

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

_____)	
)	
UNITED STATES OF AMERICA,)	
and)	No.
LOUISIANA DEPARTMENT OF)	
ENVIRONMENTAL QUALITY,)	
)	
	Plaintiffs,)	
	v.)	
)	CIVIL COMPLAINT
)	
PCS NITROGEN FERTILIZER, L.P.,)	
)	
	Defendant.)	
_____)	

The United States of America, by authority of the Attorney General of the United States and through the undersigned attorneys acting at the request of the Administrator of the United States Environmental Protection Agency (“EPA”), together with the Louisiana Department of Environmental Quality (“LDEQ”), acting with the concurrence of the Louisiana Attorney General and through the undersigned attorneys, file this Complaint and allege as follows:

NATURE OF THIS ACTION

1. This is a civil action brought pursuant to Section 3008(a) and (g) of the Resource Conservation and Recovery Act (“RCRA”), 42 United States Code (“U.S.C.”) § 6928(a) and (g), and pursuant to the Louisiana Environmental Quality Act (“EQA”), La.R.S.30:2025, and the Louisiana Administrative Code, (“LAC”), 33:V.107 against PCS Nitrogen Fertilizer, L.P., (“PCS Nitrogen” or “Defendant”). The United States and

LDEQ (“Plaintiffs”) seek injunctive relief and the assessment of civil penalties for environmental violations at PCS Nitrogen’s fertilizer manufacturing facility, which is located in Louisiana on Highway 3115 between Highways 74 and 75 near Geismar, LA 70734, in Iberville and Ascension Parishes (the “Facility”).

2. As set forth below, Defendant has violated the statutory and regulatory requirements applicable to the management and disposal of solid and/or hazardous waste, found at La. R.S. 30:2171 *et seq.* and Title 33 of the LAC Part V, Chapters 1 through 51, (the corresponding federal citations are Sections 3004 and 3005 of RCRA, 42 U.S.C. §§ 6924 and 6925, and the regulations promulgated thereunder, including (40 C.F.R. Parts 260, 261, 262, 264, 265, 268, and 270).

PARTIES

3. Plaintiffs are the United States of America and LDEQ.

4. Defendant PCS Nitrogen is registered as a limited partnership in the State of Delaware and is licensed to do business in Louisiana.

5. PCS Nitrogen is, and at all times relevant to this lawsuit has been, the owner and operator of the Facility.

JURISDICTION AND VENUE

6. This Court has jurisdiction over the parties and the subject matter of this action pursuant to RCRA Section 3008(a), 42 U.S.C. § 6928(a), and 28 U.S.C.

§§ 1331 (federal question jurisdiction), 1332 (diversity), 1345 (jurisdiction when the United States is a plaintiff), 1355 (jurisdiction over penalties arising under federal claims), and 1367 (supplemental jurisdiction).

7. Venue is proper in this judicial district pursuant to 28 U.S.C. §§ 1391(b) and 1395(a), and RCRA Section 3008(a)(1), 42 U.S.C. § 6928(a)(1), because Defendant is located and is doing business in this District and the violations occurred in this District.

8. Authority to bring this civil action is vested in the Attorney General of the United States and the Administrator of EPA pursuant to Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), and 28 U.S.C. §§ 516 and 519.

9. Authority to bring this civil action is vested in LDEQ with the concurrence of the Louisiana Attorney General pursuant to La.R.S.30:2025, and LAC 33:V.107.

10. The United States has provided notice to the State of Louisiana prior to the commencement of this action in accordance with RCRA Section 3008(a)(2), 42 U.S.C. § 6928(a)(2).

