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New Cemex enforcement package addresses air quality violations

Comments - CDPHE, APCD <cdphe.commentsapcd@state.co.us> Bcc: patrick.lennberg@state.co.us Tue, Jun 24, 2025 at 8:27 AM

We're writing to share an important update on the Cemex plant in Lyons. You previously contacted us about this facility, and we want to keep you informed.

The state health department's Air Pollution Control Division recently finalized a new <u>enforcement package</u> with Cemex. The enforcement package addresses air quality violations from 2022 and 2023. The division identified the violations during an annual inspection and records review conducted in September 2023. The majority of violations are from the annual inspection.

The enforcement package requires Cemex to pay a financial penalty of \$770,000. The division takes repeat violations and compliance history into account in the determination of penalty amounts and other settlement requirements. The penalty includes \$154,000 in administrative penalties and a minimum of \$616,000 towards a third-party <u>supplemental environmental project</u> to secure significant environmental or public health protection and improvements in the surrounding community. Cemex and the division have 60 days from the settlement date to agree on a proposal for a supplemental environmental project.

Thank you for your interest in protecting clean air. We encourage everyone in Colorado – in Lyons and across the state – to report potential air quality violations to the Air Pollution Control Division. We are always thankful for your input. As a reminder, you can submit complaints by calling 303-692-3150 or emailing us at cdphe.commentsapcd@state.co.us.

We encourage anyone interested in air quality enforcement to visit the <u>air quality settlements and orders</u> <u>web page</u> and <u>sign up to receive email updates</u> by subscribing to "Air quality compliance and enforcement updates." The division also shares <u>upcoming public participation opportunities</u> on its website and <u>tips for</u> <u>submitting effective public comments</u>. Your voice is always appreciated.

Best,

Air Pollution Control Division

Regulatory Compliance and Support Unit Planning and Policy Program



Air Pollution Control Division Department of Public Health & Environment

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COLORADO

Department of Public Health & Environment

AIR POLLUTION CONTROL DIVISION

COMPLIANCE ORDER ON CONSENT

CASE NO. 2024-213 AIRS NO. 013-0003

IN THE MATTER OF CEMEX CONSTRUCTION MATERIALS SOUTH, LLC

The Colorado Department of Public Health and Environment ("CDPHE"), through the Air Pollution Control Division ("Division"), issues this Compliance Order on Consent ("Consent Order"), pursuant to the Division's authority under § 25-7-115(3)(b), C.R.S. of the Colorado Air Pollution Prevention and Control Act, §§ 25-7-101 to 1309, C.R.S. ("the Act"), and its implementing regulations, 5 C.C.R. § 1001, <u>et seq</u> ("the Regulations") with the express consent of CEMEX Construction Materials South, LLC ("CEMEX"). The Division and CEMEX may be referred to collectively as "the Parties."

I. STATEMENT OF PURPOSE

The mutual objectives of the Parties in entering into this Consent Order are:

1. To establish compliance requirements and criteria for the continued operation of CEMEX's Portland cement manufacturing facility located at 5134 Ute Highway, Longmont, Boulder County, Colorado ("Facility"); and

2. To resolve the violations of the Act cited herein and in a Compliance Advisory issued to CEMEX by the Division on December 6, 2024.

II. DIVISION'S FINDINGS OF FACT AND DETERMINATION OF VIOLATIONS

Based upon the Division's investigation into and review of the compliance issues identified herein, and in accordance with § 25-7-115(3), C.R.S., the Division has made the following determinations regarding violations of regulatory, statutory, and/or permit requirements associated with the Facility.



3. At all times relevant to the violations cited herein, CEMEX was a Limited Liability Company in good standing and registered to conduct business in the State of Colorado.

4. CEMEX owns and/or operates the Facility.

5. The equipment or activity listed in Table 1 below, is relevant to this Consent Order.

Table 1			
AIRS Point/Facility ID	Description		
002/P002	S005- Raw Materials Dryer		
003/P003	Secondary Crushing and Screening (vents to S001) and S003 #4 and #6 Belt Transfer		
004/P004	S006 to S008 - Raw Material Storage Silos		
007/P007	S016 - Precalciner Kiln		
008/P008	S017 - Clinker Drag Chains S018- Clinker Cooler S023- 529-25 Drag Conveyor S024B- Outside Clinker Drop Hood		
015/P015	Outdoor Hot Clinker Pile		
019/P018	Haul Roads Not Subject to Emission Limitations Hauling of purchased limestone, iron, gypsum, and silica and operation of water application system		
028/P018	Process Fugitives Not Subject to Emission Limitations Includes wind erosion of stock piles and various transfers not vented through a stack (e.g. belt and screw conveyor transfers)		
024/P000	Raw Material Storage and Handling at Plant Site Discharge of Primary-Crushed Material onto Open Stockpile S009 Front End Loader Activity		
026/P017	S056-S064-Belt Conveyer, Radial Stacker to Stockpiles		
042/P007A	Handling and Processing of CKD and Raw Material Waste Dust		
049/P007A	S001 - Waste Dust Silo S066- Cement Silo A5 S067 - CKD Loading Spout 042- Haulage and Disposal of Pelletized CKD and Beneficition Dust, Truck Hauling and Disposal at the Quarry		



6. On May 17, 2023, the Division and CEMEX entered into a Compliance Order on Consent to resolve Case No. 2022-195 ("2022 COC"). As described in Paragraph 8 of the 2022 COC, CEMEX failed to maintain and operate all affected facilities including associated air pollution control equipment in a manner consistent with good air pollution control practice for minimizing emissions including routine maintenance of and operational procedures performed on the baghouses in accordance with manufacturer's specifications and/or good engineering practices; regularly sweep to minimize material buildups; limit opacity from AIRS Point 007 to 20% as required; monitor NOx, CO, SO₂, THC, and volumetric flow using CEMS; employ control measures and operating procedures to minimize fugitive emissions as required; report all deviations as required. On April 23, 2024, the Division and CEMEX entered into a Compliance Order on Consent to resolve Case Nos. 2023-177 and 2023-178 ("2023 COC"). As described in Paragraph 10 of the 2023 COC, CEMEX failed to maintain and operate all affected facilities including associated air pollution control equipment in a manner consistent with good air pollution control practice for minimizing emissions including routine maintenance of and operational procedures performed on the baghouses in accordance with manufacturer's specifications and/or good engineering practices; regularly sweep to minimize material buildups; limit opacity from AIRS Point 007 to 20% as required; monitor NOx, CO, SO₂, THC, and volumetric flow using CEMS; employ control measures and operating procedures to minimize fugitive emissions as required; submit excess emissions reports timely; and report all deviations as required.

