

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

UNITED STATES,)
)
 Plaintiff,)
)
 and the STATES OF ALABAMA, GEORGIA,)
 ILLINOIS, INDIANA, IOWA, MISSOURI,)
 NEBRASKA, NORTH CAROLINA, NORTH)
 DAKOTA, AND OHIO; and the IOWA)
 Counties of LINN and POLK, the OHIO)
 County of MONTGOMERY, and the)
 TENNESSEE County of SHELBY and City of)
 MEMPHIS,)
)
 Plaintiff-Intervenors,)
)
 v.)
)
 CARGILL, INCORPORATED,)
)
 Defendant.)

Civil Action Number: 05-2037JMR/FLN

CONSENT DECREE

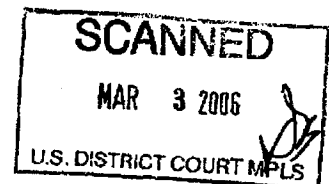


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CONSENT DECREE

WHEREAS, Plaintiff, the United States of America (hereinafter "Plaintiff" or "the United States"), on behalf of the United States Environmental Protection Agency (hereinafter "EPA"), has, simultaneously with lodging of this Consent Decree, filed a Complaint alleging that Cargill, Incorporated (hereinafter "Cargill") commenced construction of a major emitting facility and major modifications of a major emitting facility in violation of the New Source Review ("NSR") requirements at Part C and D of the Clean Air Act (the "Act"), 42 U.S.C. §§ 7470-7492 and 7501-7515, and the regulations promulgated thereunder at 40 C.F.R. Parts 52.21 and 51.165 and State Implementation Plan ("SIP") permitting programs for construction and operation of new and modified stationary sources;

WHEREAS, the United States issued Notices of Violation related to VOC emissions for Cargill's Lafayette, Indiana oilseeds facility on May 2, 2002, Cargill's Bloomington, Illinois oilseeds facility on September 9, 2002, and all nine of Cargill's corn processing facilities on August 12, 2003;

WHEREAS, on September 9, 2003, a Notice of Violation related to VOC emissions was issued to Cargill by the Regional Air Pollution Control Agency for violations associated with its failure to comply with State of Ohio and Montgomery County air pollution control provisions related to permit and emissions control requirements for new sources of air contaminants;

WHEREAS, Notices of Violations related primarily to VOC emissions were issued to Cargill by the state of Nebraska on May 23, 2003, the state of Iowa on August 1, 2003, the Iowa county of Linn on August 1, 2003, and a Notice of Inquiry related primarily to VOC emissions

was issued to Cargill by the Memphis-Shelby County Health Department on September 30, 2003;

WHEREAS, the states of Alabama, Georgia, Illinois, Indiana, Iowa, Missouri, Nebraska, North Carolina, North Dakota, and Ohio; the Iowa counties of Linn and Polk, the Ohio county of Montgomery, and the Tennessee county of Shelby and city of Memphis (hereinafter collectively "Plaintiff-Intervenors"), have filed Complaints in Intervention, joining the claims alleged by the United States;

WHEREAS, Cargill does not admit the violations alleged in the Complaints and the NOVs;

WHEREAS, Cargill has worked cooperatively with the United States and the Plaintiff-Intervenors to structure a comprehensive program that will result in the installation of pollution control equipment and enforceable emission reductions of at least 40,000 tons of allowable air pollution annually from 24 Cargill facilities in 13 states;

WHEREAS, the parties agree that many of the emission reductions under the Consent Decree would not otherwise be required by law;

WHEREAS, the United States, the Plaintiff-Intervenors, and Cargill have agreed that settlement of this action is in the best interest of the parties and in the public interest, will result in air quality improvements, and that entry of this Consent Decree without further litigation is the most appropriate means of resolving this matter; and

WHEREAS, the United States, the Plaintiff-Intervenors, and Cargill 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 or NOV's, 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 Cargill 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 United States, the Plaintiff-Intervenors, and upon Cargill as well as Cargill's officers, employees, agents, successors and assigns for the facilities listed in Appendix A to this Consent Decree. In the event Cargill proposes to sell or transfer a facility subject to this Consent Decree before termination of the Consent Decree for that facility, 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 and the Plaintiff-Intervenor with jurisdiction over the facility (the "Appropriate Plaintiff-Intervenor") before such sale or transfer, if possible, but no later than the closing date of such sale or transfer. Cargill shall provide a copy of the Consent Decree to the proposed purchaser or successor-in-interest. In the event Cargill

sells or otherwise assigns any of its right, title, or interest in a facility subject to this Consent Decree prior to termination of the Consent Decree for that facility, the conveyance shall not release Cargill from any obligation imposed by this Consent Decree for that facility unless the party to whom the right, title or interest has been transferred agrees in writing to fulfill the obligations of this Consent Decree for that facility.

III. FACTUAL BACKGROUND

3. Cargill 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, and is a Delaware corporation with corporate headquarters in Minnesota.

4. Cargill owns and/or operates the corn processing and oilseed processing facilities listed in Appendix A.

5. Cargill's corn processing and oilseeds processing facilities produce a number of value-added products including vegetable oil, starch, sweeteners, germ, ethanol, and animal feed. Production of these products results in emissions of regulated air pollutants including nitrogen oxides ("NO_x"), carbon monoxide ("CO"), sulfur dioxide ("SO₂"), particulate matter ("PM"), volatile organic compounds ("VOCs") and hazardous air pollutants ("HAPs").

6. Plaintiffs allege that certain of Cargill's facilities are "major emitting facilities," as defined by Section 169(1) of the Act, 42 U.S.C. § 7479(1), and federal, state and local regulations promulgated pursuant to the Act.

7. Cargill, individually and through its trade association, the Corn Refiners Association, voluntarily disclosed to EPA and affected state and local regulatory agencies the existence of unpermitted VOC emissions at its corn processing facilities.

8. Cargill initiated a process to correct permits for VOC emissions for all nine of its corn processing facilities in June and July 2003. Cargill also met with its state and local agencies for all facilities in July, August and September 2003 regarding the permit applications, VOC emissions and evaluation of VOC emission controls.

9. Cargill's two facilities that produce ethanol received PSD permits in 1995 (Eddyville, Iowa) and 1993 (Blair, Nebraska), and have demonstrated compliance with the Best Available Control Technology ("BACT") VOC limits for ethanol-related emission sources (fermentation vents, rectifier vents, stillage evaporators, tank farms and loadouts) in these permits.

10. Cargill's Lafayette, Indiana oilseed processing facility received a PSD permit in 2001 and complies with BACT VOC limits for the facility in this permit.

11. Cargill voluntarily invested more than \$20 million over the past eight years in process unit improvements at its extraction facilities designed to and having the effect of reducing solvent loss and lowering VOC and HAP emissions. These improvements included enhancement of condensation processes at sixteen facilities and installation of vacuum assisted desolventizing systems at Cargill's Bloomington, Illinois and Cedar Rapids West, Iowa facilities.

12. Under the terms of this Consent Decree, Cargill will optimize use of existing solvent recovery systems and commit to enforceable solvent loss rates as specified in this Consent Decree that are consistent with USEPA's most stringent BACT determination for the type of oilseeds processing plant.

13. Cargill worked to develop and voluntarily implemented use of iso-hexane, a non-hazardous air pollutant containing solvent that significantly reduces HAP emissions from extraction processes at many of its extraction facilities.

14. Under the terms of this Consent Decree, Cargill will optimize existing or install new thermal incineration emission control equipment at all feed dryers and carbon furnaces at its corn processing facilities, thereby further reducing VOC and HAP emissions from these units.

IV. COMPLIANCE PROGRAM

Program Summary. As set forth in this Part, Cargill shall implement a program of enforceable emissions reductions of SO₂, CO, NO_x, and VOCs from its corn processing and oilseeds processing plants listed in Appendix A by at least 40,000 tons per year. This includes approximate reductions of SO₂ of 15,000 tons per year, CO of 16,000 tons per year, NO_x of 2,500 tons per year, and VOC of 6,500-11,500 tons per year. Cargill shall accomplish the emission reductions through the installation of pollution control technologies and implementation of emission reduction projects in accordance with the schedules set forth in this Consent Decree. Where required, Cargill shall propose new emission limits, and submit permit applications to the applicable permitting authority to incorporate the new limits into federally-enforceable permits for the facility, and shall demonstrate compliance at all times with applicable limits through performance tests, continuous emission or operating parameter monitoring, and recordkeeping.

