UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

IN THE MATTER OF	)	
	)	
[Participating Company]	)	**CONSENT AGREEMENT AND**
	)	**FINAL ORDER**
	)	
	)	**CAA-HQ-2004-XX**
	)	
	)	
	)	

I. Preliminary Statement

1. The United States Environmental Protection Agency ("EPA") and [Participating Company] ("Respondent") voluntarily enter into this Consent Agreement and Final Order (Agreement) to address emissions of air pollutants and hazardous substances from the source(s) listed in Attachment A of this Agreement that may be subject to requirements of the Clean Air Act and the hazardous substance release notification provisions of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) and the emergency notification provisions of the Emergency Planning and Community Right-to-Know Act ("EPCRA").

2. The purpose of this Agreement is to ensure that [Participating Company] complies with all applicable requirements of the Clean Air Act and applicable release notification provisions of CERCLA and EPCRA. To that end, this Agreement requires [Participating Company], among other things, to be responsible for the payment of funds towards a two-year nationwide emissions monitoring program that will lead to the development of Emissions-Estimating Methodologies that will help animal feeding operations (AFOs) determine and comply with their regulatory responsibilities under the Clean Air Act, CERCLA, and EPCRA.

3. This Agreement is issued pursuant to 40 CFR §§ 22.13(b), 22.18(b)(2) and (3), which pertain to the quick resolution and settlement of matters before the filing of a complaint. Respondent's participation in this agreement is not an admission of liability. At this time, Respondent neither admits nor denies that any of its sources or facilities are subject to CERCLA or EPCRA reporting or Clean Air Act permitting requirements, or are in violation of any provision of CERCLA, EPCRA, or the Clean Air Act. The execution of this Agreement by Respondent is not an admission that any of its agricultural operations have been operated

negligently or improperly, or that they are or were in violation of any federal, state, or local law or regulation.

4. As set forth herein, this Agreement resolves Respondent's civil liability for potential violations of the Clean Air Act, CERCLA, and EPCRA at [Participating Company's] source(s). It resolves violations identified and quantified by applying to Respondent's sources or to Respondent's EPCRA or CERCLA facilities found at those sources the Emissions-Estimating Methodologies developed using data from the nationwide emissions monitoring program described herein.

5. This Agreement is one of numerous identical agreements between EPA and AFOs across the nation. Through these agreements, EPA and participating AFOs aim to assist in the development of improved Emissions-Estimating Methodologies for air emissions from AFOs and to ensure that all AFOs are in compliance with applicable Clean Air Act, CERCLA, and EPCRA requirements. Notwithstanding any other provision, this agreement shall not delay or interfere with the implementation or enforcement of state statutes that eliminate exemptions to CAA requirements for agricultural sources of air pollution.

6. EPA may decline to enter into this Agreement with AFOs (and their successors and assigns) that have been notified by EPA or a State that they currently may be subject to a federal or state Clean Air Act or CERCLA section 103, or EPCRA section 304(a) enforcement action

II. Definitions

7. Unless otherwise defined herein, terms used in this Agreement shall have the same meaning given to those terms in the Clean Air Act, 42 U.S.C. § 7401 et seq., the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. § 9601 et seq., the Emergency Planning and Community Right-to-Know Act, 42 U.S.C. § 11001 et seq., and the implementing regulations promulgated thereunder.

8. The term "agricultural waste" or "agricultural livestock waste" means livestock manure, wastewater, and litter, including bedding material for the disposition of manure. Agricultural livestock include dairy cattle, swine and/or poultry among others.

9. The term "Contract Grower" means the owner or operator of an AFO that raises livestock owned by a separate entity, and that entity: (1) is not an owner or operator of the AFO; and (2) has listed the AFO as one of its sources covered in a similar Agreement with EPA.

10. The term "Emissions-Estimating Methodologies" means those procedures that will be developed by EPA, based on data from the nationwide emissions monitoring program and any other relevant data and information, to estimate daily and total annual emissions from individual AFOs. These methodologies will be published on EPA's website (www.epa.gov).

11. For purposes of this Agreement only, the term "Emission Unit" means any source or part of a source that emits Volatile Organic Compounds (VOCs), Hydrogen Sulfide (H_2S),

Ammonia (NH_3), or Particulate Matter (TSP, PM_{10} and $PM_{2.5}$) and is either (a) a building, covered enclosure, or permanent or temporary covered structure that houses agricultural livestock or (b) a lagoon or similar structure that is used for storage and/or treatment of agricultural waste. This Agreement applies only to sources that contain one or more Emission Units as defined above. It does not apply to any other sources regardless of whether they are found to contain an "emissions unit" or are a "stationary source" within the meaning of the Clean Air Act.

