

Appendix S

Holcim-Clarksville BART Final Consent Agreement

April 19, 2009

REGIONAL HAZE AGREEMENT

The parties hereto, the Missouri Department of Natural Resources and Holcim (US) Inc. (“Holcim”), having agreed that entry of this Regional Haze Agreement (hereinafter “Agreement”) is in the best interest of the parties and the public health and the environment, hereby represent and state as follows:

JURISDICTION

1. The Missouri Department of Natural Resources (hereinafter “Department”) is a duly authorized state agency created under Chapter 640 of the Revised Statutes of Missouri (as amended) to administer the programs assigned to it related to environmental control and the conservation and management of natural resources.
2. Chapter 643 of the Revised Statutes of Missouri (as amended) provides that the Director of the Department, on behalf of the Missouri Air Conservation Commission, administers the provisions of the Missouri Air Conservation Law.
3. Holcim is a Delaware corporation in good standing and registered to do business in Missouri in accordance with Missouri laws and is subject to the Missouri Air Conservation Law and the regulations adopted thereunder. Holcim owns and operates a portland cement manufacturing facility located in Clarksville, Pike County, Missouri (“Clarksville Plant”). Holcim is a person within the meaning of RSMo 643.020.
4. Pursuant to RSMo 643.060, the Director has authority and jurisdiction to issue this Agreement and to enforce the same. In any action by the Department to enforce the terms of this Agreement, Holcim agrees not to contest the authority or jurisdiction of the Director to enter into and enforce this Agreement. RSMo 643.060.4 provides that the Director of the Missouri Department of Natural Resources is responsible for administering and enforcing the Missouri Air Conservation Law, investigating complaints, issuing orders and taking all actions necessary to implement the Missouri Air Conservation Law. RSMo 643.060.2 provides that the Director is authorized to enter into contracts as he deems necessary for carrying out the provisions of the Missouri Air Conservation Law. In addition, the Missouri Air Conservation Commission is granted the legal authority under RSMo 643.050 to develop and implement regulations and enter into agreements to control air pollution.
5. The terms of this Agreement shall be construed in accordance with the applicable laws of the state of Missouri and the United States.

STATEMENT OF PURPOSE

6. In entering into this Agreement, it is the mutual objective of the Department and Holcim to reduce the contributions of emissions from the Clarksville Plant to

regional haze at Mingo National Wildlife Refuge, Hercules Glade Wilderness Area, and Upper Buffalo Wilderness Area (in Arkansas), and to establish a schedule by which Holcim will achieve reductions in air pollution emissions of visibility impairing pollutants. This Agreement establishes enforceable emission limits for Emission Point EP-14 (main kiln stack) pursuant to the Department's requirements to comply with the regional haze regulations identified in this Agreement which require the use of Best Available Retrofit Technology (BART) to applicable emission sources. This Agreement is not the result of any enforcement action or alleged non-compliance with any law, regulation, permit, or order and will enable Holcim to timely comply with the United States Environmental Protection Agency (EPA) and the Department deadlines for BART.

PARTIES BOUND

7. This Agreement shall apply to and be binding upon the parties, their agents, successors, and assigns and upon all persons, contractors, and consultants acting under or for either the Department or Holcim or both. Any changes in ownership or corporate status, including but not limited to any transfer of assets or real or personal property (other than as set forth in the next sentence), shall not affect the responsibilities of Holcim under this Agreement. If Holcim sells or otherwise transfers the Clarksville Plant, Holcim shall cause as a condition of such sale, the buyer of the Clarksville Plant to assume the obligations of Holcim under this Agreement in writing upon which Holcim shall be relieved of its obligations under the Agreement. In such event, Holcim shall provide thirty (30) days prior written notice of such assumption to the Department.
8. The parties agree to undertake all actions required of them by the terms and conditions of this Agreement.
9. Notwithstanding the terms of any contract, Holcim is responsible for its compliance with this Agreement and for insuring that its contractors and agents comply with this Agreement.
10. The activities conducted under this Agreement are subject to oversight and approval by the Department as provided in this Agreement and other sources of law. Holcim shall make all reasonable efforts to provide all necessary information consistent with this Agreement requested by the Department.

LIABILITY

11. Nothing in this Agreement shall be considered an admission of any fact or acknowledgement of any liability by any party, nor shall anything in this Agreement be considered an admission of any fact or acknowledgement of any violation of any law, regulation, permit or order but will enable Holcim to timely comply with established EPA and Department deadlines for compliance with the regional haze

regulations and requirements. Neither the State of Missouri nor any agency thereof shall be held out as a party to any contract entered into by Holcim in carrying out activities pursuant to this Agreement.

