



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 4
ATLANTA FEDERAL CENTER
61 FORSYTH STREET
ATLANTA, GEORGIA 30303-8960

SEP 18 2007

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mr. James K. Voyles
Senior Environmental and Corporate Counsel
The Mosaic Company
5000 Old Highway 37 South
Mulberry, FL 33860

SUBJ: Consent Agreement and Final Order Pursuant to Section 3008(a) of RCRA
In the Matter of The Mosaic Company
Docket Number: RCRA-04-2007-4005(b)
EPA ID Nos.: FLD 043 055 003- Green Bay Phosphate Complex
FLD 084 717 545- New Wales Facility

Dear Mr. Voyles:

Please find the enclosed Consent Agreement and Final Order ("CA/FO"), issued pursuant to Section 3008(a) of the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. § 6928(a).

Per discussions held between EPA and Mosaic representatives, the fully executed CA/FO is enclosed will become effective as provided in Section XII of the CA/FO.

If you have any questions regarding this matter, please contact Mita Ghosh at (404) 562-9568.

Sincerely,

Narindar M. Kumar, Chief
RCRA/OPA Enforcement and Compliance Branch
RCRA Division

Enclosure

cc: Van Housman- EPA HQ
Kathryn Caballero- EPA HQ
Tim Bahr- FDEP
John Coates- FDEP
Jim Dregne- FDEP

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 4

RECEIVED
EPA REGION IV
2007 SEP 19 AM 8:45
HEARING CLERK

IN THE MATTER OF:)	Docket Number: RCRA-04-2007-4005(b)
)	
Mosaic Fertilizer, LLC)	
Green Bay Phosphate Complex)	
FLD 043 055 003)	
Bartow, Florida 33841)	Proceeding Under Section 3008(a) of the
)	Resource Conservation and Recovery Act,
Mosaic Fertilizer, LLC)	42 U.S.C. § 6928(a)
New Wales Facility)	
FLD 084 717 545)	
Mulberry, FL 33860)	

RESPONDENT

CONSENT AGREEMENT

I. NATURE OF THE ACTION

1. This is a civil administrative enforcement action, ordering compliance with the requirements of Subtitle C of the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. §§ 6921-6939c, as adopted under 3006(b) of RCRA, 42 U.S.C. 6926(b), by the State of Florida, with the requirements of the State program found in Florida Statute § 403.701 *et seq.* and Florida Administrative Code (F.A.C.) Chapter 62-730. This action is seeking injunctive relief pursuant to Section 3008(a) of RCRA, 42 U.S.C. § 6928(a).
2. The *Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits, 40 C.F.R. Part 22*, provide that where the parties agree to settlement of one or more causes of action before the filing of a complaint, a proceeding may be simultaneously commenced and concluded by the issuance of a Consent Agreement and Final Order (CAFO) [40 C.F.R. §§ 22.13(b) and 22.18(b)(2)].
3. Complainant and Respondent have conferred for the purpose of settlement pursuant to 40 C.F.R. § 22.18, and desire to settle this action. Accordingly, before any testimony has been taken upon the pleadings and

without any admission of violation or adjudication of any issue of fact or law, and in accordance with 40 C.F.R. § 22.13(b), Complainant and Respondent have agreed to the execution of this CAFO. Respondent hereby agrees to comply with the terms of this CAFO.

II. THE PARTIES

4. Complainant is the Chief, RCRA and OPA Enforcement and Compliance Branch, RCRA Division, United States Environmental Protection Agency (EPA), Region 4.
5. Respondent, Mosaic Fertilizer, LLC, has operated phosphoric acid manufacturing facilities, among other locations, at 4390 State Road 640 West, Bartow, FL 33830 (the Green Bay facility) and at 3095 County Road 640 West, Mulberry, FL 33860 (the New Wales facility). Respondent has idled the phosphoric acid manufacturing plant at its Green Bay facility, and has submitted a closure permit application to the Florida Department of Environmental Protection (FDEP) at FDEP's request under Florida Administrative Code (F.A.C.) 62-673.600(5) for its phosphogypsum stack system at that facility. The term "phosphogypsum stack system" as used herein shall be as defined in Rule 62-672.200(15), Florida Administrative Code (F.A.C.), as effective on July 19, 2006.

