

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

UNITED STATES OF AMERICA
and
LOUISIANA DEPARTMENT OF
ENVIRONMENTAL QUALITY,

Plaintiffs,

v.

INNOPHOS, INC.,

Defendant.

Civil No.

CIVIL COMPLAINT

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”), and the Louisiana Department of Environmental Quality (“LDEQ”), and through the undersigned attorneys acting at the request of the Secretary of LDEQ, file this Complaint and allege as follows:

NATURE OF THIS ACTION

1. This is a civil action by the United States and LDEQ against Innophos, Inc. (“Innophos” or “Defendant”), brought pursuant to Section 3008(a) and (g) of the Resource Conservation and Recovery Act (“RCRA”), 42 U.S.C. § 6928(a) and (g), and pursuant to the Louisiana Environmental Quality Act (“EQA”), La.R.S.30:2025, La R.S.30:2050.7 and the Louisiana Administrative Code, LAC 33:V.107. The United States and LDEQ seek injunctive relief and the assessment of civil penalties for environmental violations at the purified phosphoric acid manufacturing facility (the “Facility”) that Innophos, Inc. (“Innophos” or “Defendant”) owns and operates in Ascension Parish, Louisiana, near the city of Geismar, Louisiana.

2. As set forth below, Defendant at the Facility has violated the statutory and regulatory requirements applicable to the management and disposal of solid and/or hazardous waste, found in Title 33 of the Louisiana Administrative Code (“LAC”) Part V, Chapters 1 through 51; and in Sections 3004 and 3005 of RCRA, 42 U.S.C. §§ 6924, 6925, and the regulations promulgated thereunder, including 40 C.F.R. Parts 261, 262, 264, 265, 268 and 270.

PARTIES

3. Plaintiffs are the United States of America and the Louisiana Department of Environmental Quality.

4. Innophos, the Defendant, is incorporated in the State of Delaware, and is licensed to do business in Louisiana.

5. Innophos is the owner and operator of the Facility. At all times relevant to this lawsuit, Innophos and/or its predecessors in interest have been the owner and operator of the Facility.

GENERAL BACKGROUND

6. The Facility addressed in the Complaint is a tract of approximately 0.75 acres located along the Mississippi River in Ascension Parish, near the city of Geismar, Louisiana.

7. PCS Nitrogen Fertilizer, L.P. (“PCS”) is the owner and operator of an adjacent facility (the “Receiving Facility”) that manufactures phosphoric acid.

JURISDICTION AND VENUE

8. This Court has jurisdiction over the parties and the subject matter of this action pursuant to RCRA Sections 3008(a) and (g), 42 U.S.C. §§ 6928(a) and (g), and 28 U.S.C. §§ 1331, 1345 and 1355; the Court also has jurisdiction over the state law claims in this case pursuant to 28 U.S.C. § 1367 (supplemental jurisdiction).

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

10. 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.

11. Authority to bring this civil action is vested in LDEQ under La. R.S. 36:231 with the concurrence of the Attorney General of the State of Louisiana, at the request of the Secretary of the LDEQ pursuant to La.R.S.30:2025, La.R.S.30:2050.7 and LAC 33:V.107.

12. 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

13. 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.*

14. RCRA’s Subchapter III (RCRA §§ 3001-3023, 42 U.S.C. §§ 6921-6940, 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.

15. 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. When the Administrator has authorized a state to administer 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).

16. 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 a hazardous waste program on February 7, 1985 (50 Fed. Reg. 3348). LDEQ is the state agency designated to implement the authorized RCRA program in Louisiana.

17. 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 Louisiana Administrative Code (“LAC”) Part V, Chapters 1 through 51.

18. As the authorized provisions of the 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 to 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 excluded from regulation under LAC 33:V.105.D (40 C.F.R. § 261.4(a)), or by variance. A discarded material is any material that is abandoned, recycled, inherently waste-like, or a military munitions. Abandoned materials are solid wastes, as defined in LAC 33:V.109 (40 C.F.R. § 261.2(b)), if they are abandoned by being disposed of, burned or incinerated, or accumulated, stored, or treated (but not recycled) before, or in lieu of, being abandoned by being disposed of, burned, or incinerated.

20. A solid waste is a hazardous waste if it is not excluded from regulation as a hazardous waste under LAC 33:V.109 (40 C.F.R. § 261.4(b)), and it exhibits any of the characteristics of hazardous waste identified in LAC 33:V.109 (40 C.F.R. Part 261, Subpart C), or it is listed in LAC 33:V.109 (C.F.R. Part 261, Subpart D).

