

ALABAMA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

IN THE MATTER OF:)
)
National Cement Company of Alabama, Inc.)
Ragland, St. Clair County, Alabama)
)
ADEM Air Facility ID No. 410-0002)

CONSENT ORDER NO.

PREAMBLE

This Special Order by Consent is made and entered into by the Alabama Department of Environmental Management (hereinafter, “the Department” and/or “ADEM”) and National Cement Company of Alabama, Inc. (hereinafter, the “Permittee”) pursuant to the provisions of the Alabama Environmental Management Act, Ala. Code §§ 22-22A-1 to 22-22A-17, *as amended*, the Alabama Air Pollution Control Act, Ala. Code §§ 22-28-1 to 22-28-23, *as amended*, and the regulations promulgated pursuant thereto.

STIPULATIONS

1. The Permittee operates a cement manufacturing facility (hereinafter, the “Facility”) located in Ragland, St. Clair County, Alabama (ADEM Air Facility ID No. 410-0002).
2. The Department is a duly constituted department of the State of Alabama pursuant to Ala. Code §§ 22-22A-1 to 22-22A-17, *as amended*.
3. Pursuant to Ala. Code § 22-22A-4(n), *as amended*, the Department is the state air pollution control agency for the purposes of the federal Clean Air Act, 42 U.S.C. 7401 to 7671q, *as amended*. In addition, the Department is authorized to administer and

enforce the provisions of the Alabama Air Pollution Control Act, Ala. Code §§ 22-28-1 to 22-28-23, *as amended*.

4. The Permittee operates a rotary cement kiln and supporting equipment at the Facility pursuant to the authority of Major Source Operating Permit No. 410-0002 (hereinafter, the “Permit”).

5. Emission Standards Proviso No. 8(c) for the kiln states: “Mercury emissions from the kiln shall not exceed 55 lb/MM tons clinker produced (30 day rolling average). [Regulation] 40 CFR 63 Subpart LLL, §63.1343(b)”

6. Emission Monitoring Proviso No. 1 for the Limestone Quarry, Crushing, Conveying, and Storage; Reclaiming and Raw Material Grinding; Raw Material Blending Silos and Feed System; Coal Preparation; Alternative Solid Fuel Handling; Clinker Handling and Storage; Roller Press; Additives Handling; Bulk Loading; and Packing System states: “The opacity of emissions from these sources shall be monitored in accordance with the following: (a) An instantaneous visible emissions observation shall be conducted at least weekly during daylight hours while the affected source is in operation. (b) If any visible emissions are observed during the instantaneous visible emissions observation, a six (6) minute visible emissions observation shall be conducted in accordance with Method 9 of 40 CFR 60, Appendix A, within one (1) hour of the initial observation, unless the source is immediately shut down. (c) If any visible emissions are observed during the initial visible emissions observation, corrective action shall be initiated within two (2) hours. (d) After correction action has been completed, a follow-up visible emissions observation shall be conducted in order to ensure that no visible emissions are present. [Regulation] ADEM Admin. Code r. 335-3-16-.05(c)(1)”

7. These units are also subject to the applicable monitoring requirements of 40 CFR Part 63 Subpart LLL, “*National Emissions Standards for Hazardous Air Pollutants from the Portland Cement Manufacturing Industry*”. Per §63.1350(f)(1), the Permittee must conduct a monthly 10-minute visible emissions test of each affected source under this subpart in accordance with Method 22 of 40 CFR Part 60, Appendix A. If no visible emissions are observed in six consecutive monthly tests for any affected source, the Permittee may conduct a 10-minute visible emissions test semiannually for that source. If no visible emissions are observed during the semiannual test, the Permittee may conduct a 10-minute visible emissions test annually for that source. If visible emissions are observed during any semiannual or annual performance test, the Permittee must resume monthly testing for that source until no visible emissions are observed in six consecutive monthly tests. If visible emissions are observed during any Method 22 performance test, the Permittee must conduct 30 minutes of opacity observations in accordance with Method 9 of 40 CFR Part 60, Appendix A, within one hour of any observation of visible emissions.

