

BEFORE THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
Region III
1650 Arch Street
Philadelphia, Pennsylvania 19103-2029

IN THE MATTER OF:)
)
Armstrong Cement and)
Supply Corporation)
100 Clearfield Road)
Cabot, PA 16023)
Respondent)
Armstrong Cement)
100 Clearfield Road)
Cabot, PA 16023)
Facility)
_____)

Docket Number CAA-03-2017-0070

Proceeding Pursuant to
Sections 113(a) and (d) of the
Clean Air Act, as amended,
42 U.S.C. § 7413(a) and (d)

CONSENT AGREEMENT

I. Preliminary Statement

1. This administrative Consent Agreement is entered into by and between the Complainant, the Director of the Air Protection Division, United States Environmental Protection Agency, Region III ("EPA" or "Complainant"), and Armstrong Cement and Supply Corporation ("Armstrong" or "Respondent"), pursuant to Section 113(a) and (d) of the Clean Air Act ("CAA" or the "Act"), as amended, 42 U.S.C. § 7413(a) and (d), and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits, 40 C.F.R. Part 22 (the "Consolidated Rules of Practice"). The Consolidated Rules of Practice, at 40 C.F.R. § 22.13, provide, in pertinent part, that when parties agree to settlement of one or more causes of action before the filing of a complaint, a proceeding simultaneously may be commenced and concluded by the issuance of a consent agreement and final order pursuant to 40 C.F.R. § 22.18(b)(2) and (3).
2. This Consent Agreement and the accompanying Final Order (collectively referred to as the "CAFO") address an alleged violation by Respondent of the CAA at its place of business located at 100 Clearfield Road, Butler County, Pennsylvania 16023 (the

“Facility”). The alleged violation concerns compliance with regulations set forth at 40 CFR part 63, Subpart LLL (National Emission Standard for Hazardous Air Pollutants for Portland Cement Manufacturing Industry) (“Portland Cement NESHAP”), as described below.

II. General Provisions

3. Sections 113(a) and (d) of the Act, 42 U.S.C. §§ 7413(a) and (d), authorize the Administrator of EPA to issue an administrative order assessing a civil administrative penalty whenever, on the basis of any information available to the Administrator, the Administrator finds that any person has violated, or is in violation of, any requirement, rule, plan, order, waiver, or permit promulgated, issued, or approved under Subchapters I, IV, V and VI [also referred to as Titles I, IV, V and VI] of the Act. The authority to issue the accompanying Final Order has been duly delegated to the Regional Judicial Officer, EPA Region III.
4. For purposes of this proceeding only, Respondent admits the jurisdictional allegations set forth in this CAFO and agrees not to contest EPA’s jurisdiction with respect to the issuance, execution and enforcement of this CAFO.
5. Except as provided in paragraph 4 above, Respondent neither admits nor denies the specific findings of fact and the conclusions of law set forth in this CAFO.
6. Respondent consents to the issuance of this CAFO and agrees to comply with the terms and conditions set forth therein, including the payment of the indicated civil penalty as set forth in this CAFO.
7. Respondent agrees to pay its own costs and attorneys’ fees.
8. Respondent agrees that this CAFO shall apply to, and be binding upon, Respondent, its officers, directors, servants, employees, agents, successors and assigns.
9. For the purposes of this proceeding, Respondent hereby expressly waives its right to a hearing with respect to any issue of law or fact set forth in this CAFO, including the finality and/or validity thereof. Respondent hereby expressly waives its right to contest the factual allegations and legal conclusions set forth in Section III, “Findings of Fact and Conclusions of Law,” of this Consent Agreement and any right to appeal the accompanying Final Order.
10. Section 113(d)(1) of the Act, 42 U.S.C. § 7413(d)(1), limits the Administrator’s authority to matters where the first alleged violation occurred no more than 12 months prior to initiation of an administrative action, except where the Administrator and the Attorney General of the United States jointly determine that a matter involving a longer period of violation is appropriate for an administrative penalty action.

11. The Administrator and the Attorney General, each through their respective delegates, have determined jointly that an administrative penalty action is appropriate for the period of the violation alleged in this CAFO.