7. On September 21, 2023, David Huber, of the Division, conducted an inspection, pursuant to the Division's authority under § 25-7-111(2)(c), C.R.S., at the Facility for the purpose of determining compliance with Colorado Operating Permit Number 950PB0082, first issued to CEMEX on February 1, 2000, and revised on November 17, 2017 ("Permit Number 950PB0082"); 40 CFR Part 63 Subpart LLL - National Emission Standards for Hazardous Air Pollutants From the Portland Cement Manufacturing Industry ("Subpart LLL"); the Act and the Regulations. Based on inspection, and a review of records related to the Facility, the Division issued a Compliance Advisory to CEMEX on December 6, 2024.

8. On January 22, 2025, the Division and CEMEX met to discuss the issues identified in the Compliance Advisory. On January 14, 2025 CEMEX submitted additional information to the Division relating to the issues identified in the Compliance Advisory.

9. Based upon a review of information including the inspection, records related to the Facility, and the information provided by CEMEX, the Division has determined the following:

a. Pursuant to Permit Number 950PB0082, Section II, Condition 3.5.1.6, paved travel areas used by the front-end loader (AIRS Point 024, S009 Front



End Loader Activity) shall be regularly swept with a high efficiency industrial sweeper to minimize buildups. In addition, these areas will be watered as necessary and vehicle traffic suspended or rerouted to minimize fugitive dust. On September 21, 2023, the inspector observed paved areas used by the front-end loader, as well as many other paved areas, to have excessive material buildups. Additionally, the inspector observed vehicle traffic areas had excessive material buildup with vehicle tire tracks through the material. On September 21, 2023 CEMEX failed to regularly sweep as required, minimize buildups, and to suspend or reroute traffic to minimize fugitive dust, violating Permit Number 950PB0082, Section II, Condition 3.5.1.6.

- b. Pursuant to Permit Number 950PB0082, Section II, Condition 5.6.1, compliance with the PM emission limits shall be monitored as follows: baghouses shall be operated and maintained in accordance with the requirements in Condition 19. Pursuant to Permit Number 950PB0082, Section II, Condition 20.3, compliance with opacity limits for baghouses is through the operation and maintenance of the baghouses in accordance with Condition 19. Pursuant to Permit Number 950PB0082, Section II, Condition 19, routine maintenance of and operational procedures performed on the baghouses shall be conducted in accordance with manufacturer's specifications and/or good engineering practices. CEMEX had a dusting event on September 6, 2022 due to insufficient draft from the 225-11 discharge dust collector (AIRS Point 002, S005 Raw Material Dryer) that was left on manual mode. Fugitive particulate emissions that are derived from controlled point activities that are not properly or effectively controlled by their baghouse control equipment are a demonstration of a failure to properly operate and maintain the baghouse(s) and failure to demonstrate compliance with the PM and opacity limits. On September 6, 2022, CEMEX failed to demonstrate compliance with PM and opacity limits and to operate and maintain the baghouses in accordance with the manufacturer's specifications and/or good engineering practices, violating Permit Number 950PB0082, Section II, Conditions 5.6.1, 19 and 20.3.
- c. Pursuant to Permit Number 950PB0082, Section II, Condition 6.3.1, in the absence of evidence to the contrary, compliance with the PM limit is presumed provided baghouses are operated and maintained in accordance with the requirements in Condition 19. Pursuant to Permit Number 950PB0082, Section II, Condition 6.4, the source is subject to the opacity limits set forth in Condition 20 of this permit. Pursuant to Permit Number 950PB0082, Section II, Condition 20.3, compliance with opacity limits for baghouses is through the operation and maintenance of the baghouses in accordance with Condition 19. Pursuant to Permit Number 950PB0082,



Section II, Condition 19, routine maintenance of and operational procedures performed on the baghouses shall be conducted in accordance with manufacturer's specifications and/or good engineering practices. CEMEX had dusting events on June 27 and June 28, 2023 from material leakage in the #4 belt and #6 belt transfer (AIRS Point 003, S003 #4 and #6 Belt Transfer) due to damaged parts in the 248-3 rotary airlock being removed preventing proper purging from the 225-9 dust collector. Fugitive particulate emissions that are derived from controlled point activities that are not properly or effectively controlled by their baghouse control equipment are a demonstration of a failure to properly operate and maintain the baghouse(s) and failure to demonstrate compliance with the opacity limits. On June 27 and June 28, 2023, CEMEX failed to demonstrate compliance with PM and opacity limits and to operate and maintain the baghouses in accordance with the manufacturer's specifications and/or good engineering practices, violating Permit Number 950PB0082, Section II, Conditions 6.3.1, 19, and 20.3.

- d. Pursuant to Permit Number 950PB0082, Section II, Condition 11.6.1, CEMEX shall follow the approved measures to control fugitive particulate matter emissions from activities in P015 (AIRS Point 015, Outdoor Hot Clinker Pile). Pursuant to Permit Number 950PB0082, Section II, Condition 11.6.1.10, CEMEX shall clean up spillages and other particulate matter accumulations with the least delay. Pursuant to Permit Number 980PB0082, Section II, Condition 14.4.1, in addition to the fugitive control measures specified in Section II, Condition 11, CEMEX shall employ such control measures and operating procedures necessary to minimize fugitive particulate emissions into the atmosphere through the use of all available practical methods which are technologically feasible and economically reasonable. On January 8, 2023, CEMEX had dusting events from various spills and leaks throughout the plant. On January 8, 2023, CEMEX did not employ such control measures and operating procedures as are necessary to minimize fugitive particulate emissions and failed to clean up particulate matter accumulations with the least delay, violating Permit Number 950PB0082, Section II, Conditions 11.6.1.10 and 14.4.1.
- e. Pursuant to Permit Number 950PB0082, Section II, Condition 14.4.1, CEMEX shall employ such control measures and operating procedures as are necessary to minimize fugitive particulate emissions through the use of all available practical methods which are technically feasible and economically reasonable. CEMEX had a dusting event on February 20, 2023, from the raw material patio and C-Pit clinker disposal area (AIRS Points 024, P000 Raw Materials Storage and Handling and 042, P007A Handling and Processing of CKD and Raw Material Waste Dust). On February 20, 2023, CEMEX was not employing such control measures and operating procedures



as are necessary to minimize fugitive particulate emissions, violating Permit Number 950PB0082, Section II, Condition 14.4.1.

