



FLORIDA DEPARTMENT OF Environmental Protection

CENTRAL DISTRICT OFFICE
3319 MAGUIRE BLVD., SUITE 232
ORLANDO, FLORIDA 32803

Ron DeSantis
Governor

Jeanette Nuñez
Lt. Governor

Noah Valenstein
Secretary

October 5, 2023

Bobbi Powers-Hey, CFO
Howard Fertilizer & Chemical Company, Inc.
8306 S. Orange Ave.
Orlando, FL 32809
dpeterson@howardfert.com

Re: Howard Fertilizer & Chemical Company, Inc.
NPDES ST Facility ID # FLR05G878
OGC Case #22-2673

Dear Ms. Powers-Hey,

Enclosed is the executed Consent Order to resolve the above-referenced case. This copy is for your records.

Should you have any questions or comments, please contact Wanda Robles at 407-897-4126 or via e-mail at Wanda.Robles@FloridaDEP.gov.

Your cooperation in this matter will be appreciated.

Sincerely,

A handwritten signature in black ink, appearing to read "AA 7L".

On behalf of:

Aaron Watkins
Director, Central District

Enclosure

cc: Lea Crandall, Daun Festa, Antra Spencer, Wanda Robles, Jason Seyfert



FLORIDA DEPARTMENT OF Environmental Protection

Central District Office
3319 Maguire Blvd., Suite 232
Orlando, Florida 32803

Ron DeSantis
Governor

Jeanette Nuñez
Lt. Governor

Shawn Hamilton
Secretary

October 4, 2023

Howard Fertilizer & Chemical Company, Inc.
Bobbi Powers-Hey, CFO
8306 S. Orange Ave.
Orlando, FL 32809
dpeterson@howardfert.com

SUBJECT: Department of Environmental Protection v. Howard Fertilizer,
OGC File No.: 22-2673
NPDES ST Facility ID #FLR05G878

Ms. Powers-Hey,

The State of Florida Department of Environmental Protection ("Department") finds that Howard Fertilizer & Chemical Co Inc. ("Respondent") failed to maintain several Best Management Practices (BMPs): spilled fertilizer, trash & debris, oil spills, and drums exposed to stormwater, in violation of Chapter 403, Florida Statutes (F.S.) and Chapter 62-61, Florida Administrative Code (F.A.C.). Before sending this letter, the Department requested that the Respondent undertake certain actions to resolve the violations. These actions have since been completed. However, due to the nature of the violations, the Respondent remains subject to civil penalties. The Respondent is also responsible for costs incurred by the Department during the investigation of this matter.

The Department's Offer

Based on the violations described above, the Department is seeking \$30,000.00 in civil penalties, and \$500.00 for costs and expenses the Department has incurred in investigating this matter, which amounts to a total of \$30,500.00. The civil penalty in this matter includes 4 violations of \$2,000.00 or more.

However, in lieu of paying the full civil penalty, the Department has determined that \$30,000.00 of the civil penalty may be offset through the implementation of the In-Kind Project described in the attached Exhibit. This amount is referred to as the “offset amount.”

Respondent’s Acceptance

If you wish to accept this offer and fully resolve the enforcement matter pending against the Respondent, please sign this letter and return it to the Department at Central District Office at 3319 Maguire Blvd., Ste 232, Orlando, FL 32803 by October 27, 2023. The Department will then countersign it and file it with a designated clerk of the Department. Once the document is filed with the designated clerk, it will constitute a final order of the Department pursuant to Section 120.52(7), F.S., and will be effective unless a request for an administrative hearing is filed by a third party in accordance with Chapter 120, F.S. and the attached Notice of Rights.

By accepting this offer you, Bobbi Powers-Hey:

- (1) certify that you are authorized and empowered to negotiate, enter into, and accept the terms of this offer in the name and on behalf of Respondent;
- (2) acknowledge and waive Respondent’s right to an administrative hearing pursuant to Sections 120.569 and 120.57, F.S., on the terms of this offer, once final; and
- (3) acknowledge and waive Respondent’s right to an appeal pursuant to Section 120.68, F.S.

