Canada as a power marketer. That Order will expire on August 19, 2005.

On June 7, 2005, NSP filed an application with DOE for renewal of the export authority contained in Order No. EA–282 for a five-year term. NSP proposes to export electric energy to Canada and to arrange for the delivery of those exports over the international transmission facilities presently owned by Basin Electric Power Cooperative, Bonneville Power Administration, Eastern Maine Electric Cooperative, International Transmission Company, Joint Owners of the Highgate Project, Long Sault, Inc., Maine Electric Power Company, Maine Public Service Company, Minnesota Power Inc., Minnkota Power Cooperative, New York Power Authority, Niagara Mohawk Power Corporation, Northern States Power, Vermont Electric Power Company, Inc. and Vermont Electric Transmission Company.

The construction, operation, maintenance, and connection of each of the international transmission facilities to be utilized by NSP, as more fully described in the application, has previously been authorized by a Presidential permit issued pursuant to Executive Order 10485, as amended.

Procedural Matters: Any person desiring to become a party to this proceeding or to be heard by filing comments or protests to this application should file a petition to intervene, comment or protest at the address provided above in accordance with §§385.211 or 385.214 of the FERC's Rules of Practice and Procedures (18 CFR 385.211, 385.214). Fifteen copies of each petition and protest should be filed with DOE on or before the date listed above.

Comments on the NSP application to export electric energy to Canada should be clearly marked with Docket EA–282–A. Additional copies are to be filed directly with Manager, Contract Administration, Northern States Power Company, 1099 18th Street, Suite 3000, Denver, CO 80202.

A final decision will be made on this application after the environmental impacts have been evaluated pursuant to the National Environmental Policy Act of 1969, and a determination is made by the DOE that the proposed action will not adversely impact on the reliability of the U.S. electric power supply system.

Copies of this application will be made available, upon request, for public inspection and copying at the address provided above or by accessing the program's Home Page at *http://www.fe.doe.gov.* Upon reaching the Home page, select ''Electricity Regulation,'' and then ''Pending Proceedings'' from the options menus.

Issued in Washington, DC, on July 6, 2005.

Anthony J. Como,

Director, Permitting and Siting, Office of Electricity Delivery and Energy Reliability.

[FR Doc. 05–13633 Filed 7–11–05; 8:45 am]

BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[OAR–2004–0237; FRL–7936–5]

Animal Feeding Operations Consent Agreement and Final Order

AGENCY: Environmental Protection Agency (EPA).

ACTION: Supplemental notice; reopening of signup period for consent agreement and final order.

SUMMARY: On January 31, 2005 (70 FR 4958), EPA announced an opportunity for animal feeding operations (AFO) to sign a voluntary consent agreement and final order (air compliance agreement). This supplemental notice announces an extension to the signup period for the consent agreement and final order.

DATES: The signup period is extended to July 29, 2005.

ADDRESSES: EPA has established a docket for this action under Docket ID No. OAR–2004–0237. All documents in the docket are listed in the index at *http://www.epa.gov/edocket.* Although listed in the index, some information is not publicly available, *i.e.*, CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in EDOCKET or in hard copy at: Air and Radiation Docket, EPA/DC, EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the Air Docket is (202) 566–1742.

FOR FURTHER INFORMATION CONTACT: For information on the air compliance agreement, contact Mr. Bruce Fergusson, Special Litigation and Projects Division, Office of Enforcement and Compliance Assurance, U.S. EPA, Ariel Rios Building, Washington, DC 20460, telephone number (202) 564–1261, fax number (202) 564–0010, and electronic mail: *fergusson.bruce@epa.gov.*

For information on the monitoring study, contact Ms. Sharon Nizich, Organic Chemicals Group, Emission Standards Division, Office of Air Quality Planning and Standards, U.S. EPA, Research Triangle Park, NC 27711, telephone number (919) 541–2825, fax number (919) 541–3470, and electronic mail: *nizich.sharon@epa.gov.*

SUPPLEMENTARY INFORMATION: In order to provide more time for operators of animal feeding facilities to make informed decisions about participation, EPA is extending the sign-up period for the Animal Feeding Operation Air Compliance Agreement until July 29, 2005. The Agreement addresses emissions from certain animal feeding operations, also known as AFO. EPA will continue to reach out to the agricultural community during this time.

The response to comments document is published in a separate **Federal Register** notice and can also be found on the Agency's Web site at *http://www.epa.gov/compliance/resources/agreements/caa/cafo-agr-response-com.html.*

Dated: June 30, 2005.

Sally Shaver,

Director, Emission Standards Division, Office of Air Quality Planning and Standards.

Dated: July 5, 2005.

Robert A. Kaplan,

Director, Special Litigation and Projects Division, Office of Civil Enforcement and Compliance Assurance.

