STATE OF MINNESOTA
MINNESOTA POLLUTION CONTROL AGENCY

In the Matter of the Intent to Reissue Air Individual Permit Major Amendment Permit No. 03900028-102 Al-Corn Clean Fuel LLC

Affidavit of Colin M. Campbell

Colin M. Campbell, being duly sworn deposes and says as follows:

1. I am a Principal in the firm of RTP Environmental Associates, Inc. ("RTP"), an air quality consulting firm with offices in Raleigh, North Carolina and elsewhere. I have a Bachelor of Science degree in Economics and a Bachelor of Science degree in Mechanical Engineering, both conferred by North Carolina State University in 1991.

2. I have been employed by RTP since 1997. Prior to 1997, I worked in air quality consulting with Pacific Environmental Services and Woodward-Clyde Consultants. My experience in air quality consulting is primarily in the area of stationary source (*i.e.*, industrial) air pollution. Activities that I commonly perform on behalf of industrial source owners include the preparation of permit applications for new and modified facilities, evaluation of the effect of existing or proposed regulations on existing or new sources of air pollution; and assessments of compliance by existing sources of air pollution with federal, state and local requirements. I have had extensive experience in regard to advising clients in interpretation and compliance with regulations concerning air pollution, including the regulations of various state, local, and federal agencies governing the review of new and modified sources of air pollution. I also provide technical support to state and local agencies in developing and administering their stationary source permitting programs.

3. In addition, I frequently teach courses on NSR regulations for audiences including representatives of state permitting authorities such as the Minnesota Pollution Control Agency ("MPCA"), U.S. Environmental Protection Agency ("EPA"), and regulated entities.

4. A copy of my curriculum vitae is provided as Exhibit 1.

A. Background

5. Al-Corn Clean Fuel LLC ("Al-Corn") owns and operates an ethanol production facility in Dodge County, Minnesota (the "Facility"). The Facility currently operates under Part 70 Permit No. 03900028-101 (the "Current Permit") issued by MPCA.

6. MPCA has proposed to issue a renewed and modified Part 70 Permit for the Facility identified as Permit No. 03900028-102. This draft permit (the "Draft Permit") and the Technical Support Document (the "TSD") are the subject of my opinions expressed herein.

7. The Facility is not subject to the Prevention of Significant Deterioration ("PSD") permitting program because it is not a major stationary source as that term is defined at 40 CFR § 52.21(b)(1), incorporated by reference at Minn. R. 7007.3000. The Facility would be a major stationary source if, for any pollutant subject to regulation under the PSD program, its potential to emit were to equal or exceed 250 tons per year, excluding fugitive emissions.

8. The Facility is not subject to certain National Emission Standards for Hazardous Air Pollutants ("NESHAP"), such as the NESHAP for Miscellaneous Organic Chemical

Manufacturing in 40 CFR part 63, subpart FFFF, because it is not a major source of hazardous air pollutants as those terms are defined at 40 CFR § 63.2. The Facility would be a major source of hazardous air pollutants if its potential to emit were to equal or exceed 10 tons per year of any individual hazardous air pollutant or 25 tons per year of hazardous air pollutants in the aggregate.

9. The Facility includes an emissions unit known as the fermentation system. This emissions unit comprises numerous process vessels and other equipment, including three fermenters identified as Fermenter #1 ("EQUI 31"), Fermenter #2 ("EQUI 32"), and Fermenter #3 ("EQUI 33"). The fermentation system emits Volatile Organic Compounds ("VOC"), which is a regulated air pollutant generally composed of many individual carbon-containing compounds. The primary constituent of the VOC emissions from the fermentation system is ethanol, which is the facility's primary product. A scrubber, identified by MPCA as the Fermentation System Scrubber ("TREA 16"), is currently used to control emissions of VOC and to maintain compliance with limits on emissions of VOC and certain VOC constituents. A condenser, identified by MPCA as the Pre-Condenser ("TREA 42"), is used in conjunction with the scrubber primarily to improve recovery of ethanol and to improve the facility's economic efficiency and secondarily to allow the Facility to achieve an overall VOC control efficiency greater than would be achieved using the Fermentation System Scrubber alone. Prior to installation of the Fermentation System Scrubber, Al-Corn used a different scrubber, identified by MPCA as the Old Fermentation Scrubber ("TREA 10"), to control emissions of VOC and to maintain compliance with limits on emissions of VOC and certain VOC constituents.

10. The Current Permit includes three conditions imposing numeric emission standards specific to VOC emissions from the fermentation system emissions unit. Condition 5.40.2 requires Al-Corn to limit VOC emission rate to 20.80 pounds per hour or less, based on a 3-hour average. Condition 5.54.3 requires either a minimum overall VOC control efficiency of 95.0 percent for the Old Fermentation Scrubber or, if the VOC concentration in the gas stream from the fermentation system as measured upstream of the scrubber is equal to or less than 200 parts per million by volume, a maximum VOC concentration of 20 parts per million by volume in the exhaust gases emitted to atmosphere from the scrubber. Condition 5.57.2 requires a minimum overall VOC control efficiency of 95.0 percent for the Fermentation System Scrubber.

11. In March 2003, Al-Corn's corporate predecessor entered into a judicial consent decree (the "2003 Consent Decree") with the United States and MPCA. The 2003 Consent Decree obligated Al-Corn to implement a control technology plan including, among other things, installation of air pollution control technology for the fermentation system that was capable of achieving a 95 percent reduction in VOC emissions or, if the VOC concentration in the gas stream from the fermentation system as measured upstream of the scrubber is less than 200 parts per million by volume, a maximum VOC concentration of 20 parts per million by volume in the exhaust gases emitted to atmosphere from the scrubber. The 2003 Consent Decree further obligated Al-Corn to submit to MPCA a modification of its air permit to incorporate certain emission limits and other requirements from the decree, including the minimum VOC control efficiency requirement described above. One of the conditions precedent to termination of the 2003

Consent Decree was Al-Corn's compliance with emission limits under the decree, including the minimum VOC control efficiency requirement described above.

12. A copy of the 2003 Consent Decree, which was obtained for me by Michael Best and Friedrich from the National Archives Chicago Federal Records Center, is provided as Exhibit 2.

13. The 2003 Consent Decree was terminated in December 2005. The only provision of the 2003 Consent Decree that survives termination of the consent decree is the resolution of claims, in which the plaintiffs granted to Al-Corn a release of all civil and administrative liability relating to certain alleged pre-entry violations of federal and state air quality control laws.

14. A copy of the termination order, which I obtained from PACER, is provided as Exhibit 3.

15. MPCA's authority to impose emission limitations and standards in a Part 70 Permit is narrow. As pertinent here, Minn. R. 7007.0800, subpart 2, item A authorizes MPCA to include in the permit all provisions "needed to ensure compliance with all applicable requirements at the time of permit issuance." Minn. R. 7007.0100, subpart 7, establishes the requirements that are applicable requirements.

16. Under Minn. R. 7007.0800, subpart 1, in a Part 70 Permit, MPCA is obligated to "specify and reference the origin of and the authority for each term or condition" and to "identify any difference in form from the requirement giving rise to the condition."

17. Under Minn. R. 7007.0850, subpart 1, in conjunction with issuing a Part 70 Permit, MPCA is obligated to develop and distribute a technical support document that "sets forth the legal and factual basis for the draft permit conditions, including references to the applicable statutory or regulatory provisions."

18. Because the 2003 Consent Decree was terminated in December 2005, and because the provisions of a terminated consent decree do not fall within the definition at Minn. R. 7007.0100, subpart 7, the 2003 Consent Decree does not establish a basis for any ongoing requirements, whether relating to VOC emissions from the fermentation system emissions unit or otherwise.

19. In its application for renewal and modification of the Current Permit, Al-Corn did not request deletion or substantive revision of the numeric VOC emission standards currently in effect for the fermentation system emissions unit as described in ¶ 10 above. Al-Corn also did not request that MPCA establish new or more stringent numeric VOC emission standards for the fermentation system emissions unit.

20. Condition 5.1.25 of the Draft Permit provides that, "notwithstanding the conditions of this permit specifying compliance practices for applicable requirements, any person (including the Permittee) may also use other credible evidence to establish compliance or noncompliance with applicable requirements." This provision is appropriate and consistent with EPA policy and federal regulations governing state air pollution control programs. For example, 40 CFR § 51.212(c) provides, "[f]or the purpose of submitting compliance certifications or establishing whether or not a person has violated or is in violation of any [emission] standard," the state rule "must not

preclude the use, including the exclusive use, of any credible evidence or information, relevant to whether a source would have been in compliance with applicable requirements if the appropriate performance or compliance test or procedure had been performed."

21. I have attached two EPA letters dated October 30, 1998 (Exhibit 4) and July 28, 1998 (Exhibit 5), respectively, discussing the limitations on states issuing operating permits, such as the Draft Permit, with permit terms and conditions that would nullify the credible evidence rule.

B. Unauthorized Minimum Control Efficiency Requirements for Emissions of Volatile Organic Compounds from Fermentation System Scrubber

22. In the Draft Permit, MPCA has proposed to continue the currently effective numeric VOC emission standards described in ¶ 10 above without substantive revision. Condition 5.43.2 requires Al-Corn to limit VOC emission rate to 20.80 pounds per hour or less, based on a 3-hour average. Condition 5.68.7 requires either a minimum overall VOC control efficiency of 95.0 percent or, if the VOC concentration in the gas stream from the fermentation system as measured upstream of the scrubber is less than 200 parts per million by volume, a maximum VOC concentration of 20 parts per million by volume in the exhaust gases emitted to atmosphere from the scrubber.

23. In my opinion, because Al-Corn did not request deletion or revision of the currently effective numeric VOC emission standards described in ¶ 10 above, continuation of those limits in the Draft Permit as described in ¶ 22 above is appropriate.

24. In the Draft Permit, MPCA has proposed to establish additional, numeric VOC emission standards that are more stringent than those in ¶ 10 above. Condition 5.68.5, which would apply during periods when the Fermentation System Scrubber is operating with normal water flow rate and normal scrubber additive liquid flow rate, would require Al-Corn continuously to achieve a minimum overall VOC control efficiency of 99.5 percent when the VOC concentration in the gas stream from the fermentation system as measured upstream of the scrubber is less than 200 parts per million by volume. Condition 5.68.6, which would apply during periods when the Fermentation System Scrubber is operating with reduced water flow rate and reduced scrubber additive liquid flow rate, would require Al-Corn continuously to achieve a minimum overall VOC control efficiency of 99.7 percent when the VOC concentration in the gas stream from the fermentation system as measured upstream of the scrubber is less than 200 parts per million by volume.

25. As discussed in the following paragraphs of this affidavit, I cannot determine what the MPCA is relying upon as the purported legal authority or factual basis for Conditions 5.68.5 and 5.68.6 of the Draft Permit. Accordingly, I cannot determine with confidence whether and how achievability should be taken into account in determining the appropriateness of these emission standards. Nonetheless, in my opinion, the emission standards in Conditions 5.68.5 and 5.68.6 of the Draft Permit are not achievable from a technical standpoint. When the VOC concentration in the gas stream from the fermentation system as measured upstream of the scrubber is equal to 200 parts per million by volume, Conditions 5.68.5 and 5.68.6 of the Draft Permit would limit the maximum VOC concentration in the exhaust gases emitted to atmosphere from the

scrubber to approximately 1 part per million by volume. This outlet VOC concentration is not achievable with a scrubber.

26. In my opinion, with respect to the VOC emission standards in Conditions 5.68.5 and 5.68.6 of the Draft Permit, MPCA has failed to satisfy its obligations under Minn. R. 7007.0800, subpart 1, and Minn. R. 7007.0850, subpart 1. The only authority cited by MPCA in the Draft Permit for each of these conditions is, "Avoid major source under 40 CFR 52.21(b)(1)(i) and Minn. R. 7007.3000." This suggests that a control efficiency less than 99.5 percent for VOC emissions in the gas stream from the fermentation system emissions unit would result in the Facility's non-fugitive VOC emissions exceeding the major stationary source threshold of 250 tons per year. This is unsupported and erroneous. The potential non-fugitive VOC emissions from all emissions units other than the fermentation system emissions unit are less than 90 tons per year. Only if the mass flow rate of VOC in the gas stream from the fermentation system as measured upstream of the scrubber were to exceed 7,300 pounds per hour on an annual average basis would this be true, and there is no evidence in MPCA's administrative record to support this conclusion. In the TSD, MPCA provides no calculations or other evidence in support of the proposed minimum VOC control efficiency requirements in Conditions 5.68.5 and 5.68.6 of the Draft Permit.

27. In my opinion, Conditions 5.68.5 and 5.68.6 of the Draft Permit should be omitted from the final issued permit because they are not applicable requirements, are not needed to ensure compliance with all applicable requirements, and are not necessary to maintain the Facility's potential non-fugitive VOC emissions less than the applicable major stationary source threshold at 40 CFR § 52.21(b)(1).

28. In the TSD, MPCA includes a discussion styled as, "Revised BACT-equivalent Analysis for Fermentation Units." It is not clear to me whether this discussion is intended to support the proposed minimum VOC control efficiency requirements in Conditions 5.68.5 and 5.68.6 of the Draft Permit. In my opinion, to the extent that it is so intended, the discussion provides no such support. The apparent premise for this discussion—that the Facility is somehow different from other stationary sources and is subject to requirements not derived from federal or Minnesota regulations because it was once the subject of a consent decree—is a fiction. From the date of termination of the 2003 Consent Decree in December 2005 through the present, the only emission limitations and standards to which the Facility is subject are those that are expressly required by applicable requirements as set forth in Minn. R. 7007.0100, subpart 7.

29. Even if there were some statutory or regulatory authority or some factual basis for MPCA to establish stringent minimum VOC control efficiency requirements for the fermentation system emissions unit based on a "BACT-equivalent analysis," which there is not, that underlying authority would necessarily incorporate achievability as an important consideration. The Best Available Control Technology ("BACT") requirement that is a key element of the PSD program under the federal Clean Air Act expressly provides that BACT emission limits be achievable for the particular Facility. 42 U.S.C. § 7479(3). In practice, this requires that emission limits be set with a compliance margin so that compliance can be achieved continuously, under all anticipated operating conditions, for the life of the Facility. As explained in ¶ 25 above, the proposed minimum VOC control efficiency requirements in Conditions 5.68.5 and 5.68.6 of the Draft Permit are not achievable.

C. Unauthorized Minimum Control Efficiency Requirements for Emissions of Hazardous Air Pollutants from Fermentation System Scrubber

30. In Conditions 5.68.8 through 5.68.16 of the Draft Permit, MPCA has proposed to establish new, numeric emission standards for formaldehyde, acrolein, methanol, and acetaldehyde emissions from the fermentation system emissions unit. Each of these organic compounds is a constituent of VOC and also a hazardous air pollutant. Specifically, these permit conditions would require Al-Corn continuously to achieve a minimum overall control efficiency for each organic compound: for formaldehyde, 95.0 percent; for acrolein, 95.0 percent; for methanol, 96.0 percent; for acetaldehyde, 98.0 percent when the Fermentation System Scrubber is operating with normal water flow rate and normal scrubber additive liquid flow rate or 50.0 percent when the Fermentation System Scrubber is operating with reduced water flow rate and reduced scrubber additive liquid flow rate.

31. In my opinion, with respect to the emission standards for individual organic compounds in Conditions 5.68.8 through 5.68.16 of the Draft Permit, MPCA has failed to satisfy its obligations under Minn. R. 7007.0800, subpart 1, and Minn. R. 7007.0850, subpart 1. The primary authority cited by MPCA in the Draft Permit for each of these conditions is, "Avoid major source under 40 CFR 63.2." This suggests that control efficiencies less than the listed values for the gas stream from the fermentation system emissions unit, for any period of time, would result in the Facility's emissions exceeding the major source thresholds of 10 tons per year of an individual hazardous air pollutant or 25 tons per year of hazardous air pollutants in the aggregate. This is unsupported and erroneous; there is no evidence in MPCA's administrative record to support this conclusion. The potential emissions of these pollutants would be subject to enforceable

limits in other conditions of the Draft Permit, particularly Conditions 5.3.1 through 5.3.3 of the Draft Permit, which are sufficient to ensure the Facility's emissions are less than the pertinent thresholds. In the TSD, MPCA provides no calculations or other evidence in support of the proposed minimum control efficiency requirements in Conditions 5.68.8 through 5.68.16 of the Draft Permit.

32. The second authority cited by MPCA in the Draft Permit for each of these conditions is, "Minn. R. 7007.0800, subp. 11." This rule provision merely authorizes MPCA to include in a Part 70 Permit the separate applicable requirements that apply to an emissions unit under two or more alternative operating scenarios. MPCA has correctly identified the operation of the Fermentation System Scrubber with normal or reduced flow rates as representing two separate operating scenarios, but this rule provision does not provide independent authority for imposing permit conditions that are not applicable requirements as defined at Minn. R. 7007.0100, subpart 7.