21. Characteristic hazardous wastes are assigned “D” codes in LAC 33:V.4903 (40 C.F.R. Part 261, Subpart C) depending on the specific hazardous characteristic that the waste exhibits. A waste with a pH of less than or equal to 2.0, or greater than or equal to 12.5, exhibits the hazardous characteristic of corrosivity and is assigned the D002 hazardous waste code pursuant to LAC 33:V.4903.C. (40 C.F.R. § 261.22).

22. EPA’s and LDEQ’s regulations (as relevant to this lawsuit) require that generators of solid waste and hazardous waste must, among other things:

- A. Determine whether generated solid wastes are hazardous, LAC 33: V.1103 (40 C.F.R. § 262.11);
- B. Report to the LDEQ on an annual basis a list of pertinent information

about its hazardous waste that is sent offsite and also list all the pertinent information about the facility to which the hazardous waste is sent for treatment, storage, and/or disposal, LAC 33:V.1111.B.1(a)-(h) (40 C.F.R. § 262.41);

C. Treat, store, and/or dispose of hazardous waste in compliance with a permit and other applicable regulatory requirements, or, if the generator qualifies for interim status, with interim status requirements, LAC 33:V.Chapter 3 (Section 3005(a) of RCRA, 42 U.S.C. § 6925(a); 40 C.F.R. §§ 270.1 and 270.10);

D. Enumerate the hazardous constituents and indicate whether or not the waste must be treated before its placement or disposal on the land, LAC 33:V.2245 (40 C.F.R. § 268.7), according to the treatment standards set forth at LAC 33:V. 2223, 2230, and 2236 (40 C.F.R. §§ 268.45, 268.48, 268.49), and, if the waste must be treated before land disposal, send a one-time notice of the need for treatment to each facility receiving the waste, LAC 33:V.2245 (40 C.F.R. § 268.7); and

E. Not offer its hazardous waste to a facility that is not authorized to treat, store, and/or dispose of its hazardous waste, as provided by, LAC 33:V.1105.C (40 C.F.R. § 262.12(c)).

23. Pursuant to Sections 3008(a) and (g) and 3006(g) of RCRA, 42 U.S.C. §§ 6928(a) and (g) and 6926(g), the United States may enforce the federally-approved Louisiana hazardous waste program, as well as the federal regulations that remain effective in Louisiana, by filing a civil action in United States District Court seeking civil penalties up to \$25,000 per day per violation, and/or injunctive relief.

24. Pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2471, as amended by 31 U.S.C. § 3701, and as provided in 40 C.F.R. Part 19, the

amount specified in the foregoing Paragraph increases to \$27,500 per day for each violation occurring on and after January 31, 1997, further increases to \$32,500 per day for each violation occurring on or after March 15, 2004, further increases to \$37,500 per day for each violation occurring after January 12, 2009, and further increases to \$93,750 per day for each violation occurring after August 1, 2016. Each day of such violation constitutes a separate violation pursuant to Section 3008(g) of RCRA, 42 U.S.C. § 6928(g).

25. Pursuant to La.R.S.30:2025(E)(1)(a), LDEQ is authorized to enforce its hazardous waste regulations and to seek judicial imposition of penalties of up to \$32,500 per day for each violation.

GENERAL ALLEGATIONS

26. Innophos and/or its predecessors in interest have owned and operated its Louisiana Facility since 1989. Innophos succeeded its most recent predecessor in interest on or about August 13, 2004.

27. From at least 1989 until the present, Innophos and/or its predecessors purchased merchant grade phosphoric acid from PCS and engaged in further chemical processing of that merchant grade acid to produce purified phosphoric acid.

28. The Innophos process of manufacturing purified phosphoric acid produces two waste streams known as RP Pondwater and Raffinate. RP Pondwater is generated as a result of the Facility's initial filtration to remove arsenic that naturally occurs in the source phosphate ore. Raffinate is produced when Innophos further processes the merchant grade acid received from PCS to remove remaining fluoride and other impurities.

29. From at least February 2004 until the present date, Innophos and/or its predecessors in interest stored the Raffinate waste in tanks prior to routinely piping it directly to the Receiving Facility.

30. From at least February 2004 until December 2012, Innophos and/or its predecessor routinely piped the RP Pondwater stream directly to the Receiving Facility for storage, and/or disposal.

31. The Receiving Facility disposes the Raffinate, and until at least December 2012 disposed the RP Pondwater, directly or indirectly into its waste phosphogypsum stack.

