

ALABAMA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

IN THE MATTER OF:)
Holcim (US) Inc.)
Theodore, Mobile County, Alabama) CONSENT ORDER NO.
ADEM Air Facility ID No. 503-8026)
NPDES Permit No. AL0028801)

PREAMBLE

This Special Order by Consent is made and entered into by the Alabama Department of Environmental Management (“the Department” or “ADEM”) and Holcim (US) Inc. (“Permittee”) pursuant to the provisions of the Alabama Environmental Management Act, Ala. Code §§ 22-22A-1 to 22-22A-17, as amended, the Alabama Air Pollution Control Act, (“AAPCA”), Ala. Code §§ 22-28-1 to 22-28-23, as amended, the Alabama Water Pollution Control Act (“AWPCA”), Ala. Code §§ 22-22-1 to 22-22-14, as amended, and the regulations promulgated pursuant thereto.

STIPULATIONS

- 1. The Permittee operates a cement manufacturing facility (“Facility”) located in Theodore, Mobile County, Alabama (ADEM Air Facility ID No. 503-8026, NPDES Permit No. AL0028801).
2. The Department is a duly constituted department of the State of Alabama pursuant to Ala. Code §§ 22-22A-1 to 22-22A-17, as amended.
3. Pursuant to Ala. Code § 22-22A-4(n), as amended, the Department is the state air pollution control agency for the purposes of the federal Clean Air Act, 42 U.S.C.

7401 to 7671q, *as amended*. In addition, the Department is authorized to administer and enforce the provisions of the AAPCA.

4. Pursuant to Ala. Code § 22-22A-4(n), *as amended*, the Department is the state agency responsible for the promulgation and enforcement of water pollution control regulations in accordance with the Federal Water Pollution Control Act, 33 U.S.C. §§ 1251 to 1388. In addition, the Department is authorized to administer and enforce the provisions of the AWPCA.

5. The Permittee operates cement manufacturing equipment at the Facility pursuant to the authority of Major Source Operating Permit No. 503-8026 (“MSOP Permit”). Some of this equipment, including parts of Raw Material Unloading (Area 19), Raw Material Handling and Storage (Area 24), Raw Mill and Raw Mill Silos (Area 26), Kiln Feed Blending and Conveying (Area 28), Kiln, Clinker Cooler, and Rotary Dryers (Area 29), Clinker Cooler Conveying (Area 34), Finish Mills (Area 41), Land Silos and Loadout (Area 51), Marine Silos and Loadout (Area 53), and Coal Processing (Area 95), are subject to the applicable requirements of 40 CFR Part 63, Subpart LLL, “*National Emissions Standards for Hazardous Air Pollutants From the Portland Cement Manufacturing Industry*”.

6. According to 40 CFR Part 63, Subpart LLL, §63.1350(f), the owner or operator of sources subject to opacity limitations under §63.1345 must conduct required opacity monitoring in accordance with the provisions of paragraphs §63.1350(f)(1)(i) through (vii). This includes a monthly 10-minute visible emissions test of each affected source in accordance with Method 22 of Appendix A-7 to 40 CFR Part 60 while the source is in operation. If any visible emission are observed during testing, the facility must conduct

30 minutes of opacity observations in accordance with Method 9 of Appendix A-4 of 40 CFR Part 60 within 1 hour of the visible emissions observation.

7. According to 40 CFR Part 63, Subpart LLL, §63.1355, the owner or operator of sources subject to this subpart shall maintain files of all information required by this subpart in a form suitable and readily available for inspection and review. The files shall be retained for at least five years following the date of each occurrence.

8. Per Proviso No. 14 of the Compliance and Performance Test Methods and Procedures section of the MSOP Permit for the Kiln, Clinker Cooler, and Rotary Dryers, the Permittee is required to operate Continuous Emissions Monitoring Systems (CEMS) to monitor nitrogen oxides (NO_x), carbon monoxide (CO), volatile organic compounds (VOC), and sulfur dioxide (SO₂) emissions from the kiln system [ADEM Admin. Code r. 335-3-16-.05(c)]. In addition, the Permittee operates a Continuous Parametric Monitoring System (CPMS) to measure particulate matter (PM) emissions and CEMS for hydrogen chloride (HCl) and mercury (Hg) emissions to demonstrate compliance with emissions limits required by 40 CFR Part 63 Subpart LLL.

