



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 8

1595 WYNKOOP STREET
DENVER, CO 80202-1129

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EPA REGION VIII
DENVER, CO

DOCKET NO.: CWA-08-2012-0007

IN THE MATTER OF:

HOLCIM (US) INC.
3500 Highway 120
Florence, CO 81226

RESPONDENT

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)
) **FINAL ORDER**
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Pursuant to 40 C.F.R. §22.13(b) and 22.18(b)(2) and (3), of EPA's Consolidated Rules of Practice, the Consent Agreement resolving this matter is hereby approved and incorporated by reference into this Final Order. The Respondent is hereby **ORDERED** to comply with all of the terms of the Consent Agreement, effective immediately upon receipt by Respondent of this Consent Agreement and Final Order.

SO ORDERED THIS 3rd DAY OF April, 2012.

Elyana R. Sutin
Regional Judicial Officer

6. Upon integration into a final order by the EPA Regional Judicial Officer, this CCCA applies to and is binding upon the Complainant and upon the Respondent, and the Respondent's officers, directors, agents, successors and assigns. Any change in ownership, corporate organization, structure or status of the Respondent, including, but not limited to, any transfer of assets or real or personal property, shall not alter the Respondent's responsibilities under this CCCA unless the EPA, the Respondent and the transferee agree in writing to allow the transferee to assume such responsibilities.

7. The Respondent shall notify the EPA at the address specified below thirty (30) days prior to any transfer described in or contemplated under the paragraph immediately above.

8. This CCCA contains all civil penalty settlement terms agreed to by the parties.

II. GENERAL ALLEGATIONS

9. 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 in compliance with a permit issued pursuant to section 402 of the Act.

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

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

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

13. 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.
14. The EPA has approved the State of Colorado's NPDES program pursuant to section 402(b) of the Act, 42 U.S.C. § 1342(b).
15. The Respondent is and was at all relevant times a Delaware corporation doing business in Colorado and registered with the Colorado Secretary of State.
16. The Respondent owns and/or operates a limestone/silica quarry and Portland cement plant located at 3500 Highway 120, Florence, Colorado, 81226 (the Facility).
17. At all times relevant to this action, the Respondent engaged in industrial activities, as defined by 40 C.F.R. § 122.26(b)(14), at the Facility.
18. 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 and its tributaries. 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 separate storm water discharge permits (Permit Nos. COR-020526 and COR-341609), with an effective date of April 13, 2011. Holcim asserts that it has devoted significant resources to attempting to implement and comply with its stormwater permits and applicable regulations.

19. Part I.A.1. of the permit authorizes the discharge of process water from outfalls 001, 002, and 003, and the discharge of storm water from outfalls 004, 006, and 007.
20. 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 006.
21. 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.
22. Part I.D.2.c. of the permit requires that the Storm Water Management Plan (SWMP) include, among other things: a description of storm water management controls to be implemented at the facility; a description of how and where storm water will be diverted away from industrial areas to prevent storm water 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.
23. 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 storm water outfall (to the extent possible), each existing structural control measure to reduce pollutants in storm water runoff, and surface water bodies.
24. 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 conduct comprehensive inspections of the facility's storm water management system, including designated equipment and plant areas, on a monthly basis.

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. On January 21, 2009, EPA inspectors visited the Facility and observed, among other things, the following:
- a. Outfall 007 was discharging groundwater. 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 above;
 - d. The SWMP site map did not meet the requirements of the permit set forth above;
 - e. From 2004 through 2007, monthly inspections were not conducted;
 - f. The 2007 and 2008 sampling events at Outfall 007 did not include the additional information required by the permit set forth above; and
 - g. Analysis for pH was not performed according to the methods specified in 40 C.F.R. Part 136.
28. 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 section 502(7) of the CWA, 33 U.S.C. § 1362(7).
29. The Respondent is, and was at all relevant times, a “person” within the meaning of the definition set forth in section 502(5) of the Act, 33 U.S.C. § 1362(5).
30. The Facility’s Standard Industrial Classification (SIC) codes are 1422, 1429, and 3241.
31. The Respondent is engaged in an “industrial activity” as defined by 40 C.F.R. § 122.26(b)(14).
32. Runoff and drainage from the facility is “storm water” as defined in 40 C.F.R. § 122.26(b)(13).

