

**BEFORE THE ENVIRONMENTAL PROTECTION
COMMISSION OF HILLSBOROUGH COUNTY**

**ENVIRONMENTAL PROTECTION
COMMISSION OF
HILLSBOROUGH COUNTY,**

Complainant,

v.

MOSAIC FERTILIZER, LLC

Respondent.

EPC FILE NO. 20-0731FA0008

CONSENT ORDER

This Consent Order (“Order”) is entered into between the Environmental Protection Commission of Hillsborough County (“EPC”) and Mosaic Fertilizer, LLC (“Respondent”) to reach settlement of certain matters at issue between the EPC and Respondent.

The EPC finds and the Respondent neither admits nor denies the following:

1. The EPC is a local regulatory agency vested by the Florida Legislature with the power and duty to protect Hillsborough County's air, soil, and water resources and to administer and enforce Chapter 84-446, as amended, Laws of Florida (“Hillsborough County Environmental Protection Act” or “EPC Act”), and the EPC rules promulgated thereunder including but not limited to Chapter 1-3, Rules of the EPC, and also Chapter 403, Florida Statutes (F.S.), and the delegated rules promulgated thereunder, specifically Title 62, Florida Administrative Code (“F.A.C.”), in Hillsborough County, Florida. The EPC entered into an interagency agreement with the Florida Department of Environmental Protection (“DEP”) authorizing the EPC to act on behalf of the State, which includes the authority to enforce State rules and statutes concerning air facilities, including the subject fertilizer manufacturing facility. The EPC has jurisdiction over the matters addressed in this Consent Order.

2. Respondent is a “person” within the meaning of Section 403.031(5), F.S.

3. Respondent is the owner and is responsible for the operation of Mosaic Fertilizer, LLC, a facility that consists of several industrial processes that convert insoluble rock containing phosphorus ore into a soluble form suitable for agricultural use (“Facility”). The Facility is a Title V source as defined in section 62-210.200, F.A.C. and is operated under Air Permit No. 0570008-

097-AV (“Permit”) which expires on August 8, 2021. The Facility is located at 8813 Highway 41 South, Riverview, FL 33569, in Hillsborough County (“Property”). Respondent owns the Property on which the Facility is located. All of the Facility's operations are subject to the prohibitions and conditions of the EPC Act and rules promulgated thereunder, Florida Statutes and the rules promulgated thereunder, and any EPC and/or DEP orders or permits.

4. On July 27, 2020, EPC received submittal of a stack test report from the Respondent for a particulate matter and fluoride stack test that was performed on the emission unit (“EU”) No. 6 Ammoniated Phosphate (“AP”) Plant (EU No. 007) at the Facility on June 11-12, 2020. The correspondence from the Respondent indicated that there was a stack test failure on the fluoride portion of the stack test. Based on evaluation of the original stack test report, EPC staff confirmed the stack test failure. On August 6, 2020, EPC staff issued Warning Notice 2020-0125A to the Respondent for violation of the permitted emission limit as indicated in the stack test report.

5. On August 13, 2020, EPC received a response to Warning Notice 2020-0125A from the Respondent summarizing activities related to the failed stack test. The correspondence noted that on the second day of testing (June 12, 2020), after becoming aware of the preliminary results of the stack test, the Respondent notified EPC and adjusted parametric limits and production rates to those of the most recent compliant stack test. On June 13, 2020, EU No. 007 ceased production and the corresponding scrubbers were inspected and cleaned. The EU resumed operation the following day and it was retested for fluoride on June 15, 2020. The results of the retest were eventually submitted and determined to be in compliance with the fluoride emission limit by EPC staff.