9. According to 40 CFR Part 60, Subpart A, §60.10(c), the owner or operator of sources with continuous monitoring systems (CMS) shall maintain records of the date and time of each period during which the CMS was inoperative or out of control and the date and time of commencement and completion of each period of excess emissions and parameter monitoring exceedances. The nature and cause of any malfunction, if known, as well as the corrective action taken or preventive measures adopted shall also be recorded.

10. The Department issued National Pollutant Discharge Elimination System Permit AL0028801 (“NPDES Permit”), in accordance with ADEM Admin. Code chap.

335-6-6 and the AWPCA, to the Permittee on December 17, 2015, effective February 1, 2016, establishing limitations on the discharges of pollutants from the point source designated therein as outfall number DSN001, into the Middle Fork of Deer River, a water of the state. The NPDES Permit requires that the Permittee monitor its discharges and submit periodic Discharge Monitoring Reports (DMRs) to the Department describing the results of the monitoring.

11. Permit Condition I.C.1.b of the NPDES Permit requires that DMRs be submitted so that they are received by the Department no later than the 28th day of the month following a respective reporting period. The Permittee submitted the quarterly DMR for April through June 2020 on September 29, 2020, past the required due date of July 28, 2020.

12. Part II.A.2.b of the NPDES Permit requires that “[t]he permittee shall prepare, implement, and maintain a Spill Prevention, Control and Countermeasures (SPCC) Plan in accordance with 40 C.F.R. Section 112 if required thereby.”

13. Part IV.A.2.g of the NPDES Permit requires that the Permittee prepare and implement a best management practices (BMP) plan that shall: “[p]rovide for routine inspections, on days during which the facility is manned, of any structures that function to prevent stormwater pollution or to remove pollutants from stormwater and of the facility in general to ensure that the BMP is continually implemented and effective.”

14. Part IV.A.5.b of the NPDES Permit requires that “[a] log of the routine inspection required above shall be maintained at the facility and shall be available for inspection by representatives of the Department. The log shall contain records of all

inspections performed for the last three years and each entry shall be signed by the person performing the inspection.”

DEPARTMENT'S CONTENTIONS

15. On November 6, 2019, the Department conducted an air inspection of the Facility. During the inspection, records of required monthly Method 22 visible emissions observations from November 1, 2018, to the present were requested. Records of the date, time, nature, and cause of CMS downtime from November 1, 2018, to the present were also requested. These records were not available for review at the time of the inspection or afterwards via email.

16. On August 14, 2019, the Departmental conducted an NPDES inspection at the Facility. The inspector noted that no onsite BMP inspections had been performed since April 2019.

17. In January 2020, the Permittee met with Department personnel and proposed to conduct an environmental gap analysis to review the Permittee's environmental permit requirements and assess any missing or incomplete recordkeeping between 2015 and 2019. The gap analysis was conducted by ALL4, a third party environmental consulting firm, in May 2020. A report of the analysis results was submitted to the Department on November 5, 2020. The report indicated that various required records, including records of monthly Method 22 visible emissions observations and any follow-up Method 9 observations required by 40 CFR Part 63, Subpart LLL, CMS excess emission and downtime information, and BMP and SPCC records, during the period under review

could not be located. In addition, the report indicated the facility had incomplete BMP and SPCC training documentation.

18. Pursuant to Ala. Code § 22-22A-5(18)c., *as amended*, in determining the amount of any penalty, the Department must give consideration to the seriousness of the violation, including any irreparable harm to the environment and any threat to the health or safety of the public; the standard of care manifested by such person; the economic benefit which delayed compliance may confer upon such person; the nature, extent and degree of success of such person's efforts to minimize or mitigate the effects of such violation upon the environment; such person's history of previous violations; and the ability of such person to pay such penalty. Any civil penalty assessed pursuant to this authority shall not exceed \$25,000.00 for each violation, provided however, that the total penalty assessed in an order issued by the Department shall not exceed \$250,000.00. Each day such violation continues shall constitute a separate violation. In arriving at this civil penalty, the Department has considered the following.

A. **SERIOUSNESS OF THE VIOLATION:** The Department considers the Permittee's failure to conduct required monitoring and maintain required records to be serious violations. However, the Department is not aware of any irreparable harm to the environment resulting from these violations.

