

**STATE OF NEW MEXICO  
SECRETARY OF ENVIRONMENT**

**ENVIRONMENTAL PROTECTION DIVISION  
OF THE NEW MEXICO ENVIRONMENT DEPARTMENT,  
Complainant,**

**NO. AQB PBM-25342-1801 (NOV)**

**PERMIAN BASIN MATERIALS, LLC  
Respondent.**

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**SETTLEMENT AGREEMENT AND STIPULATED FINAL COMPLIANCE ORDER**

This Settlement Agreement and Stipulated Final Compliance Order (“Final Order”) is entered into between the Environmental Protection Division (“Division”) of the New Mexico Environment Department (the “Department”) and Respondent, Permian Basin Materials, LLC (“Respondent”) (collectively, the “Parties”) to resolve alleged statutory, regulatory, and permit violations by the Respondent. The Department alleges violations of the New Mexico Air Quality Control Act (“AQCA”), NMSA 1978, Sections 74-2-1 to -17; the Air Quality Control Regulations (“AQCR”), 20.2. NMAC (“Regulations”), and Air Quality Permit Number 3398M1 (“Permit”).

**I. BACKGROUND**

**A. PARTIES**

1. The Department is an agency of the executive branch of the State of New Mexico, created pursuant to NMSA 1978, § 9-7A-4. The Division is an organizational unit of the Department. The Secretary of the Department has delegated to the Director of the Division the authority to seek administrative enforcement of the AQCA and the AQCR, including assessing civil penalties for violations thereof. NMSA 1978, § 74-2-12. The Air Quality Bureau (“Bureau”) is an organizational unit of the Division.

2. The Respondent is a ready-mix concrete plant doing business in New Mexico at the PB Materials – Central Mix Concrete Plant (“Facility”), located in Lea County, New Mexico. The Facility is a ready-mix concrete plant with a permitted maximum production of sixty-eight cubic yards per hour.

**B. HISTORY AND ALLEGED VIOLATIONS**

3. On October 25, 2007, the Department issued Permit No. 3398M1 to Wallach Concrete, Inc. for the operation of a concrete plant. Respondent bought the plant on June 14, 2006.

4. Permit Condition 1.(l) provides in relevant part, “The facility equipment may not be relocated from its current permitted location without written approval from the Department.”

5. On October 17, 2017, the Bureau received a complaint that the Facility had been relocated in Lea County, New Mexico, and the Respondent had not notified the Department of the relocation. During an investigation of the complaint by Bureau personnel on November 6, 2017, it was verified that the Respondent did not notify the Department of the relocation.

6. On September 18, 2018, the Bureau issued to the Respondent Notice of Violation (“NOV”) PBM-25342-1801, alleging a violation of the AQCA, the AQCR, and the Regulations. The alleged violation was the failure of the Facility to relocate without the Department’s written approval prior to the construction of the Facility, which is a violation of Permit Condition 1.(l).

7. The NOV included a Corrective Action Verification (“CAV”) requiring Respondent to submit to the Bureau measures taken to ensure future compliance with the permit conditions.

8. On December 14, 2018, the Bureau received the CAV electronically from Respondent, which included copies of the Relocation application, and a GCP-5 permit application.

9. The CAV was determined to be satisfactory by the Bureau on December 17, 2018.

10. On December 28, 2018, the relocation was approved and on January 16, 2019, a new GCP-5 Permit No.3398M2 was issued by the Bureau to the Respondent.

11. The Parties have engaged in settlement discussions to resolve the NOV without further proceedings.

## **II. COMPROMISE AND SETTLEMENT**

### **A. GENERAL**

12. Respondent does not admit any of the allegations in the NOV. To avoid further legal proceedings, the Division and Respondent agree to the terms and conditions in this Final Order to resolve the alleged violation in the NOV.

13. The Parties admit jurisdiction and consent to the relief specified herein.

### **B. CIVIL PENALTY**

14. In compromise and settlement of the alleged violation set forth in the NOV and upon consideration of the corrective actions that have occurred, the seriousness of the alleged violation and Respondent's good faith efforts to comply, the Parties agree that Respondent shall pay a civil penalty of \$14,328.00 to the State of New Mexico within 30 calendar days after the effective date of this Final Order.

