



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 27 2011

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Holcim (US), Inc.
c/o The Corporation Company, Registered Agent
1675 Broadway
Denver, CO 80202-4675

Re: Administrative Complaint and Notice of
Opportunity for Hearing
Docket No. **CWA-08-2011-0035**

Dear Registered Agent:

On January 21, 2009, an inspection of Holcim (US) Inc.'s (Holcim) limestone/silica quarry and Portland cement plant in Florence, Colorado, by the U.S. Environmental Protection Agency (EPA) revealed violations of the facility's Authorization to Discharge Under the Colorado Discharge Permit System, Permit No. CO-0000671 (the permit). 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 section 402 of the Act, 33 U.S.C. § 1342. See 33 U.S.C. § 1311

Enclosed is an Administrative Complaint and Notice of Opportunity for Hearing (complaint) that the 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, the EPA alleges that Holcim violated numerous provisions of the permit, in violation of section 301 of the Act, 33 U.S.C. § 1311. The complaint proposes that a penalty of \$44,000.00 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 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.



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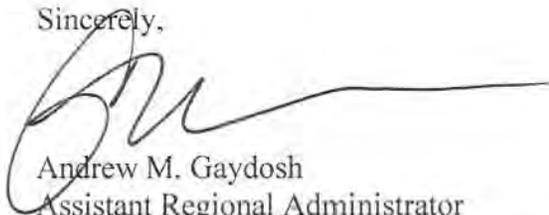
Enclosed is a copy of "U.S. EPA Small Business Resources," which can assist in complying with federal environmental laws. Also enclosed is an SEC Disclosure Notice.

Whether or not Holcim requests a hearing, it may confer informally with the EPA concerning the alleged violations and the amount of the proposed penalty. The 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 the 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 the 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

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: Plant Manager, Holcim (US) Inc.
Dr. Christopher E. Urbina, Executive Director, CDPHE

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 8

IN THE MATTER OF:)

Holcim (US), Inc.
3500 Highway 120
Florence, CO 81226)

Respondent.)
_____)

ADMINISTRATIVE COMPLAINT
AND NOTICE OF OPPORTUNITY
FOR HEARING
Proceeding to Assess Class II
Administrative Penalty Under
Clean Water Act, Section 309(g)

Docket No. CWA-08-2011-0035

2011 SEP 27 AM 9:35
FILED
EPA REGION VIII
READING 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 Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits.

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 402(p) of the Act, 33 U.S.C. § 1342(p), requires an NPDES permit for storm water discharges associated with industrial activity.

6. Under § 402 of the Act, 33 U.S.C. § 1342, on November 15, 1990, EPA promulgated regulations relating to the control of storm water discharges, found at 40 C.F.R. part 122.

7. Under 40 C.F.R. § 122.26(b)(14)(ii) and (iii), storm water associated with industrial activity includes storm water discharges associated with industrial activity from facilities classified as Standard Industrial Classifications (SIC) 14 and 32, among others.

8. EPA has approved the State of Colorado's 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 Delaware corporation doing business in Colorado and registered with the Colorado Secretary of State.

12. Respondent owns and/or operates a limestone/silica quarry and Portland cement plant located at 3500 Highway 120, Florence, Colorado, 81226 (the facility).

13. At all times relevant to this action, respondent engaged in industrial activities, as defined by 40 C.F.R. § 122.26(b)(14), at the facility.

14. On April 28, 2004, the Colorado Department of Public Health and Environment (CDPHE) lawfully issued an Authorization to Discharge Under the Colorado Discharge Permit System, Permit No. CO-0000671 (the permit), to Holcim authorizing discharges from the facility to the Arkansas River. The permit became effective on June 1, 2004, and was amended on August 29, 2005, and October 25, 2007, to add, among other things, an outfall on Bear Creek. The permit expired on May 31, 2009, and was administratively extended until a renewed permit was issued on July 1, 2011. The renewed permit did not include storm water discharges associated with industrial activity. This activity is now covered under a separate storm water discharge permit (Permit No. COR-020526), with an effective date of April 13, 2011.