III. Findings of Fact and Conclusions of Law

12. In accordance with 40 C.F.R. §§ 22.13(b) and 22.18(b)(2) and (3), EPA alleges the following findings of fact and conclusions of law:
13. EPA is authorized by Section 113 of the CAA, 42 U.S.C. § 7413, to take action to ensure that air pollution sources comply with all federally applicable air pollution control requirements.
14. Armstrong is a Pennsylvania corporation doing business in the Commonwealth of Pennsylvania.
15. Armstrong is a “person” within the meaning of Section 113(a) of the CAA, 42 U.S.C. § 7413(a), and as defined in Section 302(e) of the CAA, 42 U.S.C. § 7602(e).
16. At all times relevant to the violation alleged in this CAFO, Respondent has been the owner and/or operator of the Facility.
17. The Facility manufactures portland cement and is, therefore, a “Portland Cement Plant” as that term is defined at 40 C.F.R. § 63.1341 (Definitions).
18. Section 112 of the CAA, 42 U.S.C. § 7412, requires the Administrator of EPA to publish a list of air pollutants determined to be hazardous and to promulgate regulations establishing emission standards or, where necessary, design, equipment, work practice, or operational standards for each listed hazardous air pollutant. Pursuant to Section 112 of the Act, 42 U.S.C. § 7412, EPA promulgated the Portland Cement NESHAP.
19. Pursuant to Section 112(i) of the CAA, 42 U.S.C. § 7412(i), after the effective date of a regulation (or after the applicable compliance date established) promulgated pursuant to Section 112 of the CAA, no person may operate a source subject to the applicable regulation except in compliance with the regulation.
20. In accordance with 40 C.F.R. § 63.1340(a), the provisions of the Portland Cement NESHAP apply to each new and existing portland cement plant which is a major source or an area source as defined in 40 C.F.R. § 63.2.
21. The Facility is an existing Portland Cement Plant since the construction of the Facility commenced prior to May 6, 2009.
22. 40 C.F.R. § 63.2 sets forth the following definition for “area source”: *Area source* means any stationary source of hazardous air pollutants that is not a major source as defined in this part.

23. 40 C.F.R. § 63.2 sets forth the following definition for “major source”: *Major source* means any stationary source or group of stationary sources located within a contiguous area and under common control that emits or has the potential to emit considering controls, in the aggregate, 10 tons per year or more of any hazardous air pollutant or 25 tons per year or more of any combination of hazardous air pollutants, unless the Administrator establishes a lesser quantity, or in the case of radionuclides, different criteria from those specified in this sentence.
24. The Facility is an “area source” as defined in 40 C.F.R. § 63.2, since it is a stationary source located within a contiguous area under common control that emits or has the potential to emit considering controls, in the aggregate, less than 10 tons per year of any hazardous air pollutant and less than 25 tons per year or more of any combination of hazardous air pollutants.
25. Therefore, the Facility is subject to the Portland Cement NESHAP.
26. In accordance with 40 C.F.R. § 1340(b), the affected sources subject to 40 C.F.R. Part 63, Subpart LLL include: Each kiln including alkali bypasses and inline coal mills, except for kilns that burn hazardous waste and are subject to and regulated under 40 C.F.R. Part 63, Subpart EEE.

