

phosphate
MACT

Vielhauer, Trina

From: Vielhauer, Trina
Sent: Tuesday, March 02, 2004 7:41 AM
To: Beason, Doug
Subject: PCS

Hey, Doug. Just checking in again on the PCS extension of time issue. Did we ever receive it from Jim? Did we ever find the original?

We have a meeting set up at CF on Monday. We will call PCS sometime soon. Would still like to send Jim that letter saying, "encouraged by your response. Technical folks will talk. And- by the way- just in case it doesn't settle here is our intention". I'll call you later this morning.

Phosphate MACT

Vielhauer, Trina

From: Beason, Doug
Sent: Tuesday, March 02, 2004 9:36 AM
To: Jim Alves (E-mail)
Cc: Vielhauer, Trina
Subject: PCS White-Springs

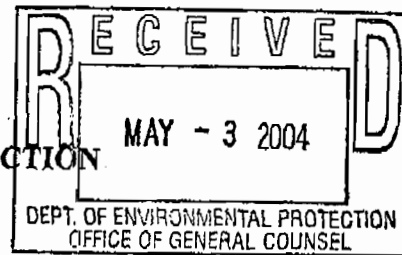
Following up on our conversation last week, please forward the OGC a copy of the letter referenced in paragraph 7 of PCS's recent proposed Stipulated Settlement. Paragraph 7 alleges that PCS timely filed a request for an extension of time concerning the DEP's letter modification of PCS's PSD permit. For whatever reason, the OGC has not been able to locate either the original or a copy of the above-referenced letter.

Thanks in advance.

W. Douglas Beason
Assistant General Counsel
Department of Environmental Protection
Phone (850) 245-2292
Suncom 205-2292
Fax (850) 245-2302

BEST AVAILABLE COPY

**STATE OF FLORIDA
DEPARTMENT OF ENVIRONMENTAL PROTECTION**



PCS PHOSPHATE - WHITE SPRINGS,

Petitioner,

vs.

**STATE OF FLORIDA DEPARTMENT
OF ENVIRONMENTAL PROTECTION,**

Respondent.

OGC CASE NO. 04-0380
Permit No. 047002-047-AC
PSD-FL-297A

PETITION FOR FORMAL ADMINISTRATIVE HEARING

White Springs Agricultural Chemicals, Inc., d/b/a PCS Phosphate - White Springs (PCS) hereby petitions, pursuant to Sections 120.569 and 120.57, Florida Statutes (F.S.), for a formal administrative hearing regarding a permit amendment (PSD-FL-297A) that PCS received from the Department of Environmental Protection (Department) on December 20, 2003.

Affected Agency

1. The name and address of the affected agency is:

Department of Environmental Protection
3700 Commonwealth Boulevard
Mail Station 35
Tallahassee, FL 32399-3000

The identification number of the permitting decision at issue is 0470002-047-AC (PSD-FL-297A).

Petitioner

2. PCS owns and operates a phosphate mining and phosphate fertilizer production complex in Hamilton County, Florida, that is known as the Suwannee River/Swift Creek complex. The Department's Facility ID Number for this facility is 0470002. Contact information for Petitioner PCS is:

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PCS Phosphate - White Springs
County Road 137
P.O. Box 300
White Springs, FL 32096
(386) 397-8101

However, for service purposes, the contact information provided below for legal counsel should be used.

Notice

3. PCS received a copy of the contested permitting decision on December 20, 2003. In an Order dated April 23, 2004, the Department granted PCS' motion for an extension of time, through May 3, 2004.

Substantial Interests Affected

4. PCS is substantially affected by the contested permitting decision because it would unjustifiably impose new requirements under 40 CFR Part 63; meeting these new requirements would require considerable expenses without regulatory justification or accomplishing discernible benefits for the environment. Moreover, PCS is adversely affected because the Department extended the permit by only one year, instead of the two years that had been requested; two years are required to complete all of the construction that is authorized under the permit.

Disputed Issues of Material Fact and Statement of Ultimate Facts

5. PCS disputes the Department's determination, in the contested portion of the permitting decision, that PCS' phosphate fertilizer production complex is a "major source" of hazardous air pollutants that is subject to the National Emission Standards for Hazardous Air Pollutants (NESHAPs) applicable to phosphoric acid manufacturing plants (40 CFR Part 63, Subparts A and AA). Subparts A and AA do not apply to this facility.

6. PCS' phosphate fertilizer production process does not emit, or have the potential to emit, 10 tons per year or more of any one hazardous air pollutant or 25 tons per year or more of any combination of hazardous air pollutants.

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7. During the development and promulgation of Subparts A, AA and BB, the U.S. Environmental Protection Agency (EPA) made certain assumptions regarding the fraction of total fluorides that are emitted as hydrogen fluoride (HF), which is a hazardous air pollutant, from phosphoric acid manufacturing and phosphate fertilizer production plants. EPA's assumptions appear to have been in error by a significant margin. Based on PCS's calculations, plant-wide potential emissions of HF from emission units at PCS's facility that are controlled for fluoride/HF emissions are well below the 10 tons per year threshold that triggers major source status.