- Pursuant to Permit Number 950PB0082, Section II, Condition 11.6.1, f. CEMEX shall follow the approved measures to control fugitive particulate matter emissions from activities in P015 (AIRS Point 015, Outdoor Hot Clinker Pile). Pursuant to Permit Number 950PB0082, Section II, Condition 13.7.1, AIRS Point 049 (Source 042 Truck Hauling and Disposal) is subject to the following fugitive particulate matter requirements and the following approved measures shall be used to control fugitive particulate matter emissions from hauling and disposal. Pursuant to Permit Number 950PB0082, Section II, Conditions 11.6.1.10 and 13.7.1.6, CEMEX shall clean up spillages and other particulate matter accumulations with the least delay. CEMEX shall operate a powered sweeper during day shift for 12 hours a day, 7 days a week to control accumulations on paved areas. CEMEX reported the sweeper and backup sweeper were down for maintenance and did not operate as required on December 3, 2022 from 06:00 to 18:00 hours and on December 17, 2022 from 06:00 to 18:00 hours. CEMEX failed to operate a powered sweeper on December 3 and December 17, 2022, and to employ such control measures and operating procedures as are necessary to minimize fugitive particulate emissions and failed to clean up particulate matter accumulations with the least delay, violating Permit Number 950PB0082, Section II, Conditions 11.6.1.10, and 13.7.1.6.
- g. Pursuant to Permit Number 95OPBO082, Section II, Condition 14.4.1.1, CEMEX shall treat haul roads (AIRS Points 019 and 028, P018) with chemical dust suppressants or stabilizers as often as necessary to maintain a surface crust, as required in Section II, Condition 13.7.1.3. Such material shall be applied to the haul road to the CKD disposal pit at least every six months. Pursuant to Permit Number 95OPB0082, Section II, Condition 13.7.1.3, haul roads (AIRS Point 049, Source 042 Truck Hauling and Disposal) shall be treated with chemical dust suppressants, as often as required, to maintain a surface crust. Such controls shall achieve a minimum control efficiency of 80%. CEMEX reported the chemical dust suppressant was applied on October 29, 2022 and was not reapplied until July 29, 2023. CEMEX failed to treat haul roads with the chemical dust suppressant at least every six months, violating Permit Number 95OPB0082, Section II, Conditions 13.7.1.3 and 14.4.1.1.
- h. Pursuant to Permit Number 950PB0082, Section II, Condition 2.2.5, compliance with the PM and opacity emission limitations in Condition 2.2.2 shall be monitored as follows: the baghouses shall be operated and maintained in accordance with the requirements in Condition 19. Pursuant to Permit Number 950PB0082, Section II, Condition 20.3, compliance with



opacity limits for baghouses is through the operation and maintenance of the baghouses in accordance with Condition 19. Pursuant to Permit Number 950PB0082, Section II, Condition 19, routine maintenance of and operational procedures performed on the baghouses shall be conducted in accordance with manufacturer's specifications and/or good engineering practices. CEMEX had a dusting event from the radial stacker belt 129-8 (AIRS Point 026, P017 Radial Stacker to Stockpile) when fines from dust collectors were emptied onto the belt on August 23, 2022. CEMEX also had dusting from the radial stacker belt 129-8 on September 7, 2022 due to failure to communicate with the guarry before running the system. Fugitive particulate emissions that are derived from controlled point activities that are not properly or effectively controlled by their baghouse control equipment are a demonstration of a failure to properly operate and maintain the baghouse(s) and failure to demonstrate compliance with the opacity limits. On August 23, 2022 and September 7, 2022, CEMEX failed to demonstrate compliance with PM and opacity limits and to operate and maintain the baghouses in accordance with the manufacturer's specifications and/or good engineering practices, violating Permit Number 950PB0082, Section II, Conditions 2.2.5, 19, and 20.3.

- i. Pursuant to Permit Number 950PB0082, Section II, Condition 22.15 and Subpart LLL § 63.1348(d), at all times CEMEX must operate and maintain any affected source, including associated air pollution control equipment and monitoring equipment, in a manner consistent with safety and good air pollution control practices for minimizing emissions. Determination of whether such operation and maintenance procedures are being used will be based on information available to the Administrator which may include, but is not limited to, monitoring results, review of operation and maintenance procedures, review of operation and maintenance records, and inspection of the source. CEMEX had the following particulate emissions events:
 - i. On August 29, 2022, a dust plume resulted from an overfilled silo at the ACI system.
 - ii. A dusting event on September 6, 2022 as described in Paragraph 9.b of this Consent Order.
 - iii. A dusting event on September 28, 2022, when the kiln feed mix cooled down rapidly and went raw coming from the kiln into the cooler (AIRS Points 008, P008 Outside Clinker Drop Hood and 015, P015 Outdoor Hot Clinker Pile).
 - iv. Dusting events on January 8, 2023, as described in Paragraph 9.d of this Consent Order.
 - v. On January 30, 2023, a dust plume resulted from an overfilled silo at the ACI system.



- vi. A dusting event on February 20, 2023, as described in Paragraph 9.e of this Consent Order.
- vii. A dusting event on June 19, 2023 from the cooler (AIRS Point 008, P008 Clinker Cooler).
- viii. A dusting event on June 25, 2023, due to the wind reaching freshly produced clinker (AIRS Point 008, P008 Outside Clinker Drop Hood).
 - ix. Dusting events on June 27 and June 28, 2023 as described in Paragraph 9.c of this Consent Order.

Fugitive particulate emissions that are derived from controlled point activities that are not properly or effectively controlled by their baghouse control equipment are a demonstration of a failure to properly operate and maintain the baghouse(s). As described in Paragraph 9.i.(i)-(ix) of this Consent Order, CEMEX failed to minimize fugitive particulate emissions into the atmosphere and to maintain and operate all affected facilities including associated air pollution control equipment and monitoring equipment in a manner consistent with good air pollution control practices for minimizing emissions, violating Permit Number 950PB0082, Section II, Condition 22.15, and Subpart LLL § 63.1348(d).

