



Florida Department of Environmental Protection

Bureau of Mining and Minerals Regulation
2051 East Paul Dirac Drive
Tallahassee, Florida 32310-3760

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Governor

Jeff Kottkamp
Lt. Governor

Michael W. Sole
Secretary

BUREAU OF MINING AND MINERALS REGULATION DEPARTMENT OF ENVIRONMENTAL PROTECTION STATE OF FLORIDA

In the Matter of an
Application for Variance, by:

APPLICANT:

Mosaic Fertilizer, LLC
Post Office Box 2000
Mulberry, FL 33860-1100

PROJECT NAME:

Payne Creek Mine
Variance Application MOS-PC-VA (2008)
Timing of Reclamation

AGENT:

Mr. Thomas E. Myers, III
Assistant Vice President, Mining
Mosaic Fertilizer, LLC
Post Office Box 2000
Mulberry, FL 33860-1100

FILE NO.: 0139109-010-EV-VR

COUNTY: Polk and Hardee

NOTICE OF INTENT TO ISSUE VARIANCE

The Department of Environmental Protection (Department) gives notice of its intent to issue a variance (File # 0139109-010-EV-VR) to Mosaic Fertilizer, LLC (Mosaic), Post Office Box 2000, Mulberry, Florida 33860-1100, under paragraph 378.212(1)(b), Florida Statutes (F.S.), from the reclamation timing requirements defined in subsection 378.209(1), F.S., and rule 62C-16.0051(12)(b), Florida Administrative Code (F.A.C.), for the Payne Creek Mine in Polk and Hardee counties, Florida. The variance is requested for a ten-year period ending June 1, 2018.

I. DESCRIPTION OF THE PROPOSED ACTIVITY/BASIS FOR ISSUANCE

Mosaic filed an application with the Department's Bureau of Mining and Minerals Regulation on May 1, 2008, seeking a variance, pursuant to section 378.212, F.S., to the timing of reclamation required by subsection 378.209(1), F.S. and rule 62C-16.0051(12)(b), F.A.C., for the Payne Creek Mine in Polk and Hardee counties,

Florida. The application was reviewed by Department staff and interested parties. The file has been designated as #0139109-010-EV-VR, MOS-PC-VA (2008).

On July 13, 2005, the Department approved a modification to the conceptual plan for Mosaic Fertilizer, LLC (Mosaic), Payne Creek Mine, MOS-PC-CPG, pursuant to Chapters 211, Part II, and 378, Part III, F.S., and Chapter 62C-16, F.A.C. MOS-PC-CPG is the current approved conceptual plan for the mine. On June 1, 2006, Mosaic initiated a temporary shut down of the Payne Creek Mine. Draglines ceased mining and the Fort Green beneficiation plant ceased operations. Mining activities in the Payne Green Mine were being processed through the Fort Green beneficiation plant. It is not anticipated that the Fort Green beneficiation plant will reopen.

Rule 62C-16.0051(12)(b)2, F.A.C., requires that contouring of all acres mined in a given calendar year be completed no later than 18 months after that calendar year or 18 months after an area is capable of being contoured when additional mining operations, such as waste disposal, occur. Subsection 378.209(1), F.S. and rule 62C-16.0051(12)(b)4, F.A.C., require that reclamation and restoration be completed within two years of the actual completion of mining operations. The temporary shutdown of the mine has resulted in sand tailings and clay materials not being available to fill and restore areas mined to the elevations approved in conceptual plan MOS-PC-CPG within the two-year period specified in Chapter 62C-16, F.A.C. As Mosaic will not be able to complete reclamation of all mined or disturbed areas within the time limits specified in Chapter 62C-16, F.A.C., Mosaic seeks approval of a variance to the timing of the completion of reclamation activities.

Some of the un-reclaimed areas cannot be reclaimed at this time because they are in mining operations. The mine water recirculation system is in active mining operations, managing and treating stormwater. A number of access corridors are in place and are needed for mining operations and inspection and maintenance of the mine and water recirculation system. Waste disposal, including pumping sand from a stockpile (no clay has been pumped because the plant is shut down), is also included as mining operations. The variance and associated financial security is not required for areas in active mining operations.

A number of the Payne Creek clay settling areas are in mining operations (including ditching/dewatering) or are essentially reclaimed with the exception of dam removal (the dams around these settling areas cannot be removed until the mine recirculation system is removed). Other areas remain un-reclaimed due to a lack of availability of sand tailings from the Fort Green beneficiation plant.

