

STATE OF NEW YORK  
DEPARTMENT OF ENVIRONMENTAL CONSERVATION

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In the Matter of Violations  
of the Environmental Conservation  
Law Article 17 and Article 12  
of the New York State Navigation Law ("NL")

**ORDER ON CONSENT**

- by -

File No. R4-2008-0214-23

Holcim (US) Inc.

Respondent

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**WHEREAS:**

1. New York State and the Department of Environmental Conservation have jurisdiction to protect the waters of the State pursuant to Environmental Conservation Law ("ECL") Article 17 and the State Pollutant Discharge Elimination System (SPDES) permit program and over oil spill prevention and control pursuant to Article 12 of the NL and the rules and regulations promulgated thereto.
2. Respondent, Holcim (US) Inc., 201 Jones Road, Waltham, Massachusetts, owns a cement manufacturing facility located at 6446 Rt 9W, Catskill, New York, ("facility"), which is currently operated by St. Lawrence Cement. The facility currently discharges through eight outfalls pursuant to SPDES permit NY0006874.
3. Respondent also owns and/or operates a Petroleum Bulk Storage ("PBS") facility (#4-388122) located at 6446 Route 9W, Catskill, New York.
4. On January 17, 2008 Department staff conducted an inspection of the facility.

**PBS VIOLATIONS**

5. The following PBS violations were noted during the inspection:

6 NYCRR 613.3(b)	Fill Port color coding is missing on one or more tanks (KI1, a 7,500-gallon above ground Heating Oil tank)
6 NYCRR 613.3(c)(3)(ii)	One or more tanks was not properly labeled with design capacity, working capacity and ID number (KI1 had no tank number or product label)

6 NYCRR 613.6(a) & (c)	Monthly inspection of AST not properly performed: records failed to indicate that tank KI1 was not labeled and had no level gauge.
6 NYCRR 613.8	Observed an unreported spill on the property (surface spills and speedi dri piles with saturated wooden pallets in the vicinity of QUWO, a 500-gallon above ground Used Oil tank)
6 NYCRR 613.8	Observed an unreported spill on the property (contaminated soil immediately below the gear lubricating operation of the kiln; Gear Oil has dripped over and down the concrete support structure)
NL Section 173	There was a discharge at the Diesel dispenser on the property (Spill # 0709317)
NL Section 176	The Diesel spill was called in, but not properly remedied

6. Respondent is working to remedy each of the identified PBS violations.

SPDES VIOLATIONS

7. The following SPDES permit effluent limit violations have been noted:

Outfall No. 001 - Cooling Water & Truck Wash

<b>Parameter</b>	<b>Permit Limit</b>	<b>DMR</b>	<b>Reported Value</b>
<b>Oil &amp; Grease</b>	<b>15 mg/L (Daily max.)</b>	January 2007	19 mg/L
<b>Delta Temperature (Intake &amp; Discharge)</b>	<b>5.4<sup>0</sup>F (7 day average)</b>		
	5.4 <sup>0</sup> F	January 2005	9.3 <sup>0</sup> F
	5.4 <sup>0</sup> F	July 2005	10.1 <sup>0</sup> F
	5.4 <sup>0</sup> F	August 2005	6.5 <sup>0</sup> F
	5.4 <sup>0</sup> F	September 2005	6.6 <sup>0</sup> F
	5.4 <sup>0</sup> F	October 2005	6.0 <sup>0</sup> F
	5.4 <sup>0</sup> F	November 2005	5.8 <sup>0</sup> F
	5.4 <sup>0</sup> F	December 2005	6.4 <sup>0</sup> F

	5.4 °F	February 2006	5.6 °F
	5.4 °F	October 2006	6.5 °F
	5.4 °F	November 2006	7.3 °F
	5.4 °F	January 2007	7.0 °F
	5.4 °F	December 2006	11.3 °F
	5.4 °F	March 2007	5.9 °F
	5.4 °F	April 2007	6.4 °F
	5.4 °F	June 2007	6.3 °F
	5.4 °F	July 2007	7.6 °F
	5.4 °F	September 2007	6.5 °F
	5.4 °F	December 2007	9.3 °F
<b>Total Suspended Solids (Effluent Gross)</b>	<b>20 mg/L (7 day average)</b>		
	20 mg/L	March 2005	65 mg/L
	20 mg/L	August 2006	33 mg/L
	20 mg/L	September 2006	41.5 mg/L
	20 mg/L	December 2007	152.0 mg/L
<b>Total Suspended Solids (Effluent Loading)</b>	<b>Background - River contribution only (7 day average)</b>		
	Background	March 2005	659.7 lb./day
<b>Total Suspended Solids (Effluent Net)</b>	<b>0 mg/L (7 day average)</b>		
	0 mg/L	January 2005	7.5 mg/L
	0 mg/L	April 2005	6.0 mg/L
	0 mg/L	May 2005	14 mg/L
	0 mg/L	June 2005	11.5 mg/L
	0 mg/L	July 2005	3.5 mg/L