[FR Doc. 05–13671 Filed 7–11–05; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OAR–2004–0237; FRL–7936–4]

Animal Feeding Operations Consent Agreement and Final Order

AGENCY: Environmental Protection Agency (EPA).

ACTION: Supplemental notice; response to comments on consent agreement and final order.

SUMMARY: On January 31, 2005 (70 FR 4958), EPA announced an opportunity for animal feeding operations (AFO) to sign a voluntary consent agreement and final order (air compliance agreement).

The comment period ended May 2, 2005. This supplemental notice publishes the Agency's response to comments.

ADDRESSES: Comments are posted on Docket ID No. OAR–2004–0237 at the Agency Web site: *http://www.epa.gov/edocket.*

Docket: All documents in the docket are listed in the EDOCKET index at *http://www.epa.gov/edocket.* Although listed in the index, some information is not publicly available, *i.e.*, CBI or other information whose disclosure is restricted by statute. Certain other information, such as copyrighted materials, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in EDOCKET or in hard copy form at Docket ID No. OAR–2004–0237, EPA/DC, EPA West, Room B102, 1301 Constitution Ave., NW, Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the Air Docket is (202) 566–1742.

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For information on the monitoring study, contact Ms. Sharon Nizich, Organic Chemicals Group, Emission Standards Division, Office of Air Quality Planning and Standards, U.S. EPA, Research Triangle Park NC 27711, telephone number (919) 541–2825, fax number (919) 541–3470, and electronic mail: *nizich.sharon@epa.gov.*

SUPPLEMENTARY INFORMATION: On January 31, 2005, EPA published a notice in the **Federal Register** announcing an Air Compliance Agreement (the Agreement) AFO, and requested public comment on the Agreement. The original comment period ran until March 2, 2005. The comment period was subsequently reopened on April 1, 2005, and ran until May 2, 2005. EPA received approximately 800 separate sets of comments.

The development of the Agreement was an open and extensive process, both before and after the January 31, 2005, publication in the **Federal Register**. Prior to that announcement, EPA worked with numerous stakeholders for 3 years to develop the Agreement. Agency officials met and received input from representatives from all the relevant AFO industry groups, State officials, national and local environmental groups, and local citizen groups. EPA provided copies of prior drafts of the Agreement to these groups, and received comments. EPA made changes to the draft Agreement in response to concerns raised during the development of the Agreement. The vast majority of comments received during the public comment periods were ones that had been previously expressed to EPA, and they had already been considered in the development of the Agreement.

After the Agreement was published in the **Federal Register**, EPA continued to meet with various stakeholders from the AFO industry, States, environmental groups, and local citizen groups regarding the Agreement. Many informative meetings were held around the Nation to discuss the Agreement with stakeholders. EPA has reviewed all comments and has determined that no changes are needed to the current version of the Agreement. The two most frequent concerns raised were the need for more time to provide comments and for more time to consider whether to sign the Agreement. These two concerns were addressed with the reopening of the comment period and the extension of the signup period by 60 days until July 1, 2005. In addition, EPA is now extending the signup period a final time until July 29, 2005.

EPA has identified a number of common concerns in the comments and responds to each below. Additional information can be found on EPA's website in documents including the ''Fact Sheet,'' ''Frequently Asked Questions,'' and the ''Agreement Sign-Up Instructions.''

Comment: Emergency Planning Community Right-to-Know Act/ Comprehensive Environmental Response, Compensation and Liability Act (EPCRA/CERCLA) Applicability.

Many commenters from the poultry industry suggested that EPCRA and CERCLA were not intended to regulate the agriculture industry, and that the Agency should exempt these sources from reporting. Other commenters claimed that, to the contrary, it was essential for these emissions to be reported to the National Response Center and local emergency response centers in order to provide the public with information regarding quantities of ammonia emissions released from nearby agricultural operations.

Response: AFO may be subject to the notification requirements of CERCLA for releases of hazardous substances from their facilities. Generally, CERCLA section 103 requires a person in charge of a ''facility'' to report any release, including air emissions, of a hazardous substance from the facility if the release exceeds the reportable quantity (RQ) for that substance. Section 101(9) of CERCLA defines a facility to include: ''(A) any building, structure, installation, equipment, pipe or pipeline * * * well, pit, pond, lagoon, impoundment, ditch, landfill, storage container, motor vehicle, rolling stock, or aircraft, or, (B) any structure, installation * * *. ditch, landfill (or) site or area where a hazardous substance has been deposited, stored, disposed of, or placed, or otherwise come to be located.'' CERCLA hazardous substances of particular concern to the AFO industry typically are ammonia and hydrogen sulfide. Both of these hazardous substances have a reportable quantity of 100 pounds. CERCLA 103 requires any person in charge of a facility, as soon as they have knowledge of a release in an amount equal to or greater than the RQ from their facility, to immediately notify the National Response Center of such a release. EPCRA section 304 requires the same notification to State emergency response commissions and local emergency planning committees when CERCLA 103 is triggered in order to protect and expand public right-to-know interests.