The Department acknowledges that the Respondent’s acceptance of this offer does not constitute an admission of liability for the violation(s) referenced above.

Respondent’s Performance

After signing and returning this document to the Department,

- (1) Upon signing this letter, you must implement the In-Kind in accordance with the requirements identified in the attached Exhibit. You must begin the In-Kind within **60 days**, and fully complete the In-Kind Project within **180 days** of your signing this letter. Your failure to timely start or complete the In-Kind Project, or timely provide the Department with the Final Report, will cause the In-Kind Project option to be forfeited and the balance of the civil penalty shall be due within 10 days of notice from the Department.

- (2) Respondent shall pay **\$500.00** by **November 3, 2023**. The payment must be made payable to the Department of Environmental Protection by cashier's check, money order or online payment and shall include the OGC File Number assigned above and the notation "Water Quality Assurance Trust Fund." Payment shall be sent to the Central District Office at 3319 Maguire Blvd., Ste 232, Orlando, FL 32803.

- (3) Respondent shall make all payments required by this Order by cashier's check, money order or on-line payment. Cashier's check or money order shall be made payable to the "Department of Environmental Protection" and shall include both the OGC number assigned to this Order and the notation "Water Quality Assurance Trust Fund." Online payments by e-check can be made by going to the DEP Business Portal at <http://www.fldepportal.com/go/pay/> It will take a number of days after this order becomes final, effective and filed with the Clerk of the Department before ability to make online payment is available.

The Department may enforce the terms of this document, once final, and seek to collect monies owed pursuant to Sections 120.69 and 403.121, F.S.

Until clerked by the Department, this letter is only a settlement offer and not a final agency action. Consequently, neither the Respondent nor any other party may request an administrative hearing to contest this letter pursuant to Chapter 120, F.S. Once this letter is clerked and becomes a final order of the Department, as explained above, the attached Notice of Rights will apply to parties, other than the Respondent, whose interests will be substantially affected.

Electronic signatures or other versions of the parties' signatures, such as .pdf or facsimile, shall be valid and have the same force and effect as originals. No modifications of the terms of this Order will be effective until reduced to writing, executed by both Respondent and the Department, and filed with the clerk of the Department.

Please be aware that if the Respondent declines to respond to the Department's offer, the Department will assume that the Respondent is not interested in resolving the matter and will proceed accordingly.

DEP vs. Howard Fertilizer & Chemical Company, Inc.

OGC No. 22-2673

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If you have any questions, please contact Wanda Robles at (407) 897-4126 or at Wanda.Robles@FloridaDEP.gov

Sincerely,



On behalf of:

Aaron Watkins
District Director
Central District

Cc: Wanda Robles, Jason Seyfert, FDEP

NOTICE OF RIGHTS

Persons who are not parties to this Order, but whose substantial interests are affected by it, have a right to petition for an administrative hearing under Sections 120.569 and 120.57, Florida Statutes. Because the administrative hearing process is designed to formulate final agency action, the filing of a petition concerning this Order means that the Department's final action may be different from the position it has taken in the Order.

The petition for administrative hearing must contain all of the following information:

- a) The name and address of each agency affected and each agency's file or identification number, if known;
- b) The name, address, any e-mail address, any facsimile number, and telephone number of the petitioner, if the petitioner is not represented by an attorney or a qualified representative; the name, address, and telephone number of the petitioner's representative, if any, which shall be the address for service purposes during the course of the proceeding; and an explanation of how the petitioner's substantial interests will be affected by the agency determination;
- c) A statement of when and how the petitioner received notice of the agency decision;
- d) A statement of all disputed issues of material fact. If there are none, the petition must so indicate;
- e) A concise statement of the ultimate facts alleged, including the specific facts the petitioner contends warrant reversal or modification of the agency's proposed action;
- f) A statement of the specific rules or statutes the petitioner contends require reversal or modification of the agency's proposed action, including an explanation of how the alleged facts relate to the specific rules or statutes; and
- g) A statement of the relief sought by the petitioner, stating precisely the action petitioner wishes the agency to take with respect to the agency's proposed action.