B. **THE STANDARD OF CARE:** The Permittee failed to manifest a sufficient standard of care by failing to conduct monitoring and maintain records required by the MSOP and NPDES Permits.

C. ECONOMIC BENEFIT WHICH DELAYED COMPLIANCE MAY HAVE CONFERRED: The Department is not aware of any evidence indicating that the Permittee received any significant economic benefit from these violations.

D. EFFORTS TO MINIMIZE OR MITIGATE THE EFFECTS OF THE VIOLATION UPON THE ENVIRONMENT: The Department is not aware of any efforts by the Permittee to minimize or mitigate the effects of these violations on the environment.

E. HISTORY OF PREVIOUS VIOLATIONS: The Department's Air Division records indicate that there are no other similar violations or enforcement actions taken by the Department against the Permittee within the past five years. The Department's Water Division records indicate that a Notice of Violation was issued on September 26, 2019; however, the violations included in the Notice of Violation are included in this Consent Order or have been addressed. The Department has not enhanced the penalty due to consideration of this penalty factor.

F. THE ABILITY TO PAY: The Permittee has not alleged an inability to pay the civil penalty.

G. OTHER FACTORS: It should be noted that this Special Order by Consent is a negotiated settlement and, therefore, the Department has compromised the amount of the penalty in this matter in the spirit of cooperation and the desire to resolve this matter amicably, without incurring the unwarranted expense of litigation.

19. The Department has carefully considered the six statutory penalty factors enumerated in Ala. Code § 22-22A-5(18)c., *as amended*, as well as the need for timely and effective enforcement and, based upon the foregoing and attached contentions, has

concluded that the civil penalty herein is appropriate (*See* “Attachment A”, which is hereby made a part of the Department’s Contentions).

20. The Department neither admits nor denies Permittee’s Contentions, which are set forth below. The Department has agreed to the terms of this Consent Order in an effort to resolve the alleged violations cited herein without the unwarranted expenditure of State resources in further prosecuting the above violations. The Department has determined that the terms contemplated in this Consent Order are in the best interests of the citizens of Alabama.

PERMITTEE’S CONTENTIONS

21. The Permittee neither admits nor denies the Department’s Contentions. The Permittee consents to abide by the terms of this Consent Order and to pay the civil penalty assessed herein.

ORDER

THEREFORE, the Permittee, along with the Department, desires to resolve and settle the compliance issues cited above. The Department has carefully considered the facts available to it and has considered the six penalty factors enumerated in Ala. Code § 22-22A-5(18)c., *as amended*, as well as the need for timely and effective enforcement, and the Department has determined that the following conditions are appropriate to address the violations alleged herein. Therefore, the Department and the Permittee agree to enter into this Consent Order with the following terms and conditions:

A. The Permittee agrees to pay to the Department a civil penalty in the amount of \$50,750.00 in settlement of the violations alleged herein within forty-five days from the effective date of this Consent Order. Failure to pay the civil penalty within forty-five days

from the effective date may result in the Department's filing a civil action in the Circuit Court of Montgomery County to recover the civil penalty.

B. The Permittee agrees that all penalties due pursuant to this Consent Order shall be made payable to the Alabama Department of Environmental Management by certified or cashier's check and shall be remitted to:

Office of General Counsel
Alabama Department of Environmental Management
P.O. Box 301463
Montgomery, Alabama 36130-1463

C. The Permittee agrees to comply with all requirements of ADEM Administrative Code div. 335-3, 335-6, the MSOP Permit, and NPDES Permit immediately upon the effective date of this Order and continuing every day thereafter.

D. The parties agree that this Consent Order shall apply to and be binding upon both parties, their directors, officers, and all persons or entities acting under or for them. Each signatory to this Consent Order certifies that he or she is fully authorized by the party he or she represents to enter into the terms and conditions of this Consent Order, to execute the Consent Order on behalf of the party represented, and to legally bind such party.

E. The parties agree that, subject to the terms of these presents and subject to provisions otherwise provided by statute, this Consent Order is intended to operate as a full resolution of the violations which are cited in this Consent Order.

F. The Permittee agrees that it is not relieved from any liability if it fails to comply with any provision of this Consent Order.

