

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF IOWA

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
 v.)
)
 ROQUETTE AMERICA, INC.)
)
 Defendant.)
 _____)

Civil Action No. 3:12cv00131

CONSENT DECREE

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WHEREAS, Plaintiff United States of America, on behalf of the United States Environmental Protection Agency (“EPA”), has filed a complaint in this action concurrently with this Consent Decree alleging that Defendant Roquette America, Inc. (“RAI”) violated Section(s) 301 and 402 of the Clean Water Act (“Act”), 33 U.S.C. § 1311 & 1342.

WHEREAS, the Complaint against Defendant alleges that: (1) RAI violated its permit limits for BOD, TSS, Nickel, pH and Temperature at Outfalls 001, 005, 009, 010, 012, and 801 on over 1,323 occasions; (2) On over 85 separate occasions RAI had unauthorized discharges of pollutants in violation of Section 301 of the CWA; (3) On at least 15 separate occasions, RAI discharged, at its WWTP, industrial waste into the Mississippi River without adequate treatment in violation of its permit (illegal by-passes); (4) RAI is in violation of its NPDES permit, and Sections 301 and 402 of the CWA, due to its failure to comply with the Operation and Maintenance section of its permit; (5) RAI is in violation of its NPDES permit 0256, and Sections 301 and 402 of the CWA, due to its failure to comply with the requirements set forth in its Storm Water Pollution Prevention Plan; and (6) RAI is in violation of its NPDES permit, and Sections 301 and 402 of the CWA, due to its failure to report all of its permit exceedances.

WHEREAS, Defendant RAI is a Delaware corporation engaged in wet corn milling with a plant located in Keokuk, Iowa. RAI is a subsidiary of Roquette Freres, a privately held multinational business, headquartered in Lestrem, France.

WHEREAS, RAI owns and operates, and at all times relevant to this matter has owned and operated, the Corn Milling Plant including the Wastewater Treatment Plant (“WWTP”) located in Keokuk, Iowa.

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

NOW, THEREFORE, 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 the Clean Water Act, 33 U.S.C. § 1319(b), and over the Parties. Venue lies in this District pursuant to 28 U.S.C. § 1391(b) because it is the judicial district in which the Defendant is located and in which the alleged violations occurred. For purposes of this Decree, or any action to enforce this Decree, Defendant consents to the Court's jurisdiction over this Decree and any such action and over Defendant and consents to venue in this judicial district.

2. For purposes of this Consent Decree only, Defendant agrees that the Complaint states claims upon which relief may be granted pursuant to Section(s) 301 and 402 of the Clean Water Act.

II. APPLICABILITY

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

4. Defendant does not admit any liability to the United States arising out of the transactions or occurrences alleged in the Complaint. Defendant further states that it has worked in a cooperative and timely manner with the United States to resolve these issues.

5. No transfer of ownership or operation of the Facility, whether in compliance with the procedures of this Paragraph or otherwise, shall relieve Defendant of its obligation to ensure that the terms of the Decree are implemented. At least 30 Days prior to such transfer, Defendant 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 EPA Region 7, the United States Attorney for the Southern District of Iowa, and the United States Department of Justice, in accordance with Section XIV of this Decree (Notices). Any attempt to transfer ownership or operation of the Facility without complying with this Paragraph constitutes a violation of this Decree.

6. Defendant shall provide a copy of this Consent Decree to all officers, employees, and agents whose duties are directly related to compliance with any provision of this Decree, as well as to any contractor retained to perform work required under this Consent Decree. Defendant shall condition any such contract upon performance of the work in conformity with the terms of this Consent Decree.

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

III. PURPOSE

8. The express purpose of the Parties entering into this Consent Decree is for RAI to take all necessary measures to meet the goals and objectives of the CWA and to achieve and maintain compliance with the CWA, the regulations promulgated thereunder, and the terms and conditions of RAI's NPDES Permit.

IV. DEFINITIONS

9. Terms used in this Consent Decree that are defined in the Act or in regulations promulgated pursuant to the Act shall have the meanings assigned to them in the 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. "Complaint" shall mean the complaint filed by the United States in this action;
- b. "Consent Decree" or "Decree" shall mean this Decree;
- c. "Date of Lodging" shall mean the date on which this Consent Decree is filed with this court.
- d. "Day" shall mean a calendar day unless expressly stated to be a business day. In computing any period of time under this Consent Decree, where the last day would fall on a Saturday, Sunday, or federal holiday, the period shall run until the close of business of the next business day;
- e. "Defendant" shall mean Roquette America, Inc. ("RAI");

- f. "EPA" shall mean the United States Environmental Protection Agency and any of its successor departments or agencies;
- g. "Effective Date" shall have the definition provided in Section XVI.
- h. "Facility" shall mean Defendant's corn processing plant and Waste Water Treatment Plant located in Keokuk, Iowa.
- i. "NPDES Permit" shall mean the NPDES permit issued to RAI at the time the decree is lodged as well as all additional NPDES permits issued to RAI in the future.
- j. "Paragraph" shall mean a portion of this Decree identified by an arabic numeral;
- k. "Parties" shall mean the United States and Defendant;
- l. "Section" shall mean a portion of this Decree identified by a roman numeral;
- m. "State" shall mean the State of Iowa.
- n. "United States" shall mean the United States of America, acting on behalf of EPA;

V. CIVIL PENALTY

10. Within 30 Days after the Effective Date of this Consent Decree, Defendant shall pay the sum of \$4,100,000 as a civil penalty, together with interest accruing from date of lodging, at the rate specified in 28 U.S.C. § 1961 as of the date of lodging.

