



Healthy Gulf
PO Box 2245
New Orleans, LA 70176

January 21, 2021

LDEQ
Public Participation Group
PO Box 4313
Baton Rouge, LA 70821-4313
DEQ.PUBLICNOTICES@LA.GOV

RE: PCS Nitrogen Fertilizer, L.P., Geismar Facility Draft Louisiana Pollutant Discharge Elimination System (LPDES) permit, AI Number 3732, Permit Number LA0066257, Activity Number PER20190015

Dear Public Participation Group,

Please accept the following comments from Healthy Gulf and Sierra Club¹ regarding PCS Nitrogen Fertilizer, L.P., Geismar Facility Draft Louisiana Pollutant Discharge Elimination System (LPDES) permit, AI Number 3732, Permit Number LA0066257, Activity Number PER20190015. We reserve the right to rely on all comments submitted.

Due to the issues raised below, we request that the draft permit be withdrawn and re-drafted to address these concerns, as well as concerns raised by community members at a public hearing.

¹ Healthy Gulf's purpose is to collaborate with and serve communities who love the Gulf of Mexico by providing research, communications and coalition-building tools needed to reverse the long-pattern of over exploitation of the Gulf's natural resources. Healthy Gulf has members throughout the Gulf states, including Louisiana. Please feel free to contact Matt Rota, Senior Policy Director by phone at (504)377-7840 or by email at matt@healthygulf.org.

The Sierra Club is America's largest and most influential grassroots environmental organization, with more than 3.8 million members and supporters. In addition to protecting every person's right to get outdoors and access the healing power of nature, the Sierra Club works to promote clean energy, safeguard the health of our communities, protect wildlife, and preserve our remaining wild places through grassroots activism, public education, lobbying, and legal action. For more information, visit www.sierraclub.org

We respectfully request an at least 30-day extension of the public comment period

The draft permit is very complex and involves a facility that has been in existence in one form or another for decades. Further, this permit is complicated in that it is a 'revocation and reissuance' of a permit. Given the complicated interaction between the closing phosphoric acid and operational nitrogen facilities, additional time is needed for the public to adequately analyze the permit.

Further, the comment period (12/18/2020-1/21/2021) included several holidays, including the days spanning Christmas and New Year's. It is even more difficult for the public to review and comment on publicly noticed permits during these times taken up by the holidays.

For the above reasons, we request an extension of the public comment period by at least 30 days.

We request a public hearing with virtual participation

As we outline below, PCS Nitrogen operates in a particularly vulnerable area from an environmental justice perspective. This plant is located in the heart of the region known as "Cancer Alley," and "Death Alley." There are communities in this area that have repeatedly been impacted by environmental degradation of the air, land, and water. Oral public comment from these communities would add valuable information to the decision-making process LDEQ is applying to this proposed permit.

In order for LDEQ to get local information regarding pollution issues regarding this proposed water discharge and associated environmental assessment, a public hearing would be necessary. We acknowledge that during the COVID-19 crisis that public hearings can be problematic. In order to facilitate the maximum amount of public participation we are requesting a public hearing where virtual participation is possible. This participation should allow for virtual attendees to submit their oral comments during this hearing.

We request a public hearing with capabilities for community members to participate fully in a virtual manner in addition to in person in a socially-distanced environment.

Comments from USEPA in 2015 were not adequately addressed in the previous permit

The United States Environmental Protection Agency (USEPA) Region 6, in a letter to LDEQ on June 16, 2015, outlined deficiencies they found in the PCS Nitrogen permit. In the final permit and the current draft permit, these issues have not been adequately addressed. The letter can be found in Attachment A.

Issues that must be addressed include:

- An analysis of potential impacts to drinking water intakes downstream
- An analysis if Total Phosphorus limits based on a 1986 task force study are actually protective of current conditions
- Water quality-based effluent limitations for hexachlorobenzene are needed for Outfall 001

The Louisiana Constitution Requires LDEQ to Analyze the Environmental Impacts of the Proposed Project.