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

34. Storm water discharged from the facility is the “discharge of a pollutant” as defined in section 502(12) of the Act, 33 U.S.C. § 1362(12), and 40 C.F.R. § 122.2.

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

III. DESCRIPTION OF THE VIOLATIONS

36. As described above in paragraph 27.a., the Respondent discharged groundwater from Outfall 007 to Bear Creek.

37. As described above in paragraph 27.b., f. and g., the Respondent failed to comply with the sampling requirements of Parts I.B.1.c., I.D.2.b., and I.E.3. of the permit.

38. As described above in paragraph 27.e., the Respondent failed to comply with the inspection requirement of Parts I.D.2.c. of the permit and Section 8 of the SWMP.

39. As described above in paragraph 27.c.- d., the Respondent’s SWMP failed to meet the requirements of Part I.D.2.c. of the permit.

40. The Respondent’s failures described above constitute violations of the permit and of section 301 of the Act, 33 U.S.C. § 1311.

IV. CIVIL PENALTY

41. Pursuant to section 309(g)(2)(B) of the Act, 33 U.S.C. § 1319(g)(2)(B), and after consideration of the facts of this case as they related to the factors set forth in section 309(g)(3) of the Act, 33 U.S.C. § 1319(g)(3), the EPA has determined that a civil penalty of thirty-six thousand five-hundred dollars (\$36,500.00) is appropriate to settle this matter.

42. The Respondent consents and agrees to pay a civil penalty in the amount of thirty-six thousand five-hundred dollars (\$36,500.00) in the manner described below.

43. Payment by the Respondent of the full penalty is due within thirty (30) calendar days of the Respondent's receipt of the Final Order issued by the EPA Regional Judicial Officer adopting this CCCA. If the due date for payment falls on a weekend or a legal federal holiday, the due date is the next business day. Payment must be received by 11:00 A.M. Eastern Time to be considered received that day.

44. Payment shall be made by one of the following methods:

a. **Payment by cashier's or certified check:**

A cashier's or certified check, including the name and docket number of this case, for \$36,500.00, payable to "Treasurer, United States of America," to:

Regular Mail:

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

Overnight Mail:

U.S. Bank
Government Lockbox 979077
U.S. EPA Fines and Penalties
1005 Convention Plaza
Mail Station SL-MO-C2-GL
St. Louis, MO 63101

b. **Wire Transfer:**

Wire transfers should be directed to the Federal Reserve Bank of New York with the following information:

ABA = 021030004
Account = 68010727
SWIFT address = FRNYUS33
33 Liberty Street
New York, NY 10045

Field Tag 4200 of the Fedwire message should read "D 680107272
Environmental Protection Agency"

c. **Online Payment:**

This option is available through the Department of the Treasury.

www.pay.gov

Enter sfo 1.1 in the search field.

Open form and complete the required fields.

d. A copy of the check or record of payment if made by other means shall be sent to:

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

and

Tina Artemis
Regional Hearing Clerk
U.S. Environmental Protection Agency (8RC)
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.

45. In the event payment is not received by the specified due date, interest accrues from the date of the Final Order, not the due date (on the 1st late day, 30 days of interest will have accrued), at a rate established by the Secretary of the Treasury pursuant to 31 U.S.C. § 3717, and will continue to accrue until payment in full is received.

46. In addition, a handling charge of fifteen dollars (\$15) shall be assessed on the 31st day from the due date of any payment, and for each subsequent thirty day period that the debt, or any portion thereof, remains unpaid. In addition, a six percent (6%) per annum penalty shall be assessed on any unpaid principal amount if payment is not received within 90 days of the due date. Payments are first applied to

outstanding handling charges, 6% penalty interest, and late interest. The remainder is then applied to the outstanding principal amount.