8. Recordkeeping Requirements Proviso No. 4 for these units states: “Records documenting the observation date, observation time, emission point designation, name of the observer, expiration date of observer’s certification, observed opacity, and any corrective actions taken during each visible emissions observation shall be kept in a permanent form suitable for inspection. These records shall be maintained for a period of at least five (5) years from the date of generation and shall be made available to the permitting authority upon request. [Regulation] ADEM Admin. Code r. 335-3-16-.05(c)(2)”

DEPARTMENT'S CONTENTIONS

9. The Permittee self-reported a total of 149 days from May 2, 2019, to February 11, 2020, in which the 30-day rolling average for mercury emissions from the kiln exceeded the allowable limit. In the Notice of Violation response letter dated March 12, 2020, the Permittee explained that an incorrect clinker ratio was used to calculate mercury emissions during that period, and the correct clinker ratio would have resulted in 123 days of exceedances.

10. On January 28, 2020, the Department conducted an inspection of the Facility. During this inspection the records for weekly and monthly visible emissions observations described above were requested for the period from July 2019 through December 2019. The requested records could not be found at the time of inspection and could not be provided via follow-up email. In the Notice of Violation response letter dated March 12, 2020, the Permittee stated that those records still had not been found.

11. Pursuant to Ala. Code § 22-22A-5(18)c., *as amended*, in determining the amount of any penalty, the Department must give consideration to the seriousness of the violation, including any irreparable harm to the environment and any threat to the health or safety of the public; the standard of care manifested by such person; the economic benefit which delayed compliance may confer upon such person; the nature, extent and degree of success of such person's efforts to minimize or mitigate the effects of such violation upon the environment; such person's history of previous violations; and the ability of such person to pay such penalty. Any civil penalty assessed pursuant to this authority shall not exceed \$25,000.00 for each violation, provided however, that the total penalty assessed in an order issued by the Department shall not exceed \$250,000.00. Each day such

violation continues shall constitute a separate violation. In arriving at this civil penalty, the Department has considered the following.

A. **SERIOUSNESS OF THE VIOLATION:** The Department considers the Permittee's failure to meet emissions limits and maintain records to be serious violations. However, the Department is not aware of any irreparable harm to the environment resulting from these violations.

B. **THE STANDARD OF CARE:** The Permittee failed to exhibit a sufficient standard of care by failing to meet the emissions and recordkeeping standards required by the Permit.

C. **ECONOMIC BENEFIT WHICH DELAYED COMPLIANCE MAY HAVE CONFERRED:** The Department is not aware of any evidence indicating that the Permittee received any significant economic benefit from these violations.

D. **EFFORTS TO MINIMIZE OR MITIGATE THE EFFECTS OF THE VIOLATION UPON THE ENVIRONMENT:** The Department is aware of the various efforts by the Permittee to minimize or mitigate the effects of these violations on the environment, which include installing an activated carbon injection system, updating and replacing equipment, and burning coal with lower mercury content.

E. **HISTORY OF PREVIOUS VIOLATIONS:** The Department's records indicate that there are no other similar violations or enforcement actions taken by the Department against the Permittee within the past five years.

F. **THE ABILITY TO PAY:** The Permittee has not alleged an inability to pay the civil penalty.

G. OTHER FACTORS: It should be noted that this Special Order by Consent is a negotiated settlement and, therefore, the Department has compromised the amount of the penalty in this matter in the spirit of cooperation and the desire to resolve this matter amicably, without incurring the unwarranted expense of litigation.

12. The Department has carefully considered the six statutory penalty factors enumerated in Ala. Code § 22-22A-5(18)c., as amended, as well as the need for timely and effective enforcement and, based upon the foregoing and attached contentions, has concluded that the civil penalty herein is appropriate (*See* “Attachment A”, which is hereby made a part of the Department’s Contentions).

13. The Department neither admits nor denies the Permittee’s Contentions, which are set forth below. The Department has agreed to the terms of this Consent Order in an effort to resolve the alleged violations cited herein without the unwarranted expenditure of State resources in further prosecuting the above violations. The Department has determined that the terms contemplated in this Consent Order are in the best interests of the citizens of Alabama.

