

IN THE CASE OF  
PACIFIC ETHANOL AURORA WEST  
WEST LLC,

**Respondent.**

## CONSENT ORDER

1. The Nebraska Department of Environmental Quality ("Department") and Pacific Ethanol Aurora West LLC ("Pacific") voluntarily enter into this Consent Order in settlement of claims against Pacific arising under the Nebraska Environmental Protection Act and without admission of any liability or violation of law by Pacific. The Consent Order establishes a schedule for actions agreed to by Pacific in accordance with the Nebraska Environmental Protection Act ("Act"), Neb. Rev. Stat. §§ 81-1501 et seq. (Reissue 2014 and 2015 Supp.) and *Title 129, Neb. Admin. Code, Nebraska Air Quality Regulations* ("Title 129"). Pacific agrees to undertake the activities specified in Section V.

2. The Department is the agency of the State of Nebraska charged with the duty pursuant to Neb. Rev. Stat. § 81-1504(1) of exercising exclusive general supervision, administration, and enforcement of the Act. This Consent Order is entered under the authority vested in the Director of the Department by Neb. Rev. Stat. §§ 81-1504(25) and 81-1507(1). Pacific is a Delaware limited liability corporation qualified and in good standing to do business in Nebraska.



3. . Pacific admits to and agrees not to contest the jurisdictional allegations referenced in paragraph 2. By entering into this Consent Order, Pacific waives its right to receipt of a complaint from the Department and all notice and hearing requirements provided in Neb. Rev. Stat. § 81-1507.

4. This Consent Order is binding on Pacific and its successors and assigns.

5. Pacific shall ensure that any contractor hired by Pacific to perform any of the work agreed to in Section V hereof receives a copy of this Consent Order. Pacific shall be responsible for any noncompliance with this Consent Order.

### III. FINDINGS OF FACT

6. Pacific and the Department stipulate that, beginning July 1, 2015, Pacific has owned and operated an ethanol manufacturing plant located at 2103 Harvest Drive, Hamilton County, Aurora, NE 68818-2525 (the "Aurora West Plant"), and that, prior to July 1, 2015, the Aurora West Plant was owned and operated by Aventine Renewable Energy. Pacific does not admit, but agrees not to contest, the remaining Findings of Fact and legal conclusions set forth in Section III. hereof.

7. Pursuant to the authority set forth in Neb. Rev. Stat. § 81-1505(12), the Nebraska Environmental Quality Council adopted rules for the issuance of construction and operating permits for the purpose of air pollution control. Those rules are codified in Title 129.

8. Commencing July 1, 2015, Pacific and the Aurora West Plant have been subject to the terms and conditions of Construction Permit #CP15-061, issued on December 16, 2015, and # CP12-012, issued on April 16, 2013 (upon Pacific's ownership of the Aurora West Plant on July 1, 2015). Both permits were issued by the Department pursuant to

Neb. Rev. Stat. § 81-1504(11). Prior to July 1, 2015, Aventine Renewable Energy was subject to the terms and conditions of Construction Permit # CP12-012 with respect to the Aurora West Plant.

9. Prior to Pacific's ownership of the Aurora West Plant, the Department issued a Notice of Violation to Aventine Renewable Energy on May 1, 2015, alleging violations of Title 129, Chapter 34, and Construction Permit # CP-12-012.

10. The Department cited seventeen alleged violations by Aventine Renewable Energy in the May 1, 2015, Notice of Violation, including failure to conduct performance tests as required, failure to meet the 20% opacity limit for RTO2, failure to have all emissions controlled, failure to submit a malfunction notification, failure to maintain a site survey for stack heights and site boundary, failure to maintain emission calculations for HAPs, failure to maintain continuous monitoring data for pressure differential and chemical addition beyond 14 days, failure to maintain calculations for the total amount of chemical added to the scrubber each month, failure to document scrubber differential pressure during the most recent performance test, failure to maintain chemical addition to the scrubber at tested rates during a period identified in the trend data, failure to maintain RTO temperatures above 1,400 F. for extended periods identified in trend data, failure to maintain monthly gas usage data on the boilers, failure to maintain 12 month operating hour rolling totals for the emergency fire pump, failure to submit an initial semiannual report for NSPS VVa, failure to maintain drift loss specification documentation for the cooling tower, and failure to document daily haul road surveys.