47. The Respondent agrees that the penalty shall never be claimed as a federal or other tax deduction or credit.

V. OTHER TERMS AND CONDITIONS

48. Failure by the Respondent to comply with any of the terms of this CCCA shall constitute a breach of this CCCA and may result in referral of the matter to the Department of Justice for enforcement of this CCCA and for such other relief as may be appropriate.

49. Nothing in this CCCA shall be construed as a waiver by the Complainant of its authority to seek costs or any appropriate penalty associated with any collection action instituted as a result of the Respondent's failure to perform pursuant to the terms of this CCCA.

50. Each undersigned representative of the parties to this CCCA certifies that he or she is fully authorized by the party represented to bind the parties to the terms and conditions of this CCCA and to execute and legally bind that party to the CCCA.

51. This CCCA may be executed in counterparts.

52. Upon execution by the parties, this CCCA shall be subject to a public comment period of not less than forty (40) days, pursuant to section 309(g)(4)(A) of the Act, 33 U.S.C. § 1319(g)(4)(A), and 40 C.F.R. § 22.45. The EPA may modify or withdraw its consent to this CCCA if comments received disclose facts or considerations indicating that the CCCA is inappropriate, improper, or inadequate.


53. If comments received during the public comment period do not require modification or withdrawal by the EPA from this CCCA, the parties agree to submit this CCCA to the Regional Judicial Officer following closure of the public comment period, with a request that it be incorporated into a final order.

54. This CCCA, upon incorporation into a final order by the Regional Judicial Officer and full satisfaction by the parties, shall be a complete, full and final settlement of the civil penalty owed for violations alleged in this CCCA.

55. This CCCA resolves the Respondent's liability for federal civil penalties under section 309(d) and (g) of the Act, 33 U.S.C. §§ 1319(d) and (g), for the violations alleged in this CCCA. This CCCA shall not in any case affect the EPA's right to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law whether or not alleged in this CCCA. This CCCA shall not affect the Respondent's right to assert any defense in any action by the EPA to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violation of law.

56. Each party shall bear its own costs and attorneys fees in connection with all issues associated with this CCCA.

UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY, REGION 8
Complainant.




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

Date: 2/13/12

HOLCIM (US) INC.,
Respondent.

Date: 1/11/2012



Gian Raffainer
Manufacturing Vice President
Holcim (US) Inc.

CERTIFICATE OF SERVICE

I certify that on the date noted below, I sent by certified mail, return receipt requested, a copy of the foregoing COMBINED COMPLAINT AND CONSENT AGREEMENT to:

Paul Phillips, Esq.
Holland & Hart LLP
555 17th Street, Suite 3200
Denver, CO 80202

The original and one copy were hand-delivered to:

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

2/14/2012
Date

Judith M. McTernan

CERTIFICATE OF SERVICE

The undersigned certifies that the original of the attached **COMBINED COMPLAINT CONSENT AGREEMENT** in the matter of **HOLCIM (US) INC.; DOCKET NO.: CWA-08-2012-0007** was filed with the Regional Hearing Clerk on February 14, 2012/ the **FINAL ORDER** was filed on April 3, 2012.


Further, the undersigned certifies that a true and correct copy of the documents were delivered to Wendy I. Silver, Senior Enforcement Attorney, U. S. EPA – Region 8, 1595 Wynkoop Street, Denver, CO 80202-1129. True and correct copies of the aforementioned documents were placed in the United States mail certified/return receipt requested on April 3, 2012.

Paul D. Phillips, Esq.
Holland & Hart, LLP
555 17th Street, Suite 3200
Denver, CO 80202

E-mailed to:

Elizabeth Whitsel
U. S. Environmental Protection Agency
Cincinnati Finance Center
26 W. Martin Luther King Drive (MS-0002)
Cincinnati, Ohio 45268

April 3, 2012


Tina Artemis
Paralegal/Regional Hearing Clerk

