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SHORT FORM CONSENT ORDER

6/30/2022

Trademark Nitrogen Corp.
Mike Barry
1216 Old Hopewell Rd
Tampa, FL 33619

SUBJECT: Environmental Protection Commission vs. Trademark Nitrogen Corporation
EPC File No.: 22-0407FA0025
Nitrogen Fertilizer Production Facility - 1216 Old Hopewell Rd, Tampa, Florida
Air Permit No. 0570025-015-AO

Mr. Barry:

The Environmental Protection Commission of Hillsborough County ("EPC") finds that Trademark Nitrogen Corp. ("Respondent") owns and/or operates a nitrogen fertilizer production facility located at 1216 Old Hopewell Rd, Tampa, FL ("Facility"), which is currently assigned Air Permit No. 0570025-015-AO ("Air Permit").

The EPC finds the following:

Respondent failed to timely submit the Semiannual Excess Emission Reports for the period of July 2017 to June 2021. This is in violation of Specific Condition A.16 of Air Permit; Sections 40 CFR 60.7(c) and 40 CFR 60.73(e); and Section 1-3.21(3), Rules of the EPC.

The missing test reports for the period from July 2017 to June 2021 were submitted to EPC on February 17, 2022. Although there are no additional actions required to correct the violation(s), the Respondent remains subject to civil penalties as a result of the violation(s). The Respondent is also responsible for costs incurred by the EPC during the investigation of this matter.

The EPC's Offer

Based on the violations described above, the EPC offers this Short Form Consent Order ("SFCO") and is seeking \$5,462.00 in civil penalties and \$690.00 for costs and expenses the EPC has incurred

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in investigating this matter, which amounts to a total of **\$6,152.00**. The settlement terms are further detailed below.

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 by July 15, 2022 to Cody Winter at the EPC Air Division at 3629 Queen Palm Drive, Tampa, FL, 33619. The EPC will then countersign it, file it with a designated Clerk of the EPC, and mail or e-mail Respondent a copy. Once the document is filed with the designated clerk (effective date), it will constitute a final order of the EPC 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, Mr. Mike Barry, or other Respondent designee signing below:

- (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;
- (3) acknowledge and waive Respondent's right to an appeal pursuant to Section 120.68, F.S.;
- (4) acknowledge this SFCO does not relieve Respondent of the need to comply with other applicable federal, state or local laws, and the EPC does not waive its right to enforce, prevent, or prohibit violations not here addressed. This is final agency action pursuant to Chapter 120, F.S., and thus it may be challenged by affected persons. Except to the extent of proving compliance with this SFCO, the Respondent waives its right to petition, appeal, or request any other judicial review of this agency action in any court of competent jurisdiction, including but not limited to administrative, county, circuit, or appellate courts; and
- (5) acknowledge that payment of the above amount does not constitute a waiver of the EPC's right, if any, to recover emergency response related costs and expenses for this matter.

The EPC 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 EPC,

- (1) Respondent must pay the EPC **\$6,152.00** in full within 15 days of the effective date of this SFCO.
- (2) Respondent shall make all payments required by this SFCO by check or money order. Check or money order shall be made payable to the "Environmental Protection Commission" and shall reference this SFCO and the case number above. All payments shall be mailed to 3629 Queen Palm Drive, Tampa, Florida 33619 in care of Cody Winter in the Air Division. If Respondent fails to timely make an agreed payment or if the Respondent files for bankruptcy, Respondent shall notify EPC immediately and any unpaid balance will become immediately due and owing.

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The EPC may enforce the terms of this SFCO, once final, and seek to collect monies owed pursuant to Sections 120.69 and 403.121, F.S. This mutually agreed upon SFCO is authorized pursuant to the EPC Act, Chapter 403, F.S., and an interagency agreement with the Florida Department of Environmental Protection (DEP) authorizing the EPC to act on the DEP's behalf.

Until clerked by the EPC, 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 EPC, 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 SFCO will be effective until reduced to writing, executed by both Respondent and the Department, and filed with the clerk of the EPC.

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

If you have any questions, please contact Cody Winter at (813) 627-2600 ext. 1289 or at winterc@epchc.org.

Sincerely,

Diana Lee /for _____
Reginald Sanford, MPH
Director, Air Division

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FOR THE RESPONDENT:

I, Mike Barry [Type or Print Name], **HEREBY ACCEPT THE TERMS OF THE SETTLEMENT OFFER IDENTIFIED ABOVE.**

RESPONDENT:

Trademark Nitrogen Corp.

July 5th 2022
Date

By: Mike Barry
Name: *Mike Barry*
Title: *President*

FOR EPC USE ONLY

DONE AND ORDERED this ____ day of ____, 2022, in Hillsborough County, Florida.

ENVIRONMENTAL PROTECTION COMMISSION OF
HILLSBOROUGH COUNTY

Reginald Sanford, MPH e-signature (7/18/22), /for
Janet D. Lorton
Executive Director

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

Sahand Nasseri
Clerk

7/18/2022
Date

Attachments: Notice of Rights

Final clerked copy furnished to:
Cody Winter, Air Division, EPC
Mike Barry, Trademark Nitrogen Corp.

NOTICE OF RIGHTS

Persons who are not parties to this Short Form 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, Florida Statutes (unless previously waived). Because the administrative hearing process is designed to formulate final agency action, the filing of a petition concerning this Order means that the EPC'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; 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;

(b) an explanation of how the petitioner's substantial interests will be affected by the Consent Order;

(c) A statement of when and how the petitioner received notice of the Consent Order;

(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 Consent Order;

(f) A statement of the specific rules or statutes that 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 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 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. Any subsequent intervention will only be at the approval of the presiding officer upon motion filed pursuant to Rule 28-106.205, Florida Administrative Code. Mediation under Section 120.573, Florida Statutes, is not available in this proceeding.