A. INSTALLATION OF CONTROLS AND APPLICABLE EMISSION LIMITS

Cargill shall implement the following Emission Control Plans:

15. Boiler SO₂ Emission Cap. The Plaintiff and Appropriate Plaintiff-Intervenors have reviewed Cargill's responses to Plaintiff's Clean Air Act Section 114 information request regarding the construction, modification, operation and emissions history of Cargill's coal-fired boilers, listed in Appendix B. Based on their review of the information available to Plaintiff and Plaintiff-Intervenors, the Plaintiff and Appropriate Plaintiff-Intervenors have not identified

liability for Cargill for failing to comply with New Source Review and/or Prevention of Significant Deterioration requirements for these sources.

Cargill will submit permit applications to the applicable permitting authority within three years from entry of this Consent Decree that will contain annual SO₂ emission limits for the facilities and boilers listed in Appendix B that, in aggregate, limit total annual SO₂ emissions to less than 15,355 tons per year based on a 12-month rolling sum. This represents a reduction of 15,067 tons of SO₂ per year from the current allowable emissions from these sources of 30,422 tons per year. To accommodate environmentally beneficial fuel switches to lower sulfur coal, these facilities are authorized to make changes to the coal boiler that maintain the heat input capacity of the coal boiler (including changes to coal boiler fuel receiving and handling systems and ash handling systems) that do not result in an increase in any single pollutant's emissions above current boiler allowable emission rates or an increase in the heat input to the boiler and result in an overall decrease in emissions.

16. Additional SO₂ Emission Reduction Commitment. Cargill will submit a permit application to the applicable permitting authority within three years from entry of this Consent Decree that will include individual emission limits for the Cedar Rapids (PC Boiler – 72-CB), Memphis (PC Boiler – 8301) and Decatur (Stoker Boiler – S407) coal boilers that in aggregate will not exceed a capacity weighted average SO₂ emission rate of 1.2 lb/MMBtu. This represents a greater than 44 percent reduction in the pound per million BTU emission rate of SO₂ from the 2003 capacity weighted baseline pound per million BTU emission rate for these boilers of 2.16 lb/MMBtu and a greater than 60 percent reduction from the weighted allowable pound per million BTU emission rate of 3.1 lb/MMBtu.

17. Boiler CO Emission Control Plan. Cargill will undertake and complete the CO emissions reduction and combustion optimization project described in Appendix C within five years from entry of this Consent Decree. After completion of the emissions reduction and combustion optimization project and within five years from entry of this Consent Decree, Cargill shall propose a new CO limit to the applicable permitting authority for the Eddyville coal boilers (EU 1.001, 1.002 and 1.039) of 4,374 tons per year based on a 12-month rolling sum. This represents a reduction of 10,080 tons of CO per year from the current BACT allowable emissions from these boilers of 14,454 tons per year. After completion of the emission reduction and combustion optimization project and within five years from entry of the Consent Decree, to the extent Cargill is unable to achieve the limit of 4,374 tons of CO per year, which is based on a vendor performance guarantee, Cargill shall submit to the applicable permitting authority an alternative CO limit based on the demonstrated operation of boilers following completion of the emission reduction project. By letter of June 14, 2005, IDNR expressly approves this emission reduction and combustion optimization project as a pollution control project (to the extent provided by law) that is exempt from New Source Review requirements and EPA does not object to IDNR's determination.

18. Boiler NO_x Emission Control Plan. Within the schedule set forth in Appendix D, Cargill will submit permit applications to the applicable permitting authority that will limit NO_x emissions from the units listed in Appendix D to the emission limits specified in Appendix D through the installation of controls, acceptance of enforceable operating limits and retirement of sources. This represents a reduction of at least 2,500 tons of NO_x per year from the current allowable emissions from these sources.

19. Extraction VOC Emission Control Plan for Soybean Processing Plants. Cargill will submit permit applications within three years from entry of this Consent Decree that will propose a final VOC solvent loss limit (hereinafter, also referred to as “solvent loss ratio limit” or “SLR limit”) for each conventional soybean oilseed processing facility listed in Appendix E that in aggregate will not exceed a capacity weighted average of 0.175 gallon of VOC solvent loss per ton of oilseed processed (gallon/ton) based on a 12-month rolling average. Beginning three years from the date of entry of the Consent Decree, Cargill shall begin to account for solvent loss and quantity of oilseeds processed to comply with the proposed final solvent loss limit. For each soybean processing plant, the first compliance determination will be based on the first twelve operating months of data collected after the third year from entry of the Consent Decree. For any plant that has an existing permit limit lower than the applicable solvent loss factor (“SLF”) in 40 C.F.R. Part 63, Subpart GGGG, Cargill may not propose a final solvent loss ratio limit that is less stringent than either the existing permit limit or the Solvent Extraction for Vegetable Oil Production NESHAP limit. Capacity weighted averages shall be based on the capacities for each facility as listed in Appendix E. If the design capacity for any plant listed in Appendix E changes anytime within three years from entry of this Consent Decree, Cargill will notify the Plaintiff and the Appropriate Plaintiff-Intervenors as part of the next semi-annual report required under Paragraph 36 submitted after such change occurs. Compliance with the capacity weighted average solvent loss limit shall be demonstrated using the compliance demonstration formula in Appendix E.

20. Extraction VOC Emission Control Plan for Corn Germ and Sunflower Processing Plants. Cargill will submit permit applications within three years from entry of this Consent

Decree that will propose a final VOC solvent loss ratio limit for each corn germ and sunflower processing facility listed in Appendix F that in aggregate will not exceed a capacity weighted average of 0.30 gallon/ton based on a 12-month rolling average. Beginning three years from the date of entry of the Consent Decree, Cargill shall begin to account for solvent loss and quantity of oilseeds processed to comply with the proposed final solvent loss limit. For each corn germ and sunflower processing plant, the first compliance determination will be based on the first twelve operating months of data collected after the third year from entry of the Consent Decree. For any plant that has an existing permit limit lower than the applicable solvent loss factor ("SLF") in 40 C.F.R. Part 63, Subpart GGGG, Cargill may not propose a final VOC SLR limit that is less stringent than either the existing permit limit or the Solvent Extraction for Vegetable Oil Production NESHAP limit. Capacity weighted averages shall be based on the capacities for each facility as listed in Appendix F. If the design capacity for any plant listed in Appendix F changes anytime within three years from entry of this Consent Decree, Cargill will notify the Plaintiff and the Appropriate Plaintiff-Intervenors as part of the next semi-annual report required under Paragraph 36 submitted after such change occurs. Compliance with the capacity weighted average solvent loss limit shall be demonstrated using the compliance demonstration formula in Appendix F.

21. Extraction VOC Emission Control Plan for Specialty Processing Plants. Cargill will submit permit applications within three years from entry of this Consent Decree that will limit total solvent loss from the oilseed specialty facilities listed in Appendix G to the gallon/ton final VOC solvent loss ratio limits established in Appendix G for each facility based on a 12-month rolling average. Beginning three years from the date of entry of the Consent Decree,

Cargill shall begin to account for solvent loss and quantity of oilseeds processed to comply with the gallon/ton solvent loss limits established in Appendix G for each facility on a twelve month rolling average. For each specialty processing plant, the first compliance determination will be based on the first twelve operating months of data collected after the third year from entry of the Consent Decree.

22. Interim Solvent Loss Ratios. Beginning 90 days after lodging of this Consent Decree, Cargill will demonstrate compliance with the applicable solvent loss ratio for one facility included in Appendix G (Extraction VOC Emission Control Plan – Specialty Plants). Beginning 12 months after one year from entry of this Consent Decree, Cargill will meet for a minimum of five extraction facilities (listed on Appendices E and F) a weighted solvent loss average of 0.175 gallon/ton (for selected soybean processing plants in Appendix E), or 0.3 gallon/ton (for selected corn germ or sunflower processing plants in Appendix F) on a 12-month rolling average. Beginning 12 months after two years from entry of this Consent Decree, Cargill will meet for a minimum of ten extraction facilities (listed on Appendices E and F) a weighted solvent loss average of 0.175 gallon/ton (for selected soybean processing plants in Appendix E), or 0.3 gallon/ton (for selected corn germ or sunflower processing plants in Appendix F) on a 12-month rolling average.

