UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

IN THE MATTER OF	)	
[Participating Company]	)	**CONSENT AGREEMENT AND**
	)	**FINAL ORDER**
	)	**CAA-HQ-2005-XX**
	)	**CERCLA-HQ-2005-XX**
	)	**EPCRA-HQ-2005-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 certain animal feeding operation(s) that may be subject to requirements of the Clean Air Act, 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 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 national air emissions monitoring study that will lead to the development of Emissions-Estimating Methodologies that will help animal feeding operations determine and comply with their regulatory responsibilities under the Clean Air Act, CERCLA and EPCRA.

3. This Agreement is issued pursuant to section 113 of the Clean Air Act, 42 U.S.C. §7413 (federal enforcement of the Clean Air Act); sections 103 and 109 of CERCLA, 42 U.S.C. §§9603 and 9609 (federal enforcement of notification provisions); section 325 of EPCRA, 42 U.S.C. §11045 (federal enforcement of EPCRA notification provisions); and 40 CFR 22.13(b) and 22.18(b)(2) and (3) (procedural requirements for the quick resolution and settlement of matters before the filing of an administrative 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 Farms is subject to CERCLA or EPCRA reporting or Clean Air Act permitting requirements, or is 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 has been

operated negligently or improperly, or that any such operation is or was in violation of any federal, state or local law or regulation.

4. As described more specifically in paragraphs 26 and 35 below, this Agreement resolves Respondent's civil liability for certain potential violations of the Clean Air Act, CERCLA and/or EPCRA at [Participating Company's] Farm(s) listed in Attachment A. The release and covenant not to sue found in paragraph 26 resolves only violations identified and quantified by applying the Emissions-Estimating Methodologies developed using data from the national air emissions monitoring study described herein.

5. This Agreement is one of numerous identical agreements between EPA and animal feeding operations across the nation. Through these agreements, EPA and participating animal feeding operations aim to assist in the development of improved Emissions-Estimating Methodologies for air emissions from animal feeding operations and to ensure that all animal feeding operations 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 Clean Air Act requirements for agricultural sources of air pollution.

6. EPA may decline to enter into this Agreement with animal

feeding operations (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, 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. For purposes of this Agreement only, the following terms shall have the following meanings.

8. The term "Agricultural Waste" or "Agricultural Livestock Waste" means Livestock manure, wastewater, litter including bedding material for the disposition of manure, and egg washing or milking center waste treatment and storage. "Agricultural Livestock" or "Livestock" include dairy cattle, swine and/or poultry among others.

9. The term "Contract Grower" means the owner or operator of a Farm that raises Livestock or produces milk or eggs under a contract with Respondent.

10. The term "Emissions-Estimating Methodologies" means

those procedures that will be developed by EPA, based on data from the national air emissions monitoring study and any other relevant data and information, to estimate daily and total annual emissions from individual Emission Units and/or Sources. These methodologies will be published on EPA's website (www.epa.gov).

11. The term "Emission Unit" means any part of a Farm that emits or may emit Volatile Organic Compounds (VOCs), Hydrogen Sulfide (H2S), Ammonia (NH3), or Particulate Matter (TSP, PM10 and PM2.5) and is either: (a) a building, enclosure, or structure that permanently or temporarily houses Agricultural Livestock; or (b) a lagoon or installation that is used for storage and/or treatment of Agricultural Waste.

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 "Facility" shall mean "CERCLA Facility and/or EPCRA Facility." The term "CERCLA Facility" shall have the meaning given that term under section 101(9) of CERCLA, 42 U.S.C. §9601(9). The term "EPCRA Facility" shall have the meaning given that term under section 329(4) of EPCRA, 42 U.S.C. §11049(4).

14. The term "Farm" shall mean the production area(s) of an animal feeding operation, adjacent and under common ownership,

where animals are confined, including animal lots, houses or barns; and Agricultural Waste handling and storage facilities. "Farm" does not include land application sites for Agricultural Waste. This definition is limited exclusively to this Agreement and establishes no precedent for the interpretation of any statute, regulation or guidance.

15. The term "Nuisance" is defined according to State and local common law, 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 "Independent Monitoring Contractor" means a person or entity that is not affiliated with Respondent or any other animal feeding operation, that has sufficient experience and expertise to fully implement the national air emissions monitoring study described herein, that meets the qualifications set forth in Attachment B to this Agreement, and that is approved by EPA.

