

STATE OF MARYLAND,
DEPARTMENT OF THE
ENVIRONMENT
1800 Washington Blvd.
Baltimore, Maryland 21230

* IN THE CIRCUIT COURT
* FOR WICOMICO
* COUNTY, MARYLAND

Plaintiff,

*
* C-22-CV-24-000274

v.

PERDUE AGRIBUSINESS, LLC
6906 Zion Church Road
Salisbury, Maryland 21804

*
*

Defendant.

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CONSENT DECREE

WHEREAS, the Maryland Department of the Environment (hereinafter “MDE” or the “Department”) and Defendant, Perdue AgriBuisness, LLC (“PAB” or “Defendant”) (collectively, the “Parties”), hereby represent and acknowledge that they agree to enter into this Consent Decree regarding certain alleged violations of Maryland environmental laws related to the permitting and authorization for Defendant’s operation of certain equipment causing the emission of air pollutants into the air impacting the ambient air quality in the State of Maryland (“State”), and hereby request that this Court enter this Consent Decree as follows:

I. FACTUAL BACKGROUND

1. PAB owns and operates a production facility located at 6906 Zion Church Road in Salisbury, Wicomico County, Maryland 21804 (the “Facility”).

2. Among other operations, the Facility uses equipment to extract soybean oil from soybeans, otherwise referred to as the extraction process. The extraction process releases volatile organic compounds (“VOC”) into the ambient atmosphere.

3. VOCs are an air pollutant and a precursor pollutant to the formation of ground-level ozone, which is a criteria air pollutant that can trigger a variety of health problems.

4. State laws and regulations and the federal Clean Air Act regulate the emission of VOCs to limit the formation of ground-level ozone, and to ensure attainment with the ozone national ambient air quality standards (“NAAQS”).

5. The VOCs released by the extraction process are in the form of hexane, which is a Class II toxic air pollutant in the State.

Air Quality Permit to Operate and Approvals

6. COMAR 26.11.02.09(A)(1) and (6) prohibit a person from constructing or modifying or causing to be constructed or modified certain sources of air emissions, including installations and air pollution equipment, without first obtaining and having in effect the specified permits and approvals.

7. The Department issued Part 70 Operating Permit No. 24-045-0042 to PAB on July 1, 2015 (“Operating Permit”), governing PAB’s permitted air emissions from the Facility.

8. COMAR 26.11.02.05(A) prohibits PAB from violating or causing to be violated any term or condition of the Operating Permit.

9. Section I, Condition 2 of the Operating Permit lists the specific air emissions units authorized to be operated at the Facility.

10. State Only Enforceable Requirement 4(B) of the Operating Permit requires PAB to submit to the Department by April 1 of each year a revised toxic air pollutant compliance demonstration, developed in accordance with COMAR 26.11.15 and COMAR 26.11.16, that accounts for changes in operations, analytical methods, air emissions determination, or other factors where the in-puts and other variables relied upon in the previous toxic air pollutant compliance demonstration have been rendered invalid.

11. Table IV-6, Condition 6.1B.3(1) of the Operating Permit requires PAB to submit all required notifications in accordance with 40 CFR § 63.2860.

12. COMAR 26.11.17.03A prohibits PAB from commencing construction of or modifying an air emissions unit at the Facility without first obtaining a “New Source Review” approval pursuant to COMAR 26.11.17 if the unit or modification would cause a net air emissions increase of 40 tons per year or more of VOC.

Emissions Units

13. In 2017, PAB applied to the Department for an air quality permit to construct an upgrade to its extraction process, including the installation or modification of equipment associated with three air emissions units (SP-6, SP-7 and SP-19) (the “Emissions Units”), but ultimately withdrew the application in 2018.

14. The Department alleges that PAB subsequently installed the following equipment, which comprise the three Emissions Units, identified in the original application without informing MDE or obtaining the required permits and approvals:

- (a) one (1) 50 hp replacement Twin City Blower Flaking Roll Fan, installed between September 6, 2017 and September 26, 2017;
- (b) two (2) new 125 hp Roskamp Flaking Roll Flakers, installed between April 24, 2019 and May 22, 2019;
- (c) two (2) 0.5 hp Roskamp Flaking Roll Feeders, installed between April 24, 2019 and May 22, 2019;
- (d) one (1) new 3.5 tph fluidized bed separator, installed between September 6, 2017 and September 26, 2017;
- (e) one (1) new 1.5 hp Sutton-Steel Secondary Table, installed between September 6, 2017 and September 26, 2017;
- (f) one (1) new 10 hp Chicago Blower Secondary Table Fan Blower, installed between September 6, 2017 and September 26, 2017;
- (g) two (2) new 150 hp Roskamp Cracking Roll Feeders, installed between September 6, 2017 and September 26, 2017;
- (h) two (2) replacement 1 hp Roskamp Cracking Rolls, installed between September 6, 2017 and September 26, 2017;
- (i) one (1) replacement 123 hp Louisville Dryer Bean Conditioner, installed on or before May 22, 2019;
- (j) one (1) new 100 hp Twin City Blower Secondary Fan, installed on or before May 22, 2019;
- (k) one (1) replacement 5 hp Goulds Bean Conditioner Condensate Pump, installed on or before May 22, 2019; and

(l) one (1) replacement 5 hp Scott Equipment Water Addition to Hulls Mixer, installed on or before May 22, 2019.

