



STATE OF MISSISSIPPI
HALEY BARBOUR
GOVERNOR
MISSISSIPPI DEPARTMENT OF ENVIRONMENTAL QUALITY
TRUDY D. FISHER, EXECUTIVE DIRECTOR

March 8, 2011

CERTIFIED MAIL/RETURN RECEIPT REQUESTED

Mr. C McCraw
Mississippi Phosphates Corporation
100 Webster Circle, Suite 4
Madison, MS 39110

**Re: Mississippi Phosphates Corporation
Agreed Order No. 5921 11**

Dear Mr. McCraw:

Enclosed you will find a copy of Agreed Order No. 5921 11, which has been executed by the Executive Director of the Mississippi Department of Environmental Quality, Trudy Fisher, on behalf of the Mississippi Commission on Environmental Quality.

The enclosed Order assesses a civil penalty. The first 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. All future installment payments should be mailed to the MDEQ Fees Division at P.O. Box 2339, Jackson, MS 39225.

If you have any questions regarding your obligations under the enclosed order, please contact Chris Wells at (601) 961-5545.

Sincerely,

A handwritten signature in blue ink that reads "Jerry W. Cain".

Jerry W. Cain, P.E., DEE
Director, Office of Pollution Control

Enclosure
cc: Chris Wells

Agency Interest No. 2068
ENF20090002

BEFORE THE MISSISSIPPI COMMISSION
ON ENVIRONMENTAL QUALITY

MISSISSIPPI COMMISSION ON
ENVIRONMENTAL QUALITY

COMPLAINANT

VS.

ORDER NO. **5921 11**

MISSISSIPPI PHOSPHATES CORPORATION
601 HIGHWAY 611
PASCAGOULA, JACKSON COUNTY 39567

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 Mississippi Phosphates Corporation, Respondent, in the above captioned cause and agree as follows:

1.

On September 18, 2009 the Respondent was contacted by the Complainant and notified of the following alleged violations determined during compliance evaluation inspections on July 12-13, 2009 and on August 11-12, 2009:

- a. Respondent failed to comply with NPDES Permit MS0003115 Condition III.D.6 by discharging process wastewater from the production of sulfuric acid to Outfall 001.
- b. Respondent failed to comply with NPDES Permit MS0003115 Condition I. A.3 and Effluent Guideline 40 CFR § 418.10 by inadequately minimizing the potential for spills, leaks, and other releases to come into contact with storm water.
- c. Respondent failed to comply with NPDES Permit MS0003115 Condition IV.A.1 due to a lack of proper secondary containment in the sulfur storage area.

- d. Respondent failed to comply with NPDES Permit MS0003115 Condition III.D.10 by not notifying Complainant of a failure in the liner of the closed gypsum stack within the required 24 hour verbal and 72 hour written time period.
- e. Respondent failed to comply with Mississippi Code 49-17-29 2(a) by unintentionally allowing acidic waste waters from the sulfuric acid plants and diammonium phosphate plant to contaminate groundwater.

The Complainant after a review of Discharge Monitoring Reports submitted in accordance with NPDES Permit MS0003115, found the following alleged violations were not in conformance with the permit:

The facility failed to comply with effluent limitations of the NPDES Permit MS0003115 for Ammonia, Phosphorous, Total Suspended Solids, Fluoride, Temperature, Total Recoverable Copper, and pH at various times from February 1, 2008 to February 28, 2011.

Additionally, information submitted in response to a letter dated March 18, 2010 contained the following violations of Title V air operating permit 1280-00044 at various times from January 1, 2005 to December 31, 2009:

- a. For Emission Points AA-001 and AA-017, the Respondent has failed to comply with Permit Condition 3.B.2 by allowing emissions of Sulfur Dioxide to exceed 4.0 pounds per ton of Sulfuric Acid produced.
- b. For Emission Points AA-001 and AA-017, the Respondent has failed to operate and maintain monitoring equipment in accordance with Permit Conditions 5.b.4 and 5.b.5.
- c. Respondent failed to submit timely and accurate Annual Certification of Compliance as required by Permit Condition 4.2.
- d. Respondent failed to submit timely and accurate Semiannual Monitoring Reports as required Permit Condition 5.A.4.
- e. Respondent failed to submit timely and accurate Excess Emissions Reports as required by Permit Condition 5.B.4.d.

2.

In lieu of a formal enforcement hearing concerning the alleged violations listed

above, Complainant and Respondent agree to settle the alleged violations addressed in this order as follows:

- a. Respondent agrees to pay and Complainant agrees to accept a civil penalty in the amount of \$ 297,000.00. Of this total penalty, \$247,000.00 shall be paid to MDEQ by electronic bank wire in accordance with the following schedule:

\$ 98,500.00 shall be paid within thirty (30) days after the date this Agreed Order is executed by the MDEQ Executive Director, or her designee (the "Effective Date").

