

ALABAMA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

IN THE MATTER OF:)
)
National Cement Company of Alabama, Inc.)
Ragland, St. Clair County, Alabama)
)
ADEM Air Facility ID No. 410-0002)

CONSENT ORDER NO. XX-XXX-CAP

PREAMBLE

This Special Order by Consent is made and entered into by the Alabama Department of Environmental Management (“the Department” and/or “ADEM”) and National Cement Company of Alabama, Inc. (the “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 (the “Facility”) located in Ragland, St. Clair County, Alabama (ADEM Air Facility ID No. 410-0002).
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 Major Source Operating Permit No. 410-0002 (“the MSOP”), Air Permit Nos. 410-0002-X018 through -X026 (“the Air Permits”).

5. General Permit Proviso No. 7 of the MSOP states in part: “The Permittee must submit to the Department, within 30 days or for such other reasonable time as the Department may set, any information that the Department may request in writing to determine compliance with this permit. [Rule 335-3-16-.05(j)]”

6. General Permit Proviso No. 21(a) of the MSOP states: “Reports to the Department of any required monitoring shall be submitted at least every 6 months. All instances of deviations from permit requirements must be clearly identified in said reports. All required reports must be certified by a responsible official consistent with Rule 335-3-16-.04(9). [Rule 335-3-16-.05(c)3.]”

7. General Permit Proviso No. 11 or 12 of the Air Permits states in part: “Submittal of other reports regarding monitoring records...may be required as authorized in the Department’s air pollution control rules and regulations.”

8. General Permit Proviso No. 23 of the Air Permits states in part: “An annual compliance certification shall be submitted by November 25th...”

DEPARTMENT’S CONTENTIONS

9. The Department received the Permittee’s semiannual monitoring report, dated May 23, 2023, on May 30, 2023. The Department received an electronic copy on May 26, 2023. The due date for this report was May 25, 2023. Upon review of the report, it was determined that the sources covered by the Air Permits were not addressed/included in the report. An email was sent on June 6, 2023, asking for a resubmittal of this report or

the submittal of an additional report addressing the Air Permits. The requested revised report had not been received as of January 31, 2024.

10. The Department issued a Notice of Violation (“NOV”) to the Permittee for failure to comply with the permit provisions listed in stipulations 5 through 7 above on November 21, 2023. The NOV included a timeline of correspondence detailing the Department’s efforts to obtain a revision and the Permittee’s repeated failure to respond.

11. On August 22, 2023, the Department conducted an inspection of the Facility. After the inspection, the Department requested certain records be provided regarding sources covered by the Air Permits and the MSOP. These records had not been provided as of January 31, 2024.

12. The Permittee submitted its semiannual report and Annual Compliance Certification, due November 25, 2023, on November 27, 2023. These reports again failed to address the sources covered by the Air Permits. The requested revised reports had not been received as of January 31, 2024.

13. 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 submit reports and failure to timely submit information requested by the Department as required by the MSOP and the Air Permits to be a serious violation. 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 exhibit a sufficient standard of care by failing repeatedly to submit reports and to submit information required by the MSOP and the Air 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 Permittee was issued a Notice of Violation on September 1, 2022, in part for failure to timely submit information requested by the Department as required by the MSOP.

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.

14. 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).

15. The Department neither admits nor denies the 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

16. The Permittee is committed to operating its facility in full compliance with its permits and applicable laws and regulations. With the construction of a new kiln at the facility, the Permittee has experienced *force majeure* circumstances that have created a number of challenges in the operation of the facility. The Permittee has provided numerous updates and has maintained an open dialogue with the Department regarding the *force majeure* circumstances encountered following the construction of the new kiln and

ancillary equipment. The Permittee has devoted considerable resources toward addressing those challenges in a manner that will ensure ongoing compliance.

17. The Permittee has not gained economic advantage from alleged non-compliance. The Permittee has retained an outside consultant to provide additional resources and expertise and to assist with complete and accurate submission of the supplemental reports and information requested by the Department. The Permittee also continues to devote significant internal resources toward achieving and maintaining compliance.

18. 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. The Permittee's entry into this Consent Order and agreement to pay the penalty assessed herein should in no way be deemed an admission of liability or noncompliance.

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 \$22,500.00 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, in addition to the following:

(1) The following reports that remain to be submitted/revised shall be submitted within forty-five days from the effective date of this Order:

- (i) Annual Compliance Certification for the reporting period of September 27, 2022 to September 26, 2023 for each of the following permits:
 - a. Air Permit No. 410-0002-X018;
 - b. Air Permit No. 410-0002-X019;
 - c. Air Permit No. 410-0002-X020;
 - d. Air Permit No. 410-0002-X021;
 - e. Air Permit No. 410-0002-X022;
 - f. Air Permit No. 410-0002-X023;
 - g. Air Permit No. 410-0002-X024;
 - h. Air Permit No. 410-0002-X025;

- i. Air Permit No. 410-0002-X026; and
 - j. Major Source Operating Permit (MSOP) No. 410-0002.
- (ii) Semiannual Monitoring Reports for the reporting period September 27, 2022 through March 26, 2023 and the reporting period March 27, 2023 through September 26, 2023 for each of the following permits:
- a. Air Permit No. 410-0002-X018;
 - b. Air Permit No. 410-0002-X019;
 - c. Air Permit No. 410-0002-X020;
 - d. Air Permit No. 410-0002-X021;
 - e. Air Permit No. 410-0002-X022;
 - f. Air Permit No. 410-0002-X023;
 - g. Air Permit No. 410-0002-X024;
 - h. Air Permit No. 410-0002-X025; and
 - i. Air Permit No. 410-0002-X026.

(2) The Permittee shall develop and document an internal procedure for ensuring that all reports required by the MSOP and the Air Permits are complete and are submitted by the due dates. In addition, this internal procedure shall include steps to ensure that any information requested by the Department will be submitted within the required timeframe. The documented procedure(s) shall be submitted to the Department for approval within forty-five days from the effective date of this Order.

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.

NATIONAL CEMENT COMPANY OF ALABAMA, INC.


(Signature of Authorized Representative)

JEROME FREMIOT
(Printed Name)

PLANT MANAGER
(Printed Title)

Date Signed: 05/06/2024

ALABAMA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

Lance R. LeFleur
Director

Date Executed: _____

Attachment A

**National Cement Company of
Alabama, Inc.
Ragland, St. Clair County**

ADEM Air Facility ID No. 410-0002

Violation*	Number of Violations*	Seriousness of Violation*	Standard of Care*	History of Previous Violations*	Total of Three Factors
Failure to submit timely reports	2	\$1,000.00	\$1,000.00	-	\$2,000.00
Failure to submit reports required by the Air Permits	2	\$4,000.00	\$2,000.00	-	\$6,000.00
Failure to respond to timely respond to information requests	Ongoing	\$10,000.00	\$5,000.00	\$2,000.00	\$17,000.00
<i>TOTAL PER FACTOR</i>		<i>\$15,000.00</i>	<i>\$8,000.00</i>	<i>\$2,000.00</i>	<i>\$25,000.00</i>

Adjustments to Amount of Initial Penalty	
Mitigating Factors (-)	
Ability to Pay (-)	
Other Factors (+/-)	-\$2,500.00
Total Adjustments (+/-)	-\$2,500.00

Economic Benefit (+)	
Amount of Initial Penalty	\$25,000.00
Total Adjustments (+/-)	-\$2,500.00
FINAL PENALTY	\$22,500.00

Footnotes

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