STATE OF NEW MEXICO
ALBUQUERQUE-BERNALILLO COUNTY
AIR QUALITY CONTROL BOARD

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IN THE MATTER OF THE PETITION FOR
A HEARING ON THE MERITS REGARDING
AIR QUALITY PERMIT NO. 0902-M3
Greater Gardner Neighborhood Association, North Valley Coalition of Neighborhood Associations, Kyle Silfer, David Wood, Marcia Finical, Petitioners

BEFORE THE ALBUQUERQUE/BERNALILLO COUNTY AIR QUALITY CONTROL BOARD

Greater Gardner Neighborhood Association, North Valley Coalition of Neighborhood Associations, Kyle Silfer, David Wood, Marcia Finical, as individuals.,

Appellants

Vs. **Permit Modification**
Permit No. #0902-M3

City of Albuquerque Air Quality Division,

Appellee

APPEAL
PETITION FOR HEARING

PRELIMINARY STATEMENT

This is an appeal of the granting of Air Quality Authority-to-Construct Permit #0902-M3, Facility #35/001/00012 to American Cement Corporation by the City of Albuquerque Air Quality Division ("AQD"). This appeal is brought by community organizations Greater Gardner Neighborhood Association, North Valley Coalition of Neighborhood Associations, and individuals Kyle Silfer, David Wood, Marcia Finical.

This case involves the failure to protect the health, safety and welfare of the public without a proper review of all relevant evidence and the failure to incorporate principles of environmental justice in the permitting process which resulted in the Air Quality Permit Modification #0902-M3.

The Appellants respectfully request that the Albuquerque/Bernalillo County Air Quality Control Board ("AQCB") reverse the action granting Air Quality Permit Modification #0902-M3 under the New Mexico Air Quality Control Act, NMSA 74-2-7(K).

STATUTORY AND OTHER BASES FOR CLAIMS

Factual and evidentiary issues related to the issuance of a permit may be raised per NMSA 74-2-7(I)(K). Failure to ensure an environment that will confer optimum health, safety, comfort and economic and social well-being on its inhabitants and maximize their economic and cultural benefits is a violation of NMSA 1978 § 74-1-2. Failure to consider public welfare, visibility and the reasonable use of property in granting an Air Quality Permit violates the definition of "air pollution" in NMSA 1978, § 74-2-2(B). Permits that disproportionately affect certain populations violate 42 U.S.C.A. § 2000d.

JURISDICTION

The Albuquerque/Bernalillo County Air Quality Control Board has jurisdiction to hear this appeal under NMSA 74-2-7(H). The Albuquerque/Bernalillo County Air Quality Control Board was created by Albuquerque Code of Ordinances §9-5-1-3 as a local board to perform, within the boundaries of the local authority, those functions delegated to the environmental improvement board under the Air Quality Control Act, except any functions reserved exclusively for the environmental improvement board under NMSA 74-2-4. Albuquerque Code of Ordinances §9-5-1-7(H) also provides for this petition for hearing before the Board.

TIMELINESS

As notice of this permit was granted on September 15, 2009, and notice was received by Appellants on October 2, 2009, this appeal is timely filed under NMSA 74-2-7(H).

PARTIES

Appellants are community organizations and individuals who participated in the permitting action before the Air Quality Division by providing testimony at one or both Public information hearings and who are adversely affected by the permitting action due to the deleterious effect on health, safety, comfort and economic and social well-being caused by the permitting action.

Appellant Greater Gardner Neighborhood Association is a neighborhood association of residents in Albuquerque's Near North Valley, an area that is, clockwise from the east, bounded by the Burlington North-Santa Fe Railroad tracks; bounded on the south by Mescalero Rd. NW, Fourth St. NW, the north border of the back lots of San Clemente Ave NW, Eleventh St. NW and La Luz Dr. NW, respectively; bounded on the west by Twelfth St. NW; bounded on the

north by Griegos Rd. NW, bounded on the west (north of Griegos Rd. NW) by Fourth St. NW; and bounded on the north (east of Fourth St. NW) by Montano Rd. NW. The Greater Gardner area represents a portion of zip code 87107, which covers 14.5 square miles in the North Valley area of Albuquerque; it is bounded on the north by Los Ranchos Blvd, on the west by the Rio Grande, on the south by Menaul Blvd. and on the east by Carlisle Blvd. The population of zip code 87107 is 32,617, nearly 19,000 (58%) of whom are Hispanic. The median yearly household income of residents is $33,788. The area has five aggregate processing plants, three asphalt production facilities, six concrete production operations, and two cement distribution terminals, among other pollution sources. In Bernalillo County there are 939 permitted stationary sources of pollution which are permitted a total of 2388.62 tons per year of all suspended particulates. Zip code 87107 (with 5% of the county population) contains 11% of the stationary sources of pollution and 17% of the permitted yearly tonnage of total suspended particulates. The American Cement transfer facility is located less than 2000 feet from from La Luz Elementary School and less than 3000 feet from Mountain Mahogany Community School. Contact information for appellant: c/o Kyle Silfer, President, 4465 Jupiter Street NW, Albuquerque, NM 87107; home (505) 265-5840; cell (505) 918-0978; email ggna@macmountain.org.

