

**STATE OF LOUISIANA**

**DEPARTMENT OF ENVIRONMENTAL QUALITY**

**IN THE MATTER OF:**

**PCS NITROGEN FERTILIZER, L.P.**

**AI # 3732**

**PROCEEDINGS UNDER THE LOUISIANA  
ENVIRONMENTAL QUALITY ACT  
LA. R.S. 30:2001, ET SEQ.**

\* **Settlement Tracking No.**  
\* **SA-WE-22-0023**  
\*  
\* **Enforcement Tracking No.**  
\* **WE-CN-22-00192**  
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\*

**SETTLEMENT**

The following Settlement is hereby agreed to between PCS Nitrogen Fertilizer, L.P. (“Respondent”) and the Department of Environmental Quality (“DEQ” or “the Department”), under authority granted by the Louisiana Environmental Quality Act, La. R.S. 30:2001, et seq. (“the Act”).

**I**

Respondent is a partnership that owns and/or operates an existing nitrogen and former phosphate fertilizer manufacturing facility located in Geismar, Ascension and Iberville Parishes, Louisiana (“the Facility”).

**II**

On March 16, 2022, the Department issued to Respondent a Consolidated Compliance Order & Notice of Potential Penalty, Enforcement Tracking No. WE-CN-22-00192 (Exhibit 1).<sup>1</sup>

**III**

Respondent denies it committed any violations or that it is liable for any fines, forfeitures and/or penalties.

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<sup>1</sup> The Respondent, the Department, and the United States Environmental Protection Agency have separately negotiated a settlement that includes closure efforts associated with the Facility’s Active Clearwell and resolves alleged violations under the Resource Conservation and Recovery Act, 42 U.S.C. 6901, et seq. (DOJ Case No. 90-7-1-08388/22).

#### IV

Nonetheless, Respondent, without making any admission of liability under state or federal statute or regulation, agrees to pay, and the Department agrees to accept, a payment in the amount of ONE HUNDRED SIXTY THOUSAND AND NO/100 DOLLARS (\$160,000.00), of which Four Thousand One Hundred Thirty-Five and 54/100 Dollars (\$4,135.54) represents the Department's enforcement costs, in settlement of the claims set forth in this agreement. The total amount of money expended by Respondent on cash payments to the Department as described above, shall be considered a civil penalty for tax purposes, as required by La. R.S. 30:2050.7(E)(1).

#### V

Respondent further agrees that the Department may consider the inspection report(s), permit record(s), the Consolidated Compliance Order & Notice of Potential Penalty and this Settlement for the purpose of determining compliance history in connection with any future enforcement or permitting action by the Department against Respondent, and in any such action Respondent shall be estopped from objecting to the above-referenced documents being considered as proving the violations alleged herein for the sole purpose of determining Respondent's compliance history.

#### VI

This agreement shall be considered a final order of the Secretary for all purposes, including, but not limited to, enforcement under La. R.S. 30:2025(G)(2), and Respondent hereby waives any right to administrative or judicial review of the terms of this agreement, except such review as may be required for interpretation of this agreement in any action by the Department to enforce this agreement.

#### VII

This settlement is being made in the interest of settling the state's claims and avoiding for

both parties the expense and effort involved in litigation or an adjudicatory hearing. In agreeing to the compromise and settlement, the Department considered the factors for issuing civil penalties set forth in La. R. S. 30:2025(E) of the Act.

## VIII

As required by law, the Department has submitted this Settlement Agreement to the Louisiana Attorney General for approval or rejection. The Attorney General's concurrence is appended to this Settlement Agreement.

## IX

The Respondent has caused a public notice advertisement to be placed in the official journal of the parish governing authority in Ascension and Iberville Parishes, Louisiana. The advertisement, in form and wording approved by the Department, announced the availability of this settlement for public view and comment and the opportunity for a public hearing. Respondent has submitted an original proof-of-publication affidavit and an original public notice to the Department and, as of the date this Settlement is executed on behalf of the Department, more than forty-five (45) days have elapsed since publication of the notice.

## X

Payment is to be made within ten (10) days from notice of the Secretary's signature. If payment is not received within that time, this Agreement is voidable at the option of the Department. Payments are to be made by check, payable to the Department of Environmental Quality, and mailed or delivered to the attention of Accountant Administrator, Financial Services Division, Department of Environmental Quality, Post Office Box 4303, Baton Rouge, Louisiana, 70821-4303. Each payment shall be accompanied by a completed Settlement Payment Form (Exhibit A).

## XI

In consideration of the above, any claims for penalties are hereby compromised and settled in accordance with the terms of this Settlement.

## XII

Each undersigned representative of the parties certifies that he or she is fully authorized to execute this Settlement Agreement on behalf of his or her respective party, and to legally bind such party to its terms and conditions.

**PCS NITROGEN FERTILIZER, L.P.**

BY: \_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Printed)

TITLE: \_\_\_\_\_

THUS DONE AND SIGNED in duplicate original before me this \_\_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_\_, at \_\_\_\_\_.

\_\_\_\_\_  
NOTARY PUBLIC (ID # \_\_\_\_\_)

\_\_\_\_\_  
(stamped or printed)

**LOUISIANA DEPARTMENT OF  
ENVIRONMENTAL QUALITY**  
Chuck Carr Brown, Ph.D., Secretary

BY: \_\_\_\_\_  
Celena J. Cage, Assistant Secretary  
Office of Environmental Compliance

THUS DONE AND SIGNED in duplicate original before me this \_\_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_\_, at Baton Rouge, Louisiana.


