UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 8
1595 Wynkoop Street
DENVER, CO 80202-1129
Phone 800-227-8917
http://www.epa.gov/region08

JAN - 9 2009

Ref: 8ENF-AT

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Blaine J. Gomer
Registered Agent for
Northern Lights Ethanol, LLC
48416 144th St.
Big Stone City, South Dakota 57216-6614

Re: Notice of Violation

Dear Mr. Gomer:

The United States Environmental Protection Agency (U.S. EPA) is issuing the enclosed Notice of Violation (NOV) to Northern Lights Ethanol, LLC ("Northern Lights Ethanol" or "you") pursuant to Section 113(a)(1) and (a)(3) of the Clean Air Act, 42 U.S.C. § 7413(a)(1) and (a)(3). We find that you are violating the regulations at your facility for New Source Performance Standards (NSPS), Northern Lights Ethanol's Title V Permit No. 28.0502-29, and the South Dakota State Implementation Plan.

Section 113 of the Clean Air Act gives us several enforcement options. These options include issuing an administrative compliance order, issuing an administrative penalty order, and bringing a judicial civil or criminal action. The option(s) we select may depend on, among other things, the length of time you take to achieve and demonstrate continuous compliance with the requirements cited in the NOV.

We are offering you an opportunity to confer with us about the violations alleged in the NOV. If you choose to have such a conference, you may present information on the specific findings of violation, any efforts you have taken to comply, and the steps you will take to prevent future violations.

If you request a conference, please plan for your facility's technical and management personnel to attend to discuss compliance measures and commitments. You may have an attorney represent you at this conference if you choose.

The contacts in this matter are Albion Carlson, Environmental Scientist, and Marc Weiner, Air Enforcement Attorney. You may call Marc Weiner at (303) 312-6913 to request a conference.

You should make the request as soon as possible, but no later than 10 calendar days after you receive this letter. We should hold any conference within 30 calendar days of your receipt of this letter.

Sincerely,

Sharon L Kerchner

for Andrew M. Gaydosh
Assistant Regional Administrator
Office of Enforcement, Compliance, and
Environmental Justice

Enclosure

cc: Steve Pirner, SDDNR
Brian Gustafson, SDDNR

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 8

IN THE MATTER OF:	)	**NOTICE OF VIOLATION**
Northern Lights Ethanol, LLC, CAA Respondent	)	Docket No. CAA-08-2009-0005

Statutory Authority

This Notice of Violation (NOV) is issued to Northern Lights Ethanol, LLC (Northern Lights Ethanol)(Respondent), pursuant to Section 113(a)(1) of the Clean Air Act (the Act), 42 U.S.C. Section 7413(a)(1), as amended. Section 113(a)(1) requires the Administrator of the United States Environmental Protection Agency (EPA) to notify a person in violation of a State Implementation Plan (SIP) or permit of the EPA's finding of a violation. The authority to issue this NOV has been delegated to the Assistant Regional Administrator for the Office of Enforcement, Compliance, and Environmental Justice.

Respondent

1. Respondent Northern Lights Ethanol is a South Dakota limited liability company that owns and operates a facility near Big Stone City, South Dakota, for the manufacture of ethanol (the Facility). Northern Lights Ethanol began production of ethanol at the Facility in July, 2002. Northern Lights Ethanol receives whole corn which is then milled, cooked, and fermented. After fermentation, the raw product is distilled to produce ethanol. Distillation separates the liquid ethanol from the corn meal which Northern Lights Ethanol dries or sells for animal feed.

2. Respondent is a "person" as defined in Section 302(e) of the Clean Air Act, 42 U.S.C. §7602(e), and the federal and state regulations promulgated pursuant to the Clean Air Act.

3. The ethanol manufacturing process at Respondent's ethanol plant results in emissions of significant quantities of regulated air pollutants, including volatile organic compounds (VOCs) and hazardous air pollutants (HAPs). The primary sources of these emissions are the feed dryers, fermentation units, distillation units, fluid bed coolers, ethanol load-out systems, and fugitive VOC emissions from plant operations.

Statutory and Regulatory Background
CAA Requirements

4. The Clean Air Act establishes 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 Clean Air Act, 42 U.S.C. § 7401(b)(1).

5. Section 110 of the Clean Air 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.

6. Under Section 107(d) of the Clean Air 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 codified 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.

7. Section 161 of the Clean Air 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.

8. State operating permit programs. The Clean Air Act requires EPA to establish minimum elements for State operating permit programs pursuant to Section 502(b), 42 U.S.C. § 7661a(b). Section 502(a), 42 U.S.C. § 7661a, states that it is unlawful to operate a major source, except in compliance with a State operating permit (Title V permit or the permit). Pursuant to Section 502(b), 42 U.S.C. § 7661a(b), EPA promulgated general regulations applicable to State operating permit programs. Those general regulations are set forth at 40 C.F.R. Part 70.

9. Under Section 302(j) of the Clean Air Act, 42 U.S.C. § 7602(j), a source is a "major source" if it has the potential to emit, in the aggregate, 100 TPY or more of any air pollutant. Respondents' ethanol plant is a "major source" because it has the potential to emit 100 TPY or more of VOCs.

10. Major sources of VOCs are required to obtain a Title V permit from the State, complete testing for compliance demonstration for VOC limits and maintain compliance with those limits. 42 U.S.C. § 7661a.

11. New Source Performance Standards. Section 111 of the Clean Air Act, 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.

12. EPA's NSPS regulations applicable to Respondents' ethanol plant are contained in 40 C.F.R. Part 60, Subparts Kb and VV.