Appellant North Valley Coalition of Neighborhood Associations provides a forum for an exchange of ideas between residents, businesses, property owners, neighborhood associations, institutions, and government toward preserving, protecting, and enhancing the North Valley Area consistent with the adopted Goals and Policies of the North Valley Area Plan. The Plan's chief goal is to "recognize the North Valley area as a unique and fragile resource and as an inestimable and irreplaceable part of the entire metropolitan community." A specific purpose of this plan is to "preserve air, water and soil quality in the North Valley area" and to "encourage quality commercial/industrial development and redevelopment." Members of the North Valley Coalition include Los Griegos Neighborhood Association, Stronghurst Neighborhood Association, Near North Valley Neighborhood Association, and Monkbridge Gardens Neighborhood Association. Contact information for appellant: c/o Chris Catechis, President, 5733 Guadalupe Trail NW, Albuquerque, NM 87107; home (505) 271-9876; cell (505) 363-2747; email catechis@msn.com.

Appellant Kyle Silfer is president of the Greater Gardner Neighborhood Association. Since moving into the neighborhood in 2003, he has suffered multiple cases of bronchial pneumonia. His residence is located less than 2000 feet from the facility. He has two small children. Contact information for appellant: 4465 Jupiter Street NW, Albuquerque, NM 87107; home (505) 265-5840; cell (505) 918-0978; email kyle@rtoads.com.

Appellant David Wood is vice-president of the Greater Gardner Neighborhood Association and a long-time resident of the neighborhood directly abutting the American Cement facility. His residence is located little more than 1000 feet from the facility. Contact information for appellant: 158 Pleasant Avenue NW, Albuquerque, NM 87107; home (505) 344-4674; cell (505) 250-0421; email wood_cpa@msn.com.

Appellant Marcia Finical is Secretary of the of the Greater Gardner Neighborhood Association and lives less than 1000 feet from the American Cement facility. Contact information for appellant: 141 Griegos Rd NW, Albuquerque, NM 87107; home (505) 341-3141; cell (505) 550-4560; email marcia_finical@yahoo.com.

Appellee City of Albuquerque Air Quality Division is the local agency assigned to the role of the New Mexico Environment Department in enforcing the New Mexico Air Quality Control Act by the Joint Air Quality Control Board Ordinance, §9-5-1-1, et seq. The Joint Air Quality Control Board Ordinance also created the Albuquerque-Bernalillo County Air Quality Control Board to serve as a joint local authority acting on behalf of both the city and the county. This Board assumed jurisdiction under the New Mexico Air Quality Control Act NMSA §74-2-4.

ESSENTIAL FACTS

American Cement Corporation was granted an Authority-to-Construct Permit Modification on September 15, 2009 by the Air Quality Division of the City of Albuquerque's Environmental Health Department.

The original permit application from American Cement Corporation was received by the Air Quality Division on February 26, 2009. Additional information was received March 2, 2009, March 13, 2009, and March 19, 2009.

The application was deemed complete on March 19, 2009. Public information hearings on the permit application were held on June 23, 2009 and August 5, 2009.

STATEMENT OF CLAIMS

FIRST CLAIM

The American Cement Authority-to-Construct permit was issued without adequate conditions to protect the health, safety and welfare of the public and without a proper review of all relevant evidence. Neighborhood residents provided substantial testimony regarding continued fugitive dust problems with the facility. Video footage date-stamped June 19, 2008 and documenting an obvious violation of the existing permit 0902-M1 while the facility was under the management of the new owners was not given proper weight. Officers of the Greater Gardner Neighborhood Association and North Valley Coalition of Neighborhood Associations made a clear request for the best available control technology, including more efficient pulse-jet fabric filters instead of cartridge-type collectors, completely enclosed transfer points for loading and unloading at all silos, and fence-line monitoring. None of these requests were included in the conditions of the permit as issued, despite the fact that the applicant proposed building a neighborhood PM monitor in a list of proposed capital improvements provided to the Air Quality Division on June 11, 2008.

