

**UNITED STATES DEPARTMENT OF AGRICULTURE
AGRICULTURAL AIR QUALITY TASK FORCE**

CONSENT AGREEMENTS INVOLVING AGRICULTURAL OPERATIONS

Background

At its March 1, 2006 meeting, the AAQTF received presentations from EPA regarding VOC scaling factors for agricultural processing facilities and for compliance issues for a Ohio egg facility . It was learned that EPA's enforcement staff has taken an enforcement initiatives through consent agreements to increase VOC concentrations by applying multipliers to measured VOC levels to create, larger calculated emission rates. This has resulted ethanol plants and other agricultural processing plants exceeding their permit limits which has the potential of costing hundreds of millions of dollars of unanticipated costs for plants in the Midwest. It was also reported that the Ohio egg facility was required to sign a consent agreement that substantially increased their permit requirements above promulgated EPA standards..

Enforcement staff defend extraordinary permit requirements outside usual and customary procedures because: "The permittees agreed to it in a consent agreement." The AAQTF has serious concerns that consent agreements have been inappropriately used as an enforcement tool to circumvent the ordinary rule-making and permitting process. Furthermore, the AAQTF feels that consent agreements should only be used to obtain compliance when permit conditions have been violated, but not to leverage concessions from existing permits that are in compliance. The AAQTF is very concerned that there appears to be a pattern of abuse with consent agreements.

Recommendations

The AAQTF recommends that the Secretary of Agriculture communicate the following concerns to the Administrator of EPA through formal correspondence regarding the use of consent agreements:

1. The AAQTF is very concerned that EPA's enforcement staff is inappropriately using consent agreements to obtain concessions from permittees outside ordinary regulatory channels. There is a serious concern that this denies permittees their rights to due process.
2. EPA should refrain from using consent agreements to extract concessions from permittees who are in compliance with their permits. Consent agreements should only be used to address statutory and regulatory violations. This is a cross media concern that transcends the air program and consent agreement abuse should be reviewed by the EPA Inspector General.

The Agricultural Air Quality Task Force (AAQTF) advises the Secretary of Agriculture on issues relating to agricultural air quality. Consistent with the Federal Advisory Committee Act, the AAQTF is utilized solely for advisory functions. Determinations of action to be taken and policy to be expressed with respect to matters upon which the AAQTF reports or makes recommendations shall be made solely by the Secretary of Agriculture or an authorized officer of the Federal Government.

3. EPA should investigate the potential of consent agreements being used as a performance measure in the Office of Enforcement and Compliance Assurance and that employee performance might be based on such a measure.

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