PERMITTEE’S CONTENTIONS

14. The Permittee is committed to operating the Facility in full compliance with its permit and applicable laws and regulations. The Facility unexpectedly experienced increases in its mercury emissions that resulted in exceedances of the 30-day rolling average for mercury emissions from the kiln. The Permittee has devoted considerable resources to investigate the causes of the emissions issues and to implement solutions to eliminate any exceedance of the 30-day rolling average for mercury emissions. The Permittee has embarked on several significant capital improvements to improve mercury

emissions, including the installation of an activated carbon abatement system. The Permittee has also made improvements to the raw mill, including substantial investments in equipment modification for the mill, which are designed to improve the operation of the raw mill and thereby reduce mercury emissions. The Permittee also made a significant capital investment toward improving its “dust shuttling” system to improve the effectiveness of its mercury removal efforts. The Permittee made process changes to reduce mercury emissions resulting in additional workforce hours. Furthermore, the Permittee has worked to identify and transition to kiln inputs with lower mercury content in order to lower mercury emissions.

15. On April 9, 2020, the Permittee sent the Department a Supplement to its March 12, 2020, Notice of Violation response letter informing the Department that it had located the weekly and monthly opacity observation records for the requested time period (July 2019 to December 2019), which previously could not be located during the Department’s January inspection. In an effort to ensure records are readily available during Department inspections, the Permittee has put additional procedures in place, including (1) weekly record checks by the environmental manager, (2) weekly reports to the plant manager confirming the records are completed and properly filed, and (3) monthly electronic back-up of all records.

16. The Permittee has not gained any economic benefit from its noncompliance and has made significant capital investments at the facility to lower mercury emissions. The Permittee has devoted substantial internal resources and has expended more than \$400,000 in investigatory costs, capital improvements, and reduced mercury kiln inputs.

17. The Permittee has been forthcoming and transparent with the Department regarding its mercury emission exceedances and will continue to work diligently to improve the facility and decrease mercury emissions.

18. The Permittee neither admits nor denies the Department's Contentions. The Permittee consents to abide by the terms of this Consent Order and to pay the civil penalty assessed herein.

ORDER

THEREFORE, the Permittee, along with the Department, desires to resolve and settle the compliance issues cited above. The Department has carefully considered the facts available to it and has considered the six penalty factors enumerated in Ala. Code § 22-22A-5(18)c., *as amended*, as well as the need for timely and effective enforcement, and the Department has determined that the following conditions are appropriate to address the violations alleged herein. Therefore, the Department and the Permittee agree to enter into this Consent Order with the following terms and conditions:

A. The Permittee agrees to pay to the Department a civil penalty in the amount of \$148,000.00 in settlement of the violations alleged herein within forty-five days from the effective date of this Consent Order. Failure to pay the civil penalty within forty-five days from the effective date may result in the Department's filing a civil action in the Circuit Court of Montgomery County to recover the civil penalty.

B. The Permittee agrees that all penalties due pursuant to this Consent Order shall be made payable to the Alabama Department of Environmental Management by certified or cashier's check and shall be remitted to:

Office of General Counsel
Alabama Department of Environmental Management

P.O. Box 301463
Montgomery, Alabama 36130-1463

C. The Permittee agrees to comply with all requirements of ADEM Administrative Code div. 335-3 and the Permit immediately upon the effective date of this Order and continuing every day thereafter.

D. The parties agree that this Consent Order shall apply to and be binding upon both parties, their directors, officers, and all persons or entities acting under or for them. Each signatory to this Consent Order certifies that he or she is fully authorized by the party he or she represents to enter into the terms and conditions of this Consent Order, to execute the Consent Order on behalf of the party represented, and to legally bind such party.

E. The parties agree that, subject to the terms of these presents and subject to provisions otherwise provided by statute, this Consent Order is intended to operate as a full resolution of the violations which are cited in this Consent Order.

F. The Permittee agrees that it is not relieved from any liability if it fails to comply with any provision of this Consent Order.

