

OHIO E.P.A.
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ENTERED DIRECTOR'S JOURNAL

BEFORE THE
OHIO ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:

The Andersons Marathon Ethanol, LLC. : Director's Final Findings
5278 Sebring Warner Road : and Orders
Greenville, Ohio 45331 :

PREAMBLE

It is agreed by the parties hereto as follows:

I. JURISDICTION

These Director's Final Findings and Orders ("Orders") are issued to The Andersons Marathon Ethanol, LLC. ("Respondent") pursuant to the authority vested in the Director of the Ohio Environmental Protection Agency ("Ohio EPA") under Ohio Revised Code ("ORC") § 3704.03 and 3745.01.

II. PARTIES BOUND

These Orders shall apply to and be binding upon Respondent and successors in interest liable under Ohio law. No change in ownership of the Respondent or of the facility (as hereinafter defined) shall in any way alter Respondent's obligations under these Orders.

III. DEFINITIONS

Unless otherwise stated, all terms used in these Orders shall have the same meaning as defined in ORC Chapter 3704 and the rules promulgated thereunder.

IV. FINDINGS

The Director of Ohio EPA makes the following findings:

1. Respondent owns and operates a facility (Facility ID 0819750245) located at 5278 Sebring Warner Road, Greenville, Darke County, Ohio ("Facility"). The Facility is an ethanol plant which also produces distillers dried grain ("DDGS") and animal feed ingredients as byproducts.

2. The Regional Air Pollution Control Agency ("RAPCA") is the contractual agent for Ohio EPA in Darke County for the administration of Ohio's air pollution control rules and laws.

3. On November 14, 2006, Ohio EPA issued permit-to-install ("PTI") 08-04773 to Respondent. On December 27, 2007, Ohio EPA issued PTI 08-04878, which superseded PTI 08-04773 and which was modified on April 22, 2008, for all emissions units ("EUs") at this Facility. The terms and conditions of PTI 08-04878 contained applicable emission limitations and operational control and reporting requirements for EUs B001 and B002 (two 122 million Btu per hour Natural Gas-fired Recuperative Thermal Oxidizers/Waste Heat Recovery Boilers), P005 (Mash and Yeast Operations Controlled with Recuperative Thermal Oxidizers), P006 (Fermentation and Beer Well Controlled with a Scrubber), P007 (Distillation Process Controlled with Recuperative Thermal Oxidizers), P008, P009, P010 and P011 (DDGS Dryers), P013 (Methanators Vented to DDGS Dryer Numbers 1 and 3 or to a Flare), P801 [volatile organic compound ("VOC") fugitive emissions from all EUs], and P902 (DDGS Handling and Cooling Controlled with a Baghouse). The emissions units listed in PTI 08-04878 are "air contaminant sources" as defined in Ohio Administrative Code ("OAC") Rule 3745-15-01(C) and (X). On February 11, 2008, Respondent started operations at the Facility.

4. The terms and conditions of PTI 08-04878 required Respondent to comply with 40 CFR Part 60 [Standards of Performance for New Stationary Sources ("NSPS")] for EUs B001, B002, P005, P006, P007, P013 and P801. EUs B001 and B002 are subject to Subpart Db (Standards of Performance for Industrial-Commercial-Institutional Steam Generating Units) and EUs P005, P006, P007, P013 and P801 are subject to Subpart VV (Standards of Performance for Equipment Leaks of VOC in the Synthetic Organic Chemical Manufacturing Industry for which Construction, Reconstruction, or Modification Commenced after January 5, 1981, and on or before November 7, 2006).

5. All EUs operated by Respondent are subject to OAC Chapter 3745-31 (Permits to Install New Sources and Permit-to-Install and Operate Program). Additionally, EUs P005, P006, P007, P013 and P801 are subject to OAC Rule 3745-21-09(DD) (Leaks from Process Units that Produce Organic Chemicals).