33. The third authority cited by MPCA in the Draft Permit for each of these conditions is, "Minn. R. 7017.2025, subp. 3(B)." This rule provision merely authorizes MPCA to include in a Part 70 Permit operational limitations, such as a maximum allowable production rate for the fermentation process emissions unit, to demonstrate that ongoing operations are not conducted under higher-emitting conditions than the operating conditions during performance (i.e., emissions measurement) testing. That is contrary to what would be achieved if Conditions 5.68.8 through 5.68.16 of the Draft Permit were included in the final permit issued to the Facility: As the emission rate at the control device inlet decreases, demonstrating compliance with a minimum control efficiency requirement becomes progressively more difficult and progressively less necessary to

comply with the applicable requirement. As a hypothetical example, using methanol emissions from the fermentation system emissions unit to illustrate: If a future performance test shows that the methanol emission rate at the control device inlet is exactly 0.0668 pounds per hour, as assumed by MPCA, and that the control efficiency actually being achieved for methanol emissions is 95.0 percent rather than the listed value of 96.0 percent, but the fermentation system emissions unit has been idle for 20 percent of available operating hours during the preceding 12-month period, then methanol emissions to the atmosphere from the Fermentation System are 0.293 tons per year, precisely as assumed by MPCA. Alternatively, if a future performance test shows that the methanol emission rate at the control device inlet is 0.0534 pounds per hour, which is 20 percent less than the value assumed by MPCA, and that the control efficiency actually being achieved for methanol emissions is 95.0 percent rather than the listed value of 96.0 percent, then methanol emissions to the atmosphere from the Fermentation System are equal to or less than the annual rate of 0.293 tons per year assumed by MPCA.

34. In my opinion, the minimum control efficiency requirements in Conditions 5.68.8 through 5.68.16 of the Draft Permit should be omitted from the final issued permit because they are not applicable requirements, are not needed to ensure compliance with all applicable requirements, and are not necessary to maintain the Facility's potential emissions of hazardous air pollutants less than the applicable major source threshold at 40 CFR § 63.2.

D. Inappropriate Restrictions on Use of Credible Evidence

35. The Draft Permit includes numerous conditions which would provide that for certain emissions units, while operating outside specified ranges for certain operating

parameters, "the emissions during that time shall be considered uncontrolled until" the specified operating condition is restored. In only one of these conditions—Condition 5.54.1, which applies to periods when emissions normally routed to a control device known as the Regenerative Thermal Oxidizer ("TREA 25") are instead routed to a bypass stack—is the operating condition narrowly circumscribed so as to warrant a presumption of zero emission control effectiveness. As explained in the following paragraphs, the remaining seventeen conditions are inconsistent with Condition 5.1.25 and EPA's Credible Evidence Rule. In my opinion, each of these conditions should be revised to remove the blanket presumption of zero emission control effectiveness.

36. Conditions 5.65.26 and 5.67.21 of the Draft Permit, pertaining to flares ("TREA 3" and "TREA 15") used to control VOC emissions, provide that VOC emissions shall be considered uncontrolled during periods when there are visible emissions from the flare. This presumption is entirely without technical support. Although it is common on a national basis to restrict visible emissions from flares, these requirements have nothing to do with VOC emissions. As explained by EPA, "Smoking flares are environmentally less desirable because they emit particulate." *VOC Fugitive Emissions in Synthetic Organic Chemicals Manufacturing Industry—Background Information for Promulgated Standards* (EPA-450/3-80-033b), EPA, Research Triangle Park, NC, June 1982, at 4-6.[1] Indeed, to the contrary, based on testing of flares used for control of VOC emissions, EPA concluded, "Smoking flares achieve high gaseous hydrocarbon destruction efficiencies." *Flare Efficiency Study* (EPA-600/2-83-052), EPA, Research Triangle Park,

[1] Available on the EPA internet web site at https://nepis.epa.gov/Exe/ZyPDF.cgi/P1004XRZ.PDF?Dockey=P1004XRZ.PDF (last accessed February 16, 2023).

NC, July 1983, at 5.[2] Therefore, in my opinion, the presumption of zero control effectiveness for VOC emissions during periods when visible emissions from a flare are observed is inappropriate and should be deleted from Conditions 5.65.26 and 5.67.21 in the final issued permit for the Facility.

37. Condition 5.66.11 and 5.74.7 of the Draft Permit, pertaining to thermal oxidizers used to control VOC emissions ("TREA 6" and "TREA 25" respectively), provide that VOC emissions shall be considered uncontrolled during periods when the 3-hour rolling average combustion chamber outlet temperature is less than the value measured during a recent performance test. This presumption is inappropriate: It is reasonable to expect that operation of a thermal oxidizer with a combustion chamber outlet temperature that is elevated, but less than the listed value, will be shown by credible evidence to achieve a non-zero VOC control efficiency. In my opinion, the presumption of zero control effectiveness for VOC emissions during periods when the 3-hour rolling average combustion chamber outlet temperature is below the listed values should be deleted from Conditions 5.66.11 and 5.74.7 in the final issued permit for the Facility. A more appropriate approach is that used by MPCA for the thermal oxidizers at the Flint Hills Resources Pine Bend Refinery (Facility 03700011)("Pine Bend Refinery"). For each of the thermal oxidizers used to control VOC emissions from rail loading of gasoline ("TREA 61") and an oil/water separator ("TREA 62"), the Part 70 Permit for the Pine Bend Refinery establishes a minimum temperature and requires continuous temperature monitoring just as in the Draft Permit for the Facility, and requires prompt corrective

[2] Available on the EPA internet web site at https://nepis.epa.gov/Exe/ZyPDF.cgi/P1003QGZ.PDF?Dockey=P1003QGZ.PDF (last accessed February 16, 2023).

action following an excursion from the minimum temperature just as in the Draft Permit for the Facility. However, the Part 70 Permit for the Pine Bend Refinery does not establish a presumption regarding VOC control efficiency, thus allowing other credible evidence to be used to establish compliance or noncompliance with applicable VOC emission standards.

38. Conditions 5.69.2, 5.70.7, 5.71.4, 5.72.4, 5.73.5, 5.75.4, 5.79.1, 5.80.1, 5.81.4, and 5.82.4 of the Draft Permit, each pertaining to a fabric filter used to control PM emissions ("TREA 17," "TREA 18," "TREA 19," "TREA 21," "TREA 23," "TREA 26," "TREA 36," "TREA 37," "TREA 38," and "TREA 39," respectively), provide that PM emissions shall be considered uncontrolled during periods when the pressure drop across the filter is outside a specified range. Condition 5.71.10, pertaining to one of these fabric filters used to control PM emissions ("TREA 19"), provides that PM emissions shall be considered uncontrolled during the entirety of any calendar day when visible emissions are observed, no matter how short the duration of such period of visible emissions. These presumptions are inappropriate: It is reasonable to expect that operation of a fabric filter with non-zero visible emissions or with pressure drop outside the listed range will be shown by credible evidence to achieve a non-zero PM control efficiency. In my opinion, the presumptions of zero control effectiveness for PM emissions during the specified periods should be deleted from each of the listed conditions in the final issued permit for the Facility. A more appropriate approach is that used by MPCA for the fabric filters at the 3M Cottage Grove Abrasive Systems Division (Facility 16300017)("3M Abrasives Facility"). For each of these fabric filters, the Part 70 Permit for the 3M Abrasives Facility establishes a pressure drop range and requires periodic monitoring of pressure

drop and periodic stack observations to check for visible emissions, just as in the Draft Permit for the Facility, and requires prompt corrective action following an excursion from the pressure drop range or observation of visible emissions, just as in the Draft Permit for the Facility. However, the Part 70 Permit for the 3M Abrasives Facility does not establish a presumption regarding PM control efficiency, thus allowing other credible evidence to be used to establish compliance or noncompliance with applicable PM emission standards.

39. Conditions 5.68.20 through 5.68.22 and 5.68.24 of the Draft Permit, pertaining to the Fermentation System Scrubber, provides that VOC emissions from the fermentation system emissions unit shall be considered uncontrolled during periods when the flow rate of either water or chemical additive is less than the corresponding value measured during a recent performance test or the pressure drop is outside the corresponding range measured during a recent performance test. These presumptions are inappropriate: It is reasonable to expect that, provided the water flow rate and pressure drop are greater than zero, operation of a scrubber with water and/or chemical flow rates that are less than the listed values or pressure drop is outside the listed range will be shown by credible evidence to achieve a non-zero VOC control efficiency. In my opinion, even in the absence of the additional concerns described in ¶ 42 below, the presumption of zero control effectiveness for VOC emissions during periods when these parameters are outside the listed ranges should be deleted from Conditions 5.68.20 through 5.68.22 and 5.68.24 in the final issued permit for the Facility. A more appropriate approach is that used by MPCA for the scrubbers ("CE 004" and "CE 005") at the 3M Cottage Grove Corporate Incinerator (Facility 16300025)("3M Corporate Incinerator"). For these

scrubbers, the Part 70 Permit for the 3M Corporate Incinerator establishes a minimum water flow rate, maximum acidity level (functionally comparable to the minimum chemical additive flow rate), and maximum pressure drop and requires periodic monitoring of operational parameters, just as in the Draft Permit for the Facility. However, the Part 70 Permit for the 3M Corporate Incinerator does not establish a presumption regarding scrubber control efficiency, thus allowing other credible evidence to be used to establish compliance or noncompliance with applicable emission standards.

40. It would be impossible to comply with the Draft Permit if it were issued in its current form. Condition 5.83.4 of the Draft Permit, pertaining to TREA 42, requires that the condenser water flow rate be maintained at a rate equal to or greater than 45.0 gallons per minute. The same permit condition provides that VOC emissions from the fermentation system emissions unit shall be considered uncontrolled during periods when the condenser water flow rate "is above the maximum flow rate limit." The latter provision is based upon an entirely irrational presumption, as ethanol recovery efficiency in the condenser increases, not decreases, with greater condenser water flow rate. In my opinion, this presumption should be deleted from Condition 5.83.4 in the final issued permit for the Facility.

41. It is possible that use of the term "above the maximum" in Condition 5.83.4 in the Draft Permit represents a scrivener's error and that MPCA intended to adopt a presumption that VOC emissions from the fermentation system emissions unit shall be considered uncontrolled during periods when the condenser water flow rate is less than the listed value. In my opinion, this presumption also would be inappropriate: It is reasonable to expect that, provided the water flow rate is greater than zero, operation of

the condenser with water flow rate that is less than the listed value will be shown by credible evidence to achieve a non-zero ethanol recovery efficiency. In my opinion, even in the absence of the additional concerns described in ¶ 42 below, the presumption of zero ethanol recovery during periods when the condenser water flow rate is below the listed value should be deleted from Condition 5.83.4 in the final issued permit for the Facility. A more appropriate approach is that used by MPCA for the quench chamber ("CE 010") at the 3M Corporate Incinerator. The CE 010 quench chamber is functionally similar to TREA 42 in that it operates by lowering the temperature of the exhaust gas stream upstream of a scrubber. For quench chamber CE 010, the Part 70 Permit for the 3M Corporate Incinerator establishes a minimum water flow rate and requires periodic monitoring of operational parameters, just as in the Draft Permit for the Facility. However, the Part 70 Permit for the 3M Corporate Incinerator does not establish a presumption regarding control efficiency based on the operational status of the quench chamber, thus allowing other credible evidence to be used to establish compliance or noncompliance with applicable emission standards.

42. As discussed in ¶ 9 above, the TREA 42 condenser operates in series with the Fermentation System Scrubber. Each apparatus removes VOC from the gas stream exiting the fermentation system; operation of the condenser in conjunction with the Fermentation System Scrubber allows the Facility to achieve an overall VOC control efficiency greater than would be achieved using the Fermentation System Scrubber alone. In addition to my opinions regarding inappropriateness as set forth in ¶¶ 39 and 41 above, the presumptions in Condition 5.68.20 through 5.68.22 and 5.83.4 of the Draft Permit are ambiguous. In particular, it is unclear whether MPCA intends to presume that the

Fermentation System Scrubber achieves zero VOC control efficiency only when the scrubber operating parameters are outside the established ranges, or also to adopt the presumption that the Fermentation System Scrubber achieves zero VOC control efficiency merely because the TREA 42 condenser operating parameter is outside its established range. If the latter, then the presumption is even more plainly inappropriate, as it is indisputable that credible evidence would show the Fermentation System Scrubber achieves a non-zero VOC control efficiency when the scrubber is operating continuously in conformance with its established operating parameter ranges notwithstanding the operating condition of the TREA 42 condenser.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on February 21, 2023 at Pascagoula, Mississippi.

Colin Campbell

Digitally signed by Colin Campbell
Date: 2023.02.21 06:40:55 -05'00'

Colin M. Campbell

CURRICULUM VITAE – COLIN M. CAMPBELL

SUMMARY

As a Principal with RTP Environmental Associates, Inc., Colin Campbell provides expert training and consulting to regulatory agencies, private industry, and trade organizations in the field of stationary source air pollution control, permitting, and compliance. Representative engagements during his 30 years in this field include:

- Obtaining New Source Review (NSR) construction permits and title V operating permits for industrial facilities;
- Providing training to:
  - Local, State, and Federal air agency personnel on permitting requirements under the New Source Review (NSR) programs;
  - Attendees at RTP's Advanced NSR Workshops (held 2-3 times per year);
  - Private companies regarding NSR permitting;
- Managing RTP's efforts under the Arizona DEQ's Accelerated Permits Processing Program, wherein RTP provides technical support to the state agency in processing NSR permit applications; and
- Serving as an expert witness in NSR-related litigation, such as enforcement actions, and in quasi-judicial proceedings such as administrative appeals of NSR permits.

Prior to joining RTP Environmental, Mr. Campbell held positions with Woodward-Clyde Consultants, providing air quality consulting services to private industry, and at Pacific Environmental Services, providing technical support to U.S. EPA in matters relating to Clean Air Act permitting program implementation.

POSITIONS HELD

1) Principal

October 1997 to Present
RTP Environmental Associates Inc.
304-A West Millbrook Road
Raleigh, NC 27609

As Principal with RTP Environmental Associates and manager of the firm's North Carolina office, Colin Campbell provides expert training and consulting to private industry and to regulatory agencies in the field of air pollution control, permitting, and compliance.

Air Quality Permitting and Compliance

- Served as Project Manager and Lead Contractor for the Arizona Department of Environmental Quality's Accelerated Permits Processing Program, which allows applicants to reimburse the State for the cost of having an approved contractor review permit applications and draft and process permits. Project elements typically include critical review of the emission inventory; regulatory applicability analyses, including complex net emissions increase determinations under the NSR and Prevention of Significant Deterioration (PSD) programs; air pollution control technology reviews including Best Available Control Technology (BACT), Lowest Achievable Emission Rate (LAER), and case-by-case Maximum Achievable Control Technology (MACT); critical review of air quality impacts analyses, including National Ambient Air Quality Standards (NAAQS) and PSD increment conformance demonstrations; evaluation of visibility impacts in the Grand Canyon National Park and other mandatory federal Class I areas; analyses of impacts on soils and vegetation under the PSD program; critical review of Compliance Assurance Monitoring (CAM) plans; drafting the proposed permit and the accompanying engineering reviews and technical support documents; and reviewing and preparing responses to comments received from U.S. Environmental Protection Agency (EPA), Federal Land Managers, and the general public. Projects completed by Mr. Campbell include:
  - PSD and title V permits for a new, 150,000 barrel-per-day grassroots petroleum refinery. This was the first such facility ever permitted under a PSD program approved by EPA as part of a State Implementation Plan (SIP);
  - Retroactive PSD and title V permits for an existing steel mini-mill that had not been able to demonstrate compliance with its synthetic minor emission limits;
  - PSD and title V permits for two new, 400-megawatt coal-fired electric utility steam generating units that "netted out" of PSD review for NO_X and SO_2 by overcontrolling two existing coal-fired steam generating units. This was the first of several similar projects nationwide to use the netting approach to avoid PSD review for new coal-fired electric generating capacity;
  - PSD and title V permits for a proposed, greenfield Portland cement plant locating within a National Forest;
  - PSD, nonattainment NSR, and title V permits for a new cement kiln replacing three existing kilns; and
  - PSD and title V permits for several natural gas-fired, combined-cycle power plants.
- Provided technical support and expert testimony in support of PSD permits issued by the Utah Department of Environmental Quality for a proposed, 270-megawatt, coal-fired power plant using circulating fluidized bed technology and a proposed, 950-megawatt pulverized coal-fired power plant. Responsibilities prior to permit issuance included reviewing and assisting with development of proposed

Approval Order (i.e., permit) conditions and technical support documents, particularly with regard to proposed BACT determinations. Represented the Executive Director of Utah DEQ as an outside expert during the administrative appeals process, in adjudicatory hearings before the Utah Air Quality Board, providing testimony on all aspects of BACT applicability and BACT determinations, including the appropriateness of considering alternative electricity generating technologies as a control option.