12. The term "Environmental Appeals Board" or "EAB" means the permanent body with continuing functions designated by the Administrator of EPA under 40 CFR § 1.25(e) whose responsibilities include approving administrative settlements commenced at EPA Headquarters.

13. The term "source," shall have the meaning given to the term "stationary source" in the implementing regulations of the Clean Air Act at 40 C.F.R. § 52.21(b)(5). The term "CERCLA facility" shall have the meaning given that term under section 101(9) of CERCLA. The term "EPCRA facility" shall have the meaning given that term under section 329(4) of EPCRA.

14. The term "nuisance" is defined according to state and local common law, statutes, regulations, ordinances or usage.

15. The term "permitting authority" means the local, state or federal government entity with jurisdiction to require compliance with the permitting requirements of the Clean Air Act.

16. The term "Independent Monitoring Contractor" means a person or entity that is not affiliated with Respondent or any other AFO, that has sufficient experience and expertise to fully implement the nationwide emissions monitoring program described herein, that meets the qualifications set forth in Attachment B to this Agreement, and that is approved by EPA.

17. The term "qualifying release" means a release that triggers the reporting requirement under section 103 of CERCLA or section 304 of EPCRA.

18. The term "Respondent" means [Participating Company].

19. The term "state or local authority" means a state or local government entity with jurisdiction over Respondent's facility(ies).

III. Consent Agreement

20. Based on [Participating Company's] obligations set forth in section IV of this Agreement, EPA and Respondent have agreed to resolve this matter by executing this Agreement.

21. Respondent asserts that it either owns, operates, or otherwise controls, or contracts with Contract Growers who own, operate, or otherwise control, the source(s) listed in

Attachment A to this Agreement. All animal feeding operations that are located on one or more contiguous or adjacent properties and under the control of the same person shall be listed as a single source on Attachment A.

22. For the purpose of this proceeding, Respondent does not contest the jurisdiction of the Environmental Appeals Board.

23. As specified more fully below, Respondent or its representative consents to pay a civil penalty, to be responsible for the payment of funds to the nationwide emission monitoring program, and to facilitate implementation of the monitoring program, including making the sources that it owns, operates or otherwise controls, available for monitoring.

24. In consideration of Respondent's obligations under this Agreement, and solely with respect to the Emission Units located at the source(s) listed in Attachment A , EPA releases and covenants not to sue Respondent for:

> (A) subject to paragraph 33, civil violations of the permitting requirements contained in Title I, Parts C and D, and Title V of the Clean Air Act, and any other federally enforceable state implementation plan (SIP) requirements for major or minor sources based on quantities, rates, or concentrations of air emissions of pollutants that will be monitored under this Agreement, including Volatile Organic Compounds (VOCs), Hydrogen Sulfide (H_2S), Particulate Matter (TSP, PM_{10} and $PM_{2.5}$), and Ammonia (NH_3); and
>
> (B) civil violations of CERCLA section 103 or EPCRA section 304, that arise from air emissions of Hydrogen Sulfide (H_2S) or Ammonia (NH_3) and that are not singular unexpected or accidental releases such as those caused by an explosion, fire or other abnormal occurrence.

25. (a) The release and covenant not to sue described in paragraph 24 extends only to violations of the requirements that are listed in that paragraph and apply to emissions from Emission Units (as defined in paragraph 11). It does not extend to: (i) any possible requirements that relate to emissions generated by other equipment or activities co-located at the source, including waste to energy plants; (ii) activities at uncovered feed lots; (iii) Clean Air Act permitting requirements triggered by an expansion of a source or Emission Unit beyond its design capacity as of the date this Agreement is executed; or (iv) requirements that are not stated in terms of the quantity, concentration or rate of emission of Volatile Organic Compounds (VOCs), Hydrogen Sulfide (H_2S), Particulate Matter (TSP, PM_{10} and $PM_{2.5}$) or Ammonia (NH_3), including work practice requirements and equipment specifications.

(b) The release and covenant not to sue in Paragraph 24 shall apply to the liability of a Contract Grower with respect to a source if and only if the Contract Grower executes an Agreement with EPA covering that source.

(c) In no event shall the release and covenant not to sue in Paragraph 24 extend more than 24 months after the conclusion of the monitoring study.