18. The term "Qualifying Release" means a release that triggers a reporting requirement under section 103 of CERCLA or section 304 of EPCRA.

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

20. The term "Source" shall have the meaning given to the term "stationary source" in the implementing regulations of the

Clean Air Act at 40 CFR 52.21(b)(5) through (6), as interpreted by applicable guidance issued by EPA.

21. The term "State or Local Authority" means a state or local government entity with jurisdiction over Respondent's Farm(s).

III. Consent Agreement

22. EPA and Respondent have agreed to resolve this matter by executing this Agreement, as further set forth herein.

23. Respondent asserts that it either owns, operates or otherwise controls, or contracts with Contract Growers who own, operate or otherwise control, the Farm(s) listed in Attachment A to this Agreement. Respondent agrees that this Agreement applies only to the Farm(s) that are listed in Attachment A and contain one or more Emission Unit(s) as defined in paragraph 11 and described in Attachment A.

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 consents to pay a civil penalty, to be responsible for the payment of funds to the national air emissions monitoring study, and to facilitate implementation of the monitoring study, including making certain Farms available for monitoring.

26. In consideration of Respondent's obligations under this Agreement and subject to the limitations and conditions set forth

in paragraphs 27-30, 33, 34, 36, 37 and 43, EPA releases and covenants not to sue Respondent, with respect to the listed Emission Units located at the Farm(s) in Attachment A, for:

(A) 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, namely Volatile Organic Compounds (VOCs), Hydrogen Sulfide (H2S), Particulate Matter (TSP, PM10 and PM2.5), and Ammonia (NH3); and

(B) civil violations of CERCLA section 103 or EPCRA section 304 from air emissions of Hydrogen Sulfide (H2S) or Ammonia (NH3) that are not singular unexpected or accidental releases such as those caused by an explosion, fire or other abnormal occurrence.

27. (a) The releases and covenants not to sue described in paragraphs 26 and 35 extend only to violations of the requirements identified in those paragraphs and apply only to emissions from Agricultural Waste at Emission Units (as defined in paragraph 11). They do not extend to any other requirements including but not limited to: (i) any possible requirements that relate to emissions generated by other equipment or activities co-located at the Farm, including waste-to-energy systems; (ii)

activities at open cattle feedlots for beef production; (iii) Clean Air Act permitting requirements triggered by an expansion of a Farm beyond its design capacity as of the date this Agreement is executed; or (iv) requirements that are not triggered by the quantity, concentration or rate of emission of Volatile Organic Compounds (VOCs), Hydrogen Sulfide (H2S), Particulate Matter (TSP, PM10 and PM2.5) or Ammonia (NH3), including work practice requirements and equipment specifications.

(b) The release and covenants not to sue in paragraphs 26 and 35 shall apply to the liability of a Contract Grower with respect to a Farm if and only if the Contract Grower executes an Agreement with EPA covering that Farm.

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

(A) Within 120 days after receiving an executed copy of this Agreement, for any Farm that confines more than 10 times the "large Concentrated Animal Feeding Operation" threshold of an

animal species[1], the animal feeding operation provides to the National Response Center (NRC) 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 operation].

Respondent shall provide to EPA, at the address in paragraph 64, a copy of any written notice given pursuant to this subparagraph. This interim notice shall be provided to satisfy the terms of this Agreement only and is not intended to establish a precedent or standard for reporting under CERCLA or EPCRA.

(B) Where application of the Emissions-Estimating Methodologies establishes that no Clean Air Act requirements or

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[1] This definition is being used in this Agreement solely for the purpose of determining the penalty assessed, and for certain limited reporting purposes. "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 or 1000 dairy heifers.

that no CERCLA or EPCRA notifications are required for a Source or Facility, Respondent shall so certify to EPA in writing within 60 days after EPA publishes Emissions-Estimating Methodologies applicable to the Emission Units at the Source or Facility. Any such certification shall identify each Source or Facility covered by the certification and the Emissions-Estimating Methodology used to calculate its emissions. If EPA notifies Respondent that this certification is not correct because application of the Emissions-Estimating Methodologies indicates that the Source or Facility is subject to such requirements, Respondent shall have 90 days from notification by EPA to comply with the provisions in paragraph 28(C) or submit, in writing, clear and convincing proof to EPA that Respondent's certification is correct.