15. The Department alleges that PAB began to operate and otherwise use the Emissions Units following installation, which resulted in a net-actual emissions increase to the atmosphere in excess of 40 tons of VOC (in the form of hexane) per year.

16. The Department alleges that installation of the Emissions Units did not include an emission limitation approved as the Lowest Achievable Emission Rate (“LAER”), the Best Available Control Technology for Toxics (“T-BACT”), or emission offsets required under COMAR 26.11.15.05A and COMAR 26.11.17.03B.

17. The Department alleges that installation of the Emissions Units did not include a revised toxic air pollutant compliance demonstration.

The Litigation

18. Section 2-609 of the Environment Article of the Maryland Code provides that the Department may bring an action to enjoin any conduct that violates any provision of Title 2 of the Environmental Article, or any rule, regulation, or order adopted or issued under Title 2.

19. Section 2-610 of the Environment Article provides that a person who violates any provision of Title 2, or any rule or regulation issued thereunder, is liable for a civil penalty up to \$25,000 per violation, with each day a violation continues constituting a separate violation.

20. In conjunction with this Consent Decree, the Department has filed a civil complaint in the Circuit Court for Wicomico County seeking injunctive relief and civil

penalty under Title 2 of the Environment Article, alleging that PAB's installation and modification of equipment associated with the Emissions Units and operation of the Facility violated its Operating Permit and Maryland's air quality control laws.

21. The Department has expended resources, including attorney resources, in investigating and bringing this Suit.

22. To avoid protracted litigation of the allegations in the Complaint and the corrective action required to remedy their ongoing nature, the Department and PAB (collectively, "Parties"), have reached an agreement on the terms of this Consent Decree, prior to PAB filing an answer or other response to the Complaint. The Parties recognize that, and the Court by entering this Consent Decree finds that, this Consent Decree has been negotiated by the Parties in good faith to avoid litigation between the Parties and that this Consent Decree is fair, reasonable and in the public interest.

23. It is the mutual objective of the Parties, by entering into this Consent Decree, to provide for and achieve compliance with the environmental laws alleged to have been violated in the Complaint in an expeditious manner to protect public health and the environment.

24. The Parties understand and intend this Consent Decree, upon entry by the Court, to be a full and final settlement and resolution of Counts I through VII identified in the Complaint filed in the above captioned matter.

25. The Department believes that this Consent Decree is in the best interests of and will benefit the residents of the State of Maryland.

26. It is expressly understood that this Consent Decree pertains to the specific alleged violations described in the Complaint and that the Parties have made no promises or representations other than those contained in this Consent Decree, and the Department makes no representations with regard to any criminal liability for the above-referenced allegations and has no authority over any criminal actions.

27. Entry by the Court and full compliance with the terms of this Consent Decree represents a full and final settlement of contested claims upon PAB's completion of all injunctive relief provisions and payment of monetary sums described below. Entry of this Consent Decree represents a settlement of claims contested by PAB.

**NOW THEREFORE, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED
AS FOLLOWS:**

II. JURISDICTION AND VENUE

28. For purposes of this Consent Decree, the Department and PAB agree that the Court has jurisdiction over the Parties and over the subject matter of this action pursuant to Title 2, Subtitle 6 of the Environment Article, and § 6-102 and § 6-103 of the Courts and Judicial Proceedings Article. Venue is proper under § 6-201 of the Courts and Judicial Proceedings Article of the Maryland Code because PAB carries on a regular business in Wicomico County, Maryland.

29. For purposes of this Consent Decree, or any action to enforce this Consent Decree, the Parties consent to this Court's jurisdiction over this Consent Decree and consent to venue in this Court.

III. WORK TO BE PERFORMED

30. Within sixty (60) days of the entry of this Consent Decree, PAB shall submit to the Department a complete air quality permit to construct application, pursuant to COMAR 26.11.02.11, a complete New Source Review (“NSR”) applicability analysis and a complete NSR approval application pursuant to COMAR 26.11.17 for the Emissions Units. PAB avers that it intends to apply for a project that includes a new “Mineral Oil System” and a new “Oil Extractor System,” as well as other necessary modifications to equipment in the Soybean Processing Plant to achieve a requested increase in production. PAB agrees to make commercially reasonable efforts to respond to any subsequent requests from the Department for additional information. The Parties agree to work cooperatively should MDE determine that revisions are necessary for either application.

