

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

UNITED STATES OF AMERICA )  
and LOUISIANA DEPARTMENT OF )  
ENVIRONMENTAL QUALITY, )  
 )  
Plaintiffs, )  
 )  
v. )  
 )  
PCS NITROGEN FERTILIZER, L.P., )  
AA SULFURIC, INC., and WHITE )  
SPRINGS AGRICULTURAL )  
CHEMICALS, INC., )  
 )  
Defendants. )  
\_\_\_\_\_ )

Civil Action No.

Judge

**CONSENT DECREE**

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## CONSENT DECREE

Concurrently with the lodging of this Consent Decree, Plaintiff, the United States of America (“United States”), on behalf of the United States Environmental Protection Agency (“EPA”), has filed a Complaint in this action seeking injunctive relief and civil penalties from the Defendants, PCS Nitrogen Fertilizer, L.P., AA Sulfuric, Inc., and White Springs Agricultural Chemicals, Inc. (collectively referred to herein as the “Defendants”), for alleged violations of the Clean Air Act (the “CAA” or “Act”), 42 U.S.C. §§ 7401 *et seq.*, with respect to emissions of sulfur dioxide (“SO<sub>2</sub>”) at the Defendants’ sulfuric acid manufacturing facilities located in or near Geismar, Louisiana (the “Geismar Sulfuric Acid Plant”) and White Springs, Hamilton County, Florida (the “White Springs Sulfuric Acid Plants”). The Louisiana Department of Environmental Quality (“LDEQ” or “Louisiana”) is a co-Plaintiff in the Complaint and is seeking injunctive relief and civil penalties from Defendants PCS Nitrogen Fertilizer, L.P. and AA Sulfuric, Inc. at the Geismar Sulfuric Acid Plant;

WHEREAS, the Complaint alleges that the Defendants violated and/or continue to violate Section 165 of the CAA, 42 U.S.C. § 7475, the permitting requirements of CAA Subchapter V (“Title V”), 42 U.S.C. §§ 7661-7661f, regulations implementing those CAA provisions, and the federally enforceable State implementation plans (“SIPs”) developed by Florida and Louisiana, both of which have been approved by EPA;

WHEREAS, the Complaint alleges that AA Sulfuric, Inc. (and/or its predecessors in interest) owns and PCS Nitrogen Fertilizer, L.P. (and/or its predecessors in interest) operates the Geismar Sulfuric Acid Plant, and that White Springs Agricultural Chemicals, Inc., owns and operates the White Springs Sulfuric Acid Plants;

WHEREAS, PCS Nitrogen Fertilizer, L.P. owns and operates a nitric acid manufacturing facility located at the same site as the Geismar Sulfuric Acid Plant (the “Geismar Nitric Acid Plant”);

WHEREAS, the Complaint alleges that the Defendants and/or their predecessors in interest constructed or modified, and then operated, the Geismar Sulfuric Acid Plant and White Springs Sulfuric Acid Plants without obtaining the appropriate CAA New Source Review (“NSR”) and Title V permits, without installing the Best Available Control Technology (“BACT”), without meeting applicable emission limits, and without complying with requirements for monitoring, recordkeeping and reporting, as required in the Act;

WHEREAS, PCS Phosphate Company, Inc. owns and operates sulfuric acid manufacturing facilities located in or near Aurora, Beaufort County, North Carolina (the “Aurora Sulfuric Acid Plants”).

WHEREAS, PCS Phosphate Company, Inc. is not a party to the Complaint, but Defendants and PCS Phosphate Company, Inc. jointly enter into this Consent Decree as settling parties (collectively, the “Settling Parties”) and shall be bound by the terms and obligations of this Consent Decree;

WHEREAS, as more specifically described in Section IV (Compliance Requirements), each Applicable Settling Party has agreed to install emission control technology or permanently shut down to reduce emissions of SO<sub>2</sub> at the Aurora Sulfuric Acid Plants, the Geismar Sulfuric Acid Plant, and the White Springs Sulfuric Acid Plants (collectively, the “Covered Sulfuric Acid Plants”);

WHEREAS, EPA issued a notice of violation (“NOV”) on June 26, 2008 and an amended NOV on June 20, 2011 with respect to the alleged CAA violations at the Defendants’ Geismar Sulfuric Acid Plant;

WHEREAS, EPA issued a NOV on May 7, 2012 with respect to the alleged CAA violations at the Defendants’ White Springs Sulfuric Acid Plants;

WHEREAS, EPA provided the Defendants, the State of Florida, and LDEQ with actual notice of the alleged violations, in accordance with Sections 113(a)(1) and (b) of the Clean Air Act, 42 U.S.C. §§ 7413(a)(1) and (b);

WHEREAS, the Defendants do not admit any liability to the United States or any State arising out of the acts or omissions alleged in the Complaint;

WHEREAS, the Parties agree that the United States’ filing of the Complaint and entry into this Consent Decree constitute diligent prosecution by the United States, under Section 304(b)(1)(B) of the Clean Air Act, 42 U.S.C. § 7604(b)(1)(B), of all matters alleged in the Complaint and addressed by this Consent Decree through the date of lodging of this Consent Decree;

WHEREAS, the Parties recognize, and this Court by entering this Consent Decree finds, that this Consent Decree has been negotiated by the Parties in good faith, 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, 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 pursuant to 28 U.S.C. §§ 1331, 1345, and 1355, and Section 113(b) of the Clean Air Act, 42 U.S.C. § 7413(b), and over the Parties. This Court has supplemental jurisdiction over the State law claims asserted by Louisiana pursuant to 28 U.S.C. § 1367. This Court has jurisdiction over PCS Phosphate Company, Inc. and its obligations in this Consent Decree pursuant to the All Writs Act, 28 U.S.C. § 1651, and Fed. R. Civ. Proc. 19(a). Venue lies in this District pursuant to Section 113(b) of the Clean Air Act, 42 U.S.C. § 7413(b), and 28 U.S.C. §§ 1391(b) and (c) and 1395(a), because the violations alleged against the Geismar Sulfuric Acid Plant in the Complaint are alleged to have occurred in, and AA Sulfuric, Inc. and PCS Nitrogen Fertilizer, L.P. conduct business in, this judicial district. The Settling Parties consent to: a) this Court's subject matter jurisdiction over this Consent Decree and any action to enforce this Consent Decree, b) this Court's personal jurisdiction over them, and c) venue in this judicial district.

2. For purposes of this Consent Decree, the Defendants agree that the Complaint states claims upon which relief may be granted pursuant to Sections 165 and 502 of the Clean Air Act, 42 U.S.C. §§ 7475 and 7661a, and/or pursuant to State law.

3. Notice of the commencement of this action has been given to the States of Florida, Louisiana, and North Carolina as required by Section 113 of the Clean Air Act, 42 U.S.C. § 7413.

## **II. APPLICABILITY**

4. The obligations of this Consent Decree apply to and are binding upon the United States, LDEQ, and upon the Settling Parties and any successors, assigns, or other entities or persons otherwise bound by law.



5. At least 30 Days prior to any transfer of ownership or operation of any of the Covered Sulfuric Acid Plants, the Applicable Settling Party 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, to the United States and, for a transfer of the Geismar Sulfuric Acid Plant and/or Geismar Nitric Acid Plant, to LDEQ, in accordance with Section XVI of this Decree (Notices). Any attempt to transfer ownership or operation of any of the Covered Sulfuric Acid Plants without complying with this Paragraph constitutes a violation of this Decree. No such transfer, whether in compliance with the notice requirements of this Paragraph or otherwise, shall relieve the Applicable Settling Party of its obligation to ensure that the terms of the Decree are implemented with respect to the Covered Sulfuric Acid Plants, unless:

a. the transferee agrees in writing to undertake the obligations required by this Consent Decree and to be added as a Settling Party and, if the transferee is acquiring the Geismar Sulfuric Acid Plant or White Springs Sulfuric Acid Plants, a Defendant in this action for the purpose of being bound by the applicable terms of this Consent Decree;

b. the transferee and/or the Applicable Settling Party provide the United States and LDEQ (for a transfer of the Geismar Sulfuric Acid Plant and/or Geismar Nitric Acid Plant) with information sufficient to demonstrate that the transferee has the technical and financial means to comply with the obligations of this Consent Decree;

c. the United States and LDEQ (for a transfer of the Geismar Sulfuric Acid Plant and/or Geismar Nitric Acid Plant) consent in writing in a

modification to the Consent Decree to substitute the transferee for the Applicable Settling Party with respect to the Consent Decree's obligations; and

d. the Court approves such substitution and enters the modification.

6. Each Settling Party shall: (a) provide a copy of this Consent Decree to its President, corporate General Counsel, corporate Director of the Environment, the Plant Manager for each Covered Sulfuric Acid Plant, the Chemical Operations Manager for each Covered Sulfuric Acid Plant, the Operations Superintendent for each Covered Sulfuric Acid Plant, and the Environmental Manager for each Covered Sulfuric Acid Plant, and shall ensure that its 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; (b) place an electronic version of the Consent Decree on the corporate Safety Health & Environment website and internal websites for each Covered Sulfuric Acid Plant; and (c) post notice of lodging of the Consent Decree and the availability for review of the Consent Decree at a location at each Covered Sulfuric Acid Plant where legal notices are posted. Each Settling Party shall be responsible for ensuring that all of its employees and contractors involved in performing any work required by this Consent Decree perform such work in compliance with the requirements of this Consent Decree.

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

### **III. DEFINITIONS**

8. Terms used in this Consent Decree that are defined in the Clean Air Act, or in federal and State regulations promulgated pursuant to the Clean Air Act, shall have the meaning assigned to them in the Clean Air Act or such regulations, unless otherwise provided in this Decree. Whenever the terms set forth below are used in this Consent Decree, the following definitions shall apply:

a. “Acid Mist” shall mean the pollutant sulfuric acid mist as measured by Method 8 of 40 C.F.R. Part 60, Appendix A consistent with 40 C.F.R. § 60.81(b).

b. “Applicable Settling Party” shall mean: (i) with respect to the Aurora Sulfuric Acid Plants, PCS Phosphate Company, Inc., (ii) with respect to the Geismar Nitric Acid Plant, PCS Nitrogen Fertilizer, L.P., (iii) with respect to the Geismar Sulfuric Acid Plant, AA Sulfuric, Inc. and PCS Nitrogen Fertilizer, L.P., and (iv) with respect to the White Springs Sulfuric Acid Plants, White Springs Agricultural Chemicals, Inc.

c. “Aurora Sulfuric Acid Plants” shall mean sulfuric acid production units 5, 6, and 7 that are owned and operated by PCS Phosphate Company, Inc. in Aurora, Beaufort County, North Carolina.

d. “CEMS” or “Continuous Emission Monitoring System” shall mean the total equipment, required under the CEMS Plans attached as Appendix A and Appendix C to this Consent Decree, used to sample and condition (if applicable), to analyze, and to provide a permanent record of emissions or process parameters.

e. “Complaint” shall mean the Complaint filed by the United States and LDEQ in this action.

f. “Consent Decree” or “Decree” shall mean this Consent Decree and all appendices attached hereto. In the event of any conflict between the text of this Consent Decree and any appendix, the text of this Consent Decree shall control.

g. “Covered Sulfuric Acid Plant” or “Covered Sulfuric Acid Plants” shall mean one or more of the following sulfuric acid production facilities that are subject to the Consent Decree: the Aurora Sulfuric Acid Plants, the Geismar Sulfuric Acid Plant, and the White Springs Sulfuric Acid Plants.

h. “Day” shall mean a calendar day unless expressly stated to be a working 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 holiday, the period shall run until the close of business of the next working day.

i. “Defendants” shall mean PCS Nitrogen Fertilizer, L.P., AA Sulfuric, Inc., and White Springs Agricultural Chemicals, Inc.

j. “Effective Date” shall have the meaning given in Section XVII.

k. “Geismar Sulfuric Acid Plant” shall mean the sulfuric acid production plant owned by AA Sulfuric, Inc. and operated by PCS Nitrogen Fertilizer, L.P. in Geismar, Louisiana.

l. “Geismar Nitric Acid Plant” shall mean the nitric acid production plant owned and operated by PCS Nitrogen Fertilizer, L.P. in Geismar, Louisiana.

m. “LDEQ” shall mean the Louisiana Department of Environmental Quality and any of its successor departments or agencies.

n. “Long-Term NOx Limit” shall mean a 365-Day rolling average NOx emission limit expressed as pounds of NOx emitted per ton of 100% Nitric Acid Produced (lb/ton).

Compliance with the Long-Term NO<sub>x</sub> Limit shall be determined each Day and shall be calculated in accordance with the NO<sub>x</sub> CEMS Plan attached to this Consent Decree as Appendix C. The Long-Term Limit applies at all times, including periods of Startup, Shutdown, and Malfunction.

o. “Long-Term SO<sub>2</sub> Limit” shall mean a 365-Day rolling average sulfur dioxide emission limit expressed as pounds of sulfur dioxide emitted per ton (“lb/ton”) of 100% Sulfuric Acid Produced. Compliance with the Long-Term SO<sub>2</sub> Limit shall be determined each Day and shall be calculated in accordance with the SO<sub>2</sub> CEMS Plan attached to this Consent Decree as Appendix A. The Long-Term SO<sub>2</sub> Limit applies at all times during all Operating Periods, including during periods of Startup, Shutdown, and Malfunction.

p. “Malfunction” shall mean, consistent with 40 C.F.R. § 60.2, any sudden, infrequent, and not reasonably preventable failure of air pollution control equipment, process equipment, or a process to operate in a normal or usual manner, but shall not include failures that are caused in whole or in part by poor maintenance or careless operation.

q. “Mass Cap” shall mean the maximum permissible amount of SO<sub>2</sub> emissions for the Geismar Sulfuric Acid Plant expressed in tons of SO<sub>2</sub> emitted during each 12-month period consisting of the most recently concluded month and the eleven months immediately preceding it. Compliance with the Mass Cap shall be calculated in accordance with the SO<sub>2</sub> CEMS Plan attached to this Consent Decree as Appendix A. In determining compliance with the Mass Cap, all SO<sub>2</sub> emissions from the Geismar Sulfuric Acid Plant, including emissions during times of Startup, Shutdown, and Malfunction, shall be counted.

r. “Month” shall mean a calendar month.

s. “NC DENR” shall mean the North Carolina Department of Environment and Natural Resources and any of its successor departments or agencies.

t. “Nitric Acid Train No. 4” shall mean the number four nitric acid production train at the Geismar Nitric Acid Plant.

u. “NO<sub>x</sub>” shall mean the pollutants collectively referred to as nitrogen oxides.

v. “NO<sub>x</sub> CEMS Plan” shall mean the CEMS Plan for Nitric Acid Train No. 4 attached in Appendix C.

w. “New Source Review” or “NSR” shall mean the PSD and Non-attainment NSR provisions in Part C and D of Subchapter I of the Clean Air Act, 42 U.S.C. §§ 7470-7492, 7501-7515, applicable federal regulations implementing such provisions of the CAA, and the corresponding provisions of federally enforceable SIPs.

x. “NSPS” shall mean the standards of performance for new stationary sources codified at 40 C.F.R. Part 60. General NSPS requirements are codified at 40 C.F.R. Part 60, Subpart A. NSPS requirements specifically for sulfuric acid plants are codified at 40 C.F.R. Part 60, Subpart H.

y. “100% Nitric Acid Produced” or “100% Nitric Acid Production Rate” shall mean the quantity of nitric acid product manufactured by Nitric Acid Train No. 4 at the Geismar Nitric Acid Plant multiplied by the concentration of actual nitric acid in the product. For example, if Nitric Acid Train No. 4 at the Geismar Nitric Acid Plant produces 100 tons of a 54% nitric acid product, this equals 54 tons of 100% Nitric Acid Produced.”

z. “100% Sulfuric Acid Produced” shall mean the quantity of sulfuric acid that would be produced at a Covered Sulfuric Acid Plant multiplied by the concentration of actual

sulfuric acid in the product. For example, if a Covered Sulfuric Acid Plant produces 100 tons of a 98% sulfuric acid product, this equals 98 tons of 100% Sulfuric Acid Produced.

aa. “Operating Periods” shall mean: (i) with respect to each of the Covered Sulfuric Acid Plants, all periods during which sulfur is being fed into the furnace at the Covered Sulfuric Acid Plant, and (ii) with respect to the Geismar Nitric Acid Plant, all periods when the facility is producing nitric acid and NO<sub>x</sub> is emitted. Operating Periods include all periods of Startup, Shutdown, and Malfunction.

bb. “Paragraph” shall mean a portion of this Consent Decree identified by an Arabic numeral.

cc. “Parties” shall mean the United States, LDEQ, and the Settling Parties.

dd. “Prevention of Significant Deterioration” or “PSD” shall mean the attainment area New Source Review program within the meaning of Part C of Subchapter I of the Clean Air Act, 42 U.S.C. §§ 7470-7492.

ee. “SCR” or “Selective Catalytic Reduction” shall mean a pollution control device that reacts ammonia (NH<sub>3</sub>) with NO<sub>x</sub> to form nitrogen (N<sub>2</sub>) and water (H<sub>2</sub>O) using a catalyst to speed the reaction for the reduction of NO<sub>x</sub>.

ff. “Section” shall mean a portion of this Consent Decree identified by a roman numeral.

gg. “Settling Party” or “Settling Parties” shall mean one or more of the Defendants and PCS Phosphate Company, Inc.

hh. “Short-Term NO<sub>x</sub> Limit” shall mean a 3-hour rolling average NO<sub>x</sub> emission limit expressed in terms of pounds of NO<sub>x</sub> emitted per ton of 100% Nitric Acid Produced (lb/ton). Compliance with the Short-Term NO<sub>x</sub> Limit shall be calculated in accordance with the

NO<sub>x</sub> CEMS Plan attached to this Consent Decree as Appendix C. The Short-Term NO<sub>x</sub> Limit does not apply during periods of Startup, Shutdown, or Malfunction.

ii. “Short-Term SO<sub>2</sub> Limit” shall mean a 3-hour rolling average SO<sub>2</sub> emission limit expressed in terms of pounds of SO<sub>2</sub> emitted per ton of 100% Sulfuric Acid Produced (lb/ton). Compliance with the Short-Term SO<sub>2</sub> Limit shall be calculated in accordance with the SO<sub>2</sub> CEMS Plan attached to this Consent Decree as Appendix A. The Short-Term SO<sub>2</sub> Limit does not apply during periods of Startup, Shutdown, or Malfunction.

jj. “Shutdown” shall mean the cessation of operation of any of the Covered Sulfuric Acid Plants or the Geismar Nitric Acid Plant for any reason. With respect to each of the Covered Sulfuric Acid Plants, Shutdown occurs when the feed of elemental sulfur to the furnace ceases. With respect to the Geismar Nitric Acid Plant, Shutdown begins at the time the feed of ammonia to the facility ceases and ends either 3 hours later or after the feed of compressed air to the facility ceases, whichever occurs first.

kk. “SO<sub>2</sub>” shall mean the pollutant sulfur dioxide.

ll. “SO<sub>2</sub> CEMS Plan” shall mean the CEMS Plan for the Covered Sulfuric Acid Plants attached in Appendix A.

mm. “Startup” shall mean: (i) with respect to each of the Covered Sulfuric Acid Plants, the period of time beginning when the feed of elemental sulfur to the furnace commences and ending no more than four hours later, and (ii) with respect to the Geismar Nitric Acid Plant, the process of initiating nitric acid production operations at the facility. Startup of the Geismar Nitric Acid Plant begins 1 hour prior to initiating the feed of ammonia to the facility, as determined by an ammonia flow meter or some other equivalent means (e.g., gauze temperature), and ends no more than 5 hours after initiating the feed of ammonia to the facility.



nn. “Title V Permit” shall mean a permit required by or issued pursuant to the requirements of 42 U.S.C. §§ 7661 - 7661f and the implementing regulations at 40 C.F.R. Part 70, or the corresponding SIP provisions.

oo. “Ton” or “Tons” shall mean short ton or short tons. One Ton equals 2,000 pounds.

pp. “United States” shall mean the United States of America, acting on behalf of EPA.

qq. “White Springs Sulfuric Acid Plants” shall mean sulfuric acid production units C, D, E, and F that are owned and operated by White Springs Agricultural Chemicals, Inc. in White Springs, Hamilton County, Florida.

**IV. COMPLIANCE REQUIREMENTS**

**A. SO<sub>2</sub> Emission Limits, Mass Cap, and Compliance Schedules**

9. By no later than the applicable compliance deadline specified in Table 1, the Applicable Settling Party shall comply with the following SO<sub>2</sub> emission limits at each Covered Sulfuric Acid Plant:

TABLE 1 – SO<sub>2</sub> Emissions Limits

<u>Covered Sulfuric Acid Plant</u>	<u>Short-Term SO<sub>2</sub> Limit (lbs SO<sub>2</sub>/ton 100% Sulfuric Acid Produced)</u>	<u>Long-Term SO<sub>2</sub> Limit (lbs SO<sub>2</sub>/ton 100% Sulfuric Acid Produced)</u>	<u>Compliance Deadline</u>
Geismar Sulfuric Acid Plant	1.5	See Paragraph 9.a	October 1, 2016
White Springs Sulfuric Acid Plant C	1.7	1.6	January 1, 2016
White Springs Sulfuric Acid Plant D	1.7	1.6	July 1, 2017

White Springs Sulfuric Acid Plant E	2.6	2.3	January 1, 2020
White Springs Sulfuric Acid Plant F	2.6	2.3	January 1, 2018
Aurora Sulfuric Acid Plant, Unit 5	3.2	2.5	January 1, 2020
Aurora Sulfuric Acid Plant, Unit 6	3.3	2.5	January 1, 2018
Aurora Sulfuric Acid Plant, Unit 7	3.0	1.75, see Paragraph 9.e	January 1, 2019

a. Mass Cap for Geismar Sulfuric Acid Plant. By no later than October 1, 2016, the Applicable Settling Party shall comply with a Mass Cap for SO<sub>2</sub> emissions of 451.59 tons SO<sub>2</sub>/year at the Geismar Sulfuric Acid Plant.

b. For the Long-Term SO<sub>2</sub> Limits and the Mass Cap, the Applicable Settling Party shall commence monitoring by the applicable compliance deadline listed in Table 1, but shall have until one year following the compliance deadline to demonstrate compliance with the applicable Long-Term SO<sub>2</sub> Limit and Mass Cap (for the one year following the compliance deadline and then for each preceding 365-Day and 12-Month period thereafter). With respect to the Mass Cap, the Applicable Settling Party shall demonstrate compliance thereafter as of the last Day of each Month for the immediately preceding consecutive 12-Month period in the manner specified in the SO<sub>2</sub> CEMS Plan. With respect to the Long-Term SO<sub>2</sub> Limits, the Applicable Settling Party shall demonstrate compliance thereafter in the manner specified in the SO<sub>2</sub> CEMS Plan.

c. Startup limit: During any Startup of the Geismar Sulfuric Acid Plant, 500 parts per million (ppm) averaged over the four-hour Startup period.

d. The Applicable Settling Party, in its sole discretion, may achieve compliance with a SO<sub>2</sub> emissions limit required by this Paragraph by permanently shutting down and ceasing operations of the applicable Covered Sulfuric Acid Plant before the compliance deadline specified in Table 1. If a Settling Party elects to permanently shut down and cease operations at a Covered Sulfuric Acid Plant, the Settling Party must provide written notice of the proposed permanent shutdown to the United States and, for the Geismar Sulfuric Acid Plant, to LDEQ, in accordance with Section XVI of this Decree (Notices), by no later than the Effective Date with respect to a Covered Sulfuric Acid Plant that is already shut down at that time and no later than 90 Days before the shutdown for any other Covered Sulfuric Acid Plant. By no later than 30 Days after the Effective Date with respect to a Covered Sulfuric Acid Plant that permanently shuts down and ceases operations before the Effective Date, and no later than 30 Days after any other Covered Sulfuric Acid Plant permanently shuts down and ceases operations, the Settling Party must also:

i. File all necessary applications or submissions with EPA and the applicable State to permanently terminate any permit or other legal authorization for further operation of the Covered Sulfuric Acid Plant and to reflect the permanently shutdown status of the Covered Sulfuric Acid Plant. The Settling Party shall also file all necessary applications or submissions to amend the applicable State's air emissions inventories so that the Covered Sulfuric Acid Plant is removed from the emission inventories. All applications and submissions required by this subparagraph shall be made in accordance with all applicable federal, state, and local requirements; and

ii. To the extent applicable, permanently surrender all emission credits and allowances associated with the Covered Sulfuric Acid Plant from the accounts administered by EPA and the applicable State so that such credits and allowances can never be used thereafter to meet any compliance requirements under the CAA, a SIP, or this Consent Decree. In addition, notwithstanding Paragraph 48.a, the Settling Parties shall not use, sell, or trade any emission credits or reductions associated with the shutdown of a Covered Sulfuric Acid Plant or that would otherwise be considered a creditable contemporaneous emission reduction within the

meaning of 40 C.F.R. § 52.21(b)(3) for any purpose. The requirements of this sub-paragraph are permanent and are not subject to any termination provision of this Consent Decree.

e. Demonstration Period for Aurora Sulfuric Acid Plant, Unit 7. The Applicable Settling Party shall have from January 1, 2019 until January 1, 2022 as a demonstration period for Aurora Sulfuric Acid Plant, Unit 7 (“Demonstration Period”) to use advanced catalyst technology, at up to nominal production capacity, combined with appropriate ancillary equipment for managing temperature profiles and gas flow in the converters without consideration of add-on control technology, such as scrubbers (“Catalyst Technology”). During this Demonstration Period, the Applicable Settling Party shall operate the Aurora Sulfuric Acid Plant, Unit 7 to demonstrate that the Catalyst Technology is capable of complying with the Long-Term SO<sub>2</sub> Limit specified in Table 1. The Applicable Settling Party shall provide updated information regarding the status of the Demonstration Period in its semi-annual reports submitted pursuant to Section IX.

i. If the Applicable Settling Party determines through the Demonstration Period that it is technically infeasible to meet the Long-Term SO<sub>2</sub> Limit specified in Table 1 for Aurora Sulfuric Acid Plant, Unit 7 using the Catalyst Technology, the Applicable Settling Party may propose to EPA a less stringent Long-Term SO<sub>2</sub> Limit for that facility. However, the Applicable Settling Party must base its determination of technical infeasibility and the proposal for a less stringent Long-Term SO<sub>2</sub> Limit solely on the SO<sub>2</sub> emission rates and sulfuric acid production rates actually achieved during the Demonstration Period, in addition to the information required in the Technical Infeasibility Report described below. The Applicable Settling Party’s proposal must be submitted no later than March 31, 2022; otherwise, the Applicable Settling Party must continue to comply with the Long-Term SO<sub>2</sub> Limit specified in Table 1. Any proposal submitted to EPA must include the following:

A. A proposed Long-Term SO<sub>2</sub> Limit that reflects the lowest achievable emission rate from the Aurora Sulfuric Acid Plant, Unit 7 using the Catalyst Technology. In no event may the proposed Long-Term SO<sub>2</sub> Limit be greater than 2.0 lbs SO<sub>2</sub>/ton 100% Sulfuric Acid Produced; and

B. A written report (“Technical Infeasibility Report”) that discusses the results of the Demonstration Period and justifies the proposed Long-Term SO<sub>2</sub> Limit. The Technical Infeasibility Report must include all evidence, data, and analysis supporting the Applicable Settling Party’s conclusion that it is technically infeasible to meet a Long-Term SO<sub>2</sub> Limit of 1.75 lbs SO<sub>2</sub>/ton 100% Sulfuric Acid Produced at the Aurora Sulfuric Acid Plant, Unit 7 using the Catalyst Technology, including, but not limited to:

- 1) a detailed engineering analysis of why a Long-Term SO<sub>2</sub> Limit of 1.75 lbs SO<sub>2</sub>/ton 100% Sulfuric Acid Produced is technically infeasible at the Aurora Sulfuric Acid Plant, Unit 7 and why the proposed less stringent emission limit is the lowest achievable emission rate;
- 2) a description of the relevant events leading up to the Applicable Settling Party’s determination that a Long-Term SO<sub>2</sub> Limit of 1.75 lbs SO<sub>2</sub>/ton 100% Sulfuric Acid Produced is technically infeasible and that the proposed less stringent emission limit is the lowest achievable emission rate, along with all related correspondence with technology vendors, contractors, or consultants and any supporting documentation, including any applicable manufacturer specifications or recommendations;
- 3) a description of all efforts taken by the Applicable Settling Party or its technology vendors, contractors, or consultants to achieve compliance with a Long-Term SO<sub>2</sub> Limit of 1.75 lbs SO<sub>2</sub>/ton 100% Sulfuric Acid Produced at the Aurora Sulfuric Acid Plant, Unit 7;
- 4) a description of all potential remedies considered by the Applicable Settling Party and/or its technology vendors, contractors, or consultants to bring the Aurora Sulfuric Acid Plant, Unit 7 into compliance with a Long-Term SO<sub>2</sub> Limit of 1.75 lbs SO<sub>2</sub>/ton 100% Sulfuric Acid Produced;
- 5) all CEMS data from the Demonstration Period; and
- 6) all sulfuric acid production data from the Demonstration Period.

ii. After an opportunity to review the Applicable Settling Party’s proposal, EPA may request any other information EPA deems necessary in order to evaluate the Applicable Settling Party’s proposal. If EPA requests additional information, the Applicable Settling Party will provide

such information within thirty (30) days or such other period as agreed upon by the parties.

iii. EPA will evaluate the Applicable Settling Party's proposal and either: 1) approve the proposal or 2) disapprove the proposal and establish a Long-Term SO<sub>2</sub> Limit for Aurora Sulfuric Acid Plant, Unit 7 that shall not be greater than 2.0 lbs SO<sub>2</sub>/ton 100% Sulfuric Acid Produced and shall not be less than 1.75 lbs SO<sub>2</sub>/ton 100% Sulfuric Acid Produced. EPA will provide written notice of its decision to the Applicable Settling Party in accordance with Section XVI (Notices).

iv. The Applicable Settling Party shall comply with the Long-Term SO<sub>2</sub> Limit specified in Table 1 until EPA either approves the Applicable Settling Party's proposed Long-Term SO<sub>2</sub> Limit or EPA establishes a new Long-Term SO<sub>2</sub> Limit pursuant to sub-paragraph 9.e(iii), except that if EPA has not acted on the Applicable Settling Party's proposal more than 90 days after the later of its submission date or the date all information requested pursuant to sub-paragraph 9.e(ii) is submitted to EPA, the request shall be deemed disapproved and the Applicable Settling Party shall have the right to invoke Dispute Resolution under Section XII of the Consent Decree. If EPA establishes a new Long-Term SO<sub>2</sub> Limit, the Applicable Settling Party shall comply with that limit or invoke Dispute Resolution within 30 Days of receiving EPA's decision.

10. Any proposal to increase the Mass Cap for the Geismar Sulfuric Acid Plant must be agreed upon by the United States and LDEQ and submitted to the Court for approval as a modification of this Decree. Until such time as the Court approves such modification, the existing Mass Cap in this Decree (451.59 tons SO<sub>2</sub>/year) shall remain in full force and effect.

**B. Acid Mist Emission Limits**

11. By no later than the Effective Date, the Applicable Settling Party shall comply with the NSPS, Subpart H sulfuric acid mist emission limitation of 0.15 lb/ton of 100% Sulfuric Acid Produced, as set forth at 40 C.F.R. § 60.83, at each Covered Sulfuric Acid Plant. Compliance with the Acid Mist limit shall be demonstrated using the performance test required by Paragraph 18 of this Consent Decree. The Acid Mist performance tests required under

Paragraph 18 may be undertaken at the same time as the performance tests for the SO<sub>2</sub> emission limits required under Paragraph 19 and scheduled under Paragraph 20.

**C. NSPS Applicability**

12. By no later than the Effective Date, the Aurora Sulfuric Acid Plants and White Springs Sulfuric Acid Plants shall be considered affected facilities for purposes of the NSPS, 40 C.F.R. Part 60, Subpart H. By no later than October 1, 2016, the Geismar Sulfuric Acid Plant shall be considered an affected facility for purposes of the NSPS, 40 C.F.R. Part 60, Subpart H. After the applicable date, each Covered Sulfuric Acid Plant shall comply with all applicable requirements for affected facilities under the NSPS, 40 C.F.R. Part 60, Subparts A and H, or with the requirements of this Consent Decree (if more stringent). Satisfactory compliance by the Applicable Settling Party with the notice and compliance demonstration obligations set forth in this Consent Decree shall be deemed to satisfy all applicable initial notification and compliance demonstration requirements of NSPS Subparts A and H.

13. Best Practices. At all times after the Effective Date of this Consent Decree, the Applicable Settling Party shall maintain and operate each Covered Sulfuric Acid Plant in accordance with 40 C.F.R. § 60.11(d).

**D. Emissions Monitoring**

14. Installation, Certification, and Calibration.

a. By no later than the applicable compliance deadline listed in Table 1 of Paragraph 9 for each Covered Sulfuric Acid Plant, the Applicable Settling Party shall certify and calibrate the CEMS at each Covered Sulfuric Acid Plant and install any necessary additional equipment so that the CEMS is capable of directly measuring the

SO<sub>2</sub> emission rate, which, pursuant to the SO<sub>2</sub> CEMS Plan, shall be expressed as lb/ton of 100% Sulfuric Acid Produced (the “SO<sub>2</sub> CEMS”).

b. By no later than the applicable compliance deadline listed in Table 1 of Paragraph 9, the Applicable Settling Party shall install a product mass flow meter at each of the Aurora Sulfuric Acid Plants and White Springs Sulfuric Acid Plants that directly measures the flow of sulfuric acid, as produced, with an accuracy of +/- 0.5%. The measured flow will then be converted to a 100% sulfuric acid basis.

15. Continuous Operation of SO<sub>2</sub> CEMS and Minimization of SO<sub>2</sub> CEMS Downtime. After the applicable compliance deadline listed in Table 1 of Paragraph 9 for each Covered Sulfuric Acid Plant, and except during SO<sub>2</sub> CEMS breakdowns, repairs, calibration checks, and zero span adjustments, the SO<sub>2</sub> CEMS maintained by the Applicable Settling Party at each Covered Sulfuric Acid Plant shall be in continuous operation during all Operating Periods and Shutdowns to demonstrate compliance with the SO<sub>2</sub> emission limits established in Subsection IV.A of this Consent Decree. The Applicable Settling Party shall take all steps necessary to minimize SO<sub>2</sub> CEMS breakdowns and downtime. These steps shall include, but are not limited to, operating and maintaining the SO<sub>2</sub> CEMS in accordance with good air pollution control practices and maintaining an on-site inventory of spare parts or other supplies necessary to make prompt repairs to the SO<sub>2</sub> CEMS and associated equipment.

16. SO<sub>2</sub> CEMS Plan. By no later than the applicable compliance deadline listed in Table 1 of Paragraph 9 for each Covered Sulfuric Acid Plant, the Applicable Settling Party shall implement the SO<sub>2</sub> CEMS Plan attached as Appendix A for the applicable Covered Sulfuric Acid Plant. The SO<sub>2</sub> CEMS Plan describes how the Applicable Settling Party shall monitor compliance with the SO<sub>2</sub> emission limits established in Subsection IV.A of this Consent



Decree, including the methodology that the Applicable Settling Party shall use to demonstrate compliance in the event of SO<sub>2</sub> CEMS downtime lasting longer than 24 hours. The monitoring methods specified in the SO<sub>2</sub> CEMS Plan have been approved as appropriate alternative monitoring methods for purposes of NSPS, pursuant to 40 C.F.R. § 60.13(i).

**E. Performance Testing**

17. By no later than the applicable compliance deadline listed in Table 1 of Paragraph 9, the Applicable Settling Party shall complete the performance tests required in this Subsection IV.E. at each Covered Sulfuric Acid Plant.

18. Acid Mist. The Applicable Settling Party shall conduct a performance test at each Covered Sulfuric Acid Plant measuring the emission rate of Acid Mist in accordance with the applicable requirements of 40 C.F.R. Part 60, Appendix A, Reference Method 8, or an alternative method approved by EPA. These performance tests shall be used to demonstrate compliance with the Acid Mist emission limit established in Paragraph 11 and may serve as the NSPS performance test required under 40 C.F.R. § 60.8. The Applicable Settling Party shall take all steps necessary to ensure accurate measurements of 100% Sulfuric Acid Production during each test run and shall include in the test protocol all measurements to be taken during the test to ensure accurate measurements of the sulfuric acid produced during each test run.

19. SO<sub>2</sub> Emission Limits. The Applicable Settling Party shall conduct a performance test at each Covered Sulfuric Acid Plant measuring the emission rate of SO<sub>2</sub> in accordance with the applicable requirements of 40 C.F.R. Part 60, Appendix A, Reference Method 8, and Part 60, Appendix B, Performance Specification 2. This test shall consist of at least nine reference method test runs and may serve as the SO<sub>2</sub> CEMS relative accuracy test required under Performance Specification 2. If applicable, this test may also serve as the NSPS

performance test required under 40 C.F.R. § 60.8. The Applicable Settling Party shall take all steps necessary to ensure accurate measurements of the sulfuric acid produced during each test run.