6. On July 16, 2008, RAPCA began conducting a compliance inspection at the Facility that was completed during a second visit on September 5, 2008. RAPCA also witnessed Respondent attempt three rounds of emissions testing in August, October, and December of 2008. As a result of the inspections and emissions tests, it was determined that Respondent had, *inter alia*:

a. For EUs B001, B002, P006 and P902, Respondent failed to conduct emissions testing that demonstrated compliance with the allowable emissions rates within 180 days after startup of each of these EUs, in violation of the terms and conditions of PTI 08-04878 and ORC § 3704.05(C). Respondent's initial startup of each of these EUs was February 11, 2008; therefore, the compliance demonstration needed to be completed by August 9, 2008. Respondent did not demonstrate compliance for EUs B001, B002 and P902 until December 5, 2008, 117 days late. For P006, Respondent did not demonstrate compliance until December 10, 2008, 122 days late;

b. For EUs B001 and B002, from August 10, 2008 until August 29, 2009 (384 days), Respondent failed to install, operate and maintain a continuous emission monitoring system ("CEMS") and continuous emission rate monitoring system ("CERMS") for nitrogen oxides ("NOx") emissions and conduct the required certification tests for the CEMS/CERMS, in violation of the terms and conditions of PTI 08-04878 and ORC § 3704.05(C);

c. For EUs B001 and B002, from May 1, 2008 until March 23, 2009 (326 days), Respondent failed to submit the required quarterly excess emissions reports ("EERs") for the CEMS/CERMS for NOx, in violation of the terms and conditions of PTI 08-04878 and ORC § 3704.05(C);

d. For EUs P005, P006, P007, P013 and P801, from August 10, 2008 until December 3, 2008 (115 days), Respondent failed to fully-develop and implement a Leak Detection and Repair ("LDAR") program within 180 days of startup of each of these EUs, in violation of the terms and conditions of PTI 08-04878, OAC Rule 3745-21-09(DD) and ORC § 3704.05(C) and (G);

e. For EUs P005, P006, P007, P013 and P801, from August 12, 2008 until February 2, 2009 (171 days), Respondent failed to submit the initial semi-annual LDAR report, to RAPCA, within six months of the February 11, 2008 startup date, in violation of the terms and conditions of PTI 08-04878 and ORC § 3704.05(C); and

f. For all EUs at the Facility, except EU P901 (Grain Receiving, Handling, and Storage Controlled with a Baghouse) and EU P904 (Steel Grain Bins), from February 11, 2009 until September 18, 2009, Respondent operated these EUs without Permits-to-Install and Operate ("PTIO"), in violation of OAC Rule 3745-31-02 and ORC § 3704.05(G). Respondent began operations on February 11, 2008; therefore all PTOs/PTIOs were required to be obtained by February 11, 2009.

7. On December 3 through 5 and December 10, 2008, Respondent successfully completed the emissions testing for EUs B001, B002, P006 and P902, thereby abating the violations referenced in Finding No. 6.a. of these Orders. In addition, at the time of these emissions tests, RAPCA observed that Respondent had purchased the required leak detection equipment and implemented the LDAR program; therefore, abating the violations referenced in Finding No. 6.d. of these Orders.

8. On February 2, 2009, Respondent submitted the initial semi-annual LDAR report, to RAPCA, thereby abating the violations referenced in Finding No. 6.e. of these Orders.

9. By letter dated February 19, 2009, RAPCA notified Respondent of the violations referenced in Finding No. 6 of these Orders.

10. On February 25 and March 18, 2009, Respondent submitted the necessary PTIO applications to abate the violations referenced in Finding No. 6.f. In addition, on March 23, 2009, Respondent submitted the required past due quarterly EERs to RAPCA, abating the violation referenced in Finding No. 6.c.

11. In January of 2009, Respondent installed the CEMS for EUs B001 and B002. On June 5, 2009, Respondent notified Ohio EPA that the required air flow rate sensor was installed to redesignate the CEMS to a CERMS. From July 31 to August 29, 2009, Respondent conducted the certification testing for the CEMS/CERMS. By letter dated October 30, 2009, Ohio EPA certified the CEMS/CERMS.

12. On August 5, July 24, October 28, 2009, and January 1 and April 27, 2010, Respondent submitted the quarterly EERs for 2009 and the 1st quarter of 2010 to RAPCA.

