

- 3) Respondent agrees not to contest EPA's jurisdiction in this proceeding or any subsequent proceeding to enforce the terms of this CAFO. Respondent neither admits nor denies the specific factual allegations and conclusions of law contained in this complaint and CAFO.
- 4) Respondent explicitly waives its right to appeal the final order contained in this CAFO, and, for purposes of this CAFO, waives any right to contest the allegations set forth in the CAFO.
- 5) This CAFO resolves Respondent's liability for the violations alleged herein based on the facts.
- 6) Respondent consents to the issuance of the CAFO hereinafter recited and consents to the assessment and payment of the stated civil penalty in the amount and by the method set out in this CAFO.

II.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

- 7) Agrifos Fertilizer is a current owner and operator of the Agrifos Site, located at 2001 Jackson Rd., Pasadena, TX 77506.
- 8) Mobil Oil Corporation previously owned and operated the Agrifos Site.
- 9) The Agrifos Site includes a mineral processing facility that extracts phosphorus from mineral ores to produce phosphoric acid.
- 10) Mineral processing wastes include phosphogypsum, which is accumulated as large piles of solids, known as gypsum stacks at the Agrifos Site, and process wastewater, which is disposed in the gypsum stacks. The placement of these wastes on the gypsum stacks is placement on the land and constitutes disposal within the meaning of RCRA and corresponding state law, and these materials are, therefore, solid wastes.
- 11) Solid wastes from the extraction, beneficiation, and processing of ores and minerals to generate a salable product are excluded from the definition of hazardous wastes pursuant to 40 C.F.R. § 261.4(b)(7), the "Bevill Exemption."

- 12) The Bevill Exemption applies to two wastes generated from phosphoric acid mineral processing operations: "(p)hosphogypsum from phosphoric acid production," 40 C.F.R. § 261.4(b)(7)(ii)(D); and "process wastewater from phosphoric acid production" operations through concentration to merchant grade acid ("MGA"), 40 C.F.R. § 261.4(b)(7)(ii)(P).
- 13) Mineral processing products that are saleable, either as raw materials to other types of industrial processes (e.g. chemical manufacturing such as monoammonium phosphate ("MAP") and diammonium phosphate ("DAP")) or as finished products, are considered final products. 54 Fed. Reg. 36,620, September 1, 1989. Chemical manufacturing wastes, cleaning wastes, scrubber wastes, and wastes generated after the first saleable product are not "process wastewater from phosphoric acid production" and do not qualify for the Bevill Exemption.
- 14) When Bevill-exempt phosphogypsum and process wastewater from phosphoric acid production are mixed with hazardous non-exempt wastes, if the resulting mixture continues to exhibit a hazardous characteristic of the non-exempt waste, then the entire mixture is a hazardous waste pursuant to the Bevill Mixture Rule, promulgated at 40 C.F.R. § 261.3(a)(2)(i).
- 15) Historically, 2,4 Dinitrotoluene ("DNT") from the adjacent facility owned and operated by Air Products and hazardous wastes from MAP/DAP fertilizer production and cleaning operations have been disposed of by ExxonMobil and Agrifos in the gypsum stacks.
- 16) The mixture of Bevill-exempt process wastewater and hazardous MAP/DAP wastes and cleaning wastes has a pH of less than 2.0 S.U., due to phosphoric and sulfuric acid concentration, and the wastewater contains levels of DNT above the regulated limit in 40 CFR § 261.24. The mixture accordingly is a hazardous waste and is not subject to the Bevill exemption.

- 17) Agrifos Fertilizer purchased the majority of the Agrifos Site (approximately 509 acres) in September 1998 from Mobil Oil Corporation through an Asset Purchase Agreement (“Agreement”), and purchased the remainder of the Agrifos Site (approximately 323 acres) from the Port of Houston in 2007.
- 18) Mobil Oil Corporation was subsequently merged into ExxonMobil (“Respondent”).
- 19) Pursuant to the Agreement, Respondent is responsible for closure of the existing gypsum stacks, proper disposal of the process wastewater, and certain sampling, analysis, and corrective action related to the closure of the gypsum stacks at the Agrifos Site.
- 20) Pursuant to the Agreement and a RCRA 7003 Administrative Order On Consent entered into in March 2008 among Respondent, Agrifos and EPA, Respondent currently is performing closure of the gypsum stacks and disposing of process wastewater via deep well injection.
- 21) Respondent owns and operates two Underground Injection Wells at property acquired from Agrifos for deep well injection of the process wastewater.
- 22) Respondent is a “person” as the term is defined at 30 TAC § 3.2 (25), 42 U.S.C. § 6903 (15) [40 CFR § 260.10, RCRA § 1004(15)].

III. **COMPLAINT**

Complainant alleges as follows:

- 23) Complainant incorporates by reference the facts, allegations, and conclusions of law contained in paragraphs 1-22 of this Complaint and CAFO.
- 24) The gypsum stacks are “Surface Impoundment[s]” as that term is defined at 30 TAC § 335.1(145) [40 CFR § 260.10].
- 25) The wastewater in the gypsum stacks is “discarded” as that term is defined at 30 TAC § 330.3(38) [40 C.F.R. 261.2] and “disposed” of as that term is defined at 30 TAC § 335.1(44) [40 CFR 261.2], by being discharged into a surface impoundment, a land-based unit.

