UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 6
1201 Elm Street, Suite 500
Dallas, Texas 75270

In the Matter of	§	
	§	
Mosaic Fertilizer, LLC and	§	**Docket No. CAA-06-2024-3314**
Tampa Port Services, LLC.	§	
	§	
Respondents.	§	

CONSENT AGREEMENT AND FINAL ORDER

Preliminary Statement

The U.S. Environmental Protection Agency, Region 6 ("EPA" or "Complainant"), and Mosaic Fertilizer, LLC and Tampa Port Services, LLC ("Respondents") have agreed to a settlement of this action before the filing of a complaint, and thus this action is simultaneously commenced and concluded pursuant to Rules 22.13(b) and 22.18(b)(2) of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits, 40 C.F.R. §§ 22.13(b) and 22.18(b)(2).

Jurisdiction

1. This proceeding is an administrative action for the assessment of civil penalties instituted pursuant to Section 113(d) of the Clean Air Act ("CAA"), 42 U.S.C. § 7413(d). Pursuant to Section 113(d) of the CAA, 42 U.S.C. § 7413(d), the Administrator and the Attorney General jointly determined that this matter, which involved a longer period of violation, was appropriate for administrative penalty action.

2. This Consent Agreement and Final Order serves as notice that the EPA has reason to believe that Respondents have violated the Chemical Accident Prevention Provisions in 40 C.F.R. Part 68,

promulgated pursuant to Section 112(r) of the CAA, 42 U.S.C. § 7412(r), and that Respondents have therefore violated Section 112(r)(7) of the CAA, 42 U.S.C. § 7412(r)(7). Furthermore, this Consent Agreement and Final Order serves as notice pursuant to Section 113(d)(2)(A) of the CAA, 42 U.S.C. § 7413(d)(2)(A), and 40 C.F.R. § 22.34, of the EPA's intent to issue an order assessing penalties for these violations.

Parties

3. Complainant is the Director of the Enforcement and Compliance Assurance Division of EPA, Region 6, as duly delegated by the Administrator of the EPA and the Regional Administrator, EPA, Region 6.

4. Respondents are Mosaic Fertilizer, LLC and Tampa Port Services, LLC, both limited liability companies formed in the state of Delaware and conducting business in the state of Louisiana.

Statutory and Regulatory Background

5. On November 15, 1990, the President signed into law the CAA Amendments of 1990. The Amendments added Section 112(r) to Title I of the CAA, 42 U.S.C. § 7412(r). The objective of Section 112(r) is to prevent the accidental release and to minimize the consequences of any such release of any substance listed pursuant to Section 112(r)(3) of the CAA, 42 U.S.C. § 7412(r)(3), or any other extremely hazardous substance.

6. Section 112(r)(3) of the CAA, 42 U.S.C. § 7412(r)(3), requires the Administrator to promulgate a list of regulated substances which, in the case of an accidental release, are known to cause or may reasonably be anticipated to cause death, injury, or serious adverse effects to human health or the environment. Section 112(r)(5) of the CAA, 42 U.S.C. § 7412(r)(5), requires the Administrator to establish a threshold quantity for any substance listed pursuant to Section 112(r)(3) of the CAA, 42 U.S.C. § 7412(r)(3). The list of regulated substances and respective threshold quantities

is codified at 40 C.F.R. § 68.130.

7. Section 112(r)(7) of the CAA, 42 U.S.C. § 7412(r)(7), requires the Administrator to promulgate regulations that address release prevention, detection, and correction requirements for stationary sources with threshold quantities of regulated substances listed pursuant to Section 112(r)(3) of the CAA, 42 U.S.C. § 7412(r)(3). On June 20, 1996, EPA promulgated a final rule known as the Risk Management Program, 40 C.F.R. Part 68 – Chemical Accident Prevention Provisions, which implements Section 112(r)(7) of the CAA, 42 U.S.C. § 7412(r)(7).

8. The regulations at 40 C.F.R. Part 68 require owners and operators to develop and implement a Risk Management Program at each stationary source with over a threshold quantity of regulated substances. The Risk Management Program must include, among other things, a hazard assessment, a prevention program, and an emergency response program. The Risk Management Program is described in a Risk Management Plan (RMP) that must be submitted to the EPA.

9. Pursuant to Section 112(r)(7) of the CAA, 42 U.S.C. § 7412(r)(7), and 40 C.F.R. § 68.150, an RMP must be submitted for all covered processes by the owner or operator of a stationary source subject to 40 C.F.R. Part 68 no later than the latter of June 21, 1999, or the date on which a regulated substance is first present above the threshold quantity in a process.

10. The regulations at 40 C.F.R. § 68.10 set forth how the Chemical Accident Prevention Provisions of 40 C.F.R. Part 68 apply to each program level of covered processes. Pursuant to 40 C.F.R. § 68.10(i), a covered process is subject to Program 3 requirements if the process does not meet the requirements of Program 1, as described in 40 C.F.R. § 68.10(g), and if it is in a specified North American Industrial Classification System code or is subject to the Occupational Safety and Health Administration (OSHA) process safety management standard, 29 C.F.R. 1910.119.

11. Section 113(d) of the CAA, 42 U.S.C. § 7413(d), states that the Administrator

may issue an administrative order against any person assessing a civil administrative penalty of up to $25,000 per day of violation whenever, on the basis of any available information, the Administrator finds that such person has violated or is violating any requirement or prohibition of Section 112(r) of the CAA, 42 U.S.C. § 7412(r), and its implementing regulations. The Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701, as amended, and the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, 28 U.S.C. § 2461, and implementing regulations at 40 C.F.R. Part 19, increased these statutory maximum penalties to $37,500 for violations that occurred before November 2, 2015, and to $55,808 for violations that occur after November 2, 2015, and are assessed after January 6, 2023.

Definitions

12. Section 302(e) of the CAA, 42 U.S.C. § 7602(e), defines "person" to include any individual, corporation, partnership, association, State, municipality, political subdivision of a State, and any agency department, or instrumentality of the United States and any officer, agent, or employee thereof.

13. Section 112(r)(2)(A) of the CAA, 42 U.S.C. § 7412(r)(2)(A), and the regulation at 40 C.F.R. § 68.3 define "accidental release" as an unanticipated emission of a regulated substance or other extremely hazardous substance into the ambient air from a stationary source.