6. On August 14, 2020, EPC received notification from the Respondent documenting multiple exceedances of the upper bound scrubber flow rate on the No. 1 and No. 2 Filter Scrubber controlling emissions from the Phosphoric Acid Production Facility (EU No. 073). The report noted that due to what appeared to be a miscommunication, the plant interlocks associated with the upper bound scrubber flow rates for the scrubber were not properly set. It further stated that immediately upon identification of the excursions, Respondent adjusted the interlocks to the correct maximum scrubber flow rate and then submitted the notification to EPC. The correspondence also included data documenting 16 days between August 2018 and August 2020 that the 24-hour maximum operating flow rates were exceeded. On August 20, 2020, EPC staff issued Warning Notice 2020-0137A to the Respondent for the exceedances of the flow rate limits

which are required by 40 CFR 63 – Subpart AA and the Alternative Maximum Achievable Control Technology (MACT) Monitoring Plan, and for failure to submit excess emissions reports for the various exceedances of the operating parameter range.

7. On August 27, 2020, EPC received a response to Warning Notice 2020-0137A from the Respondent. The response reconfirmed that upon discovery of the excursion events, the Respondent corrected the problem by resetting the upper bound interlocks, thus ceasing the activity that caused the violations. As requested by the Warning Notice, the correspondence also included 15-minute and hourly average flow rates for the 16 dates that exceedances of the maximum allowed flow rate were noted. After review of the hourly data, EPC staff determined that the upper bound scrubber flow rate had been exceeded for a total of 286 individual hours during the 16 dates provided.

8. On October 22, 2020, EPC was notified by the Respondent that the flow meter associated with the Reactor Granulator Pre-scrubber serving EU No. 007 experienced a failure. The Respondent indicated that the Reactor Granulator Pre-scrubber flow meter was pegged between August 28, 2020 and October 20, 2020 at 3,109.19 gallons per minute (gpm), exceeding the upper range of the flow meter. The findings from October 22, 2020 were discussed during a meeting attended by EPC staff and the Respondent on October 28, 2020. On October 30, November 12, and November 19, 2020, the Respondent provided additional information identifying the believed root causes leading to extended flow meter failure and the corrective actions taken including institution of monthly preventative maintenance checks, enhancement to automated system to detect out of range values, and additional staff training. EPC staff concluded that this event constituted a minor non-compliance violation for poor operation and maintenance, and the Respondent provided other information that provided reasonable assurance that the scrubber was functioning as required.

9. Based on the findings from Paragraphs 4 through 8, the EPC finds that the following violations occurred:

a) During testing conducted on June 11-12, 2020, Respondent failed a fluoride stack test performed on the EU No. 007. The results of the fluoride stack test were 0.03 lb/ton of product and 4.54 lb/hr, which exceeded the permit limits of 0.02 lb/ton of product and 3.00 lb/hr, respectively. These exceedances are in violation of Specific Condition No. B.5 of the Permit; and Section 1-3.21(3), Rules of the EPC.

b) Respondent failed to maintain the liquid flow rate below the maximum acceptable values for the No. 1 and No. 2 Filter Scrubber controlling emissions from EU No. 073. The No. 1 and No. 2 Filter Scrubber's 24-hour max operating flow rate was exceeded on 16 days between August 2018 and August 2020. This is in violation of Condition TV3 of Appendix TV (as referenced by Facility-Wide Condition FW1), Specific Condition Nos. M.14, M.18 and M.22, and Attachment B (as referenced by Specific Condition No. M.11) of the Permit; 40 CFR 63.605(d) and 63.608(b), as adopted by Section 62-204.800(11)(b), F.A.C.; Section 62-4.160(6), F.A.C.; and Sections 1-3.20 and 1-3.21(3), Rules of the EPC.

c) Respondent failed to submit excess emissions reports for exceeding the operating parameter range on the No. 1 and No. 2 Filter Scrubber controlling emissions from EU No. 073. This is in violation of Specific Condition Nos. M.20 and M.22 of the Permit; 40 CFR 63.10(e)(3) and 63.607(b)(3), as adopted by Section 62-204.800(11), F.A.C.; and Section 1-3.21(3), Rules of the EPC.

d) Respondent failed to properly maintain the Reactor Granulator Pre-scrubber serving EU No. 007 as the Pre-scrubber flow meter was pegged between August 28, 2020 and October 20, 2020 above the upper maximum limit of the flow meter. This is in violation of Condition TV3 of Appendix TV (as referenced by Facility-Wide Condition FW1) of the Permit; 40 CFR 63.628(b), as adopted by Section 62-204.800(11)(b), F.A.C.; Section 62-4.160(6), F.A.C.; and Section 1-3.21(3), Rules of the EPC.