11. Defendant shall pay the civil penalty due by FedWire Electronic Funds Transfer ("EFT") to the U.S. Department of Justice in accordance with written instructions to be provided

to Defendant, following entry of the Consent Decree, by the Financial Litigation Unit of the U.S. Attorney's Office for the Southern District of Iowa, 110 East Court Avenue, Ste 286, Des Moines, Iowa, 50309, (515) 473-9300. At the time of payment, Defendant 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 RAI America, Inc., and shall reference the civil action number and DOJ case number 90-5-1-1-10177 to the United States in accordance with Section XIV of this Decree (Notices); by email to acctsreceivable.CINWD@epa.gov; and by mail to:

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

12. Defendant shall not deduct any penalties paid under this Decree pursuant to this Section or Section VIII (Stipulated Penalties) in calculating its federal income tax.

VI. COMPLIANCE REQUIREMENTS

13. RAI shall comply with the requirements of the Clean Water Act and the regulations and policies promulgated there under and RAI's NPDES permits.

14. Complete Sewer Survey. By October 31, 2013, RAI shall submit a report to EPA that 1) describes in detail the findings and identifications of the Sewer Survey required below, 2) describes the control measures necessary to eliminate the discharge of spilled or released material to waters of the US, and 3) describes how all incorrectly permitted flows will be rerouted. The report shall provide estimates of the capital cost of each proposed measure, and shall provide a schedule for the construction and/or implementation of all proposed measures.

Upon EPA approval of the proposed schedule, RAI shall implement the measures described in the report in accordance with the approved schedule. The survey and study shall:

- a. identify and map all industrial, sanitary and stormwater sewers on its Keokuk facility site;
- b. identify and map all connections to the Keokuk facility sewers; to include connections from within all production buildings and surrounding areas, all load out areas, all storage areas, all maintenance areas, all sources of sanitary wastewater and all offsite contributions;
- c. identify the outfall(s) that each connection and/or source is tributary to, and to determine whether that contribution is allowed by RAI's current NPDES permit;
- d. specifically identify all connections or areas that have received repeated spills or releases of waste water, product, by-product or ingredients;
- e. identify appropriate measures for redirecting every connection that currently results in the discharge of wastewater not in accordance with RAI's current NPDES permit; and
- f. identify appropriate discharge prevention measures for the connections or areas identified above. Appropriate control measures may include but not be limited to 1) installation of new sewer pipe to redirect flow to the WWTP, 2) installation of secondary containment or other passive containment measures.

15. Operations and Maintenance Program

- a. RAI shall implement an Operation and Maintenance (O&M) Program in accordance with 40 C.F.R 122.41(e) to ensure the proper operation and maintenance of the

facility and to prevent spills and releases of pollutants from discharging into waters of the United States. The O&M Program shall include at a minimum: i) periodic and routine maintenance schedules, ii) identification of critical equipment/systems, iii) standard operating procedures, iv) record keeping, v) monitoring, vi) testing and inspection schedule, and vii) training curriculum. No later than March 30, 2013, RAI shall submit a draft O&M Program for review. RAI shall submit the final O&M Program by June 30, 2013.

b. RAI shall certify in accordance with Section XV to EPA in the initial annual report that all personnel, whose job duties include Production, WWTP, Environmental Compliance, or Health and Safety, have been trained on the Operation and Maintenance Program and RAI's Storm Water Pollution Prevention Plan. All new employees or reclassified existing employee working in the designated job classifications shall be trained within 30 days of hire. All staff working in the designated job classifications shall be trained annually. RAI shall certify in accordance with Section XV to EPA in the annual report that the annual training has occurred.

c. RAI shall complete scheduled inspections of each production area, load out areas, storage areas and other areas in accordance with the O&M Program. Logs and findings of each inspection shall be maintained on site in accordance with Section XI of this Decree. RAI shall certify in accordance with Section XV to EPA in the annual report that all periodic inspections have been completed, log reports have been filled out and retained, and findings from those inspections were addressed through necessary maintenance, repair, or replacement.

