

**IOWA DEPARTMENT OF NATURAL RESOURCES  
ADMINISTRATIVE CONSENT ORDER**

IN THE MATTER OF:

**FRONTIER ETHANOL, LLC, dba  
POET BIOREFINING-GOWRIE**

Facility ID# 94-02-004

ADMINISTRATIVE CONSENT ORDER  
NO. 2008-AQ-22

TO: Kelly Jessen, Environmental Health and Safety Coordinator  
Dale Calendine, Registered Agent  
POET Biorefining - Gowrie  
1562 320<sup>th</sup> Street  
Gowrie, IA 50543

**I. SUMMARY**

This administrative consent order is entered into between the Iowa Department of Natural Resources (DNR) and Frontier Ethanol, LLC, dba POET Biorefining-Gowrie (POET Biorefining-Gowrie) for the purpose of resolving issues pertaining to New Source Performance Standards (NSPS) violations. In the interest of avoiding litigation, the parties have agreed to the provisions below.

Questions regarding this administrative consent order should be directed to:

**Relating to technical requirements:**

Bryan Bunton, Air Quality  
Iowa Department of Natural Resources  
7900 Hickman Road, Suite 1  
Urbandale, Iowa 50322  
Phone: 515/281-0363

**Relating to legal requirements:**

Anne Preziosi, Attorney for the DNR  
Iowa Department of Natural Resources  
7900 Hickman Road, Suite 1  
Urbandale, Iowa 50322  
Phone: 515/281-6243

**Payment of penalty to:**

Director of the Iowa DNR  
Wallace State Office Building  
502 East Ninth Street  
Des Moines, Iowa 50319-0034

**II. JURISDICTION**

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Pursuant to the provisions of Iowa Code sections 455B.134(9) and 455B.138(1) which authorize the Director to issue any order necessary to secure compliance with or prevent a violation of Iowa Code Chapter 455B, Division II (air quality), and the rules promulgated or permits issued pursuant to that part; and Iowa Code section 455B.109 and 567 Iowa Administrative Code (IAC) Chapter 10, which authorize the Director to assess administrative penalties, the DNR has jurisdiction to issue this administrative consent order.

**III. STATEMENT OF FACTS**

1. POET Biorefining presently owns and operates seven ethanol facilities in Iowa. Poet Biorefining-Gowrie located at 1562 320<sup>th</sup> Street, Gowrie Iowa, is designed to produce 60 million gallons of ethanol annually. The plant, which is the 23<sup>rd</sup> ethanol plant built by POET Biorefining, consumes approximately 21 million bushels of locally-grown corn each year and provides premium, high-quality Dakota Gold brand livestock feed for regional, national, and international markets. POET Biorefining-Gowrie employs approximately forty people. The emission sources at this facility include boilers, dryers, grain storage silos, fermentation and distillation tanks, hammermills, and various grain loading, unloading, and handling equipment.

2. POET Biorefining-Gowrie was issued DNR Construction Permit number 04-A-503-S3 on June 12, 2007, number 04-A-505-S2 on October 24, 2005, and number 04-A-506-S2 on June 12, 2007. Condition 13 of DNR Construction Permits 04-A-503-S3, 04-A-505-S2, and 04-A-506-S2 requires that volatile organic compound (VOC) testing be conducted on a monthly basis and that semi-annual reports be submitted.

3. 40 CFR 60 Subpart VV is the New Source Performance Standard (NSPS) for Equipment Leaks of VOC in the Synthetic Organic Chemicals Manufacturing Industry. Subpart VV requires monthly leak detection monitoring for pumps, valves, and compressors in VOC service, and the submittal of semi-annual reports based on the leak detection data collection.

4. Each owner or operator subject to the provisions of Subpart VV is to demonstrate compliance with the requirements for all equipment within 180 days of initial startup when the operation of the facility commences with the initial report due 180 days after start-up. On May 1, 2006, POET Biorefining-Gowrie began operations. Accordingly, the initial testing report for POET Biorefining-Gowrie was due on November 30, 2006 for the testing period of May-October 2006. The semi-annual report was due on May 31, 2007 for the testing period of November 2006 - April 2007.

5. On July 17, 2007, DNR issued a Notice of Violation (NOV) letter to POET Biorefining-Gowrie for failing to submit reports required by 40 CFR 60 Subpart VV. The letter also informed POET Biorefining-Gowrie that the matter could be referred for enforcement action.

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6. On July 20, 2007, DNR received an initial VOC testing report from POET-Biorefining-Gowrie.

7. On July 25, 2007, DNR sent POET Biorefining-Gowrie general correspondence requesting documentation verifying that testing occurred at the plant for the month of July, 2007.

8. On August 8, 2007, POET Biorefining-Gowrie submitted the requested testing documentation.

9. On August 13, 2007, POET Biorefining-Gowrie sent DNR general correspondence stating that July 2007 was the first month that testing was completed. POET Biorefining-Gowrie is now complying with the reporting requirements.

**IV. CONCLUSIONS OF LAW**

1. Iowa Code section 455B.133 provides that the Environmental Protection Commission (Commission) shall establish rules governing the quality of air and emission standards. The Commission has adopted 567 IAC Chapters 20-34 relating to air quality.