15. Part I.A.1. of the permit authorizes the discharge of process water from outfalls 001, 002, and 003, and the discharge of stormwater from outfalls 004, 006, and 007.

16. Part I.B.1.b. of the permit requires weekly monitoring for flow, TSS, pH, oil and grease, chlorine, and fecal coliform, and quarterly monitoring for ammonia at Outfall 3.

17. Part I.B.1.c. of the permit requires flow, TSS, pH, oil and grease, and chemical oxygen demand to be monitored annually at Outfall 6.

18. Part I.D.2.b. of the permit requires that each sampling event at outfalls 004, 006, and 007 contain the following additional information: the date and duration (in hours) of the storm event(s) sampled; rainfall measurements or estimates (in inches) of the storm event which generated the sampled runoff; the duration between the storm event sampled and the end of the previous measurable (greater than 0.1 inch rainfall) storm event; an estimate of the drainage area (in square feet) and an estimate of the runoff

coefficient of the drainage area (e.g low (under 40%), medium (40% to 65%) or high (above 65%); and an estimate of the total volume (in gallons) of the discharge sampled.

19. Part I.D.2.c. of the permit requires that the Stormwater Management Plan (SWMP) include, among other things: a description of stormwater management controls to be implemented at the facility; a description of how and where stormwater will be diverted away from industrial areas to prevent stormwater contamination; and an identification of the areas which, due to topography, activities, or other factors, have a high potential for significant soil erosion, and measures taken to limit erosion.

20. Part I.D.2.c. of the permit requires that the SWMP include a site map indicating an outline of the drainage area of each stormwater outfall (to the extent possible), each existing structural control measure to reduce pollutants in stormwater runoff, and surface water bodies.

21. Part I.D.2.c. of the permit requires respondent to implement the provisions of the SWMP. Section 8 of the SWMP states that respondent will normally conduct comprehensive inspections of the facility's stormwater management system, including designated equipment and plant areas, on a monthly basis.

22. Part I.D.2.c. of the permit states that the stormwater conveyance system shall be evaluated for the presence of discharges other than stormwater. The SWMP shall include a description of the results of any evaluation for the presence of discharges other than stormwater, the method used, the date of the evaluation, and the on-site drainage points that were directly observed during the evaluation.

23. Part I.D.2.f. of the permit requires that qualified personnel identified by the operator make a comprehensive inspection of the stormwater management system at least twice a year, in the spring and fall.

24. Part I.D.2.h. of the permit states that all annual reports required for submittal shall be signed and certified for accuracy by the permittee.

25. Part I.E.3. of the permit states that all sampling shall be performed by the permittee according to specified methods in 40 C.F.R. Part 136; methods approved by EPA pursuant to 40 C.F.R. Part 136; or methods approved by the Division, in the absence of a method specified in or approved pursuant to 40 C.F.R. Part 136.

26. Table II of 40 C.F.R. part 136.3 lists the maximum holding time for hydrogen ion testing as "analyze within 15 minutes."

27. Part I.E.5. of the permit requires that a flow measuring device be installed to give representative values of effluent quantities at the respective discharge points.

28. Part I.E.6. of the permit requires all reports and other information required by the Division to be signed and certified for accuracy by the permittee.

29. On January 21, 2009, EPA inspectors visited the site and observed, among other things, the following:

- a. Outfalls 006 and 007 were discharging groundwater. Outfall 006 discharged groundwater into the Arkansas River commencing in 2006, and Outfall 007 discharged groundwater into Bear Creek commencing in 2007;
- b. The 2008 DMR for Outfall 006 stated that a discharge was discovered in November, 2008, but the discharge was not sampled until January 19, 2009;
- c. The SWMP did not meet the minimum permit requirements set forth in paragraph 19, above;
- d. The SWMP map did not meet the requirements of the permit set forth in paragraph 20, above;
- e. From 2004 through 2007, monthly inspections were not conducted;
- f. The 2004 and 2007 annual reports were not signed and certified for accuracy;
- g. There was no comprehensive inspection in the spring of 2006;
- h. The 2007 and 2008 sampling events at Outfall 007 and the 9/25/06 sampling event at Outfall 004 did not include the additional information required by the permit set forth in paragraph 18, above;
- i. The evaluations in the SWMP of the non-storm water discharges did not include all of the information required by the permit set forth in paragraph 22, above;
- j. Analysis for pH was not performed according to the methods specified in 40 C.F.R. part 136;
- k. Flow monitoring devices were not installed on all of the outfalls; and
- l. A signed SWMP was not maintained at the facility.