- Managed RTP's efforts in providing expert support to the Arizona DEQ and the Clark County (NV) Department of Air Quality and Environmental Management in rulemaking efforts involving wholesale revisions of NSR permitting rules. Scope included reviewing current air permitting rules for possible improvements, making recommendations to agency management regarding NSR reform implementation and other improvements, leading stakeholder interaction, drafting rule revisions and stakeholder responses, and assisting the agencies in obtaining SIP approval from EPA Region 9.
- Led PSD permitting efforts for a grassroots, world-scale, Midwestern U.S. petroleum refinery with hydrogen-producing, carbon-capture-ready IGCC power plant. Responsibilities include all PSD technical analyses and regulatory applicability analyses.
- Led PSD permitting efforts for a grassroots, natural gas-based nitrogenous fertilizer manufacturing complex in Idaho. Responsibilities included all PSD technical analyses and regulatory applicability analyses, negotiation of permit terms, and testimony in defense against administrative appeal of permit.
- Provided non-testifying, consulting expert services for a Midwestern petroleum refinery in litigation with the United States regarding alleged PSD and NSPS violations. The alleged modifications were believed by the refinery and were treated by the state permitting authority as pollution control projects.
- Managed permitting efforts for a PAL permit, including Plantwide Applicability Limits for all regulated NSR pollutants, for a large automobile assembly plant in South Carolina. Subsequently managed permitting efforts for a PAL major modification, including a PSD permit, for the same facility. Responsibilities included all regulatory applicability analyses, development of required PAL compliance demonstration mechanisms, BACT analyses, and negotiation of permit terms.
- Led PSD permitting of a large municipal sewage sludge-fired, electric-generating, glass aggregate production facility in Detroit. Project included emission inventory preparation, regulatory applicability analyses, BACT analyses for multiple pollutants, multi-source air quality impacts analyses, development of compliance monitoring procedures, and extensive interaction with active environmental and citizens' groups.
- Prepared minor NSR construction permit applications for complex modernization and clean fuels projects at several domestic petroleum refineries. Project

elements included preparing emission estimates and complex netting analyses, identifying economical opportunities for creditable and contemporaneous emissions decreases, performing regulatory applicability analyses, negotiating permit terms, and coordinating permitting activities with Consent Decree compliance initiative.

- Conceived and successfully implemented a novel approach for revising the air permits for expansion of a petroleum refinery in Utah where the preconstruction NSR permitting process, not involving RTP, had resulted in unachievable emission limits intended to preclude applicability of nonattainment NSR and associated emission offset requirements. The revised approach required a demonstration that the refinery, located in an area designated nonattainment with respect to the NAAQS for PM2.5 (fine particulate matter), was a non-major source of PM2.5. This strategy allowed the refinery owner to avoid the requirement for emissions offsets costing in excess of ten million dollars.
- Led PSD and title V permitting projects at chemical and pharmaceutical manufacturing facilities in Eastern and Southeastern U.S. Project elements included emission inventory preparation, regulatory analyses, BACT analyses, air quality impacts analyses, compliance assessment, development of compliance monitoring procedures, preparation of permit applications, and negotiation of permit terms.
- Led successful PSD permitting efforts for significant expansion of a fiber glass insulation manufacturing plant in Kansas. Project elements included emission inventory preparation, regulatory analyses, BACT analyses, air quality impacts analyses, compliance assessment, development of compliance monitoring procedures, preparation of permit application, and negotiation of permit terms.
- Provided technical support to owners and operators of coal- and natural gas-fired electric power plants in Arizona, agribusiness facilities in Idaho, and a sodium carbonate production plant in Wyoming in developing Best Available Retrofit Technology (BART), reasonable progress, and better-than-BART demonstrations under the Clean Air Act's Regional Haze program. Responsibilities included air pollution control technology evaluations, including assessment of technical feasibility and cost effectiveness; developing and commissioning site-specific photochemical grid modeling analyses to quantify potential reductions in anthropogenically-caused visibility impairment; and negotiating rule requirements under SIPs and a Federal Implementation Plan (FIP).
- Assisted electric utility and petroleum refinery clients in designing and implementing air permitting applicability review procedures for planned capital expenditures. Procedural documents for petroleum refinery clients includes unit-specific listing of upstream and downstream potential impacts; electronic link to production records to ensure continual updating of actual emissions baseline; and templates for documentation of non-applicability determinations. Implementation ensured minimal impact of applicability reviews on the capital approval processes while also minimizing enforcement liability for errant determinations.

- Provided technical support to counsel and led negotiation of air pollution control-related requirements in complex settlement negotiations for clients in the electric utility, glass container manufacturing, natural gas transmission, and petroleum refining industries alleged by the United States to have violated the requirement to obtain PSD or nonattainment NSR permits under the Clean Air Act for construction or modification of a major stationary source. Efforts led to favorable settlement terms embodied in judicially enforceable consent decrees and releases from civil liability for historical NSR violations.
- Provided both testifying and non-testifying (consulting) expert support for two publicly held utilities in defense of enforcement actions brought by EPA for alleged modifications at coal-fired power plants. Scope of expert testimony included the proper interpretation of NSR and NSPS applicability exclusions, particularly the exclusions for routine maintenance, repair, and replacement activities; project emissions increase and net emissions increase calculations; BACT applicability and timing; and both current and historical BACT determinations.
- Performed historical PSD/NSR applicability studies and NSR-avoidance permitting, including retroactive netting, for facilities in forest products and surface coating industries.

Air Quality Training

- Mr. Campbell has presented more than 400 days of in-depth training on NSR-related topics, to a cumulative total of more than 3,000 students, including personnel from all State air pollution control agencies in the U.S. Training course development and presentation activities include:
  - Assisted in initial preparation of, and continuing to provide support in periodic updating of, *Advanced New Source Review* training course offered by RTP Environmental. This training course provides a comprehensive review of federal PSD and nonattainment NSR regulatory provisions, interpretive guidance, and pertinent case law.
  - Co-presenter, approximately 2-3 times annually, of 4-day commercial version of the *Advanced New Source Review* training course offered by RTP Environmental. Attendees at these workshops typically include regulated industry representatives, attorneys in private practice, other air quality consultants, and representatives of Federal, State, and local agencies.
  - Co-presenter of 4-day version of the *Advanced New Source Review* training course specifically tailored for and presented to permitting agency personnel. Clients include Central States Air Resource Agencies (CENSARA), a group of nine state air pollution control agencies in the Midwest and the Plains; Lake Michigan Air Directors Consortium (LADCO), a group of six state air pollution control agencies in the Great Lakes region; Southeastern States Air Resource Managers (SESARM), a group of eight southeastern state air pollution control agencies; and individual state agencies; Western States Air Resources Council

(WESTAR), a group of fifteen western state air pollution control agencies; and EPA.

- Developed, on behalf of WESTAR and CENSARA, a comprehensive training course on BACT issues for state and local air pollution control agency personnel. This training course provides a thorough review of legislative history, statutory and regulatory provisions, interpretive guidance, and pertinent case law. The workshop also includes exercises to facilitate learning of complex BACT topics such as evaluating technical feasibility; identifying and evaluating environmental impacts; determining, weighing, and applying cost effectiveness and other measures of economic impacts for alternative air pollution control techniques; and establishing clear and enforceable emission limitations representing BACT.
- Co-presenter of 3-day BACT training course for state and local permitting agency personnel. Clients include CENSARA; LADCO; WESTAR; Mid-Atlantic Regional Air Management Association (MARAMA), an association of ten state and local air pollution control agencies; and Northeast States for Coordinated Air Use Management (NESCAUM), an association of eight state and local air pollution control agencies; and individual state agencies.
- Periodically prepare and present custom-designed air pollution control training courses, pertaining primarily to PSD and nonattainment NSR applicability issues, for private sector clients. Clients include regulated entities and trade associations in the petroleum refining, transportation, and marketing; oil and gas; electric generation; chemical manufacturing; portland cement; glass production; and wood products industries.

2) Assistant Project Engineer

October 1994 to October 1997
AECOM Technology Corp. (formerly Woodward-Clyde Consultants, Inc.)
Raleigh, NC 27604

As Assistant Project Engineer with Woodward-Clyde, Mr. Campbell was responsible for performing and managing air permitting and compliance projects including:

- Major nonattainment NSR permitting and PSD-avoidance permitting of a new non-recovery coke-making facility for an integrated Midwestern U.S. steel mill;
- Preparing Title V permit applications for an integrated chemical manufacturing facility in West Virginia and for synthetic fibers manufacturing plants in South Carolina;
- Coordinating air quality compliance activities for all southeastern and midwestern U.S. facilities for a large, multinational chemical manufacturer;
- Preparing retrospective NSR applicability analyses, including evaluation of claimed applicability exclusions and determination of net emissions increases, for several facilities acquired by a large wood products company.

3) Environmental Engineer

December 1991 to October 1994
John Wood Group plc (formerly Pacific Environmental Services, Inc.)
Research Triangle Park, NC 27709

As an Environmental Engineer with Pacific Environmental Services, Mr. Campbell provided technical support on various air quality programs implemented by EPA including:

- Planning and implementing a nationwide data gathering and compilation effort for emission test results in support of emission factor development;
- Reviewing and grading emission test results for categories of sources in the chemical, metallurgical, and mineral production industries;
- Developing emission factors and preparing updates to EPA's emission factor compilation ("AP-42") for categories of sources in the chemical, metallurgical, and mineral production industries;
- Performing air compliance inspections for stationary sources throughout the southeastern U.S., including such diverse facilities as coal-fired power plants, an integrated chemical and pharmaceutical manufacturing plant, kraft pulp mills, a plywood manufacturing plant, and a magnetic tape manufacturing plant; and
- Developing the Enhanced Monitoring rule, issued by EPA as a proposed rulemaking in 1993 and later codified as the Compliance Assurance Monitoring (CAM) rule.

EXPERT TESTIMONY

- Deposition and trial testimony on behalf of defendants in *United States v. Illinois Power Co.*, S.D. Ill., No. 99-833-MJR.
- Deposition testimony on behalf of defendant in *U.S. v Questar Gas Management Company*, D. Utah, No. 2:08-cv-00167-DAK.
- Deposition testimony and testimony at contested case hearing on behalf of Permittee *In the matter of the Prevention of Significant Deterioration (PSD) Air Quality Permit Application of Hyperion Energy Center – Hyperion Refining LLC. Permit # 28.0701-PSD*. Before the Board of Minerals and Environment, Department of Environment and Natural Resources.
- Deposition testimony on behalf of Permittee in File No. DAQ-27602-042, Commonwealth of Kentucky Environmental and Public Protection Cabinet, *Sierra Club, Valley Watch, Inc. and Save the Valley, Inc., Petitioners, v. Environmental and Public Protection Cabinet and Louisville Gas and Electric Company, Respondents*.
- Pre-filed testimony, deposition testimony, and testimony at contested case hearing on behalf of Permittee in File No. DAQ-41001-046, Commonwealth of Kentucky Energy and Environment Cabinet, *Sierra Club, Ursuline Sisters of Mount Saint*

Joseph, and Valley Watch, Inc., Petitioners, v. Energy and Environment Cabinet and Cash Creek Generating, LLC, Respondents.

- Deposition testimony on behalf of defendant in *AGC Flat Glass North America, Inc. v. Pilkington Group Limited, et al*. Commonwealth of Kentucky, Madison Circuit Court, Division 1. Civil Action No. 05-CI-656.
- Deposition and hearing testimony on behalf of the Executive Secretary of the Utah Air Quality Board in Project Code: N2529-001, Before the Utah Air Quality Board, *In Re: Approval Order – the Sevier Power Company 270 MW Coal-Fired Power Plant, Sevier County.*
- Pre-filed testimony and deposition testimony on behalf of Permittee in Case No. BER 2007-07-AQ, Before the Board of Environmental Review of the State of Montana, *In the Matter of: Southern Montana Electric Generation and Transmission Cooperative – Highwood Generating Station.*
- Deposition testimony on behalf of defendants in *Sierra Club v. City of Holland, Michigan and Holland Board of Public Works*, W.D. Michigan, No. 1:08-cv-1183.
- Pre-filed testimony on behalf of Permittee in Consolidated SOAH Docket No. 582-08-0861, Before the Texas State Office of Administrative Hearings, *Application of NRG Texas Power LLC for State Air Quality Permit 79188 and Prevention of Significant Deterioration Air Quality Permit PSD-TX-1072 and Hazardous Air Pollutant Major Source [FCAA § 112(g)] Permit HAP-14.*
- Deposition testimony in *Louisiana Generating LLC and NRG Energy, Inc., v. Illinois Union Insurance Company*, No. 3:10-cv-00516, M.D. La.
- Affidavit in *United States et al. v. DTE Energy Co. et al.*, No. 2:10-cv-13101-BAF, E.D. Mi.
- Deposition testimony on behalf of defendants in *Invista B.V. et al. v. E.I. duPont de Nemours & Co., Inc*, S.D. N.Y., No. 08-cv-3063 (SHS).
- Testimony at contested case hearing on behalf of Permittee in SOAH Docket No. 582-13-5205; TCEQ Docket No. 2013-1191-AIR, *Application of Corpus Christi Liquefaction, LLC for Air Quality Permit Nos. 105710 and PSDTX1306, for the Construction of a Natural Gas Liquefaction and Export Terminal with Regasification Capabilities, in San Patricio County, Texas*.
- Deposition testimony in *In the Matter of Air Quality Permit to Construct No. P-2013.0030 Issued to Magnolia Nitrogen Idaho LLC: Conagra Foods Lamb Weston, Inc. v. Idaho Dept. of Environmental Quality and Magnolia Nitrogen Idaho LLC*, Docket No. 0101-14-01, Before the Idaho Board of Environmental Quality.
- Deposition and trial testimony on behalf of defendants in *United States v. Westvaco Corporation,* D. Md., No. MJG-00-2602.
- Trial testimony on behalf of defendant in *Unitek Solvent Services, Inc., v. Chrysler Group LLC*, D. Hawaii, Civil No. 12-00704.

- Hearing testimony in *In the Matter of: El Dorado Chemical Company*, Docket No. 13-008-P, before the Arkansas Pollution Control & Ecology Commission.
- Deposition and trial testimony on behalf of defendants in *United States et al. v. Ameren Missouri*, E.D. Mo., No. 4:11-cv-00077-RWS.
- Testimony at technical hearing on behalf of Applicant in Docket No. 6630-CE-305, Before the Public Service Commission of Wisconsin, *Application of Wisconsin Electric Power Company for a Certificate of Authority to Construct and Place in Operation a 50 MW Biomass-Fueled Co-generation Facility to be Located in the Village of Rothschild in Marathon County*.
- Trial testimony on behalf of plaintiff in *Salt River Project Agricultural Improvement and Power District v. Arizona Corporation Commission, et al.*, Superior Court of Maricopa County (AZ), Case No. CV2022-008624.

RECENT PUBLICATIONS

- *Law of Environmental Protection*, Vol. 2, Part XI, "New Source Review" (Environmental Law Inst. 2022).

ACADEMIC TRAINING AND EDUCATION

Degree: Bachelor of Science in Mechanical Engineering
Institution: North Carolina State University
Date: May 1991

Degree: Bachelor of Science in Economics
Institution: North Carolina State University
Date: December 1991

PROFESSIONAL ACTIVITIES

- Member, Air and Waste Management Association, since 1997.

Exhibit 2

UNITED STATES DISTRICT COURT

DISTRICT OF MINNESOTA

UNITED STATES, PLAINTIFF, and the STATE OF MINNESOTA, BY ITS MINNESOTA POLLUTION CONTROL AGENCY, Plaintiff-Intervenor, v. AL-CORN CLEAN FUEL COOPERATIVE, AND AL-CORN CLEAN FUEL LIMITED PARTNERSHIP, Defendants.	Civil Action Number: Cv 02-3792 CONSENT DECREE

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FILED MAR 07 2003
RICHARD D. SLETTEN, CLERK
JUDGMENT ENTD
DEPUTY CLERK

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CONSENT DECREE

WHEREAS, Plaintiff, the United States of America (hereinafter "Plaintiff" or "the United States"), on behalf of the United States Environmental Protection Agency (herein, "EPA"), has, simultaneously with lodging of this Consent Decree, filed a Complaint alleging that Defendant, Al-Corn Clean Fuel Cooperative and Defendant Al-Corn Clean Fuel Limited Partnership (collectively referred to herein as, "Al-Corn" or "Defendant") commenced construction of a major emitting facility and major modifications of a major emitting facility in violation of the Prevention of Significant Deterioration ("PSD") requirements at Part C of the Clean Air Act (the "Act"), 42 U.S.C. §§ 7470-7492, and the regulations promulgated thereunder at 40 C.F.R. § 52.21 (the "PSD Rules");

WHEREAS, Plaintiff further alleged that Defendant commenced construction of an emitting facility or modified an emitting facility without first obtaining the appropriate preconstruction permits and installing the appropriate air pollution control equipment required by 40 C.F.R. § 52.21 and the Minnesota State Implementation Plan ("SIP") approved pursuant to 42 U.S.C. § 7410;

WHEREAS, Plaintiff further alleged that potential air emissions from the Defendant's facility were underestimated;

WHEREAS, the State of Minnesota, through the Minnesota Pollution Control Agency ("MPCA" or "Plaintiff-Intervenor"), has, simultaneously with lodging of this Consent Decree, filed a Complaint in Intervention, alleging that Al-Corn was and is in violation of the Minnesota SIP, by failing to obtain the appropriate pre-construction permits, by failing to accurately report

emissions increases, and by failing to install appropriate pollution control technology, in violation of applicable state laws, including Minnesota Rule ("Minn. R.") 7007.3000;

WHEREAS, in 1995, three hundred fifty-four (354) farm families in the Claremont area in south central Minnesota organized themselves into a cooperative known as Al-Corn to build an ethanol plant;

WHEREAS, MPCA issued a minor source permit for the plant on April 29, 1996, and ethanol production began in 1996;

WHEREAS, Al-Corn is a small facility that has produced ethanol in the following quantities:

- 1996 11.73 million gallons
- 1997 13.14 million gallons
- 1998 14.47 million gallons
- 1999 16.69 million gallons
- 2000 17.71million gallons
- 2001 17.89 million gallons;

WHEREAS, in January, 2001, Al-Corn's Board of Directors voted to spend approximately $2.0 million to install a thermal oxidizer;

WHEREAS, Al-Corn ordered its thermal oxidizer in November, 2001. On October 17, 2001, Al-Corn applied for an amendment to its MPCA permit in order to install its thermal oxidizer and expand its plant;

WHEREAS, on April 19, 2002, the MPCA issued a permit to Al-Corn allowing it to install its thermal oxidizer and expand its plant;

WHEREAS, the thermal oxidizer is expected to be operational during the late summer of 2002;

WHEREAS, on February 7, 2002, the MPCA met with representatives of the ethanol plants in Minnesota, including Al-Corn, to discuss VOC test results, VOC emissions, and related compliance issues;

WHEREAS, on April 30, 2002, Al-Corn executed a letter of commitment to negotiate with EPA and MPCA for the installation of controls on its plant to address the possible exceedance of air quality limits;

WHEREAS, Al-Corn has worked cooperatively with EPA and MPCA regarding the alleged violations and voluntarily provided requested information without information requests under Section 114 of the Act, 42 U.S.C. § 7414;

WHEREAS, the Defendant does not admit the violations alleged in the Complaints;

WHEREAS, the United States and Plaintiff-Intervenor (collectively "Plaintiffs"), and the Defendant have agreed that settlement of this action is in the best interest of the parties and in the public interest, and that entry of this Consent Decree without further litigation is the most appropriate means of resolving this matter; and

WHEREAS, Plaintiffs and the Defendant consent to entry of this Consent Decree without trial of any issues;

NOW, THEREFORE, without any admission of fact or law, and without any admission of the violations alleged in the Complaints, it is hereby ORDERED AND DECREED as follows:

I. JURISDICTION AND VENUE

1. The Complaints state a claim upon which relief can be granted against the

Defendant under Sections 113 and 167 of the Act, 42 U.S.C. §§ 7413 and 7477, and 28 U.S.C. § 1355. This Court has jurisdiction of the subject matter herein and over the parties consenting hereto pursuant to 28 U.S.C. § 1345 and pursuant to Sections 113 and 167 of the Act, 42 U.S.C. §§ 7413 and 7477. Venue is proper under Section 113(b) of the Act, 42 U.S.C. § 7413(b), and under 28 U.S.C. § 1391(b) and (c).