23. Corn Processing VOC Emission Control Plan for Process VOC Sources. Cargill, through the installation of pollution control technologies and implementation of emission reduction projects (including emission unit elimination and heat recovery) will meet the level of control specified for the emission units included in Appendix H within the schedule established in Appendix H. Thermal oxidizers installed after lodging and according to the requirements of

this Consent Decree on emission units included in Appendix H located in ozone non-attainment areas (Dayton, Hammond, Memphis), will be designed to achieve at least 98 percent control of VOC emissions and will meet the level of control specified in Appendix H within the schedule established in Appendix H. Within five years from lodging of this Consent Decree, Cargill shall submit permit applications to the applicable permitting authority to incorporate the new VOC limits for emission units in Appendix H into federally enforceable permits for the facilities.

24. Corn Processing VOC Emission Control Plan for Integrated Feed/Bran Drying Systems. For integrated feed/bran drying systems listed in Appendix I, Cargill will optimize existing pollution control equipment (thermal oxidizers and scrubbers) and implement emission reduction projects (including emission unit elimination and heat recovery) to meet pollution control equipment operating parameters set forth in Appendix I or eliminate the emission unit within three years from lodging of this Consent Decree. Also within three years from lodging of this Consent Decree, Cargill will test and establish an allowable short-term VOC emission limit at the outlet of each scrubber stack, as set forth in Appendix I, for each integrated feed/bran drying system. Within five years from lodging of this Consent Decree, Cargill shall submit permit applications to the applicable permitting authority to incorporate the pollution control equipment operating parameters and allowable short-term VOC emission limits for integrated feed/bran drying systems listed in and established pursuant to Appendix I into federally enforceable permits.

25. Corn Processing VOC Emission Control Plan – Dayton Facility. Within five years from lodging of this Consent Decree, Cargill will submit a permit to install application (“PTI”) to the Regional Air Pollution Control Agency in Dayton, Ohio that will limit process

source VOC and boiler NO_x emissions from the group of sources listed in Appendix J (Dayton, Ohio Corn Processing Ozone Cap) to less than 854 tons per year based on a 12-month rolling sum. The 854 ton per year ozone cap reflects enforceable NO_x emissions offsets of 404 tons per year for the three boiler emissions units in Appendix J and 98 percent VOC control for the process units identified in Appendix J. The PTI application shall also propose to install new thermal incineration emission control technology designed to achieve VOC destruction efficiency of not less than 98 percent to minimize VOC emissions for the process operations identified in Appendix H as emissions units P031, P052, P057, P072 and P088. The PTI application shall also propose to optimize the control devices listed in Appendix I to meet the equipment design and operational parameters established in Appendix I to minimize VOC emissions from the integrated feed/bran drying system identified as emissions units P032, P033, P034, P037, P040, and P058. Pursuant to the emission test procedures and schedule specified in Appendix J, allowable short-term VOC emission rates shall be established for the process VOC emission units identified in Appendix J. Such allowable short-term VOC emission rates shall be proposed as part of the PTI application. Compliance with the facility ozone cap and short term VOC emission limits established pursuant to this paragraph and Appendix J satisfies the requirement to meet the Lowest Achievable Emission Rate of 98 percent. The PTI application shall also propose to install low-NO_x burner control technology for the two boilers identified in Appendix J as B004 and B006. The low-NO_x burner control technology shall result in the short-term and annual emissions rates of NO_x specified in Appendix D. Within one year of issuance of the Permit to Install, Cargill shall submit an application to incorporate the provisions of the PTI into the Title V operating permit.

Within one year from lodging of this Consent Decree, Cargill shall complete, and submit to RAPCA, an odor control optimization analysis report. The report shall include identification/speciation of potentially odorous volatile organic compounds expected to be emitted from emission units located at Cargill's Dayton, Ohio corn processing facility and subject to VOC control under Appendix H of this Consent Decree. Identification/speciation of potentially odorous compounds shall be based on review of past emissions testing and analysis at Cargill's facilities, third-party expert consultation, and reasonable review of available literature and information. The odor control optimization analysis report also shall include analysis and recommendations by a third-party expert regarding how controls mandated by the Consent Decree may be operated in a manner to reduce odor to the maximum extent practicable. Specifically, the report shall evaluate and provide recommendations regarding thermal oxidizer residence time between 0.5 and 1.0 second, thermal oxidizer operating temperature between 1200 degrees F and 1500 degrees F, and zero-hearth furnace operating temperatures between 1200 degrees F and 1500 degrees F. In making these recommendations, the third-party expert shall consider effectiveness on odor control, economic feasibility, and the potential for collateral emissions increases. In any permit applications required under this Consent Decree, for the emission units subject to VOC control under Appendix H of this Consent Decree, Cargill shall propose the operating parameters recommended by the third-party expert in the odor control optimization analysis report. Compliance with the operating parameters established pursuant to this paragraph and Appendix I shall be sufficient for purposes of compliance with Ohio Administrative Code Rule 3745-15-07(A).

26. Corn Processing Process Source CO Emission Control Plan. Cargill, through the installation of pollution control technologies and implementation of emission reduction projects (including emission unit elimination and heat recovery) will meet the level of control specified for the sources included in Appendix K within the schedule established in Appendix K. Within five years from lodging of this Consent Decree, Cargill shall submit permit applications to the applicable permitting authority to incorporate the new CO limits for sources in Appendix K into federally enforceable permits for the facilities.

27. Hammond Process Source SO₂ Emission Control Plan. Cargill, through installation of pollution control technologies and implementation of emission reductions projects (including emission unit elimination) will meet the level of control specified for the sources included in Appendix L within three years from entry of this Consent Decree. Also within three years from entry of this Consent Decree, Cargill will submit to IDEM a formal request to amend Rule 326 IAC 7-4-1.1 to incorporate the new SO₂ emission limits for sources in Appendix L into this Rule.

28. Installation of air pollution control equipment and emission reduction projects undertaken pursuant to the emission control plans under Paragraphs 15-27 are intended to abate or control atmospheric pollution or contamination by removing, reducing, or preventing the emission of pollutants, and as such, are environmentally beneficial projects and are pollution control projects to the extent provided by law.

29. Additional Federal Requirements. Upon entry of this Consent Decree, for all facilities included in Appendix A, Cargill shall identify and implement applicable New Source Performance Standards ("NSPS") requirements codified at 40 C.F.R. Part 60. The following

NSPS may apply: Subparts D, Db and Dc (certain steam generating units), DD (certain grain elevators), Kb (certain organic liquid storage tanks), GG (certain stationary gas turbines) VV (certain synthetic organic chemical manufacturing equipment) and Y (certain coal preparation plants). Within 12 months from the date of entry of this Consent Decree, Cargill shall file an amended Toxics Release Inventory form (Form R) for the corn processing facilities listed in Appendix A to include all identified chemicals. Within 90 days from the date of entry of this Consent Decree, Cargill shall comply with any notification and reporting requirements under CERCLA Section 304, 42 U.S.C. § 11004.

B. DEMONSTRATION OF COMPLIANCE

30. Cargill shall demonstrate compliance with the requirements of Paragraphs 15-29 through the use of performance testing, continuous emission monitoring, parametric monitoring, recordkeeping and reporting, as set forth below:

a. Coal Boiler SO₂ Emission Reductions. Cargill shall demonstrate compliance with the aggregate 12-month rolling sum of 15,355 tons of SO₂ per year for coal boilers listed in Appendix B beginning 12 months after the third year from entry of the Consent Decree by compliance with the 12-month rolling sum limits established in individual permits pursuant to Paragraph 15. Monitoring of emissions will be as provided in Appendix B (Boiler SO₂ Emission Control Plan). Cargill shall demonstrate that the individual facility permit limits comply with the combined SO₂ capacity weighted average of 1.2 lb/MMBtu established pursuant to Paragraph 16 (Additional SO₂ Emission Reduction Commitment) using the compliance formula set forth in Appendix B, note 2. Where coal boiler exhaust is commingled with exhaust from other sources,

compliance with this limit will be based on emissions from only the coal boilers, provided that Cargill can accurately quantify the coal boiler emissions. Cargill shall monitor emissions as provided in Appendix B (Boiler SO₂ Emission Control Plan).