11. The Department issued a Notice of Violation to Aventine Renewable Energy on July 30, 2015, alleging violations by Aventine of Title 129, Chapter 34, and Construction Permit # CP-12-012.

12. Five violations were alleged in the July 30, 2015, Notice of Violation including exceeding permit limit for PM and PM10 at emission point EP-01 grain receiving bag house on February 10 & 11, 2015; exceeding permit limit for NO<sub>x</sub> at emission point EP-32, RTO # 2 on October 28, 2014; failure to test the emission point EP-29 fermentation scrubber for particulate PM & PM10; failure to test the emission points EP-31, EP-32, RTO # 1, & RTO # 2 at maximum capacity with dryers in operation within 60 days of reaching maximum capacity or 180 days from start up for all pollutants; and failure to submit all test reports to NDEQ within 60 days after the completion of the test.

13. On October 16, 2015, two employees of the Department observed a performance test conducted by Pacific on the RTO # 2 equipment at the Aurora West Plant. The Department expressed concerns to Pacific concerning the test. Pacific responded to the concerns. The Department also has expressed concern to Pacific as to the timing of notifications pursuant to Department policy for observation of compliance testing and excess emissions.

14. The Act, at Neb. Rev. Stat. §81-1506(4)(b), makes it unlawful for any person to "violate any term or condition of an air pollution permit or any emission limit set in the permit."

15. Pacific is a "person" as defined in Neb. Rev. Stat. § 81-1502(10) of the Act.

IV. STIPULATION16. The Department acknowledges, for purposes of this Consent Decree, that Pacific has taken action to resolve all alleged violations noted in the May 1, 2015 and July 30, 2015, Notices of Violation. Pacific has observed to the Department that some of the emission limitations set forth in the permits are more restrictive than the Title 129 regulations require and the Department acknowledges that Pacific plans to submit a permit revision request to the Department to revise some of the emission limitations.

17. The Department acknowledges, for purposes of this Consent Decree, that, since it took over ownership of the Aurora West Plant on July 1, 2015, Pacific has taken additional steps to assure compliance with Construction Permit # CP-12-012. These actions include: creating an onsite environmental staff position; hiring an outside air quality consultant to assist Pacific with compliance matters; implementing BasicSafe Scheduler for tracking the monitoring, testing, reporting, and recordkeeping requirements in # CP-12-012; making equipment improvements to increase the plant's reliability; conducting successful performance tests as provided in the permits; and providing training for staff and management.

18. Without this Consent Decree constituting an admission by Pacific of any allegation set forth herein or in the aforementioned Notices of Violation, or admitting any violation of law, and in full and final settlement of the Department's allegations, Pacific agrees to undertake all actions required by the terms and conditions of this Consent Order and, as a condition of entering into this Consent Order, agrees not to contest the Department's jurisdiction and authority to enter into and enforce this Consent Order.

19. . In consideration of Pacific's agreement to undertake and complete the actions set forth in Section V hereof, the Department agrees that such actions shall constitute compliance with the May 1, 2015 and July 30, 2015 Notices of Violations, and all other allegations set forth in this Consent Order.

#### V. COMPLIANCE ORDER AND SCHEDULE

20. Pacific agrees to perform the following activities at the Aurora West Plant:

A. By nine (9) months after the effective date of this Consent Order , install a VOC, HAP and Flow Continuous Emissions Monitoring Systems ("CEMS") on the fermentation scrubber (EP-29).

B. Within ninety (90) days of installation and successful operation of the CEMS, certify the CEMS in accordance with Appendix B of 40 C.F.R. Part 60.