26. The release and covenant not to sue described in paragraph 24 covers Respondent's liability for violations at a source listed in Attachment A if and only if Respondent complies with all applicable requirements of this Agreement and, with respect to that source:

(A) Within 120 days after receiving an executed copy of this Agreement, for any AFO that confines more than 10 times the "large Concentrated Animal Feeding Operation" threshold of an animal species as defined at 40 C.F.R. § 122.23(b)(4),[1] the AFO provides to the National Response Center and to the relevant local and state emergency response authorities written notice describing its location and stating substantially as follows:

> "This operation raises [species] and may generate routine air emissions of ammonia in excess of the reportable quantity of 100 pounds per 24 hours. A rough estimate of those emissions is [__] pounds per 24 hours, but this estimate could be substantially above or below the actual emission rate, which is being determined through an ongoing monitoring study in cooperation with the U.S. Environmental Protection Agency. When that emission rate has been determined by this study, we will notify you of any reportable releases pursuant to CERCLA section 103 or EPCRA section 304. In the interim, further information can be obtained by contacting [insert contact information for a person in charge of the source]."

Respondent shall provide to EPA, at the address in paragraph 62, a copy of any written notice given pursuant to this subparagraph.

(B) Where application of the Emissions-Estimating Methodologies establishes that no Clean Air Act requirements or that no CERCLA or EPCRA notifications are required for the source, Respondent shall so certify to EPA in writing within 60 days after EPA publishes Emissions-Estimating Methodologies applicable to the source. If EPA notifies Respondent that this certification is not correct because, in fact, application of the Emissions-Estimating Methodologies indicates that the source is subject to such requirements, Respondent shall have 90 days from notification by EPA to comply with the provisions in paragraph 26(C) or submit convincing proof to EPA that Respondent's certification is correct,

and

(C) Respondent complies with all of the applicable requirements set forth below:

[1] This definition is being used in this Agreement solely for the purpose of determining the penalty assessed, and for certain limited reporting purposes (see Paragraph 26(A), above). "Large Concentrated Animal Feeding Operation" is defined as: (a) 2,500 swine weighing more than 55 pounds; (b) 10,000 swine weighing less than 55 pounds; (c) 82,000 laying hens; (d) 125,000 broilers; (e) 55,000 turkeys; or (f) 700 mature dairy cows. See EPA CAFO Clean Water Act Regulations at 40 C.F.R. 122.23(b)(4).

(i) Within 120 days after EPA has published Emissions-Estimating Methodologies applicable to Respondent's source, Respondent submits all Clean Air Act permit applications required by the state or local district in which the source is located, based on application of the Emissions-Estimating Methodologies.

(a) For a source whose emissions exceed the major source threshold in Title I, Part C or D, based on the area's attainment status (e.g., in an attainment area, more than 250 tons per year of a regulated pollutant), this requirement includes,

(1) applying for and ultimately obtaining a permit that contains a federally enforceable limitation or condition that limits the potential to emit of the source to less than the applicable major source threshold for the area where the source is located,

or,

(2) as soon as reasonably possible, installing best available control technology (BACT) in an attainment area, or technology meeting the lowest achievable emission rate (LAER) if the source is located in a nonattainment area, as determined by the state or local authority where the source is located, and obtaining a federally enforceable permit that incorporates an appropriate BACT or LAER limit. For the purposes of this Agreement, compliance with the requirements found in 40 CFR 52.21(k)-(p) is not a condition of the release and covenant not to sue described in paragraph 24. Nothing in this paragraph is intended to limit a state or local government's authority to impose applicable permitting requirements. Emission reductions that result from installing BACT or LAER may not be used in netting calculations to offset emissions from a future modification to the source.

(b) Whether the annual emissions from a particular source listed in Attachment A exceed the major source threshold for its location will be determined based on Respondent's current operating methods and on the maximum number of animals housed at the source at any time over the 24 months prior to EPA's publication of the applicable Emissions-Estimating Methodologies.

(c) Respondent must promptly and fully respond to any notices of deficiency (or other equivalent notification that the permit

application is incomplete or incorrect) issued by the permitting authority with respect to the permit application(s).

(d) As described in paragraph 32, below, sources installing waste-to-energy systems will have an additional 180 days to submit the above-referenced permit applications.

(ii) Within 120 days after EPA has published Emissions-Estimating Methodologies applicable to the Respondent's facility(ies), Respondent reports all qualifying releases of hydrogen sulfide (H_2S) and ammonia (NH_3) in accordance with section 103 of CERCLA and section 304 of EPCRA.

