

ENVIRONMENTAL PROTECTION AGENCY  
REGION 6  
DALLAS, TEXAS

FILED

2019 JUL -2 AM 11:01

REGIONAL EXECUTIVE CLERK  
EPA REGION VI

IN THE MATTER OF:

PCS Nitrogen Fertilizer, LP

Respondent

Geismar, Louisiana

CONSENT AGREEMENT AND FINAL  
ORDER  
EPA DOCKET NO. CAA-06-2019-3329

**CONSENT AGREEMENT AND FINAL ORDER**

The Director, Enforcement and Compliance Assurance Division, United States Environmental Protection Agency, Region 6 (“EPA” or “Complainant”), and PCS Nitrogen Fertilizer, LP, located in Geismar, Louisiana (“Respondent” or “PCS”), in the above referenced action, have agreed to simultaneously commence and resolve this matter through issuance of this Consent Agreement and Final Order (“CAFO”).

**I. PRELIMINARY STATEMENT**

1. This proceeding for the assessment of civil penalties pursuant to Section 113(d) of the Clean Air Act, as amended (“CAA” or “the Act”), 42 U.S.C. § 7413(d), is simultaneously commenced and concluded by the issuance of this CAFO pursuant to 40 C.F.R. §§ 22.13(b), 22.18(b)(2), 22.18(b)(3), and 22.34.

2. This CAFO serves as notice pursuant to Section 113(d)(2)(A) of the Act, 42 U.S.C. § 7413(d)(2)(A).

3. For purposes of this proceeding, Respondent admits the jurisdictional allegations of this CAFO; however, Respondent neither admits nor denies the specific factual allegations and alleged violations contained in this CAFO.

4. Respondent waives any right to contest the allegations in the CAFO and its right to appeal the Final Order set forth herein and waives all defenses which have been raised or could have been raised to the claims set forth in the CAFO.

5. Respondent does not waive any rights or defenses which have been raised or could be raised in any subsequent proceeding(s) which has been brought or which could be brought against Respondent regarding the claims set forth in the CAFO. This CAFO may not be used in any federal or state proceeding except proceedings by EPA to enforce this CAFO.

6. Compliance with all the terms and conditions of this CAFO shall only resolve Respondent's liability for Federal civil penalties for the violations alleged in the CAFO.

7. Respondent consents to the issuance of this CAFO, and consents to the assessment and payment of the stated Federal civil monetary penalty in the amount and by the method set out in this CAFO.

8. Respondent shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, res judicata, collateral estoppel, issue preclusion, or claim-splitting for violations not alleged in this CAFO.

9. Except as provided in Paragraph 6, nothing in this CAFO shall be construed to prevent or limit EPA's civil, injunctive, and criminal authorities, or that of other Federal, State, or local agencies or departments to obtain penalties or injunctive relief under Federal, State, or local laws or regulations.

10. Respondent represents that the undersigned representative is fully authorized by the party whom he or she represents to enter into the terms and conditions of this CAFO, to execute this CAFO, and to legally bind the Respondent to the terms and conditions of this CAFO.

11. Respondent agrees that the provisions of this CAFO shall be binding on its officers, directors, employees, agents, servants, authorized representatives, successors, and assigns.

## **II. STATUTORY AND REGULATORY BACKGROUND**

12. Section 112(r)(1) of the CAA, 42 U.S.C. § 7412(r)(1), provides that the objective of the regulations and programs authorized under Section 112(r) shall be to prevent the accidental release of regulated substances or other extremely hazardous substances and to minimize the consequences of any such release that does occur.

13. Pursuant to Section 112(r)(7) of the CAA, 42 U.S.C. § 7412(r)(7), the Administrator is authorized to promulgate regulations dictating release prevention, detection, and correction requirements.

14. On June 20, 1996, the EPA promulgated a final rule known as the Chemical Accident Prevention Provisions, 40 C.F.R. Part 68, which implements Section 112(r)(7) of the CAA, 42 U.S.C. § 7412(r)(7).

15. Pursuant to 40 C.F.R. § 68.10(a), an owner or operator of a stationary source that has more than a threshold quantity of a regulated substance in a process ("Covered Process"), as determined under 40 C.F.R. § 68.115, shall comply with the requirements of 40 C.F.R. Part 68 no later than the latest of the following dates: (1) June 21, 1999; (2) three years after the date on which a regulated substance is first listed under Section 68.130; or (3) the date on which a regulated substance is first present above a threshold quantity in a process.