- j. Pursuant to Permit Number 950PB0082, Section II, Condition 10.15, for AIRS Point 007, CEMEX shall install, certify and operate CEMS equipment for measuring opacity, SO₂, NO_x (including diluent gas either CO₂ or O₂), CO, and volumetric flow. Pursuant to Permit Number 950PB0082, Section II, Condition 10.22.3, CEMEX shall maintain, calibrate and operate a CEMS to accurately measure SO₂, NOx, and diluents, if diluent required. Pursuant to Permit Number 950PB0082, Section II, Condition 10.10, compliance with the NOx annual emission limit for AIRS Point 007 shall be monitored using the NOx CEMS. Pursuant to Permit Number 950PB0082, Section II, Condition 10.12, compliance with AIRS Point 007 SO₂ annual emission limit shall be monitored using the SO₂ CEMS. Pursuant to Permit Number 950PB0082, Section II, Condition 10.13, compliance with the facility-wide SO₂ emission limit shall be monitored using the SO₂ CEMS. CEMEX reported CEMS downtime as follows:
 - i. NO_X CEMS downtime of 10.17% (218 hours out of 2,143 operating hours) during the third quarter of 2022.
 - ii. SO_2 CEMS downtime of 10.45% (224 hours out of 2,143 operating hour) during the third quarter of 2022.
 - iii. CO_2 CEMS downtime of 8.05% (168 hours out of 2,086 operating hours) during the third quarter of 2022.
 - iv. O_2 CEMS downtime of 5.66 % (107 hours out of 1,889 operating hours) during the fourth quarter of 2022.



As described in Paragraph 9.j.(i)-(iv) of this Consent Order, CEMEX failed to monitor NOx, SO₂, CO₂, and O₂ using CEMS as required during the third and fourth quarter of 2022, violating Permit Number 950PB0082, Section II, Conditions 10.10, 10.12, 10.13, 10.15 and 10.22.3.

- k. Pursuant to Permit Number 950PB0082, Section II, Condition 18.2.1, except for system breakdowns, repairs, calibration checks, and zero and span adjustments required under Condition 18.1.4, all continuous monitoring systems shall be in continuous operation and shall meet the minimum frequency of operation requirements. Pursuant to Permit Number 950PB0082, Section II, Condition 22.13.1.2 and Subpart LLL § 63.1348(b)(1)(ii), except for period of startup and shutdown, monitoring system malfunctions, repairs associated with monitoring system quality assurance or quality control activities, CEMEX must operate the monitoring system and collect data at all required intervals at all times the affected source is operating. As described in Paragraphs 9.j.(i)-(iv), 9.l, and 9.m of this Consent Order, CEMEX failed to continuously monitor NO_x, SO₂, CO₂, O₂, THC and mercury, as required, during the third and fourth quarter of 2022, violating Permit Number 950PB0082, Section II, Conditions 18.2.1 and 22.13.1.2, and Subpart LLL § 63.1348(b)(1)(ii).
- Pursuant to Permit Number 950PB0082, Section II, Condition 22.20 and Subpart LLL § 63.1349(b)(4)(i), CEMEX must operate a CEMS in accordance with the requirements in Subpart LLL § 63.1350(i) (Condition 22.35). Pursuant to Permit Number 950PB0082, Section II, Condition 22.35 and Subpart LLL § 63.1350(i), CEMEX must continually monitor THC. Pursuant to Permit Number 950PB0082, Section II, Condition 22.36 and Subpart LLL § 63.1350(j), if you are complying with the total organic HAP emissions limits, CEMEX must continuously monitor THC according to 63.1350(i)(1) and (2) (Conditions 22.35.1 and 22.35.2). CEMEX reported THC downtime of 5.93% (112 hours out of 1,889 operating hours) during the fourth quarter of 2022. CEMEX failed to monitor TCH emissions from AIRS Point 007 as required during the fourth quarter of 2022, violating Permit Number 950PB0082, Section II, Conditions 22.20, 22.35, 22.36, and Subpart LLL §§ 63.1349(b)(4)(i) and 63.1350.
- m. Pursuant to Permit Number 950PB0082, Section II, Condition 22.21 and Subpart LLL § 63.1349(b)(5), if you are subject to limitations on mercury emissions, you must operate a mercury ("Hg") CEMS or a sorbent trap monitoring system in accordance with the requirements of Subpart LLL § 63.1350(k) (Condition 22.37). CEMEX operates a sorbent trap monitoring system. Pursuant to Permit Number 950PB0082, Section II, Condition 12.13.6, if you are subject to limitations on mercury emissions in Subpart LLL § 63.1343(b), you must demonstrate compliance using the monitoring



methods and procedures in Subpart LLL § 63.1350(k) (Condition 22.37). Pursuant to Permit Number 950PB0082, Section II, Condition 22.37 and Subpart LLL § 63.1350(k), if you have a kiln subject to an emissions limitation on mercury emissions you must install and operate a mercury continuous emissions monitoring system or an integrated sorbent trap monitoring system. You must monitor mercury emissions continuously in accordance to paragraphs 63.1350(k)(1) through (5). CEMEX reported 8.15% downtime (154 hours out of 1,889 operating hours) for the Hg sorbent trap monitoring system during the fourth quarter of 2022. CEMEX failed to monitor Hg emissions as required during the fourth quarter of 2022, violating Permit Number 950PB0082, Section II, Conditions 22.13.6, 22.21, 22.37, and Subpart LLL §§ 63.1349(b)(5) and 63.1350(k).