Failure to Properly Operate One or Both Kilns at The Facility

27. Respondent maintains two kilns at the Facility. These kilns are identified as: No. 1 Kiln and No. 2 Kiln.
28. Each kiln, and the associated fine particulate (“PM”) control devices, are subject to the Portland Cement NESHAP.
29. Each kiln is subject to a Dioxin/Furan emissions limitation under 40 C.F.R. § 63.1343.
30. 40 C.F.R. § 63.1346(a) provides, in relevant part, that: “The owner or operator of a kiln subject to a Dioxin/Furan emissions limitation under §63.1343 must operate the kiln such that the temperature of the gas at the inlet to the kiln PM control device (PMCD) . . . does not exceed the applicable temperature limit specified in paragraph (b) of this section.”
31. Based upon information provided to EPA by Armstrong, during April through December 2015, the PMCD for each kiln at the Facility was an electrostatic precipitator (“ESP”).
32. In accordance with the Portland Cement NESHAP requirements, Armstrong monitors the inlet temperature to the ESP for each kiln to demonstrate compliance with the Dioxin/Furans (“D/F”) emission limitations set forth in the Portland Cement NESHAP and with 40 C.F.R. § 63.1346(a).
33. In accordance with 40 C.F.R. § 63.1354(b)(9), Respondent submitted compliance reports, pursuant to the Portland Cement NESHAP, addressing Respondent’s compliance with 40 C.F.R. § 63.1346(a) for the period January 2014 through December 2015, respectively (the “Subpart LLL Semiannual Compliance Reports”). The Subpart LLL Semiannual

Compliance Reports were submitted by letters dated: July 29, 2014, January 29, 2015, July 23, 2015 and January 21, 2016.

34. The Subpart LLL Semiannual Compliance Reports indicated that, on the dates set forth in the charts below, at either one or both kilns the temperature of the gas at the ESP inlet exceeded the applicable temperature limit specified in 40 C.F.R. § 63.1346(b).

Inlet Temperature to the ESP to Demonstrate Compliance with D/F Limits			Inlet Temperature to the ESP to Demonstrate Compliance with D/F Limits		
Kiln 1: January - June 2014			Kiln 2: January - June 2014		
Date	Duration of Exceedance (hours)	Cause	Date	Duration of Exceedance (hours)	Cause
4/16/2014	3.6	Malfunction (coal feeder)	4/10/2014	1.7	Malfunction (process upset)
5/1/2014	4.5	Malfunction (main drag)	4/22/2016	2	Malfunction (process upset)
5/4/2014	3.4	Unknown	4/26/2014	2.6	Malfunction (process upset)
5/5/2014	5.7	Malfunction (process upset)	5/1/2014	3.1	Malfunction (main drag)
5/6/2014	2.3	Malfunction (process upset)	5/7/2014	4.6	Malfunction (process upset)
5/7/2014	2.9	Malfunction (process upset)	5/17/2014	1.7	Malfunction (process upset)
5/9/2014	6.4	Malfunction (process upset)	6/13/2014	0.1	Malfunction (process upset)
5/10/2014	0.2	Malfunction (process upset)	6/14/2014	1.4	Malfunction (process upset)
5/11/2014	8.9	Malfunction (process upset)	6/15/2014	1.9	Malfunction (process upset)
5/14/2014	2	Malfunction (process upset)	6/16/2014	1.4	Malfunction (process upset)
5/25/2014	1.3	Malfunction (coal mill)	Kiln 2: July - December 2014		
5/26/2014	7.2	Malfunction (coal mill)	Date	Duration of Exceedance (hours)	Cause
5/28/2014	8.2	Malfunction (dump valve)	11/11/2014	2.4	Malfunction (process upset)
6/24/2014	3.7	Malfunction (incline drag)	11/14/2014	2.7	Malfunction (process upset)
Kiln 1: July - December 2014			Kiln 2: June - December 2015		
Date	Duration of Exceedance	Cause	Date	Duration of Exceedance	Cause

	(hours)			(hours)		
7/8/2014	10.7	Malfunction (process upset)		6/4/2015	11.4	Unknown
7/11/2014	1.3	Malfunction (process upset)		6/5/2015	1.6	Unknown
7/11/2014	3.7	Malfunction (process upset)		8/28/2015	1.4	Unknown
7/16/2014	4.2	Malfunction (process upset)		10/9/2015	0.4	Unknown
7/17/2014	1.5	Malfunction (process upset)		10/17/2015	0.4	Malfunction (slurry pipe plugged)
7/24/2014	10.8	Malfunction (process upset)				
7/25/2014	9.3	Unknown				
7/29/2014	2.2	Malfunction (process upset)				
7/31/2014	0.8	Malfunction (process upset)				
8/13/2014	6.9	Malfunction (process upset)				
8/14/2014	2	Malfunction (process upset)				
8/14/2014	5.7	Malfunction (process upset)				
8/16/2014	6	Malfunction (process upset)				
8/17/2014	3.9	Malfunction (coal dump valve)				
8/18/2014	2.3	Malfunction (process upset)				
8/22/2014	4.2	(Malfunction (incline drag)				
10/9/2014	5	Malfunction (process upset)				
10/13/2014	4.7	Malfunction (coal dump valve)				
10/14/2014	0.4	Malfunction (lost feed)				
10/15/2014	6.4	Malfunction (lost feed)				
10/20/2014	8.2	Malfunction (process upset)				
10/22/2014	10.7	Malfunction (process upset)				
10/23/2014	2.8	Malfunction (process upset)				
12/2/2014	1.3	Malfunction (feed pipe				