SECOND CLAIM

The action of the Air Quality Division in granting the Authority-to-Construct permit failed to incorporate principles of environmental justice in its decision. Per Attorney General of New Mexico Opinion No. 08-03, "Environmental justice principles center on the concept that a government agency should notify the public, and factor in public testimony regarding a company's environmental impact on the community, particularly in a minority or impoverished community, prior to issuing a permit to that company." The New Mexico Department of Health provided data derived from the historical record and could not rule out causation with regard to exposure to cement dust and certain of the ailments listed in the table, nor the possibility that future risk and burden to the community will emulate past risk and burden. Additionally, the decision to grant the permit was made without asthma data from La Luz Elementary School that had been requested by Bernalillo County Environmental Health. Studies have linked increased exposure to particles of 10 micrometers or less with bronchitis and phlegm in children with asthma. Furthermore, studies indicate that hospital admissions for bronchitis and asthma increase as PM10 levels increase. Without incorporating principles of environmental justice into the decision-making process, a concentration of pollution in a single area can continue to grow without meaningful regulation or planning.

THIRD CLAIM

Air Quality Authority-to-Construct Permit #0902-M3 as written does not appear to be "enforceable as a practical matter." It is unclear how control efficiency will be verified either initially or as the source continues to operate. The permit should be clear enough for the public, the source, and the enforcing agency to know exactly what is being emitted and how it is being emitted, how it is being controlled and at what levels. A review of the text of Air Quality Authority-to-Construct Permit #0902-M3 is currently in progress by Environmental Protection Agency Region 6 staff. Questions about the federal enforceability of the permit as issued have been raised. The deadline for appealing the permit decision is likely to pass before these questions are answered.

FOURTH CLAIM

Any other factual or legal issues identified by Petitioner prior to the hearing.

RELIEF REQUESTED

Appellants hereby request that the Board reverse the decision by the Air Quality Division to grant the American Cement Corporation's Authority-to-Construct permit.

AFFIRMATION

Appellants hereby swear and affirm that the contents of the petition are true and accurate to the best of their knowledge.

DATED: November 1, 2009
AMENDED: November 10, 2009

11/16/09

Kyle Silfer, as President of Greater Gardner Neighborhood Association, Appellant

11/16/09

Chris Catechis, as President of North Valley Coalition of Neighborhood Associations, Appellant

11/16/09

David Wood, Appellant

11/16/09

Marcia Finical, Appellant

11/16/09

Kyle Silfer, Appellant

Martin J. Chávez, Mayor

John W. Soladay, Director

AIR QUALITY AUTHORITY-TO-CONSTRUCT PERMIT No. 0902-M3
FACILITY CDS No. 35/001/00012

Issued to: American Cement Corporation
P.O. Box 2273
Espanola, New Mexico 87532

Certified Mail No. 7006 2760 0005 1562 4175
Return Receipt Requested

Responsible Official: Ron Hedrick, Vice President of Operations

Pursuant to the New Mexico Air Quality Control Act, Chapter 74, Article 2 New Mexico Statutes Annotated 1978 (as amended); the Joint Air Quality Control Board Ordinance, 9-5-1 to 9-5-99 ROA 1994; the Bernalillo County Joint Air Quality Control Board Ordinance, Bernalillo County Ordinance 94-5; the Albuquerque/Bernalillo County Air Quality Control Board (A/BCAQCB) Regulation Title 20, New Mexico Administrative Code (20 NMAC), Chapter 11, Part 40 (20.11.40 NMAC), Air Contaminant Source Registration; and A/BCAQCB Regulation Title 20, Chapter 11, Part 41 NMAC (20.11.41 NMAC), Authority-To-Construct; American Cement Corporation (Company or Permittee) is hereby issued this **AUTHORITY-TO- CONSTRUCT PERMIT** and authorized to operate the following equipment at:

Facility/Location	Facility Process Description	SIC	NAICS
American Cement Facility 4702 Carlton NW Albuquerque, NM UTMN: 3888364 UTME: 350955	Cement and Cement Additive Transfer Station	3273	327320

This **AUTHORITY-TO-CONSTRUCT Permit Number 0902-M3** has been issued based on the review of the application received by the Albuquerque Environmental Health Department (Department), Air Quality Division (Division) on February 26, 2009 and additional information received on March 2, 13 and 19, 2009, which was deemed complete on March 19, 2009 and on the National Ambient Air Quality Standards, New Mexico Ambient Air Quality Standards, Air Quality Control Regulations for Albuquerque/Bernalillo County, as amended, and consideration of relevant information provided at the June 23, 2009 and August 5, 2009 public information hearings held before issuance of this permit. As these standards and regulations are updated or amended, the applicable changes will be incorporated into Permit Number 0902-M3 and will apply to the facility. This permit supersedes all portions of Air Quality Permit Number 0902-M1, issued November 15, 2006.