32. The Receiving Facility did not and does not have a RCRA permit, equivalent state permit or authorization, or interim status as a hazardous waste treatment, storage, and/or disposal facility.

33. The Receiving Facility is registered with LDEQ as a large quantity generator pursuant to LAC 33:V.1105 (40 C.F.R. § 262.12). LDEQ issued two Solid Waste permits for the Receiving Facility, one for the Equalization Pond (P-0007R1) and the other for its phosphogypsum stack system (P-0202R1).

34. The Innophos Facility is registered with LDEQ as a large quantity generator pursuant to LAC 33:V.1105 (40 C.F.R. § 262.12). Innophos does not hold a hazardous waste storage permit for its two waste tanks at the Facility (R-605 and R-705).

RCRA ALLEGATIONS

35. Innophos is a “person” within the meaning of Section 1004(15) of RCRA, 42 U.S.C. § 6903(15), which includes corporations; and within the meaning of LAC 33:V.109, (40 C.F.R. § 260.10).

36. At all times relevant to this Complaint, Innophos and/or its predecessors in interest have been the “owner” and/or “operator,” and continues to be the “owner” and/or “operator,” of the Facility, within the meaning of LAC 33:V.109 (40 C.F.R. § 260.10).

37. The Facility is a “facility” within the meaning of LAC 33:V.109 (40 C.F.R. §260);

38. Innophos is a “generator” of “hazardous wastes” at the Facility, as those terms are defined in Sections 1004(5) & (6) of RCRA, 42 U.S.C. §§ 6903(5) & (6), and LAC 33:V.109 (40 C.F.R. §§ 260 and 261).

39. In February 2004, EPA conducted a Compliance Evaluation Inspection (“CEI”) and sampling event to determine the Facility’s compliance with applicable state and Federal RCRA requirements.

40. During the CEI, EPA obtained representative samples from the Raffinate and RP Pondwater waste streams.

41. Pursuant to LAC 33:4903.C (40 C.F.R. § 261.22(b)), a solid waste with a pH of less than or equal to 2.0 or greater than or equal to 12.5 exhibits the characteristic of corrosivity and is assigned the EPA Hazardous Waste Number of D002.

42. EPA tested the samples described in Paragraph 40 and concluded that both waste streams exhibited the hazardous characteristic for corrosivity, with a pH of less than 1.

43. Pursuant to LAC 33:4903.E (40 C.F.R. § 261.24(a)), EPA used the Toxicity Characteristic Leaching Procedure, test Method 1311 in “Test Methods for Evaluating Solid Waste, Physical/Chemical Methods,” EPA Publication SW-846, and performed a toxicity characteristic test on both waste streams identified in Paragraph 40.

44. Pursuant to LAC 33:4903.E (40 C.F.R. § 261.24(b)), the regulatory levels for arsenic, cadmium, and chromium are respectively 5 mg/L; 1 mg/L; and 5mg/L.

45. Pursuant to LAC 33:4903.E (40 C.F.R. § 261.24(b)), a solid waste that exhibits the characteristic of toxicity for arsenic, cadmium, and chromium has the corresponding EPA Hazardous Waste Number respectively of D004, D006, and D007.

46. The Raffinate exhibited the toxicity characteristic for cadmium, at 32 mg/L, and for chromium, at 215 mg/L.

47. The RP Pondwater exhibited the toxicity characteristic for arsenic, at 17 mg/L, for cadmium, at 19 mg/L, and for chromium, at 34 mg/L.

48. Because the Raffinate and RP Pondwater waste streams are solid wastes that exhibit the hazardous waste characteristics of corrosivity and toxicity and are not otherwise exempt or excluded from regulation as solid wastes and/or hazardous wastes, they are hazardous wastes.

49. The Facility is a “solid waste management facility” within the meaning of Section 1004(29) of RCRA, 42 U.S.C. § 6903(29); and a “hazardous waste management facility” within the meaning of LAC 33:V.109 (40 C.F.R. § 260.10).

CLAIMS FOR RELIEF

First Claim for Relief

(Failures to Make Accurate Hazardous Waste Determinations)

50. The allegations in Paragraphs 1-49 are realleged and incorporated herein by reference.

51. Pursuant to LAC 33:V.1103 (40 C.F.R. § 262.11), Defendant, as a generator of solid waste, is required to make a hazardous waste determination.

52. At the time of the February 2004 CEI, the Facility routinely generated two solid wastes for which accurate hazardous waste determinations had not been made: the Raffinate and RP Pondwater waste streams.

