



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 8

1595 Wynkoop Street
DENVER, CO 80202-1129
Phone 800-227-8917
<http://www.epa.gov/region08>

Ref: 8ENF-L

SEP 28 2010

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

CT Corporation, Registered Agent
136 East South Temple, Suite 2100
Salt Lake City, UT 84111

Re: Administrative Complaint and Notice of
Opportunity for Hearing
Docket No. **CWA-08-2010-0037**

Dear Registered Agent:

On May 23, 2008, and June 19, 2009, inspections of Holcim (US) Inc.'s (Holcim) mine in Morgan, Utah by the U.S. Environmental Protection Agency (EPA) and the Utah Department of Environmental Quality (UDEQ) revealed discharges of pollutants to waters of the United States without permit authorization. The Clean Water Act (CWA or Act) prohibits, among other things, the discharge of pollutants except as in compliance with the terms of a permit issued under § 402 of the Act, 33 U.S.C. § 1342. See 33 U.S.C. § 1311. The violations identified during the inspections were the subject of an administrative order for compliance issued to you on August 24, 2009.

Enclosed is an Administrative Complaint and Notice of Opportunity for Hearing (complaint) that EPA is issuing to Holcim under the authority of § 309(g) of the Clean Water Act (Act), 33 U.S.C. § 1319(g). In the complaint, EPA alleges that Holcim failed to apply for a permit to discharge storm water and/or process water, in violation of § 308 of the Act, 33 U.S.C. § 1318, and its implementing regulations, and violated § 301 of the Act, 33 U.S.C. § 1311, by discharging pollutants to waters of the United States without a permit. The complaint proposes that a penalty of \$82,500.00 be assessed against Holcim for these violations.

By law, Holcim has the right to request a hearing regarding the violations alleged in the complaint and the appropriateness of the proposed administrative civil penalty. Please pay particular attention to the section of the complaint entitled "Notice of Opportunity to Request a Hearing." If Holcim wishes to request a hearing, it must file within thirty (30) days of receipt of the enclosed complaint, a written answer with the EPA Regional Hearing Clerk at the address set



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forth in the complaint. The written request must follow the requirements of the Consolidated Rules of Practice at 40 C.F.R. part 22, a copy of which is enclosed. Note that should Holcim fail to request a hearing within thirty (30) days of receipt of the complaint, the right to such a hearing will be waived and the proposed civil penalty may be assessed against Holcim without further proceedings.

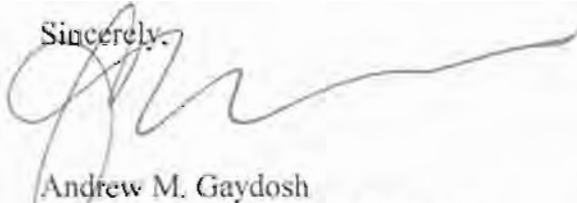
If Holcim wishes to settle this matter without further legal action, it may waive the right to a hearing and, within thirty days of receipt of this letter, pay the proposed penalty to "Treasurer, United States of America." at the address set forth in the complaint.

Enclosed is a copy of "U.S. EPA Small Business Resources," which can assist in complying with federal environmental laws. Also enclosed is an SEC Disclosure Notice.

Whether or not Holcim requests a hearing, it may confer informally with EPA concerning the alleged violations and the amount of the proposed penalty. EPA encourages all parties against whom it files a complaint proposing assessment of a penalty to pursue the possibility of settlement as a result of an informal conference. If such a mutually satisfactory settlement can be reached, it will be formalized by the issuance of a consent agreement signed by Holcim and the delegated official in EPA Region 8. The issuance of such a consent agreement shall constitute a waiver by Holcim of its right to a hearing on, and to a judicial appeal of, the agreed upon civil penalty. A request for an informal conference with EPA does not extend the thirty day period within which Holcim must request or waive the right to a hearing, and the two procedures can be pursued simultaneously.