Issued on the 15th day of September, 2009

Isreal J Tavarez

Isreal Tavarez, Environmental Engineering Manager
Air Quality Programs
Air Quality Division
Environmental Health Department
City of Albuquerque

I. **CONDITIONS:** Conditions have been imposed in this permit to assure continued compliance. 20.11.41.18.C NMAC, states that any term or condition imposed by the Division on a permit or permit modification is enforceable to the same extent as a regulation of the Board. Pursuant to 20.11.41 NMAC, the facility is subject to the following conditions:

1. **Construction and Operation:** Compliance will be based on Division inspections of the facility, reviews of production records, submission of appropriate permit applications for modification, and timely notification to the Department regarding equipment substitutions and relocations.

   a) This permit modification authorizes:

      i. The change in process equipment as listed under condition I.1.b) and I.1.c) of this permit;

      ii. The change in rated process rate for equipment listed under condition I.1.b) and I.1.c) of this permit;

      iii. The change in storage material for any of the five silos to either cement or cement additive;

      iv. The change in rated control efficiency for the dust collectors to 99.95% per manufacturer's guarantee statement; and,

      v. The change in hours of operation from 3,366 hrs/yr to continuous operation.

   b) This permit authorizes the construction and operation of the following equipment:

Process Equipment

Process Equipment Unit No.	Unit Description	Manufacturer	Model Number	Serial Number	Date of Mfg.	Rated Process Rate (ton/hr)	Unit Subject to NSPS
1	Silo 1	Allstate	N/A	N/A	2005	200	No
2	Silo 2	Allstate	N/A	N/A	2005	200	No
3	Silo 3	Allstate	N/A	N/A	2005	200	No
4	Silo 4	Great West	N/A	N/A	Prior to 1990	60	No
5	Silo 5	Great West	N/A	N/A	Prior to 1990	60	No
6	Loadout (Silos 1-3)	DCL	UN800EV	Job 206039503	2005	150	No
7	Loadout (Silo 4)	DCL	CFM 330	Job 206039501	2006	150	No
8	Loadout (Silo 5)	DCL	CFM 330	Job 206039501	2006	150	No
9	Haul Road	N/A	N/A	N/A	N/A	N/A	No

   c) This permit authorizes the construction and operation of the following air pollution control equipment:

Air Pollution Control Equipment

Type of Air Pollution Control Equipment	Manufacturer	Model Number	Serial Number	Rated Flow Rate (acfm)	Rated Control Efficiency
Silo 1 Dust Collector	DCL	CFM 330	Job 206039503	1400	99.95%
Silo 2 Dust Collector	DCL	CFM 330	Job 206039503	1400	99.95%
Silo 3 Dust Collector	DCL	CFM 330	Job 206039503	1400	99.95%
Silo 4 Dust Collector	Whirl Airflow Corp.	450-56/180	MC2695	1400	99.95%
Silo 5 Dust Collector 1	Whirl Airflow Corp.	450-56/180	MC2695	1400	99.95%
Silo 5 Dust Collector 2	Whirl Airflow Corp.	450-56/180	MC2695	1400	99.95%

Dust Collector Loadout (Silos 1-3)	DCL	UN800EV	Job 206039503	1400	99.95%
Dust Collector Loadout (Silo 4)	DCL	CFM 330	Job 206039501	1400	99.95%
Dust Collector Loadout (Silo 5)	DCL	CFM 330	Job 206039501	1400	99.95%

d) All equipment shall be maintained as per manufacturer specifications to ensure the emissions remain at or below the permitted levels.

e) This facility shall be constructed and operated in accordance with information provided on the permit application dated **February 23, 2009** and received **February 26, 2009** and additional information received **March 2, 13 and 19, 2009** and in accordance with the legal authority specified above and the conditions of this permit.

f) This facility is not subject to Federal New Source Performance Standards (NSPS), Code of Federal Regulations (CFR), Title 40, Part 60.

g) No National Emissions Standard for Hazardous Air Pollutants (NESHAP) apply to this facility. However, prior to any asbestos demolition or renovation work, the Division must be notified and proper permits shall be obtained and CFR Title 40, Part 61 Subpart M may apply.

h) Substitution of equipment is authorized provided the equipment has the same or lower process capacity as the piece of equipment being substituted. Equipment that is substituted shall comply with the requirements in Condition 2.

i) The equipment listed in Condition I.1.b) are limited to the following operational restrictions:

   i. This facility is authorized to run continuously;

   ii. The storage material in any of the five silos (Units 1 through 5) can be either cement or cement additive;

   iii. Units 1 through 3 shall each be restricted to a maximum material throughput process rate of 200 tons per hour of cement or cement additive;

   iv. Units 4 through 5 shall each be restricted to a maximum material throughput process rate of 60 tons per hour of cement or cement additive;

   v. The silo unloading spouts (Units 6 through 8) shall each be restricted to a maximum material loadout rate of 150 tons per hour of cement or cement additive;