\_\_\_\_\_  
NOTARY PUBLIC (ID # \_\_\_\_\_)

\_\_\_\_\_  
(stamped or printed)

Approved: \_\_\_\_\_

  
Celena J. Cage, Assistant Secretary



LOUISIANA DEPARTMENT OF ENVIRONMENTAL QUALITY OFFICE OF ENVIRONMENTAL COMPLIANCE																									
ENFORCEMENT DIVISION		CONSOLIDATED COMPLIANCE ORDER & NOTICE OF POTENTIAL PENALTY																							
POST OFFICE BOX 4312																									
BATON ROUGE, LOUISIANA 70821-4312																									
Enforcement Tracking No.	WE-CN-22-00192	Certified Mail No.	7021 0950 0001 9072 7693																						
Agency Interest (AI) No.	3732	Contact Name	Sharron A. Crayton																						
Alternate ID No.	LA0066257	Contact Phone No.	(225) 219-3729																						
Respondent:	PCS Nitrogen Fertilizer, L.P.	Facility Name:	Geismar Facility																						
	c/o Corporation Service Company	Physical Location:	5301 Highway 3115																						
	Agent for Service of Process																								
	501 Louisiana Avenue	City, State, Zip:	Geismar, LA 70734																						
	Baton Rouge, LA 70802	Parish:	Ascension and Iberville																						
<p>This <b>CONSOLIDATED COMPLIANCE ORDER &amp; NOTICE OF POTENTIAL PENALTY</b> is issued by the Louisiana Department of Environmental Quality (the Department), under the authority granted by the Louisiana Environmental Quality Act (the Act), La. R.S. 30:2001, et seq., and particularly by La. R.S. 30:2025(C), 30:2050.2 and 30:2050.3(B).</p>																									
<b>FINDINGS OF FACT</b>																									
<p>An authorized representative of the Department inspected the abovementioned facility or conducted a file review of the facility to determine the degree of compliance with regulations promulgated in the Louisiana Administrative Code, Title 33. The State regulatory citations for the violation(s) identified during the inspection and/or file review are indicated below.</p>																									
I.	<p>The Respondent owns and/or operates an existing nitrogen and former phosphate fertilizer manufacturing facility located at 5301 Highway 3115 in Geismar, Ascension and Iberville Parishes, Louisiana. The facility permanently closed its Phosphoric Acid Production Unit in December 2018. The Respondent was issued Louisiana Pollutant Discharge Elimination System (LPDES) Permit LA0066257 on December 7, 2015, with an effective date of January 1, 2016, and an expiration date of December 31, 2020. The Respondent submitted a modification request for LPDES Permit LA0066257 on or about March 29, 2018. The modification request was replaced in its entirety by a request for revocation and reissuance of LPDES Permit Application on or about September 3, 2019. LPDES Permit LA0066257 is administratively continued. A Draft LPDES Permit LA0066257 was public noticed on December 18, 2020. A public hearing was held and comments were received. As of the date of this order, a final LPDES individual permit has not been reissued to the Respondent. Under the terms and conditions of LPDES Permit LA0066257, the Respondent is permitted to discharge process wastewater, utility wastewater, miscellaneous wastewater, process area stormwater runoff, sanitary wastewater, contaminated non-process wastewater, and non-process area stormwater runoff to the Mississippi River (Outfall 001, including Internal Outfalls 201, 301, and 401) and non-process area stormwater to the Mississippi River and to Bayou Braud (Outfall 005), via local drainage, all waters of the state.</p> <p>Under the terms and conditions of three (3) separate general permits, the Respondent is also authorized to discharge storm water associated with construction activities established under the LPDES Large Construction General Permit LAR100000. Permitting authorization details are listed below:</p> <table border="1"> <thead> <tr> <th>Permit Number</th> <th>Receipt Date of Initial Notice of Intent</th> <th>Date of Permit Issuance</th> <th>Date of Permit Termination</th> <th>Project Name</th> </tr> </thead> <tbody> <tr> <td>LAR10M130</td> <td>April 7, 2017</td> <td>May 17, 2017</td> <td>March 28, 2023*</td> <td>Borrow Area - Construction and Dewatering/Gypsum Stack Closure &amp; Surface Impoundment Construction Activities</td> </tr> <tr> <td>LAR10N612</td> <td>October 25, 2019</td> <td>January 8, 2020</td> <td>October 24, 2022</td> <td>Phosphoric Acid, Sulfuric Acid, SPA Unit and Poly-N Site Demolition</td> </tr> <tr> <td>LAR10N735</td> <td>September 16, 2020</td> <td>December 15, 2020</td> <td>October 24, 2022</td> <td>West Property Laydown and Parking Area</td> </tr> </tbody> </table> <p>* Storm Water Construction Permit LAR10M130 was administratively extended twice since the initial permit issuance date, via submittal of applicable Notice of Extensions (NOEs) received by the Department on February 28, 2018 and November 20, 2019.</p> <p>The Respondent has been in discussions with the Department and the U.S. Environmental Protection Agency (USEPA) regarding leaks in the facility's Active Clearwell (ACW) liner and alleged violations under the Resource Conservation and Recovery Act (RCRA) program. Long term repair efforts associated with the ACW are the focus of ongoing negotiations and will be addressed via a separate federal/state enforcement mechanism.</p>					Permit Number	Receipt Date of Initial Notice of Intent	Date of Permit Issuance	Date of Permit Termination	Project Name	LAR10M130	April 7, 2017	May 17, 2017	March 28, 2023*	Borrow Area - Construction and Dewatering/Gypsum Stack Closure & Surface Impoundment Construction Activities	LAR10N612	October 25, 2019	January 8, 2020	October 24, 2022	Phosphoric Acid, Sulfuric Acid, SPA Unit and Poly-N Site Demolition	LAR10N735	September 16, 2020	December 15, 2020	October 24, 2022	West Property Laydown and Parking Area
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II.	<b>Inspection(s) 03/15/2021</b>	The Respondent failed to maintain monitoring records as required by LPDES Permit LA0066257. Specifically, during the inspection, it was noted that the pH calibration record for December 27, 2020 did not contain the time of the analysis. (LPDES Permit LA0066257, Part III, Section C.4, La. R.S. 30:2076(A)(3), and LAC 33:IX.2701.J) Prior to the inspector leaving the facility, the omission from the pH monitoring records was corrected.																							
III.	<b>Inspection(s) 03/15/2021</b>	The Respondent failed to implement an adequate Spill Prevention and Control (SPC) Plan. Specifically, during the inspection, a review of the facility's SPC Plan, which was updated on February 9, 2021, revealed the plan contained the incorrect volume for the tank information listed under Item H - Recovered Oil at Skimmer provided in the Appendix B - Nitrogen Area Oil Storages Table. The SPC Plan listed the tank's capacity as 2,000 gallons; however, a visual field observation confirmed that the tank was 500 gallons. (La. R.S. 30:2076(A)(3), and LAC 33:IX.907.A) Prior to the inspector leaving the facility, the SPC Plan was updated to reflect 500 gallons as the capacity of the tank, and the date of the last plan review was also updated to reflect the date of the change (March 15, 2021).																							