20. Advance Notification. By no later than 30 Days before any performance test required by this Section IV.E is conducted, the Applicable Settling Party shall provide notice to EPA and LDEQ (for performance tests at the Geismar Sulfuric Acid Plant), in the manner set forth in Section XVI (Notices), of its intent to conduct such testing; provided that, if a performance test must be rescheduled, notice of the rescheduled performance test may be given less than 30 Days, but in no case less than 7 Days, in advance of it. This notification must include the scheduled date of the test(s), an emissions test protocol, a description of the planned operating rate and operating conditions, and the procedures that will be used to measure 100% Sulfuric Acid Production. If EPA and/or LDEQ (for the Geismar Sulfuric Acid Plant) requires any adjustment of the testing protocol or operating conditions, the Applicable Settling Party shall either make such adjustments and conduct the performance test in conformity with EPA's and/or LDEQ's requirements or the Applicable Settling Party shall submit the issue(s) for Dispute Resolution pursuant to Section XII of this Consent Decree.

21. Report of Results. By no later than 60 Days after conducting a performance test required under this Subsection IV.E, the Applicable Settling Party shall submit to EPA and the LDEQ (for performance tests at the Geismar Sulfuric Acid Plant), in the manner set forth in Section XVI (Notices), a report documenting the results of the performance tests.

**F. Operation and Maintenance Plans**

22. By no later than six months before the applicable compliance deadline listed in Table 1 of Paragraph 9 for each Covered Sulfuric Acid Plant, the Applicable Settling

Party shall prepare and submit to EPA and LDEQ (for the Geismar Sulfuric Acid Plant) in the manner set forth in Section XVI (Notices), an Operation and Maintenance Plan (O & M Plan) for each Covered Sulfuric Acid Plant. The O & M Plan shall describe the operating and maintenance procedures necessary to: (i) minimize the frequency of Shutdowns resulting from operating and/or maintenance practices that are not in accordance with 40 C.F.R. § 60.11(d) (thereby reducing the number of Startups); and (ii) maintain and operate each Covered Sulfuric Acid Plant, including associated air pollution control equipment, in accordance with 40 C.F.R. § 60.11(d).

23. EPA and/or LDEQ (for the Geismar Sulfuric Acid Plant) may provide comments and/or recommendations with respect to the O & M Plan. If EPA and/or LDEQ provide written comments and/or recommendations about the O & M Plan, within 45 Days after receiving such comments and/or recommendations, the Applicable Settling Party shall either: (a) alter and implement the submission consistent with EPA's and/or LDEQ's written comments and/or recommendations, or (b) submit the matter for Dispute Resolution under Section XII of the Consent Decree.

24. By no later than the applicable compliance deadline listed in Table 1 of Paragraph 9 for each Covered Sulfuric Acid Plant, the Applicable Settling Party shall implement the O & M Plan, provided that the O & M Plan implemented by the Applicable Settling Party need not include elements that specifically respond to EPA's and/or LDEQ's comments until the process for responding to or disputing such comments has been completed in accordance with Paragraph 23. All other elements of the O & M Plan shall be implemented. At least once every three years, the Applicable Settling Party shall review the O & M Plan for each Covered Sulfuric Acid Plant and update it as necessary.

**G. LDEQ Compliance Order**

25. PCS Nitrogen Fertilizer, L.P. shall comply with the Consolidated Compliance Order & Notice of Potential Penalty, Enforcement Tracking No. AE-CN-10-00695 issued to PCS Nitrogen Fertilizer, L.P. on March 5, 2012, and as administratively amended on March 1, 2013 (Enforcement Tracking No. AE-CN-10-00695A) and again on June 19, 2013 (Enforcement Tracking No. AE-CN-10-00695B). These orders are attached hereto in Appendix D.

**V. SUPPLEMENTAL ENVIRONMENTAL PROJECT**

26. PCS Nitrogen Fertilizer, L.P. shall perform a Supplemental Environmental Project (the “Nitric Acid SCR SEP”) to install a SCR for Nitric Acid Train No. 4 at the Geismar Nitric Acid Plant in accordance with all provisions of this Section and Appendix B of this Consent Decree. The purpose of the Nitric Acid SCR SEP shall be to reduce emissions of NO<sub>x</sub> and ammonia from Nitric Acid Train No. 4. The Nitric Acid SCR SEP shall be completed within 24 Months after the Effective Date of this Consent Decree in accordance with the schedule set forth in Appendix B.

27. PCS Nitrogen Fertilizer, L.P. is responsible for the satisfactory completion of the Nitric Acid SCR SEP in accordance with the requirements of this Decree. PCS Nitrogen Fertilizer, L.P. may use contractors or consultants in planning and implementing the Nitric Acid SCR SEP.

28. With regard to the Nitric Acid SCR SEP, PCS Nitrogen Fertilizer, L.P., on behalf of the Settling Parties, certifies the truth and accuracy of each of the following:

a. that all cost information provided to EPA in connection with EPA’s approval of the Nitric Acid SCR SEP is complete and accurate as of the date provided and

that PCS Nitrogen Fertilizer, L.P. in good faith estimates that the cost to implement the Nitric Acid SCR SEP is at least \$2,500,000;

b. that, as of the date of executing this Decree, neither PCS Nitrogen Fertilizer, L.P. nor any of the other Settling Parties are required to perform or develop the Nitric Acid SCR SEP by any federal, State, or local law or regulation, and is not required to perform or develop the Nitric Acid SCR SEP by agreement, grant, or as injunctive relief awarded in any other action in any forum;

c. that the Nitric Acid SCR SEP is not a project that PCS Nitrogen Fertilizer, L.P. was planning or intending to construct, perform, or implement other than in settlement of the claims resolved in this Decree;

d. that none of the Settling Parties have received, and will not receive, credit for the Nitric Acid SCR SEP in any other enforcement action;

e. that none of the Settling Parties will receive any reimbursement for any portion of the cost to implement the Nitric Acid SCR SEP as set forth in Paragraph 28.a from any other person; and

f. that none of the Settling Parties are a party to any open federal financial assistance transaction that is funding or could be used to fund the same activity as the Nitric Acid SCR SEP. PCS Nitrogen Fertilizer, L.P., on behalf of the Settling Parties, further certifies that, to the best of its knowledge and belief after reasonable inquiry, there is no open federal financial assistance transaction that is funding or could be used to fund the same activity as the Nitric Acid SCR SEP, nor has the same activity been described in an unsuccessful federal financial assistance transaction proposal submitted to EPA within two years of the Settling Parties' signature date of this Consent Decree (unless the project was barred from funding as

statutorily ineligible). For purposes of this certification, the term “open federal financial assistance transaction” refers to a grant, cooperative agreement, loan, federally guaranteed loan guarantee, or other mechanism for providing federal financial assistance for which the performance period has not yet expired.

29. SEP Completion Report. Within 30 Days after the date set for completion of the Nitric Acid SCR SEP, PCS Nitrogen Fertilizer, L.P. shall submit a SEP Completion Report to the United States and LDEQ, in accordance with Section XVI of this Consent Decree (Notices). The SEP Completion Report shall contain the following information:

- a. a detailed description of the Nitric Acid SCR SEP as implemented;
- b. a description of any problems encountered in completing the Nitric Acid SCR SEP and the solutions thereto;
- c. an itemized list of all eligible costs expended in performing the Nitric Acid SCR SEP;
- d. a certification that the Nitric Acid SCR SEP has been fully implemented pursuant to the provisions of this Decree; and
- e. a description of the environmental and public health benefits resulting from implementation of the Nitric Acid SCR SEP (with a quantification of the benefits and pollutant reductions, if feasible).

30. EPA may, in its sole discretion, require information in addition to that described in the preceding Paragraph, in order to evaluate the SEP Completion Report.

31. After receiving the SEP Completion Report, the United States shall notify PCS Nitrogen Fertilizer, L.P. whether or not PCS Nitrogen Fertilizer, L.P. has satisfactorily completed the Nitric Acid SCR SEP. If PCS Nitrogen Fertilizer, L.P. has not completed the

Nitric Acid SCR SEP in accordance with this Consent Decree, stipulated penalties may be assessed under Section X of this Consent Decree.

32. Disputes concerning the satisfactory performance of the Nitric Acid SCR SEP and the amount of eligible SEP costs may be resolved under Section XII of this Decree (Dispute Resolution). No other disputes arising under this Section shall be subject to Dispute Resolution.

33. Each submission required under this Section shall be signed by an official with knowledge of the Nitric Acid SCR SEP and shall bear the certification language set forth in Paragraph 53.

34. Any public statement, whether oral or written, in print, film, or other media, made by any of the Settling Parties making reference to the Nitric Acid SCR SEP under this Decree shall include the following language: “This project was undertaken in connection with the settlement of an enforcement action, *United States, et al. v. PCS Nitrogen Fertilizer, L.P., et al.*, taken on behalf of the U.S. Environmental Protection Agency under the Clean Air Act.”

35. For federal income tax purposes, none of the Settling Parties will either capitalize into inventory or basis or deduct any costs or expenditures incurred in performing the Nitric Acid SCR SEP.

## **VI. CIVIL PENALTY**

36. Within 30 Days after the Effective Date of this Consent Decree, the Settling Parties shall pay the following amounts 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:

- a. \$ 950,000 to the United States, and
- b. \$350,000 to LDEQ.

37. The Settling Parties shall pay the civil penalty due 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 to the Settling Parties, following lodging of the Consent Decree, by the Financial Litigation Unit of the U.S. Attorney's Office for the Middle District of Louisiana, Russell B. Long Federal Building, 777 Florida Street, Suite 208, Baton Rouge, LA 70801. At the time of payment, the Settling Parties shall send a copy of the EFT authorization form and the EFT transaction record, together with a transmittal letter which 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., et al.* The transmittal letter shall reference the civil action number and DOJ case number 90-7-1-08209/1, and shall be sent to the United States in accordance with Section XVI of this Decree (Notices); 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, Ohio 45268

38. The Settling Parties shall not deduct any penalties paid under this Decree pursuant to this Section or Section X (Stipulated Penalties) in calculating its federal, State, or local income tax.

39. The Settling Parties shall pay the civil penalty due to LDEQ by bank check made payable to the Louisiana Department of Environmental Quality and sent to: Accountant Administrator, Financial Services Division, LDEQ, P.O. Box 4303, Baton Rouge, Louisiana 70821-4303.



## **VII. PERMITS**

40. Permits Prior to Construction or Installation. The Applicable Settling Party shall obtain all required federal, State, and local permits necessary for performing any compliance obligation under this Consent Decree and the SEP, including, without limitation, permits for the construction of pollution control technology and the installation of equipment at each Covered Sulfuric Acid Plant and the Geismar Nitric Acid Plant. The Applicable Settling Party may seek relief under the provisions of Section XI (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 the Applicable Settling Party has submitted timely and complete applications and has taken all other actions necessary to obtain such permit(s) or approval(s). If an Applicable Settling Party fails to submit a timely permit application, the Applicable Settling Party shall be barred from asserting a claim under Section XI (Force Majeure) of the Consent Decree that is based on delays in receiving necessary permits.

41. Applications for Permits Incorporating Emissions Limits and Standards.

a. Geismar Sulfuric and Nitric Acid Plants. By no later than one year after the Effective Date and except as provided by Paragraph 9.d, the Applicable Settling Party shall complete and submit to LDEQ's consolidated preconstruction and Title V CAA permitting program, appropriate applications to incorporate the following requirements into a federally enforceable permit(s) for the Geismar Sulfuric Acid Plant and the Geismar Nitric Acid Plant, as applicable, such that the following requirements: (i) become and remain "applicable requirements" as that term is defined in 40 C.F.R. § 70.2; (ii) are incorporated into federally enforceable Title V permits for the Geismar Sulfuric

Acid Plant and the Geismar Nitric Acid Plant, as applicable, and (iii) survive the termination of this Consent Decree:

- i. The SO<sub>2</sub> Startup Limit established in Section IV.A;
- ii. The Short-Term and Long-Term NO<sub>x</sub> Limits established in the SEP;
- iii. The Acid Mist emission limit established in Section IV.B of this Consent Decree;
- iv. A requirement that the SO<sub>2</sub>, NO<sub>x</sub>, and Acid Mist emission and startup limits described in this Paragraph, as well as the Short-Term SO<sub>2</sub> Limit and Mass Cap established in Table 1 of Section IV.A of this Consent Decree (both of which are currently reflected in LDEQ Permit No. 2247-V3), shall not be relaxed;
- v. The applicability of 40 C.F.R. Part 60, Subparts A and H, and all requirements therein, to the Geismar Sulfuric Acid Plant; and
- vi. The monitoring requirements established in the SO<sub>2</sub> CEMS Plan and the NO<sub>x</sub> CEMS Plan.

b. Aurora and White Springs Sulfuric Acid Plants. By no later than one year before the applicable compliance deadline for each of the Aurora Sulfuric Acid Plants and the White Springs Sulfuric Acid Plants and except as provided by Paragraph 9.d, the Applicable Settling Party shall complete and submit appropriate applications to the preconstruction (or other non-Title V permit) and Title V CAA permitting programs of the NC DENR's Division of Air Quality, Permitting Section (for the Aurora Sulfuric Acid Plants) or to the State of Florida's, Florida Department of Environmental Protection, Northeast District (for the White Springs Sulfuric Acid Plants). These applications shall

apply to incorporate the following requirements into a federally enforceable permit(s) for each of the Aurora Sulfuric Acid Plants and the White Springs Sulfuric Acid Plants such that the following requirements: (i) become and remain “applicable requirements” as that term is defined in 40 C.F.R. § 70.2; (ii) are incorporated into federally enforceable Title V permits for the Aurora Sulfuric Acid Plants and the White Springs Sulfuric Acid Plants, and (iii) survive the termination of this Consent Decree:

- i. The Short-Term and Long-Term SO<sub>2</sub> Emissions Limits established in Table 1 of Section IV.A;
- ii. The Acid Mist emission limits established in Section IV.B of this Consent Decree;
- iii. A requirement that the Short-Term SO<sub>2</sub> Emissions Limit, Long-Term SO<sub>2</sub> Emissions Limit, and Acid Mist emission limit established in Section IV.A and IV.B of this Consent Decree shall not be relaxed;
- iv. The applicability of 40 C.F.R. Part 60, Subparts A and H, and all requirements therein, to the Aurora Sulfuric Acid Plants and the White Springs Sulfuric Acid Plants; and
- v. The monitoring requirements established in the SO<sub>2</sub> CEMS Plan.

42. This Consent Decree shall not terminate until the requirements set forth in Paragraph 41 are incorporated into Title V operating permits for each Covered Sulfuric Acid Plant and the Geismar Nitric Acid Plant.

43. Following submission of the complete permit applications, the Applicable Settling Party shall cooperate with the NC DENR and the State of Florida by promptly

submitting all available information that either State agency seeks following its receipt of the permit materials.

44. Requirements incorporated into Title V operating permits or other operating permits pursuant to Paragraph 41 shall survive termination of this Consent Decree.

45. The permit applications and process of incorporating the requirements of this Consent Decree and SEP into Title V Permits shall be in accordance with State Title V rules, including applicable administrative amendment provisions of such rules.

46. For any permit applications required by this Section VII that are filed after the Effective Date of this Consent Decree, the Applicable Settling Party shall submit to EPA and LDEQ (for the Geismar Sulfuric Acid Plant and Geismar Nitric Acid Plant) in the manner set forth in Section XVI (Notices), a copy of each application, as well as a copy of any permit proposed as a result of such application, to allow for timely participation in any public comment process. If, as of the Effective Date, the Applicable Settling Party already has received any permit necessary to implement the requirements of this Consent Decree, then no later than 30 Days after the Effective Date, the Applicable Settling Party shall submit copies of such permits to EPA and LDEQ (for the Geismar Sulfuric Acid Plant and Geismar Nitric Acid Plant) in the manner set forth in Section XVI (Notices). EPA and/or LDEQ may excuse in writing all or part of the latter submissions if copies of such permits have already been submitted prior to the Effective Date.

### **VIII. EMISSION CREDIT GENERATION**

47. The Settling Parties shall not use, purchase, or otherwise obtain any SO<sub>2</sub>, NO<sub>x</sub>, or Acid Mist emission credits or offsets in order to comply with any requirements of the Consent Decree or the SEP. The Settling Parties shall not use any SO<sub>2</sub>, NO<sub>x</sub>, or Acid Mist

emission reductions or credits resulting from any projects conducted pursuant to this Consent Decree, including the SEP, for the purpose of obtaining netting credits in any PSD and/or minor NSR permit or permit proceeding, or for the purpose of obtaining offsets in any non-attainment NSR permit or permit proceeding. However, the use of past actual emissions from the Geismar Sulfuric Acid Plant for baseline years 2004 - 2005 or the Geismar Nitric Acid Plant for baseline years 2004 - 2005 in order to obtain minor NSR permits for construction of modifications to achieve the emissions limits specified in Section IV.A and the SEP in this Consent Decree shall not be considered the use of emissions reductions or credits for purposes of this Section.

48. The Settling Parties shall not sell or trade any SO<sub>2</sub>, NO<sub>x</sub>, or Acid Mist emission reductions or credits resulting from any projects conducted pursuant to this Consent Decree, including the SEP. However, subject to the requirements of Paragraph 9.d regarding permanently shutting down a Covered Sulfuric Acid Plant, nothing in this Consent Decree is intended to prohibit the Applicable Settling Party from:

- a. Using netting reductions that are covered by this Decree to the extent that the proposed netting reductions represent the difference between the emission limits set forth in this Consent Decree and more stringent emission limits that an Applicable Settling Party may elect to accept for any Covered Sulfuric Acid Plant or Nitric Acid Train No. 4 at the Geismar Nitric Acid Plant in a permitting process;
- b. Using netting reductions from units that are not subject to an emission limitation under this Consent Decree; and
- c. Using netting reductions for any pollutants other than SO<sub>2</sub>, NO<sub>x</sub>, or Acid Mist.

## **IX. REPORTING REQUIREMENTS**

49. Each Applicable Settling Party shall submit an individual semi-annual report to EPA and LDEQ (for the Geismar Sulfuric Acid Plant and Geismar Nitric Acid Plant) that documents the Applicable Settling Party's progress toward compliance with the requirements set forth in Section IV (Compliance Requirements) and Section V (Supplemental Environmental Project). Each Applicable Settling Party shall submit the report by no later than March 1 and September 1 of each year, with the first semi-annual report due on the first submittal date that is more than seven months after the Effective Date. The report due on March 1 shall contain all information required by this Section from July 1 through December 31 of the preceding year. The report due on September 1 shall contain all information required by this Section from the preceding January 1 through June 30 of the current year. Each semi-annual report shall contain the following information:

- a. The status of work performed and progress made toward implementing the requirements of Sections IV and V;
- b. Any significant modifications to previously submitted design specifications of any pollution control system, or to monitoring equipment, required to comply with the requirements of Sections IV and V;
- c. Any significant problems encountered or anticipated in complying with the requirements of Sections IV and V;
- d. A description of any non-compliance with the requirements of this Consent Decree and an explanation of the likely cause of the non-compliance and the remedial steps taken, or to be taken, to prevent or minimize such non-compliance, and to mitigate any adverse environmental harm;

e. A summary of the SO<sub>2</sub>, NO<sub>x</sub>, and Acid Mist performance testing data collected pursuant to Section IV.E to demonstrate compliance with the requirements of this Consent Decree;

f. In the first report submitted after the applicable compliance deadline specified in Table 1 of Paragraph 9 for each Covered Sulfuric Acid Plant, and in each report thereafter, a tabulation of each Covered Sulfuric Acid Plant's 3-hour rolling average SO<sub>2</sub> emission rate expressed in terms of pounds of SO<sub>2</sub> emitted per ton of 100% Sulfuric Acid Produced (lb/ton);

g. In the first report submitted 24 months after the Effective Date, and in each report thereafter, a tabulation of the 3-hour rolling average and 365-Day rolling average NO<sub>x</sub> emission rates for Nitric Acid Train No. 4 at the Geismar Nitric Acid Plant expressed as pounds of NO<sub>x</sub> emitted per ton of 100% Nitric Acid Produced (lb/ton);

h. In the first report submitted after October 2016, and in each report thereafter, the actual monthly emissions of SO<sub>2</sub> and Acid Mist from the Geismar Sulfuric Acid Plant, measured in accordance with the SO<sub>2</sub> CEMS Plan, and, in the first report submitted 24 months after the Effective Date, and in each report thereafter, the actual monthly emissions of NO<sub>x</sub> from Nitric Acid Train No. 4 at the Geismar Nitric Acid Plant, measured in accordance with the NO<sub>x</sub> CEMS Plan;

i. In the first report submitted after the applicable compliance deadline specified in Table 1 of Paragraph 9 for each of the Aurora Sulfuric Acid Plants and White Springs Sulfuric Acid Plants, and in each report thereafter, individual tabulations of each of the Aurora Sulfuric Acid Plants' and White Springs Sulfuric Acid Plants' 365-Day rolling average SO<sub>2</sub> emission rate (expressed in terms of pounds of SO<sub>2</sub> emitted per ton of 100% Sulfuric Acid Produced (lb/ton)) measured in accordance with the SO<sub>2</sub> CEMS Plan;

j. On and after the applicable compliance dates for the Short-Term SO<sub>2</sub> Limits, a listing and description of all periods of Startup, Shutdown, and Malfunction for each Covered Sulfuric Acid Plant, including the quantity of SO<sub>2</sub> emitted during such periods and the causes of any Malfunctions. Each report submitted after October 1, 2016 shall provide a listing and description of all periods of Startup, Shutdown, and Malfunction for Nitric Acid Train No. 4 at the Geismar Nitric Acid Plant, including the quantity of NO<sub>x</sub> emitted during such periods and the causes of any Malfunctions;

k. On and after the applicable compliance dates for Short-Term SO<sub>2</sub> Limits, all information required to be reported by the SO<sub>2</sub> CEMS Plan. In each report submitted 24 months after the Effective Date, all information required to be reported by the NO<sub>x</sub> CEMS Plan;

l. In the first report submitted after the respective applicable deadlines specified in Paragraphs 14 and 26, and in each report thereafter, a listing of the dates and times of each period during which either the SO<sub>2</sub> CEMS or NO<sub>x</sub> CEMS (or both) was inoperative, except for zero and span checks, and an explanation of the nature of the system repairs or adjustments made;

m. The status of permit applications and a summary of all permitting activity pertaining to compliance with this Consent Decree;

n. In the copy of the report submitted to EPA, a copy of all reports that were submitted only to LDEQ and that pertain to compliance with this Consent Decree;

o. After submitting the O&M Plan specified in Paragraph 22 of this Consent Decree, a description of any changes or updates made to such Plan;



p. An accounting of all emissions credits, reductions, and allowances surrendered, retired, or otherwise not used pursuant to Paragraph 9.d, including copies of any transfer forms submitted to EPA or a State; and

q. Copies of any written notices of any permanent shutdown of a Covered Sulfuric Acid Plant required by Paragraph 9.d.

50. Notification of Potential Non-Compliance. If a Settling Party violates, or has reason to believe that it may violate, any requirement of this Consent Decree, the Settling Party shall notify the United States and LDEQ (for the Geismar Sulfuric Acid Plant and Geismar Nitric Acid Plant) of such violation and its likely duration, in writing, within ten (10) working Days of the Day the Settling Party first becomes aware of the violation, with an explanation of the violation's likely cause and of the remedial steps taken, or to be taken, to prevent or minimize such violation and to mitigate any adverse effects of the violation. If the cause of a violation cannot be fully explained at the time the report is due, the Settling Party shall so state in the report. The Settling Party 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 30 Days of the Day the Settling Party becomes aware of the cause of the violation. Nothing in this Paragraph or the following Paragraph relieves the Settling Parties of their obligation to provide the notice required by Section XI of this Consent Decree (Force Majeure).

51. Imminent Threat. Whenever any violation of this Consent Decree or of any applicable permits or any other event affecting a Settling Party's performance under this Consent Decree, or the performance of any Covered Sulfuric Acid Plant or the Geismar Nitric Acid Plant, may pose an immediate threat to the public health or welfare or the environment, the Settling Party shall notify EPA and LDEQ (for the Geismar Sulfuric Acid Plant and Geismar

Nitric Acid Plant) orally or by electronic or facsimile transmission as soon as possible, but no later than 24 hours after the Settling Party first knew of the violation or event. This procedure is in addition to the requirements set forth in the preceding Paragraph.

52. All reports shall be submitted to the persons designated in Section XVI of this Consent Decree (Notices).

53. Each report submitted by a Settling Party under this Section shall be signed by an official of that party and shall include the following certification:

I certify under penalty of law that this document and all attachments were prepared either by me or 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 personal knowledge or 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 fines and imprisonment for knowing violations.

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

54. Except as provided in Paragraph 12 (with respect to the NSPS notification and compliance demonstration requirements) and Paragraph 16 (with respect to approval of alternative NSPS monitoring methods) of the Consent Decree, and except as provided in Paragraph 5 of Appendix B (with respect to approval of alternative monitoring methods for the NO<sub>x</sub> CEMS Plan), the reporting requirements of this Consent Decree do not relieve the Settling Parties of any reporting obligations required by the Clean Air Act or implementing regulations, or by any other federal, State, or local law, regulation, permit, or other requirement.

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

**X. STIPULATED PENALTIES**

56. The Applicable Settling Party shall be liable for stipulated penalties to the United States and LDEQ (for the Geismar Sulfuric Acid Plant and Geismar Nitric Acid Plant) for violations of this Consent Decree as specified below, unless excused under Section XI (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 Consent Decree, according to all applicable requirements of this Consent Decree and within the specified time schedules established by or approved under this Consent Decree.

57. Late Payment of Civil Penalty. If the Settling Parties fail to pay the civil penalty required to be paid under Section VI of this Decree (Civil Penalty) when due, the Settling Parties shall pay a stipulated penalty of \$1,000 per Day for each Day that the payment is late.

58. Short-Term SO<sub>2</sub> Limit. For each violation of the Short-Term SO<sub>2</sub> Limit in any non-overlapping 3-hour period:

<u>Percentage Over the Limit</u>	<u>Penalty per Violation</u>
1 - 50%	\$250
51 - 100%	\$500
Over 100%	\$750

Where a violation of the Short-Term SO<sub>2</sub> Limit also violates the NSPS SO<sub>2</sub> Limit, the provisions of this stipulated penalty paragraph shall apply.

59. Long-Term SO<sub>2</sub> Limits. For each violation of the Long-Term SO<sub>2</sub> Limit:

<u>Period of Noncompliance</u>	<u>Penalty per Day</u>
1st - 14th Day	\$1500
15th - 30th Day	\$2000
31st Day and each Day thereafter	\$2500

60. Mass Cap. For each violation of the Mass Cap required in Paragraph 9.a., a stipulated penalty of \$150,000 per violation shall accrue. A Mass Cap violation may occur only one time per Month and only when the sum of the SO<sub>2</sub> emitted in the immediately preceding 12 Months exceeds the Mass Cap.

61. Acid Mist Emission Limits For each violation of the sulfuric acid mist emission limitation of 0.15 lb/ton of 100% Sulfuric Acid Produced, a stipulated penalty shall accrue as follows:

<u>Percentage Over the Limit</u>	<u>Penalty per Violation</u>
1 - 50%	\$250
51 - 100%	\$500
Over 100%	\$750

62. Opacity Limits in the NSPS. For each violation of the opacity requirements of 40 C.F.R. § 60.83(a)(2), as demonstrated by a Method 9 reference test, \$40 per six (6) minute average reading in excess of the limit, up to a maximum of \$2,000 per Day.

63. Emissions Monitoring.

a. For each violation of any of the requirements of Section IV.D or the SO<sub>2</sub> CEMS Plan:

<u>Period of Noncompliance</u>	<u>Penalty per violation per Day</u>
1st - 14th Day	\$1,000
15th - 30th Day	\$1,500

31st Day and each Day thereafter \$2,000

b. For each day during which a Covered Sulfuric Acid Plant is “out of control,” as determined by the verification RATA testing required by the SO<sub>2</sub> CEMS Plan in Appendix A:

<u>Period of Noncompliance</u>	<u>Penalty per violation per Day</u>
1st - 14th Day	\$1500
15th - 30th Day	\$2000
31st Day and each Day thereafter	\$2500

64. Performance Testing. For each violation of any of the requirements of Section IV.E:

<u>Period of Noncompliance</u>	<u>Penalty per violation per Day</u>
1st - 14th Day	\$1,000
15th - 30th Day	\$1,500
31st Day and each Day thereafter	\$2,000

65. Operation and Maintenance Plans. For failure to prepare and submit to EPA and LDEQ (for the Geismar Sulfuric Acid Plant) an O & M Plan as required by Section IV.F:

<u>Period of Noncompliance</u>	<u>Penalty per violation per Day</u>
1st - 14th Day	\$150
15th - 30th Day	\$250
31st Day and each Day thereafter	\$500

66. Permitting Requirements. For each violation of any of the requirements of Section VII:

<u>Period of Noncompliance</u>	<u>Penalty per violation per Day</u>
1st - 14th Day	\$1,000

15th - 30th Day	\$1,500
31st Day and each Day thereafter	\$2,000

67. Reporting Requirements. For each violation of any of the reporting requirements of Section IX of this Consent Decree:

<u>Period of Noncompliance</u>	<u>Penalty per violation per Day</u>
1st - 14th Day	\$150
15th - 30th Day	\$250
31st Day and each Day thereafter	\$500

68. Supplemental Environmental Project. For violations of the Nitric Acid SCR SEP required under Section V, stipulated penalties shall accrue as follows:

a. If PCS Nitrogen Fertilizer, L.P. fails to satisfactorily complete the SEP in accordance with the requirements and deadlines set forth in Section V and Appendix B, PCS Nitrogen Fertilizer, L.P. shall pay stipulated penalties for each Day for which it fails to satisfactorily complete the SEP, as follows:

<u>Period of Noncompliance</u>	<u>Penalty per violation per Day</u>
1st through 30th Day	\$1,000
31st through 60th Day	\$3,500
Beyond 60th Day	\$5,000

b. For each violation of the Short-Term NOx Limit in any non-overlapping 3-hour period, PCS Nitrogen Fertilizer, L.P. shall pay stipulated penalties, as follows:

<u>Percentage Over the Limit</u>	<u>Penalty per Violation</u>
1 - 50%	\$250
51 - 100%	\$500
Over 100%	\$750

c. For each violation of the Long-Term NOx Limit, PCS Nitrogen Fertilizer,

L.P. shall pay stipulated penalties, as follows:

<u>Period of Noncompliance</u>	<u>Penalty per Day</u>
1st - 14th Day	\$1,000
15th - 30th Day	\$1,500
31st Day and each Day thereafter	\$2,000

69. All Others. For each failure to comply with any requirement of this

Consent Decree not specifically referenced:

<u>Period of Noncompliance</u>	<u>Penalty per violation per Day</u>
1st - 14th Day	\$150
15th - 30th Day	\$250
31st Day and each Day thereafter	\$500

70. 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. Stipulated penalties shall accrue simultaneously for separate violations of this Consent Decree.

71. The Applicable Settling Party shall pay any stipulated penalty to the United States and LDEQ (for the Geismar Sulfuric Acid Plant and Geismar Nitric Acid Plant) within 30 Days of receiving a written demand by the United States or LDEQ. The United States and LDEQ may seek stipulated penalties under this Section. Where both the United States and LDEQ seek stipulated penalties for the same violation of the Consent Decree, the Applicable Settling Party shall pay 50 percent to the United States and 50 percent to LDEQ. The United States and LDEQ will consult with each other prior to making a demand for stipulated penalties. The Plaintiff making a demand for payment of a stipulated penalty to the Applicable Settling Party shall simultaneously send a copy of the demand to the other Plaintiff. Where only one Plaintiff

demands stipulated penalties for a violation, it shall make the demand on its own behalf, and the Applicable Settling Party shall pay the full amount of the stipulated penalties due for the violation to that Plaintiff, and the Applicable Settling Party shall not be liable for additional stipulated penalties to the other Plaintiff for that violation.

72. After consulting with each other, the United States and LDEQ may each, in the unreviewable exercise of its discretion, reduce or waive stipulated penalties otherwise due to it under this Consent Decree.

73. Stipulated penalties shall continue to accrue as provided in Paragraph 70, 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 EPA or LDEQ that is not appealed to the Court, the Applicable Settling Party shall pay accrued penalties determined to be owing, together with interest, to the United States and/or LDEQ within 30 Days of the effective date of the agreement or the receipt of EPA's 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, the Applicable Settling Party shall pay all accrued penalties determined by the Court to be owing, together with interest, within 60 Days of receiving the Court's decision or order, except as provided in subparagraph c, below.

c. If any Party appeals the District Court's decision, the Applicable Settling Party shall pay all accrued penalties determined to be owing, together with interest, within 15 Days of receiving the final appellate court decision.

74. The Applicable Settling Party shall pay all stipulated penalties due to the United States and/or LDEQ in the manner set forth in Section VI (Civil Penalty) of this Consent Decree.



75. If the Applicable Settling Party fails to pay stipulated penalties according to the terms of this Consent Decree, the Applicable Settling Party shall be liable for interest on such penalties, as provided 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 the Applicable Settling Party's failure to pay any stipulated penalties.

76. Subject to the provisions of Section XIV of this Consent Decree (Effect of Settlement/Reservation of Rights), 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 for a Settling Party's violation of this Consent Decree or applicable law. Where a violation of this Consent Decree is also a violation of the Clean Air Act or the State Implementation Plans of Florida, Louisiana, or North Carolina, the Applicable Settling Party shall be allowed a credit, for any stipulated penalties paid, against any statutory penalties imposed for such violation.

#### **XI. FORCE MAJEURE**

77. "Force Majeure," for purposes of this Consent Decree, is defined as any event arising from causes beyond the control of an Applicable Settling Party, of any entity controlled by the Applicable Settling Party, or of the Applicable Settling Party's contractors, that delays or prevents the performance of any obligation under this Consent Decree despite the Applicable Settling Party's best efforts to fulfill the obligation. The requirement that the Applicable Settling Party exercise "best efforts to fulfill the obligation" includes using best efforts to anticipate any potential Force Majeure event and best efforts to address the effects of any such event: (a) as it is occurring and (b) after it has occurred to prevent or minimize any resulting delay and to mitigate any adverse effect to the greatest extent possible. "Force

Majeure” does not include the Settling Parties’ financial inability to perform any obligation under this Consent Decree.

78. 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, the Applicable Settling Party shall provide notice orally or by electronic or facsimile transmission to EPA and LDEQ (for the Geismar Sulfuric Acid Plant or Geismar Nitric Acid Plant), within 72 hours of when any Settling Party first knew that the event might cause a delay. Within seven Days thereafter, the Settling Party shall provide in writing to EPA and LDEQ (for the Geismar Sulfuric Acid Plant or Geismar Nitric Acid Plant) 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 and to mitigate any adverse effects from the delay; a schedule for implementation of any measures to be taken to prevent or mitigate the delay or the effect of the delay and to mitigate any adverse effects from the delay; the Settling Party’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 the Settling Party, such event may cause or contribute to an endangerment to public health, welfare or the environment. Failure to comply with the above requirements shall preclude any of the Settling Parties from asserting any claim of Force Majeure for that event for the period of time of such failure to comply, and for any additional delay caused by such failure. A Settling Party shall be deemed to know of any circumstance of which the Settling Party, any entity controlled by the Settling Party, or the Settling Party’s contractors knew or should have known. A Settling Party shall include with any notice all available documentation supporting the claim that the delay was attributable to a Force Majeure.

79. If EPA, after a reasonable opportunity for review and comment by LDEQ (for the Geismar Sulfuric Acid Plant or Geismar Nitric Acid Plant), 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 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. EPA will notify the Settling Party in writing of the length of the extension, if any, for performance of the obligations affected by the Force Majeure event.

80. If EPA, after a reasonable opportunity for review and comment by LDEQ (for the Geismar Sulfuric Acid Plant or Geismar Nitric Acid Plant), does not agree that the delay or anticipated delay has been or will be caused by a Force Majeure event, EPA will notify the Settling Party in writing of its decision.

81. If a Settling Party elects to invoke the dispute resolution procedures set forth in Section XII (Dispute Resolution), it shall do so no later than 15 Days after receipt of EPA's notice. In any such proceeding, the Settling Party 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 or violation, and that the Settling Party complied with the requirements of Paragraphs 77 and 78, above. If the Settling Party carries this burden, the delay at issue shall be deemed not to be a violation by the Settling Party of the affected obligation of this Consent Decree identified to EPA and the Court.

82. Notwithstanding any other provision of this Consent Decree, this Court shall not draw any inferences nor establish any presumptions adverse to any Party as a result of a Settling Party serving a Force Majeure notice or the Parties' inability to reach agreement with respect to the claim of Force Majeure.

83. In appropriate circumstances, as part of the resolution of any matter submitted to this Court under this Section XII (Dispute Resolution), the Parties involved in the dispute may agree to, or the Court may order, an extension or modification of the schedule for completing the work under the Consent Decree to account for the delay in the work that occurred as a result of any Force Majeure Event claimed by the Settling Party that is agreed to by the United States or approved by this Court. The Settling Party shall be liable for stipulated penalties for any failure thereafter to complete the work in accordance with the extended or modified schedule.

