

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF IOWA
WESTERN DIVISION**

UNITED STATES OF AMERICA,)	
)	
<i>Plaintiff,</i>)	Case No. 5:22-CV-4057
)	
v.)	
)	
QUAD COUNTY CORN PROCESSORS)	
COOPERATIVE,)	
)	
<i>Defendant.</i>)	
)	

**UNITED STATES’ UNOPPOSED MOTION
TO ENTER CONSENT DECREE**

Plaintiff, the United States of America, on behalf of the United States Environmental Protection Agency (“EPA”), respectfully requests that the Court enter the Consent Decree lodged with the Court on October 27, 2022 (Docket No. 2-1). The proposed Consent Decree, if entered by the Court, would resolve the civil claims set forth in the United States’ Complaint (Docket No. 1) against Defendant Quad County Corn Processors Cooperative. The proposed Consent Decree requires Defendant to pay a civil penalty of \$320,000 plus interest to resolve the claims alleged in the Complaint through the date of lodging. In addition, the proposed Consent Decree requires Defendant to retire a total of 438,314 valid D3 renewable fuel credits known as Renewable Identification Numbers or RINs.

In accordance with Department of Justice regulations, 28 C.F.R. § 50.7, and Paragraph 71 of the proposed Consent Decree, the United States published a notice of lodging of the

Consent Decree in the *Federal Register* on November 03, 2022. 87 Fed. Reg. 66327. This notice informed the public that the Department of Justice would accept comments relating to the proposed Consent Decree for a period of thirty days following publication of the notice. The public comment period ended on December 6, 2022. The United States received no comments on the proposed Consent Decree. As more fully set forth in the accompanying Memorandum, the United States respectfully requests the Court to enter the proposed Consent Decree because the settlement that it embodies is fair, reasonable, adequate, and in the public interest.

Counsel for the United States has consulted with counsel for Defendant Quad County Corn Processors Cooperative regarding the substance of this motion. Defendant consents to entry of the Consent Decree. *See* Consent Decree ¶ 71.

Respectfully submitted,

TODD KIM
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s/ James D. Freeman
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CERTIFICATE OF SERVICE

I hereby certify that on December 19, 2022, I electronically filed the foregoing document with the Clerk of the Court using CM/ECF. I also certify that the foregoing document is being served this day on all counsel of record via transmission of Notices of Electronic Filing generated by CM/ECF.

s/ James D. Freeman

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**UNITED STATES’ MEMORANDUM IN SUPPORT OF ITS
UNOPPOSED MOTION TO ENTER CONSENT DECREE**

Plaintiff, the United States of America, on behalf of the United States Environmental Protection Agency (“EPA”), respectfully requests that the Court enter the Consent Decree lodged with the Court on October 27, 2022 (ECF No. 2-1). The proposed Consent Decree, if entered by the Court, would resolve the civil claims set forth in the United States’ Complaint (ECF No. 1) against Defendant Quad County Corn Processors Cooperative (“Quad”). The United States filed this lawsuit on October 27, 2022, alleging violations of Section 211(o) of the Clean Air Act (“CAA” or “Act”), 42 U.S.C. § 7545(o), and the regulations issued thereunder at 40 C.F.R. Part 80, Subpart M.

The proposed Consent Decree requires Quad to pay a civil penalty of \$320,000 plus interest to resolve the claims alleged in the Complaint through the date of lodging. In addition, the proposed Consent Decree requires Defendant to retire a total of 438,314 valid D3 Renewable Identification Numbers, known as RINs.

In accordance with Department of Justice regulations, 28 C.F.R. § 50.7, and Paragraph 71 of the proposed Consent Decree, the United States published a notice of lodging of the Consent Decree in the *Federal Register* on November 3, 2022. 87 Fed. Reg. 66327. This notice informed the public that the Department of Justice would accept comments relating to the proposed Consent Decree for a period of thirty days following publication of the *Federal Register* notice. The public comment period ended on December 6, 2022. The United States received no comments on the proposed Consent Decree. As more fully set forth in the accompanying Memorandum, the United States respectfully requests the Court to enter the proposed Consent Decree because the settlement that it embodies is fair, reasonable, adequate, and in the public interest.

I. BACKGROUND

A. The Claims Against Quad County Corn Processors Cooperative

This case alleges violations of EPA’s Renewable Fuel Standard (“RFS”) regulations, which implement the requirements of Section 211(o) of the Clean Air Act (“CAA”), 42 U.S.C. § 7545(o). The RFS regulations incentivize the production of renewable fuel by requiring refiners or importers of gasoline or diesel fuel to blend renewable fuels into transportation fuel or obtain and retire credits generated by renewable fuel producers or importers (called “Renewable Identification Numbers” or “RINs”) to meet an EPA-specified renewable fuel volume requirement. Gasoline and diesel refiners and importers (known as “obligated parties”) must demonstrate that they have retired a sufficient number of RINs (whether they produced the renewable fuel associated with the RINs themselves or whether the RINs were obtained from another entity) to meet their Renewable Volume Obligations (“RVOs”). *See* 40 C.F.R. § 80.1427(a)(1).