**EXHIBIT**

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IV.	Inspection(s) 03/15/2021	The Respondent failed to properly operate and maintain the systems of treatment and control. Specifically, during the inspection, it was noted that the calibration date for thermometers utilized in the refrigerators for the composite samplers designated for Internal Outfalls 201 and 301 expired in February 2021. The last date the liquid-in-glass thermometers were calibrated was on February 18, 2020. Visual temperature readings during the inspection noted 2°C and 3°C, respectively for the thermometers utilized. (LPDES Permit LA0066257, Part III, Section C.5.b, La. R.S. 30:2076(A)(3), and LAC 33:IX.2701.E) Via written correspondence submitted to Department, dated September 14, 2021, the Respondent informed the Department that the above-mentioned thermometers were replaced, and have been placed on an email reminder to order new thermometers two (2) months prior to the calibration expiration date of the in-service thermometers.																														
V.	Inspection(s) 03/15/2021	The Respondent failed to implement an adequate Storm Water Pollution Prevention Plan (SWP3). Specifically, in addition to the facility's SWP3 required by LPDES Permit LA0066257, the facility also has authorization to discharge storm water associated with construction activity, via the following three (3) LPDES Storm Water Construction General Permits: LAR10M130, LAR10N612, and LAR10N735. A review of the facility's SWP3 for LAR10M130, during the inspection revealed inspections were not conducted at least once every seven (7) calendar days, as noted in Section 5.0 - Inspections of the SWP3, which was certified on December 3, 2019 by the facility's General Manager. (La. R.S. 30:2076(A)(3), and LAC 33:IX.2701.A)																														
VI.	Inspection(s) & File Review 03/15/2021 & 10/18/2021 - 02/28/2022	<p>The Respondent failed to comply with LPDES permit LA0066257. Specifically, a review of Discharge Monitoring Reports (DMRs), during the monitoring periods of June 1, 2019 to December 31, 2021, revealed that the Respondent reported exceedances of permit effluent limitations for parameters Total Organic Nitrogen, Total Ammonia Nitrogen, and Total Nitrate Nitrogen for the monthly reporting period ending on August 31, 2020 (see table below for additional details). Per additional information submitted with the Respondent's NetDMRs for the afore-mentioned reporting period, the permit effluent exceedances experienced were associated with a Urea Ammonia Nitrate Spill, which occurred on August 17, 2020. (LPDES Permit LA0066257, Part I, Page 5 of 9, Effluent Limitation and Monitoring Requirements for Internal Outfall 201; La. R.S. 30:2076(A)(3); and LAC 33:IX.501.A)</p> <table><tr><th>Outfall</th><th>Parameter</th><th>Permit Limit</th><th>DMR Value</th><th>DMR Units</th><th>No. Exceedances Reported</th></tr><tr><td>201-A</td><td>Nitrogen, organic total [as N] --- DAILY MX</td><td>1370</td><td>12954</td><td>lbs/day</td><td>1</td></tr><tr><td>201-A</td><td>Nitrogen, ammonia total [as N] --- DAILY MX</td><td>3948</td><td>28531</td><td>lbs/day</td><td>1</td></tr><tr><td>201-A</td><td>Nitrogen, nitrate total [as N] --- MO AVG</td><td>1205</td><td>1276</td><td>lbs/day</td><td>2</td></tr><tr><td>201-A</td><td>Nitrogen, nitrate total [as N] --- DAILY MX</td><td>3068</td><td>21745</td><td>lbs/day</td><td>2</td></tr></table>	Outfall	Parameter	Permit Limit	DMR Value	DMR Units	No. Exceedances Reported	201-A	Nitrogen, organic total [as N] --- DAILY MX	1370	12954	lbs/day	1	201-A	Nitrogen, ammonia total [as N] --- DAILY MX	3948	28531	lbs/day	1	201-A	Nitrogen, nitrate total [as N] --- MO AVG	1205	1276	lbs/day	2	201-A	Nitrogen, nitrate total [as N] --- DAILY MX	3068	21745	lbs/day	2
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VII.	File Review 10/18/2021 - 02/28/2022	<p>The Respondent caused and/or allowed the discharge of wastewater from a source or location not authorized by the permit. File reviews conducted on October 18, 2021 and concluded on February 28, 2022, of correspondence submitted to the Department by the Respondent revealed that on August 28, 2017, the Respondent identified an area of dead vegetation northwest of the facility's Active Clearwell, and observed water welling upward to the surface in the northwest Lower Perimeter Ditch. The Lower Perimeter Ditch collects water from various sources, which drain to the Inactive Clearwell and are discharged without required treatment, prior to discharges, via Internal Outfall 301. Remedial measures to address the issue were implemented; however, since the discovery of the initial August 2017 event, the Respondent has identified other leaks in the Active Clearwell liner, and taken additional remedial measures to make repairs and/or attempts to contain and return untreated wastewater (back) to the Active Clearwell. Wastewater from the Active Clearwell continues to enter the Lower Perimeter Ditch, where it is pumped to the Inactive Clearwell, and ultimately discharged without treatment via Internal Outfall 301.</p> <p>Currently, Internal Outfall 301 (continuous discharge of inactive calcium sulfate storage pile transport water runoff and excess storm water runoff) does not authorize the discharge of wastewater from the Active Clearwell. In accordance with LPDES Permit LA0066257, Part II, Page 5 of 9, Effluent Limitations and Monitoring Requirements, the Respondent shall only discharge wastewater from the Active Clearwell (process wastewater) after treatment, via Internal Outfall 201. Accordingly, any and all discharges of Active Clearwell wastewater, via Internal Outfall 301, constitutes an unauthorized discharge. (La. R.S. 30:2076(A)(1)(a) and LAC 33:IX.501.D)</p>																														
VIII.	File Review 10/18/2021 - 02/28/2022	The Respondent caused and/or allowed the discharge of wastewater from a source or location not authorized by the permit. Specifically, via the Respondent's NetDMR for Internal Outfall 301, which was submitted electronically on July 15, 2019, a comment was noted that on June 6, 2019, a breach of the facility's active perimeter ditch system occurred after receiving approximately 2.5 inches of rainfall in a 45-minute period. As a result, approximately 5,200 gallons of active pond water overflowed from the active perimeter ditch into the inactive pond resulting in a release of approximately 318 pounds of phosphoric acid, via Internal Outfall 301. In response to the overflow event and as a means of remedial measures, the Respondent placed an earthen dam between the breach and the inactive pond, and pumped the remaining accumulated water back to the active perimeter ditch following the rain event. The unauthorized discharge of Active Clearwell wastewater, via Internal Outfall 301, was an unauthorized discharge. (La. R.S. 30:2076(A)(1)(a) and LAC 33:IX.501.D)																														