The Louisiana Constitution requires LDEQ, as public trustee, to analyze the environmental impacts of the proposed project before deciding whether to grant a LPDES permit. Article IX, Section 1 of Louisiana's Constitution states that:

The natural resources of the state, including air and water, and the healthful, scenic, historic, and esthetic quality of the environment shall be protected, conserved, and replenished insofar as possible and consistent with the health, safety, and welfare of the people. The legislature shall enact laws to implement this policy.

Louisiana courts explained this constitutional requirement in the Supreme Court's decision in *Save Ourselves, Inc. v. Louisiana Env't'l Control Comm'n*, 452 So. 2d 1152 (La. 1984) and in the First Circuit's decision in *In re Rubicon, Inc.*, 95-0108 (La. App. 1 Cir. 2/14/96), 570 So. 2d 475, 481. In *Save Ourselves*, the Louisiana Supreme Court outlined LDEQ's public trustee responsibilities under the Louisiana Constitution. The Supreme Court found that Article IX, Section 1 is a "rule of reasonableness which requires an agency or official, before granting approval of [the] proposed action affecting the environment, to determine that adverse environmental impacts have been minimized or avoided as much as possible consistently with the public welfare" (*Save Ourselves* at 452 So. 2d 1157).

The court in *Rubicon* further elucidated LDEQ's public trustee responsibilities by setting out a series of specific inquiries that the public trustee must address in order to satisfy the Constitutional mandate (670 So. 2d 475). Specifically, LDEQ must address:

Whether: 1) the potential and real adverse environmental effects of the proposed project have been avoided to the maximum extent possible; 2) a cost/benefit analysis of the environmental impact costs balanced against the social and economic benefits of the project demonstrate that the latter outweighs the former; and 3) there are alternative projects which would offer more protection to the environment than the proposed project without unduly curtailing non-environmental benefits to the extent applicable (*Id.* at 483).

LDEQ has apparently not conducted an IT analysis with respect to this project, much less one that adequately considers the potential and real adverse environmental effects of allowing the discharge of thousands of pounds of potentially harmful and radioactive materials into the waters of Louisiana. Further, LDEQ has not conducted an adequate discussion of the costs and benefits of the project, nor has it discussed alternative projects, alternative sites or mitigating measures. Before LDEQ can make any decision regarding this request for an LPDES permit LDEQ must answer the IT Questions in order to fulfill its public trustee duties.

Environmental Justice concerns must be addressed.

As a part of the LPDES permit evaluation, an 'I.T.' analysis, and as a trustee of the citizens of Louisiana, LDEQ must address the social costs of this permit for an industrial complex in an area with environmental justice concerns (Figure 1).

