

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF LOUISIANA

\_\_\_\_\_  
UNITED STATES OF AMERICA, )  
and )  
LOUISIANA DEPARTMENT OF )  
ENVIRONMENTAL QUALITY )  
)  
)  
Plaintiffs, )  
)  
)  
v. )  
)  
PCS NITROGEN FERTILIZER, L.P., )  
)  
\_\_\_\_\_  
Defendant. )

Civil Action No. [ ]

Section:

Magistrate:

CONSENT DECREE

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## CONSENT DECREE

**WHEREAS**, Plaintiffs, the United States of America (United States), on behalf of the United States Environmental Protection Agency (EPA), and the Louisiana Department of Environmental Quality (LDEQ) (together the Plaintiffs), have filed a complaint alleging that Defendant, PCS Nitrogen Fertilizer, L.P. (“PCS”) at its phosphoric acid facility located in Geismar, Louisiana (Facility) has violated the Clean Air Act (“CAA”), 42 U.S.C. § 7401 et seq., its implementing regulations, and permits issued to PCS under the Louisiana State Implementation Plan (“Louisiana SIP”), which are enforceable by EPA under Section 113 of the CAA, 42 U.S.C. § 7413, and has also violated PCS’s Title V operating permits, which are enforceable by EPA under Section 502 of the CAA, 42 U.S.C. § 7661a, by introducing into its evaporative cooling towers liquid effluent from wet scrubbing devices installed to control emissions from process equipment, and failing to regularly certify the prevention of such effluent being introduced into the cooling tower, as required by the Louisiana SIP and Title V of the CAA, 42 U.S.C. 7661a-7661e;

**WHEREAS**, PCS denies the violations alleged in the Complaint, and maintains that it has been and remains in compliance with the CAA and is not liable for civil penalties or injunctive relief;

**WHEREAS**, the objective of the Parties in this Consent Decree is to resolve the civil claims for violations of the CAA alleged in the Complaint by establishing certain injunctive relief whereby PCS shall modify certain operating practices with respect to its management of liquid effluent, and by assessing an appropriate penalty;

**WHEREAS**, PCS has conducted itself in good faith in its discussions with the Plaintiffs concerning the violations alleged in the Complaint and has already implemented certain corrective measures at its Facility, obviating the need for certain injunctive relief;

**WHEREAS**, by agreeing to entry of this Consent Decree, PCS makes no admission of law or fact with respect to the allegations in the Complaint and continues to deny any non-compliance or violation of any law or regulation identified therein. For the purpose of avoiding litigation among the Parties, however, PCS agrees to the requirements of this Consent Decree; and

**WHEREAS**, the Parties recognize, and the Court by entering this Consent Decree finds, that this Consent Decree has been negotiated by the Parties in good faith and will avoid litigation among the Parties and that this Consent Decree is fair, reasonable, and in the public interest.

**NOW, THEREFORE**, before the taking of any testimony, without the adjudication or admission of any issue of fact or law except as provided in Section I (Jurisdiction and Venue), below, and with the consent of the Parties,

**IT IS HEREBY ADJUDGED, ORDERED, AND DECREED** as follows:

**I. JURISDICTION AND VENUE**

1. This Court has jurisdiction over the subject matter of this action and over the Parties, pursuant to Section 113(b) and 167 of the CAA, 42 U.S.C. §7413(b) and 7477, and 28 U.S.C. §§ 1331, 1332, 1345, 1355 and 1367. Venue is proper in this judicial district pursuant to 28 U.S.C. §§ 1331, 1332, 1345, 1355, 1367, 1391(b) and (c) and 1395(a), and Section 113(b) of the CAA, 42 U.S.C. § 7413(b), because PCS's phosphoric acid Facility is located in this judicial district. For purposes of this Decree, or any action to enforce this Decree, EPA, LDEQ, and

PCS consent to the Court's jurisdiction over this Decree and any such action and over PCS and further consent to venue in this judicial district.

2. Pursuant to Section 113(a) and (b) of the CAA, 42 U.S.C. § 7413(a) and (b), notice of the commencement of this action has been given to LDEQ.

3. For purposes of this Consent Decree only, PCS agrees that the Complaint states claims upon which relief may be granted pursuant to Sections 113(b) and 502 of the CAA, 42 U.S.C. §§ 7413(b) and 7661a.

## **II. APPLICABILITY**

4. The obligations of this Consent Decree apply to and are binding upon the United States, LDEQ, and PCS and any successors, assigns, or other entities or persons otherwise bound by law. Rights granted to EPA under this Consent Decree may be exercised by LDEQ upon the written agreement of EPA and LDEQ.

5. No transfer of ownership or operation of all or a portion of the Facility, whether in compliance with the procedures of this Paragraph or otherwise, shall relieve PCS of its obligation to ensure that the terms of the Decree are implemented, unless: (1) the transferee agrees in writing to undertake the obligations required by this Decree and to be substituted for PCS as a Party to the Decree and thus be bound by the terms thereof; and (2) the United States, after consultation with LDEQ, consents in writing to relieve PCS of its obligations pursuant to Section XVI (Modification) of this Consent Decree. At least thirty (30) Days prior to such transfer, or such other period agreed to by the Parties in writing, PCS shall provide a copy of this Consent Decree to the proposed transferee and shall simultaneously provide written notice of the prospective transfer, together with a copy of the proposed written agreement transferring obligations to the transferee, to EPA, LDEQ, the United States Attorney for the Eastern District

of Louisiana, and the United States Department of Justice, in accordance with Section XIII (Notices) of this Decree. The United States' determination whether to approve the transferee's substitution for PCS under this Consent Decree will take into account the status of PCS's modifications to the Facility necessary to allow PCS to comply with the obligations of this Consent Decree and a demonstration that the transferee has the financial and technical capability to comply with this Consent Decree. Any transfer of ownership or operation of the Facility without complying with this Paragraph constitutes a violation of this Decree. The United States' decision to refuse to approve the substitution of the transferee for PCS shall be subject to dispute resolution pursuant to Section IX (Dispute Resolution) of this Consent Decree, but any judicial review shall be conducted pursuant to Paragraph 46(a) of this Consent Decree.

6. PCS shall: (1) provide a copy of this Consent Decree to its President, corporate General Counsel, corporate Director of the Environment, Facility Plant Manager, Facility Chemical Operations Manager, Facility Operations Superintendent and Facility Environmental Manager, and shall ensure that employees and contractors whose duties might reasonably include compliance with any provision of this Consent Decree are made aware of both the existence of the Consent Decree and specific requirements of the Consent Decree that fall within such person's duties; (2) place an electronic version of the Consent Decree on the corporate SH&E and Facility internal websites; and (3) post notice of lodging of the Consent Decree and the availability for review of the Consent Decree at a location at the Facility where legal notices are posted. PCS shall be responsible for ensuring that all employees and contractors involved in performing any Work pursuant to this Consent Decree perform such Work in compliance with the requirements of this Consent Decree.

7. In any action to enforce this Consent Decree, PCS shall not raise as a defense the failure by any of its officers, directors, employees, agents, or contractors to take any actions necessary to comply with the provisions of this Consent Decree.