14. Section 112(r)(2)(C) of the CAA, 42 U.S.C. § 7412(r)(2)(C), and the regulation at 40 C.F.R. § 68.3 define "stationary source," in part, as any buildings, structures, equipment, installations or substance-emitting stationary activities which belong to the same industrial group, which are located on one or more contiguous properties, which are under the control of the same person (or persons under common control), and from which an accidental release may occur.

15. Section 112(r)(2)(B) of the CAA, 42 U.S.C. § 7412(r)(2)(B), and the regulation at 40

C.F.R. § 68.3 define "regulated substance" as any substance listed pursuant to Section 112(r)(3) of the CAA, as amended, in 40 C.F.R. § 68.130.

16. The regulation at 40 C.F.R. § 68.3 defines "threshold quantity" as the quantity specified for regulated substances pursuant to Section 112(r)(5) of the CAA, as amended, listed in 40 C.F.R. § 68.130 and determined to be present at a stationary source as specified in 40 C.F.R. § 68.115.

17. The regulation at 40 C.F.R. § 68.3 defines "process" as any activity involving a regulated substance including any use, storage, manufacturing, handling or on-site movement of such substances, or combination of these activities. For the purposes of this definition, any group of vessels that are interconnected, or separate vessels that are located such that a regulated substance could be involved in a potential release, shall be considered a single process.

18. The regulation at 40 C.F.R. § 68.3 defines "covered process" as a process that has a regulated substance present in more than a threshold quantity as determined under 40 C.F.R. § 68.115.

EPA Findings of Fact and Conclusions of Law

19. Respondents, and at all times referred to herein, are each a "person" as defined by Section 302(e) of the CAA, 42 U.S.C. § 7602(e).

20. Respondents are the owners and operators of a facility located at: 9959 HWY 18, St. James, Louisiana 70086 (the "Facility").

21. Pursuant to Section 114 of the CAA, 42 U.S.C. § 7414, the EPA conducted an inspection of the Facility between February 22-25, 2022, to determine Respondents' compliance with Section 112(r) of the CAA, 42 U.S.C. § 7412(r), and 40 C.F.R. Part 68 (the "Inspection").

22. On September 14, 2022, the EPA sent Respondents a Notice of Potential Violation and Opportunity to Confer letter. On March 1, 2023, the EPA responded to the documentation and information received from Respondents as a result of the opportunity to confer and articulated the

EPA's position concerning Respondents' compliance with Section 112(r) of the CAA, 42 U.S.C. § 7412(r).

23. Respondent Mosaic Fertilizer, LLC operates a granular monoammonium phosphate (GMAP) process and a diammonium phosphate (DAP) process at the Facility, meeting the definition of "process", as defined by 40 C.F.R. § 68.3. Respondent Tampa Port Services, LLC operates an anhydrous ammonia process at the Facility, meeting the definition of "process", as defined by 40 C.F.R. § 68.3. The GMAP and DAP processes are located on property that is contiguous or adjacent to the anhydrous ammonia process. Further, Tampa Port Services, LLC is under the control of or under common control with Mosaic Fertilizer, LLC.

24. The Facility containing the GMAP, DAP, and anhydrous ammonia plants is a "stationary source" pursuant to Section 112(r)(2)(C) of the CAA, 42 U.S.C. § 7412(r)(2)(C), and the regulation at 40 C.F.R. § 68.3.

25. Anhydrous ammonia is a "regulated substance" pursuant to Section 112(r)(2)(B) of the CAA, 42 U.S.C. § 7412(r)(2)(B), and the regulation at 40 C.F.R. § 68.3. The threshold quantity for anhydrous ammonia, as listed in 40 C.F.R. § 68.130, is 10,000 pounds.

26. Respondents have greater than a threshold quantity of anhydrous ammonia ("the Regulated Substance"), in a process at the Facility, meeting the definition of "covered process" as defined by 40 C.F.R. § 68.3.

27. From the time Respondents first had on-site greater than a threshold quantity of the Regulated Substance in a process, Respondents were subject to the requirements of Section 112(r)(7) of the CAA, 42 U.S.C. § 7412(r)(7), and 40 C.F.R. Part 68 because they were the owners or operators of a stationary source that had more than a threshold quantity of a regulated substance in a process.

28. From the time Respondents first had on-site greater than a threshold quantity of the

Regulated Substance in a process, Respondents were required to submit an RMP pursuant to 40 C.F.R. § 68.12(a) and to comply with the Program 3 prevention requirements because pursuant to 40 C.F.R. § 68.10(i), the covered processes at the Facility did not meet the eligibility requirements of Program 1 or Program 2, are subject to OSHA requirements for Process Safety Management pursuant to 29 C.F.R. 1910.119, and the GMAP and DAP processes are in North American Industry Classification System (NAICS) code 325312 and the anhydrous ammonia process is in NAICS code 325311.

EPA Findings of Violation

29. The facts stated in the EPA Findings of Fact and Conclusions of Law above are herein incorporated.

30. Complainant hereby states and alleges that Respondents have violated the CAA and federal regulations promulgated thereunder as follows:

Count 1 – Process Safety Information

31. The regulation at 40 C.F.R. § 68.12(d)(3) requires the owner or operator of a stationary source with a process subject to Program 3 to implement the prevention requirements of 40 C.F.R. §§ 68.65 through 68.87. Pursuant to 40 C.F.R § 68.65(d)(2), the owner or operator shall document that equipment complies with recognized and generally accepted good engineering practices.

32. Respondents failed to document that an American Petroleum Institute (API) 580 certified inspector performed the Risk Based Inspection assessment for the ammonia piping.

33. Respondents' failure to document that equipment complies with recognized and generally accepted good engineering practices pursuant to 40 C.F.R. § 68.65(d)(2), as required by 40 C.F.R. § 68.12(d)(3), is a violation of Section 112(r)(7) of the CAA, 42 U.S.C. § 7412(r)(7).