8. Additionally, PCS disputes the Department's determination that the Department can and has accurately quantified the amount of fugitive HF emissions emanating from the process water ponds at PCS's facility. PCS' position is that the combined amount of HF emissions from regulated emission units and quantifiable HF fugitive emissions from the process water ponds and other areas amounts to less than the 10 tons per year threshold that triggers major source status.

9. PCS is not a major source, and as such, it is not subject to Subparts A and AA.

10. PCS' application for a two year extension of its permit met the test set forth in Rule 62-4.080(3), F.A.C. The Department has not articulated good cause for granting an extension of only one year.

Rules and Statutes

11. The rules and statutes entitling PCS to relief in this case include Chapters 62-4 and 62-213, F.A.C., Rules 62-4.080(3) and 62-204.800(11), F.A.C., and Chapters 120 and 403, F.S.

Request for Relief

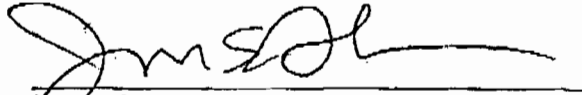
Based on the foregoing, PCS respectfully requests that the Department:

- A. Refer this matter to the Division of Administrative Hearings for a formal hearing;
- B. Delete all references to Subparts A and AA from the permitting decision;
- C. Grant such other relief as is required by law.

BEST AVAILABLE COPY

Respectfully submitted this 30th day of April, 2004.

HOPPING GREEN SAMS & SMITH



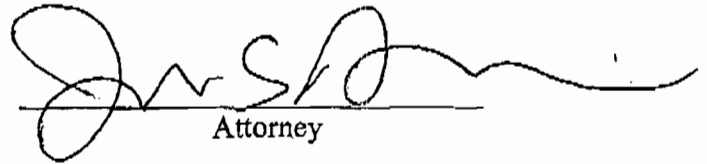
James S. Alves
Florida Bar No. 443750
123 South Calhoun Street
Tallahassee, FL 32301
Telephone: (850) 222-7500
Facsimile: (850) 224-8551

Attorneys for PCS PHOSPHATE - WHITE
SPRINGS

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished to the following by U.S. Mail this 30th day of April, 2004:

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


Attorney

174690.2

Phillips, Cindy

From: Vielhauer, Trina
Sent: Thursday, May 06, 2004 12:55 PM
To: Phillips, Cindy; Bull, Robert; Comer, Patricia
Cc: Linero, Alvaro; Pennington, Jim; Kahn, Joseph; Pichard, Errin; Wider, Russell
Subject: draft PCS settlement

I met with Stan Posey from PCS on Monday. He expressed the following concerns about the "standard" IMC settlement language:

1. The June 2002 date: can we clarify that this is the effective date of the MACT?
2. IF they want to request a reopening of the permit pursuant to that "additional testing and modeling" language, would they have to have test results from tests conducted after June 2002 and before this settlement agreement is signed [to show they WERE in compliance during that timeframe]? Would they have to do testing for ALL HAPS [since the "standard" language was written as HAPS]?

I've tried to outline [in rough draft form] our conversation, proposed course of action and address his above questions in the attachment. Doug didn't see a problem with it so I'm now forwarding for all of you to review and comment.

Thanks,
Trina

① We will issue Draft TV on or before July 15, 2004. ~~It~~ It will say (~~IT~~^{HAP} major) & .

② If they have alt monitoring final before then we will put it in.

③ If not - we'll put in compl plan (establishing milestones

④ They won't challenge this language in renewal

Settlement proposal:

1. On June 10, 1999, the Environmental Protection Agency 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 the ~~a~~Appendix A to Subpart AA and BB). The effective date of these regulations was June 10, 1999 2002. The compliance date of these regulations was June 10, 1999, 2002.

2 The Department maintains that the facility is a major source of hazardous air pollutants (HAPs) HF and is, therefore, subject to the ~~major source~~ requirements of 40 CFR 63 Subparts AA and BB; however, PCS maintains that they are not ~~such a~~ major sources of HAPs and are not subject to the ~~major source~~ requirements of 40 CFR 63 Subparts AA and BB.

3. The Department has issued two draft Title V revisions [0470002-041 AV and 0470002-044 AV] that included the major source determination and requirements of 40 CFR 63. The Department has also issued an extension of the expiration date on a PSD permit that included the major source determination and requires compliance with 40 CFR 63 [047002-xx-AC]. PCS has challenged these permitting actions based upon the claim that they are not subject to the ~~major source~~ requirements of 40 CFR 63 Subparts AA and BB.