IX.	<b>Inspection(s) &amp; File Review</b>  <b>12/02/2022 &amp; 12/01/2022 - 02/28/2022</b>	<p>The Respondent caused and/or allowed the discharge of wastewater from a source or location not authorized by the permit. Specifically, on or about November 16, 2021, the Respondent experienced a discharge of low pH water ranging from 1.0 standard units (s.u.) to 5.5 s.u. to waters of the state. Per the Single Point Of Contact (SPOC) notification (OS1393/T-205948), the low pH water originated from the gypsum stack system, at a low flow rate over an unknown period of time. On December 2, 2021, an investigation conducted by the Department noted dead vegetation in various spots throughout the Gulf States Ditch (GSD), which borders the facility. In addition, low pH water with visual lime-greenish characteristics was also observed in the GSD and an immediate unnamed tributary offsite. The impacted area extended into the unnamed tributary, via an 18" and a 24" culvert, which drains into a nearby wooded/wetlands area where additional dead vegetation was also observed approximately 1,500 feet from the GSD. (La. R.S. 30:2076(A)(1)(a) and LAC 33:IX.501.D)</p> <p>On or about December 3, 2021, the Respondent submitted to the Department's Waste Permits Division a Soil and Groundwater Sampling and Analysis Plan (SAP) for the investigation of the GSD area. A revised plan was submitted to the Department on or about January 14, 2021. On February 15, 2022, the Department approved the revised SAP plan.</p>
X.	<b>File Review</b>  <b>10/18/2021 - 02/28/2022</b>	<p>The Respondent failed to submit relevant facts in a permit application. Specifically, the facility failed to report changes to the permitted facility of a new wastewater discharge, via Internal Outfall 301. The Respondent's LPDES administrative records were not updated, and the Respondent did not submit any information to the Water Permits Division relative to discharges from the Active Clearwell to Internal Outfall 301 in the submittal of the 2019 LPDES permit renewal application for LPDES Permit LA0066257, subsequent submittals of additional information, public notice of the Draft LPDES permit, and public comment period. The Respondent did notify the Department on or about August 30, 2017 regarding the Active Clearwell wastewater leak to the Lower Perimeter Ditch; however, those communications were made exclusively to the Department's Waste Permits Division, and not the Water Permits Division, which administers the LPDES wastewater discharge permit. (LPDES Permit LA0066257, Page 11 of 18, Effluent Limitation and Monitoring Requirements for Internal Outfall 301 and Part III, Section D.8; La. R.S. 30:2076(A)(3); and LAC 33:IX.2701.L.8)</p>