III. PRELIMINARY STATEMENTS

6. Pursuant to Section 3006 of RCRA, 42 U.S.C. § 6926, the State of Florida (the State) is authorized to carry out a hazardous waste program in lieu of the federal program. The requirements of the authorized state program are found in Florida Statute § 403.701 *et seq.* and F.A.C. Chapter 62-730.
7. Pursuant to Section 3006(g) of RCRA, 42 U.S.C. § 6926(g), the requirements established by the Hazardous and Solid Waste Amendments of 1984 (HSWA), Pub. L. 98-616, are immediately effective in all states upon their federal effective date regardless of the states' authorization status. On February 12, 1985, the State received authorization for its base RCRA program and the State received authorization for its corrective action program on January 2, 2001.
8. Although EPA has granted the State of Florida the authority to enforce its own hazardous waste program, EPA retains jurisdiction and authority to initiate an independent enforcement action, pursuant to Section 3008(a) of RCRA, 42 U.S.C. § 6928(a). EPA exercises this authority in the manner set forth in the Memorandum of Agreement between EPA and the State.

9. Pursuant to Section 3008(a)(2) of RCRA, 42 U.S.C. § 6928(a)(2), Complainant has given notice of this action to the State of Florida before issuance of this CAFO.
10. Respondent, Mosaic Fertilizer, LLC is a “person” as defined in Section 1004(15) of RCRA, 42 U.S.C. § 6903(15) and 40 C.F.R. § 260.10.
11. Respondent is the “owner” and “operator” of the Green Bay “facility” and the New Wales “facility,” as those terms are defined in 40 C.F.R. § 260.10.

IV. EPA ALLEGATIONS AND DETERMINATIONS

12. The Green Bay facility is approximately 2,545 acres and is located at 4390 State Road 640 West, in Bartow, Florida. The existing phosphogypsum stack system at this facility is approximately 833 acres. The facility began operation in 1965 under the ownership of Farmland Industries, Inc. Primary operations at that time included one production line for the manufacture of phosphoric acid. In 1971, a second fertilizer production plant was constructed within the chemical complex. In November 1991, a joint venture known as Farmland Hydro Limited Partnership was formed between Norsk Hydro USA Inc. and Farmland Industries, Inc. Farmland Hydro LLP purchased an ammonia terminal and pipeline from Seminole Fertilizer Corporation. Farmland Hydro LLP manufactured sulfuric acid (SAD), phosphoric acid (PAD), diammonium phosphate (DAP), and monoammonium phosphate (MAP) products. Cargill Fertilizer, Inc. purchased the facility in 2002 and continued the previous manufacturing operations. Effective June 1, 2004, Cargill Fertilizer, Inc., transferred and conveyed to Cargill Fertilizer, LLC substantially all of the assets and liabilities comprising Cargill’s phosphate mining and manufacturing business, including all mine properties and manufacturing facilities owned by Cargill in Florida, and more specifically including the Green Bay facility. On October 22, 2004, concurrent with the merger of the Cargill fertilizer business with IMC Global, the name of Cargill Fertilizer, LLC was changed to Mosaic Fertilizer, LLC. Mosaic Fertilizer, LLC is the 100% owner of the Green Bay facility.
13. In May 2006, Respondent idled the phosphoric acid manufacturing plant and ceased all production operations at the Green Bay facility.
14. During the time that phosphoric acid was produced at its Green Bay facility, it was produced by reacting sulfuric acid with phosphate rock (calcium fluoroapatite). The reaction produced phosphoric acid and calcium sulfate, commonly referred to as gypsum. During the reaction, precipitated crystals of gypsum were separated from the acid via filtration

and rinsed to recover residual phosphoric acid. After rinsing, the gypsum was slurried with water and pumped to the lined expansion gypsum storage stack (gypstack).

15. The gypsum slurry flowed through an elevated ditch, called a rim ditch, into one of two ponded compartments atop the stack. After the gypsum settled out in the rim ditch and pond, the decanted process water is discharged into the cooling pond system via a seepage collection and return water ditch that surrounds the stack. The cooling pond system is divided into a north and south pond with water levels controlled by concrete spillways. The cooling pond system receives the decanted process water from the active gypsum storage stack as well as, while the plant was in operation, heated water from the plant.
16. Leachate from gypsum storage stacks and process water from the production of phosphoric acid typically contains metals such as arsenic and cadmium and, without neutralization, is characteristically corrosive with a pH of less than 2.
17. The Green Bay facility currently has one unlined (closed) gypsum storage stack and one lined gypsum stack. Management of the lined phosphogypsum stack, non-contact process wastewater, treated process cooling pond water and stormwater are authorized under the facility Wastewater Permit issued under the provisions of Chapter 403, Florida Statutes. Wastewater Permit No. FL0000752 was issued by the FDEP on August 10, 2001, and expired on August 9, 2006, and which incorporates applicable regulatory requirements for FDEP's wastewater program and its state authorized NPDES program under Section 402 of the Clean Water Act, 33 U.S.C. § 1251 et seq. That permit is currently in the renewal process.
18. Some of the materials that have been placed into the stacks and ponds at the Green Bay facility include process wastewater from phosphoric acid production and/or phosphogypsum from phosphoric acid production, both of which are exempt from classification as a hazardous waste by the Bevill exclusion for certain mineral processing wastes set forth in 40 C.F.R. 261.4(b)(7)(ii)(D)(P).
19. Complainant alleges that hazardous wastes not exempt from regulation under RCRA were also placed into these stacks and/or ponds referenced in Paragraph 18, above. Complainant also alleges that the transportation of the liquid material referred to in Paragraph 21 below, from the Green Bay facility to the New Wales facility includes the transport of materials classified as hazardous waste and that any such transportation is in violation of the requirements of 40 C.F.R. Part 263 and the corresponding

