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May 30, 2008

OF COUNSEL:
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BY HAND DELIVERY

Joseph Kahn, Director
Division of Air Resource Management
Florida Department of Environmental Protection
2600 Blainstone Road, MS-5500
Tallahassee, Florida 32399-2400

RECEIVED

MAY 30 2008

DIVISION OF AIR
RESOURCES MANAGEMENT

Re: Draft Permit 0530010-030-AC
CEMEX Cement, Inc.
Brooksville Cement Plant, Facility ID No. 050010
BART Project

Dear Mr. Kahn:

As you know, our client CEMEX Cement, Inc. ("CEMEX") objects to the inclusion of Condition 3.b. of Section 3.A. in Draft Permit 0530010-030-AC. This Condition does not require CEMEX to install a SCR system; it only authorizes CEMEX to install the system if CEMEX elects to do so without further FDEP review or approval. CEMEX objects to this Condition for at least two reasons.

First, CEMEX has provided the Department with NOx emission data collected with a certified Continuous Emission Monitoring System (CEMS) on Kiln No. 1. The data represent the period July 1 – December 31, 2007 and demonstrate that CEMEX has continuously complied with the BART NOx emission limit of 1.2 pounds of NOx per ton of kiln preheater feed using the existing control system, and plant operating practices. As such, CEMEX has no need to retrofit and install a SCR system to augment or replace existing NOx controls on Kiln No. 1 to comply with the BART established NOx emission limit for Kiln No. 1. Furthermore, CEMEX has no intention of installing a SCR system in the foreseeable future, either to augment or replace the existing NOx control system, and there are no regulatory requirements that would cause CEMEX to consider the installation of such a system.

Second, in the Department's Technical Evaluation and Preliminary Determination (TEPD) for Draft Permit 0530010-030-AC, the Department discusses the potential multi-pollutant control benefits that may be realized with SCR on certain cement kilns as a reason for considering SCR or BART. On Page 10 of the TEPD, the Department states:

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Selective Catalytic Reduction (SCR) is an alternative technology to SNCR. While it has greater capital costs than SNCR, there are potential multi-pollutant benefits that can be realized at certain kilns. These benefits include destruction of Volatile Organic Compounds (VOC) and Dioxin/Furan, lower ammonia (NH₃) emissions, and ultimately emissions of less ozone and PM precursors. SCR can also convert mercury (Hg) to more collectable forms.

FDEP has repeatedly used this BART permitting process to address the supposed impacts of SCR on these pollutants. However, none of the other pollutants referenced in the multi-pollutant control consideration in the above referenced TEPD citation (Volatile Organic Compounds, Dioxins/Furans, ammonia, ozone and PM precursors and mercury) are pollutants regulated by BART. In fact, elsewhere in the TEPD (Page 5) the Department states:

In accordance with Appendix Y in 40CFR51, the affected visibility impairing [BART] pollutants include the following: nitrogen oxides (NO_x), particulate matter (PM), and sulfur dioxide (SO₂).

Furthermore, the potential multi-pollutant "benefits" were not quantified and only a simplistic table (Table 5) of expected pollutant impacts were provided. Clearly, if this permitted allowance for SCR is considered in future BACT analyses, it should be known that BACT analyses was NOT performed in this permitting exercise and that the FDEP review and inclusion of SCR as an option has NOT been through a BACT analyses, in consideration of BART pollutants and/or other pollutants. If this permit condition is reviewed in future BACT analyses this document and related previous BART-permitting correspondence stands to refute the validity of any justification of SCR as a viable BACT option. While BART analyses is modeled in a similar fashion of BACT analyses, this BART analyses of SCR is not comparable nor representative of BACT. The fact that the Department has given consideration to the potential control of non-BART regulated pollutants when evaluating SCR as BART is clearly not relevant nor appropriate to this permit. Because of this, the weight of any potential benefit of multi-pollutant control should not be a factor or a consideration when developing BART for NO_x.

The FDEP was required to consider in establishing BART for NO_x the degree of improvement in visibility which might be anticipated as a result of using SCR. Based on the control of BART regulated pollutants affected by SCR (NO_x), no visibility improvement would be realized as the existing control system is already capable of achieving the BART established NO_x emission limit.

Thus, CEMEX objects to the inclusion of Condition 3.b. in Section 3.A. of Permit 0530010-030-AC due to the following:

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- (1) the fact that Condition 3.b. of Section 3.A. does not require any action on the part of CEMEX, the fact that CEMEX is currently meeting the BART established NOx emission limit with the existing NOx control system, and the fact that CEMEX has no intention of installing a SCR system in the foreseeable future and is under no regulatory requirement to consider the installation of such a system;
- (2) the fact that the multi-pollutant control consideration given to SCR by the Department addresses pollutants that are not regulated by BART; and
- (3) the fact that the Department has failed to conduct any proper analysis for the inclusion of SCR in the permit, including, but not limited to, a proper cost-benefit analysis.

Even though CEMEX objects to the inclusion of Condition 3.b. authorizing the use of SCR in Permit 0530010-030-AC, CEMEX has determined that it is in its best interests to conclude the above-referenced litigation in order to conserve valuable time and costly resources.

We hope that the remaining issues presented for litigation may be resolved by the attached Settlement Stipulation to be filed with the Division of Administrative Hearings. Please let us know if you have any questions or need any further information.

Sincerely,



Segundo J. Fernandez
Timothy P. Atkinson

Enclosure

c: CEMEX Cement, Inc.
Trina L. Vielhauer, Chief, Bureau of Air Regulation, FDEP
Ronda Moore, Assistant General Counsel, FDEP
Division of Administrative Hearings