#### ORDER

Based on the foregoing, the Respondent is hereby ordered to comply with the requirements that are indicated below:

I.	To take, immediately upon receipt of this <b>COMPLIANCE ORDER</b> , any and all steps necessary to meet and maintain compliance with the Water Quality Regulations. This shall include, but not be limited to; correcting <u>all</u> of the violations described in the "Findings of Fact" portion.
II.	To immediately cease, upon receipt of this <b>COMPLIANCE ORDER</b> , any unauthorized discharges from the Respondent's facility to waters of the state.
III.	To submit to the Enforcement Division, within thirty (30) days after receipt of this <b>COMPLIANCE ORDER</b> , a written report that includes a detailed description of the circumstances surrounding the cited violation(s) and actions taken or to be taken to achieve compliance with the "Order" portion of this <b>COMPLIANCE ORDER</b> . This report and all other reports or information required to be submitted to the Enforcement Division by this <b>COMPLIANCE ORDER</b> shall be submitted to the Department at the address specified in this document.
IV.	To submit to the Enforcement Division, within thirty (30) days after receipt of this <b>COMPLIANCE ORDER</b> , the last three (3) months of inspections records as evidence that Storm Water Pollution Prevention Plan (SWP3) inspections are being conducted, as required by LPDES Storm Water Construction Permit LAR10M130.
V.	The Respondent shall accomplish the tasks contained in Attachment A, and comply with the schedule of activities associated with interim measures to address Active Clearwell liner leaks, which were referenced via email communication submitted to the Department by the Respondent on or about March 4, 2022.
VI.	The Respondent shall submit weekly progress reports to the Enforcement Division until the completion of the aforementioned schedule. The Respondent shall submit the first progress report ten (10) calendar days after receipt of this <b>COMPLIANCE ORDER</b> . Additionally, if an activity cannot be completed by the due date specified in the schedule, the Respondent shall submit a certification of non-compliance to the Enforcement Division 48 hours prior to the scheduled due date. If the Respondent reports non-compliance with a scheduled event, the certification shall include a discussion of the cause of the delay, an anticipated date of completion, and a discussion of any impairment of a subsequent due date. Upon completion of all scheduled events, the Respondent shall submit a final certification stating that all activities have been achieved.

#### RIGHT TO APPEAL

I.	The Respondent has a right to an adjudicatory hearing on a disputed issue of material fact or of law arising from this <b>COMPLIANCE ORDER</b> . This right may be exercised by filing a written request with the Secretary no later than thirty (30) days after receipt of this <b>COMPLIANCE ORDER</b> .
II.	The request for an adjudicatory hearing shall specify the provisions of the <b>COMPLIANCE ORDER</b> on which the hearing is requested and shall briefly describe the basis for the request. This request should reference the Enforcement Tracking Number and Agency Interest Number, which are located in the upper left-hand corner of the first page of this document and should be directed to the address specified in this document.
III.	Upon the Respondent's timely filing a request for a hearing, a hearing on the disputed issue of material fact or of law regarding this <b>COMPLIANCE ORDER</b> may be scheduled by the Secretary of the Department. The hearing shall be governed by the Act, the Administrative Procedure Act (La. R.S. 49:950, et seq.), and the Division of Administrative Law's (DAL) Procedural Rules. The Department may amend or supplement this <b>COMPLIANCE ORDER</b> prior to the hearing, after providing sufficient notice and an opportunity for the preparation of a defense for the hearing.
IV.	This <b>COMPLIANCE ORDER</b> shall become a final enforcement action unless the request for hearing is timely filed. Failure to timely request a hearing constitutes a waiver of the Respondent's right to a hearing on a disputed issue of material fact or of law under Section 2050.4 of the Act for the violation(s) described herein.



V.	The Respondent's failure to request a hearing or to file an appeal or the Respondent's withdrawal of a request for hearing on this <b>COMPLIANCE ORDER</b> shall not preclude the Respondent from contesting the findings of facts in any subsequent penalty action addressing the same violation(s), although the Respondent is estopped from objecting to this <b>COMPLIANCE ORDER</b> becoming a permanent part of its compliance history.
VI.	Civil penalties of not more than thirty-two thousand five hundred dollars (\$32,500) may be assessed for each day of violation. The Respondent's failure or refusal to comply with this <b>COMPLIANCE ORDER</b> and the provisions herein will subject the Respondent to possible enforcement procedures under La. R.S. 30:2025, which could result in the assessment of a civil penalty in an amount of not more than fifty thousand dollars (\$50,000) for each day of continued violation or noncompliance.
VII.	For each violation described herein, the Department reserves the right to seek civil penalties in any manner allowed by law, and nothing herein shall be construed to preclude the right to seek such penalties.