Count 2 – Process Hazard Analysis & Mechanical Integrity

34. The regulation at 40 C.F.R. § 68.12(d)(3) requires the owner or operator of a stationary

source with a process subject to Program 3 to implement the prevention requirements of 40 C.F.R. §§ 68.65 through 68.87. Pursuant to 40 C.F.R. § 68.67(e), the owner or operator shall establish a system to promptly address the process hazard analyses ("PHA") team's findings and recommendations; assure that the recommendations are resolved in a timely manner and that the resolution is documented; document what actions are to be taken; complete actions as soon as possible; develop a written schedule of when these actions are to be completed; communicate the actions to operating, maintenance and other employees whose work assignments are in the process and who may be affected by the recommendations or actions. Pursuant to 40 C.F.R § 68.73(e), the owner or operator shall correct deficiencies in equipment that are outside acceptable limits (defined by the process safety information in § 68.65) before further use or in a safe and timely manner, when necessary, means are taken to assure safe operation.

35. Respondents failed to promptly address the team's findings and recommendations, assure that the recommendations were resolved in a timely manner, or complete actions as soon as possible. Specifically, as of 2/25/2022, the 2016 Ammonia Plant PHA had 12 open findings, with several dated to be complete by 12/31/2025. As of 2/25/2022, there were an additional 14 open PHA findings from the 2018, 2019, and 2020 PHAs. The 2019 compliance audit identified that the 2016 Ammonia Plant PHA did not track 62 of 169 action items. Of the 107 that were tracked, 83 were not completed over 2.5 years after the PHA meetings were completed. Several open findings had a residual risk ranking of red marked in the PHAs. Additionally, Respondents failed to timely correct deficiencies in the RV-100-146 relief valve when an engineering firm deemed that it was not sized properly as part of the 2021 PHA.

36. Respondents' failure to promptly address the team's findings and recommendations, assure that the recommendations were resolved in a timely manner, and complete actions as soon as possible

pursuant to 40 C.F.R. § 68.67(e), and Respondents' failure to correct deficiencies in equipment that are outside acceptable limits before further use or, if not before further use, in a safe and timely manner when necessary means are taken to assure safe operation pursuant to 40 C.F.R § 68.73(e), as required by 40 C.F.R. § 68.12(d)(3), is a violation of Section 112(r)(7) of the CAA, 42 U.S.C. § 7412(r)(7).

Count 3 – Operating Procedures

37. The regulation at 40 C.F.R. § 68.12(d)(3) requires the owner or operator of a stationary source with a process subject to Program 3 to implement the prevention requirements of 40 C.F.R. §§ 68.65 through 68.87. Pursuant to 40 C.F.R. § 68.69(c), the operating procedures shall be reviewed as often as necessary to assure that they reflect current operating practice, including changes that result from changes in process chemicals, technology, and equipment, and changes to stationary sources. The owner or operator shall certify annually that these operating procedures are current and accurate.

38. Respondents failed to document annual certifications for the Dry Products / Granulation operating procedures between 2014 and 2018.

39. Respondents' failure to certify annually that operating procedures are current and accurate pursuant to 40 C.F.R. § 68.69(c), as required by 40 C.F.R. § 68.12(d)(3), is a violation of Section 112(r)(7) of the CAA, 42 U.S.C. § 7412(r)(7).

Count 4 - Training

40. The regulation at 40 C.F.R. § 68.12(d)(3) requires the owner or operator of a stationary source with a process subject to Program 3 to implement the prevention requirements of 40 C.F.R. §§ 68.65 through 68.87. Pursuant to 40 C.F.R. § 68.71(a), each employee presently involved in operating a process, and each employee before being involved in operating a newly assigned process, shall be trained in an overview of the process and in the operating procedures as specified in § 68.69. The

training shall include emphasis on the specific safety and health hazards, emergency operations including shutdown, and safe work practices applicable to the employee's job tasks. Additionally, pursuant to 40 C.F.R. § 68.71(b), refresher training shall be provided at least every three years, and more often, if necessary, to each employee involved in operating a process to assure that the employee understands and adheres to the current operating procedures of the process. The owner or operator, in consultation with the employees involved in operating the process, shall determine the appropriate frequency of refresher training.

41. Respondents failed to conduct initial training for a board operator in the Ammonia plant before being involved in operation of a newly assigned process. Additionally, Respondents did not document that employees were consulted on the appropriate frequency of refresher training.

42. Respondents' failure to train each employee before being involved in operating a newly assigned process in an overview of the process and in the operating procedures, and Respondents' failure to consult with employees involved in operating the process on the appropriate frequency of refresher training pursuant to 40 C.F.R. § 68.71(a) and (b), as required by 40 C.F.R. § 68.12(d)(3), is a violation of Section 112(r)(7) of the CAA, 42 U.S.C. § 7412(r)(7).

Count 5 – Mechanical Integrity

43. The regulation at 40 C.F.R. § 68.12(d)(3) requires the owner or operator of a stationary source with a process subject to Program 3 to implement the prevention requirements of 40 C.F.R. §§ 68.65 through 68.87. Pursuant to 40 C.F.R. § 68.73(b), the owner or operator shall establish and implement written procedures to maintain the ongoing integrity of process equipment.

44. Respondents failed to establish and implement written procedures to maintain the on-going integrity of the following covered process equipment: (1) Emergency shutdown devices (ESD) – A procedure had not been established or implemented for certain ESDs. Function testing was being

performed as part of safety instrumented system proof testing; however, this testing was not outlined in any procedure. (2) Safety instrumented systems (SIS) – Proof/function testing and calibration was being performed for selected SISs; however, there was no procedure established that assigned this testing to interlocks and related components (e.g., transmitters, gauges, controls). A procedure had not been established or implemented for the maintenance of certain SISs.

45. Respondents' failure to implement its written procedures to maintain the ongoing integrity of process equipment pursuant to 40 C.F.R. § 68.73(b), as required by 40 C.F.R. § 68.12(d)(3), is a violation of Section 112(r)(7) of the CAA, 42 U.S.C. § 7412(r)(7).

Count 6 – Mechanical Integrity

46. The regulation at 40 C.F.R. § 68.12(d)(3) requires the owner or operator of a stationary source with a process subject to Program 3 to implement the prevention requirements of 40 C.F.R. §§ 68.65 through 68.87. Pursuant to 40 C.F.R. § 68.73(c), the owner or operator shall train each employee involved in maintaining the on-going integrity of process equipment in an overview of that process and its hazards and in the procedures applicable to the employee's job tasks to assure that the employee can perform the job tasks in a safe manner.

