

1 it is possible for the plant's mercury emissions to be controlled to a significant degree, although the
2 parties recognize that the performance of the pilot system may or may not be reflective of the
3 performance of a full-scale control system.

4 7. This Mutual Agreement and Order (Order) is being entered into voluntarily by Ash
5 Grove and the Department so as to memorialize Ash Grove's commitment and to develop
6 enforceable milestones that will enable the implementation of mercury controls in an expeditious
7 manner. A draft of this Order was available for public review and comment from February 15,
8 2008 to March 28, 2008. The comments received were considered in the final development of this
9 Order.

10 8. NOW THEREFORE, it is stipulated and agreed that the Environmental Quality
11 Commission shall issue a Final Order:

12 A. Monitoring and Reporting. Within 18 months of the Department's approval of the
13 draft Plan & Schedule as provided in Paragraph 8.B.II. below, Ash Grove must begin
14 continuously sampled composite monitoring of its mercury emissions through use of a
15 mercury sorbent trap monitoring system. The traps will be continuously in place and
16 evaluated on a technically reasonable schedule not to exceed one month. Monitoring will be
17 achieved by determining the appropriate sampling period and simultaneously changing the
18 sorbent tubes in the monitor. Ash Grove will use a sorbent trap monitoring system to
19 determine the average concentration (*e.g.*, ug/dscm) at the inlet of the mercury pollution
20 control device (after it is installed) and at the stack. Actual mass mercury stack emissions and
21 actual mass mercury entering the mercury control device will be calculated using a method
22 approved by the Department. The capture efficiency of the mercury control device will be
23 determined by the absolute difference of the mass of the mercury entering the mercury control
24 device and the mass of the mercury emitted in the stack divided by the mass of the mercury
25 entering the mercury control device. Ash Grove agrees to (Ash Grove is entering into this
26 Mutual Agreement and Order voluntarily; once the Order is executed, all "agreements"
27 contained in the Order are requirements and are fully enforceable) submit to the Department

1 by the 30th day of each month: (i) the average for each month, (ii) the average for the
2 preceding month, and (iii) the rolling average for the preceding 12 months.

3 B. Permitting, Construction and Implementation.

- 4 I. Within 60 days from the execution of this MAO, Ash Grove agrees to
5 submit to the Department an approvable draft Plan & Schedule, including
6 but not limited to a construction schedule and preliminary specifications, for
7 the construction and implementation of its mercury emission control
8 facilities and associated systems (hereinafter Facilities) believed practicably
9 capable of attaining the highest emission reductions described in Paragraphs
10 8.C below. The draft Plan & Schedule must provide for obtaining all
11 necessary approvals and permits, and completing construction of the
12 Facilities within 24 months from the execution of this MAO.
- 13 II. Within 90 days of approval of the draft Plan & Schedule, Ash Grove agrees
14 to submit to the Department: (i) a Notice of Construction for the
15 construction of the Facilities described in the Plan & Schedule. The
16 Department will expedite the processing of this Notice of Construction
17 application and any other permit applications or determination requests
18 related to the Project so as to minimize the likelihood of delay to Ash
19 Grove's construction and/or operation schedule.
- 20 III. Upon approval of the Notice of Construction, Ash Grove agrees to begin
21 construction according to the Plan & Schedule and notify the Department
22 that construction has begun.
- 23 IV. If a significant Title V permit modification (as that term is defined in OAR
24 340-218-0180) is necessary in order to operate the Facilities, then Ash
25 Grove will submit such an application at least 6 months prior to the
26 estimated construction completion date. The Department will expedite
27 processing of the application so as to minimize the likelihood of delay to

1 Ash Grove's compliance with the Plan & Schedule. If a significant permit
2 modification is required in order to operate the Facilities, then Ash Grove
3 and the Department may extend the compliance deadlines in this Order as
4 necessary under Paragraph 10 of this MAO.

5 V. If compliance with any regulatory requirement would materially delay
6 implementation of the schedule anticipated by this MAO, then Ash Grove
7 and the Department will extend the MAO compliance deadlines as necessary
8 under Paragraph 10 of this MAO. If compliance with regulatory
9 requirements, other than those reasonably anticipated by this MAO, would
10 significantly impact the cost of installing or operating the Facilities, then
11 Ash Grove may terminate this MAO by demonstrating to the Department's
12 reasonable satisfaction that the unanticipated regulatory requirements would
13 create a significant cost impact. For purposes of this paragraph, a
14 "significant cost impact" would be an increase of more than \$4 million in
15 the Facilities' installation/shakedown cost above the \$20 million projected
16 Facilities' installation/shakedown cost or an increase of more than \$500,000
17 per year in the Facilities' operating cost above the projected \$1 million/year
18 annual Facilities' operating cost. All costs shall be evaluated in 2008
19 dollars.

20 VI. Within 24 months of the execution of this MAO, Ash Grove agrees to finish
21 construction of the Facilities and notify the Department in writing that it has
22 finished construction. If the Department takes longer than 30 days to
23 approve the Plan & Schedule or 60 days to approve the Notice of
24 Construction, then this deadline will be extended by an amount of time equal
25 to the additional approval period.
26
27

1 VII. Within 18 months of completing construction, Ash Grove agrees to
2 complete "shakeout" testing and be operating so as to meet the emission
3 limitations as described in Paragraph 8.C.

