



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 8

1595 WYNKOOP STREET

DENVER, CO 80202-1129

Phone 800-227-8917

<http://www.epa.gov/region08>

2009 AUG 24 PM 12: 00

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EPA REGION VIII  
HEARING CLERK

AUG 24 2009

CERTIFIED MAIL  
RETURN RECEIPT REQUESTED

Ref: 8ENF-L

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

Re: Findings of Violation and Administrative  
Order for Compliance  
Docket No. **CWA-08-2009-0025**

Dear Registered Agent:

Based on our review of all available information, the United States Environmental Protection Agency (EPA) has determined that Holcim (US) Inc. (Holcim) is in violation of the Clean Water Act, as amended (CWA) or the Act. The CWA prohibits, among other things, the discharge of pollutants into waters of the United States 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. Inspections of Holcim's mine in Morgan, Utah in May 2008 and June 2009 identified discharges of pollutants to the Weber River without permit authorization.

Enclosed is an EPA Region 8 administrative order that specifies the nature of the violations and describes actions necessary in order for you to achieve compliance with the CWA. EPA's authority for such action is provided under §§ 308 and 309(a)(3) of the Act, 33 U.S.C. §§ 1318 and 1319(a)(3). The order requires you to inform EPA in writing, within 10 days of receipt, of your intent to fully comply with the order.

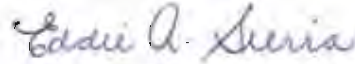
The CWA requires the Administrator of EPA to take all appropriate enforcement action necessary to secure prompt compliance with the CWA and any order issued thereunder. Section 309 of the Act authorizes a variety of possible enforcement actions, including filing of a civil or criminal action, administrative penalty action, and/or debarment from Federal contracts and/or loans for any non-compliance with the CWA or an order issued pursuant to the CWA. Please be advised that the issuance of this order does not preclude civil or criminal actions in the U.S. District Court pursuant to §§ 309(b) or (c) of the CWA, 33 U.S.C. §§ 1319(b) or (c), or assessment of civil penalties pursuant to §§ 309(d) or (g) of the Act, 33 U.S.C. §§ 1319(d) or (g), for the violations cited in the order.



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Please review the order carefully. If you have any questions, the most knowledgeable people on my staff are Wendy Silver, Senior Attorney, at 303-312-6637 and Amy Clark, Environmental Scientist, at 303-312-7014.

Sincerely,



Eddie A. Sierra  
Acting Assistant Regional Administrator  
Office of Enforcement, Compliance and  
Environmental Justice

Enclosures

cc: Tina Artemis, EPA, Regional Hearing Clerk  
Michael Herkimer, UDEQ, DWQ  
Keith Krugh, Plant Manager, Holcim

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 8

2009 AUG 24 PM 12: 00

IN THE MATTER OF: )  
)  
Holcim (US) Inc. )  
6055 E. Croydon Road )  
Morgan, Utah 84050 )  
Respondent. )  
\_\_\_\_\_ )

**FINDINGS OF VIOLATION AND  
ORDER FOR COMPLIANCE**

Proceeding under Sections 308(a) and  
309(a) of the Clean Water Act, 33 U.S.C.  
§§ 1318(a) and 1319(a)

Docket No. **CWA-08-2009-0025**

**STATUTORY AUTHORITY**

The following Findings of Violation are made and Order for Compliance (order) issued pursuant to § 309(a) of the Clean Water Act (Act), 33 U.S.C. § 1319(a), which authorizes the Administrator of the U.S. Environmental Protection Agency (EPA) to issue an order requiring compliance by a person found to be in violation of §§ 301, 308, or 402 of the Act, among others, or in violation of any permit condition or limitation implementing such sections of the Act. This order is also issued pursuant to § 308(a) of the Act, 33 U.S.C. § 1318(a), which authorizes the Administrator of EPA to require reports necessary to determine compliance. These authorities have been delegated to the Regional Administrator of EPA Region 8 and redelegated to the undersigned official.