To date, AFO that have reported to the National Response Center generally have reported estimated emissions coming from their barns and lagoons. In addition, AFO have the option of submitting a single, written report that characterizes continuous release reporting from their facilities. This ''continuous release report'' is the least burdensome form of reporting.

The Agency is aware of the concerns expressed and is committed to streamline the notifications so that they impose the least amount of burden for the reporting entities. EPA is particularly sensitive to the need for more specific triggering thresholds for CERCLA. One of the goals of the Agreement's 2-year monitoring study is to determine a more specific range of operations/species-specific release sizes that would trigger CERCLA and EPCRA.

In addition, the Agency has not received a formal request to consider a CERCLA administrative reporting exemption specifically for AFO for ammonia and/or hydrogen sulfide reporting.

Comment: Impact on State Actions.

Commenters noted that the Agency should clarify whether respondents will be shielded from future State lawsuits by signing this Agreement. A number of State commenters voiced concerns about the effect of the Agreement on State efforts to enforce against AFO. The primary objection was that the Agreement may undercut action of State, local, or tribal authorities

attempting to enforce their own authorities against AFO.

Response: The Agreement has no impact on the most important State enforcement tools to protect local residents from AFO emissions. These include zoning classification, State (non-Federally enforceable) permits, nuisance actions, workplace regulations and health and safety laws. Further, the Agreement does not impact any actions to abate odors because there are no Federal Clean Air Act (CAA) odor control regulations. The Agreement does not and is no way intended to undermine the State, local or tribal enforcement authorities. The Agreement does not affect any requirements that do not arise under CERCLA, EPCRA, or a federally-approved CAA State implementation plan. Prior to the Agreement, very few actions were brought against AFO for air emissions under the authorities set out in the Agreement. The great majority of enforcement came about under regulations that are not impacted by the Agreement. Concerns that the Agreement could affect the ability of regulators to protect the health and safety of local residents are unfounded. The Agreement does not affect the ability of any regulator to bring an action under the emergency provisions of the CAA and other statutes to prevent an imminent and substantial endangerment to public health, welfare or the environment.

The Agreement augments and improves State and local control in several respects. First, emissions data generated by the nationwide emissions study will be available to the public during the study. EPA's publication of emissions—estimating methodologies will also assist and guide State, local and tribal efforts. In December 2002, the National Academy of Sciences released a report concluding that scientifically sound and practical protocols for measuring air concentrations and emissions rates were needed to guide regulatory and enforcement decisions. The data collected by this study, along with EPA's analyses, will be a helpful step for all in answering the concerns of the National Academy of Sciences. Second, participating farms which need to obtain Prevention of Significant Deterioration/New Source Review (PSD/NSR) permits at the conclusion of the study will submit applications to the States. The Agreement explicitly does not limit a State or local government's authority to impose applicable permitting requirements. In addition, the covenant not to sue will be nullified if AFO fail to comply with State nuisance final orders arising from air emissions. Finally, a number of States are undertaking their own programs to address air emissions from AFO. These efforts range from mandatory permit programs to voluntary, cooperative approaches with industry. The Agreement is not intended to preempt or otherwise interfere with these efforts. Nothing in the Agreement absolves a failure to comply with non-federally enforceable State law, nor prohibits participation in other compliance programs.

Comment: Length of Implementation Schedule.

Several commenters expressed concern that major agricultural sources of air pollution may not be required to install emission control technology until 2010 or later under the Agreement. These commenters claim that such facilities are already having a significant negative impact on nearby residents and on local and regional air quality and, therefore, they should take immediate steps to reduce their emissions.

Response: Under the Agreement, the national air emissions monitoring study will be conducted for 2 years, most likely starting in early 2006. At the end of the monitoring study in early 2008, EPA will have eighteen months to develop and publish emissions-estimating methodologies for AFO. Within 120 days after EPA has published an emissions-estimating methodology for a particular farm, the farm will have to submit all required CAA permit applications. Installation of controls required by any permits will be in accordance with the deadlines established by the relevant State permitting authority.

EPA believes that the above schedule represents the most aggressive schedule that is reasonably possible. EPA and the group of experts on AFO air emissions that developed the monitoring study protocol concluded that 2 years of monitoring were needed to conduct a study that will yield data adequate to allow EPA to develop reasonably accurate emissions-estimating methodologies. While much has to be done once the monitoring study is completed to develop the emissions-estimating methodologies, such as analysis of data and review by EPA's Science Advisory Board, EPA will not wait until the end of the 2-year monitoring study before beginning the process of developing the Emissions-Estimating Methodologies, but rather will do so as soon as data become available. Moreover, EPA has agreed to publish the emissions-estimating methodologies on a rolling basis as they are developed. For those reasons, EPA is hopeful that it will be able to publish emissions-estimating methodologies for large segments of the AFO industry before the 18-month deadline, and that any required controls will subsequently be installed before 2010.