As a consideration for the granting of the variance, Mosaic shall post financial security. The financial security required per acre is based on rule 62C-16.0075(2), F.A.C. For mined areas where contouring is not complete, Mosaic shall initially post security at a rate of \$8,015 per acre. For clay settling areas, Mosaic shall initially post security at a rate of \$5,050 per acre. For disturbed or cleared lands, Mosaic shall initially post security at a rate of \$1,042 per acre. Based on these values, Mosaic shall post security in the amount of \$492,121.00 for mined areas where contouring is not complete, \$780,225.00 for clay settling areas, and \$108,159.60 for disturbed/cleared areas. The total financial security to be posted is \$1,380,505.60. The variance, if granted by the Department, will be subject to conditions to ensure reclamation activities are completed in accordance with the approved conceptual plan.

The chart below details the reclamation areas, number of acres to be reclaimed and the amount of security required.

Table A: FINANCIAL SECURITY REQUIREMENTS

<u>CATEGORY</u>	<u>RECLAMATION AREA</u>	<u>ACRES</u>
Mined, No Work	PC-HB(3)	16.1
	PC-LPC(3)	5.3
	PC-LPC(10)	10.1
	PC-LPC(11)	17.9
	PC-SP(6)	8.5
	PC-SP(7)	3.5
	TOTAL MINED, NO WORK ACRES	
SECURITY PER ACRE		\$8,015
TOTAL SECURITY - MINED, NO WORK		\$492,121.00
Clay Settling Areas	PC-LPC(3)	90.6
	PC-LPC(11)	19.3
	PC-SP(6)	34.4
	PC-SP(7)	10.2
	TOTAL CLAY SETTLING AREA ACRES	
SECURITY PER ACRE		\$5,050
TOTAL SECURITY - CLAY SETTLING AREAS		\$780,225.00
Disturbed or Cleared Lands	PC-HB(3)	10.4
	PC-LPC(3)	0.4
	PC-LPC(10)	3.2
	PC-LPC(11)	20.6
	PC-SP(6)	43.4
	PC-SP(7)	18.9
	TOTAL DISTURBED OR CLEARED LANDS ACRES	
SECURITY PER ACRE		\$1,042
TOTAL SECURITY - DISTURBED OR CLEARED LANDS		\$108,159.60

PC-SP(8)

6.9

TOTAL DISTURBED/CLEARED ACRES	103.8
SECURITY PER ACRE	\$1,042
TOTAL SECURITY - DISTURBED/CLEARED AREAS	\$108,159.60
TOTAL SECURITY REQUIRED	\$1,380,505.60

The variance request complies with the standards and criteria of Chapters 211, Part II, and 378, Part III, F.S., and Chapter 62C-16, F.A.C. This approval does not warrant the suitability of subject lands for any current or proposed use and does not constitute a statement or admission concerning ownership of any interest in the subject lands.

The Department gives notice of its intent to issue a variance [#0139109-010-EV-VR, MOS-PC-VA (2008)] from the reclamation timing requirements defined in subsection 378.209(1), F.S. and rule 62C-16.0051(12)(b), F.A.C.

Upon approval, this variance will be subject to the following Specific Conditions:

1. Mosaic Fertilizer, LLC, shall post security on all lands mined after July 1, 1975, that have not been reclaimed through the revegetation stage and are not under active mining operations. The initial amount of this security shall be equal to \$8,015 per acre for 64.1 acres of mined-out lands where contouring is not complete, \$5,050 per acre for 184.5 acres of clay settling areas, and \$1,042 per acre for 103.8 acres of disturbed or cleared lands. The security shall be posted within 60 days of the effective date of the Final Order, and shall be in the form of cash or cash equivalent deposited in an Escrow Account, a Letter of Credit or a Performance Bond. Escrow Agreements, Letters of Credit, or Bonds shall be approved by the Department.
2. A variance status report shall be submitted by **June 1** of each year describing work done on the site during the previous year. The acres contoured, acres revegetated, acres in mining operations, and remaining acres requiring security shall be delineated on tables and arials submitted with the status report. An annual site inspection will be performed by Department staff to confirm the information submitted with the annual status reports.
3. The amount of security required shall be updated on an annual basis based on the approved variance status report. The posted security may be reduced for individual reclamation parcels following the successful completion of approved reclamation through the initial revegetation stage, or once a reclamation parcel has been continuously in approved, active mining operations for a period of three (3) months. The security amount shall be adjusted annually for inflation by five percent (5%)

each year pursuant to rule 62C-16.0075(2)(e), F.A.C. Adjustment to the surety amount shall be effective July 1st of each year.