30. Bear Creek and the Arkansas River are each a “water of the United States” within the meaning of 40 C.F.R. § 122.2, and therefore a “navigable water” within the meaning of the definition set forth in § 502(7) of the CWA, 33 U.S.C. § 1362(7).

31. 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).

32. The facility’s SIC codes are 1422, 1429, and 3241.

33. Respondent is engaged in an “industrial activity” as defined by 40 C.F.R. § 122.26(b)(14).

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

35. Storm water coming into contact with a regulated industrial activity contains “pollutants” as defined in § 502(6) of the Act, 33 U.S.C. § 1362(6).

36. Storm water discharged 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.

37. The facility, as well as the outfalls referenced above, constitute “point sources” within the meaning of § 502(14) of the Act, 33 U.S.C. § 1362(14) and 40 C.F.R. § 122.2.

38. Pursuant to § 309(g) of the Act, 33 U.S.C. § 1319(g), EPA has consulted with Dr. Chris Urbina, Executive Director, Colorado Department of Public Health and Environment, regarding assessment of

this administrative penalty by furnishing a copy of this complaint and inviting him to comment on behalf of the State of Colorado.

COUNT I

(Unauthorized Non-Storm Water Discharges)

39. As described above in paragraph 29.a., respondent discharged groundwater from Outfalls 006 and 007 to the Arkansas River and Bear Creek, respectively.

40. Respondent's discharges of groundwater from Outfalls 006 and 007 constitute violations of Part I.A.1. of the permit and of § 301 of the Act, 33 U.S.C. 1311.

COUNT II

(Failure to Comply with Sampling and Analysis Requirements)

41. As described above in paragraph 29.b., h., j., and k., respondent failed to comply with the sampling requirements of the permit set forth in paragraphs 17-18, 25 and 27, above.

42. Respondent's failures to comply with the permit provisions set forth in paragraphs 17-18 and 25 and 27, above, constitute violations of the permit and of § 301 of the Act, 33 U.S.C. § 1311.

COUNT III

(Failure to Comply with Inspection and Reporting Requirements)

43. As described above in paragraph 29.e.-g., respondent failed to comply with the inspection requirements of Parts I.D.2.c., f., and h. of the permit, set forth in paragraphs 21, 23, and 24, above.

44. Respondent's failures to comply with the permit provisions set forth in paragraphs 21, 22 and 24, above, constitute violations of the permit and of § 301 of the Act, 33 U.S.C. § 1311.

COUNT IV

(Inadequate SWMP)

45. As described above in paragraph 29.c.- d., i., and l., Respondent's SWMP did not meet the requirements of Parts I.D.2.c. and I.E.6. of the permit, set forth in paragraphs 19-20, 22, and 28, above.

46. Respondent's failure to develop a complete SWMP as required by the permit constitutes violations of the permit and of § 301 of the Act, 33 U.S.C. § 1311.

NOTICE OF PROPOSED ORDER ASSESSING A CIVIL PENALTY

47. Based on the foregoing allegations and pursuant to the authority of section 309(g) of the Act, 33 U.S.C. § 1319(g), EPA Region 8 hereby proposes that a penalty of \$44,000.00 be assessed against Respondent for the violations alleged above, as explained below:

Nature, Circumstances, Extent, and Gravity of Violations

The facility contains both a limestone/silica quarry and a Portland cement manufacturing plant, which are regulated Industrial Activities. The facility's quarry is included in Sector J – Mineral Mining and Dressing. 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. According to the December 2006, "Industrial Storm Water Fact Sheet Series - Sector E: Glass, Clay, Cement, Concrete, and Gypsum Product Manufacturing Facilities," EPA-833-F-06-020, the potential pollutants of concern from cement manufacturing facilities include TSS, chemical oxygen demand, potassium, sulfate, oil and grease, and pH.