\$ 148,500.00 shall be paid within one hundred eighty (180) days after the Effective Date.

Notification of the electronic bank wire shall be submitted to the following address:

Mississippi Department of Environmental Quality
ATTN: Mona Varner
P.O. Box 2339
Jackson, MS 39255

- b. In accordance with the provisions of this Agreed Order and the Memorandum of Agreement among MDEQ, Respondent and the Stone Utility Authority (the "Authority"), which is attached hereto as exhibit "A" (the MOA), Complainant shall allow Respondent credit as follows toward payment of the total civil penalty of \$297,000.00. Within thirty (30) days after the Effective Date, Respondent shall pay, by check or money order, \$50,000.00 to the Authority in accordance with the terms and the conditions of the MOA. The Authority shall use these funds for the purpose of defraying the costs, or some portion of the costs, associated with the operation and maintenance of its drinking water and wastewater treatment facilities, including hiring of a certified operator, as detailed in the MOA. Within ten (10) days after making the payment to the Authority contemplated by this subparagraph, Respondent shall provide MDEQ written proof of such payment.

- c. Any public statement, oral or written, in print, film, or other media, made by

the Respondent making reference to the payment described in paragraph 2.b. above shall include the following language: "This contribution was made in connection with the settlement of an environmental enforcement action taken by the Mississippi Commission on Environmental Quality."

d. If Respondent fails to make the payment described in 2.b. above by the deadline set forth in that subparagraph, the remaining balance of the civil penalty shall be immediately due and payable to MDEQ.

e. Respondent shall submit a Best Management Practices plan specifying protocol for spill prevention and containment of chemicals and materials (including fugitive emissions releases) in and around the sulfuric acid plants and diammonium phosphate plant. This plan shall include, at a minimum a schedule for inventorying existing leaks and/or fugitive emission sources and protocols for repairing both existing and future spills, leaks and fugitive emission sources. The plan shall be submitted within forty-five (45) days after the Effective Date.

f. Respondent shall henceforth generate all emissions reports for the sulfuric acid plants from data collected by the continuous emission monitors in the sulfuric acid plants. Respondent shall develop a written procedure for these reports that addresses data collection, downtime and malfunctions of the monitors, calibration data and span checks. Respondent shall submit the written procedures to MDEQ within forty-five (45) days after the Effective Date.

3.

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.

4.

Nothing contained in this Agreed Order shall limit the rights of MDEQ, the Commission, or the United States Environmental Protection Agency to take enforcement or other actions against Respondent for violations not addressed herein and for future

violations of environmental laws, rules, and regulations. In particular, nothing in this Agreed Order shall be construed as resolving any violations of the Mississippi Solid Waste Disposal Law or the federal Resource Conservation and Recovery Act, or any regulations implementing such statutes. Respondent agrees that it shall not assert res judicata based on this Agreed Order as a defense to any such violations.

5.

Respondent understands and acknowledges that it is entitled to an evidentiary hearing before the Commission pursuant to Miss. Code Ann. Section 49-17-31 (Rev. 2003), and that it has made an informed waiver of that right. MDEQ and Respondent agree that by entering this Agreed Order, Respondent does not admit or deny any liability arising out of the facts or allegations related to, the acts or omissions alleged in this Agreed Order.

ORDERED, this the 4 day of March, 2011.

MISSISSIPPI COMMISSION ON
ENVIRONMENTAL QUALITY

BY: 

TRUDY FISHER
EXECUTIVE DIRECTOR
MISSISSIPPI DEPARTMENT
OF ENVIRONMENTAL QUALITY

AGREED, this the 28th day of February, 2011.

MISSISSIPPI PHOSPHATES CORPORATION

BY: C. E. McCraw

RESPONDENT

C. E. McCraw

TITLE: Chief Operating Officer

STATE OF MISSISSIPPI

COUNTY OF MADISON

PERSONALLY appeared before me, the undersigned authority in and for the jurisdiction aforesaid, the within named C. E. McCraw who first being duly sworn, did state upon his/~~her~~ oath and acknowledge to me that he/~~she~~ is the Chief Operating Officer of MISSISSIPPI PHOSPHATES CORPORATION and is authorized to sign this Agreement.

SWORN AND SUBSCRIBED BEFORE ME, this the 28th day of February, 2011.

