



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

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

SEP 22 2015

CERTIFIED MAIL  
RETURN RECEIPT REQUESTED

Christine M. Morgan, Esq.  
Jones Day  
1420 Peachtree Street NE  
Suite 800  
Atlanta, Georgia 30309-3053

Re: Southern States Phosphate and Fertilizer Company  
Consent Agreement and Final Order  
Docket Number: CERCLA-04-2015-2030(b)

Dear Ms. Morgan:

Enclosed is a copy of the ratified Consent Agreement and Final Order (CAFO) in the above-referenced matter. The original CAFO has been filed with the Regional Hearing Clerk and served on the parties as directed in Section 22.6 of the Consolidated Rules of Practice, 40 C.F.R. Part 22. To ensure proper processing, the Respondent's Name and Docket Number for this case, identified above and in the CAFO, should be noted on any cashier's or certified check submitted in payment of the penalty.

Also enclosed is a copy of a document entitled "Notice of Securities and Exchange Commission Registrants' Duty to Disclose Environmental Legal Proceedings." This document puts Southern States Phosphate and Fertilizer Company on notice of its potential duty to disclose to the Securities and Exchange Commission any environmental enforcement actions taken by the U. S. Environmental Protection Agency Region 4. Where used in the document "SEC" refers to the Securities and Exchange Commission.

Should you or your client have any questions about this matter, or your client's compliance status in the future, please contact Ms. Ellen Rouch of the EPA Region 4 staff at (404) 562-9575.

Sincerely,

A handwritten signature in blue ink, appearing to read "Anthony G. Toney".

Anthony G. Toney  
Chief  
Chemical Safety and Enforcement Branch

Enclosures

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 4**

**IN THE MATTER OF:** )  
 )  
Southern States Phosphate ) **Docket Number:** CERCLA-04-2015-2030(b)  
and Fertilizer Company )  
 )  
Respondent. )  
\_\_\_\_\_ )

2015 SEP 21 9:00 AM  
EPA REGION 4

**CONSENT AGREEMENT AND FINAL ORDER**

**I. Nature of the Action**

1. This is a civil penalty proceeding pursuant to Section 109 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), as amended, 42 U.S.C. § 9609 and Section 325 of the Emergency Planning and Community Right-to-Know Act (EPCRA), 42 U.S.C. § 11045 and pursuant to the Consolidated Rules of Practice Governing Administrative Assessment of Civil Penalties, and the Revocation/Termination or Suspension of Permits (Consolidated Rules), codified at 40 C.F.R. Part 22. Complainant is the Director of the Air, Pesticides and Toxics Management Division, Region 4, United States Environmental Protection Agency (EPA). Respondent is Southern States Phosphate and Fertilizer Company.

2. The authority to take action under Section 109 of CERCLA, 42 U.S.C. § 9609 is vested in the Administrator of EPA. The Administrator of EPA has delegated this authority under CERCLA to the Regional Administrators by EPA Delegations 14-31 dated May 11, 1994. The Regional Administrator, Region 4, has redelegated to the Director, Air, Pesticides and Toxics Management Division, the authority under CERCLA by EPA Region 4 Delegation 14-31 dated March 8, 1999, and updated August 6, 2004. Pursuant to these delegations, the Director of the Air, Pesticides and Toxics Management Division has the authority to commence an enforcement action as the Complainant in this matter.

3. Complainant and Respondent have conferred for the purpose of settlement pursuant to 40 C.F.R. § 22.18(b) and desire to resolve this matter and settle the allegations described herein without a formal hearing. Therefore, without the taking of any evidence or testimony, the making of any argument, or the adjudication of any issue in this matter, and in accordance with 40 C.F.R. §§ 22.13(b) and 22.18(b), this Consent Agreement and Final Order (CAFO) will simultaneously commence and conclude this matter.

**II. Preliminary Statements**

4. Respondent, Southern States Phosphate and Fertilizer Company, is a corporation doing business in the State of Georgia.

5. Respondent is a “person” and is the “owner or operator” of a “facility” as those terms are defined in Section 101(21) of CERCLA, 42 U.S.C. § 9601(21), Section 101 (20)(A) of CERCLA, 42 U.S.C. § 9601(20)(A), and Section 101(9) of CERCLA, 42 U.S.C. § 9601(9), respectively.