EPA believes that the alternative to the Agreement suggested by several commenters—using enforcement authority to order AFO to measure their emissions and to comply with all applicable environmental requirements would take much longer. In addition to the above steps related to emissions monitoring and developing emissions-estimating methodologies for the AFO industry, which would take just as long if not longer under this scenario, there would also potentially be several years of litigation added to the timeline as AFO contested EPA's orders and emissions-estimating methodologies. By avoiding lengthy litigation, the Agreement provides the shortest timeframe possible to obtain the necessary data and to bring AFO into compliance with all applicable regulatory requirements pertaining to air emissions.

Comment: BACT/LAER.

Several commenters noted that it is not clear what types of control strategies/techniques respondents will be committing to install, since best available control technology (BACT)/lowest achievable emission limitations (LAER) determinations have not been made for agriculture sources. The commenters expressed concern that implementation of BACT/LAER could force closure of farms.

Response: The selection of both BACT and LAER are site-specific determinations that consider the achievability of controls. A BACT analysis requires the local permitting authority to consider the economic, energy, and environmental impacts in determining the degree of emissions reductions that are achievable for new or modified major sources in attainment areas. EPA does not envision significant burdens associated with the application of BACT. Although a LAER determination does not consider economic, energy, or environmental factors, a LAER limit also is not intended to impose costs that would prevent successful economic operation of a source. LAER is defined as the most stringent emission limitation that is either: (1) Contained in a State implementation plan, or (2) achieved in practice by a source in the same class or category. If a control technology is in use at another facility in the same class or category of farm, then this is evidence that the costs of that control are not prohibitive and would not cause a competitive disadvantage. EPA will be

issuing guidance in the future that will specify the conditions that constitute the same class or category of farm. Relative to non-attainment and attainment areas under the CAA, BACT is applicable when a major source applies for a PSD permit, and is only applicable in attainment areas. LAER is applicable when a major source applies for a New Source Review (NSR) permit in a non-attainment area. Until emission estimates are developed for farm operations, it is not known whether BACT or LAER would be required. If they are needed, EPA will work with the U.S. Department of Agriculture (USDA) to determine the most effective BACT and LAER alternatives for the least cost. EPA will issue guidance addressing this along with methodologies for determining emission estimates at the conclusion of the study.

Comment: Civil Penalty Payment.

EPA received several comments suggesting that the civil penalty provision and the monitoring fund fees under the Agreement are inappropriate for various reasons. Commenters noted that the Agreement does not follow the penalty assessment criteria established by CERCLA, EPCRA and the CAA. Commenters also claimed that the EPA failed to adhere to its policies governing the assessment of penalties, known as Enforcement Response Policies (ERPs), in administrative enforcement proceedings which provide guidance in establishing penalties.

Commenters argued that the penalties under the Agreement were either too low or too high. Those who thought that the penalties under the Agreement were too low referenced the criteria set forth in the statutes and in the ERPs. Those who thought that the penalties under the Agreement were too high commented that small farmers would have to pay a disproportionate amount of their total revenue where they are unlikely to trigger CERCLA, EPCRA or CAA reporting thresholds. Lastly, some commenters noted that the monitoring fund fees would impose a financial hardship.

EPA also received several comments suggesting that the Agreement requires an admission of liability and that the term ''civil penalty'' carries negative connotations that imply guilt. Furthermore, companies should not have to pay to resolve unproven violations.

Response: The Agreement is a voluntary settlement between the EPA and participating farmers. There is no obligation to participate. The penalty assessment criteria contained in CERCLA, EPCRA, and the CAA serve as guidance in establishing the penalty provision under the Agreement. The Agreement use a pro-rata determination based on the size of business in calculating the amount of the penalty. For example, the Agreement considers the number of facilities in making the penalty determination. Under the Agreement, some small farmers may pay as little as $200 in order to participate. The monitoring fund fees will be used to support monitoring activities to determine emissions from various types of operations across geographic regions and species. Given the lack of established emissions factors, participating facilities both large and small will benefit from increased certainty—both in knowing their obligations and resolving possible current and past liability.

By signing the Agreement, farmers are not admitting any liability or any sort of wrongdoing. The Agreement makes clear that signing is not an ''admission that any of its agricultural operations has been operated negligently or improperly or that any such operation is or was in violation of any Federal, State, or local law or regulation.'' The civil penalty provision is not intended to be used for any other purposes other than this Agreement. Rather, payment of a penalty is part of the process to obtain a release from liability for possible violations. If the participant pays the penalty and complies with all the terms of the Agreement, the Federal Government cannot sue later for the violations covered by the Agreement. Payment provides participants with the full protections of the settlement.