47. Respondents failed to train I&E technicians in specific maintenance operating procedures to maintain the on-going integrity of process equipment.

48. Respondents' failure to train each employee involved in maintaining the on-going integrity of process equipment in an overview of that process and its hazards and in the procedures applicable to the employee's job tasks to assure that the employee can perform the job tasks in a safe manner pursuant to 40 C.F.R. § 68.73(c), as required by 40 C.F.R. § 68.12(d)(3), is a violation of Section 112(r)(7) of the CAA, 42 U.S.C. § 7412(r)(7).

Count 7 – Mechanical Integrity

49. The regulation at 40 C.F.R. § 68.12(d)(3) requires the owner or operator of a stationary source with a process subject to Program 3 to implement the prevention requirements of 40 C.F.R. §§ 68.65 through 68.87. Pursuant to 40 C.F.R. § 68.73(d)(3), the frequency of inspections and tests of process equipment shall be consistent with applicable manufacturers' recommendations and good engineering practices, and more frequently if determined to be necessary by prior operating experience.

50. Respondents failed to conduct inspections and tests on the following process equipment at a frequency consistent with applicable manufacturers' recommendations and good engineering practices: (1) Seventy-four piping circuits; (2) Nineteen pieces of equipment were overdue for external visual inspections; (3) Twenty-seven pieces of equipment were overdue for internal inspections; (4) Pumps P1 and P2; (5) Pumps P109J and P109JA; (6) Vessel H1 (7) Vessel H2; (8) Condition monitoring locations on vessel 104-D; (9) Vessel 121-C Ammonia converter feed effluent exchanger; and (10) SIS testing for NH3 I-01; I-02A and B; I-04; I-05; I-10; I-11; and I-16.

51. Respondents' failure to conduct inspections and tests on process equipment at a frequency consistent with applicable manufacturers' recommendations and good engineering practices pursuant to 40 C.F.R. § 68.73(d)(3), as required by 40 C.F.R. § 68.12(d)(3), is a violation of Section 112(r)(7) of the CAA, 42 U.S.C. § 7412(r)(7).

Count 8 – Mechanical Integrity

52. The regulation at 40 C.F.R. § 68.12(d)(3) requires the owner or operator of a stationary source with a process subject to Program 3 to implement the prevention requirements of 40 C.F.R. §§ 68.65 through 68.87. Pursuant to 40 C.F.R. § 68.73(d)(4), the owner or operator shall document each inspection and test that has been performed on process equipment. The documentation shall identify the date of the inspection or test, the name of the person who performed the inspection or test, the

serial number or other identifier of the equipment on which the inspection or test was performed, a description of the inspection or test performed, and the results of the inspection or test.

53. Respondents failed to completely document each inspection and test that had been performed on process equipment. Specifically, the previous inspections, including both external visual and thickness measurements, for ammonia piping were not found or provided to inspectors on-site. Inspection history could not be matched with the new circuits created by Respondents. Vessel 105-D appeared to have an external inspection performed in 2018 in PCMS by Respondents' inspectors; however, the inspection report could not be found.

54. Respondents' failure to document each inspection and test that had been performed on process equipment pursuant to 40 C.F.R. § 68.73(d)(4), as required by 40 C.F.R. § 68.12(d)(3), is a violation of Section 112(r)(7) of the CAA, 42 U.S.C. § 7412(r)(7).

Count 9 – Compliance Audit

55. The regulation at 40 C.F.R. § 68.12(d)(3) requires the owner or operator of a stationary source with a process subject to Program 3 to implement the prevention requirements of 40 C.F.R. §§ 68.65 through 68.87. Pursuant to 40 C.F.R. § 68.79(d), the owner or operator shall promptly determine and document an appropriate response to each of the findings of the compliance audit, and document that deficiencies have been corrected.

56. Respondents failed to promptly determine and document an appropriate response to each of the findings of the compliance audit, and document that deficiencies have been corrected. Specifically, for the 2019 compliance audit, 6 of 20 findings were still open as of 2/25/2022, and several findings were closed late.

57. Respondents' failure to promptly determine and document an appropriate response to the 2019 compliance audit findings pursuant to 40 C.F.R. § 68.79(d), as required by 40 C.F.R. §

68.12(d)(3), is a violation of Section 112(r)(7) of the CAA, 42 U.S.C. § 7412(r)(7).

CONSENT AGREEMENT

58. For the purpose of this proceeding, as required by 40 C.F.R. § 22.18(b)(2), Respondents:

a. admit the jurisdictional allegations set forth herein.

b. neither admit nor deny the specific factual allegations stated herein.

c. consent to the assessment of a civil penalty, as stated herein.

d. consent to the performance of the Supplemental Environmental Project (SEP) set forth herein.

e. consent to any conditions specified herein.

f. waive any right to contest the allegations set forth herein; and

g. waive their rights to appeal the Final Order accompanying this Consent Agreement.

59. Respondents consent to the issuance of this Consent Agreement and Final Order and consent for the purposes of settlement to the payment of the civil penalty specified herein.

60. Respondents and EPA agree to conciliate this matter without the necessity of a formal hearing and to bear their respective costs and attorneys' fees.

Penalty Payment

61. Respondents agree that, in settlement of the claims alleged herein, Respondents shall pay a civil penalty of Two Hundred Seventeen Thousand Eighty-Five Dollars ($217,085.00), as set forth below, and shall perform two Supplemental Environmental Projects ("SEPs") as set forth herein. The projected cost of the SEPs is One Hundred Thousand dollars ($100,000.00).

62. Respondents shall pay the penalty within thirty (30) days of the effective date of the Final Order. Such payment shall identify Respondents by name and docket number and shall be by certified or cashier's check made payable to the "United States Treasury" and sent to:

U.S. Environmental Protection Agency
Government Lockbox 979078
3180 Rider Trail S.
Earth City, MO 63045

or by alternate payment method described at *http://www.epa.gov/financial/makepayment*.