THEREFORE, having reached a resolution of the matter, Respondent and the EPC mutually agree and it is **ORDERED**:

10. Within 15 days of the effective date of this Consent Order, the Respondent shall submit a written plan, for EPC staff approval, documenting the procedure being developed to ensure that scrubber operating parameters at the Phosphoric Acid Production Facility are properly adjusted following performance tests (collectively referred to as "Plan"), and should at a minimum address the following:

- a) Details on the results of the root cause analysis that was conducted by the Respondent (according to correspondence received by EPC on August 14, 2020);
- b) Details on procedural changes to ensure that necessary adjustments and notifications are made following performance tests, including any potential redundancies that may be deemed necessary; and
- c) Details on any adjustments to training procedures to ensure appropriate staff are aware of requirements to adjust and monitor limits following testing.

The Plan shall also include timelines for implementation of any process changes deemed necessary. Unless a longer timeframe is established in the Plan for any specific process improvement, all corrective actions identified within the Plan shall be completed within 90 days of written approval of the Plan by the EPC. Respondent shall provide written confirmation to EPC within 110 days of EPC's written approval of the Plan that all actions required in the approved Plan have been completed. Failure to complete the Plan in 90 days or any other approved deadline is an enforceable condition of this Consent Order.

11. This Consent Order shall constitute the schedule under which the Respondent shall achieve compliance with the requirements of the Permit and all applicable EPC and DEP rules and regulations. Respondent shall ensure operation of the Facility in compliance with applicable environmental regulations, including but not limited to complying with all applicable rules relating to the operation of the No. 6 AP Plant, the Phosphoric Acid Production Facility, and their associated control equipment.

12. Within 15 days of the effective date of this Consent Order, Respondent shall pay the EPC a total of **\$22,340.00** in settlement of the matters addressed in this Consent Order. This amount includes \$20,900.00 for civil penalties and \$1,440.00 for costs and expenses incurred by the EPC during the investigation of this matter and the preparation and tracking of this Consent Order.

13. Respondent agrees to pay the EPC stipulated penalties in the amount of \$250 per day for each and every day Respondent fails to timely comply with any of the requirements of Paragraph 10 of this Consent Order. The EPC may demand stipulated penalties at anytime after

violations occur. Respondent shall pay stipulated penalties owed within 30 days of the EPC's issuance of written demand for payment and shall do so as further described in Paragraphs 14 and 15, below. Nothing in this paragraph shall prevent the EPC from filing suit to specifically enforce any terms of this Order. Any stipulated penalties assessed under this paragraph shall be in addition to the civil penalties agreed to in Paragraph 12 of this Consent Order.

14. Respondent shall make all payments required by this Order by cashier's check or money order. Cashier's check or money order shall be made payable to the "Environmental Protection Commission" and shall include thereon the notation "Civil Penalty and Costs" and EPC Consent Order No. 20-0731FA0008.

15. Except as otherwise provided, all submittals and payments required by this Order shall be sent to Jeff Sims, Air Division, Environmental Protection Commission, 3629 Queen Palm Drive, Tampa, Florida 33619.

16. Respondent shall allow all authorized representatives of the EPC access to the Facility and the Property at reasonable times for the purpose of determining compliance with the terms of this Consent Order and the rules and statutes of the DEP and EPC.

17. In the event of a sale or conveyance of the Facility or of the Property upon which the Facility is located, if all of the requirements of this Consent Order have not been fully satisfied, Respondent shall, at least 30 days prior to the sale or conveyance of the Facility or Property, (a) notify the EPC of such sale or conveyance, (b) provide the name and address of the purchaser, operator, or person(s) in control of the Facility (collectively referred to as "new controlling party"), and (c) provide a copy of this Consent Order with all attachments to the new controlling party. The sale or conveyance of the Facility or the Property does not relieve Respondent of the obligations imposed in this Order.

