

ALABAMA DEPARTMENT OF
ENVIRONMENTAL MANAGEMENT

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

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 ("Kiln 2") and supporting equipment at the Facility pursuant to the authority of Air Permit No. 410-0002-X018 ("Air Permit X018") and Major Source Operating Permit No. 410-0002 ("the MSOP").

5. Emission Standards Proviso No. 3(c) of Air Permit X018 states in part: "Mercury emissions from the kiln [Kiln 2] shall not exceed 21 lb/MM tons clinker" as 30-day rolling average determined on a dry basis. [No. 4 of Table 1 of 40 CFR 63.1343(b)(1)]

6. Emission Standards Proviso 4 of Air Permit X018 states: "This source [Kiln 2 and associated equipment] is subject to the applicable requirements outlined in 40 CFR 60: Subpart F, '*Standards*'."

7. 40 CFR 60.62(a) states in part: "You [the Permittee] may not discharge into the atmosphere from any kiln any gases which ... exceed 0.4 pounds of sulfur dioxide (SO₂) per ton of clinker on a 30-operating day rolling average." [40 CFR 60.62(a) and (a)(4)]

8. Emission Standards Proviso 3 of the Area 71: Finish Mill No. 1 section of the MSOP states in part: "Emissions Point ... No. 71-01 ... [is] subject to the applicable emissions standards outlined in 40 CFR 63: Subpart LLL, '*Emissions limits for affected sources other than kilns; clinker coolers; new and reconstructed raw material dryers*'." [40 CFR 63.1345]

9. 40 CFR 63.1345 states in part: "The owner or operator of each ... finish mill ... must not cause to be discharged into the atmosphere from any of these affected sources any gases which exhibit opacity in excess of 10 percent."

10. General Permit Proviso No. 29 of the MSOP states in part: "Any source of particulate emissions shall not discharge more than one 6-minute average opacity greater than 20% in any 60-minute period."

11. Emissions Monitoring Proviso 3 of the Area 71: Finish Mill No. 1 section of the MSOP states: “These sources... are subject to the applicable requirements outlined in 40 CFR 63, Subpart LLL: ‘*Monitoring requirements*’. If visible emissions are observed, corrective action shall be initiated within one (1) hour.” [40 CFR 63.1350(f) and (f)(3)]

DEPARTMENT'S CONTENTIONS

12. The Permittee submitted final versions of quarterly excess emission reports for the second and third quarters of 2024 on November 11, 2024. For the period from April 1, 2024 through September 30, 2024, the Permittee reported the following emissions exceedances for Kiln 2:

A. 2,129 operating hours (76 operating days), or 66.6% of Kiln 2's total operating hours during this period, during which the Permittee failed to comply with the mercury emission limit listed in stipulation 5, above.

B. 573 operating hours (33 operating days), or 17.9% of Kiln 2's total operating hours during this period, during which the Permittee failed to comply with the SO₂ emission limit of 40 CFR 60.62(a), detailed in stipulation 7 above.

13. The Department issued a Notice of Violation (“NOV”) to the Permittee for failure to comply with the permit provisions listed in stipulations 5 and 7 above on November 27, 2024.

14. The Permittee submitted the quarterly excess emissions report for the fourth quarter of 2024 on January 21, 2025. This report stated that the following additional emission exceedances for Kiln 2 occurred during the period from October 1, 2024 through December 31, 2024:

A. 48 operating hours (2 operating days), or 3.0% of Kiln 2's total operating hours during this period, during which the Permittee failed to comply with the mercury emission limit listed in stipulation 5, above. The Permittee remained out of compliance past the end of this reporting period.

B. 539 operating hours (26 operating days), or 33.1% of Kiln 2's total operating hours during this period, during which the Permittee failed to comply with the SO₂ emission limit of 40 CFR 60.62(a), detailed in stipulation 7 above.

15. On March 3, 2025, the Permittee submitted a notification which stated that between December 29, 2024 and February 28, 2025, there were 757 operating hours (36 operating days), or 87.5% of kiln operating hours during this period, during which the Permittee failed to comply with the mercury emission limit listed in stipulation 5, above. This period includes the 48 operating hours (2 operating days) of exceedance that were reported for the fourth quarter of 2024.

16. The Department previously issued a NOV to the Permittee for failure to comply with the opacity limit of 40 CFR 63.1345 and the requirement of 40 CFR 63.1350(f)(3) to initiate corrective action within one (1) hour on March 14, 2024.

17. During the period from November 19, 2024 through February 3, 2025, the Permittee notified the Department of multiple exceedances of the 10% opacity limit for the Finish Mill No. 1 separator stack (71-01, or "71DC01"), as well as multiple instances of failure to document corrective actions, including that corrective action was initiated within one (1) hour, as detailed below.

A. On November 15 and 18, 2024, the Permittee notified the Department via email of an opacity exceedance which occurred from November 13 through 16, 2024 for

the Finish Mill No. 1 separator stack (71-01, or "71DC01"). The notification did not document the corrective actions initiated within 1 hour. This process operated 33 hours prior to being shut down for repairs.

B. On December 20, 2024, the Permittee notified the Department via email of an opacity exceedance which occurred on December 16, 17, 18, and 19, 2024. Method 9 testing conducted by facility personnel indicated five (5) discrete six-minute averages in excess of 10% opacity on each date, or a total of twenty (20) discrete six-minute averages in excess of 10% opacity. The Department is not aware of any documented corrective action performed until December 20, 2024. Finish Mill No. 1 operated 92 hours prior to being shut down for repairs.