- 26) The wastewater in the gypsum stacks is therefore a "solid waste" as that term is defined at 30 TAC § 335.1(138) [40 CFR 261.2].
- 27) The wastewater (a solid waste) has been mixed with hazardous wastes, has a pH of less than 2.0 S.U. (hazardous waste code D002), and contains DNT above the Toxicity Characteristic level identified at 40 C.F.R. § 261.24 (hazardous waste code of D030) and is therefore a "hazardous waste" as that term is defined at 30 TAC § 335.1(69) [40 CFR 261.3].
- 28) The gypsum stacks are "Hazardous Waste Management Unit[s]" as that term is defined at 30 TAC § 335.1(72) [40 CFR § 260.10].
- 29) Pursuant to 30 TAC § 335.2 [40 C.F.R. §§ 270.1, 270.10, 270.17, RCRA § 3005], owners and operators of hazardous waste management units must have permits during the active life of their facilities.
- 30) Respondent does not have a RCRA Permit to operate hazardous waste management units at the Agrifos Site.
- 31) Therefore, Respondent violated 30 TAC § 335.2 [40 C.F.R. §§ 270.1, 270.10, & 270.17, RCRA § 3005], by failing to have a RCRA Permit.

IV.
COMPLIANCE ORDER

- 32) Pursuant to 42 U.S.C. § 6928, Respondent is hereby ORDERED to take the following actions and provide evidence of compliance within the time period specified below:
- a) Respondent shall perform closure of the existing phosphogypsum stacks, including, without limitation, sampling, analysis, and corrective action, at the Agrifos Site pursuant to the requirements of Appendix 1 of this Order, *ExxonMobil Obligations at Agrifos Facility*.
 - b) Respondent shall dispose of the wastewater via permitted Underground Injection Control wells at the Agrifos Site, or otherwise in accordance with legal requirements

governing hazardous waste.

- c) Once deep injection of the wastewater is complete, Respondent shall permanently cap both Underground Injection Control wells, precluding the future use of both wells.
- d) Respondent shall establish and maintain Financial Assurance for the benefit of the EPA, pursuant to the requirements in Appendix 2 of this Order, to ensure coverage for: (a) Third-party Liability; (b) Phosphogypsum Stack System Closure and Long Term Care; and (c) Corrective Action. Respondent's inability to secure and/or maintain adequate Financial Assurance shall in no way excuse performance of the Work or any other requirement of this CAFO.
- e) In all instances in which this CAFO requires written submissions to TCEQ and/or EPA, each submission must be accompanied by the following certification signed by a "responsible official:"

"I certify that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to evaluate the information submitted. I certify that the information contained in or accompanying this submittal is true, accurate, and complete. As to those identified portion(s) of this submittal for which I cannot personally verify the accuracy, I certify that this submittal and all attachments were prepared in accordance with procedures designed to assure that qualified personnel properly gathered and evaluated the information submitted. Based on my inquiry of the person or persons who manage the site or those directly responsible for gathering the information, or the immediate supervisor of such person(s), the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

For the purpose of this certification, a "responsible official" of Respondent means a person with the authority to bind Respondent as to the truth, accuracy, and completeness of all certified information.

- f) All documents required under this CAFO shall be sent to the following persons:

Chuck Barnes (6EN-HC)

Hazardous Waste Enforcement Branch
U.S. EPA Region 6, Suite 1200
1445 Ross Ave.
Dallas, TX 75202-2733
(214) 665-6535

Rick Ciampi
Corrective Action Team 1/VCP-CA Section
Remediation Division, MC-127
Texas Commission on Environmental Quality
12100 Park 35 Circle
Austin, TX 78753

- g) A copy of all technical reports and plans required to be submitted to EPA and/or TCEQ pursuant to Appendix 1 also shall be sent to the following person:

Bob Allen, Manager Permits and Technical Services
Environmental Public Health Division
Harris County Public Health and Environmental Services
107 N. Munger
Pasadena, TX 77506

V.
CIVIL PENALTY AND
TERMS OF SETTLEMENT

A. PENALTY PROVISIONS

- 33) Pursuant to the authority granted in Section 3008 of RCRA, 42 U.S.C. § 6928, and upon consideration of the entire record herein, including the above referenced Findings of Fact and Conclusions of Law, which are hereby adopted and made a part hereof, and upon consideration of the extent of deviation from the statutory or regulatory requirement, the duration of the violations, the economic benefit derived from non-compliance, and the Respondent's compliance history and/or good faith efforts to comply with the applicable regulations, and the October 1990 RCRA Civil Penalty Policy (as revised in 2003), it is **ORDERED** that Respondent be assessed a civil penalty of **One Hundred Thousand Dollars and No Cents (\$100,000.00)**.

34) Within forty-five (45) days of Respondent's receipt of this fully executed CAFO, Respondent shall pay the assessed civil penalty by cashier's or certified check, made payable to "Treasurer, United States of America, EPA - Region 6" or in one of the alternatives provided in the collection information section below:

a) **CHECK PAYMENTS:**

U.S. Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
PO Box 979077
St. Louis, MO 63197-9000

b) **WIRE TRANSFERS:**

Wire transfers should be directed to the Federal Reserve Bank of New York

Federal Reserve Bank of New York
ABA = 021030004
Account = 68010727
SWIFT address = FRNYUS33
33 Liberty Street
New York, NY 10045

Field Tag 4200 of the Fedwire message should read "D 68010727 Environmental Protection Agency"

c) **OVERNIGHT MAIL:**

U.S. Bank
1005 Convention Plaza
Mail Station SL-MO-C2GL
St. Louis, MO 63101
Contact: Natalie Pearson, 314-418-4087

d) **ACH (also known as REX or remittance express)**

Automated Clearinghouse (ACH) for receiving U.S. currency
PNC Bank
808 17th Street, NW
Washington, DC 20074
Contact - Jesse White 301-887-6548
ABA = 051036706
Transaction Code 22 - checking
Environmental Protection Agency
Account 310006
CTX Format

e) ONLINE PAYMENT:

There is an Online Payment Option available through the Department of Treasury. This payment option can be accessed from the information below:

WWW.PAY.GOV
Enter "sfo 1.1" in the search field;
Open form and complete required fields.

35) The case name and docket number (In the Matter of ExxonMobil Oil Corporation., Docket No. RCRA 06-2010-1101) shall be clearly typed on the check to ensure proper credit.