b. Boiler CO Emission Reductions. Cargill shall demonstrate compliance with the 12-month rolling sum of 4,374 tons of CO per year, or the alternative limit proposed under Paragraph 17, from the Eddyville coal boilers (EU 1.001, 1.002 and 1.039) beginning 12 months after the fifth year from entry of the Consent Decree. Cargill shall monitor emissions as provided in Appendix C (Boiler CO Emission Control Plan).

c. Boiler NO_x Emission Reductions. Within the schedule set forth in Appendix D (Boiler NO_x Emission Control Plan), Cargill shall demonstrate compliance with coal and gas boiler NO_x emission limits established pursuant to Appendix D. Cargill shall monitor emissions as provided in Appendix D, and shall conduct performance testing as provided in Appendix M (Performance Testing Plan).

d. Extraction VOC Emissions Reductions. Beginning 12 months after the first year from entry of this Consent Decree, Cargill will demonstrate at a minimum of five extraction facilities (listed on Appendices E and F) compliance with a weighted solvent loss average of 0.175 gallon/ton (for selected soybean processing plants in Appendix E), or 0.3 gallon/ton (for selected corn germ or sunflower processing plants in Appendix F) on a 12-month rolling average. Beginning 12 months after the second year from entry of this Consent Decree, Cargill will demonstrate at a minimum of ten extraction facilities compliance with a weighted solvent loss average of 0.175 gallon/ton (for selected soybean processing plants in Appendix E), or 0.3 gallon/ton (for selected

corn germ or sunflower processing plants in Appendix F) on a 12-month rolling average. Beginning 12 months after the third year from entry of the Consent Decree, Cargill will demonstrate compliance with applicable solvent loss ratios for all facilities included under Appendices E (Oilseeds Extraction VOC Emission Control Plan—Soybean Processing Plants), F (Extraction VOC Emission Control Plan—Corn Germ and Sunflower Processing Plants) and G (Extraction VOC Emission Control Plan—Specialty Processing Plants).

Compliance with the solvent loss ratio limits established pursuant to Paragraphs 19-22 shall be calculated on a monthly basis and determined in accordance with 40 C.F.R. Part 63, Subpart GGGG, with the following exceptions: (1) provisions pertaining to HAP content shall not apply; (2) solvent losses and quantities of oilseeds processed during startup and shutdown periods shall not be excluded in determining solvent losses; and (3) records shall be kept in the form of the table in Attachment N (Extraction Solvent Loss Recordkeeping Template), that show total solvent losses, solvent losses during malfunction periods, and adjusted solvent losses (i.e., total solvent losses minus malfunction losses) monthly and on a twelve month rolling average basis. Cargill may apply the provisions of 40 C.F.R. Part 63, Subpart GGGG pertaining to malfunction periods only when: (i) the malfunction results in a shutdown of the solvent extraction system; and (ii) cumulative solvent losses during malfunction periods at a plant do not exceed 4,000 gallons in a 12-month rolling period.

e. Corn Processing VOC Emission Reductions.

i. Process VOC Sources. As stated in Paragraph 23, within the schedule established in Appendix H (Corn Processing VOC Emission Control Plan), Cargill will meet the level of control specified for the sources included in Appendix H. Cargill will monitor controls and emissions as provided in Appendix H and will conduct performance testing as provided in Appendix M (Performance Testing Plan) and, where applicable, Appendix O (Carbon Furnace Test Protocol).

ii. Integrated Feed/Bran Drying Systems. As stated in Paragraph 24, within three years from lodging of the Consent Decree, Cargill will monitor and demonstrate compliance with control equipment operating parameters established under Appendix I as set forth under Appendix I. Also, within three years from lodging of the Consent Decree, Cargill will monitor control equipment and conduct testing as provided in Appendices I and M (Performance Testing Plan).

iii. Dayton Corn Processing Ozone Cap. As stated in Paragraph 25, Cargill will demonstrate compliance with the Dayton Corn Processing Ozone Cap, which reflects enforceable NO_x emissions offsets of 404 tons per year for the three boiler emission units in Appendix J and 98 percent VOC control for the process units identified in Appendix J, via the emission tracking mechanism provided in Appendix J. Such VOC and NO_x emission tracking shall begin the fifth year from lodging of the Consent Decree. Cargill shall demonstrate compliance with the 12-month rolling sum ozone cap of 854 tons for the process

source VOC and boiler NO_x emission sources listed in Appendix J during the first 11 months following the fifth year from lodging of the Consent Decree as per the schedule in Appendix J. Cargill will track VOC and NO_x emissions as provided in Appendix J (Dayton, Ohio Corn Processing Ozone Cap). NO_x emissions will be continuously monitored as provided in Appendices D (Boiler NO_x Emission Control Plan) and J (Dayton, Ohio Corn Processing Ozone Cap). To monitor VOC emissions, Cargill will develop and utilize VOC emission factors via performance testing as provided in Appendices J (Dayton, Ohio Corn Processing Ozone Cap) and M (Performance Testing Plan).

iv. Dayton, Ohio Odor Control Optimization Analysis. Within one year from lodging of this Consent Decree, Cargill shall complete, and submit to RAPCA, an odor control optimization analysis report for emission units subject to VOC control under Appendix H as required under Paragraph 25. Within five years from the date of lodging of this Consent Decree, Cargill shall implement the odor report recommendations for the emission units subject to VOC control under Appendix H.

v. Hammond, Indiana RACT Plan. Within five years from the date of lodging of this Consent Decree, Cargill shall submit the emission limits established pursuant to Paragraphs 23 and 24 and Appendices H and I as an amendment to the Hammond, Indiana facility's RACT plan; IDEM shall incorporate the emission limits into the RACT plan.

f. Corn Processing Process Source CO Emission Reductions. As stated in Paragraph 26, within the schedule established in Appendix K, Cargill will meet the level of control specified for the sources included in Appendix K (Corn Processing Process CO Emission Control Plan). Controls and emissions will be monitored as provided in Appendix K and performance testing will occur as provided in Appendix M (Performance Testing Plan) and, where applicable, Appendix O (Carbon Furnace Test Protocol).

g. Hammond Process Source SO₂ Emission Reductions. As stated in Paragraph 27, within three years from entry of this Consent Decree, Cargill will meet the level of control specified for the sources included in Appendix L (Hammond Process Source SO₂ Emission Control Plan). Controls and emissions will be monitored as provided in Appendix L and performance testing will occur as provided in Appendix M (Performance Testing Plan).

31. Continuous Emission Monitors Use and Certification. For all new Continuous Emission Monitors ("CEMs") installed after entry and pursuant to this Consent Decree, Cargill shall install, calibrate and certify the CEMs and begin to continuously monitor emissions sufficient to meet the compliance schedules specified in Paragraph 30 and related appendices. Cargill shall thereafter continuously maintain and operate each CEM as specified in Appendices B-D.

32. Source Testing. Cargill shall conduct source testing to evaluate compliance with applicable requirements of this Consent Decree, as required under Appendix M. For each performance test that determines initial compliance or demonstration of emission limits with requirements under Appendices H and I, the performance test shall be conducted in accordance

with a protocol approved by Plaintiff and Appropriate Plaintiff-Intervenors. Testing for compliance or demonstration of emission limits for all other instances shall be conducted in accordance with a protocol approved by the Appropriate Plaintiff-Intervenors. During the source testing, all emission units shall be operated at maximum representative operating conditions. During the source testing, Cargill shall monitor, at a minimum, the operating parameters specified by Appendices B-L.

33. Initial Emissions Report. No later than 60 days after the completion of the source testing required pursuant to this Consent Decree, Cargill shall submit an Initial Emissions Report to the Plaintiff and Appropriate Plaintiff-Intervenors. This report shall include, where applicable, the source test report or a summary of emission monitoring data; Cargill's proposed emission limit as required by the emission control plans under Paragraphs 15-27; and the operating parameter(s) ranges or limits that Cargill proposes to monitor for compliance demonstration as required under this Consent Decree or Appendices B-L.

34. Proposed and Final Emission Limits. The Plaintiff and Appropriate Plaintiff-Intervenor shall set the final emission limit, and operating parameter ranges or limits, as appropriate and consistent with the provisions of this Consent Decree, taking into consideration Cargill's Initial Emissions Report under Paragraph 33, process variability, test methodology, a reasonable certainty of compliance and any other information pertinent to the specific emission unit. Cargill shall comply with the proposed emission limit immediately following submission of the Initial Report and shall comply with the Final Limit no later than 60 days following Cargill's receipt of notice from the Plaintiff and Appropriate Plaintiff-Intervenors regarding the Final Limit.

