



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 8

1595 WYNKOOP STREET  
DENVER, CO 80202-1129

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2012 SEP -6 PM 1:57

FILED  
EPA REGION 8  
DENVER, CO

DOCKET NO.: CAA-08-2012-0015

IN THE MATTER OF:

GCC DACOTA, INC.  
130 Rampart Way, Suite 200  
Denver, CO 80230

Respondent

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FINAL ORDER

Pursuant to 40 C.F.R. §22.18 and 22.13(b), of EPA's Consolidated Rules of Practice, the Consolidated Complaint and 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.

The Parties are hereby **ORDERED** to comply with all of the terms of this **Order**, effective immediately upon receipt by Parties of this **Order**.

SO ORDERED THIS 6th Day of September, 2012

Elyana R. Sutin  
Regional Judicial Officer

UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY 2012 SEP -6 PM 1:57  
REGION 8

In the Matter of: )  
)  
GCC DACOTAH INC. ) CONSOLIDATED COMPLAINT  
130 Rampart Way, Suite 200 ) AND CONSENT AGREEMENT  
Denver, CO 80230 )  
)  
Respondent ) Docket No. CAA-08-2012-0015

AUTHORITY

The United States Environmental Protection Agency, Region 8 (EPA), and Respondent, GCC Dacotah Inc., (GCC), by their undersigned representatives, hereby settle the below-described civil cause of action arising out of violations of section 112 of the Clean Air Act (CAA), 42 U.S.C. § 7412 and implementing regulations, and agree as follows:

1. Section 113(d)(1)(B) of the CAA, 42 U.S.C. § 7413(d)(1)(B), and 40 C.F.R. Part 19 authorize the assessment of civil penalties for violations of the CAA.
2. Pursuant to section 113(d)(1)(C) of the CAA, 42 U.S.C. § 7413(d)(1)(C), the Department of Justice and the EPA have jointly determined that this matter is appropriate for handling as an administrative penalty action.
3. This Consolidated Complaint and Consent Agreement (Agreement) is governed by the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders and the Revocation, Termination or Suspension of Permits, 40 C.F.R. Part 22, and is entered into pursuant to 40 C.F.R. §§ 22.13(b) and 22.18(b)(2) and (3).

## STATUTORY AND REGULATORY BACKGROUND

4. Congress enacted section 112 of the CAA, 42 U.S.C. § 7412, authorizing the EPA to regulate sources of hazardous air pollutants (HAPs) and requiring the EPA to establish National Emission Standards for Hazardous Air Pollutants (NESHAPs).
5. Pursuant to section 112(c)(1), 42 U.S.C. § 7412(c)(1), the EPA is required to publish a list of all categories and subcategories of major sources and area sources of HAPs.
6. The EPA has designated the Portland cement manufacturing industry as a category subject to the requirements of section 112 of the CAA. 57 Fed. Reg. 31,576 (1992).
7. Section 112(d) of the CAA, 42 U.S.C. § 7412(d), requires the EPA to establish NESHAPs for each category or subcategory of major sources and area sources of HAPs.
8. The EPA has promulgated "National Emission Standards for Hazardous Air Pollutants From the Portland Cement Manufacturing Industry," at 40 C.F.R. Part 63, Subpart LLL, §§ 63.1340 through 63.1359. 64 Fed. Reg. 31925 (1999).
9. Owners and/or operators of any Portland cement manufacturing plant that is a "major source" are subject to the NESHAPs promulgated under 40 C.F.R. Part 63, Subpart LLL.
10. A major source is a stationary source that has the potential to emit 10 tons per year of any hazardous air pollutant or 25 tons per year of any combination of hazardous air pollutants. 40 C.F.R. § 63.2.
11. Section 63.1343(b)(2) of Subpart LLL requires that existing kilns be operated such that they do not discharge gases into the atmosphere which exhibit opacity greater than 20 percent. Section 63.1350(c)(3) provides that to remain in compliance, the opacity must

be maintained such that the 6-minute average opacity for any 6-minute block period does not exceed 20 percent.