6. Respondent’s facility is located at 1600 East President Street, Savannah, Georgia.

### **III. EPA’s Allegations of Violations**

7. Section 102(a) of CERCLA, 42 U.S.C. § 9602(a), required the Administrator of EPA to publish a list of substances designated as hazardous substances which, when released into the environment, may present substantial danger to public health or welfare or the environment and to promulgate regulations establishing the quantity of any hazardous substance the release of which was required to be reported under Section 103(a) of CERCLA, 42 U.S.C. § 9603(a). EPA has published and amended such a list, including the corresponding reportable quantities (RQ) for those substances. This list which is codified at 40 C.F.R. Part 302, was initially published on April 4, 1985 (50 Fed. Reg. 13474) and is periodically amended.

8. Section 103(a) of CERCLA, 42 U.S.C. § 9603(a), and the regulations found at 40 C.F.R. § 302.6, require a person in charge of a facility or vessel to immediately notify the National Response Center (NRC), as soon as he or she has knowledge of a release of a hazardous substance from such facility or vessel in an amount equal to, or greater than the RQ.

9. Respondent was in charge of the facility during the relevant period described below.

10. On September 21, 2014, a release of sulfuric acid above the RQ occurred at the facility.

11. Sulfuric acid is a “hazardous substance” as that term is defined by Section 101(14) of CERCLA, 42 U.S.C. § 9601(14), with an RQ of 1,000 pounds, as specified in 40 C.F.R. § 302.4.

12. Respondent violated the notification requirements of Section 103(a) of CERCLA, 42 U.S.C. § 9603(a), and the applicable CERCLA regulations, 40 C.F.R. § 302.6, by failing to immediately notify the NRC as soon as Respondent had knowledge of the release of sulfuric acid in an amount equal to or greater than its RQ at Respondent’s facility and is therefore subject to the assessment of penalties under Section 109 of CERCLA, 42 U.S.C. § 9609.

13. Pursuant to Section 109 of CERCLA, 42 U.S.C. § 9609, and 40 C.F.R. Part 19, EPA may assess a penalty not to exceed \$37,500 for each violation of Section 103(a) of CERCLA, 42 U.S.C. § 9603(a), that occurred after December 6, 2013. Each day a violation of Section 103 continues constitutes a separate violation. Civil penalties under Section 109 of CERCLA, 42 U.S.C. § 9609, may be assessed by Administrative Order.

#### **IV. Consent Agreement**

14. For the purposes of this CAFO, Respondent admits the jurisdictional allegations set out above but neither admits nor denies the factual allegations set out above.
15. Respondent waives any right to contest the allegations and its right to appeal the proposed final order accompanying the Consent Agreement.
16. Respondent consents to the assessment of and agrees to pay the civil penalty as set forth in this CAFO.
17. Respondent has agreed to undertake and complete a Supplemental Environmental Project (SEP) in accordance with Section VI of this CAFO.
18. Respondent certifies that as of the date of its execution of this CAFO, it is in compliance with all relevant requirements of CERCLA.
19. Compliance with this CAFO shall resolve the allegations of violations contained herein. In accordance with 40 C.F.R. § 22.18(c), compliance with this CAFO only resolves Respondent's liability for federal civil penalties for the allegations in Section III of this CAFO and does not affect the right of the EPA or U.S. to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violation of law. This CAFO does not waive, extinguish or otherwise affect Respondent's obligation to comply with all applicable provisions of CERCLA or other applicable laws and regulations.
20. Complainant and Respondent agree to settle this matter by their execution of this CAFO. The parties agree that the settlement of this matter is in the public interest and that this CAFO is consistent with the applicable requirements of CERCLA.

#### **V. Final Order**

21. Respondent shall pay a civil penalty of **SEVEN THOUSAND NINE HUNDRED SIXTY-NINE DOLLARS (\$7,969)** for the CERCLA violation which shall be paid within thirty (30) days of the effective date of this CAFO.
22. Respondent shall pay the CERCLA civil penalty by forwarding a cashier's or certified check, payable to "EPA Hazardous Substance Superfund" to one of the following addresses:

**BY MAIL**

U.S. Environmental Protection Agency  
Superfund Payments  
Cincinnati Finance Center  
P.O. Box 979076  
St. Louis, Missouri 63197-9000

**BY OVERNIGHT**

U.S. Environmental Protection Agency  
Government Lockbox 979076  
1005 Convention Plaza  
Mail Station SL-MO-C2-GL  
St. Louis, MO 63101  
(314) 425-1818

The check shall reference on its face the name and the Docket Number of the CAFO.