- n. Pursuant to Permit Number 950PB0082, Section II, Condition 22.28 and Subpart LLL § 63.1350(a)(1), the owner or operator must demonstrate compliance with this subpart on a continuous basis by meeting the requirements of this section. Pursuant to Permit Number 950PB0082, Section II, Condition 22.30 and Subpart LLL § 63.1350(a)(4), any instance where the owner or operator fails to comply with the continuous monitoring requirements of this section is a violation.
 - i. <u>THC CEMS</u>: Pursuant to Permit Number 950PBP0082, Section II, Condition 22.23.9 and Subpart LLL § 63.1349(b)(7)(xi), to determine continuous compliance with the THC operating limit, CEMEX must record the THC CEMS output data for all periods when the process is operating and the THC CEMS is not out of control. As described in Paragraph 9.1 of this Consent Order, for the AIRS Point 007 THC CEMS, CEMEX failed to monitor the THC emissions as a surrogate for organic HAP from AIRS Point 007 using the CEMS as required during fourth quarter of 2022, violating Permit Number 950PBP082, Section II, Condition 22.23.9, Condition 22.28, Condition 22.30, and Subpart LLL §§ 63.1349(b)(7)(xi).
 - SO₂ CEMS: Pursuant to Permit Number 950PB0082, Section II, Condition 22.22.1 and Subpart LLL § 63.1349(b)(6)(iii), a source subject to limitations on HCl emissions may choose to monitor SO₂ emissions using a CEMS in accordance with the requirements of Subpart LLL § 63.1350(l)(3)(Condition 22.38.1). Pursuant to Permit Number 950PB0082, Section II, Condition 22.38.1, if the source is equipped with a wet or dry scrubber or tray tower, and chooses to monitor SO₂ emissions, monitor SO₂ emissions continually. Pursuant to Permit Number 950PB0082, Section II, Condition 22.24.6 and Subpart LLL § 63.1349(b)(8)(viii), to determine continuous compliance with the SO₂ operating limit, CEMEX must



record SO₂ CEMS output data for all periods when the process is operating and the SO₂ CEMS is not out of control. As described in Paragraph 9.j.(ii) of this Consent Order, CEMEX failed to monitor the SO₂ emissions from AIRS Point 007 using the CEMS as required during the third quarter of 2022, violating Permit Number 950PB0082, Section II, Conditions 22.22.1, 22.24.6, 22.28, 22.30, and 22.38.1, and Subpart LLL §§ 63.1349(b)(6)(iii), 63.1349(b)(8)(viii), and 63.1350.

- iii. NOx, O₂, CO₂ CEMS: As described in Paragraph 9.j.(i),(iii) and (iv) of this Consent Order, CEMEX failed to monitor NOx, O₂, CO₂ using CEMS during the third and fourth quarter 2022 as required, violating Permit Number 95OPBO082, Section II, Conditions 22.28 and 22.30, and Subpart LLL § 63.1350(a).
- o. Pursuant to Permit Number 950PB0082, Section II, Condition 18.4.1, CEMEX shall submit excess emissions and monitoring systems performance reports to the Division semiannually, except when more frequent reporting is specifically required by an applicable subpart or the Division determines that more frequent reporting is necessary to accurately access the compliance status of the source. Pursuant to Permit Number 950PB0082, Section II, Condition 22.2.6, CEMEX shall comply with the reporting requirements in § 63.10, except as noted in Condition 22.2.6. CEMEX did not submit the Kiln, Cooler, & Dryer excess emissions reports listed in Table 2 below, until April 26, 2023, violating Permit Number 950PB0082, Section II, Condition 18.4.1.

Table 2			
Quarter	Report due date		
2022Q3	10/30/2022		
2022Q4	1/30/2023		

p. Pursuant to Permit Number 950PB0082, Section II, Condition 23.3.3.1, upon detecting an excursion or exceedance related to the Compliance Assurance Monitoring ("CAM") requirements, the owner or operator shall restore operation of the pollutant-specific emissions unit (including the control device and associated capture system) to its normal or usual manner of operation as expeditiously as practicable in accordance with good air pollution control practices for minimizing emissions. The response shall include minimizing the period of any startup, shutdown, or malfunction and taking any necessary corrective actions to restore normal operation and prevent the likely reoccurrence of the cause of an excursion or exceedance. Determination of whether the owner or operator has used acceptable procedures in response to an excursion or exceedance will be based on information available, which may include but is not limited to,



monitoring results, review of operation and maintenance procedures and records, and inspection of the control device, associated capture system, and the process. Pursuant to Permit Number 950PB082, Section II, Condition 23.2.1.1, excursions for the purposes of reporting for all sources except the kiln (AIRS Point 007) include, for visible emissions any calendar day (midnight to midnight) in which visible emissions are observed. Based on the observations made by the inspector on September 21, 2023, the number of reported events, reasons for events, reported responses to events during the time period of July 1, 2022 to June 30, 2023, CEMEX failed to restore operation of the pollutant-specific emissions unit (including the control device and associated capture system) to its normal or usual manner of operation as expeditiously as practicable in accordance with good air pollution control practices for minimizing emissions, violating Permit Number 950PB0082, Section II, Condition 23.3.3.1.

Pursuant to Permit Number 950PB0082, Section IV, Condition 21, the q. permittee shall promptly report any deviation from permit requirements. Pursuant to Permit Number 950PB0082, Section IV, Condition 22.d, all instances of deviations from any permit requirements must be clearly identified in such reports. Pursuant to Permit Number 950PB0082, Section II, Condition 23.2.3, excursions shall be reported as required by Section IV, Conditions 21 and 22.d of this permit. Pursuant to Permit Number 950PB0082, Section II, Condition 23.5, the reports required by Section IV, Condition 22.d, shall contain the information specified in Appendix B of the permit. CEMEX submitted the third guarter 2022 Kiln Cooler & Dryer excess emissions report ("EER") after the due date and did not report the late EER in the Semi-annual report ("SAR") or Annual Compliance Certification ("ACC") due on February 1, 2023. CEMEX submitted the fourth guarter 2022 EER late and failed to report this as a deviation in the SAR due on August 1, 2023. As described in Table 3 below, CEMEX also failed to accurately report deviations from permit requirements in the reports referenced below. CEMEX failed to accurately report each deviation from permit requirements for the second half of 2022 SAR, 2022 ACC, and first half of 2023 SAR, violating Permit Number 950PB0082, Section II, Conditions 23.2.3 and 23.5, and Section IV, Conditions 21 and 22.d.



