

**STATE OF NEW MEXICO
ENVIRONMENT DEPARTMENT**

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

NO. AQB MOS-0196-1201 (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, § 74-2-1 to 74-2-17; the Air Quality Control Regulations (“AQCR”), 20.2. NMAC (“Regulations”), and Air Quality Permit Number P039-R1-M1 (“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 corporation doing business in New Mexico at the Mosaic Potash Carlsbad Facility ("Facility"). The Facility is potash mine and mill, and is located in Eddy County, New Mexico.

B. HISTORY AND ALLEGED VIOLATIONS

3. Permit Condition 3.3.11 states in relevant part: "No fugitive particulate matter emission from the facility's activities and operations shall be visible crossing the modeled property boundary of the facility...."
4. On August 10, 2012, the Bureau received an Annual Compliance Certification Report from Respondent for the Facility. The report covered the time period of July 15, 2011 to July 14, 2012. The report stated that two instances of visible emissions, which originated from the LANG (K-MAG) screening circuit, were observed at the modeled property boundary. Using Method 22 in accordance with the Permit, Condition 3.4.2.9, visible emission were observed at the modeled property line for 42 minutes on January 30, 2012 and for 10 minutes on May 21, 2012.
5. 20.2.7.110.A. NMAC states in relevant part: "The owner or operator of a source having an excess emission shall report the following information to the department...(1) Initial report: the owner or operator shall file an initial report, no later than the end of the next regular business day after the time of discovery of an excess emission...."
6. On August 10, 2012, the Bureau received a Semi-Annual Monitoring Report from Respondent for the Facility. The report covered the time period of January 15, 2012

to July 14, 2012. The report included two Initial/Final excess emission forms pertaining to two instances of visible emissions at the modeled property boundary: January 30 and May 21, 2012. In accordance with 20.2.7.110.A.(1) NMAC, an initial excess emission report is required to be submitted no later than the end of the next regular business day after the time of discovery of an excess emission. The events were discovered on January 30 and May 21, 2012; therefore, initial reports for the events were due January 31 and May 22, 2012, respectively. The initial reports were not submitted until August 10, 2012; therefore, the initial reports were 192 and 80 days late, respectively.

7. 20.2.7.110.A. NMAC states in relevant part: "The owner or operator of a source having an excess emission shall report the following information to the department...(2) Final report: the owner or operator shall file a final report ...no later than ten (10) days after the end of the excess emission...."
8. On August 10, 2012, the Bureau received a Semi-Annual Monitoring Report from Respondent for the Facility. The report covered the time period of January 15, 2012 to July 14, 2012. The report included two Initial/Final excess emission forms pertaining to two instances of visible emissions at the modeled property boundary: January 30 and May 21, 2012. In accordance with 20.2.7.110.A.(2) NMAC, a final excess emission report is required to be submitted no later than ten (10) days after the end of the excess emission. The events ended on January 30 and May 21, 2012; therefore, final reports for the events were due February 9 and May 31, 2012, respectively. The final reports were not submitted until August 10, 2012; therefore, the final reports were 183 and 71 days late, respectively.

9. On November 6, 2012, the Bureau issued to Respondent Notice of Violation MOS-0196-1201 ("NOV"), alleging violations of the AQCA, the AQCR, and the Permit. The alleged violations were 1) visible emissions at the modeled property boundary; 2) failure to submit an initial excess emission report no later than the end of the next regular business day after discovery of an excess emission; and 3) failure to submit a final excess emission report no later than 10 days of the end of an excess emission.
10. The NOV included a Corrective Action Verification ("CAV") requiring Respondent to submit to the Bureau measures taken to ensure future compliance with the permit conditions.
11. On December 5, 2012, the Bureau received the CAV from Respondent. The CAV was determined to be satisfactory by the Bureau on December 7, 2012.
12. On March 5, 2013, the Bureau issued to Respondent a proposal of a civil penalty for the alleged violations at the Facility.
13. The Parties have engaged in settlement discussions to resolve the NOV without further proceedings.

