

STATE OF NEW YORK  
DEPARTMENT OF ENVIRONMENTAL CONSERVATION

-----  
In the Matter of Violations  
of Environmental Conservation Law  
Article 19

- by -

**ORDER ON CONSENT**

File No.R4-2009-0408-60

Holcim (US) Inc.  
201 Jones Road.  
Waltham, Mass. 02451

Respondent

-----  
WHEREAS:

1. New York State Department of Environmental Conservation (“Department”) has administrative jurisdiction to safeguard the air resources of the state pursuant to ECL Article 19.
2. Respondent, Holcim (US) Inc., owns and operates a Portland Cement manufacturing plant at 6446 Route 9W, Catskill, New York (“facility”) which is subject to NESHAP regulations at 40 CFR 63 LLL.
3. The facility is also subject to a Title V air permit (#4-1926-00021/00040) (“permit”) that contains, in part, special conditions.
4. Department staff inspected the facility on September 25, 2008 (“inspection”).

First Violation

5. Regulations at 6 NYCRR 220-4(c) and permit condition #34 requires the facility to not allow any potential to emit visible emissions out of any building opening for greater than one hour.
6. Department staff observed during the inspection that the top of the silo building was covered with a thick cover of dust and that there was accumulation of dust both in and outside the windows. This same observation was noted during Department staff’s January 17, 2008 inspection.
7. Respondent violated 6 NYCRR 220-4(c) and permit condition #34 by emitting emissions as observed during the inspection.

### Second Violation

8. Regulations at 40 CFR 63, Subpart LLL, 63.1343(b)(2) and permit condition #96 limit the kiln stack opacity to 20%, except during periods of startup, shutdown, and malfunction (as provided in 40CFR63.6(h)(1)). Malfunctions are defined as “sudden, infrequent, and not reasonably preventable.”

9. During the FCE period, Respondent reported six periods of time where the kiln stack opacity exceeded 20% for greater than 30 minutes, with the time-weighted average opacity during these exceedances equaling 35.9%. Respondent alleged that the exceedances were the result of a failure of the electrostatic precipitator.

10. The Department has determined that the frequency of the failure of the electrostatic precipitator is preventable and that the six period of opacity exceedances referenced in Paragraph 9 are separate violations of permit condition #96.

### Third Violation

11. Regulations at 40 CFR 63, Subpart LLL, 63.1343(b)(3) and permit condition #97 limit the emissions of dioxins and furans from the kiln stack to 0.2 ng/dscm. The back end temperature during the complying stack test is set as the emission limit for monitoring continuous compliance with the 0.2 ng/dscm standard.

12. During the FCE period, Respondent reported five exceedances of the back end temperature limit.

13. The five exceedances of the back end temperature emission standard as discussed in Paragraph 11 are violations of permit condition # 97.

### Civil Penalties

14. ECL Section 71-2103(1) provides that: “Except as provided in section 71-2113, any person who violates any provision of article nineteen or any code, rule or regulation which was promulgated pursuant thereto; or any order except an order directing such person to pay a penalty by a specified date issued by the commissioner pursuant thereto, shall be liable, in the case of a first violation, for a penalty not less than three hundred seventy-five dollars nor more than fifteen thousand dollars for said violation and an additional penalty of not to exceed fifteen thousand dollars for each day during which such violation continues. In the case of a second or any further violation, the liability shall be for a penalty not to exceed twenty-two thousand five hundred dollars for said violation and an additional penalty not to exceed twenty-two thousand five hundred dollars for each day during which such violation continues. In addition thereto, such person may be enjoined from continuing such violation as hereinafter provided.”

### Waiver of Hearing

15. Respondent has affirmatively waived their right to notice and hearing in the manner provided by law, and has consented to the issuing and entering of this Order and agrees 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 SIXTY THOUSAND DOLLARS (\$60,000) shall be assessed. FIFTY THOUSAND DOLLARS (\$50,000) 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.