Holcim has the right to be represented by an attorney at any stage in the proceedings, including any informal discussions with EPA, but it is not required. If Holcim wishes to discuss settlement or technical questions, please contact David Gwisdalla, Environmental Engineer, at (303) 312-6193. Legal questions, including any communications from an attorney, should be directed to Wendy Silver, Senior Attorney, at (303) 312-6637.

We urge your prompt attention to this matter.

Sincerely,

Andrew M. Gaydosh
Assistant Regional Administrator
Office of Enforcement, Compliance and
Environmental Justice

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 8

2010 SEP 28 AM 11:49

IN THE MATTER OF:)	ADMINISTRATIVE COMPLAINT;
)	AND NOTICE OF OPPORTUNITY
Holcim (US), Inc.)	FOR HEARING
6055 East Croydon Road)	Proceeding to Assess Class II
Morgan, Utah 84050-9951)	Administrative Penalty Under
)	Clean Water Act, Section 309(g)
Respondent.)	
_____)	Docket No. CWA-08-2010-0037

LET
REGION VIII
HEARING CLERK

1. This Administrative Complaint and Notice of Opportunity for Hearing (complaint) is issued pursuant to § 309(g) of the Clean Water Act (CWA or the Act), 33 U.S.C. § 1319(g), and 40 C.F.R. § 22.13. Section 309(g) of the Act authorizes the Administrator of the United States Environmental Protection Agency (EPA) to make findings and to assess civil penalties for violations of § 301 of the CWA, 33 U.S.C. § 1311. This proceeding is subject to the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits, 40 C.F.R. Part 22, a copy of which accompanies this complaint.

2. The undersigned EPA official has been properly delegated the authority to issue this complaint.

STATUTORY AND REGULATORY FRAMEWORK

3. Section 301(a) of the Act, 33 U.S.C. § 1311(a), among other things, prohibits the discharge of any pollutant into waters of the United States except as in compliance with a permit issued pursuant to § 402 of the Act, 33 U.S.C. § 1342.

4. Section 402 of the Act, 33 U.S.C. § 1342, establishes a National Pollutant Discharge Elimination System (NPDES) program, under which EPA and, upon receiving authorization from EPA, states may permit discharges of pollutants into navigable waters, subject to specific terms and conditions.

5. Section 308 of the Act, 33 U.S.C. § 1318, requires owners and operators of point sources to submit information to EPA as needed to carry out the objectives of the Act, including the NPDES program.

6. 40 C.F.R. § 122.26(b)(14)(iii) defines the term "storm water discharge associated with industrial activity" to include facilities classified as "Standard Industrial Classifications (SIC) 10 through 14 (mineral industry) including active or inactive mining operations...and oil and gas

exploration, production, processing, or treatment operations, or transmission facilities that discharge storm water contaminated by contact with or that has come into contact with, any overburden, raw material, intermediate products, finished products, byproducts or waste products located on the site of such operations... .”

7. 40 C.F.R. § 122.21 requires persons who discharge or propose to discharge “storm water associated with industrial activity” to apply for an individual permit or seek coverage under a promulgated storm water general permit.

8. EPA has approved the State of Utah’s (state) NPDES program pursuant to § 402(b) of the Act, 42 U.S.C. § 1342(b).

9. Section 309(g)(2)(B) of the Act, 33 U.S.C. § 1319(g)(2)(B), authorizes the assessment of a Class II civil penalty of up to \$11,000.00 per day per violation of § 301 of the Act, 33 U.S.C. § 1311, and per day per violation of any condition or limitation in a permit issued pursuant to § 402 of the Act, 33 U.S.C. § 1342, up to a maximum for all violations of \$157,500.00 for violations occurring from March 15, 2004, through January 12, 2009 and up to \$16,000.00 per day per violation up to a maximum for all violations of \$177,500.00 for violations occurring thereafter.

