



Florida Department of Environmental Protection

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Tallahassee, Florida 32399-2400

Rick Scott
Governor

Carlos Lopez-Cantera
Lt. Governor

Noah Valenstein
Secretary

BEFORE THE STATE OF FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION

In Re:

Petition for Waiver
CEMEX Construction Materials Florida, LLC
16301 Ponce de Leon Boulevard
Brooksville, Florida 34614-0849

Hernando County
AIRS ID No. 0530010
OGC File No. 17-0886

Mr. Lawrence Sellers
Holland & Knight, LLP
Counsel for CEMEX Construction Materials Florida, LLC

FINAL ORDER GRANTING WAIVER

The Florida Department of Environmental Protection (Department) hereby grants to CEMEX Construction Materials Florida, LLC (“CEMEX” or “Petitioner”), a waiver order issued pursuant to the authority of Section 120.542, Florida Statutes (F.S.), from the maximum renewal period for Air Operation Permit requirements of sub-subparagraph 62-210.300(2)(a)3.c., Florida Administrative Code (F.A.C.), for the existing CEMEX Brooksville North Cement Plant in Hernando County, Florida, in accordance with the following Findings of Fact and Conclusions of Law, and under the conditions specified in the Determination herein.

FINDINGS OF FACT

1. On July 6, 2017, the Department received CEMEX’s Petition for Waiver (Petition), pursuant to Section 120.542, F.S., and Chapter 28-104, F.A.C. The Petition requested a waiver from the requirements of sub-subparagraph 62-210.300(2)(a)3.c., F.A.C. (maximum renewal period for Air Operation Permit requirements).

2. Section 120.542(2), F.S., permits the granting of a waiver for the following reasons:

Variations and waivers shall be granted when the person subject to the rule demonstrates that the purpose of the underlying statute will be or has been

achieved by other means by the person and when application of a rule would create a substantial hardship or would violate principles of fairness. For purposes of this section, “substantial hardship” means a demonstrated economic, technological, legal, or other type of hardship to the person requesting the variance or waiver. For purposes of this section, “principles of fairness” are violated when the literal application of a rule affects a particular person in a manner significantly different from the way it affects other similarly situated persons who are subject to the rule.

3. A Notice of Receipt of Petition for Waiver was published in the Florida Administrative Register (FAR) on July 14, 2017, in Volume 43, Number 136, page 3129. No comments were received.

4. Petitioner owns and operates the CEMEX Brooksville North Cement Plant (Facility) located at 16301 Ponce de Leon Boulevard, Brooksville, Florida, in Hernando County, which is currently permitted under Florida Operating Permit No. 0530010-045-AV.

5. The Facility produces portland cement and masonry cement and maintains two Polysuis GEPOL preheater kilns, two clinker coolers, and numerous other equipment related to the production of cement.

6. In 2005 and 2006, the Florida market consumed more than 12 million short tons (MMST) per year of portland cement. Due to an economic downturn affecting the construction industry, the state’s consumption subsequently fell to less than 50% of that amount: 6.5 MMST in 2008 and 4.3 MMST in 2009.

7. On November 25, 2008, the Department renewed the Facility’s Title V Air Operating Permit (Permit No. 0530010-015-AV).

8. On December 12, 2008, the Facility was forced to shut down because of the economic downturn. At the time that the Facility shut down, the Facility was in compliance with all applicable rules and emission limits. Ongoing economic and market conditions affecting demand for portland cement have made it financially infeasible to re-start the Facility in the intervening years since the Facility shut down.

9. On April 12, 2013, Petitioner applied to the Department for renewal of the Facility’s Title V Air Operating Permit (Permit No. 0530010-15-AV). On November 20, 2013, the Department renewed the Facility’s Title V Air Operating Permit (Permit No. 0530010-045-AV).