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

(i) Within 120 days after EPA has published Emissions-Estimating Methodologies applicable to the Emission Units at Respondent's Source, Respondent submits all Clean Air Act permit applications required by the Permitting Authority for the Source, based on application of those 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) 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 and in accordance with the schedule provided by the Permitting Authority for the Source, 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) through (p) is not a condition of the release and covenant not to sue described in paragraph 26. 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) The annual emissions from a particular Source shall 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 promptly and fully responds 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 34, below, Farms 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 Emission Units at Respondent's Facility, Respondent reports all Qualifying Releases of Hydrogen Sulfide (H2S) and Ammonia (NH3) in accordance with section 103 of CERCLA and section 304 of EPCRA.

(iii) Respondent timely 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.

(D) Respondent's failure to comply with any of the above requirements in this paragraph at any particular Source shall affect the release and covenant not to sue for the noncompliant Source only and shall not affect the release and covenant not to sue for Respondent's complying Sources. In addition, Respondent's failure to comply with any of the above requirements in this paragraph at any particular Facility shall affect the release and covenant not to sue for the noncompliant Facility only and shall not affect the release and covenant not to sue for Respondent's complying Facilities.

29. For any Farm listed in Attachment A that is owned and operated by a Contract Grower, Respondent is not responsible for complying with paragraphs 28, 30 and 60. However, the release and covenant not to sue described in paragraph 26 covers Respondent's liability for violations with respect to the Emission Units located at such Farm if, and only if, the Contract Grower complies with all the requirements of paragraph 28. The Contract Grower's liability for violations with respect to the

Emission Units located at that Farm is not covered by any of the releases and covenants not to sue set forth in this Agreement. However, the Contract Grower may enter its own agreement with EPA (thus becoming a respondent in its own agreement) and obtain similar conditional releases and covenants not to sue with respect to the emission units at its farm.

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

(A) During the period in which potential violations at the Farm are covered by the release and covenant not to sue as described in paragraph 26, 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 Farm 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 Farm are covered by the release and covenant not to sue as described in paragraph 26.

(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 the time schedule approved by the State or Local Authority.

31. 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 the earlier of: (a) 120 days after Respondent files the required certifications in accordance with paragraph 28(B) or paragraph 28(C)(iv), or (b) December 31, 2011. This time period can be extended by written agreement of both parties.

32. 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 Emission Unit 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 Emission Unit in Attachment A within 18 months shall have no effect on any other deadline or provision of this Agreement for

any other type of Emission Unit listed in Attachment A.

33. As a condition of its participation in this Agreement, Respondent agrees to accept, regardless of any collateral proceeding, the study protocols employed in and the emissions data developed by, the national air emissions monitoring study conducted under the plan described in paragraphs 53 through 63 below. If Respondent challenges the protocols employed or the data developed, the release and covenant not to sue described in paragraph 26 of this Agreement will become null and void and will have no effect on Respondent's past or future liability.

34. 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 Farm 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 Farm:

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

(B) The waste-to-energy system processes at least 50 percent of the Agricultural Waste by volume produced at the Farm.

(C) Respondent makes each Farm 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 Emission Units at Respondent's 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 Farm.

35. Subject to paragraphs 27, 37 and 43, if during the pendency of the nationwide monitoring study, Respondent promptly reports and corrects a civil violation of a federally approved SIP or an approved Federal implementation plan (FIP) resulting from emissions of Volatile Organic Compounds (VOCs), Hydrogen Sulfide (H2S), Ammonia (NH3), or Particulate Matter (TSP, PM10, and PM2.5) from a Farm 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 at the Farm's property line, EPA releases and covenants not to sue Respondent for the 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 Permitting Authority 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 any necessary adjustments to its operations at the Farm 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 Permitting Authority 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 violation that

Respondent previously reported to EPA pursuant to this paragraph. Respondent may rectify the loss of the above release and covenant not to sue for the first instance of a repeat violation; however, if it pays a stipulated penalty of $500 a day for each day that the Farm exceeds the 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.

36. 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).