Table 3				
Date	Unit	Description	Report	
8/23/2022	AIRS Point 026 (P017 Radial Stacker Stockpile)	Dusting was observed from discharge of Stacker Belt 129-8. Fines from Dust Collectors were emptied onto belt during a maintenance call to repair a tripping component of the 139-8 DC fan. SAR cited Condition 19. Should have also reported Condition 2.2.5 and 20.3	SAR submitted on 2/1/2023	
9/6/2022	AIRS Point 002 (P002 Raw Materials Drying Stack #S005)	Dusting from the Crusher/Dryer area due to insufficient draft from the 225-11 Discharge that was left on manual mode. SAR cited Conditions 22.15 and 23.5.1.1. Should have also reported Conditions 5.6, 20.3 and 19	SAR submitted on 2/1/2023	
9/7/2022	AIRS Point 026 (P017 Radial Stacker to Stockpile)	Dusting was observed from discharge of Stacker Belt 129-8. This was due to failure to communicate with the Quarry before running the O1 belt system. SAR cited Condition 19. Should have also cited Condition 2.2.5 and 20.3.	SAR submitted on 2/1/2023	

	Table 3				
Date	Unit	Description	Report		
Q3 2022	AIRS Point 007 (P007) S016 (Precalciner Kiln)	CEMS for CO ₂ , SO ₂ , NO _X ended Q3 with over the 5% Downtime threshold (10.17% for NO _x , 10.45% for SO ₂ , and 8.05% for CO2. SAR cited Conditions 18.1.1, 18.2, 22.13 and Subpart LLL § 63.1343(b). Should have also cited Condition 10.10, 10.22, 18.2.1, & 22.13 for failing to monitor NO _x , Condition 10.12, 10.22, 18.2.1, & 22.13 for failing to monitor SO ₂ , Condition 10.15, 18.2.1, & 22.13 for failing to monitor CO ₂	SAR submitted on 2/1/2023		
10/24/2022 - 10/27/2022	AIRS Point 007 (P007) S016 (Precalciner Kiln)	Hg Sorbent Trap downtime from 10/24/2022 to 10/27/2022 was over 5% of the operations for the fourth quarter of 2022. SAR cited Conditions 18 and 22.13. Should have also cited Conditions 22.21 and 22.37.	SAR submitted on 2/1/2023		
4/29/2023	AIRS Point 018 (P018 General Fugitives)	Chemical dust suppressant was applied along the haul road leading to the CKD disposal pit on 10/29/2022. Chemical dust suppressant was not reapplied prior to 4/29/2023, which exceeded the requirement for reapplication every six months. SAR cited Condition 14.4.1.1.Should have also cited Condition 13.7.1.3.	SAR submitted on 7/31/2023		



	Table 3				
Date	Unit	Description	Report		
6/27/2023	AIRS Point 002 (P002 Raw Materials Dryer), Point 003 (P003, #4 and #6 Belt Transfer, 229-5 dust collector, 248-3 rotary airlock), and Point 024 (P000 Raw Material Storage and Handling)	Dusting around the Raw Material Dryer, #4 belt and #6 belt transfer area, and the raw material storage patio. Material leakage in the #4 belt and #6 belt transfer due to damaged parts in the 248-3 Rotary Airlock being removed preventing proper purging from the 225-9 dust collector. SAR cited Condition 22.15. Should have also cited Conditions 6.3 and 19.	SAR submitted on 7/31/2023		
6/28/2023	AIRS Point 002 (P002 Raw Materials Dryer), Point 003 (P003, #4 and #6 Belt Transfer)	Back spillage in the Raw Materials Dryer and material buildup at the #4 to #6 belt transition created fugitive dust due to high wind gusts. Material leakage in the #4 belt and #6 belt transfer due to damaged parts in the 248-3 Rotary Airlock being removed preventing proper purging from the 225-9 dust collector. SAR cited Condition 22.15. Should have also cited Conditions 6.3 and 19	SAR submitted on 7/31/2023		

10. The Division and CEMEX entered into settlement discussions for the violations as determined by the Division. The Parties reached a settlement that is detailed in this Consent Order.



III. ORDER and AGREEMENT

Based on the foregoing factual and legal determinations, pursuant to its authority under § 25-7-115, C.R.S., and as a result of the violations cited herein, the Division orders CEMEX to comply with all provisions of this Consent Order, including all requirements set forth below.

11. CEMEX agrees to the terms and conditions of this Consent Order. CEMEX agrees that this Consent Order constitutes an order issued pursuant to § 25-7-115, C.R.S., and is an enforceable requirement of Part 1 of the Act. CEMEX also agrees not to challenge directly or collaterally, in any judicial or administrative proceeding brought by the Division to enforce this Consent Order or by CEMEX against the Division:

- a. the issuance of this Consent Order;
- b. the factual and legal determinations made by the Division herein; and
- c. the Division's authority to bring, or the court's jurisdiction to hear, any action to enforce the terms of this Consent Order under the Act.

12. Notwithstanding the above, CEMEX does not admit to any of the factual or legal determinations made by the Division herein, and any action undertaken by CEMEX pursuant to this Consent Order shall not constitute an admission of liability by CEMEX with respect to the condition of the Facility.

Compliance Requirements

13. Effective immediately, and without limitation, CEMEX shall comply with Colorado Operating Permit Number 950PB0082 first issued on February 1, 2000 and renewed on February 1, 2025, Subpart LLL, the Act and the Regulations in the regulation and control of air pollutants.

Administrative Penalty Requirements

14. Based upon the factors set forth in § 25-7-122, C.R.S., the Division has determined an administrative penalty in the amount of **Seven Hundred and Seventy Thousand Dollars (\$770,000.00)** against CEMEX is appropriate and consistent with the Division's policies for violations of the Act and the Regulations cited in Section II of this Consent Order. CEMEX agrees to pay the sum of **\$770,000.00**, comprised of **\$154,000.00** in administrative penalties, and no less than **\$616,000.00** in Supplemental Environmental Projects ("SEP") as provided for in Paragraphs 15 and 16,



below. Payment is due within thirty (30) calendar days of the effective date of this Consent Order by certified, corporate or cashier's check drawn to the order of "Colorado Department of Public Health and Environment" and delivered to the attention of the Enforcement Unit Supervisor, Air Pollution Control Division, 4300 Cherry Creek Drive South, APCD-SS-B1, Denver, Colorado 80246-1530.

