UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

UNITED STATES OF AMERICA, Plaintiff, v. AGRA RESOURCES COOPERATIVE, d/b/a/ EXOL, BROIN AND ASSOCIATES, INC., and BROIN MANAGEMENT, L.L.C., Defendants.	)	CIVIL ACTION NO. 02-3789 MJD/JGL

COMPLAINT

The United States of America, by the authority of the Attorney General of the United States and through the undersigned attorneys, acting at the request of the Administrator of the United States Environmental Protection Agency ("EPA"), alleges:

NATURE OF ACTION

1. This is a civil action brought against Agra Resources Cooperative, d/b/a/ Exol, Broin and Associates, Inc., and Broin Management, L.L.C. ("Exol" and "Broin" or "Defendants"), pursuant to Section 113(b) of the Clean Air Act ("CAA" or the Act), 42 U.S.C. § 7413(b), for alleged environmental violations at an ethanol plant owned and operated by Defendants in Luverne, Minnesota. As set forth below, Exol and Broin have been and are in violation of EPA's regulations implementing the following Clean Air Act statutory and regulatory requirements applicable to the ethanol industry: Part C of Title I of the Act, 42 U.S.C. §

7470-7492, Prevention of Significant Deterioration ("PSD"); New Source Performance Standards ("NSPS"), 40 C.F.R. Part 60, Subparts Db, Dc, Kb, and VV; National Emission Standards for Hazardous Air Pollutants ("NESHAP"), 40 C.F.R. Part 63, pursuant to Sections 112(d) and 112(g) of the Act; and the Minnesota state implementation plan ("SIP") which incorporates and/or implements the above-listed federal regulations.

2. The United States seeks an injunction ordering Defendants to comply with the above statutes and the laws and regulations promulgated thereunder, and civil penalties for Defendants' past and ongoing violations.

JURISDICTION AND VENUE

3. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331, 1345 and 1355; Section 113(b) of the CAA.

4. Venue is proper in this District pursuant to 28 U.S.C. § 1391(c) and Section 113(b) of the CAA, 42 U.S.C. § 7413(b), because the Defendants are located and are doing business in this district.

NOTICE TO STATE

5. Actual notice of the commencement of this action has been given to the State of Minnesota as required under Section 113(b) of the CAA, 42 U.S.C. § 7413(b).

DEFENDANT

6. Exol owns and Broin operates a chemical manufacturing plant for the production of ethanol in Albert Lea, Minnesota. Broin is an "operator", as defined in Section 113(h), 42 U.S.C. 7414(h), and the federal and state regulations promulgated pursuant to the Act.

7. The Defendants are "persons" as defined in Section 302(e) of the CAA, 42 U.S.C. §7602(e), and the federal and state regulations promulgated pursuant to these statutes.

8. The ethanol manufacturing process at the Defendants' facility results in emissions of significant quantities of regulated air pollutants, including nitrogen oxides ("NOx"), carbon monoxide ("CO"), particulate matter ("PM" and "PM_{10}"), sulfur dioxide ("SO2"), volatile organic compounds ("VOCs") and hazardous air pollutants ("HAPs"). The primary sources of these emissions are the feed dryers, fermentation units, gas boilers, cooling cyclones, ethanol load-out systems, and fugitive dust emissions from facility operations, including roads.

STATUTORY AND REGULATORY BACKGROUND
CLEAN AIR ACT REQUIREMENTS

9. The Act established a regulatory scheme designed to protect and enhance the quality of the nation's air so as to promote the public health and welfare and the productive capacity of its population. Section 101(b)(1) of the Act, 42 U.S.C. § 7401(b)(1).

10. Prevention of Significant Deterioration. - Section 109 of the Act, 42 U.S.C. § 7409, requires the Administrator of EPA to promulgate regulations establishing primary and secondary national ambient air quality standards ("NAAQS" or "ambient air quality standards") for certain criteria air pollutants. The primary NAAQS are to be adequate to protect the public health, and the secondary NAAQS are to be adequate to protect the public welfare, from any known or anticipated adverse effects associated with the presence of the air pollutant in the ambient air.