## **XII. DISPUTE RESOLUTION**

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

85. Informal Dispute Resolution. Any dispute subject to Dispute Resolution under this Consent Decree shall first be the subject of informal negotiations. The dispute shall be considered to have arisen when a Settling Party sends the United States a written Notice of Dispute. Such Notice of Dispute shall clearly state the matter in dispute. The period of informal

negotiations shall not exceed 30 Days from the date the dispute arises, unless that period is modified by written agreement. If the Parties cannot resolve a dispute by informal negotiations, then the position advanced by the United States shall be considered binding unless, within 30 Days after the conclusion of the informal negotiation period, the Settling Party invokes formal dispute resolution procedures as set forth below.

86. Formal Dispute Resolution. A Settling Party shall invoke formal dispute resolution procedures, within the time period provided in the preceding Paragraph, by serving on the United States and LDEQ (for the Geismar Sulfuric Acid Plant or Geismar Nitric Acid Plant) 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 the Settling Party's position and any supporting documentation relied upon by the Settling Party.

87. The United States shall serve its Statement of Position within 45 Days of receipt of the Settling Party's Statement of Position. The United States' Statement of Position shall include, 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. The United States' Statement of Position shall be binding on the Settling Party, unless the Settling Party files a motion for judicial review of the dispute in accordance with the following Paragraph.

88. The Settling Party may seek judicial review of the dispute by filing with the Court and serving on the United States, in accordance with Section XVI of this Consent Decree (Notices), a motion requesting judicial resolution of the dispute. The motion must be filed within 10 Days of receipt of the United States' Statement of Position pursuant to the preceding Paragraph. The motion shall contain a written statement of the Settling Party'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.

89. The United States shall respond to the Settling Party's motion within the time period allowed by the Local Rules of this Court. The Settling Party may file a reply memorandum, to the extent permitted by the Local Rules.

90. Standard of Review. Except as otherwise provided in this Consent Decree, in any dispute brought under this Section, the Settling Party shall bear the burden of demonstrating that its position complies with this Consent Decree and the Clean Air Act. The Court shall decide the dispute based upon applicable principles of law. The United States reserves the right to argue that its position is reviewable only on the administrative record and must be upheld unless arbitrary and capricious or otherwise not in accordance with the law.

91. The invocation of dispute resolution procedures under this Section shall not, by itself, extend, postpone, or affect in any way any obligation of the Settling Parties under this Consent Decree, unless and until final resolution of the dispute so provides. 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 73. If the Settling Party does not prevail on the disputed issue, stipulated penalties shall be assessed and paid as provided in Section X (Stipulated Penalties).

### **XIII. INFORMATION COLLECTION AND RETENTION**

92. The United States, LDEQ (for the Geismar Sulfuric Acid Plant and Geismar Nitric Acid Plant), and their representatives, including attorneys, contractors, and consultants, shall have the right of entry into the Covered Sulfuric Acid Plants and the Geismar Nitric Acid Plant, at all reasonable times, upon presentation of credentials, 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 a Settling Party or its representatives, contractors, or consultants;
- d. obtain documentary evidence, including photographs and similar data; and
- e. assess the Settling Parties' compliance with this Consent Decree.

93. Notwithstanding Section XX (Termination), until five years after the termination of this Consent Decree, each Settling Party shall retain, and shall instruct their contractors and agents to preserve, all non-identical copies of all documents, records, or other information (including documents, records, 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 in any manner to the Settling Parties' performance of their obligations under this Consent Decree. 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, the Settling Parties shall provide copies of any documents, records, or other information required to be maintained under this Paragraph.

94. At the conclusion of the information-retention period provided in the preceding Paragraph, each Settling Party shall notify the United States and LDEQ (for the Geismar Sulfuric Acid Plant and Geismar Nitric Acid Plant) at least 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, a Settling Party shall deliver any such documents, records, or other information to EPA or LDEQ.

95. A Settling Party may assert that certain documents, records, or other information required to be provided to the United States or LDEQ pursuant to this Section XIII is privileged under the attorney-client privilege or any other privilege recognized by federal law. If a Settling Party asserts such 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 the Settling Party. However, no documents, records, or other information created or generated pursuant to the requirements of this Consent Decree shall be withheld on grounds of privilege.

96. A Settling Party 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 a Settling Party seeks to protect as CBI, the Settling Party shall follow the procedures set forth in 40 C.F.R. Part 2.

97. 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 the Settling Parties to maintain documents, records, or other information imposed by applicable federal or State laws, regulations, or permits.



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

98. This Consent Decree resolves the civil claims of the United States and LDEQ for the violations alleged in the Complaint filed in this action through the date the Consent Decree is lodged with the Court. This Consent Decree also resolves the civil claims of: a) the United States and LDEQ for the violations at the Geismar Sulfuric Acid Plant as alleged in the June 26, 2008 NOV and June 20, 2011 amended NOV issued to AA Sulfuric, Inc. and PCS Nitrogen Fertilizer, L.P., and b) the United States for the violations at the White Springs Sulfuric Acid Plants alleged in the May 7, 2012 NOV issued to White Springs Agricultural Chemical, Inc.. These NOVs are attached in Appendix E.

99. Entry of this Consent Decree also resolves the civil liability of the Settling Parties to the United States and LDEQ with respect to emissions of SO<sub>2</sub> and sulfuric acid mist for the following claims arising from any construction or modification commenced at the Covered Sulfuric Acid Plants prior to the lodging of this Consent Decree:

- a. Claims based on Part C of Subchapter I of the Clean Air Act, 42 U.S.C. §§ 7470-7479, and the regulations promulgated at 40 C.F.R. § 52.21;
- b. Claims based on Section 111(e) of the Clean Air Act, 42 U.S.C. § 7411(e) and the regulations promulgated thereunder at Subparts A and H of 40 C.F.R. Part 60;
- c. Claims based on Sections 502(a) and 504(a) of Title V of the Clean Air Act, 42 U.S.C. §§ 7661a(a) and 7661c(a), but only to the extent that such claims are based on the Settling Parties' failure to obtain a permit that reflects applicable requirements imposed under Part C of Subchapter I; and
- d. Claims based on the following provisions of the federally approved and enforceable SIPs for:

- i. The State of Florida: Florida Administrative Code (FAC) Sections 62-204.800(8)(b)(12), 62-210.300(1)(a) and (b) and 62-210.300(2), 62-210.350(1); 62-212.300 and 62-212.400; and , 62-213.205, , 62-213.400, 62-213.420 and;
- ii. The State of Louisiana: LAC 33:III.501.C, LAC 33:III.507.B and 507.D.2.b-c, LAC 33:III.509, LAC 33:III.517, and, insofar as it incorporates by reference NSPS Subparts A and H as Louisiana regulations, LAC 33:III.3003; and
- iii. The State of North Carolina: Title 15A NCAC 2D.0524(a) and .0530, 15A NCAC 2Q.0203-0206, and 15A NCAC 2Q.0501(c)-(f), .0507(a)-(b) and (f), and .0508.

Claims based on the Part 70 operating permit requirements or the consolidated pre-construction and operating permit requirements of these three SIPs are resolved only to the extent that such claims are based on the Settling Parties' failure to obtain a permit that reflects applicable requirements imposed under the SIPs' Prevention of Significant Deterioration provisions.

100. Entry of this Consent Decree also resolves all civil penalty liability of PCS Nitrogen Fertilizer, L.P to LDEQ for the violations identified in the Consolidated Compliance Order & Notice of Potential Penalty, Enforcement Tracking No. AE-CN-10-00695 issued to PCS Nitrogen Fertilizer, L.P. on March 5, 2012, as it was administratively amended on March 1, 2013 (Enforcement Tracking No. AE-CN-10-00695A) and again on June 19, 2013 (Enforcement Tracking No. AE-CN-10-00695B). Entry of this Consent Decree furthermore resolves all civil liability of PCS Nitrogen Fertilizer, L.P and AA Sulfuric, Inc. to LDEQ for violations of LAC

33:III.207, LAC 33:III.209, LAC 33:III.211, LAC 33:III.217, and LAC 33:III.219 arising from the claims resolved in Paragraphs 99(a)-(d).

101. The United States and LDEQ reserve all legal and equitable remedies available to enforce the provisions of this Consent Decree. 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 CAA or implementing regulations, or under other federal or State laws, regulations, or permit conditions, except as expressly specified in Paragraphs 98 - 100. The United States and LDEQ further reserve 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, any of the Covered Sulfuric Acid Plants, whether related to the violations addressed in this Consent Decree or otherwise.

102. In any subsequent administrative or judicial proceeding initiated by the United States or LDEQ for injunctive relief, civil penalties, other appropriate relief relating to a Covered Sulfuric Acid Plant or the Settling Parties' violations, the Settling Parties shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, res judicata, collateral estoppel, issue preclusion, claim preclusion, claim-splitting, or other defenses based upon any contention that the claims raised by the United States or LDEQ in the subsequent proceeding were or should have been brought in the instant case, except with respect to claims that have been specifically resolved pursuant to Paragraphs 98 - 100 of this Section.

103. This Consent Decree is not a permit, or a modification of any permit, under any federal, State, or local laws or regulations. The Settling Parties are responsible for achieving and maintaining compliance with all applicable federal, State, and local laws, regulations, and permits; and the Settling Parties' compliance with this Consent Decree shall be

no defense to any action commenced pursuant to any such laws, regulations, or permits, except as set forth herein. The United States and LDEQ do not, by their consent to the entry of this Consent Decree, warrant or aver in any manner that the Settling Parties' compliance with any aspect of this Consent Decree will result in compliance with provisions of the Clean Air Act, or with any other provisions of federal, State, or local laws, regulations, or permits.

104. This Consent Decree does not limit or affect the rights of the Settling Parties or of the United States or LDEQ against any third parties that are not party to this Consent Decree, nor does it limit the rights of third parties that are not party to this Consent Decree, against the Settling Parties, except as otherwise provided by law.

105. This Consent Decree shall not be construed to create rights in, or grant any cause of action to, any third party that is not a party to this Consent Decree.

#### **XV. COSTS**

106. 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 the costs (including attorneys' fees) incurred in any action necessary to collect any portion of the civil penalty or any stipulated penalties due but not paid by the Settling Parties.

#### **XVI. NOTICES**

107. Unless otherwise specified herein, whenever notifications, submissions, or communications are required by this Consent Decree, they shall be made in writing and addressed as follows:

As to the United States:

Chief, Environmental Enforcement Section  
Environment and Natural Resources Division  
U.S. Department of Justice  
Box 7611 Ben Franklin Station  
Washington, DC 20044-7611  
Re: DOJ No. 90-7-1-08209/1

As to EPA:

Air Enforcement Division Director  
U.S. Environmental Protection Agency  
Office of Civil Enforcement  
1200 Pennsylvania Ave, NW  
Mail Code: 2242A  
Washington, DC 20460

and

Sarah Marshall  
U.S. Environmental Protection Agency  
Region 5  
AE-17J  
77 West Jackson Blvd.  
Chicago, IL 60604  
Marshall.Sarah@epa.gov

As to EPA Region 6:

Associate Director  
Air Toxics Inspection and Coordination Branch  
U.S. Environmental Protection Agency  
Region 6  
1445 Ross Avenue, Suite 1200  
Mailcode 6EN-A  
Dallas, TX 75202

As to EPA Region 4:

Beverly Banister  
Division Director  
Air, Pesticides and Toxics Management Division  
61 Forsyth Street  
Atlanta, Georgia 30303

Todd Groendyke  
South Air Enforcement Section  
Air, Pesticides, and Toxics Management Division  
61 Forsyth Street  
Atlanta, Georgia 30303

and

Rosalyn Hughes  
South Air Enforcement Section  
Air, Pesticides, and Toxics Management Division  
61 Forsyth Street  
Atlanta, Georgia 30303

As to LDEQ:

Celena J. Cage  
Administrator, Enforcement Division  
Office of Environmental Compliance  
Louisiana Department of Environmental Quality  
P. O. Box 4312  
Baton Rouge, Louisiana 70821-4312

and

Perry Theriot, Attorney Supervisor Office of the Secretary, Legal Division  
Louisiana Department of Environmental Quality  
P. O. Box 4302  
Baton Rouge, Louisiana 70821-4302

As to the Settling Parties:

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

White Springs Agricultural Chemicals, Inc.  
P. O. Box 300  
White Springs, FL 32096  
Telephone: (386) 397-8101  
Attention: General Manager

PCS Phosphate Company, Inc.  
1530 NC Hwy 306 South  
Aurora, NC 27806  
Telephone: (252) 322-4111  
Facsimile: (252) 322-8061  
Attention: General Manager

and

Charles T. Wehland  
Jones Day  
77 West Wacker Drive, Suite 3500  
Chicago, Illinois 60601-1692  
Telephone: (312) 782-3939  
Facsimile: (312) 782-8585

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

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

#### **XVII. EFFECTIVE DATE**

110. The Effective Date of this Consent Decree shall be the date upon which this Consent Decree is entered by the Court; provided, however, that the Settling Parties hereby

agree that they shall be bound to perform duties scheduled to occur prior to the Effective Date as set forth herein. In the event the United States withdraws or withholds consent to this Consent Decree before entry, or the Court declines to enter the Consent Decree, then the preceding requirement to perform duties scheduled to occur before the Effective Date shall terminate.

### **XVIII. RETENTION OF JURISDICTION**

111. The Court shall retain jurisdiction over this case until termination of this Consent Decree, for the purpose of: (i) resolving disputes arising under this Decree pursuant to Section XII (Dispute Resolution), (ii) entering orders modifying this Decree pursuant to Section XIX (Modification), or (iii) effectuating or enforcing compliance with the terms of this Decree.

### **XIX. MODIFICATION**

112. Except as provided in Paragraph 108, the terms of this Consent Decree, including any attached appendices, may be modified only by a subsequent written agreement signed by all the Parties. Where the modification constitutes a material change to this Decree, it shall be effective only upon approval by the Court.

113. Any disputes concerning modification of this Consent Decree shall be resolved pursuant to Section XII of this Decree (Dispute Resolution), provided, however, that, instead of the burden of proof provided by Paragraph 90, the Party seeking the modification bears the burden of demonstrating that it is entitled to the requested modification in accordance with Federal Rule of Civil Procedure 60(b).

### **XX. TERMINATION**

114. Except for the surviving requirements of Paragraphs 9.d.ii and 48, permitting requirements of Paragraph 41, and information retention requirements of Paragraph 93, after an Applicable Settling Party has completed the requirements of Section IV (Compliance



Requirements) for all sulfuric acid production units subject to the Decree at its Covered Sulfuric Acid Plant and Section V (Supplemental Environmental Project) of this Decree, has thereafter maintained continuous satisfactory compliance with this Consent Decree and the applicable Title V Permit for all sulfuric acid production units subject to the Decree at its Covered Sulfuric Acid Plant for a period of one year, has complied with all other requirements of this Consent Decree, including the permitting requirements of Section VII, and has paid the civil penalty and any accrued stipulated penalties as required by this Consent Decree, the Applicable Settling Party may serve upon the United States and LDEQ (for the Geismar Sulfuric Acid Plant and Geismar Nitric Acid Plant) a Request for Termination with respect to all sulfuric acid production units at the Covered Sulfuric Acid Plant owned and operated by the Applicable Settling Party, stating that the Applicable Settling Party has satisfied those requirements, together with all necessary supporting documentation.

115. Following receipt by the United States and LDEQ (for the Geismar Sulfuric Acid Plant and Geismar Nitric Acid Plant) of a Settling Party's Request for Termination, the Parties shall confer informally concerning the request and any disagreement that the Parties may have as to whether the Settling Party has satisfactorily complied with the requirements for termination of this Consent Decree with respect to the Covered Sulfuric Acid Plant owned and operated by the Settling Party. If the United States after consultation with LDEQ (for the Geismar Sulfuric Acid Plant and Geismar Nitric Acid Plant) agrees that the Decree may be terminated, the Parties shall submit, for the Court's approval, a joint stipulation terminating the Decree with respect to the Covered Sulfuric Acid Plant owned and operated by the Settling Party.

116. If the United States after consultation with LDEQ (for the Geismar Sulfuric Acid Plant and Geismar Nitric Acid Plant) does not agree that the Decree may be terminated, a Settling Party may invoke Dispute Resolution under Section XII of this Decree. However, the Settling Party shall not seek Dispute Resolution of any dispute regarding termination until 90 Days after service of its Request for Termination.

## **XXI. PUBLIC PARTICIPATION**

117. This Consent Decree shall be lodged with the Court for a period of not less than 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. The Settling Parties consent to entry of this Consent Decree without further notice and agree not to withdraw from or oppose entry of this Consent Decree by the Court or to challenge any provision of the Consent Decree, unless the United States has notified the Settling Parties and LDEQ in writing that it no longer supports entry of the Decree.

118. The Parties agree and acknowledge that final approval by LDEQ and entry of this Consent Decree are subject to the requirements of La. R.S. 30:2050.7, which provides for: (a) public notice of this Consent Decree in the newspaper of general circulation and the official journal of the parish in which the Geismar Sulfuric Acid Plant is located, (b) an opportunity for public comment and consideration of any comments received, and (c) 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.

## **XXII. SIGNATORIES/SERVICE**

119. Each undersigned representative of the Settling Parties, LDEQ, and the Acting Assistant Attorney General for the Environment and Natural Resources Division of the Department of Justice 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.

120. This Consent Decree may be signed in counterparts, and its validity shall not be challenged on that basis. The Settling Parties agree 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.

## **XXIII. INTEGRATION**

121. This Consent Decree constitutes the final, complete, and exclusive agreement and understanding among the Parties with respect to the settlement embodied in the Consent Decree and supersedes all prior agreements and understandings, whether oral or written, concerning the settlement embodied herein. Other than deliverables that are subsequently submitted and approved pursuant to this Consent Decree, no other document, nor any representation, inducement, agreement, understanding, or promise, constitutes any part of this Consent Decree or the settlement it represents, nor shall it be used in construing the terms of this Consent Decree.

## **XXIV. APPENDICES**

122. The following appendices are attached to and incorporated as part of this Consent Decree:

“Appendix A (A-1 – A-3)” contains the CEMS Plans for SO<sub>2</sub> Emissions at the Covered Sulfuric Acid Plants,

“Appendix B” is the Nitric Acid SCR SEP,

“Appendix C” is the CEMS Plan for NO<sub>x</sub> Emissions, and

“Appendix D” are the Consolidated Compliance Order & Notice of Potential Penalty, Enforcement Tracking No. AE-CN-10-00695 issued to PCS Nitrogen Fertilizer, L.P. on March 5, 2012, Amended Consolidated Compliance Order & Notice of Potential Penalty, Enforcement Tracking No. AE-CN-10-00695A issued to PCS Nitrogen Fertilizer, L.P. on March 1, 2013; and Amended Consolidated Compliance Order & Notice of Potential Penalty, Enforcement Tracking No. AE-CN-10-00695B issued to PCS Nitrogen Fertilizer, L.P. on June 19, 2013; and

“Appendix E” is the set of NOVs resolved by the Consent Decree.

#### **XXV. FINAL JUDGMENT**

123. 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 the Settling Parties. The Court finds no just reason for delay and therefore enters this judgment as a final judgment pursuant to Fed. R. Civ. P. 58.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2014.

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UNITED STATES DISTRICT JUDGE  
MIDDLE DISTRICT OF LOUISIANA

Subject to the notice and comment provisions of 28 C.F.R. § 50.7, THE UNDERSIGNED PARTIES enter into this Consent Decree entered in the matter of the *United States et al. v. PCS Nitrogen Fertilizer, L.P. et al.* (M.D. La.).

**FOR THE UNITED STATES OF AMERICA**

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SAM HIRSCH  
Acting Assistant Attorney General  
Environment and Natural Resources Division  
U.S. Department of Justice

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STEVEN D. SHERMER  
Senior Attorney  
DAVID MCILWAIN  
Trial Attorney  
Environmental Enforcement Section  
Environment and Natural Resources Division  
United States Department of Justice  
P.O. Box 7611  
Washington, D.C. 20044-7611  
(202) 514-1134  
Steven.Shermer@usdoj.gov

J. WALTER GREEN  
United States Attorney  
Middle District of Louisiana

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/s/ Susan C. Amundson  
Susan C. Amundson, LBN 22710  
Assistant United States Attorney  
777 Florida Street, Suite 208  
Baton Rouge, Louisiana 70801  
Telephone: (225) 389-0443  
Fax: (225) 389-0561  
E-mail: [susan.amundson@usdoj.gov](mailto:susan.amundson@usdoj.gov)

Subject to the notice and comment provisions of 28 C.F.R. § 50.7, THE UNDERSIGNED PARTIES enter into this Consent Decree entered in the matter of the *United States et al. v. PCS Nitrogen Fertilizer, L.P. et al.* (M.D. La.).

**FOR THE UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY**

---

CYNTHIA GILES  
Assistant Administrator  
Office of Enforcement and Compliance Assurance  
U.S. Environmental Protection Agency  
1200 Pennsylvania Avenue  
Washington, D.C. 20460

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SUSAN SHINKMAN  
Director, Office of Civil Enforcement  
U.S. Environmental Protection Agency  
1200 Pennsylvania Ave., N.W.  
Washington, D.C. 20460

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PHILLIP A. BROOKS  
Director, Air Enforcement Division  
Office of Civil Enforcement  
U.S. Environmental Protection Agency  
1200 Pennsylvania Ave., N.W.  
Washington, D.C. 20460

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MELANIE SHEPHERDSON  
Attorney-Advisor  
U.S. Environmental Protection Agency  
1200 Pennsylvania Ave., N.W.  
Washington, D.C. 20460

Subject to the notice and comment provisions of 28 C.F.R. § 50.7, THE UNDERSIGNED PARTIES enter into this Consent Decree entered in the matter of the *United States et al. v. PCS Nitrogen Fertilizer, L.P. et al.* (M.D. La.).

**FOR THE UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY,  
REGION 4**

---

HEATHER MCTEER TONEY  
Regional Administrator  
U.S. Environmental Protection Agency, Region 4  
61 Forsyth Street  
Atlanta, Georgia 30303

---

MARLENE J. TUCKER  
Associate Regional Counsel  
U.S. Environmental Protection Agency, Region 4  
Office of Environmental Accountability  
61 Forsyth Street  
Atlanta, Georgia 30303

Subject to the notice and comment provisions of 28 C.F.R. § 50.7, THE UNDERSIGNED PARTIES enter into this Consent Decree entered in the matter of the *United States et al. v. PCS Nitrogen Fertilizer, L.P. et al.* (M.D. La.).

**FOR THE UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY,  
REGION 6**

---

RON CURRY  
Regional Administrator  
U.S. Environmental Protection Agency, Region 6  
1445 Ross Ave.  
Dallas, TX 75202-2733

---

CARLOS ZEQUEIRA-BRINSFIELD  
Senior Assistant Regional Counsel  
U.S. Environmental Protection Agency  
1445 Ross Avenue (6RC)  
Dallas, Texas 75202-2733



Subject to the notice and comment provisions of La. R.S. 30 § 2050.7 and 28 C.F.R. § 50.7, THE UNDERSIGNED PARTIES enter into this Consent Decree entered in the matter of the *United States et al. v. PCS Nitrogen Fertilizer, L.P. et al.* (M.D. La.).

**FOR THE LOUISIANA DEPARTMENT OF ENVIRONMENTAL QUALITY**

---

CHERYL SONNIER NOLAN  
Assistant Secretary  
Office of Environmental Compliance  
Louisiana Department of Environmental Quality  
P.O. Box 4312  
Baton Rouge, Louisiana 70821-4312

---

JAY GLORIOSO, Trial Attorney  
(La. Bar #28050)  
TED BROYLES, Trial Attorney  
(La. Bar # 20456)  
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Jay.Glorioso@la.gov  
Ted.Broyles@la.gov

THE UNDERSIGNED PARTIES enter into this Consent Decree entered in the matter of the *United States et al. v. PCS Nitrogen Fertilizer, L.P. et al.* (M.D. La.).

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

---

RAEF SULLY  
President, PCS Nitrogen Fertilizer Operations, Inc.,  
(On behalf of and as General Partner of PCS  
Nitrogen Fertilizer, L.P.)

THE UNDERSIGNED PARTIES enter into this Consent Decree entered in the matter of the *United States et al. v. PCS Nitrogen Fertilizer, L.P. et al.* (M.D. La.).

FOR AA SULFURIC, INC.

---

RAEF SULLY  
President, AA Sulfuric, Inc.

THE UNDERSIGNED PARTIES enter into this Consent Decree entered in the matter of the *United States et al. v. PCS Nitrogen Fertilizer, L.P. et al.* (M.D. La.).

FOR WHITE SPRINGS AGRICULTURAL  
CHEMICALS, INC.

---

PAUL DeKOK  
President  
White Springs Agricultural Chemicals, Inc.

THE UNDERSIGNED PARTIES enter into this Consent Decree entered in the matter of the *United States et al. v. PCS Nitrogen Fertilizer, L.P. et al.* (M.D. La.).

FOR PCS PHOSPHATE COMPANY, INC.

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PAUL DeKOK  
President, PCS Phosphate Company, Inc.

## **APPENDIX A**

Appendix A consists of Appendix A-1 for the Aurora Sulfuric Acid Plants, Appendix A-2 for the Geismar Sulfuric Acid Plant, and Appendix A-3 for the White Springs Sulfuric Acid Plants. Any references to Appendix A in the Consent Decree shall be read, as appropriate, to refer to all three sub-appendices collectively or to refer to the part or the appendix that is specific to a particular Covered Sulfuric Acid Plant.

## APPENDIX A-1

### **CEMS Plan for SO<sub>2</sub> Emissions PCS Phosphate Company, Inc., Aurora, NC Sulfur Burning Sulfuric Acid Plants**

#### **Principle**

This CEMS Plan is the mechanism for determining compliance with the SO<sub>2</sub> emission limits in Section IV.A of the Consent Decree for the Aurora Sulfuric Acid Plants. The methodology described in this CEMS Plan will provide a continuous real-time indication of compliance with the emission limits established in the Consent Decree for the Aurora Sulfuric Acid Plants by determining the emission rate in terms of pounds of SO<sub>2</sub> emitted per ton of 100% Sulfuric Acid Produced ("lb/ton"). The system will utilize the following analyzers: one to measure stack SO<sub>2</sub> concentration, one to measure stack oxygen ("O<sub>2</sub>") concentration, and one to measure the 100% Sulfuric Acid Production Rate. From these data, the SO<sub>2</sub> emission rate, expressed as lb/ton, will be directly calculated using Equations 1 and 2 below.

Equation 1:

$$E_{\frac{lb}{ton}} = \frac{C_S \cdot S}{(0.264 - 0.0126 \cdot \%O_2 - 7.61 \cdot C_S)}$$

Equation 2:

$$M_{SO_2 Stack} = E_{\frac{lb}{ton}} \cdot P_{H_2SO_4}$$

Where:

$P_{H_2SO_4}$  = 100% Sulfuric Acid Production, tons per unit of time

$M_{SO_2 Stack}$  = Mass SO<sub>2</sub> stack emission rate, lb per unit of time

$\%O_2$  = Stack O<sub>2</sub> concentration, percent by volume dry basis

$C_S$  = Stack SO<sub>2</sub> concentration, lb/DSCF (to convert parts per million by volume, dry basis (ppmvd) to lb/DSCF, multiply by 1.661×10<sup>-7</sup>)

$E_{\frac{lb}{ton}}$  = lb SO<sub>2</sub> per ton 100% Sulfuric Acid Produced

$S$  = the acid production rate factor, 11,800 DSCF/Ton of 100% Sulfuric Acid Produced;

#### **Definitions**

Terms used in this CEMS Plan that are defined in the Clean Air Act ("CAA") or in federal or State regulations promulgated pursuant to the CAA shall have the meaning assigned to them in the CAA or such regulations, unless otherwise defined in the Consent Decree. The terms used in this CEMS Plan that are defined in the Consent Decree shall have the meaning assigned to them therein.

## Emissions Monitoring

Emissions monitoring will be done using an O<sub>2</sub> analyzer at the exit stack and an SO<sub>2</sub> analyzer at the exit stack. Except for any analyzer downtime, associated repairs, and required quality assurance or control activities (including calibration checks and required zero and span adjustments) and any other period specified in Paragraph 15 of the Consent Decree PCS Phosphate Company, Inc. (PCS Phosphate) will conduct monitoring at each Aurora Sulfuric Acid Plant during all Operating Periods.

- At least once every 15 minutes, the analyzers will measure the stack SO<sub>2</sub> concentration (lb/DSCF or ppmvd) and the stack O<sub>2</sub> concentration (percent by volume).
- During routine calibration checks and adjustments of any analyzer, the pre-calibration level will be used to fill in any analyzer data gaps that occur pending completion of the calibration checks and adjustments.
- If any one or more than one analyzer is/are not operating, a like-kind replacement (*i.e.* a redundant analyzer) may be used as a substitute.
- If any one or more than one analyzer is/are not operating for a period of 24 hours or greater and no redundant analyzer is available, data gaps in the array involving the non-operational analyzer(s) will be filled in as follows:
  - Exit stack gas will be sampled and analyzed for SO<sub>2</sub> at least once every three hours, while the relevant Aurora Sulfuric Acid Plant is operating. Sampling will be conducted by Reich test or other established method (*e.g.*, portable analyzer). The most recent 3-hour average reading will be substituted for the four 15-minute average measurements that would otherwise be utilized if the analyzer were operating normally.
  - O<sub>2</sub> in the exit stack gas will be sampled and analyzed at least once every three hours, while the relevant Aurora Sulfuric Acid Plant is operating. Sampling will be conducted by Orsat test or other method (*e.g.*, portable analyzer). The most recent 3-hour average reading will be substituted for the four 15-minute average measurements that would otherwise be utilized if the analyzer were operating normally.
- If any one or more than one analyzer is/are not operating for a period of less than 24 hours, PCS Phosphate will either: (i) follow the requirements set forth for a 24-hour or greater period of downtime to fill in the data gaps; or (ii) use the data recorded for the 3-hour average immediately preceding the affected analyzer's(s') stoppage to fill in the data gap.

## Emissions Calculations

### 1-Hour Average

At the top of each hour, the CEMS will maintain an array of the 15-minute average measurements of each of the monitored parameters collected for that hour (or partial hour, in the case of a Shutdown) and perform the calculation specified in Equation 3.

Equation 3:

$$E_{1hravg} = \frac{\bar{C}_s \cdot S}{(0.264 - 0.0126 \cdot \%O_2 - 7.61 \cdot \bar{C}_s)}$$



Where:

- $\overline{\%O_2}$  = Stack O<sub>2</sub> concentration, percent by volume dry basis, arithmetic average of hourly measurements
- $\overline{CS}$  = Stack SO<sub>2</sub> concentration, lb/DSCF, arithmetic average of hourly measurements
- $S$  = the acid production rate factor, 11,800 DSCF/Ton of 100% Sulfuric Acid Produced;
- $E_{1hravg}$  = 1-hour average lb SO<sub>2</sub> per ton 100% Sulfuric Acid Produced

### 3-Hour Rolling Average

At the top of each hour, the CEMS will calculate the 3-hour rolling average SO<sub>2</sub> emission rate ( $E_{3hravg}$ ) by maintaining an array of the three most recently calculated values of  $E_{1hravg}$  and performing the calculation specified in Equation 4.

#### Equation 4

$$E_{3hravg} = \frac{\sum_i^3 E_{1hravg\ i}}{3}$$

$E_{1hravg\ i}$  = 1-hour average lb SO<sub>2</sub> per ton 100% Sulfuric Acid Produced for hour  $i$

$E_{3hravg}$  = 3-hour rolling average lb SO<sub>2</sub> per ton 100% Sulfuric Acid Produced

### Daily Mass SO<sub>2</sub> Emissions

The daily mass SO<sub>2</sub> emissions ( $M_{SO_2Day}$ ) (which are based on a calendar day) will be calculated for each Aurora Sulfuric Acid Plant using the hourly values of  $E_{1hravg}$ , the measured 100% Sulfuric Acid Production rate, and Equation 5.

#### Equation 5:

$$M_{SO_2Day} = \sum_i^n (E_{1hravg\ i} \cdot P_{H_2SO_4Hour\ i})$$

Where:

- $E_{1hravg\ i}$  = 1-hour average lb SO<sub>2</sub> per ton 100% Sulfuric Acid Produced during hour  $i$
- $P_{H_2SO_4Hour\ i}$  = 100% Sulfuric Acid Produced during hour  $i$ , tons
- $M_{SO_2Day}$  = Mass emissions of SO<sub>2</sub> during a calendar day, lb
- $n$  = Number of operating hours in the day

### 365-Day Rolling Average

For the purposes of calculating a 365-day rolling average lb/ton SO<sub>2</sub> emission rate, the system will maintain an array of  $M_{SO_2Day}$  and  $P_{TonsH_2O_4}$  each day for 365 days. Every day, the system will add the values from that day to the array and exclude the readings from the oldest day.

The 365-day rolling average lb/ton SO<sub>2</sub> emission rate ( $E_{365-Day\ Avg}$ ) will be calculated for each Aurora Sulfuric Acid Plant using Equation 6:

Equation 6:

$$E_{365\text{-Day Avg}} = \frac{\sum_i^n M_{SO_2\text{Day } i}}{\sum_i^n P_{H_2SO_4\text{Day } i}}$$

Where:

$M_{SO_2\text{Day } i}$  = Mass emissions of SO<sub>2</sub> during a calendar day *i*, lb  
 $P_{H_2SO_4\text{Day } i}$  = 100% Sulfuric Acid Produced during day *i*, tons  
 $E_{365\text{-Day Avg}}$  = 365-day rolling average lb SO<sub>2</sub> per ton 100% Sulfuric Acid Produced

### **Rounding of Numbers Resulting from Calculations**

Upon completion of the calculations, the final numbers will be rounded as follows:

$E_{3hravg}$ : Rounded to the nearest tenth  
 $E_{365\text{-Day Avg}}$ : Rounded to the nearest hundredth

The number "5" shall be rounded up (e.g., a short-term rate of 2.05011 shall be rounded to 2.1).

### **Rounding of Variables: $CS$ , %O<sub>2</sub>, and $P_{H_2SO_4}$**

Rounding of the variables identified as  $CS$ , %O<sub>2</sub>, and  $P_{H_2SO_4}$  in the equations set forth in this CEMS Plan shall be done based on the accuracy of the measuring device as provided by the manufacturer of the device.

### **Compliance with Consent Decree SO<sub>2</sub> Limits**

Nothing in this CEMS Plan shall preclude the use of other credible evidence or information, as authorized under Section 113 of the Clean Air Act and 40 C.F.R. §§ 60.11(g) and 61.12, to determine whether an Aurora Sulfuric Acid Plant is, or would have been, in compliance with the SO<sub>2</sub> Emissions Limits required by Section IV.A of the Consent Decree if the appropriate performance or compliance test had been performed.

#### **Short-Term SO<sub>2</sub> Limits**

The Short-Term SO<sub>2</sub> Limits do not apply during periods of Startup, Shutdown, or Malfunction. During all other Operating Periods, PCS Phosphate will be in compliance with the Short-Term SO<sub>2</sub> Consent Decree Limit if  $E_{3hravg}$  for each Aurora Sulfuric Acid Plant does not exceed the applicable Short-Term SO<sub>2</sub> Limit listed in Table 1 in Paragraph 9 of the Consent Decree. If PCS Phosphate contends that emissions during a Malfunction(s) resulted in a calculated 3-hour rolling average emission rate(s) in excess of an applicable Short-Term SO<sub>2</sub> Limit, after the period of the Malfunction(s) end(s), PCS Phosphate will recalculate  $E_{3hravg}$  to exclude measurements recorded during the period(s) of the claimed Malfunction(s).

### NSPS SO<sub>2</sub> Limits

The NSPS SO<sub>2</sub> Limit does not apply during periods of Startup, Shutdown, or Malfunction. During all other Operating Periods, PCS Phosphate will be in compliance with the NSPS SO<sub>2</sub> Limit if  $E_{3hravg}$  does not exceed 4.0 lb of SO<sub>2</sub> per ton of 100% Sulfuric Acid Produced. If PCS Phosphate contends that emissions during a Malfunction(s) resulted in a calculated 3-hour rolling average emission rate(s) in excess of 4.0 lb/ton after the period of the Malfunction(s) end(s) PCS Phosphate will recalculate  $E_{3hravg}$  to exclude measurements recorded during the period(s) of the claimed Malfunction(s).

### Long-Term SO<sub>2</sub> Limits

The Long-Term SO<sub>2</sub> Limits include periods of Startup, Shutdown, and Malfunction. The Aurora Sulfuric Acid Plants will be in compliance with the Long-Term SO<sub>2</sub> Limits if  $E_{365-Day Avg}$  does not exceed the applicable Long-Term SO<sub>2</sub> Limit listed in Table 1 in Paragraph 9 of the Consent Decree (measured as lbs of SO<sub>2</sub> per ton of 100% Sulfuric Acid Produced).

### **Retention of All CEMS Data, including Data during Startup, Shutdown, and Malfunction**

PCS Phosphate will retain all data generated by its SO<sub>2</sub> analyzers, O<sub>2</sub> analyzers, and production rate analyzers including all data generated during Startup, Shutdown, and/or Malfunction (“SSM”) of the Aurora Sulfuric Acid Plants in accordance with Section XIII of the Consent Decree.