**FINDINGS OF VIOLATION**

1. Respondent Holcim (US) Inc. (respondent) is a Delaware corporation doing business in Utah and having a registered office address of 6055 E. Croydon Road, Morgan, Utah 84050.
2. Respondent is a "person" within the meaning of § 502(5) of the Act, 33 U.S.C. § 1362(5).

3. Respondent owns and/or operates a limestone and sandstone quarry located at 6055 E. Croydon Road, Morgan, Utah (the facility), adjacent to the Weber River.
4. 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.
5. Water from the facility flows into two drainages, Quarry Hollow and Bone Yard Hollow, which each flow into catch basins located 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 basin) located approximately twenty-five (25) feet north of the Weber River.
6. The facility is a “point source” within the meaning of § 502(14) of the Act, 33 U.S.C. § 1362(14).
7. Storm water and process water are each a “pollutant” within the meaning of § 502(6) of the Act, 33 U.S.C. § 1362(6).
8. The Weber River is 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 § 502(7) of the Act, 33 U.S.C. § 1362(7).
9. Section 301 of the Act, 33 U.S.C. § 1311(a), prohibits, among other things, the discharge of pollutants by any person into waters of the United States except as in compliance with § 402 of the Act, 33 U.S.C. § 1342.
10. Section 402 of the Act, 33 U.S.C. § 1342, establishes a National Pollutant Discharge Elimination System (NPDES) program, administered by EPA and, under certain circumstances, the State, to permit discharges into navigable waters, subject to specific terms and conditions.

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

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

13. On June 19, 2009, an inspector from DWQ conducted an NPDES inspection of the facility and observed a discharge from the terminal basin of the Bone Yard Hollow drainage to the Weber River through the discharge outfall described in paragraph 12, above.

14. Respondent did not apply for or receive a § 402 permit authorizing the discharge of pollutants described in paragraphs 12 and 13, above, prior to their discharge, as required under §§ 301, 308, and 402 of the Act, 33 U.S.C. §§ 1311, 1318, and 1342.

15. The discharges of pollutants from a point source by Respondent into waters of the United States as described in paragraphs 12 and 13, above, were carried out without the required permit pursuant to § 402 of the Act, 33 U.S.C. § 1342, and therefore constitute violations of §§ 301 and 402 of the Act, 33 U.S.C. §§ 1311 and 1342.

### **ORDER**

Based on the foregoing FINDINGS OF VIOLATION, and pursuant to the authority vested in the Administrator of EPA pursuant to §§ 308 and 309(a) of the Act, 33 U.S.C. §§ 1318 and 1319(a), as properly delegated to the Assistant Regional Administrator of the Office of

Enforcement, Compliance, and Environmental Justice, Region 8, it is hereby ORDERED:

1. Within ten (10) calendar days of receipt of this Order, Respondent shall submit to EPA written notice of its intent to comply with the requirements of this Order.
2. Within thirty (30) calendar days of receipt of this Order, Respondent shall develop and submit a plan to EPA and DWQ to prevent unauthorized discharges of pollutants from the facility to waters of the United States until permit coverage is obtained pursuant to paragraph 6 of this Order, below. Such plan shall also provide for inspecting the structural integrity of all catch basins and monitoring of the facility for discharges to waters of the United States on a weekly basis and within twenty-four (24) hours of any precipitation event, and immediate notification to EPA and DWQ in the event a discharge has occurred.
3. EPA will review the submission described in paragraph 2 and may: (a) approve the submission; (b) approve the submission with modifications; or (c) disapprove the submission and direct Respondent to resubmit the document after incorporating EPA's comments.
4. Upon receipt of a notice of disapproval or a request for modification as described in paragraph 3 above, Respondent shall, within fifteen (15) calendar days, or such longer time as specified by EPA in its notice of disapproval or request for modification, correct the deficiencies and resubmit the plan. Respondent shall have the opportunity to object in writing to the notification of disapproval or request for modification given pursuant to paragraph 3 within fifteen (15) calendar days of receipt of such notification. EPA and Respondent shall have an additional thirty (30) calendar day from receipt by EPA of the notification of objection to reach agreement. If agreement cannot be reached on any such issue within this thirty (30) calendar day period, EPA shall provide a written statement of its decision to Respondent, which decision shall

be final and binding upon Respondent.