18. If any event, including administrative or judicial challenges by third parties unrelated to the Respondent, occurs which causes delay or the reasonable likelihood of delay, in complying with the requirements of this Consent Order, Respondent shall have the burden of proving the delay was or will be caused by circumstances beyond the reasonable control of the Respondent and could not have been or cannot be overcome by Respondent's due diligence. Neither economic circumstances nor the failure of a contractor, subcontractor, materialman, or other agent (collectively referred to as "contractor") to whom responsibility for performance is delegated to meet contractually imposed deadlines shall be considered circumstances beyond the

control of Respondent (unless the cause of the contractor's late performance was also beyond the contractor's control). Upon occurrence of an event causing delay, or upon becoming aware of a potential for delay, Respondent shall notify the EPC via phone or e-mail by the next working day. Additionally, within seven calendar days of occurrence of an event causing delay or upon becoming aware of a potential for delay, Respondent shall notify the EPC in writing of (a) the anticipated length and cause of the delay, (b) the measures taken or to be taken to prevent or minimize the delay, and (c) the timetable by which Respondent intends to implement these measures. If the parties can agree that the delay or anticipated delay has been or will be caused by circumstances beyond the reasonable control of Respondent, the time for performance hereunder shall be extended. The agreement to extend compliance must identify the provision or provisions extended, the new compliance date or dates, and the additional measures Respondent must take to avoid or minimize the delay, if any. Failure of Respondent to comply with the notice requirements of this paragraph in a timely manner constitutes a waiver of Respondent's right to request an extension of time for compliance for those circumstances.

19. The EPC, for and in consideration of the complete and timely performance by Respondent of all the obligations agreed to in this Order, hereby conditionally waives its right to seek judicial imposition of damages or civil penalties for the violations described above up to the date of the filing of this Order. This waiver is conditioned upon Respondent's complete compliance with all of the terms of this Order.

20. This Consent Order is a settlement of the EPC's civil and administrative authority arising under Florida law to resolve the matters addressed herein. This Consent Order is not a settlement of any criminal liabilities which may arise under Florida law, nor is it a settlement of any violation which may be prosecuted criminally or civilly under federal law. Entry of this Consent Order does not relieve Respondent of the need to comply with applicable federal, state or local laws, regulations or ordinances, and all applicable permits and orders issued under those laws, regulations or ordinances.

21. The EPC does not, by execution of this Consent Order, warrant or assert in any manner that the Respondent's compliance with this Consent Order will result in compliance with Respondent's permit(s). Notwithstanding the EPC's review or approval of any plans, reports, schedules, policies, or procedures prepared pursuant to this Consent Order, the Respondent and its

successors and assigns shall remain solely responsible for any noncompliance with the terms of this Consent Order, all applicable federal, state or local laws, regulations or ordinances.

22. The EPC hereby expressly reserves the right to initiate appropriate legal action to address any violations of statutes or rules administered by the EPC that are not specifically resolved by this Consent Order.

23. The provisions of the Consent Order shall apply to, inure, and be binding upon the parties and their successors and assigns. Each of the parties hereby agrees that in the event one of the parties attempts to enforce the terms of this Consent Order, no defense will be raised as to the validity or enforceability of this Consent Order. This Consent Order shall be construed and enforced under Florida Law.

24. Respondent is fully aware that a violation of the terms of this Consent Order may subject Respondent to judicial imposition of damages, civil penalties up to \$15,000.00 per day per violation, costs and expenses of litigation, and criminal penalties.

25. All parties agree to pay their own fees and costs, including attorney's fees and costs, related to the violations addressed in this Consent Order and incurred up to the date of execution of this Consent Order, except that Respondent shall pay for any penalties, cost, and fees agreed to in this Consent Order.

