

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION IX
SAN FRANCISCO, CALIFORNIA

FILED

2009 FEB -5 PM 12: 00

U.S. ENVIRONMENTAL PROTECTION AGENCY
REGIONAL HEARING CLERK

IN RE:)
)
CalPortland Company) Docket No. CAA-09-2008-0034
(f/k/a California Portland Cement Company))
)
)
Colton, California) CONSENT AGREEMENT
) AND FINAL ORDER
)
RESPONDENT)
_____)

CONSENT AGREEMENT

I. AUTHORITIES AND PARTIES

A. Complainant, the Director of the Air Division, United States Environmental Protection Agency, Region IX, ("EPA") and Respondent, CalPortland Company (f/k/a/ California Portland Cement Company) ("CalPortland"), seek to settle this case initiated against Respondent under the Clean Air Act ("CAA"), as amended, 42 U.S.C. §§7401-7671q, and consent to the entry of this Consent Agreement and Final Order ("CAFO").

B. EPA initiated this civil administrative proceeding for the assessment of a civil penalty under the CAA pursuant to Section 113(d) of the CAA by issuing a Complaint and Notice of Opportunity for Hearing ("Complaint") against Respondent on September 24, 2008, in accordance with the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits at 40 C.F.R. Part 22.

C. The Complaint alleged that Respondent violated the CAA at its portland cement manufacturing plant located in Colton, California, by failing to submit excess emissions and continuous monitoring system performance reports to EPA as required by the National Emissions Standards for Hazardous Air Pollutants (“NESHAP”) General Provisions, 40 C.F.R. Part 63 Subpart A, and the NESHAP for the Portland Cement Manufacturing Industry , 40 C.F.R. Part 63 Subpart LLL.

D. EPA and Respondent have agreed to resolve this civil administrative proceeding by executing this CAFO.

II. RESPONDENT’S ADMISSIONS

A. For purposes of this proceeding, Respondent admits that EPA has jurisdiction over the subject matter of this CAFO and over Respondent.

B. Respondent neither admits nor denies the factual allegations, findings, or conclusions of law contained in the Complaint.

C. Respondent waives its right to request an adjudicatory hearing on any issue under the CAA addressed in the Complaint and waives its right to a judicial or an administrative hearing on any issue of law or fact set forth in the Complaint or this CAFO.

D. Respondent consents to any and all conditions specified in this CAFO and to the assessment of the civil administrative penalties under Section III of this CAFO.

III. CIVIL ADMINISTRATIVE PENALTY

A. Respondent agrees to the assessment of a penalty in the amount of SEVENTY THOUSAND DOLLARS (\$70,000.00) as final settlement of the civil claims against

Respondent arising under the CAA, as alleged in the Complaint.

B. Respondent shall pay the assessed penalty no later than thirty (30) days after the effective date of the CAFO.

C. The assessed penalty shall be paid by **certified or cashier's check**, payable to "Treasurer, United States of America," and mailed to:

**U.S. Environmental Protection Agency, Fines and Penalties
Cincinnati Finance Center
P.O. Box 979078
St. Louis, MO 63197-9000**

A transmittal letter indicating Respondent's name, complete address, and this case docket number must accompany the payment. When payment is mailed to the above address,

Respondent shall also send a copy of the check and transmittal letter to:

Regional Hearing Clerk (ORC-1)
Office of Regional Counsel
U.S. Environmental Protection Agency, Region 9
75 Hawthorne Street
San Francisco, California 94105

Chief, Air Enforcement Office (AIR-5)
Air Division
U.S. Environmental Protection Agency, Region 9
75 Hawthorne Street
San Francisco, California 94105

AND

Ivan Lieben
Assistant Regional Counsel (ORC-2)
U.S. Environmental Protection Agency, Region 9
75 Hawthorne Street
San Francisco, California 94105

Payment of the above civil administrative penalty shall not be used by Respondent or any other person as a tax deduction from Respondent's federal, state, or local taxes.

IV. NONPAYMENT OF PENALTY

In the Matter of CalPortland Company
(f/k/a California Portland Cement Company),

Docket No. CAA-9-2008-0034, page 3

A. In the event that Respondent fails to pay the assessed penalty specified in Article III(A) by the deadline specified in Article III(B), Respondent shall pay a stipulated penalty of \$750/day for each day that the assessed penalty is late, which shall become due and payable upon EPA's written request. Such failure by Respondent may also subject Respondent to a civil action to collect any unpaid portion of the assessed penalty, together with interest, handling charges, and nonpayment penalties as set forth in Paragraph B below. In any such collection action, the validity, amount, and appropriateness of this CAFO or the penalty assessed hereunder are not subject to review.

B. Pursuant to 42 U.S.C. § 7413(d)(5) and 31 U.S.C. § 3731, Respondent shall pay the following amounts:

1. Interest: Any unpaid portion of the assessed penalty shall bear interest at the rate established pursuant to 26 U.S.C. § 6621(a)(2) from the effective date of this CAFO, provided, however, that no interest shall be payable on any portion of the assessed penalty that is paid within thirty (30) days of the effective date of this CAFO.

2. Handling Charge: Pursuant to 31 U.S.C. § 3717(e)(1), a monthly handling charge of \$15 shall be paid for any month in which any portion of the assessed penalties is more than 30 days past due.

3. Attorney Fees, Collection Costs, Nonpayment Penalty: Pursuant to 42 U.S.C. § 7413(d)(5), if Respondent fails to pay on a timely basis the full amount of the assessed penalty, interest, and handling charges, it shall be liable for the United States' enforcement and collection expenses, including, but not limited to, attorney fees and costs incurred by the United States for collection proceedings, and a quarterly nonpayment penalty for each quarter during which such failure to pay persists. Such

nonpayment penalty shall be ten percent (10%) of the aggregate amount of Respondent's outstanding or overdue penalties and nonpayment penalties accrued from the beginning of such quarter.