4. Forfeiture of the posted security shall not operate to relieve Mosaic Fertilizer, LLC of its responsibility to reclaim all mandatory lands mined or disturbed at the Payne Creek Mine.
5. Reclamation parcels PC-LPC(3) and PC-LPC(11) require additional sand tailings prior to reclamation. Sand tail deposition shall be initiated by June 1, 2009, unless another date is approved in writing by the Department. Annual updates to the sand tailings schedule will be submitted with the annual variance status reports by June 1 of each year. The updates shall include:
 - a) the amount of sand required to fill the remaining cuts,
 - b) the amount deposited during the previous year,
 - c) the future sand deposition schedule, and
 - d) the estimated date (month/year) of completion for sand tails deposition.
6. Unless mining operations are initiated by **June 1, 2018**, within each of the un-reclaimed parcels listed in Table A, or unless a different schedule is approved in writing by the Department, reclamation within each of the parcels listed above shall begin by **June 1, 2018**. Failure to complete reclamation through revegetation by **June 1, 2020**, or by a later date approved in writing by the Department, or within two (2) years of the completion of mining operations, whichever is applicable, will result in forfeiture of the security.
7. Pursuant to rule 62C-16.0045(3), F.A.C., the Department shall review this variance at the end of the first five-year period and each subsequent five-year period thereafter. The Department shall review the file and inspect the project site for compliance with the terms of the variance and evaluate whether conditions and factors justifying the issuance of the variance have changed so as to make the variance unnecessary. Mosaic shall submit to the Department any information necessary to complete this review.

II. RIGHTS OF AFFECTED PARTIES

The Department's file on this matter is available for public inspection during normal business hours, 8:00 a.m. to 5:00 p.m., Monday through Friday, except legal holidays, at the Florida Department of Environmental Protection, Bureau of Mine Reclamation, 2051 East Dirac Drive, Tallahassee, Florida 32310-3760, Telephone: (850) 488-8217.

Under this intent to issue, this variance is hereby granted subject to the applicant's compliance with any requirement in this intent to publish notice of this intent in a newspaper of general circulation and to provide proof of such publication in accordance with section 50.051, F.S. This action is final and effective on the date filed with the Clerk of the Department unless a sufficient petition for an administrative hearing is timely filed under sections 120.569 and 120.57, F.S., as provided below. If a sufficient petition for an administrative hearing is timely filed, this intent to issue automatically becomes only proposed agency action on the application, subject to the result of the administrative review process. Therefore, on the filing of a timely and sufficient petition, this action will not be final and effective until further order of the Department. When proof of publication is provided, if required by this intent, and if a sufficient petition is not timely filed, the variance will be issued as a ministerial action. Because an administrative hearing may result in the reversal or substantial modification of this action, the applicant is advised not to commence construction or other activities until the deadlines noted below for filing a petition for an administrative hearing or request for an extension of time have expired and until the variance has been executed and delivered. Mediation is not available.

A person whose substantial interests are affected by the Department's action may petition for an administrative proceeding (hearing) under sections 120.569 and 120.57, F.S. The petition must contain the information set forth below and must be filed (received by the clerk) in the Office of General Counsel of the Department at 3900 Commonwealth Boulevard, Mail Station 35, Tallahassee, Florida 32399-3000.

Under rule 62-110.106(4), F.A.C., a person whose substantial interests are affected by the Department's action may also request an extension of time to file a petition for an administrative hearing. The Department may, for good cause shown, grant the request for an extension of time. Requests for extension of time must be filed with the Office of General Counsel of the Department at 3900 Commonwealth Boulevard, Mail Station 35, Tallahassee, Florida 32399-3000, before the applicable deadline. A timely request for extension of time shall toll the running of the time period for filing a petition until the request is acted upon. If a request is filed late, the Department may still grant it upon a motion by the requesting party showing that the failure to file a request for an extension of time before the deadline was the result of excusable neglect.

If a timely and sufficient petition for an administrative hearing is filed, other persons whose substantial interests will be affected by the outcome of the administrative process have the right to petition to intervene in the proceeding. Intervention will be permitted only at the discretion of the presiding officer upon the filing of a motion in compliance with rule 28-106.205, F.A.C.

In accordance with subsection 378.212(3), F.S., petitions for an administrative hearing by the applicant must be filed within 14 days of receipt of this written notice. Petitions filed by any persons other than the applicant, and other than those entitled to written notice under subsection 120.60(3), F.S., must be filed within 14 days of publication of the notice or within 14 days of receipt of the written notice, whichever occurs first. Under subsection 120.60(3), F.S., however, any person who has asked the Department for notice of agency action may file a petition within 14 days of receipt of such notice, regardless of the date of publication.