	0 mg/L	October 2005	8.0 mg/L
	0 mg/L	December 2005	7.0 mg/L
	0 mg/L	January 2006	6.0 mg/L
	0 mg/L	February 2006	6.5 mg/L
	0 mg/L	April 2006	11.0 mg/L
	0 mg/L	May 2006	2.0 mg/L
	0 mg/L	March 2007	27.5 mg/L
	0 mg/L	June 2007	14 mg/L
	0 mg/L	July 2007	4.5 mg/L
<b>pH</b>	<b>9.0 s.u. (Maximum)</b>	December 2006	9.3 s.u.
	<b>6.0 s.u. (Minimum)</b>	October 2007	5.6 s.u.

Outfall No. 002 - Cooling Water (Kiln Pier & Plant Compressor) & Parking Lot Stormwater

<b>Temperature Difference Between Intake &amp; Discharge</b>	<b>5.4 °F (7 day average)</b>		
	5.4 °F	January 2005	7.6 °F
	5.4 °F	October 2005	5.5 °F
	5.4 °F	April 2006	5.8 °F
	5.4 °F	May 2006	5.5 °F
	5.4 °F	October 2006	8.2 °F
	5.4 °F	February 2007	5.7 °F
	5.4 °F	April 2007	5.8 °F
	5.4 °F	May 2007	9.3 °F
	5.4 °F	December 2007	7.6 °F
<b>Total Suspended Solids</b>	<b>20 mg/L (Monthly)</b>		
	20 mg/L	October 2005	24 mg/L

	20 mg/L	January 2006	81.5 mg/L
	20 mg/L	March 2007	23 mg/L
	20 mg/L	May 2007	22.5 mg/L
	20 mg/L	June 2007	86 mg/L
	20 mg/L	November 2007	75 mg/L
	20 mg/L	December 2007	50 mg/L
<b>pH</b>	<b>9.0 s.u. - Maximum</b>		
	9.0 s.u.	May 2005	9.1 s.u.
	9.0 s.u.	January 2006	9.2 s.u.
	9.0 s.u.	February 2006	9.1 s.u.
	9.0 s.u.	March 2006	10.0 s.u.
	9.0 s.u.	May 2007	9.1 s.u.
	9.0 s.u.	June 2007	9.4 s.u.

Outfall No. 005 - Quarry Water

<b>Total Suspended Solids</b>	<b>50 mg/L (Monthly)</b>	November 2005	Not Recorded
		August 2006	Not Recorded
<b>Settleable Solids</b>	<b>0.1 mg/L (Monthly)</b>	November 2005	Not Recorded
		August 2006	Not Recorded

Outfall No. 006 - CKD Landfill Stormwater

<b>Total Suspended Solids</b>	<b>50 mg/L (Quarterly)</b>		
<b>pH</b>	<b>9.0 s.u. - Maximum</b>	January 2005	9.2 s.u.
	9.0 s.u.	April 2005	13.4 s.u.

	9.0 s.u.	July 2005	13.46 s.u.
	9.0 s.u.	August 2005	11.1 s.u.
	9.0 s.u.	September 2005	10.97 s.u.
	9.0 s.u.	October 2005	12.80 s.u.
<b>pH</b>	<b>9.0 s.u. - Maximum</b>	November 2005	13.11 s.u.
	9.0 s.u.	December 2005	13.14 s.u.
	9.0 s.u.	January 2006	13.0 s.u.
	9.0 s.u.	February 2006	13.0 s.u.
	9.0 s.u.	March 2006	9.7 s.u.

Outfall No. 007 - Equipment Storage Area Stormwater

<b>Total Suspended Solids</b>	<b>50 mg/L - Quarterly</b>	June 2005	180 mg/L
		March 2006	59 mg/L

8. Late DMR were filed for November 2006 and May 2007. Errors in completion of the DMR have also been noted and while the reporting of spills does occur, the necessary information is not consistently provided to the Department.
9. ECL §17-0511 states that “the use of existing or new outlets or point sources, which discharge sewage, industrial waste or other wastes into waters of this state is prohibited unless such use is in compliance with all standards, criteria, limitations, rules and regulations promulgated or applied by the department pursuant to this article.”
10. Respondent's effluent limit exceedances, late DMR submissions and failure to provide necessary data regarding incidents occurring at the facility are violations of its SPDES permit and ECL §17-0511.
11. ECL §71-1929 provides that any person who violates any provision of Titles 1 through 11 inclusive and title 19 of Article 17 of the ECL or any rule or regulation, order or determination of the Commissioner promulgated thereunder shall be liable for a civil

penalty of up to thirty seven thousand five dollars (\$37,500). Injunctive relief is also available.