Respondent shall send simultaneous notices of such payments, including copies of the cashier's check or certified check to the following:

Lorena S. Vaughn (6RC-D)
Regional Hearing Clerk
U.S. EPA - Region 6
1445 Ross Avenue
Dallas, TX 75202-2733

Ragan Broyles (6EN-II)
Associate Director, Hazardous Waste Enforcement Branch
U.S. EPA - Region 6
1445 Ross Avenue, Suite 1200
Dallas, TX 75202-2733

David Edelstein (6RC-ER)
RCRA Legal Branch
Office of Regional Counsel
U.S. EPA - Region 6
1445 Ross Avenue, Suite 1200
Dallas, TX 75202-2733

Your adherence to this request will ensure proper credit is given when penalties are received in the Region.

36) Pursuant to 31 U.S.C. § 3717 and 40 C.F.R. § 13.11, unless otherwise prohibited by law, EPA will assess interest and late payment penalties on outstanding debts owed to the United States and a charge to cover the costs of processing and handling a delinquent claim. Interest on the civil penalty assessed in this CAFO will begin to accrue on the effective date

of the CAFO and will be recovered by EPA on any amount of the civil penalty that is not paid within thirty (30) calendar days of the effective date of the CAFO and will be assessed at the rate of the United States Treasury tax and loan rate in accordance with 40 C.F.R.

§ 13.11(a). Moreover, the costs of the Agency's administrative handling of overdue debts will be charged and assessed monthly throughout the period the debt is overdue. 40 C.F.R.

§ 13.11(b). EPA will also assess a \$15.00 administrative handling charge for administrative costs on unpaid penalties for the first thirty (30) day period after the payment is due and an additional \$15.00 for each subsequent thirty (30) day period the penalty remains unpaid.

In addition, a penalty charge of up to six percent per year will be assessed monthly on any portion of the debt which remains delinquent more than ninety (90) days. 40 C.F.R.

§ 13.11(c). Should a penalty charge on the debt be required, it shall accrue from the first day payment is delinquent. 31 C.F.R. § 901.9(d). Other penalties for failure to make a payment may also apply.

B. GENERAL PROVISIONS

PARTIES BOUND

37) The provisions of this CAFO shall apply to and be binding upon the parties to this action, their officers, directors, agents, employees, successors, and assigns. The undersigned representative of each party to this CAFO certifies that he or she is fully authorized by the party whom he or she represents to enter into the terms and conditions of this CAFO and to execute and to legally bind that party to it.

STIPULATED PENALTIES

38) If Respondent fails or refuses to comply with any provision of this CAFO, Respondent shall pay stipulated penalties in the following amounts for each day during which each failure or refusal to comply continues:

| <u>Period of Failure to Comply</u> | <u>Penalty Per Violation Per Day</u> |
|------------------------------------|--------------------------------------|
| 1st through 15th day | \$ 1000.00 |
| 16th through 30th day | \$ 2000.00 |
| 31st day and beyond | \$ 3000.00 |

39) Penalties shall accrue from the date of the noncompliance until the date the violation is corrected, as determined by EPA.

40) The payment of stipulated penalties shall be made by mailing a cashier's check or certified check payable to the Treasurer of the United States, within thirty (30) days of receipt of a demand letter for payment to the following address:

Regional Hearing Clerk (6RC-D)
U.S. EPA, Region 6
Cincinnati Finance Center
PO Box 979077
St. Louis, MO 63197-9000

41) The case name and docket number (In the Matter of ExxonMobil Oil Corporation, Docket No. RCRA 06-2010-1101) shall be clearly typed on the check to ensure proper credit.

Respondent shall send simultaneous notices of such payments, including copies of the cashier's check or certified check to the following:

Lorena S. Vaughn (6RC-D)
Regional Hearing Clerk
U.S. EPA - Region 6
1445 Ross Avenue
Dallas, TX 75202-2733

Ragan Broyles (6EN-H)
Associate Director, Hazardous Waste Enforcement Branch
U.S. EPA - Region 6
1445 Ross Avenue, Suite 1200
Dallas, TX 75202-2733

David Edelstein (6RC-ER)
RCRA Legal Branch
Office of Regional Counsel
U.S. EPA - Region 6
1445 Ross Avenue, Suite 1200
Dallas, TX 75202-2733

Adherence to these procedures will ensure proper credit when payments are received.

In addition, the provisions of Paragraph 38 concerning interest, penalties, and administrative costs also apply.

- 42) The Respondent may dispute EPA's assessment of stipulated penalties by invoking the Dispute Resolution procedures unless the matter has already been in dispute resolution. Penalties shall accrue but need not be paid during the dispute resolution period. If the Respondent does not prevail upon resolution, all penalties from the date of accrual shall be due to EPA within 45 days of resolution of the dispute. If the Respondent prevails upon resolution, no penalties shall be paid.
- 43) Neither the invocation of dispute resolution nor the payment of penalties shall alter in any way Respondents' obligation to comply with the terms and conditions of this Order..

DISPUTE RESOLUTION

- 44) If Respondent objects to any decision or directive of EPA in regard to compliance with this CAFO, Respondent 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:

Ragan Broyles (6EN-H)
Associate Director, Hazardous Waste Enforcement Branch
U.S. EPA - Region 6
1445 Ross Avenue, Suite 1200
Dallas, TX 75202-2733

David Edelstein (6RC-ER)
RCRA Legal Branch
Office of Regional Counsel
U.S. EPA - Region 6
1445 Ross Avenue, Suite 1200
Dallas, TX 75202-2733