The Energy Independence and Security Act of 2007 amended Section 211(o) of the Clean Air Act to increase the renewable fuel mandate to 36 billion gallons by 2022 and establish four separate categories of renewable fuels, each with a separate volume mandate and each with a specific lifecycle greenhouse gas emission threshold. 42 U.S.C. § 7545(o)(2). The Energy Independence and Security Act also authorized EPA to allow credits to be generated for non-road fuel, home heating oil, and jet fuel, in addition to motor vehicle fuel. 42 U.S.C. § 7545(o)(5).

The Complaint (ECF No. 1) alleges that from May 26, 2015, through October 12, 2015, Quad (a) produced renewable fuel using process equipment that diverted a stream of starch from the non-cellulosic process into the cellulosic fermenter, a process that was not described in its registration statement in violation of 40 C.F.R. § 80.1460(b)(5); (b) failed to submit to EPA chemical analysis and data related to the simultaneous feedstock conversion process that introduced starch from the non-cellulosic process into the cellulosic fermenter, as required by 40 C.F.R. § 80.1451(b)(1)(iii)(U); and (c) used process equipment that introduced starch from the non-cellulosic process into the cellulosic fermenter, creating a simultaneous feedstock conversion process without applying the equations required by 40 C.F.R. § 80.1426(f)(3)(vi), resulting in the assignment of an incorrect D code for the RINs it generated.

The Complaint seeks an order declaring that the improperly generated RINs that Quad created in 2015 are invalid. It also asks the Court to enter a judgment that Quad is liable to the United States for civil penalties pursuant to Section 211(d) of the Act, 42 U.S.C. § 7545(d), of an amount not more than \$51,796 for every day of such violation and the amount of economic benefit or savings resulting from the violation.

B. The Proposed Consent Decree with Quad

After a period of negotiation, the United States and Quad agreed to the resolution of the United States' claims as set forth in the proposed Consent Decree (ECF No. 2-1). Quad has asserted that its ability to pay is limited and that it does not have an ability to pay a penalty greater than that required by the Consent Decree. A qualified financial analyst hired by the United States reviewed financial information provided by Quad and concluded that Quad has a limited ability to pay the full amount of civil penalties sought by the United States. The amount required to be paid under the Consent Decree reflects the analyst's conclusion.

The proposed Consent Decree provides that Quad shall pay a civil penalty of \$320,000 plus interest, to be paid in three installments. Defendant shall make the first payment of \$110,000 plus interest within 30 Days after the Effective Date. Defendant shall make the second payment of \$105,000 plus interest within one year after the Effective Date. Defendant shall make the third payment of \$105,000 plus interest within two years after the Effective Date. ECF No. 2-1, ¶ 6-7. The proposed Consent Decree further provides that Quad shall retire a total of 438,314 valid D3 RINs. Quad shall, no later than December 31, 2022, retire at least 87,662 valid 2021 or 2022 D3 RINs; Defendant may, however meet all or a portion of this obligation by retiring valid 2022 or 2023 D3 RINs between January 1, 2023 and March 31, 2023. No later than December 31, 2023, Defendant shall retire at least 131,494 valid 2022 or 2023 D3 RINs. No later than December 31, 2024, Defendant shall retire a sufficient number of valid 2023 or 2024 D3 RINs such that the cumulative total of RINs retired is 438,314 RINs. *Id.* ¶ 13a.-c. Lastly, the proposed Consent Decree provides that any submittal Quad is required to make by Section VI or Section IX of the Consent Decree shall be signed and certified by a corporate officer of Quad authorized to make such certifications on their behalf.

The proposed Consent Decree resolves all civil claims of the United States for the violations alleged in the Complaint against Quad through the date of lodging of the Consent Decree. *Id.* ¶ 54. Quad also certifies that: (a) the financial information it submitted to the United States during negotiations – which purports to show that Quad had a limited ability to pay a civil penalty to resolve this case – fairly, accurately, and materially sets forth its financial circumstances, and (b) that those circumstances have not materially changed between December 21, 2021 and the date that Quad signed the Consent Decree. *Id.* ¶ 53.

II. LEGAL STANDARD FOR ENTRY OF A CONSENT DECREE

“Consent decrees should . . . spring from—and serve to resolve—a dispute within the court’s subject-matter jurisdiction; come within the general scope of the case from the pleadings; and, further the objectives of the law on which the complaint was based.” *United States v. NGL Crude Logistics, LLC*, No. 16-CV-1038-LRR, 2017 WL 1371286, at *3 (N.D. Iowa Apr. 11, 2017) citing *EEOC v. Prod. Fabricators, Inc.*, 666 F.3d 1170, 1172 (8th Cir. 2012). “The court must review a proposed consent decree for fairness, reasonableness, and adequacy.” *Northeast Iowa Citizens for Clean Water v. AgriProcessors, Inc.*, 469 F. Supp. 2d 666, 672 (N.D. Iowa 2006); see also *United States v. City of Waterloo*, No. 15-CV-2087-LRR, 2016 WL 254725, at *3 (N.D. Iowa Jan. 20, 2016) (involving a Clean Water Act action). Fairness has procedural and substantive components. *Northeast Iowa Citizens for Clean Water*, 469 F. Supp. 2d at 672; see also *United States v. Cannons Eng’g Corp.*, 899 F.2d 79, 86 (1st Cir. 1990) (involving the Comprehensive Environmental Response, Compensation, and Liability Act). Procedural fairness is measured by the candor, openness, and bargaining balance involved in the negotiation process. *Id.* “Substantive fairness introduces into the equation concepts of corrective justice and accountability: a party should bear the cost of the harm for which it is legally responsible.” *Id.*