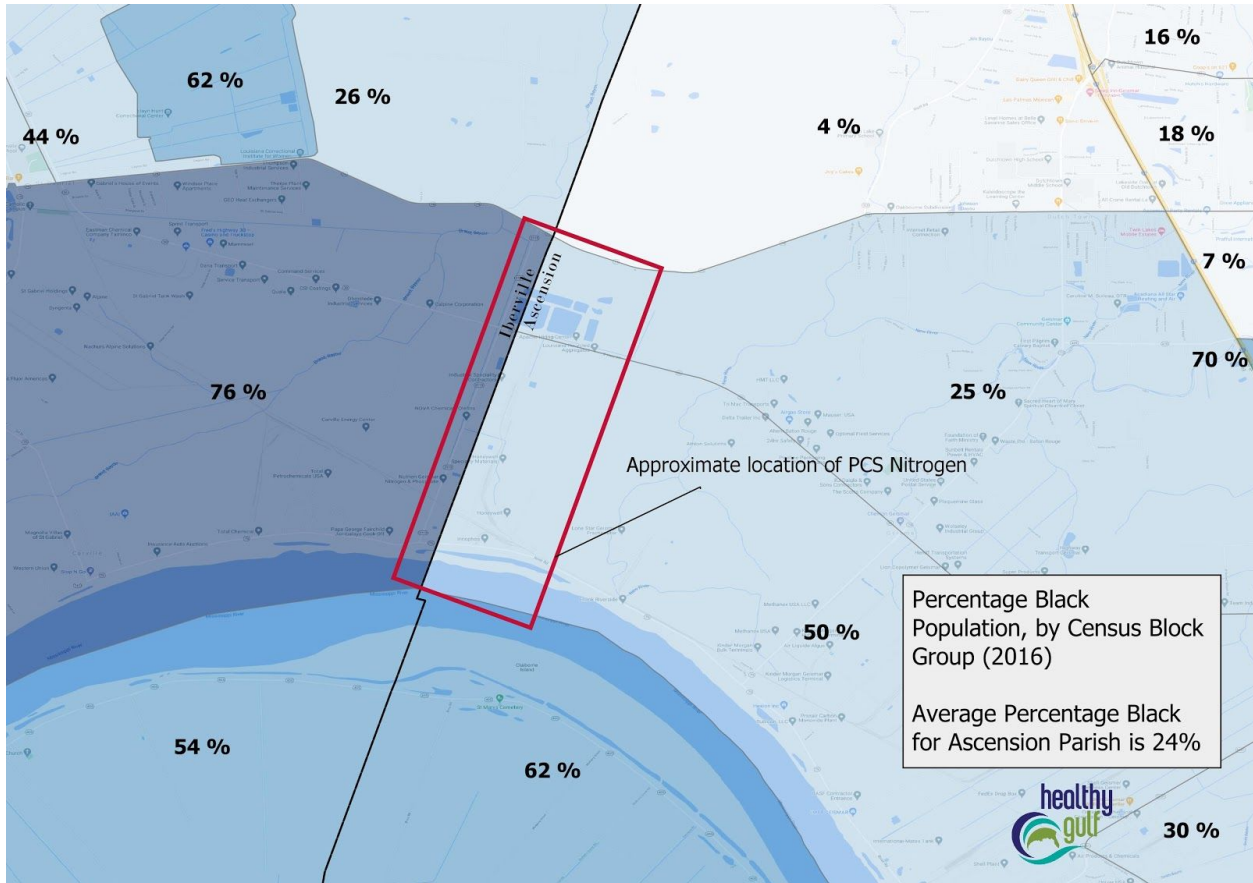


Figure 1. Percentages Black population from 2016 US Census in the Project area. Average percent Black for Ascension Parish = 24% and Iberville Parish = 48%. Data: ACS US Census 2016.

This area is in and surrounded by environmental justice census block groups (Figure 1). The wastewater and runoff coming from the facility will affect communities of color and low income residents disproportionately. Also, this area is in the midst of an EPA wastewater environmental justice problem zone (Figure 2). Plus, COVID-19 has disproportionately affected people of color. Whatever existing environmental justice issues there were, after the pandemic in 2020 and 2021, the environmental justice issues have only grown for people living there. LDEQ must take the well-being of the communities directly affected by their waste into account, and deny the permit.

