

STATE OF NEW MEXICO
NEW MEXICO ENVIRONMENT DEPARTMENT

NEW MEXICO ENVIRONMENT DEPARTMENT,

Complainant,

v.

No. AQB HOM-26551-1001 (NOV)

HOME BUILDERS REDI-MIX, LLC

Respondent.

STIPULATED FINAL COMPLIANCE ORDER

This Stipulated Final Compliance Order ("Final Order") is agreed to by the New Mexico Environment ("Department") and the Respondent Home Builders Redi-Mix, LLC ("Respondent") to resolve alleged violations of the New Mexico Air Quality Control Act ("AQCA"), NMSA 1978, § 74-2-1 to 74-2-17; the Air Quality Control Regulations ("AQCR"), 20.2 NMAC; and Air Quality Permit Number GCP5-3599 ("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 Environmental Protection Division is an organizational unit of the Department. The Air Quality Bureau ("Bureau") is an organizational unit of the Division.

2. Respondent is a New Mexico limited liability corporation doing business in New Mexico at the Home Builders Redi-Mix plant ("Facility"). The Facility is a truck mix concrete batch plant located at 132 Calle Industrial in the city of Bernalillo, in Sandoval County, NM.

B. HISTORY AND ALLEGED VIOLATIONS

3. Section III.B.2 of the Permit states in part: "The Department considers a Facility registered and operating under this Permit to be in compliance with the following state regulations as those regulations existed on the date of issuance of this Permit: . . . b) 20.2.7 NMAC - Excess Emissions During Malfunctions. Startup, Shutdown, or Scheduled Maintenance . . ." 20.2.7.14 NMAC states in part: "The owner or operator of a source . . . shall establish and implement a plan to minimize emissions during routine or predictable startup, shutdown, and scheduled maintenance through work practice standards and good air pollution control practices. . . "

4. Section IV.A.2 of the Permit states: "The pressure and loading activity status shall be recorded by a CEMS or data-logger." Section IV.A.1. of the Permit states in part: "The registered Facility shall monitor and record the loading activity status of silos and trucks and the pressure (inches of water) across the Filter(s) using a differential pressure gauge: a. Each time a silo is being filled; b. Each time a concrete truck is being filled . . ." Section IV.A.3 of the Permit states in part: "The records shall confirm that the Filter(s) are being employed per subparagraph III.F.2.e and paragraph III.F.3. . . " Section IV.B.3.j of the Permit states: "The owner or operator shall collect and retain the following records: j. Copies of documentation that substantiates compliance with the requirement in subparagraph III.F.2.e." Section III.F.2.e of the Permit states in part: "The Facility's truck-loading point shall control PM emissions by implementing the following controls and operational procedures to comply with paragraph III.A.6. All such control devices shall be maintained in working order. The Facility shall . . . e. For truck mix Facilities, install and operate a commercially designed and manufactured negative-pressure canopy over the truck loading point. The canopy shall be designed-for and sized-to the permitted Facility and shall be operated such that it effectively controls truck-loading emissions during normal operations."

5. Section IV.B.3 of the Permit states in part: "The owner or operator shall collect and retain the following records . . . f. The quantity and frequency of water or surfactant application to haul roads . . ."

6. Section IV.D.4 of the Permit states: "The owner or operator shall conduct these tests within sixty (60) days of initial startup of the Facility." Section IV.D.9 of the Permit states: "Initial compliance tests on Filters shall demonstrate compliance with paragraph III.F.6, or shall establish an operating range in which there are no visible emissions per paragraph III.F.6. Results shall be furnished to the Department for use as a baseline data set during future compliance inspections as a comparison of Facility performance versus opacity." Permit Section III.F.6 states: "The Facility's silo(s) and Filter(s) shall not exhibit visible emissions for more than a total of five (5) minutes in any consecutive two (2) hour period. [40 CFR § 60.92] Compliance with this condition shall be determined in accordance with procedures in Reference Method 22 in 40 CFR § 60, Appendix A."