53. Based on EPA's knowledge of the processes at the Facility and the results of the samples taken from the Raffinate and RP Pondwater waste streams, EPA determined that both waste streams are "hazardous wastes" pursuant to LAC 33:4903.C and E (40 C.F.R. §§ 261.22(b) and 261.24(a)).

54. Defendant has violated LAC 33:V.1103 (40 C.F.R. § 262.11) by failing to conduct accurate hazardous waste determinations on its Raffinate and RP Pondwater solid waste streams.

55. Defendant is liable for injunctive relief and civil penalties pursuant to Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), and La.R.S.30:2025 for each such failure to make a hazardous waste determination for solid wastes generated at the Facility.

Second Claim for Relief

(Failure to Submit Annual Reports to the LDEQ)

56. The allegations in Paragraphs 1-55 are realleged and incorporated herein by reference.

57. Pursuant to LAC 33:V.1111.B.1(a) through (h), a generator on an annual basis is required to report to the administrative authority prescribed information about the description of its hazardous waste shipped off-site for treatment, storage, and/or disposal; identifying information about the transporter used to shipped its hazardous waste; and identifying information about the treatment, storage, and/or disposal facility to which the hazardous waste was shipped.

58. At all times relevant to this Complaint for Raffinate, and until December 2012 for RP Pondwater, LDEQ, as the administrative authority, received no annual reports from Innophos that included the Raffinate and/or the RP Pondwater waste streams.

59. Defendant, by its failure to submit annual reports of its hazardous waste activities to LDEQ, has violated the applicable regulatory requirements of LAC 33:V.1111.B.1(a) through (h) (40 C.F.R. § 262.41).

60. Defendant is liable for injunctive relief and civil penalties pursuant to Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), and La.R.S.30:2025 for each such failure to submit annual reports of its hazardous waste activities to LDEQ.

Third Claim for Relief

(Treatment and/or Storage of Hazardous Waste in Tanks without a Permit or Interim Status at the Facility)

61. The allegations in Paragraphs 1-60 are realleged and incorporated herein by reference.

62. Pursuant to LAC 33:V.1109.E (40 C.F.R. §§ 270.1 and 270.10), a generator who stores hazardous waste must obtain a permit or interim status unless it meets the exemption requirements for generators specified at LAC 33:V.1109.E (40 C.F.R. § 262.34(a)(1)(ii)).

63. At all times relevant to this Complaint for Raffinate, and until at least December 2012 for RP Pondwater, Innophos did not have a RCRA storage permit or interim status to operate hazardous waste storage tank(s) at the Facility.

64. During the CEI and as documented further in subsequent EPA investigation, EPA identified and documented two tanks (R-605 and R-705) at the Facility, owned and operated by Innophos, and in which Innophos stored Raffinate hazardous waste.

65. At all times relevant to this Complaint, Innophos stored Raffinate hazardous waste in tanks R-605 and R-705 at the Facility without a permit or interim status and without meeting the storage permit exemption conditions for generators specified at LAC 33:V.1109.E (40 C.F.R. § 262.34(a)(1)(ii)).

66. Defendant has violated LAC 33:V1109.E (40 C.F.R. §§ 270.1 and 270.10) by its failures to obtain RCRA permits or interim status and for the unpermitted storage of hazardous waste in its tanks (R-605 and R-705).

67. Defendant is liable for injunctive relief and civil penalties pursuant to Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), and La.R.S.30:2025 for its storage of hazardous waste without a RCRA permit or interim status at the Facility.

Fourth Claim for Relief

(Failure to Perform Land Disposal Determination and Notification)

68. The allegations in Paragraphs 1-67 are realleged and incorporated herein by reference.

69. Pursuant to LAC 33:V.2245 (40 C.F.R. § 268.7), a generator is required to determine if its waste has to be treated before being land disposed. The applicable treatment standards are set forth in LAC 33:V.2223, 2230, and 2236 (40 C.F.R. §§ 268.45, 268.48, 268.49).

70. If the waste must be treated before land disposal, LAC 33:V.2245 further requires that the generator send a one-time notice to each treatment, storage, and/or disposal facility receiving the waste stating, among other information, that the waste must be treated before land disposal. Also, the generator must place a copy of the determination in its files.

71. From 2004 until December 2012, Innophos routinely generated the hazardous waste stream RP Pondwater and failed to determine whether this waste stream needed to be treated prior to land disposal, and nevertheless piped this waste stream to the Receiving Facility, where it was land-disposed.