C. RECORDKEEPING AND REPORTING REQUIREMENTS

35. Data Retention. Cargill shall conduct monitoring as required by the Emission Control Plans and Paragraphs 30(a)-30(g), and shall maintain records of this monitoring data in accordance with the record retention requirements set forth in Paragraph 37.

36. Semi-annual Reports. Cargill shall submit semi-annual written reports to the Plaintiff and Plaintiff-Intervenors that describe Emission Control Plan requirements, the applicable deadlines and the dates the tasks were completed. Each report shall also contain i) any deviations from emission limitations, operational restrictions, performance testing requirements and control device operating parameter limitations, including deviations resulting from malfunctions, that have been detected by the testing, monitoring, and recordkeeping requirements specified in this Consent Decree; ii) the probable cause of such deviations; and iii) any corrective actions or preventive measures taken. If no deviations occurred during a reporting period, Cargill shall submit a written report which states that no deviations occurred. Each report shall be due within thirty days after the end of each semi-annual reporting period (January 1 through June 30, or July 1 through December 31, as applicable, except the first report where the reporting period is from the date of lodging of this Consent Decree through December 31, 2005). Reports shall be submitted as set forth in Paragraph 84 (Notice and Penalty Payment). Emissions data may be submitted in electronic format unless otherwise requested by the Appropriate Plaintiff-Intervenor.

37. Cargill shall retain records required by Paragraphs 15-30 of this Consent Decree for a period of five years unless other state or local regulations require the records to be maintained longer.

38. Cargill's semi-annual reports shall contain the following certification and may be signed by the company employees responsible for corn and oilseed processing 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."

D. PERMITTING

39. Within the schedules specified in Paragraphs 15-27 of the Consent Decree, Cargill shall apply for modification of its federally-enforceable construction and/or operating permits to incorporate the specific emission reduction requirements, emission limits, operating parameters, performance testing requirements, monitoring requirements and recordkeeping requirements specified under Paragraphs 15-27. It is the intent of the parties that the requirements under Paragraphs 15-27 and associated appendices survive termination of this Consent Decree and are deemed "applicable requirements" under Title V of the Clean Air Act and state and local operating permit programs that implement the requirements of Title V. EPA, states and local agencies agree to propose as permit conditions, and may propose as revisions to their SIPs, the specific emission limits, operating parameters, monitoring requirements and recordkeeping requirements set forth under Paragraphs 15-27 and associated appendices, and as proposed by Cargill under Paragraphs 15-27 so long as Cargill's proposal is consistent with Consent Decree emission reduction requirements. Cargill agrees not to contest any such permit conditions or SIP revisions. For emission reduction projects necessary to meet the requirements of Paragraphs 15-

28 and 30 of this Consent Decree, Cargill, as necessary, shall apply for modification of its federally-enforceable operating permits to incorporate revised emission limits for any collateral emissions increases resulting from implementation of such emission reduction projects within the schedules specified in Paragraphs 15-28 of the Consent Decree for permitting of such projects. For units and pollutants not addressed by the emission reduction programs under Paragraphs 15-27 of this Consent Decree, Cargill shall have a period of 3 years from the date of lodging of the Consent Decree to apply for a permit or permit amendment to impose or modify the VOC, HAP or CO emission limits for the sources included in Appendix A. Prior to issuance of revised construction and/or operating permits that incorporate Consent Decree requirements, Cargill shall operate all units identified in Paragraphs 15-28 of this Consent Decree and associated appendices in accordance with the provisions of Paragraphs 15-28 and 30 of this Consent Decree and associated appendices.

V. CIVIL PENALTY

40. Within thirty (30) calendar days of entry of this Consent Decree, Cargill shall pay to the United States and Plaintiff-Intervenors a total civil penalty pursuant to Section 113 of the Act, 42 U.S.C. § 7413 in the amount of \$1,600,000. The Plaintiffs agree that to the extent the emission reduction projects required in this Consent Decree result in emission reductions not otherwise required by law, they have been considered environmentally beneficial projects for civil penalty mitigation.

41. Of the total civil penalty, \$830,769 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, and

the civil action case name and case number. The costs of such EFT shall be Cargill's responsibility. Payment shall be made in accordance with instructions provided to Cargill by the Financial Litigation Unit of the U.S. Attorney's Office. Any funds received after 11:00 a.m. (EST) shall be credited on the next business day. Cargill shall provide notice of payment, referencing the USAO File Number and DOJ Case Number, and the civil action case name and case number, to the Department of Justice and to EPA, as provided in Paragraph 84 (Notice and Penalty Payment).

42. Of the total civil penalty, \$769,231 shall be divided among the state and local air authorities that have filed Complaints in Intervention and joined the claims alleged by the United States in this action. Cargill shall make payment as follows:

- a) \$61,538 to the State of Alabama;
- b) \$30,769 to the State of Georgia;
- c) \$30,769 to the State of Illinois;
- d) \$61,538 to the State of Indiana;
- e) \$123,082 to the State of Iowa;
- f) \$92,307 to Linn County, Iowa;
- g) \$30,769 to Polk County, Iowa;
- h) \$30,769 to the State of Missouri;
- i) \$61,538 to the State of Nebraska;
- j) \$61,538 to the State of North Carolina;
- k) \$61,538 to the State of North Dakota;
- l) \$30,769 to the State of Ohio;

- m) \$30,769 to Montgomery County, Ohio; and
- n) \$61,538 to the City of Memphis and Shelby County, Tennessee.

Payment shall be made as provided in Paragraph 84 (Notice and Penalty Payment).

43. 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, and other applicable federal authority. The Plaintiff shall be deemed a judgment creditor for purposes of collection of any unpaid amounts of the civil and stipulated penalties and interest.

44. No amount of the total civil penalty of \$1,600,000 to be paid by Cargill shall be used to reduce its federal or state tax obligations.

45. Supplemental Environmental Projects. By no later than five years from entry of this Consent Decree, Cargill shall complete implementation of the Supplemental Environmental Projects ("SEPs") identified in Appendix P (Supplemental Environmental Projects) (hereinafter, "Appendix P SEPs") at an aggregate cost of at least \$3,000,000, in accordance with the requirements of Paragraphs 46-48.

46. Within one year from entry of this Consent Decree, Cargill shall provide Plaintiff and Plaintiff-Intervenors with a work plan that provides the proposed schedule for commencing and completing construction of the Appendix P SEPs. The work plan submitted under this paragraph is incorporated by reference herein and made directly enforceable under the Consent Decree.

47. Semi-annual reports, as required under Paragraph 36, shall include a description of work undertaken to implement the Appendix P SEPs and an accounting of all costs incurred in implementing the Appendix P SEPs. Cargill shall provide, upon request, copies of invoices, receipts, purchase orders or other documentation of costs incurred to implement the Appendix P SEPs.

48. Within five years from entry of this Consent Decree, Cargill shall provide an Appendix P SEP completion report to Plaintiffs that documents the dates each project was completed, results of implementing the project (including energy and emission reductions), and project dollars expended by Cargill in implementing the projects.

49. Community-Based Supplemental Environmental Projects. By no later than five years from entry of this Consent Decree, Cargill shall complete implementation of the Community-Based SEPs identified below at an aggregate cost of at least \$500,000:

- a. Mid-South Clean Air Coalition Diesel Retrofit program in Shelby County, TN;
- b. Eddyville Dunes and Wetland Restoration Project in Eddyville, IA;
- c. Cedar Rapids, IA Indian Creek Nature Center Wetlands Restoration Project;
- d. Nebraska-Missouri River Wetland Reserve Enhancement Program; and
- e. Such additional or alternative Community-Based SEPs as Cargill may propose, subject to Plaintiff's approval.

The implementation of the Community-Based SEPs shall be deemed complete upon Cargill's expenditure of at least \$500,000 in accordance with the work plan approved pursuant to Paragraph 50.