11. Section 110 of the Act, 42 U.S.C. § 7410, requires each state to adopt and submit to EPA for approval a SIP that provides for the attainment and maintenance of the NAAQS.

12. Under Section 107(d) of the Act. 42 U.S.C. § 7407(d), each state is required to designate those areas within its boundaries where the air quality is better or worse than the NAAQS for each criteria pollutant, or where the air quality cannot be classified due to insufficient data. These designations have been approved by EPA and are located at 40 C.F.R. Part 81. An area that meets the NAAQS for a particular pollutant is classified as an "attainment" area; one that does not is classified as a "non-attainment" area.

13. Part C of Title I of the Act, 42 U.S.C. §§ 7470-7492, sets forth requirements for the prevention of significant deterioration of air quality in those areas designated as

attaining the NAAQS standards. These requirements are designed to protect public health and welfare, to assure that economic growth will occur in a manner consistent with the preservation of existing clean air resources and to assure that any decision to permit increased air pollution is made only after careful evaluation of all the consequences of such a decision and after public participation in the decision-making process. These provisions are referred to herein as the "PSD program."

14. Section 165(a) of the Act, 42 U.S.C. § 7475(a), prohibits the construction and subsequent operation of a major emitting facility in an area designated as attainment unless a PSD permit has been issued and air pollution control equipment is installed and operated. Section 169(1) of the CAA, 42 U.S.C. § 7479(1), defines "major emitting facility" for certain listed stationary sources, such as chemical manufacturing plants, as a source with the potential to emit 100 tons per year ("TPY") or more of any criteria air pollutant.

15. As set forth at 40 C.F.R. § 52.21(k), the PSD program generally requires a person who wishes to construct or modify a major emitting facility in an attainment area to demonstrate, before construction commences, that construction of the facility will not cause or contribute to air pollution in violation of any ambient air quality standard or any specified incremental amount.

16. As set forth at 40 C.F.R. § 52.21(i), any major

emitting source in an attainment area that intends to construct a major modification must first obtain a PSD permit and install and operate best available air pollution control technology. "Major modification" is defined at 40 C.F.R. § 52.21(b)(2)(i) as meaning any physical change in or change in the method of operation of a major stationary source that would result in a significant net emission increase of any criteria pollutant subject to regulation under the Act. "Significant" is defined at 40 C.F.R. § 52.21(b)(23)(i) in reference to a net emissions increase or the potential of a source to emit any of the following criteria pollutants, at a rate of emissions that would equal or exceed any of the following: for ozone, 40 TPY of volatile organic compounds ("VOC"s); for carbon monoxide ("CO"), 100 TPY; for nitrogen oxides ("NO_x"), 40 TPY; for sulfur dioxide ("SO2"), 100 TPY, for particulate matter ("PM"), 25 TPY, and for particulate matter at or below 10 microns ("PM_{10}"), 10 TPY, (hereinafter "criteria pollutants").

17. As set forth at 40 C.F.R. § 52.21(j), a new major stationary source or a major modification in an attainment area shall install and operate best available control technology ("BACT") for each pollutant subject to regulation under the Act that would have the potential to emit in significant quantities.

18. Section 161 of the Act, 42 U.S.C. § 7471, requires SIPs to contain emission limitations and such other measures as may be

necessary, as determined under the regulations promulgated pursuant to these provisions, to prevent significant deterioration of air quality in attainment areas.

19. A state may comply with Section 161 of the Act either by being delegated by EPA the authority to enforce the federal PSD regulations set forth at 40 C.F.R. § 52.21, or by having its own PSD regulations approved as part of its SIP by EPA, which must be at least as stringent as those set forth at 40 C.F.R. § 51.166, Minnesota, Minn. R. 7007.300.