### III. DEFINITIONS

8. Every term expressly defined by this Section shall have the meaning given that term herein. Every other term used in this Consent Decree that is also a term used under the CAA, 42 U.S.C. § 7401 et seq., or its implementing regulations shall have the same meaning in this Consent Decree as such term has under the CAA or under federal or state regulations. For purposes of this Consent Decree, whenever the terms defined below are used in this Consent Decree, such definitions shall apply:

a. Complaint shall mean the complaint filed by the United States and LDEQ in this action;

b. Consent Decree or Decree shall mean this Decree and all Appendices identified in Section XXII (Appendices) and attached hereto. In the event of any conflict between this Decree and any Appendix hereto, this Decree shall control;

c. Day shall mean a calendar day unless expressly stated to be a business day. In computing any period of time under this Consent Decree, where the last day would fall on a Saturday, Sunday, or federal or State of Louisiana holiday, the period shall run until the close of business of the next business day;

d. Defendant or PCS shall mean PCS Nitrogen Fertilizer, L.P. ;

e. EPA shall mean the United States Environmental Protection Agency and any of its successor departments or agencies;

f. Effective Date is defined in Section XIV (Effective Date);

- g. Facility shall mean PCS's Geismar, Louisiana manufacturing plant, Phosphogypsum Stack Systems, and all other contiguous or adjacent property owned and/or operated by PCS.
- h. Interest shall mean the interest rate specified in 28 U.S.C. § 1961;
- i. LDEQ shall mean the State of Louisiana Department of Environmental Quality and any of its successor departments or agencies;
- j. Paragraph shall mean a portion of this Decree identified by an arabic numeral;
- k. Parties shall mean the United States, LDEQ and PCS;
- l. Scrubber Effluent shall mean any liquid effluent from any wet scrubbing device installed to control emissions from process equipment as provided in 40 CFR 63.602(e);
- m. Section shall mean a portion of this Decree identified by a roman numeral;
- n. United States shall mean the United States of America, acting on behalf of EPA; and
- o. Work shall mean any activity that PCS must perform to comply with the requirements of this Decree, including Appendices.

#### **IV. CIVIL PENALTY**

9. Within thirty (30) Days after the Effective Date of this Consent Decree, PCS shall pay the sum of \$198,825.30 as a civil penalty, together with Interest accruing from the date on which the Consent Decree is lodged with the Court, at the rate specified in 28 U.S.C. § 1961 as of the date of lodging, in accordance with the following Paragraphs.

10. PCS shall pay \$99,412.65 to the United States by FedWire Electronic Funds Transfer (“EFT”) to the U.S. Department of Justice, in accordance with written instructions to be provided by the Financial Litigation Unit of the U.S. Attorney’s Office for the Eastern District of Louisiana, 500 Poydras Street, Suite 210, New Orleans, Louisiana, 70130 (504) 680-3000 to PCS following lodging of the Consent Decree. At the time of payment, PCS shall send a copy of the EFT authorization form and the EFT transaction record, together with a transmittal letter, to the United States in accordance with Section XIII (Notices) of this Decree; by email to [acctsreceivable.CINWD@epa.gov](mailto:acctsreceivable.CINWD@epa.gov); and by mail to:

EPA Cincinnati Finance Office  
26 Martin Luther King Drive  
Cincinnati, OH 45268

The transmittal letter shall state that the payment is for the civil penalty owed pursuant to the Consent Decree in United States et al. v. PCS Nitrogen Fertilizer, L.P., and shall reference the civil action number and DOJ case number 90-7-1-08209.

11. Within thirty (30) Days after the Effective Date of this Consent Decree, PCS shall pay the sum of \$99,412.65 as a civil penalty, to LDEQ. Payment of the civil penalty to LDEQ shall be made by certified check made payable to the Louisiana Department of Environmental Quality and delivered to:

Accountant Administrator  
Financial Services Division  
Department of Environmental Quality  
P.O. Box 4303  
Baton Rouge, LA 70821-4303

The transmittal letter shall state that the payment is for a civil penalty owed pursuant to the Consent Decree in United States et al. v. PCS Nitrogen Fertilizer, L.P., and shall reference DOJ case number 90-7-1-0829.

12. PCS shall not deduct any penalties paid under this Section in calculating its federal or state or local income tax.

## **V. COMPLIANCE REQUIREMENTS**

13. Compliance Project and Schedule. PCS shall implement certain Facility changes pursuant to the description and schedule set forth in Appendix 1 (Project Implementation Schedule).

14. Cooling Towers. PCS shall not introduce Scrubber Effluent directly or indirectly into any evaporative cooling tower and shall certify its compliance with this prohibition annually, as required by the Louisiana SIP and Title V of the CAA, 42 U.S.C. 7661a-7661e.

15. Permits. Where any compliance obligation under this Section requires PCS to obtain a federal, state, or local permit, or approval, PCS shall submit timely and complete applications and take such actions as are necessary to obtain all such permits or approvals. PCS may seek relief under the provisions of Section VIII (Force Majeure) of this Consent Decree for any delay in the performance of any such obligation resulting from a failure to obtain, or a delay in obtaining, any permit or approval required to fulfill such obligation, if PCS has submitted timely and complete applications and has taken such actions as are necessary to timely obtain all such permits or approvals.

## **VI. REPORTING REQUIREMENTS**

16. Within one-hundred eighty (180) Days after the end of the calendar-quarter following the lodging of this Consent Decree (quarters shall be calculated based on PCS's end-of-fiscal-year), and every one hundred eighty (180) Days thereafter until the Consent Decree is terminated in accordance with Section XVII (Termination), PCS shall submit to EPA and

LDEQ a report for the period since the lodging of the Consent Decree, or since the last report, that shall include the status of any construction or compliance measures; completion of milestones; problems encountered or anticipated, together with implemented or proposed solutions; status of permit applications; operation and maintenance difficulties or concerns.

17. The reports shall also include a description of any violation of the requirements of this Consent Decree and an explanation of the likely cause of such violation and of the remedial steps taken, or to be taken, to prevent or minimize such violation. If PCS violates, or determines that it will violate, any requirement of this Consent Decree, PCS shall notify EPA and LDEQ of such violation and its likely duration, in writing, within twelve (12) Days of the date PCS first becomes aware of the violation, with an explanation of the likely cause of the violation and of the remedial steps taken, or to be taken, to prevent or minimize such violation. If the cause of a violation cannot be fully explained at the time the report is due, PCS shall so state in the report. PCS shall investigate the cause of the violation and shall then submit an amendment to the report, including a full explanation of the cause of the violation, within thirty (30) Days of the date PCS becomes aware of the cause of the violation. Nothing in this Paragraph or the following Paragraph relieves PCS of its obligation to provide the notice required by Section VIII (Force Majeure) of this Consent Decree.