The facility had over 30 months of documented unauthorized discharges from outfalls going to both the Arkansas River and Bear Creek. Sediment discharged to waterways can have a deleterious effect on aquatic life.

Outfalls 002, 003, and 006 discharge directly to the Arkansas River. Outfall 007 discharges to Bear Creek, a tributary of the Arkansas River. According to the Colorado Department of Public Health and Environment, the classification and designated use of the Arkansas River is Aquatic Life Cold 1, Recreation Class E, Agriculture, and Water Supply. Bear Creek is classified as Aquatic Life Cold 2, Recreation Class E, and Agriculture. According to the EPA Water Quality Assessment Status for Reporting year 2008, the Arkansas River is in impaired status for aquatic life.

Prior Compliance History

Five years of compliance history were reviewed for this facility for both its original permit, CO-0000671, and its more recently issued Storm Water Discharges Associated with Heavy Industrial Activity permit, COR-020526. Violations were noted related to the original permit for non-receipt of the annual reports for years 2004 to 2008.

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 11 cement plants and associated quarries in the United States. Holcim operates this facility under a Colorado discharge permit and records indicate the facility was permitted since the late 1970's. Stormwater discharges from this site related to phase I storm water requirements were incorporated into the permit in 1993, therefore, the 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 collect and analyze the required samples, complete site inspections, and develop and keep up to date its SWMP.

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 ability 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.

48. As required by section 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.

NOTICE OF OPPORTUNITY TO REQUEST A HEARING

49. As provided in section 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.

50. Respondent's answer must (1) clearly 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 defense, (3) state the facts intended to be placed at issue, (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(c).

51. 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

52. 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 section 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.

53. 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

54. 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 9790777
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.

55. 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.

56. Neither assessment nor payment of an administrative civil penalty pursuant to section 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 section 309(a) of the Act, 33 U.S.C. §1319(a), for the violations alleged herein.

SETTLEMENT CONFERENCE

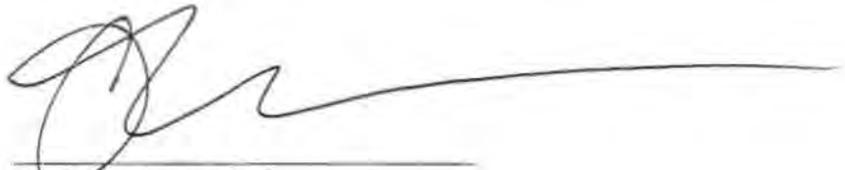
57. EPA encourages the exploration of settlement possibilities through an informal settlement conference. Please note that a request for, scheduling of, or participation in a settlement conference does not extend the period for filing an answer and request for hearing as set out above. The settlement 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.

IN THE MATTER OF: Holcim (US), Inc. Docket No.

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

Date: 9/27/11

By:



Andrew M. Gaydosh
Assistant Regional Administrator

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:

The Corporation Company, Registered Agent
1675 Broadway
Denver, CO 80202-4675

Certified Return Receipt No. 7009-3410-0000-2594-6127

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

Dr. Chris Urbina
Colorado Department of Public Health and Environment
4300 Cherry Creek Drive South
Denver, CO 80246-1530

Certified Return Receipt No. 7009-3410-0000-2594-6134

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: 9/27/2011 Judith M. McTernan

§21.13

approve or disapprove the State issued statement, in accordance with the requirements of §21.5.

(2) The Regional Administrator will periodically review State program performance. In the event of State program deficiencies the Regional Administrator will notify the State of such deficiencies.

(3) During that period that any State's program is classified as deficient, statements issued by a State shall also be sent to the Regional Administrator for review. The Regional Administrator shall notify the State, the applicant, and the SBA of any determination subsequently made, in accordance with §21.5, on any such statement.

(i) If within 60 days after notice of such deficiencies has been provided, the State has not taken corrective efforts, and if the deficiencies significantly affect the conduct of the program, the Regional Administrator, after sufficient notice has been provided to the Regional Director of SBA, shall withdraw the approval of the State program.

(ii) Any State whose program is withdrawn and whose deficiencies have been corrected may later reapply as provided in §21.12(a).