12. Sections 63.1344(a)(1), 63.1344(a)(2), and 63.1344(a)(3) of Subpart LLL require that kilns be operated such that the temperature of the gas at the inlet to the kiln particulate matter device does not exceed applicable temperature limits. The owner or operator of an in-line kiln/raw must operate the in-line kiln/raw mill such that: 1) when the raw mill of the in-line kiln/raw mill is operating, the applicable temperature limit for the main in-line kiln/raw mill exhaust is not exceeded; 2) when the raw mill of the in-line kiln/raw mill is not operating, the applicable temperature limit for the main in-line kiln/raw mill exhaust is not exceeded; 3) if the in-line kiln/raw mill is equipped with an alkali bypass, the applicable temperature limit for the alkali bypass, with or without the raw mill operating, is not exceeded.
13. Sections 63.1345(a)(2) and 63.1350(d)(3) of Subpart LLL require that clinker coolers be operated such that they do not discharge gases into the atmosphere which exhibit opacity greater than 10 percent. Section 63.1350(d)(3) provides that to remain in compliance, the opacity must be maintained such that the 6-minute average opacity for any 6-minute block period does not exceed 10 percent.
14. Section 63.1350(a)(4)(i) of Subpart LLL requires that a monthly 1-minute visible emissions test be conducted at each affected source subject to 40 C.F.R. § 63.1348, in accordance with Method 22 of Appendix A to Part 60.

15. Section 63.1350(e) of Subpart LLL requires that daily visual emissions observations to monitor for opacity be conducted at each finish mill in accordance with Method 22 of Appendix A to Part 60.

#### RESPONDENT

16. Respondent GCC Dacotah is a South Dakota company. GCC Dacotah is a wholly-owned subsidiary of Grupo Cementos de Chihuahua, headquartered in Chihuahua, Mexico.
17. Respondent is a "person" as defined in section 302(3) of the CAA, 42 U.S.C. § 7602(e), and the federal and state regulations promulgated pursuant to the CAA.
18. Respondent owns and operates a Portland cement manufacturing facility (facility) located at 501 North Saint Onge Street, Rapid City, South Dakota 57702.
19. The facility has the potential to emit more than 25 tons per year of hazardous air pollutants, including dioxin, furan, hydrochloric acid, benzene, and xylenes. The facility is therefore a "major source" subject to the requirements of section 112 of the Clean Air Act and the NESHAPs for the Portland cement manufacturing industry found at 40 C.F.R. Part 60, Subpart LLL.

#### THE TOLLING AGREEMENT

20. The EPA and Respondent entered into a tolling agreement and two extensions of the tolling agreement in order to reach an amicable resolution of this matter. Pursuant to the tolling agreement and extensions of the tolling agreement, the parties agree that the five-year statute of limitations, governed by 28 U.S.C. § 2462, is tolled for the period between December 23, 2011 through October 22, 2012.

## FINDINGS OF FACT

21. From June 1 through June 4, 2009, inspectors from the EPA National Enforcement Investigations Center inspected the facility. The EPA subsequently received additional information from the Respondent and the State of South Dakota Department of Environment and Natural Resources.
22. As a result of the inspection and subsequent review of records and discussions with the Respondent concerning the facility, the EPA alleges that:
- At times during the months of March 2007, July 2007, September 2007, and March 2008, the opacity standard was exceeded at kiln #4.
  - At times during the months of July 2007, September 2007, October 2007, April 2008, and May 2008, the opacity standard was exceeded at kiln #5.
  - At times during the months of January 2008, December 2008, and January 2009, the opacity standard was exceeded at kiln #6.
  - At times during the months of September 2007, September 2008, and May 2009, the opacity standard was exceeded at the kiln #6 alkali bypass.
23. The EPA further alleges that:
- At times during the months of June 2008, July 2008, December 2008, January 2009, February 2009, May 2009, and June 2009, the temperature standard for kiln #6 was exceeded while the mill was operating.
  - At times during the months of April 2008 and May 2009, the temperature standard for kiln #6 was exceeded while the mill was not operating.

- At times during the months of April 2008, July 2008, August 2008, December 2008, and January 2009, the temperature standard for the alkali bypass at kiln #6 was exceeded.

24. The EPA further alleges that:

- At times during the months of March 2007, July 2007, September 2007, and November 2007, the opacity standard at the clinker cooler for kiln #4 was exceeded.
- At times during the month of August 2007, the opacity standard at the clinker cooler for kiln #5 was exceeded.
- At times during the months of May 2007, November 2007, December 2007, January 2008, March 2008, and September 2008, the opacity standard at the clinker cooler for kiln #6 was exceeded.