12. NL Section 192 provides that any person who violates any of the provisions of Article 12 of the NL, or any rule promulgated thereunder, or who fails to comply with any duty created by this article, shall be subject to a penalty of not more than twenty-five thousand dollars (\$25,000) for each offense.
13. Respondent has affirmatively waived its right to notice and hearing in the manner provided by law, and has consented to the issuing and entering of this Order and agree to be bound by the terms, provisions and conditions contained herein.

NOW, having considered this matter and being duly advised, it is ORDERED that:

- I. In respect of the aforesaid violations, a civil penalty in the amount of SEVENTY THOUSAND DOLLARS (\$70,000) is hereby assessed against the Respondent. Payment of the civil penalty is due upon the return of a signed and notarized copy of this Order to the Department. The civil penalty shall be paid by certified or bank check made payable to the NYS DEC.
- II. The provisions of this Order shall be deemed to bind Respondent, its agents, employees, and all persons, firms, corporations acting under or for it.
- III. The terms of this Order shall not be construed to prohibit the Commissioner or his duly authorized representative from exercising any summary abatement powers, either at common law or as granted pursuant to statute or regulation.
- IV. Respondent shall indemnify and hold harmless the Department, the State of New York, and their representatives and employees for all claims, suits, actions, damages and costs of every name and description arising out of or resulting from the fulfillment or attempted fulfillment of the provisions hereof by Respondent, its directors, officers, employees, servants, agents, successors or assigns.
- V. No change in this Order shall be made or become effective except as set forth by a written order of the Commissioner or the Commissioner's designee.
- VI. Respondent shall allow duly authorized representatives of the DEC access to the site at reasonable times without proper notice, in order for the DEC to inspect and determine the status of Respondent's compliance with this Order, the ECL and regulations promulgated thereunder.
- VII. The Schedule of Compliance is incorporated into the Order and is enforceable thereunder.

- VIII. All communications except where otherwise specifically directed should be sent to:  
Regional Engineer  
New York State Department  
of Environmental Conservation  
Region 4  
1130 North Westcott Road  
Schenectady, NY 12306
- IX. This Order is deemed effective on the date signed by the Department.
- X. Except as specifically provided in this Order, nothing contained in this Order shall be construed as barring, diminishing, adjudicating or in any way affecting:
- A. Any legal or equitable rights or claims, actions, proceedings, suits, causes of action or demands whatsoever that the State may have against Respondent for any other violations of the ECL , rules or regulations promulgated thereunder or permits issued thereunder;
  - B. Any legal or equitable rights or claims, actions, proceedings, suits, causes of action or demands whatsoever that the State may have against anyone other than Respondent, its agents, its servants, its employees, its successors and its assigns;
  - C. Whatever right the Department has to bring any action or proceeding against Respondent and/or any of Respondent's' employees, servants, agents, successors, and assigns with respect to claims for natural resource damages; and
  - D. Respondent's right to assert all available defenses to any claims, actions, proceedings, suits, causes of actions or demands made or commenced by the State or the Department provided, however, that Respondent waives all legal or equitable rights claims, actions, proceedings, appeals, suits, causes of action, defenses or demands whatsoever that it may have to a judicial review of the validity and binding effect of this Order and whether or not this Order has been entered into voluntarily by Respondent.
- XI. A. Whenever the Department's approval of a submittal under the terms of this Order is required, the Department shall review such submittal to determine whether it was prepared, and whether the work done to generate the data and other information in the submittal was done, in accordance with this Order and applicable state and federal regulations and laws and generally accepted technical and scientific principles. The Department shall notify Respondent in writing of its approval or disapproval of the submittal. All

Department-approved plans and reports shall be incorporated into and become an enforceable part of this Order.

- B.
  - 1. If the Department disapproves a submittal, its notice shall specify the reasons for disapproval. Respondent shall make a revised submittal to the Department within thirty (30) days after receiving written notice of disapproval that specifically addresses all of the Department's stated reasons for disapproving the first submittal.
  - 2. After receipt of the revised submittal from Respondent, the Department shall notify Respondent in writing of its approval or disapproval. If the Department approves the revised submittal, it shall be incorporated into and become an enforceable part of this Order. If the Department disapproves the revised submittal, it shall notify the Respondent in writing and specify its reasons. The Department reserves its right to take whatever action it deems necessary after the second disapproval of a submittal.

- XII. Compliance with the terms and conditions of this Order, including the Schedule of Compliance, shall be in full civil settlement of the violations alleged in this Order.