16. Pursuant to 40 C.F.R. § 68.12(a), an owner or operator of a stationary source subject to Part 68 requirements must submit a Risk Management Plan ("RMP"), as provided in 40 C.F.R. Part 68 Subpart G (§§ 68.150-68.185), that reflects all covered processes at the stationary source.

17. 40 C.F.R. Part 68 provides general requirements applicable to owners or operators of a stationary source subject to Part 68.

18. 40 C.F.R. Part 68 also establishes requirements that apply to an owner or operator depending on whether the stationary source operates processes subject to one of three “Programs” -- Program 1, Program 2, and Program 3, as these program levels are defined in 40 C.F.R. § 68.10.

19. Pursuant to 40 C.F.R. § 68.12(d), the owner or operator of a stationary source with a process subject to the “Program 3” requirements of the Part 68 regulations, as determined pursuant to 40 C.F.R. § 68.10(d), must comply with the chemical accident prevention requirements of 40 C.F.R. Part 68, Subpart D (Program 3 Prevention Program, at 40 C.F.R. §§ 68.65-68.87).

20. Pursuant to Sections 113(a)(3) and 113(d)(1)(B) of the CAA, 42 U.S.C. §§ 7413(a)(3) and 7413(d)(1)(B), whenever the Administrator finds that any person has violated or is violating a requirement of the CAA, including, but not limited to, a requirement or prohibition of any rule promulgated under the CAA, other than those requirements specified in Sections 113(a)(1), 113(a)(2) or 113(d)(1)(A) of the CAA [42 U.S.C. §§ 7413(a)(1), 7413(a)(2), or 7413(d)(1)(A)], the Administrator may issue an order assessing a civil administrative penalty.

21. Pursuant to Section 113(d)(1) of the CAA, 42 U.S.C. 7413(d)(1), and as adjusted by the Civil Penalty Inflation Adjustment Rule of January 10, 2018 (83 Fed. Reg. 1190, 1193), 40 C.F.R. § 19.4, the Administrator may assess a civil administrative penalty of up to \$46,192 per day of violation for a violation occurring after November 2, 2015, where penalties are assessed on or after January 15, 2018.

22. EPA and the U.S. Department of Justice have jointly determined that the

Complainant can administratively assess a civil penalty even though the penalty might exceed the statutory amount and the alleged violations have occurred more than twelve (12) months prior to the initiation of the administrative action.

23. “Covered process” is defined in 40 C.F.R. § 68.3 as a process that has a regulated substance present in more than a threshold quantity as determined under § 68.115.

24. “Mechanical integrity” means the process of ensuring that process equipment is fabricated from the proper materials of construction and is properly installed, maintained, and replaced to prevent failures and accidental releases.

25. “Owner or operator” shall mean any person who owns, leases, operates, controls, or supervises a stationary source.

26. “Person” is defined in Section 302(e) of the CAA, 42 U.S.C. § 7602(e), as including an individual, corporation, partnership, association, state, municipality, political subdivision of a state, and any agency, department, or instrumentality of the United States and any officer, agent, or employee thereof.

27. “Process” is defined in 40 C.F.R. § 68.3 as any activity involving a regulated substance including any use, storage, manufacturing, handling, or on-site movement of such substances, or combination of these activities. For the purposes of this definition, any group of vessels that are interconnected, or separate vessels that are located such that a regulated substance could be involved in a potential release, shall be considered a single process.

28. “Regulated substance” is defined in 40 C.F.R. § 68.3 as any substance listed pursuant to Section 112(r)(3) of the CAA as amended, in § 68.130.

29. “RMP” is defined in 40 C.F.R. § 68.3 as the risk management plan required under subpart G of 40 C.F.R. Part 68.

30. “Stationary source” is defined in Section 112(r)(2)(C) of the CAA, 42 U.S.C. § 7412(r)(2)(C) and 40 C.F.R. § 68.3 as any buildings, structures, equipment, installations or substance emitting stationary activities which belong to the same industrial group, which are located on one or more contiguous properties, which are under the control of the same person (or persons under common control), and from which an accidental release may occur.

