

**STATE OF NEW MEXICO
SECRETARY OF ENVIRONMENT**

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

NO. AQB LAF-1733-1401 (NOV)

**LAFARGE NORTH AMERICA, INC.
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, Lafarge North America, Inc. (“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 74-2-17; the Air Quality Control Regulations (“AQCR”), 20.2. NMAC (“Regulations”), and Air Quality Permit Number 0723-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. At the time of the alleged violations, the Respondent was a company doing business in New Mexico at the Placitas Facility ("Facility"), located in Sandoval County, New Mexico. The Facility is an aggregate mine. The respondent sold the Facility on August 26, 2014.

B. HISTORY AND ALLEGED VIOLATIONS

3. On April 1, 2014, Air Quality Bureau ("AQB") staff conducted a partial compliance evaluation ("PCE") at the Facility in response to a complaint about fugitive dust emissions.

4. Permit Condition A112.B provides in relevant part, "Haul Road Control...Recordkeeping: 1. The permittee shall keep records of the frequency, quantity, and location(s) of the water, base course and surfactant application, power washing, sweeping and/or deep cleaning control measures. The permittee shall enter the records pertaining to each control measure on the day that each control measure occurs. 2. In addition, a copy of the manufacturer's recommended surfactant application schedule shall be maintained on site."

5. During the PCE, AQB staff requested to review records required by NSR Permit 0732-M3. Records reviewed covered the period from April 2012 through April 2014. The water truck logs did not include information indicating how much water was applied by location. No records of sweeping of the paved roads or of surfactant application to unpaved haul roads were made available. The facility also failed to maintain a copy of the manufacturer's recommended surfactant application schedule on site.

6. Permit Condition A302.A provides in relevant part: "Crushers - Production Limits Requirement: The production rate of Unit 4299803 shall not exceed an average of 350 tons per hour on a daily basis. The production rate of Unit 4299901 shall not exceed an average of 300

tons per hour on a daily basis...Monitoring: The permittee shall install, operate, and maintain belt scales on Units 4299803 and 4299901 to monitor the daily production rates. Recordkeeping: The permittee shall: (1) Record the date, start time, and end time of any production at each crusher; (2) determine by use of the belt scale the total daily production rate(s) in tons per day and calculate the average rate in tons per hour for each day of operation; and (3) maintain the records necessary to support the calculation of the daily and average hourly production rate(s)...."

7. During the PCE, AQB staff requested to review records required by NSR Permit 0732-M3 for the Facility. Records reviewed covered the period from April 2012 through April 2014. No records of tons per hour production by crusher number for Unit 4299803 and Unit 4299901 were made available.

8. Permit Condition A112.A provides in relevant part: "... Recordkeeping: 1. The permittee shall keep daily records of the total number of haul road trips and the total hours of truck traffic. The permittee shall also calculate and record each day's average hourly haul road trips. 2. The permittee shall keep daily records of the weight of each outgoing load of aggregate and shall calculate and record the total daily weight of aggregate transported. The permittee shall calculate and keep records of the total annual amount of material transported from the facility as a monthly rolling 12-month total."

9. During the PCE, AQB staff requested to review records required by NSR permit 0732-M3 for the Facility. Records reviewed covered the period from April 2012 through April 2014. There were no records of the total annual amount of material transported from the facility as a monthly rolling 12-month total. The facility also failed to record the total number of haul road trips per day and failed to record each day's average hourly haul road trips.

10. Permit Condition A108.A provides in relevant part: "...Recordkeeping: Daily, the permittee shall record the startup and shut down times and the hours of operation. Each calendar month, the permittee shall calculate and record the monthly total for the production hours in which the facility operates. The permittee shall also calculate and record the monthly rolling 12-month total production hours for the facility."

11. During the PCE, AQB staff requested to review records required by NSR permit 0732-M3 for the Facility. Records reviewed covered the period from April 2012 through April 2014. There were no records of the monthly total operating hours and the monthly rolling 12-month total of operating hours.

12. Permit 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."

13. Prior to entering the facility on April 1, 2014, AQB staff drove around the perimeter of the facility 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. Photographs were taken showing the end of the road and the gap in the boundary fence. The approximate distance between the ends of the fencing was eighty (80) feet.

14. Permit Condition A306.A provides: "Requirement: The permittee shall water sites of overburden removal and active pit areas, dependent upon existing wind speeds and soil moisture content, and as necessary to minimize dust emissions."

15. Prior to entering the facility on April 1, 2014, AQB staff parked on the North side exterior of the facility to observe the operation. They observed fugitive emissions possibly originating from the active mining area. During the site inspection AQB staff noted the fugitive

emissions coming from the active pit area and took photographs. The active pit area was dry and there was no evidence that the water truck had applied water to this area.

16. On March 25, 2015, the Bureau issued to the Respondent Notice of Violation LAF-1733-1401 (“NOV”), alleging violations of the AQCA, the AQCR, and the Permit. The alleged violations consisted of: 1) failure to keep records demonstrating applicant of water and surfactant to haul roads, which is a violation of Permit Condition A112.B; 2) failure to keep records of crusher production rates, which is a violation of Permit Condition A302.A; and 3) failure to record times of daily inspections of spray bars , which is a violation of Permit Condition A302.B; 4) failure to record the total number of haul road trips per day, each day’s average hourly haul road trips, and the total annual amount of material transported from the facility as a rolling 12-month total, which is a violation of Permit Condition A112.A; 5) failure to record the monthly total operating hours and the 12-month total of operating hours, which is violation of Permit Condition A108.A; 6) failure to restrict and control public access, which is a violation of Permit Condition B101.D; and 7) failure to water sites of overburden removal and active pit areas, which is a violation of Permit Condition A306.A.

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

II. COMPROMISE AND SETTLEMENT

A. GENERAL

18. The Respondent does not admit to 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.

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

B. CIVIL PENALTY

20. 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 \$50,400.00 to the State of New Mexico within 30 calendar days after the effective date of this Final Order.

21. 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

22. 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

23. 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

24. 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

25. 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

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

27. 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 release in Paragraphs 24 and 25 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

28. 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

29. 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

30. 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

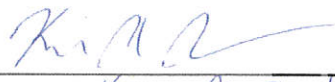
31. This Agreement may be executed in multiple counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same agreement.

**ENVIRONMENTAL PROTECTION DIVISION
NEW MEXICO ENVIRONMENT DEPARTMENT**

By: 
MICHAEL VONDERHEIDE
DIRECTOR

Date: 12/11/15

LAFARGE NORTH AMERICA, INC.

By: 
Print Name: Kevin M Jordan
Print Title: Vice President

Date: 12/8/15

STIPULATED FINAL COMPLIANCE ORDER

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



**RYAN FLYNN
SECRETARY
ENVIRONMENT DEPARTMENT**

Date: 12/19/18