5. Upon EPA approval, or approval with modification of the plan, the plan and its implementation schedule will be incorporated into this Order.

6. Within forty-five (45) calendar days of receipt of this Order, Respondent shall submit a complete application to EPA and DWQ for permit coverage for all discharges from the facility to the Weber River, including the discharges described in paragraphs 12 and 13 of the Findings of Violation, above.

7. A copy of the plan to prevent discharges required by paragraph 2 of this Order and application for permit coverage required by paragraph 6 of this Order, and of all related correspondence, plans, schedules, and reports, shall be sent to the following addresses:

Amy Clark (8ENF-W-NP)  
U.S. Environmental Protection Agency, Region 8  
1595 Wynkoop St.  
Denver, CO 80202-1129  
[clark.amy@epa.gov](mailto:clark.amy@epa.gov)  
303-312-7014 (Phone)  
303-312-7202 (Fax)

and

Michael Herkimer  
Utah Department of Environmental Quality  
Division of Water Quality  
P.O. Box 144870  
Salt Lake City, UT 84114-4870  
[mherkimer@utah.gov](mailto:mherkimer@utah.gov)  
801-538-6058 (Phone)  
801-538-6016 (Fax)

8. All correspondence, plans, schedules, and reports submitted pursuant to this Order must be signed by a principal executive officer, ranking elected official, or duly authorized

representative of Respondent (as specified by 40 C.F.R. § 122.22(b)) and shall include the following statement:

“I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, I certify that the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.”

9. Respondent shall allow, or use its best efforts to allow, access by any authorized representatives of EPA and the DWQ, or any of the agencies’ contractors, upon proper presentation of credentials, to the facility and records relevant to this Order for the following purposes:

- a. To inspect and monitor progress of the activities required by this Order;
- b. To inspect and monitor compliance with this Order; and
- c. To verify and evaluate data and other information submitted to EPA.

10. This Order shall in no way limit or otherwise affect EPA’s authority, or the authority of any other governmental agency, to enter the facility, conduct inspections, have access to records, issue notices and orders for enforcement, compliance, or abatement purposes, or monitor compliance pursuant to any statute, regulation, permit, or court order.

11. Compliance with the terms and conditions of this Order shall not be construed to relieve Respondent of its obligation to comply with any applicable Federal, state, or local law or regulation.



12. Please be advised that § 309(d) of the Act, 33 U.S.C. § 1319(d), authorizes civil penalties of up to \$32,500 per day for each violation which occurred from March 15, 2004, through January 12, 2009, and \$37,500 per day for each violation thereafter of § 301 of the Act, 33 U.S.C. § 1311. Section 309(d) of the Act, 33 U.S.C. § 1319(d) further authorizes such penalties for each violation of a permit condition in a permit issued by a state under § 402 of the Act, 33 U.S.C. § 1342, and for each violation of an order issued by the Administrator of EPA under § 309(a) of the Act, 33 U.S.C. § 1319(a), including this Order. Additionally, § 309(g) of the Act, 33 U.S.C. § 1319(g), authorizes EPA to impose administrative penalties for violations of the Act. Further, § 309(c) of the Act, 33 U.S.C. § 1319(c), authorizes fines and imprisonment for willful or negligent violations of the Act. Issuance of this Order shall not be deemed an election by the United States to forego any civil or criminal action to seek penalties, fines, or other appropriate relief under the Act for violations giving rise to this Order.

13. Issuance of this Order shall not be deemed an election by the United States to forego any civil or criminal action to seek penalties, fines, or other appropriate relief under the Act for violations giving rise to this Order.

14. This Order shall be effective upon receipt by Respondent.

DATED this 24 day of August, 2009.



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Eddie A. Sierra  
Acting Assistant Regional Administrator  
Office of Enforcement, Compliance, and  
Environmental Justice