II. APPLICABILITY

2. The provisions of this Consent Decree shall apply to and be binding upon the Plaintiffs and upon the Defendant as well as the Defendant's officers, employees, agents, successors and assigns. In the event Defendant proposes to sell or transfer its facility (i.e., a plant or mill) subject to this Consent Decree before termination of the Consent Decree, it shall advise such proposed purchaser or successor-in-interest in writing of the existence of this Consent Decree, and shall send a copy of such written notification by certified mail, return receipt requested, to the EPA Regional Administrator for the region in which the facility is located before such sale or transfer, if possible, but no later than the closing date of such sale or transfer. The Defendant shall provide a copy of the Consent Decree and the Control Technology Plan required in Paragraph 15 of this Consent Decree to the proposed purchaser or successor-in-interest. In the event the Defendant sells or otherwise assigns any of its right, title, or interest in its facility, prior to termination of the Consent Decree, the conveyance shall not release the Defendant from any obligation imposed by this Consent Decree unless the party to whom the right, title or interest has been transferred agrees in writing to fulfill the obligations of this Consent Decree.

III. FACTUAL BACKGROUND AND APPLICABLE DEFINITIONS

3. (a) Al-Corn is a "person" as defined in Section 302(e) of the Act, 42 U.S.C. § 7602(e), and the federal and state regulations promulgated pursuant to the Act.

(b) Al-Corn owns and operates a plant in Claremont, Minnesota, for the manufacture of ethanol. Al-Corn receives whole corn which is then milled, cooked, and fermented. After fermentation, the raw product is distilled to produce ethanol. Distillation separates the liquid ethanol from the corn meal, which Al-Corn may dry or sell as wet mash for animal feed. The Plaintiffs allege that in the course of these manufacturing activities significant quantities of particulate matter ("PM"), particulate matter at or below 10 microns ("PM_{10}"), carbon monoxide ("CO"), volatile organic compounds ("VOCs"), nitrogen oxides ("NOx") and other pollutants are generated, including hazardous air pollutants ("HAPs") listed under Section 112(b)(1), 42 U.S.C. § 7412(b)(1) of the Act. The primary sources of these emissions are the feed dryers, fermentation units, gas boilers, cooling cyclones, ethanol truck load-out systems, and the fugitive dust emissions from the facility operations, including roads.

(c) Plaintiffs allege that Al-Corn's ethanol plant in Claremont, Minnesota is a "major emitting facility," as defined by Section 169(1) of the Act, 42 U.S.C. § 7479(1), and the federal and state regulations promulgated pursuant to the Act.

(d) Definitions: Unless otherwise defined herein, terms used in this Consent Decree shall have the meaning given to those terms in the Act, and the federal and state regulations promulgated pursuant to the Act.

IV. COMPLIANCE PROGRAM SUMMARY

4. Al-Corn shall implement a program of compliance at its ethanol distillation facility to attain the emission levels required under this Consent Decree for VOC, PM, PM_{10},

CO, and NOx. Al-Corn's compliance program is summarized below in Paragraphs 5 through 10, and implemented through Paragraphs 15 through 17 and 26 through 28 of this Consent Decree.

5. Al-Corn shall implement a program to control and minimize fugitive particulate matter emissions from facility operations as set forth in the approved Control Technology Plan required under Part V of this Consent Decree and which is Attachment 1 to this Consent Decree.

6. Al-Corn shall demonstrate compliance with the required emission levels on a unit-by-unit basis as set forth in the approved Control Technology Plan.

7. Al-Corn shall demonstrate compliance with the emission limits established under this Consent Decree by the use of performance testing, parametric monitoring, recordkeeping and reporting, or initial and periodic compliance testing, where appropriate, as set forth in the approved Control Technology Plan.

8. Al-Corn shall maintain records to demonstrate compliance with New Source Performance Standards ("NSPS"), Part 60, Subparts Dc, Kb, and VV, and its fugitive dust management program.

9. Al-Corn shall accept source-wide allowable emission caps equivalent to 95 tons per year ("TPY"), for each pollutant, for VOCs, PM, PM_{10}, sulfur dioxide ("SO_2"), NO_X, and CO based on a 12-month rolling sum, rolled monthly, and recorded monthly.

10. Al-Corn shall apply for a modification to its federally-enforceable operating permit to incorporate the 95 TPY allowable emission caps and the lower emission limits applicable to each unit as set forth in the approved Control Technology Plan.

11. Al-Corn shall obtain a federally-enforceable permit prior to beginning construction or operation of any future modification that will result in a significant net emission

increase as defined by 40 C.F.R. Part 52, but will not exceed the 95 TPY allowable emission caps. The modifications required in Part V Section A ("Installation of Controls and Applicable Emission Limits") of this Consent Decree and any modification that qualifies under Minnesota Rule 7007.1250 and 7007.1450 subp. 2 are excluded from the requirements of this Paragraph. For purposes of determining whether a modification will result in a significant net emissions increase, Al-Corn shall use results from its initial compliance testing to determine its past actual emissions baseline. Al-Corn shall include in its application for the federally-enforceable permit, and MPCA shall propose to incorporate in the permit, the 95 TPY allowable emission caps or a schedule to meet the 95 TPY allowable emission caps and all emission limits, monitoring and recordkeeping requirements as set forth in the approved Control Technology Plan and this Consent Decree, and Al-Corn shall not contest what is contained in its permit application.

12. If, as a result of any future modifications, prior to termination of the Consent Decree, the total limited potential emissions of VOCs, PM, PM_{10}, SO_2, NO_X and CO will exceed the 95 TPY allowable emission caps, then Al-Corn shall complete and submit for MPCA approval a source-wide PSD/NSR permit application that includes the approved Control Technology Plan requirements as set forth in this Consent Decree. To the extent that Al-Corn demonstrates, through results of compliance tests or evidence of operating conditions, that its facility has operated below the 95 TPY emission caps for 24 months, the facility shall be treated as a synthetic minor for air permitting requirements and permit requirements for future modifications will be governed by applicable state and federal regulations.

13. Except as provided in Paragraph 12, if as a result of any future modifications, prior to termination of the Consent Decree, the total limited potential emissions of VOCs, PM,

PM_{10}, SO_2, NO_X and CO will exceed the 95 TPY allowable emission caps , then Al-Corn shall obtain a PSD/NSR permit prior to beginning construction of those modifications. Following termination of the Consent Decree, Al-Corn shall obtain necessary permits or permit amendments, as required under applicable state and federal regulations.

14. Al-Corn shall include in its application, and MPCA shall propose to incorporate, the emission limits, monitoring and recordkeeping requirements of the approved Control Technology Plan and this Consent Decree into any existing or new permit issued to the source as federally-enforceable Title I permit conditions and such emission limits, monitoring and recordkeeping requirements shall remain applicable to the source for the life of its operation or until changed through a permit amendment. Al-Corn shall not contest what is contained in its permit application. Requirements under this Consent Decree excluded under this Paragraph as Title I conditions are NSPS Subparts Dc, Kb, and VV, and the fugitive emission control program referenced in Paragraphs 15(j) and (h), respectively. In addition, the Consent Decree shall be referenced in the permit as the legal basis for all applicable requirements created by the Consent Decree.

V. COMPLIANCE PROGRAM REQUIREMENTS

A. Installation Of Controls And Applicable Emission Limits

15. Al-Corn shall implement a plan for the installation of air pollution control technology ("Control Technology Plan") capable of meeting the following emission level reductions for the identified units in subparagraphs (a) through (j). Al-Corn's Control Technology Plan, which has been approved by Plaintiffs, is Attachment 1 to this Consent Decree:

(a) Feed Dryers: 95 percent reduction of VOC or emissions no higher than 10 parts per million ("PPM") of VOC, 90 percent reduction of CO emissions or emissions no higher than 100 PPM CO, and reduction of PM and PM_{10} based on operation of pollution control technology specified in the approved Control Technology Plan and as established after initial performance testing pursuant to Paragraph 24 of this Consent Decree. A NO_X emission factor shall be established after initial performance testing required pursuant to Paragraph 23 of this Consent Decree. The emission factor will be used to determine compliance with Paragraph 15(g). The following units are subject to these limits: EU 013, EU 037

(b) Fermentation Units: 95 percent reduction of VOC or if the inlet is less than 200 PPM of VOC, then 20 PPM or lower of VOC. The following units are subject to this limit: EU 009-EU 012, EU 038-EU 039, EU 045, EU 052

(c) Gas Boilers: Installation of low NOx burner on EU 017. A NOx emission factor shall be established after initial performance testing required pursuant to Paragraph 23 of this Consent Decree. The emission factor will be used to determine compliance with Paragraph 15(g). The following unit is subject to these limits: EU 017

(d) Cooling Cyclones: 95 percent reduction of VOC or emissions no higher than 10 PPM of VOC. The following unit is subject to this limit: EU 018

(e) Fugitive Dust Control PM: A program shall be developed for minimization of fugitive dust emissions from facility operations. The following area is subject to this program: FS 002

(f) Ethanol Loadout:
Truck loadout: Design an enclosure for total capture of VOC and operate a closed loop system vented to the feed dryer control equipment for destruction of the captured VOC.
Railcar loadout: All railcars shall be dedicated as ethanol only.
The following unit is subject to this limit: FS 001

(g) Additional Requirements for NOx Emission Units: Establish a Group NOx limit based on 0.04 lbs of NOx per unit, per MMBtu at capacity. An adjustment for propane usage may be made for a designated period of time based on a limit of 0.08 lbs of NOx per MMBtu. Emission factors for each unit in this group shall be established during the initial performance test required in Paragraph 23 of this Consent Decree and will be used to calculate compliance with the Group NOx limit, based

on actual fuel usage for all emission units in this group. The fuel used by this group as a whole shall not allow NOx emissions in excess of 41.7 TPY. The following units are subject to this limit: EU 013, EU 017, EU 037, EU 042

(h) Fugitive VOC: Implement and comply with the requirements of 40 C.F.R. Part 60, Subpart VV. The following unit is subject to these requirements: FS 004

(i) Additional Requirements for Hazardous Air Pollutants ("HAPs"): Beginning no later than 180 days following the start-up of the last piece of control equipment required in the approved Control Technology Plan, Al-Corn shall continually operate its facility so as not to exceed source-wide allowable emissions of 9.0 TPY for any single HAP or 24.0 TPY for all HAPs based on a 12-month rolling sum, rolled monthly, and recorded monthly. For the first eleven months, beginning no later than 180 days following start-up of the last piece of control equipment required in the approved Control Technology Plan, compliance with the 12-month rolling sum will be demonstrated based on the schedule to meet applicable emission caps as set forth in the approved Control Technology Plan. If, based on emissions testing as set forth in the approved Control Technology Plan, additional control measures are required to meet the 9.0 or 24.0 TPY emission caps, such control measures shall be implemented and included in the operating permit application required under Paragraph 17.

(j) New Source Performance Standards (NSPS): Identify and implement applicable NSPS requirements codified at 40 C.F.R. Part 60. The following NSPS apply: NSPS subpart Dc (Small Industrial Commercial-Institutional Steam Generating Units less than 29 MW (100 million BTu/hour)); NSPS subpart Kb (Volatile Organic Liquid Storage Vessels); and NSPS subpart VV (Synthetic Organic Chemicals Manufacturing Industry Leak Detection, Monitoring and Repair Requirements).

16. Al-Corn shall implement the approved Control Technology Plan in accordance with the schedule set forth in that plan. Al-Corn's approved Control Technology Plan is incorporated by reference herein and made directly enforceable by Plaintiffs under this Consent Decree.

B. Permitting And Modification

17. Source-wide Permit: By no later than 180 days following the start-up of the last piece of control equipment required in the approved Control Technology Plan, Al-Corn shall apply for a modification to its federally-enforceable operating permit(s) to incorporate the 95 TPY source-wide allowable emission caps as described in Paragraph 9.

18. Future Modifications: Except as provided in Paragraph 12, for the effective period of the Consent Decree, Al-Corn shall obtain a federally-enforceable permit prior to beginning construction or operation of any future modification that will result in a significant net emission increase as defined by 40 C.F.R. Part 52, but will not exceed the 95 TPY allowable emission caps. The modifications required in Part V Section A ("Installation of Controls and Applicable Emission Limits") and the approved Control Technology Plan of this Consent Decree and any modification that qualifies under Minnesota Rule 7007.1250 and 7007.1450 subp. 2 are excluded from the requirements of this Paragraph. This permit shall incorporate the 95 TPY allowable emission caps or a schedule to meet the 95 TPY allowable emission caps and emission limits, monitoring and recordkeeping requirements as set forth in the approved Control Technology Plan and this Consent Decree, including the requirements establishing the emission level reductions within the Control Technology Plan.

19. In determining whether a future modification will result in a significant net emissions increase, Al-Corn cannot take credit for any emission reductions resulting from the implementation of the approved Control Technology Plan for netting purposes as defined by 40 C.F.R. § 52.21(b)(3). In addition, the emission reductions of PM, PM_{10}, NOx, SO_2 and CO required under this Consent Decree and the applicable NSPS may not be used for any emissions

offset, banking, selling or trading program. VOC emissions reductions up to 98 percent of the uncontrolled feed dryer emissions may not be used for any emissions offset, banking, selling or trading program.

20. Except as provided for in Paragraph 12, Al-Corn shall obtain a PSD permit prior to beginning construction of any future modifications during the effective period of the Consent Decree that will cause any increase in its limited potential emissions of any pollutant regulated under the Act above the 95 TPY source-wide caps, or prior to relaxation of a federally-enforceable permit limit pursuant to 40 C.F.R. § 52.21(r)(4).

C. Emission Limits

21. Unit Emission Limit for VOC, CO, NOx: Beginning no later than 180 days following the start-up of each piece of control equipment required in its approved Control Technology Plan, Al-Corn shall continually operate each unit in accordance with the operating parameters set forth in the approved Control Technology Plan.

22. VOC Limit for Cooling Cyclone:

(a) By no later than 90 days following the initial performance test of the cooling cyclone as required in Paragraphs 15(d) and 28, Al-Corn shall submit a written evaluation of the technical feasibility and cost effectiveness of additional VOC control equipment for the cooling cyclone and the technical feasibility and cost effectiveness of either directly or indirectly routing the cooling cyclone emissions to feed dryer control equipment.

(1) If the evaluation demonstrates that additional controls or routing the emissions to the feed dryer control equipment are technically feasible and cost effective, a schedule to install the controls and interim VOC emission limit(s) to apply until controls are

installed must be included in the evaluation.

(2) If Al-Corn concludes that additional controls are not technically feasible and cost effective, Al-Corn shall propose a VOC emission limit(s) based on the data collected from initial performance testing and other available pertinent information.

(b) Al-Corn shall immediately comply with the proposed VOC emission limit(s) or interim VOC emission limit(s).

(c) MPCA will use the data collected, the control equipment evaluation and other available pertinent information to establish a VOC emission limit(s) for the cooling cyclone and, if necessary, the required emissions control or to support a determination that additional controls are not technically feasible or cost-effective. MPCA shall provide written notice to Al-Corn of the established limit, or the additional required controls, and MPCA's notice shall be incorporated into and enforceable under this Consent Decree.

(1) If the limit established by the MPCA is more stringent than the limit proposed by Al-Corn, Al-Corn shall have 30 days from the date of the written notice to comply with the established limit(s).