16. Third Party Audit

a. Third Party Contractor. RAI during the pendency of this Consent Decree shall annually retain an independent contractor(s) to complete annual Third-Party Audits of

RAI's compliance with the O&M plan, the SWPPP, RAI's NPDES permits and the requirements of this Section. RAI shall submit to EPA a list of potential contractors to be retained by RAI to complete the Audit for review and concurrence prior to the commencement of the Audit. RAI's third party contractor shall complete the first Audit no later than May 31, 2013. RAI shall conduct Audits in the same Calendar Quarter annually thereafter.

b. Reporting Requirements for the Audits. RAI shall submit the Audit Report prepared by the Auditor to EPA which summarizes the Audit and lists all areas of non-compliance identified as a result of the Audit. The report shall identify specific measures to be implemented by RAI to correct all identified areas of non-compliance and a schedule for the implementation of those proposed corrective measures. If the proposed compliance schedule extends greater than 60 days beyond the audit completion date, RAI must provide a reason for the delay(s). This Audit Report shall be attached to the next annual report due to be submitted pursuant to Paragraph 25. RAI shall list the steps taken to address issues identified in the Audit report in the annual report.

17. Stormwater Management for Coal Ash Storage

a. In conjunction with the preparation and delivery of a revised spill prevention program and by no later than October 31, 2013, RAI shall contemporaneously submit a plan to EPA for Review and Approval that will provide stormwater management and/or containment in the areas surrounding the coal ash storage to eliminate effluent violations of RAI's NPDES permit at outfall 001.

b. All necessary measures must be in place and fully operational by October 1, 2014.

18. Nickel Recovery Plan

a. No later than December 31, 2013, RAI shall: 1) install at a minimum two polyethylene tanks with a minimum of 12,000 gallons per tank; 2) install agitation equipment on each tank to assure thorough mixing of contents; 3) install instrumentation to analyze and adjust pH in each tank through the addition of sodium hydroxide; 4) ensure that all waste water from pH adjustment system will pass through an existing pressure leaf filter utilizing Diatomaceous Earth as a filter media; and 5) construct spill containment and install sump pump and piping sufficient to cover the production area and capable of containing a spill of 12,000 gallons.

19. Certification of Elimination Outfall 008

a. RAI certifies that the discharge of all process wastewater, including thermal discharges, have been eliminated from Outfall 008. With each annual report submitted in March of each year, RAI shall certify, in accordance with Section XV, that there have been no discharges of process wastewater from Outfall 008 since the last certification.

20. TSS Reduction Plan for Outfall 005

a. No later than October 31, 2013, RAI shall submit a plan to EPA for Review and Approval to reduce Total Suspended Solids discharges through Outfall 005 to ensure compliance with the NPDES permit.

b. RAI shall fully implement the approved TSS Reduction Plan by December 31, 2014.

21. WWTP Improvements

- a. By December 31, 2013 RAI shall complete WWTP improvement in accordance with IDNR construction permit number 2012-0219S issued February 15, 2012, and any amendments thereto, and shall include at least the following components:
- i. construction of two new oxidation ditches each with 2.5 million gallon effective storage volume;
 - ii. two new clarifiers each with 100 feet diameter; approximate effective capacity of 940, 000 gallons and 7,854 ft² surface area;
 - iii. a pH adjuster flash mix tank with approximately 14,000 gallons effective capacity;
 - iv. a oxic-selector tank with approximately 38,000 gallons effective capacity;
 - v. a new Mixed Liquor Suspended Solids flow splitter structure;
 - vi. three new Return Activated Sludge pumps each capable of pumping 2,200 GPM;
 - vii. two new Waste Activated Sludge pumps each capable of pumping 250 GPM;
 - viii. a new jet aeration system with four new blowers each capable of providing 4,600 scfm air with a total blower capacity of 19,200 scfm;
 - ix. a new 35.0 ft by 65.0 ft blower and motor control center building; and
 - x. all other associated appurtenances as specified in the approved plans and specifications submitted to IDNR to obtain the Construction Permit.

22. Effluent Monitoring Requirements. For the duration of this Consent Decree, RAI shall monitor each outfall identified in its NPDES permits (001, 005, 006, 009, 010, 011, and

012) for the parameters and the frequency identified in the table below in addition to the monitoring requirements of the NPDES permit:

Outfall	Parameter	Frequency	Sample Type
001	Flow	Weekly	24- hour total
	pH	Weekly	Grab
	Temperature	Hourly	Continuous
	Total Suspended Solids	Weekly	Grab
005	Flow	Daily	24- hour total
	pH	Weekly	Grab
	Temperature	Daily	Grab
	Total Suspended Solids	Daily	Composite
006	Flow	Daily	24- hour total
	pH	Daily	Grab
	Temperature	Daily	Grab
	Total Suspended Solids	Daily	Composite
009	Flow	Daily	24- hour total
	pH	Weekly	Grab
	Temperature	Hourly	Continuous
	Total Suspended Solids	Daily	Composite
010	Flow	Daily	24- hour total
	pH	Weekly	Grab
	Temperature	Hourly	Continuous
	Total Suspended Solids	Daily	Composite
011	Flow	Daily	24- hour total
	pH	Weekly	Grab
	Temperature	Hourly	Continuous
	Total Suspended Solids	Daily	Composite
012	Flow	Daily	24- hour total
	pH	Daily	Grab
	Temperature	Daily	Grab

Sampling shall begin upon Entry except for temperature monitoring at Outfalls 009 and 010 and pH and temperature monitoring at Outfall 006, which shall commence by December 31, 2012, and flow and TSS monitoring at Outfall 006, which shall commence by March 30, 2013.

