

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5



In the Matter of:

Louis Dreyfus Company
Agricultural Industries LLC
Claypool, Indiana,
Respondent.

Docket No.

CAA-05-2019-0027

Proceeding to Assess a Civil Penalty
Under Section 113(d) of the Clean Air Act,
42 U.S.C. § 7413(d)

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 Enforcement and Compliance Assurance Division, U.S. Environmental Protection Agency (EPA), Region 5.
3. Respondent is Louis Dreyfus Company Agricultural Industries LLC (Louis Dreyfus), a corporation doing business in Indiana.
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 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. Each state must submit to the Administrator of EPA a plan for attaining and maintaining the National Ambient Air Quality Standards (NAAQS) under Section 110 of the CAA, 42 U.S.C. § 7410.

Indiana State Implementation Plan (SIP)

Emission Statement Requirements

10. On March 29, 2007, EPA approved 326 Indiana Administrative Code (IAC) 2-6-3 and 2-6-4 as part of the federally enforceable State Implementation Plan (SIP) for Indiana. *72 Fed. Reg.* 14678.

11. 326 IAC 2-6-3 requires the submission of emission statements covering the previous calendar year. Sources which have the potential to emit 250 tons per year or more of volatile organic compounds (VOCs) must submit annual emission statements by July 1 of each year.

12. 326 IAC 2-6-2(19) states that the term "potential to emit" has the meaning set forth in 326 IAC 2-7-1. 326 IAC 2-7-1(30) defines "potential to emit" as "the maximum capacity of a stationary source to emit any air pollutant under its physical and operational design. Any physical or operational limitation on the capacity of a source to emit an air pollutant, including air pollution control equipment and restrictions on hours of operation or type or amount of material combusted,

stored, or processed shall be treated as part of its design if the limitation is enforceable by the U.S. EPA. This term does not alter or affect the use of this term for any other purpose under the CAA, (or the term "capacity factor" as used in Title IV of the CAA) (or the regulations promulgated thereunder)."

13. 326 IAC 2-6-4(c)(3) requires that the emission statement include certain operating data for each emission unit or emissions unit group.

14. 326 IAC 2-6-4(c)(5) requires that the emission statement include certain emission information for each process.

Prevention of Significant Deterioration Requirements

15. On March 3, 2003, EPA conditionally approved Indiana's Prevention of Significant Deterioration (PSD) program as part of the Indiana SIP. 68 *Fed. Reg.* 9892 (effective April 2, 2003). On June 18, 2007, EPA partially approved revisions related to EPA's New Source Review (NSR) Reform regulations in Indiana's SIP. 72 *Fed. Reg.* 33395 (effective July 18, 2007). For all violations cited in this CAFO, the applicable Indiana PSD regulations are the regulations codified in the Indiana Administrative Code as part of the Indiana SIP.

16. On October 29, 2012, EPA approved revised 326 IAC 2-2-1(ss)(1) as part of the federally enforceable SIP for Indiana. 77 *Fed. Reg.* 65478.

17. 326 IAC 2-2-1(ss)(1) defines "regulated NSR pollutant" as any pollutant for which a NAAQS has been promulgated and any pollutant identified as a constituent or precursor to the pollutant.

18. EPA initially promulgated a NAAQS for ozone on April 30, 1971 (36 *Fed. Reg.* 8186). The ozone NAAQS has been updated multiple times since its initial promulgation.

19. 326 IAC 2-2-1(ss)(1)(A) states that VOC is a precursor to ozone.

20. On September 28, 2011, EPA approved 326 IAC 2-2-1(ff)(1)-(7) as part of the federally enforceable SIP for Indiana. *76 Fed. Reg. 59899.*

21. Pursuant to the Indiana SIP, a facility is considered a “major stationary source” if it emits or has the potential to emit 100 tons per year or more of a regulated NSR pollutant and it has fossil fuel boilers (or combinations thereof) totaling more than 250 million British thermal units per hour (mmBtu/hr) of heat input. *See 326 IAC 2-2-1(ff)(1)(V).*

Title V of the CAA

22. Title V of the Act, 42 U.S.C. §§ 7661-7661f, establishes an operating permit program for major sources of air pollution.

23. In accordance with Section 502(b) of the Act, 42 U.S.C. § 7661a(b), 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. 32250 (July 21, 1992).* Those regulations are codified at 40 C.F.R. Part 70; thus Title V Permits are also called “Part 70” permits.

24. Section 502(d) of the Act, 42 U.S.C. § 7661a(d), provides that each state must submit to EPA a permit program meeting the requirements of Title V.