31. “Threshold quantity” is defined in 40 C.F.R. § 68.3 as the quantity specified for regulated substances pursuant to Section 112(r)(5) of the CAA, 42 U.S.C. § 7412(r)(5), as amended, listed in 40 C.F.R. § 68.130 and determined to be present at a stationary source as specified in 40 C.F.R. § 68.115.

### **III. FINDINGS OF FACT AND CONCLUSIONS OF LAW**

32. Respondent is a limited partnership authorized to do business in the State of Louisiana.

33. Respondent is a “person” as that term is defined in Section 302(e) of the Act, 42 U.S.C. § 7602(e), and within the meaning of Section 113(d) of the Act, 42 U.S.C. § 7413(d).

34. At all times relevant to this CAFO, Respondent owned and operated the Geismar Agricultural Nitrogen and Phosphate Plant, located at 10866 Highway 75, Geismar, Louisiana 70734 (“Facility”).

35. The Facility is a “stationary source” as that term is defined in Section 112(r)(2)(C) of the CAA, 42 U.S.C. § 7412(r)(2)(C) and 40 C.F.R. § 68.3.

36. The Facility manufactures liquid phosphate and nitrogen-based fertilizers, industrial grade nitric acid, ammonium nitrate (liquid only), and phosphoric acid.

37. At the Facility, Respondent produces, processes, stores, or handles more than 10,000 pounds of anhydrous ammonia, oleum, and a flammable gas mixture (ammonia process – primarily hydrogen and natural gas).

38. Anhydrous ammonia, oleum, and flammable gas mixture are identified at 40 C.F.R. § 68.130 as regulated toxic and/or flammable substances with a threshold quantity of 10,000 pounds.

39. Respondent's RMP lists several "covered process[es]," as that term is defined in 40 C.F.R. § 68.3, including Oleum Storage Process, Nitric Acid Trains, and Urea Plant.

40. Respondent is required to submit an RMP pursuant to 40 C.F.R. § 68.12(a).

41. Respondent's RMP indicates that the Facility is subject to OSHA Process Safety Management standard, 29 C.F.R. § 1910.119.

42. Respondent's Facility is a Program Level 3 covered process, as that term is defined in 40 C.F.R. § 68.10.

43. Pursuant to 40 C.F.R. § 68.12(d), Respondent is required to implement the prevention requirements of 40 C.F.R. §§ 68.65 - 68.87 at its Facility.

44. On December 5-8, 2016, EPA inspectors conducted an announced inspection to determine compliance with Section 112(r) of the CAA and 40 C.F.R. Part 68.

#### IV. VIOLATIONS

##### **Count 1. Failure to Review Operating Procedures. 40 C.F.R. § 68.69(c).**

45. Pursuant to 40 C.F.R. § 68.69(c), owners and operators shall review operating procedures as often as necessary to assure that they reflect current operating practice, including changes that result from changes in process chemicals, technology, and equipment, and changes

to stationary sources. The owner or operator shall certify annually that these operating procedures are current and accurate.

46. In its Process Safety Management (PSM) Manual (Section 4.7), Respondent requires that “the date stamp [indicating that a review of a particular manual has been completed] of the Standard Operating Procedure (SOP) manuals shall be no older than three years.”

47. Inspectors observed that three SOPs had not been reviewed within three years.

48. This failure to review operating procedures as often as required constitutes a violation of 40 C.F.R. § 68.69(c).

**Count 2. Failure to Establish Written Mechanical Integrity Procedures. 40 C.F.R. § 68.73(b).**

49. Pursuant to 40 C.F.R. § 68.73(b), the owner or operator shall establish and implement written procedures to maintain the on-going integrity of process equipment.

50. From August 2013 to July 2014, Respondent changed portions of its mechanical integrity program from an interval-based program using API and other industry-recognized inspection standards to a risk-based inspection program.

51. Inspectors observed that Respondent had failed to establish written mechanical integrity procedures to reflect the risk-based inspection program in use since July 2014.

52. Respondent’s failure to establish written mechanical integrity procedures constitutes a violation of 40 C.F.R. § 68.73(b).

**Count 3. Failure to Conduct Inspections. 40 C.F.R. § 68.73(d)(3).**

53. Pursuant to 40 C.F.R. § 68.73(d)(3), the frequency of inspections and tests of process equipment shall be consistent with applicable manufacturers’ recommendations and good



engineering practices, and more frequently if determined to be necessary by prior operating experience.

54. Inspectors observed that Respondent failed to timely conduct thirteen preventative maintenance inspections on rotating equipment in RMP processes.

