

STATE OF NEW MEXICO
Before the
ALBUQUERQUE BERNALILLO COUNTY AIR QUALITY CONTROL BOARD

IN THE MATTER OF THE PETITION FOR A HEARING ON THE MERITS
REGARDING AMERICAN CEMENT CORPORATION
AIR QUALITY PERMIT No. 0902-M3

Greater Gardner Neighborhood Association, North
Valley Coalition of Neighborhood Associations, Kyle
Silfer, David Wood and Marcia Finical, as
individuals, *Petitioners/Appellants*

v.

City of Albuquerque Environmental Health
Department Air Quality Division,
Respondent/Appellee,

and

GCC, Inc. (Grupo Cementos de Chihuahua), d/b/a
American Cement Corporation, *Intervener*

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AQCB Petition No. 2009-7

February 26, 2010

FILING SETTLEMENT AND MOVING FOR APPROVAL OF SETTLEMENT AND DISMISSAL
OF APPEAL WITH PREJUDICE

Pursuant to NMAC §20.11.81.20.C, Intervener GCC, d/b/a American Cement Corporation ("GCC"), and Petitioners-Appellants ("Petitioners"), without opposition from the City of Albuquerque Environmental Health Department Air Quality Control Division, hereby file the Settlement Agreement, attached hereto as Exhibit A, with the Albuquerque-Bernalillo Air Quality Control Board. Petitioners and GCC jointly move the Board, upon summary hearing March 10, 2010, to approve the settlement, order the City of Albuquerque to modify Air Quality Permit No. 0902-M3 in accordance with the terms of the Settlement Agreement, and if so approved and ordered, dismiss Petitioners' appeal with prejudice.

Respectfully submitted:

Timothy R. Van Velsor (for)

Adam DeVoe, Attorney for GCC
Jonathan Block, Attorney for Petitioners

cc: Attached Service List with Certification

CERTIFICATION OF SERVICE

I, Timothy R. VanValen, hereby certify that on this 26th day of February, 2010, I caused the foregoing FILING SETTLEMENT AND MOVING FOR APPROVAL OF SETTLEMENT AND DISMISSAL OF APPEAL WITH PREJUDICE to be served upon the below listed persons by mailing it to them U.S. First Class postage prepaid and by email:

Janice C. Wright, Hearing Clerk
Air Quality Div., Env. Health Dept.
City of Albuquerque
One Civic Plaza, Rm. 3023
Albuquerque, NM 87103
jcwright@cabq.gov

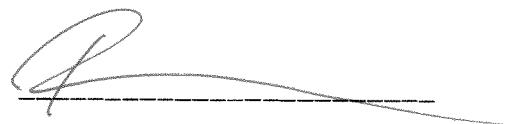
Felicia Orth., Hearing Officer
N.M. Environmental Department
1190 St. Francis Drive, Rm. 2150 N.
Santa Fe, NM 87502
felicia.orth@state.nm.us

For City of Albuquerque
Adelia W. Kearny, Esq.
City Attorney's Office
City of Albuquerque
One Civic Plaza, Rm. 4015
Albuquerque, NM 87102
akearny@cabq.gov

For Appellants
Jonathan M. Block, Esq.
1405 Luisa Street, Ste. 5
Santa Fe, NM 87505
jblock@nmelc.org

For Intervener
Adam T. DeVoe
Brownstein | Hyatt | Farber | Schreck, LLP
410 Seventeenth Street, Suite 2200
Denver, CO 80202-4432
adevoe@bhfs.com

Tim Van Valen, Esq. (Local counsel)
Brownstein, Hyatt, Farber, Schreck, LLP
201 Third Street NM, #1700
Albuquerque, NM 87102
tvanvalen@bhfs.com





