

**STATE OF NEW MEXICO
SECRETARY OF ENVIRONMENT**

**ENVIRONMENTAL PROTECTION DIVISION
OF THE NEW MEXICO ENVIRONMENT DEPARTMENT,
Complainant,**

NO. AQB MOS-0196-1301 (NOV)

**MOSAIC POTASH CARLSBAD, INC.,
Respondent.**

SETTLEMENT AGREEMENT AND STIPULATED FINAL COMPLIANCE ORDER

This Settlement Agreement and Stipulated Final Compliance Order (“Final Order”) is entered into between the Environmental Protection Division (“Division”) of the New Mexico Environment Department (the “Department”) and the Respondent, Mosaic Potash Carlsbad, Inc. (“Respondent”) (collectively, the “Parties”) to resolve alleged statutory, regulatory, and permit violations by the Respondent. The Department alleges violations of the New Mexico Air Quality Control Act (“AQCA”), NMSA 1978, Sections 74-2-1 to -17; the Air Quality Control Regulations (“AQCR”), 20.2. NMAC (“Regulations”), and Air Quality Title V Permit Number P039-R2 (“Permit”).

I. BACKGROUND

A. PARTIES

1. The Department is an agency of the executive branch of the State of New Mexico, created pursuant to NMSA 1978, § 9-7A-4. The Division is an organizational unit of the Department. The Secretary of the Department has delegated to the Director of the Division the authority to seek administrative enforcement of the AQCA and the AQCR, including assessing

civil penalties for violations thereof. NMSA 1978, § 74-2-12. The Air Quality Bureau ("Bureau") is an organizational unit of the Division.

2. The Respondent is a company doing business in New Mexico at the Mosaic Potash Facility ("Facility"), located in Eddy County, New Mexico. The Facility is a potash mine and mill.

B. HISTORY AND ALLEGED VIOLATIONS

3. 20.2.72.200 NMAC states in relevant part: "Permits must be obtained from the Department by: ... A.(2) Any person modifying a stationary source when all of the pollutant emitting activities at the entire facility, either prior to or following the modification, emit a regulated air contaminant for which there is a National or New Mexico Ambient Air Quality Standard with a potential emission rate greater than 10 pounds per hour or 25 tons per year and the regulated air contaminant is emitted as a result of the modification. ..." and; 20.2.72.200.E NMAC states: "For all sources subject to this Part, applications for permits shall be filed prior to the commencement of the construction, modification or installation. Regardless of the anticipated commencement date, no construction, modification or installation shall begin prior to issuance of the permit."

4. 20.2.72.203.A NMAC states in relevant part: "... (3) Provide all information, including all calculations and computations, to describe the specific chemical and physical nature and to estimate the maximum quantities of any regulated air contaminants the source will emit through routine operations after construction, modification or installation is completed ..."

5. On August 23, 2013, the Bureau received a voluntary self-disclosure letter from the Respondent stating that it did not receive pre-construction approval from the Department prior to initiating construction activities at its Facility, which is a potential violation of the Act, Regulations, and/or Permit.

6. On July 7, 2014, the Bureau issued to the Respondent Notice of Violation MOS-196-1301 alleging three air quality violations: 1) the failure to obtain an air quality permit prior to the construction of the haul road, wet tank, belt, and hopper for the KCL Lake Salt Processing Project, which is a violation of 20.2.72.200.A(2) and E NMAC; 2) the failure to provide all information, including all calculations and computations, to describe the specific chemical and physical nature and to estimate the maximum quantities of any regulated contaminants the source will emit through routine operations after construction, modification or installation is completed, which is a violation of 20.2.72.203.A(3) NMAC; and 3) the failure to obtain an air quality construction permit prior to the construction of 22 pieces of equipment, which is a violation of 20.2.72.200.A(2) and E NMAC.

7. The NOV included a Corrective Action Verification (“CAV”) requiring the Respondent to submit to the Bureau measures taken to ensure future compliance with the permit conditions.

8. On July 22, 2014, the Bureau received the CAV from the Respondent. The CAV was determined to be satisfactory by the Bureau on June 25, 2015.

9. The Parties have engaged in settlement discussions to resolve the NOV without further proceedings.

II. COMPROMISE AND SETTLEMENT

A. GENERAL

10. The Respondent does not admit any of the allegations in the NOV. To avoid further legal proceedings, the Division and the Respondent agree to the terms and conditions in this Final Order to resolve the alleged violations in the NOV.