4. In order to resolve the dispute about the applicability of 40 CFR 63 Subparts AA and BB to this facility, the parties agree and it is ORDERED:

- A. PCS will expeditiously submit a request for an alternate monitoring plan to the Division of Air Resource Management's Emissions Monitoring Section. PCS will timely respond to any on the Emission Monitoring Section's requests for additional information.
- B. The Division will include the alternate monitoring plan, if approved, into the facility's Title V Renewal.
- C. The alternate monitoring plan, if approved, will contain the following determination that is effective as of the alternate monitoring plan becoming final:

40 CFR 63, Subparts AA and BB require all phosphate fertilizer and phosphoric acid manufacturing plants that are major sources of hazardous air pollutants to monitor liquid flow rate to each scrubber and pressure drop across each scrubber used to control hydrogen fluoride emissions. Additionally, each affected facility must establish allowable ranges for

these parameters by submitting upper and lower values for approval or by accepting the default range of $\pm 20\%$ of the baseline value as specified in Subparts AA and BB. Petitioner's facility is a major source of hazardous air pollutants. Specifically, ~~Petitioner's facility emits 10 tons per year or more of HF.~~ Therefore, Petitioner's facility is subject to these requirements.

- D. The Division will include the following language into the facility's Title V Renewal:

*Based on the initial notification requirements of 40 CFR 63, Subparts AA and BB, this facility is a major source of hazardous air pollutants (HAPs). If additional testing and modeling demonstrate that the facility is not and has never been a major source of hazardous air pollutants since at least June 10, 2002, the permittee shall have the right to request that the Department revise the permit to remove those requirements and conditions that are applicable because the facility is a major source of hazardous air pollutants as determined by the Department. **The permittee shall also have the right to request that the Department revise the permit to remove those requirements and conditions that are applicable because the facility is a major source of hazardous air pollutants as determined by the Department if EPA promulgates revisions to 40 CFR 63, Subparts AA and BB that exclude the cooling ponds from major source determinations.***

1. It is the understanding of the parties that:
 - a. "additional testing and modeling" means testing or modeling conducted on or after the date of this settlement agreement as it relates to HAP HF emissions. Stack testing will be evaluated to determine if a sufficient number of test runs have been conducted to meet a data quality objective that accounts for the variability of test data and provides for confidence in the mean measured value. Pond testing will also be required by the Department. It does NOT require that testing had been conducted prior to the effective date of this agreement.
 - b. June 10, 2002 was the effective compliance date 40 CFR 63 Subparts AA and BB.
 - c. The Department is under no obligation to implement any revision request

- E. The facility's draft Title V Renewal will also incorporate the changes contained in draft Title V Revision [0470002-044-AV].

- F. PCS will publish the draft Title V Renewal in an expeditious fashion. Once the draft Title V Renewal becomes a "proposed" Title V Renewal:
1. PCS will withdraw its petition on the Title V Revision [0470002-041-AV]. The Department will forward this Title V Revision to EPA as a "proposed" Title V Revision. ????
 2. DEP will reissue a draft PSD permit extending the expiration date of the permit to December 31, 2005.

~~Dept~~
~~2/2/05~~

① Don't want to waive our rts to use intervening data

② include that they must submit any preexisting test;

③ Submit all quantified NAPS for facility if request revision (not necess. testing)

➔ Doug: since Title V renewal will have same MACT language when

➔ Deadline: we will issue draft renewal on or before ~~4/1/05~~ ————— will have compliance plan

Linero, Alvaro

From: Vielhauer, Trina
Sent: Thursday, May 06, 2004 9:05 PM
To: Linero, Alvaro
Subject: Re: draft PCS settlement

The question I need to answer is if they come back to challenge the aa and bb (I have in there must be future testing- ill add we must have notice and chance to witness and must be representative for ponds) would we then make them test for all haps?

I didn't think so based upon our proposed settlement for these cases. I think we'd really be changing our course to now say all haps (unless I misunderstood our settlement proposal). We could clarify that if they want to later request specifically for aa and bb that it is only hf testing- I think we did write it in terms of all haps.

thx

Ps-
Don't think the guidance went into this.
Trina Vielhauer

Sent from my BlackBerry Wireless Handheld

-----Original Message-----
From: Linero, Alvaro <Alvaro.Linero@dep.state.fl.us>
To: Vielhauer, Trina <Trina.Vielhauer@dep.state.fl.us>
Sent: Thu May 06 20:19:05 2004
Subject: FW: draft PCS settlement

ATTORNEY DIRECTED WORK ***** NOT A PUBLIC RECORD ***** 119.07, F.S. *****

May need to look exactly at what they did submit. Might be worth seeing what they submitted for their North Carolina and Louisiana Plants regarding HAPs other than HF. I imagine some of their Louisiana numbers became a little more accurate after FBI/EPA action.

Al.

-----Original Message-----
From: Phillips, Cindy
Sent: Thu 5/6/2004 5:31 PM
To: Linero, Alvaro
Cc:
Subject: RE: draft PCS settlement

ATTORNEY DIRECTED WORK ***** NOT A PUBLIC RECORD ***** 119.07, F.S. *****

Al, Bobby is working on this application but I don't think they gave us any estimates for other HAPs. Using some questionable AP-42 factors, I came up with about 14 tpy total HAPs from their annual permitted/potential residual fuel combustion. Their actual fuel combustion is less than their potential so, if this becomes a problem, they could probably take tighter use limits.

