



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 4  
ATLANTA FEDERAL CENTER  
61 FORSYTH STREET  
ATLANTA, GEORGIA 30303-8960

JUL 17 2012

Patrick van der Voorn  
Senior Environmental Counsel  
The Mosaic Company  
3033 Campus Drive, Suite E490  
Plymouth, Minnesota 55441

SUBJ: Mosaic Fertilizer, LLC Riverview, Florida Facility  
Consent Agreement and Final Order, Docket No. CWA-04-2012-5131(b)

Dear Pat,

Enclosed, please find a copy of the executed Consent Agreement and Final Order (CAFO) resolving the violations of the Spill Prevention Control and Countermeasures requirements of the Clean Water Act alleged by EPA against Mosaic Fertilizer, LLC's Riverview, Florida, facility (Mosaic). Please note that payment of Mosaic's penalty is due within thirty days of the effective date of the CAFO. The effective date of the CAFO is the date the CAFO is filed with the Regional Hearing Clerk

Thank you for your assistance in getting this matter resolved. If you have any questions, please call me at (404) 562-9544.

Sincerely,

A handwritten signature in cursive script that reads "Joan".

Joan Redleaf Durbin  
Senior Attorney  
US EPA, Region 4

Enclosure

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 4**

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EPA REGION IV

2012 JUL 17 AM 8:34

HEARING CLERK

IN THE MATTER OF	)	CWA SECTION 311 CLASS I
	)	CONSENT AGREEMENT AND
Mosaic Fertilizer, LLC	)	FINAL ORDER
8133 US Highway 41 South	)	UNDER 40 C.F.R. § 22.13(b)
Riverview, Florida 33569	)	
	)	
Respondent	)	Docket No. CWA-04-2012-5131(b)
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**LEGAL AUTHORITY**

This Consent Agreement is proposed and entered into under the authority vested in the Administrator of the U.S. Environmental Protection Agency (“EPA”) by Section 311(b)(6)(B)(i) of the Clean Water Act (“CWA”), 33 U.S.C. § 1321(b)(6)(B)(i), as amended by the Oil Pollution Act of 1990, and under the authority provided by 40 C.F.R. §§ 22.13(b) and 22.18(b)(2). The Administrator has delegated these authorities to the Regional Administrator of EPA, Region 4, who has in turn delegated these authorities through the Director, RCRA Division, to the Chief, RCRA and OPA Enforcement and Compliance Branch, RCRA Division (“Complainant”).

**CONSENT AGREEMENT**

Complainant and Respondent have conferred for the purpose of settlement pursuant to 40 C.F.R. § 22.18, and desire to settle this action. Accordingly, before any testimony has been taken upon the pleadings and without any admission of violation or adjudication of any issue of fact or law and in accordance with 40 C.F.R. § 22.13(b), Complainant and Respondent have agreed to the execution of this Consent Agreement and Final Order (CAFO), and Respondent hereby agrees to comply with the terms of this CAFO. For purposes of this CAFO and settlement of this action, Respondent admits to the jurisdictional statements contained herein.