(a) As described in paragraph 32, facilities installing waste-to-energy systems will have an additional 180 days to submit the above-referenced notifications.

(iii) Respondent installs all emission control equipment and implements all practices required by this Agreement or contained in the Clean Air Act permits issued in response to the applications submitted in accordance with subparagraph (i) of this paragraph.

(iv) Respondent provides EPA with written certification that it has timely installed all emission control equipment and implemented all practices required by this Agreement or contained in the Clean Air Act permits issued in response to the applications submitted in accordance with subparagraph (i) of this paragraph, within 30 days of meeting those requirements or within 30 days of acknowledgment of compliance by the permitting authority if such acknowledgment is required.

27. The release and covenant not to sue described in paragraph 24 covers Respondent's liability for violations at a source listed in Attachment A that is owned or operated by a Contract Grower, if and only if the Contract Grower complies with all the requirements of paragraphs 26 and 28.

28. In addition, the release and covenant not to sue described in paragraph 24 covers violations at a source listed in Attachment A that Respondent owns, operates or otherwise controls if, and only if, Respondent complies with the following requirements, with respect to that source:

(A) During the period in which potential violations at the source are covered by the release and covenant not to sue as described in paragraph 24, Respondent complies with all final actions and final orders issued by the state or local authority that address a nuisance arising from air emissions at the source and that are:

(i) issued after Respondent has been given notice and opportunity to be heard (including any available judicial review) as required by applicable state or local law; and,

(ii) issued during the time period in which potential violations at the source are covered by the release and covenant not to sue as described in paragraph 24.

(B) Within 60 days of coming into compliance with the final action or order of the state or local authority, Respondent provides EPA with written certification that Respondent has complied with the final action or final order and within a time schedule approved by the state or local authority.

29. Respondent agrees that the statute of limitations for all claims covered by the release and covenant not to sue in paragraph 24 will be tolled from the date this agreement is approved by the EAB and until 120 days after either of the following events: Respondent files the required certifications in accordance with paragraph 26(B) or paragraph 26(C)(iv); or Respondent fails to comply with the requirements in paragraph 26.

30. EPA will publish Emissions-Estimating Methodologies within 18 months of the conclusion of the monitoring period, and will publish such Methodologies on a rolling basis as soon as they are developed. If EPA's Science Advisory Board determines that EPA is unable to publish Emissions-Estimating Methodologies applicable to a particular type of source or Emission Unit at a source listed in Attachment A within 18 months of the conclusion of the monitoring period because of inadequate data, EPA will attempt to resolve such data problems as soon as possible. EPA's inability to publish an Emissions-Estimating Methodology for a particular type of source or Emission Unit at a source in Attachment A within 18 months shall have no effect on any other deadline or provision of this Agreement for any other type of source or Emission Unit at a source listed in Attachment A.

31. As a condition of its participation in this Agreement, Respondent agrees to accept, regardless of any collateral proceeding, the study protocols employed in, or the emissions data developed by, the nationwide monitoring program conducted under the plan described in paragraph 55 below. If Respondent challenges the protocols employed or the data developed, this Agreement will become null and void and will have no affect on Respondent's past or future liability.

32. Respondent may choose to install and operate one or more systems that process agricultural livestock waste to produce electricity (a waste-to-energy system). If Respondent selects this option it will have, with respect to a source at which such a system will be installed, an additional 180 days to comply with the requirements of paragraph 26 provided the following requirements are met, with respect to that source:

(A) Within 120 days after EPA has published Emissions-Estimating Methodologies applicable to Respondent's source(s), Respondent provides EPA with a written certification that it intends to install a waste-to-energy system,

identifies each source at which such a system is or will be installed, and describes the type of waste-to-energy system installed and the percentage by volume of agricultural waste processed by the system at each source.

(B) The waste-to-energy system processes at least 50% of the agricultural waste by volume produced at the source.

(C) Respondent makes each source at which a waste-to-energy system is installed available for inspection by EPA.

(D) Respondent agrees to operate the waste-to-energy system for 24 months from the first date of operation or the date EPA publishes Emissions-Estimating Methodologies for the source, whichever is later. If during that 24 month period Respondent has to shut down the waste-to-energy system, the benefits of this paragraph will still be applicable if Respondent has made all reasonable efforts to maintain and operate the system.

(E) Respondent obtains, within applicable time limits, all required federal and state permits needed to construct and operate the waste-to-energy system at the source.

