

**BEFORE THE ENVIRONMENTAL PROTECTION COMMISSION OF
HILLSBOROUGH COUNTY**

**In re: Mosaic Fertilizer, LLC
Petition for Waiver**

Case No. LEPC07-009

**FINAL ORDER ON APPLICATION FOR CHAPTER 1-2 RULE OF THE
ENVIRONMENTAL PROTECTION COMMISSION WAIVER**

BACKGROUND

On April 23, 2007, Mosaic Fertilizer, LLC (Mosaic) submitted a waiver request to the Environmental Protection Commission of Hillsborough County (EPC) under section 1-2.50, Rules of the EPC. Mosaic requested a waiver of section 1-11.08(6)(e), Rules of the EPC. This rule requires a permanent conservation easement over any wetland mitigation area in excess of 0.5 acres proposed as compensation for a permitted wetland impact.

Section 1-11.08(6) states in part

Where wetlands are or may be adversely impacted by development, an acceptable mitigation plan shall include detailed plans designed to compensate for any adverse impact to the environmental benefits and shall comply with Commission rules and Rules 62-345.200-.900, F.A.C. All such mitigation must also comply with the following:

e. a recorded designation in the Official Records of Hillsborough County as a permanent conservation easement as defined in section 704.06, F.S., whenever the mitigation area(s) alone or cumulatively exceed 0.5 acres.

Mosaic requests a waiver of the above rule section for their proposed wetland impact based on the existence of a substantial hardship.

FINDINGS OF FACT

1. In accordance with Chapter 1-11, Rules of the EPC, applicant Mosaic Fertilizer, LLC filed permit applications to impact wetlands, more precisely identified on Map 35 of the Wetland Mitigation Plan submitted to the EPC on April 3, 2007, and reconstruction for same, to allow for a dragline access corridor associated with Mosaic's Lonesome Mining Unit 19 application (Application No. 1106.11P).

2. The wetland impacts are associated with a temporary dragline crossing. Impacts to 5.53 acres of wetlands are proposed for a 200' wide dragline walkpath and are

depicted in Exhibit A of the application for wetland impacts, "Map 35 - EPCHC Wetlands Requested For Impact – Dragline Walkpath." These impacts were included in the impact and mitigation plan for Lonesome Mining Unit 19, and a mitigation agreement was signed by the Executive Director on April 25, 2007. Chapter 1-11 requires any mitigation in excess of 0.5 acres to be protected by a conservation easement in order to permanently protect the mitigation area.

3. The EPC received the waiver application on April 23, 2007, from Mosaic. Mosaic requested a waiver of section 1-11.08(6)(e), Rules of the EPC. This rule requires a permanent conservation easement for mitigation areas which alone or cumulatively exceed 0.5 acres in size proposed to offset wetlands impacts.

4. Pursuant to section 1-2.50(3), Rules of the EPC, Mosaic published notice of the waiver application and the June 21, 2007 public hearing in the Tampa Tribune on June 7, 2007.

5. Pursuant to section 1-2.50(4), the Commissioners considered the application, the Executive Director's recommendation, and the comments of the public at a regular meeting of the EPC on June 21, 2007.

6. Mitigation for the wetland impacts will consist of restoration of the walkpath area, which is to be restored within 30 days of passage of the dragline through the walkpath. A conservation easement over the mitigation areas would therefore consist of a 200' wide portion of the wetlands, which have previously received conceptual authorization for impacts associated with mining.