18. Whenever any event affecting the Facility or PCS's performance under this Decree may pose an immediate threat to the public health or welfare or the environment, PCS shall comply with any applicable federal and state laws, and, in addition, shall notify EPA and LDEQ as per Section XIII (Notices) orally or by electronic or facsimile transmission as soon as possible, but no later than twenty-four (24) hours after PCS first knew of the violation or event.

This notice requirement is in addition to the requirement to provide notice of a violation of this Consent Decree set forth in the preceding Paragraph.

19. All reports under this Section VI shall be submitted to the persons designated in Section XIII (Notices) of this Consent Decree.

20. Each report submitted by PCS under this Section shall be signed by a responsible corporate official of PCS (as defined in 40 C.F.R. § 270.11(a)) and shall include the following certification:

I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

This certification requirement does not apply to emergency notifications where compliance would be impractical.

21. The reporting requirements of this Consent Decree do not relieve PCS of any reporting obligations required by the CAA or any of its implementing regulations, or by any other federal, state, or local law, regulation, permit, or other requirement. However, the reporting requirements of this Consent Decree shall not require PCS to re-submit any report, plan or information submitted by PCS to EPA and/or LDEQ prior to the Effective Date of this Consent Decree.

22. Any information provided pursuant to this Consent Decree may be used by the Plaintiffs in any proceeding to enforce the provisions of this Consent Decree and as otherwise permitted by law.

## VII. STIPULATED PENALTIES

23. PCS shall be liable for stipulated penalties to the United States and LDEQ for violations of this Consent Decree as specified below, unless excused under Section VIII (Force Majeure). A violation includes failing to perform any obligation required by the terms of this Decree, including any work plan or schedule approved under this Decree, according to all applicable requirements of this Decree and within the specified time schedules established by or approved under this Decree.

24. If PCS fails to pay the civil penalty required to be paid under Section IV (Civil Penalty) of this Decree when due, PCS shall pay a stipulated penalty of \$1,000 per Day for each Day that the payment is late for the first ten (10) Days, together with Interest. Thereafter, PCS shall pay \$3,000 per Day for each Day that the payment is late, with Interest. Late payment of the civil penalty shall be made in accordance with Section IV (Civil Penalty), Paragraphs 10 and 11. Stipulated penalties for late payment shall be paid in accordance with Paragraphs 25 through 29, below. All transmittal correspondence shall state that any such payment is for late payment of the civil penalty due under this Decree, or for stipulated penalties for late payment, as applicable, and shall include the identifying information set forth in Paragraphs 10 and 11, above.

25. Compliance Requirements: The following stipulated penalties shall accrue per violation per Day for each violation of the requirements identified in Section V (Compliance Requirements):

<u>Penalty Per Violation Per Day</u>	<u>Period of Noncompliance</u>
\$1,000	1st through 14th Day
\$2,000	15th through 30th Day
\$3,000	31st Day and beyond

26. Reporting Requirements. The following stipulated penalties shall accrue per violation per Day for each violation of the requirements of Section VI (Reporting Requirements) of this Consent Decree:

<u>Penalty Per Violation Per Day</u>	<u>Period of Noncompliance</u>
\$ 750	1st through 14th Day
\$1,000	15th through 30th Day
\$2,000	31st Day and beyond

27. Stipulated penalties under this Section shall begin to accrue on the Day after performance is due or on the Day a violation occurs, whichever is applicable, and shall continue to accrue until performance is satisfactorily completed or until the violation ceases.

28. PCS shall pay stipulated penalties to the United States and to LDEQ within twelve (12) Days of a written demand by either Plaintiff, subject to its right to invoke dispute resolution in accordance with Section IX (Dispute Resolution). PCS shall pay fifty percent (50%) of the total stipulated penalty amount due to the United States and fifty percent (50%) to LDEQ. The Plaintiff making a demand for payment of a stipulated penalty shall simultaneously send a copy of the demand to the other Plaintiff.

29. Each Plaintiff, may, in the unreviewable exercise of its discretion, reduce or waive stipulated penalties otherwise due it under this Consent Decree. The determination by one Plaintiff not to seek stipulated penalties, or to subsequently waive or reduce the amount it seeks,

shall not preclude the other Plaintiff from seeking the full amount of the stipulated penalties owed.

30. Stipulated penalties shall continue to accrue as provided in Paragraph 27, during any Dispute Resolution, but need not be paid until the following:

a. If the dispute is resolved by agreement or by a decision of the United States or LDEQ that is not subject to judicial review or appealed to the Court, PCS shall pay accrued penalties determined to be owing, together with Interest, to the United States or LDEQ within thirty (30) Days of the effective date of the agreement or the receipt of the United States' or LDEQ's decision or order.

b. If the dispute is appealed to the Court and the United States or LDEQ prevails in whole or in part, PCS shall pay all accrued penalties determined by the Court to be owing, together with Interest, within sixty (60) Days of receiving the final appellate Court decision.

31. PCS shall pay stipulated penalties owing to the United States in the manner set forth and with the confirmation notices required by Paragraph 10, except that the transmittal letter shall state that the payment is for stipulated penalties and shall state for which violation(s) the penalties are being paid. PCS shall pay stipulated penalties owing to LDEQ in accordance with Paragraph 11, except that the transmittal letter shall state that the payment is for stipulated penalties and shall state for which violation(s) the penalties are being paid.

32. PCS shall not deduct stipulated penalties paid under this Section in calculating its state and federal income tax.

33. If PCS fails to pay stipulated penalties according to the terms of this Consent Decree, PCS shall be liable for Interest on such penalties, as provided for in 28 U.S.C. § 1961,

accruing as of the date payment became due. Nothing in this Paragraph shall be construed to limit the United States or LDEQ from seeking any remedy otherwise provided by law for PCS's failure to pay any stipulated penalties.

34. Subject to the provisions of Section XI (Effect of Settlement/ Reservation of Rights) of this Consent Decree, the stipulated penalties provided for in this Consent Decree shall be in addition to any other rights, remedies, or sanctions available to the United States or LDEQ for PCS's violation of this Consent Decree or applicable law. Where a violation of this Consent Decree is also a violation of relevant statutory or regulatory requirements, PCS shall be allowed a credit for any stipulated penalties paid against any statutory penalties imposed for such violation.

#### **VIII. FORCE MAJEURE**

35. Force majeure, for purposes of this Consent Decree, is defined as any event arising from causes beyond the control of PCS, of any entity controlled by PCS, or of PCS's contractors, that delays or prevents the performance of any obligation under this Consent Decree despite PCS's best efforts to fulfill the obligation. The requirement that PCS exercise best efforts to fulfill the obligation includes using best efforts to anticipate any potential force majeure and best efforts to address the effects of any potential force majeure (1) as it is occurring and (2) following the potential force majeure such that the delay and any adverse effects of the delay are minimized to the greatest extent possible. Force Majeure does not include PCS's financial inability to perform any obligation under this Consent Decree.