Debra Johnson
NOTARY PUBLIC

My Commission expires:



**MEMORANDUM OF AGREEMENT BETWEEN MISSISSIPPI
DEPARTMENT OF ENVIRONMENTAL QUALITY,
THE STONE COUNTY UTILITY AUTHORITY AND MISSISSIPPI PHOSPHATES
CORPORATION**

Background. On or about September 18, 2009, the Mississippi Department of Environmental Quality (“MDEQ”), issued a Notice of Violation to Mississippi Phosphates Corporation (the “Company”) citing certain alleged violations of the Company’s National Pollutant Discharge Elimination System permit (the “NPDES permit”). Subsequently, reviews of Discharge Monitoring Reports and Excess Emissions Reports submitted by the Company revealed additional apparent violations of both the NPDES permit and the Company’s Title V air emissions permit. MDEQ initiated an enforcement action. As part of the settlement and resolution of that enforcement action, and in consideration of an agreement by the Company to pay \$50,000.00 to the Stone County Utility Authority (the “Authority”), MDEQ has agreed to give the Company credit in that amount toward payment of a civil penalty. MDEQ now seeks to ensure that the Authority expends the funds for the purposes set forth below.

Section 1. Parties to the Agreement: The parties to this Memorandum of Agreement are MDEQ, the Authority and the Company.

Section 2. Purpose of the Agreement: The purpose of this agreement is to ensure that the Authority expends the funds received from the Company to defray the costs, or some portion of the costs, associated with the operation and maintenance of its drinking water and wastewater treatment facilities, including hiring of a certified operator. All expenditures must be pre-approved by MDEQ.

Section 3. Responsibilities of the Company: The Company shall make payment to the Authority in the amount of \$50,000.00 after execution of this Memorandum of Agreement and in accordance



with the associated Agreed Order to be issued by MDEQ.

Section 4. Responsibilities the Authority: The Authority shall expend the funds received from the Company for the purpose of defraying the costs, or some portion of the costs, associated with the operation and maintenance of its drinking water and wastewater treatment facilities, including hiring of a certified operator. Should the Authority fail to expend the funds received from the Company, or all of the funds, as required by this Memorandum of Agreement, the Authority shall remit to MDEQ that portion of the funds not spent toward accomplishing the purpose of this Memorandum of Agreement. Any such funds remitted to MDEQ shall be considered a penalty collection and deposited into the Pollution Emergency Fund pursuant to Miss. Code Ann. § 49-17-43(6).

Section 5. Responsibilities of MDEQ: As consideration for the performance of this Agreement, MDEQ agrees to grant the Company credit in the amount of \$50,000.00 toward payment of a total civil penalty of \$297,000.00 for the violations referenced above. This concession by MDEQ shall also be embodied in an Agreed Order to be executed contemporaneously with this Memorandum of Agreement.

Section 6. Reporting and Certification Requirements: The Authority shall submit to MDEQ documentation (such as receipts, paid invoices, work orders, purchase orders, change orders, etc.) reflecting that it expended the funds in accordance with this Memorandum of Agreement once the funds have been fully expended. The Executive Director or President of the Board of Directors of the Authority, or his/her designee shall submit a certification that the funds were expended in accordance with the terms of this Memorandum of Agreement.

Section 7. Period of Performance: The period of performance for this Agreement shall be from the date the Agreement is executed by all parties until the funds are fully expended in accordance

with this Agreement.

Section 8. **Nullification of this Agreement:** The parties to this Agreement contemplate, and the agreement embodied in this document presumes, the issuance by MDEQ of an Agreed Order associated with, and referencing, this Memorandum of Agreement and requiring the Company to make the payment described herein. If, for any reason, MDEQ and the Company are unable to settle the enforcement action referenced above as contemplated by this Memorandum of Agreement and/or if MDEQ, for any reason, does not issue the contemplated Agreed Order, this Agreement, and any and all obligations described herein, shall be null, void and without effect.

WITNESS OUR SIGNATURES:

THE STONE COUNTY UTILITY AUTHORITY

By: _____
Dick O'Neal, President, Board of Directors


Date Executed _____

MISSISSIPPI DEPARTMENT OF ENVIRONMENTAL QUALITY

By:  _____
Trudy D. Fisher, Executive Director

Date Executed: 3/4/11

MISSISSIPPI PHOSPHATES CORPORATION

By:  _____
Printed name: C. E. McCraw
Its: Chief Operating Officer

Date Executed: February 28, 2011

make the payment described herein. If, for any reason, MDEQ and the Company are unable to settle the enforcement action referenced above as contemplated by this Memorandum of Agreement and/or if MDEQ, for any reason, does not issue the contemplated Agreed Order, this Agreement, and any and all obligations described herein, shall be null, void and without effect.

WITNESS OUR SIGNATURES:

THE STONE COUNTY UTILITY AUTHORITY

By: Dick O'Neal
Dick O'Neal, President, Board of Directors

Date Executed 3/1/11

MISSISSIPPI DEPARTMENT OF ENVIRONMENTAL QUALITY

By: _____
Trudy D. Fisher, Executive Director

Date Executed: _____

MISSISSIPPI PHOSPHATES CORPORATION

By: _____
Printed name: _____
Its: _____

Date Executed: _____