state regulations found at F.A.C. 62-730.170. For purposes of this CAFO, Respondent neither admits nor denies the foregoing allegations and specifically reserves the right to contest the allegations in any other legal action or proceeding, and its entry into this CAFO shall not constitute an admission of any sort with respect to such allegations.

20. On November 15, 2006, in response to a request from the FDEP, Respondent submitted a closure permit application to the FDEP to close the lined phosphogypsum stack system at the Green Bay facility in accordance with 62-673.600(5), F.A.C. That application is being processed by the FDEP within the renewal process of wastewater Permit No. FL0000752 .
21. As part of its closure plan set forth in the pending closure permit application for the Green Bay facility and the water management plan required by Chapter 62-780(8), F.A.C., Respondent has included the transport by tanker truck of process wastewater (P_2O_5 solution) from its phosphogypsum stack system at the Green Bay facility to the phosphogypsum stack system at its New Wales facility as a mutually beneficial solution to process wastewater inventory imbalance issues at each facility. The New Wales facility is an active facility, regulated by the FDEP under wastewater Permit No. FL0036421, engaged in the production of phosphoric acid, and process wastewater transported from the Green Bay facility's phosphogypsum stack system can be consumed in the New Wales phosphoric acid production process. This transport is environmentally beneficial in a number of ways including: (i) it reduces the volume of process wastewater in the Green Bay facility's phosphogypsum stack system and therefore facilitates the expeditious closure of that facility and (ii) it reduces the need of the New Wales facility to utilize fresh groundwater, which is a scarce resource.
22. On April 19, 2007, Respondent sought specific approval from FDEP for the transfer activities described in paragraph 21, pursuant to the phosphogypsum stack system operation and closure requirements of Chapters 62-672 and 62-673, F.A.C.. Respondent provided additional clarifying information to the FDEP on June 6, 2007. FDEP approval is pending.

V. TERMS OF AGREEMENT

Based on the foregoing Preliminary Statements, Allegations and Determinations, the Parties agree to the following:

23. For the purposes of this CAFO, and pursuant to Section 3008 of RCRA, 42 U.S.C. § 6928, Respondent admits the jurisdictional allegations set out in Paragraphs 1-11 above.
24. Respondent neither admits nor denies the factual allegations set out in this CAFO.
25. Respondent waives any right it may have to contest the allegations and its right to appeal the proposed Final Order accompanying this Consent Agreement.
26. Respondent waives any right it may have to challenge the validity of this CAFO and the settlement of the matters addressed in this CAFO based on any issue related to the Paperwork Reduction Act.
27. Respondent waives any right it may have pursuant to 40 C.F.R. § 22.8 to be present during any discussions with, or to be served with and reply to, any memorandum or communication addressed to EPA officials where the purpose of such discussion, memorandum or communication is to persuade such official to accept and issue this CAFO.
28. The Parties agree that compliance with the terms of this CAFO shall resolve only the violations of RCRA related to the transport of process wastewater by tanker truck from Respondent's Green Bay phosphogypsum stack system to its New Wales facility, and the implementing State and Federal regulations alleged in this CAFO.
29. Based on the facts alleged in Paragraphs 12-22 above, and Respondent's agreement to implement the Injunctive Relief established in Paragraph 31 below, and for other reasons as justice requires, EPA assesses a \$0 penalty with this case.
30. Each Party will pay its own costs and attorneys' fees.

INJUNCTIVE RELIEF

31. Respondent shall undertake the transfer activities described in Paragraph 21 in accordance with the following requirements:
 - a. Respondent shall comply with all requirements in any permits, including any closure permits, issued by FDEP.
 - b. Respondent shall comply with all requirements for the transfer of process water from the Greenbay phosphogypsum stack system to the New Wales facility in accordance with FDEP Wastewater Permit Nos.