BACKGROUND

12. In 1977, the U.S. Congress adopted § 169 (42 U.S.C. 7491) of the Clean Air Act (CAA), setting forth the national visibility goal of restoring pristine conditions in national parks and wilderness areas designated as Class I Areas. When the CAA was again amended in 1990, Congress added § 169B (42 U.S.C. 7492), authorizing further research and regular assessments of the progress made for visibility improvement.
13. EPA's Regional Haze Rule, 40 CFR 51.308 (Part P), was adopted July 1, 1999 and went into effect on August 30, 1999. The Regional Haze Rule aimed at achieving national visibility goals by 2064. This rulemaking addresses the combined visibility effects of various pollution sources over a wide geographic region. The 1999 Regional Haze Rule also singles out certain older emission sources that have not been regulated under other provisions of the CAA for additional controls. Therefore, older sources that contribute to visibility impairment in Class I areas are required to implement BART.
14. On May 24, 2002, the U.S. Court of Appeals, D.C. District Court ruled on a challenge brought by the American Corn Growers Association against EPA's Regional Haze Rule of 1999. *American Corn Growers Association v. EPA*, 291 F.3d 1. The Court denied the American Corn Growers Association's challenge to the Regional Haze Rule and remanded the case to EPA. Pursuant to this remand, EPA proposed revisions to the Regional Haze Rule.
15. On July 6, 2005, EPA published a revision to the Regional Haze Rule, including Appendix Y, "Guidelines for BART Determinations Under the Regional Haze Rule," which provides direction to states on determining which older sources may need to install BART and how to determine BART.
16. Appendix Y of the Regional Haze Rule requires states to identify sources constructed between 1962 and 1977 in certain industrial categories, including Portland cement production. Then, each state is allowed to consider whether the predicted (modeled) impact from each source's emissions on Class I areas has less than a significant contribution on visibility impairment (0.5 deciview). After both screening and refined air quality modeling evaluations for Missouri sources, Holcim was identified as a contributor to visibility impairment at Mingo Wildlife Refuge and Hercules Glade Wilderness Area in Missouri and Upper Buffalo Wilderness Area in Arkansas due to its Sulfur Dioxide (SO₂) and Oxides of Nitrogen (NO_x) emissions and is therefore required to install BART. The Department also determined that the magnitude of the direct Particulate Matter (PM) visibility impacts from Holcim at the relevant Class I areas was very minimal. In addition, the controls already installed

for direct PM emissions were evaluated and were determined to be sufficient to satisfy the BART requirements.

17. Based on these findings, the Department requested an evaluation of BART controls for SO₂ and NO_x emissions at Holcim. An initial BART proposal was submitted by Holcim on April 20, 2008. Comments were provided by the Department which resulted in three additional submittals to clarify information and explore additional control options. Subsequent comments were provided to ask for clarification of some additional options for BART. As a result, Holcim provided sufficient information for the Department's BART finding at the Clarksville Plant for the kiln system: EP-14 (main kiln stack)
18. The Department's BART finding is based on the use of mid-kiln firing of tires and reduced sulfur fuel sources (coal, tires, and synthetic fuel) to control NO_x and SO₂ respectively from kiln operation.

AGREEMENT AND COMPLIANCE PLAN

Subject to the terms and conditions contained herein, the parties agree as follows:

19. This Agreement applies only to operation of the Clarksville Plant kiln system (Emission Point ID EP-14 main kiln stack). Unless otherwise specified in the Agreement, Holcim agrees to meet the following emission limits for the kiln system as expeditiously as practicable after approval of Missouri's regional haze plan, but no later than four years after approval of Missouri's regional haze plan:
 - A. NO_x – 42,287 lb/day using a 30-day rolling average
 - B. SO₂ – 58,787 lb/day using a 30-day rolling average
20. Compliance with the limits listed in paragraph 19 shall be based on the existing continuous emission monitoring (CEM) system or an equivalent system utilized by Holcim that has been approved by the Department at all times when (a) fuel is being combusted in the kiln or (b) the kiln shell temperature exceeds 200°F and kiln rotation is occurring. When the circumstances described in (a) and (b) above are not present, no CEM data is required. Holcim shall be subject to the above listed monitoring requirements upon the EPA's approval of Missouri's regional haze plan.