- 45) The Associate Director for Hazardous Waste Enforcement or his designee, and Respondent shall then have an additional thirty (30) calendar days from EPA's receipt of Respondent's written objections to attempt to resolve the dispute informally. If an agreement is reached between the Associate Director for Hazardous Waste Enforcement or his designee, and Respondent, the agreement shall be reduced to writing and signed by the Associate Director for Hazardous Waste Enforcement or his designee, and Respondent and incorporated by reference into this CAFO.
- 46) If no agreement is reached between the Associate Director for Hazardous Waste Enforcement or his designee and Respondent within that time period, the dispute shall be submitted to the Director of the Compliance Assurance and Enforcement Division or his/her designee ("Division Director") for formal dispute resolution. The Division Director and Respondent shall then have a 15-day period to resolve the dispute. If an agreement is reached between the Division Director and Respondent, the resolution shall be reduced to writing and signed by the Division Director and Respondent and incorporated by reference into this CAFO. If the Division Director and Respondent are unable to reach agreement within this 15-day period, the Division Director shall provide a written statement of EPA's decision to Respondent, which shall be binding upon Respondent and incorporated by reference into the CAFO.
- 47) If the Dispute Resolution process results in a modification of this CAFO, the modified CAFO must be approved by the Regional Judicial Officer and filed pursuant to the Modification Section.
- 48) If the Respondent does not agree with EPA's final decision and does not comply with such decision or directive, EPA reserves the right to seek enforcement of the decision, to seek

stipulated penalties, and/or to seek any other appropriate relief. Disputes under this CAFO are not subject to judicial review until such time as EPA seeks to enforce this CAFO.

FORCE MAJEURE

- 49) Respondent shall perform all requirements under this CAFO within the time limits established under this CAFO, unless the performance is delayed or made impossible by a force majeure. For purposes of this CAFO, a force majeure is defined as any event arising from causes beyond the anticipation or control of the Respondent, including but not limited to acts of nature and acts of people. Force majeure and impossibility do not include financial inability to complete the Work required under this CAFO or increased cost of performance or any changes in Respondent's business or economic circumstances. Force majeure does include inability to perform caused by a permit authority's delay in permit approval, or authorization necessary to performance when Respondent has timely and completely applied for or sought a permit, approval, or authorization to which it is entitled.
- 50) If any event occurs or has occurred that may delay or make impossible the performance of any obligation under this CAFO, whether or not caused by a force majeure event, Respondent shall notify EPA within 72 hours (by phone, email, or written correspondence) of when the Respondent knew or should have known that the event might cause a delay or impossibility of performance. Such notice shall: identify the event causing the delay or impossibility, or anticipated to cause delay or impossibility, and, if delay, the anticipated duration of the delay; provide Respondent's rationale for attributing such delay or impossibility to a force majeure event; state the measures taken or to be taken to prevent or minimize the delay or impossibility; estimate the timetable for implementation of those measures; and a statement as to whether, in the opinion of Respondent, such event may cause or contribute to an endangerment to public health or the environment. Respondent shall

undertake best efforts to avoid and minimize the delay or impossibility. Failure to comply with the notice provision of this action shall waive any claim of force majeure by the Respondent. Respondent shall be deemed to have notice of any circumstances of which its contractors had or should have had notice.

51) If EPA determines that a delay in performance or anticipated delay of a requirement under this CAFO is or was attributable to a force majeure, then the time period for performance of that requirement will be extended as deemed necessary by EPA and stipulated penalties shall not be assessed for any such delay. If EPA determines that impossibility of performance of a requirement under this CAFO is or was attributable to a force majeure, then the deadline for that requirement shall be waived, and the time periods for any other requirements that are directly affected by the impossibility of performance shall be extended as deemed necessary by EPA, and stipulated penalties shall not be assessed for any waived or extended requirements. If EPA determines that the delay or impossibility, or anticipated delay or impossibility, has been or will be caused by a force majeure, then EPA will notify Respondent, in writing, of the length of the extension or waivers, if any, for performance of such obligations affected by the force majeure. Any such extensions or waivers shall not alter Respondent's obligation to perform or complete other tasks required by the CAFO which are not directly affected by the force majeure.

52) If EPA disagrees with Respondent's assertion of a force majeure, then Respondent may elect to invoke the dispute resolution provision, and shall follow the procedures set forth in the Dispute Resolution section. In any such proceeding, Respondent shall have the burden of demonstrating by a preponderance of the evidence that the delay or impossibility, or anticipated delay or impossibility, has been or will be caused by a force majeure, that the duration of the delay or the extension or waiver sought was or will be warranted under the

circumstances, and that best efforts were exercised to avoid and mitigate the effects of the delay or impossibility. If Respondent satisfies this burden, then the time for performance of such obligation will be extended by EPA for such time as is necessary to complete such obligation as determined by EPA, or waived if performance is impossible, and no stipulated penalties shall be assessed for any such delay, extension, or waiver.

NOTIFICATION

53) Unless otherwise specified elsewhere in this CAFO, whenever written notice is required to be given, whenever a report or other document is required to be forwarded by one party to another, or whenever a submission or demonstration is required to be made, it shall be directed to the individuals specified below at the addresses given (in addition to any other notices required by law or regulation), unless these individuals or their successors give notice in writing to the other parties that another individual has been designated to receive the communication:

EPA: Ragan Broyles (6EN-H)
Associate Director, Hazardous Waste Enforcement Branch
U.S. EPA Region 6, Suite 1200
1445 Ross Ave.
Dallas, TX 75202-2733
Broyles.ragan@epa.gov

Respondent: Forrest E. "Buddy" Hand
ExxonMobil Environmental Services
Rm GP6-1014
12450 Greenspoint Drive
Houston, TX 77060
forrest.e.hand@exxonmobil.com

MODIFICATION

54) The terms, conditions, and compliance requirements of this CAFO may not be modified or amended except upon the written agreement of both parties, and such modification or amendment being filed with the Regional Hearing Clerk. Where a modification agreed upon

by both parties constitutes a material change to any term of this CAFO, it shall be effective upon approval by a Regional Judicial Officer.