C. On January 3, 14, and 21, 2025, the Permittee notified the Department of ongoing opacity exceedances which began on January 2, 2025. Opacity in excess of 10% was reported on eight (8) days between January 2, 2025 and January 18, 2025. While maintenance inspections were initiated in a timely manner on January 2, 2025, the finish mill operated without corrective action being conducted between January 7 and 8, 2025 and January 10 and 13, 2025. Method 9 testing conducted by facility personnel on January 8 and 13 indicated five (5) discrete six-minute averages in excess of 20% opacity on each date, for a total of ten (10) discrete six-minute averages in excess of 20% opacity. Repairs were made on January 3, 9, 16-17, and 20, 2024. Finish Mill No. 1 operated 214 hours during this period prior to the final shutdown for repairs on January 18, 2025.

D. On January 29, 2025, the Permittee notified the Department of additional opacity exceedances from 71DC01 which began on January 27, 2025. Maintenance inspections were initiated in a timely manner on January 27, 2025.

E. On February 3, 2025, the Permittee notified the Department that opacity in excess of 10% was noted from 71DC01 beginning on January 30, 2025. Method 9 testing conducted by facility personnel on January 30 and 31 and February 1 and 2 indicated five (5) discrete six-minute averages in excess of 20% opacity on each date, for a total of twenty (20) discrete six-minute averages in excess of 20% opacity. The Permittee did not document that corrective actions were initiated within 1 hour. Finish Mill No. 1 operated 74 hours prior to shutting down for repairs on February 3, 2025.

F. The total instances of opacity exceedances and failure to record corrective actions initiated within one (1) hour of noting visible emissions, which are detailed in stipulations 17 A through 17 E, are as follows:

1. There were 22 days where the Permittee's records indicate that visible emissions in excess of 10% opacity were observed from 71DC01.

2. Method 9 observations performed by the Permittee on 71DC01 during this period indicated thirty (30) discrete six-minute averages in excess of 20% opacity, and an additional twenty (20) discrete six-minute averages in excess of 10% opacity.

3. On at least 13 dates during this period, the Permittee did not comply with the requirement to record the corrective actions initiated within one (1) hour.

4. During this period, Finish Mill No. 1 operated a total of 452 hours between the time that the Permittee initially noted excess opacity and the time at which corrective action was initiated.

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 failures to meet emissions limits 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 exhibit a sufficient standard of care by failing to meet the emissions standards and corrective action documentation requirements, including that timely corrective action was completed, of Air Permit X018, the MSOP, Subpart F of 40 CFR Part 60, and Subpart LLL of 40 CFR Part 63.

C. ECONOMIC BENEFIT WHICH DELAYED COMPLIANCE MAY HAVE CONFERRED: The Permittee has likely received significant economic benefit from continuing to operate the Finish Mill No. 1 while exceeding the opacity limit for 71DC01, rather than conducting corrective action in a timely manner; however, the realized economic benefit could not be quantified by the Department. The Department is not aware

of any evidence indicating the Permittee received any significant economic benefit from any of the other violations referenced in this Order.

D. EFFORTS TO MINIMIZE OR MITIGATE THE EFFECTS OF THE VIOLATION UPON THE ENVIRONMENT: The Department is aware of the various efforts by the Permittee to minimize or mitigate the effects of the violations for Kiln 2 on the environment, which include optimizing the operation, preventative maintenance procedures, and corrective action procedures for the Kiln 2 lime and activated carbon injection systems. The Department is also aware of various efforts by the Permittee to minimize or mitigate the effects of the violations for Finish Mill No. 1, including several replacements of damaged filter bags, repair of an electrical issue with the pulsing system, contracting a filter bag supplier technician to troubleshoot and identify causes of exceedances, and a complete replacement of the filter bags in 71DC01.

E. HISTORY OF PREVIOUS VIOLATIONS: Department records indicate that in the past five years, two Orders were issued to the Permittee by the Department: Consent Order No. 24-087-CAP was executed July 10, 2024 for unrelated violations, and Consent Order No. 20-088-CAP was executed August 5, 2020 for mercury violations of a different source. There are no other similar violations or enforcement actions taken by the Department against the Permittee within the past five years.

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

G. OTHER FACTORS: The calculated penalty would have exceeded \$250,000.00; therefore, in an effort to resolve this matter amicably, without incurring the

additional expense of litigation, the penalty has been set at the statutory maximum of \$250,000.00.

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 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

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.

22. The Permittee is committed to operating its facility in full compliance with its permits and applicable laws and regulations. Following the facility's expansion, the Permittee has encountered various operational challenges and has implemented enhanced procedures for both operations and recordkeeping to ensure continued compliance. The Permittee has kept the Department informed of these challenges and has not derived any economic benefits from instances of non-compliance.

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 \$250,000.00 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, in addition to the following:

1. A revised MACT LLL Operation and Maintenance plan shall be submitted within forty-five days of the effective date of this Order. The revised plan shall include all

MACT LLL opacity monitoring requirements and shall detail corrective actions to be completed when visible emissions are observed, including what is required for corrective action to be considered timely.

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.

ALABAMA DEPARTMENT OF
ENVIRONMENTAL MANAGEMENT


(Signature of Authorized Representative)

Jeffery W. Kitchens
Acting Director

jeane funder
(Printed Name)

PLANT MANAGER
(Printed Title)

Date Signed: 6/10/2025

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 meet MACT Hg Limit	112				
Failure to meet NSPS SO ₂ Limit	59				
Noncompliance with MACT opacity limit	50				
Noncompliance with General Proviso 29 20% opacity limit	24				
Failure to conduct timely corrective action [†]	13 [†]				
TOTAL PER FACTOR					

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

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

Footnotes

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

** Pursuant to Ala. Code §22-22A-5(18)c., as amended, the total penalty is limited to \$250,000.00.

† The Permittee has provided information indicating that corrective actions were initiated in a timely manner but that these corrective actions were not properly recorded.