**SETTLEMENT AGREEMENT
BETWEEN**

**Greater Gardner Neighborhood Association (GGNA), North Valley Coalition of
Neighborhood Associations, Kyle Silfer, David Wood and Marcia Finical, as individuals,
Petitioners/Appellants
and
GCC, Inc. (Grupo Cementos de Chihuahua), d/b/a American Cement Corporation,
*Intervener***

**IN THE MATTER OF THE PETITION FOR A HEARING ON THE MERITS
REGARDING AMERICAN CEMENT CORPORATION
AIR QUALITY PERMIT No. 0902-M3**

This Settlement Agreement is made this 24th day of February, 2010, between the Greater Gardner Neighborhood Association, the North Valley Coalition of Neighborhood Associations, Kyle Silfer, David Wood, and Marcia Finical, as individuals (collectively, "Petitioners") and GCC, Inc. (Grupo Cementos de Chihuahua), d/b/a American Cement Corporation ("American Cement"). The parties have participated in mediation and have agreed to settle the issues raised by the Petitioners in AQCB Petition No. 2009-7 regarding American Cement's Air Quality Permit No. 0902-M3.

By signing this agreement, Petitioners' representative(s) and American Cement's representative(s) agree that the above and following terms apply to this settlement:

1. The terms of the settlement are as follows:
 - a. American Cement agrees to report any excess emissions events and emissions investigation reports, including root cause failure analysis and associated corrective actions and recommendations to the Community Advisory Panel (CAP) and to Greater Gardner Neighborhood Association officers. Greater Gardner will coordinate an email and phone tree structure to inform all its members and interested parties of these reports and events.
 - b. American Cement offers association members a walk through of the plant, for general information and/or in the event of an emissions event.
 - c. American Cement affirms that CAP and Greater Gardner Neighborhood Association (GGNA) representatives shall have direct contact with the plant manager. GCC will instruct the American Cement plant manager to return phone calls from CAP members and GGNA officers. GGNA and CAP agree to provide constructive input on operations based on their day to day observations, such as an emissions event.

d. At every meeting with CAP, American Cement agrees to report to members what materials are coming into the plant. American Cement agrees to perform quarterly lab analysis of trace metals in those materials and to report the results of each analysis at the CAP meeting. Testing frequency and specific tests may be revised by members of CAP.

e. American Cement agrees to provide advance notification to the CAP and GGNA of any changes in night time loading activities (i.e. between the hours of 10:00 PM or before 5:00 AM). GGNA will coordinate an email and phone tree structure to inform its members and interested parties of these changes.

f. American Cement will make a good faith effort to minimize operations during the hours of 10:00 PM and 5:00 AM. American Cement will provide good faith estimates of operations, currently estimated at less than 10% of total materials loaded and is currently estimated at less than 30 days per year. At no time will operations between the hours of 10:00 PM and 5:00 AM exceed 40% of total materials loaded annually. American Cement will take pro-active steps to limit night time loading.

g. Within 180 days of an approved settlement agreement, American Cement agrees to install Bag Leak Detectors (BLD's) on all its silo dust collectors and load out spout dust collectors, with programmed alarm functionality to ensure that the control efficiencies for those collectors as set forth in permit Section .I.(1) (c), are met. These units will be equipped with a data logger to record times and dates of alarm events and to record the monitor system up-time. This provision meets proposed monitoring regulations required by year 2013 for major emissions source facilities regulated under EPA's proposed Portland Cement National Emissions Standards for Hazardous Air Pollutants (NESHAP). Any extension of the 180-day time period stated above must have prior approval by the city and the Division.

h. American Cement will communicate any extension of the 180-day time period stated above to CAP and GGNA. American Cement agrees to provide a tour for CAP and GGNA representatives to see the Bag Leak Detectors once they are installed.

i. American Cement agrees to submit a monitor down time report semi-annually or annually to the city.

j. American Cement agrees to submit a monitor down time report semi-annually or annually to the CAP.

k. Because paragraph 1.f. of this Agreement is a more restrictive condition with the installation of Bag Leak Detectors, the parties agree to relax permit conditions that are related to Pressure Drop Monitoring across bag houses, including record keeping and equipment requirements, pending approval of the City of Albuquerque and the Air Quality Division.

l. In light of the more restrictive/protective requirement of Bag Leak Detectors, American Cement agrees to the following, pending approval of the City of Albuquerque and the Air Quality Division.