The balance of the penalty, TEN THOUSAND DOLLARS (\$10,000), is suspended and shall not be payable, provided that Respondent fully complies with the requirements of this Order in a timely fashion. In the event that Respondent fails to comply with the requirements of this Order the entire suspended portion of the penalty shall become due and payable upon written notice to Respondent without prejudicing the Department from seeking further appropriate penalties for violations of this Order by Respondent.

II. Respondent shall comply with the attached Schedule of Compliance which is incorporated and made part of this Order.

III. Pursuant to ECL Section 71-0301, the Commissioner specifically reserves the right to exercise summary abatement authority.

IV. This Order is binding upon the Respondent, their agents, their employees, their successors, their assigns and to all persons and firms, and corporations acting subordinate thereto.

V. No change or modification to this Order shall be made or be effective except as may be specifically set forth in writing by the Commissioner or Regional Director. Such application shall be made to the Regional Director.

VI. For the purpose of insuring compliance with this Order, duly authorized representatives of this Department shall be permitted access to the site in question in order to inspect and/or require such tests as may be deemed necessary to determine the status of Respondent's compliance herewith.

VII. The effective date of this Order shall be the date upon which it is signed on behalf of the Department.

VIII. Respondent shall indemnify and hold the Department, the State of New York, and their representatives and employees harmless 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, their employees, their servants, their agents, their successors or their assigns.

IX. 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, their agents, their servants, their employees, their successors and their assigns; and

C. 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.

X. 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.

XI. Compliance with the terms and conditions of this Order, including the Schedule of Compliance, shall be in full settlement of the violations in this Order.

XII. This Order is made strictly for the purposes of the Department and the State and is not intended for use by any third party.

XIII. The Order shall terminate upon Respondent's complete compliance with all the terms, conditions and terms of the Order.

DATED: \_\_\_\_\_, 2009  
Rotterdam, New York

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

BY:

\_\_\_\_\_  
Eugene J. Kelly  
Regional Director  
Region 4



## SCHEDULE OF COMPLIANCE

1. Within 90 days of the effective date of the Order, Respondent shall complete the following actions to minimize the potential for visible emissions to be released from the silo building enclosure and provide certification of completion to the Department:

- Inspect and repair silo covers (hatches) on top of silos to minimize any leak
- Inspect and repair the duct work on each dust collector
- Inspect and repair the dust collector bags, and replace bags on K27, W32, W25
- Inspect and repair the conveying equipment
- Improve and enhance existing preventative maintenance plans on dust collector and conveying equipment
- Provide refresher training on baghouse/dust collectors by vendor.

2. Within 90 days of the effective date of the Order, Respondent shall submit to the Department an engineering assessment of the kiln and electrostatic precipitator failures with recommendations and a schedule for their implementation to minimize precipitator failures.

3. Respondent shall install a water spray system to control kiln backend temperature no later than December 31, 2009 in accordance with the notification given to the Department on May 29, 2009.

4. Commencing on (a) the date of the implementation of the recommendations generated in item 2 above for kiln stack opacity and (b) the date the water spray system described in item 3 above is fully operational, and continuing for a period of 12 months, Respondent shall submit to the Department a notification for kiln stack opacity and backend temperature exceedances that are greater than 30 continuous minutes within two working days of their recording. All kiln stack opacity and back-end temperature exceedances will be reported to the Department by the 15th day of the following month. For purposes of this paragraph, a notification shall be submitted by Respondent irrespective of any claim by Respondent that the exceedance was allegedly attributable to startup, shutdown or malfunction. The notification shall include the time, duration, actions taken in response to the exceedance, and the cause of the exceedance. The reporting shall continue for 12 months. The Department may extend either requirement for an additional 12 month period if it determines, in its discretion, to be warranted, based upon the extent of non-compliance reported during the above referenced period.

5. Compliance with the requirements of the Schedule of Compliance shall not be a defense to any noncompliance with applicable emission limits.