63. A copy of the check or other information confirming payment shall simultaneously be sent to the following:

Lorena S. Vaughn
Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 6
1201 Elm Street, Suite 500 (ORC)
Dallas, Texas 75270-2102
vaughn.lorena@epa.gov; and

Sherronda Phelps
Enforcement and Compliance Assurance Division
Air Enforcement Branch
U.S. Environmental Protection Agency, Region 6
1201 Elm Street, Suite 500 (ECDAC)
Dallas, Texas 75270-2101
phelps.sherronda@epa.gov

64. Respondents understand that their failure to timely pay any portion of the civil penalty may result in the commencement of a civil action in Federal District Court to recover the full remaining balance, along with penalties and accumulated interest. In such case, interest shall begin to accrue on a civil or stipulated penalty from the date of delinquency until such civil or stipulated penalty and any accrued interest are paid in full. 31 C.F.R. § 901.9(b)(1). Interest will be assessed at a rate of the United States Treasury Tax and loan rates in accordance with 31 U.S.C. § 3717. Additionally, a charge will be assessed to cover the costs of debt collection including processing and handling costs, and a non-payment penalty charge of six percent (6%) per year compounded annually will be assessed on any portion of the debt which remains delinquent more than ninety (90) days after payment is due. 31 U.S.C. § 3717(e)(2).

65. Pursuant to 26 U.S.C. § 6050X and 26 C.F.R. § 1.6050X-1, EPA is required to send to the Internal Revenue Service ("IRS") annually, a completed IRS Form 1098-F ("Fines, Penalties, and Other Amounts") with respect to any court order or settlement agreement (including administrative settlements), that require a payor to pay an aggregate amount that EPA reasonably believes will be equal to, or in excess of, $50,000 for the payor's violation of any law or the investigation or inquiry into the payor's potential violation of any law, including amounts paid for "restitution or remediation of property" or to come "into compliance with a law." EPA is further required to furnish a written statement, which provides the same information provided to the IRS, to each payor (i.e., a copy of IRS Form 1098-F). Failure to comply with providing IRS Form W-9 or Tax Identification Number ("TIN"), as described below, may subject Respondent to a penalty, per 26 U.S.C. § 6723, 26 U.S.C. § 6724(d)(3), and 26 C.F.R. § 301.6723-1. In order to provide EPA with sufficient information to enable it to fulfill these obligations, EPA herein requires, and Respondent herein agrees, that:

a. Respondent shall complete an IRS Form W-9 ("Request for Taxpayer Identification Number and Certification"), which is available at https://www.irs.gov/pub/irs-pdf/fw9.pdf;

b. Respondent shall therein certify that its completed IRS Form W-9 includes Respondent's correct TIN or that Respondent has applied and is waiting for issuance of a TIN; Respondent shall email its completed Form W-9 to EPA's Cincinnati Finance Center at chalifoux.jessica@epa.gov within 30 days after the Final Order ratifying this Agreement is filed, and EPA recommends encrypting IRS Form W-9 email correspondence; and

c. In the event that Respondent has certified in its completed IRS Form W-9 that it has applied for a TIN and that TIN has not been issued to Respondent within 30 days after the effective date, then Respondent, using the same email address identified in the preceding sub-paragraph, shall further:

i. Notify EPA's Cincinnati Finance Center of this fact, via email, within 30 days after the effective date of this Order; and

ii. Provide EPA's Cincinnati Finance Center with Respondent's TIN, via email, within five (5) days of Respondent's issuance and receipt of the TIN.

Supplemental Environmental Project

66. In response to the alleged violations of the CAA and in settlement of this matter, although not required by the CAA or any other federal, state, or local law, Respondents agree to implement two SEPs, as described below in paragraph 67 and in Appendix A.

67. Respondents shall complete the following SEPs: (i) Installation of Area Ammonia Gas Detection System and Monitoring for a Term of Two Years (the "Detection System and Monitoring SEP") and (ii) Donation of Equipment to the St. James Parish Department of Emergency Preparedness (the "Equipment Donation SEP"). The SEPs are more specifically described in Appendix A and incorporated herein by reference.

68. Respondents shall spend no less than One Hundred Thousand Dollars ($100,000.00) on implementing the SEPs. Respondents shall include documentation of the expenditures made in connection with each SEP as part of the SEP Completion Reports. If Respondents' implementation of the SEPs as described in Appendix A does not expend the full amount set forth in this paragraph, and if EPA determines that the amount remaining reasonably could be applied toward the purchase of additional emergency response equipment, Respondents will identify, purchase, and provide additional

emergency response equipment to the emergency response organization identified in Appendix A.

69. Respondents shall (i) install the area ammonia gas detection system and (ii) execute the donation of the emergency response equipment to the St. James Parish Department of Emergency Preparedness within one-hundred eighty (180) days after the effective date of this Consent Agreement and Final Order.

70. Use of SEP Implementer and Identification of SEP Recipient

(a) SEP Implementer for the Detection System and Monitoring SEP

i. Respondents have selected Safe zone Safety Systems, LLC, as the contractor/consultant to assist with installing and commissioning the Detection System and Monitoring SEP. Other contractors may be used for discrete auxiliary tasks associated with implementation.

(b) SEP Recipient for the Equipment Donation SEP

i. Respondents have selected St. James Parish Department of Emergency Preparedness to receive two (2) 20kw towable Generac (generators MDG25IF4).

(c) The EPA had no role in the selection of any SEP implementer, SEP recipient, or specific equipment identified in the SEP, nor shall this Consent Agreement and Final Order be construed to constitute EPA approval or endorsement of any SEP implementer, SEP recipient, or specific equipment identified in this Consent Agreement and Final Order.

71. The SEPs are consistent with applicable EPA policy and guidelines, specifically EPA's 2015 Update to the 1998 Supplemental Environmental Projects Policy, (March 10, 2015).

72. The Detection System and Monitoring SEP advances at least one of the objectives of

Section 112(r) of the CAA, 42 U.S.C. § 7412(r), by focusing prevention measures on anhydrous ammonia, a chemical regulated under Section 7412(r).[1] The primary benefit of this project is early and more reliable detection of ammonia releases. Early detection may lead to more effective mitigation and reduced risk to plant personnel, the local community, and the environment. Additionally, the monitors could assist with the quantification of releases and more effective emergency response decision making and actions. The SEP is not inconsistent with any provision of Section 112(r) of the CAA, 42 U.S.C. § 7412(r). Further, the SEP relates to the alleged violations, and is designed to reduce:

(a) The adverse impact to public health and/or the environment to which the alleged violations contribute by providing early detection, which may lead to more effective mitigation and reduced risk to plant personnel, the local community, and the environment and by assisting with the quantification of releases and more effective emergency response decision making and actions; and

(b) The overall risk to public health and/or the environment potentially affected by the alleged violations by providing early detection, which may lead to more effective mitigation and reduced risk to plant personnel, the local community, and the environment and by assisting with the quantification of releases and more effective emergency response decision making and actions.