25. On December 4, 2001, EPA approved the State of Indiana’s operating permit program with an effective date of November 30, 2001. *See 66 Fed. Reg. 62969 (December 4, 2001).* Indiana’s operating permit program is codified at 326 IAC 2-7.

26. On March 16, 2015, EPA approved Indiana’s Title V construction permit rule, replacing Indiana’s previous construction permit rules codified at 326 IAC 2-1 with 326 IAC 2-7-10.5. *See 80 Fed. Reg. 13493.*

27. 326 IAC 2-7-10.5 requires that the application for modification of a Part 70 permit must identify all applicable requirements to which the source will be subject as a result of the modification.

28. 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.

29. 40 C.F.R. § 70.6(b)(1) provides that all terms and conditions in a Title V permit are enforceable by EPA.

30. The Administrator of EPA (the Administrator) may assess a civil penalty of up to \$47,357 per day of violation up to a total of \$378,852 for violations that occurred after November 2, 2015 under Section 113(d)(1) of the CAA, 42 U.S.C. § 7413(d)(1), and 40 C.F.R. Part 19.

31. 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.

32. 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 and Alleged Violations

33. Louis Dreyfus owns and operates a soybean processing facility at 7344 SR 15 S, Claypool, Kosciusko County, Indiana (Facility).

34. Louis Dreyfus owns or operates an "emission source" within the meaning of Section 114 (a)(1) of the CAA, 42 U.S.C. § 7414(a)(1). Therefore, Louis Dreyfus is subject to the requirements of Section 114(a)(1).

35. Emissions from Louis Dreyfus's Facility are subject to the emission statement reporting requirements in the Indiana SIP at 326 IAC 2-6-3 and 2-6-4 as well as the Prevention of Significant Deterioration Requirements of the Indiana SIP at 326 IAC 2-2.

36. IDEM issued an initial Title V permit to Louis Dreyfus on January 24, 2006. Louis Dreyfus has received modifications to and renewals of this permit, including on the following dates which are relevant to this CAFO: December 17, 2013, June 16, 2017, and September 5, 2018.

37. The Facility's June 16, 2017 and September 5, 2018 Title V Permits contain the following requirements related to operation of the mineral oil system which controls VOC emissions from the extraction unit:

- a. Condition D.3.11(a) requires that the Permittee monitor and record the mineral oil flow rate to the mineral oil absorber at least once per day;
- b. Condition D.3.11(b) requires that a continuous monitoring system measure the operating temperature of the mineral oil absorber, and requires that on and after the date the stack test results are available, the Permittee maintain the temperature of the mineral oil to the absorber at or below the 3-hour block average temperature as observed during the compliant test;
- c. Condition D.3.11(c) requires that a continuous monitoring system measure the operating temperature of the mineral oil stripper, and requires that on and after the date the stack test results are available, the Permittee maintain the temperature of the mineral oil stripper at or above the 3-hour block average temperature as observed during the compliant test;
- d. Condition D.3.11(d) requires that the Permittee must take action to address certain operating conditions, including when the mineral oil flow rate is below the minimum established during the last stack test, when the temperature of mineral oil to the absorber is above the temperature established during the last stack test, and when the temperature of mineral oil to the stripper is below the temperature established during the last stack

test. It also states that, “[o]perating conditions above or below the values specified in (1) through (3) above shall not be considered a deviation from this permit. Failure to take response steps shall be considered a deviation from this permit.”

38. On December 19, 2018, EPA issued to Louis Dreyfus a Notice and Finding of Violation alleging that it violated:

- a. 326 IAC 2-6-3 of the Indiana SIP;
- b. 326 IAC 2-6-4(c)(3) and 326 IAC 2-6-4(c)(5) of the Indiana SIP;
- c. 326 IAC 2-7-10.5 of the Indiana SIP; and,
- d. Condition D.3.11(d) of its Title V permit.

39. On February 12, 2019, representatives of Louis Dreyfus and EPA discussed the December 19, 2018 Notice and Finding of Violation.

40. At the February 12, 2019 meeting and subsequently thereafter, Louis Dreyfus presented information indicating that it had not violated the Indiana SIP.

41. Louis Dreyfus violated Condition D.3.11(d) of its Title V permit by failing to take response steps to address certain operating conditions.

Civil Penalty

42. 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 Louis Dreyfus’ cooperation and prompt return to compliance, Complainant has determined that an appropriate civil penalty to settle this action is \$155,806.

43. Within 30 days after the effective date of this CAFO, Respondent must pay a \$155,806 civil penalty by electronic funds transfer, payable to “Treasurer, United States of America,” and sent 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.