Another source of HAPs is metals in their particulate emissions (which is why the MACT includes particulate matter limits [as a surrogate for HAP metals] for rock dryers). I don't know what percentage of the rock is HAP metals, but their potential PM emissions from their rock crushers, silos, and dryers is 1452 tpy. Again, their actual particulate

CINDY'S THOUGHTS

emissions from these emission units in 2003 was reported to be 23 tons.

If their HF emissions are 9 tpy (non-major), their combustion HAPs are 14 tpy, and the percent HAP metals in their rock potential particulate emissions is about 0.14%, they could still technically be major for total HAPs.

What does that new draft guidance memo tell us to do???? :-)

-Cindy

-----Original Message-----

From: Linero, Alvaro
Sent: Thursday, May 06, 2004 2:36 PM
To: Vielhauer, Trina
Subject: RE: draft PCS settlement

ATTORNEY DIRECTED WORK ***** NOT A PUBLIC RECORD ***** 119.07, F.S. *****

Trina. I would think that HF testing is enough unless we dispute the accuracy of their emission estimates for other HAPs. HF would be the one to trip a 10 tpy threshold. If we believe the results of their other estimates, then no need to try to show where they stand with respect to the 25 tpy threshold.

I prefer to know that the tests they relied on (or will rely on) were (or will be) conducted after proper notification to the Department.

I would not recommend opening the possibility of having them sign off for now, get their permit, and then quickly make claims based on past unacceptable tests. We wind up in possible litigation, while they have a shield and avoid other MACT rules.

We will never pin down every possibility, but a few logical principles ought to keep us (and them) out of trouble.

The concept of representativeness of operations is key. Also a requirement (if not an understanding) to provide us with lists of any measures they have undertaken or that they subsequently undertake designed to lower or that incidentally lower HF.

With those principles (and maybe one or two others) in mind, we won't need to get into nth degree ramifications.

Thanks.

Al Linero.

-----Original Message-----

From: Vielhauer, Trina
Sent: Thursday, May 06, 2004 12:55 PM
To: Phillips, Cindy; Bull, Robert; Comer, Patricia
Cc: Linero, Alvaro; Pennington, Jim; Kahn, Joseph; Pichard, Errin; Wider, Russell
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they WERE in compliance during that timeframe]? Would they have to do testing for ALL HAPS [since the "standard" language was written as HAPS]?

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Thanks,

Trina

Vielhauer, Trina

From: Comer, Patricia
Sent: Thursday, May 06, 2004 1:28 PM
To: Vielhauer, Trina; Phillips, Cindy; Bull, Robert
Cc: Linero, Alvaro; Pennington, Jim; Kahn, Joseph; Pichard, Errin; Wider, Russell
Subject: RE: draft PCS settlement

My 2 cents is this (and I'm leaving town now and won't be back until Monday afternoon or Tuesday)

That MACT was effective on promulgation. But EPA has always allowed an existing source to avoid applicability if the source become a synthetic minor before the first compliance date set by the specific MACT. In this case, that date would be June 10, 2002 (see 40 CFR 63.609) because all "existing sources" had to be in compliance on June 10, 2002. (All new sources and "reconstructed" sources had to be in compliance by June 10, 1999 or on startup, whichever is later---I think we all assume that these facilities are existing.)

So any operation at MACT applicability levels after June 9, 2002 would make these facilities subject to the MACT & no "dropping back afterward" will change that.

The testing paragraph doesn't have anything to do with compliance, I believe. The testing paragraph merely gives each facility the opportunity to demonstrate that the MACT has never applied---that is, that the facility is and has been a "natural minor" or at least has never operated as a HAP major source since the first compliance date of the MACT and is therefore eligible for limitations on PTE that would establish them as HAP minor. (I think that MACT applicability is specified by each MACT, but it usually means "HAP major source". I defer to Cindy on what these MACTs specify.)

Compliance and applicability are typically two separate issues. A facility can be in compliance with the MACT by reducing emissions of a particular HAP but still be a HAP major. That is a big reason why EPA has said "once-in-always-in".

So the testing will probably need to show two things---less than 10 TPY of any individual HAP & less than 25 TPY of all HAPS.

[Pat Comer]

-----Original Message-----

From: Vielhauer, Trina
Sent: Thursday, May 06, 2004 12:55 PM
To: Phillips, Cindy; Bull, Robert; Comer, Patricia
Cc: Linero, Alvaro; Pennington, Jim; Kahn, Joseph; Pichard, Errin; Wider, Russell
Subject: draft PCS settlement

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5/6/2004

I've tried to outline [in rough draft form] our conversation, proposed course of action and address his above questions in the attachment. Doug didn't see a problem with it so I'm now forwarding for all of you to review and comment.

