

Hopping Green & Sams

Attorneys and Counselors

February 11, 2004

Mr. Douglas Beason
Department of Environmental Protection
Office of General Counsel
3900 Commonwealth Blvd.
Mail Station 35
Tallahassee, FL 32399-3000

Re: PCS Phosphate - White Springs
OGC Case No. 03-0062
Permit Nos. 047002-044-AV
PSD-FL-297A

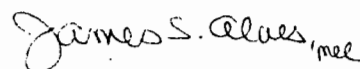
Dear Doug:

Enclosed for your review is a proposed draft of a Stipulated Settlement to resolve the hydrogen fluoride NESHAP applicability issue at the Suwannee River/Swift Creek Complex in Hamilton County. As you will see, the approach set forth in this draft settlement document entails qualified acceptance of Subpart AA and BB applicability. We have included language that would reserve PCS Phosphate-White Springs' opportunity to contest NESHAP major source status at a later date based on hydrogen fluoride emissions analysis or data, or based on subsequent regulatory developments.

Note that this proposed approach to settlement would entail parallel development of an alternative monitoring plan, which would be included in the Stipulated Settlement as Attachment A. We are optimistic that recent developments in establishing alternative monitoring plans for other companies create a sound starting point for coming to closure on that issue in the context of this case. Certain details will need to be resolved at the Suwannee River/Swift Creek Complex, but we are committed to working earnestly with the Department to come to closure on alternative monitoring issues within a time frame that is consistent with finalizing other aspects of a complete settlement of the Subpart AA and BB issues.

We look forward to hearing back from the Department and resolving these matters expeditiously.

Very truly yours,



James S. Alves

STATE OF FLORIDA
DEPARTMENT OF ENVIRONMENTAL PROTECTION

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WHITE SPRINGS AGRICULTURAL
CHEMICALS, INC. (PCS)

v.

OGC Case No. 03-0062
Permit No. 0470002-044-AV

STATE OF FLORIDA
DEPARTMENT OF ENVIRONMENTAL
PROTECTION

STIPULATED SETTLEMENT

By and through undersigned counsel, 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 described herein.

1. On June 10, 1999, the Environmental Protection Agency (EPA) promulgated National Emission Standards for Hazardous Air Pollutants (NESHAP) for new and existing Phosphoric Acid Manufacturing Plants and Phosphate Fertilizers Production Plants (40 CFR Part 63, Subparts AA and BB including Appendix A to Subpart AA). The rule requirements apply to specified “affected sources” at Phosphoric Acid Manufacturing Plants and Phosphate Fertilizers Production Plants that are “major sources” of hazardous air pollutants. 40 C.F.R. §§ 63.600, 63.620, 63.2. The intended outcome under the rule was that affected sources would be the primary emitters of hydrogen fluoride air emissions.

2. On January 3, 2003, PCS received from the Department’s Northeast District Office an “Intent to Issue Title V Air Operation Permit Revision” and “Public Notice of Intent to Issue Title V Air Operation Permit Revision” applicable to PCS’ Suwannee River/Swift Creek

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Complex. PCS was afforded 14 days to petition for a formal administrative hearing under Sections 120.569 and 120.57, Florida Statutes, and also was instructed to publish the notice as soon as possible. By letter dated January 6, 2003 PCS requested an extension of time for both actions, and by order dated January 16, 2003 the Department granted an extension of time for both actions through March 31, 2003. PCS thereafter requested a second extension of time for an additional 120 days for both actions, extending to (and including) July 29, 2003. The Department did not rule on this second request for extension, resulting in an automatic extension of the deadline. PCS subsequently requested additional extensions through March 31, 2004, and again the Department did not take action, resulting in ongoing automatic extensions of the deadline.

3. The Department's revised Title V Air Operation Permit, upon becoming final agency action, would result in the imposition of fluoride emission limitations (as a surrogate for hydrogen fluoride) for existing affected sources at the Suwannee River/Swift Creek Complex under 40 C.F.R. §§ 63.602 and 63.622, as well as new operating requirements under 40 C.F.R. §§ 63.604 and 63.624, and new monitoring and performance test requirements under 40 C.F.R. §§ 63.605, 63.606, 63.625, and 63.626. The fluoride emission limitations under Parts AA and BB are not more stringent than existing fluoride limitations already applicable to the affected sources associated with phosphoric acid manufacturing and phosphate fertilizer production at the Suwannee River/Swift Creek Complex.

4. The Department's Intent to Issue Revision to Title V Air Operation Permit is based on the Department's position that the Suwannee River/Swift Creek Complex is a major source of hydrogen fluoride emissions.