20. New Source Performance Standards. - Section 111 of the CAA, 42 U.S.C. § 7411, requires EPA to promulgate standards of performance for certain categories of new air pollution sources ("New Source Performance Standards" or "NSPS"). Pursuant to Section 111(b), 42 U.S.C. § 7411(b), EPA promulgated general regulations applicable to all NSPS source categories. Those general regulations are set forth at 40 C.F.R. Part 60 Subpart A.

21. EPA's NSPS regulations applicable to ethanol plants are contained in 40 C.F.R. Part 60, Subparts Dc, Kb, and VV.

22. National Emission Standards for Hazardous Air Pollutants ("NESHAP"). - The Act requires EPA to establish emission standards for each category or subcategory of major sources of hazardous air listed for regulation pursuant to Section 112(b)(1), 42 U.S.C. § 7412(b)(1).

23. Under to Section 112(a)(1) of the CAA, 42 U.S.C. §

7412(a)(1), a source is "major" if it has the potential to emit, in the aggregate, 10 tpy or more of any hazardous air pollutants ("HAPS") or 25 tpy or more of any combination of HAPS. Ethanol plants are "major sources" because they have the potential to emit 25 tpy or more of the following HAPs: acetaldehyde, methanol, acrolein, formaldehyde, lactic and acetic acid.

24. Major sources of HAPs are required to reduce emissions by the application of maximum achievable control technology ("MACT") for the control of emissions. 42 U.S.C. §112(2) and (3).

25 . Pursuant to Section 113(b) of the CAA, 42 U.S.C. §7413(b), EPA may commence a civil action for injunctive relief and civil penalties for violations of the Act, not to exceed $25,000 per day of violation for violations of the CAA. Pursuant to Pub. L. 104-134 and 61 Fed. Reg. 69369, civil penalties of up to $27,500 per day per violation may be assessed for violations occurring on or after January 30, 1997.

FIRST CLAIM FOR RELIEF
PSD and NSR Requirements

26. Paragraphs 1 through 25 are realleged and incorporated by reference.

27. Exol owns and Broin operates the ethanol plant identified in Paragraph 6, which receives whole corn that is then milled, cooked, and fermented. After fermentation, the raw product is distilled to produce ethanol. Distillation also

separates the liquid ethanol from the corn meal, which Exol may dry or sell as wet mash for animal feed.

28. EPA and the Minnesota Pollution Control Agency ("MPCA") have conducted investigations of a number of ethanol plants in Minnesota, including Defendants' facility, which included site inspections, review of permitting history and emissions data, and analysis of other relevant information concerning modification and operation of these facilities. The United States alleges the following based on the results of the EPA and MPCA investigation, information and belief:

29. The Defendants' ethanol plant operations result in emissions of significant quantities of criteria air pollutants, including NOx, CO, PM, PM_{10}, SO_2, VOCs and a number of HAPS. The primary sources of these emissions are the feed dryers, fermentation units, gas boilers, cooling cyclones, ethanol load-out operations, and fugitive dust from facility operations, including roads.

30. The Defendants' facility is a "chemical manufacturing facility" in accordance with Section 169(1) of the CAA, 42 U.S.C. § 7479(1), which defines "major emitting facility" for certain listed stationary sources as a source with the potential to emit 100 TPY or more of any criteria air pollutant. Defendants' ethanol plant is a major emitting facility with the potential to emit in excess of 100 TPY of VOC, PM, and CO, which are listed

criteria air pollutants.

31. At all times relevant to this Complaint, the Defendants' ethanol plant was and is located in an area that was designated as "Class II" under Section 162(b) of the Act, 42 U.S.C. § 7472(b), and that has attained the National Ambient Air Quality Standards for Ozone, of which VOC is a precursor, SO_2, NOx, PM, PM_{10}, and CO, under Section 107(d) of the Act, 42 U.S.C. § 7407(d).

32. At all times relevant to this Complaint, and on numerous occasions since commencement of operations, the Defendant has failed to fully and accurately identify the emissions from its ethanol plants of one or more criteria pollutants.