37. The releases and covenants not to sue described in paragraphs 26 and 35 do not cover Respondent's liability for any violation with respect to an Emission Unit located at a Farm if Respondent fails to comply with any of the applicable requirements of this Agreement with respect to that Emission Unit, including the limitations and conditions in paragraphs

26-29 and 33-34 above. The releases and covenants not to sue described in paragraphs 26 and 35 cover only violations with respect to the Emission Units located at the Farm that occur before the earlier of: (a) the date Respondent submits the last required certification covering those Emission Units; or (b) 2 years after Respondent submits any permit applications pursuant to paragraph 28(C)(i). This time period can be extended by a period not to exceed 6 months upon written agreement of both parties provided the Respondent's action or inaction is not the cause of any delay in obtaining a permit.

38. EPA will notify Respondent if EPA has determined that it cannot develop Emissions-Estimating Methodologies for any Emission Units listed in Attachment A.

(A) This notice shall identify (individually or by category) Emission Units, Sources and/or Facilities for which Emissions-Estimating Methodologies cannot be developed.

(B) For the Emission Units identified in such a notice:

(i) no certification under paragraph 28 shall be required for those Emission Units and any other related Emission Units that comprise the Source or Facility; and,

(ii) the releases and covenants not to sue described in paragraphs 26 and 35 shall cover potential violations that occur on or before 120 days after the date the

notice is mailed, but shall not cover potential violations that occur more than 120 days after that date.

(C) Notice required under this paragraph will be deemed proper if sent via U.S. mail postage prepaid to the address listed in Attachment A.

39. 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.

40. Respondent waives its right to request an adjudicatory hearing on this Agreement, and its right, created by Clean Air Act section 113(a)(4), to confer with the Administrator before this Agreement takes effect. Respondent further waives its right to seek judicial review of the penalty assessed in paragraph 48.

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

42. 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. Any payments made in connection with the national air emissions monitoring study do not constitute a fine or penalty and are not

paid in settlement of any actual or potential liability for a fine or penalty.

43. This Agreement is without prejudice to all rights of EPA against Respondent with respect to any claims not expressly covered by the releases and covenants not to sue contained in paragraphs 26 and 35. 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, the releases and covenants not to sue in paragraphs 26 and 35 do not cover any criminal liability.

44. 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 Farm 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.

45. Respondent recognizes that EPA may not execute this Agreement if EPA determines that there will be inadequate funding

for the national air emissions monitoring study or if EPA determines that there is inadequate representation of eligible animal groups and types of Farms, Facilities or Emission Units.

46. 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

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

Penalty

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

(A) If Respondent has only one Farm and that Farm 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 Farm, unless the Farm contains more than 10 times the total number of animals that defines the "large Concentrated Animal Feeding Operation" threshold. For those Farms, Respondent is assessed a penalty of $1,000 per Farm.

(C) The total penalty paid by Respondent shall not exceed:

$10,000 if Attachment A lists 1-10 Farms
$30,000 if Attachment A lists 11-50 Farms
$60,000 if Attachment A lists 51-100 Farms
$80,000 if Attachment A lists 101-150 Farms
$90,000 if Attachment A lists 151-200 Farms

[2] Ibid.

$100,000 if Attachment A lists more than 200 Farms.

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

50. 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.

51. 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 or appropriateness of this Order or

the penalty assessed hereunder is not subject to review.

52. 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 an executed 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 10 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

53. Respondent has a shared responsibility for funding and implementing the national air emissions monitoring study described in paragraphs 53 through 63.

(A) Respondent individually shall be responsible for paying the lesser of: (a) $2,500 for each Farm listed in Attachment A to this Agreement; or (b) Respondent's pro rata share of the amount needed to fully fund the monitoring study ("Full Funding Level"), including any unfunded balance of the monitoring study, consistent with the provisions of paragraph 62. Respondent's pro rata share shall be based on the number of Farms listed in Attachment A divided by the total number of discrete Farms of the same species that share responsibility for funding the national monitoring study. The Full Funding Level is the amount of money actually needed to fully and adequately fund the monitoring study 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 55. The estimated Full Funding Level shall be used to 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 62.

(B) Respondent shall have no obligation to contribute money to the national monitoring study on behalf of a Farm listed in Attachment A if: (a) that Farm has been listed as a contract farm in another agreement that is identical to this agreement except for the respondent involved, and (b) the respondent to the other Agreement has agreed to be responsible for the payment of monies into the monitoring study for that Farm.