44. Respondent must send a notice of payment that states Respondent's name and the docket number of this CAFO to EPA at the following addresses when it pays the penalty:

Attn: Compliance Tracker (AE-18J)
Air Enforcement and Compliance Assurance Branch
Enforcement and Compliance Assurance Divisions
U.S. Environmental Protection Agency, Region 5
77 W. Jackson Boulevard
Chicago, Illinois 60604

Susan Tennenbaum (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

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

46. 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.

47. 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

48. The parties consent to service of this CAFO by e-mail at the following e-mail addresses: Tennenbaum.Susan@epa.gov (for Complainant), and to NEIL.GREALY@ldc.com with a copy to TODD.TREFREN@ldc.com (for Respondent). The parties waive their right to service by the methods specified in 40 C.F.R. § 22.6.

49. This CAFO resolves only Respondent's liability for federal civil penalties for the violations alleged in this CAFO and the December 19, 2018 Notice and Finding of Violation.

50. 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.

51. 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 49, above, compliance with this CAFO will not be a defense to any actions subsequently commenced pursuant to federal laws administered by EPA.

52. Respondent certifies that it is complying fully with Condition D.3.11(d) of its Title V permit.

53. Respondent waives any and all remedies, claims for relief and otherwise available rights to judicial or administrative review that Respondent may have with respect to any issue of fact or law set forth in this CAFO, including any right of judicial review under Section 307(b)(1) of the Clean Air Act, 42 U.S.C. § 7607(b)(1).

54. 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).

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

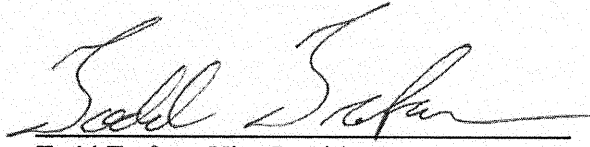
56. Each person signing this consent agreement certifies that he or she has the authority to sign for the party whom he or she represents and to bind that party to its terms.

57. Each party agrees to bear its own costs and attorneys’ fees in this action.

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

Louis Dreyfus Company Agricultural Industries LLC, Respondent

August 19, 2019
Date

A handwritten signature in black ink, appearing to read "Todd Trefren", written over a horizontal line.

Todd Trefren, Vice President
Louis Dreyfus Company Agricultural
Industries LLC

United States Environmental Protection Agency, Complainant

9-3-2019
Date

Sara Brunema
for Michael D. Harris
Acting Division Director
Enforcement and Compliance Assurance Division
U.S. Environmental Protection Agency, Region 5

Consent Agreement and Final Order

In the Matter of: Louis Dreyfus Company Agricultural Industries LLC

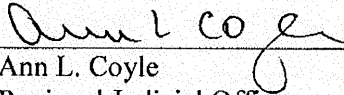
Docket No. CAA-05-2019-0027

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.

9/6/19

Date



Ann L. Coyle
Regional Judicial Officer
U.S. Environmental Protection Agency
Region 5

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Docket Number: CAA-05-2019-0027

CERTIFICATE OF SERVICE

I certify that I served a true and correct copy of the foregoing **Consent Agreement and Final Order**, docket number CAA-05-2019-0027 which was filed on September 9, 2019, in the following manner to the following addressees:

Copy by E-mail to Respondent: Neil Grealy
neil.grealy@ldc.com
Louis Dreyfus Company Agricultural Industries LLC
7344 SR 15 S
Claypool, Indiana 46510

and

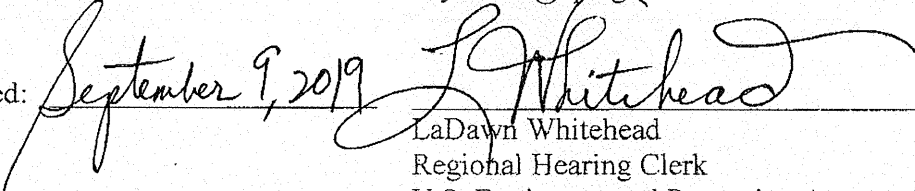
Todd Trefren
Todd.trefren@ldc.com
Louis Dreyfus Company Agricultural Industries LLC
7344 SR 15 S
Claypool, Indiana 46510

Copy by E-mail to
Attorney for Complainant: Susan Tennenbaum
Tennenbaum.susan@epa.gov

Copy by E-mail to
Attorney for Respondent: James Hauck
james.hauck@h2lawyers.com

Copy by E-mail to
Regional Judicial Officer: Ann Coyle
coyle.ann@epa.gov

Dated: September 9, 2019



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