36. If any event occurs or has occurred that may delay the performance of any obligation under this Consent Decree, whether or not caused by a force majeure event, PCS shall provide notice orally or by electronic or facsimile transmission as soon as possible, as provided

in Section XIII (Notices) of this Consent Decree, but not later than seventy-two (72) hours after the time when PCS first knew that the event might cause a delay. Within ten (10) Days thereafter, PCS shall provide written notice to EPA and LDEQ with an explanation and description of the reasons for the delay; the anticipated duration of the delay; all actions taken or to be taken to prevent or minimize the delay; a schedule for implementation of any measures to be taken to prevent or mitigate the delay or the effect of the delay; PCS's rationale for attributing such delay to a force majeure event if it intends to assert such a claim; and a statement as to whether, in the opinion of PCS, such event may cause or contribute to an endangerment to public health, welfare or the environment. PCS shall include with any notice all available documentation supporting a claim that the delay was attributable to a force majeure. PCS shall be deemed to know of any circumstance of which PCS, any entity controlled by PCS, or PCS's contractors knew or reasonably should have known. Failure to comply with the above requirements regarding an event shall preclude PCS from asserting any claim of force majeure regarding that event, provided, however, that if EPA, despite the late notice, is able to assess to its satisfaction whether the event is a force majeure under Paragraph 35 and whether PCS has exercised its best efforts under Paragraph 35, EPA may, in its unreviewable discretion, excuse in writing PCS's failure to submit timely notices under this Paragraph.

37. If EPA, after consultation with LDEQ, agrees that the delay or anticipated delay is attributable to a force majeure event, the time for performance of the obligations under this Consent Decree that are affected by the force majeure event will be extended by EPA, after consultation with LDEQ, for such time as is necessary to complete those obligations. An extension of the time for performance of the obligations affected by the force majeure event shall not, of itself, extend the time for performance of any other obligation. If EPA, after

consultation with LDEQ, agrees that the delay is attributable to a force majeure event, EPA will notify PCS in writing of the length of the extension, if any, for performance of the obligations affected by the force majeure event.

38. If EPA, after consultation with LDEQ does not agree that the delay or anticipated delay has been or will be caused by a force majeure event, EPA will notify PCS in writing of its decision.

39. If PCS elects to invoke the dispute resolution procedures set forth in Section IX (Dispute Resolution), it shall do so no later than fifteen (15) Days after receipt of EPA's notice. In any such proceeding, PCS shall have the burden of demonstrating by a preponderance of the evidence that the delay or anticipated delay has been or will be caused by a force majeure event, that the duration of the delay or the extension sought was or will be warranted under the circumstances, that best efforts were exercised to avoid and mitigate the effects of the delay, and that PCS complied with the requirements of Paragraphs 35 and 36, above. If PCS carries this burden, the delay at issue shall be deemed not to be a violation by PCS of the affected obligation of this Consent Decree identified to EPA and the Court.

#### **IX. DISPUTE RESOLUTION**

40. Unless otherwise expressly provided for in this Consent Decree, the dispute resolution procedures of this Section shall be the exclusive mechanism to resolve all disputes arising under or with respect to this Consent Decree. PCS's failure to seek resolution of a disputed issue under this Section shall preclude PCS from raising any such issue as a defense to an action by the United States or LDEQ to enforce any obligation of PCS arising under this Decree.

41. Informal Dispute Resolution. Any dispute subject to Dispute Resolution under this Consent Decree shall first be the subject of informal negotiations, which may include any third-party assisted, non-binding alternative dispute resolution process agreeable to the Parties. PCS shall submit a written Notice of Dispute to both the United States and LDEQ within thirty (30) Days after receiving written notice from EPA or LDEQ of a decision that PCS disputes. The dispute shall be considered to have arisen on the later of the dates that the United States or LDEQ receives a written Notice of Dispute. Such Notice of Dispute shall state clearly the matter in dispute. The period of informal negotiations shall not exceed twenty (20) Days from the date that the dispute arises, unless that period is modified by written agreement between the United States and PCS. If the Parties cannot resolve a dispute by informal negotiations, then the position of EPA, after consultation with LDEQ, shall be considered binding, unless PCS invokes formal dispute resolution procedures as provided in the following Paragraph.

42. Formal Dispute Resolution. If PCS elects to invoke formal dispute resolution, PCS shall, within thirty (30) Days after the conclusion of the informal negotiation period, serve on the United States and LDEQ a written Statement of Position regarding the matter in dispute. The Statement of Position shall include, but need not be limited to, any factual data, analysis, or opinion supporting PCS's position and any supporting documentation relied upon by PCS.

43. The United States, after consultation with LDEQ, shall serve its Statement of Position within forty-five (45) Days of receipt of PCS's Statement of Position. The United States' Statement of Position shall include or clearly reference, but need not be limited to, any factual data, analysis, or opinion supporting that position and any supporting documentation relied upon by the United States. Where appropriate, EPA may allow submission of supplemental statements of position by the parties to the dispute. The United States' Statement

of Position shall be binding on PCS, unless PCS files a motion for judicial review of the dispute in accordance with the following Paragraph.

44. PCS may seek judicial review of the dispute by filing with the Court and serving on the United States and LDEQ, in accordance with Section XIII (Notices) of this Consent Decree, a motion requesting judicial resolution of the dispute. The motion must be filed within thirty (30) Days of receipt of the United States' Statement of Position pursuant to the preceding Paragraph. The motion shall contain a written statement of PCS's position on the matter in dispute, including any supporting factual data, analysis, opinion, or documentation, and shall set forth the relief requested and any schedule within which the dispute must be resolved for orderly implementation of the Consent Decree.

45. The United States, after consultation with LDEQ, shall respond to PCS's motion within the time period allowed by the Local Rules of this Court. PCS may file a reply memorandum to the extent permitted by the Local Rules.

46. Standard of Review

a. Disputes Concerning Matters Accorded Record Review. In any dispute brought under this Section pertaining to the adequacy or appropriateness of plans, procedures to implement plans, schedules or any other items requiring approval by EPA under this Consent Decree; the adequacy of the performance of Work undertaken pursuant to this Consent Decree; and all other disputes that are accorded review on the administrative record under applicable principles of administrative law, EPA shall compile an administrative record of the dispute containing all Statements of Position, including supporting documentation and referenced data or information, and PCS shall have the burden of demonstrating, based on the administrative

record, that the position of the United States is arbitrary and capricious or otherwise not in accordance with law.

b. In any other dispute brought under this Section, PCS shall bear the burden of demonstrating that its position better fulfills the requirements and objectives of this Consent Decree.

47. The invocation of dispute resolution procedures under this Section shall not, by itself, extend, postpone, or affect in any way any obligation of PCS under this Consent Decree, unless and until final resolution of the dispute so provides or unless ordered by the Court. Stipulated penalties with respect to the disputed matter shall continue to accrue from the first Day of noncompliance, but payment shall be stayed pending resolution of the dispute as provided in Paragraph 30. If PCS does not prevail on the disputed issue, stipulated penalties shall be assessed and paid as provided in Section VII (Stipulated Penalties).