### **Analyzer Specifications**

The analyzers will meet the following specifications:

**Table 1**

<b>Parameter</b>	<b>Location</b>	<b>Range</b>
SO <sub>2</sub> , parts per million, dry basis (to convert to lb/DSCF, multiply by $1.661 \times 10^{-7}$ )	Stack	Dual range: Normal: 0 – 1,000 ppm SO <sub>2</sub> SSM: 0 – 10,000 ppm SO <sub>2</sub>
O <sub>2</sub> , percent, dry basis	Stack	Single range: 0 – 20.9 % O <sub>2</sub>

Each SO<sub>2</sub> and O<sub>2</sub> CEMS will meet all applicable requirements of 40 C.F.R. §§ 60.11, 60.13, Performance Specifications 2, 3, and 6 in 40 C.F.R. Part 60, Appendix B, and the Quality Assurance and Quality Control Procedures in 40 C.F.R. Part 60, Appendix F, Procedure 1.

### **RATA Requirements**

After the Effective Date, pursuant to 40 C.F.R. Part 60, Appendix F, Procedure 1, 5.1.1, PCS Phosphate shall conduct a Relative Accuracy Test Audit (RATA) at least once every four calendar quarters at each Aurora Sulfuric Acid Plant.

RATAs will be performed to determine the relative accuracy of the equipment, methods, and procedures required by this CEMS Plan. In addition to all other applicable procedures required by 40 C.F.R. Part 60, Appendix F, Procedure 1, 5.1.1, RATA testing will compare the concentrations of SO<sub>2</sub> and O<sub>2</sub>, as measured by the CEMS installed or operated as part of the Consent Decree, with the concentrations of SO<sub>2</sub> and O<sub>2</sub> measured during the RATA testing. In addition, RATA testing will compare the pounds of SO<sub>2</sub> emissions/ton of 100% Sulfuric Acid Produced, as calculated by Equation 1, with the pounds of SO<sub>2</sub> emissions/ton of 100% Sulfuric Acid Produced calculated during the RATA testing pursuant to 40 C.F.R. § 60.85.

Beginning with the initial RATA under this CEMS Plan, and thereafter for every triennial RATA (*i.e.*, year 1, 4, 7, etc.), PCS Phosphate will utilize the reference methods and procedures specified in 40 C.F.R. § 60.85(b) to generate the Reference Method (RM) values for calculating the relative accuracy. In intervening years (*i.e.*, year 2, 3, 5, 6, etc.) PCS Phosphate may use the alternative method at 40 C.F.R. § 60.85(c) to calculate the RM values.

For each RATA performed, stack flow shall be measured using Method 2, 2F, 2G, or 2H, or a combination thereof.

If a CEMS or the measurement of pounds of SO<sub>2</sub> emissions/ton of 100% Sulfuric Acid Produced (as calculated by Equation 1) is deemed to be “out of control” pursuant to 40 C.F.R. Part 60, Appendix F, Procedure 1, § 5.2, PCS Phosphate shall take all necessary corrective actions required by that procedure, including performing a follow-up (“verification”) RATA meeting the requirements of this CEMS Plan. All necessary corrective actions and the verification RATA shall be completed within 30 days after the initial RATA testing. If the verification RATA determines that a CEMS or the measurement of pounds of SO<sub>2</sub> emissions/ton of 100% Sulfuric Acid Produced (as calculated by Equation 1) remains out of control, PCS Phosphate shall take all necessary corrective actions to eliminate the problem, including, but not limited to, submitting, for EPA review and approval, a revised SO<sub>2</sub> CEMS Plan that considers: a) installation of direct stack flow meters and b) a monitoring methodology that accurately measures emissions of SO<sub>2</sub>/ton of 100% Sulfuric Acid Produced, but is not based on the S-Factor.

If the verification RATA determines that a CEMS or the measurement of pounds of SO<sub>2</sub> emissions/ton of 100% Sulfuric Acid Produced (as calculated by Equation 1) remains out of control, PCS Phosphate shall also be subject to stipulated penalties as set forth in Section X, Paragraph 63.b of the Consent Decree.

#### **Compliance with the NSPS: 40 C.F.R. Part 60, Subpart H**

In addition to the requirements in this CEMS Plan, PCS Phosphate also will comply with all of the requirements of the NSPS relating to monitoring except that, pursuant to 40 C.F.R. § 60.13(i), this CEMS Plan will supersede the following provisions of 40 C.F.R. Part 60, Subpart H:

- The procedures specified at 40 C.F.R. § 60.84(b) for converting monitoring data into the units of the applicable standard. In lieu of this PCS Phosphate will utilize the procedures specified in this CEMS Plan for calculating compliance with the NSPS SO<sub>2</sub> Limit.

## APPENDIX A-2

### CEMS Plan for SO<sub>2</sub> Emissions PCS Nitrogen Fertilizer, L.P., Geismar, LA Sulfur Burning Sulfuric Acid Plant

#### Principle

This CEMS Plan is the mechanism for determining compliance with the SO<sub>2</sub> emission limits in Section IV.A of the Consent Decree for the Geismar Sulfuric Acid Plant. The methodology described in this CEMS Plan will provide a continuous real-time indication of compliance with the emission limits established in the Consent Decree by determining the emission rate both in terms of pounds of SO<sub>2</sub> emitted per unit of time and pounds of SO<sub>2</sub> emitted per ton of 100% Sulfuric Acid Produced ("lb/ton"). The system will utilize three analyzers: one to measure stack SO<sub>2</sub> concentration, one to measure stack oxygen ("O<sub>2</sub>") concentration, and one to measure stack volumetric flow rate. From these data, the emission rate, expressed as both pounds per unit of time and lb/ton, will be directly calculated using Equations 1, 2, and 3 below.

#### Equation 1:

$$M_{SO_2Stack} = Q_{Stack} \cdot C_S$$

#### Equation 2:

$$P_{TonsH_2SO_4} = \frac{Q_{Stack} \cdot (0.264 - 0.0126 \cdot \%O_2 - 7.61 \cdot C_S)}{S}$$

#### Equation 3:

$$E_{lbs/ton} = \frac{M_{SO_2Stack}}{P_{TonsH_2SO_4}} = \frac{Q_{Stack} \cdot C_S \cdot S}{Q_{Stack} \cdot (0.264 - 0.0126 \cdot \%O_2 - 7.61 \cdot C_S)}$$

Where:

$P_{TonsH_2SO_4}$	= 100% Sulfuric Acid Production, tons per unit of time
$M_{SO_2Stack}$	= Mass SO <sub>2</sub> stack emission rate, lb per unit of time
$Q_{Stack}$	= Volumetric flow rate of stack gas, dry standard cubic feet (DSCF) per unit of time
$\%O_2$	= Stack O <sub>2</sub> concentration, percent by volume dry basis
$C_S$	= Stack SO <sub>2</sub> concentration, lb/DSCF (to convert parts per million by volume, dry basis (ppmvd) to lb/DSCF, multiply by 1.661×10 <sup>-7</sup> )
$E_{lbs/ton}$	= lb SO <sub>2</sub> per ton 100% Sulfuric Acid Produced
$S$	= the acid production rate factor, 11,800 DSCF/Ton of 100% Sulfuric Acid Produced;

The mass emission rate equation (Equation 1) calculates the SO<sub>2</sub> mass emission rate by multiplying the total stack gas flow rate by the stack SO<sub>2</sub> concentration. The 100% Sulfuric Acid Production Rate equation (Equation 2) is based on a material balance of the contact process and the fact that the ratio of oxygen to nitrogen of the incoming air is fixed. The lb/ton equation (Equation 3) is the ratio of the mass SO<sub>2</sub> emission rate to the 100% Sulfuric Acid Production Rate.

The benefit of using this method is the ability to obtain continuous information regarding the SO<sub>2</sub> mass emission rate, the fact that lb/ton measurements will be “weighted” based on the flow rate during each measurement, and the elimination of errors associated with measuring sulfuric acid flow and using converter inlet Reich testing.

### **Definitions**

Terms used in this CEMS Plan that are defined in the Clean Air Act (“CAA”) or in federal or State regulations promulgated pursuant to the CAA shall have the meaning assigned to them in the CAA or such regulations, unless otherwise defined in the Consent Decree. The terms used in this CEMS Plan that are defined in the Consent Decree shall have the meaning assigned to them therein.

### **Emissions Monitoring**

Emissions monitoring will be done using an O<sub>2</sub> analyzer at the exit stack, an SO<sub>2</sub> analyzer at the exit stack, and a stack flow rate analyzer. Except for any analyzer downtime, associated repairs, and required quality assurance or control activities (including calibration checks and required zero and span adjustments) and any other period specified in Paragraph 15 of the Consent Decree, PCS Nitrogen Fertilizer, L.P. (“PCS Nitrogen”) will conduct monitoring at the Geismar Sulfuric Acid Plant during all Operating Periods.

- At least once every 15 minutes, the analyzers will measure the stack SO<sub>2</sub> concentration (lb/DSCF or ppmvd), the stack O<sub>2</sub> concentration (percent by volume) and the volumetric flow rate (DSCF per minute).
- During routine calibration checks and adjustments of any analyzer, the pre-calibration level will be used to fill in any analyzer data gaps that occur pending completion of the calibration checks and adjustments.
- If any one or more than one analyzer is/are not operating, a like-kind replacement (*i.e.* a redundant analyzer) may be used as a substitute.
- If any one or more than one analyzer is/are not operating for a period of 24 hours or greater and no redundant analyzer is available, data gaps in the array involving the non-operational analyzer(s) will be filled in as follows:
  - Exit stack gas will be sampled and analyzed for SO<sub>2</sub> at least once every three hours, while the Geismar Sulfuric Acid Plant is operating. Sampling will be conducted by Reich test or other established method (*e.g.*, portable analyzer). The most recent 3-hour average reading will be substituted for the four 15-minute average measurements that would otherwise be utilized if the analyzer were operating normally.
  - O<sub>2</sub> in the exit stack gas will be sampled and analyzed at least once every three hours, while the Geismar Sulfuric Acid Plant is operating. Sampling will be conducted by Orsat test or other method (*e.g.*, portable analyzer). The most recent 3-hour average reading will be substituted for the four 15-minute average measurements that would otherwise be utilized if the analyzer were operating normally.
  - Stack volumetric flow rate will be estimated using engineering judgment.
- If any one or more than one analyzer is/are not operating for a period of less than 24 hours PCS Nitrogen will either: (i) follow the requirements set forth for a 24-hour or greater period of downtime to fill in the data gaps; or (ii) use the data recorded for the 3-hour average immediately

preceding the affected analyzer's(s') stoppage to fill in the data gap.

## **Emissions Calculations**

### **Rolling 3-Hour Average**

For purposes of calculating a rolling 3-hour average, the CEMS will maintain an array of the 12 most recent 15-minute average measurements of each of the three monitored parameters. Every 15 minutes, it will add the most recent readings to the array and exclude the oldest readings.

The rolling 3-hour average lb/ton SO<sub>2</sub> emission rate ( $E_{3hravg}$ ) will then be calculated every 15 minutes using Equation 4.

**Equation 4:**

$$E_{3hravg} = \frac{S \cdot \sum_{i=1}^{12} Q_{Stack\ i} \cdot Cs_i}{\sum_{i=1}^{12} Q_{Stack\ i} \cdot (0.264 - 0.0126 \cdot \%O_{2i} - 7.61 \cdot Cs_i)}$$

Where:

- $\%O_{2i}$  = Stack O<sub>2</sub> concentration, percent by volume dry basis at measurement "i"
- $Cs_i$  = Stack SO<sub>2</sub> concentration, lb/DSCF at measurement "i"
- $Q_{Stack\ i}$  = Stack volumetric flow rate, DSCF per minute at measurement "i"
- $S$  = the acid production rate factor, 11,800 DSCF/Ton of 100% Sulfuric Acid Produced;
- $E_{3hravg}$  = 3-hour average lb SO<sub>2</sub> per ton 100% Sulfuric Acid Produced

### **Daily Mass SO<sub>2</sub> Emissions**

The daily mass SO<sub>2</sub> emissions ( $M_{SO_2Day}$ ) (which are based on a calendar day) will be calculated for the Geismar Sulfuric Acid Plants using Equation 5.

**Equation 5:**

$$M_{SO_2Day} = \sum_{i=1}^n Q_{Stack\ i} \cdot Cs_i \cdot 15 \text{ min}$$

Where:

- $Cs_i$  = Stack SO<sub>2</sub> concentration, lb/DSCF at measurement "i"
- $Q_{Stack\ i}$  = Stack volumetric flow rate, DSCF per minute at measurement "i"
- $M_{SO_2Day}$  = Mass emissions of SO<sub>2</sub> during a calendar day, lb
- $n$  = Number of measurement intervals in a given calendar day

### 12-Month Rolling Sum Mass SO<sub>2</sub> Emissions

The 12-month rolling sum mass SO<sub>2</sub> emissions (  $M_{SO_2 12Mo Sum}$  ) for the immediately preceding month will be calculated for the Geismar Sulfuric Acid Plant by no later than the 15th day of each month, using Equation 6:

Equation 6:

$$M_{SO_2 12Mo Sum} = \sum_{j=1}^d M_{SO_2 Day j}$$

Where:

$M_{SO_2 Day j}$  = Mass emissions of SO<sub>2</sub> during calendar day “j”, lb

$d$  = Number of days in the preceding 12 calendar months

$M_{SO_2 12Mo Sum}$  = 12-month rolling sum of SO<sub>2</sub> emitted into the atmosphere, lb

### Rounding of Numbers Resulting from Calculations

Upon completion of the calculations, the final numbers will be rounded as follows:

$E_{3hravg}$  : Rounded to the nearest tenth.

$M_{SO_2 12Mo Sum}$  : Rounded to the nearest tenth of a ton (i.e., 200 lb).

The number “5” shall be rounded up (e.g., a short-term rate of 2.05011 shall be rounded to 2.1).

Rounding of the variables identified as  $C_s$ , %O<sub>2</sub>, and  $Q_{Stack}$  in the equations set forth in this CEMS Plan shall be done based on the accuracy of the measuring device as provided by the manufacturer of the device.

### Compliance with Consent Decree SO<sub>2</sub> Limits

#### Short-Term SO<sub>2</sub> Limits

The Short-Term SO<sub>2</sub> Limit does not apply during periods of Startup, Shutdown, or Malfunction. During all other Operating Periods where the Geismar Sulfuric Acid Plant, PCS Nitrogen will be in compliance with the Short-Term SO<sub>2</sub> Consent Decree Limit if  $E_{3hravg}$  for the Geismar Sulfuric Acid Plant does not exceed the applicable Short-Term SO<sub>2</sub> Limit listed in Table 1 in Paragraph 9 of the Consent Decree . If PCS Nitrogen contends that emissions during a Malfunction(s) resulted in a calculated 3-hour rolling average emission rate(s) in excess of an applicable Short-Term SO<sub>2</sub> Limit, after the period of the Malfunction(s) end(s), PCS Nitrogen will recalculate  $E_{3hravg}$  to exclude measurements recorded during the period(s) of the claimed Malfunction(s).



### NSPS SO<sub>2</sub> Limits

The NSPS Limit does not apply during periods of Startup, Shutdown, or Malfunction. During all other Operating Periods where the Geismar Sulfuric Acid Plant, PCS Nitrogen will be in compliance with the NSPS Limit if  $E_{3hravg}$  does not exceed 4.0 lb of SO<sub>2</sub> per ton of 100% Sulfuric Acid Produced. If PCS Nitrogen contends that emissions during a Malfunction(s) resulted in a calculated 3-hour rolling average emission rate(s) in excess of 4.0 lb/ton after the period of the Malfunction(s) end(s) PCS Nitrogen will recalculate  $E_{3hravg}$  to exclude measurements recorded during the period(s) of the claimed Malfunction(s).

### Mass Cap for SO<sub>2</sub>

The Applicable Settling Parties will be in compliance with the Mass Cap for the Geismar Sulfuric Acid Plant if the 12-month rolling sum ( $M_{SO_2,12Mo Sum}$ ) is 451.59 tons (902,000 lbs) of SO<sub>2</sub> or less.

### Retention of All CEMS Data, including Data during Startup, Shutdown, and Malfunction

PCS Nitrogen will retain all data generated by its SO<sub>2</sub> analyzers, O<sub>2</sub> analyzers, and stack flow analyzers, including all data generated during Startup, Shutdown, and/or Malfunction (“SSM”) of the Geismar Sulfuric Acid Plants in accordance with Section XIII of the Consent Decree.

### Analyzer Specifications

The three analyzers will meet the following specifications:

**Table 1**

<b>Parameter</b>	<b>Location</b>	<b>Range</b>
SO <sub>2</sub> , parts per million, dry basis (to convert to lb/DSCF, multiply by 1.661×10 <sup>-7</sup> )	Stack	Dual range: Normal: 0 – 500 ppm SO <sub>2</sub> SSM: 0 – 3,600 ppm SO <sub>2</sub>
O <sub>2</sub> , percent, dry basis	Stack	Single range: 0 – 20.9 % O <sub>2</sub>
Volumetric flow rate, DSCFM	Stack	15 to 125% of the maximum expected volumetric flow rate

Each SO<sub>2</sub> and O<sub>2</sub> CEMS and the flow rate CERMS will meet all applicable requirements of 40 C.F.R. §§ 60.11, 60.13, 40 C.F.R. Part 60, Appendix B, Performance Specifications 2 and 6, and the Quality Assurance and Quality Control Procedures in 40 C.F.R. Part 60, Appendix F, Procedure 1.

### Compliance with the NSPS: 40 C.F.R. Part 60, Subpart H

In addition to the requirements in this CEMS Plan, PCS Nitrogen also will comply with all of the requirements of the NSPS relating to monitoring except that, pursuant to 40 C.F.R. § 60.13(i), this CEMS Plan will supersede the following provisions of 40 C.F.R. Part 60, Subpart H:

- The requirement at 40 C.F.R. § 60.84(a) that the stack SO<sub>2</sub> analyzer have a span value of 1000 ppm. In lieu of this, PCS Nitrogen will utilize the span values specified in Table 1; and

- The procedures specified at 40 C.F.R. § 60.84(b) for converting monitoring data into the units of the applicable standard. In lieu of this, PCS Nitrogen will utilize the procedures specified in this CEMS Plan for calculating compliance with the NSPS 3-hour average limit.

## APPENDIX A-3

### **CEMS Plan for SO<sub>2</sub> Emissions White Springs Agricultural Chemicals, Inc. White Springs, FL Sulfur Burning Sulfuric Acid Plants**

#### **Principle**

This CEMS Plan is the mechanism for determining compliance with the SO<sub>2</sub> emission limits in Section IV.A of the Consent Decree for the White Springs Sulfuric Acid Plants. The methodology described in this CEMS Plan will provide a continuous real-time indication of compliance with the emission limits established in the Consent Decree for the White Springs Sulfuric Acid Plants by determining the emission rate in terms of pounds of SO<sub>2</sub> emitted per ton of 100% Sulfuric Acid Produced ("lb/ton"). The system will utilize the following analyzers: one to measure stack SO<sub>2</sub> concentration, one to measure stack oxygen ("O<sub>2</sub>") concentration, and one to measure the 100% Sulfuric Acid Production Rate. From these data, the SO<sub>2</sub> emission rate, expressed as lb/ton, will be directly calculated using Equations 1 and 2 below.

#### Equation 1:

$$E_{\frac{lb}{ton}} = \frac{C_s \cdot S}{(0.264 - 0.0126 \cdot \%O_2 - 7.61 \cdot C_s)}$$

#### Equation 2:

$$M_{SO_2 \text{ Stack}} = E_{\frac{lb}{ton}} \cdot P_{H_2SO_4}$$

Where:

$P_{H_2SO_4}$	= 100% Sulfuric Acid Production, tons per unit of time
$M_{SO_2 \text{ Stack}}$	= Mass SO <sub>2</sub> stack emission rate, lb per unit of time
$\%O_2$	= Stack O <sub>2</sub> concentration, percent by volume dry basis
$C_s$	= Stack SO <sub>2</sub> concentration, lb/DSCF (to convert parts per million by volume, dry basis (ppmvd) to lb/DSCF, multiply by 1.661×10 <sup>-7</sup> )
$E_{\frac{lb}{ton}}$	= lb SO <sub>2</sub> per ton 100% Sulfuric Acid Produced
$S$	= the acid production rate factor, 11,800 DSCF/Ton of 100% Sulfuric Acid Produced;

#### **Definitions**

Terms used in this CEMS Plan that are defined in the Clean Air Act ("CAA") or in federal or State regulations promulgated pursuant to the CAA shall have the meaning assigned to them in the CAA or such regulations, unless otherwise defined in the Consent Decree. The terms used in this CEMS Plan that are defined in the Consent Decree shall have the meaning assigned to them therein.

#### **Emissions Monitoring**

Emissions monitoring will be done using an O<sub>2</sub> analyzer at the exit stack and an SO<sub>2</sub> analyzer at the exit stack. Except for any analyzer downtime, associated repairs, and required quality assurance or control activities (including calibration checks and required zero and span adjustments) and any other period specified in Paragraph 15 of the Consent Decree White Springs Agricultural Chemicals, Inc. (WSAC) will conduct monitoring at each White Springs Sulfuric Acid Plant during all Operating Periods.

- At least once every 15 minutes, the analyzers will measure the stack SO<sub>2</sub> concentration (lb/DSCF or ppmvd) and the stack O<sub>2</sub> concentration (percent by volume).
- During routine calibration checks and adjustments of any analyzer, the pre-calibration level will be used to fill in any analyzer data gaps that occur pending completion of the calibration checks and adjustments.
- If any one or more than one analyzer is/are not operating, a like-kind replacement (*i.e.* a redundant analyzer) may be used as a substitute.
- If any one or more than one analyzer is/are not operating for a period of 24 hours or greater and no redundant analyzer is available, data gaps in the array involving the non-operational analyzer(s) will be filled in as follows:
  - Exit stack gas will be sampled and analyzed for SO<sub>2</sub> at least once every three hours, while the relevant White Springs Sulfuric Acid Plant is operating. Sampling will be conducted by Reich test or other established method (*e.g.*, portable analyzer). The most recent 3-hour average reading will be substituted for the four 15-minute average measurements that would otherwise be utilized if the analyzer were operating normally.
  - O<sub>2</sub> in the exit stack gas will be sampled and analyzed at least once every three hours, while the relevant White Springs Sulfuric Acid Plant is operating. Sampling will be conducted by Orsat test or other method (*e.g.*, portable analyzer). The most recent 3-hour average reading will be substituted for the four 15-minute average measurements that would otherwise be utilized if the analyzer were operating normally.
- If any one or more than one analyzer is/are not operating for a period of less than 24 hours, WSAC will either: (i) follow the requirements set forth for a 24-hour or greater period of downtime to fill in the data gaps; or (ii) use the data recorded for the 3-hour average immediately preceding the affected analyzer's(s') stoppage to fill in the data gap.

## **Emissions Calculations**

### 1-Hour Average

At the top of each hour, the CEMS will maintain an array of the 15-minute average measurements of each of the monitored parameters collected for that hour (or partial hour, in the case of a Shutdown) and perform the calculation specified in Equation 3.

Equation 3:

$$E_{1hravg} = \frac{\overline{CS} \cdot S}{(0.264 - 0.0126 \cdot \%O_2 - 7.61 \cdot \overline{CS})}$$

Where:

$\%O_2$	= Stack O <sub>2</sub> concentration, percent by volume dry basis, arithmetic average of hourly measurements
$\overline{CS}$	= Stack SO <sub>2</sub> concentration, lb/DSCF, arithmetic average of hourly measurements
$S$	= the acid production rate factor, 11,800 DSCF/Ton of 100% Sulfuric Acid Produced;
$E_{1hravg}$	= 1-hour average lb SO <sub>2</sub> per ton 100% Sulfuric Acid Produced

### 3-Hour Rolling Average

At the top of each hour, the CEMS will calculate the 3-hour rolling average SO<sub>2</sub> emission rate ( $E_{3hravg}$ ) by maintaining an array of the three most recently calculated values of  $E_{1hravg}$  and performing the calculation specified in Equation 4.

#### Equation 4

$$E_{3hravg} = \frac{\sum_i^3 E_{1hravg\ i}}{3}$$

$E_{1hravg\ i}$  = 1-hour average lb SO<sub>2</sub> per ton 100% Sulfuric Acid Produced for hour  $i$

$E_{3hravg}$  = 3-hour rolling average lb SO<sub>2</sub> per ton 100% Sulfuric Acid Produced

### Daily Mass SO<sub>2</sub> Emissions

The daily mass SO<sub>2</sub> emissions ( $M_{SO_2Day}$ ) (which are based on a calendar day) will be calculated for each White Springs Sulfuric Acid Plant using the hourly values of  $E_{1hravg}$ , the hourly measurements of the 100% Sulfuric Acid Production rate, and Equation 5.

#### Equation 5:

$$M_{SO_2Day} = \sum_i^n (E_{1hravg\ i} \cdot P_{H_2SO_4Hour\ i})$$

Where:

$E_{1hravg\ i}$  = 1-hour average lb SO<sub>2</sub> per ton 100% Sulfuric Acid Produced during hour  $i$

$P_{H_2SO_4Hour\ i}$  = 100% Sulfuric Acid Produced during hour  $i$ , tons

$M_{SO_2Day}$  = Mass emissions of SO<sub>2</sub> during a calendar day, lb

$n$  = Number of operating hours (or partial operating hours) in the day

### 365-Day Rolling Average

For the purposes of calculating a 365-day rolling average lb/ton SO<sub>2</sub> emission rate, the system will maintain an array of  $M_{SO_2Day}$  and  $P_{TonsH_2O_4}$  each day for 365 days. Every day, the system will add the values from that day to the array and exclude the readings from the oldest day.

The 365-day rolling average lb/ton SO<sub>2</sub> emission rate ( $E_{365-Day\ Avg}$ ) will be calculated for each White Springs Sulfuric Acid Plant using Equation 6:

#### Equation 6:

$$E_{365-Day\ Avg} = \frac{\sum_i^n M_{SO_2Day\ i}}{\sum_i^n P_{H_2SO_4Day\ i}}$$

Where:

$M_{SO_2Day\ i}$  = Mass emissions of SO<sub>2</sub> during a calendar day  $i$ , lb

$P_{H_2SO_4Day\ i}$  = 100% Sulfuric Acid Produced during day  $i$ , tons

$E_{365-Day\ Avg}$  = 365-day rolling average lb SO<sub>2</sub> per ton 100% Sulfuric Acid Produced

## **Rounding of Numbers Resulting from Calculations**

Upon completion of the calculations, the final numbers will be rounded as follows:

$E_{3hravg}$ : Rounded to the nearest tenth  
 $E_{365-Day Avg}$ : Rounded to the nearest hundredth

The number "5" shall be rounded up (e.g., a short-term rate of 2.05011 shall be rounded to 2.1).

## **Rounding of Variables: $Cs$ , $\%O_2$ , and $P_{H_2SO_4}$**

Rounding of the variables identified as  $Cs$ ,  $\%O_2$ , and  $P_{H_2SO_4}$  in the equations set forth in this CEMS Plan shall be done based on the accuracy of the measuring device as provided by the manufacturer of the device.

## **Compliance with Consent Decree SO<sub>2</sub> Limits**

Nothing in this CEMS Plan shall preclude the use of other credible evidence or information, as authorized under Section 113 of the Clean Air Act and 40 C.F.R. §§ 60.11(g) and 61.12, to determine whether a White Springs Sulfuric Acid Plant is, or would have been, in compliance with the SO<sub>2</sub> Emissions Limits required by Section IV.A of the Consent Decree if the appropriate performance or compliance test had been performed.

### **Short-Term SO<sub>2</sub> Limits**

The Short-Term SO<sub>2</sub> Limits do not apply during periods of Startup, Shutdown, or Malfunction. During all other Operating Periods, WSAC will be in compliance with the Short-Term SO<sub>2</sub> Consent Decree Limits if  $E_{3hravg}$  for each White Springs Sulfuric Acid Plant does not exceed the applicable Short-Term SO<sub>2</sub> Limit listed in Table 1 in Paragraph 9 of the Consent Decree. If WSAC contends that emissions during a Malfunction(s) resulted in a calculated 3-hour rolling average emission rate(s) in excess of an applicable Short-Term SO<sub>2</sub> Limit, after the period of the Malfunction(s) end(s), WSAC will recalculate  $E_{3hravg}$  to exclude measurements recorded during the period(s) of the claimed Malfunction(s). Nothing in this CEMS Plan shall preclude the use, including the exclusive use, of other credible evidence or information, relevant to whether a White Springs Sulfuric Acid Plant is, or would have been, in compliance with the Short-Term SO<sub>2</sub> Limits.

### **NSPS SO<sub>2</sub> Limits**

The NSPS SO<sub>2</sub> Limit does not apply during periods of Startup, Shutdown, or Malfunction. During all other Operating Periods where a White Springs Sulfuric Acid Plant, WSAC will be in compliance with the NSPS SO<sub>2</sub> Limit if  $E_{3hravg}$  does not exceed 4.0 lb of SO<sub>2</sub> per ton of 100% Sulfuric Acid Produced. If WSAC contends that emissions during a Malfunction(s) resulted in a calculated 3-hour rolling average emission rate(s) in excess of 4.0 lb/ton after the period of the Malfunction(s) end(s) WSAC will recalculate  $E_{3hravg}$  to exclude measurements recorded during the period(s) of the claimed Malfunction(s). Nothing in this CEMS Plan shall preclude the use, including the exclusive use, of other credible evidence or information, relevant to whether a White Springs Sulfuric Acid Plant is, or would have been, in compliance with the NSPS SO<sub>2</sub> Limit.

### **Long-Term SO<sub>2</sub> Limits**

The Long-Term SO<sub>2</sub> Limits include periods of Startup, Shutdown, and Malfunction. The White Springs Sulfuric Acid Plants will be in compliance with the Long-Term SO<sub>2</sub> Limits if  $E_{365-Day Avg}$  does not

exceed the applicable Long-Term SO<sub>2</sub> Limit listed in Table 1 in Paragraph 9 of the Consent Decree (measured as lbs of SO<sub>2</sub> per ton of 100% Sulfuric Acid Produced).

**Retention of All CEMS Data, including Data during Startup, Shutdown, and Malfunction**

WSAC will retain all data generated by its SO<sub>2</sub> analyzers, O<sub>2</sub> analyzers, and production rate analyzers including all data generated during Startup, Shutdown, and/or Malfunction (“SSM”) of the White Springs Sulfuric Acid Plants in accordance with Section XIII of the Consent Decree.

**Analyzer Specifications**

The analyzers will meet the following specifications:

**Table 1**

Parameter	Location	Range
SO <sub>2</sub> , parts per million, dry basis (to convert to lb/DSCF, multiply by 1.661×10 <sup>-7</sup> )	Stack	Dual range: Normal: 0 – 1,000 ppm SO <sub>2</sub> SSM: 0 – 10,000 ppm SO <sub>2</sub>
O <sub>2</sub> , percent, dry basis	Stack	Single range: 0 – 20.9 % O <sub>2</sub>

Each SO<sub>2</sub> and O<sub>2</sub> CEMS will meet all applicable requirements of 40 C.F.R. §§ 60.11, 60.13, Performance Specifications 2, 3, and 6 in 40 C.F.R. Part 60, Appendix B, and the Quality Assurance and Quality Control Procedures in 40 C.F.R. Part 60, Appendix F, Procedure 1.

**RATA Requirements**

After the Effective Date, pursuant to 40 C.F.R. Part 60, Appendix F, Procedure 1, 5.1.1, WSAC shall conduct a Relative Accuracy Test Audit (RATA) at least once every four calendar quarters at each White Springs Sulfuric Acid Plant.

RATAs will be performed to determine the relative accuracy of the equipment, methods, and procedures required by this CEMS Plan. In addition to all other applicable procedures required by 40 C.F.R. Part 60, Appendix F, Procedure 1, 5.1.1, RATA testing will compare the concentrations of SO<sub>2</sub> and O<sub>2</sub>, as measured by the CEMS installed or operated as part of the Consent Decree, with the concentrations of SO<sub>2</sub> and O<sub>2</sub> measured during the RATA testing. In addition, RATA testing will compare the pounds of SO<sub>2</sub> emissions/ton of 100% Sulfuric Acid Produced, as calculated by Equation 1, with the pounds of SO<sub>2</sub> emissions/ton of 100% Sulfuric Acid Produced calculated during the RATA testing pursuant to 40 C.F.R. § 60.85.

Beginning with the initial RATA under this CEMS Plan, and thereafter for every triennial RATA (*i.e.*, year 1, 4, 7, etc.), WSAC will utilize the reference methods and procedures specified in 40 C.F.R. § 60.85(b) to generate the Reference Method (RM) values for calculating the relative accuracy. In intervening years (*i.e.*, year 2, 3, 5, 6, etc.) WSAC may use the alternative method at 40 C.F.R. § 60.85(c) to calculate the RM values.

For each RATA performed, stack flow shall be measured using Method 2, 2F, 2G, or 2H, or a combination thereof.

If a CEMS or the measurement of pounds of SO<sub>2</sub> emissions/ton of 100% Sulfuric Acid Produced (as calculated by Equation 1) is deemed to be “out of control” pursuant to 40 C.F.R. Part 60, Appendix F, Procedure 1, § 5.2, WSAC shall take all necessary corrective actions required by that procedure,

including performing a follow-up (“verification”) RATA meeting the requirements of this CEMS Plan. All necessary corrective actions and the verification RATA shall be completed within 30 days after the initial RATA testing. If the verification RATA determines that a CEMS or the measurement of pounds of SO<sub>2</sub> emissions/ton of 100% Sulfuric Acid Produced (as calculated by Equation 1) remains out of control, WSAC shall take all necessary corrective actions to eliminate the problem, including, but not limited to, submitting, for EPA review and approval, a revised SO<sub>2</sub> CEMS Plan that considers: a) installation of direct stack flow meters and b) a monitoring methodology that accurately measures emissions of SO<sub>2</sub>/ton of 100% Sulfuric Acid Produced, but is not based on the S-Factor .

If the verification RATA determines that a CEMS or the measurement of pounds of SO<sub>2</sub> emissions/ton of 100% Sulfuric Acid Produced (as calculated by Equation 1) remains out of control, WSAC shall also be subject to stipulated penalties as set forth in Section X, Paragraph 63.b of the Consent Decree.

**Compliance with the NSPS: 40 C.F.R. Part 60, Subpart H**

In addition to the requirements in this CEMS Plan, WSAC also will comply with all of the requirements of the NSPS relating to monitoring except that, pursuant to 40 C.F.R. § 60.13(i), this CEMS Plan will supersede the following provisions of 40 C.F.R. Part 60, Subpart H:

- The requirement at 40 C.F.R. § 60.84(a) that the stack SO<sub>2</sub> analyzer have a span value of 1000 ppm. In lieu of this, WSAC will utilize the span values specified in Table 1; and
- The procedures specified at 40 C.F.R. § 60.84(b) for converting monitoring data into the units of the applicable standard. In lieu of this WSAC will utilize the procedures specified in this CEMS Plan for calculating compliance with the NSPS SO<sub>2</sub> Limit.



## **APPENDIX B – Nitric Acid SCR SEP**

PCS Nitrogen Fertilizer, L.P. shall perform the Nitric Acid SCR SEP required by Section V of the Consent Decree in accordance with that Section and the following requirements:

### **A. NO<sub>x</sub> Emission Limits and Schedule of Compliance**

1. Installation of SCR. By no later than 24 months after the Effective Date, PCS Nitrogen Fertilizer, L.P. shall install a SCR for Nitric Acid Train No. 4 at the Geismar Nitric Acid Plant. During all Operating Periods, except Startup, the SCR shall be operated in conjunction with the existing non-selective catalytic reduction (NSCR) equipment.

2. NO<sub>x</sub> Emission Limits.

a. Short-Term NO<sub>x</sub> Limit. By no later than 24 months after the Effective Date, PCS Nitrogen Fertilizer, L.P. shall comply with a 1.0 lb/ton Short-Term NO<sub>x</sub> Limit at Nitric Acid Train No. 4.

b. Long-Term NO<sub>x</sub> Limit. By no later than 24 months after the Effective Date, PCS Nitrogen Fertilizer, L.P. shall commence monitoring its NO<sub>x</sub> emissions from Nitric Acid Train No. 4 in accordance with the NO<sub>x</sub> CEMS Plan. By no later than 36 months after the Effective Date and for all periods thereafter, PCS Nitrogen Fertilizer, L.P. shall comply with a 0.60 lb/ton Long-Term NO<sub>x</sub> Limit at Nitric Acid Train No. 4.

### **B. Emissions Monitoring**

3. Installation, Certification, and Calibration. By no later than 24 months after the Effective Date, PCS Nitrogen Fertilizer, L.P. shall certify and calibrate the CEMS on Nitric Acid Train No. 4 and install any necessary equipment so that the CEMS meets the requirements of this Paragraph (the “NO<sub>x</sub> CEMS”). The NO<sub>x</sub> CEMS shall include both a NO<sub>x</sub> Analyzer capable of measuring the NO<sub>x</sub> concentration and a Stack Flowmeter that measures volumetric flow rate.

Except as may be specified in the applicable NO<sub>x</sub> CEMS Plan in Attachment C of this Consent Decree, the NO<sub>x</sub> Stack Analyzer shall comply with 40 C.F.R. Part 60, Appendix B, Performance Specification 2 and the quality assurance/quality control requirements specified in 40 C.F.R. Part 60, Appendix F, Procedure 1. The Stack Flowmeter shall comply with 40 C.F.R. Part 60, Appendix B, Performance Specification 6.