“Reasonableness and adequacy entail a multifaceted inquiry.” *City of Waterloo*, 2016 WL 254725, at *5. To evaluate reasonableness and adequacy, courts may consider whether a consent decree “provides satisfactory public compensation for the costs of remediation; possible alternatives for remedying hazards; whether the terms of the decree, including enforcement mechanisms, are clear; and whether the decree reflects a resolution of the actual controversy in the complaint.” *Id.* “Although entry of a consent decree is committed to the informed discretion of the trial court, strong policy considerations favor entry.” *United States v. Atlas Minerals & Chems., Inc.*, 851 F. Supp. 639, 648 (E.D. Pa. 1994). One such policy consideration is the “presumption in favor of voluntary settlement,” which is “particularly strong where a consent decree has been negotiated by the Department of Justice on behalf of a federal administrative agency like EPA which enjoys substantial expertise in the environmental field.” *United States v. Akzo Coatings of Am., Inc.*, 949 F.2d 1409, 1436 (6th Cir. 1991); *see also Cannons Eng’g Corp.*, 899 F.2d at 84 (stating that the policy to encourage settlements “has particular force where . . . a government actor committed to the protection of the public interest has pulled the laboring oar in constructing the proposed settlement”); *Northeast Iowa Citizens for Clean Water*, 469 F. Supp. 2d at 672 (stating that “[s]ettling an enforcement action is a discretionary act on the part of the EPA, and the EPA has considerable expertise in determining the appropriate settlement” (internal citation omitted)).

III. DISCUSSION

The proposed Consent Decree is fair, reasonable, adequate, and in the public interest. This case presents no facts militating against the presumption in favor of entering the voluntary settlement between the United States and Quad.

First, the proposed Consent Decree is procedurally and substantively fair. “To measure procedural fairness, a court should normally look to the negotiation process and attempt to gauge its candor, openness and bargaining balance.” *Atlas Minerals*, 851 F. Supp. at 653 (quoting *Cannons Eng’g Corp.*, 899 F.2d at 86). *See also United States v. BP Amoco Oil PLC*, 277 F.3d 1012, 1020 (8th Cir. 2002) (consent decree procedurally fair where it resulted from good faith, arms-length negotiations). The settlement negotiation process was procedurally fair here because the parties were represented by experienced environmental counsel in extensive arms-length negotiations.

The proposed Consent Decree is substantively fair as well. “A consent decree is substantively fair if it comports with ‘concepts of corrective justice and accountability: a party should bear the cost of the harm for which [it is] legally responsible.’” *NGL*, 2017 WL 1371286, at *3 (quoting *BP Amoco Oil*, 277 F.3d at 1019). Under the proposed Consent Decree, Quad will pay a \$320,000 civil penalty plus interest and will retire 438,314 RINs to resolve the United States’ claims against it. The penalty recovers Quad’s economic benefit of the violations, a Clean Air Act penalty factor. *See* 42 U.S.C. § 7524(b); 42 U.S.C. § 7545(d)(1) (penalties for violations of Clean Air Act Section 211(o) shall be assessed in accordance with subsection (b) of Section 7524). In negotiating the penalty, the United States also considered the effect of the penalty on Quad’s ability to continue in business, which is also a Clean Air Act penalty factor. A qualified financial analyst hired by the United States reviewed extensive financial information provided by Quad and the amount required to be paid under the proposed Consent Decree reflects the analyst’s conclusion regarding the company’s ability to pay a substantial penalty. In addition, the Consent Decree’s requirement that Quad retire 438,314 RINs will offset the harm caused by the creation and transfer of an equivalent number of invalid RINs.

The proposed Consent Decree is reasonable and adequate. A court's inquiry into the reasonableness and adequacy of a proposed consent decree is multifaceted, and may involve an examination of, *inter alia*, how the terms of the settlement resolve the claims in the complaint, remedy the harm caused, and reimburse the public for the harm caused. *See City of Waterloo*, 2016 WL 254725, at *5. Here, the proposed Consent Decree resolves the United States' claims against Quad by requiring Quad to pay a civil penalty and retire RINs on a scale that is large enough to act as a specific deterrent to Quad, especially considering Quad's limited financial circumstances, and to serve as a general deterrent to other members of the regulated community. A settlement of this kind is consistent with the goal of promoting cost-effective settlements, which furthers the public interest as well as public health and safety by preserving the limited resources of the government in its efforts to enforce environmental laws.

IV. CONCLUSION

The United States respectfully requests that the Court grant this motion and enter the Consent Decree previously lodged with this Court at Docket No. 2-1 as a final order of the Court.

Respectfully Submitted,

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