STATUTORY AND REGULATORY BACKGROUND

11. Federal regulation of hazardous waste is primarily based on RCRA, enacted on October 21, 1976 to amend the Solid Waste Disposal Act, and on the Hazardous and Solid Waste Amendments (“HSWA”) enacted by Congress in 1984 to further amend the Solid Waste Disposal Act. RCRA establishes a “cradle-to-grave” program to be administered by the Administrator of EPA and authorized states for regulating the generation, transportation, treatment, storage, and disposal of hazardous waste. See 42 U.S.C. § 6901 *et seq.*

12. RCRA’s Subchapter III (RCRA §§ 3001-3024, 42 U.S.C. §§ 6921-6939(g), known as “Subtitle C”) required EPA to promulgate regulations establishing performance standards applicable to facilities that generate, transport, treat, store, or dispose of

hazardous wastes. Together, RCRA Subtitle C and its implementing regulations, set forth at 40 C.F.R. Parts 260 – 279, comprise EPA’s RCRA hazardous waste program.

13. RCRA Section 3006, 42 U.S.C. § 6926, allows the Administrator to authorize a state to administer its own hazardous waste program in lieu of the federal program when the Administrator deems the state program to be equivalent to and consistent with the federal program.

14. On January 24, 1985, the State of Louisiana received final authorization for its base Hazardous Waste Management Program (50 Fed. Reg. 3348). Pursuant to Section 3006(b) of RCRA, 42 U.S.C. § 6926(b), the state of Louisiana was granted final authorization by EPA to administer and enforce a hazardous waste program on February 7, 1985 (50 Fed. Reg. 3348). LDEQ is the designated state agency to implement the authorized RCRA program in Louisiana.

15. Subsequent revisions have been made to the Louisiana Hazardous Waste Program and authorized by EPA. Except as otherwise provided, all citations found within this Complaint are to the “EPA-Approved Louisiana Statutory and Regulatory Requirements Applicable to the Hazardous Waste Management Program” dated November 2015, incorporated by reference under 40 C.F.R. § 272. 951(c)(1)(i), effective on December 26, 2018. 83 Fed. Reg. 66143 (December 26, 2018); 40 C.F.R. 272. 951; Louisiana State-Administered Program: Final Authorization. In July 2020, the LDEQ promulgated new regulations and re-codified existing regulations applicable to generators of hazardous waste resulting in the migration of specific hazardous waste generator regulations from LAC 33:V.Chapter 11 into LAC 33:V.Chapter 10. Therefore, due to the dates of allegations herein, regulatory citations included in this document may differ from

analogous regulatory citations in the current Louisiana Hazardous Waste Code (LAC 33: Part V). The corresponding C.F.R. citations are also provided.

16. Pursuant to its authority under Subtitle C of RCRA, 42 U.S.C. § 6922(a), EPA has promulgated regulations applicable to solid and hazardous waste generators at 40 C.F.R. Parts 261 and 262; to owner/operators of hazardous waste facilities at 40 C.F.R. Parts 264 and 265; and to land disposal of solid and hazardous waste at 40 C.F.R. Part 268. LDEQ, like EPA, has promulgated regulations applicable to these persons and practices, which are found at Title 33 of the LAC Part V, Chapters 1 through 51. Unless specified otherwise, LDEQ has incorporated by reference all federal regulations cited in this Complaint.

17. Although EPA has granted the State authority to enforce its own hazardous waste program, EPA retains jurisdiction and authority to initiate an independent enforcement action, pursuant to Section 3008(a)(2) of RCRA, 42 U.S.C. § 6928(a)(2).

18. As the authorized provisions of Louisiana's hazardous waste program operate in lieu of the federal RCRA program, the citations for the violations of those authorized provisions alleged herein will be the authorized Louisiana program; however, for ease of reference, the federal citations will follow in parentheses.

19. LAC 33:V.109, (40 C.F.R. § 261.2), defines a "solid waste" as any discarded material that is not otherwise excluded under LAC 33:V.105.D, (40 C.F.R. § 261.4(a)), or that is not excluded by variance. A material is discarded if it is abandoned (and not used, re-used, reclaimed, or recycled) by being disposed of, or burned or incinerated, except where the material is being burned as a fuel for the purpose of recovering usable energy; or physically, chemically, or biologically treated (other than burned or incinerated) in lieu

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