Thanks,
Trina

5/6/2004

Vielhauer, Trina

From: Comer, Patricia
Sent: Thursday, May 13, 2004 11:39 AM
To: Vielhauer, Trina
Subject: RE: PCSOption 2revised.doc

If we're processing an alternate monitoring plan by the time the draft renewal goes out and they aren't in compliance with the NESHAP, the renewal will have to contain a compliance plan for coming into compliance with the NESHAP if the plan isn't approved or for complying with the plan if it is.

If there is an order out, but it isn't final, I'd put it into the draft renewal anyway.

If nothing has even been submitted by draft renewal, I just put a compliance plan for only the NESHAP in the draft renewal. You can't force these people to request an alternate. If they haven't done it in a timely way they can deal with complying with the NESHAP and get an alternate plan, assuming they finally get one, put in the Title V permit by permit revision later.

-----Original Message-----

From: Vielhauer, Trina
Sent: Thursday, May 13, 2004 9:59 AM
To: Comer, Patricia
Subject: RE: PCSOption 2revised.doc

I'll make the changes you noted. Thank you.

As I thought about it last night I think I need to fully spell-out the compliance plan in the revision itself- NOT have the revision's compliance plan refer to a potential compliance plan in the renewal.

I'm thinking I can revise so the Revision's compliance plan to just:

1. submit alt. monitoring proposal by [date] and
2. must either be in compliance with approved alt. monitoring plan OR the NESHAP by [date]

IF I do that and they don't have a final order on the alt. monitoring plan by draft Title V time....would we then do another compliance plan in the renewal? Would it just carry over the #2 [comply by deadline] from the Revision's compliance plan?

-----Original Message-----

From: Comer, Patricia
Sent: Wednesday, May 12, 2004 2:20 PM
To: Vielhauer, Trina
Subject: PCSOption 2revised.doc

<< File: PCSOption 2revised.doc >> ummm....maybe I got carried away but I think this needs to be nailed down closely and where's the compliance plan referred to in paragraph A? Did I miss it?
Pat

[version sent to
companies]
10/03

STATE OF FLORIDA
DEPARTMENT OF ENVIRONMENTAL PROTECTION

**WHITE SPRINGS AGRICULTURAL CHEMICALS, INC.
d/b/a PCS PHOSPHATE-WHITE SPRINGS,**

Petitioner,

v.

OGC Case No. 02-0862
Permit No. 0470002-041 AV
0470002-044 AV

**STATE OF FLORIDA DEPARTMENT
OF ENVIRONMENTAL PROTECTION,**

Respondent.

_____ /

SETTLEMENT STIPULATION

Petitioner, White Springs Agricultural Chemicals, Inc. d/b/a PCS Phosphate – White Springs (“White Springs”) and Respondent, State of Florida Department of Environmental Protection (“Department”), hereby enter this Settlement Stipulation with respect to the disposition of the above-styled litigation:

RECITALS

Whereas, on June 10, 1999, the Environmental Protection Agency 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 the appendix A to Subpart AA);

Whereas, in May, 2002, the Department issued to White Springs an Intent to Issue Revision to the Title V Air Operation Permit for White Springs’ facility located in White Springs, Hamilton County;

Whereas, the Department's Intent to Issue was predicated upon the Department's determination that the White Springs facility was a major source of hydrogen fluoride emissions subject to 40 CFR 63, Subparts AA and BB;

Whereas, in December, 2002, the Department issued to White Springs an Intent to Issue a second and independent Revision to the Title V Air Operation Permit for the White Springs facility;

Whereas, both of the Department's Intents to Issue afforded White Springs a point-of-entry to petition for a formal administrative hearing under Chapter 120, F.S., to challenge the Department's proposed agency action;

Whereas, White Springs filed a request for an extension of time to file a petition for administrative hearing to challenge the Department's May, 2002, Intent to Issue alleging the facility is not a "major source" of hydrogen fluoride emissions subject to 40 CFR 63, Subparts AA and BB. White Springs filed this request for an extension of time to file a petition for administrative hearing after the 14 day petition period arguing "excusable neglect";

Whereas White Springs filed a timely request for an extension of time to file a petition for administrative hearing to challenge the Department's December, 2002, Intent to Issue alleging the facility is not a "major source" of hydrogen fluoride emissions subject to 40 CFR 63, Subparts AA and BB;

Whereas, the Department maintains that the White Springs facility is subject to the requirements of 40 CFR 63, Subparts AA and BB while White Springs maintains these regulatory requirements do not apply to this facility;

Wherefore, the purpose of this Settlement Stipulation is to: (a) provide for the implementation of a comprehensive emissions testing program to allow White Springs an opportunity to demonstrate the White Springs facility is not a major source of hydrogen fluoride emissions; (b) provide White Springs an opportunity to obtain an alternative means to demonstrate compliance with 40 CFR 63, Subparts AA and BB in the event the White Springs facility determined to be a major source of hydrogen fluoride emissions; and (c) revise White Spring's Title V Air Operation Permit to incorporate the provisions of this Settlement Stipulation as part of a Compliance Plan.