(2) If MPCA determines that controls are required in addition to, or different from, those proposed by Al-Corn, Al-Corn shall have 30 days from the date of the written notice to provide MPCA with a schedule to install the controls. The MPCA shall allow Al-Corn a reasonable time to install the required controls. If Al-Corn contests the MPCA's proposed limit or MPCA's proposed controls, Al-Corn shall have 60 days to invoke the Dispute Resolution process pursuant to Part X ("Dispute Resolution") and obtain a stay from the Court. Until a limit is established under the Dispute Resolution process herein, Al-Corn shall comply

with the emission limit(s) it proposed under Paragraph 22(a)(2).

23. NOx Emission Factors: Following the initial performance test as required in Paragraphs 15 (a), (c), and (g) and 28, Al-Corn shall establish unit specific NO_X emission factors that it will use to calculate actual NO_X emissions to demonstrate compliance with Paragraph 15(g). The method to determine compliance with the limit in Paragraph 15(g) is specified in the approved Control Technology Plan.

(a) By no later than 90 days following the initial performance test of the feed dryer, thermal oxidizer, and boilers as required in Paragraphs 15(a) and (c) and 28, if Al-Corn determines that it cannot meet the Group NOx limit in Paragraph 15(g), Al-Corn shall submit a written evaluation of the technical feasibility and cost-effectiveness of additional NOx control equipment or low NOx burner replacement for the feed dryer, thermal oxidizer, and boiler to meet the Group NOx limit required in Paragraph 15(g).

(1) If the evaluation demonstrates that additional controls to meet the Group NOx limit are technically feasible and cost-effective, a schedule to install the controls and an interim NOx emission limit(s) to apply until controls are installed must be included in the evaluation.

(2) If Al-Corn concludes that additional controls are not technically feasible and cost-effective, Al-Corn shall propose an adjusted Group NOx limit to replace the limit initially required in Paragraph 15(g) based on the data collected from initial performance testing and other available pertinent information.

(b) Al-Corn shall immediately comply with the proposed adjusted Group NOx limit or interim NOx limit(s).

(c) MPCA will use the data collected, the control equipment evaluation and other available pertinent information to establish an adjusted Group NOx limit, and if necessary, the required emissions control or to support a determination that additional controls are not technically feasible and cost-effective. MPCA shall provide written notice to Al-Corn of the established limit, or the additional required controls, and MPCA's notice shall be incorporated into and enforceable under this Consent Decree.

(1) If the limit established by the MPCA is more stringent than the limit proposed by Al-Corn, Al-Corn shall have 30 days from the date of the written notice to comply with the established limit.

(2) If MPCA determines that controls are required in addition to, or different from, those proposed by Al-Corn, Al-Corn shall have 30 days from the date of the written notice to provide MPCA with a schedule to install the controls. The MPCA shall allow Al-Corn a reasonable time to install the required controls. If Al-Corn contests the MPCA's proposed limit or MPCA's proposed controls, Al-Corn shall have 60 days to invoke the Dispute Resolution process pursuant to Part X ("Dispute Resolution") and obtain a stay from the Court. Until a limit is established under the Dispute Resolution process herein, Al-Corn shall comply with the adjusted Group NOx limit it proposed under Paragraph 23(a)(2).

24. Unit Emission Limit for PM and PM_{10}: By no later than 45 days following the initial performance test of the control equipment for the feed dryer as required in Paragraphs 15(a) and 28, Al-Corn shall propose PM and PM_{10} emission limits based on the data collected from initial performance testing and other available pertinent information. Al-Corn shall immediately comply with the proposed emission limit. MPCA will use the data collected and

other available pertinent information to establish limits for PM and PM_{10}. MPCA shall provide written notice to Al-Corn of the established limit and the established limit shall be incorporated into and enforceable under this Consent Decree. If Al-Corn contests the MPCA's proposed limit, Al-Corn shall have 60 days to invoke the Dispute Resolution process pursuant to Part X ("Dispute Resolution") and obtain a stay from the Court. Until a limit is established under the Dispute Resolution process herein, Al-Corn shall comply with the emission limit(s) it proposed under this Paragraph.

25. Unit Operating Permits: By no later than 180 days following start-up of the last piece of control equipment required in its approved Control Technology Plan, Al-Corn shall apply for modification to its federally-enforceable operating permit to incorporate the emission limits, monitoring parameters, and recordkeeping set forth in the approved Control Technology Plan and this Consent Decree.

26. Source-wide Caps:

(a) Beginning no later than180 days following start-up of the last piece of control equipment required in its approved Control Technology Plan, Al-Corn shall continually operate its facility so as not to exceed the source-wide allowable emission caps of 95 TPY for each pollutant for VOCs, PM, PM_{10}, SO_2, NO_X, and CO based on a 12-month rolling sum, rolled monthly, and recorded monthly. For the first eleven months, beginning no later than 180 days following start-up of the last piece of control equipment required in the approved Control Technology Plan, compliance with the 12-month rolling sum will be demonstrated based on a schedule to meet applicable emission caps as set forth in the approved Control Technology Plan. This provision shall survive termination of this Consent Decree until the 95 TPY emission caps

are amended by or incorporated into a federally-enforceable permit for the facility.

(b) Beginning no later than 180 days following start-up of the last piece of control equipment required in its approved Control Technology Plan, Al-Corn shall continually operate its facility so as not to exceed the source-wide allowable emission caps of 9.0 TPY for any single hazardous air pollutant or 24.0 TPY for all hazardous air pollutants based on a 12-month rolling sum, rolled monthly, and recorded monthly. For the first eleven months, beginning no later than 180 days following start-up of the last piece of control equipment required in the approved Control Technology Plan, compliance with the 12-month rolling sum will be demonstrated based on a schedule to meet applicable emission caps as set forth in the approved Control Technology Plan. This provision shall survive termination of this Consent Decree until the 9.0 TPY and 24.0 TPY emission caps are amended by or incorporated into a federally-enforceable permit for the facility.

D. Demonstration Of Compliance

27. Al-Corn shall demonstrate continuous compliance with the emission limits established under this Consent Decree by the use of parametric monitoring, recordkeeping and reporting, as set forth in the approved Control Technology Plan.

28. By no later than 120 days following the start-up of the last piece of control equipment required in the approved Control Technology Plan, Al-Corn shall demonstrate through emissions testing of each emissions unit as specified in the approved Control Technology Plan, conducted in accordance with a MPCA and U.S. EPA approved test protocol, that it has met the required destruction efficiency and/or emission limit. Al-Corn shall follow all testing requirements in Minnesota Rule 7017. Al-Corn shall retest the dryer for VOCs, CO, PM,

and PM_{10} no less than annually for the effective period of the Consent Decree. Al-Corn shall retest all other units in accordance with MPCA's policy regarding performance testing frequency.

29. Al-Corn shall maintain control technology performance criteria monitoring data and records as set forth in the approved Control Technology Plan, and shall make them available to the Plaintiffs upon demand as soon as practicable.

E. Recordkeeping And Reporting Requirements

30. Beginning with the first full calendar quarter following lodging of this Consent Decree, Al-Corn shall submit written reports within 30 days following each calendar quarter to MPCA and U.S. EPA that itemize Consent Decree requirements and the approved Control Technology Plan requirements, the applicable deadlines, the dates the tasks were completed, unit emissions data and data to support Al-Corn's compliance status with the terms of this Consent Decree. Reports shall be sent to the addresses identified in Paragraph 64 ("Notice"). Emissions data may be submitted in electronic format.

31. Al-Corn shall preserve and retain all records and documents now in its possession or control, or which come into its possession or control, that support the reporting and compliance requirements under this Part for a period of three years following the termination of this Consent Decree, unless other regulations require the records to be maintained longer.

32. All notices, reports or any other submissions from Al-Corn shall contain the following certification and may be signed by an owner or operator of the company responsible for environmental management and compliance:

> "I certify under penalty of law that I have personally examined the information submitted herein and that I have made a diligent

inquiry of those individuals immediately responsible for obtaining the information and that to the best of my knowledge and belief, the information submitted herewith is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment."

VI. CIVIL PENALTY

33. Within thirty (30) calendar days of entry of this Consent Decree, the Defendant shall pay to the Plaintiffs a civil penalty pursuant to Section 113 of the Act, 42 U.S.C. § 7413 and Minn. Stat.§ 115.071, in the amount of $36,800 (Thirty-Six Thousand Eight Hundred Dollars). Pursuant to the Act, the following factors were considered in determining a civil penalty, in addition to other factors as justice may require, the size of the business, the economic impact of the penalty on the business, the violator's full compliance history and good faith efforts to comply, the duration of the violation, payment by the violator of penalties previously assessed for the same violation, the economic benefit of noncompliance, and the seriousness of the violation.

34. Of the total penalty, $18,400, shall be paid to the United States by Electronic Funds Transfer ("EFT") to the United States Department of Justice, in accordance with current EFT procedures, referencing the USAO File Number and DOJ Case Number 90-5-2-1-07784, and the civil action case name and case number of the District of Minnesota. The costs of such EFT shall be Al-Corn's responsibility. Payment shall be made in accordance with instructions provided to Al-Corn by the Financial Litigation Unit of the U.S. Attorney's Office in the District of Minnesota. Any funds received after 11:00 a.m. (EST) shall be credited on the next business day. Al-Corn shall provide notice of payment, referencing the USAO File Number and DOJ Case Number 90-5-2-1-07784, and the civil action case name and case number, to the

Department of Justice and to EPA, as provided in Paragraph 64 ("Notice"). The total remaining amount, $18,400 in civil penalties, shall be paid to the Plaintiff-Intervenor the State of Minnesota, made in the form of a certified check payable to the Minnesota Pollution Control Agency and delivered to:

Enforcement Penalty Coordinator
Minnesota Pollution Control Agency
520 Lafayette Road
St. Paul, Minnesota 55155-4194

35. The Defendant shall pay statutory interest on any over due civil penalty or stipulated penalty amount at the rate specified in 31 U.S.C. § 3717. Upon entry of this Consent Decree, this Consent Decree shall constitute an enforceable judgment for purposes of post-judgment collection in accordance with Rule 69 of the Federal Rules of Civil Procedure, the Federal Debt Collection Procedure Act, 28 U.S.C. § 3001-3308, Minnesota Statute Chapter 16D and other applicable federal and state Authority. The Plaintiffs shall be deemed a judgment creditor for purposes of collection of any unpaid amounts of the civil and stipulated penalties and interest.

36. No amount of the $36,800 civil penalty to be paid by Al-Corn shall be used to reduce its federal or state tax obligations.

VII. STIPULATED PENALTIES

37. The Defendant shall pay stipulated penalties in the amounts set forth below to the Plaintiffs, to be paid 50 percent to the United States and 50 percent to the Plaintiff-Intervenor, for the following:

(a) for each day of failure to propose PM, PM_{10}, and VOC emissions limits under Paragraphs 22 and 24:

1st through 30th day after deadline	$ 250
31st through 60th day after deadline	$ 500
Beyond the 60th day	$1000

(b) for each day of failure to meet the deadlines for installation of control technology systems set forth in the Control Technology Plan and applying for, or obtaining, permits under Paragraphs 17, 18, 20, and 25:

1st through 30th day after deadline	$ 800
31st through 60th day after deadline	$1,200
Beyond 60th day	$2,000

(c) for failure to conduct a compliance test as required by Paragraph 28, per day per unit:

1st through 30th day after deadline	$ 250
31st through 60th day after deadline	$ 500
Beyond 60th day	$1,000

(d) for failure to demonstrate compliance with emission limits set forth in the approved Control Technology Plan or emission limits set pursuant to Part V Section C ("Emission Limits"): $5000 per emissions test for each pollutant

(e) for each failure to submit reports or studies as required by Part V Section E ("Recordkeeping and Reporting Requirements") of this Consent Decree, per day per report or notice:

1st through 30th day after deadline	$ 250
31st through 60th day after deadline	$ 500

Beyond 60th day $1,000

(f) for failure to pay or escrow stipulated penalties, as specified in Paragraphs 38 and 39 of this section, $500 per day per penalty demand.

(g) for failure to notify the Plaintiffs pursuant to Paragraph 2 of Al-Corn's sale or transfer of the facility, $250 per day.

38. Al-Corn shall pay stipulated penalties upon written demand by the Plaintiffs no later than thirty (30) days after Defendant receives such demand. Stipulated penalties shall be paid to the Plaintiffs in the manner set forth in Part VI ("Civil Penalty") of this Consent Decree.

39. Should Al-Corn dispute its obligation to pay part or all of a stipulated penalty, it may avoid the imposition of the stipulated penalty for failure to pay a penalty due to the Plaintiffs by placing the disputed amount demanded by the Plaintiffs, not to exceed $20,000 for any given event or related series of events at any one plant, in a commercial escrow account pending resolution of the matter and by invoking the Dispute Resolution provisions of Part X within the time provided in Paragraph 38 for payment of stipulated penalties. If the dispute is thereafter resolved in Defendant's favor, the escrowed amount plus accrued interest shall be returned to the Defendant. Otherwise the Plaintiffs shall be entitled to the escrowed amount that was determined to be due by the Court plus the interest that has accrued on such amount, with the balance, if any, returned to the Defendant.

40. The Plaintiffs reserve the right to pursue any other remedies for violations of this Consent Decree to which they are entitled. The Plaintiffs will not seek stipulated penalties and civil or administrative penalties for the same violation of the Consent Decree.

VIII. RIGHT OF ENTRY

41. Any authorized representative of the EPA or MPCA, or an appropriate federal or state agency, including independent contractors, upon presentation of proper credentials and in compliance with the facility's safety requirements, shall have a right of entry upon the premises of Al-Corn's plant identified herein at Paragraph 3(b) at any reasonable time for the purpose of monitoring compliance with the provisions of this Consent Decree, including inspecting plant equipment, and inspecting and copying all records maintained by Defendant required by this Consent Decree. Nothing in this Consent Decree shall limit the authority of EPA and MPCA to conduct tests and inspections under Section 114 of the Act, 42 U.S.C. § 7414, and Minnesota Statute §§ 116.07, subd. 9 and 116.091 or any other applicable law.

IX. FORCE MAJEURE

42. If any event occurs which causes or may cause a delay or impediment to performance in complying with any provision of this Consent Decree, Defendant shall notify the Plaintiffs in writing as soon as practicable, but in any event within twenty (20) business days of when Defendant first knew of the event or should have known of the event by the exercise of due diligence. In this notice Defendant shall specifically reference this Paragraph of this Consent Decree and describe the anticipated length of time the delay may persist, the cause or causes of the delay, and the measures taken or to be taken by Defendant to prevent or minimize the delay and the schedule by which those measures will be implemented. Defendant shall adopt all reasonable measures to avoid or minimize such delays.

43. Failure by Defendant to provide notice to Plaintiffs of an event which causes or may cause a delay or impediment to performance shall render this Part IX voidable by the

Plaintiffs as to the specific event for which the Defendant has failed to comply with such notice requirement, and, if voided, is of no effect as to the particular event involved.

44. The United States or MPCA shall notify the Defendant in writing regarding the Defendant's claim of a delay or impediment to performance as soon as practicable, but in any event within thirty (30) days of receipt of the Force Majeure notice provided under Paragraph 42. If the Plaintiffs agree that the delay or impediment to performance has been or will be caused by circumstances beyond the control of the Defendant, including any entity controlled by the Defendant, and that the Defendant could not have prevented the delay by the exercise of due diligence, the parties shall stipulate to an extension of the required deadline(s) for all requirement(s) affected by the delay by a period equivalent to the delay actually caused by such circumstances. The Defendant shall not be liable for stipulated penalties for the period of any such delay.

45. If the Plaintiffs do not accept the Defendant's claim that a delay or impediment to performance is caused by a force majeure event, to avoid payment of stipulated penalties, the Defendant must submit the matter to this Court for resolution within twenty (20) business days after receiving notice of the Plaintiffs' position, by filing a petition for determination with this Court. Once the Defendant has submitted this matter to this Court, the Plaintiffs shall have twenty (20) business days to file its response to said petition. If the Defendant submits the matter to this Court for resolution and the Court determines that the delay or impediment to performance has been or will be caused by circumstances beyond the control of the Defendant, including any entity controlled by the Defendant, and that the Defendant could not have prevented the delay by the exercise of due diligence, the Defendant shall be excused as to that

event(s) and delay (including stipulated penalties), for a period of time equivalent to the delay caused by such circumstances.

46. The Defendant shall bear the burden of proving that any delay of any requirement(s) of this Consent Decree was caused by or will be caused by circumstances beyond its control, including any entity controlled by it, and that the Defendant could not have prevented the delay by the exercise of due diligence. The Defendant shall also bear the burden of proving the duration and extent of any delay(s) attributable to such circumstances. An extension of one compliance date based on a particular event may, but does not necessarily, result in an extension of a subsequent compliance date or dates.

47. Unanticipated or increased costs or expenses associated with the performance of the Defendant's obligations under this Consent Decree shall not constitute circumstances beyond the control of the Defendant, or serve as a basis for an extension of time under this Part. However, failure of a permitting authority to issue a necessary permit in a timely fashion is an event of Force Majeure where the Defendant has taken all steps available to it to obtain the necessary permit including but not limited to:

(a) submitting a timely and complete permit application;

(b) responding to requests for additional information by the permitting authority in a timely fashion; and

(c) prosecuting appeals of any disputed terms and conditions imposed by the permitting authority in an expeditious fashion.

48. Notwithstanding any other provision of this Consent Decree, this Court shall not draw any inferences nor establish any presumptions adverse to either party as a result of

Defendant delivering a notice of Force Majeure or the parties' inability to reach agreement.