   vi. The nine (9) dust collectors which serve Units 1 through 8 shall be operated and maintained in accordance with the manufacturer's specifications in order to ensure a control efficiency greater than or equal to 99.95% is achieved. The pressure drop across the dust collectors shall remain within the range required by the manufacturer to achieve this level of control efficiency. If any of the dust collectors are not operating in compliance with the respective conditions in this permit or the manufacturer's specifications, the effected silo shall be immediately shut down until the dust collection control equipment is repaired and functioning in accordance with the manufacturer's specifications. Compliance with this condition shall be shown through meeting the requirements of Permit Conditions {I.1.d)}, {I.1.i)ix}, {I.2.c)}, and {I.3.b),d),e),f)}. This condition has been placed in the permit based on air dispersion modeling of the facility at this location to demonstrate compliance with the National Ambient Air Quality Standards and New Mexico Ambient Air Quality Standards for $PM_{2.5}$, PM_{10}, and TSP);

vii. During operation of Units 1 through 8, emissions shall be ducted to a dust collector, with a control efficiency as described above. Compliance with opacity of fugitive emissions, during connection and disconnection of equipment, shall be shown through Permit Condition I.2.c). This condition has been placed in the permit based on air dispersion modeling of the facility at this location to demonstrate compliance with the National Ambient Air Quality Standards and New Mexico Ambient Air Quality Standards for $PM_{2.5}$, PM_{10}, and TSP);

viii. Units 1 through 5 shall be equipped with a functioning and well maintained overflow alarm. Alarm activation shall either be visual in the form of a lamp, or audible in the form of a buzzer. The Permittee shall stop filling the silo whenever the overflow alarm has been activated. This device shall be installed within fifteen (15) days of permit issuance; and,

ix. Units 1 through 8 shall each be equipped with a functioning and well maintained device capable of reading the pressure drop across each dust collector. The pressure drop reading of each pressure drop monitoring device shall continually remain within the range required by the manufacture to achieve a $\geq$ 99.95% control efficiency. This device shall be installed within sixty (60) days of permit issuance.

j) Vehicle traffic areas, haul roads and all site operations shall be maintained and controlled pursuant to 20.11.20.12.A. NMAC, General Provisions, Fugitive Dust Control. That is, the owner/operator shall "...use reasonable available control measures or any other effective control measure to prevent a violation of the national ambient air quality standards and meet the objective established in 20.11.20.6 NMAC, whether or not the person has been issued a fugitive dust control permit. No person shall allow fugitive dust, track out, or transported material from any active operation, open storage pile, paved or unpaved roadway or disturbed surface area, or inactive disturbed surface area to be carried beyond the property line, right-of-way, easement or any other area under control of the person generating or allowing the fugitive dust if the fugitive dust will: 1) adversely affect the health, public welfare or safety of the residents of Bernalillo county; or 2) impair visibility or the reasonable use of property; or 3) be visible longer than a total of 15 minutes in any one hour observation period...To mitigate fugitive dust, all inactive disturbed surface areas must be stabilized and maintained in stable condition by the owner, operator, or person responsible for maintenance of the disturbed surface..."

k) All haul roads shall be paved by the owner/operator. The permittee shall perform daily vacuum street cleaning or wet sweeping with a sweeper certified by the manufacturer to be efficient at removing particulate matter having an aerodynamic diameter of less than 10 microns (i.e. PM10) to prevent visible emissions of fugitive dust from being generated as specified by 20.11.20.23.A and B NMAC. Vacuum street cleaning or wet sweeping shall be conducted more frequently than daily as necessary to prevent fugitive dust from being generated from all haul roads.

l) Changes in plans, specifications, and other representations proposed in the application documents shall not be made if they will increase the potential to emit or cause a change in the method of control of emissions or in the character of emissions. Any such proposed changes shall be submitted as a modification to this permit. No modification shall begin prior to issuance of a permit.

m) Compliance with ton per year (tpy) emissions shall be based on compliance with Conditions I.1.i)iii, iv, v, vi, vii, viii and ix.

2. **Unit Emission Limits:** Condition 2, Unit Emission Limits, has been placed in the permit in accordance with 20.11.41.18.B NMAC, to allow the Division to determine compliance with the terms and conditions of the permit. These were the emission rates stated in the permit application and are the basis of the Division's review. Compliance will be based on Division inspections of the facility and upon compliance with the emission limits and opacity readings conducted in accordance with the test methods specified in Condition 6 - **Compliance Tests**.

a) The cement and cement additive transfer station emissions units are described below and correspond to the process equipment units in Condition I.1.b).

Emission Unit Table

Emission Unit Number	Emission Unit Description
1	Silo 1 (Dust Collector)
2	Silo 2 (Dust Collector)
3	Silo 3 (Dust Collector)
4	Silo 4 (Dust Collector)
5, 6	Silo 5 (Dust Collector)
7	Loadout (Silos 1-3) (Dust Collector)
8	Loadout (Silo 4) (Dust Collector)
9	Loadout (Silo 5) (Dust Collector)
10	Haul Road

b) The facility shall not exceed the emission limits stated in the table below. Tons per year emissions shall be based on a 12-month rolling total.