The petition must be filed (received) at the Department's Office of General Counsel, 3900 Commonwealth Boulevard, MS# 35, Tallahassee, Florida 32399-3000 or received via electronic correspondence at Agency_Clerk@floridadep.gov, within 21 days of receipt of this notice. A copy of the petition must also be mailed at the time of filing to the District Office at the address indicated above. Failure to file a petition within the 21-day period constitutes a person's waiver of the right to request an administrative hearing and to participate as a party to this proceeding under Sections 120.569 and 120.57, Florida Statutes. Mediation under Section 120.573, Florida Statutes, is not available in this proceeding.

FOR THE RESPONDENT:

I, Bobbi S Rowens-Hey [Type or Print Name], **HEREBY ACCEPT THE TERMS OF THE SETTLEMENT OFFER IDENTIFIED ABOVE.**

By: Bobbi S Rowens-Hey
[Signature]

Date: 10-5-23

Title: CFD
[Type or Print]

FOR DEPARTMENT USE ONLY

DONE AND ORDERED this 5 day of October, 2023, in Orange County, Florida.

STATE OF FLORIDA DEPARTMENT
OF ENVIRONMENTAL PROTECTION

Aaron Watkins on behalf of

Aaron Watkins
District Director
Central District

Filed, on this date, pursuant to section 120.52, F.S., with the designated Department Clerk, receipt of which is hereby acknowledged.

Vilma Diaz

October 5, 2023

Clerk

Date

Attachments: Notice of Rights
 In-Kind Project

Final clerked copy furnished to:

Lea Crandall, Agency Clerk (lea.crandall@dep.state.fl.us)

Exhibit

In-Kind Project Summary

Howard Fertilizer & Chemical Co
7205 E Hwy 50, Groveland FL, 34736
(352) 432-7100

Doug Peterson/ Operations and Compliance Manager

A. Project Description:

In the past HFC dumped old fertilizer from their bulk trailers onto the ground and moved the product into the "Old Mill" for processing. This process would leave remnants of fertilizer exposed to the elements in the dumping area. Currently, the company has implemented a process of dumping the old fertilizer into a covered dumpster which keeps the product covered away from the elements. While effective, the dumpster has been more of a band aid than a long-term solution.

HFC is requesting approval for a long-term solution consisting of a covered structure having a "Pole Barn" with a concrete floor. The structure will be a 30'x30' pole barn with walls on 3 sides to protect the product from the elements. The concrete slab will be a 30' by 40' surface with the extra 10' forming a ramp up into the structure. The interior will have two 15' wide by 25' deep stall-like partitions. The material from returning bulk trailers will be dumped on the concrete floor, moved into the stall with a loader and stored there until enough product accumulates for a sellable load.

B. Environmental and Economic Benefits:

Over the years one of HFC's biggest environmental challenges has been the disposition of old unused fertilizer remaining in returning bulk trailers. Our bulk trailers are tall and large and finding an adequate covered place to dump the remaining product from these trailers has been a struggle. Past practices included dumping on an open cement slab that (at times) was not sufficiently large to contain the material being dumped. This would cause material spillage onto the ground and wouldn't always get cleaned up and into the stall for storage on a timely basis.

To eliminate the above issues the proposed concrete pad will be poured with a lip around the 3 sides to ensure product does not escape containment. The 3 walls of the proposed structure will keep the elements from getting to the product, thereby keeping it dry. The open side of the proposed structure will have the stalls deep enough to keep the elements from getting to the product stored some 25' under cover inside the barn. In extreme circumstances (hurricane, tropical storms) we will ensure that the stalls are emptied prior to the event and if need be, drape a large tarp to cover the opening.

This project will serve to eliminate past issues with clean up and containment of old fertilizer from returning bulk trailers.

C. Project Cost:

The cost of the project:

- 32'L x 32'W x16'H with 3 sides closed Pole barn: \$21,109
- 30' x 40' concrete slab: \$23,000
- Interior Stall buildout: \$2,500
- Total: \$46,609