73. The Equipment Donation SEP advances at least one of the objectives of Section 112(r) of the CAA, 42 U.S.C. § 7412(r), by upgrading the St. James Parish Department of Emergency Preparedness ("SJDEP") equipment. The SEP is not inconsistent with any provision of Section 112(r)

[1] *See e.g.,* Accidental Release Prevention Requirements: Risk Management Programs Under Clean Air Act Section 112(r)(7), 61 Fed. Reg. 31668 (June 20, 1996) ("The intent of section 112(r) is to prevent accidental releases to the air and mitigate the consequences of such releases **by focusing prevention measures on chemicals that pose the greatest risk to the public and the environment**.") (emphasis provided).

of the CAA, 42 U.S.C. § 7412(r). Further, the SEP relates to the alleged violations, and is designed to reduce:

(a) The overall risk to public health and/or the environment potentially affected by the alleged violations. The SJDEP's main function is to safely and effectively manage response to technological and natural disasters that may affect the public. This is done by effectively managing the mitigation, preparedness, response, and recovery phases of any incident. Respondents will donate equipment selected by SJDEP in order to assist the Emergency Preparedness Department in performing those duties.

74. Respondents certify as to the truth and accuracy of each of the following:

(a) That all cost information provided to EPA in connection with EPA's approval of the SEPs is complete and accurate and that Respondents in good faith estimate that the cost to implement the SEPs is One Hundred Thousand Dollars ($100,000.00).

(b) That, as of the date of executing this Consent Agreement and Final Order, Respondents are not required to perform or develop the SEPs by any federal, state, or local law or regulation and are not required to perform or develop the SEPs by agreement, grant, or as injunctive relief awarded in any other action in any forum.

(c) That the SEPs are not projects that Respondents were planning or intending to construct, perform, or implement other than in settlement of the claims resolved in this Consent Agreement and Final Order.

(d) That Respondents have not received and will not receive credit for the SEPs in any other enforcement action.

(e) That Respondents will not receive reimbursement for any portion of the SEPs from another person or entity.

(f) That for federal income tax purposes, Respondents agree that they will neither capitalize into inventory or basis nor deduct any costs or expenditures incurred in performing the SEPs.

(g) Respondents are not a party to any open federal financial assistance transaction that is funding or could fund the same activity as the SEPs described in Appendix A.

(h) That Respondents have inquired of the SEP recipient and SEP implementer whether it either is party to an open federal financial assistance transaction that is funding or could fund the same activity as the SEPs and has been informed by the recipient and implementer that neither is a party to such a transaction.

75. Any public statement, oral or written, in print, film, or other media, made by Respondents or a representative of Respondents making reference to the SEPs under this Consent Agreement and Final Order from the date of its execution of this Consent Agreement and Final Order shall include the following language: "This project was undertaken in connection with the settlement of an enforcement action taken by the U.S. Environmental Protection Agency for alleged violations of the federal laws."

76. SEP Reports.

(a) Respondents shall submit a SEP Completion Report to EPA within thirty (30) days of completion of each SEP. The SEP (Completion) Report shall contain the following information, with supporting documentation:

i. A detailed description of the SEP as implemented.

ii. A description of any operating problems encountered and the solutions thereto.

iii. Itemized costs.

iv. Certification that the SEP has been fully implemented pursuant to the provisions of this Consent Agreement and Final Order; and

v. A description of the environmental and public health benefits resulting from implementation of the SEP (with a quantification of the benefits and pollutant reductions, if feasible).

(b) Respondents agree that failure to submit the SEP Completion Reports required by subsection (a) above shall be deemed a violation of this Consent Agreement and Final Order and Respondents shall become liable for stipulated penalties pursuant to paragraph 78 below.

(c) Respondents shall submit all notices and reports required by this Consent Agreement and Final Order to Sherronda Phelps at phelps.sherronda@epa.gov.

(d) In itemizing its costs in the SEP Completion Reports, Respondents shall clearly identify and provide acceptable documentation for all eligible SEP costs. Where the SEP completion reports include costs not eligible for SEP credit, those costs must be clearly identified as such. For purposes of this Paragraph, "acceptable documentation" includes invoices, purchase orders, or other documentation that specifically identifies and itemizes the individual costs of the goods and/or services for which payment is being made. Canceled drafts do not constitute acceptable documentation unless such drafts specifically identify and itemize the individual costs of the goods and/or services for which payment is being made.

77. EPA acceptance of the SEP Reports.

(a) After receipt of the SEP Completion Reports described in paragraph 76 above, EPA will, in writing to the Respondents, either:

i. Identify any deficiencies in the SEP Completion Reports itself along with a grant of an additional thirty (30) days for Respondents to correct any

deficiencies; or

ii. Indicate that EPA concludes that the projects have been completed satisfactorily; or

iii. Determine that the projects have not been completed satisfactorily and seek stipulated penalties in accordance with paragraph 78 herein.

(b) If EPA elects to exercise option (i) above, i.e., if the SEP Report is determined to be deficient but EPA has not yet made a final determination about the adequacy of SEP completion itself, Respondents may object in writing to the notification of deficiency given pursuant to this paragraph within ten (10) days of receipt of such notification. EPA and Respondents shall have an additional thirty (30) days from the receipt by EPA of the notification of objection to reach agreement on changes necessary to the SEP Report. If agreement cannot be reached on any such issue within this thirty (30) day period, EPA shall provide a written statement of its decision on adequacy of the completion of the SEP to Respondents, which decision shall be final and binding upon Respondents.

78. Stipulated Penalties

(a) Except as provided in subparagraphs (b) and (c) below, if Respondents fail to satisfactorily complete the requirements regarding the SEPs specified in Appendix A by the deadline in paragraph 69, Respondents agree to pay, in addition to the civil penalty in paragraph 61, the following per day per violation stipulated penalty for each day the Respondents are late meeting the applicable SEP requirement:

i. $250 per day for days 1-30.

ii. $300 per day for days 31-60.

iii. $500 per day for days 61 or more.