10. Sub-subparagraph 62-210.300(2)(a)3.c., F.A.C., states the following:

Except as provided in sub-subparagraph 62-210.300(2)(a)3.d., F.A.C., the operation permit for an emissions unit which has been shut down for five

years or more prior to the expiration date of the current operation permit shall be renewed for a maximum period not to exceed ten years from the date of shutdown, even if the emissions unit is not maintained in operational condition, provided the conditions given in sub-subparagraph 62-210.300(2)(a)3.b., F.A.C., are met and the owner or operator demonstrates to the Department that failure to renew the permit would constitute a hardship, which may include economic hardship.

11. Section 403.061(14), F.S., authorizes the Department to establish through rulemaking a permit system whereby “a permit may be required for the operation, construction, or expansion of any installation that may be a source of air or water pollution and provide for the issuance and revocation of such permits and for the posting of an appropriate bond to operate.”

12. Section 403.087(1), F.S., provides “[a] stationary installation that is reasonably expected to be a source of air or water pollution must not be operated, maintained, constructed, expanded, or modified without an appropriate and currently valid permit issued by the department, unless exempted by department rule...” and also establishes the permit term of 5 years: “...nor may an operation permit issued after July 1, 1992, for a major source of air pollution have a fixed term of more than 5 years.”

13. Section 403.087(2), F.S., provides “The department shall adopt, and may amend or repeal, rules for the issuance, denial, modification, and revocation of permits under this section.”

14. Section 403.087(5), F.S., provides “The department shall issue permits to construct, operate, maintain, expand, or modify an installation which may reasonably be expected to be a source of pollution only when it determines that the installation is provided or equipped with pollution control facilities that will abate or prevent pollution to the degree that will comply with the standards or rules adopted by the department [...]”

15. The Petitioner has provided the following information in support of its waiver petition.

- (a) Prior to the recession (beginning in December 2007), the United states, including Florida, overall had insufficient capacity to meet demand, and were importing cement to supplement domestic production. In 2006, Florida possessed 7.4 MMST of annual cement capacity, just over half of its 13.2 MMST of cement demand, and imported 6.7 MMST, slightly more than the difference, to supplement domestic production. The United States imported 39 MMST that same year, and Petitioner was also importing into Florida and other states to supplement its domestic production.

- (b) Two years after the recession began (2007), in 2009, United States demand had dropped to just over half of its peak in 2005/2006. The United States has recovered less than half of the volume lost so far.
- (c) Demand in the cement industry is still recovering and it is not expected to reach capacity within the Portland Cement Association's forecast period that ends in 2021.

16. Permit No 0530010-045-AV is scheduled to expire on November 19, 2018. Petitioner seeks renewal of its Title V Air Operation Permit to allow Petitioner to maintain its existing source status without needing to reactivate any equipment unnecessarily.

17. Sub-subparagraph 62-210.300(2)(a)3.c., F.A.C., states that an Air Operation Permit for an emissions unit that has been shut down shall be renewed for a maximum period not to exceed ten years from the date of shutdown.

18. December 12, 2018 will be ten years from the date that Petitioner shut down the two cement kilns at the Facility. Thus, Petitioner would not be permitted to operate the Facility pursuant to sub-subparagraph 62-210.300(2)(a)3.c., F.A.C., after December 12, 2018. A waiver of sub-subparagraph 62-210.300(2)(a)3.c., F.A.C., would allow the Facility to operate after December 12, 2018, pursuant to the Facility's renewed Title V Air Operation Permit.

19. If Petitioner were required to make its kilns operational prior to December 12, 2018, solely for the purpose of enabling Petitioner to renew the Facility's operating permit, it would cause Petitioner substantial economic hardship. Petitioner projects that it would cost an estimated \$35 million to operate one kiln and \$55 million to operate both kilns to produce product for which currently there is insufficient market demand. Because it is not yet financially feasible for Petitioner to reopen the Facility, it would be a substantial economic hardship to require Petitioner to restart its kilns prior to an increase in the demand for portland cement in the Florida market that would justify operating these kilns.

20. If Petitioner were to lose its ability to apply for a renewal permit, and the Facility's current operating permit expired, Petitioner's subsequent inability to operate the kilns as existing emissions units would impose a substantial hardship. Constructing a similar plant, assuming an investment of \$400 per annual ton of capacity, would require a total investment of approximately \$600 million. Petitioner states that its inability to restart the Facility would cost Petitioner hundreds of millions of dollars.