31. The NSR approval application shall include an evaluation of currently available emissions controls constituting LAER technologies, as defined in COMAR 26.11.17.01(B)(15). In no case shall an acceptable LAER emission limitation be greater than an annual average solvent loss ratio of 0.152 gallons of solvent per ton of soybeans processed, as calculated on a 12-month rolling average.

32. The NSR approval application shall also commit to providing VOC emissions offsets from existing sources in the area impacted by the Facility at a ratio of 1.15 to 1 pursuant to COMAR 26.11.17.03(B)(3) through (5). In no case shall PAB obtain emissions offsets of less than 107 tons of VOC offsets.

33. The permit to construct and NSR approval applications required pursuant to Paragraph 30 shall include a toxic air pollutant compliance demonstration, developed in accordance with COMAR 26.11.15 and COMAR 26.11.16, that accounts for all operations at the Facility (including but not limited to the Emissions Units utilized in the soybean oil extraction process), analytical methods, emissions determination, and other factors changed from its most recent toxic air pollutant compliance demonstration. The demonstration shall include a proposal constituting current T-BACT.

34. Following conclusion of any applicable public participation process and upon final issuance or denial of a permit to construct and/or NSR approval, PAB shall comply with the requirements of any air quality permit to construct or NSR approval which has been issued and shall cease operation of all equipment for which a permit and/or NSR approval has been denied. PAB retains the right to appeal the Department's decision denying any permit and/or approval associated with this Consent Decree and/or any condition imposed by the Department in any permit and/or approval associated with this Consent Decree. During the pendency of any such appeal, PAB shall be limited to no more than 271.4 tons per year of VOC emissions from the soybean processing plant, as identified in the Operating Permit and replaced/modified by the Emissions Units, until final resolution of the appeal or any permit remand which may be ordered, whichever is later, at which time PAB shall comply with the permit approval or denial.

35. If an NSR approval is ultimately issued by the Department, PAB shall have any pollution control equipment constituting LAER and/or T-BACT required by that approval installed and in operation no later than nineteen (19) months following issuance

of the approval by the Department and contractor construction start date based on contractor availability established in paragraph 37.a. below, subject to a *force majeure* event as described in Section XII below. Within fifteen (15) days of initiating operation of either the LAER or the T-BACT systems, PAB shall notify the Department of each system's start-up in accordance with Section XVI of this Consent Decree.

36. Within sixty (60) days after entry of this Consent Decree, PAB shall submit an application for a new permit to construct both a "Mineral Oil System" and "Oil Extractor System" that incorporates the three Emissions Units which are utilized in the soybean oil extraction process at the Facility and any necessary modifications thereto, as further detailed in Paragraphs 37 and 38. The Parties expressly recognize that PAB's intention to install the Mineral Oil System and Oil Extractor System pursuant to the construction schedules in those paragraphs was proposed directly by PAB without input from the Department, and shall not in any way constitute a prior determination by the Department that the systems as proposed will ultimately be approvable or otherwise constitute LAER and/or T-BACT. Any inherent risk posed by those construction schedules shall be inherently borne by PAB and shall not play any role in the Department's review and final determination on the permits to construct or NSR approval required under this Consent Decree or in any judicial review of those determinations.

37. To ensure that LAER and T-BACT systems meet the deadline of Paragraph 35, PAB shall adhere to the following construction schedule for the Oil Extractor System:

a. After the Parties execute this Consent Decree but before the Court enters this Consent Decree, PAB may grade soil and pour the concrete foundations for the

Oil Extractor System. This work shall not be deemed to be a violation of the Permit to Construct for this system. PAB shall notify MDE in writing within seven (7) business days of this stage's completion and within seven (7) days of the foundation having cured.

b. Within one (1) month after entry into this Consent Decree, PAB shall engage contractors and will establish a defined construction start based on the contractor availability and scheduling. The start of construction shall not exceed three (3) months from the entry of the Consent Decree by the Court. PAB shall notify MDE in writing when this stage has been completed.

c. Within two (2) months after the foundation has cured, PAB shall assemble (but shall not operate) the new Oil Extractor System which will be used to achieve compliance with any LAER and T-BACT emission requirements. PAB shall notify MDE within seven (7) days of this stage's completion.

d. Within three (3) months after assembly of the Oil Extractor System, PAB shall complete erection of the steel frame for the new oil extractor building. PAB shall notify MDE within seven (7) business days of this stage's completion.

e. Within three (3) months after assembly of the steel frame for the new extractor building, PAB shall complete construction of all piping for the Oil Extractor System, except that PAB shall not complete any "tie-ins" between the Oil Extractor System and the existing extractor operations at the Facility without written approval from the Department, which approval shall not be unreasonably withheld by the Department. PAB shall notify the Department in writing within seven (7) business days of this stage's completion.