13. After reviewing the quarterly EERs referenced in Finding No. 12. of these Orders, RAPCA, by letters dated February 26 and June 28, 2010, notified Respondent that:

a. For EUs B001, B002, P005, P007, P008, P009, P010, P011, P013 and P902, Respondent failed to comply with the combined NO_x emissions limitation of 21.2 pounds per hour, in violation of the terms and conditions of PTI 08-04878 and ORC § 3704.05(C);

b. For EUs B001 and B002, Respondent failed to report, in the EERs, the location of the continuous NO_x monitor, the total NO_x emissions for the calendar quarter, in tons, and the date and time of commencement and completion, duration and magnitude of each exceedance, in violation of the terms and conditions of PTI 08-04878 and ORC § 3704.05(C); and

c. For EUs B001, B002, P005, P007, P008, P009, P010, P011, P013 and P902, the average combustion temperature for the thermal oxidizers ("TO1 and TO2"), for any 3-hour block of time when these EUs are in operation, shall not be more than 50 degrees Fahrenheit below the average temperature during the most recent emissions test that demonstrated the emissions unit was in compliance. Based upon the December 2008 stack test, the average temperatures for TO1 and TO2 were 1,476.5 and 1,481.7 degrees Fahrenheit, respectively. For 75 days during the operating time between January 23, 2009 and December 29, 2009, Respondent failed to operate under these temperature restrictions, in violation of the terms and conditions of PTI 08-04878 and ORC § 3704.05(C).

14. By letter dated August 14, 2010, Respondent submitted a response to the June 28, 2010 notice of violation letter referenced in Finding No. 13. of these Orders.

15. On November 2, 2010 and April 28, 2011, Ohio EPA, RAPCA and Respondent met to discuss the Facility operations and outstanding compliance issues at the Facility. Respondent proposed changing the NOx emissions limitation to 21.2 pounds per hour as a 30-day rolling average. In addition, Respondent requested clarification on what a "3-hr block of time" meant.

16. By letter dated May 19, 2011, RAPCA notified Respondent that Ohio EPA and RAPCA had agreed that the requests referenced in Finding 15 of these Orders were acceptable and that Respondent needed to submit an administrative permit modification request to Ohio EPA to reflect the changes. In addition, RAPCA requested that Respondent run a CERMS analysis using the 21.2 pounds per hour, as a 30-day rolling average, emissions limit and also run a thermal oxidizer temperature data analysis using the 3-hour block of time format and resubmit this data to RAPCA.

17. On May 26, 2011, Respondent submitted the administrative PTI modification to Ohio EPA. On June 9, 2010, Respondent submitted the CERMS and thermal oxidizer temperature data analysis to RAPCA.

18. On June 29, 2011, Ohio EPA issued PTI modification P0104717 to Respondent.

19. Ohio EPA and RAPCA have reviewed the CERMS and thermal oxidizer temperature data analysis information submitted by Respondent and have determined that:

a. From July 1, 2009 until March 30, 2011, Respondent would not have exceeded the 21.2 pounds per hour, as a 30-day rolling average, emissions limit as proposed in the June 29, 2011 administrative PTI modification request and as approved in the PTI modification; and

b. For TO1 and TO2, for about 146 days during the operating time between January 23, 2009 and March 31, 2011, Respondent failed to operate under the temperature designations referenced in Finding No. 13.c. of these Orders, in violation of the terms and conditions of former PTI 08-04878 and ORC § 3704.05(C).

20. The Director has given consideration to, and based his determination on, evidence relating to the technical feasibility and economic reasonableness of complying with the following Orders and their relation to benefits to the people of the State to be derived from such compliance.

V. ORDERS

The Director hereby issues the following Orders:

1. Respondent shall pay the amount of ninety-nine thousand and five hundred dollars (\$99,500) in settlement of Ohio EPA's claims for civil penalties, which may be assessed pursuant to ORC Chapter 3704. Within thirty (30) days after the effective date of these Orders, payment to Ohio EPA shall be made by an official check made payable to "Treasurer, State of Ohio" for seventy-nine thousand and six hundred dollars (\$79,600) of the total amount. The official check shall be submitted to Akia Smith, or her successor, together with a letter identifying the Respondent, to:

Ohio EPA
Office of Fiscal Administration
50 West Town Street, Suite 700
P.O. Box 1049
Columbus, Ohio 43216-1049

2. In lieu of paying the remaining nineteen thousand nine hundred dollars (\$19,900) of the civil penalty to Ohio EPA, Respondent shall fund a Supplemental Environmental Project ("SEP") by making a contribution in the amount of \$19,900 to Ohio EPA's Clean Diesel School Bus Program Fund (Fund 5CD0). Respondent shall make payment on or within thirty (30) days after the effective date of these Orders by tendering an official check made payable to "Treasurer, State of Ohio" for \$19,900. The official check shall be submitted to Akia Smith, or her successor, together with a letter identifying the Respondent and Fund 5CD0, to the above-stated address.