		plugged)
12/2/2014	0.9	Malfunction (main drag)
12/3/2014	3.1	Malfunction (main drag)

35. Respondent's failure to operate one or both kilns such that the temperature of the gas at the kiln PMCD, or at the ESP inlet, did not exceed the applicable temperature limit specified in 40 C.F.R. § 63.1346(b) during April 10, 2014 through June 24, 2014, July 8, 2014 through December 3, 2014 and June 4, 2015 through October 17, 2015 is a violation of Section 112 of the CAA, 42 U.S.C. § 7412, and 40 C.F.R. § 63.1346(a).

IV. Settlement Recitation, Settlement Conditions, and Civil Penalty

36. Complainant and Respondent enter into this CAFO in order to settle and resolve the violation specifically set forth in Section III of this Consent Agreement.
37. In settlement of the allegations in Section III, Findings of Fact and Conclusions of Law, of this Consent Agreement and in consideration of each provision of this CAFO, Respondent consents to the assessment and payment of a civil penalty in the amount of twenty thousand seven hundred ninety-four dollars (\$20,794) within the time and manner specified herein.
38. The settlement amount of twenty thousand seven hundred ninety-four dollars (\$20,794) is based upon Complainant's consideration and application of the statutory penalty factors set forth in Section 113(e) of the Act, 42 U.S.C. § 7413(e) (which include the size of the business, economic impact of the penalty, the violator's full compliance history and good faith efforts to comply, the duration of the violation as established by any credible evidence, the economic benefit of noncompliance, the payment of penalties previously assessed for same violation, the seriousness of violation and such other matters as justice may require), and EPA's Clean Air Act Stationary Source Civil Penalty Policy (dated October 25, 1991), as indexed for inflation in keeping with 40 C.F.R. Part 19 (Adjustment to Civil Monetary Penalties for Inflation).
39. Respondent shall pay the civil penalty of twenty thousand seven hundred ninety-four dollars (\$20,794) no later than thirty (30) days after the effective date of this CAFO in order to avoid the assessment of interest, administrative costs, and late payment penalties in connection with such civil penalty as described in this CAFO.
40. Pursuant to 31 U.S.C. § 3717 and 40 C.F.R. §13.11, EPA is entitled to assess interest and late payment penalties on outstanding debts owed to the United States and a charge to cover the costs of processing and handling a delinquent claim, as more fully described below. Accordingly, Respondent's failure to make timely payment or to comply with the conditions in this CAFO shall result in the assessment of late payment charges including interest, penalties, and/or administrative costs of handling delinquent debts.