STIPULATIONS

Wherefore, the Department and White Springs hereby stipulate and agree to the following:

I. COMPREHENSIVE HYDROGEN FLUORIDE EMISSIONS TESTING PROGRAM

A. PROCESS POND EMISSIONS

1. Testing for Process Pond Emissions: The Department believes that both wind and temperature affect emissions from the process ponds. Therefore, testing may be required during both winter and summer seasons as set forth in paragraph I.A.4., below] Within 60 days of the execution of this Settlement Agreement, White Springs shall complete testing to quantify hydrogen fluoride emissions from the process ponds (gypsum and cooling ponds). White Springs shall provide the Department's Division of Air Resource Management ["Division"] with written notice of the date on which the testing is to be performed. This notice shall be provided a minimum of 14 days prior to the date on which the testing is to be performed.

2. Testing Protocol for Process Pond Emissions: White Springs shall submit a proposal from a contractor experienced with Optical Remote Sensing using Fourier Transform Infrared (FTIR) or Tunable Diode Laser (TDL) techniques as described in the joint project by the U.S. EPA, the U.S. Air Force, and ARCADIS.¹ within 14 days of the execution of this settlement agreement to the Division for approval. The proposal shall include an estimate of the likely accuracy of the proposed methodology that is no more than a factor of two or one order of magnitude.

(a) In the event White Springs does not follow the approved testing protocol, the test results will be deemed invalid and White Springs shall comply with 40 CFR 63, subparts AA and BB, within 30 days of notification from the Department that the tests are invalid.

(b) The length of the testing shall be at least one week and extended as needed to ensure that the HF emission factor determined will, in the opinion of the contractor, be accurate to plus or minus a factor of 2 (or lower).

3. Process Pond Test Report:

(a) Within 30 days of completion of testing [i.e. 90 days from execution of the Settlement Agreement], a process ponds emissions test report shall be submitted to the Division. The test report shall include HF emission factors for the process pond(s) in terms of pounds per acre-day at the facility and a single, numerical estimate [i.e. not a range] of total annual pond HF emissions in tons per year (TPY). The annualized pond

¹ Sullivan, Patrick D., et. Al. Development of Optical Remote Sensing Protocol for the Measurement of Area Sources. Proceedings of Air and Waste Management Association 95th Annual Conference and Exhibition. Baltimore, Maryland. June 2002.

HF TPY and emission factors will be accepted and not corrected to account for the accuracy of the methodology identified in paragraph I.A.2.a., above.

(b) The process pond emissions test report shall include process data covering the time of the tests including recent plant operational history, usage of the process ponds, and water chemistry of streams to the gypsum stacks, to the cooling ponds and from the cooling ponds. The measured parameters shall include F, pH, P₂O₅, SO₄-S, NH₄-N, temperature, Si, Na, Al, Ca, K, Fe, Mg, Cl. The recent operational history of each process pond, including actual usage, circulation rates, and its representativeness or nonrepresentativeness of steady state condition, etc., shall be included

(c) The Division shall review the test report to determine whether it is accurate and complete. In the event the Division should request additional information concerning the test report, the Division shall make such request within 14 days of White Spring's submittal. White Springs shall respond to a request for additional information within 14 days of receipt of such written request.

(d) Gas certifications for gases used for calibrations and QA spiking. An explanation of how reference spectra were obtained or if they were produced by personnel not affiliated with the vendor of the FTIR equipment. The moisture concentrations that are expected when performing Method 320 testing and the effect of such on the reference spectra of HF at differing moisture concentrations. The test results shall include the concentrations and makeup of samples used to prepare the reference spectra for HF with and without moisture as needed.

(e) the Division shall utilize the complete process pond emission test report, in conjunction with the stack test report and fugitive emissions discussed in B. and C.

below, to determine whether the White Springs facility is a major source of hydrogen fluoride emissions. White Springs expressly waives any administrative or judicial right to challenge the Department's utilization of, and determination based upon, the test report. In the event the Division determines that hydrogen fluoride emissions are 10 tons per year or more based solely upon the pond testing results, White Springs may notify the Division within 10 days of submittal of the pond testing report that it is electing not to proceed with testing stack emissions set forth in II, below, nor with part 2 of the pond emissions testing set forth in I.A.4, below. In that event, White Springs shall comply with AA and BB or an alternate monitoring plan approved pursuant to II, below, within 30 days of notifying the Division.

4. In the event the Division determines that the process pond emission test report in conjunction with the stack test report and fugitive emissions discussed in B. and C. below are less than 10 tons per year, White Springs shall retest the process ponds during summer months following the same protocol outlined in paragraph I.A.1-3, above. The testing shall be completed between June 1 and August 31

B. STACK EMISSIONS

1. Stack Emissions Testing: Within 30 days of execution of this settlement agreement, White Springs shall submit to the Division a test protocol and a test schedule for testing stack emissions for hydrogen fluorides. The Division shall either approve, deny or request additional information regarding the test protocol within 14 days of its submittal to the Division.

