12/10/03 Draft

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

IN THE MATTER OF	)	
	)	
[Participating Company]	)	**CONSENT AGREEMENT AND FINAL ORDER**
	)	
	)	
	)	**CAA-HQ-2003-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 facility(ies) 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).

2. The purpose of this Agreement is to ensure that [Participating Company] complies with all applicable requirements of the Clean Air Act and the hazardous substance release notification provisions of CERCLA. To that end, this Agreement requires [Participating Company] to, among other things, contribute 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 and CERCLA.

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.

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

5. This Agreement is intended to address air emissions from AFOs that are potentially significant sources of air pollution, though any size AFO may enter into this Agreement.

6. This Agreement is intended to address air emissions from AFOs in all regions of the United States. It aims to promote a national consensus on appropriate Emissions-Estimating Methodologies for air emissions from AFOs. [Note: EPA continues to consider alternatives to ensure consistency with any state laws that may impose earlier Clean Air Act requirements on AFOs.]

7. AFOs that have been notified that they may be subject to a federal or state Clean Air Act or CERCLA section 103 enforcement action are not eligible to enter into this Agreement.

II. Definitions

8. 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., and the implementing regulations promulgated thereunder.

9. 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.

10. The term "change over" means the process in which one flock, herd or group of chickens, dairy cows or hogs housed for confined feeding for the production of eggs, milk or meat is exchanged for replacement animals.

11. 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).

12. The term "emission source" means any building, enclosure, permanent or temporary structure that houses agricultural livestock and any lagoon or other similar structure that is used for storage and/or treatment of agricultural waste , which produces air emissions of Nitrogen Oxides (NO_x), Volatile Organic Compounds (VOCs), Hydrogen Sulfide (H_2S), Ammonia (NH_3), or Particulate Matter (TSP, PM_{10} and $PM_{2.5}$). Only those emission sources specifically listed in Attachment A are covered by this Agreement.

13. 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.

14. The term "facility"shall have the same meaning given to that term in the Clean Air Act, 42 U.S.C. § 7401 et seq., and the implementing regulations promulgated thereunder.

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

16. 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.

17. The term "potentially significant sources of air pollution" means any stationary source facility that emits, or has the potential to emit, an amount of any federally regulated pollutant in excess of the amount necessary to cause the source to apply for a Clean Air Act permit or submit a hazardous substance release notification under CERCLA.

18. The term "qualified, independent third party" 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.

19. The term "qualifying hazardous substance" means those substances that trigger the reporting requirement under section 103 of CERCLA.

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

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

III. Consent Agreement

22. 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.

23. Respondent asserts that it owns, operates and/or otherwise controls the facilities listed in Attachment A to this Agreement. Respondent also asserts that the emissions sources and facilities listed in Attachment A fall within the categories of emissions sources and facilities identified in Attachment B to be monitored under this agreement.

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

25. As specified more fully below, Respondent or its representative consents to pay a civil penalty, to contribute funds to the nationwide emission monitoring program, and to facilitate implementation of the monitoring program, including making its facilities available for monitoring.

26. In consideration of Respondent's obligations specified in this Agreement, with respect to the emissions sources at the facility(ies) listed in Attachment A, operating at or below currently permitted capacity, EPA releases and covenants not to sue Respondent for:

(A) subject to paragraph 34, 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 SIP requirements for major or minor sources based on emission rates and relating to air emissions of pollutants that will be monitored under this Agreement, including Nitrogen Oxides (NO_x), Volatile Organic Compounds (VOCs), Hydrogen Sulfide (H_2S), Particulate Matter (TSP, PM_{10} and $PM_{2.5}$), and Ammonia (NH_3), from any emission source listed in Attachment A; and

(B) civil violations of CERCLA section 103 hazardous substance release reporting requirements that arise from air emissions of Hydrogen Sulfide (H_2S) or Ammonia (NH_3) from any emission source listed in Attachment A and are not a consequence of a singular unexpected or accidental release such as that caused by an explosion, fire or other abnormal occurrence.

27. The release and covenant not to sue described in paragraph 26 extends only to violations related to emissions generated by agricultural livestock or agricultural livestock waste. It does not extend to violations arising from: (a) emissions from internal combustion engines; (b) dust and other emissions from roads, fields (including emissions resulting from land application of animal waste) and uncovered feedlots; (c) emissions arising from animal incineration, rendering, or processing; or (d) emissions from sources not listed in Attachment A.