33. If during the pendency of the nationwide monitoring program Respondent promptly reports and corrects a Clean Air Act violation resulting from emissions from a source listed in Attachment A that causes or contributes to a violation of any provision of the federally approved SIP that requires compliance with an ambient air quality standard beyond the source's property line, EPA releases and covenants not to sue the Respondent for such a reported and corrected violation if, and only if, the conditions set forth below are met:

(A) Unless Respondent first learned of the violation through a notice from EPA, Respondent provides notice of the violation to EPA and the applicable state within 21 days of Respondent's discovery of the violation or the final order of the EAB approving this Agreement, whichever is later;

(B) Respondent corrects the violation, including making adjustments to its operations at the source to prevent the violation from happening again, within 60 days after notice is given by Respondent or EPA as described in subparagraph (A), above. If the violation cannot reasonably be corrected within 60 days, Respondent must, before the end of the 60 day time period, submit a plan that is ultimately approved by EPA and the applicable state to correct the violation and must comply with the approved plan in accordance with the specified schedule. Within 30 days of correcting the violation, Respondent shall submit a written certification to EPA indicating that it has corrected the violation in accordance with the approved plan; and,

(C) The violation is not a repeated exceedance of a standard that Respondent previously tried to correct pursuant to this provision. Respondent may rectify the

> loss of the above release and covenant not to sue for a repeated violation, however, if it pays a stipulated penalty of $500 a day for each day that the source exceeds the state ambient air quality standard, and it meets the requirements of subparagraphs (A) and (B), except that the time to correct the violation shall be 30 days instead of 60 days.

34. All certifications that Respondent must submit to comply with this Agreement shall include the following statement:

> I certify under penalty of law that the information contained in this submittal to EPA is accurate, true, and complete. I understand that there are significant civil and criminal penalties for making false or misleading statements to the United States government.

The above statement shall be signed by a responsible official for the Respondent (i.e., the owner if Respondent is a sole proprietorship; the managing partner if Respondent is a partnership; or a responsible corporate official if Respondent is an incorporated entity).

35. The releases and covenants not to sue described in paragraphs 24 and 33 cover only violations at any source listed in Attachment A that occur before the date on which Respondent submits the last required certification for that source.

36. In the event that EPA cannot develop Emissions-Estimating Methodologies for an Emission Unit at a source listed in Attachment A, EPA will so notify Respondent. This notice may state that Emissions-Estimating Methodologies cannot be developed for: a specific Emission Unit; an identified category of Emission Units; or, any Emission Unit for which methodologies have not been developed as of a certain date. If EPA provides such notice regarding an Emission Unit at a source, the releases and covenants not to sue described in paragraphs 24 and 33 shall cover only violations at the Emission Unit that occur prior to 180 days after the date the notice is delivered to Respondent. During the 180 days following the notice, Respondent may attempt to provide data or correct other problems that prevented EPA from being able to generate an applicable Emissions-Estimating Methodology or attempt to show that an existing Emissions-Estimating Methodology is applicable to its Emission Unit(s). If EPA publishes an applicable Emissions-Estimating Methodology for the Emission Unit during the 180 days after the notice, then the provisions of this Agreement shall apply as if the above notice by EPA was never given. EPA, in its discretion, may extend the 180 day period for publishing an applicable Emissions-Estimating Methodology. Notice given under this paragraph shall be deemed proper if it is sent via U.S. mail, postage pre-paid, to the address listed in Attachment A.

37. The execution of this Agreement is not an admission of liability by Respondent, and Respondent neither admits nor denies that it has violated any provisions of the Clean Air Act, CERCLA, or EPCRA.

38. Respondent waives its right to request an adjudicatory hearing, and its right to have an opportunity to confer with the Administrator on any issue addressed in this Agreement.

Respondent further waives its right to seek judicial review of the penalty assessed in paragraph 46.

39. Respondent and EPA represent that they are duly authorized to execute this Agreement and that the parties signing this Agreement on their behalf are duly authorized to bind Respondent and EPA, respectively, to the terms of this Agreement.

40. Respondent agrees not to claim or attempt to claim a federal income tax deduction or credit covering all or any part of the civil penalty paid to the United States Treasurer. Payments made in connection with the nationwide emissions monitoring program do not constitute a fine or penalty and are not paid in settlement of any actual or potential liability for a fine or penalty.

41. This Agreement is without prejudice to all rights of EPA against Respondent with respect to any claims not expressly released herein. This Agreement does not limit in any way EPA's authority to restrain Respondent or otherwise act in any situations that may present an imminent and substantial endangerment to public health, welfare, or the environment. In addition, this Agreement does not release Respondent for any criminal liability.