FL0000752 and FL0036421, as of the effective date of this CAFO, and Respondent shall comply with all requirements as may be issued or revised by FDEP for such transfer and reuse/use.

- c. All loading of tanker trucks at the Green Bay facility shall take place at loading bays in an area that is covered, curbed and contained, and that returns any spillage via sump to the regional reverse osmosis treatment unit feed line or to the phosphogypsum system at the Green Bay facility.
- d. To minimize the possibility of any spillage, Respondent shall utilize automated fill controls that are linked to the shipping documents that are printed at the loading bay.
- e. Respondent shall utilize a unified truck tank designed to match its unified loading apparatus (tire chalk, drop down hose and connector, valves, pipes, pump operator remote start/driver acknowledgement screen, flow measurement, shipping document, etc.) to minimize load time and maximize the safety and environmental protectiveness of the loading process.
- f. Respondent shall ensure that there is adequate vehicle maneuvering area for the tanker trucks at the Green Bay facility.
- g. Respondent shall ensure that there is continuous monitoring of the loading area by the facility's security staff, which may be conducted by a remote video camera.
- h. Respondent shall ensure that the transportation of the materials from the Green Bay facility to the New Wales facility is undertaken in accordance with all applicable requirements of the United States Department of Transportation for the transport of hazardous materials found at 49 C.F.R Parts 171- 179, including all applicable requirements of the Hazardous Materials Transportation Act of 1975, and the regulations thereunder, including the requirements for Class 8--Corrosives.
- i. Respondent shall maintain daily records of the quantity of materials transported under the terms of this agreement at the Green Bay facility and shall make these records available to EPA upon request.

- j. Respondent shall ensure that the unloading of the materials into the phosphogypsum stack system at the New Wales facility is undertaken in a manner that minimizes the possibility of any spills.
32. Respondent shall provide EPA with the appropriate documentation to certify that Respondent is complying with the requirements set forth in Paragraph 31 above within 60 calendar days of the effective date of this CAFO. The certification and supporting documentation should be provided to:

Larry L. Lamberth, Acting Chief
South RCRA and OPA Enforcement and Compliance Section
RCRA and OPA Enforcement and Compliance Branch
RCRA Division
U.S. EPA - Region 4
61 Forsyth Street, S.W.
Atlanta, Georgia 30303

VI. RESERVATION OF RIGHTS

33. Notwithstanding any other provision of this CAFO, an enforcement action may be brought pursuant to Section 7003 of RCRA, 42 U.S.C. § 6973, or other statutory authority, should the EPA find that the handling, storage, treatment, transportation, or disposal of solid waste or hazardous waste at, to or from the Green Bay facility or the New Wales facility may present an imminent and substantial endangerment to human health or the environment.
34. Complainant reserves the right to take enforcement action against Respondent for any future violations of RCRA and the implementing regulations and to enforce the terms and conditions of this CAFO.
35. Except as expressly provided herein, nothing in this CAFO shall constitute or be construed as a release from any civil or criminal claim, cause of action or demand in law or equity for any liability Respondent may have arising out of, or relating in any way to, the transportation, release, or disposal of any hazardous constituents, hazardous substances, hazardous wastes, pollutants, or contaminants found at, taken to, or taken from the Green Bay facility or the New Wales facility.
36. This CAFO may be amended or modified only by written agreement executed by both the EPA and Respondent.

VII. OTHER APPLICABLE LAWS

37. All actions required to be taken pursuant to this CAFO shall be undertaken in accordance with the requirements of all applicable local, state, and Federal laws and regulations. Respondent shall obtain or cause its representatives to obtain all permits and approvals necessary under such laws and regulations.

VIII. PARTIES BOUND

38. This CAFO shall be binding upon Respondent and its successors and assigns. Respondent shall cause its officers, directors, employees, agents and all persons, including independent contractors, contractors and consultants acting under or for Respondent, to comply with the provisions hereof in connection with any activity subject to this CAFO.
39. No change in ownership, partnership, corporate or legal status relating to the facility will in any way alter Respondent's obligations and responsibilities under this CAFO.
40. The undersigned representative of Respondent hereby certifies that he is fully authorized to enter into this CAFO and to execute and legally bind Respondent to this CAFO.