II. COMPROMISE AND SETTLEMENT OF NOTICE OF VIOLATIONS

A. GENERAL

14. Respondent does not admit any of the allegations in the NOV. To avoid further legal proceedings, the Division and Respondent agree to terms and conditions in this Final Order to resolve the alleged violations in the NOV.
15. The Parties admit jurisdiction and consent to the relief specified herein.

B. CIVIL PENALTY

16. In compromise and settlement of the alleged violations set forth in the NOV and upon consideration of the seriousness of the violations and good faith efforts to comply, the Parties agree that Respondent shall pay a civil penalty of \$28,800.00 to the State of New Mexico within 30 calendar days after the effective date of this Final Order.

17. 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 87505-1816

18. If Respondent fails to make timely and complete payment of the civil penalty, Respondent shall pay interest on the outstanding balance at the rate established for judgments and decrees under NMSA 1978, § 56-8-4.

C. STIPULATED PENALTIES

19. Respondent agrees to pay a total of Eight thousand dollars (\$8,000.00) as stipulated penalties for the four violations of Permit Condition 3.3.11, visible emissions crossing the modeled property boundary, that occurred on September 10, 2012, October 22, 2012, November 7, 2012, and January 14, 2013. These four events were reported to the Bureau in accordance with 20.2.7 NMAC, and were not included in the alleged violations in the NOV. Payment of the stipulated penalties for these four events shall be due no later than thirty (30) days after the effective date of this Agreement, and shall made in accordance with the terms set forth in Paragraph 17.

20. Respondent agrees to pay a stipulated penalty of two thousand dollars (\$2,000.00) for each instance of visible emissions crossing the modeled property boundary which Respondent self-reports to the Bureau in accordance with 20.2.7.110.A, a violation of Permit Condition 3.3.11, that occurs after January 14, 2013. The requirements of this paragraph 20 shall terminate upon start of operations of a new tube belt to the LANG (K MAG) screening unit ("Unit").
21. Respondent shall submit to the Bureau a startup notification for the Unit, within 10 calendar days of startup.
22. Unless otherwise specified, payment of stipulated penalties shall be due no later than thirty (30) days of receipt of a written demand from the Bureau, and shall be made in accordance with the terms set forth in Paragraph 17.

III. OTHER TERMS AND CONDITIONS

A. RESERVATION OF RIGHTS AND DEFENSES

23. This Final Order shall not be construed to prohibit or limit in any way the Department from requiring Respondent to comply with any applicable state or federal requirement. 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 Respondent not resolved herein. This Final Order shall not be construed to prohibit or limit in any way Respondent from raising any defense to a Department action seeking such relief.

B. MUTUAL RELEASE

24. 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 or which are, or become subject to, the stipulated penalty provisions set forth in Paragraphs 19 and 20, above. Such release applies only to civil liability.

C. WAIVER OF STATE LIABILITY

25. 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 Respondent's performance of any obligation under this Final Order.

D. EFFECTIVE DATE AND TERMINATION DATES

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

27. Except as otherwise provided in this Paragraph, the terms of this Final Order shall terminate when Respondent has fulfilled the requirements of this Final Order. The reservations of rights and defenses and the mutual release in Paragraphs 23 and 24 shall not terminate, and shall remain in effect as an agreement between the Parties.

E. INTEGRATION

28. 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

29. 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

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

**ENVIRONMENTAL PROTECTION DIVISION
NEW MEXICO ENVIRONMENT DEPARTMENT**

By: Mary Rose
MARY ROSE
ACTING DIRECTOR

Date: 5/6/13

MOSAIC POTASH CARLSBAD, INC.

By: Donald J. Purvis
DONALD J. PURVIS
VICE PRESIDENT, OPERATIONS

Date: 4/23/13

STIPULATED FINAL COMPLIANCE ORDER

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

for Butch Longate
RYAN FLYNN
SECRETARY DESIGNATE OF ENVIRONMENT
DEPARTMENT

Date: 5/9/13