42. With respect to any claims not expressly released herein, in any subsequent administrative or judicial proceeding initiated by the United States for injunctive relief, penalties, recovery of response costs, or other relief relating to a facility listed in Attachment A, Respondent shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, *res judicata*, collateral estoppel, issue preclusion, claim-splitting, or other defenses based upon any contention that the claims raised by the United States in the subsequent proceeding were or should have been brought in the instant proceeding.

43. Respondent recognizes that EPA may not execute this Agreement if it determines that there will be inadequate funding for the nationwide monitoring program or if it determines that there is inadequate representation of eligible animal groups and types of sources or Emission Units.

44. Respondent and EPA stipulate to the issuance of the proposed Final Order below.

[Participating Company], Respondent

By:_____

(Print Name):_____

Title:_____

Dated:_____

U.S. Environmental Protection Agency, Complainant

By:_____

Title:_____

Dated:_____

IV. Final Order

It is hereby ordered and adjudged as follows:

Compliance

45. Respondent shall comply with all terms of this Agreement.

Penalty

46. Respondent is hereby assessed a penalty based on the number and size of the sources listed in Attachment A as follows:

(A) If Respondent has only one source and that source is below the "large Concentrated Animal Feeding Operation" threshold for that animal species,[2] Respondent is assessed a penalty of $200.

(B) All other Respondents are assessed a penalty of $500 per source, unless the source contains more than 10 times the "large Concentrated Animal Feeding Operation" threshold. For those sources, Respondent is assessed a penalty of $1,000 per source.

(C) The total penalty paid by Respondent shall not exceed:
$10,000 if Attachment A lists 1-10 sources
$30,000 if Attachment A lists 11-50 sources
$60,000 if Attachment A lists 51-100 sources
$80,000 if Attachment A lists 101-150 sources
$90,000 if Attachment A lists 151-200 sources
$100,000 if Attachment A lists more than 200 sources

[2] This definition is being used in this Agreement solely for the purpose of determining the penalty assessed, and for certain limited reporting purposes (see Paragraph 26(A), above). "Large Concentrated Animal Feeding Operation" is defined as: (a) 2,500 swine weighing more than 55 pounds; (b) 10,000 swine weighing less than 55 pounds; (c) 82,000 laying hens ; (d) 125,000 broilers; (e) 55,000 turkeys; or (f) 700 mature dairy cows. See EPA CAFO Clean Water Act Regulations at 40 C.F.R. 122.23(b)(4).

47. Respondent shall pay the assessed penalty no later than thirty (30) calendar days from the date a confirmed copy of this Agreement is received by Respondent (hereinafter referred to as the "Agreement Date").

48. All penalty assessment monies under this Agreement shall be paid by certified check or money order, payable to the United States Treasurer, and mailed to: U.S. Environmental Protection Agency (Washington, D.C. Hearing Clerk), P.O. Box 360277, Pittsburgh, Pennsylvania 15251-6277. A transmittal letter, indicating Respondent's name, complete address, and this case docket number must accompany the payment. Respondent shall file a copy of the check and of the transmittal letter by mailing it to:

Headquarters Hearing Clerk
US EPA
1921 Jefferson Davis Hwy
Crystal Mall #2, Room 104
Arlington, VA 22202.

49. Failure to pay the penalty assessed under this Agreement may subject Respondent to a civil action pursuant to section 113(d)(5) of the Clean Air Act, 42 U.S.C. § 7413(d)(5), to collect any unpaid portion of the monies owed, together with interest, handling charges, enforcement expenses, including attorney fees, and nonpayment penalties. In any such collection action, the validity, amount, appropriateness of this Order or the penalty assessed hereunder are not subject to review.

50. Pursuant to 42 U.S.C. § 7413(d)(5) and 31 U.S.C. § 3717, Respondent shall pay the following amounts:

(A) Interest. Any unpaid portion of the assessed penalty shall bear interest at the rate established pursuant to 26 U.S.C. § 6621(a)(2) from the date a confirmed copy of this Agreement is received by Respondent; provided, however, that no interest shall be payable on any portion of the assessed penalty that is paid within 30 days of the Agreement Date.