21. Petitioner has stated that it meets the conditions applicable to electric utility generating units subject to sub-subparagraph 62-210.300(2)(a)3.b., F.A.C., that, if met, allow for indefinite renewals of operation permits pursuant to sub-subparagraph 62-210.300(2)(a)3.d., F.A.C.:

- (I) The owner or operator of the emissions unit demonstrates to the Department that the emissions unit may need to be reactivated and used, or that it is the owner's or operator's intent to apply to the Department for a permit to construct a new emissions unit at the facility before the end of the extension period; and
- (II) The owner or operator of the emissions unit agrees to and is legally prohibited from providing the allowable emission permitted by the renewed permit as an emissions offset to any other person under Rule 62-212.500, F.A.C.; and
- (III) The emissions unit was operating in compliance with all applicable rules as of the time the source was shut down.

CONCLUSIONS OF LAW

1. The Department has jurisdiction to grant this waiver pursuant to Section 120.542, F.S.

2. Subsection 120.542(2), F.S., permits the granting of a waiver for any one of the following reasons:

Variances and waivers shall be granted when the person subject to the rule demonstrates that the purpose of the underlying statute will be or has been achieved by other means by the person and when application of a rule would create a substantial hardship or would violate principles of fairness. For purposes of this section, "substantial hardship" means a demonstrated economic, technological, legal, or other type of hardship to the person requesting the variance or waiver. For purposes of this section, "principles of fairness" are violated when the literal application of a rule affects a particular person in a manner significantly different from the way it affects other similarly situated persons who are subject to the rule.

3. Section 120.542(1), F.S. provides that "[a]n agency may limit the duration of any grant of a variance or waiver or otherwise impose conditions on the grant only to the extent necessary for the purpose of the underlying statute to be achieved."

4. Subsection 28-104.002(2), F.A.C., provides that a petitioner for a waiver must include:

- (a) The caption shall read: Petition for (Variance from) or (Waiver of) Rule (Citation)
- (b) The name, address, any e-mail address, telephone number, and any facsimile number of the petitioner, if the party is not represented by

- an attorney or a qualified representative;
- (c) The name, address, e-mail address, telephone number, and any facsimile number of the attorney or qualified representative of the petitioner, if any;
- (d) The applicable rule or portion of the rule;
- (e) The citation to the statute the rule is implementing;
- (f) The type of action requested;
- (g) The specific facts that demonstrate a substantial hardship or a violation of principles of fairness that would justify a waiver or variance for the petitioner;
- (h) The reason why the variance or the waiver requested would serve the purposes of the underlying statute; and
- (i) A statement whether the variance or waiver is permanent or temporary. If the variance or waiver is temporary, the petition shall include the dates indicating the duration of the requested variance or waiver.

5. Petitioner has provided the information required by rule and sufficient information to enable the Department to evaluate the merits of the Petition for Waiver.

6. Petitioner has demonstrated to the satisfaction of the Department that compliance with sub-subparagraph 62-210.300(2)(a)3.c., F.A.C. (maximum renewal period for Air Operation Permit requirements) will cause a substantial hardship due to the economics related to restarting the Facility for the sole purpose of maintaining eligibility to renew the Facility's Title V Air Operating Permit.

7. Petitioner has demonstrated that it has met the requirements of sub-subparagraphs 62-210.300(2)(a)3.b.(I) and (III), F.A.C., as Petitioner has demonstrated to the Department that the Facility may need to be reactivated in the future in order to meet the Florida market demand for portland cement and that the Facility was in compliance with all applicable rules and emission limits as of the time that the Facility shut down.

8. The substantial economic hardships that result from an application of sub-subparagraph 62-210.300(2)(a)3.c., F.A.C., on the Facility satisfy the requirements of Subsection 120.542(2), F.S.