#### **X. INFORMATION COLLECTION AND RETENTION**

48. The United States, LDEQ, and their representatives, including attorneys, contractors, and consultants, shall have the right of entry into any of PCS's Facility, at all reasonable times, upon presentation of appropriate identification, to:

- a. monitor the progress of activities required under this Consent Decree;
  - b. verify any data or information submitted to the United States or LDEQ in accordance with the terms of this Consent Decree;
  - c. obtain samples and, upon request, splits of any samples taken by PCS or its representatives, contractors, or consultants;
  - d. obtain documentary evidence, including photographs and similar data;
- and

e. assess PCS's compliance with this Consent Decree.

49. Upon request, PCS shall provide EPA, LDEQ and their authorized representatives splits of any samples taken by PCS. Upon request, EPA and LDEQ shall provide PCS splits of any samples taken by EPA, LDEQ, and their authorized representatives.

50. PCS shall retain, and shall require its contractors and agents to preserve, all non-identical copies of all documents, records, or other information (including documents, records, emails or other information in electronic form) in its or its contractors' or agents' possession or control, or that come into its or its contractors' or agents' possession or control, and that relate to PCS's performance of its obligations under this Consent Decree for a period of five (5) years after the creation of such documents, records or other information. This information retention requirement shall apply regardless of any contrary corporate or institutional policies or procedures. At any time during this information retention period, upon request by the United States or LDEQ, PCS shall provide copies of any documents, records, or other information required to be maintained under this Paragraph.

51. At the conclusion of the information retention period provided in the preceding Paragraph, PCS shall notify the United States and LDEQ at least ninety (90) Days prior to the destruction of any documents, records, or other information subject to the requirements of the preceding Paragraph and, upon request by the United States or LDEQ, PCS shall deliver any such documents, records, or other information to EPA or LDEQ.

52. In connection with any request for documents, records, or other information pursuant to this Consent Decree, PCS may assert that certain documents, records, or other information are privileged under the attorney-client privilege or any other privilege recognized by federal law, provided that PCS shall not assert a legal privilege for any data, records or

information (excluding legal advice) generated or received in connection with PCS's obligations pursuant to the requirements of this Consent Decree. If PCS asserts a privilege, it shall provide the following: (1) the title of the document, record, or information; (2) the date of the document, record, or information; (3) the name and title of each author of the document, record, or information; (4) the name and title of each addressee and recipient; (5) a description of the subject of the document, record, or information; and (6) the privilege asserted by PCS. If Plaintiffs and PCS disagree as to whether a particular document or record is privileged, PCS shall deliver such document or record to the United States or LDEQ unless it invokes dispute resolution pursuant to Section IX (Dispute Resolution), in which case, PCS shall not have an obligation to deliver such document or record until a final determination is made, pursuant to the procedures set forth in Section IX (Dispute Resolution), that such document or record is not privileged.

53. PCS may also assert that information required to be provided under this Consent Decree is protected as Confidential Business Information ("CBI") under 40 C.F.R. Part 2. As to any information that PCS seeks to protect as CBI, PCS shall follow the procedures set forth in 40 C.F.R. Part 2.

54. This Consent Decree in no way limits or affects any right of entry and inspection, or any right to obtain information, held by the United States or LDEQ pursuant to applicable federal or state laws, regulations, or permits, nor does it limit or affect any duty or obligation of PCS to maintain documents, records, or other information imposed by applicable federal or state laws, regulations, or permits.

## **XI. EFFECT OF SETTLEMENT/RESERVATION OF RIGHTS**

55. This Consent Decree resolves the civil claims of the United States and LDEQ against PCS for the violations alleged in the Complaint filed in this action through the date of the lodging of the Consent Decree.

56. This resolution of the Plaintiffs' civil claims set forth in the Complaint is expressly conditioned upon complete and satisfactory performance of the requirements set forth in this Consent Decree. The United States and LDEQ reserve all legal and equitable remedies available to enforce the provisions of this Consent Decree, and PCS reserves all legal and equitable defenses available to it in the defense of any such enforcement. This Consent Decree shall not be construed to limit the rights of the United States or LDEQ to obtain penalties or injunctive relief under the federal and state environmental statutes or their implementing regulations, or under other federal or state law regulations or permit conditions, including Section 3008(h) of RCRA, 42 U.S.C. § 6928(h), except as expressly specified in Paragraph 55 with respect to the claims alleged in the Complaint. The United States and LDEQ further retain all authority and reserve all rights to take any and all actions authorized by law to protect human health and the environment, including all legal and equitable remedies to address any imminent and substantial endangerment to the public health or welfare or the environment arising at, or posed by, the Facility, whether related to the violations addressed in this Consent Decree or otherwise.

57. This Consent Decree is not a permit, or a modification of any permit, under any federal, State, or local law or regulation. Compliance with the terms of this Consent Decree does not guarantee compliance with all applicable federal, state, or local laws or regulations. PCS is responsible for achieving and maintaining complete compliance with all applicable

federal, State, and local laws, regulations, and permits; PCS's compliance with this Consent Decree shall be no defense to any action commenced pursuant to any such law, regulation, or permit, except as expressly specified in Paragraph 55 with respect to the civil claims alleged in the Complaint.

58. This Consent Decree does not limit or affect the rights of Parties against any third parties (persons not a Party to this Consent Decree), nor does it limit the rights of third parties against PCS, except as provided by law.

59. This Consent Decree shall not be construed to create rights or obligations in, or grant any cause of action to, any third party.

60. Nothing in the Complaint filed in this action or in this Consent Decree, including the execution and implementation of this Consent Decree, shall constitute an admission by PCS of any violation of the CAA, or of any implementing regulation, or of the allegations of the Complaint. The terms of this Consent Decree may not be used as evidence in any litigation between the Parties except pursuant to Section IX (Dispute Resolution) or in an action to enforce this Consent Decree.

## **XII. COSTS**

61. The Parties shall bear their own costs of this action, including attorneys' fees, except that the United States and LDEQ shall be entitled to collect any portion of the civil penalty or any stipulated penalties or other costs due under this Consent Decree but not paid by PCS.

### XIII. NOTICES

62. Unless otherwise specified herein, whenever notifications, submissions, or communications are required by this Consent Decree in accordance with Section VI (Reporting Requirements) they shall be made electronically, unless otherwise requested by either LDEQ or EPA, and addressed as follows:

To the United States:

Chief, Environmental Enforcement Section  
Environment and Natural Resources Division  
U.S. Department of Justice  
Re: DOJ No. 90-7-1-08209

Deborah Reyher  
Senior Counsel

via regular mail or post office express mail (required):

Box 7611 Ben Franklin Station  
Washington, D.C. 20044-7611

via email (required):

Deborah.Reyher@usdoj.gov

via facsimile (optional):

(202) 514-4113 or (202) 514-0097

via private overnight service (optional):

601 D Street, NW., 2nd Floor  
Washington, D.C. 20004

United States Attorney for the Eastern District of Louisiana  
Hale Boggs Federal Building  
500 Poydras Street, Suite 210  
New Orleans, Louisiana 70130  
Phone: (504) 680-3000  
Fax: (504) 589-4014

and to EPA, below:

David Eppler and Marcia Moncrieffe  
U.S. Environmental Protection Agency,  
Region 6  
1445 Ross Avenue, Suite 1200  
Dallas, TX 75202-2733  
Phone: (214) 665-6529  
Fax: (214) 665-7264

Eppler.david@epa.gov  
Moncrieffe.marcia@epa.gov

Kathryn P. Caballero  
Office of Civil Enforcement  
Mail Code 2249A  
U.S. Environmental Protection Agency  
Ariel Rios Building  
1200 Pennsylvania Ave., NW  
Washington, D.C. 20460  
Phone: (202) 564-1849  
Fax: (202) 564-0019  
russell.bethany@epa.gov  
caballero.kathryn@epa.gov

To LDEQ:

Administrator, Enforcement Division  
Office of Environmental Compliance  
Louisiana Dept. of Environmental Quality  
P.O. Box 4312  
Baton Rouge, LA 70821-4312

Kathy M. Wright  
Office of the Secretary  
Legal Affairs Division  
Louisiana Dept. of Environmental Quality  
P.O. Box 4302  
Baton Rouge, Louisiana 70821-4302  
Phone: (225) 219-3989  
Fax: (225) 219-4068  
kathy.wright@la.gov

To PCS:

PCS Administration (USA), Inc.  
1101 Skokie Boulevard, Suite 400  
Northbrook, Illinois 60062  
Telephone: (847) 849-4200  
Facsimile: (847) 849-4663  
Attention: Legal Counsel

PCS Nitrogen Fertilizer, L.P.  
3115 Highway 30  
Geismar, LA 70734  
Telephone: (225) 621-1500

Facsimile: (225) 621-1504  
Attention: General Manager

Charles T. Wehland  
Jones Day  
77 West Wacker Drive, Suite 3500  
Chicago, Illinois 60614  
[ctwehland@jonesday.com](mailto:ctwehland@jonesday.com)

63. Any Party may, by written notice to the other Parties, change its designated notice recipient or notice address provided above.

64. Notices submitted pursuant to this Section shall be deemed submitted upon electronic transmission, unless otherwise provided in this Consent Decree or by mutual agreement of the Parties in writing.

#### **XIV. EFFECTIVE DATE**

65. The Effective Date of this Consent Decree shall be the date upon which this Consent Decree is entered by the Court or a motion to enter the Consent Decree is granted, whichever occurs first, as recorded on the Court's docket.

#### **XV. RETENTION OF JURISDICTION**

66. The Court shall retain jurisdiction over this case until termination of this Consent Decree, pursuant to Section XVII (Termination), for the purpose of resolving disputes arising under this Decree or entering orders modifying this Decree, pursuant to Sections IX (Dispute Resolution) and XVI (Modification), or effectuating or enforcing compliance with the terms of this Decree.

#### **XVI. MODIFICATION**

67. The terms of this Consent Decree may be modified only by a subsequent written agreement of the Parties to this Consent Decree as set forth herein. Changes to Appendix 1 or to provisions of this Consent Decree that do not constitute a material change to this Decree may be

made without approval by the Court upon written agreement between PCS and EPA, after consultation with LDEQ, and upon execution shall become enforceable under this Consent Decree and shall be made available to the public in EPA's and LDEQ's official records, and shall periodically be filed with the Court. Any other modifications agreed to by the Parties shall be effective only upon approval by the Court. A Party's refusal to agree to a modification of this Consent Decree shall not be subject to dispute resolution or judicial review.

68. In the event that a potential transferee under Section II (Applicability) of this Consent Decree has agreed to become a party to this Consent Decree and to be subject to all its terms and provisions, it may do so upon written approval of the United States pursuant to Section II (Applicability) of this Consent Decree, in which event a supplemental signature page will be affixed to this Consent Decree and filed with the Court.

#### **XVII. TERMINATION**

69. Completion of Work. Within ninety (90) Days after PCS provides notification to EPA and LDEQ in accordance with Section XIII (Notices) that all Work required under this Consent Decree has been fully performed, EPA and/or LDEQ may conduct an inspection of the Facility to be attended by EPA, LDEQ and PCS at a mutually agreeable time. Following the inspection, if any, and correction of any problems or deficiencies noted by EPA, after consultation with LDEQ, PCS shall submit one or more written reports by a third party registered professional engineer, in the relevant technical field, certifying compliance with Section V (Compliance Requirements) of this Consent Decree that the Work has been completed in full satisfaction of the requirements of this Consent Decree. The reports shall indicate the case name and civil action number, and shall be submitted, together with a request for

Acknowledgment of Completion, in accordance with Section VI (Reporting Requirements) of this Consent Decree.

70. If, after review of the written report(s) and certification and consultation with LDEQ, EPA determines that any portion of the Work has not been completed in accordance with this Consent Decree, EPA will notify PCS in writing of the activity(ies) and/or obligation(s) that must be undertaken to complete the Work. EPA will set forth in the notice a schedule for performance of the activity(ies) and/or obligation(s) required under the Consent Decree, or will require PCS to submit a schedule for EPA approval pursuant to Section V (Compliance Requirements) of this Consent Decree. PCS shall perform all activities described in the notice in accordance with the specifications and schedules established therein, subject to PCS's right to invoke the dispute resolution procedures set forth in Section IX (Dispute Resolution) of this Consent Decree.

71. If EPA concludes, based on the initial or any subsequent request for an Acknowledgment of Completion by PCS, and after reasonable opportunity for review and comment by LDEQ, that the Work has been fully performed in accordance with this Consent Decree, EPA will so notify PCS in writing, which notice shall constitute the Acknowledgment of Completion. If EPA has not either provided a notice pursuant to Paragraph 70 or issued an Acknowledgment of Completion within 90 (ninety) Days after receiving a request, PSC may invoke dispute resolution under Section IX (Dispute Resolution) of this Consent Decree.

72. Termination. After PCS has completed the requirements set forth in Paragraphs 69 and 70 of this Section, obtained an Acknowledgment of Completion, complied with all other requirements of this Consent Decree, and paid the civil penalty and any accrued stipulated penalties as required by this Consent Decree, PCS may serve upon the United States and LDEQ

a Request for Termination, stating that PCS has satisfied those requirements, together with all necessary supporting documentation.

73. Following receipt by the United States and LDEQ of PCS's Request for Termination, the Parties shall confer informally concerning the Request and any disagreement that the Parties may have as to whether PCS has satisfactorily complied with the requirements for termination of this Consent Decree. If the United States, after consultation with LDEQ agrees that the Decree may be terminated, the Parties shall submit, for the Court's approval, a joint stipulation terminating the Decree.

74. If the United States, after consultation with LDEQ, does not agree that the Decree may be terminated as to the Facility, PCS may invoke dispute resolution under Section IX (Dispute Resolution) of this Decree. However, all time periods and deadlines established under Section IX (Dispute Resolution) shall be extended by sixty (60) Days, or more by the agreement of the Parties.