As RAI completes pipe modifications and wastewater is redirected or eliminated for specific outfalls, RAI may certify to EPA that process wastewater is no longer discharged through a

specific outfall, and request termination of the monitoring required by this Decree as to that outfall. Any denial of that request by EPA shall be subject to the dispute resolution procedures of this Decree.

23. Approval of Deliverables. After review of any plan, report, or other item that is required to be submitted pursuant to this Consent Decree for approval, EPA shall in writing: a) approve the submission; b) approve the submission upon specified conditions; c) approve part of the submission and disapprove the remainder; or d) disapprove the submission.

a. If the submission is approved pursuant to Paragraph 23.a, RAI shall take all actions required by the plan, report, or other document, in accordance with the schedules and requirements of the plan, report, or other document, as approved. If the submission is conditionally approved or approved only in part, pursuant to Paragraph 23.b or .c, RAI shall, upon written direction from EPA, take all actions required by the approved plan, report, or other item that EPA determines are technically severable from any disapproved portions, subject to RAI's right to dispute only the specified conditions or the disapproved portions, under Section X of this Decree (Dispute Resolution).

b. If the submission is disapproved in whole or in part pursuant to Paragraph 23.c or .d, RAI shall, within 45 Days or such other time as the Parties agree to in writing, correct all deficiencies and resubmit the plan, report, or other item, or disapproved portion thereof, for approval, in accordance with the preceding Paragraphs. If the resubmission is approved in whole or in part, RAI shall proceed in accordance with the preceding Paragraph.

c. Any stipulated penalties applicable to the original submission, as provided in Section VIII of this Decree, shall accrue during the 45 Day period or other specified period,

but shall not be payable unless the resubmission is untimely or is disapproved in whole or in part; provided that, if the original submission was so deficient as to constitute a material breach of RAI's obligations under this Decree, the stipulated penalties applicable to the original submission shall be due and payable notwithstanding any subsequent resubmission.

d. If a resubmitted plan, report, or other item, or portion thereof, is disapproved in whole or in part, EPA may again require RAI to correct any deficiencies, in accordance with the preceding Paragraphs, or may itself/themselves correct any deficiencies, subject to RAI's right to invoke Dispute Resolution and the right of EPA to seek stipulated penalties as provided in the preceding Paragraphs.

24. Permits. Where any compliance obligation under this Section requires RAI to obtain a federal, state, or local permit or approval, RAI shall submit timely and complete applications and take all other actions necessary to obtain all such permits or approvals. RAI may seek relief under the provisions of Section IX of this Consent Decree (Force Majeure) 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 RAI has submitted timely and complete applications and has taken all other actions necessary to obtain all such permits or approvals.

VII. REPORTING REQUIREMENTS

25. RAI shall submit the following reports:

a. By March 1 after lodging of this Consent Decree, until termination of this Decree pursuant to Section XIX, RAI shall submit electronically an annual report signed by a

RAI Corporate Official for the preceding calendar year that shall include: 1) O&M Program and SWPPP training certification; 2) O&M periodic inspection certification; 3) the status of any construction or compliance measures being implemented; 4) completion of milestones; 5) problems encountered or anticipated, together with implemented or proposed solutions; 6) status of permit applications; 7) Spill and Bypass reports submitted to IDNR; 8) Monthly Operating Reports submitted to IDNR, and including additional monitoring required above.

b. The report shall also include a description of any non-compliance with the requirements of this Consent Decree and an explanation of the violation's likely cause and of the remedial steps taken, or to be taken, to prevent or minimize such violation. If RAI violates, or has reason to believe that it may violate, any requirement of this Consent Decree, RAI shall notify the United States of such violation and its likely duration, in writing, within ten working Days of the Day RAI 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. If the cause of a violation cannot be fully explained at the time the report is due, RAI shall so state in the report. RAI 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 RAI becomes aware of the cause of the violation. Nothing in this Paragraph or the following Paragraph relieves RAI of its obligation to provide the notice required by Section IX of this Consent Decree (Force Majeure).

c. Whenever any violation of this Consent Decree or of RAI's NPDES permits or any other event affecting RAI's performance under this Decree, or the performance of its Facility, may pose an immediate threat to the public health or welfare or the environment,

RAI shall notify EPA orally or by electronic or facsimile transmission as soon as possible, but no later than 24 hours after RAI first knew of the violation or event. This procedure is in addition to the requirements set forth in the preceding Paragraph.