Except for routine CEMS calibration and maintenance activities, missing data due to CEMS availability will be filled by using the following methods:

If the monitor data availability is at least 90.0% over the preceding 30 day rolling average, the owner or operator shall calculate substitute data for each hour of each missing data period according to the following procedure:

(I) For a missing data period of less than or equal to 24 hours, substitute the average of the hourly concentrations recorded by a pollutant concentration monitor for the hour before and the hour after the missing data period.

- (II) For the missing data period of more than 24 hours, substitute the greater of:
- (a) The 95th percentile hourly pollutant concentration recorded by a pollutant concentration monitor during the previous 720 quality-assured monitor operating hours; or
 - (b) The average of the hourly concentrations recorded by a pollutant concentration monitor for the hour before and the hour after the missing data period.

If the monitor data availability is less than 90.0% for the previous thirty (30) day rolling average, the following substitution or another alternative method agreed to by the Department will be utilized:

SO₂ – 3,355 pounds per hour for each missing hour, and
NO_x – 2,202 pounds per hour for each missing hour.

For routine CEMS calibration and maintenance activities, missing emission data will be substituted using the average of the hour before and the hour after the activity.

- 21. As identified in item 20, Holcim shall calibrate and comply with the continuous emission monitoring system applicable requirements per 40 CFR, Part 60, Appendix F, Quality Assurance Procedure 1 or other equivalent procedure approved by the Department. At the request of the Department, Holcim will provide results of any audits and RATAs. Holcim will be subject to the above calibration and quality assurance requirements upon the EPA's approval of Missouri's regional haze plan.
- 22. As identified in paragraph 20, Holcim shall record the hourly CEM data or data supporting lack of kiln operation to demonstrate compliance with the limits in paragraph 19. Holcim shall maintain these records for a period of no less than five years. These records shall be kept at the Clarksville Plant; however, they may be maintained at a subsequent site provided that Holcim notifies the Department in writing thirty (30) days before any records are moved and provides the department with the address of the site where the records will be maintained and the name of a contact person in the event the Department needs to inquire as to the records. Holcim shall submit an annual report to the Department detailing the daily and 30-day rolling average emission SO₂ and NO_x emission rates. The first annual report will be due one year and 60 days after EPA's approval of Missouri's regional haze plan. Subsequent reports will be due on this same date each year.
- 23. The emission limits in this Agreement shall be incorporated into any construction or operation permits issued for Holcim at the Clarksville Plant.
- 24. This Agreement shall be proposed by the Department for incorporation into the Regional Haze State Implementation Plan for Missouri.

BEST PROFESSIONAL JUDGMENT

25. The requirements of this Agreement represent the best professional judgment of the Department based on information available as of the effective date of this Agreement. If circumstances change significantly so that data related to the commitments of this Agreement indicates an imminent threat of danger to the public health, safety or the environment or if the Department determines there is a significantly different threat other than the issues addressed herein, then the Department reserves the right to modify dates or requirements herein as it deems reasonably necessary to comply with the regional haze regulations, provided that the Department gives Holcim at least 90 days notice and an opportunity to propose a compliance schedule during the 90 days notice period. Holcim further reserves the right to seek review of any such modifications or additional requirements in accordance with paragraph 27.

FORCE, MAJEURE, EXCUSABLE DELAY, MODIFICATION

26. The following shall constitute the governing terms for force majeure, excusable delay, and modification of the Agreement:
- A. Except as set forth in paragraph G. below, Holcim shall perform the requirements under this Agreement within the time limits set forth herein unless the performance is prevented or delayed solely by events which constitute a force majeure. For purposes of this Agreement a force majeure is defined as any event beyond the control of Holcim which could not be overcome by due diligence and which delays or prevents performance by a date required by this Agreement. Such events do not include increased costs of performance or changed economic circumstances.
 - B. Holcim shall have the burden of proving all claims of force majeure. Failure to comply by reason of force majeure shall not be construed as a violation of this Agreement.
 - C. Holcim shall notify the Department in writing within ten (10) days after becoming aware of an event which Holcim knew or reasonably should have known constituted force majeure. Such notice shall estimate the anticipated length of delay, its cause, measures to be taken to minimize the delay, and an estimated timetable for implementation of these measures. Failure to comply with the notice provision of this section shall constitute grounds for the Department, at its sole discretion, to deny Holcim an extension of time for performance.
 - D. Within sixty (60) days of the receipt of written notice from Holcim of a force majeure event, the Department shall notify Holcim of the extent to which

modifications to this Agreement are necessary. In the event that the Department and Holcim cannot agree that a force majeure event has occurred or if there is no agreement on the length of the extension, the dispute shall be resolved as set forth in paragraph 27.