41. Interest on the civil penalty assessed in this CAFO will begin to accrue on the date that a copy of this executed CAFO is mailed or hand-delivered to Respondent. However, EPA will not seek to recover interest on any amount of the civil penalty that is paid within thirty (30) calendar days after the date on which such interest begins to accrue. Interest will be assessed at the rate of the United States Treasury tax and loan rate in accordance with 40 C.F.R. § 13.11(a).
42. The cost of EPA's administrative handling of overdue debts will be charged and assessed monthly throughout the period the debt is overdue. 40 C.F.R. § 13.11(b). Pursuant to Appendix 2 of EPA's Resources Management Directives - Cash Management, Chapter 9, EPA will assess a \$15.00 administrative handling charge for administrative costs on unpaid penalties for the first thirty (30) day period after the payment is due and an additional \$15.00 for each subsequent thirty (30) days the penalty remains unpaid.
43. A penalty charge of six percent per year will be assessed monthly on any portion of the civil penalty that remains delinquent for more than ninety (90) calendar days. 40 C.F.R. § 13.11(c). Should assessment of the penalty charge on the debt be required, it shall accrue from the first day payment is delinquent. 31 C.F.R. § 901.9(d).
44. Thus, in accordance with the above provisions, to avoid the assessment of interest, late payment penalties, and handling charges on the penalty set forth herein, Respondent must pay the full amount of the civil penalty, in the manner directed, within thirty (30) days of the effective date of this CAFO.
45. Payment of the penalty in Paragraph 36 shall be made by corporate check, cashier's check, certified check, or electronic wire transfer, Automated Clearing House ("ACH"), or an on line, internet payment as specified below. All payments shall be made payable to "Treasurer, United States of America," and shall reference the above case caption and docket number (CAA-03-2017-00700).
46. Instructions for submitting payment of the penalty using the methods, or combination of methods, described above are provided at the following EPA website addresses:
<http://www2.epa.gov/financial/additional-instructions-making-payments-epa>
<http://www2.epa.gov/financial/makepayment>.
47. Within five (5) business days of payment of any penalty amount, Respondent shall mail copies of any corresponding check or written notification confirming any electronic transfer through wire transfer, ACH, or internet payment to: a) Lydia A. Guy, Regional Hearing Clerk (3RC00), U.S. EPA, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103-2029, b) Kathleen Root, Senior Assistant Regional Counsel (3RC10), U.S. EPA Region III, 1650 Arch Street, Philadelphia, Pennsylvania, 19103-2029, and c) James Adamiec (3AP20), Life Scientist, U.S. EPA Region III, 1650 Arch Street, Philadelphia, Pennsylvania, 19103-2029.
48. Respondent agrees not to deduct for federal tax purposes the civil penalty specified in, and any civil penalty amount paid pursuant to, this CAFO.

49. This Consent Agreement and Final Order shall resolve all civil claims for penalties for the specific violation alleged in Section III of this Consent Agreement. Compliance with this CAFO shall not be a defense to any action commenced at any time for any other violation of any federal laws and regulations administered by EPA.
50. Respondent's failure to make timely payment of the civil penalty or any portion of the civil penalty provided herein may result in referral of this matter to the United States Attorney for enforcement of this CAFO in the appropriate United States District Court in accordance with Section 113(d) (5) of the Act, 42 U.S.C. § 7413(d)(5). Additionally, Respondent's failure to make timely payment of the civil penalty or any portion of the civil penalty provided herein may result in the assessment of additional interest, penalties and/or late payment penalty charges.

V. Reservation of Rights

51. This CAFO resolves only the civil claims for penalties for the specific violation alleged in Section III of this Consent Agreement. EPA reserves the right to commence action against any person, including Respondent, in response to any condition which EPA determines may present an imminent and substantial endangerment to the public health, public welfare, or the environment. Nor shall anything in this CAFO be construed to limit the United States' authority to pursue criminal sanctions. In addition, this settlement is subject to all limitations on the scope of resolution and to the reservation of rights set forth in 40 C.F.R. § 22.18(c). Further, Complainant reserves any rights and remedies available to it under the Act, the regulations promulgated thereunder, and any other federal laws or regulations for which Complainant has jurisdiction, to enforce the provisions of this CAFO following its filing with the Regional Hearing Clerk.

VI. Effective Date

52. The effective date of this CAFO is the date on which it is filed with the Regional Hearing Clerk of EPA Region III.

VII. Entire Agreement

53. This CAFO constitutes the entire agreement and understanding of the parties concerning settlement of the above-captioned action and there are no representations, warranties, covenants, terms or conditions agreed upon between the parties other than those expressed in this CAFO. Nothing in this CAFO shall be construed to affect or limit in any way the obligation of Respondent to comply with all federal, state and local laws and regulations governing any activity required by this CAFO.