GENERAL ALLEGATIONS

10. All general allegations set forth in this complaint are specifically incorporated into each count by this reference.

11. Respondent Holcim (US), Inc. (Holcim or respondent) is and was at all relevant times a Utah corporation doing business in Utah and having a registered office address of 6055 East Croydon Road, Morgan, Utah 84050.

12. Respondent owns and/or operates a limestone and sandstone quarry (the Devil’s Slide quarry) located at 6055 East Croydon Road, Morgan, Utah (the facility), adjacent to the Weber River.

13. At all times relevant to this action, respondent engaged in industrial activities at the facility.

14. Operations at the facility involve drilling and blasting limestone and sandstone, loading the rock with a front-end loader into a haul truck, and transporting the rock to a crushing area. Sandstone, limestone, clay, and topsoil are stored at the facility.

15. Water from the facility flows into two drainages, Quarry Hollow and Bone Yard Hollow, each of which flows into catch basins north of the Weber River. The catch basin for the Quarry Hollow drainage is a single basin; the catch basins for the Bone Yard Hollow drainage are a series

of at least two structures, with the lowest basin (the terminal impoundment) located approximately twenty-five (25 feet) north of the Weber River.

16. On May 23, 2008, inspectors from EPA and the Utah Department of Environmental Quality (UDEQ), Division of Water Quality conducted an NPDES storm water inspection of the facility and observed a discharge outfall from the terminal impoundment of the Bone Yard Hollow drainage to the Weber River through an eroded bank in the impoundment. A flow path was visible from the terminal impoundment to the Weber River.

17. At the time of the inspection, the respondent had not sought or obtained authorization from UDEQ to discharge storm water from the facility under either the applicable General Permit or any individual Utah Pollution Discharge Elimination System (UPDES) storm water discharge permit.

18. On June 19, 2009, an inspector from UDEQ conducted an inspection of the facility and observed a discharge from the terminal impoundment of the Bone Yard Hollow drainage to the Weber River.

19. On October 14, 2009, respondent submitted a UPDES permit application to the state requesting authorization to discharge process wastewater from the facility.

20. The Weber River is a "water of the United States" within the meaning of 33 C.F.R. § 328.3(a), and therefore a "navigable water" within the meaning of the definition set forth in § 502(7) of the Act, 33 U.S.C. § 1362(7).

21. Respondent is, and was at all relevant times, a "person" within the meaning of the definition set forth in § 502(5) of the Act, 33 U.S.C. § 1362(5).

22. Runoff and drainage from the facility is "storm water" as defined in 40 C.F.R. § 122.26(b)(13).

23. Discharges of storm water that have come into contact with raw material at the quarry, including limestone, are considered "process water," and are subject to the effluent guidelines in 40 C.F.R. Part 436.

24. Storm water in contact with industrial activities and process water contain "pollutants" as defined in § 502(6) of the Act, 33 U.S.C. § 1362(6).

25. The discharge of storm water and process water from the facility is the "discharge of a pollutant" as defined in § 502(12) of the Act, 33 U.S.C. § 1362(12) and 40 C.F.R. § 122.2.

26. The facility is a "point source" within the meaning of § 502(14) of the Act, 33 U.S.C. § 1362(14).

Enclosures:

1. Administrative Complaint and Notice of Opportunity for Hearing
2. Consolidated Rules of Civil Practice (40 C.F.R. part 22)
3. U.S. EPA Small Business Resources Information Sheet
4. SEC Disclosure Notice

cc: Amanda Smith, Utah Department of Environmental Quality
Keith Krugh, Holcim (US) Inc.

27. Pursuant to § 309(g) of the Act, 33 U.S.C. § 1319(g), EPA has consulted with Amanda Smith, Executive Director, UDEQ, regarding assessment of this administrative penalty by furnishing a copy of this complaint and inviting her to comment on behalf of the state.

COUNT I

28. Respondent failed to apply for authorization to discharge under a UPDES permit prior to discharging pollutants from the facility.