RETENTION OF ENFORCEMENT RIGHTS

- 55) EPA does not waive any rights or remedies available to EPA for any other or future violations by Respondent of Federal or State laws, regulations, or permitting conditions.
- 56) Except as specifically provided in this CAFO, nothing herein shall limit the power and authority of EPA, Texas, or the United States to take, direct, or order all actions to protect public health, welfare, or the environment, or prevent, abate, or minimize an actual or threatened release of hazardous substances, pollutants, contaminants, on, at, or from the Agrifos Site. Furthermore, nothing in this CAFO shall be construed to prevent or limit EPA's civil and criminal authorities, or that of other Federal, State, or local agencies or departments to obtain penalties or injunctive relief under other Federal, State, or local laws or regulations.

INDEMNIFICATION OF EPA

- 57) Neither EPA, Texas, nor the United States shall be liable for any injuries or damages to person or property resulting from the acts or omissions of Respondent, its officers, directors, employees, agents, receivers, trustees, successors, assigns, or contractors in carrying out the activities required by this CAFO, nor shall EPA, Texas, or the United States be held out as a party to any contract entered into by Respondent in carrying out the activities required by this CAFO.

RECORD PRESERVATION

- 58) Respondent shall preserve, during the pendency of this CAFO and five years after termination, all records and documents in its possession or in the possession of its divisions, employees, agents, contractors, or successors which are required to be prepared pursuant to this CAFO regardless of any document retention policy to the contrary.

COSTS

59) Each party shall bear its own costs and attorney's fees. Furthermore, Respondent specifically waives its right to seek reimbursement of its costs and attorney's fees under the Equal Access to Justice Act, 5 U.S.C. § 504, as amended by the Small Business Regulatory Enforcement Fairness Act, 5 U.S.C. § 801 *et. seq.*, and any regulations promulgated pursuant to those Acts.

TERMINATION

60) At such time as Respondent believes that it has complied with all terms and conditions of this CAFO, it may request that EPA concur whether the requirements of this CAFO have been satisfied. Such request shall be in writing and shall provide the necessary documentation to establish whether there has been full compliance with the terms and conditions of this CAFO. EPA will respond to said request in writing within 90 days of receipt of the request. This CAFO shall terminate when all actions required to be taken by this CAFO have been completed, and Respondent has been notified by the EPA in writing that this CAFO has been satisfied and terminated.

EFFECT ON RCRA 7003 ORDER

61) The terms of the RCRA 7003 Administrative Order On Consent ("AOC") entered into in March 2008 among Respondent, Agrifos and EPA (as subsequently amended), shall remain in effect, provided, however, than any term in the RCRA 7003 AOC that imposes an obligation on Respondent (as the only affected Respondent) that is inconsistent with the requirements of this CAFO shall be deemed to be replaced by the comparable term/requirement in this CAFO.

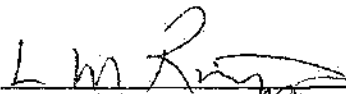
EFFECTIVE DATE

62) This CAFO, and any subsequent modifications, become effective upon filing with the Regional Hearing Clerk.

THE UNDERSIGNED PARTIES CONSENT TO THE ENTRY OF THIS CONSENT AGREEMENT AND FINAL ORDER:

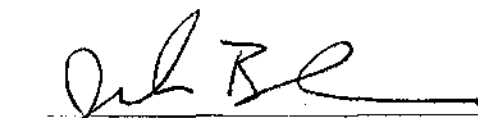
FOR RESPONDENT:

Date: 24.5.7 2010


ExxonMobil Oil Corporation

FOR THE COMPLAINANT:

Date: 9.24.10


John Blevins
Director
Compliance Assurance and
Enforcement Division
US EPA, Region 6

FINAL ORDER

Pursuant to the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, 40 C.F.R. Part 22, the foregoing Consent Agreement is hereby ratified. This Final Order shall not in any case affect the right of EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law. This Final Order shall resolve only those causes of action alleged herein. Nothing in this Final Order shall be construed to waive, extinguish or otherwise affect Respondent's (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. Respondent is ordered to comply with the terms of settlement and the civil penalty payment instructions as set forth in the Consent Agreement. Pursuant to 40 C.F.R. § 22.31(b) this Final Order shall become effective upon filing with the Regional Hearing Clerk.

Date: September 27, 2010



Regional Judicial Officer

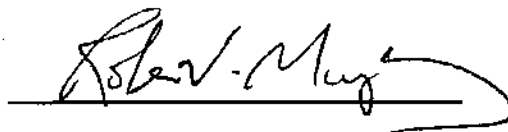
CERTIFICATE OF SERVICE

I hereby certify that on the 27th day of Sept., 2010, the original of the foregoing Consent Agreement and Final Order ("CAFO") was hand delivered to the Regional Hearing Clerk, U.S. EPA - Region 6, 1445 Ross Avenue, Dallas, Texas 75202-2733, and that a true and correct copy of the CAFO was sent to the following by the method identified below:

Forrest E. "Buddy" Hand
ExxonMobil Environmental Services
Rm GP6-1014
12450 Greenspoint Drive
Houston, TX 77060

Jeffrey I. Butvinik
Coordinator - Compliance & Training
Environmental & Safety Law Group
ExxonMobil Law Department
Room 3D1707
3225 Gallows Road
Fairfax, VA 22037

CERTIFIED MAIL - RETURN RECEIPT REQUESTED: 7010 1060 0002 1871 8495



APPENDIX 1
EXXONMOBIL OBLIGATIONS AT AGRIFOS FACILITY

[This CAFO includes Attachments A, B, D and F only.]