25. The EPA further alleges that the monthly Method 22 opacity inspections required under 40 C.F.R. § 63.1350(a)(4)(i) were not conducted and/or the results were not recorded at various affected locations subject to 40 C.F.R. § 63.1348 during the following months:

- August 2007
- February 2008
- May 2008
- August 2008

26. The EPA further alleges that daily Method 22 visual emission observations required under 40 C.F.R. § 63.1350(e) were not conducted at finish mills #4, 5, 6, and/or 7 on the following dates:

- June 29, 2007
- September 25, 2007
- November 12, 2007
- January 26, 2008
- January 27, 2008
- February 23, 2008
- April 26, 2008
- April 27, 2008
- July 6, 2008
- September 9, 2008
- September 21, 2008
- September 24, 2008
- November 30, 2008

#### FINDING OF VIOLATIONS

27. At various times during the months of March 2007, July 2007, September 2007, October 2007, January 2008, March 2008, April 2008, May 2008, September 2008, December 2008, January 2009, and May 2009, the opacity standard was exceeded at kilns #4, 5, 6, and/or the kiln #6 alkali bypass, in violation of 40 C.F.R. §§ 63.1343(a), 63.1343(b)(2), and 63.1350(c)(3).



28. At various times during the months of April 2008, June 2008, July 2008, August 2008, December 2008, January 2009, February 2009, May 2009, and June 2009, the temperature standards were exceeded at kiln #6 and/or the alkali bypass at kiln #6, in violation of 40 C.F.R. §§ 63.1344(a)(1), 63.1344(a)(2), and 63.1344(a)(3).
29. At various times during the months of March 2007, May 2007, July 2007, August 2007, September 2007, November 2007, December 2007, January 2008, March 2008, and September 2008, the opacity standard was exceeded at the clinker coolers for kilns #4, 5, and/or 6, in violation of 40 C.F.R. §§ 63.1345(a)(2) and 63.1350(d)(3).
30. Respondent failed to conduct and/or record monthly visible emissions tests at affected locations subject to 40 C.F.R. § 63.1348 during the months of August 2007, February 2008, May 2008, and August 2008, in violation of 40 C.F.R. §§ 63.1350(a)(4)(i) and 63.1350(b).
31. Respondent failed to conduct daily visual emission observations at finish mills #4, 5, 6, and/or 7 on June 29, 2007; September 25, 2007; November 12, 2007; January 26, 2008; January 27, 2008; February 23, 2008; April 26, 2008; April 27, 2008; July 6, 2008; September 9, 2008; September 21, 2008; September 24, 2008; and November 30, 2008, in violation of 40 C.F.R. § 63.1350(e).

#### FINAL SETTLEMENT

32. Respondent admits the jurisdictional allegations stated above.
33. Respondent neither admits nor denies the allegations and determinations in the Findings of Fact and Findings of Violations stated above.

34. Respondent waives its rights to a hearing before any tribunal, and to contest any issue of law or fact set forth in this Consolidated Complaint and Consent Agreement.
35. Section 113(d)(1)(B) of the CAA and 40 C.F.R. Part 19 authorize the assessment of a civil penalty of up to \$37,500 per day for each violation of the regulations associated with the NESHAPs program. For purposes of determining the amount of any civil penalty to be assessed, section 113(e)(1) of the CAA, 42 U.S.C. § 7413(e)(1), requires that the EPA . . . as appropriate, shall take into consideration (in addition to such other factors as justice may require) the size of the business, the economic impact of the penalty on the business, the violator's full compliance history and good faith efforts to comply, the duration of the violation as established by any credible evidence, payment by the violator of penalties previously assessed for the same violation, the economic benefit of noncompliance, and the seriousness of the violation.
36. Based on the factors listed in paragraph 35, and Respondent's acknowledgment that it has corrected the violations described in paragraphs 27 through 31 above as of the date of execution of this Consolidated Complaint and Consent Agreement, the EPA has determined that an appropriate civil penalty to settle this action is Seventy Thousand Dollars (\$70,000).
37. Respondent consents, for the purpose of settlement, to the issuance of a Final Order in this matter and agrees to pay the civil penalty cited in the foregoing paragraph as follows:
- a. Payment is to be made of Seventy Thousand Dollars (\$70,000) due within 30 calendar days from the effective date of the Final Order, issued by the Regional Judicial Officer, which incorporates the terms of this Consolidated Complaint and Consent Agreement. If the due date falls on a weekend or legal Federal holiday,

the due date is the next business day. Payments must be received by 11:00 a.m.

Eastern Standard Time to be considered as received that day.