23. At the time of payment, Respondent shall send a separate copy of the check, and a written statement that payment has been made in accordance with this CAFO, to the following persons at the following addresses:

Regional Hearing Clerk  
U.S. EPA, Region 4  
61 Forsyth Street, S.W.  
Atlanta, Georgia 30303

Vinson Poole  
U.S.EPA, Region 4  
Air, Pesticides & Toxics Management Division  
61 Forsyth Street, S.W.  
Atlanta, Georgia 30303

Saundi Wilson  
U.S. EPA, Region 4  
Office of Environmental Accountability  
61 Forsyth Street, S.W.  
Atlanta, Georgia 30303

24. For the purposes of state and federal income taxes, Respondent shall not be entitled, and agrees not to attempt, to claim a deduction for any civil penalty payment made pursuant to this CAFO. Any attempt by Respondent to deduct any such payments shall constitute a violation of this CAFO.

#### **VI. Supplemental Environmental Project**

25. Respondent shall undertake and complete the following Emergency Planning and Preparedness project within 45 days of the effective date of this CAFO. Respondent shall expend no less than **THIRTY THOUSAND NINE HUNDRED THIRTY-FIVE DOLLARS (\$30,935)** for the purchase of the following equipment for donation to the City of Savannah Fire and Emergency Services:

<u>Quantity</u>	<u>Description</u>
4	SAFESITE Radiation Sensor, Part Number Z4040010, upgrade to SAFESITE Detector, Part Number 10124482
8	Avon 60-minute HP SCBA Carbon Cylinder, Part Number 124004
1	Fire Ade 2000 AR-AFFF Eco-Friendly Suppressant Tote, Part Number FA-ARAFFF

This CAFO shall not be construed to constitute EPA's endorsement of the equipment or technology to be purchased by Respondent in connection with the SEP undertaken pursuant to this Agreement.

26. Respondent certifies that:

a. all cost information provided to the EPA in connection with the EPA's approval of the SEP described in paragraph 25 is complete and accurate and that Respondent in good faith estimates that the cost to implement the SEP is **\$30,935**.

b. the SEP is not a project that Respondent was planning or intending to construct, perform, or implement other than in settlement of the claims resolved in this CAFO.

27. Respondent also certifies that:

a. It is not a party to any open federal financial assistance transaction that is funding or could fund the same activity as the SEP described in paragraph 25; and

b. It has inquired of the City of Savannah Fire and Emergency Services whether the City of Savannah Fire and Emergency Services is a party to an open federal financial assistance transaction that is funding or could fund the same activity as the SEP and has been informed by the City of Savannah Fire and Emergency Services that it is not a party to such a transaction.

28. Respondent further certifies that, as of the date this CAFO is signed, it is not required to perform or develop any part of the SEP by any federal, state or local law, regulation, permit or order, or by any agreement or grant, or as injunctive relief awarded in any other action in any forum. Respondent further certifies that, as of this date, it has not received and is not negotiating to receive, credit for any part of the SEP in any other enforcement action of any kind, and Respondent will not receive reimbursement for any portion of this SEP from another person or entity.

29. Respondent agrees that in order to receive credit for the SEP, it must fully and timely complete the SEP project in accordance with Paragraph 25. If Respondent does not fully and timely complete the SEP, it shall be required to pay stipulated penalties pursuant to Paragraph 30.

30. If Respondent fails to timely and fully complete any part of the SEP, including failure to spend the minimum amount of **THIRTY THOUSAND NINE HUNDRED THIRTY-FIVE DOLLARS (\$30,935)**, Respondent shall pay to the United States, a stipulated penalty of the difference between **\$30,935** and the actual SEP expenditure.

31. For purposes of Paragraphs 29 and 30, the determination as to whether Respondent has fully and timely completed the SEP shall be in the sole discretion of EPA.

32. Any public statement, oral or written, by Respondent making any reference to the SEP 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 violation of Section 103 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA).”