(b) If Respondents fail to timely submit any SEP reports, such as those referred to in paragraph 76, in accordance with the timelines set forth in this Consent Agreement and Final Order, Respondents agree to the following per day stipulated penalty for each day after the report was due until Respondents submit the reports in their entirety:

i. $100 per day for days 1-30.

ii. $150 per day for days 31-60.

iii. $300 per day for days 61 or more.

(c) If Respondents do not satisfactorily complete the SEPs, including spending the minimum amount on the SEPs set forth in paragraph 68 above, Respondents shall pay a stipulated penalty to the United States in the amount of One Hundred and Twenty Thousand Dollars ($120,000.00). "Satisfactory completion" of the SEP is defined as Respondents spending no less than $100,000.00 to (i) install an area ammonia gas detection system and monitoring for at least two years and (ii) donate emergency response equipment to the St. James Parish Department of Emergency Preparedness within one-hundred eighty (180) days of the Effective Date of this Consent Agreement and Final Order. The determinations of whether the SEPs have been satisfactorily completed shall be in the sole discretion of EPA.

(d) EPA retains the right to waive or reduce a stipulated penalty at its sole discretion.

(e) Respondents shall pay stipulated penalties not more than fifteen (15) days after receipt of written demand by EPA for such penalties. The method of payment shall be in accordance with the provisions of paragraph 62 above. Interest and late charges shall be paid as stated in paragraph 64.

Dispute Resolution

79. If the Respondents object to any decision or directive of EPA, the Respondents shall notify the following persons in writing of its objections, and the basis for those objections, within fifteen (15) calendar days of receipt of EPA's decision or directive:

Chief, Chemical Accident Enforcement Section
Enforcement and Compliance Assurance Division
U.S. EPA - Region 6
1201 Elm St, Suite 500
Dallas, TX 75270-2101

Manager, RCRA & Toxics Enforcement Branch
Office of Regional Counsel
U.S. EPA - Region 6
1201 Elm St., Suite 500
Dallas, TX 75270-2101

80. The Chemical Accident Enforcement Section Chief ("Chief") or his designee, and the Respondents shall then have an additional fifteen (15) calendar days from receipt by EPA of the Respondents' written objections to attempt to resolve the dispute. If an agreement is reached between the Chief and the Respondents, the agreement shall be reduced to writing and signed by the Chief and the Respondents and incorporated by reference into this Consent Agreement and Final Order.

81. If no agreement is reached between the Chief and the Respondents within that time period, the dispute shall be submitted to the Director of the Compliance Assurance and Enforcement Division (Division Director) or his designee. The Division Director and the Respondents shall then have a second 15-day period to resolve the dispute. If an agreement is reached between the Division Director and the Respondents, the resolution shall be reduced to writing and signed by the Division Director and Respondents and incorporated by reference into this Consent Agreement and Final Order. If the Division Director and the Respondents are unable to reach agreement within this second 15-day period, the Division Director shall provide a written statement of EPA's decision to the Respondents,

which shall be binding upon the Respondents and incorporated by reference into the Consent Agreement and Final Order.

Modification

82. The terms, conditions, and compliance requirements of the Consent Agreement and Final Order may not be modified or amended except as otherwise specified in this Consent Agreement and Final Order, or upon the written agreement of EPA and Respondents, and such modification or amendment being filed with the Regional Hearing Clerk.

Effect of Settlement and Reservation of Right

83. Full payment of the penalty proposed in this Consent Agreement shall only resolve Respondents' liability for federal civil penalties for the violations alleged herein. Complainant reserves the right to take any enforcement action with respect to any other violations of the CAA or any other applicable law.

84. The effect of settlement described in the immediately preceding paragraph is conditioned upon the accuracy of Respondents' representations to the EPA, as memorialized in the paragraph directly below.

85. Respondents certify by the signing of this Consent Agreement that to the best of their knowledge, information, and belief, they are presently in compliance with all requirements of Section 112(r) of the CAA, 42 U.S.C. § 7412(r). Respondents represent that there are certain open and past due items from Process Hazard Analysis ("PHA") findings described in Paragraph 35, above, and from prior compliance audits, including the audit described in Paragraph 56, above. Such open and past due items are expected to be completed in accordance with written resolutions and schedules for

completion developed by Respondents, and subject to any necessary authorizations from the Louisiana Department of Environmental Quality.

86. Full payment of the penalty proposed in this Consent Agreement shall not in any case affect the right of the Agency or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law. This Consent Agreement and Final Order does not waive, extinguish or otherwise affect Respondents' obligation to comply with all applicable provisions of the CAA and regulations promulgated thereunder.

87. Complainant reserves the right to enforce the terms and conditions of this Consent Agreement and Final Order.

General Provisions

88. By signing this Consent Agreement, the undersigned representatives of Respondents certify that they are fully authorized to execute and enter into the terms and conditions of this Consent Agreement and have the legal capacity to bind the party it represents to this Consent Agreement.

89. This Consent Agreement shall not dispose of the proceeding without a final order from the Regional Judicial Officer or Regional Administrator ratifying the terms of this Consent Agreement. This Consent Agreement and Final Order shall be effective upon filing of the Final Order by the Regional Hearing Clerk for EPA, Region 6. Unless otherwise stated, all time periods stated herein shall be calculated in calendar days from such date.

90. The penalty specified herein shall represent civil penalties assessed by EPA and shall not be deductible for purposes of Federal, State, and local taxes.

91. This Consent Agreement and Final Order shall apply to and be binding upon Respondents and Respondents' agents, successors and/or assigns. Respondents shall ensure that all contractors, employees, consultants, firms, or other persons or entities acting for Respondents with respect to

matters included herein comply with the terms of this Consent Agreement and Final Order.