29. Respondent's failure to apply for authorization to discharge under a UPDES permit constitutes a violation of 40 C.F.R. § 122.21 and § 308 of the Act, 33 U.S.C. § 1318.

COUNT II

30. Respondent discharged pollutants to waters of the United States from the facility without the required authorization by a permit issued pursuant to § 402, of the Act, 33 U.S.C. § 1342.

31. Respondent's discharges of pollutants from the facility to waters of the United States without permit authorization pursuant to § 402, 33 U.S.C. § 1342, constitute violations of § 301 of the Act, 33 U.S.C. § 1311.

NOTICE OF PROPOSED ORDER ASSESSING A CIVIL PENALTY

32. Based on the foregoing allegations and pursuant to the authority of § 309(g) of the Act, 33 U.S.C. § 1319(g), EPA Region 8 hereby proposes that a penalty of \$82,500.00 be assessed against respondent for the violations alleged above, as explained below:

Nature, Circumstances, Extent, and Gravity of Violations

In May 2008, EPA inspected the facility and found that respondent had failed to apply for or obtain NPDES permit coverage and found evidence of a discharge to the Weber River from the existing impoundment built to store storm water and/or process water runoff from the facility. The inspectors also cited other poor housekeeping and material stock-pile management issues. A follow-up inspection by UDEQ, in June 2009, found that the facility was discharging storm water and/or process water from the impoundment. The water discharged from the impoundment flowed directly to the Weber River, a water of the United States. The impoundment was observed discharging with approximately 0.19 inches of precipitation in the two days preceding UDEQ's inspection. The National Oceanic and Atmospheric Administration (NOAA) 10-year 24-hour storm for this area is 2.26 inches of precipitation. Federal regulations require that storm water discharges from mining processes, at a minimum, fully retain the 10-year 24-hour storm on site (40 C.F.R. 436.52(b)). Additionally, pollutants going to the Weber River from the facility would have been minimized or prevented if the respondent had implemented a storm water program.

Thus, the observed violations led to the discharge of storm water and/or process water runoff, considered process wastewater, from the facility to the Weber River.

The facility is a limestone and sandstone mining facility, which is a regulated Industrial Activity. According to the December 2006, "Industrial Storm Water Fact Sheet Series - Sector J: Mineral Mining and Processing Facilities," EPA-833-F-06-025, the potential pollutants of concern from mining facilities include dust, total suspended solids (TSS), total dissolved solids (TDS), and pH.

The Weber River, which flows through the facility, is located approximately 25 feet from the point of discharge from the impoundment. There were flow paths eroded into the surface materials and an observed discharge in the inspection records. There was no precipitation during either inspection but a discharge was observed on a UDEQ inspection on June 19, 2009. The Weber River is a receiving water that provides high-quality habitat for fish, other aquatic life and wildlife; it is suitable for primary and secondary contact recreation.

The Weber River is classified as Class 3A in the section to which the facility discharges. Class 3A streams are defined by the Utah Administrative Code, as "Protected for cold water species of game fish and other cold water aquatic life, including the necessary aquatic organisms in their food chain." The Weber River is listed on the 2008 303(d) List of Impaired Waters. Adjacent to and down-stream of, the facility, the Weber River is listed on the 2008 Utah Total Maximum Daily Load (TMDL) assessment for *Benthic Macro-invertebrate Assessment* impairment.

Prior Compliance History

This penalty complaint is a follow-up to an earlier administrative order issued August 24, 2009. The penalty complaint and the administrative order represent the first CWA enforcement actions by EPA Region 8 against respondent.

Degree of Culpability

In 1990, EPA promulgated Phase I of its storm water program. (55 Fed. Reg. 47990-48091, November 16, 1990.) Phase I required NPDES permit authorization for storm water discharges from ten categories of Industrial Activities, including category three, "Coal and mineral mining and oil and gas exploration and processing" (55 Fed. Reg. at 48065).