33. No later than sixty (60) calendar days after the effective date of this CAFO, Respondent shall submit to EPA a SEP Completion Report. The Report shall be sent to the Chemical Management & Emergency Planning Section, to the attention of Vinson Poole at the address provided above in Paragraph 23. The Report shall include the following:

(a) an affidavit from an authorized company official, attesting that the SEP has been completed or explaining in detail any failure to complete it; and

(b) copies of appropriate documentation, including invoice and receipts, showing a total expenditure of no less than **\$30,935**, was spent on the Emergency Planning and Preparedness SEP described in Paragraph 25.

Upon request, Respondent shall send EPA any additional documentation requested by EPA.

34. If Respondent fails to timely submit a SEP Completion Report as required by this CAFO, Respondent shall pay to the United States a stipulated penalty of **ONE HUNDRED DOLLARS (\$100)** for each calendar day that the report is late.

35. Respondent shall pay any stipulated penalties that accrue under this CAFO within 15 calendar days of the receipt by Respondent of written demand from EPA for such penalties. Such penalties shall be paid in accordance with the procedures set forth in the written demand from EPA.

36. For Federal Income Tax purposes, Respondent agrees that it will neither capitalize into inventory or basis nor deduct any costs or expenditures incurred in performing the SEP.

37. Pursuant to 31 U.S.C. § 3717, EPA is entitled to assess interest and penalties on debts owed to the United States and a charge to cover the cost of processing and handling a delinquent claim. Interest will therefore begin to accrue on the civil penalty from the effective date of this CAFO if the penalty is not paid by the date required. Interest will be assessed at the rate established by the Secretary of Treasury pursuant to 31 U.S.C. § 3717. A charge will be assessed to cover the costs of debt collection, including processing and handling costs and attorney fees. In addition, a penalty charge will be assessed on any portion of the debt that remains delinquent more than ninety (90) days after payment is due.

38. Complainant and Respondent shall bear their own costs and attorney fees in this matter.

39. This CAFO shall be binding upon the Respondent, its successors, and assigns.

40. The following individual is authorized to receive service for EPA in this proceeding:

Verne H. George  
U.S. EPA, Region 4  
Air, Pesticides & Toxic Management Division  
61 Forsyth Street, S.W.  
Atlanta, Georgia 30303  
(404) 562-8988

41. Each undersigned representative of the parties to this CAFO certifies that he or she is fully authorized by the party represented to enter into this CAFO and legally bind that party to it.

**THIS SECTION INTENTIONALLY LEFT BLANK.**




**VII. Effective Date**


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

AGREED AND CONSENTED TO:

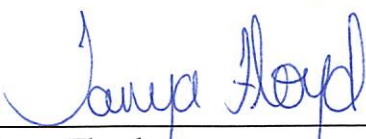
Southern States Phosphate and Fertilizer Company

By:  (Signed) Date: 9-1-15  
Name: REED DULANY III (Typed or Printed)  
Title: President (Typed or Printed)

U.S. Environmental Protection Agency

By:  Date: 9/11/15  
Beverly H. Banister  
Director  
Air, Pesticides and Toxics Management Division

APPROVED AND SO ORDERED this 21<sup>st</sup> day of September, 2015.

  
Tanya Floyd  
Regional Judicial Officer

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true and correct copy of the foregoing Consent Agreement and Final Order: In the Matter of Southern States Phosphate and Fertilizer Company, Docket Number: CERCLA-04-2015-2030(b), on the parties listed below in the manner indicated:

Verne H. George (Via EPA's internal mail)  
U.S. EPA, Region 4  
Air, Pesticides & Toxics Management Division  
61 Forsyth Street  
Atlanta, GA 30303

Ellen Rouch (Via EPA's internal mail)  
U.S. EPA, Region 4  
Office of Environmental Accountability  
61 Forsyth Street  
Atlanta, GA 30303

Robert Caplan (Via EPA's internal mail)  
U.S. EPA, Region 4  
Office of Environmental Accountability  
61 Forsyth Street  
Atlanta, GA 30303

Christine M. Morgan, Esq. (Certified Mail - Return Receipt Requested)  
Jones Day  
1420 Peachtree Street, N.E.  
Suite 800  
Atlanta, Georgia 30309-3053

Date: 9-22-15



Patricia A. Bullock, Regional Hearing Clerk  
United States Environmental  
Protection Agency, Region 4  
Atlanta Federal Center  
61 Forsyth Street, S.W.  
Atlanta, GA 30303  
(404) 562-9511