

**STATE OF NEW MEXICO
SECRETARY OF ENVIRONMENT**

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

NO. AQB VUL-1733-1401 (NOV)

**VULCAN MATERIALS COMPANY,
Respondent.**

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 the Respondent, Vulcan Materials Company (“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 0732-M3 (“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 company doing business in New Mexico at the Placitas Aggregate Facility (“Facility”), located in Sandoval County, New Mexico. The Facility is an aggregate mine.

B. HISTORY AND ALLEGED VIOLATIONS

3. On October 23, 2014, the Bureau performed a partial compliance evaluation at the Facility and identified potential violations of the Act, Regulations, and/or Permit.

4. Permit 0732-M3, General Condition B101.D provides in relevant part: "The permittee shall establish and maintain the property's Restricted Area, as identified in the most recent modeling plan for which the permittee received Department approval."

5. On October 23, 2014, Bureau staff conducted a partial compliance evaluation (PCE) at the Respondent’s Facility in response to a complaint about fugitive dust emissions coming from the Facility. Prior to entering the Facility, Bureau staff drove around the perimeter to verify that the Facility was restricting and controlling public access. There was no fencing at the end of the Chaco Mesa Trail cul-de-sac and nothing to restrict the public from entering. On November 12, 2014, the Respondent received written notification of the damaged fence. On June 10, 2015, the Bureau received documentation from the Respondent that the fence was repaired on November 29, 2014. Thus, it was 17 days from the time that Respondent received written notification to the date of repair.

6. Permit 0732-M3, General Condition B110.A provides in relevant part: "Records and reports shall be maintained on-site..."

7. On October 23, 2014, Bureau staff conducted a partial compliance evaluation (PCE) at the Respondent’s Facility in response to a complaint about fugitive dust emissions coming from

the Facility. On November 3, 2014, the Bureau received Facility records from the Respondent requested during the October 23 inspection. Bureau staff reviewed the records on November 4, 2014, and noted that the Respondent had: failed to record the startup and shutdown times of operations; no records demonstrating application of water per location, and also failed to maintain a copy of the manufacturer's recommended surfactant application schedule on site; no records of tons per hour (TPH) production by crusher number for Unit 4299803 and Unit 4299901.

8. On August 12, 2015, the Bureau issued Revised Notice of Violation VUL-1733-1401 alleging two (2) air quality violations: 1) the failure to restrict and control public access, which is a violation of Permit 0732-M3, General Condition B101.D; and 2) the failure to maintain records on-site, which is a violation of Permit 0732-M3, General Condition B110.A.

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

10. On October 13, 2015, the Bureau received the CAV from the Respondent. The CAV was determined to be satisfactory by the Bureau on October 15, 2015.

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

II. COMPROMISE AND SETTLEMENT

A. GENERAL

12. The Respondent does not admit any of the allegations in the NOV. To avoid further legal proceedings, the Division and the Respondent agree to the terms and conditions in this Final Order to resolve the alleged violations 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 violations set forth in the NOV and upon consideration of the seriousness of the alleged violations and Respondent's good faith efforts to comply, the Parties agree that the Respondent shall pay a civil penalty of \$18,936.00 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 the Respondent fails to make timely and complete payment of the civil penalty, the Respondent shall pay a stipulated penalty of \$250.00 per day for each day a payment is not timely or complete. The 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 the 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 the 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 the Respondent not resolved herein. This Final Order shall not be

construed to prohibit or limit in any way the 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 violations alleged in the NOV. Such release applies only to civil liability.

C. WAIVER OF STATE LIABILITY

19. The 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 the 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 the Respondent has fulfilled the requirements of this Final Order. The reservations of rights and defenses and the mutual releases 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 the Respondent and the Division, respectively, represent that he or she has the authority to execute this Final Order on behalf of the Respondent and the Division.

H. SIGNATURE AND COUNTERPARTS

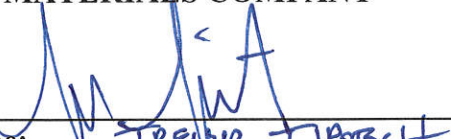
25. This Agreement may be executed in multiple counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same agreement.

**ENVIRONMENTAL PROTECTION DIVISION
NEW MEXICO ENVIRONMENT DEPARTMENT**

By: 
MICHAEL VONDERHEIDE
DIRECTOR

Date: 11/5/15

VULCAN MATERIALS COMPANY

By: 
Print Name: TREVOR TIBBITTS
Print Title: VP/Com

Date: 10-30-15

STIPULATED FINAL COMPLIANCE ORDER

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

for *Butch Longate*
RYAN FLYNN
SECRETARY
ENVIRONMENT DEPARTMENT

Date: *11/12/15*