(g) Funds appropriated under section 106 of the Act may be utilized by a State agency authorized to receive such funds in conducting this program.

§21.13 Effect of certification upon authority to enforce applicable standards.

The certification by EPA or a State for SBA Loan purposes in no way constitutes a determination by EPA or the State that the facilities certified (a) will be constructed within the time specified by an applicable standard or (b) will be constructed and installed in accordance with the plans and specifications submitted in the application, will be operated and maintained properly, or will be applied to process wastes which are the same as described in the application. The certification in no way constitutes a waiver by EPA or a State of its authority to take appropriate enforcement action against the owner or operator of such facilities for violations of an applicable standard.

1st Page Only
40 CFR Ch. I (7-1-08 Edition)

PART 22—CONSOLIDATED RULES OF PRACTICE GOVERNING THE ADMINISTRATIVE ASSESSMENT OF CIVIL PENALTIES AND THE REVOCATION/TERMINATION OR SUSPENSION OF PERMITS

Subpart A—General

- Sec.
- 22.1 Scope of this part.
 - 22.2 Use of number and gender.
 - 22.3 Definitions.
 - 22.4 Powers and duties of the Environmental Appeals Board, Regional Judicial Officer and Presiding Officer; disqualification, withdrawal, and reassignment.
 - 22.5 Filing, service, and form of all filed documents; business confidentiality claims.
 - 22.6 Filing and service of rulings, orders and decisions.
 - 22.7 Computation and extension of time.
 - 22.8 *Ex parte* discussion of proceeding.
 - 22.9 Examination of documents filed.

Subpart B—Parties and Appearances

- 22.10 Appearances.
- 22.11 Intervention and non-party briefs.
- 22.12 Consolidation and severance.

Subpart C—Prehearing Procedures

- 22.13 Commencement of a proceeding.
- 22.14 Complaint.
- 22.15 Answer to the complaint.
- 22.16 Motions.
- 22.17 Default.
- 22.18 Quick resolution; settlement; alternative dispute resolution.
- 22.19 Prehearing information exchange; prehearing conference; other discovery.
- 22.20 Accelerated decision; decision to dismiss.

Subpart D—Hearing Procedures

- 22.21 Assignment of Presiding Officer; scheduling the hearing.
- 22.22 Evidence.
- 22.23 Objections and offers of proof.
- 22.24 Burden of presentation; burden of persuasion; preponderance of the evidence standard.
- 22.25 Filing the transcript.
- 22.26 Proposed findings, conclusions, and order.

Subpart E—Initial Decision and Motion to Reopen a Hearing

- 22.27 Initial decision.
- 22.28 Motion to reopen a hearing.

U.S. EPA Small Business Resources Information Sheet

The United States Environmental Protection Agency provides an array of resources, including workshops, training sessions, hotlines, websites and guides, to help small businesses understand and comply with federal and state environmental laws. In addition to helping small businesses understand their environmental obligations and improve compliance, these resources will also help such businesses find cost-effective ways to comply through pollution prevention techniques and innovative technologies.

EPA's Small Business Websites

Small Business Environmental Homepage - www.smallbiz-enviroweb.org

Small Business Gateway - www.epa.gov/smallbusiness

EPA's Small Business Ombudsman - www.epa.gov/sbo or 1-800-368-5888

EPA's Compliance Assistance Homepage

[www.epa.gov/compliance/assistance/
business.html](http://www.epa.gov/compliance/assistance/business.html)

This page is a gateway to industry and statute-specific environmental resources, from extensive web-based information to hotlines and compliance assistance specialists.

EPA's Compliance Assistance Centers

www.assistancecenters.net

EPA's Compliance Assistance Centers provide information targeted to industries with many small businesses. They were developed in partnership with industry, universities and other federal and state agencies.