1) Replace "monthly" with "quarterly" in Section I (4) (C).

2) In Section I (2)(C), replace 15-minute Method 22 with 6-minute Method 22. Add the condition that if the results of the Method 9 test show an exceedance of the 10% opacity standard, the plant will initiate corrective action within 2 hours, followed by another 30-minute Method 9 by the next operating day. If that Method 9 still is above 10% opacity, the plant will shut down that particular process unit until adequate corrections are made. The plant will conduct an additional 30-minute Method 9 of the unit upon re-start of the equipment within 2 operating days.

3) Remove Condition I.(6)(c) as the above condition replaces it and the Bag Leak Detector provides superior protection. Method 5 is not necessary, as particulate emissions are continuously monitored with Bag Leak Detectors.

m. American Cement agrees to initiate corrective action for any emissions event within a reasonable amount of time, generally within two hours.

2. STIPULATION TO PERMIT MODIFICATION. Petitioners and American Cement agree that American Cement's Air Quality Permit No. 0902-M3 shall be modified as set forth in this agreement. The modifications agreed to herein will result in an Air Quality Permit that is more stringent than Permit No. 0902-M3.

3. APPEAL DISMISSAL. As a result of reaching this Settlement Agreement, Petitioners will as soon as possible dismiss their appeal with prejudice.

4. AUTHORITY. This Settlement Agreement is binding on all parties, including all members of each respective Neighborhood Association. By entering into this Settlement Agreement, Petitioners' representatives agree that they have the authority to bind all Petitioners and American Cement's representative has the authority to bind the Intervener in the above captioned matter.

5. PUBLIC MEETING. Petitioners and American Cement agree to cooperate in conducting a cursory public meeting before the Albuquerque Bernalillo County Air Quality Control Board seeking approval of the settlement as required by NMAC 20.11.81.20.C. The parties will present this settlement to the Albuquerque Air Quality Board at the regularly scheduled meeting of the Board on March 10, 2010. The parties agree that the public hearing, currently scheduled for March 9th and 10th will be canceled, and the parties will cooperate in precluding testimony opposing this Settlement Agreement at the Air Quality Control Board meeting on March 10, 2010. Petitioners will testify that the permit amendments necessarily resulting from this Settlement Agreement will be more stringent than the Permit No. 0902-M3 and therefore satisfy the concerns of the Petitioners that resulted in the filing of the above referenced action.

6. INCORPORATION INTO PERMIT. Petitioners and American Cement agree that paragraphs l.g., l.i., l.k., l.l. and l.m. in this Settlement Agreement shall be incorporated into the Air Quality Permit No. 0902-M3.

7. The remaining paragraphs of this Agreement shall not be incorporated into the permit, but shall constitute agreements between Petitioner and American Cement.


8. COUNTERPARTS AND SIGNATURES. This Agreement may be executed in multiple counterparts each of which shall be deemed an original and together will constitute one and the same instrument. This Agreement may be executed by facsimile or pdf signatures which shall be binding as originals on the parties hereto.

9. SEVERABILILTY. If any portions of the above Agreement are found to be invalid, the remainder of the Agreement shall be in full force and effect.

Agreed upon this 24th day of February, 2010



Kyle Silfer
President
Greater Gardner Neighborhood Association

 2-24-10

Doug Roark
Environmental and Process Manager
GCC d/b/a American Cement



Kyle Silfer, Individual Petitioner

 2-24-10

Debra Oliver, Mediator, (Witness)
Common Ground Mediation Svcs.

 2-24-10

David Wood, Individual Petitioner