55. Respondent's failure to conduct preventative maintenance inspections constitutes a violation of 40 C.F.R. § 68.73(d)(3).

**Count 4. Failure to Perform a pre-startup review. 40 C.F.R. § 68.77.**

56. Pursuant to 40 C.F.R. § 68.77, the owner or operator shall perform a pre-startup safety review ("PSSR") for new stationary sources and for modified stationary sources when the modification is significant enough to require a change in the process safety information.

57. Further, 40 C.F.R. § 68.77(b) requires that the PSSR shall confirm, prior to the introduction of regulated substances into a process, that training of each employee involved in operating a process has been completed.

58. Respondent uses a checklist to document PSSR.

59. Respondent's PSSR SOP states that the PSSR checklist should identify items to be addressed and identify the person responsible for tracking and completing those items.

60. Inspectors observed several checklist items marked as complete, but without any indication of the person responsible for tracking and completing the items.

61. Further, the PSSR checklist did not provide any assurance that training was completed.

62. Respondent could not produce some training records to support the completion of items marked complete on the PSSR.

63. Respondent's failure to adequately perform a pre-startup review constitutes a violation of 40 C.F.R. § 68.77.

**Count 5: Failure to prepare an adequate incident investigation report. 40 C.F.R. § 68.81.**

64. Pursuant to 40 C.F.R. § 68.81(a), an owner or operator shall investigate each incident which resulted in, or could reasonably have resulted in a catastrophic release of a regulated substance.

65. Further, 40 C.F.R. § 68.81(d) requires that a report shall be prepared at the conclusion of the investigation. This incident investigation report shall include, among other things, the date of the incident and the date the incident investigation began.

66. Respondent did not include the date that its investigation began on the incident report for a March 26, 2014 incident.

67. Respondent's failure to prepare an adequate investigation report constitutes a violation of 40 C.F.R. § 68.81(d)(2).

#### **V. CIVIL PENALTY AND TERMS OF SETTLEMENT**

##### **A. Supplemental Environmental Project.**

68. Respondent shall undertake the following Supplemental Environmental Project ("SEP"), which the parties agree is intended to secure significant environmental or public health protection and improvement.

69. Respondent will purchase emergency response equipment, as set forth below. The emergency response equipment will include a thermal imaging camera, six portable radios, and two mobile radios ("Emergency Response Equipment").

70. Respondent will purchase the Emergency Response Equipment and donate it to the Ascension Parish Fire Department.

71. Respondent shall complete its purchase and donation of emergency response equipment within 90 days from the effective date of this CAFO.

72. Respondent is responsible for the satisfactory completion of the SEP. The total expenditure for the SEP shall be no less than **\$25,000.00**. Eligible SEP costs do not include inventory on hand, overhead, additional employee time and salary, administrative expenses, legal fees, and oversight of a contractor. The Respondent shall include documentation of the expenditures made in connection with the SEP as part of the SEP Completion Report.

73. The Respondent hereby certifies that, as the date of this CAFO, the Respondent is not required to perform or develop the SEP by any federal, state or local law or regulation; nor is the Respondent required to perform or develop the SEP by any other agreement, grant, or as injunctive relief in this or any other case. The Respondent further certifies that the SEP was not a project that the Respondent was planning or intending to construct, perform, or implement other than in settlement of this action. Finally, the Respondent certifies that it has not received, and is not presently negotiating to receive credit in any other enforcement action for this SEP.

74. The Respondent's signatory to this CAFO, by signing the CAFO, makes the following additional certification:

The Respondent, to the best of my knowledge and belief after reasonable inquiry, is not a party to any open federal financial assistance transaction that is funding or could be used to fund the same activity as the SEP. I further certify that, to the best of my knowledge and belief after reasonable inquiry, there is no such open federal financial transaction that is funding or could be used to fund the same activity as the SEP, nor has the same activity been described in an unsuccessful federal financial assistance transaction proposal submitted to EPA within two years of the date of this settlement (unless the project was barred from funding as statutorily ineligible). For the purpose 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 whose performance period has not yet expired.

75. For federal income tax purposes, the Respondent agrees that it will neither capitalize into inventory or basis nor deduct any costs or expenditures incurred in performing the SEP.