4 C. Emission goals and limitations.

5 I. Shakeout emission limitations: During the shakeout period identified in
6 Paragraph 8.B.VI, Ash Grove shall, to the extent practicable, maintain and
7 operate the mercury controls in a manner consistent with good air pollution
8 control practice for minimizing emissions. Ash Grove shall maintain a log
9 of those times when the mercury controls are not operating and identify the
10 raw mill operational status during those down times. Ash Grove shall, to the
11 extent practicable, operate the mercury controls during all times that the raw
12 mill is not operational. Ash Grove shall make the logs available to the
13 Department during reasonable times. Ash Grove and the Department
14 acknowledge that during the shakeout period there may be times when the
15 mercury controls are taken down for reconfiguration or other work. During
16 the shakeout period Ash Grove agrees to take all reasonable steps, including
17 but not limited to increasing the amount of carbon and/or changing the form
18 of carbon, to meet a 75% emission reduction, calculated on a rolling 12-
19 month average. If Ash Grove fails to achieve at least 75% percent mercury
20 reduction, calculated on a rolling 12-month average, it must notify the
21 Department, in writing, by the end of the shakeout period, of: (i) the failure,
22 (ii) the steps it took to avoid failure, and (iii) the alternative maximum
23 percent mercury capture it is able to achieve. During the shakeout period,
24 Ash Grove agrees to take all reasonable steps to achieve the goal of 85%
25 emission reductions.

26 II. Post-shakeout emission goal:

- 1 a. The 85% goal: At all times after completion of shakeout as described
2 in Paragraph 8.B.VI, Ash Grove agrees to endeavor to meet a goal of
3 85% reduction in mercury emissions on a rolling 12-month average
4 basis, calculated as described in Paragraph 8.A. If Ash Grove's
5 emissions are below 85% reduction for the rolling 12-month average
6 for any successive four month periods occurring wholly after the
7 shakeout period, Ash Grove agrees to take the following steps:
- 8 i. Within 45 days of the last day of the last of the successive four
9 months in which Ash Grove did not achieve the 85% reduction,
10 Ash Grove agrees to submit an Action Plan to the Department
11 for approval. The Action Plan must evaluate reasonable
12 alternative methods to reduce the mercury emissions, including
13 identifying the optimal carbon injection rates, and propose a plan
14 and implementation schedule to achieve the 85% reduction; and
- 15 ii. Upon the Department's approval of the Action Plan, Ash Grove
16 agrees to implement the corrective actions identified in the
17 Action Plan according to the schedule in the Action Plan.
- 18 iii. If the Department agrees in writing that Ash Grove has
19 exhausted all reasonable alternatives for meeting the 85% goal,
20 Ash Grove need not submit further Action Plans.
- 21 iv. Ash Grove's failure to achieve the 85% reduction will not be
22 considered a violation of this Order.

23 III. Post-shakeout emission limitations:

- 24 a. The minimum emission limitation: At all times after completion of
25 shakeout as described in Paragraph 8.B.VI:
- 26 i. If Ash Grove notifies the Department, pursuant to 8.C.I, that it is
27 unable to reliably meet a 75% overall control efficiency across

1 the mercury control device and provides an alternative maximum
2 mercury reduction percentage; then Ash Grove must meet at
3 least that alternative maximum mercury reduction unless or until
4 the Department reviews the notice and either determines the 75%
5 control efficiency is reliably achievable or modifies this MAO
6 pursuant to Paragraphs 10 or 11; or

- 7 ii. If Ash Grove does not submit the notification referred to in
8 Paragraphs 8.C.I. and 8.C.III.a.i above to the Department, then
9 Ash Grove must meet at least a 75% overall control efficiency
10 across the mercury control device as calculated in Paragraph 8.A
11 measured on a rolling 12-month average basis.

12 IV. Emissions During Unrelated Testing:

- 13 a. The Department recognizes that the Facilities are not being installed
14 for the purpose of dioxin and/or furan control. If Ash Grove
15 bypasses the Facilities as specified in an approved compliance
16 testing protocol during the periodic dioxin/furan performance test
17 (required every 30 months), then mercury emitted while conducting
18 the dioxin/furan performance test need not be counted in
19 determining compliance with this Order. If Ash Grove chooses to
20 not count mercury emitted during performance testing then it shall
21 take reasonable measures to minimize the uncontrolled emissions.

22 D. Enforceability. Ash Grove must, upon receipt of a written Penalty Demand Notice from
23 the Department, pay the following civil penalties:

- 24 i. \$250 for each day of each violation of this Order other than violations of the
25 75% reduction requirement; and
26 ii. \$1000 for each violation of the 75% control efficiency requirement.

1 Any requirement of Paragraph 8 of this MAO that is contained in or contradicted by
2 Ash Grove's Oregon Title V Operating Permit or Oregon rules or laws is superceded by
3 the Oregon Title V Operating Permit or Oregon rules or laws and is not enforceable
4 under this Paragraph.