26. Respondent acknowledges and waives its right to an administrative hearing pursuant to Sections 120.569 and 120.57, F.S., on the terms of this Consent Order. Respondent also acknowledges and waives its right to appeal the terms of this Consent Order pursuant to Section 120.68, F.S. Respondent hereby foregoes, surrenders, waives, and disclaims any and all other hearing and appeal rights under Chapter 120, F.S. or Section 9 of the EPC Act and any and all other suits, appeals, claims, or causes of action in any court of competent jurisdiction, including but not limited to County Court, Circuit Court, the Division of Administrative Hearings, appellate courts, or any other EPC hearing processes against the EPC and DEP arising out of or relating to the violations specifically addressed in this Consent Order, and Respondent, and their counsel, further agree not to encourage or support any such actions by other parties or entities to challenge this Consent Order. If Respondent is charged with violation of this Consent Order, Respondent does not waive its right to prove compliance with the terms of this Consent Order in any court of competent jurisdiction.

27. 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 Consent Order shall be effective until reduced to writing, executed by both Respondent and the EPC, and filed with the Clerk of the EPC.

28. The terms and conditions set forth in this Consent Order may be enforced in a court of competent jurisdiction pursuant to Sections 120.69 and 403.121, F.S. Failure to comply with the terms of this Consent Order shall constitute a violation of Section 403.161(1)(b), F.S., and the EPC Act.

29. This Consent Order is a final order of the EPC pursuant to Section 120.52(7), F.S., and it is final and effective on the date filed with the Clerk of the EPC unless a Petition for Administrative Hearing is filed in accordance with Chapter 120, F.S. Upon the timely filing of a petition, this Consent Order will not be effective until further order of the EPC.

30. Notice of Rights.

Persons who are not parties to this Consent 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, F.S. Because the administrative hearing process is designed to formulate final agency action, the filing of a petition concerning this Consent Order means that the EPC's final action may be different from the position taken by it in this Consent 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 (the number assigned on the first page of this Consent Order), if known;
- (b) The name, address, and telephone number of the petitioner; 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;
- (c) An explanation of how the petitioner's substantial interests will be affected by the Consent Order;
- (d) A statement of when and how the petitioner received notice of the Consent Order;
- (e) Either a statement of all material facts disputed by the petitioner or a statement that the petitioner does not dispute any material facts;
- (f) A statement of the specific facts the petitioner contends warrant reversal or modification of the Consent Order;

- (g) A statement of the rules or statutes the petitioner contends require reversal or modification of the Consent Order; and
- (h) A statement of the relief sought by the petitioner, stating precisely the action petitioner wishes the agency to take with respect to the Consent Order.

The petition must be filed (received) at the EPC's Legal Department, 3629 Queen Palm Drive, Tampa, Florida 33619 **or via electronic mail at legalclerk@epchc.org or via facsimile at (813) 627-2602** within 21 days of receipt of this notice. Failure to file a petition within the 21-day period constitutes a person's waiver of any right to request an administrative hearing and to participate as a party to this proceeding under sections 120.569 and 120.57, F.S. Before the deadline for filing a petition, a person whose substantial interests are affected by this Consent Order may choose to pursue mediation as an alternative remedy under section 120.573, Florida Statutes. Choosing mediation will not adversely affect such person's right to request an administrative hearing if mediation does not result in a settlement. Additional information about mediation is provided in section 120.573, Florida Statutes and Rule 62-110.106(12), Florida Administrative Code.

Rules referenced in this Consent Order are available at <http://www.dep.state.fl.us/legal/Rules/rulelist.htm> and <http://www.epchc.org>.

FOR THE RESPONDENT:

MOSAIC FERTILIZER, LLC

1/14/2021
DATE

By: Joseph C. Wolf
SIGNATURE

Name: JOSEPH C. WOLF
PRINT NAME

Title: VICE PRESIDENT CONCENTRATES

For EPC staff only

DONE AND ORDERED this 15th day of January, 20 21

in Hillsborough, Florida.

ENVIRONMENTAL PROTECTION
COMMISSION OF
HILLSBOROUGH COUNTY

Janet L. Dougherty
Janet L. Dougherty
Executive Director

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

Yvonne Hensley
Clerk

01/15/21
Date