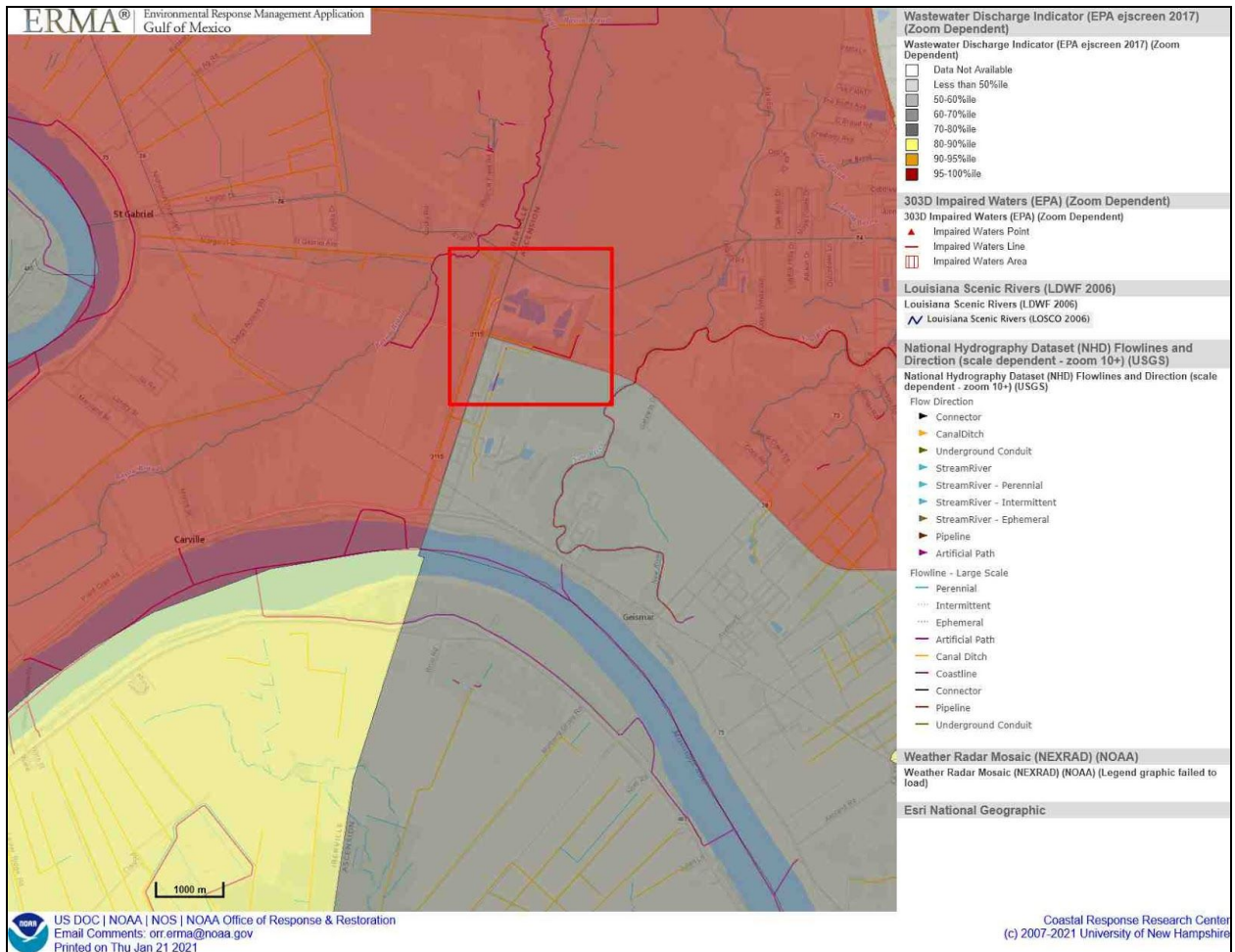


Figure 2. EPA “Wastewater Discharge EJ Indicator” from EJ SCREEN show the Project area to be within zones in the 90 - 100 percentile and above 50 percentile for concern. Data: ERMA Gulf of Mexico

We request LDEQ withdraw this permit and include an analysis of environmental justice concerns in any subsequent new permit announcement.

Significant Previous Water Contamination Violations

This facility is the site of numerous significant violations of its own water permits in the past. Just last year, PCS Nitrogen was found exceeding its permit limits by *an order of magnitude* for ammonia, nitrate daily maximum, and organic nitrogen daily maximum (Figure 3). Approval of the pending permit would seem to reward the Applicant, without enforcing LDEQ’s own regulations. LDEQ is charged with holding corporations accountable for their pollution. It is absurd that we should even have to point this out. The Applicant has had other violations of air and water permits in the past, as well. Those past infractions may have been addressed, but the fact remains that the Applicant is in repeated violation of regulations, and by approving

the permit LDEQ would seem to be ignoring the record. LDEQ must take their own regulations seriously, and refrain from approving the permit until a public hearing and a thorough environmental review are completed.

Based on data reported to the Louisiana Department of Environmental Quality (LDEQ) and reflected in the EPA's national data system, your facility has been flagged for possible Significant Non-Compliance (SNC) due to exceedance(s) of the effluent limit(s) in your Louisiana Pollutant Discharge Elimination System (LPDES) permit, LA0066257. For your information, the sample measurements and permit limits are listed in the following table.