54. Respondent shall have met its shared responsibility for funding and implementing the national air emissions monitoring study, including any individual payments by Respondent under paragraph 53 or 62 if, and only if: (a) a nonprofit entity is established for the purposes set forth below; (b) the monitoring fund obligations to the nonprofit entity are fully satisfied; (c) the nonprofit entity enters into a contract with an Independent Monitoring Contractor (the "IMC") that obligates the IMC to fulfill the requirements set forth in paragraphs 55 through 59 and 62 of this Agreement; and, (d) Respondent grants access to Farms listed in Attachment A in accordance with paragraphs 60 and 61. The purposes of the nonprofit entity shall include: collecting and holding Respondent's contributions to the national air emissions monitoring study, purchasing and holding title to research equipment, contracting with an IMC to conduct the monitoring study, and other responsibilities.

55. The contract identified in paragraph 54 shall require the IMC to submit to EPA, within 60 days of the Agreement date, a detailed plan to conduct the nationwide monitoring study set forth in Attachment B. The proposed plan shall:

(A) Identify the IMC and its qualifications, including the qualifications of any subcontracted science advisors, for implementing the national air emissions monitoring study;

(B) Be consistent with, expand the explanation of, and include all of the elements of the monitoring study outline set forth in Attachment B to this Agreement, including the requirements that: (1) all monitoring be completed within 2 years of EPA's approval of the monitoring study; (2) a comprehensive quality assurance program be implemented as part of the study; and (3) the emissions to be monitored will be Particulate Matter (TSP, PM10, and PM2.5), Hydrogen Sulfide (H2S), Ammonia (NH3), and Volatile Organic Compounds (VOCs);

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

(D) Require the IMC to submit detailed quarterly reports to EPA and to the entity described in paragraph 54. Those reports shall discuss the IMC's progress in implementing the approved monitoring plan, including what it did during the

previous 3 months and what it intends to do during the next three months. The IMC 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 IMC 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 national monitoring study is completed.

56. EPA will review and approve or disapprove the proposed plan within 30 days of receiving it from the IMC. If the proposed plan is disapproved, EPA will specifically state why it is being disapproved and what changes need to be made. The IMC 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 IMC does not submit a plan that is ultimately approved by EPA, the releases and covenants not to sue set forth in paragraphs 26 and 35 of this Agreement shall be null and void.

57. Once the plan is approved, the contract between the nonprofit entity identified in paragraph 54 and the IMC shall require the IMC to fully implement the approved plan in accordance with the approved schedule. Failure of the IMC 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 35 of the Agreement. The estimated Full Funding Level monies shall be transferred to the nonprofit entity described in paragraph 54 within 60 days of EPA's approval of the monitoring plan.

58. The contract identified in paragraph 54 shall require the IMC to schedule periodic meetings (either by phone or in person) with EPA, and additional meetings upon request by EPA or the IMC, to discuss progress in implementing the approved plan. The IMC 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 IMC during the nationwide monitoring study shall be provided to EPA as soon as possible in a form and through means acceptable to EPA. The parties agree that all emissions data will be fully available to the public, and that Respondent waives any right to claim any privilege with respect to such data.

60. Respondent agrees to make the Farms listed in

Attachment A available for emissions monitoring under the national air emissions monitoring study if the Farm is chosen as a monitoring site under the approved plan. As stated in paragraph 29, if the Farm is owned by a Contract Grower, this requirement does not apply. However, a Contract Grower who enters into its own agreement with EPA (thus becoming a respondent in its own agreement) is subject to this requirement.

61. Respondent also agrees to give EPA or its representative access to those Farms 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 Farm, 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.

62. If, prior to completion of the national air emissions monitoring study, it appears that there will be insufficient funds to complete the study, the IMC 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 study. If Respondent is not required under paragraph 53 to contribute or

secure the contribution of additional money to the national monitoring study that will be sufficient to complete the monitoring study, the IMC or the nonprofit entity described in paragraph 54 shall make all reasonable efforts to find additional funding to complete the monitoring study. The IMC or the nonprofit entity described in paragraph 54 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 IMC, or the nonprofit entity described in paragraph 54, the national monitoring study cannot be completed due to lack of funding, then the releases and covenants not to sue set forth in paragraphs 26 and 35 of this Agreement will no longer be in effect. For Farms with animal types for which sufficient funds were provided to fully and adequately fund their portion of the national monitoring study, EPA shall make reasonable efforts to avoid terminating the releases and covenants not to sue set forth in paragraphs 26 and 35.