4. Continuous Operation of NO<sub>x</sub> CEMS and Minimization of NO<sub>x</sub> CEMS

Downtime. By no later than 24 months after the Effective Date, and except during periods of NO<sub>x</sub> CEMS breakdowns, analyzer malfunctions, repairs, and required quality assurance or quality control activities (including calibration checks and required zero and span adjustments), the NO<sub>x</sub> CEMS at Nitric Acid Train No. 4 shall be in continuous operation during all Operating Periods to demonstrate compliance with the NO<sub>x</sub> emission limits established in Paragraph 2 of this Appendix B. PCS Nitrogen Fertilizer, L.P. shall take all necessary steps to minimize NO<sub>x</sub> CEMS breakdowns and minimize NO<sub>x</sub> CEMS downtime. These steps shall include, but are not limited to, operating and maintaining the NO<sub>x</sub> CEMS in accordance with good air pollution control practices and maintaining an on-site inventory of spare parts or other supplies necessary to make prompt repairs to the NO<sub>x</sub> CEMS and associated equipment.

5. NO<sub>x</sub> CEMS Plan. By no later than 24 months after the Effective Date, PCS Nitrogen Fertilizer, L.P. shall implement the NO<sub>x</sub> CEMS Plan for Nitric Acid Train No. 4 in Appendix C. The NO<sub>x</sub> CEMS Plan describes how PCS Nitrogen Fertilizer, L.P. shall monitor compliance with the NO<sub>x</sub> emission limits for Nitric Acid Train No. 4, including the methodology that PCS Nitrogen Fertilizer, L.P. shall use to demonstrate compliance in the event of NO<sub>x</sub> CEMS downtime. EPA and LDEQ have approved the monitoring methods specified in the NO<sub>x</sub>

CEMS Plan as appropriate alternative monitoring methods for purposes of NSPS, Subparts A and G, pursuant to 40 C.F.R. § 60.13(i).

6. Applicable Consent Decree Requirements. PCS Nitrogen Fertilizer, L.P. shall comply with all other applicable requirements of the Consent Decree with respect to the Nitric Acid SCR SEP, including, but not limited to, those in Section VII (Permits), Section VIII (Emission Credit Generation), and Section IX (Reporting).

## APPENDIX C

### **CEMS Plan for NO<sub>x</sub> Emissions PCS Nitrogen, L.P., Geismar, LA Nitric Acid Train No. 4 SEP**

#### **Principle**

This CEMS Plan is the mechanism for determining compliance with the Short-Term NO<sub>x</sub> Limit and Long-Term NO<sub>x</sub> Limit applicable to Nitric Acid Train No. 4 as specified in the Consent Decree and the Nitric Acid SCR SEP. The methodology described in this CEMS Plan will provide a continuous indication of compliance with the above-referenced NO<sub>x</sub> emission limits established in the Consent Decree and the Nitric Acid SCR SEP by accurately determining the emission rate in terms of pounds of NO<sub>x</sub> emitted per ton of 100% Nitric Acid Produced (lb/ton) as a rolling 3-hour average and a rolling 365-Day average. The CEMS will utilize equipment to measure stack NO<sub>x</sub> concentration, the stack volumetric flow rate, and the 100% Nitric Acid Production Rate. From this data, real-time, accurate, and quality controlled measurements of the mass NO<sub>x</sub> emission rate per unit of production can be obtained.

#### **Definitions**

Terms used in this CEMS Plan that are defined in the Clean Air Act (“CAA”) or in federal or State regulations promulgated pursuant to the CAA shall have the meaning assigned to them in the CAA or such regulations, unless otherwise defined in the Consent Decree. The terms used in this CEMS Plan that are defined in the Consent Decree shall have the meaning assigned to them therein. The following definitions specifically apply for purposes of this CEMS Plan:

- “Minimum measurement period” shall mean the designated period of time that the stack flowmeter and the NO<sub>x</sub> Stack Analyzer will record a valid reading. This discrete period, such as every minute, will be the same for both meters.
- “NO<sub>x</sub> Stack Analyzer” shall mean that portion of the CEMS that senses NO<sub>x</sub> and generates an output proportional to the NO<sub>x</sub> concentration.
- “One-hour period” and “1-hour period” shall mean any 60-minute period commencing on the hour.
- “Stack Flowmeter” shall mean that portion of the CEMS that senses the volumetric flow rate and generates an output proportional to that flow rate.
- “Standard Cubic Foot (SCF)” shall mean a cubic foot of a substance measured at 68° Fahrenheit and 14.696 pounds per square inch absolute pressure.

## Emissions Monitoring

Emissions monitoring under this CEMS Plan will be done using a NO<sub>x</sub> Stack Analyzer and a Stack Flowmeter on Nitric Acid Train No. 4. Except for periods of CEMS breakdowns, analyzer malfunctions, repairs, and required quality assurance or quality control activities (including calibration checks and required zero and span adjustments), PCS Nitrogen Fertilizer, L.P. will conduct continuous monitoring pursuant to this CEMS Plan at Nitric Acid Train No. 4 during all Operating Periods as follows:

- At least once every 15 minutes, the NO<sub>x</sub> Stack Analyzer will measure the stack NO<sub>x</sub> concentration, in parts per million by volume, dry basis (ppmvd) and the Stack Flowmeter will measure the volumetric flow rate in dry standard cubic feet per minute (DSCFM).<sup>1</sup>
- For every 1-hour period (60-minute period commencing on the hour), the CEMS will take the arithmetic average of all valid NO<sub>x</sub> Stack Analyzer readings to determine the emission rate during the previous 1-hour period. This data will be used to calculate the 3-hour average NO<sub>x</sub> emission rate. At least one valid measurement of the NO<sub>x</sub> Stack Analyzer for each 15-minute quadrant of the hour when the CEMS is in operation must be used to make this calculation.

### Backup Monitoring Procedure for Long-Term NO<sub>x</sub> Limit

In the event that the NO<sub>x</sub> Stack Analyzer and/or Stack Flowmeter is/are not available or is/are out-of-control, PCS Nitrogen Fertilizer, L.P. will implement the backup monitoring procedure specified below. The resulting data will be used to calculate the 365-Day average NO<sub>x</sub> emission rate.

- Other than as specified below for a CEMS outage or out-of-control period less than 24 consecutive hours, PCS Nitrogen Fertilizer, L.P. will comply with the following requirements to fill in data gaps in the array:
  - Exit stack gas will be sampled and analyzed for NO<sub>x</sub> at least once every three (3) hours, during all Operating Periods. Sampling will be conducted by making physical measurements of the NO<sub>x</sub> concentration in the gas stream to the main stack using alternative/non-CEMS methods (*e.g.*, through the use of a portable analyzer/detector or non-certified NO<sub>x</sub> Stack Analyzer). The reading obtained will be substituted for the 180 (or less) one-minute measurements that would otherwise be utilized if the CEMS were operating normally. Alternatively, PCS

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<sup>1</sup> For the purposes of the calculations under this CEMS Plan, as-is volumetric flow rate measurements will be assumed to be dry. However, PCS Nitrogen Fertilizer, L.P. may adjust for any moisture contained in the stack gas if Nitric Acid Train No. 4 is equipped with a continuous moisture analyzer.

Nitrogen Fertilizer, L.P. may conduct the required sampling and analysis using a redundant certified NO<sub>x</sub> analyzer.

- Stack volumetric flow rate and 100% Nitric Acid Production Rate will be estimated using engineering judgment.
- The data generated during required quality assurance or quality control activities (including calibration checks and required zero and span adjustments) of the CEMS and Stack Flowmeter shall be excluded from the hourly arithmetic average. PCS Nitrogen Fertilizer, L.P. may use the average hourly value from the last valid reading directly prior to these periods to fill in the data gaps.
- If the CEMS or Stack Flowmeter is not operating for a period of less than 24 consecutive hours due to breakdowns, malfunctions, repairs, or out-of-control period of the same, PCS Nitrogen Fertilizer, L.P. may use the previous Day average value recorded for each to fill in the data gaps.

### **Production Data**

Following each Day at Nitric Acid Train No. 4, PCS Nitrogen Fertilizer, L.P. will record the quantity of nitric acid produced during that Day and the average strength of the nitric acid produced during that Day. From this information, PCS Nitrogen Fertilizer, L.P. will calculate the 100% Nitric Acid Produced for that Day, in units of tons per Day.

### **Conversion Factor**

Within 60 days after achieving the maximum production rate at which Nitric Acid Train No. 4 will be operated, but not later than 180 days after initial startup, PCS Nitrogen Fertilizer, L.P. shall perform a performance test on Nitric Acid Train No. 4 and the SCR in accordance with 40 C.F.R. § 60.8. During the performance test, and any performance test thereafter, for Nitric Acid Train No. 4, PCS Nitrogen Fertilizer, L.P. will develop a conversion factor, in units of lb/ton of 100% Nitric Acid Produced per ppmvd consistent with 40 C.F.R. § 60.73(b).

### **Emissions Calculations**

#### **Rolling 3-Hour Average**

Compliance with the Short-Term NO<sub>x</sub> Limit shall be based on a rolling 3-hour average (rolled hourly). For purposes of calculating a rolling 3-hour average NO<sub>x</sub> emission rate, the CEMS will maintain an array of the 3 most recent and contiguous 1-hour period average measurements of stack NO<sub>x</sub> concentration while Nitric Acid Train No. 4 was operating. Every hour while Nitric Acid Train No. 4 was operating, the CEMS will add the most recent 1-hour period average measurement to the array and exclude the oldest 1-hour period average

measurement. Data generated using the backup monitoring procedure, specified above, need not be included in this calculation.

The rolling 3-hour average lb/ton NO<sub>x</sub> emission rate ( $E_{3hravg}$ ) will be calculated every hour using Equation 1.

Equation 1:

$$E_{3Hravg} = \frac{K \cdot \sum_{i=1}^3 \cdot C_{NOx\ i}}{3}$$

Where:

$C_{NOx\ i}$  = Arithmetic average of all measurements of stack NO<sub>x</sub> concentration, parts per million by volume, dry basis (ppmvd) during a 1-hour period “i” while Nitric Acid Train No. 4 is operating.

$K$  = Conversion factor determined during most recent NO<sub>x</sub> performance test or RATA (lb/ton of 100% Nitric Acid Produced per ppm).

$E_{3Hravg}$  = 3-hour average lb NO<sub>x</sub> per ton 100% Nitric Acid Produced.

Rolling 365-Day Average

Compliance with the Long-Term NO<sub>x</sub> Limit shall be based on a rolling 365-Day average (rolled daily) for each day that Nitric Acid Train No. 4 is operating. For the purposes of calculating the 365-Day average NO<sub>x</sub> emission rate each operating Day at Nitric Acid Train No. 4, PCS Nitrogen Fertilizer, L.P. will maintain an array of the mass emissions (lb/Day) of NO<sub>x</sub> (calculated using Equation 2) and the 100% Nitric Acid Produced for that operating Day (tons/Day) and the preceding 364 operating Days. Each subsequent operating Day, the data from that operating Day will be added to the array, and the data from the oldest operating Day will be excluded.

For the purposes of calculating daily mass emission rate, the CEMS will maintain an array with a measurement for each minimum measurement period of the NO<sub>x</sub> concentration (ppmvd) at the exit stack and each measurement of volumetric flow rate (DSCFM) of the exit stack over each operating Day. In the event that the CEMS and/or Stack Flowmeter is/are not available, PCS Nitrogen Fertilizer, L.P. will use the backup monitoring procedure, specified above, to fill in the data gaps.

Following each operating Day, the daily NO<sub>x</sub> mass emissions will be calculated using Equation 2.

Equation 2:

$$M_{NO_x Day} = 1.193 \times 10^{-7} \cdot \sum_{i=1}^n Q_{Stack\ i} \cdot C_{NO_x\ i}$$

Where:

$C_{NO_x\ i}$  = Each average measurement of stack NO<sub>x</sub> concentration (not greater than 15 minutes), ppmvd, for a unit of time during the Operating Period in a Day “i”

$Q_{Stack\ i}$  = Each average measurement of stack volumetric flow rate, DSCFM, for a corresponding unit of time during the Operating Period in a Day “i”

$1.193 \times 10^{-7}$  = Conversion factor in units of pounds per standard cubic foot (lb/SCF) NO<sub>x</sub> per ppm

$M_{NO_x Day}$  = Mass emissions of NO<sub>x</sub> during a Day (lbs)

$n$  = Number of minimum measurements during Operating Periods in a Day

Following each operating Day, the NO<sub>x</sub> emission rate as lb/ton, averaged over a rolling 365-Day period ( $E_{365-Day\ Avg}$ ) will be calculated using Equation 3.

Equation 3:

$$E_{365-Day\ Avg} = \frac{\sum_{d=1}^{365} M_{NO_x Day\ d}}{\sum_{d=1}^{365} P_d}$$

Where:

$M_{NO_x Day\ d}$  = Mass emissions of NO<sub>x</sub> during a Day “d” (lbs)

$P_d$  = 100% Nitric Acid Produced during a Day “d” (tons)

$E_{365-Day\ Avg}$  = 365-Day rolling average lb NO<sub>x</sub> per ton of 100% Nitric Acid Produced



## **Rounding of Numbers resulting from Calculations**

Upon completion of the calculations, the final numbers shall be rounded as follows:

$E_{3hravg}$  : Rounded to the nearest tenth.

$E_{365-Day Avg}$  : Rounded to the nearest hundredth.

The values for  $E_{3hravg}$  and  $E_{365-Day Avg}$  shall be truncated to the hundredth place and the thousandth place, respectively. For the last digit, “5”-“9” shall be rounded up, and the numbers “1”-“4” shall be rounded down. Thus, “1.051” for the for  $E_{3hravg}$  shall be truncated to 1.05 and rounded to “1.1”, and “1.049” shall be truncated to 1.04 and rounded to “1.0”.

## **Compliance with Nitric Acid SCR SEP NO<sub>x</sub> Limits**

### **Short-Term NO<sub>x</sub> Limit**

The Short-Term NO<sub>x</sub> Limit does not apply during periods of Startup, Shutdown, or Malfunction. During all other Operating Periods at Nitric Acid Train No. 4, PCS Nitrogen Fertilizer, L.P. will be in compliance with the Short-Term NO<sub>x</sub> Limit specified in the Consent Decree if  $E_{3hravg}$  does not exceed 1.0 lb of NO<sub>x</sub> per ton of 100% Nitric Acid Produced. If PCS Nitrogen Fertilizer, L.P. contends that any 3-hour rolling average emission rate is in excess of 1.0 lb/ton due to the inclusion of hours of Startup, Shutdown or Malfunction in the 3-hour period, PCS Nitrogen Fertilizer, L.P. shall recalculate  $E_{3hravg}$  to exclude measurements recorded during the period(s) of the claimed Startup, Shutdown or Malfunction(s). Nothing in this CEMS Plan shall preclude the use, including the exclusive use, of any credible evidence or information, relevant to whether Nitric Acid Train No. 4 would have been in compliance with the Short-Term Limit if the appropriate performance test or compliance procedure had been performed.

### **Long-Term NO<sub>x</sub> Limit**

PCS Nitrogen Fertilizer, L.P. will be in compliance with the Long-Term NO<sub>x</sub> Limit specified in the Consent Decree if  $E_{365-Day Avg}$  does not exceed 0.60 lbs. lb of NO<sub>x</sub> per ton of 100% Nitric Acid Produced. The Long-Term NO<sub>x</sub> Limit applies at all times, including during periods of Startup, Shutdown, or Malfunction.

## **Retention of All CEMS Data, including Data during Startup, Shutdown, and Malfunction**

PCS Nitrogen Fertilizer, L.P. will retain all data generated by the NO<sub>x</sub> Stack Analyzer and Stack Flowmeter, including all data generated during Startup, Shutdown, and/or Malfunction (“SSM”) at Nitric Acid Train No. 4 in accordance with Appendix F of 40 C.F.R. Part 60.

## **Analyzer Specifications**

The NO<sub>x</sub> Stack Analyzer and the Stack Flowmeter required under this CEMS Plan at Nitric Acid Train No. 4 will meet the following specifications:

**Table 1**

<b>Analyzer</b>	<b>Parameter</b>	<b>Location</b>	<b>Span Value</b>
NO <sub>x</sub> Stack Analyzer	NO <sub>x</sub> , ppm by volume, dry basis	Stack	Dual range: Normal: 0 – 100 ppm NO <sub>x</sub> SSM: 0 – 5000 ppm NO <sub>x</sub>
Stack Flowmeter	Volumetric flow rate, SCFM	Stack	0 to 125% of the maximum expected volumetric flow rate

The NO<sub>x</sub> Stack Analyzer will meet all applicable requirements of 40 C.F.R. §§ 60.11, 60.13, 40 C.F.R. Part 60, Appendix B, Performance Specification 2, and the Quality Assurance and Quality Control Procedures in 40 C.F.R. Part 60, Appendix F, Procedure 1. It should be noted, however, that the daily drift test requirement at 40 C.F.R. § 60.13(d) and the requirements of Appendix F apply only to the normal range of the NO<sub>x</sub> Stack Analyzer. The SSM range of the NO<sub>x</sub> Stack Analyzer will be evaluated at least once each calendar quarter to verify accuracy.

The Stack Flowmeter will meet 40 C.F.R. Part 60, Appendix B, Performance Specification 6 (PS 6) and will be evaluated at least once each calendar quarter in accordance with Section 8.1 of PS 6, except during the quarter when the PS 6 RATA is conducted. On an annual basis a RATA of the stack flow meter must be completed to verify accuracy. In addition to the reference methods described in Section 8.2.2 of PS 6, 40 CFR 60, Appendix B, Methods 2F, 2G and 2H may be utilized to demonstrate accuracy.

### **Compliance with the NSPS: 40 C.F.R. Part 60, Subpart G**

In addition to the requirements in this CEMS Plan, PCS Nitrogen Fertilizer, L.P. also will comply with all of the requirements of the NSPS relating to monitoring at Nitric Acid Train No. 4 except that, pursuant to 40 C.F.R. § 60.13(i), this CEMS Plan will supersede the following provisions of 40 C.F.R. Part 60, Subpart G:

- The requirement at 40 C.F.R. § 60.73(a) that the NO<sub>x</sub> Stack Analyzer have a span value of 500 ppm. In lieu of this, PCS Nitrogen Fertilizer, L.P. will utilize the span values specified in Table 1 of this CEMS Plan; and
- The requirement at 40 C.F.R. § 60.73(a) that pollutant gas mixtures under Performance Specification 2 and for calibration checks under 40 C.F.R. § 60.13(d) be nitrogen dioxide (NO<sub>2</sub>). PCS Nitrogen Fertilizer, L.P. will use calibration gases containing NO and/or NO<sub>2</sub> as appropriate to assure accuracy of the NO<sub>x</sub> Stack Analyzer except where verified reference cells are used in accordance with Performance Specification 2.

**Appendix D – LDEQ Compliance Orders Resolved by Consent Decree**

BOBBY JINDAL  
GOVERNOR



PEGGY M. HATCH  
SECRETARY

**State of Louisiana**  
DEPARTMENT OF ENVIRONMENTAL QUALITY  
OFFICE OF ENVIRONMENTAL COMPLIANCE

March 5, 2012

CERTIFIED MAIL (7004 2510 0005 5763 9587)  
RETURN RECEIPT REQUESTED

**PCS NITROGEN FERTILIZER, L.P.**  
c/o Corporation Service Company  
Agent of Service  
320 Somerulos Street  
Baton Rouge, LA 70802

**RE: CONSOLIDATED COMPLIANCE ORDER  
& NOTICE OF POTENTIAL PENALTY  
ENFORCEMENT TRACKING NO. AE-CN-10-00695  
AGENCY INTEREST NO. 3732**

Dear Sir:

Pursuant to the Louisiana Environmental Quality Act (La. R.S. 30:2001, et seq.), the attached **CONSOLIDATED COMPLIANCE ORDER & NOTICE OF POTENTIAL PENALTY** is hereby served on **PCS NITROGEN FERTILIZER, L.P. (RESPONDENT)** for the violations described therein.

Compliance is expected within the maximum time period established by each part of the **COMPLIANCE ORDER**. The violations cited in the **CONSOLIDATED COMPLIANCE ORDER & NOTICE OF POTENTIAL PENALTY** could result in the issuance of a civil penalty or other appropriate legal actions.

Any questions concerning this action should be directed to Mark E. Brown at (225) 219-3782.

Sincerely,

A handwritten signature in black ink, appearing to read "Celena J. Cage".

Celena J. Cage  
Administrator  
Enforcement Division

CJC/MEB/meb  
Alt ID Nos. 2240, 2241, 2247, 2276  
Attachment

c: PCS Nitrogen Fertilizer, L.P.  
John Hewson  
10886 La. Hwy 75  
Geismar, LA 70734

**STATE OF LOUISIANA  
DEPARTMENT OF ENVIRONMENTAL QUALITY  
OFFICE OF ENVIRONMENTAL COMPLIANCE**

**IN THE MATTER OF**

**PCS NITROGEN FERTILIZER, L.P.  
ASCENSION PARISH  
ALT ID NOS. 2240, 2241, 2247, 2276**

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

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**ENFORCEMENT TRACKING NO.**

**AE-CN-10-00695**

**AGENCY INTEREST NO.**

**3732**

**CONSOLIDATED  
COMPLIANCE ORDER & NOTICE OF POTENTIAL PENALTY**

The following **CONSOLIDATED COMPLIANCE ORDER & NOTICE OF POTENTIAL PENALTY** is issued to **PCS NITROGEN FERTILIZER, L.P. (RESPONDENT)** 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).

**FINDINGS OF FACT**

**I.**

The Respondent owns and/or operates a fertilizer facility producing three different mineral acids as well as ammonia production and derived reaction products. The Nitrate Group is comprised of three Nitric Acid lines, currently operating under Title V Permit No. 2240-V6, issued on or about November 15, 2010. The Ammonia Group is comprised of four related operations, currently operating under Title V Permit No. 2241-V2, issued on or about June 16, 2009. The Sulfate Group consists of one Sulfuric Acid line, currently operating under Title V Permit No. 2247-V1, issued on or about March 26, 2008. The Phosphate Group consists of one Phosphoric Acid line, currently operating under Title V Permit No. 2276-V1, issued on or about May 3, 2010.

II.

On or about February 2, 2010, and on or about March 19, 2010, Air Quality inspections were performed to determine the degree of compliance with the Act and the Air Quality Regulations. On or about January 15, 2012, a file review of the facility was performed to determine the degree of compliance with the Act and the Air Regulations.

While the investigation by the Department is not yet complete, the following violations were noted during the course of the inspections and file review:

- A. In correspondence dated March 31, 2009, the Respondent submitted the facility's 2008 Annual Compliance Certification for the Nitrate Group for the period encompassing January 1, 2008 through December 31, 2008, for Title V Permit No. 2240-V4, issued on or about November 26, 2007. The certification listed the following exceedances, in pounds per hour (lb/hr) of NO<sub>x</sub> for Nitric Acid Train No. 4 (EQT0007) and for Nitric Acid Train No. 5 (EQT0009):

Emission source	Date deviation began	Duration, hrs	NO <sub>x</sub> emitted, lb/hr	NO <sub>x</sub> permitted, lb/hr
Train No. 4	8/15/08	1.0	160.6	135.4
	8/23/08	1.5	313.7	
	10/27/08	4.75	222.9	
	10/27/08	1.0	237.2	
	10/30/08	13.0	220.4	
	10/31/08	3.0	137.5	
	12/02/08	1.0	177.4	
	12/12/08	1.0	165.9	
	12/15/08	2.0	153.3	
	12/18/08	1.0	157.3	
Train No. 5	1/3/2008	0.5	194.4	181.9
	9/23/2008	1.0	262.2	

Each failure to demonstrate compliance with the limits of the permit for emission of NO<sub>x</sub> is a violation of Title V Permit No. 2240-V4, LAC 33:III.501.C.4, La. R. S. 30:2057(A)(1) and 2057(A)(2).

- B. In correspondence dated August 24, 2009, the Respondent submitted the facility's 2009 First Semiannual Monitoring Report for the Nitrate Group for the period encompassing January 1, 2009 through June 30, 2009 for Title V Permit No. 2240-V4, issued on or about November 26, 2007. The report stated that on or about May 7, 2009, during maintenance on Nitric Acid Train No. 5 (EQT0009), a one-hour excursion of NO<sub>x</sub> occurred at a rate of 198.8 lb/hr. The permit limit of NO<sub>x</sub> is 181.9 lb/hr. The failure to demonstrate compliance with the limits of the



permit for emission of NO<sub>x</sub> is a violation Title V Permit No. 2240-V4, LAC 33:III.501.C.4 and La. R. S. 30:2057(A)(1) and 2057(A)(2).

- C. In correspondence dated March 30, 2010, the Respondent submitted the facility's 2009 Annual Compliance Certification for the Nitrate Group for the period encompassing January 1, 2009 through August 25, 2009, for Title V Permit No. 2240-V4, issued on or about November 26, 2007, and the period encompassing August 26, 2009 through December 31, 2009 for Title V Permit No. 2240-V5, issued on or about August 26, 2009. The following deviations or violations reported were:

Emission Source	Duration of Deviation	Title V Permit	Deviation
Fume scrubber 308 (EQT0014)	2/1/2009 – 8/25/2009	Permit No. 2240-V4	Log sheet documentation missing
	8/26/2009 – 8/31/2009	Permit No. 2240-V5	

Each failure to maintain records of operating data for Fume Scrubber 308 is a violation of Specific Requirement 43 of Title V Permit No. 2240-V4, Specific Requirement 43 of Title V Permit No. 2240-V5, LAC 33:III.501.C.4, and La. R.S. 30:2057(A)(2).

- D. In correspondence dated March 30, 2010, the Respondent submitted the facility's 2009 Annual Compliance Certification for the Nitrate Group for the period encompassing January 1, 2009 through August 25, 2009, for Title V Permit No. 2240-V4, issued on or about November 26, 2007, and the period encompassing August 26, 2009 through December 31, 2009 for Title V Permit No. 2240-V5, issued on or about August 26, 2009. The following deviations or violations reported were:

Emission Source	Duration of Deviation	Title V Permit	Deviation
Fume scrubber (EQT0133) for Nos. 3 & 4 Nitric Acid Tanks	6/16/2009 – 8/25/2009	Permit No. 2240-V4	Scrubber flow was not maintained above 5.0 gallons per minute
	8/26/2009 – 12/31/2009	Permit No. 2240-V5	

Each failure to control the proper water flow to the fume scrubber for Nos. 3 & 4 Nitric Acid Tanks is a violation of Specific Requirement 43 of Title V Permit No. 2240-V4, Specific Requirement 75 of Title V Permit No. 2240-V5, LAC 33:III.501.C.4, La. R.S. 30:2057(A)(1) and 30:2057(A)(2).

- E. In correspondence dated September 29, 2010, the Respondent submitted the facility's 2010 First Semiannual Monitoring Report for the Nitrate Group for the period encompassing January 1, 2010 through June 30, 2010 for Title V Permit No. 2240-V4, issued on or about August 26, 2009. The report listed NO<sub>x</sub>

exceedances of both the 3-hour average in lb/ton nitric acid produced and the one hour limit in lb/hr for the following Nitric Acid trains:

Acid Train	Date	Duration	NO <sub>x</sub> emitted	Permit limit
Train No. 3	6/15/10	1 hour	151.04 lb/hr	81.25 lb/hr
Train No.4	2/1/10	1 hour	278.3 lb/hr	135.42 lb/hr
	2/6/10		387.7 lb/hr	
	2/12/10		254.9 lb/hr	
	2/12/10	Two 3-hr avgs	9.74 lb/ton	6.5 lb/ton
	2/13/10	2 hours	245.0 lb/hr	135.42 lb/hr
	2/13/10	Two 3-hr avgs	6.97 lb/ton	6.5 lb/ton
	2/27/10		11.54 lb/ton	
	3/9/10	1 hour	180.8 lb/hr	135.42 lb/hr
	3/17/10		139.8 lb/hr	135.42 lb/hr
	4/22/10	Three 3-hr avgs	8.1 lb/ton	6.5 lb/ton
Train No.5	4/30/10	1 hour	224.7 lb/hr	200.02 lb/hr

Each failure to demonstrate compliance with the limits of the permit for emission of NO<sub>x</sub> is a violation of Title V Permit No. 2240-V5, LAC 33:III.501.C.4, La. R. S. 30:2057(A)(1) and 2057(A)(2).

- F. In correspondence dated June 6, 2008, the Respondent stated that on or about May 31, 2008, overpressure developed in an ammonia (NH<sub>3</sub>) transfer line and caused a pressure relief manway in the transfer line to lift, resulting in an unpermitted release of 2,638 pounds of NH<sub>3</sub>. The Respondent reported that the relief remained open for 4.5 hours; the tank depressurized to atmospheric pressure over the course of two minutes, 23 seconds. The pressure relief manway in the NH<sub>3</sub> line is not a permitted emission source. The failure to prevent an unpermitted release of NH<sub>3</sub> into the atmosphere is a violation of LAC 33:III.501.C.4, La. R.S. 30:2057(A)(1), and 3:2057(A)(2).
- G. In correspondence dated June 8, 2010, the Respondent notified the Department of the results of testing conducted in April 2010 for NH<sub>3</sub> emissions on Nitric Acid Train No. 4 (EQT0007). Train No. 4 first entered service in 1996. The April 2010 testing for NH<sub>3</sub> was the first conducted on Train No. 4 since the train entered service. The correspondence dated June 8, 2010 stated that the permit limit for NH<sub>3</sub> of 13.06 lb/hr (maximum) was estimated by engineering calculations for the application for Title V Permit No. 2240-V5. The April 2010 test results indicated an NH<sub>3</sub> emission level of 132.2 lb/hr, which exceeded the permit. The failure to demonstrate compliance with the limits of the permit for emission of NH<sub>3</sub> is a violation of Title V Permit No. 2240-V5, LAC 33:III.501.C.4, La. R.S. 30:2057(A)(1) and 30:2057(A)(2).

- H. In correspondence dated September 4, 2009, the Respondent stated that on or about August 31, 2009, the vent on the Ammonia Storage Tank lifted and did not reseal, causing a release of NH<sub>3</sub>. The unpermitted release occurred during transfer from a ship at the unloading facility. The Respondent reported that the vent remained open for 2.0 hours; the tank depressurized to atmospheric pressure over the course of two minutes, 42 seconds. The unpermitted volume released was 1,896 pounds. The failure to prevent an unpermitted release of NH<sub>3</sub> into the atmosphere is a violation of LAC 33:III.501.C.4, La. R.S. 30:2057(A)(1), and 3:2057(A)(2).
- I. In correspondence dated March 30, 2010, the Respondent submitted the facility's 2009 Annual Compliance Certification for the Ammonia Group for the period encompassing January 1, 2009 through December 31, 2009 for Title V Permit No. 2241-V1, issued on or about May 31, 2006, and Title V Permit No. 2241-V2, issued on or about June 16, 2009. The following deviations or violations reported were:

<b>Emission Source</b>	<b>Deviation began</b>	<b>Deviation ended</b>	<b>Event</b>
Ammonia Plant Process Flare (EQT002)	1/1/2009	9/22/2009	Daily observation of flame was not recorded
Ammonia Plant Storage Flare (EQT109)	1/1/2009	9/22/2009	
<b>Emission Source</b>	<b>Deviation began</b>	<b>Deviation ended</b>	<b>Event</b>
FUG016	1/1/2009	12/31/2009	Fugitive NH <sub>3</sub> emission from urea plant exceeded

Each failure to record daily observations of the flames of the flares is a violation of Specific Requirement No. 9 and Specific Requirement No. 56, respectively, of Title V Permit No. 2241-V1, and Specific Requirement No. 5 and Specific Requirement No. 49, respectively, of Title V Permit No. 2241-V2, LAC 33:III.501.C.4, and La. R.S. 30:2057(A)(2).

- J. In correspondence dated June 8, 2010, the Respondent reported that on or about June 2, 2010, an unpermitted release of 756 pounds of NH<sub>3</sub> occurred when the relief valve on an NH<sub>3</sub> storage tank vented for 2.5 minutes to relieve high pressure in the tank. The failure to prevent an unpermitted release of NH<sub>3</sub> into the atmosphere is a violation of LAC 33:III.501.C.4, La. R.S. 30:2057(A)(1), and 3:2057(A)(2).
- K. In correspondence dated December 3, 2008, the Respondent submitted the following results of stack testing conducted September 25, 2008 on the Phosphoric Acid Plant Fume Scrubber (EQT074). The testing was conducted to determine the level of Total Fluorides (TF) emitted from the scrubber, with and without, water flow. In correspondence dated September 12, 2008, the Department granted an Exemption to Test to the facility with a condition requiring that no emission limit would be exceeded during the test. Results of the testing are:

<b>Fume Scrubber (EQT074)</b>	<b>Permit Limits TF, lb/hr</b>	<b>Test Results TF, lb/hr</b>
TF with water flow	0.007(avg)/0.010(max)	0.0023
TF without water flow	0.007(avg)/0.010(max)	<b>0.0844</b>
Load, tph	30.1(avg)/33.3(max)	33.0 (99% of max)

The failure to meet the permit limit for emission of TF during the testing period is a violation of Title V Permit No. 2276-V0, LAC 33:III.501.C.4, La. R.S. 30:2057(A)(1), and 30:2057(A)(2).

- L. In correspondence dated August 10, 2009, the Respondent reported the use of an unpermitted 174 horsepower (hp) diesel-fired portable water pump. At the time of the report, the engine had operated for 319 hours. The failure to receive approval prior to the installation of any emission source which will, or ultimately may, result in emission of air contaminants is a violation of LAC 33:III.501.C.1, and La. R.S. 30:2057(A)(2).
- M. In correspondence dated January 5, 2010, the Respondent submitted the facility's 2009 Second Semiannual Subpart AA Report for the Phosphate Group for the period encompassing July 1, 2009 through December 31, 2009, for Title V Permit No. 2276-V0, issued on or about August 10, 2007. The report stated that the South Attack Pre-scrubber flow meter was out of service for the period encompassing October 29, 2009, through November 16, 2009. Each day of failure to use installed air pollution control devices is a violation of LAC 33:III.905.A, LAC 33:III.501.C.4, La. R.S. 30:2057(A)(1), and 30:2057(A)(2).
- N. In correspondence dated March 30, 2010, the Respondent submitted the facility's 2009 Annual Compliance Certification for the Phosphate Group for the period encompassing January 1, 2009 through December 31, 2009, for Title V Permit No. 2276-V0, issued on or about August 10, 2007. The certification listed the following excess emissions of Hydrogen Fluoride (HF), Particulate Matter (PM<sub>10</sub>), Sulfur Dioxide (SO<sub>2</sub>), Oxides of Nitrogen (NO<sub>x</sub>), Carbon Monoxide (CO), and Volatile Organic Compounds (VOC):

<b>Identifier</b>	<b>Emission Source</b>	<b>Permit Limit, per year</b>	<b>Actual Emissions in 2009</b>
GRP025	Phosphoric Acid Area	0.15 tons HF	<b>0.670 tons HF</b>
EQT063	Diesel Compressor AC-191	0.01 tons PM <sub>10</sub>	<b>0.051 tons PM<sub>10</sub></b>
		0.01 tons SO <sub>2</sub>	<b>0.048 tons SO<sub>2</sub></b>
		0.01 tons NO <sub>x</sub>	<b>0.722 tons NO<sub>x</sub></b>
		0.01 tons CO	<b>0.156 tons CO</b>
		0.01 tons VOC	<b>0.059 tons VOC</b>

Each failure to demonstrate compliance with the limits of the permit for emission of HF is a violation of Specific Requirement 109 of Title V Permit No. 2276-V0, issued on or about August 10, 2007, LAC 33:III.501.C.4 and La. R. S. 30:2057(A)(1) and 30:2057 (A)(2). Each failure to demonstrate compliance with the limits of the

permit for emission of the criteria pollutants listed is a violation of Title V Permit No. 2276-V0, LAC 33:III.501.C.4 and La. R. S. 30:2057(A)(1) and 30:2057 (A)(2).

### COMPLIANCE ORDER

Based on the foregoing, the Respondent is **hereby ordered**:

I.

To immediately take, upon receipt of this **COMPLIANCE ORDER**, any and all steps necessary to achieve and maintain compliance with all current Title V Permits and comply with the Air Quality Regulations and the Act.

II.

To submit to the Enforcement Division, within ninety (90) days after receipt of this **COMPLIANCE ORDER**, a written report showing revised ammonia yearly emissions from Nitric Acid Train No. 4 (EQT0007) since it was put in service in 1996, until the report date.

III.

To submit to the Enforcement Division, within thirty (30) days after receipt of this **COMPLIANCE ORDER**, a written report that includes a detailed description of the circumstances surrounding the cited violations and actions taken or to be taken to achieve compliance with the Order Portion of this **COMPLIANCE ORDER**. This report and all other reports or information required to be submitted to the Enforcement Division by this **COMPLIANCE ORDER** shall be submitted to:

Office of Environmental Compliance  
Post Office Box 4312  
Baton Rouge, Louisiana 70821-4312  
**Attn: Mark E. Brown**  
**Re: Enforcement Tracking No. AE-CN-10-00695**  
**Agency Interest No. 3732**

### THE RESPONDENT SHALL FURTHER BE ON NOTICE THAT:

I.

The Respondent has a right to an adjudicatory hearing on a disputed issue of material fact or of law arising from this **COMPLIANCE ORDER**. This right may be exercised by filing a written request with the Secretary no later than thirty (30) days after receipt of this **COMPLIANCE ORDER**.