C. By nine (9) months after the effective date of this Consent Order, submit a minor permit revision request in accordance with Title 129, Chapter 15.003, to revise Air Quality Construction Permit Number CP15-061 dated December 16, 2015, to allow Pacific to use the installed CEMS for compliance demonstration.

D. Until such time as the CEMS unit has been certified in accordance with Appendix B of 40 C.F.R. Part 60 and the minor permit revision request has been submitted, Pacific will continue with the air emissions testing schedule found in Air Quality Construction Permit Number CP15-061 dated December 16, 2015. The Department acknowledges that the installation and operation of CEMS on ethanol plant fermentation scrubbers is in its early stages and that Pacific may encounter challenges in the implementation of this project. Pacific will inform the Department of

any such challenges that materially impact the project or its schedule, and the Department will respond promptly to Pacific's requests related to the project.

E. The NDEQ acknowledges that the current system in place for the bypass (dump) stacks at the Aurora West Plant monitors the open/closed status of both stacks. The plant has a position sensor on the actuator that monitors the position of the stacks. There is a position sensor that indicates when the positioner is completely closed and when it is fully open.

F. Pacific's performance of the activities set forth in this Section V shall be excused if and to the extent Pacific's performance is prevented by any cause reasonably beyond its control and without Pacific's fault, such as and not by way of limitation: fire; floods; windstorms; strikes; work stoppages; riots; acts of God; and acts of the public enemy ("Event of Force Majeure"). In the event of any delay or nonperformance caused by an Event of Force Majeure, Pacific shall, within forty-eight (48) hours, notify the Department verbally and, within five (5) days provide the Department written confirmation of the nature and anticipated duration of such delay or nonperformance. Pacific shall use its best efforts to resume the performance of its obligations with the least possible delay, provided that this shall not require Pacific to enter into settlement of labor or other disputes against its best interest.

21. Information to be submitted under this Consent Order shall be sent to:

Air Quality Division  
Nebraska Department of Environmental Quality  
P.O. Box 98922 (1200 N St., Suite 400)  
Lincoln, NE 68509-8922  
Telephone: 402-471-2186

#### VI. SATISFACTION AND COMPLIANCE WITH OTHER LAWS

22. Pacific shall perform and conduct all actions required by this Consent Order in accordance with all applicable local, state, and federal laws, regulations and permits.

#### VII. RESERVATION OF RIGHTS

23. Nothing in this Consent Order shall be construed to sanction any violation of State or Federal law or limit the power and authority of the Department to take or order any action necessary to protect public health, welfare, or the environment or to enforce any provision of the Act and any rules, regulations, orders, or permits issued pursuant to the Act.

#### VIII. NEGATION OF AGENCY RELATIONSHIP

24. Nothing contained in this Consent Order shall be construed to create, either expressly or by implication, the relationship of agency between the Department and Pacific.

#### IX. AMENDMENT

25. This Consent Order may be modified and amended in writing by mutual agreement of the Department and Pacific.

#### X. EFFECTIVE DATE

26. This Consent Order shall become effective on the date it is signed by the Director of the Department or his designee.

#### XI. SEVERABILITY

27. If any provision or authority of this Consent Order or the application of this Consent Order to any party or circumstances is held by any judicial or administrative authority to be invalid, the remainder of the Consent Order shall remain in force and shall not be affected thereby.



## XII. SIGNATURES

28. For the Respondent, Pacific Ethanol Aurora West LLC: The undersigned representative of Pacific Ethanol Aurora West LLC certifies that he or she is fully authorized to enter into the terms and conditions of this Consent Order and to bind the Respondent.

By: Michael Kados

Title: COO

Date: 12/16/2016

For the Department: IT IS AGREED AND ORDERED this 7<sup>th</sup> day of December, 2016.

By: Jim Macy  
Jim Macy, Director  
Department of Environmental Quality

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