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

e. Each report submitted by RAI under this Section shall be signed by an official of the submitting party and include the following certification:

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

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

g. The reporting requirements of this Consent Decree do not relieve RAI of any reporting obligations required by the Clean Water Act or implementing regulations, or by any other federal, state, or local law, regulation, permit, or other requirement. 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.

VIII. STIPULATED PENALTIES

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

27. Late Payment of Civil Penalty

If Defendant fails to pay the civil penalty required to be paid under Section V of this Decree (Civil Penalty) when due, Defendant shall pay a stipulated penalty of \$2,500 per Day for each Day that the payment is late.

28. Effluent Limits

a. For purposes of this paragraph, a pH violations percent over will be

calculated as follows:
$$\frac{\text{Effluent pH} - \text{Maximum pH limit}}{\text{Maximum pH limit}}$$

percent under will be calculated as follows:
$$\frac{\text{Minimum pH limit} - \text{Effluent pH}}{\text{Minimum pH limit}}$$

b. The following stipulated penalties shall accrue per violation per Day for each violation of the effluent limitations contained in Defendant's NPDES Permit (currently identified in Defendant's NPDES Permit as Outfall 012 and Outfall 801):

<u>Penalty Per Violation Per Day</u>	<u>Degree of Exceedance</u>
\$2,000	up to 20% over permit limit
\$4,000	20%-50% over permit limit

\$7,500 *50% over permit limit*

c. The following stipulated penalties shall accrue per violation per Day for each violation of Defendant’s effluent limitations for TSS and pH at RAI’s storm water outfalls that are authorized to discharge process wastewater (currently identified in Defendant’s NPDES Permit as Outfalls 005, 009, 010) before RAI has completed the compliance measures identified in Section VI:

<u><i>Penalty Per Violation Per Day</i></u>	<u><i>Degree of Exceedance</i></u>
<i>\$1,000</i>	<i>up to 20% over permit limit</i>
<i>\$2,000</i>	<i>20%-50% over permit limit</i>
<i>\$3,000</i>	<i>50% over permit limit or greater</i>

d. The following stipulated penalties shall accrue per violation per Day for each violation of Defendant’s effluent limitations for TSS and pH at RAI’s storm water outfalls authorized to discharge process wastewater (currently identified in Defendant’s NPDES Permit as Outfalls 005, 009, 010) after RAI has completed the compliance measures identified in Section VI:

<u><i>Penalty Per Violation Per Day</i></u>	<u><i>Degree of Exceedance</i></u>
<i>\$2,000</i>	<i>up to 20% over permit limit</i>
<i>\$4,000</i>	<i>20%-50% over permit limit</i>
<i>\$8,000</i>	<i>50% over permit limit or greater</i>

e. The following stipulated penalties shall accrue per violation per Day for each violation of Defendant’s effluent limitations at RAI’s coal fired boiler (currently identified

in Defendant's NPDES Permit as Outfall 001) before RAI has completed the compliance measures identified in Section VI:

<u>Penalty Per Violation Per Day</u>	<u>Degree of Exceedance</u>
\$1,000	up to 20% over permit limit
\$2,000	20%-50% over permit limit
\$3,000	50% over permit limit or greater

f. The following stipulated penalties shall accrue per violation per Day for each violation of Defendant's effluent limitations at RAI's coal fired boiler (currently identified in Defendant's NPDES Permit as Outfall 001) after RAI has completed the compliance measures identified in Section VI:

<u>Penalty Per Violation Per Day</u>	<u>Degree of Exceedance</u>
\$2,000	up to 20% over permit limit
\$4,000	20%-50% over permit limit
\$10,000	50% over permit limit or greater

g. Defendant shall accrue stipulated penalties of \$8,000 per violation per Day for each violation of Defendant's effluent limitations for temperature at RAI's storm water outfalls (currently identified in Defendant's Permit as Outfalls 005, 009, and 010).

29. Unauthorized Discharges

a. Defendant shall accrue stipulated penalties of \$20,000 per violation per Day for each unauthorized discharge at Outfall 008.

b. Defendant shall accrue stipulated penalties of \$1,000 per violation per Day for all other unauthorized discharges (including bypasses at the WWTP) that reach waters of the U.S. before October 1, 2013.

c. Defendant shall accrue stipulated penalties of \$2,500 per violation per Day for all other unauthorized discharges (including bypasses at the WWTP) that reach waters of the U.S. after October 1, 2013 and before Defendant has completed the compliance measures identified in Section VI.

d. Defendant shall accrue stipulated penalties of \$5,000 per violation per Day for all other unauthorized discharges (including bypasses at the WWTP) that reach waters of the United States after Defendant has completed the compliance measures identified in Section VI.