II.

The request for an adjudicatory hearing shall specify the provisions of the **COMPLIANCE ORDER** 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 right-hand corner of the first page of this document and should be directed to the following:

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. AE-CN-10-00695**  
**Agency Interest No. 3732**

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 **COMPLIANCE ORDER** 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 Department's Rules of Procedure. The Department may amend or supplement this **COMPLIANCE ORDER** prior to the hearing, after providing sufficient notice and an opportunity for the preparation of a defense for the hearing.

IV.

This **COMPLIANCE ORDER** 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 violations 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 **COMPLIANCE ORDER** shall not preclude the Respondent from contesting the findings of facts in any subsequent penalty action addressing the same violations, although the Respondent is estopped from objecting to this **COMPLIANCE ORDER** becoming a permanent part of its compliance history.

VI.

Civil penalties of not more than twenty-seven thousand five hundred dollars (\$27,500) for each day of violation for the violations described herein may be assessed. For violations which occurred on August 15, 2004, or after, 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 **COMPLIANCE ORDER** 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 violations described herein. Written comments may be filed regarding the violations 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 violations. If you would like to have such a meeting, please contact Mark E. Brown at (225) 219-3782 within ten (10) days of receipt of this **NOTICE OF POTENTIAL PENALTY**.

III.

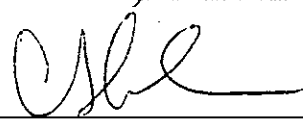
The Department is required by La. R.S. 30:2025(E)(3)(a) to consider the gross revenues of the Respondent and the monetary benefits of noncompliance to determine whether a penalty will be assessed and the amount of such penalty. Please forward the Respondent's most current annual gross revenue statement along with a statement of the monetary benefits of noncompliance for the cited

violations to the above named contact person within ten (10) days of receipt of this **NOTICE OF POTENTIAL PENALTY**. 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.

IV.

This **CONSOLIDATED COMPLIANCE ORDER & NOTICE OF POTENTIAL PENALTY** is effective upon receipt.

Baton Rouge, Louisiana, this 05 day of March, 2012.



Cheryl Sonnier Nolan  
Assistant Secretary  
Office of Environmental Compliance

Copies of a request for a hearing and/or related correspondence should be sent to:

Louisiana Department of Environmental Quality  
Office of Environmental Compliance  
Enforcement Division  
P.O. Box 4312  
Baton Rouge, LA 70821-4312  
Attention: Mark E. Brown





**BOBBY JINDAL**  
GOVERNOR

**PEGGY M. HATCH**  
SECRETARY

**State of Louisiana**  
**DEPARTMENT OF ENVIRONMENTAL QUALITY**  
**OFFICE OF ENVIRONMENTAL COMPLIANCE**

March 1, 2013

CERTIFIED MAIL 7004 2510 0005 5763 9969  
RETURN RECEIPT REQUESTED

**PCS NITROGEN FERTILIZER, L.P.**  
c/o Corporation Service Company  
Agent of Service  
320 Somerulos Street  
Baton Rouge, LA 70802

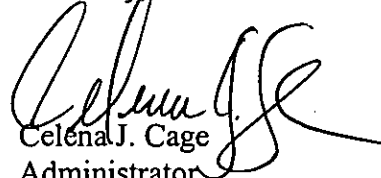
**RE: AMENDED CONSOLIDATED COMPLIANCE ORDER &  
NOTICE OF POTENTIAL PENALTY  
ENFORCEMENT TRACKING NO. AE-CN-10-00695A  
AGENCY INTEREST NOS. 3732, 173682**

Dear Sir:

Pursuant to the Louisiana Environmental Quality Act (La. R.S. 30:2001, et seq.), the attached **AMENDED CONSOLIDATED COMPLIANCE ORDER & NOTICE OF POTENTIAL PENALTY** is hereby served on **PCS NITROGEN FERTILIZER, L.P. (RESPONDENT)** for the violations described therein.

Any questions concerning this action should be directed to Mark E. Brown at (225) 219-3782.

Sincerely,

  
Celena J. Cage  
Administrator  
Enforcement Division

CSN/MEB/meb  
Alt ID No. 0180-00046, 0880-00198

c: PCS Nitrogen Fertilizer, L.P.  
Cecil Hopper  
10886 La. Hwy 75  
Geismar, LA 70734

**STATE OF LOUISIANA  
DEPARTMENT OF ENVIRONMENTAL QUALITY  
OFFICE OF ENVIRONMENTAL COMPLIANCE**

**IN THE MATTER OF**

**PCS NITROGEN FERTILIZER, L.P.  
ASCENSION PARISH  
ALT ID NOS. 0180-00046, 0180-00198**

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

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\* **ENFORCEMENT TRACKING NO.**  
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\* **AE-CN-10-00695A**  
\*  
\* **AGENCY INTEREST NOS.**  
\*  
\* **3732, 173682**  
\*  
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**AMENDED CONSOLIDATED COMPLIANCE ORDER &  
NOTICE OF POTENTIAL PENALTY**

The Louisiana Department of Environmental Quality (the Department) hereby amends the **CONSOLIDATED COMPLIANCE ORDER & NOTICE OF POTENTIAL PENALTY, ENFORCEMENT TRACKING NO. AE-CN-10-00695** issued to **PCS NITROGEN FERTILIZER, L.P. (RESPONDENT)** on March 5, 2012, in the above-captioned matter as follows:

I.

The Department hereby amends paragraph I of the Findings of Fact portion of **CONSOLIDATED COMPLIANCE ORDER & NOTICE OF POTENTIAL PENALTY, ENFORCEMENT TRACKING NO. AE-CN-10-00695** to read as follows:

"I.

The Respondent (Agency Interest No. 3732) owns and/or operates a fertilizer facility producing three different mineral acids as well as ammonia production and derived reaction products. The Nitrate Group is comprised of three Nitric Acid lines, currently operating under Title V Permit No. 2240-V6 issued on or about November 15, 2010. The Ammonia Group is comprised of four related operations which have operated under Title V Permit No. 2241-V2 issued on or about June 16, 2009, and Title V Permit No. 2241-V3 issued on or about May 26, 2011. The Ammonia Group currently operates under Title V Permit No. 2241-V4 issued on or about May 11, 2012. The Phosphate Group consists of one Phosphoric Acid line which has operated under Title V Permit No. 2276-V1 issued on or about

May 3, 2010 and administratively amended on or about June 8, 2010. The Phosphate Group currently operates under Title V Permit No. 2276-V2, issued on or about January 31, 2012. The Sulfate Group consists of one Sulfuric Acid line which has operated under Title V Permit No. 2247-V1 issued on or about March 26, 2008. The Department received a Notification of Change of Ownership Form (NOC-1) on April 29, 2010, from AA Sulfuric Corporation (Agency Interest No. 173682). The form indicated a new owner for the Sulfuric Acid Plant which was listed as AA Sulfuric Corporation. However, it also indicated that there was no change in the operator, and that attached information was provided to explain the previous owner. The explanation provided is as follows: "AA Sulfuric Corporation is a corporation that was created in 1984 to hold legal title to the Geismar sulfuric acid plant at the Geismar facility. Since that time, the sulfuric acid plant has been owned by AA Sulfuric but operated by other companies, including PCS Nitrogen Fertilizer, LP since at least 1997. The purpose of this filing is to correct the record to show AA Sulfuric as the owner on the relevant permits. PCS Nitrogen Fertilizer LP has been and will continue to be the operator of the plant with responsibility for permitting and compliance." Additionally, in the NOC-1 form, AA Sulfuric Corporation requested the transfer of Title V Permit No. 2247-V1 to them. Title V Permit No. 2247-V2 was issued on or about September 29, 2010, and on or about June 1, 2011, Title V Permit No. 2247-V3 was issued to AA Sulfuric Corporation (Agency Interest No. 173682), under which the Sulfuric Acid Plant currently operates."

## II.

The Department hereby adds paragraph III to the Findings of Fact portion of **CONSOLIDATED COMPLIANCE ORDER & NOTICE OF POTENTIAL PENALTY, ENFORCEMENT TRACKING NO. AE-CN-10-00695**, which shall read as follows:

## "III.

On or about January 15, 2013, a file review of the Respondent's Nitrate Group, Phosphate Group, Ammonia Group, and Sulfate Group was performed to determine the degree of compliance with the Act and the Air Quality Regulations.

While the investigation by the Department is not yet complete, the following violations were noted during the course of the file review:

- A. In correspondence dated March 24, 2011, the Respondent submitted the Nitrate Group's 2010 Second Semiannual Monitoring Report for the period encompassing July 1, 2010 through December 31, 2010. The Report listed exceedances of the permitted 3-hour averages for NO<sub>x</sub> for Nitric Acid Train 3 (EQT004) and Nitric Acid Train 4 (EQT007) but failed to report the amount of NO<sub>x</sub> emitted during the excursions. The failure to submit a complete Semiannual Monitoring Report is a

violation of Part 70 General Condition M of Title V Permit No. 2240-V5, and of Title V Permit No. 2240-V6, LAC 33:III.501.C.4, and La. R.S. 30:2057(A)(2).

- B. The Respondent failed to request an exemption, or submit a written report within seven calendar days for the excess emissions reported in Paragraph III.A of the Findings of Fact of this Compliance Order. Each failure to timely submit a written report for the excess emissions is a violation of Specific Requirement 16 of Title V Permit No. 2240-V5, Specific Requirement 15 of Title V Permit No. 2240-V6, LAC 33:III.501.C.4, and La. R.S. 30:2057(A)(2).
- C. In correspondence dated September 27, 2011, the Respondent submitted the Nitrate Group's 2011 First Semiannual Monitoring Report for the period encompassing January 1, 2011 through June 30, 2011. In correspondence dated March 31, 2012, the Respondent submitted the Nitrate Group's 2011 Second Semiannual Monitoring Report for the period encompassing July 1, 2011 through December 31, 2011. The violation, SR violated, and relevant Title V Permit, are shown in Table A:

TABLE A

Emission Source	Deviation Began	Deviation Ended	Violation	SR and Permit
Fume Scrubber 03G-119 (EQT0012)	1/1/11	6/30/11	Scrubber liquid flows were not recorded on 146 shifts of 362 shifts in the recording period	SR 37 2240-V6
	7/1/11	12/31/11	Scrubber liquid flows were not recorded on 14 shifts of 366 shifts in the recording period	
Fume Scrubber 218 (EQT0013)	7/1/11	12/31/11	Scrubber liquid flows were not recorded on 14 occasions of 366 recording occasions in the recording period	SR 39 2240-V6
Fume Scrubber 308 (EQT0014)	7/1/11	12/31/11	Scrubber liquid flows were not recorded on 14 shifts of 366 shifts in the recording period	SR 43 2240-V6
Nos. 3 & 4 Nitric Acid Tanks Fume Scrubber (EQT0133)	1/1/11	6/30/11	Scrubber liquid flows were not recorded on 164 shifts of 362 shifts in the recording period	SR 75 2240-V6
	7/1/11	12/31/11	Scrubber liquid flows were not recorded on 17 shifts of 366 shifts in the recording period	SR 75 2240-V6
Nitric Acid Train 4 (EQT007)	11/21/11 for 4 hours		NO <sub>x</sub> levels neither monitored nor recorded	SR 24 – monitor SR 25 – record 2240-V6
Nitric Acid Train 5 (EQT009)	8/4/11 for 4 hours		NO <sub>x</sub> levels not recorded	SR 29 2240-V6

**TABLE A**

<b>Emission Source</b>	<b>Deviation Began</b>	<b>Deviation Ended</b>	<b>Violation</b>	<b>SR and Permit</b>
Utility Boiler No. 2 (EQT0016)	8/4/11 for 4 hours		Failure to continuously record oxygen flow by CMS	SR 47 2240-V6
			Failure to continuously record fuel flow by CMS	SR 51 2240-V6
			Failure to continuously record steam flow by CMS	SR 53 2240-V6

Each failure to monitor and/or record monitoring data is a violation of the SR listed of the relevant Title V Permit, LAC 33:III.501.C.4, and La. R.S. 30:2057(A)(2).

- D. In correspondence dated September 27, 2011, the Respondent submitted the Nitrate Group's 2011 First Semiannual Monitoring Report for the period encompassing January 1, 2011 through June 30, 2011. In correspondence dated March 31, 2012, the Respondent submitted the Nitrate Group's 2011 Second Semiannual Monitoring Report for the period encompassing July 1, 2011 through December 31, 2011. The Reports listed exceedances of the permitted 3-hour averages for NO<sub>x</sub> for Nitric Acid Train 3 (EQT004) and Nitric Acid Train 4 (EQT007) but failed to report the amount of NO<sub>x</sub> emitted during the excursions. The failure to submit a complete Semiannual Monitoring Report is a violation of Part 70 General Condition M of Title V Permit No. 2240-V5, and of Title V Permit No. 2240-V6, LAC 33:III.501.C.4, and La. R. S. 30:2057(A)(2).
  
- E. The Respondent failed to request an exemption, or submit a written report within seven (7) calendar days, for the startup with excess emissions on October 25, 2011. The failure to submit a written report for excess emissions is a violation of Specific Requirement 15 of Title V Permit No. 2240-V6, LAC 33:III.501.C.4, and La. R. S. 30:2057(A)(2).
  
- F. In correspondence dated September 22, 2011, the Respondent submitted the Ammonia Group's 2011 First Semiannual Monitoring Report for the period encompassing January 1, 2011 through June 30, 2011. In correspondence dated March 29, 2012 the Respondent submitted the Ammonia Group's 2011 Second Semiannual Monitoring Report for the period encompassing July 1, 2011 through December 31, 2011. Each violation and Specific Requirement (SR) violated is shown in Table B:

**TABLE B**

<b>Emission Source</b>	<b>Deviation Began</b>	<b>Deviation Ended</b>	<b>Violation</b>	<b>SR and Permit</b>
Ammonia Plant Process Flare (EQT 0002)	1/1/11	6/30/11	Daily observations of flame were not recorded on four occasions during 181 occasions during the recording period	SR 5 2241-V2 SR 6 2241-V3
Ammonia Plant Storage Flare (EQT 0109)	1/1/11	6/30/11	Daily observations of flame were not recorded on four occasions during 181 occasions during the recording period	SR 49 2241-V2 SR 50 2241-V3
Ammonia Plant Storage Flare (EQT 0109)	7/1/11	12/31/11	Daily observations of flame were not recorded on four occasions during 184 occasions during the recording period	SR 6 2241-V3
Ammonia Plant Process Flare (EQT 0002)	7/1/11	12/31/11	Daily observations of flame were not recorded on four occasions during 184 occasions during the recording period	SR 50 2241-V3

Each failure to record daily observations of the flames of the flares is a violation of the SR listed of Title V Permit No. 2241-V2, Title V Permit No. 2241-V3, LAC 33:III.501.C.4, and La. R.S. 30:2057(A)(2).

- G. In correspondence dated June 22, 2011, the Respondent reported that on or about June 16, 2011, an unpermitted release of 2,630.5 pounds of ammonia occurred due to a piping failure within the urea plant. The failure to prevent an unpermitted release of ammonia into the atmosphere is a violation of LAC 33:III.905.A, LAC 33:III.501.C4, La. R.S. 30:2057(A)(1) and 30:2057(A)(2).
- H. In correspondence dated July 19, 2010, the Respondent submitted the Phosphate Group's 2010 First Semiannual Subpart AA Report for the period encompassing January 1, 2010 through May 2, 2010 for Title V Permit No. 2276-V0 and for the period encompassing May 3, 2010 through June 30, 2010 for Title V Permit No.

2276-V1. In correspondence dated January 19, 2011, the Respondent submitted the Phosphate Group's 2010 Second Semiannual Subpart AA Report for the period encompassing July 1, 2010 through December 31, 2010 for Title V Permit No. 2276-V1. Violations for the Phosphoric Acid Plant Fume Scrubber (EQT074, PPA-2) and the SR violated are shown in Table C:

**TABLE C**

<b>Emission Source</b>	<b>Duration of Deviation</b>	<b>Violation</b>	<b>Specific Requirement</b>
1 <sup>st</sup> Stage Filter Scrubber	3/17/10 and 3/19/10	Scrubber flow was not maintained ( $\geq 56.4$ and $\leq 182.8$ gal/min)	SR 37 2276-V0 AA
2 <sup>nd</sup> Stage Filter Scrubber	2/17/10, 3/19/10, 8/10/10, 8/30/10	Scrubber flow was not maintained ( $\geq 70.7$ and $\leq 173.7$ gal/min)	SR 39 2276-V0 AA SR 32 2276-V1 AA
North Attack Pre-Scrubber	1/4/10 – 1/5/10, 1/22/10, 2/10/10, 4/13/10, 5/8/10 – 5/9/10, 5/12/10, 9/30/10, 12/19/10	Scrubber flow was not maintained ( $\geq 75.3$ and $\leq 634.7$ gal/min)	SR 40 2276-V0 AA SR 29 2276-V1 SR 28 2276-V1 AA
South Attack Pre-Scrubber	1/13/10, 6/19/10 – 6/21/10, 9/30/10, 11/26/10, 12/18/10	Scrubber flow was not maintained ( $\geq 52.0$ and $\leq 424.9$ gal/min)	SR 36 2276-V0 AA SR 34 2276-V1 SR 24 2276-V1 AA

Each failure to control the proper water flow for each scrubber, on each day, is a violation of the SR listed of the relevant permit, LAC 33:III.501.C.4, La. R.S. 30:2057(A)(1) and 30:2057(A)(2).

- I. In correspondence dated July 19, 2010, the Respondent submitted the Phosphate Group's 2010 First Semiannual Subpart AA Report for the period encompassing January 1, 2010 through May 2, 2010 for Title V Permit No. 2276-V0 and for the period encompassing May 3, 2010 through June 30, 2010 for Title V Permit No. 2276-V1. In correspondence dated January 19, 2011, the Respondent submitted the Phosphate Group's 2010 Second Semiannual Subpart AA Report for the period encompassing July 1, 2010 through December 31, 2010 for Title V Permit No. 2276-V1. Violations of pressure differential for the Phosphoric Acid Plant Fume Scrubber (EQT074, PPA-2) and the SR violated are shown in Table D:

**TABLE D**

<b>Emission Source</b>	<b>Duration of Deviation</b>	<b>Violation</b>	<b>SR and Permit</b>
2 <sup>nd</sup> Stage Attack Scrubber	2/3/10, 3/23/10	Pressure differential was not maintained $\geq 0.3$ and $\leq 3.3$ inches	SR 28 2276-V0 AA

**TABLE D**

Emission Source	Duration of Deviation	Violation	SR and Permit
	8/13/10, 9/30/10	Pressure differential was not maintained $\geq 0.3$ and $\leq 3.3$ inches	SR 27 2276-V1 AA

Each failure to control the proper pressure differential is a violation of the SR listed of the Title V Permit listed, LAC 33:III.501.C.4, La. R.S. 30:2057(A)(1) and 30:2057(A)(2).

- J. In correspondences dated March 24, 2011, and March 28, 2012, the Respondent submitted the Phosphate Group's 2010 Title V Annual Compliance Certification for the period encompassing January 1, 2010 through December 31, 2010, and the 2011 Title V Annual Compliance Certification for the period encompassing January 1, 2011 through December 31, 2011, respectively. The Certifications revealed the exceedances listed in Table F for the emission sources listed in Table E:

**Table E**

ARE 00006	PGS-1 Inactive Clear Well System
GRP 025	Phosphoric Acid Process Area
EQT 062	PGS-3 Portable Diesel Pumps
EQT 063	PGS-4 Diesel Fired Air Compressor
EQT 064	PGS-5 Stack 1 Diesel Pump
EQT 072	PPA-14 Sand Blasting Area Compressor
EQT 074	Phosphoric Acid Plant Fume Scrubber
EQT 075	Phosphoric Acid Plant Cooling Tower
EQT 078	PPA-7 Filtrate Sump

Exceedances of permit limits for Hydrofluoric Acid (HF), Total Fluorides (Fluorides), Particulate Matter (PM<sub>10</sub>), Sulfur Dioxide (SO<sub>2</sub>), Nitrogen Oxides (NO<sub>x</sub>), Carbon Monoxide (CO), and Volatile Organic Compounds (VOC), are listed in Table F:

**Table F**

Quantity emitted in tons per year								
Year	Pollutant	ARE 0006	EQT 062	EQT 063	EQT 064	EQT 072	EQT 074	EQT 078
	HF limit 2276-V0 AA	0.26						Not permitted
	HF limit 2276-V1 & -V1AA		< 0.010					
2010	HF actual	0.29						0.061



**Table F**

Quantity emitted in tons per year								
Year	Pollutant	ARE 0006	EQT 062	EQT 063	EQT 064	EQT 072	EQT 074	EQT 078
	Fluorides limit 2276-V0 AA	0.40						< 0.010
	Fluorides limit 2276-V1 & -V1AA	0.78						< 0.010
2010	<b>Fluorides actual</b>	<b>0.87</b>						<b>0.174</b>
	PM <sub>10</sub> limit 2276-V0 AA, -V1, & -V1AA		0.410	0.010	0.01	0.060		
2010	<b>PM<sub>10</sub> actual</b>		<b>1.070</b>	<b>0.764</b>	<b>0.03</b>	<b>0.474</b>		
	SO <sub>2</sub> limit 2276-V0 AA		0.130					
	SO <sub>2</sub> limit 2276-V1 & -V1AA		0.380	0.010	0.01	0.060		
2010	<b>SO<sub>2</sub> actual</b>		<b>0.997</b>	<b>0.165</b>	<b>0.02</b>	<b>0.441</b>		
	NO <sub>x</sub> limit 2276-V1 & -V1AA		5.800					
2010	<b>NO<sub>x</sub> actual</b>		<b>15.078</b>	<b>0.051</b>	<b>0.35</b>	<b>6.674</b>		
	CO limit 2276-V0 AA		0.420					
	CO limit 2276-V1 & -V1AA		1.250	0.010	0.04	0.190		
2010	<b>CO actual</b>		<b>3.249</b>	<b>0.054</b>	<b>0.08</b>	<b>1.438</b>		
	VOC limit 2276-V0 AA		0.47	0.010	0.02	0.070		
	VOC limit 2276-V1 & -V1AA							

**Table F**

Quantity emitted in tons per year								
Year	Pollutant	ARE 0006	EQT 062	EQT 063	EQT 064	EQT 072	EQT 074	EQT 078
2010	<b>VOC actual</b>		1.223	0.062	0.03	0.541		
	HF limit 2276-V1	0.26					0.01	
2011	<b>HF actual</b>	0.29					0.02	
	Fluorides limit 2276-V1	0.78					0.01	
2011	<b>Fluorides actual</b>	0.87					0.06	
	PM <sub>10</sub> limit 2276-V1			0.010				
2011	<b>PM<sub>10</sub> actual</b>			0.336				
	SO <sub>2</sub> limit 2276-V1		0.380	0.010				
2011	<b>SO<sub>2</sub> actual</b>		0.386	0.072				
	NO <sub>x</sub> limit 2276-V1		5.800	0.010				
2011	<b>NO<sub>x</sub> actual</b>		5.836	0.022				
	CO limit 2276-V1		1.25	0.010				
2011	<b>CO actual</b>		1.26	0.024				
	VOC limit 2276-V1			0.010				
2011	<b>VOC actual</b>			0.026				

Each failure to maintain each pollutant below the permitted level is a violation of the relevant Permit, LAC 33:III.501.C.4, La. R.S. 30:2057(A)(1) and 30:2057(A)(2).

- K. In correspondences dated July 28, 2011, the Respondent submitted the Phosphate Group's 2011 First Semiannual Subpart AA Report for the period encompassing January 1, 2011 through June 30, 2011. In correspondence dated January 30, 2012, the Respondent submitted the Phosphate Group's 2011 Second Semiannual Subpart AA Report for the period encompassing July 1, 2011 through December 31, 2011. Violations of scrubber flow and differential in inches of water column (w.c.) for the Phosphoric Acid Plant Fume Scrubber (EQT074, PPA-2) and the SR violated are shown in Table G:

**TABLE G**

<b>Instrument</b>	<b>Duration of Deviation</b>	<b>Violation</b>	<b>SR and Permit</b>
2 <sup>nd</sup> Stage Attack Scrubber	8/31/11, 11/7/11 – 11/15/11	Scrubber flow was not maintained ( $\geq 88.3$ and $\leq 186.2$ gal/min)	SR 22 2276-V1AA
North 1 <sup>st</sup> Stage Attack Scrubber	8/31/11, 11/7/11 – 11/15/11	Scrubber flow was not maintained ( $\geq 44.5$ and $\leq 138.8$ gal/min)	SR 23 2276-V1AA
South Attack Pre-Scrubber	3/23/11, 5/3/11, 5/12/11, 6/3/11, 6/8/11, 8/11/11, 8/31/11, 11/7/11 – 11/15/11, 12/19/11 – 12/20/11, 12/24/11, 12/31/11	Scrubber flow was not maintained ( $\geq 52.0$ and $\leq 424.9$ gal/min)	SR 24 2276-V1AA
North Attack Pre-Scrubber	3/6/11, 5/12/11 – 5/13/11, 7/14/11, 8/1/11 – 8/2/11, 8/31/11, 11/7/11 – 11/15/11	Scrubber flow was not maintained ( $\geq 75.4$ and $\leq 634.7$ gal/min)	SR 30 2276-V1AA
2 <sup>nd</sup> Stage Filter Scrubber	3/5/11, 3/16/11, 3/18/11 – 3/19/11, 5/10/11, 8/31/11, 11/7/11 – 11/15/11	Scrubber flow was not maintained ( $\geq 70.7$ and $\leq 173.7$ gal/min)	SR 32 2276-V1AA
South 1 <sup>st</sup> Stage Attack Scrubber	2/27/11, 3/7/11 - 3/25/11, 3/28/11, 4/22/11 – 4/23/11, 5/31/11, 6/6/11 – 6/8/11, 11/7/11 – 11/15/11	Scrubber flow was not maintained ( $\geq 63.5$ and $\leq 186.8$ gal/min)	SR 33 2276-V1AA
3 <sup>rd</sup> Stage Attack Scrubber	2/24/11, 8/31/11, 11/7/11 – 11/15/11, 12/9/11	Scrubber flow was not maintained ( $\geq 91.7$ and $\leq 207.3$ gal/min)	SR 36 2276-V1AA
1 <sup>st</sup> Stage Filter Scrubber	8/31/11, 11/7/11 – 11/15/11, 12/9/11	Scrubber flow was not maintained ( $\geq 56.4$ and $\leq 182.8$ gal/min)	SR 37 2276-V1AA
3 <sup>rd</sup> Stage Attack Scrubber	7/1/11 – 7/21/11, 7/28/11 – 11/16/11, 12/22/11 – 12/24/11, 12/26/11	Pressure differential was not maintained ( $\geq 1.0$ and $\leq 2.5$ inches)	SR 26 2276-V1AA

**TABLE G**

<b>Instrument</b>	<b>Duration of Deviation</b>	<b>Violation</b>	<b>SR and Permit</b>
2 <sup>nd</sup> Stage Attack Scrubber	1/22/11, 2/22/11, 3/16/11, 4/28/11, 6/3/11, 7/29/11, 9/16/11, 11/7/11 – 11/15/11	Pressure differential was not maintained ( $\geq 0.3$ and $\leq 3.3$ inches)	SR 27 2276-V1AA
North Attack Pre-Scrubber	3/16/11, 5/25/11, 6/20/11, 8/10/11 – 8/11/11, 9/2/11, 10/15/11 – 10/16/11, 11/5/11 – 11/15/11, 12/15/11	Pressure differential was not maintained ( $\geq 0.1$ and $\leq 6.5$ inches)	SR 28 2276-V1AA
South 1 <sup>st</sup> Stage Attack Scrubber	5/31/11, 6/30/11, 11/7/11 – 11/15/11, 12/26/11, 12/23/11 – 12/25/11	Pressure differential was not maintained ( $\geq 0.3$ and $\leq 6.8$ inches)	SR 34 2276-V1AA

Each failure to control the proper water flow and/or pressure differential for each scrubber on each day is a violation of the SR listed of the permit listed, LAC 33:III.501.C.4, La. R.S. 30:2057(A)(1) and 30:2057(A)(2).

- L. In correspondence dated March 29, 2012, the Respondent submitted the Phosphate Group's 2011 Annual Compliance Certification for the period encompassing January 1, 2011 through December 31, 2011 for Title V Permit No. 2276-V1. The Certification stated that the Respondent submitted a 30-day notification of stack testing of the Phosphoric Acid Process Area (UNF 0004). The failure to submit a notification at least 60 days in advance of stack testing is a violation of Specific Requirement 98 of Title V Permit No. 2276-V1, LAC 33:III.501.C.4, and La. R.S. 30:2057(A)(2).
- M. In correspondences dated March 24, 2011, the Respondent submitted the Sulfate Group's 2010 First Semiannual Monitoring Report for the period encompassing January 1, 2010 through June 30, 2010, and 2010 Second Semiannual Monitoring Report for the period encompassing July 1, 2010 through December 31, 2010. In correspondence dated September 20, 2011, the Respondent submitted the Sulfate Group's 2011 First Semiannual Monitoring Report for the period encompassing January 1, 2011 through June 30, 2011. Violations included in the Reports are shown in Table H:

**TABLE H**

<b>Emission Source</b>	<b>Deviation Began</b>	<b>Deviation Ended</b>	<b>Violation</b>	<b>SR and Permit</b>
Oleum Storage Tank #1 Seal Pot (EQT0045)	1/1/10	6/30/10	Visual monitoring of emissions from the Oleum seal pot was not recorded on 17 shifts during 366 shifts in the monitoring period	SR 14 2247-V1
Oleum Storage Tank #2 Seal Pot (EQT0046)	1/1/10	6/30/10	Visual monitoring of emissions from the Oleum seal pot was not recorded on 17 shifts during 366 shifts in the monitoring period	SR 18 2247-V1
Oleum Storage Tank #1 Seal Pot (EQT0045)	7/1/10	12/31/10	Visual monitoring of emissions from the Oleum seal pot not recorded on 8 shifts during 366 shifts in the monitoring period	SR 14 2247-V1 SR 9 2247-V2
Oleum Storage Tank #2 Seal Pot (EQT0046)	7/1/10	12/31/10	Visual monitoring of emissions from the Oleum seal pot not recorded on 8 shifts during 365 shifts in the monitoring period	SR 18 2247-V1 SR 14 2247-V2
Oleum Storage Tank #1 Seal Pot (EQT0045)	1/1/11	6/30/11	Visual monitoring of emissions from the Oleum seal pot not recorded on 10 shifts during 365 shifts in the monitoring period	SR 9 2247-V2 SR 9 2247-V3
Oleum Storage Tank #2 Seal Pot (EQT0046)	1/1/11	6/30/11	Visual monitoring of emissions from the Oleum seal pot not recorded on 10 shifts during 365 shifts in the monitoring period	SR 14 2247-V2 SR 14 2247-V3
Oleum Storage Tank #1 Seal Pot (EQT0045)	1/1/11	6/30/11	Replacement of the contents of the Oleum seal pot was not conducted twice-weekly during 6 non-consecutive weeks of the 24-week reporting period	SR 8 2247-V2 SR 10 2247-V3
Oleum Storage Tank #2 Seal Pot (EQT0046)	1/1/11	6/30/11	Replacement of the contents of the Oleum seal pot was not conducted twice-weekly during 6 non-consecutive weeks of the 24-week reporting period	SR 12 2247-V2 SR 13 2247-V3

Each failure to record monitoring of emissions from the oleum tank seal pots on each day is a violation of the SR listed of the relevant permit, LAC 33:III.501.C.4, and La. R.S. 30:2057(A)(2). Each failure to twice-weekly replace the contents of each oleum tank seal pot is a violation of the SR listed of the relevant permit, LAC 33:III.501.C.4, La. R.S. 30:2057(A)(1) and 30:2057(A)(2).

- N. In correspondence dated March 24, 2011, the Respondent submitted the Sulfate Group's 2010 First Semiannual Monitoring Report for the period encompassing January 1, 2010 through June 30, 2010. The Respondent failed to submit the Report by the required September 30, 2010 due date. The failure to timely submit the Semiannual Monitoring Report is a violation of Part 70 General Condition K of Title V Permit No. 2247-V1, LAC 33:III.501.C.4, and La. R.S. 30:2057(A)(2).
- O. The Respondent failed to submit the Sulfate Group's 2010 Annual Compliance Certification for the period encompassing January 1, 2010 through December 31, 2010. The failure to submit the Annual Compliance Certification is a violation of Part 70 General Condition M of Title V Permit Nos. 2247-V1 and 2247-V2, LAC 33:III.501.C.4, and La. R.S. 30:2057(A)(2)."

### III.

The Department hereby adds paragraphs IV and V to the Order portion of **CONSOLIDATED COMPLIANCE ORDER & NOTICE OF POTENTIAL PENALTY, ENFORCEMENT TRACKING NO. AE-CN-10-00695**, which shall read as follows:

#### "IV.

To submit to the Emissions Reporting and Inventory Center (ERIC), within sixty (60) days after receipt of this **COMPLIANCE ORDER**, revised ammonia Emission Inventory (EI) reports for Nitric Acid Train No. 4 (EQT0007) for the years 2006 through 2009, if such reports have not been submitted to date. To submit revised ammonia EI reports for Nitric Acid Train No. 4 (EQT0007) for the years 1996 through 2005 within sixty (60) days of the ERIC system becoming available to receive them, if such reports have not been submitted to date. To submit to the Enforcement Division, a copy of the cover letter for each ERIC submission.

#### V.

To submit to the Enforcement Division, within sixty (60) days after receipt of this **COMPLIANCE ORDER**, amended Nitrate Group 2010 Second Semiannual and 2011 First Semiannual Monitoring Reports, showing the actual tons of NO<sub>x</sub> emitted during the excursion periods."

IV.

The Department incorporates all of the remainder of the original **CONSOLIDATED COMPLIANCE ORDER & NOTICE OF POTENTIAL PENALTY, ENFORCEMENT TRACKING NO. AE-CN-10-00695**, as if reiterated herein.

V.

This **AMENDED CONSOLIDATED COMPLIANCE ORDER & NOTICE OF POTENTIAL PENALTY** is effective upon receipt.

Baton Rouge, Louisiana, this 01 day of March, 2013.



\_\_\_\_\_  
Cheryl Sonnier Nolan  
Assistant Secretary  
Office of Environmental Compliance

Copies of a request for a hearing and/or related correspondence should be sent to:

Louisiana Department of Environmental Quality  
Office of Environmental Compliance  
Enforcement Division  
Post Office Box 4312  
Baton Rouge, LA 70821-4312  
Attention: Mark E. Brown



**BOBBY JINDAL**  
GOVERNOR

**PEGGY M. HATCH**  
SECRETARY

**State of Louisiana**  
**DEPARTMENT OF ENVIRONMENTAL QUALITY**  
**OFFICE OF ENVIRONMENTAL COMPLIANCE**

June 19, 2013

CERTIFIED MAIL (7004 2510 0006 3853 0437)  
RETURN RECEIPT REQUESTED

**PCS NITROGEN FERTILIZER, L.P.**  
c/o Corporation Service Company  
Agent of Service  
320 Somerulos Street  
Baton Rouge, LA 70802

**RE: AMENDED CONSOLIDATED COMPLIANCE ORDER &  
NOTICE OF POTENTIAL PENALTY  
ENFORCEMENT TRACKING NO. AE-CN-10-00695B  
AGENCY INTEREST NOS. 3732, 173682**

Dear Sir:

Pursuant to the Louisiana Environmental Quality Act (La. R.S. 30:2001, et seq.), the attached **AMENDED CONSOLIDATED COMPLIANCE ORDER & NOTICE OF POTENTIAL PENALTY** is hereby served on **PCS NITROGEN FERTILIZER, L.P. (RESPONDENT)** for the violations described therein.

Any questions concerning this action should be directed to Mark E. Brown at (225) 219-3782.

Sincerely,

Celena J. Cage  
Administrator  
Enforcement Division

CSN/MEB/meb  
Alt ID No. 0180-00046, 0180-00198

c: PCS Nitrogen Fertilizer, L.P.  
Cecil Hopper  
10886 La. Hwy 75  
Geismar, LA 70734



**STATE OF LOUISIANA  
DEPARTMENT OF ENVIRONMENTAL QUALITY  
OFFICE OF ENVIRONMENTAL COMPLIANCE**

**IN THE MATTER OF**

**PCS NITROGEN FERTILIZER, L.P.  
ASCENSION PARISH  
ALT ID NOS. 0180-00046, 0180-00198**

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

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**ENFORCEMENT TRACKING NO.**

**AE-CN-10-00695B**

**AGENCY INTEREST NOS.**

**3732, 173682**

**AMENDED CONSOLIDATED COMPLIANCE ORDER &  
NOTICE OF POTENTIAL PENALTY**

The Louisiana Department of Environmental Quality (the Department) hereby amends the **CONSOLIDATED COMPLIANCE ORDER & NOTICE OF POTENTIAL PENALTY, ENFORCEMENT TRACKING NO. AE-CN-10-00695A** issued to **PCS NITROGEN FERTILIZER, L.P. (RESPONDENT)** on or about March 1, 2013 in the above-captioned matter as follows:

**I.**

The Department hereby removes sub-paragraph N and sub-paragraph O of Paragraph II of the Findings of Fact.