## Stipulations

1. Respondent, Mosaic Fertilizer, LLC, is a limited liability company organized under the laws of Delaware and registered to do business in the State of Florida. Respondent is a person within the meaning of Section 311(a)(7) of the CWA, 33 U.S.C. § 1321(a)(7).
2. The Respondent is the “owner” and “operator” within the meaning of Section 311(a)(6) of the CWA, 33 U.S.C. § 1321(a)(6), of a fertilizer manufacturing facility, which includes storage tanks with a total capacity of approximately 100,000 gallons of gasoline, diesel fuel, and other oil products. The facility, located at 8813 US Highway 41 South, Riverview, Florida 33569 (“the facility”), is an “onshore facility” within the meaning of Section 311(a)(10) of the CWA, 33 U.S.C. § 1321(a)(10).
3. Pursuant to 40 C.F.R. § 112.1, the Spill Prevention Control and Countermeasures (SPCC) regulations contained in 40 C.F.R. Part 112 apply to each owner and operator of a non-transportation-related onshore facility engaged in drilling, producing, gathering, storing, processing, refining, transferring, distributing, using or consuming oil or oil products , which, due to its location, could reasonably be expected to discharge oil into or upon the navigable waters of the United States and their adjoining shorelines in such quantity as may be harmful, as described in 40 C.F.R. § 110.3 (“harmful quantity”).
4. The facility is located less than one-quarter mile from the Alafia River.
5. The Alafia River is a navigable water as defined in Section 502(7) of the CWA, 33 U.S.C. § 1362(7), and 40 C.F.R. § 112.2 and is therefore subject to the jurisdiction of Section 311 of the CWA.
6. Respondent is engaged in drilling, producing, gathering, storing, processing, refining, transferring, distributing, using, or consuming oil or oil products located at the facility.

7. As of the date of the EPA inspection described in Paragraph 11, the facility had an aggregate above ground storage capacity greater than 1,320 gallons of oil in containers, each with a capacity of at least 55 gallons and did not qualify for the exemption under 40 C.F.R. § 112.1(d)(2).

8. The facility is a non-transportation-related facility within the meaning of 40 C.F.R. § 112.2, as described in 40 C.F.R. Part 112, Appendix A.

9. As of the date of the EPA inspection described in Paragraph 11, the facility was a non-transportation-related onshore facility which, due to its location, could reasonably be expected to discharge oil to a navigable water of the United States or its adjoining shorelines in a harmful quantity and is, as such, an SPCC-regulated facility.

10. Pursuant to 40 C.F.R. § 112.3, the owner or operator of an SPCC-regulated facility must prepare in writing and implement an SPCC plan in accordance with 40 C.F.R. § 112.7 and any other applicable sections of 40 C.F.R. Part 112.

### **Allegations**

Complainant alleges, and Respondent neither admits nor denies, that:

11. On or about February 20, 2008, an inspection was conducted by EPA at the Respondent's facility to determine Respondent's compliance with SPCC regulations. The EPA contends it found the following violations of the SPCC regulations:

- a. Approval by the facility's management of the written SPCC Plan ("Plan") had not been documented, as required by 40 C.F.R. § 112.7.
- b. The Plan neither followed the sequence specified in the SPCC regulations nor included a section properly cross referencing the requirements in the plan, as required by 40 C.F.R. § 112.7.

- c. The Plan did not include a contact list and telephone numbers for various entities who must be contacted in the case of a discharge, as required by 40 C.F.R. § 112.7(a)(3)(vi).
- d. The Plan did not discuss brittle fracture evaluation of field-constructed tanks, as required by 40 C.F.R. § 112.7(i).
- e. The Plan did not discuss any applicable more stringent State rules, regulations, and guidelines, as required by 40 C.F.R. § 112.7(j).
- f. The Plan did not discuss the volumes of secondary containment systems for above ground tanks, as required by 40 C.F.R. § 112.8(c)(2).
- g. The Plan did not discuss inspection and integrity testing procedures for above ground tanks, as required by 40 C.F.R. § 112.8(c)(6).
- h. The Plan did not discuss internal heating coils, as required by 40 C.F.R. § 112.8(c)(7).
- i. The Plan's Professional Engineer Certification did not include all attestations required by 40 C.F.R. § 112.3(d).
- j. Respondent did not maintain records of dike drainage events, as required by 40 C.F.R. § 112.8(c)(3)(iv).
- k. Respondent did not regularly test liquid level sensing devices to ensure proper operations, as required by 40 C.F.R. § 112.8(c)(8).
- l. Respondent did not promptly remove accumulations of oil in diked areas, as required by 40 C.F.R. § 112.8(c)(10).

12. The EPA therefore alleges that Respondent violated the regulatory requirements cited in paragraphs 11.a. through 11.l. above.

