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HEARING CLERK

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October 26, 2010

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

Re: *In the Matter of: Holcim (US), Inc., Docket No. CWA-08-2010-0037*

Dear Sir or Madam:

Enclosed please find the Answer to Administrative Complaint and Request for Hearing by Holcim (US), Inc. in the captioned matter.

Please note that the Answer also includes a request for an informal conference to discuss possible resolution of the Complaint. By separate letter we are requesting that a time be scheduled for the informal conference.

Very truly yours,

James A. Holtkamp
Attorney for Holcim (US) Inc.

JAH
Enclosure

cc: (w/encl.)
Wendy I. Silver, Esq.
Amanda Smith

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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

2010 REGION 8 PH 3: 28

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| <p>IN THE MATTER OF:</p> <p>Holcim (US), Inc. 6055 East Croydon Road Morgan, Utah 84050-9951</p> <p>Respondent</p> | <p>ANSWER TO ADMINISTRATIVE COMPLAINT AND REQUEST FOR HEARING</p> <p>Proceeding to Assess Class II Administrative Penalty Under Clean Water Act, Section 309(g)</p> <p>Docket No. CWA-08-2010-0037</p> |
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This Answer to Administrative Complaint and Request for Hearing is submitted by Holcim (US), Inc. ("Respondent") pursuant to 40 C.F.R. § 22.15 in response to the Administrative Complaint and Notice of Opportunity for Hearing ("Complaint") in the captioned docket. In addition, Respondent requests a hearing regarding the violations alleged in the complaint and the appropriateness of the proposed administrative civil penalty pursuant to 40 C.F.R. § 22.15(c). Finally, Respondent requests an informal conference to discuss possible resolution of the Complaint.

Respondent responds to the Complaint as follows:

1. Respondent admits the allegations contained in paragraph 11 of the Complaint.
2. Respondent admits the allegations contained in paragraph 12 of the Complaint.
3. Respondent admits the allegations contained in paragraph 13 of the Complaint.
4. Respondent admits the allegations contained in paragraph 14 of the Complaint.
5. Respondent admits the allegations contained in paragraph 15 of the Complaint.
6. With regard to paragraph 16, Respondent admits that there was a "discharge from the terminal impoundment of the Bone Yard Hollow Drainage to the Weber River," but denies that there was a discharge of any pollutants into the Weber River. Respondent admits the remaining allegations contained in Paragraph 16.
7. Respondent admits the allegations contained in paragraph 17 of the Complaint.
8. With regard to paragraph 18, Respondent admits that there was a "discharge from the terminal impoundment of the Bone Yard Hollow Drainage to the Weber River" but denies that the discharge contained pollutants. Respondent admits the remaining allegations contained in Paragraph 18.

9. Respondent admits the allegations contained in paragraph 19 of the Complaint.
10. Respondent admits the allegations contained in paragraph 20 of the Complaint.
11. Respondent admits the allegations contained in paragraph 21 of the Complaint.
12. Respondent admits that “storm water” is defined at 40 C.F.R. § 122.6(b)(13) but denies the allegations contained in paragraph 22 of the Complaint to the extent that they are not consistent with that definition.
13. Respondent admits that “process waste water” is defined in 40 C.F.R. §§ 122.2 and 401.11(q) but denies the allegations contained in paragraph 23 of the Complaint to the extent that there is no definition of “process water” in 40 C.F.R. Part 436 or elsewhere in the effluent guideline regulations.
14. Respondent denies the allegations contained in paragraph 24 of the Complaint.
15. Respondent denies the allegations contained in paragraph 25 of the Complaint.
16. Respondent denies the allegations contained in paragraph 26 of the Complaint.
17. Respondent has no knowledge of the allegations contained in paragraph 27 of the Complaint.
18. Respondent admits the allegation contained in paragraph 28 of the Complaint that it did not apply for an authorization to discharge under a UPDES permit but denies the remaining allegations in paragraph 28.
19. Respondent denies the allegations contained in paragraph 29 of the Complaint.
20. Respondent denies the allegations contained in paragraph 30 of the Complaint.
21. Respondent denies the allegations contained in paragraph 31 of the Complaint.
22. Respondent requests a hearing in this matter as provided in § 309(g)(2)(A) of the Clean Water Act, 33 U.S.C. § 1319(g)(2)(A), and 40 C.F.R. § 22.15(c).
23. Respondent asserts the following defenses and the grounds for such defenses:

FIRST DEFENSE (COUNT I)

24. Respondent did not apply for authorization to discharge under a UPDES permit because no pollutants were discharged.

25. Respondent therefore did not violate § 308 of the Clean Water Act, 33 U.S.C. § 1318, or 40 C.F.R. § 122.21.

SECOND DEFENSE (COUNT II)

26. Respondent did not discharge pollutants into waters of the United States from the facility because any water entering the Weber River from the facility did not contain “pollutants” as defined in § 502(6) of the Clean Water Act, 33 U.S.C. § 1362(12), and 40 C.F.R. § 122.2.

27. Respondent therefore was not required to obtain a UPDES or other permit or authorization under §§ 301 or 402 of the Clean Water Act, 33 U.S.C. §§ 1311, 1342.

PROPOSED CIVIL PENALTY ASSESSMENT

28. Respondent contests the proposed assessment of a penalty contained in paragraph 32 of the Complaint, and denies the allegations contained in paragraph 32 of the Complaint that:

a. There were “poor housekeeping and material stock-pile management issues.” In particular, Respondent objects to the inclusion of this allegation in paragraph 32 as a basis for the proposed civil penalty because it has nothing to do with the alleged violation and thus should be stricken from the complaint.

b. “[T]he facility was discharging storm water and/or process water from the impoundment.”

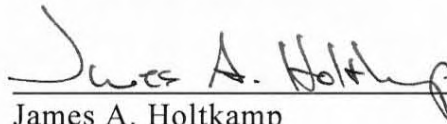
c. The facility did not have in place a storm water management program.

d. Process waste water containing pollutants was discharged from the facility to the Weber River.

e. Respondent received an economic benefit from not applying for a permit or otherwise not performing functions or installing the facilities it was not required to perform or install.

Dated this 26th day of October, 2010.

Respectfully submitted,

A handwritten signature in black ink, reading "James A. Holtkamp", is written over a solid horizontal line.

James A. Holtkamp
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Salt Lake City, UT 84101
801-799-5847
Attorneys for Holcim (US) Inc.

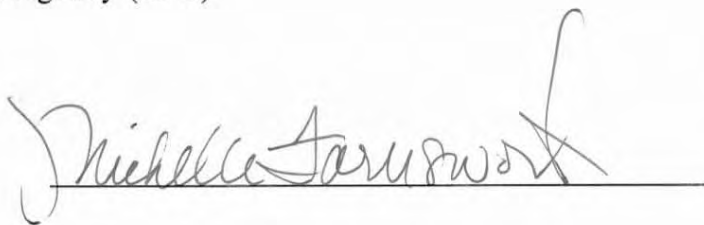
CERTIFICATE OF SERVICE

I certify that on October 26, 2010 I served a copy of the foregoing document to the following by

- U.S. Mail, postage prepaid
- Hand Delivery
- Fax
- Electronic Service by LexisNexis File & Serve

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

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



Michelle Jarosow