(B) Attorney Fees, Collection Cost, Nonpayment Penalty. Should Respondent fail to pay on a timely basis the amount of the assessed penalty, Respondent shall be required to pay, in addition to such penalty and interest, the United States' enforcement expenses, including but not limited to attorney fees and costs incurred by the United States for collection proceedings, and a quarterly nonpayment penalty for each quarter during which such failure to pay persists. Such nonpayment penalty shall be ten percent of the aggregate amount of Respondent's outstanding penalties and nonpayment penalties accrued from the beginning of such quarter.

(C) Payment. Interest, attorney fees, collection costs, and nonpayment penalties related to Respondent's failure to timely pay the assessed penalty shall be made in accordance with subparagraphs (A) and (B) of this paragraph.

Monitoring Fund

51. Respondent (unless Respondent is a Contract Grower) has a shared responsibility for funding the nationwide monitoring program described in paragraph 53. Respondent individually shall be responsible for paying the lesser of: (a) $2500 for each source listed in Attachment A to this Agreement; or (b) Respondent's pro rata share of the amount needed to fully fund the monitoring program ("full funding level"), including any unfunded balance of the monitoring program, consistent with the provisions of paragraph 60. The Monitoring Fund and the Respondent's obligations with respect to the nationwide monitoring program are more fully described in paragraphs 53 through 63. The full funding level is the amount of money actually needed to fully and adequately fund the nationwide monitoring program described in this Agreement. The full funding level shall be initially estimated within 60 days of the Agreement date and shall be included as part of the proposed plan to conduct the monitoring described in paragraph 53. The estimated full funding level shall determine the pro rata share of the monitoring fund payment for which Respondent is initially responsible. Any shortfalls that occur because the estimated full funding level was less than the actual full funding level shall be handled in accordance with this paragraph and paragraph 60. If Respondent is a Contract Grower, it shall have no obligation to contribute money to the nationwide monitoring program.

52. Respondent's shared responsibility for funding the nationwide monitoring program, including any individual payments by Respondent under Paragraphs 51 or 60, shall be met through payments into a nonprofit entity that has been established for the purposes set forth in Attachment B. Those purposes shall include: collecting and holding Respondent contributions to the nationwide emissions monitoring program; purchasing and holding title to research equipment; contracting with an Independent Monitoring Contractor (or "Contractor") to conduct the monitoring program; and other responsibilities.

53. The contract identified in paragraph 52 shall require the Independent Monitoring Contractor to submit to EPA, within 60 days of the Agreement Date, a detailed plan to conduct the nationwide monitoring program. The proposed plan shall:

(A) Identify the Independent Monitoring Contractor and its qualifications, including the qualifications of any subcontracted science advisors, for implementing the nationwide monitoring program;

(B) Be consistent with, expand the explanation of, and include all of the elements of the monitoring plan outline set forth in Attachment B to this Agreement, including the requirements that: (1) all monitoring be completed within two years of the Agreement Date; (2) a comprehensive quality assurance program be implemented as part of the study, and (3) that the emissions to be monitored will be PM (TSP, PM_{10}, and $PM_{2.5}$), H_2S, ammonia, and VOCs;

(C) Identify the sources to be monitored, and the justification for including those sources based on the specifications for the monitored sources set forth in Attachment B; and,

(D) Require the Independent Monitoring Contractor to submit detailed quarterly reports to EPA and to the entity described in paragraph 52. Those reports shall

discuss the Contractor's progress in implementing the approved monitoring plan, including what it did during the previous three months and what it intends to do during the next three months. The Independent Monitoring Contractor shall submit quarterly reports starting with the end of the first calendar quarter (i.e., March 31, June 30, September 30, or December 31) after the proposed monitoring plan is approved by EPA, unless the plan is approved by EPA with less than 30 days left in the current calendar quarter. If that occurs, the contractor shall submit the first quarterly report at the end of the next calendar quarter. The quarterly reports shall continue through the end of the calendar quarter during which the nationwide monitoring program is completed.

54. EPA will review and approve or disapprove the proposed plan within 30 days of receiving it from the Independent Monitoring Contractor. If the proposed plan is disapproved, EPA will specifically state why it is being disapproved and what changes need to be made. The Contractor shall then have 30 days from the date EPA disapproves the proposed plan to modify it and to submit the modified plan to EPA for review and approval. If the Contractor does not submit a plan that is ultimately approved by EPA, the releases and covenants not to sue set forth in paragraphs 26 and 34 of this Agreement shall be null and void.