Agriculture

www.epa.gov/agriculture/

Automotive Recycling

www.ecarcenter.org

Automotive Service and Repair

www.ccar-greenlink.org or 1-888-GRN-LINK

Chemical Manufacturing

www.chemalliance.org

Construction

www.cicacenter.org or 1-734-995-4911

Education

www.campuserc.org

Food Processing

www.fpeac.org

Healthcare

www.hercenter.org

Local Government

www.lgean.org

Metal Finishing

www.nmfrc.org

Paints and Coatings

www.paintcenter.org

Printed Wiring Board Manufacturing

www.pwbrc.org

Printing

www.pneac.org

Ports

www.portcompliance.org

U.S. Border Compliance and Import/Export Issues

www.bordercenter.org

Hotlines, Helplines and Clearinghouses

www.epa.gov/epahome/hotline.htm

EPA sponsors many free hotlines and clearinghouses that provide convenient assistance regarding environmental requirements. Some examples are:

Antimicrobial Information Hotline

info-antimicrobial@epa.gov or
1-703-308-6411

Clean Air Technology Center (CATC) Info-line

www.epa.gov/ttn/cac or 1-919-541-0800

Emergency Planning and Community Right-To-Know Act

[www.epa.gov/superfund/resources/
infocenter/epcra.htm](http://www.epa.gov/superfund/resources/infocenter/epcra.htm) or 1-800-424-9346

EPA Imported Vehicles and Engines Public Helpline

www.epa.gov/otaq/imports or
734-214-4100

National Pesticide Information Center

www.npic.orst.edu/ or 1-800-858-7378

National Response Center Hotline -

to report oil and hazardous substance spills
www.nrc.uscg.mil or 1-800-424-8802

Pollution Prevention Information Clearinghouse (PPIC)

www.epa.gov/opptintr/ppic or
1-202-566-0799

Safe Drinking Water Hotline

[www.epa.gov/safewater/hotline/index.
html](http://www.epa.gov/safewater/hotline/index.html) or 1-800-426-4791

Stratospheric Ozone Protection Hotline

www.epa.gov/ozone or 1-800-296-1996

Toxic Substances Control Act (TSCA) Hotline

tsc-hotline@epa.gov or 1-202-554-1404

Wetlands Information Helpline

www.epa.gov/owow/wetlands/wetline.html or 1-800-832-7828

State and Tribal Web-Based Resources

State Resource Locators

www.envcap.org/statetools

The Locators provide state-specific contacts, regulations and resources covering the major environmental laws.

State Small Business Environmental Assistance Programs (SBEAPs)

www.smallbiz-enviroweb.org

State SBEAPs help small businesses and assistance providers understand environmental requirements and sustainable business practices through workshops, trainings and site visits. The website is a central point for sharing resources between EPA and states.

EPA's Tribal Compliance Assistance Center

www.epa.gov/tribalcompliance/index.html

The Center provides material to Tribes on environmental stewardship and regulations that might apply to tribal government operations.

EPA's Tribal Portal

www.epa.gov/tribalportal/

The Portal helps users locate tribal-related information within EPA and other federal agencies.

EPA Compliance Incentives

EPA provides incentives for environmental compliance. By participating in compliance assistance programs or voluntarily disclosing and promptly correcting violations before an enforcement action has been initiated, businesses may be eligible for penalty waivers or reductions. EPA has two such policies that may apply to small businesses:

EPA's Small Business Compliance Policy

www.epa.gov/compliance/incentives/smallbusiness/index.html

This Policy offers small businesses special incentives to come into compliance voluntarily.

EPA's Audit Policy

www.epa.gov/compliance/incentives/auditing/auditpolicy.html

The Policy provides incentives to all businesses that voluntarily discover, promptly disclose and expeditiously correct their noncompliance.

Commenting on Federal Enforcement Actions and Compliance Activities

The Small Business Regulatory Enforcement Fairness Act (SBREFA) established a SBREFA Ombudsman and 10 Regional Fairness Boards to receive comments from small businesses about federal agency enforcement actions. If you believe that you fall within the Small Business Administration's definition of a small business (based on your North American Industry Classification System designation, number of employees or annual receipts, as defined at 13 C.F.R. 121.201; in most cases, this means a business with 500 or fewer employees), and wish to comment on federal enforcement and compliance activities, call the SBREFA Ombudsman's toll-free number at 1-888-REG-FAIR (1-888-734-3247), or go to their website at www.sba.gov/ombudsman.