#### **XVIII. PUBLIC PARTICIPATION**

75. This Consent Decree shall be lodged with the Court for a period of not less than thirty (30) Days for public notice and comment in accordance with 28 C.F.R. § 50.7. The United States reserves the right to withdraw or withhold its consent if the comments regarding the Consent Decree disclose facts or considerations indicating that the Consent Decree is inappropriate, improper, or inadequate. Further, the parties agree and acknowledge that final approval by the Louisiana Department of Environmental Quality and entry of this Consent Decree is subject to the requirements of LA. R.S. 30:2050.7, which provides for public notice of this Consent Decree in the newspapers of general circulation and the official journals of the parish in which the PCS Facility is located, an opportunity for public comment, consideration of

any comments, and concurrence by the State Attorney General. LDEQ 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. PCS consents to entry of this Consent Decree without further notice and agrees not to withdraw from or oppose entry of this Consent Decree by the Court or to challenge any provision of the Decree, unless the United States has notified PCS in writing that it no longer supports entry of the Decree.

### **XIX. SIGNATORIES/SERVICE**

76. Each undersigned representative of PCS, the Assistant Attorney General for the Environment and Natural Resources Division of the Department of Justice, or her designee, and the Secretary of the Louisiana Department of Environmental Quality, or her designee, certifies that he or she is fully authorized to enter into the terms and conditions of this Consent Decree and to execute and legally bind the Party he or she represents to this document.

77. This Consent Decree may be signed in counterparts, and its validity shall not be challenged on that basis. PCS agrees to accept service of process by mail with respect to all matters arising under or relating to this Consent Decree and to waive the formal service requirements set forth in Rules 4 and 5 of the Federal Rules of Civil Procedure and any applicable Local Rules of this Court including, but not limited to, service of a summons.

### **XX. INTEGRATION**

78. This Consent Decree and its Appendices constitute the final, complete, and exclusive agreement and understanding among the Parties with respect to the settlement embodied in the Decree and supersedes all prior agreements and understandings, whether oral or written, concerning the settlement embodied herein. Other than the Appendices, which are

attached to and incorporated in this Decree, no other document, nor any representation, inducement, agreement, understanding, or promise, constitutes any part of this Decree or the settlement it represents, nor shall it be used in construing the terms of this Decree.

#### **XXI. FINAL JUDGMENT**

79. Upon approval and entry of this Consent Decree by the Court, this Consent Decree shall constitute a final judgment of the Court as to the United States, LDEQ and PCS. The Court finds that there is no just reason for delay and therefore enters this judgment as a final judgment under Fed. R. Civ. P. 54 and 58.

#### **XXII. APPENDICES**

80. The following Appendices are attached to and part of this Consent Decree:  
Appendix 1 contains the Project Implementation Schedule.

Dated and entered this \_\_\_ day of \_\_\_\_\_, 2013.

\_\_\_\_\_  
UNITED STATES DISTRICT JUDGE  
EASTERN DISTRICT OF LOUISIANA

WE HEREBY CONSENT to the entry of the Consent Decree in United States et al. v. PCS Nitrogen Fertilizer, L.P., Civil Action No. \_\_\_\_\_, subject to the public notice and comment requirements of 28 C.F.R. § 50.7.

FOR THE UNITED STATES OF AMERICA:

Date: \_\_\_\_\_

\_\_\_\_\_  
IGNACIA S. MORENO  
Assistant Attorney General  
Environment and Natural Resources Division  
United States Department of Justice  
950 Pennsylvania Avenue, NW  
Washington, D.C. 20530

Date: \_\_\_\_\_

\_\_\_\_\_  
DEBORAH M. REYHER  
Senior Counsel  
Environmental Enforcement Section  
Environment and Natural Resources Division  
United States Department of Justice  
P.O. Box 7611, Ben Franklin Station  
Washington, D.C. 20044  
(202) 514-4113

DANA J. BOENTE  
Interim United States Attorney  
Eastern District of Louisiana

Date: \_\_\_\_\_

\_\_\_\_\_  
Sharon Smith  
Assistant United States Attorney  
Eastern District of Louisiana  
Hale Boggs Federal Building  
500 Poydras Street, Suite 210  
New Orleans, Louisiana 70130  
(504) 680-3000

WE HEREBY CONSENT to the entry of the Consent Decree in United States et al. v. PCS Nitrogen Fertilizer, L.P., Civil Action No. \_\_\_\_\_, subject to the public notice and comment requirements of 28 C.F.R. § 50.7.

FOR THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY:

Date: \_\_\_\_\_

\_\_\_\_\_  
CYNTHIA GILES  
Assistant Administrator  
Office of Enforcement and Compliance Assurance  
United States Environmental Protection Agency  
Washington, D.C. 20460

Date: \_\_\_\_\_

\_\_\_\_\_  
SUSAN SHINKMAN  
Office Director  
Office of Civil Enforcement  
Office of Enforcement and Compliance Assurance  
United States Environmental Protection Agency  
Washington, D.C. 20460

Date: \_\_\_\_\_

\_\_\_\_\_  
ROSEMARIE KELLEY, Director  
Waste & Chemical Enforcement Division  
Office of Civil Enforcement  
Office of Enforcement and Compliance Assurance  
United States Environmental Protection Agency  
Washington, D.C. 20460

Date: \_\_\_\_\_

\_\_\_\_\_  
KATHRYN PIRROTTA CABALLERO  
Waste & Chemical Enforcement Division  
Office of Civil Enforcement  
Office of Enforcement and Compliance Assurance  
United States Environmental Protection Agency  
Washington, D.C. 20460

WE HEREBY CONSENT to the entry of the Consent Decree in United States et al. v. PCS Nitrogen Fertilizer, L.P., Civil Action No. \_\_\_\_\_, subject to the public notice and comment requirements of 28 C.F.R. § 50.7.

FOR THE U.S. ENVIRONMENTAL PROTECTION AGENCY REGION 6

Date: \_\_\_\_\_

\_\_\_\_\_  
John Blevins  
Director  
Compliance Assurance and Enforcement Division

Date: \_\_\_\_\_

\_\_\_\_\_  
Marcia Moncrieffe  
Regional Counsel  
U.S. Environmental Protection Agency,  
Region 6  
1445 Ross Avenue, Suite 1200  
Dallas, TX 75202-2733

WE HEREBY CONSENT to the entry of the Consent Decree in United States and LDEQ v. PCS Nitrogen Fertilizer, L.P. (E.D. La.), a civil action, subject to the public notice and comment requirements.