V. GENERAL TERMS AND CONDITIONS

A. In accordance with 40 C.F.R. § 22.18(c), this CAFO only resolves Respondent's liability for federal civil penalties for the violations and facts specifically alleged in the Complaint. Nothing in this CAFO is intended to or shall be construed to resolve (i) any civil liability for violations of any provision of any federal, state, or local law, statute, regulation, rule, ordinance, or permit not specifically alleged in the Complaint; or (ii) any criminal liability. EPA specifically reserves any and all authorities, rights, and remedies available to it (including, but not limited to, injunctive or other equitable relief or criminal sanctions) to address any violation of this CAFO or any violation not specifically alleged in the Complaint.

B. This CAFO does not exempt, relieve, modify, or affect in any way Respondent's duty to comply with all applicable federal, state, and local laws, regulations, rules, ordinances, and permits.

C. The provisions of this CAFO shall be binding on Respondent and its officers, directors, employees, agents, servants, authorized representatives, successors, and assigns.

D. This document constitutes an "enforcement response" as that term is used in EPA's Penalty Policy for the purposes of determining Respondent's "full compliance history" as provided in Section 113(e) of the Act, 42 U.S.C. § 7413(e).

E. Except as set forth in Article IV(B)(3) above, each party shall bear its own

costs, fees, and disbursements in this action.

F. This Consent Agreement constitutes the entire agreement between the parties resolving this matter arising under the CAA.

G. In accordance with 40 C.F.R. §§ 22.18(b)(3) and 22.31(b), this CAFO shall be effective on the date that the final order contained in this CAFO, having been approved and issued by either the Regional Judicial Officer or Regional Administrator, is filed.

H. The undersigned representative of Complainant and the undersigned representative of Respondent each certifies that he or she is fully authorized to enter into the terms and conditions of this CAFO and to bind the party he or she represents to this CAFO.

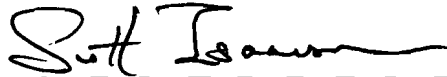
I. Execution of this CAFO and compliance with the requirements set forth herein shall constitute full settlement and satisfaction of all civil claims arising from the Complaint.

J. Respondent and EPA agree to the issuance of the Final Order that follows.

K. EPA and Respondent consent to execution of this CAFO without further notice.


FOR RESPONDENT,

Date: 1/14/09

By 
SCOTT ISAACSON
Vice President
CalPortland Company

FOR COMPLAINANT, EPA REGION IX

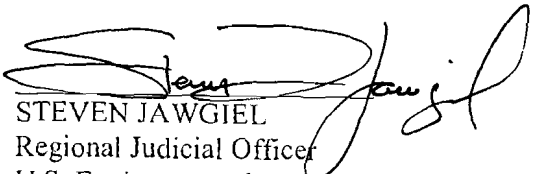
Date: 2/3/09

By 
DEBORAH JORDAN
Director, Air Division
U.S. Environmental Protection Agency, Region IX

FINAL ORDER

EPA and California Portland Cement Company (aka CalPortland Company) having entered into the foregoing Consent Agreement, IT IS HEREBY ORDERED that this CAFO (Docket No. CAA-09-2008-0034) be entered, and Respondent shall pay a civil administrative penalty in the amount of SEVENTY THOUSAND DOLLARS (\$70,000.00), and comply with the terms and conditions set forth in the Consent Agreement.

02/05/09
DATE


STEVEN JAWGIEL
Regional Judicial Officer
U.S. Environmental Protection Agency, Region IX

CERTIFICATE OF SERVICE

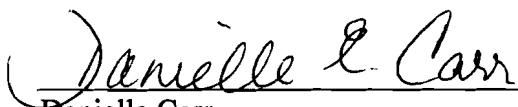
I certify that the original and one copy of the foregoing Consent Agreement and Final Order was hand-delivered to:

The Regional Hearing Clerk
United States Environmental Protection Agency, Region IX
75 Hawthorne St
San Francisco, California 94105-3901

And that a true and correct copy of the Consent Agreement and Final Order was placed in the United States Mail, certified mail, return receipt requested, addressed to the following party:

Scott P. Isaccson
Vice President
California Portland Cement Company
2025 E. Financial Way
Glendora, CA 91741
Certified Return Receipt No. 7003 3110 0006 1997 3064

Dated: Feb. 5, 2009

By: 
Danielle Carr
Regional Hearing Clerk
United States Environmental
Protection Agency
Region IX
San Francisco, CA 94105



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION IX

75 Hawthorne Street

San Francisco, CA 94105-3901

FEB - 5 2009

CERTIFIED MAIL NO. 7003 3110 0006 1997 3064
RETURN RECEIPT REQUESTED

Scott P. Isaccson
Vice President
CalPortland Company
2025 E. Financial Way
Glendora, CA 91741

Dear Mr. Isaacson:

Enclosed is a copy of a Consent Agreement and Final Order ("CAFO") filed pursuant to section 113(d) of the Clean Air Act, 42 U.S.C. §§ 7401-7671q (1991) (the "Act"). The CAFO assesses a \$70,000 civil Administrative penalty against CalPortland Company ("CalPortland") for violations of section 112 of the Clean Air Act at CalPortland's Portland cement plant in Colton, California.

If you wish to discuss this CAFO, you may contact Charles Aldred of our Air Enforcement Office at 415.972.3986, or have your attorney contact Ivan Lieben of our Office of Regional Council at 415.972.3914. Thank you for your cooperation in this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Deborah Jordan".

Deborah Jordan
Director, Air Division

Enclosure

cc w/CAFO: Mohsen Nazemi, South Coast AQMD
James Ryden, CARB