11. The Parties admit jurisdiction and consent to the relief specified herein.

B. CIVIL PENALTY

12. In compromise and settlement of the alleged violations set forth in the NOV and upon consideration of the seriousness of the alleged violations and Respondent's good faith efforts to comply, the Parties agree that the Respondent shall pay a civil penalty of \$22,080.00 to the State of New Mexico within 30 calendar days after the effective date of this Final Order.

13. Payment shall be made to the *State of New Mexico General Fund* by certified or corporate check and sent to the following address:

New Mexico Environment Department
Air Quality Bureau
c/o Compliance and Enforcement Manager
525 Camino de los Marquez, Suite 1
Santa Fe, New Mexico 87505

14. If the Respondent fails to make timely and complete payment of the civil penalty, the Respondent shall pay a stipulated penalty of \$250.00 per day for each day a payment is not timely or complete. The Respondent shall not contest or dispute in any way the stipulated penalty of \$250.00 per day in the event that the Department brings an action against the Respondent for the failure to make timely or complete payment.

III. OTHER TERMS AND CONDITIONS

A. RESERVATION OF RIGHTS AND DEFENSES

15. This Final Order shall not be construed to prohibit or limit in any way the Department from requiring the Respondent to comply with any applicable state or federal requirement not resolved herein. This Final Order shall not be construed to prohibit or limit in any way the Department from seeking any relief authorized by the AQCA for violation of any state or federal requirement applicable to the Respondent not resolved herein. This Final Order shall not be

construed to prohibit or limit in any way the Respondent from raising any defense to a Department action seeking such relief.

B. MUTUAL RELEASE

16. The Parties mutually release each other from all claims that each party raised or could have raised against the other regarding the facts and violations alleged in the NOV. Such release applies only to civil liability.

C. WAIVER OF STATE LIABILITY

17. The Respondent shall assume all costs and liabilities incurred in performing all obligations under this Final Order. The Department, on its own behalf and on behalf of the State of New Mexico, does not assume any liability for the Respondent's performance of any obligation under this Final Order.

D. EFFECTIVE DATE AND TERMINATION DATES

18. This Final Order shall become effective on the date it has been signed by the Department Secretary.

19. Except as otherwise provided in this Paragraph, the terms of this Final Order shall terminate when the Respondent has fulfilled the requirements of this Final Order. The reservations of rights and defenses and the mutual release in Paragraphs 15 and 16 shall survive the execution and performance of this Final Order, and shall remain in full force and effect as an agreement between the Parties.

E. INTEGRATION

20. This Final Order merges all prior written and oral communications between the Parties concerning the subject matter of this Final Order, contains the entire agreement between the Parties, and shall not be modified without the express written agreement of the Parties.

F. BINDING EFFECT

21. This Final Order shall be binding on the Parties and their officers, directors, employees, agents, subsidiaries, successors, assigns, trustees, or receivers.

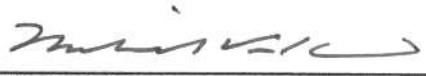
G. AUTHORITY OF SIGNATORIES

22. The persons executing this Final Order on behalf of the Respondent and the Division, respectively, represent that he or she has the authority to execute this Final Order on behalf of the Respondent and the Division.

H. SIGNATURE AND COUNTERPARTS

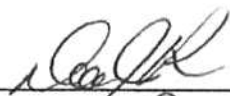
23. This Agreement may be executed in multiple counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same agreement.

**ENVIRONMENTAL PROTECTION DIVISION
NEW MEXICO ENVIRONMENT DEPARTMENT**

By: 
MICHAEL VONDERHEIDE
DIRECTOR

Date: 11/30/15

MOSAIC POTASH CARLSBAD, INC.

By: 
Print Name: Don J. Purvis
Print Title: General Manager

Date: Oct 20, 2015

STIPULATED FINAL COMPLIANCE ORDER

This Settlement Agreement and Stipulated Final Compliance Order, agreed to by the Division and the Respondent Mosaic Potash Carlsbad, Incorporated, is hereby incorporated herein and **APPROVED AS A FINAL COMPLIANCE ORDER** issued pursuant to NMSA 1978, §74-2-12.



**RYAN FLYNN
SECRETARY
ENVIRONMENT DEPARTMENT**

Date: 12/2/2015