



STATE OF MISSISSIPPI
PHIL BRYANT
GOVERNOR
MISSISSIPPI DEPARTMENT OF ENVIRONMENTAL QUALITY
GARY C. RIKARD, EXECUTIVE DIRECTOR

March 7, 2018

CERTIFIED MAIL# 7012 2920 0000 4177 0019

Mr. Russ Bragg, Vice President - Midsouth
Gavilon Fertilizer LLC
103 North Lamar, Suite 203
Oxford, Mississippi 38655

**Re: Gavilon Fertilizer LLC, Greenville Facility
Greenville, Washington County
Agreed Order No. 6838 18**

Dear Mr. Bragg:

Enclosed you will find a copy of Agreed Order No. 6838 18, which has been executed by the Executive Director of the Mississippi Department of Environmental Quality, Gary Rikard, on behalf of the Mississippi Commission on Environmental Quality.

The enclosed Order assesses a civil penalty. The penalty payment, when due, should be made by check payable to the Mississippi Department of Environmental Quality and returned in the enclosed, self-addressed envelope to the MDEQ Accounts Receivable at P.O. Box 2339, Jackson, MS 39225.

If you have any questions regarding your obligations under the enclosed order, please contact Felisa Keyes at (601) 961-5319.

Sincerely,

Tim Aultman, P.E.
Chief, Environmental Compliance and Enforcement Division

Enclosure
cc: Felisa Keyes

Agency Interest No. 36427
ENF20160001

BEFORE THE MISSISSIPPI COMMISSION
ON ENVIRONMENTAL QUALITY

MISSISSIPPI COMMISSION ON
ENVIRONMENTAL QUALITY

COMPLAINANT

6838 18

VS.

ORDER NO. _____

GAVILON FERTILIZER, LLC
1331 CAPITOL AVENUE
OMAHA, NE 68102

RESPONDENT

AGREED ORDER

COME NOW the Mississippi Commission on Environmental Quality (Commission), acting through the staff and Executive Director of the Mississippi Department of Environmental Quality (MDEQ), Complainant, and Gavilon Fertilizer LLC, Respondent, in the above captioned cause and agree as follows:

1.

By letter dated December 8, 2015, Respondent was contacted by Complainant and notified of the following alleged violations documented during a complaint investigation (Compliant I.D. 39426) conducted on August 25, 2015 at Gavilon Fertilizer LLC, Greenville Facility located at 1699 Harbor Front Road, Greenville, Mississippi in Washington County:

- A. Respondent failed to sufficiently develop and implement best management practices (BMPs) that minimize the contact of stored materials on-site with storm water. ACT 5: T-2 Section 3(B) and ACT 7: S-1 Section 1 of Baseline Storm Water General NPDES Permit Coverage No. MSR0001827;
- B. Respondent failed to take all reasonable steps to minimize or prevent any discharge which is likely to adversely affect human health or the environment. ACT 14: T-3

(Duty to Mitigate) of Baseline Storm Water General NPDES Permit Coverage No. MSR0001827;

- C. Respondent failed to properly maintain equipment on-site. ACT 14: T-8 (Proper Operation and Maintenance) of Baseline Storm Water General NPDES Permit Coverage No. MSR0001827;
- D. Respondent failed to notify this agency of a release or unanticipated non-compliance. ACT 14: T-18 (Noncompliance Reporting) of Baseline Storm Water General NPDES Permit Coverage No. MSR0001827.

As a result of National Response Center (NRC) reports filed by the Respondent on July 28, 2016, October 17, 2016, and September 18, 2017, Complainant cited Respondent, by letter dated October 13, 2017, for alleged violations of the following conditions of Baseline Storm Water General NPDES Permit Coverage No. MSR0001827, at Gavilon Fertilizer LLC, Greenville Facility located at 1699 Harbor Front Road, Greenville, Mississippi in Washington County:

- A. Storage Tank Release on July 28, 2016: Respondent failed to take all reasonable steps to minimize or prevent any discharge which is likely to adversely affect human health or the environment. ACT 14: T-3 (Duty to Mitigate) of Baseline Storm Water General NPDES Permit Coverage No. MSR0001827;
- B. Potash Release on October 17, 2016: Respondent failed to take all reasonable steps to minimize or prevent any discharge which is likely to adversely affect human health or the environment. ACT 14: T-3 (Duty to Mitigate) of Baseline Storm Water General NPDES Permit Coverage No. MSR0001827;
- C. Potash Release on September 18, 2017: Respondent failed to take all reasonable steps to minimize or prevent any discharge which is likely to adversely affect human health or the environment. ACT 14: T-3 (Duty to Mitigate) of Baseline Storm Water General NPDES Permit Coverage No. MSR0001827.

