

## **CONSENT AGREEMENTS and ORDERS**

### **Background**

At its March 1, 2006 meeting, the USDA Agricultural Air Quality Task Force (AAQTF) received information that federal and state regulatory officials have taken enforcement actions and used consent agreements and orders in several instances to obtain concessions from agricultural processors. It was reported that EPA obtained consent agreements and orders from ethanol operations in the Midwest for violating VOC scaling factors, and the State of Ohio extracted a consent agreement and order from an Ohio egg facility for alleged excess particulate emissions exceeding and violating Title V of the Clean Air Act. This has resulted in hundreds of millions of dollars of unanticipated costs for agricultural interests.

Enforcement staff defend imposing extraordinary permit requirements outside usual and customary procedures because: "The permittees agreed to it in a consent agreement." The AAQTF has expressed serious concerns that consent agreements and orders have been inappropriately used as an enforcement tool to circumvent the ordinary rule-making and permitting process and that there appears to be a pattern of abuse.

### **Possible Actions:**

1. The Secretary of Agriculture, the Administrator of EPA, and the Attorney General should meet to evaluate the potential for abuse in using consent agreements and orders in routine regulatory compliance issues and provide appropriate policy direction to their respective agencies.
2. Consent agreements and orders to obtain concessions from permittees who are in compliance with existing permits should be prohibited. (Permit changes should be made through ordinary, regulatory processes and not through extraordinary processes under duress.)
3. Consent agreements and orders should only be used to address the most serious statutory and regulatory violations that have immediate and substantial threats to the environment or human health.
4. EPA Inspector General should be asked to investigate potential abuses of consent agreements and orders within the agency.
5. If consent agreements and orders are being used as a performance measure in the Office of Enforcement and Compliance Assurance and ultimately for employee performance evaluations, the performance measure and employee appraisals should be prohibited.