#### NOTICE OF POTENTIAL PENALTY

I.	Pursuant to La. R.S. 30:2050.3(B), you are hereby notified that the issuance of a penalty assessment is being considered for the violation(s) described herein. Written comments may be filed regarding the violation(s) and the contemplated penalty. If you elect to submit comments, it is requested that they be submitted within ten (10) days of receipt of this notice.
II.	Prior to the issuance of additional appropriate enforcement action(s), you may request a meeting with the Department to present any mitigating circumstances concerning the violation(s). If you would like to have such a meeting, please contact Sharron A. Crayton at (225) 219-3729 within ten (10) days of receipt of this <b>NOTICE OF POTENTIAL PENALTY</b> .
III.	The Department is required by La. R.S. 30:2025(E)(3)(a) to consider the gross revenues of the Respondent and the monetary benefits of noncompliance to determine whether a penalty will be assessed and the amount of such penalty. Please forward the Respondent's most current annual gross revenue statement along with a statement of the monetary benefits of noncompliance for the cited violation(s) to the above named contact person within ten (10) days of receipt of this <b>NOTICE OF POTENTIAL PENALTY</b> . Include with your statement of monetary benefits the method(s) you utilized to arrive at the sum. If you assert that no monetary benefits have been gained, you are to fully justify that statement. If the Respondent chooses not to submit the requested most current annual gross revenues statement within ten (10) days, it will be viewed by the Department as an admission that the Respondent has the ability to pay the statutory maximum penalty as outlined in La. R.S. 30:2025.
IV.	This <b>CONSOLIDATED COMPLIANCE ORDER &amp; NOTICE OF POTENTIAL PENALTY</b> is effective upon receipt.

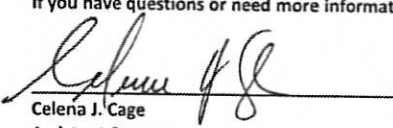
#### CONTACTS AND SUBMITTAL OF INFORMATION

<b>Enforcement Division:</b> Louisiana Department of Environmental Quality Office of Environmental Compliance Water Enforcement Division Post Office Box 4312 Baton Rouge, LA 70821 Attn: Sharron A. Crayton	<b>Hearing Requests:</b> Department of Environmental Quality Office of the Secretary Post Office Box 4302 Baton Rouge, Louisiana 70821-4302 Attn: Hearings Clerk, Legal Division Re: Enforcement Tracking No. WE-CN-22-00192 Agency Interest No. 3732
<b>Water Permits Division (if necessary):</b> Department of Environmental Quality Office of Environmental Services Post Office Box 4313 Baton Rouge, LA 70821-4313 Attn: Water Permits Division	<b>Physical Address (if hand delivered):</b> Department of Environmental Quality 602 N Fifth Street Baton Rouge, LA 70802

#### HOW TO REQUEST CLOSURE OF THIS CONSOLIDATED COMPLIANCE ORDER & NOTICE OF POTENTIAL PENALTY

- To appeal the **CONSOLIDATED COMPLIANCE ORDER AND NOTICE OF POTENTIAL PENALTY**, the Respondent must follow the guidelines set forth in the "Right to Appeal" portion of this **CONSOLIDATED COMPLIANCE ORDER AND NOTICE OF POTENTIAL PENALTY**.
- To request closure of the **COMPLIANCE ORDER** portion, the Respondent must demonstrate compliance with the "Order" portion of this **COMPLIANCE ORDER** by completing the attached "**CONSOLIDATED COMPLIANCE ORDER AND NOTICE OF POTENTIAL PENALTY REQUEST TO CLOSE**" form and returning it to the address specified.
  - Before requesting closure of the **COMPLIANCE ORDER** portion, please contact the Financial Services Division at 225-219-3865 or email them at [\\_DEQ-WWWFinancialServices@la.gov](mailto:_DEQ-WWWFinancialServices@la.gov) to determine if you owe outstanding fees.
- To expedite closure of the **NOTICE OF POTENTIAL PENALTY** portion, the Respondent may offer a settlement amount to resolve any claim for civil penalties for the violation(s) described herein.
  - The Department assesses civil penalties based on LAC 33:1.Subpart1.Chapter7.
  - The Respondent may offer a settlement amount but the Department is under no obligation to enter into settlement negotiations. It is decided upon on a discretionary basis.
  - The settlement offer amount may be entered on the attached "**CONSOLIDATED COMPLIANCE ORDER AND NOTICE OF POTENTIAL PENALTY REQUEST TO CLOSE**" form. The Respondent must include a justification of the offer.
  - DO NOT** submit payment of the offer amount with the form. The Department will review the settlement offer and notify the Respondent as to whether the offer is or is not accepted.
  - Before requesting closure of the **NOTICE OF POTENTIAL PENALTY** portion, please contact the Financial Services Division at 225-219-3865 or email them at [\\_DEQ-WWWFinancialServices@la.gov](mailto:_DEQ-WWWFinancialServices@la.gov) to determine if you owe outstanding fees.

If you have questions or need more information, you may contact Sharron A. Crayton at (225) 291-3729 or [Sharron.Crayton@la.gov](mailto:Sharron.Crayton@la.gov).

  
Celena J. Cage  
Assistant Secretary  
Office of Environmental Compliance

WE-CN-22-00192

Date:

March 14, 2022

ecc:

USDOJ: [Deborah.Reyher@usdoj.gov](mailto:Deborah.Reyher@usdoj.gov)

USEPA: [Welles.Laura@epa.gov](mailto:Welles.Laura@epa.gov)


USEPA: [Moncrieffe.Marcia@epa.gov](mailto:Moncrieffe.Marcia@epa.gov)

USEPA: [Davies.Lynne@epa.gov](mailto:Davies.Lynne@epa.gov)

PCS Nitrogen Legal Counsel: [dwayne.johnson@keanmiller.com](mailto:dwayne.johnson@keanmiller.com)

Attachment(s)

- Attachment A: Activities Associated with Interim Measures to Address Active Clearwell Liner Leaks
- Request to Close
- Settlement Brochure