Holcim (US), Inc. operates eleven (11) cement plants and associated quarries in the United States. Holcim operates a cement production facility, adjacent to the Devil's Slide Quarry, under a Utah General Storm Water Permit for its regulated industrial activities; the cement production facility was permitted in the early 1990s. Therefore, respondent should have been fully aware of its responsibilities to meet the storm water control requirements of the CWA.

Economic Benefit

Respondent received an economic benefit from the failure to obtain permit authorization and failure to comply with the requirements in the storm water discharge permit. Holcim benefited by failing to timely apply for a permit, by failing to do the required inspections, and by the failing to install a properly-sized process water impoundment.

Ability to Pay

The proposed penalty was not reduced based upon the statutory factor of an inability to pay. However, EPA will consider any new information that respondent may present regarding its inability to pay the penalty proposed in this complaint.

Other Matters That Justice May Require

At this time, EPA has not made any adjustment to the proposed penalty based on this statutory factor.

33. As required by § 309(g)(4) of the Act, 33 U.S.C. § 1319(g)(4), prior to assessing a civil penalty, EPA will provide public notice of the proposed penalty and a reasonable opportunity for the public to comment on the matter and, if a hearing is held, to be heard and present evidence.

34. EPA may issue the Final Order Assessing Administrative Penalties thirty days after respondent's receipt of this Notice, unless respondent, within that time, requests a hearing on this Notice pursuant to the following section.

NOTICE OF OPPORTUNITY TO REQUEST A HEARING

35. As provided in § 309(g)(2)(A) of the Act, 33 U.S.C. § 1319(g)(2)(A), and 40 C.F.R. § 22.15(c), respondent has the right to request a hearing in this matter. If respondent (1) contests any material fact upon which the complaint is based, (2) contends that the amount of penalty proposed in the complaint is inappropriate, or (3) contends that it is entitled to judgment as a matter of law, it must file a written answer in accordance with 40 C.F.R. § 22.15 within thirty days after service of the complaint.

36. Respondent's answer must (1) clearly and directly admit, deny, or explain each of the factual allegations contained in the complaint, (2) state the circumstances or arguments which are alleged to constitute grounds of any defense, (3) state the facts which respondent disputes, (4) state the basis for opposing any proposed relief, and (5) specifically request a hearing, if desired, 40 C.F.R. § 22.15(b). Failure to admit, deny, or explain any factual allegation contained in the complaint constitutes an admission of the allegation. 40 C.F.R. § 22.15(d).

37. Respondent's answer, an original and one copy, must be filed with:

Regional Hearing Clerk
U.S. EPA Region 8 (8RC)
1595 Wynkoop Street
Denver, Colorado 80202-1129

A copy of the answer and all other documents filed in this action must be served on:

Wendy Silver
Senior Attorney
U.S. EPA, Region 8 (8ENF-L)
1595 Wynkoop Street
Denver, CO 80202-1129

38. Be aware that should respondent request a hearing on this proposed penalty assessment, members of the public, to whom EPA is obligated to give notice of this proposed action, will have a right under § 309(g)(4)(B) of the Act, 33 U.S.C. §1319(g)(4)(B), to be heard and to present evidence on the appropriateness of the penalty assessment.

IF RESPONDENT FAILS TO REQUEST A HEARING, IT WILL WAIVE ITS RIGHT TO CONTEST ANY OF THE ALLEGATIONS SET FORTH IN THE COMPLAINT.

IF RESPONDENT FAILS TO FILE A WRITTEN ANSWER WITHIN THE THIRTY (30) DAY LIMIT, A DEFAULT JUDGMENT MAY BE ENTERED

PURSUANT TO 40 C.F.R. § 22.17, THIS JUDGMENT MAY IMPOSE THE FULL PENALTY PROPOSED IN THE COMPLAINT.

39. Should respondent not request a hearing, EPA will issue a Final Order Assessing Administrative Penalties, and only members of the public who submit timely comments on this proposal will have an additional 30 days to petition EPA to set aside the Final Order Assessing Administrative Penalties and to hold a hearing thereon. EPA will grant the petition and will hold a hearing only if the petitioner's evidence is material and was not considered by EPA in the issuance of the Final Order Assessing Administrative Penalties.