CONCLUSIONS OF LAW

7. This variance is requested pursuant to section 1-2.50, Rules of the EPC, which states as follows:

1-2.50 REQUEST FOR VARIANCE OR WAIVER

(a) Upon application, the Executive Director may recommend to the Commission that a variance or waiver be granted from the provisions of the rules adopted pursuant to Chapter 84-446, where the applicant demonstrates:

(1) A substantial hardship as defined by section 120.542, F.S., or that a violation of the principles of fairness as defined by section 120.542, F.S., would occur, and

(2) The purpose of the underlying rule can be, or has been, achieved by other means, and

(3) The provision from which the variance or waiver is being sought did not originate with the DEP where the variance must be considered by the DEP pursuant to section 403.201, F.S. or the variance or waiver must be considered by the DEP or the Southwest Florida Water Management District pursuant to Chapter 120, F.S. Additionally, the Commission does not process variances or waivers of state-delegated rules.

(b) The application must specify the rule for which the variance or waiver is requested, the type of action requested, the specific facts that would

justify a variance or waiver, and the reasons why and the manner by which the purposes of the underlying rule would still be met.

(c) Notice of the application must be published by the applicant in a newspaper of general circulation summarizing the factual basis for the application, the date of the Commission hearing, and information regarding how interested persons can review the application and provide comment.

(d) The Commission will consider the application, the Executive Director's recommendation, and the comments of the public at a public hearing during a Commission meeting. The Commission shall grant, in whole or part, or deny the application by written decision supported by competent substantial evidence. The Commission may impose additional conditions in a variance or waiver.

8. Section 1-2.50, Rules of the EPC, among other things, requires that an applicant for a waiver show that "purpose of the underlying rule can be, or has been, achieved by other means" and that a "substantial hardship as defined by section 120.542, F.S. . . would occur." While section 120.542, F.S. is not the enabling legislation for the EPC variance provision, it is persuasive and the EPC adopted the statute's definitions for hardship and fairness. Section 120.542, F.S. provides that before an agency can grant a variance, the petitioner must demonstrate that the purpose of the underlying statute will be or has been achieved by other means and that either the application of the rule would create a substantial hardship or that it would violate principles of fairness.

9. As noted in the Wetland Mitigation Plan, all wetlands proposed for disturbance, including the wetlands identified in Exhibit A, have been preeviously approved for impact by EPC pursuant to the April 26, 2005 Life of Mine Conceptual Approval Letter ("LoM Approval").

10. In accordance with Mosaic's long-term mining plan, the wetland systems identified in Exhibit A are expected to be re-impacted for actual mining purposes pursuant to the LoM Approval at a subsequent time when Mosaic's future Lonesome Mining Unit 18, along with its associated EPC mitigation plan, is approved.

11. Mosaic has demonstrated a substantial hardship due to potential complication due to the need to submit an application to vacate the conservation easement (without any reliance that such a vacation would be approved) and additional expenditures involved in preparation, recording, and subsequent application to vacate the conservation easement.

12. Mosaic has demonstrated the underlying purpose of the rule will be achieved.

13. Mosaic has demonstrated that the provision from which the waiver is being sought did not originate with the DEP where the variance must be considered by the DEP pursuant to section 403.201, F.S. and that the waiver does not need to be considered by the DEP or the SWFWMD pursuant to Chapter 120, F.S.

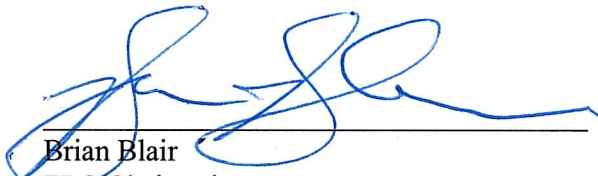
ORDER

14. For the foregoing reasons, the requested waiver from sections 1-11.08(6)(e), Rules of the EPC is granted.

NOTICE OF RIGHTS

The EPC's proposed action on this waiver shall become final unless a timely appeal via writ of *certiorari* to the 13th Judicial Circuit is filed with any appropriate fee. A copy of the appeal must be provided to the EPC Legal Department, 3629 Queen Palm Dr., Tampa, Florida 33619.

DONE AND ORDERED this 21 of JUNE, 2007 in Tampa, Florida.



Brian Blair
EPC Chairmain

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