72. At all times relevant to this Complaint, Innophos routinely generated the hazardous waste stream Raffinate and failed to determine whether this waste stream needed to be treated prior to land disposal, and nevertheless piped this waste stream to the Receiving Facility, where it was land-disposed.

73. Based on the EPA's knowledge of the processes at the Facility and the results of the samples taken from the Raffinate and RP Pondwater waste streams during the CEI, EPA determined that the Raffinate and RP Pondwater hazardous waste streams do not or did not meet the treatment standards set forth at LAC 33:V.2223, 2230, and 2236 (40 C.F.R. §§ 268.45, 268.48, 268.49).

74. During and subsequent to the CEI, EPA found no documentation that Innophos had made a determination that the Raffinate and RP Pondwater waste streams met the applicable treatment standard, nor did EPA find any documentation that Innophos had prepared a one-time notice for its disposal of hazardous waste.

75. Defendant has violated LAC 33:V.2245 (40 C.F.R. § 268.7) by failing to determine whether RCRA required its hazardous waste streams to be treated before they could be land-disposed, and by failing to provide a one-time notification that its wastes did not meet the required treatment standards for land disposal.

76. Defendant is liable for injunctive relief and civil penalties pursuant to

Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), and La.R.S.30:2025 for failing to determine whether its hazardous waste streams were required to be treated before being land-disposed, and by failing to provide a one-time notification that its wastes did not meet the required treatment standards for land disposal.

Fifth Claim for Relief

(Failure to Ship Hazardous Waste to a Permitted Treatment, Storage, and/or Disposal Facility)

77. The allegations in Paragraphs 1-76 are realleged and incorporated herein by reference.

78. Pursuant to LAC 33:V.1105.C (40 C.F.R. § 262.12(c)), a generator must not offer its hazardous waste to a transporter, or to a treatment, storage, and/or disposal facility that has not received an active EPA identification number and the required permit (or interim status) necessary to receive and manage the generator's waste.

79. At all times relevant to this Complaint, the Receiving Facility did not have a permit or interim status pursuant to the requirements of LAC 33:V. Chapters 3 and 5 (40 C.F.R. §§ 270.1 and 270.10) that would qualify or allow it to treat, store, and/or dispose of hazardous waste.

80. At all times relevant to this Complaint for Raffinate, and until December 2012 for RP Pondwater, Innophos routinely piped and/or shipped its hazardous waste streams of Raffinate and RP Pondwater to the Receiving Facility, where the Receiving Facility land-disposed of the hazardous waste streams, either directly or indirectly, into its waste phosphogypsum stacks.

81. Innophos violated LAC 33:V.1105.C (40 C.F.R. § 262.12(c)) by sending its hazardous waste to a facility that was and is not permitted to treat, store, and/or dispose of hazardous waste.

82. Defendant is liable for injunctive relief and civil penalties pursuant to Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), and La.R.S.30:2025 for its failure to send its hazardous waste to a permitted treatment, storage, and/or disposal facility.

PRAYER FOR RELIEF

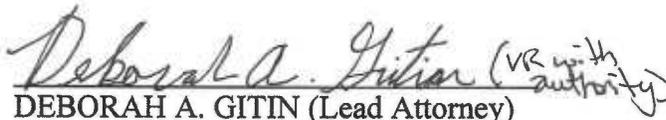
WHEREFORE, Plaintiffs, the United States and the Louisiana Department of Environmental Quality, respectfully request that this Court:

1. Order the Defendant to immediately comply with the statutory and regulatory requirements cited in this Complaint;
2. Assess civil penalties against the Defendant for up to the amounts provided pursuant to Sections 3008(a) and 3008(g) of RCRA, 42 U.S.C. §§ 6928(a) and 6928(g); La.R.S. 30:2025; and 28 U.S.C. § 2471, as amended by 31 U.S.C. § 3701; and
3. Grant the United States and the Louisiana Department of Environmental Quality such other relief as this Court deems just and proper.

FOR PLAINTIFF UNITED STATES OF AMERICA:


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Date: 1/12/2017


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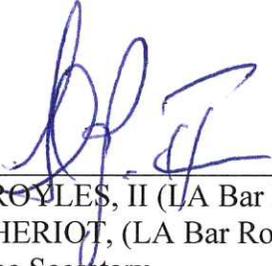
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FOR THE LOUISIANA DEPARTMENT OF ENVIRONMENTAL QUALITY:



Date: 1-11-17

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