IX. SERVICE OF DOCUMENTS

41. A copy of any document that Respondent files in this action shall be sent to the following attorney who represents EPA in this matter and who is authorized to receive service for EPA in the proceeding:

Mita Ghosh
Associate Regional Counsel
U.S. Environmental Protection Agency, Region 4
61 Forsyth Street, S.W.
Atlanta, Georgia 30303-8909
(404) 562-9544

A copy of any documents that Complainant files in this action shall be sent to the following individual who is authorized to receive service for the Respondent in this proceeding:

James K. Voyles
Senior Environmental and Corporate Counsel
The Mosaic Company
5000 Old Highway 37 South

Mulberry, FL 33860,
Phone: (863) 428-6482,
Fax: (863) 428-2676

X. SEVERABILITY

42. It is the intent of the parties that the provisions of this CAFO are severable. If any provision or authority of this CAFO or the application of this CAFO to any party or circumstances is held by any judicial or administrative authority to be invalid or unenforceable, the application of such provisions to other parties or circumstances and the remainder of the CAFO shall remain in force and shall not be affected thereby.

XI. TERMINATION


43. This CAFO will terminate when Respondent notifies Complainant that Respondent is no longer engaged in the transfer activities described in this CAFO; provided, however, Complainant may terminate this CAFO in its sole discretion prior to that time by providing 90 day written notice to Respondent.

XII. EFFECTIVE DATE

44. The effective date of this CAFO shall be the date on which the CAFO is filed with the Regional Hearing Clerk.


AGREED AND CONSENTED TO:

Mosaic Fertilizer, LLC

By: 
Gary N. Davis
Vice President – Phosphate Operations

Date: 8/13/07

U.S. Environmental Protection Agency

By: 
Narindar M. Kumar, Chief
RCRA and OPA Enforcement and Compliance Branch
RCRA Division

Date: 7/30/07

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

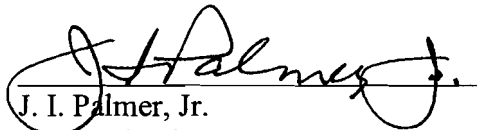
IN THE MATTER OF:)	
)	Docket Number: 04-2007-4005(b)
)	
Mosaic Fertilizer, LLC)	
Green Bay Phosphate Complex)	
FLD 043 055 003)	
Bartow, Florida 33841)	Proceeding Under Section 3008(a) of the
)	Resource Conservation and Recovery Act,
Mosaic Fertilizer, LLC)	42 U.S.C. § 6928(a)
Bartow Phosphate Complex)	
FLD 003 952 033)	
Bartow, Florida 33830)	

RESPONDENT

FINAL ORDER

The foregoing Consent Agreement is hereby approved, ratified and incorporated by reference into this Final Order in accordance with the *Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits*, 40 C.F.R. Part 22. The Respondent is hereby ORDERED to comply with all of the terms of the foregoing Consent Agreement effective immediately upon filing of this Consent Agreement and Final Order with the Regional Hearing Clerk. This Order disposes of this matter pursuant to 40 C.F.R. §§ 22.18 and 22.31.

BEING AGREED, IT IS SO ORDERED this 11th day of September, 2007.

BY: 
 J. I. Palmer, Jr.
 Regional Administrator
 EPA Region 4

In the Matter of Mosaic Fertilizer, LLC
Docket Number: RCRA-04-2007-4005(b)

CERTIFICATE OF SERVICE

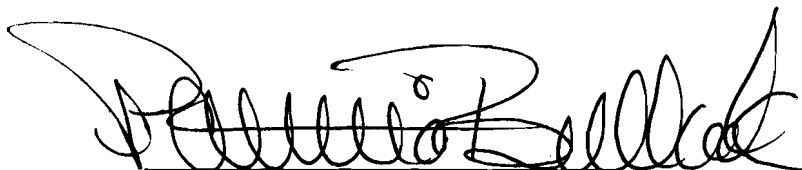
I hereby certify that on SEP 18 2007, I filed the foregoing Consent Agreement and the attached Final Order (CA/FO), in the Matter of Mosaic Fertilizer, LLC, Docket Number: RCRA-04-2007-4005(b), and that on SEP 18 2007 I served a true and correct copy of the CA/FO on the parties listed below in the manner indicated:

Mita Ghosh
Associate Regional Counsel
U.S. EPA - Region 4
61 Forsyth Street, S.W.
Atlanta, Georgia 30303
(404) 562-9568

(Via EPA's internal mail)

Mr. James K. Voyles
Senior Environmental and Corporate Counsel
The Mosaic Company
5000 Old Highway 37 South
Mulberry, FL 33860
(863) 428-2676

(Via Certified Mail - Return Receipt Requested)



Patricia A. Bullock
Regional Hearing Clerk
U.S. EPA - Region 4
61 Forsyth Street, S.W.
Atlanta, GA 30303
(404) 562-9511