2. 40 CFR 60 Subpart VV is the NSPS for Equipment Leaks of VOC in the Synthetic Organic Chemicals Manufacturing Industry. Subpart VV requires monthly leak detection monitoring for pumps, valves, and compressors in VOC service, and the submittal of semi-annual reports based on the leak detection data collected. Each owner or operator subject to the provisions of Subpart VV is to demonstrate compliance with the requirements for all equipment within 180 days of initial startup. Condition 13 of DNR Construction Permits 04-A-503-S3, 04-A-505-S2, and 04-A-506-S2 subjects POET Biorefining-Gowrie to the NSPS requirements specified in 40 CFR 60 subpart VV.

3. POET Biorefining-Gowrie began operation in May 1, 2006. Therefore, the initial semi-annual report was due on November 30, 2006 and a subsequent report was due May 31, 2007. DNR received an initial testing report from POET on July 20, 2007. POET Biorefining-Gowrie stated that testing at the facility did not commence until July 2007. Therefore, POET Biorefining-Gowrie had been out of compliance with this permit requirement from November 30, 2006 until July 20, 2007, or approximately nine months..

**V. ORDER**

THEREFORE, the DNR orders and POET Biorefining-Gowrie agrees to do the following:

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1. Pay a penalty of \$7,500.00 within 60 days of the date the Director signs this administrative consent order.

**VI. PENALTY**

1. Iowa Code section 455B.146 authorizes the assessment of civil penalties of up to \$10,000.00 per day of violation for the air quality violations involved in this matter. More serious criminal sanctions are also available pursuant to Iowa Code section 455B.146A.

2. Iowa Code section 455B.109 authorizes the Commission to establish by rule a schedule of civil penalties up to \$10,000.00, which may be assessed administratively. The Commission has adopted this schedule with procedures and criteria for assessment of penalties in 567 LAC Chapter 10. Pursuant to these rules, the DNR has determined that the most effective and efficient means of addressing the above-cited violations is the issuance of an administrative consent order with an administrative penalty of \$7,500.00. The administrative penalty is determined as follows:

Economic Benefit- POET Biorefining-Gowrie received a significant economic benefit from failing to complete the VOC leak detection tests as required. Costs were delayed for training personnel in the proper testing procedures, and also by delaying the purchase of testing equipment. More importantly, the total cost of completing actual testing was completely avoided for nine months. This includes consultant fees, the cost of completing the tests, and any repair that was necessary as a result of the tests. In addition, POET Biorefining-Gowrie enjoyed a competitive advantage over competitors who were completing the necessary tests as required. Based on the above considerations, \$6,500.00 is assessed for this factor.

Gravity – The amount of actual or threatened harm to the environment that resulted from POET Biorefining-Gowrie's failure to conduct VOC leak tests is difficult to quantify due to the fugitive nature of the emissions. No leaks were detected during the initial testing performed in July 2007. However, because POET-Biorefining-Gowrie did not comply with air quality requirements, DNR staff had to spend extra time writing NOV's and making phone calls trying to obtain the required reports. Thus, these violations threaten the integrity of DNR's air program. Based on the above considerations, \$500.00 is assessed for this factor.

Culpability- POET Biorefining presently owns and operates seven ethanol facilities in Iowa and is fully aware of the requirement to complete monthly VOC testing and to summarize those findings in semi-annual reports. POET Biorefining-Gowrie thus was aware of these requirements, yet failed to comply with them in this case. Based on the above considerations, \$1,000.00 is assessed for this factor.

Mitigating Factors- POET Biorefining-Gowrie cooperated fully with the DNR by establishing a testing program as quickly as possible once it was made aware of the violation

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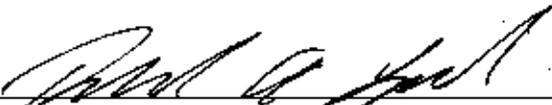
and provided the requested information in a timely manner. Therefore, the total penalty amount should be reduced by \$500.00.

**VII. WAIVER OF APPEAL RIGHTS**

This administrative consent order is entered into knowingly and with the consent of POET Biorefining-Gowrie. For that reason POET Biorefining-Gowrie waives its right to appeal this administrative consent order or any part thereof.

**VIII. NONCOMPLIANCE**

Failure to comply with this administrative consent order, including failure to timely pay any penalty, may result in the imposition of further administrative penalties or referral to the attorney general to obtain injunctive relief and civil penalties pursuant to Iowa Code section 455B.146. Compliance with Section "V. Order" of this administrative consent order constitutes full satisfaction of all requirements pertaining to the specific violations described in Section "IV. Conclusions of Law" of this administrative consent order. DNR reserves the right to bring enforcement action, including penalties, or to request that the attorney general initiate legal action to address other violations not described in Section "IV. Conclusions of Law" of this administrative consent order but which may arise from the facts summarized in Section "III. Statement of Facts" of this administrative consent order. DNR specifically reserves the right to pursue enforcement action, including penalties, for any current violations not specifically cited in this administrative consent order.

  
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RICHARD A. LEOPOLD, DIRECTOR  
Iowa Department of Natural Resources

Dated this 8 day of  
August, 2008.

  
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AUTHORIZED AGENT  
Frontier Ethanol, LLC, dba POET Biorefining-Gowrie

Dated this 22 day of  
July, 2008.