Violations

Title V

13. On or about July 3, 2001, Respondent obtained a Title V permit (Permit #28.0502-29; amended September 8, 2006) to operate the facility.

14. Among other things, the permit contained a limit on the amount of emissions of VOCs from the Facility in any 12-month rolling period. The permit required Respondent to limit emissions of VOCs to 100 tons per 12-month rolling period (reduced to 95 tons per 12-month rolling period in 2006).

15. Since construction of the Facility, Respondent has been in violation of Section 502(a) of the Clean Air Act, 42 U.S.C. § 7661a, by failing to maintain VOC emissions below the permit limit, and by conducting invalid testing for compliance demonstration with that limit.

16. Section 7.24.1 of the permit requires the internal floating roof shall rest or float on the liquid inside the storage vessel(s) at all times except during initial filling and when the tanks are emptied and subsequently refilled.

17. Respondent failed to maintain the internal floating roof on tanks #1, #2, #3, #4, and #5 in violation of the permit.

18. Section 7.8 of the permit requires the fluid bed cooler to be operated in compliance with the short term VOC emission limit of 7.0 pounds per hour.

19. Respondent operated the fluid bed cooler in violation of the permit and in excess of the 7.0 pounds of VOC per hour emission limit.

20. Section 7.8 of the permit requires the dried distiller grains and solubles dryers to be operated in compliance with the short term VOC emission limit of 6.0 pounds per hour.

21. Respondent operated the dried distiller grains and solubles dryers in violation of the permit and in excess of the 6.0 pounds of VOC per hour emission limit.

22. Section 19.8 of the permit requires the installation, operation, and maintenance of a monitoring device to continuously monitor and record the flow rate of combustion air from the fluid bed cooler to the ring dryer.

23. Respondent failed to install the flow monitoring device monitoring the amount of air from the fluid bed cooler to the ring dryer.

24. Section 19.9 requires the installation, operation, and maintenance of a monitoring device to continuously monitor and record when the combustion air valve which allows air from the fluid bed cooler to the ring dryer is open or closed.

25. Respondent failed to install the monitoring device on the fluid bed cooler air valve.

New Source Performance Standards
Standards of Performance for Volatile Organic
Liquid Storage Vessels

26. Respondent has storage vessels that are "affected facilities" under Subpart Kb, which are subject to the operational and emissions limits, testing, and recordkeeping and reporting requirements in 40 C.F.R. §§ 60.110b to 60-117b.

27. On one or more occasions since July, 2002, Respondent 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, and Section 111 of the Clean Air Act, 42 U.S.C. § 7411.

Enforcement

Section 113(a)(1) of the Act provides that, at any time after 30 days following the date of the issuance of this NOV, the Administrator of the EPA may, without regard to the period of violation:

--issue an order requiring compliance with the requirements of the EPA-approved State Implementation Plan or permit, and/or

--issue an Administrative Penalty Order in accordance with Section 113(d), or

--bring a civil action pursuant to Section 113(b) of the Clean Air Act, 42 U.S.C. § 7413(b), for injunctive relief and civil penalties not to exceed $25,000 per day of violation for violations of the Clean Air Act that occur before January 30, 1997. Section 113(b) of the Clean Air Act, 42 U.S.C. § 7413(b), pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461, as amended by The Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701, authorizes EPA to commence an action to assess civil penalties of not more than $27,500 per day per violation for violations occurring on or after January 30, 1997 through March 15, 2004; and $32,500 per day for each violation that occurs after March 15, 2004 through January 12, 2009; and $37,500 per day for each violation that occurs after January 12, 2009.

Penalty Assessment Criteria

Section 113(e)(1) of the Act states that the EPA Administrator or the court, as appropriate, shall, in determining the amount of penalty to be assessed, take into consideration (in addition to such other factors as justice may require) the size of the business, the economic impact of the penalty on the business, the violator's full compliance history and good faith efforts to comply, the duration of the violation as established by any credible evidence (including evidence other than the applicable test method), payment by the violator of penalties previously assessed for the same violation, the economic benefit of noncompliance, and the seriousness of the violation.

Section 113(e)(2) of the Act allows the EPA Administrator or the court to assess a penalty for each day of violation. For purposes of determining the number of days of violation, where the EPA makes a *prima facie* showing that the conduct or events giving rise to these violations are likely to have continued or recurred past the date of this NOV, the days of violation shall be presumed to include the date of this NOV and each and every day thereafter, until Respondent demonstrates that continuous compliance has been achieved, except to the extent that Respondent can prove, by preponderance of evidence, that there were intervening days during which no violation occurred, or that the violations were not continuing in nature.

Opportunity for Conference

Respondent may confer with EPA, upon request to the EPA Region 8 Legal Enforcement Program. The conference will enable Respondent to present evidence bearing on the finding of violation, on the nature of violation, and on any efforts Respondent may have taken, or proposes

to take, to achieve compliance. Respondent has the right to be represented by legal counsel. A request for a conference must be made within ten (10) calendar days after receipt of this NOV. The request for a conference, or any other inquiries concerning this NOV, should be addressed to:

Marc Weiner, Enforcement Attorney
Legal Enforcement Program
Office of Enforcement, Compliance and Environmental Justice
U.S. Environmental Protection Agency, Region 8
1595 Wynkoop Street
Denver, CO 80202-1129
Tel. (303) 312-6913 Fax. (303) 312-7202

By offering the opportunity for a conference or participating in one, EPA does not waive or limit its right to any remedy available under the Act.

Effective Date

This NOV shall be effective immediately upon receipt.

Dated this 8th day of January, 2009.

Sharon L Kercher
for Andrew M. Gaydosh
Assistant Regional Administrator
Office of Enforcement, Compliance, and
Environmental Justice