f. Within two (2) months after completion of the piping referenced in subsection (d), PAB shall complete construction of the walls and roof of the building for the new Oil Extractor System. PAB shall notify MDE in writing within seven (7) business days of this stage's completion.

g. Within two (2) months after completion of the construction of the walls and roof of the extractor building, PAB shall complete insulation for the piping and equipment in the new oil extractor building (consisting of covering of the piping and equipment for the purposes of energy efficiency and associated safety). PAB shall notify MDE in writing within seven (7) business days of this stage's completion.

h. Within one (1) month after completion of the insulation, PAB shall complete the tie-ins of piping and other utilities between the existing Facility and the Oil Extractor System, the completion of which will effectively make the new Oil Extractor System operational. PAB shall notify the Department in writing within seven (7) business days of this stage's completion.

i. Within four (4) months after completion of final tie-ins pursuant to subsection (g), PAB shall demonstrate to the reasonable satisfaction of the Department that the Oil Extractor System is operational and in conformance with any LAER and T-BACT authorizations.

38. PAB shall adhere to the following construction schedule for the Mineral Oil System to be applied for pursuant to Paragraph 36.

a. After the Parties execute this Consent Decree but before the Court enters this Consent Decree, PAB may grade soil and pour the concrete foundations for the

Mineral Oil System. This phase of work will not be deemed to be a violation of the Permit to Construct for this system. PAB shall notify MDE in writing within seven (7) business days of this stage's completion and within seven (7) days of the foundation having cured.

b. Within six (6) months after entry of this Consent Decree, PAB shall complete its engineering design for the Mineral Oil System. PAB shall notify the Department within seven (7) business days of completion of its engineering design.

c. Within four (4) months of completion of its engineering design, PAB shall complete its bid process (including all internal approvals) for construction of the Mineral Oil System. PAB shall notify the Department within seven (7) business days of this stage's completion.

d. Within sixteen (16) months after completion of the bid process, PAB shall acquire all material components to complete the Mineral Oil System. PAB shall notify the Department within seven (7) business days of this stage's completion.

e. Within six (6) months after acquisition of material components, PAB shall complete construction of the Mineral Oil System so that its operations meet the requirements of any and all permits to construct for the Mineral Oil System that have been issued. PAB shall notify the Department within seven (7) business days of this stage's completion.

IV. PLAN FOR COMPLIANCE

39. This Consent Decree constitutes a plan for compliance within the meaning of § 2-611 of the Environment Article. It is intended to address emissions from the Emission Units that are not authorized by the Operating Permit, so as to allow for the

evaluation of required air quality permits to construct and NSR approval pursuant to the public participation process, and the construction and/or implementation of LAER and T-BACT pollution controls, as required by this Consent Decree and designed to enable compliance with Title 2 of the Environment Article and Title 26, Subtitle 11 of COMAR. The schedule of compliance shall continue from the date of execution of this Consent Decree until construction and implementation of any equipment required pursuant to a permit to construct and/or NSR approval issued by the Department in accordance with this Consent Decree and as further set forth in Paragraphs 35 through 38 above, or denial of a permit to construct and/or NSR approval in accordance with this Consent Decree.

V. CIVIL PENALTY

40. PAB shall pay to the Department a civil penalty in the amount of eight million dollars (\$8,000,000), in accordance with the following payment schedule:

a. Within thirty (30) calendar days after entry of this Consent Decree, PAB shall pay to the Department one million five hundred thousand dollars (\$1,500,000).

b. Within thirty (30) days of receipt of an invoice to be sent by the Department no sooner than January 1, 2025, PAB shall pay to the Department two million five hundred thousand dollars (\$2,500,000).

c. Within thirty (30) days of receipt of an invoice to be sent by the Department no sooner than August 1, 2025, PAB shall pay to the Department four million dollars (\$4,000,000).

The above sums are considered the complete payment and no additional interest will be charged as long as the payments are timely made.

41. In accordance with the schedule in Paragraph 40, each payment shall be made to the “Maryland Department of the Environment/Clean Air Fund” in the full amount of the penalty, paid either by electronic transfer or by certified check. The Department shall issue an invoice for the payment, and the payment shall reference the invoice number provided by the Department. Payment made via electronic transfer shall be made in accordance with the instructions at <https://www.egov.maryland.gov/mde/invoice#!>. Payment made via check shall be mailed to Maryland Department of the Environment, P.O. Box 2037, Baltimore, MD 21203-2037.

42. Failure to pay any installment by its required due date shall, upon written notification by the Department, result in a forfeiture of the foregoing payment schedule and any remaining balance of the civil penalty shall be immediately due in full. In addition, any failure to pay the civil penalty as required by this Consent Decree may result in this any remaining debt owed to the State being referred to the Central Collection Unit. The Central Collection Unit is authorized to collect outstanding debts resulting from unpaid penalties. The Central Collection Unit will assess a collection fee of 17%, plus interest, to the amount owed.