A primary focus of the national air emissions study is to determine how much air pollution farms emit. The type and quantity of emissions depend on many factors such as species, number of animals, type of operation, and location. Until the monitoring study is complete and more data are available, it would be difficult to say what requirements may apply to which particular size and type of operations, and whether these farms emit enough pollutants to trigger regulatory requirements. In fact, the study is designed to answer this question: what size and types of farms may have regulatory responsibilities? Therefore, the results of the study will be used to determine compliance status.

Comment: Payment Responsibility for Monitoring.

EPA received a number of comments relating to funding of the monitoring study. Some commenters noted that farms should not have to pay to monitor their facilities; EPA and/or USDA should pay for the monitoring or offer grants to help farms pay for the monitoring. Some commenters also noted possible inequities in the funding obligations across animal species because dairy and poultry cannot use check-off funds to pay for monitoring.

Response: Every source is obligated to determine if it is in compliance with applicable Federal environmental laws. EPA recognizes it may be difficult for certain farms to determine their compliance responsibilities with respect to air emissions. The emissions monitoring study in the Agreement will help provide the scientific data needed to help farmers and EPA determine the compliance status of AFO. The Agreement is the quickest and most effective way to address current uncertainty regarding emissions from AFO and to bring all AFO into compliance with all applicable regulatory requirements pertaining to air emissions.

EPA is offering the Agreement to AFO in the egg, broiler chicken, turkey, dairy and swine industries. The Agreement ensures that responsibility for funding the emissions monitoring study will be shared among the AFO that choose to sign the Agreement. Moreover, the Agreement should reduce the cost of measuring emissions for individual facilities by combining participants' resources.

The Agreement also ensures participating farms are treated fairly and consistently across animal sectors. Under the Agreement, EPA will not sue any participant for certain past violations; in return, participants agree to pay a small civil penalty and contribute to the emissions monitoring study. The Agreement is designed to provide flexibility for the industry to generate or pool resources to cover the costs of the study.

Comment: Immunity.

Several commenters stated EPA should not give ''immunity'' as part of the Agreement, or at least not to the farms that are not monitored as part of the emissions monitoring study.

Response: A release and covenant not to sue is a common provision of settlements and is consistent with the procedural requirements for the settlement of matters before filing an administrative complaint contained in 40 CFR part 22. In the Agreement, EPA agrees not to sue participating AFO for violations of certain federal environmental laws provided participants comply with specific conditions of the Agreement. This limited conditional release and covenant not to sue is offered to participating AFO that pay a small penalty and contribute to the monitoring study fund. Payment

provides participants with the full protections of a settlement.

Comment: Monitoring Protocol—Outside Peer Review/Stakeholder Involvement.

EPA received several comments suggesting that the monitoring protocol should be reviewed by groups outside the EPA, and that EPA should provide greater stakeholder participation. Commenters suggested that the monitoring protocol should undergo peer review by independent experts that were not involved in formulating the protocol. Also, some State and local agencies requested that they be allowed to participate with EPA in the periodic technical review of progress of the study.

Response: The monitoring protocol was developed over a period of approximately 12 months by a group of thirty experts in the area of AFO air emissions. This group of experts included scientists from both USDA and EPA, the AFO industry, environmental groups, and academia. EPA is evaluating whether and how to conduct additional review.

Comment: Monitoring Site Selection/Statistical Representation.

EPA received many comments related to the selection of monitoring sites. Commenters stated that the number of monitoring sites is too small to provide scientifically defensible emission estimates. Commenters also noted that the number of sites is too limited to account for all of the differences in types of manure management systems, building types, ventilation rates, feeding practices, animal type/age, animal management practices, geography, and climate. Even for the types of farms monitored, commenters said that there may not be a sufficient number of samples to establish a statistically-valid standard deviation to account for random variability from a single farm type.