Criteria Pollutants

Emission Unit No.	TSP, lb/hr	TSP, tpy	PM10, lb/hr	PM10, tpy	PM2.5, lb/hr	PM2.5, tpy	Percent Opacity	Recordkeeping[1]	Monitoring[1]	Reporting[1]	Compliance Testing[2]
1	0.12	0.51	0.09	0.41	0.04	0.16	10%	Yes	Yes	Yes	Yes
2	0.12	0.51	0.09	0.41	0.04	0.16	10%	Yes	Yes	Yes	Yes
3	0.12	0.51	0.09	0.41	0.04	0.16	10%	Yes	Yes	Yes	Yes
4	0.12	0.51	0.09	0.41	0.04	0.16	10%	Yes	Yes	Yes	Yes
5	0.12	0.51	0.09	0.41	0.04	0.16	10%	Yes	Yes	Yes	Yes
6	0.12	0.51	0.09	0.41	0.04	0.16	10%	Yes	Yes	Yes	Yes
7	0.12	0.51	0.09	0.41	0.04	0.16	10%	Yes	Yes	Yes	Yes
8	0.12	0.51	0.09	0.41	0.04	0.16	10%	Yes	Yes	Yes	Yes
9	0.12	0.51	0.09	0.41	0.04	0.16	10%	Yes	Yes	Yes	Yes
10	3.01	14.37	0.59	2.80	0.09	0.42	*	Yes	Yes	Yes	No
Total	**4.03**	**18.82**	**1.42**	**6.46**	**0.42**	**1.84**					

[1] *Refer to Conditions 3, 4 and 5 for unit specific record keeping/monitoring, and reporting requirements.*
[2] *Refer to Condition 6 for unit specific compliance testing requirements.*
**Please see Conditions I.1.j) and k) for compliance of Unit 10.*

c) Emission Units 1 through 9 shall not cause or allow visible emissions that exceed 10 percent opacity. Percent opacity shall be determined using a 15-minute Method 22 test - "Visual determination of fugitive emissions from material sources and smoke emissions from flares", pursuant to CFR Title 40 Part 60 Appendix A. If visible emissions are observed during any Method 22 test, the facility will perform on the Unit(s) in question a 30-minute Method 9 test - "Visual Determination of the opacity of emissions from stationary sources", pursuant to CFR Title 40 Part 60 Appendix A.

d) Total suspended particulate matter (TSP), particulate matter less than 10 microns (PM_{10}), particulate matter less than 2.5 microns ($PM_{2.5}$), (lb/hr) emission rates for Emission Units 1 through 10 are for informational purposes and shall be used to determine tpy emissions for each emission unit. Compliance with lb/hr emission rates, for Units 1 through 9, shall be based on compliance with the opacity standards in Condition I.2.c). Compliance with lb/hr emission rates, for Unit 10, shall be based on compliance with Conditions I.1.j) and k).

3. **Record keeping:** Condition 3 has been placed in the permit in accordance with 20.11.41.18.B(8) NMAC, to allow the Division to determine compliance with the terms and conditions of the permit. Compliance will be based on Division inspection of records and logs. This information shall be retained at the facility for the most recent two-year period and shall be made available to Division personnel upon request.

a) Maintain Bill of Lading records of the daily receipt of cement and cement additive (in tons) for the silos. Daily receipt records shall be totaled on a monthly basis.

b) Maintain records of all maintenance and repair performed on Emission Units 1 through 9.

c) Maintain records of biannual testing done on the overflow alarm for each silo. Include any repairs performed on the alarm system.

d) Maintain records showing the pressure drop range required across each dust collector.

e) Maintain records of each daily pressure drop reading for Emission Units 1 through 9. Include any repairs performed on the pressure drop device.

f) Maintain records of monthly opacity readings on Emission Units 1 through 9. These records shall include Method 9 Certifications for the person(s) performing the Method 9 tests as necessary.

g) Maintain manufacture records showing the control efficiency of the cartridges used in Emission Units 1 through 9.

h) Maintain records of the sweep of haul roads including daily vacuum sweeps.

i) Annual scale calibration certifications shall be kept on site.

j) Maintain records of the location, within the dust collector, of each cartridge replacement. This recordkeeping shall be performed so continuous cartridge failure at a certain location can be tracked, diagnosed, and resolved.

k) Maintain records of monthly purchases and installation of cartridges.

4. **Monitoring:** Condition 4 has been placed in the permit in accordance with 20.11.41.18(4), (6), and (7) NMAC, to allow the Division to determine compliance with the terms and conditions of the permit. Compliance will be based on Division inspection of equipment and logs.

a) Each cement and cement additive silo shall be equipped with a functioning and well maintained overflow alarm. Alarm activation shall either be visual in the form of a lamp, or audible in the form of a buzzer. The owner/operator shall monitor the overflow alarm during any silo filling.

b) Emission Units 1 through 9 shall each be equipped with a functioning and well maintained device capable of reading the pressure drop across each unit. The owner/operator shall monitor, daily, the pressure drop across Units 1 through 9 to verify it is within the range required by the manufacturer.

c) Opacity readings, on Emission Units 1 through 9, shall be performed on a monthly basis. Opacity readings for these units shall be done in accordance with Method 22 - "Visual determination of fugitive emissions from material sources and smoke emissions from flares" or Method 9 - "Visual Determination of the opacity of emissions from stationary sources", CFR Title 40 Part 60 Appendix A, in compliance with Condition I.2.c).

d) The owner/operator shall ensure that a 50% cartridge replacement stock is kept onsite for each dust collector.