43. Upon entry of this Consent Decree, the Department shall be a judgment creditor for purposes of collection of the penalties required by this Consent Decree and enforcement of this Consent Decree.

VI. OPERATIONAL IMPROVEMENTS

44. Beginning on the date of entry of this Consent Decree, PAB shall undertake a program to replace the two diesel-powered “trackmobile” units used to move rail cars at the Facility with zero-emission all-electric replacement units. The first all-electric unit shall be purchased and placed into usage by June 30, 2025, and the second all-electric unit shall be purchased and placed into usage by October 1, 2025. PAB further agrees to permanently use the all-electric replacement units at the Facility for the useful life of that equipment.

45. PAB agrees that both diesel-powered “trackmobile” units which shall be replaced by all-electric counter parts shall be: (i) returned to the lessor of the trackmobile; (ii) permanently retired; or (iii) sold for salvage value (the outcome being that the diesel-powered trackmobile unit itself will not be used by any person or entity).

46. The Parties agree that the estimated cost of the all-electric replacement units and their associated charging-related infrastructure described below is anticipated to cost at least three million five hundred thousand dollars (\$3,500,000). Within thirty (30) days of: (1) completion of installation of: (a) concrete pads and canopies for the electric vehicle charging stations; (b) electric vehicle charging stations and control equipment; and (c) charging components linking the charging stations to the trackmobiles; and (2) purchase and deployment of both all-electric replacement units, PAB shall submit to the Department all documents required by generally accepted accounting principles to substantiate the capital costs expended by PAB in implementing the operational improvement described in this Section. PAB shall provide within thirty (30) days of receipt of written request by

the Department, any additional information reasonably necessary to determine the actual capital expenditures of the operational improvements.

47. In the event that PAB expends less than three million five hundred thousand dollars (\$3,500,000) in capital expenditures to purchase the all-electric replacement units and install related infrastructure described in Paragraph 46 above, Perdue shall pay to the Department the remaining difference within thirty (30) days of the Department's written request.

VII. SUPPLEMENTAL ENVIRONMENTAL PROJECT

48. Within thirty (30) days of entry of this Consent Decree, PAB shall pay four hundred thousand dollars (\$400,000) to the City of Salisbury to fund its terra scaping plan designed to eliminate excessive pavement (beyond what is needed for the appropriate and safe convenience of traffic) and place trees in exposed and improved areas of soil within identified areas within the City limits with poor tree canopies and/or economically disadvantaged areas ("SEP"). No later than thirty (30) days following its payment to the City of Salisbury, PAB shall submit to the Department written notice and documentation confirming that the payment was made in accordance with Section XVI of this Consent Decree.

49. Notwithstanding PAB's obligation to make the payment described in Paragraph 48, the parties agree that this Consent Decree does not create any obligation on the part of PAB to ensure implementation of the SEP. Rather, proper performance of the SEP shall be the sole responsibility of the funding recipient, who shall guarantee

performance of the SEP in accordance with the Guarantee Agreement attached as Attachment A to this Consent Decree.

50. Any statement, publication, or other material published or distributed by PAB or on PAB's behalf referencing the SEP shall include a statement that "this project was required as the result of an enforcement action by the State of Maryland."

VIII. STIPULATED PENALTIES

51. In addition to the civil penalty provided in Section V of this Consent Decree, PAB agrees to pay stipulated penalties upon written demand by the Department to the Maryland Department of the Environment "Clean Air Fund" in accordance with the following criteria:

a. If PAB fails to submit to the Department an administratively complete air quality permit to construct application or NSR approval application in accordance with Paragraph 30, PAB shall pay five hundred dollars (\$500) per day for each day beyond the required completion date until the requirement is met.

b. If PAB has submitted an administratively complete permit to construct or NSR approval application which MDE determines contains a deficiency or otherwise requires a revision to complete processing, MDE shall provide notice and allow fourteen (14) business days, or a longer period as determined by MDE, for PAB to correct the deficiency, and PAB shall pay five hundred dollars (\$500) per day for each day beyond the applicable deadline if PAB fails to timely correct that deficiency.

c. If PAB fails to install and operate any pollution control equipment in accordance with Paragraph 35, PAB shall pay one thousand dollars (\$1,000) per day for each day beyond the required completion date until the requirement is met.

d. If PAB fails to purchase and operate either of the zero-emission, all-electric replacement “trackmobile” units in accordance with Paragraph 44, PAB shall pay one thousand dollars (\$1,000) per day for each day beyond the required completion date until the requirement is met (except to the extent that PAB’s delay in meeting these obligations is due to a *force majeure*).