DETERMINATION

Pursuant to its authority under Section 120.542, F.S., the Department hereby grants to Petitioner a one-time waiver from the Air Operation Permit renewal period requirements of sub-subparagraph 62-210.300(2)(a)3.c., F.A.C., which states that an emissions unit which has been shut down for five years or more prior to the expiration date of the current operation permit shall be renewed for a maximum period not to exceed ten years from the date of shutdown. Pursuant to this waiver, the CEMEX Brooksville North Cement Plant may apply for one five-year renewal of its Title V Air Operating

Permit prior to the scheduled expiration of that Title V Air Operating Permit on November 19, 2018, notwithstanding the fact that the Facility has not operated since December 12, 2008. Any such renewed Title V Air Operating Permit shall authorize the Facility to restart at any time during the five-year term of the renewed permit. This waiver is subject to the following conditions:

1. This waiver becomes effective on September 15, 2017.
2. This waiver shall not apply to any other new or existing state or federal rules.
3. Petitioner agrees to and is legally prohibited from providing the allowable emissions permitted by the renewed permit as an emissions offset to any other entity or person under Rule 62-212.500, F.A.C.
4. Petitioner agrees that any renewed Title V Air Operating Permit for the CEMEX Brooksville North Cement Plant will incorporate the following requirement pursuant to subparagraph 62-210.300(2)(a)4., F.A.C.:

In the case of an emissions unit permitted pursuant to sub-subparagraphs 62-210.300(2)(a)3.b., c., and d., F.A.C., include reasonable notification and compliance testing requirements for reactivation of such emissions unit and provide that the owner or operator demonstrate to the Department prior to reactivation that such reactivation would not constitute any modification or reconstruction pursuant to this chapter or any federal regulation adopted by reference at Rule 62-204.800, F.A.C.

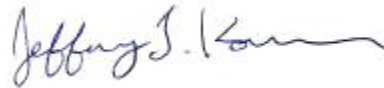
5. Granting the waiver is contingent upon the facility's ability to meet all terms and conditions of this Order.
6. Petitioner must apply for renewal of the Facility's Title V Air Operating Permit prior to the date of expiration of the Facility's existing Title V Air Operating Permit (November 19, 2018)
7. The Facility's Title V Air Operating Permit shall be renewed for a maximum period of five years from the date of issuance of that renewal permit.
8. This waiver does not authorize any further renewals of the Facility's Title V Air Operating Permit.

RIGHT TO APPEAL

A party to this order has the right to seek judicial review of it under Section 120.68, F.S., by filing a notice of appeal under Rule 9.110, Florida Rules of Appellate Procedure, with the clerk of the Department in the Office of General Counsel, Mail Station 35, 3900

Commonwealth Boulevard, Tallahassee, Florida 32399-3000, and by filing a copy of the notice of appeal accompanied by the applicable filing fees with the appropriate district court of appeal. The notice must be filed within thirty (30) days after this order is filed with the clerk of the Department.

DONE AND ORDERED this 15th day of September 2017 in Tallahassee, Florida.



Jeffery Koerner, Director
Division of Air Resource Management
Department of Environmental Protection
2600 Blair Stone Road,
Mail Station 5500
Tallahassee, Florida 32399-2400
Telephone: (850)717-9000

CERTIFICATE OF SERVICE

The undersigned duly designated deputy agency clerk hereby certifies that this ORDER GRANTING WAIVER was sent by electronic mail, with received receipt requested before the close of business on September 15, 2017 to the person listed below:

Lawrence Sellers, Counsel for CEMEX Construction Materials Florida, LLC

FILING AND ACKNOWLEDGMENT:

The undersigned duly designated Deputy Agency Clerk hereby certifies that this Written Notice of Final Order Granting Waiver was sent by electronic mail, with received receipt requested before the close of business on the date indicated below to the following persons.

Lawrence E. Sellers, Jr., Esq. (Larry.Sellers@hklaw.com)
Terri Long, DEP Division of Air Resource Management (Terri.Long@dep.state.fl.us)
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FILING AND ACKNOWLEDGMENT FILED, on this date, pursuant to Section 120.52, F.S., with the designated Agency Clerk, receipt of which is hereby acknowledged.

Clerk