

STATE OF FLORIDA
DEPARTMENT OF ENVIRONMENTAL PROTECTION

WHITE SPRINGS AGRICULTURAL
CHEMICALS, INC. (PCS)

v.

OGC Case Nos.	02-0862
	03-0062
	04-0380
Permit Nos.	0470002-044-AV
	0470002-041-AV
	0470002-047-AC

STATE OF FLORIDA
DEPARTMENT OF ENVIRONMENTAL
PROTECTION

STIPULATED SETTLEMENT

The Florida Department of Environmental Protection ("Department") and White Springs Agricultural Chemicals, Inc., d/b/a PCS Phosphate - White Springs ("PCS") hereby enter into this Stipulated Settlement resolving all of the matters relating to the pending litigation of OGC case numbers 02-0862, 03-0062 and 04-0380.

The permitting decisions addressed in this Stipulated Settlement include: (1) a Draft Title V Air Operation Permit Revision that PCS received on May 13, 2002 (OGC case number 02-0862); and (2) an Intent to Issue Title V Air Operation Permit Revision that PCS received on January 3, 2003 (OGC case number 03-0062); and (3) a letter permit modification (to a PSD permit) that PCS received on December 20, 2003 (OGC case number 04-0380). The principal issue in dispute in all of these cases is applicability of 40 CFR Part 63, Subparts AA and BB, (the "Phosphate MACT") at PCS' Suwannee River/Swift Creek Complex (facility). An additional issue in dispute in OGC case number 04-0380 is whether PSD permit PSD-FL-297A (0470002-047-AC) should be extended until October 1, 2005.

In order to resolve all issues in dispute in all three cases, the parties agree that:

A. Compliance Plan

Within 10 days of the effective date of this agreement, the Department shall incorporate into the draft Title V Air Operation Permit Revision (0470002-041 AV) a compliance plan as set forth in paragraphs 1, 2, and 3, below. This draft Title V Air Operation Permit Revision will

immediately be forwarded to EPA as a "proposed" Title V Air Operation Permit Revision. The compliance plan will include the following:

1. Upon the effective date of the Title V Air Operation Permit Revision, PCS shall be in compliance with all emission limits contained in the Phosphate MACT.
 2. As soon as possible but no later than August 1, 2004, PCS shall submit a proposal for an alternate monitoring plan for the Phosphate MACT to the Division's Emission Monitoring Section for approval. PCS represents that the alternate monitoring plan will describe compliance monitoring for the facility based upon monitoring of scrubbing liquid flow to scrubbers, scrubber fan amperage, and minimum air pressure differential across scrubbers on sources of hydrogen fluoride. The Department has not reviewed the proposal at the time of executing this agreement and reserves its right to approve or reject such proposal. PCS agrees to work diligently and expeditiously to complete the alternate monitoring plan; the Department agrees to work diligently and expeditiously in reviewing, commenting on and rejecting or approving the alternate monitoring plan. In the event an alternate monitoring plan is ultimately approved by the Department, such approval will be by final order of the Department.
 3. In the event the Department issues a final order approving the alternate monitoring plan, the following deadlines apply:
 - a. Within 15 days of the final order, or September 30, 2004, whichever is later, PCS shall confirm in writing to the Department the data collection into electronic storage for all monitoring devices contained in the approved alternate monitoring plan;
 - b. Within 45 days of the final order, or October 31, 2004, whichever is later, PCS shall install and have in operation a data management and reporting system for all required components of its approved alternate monitoring plan;
 - c. Thereafter, PCS shall submit semiannual reports required by the Phosphate MACT, containing all data from the monitoring devices identified in paragraph 3a as required by the Title V Air Operation Permit Revision.
- B. In the event the Department issues a denial of the alternate monitoring plan proposal, such denial shall be considered agency action under Chapter 120, Florida Statutes and shall

incorporate provisions for a reasonable time for PCS to comply with the terms of the Phosphate MACT.

- C. The Department will add the following statement regarding the applicability of the Phosphate MACT to the facility's draft Title V renewal:

The Department has determined that this facility is a major source of hazardous air pollutants (HAPs), based upon its estimation of emissions of hydrogen fluoride. If additional testing and modeling demonstrate 1) that the facility is not and has never been a major source of hazardous air pollutants since at least June 10, 2002, or 2) if prospective changes to Subparts AA and BB warrant such an outcome, the permittee shall have the right to request that the Department revise the determination of major source status and revise this permit to remove all requirements and conditions based on 40 CFR Part 63.