49. As part of the resolution of any matter submitted to this Court under this Part IX, the parties by agreement, or this Court, by order, may in appropriate circumstances extend or modify the schedule for completion of work under this Consent Decree to account for the delay in the work that occurred as a result of any delay or impediment to performance agreed to by the Plaintiffs or approved by this Court. Defendant shall be liable for stipulated penalties for its failure thereafter to complete the work in accordance with the extended or modified schedule.

X. DISPUTE RESOLUTION

50. The dispute resolution procedure provided by this Part X shall be available to resolve all disputes arising under this Consent Decree, including but not limited to emission limits established by the MPCA in Part V Section C ("Emission Limits"), except as otherwise provided in Part IX regarding Force Majeure.

51. The dispute resolution procedure required herein shall be invoked upon the giving of written notice by one of the parties to this Consent Decree to another advising of a dispute pursuant to this Part X. The notice shall describe the nature of the dispute, and shall state the noticing party's position with regard to such dispute. The party receiving such a notice shall acknowledge receipt of the notice and the parties shall expeditiously schedule a meeting to discuss the dispute informally not later than fourteen (14) days from the receipt of such notice.

52. Disputes submitted to dispute resolution shall, in the first instance, be the subject of informal negotiations between the parties. Such period of informal negotiations shall not extend beyond thirty (30) calendar days from the date of the first meeting between representatives of the Plaintiffs and the Defendant, unless the parties' representatives agree to

shorten or extend this period.

53. In the event that the parties are unable to reach agreement during such informal negotiation period, the Plaintiffs shall provide the Defendant with a written summary of their position regarding the dispute. The position advanced by the Plaintiffs shall be considered binding unless, within forty-five (45) calendar days of the Defendant's receipt of the written summary of the Plaintiffs position, the Defendant files with this Court a petition which describes the nature of the dispute, and includes a statement of the Defendant's position and any supporting data, analysis, and/or documentation relied on by the Defendant. The Plaintiffs shall respond to the petition within forty-five (45) calendar days of filing.

54. Where the nature of the dispute is such that a more timely resolution of the issue is required, the time periods set out in this Part X may be shortened upon motion of one of the parties to the dispute.

55. Notwithstanding any other provision of this Consent Decree, in dispute resolution, this Court shall not draw any inferences nor establish any presumptions adverse to either party as a result of invocation of this Part X or the parties' inability to reach agreement. The final position of the Plaintiffs shall be upheld by the Court if supported by substantial evidence in the record as identified and agreed to by all the Parties.

56. As part of the resolution of any dispute submitted to dispute resolution, the parties, by agreement, or this Court, by order, may, in appropriate circumstances, extend or modify the schedule for completion of work under this Consent Decree to account for the delay in the work that occurred as a result of dispute resolution. Defendant shall be liable for stipulated penalties for its failure thereafter to complete the work in accordance with the

extended or modified schedule.

XI. GENERAL PROVISIONS

57. Effect of Settlement. This Consent Decree is not a permit; compliance with its terms does not guarantee compliance with any applicable federal, state or local laws or regulations. To the extent that the terms of this Consent Decree conflict with the terms of any air quality permit, the terms of this Consent Decree shall control during the effective period of the Consent Decree.

58. Resolution of Claims. Satisfaction of all of the requirements of this Consent Decree constitutes full settlement of and shall resolve all past civil and administrative liability of the Defendant to the Plaintiffs for the violations alleged in the United States' and Plaintiff-Intervenor's Complaints and all civil and administrative liability of the Defendant for any violations at its facility based on facts and events that occurred during the relevant time period under the following statutory and regulatory provisions: (a) NSPS, 40 C.F.R. Part 60, including subparts Dc, Kb, and VV; (b) National Emission Standards for Hazardous Air Pollutants, 40 C.F.R. Part 63, pursuant to Sections 112(d) and 112(g) of the Act; (c) PSD requirements at Part C of the Act and the regulations promulgated thereunder at 40 C.F.R. § 52.21, and the Minnesota regulations which incorporate and/or implement the above-listed federal regulations in items (a) through (c); (d) all air permit requirements under Minn. R. 7007.0050-7007.1850; (e) air emissions fee requirements under Minn. R. 7002.0025-7002.0095; (f) performance standards for stationary sources under Minn. R. 7011.0010-7011.9990, performance tests under Minn. R. 7017.2001-7017.2060; (g) notification, recordkeeping and reporting requirements under Minn. R. 7019.0100-7019.2000; and (h) emission inventory requirements under Minn. R. 7019.3000-

7019.3100. For purposes of this Consent Decree, the "relevant time period" shall mean the period beginning when the United States' claims and/or Plaintiff-Intervenor's claims under the above statutes and regulations accrued through the date of entry of this Consent Decree. During the effective period of the Consent Decree, certain emission units shall be on a compliance schedule and any modification to these units, as defined in 40 C.F.R. § 52.21, which is not required by this Consent Decree is beyond the scope of this resolution of claims. This provision shall survive the termination of the Consent Decree.

59. Other Laws. Except as specifically provided by this Consent Decree, nothing in this Consent Decree shall relieve Defendant of its obligation to comply with all applicable federal, state and local laws and regulations. Subject to Paragraphs 40 and 58, nothing contained in this Consent Decree shall be construed to prevent or limit the United States' or MPCA's rights to obtain penalties or injunctive relief under the Act or other federal, state or local statutes or regulations, including but not limited to, Section 303 of the Act, 42 U.S.C. § 7603.

60. Third Parties. Except as otherwise provided by law, this Consent Decree does not limit, enlarge or affect the rights of any party to this Consent Decree as against any third parties. Nothing in this Consent Decree should be construed to create any rights, or grant any cause of action, to any person not a party to this Consent Decree.

61. Costs. Each party to this Consent Decree shall bear its own costs and attorneys' fees through the date of entry of this Consent Decree.

62. Public Documents. All information and documents submitted by the Defendant to the Plaintiffs pursuant to this Consent Decree shall be subject to public inspection, unless subject to legal privileges or protection or identified and supported as business confidential by the

Defendant in accordance with 40 C.F.R. Part 2 and Minnesota Statute §§ 13.37 and 116.075.

63. Public Comments - Federal Approval. The parties agree and acknowledge that final approval by the United States and entry of this Consent Decree is subject to the requirements of 28 C.F.R. § 50.7, which provides for notice of the lodging of this Consent Decree in the Federal Register, an opportunity for public comment, and consideration of any comments. The United States reserves the right to withdraw or withhold consent if the comments regarding this Consent Decree discloses facts or considerations which indicate that this Consent Decree is inappropriate, improper or inadequate. The Defendant and the Plaintiff-Intervenor consent to the entry of this Consent Decree.

64. Notice. Unless otherwise provided herein, notifications to or communications with the United States, EPA, MPCA or the Defendant shall be deemed submitted on the date they are postmarked and sent either by overnight receipt mail service or by certified or registered mail, return receipt requested. Except as otherwise provided herein, when written notification to or communication with the United States, EPA, MPCA or the Defendant is required by the terms of this Consent Decree, it shall be addressed as follows:

As to the United States:

Thomas L. Sansonetti
Assistant Attorney General
Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
P.O. Box 7611, Ben Franklin Station
Washington, DC 20044-7611

As to the U.S. EPA:

Bruce Buckheit
Director, Air Enforcement Division

U.S. Environmental Protection Agency
Ariel Rios Building
1200 Pennsylvania Avenue, N.W.
Mail Code 2242-A
Washington, DC 20004

and the EPA Regional office for the region in which the facility is located:

Region 5:

Cynthia A. King
U.S. EPA, Region 5
C-14J
77 W. Jackson Blvd.
Chicago, IL 60604

Compliance Tracker
Air Enforcement Branch, AE-17J
U.S. EPA, Region 5
77 W. Jackson Blvd.
Chicago, IL 60604

As to Al-Corn Clean Fuel Cooperative:

Al-Corn
General Manager
P.O. Box 6
797 5th Street
Claremont, MN 55924

and

(Counsel for Al-Corn)

Gerald L. Seck
Larkin, Hoffman, Daly & Lindgren, Ltd.
1500 Wells Fargo Plaza
7900 Xerxes Avenue South
Bloomington, MN 55431

Peder A. Larson
Peder Larson & Associates, PLC
5200 Willson Road
Suite 150

Minneapolis, MN 55424

As to Plaintiff-Intervenor the State of Minnesota, through the MPCA:

Rhonda Land
Minnesota Pollution Control Agency
520 Lafayette Road N
St. Paul, MN 55155-4194

Kathleen L. Winters
Office of the Attorney General
NCL Towers Suite 900
445 Minnesota Street
St. Paul, MN 55101-2127

65. Change of Notice Recipient. Any party may change either the notice recipient or the address for providing notices to it by serving all other parties with a notice setting forth such new notice recipient or address.

66. Modification. There shall be no modification of this Consent Decree without written agreement of all the parties. There shall be no material modification of this Consent Decree without the written agreement of the parties and by Order of the Court. Prior to complete termination of the requirements of this Consent Decree pursuant to Paragraph 68, the parties may, upon motion to the Court, seek to terminate provisions of this Consent Decree.

67. Continuing Jurisdiction. The Court retains jurisdiction of this case after entry of this Consent Decree to enforce compliance with the terms and conditions of this Consent Decree and to take any action necessary or appropriate for its interpretation, construction, execution, or modification. During the term of this Consent Decree, any party may apply to the Court for any relief necessary to construe or effectuate this Consent Decree.

XII. TERMINATION

68. This Consent Decree shall be subject to termination upon motion by any party

after the Defendant satisfies all requirements of this Consent Decree and has operated the control technologies identified in the approved Control Technology Plan in compliance with emission limits, and has demonstrated for 24 months that its actual emissions of VOCs, PM, PM_{10}, SO_2, NOx and CO have remained under 95 TPY. For purposes of meeting the 24-month performance requirement in this Paragraph, Defendant may demonstrate that its actual emissions remained under the 95 TPY allowable emission caps by either using the results of its initial compliance tests or evidence of operating conditions since the installation of the control equipment required in this Consent Decree and in the approved Control Technology Plan. At such time, if the Defendant believes that it is in compliance with the requirements of this Consent Decree, and has paid the civil penalty and any stipulated penalties required by this Consent Decree, then the Defendant shall so certify to the Plaintiffs, and unless the Plaintiffs object in writing with specific reasons within forty-five (45) days of receipt of the certification, the Court shall order that this Consent Decree be terminated on Defendant's motion. If the United States or MPCA objects to the Defendant's certification, then the matter shall be submitted to the Court for resolution under Part X ("Dispute Resolution") of this Consent Decree. In such case, the Defendant shall bear the burden of proving that this Consent Decree should be terminated.

So entered in accordance with the foregoing this 9th day of March, 2002.

United States District Court Judge
District of Minnesota

FOR PLAINTIFF, UNITED STATES OF AMERICA:

Tom Sansonetti

Date 9.10.02

Thomas L. Sansonetti
Assistant Attorney General
Environment and Natural Resources Division
U.S. Department of Justice
10th & Pennsylvania Avenue, N.W.
Washington, DC 20530

Dianne M. Shawley

Date 8/23/02

Dianne M. Shawley
Senior Counsel
Environment and Natural Resources Division
U.S. Department of Justice
1425 New York Avenue, N.W.
Washington, DC 20005

Date 8/23/02

Cynthia A. King
Special Trial Attorney
US EPA Region 5
77 W. Jackson Street
Chicago, IL 60604

United States Attorney
District of Minnesota

Friedrich A. P. Siekert

Date 10/1/02

THOMAS B. HEFFELFINGER
United States Attorney

BY: FRIEDRICH A. P. SIEKERT
Assistant U.S. Attorney
Attorney ID No. 142013
District of Minnesota
U.S. Courthouse
300 S. 4th Street
Suite 600
Minneapolis, MN 55415

FOR U.S. ENVIRONMENTAL PROTECTION AGENCY:

Date 7/20/02

John Peter Suarez
Assistant Administrator
Office of Enforcement and Compliance Assurance
U.S. Environmental Protection Agency
Ariel Rios Building
1200 Pennsylvania Avenue, N.W.
Washington, DC 20460

FOR U.S. ENVIRONMENTAL PROTECTION AGENCY:

Date 9.20.02

Thomas V. Skinner
Regional Administrator
U.S. Environmental Protection Agency
Region 5
77 West Jackson Street
Chicago, IL 60604

FOR THE PLAINTIFF-INTERVENOR, THE STATE OF MINNESOTA POLLUTION CONTROL AGENCY:

Karen A. Studders

Date 10 October 2012

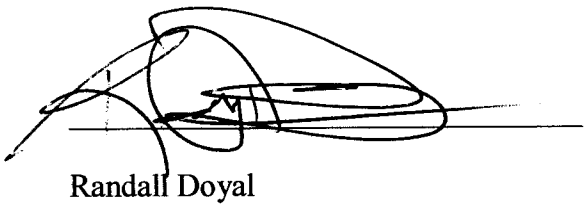
Commissioner Karen A. Studders
Minnesota Pollution Control Agency
520 Lafayette Road
St. Paul, MN 55155

_____

Date _____

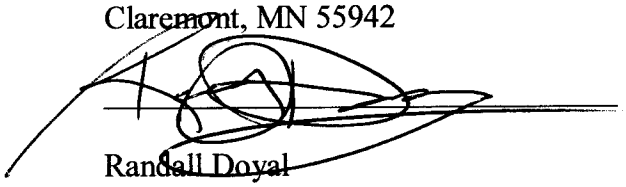
Kathleen L. Winters
Office of the Attorney General
NCL Towers Suite 900
445 Minnesota Street
St. Paul, MN 55101-2127

FOR DEFENDANT, AL-CORN CLEAN FUEL COOPERATIVE AND AL-CORN CLEAN FUEL LIMITED PARTNERSHIP:



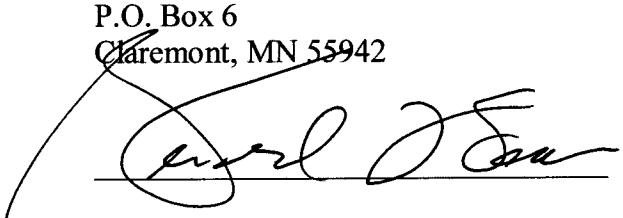
Date August 14, 2002

Randall Doyal
General Manager
Al-Corn Clean Fuel Cooperative
P.O. Box 6
Claremont, MN 55942



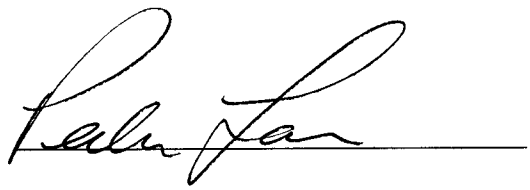
Date August 14, 2002

Randall Doyal
Chief Executive Officer
Al-Corn Clean Fuel Limited Partnership
P.O. Box 6
Claremont, MN 55942



Date 8-23-02

Gerald L. Seck
Larkin, Hoffman, Daly & Lindgren, Ltd.
1500 Wells Fargo Plaza
7900 Xerxes Avenue South
Bloomington, MN 55431



Date 8-23-02

Peder A. Larson
Peder Larson & Associates, PLC
5200 Willson Road
Suite 150
Minneapolis, MN 55424

Al-Corn Clean Fuel

Claremont, Minnesota

Control Technology Plan

August 22, 2002

CONTENTS

1.0 INTRODUCTION

On August 14, 2002, Al-Corn Clean Fuel (Al-Corn) signed a consent decree that requires Al-Corn to implement a program of compliance at the corn dry mill ethanol plant it operates in Claremont, Minnesota. Al-Corn prepared and submits this Control Technology Plan (CTP) as an integral part of the consent decree. This CTP fulfills the requirement of the consent decree and has been reviewed and approved by the US Environmental Protection Agency (USEPA) and the Minnesota Pollution Control Agency (MPCA) as part of the consent decree.

Al-Corn's CTP includes the following:

(a). Identification of all units to be controlled;

(b). Engineering design criteria for all proposed controls capable of meeting the emission levels required by Part V of the Consent Decree;

(c). Proposed short-term and long-term emission limits and controlled outlet concentrations for each pollutant as appropriate;

(d). A schedule for expedited installation with specific milestones applicable on a unit-by-unit basis;

(e). Proposed monitoring parameters for all control equipment and parameter ranges;

(f). Identification of all units to be emission tested under Paragraph 15 of the Consent Decree and a schedule for initial tests and retest;

(g). The test methods that will be used to demonstrate compliance with the emissions levels set forth in the Consent Decree; and

(h). Program for minimization of fugitive dust emissions from facility operations.

2.0 EMISSION UNITS REQUIRING POLLUTION CONTROL EQUIPMENT

The following emission units, fugitive sources, and control equipment have been designated as affected units in the consent decree and have emission limits requiring pollution control technology.