ATTACHMENT A: SITE ASSESSMENT, REPORTING, AND CORRECTIVE MEASURES

SAMPLING AND ANALYSIS

- 1) The Respondent shall conduct an Affected Property Assessment meeting the requirements of the Texas Risk Reduction Program (TRRP) at 30 TAC 350 for phosphogypsum stacks and adjacent areas subject to closure under this Order. The Affected Property Assessment shall include, at a minimum, the major work elements specified in this Attachment, to the extent consistent with 30 TAC 350 for closure of an industrial solid waste landfill that received waste disposed on property owned or otherwise effectively controlled by the owner of the manufacturing plant (no permit required) as described in 30 TAC 335. Respondent shall conduct assessments to evaluate environmental conditions as required to support the stack closure. This Order does not require Respondent to conduct assessments necessary to evaluate, or to support response actions for, environmental conditions not associated with stack closure or spills and/or contamination resulting from releases occurring from the stacks.
- 2) Respondent shall conduct a sampling and analysis program to determine the presence, magnitude, extent, direction, and rate of movement of any hazardous waste, hazardous constituents, and/or constituents of concern ("COC") that may be migrating from a stack beyond the phosphogypsum stack boundary. Target COCs shall be determined in accordance with the requirements of 30 TAC 350 and shall at a minimum include contaminants that are reasonably likely to be associated with the phosphogypsum stacks undergoing closure subject to this Order. Target COC's must include 2,4 Dinitrotoluene ("DNT"), sulfates, fluorine, arsenic, cadmium, and chromium. The Respondent may implement the Affected Property Assessment in a multi-phased approach. A schedule for implementation of an Affected Property Assessment associated with a phosphogypsum stack being closed under this Order shall be submitted to the TCEQ and EPA prior to beginning the assessment and within sixty (60) days of the effective date of this Order¹, or for Affected Property Assessments underway at the effective date of this Order, within sixty (60) days following the effective date of this Order. Implementation of an Affected Property Assessment shall begin no later than ninety (90) days from the effective date of this Order.

The Affected Property Assessments conducted under this Attachment shall include assessments to evaluate spills and/or contamination resulting from releases occurring from operations at the phosphogypsum stacks.²

The Affected Property Assessment shall include the following subtasks to the extent consistent with

¹ The schedule for implementation of an Affected Property Assessment and closure for Stack 1 will be developed in connection with Agrifos' notification to Respondent that it has ceased its activities at that stack.

² In addition to the work required pursuant to this CAFO, Respondent acknowledges that additional work will be required with respect to other areas of the Agrifos Site. Respondent's obligation to conduct site assessment and/or remediation work beyond closure, post-closure, and corrective action at and around existing phosphogypsum stacks shall be governed by the terms of the Asset Purchase Agreement between Respondent and Agrifos Fertilizer. Pursuant to the Asset Purchase Agreement, Respondent is conducting a separate Affected Property Assessment and will prepare and submit to TCEQ for approval a separate Affected Property Assessment Report ("APAR") relating to the Plant Site at the Agrifos facility.

30 TAC 350:

(a) As appropriate, a sediment evaluation and/or soil sampling and analysis program will be conducted, as described below:

- i.) Sediment evaluation if an assessment of groundwater beyond the perimeter of a phosphogypsum stack indicates that sediment may be affected by groundwater migrating from the stack to sediment via a groundwater-to-sediment migration pathway, determined in accordance with applicable TCEQ screening criteria.
- ii.) Soil sampling and analysis if an assessment of groundwater indicates the presence of potential source areas in unsaturated surface and subsurface soils beyond the perimeter of a phosphogypsum stack. Sampling, analysis and remediation of soil contaminated from the phosphogypsum stack shall be the responsibility of Respondent.

(b) A surface water sampling and analysis program if an assessment of groundwater beyond the perimeter of a phosphogypsum stack determines that surface water may be affected by groundwater migrating from the stack to surface water via a groundwater-to-surface water migration pathway, as determined in accordance with applicable TCEQ screening criteria. If indicated, a surface water sampling and analysis program will be conducted to determine the presence, nature and extent of potential surface water contamination related to groundwater migrating from the stack.

(c) A groundwater sampling and analysis program to characterize the groundwater quality and the extent of any groundwater contamination, both vertically and horizontally, that may be migrating from a phosphogypsum stack subject to closure under this Order. The groundwater sampling and analysis program shall include an assessment of groundwater conditions adjacent to the perimeter of a phosphogypsum stack system. If indicated by the results of the perimeter assessment, additional investigations in the vicinity of perimeter locations where analytical results indicate an exceedance of applicable TCEQ assessment criteria will be conducted.

(d) If sediment, soil, surface water, and/or groundwater sampling adjacent to the perimeter of a phosphogypsum stack system demonstrates no contamination in exceedance of applicable TCEQ assessment criteria, Respondent shall conduct at least one round of sampling in the areas/waters beyond the perimeter to verify that further sampling is not necessary.

(e) A field survey to locate potential receptors, including water wells and surface waters (wetlands, creeks or lakes) to at least 500 feet beyond the boundary of the affected property, and a records survey to identify all water wells and surface water bodies (wetlands, creeks or lakes) within ½ mile of the limits of groundwater which contains COCs in excess of an applicable assessment level, screening level or action level.

(f) Assessment will be managed in accordance with this CAFO, consistent with accepted standards and TCEQ guidance applicable to conducting an Affected Property Assessment. The scope of the assessment will be limited to conditions at/around or emanating from the existing

gypsum stacks.

(g) Assessments will be conducted in accordance with TCEQ requirements for sample collection, laboratory analysis, data validation and data quality documentation applicable to an Affected Property Assessment.

(h) Data will be compiled, evaluated and reported in an Affected Property Assessment Report in accordance with the TCEQ data management, evaluation and reporting requirements applicable to an Affected Property Assessment.

(i) A Community Relations Plan will not be required unless, during the conduct of the work, it is determined that development of a Community Relations Plan becomes appropriate.

(j) A schedule for the initiation of the Affected Property Assessment, quarterly progress reports, and the Affected Property Assessment Report. Quarterly progress reports shall be submitted to TCEQ and EPA within forty-five (45) days after the end of each calendar quarter, beginning after the Effective Date of this CAFO and continuing for two (2) years from that date.