Supplemental Environmental Project Requirements

15. In order to settle the matters contained herein, CEMEX anticipates funding a third-party SEP, which the Parties agree is intended to secure significant environmental or public health protection and improvements. CEMEX's total expenditure for the SEP shall be not less than **\$616,000.00**. Within thirty (30) calendar days of the effective date of the SEP agreement, CEMEX must submit the SEP component of the penalty to the SEP administrator identified in the SEP agreement. If CEMEX's total expenditure for the SEP(s) is less than **\$616,000.00** CEMEX shall pay the remainder of the SEP component of the penalty as an additional administrative penalty in the manner prescribed in Paragraph 14 above and no later than ninety (90) calendar days of the effective date of this Consent Order.

16. CEMEX must submit one or more SEP proposals for the Division's potential approval within thirty (30) calendar days of the effective date of this Consent Order. If the Division disapproves the SEP(s) or the parties are otherwise unable to agree upon a SEP or SEPs within sixty (60) calendar days of the effective date of this Consent Order, CEMEX shall pay the SEP component of the penalty, **\$616,000.00**, as an additional administrative penalty in the manner prescribed in Paragraph 14 above and no later than ninety (90) calendar days of the effective date of this Consent Order.

17. CEMEX hereby certifies that, as of the date of this Consent Order, it is not required to perform or develop the SEP by any federal, state or local law or regulation and it is not required to perform or develop the SEP by any agreement, grant or an injunctive relief in this or any other case. CEMEX further certifies that it has not received, and is not presently negotiating to receive, credit in any other enforcement action for the SEP.

18. CEMEX or a third-party SEP administrator shall submit a SEP Completion Report to the Division by the date(s) agreed to by the Parties in the SEP Agreement(s). The SEP Completion Report(s) shall contain the following information:

- a. A detailed description of the SEP as implemented;
- b. A description of any operating problems encountered and the solutions thereto;



- c. Itemized costs, documented by copies of purchase orders and receipts or canceled checks;
- d. Certification that the SEP has been fully implemented pursuant to the provisions of this Consent Order; and
- e. A description of the environmental and public health benefits resulting from implementation of the SEP (with quantification of the benefits and pollutant reductions, if feasible).

19. In the event that CEMEX and not a designated third-party administrator is required to submit the SEP Completion Report, CEMEX agrees that failure to submit the SEP Completion Report, or any periodic report, if required, with the required information will be a violation of this Consent Order and CEMEX shall become liable for penalties as a violation of this Consent Order.

20. In the event that CEMEX fails to comply with any of the terms or provisions of this Consent Order relating to the performance of the SEP, CEMEX shall be liable for penalties as a violation of this Consent Order.

21. CEMEX must include in any public statement, oral or written making reference to the SEP the following language: "This project was undertaken in connection with the settlement of an enforcement action taken by the Colorado Department of Public Health and Environment, Air Pollution Control Division, for violations of air quality laws and regulations."

IV. SCOPE AND EFFECT OF CONSENT ORDER

22. The Parties agree and acknowledge that this Consent Order constitutes a full and final settlement of the violations cited herein. This Consent Order is final agency action. CEMEX agrees not to challenge the terms and conditions of this Consent Order in any proceeding before any administrative body or any judicial forum, whether by way of direct judicial review or collateral challenge.

23. This Consent Order shall be enforceable by either party in the same manner as if the Division had entered this Consent Order without agreement by CEMEX. The Parties agree that any violation of the provisions of this Consent Order by CEMEX concerning the Act, or the Regulations, shall be a violation of a final order of the Division for the purposes of §§ 25-7-115, 121, and 122, C.R.S., and may result in the assessment of civil penalties consistent with § 25-7-115, C.R.S., per day for each day of such violation.



24. The Parties' obligations under this Consent Order are limited to the matters expressly stated herein or in approved submissions required hereunder. All submissions made pursuant to this Consent Order are incorporated into this Consent Order and become enforceable under the terms of this Consent Order as of the date of approval by the Division.

25. The Division's approval of any submission, standard, or action under this Consent Order shall not constitute a defense to, or an excuse for, any prior violation of any requirement under the Act, the Regulations, or any subsequent violation of any requirement of this Consent Order, the Act, or the Regulations.

26. Entering into this settlement shall not constitute an admission of violation of the air quality laws by CEMEX, nor shall the Division or any third party infer it to be such an admission by CEMEX in any administrative or judicial proceeding. Notwithstanding the foregoing or anything in this Consent Order to the contrary, the described violation will constitute part of CEMEX's compliance history for any purpose for which such history is relevant, including considering the violation described above in assessing a penalty for any subsequent violations, in accordance with the provisions of § 25-7-122, C.R.S., against CEMEX.

27. CEMEX shall comply with all applicable Federal, State, and/or local laws and regulations and shall obtain all necessary approvals or permits to conduct the investigation and remedial activities required by this Consent Order and perform its obligations required hereunder. The Division makes no representation with respect to approval and permits required by Federal, State, or local laws or regulations other than those specifically referred to herein.

28. Nothing herein shall be construed as prohibiting, altering, or in any way limiting the ability of the Division to seek any other remedies or sanctions available by virtue of CEMEX's violation of this Consent Order or of the statutes and regulations upon which this Consent Order is based, or for CEMEX's violation of any applicable provision of law.

V. <u>LIMITATION RELEASES AND RESERVATION OF RIGHTS AND</u> <u>LIABILITY</u>

29. Upon the effective date of this Consent Order, and during its term, this Consent Order shall stand in lieu of any other enforcement action by the Division with respect to the violations cited herein. This Consent Order does not grant any release of liability for any violations, regardless of when they occurred, that are not cited in this Consent Order. The Division reserves the right to bring any action it deems necessary to enforce this Consent Order, including actions for penalties and/or injunctive relief.



30. Nothing in this Consent Order shall preclude the Division from imposing additional requirements necessary to protect human health or the environment and to effectuate the purposes of this Consent Order. Nor shall anything in this Consent Order preclude the Division from imposing additional requirements in the event that additional information is discovered that indicates such requirements are necessary to protect human health or the environment.

31. CEMEX reserves its rights and defenses regarding liability in any proceedings regarding the Facility other than proceedings to enforce this Consent Order.

32. Upon the effective date of this Consent Order, CEMEX releases and covenants not to sue the State of Colorado as to all common law or statutory claims or counterclaims arising from, or relating to, the violations of the Act or the Regulations specifically addressed herein.