33. Since construction of their ethanol plant, the Defendant has been in violation of Section 165(a) of the CAA, 42 U.S.C. § 7475(a), and 40 C.F.R. § 52.21, and the corresponding state implementation plans, by failing to undergo PSD review, by failing to obtain all appropriate permits, and failing to install the best available control technology for the control of VOC, CO, NOx, PM, and PM_{10} from all feed dryers, fermentation units, gas boilers, cooling cyclones, fugitive dust emissions from facilities, and ethanol load-out operations.

34. Unless restrained by an Order of the Court, these violations of the CAA and the implementing regulations will

continue.

35. As provided in 42 U.S.C. § 7413(b), the Defendants' violations, as set forth above, subject them to injunctive relief and civil penalties of up to $25,000 per day for each violation of the Act prior to January 31, 1997, and $27,500 per day for each violation after January 30, 1997, pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461, as amended by 31 U.S.C. § 3701.

SECOND CLAM FOR RELIEF
NATIONAL EMISSIONS STANDARDS FOR
HAZARDOUS AIR POLLUTANTS

36. Paragraphs 1 through 28 are realleged and incorporated by reference.

37. The Defendants' ethanol plant is a major source of HAPs because it has the potential to emit 25 tpy of the following listed HAPs: acetaldehyde, methanol, acrolein, formaldehyde, lactic and acetic acid. The primary sources of these emissions are the feed dryers, fermentation units, gas boilers, cooling cyclones, and ethanol load-out operations.

38. At all times relevant to this Complaint, and on numerous occasions since commencement of operations, the Defendants have failed to fully and accurately identify the HAP emissions from its ethanol plant.

39. Since construction of their ethanol plant, the Defendants have been in violation of Section 112(g) of the CAA,

42 U.S.C. § 7475(a), and the corresponding state implementation plan, by failing to install the maximum achievable control technology on all feed dryers, fermentation units, gas boilers, cooling cyclones, and ethanol loadout operations.

40. Unless restrained by an Order of the Court, these violations of the CAA and the implementing regulations will continue.

41. As provided in 42 U.S.C. § 7413(b), the Defendants' violations, as set forth above, subject them to injunctive relief and civil penalties of up to $25,000 per day for each violation of the Act prior to January 31, 1997, and $27,500 per day for each violation after January 30, 1997, pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461, as amended by 31 U.S.C. § 3701.

THIRD CLAIM FOR RELIEF
New Source Performance Standards
For Small Industrial Commercial-Institutional
Steam Generating Units

42. Paragraphs 1 through 28 are realleged and incorporated by reference.

43. Defendants operate one or more small industrial commercial-institutional steam generating units at its ethanol plant which are "affected facilities" pursuant to 40 C.F.R. Part 60, Subpart Dc, because they were constructed, modified or reconstructed after June 9, 1989.

44. Defendants' units are subject to the new source

performance requirements for sulfur dioxide and PM emissions, demonstrations of compliance, recordkeeping and recording as set forth in Subpart Dc, 40 C.F.R. §§ 60.42c through 60.48c.

45. On one or more occasions, since December 31, 1997, the Defendants have failed to comply with all applicable requirements at its affected facilities, in violation of NSPS, 40 C.F.R. §§ 60.42c through 60.48c.

46. Unless restrained by an Order of the Court, these violations of the Act and the implementing regulations will continue.

47. As provided in 42 U.S.C. § 7413(b), the Defendants' violations, as set forth above, subject them to injunctive relief and civil penalties of up to $25,000 per day for each violation of the Act prior to January 30, 1997, and $27,500 per day for each violation after January 30, 1997, pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461, as amended by 31 U.S.C. § 3701.

FOURTH CLAIM FOR RELIEF
New Source Performance Standards
Standards Of Performance for Equipment Leaks of VOC in the
Synthetic Organic Chemicals Manufacturing Industry

48. Paragraphs 1 through 28 are realleged and incorporated by reference.

49. Defendants operate a facility for synthetic organic chemical manufacturing which was constructed or modified after

January 5, 1981. Defendants' facility is an "affected facility" as defined by Subpart VV, 40 C.F.R. § 60.480, which is subject to the leak detection, monitoring, and repair requirements set forth in 40 C.F.R. §§ 60.482-1 to 60-489.