5. PCS' position is that quantifiable hydrogen fluoride emissions from the Suwannee River/Swift Creek Complex amount to less than the major source threshold of 10 tons per year, and therefore the Complex is not a major source subject to 40 CFR Part 63, Subparts AA and BB. PCS' position also is that: (a) the monitoring and operational requirements applicable to affected sources under Subparts AA and BB were established based on EPA's understanding at the time that hydrogen fluoride emissions from the "affected sources" at phosphoric acid manufacturing and phosphate fertilizer production plants would meet or exceed the major source threshold of 10 tons per year; (b) the critical air emissions variable which determines whether Subparts AA and BB are applicable at the Suwannee River/Swift Creek Complex is unregulated fugitive hydrogen fluoride emissions from the Complex pond system; (c) the Complex pond system is not an "affected source" under 40 C.F.R. §§ 63.600 and 63.620; (4) no definitive, reliable methodology has been established by rule for precisely quantifying fugitive hydrogen fluoride emissions from phosphate complex pond systems. Also, PCS' position is that no environmental policy rationale would be served by imposing significant additional operating and monitoring requirements on affected sources that have insignificant hydrogen fluoride emissions at phosphate complexes that may be major sources of hydrogen fluoride due to estimated hydrogen fluoride emissions from unregulated pond systems.

6. The Department and PCS have utilized different approaches in estimating hydrogen fluoride emissions from phosphate complex pond systems. The approach relied on by the Department indicates that pond system hydrogen fluoride emissions could exceed the 10 tons per year hazardous air pollutant major source threshold, while the approach relied on by PCS indicates that pond system hydrogen fluoride emissions do not necessarily exceed 10 tons per

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year. Existing reported studies provide a wide range of potential hydrogen fluoride flux factors and annual emissions.

7. This Stipulated Settlement also addresses a letter permit modification that PCS received from the Department on or about December 20, 2003. This letter modified PCS' PSD permit (PSD-FL-297A, DEP File No. 0470002-047-AC) by extending the expiration date by one year. PCS had requested and justified a two year extension. This letter unexpectedly also included new conditions identifying the subject facility as a "major source" subject to 40 CFR Part 63, Subparts A and AA. (Presumably the Department also intended to refer to Subpart BB.) This letter afforded PCS 14 days to petition for a formal administrative hearing under Section 120.569 and 120.57, Florida Statutes. PCS timely filed a request for extension of time through March 31, 2004. The Department did not respond to that request for extension of time, resulting in an automatic extension.

8. On November 11, 2003, PCS filed with the Department an application for renewal (No. 203-1) of its Title V Air Operation Permit. The Department's final agency action on that renewal application shall replace and supersede the Intent to Issue Title V Air Operation Permit Revision.

9. With regard to the applicability of 40 CFR Part 63, Subparts AA and BB, the Department shall issue the Title V Air Operation Permit renewal in accordance with the terms and conditions set forth in the Intent to Issue referenced in paragraph 3 above, provided, however, that in lieu of the monitoring requirements set forth in Subparts AA and BB the renewed Title V permit instead shall require compliance with the alternative monitoring plan set forth in Attachment A to this Stipulated Settlement.

10. The Department also shall reissue the letter modification extending the expiration date of

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the PSD permit, referenced in paragraph 7 above, with two changes. First, the expiration date shall be extended for two years. Second, all references to 40 CFR Part 63, Subparts A and AA (or BB) shall acknowledge the applicability of the alternative monitoring plan set forth in Attachment A to this Stipulated Settlement.

11. PCS agrees not to file an administrative challenge under Chapter 120, Florida Statutes or to seek judicial review in opposition to terms and conditions governing the applicability of 40 CFR, Part 63, Subparts AA and BB, in the renewed Title V permit and in the reissued letter modification extending the expiration date of the PSD permit, insofar as such terms and conditions in the renewed Title V permit and the reissued letter modification extending the expiration date of the PSD permit are issued in complete conformity with paragraphs 9 and 10 of this Stipulated Settlement.

12. Neither this Stipulated Settlement nor PCS' acceptance of the renewed Title V permit or PSD permit extension shall constitute or be construed as constituting an admission or acknowledgment by PCS that the Suwannee River/Swift Creek Complex is a major source of hazardous air pollutants subject to 40 CFR Part 63, Subparts AA and BB. Moreover, PCS is not precluded from contesting hazardous air pollutant major source status in the context of future Title V permit renewals, future applications for permit modifications, or other suitable points of entry. Nothing herein shall preclude the effectiveness of any future amendments to 40 CFR Part 63 or judicial precedents that have the effect of or warranting reevaluation of altering the major source status of the Suwannee River/Swift Creek Complex under 40 CFR Part 63.

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13. The requirements of 40 CFR Part 63, Subparts AA and BB, shall be in effect at the Suwannee River/Swift Creek Complex, subject to the requirements of this Stipulated Settlement

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and in accordance with the terms of the reissued permits as set forth in paragraphs 9 and 10, at such time as the Department completes final agency action on the renewed Title V Permit and the reissued letter modification extending the expiration date of the PSD permit in accordance with the terms and conditions of this Stipulated Settlement.

PCS and the Department hereby execute this Stipulated Settlement on this _____ day of February, 2004.