G. For purposes of this Consent Order only, the Permittee agrees that the Department may properly bring an action to compel compliance with the terms and conditions contained herein in the Circuit Court of Montgomery County. The Permittee also agrees that in any action brought by the Department to compel compliance with the terms of this Agreement, the Permittee shall be limited to the defenses of *Force Majeure*, compliance with this Agreement and physical impossibility. A *Force Majeure* is defined as any event arising from causes that are not foreseeable and are beyond the reasonable control of the Permittee, including its contractors and consultants, which could not be overcome by due diligence (i.e., causes which could have been overcome or avoided by

the exercise of due diligence will not be considered to have been beyond the reasonable control of the Permittee) and which delays or prevents performance by a date required by the Consent Order. Events such as unanticipated or increased costs of performance, changed economic circumstances, normal precipitation events, or failure to obtain federal, state, or local permits shall not constitute *Force Majeure*. Any request for a modification of a deadline must be accompanied by the reasons (including documentation) for each extension and the proposed extension time. This information shall be submitted to the Department a minimum of ten working days prior to the original anticipated completion date. If the Department, after review of the extension request, finds the work was delayed because of conditions beyond the control and without the fault of the Permittee, the Department may extend the time as justified by the circumstances. The Department may also grant any other additional time extension as justified by the circumstances, but it is not obligated to do so.

H. The Department and the Permittee agree that the sole purpose of this Consent Order is to resolve and dispose of all allegations and contentions stated herein concerning the factual circumstances referenced herein. Should additional facts and circumstances be discovered in the future concerning the facility which would constitute possible violations not addressed in this Consent Order, then such future violations may be addressed in Orders as may be issued by the Director, litigation initiated by the Department, or such other enforcement action as may be appropriate, and the Permittee shall not object to such future orders, litigation or enforcement action based on the issuance of this Consent Order if future orders, litigation or other enforcement action address new matters not raised in this Consent Order.

I. The Department and the Permittee agree that this Consent Order shall be considered final and effective immediately upon signature of all parties. This Consent Order shall not be appealable, and the Permittee does hereby waive any hearing on the terms and conditions of same.

J. The Department and the Permittee agree that this Order shall not affect the Permittee's obligation to comply with any Federal, State, or local laws or regulations.

K. The Department and the Permittee agree that final approval and entry into this Order are subject to the requirements that the Department give notice of proposed Orders to the public, and that the public have at least thirty days within which to comment on the Order.

L. The Department and the Permittee agree that, should any provision of this Order be declared by a court of competent jurisdiction or the Environmental Management Commission to be inconsistent with Federal or State law and therefore unenforceable, the remaining provisions hereof shall remain in full force and effect.

M. The Department and the Permittee agree that any modifications of this Order must be agreed to in writing signed by both parties.

N. The Department and the Permittee agree that, except as otherwise set forth herein, this Order is not and shall not be interpreted to be a permit or modification of an existing permit under Federal, State or local law, and shall not be construed to waive or relieve the Permittee of its obligations to comply in the future with any permit.

Executed in duplicate, with each part being an original.

NATIONAL CEMENT COMPANY OF
ALABAMA, INC.

ALABAMA DEPARTMENT OF
ENVIRONMENTAL MANAGEMENT

(Signature of Authorized Representative)

Lance R. LeFleur
Director

(Printed Name)

(Printed Title)

Date Signed: _____

Date Executed: _____

Attachment A

**National Cement Company of
Alabama, Inc.
Ragland, St. Clair County**

ADEM Air Facility ID No. 410-0002

Violation*	Number of Violations*	Seriousness of Violation*	Standard of Care*	History of Previous Violations*	Total of Three Factors
Failure to meet Hg MACT Limit	123	\$123,000.00	\$125,000.00	-	\$248,000.00
Failure to produce required records**	1	\$500.00	\$1,500.00	-	\$2,000.00
TOTAL PER FACTOR		\$123,500.00	\$126,500.00	-	\$250,000.00

Adjustments to Amount of Initial Penalty	
Mitigating Factors (-)	\$100,000
Ability to Pay (-)	
Other Factors (+/-)	\$2,000
Total Adjustments (+/-)	\$102,000

Economic Benefit (+)	
Amount of Initial Penalty	\$250,000
Total Adjustments (+/-)	-\$102,000
FINAL PENALTY	\$148,000

Footnotes

* See the "Department's Contentions" portion of the Order for a detailed description of each violation and the penalty factors.

** The Department has agreed to remove this penalty because the Permittee was ultimately able to produce the records.