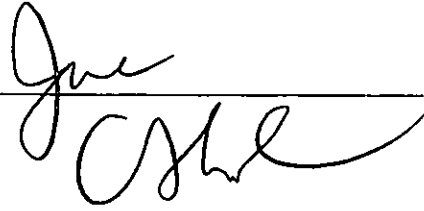
**II.**

The Department incorporates all of the remainder of the original **CONSOLIDATED COMPLIANCE ORDER & NOTICE OF POTENTIAL PENALTY, ENFORCEMENT TRACKING NO. AE-CN-10-00695A** and **AGENCY INTEREST NOS. 3732 and 173682**, as if reiterated herein.

IV.

This **AMENDED CONSOLIDATED COMPLIANCE ORDER & NOTICE OF POTENTIAL PENALTY** is effective upon receipt.

Baton Rouge, Louisiana, this 19 day of June, 2013.



---

Cheryl Sonnier Nolan  
Assistant Secretary  
Office of Environmental Compliance

Copies of a request for a hearing and/or related correspondence should be sent to:

Louisiana Department of Environmental Quality  
Office of Environmental Compliance  
Enforcement Division  
Post Office Box 4312  
Baton Rouge, LA 70821-4312  
Attention: Mark E. Brown

Copies of a request for a hearing and/or related correspondence should be sent to:

Louisiana Department of Environmental Quality  
Office of Environmental Compliance  
Enforcement Division  
Post Office Box 4312  
Baton Rouge, LA 70821-4312  
Attention: Mark E. Brown

**Appendix E – Notices of Violation Resolved by Consent Decree**



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 6  
1445 Ross Avenue  
Dallas, Texas 75202-2733

CERTIFIED MAIL – RETURN RECEIPT REQUESTED: 7003 0500 0003 0866 2024

Hanson Leonard  
General Manager  
PCS Nitrogen Fertilizer, L.P.  
P.O. Box 307  
Geismar, LA 70734

Subject: Notice and Finding of Violations

Dear Mr. Leonard:

Enclosed is a Notice and Finding of Violations (Notice) issued to PCS Nitrogen Fertilizer, L.P. (PCS Nitrogen) pursuant to Section 113(a)(1) and (a)(3) of the Clean Air Act, 42 U.S.C. §§ 7413(a)(1) and (a)(3). In the Notice, the Environmental Protection Agency is notifying PCS Nitrogen of violations of the Prevention of Significant Deterioration requirements and New Source Review permitting requirements of the Louisiana State Implementation Plan, and the Title V permitting requirements at its Geismar Plant in Ascension Parish, Texas.

Please note the opportunity to confer outlined in the Notice. As indicated in the Notice, any request to confer should be directed to Carlos Zequeira-Brinsfield, Senior Enforcement Counsel, at (214) 665-8053.

Sincerely,

A handwritten signature in black ink, appearing to read "John Blevins".

John Blevins  
Director  
Compliance Assurance and  
Enforcement Division

Enclosure

cc: Ms. Peggy M. Hatch  
Assistant Secretary  
Office of Environmental Compliance  
Louisiana Department of Environmental Quality  
P.O. Box 4312  
Baton Rouge, LA 70821-4312

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 6

IN THE MATTER OF:

PCS Nitrogen Fertilizer, L.P.  
Geismar, LA

Proceedings Pursuant to  
Section 113(a)(1) and (a)(3) of the Clean  
Air Act, 42 U.S.C. § 7413(a)(1) and (a)(3)

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) **NOTICE OF VIOLATION**  
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**NOTICE AND FINDING OF VIOLATIONS**

This Notice and Finding of Violations (Notice) is issued to PCS Nitrogen Fertilizer, L.P. (PCS Nitrogen) for violations of the Clean Air Act (CAA or the Act), 42 U.S.C. § 7401 *et seq.*, at its Geismar sulfuric acid plant. Specifically, PCS Nitrogen has violated the Prevention of Significant Deterioration (PSD) permitting requirements in the Louisiana State Implementation Plan (SIP), the Federal New Source Performance Standards (NSPS) for Sulfuric Acid Plants, and the Title V permitting requirements at its Geismar sulfuric acid plant.

This Notice is issued pursuant to Section 113(a)(1) and (a)(3) of the CAA, 42 U.S.C. § 7413(a)(1) and (a)(3). The authority to issue this Notice has been delegated to the Regional Administrator of EPA Region 6, and re-delegated to the Director, Compliance Assurance and Enforcement Division, EPA Region 6.

**A. STATUTORY AND REGULATORY BACKGROUND**

**National Standards of Performance for Sulfuric Acid Plants**

1. Section 111(e) of the Act provides that after the effective date of a standard of performance promulgated under this section, it is unlawful for any owner or operator of any new source to operate such source in violation of that standard.
2. EPA proposed the NSPS for Sulfuric acid plants on August 17, 1971. 36 Fed. Reg. 15704.
3. A modified stationary source must comply with all applicable standards within 180 days from the completion of any physical or operational change. 40 C.F.R. § 60.14(g).

4. An affected facility under the NSPS for Sulfuric Acid Plants, 40 C.F.R. Part 60, Subpart H (40 C.F.R. §§ 60.80-60.85), is any sulfuric acid production unit constructed, reconstructed, or modified after August 17, 1971.
5. 40 C.F.R. § 60.82 prohibits any affected sulfuric acid plant to emit SO<sub>2</sub> in excess of 2 kilograms per metric ton of acid produced (kg/metric ton) (4 pounds per ton of acid produced (lbs/ton)), the production being expressed as 100 percent sulfuric acid.
6. 40 C.F.R. § 60.83 prohibits any affected sulfuric acid plant to emit sulfuric acid mist in excess of 0.075 kilograms per metric ton of acid produced (kg/metric ton) (0.15 pounds per ton of acid produced (lbs/ton)), the production being expressed as 100 percent sulfuric acid.

#### Prevention of Significant Deterioration

7. Part C of Title I of the CAA (Sections 160 through 169) establishes the federal Prevention of Significant Deterioration (PSD) permitting program and requires each state to include a PSD program as part of its SIP.
8. Specifically, Section 165(a) of the CAA prohibits a major stationary source from constructing a major emitting facility without first obtaining a PSD permit and installing the best available control technology (BACT) if the source is located in an area which has achieved the National Ambient Air Quality Standards (NAAQS) for that pollutant.
9. On June 19, 1978, EPA established regulations implementing the federal PSD program at 40 C.F.R. § 52.21 and requirements for SIP Approved programs at 40 C.F.R. § 52.166. 43 Fed. Reg. 26403 (June 19, 1978). The PSD regulations were revised on August 7, 1980 (45 Fed. Reg. 52676). Subsequent to 1980, the PSD regulations have been revised.
10. EPA approved the State of Louisiana PSD Program into the federally enforceable SIP effective May 26, 1987. 40 C.F.R. § 52.970 and 52 Fed. Reg. 13671 (April 24, 1987).
11. Louisiana's PSD program is located in Louisiana Administrative Code (LAC) 33:III.509. These rules mirror the federal PSD regulations codified in 40 C.F.R. § 52.21 in the July 1, 2000 revision of the Code of Federal Regulations.
12. The Louisiana SIP at LAC 33:III.509.I prohibits the construction of any new major stationary source or any major modification without a permit which states that the source or modification would meet the requirements of LAC 33:III.509.J through R. LAC 33:III.509.J through M requires that a source subject to PSD regulations undergo a control technology review, install BACT, and conduct air quality modeling.
13. LAC 33:III.509.J requires the owner or operator of a new major stationary source or major modification to apply BACT for each pollutant that experienced a significant net emission increase as a result of a physical or operational change to that source.

14. Violations of the federally approved Louisiana PSD program are federally enforceable pursuant to Section 113 of the Act.

Requirements for Title V Operating

15. Title V of the Act, Sections 501 through 507, and its implementing regulations at 40 C.F.R. Part 70, establish an operating permit program for certain sources, including "major sources". The purpose of Title V is to ensure that all "applicable requirements" for compliance with the Act, including PSD and NSPS requirements, are collected in one place.

16. Section 502(a) of the Act and its implementing regulations at 40 C.F.R. Part 70, as well as the Louisiana Title V permit requirements, state that it is unlawful for any person to violate any requirement of a permit issued under Title V, or to operate an affected source except in compliance with a permit issued by a permitting authority under Title V.

17. Section 502(f) and 40 C.F.R. § 70.6(a) requires all operating permits issued under Title V to include enforceable emission limitations and such other conditions as are necessary to assure compliance with "applicable requirements" of the Act and the requirements of the applicable SIP. "Applicable requirement," defined at 40 C.F.R. § 70.2, includes any applicable PSD requirements and any applicable NSPS requirements.

18. 40 C.F.R. § 70.5(a) requires any owner or operator of a source subject to the Title V program to submit a timely and complete permit application that contains information sufficient to determine the applicability of any applicable requirements (including any requirement to meet BACT pursuant to PSD and to comply with NSPS), certifies compliance with all applicable requirements, provides information that maybe necessary to determine the applicability of other applicable requirements of the Act and contains a compliance plan for all applicable requirements for which the source is not in compliance.

19. 40 C.F.R. § 70.5(b) requires any applicant who fails to submit any relevant fact or who has submitted incorrect information in a permit application to promptly submit such supplementary facts or corrected information upon becoming aware of such failure or incorrect submittal.

20. EPA fully approved the Louisiana Title V program, effective October 12, 1995. *See* 60 Fed. Reg. 47296 (September 12, 1995). Louisiana's Title V permit requirements are codified at LAC 33:III.507.

**B. FACTUAL BACKGROUND**

21. PCS Nitrogen owns and operates a Sulfuric acid plant at Geismar, Louisiana.

22. PCS Nitrogen Fertilizer, L.P., is a partnership with domicile in the State of Delaware and is registered to do business in the State of Louisiana.



23. PCS Nitrogen owns and operates its Sulfuric Acid Plant (the Facility), which is a portion of the Geismar Agricultural Nitrogen & Phosphate Plant, located in Ascension and Iberville Parishes, Louisiana. At all times relevant to this action, PCS Nitrogen has been and continues to be the owner and/or operator of the Facility within the meaning of Section 112(a)(9) of the CAA, 42 U.S.C. § 7412(a)(9).

24. Defendant is a "person" within the meaning of Section 302(e) of the Act, 42 U.S.C. § 7602(e).

25. The PCS Nitrogen Geismar facility meets the definition of "sulfuric acid production unit" in 40 C.F.R. § 60.81.

26. The PCS Nitrogen Geismar facility meets the definition of "major stationary source" in 40 C.F.R. § 52.21(b)(1)(i)(a), because it is a sulfuric acid plant that has the potential to emit in excess of 100 tons of SO<sub>2</sub> per year.

27. On or about October 1995, PCS Nitrogen began a project to replace the converter with a new oversized converter. The original converter was sized for a production capacity of 1450 tons per day (TPD); the new converter was sized for a production capacity of at least 1700 TPD for a single absorption process.

28. As a result of the converter replacement, the 100% sulfuric acid production capacity of the sulfuric acid plant increased from 1670 tons per day to at least 1720 tons per day.

29. As a result of the converter replacement the SO<sub>2</sub> emission rate to the atmosphere increased from 2048 lbs/hr before the 1995 project to at least 2109 lbs/hr after the project.

30. Emissions of SO<sub>2</sub> increased from 8261 tons per year in the 24 month period preceding the converter replacement to a PTE of 10,157.38 tons per year after the converter replacement. This constitutes an actual-to-potential increase of 1896.38 tons per year.

31. Between 1995 and 2003, a series of component replacements were conducted at the Geismar facility which, in aggregate, extended its useful life. The sum of the capital expenditures for the component replacements was \$11,503,000.

32. The most recent stack test conducted June 7, 2005 showed the sulfuric acid plant to be emitting approximately 30.5 lbs of SO<sub>2</sub> per ton of 100% acid produced.

33. The PCS Nitrogen Geismar facility is subject to Title V of the CAA (Sections 502 and 503) because it is a major source (as defined in Section 501(2) of the CAA) with the potential to emit more than 100 tons of SO<sub>2</sub> per year. PCS Nitrogen became subject to the requirements of Title V on October 12, 1995.

34. PCS Nitrogen submitted its initial Title V permit application to the Louisiana Department of Environmental Quality (LDEQ) on October 15, 1996. An application

reconciliation was submitted in June 2001. This permit application and the revision stated that the sulfuric acid plant was grandfathered from the provisions of NSPS Subpart H.

35. As of the date of this NOV, PCS Nitrogen is operating its facility in Geismar, Louisiana.

### **C. FINDING OF VIOLATIONS**

#### **Violation No.1 – Failing to Obtain a PSD Permit Prior to Making a Major Modification**

36. Paragraphs 1 – 35 are realleged and incorporated by reference.

37. As a result of the converter replacement, the potential to emit off the sulfuric acid plant increased beyond the significance level for SO<sub>2</sub>. Therefore, the converter replacement caused a significant net emission increase of SO<sub>2</sub>.

38. Because the sulfuric acid plant converter replacement caused a significant net emission increase of SO<sub>2</sub> at a major stationary source, the project was a “major modification,” as defined in the Louisiana SIP at LAC 33:III.509.B, triggering the requirement to (1) obtain a PSD permit, (2) apply BACT on the sulfuric acid plant, and (3) demonstrate that the proposed change did not cause a significant deterioration in air quality in accordance with LAC 33:III.509.J through R, and Sections 110 and 165 of the Act.

39. PCS Nitrogen’s failure to apply for a PSD Permit and apply BACT for SO<sub>2</sub> to the sulfuric acid plant constitutes a violation of the Louisiana SIP at LAC 33:III.509.I (PSD), which was promulgated pursuant to Sections 110 and 165 of the Act, 42 U.S.C. §§ 7410 and 7475.

#### **Violation No. 2 – Emissions of Sulfur Dioxide Greater Than 2 kg per metric ton (4 lbs/ton) of Acid Produced**

40. Paragraphs 1 – 39 are realleged and incorporated by reference.

41. The converter replacement increased the hourly emission rate of SO<sub>2</sub> and sulfuric acid mist. Therefore, the project triggered the NSPS “modification” provisions in 40 C.F.R. § 60.14 for SO<sub>2</sub> and sulfuric acid mist. As a result, the sulfuric acid plant is subject to the standards for SO<sub>2</sub> in 40 C.F.R. Part 60 Subpart H (40 C.F.R. §§ 60.80-85).

42. Additionally, the general provisions to NSPS (40 C.F.R. §§ 60.1-60.19) define “reconstruction” as “the replacement of components of an existing facility to the extent that...the fixed capital cost of the new components exceeds 50 percent of the fixed capital cost that would be required to construct a comparable and entirely new facility.” 40 C.F.R. § 60.15(b).

43. Between 1995 and 2003, a series of component replacements were conducted at the Facility which, in aggregate, extended its useful life. The sum of the capital expenditures for the

component replacements was \$11,503,000. The fixed capital cost that would have been required to construct a comparable 1600 tons per day sulfuric acid plant in 1995 was \$20,000,000. The sum of the capital expenditures for the component replacements between 1995 and 2005 exceeds 50 percent of the fixed capital cost that would be required to construct a comparable and entirely new facility. This meets the definition of reconstruction, thus making the Facility subject to the standards for SO<sub>2</sub> and sulfuric acid mist in 40 C.F.R. Part 60 Subpart H (40 C.F.R. §§ 60.80-85).

44. The sulfuric acid plant routinely emits more than the NSPS standard for SO<sub>2</sub> of 2 kilograms per metric ton of acid produced (kg/metric ton)(4 lbs/ton) at 40 C.F.R. § 60.82.

45. PCS Nitrogen's emissions of greater than 2 kg/metric ton (4 lbs/ton) of SO<sub>2</sub> while operating the sulfuric acid plant violate 40 C.F.R. § 60.82, a regulation promulgated pursuant to Section 111 of the Act, 42 U.S.C. § 7411.

**Violation No. 3 – Emissions of Sulfuric Acid Mist Greater Than 0.075 kg per metric ton (0.15 lbs/ton) of Acid Produced**

46. Paragraphs 1 – 45 are realleged and incorporated by reference.

47. The sulfuric acid plant has emitted more than the NSPS standard for standard sulfuric acid mist of 0.075 kilograms per metric ton of acid produced (kg/metric ton)(0.15 lbs/ton) at 40 C.F.R. § 60.83.

48. PCS Nitrogen's emissions of greater than 0.075 kg/metric ton (0.15 lbs/ton) of sulfuric acid mist while operating the sulfuric acid plant violate 40 C.F.R. § 60.83 a regulation promulgated pursuant to Section 111 of the Act, 42 U.S.C. § 7411.

**Violation No. 4 – Failing to Conduct Performance Test(s) within 180 days of startup**

49. Paragraphs 1 – 48 are realleged and incorporated by reference.

50. In a CAA Section 114 Information Request dated March 27, 2006, EPA requested that PCS Nitrogen submit documentation of all emission test runs, emissions characterizations, or emissions studies, conducted or attempted at the sulfuric acid plant since January 1, 1980, including information relevant to operating parameters measured during these tests/studies, such as production rate and stack gas flow rates.

51. Information submitted by PCS Nitrogen on June 21, 2006, in response to the CAA Section 114 Information Request dated March 27, 2006, failed to show that a performance test was conducted within 180 days of startup.

52. By failing to conduct a performance test within 180 days of initial startup PCS Nitrogen violated 40 C.F.R. § 60.8(a), a regulation promulgated pursuant to Section 111 of the Act, 42 U.S.C. § 7411

**Violation No. 5 – Failing to Submit Complete Permit Application for a Title V Operating Permit**

53. Paragraphs 1 – 52 are realleged and incorporated by reference.

54. PCS Nitrogen submitted a Title V permit application for the source on October 15, 1996. The application did not identify NSPS and PSD as applicable requirement to the source, did not certify compliance with NSPS and PSD requirements, and did not contain a compliance plan for NSPS or PSD requirements.

55. In June 2001, PCS Nitrogen submitted a Title V permit application reconciliation. The application did not identify NSPS and PSD as applicable requirement to the source, did not certify compliance with NSPS and PSD requirements, and did not contain a compliance plan for NSPS or PSD requirements.

56. The Title V permit for the source, which was issued to PCS Nitrogen on March 14, 2006, does not list NSPS and PSD as applicable requirements and does not contain a compliance plan for NSPS and PSD.

57. Therefore PCS Nitrogen's failure violates Title V permitting requirements at Section 502(a) and 504 (a) of the Act [42 U.S.C. §§ 7661a(a) & c(a)], 40 C.F.R. § 70.5, and LAC 33:III.507.B.2 and LAC 33:III.517.B.1.

**D. ENFORCEMENT**

Section 113(a)(1) of the Act, 42 U.S.C. § 7413(a)(1), provides that at any time after the expiration of 30 days following the date of the issuance of a Notice of Violation, the Administrator may, without regard to the period of violation, issue an order requiring compliance with the requirements of the state implementation plan or permit, issue an administrative penalty order pursuant to Section 113(d), or bring a civil action pursuant to Section 113(b) for injunctive relief and/or civil penalties.

Section 113(a)(3) of the Act, 42 U.S.C. § 7413(a)(3), provides in part that if the Administrator finds that a person has violated, or is in violation of Title V of the Act, including a requirement or prohibition of any rule, plan, order, waiver, or permit promulgated, issued, or approved under Title V, the Administrator may issue an administrative penalty order under Section 113(d), issue an order requiring compliance with such requirement or prohibition, or bring a civil action pursuant to Section 113(b) for injunctive relief and/or civil penalties.

**E. OPPORTUNITY FOR CONFERENCE**

PCS Nitrogen may, upon request, confer with EPA. The conference will enable PCS Nitrogen to present evidence bearing on the finding of violations, on the nature of the violations, and on any efforts it may have taken or proposes to take to achieve compliance. PCS Nitrogen has a right to be represented by counsel. A request for a conference must be made within

ten (10) days of receipt of this Notice, and the request for a conference or other inquiries concerning the Notice should be made in writing to:

Carlos Zequeira-Brinsfield  
Assistant Regional Counsel (6RC-EA)  
U. S. EPA - Region 6  
1445 Ross Avenue  
Dallas, Texas 75202-2733

If you have any questions, please feel free to call Mr. Zequeira-Brinsfield at (214) 665-8053.

**F. EFFECTIVE DATE.**

This Notice shall become effective immediately upon issuance.

Dated: 6-26-08



John Blevins  
Director  
Compliance Assurance and Enforcement Division  
U.S. EPA - Region 6



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 6  
1445 Ross Avenue  
Dallas, Texas 75202-2733

June 20, 2011

CERTIFIED MAIL – RETURN RECEIPT REQUESTED: 7010 1060 0002 1872 0054

Charles T. Wehland, Esq.  
Jones Day  
77 West Wacker  
Chicago, IL 60601-1692

Subject: Notice and Finding of Violations

Dear Mr. Wehland:

Enclosed is an Amended Notice and Finding of Violations (Notice) issued to AA Sulfuric Corporation (AA Sulfuric) and PCS Nitrogen Fertilizer, L.P. (PCS Nitrogen) pursuant to Section 113(a)(1) and (a)(3) of the Clean Air Act, 42 U.S.C. §§ 7413(a)(1) and (a)(3). In the Notice, the Environmental Protection Agency (EPA) is notifying AA Sulfuric and PCS Nitrogen of violations of the Prevention of Significant Deterioration requirements and New Source Review permitting requirements of the Louisiana State Implementation Plan, and the Title V permitting requirements at its Geismar Plant located in Ascension and Iberville Parish, Louisiana. PCS Nitrogen was previously notified of these violations in the Notice issued on June 26, 2008.

Please note the opportunity to confer outlined in the Notice. As indicated in the Notice, any request to confer should be directed to Carlos Zequeira, Senior Enforcement Counsel. Mr. Zequeira can be reached at (214) 665-8053.

Sincerely,

A handwritten signature in black ink, appearing to read "John Blevins".

John Blevins  
Director  
Compliance Assurance and  
Enforcement Division

Enclosure

cc: PCS Nitrogen Fertilizer  
c/o Corporation Service Company (Certified Number: 7007 1490 0004 0562 9897)

Celena Cage, Administrator  
Louisiana Department of Environmental Quality

Re: AA Sulfuric and PCS Nitrogen  
Amended Finding and Notice of Violations

---

Identical Letter Sent to:

Bryan Andries, President, Director  
AA Sulfuric Corporation  
3115 Highway 30  
Geismar, LA 70734



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 6  
1445 Ross Avenue  
Dallas, Texas 75202-2733

June 20, 2011

CERTIFIED MAIL – RETURN RECEIPT REQUESTED: 7011 0110 0001 3590 7435

Bryan Andries, President  
AA Sulfuric Corporation  
3115 Highway 30  
Geismar, LA 70734

Subject: Amended Notice and Finding of Violations

Dear Mr. Andries:

Enclosed is an Amended Notice and Finding of Violations (Notice) issued to AA Sulfuric Corporation (AA Sulfuric) and PCS Nitrogen Fertilizer, L.P. (PCS Nitrogen) pursuant to Section 113(a)(1) and (a)(3) of the Clean Air Act, 42 U.S.C. §§ 7413(a)(1) and (a)(3). In the Notice, the Environmental Protection Agency (EPA) is notifying AA Sulfuric and PCS Nitrogen of violations of the Prevention of Significant Deterioration requirements and New Source Review permitting requirements of the Louisiana State Implementation Plan, and the Title V permitting requirements at its Geismar Plant located in Ascension and Iberville Parish, Louisiana. PCS Nitrogen was previously notified of these violations in the Notice issued on June 26, 2008.

Please note the opportunity to confer outlined in the Notice. As indicated in the Notice, any request to confer should be directed to Carlos Zequeira, Senior Enforcement Counsel. Mr. Zequeira can be reached at (214) 665-8053.

Sincerely,

A handwritten signature in black ink, appearing to read "John Blevins".

John Blevins  
Director  
Compliance Assurance and  
Enforcement Division

Enclosure

cc: AA Sulfuric Corporation  
c/o Corporation Service Company (Certified Number: 7007 1490 0004 0562 9880)

Celena Cage, Administrator  
Louisiana Department of Environmental Quality



Re: AA Sulfuric and PCS Nitrogen  
Amended Notice and Finding of Violations

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Identical Letter Sent to:

Charles T. Wehland, Esq.  
Jones Day  
77 West Wacker  
Chicago, IL 60601-1692

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 6**

**IN THE MATTER OF:**

AA Sulfuric Corporation and  
PCS Nitrogen Fertilizer, L.P.  
Geismar, LA

Proceedings Pursuant to  
Section 113(a)(1) and (a)(3) of the Clean  
Air Act, 42 U.S.C. § 7413(a)(1) and (a)(3)

**AMENDED NOTICE OF VIOLATION**

**AMENDED NOTICE AND FINDING OF VIOLATIONS**

This Amended Notice and Finding of Violations (Notice) is issued to AA Sulfuric Corporation (AA Sulfuric) and PCS Nitrogen Fertilizer, L.P. (PCS Nitrogen) for violations of the Clean Air Act ("CAA" or "the Act"), 42 U.S.C. § 7401 *et seq.*, at the Geismar sulfuric acid plant. Specifically, AA Sulfuric and PCS Nitrogen have violated the Prevention of Significant Deterioration (PSD) permitting requirements in the Louisiana State Implementation Plan (SIP), the Federal New Source Performance Standards (NSPS) for Sulfuric Acid Plants, and the Title V permitting requirements at the Geismar sulfuric acid plant.

This Notice is issued pursuant to Section 113(a)(1) and (a)(3) of the CAA, 42 U.S.C. § 7413(a)(1) and (a)(3). Section 113(a) of the Act requires the Administrator of the United States Environmental Protection Agency (EPA) to notify any person in violation of a State Implementation Plan (SIP) or permit of the violations. The authority to issue this Notice has been delegated to the Regional Administrator of EPA Region 6, and re-delegated to the Director, Compliance Assurance and Enforcement Division, EPA Region 6.

A Notice and Finding of Violations issued to PCS Nitrogen on June 26, 2008 regarding the same violations at the Geismar sulfuric acid plant is incorporated herein by reference.

**A. STATUTORY AND REGULATORY BACKGROUND**

1. The Clean Air Act is designed to protect and enhance the quality of the nation's air so as to promote the public health and welfare and the productive capacity of its population. Section 101(b)(1) of the Act, 42 U.S.C. § 7401(b)(1).

Re: AA Sulfuric Corporation and  
PCS Nitrogen Fertilizer, L.P.  
Amended Notice and Finding of Violations

The National Ambient Air Quality Standards

2. Section 108(a) of the Act, 42 U.S.C. § 7408(a), requires the Administrator of EPA to identify and prepare air quality criteria for each air pollutant, emissions of which may endanger public health or welfare, and the presence of which results from numerous or diverse mobile or stationary sources. For each such “criteria” pollutant, Section 109 of the Act, 42 U.S.C. § 7409, requires EPA to promulgate national ambient air quality standards (“NAAQS”) requisite to protect the public health and welfare.
3. Pursuant to Sections 108 and 109, 42 U.S.C. §§ 7408 and 7409, EPA has identified SO<sub>2</sub> as a criteria pollutant, and has promulgated NAAQS for such pollutant. 40 C.F.R. §§ 50.4 and 50.5.
4. Under Section 107(d) of the Act, 42 U.S.C. § 7407(d), each state is required to designate those areas within its boundaries where the air quality is better or worse than the NAAQS for each criteria pollutant, or where the air quality cannot be classified due to insufficient data. An area that meets the NAAQS for a particular pollutant is termed an “attainment” area with respect to such pollutant. An area that does not meet the NAAQS for a particular pollutant is termed a “nonattainment” area with respect to such pollutant.
5. An area that cannot be classified as either “attainment” or “nonattainment” with respect to a particular pollutant due to insufficient data is termed “unclassifiable” with respect to such pollutant.
6. At all times relevant to this Notice, Ascension and Iberville Parishes, the area in which the Facility is located, have been classified as attainment for SO<sub>2</sub>.

Prevention of Significant Deterioration

7. Part C of Title I of the CAA (Sections 160 through 169) establishes the federal Prevention of Significant Deterioration (PSD) permitting program and requires each state to include a PSD program as part of its SIP.
8. Specifically, Section 165(a) of the CAA prohibits a major stationary source from constructing a major emitting facility without first obtaining a PSD permit and installing the best available control technology (BACT) if the source is located in an area which has achieved the NAAQS for that pollutant.
9. On June 19, 1978, EPA established regulations implementing the federal PSD program at 40 C.F.R. § 52.21 and requirements for SIP Approved programs at 40 C.F.R. § 52.166.

Re: AA Sulfuric Corporation and  
PCS Nitrogen Fertilizer, L.P.  
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- 43 Fed. Reg. 26403 (June 19, 1978). The PSD regulations were revised on August 7, 1980 (45 Fed. Reg. 52676). Subsequent to 1980, the PSD regulations have been revised.
10. EPA approved the State of Louisiana PSD Program into the federally enforceable SIP effective May 26, 1987. 40 C.F.R. § 52.970 and 52 Fed. Reg. 13671 (April 24, 1987).
  11. Louisiana's PSD program is located in Louisiana Administrative Code (LAC) 33:III.509. These rules mirror the federal PSD regulations codified in 40 C.F.R. §52.21.
  12. The Louisiana SIP at LAC 33:III.509.I prohibits the construction of any new major stationary source or any major modification without a permit which states that the source or modification would meet the requirements of LAC 33:III.509.J through R. LAC 33:III.509.J through M requires that a source subject to PSD regulations undergo a control technology review, install BACT, and conduct air quality modeling.
  13. LAC 33:III.509.J requires the owner or operator of a new major stationary source or major modification to apply BACT for each pollutant that experienced a significant net emission increase as a result of a physical or operational change to that source.
  14. Violations of the federally approved Louisiana PSD program are federally enforceable pursuant to Section 113 of the Act.

National Standards of Performance for Sulfuric Acid Plants

15. Section 111(e) of the Act provides that after the effective date of a standard of performance promulgated under this section, it is unlawful for any owner or operator of any new source to operate such source in violation of that standard.
16. EPA promulgated the National Standards of Performance for Sulfuric Acid Plants (NSPS) on December 23, 1971. 36 Fed. Reg. 24877.
17. A modified stationary source must comply with all applicable standards within 180 days from the completion of any physical or operational change. 40 C.F.R. § 60.14(g).
18. An affected facility under the NSPS for Sulfuric Acid Plants, codified at 40 C.F.R. Part 60, Subpart H (40 C.F.R. §§ 60.80-60.85), is any sulfuric acid production unit constructed, reconstructed, or modified after August 17, 1971.
19. 40 C.F.R. § 60.82 prohibits any affected sulfuric acid plant from emitting SO<sub>2</sub> in excess of 2 kilograms per metric ton of acid produced (kg/metric ton) (4 pounds per ton of acid produced (lbs/ton), the production being expressed as 100 percent sulfuric acid.

Re: AA Sulfuric Corporation and  
PCS Nitrogen Fertilizer, L.P.  
Amended Notice and Finding of Violations

20. 40 C.F.R. § 60.83 prohibits any affected sulfuric acid plant from emitting sulfuric acid mist in excess of 0.075 kilograms per metric ton of acid produced (kg/metric ton) (0.15 pounds per ton of acid produced (lbs/ton)), the production being expressed as 100 percent sulfuric acid.

Requirements for Title V Operating

21. Title V of the Act, found in CAA Sections 501 through 507, 42 U.S.C. §§ 7661 through 7661f, and its implementing regulations at 40 C.F.R. Part 70, establish an operating permit program for certain sources, including “major sources”. The purpose of Title V is to ensure that all “applicable requirements” for compliance with the Act, including PSD and NSPS requirements, are collected in one place.
22. Section 502(a) of the Act and its implementing regulations at 40 C.F.R. Part 70, as well as the Louisiana Title V permit requirements, state that it is unlawful for any person to violate any requirement of a permit issued under Title V, or to operate an affected source except in compliance with a permit issued by a permitting authority under Title V.
23. Section 502(f) and 40 C.F.R. § 70.6(a) require all operating permits issued under Title V to include enforceable emission limitations and such other conditions as are necessary to assure compliance with “applicable requirements” of the Act and the requirements of the applicable SIP. “Applicable requirement,” defined at 40 C.F.R § 70.2, includes any applicable PSD requirements and any applicable NSPS requirements.
24. 40 C.F.R. § 70.5(a) requires any owner or operator of a source subject to the Title V program to submit a timely and complete permit application that contains information sufficient to determine the applicability of any applicable requirements (including any requirement to meet BACT pursuant to PSD and to comply with NSPS), certifies compliance with all applicable requirements, provides information that may be necessary to determine the applicability of other applicable requirements of the Act and contains a compliance plan for all applicable requirements for which the source is not in compliance.
25. 40 C.F.R. § 70.5(b) requires any applicant who fails to submit any relevant fact or who has submitted incorrect information in a permit application to promptly submit such supplementary facts or corrected information upon becoming aware of such failure or incorrect submittal.
26. EPA fully approved the Louisiana Title V program, effective October 12, 1995. *See* 60 Fed. Reg. 47296 (September 12, 1995). Louisiana’s Title V permit requirements are codified at LAC 33:III., Chapter 5.

Re: AA Sulfuric Corporation and  
PCS Nitrogen Fertilizer, L.P.  
Amended Notice and Finding of Violations

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**B. FACTUAL BACKGROUND**

27. AA Sulfuric owns a sulfuric acid plant at Geismar, Louisiana which is operated by PCS Nitrogen.
28. AA Sulfuric Corporation is a Louisiana corporation that is registered to do business in the State of Louisiana. PCS Nitrogen is a partnership domiciled in Delaware and registered to do business in Louisiana.
29. The sulfuric acid plant owned by AA Sulfuric and operated by PCS Nitrogen (the Facility) is a portion of the Geismar Agricultural Nitrogen & Phosphate Plant and is located in Ascension and Iberville Parishes, Louisiana. At all times relevant to this action, AA Sulfuric has been and continues to be the owner of the Facility within the meaning of Section 111(a)(5) of the CAA, 42 U.S.C. § 7411(a)(5). In addition, at all times relevant to this action, PCS Nitrogen has been and continues to be the operator of the Facility within the meaning of Section 111(a)(5) of the CAA, 42 U.S.C. § 7411(a)(5).
30. Defendants are both “persons” within the meaning of Section 302(e) of the Act, 42 U.S.C. § 7602(e).
31. The Facility meets the definition of “sulfuric acid production unit” in 40 C.F.R. § 60.81.
32. The Facility meets the definition of “major stationary source” in 40 C.F.R. § 52.21(b)(1)(i)(a), because it is a sulfuric acid plant that has the potential to emit in excess of 100 tons of SO<sub>2</sub> per year.
33. On or about October 1995, AA Sulfuric and PCS Nitrogen began a project to replace the sulfuric acid converter at the Facility with a new oversized converter. The original converter was sized for a production capacity of approximately 1,450 tons per day (TPD); the new converter was sized for a production capacity of at least 1,700 TPD for a single absorption process.
34. As a result of the converter replacement, the 100% sulfuric acid production capacity of the sulfuric acid plant increased from 1,670 tons per day to at least 1,720 tons per day.
35. As a result of the converter replacement, the SO<sub>2</sub> emission rate to the atmosphere increased from 2,048 lbs/hr before the 1995 project to at least 2,109 lbs/hr after the project.

Re: AA Sulfuric Corporation and  
PCS Nitrogen Fertilizer, L.P.  
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36. Emissions of SO<sub>2</sub> increased from 8,261 tons per year in the 24 month period preceding the converter replacement to a PTE of 10,153 tons per year after the converter replacement. This constitutes an actual-to-potential increase of 1,892 tons per year.
37. Between 1995 and 2003, a series of component replacements were conducted at the Geismar facility which, in aggregate, extended its useful life. The sum of the capital expenditures for the component replacements was \$11,503,000.
38. The most recent stack test conducted June 7, 2005, showed the sulfuric acid plant to be emitting approximately 30.5 lbs of SO<sub>2</sub> per ton of 100% acid produced.
39. The Facility is subject to Title V of the CAA (Sections 502 and 503) because it is a major source (as defined in Section 501(2) of the CAA) with the potential to emit more than 100 tons of SO<sub>2</sub> per year. Louisiana's Title V program is located in LAC 33:III., Chapter 5.
40. PCS Nitrogen submitted its initial Title V permit application to the Louisiana Department of Environmental Quality (LDEQ) on October 15, 1996. An application reconciliation was submitted in June 2001. This permit application and the revision stated that the sulfuric acid plant was grandfathered from the provisions of NSPS Subpart H.
41. As of the date of this Notice, PCS Nitrogen is operating the Facility and AA Sulfuric owns it.

### **C. FINDING OF VIOLATIONS**

#### **Violation No.1 – Failing to Obtain a PSD Permit Prior to Making a Major Modification**

42. Paragraphs 1 through 41 are realleged and incorporated by reference.
43. As a result of the converter replacement, the potential to emit of the sulfuric acid plant increased beyond the significance level for SO<sub>2</sub>. Therefore, the converter replacement caused a significant net emission increase of SO<sub>2</sub>.
44. Because the sulfuric acid plant converter replacement caused a significant net emission increase of SO<sub>2</sub> at a major stationary source, the project was a "major modification," as defined in the Louisiana SIP at LAC 33:III.509.B, triggering the requirement to (1) obtain a PSD permit, (2) apply BACT on the sulfuric acid plant, and (3) demonstrate that the proposed change did not cause a significant deterioration in air quality in accordance with LAC 33:III.509.J through R, and Sections 110 and 165 of the Act.