30. Compliance Milestones

a. The following stipulated penalties shall accrue per violation per Day for each violation of the requirements identified in Section VI:

<u>Penalty Per Violation Per Day</u>	<u>Period of Noncompliance</u>
\$750	1st through 14th Day
\$1,500	15th through 30th Day
\$3,000	31st Day and beyond

31. Reporting Requirements. The following stipulated penalties shall accrue per violation per Day for each violation of the reporting requirements of Section VII of this Consent Decree:

<u>Penalty Per Violation Per Day</u>	<u>Period of Noncompliance</u>
\$250	1st through 14th Day

\$500	15th through 30th Day
\$1000	31st Day and beyond

32. 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.

33. Defendant shall pay any stipulated penalty within 30 Days of receiving the United States' written demand.

34. The United States may in the unreviewable exercise of its discretion, reduce or waive stipulated penalties otherwise due it under this Consent Decree.

35. Stipulated penalties shall continue to accrue as provided in Paragraph 32, 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 that is not appealed to the Court, Defendant shall pay accrued penalties determined to be owing, together with interest, to the United States within 30 Days of the effective date of the agreement or the receipt of EPA's decision or order.

b. If the dispute is appealed to the Court and the United States prevails in whole or in part, Defendant 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, Defendant shall pay all accrued penalties determined to be owing, together with interest, within 15 Days of receiving the final appellate court decision.

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

37. If Defendant fails to pay stipulated penalties according to the terms of this Consent Decree, Defendant shall be liable for interest on such penalties, as provided for in 28 U.S.C. § 1961, accruing as of the date payment became due. Nothing in this Paragraph shall be construed to limit the United States from seeking any remedy otherwise provided by law for Defendant's failure to pay any stipulated penalties.

38. Subject to the provisions of Section XII 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 Defendant's violation of this Consent Decree or applicable law. Where a violation of this Consent Decree is also a violation of the Clean Water Act, Defendant shall be allowed a credit, for any stipulated penalties paid, against any statutory penalties imposed for such violation.

IX. FORCE MAJEURE

39. "Force Majeure," for purposes of this Consent Decree, is defined as any event arising from causes beyond the control of Defendant, of any entity controlled by Defendant, or of

Defendant's contractors, that delays or prevents the performance of any obligation under this Consent Decree despite Defendant's best efforts to fulfill the obligation. The requirement that Defendant 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 to the greatest extent possible. "Force Majeure" does not include Defendant's financial inability to perform any obligation under this Consent Decree.

40. 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, Defendant shall provide notice orally or by electronic or facsimile transmission to the EPA, within 3 days of when Defendant first knew that the event might cause a delay. Within fifteen days thereafter, Defendant shall provide in writing to EPA an explanation and description of the reasons for the delay; the anticipated duration of the delay; all actions taken or to be taken to prevent or minimize the delay; a schedule for implementation of any measures to be taken to prevent or mitigate the delay or the effect of the delay; Defendant'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 Defendant, such event may cause or contribute to an endangerment to public health, welfare or the environment. Defendant shall include with any notice all available documentation supporting the claim that the delay was attributable to a Force Majeure. Failure to comply with the above requirements shall preclude Defendant 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. Defendant shall be deemed to know of any circumstance

of which Defendant, any entity controlled by Defendant, or Defendant's contractors knew or should have known.

41. If EPA 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 Defendant in writing of the length of the extension, if any, for performance of the obligations affected by the Force Majeure event.

42. If EPA does not agree that the delay or anticipated delay has been or will be caused by a Force Majeure event, EPA will notify Defendant in writing of its decision.

43. If Defendant elects to invoke the dispute resolution procedures set forth in Section X (Dispute Resolution), it shall do so no later than 15 days after receipt of EPA's notice. In any such proceeding, Defendant shall have the burden of demonstrating by a preponderance of the evidence that the delay or anticipated delay has been or will be caused by a Force Majeure event, that the duration of the delay or the extension sought was or will be warranted under the circumstances, that best efforts were exercised to avoid and mitigate the effects of the delay, and that Defendant complied with the requirements of Paragraphs 39 and 40, above. If Defendant carries this burden, the delay at issue shall be deemed not to be a violation by Defendant of the affected obligation of this Consent Decree identified to EPA and the Court.

X. DISPUTE RESOLUTION

44. 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. Defendant's failure to seek resolution of a dispute under this Section shall preclude Defendant from raising any such issue as a defense to an action by the United States to enforce any obligation of Defendant arising under this Decree.

45. 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 Defendant sends the United States a written Notice of Dispute. Such Notice of Dispute shall state clearly 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, Defendant invokes formal dispute resolution procedures as set forth below.

46. Formal Dispute Resolution. Defendant shall invoke formal dispute resolution procedures, within the time period provided in the preceding Paragraph, by serving on the United States 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 Defendant's position and any supporting documentation relied upon by Defendant.

47. The United States shall serve its Statement of Position within 45 Days of receipt of Defendant'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 Defendant, unless Defendant files a motion for judicial review of the dispute in accordance with the following Paragraph.