33. CEMEX shall not seek to hold the State of Colorado or its employees, agents or representatives liable for any injuries or damages to persons or property resulting from acts or omissions of CEMEX, or those acting for or on behalf of CEMEX, including its officers, employees, agents, successors, representatives, contractors or consultants in carrying out activities pursuant to this Consent Order. CEMEX shall not hold out the State of Colorado or its employees, agents or representatives as a party to any contract entered into by CEMEX in carrying out activities pursuant to this Consent Order. Nothing in this Consent Order shall constitute an express or implied waiver of immunity otherwise applicable to the State of Colorado, its employees, agents, or representatives.

34. The Division reserves the right to bring any action or to seek civil or administrative penalties for any past, present, or future violations of the Act and the Regulations, not specifically addressed herein. Further, the Division has the right to bring any action to enforce this Consent Order and to seek authorized penalties for any violation of this Consent Order.

VI. FORCE MAJEURE

35. CEMEX shall perform the requirements of this Consent Order within the schedules and time limits set forth herein and in any approved plan unless the performance is prevented or delayed by events that constitute a force majeure. A force majeure is defined as any event arising from causes which are not reasonably foreseeable, which are beyond the control of CEMEX, and which cannot be overcome by due diligence.

36. Unless otherwise provided in the Act or the Regulations, within seventy-two (72) hours of the time that CEMEX knows or has reason to know of the occurrence of any event which CEMEX has reason to believe may prevent CEMEX from timely



compliance with any requirement under this Consent Order, CEMEX shall provide verbal notification to the Division. Within seven (7) calendar days of the time that CEMEX knows or has reason to know of the occurrence of such event, CEMEX shall submit to the Division a written description of the event causing the delay, the reasons for and the expected duration of the delay, and actions which will be taken to mitigate the duration of the delay.

37. The burden of proving that any delay was caused by a force majeure shall at all times rest with CEMEX. If the Division agrees that a force majeure has occurred, the Division will so notify CEMEX. The Division will also approve or disapprove of CEMEX's proposed actions for mitigating the delay. If the Division does not agree that a force majeure has occurred, or if the Division disapproves of CEMEX's proposed actions for mitigating the delay, it shall provide a written explanation of its determination to CEMEX.

38. Delay in the achievement of one requirement shall not necessarily justify or excuse delay in the achievement of subsequent requirements. In the event any performance under this Consent Order is found to have been delayed by a force majeure, CEMEX shall perform the requirements of this Consent Order that were delayed by the force majeure with all due diligence.

VII. DISPUTE RESOLUTION

39. If the Division determines that additional requirements are necessary pursuant to paragraph 30; that a violation of this Consent Order has occurred, that a force majeure has not occurred; that the actions taken by CEMEX to mitigate the delay caused by a force majeure are inadequate; the Division shall provide a written explanation of its determination to CEMEX. Within fifteen (15) calendar days of receipt of the Division's determination, CEMEX shall:

- a. Submit a notice of acceptance of the determination; or
- b. Submit a notice of dispute of the determination.

If CEMEX fails to submit either of the above notices within the specified time, it will be deemed to have accepted the Division's determination.

40. If CEMEX files any notice of dispute pursuant to paragraph 39, the notice shall specify the particular matters in the Division's determination that CEMEX seeks to dispute, and the basis for the dispute. Matters not identified in the notice of dispute shall be deemed accepted by CEMEX. The Division and CEMEX shall have thirty (30) calendar days from the receipt by the Division of the notification of dispute to reach an agreement. If agreement cannot be reached on all issues within this thirty (30) day period, the Division shall confirm or modify its decision within an



additional fourteen (14) days, and the confirmed or modified decision shall be deemed effective and subject to appeal in accordance with the Act and the Colorado Administrative Procedure Act, Article 4, Title 24, Colorado Revised Statutes.

VIII. NOTICES

41. Unless otherwise specified, any report, notice or other communication required under the Consent Order shall be sent to:

- For the Division: Enforcement Unit Supervisor Colorado Department of Public Health and Environment APCD-SS-B1-1400 4300 Cherry Creek Drive South Denver, Colorado 80246-1530
- For CEMEX: CEMEX Construction Materials South, LLC Attn: Plant Manager 5134 Ute Highway Longmont, Colorado 80503

IX. OBLIGATIONS UNAFFECTED BY BANKRUPTCY

42. The obligations set forth herein are based on the Division's police and regulatory authority. These obligations require specific performance by CEMEX of corrective actions carefully designed to prevent on-going or future harm to public health or the environment, or both. Enforcement of these obligations is not stayed by a petition in bankruptcy. CEMEX agrees that the penalties set forth in this Consent Order are not in compensation of actual pecuniary loss. Further, the obligations imposed by this Consent Order are necessary for CEMEX and the Facility to achieve and maintain compliance with State law.

X. MODIFICATIONS

43. This Consent Order may be modified only upon mutual written agreement of the Parties.

XI. <u>BINDING EFFECT, AUTHORIZATION TO SIGN</u> <u>AND EFFECTIVE DATE</u>

44. This Consent Order is binding upon the Parties to this Consent Order and their corporate subsidiaries or parents, their officers, directors, agents, attorneys, employees, contractors, successors in interest, affiliates and assigns. The



undersigned warrant that they are authorized to bind legally their respective principals to this Consent Order, and that the Parties have the authority to enter into this Consent Order. This Consent Order shall be effective upon the date signed by the last party. In the event that a party does not sign this Consent Order within thirty (30) calendar days of the other party's signature, this Consent Order becomes null and void. This Consent Order may be executed in multiple counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same Consent Order.

COLORADO DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT

Bv:

DocuSigned by:

DocuSigned by:

Date: 5/14/2025

Shannon McMillan Compliance and Enforcement Program Manager Air Pollution Control Division

CEMEX CONSTRUCTION MATERIALS SOUTH, LLC

Bv:

Date: 5/14/2025

TITLE: SVP Operations & Technology

Shannon McMillan, APCD David Huber, APCD cc: Paul Carr, APCD Beth Pilson, APCD Heather Wuollet, APCD Jeffrey Bishop, APCD Tom Lovell, APCD Elizabeth Scherer, APCD Ben Cappa, APCD David Beckstrom, Attorney General's Office Michael Stovern, EPA (Region VIII) Jason Long, APCD Sarah Acosta, APCD Alex Scherer, CDPHE File