The Respondent has responded to the alleged violations in a letter dated March 3, 2016 and also via Administrative Conferences held on January 7, 2016 and November 28, 2017.

2.

In lieu of a formal enforcement hearing concerning the alleged violations listed above, Complainant and Respondent agree to settle this matter as follows:

- A. Respondent agrees to pay and Complainant agrees to accept a civil penalty in the amount of \$20,000.00. Respondent shall pay this penalty to MDEQ within forty-five (45) days after this Agreed Order has been executed by the MDEQ Executive Director or his designee, the "Execution Date." The settlement payment shall be submitted to:

Mississippi Department of Environmental Quality
Attn: Accounts Receivable
P.O. Box 2339
Jackson, MS 39225

- B. On or before June 1, 2018, Respondent shall complete the following improvements to its facility located at 1699 Harbor Front Road, Greenville, Mississippi in Washington County:
1. Perform inspection to verify integrity of Tank 2 (500,000 gallon liquid fertilizer tank);
 2. Install Gearbox Brakes on barge to warehouse conveyor to prevent back-flow;
 3. Install Speed Sensors on barge to warehouse conveyor to shutdown working barge conveyor;
 4. Purchase Sweeper for Concrete Pad;
 5. Install Belt Wiper and Transition Work to reduce carry-over on return side of barge to warehouse conveyor.

- C. On or before June 1, 2018, Respondent shall submit to MDEQ an updated Storm Water Pollution Prevention Plan (SWPPP).
- D. Respondent shall submit timely notification in writing to MDEQ of its completion of the improvements listed in 2.B. above, but no later than June 11, 2018. For any items in 2.B. that have been completed prior to the Execution Date of this Agreed Order, timely notification shall mean within 10 days of the Execution Date. For any items in 2.B. not completed prior to the Execution Date, timely notification shall mean within 10 days of completing the improvement.
- E. If Respondent fails to comply by the compliance dates established in 2.B. and 2.C., the Respondent shall pay a stipulated penalty of \$5,000.00. Additionally, Respondent shall also pay a stipulated penalty of \$100.00 per day of violation until compliance is met. The stipulated penalty will be due within thirty (30) days of written notification by Complainant that such payment became due.

3.

Notwithstanding the provision by this Agreed Order for stipulated penalties to accrue in certain circumstances, the Commission reserves the right to conduct a separate enforcement action concerning any violation by Respondent of this Agreed Order or of the laws or regulations within the jurisdiction of the Commission. If the Commission conducts a separate enforcement action concerning a violation for which stipulated penalties are provided in this Agreed Order, the Commission will be deemed to have waived the right to collect stipulated penalties in lieu of the right to conduct the separate enforcement action. In that separate enforcement action, the Commission may seek penalties, injunctive relief, or other appropriate relief different from or in the excess of the amount of stipulated penalties included in this Agreed Order, up to and including the statutory maximum penalty.

4.

Nothing in this Agreed Order shall limit the rights of MDEQ or the Commission in the event Respondent fails to comply with this Agreed Order. The Agreed Order shall be strictly construed to

apply to those matters expressly resolved herein.

5.

Nothing contained in this Agreed Order shall limit the rights of MDEQ or the Commission to take enforcement or other actions against Respondent for violations not addressed herein and for future violations of environmental laws, rules, and regulations.

6.

Respondent understands and acknowledges that it is entitled to an evidentiary hearing before the Commission pursuant to Miss. Code Ann. § 49-17-31, and that it has made an informed waiver of that right.

ORDERED, this the 6th day of MARCH, 2018.

MISSISSIPPI COMMISSION ON
ENVIRONMENTAL QUALITY

BY: 

GARY C. RIKARD
EXECUTIVE DIRECTOR
MISSISSIPPI DEPARTMENT
OF ENVIRONMENTAL QUALITY

AGREED, this the 26th day of February, 2018.

GAVILON FERTILIZER LLC, GREENVILLE FACILITY

BY: *Russ Bragg*

TITLE: VP & GM - Midsouth

STATE OF Mississippi

COUNTY OF Lafayette

PERSONALLY appeared before me, the undersigned authority in and for the jurisdiction aforesaid, the within named Russ Bragg who first being duly sworn, did state upon his/her oath and acknowledge to me that he/she is the Vice President & GM - Midsouth of Gavilon Fertilizer LLC, Greenville Facility and is authorized to sign and enter this Agreement.

SWORN AND SUBSCRIBED BEFORE ME, this the 26 day of Feb., 2018.

Marie Likard
NOTARY PUBLIC

My Commission expires: **My Commission Expires Jan. 2, 2020**