### **SEP Completion Report**

76. Respondent shall submit a SEP Completion Report to EPA within thirty (30) days after completion of the SEP. The SEP Completion Report shall contain the following information:

- A. A detailed description of the SEP as implemented;
- B. A description of any operating or logistical problems encountered and the solutions thereto;
- C. Itemized final costs with copies of receipts for all expenditures;
- D. Certification that the SEP has been fully implemented pursuant to the provisions of this CAFO; and
- E. A description of the environmental, emergency preparedness, and/or public health benefits resulting from implementation of this SEP.

77. Respondent agrees that failure to timely submit the final SEP Completion Report shall be deemed a violation of this CAFO and Respondent shall become liable for stipulated penalties pursuant to Paragraph 84, below.

78. Respondent shall submit all notices and reports required by this CAFO to the following:

Samuel Tate  
Chief (ECDAC)  
Chemical Accident Enforcement Section

Enforcement and Compliance Assurance Division  
U.S. EPA, Region 6  
1445 Ross Avenue Suite 1200  
Dallas, Texas 75202-2733

79. In itemizing its costs in the SEP Completion Report, Respondent shall clearly identify and provide acceptable documentation for all eligible SEP costs. Where the SEP Completion Report includes costs not eligible for SEP credit, those costs must be clearly identified as such. For purposes of this Paragraph, "acceptable documentation" includes invoices, purchase orders, or other documentation that specifically identifies and itemizes the individual costs of the goods and/or services for which payment is being made. Canceled drafts do not constitute acceptable documentation unless such drafts specifically identify and itemize the individual costs of the goods and/or services for which payment is being made.

80. Respondent shall submit the following certification in the SEP Completion Report, signed by a responsible corporate official:

I certify under penalty of law that I have examined and am familiar with the information submitted in this document and all attachments and that, based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fines and imprisonment.

81. After receipt of the SEP Completion Report described in Paragraph 76 above, EPA will notify the Respondent, in writing, regarding: (a) any deficiencies in the SEP Report itself along with a grant of an additional thirty (30) days for Respondent to correct any deficiencies; or (b) indicate that EPA concludes that the project has been completed satisfactorily; or (c) determine that the project has not been completed satisfactorily and seek stipulated penalties in accordance with Paragraph 84 below.

82. If EPA elects to exercise option (a) in Paragraph 81 above, i.e., if the SEP Report is determined to be deficient but EPA has not yet made a final determination about the adequacy of SEP completion itself, EPA shall permit the Respondent the opportunity to object in writing to the notification of deficiency given pursuant to Paragraph 81 within ten (10) days of receipt of such notification. EPA and the Respondent shall have an additional thirty (30) days from the receipt by EPA of the notification of objection to reach agreement on changes necessary to the SEP Report. If agreement cannot be reached on any such issue within this thirty (30) day period, EPA shall provide a written statement of its decision on adequacy of the completion of the SEP to Respondent, which decision shall be final and binding upon the Respondent. The Respondent agrees to comply with any requirements imposed by EPA as a result of any failure to comply with the terms of this CAFO. In the event the SEP is not completed as reasonably contemplated herein, as determined by EPA, a stipulated penalty shall be due and payable by Respondent to EPA in accordance with Paragraph 84 herein.

**B. Penalty Provisions**

83. Pursuant to the authority granted in Sections 113(d) of the CAA, 42 U.S.C. § 7413(d), and taking into consideration the size of the business, the economic impact of the penalty on the business, the violator's full compliance history and good faith efforts to comply, the duration of the violation, payment by the violator of penalties previously assessed for the same violation, the economic benefit of noncompliance, the seriousness of the violation, and other factors as justice may require, the parties agree that **one hundred six thousand nine hundred ninety-one dollars (\$106,991.00)** is an appropriate penalty to resolve this matter.

84. If Respondent fails to adequately perform the SEP as described above, Respondent agrees to pay a stipulated penalty of \$25,000.

85. The EPA may, in the unreviewable exercise of its discretion, reduce or waive stipulated penalties otherwise due under this CAFO.

86. If the cost to implement the SEP is less than the amount specified in paragraph 72, Respondent agrees to pay a stipulated penalty in the amount of the difference between the amount specified in Paragraph 72 and the cost to implement the SEP.