- 3) Respondent shall prepare and maintain on file at the site, a Health and Safety Plan with respect to the Work to be performed.
- 4) The Respondent shall implement the Affected Property Assessment(s) in accordance with the submitted schedule(s), subject to requests for extension based on reasonable cause. Upon completion of an Affected Property Assessment, the Respondent shall submit an Affected Property Assessment Report to the TCEQ and EPA for review. Prior to approving any Affected Property Assessment Report, the TCEQ shall consult with EPA. Upon approval of the Affected Property Assessment Report by the TCEQ, the Respondent shall, if appropriate, submit a schedule for preparation of a Response Action Plan in accordance with the requirements of 30 TAC 350.
- 5) The TCEQ and EPA acknowledge that the Respondent may have completed some of the tasks required by this Attachment and/or that the Respondent has available some of the information and data required by this Attachment. This previous work may be used to meet some of the requirements of this Attachment, upon submission to and written approval by the TCEQ. Prior to approving any submission made pursuant to this Paragraph, the TCEQ shall consult EPA.
- 6) The Respondent shall develop site-specific background levels for sulfates, arsenic, cadmium, chromium, and any other minerals, metals, and naturally occurring materials for use in determining the appropriate Critical Protective Concentration Level (Critical PCL) for a particular constituent of concern. For soils, the Respondent may also elect to compare results to the Texas-Specific Soil Background Concentrations specified in 30 TAC 350.

ADDITIONAL WORK

- 7) Based on the results of investigations conducted as part of the Affected Property Assessment, the

TCEQ and/or EPA may determine that additional monitoring, testing, analysis, and/or reporting is necessary to ascertain the nature and extent of any hazard to human health and the environment that may be presented by the presence or release of hazardous wastes and/or hazardous constituents at or from a phosphogypsum stack subject to closure under this Order. If the TCEQ and/or EPA determine that such additional Work is necessary, the TCEQ and/or EPA will notify the Respondent in writing and specify the basis for its determination that additional Work is necessary.

MINIMUM QUALIFICATIONS FOR PERSONNEL

- 8) All Work performed by or for the Respondent pursuant to this Attachment shall be under the direction and supervision of an individual who has demonstrated expertise in hazardous waste site (RCRA/CERCLA) investigation. Additionally, the Respondent shall ensure that when a license is required, only licensed individuals shall be used to perform any Work required by this Attachment.

QUALITY ASSURANCE/QUALITY CONTROL

- 9) All new sampling and analysis conducted under this Attachment shall follow applicable TCEQ standards for sample analysis. The contact person(s), name(s), address(es), and telephone number(s) of the analytical laboratories the Respondent proposes shall be provided to the TCEQ and EPA for documentation.
- 10) All Work conducted under this Attachment shall meet the TCEQ data quality objectives for each data collection activity to ensure that data of known and appropriate quality are obtained and that data are sufficient to support their intended use(s).
- 11) The Respondent shall monitor to ensure that high quality data are obtained by its consultant or contract laboratories. The TCEQ and/or EPA may reject any data that does not meet the requirements applicable to the intended use of the data, or approved analytical methods and may require re-sampling and additional analysis.
- 12) The Respondent shall ensure that appropriate chain-of-custody procedures are followed. Such procedures shall include, but not be limited to: standardized field tracking reports to establish sample custody in the field prior to shipment, prepared sample labels containing all the information necessary for sample tracking; identification of responsible party at a laboratory who is authorized to sign for incoming field samples, obtain documents of shipment, and verify the data entered into the sample custody records; use of sample custody log consisting of serially numbered standard lab-tracking report sheets; and specification of laboratory sample custody procedures for sample handling, storage and dispersment for analysis.

- 13) TCEQ and/or EPA may conduct a performance and Quality Assurance/Quality Control ("QA/QC") audit of the laboratories chosen by the Respondent before, during, or after sample analyses. Upon request by the TCEQ and/or EPA, the Respondent shall have its laboratory perform analyses of samples provided by the TCEQ and/or EPA to demonstrate laboratory performance. If the audit reveals deficiencies in a laboratory's performance or QA/QC, re-sampling and additional analysis may be required.
- 14) To the extent Respondent can authorize such entry onto the Agrifos Site, the TCEQ, EPA, and their representatives, including attorneys, contractors, and consultants, shall have the right of entry onto the Agrifos Site at all reasonable times, upon presentation of appropriate identification, to:
 - (a) monitor the progress of activities required under this CAFO;
 - (b) verify any data or information submitted to the TCEQ and EPA in accordance with the terms of this CAFO;
 - (c) obtain samples and, upon request, splits of any samples taken by Respondent or its representatives, contractors, or consultants;
 - (d) obtain documentary evidence, including photographs and similar data; and
 - (e) assess Respondent's compliance with this CAFO.
- 15) Upon request, Respondent shall provide TCEQ, EPA, or their authorized representatives splits of any samples taken by Respondent. Upon request, TCEQ and EPA shall provide Respondent splits of any samples taken by TCEQ, EPA, or their authorized representatives. All parties will make "best efforts" to request splits with 5 days notice prior to sampling.
- 16) Respondent shall retain, and shall require its contractors and agents to preserve, all non-identical copies of all documents, records, or other information (including documents, records, emails or other information in electronic form) in its or its contractors or agents possession or control, or that come into its or its contractors' or agents' possession or control, and that relate to Respondent's performance of its obligations under this CAFO for a period of five (5) years after the creation of such documents, records or other information. This information-retention requirement shall apply regardless of any contrary corporate or institutional policies or procedures. At any time during this information-retention period, upon request by TCEQ or EPA, Respondent shall provide copies of any documents, records, or other information required to be maintained under this Paragraph, except where such document or other information is subject to a legal privilege. Respondent shall not dispose of materials following the expiration of its five (5) year retention period more often than once a year.
- 17) At the conclusion of the information-retention period provided in the preceding Paragraph, Respondent shall notify the TCEQ and EPA at least ninety (90) days prior to the destruction of any documents, records, or other information subject to the requirements of the preceding Paragraph and, upon request by the TCEQ or EPA, Respondent shall deliver any such documents, records, or other information to TCEQ or EPA. Respondent may assert that certain documents, records, or other information are privileged under the attorney-client privilege or any other privilege recognized by federal law, provided that Respondent shall not assert a legal privilege for any data, records or information (excluding legal advice) generated or received in connection with Respondent's obligations pursuant to the requirements of this CAFO. If Respondent asserts a privilege, it shall provide the following: (1) the title of the document, record, or information; (2)