Response: EPA recognizes that there is a wide variety of AFO processes used in the industry and that the mechanisms that generate emissions from the AFO industry are highly complex. EPA recognizes that it is impractical to expect that sufficient data could be collected in a timely manner to accurately characterize every different type of operation and practice used in the AFO industry. Technical experts on emission monitoring at EPA and a number of universities have concluded that monitoring the farms described in the protocol will provide sufficient data to get a valid sample that is representative of the vast majority of participating AFO. At the time the agreement was announced, EPA estimated that approximately 28 farms would be selected to represent the major animal groups (*e.g.*, swine, dairy, and poultry), different types of operations, and different geographic regions. Twenty-eight farms represent EPA's estimate of the minimum number of farms that are expected to participate in the Agreement, based on the resources available. If more farms decide to participate, then resources will be available to monitor additional sites. Whatever number of sites are ultimately selected, EPA will choose farms that are representative of the broadest population of participating animal feeding operations. Moreover, in developing the methodologies for estimating AFO emissions, EPA will not be limited to using only the data collected under the Agreement. As stated in the **Federal Register** notice, EPA intends to aggregate the data collected under the Agreement with existing emissions data. Currently, substantial research on AFO emissions is being conducted by states, universities, and the USDA. For example, the USDA funded a project through the Initiative for Future Agriculture and Food Systems in early 2000. This emissions measurement project at livestock and poultry buildings is being conducted in six States: Indiana, Iowa, Illinois, Minnesota, North Carolina, and Texas. Mobile laboratories are being used by each State to collect aerial pollutant emissions from the barns of six different animal types, one type per each participating State. EPA will evaluate the results of the research and all other relevant studies and will incorporate the findings of any substantially similar studies that can meet quality assurance tests and other validity tests into the emissions-estimating methodologies.

Comment: Use of a Single Nonprofit Organization/Independent Monitoring Contractor.

Some commenters asserted that using a single nonprofit organization (NPO) and single independent monitoring contractor (IMC) to conduct the monitoring is inappropriate. Commenters stated that a separate NPO should be established for each animal sector to ensure the credibility and success of the monitoring results. In this manner, the monitoring study would be conducted by individuals who are most knowledgeable about each animal sector. A primary concern of the commenters was that the emission results will not be valid because the monitoring study will not be tailored to the needs of each animal species and study location.

Response: The Agreement provides for individuals who are most knowledgeable to be responsible for planning and implementing the study. The use of a single NPO and IMC does not limit the scientific expertise that will be incorporated into planning and implementation. The NPO will be primarily responsible for administration of the study and communicating progress, but will not be involved in the technical aspects of the testing and monitoring program. The IMC and Science Advisor will be responsible for developing the monitoring plan; ensuring the consistency of the quality assurance objectives, test methods, and monitoring protocols that will be used at the various sites; and selection, hiring, and oversight of the Principal Investigators for each site, who will be responsible for conducting the monitoring at each site. The Principal Investigators will be selected based on the unique scientific expertise required for each animal species and farm operating practice.

The Principal Investigators will be regional or local experts (*e.g.*, nearby university researchers) who are familiar with local animal agricultural practices and the topographic and meteorological factors that influence emissions. Under the direction and approval of the Science Advisor, the Principal Investigators may participate in site selection and development of the site-specific monitoring plans and will be able to alter their plans due to interim findings as the study progresses. Hence, the study methodology is anticipated to allow sector experts to oversee the implementation of the plans and tailor the monitoring protocols as needed to address site-specific conditions.

Comment: Testing and Monitoring Methods and Data Availability.

EPA received a number of technical comments related to testing and monitoring methodologies. These comments addressed limitations and difficulties of applying specific sampling methods to barns and manure storage facilities (*e.g.*, maintenance and operating procedures, the citing of samplers, sampling procedures, sampling frequency, method selection, and others).

Several commenters stated that real-time monitoring data should be made available online to the public. Other commenters said that the industry participants and independent researchers that conduct the monitoring should have access to the data and be encouraged to publish the data.

Response: The comments EPA received on testing and monitoring-related issues came primarily from

researchers with experience in evaluating and monitoring emissions from the processes and animal groups addressed by the Agreement. These comments contain useful advice on the application of testing and monitoring methods, sampling locations, equipment selection, and maintenance as well as suggestions for avoiding potential pitfalls. These comments will be passed to the Science Advisor for consideration in developing site-specific testing and monitoring plans. As stated in the Agreement, all the emissions data collected will be made available to the public. Throughout the course of the study, the IMC will submit quarterly progress reports to EPA and provide all emissions data and analysis to the EPA as soon as possible. The EPA will review the data to validate the suitability for use in developing emission estimation tools. As the study progresses, EPA will periodically release interim findings to the public. At this time, the schedule for release and the format of the data have not been determined.

Comment: Industry-Sponsored Study.

A number of commenters stated that industry should not be responsible for the monitoring study because the results of the study could not be accepted as unbiased, especially since there is no outside oversight of the monitoring by EPA or anyone else not connected with the industry.

Response: Throughout the study, the activities of the Principal Investigators will be subject to review and approval by EPA. The IMC must submit to EPA a proposed monitoring plan (including selection of the farms to be tested) for review and approval. The Agreement also requires the IMC to submit quarterly progress reports to EPA and schedule periodic meetings with EPA (additional meetings can be scheduled at the request of EPA). The IMC must notify EPA promptly of any problems or adjustments made to the approved plan. The EPA also will have access to the farms participating in the study to verify or observe the conduct of the monitoring. All emissions data generated and all analyses of the data made by the IMC during the monitoring study will be provided to EPA as soon as possible. EPA will review and analyze the data to verify credibility for use in developing the emissions-estimation methodologies. The emissions data also will be made available to the public.