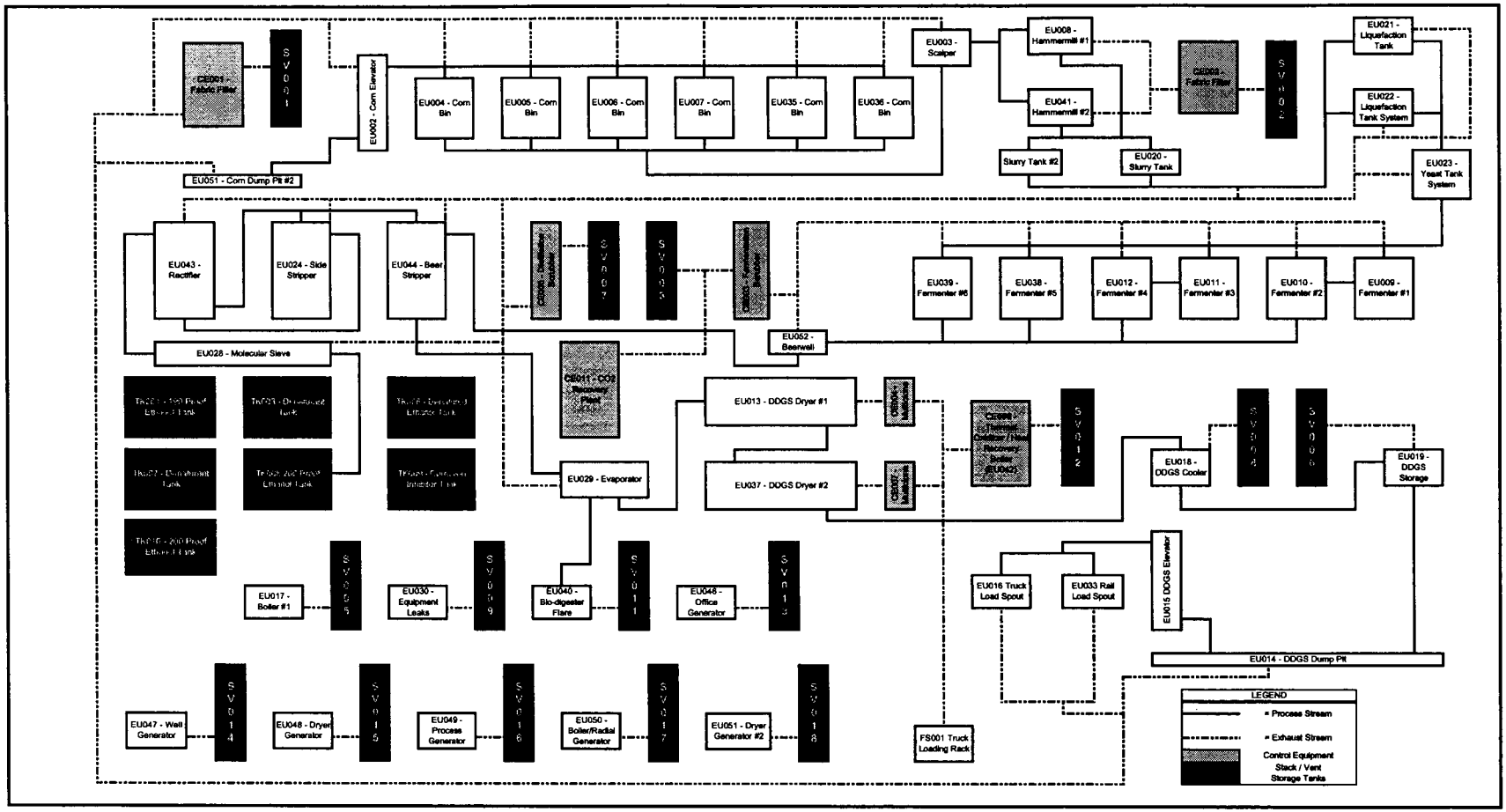
Unit Designation #	Unit Description	CE #	CE Description
EU 009	Fermenter #1	003	scrubber
EU 010	Fermenter #2	003	scrubber
EU 011	Fermenter #3	003	scrubber
EU 012	Fermenter #4	003	scrubber
EU 013	DDGS Dryer #1 (B)	004, 006, 007	Multicyclones and TO
EU 017	Boiler	NA	NA
EU 018	Cooling Cyclone	NA	Cyclone (PM) TBD (VOC)
EU 020	Slurry Tank	005	scrubber
EU 021 and EU 022	Liquifaction System	005	scrubber
EU 023	Yeast Propagation	005	scrubber
EU 024	Side Stripper	005	scrubber
EU 028	Molecular Sieve System	005	scrubber
EU 029	Evaporator	005	scrubber
EU 032	Process Water Tank	003	scrubber
EU 037	DDGS Dryer #2 (A)	004, 006, 007	Multicyclones and TO
EU 038	Fermenter #5	003	scrubber
EU 039	Fermenter #6	003	scrubber
EU 042	Thermal Oxidizer /Heat Recovery Boiler	006	TO
EU 043	Rectifier	005	scrubber
EU 044	Beer Stripper	005	scrubber
EU 045	Fermenter #7	003	scrubber
EU 052	Beerwell	003	scrubber
FS 001	Loading Rack	006	TO
FS 002	Truck Traffic	NA	Paved roads
FS 004	Valve, Flange, & Seal Fugitives	NA	LDAR

3.0 ENGINEERING DESIGN CRITERIA FOR POLLUTION CONTROL EQUIPMENT

After identifying the affected units that require installation of air pollution control technology, Al-Corn conducted a design and engineering review of each unit to select the pollution control technology that would achieve the emission level reductions identified in the consent decree.

Process Description	Control Device #	Control Device Description	Operating Parameters
Fermentation Scrubber	CE 003	Packed Bed Scrubber	Exhaust flow rate: 4500 cfm Water flow rate $\geq$ 11.7 gal/min.
DDGS Dryer #1, DDGS Dryer #2, Ethanol Truck Loadout	CE 006	Thermal Oxidizer for VOC, CO and PM/PM_{10} control Thermal oxidizer has low NO_x burners	Exhaust flow rate: 60,000 Residence time: 0.7 to 1.4 seconds Combustion chamber orientation Operating temperature: 1300 to 1500 °F Design fuel input rate: 95 MMBtu/hr NO_x Emission Rate: 0.04 lb/MMBtu
DDGS Cooling Cyclone	EU 018	TBD	Pressure drop between 2 and 8 inches of water column
Boiler #1	EU 017	Low NO_x burners	Design fuel input rate: 60 MMBtu/hr NO_x Emission Rate: 0.055 lb/MMBtu

The attached flow diagram presents the affect units and associated control technology as determined by the results of engineering design criteria.



Better Fuel. Cleaner Air.

GI-02
Process Flow Diagram
Al-Corn Clean Fuel
Claremont, Minnesota

DATE: 8/1/02
REVISED:
SCALE: NTS
DRAWN BY: WFVONSEE
G:\Clients\Client A-L\AL-CORN\Acf2001-005\Deliv\Minor

4.0 PROPOSED EMISSION LIMITS FROM POLLUTION CONTROL EQUIPMENT

Unless otherwise stated, all controlled emission limitations apply at all times except during periods when the process equipment is not operating or during previously planned startup and shutdown periods, and malfunctions as defined in 40 CFR section 63.2. These startup and shutdown periods shall not exceed the minimum amount of time necessary for these events, and during these events, Al-Corn shall minimize emissions to the greatest extent practicable. To the extent practical, startup and shutdown of control technology systems will be performed during times when process equipment is also shut down for routine maintenance.

In addition to the limits listed below, all emission sources will comply with a 12-month rolling sum source wide SO2 cap of 95 TPY.

Any deviation from the requirements in 4.0 and/or 4.1 shall be reported in the quarterly reports and as required under other state and federal rules.

Process Description	Control Device	Control Device Description	Pollutant	Short Term Emission Rate	Long Term Emission Rate
Fermentation Scrubber	CE 003	Packed Bed Scrubber	VOC	95% reduction or <20 ppm if inlet concentration is below 200 ppm; lb/hr limits to be established based on performance testing under the process outline under Paragraph 24 in the Consent Decree.	12-month rolling sum total facility VOC emission rate equal to the 95 ton emissions cap.
			HAPs		12-month rolling sum total facility emission cap of 9.0 TPY for any single HAP and 24.0 TPY for total HAPs.

Process Description	Control Device #	Control Device Description	Pollutant	Short Term Emission Rate	Long Term Emission Rate
Boiler #1	EU 017	Low NO_x Burners	NO_x		12-month rolling sum source wide NO_x cap of 95 TPY and 12-month rolling sum Dryer #1 and #2, TO, and Boiler #1 Group NO_x cap of 41.7 TPY (See Attachment 2)
NOx Unit Group Cap	EU013 EU017 EU037 EU042	Low NO_x Equivalent	NO_x		12-month rolling sum source wide NO_x cap of 95 TPY and 12-month rolling sum Dryer #1 and #2, TO, and Boiler #1 Group NO_x cap of 41.7 TPY (See Attachment 2)
Cooling Cyclone	EU018	TBD	VOC	To be established pursuant to paragraph 22 of the Consent Decree	12-month rolling sum source wide VOC cap of 95 TPY
Truck Loadout	CE006	TO	VOC		12-month rolling sum source wide VOC cap of 95 TPY
DDGS Dryer #1, DDGS Dryer #2, Ethanol Truck Loadout	CE 004 CE 007 CE 006	Dryer#1 and #2 multiclone for PM/PM_{10} control Thermal Oxidizer for VOC, PM/PM_{10} and CO control Thermal oxidizer has low NO_x burners.	CO	90% reduction or emission no higher than 100 ppm	12-month rolling sum source wide CO cap of 95 TPY.

Process Description	Control Device #	Control Device Description	Pollutant	Short Term Emission Rate	Long Term Emission Rate
			NO_x		12-month rolling sum source wide NO_x cap of 95 TPY and 12-month rolling sum Dryer #1 and #2, TO, and Boiler #1 Group NO_x cap of 41.7 TPY (See Attachment 2)
			PM/PM_{10}	Test and set pursuant to paragraph 24 of the Consent Decree	12-month rolling sum total facility PM/PM_{10} cap of 95 tpy.
			VOC	95% reduction or 10 ppm outlet concentration; lb/hr limits to be established based on performance testing under the process outline in paragraph 24 under the Consent Decree.	12-month rolling sum total facility VOC cap of 95 tpy.
			HAPs		12-month rolling sum total facility emission cap of 9.0 TPY for any single HAP and 24.0 TPY for total HAPs.

For all source-wide emission limits during the first 11 months of operation, the facility will maintain the following source-wide limits in Tons Per Year:

	Mo 1				Mo 2	Mo 3	Mo 4	Mo 5	Mo 6	Mo 7	Mo 8	Mo 9	Mo 10	Mo 11
	WK1	Wk2	Wk3	Wk4										
Source wide VOC, CO, NOx and PM/PM10	12				24	36	45	56	64	72	80	84	88	92
NOx for Boiler #1, Dryers #1, #2, and TO	2	3	4	5	10	15	20	25	30	34	36	38	40	41
Individual HAP/	1.6/				3.2/	4.0/	4.8/	5.6/	6.4/	7.2/	8.0/	8.2/	8.5/	8.8/
Total HAPs	3.0				6.0	9.0	12	14	16	18	20	21	22	23

Recordkeeping

Record fuel usage daily for each unit subject to the NO_x group emissions cap. Calculate the NO_x group emissions from the previous week and the NO_x Group emissions from the previous 51 weeks (52 week rolling sum). Calculate the total 52-week rolling sum for NO_x emissions from all units according to Equation 1:

$$\sum_{i=1}^{n} E_{n_i} = \sum_{i=1}^{x}\left[NG_{x_i}\left(MMBtu/week\right) \bullet EF_x\left(lb/MMBtu\right) \bullet 0.0005\left(ton/lb\right)\right] \qquad \text{Eqn 1}$$

where:

x = number of units;

n = number of weeks of interest;

$\sum_{i=1}^{n} E_{n_i}$ = sum of weekly NO_x emissions from unit x (tons/52 weeks);

NGx_i = i^{th} week natural gas usage of emission unit x (MMBtu/week); and

EF_x = unit specific emission factor determined by stack testing.

4.1 Alternative Operating Scenarios

- Ethanol truck load out shall be vented to the control equipment at any time the control equipment is in operation. Ethanol truck load out shall be limited to 4 million gallons per year of uncontrolled operation.

5.0 POLLUTION CONTROL EQUIPMENT INSTALLATION SCHEDULE

The control equipment specified in this CTP will be installed and operational by October 1, 2002, unless modifications to a burner or additional paving of interior plant roads are required. If additional paving is required, this will be completed by September 1, 2003. See Attachment 1 for a map showing the unpaved sections of the facility. Deviations shall be reported quarterly or more frequently if required by state and Federal rules.

6.0 PROPOSED MONITORING PARAMETERS FOR POLLUTION CONTROL DEVICES

The consent decree requires that monitoring parameters be established for affected pollution control devices. Al-Corn is proposing the following monitoring parameters for each of the affected pollution control devices. Any deviations of monitoring frequency and/or operating ranges shall to be reported in quarterly reports unless more frequent reporting is required by state or federal regulations.

Control Device #	Control Device Description	Parameter Monitored	Operating Range	Monitoring Frequency
CE 003	Fermentation Scrubber	Pressure Drop and Water Flow Rate	2 to 12 inches of water column At least 11.7 gallons water per minute	Continuously and recorded once Daily when operating
CE 006	Thermal Oxidizer	Operating temperature	At least 1300 F combustion chamber	Continuously with low temperature alarm
FS 005	Leak Detection	As stated in 40 CFR Subpart VV	As stated in 40 CFR Subpart VV	As stated in 40 CFR Subpart VV
EU066	DDGS Dryer	Syrup Feed	TBD	24-hour average
		Beer Feed	TBD	24-hour average
NO_x Group EU013 EU017 EU037 EU042	 DDGS Dryer #1 Boiler DDGS Dryer #2 TO	Fuel Usage		Weekly monitor and record fuel usage and type for each unit, calculate NOx emissions weekly based on latest stack test data

7.0 POLLUTION CONTROL DEVICE PERFORMANCE TEST SCHEDULE AND METHODS

The following schedule and methods will be used to demonstrate initial compliance with the emission limits contained in Section 4.0 of this Control Technology Plan.

Al-Corn shall conduct the following performance testing pursuant to the Consent Decree schedule. The CD states that no later than 180 days following the start-up of the last piece of control equipment required in the approved Control Technology Plan, Al-Corn shall demonstrate through emissions testing of each emissions unit as specified in the approved Control Technology Plan, conducted in accordance with the MPCA and U.S. EPA approved test protocol, that it has met the required destruction efficiency and/or emission limit. Al-Corn shall follow all testing requirements in Minnesota Rule 7017.

Process Description	Unit / Control Device #	Unit / Control Device Description	Pollutants	Proposed Methods
Fermentation Scrubber	CE 003 / SV003	Packed Bed Scrubber	VOC Inlet and Outlet, Speciated VOCs/HAPs	Method 1, 2, 3A, 4, Method 18 NCASI CI/WP-98.01 and VOC test method as approved by the parties in the Performance Test Plan Protocol.
Boiler	EU 017 / SV005		NOx	Method 1, 2, 3B, 4, and 7E
			CO	Method 10
DDGS Cooling Cyclone	EU 018 / SV008	TBD	VOC Outlet, Speciated VOCs/HAPs	Method 1, 2, 3B, 4, Method 18 NCASI CI/WP-98.01 and 25 (unless the outlet concentration is < 50 ppm, then 25A will be used)

Process Description	Unit/Control Device	Unit/Control Device Description	Pollutants	Proposed Methods Used
DDGS Dryer #1, DDGS Dryer #2, Thermal Oxidizer, Ethanol Truck Loadout	CE 004, CE007 CE 006 SV012	Dryer#1 and #2 multiclone for PM/PM_{10} control Thermal Oxidizer for VOC, PM/PM_{10}, and CO control, and confirmation of the NO_x emission factor.	CO Inlet and Outlet	Method 1, 2, 3B, 4, and 10
			NO_x	Method 1, 2, 3B, 4, and 7E
			PM/PM_{10} Outlet	Method 1, 2, 3B, 4, 5 and 202
			VOC Inlet	Method 1, 2, 3B, 4, 25 (unless the outlet concentration is < 50 ppm, then 25A will be used)
			VOC Outlet, Speciated VOCs/HAPs	Method 1, 2, 3B, 4, Method 18 NCASI CI/WP-98.01 and 25 (unless the outlet concentration is < 50 ppm, then 25A will be used)