the date of the document, record, or information; (3) the name and title of each author of the document, record, or information; (4) the name and title of each addressee and recipient; (5) a description of the subject of the document, record, or information; and (6) the privilege asserted by Respondent. If TCEQ or EPA and Respondent disagree as to whether a particular document or record is privileged, Respondent shall deliver such document or record to the TCEQ or EPA, unless it invokes dispute resolution pursuant to the Dispute Resolution section of this CAFO, in which case, Respondent shall not have an obligation to deliver the document or record until a final determination is made, pursuant to the procedures set forth in the Dispute Resolution section, that such document or record is not privileged.

- 18) Respondent may also assert that information required to be provided under these Paragraphs is protected as Confidential Business Information (CBI) under 40 C.F.R. Part 2. As to any information that Respondent seeks to protect as CBI, Respondent shall follow the procedures set forth in 40 C.F.R. Part 2.
- 19) This CAFO in no way limits or affects any right of entry and inspection, or any right to obtain information, held by the TCEQ or EPA pursuant to applicable federal or state laws, regulations, or permits, nor does it limit or affect any duty or obligation of Respondent to maintain documents, records, or other information imposed by applicable federal or state laws, regulations, or permits.

SAMPLING AND DATA/DOCUMENT AVAILABILITY

- 20) The Respondent shall submit to the TCEQ and EPA the results of all sampling and/or tests or other data generated by, or on behalf of, the Respondent in accordance with the requirements of 30 TAC 350 pursuant to this CAFO.
- 21) The Respondent shall notify the TCEQ and EPA, in writing or by electronic mail, at least ten (10) days in advance of initiating any sampling related to an Affected Property Assessment field work for a phosphogypsum stack subject to closure pursuant to this Order. At the request of the TCEQ and/or EPA, the Respondent shall provide, or allow the TCEQ and/or EPA or its authorized representatives to take, split and/or duplicate any of the samples collected by the Respondent pursuant to this Attachment. Similarly, at the request of the Respondent, the TCEQ and/or EPA will allow the Respondent or its authorized representatives to take split and/or duplicate any of the samples collected by the TCEQ and/or EPA under this Attachment, provided that such sampling shall not delay the TCEQ's and/or EPA's proposed sampling activities. Nothing in this Attachment shall limit or otherwise affect the TCEQ's and/or EPA's authority to collect samples pursuant to applicable law, including, but not limited to, RCRA and/or CERCLA.

RISK ASSESSMENT PLAN

- 22) A Human Health Risk Assessment will be conducted as an integral part of the Affected Property Assessment, and will be reported in the Affected Property Assessment Report, as required by 30 TAC 350. A determination regarding the applicability of an ecological risk assessment for an Affected Property Assessment conducted pursuant to this Attachment will be made in accordance with the requirements of 30 TAC 350. If applicable, an ecological risk assessment will be conducted and reported in the Affected Property Assessment, or in appropriate alternate

documents, in accordance with the requirements of 30 TAC 350.

RESPONSE ACTION PLAN

23) The Respondent shall develop and submit a Response Action Plan (RAP) to the TCEQ and to EPA in accordance with 30 TAC 350 that incorporates the design and performance standards set forth in Attachment D for a phosphogypsum stack subject to closure under this Order. A RAP, or RAPs, shall also be prepared, as appropriate, for environmental conditions adjacent to and associated with a phosphogypsum stack that are not adequately addressed by the phosphogypsum stack closure requirements specified in Attachment D, as required by 30 TAC 350.

Response actions shall address soil, sediment, surface water and groundwater associated with contamination resulting from releases from the phosphogypsum stacks subject to closure under this Order, and determined to meet the criteria for development of a response action in accordance with 30 TAC 350, resulting from the following:

- i.) Groundwater contamination beyond the perimeter of a stack resulting from groundwater emanating from a phosphogypsum stack;
- ii.) Sediment contamination by groundwater migrating from a phosphogypsum stack by means of a complete groundwater-to-sediment migration pathway;
- iii.) Soil contaminated by groundwater migrating from a phosphogypsum stack to soil beyond the limits of the stack; and
- iv.) Surface water contaminated by groundwater migrating from a phosphogypsum stack to surface water by means of a complete groundwater-to-surface water migration pathway.

A RAP shall include an evaluation of existing site conditions and response objectives established in accordance with the requirements of 30 TAC 350, and propose either no further action or specific response actions selected to achieve the response objectives. RAP(s) shall be submitted to the TCEQ for review and approval. Prior to approving any RAP, the TCEQ shall consult EPA.

(a) The Respondent shall implement the Work specified in a RAP in accordance with a schedule presented in the approved RAP. The RAP must contain adequate information to enable the TCEQ and/or EPA to make a decision as to the adequacy and appropriateness of the proposed response action(s).

(b) The Respondent will be notified by the TCEQ and/or EPA, upon review of the RAP, if no further action is required or which selected remedies need to be implemented. If response actions are proposed, the RAP shall include sections addressing: engineering design; construction, operation and maintenance; monitoring and performance monitoring; waste management; health and safety plan; schedule; response action goals; reporting requirements; and public participation, as appropriate and applicable, in accordance with the requirements of 30 TAC 350. If determined that response actions are needed, the TCEQ and/or EPA may