Date	Outfall	Parameter	Permit Limit	Sample Value
08/31/2020	201A	Nitrogen, ammonia total [as N] Daily Maximum	3948 lb/d	28531 lb/d
08/31/2020	201A	Nitrogen, nitrate total [as N] Daily Maximum	3068 lb/d	21745 lb/d
08/31/2020	201A	Nitrogen, nitrate total [as N] Monthly Average	1205 lb/d	1276 lb/d
08/31/2020	201A	Nitrogen, organic total [as N] Daily Maximum	1370 lb/d	12954 lb/d

This notice is strictly addressing potential SNC effluent violation reporting from last quarter and may not include all schedule or other effluent violations. Continued noncompliance may result in PCS Nitrogen Fertilizer being designated SNC and may require formal enforcement action and/or penalty.

Figure 3. Finding of Significant Non-compliance from LDEQ and EPA, from August 2020.

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Further, EPA records show a history of environmental non-compliance not only with water, but with air and solid waste. While we understand that this is a water discharge permit, the violations in other media show a consistent record of non compliance and pollution. See Figure 4.

Enforcement and Compliance Summary

Statute	Insp (5 Years)	Date of Last Inspection	Compliance Status	Qtrs with NC (of 12)	Qtrs with Significant Violation	Informal Enforcement Actions (5 years)	Formal Enforcement Actions (5 years)	Penalties from Formal Enforcement Actions (5 years)	EPA Cases (5 years)	Penalties from EPA Cases (5 years)
CAA	4	09/17/2020	High Priority Violation	12	12	1	2	\$106,991	--	--
CWA	2	03/21/2019	Violation Identified	3	0	2	--	--	--	--
RCRA	2	09/14/2020	Significant Noncomplier	12	12	--	--	--	--	--

Figure 4. Enforcement and Compliance Summary from USEPA's Enforcement and Compliance History Online (ECHO). Accessed 1/21/2021³

EPA ECHO data shows that this facility not only has had water pollution issues in the past but is a "High Priority Violation" status for the Clean Air Act (CAA) and a "Significant Noncomplier" for the Resource Conservation and Recovery Act (RCRA).

Because of the previous violations, the permit should not be approved. The Applicant must be held accountable for their egregious violations of their permits, and for contributing further to the environmental justice disaster in Ascension and Iberville Parishes.

² Document ID [12465399](#).

³ <https://echo.epa.gov/detailed-facility-report?fid=110000748059>

Limits from LDEQ's guidance on stormwater, letter dated 6/17/87, from Dale Givens (LDEQ to Myron Knudson (EPA Region 6) is inappropriately applied.

This memo holds no apparent backing from USEPA, as what is provided is simply a memo from LDEQ with no given response from EPA. Did EPA concur with this 33 year-old memo? Studies of pollutants in stormwater have advanced greatly since the date of this memo, and therefore these limits might not be accurate according to recent science and technology. However, even if this memo still stands it is inappropriately applied. This memo states the proposed limits for Oil and Grease, TOC, and pH are intended for *uncontaminated* stormwater. As this would be an active methanol production facility, there is no evidence that this stormwater would be uncontaminated. While the first inch of rainfall, or 'first flush,' is to be discharged ultimately through Outfall 001 into the Mississippi River, there is no evidence provided that indicates that stormwater after the first inch of rain will not be contaminated.

Because of the lack of evidence for EPA approval and potential for contamination, the application of the Givens-Knudson Memo is inappropriate.

Thank you for the opportunity to comment on this draft LPDES permit. We look forward to LDEQ's response to the issues raised above.

Respectfully submitted,

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CC:

Kimberly Terrell, Tulane Environmental Law Clinic

Attachment A



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 6
1445 ROSS AVENUE
DALLAS, TEXAS 75202-2733

JUN 16 2015

Ms. Tegan B. Treadaway
Assistant Secretary
Office of Environmental Services
Louisiana Department of Environmental Quality
P.O. Box 4313
Baton Rouge, LA 70821-4313

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Admin/holding

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DEQ - DES

Re: Comments on Preliminary Draft Permit (PDP)
PCS Nitrogen Fertilizer, L.P., Geismar Plant (PotashCorp)
LPDES Permit No. LA0066257, AI No. 3732 ✓

Dear Ms. Treadaway:

Thank you for the opportunity to review the preliminary draft permit (PDP) for PCS Nitrogen Fertilizer, L.P., Geismar Plant (PotashCorp), (LPDES Permit No. LA0066257), which was submitted to this office on May 15, 2015. EPA has the following comments at this time.