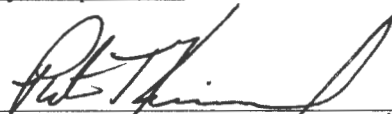
VIII. Execution

54. The person signing this Consent Agreement on behalf of Respondent acknowledges and certifies by his/her signature that he/she is fully authorized to enter into this Consent Agreement and to legally bind Respondent, to the terms and conditions of this CAFO.

The foregoing Consent Agreement in the Matter of Armstrong Cement and Supply Corporation, Docket No. CAA-03-2017-0070, is Hereby Stipulated, Agreed and Approved for Entry.

For Respondent, Armstrong Cement and Supply Corporation:

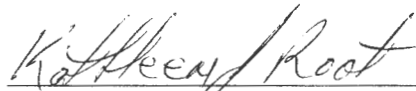
6-13-17
Date


Name: Peter T. Kimmel
Title: VP Operations

Respondent's Federal Tax Identification Number: 25-1426093


For Complainant, Environmental Protection Agency, Region III:

6/29/2017
Date


Kathleen J. Root, Esq.
Senior Assistant Regional Counsel
U.S. EPA, Region III
1650 Arch Street
Philadelphia, PA 19103-2029

Accordingly, the Air Protection Division, United States Environmental Protection Agency, Region III, recommends that the Regional Administrator or his designee, the Regional Judicial Officer, issue the accompanying Final Order and thereby ratify this Consent Agreement and the terms and provisions herein.

7/12/2017
Date



Cristina Fernandez, Director
Air Protection Division
U.S. EPA, Region III
1650 Arch Street
Philadelphia, PA 19103-2029

BEFORE THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

Region III

1650 Arch Street

Philadelphia, Pennsylvania 19103-2029

SEP 13 PM 4:52

IN THE MATTER OF:

Armstrong Cement and
Supply Corporation
100 Clearfield Road
Cabot, PA 16023

Respondent

Armstrong Cement
100 Clearfield Road
Cabot, PA 16023

Facility

Docket Number CAA-03-2017-0070

Proceeding Pursuant to
Sections 113(a) and (d) of the
Clean Air Act, as amended,
42 U.S.C. § 7413(a) and (d)

FINAL ORDER

Complainant, the Director of the Air Protection Division, U.S. Environmental Protection Agency, Region III, and Respondent, Armstrong Cement and Supply Corporation have executed a document entitled "Consent Agreement," which I hereby ratify as a Consent Agreement in accordance with the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits ("Consolidated Rules of Practice"), 40 C.F.R. Part 22 (with specific reference to Sections 22.13(b) and 22.18(b)(2) and (3)). The terms of the foregoing Consent Agreement are accepted by the undersigned and incorporated into this Final Order as if fully set forth at length herein.

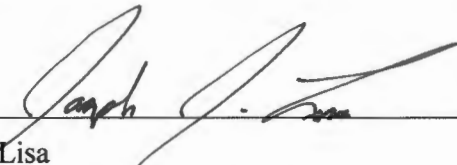
Based on the representations of the parties in the attached Consent Agreement, the penalty agreed to therein is based upon consideration of, *inter alia*, EPA's Clean Air Act Stationary Source Civil Penalty Policy (dated October 25, 1991) and the statutory factors set forth in Section 113(e) of the Clean Air Act, 42 U.S.C. § 7413(e).

NOW, THEREFORE, PURSUANT TO Section 113 of the Clean Air Act, 42 U.S.C. § 7413, and Section 22.18(b)(3) of the Consolidated Rules of Practice, **IT IS HEREBY ORDERED** that Respondent pay a civil penalty of twenty thousand seven hundred ninety-four dollars (\$20,794), in accordance with the payment provisions set forth in the Consent Agreement, and comply with the terms and conditions of the Consent Agreement.

The effective date of the attached Consent Agreement and this Final Order is the date on which this Final Order is filed with the Regional Hearing Clerk.

July 13, 2017

Date



Joseph J. Lisa
Regional Judicial and Presiding Officer
U.S. EPA Region III