15. Payment shall be made to the *State of New Mexico General Fund* by certified or corporate check and sent to the following address:

New Mexico Environment Department  
Air Quality Bureau  
c/o Compliance and Enforcement Manager  
525 Camino de los Marquez, Suite 1  
Santa Fe, New Mexico 87505

16. If Respondent fails to make timely and complete payment of the civil penalty, Respondent shall pay a stipulated penalty of \$250.00 per day for each day a payment is not timely or complete. Respondent shall not contest or dispute in any way the stipulated penalty of \$250.00 per day in the event that the Department brings an action against Respondent for the failure to make timely or complete payment.

## **III. OTHER TERMS AND CONDITIONS**

**A. RESERVATION OF RIGHTS AND DEFENSES**

17. This Final Order shall not be construed to prohibit or limit in any way the Department from requiring Respondent to comply with any applicable state or federal requirement not resolved herein. This Final Order shall not be construed to prohibit or limit in any way the Department from seeking any relief authorized by the AQCA for violation of any state or federal requirement applicable to Respondent not resolved herein. This Final Order shall not be construed to prohibit or limit in any way Respondent from raising any defense to a Department action seeking such relief.

**B. MUTUAL RELEASE**

18. The Parties mutually release each other from all claims that each party raised or could have raised against the other regarding the facts and the violation alleged in the NOV. Such release applies only to civil liability.

**C. WAIVER OF STATE LIABILITY**

19. Respondent shall assume all costs and liabilities incurred in performing all obligations under this Final Order. The Department, on its own behalf and on behalf of the State of New Mexico, does not assume any liability for Respondent's performance of any obligation under this Final Order.

**D. EFFECTIVE DATE AND TERMINATION DATES**

20. This Final Order shall become effective on the date it has been signed by the Department Secretary.

21. Except as otherwise provided in this Paragraph, the terms of this Final Order shall terminate when Respondent has fulfilled the requirements of this Final Order. The reservations of rights and defenses and the mutual release in Paragraphs 17 and 18 shall survive the execution and performance of this Final Order and shall remain in full force and effect as an agreement between the Parties.

**E. INTEGRATION**

22. This Final Order merges all prior written and oral communications between the Parties concerning the subject matter of this Final Order, contains the entire agreement between the Parties, and shall not be modified without the express written agreement of the Parties.

**F. BINDING EFFECT**

23. This Final Order shall be binding on the Parties and their officers, directors, employees, agents, subsidiaries, successors, assigns, trustees, or receivers.

**G. AUTHORITY OF SIGNATORIES**

24. The persons executing this Final Order on behalf of Respondent and the Division, respectively, represent that he or she has the authority to execute this Final Order on behalf of Respondent and the Division.

**H. SIGNATURE AND COUNTERPARTS**

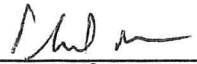
25. This Agreement may be executed in multiple counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same agreement.

**ENVIRONMENTAL PROTECTION DIVISION  
NEW MEXICO ENVIRONMENT DEPARTMENT**

By:   
Sandra Ely  
Division Director

Date: 12/5/19

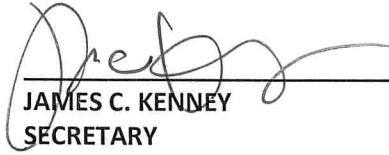
**PERMIAN BASIN MATERIALS, LLC**

By:   
Print Name: Philip McWard  
Print Title: eFO

Date: 9/9/2019

**STIPULATED FINAL COMPLIANCE ORDER**

This Settlement Agreement and Stipulated Final Compliance Order, agreed to by the Division and the **PERMIAN BASIN MATERIALS, LLC**, is hereby incorporated herein and **APPROVED AS A FINAL COMPLIANCE ORDER** issued pursuant to NMSA 1978, §74-2-12.

  
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**JAMES C. KENNEY**  
**SECRETARY**  
**ENVIRONMENT DEPARTMENT**

Date: 12/5/2019\_\_\_\_\_