87. Within thirty (30) days of this fully executed CAFO, Respondent shall pay \$106,991.00 by cashier's check, certified check, or wire transfer made payable to "Treasurer, United States of America, EPA - Region 6." Payment shall be remitted in one of five (5) ways: regular U.S. Postal Service mail, to include certified mail; overnight mail; wire transfer; Automated Clearinghouse for receiving U.S. currency; or Online Payment. For regular U.S. Postal Service mail, U.S. Postal Service certified mail, or U.S. Postal Service express mail, the check(s) should be remitted to:

U.S. Environmental Protection Agency  
Fines and Penalties  
Cincinnati Finance Center  
P.O. Box 979077  
St. Louis, MO 63197-9000

For overnight mail (non-U.S. Postal Service, e.g., FedEx), the check(s) should be remitted to:

U.S. Bank  
Government Lockbox 979077  
U.S. EPA Fines & Penalties  
1005 Convention Plaza  
SL-MO-C2-GL  
St. Louis, MO 63101

Contact: Warren Stroman  
225-621-1554

For wire transfer, the payment should be remitted to:

Federal Reserve Bank of New York  
ABA: 021030004

Account Number: 68010727  
SWIFT address: FRNYUS33  
33 Liberty Street  
New York, NY 10045

Field Tag 4200 of the Fedwire message should read:  
“D 68010727 Environmental Protection Agency”

For Automated Clearinghouse (also known as REX or remittance express):

U.S. Treasury REX / Cashlink ACH Receiver  
ABA: 051036706  
Account Number: 310006, Environmental Protection Agency  
CTX Format Transaction Code 22 – checking  
Physical location of U.S. Treasury facility:  
5700 Rivertech Court  
Riverdale, MD 20737

Contact – Jesse White (301) 887-6548

For On Line Payment:

**WWW.PAY.GOV**

Enter sfo 1.1 in search field  
Open form and complete required fields.

PLEASE  
NOTE:

The docket number “CAA 06-2019-3329” shall be clearly typed on the check to ensure proper credit. The payment shall also be accompanied by a transmittal letter and shall reference Respondent’s name and address, the case name, and docket number of the administrative Complaint and CAFO. Respondent’s adherence to this request will ensure proper credit is given when penalties are received for the Region. Respondent shall also send a simultaneous notice of such payment, including a copy of the money order, or check, and the transmittal letter to the following:

Kayla Buchanan  
Enforcement Officer (ECDAC)  
Chemical Accident Enforcement Section  
Enforcement and Compliance Assurance Division  
U.S. EPA, Region 6  
1445 Ross Avenue Suite 1200  
Dallas, Texas 75202-2733;

Lorena Vaughn  
Region 6 Hearing Clerk (ORC)  
U.S. EPA, Region 6



1445 Ross Avenue, Suite 1200  
Dallas, TX 75202-2733

88. Respondent agrees not to claim, or attempt to claim, a federal income tax deduction or credit covering all or any part of the civil penalty paid to the United States Treasurer.

89. Pursuant to 31 U.S.C. § 3717 and 40 C.F.R. § 13.11, unless otherwise prohibited by law, EPA will assess interest and late payment penalties on outstanding debts owed to the United States and a charge to cover the costs of processing and handling a delinquent claim. Interest on the civil penalty assessed in this CAFO will begin to accrue thirty (30) days after the effective date of the CAFO and will be recovered by EPA on any amount of the civil penalty that is not paid by the respective due date. Interest will be assessed at the rate of the United States Treasury tax and loan rate in accordance with 40 C.F.R. § 13.11(a). Moreover, the costs of the Agency's administrative handling of overdue debts will be charged and assessed monthly throughout the period the debt is overdue. See 40 C.F.R. § 13.11(b).

90. EPA will also assess a fifteen-dollar (\$15.00) administrative handling charge for administrative costs on unpaid penalties for the first thirty (30) day period after the payment is due and an additional fifteen dollars (\$15.00) for each subsequent thirty (30) day period that the penalty remains unpaid. In addition, a penalty charge of up to six percent (6%) per year will be assessed monthly on any portion of the debt which remains delinquent more than ninety (90) days. See 40 C.F.R. § 13.11(c). Should a penalty charge on the debt be required, it shall accrue from the first day payment is delinquent. See 31 C.F.R. § 901.9(d). Other penalties for failure to make a payment may also apply.