LOUISIANA DEPARTMENT OF ENVIRONMENTAL QUALITY OFFICE OF ENVIRONMENTAL COMPLIANCE ENFORCEMENT DIVISION POST OFFICE BOX 4312 BATON ROUGE, LOUISIANA 70821-4312				<b>CONSOLIDATED COMPLIANCE ORDER &amp; NOTICE OF POTENTIAL PENALTY REQUEST TO CLOSE</b>			
Enforcement Tracking No.	WE-CN-22-00192	Contact Name	Sharron A. Crayton				
Agency Interest (AI) No.	3732	Contact Phone No.	(225) 219-3729				
Alternate ID No.	LA0066257						
Respondent:	PCS Nitrogen Fertilizer, L.P.		Facility Name:	Geismar Facility			
	c/o Corporation Service Company		Physical Location:	5301 Highway 3115			
	Agent for Service of Process						
	501 Louisiana Avenue		City, State, Zip:	Geismar, LA 70734			
	Baton Rouge, LA 70802		Parish:	Ascension and Iberville			
<b>STATEMENT OF COMPLIANCE</b>							
<b>STATEMENT OF COMPLIANCE</b>			Date Completed	Copy Attached?			
A written report was submitted in accordance with Paragraph III of the "Order" portion of the COMPLIANCE ORDER.							
Completed all tasks associated with interim measures to address Active Clearwell liner leaks as listed in Attachment A, and submitted all progress reports in accordance with Paragraph V of the "Order" portion of the COMPLIANCE ORDER.							
All necessary documents were submitted to the Department within 30 days of receipt of the COMPLIANCE ORDER in accordance with Paragraph(s) III and IV of the "Order" portion of the COMPLIANCE ORDER.							
All items in the "Findings of Fact" portion of the COMPLIANCE ORDER were addressed and the facility is being operated to meet and maintain the requirements of the "Order" portion of the COMPLIANCE ORDER. Final compliance was achieved as of:							
<b>SETTLEMENT OFFER (OPTIONAL)</b>							
(check the applicable option)							
<input type="checkbox"/>	The Respondent is not interested in entering into settlement negotiations with the Department with the understanding that the Department has the right to assess civil penalties based on LAC 33:1.Subpart1.Chapter7.						
<input type="checkbox"/>	In order to resolve any claim for civil penalties for the violations in NOTICE OF POTENTIAL PENALTY (WE-CN-22-00192), the Respondent is interested in entering into settlement negotiations with the Department and would like to set up a meeting to discuss settlement procedures.						
<input type="checkbox"/>	In order to resolve any claim for civil penalties for the violations in NOTICE OF POTENTIAL PENALTY (WE-CN-22-00192), the Respondent is interested in entering into settlement negotiations with the Department and offers to pay \$ _____ which shall include LDEQ enforcement costs and any monetary benefit of non-compliance. <ul style="list-style-type: none"> <li>• Monetary component = \$ _____</li> <li>• Beneficial Environmental Project (BEP) component (optional) = \$ _____</li> <li>• <b>DO NOT SUBMIT PAYMENT OF THE OFFER WITH THIS FORM- the Department will review the settlement offer and notify the Respondent as to whether the offer is or is not accepted.</b></li> </ul>						
<input type="checkbox"/>	The Respondent has reviewed the violations noted in NOTICE OF POTENTIAL PENALTY (WE-CN-22-00192) and has attached a justification of its offer and a description of any BEPs if included in settlement offer.						
<b>CERTIFICATION STATEMENT</b>							
<i>I certify, under provisions in Louisiana and United States law that provide criminal penalties for false statements, that based on information and belief formed after reasonable inquiry, the statements and information attached and the compliance statement above, are true, accurate, and complete. I also certify that I do not owe outstanding fees or penalties to the Department for this facility or any other facility I own or operate. I further certify that I am either the Respondent or an authorized representative of the Respondent.</i>							
Respondent's Signature		Respondent's Printed Name		Respondent's Title			
Respondent's Physical Address		Respondent's Phone #		Date			
<b>MAIL COMPLETED DOCUMENT TO THE ADDRESS BELOW:</b>							
Louisiana Department of Environmental Quality Office of Environmental Compliance Enforcement Division Post Office Box 4312 Baton Rouge, LA 70821 Attn: Sharron A. Crayton							

If you have questions or need more information, you may contact Sharron A. Crayton at (225) 291-3729 or Sharron.Crayton@la.gov.

**Attachment A:**  
**Activities Associated with Interim Measures to Address Active Clearwell Liner Leaks**

**PCS Nitrogen Fertilizer, L.P. - Geismar Facility**  
**AI #3732 - LPDES Permit LA0066257**

<b>Task No.</b>	<b>Milestones</b>	<b>Completion Date</b>
<b>Task 1.</b>	<b><i>Toe Drain No. 7:</i></b> Reroute No. 7 Leachate Pump to the Active Clearwell/Stack 11 Impoundment	Within seven (7) days after receipt of LDEQ CONOPP, Enforcement Tracking No. WE-CN-22-00192
<b>Task 2.</b>	<b><i>Toe Drain No. 3:</i></b> Utilize No. 3 Lower Perimeter Ditch Pump to Convey Leachate to the Active Clearwell/Stack 11 Impoundment	Within seven (7) days after receipt of LDEQ CONOPP, Enforcement Tracking No. WE-CN-22-00192
<b>Task 3.</b>	<b><i>Inactive Clearwell*:</i></b> Single Pump Event of Residual Water from the Inactive Clearwell to the Active Clearwell/Stack 11 Impoundment	Within 15 days of completion of Task 2 (weather contingent)

*\*Once the Inactive Clearwell is drained to either the Active Clearwell (or Stack 11 Impoundment), water in the Inactive Clearwell will continue to be discharged via Internal Outfall 301.*



# SETTLEMENT AGREEMENTS

## WHAT IS A SETTLEMENT AGREEMENT?

Once the Department has determined that a penalty is warranted for a violation, the Assistant Secretary of the Department, with the concurrence of the Attorney General, may enter into a settlement agreement with the Respondent as a means to resolve the Department's claim for a penalty.