52. PAB agrees not to contest the amount of a stipulated penalty but reserves the right to contest whether a violation has occurred unless PAB has self-reported such violation on any of the monitoring reports required by the Operating Permit and the event is not otherwise within the scope of the *force majeure* clause of this Consent Decree. The absence of stipulated penalties for a violation of this Consent Decree shall not be construed to limit in any way the Department’s discretion to seek civil or administrative penalties, any form of injunctive relief, or any other right, remedy or sanctions available to it for violations of the Consent Decree, or for any other violation of State law not expressly addressed in the Complaint in this action.

53. All stipulated penalties shall begin to accrue on the day after the performance is due and shall continue to accrue until performance is satisfactorily completed or the violation ceases. Nothing in the Consent Decree shall prevent the simultaneous accrual of separate stipulated penalties for separate failures of performance or violations of this Consent Decree.

54. All stipulated penalties owed pursuant to this Consent Decree shall be due within thirty (30) days following receipt of written demand by the Department, unless PAB elects within twenty (20) days of receipt of the Department's written demand to dispute the accrual of stipulated penalties with the Court overseeing this Consent Decree. The Department's written demand shall describe the noncompliance and shall indicate the amount of penalties due. Any such stipulated penalties shall be paid by check made payable to "Maryland Department of the Environment/Clean Air Fund" and sent to c/o The Maryland Department of the Environment, P.O. Box 2037, Baltimore, MD 21203, and shall reference the caption of this Consent Decree.

55. The Department may, in its sole discretion, reduce or waive any stipulated penalty for any reason deemed appropriate by the Department.

IX. RESPONSIBILITY FOR CONSTRUCTION

56. Notwithstanding the use of consultants or contractors in planning, installing and implementing the Work to be Performed under Section III or the Operational Improvements under Section VI of this Consent Decree, PAB shall be responsible for the satisfactory completion of that work. "Satisfactory completion" means completion of all work in accordance with all applicable work plans, specifications, construction permits, and State and federal laws and regulations.

X. RETENTION OF JURISDICTION

57. This Court shall retain jurisdiction of this case after entry of this Consent Decree to enforce compliance with the terms and conditions of this Consent Decree and to take any action necessary or appropriate for its interpretation, construction,

execution, modification, or adjudication of disputes. During the term of this Consent Decree, any party to this Consent Decree may apply to the Court for any relief necessary to construe or effectuate this Consent Decree until the Consent Decree is terminated.

XI. SUBSEQUENT MODIFICATION

58. The terms of this Consent Decree are contractual and not mere recitals. This Consent Decree contains the entire Consent Decree of the Parties and shall not be modified by any prior oral or written Consent Decree, representation, or understanding. Except for a deadline extension granted in writing by the Department as provided by Section XII or Section XIII, the terms of this Consent Decree may only be modified by a subsequent written agreement signed by all parties and shall not be effective until approval and entry by this Court.

XII. FORCE MAJEURE

59. PAB shall perform the requirements of this Consent Decree within the time limits and manner set forth herein, unless performance is prevented or delayed by events which constitute a *force majeure*, including but not limited to an act of God, strike, riot, catastrophe, or other cause beyond the control of PAB. *Force majeure* events do not include difficulties caused by reasonably foreseeable weather conditions which could have been overcome by best efforts, increased costs of performance or changed economic circumstances. The mere existence of the novel coronavirus, COVID-19, Respiratory Syncytial Virus (RSV), or other communicable diseases does not excuse performance under this Consent Order. PAB must take all reasonable steps to mitigate any delay that may occur as a result of the novel coronavirus, COVID-19,

or other communicable diseases. Delays attributable to the communicable diseases may only constitute a *force majeure* event where PAB could not reasonably have taken the known circumstance associated with the applicable disease into account when developing and implementing plans and schedules under this Consent Order. PAB will notify the Department, in writing, of such cause or causes for delay within fourteen (14) days after PAB becomes aware of the delay or anticipates a delay.

60. The burden of establishing a *force majeure* event shall rest with PAB. If PAB established to the Department's satisfaction that it has been delayed in the implementation of any obligation under the Consent Decree by a *force majeure* event, then the Department shall extend the date or dates specified in this Consent Decree for such a period of time as allows compliance to be achieved as expeditiously as practicable after the delay excused pursuant to this Paragraph. Any extension granted shall in no event exceed the period of delay caused by the *force majeure* event.

XIII. DELAY

61. If any event occurs which causes or which PAB expects to cause a delay in the achievement of any requirement imposed by this Consent Decree, PAB shall notify the Department in writing within ten (10) business days of obtaining knowledge of the occurrence of such event and of its impact on timely compliance. The notice shall identify the cause of the delay, an estimate of the anticipated length of delay, the measures taken and to be taken to prevent or minimize the delay, and an estimate of the date by which such measures will be completed and shall be submitted in accordance with Section XVI of this Consent Decree. PAB may request in writing an extension of the deadline at least

ten (10) business days prior to the deadline. The Department may, in its sole discretion, grant an extension upon such request. Notwithstanding any delay, PAB shall promptly comply with the requirements of this Consent Decree as soon as reasonably possible.