(a) White Springs shall respond to a request for additional information within 14 days of receipt of such written request. The Division may elect to audit the tests with its own calibration gases.

(b) The stack testing shall follow the approved protocol and shall be completed within 120 [the test report for the ponds isn't due until 90 days] days of execution of the settlement agreement. In the event White Springs does not follow the testing protocol the test results will be deemed invalid and White Springs shall comply with 40 CFR 63, subparts AA and BB, within 30 days of notification from the Division that the tests are invalid.

2. Stack Emissions Test Protocol: At a minimum, the test protocol shall include testing each stack that emits total fluorides while operating the facility between 90 and 100% of operating capacity and:

(a) EPA Method 320 shall be paired with any necessary isokinetic sampling equipment to avoid under sampling at sources emitting acid particulate matter (e.g., hydrogen halides dissolved in water droplets).

(b) All sample lines shall be sufficiently heated in order to reduce the amount of water introduced to the equipment.

(c) Accurate measurements of hydrogen fluoride in the plant's exhaust gases are necessary for major source determination. White Springs shall use EPA Method 26A with concurrent validation with EPA Method 320 to confirm whether the plant is a major source to ensure reasonable precision in the results of the stack testing source. White Springs shall use EPA Method 13B to determine total fluorides.

(d) The test protocol shall require that the stack emissions testing performed by White Springs for total fluorides and hydrogen fluoride will meet the requirements of the Division's Data Quality Objective (DQO). The DQO requires that the width of the 2-sided 90 percent confidence interval of the mean measured value be less than or equal to 10 percent of the mean measured value. This ensures that 90 percent of the time, when the DQO is met, the actual emission value will be 5 percent of the mean measured value. The DQO is achieved when $k/x_{\text{bar}} \leq 5$ percent, where k is the distance to each endpoint of the 90 percent (2-sided) confidence interval and x_{bar} is the average measured emission value.

(e) The facility shall perform stack testing until a sufficient number of test runs are conducted to meet the DQO. The stack test protocol shall provide for a minimum of three test runs. White Springs may stop testing after 12 test runs are performed even if the DQO is not met.

(f) All stack test results shall be reported and used in the DQO calculation. The stack test results should be expressed as mass emission rates, but can be expressed as mass rate per unit of production or heat input if the emissions are logically related to production rates or heat input, and such rates can be measured within 10% accuracy. The Division will supply upon request a spreadsheet with the applicable DQO requirements and calculations.

(g) White Springs shall provide the Division with written notice of the date on which stack testing is to be performed. This notice shall be provided a minimum of 14 days prior to the date on which the testing is to be performed.

3. Stack Emission Test Results

(a) All stack emission test results shall be submitted to the Division within 45 days of the completion of testing. The test results shall be submitted under the signature and seal of a Florida registered professional engineer.

(b) At a minimum, the stack test results shall contain the following information:

(i) Gas certifications for gases used for calibrations and QA spiking. An explanation of how reference spectra were obtained or if they were produced by personnel not affiliated with the vendor of the FTIR equipment. The moisture concentrations that are expected when performing Method 320 testing and the effect of such on the reference spectra of HF at differing moisture concentrations. The test results shall include the concentrations and makeup of samples used to prepare the reference spectra for HF with and without moisture as needed.

(ii) Sample line temperatures showing that all sample heating lines were sufficiently heated.

(iii) A demonstration of isokinetic sampling by the use of supporting calculations.

(iv) Production rates during testing.

(v) All raw data taken during testing.

(vi) Spike recovery rates.

(vii) Sample calculations of emission rates from raw data.

(c) The Division shall review the test results to determine whether the results are accurate and complete. In the event the Division should request additional information concerning the stack test results, the Division shall make such request within 14 days of

White Springs submittal. White Springs shall respond to a request for additional information within 14 days of receipt of such written request.

(d) The Division shall utilize the stack tests in conjunction with the pond test report identified in section A, previously, and the fugitive emissions identified in Section C, below, to determine whether the White Springs facility is a major source of hydrogen fluoride emissions. White Springs expressly waives any administrative or judicial right to challenge the Department's utilization of, and determination based upon, the stack test results.

C. MISCELLANEOUS FUGITIVE EMISSIONS

For the purpose of estimating total annual emissions, fugitive hydrogen fluoride emissions shall include those that are not vented through pollution control equipment or emitted from the process ponds. These fugitive emissions include leaks from vessels, valves, conveyance equipment, etc.. For the purpose of estimating total annual emissions, the Division shall assume miscellaneous fugitive emissions are equal to one-tenth (1/10) of the combined sum of annual HF emissions from the process ponds and stacks. White Springs expressly waives any administrative or judicial right to challenge the Division's utilization of, and determination based upon, the fugitive emission calculations.