Since the inception of the CAA, most emissions data that have been used for regulatory applicability determinations and environmental rulemaking have been developed by industry. EPA policy requires that the data be collected using federally approved test methods. EPA reviews the final test reports and is the final authority on the acceptability of the data. The monitoring protocol for AFO differs only in the scope of the monitoring study and the additional degree of EPA involvement in the up-front planning of the study.

Comment: Process-Based Models.

Several commenters stated that the emissions-estimating methodologies developed by EPA should be process-based models as suggested by the National Academy of Sciences. In addition, development of the emissions-estimating methodologies should be an open process, with citizen and State involvement and peer review.

Response: In the short-term, the monitoring study is designed to produce scientifically sound emissions-estimating methodologies for making regulatory applicability decisions for AFO. Our longer-term strategy involves development of process-based models that consider the entire animal production process, consistent with the recommendations from the National Academy of Sciences. The data collected in the monitoring study, along with other valid scientific studies that are available will be used to develop the process-based models. EPA has not determined the process by which emissions-estimating methodologies will be developed. EPA anticipates that the process will provide the opportunity for public input and review. However, the timing and extent of review have not been determined.

Comment: Claim that Agreement is a Rule.

Several commenters expressed the opinion that the Agreement was a rule, not an adjudication, and was, therefore, subject to the Administrative Procedure Act's procedures for rulemaking. Commenters expressed two concerns. First was a belief that the Agreement will excuse a large part of the industry from compliance with the CAA, CERCLA, and EPCRA for several years. Second, commenters expressed concern that binding emission evaluating protocols would be established without adequate public input.

Response: Each Agreement that will be entered into by EPA is a settlement of potential civil violations under the Clean Air Act, CERCLA, and EPCRA and, therefore, clearly the result of an adjudication. It contains all the classic elements of an adjudicatory settlement, including an allegation of potential violations, a civil penalty, a resolution of liability, and a requirement that the participating farms come into compliance with all applicable regulatory requirements. While the commenters object that the Agreement does not require immediate compliance, it is common for settlements to establish a compliance schedule. Here, the Agreement requires that the participating company must first determine the amount of their emissions and which regulatory requirements apply, and then is required come into compliance expeditiously once that determination is made. The fact that EPA has chosen to exercise its enforcement discretion to enter into essentially the same settlement agreement with a class of facilities that may have the same potential violations does not convert the adjudicatory process into a rulemaking one.

With regard to commenters' second concern, EPA has not determined the process by which emissions-estimating methodologies will be developed and anticipates that the process will provide the opportunity for public input and review. Because neither the final form of the emissions-estimating methodologies nor the process by which they will be developed has yet been determined, commenters' claim that EPA has failed to comply with procedural requirements is premature.

Comment: Liability Impacts in Other Areas.

EPA received a number of comments on potential adverse consequences of ''admitting liability'' by participation in the Agreement, with payment of a penalty pursuant to Paragraph 48 of the Final Order. Some farmers raised concerns that participation could affect their credit, immigration status, and ability to participate in other government programs.

Response: As noted earlier, participation in the Agreement is not an admission of liability. Paragraph 3 of the Agreement makes clear that execution of the Agreement is ''not an admission that any of its agricultural operations has been operated negligently or improperly, or that any such operation is or was in violation of any Federal, State, or local law or regulation.'' Consistent with EPA's practice in settling both civil judicial and administrative matters, the Agreement states that, ''participation in this Agreement is not an admission of liability.'' Concerns that signing the Agreement may serve as an admission are addressed in the Agreement. No further clarification is necessary. Second, as set out in Paragraph 2 of the Agreement, the purpose of the Agreement is to ensure that participants comply with applicable requirements of the CAA and applicable reporting provisions of CERCLA and EPCRA.

Participation should not give rise to any inference of wrongdoing. To the contrary, EPA deems those who choose to participate to be cooperatively addressing an industry-wide problem, acting responsibly and proactively.

Further, until the results of the study are published and EPA determines emissions factors, it can be difficult for participants to determine their compliance status. The Agreement provides a mechanism for resolution of civil liability, as set out in the Agreement, that is designed to achieve compliance for large segments of the industry as rapidly as possible. For all of these reasons, participants should not suffer adverse consequences in any other public or private application, program, or proceeding for voluntarily undertaking this action.