G. For purposes of this Consent Order only, the Permittee agrees that the Department may properly bring an action to compel compliance with the terms and conditions contained herein in the Circuit Court of Montgomery County. The Permittee

also agrees that in any action brought by the Department to compel compliance with the terms of this Agreement, the Permittee shall be limited to the defenses of *Force Majeure*, compliance with this Agreement and physical impossibility. A *Force Majeure* is defined as any event arising from causes that are not foreseeable and are beyond the reasonable control of the Permittee, including its contractors and consultants, which could not be overcome by due diligence (i.e., causes which could have been overcome or avoided by the exercise of due diligence will not be considered to have been beyond the reasonable control of the Permittee) and which delays or prevents performance by a date required by the Consent Order. Events such as unanticipated or increased costs of performance, changed economic circumstances, normal precipitation events, or failure to obtain federal, state, or local permits shall not constitute *Force Majeure*. Any request for a modification of a deadline must be accompanied by the reasons (including documentation) for each extension and the proposed extension time. This information shall be submitted to the Department a minimum of ten working days prior to the original anticipated completion date. If the Department, after review of the extension request, finds the work was delayed because of conditions beyond the control and without the fault of the Permittee, the Department may extend the time as justified by the circumstances. The Department may also grant any other additional time extension as justified by the circumstances, but it is not obligated to do so.

H. The Department and the Permittee agree that the sole purpose of this Consent Order is to resolve and dispose of all allegations and contentions stated herein concerning the factual circumstances referenced herein. Should additional facts and circumstances be discovered in the future concerning the facility which would constitute

possible violations not addressed in this Consent Order, then such future violations may be addressed in Orders as may be issued by the Director, litigation initiated by the Department, or such other enforcement action as may be appropriate, and the Permittee shall not object to such future orders, litigation or enforcement action based on the issuance of this Consent Order if future orders, litigation or other enforcement action address new matters not raised in this Consent Order.

I. The Department and the Permittee agree that this Consent Order shall be considered final and effective immediately upon signature of all parties. This Consent Order shall not be appealable, and the Permittee does hereby waive any hearing on the terms and conditions of same.

J. The Department and the Permittee agree that this Order shall not affect the Permittee's obligation to comply with any Federal, State, or local laws or regulations.

K. The Department and the Permittee agree that final approval and entry into this Order are subject to the requirements that the Department give notice of proposed Orders to the public, and that the public have at least thirty days within which to comment on the Order.

L. The Department and the Permittee agree that, should any provision of this Order be declared by a court of competent jurisdiction or the Environmental Management Commission to be inconsistent with Federal or State law and therefore unenforceable, the remaining provisions hereof shall remain in full force and effect.

M. The Department and the Permittee agree that any modifications of this Order must be agreed to in writing signed by both parties.

N. The Department and the Permittee agree that, except as otherwise set forth herein, this Order is not and shall not be interpreted to be a permit or modification of an existing permit under Federal, State or local law, and shall not be construed to waive or relieve the Permittee of its obligations to comply in the future with any permit.

Executed in duplicate, with each part being an original.

HOLCIM (US) INC.

ALABAMA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

(Signature of Authorized Representative)

Lance R. LeFleur
Director

(Printed Name)

(Printed Title)

Date Signed: _____

Date Executed: _____

Attachment A

**Holcim (US) Inc.
Theodore, Mobile County**

**ADEM Air Facility ID No. 503-8026
NPDES Permit AL0028801**

Violation*	Number of Violations*	Seriousness of Violation*	Standard of Care*	History of Previous Violations*	Total of Three Factors
Failure to conduct NESHAP monitoring	1	\$15,000.00	\$10,000.00	-	\$25,000.00
Failure to maintain NESHAP records	1	\$5,000.00	\$10,000.00	-	\$15,000.00
Failure to conduct BMP Inspections	1	\$3,000.00	\$2,000.00		\$5,000.00
Failure to maintain adequate BMP/SPCC records	1	\$3,000.00	\$2,000.00		\$5,000.00
Late DMR	1	\$500.00	\$250.00		\$750.00
TOTAL PER FACTOR		\$26,500.00	\$24,250.00	-	\$50,750.00

Adjustments to Amount of Initial Penalty	
Mitigating Factors (-)	
Ability to Pay (-)	
Other Factors (+/-)	
Total Adjustments (+/-)	

Economic Benefit (+)	
Amount of Initial Penalty	\$50,750.00
Total Adjustments (+/-)	
FINAL PENALTY	\$50,750.00

Footnotes

* See the "Department's Contentions" portion of the Order for a detailed description of each violation and the penalty factors.