- E. Any modifications to any provision of this Agreement shall not alter the schedule for performance or completion of other tasks required by this Agreement, unless specifically agreed to by the parties in writing and incorporated into this Agreement.
- F. This Agreement may be amended by mutual agreement of the Department and Holcim. Such amendments shall be in writing, shall have as their effective date the date on which they are signed by both parties and shall be incorporated into this Agreement.
- G. Holcim, voluntarily and of its own accord and for reasons unrelated to this Agreement has indicated in November 2008 that it will cease clinker production at the Clarksville Plant during the first quarter of 2009. Upon permanent cessation of operation of the Clarksville Plant kiln, Holcim at its election may formalize such permanent cessation of the kiln in a letter to the Department's Director of the Division of Environmental Quality in which it may agree that any operating permits and construction permits issued by the Air Pollution Control Program for the kiln system shall be terminated. In the event that Holcim sends the letter and agrees to the termination of such permits, this Agreement shall be null and void and of no further force and effect, except that Holcim shall submit any compliance reports required to be submitted hereunder up to the date of such termination.

DISPUTE RESOLUTION

- 27. The parties recognize that a dispute may arise between them regarding implementation of the action to be taken as herein set forth or other terms or provisions of this Agreement.
 - A. If such dispute arises, the parties will endeavor to settle it by informal negotiations between themselves. If the parties cannot resolve the issue informally within a reasonable period of time, either of the parties may commence a non-contested case by notifying the other in writing stating its position with regard to the dispute and its rationale. A party receiving such a notice of dispute will respond in writing within thirty (30) days stating its position. The Department or Holcim shall then have an additional thirty (30) day period or such longer time as the parties agree to respond. If the parties are still unable to reach an agreement, the matter shall be referred to the Department's Director of the Division of Environmental Quality, who shall

decide the matter and provide a written statement of his decision which shall be incorporated into the Agreement.

- B. This dispute resolution procedure shall not preclude any party from having direct recourse to court if otherwise available under Missouri law.

OTHER CLAIMS AND PARTIES

- 28. Nothing in this Agreement shall constitute or be construed as a release for any claim, cause of action or demand in law or equity against any person, firm, partnership, or corporation not a signatory to this Agreement for any liability it may have arising out of or relating in any way to this Agreement.

EFFECTIVE DATE, TERMINATION

- 29. This Agreement shall become effective when signed by the Director of the Missouri Department of Natural Resources or his designee.
- 30. Except as expressly set forth in paragraph 26.G., this Agreement will be terminated at such time that it is superseded by a future agreement, regulation, or other enforceable document that contains equivalent or more stringent emission limits.

**AUTHORIZATION OF SIGNATORIES TO EXECUTE THE AGREEMENT AND
BIND THE PARTIES**

31. The parties hereto have affixed their signatures on the dates inserted below to acknowledge their agreement to this Agreement. The signatories to this Agreement certify that they are authorized to execute and to legally bind the parties they represent to this Agreement.

HOLCIM (US) INC

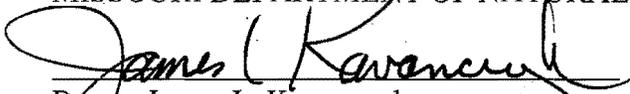


By: Walt Precourt

Title: Vice President – Environmental and Governmental Affairs

Date: April 3, 2009

MISSOURI DEPARTMENT OF NATURAL RESOURCES



By: James L. Kavanaugh

Title: Air Pollution Control Program, Director

Date: April 17, 2009

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EPA Rulemakings

CFR: 40 C.F.R. 52.1320(d)(26),(e)(57); 40 C.F.R. 52.1339(c)
FRM: 77 FR 38007 (6/2/2012)
Effective Date: 7/26/12; 8/6/12 for 52.1339(c)
PRM: 77 FR 11958 (02/28/2012)
State Submission: 8/5/2009, supplemented 1/30/2012
State Effective Date: 4/19/2009
APDB File: MO-260; EPA-R07-OAR-2012-0153
Description: EPA is finalizing a limited approval to the SIP that addresses Regional Haze for the first implementation period. In a separate rulemaking action EPA finalized the limited disapproval of Missouri's Regional Haze SIP and imposed a Federal Implementation Plan for Missouri on June 7, 2012. 77 FR 33642.

Difference Between the State and EPA-Approved Regulation

Limited approval.