1) The PDP proposes to authorize the discharge of process and other wastewaters from Internal Outfalls 201, 301 and 401 via Outfall 001 to the Mississippi River, Subsegment 070301. Per the fact sheet, this nitrogen and phosphate fertilizer manufacturer's average production is 1750 tons per day (TPD) of ammonia, (currently, Phase I) and will be 2800 TPD (after the expansion, Phase II.) Also, 3100 TPD of nitric acid (liquid NH₃), 1975 TPD of ammonium nitrate, 1350 TPD of urea, and 781 TPD of phosphoric acid is produced.

- The fact sheet and the rating worksheet sheet state that the receiving water to which Outfall 001 is discharged is used as a drinking water supply source within 50 miles downstream; however, it is unclear if the PDP specifically addresses potential impacts to the drinking water supply.
- It is noted that the PDP proposes to reduce the existing monitoring frequency of once per quarter to once per year for Total Priority Metals, and to reduce the existing frequency of once per month to once per quarter for Total Aluminum and Total Cadmium at Outfall 301. EPA recommends that there be no reduction in the existing monitoring frequencies as this data is needed to evaluate impacts to the receiving water.
- Nutrients are a current EPA priority. The PDP proposes to limit Total Phosphorus at Outfalls 301 and 401 based on the findings of a 1986 task force study. These limits fluctuate based on the flow of the Mississippi River. It is unclear if this approach is protective of the current conditions. Also, it is unclear if Total Phosphorus loadings and concentrations for

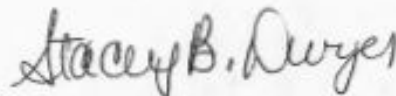
Outfalls 301 and 401 are being reported on DMRs and/or if this information is entered into the national database.

- The Water Quality Screen in Appendix B-2 of the fact sheet indicates that a water quality-based effluent limitation is needed at Outfall 001 for hexachlorobenzene. It is unclear how this is addressed in the PDP.

2) The existing permit requires that Total Phosphorus and Total Nitrates be monitored at Outfall 005 which discharges to Bayou Braud via local drainage (Subsegment 040201). The Final 2012 and the Draft 2014 Integrated Reports (IR) list Subsegment 040201 for various pollutants including Nitrate/Nitrite and Phosphorus (category 3 - "insufficient data"). Dissolved Oxygen (DO) is also listed on the 2012 and 2014 IRs. Page 19 of the Fact Sheet states that the Bayou Manchac Watershed TMDL for Biochemical Oxygen-Demanding Substances - Phase 1 not only addresses DO, but also nutrients. It also states that the wasteload allocation (WLA) does not include storm water. Data reported on DMRs in 2014 indicate that concentrations of greater than 2 mg/L were reported for Total Phosphorus and Total Nitrates at Outfall 005. The PDP proposes to remove these monitoring requirements; however, EPA recommends that monitoring be continued to collect additional data on nutrients.

As the NPDES permitting authority, it is LDEQ's obligation to ensure that the permit conforms to the requirements of the Clean Water Act (CWA) and the federal regulations. Based on the discussion above and prior to finalizing this permit, EPA recommends that the permitting authority consider the above comments and include additional conditions in the PDP and/or basis for the permit conditions in the fact sheet as appropriate. Also, please provide us with copies of any updated pages for the fact sheet and PDP for our files. Thank you for your cooperation. If you have any questions, please feel free to call me at (214) 665-7170, or contact Kay Schwab at (214) 665-6635, or EMAIL: schwab.kay@epa.gov.

Sincerely,



Stacey B. Dwyer, P.E.
Associate Director
NPDES Permits & TMDLs Branch (6WQ-P)
Water Quality Protection Division

cc: Bruce Fielding (LDEQ Permits Division)
Sonja Loyd (LDEQ Permits Division)