5 9. If any event occurs that is beyond Ash Grove's reasonable control and that causes or
6 may cause a delay or deviation in performance of the requirements of this Order, Ash Grove must
7 immediately notify the Department verbally of the cause of delay or deviation and its anticipated
8 duration, the measures that have been or will be taken to prevent or minimize the delay or
9 deviation, and the timetable by which Ash Grove proposes to carry out such measures. Ash
10 Grove must confirm this information in writing within five (5) working days of the onset of the
11 event. It is Ash Grove's responsibility in the written notification to demonstrate to the
12 Department's satisfaction that the delay or deviation has been or will be caused by circumstances
13 beyond the control and despite due diligence of Ash Grove. If Ash Grove so demonstrates, the
14 Department will extend times of performance of related activities under this Order as
15 appropriate. Circumstances or events beyond Ash Grove's control include, but are not limited to,
16 acts of nature, unforeseen strikes, work stoppages, fires, explosion, riot, or sabotage. Increased
17 cost of performance or consultant's failure to provide timely reports will not be considered
18 circumstances beyond Ash Grove's control. However, equipment, material or expertise shortages
19 due to no act or omission of Ash Grove's will be considered circumstances beyond Ash Grove's
20 control.

21 10. The terms of this Order may be amended by the mutual written agreement of the
22 Department and Ash Grove.

23 11. The Department may amend the compliance schedule and conditions in this Order upon
24 finding that such modification is necessary because of changed circumstances, or in order to protect
25 public health and the environment. The Department shall provide Ash Grove a minimum of thirty
26 (30) days written notice prior to issuing an Amended Order modifying any compliance schedules or
27

1 conditions. If Ash Grove contests the Amended Order, the applicable procedures for conduct of
2 contested cases in such matters will apply.

3 12. This Order shall be binding on the parties and their respective successors, agents, and
4 assigns. The undersigned representative of each party certifies that he or she is fully authorized to
5 execute and bind such party to this Order. No change in ownership or corporate or partnership
6 status relating to the facility shall in any way alter Ash Grove's obligations under this Order, unless
7 otherwise approved in writing by DEQ.

8 13. All reports, notices and other communications required under or relating to this Order
9 should be directed to Linda Hayes-Gorman, 300 Reed Market Road, Bend, Oregon, 97702-2237.
10 The contact person for Ash Grove shall be Terry Kerby, P.O. Box 287, Durkee, OR 97905-0287.

11 14. Ash Grove acknowledges that it has actual notice of the contents and requirements of
12 the Order and that failure to fulfill any of the requirements hereof would constitute a violation of
13 this Order and subject Ash Grove to payment of civil penalties pursuant to Paragraph 8.D above.

14 15. Any stipulated civil penalty imposed pursuant to Paragraph 8.D shall be due upon
15 written demand. Stipulated civil penalties shall be paid by check or money order made payable to
16 the "Oregon State Treasurer" and sent to: Business Office, Department of Environmental Quality,
17 811 S.W. Sixth Avenue, Portland, Oregon 97204. Within 21 days of receipt of a "Demand for
18 Payment of Stipulated Civil Penalty" Notice from the Department, Ash Grove may request a
19 hearing to contest the Demand Notice. At any such hearing, the issue shall be limited to Ash
20 Grove's compliance or non-compliance with this Order. The amount of each stipulated civil
21 penalty for each violation and/or day of violation is established in advance by this Order and shall
22 not be a contestable issue.

23 16. Providing Ash Grove has paid in full all stipulated civil penalties pursuant to Paragraph
24 15 above, this Order shall terminate at the time that Ash Grove obtains the Oregon Title V

25 ///

26 ///

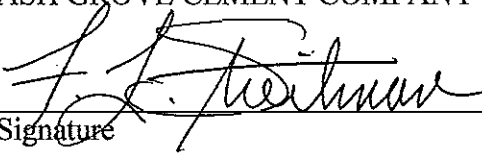
27 ///

1 Operating Permit modification referred to in Paragraph 8.B.I and demonstrates compliance with
2 the rolling annual average identified in Para. 8.C.III.

3 ASH GROVE CEMENT COMPANY

4
5 July 11, 2008

6 Date

7 
Signature

8 F. L. Streitman

9 Name (print)

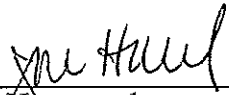
10 Vice President Manufacturing Services and
Environmental Affairs

11 Title (print)

12 DEPARTMENT OF ENVIRONMENTAL QUALITY

13 7-17-08

14 Date

15 
16 Joni Hammond
17 Interim Deputy Director

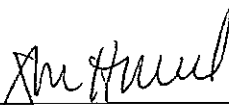
18 FINAL ORDER

19 IT IS SO ORDERED:

20 ENVIRONMENTAL QUALITY COMMISSION

21 7-17-08

22 Date

23 
24 Joni Hammond, Interim Deputy Director
25 Pursuant to OAR 340-011-0136(1)