28. The release and covenant not to sue described in paragraph 26 covers violations at a facility listed in Attachment A if and only if Respondent complies with all provisions of this Agreement and, with respect to that facility:

(A) Where application of the Emissions-Estimating Methodologies establishes that no Clean Air Act permit applications or that no CERCLA notifications (or both) are required for the facility, Respondent provides EPA with written certification that application of the applicable Emissions-Estimating Methodologies to the facility establishes that no such permit applications or notifications are required. This certification must be submitted within 30 days after EPA publishes Emissions-Estimating Methodologies applicable to the facility. If EPA notifies Respondent that it has determined that a certification submitted under this provision is not correct because, in fact, the Emissions-Estimating Methodologies when applied to Respondent's facility indicate that the facility is subject to Clean Air Act or CERCLA requirements, Respondent shall have 90 days from notification by EPA to comply with the provisions in paragraph 28(B) or submit convincing proof to EPA that Respondent's certification is correct,

and

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

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

(a) For a facility 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 facility to less than the applicable major source threshold for the area where the facility is located,

or,

(2) as soon as reasonably possible, installing best available control technology (BACT), or technology meeting the lowest achievable emission rate (LAER) if the facility is located in a nonattainment area, as determined by the state where the facility 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 25. Nothing in this paragraph is intended to limit a state'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 facility.

(b) Whether the annual emissions from a particular facility exceed the major source threshold for its location will be determined based on Respondent's current operating methods and an assumption that the number of animals housed at the facility is the maximum number of animals (excluding changeovers) housed at the facility during 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 33, below, facilities 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.

(a) As described in paragraph 33, facilities installing waste-to-energy systems will have an additional 180 days to submit the above-referenced CERCLA 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.

29. In addition, the release and covenant not to sue described in paragraph 26 covers violations at a facility listed in Attachment A if, and only if, Respondent complies with the following requirements, with respect to that facility:

(A) During the period in which potential violations at the facility are covered by the release and covenant not to sue as described in paragraph 36, 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 facility 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 law; and,

(ii) issued during the time period in which potential violations at the facility are covered by the release and covenant not to sue as described in paragraph 36.

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

30. Respondent agrees that the statute of limitations for all claims covered by the release and covenant not to sue in paragraph 26 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 28(A) or paragraph 28(B)(iv); or Respondent fails to comply with the requirements in paragraph 28.

31. 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 facility type 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 certain type of facility in Attachment A within 18 months shall have no effect on any other deadline or provision of this agreement for any other type of facility.

32. Respondent agrees not to challenge the validity of the study protocols employed in, or the emissions data developed by, the nationwide monitoring program conducted under the plan described in paragraph 55, below. In the event of an enforcement action brought against Respondent involving a facility listed in Attachment A, Respondent may, however, challenge the application of the emissions estimation methodology to that specific facility. Nothing in this paragraph shall protect Respondent from the loss of the release and covenant not to sue for failing to comply with the conditions set forth in this Agreement.

33. Respondent may choose to install and operate one or more systems that use agricultural livestock waste to produce electricity (a waste-to-energy system). If Respondent selects this option it will have, with respect to a facility at which such a system will be installed, an additional 180 days to comply with the requirements of paragraph 28 provided the following requirements are met, with respect to that facility:

(A) Within 120 days after EPA has published Emissions-Estimating Methodologies applicable to Respondent's facility(ies), Respondent provides EPA with a written certification that it intends to install a waste-to-energy system, identifies each facility 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 used by the system at each facility.

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

(C) Respondent makes each facility 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 Respondent's facilities, 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 all required federal and state permits needed to construct and operate the waste-to-energy system at each facility.

34. If Respondent promptly reports and corrects a Clean Air Act violation resulting from emissions from a facility listed in Attachment A that causes or contributes to an exceedance of federally-enforceable, applicable state ambient air quality standards beyond the facility's property line during the pendency of the nationwide monitoring program, EPA releases and

covenants not to sue 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 notification from EPA, Respondent provides notice of the violation to EPA and the state in which the facility is located 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 facility to prevent the violation from happening again, within 60 days after Respondent discovers the violation or is notified of the violation by EPA or the state, whichever occurs first. 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 facility 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.

35. 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).

36. The releases and covenants not to sue described in paragraphs 26 and 34 cover only violations at any facility listed in Attachment A that occur before the date on which Respondent submits all required certifications for that facility.

37. In the event that EPA cannot develop Emissions-Estimating Methodologies for a facility listed in Attachment A because of a lack of data or other reason, EPA will notify Respondent of this fact. This notice may state that Emissions-Estimating Methodologies cannot be developed for: a specific facility; an identified category of facilities; or, any facility for which methodologies have not been developed as of a certain date. If EPA provides such notice regarding a facility, the releases and covenants not to sue described in paragraphs 26 and 34 shall

cover only violations at the facility 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. If EPA publishes an applicable Emissions-Estimating Methodology for the facility during the 180 days after the notice, then the provisions of paragraphs 28 through 36 of this Agreement shall apply as if the above notice by EPA was never given. Notice given under this paragraph shall be deemed proper if it is sent via U.S. mail, postage paid, to the address listed in Attachment A.

38. 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 or CERCLA.

39. Respondent waives its right to request an adjudicatory hearing on any issue addressed in this Agreement.

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

41. 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.

42. 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.

43. 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.

44. Respondent recognizes that EPA may not execute this Agreement if an insufficient number of AFOs agree to participate in the Agreement to adequately fund the nationwide monitoring program or if there is inadequate representation of eligible animal groups and types of facilities.