**Waiver of Rights**

13. Solely for the purpose of this Consent Agreement, Respondent waives the right to contest the allegations contained herein, to a hearing under Section 311(b)(6)(B)(i) of the CWA, 33 U.S.C. § 1321(b)(6)(B)(i), and to appeal any Final Order in this matter under Section 311(b)(6)(G)(i) of the CWA, 33 U.S.C. § 1321(b)(6)(G)(i), and consents to the issuance of a Final Order without further adjudication.

**Terms of Agreement**

14. Respondent consents to the payment of a civil penalty of Twenty-One Thousand Dollars (\$21,000).

15. By signing this Consent Agreement, Respondent certifies that all violations alleged in this Consent Agreement have been corrected.

**Payment Terms**

16. No later than thirty (30) days after the effective date of the Final Order, Respondent shall pay the penalty by means of a corporate cashier's or certified check, by electronic funds transfer (EFT), or on-line. If paying by check, Respondent shall submit a corporate cashier's or certified check, payable to "Environmental Protection Agency." The check shall bear the notation "OSLTF – 311," along with the title and docket number of this case.

If the Respondent sends payment by the U.S. Postal Service, the payment shall be sent to:

U.S. Environmental Protection Agency  
**Fines and Penalties**  
Cincinnati Finance Center  
Post Office Box 979077  
St. Louis, Missouri 63197-9000

If the Respondent sends payment by an overnight commercial delivery service such as DHL, FedEx or UPS, the payment shall be sent to:

U.S. Bank  
Government Lockbox 979077  
**U.S. EPA Fines & Penalties**  
1005 Convention Plaza  
SL-MO-C2-GL  
St. Louis, Missouri 63101  
314-418-1028

If the Respondent sends payment by wire transfer, the wire transfer 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, New York 10045  
Field Tag 4200 of the Fedwire message should read  
“D 68010727 Environmental Protection Agency”

Respondent may also elect the On Line Payment Option, available through the Department of Treasury. This payment option can be accessed at [www.pay.gov](http://www.pay.gov). Enter “sfo 1.1” in the search field and then open the form and complete required fields.

17. Respondent shall submit copies of the check (or, in the case of a wire transfer or on-line payment, a copy of the wire transfer or on-line confirmation) to the following people:

Patricia Bullock  
Regional Hearing Clerk  
U.S. EPA, Region 4  
Sam Nunn Atlanta Federal Center  
61 Forsyth Street, SW  
Atlanta, Georgia 30303-8960

and to:

Larry Lamberth, Chief  
South Enforcement and Compliance Section  
RCRA and OPA Enforcement and Compliance Branch  
RCRA Division  
U.S. EPA, Region 4  
Sam Nunn Atlanta Federal Center  
61 Forsyth Street, SW  
Atlanta, Georgia 30303-8960

18. Penalties paid pursuant to this CAFO are not deductible for federal purposes under 26 U.S.C. § 162(f).

19. Respondent's failure to pay the penalty assessed by the Final Order in full by its due date may subject Respondent to a civil action to collect the assessed penalty, plus interest, attorney's fees, costs and an additional quarterly nonpayment penalty pursuant to Section 311(b)(6)(H) of the CWA, 33 U.S.C. § 1321(b)(6)(H). In any such collection action, the validity, amount and appropriateness of the penalty agreed to herein shall not be subject to review.

#### **General Provisions**

20. The Final Order shall be binding upon Respondent and Respondent's officers, directors, agents, and successors or assigns.

21. The Final Order does not constitute a waiver, suspension or modification of the requirements of Section 311 of the CWA, 33 U.S.C. § 1321, or any regulations promulgated thereunder, and does not affect the right of the Administrator or the United States to pursue any applicable injunctive or other equitable relief or criminal sanctions for any violation of law. Payment of the penalty pursuant to this CAFO resolves only Respondent's liability for federal civil penalties for the violations and facts stipulated to and alleged herein. Except as otherwise set forth herein, compliance with this CAFO shall resolve the allegations of violations contained herein.