TERMS OF PAYMENT FOR QUICK RESOLUTION

40. If respondent does not contest the findings and assessments set out above, this action may be resolved by paying the proposed penalty in full pursuant to 40 C.F.R. § 22.18. If such payment is made within thirty (30) calendar days of receipt of this complaint, no Answer need be filed. For more time for payment, respondent may file a statement agreeing to pay the penalty within thirty

(30) days of receipt of the complaint, then pay the money within sixty (60) days of such receipt. Penalty payment must be made by certified or cashier's check payable to "Treasurer, the United States of America", and remitted to:

U.S. Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, MO 63197-9000

Copies of the check shall be sent to:

David Gwisdalla
U.S. Environmental Protection Agency (8ENF-W-NP)
1595 Wynkoop Street
Denver, CO 80202-1129

and

Wendy Silver
U.S. Environmental Protection Agency (8ENF-L)
1595 Wynkoop Street
Denver, CO 80202-1129

A transmittal letter identifying the case title and docket number must accompany the remittance and copies of the check.

41. Payment of the penalty in this manner shall constitute consent by respondent to the assessment of the proposed penalty and a waiver of respondent's right to a hearing in this matter.


42. Neither assessment nor payment of an administrative civil penalty pursuant to § 309 of the Act, 33 U.S.C. § 1319, shall affect respondent's continuing obligation to comply with the Clean Water Act or any other federal, state, or local law or regulations and any separate Compliance Order issued under § 309(a) of the Act, 33 U.S.C. § 1319(a), for the violations alleged herein.

SETTLEMENT CONFERENCE

43. EPA encourages the exploration of settlement possibilities through an informal settlement conference. Please note that a request for, scheduling of, or participation in a settlement conference does not extend the period for filing an answer and request for hearing as set out above. The settlement process, however, may be pursued simultaneously with the administrative litigation process. If a settlement can be reached, its terms will be expressed in a written consent agreement signed by the parties and incorporated into a final order signed by the Regional Judicial Officer, 40 C.F.R. § 22.18. To explore the possibility of settlement in this matter, contact Wendy Silver, Senior Attorney, at the address below. Ms. Silver can also be reached at (303) 312-6637.


United States Environmental Protection Agency, Region 8
Office of Enforcement, Compliance, and
Environmental Justice, Complainant,
1595 Wynkoop Street
Denver, CO 80202-1129

Date: 9/22/10

By: 

Andrew M. Gaydosh
Assistant Regional Administrator

Date: 9/24/10

By: 

Wendy I. Silver, Senior Attorney
Legal Enforcement Program

CERTIFICATE OF SERVICE

I certify that on the date noted below, I sent by certified mail, return receipt requested, a copy of the foregoing ADMINISTRATIVE COMPLAINT AND NOTICE OF OPPORTUNITY FOR HEARING, and a copy of the Consolidated Rules of Practices Governing the Administrative Assessment of Civil Penalties and the Revocation or Suspension of Permits, 40 C.F.R. Part 22, to:

CT Corporation
Registered Agent for Holcim, Inc
136 East South Temple, Suite 2100
Salt Lake City, UT 84111

Certified Return Receipt No. 7009 3410 0000 2592 4569

I further certify that on the same date below I sent by certified mail, return receipt requested, a copy of this document to:

Amanda Smith
Executive Director
Utah Department of Environmental Quality
168 North 1950 West
P.O. Box 144810
Salt Lake City, UT 84114-4810

Certified Return Receipt No. 7009 3410 0000 2592 4668

The original and one copy were hand-delivered to:

Tina Artemis
Regional Hearing Clerk
U.S. Environmental Protection Agency (8RC)
1595 Wynkoop Street
Denver, CO 80202-1129

Date: 9/28/10 Aime Dawell