XIV. INFORMATION COLLECTION AND RETENTION

62. Any authorized representative of the Department, upon presentation of credentials, shall have a right and are authorized to enter the Facility at any reasonable time to monitor the progress of activities under the Consent Decree, verify dates or information submitted to the Department in accordance with this Consent Decree, inspect non-privileged records related to the work performed hereunder, review the progress of PAB in carrying out the terms of the Consent Decree, conduct such tests, sampling, or monitoring as the Department deems necessary, using a camera, sound recording, or other documentary-type equipment, and verify reports and data submitted to the Department. The Department agrees that it and its representatives will comply with all applicable laws, regulations, ordinances, or procedures related to access to the Facility, including, but not limited to, all security laws, regulations, or procedures, and any site-related health and safety protocols and procedures established by PAB.

63. Nothing herein shall be interpreted as limiting any other inspection authority which the Department has under Maryland law or the Operating Permit.

XV. TRANSFER OF OWNERSHIP

64. No transfer of ownership or operation of the Facility, in whole or in part, shall relieve PAB of its obligation to ensure that the terms of this Consent Decree are implemented unless: (a) the transferee agrees to undertake any unperformed obligations

required under this Consent Decree and to be substituted for PAB as a party under the Consent Decree and thus be bound by the terms thereof; (b) the Department consents to relieve PAB of its obligations, which consent shall not be unreasonably withheld; and (c) the transferee becomes a party to this Consent Decree pursuant to the provisions for Subsequent Modification. At least thirty (30) days prior to any such transfer, PAB shall provide a copy of this Consent Decree to the proposed transferee and simultaneously provide written notice of the prospective transfer, together with a copy of the provisions of the proposed written agreement pertaining to the successor entity's assumption of responsibilities under this Consent Decree, to the Department in accordance with Section XVI of this Consent Decree. Any attempt by PAB to transfer ownership or operation of the Facility without complying with this Paragraph constitutes a violation of this Consent Decree.

XVI. NOTIFICATION

65. Unless otherwise specified, reports, correspondence, approvals, disapprovals, notices or other submissions relating to or required by this Consent Decree shall be in writing and shall be sent to the following:

For the Department, all correspondence shall be sent by electronic message to MDEAIR.othercompliance@maryland.gov, with a copy to christopher.wheeling@maryland.gov.

For PAB, all correspondence shall be sent by electronic message to Herb.Frerichs@perdue.com with a copy to tmaiden@reedsmith.com.

If the point of contact changes for any party, that party shall provide written notification of the new point of contact.

XVII. RELEASE AND RESERVATION OF RIGHTS

66. Upon full completion of all the obligations set forth in this Consent Decree, including all work required in this Consent Decree and payment of any judgement and stipulated penalties, this Consent Decree shall act as a full and final settlement and resolve PAB's civil liability to the Department for violations alleged in the Complaint filed by the Department in this proceeding through the date of entry of this Consent Decree. This Consent Decree should not be construed as a waiver or limitation of the Department's right to take enforcement, including criminal enforcement, or other action with respect to activities not addressed by this Consent Decree or unknown to the Department at this time, including newly discovered violations.

67. The Department reserves all legal and equitable remedies available to enforce the provisions of this Consent Decree. This Consent Decree shall not be construed to limit the rights of the State of Maryland to obtain penalties or injunctive relief under the Clean Air Act or implementing regulations, or under state laws, regulations, or permit conditions, except with respect to the events expressly specified herein.

68. Neither demand for, nor payment of, stipulated penalties shall be construed as an election of remedy or other limitation on the Department's discretion to seek any form of injunctive relief available to it under the Environment Article or other applicable law for violations of this Consent Decree. Nothing in this Consent Decree shall be

construed to limit the Department's discretion to seek any form of injunctive relief available to it under the Environment Article for violations of this Consent Decree.

69. This Consent Decree is not a permit or a modification of any permit, under any federal, state, or local laws or regulations. Notwithstanding any provision of this Consent Decree, PAB is responsible for achieving and maintaining complete compliance with all applicable federal, state, and local laws, regulations and permits; and PAB's compliance with this Consent Decree shall be no defense to any action by the State of Maryland commenced after the entry of this Consent Decree.

XVIII. U.S. INTERNAL REVENUE SERVICE REPORTING

70. The Parties to this Consent Decree recognize and acknowledge that the Department is required to report certain fines, penalties, and other amounts to the United States Internal Revenue Service pursuant to 26 U.S.C.A. § 6050X. PAB agrees to cooperate with the Department in meeting this reporting obligations, to promptly provide information requested by the Department associated therewith, and to complete the Information Form attached hereto as Attachment B. The Parties acknowledge that this Consent Decree is not fully executed until a completed Attachment B is attached.