50. On one or more occasions since December 31, 1996, the Defendants failed to accurately monitor the subject VOC valves and other components at its ethanol plants, to report the VOC valves and other components that were leaking, and to repair all leaking VOC valves and other components in a timely manner, in violation of one or more requirements of 40 C.F.R. §§ 60.482-1 to 60-489.

51. Unless restrained by an Order of the Court, the Defendant's violations of the Act and the implementing regulations will continue.

52. As provided in 42 U.S.C. § 7413(b), the Defendants' violations, as set forth above, subject them to injunctive relief and civil penalties of up to $25,000 per day for each violation of the Act prior to January 30, 1997, and $27,500 per day for each violation after January 30, 1997, pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461, as amended by 31 U.S.C. § 3701.

FIFTH CLAIM FOR RELIEF
New Source Performance Standards
Standards of Performance for Volatile Organic
Liquid Storage Vessels

53. Paragraphs 1 through 28 are realleged and incorporated

by reference.

54. Defendants have one or more storage vessels that are "affected facilities" under this Subpart, with a capacity greater than or equal to 40 cubic meters that are used to store volatile organic liquids for which construction, reconstruction, or modification was commenced after July 23, 1984, as defined by 40 C.F.R. § 60.110b which is subject to the operational and emission limits, testing, and recordkeeping and reporting requirements set forth in 40 C.F.R. §§ 60.110b to 60-117b.

55. On one or more occasions since December 31, 1996, the Defendants failed to comply with the applicable requirements of Subpart Kb, in violation of one or more provisions of 40 C.F.R. §§ 60.110b to 60-117b.

56. Unless restrained by an Order of the Court, the Defendants' violations of the Act and the implementing regulations will continue.

57. As provided in 42 U.S.C. § 7413(b), the Defendants' violations, as set forth above, subject it to injunctive relief and civil penalties of up to $25,000 per day for each violation of the Act prior to January 30, 1997, and $27,500 per day for each violation after January 30, 1997, pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461, as amended by 31 U.S.C. § 3701.

SIXTH CLAIM FOR RELIEF
New Source Performance Standards
For Industrial Commercial-Institutional
Steam Generating Units

58. Paragraphs 1 through 28 are realleged and incorporated by reference.

59. Defendants operate one or more industrial commercial-institutional steam generating units at its ethanol plant which are "affected facilities" pursuant to 40 C.F.R. Part 60, Subpart Db, because they were constructed, modified or reconstructed after June 19, 1984, and that has a heat input capacity from fuels combusted in the steam generating unit of greater that 29 MW (100 million Btu/hour).

60. Defendants' units are subject to the new source performance requirements for SO_2, NOx and PM emissions, demonstrations of compliance, recordkeeping and recording as set forth in Subpart Db, 40 C.F.R. §§ 60.42b through 60.49b.

61. On one or more occasions, since December 31, 1997, the Defendants have failed to comply with all applicable requirements at its affected facilities, in violation of NSPS, 40 C.F.R. §§ 60.42b through 60.49b.

62. Unless restrained by an Order of the Court, these violations of the Act and the implementing regulations will continue.

63. As provided in 42 U.S.C. § 7413(b), the Defendants'

violations, as set forth above, subject them to injunctive relief and civil penalties of up to $25,000 per day for each violation of the Act prior to January 30, 1997, and $27,500 per day for each violation after January 30, 1997, pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461, as amended by 31 U.S.C. § 3701.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, the United States, respectfully requests that this Court:

1. Order the Defendants to immediately comply with the statutory and regulatory requirements cited in this Complaint, under the Clean Air Act;

2. Order the Defendants to take appropriate measures to mitigate the effects of its violations;

3. Assess civil penalties against the Defendants for up to the amounts provided in the Clean Air Act; and

4. Grant the United States such other relief as this Court deems just and proper.

Respectfully submitted,

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