45. 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

Penalty

It is hereby ordered and adjudged as follows:

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

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

(A) If Respondent has only one facility and that facility contains fewer than the "large CAFO" threshold for that animal species as defined in the EPA CAFO Water Rule at 40 CFR 122.23 (b)(4)[1], Respondent is assessed a penalty of $200.

(B) All other Respondents are assessed a penalty of $500 per facility, unless the facility contains more than 10 times the "large CAFO" threshold for that animal species as defined in the EPA CAFO Water Rule at 40 CFR 122.23 (b)(4). For those facilities, Respondent is assessed a penalty of $1,000 per facility.

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

48. 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.

49. 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:

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

50. 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.

[1]The definition of "large CAFO" as defined in the EPA CAFO Water Rule is being used in this Agreement solely for the purpose of determining the penalty assessed.

51. 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 date a copy of this Agreement is received by Respondent.

(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

52. Respondent is responsible for the payment of $2,500 for each covered facility listed in Attachment A to this Agreement into a fund to implement a nationwide monitoring program at AFOs. The fund and the Respondent's obligations with respect to the nationwide monitoring program are more fully described in paragraphs 53 through 63.

53. Within 30 days from the date that Respondent receives a confirmed copy of this Agreement (hereinafter referred to as the "Agreement date"), Respondent or its representative, in cooperation with other AFOs who have entered into a similar agreement with EPA, shall establish an independent organization that will be responsible for collecting and holding Respondent's contribution to the nationwide emissions monitoring program and the contributions of the other AFOs who have entered into a similar agreement with EPA.

54. Within 30 days of the Agreement date, Respondent or its representative shall, through the independent organization identified in paragraph 53, contract with a "qualified, independent third party" (hereinafter referred to as the "monitoring contractor") to conduct the monitoring program.

55. The contract identified in paragraph 54 shall require the monitoring contractor to submit to EPA, within 60 days of the Agreement date, a detailed proposed plan to conduct the nationwide monitoring program. The proposed plan shall:

(A) Identify the monitoring contractor and its qualifications for implementing the nationwide monitoring program;

(B) Be consistent with and include all the elements of the monitoring plan set forth in Attachment B to this Agreement, including the requirement that all monitoring must be completed within two years of EPA's approval of the monitoring plan and that the emissions to be monitored will be PM (TSP, PM_{10}, and $PM_{2.5}$), H_2S, ammonia, VOCs and NOx;

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

(D) Require the monitoring contractor to submit detailed quarterly reports to EPA discussing its progress in implementing the approved monitoring plan, including what was done during the previous three months and what the monitoring contractor intends to do during the next three months. The 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. In which case, the first quarterly report shall be submitted 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.

56. EPA will review and approve or disapprove the proposed plan within 30 days of receiving it from the monitoring contractor. If the proposed plan is disapproved, EPA will specifically state why the plan is being disapproved and what changes need to be made. The monitoring contractor shall then have 30 days from the date EPA disapproves the plan to modify the proposed plan to address the changes required by EPA and to submit the modified plan to EPA for review and approval. If the monitoring 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.

57. Once the plan is approved, the contract between the independent organization identified in paragraph 53 and the monitoring contractor shall require the monitoring contractor to fully implement the approved plan in accordance with the approved schedule. Failure of the monitoring 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 26 and 34 of the Agreement.

58. The contract identified in paragraph 54 shall require the monitoring contractor to schedule periodic meetings (either by phone or in person) with EPA, and special meetings upon request by EPA or the monitoring contractor, to discuss progress in implementing the approved plan. The monitoring 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.

59. All emissions data generated and all analyses of the data made by the 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 this data and analysis 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 analysis.

60. Respondent agrees to make its facility(ies) available for emissions monitoring under the nationwide emission monitoring program if it is chosen as a monitoring site under the approved plan.

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

62. If, prior to completion of the nationwide monitoring program, it appears that there will be insufficient funds to complete the program, Respondent or its representative shall notify EPA of this problem. 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. While Respondent is not individually required to contribute additional money to the nationwide monitoring program, Respondent or its representative, along with the other participants in the AFO Partnership Program, shall make all reasonable efforts to find additional funding to complete the monitoring program. Respondent or its representative 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, the nationwide monitoring program cannot be completed due to lack of funding, then the releases and covenants not to sue set forth in paragraphs 26 and 34 of this Agreement will no longer be in effect.

63. If, after completion of the nationwide monitoring program, there is unspent money in the nationwide monitoring fund, Respondent or its representative shall notify EPA of this fact 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 review and approval by EPA, to spend the leftover money on additional air emissions monitoring or best management practice development at AFOs. Respondent or its representative shall implement the proposed plan as approved by EPA.

64. 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

65. Except for a facility for which Respondent is able to certify under paragraph 28(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.

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

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

It is so ordered.
Dated this _____ day of _____, 2003.

_____
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:

_____, Registered Agent for
[Participating Company]
[Participating Company's Address]

Dated: _____
U.S. EPA