## HOW DOES THE SETTLEMENT AGREEMENT PROCESS WORK?

To begin the settlement agreement process, the Department must receive a written settlement offer. Once this offer is submitted, it is sent for approval by the Assistant Secretary of the Office of Environmental Compliance. The formal Settlement Agreement is drafted and sent to the Attorney General's office where the Attorney General has a 90 day concurrence period. During this time, the Respondent is required to run a public notice in an official journal and/or newspaper of general circulation in each affected parish. After which, a 45 day public comment period is opened to allow the public to submit comments. Once the Department has received concurrence, the settlement agreement is signed by both parties. The Department then forwards a letter to the responsible party to establish a payment plan and/or beneficial environmental project (BEP).

## WHAT SHOULD I INCLUDE IN A SETTLEMENT AGREEMENT?

The Department uses the penalty determination method defined in LAC 33:1.705 as a guideline to accepting settlement offers. The penalty matrix is used to determine a penalty range for each violation based on the two violation specific factors, the nature and gravity of the violation and the degree of risk/impact to human health and property.

DEGREE OF RISK OR IMPACT TO HUMAN HEALTH OR PROPERTY	NATURE AND GRAVITY OF THE VIOLATION		
	MAJOR	MODERATE	MINOR
	MAJOR	\$32,500 to \$20,000	\$20,000 to \$15,000 to \$11,000
	MODERATE	\$11,000 to \$8,000	\$8,000 to \$5,000 to \$3,000
	MINOR	\$3,000 to \$1,500	\$1,500 to \$500 to \$100

### Degree of Risk to Human Health or Property

Major: (actual measurable harm or substantial risk of harm) A violation of major impact to an environmental resource or a hazard characterized by high volume and/or frequent occurrence and/or high pollutant concentration.

Moderate: (potential for measurable detrimental impact) A violation of moderate impact and hazard may be one characterized by occasional occurrence and/or pollutant concentration that may be expected to have a detrimental effect under certain conditions

Minor: (no harm or risk of harm) A violation of minor impact are isolated single incidences and that cause no measurable detrimental effect or are administrative in nature.

### Nature and Gravity of the Violation

Major: Violations of statutes, regulations, orders, permit limits, or permit requirements that result in negating the intent of the requirement to such an extent that little or no implementation of requirements occurred.

Moderate: Violations that result in substantially negating the intent of the requirements, but some implementation of the requirements occurred.

Minor: Violations that result in some deviation from the intent of the requirement; however, substantial implementation is demonstrated.

### The range is adjusted using the following violator specific factors:

1. history of previous violations or repeated noncompliance;
2. gross revenues generated by the respondent;
3. degree of culpability, recalcitrance, defiance, or indifference to regulations or orders;
4. whether the Respondent has failed to mitigate or to make a reasonable attempt to mitigate the damages caused by the violation; and
5. whether the violation and the surrounding circumstances were immediately reported to the department, and whether the violation was concealed or there was an attempt to conceal by the Respondent.



# SETTLEMENT AGREEMENTS

Given the previous information, the following formula is used to obtain a penalty amount.

$$\text{Penalty Event Total} = \text{Penalty Event Minimum} + (\text{Adjustment Percentage} \times [\text{Penalty Event Maximum} - \text{Penalty Event Minimum}])$$

After this, the Department adds any monetary benefit of noncompliance to the penalty event. In the event that a monetary benefit is gained due to the delay of a cost that is ultimately paid, the Department adds the applicable judicial interest. Finally, the Department adds all response costs including, but not limited to, the cost of conducting inspections, and the staff time devoted to the preparation of reports and issuing enforcement actions.

## WHAT IS A BEP?

A BEP is a project that provides for environmental mitigation which the respondent is not otherwise legally required to perform, but which the defendant/respondent agrees to undertake as a component of the settlement agreement.

Project categories for BEPs include public health, pollution prevention, pollution reduction, environmental restoration and protection, assessments and audits, environmental compliance promotion, and emergency planning, preparedness and response. Other projects may be considered if the Department determines that these projects have environmental merit and is otherwise fully consistent with the intent of the BEP regulations.

## WHAT HAPPENS IF MY OFFER IS REJECTED?

If an offer is rejected by the Assistant Secretary, the Legal Division will contact the responsible party, or anyone designated as an appropriate contact in the settlement offer, to discuss any discrepancies.

## WHERE CAN I FIND EXAMPLES AND MORE INFORMATION?

Settlement Offers .....	searchable in <a href="#">EDMS</a> using the following filters Media: Air Quality, Function: Enforcement; Description: Settlement
Settlement Agreements .....	<a href="#">Enforcement Division's website</a> specific examples can be provided upon request
Penalty Determination Method .....	<a href="#">LAC 33:I Chapter 7</a>
Beneficial Environmental Projects .....	<a href="#">LAC 33:I Chapter 25</a>
	<a href="#">FAQs</a>
Judicial Interest.....	<a href="#">provided by the Louisiana State Bar Association</a>