Conclusion

Interested parties should refer to the January 31, 2005, **Federal Register** notice (70 FR 4958) to view the consent agreement and final order at Appendix 1, Attachment A—Farm Information Sheet, and Attachment B—National Air Emissions Monitoring Study Protocol.

Dated: June 30, 2005.

Sally L. Shaver,

Director, Emission Standards Division, Office of Air Quality Planning and Standards.

Dated: July 5, 2005.

Robert A. Kaplan,

Director, Special Litigation and Projects Division, Office of Civil Enforcement and Compliance Assurance.

[FR Doc. 05–13672 Filed 7–11–05; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

[FRL–7936–6]

Announcement of the Board of Trustees for the National Environmental Education and Training Foundation, Inc.

SUMMARY: The National Environmental Education and Training Foundation was created by Section 10 of Public Law #101–619, the National Environmental Education Act of 1990. It is a private 501(c)(3) non-profit organization established to promote and support education and training as necessary tools to further environmental protection and sustainable, environmentally sound development. It provides the common ground upon which leaders from business and industry, all levels of government, public interest groups, and others can work cooperatively to expand the reach of environmental education and training programs beyond the traditional classroom. The Foundation supports a grant program that promotes innovative environmental education and training programs; it also develops partnerships with government and other organizations to administer projects that promote the development of an environmentally literal public.

The Administrator of the U.S. Environmental Protection Agency, as required by the terms of the Act, announces the following appointment to the National Environmental Education and Training Foundation, Inc. Board of Trustees. The appointee is J.L. Armstrong, National Manager, Diversity, Development—Community, Toyota Sales, USA, Inc. The appointee will join the current Board members which include:

- Braden Allenby, Vice President, Environment, Health and Safety, AT&T
- Richard Bartlett, (NEETF Chairman) Vice Chairman, Mary Kay Holding Corporation
- Dorothy Jacobson, Consultant
- Karen Bates Kress, President, KBK Consulting, Inc.
- Dorothy McSweeny, (NEETF Vice Chair), Chair, DC Commission on the Arts and Humanities
- Honorable William Sessions, former Director of the Federal Bureau of Investigation.

Additional Considerations: Great care has been taken to assure that this new appointee not only has the highest degree of expertise and commitment, but also brings to the Board diverse points of view relating to environmental education and training. This appointment shall be for two consecutive four year terms.

FOR FURTHER INFORMATION CONTACT: C. Michael Baker, (202) 564–0446, Acting Director, Office of Environmental Education, Office of Public Affairs (1704A) U.S. EPA 1200 Pennsylvania Ave., NW., Washington, DC 20460.

Dated: July 6, 2005.

Stephen L. Johnson,

Administrator.

BIO of New Member

J. L. Armstrong, National Manager, Diversity Development—Community, Toyota Motor Sales, U.S.A., Inc.

J.L. Armstrong is national manager diversity development, community for Toyota Motor Sales (TMS), U.S.A., Inc.

In support of Toyota's 21st Century Diversity Strategy, he has corporate liaison responsibility for minority advertising and marketing promotions, supplier diversity, community relations, and field operations. He is charged with developing a strategic diversity plan and is responsible for monitoring, augmenting, tracking, and supporting those processes that result in the organization's ability to sustain a competitive advantage by leveraging diversity.

Armstrong began his career with Toyota in 1992 as merchandising manager and was responsible for developing and implementing marketing programs targeting special markets based upon ethnicity, gender, and educational background. Armstrong developed and implemented sports, motorsports, media merchandising, auto show, and promotional clothing/specialty merchandising marketing programs.

In 1998 he was appointed supplier development manager and promoted to national manager supplier development January 2002. Armstrong developed the Supplier Development Department at TMS, which included developing an electronic supplier database accessible to all TMS associates in the interest of increasing the utilization of minority and woman-owned businesses. He developed a Second Tier Supplier Program to ensure that TMS majority-owned suppliers utilize minority and woman-owned businesses, and developed metrics and quarterly reporting systems to ensure that TMS is able to monitor its spending with minority and woman-owned business enterprises. Armstrong was instrumental in taking TMS from $44 million in minority/woman-owned business procurement spend in 1998 to over $83 million in 2001.

Prior to Toyota, Armstrong worked as director of business affairs for Universal Television, MCA, Inc., negotiating deals for the services of writers, directors, and producers in connection with television development and production.

Armstrong graduated with a Bachelor of Science degree in business from Indiana University in Bloomington, Ind. He is an ordained minister with the African Methodist Episcopal Church, and serves on the ministerial staff of Rev. Dr. Cecil Murray at First AME Church, Los Angeles, Calif.

Armstrong is past Vice Chair External Affairs of the Southern California Regional Purchasing Council board of directors, and served on the senior corporate executive advisory board of the United States Hispanic Chamber of Commerce in Washington, DC.

Armstrong resides in West Los Angeles, Calif.

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