

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
BEFORE THE ADMINISTRATOR

In the Matter of:)
)
CEMEX de Puerto Rico, Inc.)
)
Respondent)
)

Docket No. CAA 02-2015-1210

U.S. Environmental
Protection Agency-Reg 2
2015 SEP 30 PM 2:47
REGIONAL HEARING
CLERK

CONSENT AGREEMENT

A. Preliminary Statement

1. This is an administrative penalty assessment proceeding brought under Section 113(d) of the Clean Air Act (the Act), 42 U.S.C. § 7413(d), and Sections 22.13 and 22.18 of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits (Consolidated Rules), as codified at 40 C.F.R. Part 22.
2. The Administrator of the United States Environmental Protection Agency (the EPA), has delegated to the Regional Administrator of the EPA, Region 2, the authority to settle civil administrative proceedings under Section 113(d) of the Act, and the Regional Administrator, Region 2, in turn, has re-delegated that authority to the Director of the Division of Enforcement and Compliance Assistance of Region 2.
3. Respondent is CEMEX de Puerto Rico, Inc. (CEMEX), a corporation that operates a cement production facility in Ponce, Puerto Rico (hereinafter the Facility).
4. The EPA asserts that the settlement of this matter is in the public interest, and the EPA and CEMEX agree to request that the Regional Administrator, Region 2, issue the attached Final Order approving this Consent Agreement without adjudication of

any issues of law or fact herein, and EPA and CEMEX further agree to comply with the terms of this Consent Agreement and Final Order.

B. Jurisdiction

5. The EPA asserts jurisdiction over this matter pursuant to section 113(d)(1)(B) and 113(d)(2)(B) of the Act; EPA and CEMEX enter into this agreement pursuant to the Consolidated Rules, 40 C.F.R. Part 22.
6. The EPA and the United States Department of Justice have jointly determined that this matter is appropriate for an administrative penalty assessment, as authorized by section 113(d) of the Act, 42 U.S.C. §§ 7413(d)(1), although the alleged violations occurred more than one year before the initiation of this proceeding.
7. CEMEX is a “person” as defined in Section 302(e) of the Act, 42 U.S.C. § 7602(e).
8. In satisfaction of the notice requirement in Section 113(d)(1)(A) of the Act, 42 U.S.C. § 7413(d)(1)(A), EPA, Region 2, issued a Notice of Violation to CEMEX on September 28, 2007, advising CEMEX that the EPA found that CEMEX committed the alleged violations as described in Section E of this Consent Agreement. On September 28, 2007, the EPA, Region 2, provided a copy of the Notice of Violation to the Commonwealth of Puerto Rico.
9. In satisfaction of the opportunity to confer requirement in Section 113(a)(4) of the Act, 42 U.S.C. § 7413(a)(4), on January 9, 2008, the EPA, Region 2, met with CEMEX to discuss the alleged violations listed in the September 28, 2007 Notice of Violation.
10. The EPA Regional Administrator, Region 2, is authorized to issue the Final Order ratifying this Consent Agreement, which memorializes a settlement between the EPA

and CEMEX pursuant to 40 C.F.R. §§22.4(a) and 22.18(b)(2) and (3) of the Consolidated Rules.

11. The filing of the Final Order approving this Consent Agreement simultaneously commences and concludes this proceeding, as authorized by 40 C.F.R. §22.13(b) of the Consolidated Rules.

C. Governing Law and Regulatory Authority

Prevention of Significant Deterioration

12. Part C of Title I of the Act, 42 U.S.C. §§ 7470-7492, sets forth requirements for the prevention of significant deterioration of air quality in those areas designated as either attainment or unclassifiable for purposes of meeting the NAAQS standards. These requirements are designed to protect public health and welfare, to assure that economic growth will occur in a manner consistent with the preservation of existing clean air resources, and to assure that any decision to permit increased air pollution is made only after careful evaluation of all the consequences of such a decision and after public participation in the decision making process. 42 U.S.C. § 7470. These provisions and the regulations promulgated pursuant to these provisions are collectively referred to herein as the “PSD program.”
13. Section 165(a) of the Act, 42 U.S.C. § 7475(a), among other things, prohibits the construction and operation of a “major emitting facility” in an area designated as attainment or unclassifiable unless a permit has been issued that comports with the requirements of Section 165 and the facility employs the best available control

technology (“BACT”) for each pollutant subject to regulation under the Act that is emitted from the facility.

14. Section 169(1) of the Act, 42 U.S.C. § 7479(1), designates Portland Cement plants which emit or have the potential to emit 100 tons per year or more of any air pollutant to be “major emitting facilities.”
15. The Facility is located in Puerto Rico, an area that the EPA designated as unclassifiable or in attainment with the NAAQS for nitrogen dioxide, an oxide of nitrogen or NO_x. 40 C.F.R. § 81.355.
16. Sections 110(a) and 161 of the Act, 42 U.S.C. §§ 7410(a) and 7471, require each state to adopt a state implementation plan (“SIP”) that contains emission limitations and such other measures as may be necessary to prevent significant deterioration of air quality in areas designated as attainment or unclassifiable.
17. A state may comply with Sections 110(a) and 161 of the Act, 42 U.S.C. §§ 7410(a) and 7471, by having its own PSD rules, which must be at least as stringent as those set forth at 40 C.F.R. § 51.166 and approved by the EPA.
18. Pursuant to sections 110 and 161 of the Act, the EPA disapproved Puerto Rico’s PSD program rules, and incorporated by reference, and made part of the applicable Puerto Rico implementation plan, the provisions at 40 C.F.R. § 52.21(b) through (w). 40 C.F.R. § 52.2729. 43 Fed. Reg. 26410 (June 19, 1978).
19. 40 C.F.R. § 52.21(i)(1) provides that no stationary source or modification to which the requirements of 40 C.F.R. § 52.21(j) through (r) apply may begin construction without a permit which states that the stationary source or modification will meet those requirements.