DATED: \_\_\_\_\_, 2008  
Rotterdam, New York

Alexander B. Grannis  
Commissioner  
New York State Department of  
Environmental Conservation

BY:

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Eugene J. Kelly  
Regional Director  
Region 4



## SCHEDULE OF COMPLIANCE

1. By May 31, 2008, Respondent shall initiate the field work for the investigation to determine the vertical and horizontal extent of residual contamination in the vicinity of the dispenser at tank #VC1, the 10,000-gallon above ground Diesel storage tanks.
2. By May 31, 2008, Respondent shall initiate the field work for the subsurface investigation to determine the environmental impact, if any, of the on-going Gear Oil spill at the Kiln support structure.

To allow for Department review and processing, all submittals to the Department shall be clearly identified with the owner's name, facility name and address, contact name and telephone number, and the PBS registration identification number.

3. Respondent has replaced the Dresser coupling on the finished product line involved in the spill event on December 17, 2007. A cover structure has been constructed over the coupling to reduce product release and associated impacts resulting from any future spill events or releases. All couplings and structures on the finished line shall be inspected and any necessary repairs completed. The findings of the inspections along with preventive maintenance (PM) tasks to be completed shall be documented in a letter report to the Department by June 1, 2008. Also, a contingency plan, with appropriate chain-of-command reporting and documentation procedures, shall be prepared and submitted to the Department by October 1, 2008. Once approved by Department, the plan will become enforceable under this Order and shall be utilized during future spill events or releases.
4. On or before May 31, 2008, Respondent shall develop a plan and schedule to ensure that stormwater from the area surrounding the Coal Pile Storage Area is properly diverted to the stormwater basin (i.e. Swan Pond) both during and after construction using the methods referred to in the Department's *Standards and Specifications for Erosion and Sediment Control*. The diversion and any required grading should be depicted on a surveyed site plan along with the location of the coal pile storage structure. Construction activities related to the new covered structure for coal storage will not be approved until such information is reviewed and approved by the Department. Once approved by Department, the plan and schedule will become enforceable under this Order.
5. On or before September 1, 2008, Respondent shall develop a plant spill/release contingency plan, which shall include appropriate chain-of-command reporting and documentation procedures. This plan shall address at a minimum all SPDES outfalls, Duck Cove, Inbocht Bay, and the off-loading dock. Once approved by Department, the plan and schedule will become enforceable under this Order.

6. On or before September 1, 2008, Respondent shall revise the Best Management Practice (BMP) Plan for the facility and include, at a minimum, the cleaning schedules for the primary and final settling basins, oil/water separator, and the drainage swale. General housekeeping practices shall also be reviewed and shall include raw material storage areas, waste drum handling and storage, and fuel/chemical handling and storage. Once approved by Department, the BMP will become enforceable under this Order and the document must be reviewed and revised as necessary on an annual basis thereafter.
7. Respondent is undertaking a study of the hydrology at the site in accordance with the "Work Plan for the Investigation of Outfall 006 Flows," prepared by Arcadis, submitted to the Department on March 31, 2008, and revised to reflect the Department's comments of May 15, 2008, and submitted as approved (hereinafter, the "Work Plan"). The study will take approximately 75 days to complete, and will yield useful information about hydrologic conditions at the site and facilitate the development of environmentally protective water resource management strategies for the site, including the management of flows from Outfall 006 and the neutralization of the discharge from Swan Pond. Accordingly, it is contemplated that the results of the study will inform the development of the plans and schedules required to be prepared and submitted to the Department under Paragraph Nos. 8 and 9 in this Compliance Schedule.

On or before September 1, 2008, Respondent shall submit a report to the Department summarizing the findings of the Investigation of Outfall 006 Flows and recommending specific actions and corresponding time frames which will be taken to address Outfall 006 flows, discharges from Wet Well No. 2, and the neutralization of the discharge from Swan Pond (hereinafter, the "Report").

In the interim, the use of the existing portable neutralization system at Wet Well No. 2 is allowed as a pilot test mode until December 31, 2008.

8. Within 30 days of the Department's approval of the recommendations set forth in the Report, Respondent shall submit a design plan and schedule to address and correct the following:
  - high flow and pH of the stormwater discharging to Outfall No. 006
  - discharge from Wet Well No. 2
  - installation of permanent neutralization system(s) for treatment of water for Swan Pond and other outfalls.

Once approved by the Department, these plans and schedule will become enforceable under this Order.

9. On or before December 31, 2008, Respondent shall develop a plan and schedule to conduct a temperature study of extracting water from the Hudson River and the effluent discharged from the combined Outfalls No. 1 and 2. This shall be completed in consultation with the Department's Bureau of Water Permits and Division of Fish, Wildlife, and Marine Resources. Once approved by the Department, the plan and schedule will become enforceable under this Order.
  
10. As per Respondent's May 2, 2008 request, the Department Initiated Permit Modification ("DIPM"), which is set to expire on October 31, 2008, is hereby extended until December 31, 2010, or the issuance date of the final SPDES permit, whichever comes sooner.