55. Once the plan is approved, the contract between the nonprofit entity identified in paragraph 52 and the Independent Monitoring Contractor shall require the contractor to fully implement the approved plan in accordance with the approved schedule. Failure of the contractor to implement the approved plan in accordance with the approved schedule, unless specifically excused by EPA in writing, shall nullify the releases and covenants not to sue set forth in paragraphs 24 and 33 of the Agreement. The estimated full funding level shall be transferred to the nonprofit entity described in paragraph 52 prior to 60 days after EPA's approval of the monitoring plan.

56. The contract identified in paragraph 54 shall require the Independent Monitoring Contractor to schedule periodic meetings (either by phone or in person) with EPA, and special meetings upon request by EPA or the Contractor, to discuss progress in implementing the approved plan. The Contractor shall be required to promptly inform EPA of any problems in implementing the approved plan that have occurred or are anticipated to occur or of any adjustments that may be needed. No changes may be made to the approved plan without the written consent of EPA.

57. All emissions data generated and all analyses of the data made by the Independent Monitoring Contractor during the nationwide monitoring program shall be provided to EPA as soon as possible in a form and through means acceptable to EPA. The parties agree that these data and analyses will be fully available to the public and that Respondent and EPA waive any right to claim any privilege with respect to such data and analyses.

58. Respondent agrees to make the sources listed in Attachment A that it owns, operates, or otherwise controls available for emissions monitoring under the nationwide emission monitoring program if the source is chosen as a monitoring site under the approved plan.

59. Respondent also agrees to give EPA or its representatives access to those sources for the purpose of verifying their suitability for monitoring or to observe monitoring conducted under the approved nationwide monitoring plan. EPA agrees that prior to entering a source it will comply with proper biosecurity measures as are normal and customary. Nothing in this Agreement is intended in any way to limit EPA's inspection, monitoring, and information collection authorities under the Clean Air Act, CERCLA or EPCRA.

60. If, prior to completion of the nationwide monitoring program, it appears that there will be insufficient funds to complete the program, the Contractor shall notify EPA of this problem within 30 days of making this determination. The notice shall contain a detailed explanation of why there are insufficient funds, account for all money spent, and identify how much more money is needed to complete the monitoring program. If Respondent is not required under Paragraph 51 to contribute or secure the contribution of additional money to the nationwide monitoring program that will be sufficient to complete the monitoring program, the Contractor or the nonprofit entity described in paragraph 52 shall make all reasonable efforts to find additional funding to complete the monitoring program. The Contractor shall advise EPA of the efforts to locate additional funding and shall not commit to the use of additional funding sources without the prior approval of EPA. If, despite the best efforts of Respondent or its representative, the Contractor, or the nonprofit entity described in paragraph 52, the nationwide monitoring program cannot be completed due to lack of funding, then the releases and covenants not to sue set forth in paragraphs 24 and 33 of this Agreement will no longer be in effect.

61. If, after completion of the nationwide monitoring program, there is unspent money in the nationwide monitoring fund, the Independent Monitoring Contractor shall notify EPA within 90 days of completion of the monitoring program. The notice shall contain a detailed explanation of why there are unspent funds, including an accounting of all money spent to implement the nationwide monitoring program and how much is left unspent. The notice shall also include a proposed plan for distribution of the leftover money..

62. All certifications required by this Agreement shall be submitted to:

Special Litigation and Projects Division
Office of Regulatory Enforcement
1200 Pennsylvania Ave., NW
Washington, DC 20460

Attn: AFO/CAFO certifications

63. Except for a facility for which Respondent, or the owner or operator of a contract facility, is able to certify under paragraph 26(A), this document constitutes an "enforcement response" as that term is used in the Clean Air Act Penalty Policy and an "enforcement action" as that term is used in the CERCLA Penalty Policy.

64. Each party shall bear its own costs, fees, and disbursements in this action, except where explicitly stated as otherwise in this Agreement.

65. The provisions of this Agreement shall be binding on Respondent, its officers, directors, employees, agents, successors and assigns.

It is so ordered.
Dated this _____ day of _____, 2004.

_____
Environmental Appeals Judge
Environmental Appeals Board
U.S. Environmental Protection Agency

Certificate of Service

I certify that the foregoing Consent Agreement and Final Order was sent to the following persons, in the manner specified, on the date below:

Original hand-delivered: [insert name], EAB Hearing Clerk, U.S. Environmental Protection Agency, Mail Code 1103B, 607 14th Street, N.W., Suite 5000, Washington, D.C. 20005

Copy by certified mail, return receipt requested:

_____
[Name]
[Participating Company]
[Participating Company's Address]

Dated: _____
U.S. EPA