7. On September 1, 2010, the Bureau issued to the Respondent Notice of Violation HOM-26551-1001 ("NOV") alleging violation of the AQCA, the AQCR and the Permit. The alleged violations were 1) failure to have a Startup, Shutdown, Maintenance plan; 2) failure to monitor and keep records; 3) failure to record quantity and frequency of water or surfactant applied to haul roads; and 4) failure to conduct initial compliance test on facility silo and filters.

8. The NOV included a Corrective Action Verification ("CAV") requiring the Respondent to submit to the Bureau copies of monitoring records, documentation of initial compliance testing and actions taken to prevent recurrence of the alleged violations.

9. Between October 15, 2010 and November 15, 2010 the Bureau received the records, documentation and preventive actions taken as required by the CAV from the Respondent. The CAV was determined to be complete and satisfactory by the Bureau on November 29, 2010.

10. On December 13, 2011, the Bureau issued to the Respondent a proposal of a civil

penalty for the alleged violations.

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

II. COMPROMISE AND SETTLEMENT OF NOTICE OF VIOLATIONS

A. GENERAL

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

13. Respondent admits the Department has jurisdiction in this matter and consents 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 violations and good faith efforts to comply, the Parties agree that Respondent shall pay a civil penalty of \$21,840.00.

Payment shall be made in twelve installments, submitted on the following schedule:

Installment Payment Due	Installment Payment Amount
February 15, 2012	\$1,820.00
March 15, 2012	\$1,820.00
April 15, 2012	\$1,820.00
May 15, 2012	\$1,820.00
June 15, 2012	\$1,820.00
July 15, 2012	\$1,820.00
August 15, 2012	\$1,820.00

September 15, 2012	\$1,820.00
October 15, 2012	\$1,820.00
November 15, 2012	\$1,820.00
December 15, 2012	\$1,820.00
January 15 2013	\$1,820.00

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

New Mexico Environment Department
 Air Quality Bureau
 Attn: Compliance and Enforcement Section Chief
 1301 Siler Road, Building B
 Santa Fe, New Mexico 87507

16. If the Respondent fails to make timely and complete payment of the civil penalty by each date specified in Paragraph 14, the Respondent shall pay a stipulated penalty of \$50.00 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 \$50.00 per day in the event that the Department brings an action against the Respondent for failure to make timely or complete payment.

17. This Order is an enforceable order and shall be treated by the Parties as a judgment for the purposes of post-judgment collection in accordance with state law, and the State of New Mexico shall be deemed a judgment creditor for the purpose of collecting any unpaid amount of any penalties and interest.

III. OTHER TERMS AND CONDITIONS

A. RESERVATION OF RIGHTS AND DEFENSES

18. 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. 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

19. 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

20. 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

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

22. Except as otherwise provided in this Paragraph, the terms of this Final Order shall terminate when Respondent has fulfilled all requirements of this Final Order. The reservations of rights and defenses and the mutual release in Paragraphs 15 and 16 shall not terminate, and shall remain in effect as an agreement between the Parties.

E. INTEGRATION

23. 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

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

G. AUTHORITY OF RESPONDENT SIGNATORY

25. The person executing this Final Order on behalf of Respondent represents that he or she has the authority to execute this Final Order on behalf of Respondent.

AGREED TO BY:

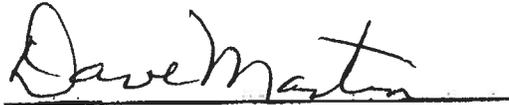
HOME BUILDERS REDI-MIX, LLC

David Martinez
Name: DAVID MARTINEZ
Title: OM

Date 1-26-12

STIPULATED FINAL COMPLIANCE ORDER

This Stipulated Final Compliance Order, agreed to by Respondent Home Builders Redi-Mix, LLC, is hereby incorporated herein and is **APPROVED AS A FINAL COMPLIANCE ORDER** issued pursuant to NMSA 1978, § 74-2-12.



Dave Martin
Cabinet Secretary
New Mexico Environment Department

Date 2-10-12