8.0 FUGITIVE DUST EMISSION CONTROL PROGRAM

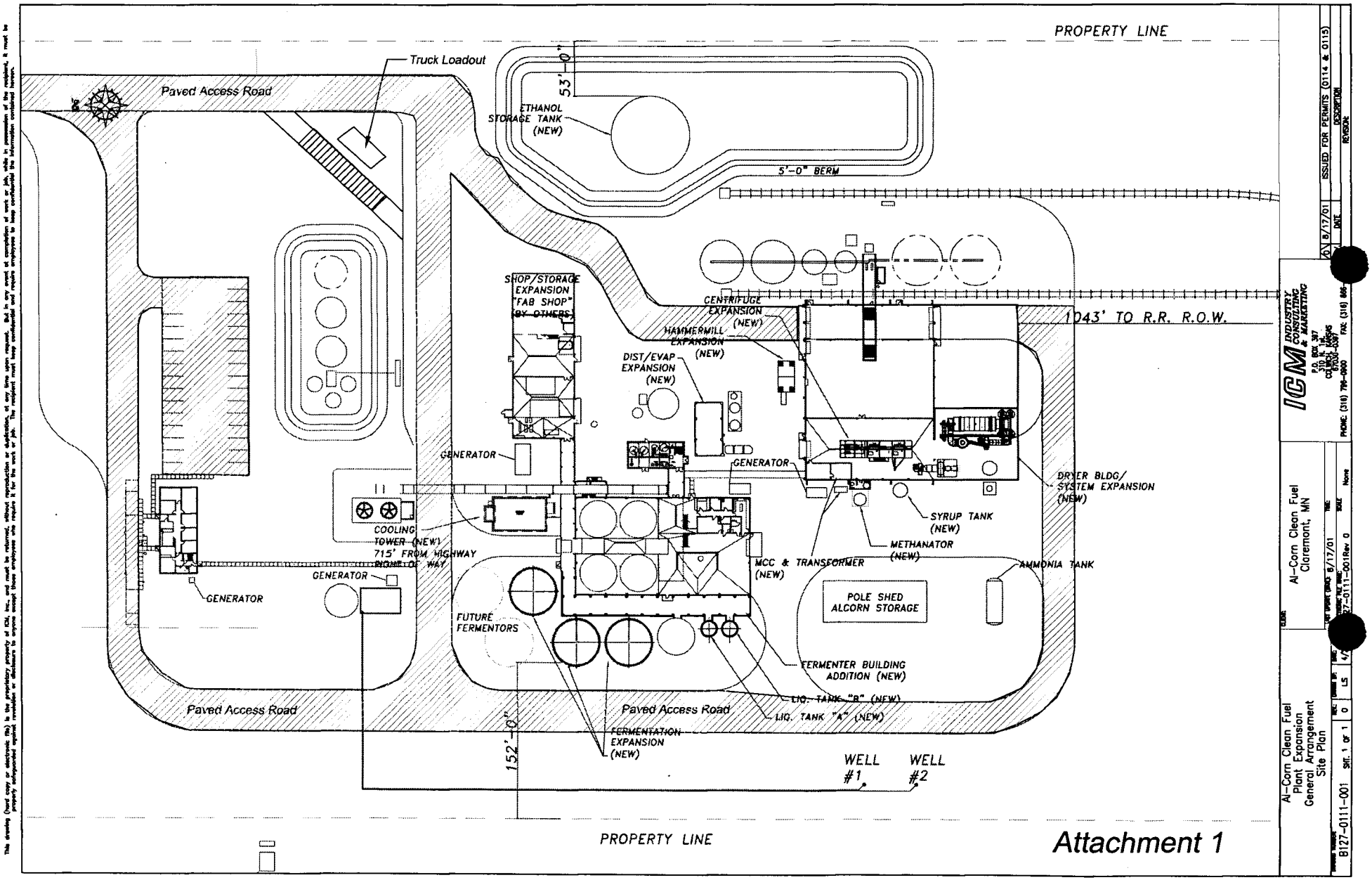
The objectives of the Fugitive Control Program are to prevent and minimize the release of avoidable fugitive emissions as required by the consent decree. The Program describes the procedures Al-Corn will use to control emissions, to determine when emissions are at levels requiring corrective action, and to reduce excessive emissions to acceptable levels.

- Al-Corn has paved existing roads (all normal traffic routes) that are used for truck and car traffic (see map).

Al-Corn will implement the following actions to minimize fugitive dust emissions

- Al-Corn will perform weekly visual inspections of the roads.
- Al-Corn will document the inspection was performed and describe any corrective action taken.
- Al-Corn will use water or mechanical means of removal to minimize identified fugitive dust emissions.

Any deviations to short term or long term emission limits to be reported in quarterly reports unless more frequent reporting is required by state or federal regulations.



NO	DATE	REVISION DESCRIPTION
0	8/17/01	ISSUED FOR PERMITS (0114 & 0115)

ICM INDUSTRY CONSULTING & MARKETING
P.O. BOX 367
310 4th AVE. S.
COLWICH, KANSAS
67030-0367
PHONE: (316) 796-0900 FAX: (316) 796-1

CLIENT: Al-Corn Clean Fuel
Claremont, MN

TITLE:
SCALE: None
DRAWING FILE NAME: B127-0111-001Rev 0

Al-Corn Clean Fuel
Plant Expansion
General Arrangement
Site Plan

DRAWING NUMBER: B127-0111-001
SHT. 1 OF 1
REV: 0
DRAWN BY: LS
CHKD BY:
APP'D BY:

ATTACHMENT 2

Al-Corn
Emission Calculations for Dryers, Boiler and TO NOx Limit

All units burning only pipeline quality natural gas for 344 days per year
Assume 0.04 lbs/MMBtu average emission factor and 8260 hours of operation per year.

Source	Capacity (MMBtu/hr)
Dryer #1	30
Dryer #2	45
TO	95
Boiler #1	60
Total	230

0.04 lbs/MMBtu X 230 MMBtu/hr =

	lbs/hr	**TPY**	
NOx	9.2	38.0	**Natural gas**
	14.6	3.7	**Propane**
		41.7	**Total**

Boiler and dryers burning propane for 500 hours per year, all other units burning pipeline quality natural gas
Assume 0.08 lbs/MMBtu for propane fired units and 0.04 lbs/MMBtu for natural gas and 500 hours of operation per year.

Source	Capacity (MMBtu/hr)
Dryer #1	30
Dryer #2	45
TO	95
Boiler #1	60
Total	230

0.04 lbs/MMBtu X 95 MMBtu/hr =
0.08 lbs/MMBtu X 135 MMBtu/hr =

[docket] CIVIL/CRIMINAL [vfmadr]
. Docket [ADDR]
Processing form: Checks Addressees

Docket # : 0:2 -cv-3792
Short Title: USA v. Al-Corn Clean Fuel REFER
Type: cv - Judge: Lancaster Magistrate: Erickson

----------Event----------Action----------Relief----------Trans #----
1 - - |- |- - - | 1615233
**** Form: Old Labels ****
********** party Direct Addressees in Case: 0:02-cv-03792 *****

Ord	Name		Term
--	1. Siekert	Friedrich	COURIER
--	2. Sansonetti	Thomas	
--	3. Shawley	Dianne	
--	4. King	Cynthia	
--	5. Puchalski	Connie	
--	6. Larson	Peder	MAILED

NOT SCANNED

[A]cc, [S]lct, [E]vry, [C]lr, [I]ns, [M]ore, [U]p/[D]n, [N]x/[P]v, [Q]uit
total: 7 selected: 0 current: 1 :

[docket] CIVIL/CRIMINAL [vfmadr]
3. Docket [ADDR]
Processing form: Checks Addressees

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1 - - |- |- - - | 1615233
**** Form: Old Labels ****
********** party Direct Addressees in Case: 0:02-cv-03792 *****

Ord	Name		Term
--	7. Winters	Kathleen	MAILED

[A]cc, [S]lct, [E]vry, [C]lr, [I]ns, [M]ore, [U]p/[D]n, [N]x/[P]v, [Q]uit
total: 7 selected: 0 current: 7 : n

Exhibit 3

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

UNITED STATES OF AMERICA,

Plaintiff,

and

MINNESOTA POLLUTION CONTROL AGENCY,

Intervenor Plaintiff

v.

AL-CORN CLEAN FUEL COOPERATIVE,

Defendant.

Civil Action No.
CV02-3792 ~~(JEL/JGL)~~ JNE/RLE

ORDER

This matter is before the court upon the unopposed motion of Defendant and Supporting Affidavit of Defendant's Counsel, Gerald L. Seck.

UPON UNOPPOSED MOTION of Defendants, the Court hereby orders that the Consent Decree entered in this matter on March 7, 2003, is hereby terminated.

IT IS SO ORDERED.

Dated: 12-7-05

UNITED STATES DISTRICT COURT JUDGE

Exhibit 4

10/30/98

(AR-18J)

Robert F. Hodanbosi, Chief
Division of Air Pollution Control
Ohio Environmental Protection Agency
1800 WaterMark Drive
Columbus, Ohio 43215-1099

Dear Mr. Hodanbosi:

This letter is in response to your letter dated October 2, 1998, proposing the option of expanding the credible evidence boilerplate language in your Title V permits. I understand from your letter as well as conversations on September 22, 1998 and October 7, 1998, that the regulated community in Ohio has concerns with the current language and some groups have verbally informed you that they may appeal their Title V permit if the language is not removed.

It is the United States Environmental Protection Agency's (USEPA) position that the general language addressing the use of credible evidence is necessary to make it clear that despite any other language contained in the permit, credible evidence can be used to show compliance or noncompliance with applicable requirements. Permit provisions containing testing or monitoring requirements sometimes represent instances where a regulated entity could construe the language to mean that the methods for demonstrating compliance specified in the permit are the only methods admissible to demonstrate violation of the permit terms. It is important that Title V permits not lend themselves to this improper construction.

It is also important to note, however, that since its initial promulgation in 1992, part 70 has required sources certifying compliance with terms and conditions in their operating permits to consider information other than data from reference test methods in providing certifications that are true, accurate and complete. See, e.g., 40 CFR § 70.5(d) (requiring compliance certifications to be true, accurate, and complete " based on information and belief formed after reasonable inquiry"); § 70.6(a)(3) (discussing required monitoring, recordkeeping, and reporting in part 70 permits); § 70.6(c)(5) (1997) & § 70.6(c)(5) (1998) (compliance certification requirements of part 70 before and after Compliance Assurance Monitoring rule revisions to part 70); see also 62 Fed. Reg. 8314, 8319-20 (Feb. 24, 1997). Therefore, prior to and independent of the credible evidence rule and the concerns expressed by the regulated community with that rule, part 70 already required responsible officials to consider non-reference test data in certifying compliance, and part 70 permit terms may not alter nor impede that requirement.

Having explained the importance of including the credible evidence general language currently contained in the Title V permits the Ohio Environmental Protection Agency (OEPA) issues, USEPA does not believe that it is appropriate to include in Title V permits the additional language you propose in your October 2 letter. The

background of this court decision does not belong in Title V permits. The Title V permit is designed to include the requirements for the subject source, not the historical and legal background for those requirements. In addition, the decision did not affect the validity of EPA's Title V regulations or any permits issued thereunder. However, neither the credible evidence rule nor the inclusion of general credible evidence language in a Title V permit waives the permittee's right to challenge either the credible evidence rule, or the admissibility or credibility of particular evidence in individual adjudications. I believe the concerned parties you mention in your letter are aware of the court decision and their rights preserved in the ruling, and would have the opportunity to exercise those rights if the appropriate situation arose. For the reasons listed above, it is USEPA's position that the numerous requests for hearings before the Director of OEPA are unfounded.

I hope that this letter clarifies USEPA's position with respect to the need for credible evidence boilerplate language and assists OEPA with any hearings that may result from the issuance of Title V permits containing such language. If you have any questions regarding this letter, please contact Genevieve Damico, of my staff, at (312) 353-4761.

Sincerely yours,

/s/

Cheryl L. Newton, Acting Chief
Air Programs Branch

Exhibit 5

July 28, 1998

Paul Dubenetzky, Branch Chief
Office of Air Management
Indiana Department of Environmental Management
100 North Senate Avenue
P.O. Box 6015
Indianapolis, Indiana 46206-6015

Dear Mr. Dubenetzky:

The purpose of this letter is to inform you of the United States Environmental Protection Agency's (USEPA) concerns regarding the inclusion of supersession condition and credible evidence language in Title V permits. The topic of supersession has developed into a national issue with concerns over the legal consequences of incorporating such language into permits. The specific concerns with Indiana's permit program and possible steps for resolution are outlined immediately below. Credible evidence has also gained national significance because the language can be construed as allowing only specified testing and monitoring methods to be used to demonstrate violations of or compliance with permit terms and conditions. However, as underscored by the credible evidence rule, 62 Fed. Reg. 8314 (Feb. 24, 1997), the Clean Air Act provides that USEPA, the State, and citizens, including the source itself, may use any credible evidence for these purposes.

Supersession:
A Title V permit incorporates into one document and provides for the implementation of all applicable requirements of the Clean Air Act that apply to a permit holder. 40 C.F.R. º 70.2 defines "applicable requirement" as, among other things, "(2) Any term or condition of any preconstruction permits issued pursuant to regulations approved or promulgated through rulemaking under title I, including parts C or D, of the Act...." By definition, "applicable requirements", such as preconstruction permit conditions, need to exist apart and independent of the Title V permit. Rescission of an underlying preconstruction permit by the terms of a Title V permit could result in the nullification of the terms of the preconstruction permit as "applicable requirements" which must be incorporated into future Title V permits. When a term or condition no longer exists in a preconstruction permit, the term or condition may no longer be an applicable requirement, as defined by the Part 70 regulations. Once a Title V permit superseded previous preconstruction permits, there may be no legal basis for incorporating any conditions which were inadvertently overlooked or for maintaining

conditions when the Title V permit was renewed. Therefore, preconstruction permits should not be superseded.

Indiana has been issuing Title V permits with a supersession condition in A.5 under Source Summary. The condition states that:

The terms and conditions of this permit incorporate all the current applicable requirements for all emission units located at this source, and supersede all terms and conditions in all registrations and permits, including construction permits, issued prior to the effective date of this permit. All terms and conditions in such registrations and permits are no longer in effect.

Pursuant to this condition, the Title V permit automatically supersedes any previously issued construction permit and/or operating permit. Furthermore, it is my understanding that the Indiana Department of Environmental Management (IDEM) would allow a source's state operating permit to expire once the source was issued a Title V permit. This would similarly cause concerns because the applicable requirements would no longer exist outside the Title V permit. As with permits to construct, once a state operating permit is superseded or expired, there may be no legal basis for incorporating or maintaining the conditions of the superseded permit into the Title V permit. Neither Title V (Subchapter V of the Clean Air Act as amended) nor its implementing regulations provide the permitting authority with the authority to create applicable requirements through the Title V permitting process.

Along with the supersession language found in Indiana's Title V permits, my staff have identified specific rule provisions which complicate the supersession issue. 326 IAC 2-1-4 contains the state operating permit rules. A non-SIP approved part of the rules states that sources subject to 2-7, 2-8, or 2-9 shall comply with those rules instead of the state operating permit rules, thereby eliminating the requirement for a state operating permit if a source is subject to Part 70. Also, 326 IAC 2-7-2(f), which was approved as part of the original Part 70 submittal, states that a Part 70 source is exempt from the requirement to have a state operating permit once the Title V permit is effective. Again, this language eliminates the need for the source to have a state operating permit. When the source's construction and operating permits disappear, only the Title V permit will exist. As a result, there may be no requirement to keep the construction and operating permit terms in the Title V permit, since they may no longer exist as applicable requirements.

It is my understanding that IDEM would like to include language in its Title V permits to alleviate the regulated community's concern about enforcement of multiple permits or requirements. Title V is designed to be the primary enforcement tool which incorporates all applicable requirements into one document. As we discussed, Indiana may incorporate the following language into the permit shield condition immediately before B.14(a)(1)&(2):

This permit shall be used as the primary document for determining compliance with applicable requirements established by previously issued permits. Compliance with the conditions of this permit shall be deemed in compliance with any applicable requirements as of the date of permit issuance.

Adding the language to the permit shield condition will ensure that supersession concerns are avoided by limiting the language to applicable requirements which have been specifically identified in the permit and to determinations in the permit which specifically identify other applicable requirements as not applicable, while addressing the regulated community's concerns with multiple permit requirements.

In the long term, national policy on supersession will require certain changes in the rules discussed above so that the State operating permit, which contains the applicable requirements, will not disappear. Possible solutions may involve making permanent the state operating permit. Also, the State may wish to consider developing a merged state operating/Title V permit program or even a merged state operating/construction/Title V program, such that the renewal of all permits can be done concurrently. In this case, the Title V permit would also be, in effect, the state operating and/or construction permit. My staff is available to assist you in exploring options to address these underlying concerns, and, again, we will be continuing to appraise you of national efforts. In the meantime, you should be aware that USEPA intends to object to any permits containing supersession language.

Credible Evidence:
With respect to credible evidence, IDEM has been drafting and proposing Title V permits which include several examples of language which may preclude the use as evidence testing or monitoring other than that specified in the Title V permit. Such examples can be found in various sections of the model Title V permit, including sections D.4.4. (Section D.4.4. provides that "[c]ompliance shall be determined utilizing one of the following options.";"A determination of noncompliance pursuant to either of the methods specified in (a) or (b) above shall not be refuted by evidence of compliance pursuant to the other method.") and D.1.7, (Section D.1.7. provides that "[c]ompliance with the VOC content

and usage limitations contained in Conditions Dx.x and D.x.x shall be determined pursuant to 326 IAC 8-1-2(a)(7) using formulation data supplied by the coating manufacturer."). This language makes it possible for a permitted source to assert that the methods for demonstrating compliance specified in the permit are the only methods admissible to demonstrate violation of the permit terms. In order to make clear the authority to use other evidence to prove compliance or noncompliance, USEPA believes this language must be removed from permits.

For these reasons, USEPA will object to any Title V permit which IDEM proposes to issue, which contains such "credible evidence buster" language. The USEPA suggests that, in addition to removing the above-referenced language from permits, IDEM should include in each permit general language providing for the use of other credible evidence. This phrase would give the source notice that any person could rely upon any credible evidence to prove the source's compliance status. An example of such a phrase is:

"Notwithstanding the conditions of this permit that state specific methods that may be used to assess compliance or noncompliance with applicable requirements, other credible evidence may be used to demonstrate compliance or noncompliance."

If IDEM would like to use an alternate method or text, USEPA would be willing to explore options which will resolve this issue expeditiously.

If you have any questions or wish to discuss these issues further, please call Pallavi Reddy or Alvin Choi, of my staff, at (312)886-6204 or (312)886-3507.

Sincerely yours,

/s/

Stephen Rothblatt, Acting Director
Air and Radiation Division