The petitioner shall mail a copy of the petition to the applicant at the address indicated above at the time of filing. The failure of any person to file a petition for an administrative hearing within the appropriate time period shall constitute a waiver of that person's right to request an administrative determination (hearing) under sections 120.569 and 120.57, F.S.

A petition that disputes the material facts on which the Department's action is based must contain the following information:

- (a) the name and address of each agency affected and each agency's file or identification number, if known;
- (b) the name, address, and telephone number of the petitioner; the name, address, and telephone number of the petitioner's representative, if any, which shall be the address for service purposes during the course of the proceeding; and an explanation of how the petitioner's substantial interests are or will be affected by the agency determination;
- (c) a statement of when and how the petitioner received notice of the agency decision;
- (d) a statement of all disputed issues of material fact. If there are none, the petition must so indicate;
- (e) a concise statement of the ultimate facts alleged, including the specific facts that the petitioner contends warrant reversal or modification of the agency's proposed action;
- (f) a statement of the specific rules or statutes that the petitioner contends require reversal or modification of the agency's proposed action; and

- (g) a statement of the relief sought by the petitioner, stating precisely the action that the petitioner wishes the agency to take with respect to the agency's proposed action.

A petition that does not dispute the material facts on which the Department's action is based shall state that no such facts are in dispute and otherwise shall contain the same information as set forth above, as required by rule 28-106.301, F.A.C. Under paragraphs 120.569(2)(c) and (d), F.S., a petition for administrative hearing must be dismissed by the agency if the petition does not substantially comply with the above requirements or is untimely filed.

This intent to issue a variance constitutes an order of the Department. Subject to the provisions of paragraph 120.68(7)(a), F.S, which may require a remand for an administrative hearing, the applicant has the right to seek judicial review of the order under section 120.68, F.S., by the filing of a notice of appeal under rule 9.110 of the Florida Rules of Appellate Procedure with the Clerk of the Department in the Office of General Counsel, 3900 Commonwealth Boulevard, Mail Station 35, Tallahassee, Florida, 32399-3000; and by filing a copy of the notice of appeal accompanied by the applicable filing fees with the appropriate district court of appeal. The notice of appeal must be filed within 30 days from the date when the order is filed with the Clerk of the Department.

III. PUBLICATION OF NOTICE

The Department has determined that the proposed activity, because of its size, potential effect on the environment or the public, controversial nature, or location, is likely to have a heightened public concern or likelihood of request for administrative proceedings. Therefore, pursuant to rules 62-110.106(8)(9), and (11), F.A.C., you (the applicant) are required to publish at your own expense the enclosed Notice of Intent to Issue. The notice is required to be published one time, within 30 days of the date of entry of this intent, in the legal advertisements section of a newspaper of general circulation meeting the requirements of sections 50.011 and 50.031, F.S., in the county where the activity is to take place.

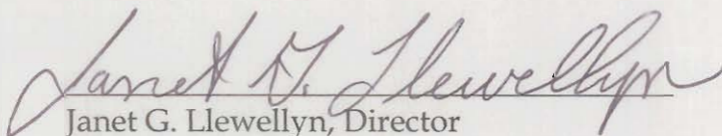
Within seven days of publication, the applicant must provide proof of publication in the form prescribed by section 50.051, F.S., to:

Department of Environmental Protection
Mandatory Phosphate Section
Bureau of Mining and Minerals Regulation
2051 East Dirac Drive
Tallahassee, Florida 32310

Failure to publish the notice and provide proof of publication within the allotted time shall result in denial of the petition.

Executed in Tallahassee, Florida.

**STATE OF FLORIDA, DEPARTMENT
OF ENVIRONMENTAL PROTECTION**



Janet G. Llewellyn, Director
Division of Water Resource Management
Department of Environmental Protection
2051 E. Paul Dirac Drive
Tallahassee, Florida 32310
(850) 488-8217

**Copies furnished to via e-mail: Hardee, Manatee, and Polk Counties
Reclamation 2008**

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Traci Wallace - FWCC - traci.wallace@MyFWC.com
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Bureau of Mining and Minerals Regulation File

CERTIFICATE OF SERVICE

The undersigned duly designated deputy clerk hereby certifies that this **INTENT TO ISSUE**, and all copies, was mailed before the close of business on

March 5, 2008₉ to the above listed persons.

FILING AND ACKNOWLEDGMENT

FILED, on this date with the designated Department Clerk, pursuant to subsection 120.52(11), Florida Statutes, receipt of which is hereby acknowledged.

Salma Acosta

Clerk

3/5/09

Date