50. Within one year from entry of this Consent Decree, Cargill shall provide to Plaintiff and Plaintiff-Intervenors, for review and approval, a detailed work plan that provides the proposed schedule for commencing and completing the Community-Based SEPs identified above, as well as describing the nature, scope and goals of the projects, and where they are to be implemented. Cargill, subject to Plaintiff's approval, may propose an alternative or additional Community-Based SEP. Cargill's Community-Based SEP work plans shall be approved by the Plaintiff and Appropriate Plaintiff-Intervenors provided they conform to the requirements of EPA's Supplemental Environmental Projects Policy (eff. May 1, 1998).

51. Community-Based SEP Completion Report. For the Community-Based SEPs completed under this Section during a particular semiannual period, Cargill shall provide, as part of the semiannual report for that period, a Community-Based SEP Completion Report certified in accordance with Paragraph 38 of this Consent Decree and containing the following information:

- a. A detailed description of the Community-Based SEP as implemented;
- b. A description of any pre-report implementation problems encountered and the solutions thereto;
- c. An accounting of all costs incurred by Cargill for the purpose of implementing the Community-Based SEP. Cargill shall provide, upon request, copies of the invoices, receipts, purchase orders, or other documentation that specifically identifies and itemizes the individual cost

or the goods and/or services for which payment is being made. Canceled drafts do not constitute acceptable documentation unless such drafts specifically identify and itemize the individual costs of the goods and/or services for which payment is being made; and

- d. A certification that the Community-Based SEP has been satisfactorily completed which is signed by the company employees responsible for corn and oilseed processing environmental management and compliance.

52. Acceptance of Community-Based SEP Completion Report. After receipt of the Community-Based SEP Completion Report described in Paragraph 51 above, the Plaintiff and Appropriate Plaintiff-Intervenors will notify Cargill, in writing, regarding: (a) any deficiencies in the Community-Based SEP Completion Report along with a grant of an additional thirty (30) days for Cargill to correct any deficiencies; or (b) indicate that the Plaintiff and Appropriate Plaintiff-Intervenors conclude that the project has been completed satisfactorily; or (c) determine that the project has not been completed satisfactorily and seek stipulated penalties in accordance with Paragraph 57 herein.

53. If the Plaintiff and Appropriate Plaintiff-Intervenors elect to exercise option (a) above, i.e., if the Community-Based SEP Completion Report is determined to be deficient but Plaintiffs and Appropriate Plaintiff-Intervenors have not yet made a final determination about the adequacy of Community-Based SEP completion itself, Cargill shall have the opportunity to object in writing to the notification of deficiency given pursuant to this paragraph within ten (10) days of receipt of such notification. The Plaintiffs and Appropriate Plaintiff-Intervenors and Cargill shall have an additional thirty (30) days from the receipt of the Plaintiffs and Appropriate

Plaintiff-Intervenors notification of objection to reach agreement on changes necessary to the Community-Based SEP Completion Report. If agreement cannot be reached on any such issue within this thirty (30) day period, the Plaintiff and Appropriate Plaintiff-Intervenors shall provide a written statement of their decision on the adequacy of the completion of the Community-Based SEP to Cargill.

54. If for any reason Cargill expends less than the full amount in Paragraphs 45 (Appendix P SEPs) or 49 (Community-Based SEPs), Cargill shall pay the balance of the unexpended funds in accordance with the payment requirements set forth in Paragraph 41, within thirty (30) days of receipt of written notification of the unexpended funds from the United States.

55. In any public statement regarding the funding of Appendix P SEPs or Community-Based SEPs implemented under this Consent Decree, Cargill shall clearly indicate that these projects are being undertaken as part of the settlement of an enforcement action for alleged environmental violations. Cargill shall not be able to use or rely on any emissions reductions generated as a result of its performance of the Appendix P SEPs or Community-Based SEPs in any federal or state emission averaging, banking, trading or netting program.

56. These Paragraphs 45-55 shall not relieve Cargill of its obligation to comply with all applicable provisions of federal, state or local law during the implementation of the Appendix P SEPs or Community-Based SEPs, nor shall they be construed to be a ruling on, or determination of, any issue related to any federal, state or local permit, nor shall they be construed to constitute Plaintiffs approval of the equipment or technology installed by Cargill in connection with the Appendix P SEPs or Community-Based SEPs undertaken pursuant to this Consent Decree.

VI. STIPULATED PENALTIES

57. Cargill shall pay stipulated penalties in the amounts set forth below to the Plaintiff for violations of the Consent Decree. When a violation of the Consent Decree is at a specific facility, Cargill shall divide the stipulated penalty set forth below equally among the Plaintiff and the Appropriate Plaintiff-Intervenors for the following:

a. For failure to comply with a proposed emission limit under Paragraphs 15-29 (other than, for proposed emission limits under Paragraphs 23-26, startup, shutdown or malfunction events as defined in 40 C.F.R. Part 63), per day, per unit:

For one through three days per calendar month - \$1,500
For four through ten days per calendar month - \$2,500
For greater than 10 days per calendar month - \$5,000

b. For failure to monitor operating parameters for pollution control equipment established under Paragraphs 15-29, per day, per calendar quarter, per device not monitored:

For four to ten days per calendar quarter - \$1,500
For eleven through twenty days per calendar quarter - \$2,500
For greater than twenty days per calendar quarter - \$3,750

c. For failure to operate air pollution control devices within parameters as established under Paragraphs 15-29 (other than, for parameters as established under Paragraphs 23-26, startup, shutdown or malfunction events as defined in 40 C.F.R. Part 63), per day, per device:

For two to six days per calendar month - \$1,500
For seven through twelve days per calendar month - \$2,500
For greater than twelve days per calendar month - \$3,750

d. For failure to meet the 12-month rolling average solvent loss ratio limits

established pursuant to Paragraphs 19-22:

For each exceedance of a 12-month rolling average - \$30,000

e. For failure to install CEMs on sources pursuant to Paragraphs 30(a)-(c)

and Appendices B, C and D, per a CEM not timely installed:

For first full month of delay - \$2,500

For each subsequent month and fraction thereof - \$2,500

f. For failure to certify CEMs pursuant to Paragraphs 30(a)-(c) and

Appendices B, C and D, per a CEM not certified:

For first full month of delay - \$2,500

For each subsequent month and fraction thereof - \$2,500

g. For failure to operate CEMs pursuant to Paragraphs 30(a)-(c) and

Appendices B, C and D, per CEM not operated, \$100 per day.

h. For failure to apply for permits incorporating emission limits as required

by Paragraphs 15-28, \$1,000 per the first full week of delay, and \$1,000 per each

subsequent week of delay, or fraction thereof.

i. For failure to preserve records as specified in Paragraph 37 of the Consent

Decree:

Per record not retained per day: \$500

j. For failure to conduct a compliance test as required by Paragraph 30, per

day, per unit:

1 st through 30 th day after deadline	\$1,000
31 st through 60 th day after deadline	\$2,000
Beyond 60 th day	\$5,000

k. For failure to complete the CO emission reduction project required under Paragraph 17, \$1,000 per a day.

l. For failure to submit a semi-annual report required by Paragraph 36 of this Consent Decree, per day:

1 st through 30 th day after deadline	\$200
31 st through 60 th day after deadline	\$500
Beyond 60 th day	\$1,000

m. For failure to notify the Plaintiffs of Cargill's sale or transfer of a facility pursuant to Paragraph 2, \$250 per day.

n. For failure to pay the civil penalty as specified in Section V of this Consent Decree, Cargill shall pay an additional \$30,000 per week that full payment is delayed plus interest on the amount overdue at the rate specified in 31 U.S.C. § 3717.

o. For failure to satisfactorily complete implementation of the Appendix P SEPs or Community-Based SEPs as required under Paragraphs 45 and 49, Cargill shall pay the shortfall as provided in Paragraph 54 and pay a stipulated penalty of \$50,000, each.

p. For failure to submit each of the proposed work plans required by Paragraphs 46 and 50, or each of the completion reports required by Paragraphs 48 and 51 of the Consent Decree, per day:

1 st through 30 th day after deadline	\$1,000
31 st through 60 th day after deadline	\$2,000
Beyond 60 th day	\$3,000

q. For failure to escrow stipulated penalties as required by Paragraph 59, \$1,425 per day.

58. Cargill shall pay stipulated penalties upon written demand by the Plaintiff and the Plaintiff-Intervenors no later than thirty (30) days after Cargill receives such demand. Stipulated penalties shall be paid to the Plaintiff and the Plaintiff-Intervenors as provided in Paragraphs 57 and 84 (Notice and Penalty Payment) of this Consent Decree.