PRELIMINARY APPROVAL BY PLAINTIFF LOUISIANA DEPARTMENT OF ENVIRONMENTAL QUALITY:

Dated: 14 May 2013



Cheryl Sonnier Nolan  
Assistant Secretary  
Office of Environmental Compliance  
Louisiana Dept. of Environmental Quality

Dated: 5/15/2013



Kathy M. Wright (LA Bar Roll #30804)  
Perry Theriot, LA (Bar Roll #19181)  
Office of the Secretary  
Legal Affairs Division  
Louisiana Dept. of Environmental Quality  
P.O. Box 4302  
Baton Rouge, Louisiana 70821-4302  
Phone: (225) 219-3985  
Fax: (225) 219-4068

FINAL APPROVAL BY PLAINTIFF LOUISIANA DEPARTMENT OF ENVIRONMENTAL QUALITY:

Dated: \_\_\_\_\_

\_\_\_\_\_  
Cheryl Sonnier Nolan  
Assistant Secretary  
Office of Environmental Compliance  
Louisiana Dept. of Environmental Quality

Dated: \_\_\_\_\_

\_\_\_\_\_  
Kathy M. Wright (LA Bar Roll #30804)  
Perry Theriot (LA Bar Roll #19181)  
Office of the Secretary  
Legal Affairs Division  
Louisiana Dept. of Environmental Quality  
P.O. Box 4302  
Baton Rouge, Louisiana 70821-4302  
Phone: (225) 219-3985  
Fax: (225) 219-4068

This Consent Decree has been reviewed, and is concurred in, by the Attorney General of the State of Louisiana, pursuant to the provisions of La. R.S. 30:2050.7.

JAMES D. "BUDDY" CALDWALL

\_\_\_\_\_  
ATTORNEY GENERAL

DATED: \_\_\_\_\_

WE HEREBY CONSENT to the entry of the Consent Decree in United States et al. v. PCS Nitrogen Fertilizer, L.P., Civil Action No. \_\_\_\_\_, subject to the public notice and comment requirements of 28 C.F.R. § 50.7.

FOR PCS NITROGEN FERTILIZER, L.P.

Date: \_\_\_\_\_

Date: \_\_\_\_\_

## APPENDIX 1 – Project Implementation Schedule

For purposes of Paragraph 13 of the Consent Decree, PCS has either already implemented, or will implement, the following Facility changes described below and depicted on Figure 1 (Configuration Before Isolation Project) and Figure 2 (Configuration After Isolation Project):

1. The Facility's wet process phosphoric acid plant utilizes a wet scrubbing device to control hydrogen fluoride emissions from the plant's phosphoric acid attack tank. Two of the scrubber elements (the north pre-scrubber and the south pre-scrubber) utilized water from the process water loop that was then routed to the plant's gypsum ponds. Some water from the gypsum ponds returns to the Facility's process water loop that includes a cooling tower. On December 20, 2012, work to prevent process water from circulating through these phosphoric acid scrubber elements was completed. This work consisted of blinding off both: (i) the process water supply to the pre-scrubbers so as to prevent process water from entering them; and (ii) the supply lines to the venturi sprays to remove the capability to re-circulate process water within the pre-scrubbers. On or before December 31, 2013, the Facility plans to remove the piping and pumps associated with the pre-scrubbers that were isolated in December 2012.
2. The attached figures, which show the pre-scrubber configuration both before (Fig. 1) and after (Fig. 2) the isolation project illustrate the changes described above. As demonstrated on these figures, the remaining phosphoric acid scrubber elements receive water from and discharge to the Mississippi River. Water from these elements does not flow through the process water loop, including to the Facility's cooling tower.
3. After the completion of the initial phase of the work in December 2012, stack testing was completed to demonstrate that HF emissions comply with 40 CFR Part 63, Subpart AA without the functional operation of these scrubber elements. A stack test report that meets this requirement was submitted to LDEQ on November 19, 2012.

Figure 1 - Configuration Before Isolation Project

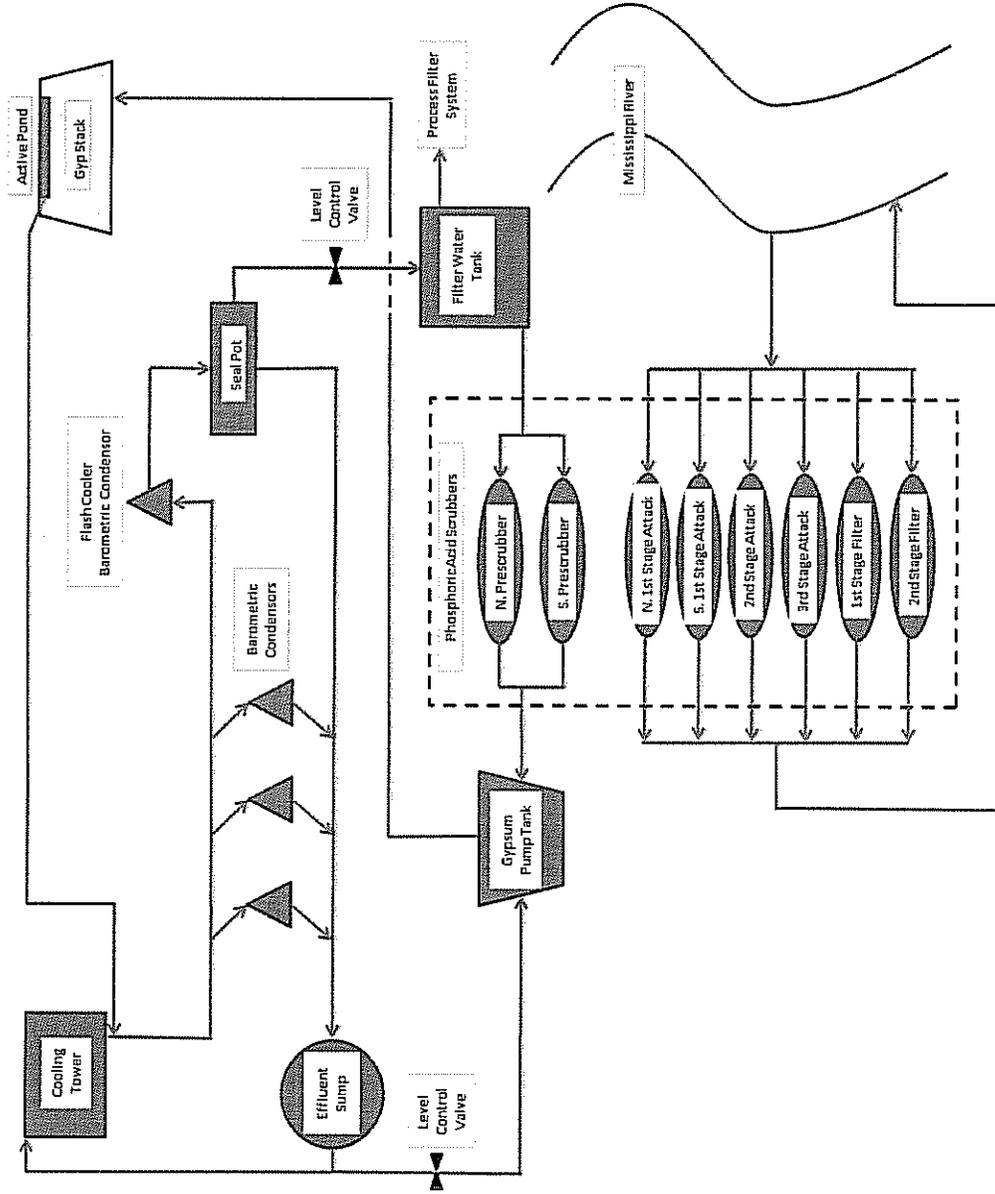


Figure 2 - Configuration After Isolation Project