92. The EPA and Respondents agree to the use of electronic signatures for this matter pursuant to 40 C.F.R. § 22.6. The EPA and Respondents further agree to electronic service of this Consent Agreement and Final Order by email to the following:

To EPA: *george.elizabeth.a@epa.gov*

To Respondents: *lauren.rucinski@keanmiller.com*

RESPONDENT:
MOSAIC FERTILIZER, LLC

Date: 1/25/2024

DocuSigned by:
Pat Kane
E2CB78EFB1ED4EC...
Signature

Pat Kane
Print Name

VP EHS Enterprise Operations
Title

RESPONDENT:
TAMPA PORT SERVICES, LLC

Date: 1/25/2024

DocuSigned by:
Pat Kane
E2CB78EFB1ED4EC...
Signature

Pat Kane
Print Name

VP EHS Enterprise Operations
Title

COMPLAINANT:
U.S. ENVIRONMENTAL PROTECTION AGENCY

Date: _____

Digitally signed by MARGARET OSBOURNE
Date: 2024.01.29 10:57:56 -06'00'

Cheryl T. Seager
Director
Enforcement and
Compliance Assurance Division
U.S. EPA, Region 6

FINAL ORDER

Pursuant to Section 113(d) of the CAA, 42 U.S.C. § 7413(d), and 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 foregoing Consent Agreement resolving this matter is hereby ratified and incorporated by reference into this Final Order.

Respondents are ORDERED to comply with all of the terms of the Consent Agreement. In accordance with 40 C.F.R. § 22.31(b), the effective date of the foregoing Consent Agreement and this Final Order is the date on which this Final Order is filed with the Regional Hearing Clerk.

This Final Order shall resolve only those causes of action alleged in the Consent Agreement. Nothing in this Final Order shall be construed to waive, extinguish, or otherwise affect Respondents' (or its officers, agents, servants, employees, successors, or assigns) obligation to comply with all applicable federal, state, and local statutes and regulations, including the regulations that were the subject of this action.

IT IS SO ORDERED.

THOMAS RUCKI

Digitally signed by THOMAS RUCKI
Date: 2024.01.30 08:58:32 -05'00'

Thomas Rucki
Regional Judicial Officer

Date

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing Consent Agreement and Final Order was delivered to the Regional Hearing Clerk, U.S. EPA, Region 6, 1201 Elm Street, Dallas, Texas 75270-2102, and that a true and correct copy was sent this day in the following manner to the addressees:

Copy via Email to Complainant:

george.elizabeth.a@epa.gov

Copy via Email to Respondents:

lauren.rucinski@keanmiller.com

Copy via Email to the Regional Hearing Clerk:

vaughn.lorena@epa.gov

ELIZABETH GEORGE

Digitally signed by ELIZABETH GEORGE
Date: 2024.01.30 14:17:22 -06'00'

Signed
Office of Regional Counsel
U.S. EPA, Region 6

APPENDIX A

Mosaic Fertilizer, LLC and Tampa Port Services, LLC Settlement Proposal Including Supplemental Environmental Projects

Mosaic Fertilizer, LLC and Tampa Port Services, LLC (TPS) (collectively, "Respondents") propose to resolve EPA's proposed civil penalty of Two Hundred Ninety-Seven Thousand Eighty-Five Dollars ($297,085.00) through payment of Two Hundred Seventeen Thousand Eighty-Five Dollars ($217,085.00) in cash and performance of the following two Supplemental Environmental Projects valued at a total of $100,000.00:

1. **SEP No. 1 – Installation of Area Ammonia Gas Detection System and Monitoring for a Term of Two Years**

Currently the TPS Faustina ammonia plant maintains ammonia detection monitors at select areas within the facility. Area monitors are present at Faustina's storage tank, truck loading station area and loading dock area on the Mississippi River. There are no monitors at other locations around the facility. The proposed project is to install eleven ammonia detectors primarily along the perimeter of active operations that will be actively monitored and alarmed on the distributed control system (DCS) in the ammonia control room. Eleven monitors will be installed at select locations along the southern side of the plant towards the facility's neighbor American Styrenic, on the eastern side of the facility in an area that parallels Hwy 18 and on the northern side of operations between the Faustina site and commercial and residential areas along Highway 70.

The primary benefit of this project is early and more reliable detection of ammonia releases. Early detection may lead to more effective mitigation and reduced risk to plant personnel, the local community, and the environment. Additionally, the monitors could assist with the quantification of releases and more effective emergency response decision making and actions.

A proposal for purchase and installation of the equipment indicates the monitoring system for eleven monitors would cost approximately $54,000. Additionally, there would be a cost of approximately $6,000 for a contractor to assist in integrating the monitor network to the DCS to add graphics and data to the existing displays. Respondents have not included any cost for annual operation and maintenance.

Respondents commit to operating the monitoring network for a period of two years from installation. After such period, Respondents may voluntarily continue operations, but such would not be a part of the SEP.

Respondents will initiate purchase of the monitoring network within sixty (60) days of the effective date of the Consent Agreement and Final Order and will complete installation within one-hundred eighty (180) days of the effective date of the Consent Agreement and Final Order. The monitoring results would be used to identify potential releases of ammonia from process equipment in the TPS Faustina ammonia plant.

Respondents propose to submit monitoring reports to EPA covering the two-year period of operation under the SEP. The reports will be due thirty (30) days after each 6-month period. The reports will contain the following information:

a. Status of purchase and installation of the monitoring system.
b. Date that the monitoring system commences operation.
c. Identification of the ambient concentration at which investigation will be triggered (i.e., the "alert" level).
d. Results of any investigation in which a release of ammonia in excess of the reportable quantity was identified including the date and time the release was identified and the date of repair, or if for any reason the release could not be repaired due to the need for a process shutdown or other safety factor, the anticipated date of the repair.

2. **SEP No. 2 Donation of Equipment to the St. James Parish Department of Emergency Preparedness**

Respondents have consulted with the St. James Parish Department of Emergency Preparedness ("SJDEP") and intend to donate equipment to assist the SJDEP's emergency operations center. The equipment selected by the SJDEP is two (2) 20kw towable Generac generators (MDG25IF4). This equipment will be purchased and donated within one-hundred eighty (180) days after the effective date of the Consent Agreement and Final Order.

The SJDEP's main function is to safely and effectively manage response to technological and natural disasters that may affect the public. This is done by effectively managing the mitigation, preparedness, response, and recovery phases of any incident. Respondents will donate equipment selected by SJDEP in order to assist the Emergency Preparedness Department in performing those duties.

It is anticipated that the cost of this equipment will be at least Forty-Thousand Dollars ($40,000.00).

Respondents propose to submit one SEP completion report for this SEP, within thirty (30) days after the date of the donation. The report will confirm the date of the donation and total cost of the equipment.