

ALABAMA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

IN THE MATTER OF:)
CEMEX Southeast, LLC)
Demopolis, Marengo County, Alabama) CONSENT ORDER NO.
ADEM Air Facility ID No. 105-0002)

PREAMBLE

This Special Order by Consent is made and entered into without adjudication of law or fact by the Alabama Department of Environmental Management ("Department" or "ADEM") and CEMEX Southeast, LLC ("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, Ala. Code §§ 22-28-1 to 22-28-23, as amended, and the regulations promulgated pursuant thereto.

STIPULATIONS

- 1. The Permittee operates a cement manufacturing facility ("Facility") located in Demopolis, Marengo County, Alabama (ADEM Air Facility ID No. 105-0002).
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 Alabama Air Pollution Control Act, Ala. Code §§ 22-28-1 to 22-28-23, as amended.

4. The Permittee operates a rotary cement kiln and supporting equipment at the Facility pursuant to the authority of Air Permit No. 105-0002-X016 (“Permit”) issued on October 2, 2017, and Major Source Operating Permit No. 105-0002.

5. Pursuant to Applicability Proviso No. 7 of the Permit, the kiln is 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, §63.1343(b), existing kilns are subject to a mercury (Hg) limit of 55 lb/MM tons clinker (30-day rolling average).

7. According to 40 CFR Part 63, Subpart LLL, §63.1343(b), existing kilns are subject to a hydrogen chloride (HCl) limit of 3 ppmvd (corrected to 7 percent oxygen).

8. According to 40 CFR Part 63, Subpart LLL, §63.1349(c), “performance tests are required at regular intervals for affected sources that are subject to a dioxin, organic HAP or HCl emissions limit. Performance tests required every 30 months must be completed no more than 31 calendar months after the previous performance test...”

9. According to Emissions Standards Proviso No. 5 of the Permit, “Sulfur dioxide (SO₂) emissions from the kiln shall not exceed 1.0 lb/ton of clinker as determined by a 30 day rolling average beginning on the 30th operating day after November 29, 2018. [Regulation] Consent Decree No. 3:16-cv-471”

DEPARTMENT'S CONTENTIONS

10. On February 16, 2022, the Permittee conducted an OHAP stack test and collected HCl emissions data from the kiln main stack and alkali bypass stack using an FTIR sensor. The HCl data was not properly calibrated and thus was not submitted as a

valid compliance test. The data indicated that HCl emissions from the kiln exceeded the Permit limit. The Permittee collected additional non-validated data on March 8 and 9, 2022, that indicated HCl emissions exceeded the Permit limit. The Permittee collected additional non-validated data on March 29, 2022, that indicated HCl emissions below the Permit limit. The Department considers each operating day since the Permittee received data indicating an exceedance of the HCl limit to be a separate violation until the day the Permittee received data indicating HCl emissions below the Permit limit, resulting in 38 Permit violations.

11. The Permittee conducted HCl and OHAP performance testing on the kiln on August 2, 2019. The Permittee did not conduct a valid performance test to certify compliance with the HCl and OHAP limits in the Permit by March 2, 2022, within the allowable timeframe of 31 months from the previous performance test, resulting in two Permit violations. On May 20, 2022, the Department received a notification from the Permittee that HCl and OHAP testing was scheduled for the week of June 13, 2022.

12. On February 22, 2022, the Department received a notification from the Permittee that mercury emissions from the kiln exceeded the Permit limit on February 20, 2022. Additional notifications stated mercury emissions exceeded the Permit limit on February 20-22, and 26-28, 2022, March 1-5, 8-20, and 25-31, 2022, and April 1-4, 2022, for a total of 35 days.

13. On March 7, 2022, the Department received a notification from the Permittee that the SO₂ emissions from the kiln exceeded the Permit limit. Additional notifications stated SO₂ emissions exceeded the Permit limit on March 6, 8, 14-21, and 24-31, 2022, and April 1, 2022, for a total of 19 days.

14. 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 demonstrate compliance with the emissions limits of the Permit to be serious violations. However, the Department is not aware of any irreparable harm to the environment resulting from this violation.

B. THE STANDARD OF CARE: The Permittee failed to exhibit a sufficient standard of care by failing to demonstrate compliance with several emissions limits required by the Permit and by failing to conduct compliance testing in accordance with the requirements of the Permit.

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 aware of and considered the steps taken by the Permittee to minimize or mitigate the effects of these violations on the environment once the violations were known.

E. HISTORY OF PREVIOUS VIOLATIONS: The Department's records indicate that there are no other similar violations or enforcement actions taken by the Department against the Permittee within the past five years. However, the Department issued two Consent Orders to the Permittee within the last two years. Consent Order No. 21-054-CAP was issued on May 12, 2021, for the Permittee's failure to accurately certify compliance in a report required by its permits. Consent Order No. 22-073-CAP was issued on May 4, 2022, for the Permittee's failure to demonstrate compliance with a particulate matter emission limit applicable to the kiln referenced in this Order.

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.

15. 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).

16. 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

17. 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 \$210,000.00 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 and the 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. Except for purposes identified in this Paragraph G and/or in actions by the Department, this Special Order by Consent shall not be admissible in other proceedings.

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.

CEMEX SOUTHEAST, LLC



(Signature of Authorized Representative)

Edgar Claudio Angeles Garga
(Printed Name)

E.V.P Cement Operations & Technology
(Printed Title)

ALABAMA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

Lance R. LeFleur
Director

Date Signed: 07.29.2022

Date Executed: _____

Attachment A

**CEMEX Southeast, LLC
Demopolis, Marengo County**

ADEM Air Facility ID No. 105-0002

Violation*	Number of Violations*	Seriousness of Violation*	Standard of Care*	History of Previous Violations*	Total of Three Factors
Failure to meet MACT/NESHAP Hg emissions limit of the Permit	35	\$35,000.00	\$20,000.00	-	\$55,000.00
Failure to meet SO ₂ emissions limit of the Permit	19	\$20,000.00	\$20,000.00	-	\$40,000.00
Failure to meet MACT/NESHAP HCl emissions limit of the Permit	38**	\$100,000.00	\$50,000.00	-	\$150,000.00
Failure to meet the MACT/NESHAP testing deadline for HCl, OHAP as required by the Permit	2	\$2,000.00	\$3,000.00	-	\$5,000.00
TOTAL PER FACTOR		\$157,000.00	\$93,000.00		\$250,000.00

Adjustments to Amount of Initial Penalty	
Mitigating Factors (-)	
Ability to Pay (-)	
Other Factors (+/-)	-\$40,000.00
Total Adjustments (+/-)	-\$40,000.00

Economic Benefit (+)	
Amount of Initial Penalty	\$250,000.00
Total Adjustments (+/-)	-\$40,000.00
FINAL PENALTY	\$210,000.00

Footnotes

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

** The Department originally considered each day since the Permittee received data indicating an exceedance of the HCl limit to be a separate violation since the Permittee had not demonstrated compliance with the HCl limit with a valid compliance test, which would have resulted in over 100 violations. After meeting with the Permittee, the Department agreed to accept the data obtained on March 29, 2022, as evidence that the facility had returned to compliance, thus reducing the number of violations to 38.