3. A copy of each of the above checks shall be sent to Thomas Kalman, Acting Assistant Chief, SIP Development and Enforcement, or his successor, at the following address:

Ohio EPA
Division of Air Pollution Control
50 West Town Street, Suite 700
P.O. Box 1049
Columbus, Ohio 43216-1049

6. Should Respondent fail to fund the SEP within the required time frame set forth in Order 2, Respondent shall immediately pay to Ohio EPA \$19,900 of the civil penalty in accordance with the procedures in Order 1.

VI. TERMINATION

Respondent's obligations under these Orders shall terminate upon Ohio EPA's receipt of the official checks required by Section V of these Orders.

VII. OTHER CLAIMS

Nothing in these Orders shall constitute or be construed as a release from any claim, cause of action or demand in law or equity against any person, firm, partnership or corporation, not a party to these Orders, for any liability arising from, or related to, operations by Respondent.

VIII. OTHER APPLICABLE LAWS

All actions required to be taken pursuant to these Orders shall be undertaken in accordance with the requirements of all applicable local, state and federal laws and regulations. These Orders do not waive or compromise the applicability and enforcement of any other statutes or regulations applicable to Respondent.

IX. MODIFICATIONS

These Orders may be modified by agreement of the parties hereto. Modifications shall be in writing and shall be effective on the date entered in the journal of the Director of Ohio EPA.

X. NOTICE

All documents required to be submitted by Respondent pursuant to these Orders shall be addressed to:

Regional Air Pollution Control Agency
117 South Main Street
Dayton, Ohio 45422
Attn: Jennifer S. Marsee

and to:

Ohio Environmental Protection Agency
Division of Air Pollution Control
P.O. Box 1049
Columbus, Ohio 43216-1049
Attn: Thomas Kalman

or to such persons and addresses as may hereafter be otherwise specified in writing by Ohio EPA.

XI. RESERVATION OF RIGHTS

Ohio EPA and Respondent each reserve all rights, privileges and causes of action, except as specifically waived in Section XII of these Orders.

XII. WAIVER

In order to resolve disputed claims, without admission of fact, violation or liability, and in lieu of further enforcement action by Ohio EPA for only the violations specifically cited in these Orders, Respondent consents to the issuance of these Orders and agrees to comply with these Orders. Compliance with these Orders shall be a full accord and satisfaction for Respondent's liability for the violations specifically cited herein.

Respondent hereby waives the right to appeal the issuance, terms and conditions, and service of these Orders, and Respondent hereby waives any and all rights Respondent may have to seek administrative or judicial review of these Orders either in law or equity.

Notwithstanding the preceding, Ohio EPA and Respondent agree that if these Orders are appealed by any other party to the Environmental Review Appeals Commission, or any court, Respondent retains the right to intervene and participate in such appeal. In such an event, Respondent shall continue to comply with these Orders notwithstanding such appeal and intervention unless these Orders are stayed, vacated or modified.

XIII. EFFECTIVE DATE

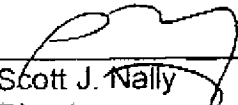
The effective date of these Orders is the date these Orders are entered into the Ohio EPA Director's journal.

XIV. SIGNATORY AUTHORITY

Each undersigned representative of a party to these Orders certifies that he or she is fully authorized to enter into these Orders and to legally bind such party to these Orders.

ORDERED AND AGREED:

Ohio Environmental Protection Agency



Scott J. Nally
Director

6/15/12

Date

AGREED:

The Andersons Marathon Ethanol, LLC.

By: The Andersons, Inc., manager



Signature

6/12/12

Date

NARAN BURCHINOW

Printed or Typed Name

Vice President

Title