59. Should Cargill 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 Plaintiff and the Plaintiff-Intervenors by placing the disputed amount demanded by the Plaintiff and the Plaintiff-Intervenors, not to exceed \$30,000 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 IX within the time provided in Paragraph 58 for payment of stipulated penalties. If the dispute is thereafter resolved in Cargill's favor, the escrowed amount plus accrued interest shall be returned to Cargill. Otherwise the Plaintiff and Plaintiff-Intervenors 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 Cargill.

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

VII. RIGHT OF ENTRY

61. Nothing in this Consent Decree shall limit the authority of EPA and Plaintiff-Intervenors to conduct tests and inspections under Section 114 of the Act, 42 U.S.C. § 7414, or any other applicable law.

VIII. FORCE MAJEURE

62. If any event occurs which causes or may cause a delay or impediment to performance in complying with any provision of this Consent Decree, Cargill shall notify the Plaintiff and Plaintiff-Intervenors in writing as soon as practicable, but in any event within twenty (20) business days of when Cargill first knew of the event or should have known of the event by the exercise of due diligence. In this notice Cargill 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 Cargill to prevent or minimize the delay and the schedule by which those measures will be implemented. Cargill shall adopt all reasonable measures to avoid or minimize such delays.

63. Failure by Cargill to provide notice to the Plaintiff and Plaintiff-Intervenors of an event which causes or may cause a delay or impediment to performance shall render this Part VIII voidable by the Plaintiff and Plaintiff-Intervenors as to the specific event for which Cargill has failed to comply with such notice requirement, and, if voided, is of no effect as to the particular event involved.

64. The Plaintiff or the Plaintiff-Intervenors shall notify Cargill in writing regarding Cargill'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 62. If the Plaintiff or the Plaintiff-Intervenors agree that the delay or impediment to performance has been or will be caused by circumstances beyond the control of Cargill, including any entity controlled by Cargill, and that Cargill 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. Cargill shall not be liable for stipulated penalties for the period of any such delay.

65. If the Plaintiff and the Plaintiff-Intervenors do not accept Cargill's claim that a delay or impediment to performance is caused by a force majeure event, to avoid payment of stipulated penalties, Cargill must submit the matter to this Court for resolution within twenty (20) business days after receiving notice of the Plaintiff's and the Plaintiff-Intervenors position, by filing a petition for determination with this Court. Once Cargill has submitted this matter to this Court, the Plaintiff and Plaintiff-Intervenors shall have twenty (20) business days to file their response to said petition. If Cargill 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 Cargill, including any entity controlled by Cargill, and that Cargill could not have prevented the delay by the exercise of due diligence, Cargill 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.

66. Cargill 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 their control, including any entity controlled by it, and that Cargill could not have prevented the delay by the exercise of due diligence. Cargill 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.

67. Unanticipated or increased costs or expenses associated with the performance of Cargill's obligations under this Consent Decree shall not constitute circumstances beyond the control of Cargill, 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 Cargill 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.

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

69. As part of the resolution of any matter submitted to this Court under this Part VIII, 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 Plaintiff and the Plaintiff-Intervenors or approved by this Court. Cargill shall be liable for stipulated penalties for their failure thereafter to complete the work in accordance with the extended or modified schedule.

IX. DISPUTE RESOLUTION

70. The dispute resolution procedure provided by this Part IX shall be available to resolve all disputes arising under this Consent Decree except as otherwise provided in Part VIII regarding Force Majeure.

71. 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 IX. 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.

72. 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 Plaintiff, the Plaintiff-Intervenors with jurisdiction over the facility at which the dispute arose and Cargill, unless the parties' representatives agree to shorten or extend this period.

73. In the event that the parties are unable to reach agreement during such informal negotiation period, the Plaintiff and the participating Plaintiff-Intervenors shall provide Cargill with a written summary of their position regarding the dispute. In the event the Plaintiff and the participating Plaintiff-Intervenor disagree, the position of the Plaintiff shall control. The position advanced by the Plaintiff and the participating Plaintiff-Intervenors shall be considered binding unless, within forty-five (45) calendar days of Cargill's receipt of the written summary of the

Plaintiff and the participating Plaintiff-Intervenors position, Cargill files with this Court a petition which describes the nature of the dispute, and includes a statement of Cargill's position and any supporting data, analysis, and/or documentation relied on by Cargill. The Plaintiff and the participating Plaintiff-Intervenors shall respond to the petition within forty-five (45) calendar days of filing.

74. 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 IX may be shortened upon motion of one of the parties to the dispute.

75. 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 IX or the parties' inability to reach agreement. The final position of the Plaintiff and the participating Plaintiff-Intervenors shall be upheld by the Court if supported by substantial evidence in the record as identified and agreed to by all the Parties.

76. 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. Cargill shall be liable for stipulated penalties for their failure thereafter to complete the work in accordance with the extended or modified schedule.

X. GENERAL PROVISIONS

77. Effect of Settlement.

a. 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.

During the effective period of the Consent Decree, Cargill shall comply with the specific emission reduction requirements, emission limits, operating parameters, monitoring requirements and recordkeeping requirements specified in this Consent Decree including those specified pursuant to Paragraph 19, which shall supercede and control over corresponding terms and conditions of any air quality control permits existing as of the date of entry of this Consent Decree.

b. In determining whether a future modification will result in a significant net emissions increase, Cargill shall not take credit for any emissions reductions required by this Consent Decree, as set forth in Paragraphs 15-27, for netting purposes as defined by the applicable regulations implementing Part C of Title I of the Clean Air Act. In addition, the emission reductions of PM, PM10, NO_x, SO₂, CO and VOC (at units other than dryers) required under this Consent Decree, as set forth in Paragraphs 15-27, may not be used for any emissions offset, banking, selling or trading program. No further offsets are required for any emission units existing at the facilities in Appendix A as of the date of lodging of this Consent Decree. Cargill may continue to sell and trade: i) NO_x credits of 50 tons per year for the Memphis facility (an amount equal to the average credits available to Cargill in 2003 and 2004 and representative of Cargill's baseline operations); and ii) emission credits resulting from reductions in excess of those required

to meet the emission limits set forth in Appendices B-L. Cargill may not use VOC emission reductions up to 98 percent of the uncontrolled dryer emissions from sources in Appendices H, I and J for any emissions offset, banking, selling or trading program.

c. Nothing in this Consent Decree shall be construed to limit the ability of the State of Nebraska to ensure compliance with the National Ambient Air Quality Standards (NAAQS) and the PSD increment provisions of 40 C.F.R. Part 52.21(c) and the corresponding state regulations.

78. Resolution of Claims. Satisfaction of the requirements of this Consent Decree constitutes full settlement of and shall resolve all past civil and administrative liability of Cargill and all owners and prior owners and/or operators of the facilities listed in Appendix A to the Plaintiff and the Plaintiff-Intervenors for the violations alleged in the United States' and Plaintiff-Intervenors' Complaints (and any Notices of Violation referenced therein), and all civil and administrative liability of Cargill, and all owners and prior owners and/or operators of the facilities listed in Appendix A, for any violations at the facilities included in Appendix A arising out of facts and events that occurred or may have occurred during the relevant time period, or that arise out of execution of the provisions of this Consent Decree, under the following statutory and regulatory provisions:

a. PSD and Nonattainment New Source Review Requirements at Parts C and D of Subchapter I of the Act and the regulations promulgated thereunder at 40 C.F.R. Part 52.21 and 51.165, and the SIP provisions which incorporate and implement the above listed federal statute and regulations;

b. New Source Performance Standards under Section 111 of the Clean Air Act and the regulations promulgated thereunder at 40 C.F.R. Part 60, including Subparts D, Db, Dc, DD, Kb, GG, VV, and Y, and the SIP provisions which incorporate and implement the above listed federal statute and regulations;

c. Toxic Chemical Release Reporting Requirements pursuant to EPCRA Section 313, 42 U.S.C. § 11023;

d. CERCLA Notification and Reporting Requirements under EPCRA Section 304, 42 U.S.C. § 11004;

e. State Implementation Plan Requirements and State and Local Air Permitting Statutes and Regulations for: (1) permitting of the construction and operation of new and modified stationary sources; (2) requirements relating to emission limits in permits issued for such construction and operation; (3) performance testing and emissions monitoring; (4) data submission and notification requirements; (5) supplementation of permit applications; (6) hazardous air pollutants; (7) emission limits, control requirements, and standards of performance; (8) odor, noise or other nuisance; and (9) payment of fees based on quantity of emissions.