63. If, after completion of the national monitoring study, there is unspent money in the national monitoring fund, the IMC shall notify EPA within 90 days of completion of the monitoring study. The notice shall contain a detailed explanation of why there are unspent funds, including an accounting of all money spent to implement the national monitoring study and how much is

left unspent. The notice shall also include a proposed plan for distribution of the leftover money.

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

Special Litigation and Projects Division (2248A)
Attn: AFO/CAFO certifications
Office of Regulatory Enforcement
1200 Pennsylvania Ave., NW
Washington, DC 20460

65. Except for a Farm for which Respondent, or the Contract Grower, is able to certify under paragraph 27(B), 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 EPCRA/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, successors and assigns.

68. This Agreement is not binding and without legal effect unless and until approved by the Environmental Appeals Board.

It is so ordered.

Dated this _____ day of _____, 2005.

_____

Environmental Appeals Judge

ATTACHMENT A TO THE CONSENT AGREEMENT

This Attachment identifies and describes the Farms and Emission Units covered by this Agreement. This Agreement has no effect on any Farm or Emission Unit not specifically listed on this Attachment. The terms used in this Attachment shall have the meaning given to those terms in the Agreement.

The attached Farm Information Sheets and Emission Unit Information Sheets provide information about each Farm and Emission Unit(s) to be covered by this Agreement. A separate form for each Farm and each Emission Unit covered by the Agreement is attached below and as such is an integral part of this Attachment. By identifying a Farm for coverage under the Agreement, Respondent is asserting that the Farm meets the definition of a Farm in the Agreement and contains at least one Emission Unit as defined in the Agreement. Also by identifying an Emission Unit at a Farm for coverage under the Agreement, Respondent is asserting that the Emission Unit meets the definition of an Emission Unit in the Agreement. Unless Respondent identifies a Contract Grower for a Farm, Respondent is also asserting it owns, operates or otherwise controls the Farm.

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.

[Signature]_____

[Name] [Title] [Date]
[Participating Company]
[Participating Company's Address]

FARM INFORMATION SHEET (FILL OUT ONE SHEET FOR EACH FARM)

Name of Farm:_____

Is the Farm owned and operated by a Contract Grower or is otherwise a contract farm?

____ yes ____ no

Name of Contract Grower (if applicable):_____

Location:_____

_____
(street address, city, county, state)

Animal Type (check all that apply):
___ Poultry (layers)
___ Poultry (broilers)
___ Poultry (turkeys)
___ Dairy Cattle (heifers or milking cattle)
___ Swine (nursery, sow or finisher)
___ Other (please identify)

For all Farms that Respondent owns and/or operates, provide a Farm sketch/diagram that numbers or otherwise identifies all Emission Units listed on this Farm Information Sheet.

EMISSION UNIT INFORMATION SHEET (FILL OUT ONE SHEET FOR EACH EMISSION UNIT)

Name of Farm where Emission Unit is located:_____

Unit name and/or number: _____

Date placed in service:_____

Design capacity (No. of animals or No. of gallons):_____

If the Emission Unit is a manure storage and treatment system in use at the Farm, check all that apply:

___ pull plug/flush/in-ground manure storage basin (if lagoon, specify type)

___ deep pit/in-ground manure storage basin (if lagoon specify type)

___ shallow pit/open manure storage

___ shallow pit/closed manure storage

___ deep pit/open manure storage

___ deep pit/closed manure storage

___ manure belt/closed manure storage

___ manure belt/open manure storage

___ flush/open manure storage

___ flush/closed manure storage

___ scrape/open manure storage

___ scrape/closed manure storage

___ other (briefly describe)

If the Emission Unit is a building, enclosure, or structure that permanently or temporarily houses Agricultural Livestock, check all that apply with respect to the ventilation type:

___ natural

___ mechanical

___ other (please describe)

Emission Control Technology (please list type and briefly describe if applicable):