48. Defendant may seek judicial review of the dispute by filing with the Court and serving on the United States, in accordance with Section XIV of this Consent Decree (Notices), a motion requesting judicial resolution of the dispute. The motion must be filed within 20 Days of receipt of the United States' Statement of Position pursuant to the preceding Paragraph. The motion shall contain a written statement of Defendant'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.

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

50. Standard of Review

a. Disputes Concerning Matters Accorded Record Review. Except as otherwise provided in this Consent Decree, in any dispute pertaining to the adequacy or appropriateness of plans, procedures to implement plans, schedules or any other items requiring approval by EPA under this Consent Decree; the adequacy of the performance of work undertaken pursuant to this Consent Decree; Defendant shall have the burden of demonstrating,

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

b. Other Disputes. Except as otherwise provided in this Consent Decree, in any other dispute, Defendant shall bear the burden of demonstrating that its position complies with this Consent Decree and better further the objectives of the Consent Decree.

51. The invocation of dispute resolution procedures under this Section shall not, by itself, extend, postpone, or affect in any way any obligation of Defendant 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 35. If Defendant does not prevail on the disputed issue, stipulated penalties shall be assessed and paid as provided in Section VIII (Stipulated Penalties).

XI. INFORMATION COLLECTION AND RETENTION

52. The United States and its representatives, including attorneys, contractors, and consultants, shall have the right of entry into any facility covered by this Consent Decree, 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 in accordance with the terms of this Consent Decree;
- c. obtain samples and, upon request, splits of any samples taken by Defendant or its representatives, contractors, or consultants;

- d. obtain documentary evidence, including photographs and similar data; and
- e. assess Defendant's compliance with this Consent Decree.

53. Upon request, Defendant shall provide EPA or its authorized representatives splits of any samples taken by Defendant. Upon request, EPA shall provide Defendant splits of any samples taken by EPA.

54. Until three years after the termination of this Consent Decree, Defendant shall retain, and shall instruct its 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 Defendant's performance of its 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, Defendant shall provide copies of any documents, records, or other information required to be maintained under this Paragraph.

55. At the conclusion of the information-retention period provided in the preceding Paragraph, Defendant shall notify the United States 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, Defendant shall deliver any such documents, records, or other information to EPA. Defendant may assert that certain documents, records, or other information is privileged under the attorney-client privilege or any other privilege recognized by federal law. If Defendant 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 Defendant. 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.

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

57. 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 pursuant to applicable federal laws, regulations, or permits, nor does it limit or affect any duty or obligation of Defendant to maintain documents, records, or other information imposed by applicable federal or state laws, regulations, or permits.

XII. EFFECT OF SETTLEMENT/RESERVATION OF RIGHTS

58. This Consent Decree resolves the civil claims of the United States for the violations alleged in the Complaint filed in this action through the date of lodging.

59. The United States reserves all legal and equitable remedies available to enforce the provisions of this Consent Decree, except as expressly stated in Paragraph 58. This Consent Decree shall not be construed to limit the rights of the United States or the State to obtain

penalties or injunctive relief under the Act or implementing regulations, or under other federal or state laws, regulations, or permit conditions, except as expressly specified in Paragraph 58. The United States further reserves 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, Defendant's Facility, whether related to the violations addressed in this Consent Decree or otherwise.

60. In any subsequent administrative or judicial proceeding initiated by the United States for injunctive relief, civil penalties, other appropriate relief relating to the Facility, Defendant 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 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 Paragraph 58 of this Section.

61. This Consent Decree is not a permit, or a modification of any permit, under any federal, State, or local laws or regulations. Defendant is responsible for achieving and maintaining complete compliance with all applicable federal, State, and local laws, regulations, and permits; and Defendant's 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 does not, by its consent to the entry of this Consent Decree, warrant or aver in any manner that Defendant's compliance with any aspect of this Consent Decree will result in compliance with provisions of the CWA, or with any other provisions of federal, State, or local laws, regulations, or permits.

62. This Consent Decree does not limit or affect the rights of Defendant or of the United States against any third parties, not party to this Consent Decree, nor does it limit the rights of third parties, not party to this Consent Decree, against Defendant, except as otherwise provided by law.

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

XIII. COSTS

64. The Parties shall bear their own costs of this action, including attorneys' fees, except that the United States 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 Defendant.

XIV. NOTICES

65. 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:

To the United States:

Chief, Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
Box 7611 Ben Franklin Station
Washington, D.C. 20044-7611
Re: DOJ No. 90-5-1-1-10177

and

Regional Counsel
U.S. Environmental Protection Agency
Region 7
11201 Renner Boulevard
Lenexa KS 66219

To EPA:

Chief, Water Enforcement
U.S. Environmental Protection Agency
Region 7
11201 Renner Boulevard
Lenexa KS 66219

To Defendant(s):

William J. Gibson
Environmental Manager
Roquette America, Inc.
1003 South 5th Street
Keokuk, IA 52632

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

67. 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.