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, the emission units subject to this Consent Decree shall be on a compliance schedule and any modification to these units, as defined in 40 C.F.R. Part 52.21, which is not required by this Consent Decree is

beyond the scope of this resolution of claims. Nothing in this Paragraph 78 shall be construed to limit the Plaintiff and Plaintiff-Intervenor's right to demand stipulated penalties in accordance with Paragraph 57. Paragraph 78 shall survive the termination of the Consent Decree.

79. Other Laws. Except as specifically provided by this Consent Decree, nothing in this Consent Decree shall relieve Cargill of its obligation to comply with all applicable federal, state and local laws and regulations. Nothing in this Consent Decree shall relieve Cargill of its obligation to comply with state and local laws, rules and regulations which become effective after the date of lodging of the consent decree or with State Implementation Plan provisions promulgated after the date of lodging of the Consent Decree. Subject to Paragraphs 60 and 78, nothing contained in this Consent Decree shall be construed to prevent or limit the United States' or the Plaintiff-Intervenor'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.

80. Third Parties. Except as otherwise provided by this Consent Decree or 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.

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

82. Public Documents. All information and documents submitted by Cargill to the Plaintiff and Plaintiff-Intervenors 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 Cargill in accordance with 40 C.F.R. Part 2.

83. 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. Part 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 disclose facts or considerations which indicate that this Consent Decree is inappropriate, improper or inadequate. Cargill and the Plaintiff-Intervenors consent to the entry of this Consent Decree.

84. Notice and Penalty Payment. Unless otherwise provided herein, notifications to or communications with the United States, EPA, the Plaintiff-Intervenors or Cargill 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, the Plaintiff-Intervenors or Cargill is required by the terms of this Consent Decree or when payment of a penalty is required by the terms of this Consent Decree, it shall be addressed or paid as set forth in Appendix Q:

85. 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.

86. Modification. Except as provided herein, there shall be no modification of this Consent Decree without written agreement of 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.

87. 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. to and until December 31, 2009. 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.

JMR
2/27/06

XI. TERMINATION

88. Prior to complete termination of the requirements of this Consent Decree, any party may, upon motion to the Court, seek to terminate specific provisions of this Consent Decree. This Consent Decree shall be subject to complete termination upon motion by any party after Cargill satisfies all requirements of this Consent Decree. At such time, if Cargill 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 Cargill shall so certify to the Plaintiff and the appropriate Plaintiff-Intervenors, and unless the Plaintiff and the appropriate Plaintiff-Intervenors object in writing with specific reasons within sixty (60) days of receipt of the certification, the Court shall order that this Consent Decree be terminated on Cargill's motion. If the Plaintiff or Plaintiff-Intervenors object to Cargill's certification, then the matter shall be submitted to the Court for resolution under Part IX ("Dispute Resolution") of this Consent Decree. Paragraphs 39 and 78 shall survive the termination of the Consent Decree.

So entered in accordance with the foregoing this 27th day of February, 2006 *Jur 2/27/06*

United States District Court Judge
District of Minnesota

FOR PLAINTIFF, THE UNITED STATES OF AMERICA:

KELLY A. JOHNSON
Acting Assistant Attorney General
Environment and Natural Resources
Division
U.S. Department of Justice

DIANNE SHAWLEY
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By: *y*

FRED SIEKERT #142013
Assistant United States Attorney
District of Minnesota

United States et al. v. Cargill, Inc.

For Headquarters US EPA

THOMAS V. SKINNER
Acting Assistant Administrator
Office of Enforcement and Compliance Assurance
1200 Pennsylvania Ave, N.W.
Washington, D.C. 20460

ju DATE

8/10/05

FOR THE U.S. ENVIRONMENTAL PROTECTION AGENCY:

Date 7-27-05

Bharat Mathur
Acting Regional Administrator
U.S. Environmental Protection
Agency, Region V
77 West Jackson Boulevard
Chicago, Illinois 60604-3590

FOR THE U.S. ENVIRONMENTAL PROTECTION AGENCY:

Date 07-22-05

Richard E. Greene
Regional Administrator
U.S. Environmental Protection
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1445 Ross Avenue, Suite 1200
Dallas, Texas 75202

FOR THE U.S. ENVIRONMENTAL PROTECTION AGENCY:

Date AUG - 1 2005

J. I. Palmer, Jr.
Regional Administrator
U.S. Environmental Protection
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Sam Nunn Atlanta Federal Center
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FOR THE U.S. ENVIRONMENTAL PROTECTION AGENCY:

Date: JUL 21 2005

Robert E. Roberts
Regional Administrator
US EPA Region 8
999 18th Street Suite 300
Denver, CO 80202-2466

United States et al v. Cargill, Incorporated

FOR THE U.S. ENVIRONMENTAL PROTECTION AGENCY:

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Martha R. Steincamp
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U.S. Environmental Protection Agency, Region 7
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Kansas City, Kansas 66101

FOR THE PLAINTIFF-INTERVENOR, THE STATE OF ALABAMA

Date 8-1-05

Name

Title

Address

CHIEF, AIR DIVISION
ALA. DEPT. OF ENV. MGMT.
MONTGOMERY, AL.

FOR THE PLAINTIFF-INTERVENOR, THE STATE OF GEORGIA

Name
Title
Address

Date Aug 1, 2005

FOR THE PLAINTIFF-INTERVENOR, THE STATE OF ILLINOIS

FOR THE STATE OF ILLINOIS
PEOPLE OF THE STATE OF ILLINOIS *ex rel.*

LISA MADIGAN,
Attorney General of the State of Illinois

MATTHEW J. DUNN, Chief
Environmental Enforcement/Asbestos Litigation Division

BY: _____
THOMAS DAVIS, Chief
Environmental Bureau
Assistant Attorney General

DATE: 8/08/05

ILLINOIS ENVIRONMENTAL PROTECTION AGENCY

BY: _____
ROBERT A. MESSINA
Chief Legal Counsel

DATE: 8/16/05

FOR THE PLAINTIFF-INTERVENOR, THE STATE OF INDIANA

Date: JULY 25, 2005

THOMAS W. EASTERLY
Commissioner
Indiana Department of Environmental Management

Approved as to form and legality:

STEVE CARTER
Indiana Attorney General

Date: August 5, 2005

CHARLES J. TODD
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FOR THE PLAINTIFF-INTERVENOR,
STATE OF IOWA

THOMAS J. MILLER
Attorney General of Iowa

Date 7/27/05

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FOR PLAINTIFF-INTERVERNOR, THE STATE OF MISSOURI

Date: 8/1/05

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Date: 7/29/05

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FOR PLAINTIFF-INTERVENOR, THE STATE OF NEBRASKA:

By: JON C. BRUNING
Attorney General

By: _____
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(402) 471-2682

Date: July 25, 2005

Signature page: USA et al v. Cargill, Incorporated, U.S. District Court, District of
Minnesota

FOR THE PLAINTIFF-INTERVENOR, THE STATE OF OHIO

JIM PETRO
ATTORNEY GENERAL OF OHIO

Date: 8/8/05

MARGARET A. MALONE
Assistant Attorney General
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FOR THE COMBINED HEALTH DISTRICT OF MONTGOMERY COUNTY, OHIO
REGIONAL AIR POLLUTION CONTROL AGENCY

Date: 8/8/05

JOHN A. PAUL, RAPCA Supervisor
Duly Authorized Agent for the Health Commissioner
RAPCA
117 South Main Street
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FOR THE PLAINTIFF-INTERVENOR, THE TENNESSEE COUNTY OF SHELBY AND
CITY OF MEMPHIS

Date 3/5/05

YVONNE S. MADLOCK
Director
Memphis and Shelby County Health Department
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Memphis, Tennessee 38105

FOR THE PLAINTIFF-INTERVENOR, THE STATE OF NORTH DAKOTA

Date


7-25-05

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State of North Dakota
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United States, et al. v. Cargill Incorporated

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7/22/05
Date

FOR THE IOWA COUNTY OF POLK

Date:

7/25/05

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FOR DEFENDANT, CARGILL, INCORPORATED

7

Ronald L. Christenson
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Date Aug. 02, 2005