71. Payments under this Consent Decree are penalties within the meaning of Section 162(f)(1) of the Internal Revenue Code, 26 U.S.C. § 162(f)(1), and 26 C.F.R. § 1.162-21(a)(3)(i), and PAB shall not deduct any penalties paid under this Consent Decree in accordance with the Civil Penalties set forth in Section V, the Stipulated Penalties set forth in Section VIII, or the Supplemental Environmental Projects set forth in Section VII in calculating their federal income tax.

72. For purposes of the identification requirement in Section 162(f)(2)(A)(ii) of the Internal Revenue Code, 26 U.S.C. § 162(f)(2)(A)(ii), and 26 C.F.R. § 162-21(b)(2)(iii)(A), performance of the Work to be Performed set forth in Section III and Operational Improvements in Section VI are restitution, remediation, or required to come into compliance with the law.

XIX. SEVERABILITY

73. If any provision or authority of this Consent Decree or the application of this Consent Decree to any party or circumstance is held by any judicial or administrative authority to be invalid, the application of such provision or authority to other parties or circumstances and the remainder of this Consent Decree shall not be affected thereby and shall remain in full force to the maximum extent reasonable.

XX. GENERAL PROVISIONS

74. Upon entry, the provisions of this Consent Decree shall apply to and be binding upon the Department and PAB and their successors and assigns, and upon PAB's officers, employees and agents solely in their capacities as such.

75. Nothing in this Consent Decree shall be construed to alter PAB's obligation to comply with all applicable federal, State or local statutes, regulations or permits.

76. This Consent Decree does not and is not intended to create any rights, claims, or benefits for any third party. No third party shall have any legally enforceable rights, claims, or benefits under this Consent Decree, nor shall any third party have any rights to enforce the terms of this Consent Decree. No act of performance by PAB or the

Department, nor forbearance to enforce any term of this Consent Decree by the Department, shall be construed as creating any rights, claims, or benefits for any third party.

77. This Consent Decree constitutes the entire Consent Decree between the Department and PAB. No other prior or contemporaneous written or oral Consent Decree, action, or statement regarding the matters described herein shall be valid or have any bearing on the interpretation, application, or enforcement of this Consent Decree.

78. Each party to this action shall bear its own costs and attorneys' fees.

79. The Consent Decree and any subsequent action involving this Consent Decree shall be governed and interpreted in accordance with Maryland law, without regard to conflict of law principles.

80. PAB agrees to undertake and complete all actions required by the terms and conditions of this Consent Decree. In any action by the Department to enforce the terms of this Consent Decree, PAB consents to and agrees not to contest the authority or jurisdiction of the Department to issue or enforce this Consent Decree and agrees not to contest the validity of this Consent Decree or its terms or conditions. PAB agrees this Consent Decree is a contract and final order enforceable in a judicial forum.

81. This Consent Decree has been negotiated freely by the Department and PAB and shall in all cases be construed as a whole, according to its fair meaning.

82. The Parties represent that prior to signing this Consent Decree, each has read it, understood its terms and conditions, and consulted with counsel, and that each party has voluntarily signed it.

83. Each person signing this Consent Decree certifies that he or she is duly authorized by the party on behalf of which each signs to execute this Consent Decree and to bind that party to the terms of this Consent Decree, and agrees that signatures transmitted by electronic means shall be as effective as an original.

84. This Consent Decree may be executed in any number of counterpart originals, each of which shall be deemed to constitute an original agreement, and all of which shall constitute one agreement. The execution of one counterpart by any party shall have the same force and effect as if that party had signed all other counterparts.

85. This Consent Decree shall become effective upon execution by all Parties and entry by a Circuit Court Judge for the Wicomico County Circuit Court.

86. This Consent Decree shall terminate following PAB's completion of all of the obligations of this Consent Decree, including but not limited to: (i) payment of the civil penalty required by Section III; (ii) payment of any accrued stipulated penalties which have not been waived by the Department required by Section VIII; and (iii) completion of all work to be performed provided by Section III, Section VI, and Section VII.

FOR PERDUE AGRIBUSINESS, LLC.

July 25, 2024



Herbert Frerichs
General Counsel

FOR STATE OF MARYLAND
DEPARTMENT OF THE ENVIRONMENT

July 29th, 2024



Christopher R. Hoagland, Director
Air & Radiation Administration

Approved as to form and legal sufficiency
this 26th day of July 2024.



Michael F. Strande
Assistant Attorney General

IT IS SO ORDERED:

07/31/2024 11:33:27 AM

31st of July, 2024

Date



Judge

Karen M. Dean

Circuit Court for Wicomico County