XV. CERTIFICATION

68. Each report, plan, or other document submitted by RAI pursuant to this Consent Decree shall be signed by an official of RAI and include the following certification:

I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted.

Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

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

69. RAI shall not object to the admissibility into evidence of any report, plan, notice, or any other document prepared in accordance with this Consent Decree or the information contained in said reports in any proceeding to enforce this Consent Decree.

XVI. EFFECTIVE DATE

70. The Effective Date of this Consent Decree shall be the date upon which this Consent Decree is entered by the Court or a motion to enter the Consent Decree is granted, whichever occurs first, as recorded on the Court's docket; provided, however, that Defendant hereby agrees that it shall be bound to perform duties scheduled to occur prior to the Effective Date. 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.

XVII. RETENTION OF JURISDICTION

71. The Court shall retain jurisdiction over this case until termination of this Consent Decree, for the purpose of resolving disputes arising under this Decree or entering orders

modifying this Decree, pursuant to Sections X and XVIII, or effectuating or enforcing compliance with the terms of this Decree.

XVIII. MODIFICATION

72. The terms of this Consent Decree 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.

73. Any disputes concerning modification of this Decree shall be resolved pursuant to Section X of this Decree (Dispute Resolution), provided, however, that, instead of the burden of proof provided by Paragraph 50, 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).

XIX. TERMINATION

74. After Defendant has completed the requirements of Section VI (Compliance Requirements) of this Decree, has thereafter maintained satisfactory compliance with this Consent Decree and Defendant's NPDES permit for a period of one year, has complied with all other requirements of this Consent Decree, and has paid the civil penalty and any accrued stipulated penalties as required by this Consent Decree, Defendant may serve upon the United States a Request for Termination, stating that Defendant has satisfied those requirements, together with all necessary supporting documentation.

75. Following receipt by the United States of Defendant's Request for Termination, the Parties shall confer informally concerning the Request and any disagreement that the Parties

may have as to whether Defendant has satisfactorily complied with the requirements for termination of this Consent Decree. If the United States agrees that the Decree may be terminated, the Parties shall submit, for the Court's approval, a joint stipulation terminating the Decree.

76. If the United States does not agree that the Decree may be terminated, Defendant may invoke Dispute Resolution under Section X of this Decree. However, Defendant shall not seek Dispute Resolution of any dispute regarding termination, under Paragraph 46 of Section X, until sixty (60) days after service of its Request for Termination.

XX. PUBLIC PARTICIPATION

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

XXI. SIGNATORIES/SERVICE

78. Each undersigned representative of Defendant and the 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.

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

XXII. INTEGRATION

80. This Consent Decree constitutes the final, complete, and exclusive agreement and understanding among the Parties with respect to the settlement embodied in the Decree and supercedes all prior agreements and understandings, whether oral or written, concerning the settlement embodied herein. No other document, nor any representation, inducement, agreement, understanding, or promise, constitutes any part of this Decree or the settlement it represents, nor shall it be used in construing the terms of this Decree.

XXIII. FINAL JUDGMENT

81. 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 and Defendant.

Dated and entered this 9th day of January, 2013


JAMES E. GRITZNER, Chief Judge
U.S. DISTRICT COURT

FOR PLAINTIFF UNITED STATES OF AMERICA:


IGNACIA S. MORENO

Assistant Attorney General
Environment and Natural Resources Division
United States of Department of Justice
P.O. Box 7611
Washington, D.C. 20044

DATE: 11/8/12



DAVID L. DAIN
Senior Trial Attorney
Environmental Enforcement Section
Environment and Natural Resources Division
United States Department of Justice
P.O. Box 7611
Washington, D.C. 20044

DATE: 11/9/12

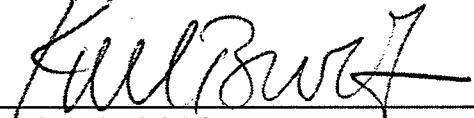
NICHOLAS A. KLINEFELDT
UNITED STATES ATTORNEY



WILLIAM C. PURDY, AUSA
Civil Chief, SDIA
110 E. Court Ave., Ste 286
Des Moines, Iowa 50309
(515) 473-9315

DATE: November 9, 2012

FOR UNITED STATES ENVIRONMENTAL PROTECTION AGENCY:



DATE: 10/29/12

KARL BROOKS
Regional Administrator
United States Environmental Protection Agency
Region 7
11201 Renner Blvd.
Lenexa, Kansas 66219



DATE: 10/29/12

ELIZABETH HUSTON
Assistant Regional Counsel
United States Environmental Protection Agency
Region 7
11201 Renner Blvd.
Lenexa, Kansas 66219

FOR DEFENDANT ROQUETTE AMERICA, INC:



DATE: 09/28/12

DOMINIQUE TARET
President and CEO
Roquette America, Inc.
1417 Exchange Street
Keokuk, IA 52632-6647