5. **Reporting**: Condition 5 has been placed in the permit in accordance with 20.11.41.20 NMAC and 20.11.90 NMAC, to allow the Division to determine compliance with the terms and conditions of the permit. Compliance will be based on timely submittal of the reports (initial and annual). Notifications shall contain the required information and shall be made in accordance with 20.11.41.20 NMAC.

The permittee shall notify the Division in writing of:

a) Any change in control or ownership within fifteen (15) days of the change in control or ownership; the permit and conditions apply in the event of any change in control or ownership of the facility. No permit modification is required in such case; however, in the event of any such change in control or ownership, the permittee shall notify the succeeding owner of the permit and the conditions;

b) An updated emissions inventory for all pollutants contained in the Permit Condition I.2.b) table; to include annual throughput (in tons) for cement and cement additive; by March 15 every year. If no change has occurred, a letter indicating that no change has occurred shall be sufficient;

c) Any breakdown of equipment or air pollution control devices or apparatus so as to cause emissions of air contaminants in excess of limits set by permit conditions. Any breakdown or abnormal operating conditions shall be reported within two hours of occurrence to (505) 224-6977 and via facsimile to (505) 768-1977; and,

d) Any equipment substitution within 15 days of said substitution.

6. **Compliance Tests:** Condition 6 has been placed in the permit in accordance with 20.11.41.21 NMAC, and 20.11.90.13 F. NMAC. Compliance will be based on the satisfactory completion of the compliance tests, the timely submittal of the emission unit test results to the Division, and on meeting the emission limits specified in Condition 2.

a) In accordance with 20.11.41.21 NMAC and 20.11.90.13 F. NMAC, Performance Testing Following Startup and Performance Tests respectively, an initial performance test shall be conducted on Emission Units 1 through 9 to demonstrate compliance with the opacity standards established in Condition I.2.c). The compliance tests shall be conducted in accordance with EPA Method 9 found in Appendix A of CFR Title 40 Part 60, and the procedures found in Subpart A of CFR Title 40 Part 60.11. These tests shall be conducted within 60 days after achieving the maximum production rate at which affected facility will be operated, but not later than 180 days after initial startup of such facility and at such other times as may be required by the Division.

b) Biannual compliance tests for the overflow alarms for each silo shall be conducted.

c) Compliance tests for Units 1 through 9 shall be conducted once every quarter-year in order to demonstrate continual compliance of the opacity standards stated in Condition I.2.b). The compliance tests shall be conducted in accordance with EPA Method 9 found in Appendix A of CFR Title 40 Part 60, and the procedures found in Subpart A of CFR Title 40 Part 60.11. If any Method 9 reading shows non-compliance, EPA Methods 1 through 5 shall be conducted within 30 days of the non-compliant Method 9 testing. The permittee may submit to the Department for review a written request to waive any compliance test requirement. Compliance testing shall not be waived unless it is approved in writing by the Department.

d) Compliance tests have not been imposed for Emission Unit 10.

e) The permittee shall provide for the Division's approval a written test protocol at least fifteen (15) days prior to the anticipated test date. The protocol shall describe the test methods to be used (including sampling locations), and shall describe data reduction procedures. Any variation from the established sampling and analytical procedures or from facility operating conditions shall be presented for Division approval.

f) The test protocol and compliance test report shall conform to the standard format specified by the Division.

g) The tests shall be conducted at ninety (90%) percent or greater of the facilities permitted capacity to demonstrate compliance with the permitted emission limits. Compliance testing at other than 90% production levels shall be performed at the Division's request and/or approval.

h) One copy of the compliance test results shall be submitted to the Division Enforcement Section within thirty (30) days after the completion of testing.

Unit Specific Compliance Testing

Emission Unit Number	Initial Compliance Test	Frequency of Compliance Test
1, 2, 3, 4, 5, 6, 7, 8, and 9	Yes (Opacity)	Quarter-annually for Opacity
10	Not Required*	Not Required*

*Compliance tests have not been imposed for this unit at this time, but may be imposed if inspections of the source indicate non-compliance with permit conditions.