For purposes of reconsideration of major source status as described herein, PCS shall: (a) submit a quantification of all hazardous air pollutants reasonably believed, on the basis of either previous testing or process knowledge, to be emitted in significant quantities from the facility and (b) conduct representative stack and pond testing and modeling (if modeling is required for quantification of fugitive emissions) for total fluorides and hydrogen fluorides with sufficient samples to meet a data quality objective that accounts for the variability of test data and provides for confidence in the mean measured value. Although this reconsideration does not *require* that past testing for fluoride and/or hydrogen fluoride was conducted, the Department reserves its right to request and evaluate the results of any such past testing. As part of this reconsideration, the Department reserves its right to base its determination upon hydrogen fluoride and/or total HAP emissions.

- D. The parties acknowledge that this determination of Phosphate MACT applicability made pursuant to this settlement agreement is based upon the Department's estimation of hydrogen fluoride emissions.
- E. The draft Title V renewal will incorporate the air construction permits originally incorporated in draft Title V revision (0470002-044 AV) making OGC case number 03-0062 moot. The draft Title V renewal will also incorporate the terms of Title V revision 0470002-041 AV. In the event the Department has issued a final, approved alternate monitoring plan order to PCS by the time the draft Title V renewal is issued, such alternate monitoring plan will be

incorporated therein. In the event the Department issues a final, approved alternate monitoring plan order after the draft Title V renewal is issued, the Department will open PCS' Title V permit for cause to incorporate such alternate monitoring plan. In the event the Department takes final agency action rejecting or denying the alternate monitoring plan proposal, the Title V draft or permit will be revised if needed.

F. The following specific provisions are made with respect to compliance and enforcement:

1. The Department agrees that no civil penalties or sanctions associated with the application of the Phosphate MACT prior to the effective date of this Stipulated Settlement will be imposed or sought, conditioned upon PCS' compliance with all of the terms and timeframes contained in this agreement.
2. The Department will consider the facility in compliance with monitoring requirements for the Phosphate MACT in the future so long as the facility meets all Phosphate MACT emissions limits and complies with any final, approved, alternate monitoring plan and all provisions of the Title V Revision's compliance plan (0470002-041 AV) and the Title V renewal compliance plan (if applicable).
3. The Department reserves the right to pursue civil penalties and/or sanctions in the event all of the terms and timeframes contained in this agreement, the Title V Revision's compliance plan (0470002-041 AV) and the Title V renewal compliance plan (if applicable) are not met.
4. The Department and PCS may agree that changes are appropriate to the timeframes in this agreement, including the schedule in Paragraph A. The Department will use its enforcement discretion to allow for such changes where caused by factors beyond PCS's direct control and PCS is continuing in good faith to complete the work. PCS shall have the burden of proving the delay was or will be caused by factors beyond the direct control of PCS and could not have been or cannot be overcome by PCS's due diligence. Economic circumstances shall not be considered circumstances beyond the control of PCS, nor shall the failure of a contractor, subcontractor, materialman or other agent (collectively referred to as "contractor") to whom responsibility for performance is delegated to meet contractually imposed deadlines be a cause beyond the control of PCS, unless the cause of the contractor's late performance was also beyond the contractor's

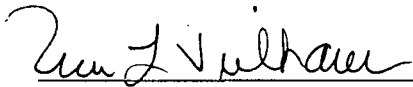
control.


- G. The parties agree that PCS will request additional extension of PSD permit number PSD-FL-297A until October 1, 2005 and that the Department has no objection to such extension provided the facility remains in compliance with all terms of all permits and with the terms of this agreement. PCS may request that additional extension at any time after execution of this Stipulated Settlement, and the Department will process such request expeditiously.
- H. Each party shall bear its own litigation costs.

PCS and the Department hereby execute this Stipulated Settlement on this ____ day of July, 2004.

For the Department of Environmental Protection

For White Springs Agricultural Chemicals, Inc. (d/b/a PCS Phosphate - White Springs)


Name and Title


Paul Barrett, General Manager

7-15-04
Date

7-12-04
Date