D. SUMMATION OF HF EMISSIONS

1. The Division shall utilize the pond testing report, stack testing report and the fugitive emission calculations set forth in Sections A, B, and C, above, to determine the total amount of HF from the facility and shall notify White Springs of its determination. In the event the Division determines the facility emits 10 tons per year or more of HF,

White Springs shall comply with AA and BB or an approved alternate monitoring plan within 30 days of such notification. White Springs may file a protective request for an extension of time to file a petition on the Division's determination *solely* to protect its rights in the event of a third party challenge. Within 30 days of the Division's determination and provided no third party has challenged, White Springs shall dismiss any request for an extension of time filed. White Springs shall only file a petition for hearing in the event a third party challenges the Division's determination and that challenge is forwarded to DOAH.

2. In the event the Division determines the emission of HF from the facility is less than 10 tons per year, the Department shall notify White Springs, reopen the Title V permit and remove the 40 CFR 63 subparts AA and BB requirements.

II. ALTERNATE MONITORING PLAN & TITLE V REVISION

1. Within 30 days of execution of this settlement agreement, White Springs shall submit an alternate monitoring plan to the Division for approval. The Division shall either approve or deny the alternate monitoring plan or request additional information within 30 days of its submittal. White Springs shall respond to a request for additional information within 30 days of receipt of such written request.

2. The Department shall reissue a draft, revised White Springs Title V Air Operation Permit to incorporate this Settlement Stipulation as part of a Compliance Plan, to identify this facility as a major facility that is subject to 40 CFR 63 AA and BB, and incorporate changes to 40 CFR 63 AA and BB that have been finalized during the pendency of this case. White Springs shall publish notice of the draft, revised Title V Air Operation Permit as soon as possible after

receipt thereof. White Springs expressly waives any administrative, judicial or other legal right to challenge the items stated in this paragraph in the Department's revised, draft White Springs Title V Air Operation Permit

IN WITNESS WHEREOF, White Springs and the Department have executed this Settlement Stipulation this ____ of October, 2003.

Vielhauer, Trina

From: Vielhauer, Trina
Sent: Monday, May 17, 2004 1:35 PM
To: 'sPosey@pcsphosphate.com'
Cc: cPults@pcsphosphate.com
Subject: RE: Draft Settlement



PCSOption
ised.doc (65 KB)

Stan,

I had a chance to discuss internally. I've made some changes. We'd like to see the alternate monitoring sooner than August 15. It is my understanding that it largely follows what has been done by Cargill and that it was almost done when our folks met with Mr. Pults on site in March.

Also, I think it makes sense to wrap this into the Revision [as you will see]. It makes dealing with the Title V renewal much easier.

I'm out of the office until Thursday but we can discuss later this week or at your earliest convenience.

Trina

-----Original Message-----

From: sPosey@pcsphosphate.com [mailto:sPosey@pcsphosphate.com]
Sent: Thursday, May 06, 2004 5:08 PM
To: Vielhauer, Trina
Cc: cPults@pcsphosphate.com
Subject: Draft Settlement

Trina:

The attachment is my first draft of a settlement agreement for our HF MACT - related issues. I've attempted to simply state the areas on which we agreed in our meeting on Monday. We have proposed in here submission of the alternative monitoring plan on or before August 15. That gives us the time we need to complete our CAM work and other information in response to the request for additional information on the Title V renewal and then prepare a complete submission on the alternative monitoring plan. I took the liberty of amending the permit language as well. I know you had some thoughts on that. Please call if you have any questions. Stan

(See attached file: Stipulated Settlement - PCS.doc)

Stanley W. Posey
Manager, Environmental Affairs
PCS Phosphate -- White Springs
386/397-8304, fax 386/397-8390

DRAFT 5/6/04

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 issue in dispute in all three cases, the parties agree that:

A. 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 and 2, below. This draft Title V Air Operation Permit Revision will

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immediately be forwarded to EPA as a “proposed” Title V Air Operation Permit Revision. The compliance plan will provide as follows:

1. On or before June 15, 2004, PCS shall submit a proposal for an alternate monitoring plan to the Division’s Emission Monitoring Section for approval; and
2. No later than August 31, 2004, PCS shall be in compliance with either (a) the terms and conditions of an alternate monitoring plan approved by final order of the Department or (b) the monitoring requirements established in 40 CFR Part 63 Subparts AA and BB.

B. 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). 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 for the facility either by testing or other means and (b) conduct representative stack and pond testing and modeling 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. PCS must obtain the Department’s advance concurrence on stack and pond testing protocol and must notify the Department at least 14 days in advance of any such testing. 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 existing past testing.

C. 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.

D. The Department agrees to forego past civil penalties and sanctions associated with the

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applicability of the Phosphate MACT in the event PCS complies with all of the terms and timeframes contained in this agreement and 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 or, if applicable, with all provisions of the Title V Revision's compliance plan (0470002-041 AV) and the Title V renewal compliance plan (if applicable). 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.

E. 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.

F. Each party shall bear its own litigation costs.

PCS and the Department hereby execute this Stipulated Settlement on this _____ day of May, 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

Date

Date