Re: AA Sulfuric Corporation and  
PCS Nitrogen Fertilizer, L.P.  
Amended Notice and Finding of Violations

45. AA Sulfuric's and PCS Nitrogen's failure to apply for a PSD Permit and apply BACT for SO<sub>2</sub> to the sulfuric acid plant constitutes a violation of the Louisiana SIP, specifically LAC 33:III.501(C) and 509.I and R, which was promulgated pursuant to Sections 110 and 165 of the Act, 42 U.S.C. §§ 7410 and 7475.

**Violation No. 2 – Emissions of Sulfur Dioxide Greater than 2 kg per metric ton (4 lbs/ton) of Acid Produced**

46. Paragraphs 1 through 45 are realleged and incorporated by reference.
47. The converter replacement increased the hourly emission rate of SO<sub>2</sub> and sulfuric acid mist. Therefore, the project triggered the NSPS "modification" provisions in 40 C.F.R. § 60.14 for SO<sub>2</sub> and sulfuric acid mist. As a result, the sulfuric acid plant is subject to the standards for SO<sub>2</sub> in 40 C.F.R. Part 60 Subpart H (40 C.F.R. §§ 60.80-85).
48. Additionally, the general provisions to NSPS (40 C.F.R. §§ 60.1-60.19) define "reconstruction" as "the replacement of components of an existing facility to the extent that...the fixed capital cost of the new components exceeds 50 percent of the fixed capital cost that would be required to construct a comparable and entirely new facility." 40 C.F.R. § 60.15(b).
49. Between 1995 and 2003, a series of component replacements were conducted at the Facility which, in aggregate, extended its useful life. The sum of the capital expenditures for the component replacements was \$11,503,000. The fixed capital cost that would have been required to construct a comparable 1600 tons per day sulfuric acid plant in 1995 was \$20,000,000. The sum of the capital expenditures for the component replacements between 1995 and 2005 exceeds 50 percent of the fixed capital cost that would be required to construct a comparable and entirely new facility. This meets the definition of reconstruction, thus making the Facility subject to the standards for SO<sub>2</sub> and sulfuric acid mist in 40 C.F.R. Part 60 Subpart H (40 C.F.R. §§ 60.80-85).
50. The sulfuric acid plant routinely emits more than the NSPS standard for SO<sub>2</sub> of 2 kilograms per metric ton of acid produced (kg/metric ton)(4 lbs/ton) at 40 C.F.R. § 60.82.
51. AA Sulfuric's and PCS Nitrogen's emissions of greater than 2 kg/metric ton (4 lbs/ton) of SO<sub>2</sub> at the sulfuric acid plant violate 40 C.F.R. § 60.82, a regulation promulgated pursuant to Section 111 of the Act, 42 U.S.C. § 7411.

**Violation No. 3 – Emissions of Sulfuric Acid Mist Greater than 0.075 kg per metric ton (0.15 lbs/ton) of Acid Produced**

52. Paragraphs 1 through 51 are realleged and incorporated by reference.



Re: AA Sulfuric Corporation and  
PCS Nitrogen Fertilizer, L.P.  
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53. The sulfuric acid plant has emitted more than the NSPS standard for standard sulfuric acid mist of 0.075 kilograms per metric ton of acid produced (kg/metric ton)(0.15 lbs/ton) at 40 C.F.R. § 60.83.
54. AA Sulfuric's and PCS Nitrogen's emissions of greater than 0.075 kg/metric ton (0.15 lbs/ton) of sulfuric acid mist at the sulfuric acid plant violate 40 C.F.R. § 60.83, a regulation promulgated pursuant to Section 111 of the Act, 42 U.S.C. § 7411.

**Violation No. 4 – Failing to Conduct Performance Test(s) within 180 days of Startup**

55. Paragraphs 1 through 54 are realleged and incorporated by reference.
56. In a CAA Section 114 Information Request dated March 27, 2006, EPA requested that PCS Nitrogen submit documentation of all emission test runs, emissions characterizations, or emissions studies, conducted or attempted at the sulfuric acid plant since January 1, 1980, including information relevant to operating parameters measured during these tests/studies, such as production rate and stack gas flow rates.
57. Information submitted by PCS Nitrogen on June 21, 2006, in response to the CAA Section 114 Information Request dated March 27, 2006, failed to show that a performance test was conducted within 180 days of startup.
58. By failing to conduct a performance test within 180 days of initial startup, AA Sulfuric and PCS Nitrogen violated 40 C.F.R. § 60.8(a), a regulation promulgated pursuant to Section 111 of the Act, 42 U.S.C. § 7411.

**Violation No. 5 – Failing to Submit Complete Permit Application for a Title V Operating Permit**

59. Paragraphs 1 through 58 are realleged and incorporated by reference.
60. PCS Nitrogen submitted a Title V permit application for the source on October 15, 1996. The application did not identify NSPS and PSD as applicable requirement to the source, did not certify compliance with NSPS and PSD requirements, and did not contain a compliance plan for NSPS or PSD requirements.
61. In June 2001, PCS Nitrogen submitted a Title V permit application reconciliation. The application did not identify NSPS and PSD as applicable requirement to the source, did not certify compliance with NSPS and PSD requirements, and did not contain a compliance plan for NSPS or PSD requirements.

Re: AA Sulfuric Corporation and  
PCS Nitrogen Fertilizer, L.P.  
Amended Notice and Finding of Violations

62. The Title V permit for the source, which was issued to PCS Nitrogen on March 14, 2006, does not list NSPS and PSD as applicable requirements and does not contain a compliance plan for NSPS and PSD.
63. By failing to identify NSPS and PSD as applicable requirements, failing to certify compliance with NSPS and PSD requirements, and failing to submit a compliance plan for NSPS and PSD requirements in the Title V permit application, AA Sulfuric and PCS Nitrogen are in violation of Title V permitting requirements found in Section 502(a) and 504 (a) of the Act [42 U.S.C. §§ 7661a(a) and c(a)], 40 C.F.R. §§ 70.1(b), 70.5, 70.6, 70.7(b), and LAC 33:III.501(C), 507.B.2 and LAC 33:III.517.B.1.

#### **D. ENFORCEMENT**

Section 113(a)(1) of the Act, 42 U.S.C. § 7413(a)(1), provides that at any time after the expiration of 30 days following the date of the issuance of a Notice of Violation, the Administrator may, without regard to the period of violation, issue an order requiring compliance with the requirements of the state implementation plan or permit, issue an administrative penalty order pursuant to Section 113(d), or bring a civil action pursuant to Section 113(b) for injunctive relief and/or civil penalties.

Section 113(a)(3) of the Act, 42 U.S.C. § 7413(a)(3), provides in part that if the Administrator finds that a person has violated, or is in violation of Title V of the Act, including a requirement or prohibition of any rule, plan, order, waiver, or permit promulgated, issued, or approved under Title V, the Administrator may issue an administrative penalty order under Section 113(d), issue an order requiring compliance with such requirement or prohibition, or bring a civil action pursuant to Section 113(b) for injunctive relief and/or civil penalties.

#### **E. OPPORTUNITY FOR CONFERENCE**

AA Sulfuric and PCS Nitrogen may, upon request, confer with EPA. The conference will enable AA Sulfuric and PCS Nitrogen to present evidence bearing on the finding of violations, on the nature of the violations, and on any efforts it may have taken or proposes to take to achieve compliance. AA Sulfuric and PCS Nitrogen have a right to be represented by counsel. A request for a conference must be made within ten (10) days of receipt of this Notice, and the request for a conference or other inquiries concerning the Notice should be made in writing to:

Carlos Zequeira  
Assistant Regional Counsel (6RC-EA)  
U. S. EPA - Region 6  
1445 Ross Avenue  
Dallas, TX 75202-2733

Re: AA Sulfuric Corporation and  
PCS Nitrogen Fertilizer, L.P.  
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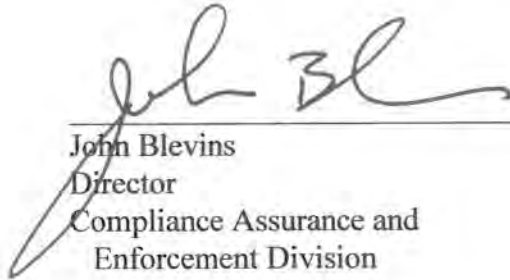
If you have any questions, please feel free to call Carlos Zequeira at (214) 665-8053.

**F. EFFECTIVE DATE**

This Notice shall become effective immediately upon issuance.

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

6/20/11

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



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 4  
ATLANTA FEDERAL CENTER  
61 FORSYTH STREET  
ATLANTA, GEORGIA 30303-8960

**MAY 07 2012**

UNITED PARCEL SERVICE  
E-MAIL VERIFICATION REQUESTED

Charles T. Wehland, Esq.  
Jones Day  
77 West Wacker  
Chicago, Illinois 60601

Re: Notice of Violation and Opportunity to Show Cause

Dear Mr. Wehland:

Enclosed is a Notice of Violation (NOV) issued to White Springs Agricultural Chemicals, Inc. (White Springs), under Section 113(a) of the Clean Air Act (CAA), 42 U.S.C. § 7413(a). In this NOV, the U.S. Environmental Protection Agency, EPA Region 4 notifies White Springs of violations of the CAA requirements for the Prevention of Significant Deterioration, 42 U.S.C. §§ 7470 – 7479, title V, 42 U.S.C. §§ 7661a and 7661b, and violations of the Florida State Implementation Plan at its facility located at 15843 S.E. 78<sup>th</sup> Street, White Springs, Florida.

Please note that the NOV requests that you contact EPA within **seven (7) days** of receipt of this letter to schedule a conference for the week of May 21, 2012. Questions should be directed to Ms. Marlene J. Tucker, Associate Regional Counsel at 404 562-9536 or by e-mail at [tucker.marlene@epa.gov](mailto:tucker.marlene@epa.gov).

Sincerely,

A handwritten signature in cursive script that reads "Beverly H. Banister".

Beverly H. Banister  
Director  
Air, Pesticides and Toxics  
Management Division

Enclosure

cc : Karin Torain (w/enclosure)  
PotashCorp

Brian Accardo (w/enclosure)  
Division of Air Resource Management  
Florida Department of Environmental Protection

**United States Environmental Protection Agency  
Region 4 - Atlanta, Georgia**

In the matter of:

**White Springs Agricultural Chemicals,  
Inc.**

White Springs, Florida

Clean Air Act

Notice of Violation

**NOTICE OF VIOLATION**

This Notice of Violation (NOV) is issued pursuant to Section 113 of the Clean Air Act (CAA or the Act), as amended, 42 U.S.C. § 7413, to White Springs Agricultural Chemicals, Inc. (hereinafter referred to as "White Springs", "Company", or "Respondent"), for violations of the CAA and the Florida State Implementation Plan at its facility located at 15843 S.E. 78<sup>th</sup> Street, White Springs, Florida (the Facility). Section 113 requires the Administrator of the United States Environmental Protection Agency (EPA) to notify a person that has violated a requirement of the applicable state implementation plan (SIP) or permit of such finding of the violation. The authority to issue NOV's has been delegated to the Director of the Air, Pesticides, and Toxics Management Division, EPA, Region 4.

**STATUTORY AND REGULATORY BACKGROUND**

1. The CAA is designed to protect and enhance the quality of the nation's air so as to promote the public health and welfare and the productive capacity of its population. Section 101(b)(1) of the Act, 42 U.S.C. § 7401(b)(1).
  - A. The National Ambient Air Quality Standards
2. Section 108(a) of the Act, 42 U.S.C. § 7408(a), requires the Administrator of EPA to identify and prepare air quality criteria for each air pollutant, emissions of which may endanger public health or welfare, and the presence of which results from numerous or diverse mobile or stationary sources. For each such "criteria" pollutant, Section 109 of the Act, 42 U.S.C. § 7409, requires EPA to promulgate national ambient air quality standards (NAAQS) requisite to protect the public health and welfare.

3. Pursuant to Section 109, 42 U.S.C. § 7409, EPA has identified sulfur dioxide (SO<sub>2</sub>), carbon monoxide, lead, nitrogen dioxide, ozone, and particulate matter as criteria pollutants, and has promulgated NAAQS for such pollutants. 40 C.F.R. Part 50.
4. Under Section 107(d) of the Act, 42 U.S.C. § 7407(d), each state is required to designate those areas within its boundaries where the air quality is better or worse than the NAAQS for each criteria pollutant, or where the air quality cannot be classified due to insufficient data. An area that meets the NAAQS for a particular pollutant is termed an “attainment” area with respect to such pollutant. An area that does not meet the NAAQS for a particular pollutant is termed a “nonattainment” area with respect to such pollutant.
5. An area that cannot be classified as either “attainment” or “nonattainment” with respect to a particular pollutant due to insufficient data is termed “unclassifiable” with respect to such pollutant.
6. At all times relevant to this NOV, Hamilton County, the area in which the Facility is located, has been classified as attainment for SO<sub>2</sub>.

#### B. Prevention of Significant Deterioration

7. Part C of Title I of the Act, 42 U.S.C. §§ 7470-7492, sets forth requirements for the prevention of significant deterioration of air quality in those areas designated as either attainment or unclassifiable for purposes of meeting the NAAQS standards. These requirements are designed to protect public health and welfare, to assure that economic growth will occur in a manner consistent with the preservation of existing clean air resources, and to assure that any decision to permit increased air pollution is made only after careful evaluation of all the consequences of such a decision and after public participation in the decision making process. 42 U.S.C. § 7470. These provisions are referred to herein as the “PSD program.” The PSD program (which applies in attainment or unclassifiable areas), along with the nonattainment area requirements are each a part of what is referred to as “New Source Review” or the “New Source Review program” (NSR).
8. Section 165(a) of the Act, 42 U.S.C. § 7475(a), among other things, prohibits the construction and operation of a “major emitting facility” in an area designated as attainment or unclassifiable unless a permit has been issued that comports with the requirements of Section 165, including that the facility is subject to the best available control technology (BACT) for each pollutant subject to regulation under the Act that is emitted from the facility.

9. Section 169(1) of the Act, 42 U.S.C. § 7479(1), designates sulfuric acid plants which emit or have the potential to emit one hundred tons per year or more of any pollutant to be “major emitting facilities.”
10. Section 169(2)(C) of the Act, 42 U.S.C. § 7479(2)(C), defines “construction” to include “modification” (as defined in Section 111(a) of the Act). “Modification” is defined in Section 111(a) of the Act, 42 U.S.C. § 7411(a), to be “any physical change in, or change in the method of operation of, a stationary source which increases the amount of any air pollutant emitted by such source or which results in the emission of any air pollutant not previously emitted.”
11. Sections 110(a) and 161 of the Act, 42 U.S.C. §§ 7410(a) and 7471, require each state to adopt, and submit to EPA for approval, a SIP that contains emission limitations and such other measures as may be necessary to prevent significant deterioration of air quality in areas designated as attainment or unclassifiable.
12. EPA has promulgated two largely identical sets of regulations to implement the PSD program. One set, found at 40 C.F.R. § 52.21, contains EPA’s own federal PSD program, which applies in areas without a SIP-approved PSD program. The other set of regulations, found at 40 CFR § 51.166, contains requirements that state PSD programs must meet to be approved as part of a SIP.
13. Florida administers a SIP-approved PSD program, which is governed by its PSD and permitting rules in Florida Administrative Code (F.A.C.) Chapters 62-210, formerly 17-210, and 62-212, formerly 17-212.
14. The Florida PSD regulations were originally approved by EPA into the Florida SIP on December 22, 1983, as Chapter 17-2. (48 Fed. Reg. 52713). EPA has since approved several amendments to the PSD portion and general permitting requirements of Florida’s SIP. Effective December 12, 1994, Florida’s air pollution rules formerly found in F.A.C. 17-2 were recodified and relevant chapters were relocated to Chapter 17-210 (Stationary Sources General Requirements), and Chapter 17-212 (Stationary Sources Preconstruction Review). (59 Fed. Reg. 52916).
15. Effective August 16, 1999, the PSD portion and general permitting requirements of Florida’s SIP were recodified again, this time to 62-210 and 62-212. (64 Fed. Reg. 32346). This revision also relocated the definitions that applied to Florida’s PSD program to F.A.C. 62-210.200. More recent amendments to incorporate the NSR reform regulations into the Florida SIP, became effective on July 28, 2008. (73 Fed. Reg. 36435). A list of Florida regulations incorporated into Florida’s SIP is provided at 40 CFR § 52.520.

16. The relevant Florida PSD and general permitting regulations formerly found in Chapters 17-210 (Stationary Sources General Requirements); 17-212 (Stationary Sources Preconstruction Review); 62-210 (Stationary Sources General Requirements) and 62-212 (Stationary Sources Preconstruction Review) were incorporated into and were a part of the Florida SIP at the time of the modifications at issue in this case (referenced in Appendix A). All citations to such regulations herein, refer to the regulations as incorporated into and part of the Florida SIP applicable at the time of each modification alleged herein.
17. At all relevant times, the PSD regulations applied to any modification of a major facility in an area designated as attainment or unclassifiable, that would result in a significant net emissions increase.
18. Under the PSD regulations a proposed modification to a “major facility” is subject to preconstruction review requirements if [1] the facility to be modified would be subject to preconstruction review requirements if it were itself a proposed new facility; and [2] the modification would result in a significant net emissions increase of any pollutant regulated under the Act. F.A.C. 17-212.400(2)(d)4.a and 62-212.400(2)(d)4.a.
19. Under the PSD regulations, a proposed new sulfuric acid plant would be subject to preconstruction review requirements if it would have the potential to emit 100 tons per year or more of any pollutant regulated under the Act. F.A.C. 17-212.400(2)(e)2 [Table 212.400-2] and 62-212.400(d)2.b [Table 212.400-2].
20. Under the PSD regulations, a “major facility” is any facility which emits, or has the potential to emit 100 tons per year or more of any pollutant, or five tons per year or more of lead, or 30 tons per year or more of acrylonitrile. F.A.C. 17-210.200(40) and 62-210.200(173).
21. Under the PSD regulations, a “modification” is any physical change in, change in the method of operation of, or addition to a facility which would increase the actual emissions of any air pollutant, including any not previously emitted from the facility. F.A.C. 17-210.200(46) and 62-210.200(185).
22. The PSD regulations define “actual emissions” as the average rate, in tons per year, at which the unit actually emitted the pollutant during a two-year period which precedes the particular date and which is representative of normal operation. In addition, for any emissions unit that has not begun normal operations on the particular date, actual emissions shall equal the potential to emit of the unit on that date. F.A.C. 17-212.200(2) and 62-210.200(12).



23. The PSD regulations define “potential emissions” or “potential to emit” as the maximum capacity of a source to emit a pollutant under its physical and operational design. Any physical or operational limitation on the capacity of the source to emit a pollutant, including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, shall be treated as part of its design if the limitation or the effect it would have on emissions is enforceable. F.A.C. 17-212.200(57) and 62-210.200(225).
24. Under the PSD regulations, a “significant net emissions increase” of a pollutant regulated under the Act is a net emissions increase equal to or greater than the applicable significant emission rate listed in Table 212.400-2 at F.A.C. 17-212.400(2)(e)2 and 62-212.400(e)2. The rate listed in Table 212.400-2 for SO<sub>2</sub> is 40 tons per year.
25. Under the PSD regulations, a “net emissions increase” results when the sum of all of the contemporaneous creditable increases and decreases in the actual emissions of the facility, including the increase in emissions of the modification itself and any increases and decreases in quantifiable fugitive emissions, is greater than zero. F.A.C. 17-212.400(2)e and 62-212.400(2)e.
26. Under the PSD regulations, “construction” means the act of performing on-site fabrication, erection, installation or modification of an emission unit or facility of a permanent nature, including but not limited to, installation of foundations or building supports, laying of underground pipe work or electrical conduit; and fabrication or installation of permanent storage structures, component parts of an emission unit or facility, associated support equipment, or utility connections. F.A.C. 17-212.200(21) and 62-210.200(85).
27. No owner or operator of a facility or modification subject to the preconstruction review requirements of the Florida PSD regulations shall begin construction prior to obtaining a permit to construct that complies with all the provisions of F.A.C. 17-212.400 (PSD), 62-212.400 (PSD), 17-210.300 (Permits Required) and 62-210.300 (Permits Required), including implementation of BACT for each pollutant subject to regulation; performance of preconstruction air quality monitoring analysis; performance of an ambient impact analysis; and a demonstration that the modification will not cause or contribute to a violation of the NAAQS, among other things. F.A.C. 17-212.400(5) and (6), and 62-212.400(5), (6) and (7).
28. The owner or operator of any emissions unit which emits or can reasonably be expected to emit any air pollutant shall obtain an

appropriate permit prior to beginning construction, modification, or initial or continued operation. F.A.C. 17-210.300 and 62-210.300.

29. Any construction permit issued under the PSD regulations shall contain all of the conditions and provisions necessary to ensure that the construction and operation of the facility or modification shall be in compliance with the requirements of the PSD regulations. F.A.C. 17-212.400(6)(a), 62-212.400(7)(a), 17-210.300(1) and 62-210.300(1).
30. Any operation permit issued for a facility or modification shall include all operating conditions and provisions necessary to ensure compliance with the PSD regulations. F.A.C. 17-212.400(6)(b), 62-212.400(7)(b), 17-210.300(2) and 62-210.300.
31. Upon expiration of the air operation permit for any existing facility or emissions unit, subsequent to construction or modification and demonstration of initial compliance with the conditions of the construction permit for any new or modified facility or emissions unit, or as otherwise provided, the owner or operator of such facility or emissions unit shall obtain a renewal air operation permit, an initial air operation permit, or an administrative permit, whichever is appropriate, in accordance with applicable requirements. F.A.C. 17-210.300(2) and 62-210.300.

### C. Title V Program

#### 1. Federal Title V Requirements

32. Section 502(a) of the CAA, 42 U.S.C. § 7661a(a), provides that no major source or certain other sources may operate without a Title V permit after the effective date of any permit program approved or promulgated under Title V of the Act. EPA first promulgated regulations governing the minimum elements for state operating permit programs on July 21, 1992. (57 Fed. Reg. 32295); *See also*, 40 C.F.R. Part 70, F.A.C. 17-213.400 and 62-213.400.
33. Section 503 of the CAA, 42 U.S.C. § 7661b, sets forth the requirements to submit a timely, accurate, and complete application for a permit, including information required to be submitted with the application. *See also*, F.A.C. 17-213.420 and 62-213.420.
34. Section 504(a) of the CAA, 42 U.S.C. § 7661c(a), requires that each Title V permit include enforceable emission limitations and standards, a schedule of compliance, and other conditions necessary to assure compliance with applicable requirements, including those contained in a state implementation plan. 42 U.S.C. § 7661c(a).

35. 40 C.F.R. § 70.1(b) provides that: “All sources subject to these regulations shall have a permit to operate that assures compliance by the source with all applicable requirements.” *See also*, F.A.C. 17-213.400 and 62-213.400.
36. 40 C.F.R § 70.2 defines “applicable requirement” to include “(1) Any standard or other requirement provided for in the applicable implementation plan approved or promulgated by EPA through rulemaking under Title I of the Act that implements the relevant requirements of the Act, including revisions to that plan promulgated in part 52 of this chapter ....” *See also*, F.A.C. 17-210.200 and 62-210.200(29).
37. 40 C.F.R. § 70.7(b) provides that no source subject to 40 C.F.R. Part 70 requirements may operate without a permit as specified in the Act. *See also*, F.A.C. 17-213.400 and 62-213.400.
38. 40 C.F.R. § 70.5(a) and (c) require timely and complete permit applications for Title V permits with required information that must be submitted and 40 C.F.R. § 70.6 specifies required permit content. *See also*, F.A.C.17-213.420, 62-213.420, 17-213.440 and 62-213.440.
39. 40 C.F.R. § 70.5(b) provides that: “Any applicant who fails to submit any relevant facts or who has submitted incorrect information in a permit application shall, upon becoming aware of such failure or incorrect submittal, promptly submit such supplementary facts or corrected information. In addition, an applicant shall provide additional information as necessary to address any requirements that become applicable to the source after the date it filed a complete application but prior to release of a draft permit.” *See also*, F.A.C.17-213.420, 62-213.420, 17-213.440 and 62-213.440.

## 2. Florida’s Title V Requirements

40. Florida’s Title V program received final interim approval by EPA on September 25, 1995, and became effective on October 25, 1995. (*See* 60 Fed. Reg. 49343), and was granted final full approval by EPA on October 31, 2001. (*See* 66 Fed. Reg. 49837). *See also*, 40 C.F.R. Part 70, Appendix A. Applications were due on October 25, 1996, from Florida sources subject to Title V following EPA’s interim approval of Florida’s Title V program.
41. The Florida regulations governing the Title V permitting program are codified at F.A.C. 62-213 (Operation Permit for Major Sources of Air Pollution), and are federally enforceable pursuant to Section 113(a)(3).

42. All Title V sources are subject to the air operation permit requirements of F.A.C. 17-213.400 and 62-213.400.
43. A Title V source is a major source of air pollution. F.A.C.17-210.200, 62-210.200(175) and 62-210.200(188).
44. A major source of air pollution includes, among other things, a sulfuric acid plant that emits or has the potential to emit 100 tons per year or more of any regulated air pollutant. F.A.C. 17-212.200(4) and 62-210.200(173).
45. F.A.C. 17-213.420 (1) (a) and 62-213.420(1)(a) require sources to submit timely and complete permit applications for Title V permits with required information and F.A.C.17-213.420(3) and 62-213.420(3) specify required permit application content.
46. F.A.C. 17-213.420(1)(b)3 and 62-213.420(1)(b)3 require sources to submit additional information to supplement or correct an application promptly after becoming aware that an application contains incorrect or incomplete information.
47. F.A.C. 17-213.400 and 62.-213.400 state that no Title V source “shall make any changes in its operation without first applying for and receiving a permit revision” if the change constitutes a modification, or violates any applicable requirement, among other things.

### **FACTUAL FINDINGS**

48. White Springs owns and operates four sulfuric acid plants (Plants C, D, E and F) at its facility located in White Springs, Florida (Facility).
49. White Springs is a Delaware corporation doing business in the state of Florida, and is a wholly owned subsidiary of Potash Corporation of Saskatchewan, Inc. (PCS), a Canadian company. White Springs is hereinafter referred to as “Respondent.”
50. Respondent is a “person” within the meaning of Sections 113(a) and 502 of the CAA, 42 U.S.C. §§ 7413(a) and 7661a, and as defined in Section 302(e) of the CAA, 42 U.S.C. § 7602(e).
51. Respondent produces sulfuric acid at the Facility by burning elemental sulfur, converting the resulting sulfur dioxide into sulfur trioxide, and absorbing it into recirculating sulfuric acid solution.
52. Respondent uses the sulfuric acid to manufacture phosphoric acid which is ultimately used in the fertilizer and animal feed products.

53. The Facility is a “major source,” a “major facility” and a “major emitting facility” because it belongs to one of the 28 named source categories and has the potential to emit more than 100 tons per year of SO<sub>2</sub>, a regulated air pollutant. 42 U.S.C. § 7479(1); and F.A.C. 17-210.200(34) and 62-210.200(173).
54. At all times relevant to this NOV, Hanover County, the area in which the Facility is located, has been designated as either attainment or unclassifiable for all criteria pollutants. *See also* 40 C.F.R. § 81.310.
55. The Facility currently operates under a Title V Permit (Number: V-0470002), that was issued by FDEP on June 4, 2007, and expires on June 4, 2012.
56. By an information request letter issued pursuant to the authority of Section 114 of the Act, 42 U.S.C. § 7414, dated May 28, 2008, EPA required PCS to submit specific information regarding all its nitric and sulfuric acid plants in the United States including the White Springs Facility.
57. PCS responded to EPA’s initial Section 114 information request on behalf of the Respondent on August 11, 2008. On June 15, 2010, EPA sent a second Section 114 information request to the Respondent. Respondent replied to the second information request with two separate submittals on July 2, and July 21, 2010.

**PARAGRAPHS 58-73 MOVED TO APPENDIX A  
APPENDIX A CONTAINS INFORMATION CLAIMED TO BE  
CONFIDENTIAL BUSINESS INFORMATION, AND IS BEING TREATED  
AS SUCH UNTIL A FINAL DETERMINATION IS MADE**

#### **FINDING OF VIOLATIONS**

74. Upon review of the information provided by Respondent, and as described herein including, in Appendix A, EPA Region 4 has concluded that Respondent conducted capital projects on the four sulfuric acid units at the Facility which resulted in significant net emissions increases in SO<sub>2</sub>.
75. The activities described in Appendix A are major modifications that resulted in a significant net emissions increases of SO<sub>2</sub> within the meaning of the CAA and F.A.C.17-212.400(2)(e)2, 62-212.400.2(e)2, 17-2.200(46) and 62-210.200(185). Respondent failed to apply for or obtain a PSD permit prior to commencing construction of such activities in violation of F.A.C. 17-210.300(1), 62-210.300(1), 17-212.400(5)(a)2 and 62-212.400(5)(a)2. Respondent failed to obtain an operating permit including all operating conditions and provisions necessary to ensure compliance with PSD, in violation of F.A.C. 17-210.300, 62-210.300, 17-12.400(6)(b)

and 62-212.400(7)(b). Respondent violated and continues to violate Section 165(a) of the Act, 42 U.S.C. § 7475(a), F.A.C. 17-212.400(5) and (6), 62-212.400(5), (6) and (7), 17-210.300 and 62-210.300, by commencing construction of, and continuing to operate a major modification at its White Springs Facility without applying for and obtaining a PSD permit. Respondent did not install BACT for the control of SO<sub>2</sub>, and continues to operate its White Springs Facility without an operating permit containing all applicable requirements including BACT. White Springs violated and continues to violate the provisions cited in this paragraph, by failing to install and operate BACT for SO<sub>2</sub>.

76. Since 1996, Respondent has failed to submit a timely, accurate, and complete Title V permit application for its White Springs Facility with information pertaining to the modifications identified in Appendix A and with information concerning all applicable requirements, including, but not limited to, the requirement to apply, install, and operate BACT for SO<sub>2</sub> at the White Springs Facility. Respondent also failed to supplement or correct the Title V permit applications for this Facility in violation of Sections 502, 503, and 504 of the Act, 42 U.S.C. §§ 7661a, 7661b and 7661c; the regulations at 40 C.F.R. Part 70, including, but not limited to, 40 C.F.R. §§ 70.1(b), 70.5, 70.6, and 70.7(b); and the Florida Title V provisions at F.A.C.17-213.400 and 62-213.400; F.A.C. 17-213.420 and 62-213.420; and F.A.C. 17-213.440 and 62-213.440.

### **ENFORCEMENT PROVISIONS**

77. Sections 113(a)(1) and (3) of the Act, 42 U.S.C. § 7413(a)(1) and (3), provide that the Administrator may bring a civil action in accordance with Section 113(b) of the Act, 42 U.S.C. § 7413(b), whenever, on the basis of any information available to the Administrator, the Administrator finds that any person has violated or is in violation of any requirement or prohibition of, inter alia, the PSD requirements of Section 165(a) of the Act, 42 U.S.C. § 7475(a); Title V of the Act, 42 U.S.C. §§ 7661-7661f, or any rule or permit issued thereunder; or the PSD provisions of the Florida SIP. *See also*, 40 C.F.R. § 52.23.
78. Section 113(b) of the Act, 42 U.S.C. § 7413(b), authorizes the Administrator to initiate a judicial enforcement action for a permanent or temporary injunction, and/or for a civil penalty of up to \$25,000 per day for each violation occurring on or before January 30, 1997; up to \$27,500 per day for each such violation occurring on or after January 31, 1997 and up to and including March 15, 2004; up to \$32,500 per day for each such violation occurring on or after March 16, 2004 through January 12, 2009; and up to \$37,500 per day for each such violation occurring on or after January 13, 2009, pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461, as amended by

31 U.S.C. § 3701, 40 C.F.R. § 19.4, and 74 Fed. Reg. 626 (Jan. 7, 2009), against any person whenever such person has violated, or is in violation of, *inter alia*, the requirements or prohibitions described in the preceding paragraph.

79. Section 167 of the Act, 42 U.S.C. § 7477, authorizes the Administrator to initiate an action for injunctive relief, as necessary to prevent the construction, modification or operation of a major emitting facility which does not conform to the PSD requirements in Part C of the Act.


**OPPORTUNITY FOR CONFERENCE**

Respondent is hereby offered an opportunity for a conference with EPA. The conference will enable Respondent to present evidence bearing on the violations, on the nature of the violations, and on any efforts it may have taken or proposes to take to achieve compliance. Respondent has the right to be represented by legal counsel.

A request for a conference must be made within seven (7) days of receipt of this Notice, and should be made in writing and addressed to:

Marlene J. Tucker  
Associate Regional Counsel  
Office of Regional Counsel, Region 4  
U.S. Environmental Protection Agency  
Atlanta Federal Center  
61 Forsyth Street SW  
Atlanta, Georgia 30303

If you have any questions, please feel free to call Ms. Marlene J. Tucker, at (404) 562-9536.

  
Beverly H. Banister  
Director  
Air, Pesticides, and Toxics  
Management Division

5/7/12  
Date

## Appendix A

### **CONTAINS INFORMATION CLAIMED TO BE CONFIDENTIAL BUSINESS INFORMATION AND IS BEING TREATED AS SUCH UNTIL A FINAL DETERMINATION IS MADE**

The EPA alleges that the Respondent spent approximately \$11.5 million in capital expenditure to undertake the following projects which were major modifications that resulted in significant net emissions increases, and constitute violations of the CAA's PSD requirements and the Florida SIP.

#### (1) #2 Heat Exchanger – Plant D

58. In or about October 1996, Respondent authorized the purchase and replacement of the #2 heat exchanger at Plant D. Respondent replaced the existing heat exchanger due to the severe leakage from the heat exchanger's corroded tube sheets. The old heat exchanger was replaced with an improved all stainless unit that allowed for greater heat transfer rates and an increase in production rates.
59. The project described in paragraph 58 was a physical change that resulted in significant net emissions increases of SO<sub>2</sub>.

#### (2) Hot Heat Exchanger – Plant F

60. In or about September 2000, Respondent authorized the purchase and replacement of the entire hot heat exchanger at Plant F. Respondent replaced the existing exchanger due to its poor condition resulting from corrosion in the tube sheets. The old heat exchanger was replaced with a completely redesigned and different all-stainless radial flow model. The new model allowed Plant F to operate at a higher efficiency with substantial decrease in pressure drop. This amounted to an increase in production capacity at the plant.
61. The project described in paragraph 60 was a physical change that resulted in significant net emissions increases in SO<sub>2</sub>.

#### (3) #2 Heat Exchanger – Plant C

62. In or about April 2001, Respondent authorized the purchase and replacement of the #2 heat exchanger at Plant C. Respondent replaced the existing exchanger due to its poor condition resulting from corrosion in the tube sheets. The old heat exchanger was replaced with a completely redesigned and different all-stainless radial flow model. The new model



in pressure drop. This amounted to an increase in production capacity at the plant.

63. The project described in paragraph 62 was a physical change that resulted in significant net emissions increases in SO<sub>2</sub>.

(4) Waste Heat Boiler – Plant D

64. In or about April 2004, Respondent authorized the purchase and replacement of the waste heat boiler for Plant D. Respondent replaced the existing boiler due to the failure of the hot end tube sheets. The new model allowed the plant to operate more efficiently and at a higher production capacity.
65. The project described in paragraph 64 was a physical change that resulted in significant net emissions increases of SO<sub>2</sub>.

(5) Superheater –Plant E

66. In or about August 2004, Respondent authorized the purchase and replacement of the superheater at Plant E. Respondent replaced the existing superheater due to the deterioration of its shell and internal carbon steel surfaces. The replacement was a new and superior designed model which was fabricated with stainless steel to provide better resistance to corrosion.
67. The project described in paragraph 66 was a physical change that resulted in significant net emissions increases of SO<sub>2</sub>.

(6) Primary Superheater –Plant C

68. In or about November 2005, Respondent authorized the purchase and replacement of the superheater at Plant C. Respondent replaced the existing superheater due to the deterioration of its shell and internal carbon steel surfaces. The replacement was a new and superior designed model which was fabricated with stainless steel to provide better resistance to corrosion.
69. The project described in paragraph 68 was a physical change that resulted in significant net emissions increases of SO<sub>2</sub>.

(7) Drying Tower –Plant D

70. In or about June 2007, Respondent authorized the purchase and replacement of the drying tower at Plant D. Respondent replaced the existing tower due to its poor condition. The replacement allowed the

existing tower due to its poor condition. The replacement allowed the plant to experience a decrease in pressure drop which amounted to an increase in production.

71. The project described in paragraph 70 was a physical change that resulted in significant net emissions increases of SO<sub>2</sub>.

#### 8) Absorption Tower –Plant C

72. In or about June 2008, Respondent authorized the purchase and replacement of the absorption tower at Plant C. Respondent replaced the existing tower at Plant C due to its poor condition. The new absorption tower included a low pressure ceramic packing system, a new alloy and distributor, and alloy packing support which allowed the plant to have greater efficiency and a decrease in pressure drop. The improved features of the new absorption tower also amounted to an increase in production capacity.
73. The project described in paragraph 72 was a physical change that resulted in significant net emissions increases of SO<sub>2</sub>.