22. The undersigned representative of Respondent hereby certifies that he or she is fully authorized to enter into and execute this Consent Agreement and to legally bind Respondent to the terms and conditions of this Consent Agreement and the attached Final Order.

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

Joan Redleaf Durbin  
Associate Regional Counsel  
Office of Environmental Accountability  
U.S. Environmental Protection Agency, Region 4  
Sam Nunn Atlanta Federal Center  
61 Forsyth Street, SW  
Atlanta, Georgia 30303-8960  
404-562-9544  
[redleaf-durbin.joan@epa.gov](mailto:redleaf-durbin.joan@epa.gov)

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

Patrick van der Voorn  
Senior Environmental Counsel  
The Mosaic Company  
3033 Campus Drive, Suite E490  
Plymouth, Minnesota 55441  
763-577-8229  
[patrick.vandervoorn@mosaicco.com](mailto:patrick.vandervoorn@mosaicco.com)

**Effective Date**

25. This Consent Agreement and Final Order is effective when the Final Order is filed with the Regional Hearing Clerk.

**CONSENTED AND AGREED TO:**

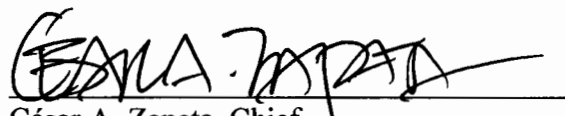
MOSAIC FERTILIZER, LLC

Date: 6/26/12

  
Larry Simpson  
Plant Manager, Riverview Facility

U.S. ENVIRONMENTAL PROTECTION AGENCY

Date: 7/11/12

  
César A. Zapata, Chief  
RCRA and OPA Enforcement and Compliance Branch  
RCRA Division

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 4**

IN THE MATTER OF	)	CWA SECTION 311 CLASS I
	)	CONSENT AGREEMENT AND
Mosaic Fertilizer, LLC	)	FINAL ORDER
8813 US Highway 41 South	)	UNDER 40 C.F.R. § 22.13(b)
Riverview, Florida 33569	)	
	)	
Respondent	)	Docket No. CWA-04-2012-5131(b)
_____	)	

**FINAL ORDER**

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

**BEING AGREED, IT IS SO ORDERED** this 16<sup>th</sup> day of July, 2012.

BY: Susan B. Schub  
Susan Schub  
Regional Judicial Officer

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## 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 Mosaic Fertilizer, LLC, Docket No. CWA-04-2012-5131(b), on the parties listed below in the manner indicated:

Joan Redleaf Durbin  
Associate Regional Counsel  
Office of Environmental Accountability  
U.S. Environmental Protection Agency, Region 4  
61 Forsyth Street, SW  
Atlanta, Georgia 30303

(Via EPA's internal mail)

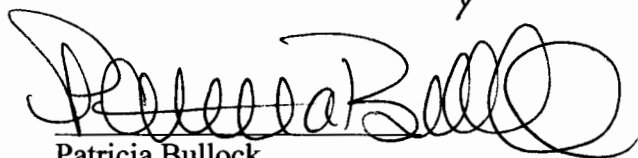
Quantindra Smith  
RCRA & OPA Enforcement and Compliance Branch  
U.S. Environmental Protection Agency, Region 4  
61 Forsyth Street, SW  
Atlanta, Georgia 30303

(Via EPA's internal mail)

Patrick van der Voorn  
Senior Environmental Counsel  
The Mosaic Company  
3033 Campus Drive, Suite E490  
Plymouth, Minnesota 55441

(Via Certified Mail)

Dated this 17 day of July, 2012.



Patricia Bullock  
Regional Hearing Clerk  
U.S. EPA – Region 4  
Sam Nunn Atlanta Federal Center  
61 Forsyth Street, SW  
Atlanta, Georgia 30303-8960