91. Pursuant to Section 113(d)(5) of the Act, 42 U.S.C. § 7413(d)(5), any person who fails to pay on a timely basis, a civil penalty ordered or assessed under this section shall be

required to pay - in addition to such penalty and interest - the United States enforcement expenses, including but not limited to, attorney's fees and costs incurred by the United States for collection proceedings, and a quarterly nonpayment penalty for each quarter during which such failure to pay persists. Such nonpayment penalty shall be ten (10%) percent of the aggregate amount of such person's outstanding penalties and nonpayment penalties accrued as of the beginning of each quarter.

92. This CAFO shall not relieve the Respondent of its obligation to comply with all applicable provisions of federal, state or local law, nor shall it be construed to be a ruling on, or determination of, any issue related to any federal, state or local permit, nor shall it be construed to constitute EPA approval of any equipment or technology installed by the Respondent in connection with any additional settlement terms undertaken pursuant to this CAFO. Nothing in this CAFO shall be construed to prohibit or prevent the federal, state, or local government from developing, implementing, and enforcing more stringent standards through rulemaking, the permit process, or as otherwise authorized or required.

93. This document constitutes a "Final Order" as that term is defined in the CAA Penalty Policy for the purpose of demonstrating a history of "prior such violations."

#### **VI. RETENTION OF ENFORCEMENT RIGHTS**

94. EPA does not waive any rights or remedies available to EPA for any violations by the Respondent of Federal or State laws, regulations, statutes, or permitting programs.

95. Nothing in this CAFO shall relieve Respondent of the duty to comply with all applicable provisions of the CAA.

96. Nothing in this CAFO shall limit the power and authority of EPA or the United States to take, direct, or order all actions to protect public health, welfare, or the environment, or

prevent, abate, or minimize an actual or threatened release of hazardous substances, pollutants, contaminants, or regulated or other extremely hazardous substances at, on, or from the Respondent's facility. Furthermore, nothing in this CAFO shall be construed to prevent or limit EPA's civil, injunctive, or criminal authorities, or that of other Federal, State, or local agencies or departments to obtain penalties or injunctive relief under other Federal, State, or local laws, regulations, or subparts thereof.

#### **VII. COSTS**

97. Each party shall bear its own costs and attorney's fees.

IT IS SO AGREED.

FOR THE RESPONDENT:

Date: June 3/2019



PCS Nitrogen Fertilizer, LP  
Trevor Williams  
Vice President, Operations Nitrogen

FOR THE COMPLAINANT:

Date: 6-26-19

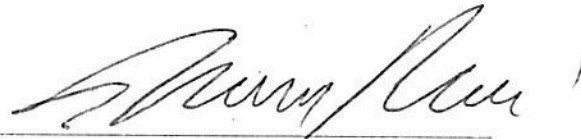


Cheryl T. Seager, Director  
Enforcement and  
Compliance Assurance Division

FINAL ORDER

Pursuant to Section 113(d) of the Clean Air Act (Act), 42 U.S.C. § 7413(d), and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, 40 C.F.R. Part 22, the foregoing Consent Agreement is hereby ratified. This Final Order shall not in any case affect the right of EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law. This Final Order shall resolve only those causes of action alleged in this CAFO. Nothing in this Final Order shall be construed to waive, extinguish, or otherwise affect Respondent's (or its officers, agents, servants, employees, successors, or assigns) obligation to comply with all applicable federal, state, and local statutes and regulations, including the regulations that were the subject of this action. The Respondent is ordered to comply with the terms of settlement as set forth in the Consent Agreement, including the assessment of civil penalties. In accordance with 40 C.F.R. Part 22.31(b), this Final Order shall become effective upon filing with the Regional Hearing Clerk.

Dated 7/1/19

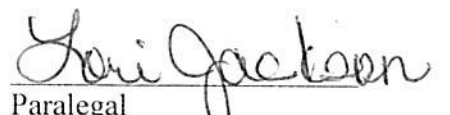
  
\_\_\_\_\_  
Thomas Rucki  
Regional Judicial Officer  
U.S. EPA, Region 6

CERTIFICATE OF SERVICE

I hereby certify that on the 2nd day of July, 2019, the original and one copy of the foregoing Consent Agreement and Final Order ("CAFO") was hand delivered to the Regional Hearing Clerk, U.S. EPA - Region 6, 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202-2733, and a true and correct copy was delivered to the following individual(s) by the method indicated below:

CERTIFIED MAIL - RETURN RECEIPT REQUESTED and ELECTRONIC COPY

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