- b. Payment of the penalty shall: (1) be made by certified or cashier's check payable to "Treasurer, United States of America;" (or be paid by one of the other methods listed below) (2) identify the case title and docket number of this action (either on the check or in a transmittal letter accompanying the check); and (3) be remitted 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  
1005 Convention Plaza  
Mail Station SL-MO-C2GL  
St. Louis, MO 63101  
Contact: Natalie Pearson  
314-418-4087

Wire Transfers:

Wire transfers must be sent directly to the Federal Reserve Bank in New York City with the following information:  
Federal Reserve Bank of New York  
ABA: 021030004  
Account: 68010727  
SWIFT address: FRNYUS33  
33 Liberty Street  
New York NY 10045  
Field Tag 4200 of the Fedwire message should read "D 68010727 Environmental Protection Agency"

On Line Payment:

This payment option can be accessed from the information below:

[www.pay.gov](http://www.pay.gov)

Enter sfo1.1 in the search field

Open form and complete required fields

- c. A copy of the check or notification that the payment has been made by one of the other methods listed above, including proof of the date payment was made shall be sent to both:

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

and to:

Laurie Ostrand  
Mail Code (8ENF-AT)  
U.S. EPA, Region 8  
1595 Wynkoop Street  
Denver, Colorado 80202

38. 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, 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.
39. In addition, a handling charge of fifteen dollars (\$15) shall be assessed the 61<sup>st</sup> day from the date of the Final Order, and 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 handling charges, 6% penalty interest, and late interest; then any balance is applied to the outstanding principal amount.

40. Respondent agrees that the penalty shall never be claimed as a federal or other tax deduction or credit.
41. Nothing in this Agreement shall relieve Respondent of the duty to comply with the CAA and its implementing regulations.
42. Failure by Respondent to comply with any term of this Agreement shall constitute a breach of the Agreement and may result in referral of the matter to the Department of Justice for enforcement of this Agreement and such other relief as may be appropriate.
43. Nothing in this Agreement shall be construed as a waiver by the EPA or any other federal entity of its authority to seek costs or any appropriate penalty associated with any collection action instituted as a result of Respondent's failure to perform pursuant to the terms of this Agreement.
44. The undersigned EPA official has been properly delegated the authority to enter into this Agreement on behalf of the EPA.
45. The undersigned representative of the Respondent certifies that he is fully authorized to enter into the terms and conditions of this Agreement and to bind Respondent to the terms and conditions of this Agreement.
46. The parties agree to submit this Agreement to the Regional Judicial Officer, with a request that it be incorporated into a Final Order.

47. This Agreement, upon incorporation into a Final Order by the Regional Judicial Officer and full satisfaction by the parties, shall be a complete and full civil settlement of the specific violations alleged in paragraphs 27 through 31 of this Agreement.
48. This Agreement, upon incorporation into a Final Order, applies to and is binding upon the EPA and upon Respondent and Respondent's heirs, successors and assigns. Any change in ownership or corporate status of Respondent, including, but not limited to, any transfer of assets or real or personal property, shall not alter Respondent's responsibilities under this Agreement. This Agreement contains all terms of the settlement agreed to by the parties.
49. Each party shall bear its own costs and attorney fees in connection with this matter.

UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
REGION 8

Date: 9/5/12

By: Eddie Q. Sierra  
for Andrew M. Gaydosh  
Assistant Regional Administrator  
Office of Enforcement, Compliance, and  
Environmental Justice

GCC DACOTAH, INC.

Date: 9/4/12

By: [Signature]  
Verne Stuessy  
Vice President, Operations  
GCC Dacotah Inc.

## CERTIFICATE OF SERVICE

The undersigned certifies that the original of the attached **CONSOLIDATED COMPLAINT and CONSENT AGREEMENT AND FINAL ORDER** in the matter of **GCC DACOTAH, INC.; DOCKET NO.: CAA-08-2012-0015**, was filed with the Regional Hearing Clerk on September 6, 2012.

Further, the undersigned certifies that a true and correct copy of the document was delivered to Linda Kato, 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 and e-mailed on September 6, 2012, to:

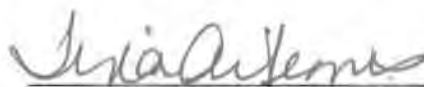
Adam DeVoe  
Brownstein, Hyatt, Farber, Schreck, LLP  
410 Seventeenth St., Suite 2200  
Denver, CO 80202-4432

Email is ADeVoe@BHFS.com

And emailed to:

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

September 6, 2012



Tina Artemis  
Paralegal/Regional Hearing Clerk