7. **Modifications:** Condition 7 has been placed in the permit in accordance with 20.11.41.7.H NMAC, to enable the Division to review proposed changes to the facility which may constitute a permit modification prior to such changes. Compliance will be based on Division inspections and the submittal of a new permit application for any modification.

   a) Any future physical changes or changes in the method of operation which results in an increase in the pre-controlled emission rate may constitute a modification as defined by 20.11.41.7.H NMAC. No modification shall begin prior to issuance of a permit. Modifications or revisions to this permit shall be processed in accordance with 20.11.41 NMAC.

8. **Compliance Assurance/Enforcement:** All air pollution emitting facilities within Bernalillo County are subject to all applicable Albuquerque/Bernalillo County Air Quality Control Regulations, whether listed in this registration/permit or not.

   a) The issuance of a permit or registration does not relieve the facility from responsibility of complying with the provisions of the Air Quality Control Act, and the laws and regulations in force pursuant to the Act and 20.11.41.17 NMAC.

b) Any conditions imposed upon the facility as the result of an Authority-To-Construct Permit or any other permit issued by the Division shall be enforceable to the same extent as a regulation of the Board and 20.11.41.18.C NMAC.

c) Whenever two or more parts of the Air Quality Control Act, or the laws and regulations in force pursuant to the Act, limit, control or regulate the emissions of a particular air contaminant, the more restrictive or stringent shall govern pursuant to 20.11.1.14 NMAC.

d) The Division is authorized to issue a compliance order requiring compliance and assessing a civil penalty not to exceed Fifteen Thousand and no/100 Dollars ($15,000) per day of noncompliance for each violation, commence a civil action in district court for appropriate relief, including a temporary and permanent injunction. (74-2-12 NMSA).

e) Scheduled and Unscheduled Inspection (74-2-13 NMSA) -- The Division will conduct scheduled and unscheduled inspections to insure compliance with the Air Quality Control Act, and the laws and regulations in force pursuant to the Act, and this permit, and, upon presentation of credentials:

   i. Shall have a right of entry to, upon, or through any premises on which an emission source is located or on which any records required to be maintained by regulations of the Board or by any permit condition are located;

   ii. May at any reasonable time have access to and copy any records required to be established and maintained by Regulations of the Board, or any permit condition;

   iii. May inspect any monitoring equipment and method required by Regulations of the Board or by any permit condition; and,

   iv. Sample any emissions that are required to be sampled pursuant to Regulation of the Board, or any permit condition.

f) Any credible evidence may be used to establish whether the facility has violated or is in violation of any regulation of the Board, or any other provision of law. Credible evidence and testing shall include, but is not limited to (20.11.41.26.A-B NMAC):

   i. A monitoring method approved for the source pursuant to 20.11.42 NMAC "Operating Permits" and incorporated into an operating permit;
   ii. Compliance methods specified in the Regulations, conditions in a permit issued to the facility, or other provision of law;

   iii. Federally enforceable monitoring or testing methods, including methods in 40 CFR parts 51, 60, 61, and 75; and,

   iv. Other testing, monitoring or information-gathering methods that produce information comparable to that produced by any CFR method and approved by the Division and EPA.

9. **Posting of the Permit:** Compliance will be based on Division inspections of the facility, which show that a copy of the permit has been posted in a visible location. A copy of this permit shall be posted in a visible location at the plant site at all times. The permit shall be made available to Division personnel for inspection upon request.

10. **Annual Fees:** Condition 10 has been placed in the permit in accordance with 20.11.2 NMAC to allow the Division to determine compliance with the terms and conditions of the permit. Compliance will be based on the receipt of the annual emissions fee due each year to the Division pursuant to 20.11.2 NMAC. Every owner or operator of a source that is required to obtain a source registration, an Authority-to-Construct, an operating permit, or a preconstruction permit shall pay an annual emissions fee pursuant to 20.11.2 NMAC, 20.11.40 NMAC, 20.11.41 NMAC, 20.11.42 NMAC, 20.11.60 NMAC, 20.11.61 NMAC, or 20.11.62 NMAC.

Facility Wide Fee Pollutants
(Tons Per Year)

Fee Pollutant	Facility Wide Fee Pollutant Totals in Tons per Year (TPY)
Total Suspended Particulate Matter (TSP)	19
Facility Wide Fee Pollutants Totals (TPY)	**19**

II. ADDITIONAL REQUIREMENTS

1. **Permit Cancellation**-- The Division may cancel any permit if the construction or modification is not commenced within one (1) year from the date of issuance or if, during the construction or modification, work is suspended for a total of one (1) year pursuant to 20.11.41.19 NMAC.

Application for permit modifications, relocation notices and items listed under **ADDITIONAL REQUIREMENTS** shall be submitted to:

Albuquerque Environmental Health Department
Air Quality Division
Permitting Section
P.O. Box 1293
Albuquerque, New Mexico 87103

Test protocols, compliance tests and all reports shall be submitted to:

Albuquerque Environmental Health Department
Air Quality Division
Attention: Compliance Officer
P.O. Box 1293
Albuquerque, New Mexico 87103