Every small business that is the subject of an enforcement or compliance action is entitled to comment on the Agency's actions without fear of retaliation. EPA employees are prohibited from using enforcement or any other means of retaliation against any member of the regulated community in response to comments made under SBREFA.

Your Duty to Comply

If you receive compliance assistance or submit a comment to the SBREFA Ombudsman or Regional Fairness Boards, you still have the duty to comply with the law, including providing timely responses to EPA information requests, administrative or civil complaints, other enforcement actions or communications. The assistance information and comment processes do not give you any new rights or defenses in any enforcement action. These processes also do not affect EPA's obligation to protect public health or the environment under any of the environmental statutes it enforces, including the right to take emergency remedial or emergency response actions when appropriate. Those decisions will be based on the facts in each situation. The SBREFA Ombudsman and Fairness Boards do not participate in resolving EPA's enforcement actions. Also, remember that to preserve your rights, you need to comply with all rules governing the enforcement process.

EPA is disseminating this information to you without making a determination that your business or organization is a small business as defined by Section 222 of the Small Business Regulatory Enforcement Fairness Act or related provisions.

NOTICE OF SECURITIES AND EXCHANGE COMMISSION REGISTRANTS' DUTY TO DISCLOSE ENVIRONMENTAL LEGAL PROCEEDINGS

Securities and Exchange Commission regulations require companies registered with the SEC (e.g., publicly traded companies) to disclose, on at least a quarterly basis, the existence of certain administrative or judicial proceedings taken against them arising under Federal, State or local provisions that have the primary purpose of protecting the environment. Instruction 5 to Item 103 of the SEC's Regulation S-K (17 CFR 229.103) requires disclosure of these environmental legal proceedings. For those SEC registrants that use the SEC's "small business issuer" reporting system, Instructions 1-4 to Item 103 of the SEC's Regulation S-B (17 CFR 228.103) requires disclosure of these environmental legal proceedings.

If you are an SEC registrant, you have a duty to disclose the existence of pending or known to be contemplated environmental legal proceedings that meet any of the following criteria (17 CFR 229.103(5)(A)-(C)):

- A. Such proceeding is material to the business or financial condition of the registrant;
- B. Such proceeding involves primarily a claim for damages, or involves potential monetary sanctions, capital expenditures, deferred charges or charges to income and the amount involved, exclusive of interest and costs, exceeds 10 percent of the current assets of the registrant and its subsidiaries on a consolidated basis; or
- C. A governmental authority is a party to such proceeding and such proceeding involves potential monetary sanctions, unless the registrant reasonably believes that such proceeding will result in no monetary sanctions, or in monetary sanctions, exclusive of interest and costs, of less than \$100,000; provided, however, that such proceedings which are similar in nature may be grouped and described generically.

Specific information regarding the environmental legal proceedings that must be disclosed is set forth in Item 103 of Regulation S-K or, for registrants using the "small business issuer" reporting system, Item 103(a)-(b) of Regulation S-B. If disclosure is required, it must briefly describe the proceeding, "including the name of the court or agency in which the proceedings are pending, the date instituted, the principal parties thereto, a description of the factual basis alleged to underlie the proceedings and the relief sought."

You have been identified as a party to an environmental legal proceeding to which the United States government is, or was, a party. If you are an SEC registrant, this environmental legal proceeding may trigger, or may already have triggered, the disclosure obligation under the SEC regulations described above.

This notice is being provided to inform you of SEC registrants' duty to disclose any relevant environmental legal proceedings to the SEC. This notice does not create, modify or interpret any existing legal obligations, it is not intended to be an exhaustive description of the legally applicable requirements and it is not a substitute for regulations published in the Code of Federal Regulations. This notice has been issued to you for information purposes only. No determination of the applicability of this reporting requirement to your company has been made by any governmental entity. You should seek competent counsel in determining the applicability of these and other SEC requirements to the environmental legal proceeding at issue, as well as any other proceedings known to be contemplated by governmental authorities.

If you have any questions about the SEC's environmental disclosure requirements, please contact the Office of Chief Counsel in the SEC's Division of Corporation Finance. The phone number is (202) 942-2900.