

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION IX
SAN FRANCISCO, CALIFORNIA

FILED

2008 SEP 23 AM 11:04

U.S. EPA, REGION IX
REGIONAL HEARING CLERK

IN RE:)
)
California Portland Cement Company) Docket No. CAA-09-2008- 0034
)
Colton, California)
) COMPLAINT AND
) OPPORTUNITY FOR
) HEARING
RESPONDENT)
_____)

PRELIMINARY STATEMENT

Complainant, the Director of the Air Division, United States Environmental Protection Agency ("EPA" or "Complainant"), Region IX, issues this Complaint and Notice of Opportunity for Hearing ("Complaint") against Respondent, California Portland Cement Company ("CPC"), pursuant to Section 113(d) of the Clean Air Act, as amended (the "Act" or "CAA"), 42 U.S.C. § 7413(d). The Administrator of EPA delegated to the Regional Administrator of Region IX the authority to issue complaints such as this one in the state of California, and the Regional Administrator, in turn, re-delegated that Authority to the Complainant. In addition, pursuant to Section 113(d) of the Act, the Administrator of EPA and the United States Attorney General have jointly determined that this matter is appropriate for civil administrative penalty action.

Complainant alleges herein that Respondent violated the CAA at its portland cement manufacturing plant (the "Facility") located in Colton, California by failing to comply with National Emissions Standards for Hazardous Air Pollutants ("NESHAP")

requirements requiring submission of excess emissions and continuous monitoring system performance reports to EPA.

STATUTORY AND REGULATORY AUTHORITY

1. Pursuant to Section 112 of the Act, 42 U.S.C. § 7412, the Administrator of EPA promulgated the NESHAP General Provisions, 40 C.F.R. Part 63 Subpart A, on March 16, 1994, 59 Fed. Reg. 12430, as amended, and the NESHAP From the Portland Cement Manufacturing Industry, 40 C.F.R. Part 63 Subpart LLL, on June 14, 1999, 64 Fed. Reg. 31925, as amended (“Portland Cement NESHAP”).

2. 40 C.F.R. § 63.1 of Subpart A states, in pertinent part, that:

(a) General.

(2) This part contains national emission standards for hazardous air pollutants (NESHAP) established pursuant to section 112 of the Act as amended November 15, 1990.

(4)(i) Each relevant standard in this part 63 must identify explicitly whether each provision in this subpart A is or is not included in such relevant standard.

(ii) If a relevant part 63 standard incorporates the requirements of 40 CFR part 60, part 61 or other part 63 standards, the relevant part 63 standard must identify explicitly the applicability of each corresponding part 60, part 61, or other part 63 subpart A (General) provision.

3. 40 C.F.R. § 63.10 of Subpart A, in relevant part, states that:

(e) Additional reporting requirements for sources with continuous monitoring systems--(1) General. When more than one CEMS is used to measure the emissions from one affected source (e.g., multiple breechings, multiple outlets), the owner or operator shall report the results as required for each CEMS.

(3) Excess emissions and continuous monitoring system performance report and summary report.

(vi) Summary report. As required under paragraphs (e)(3)(vii) and (e)(3)(viii) of this section, one summary report shall be submitted for the hazardous air pollutants monitored at each affected source (unless the relevant standard specifies that more than one summary report is required, e.g., one summary

report for each hazardous air pollutant monitored). The summary report shall be entitled "Summary Report--Gaseous and Opacity Excess Emission and Continuous Monitoring System Performance" and shall contain the following information:

- (A) The company name and address of the affected source;
- (B) An identification of each hazardous air pollutant monitored at the affected source;
- (C) The beginning and ending dates of the reporting period;
- (D) A brief description of the process units;
- (E) The emission and operating parameter limitations specified in the relevant standard(s);
- (F) The monitoring equipment manufacturer(s) and model number(s);
- (G) The date of the latest CMS certification or audit;
- (H) The total operating time of the affected source during the reporting period;
- (I) An emission data summary (or similar summary if the owner or operator monitors control system parameters), including the total duration of excess emissions during the reporting period (recorded in minutes for opacity and hours for gases), the total duration of excess emissions expressed as a percent of the total source operating time during that reporting period, and a breakdown of the total duration of excess emissions during the reporting period into those that are due to startup/shutdown, control equipment problems, process problems, other known causes, and other unknown causes;
- (J) A CMS performance summary (or similar summary if the owner or operator monitors control system parameters), including the total CMS downtime during the reporting period (recorded in minutes for opacity and hours for gases), the total duration of CMS downtime expressed as a percent of the total source operating time during that reporting period, and a breakdown of the total CMS downtime during the reporting period into periods that are due to monitoring equipment malfunctions, nonmonitoring equipment malfunctions, quality assurance/quality control calibrations, other known causes, and other unknown causes;
- (K) A description of any changes in CMS, processes, or controls since the last reporting period;
- (L) The name, title, and signature of the responsible official who is certifying the accuracy of the report; and
- (M) The date of the report.

4. 40 C.F.R. § 63.1340 of Subpart LLL states, in pertinent part, that:

- (a) Except as specified in paragraphs (b) and (c) of this section, the provisions of this subpart apply to each new and existing portland cement plant which is a major source or an area source as defined in §63.2.
- (b) The affected sources subject to this subpart are:

(1) Each kiln and each in-line kiln/raw mill at any major or area source, including alkali bypasses, except for kilns and in-line kiln/raw mills that burn hazardous waste and are subject to and regulated under subpart EEE of this part;

5. 40 C.F.R. § 63.2 of Subpart A defines in pertinent part:

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, . . .

Area source means any stationary source of hazardous air pollutants that is not a major source as defined in this part.

6. 40 C.F.R. § 63.1341 of Subpart LLL defines in pertinent part:

In-line kiln/raw mill means a system in a Portland cement production process where a dry kiln system is integrated with the raw mill so that all or a portion of the kiln exhaust gases are used to perform the drying operation of the raw mill, with no auxiliary heat source used. In this system the kiln is capable of operating without the kiln gases, and consequently, the raw mill does not generate a separate exhaust gas stream.

Kiln means a device, including any associated preheater or precalciner devices, that produces clinker by heating limestone and other materials for subsequent production of Portland cement.

7. 40 C.F.R. § 63.1343 of Subpart LLL requires, in pertinent part, that:

(d) *Existing kilns located at area sources.* No owner or operator of an existing kiln or an existing in-line kiln/raw mill located at a facility that is an area source subject to the provisions of this subpart shall cause to be discharged into the atmosphere from these affected sources any gases which:

(1) Contain D/F [dioxins and furans] in excess of 0.20 ng per dscm (8.7×10^{-11} gr per dscf) (TEQ); or

(2) Contain D/F in excess of 0.40 ng per dscm (1.7×10^{-10} gr per dscf) (TEQ) when the average of the performance test run average temperatures at the inlet to the particulate matter control device is 204 °C (400 °F) or less.

8. 40 C.F.R. § 63.1344 of Subpart LLL requires, in pertinent part, that:

(a) The owner or operator of a kiln subject to a D/F emission limitation under Sec. 63.1343 must operate the kiln such that the temperature of the gas at the

inlet to the kiln particulate matter control device (PMCD) and alkali bypass PMCD, if applicable, does not exceed the applicable temperature limit specified in paragraph (b) of this section. The owner or operator of an in-line kiln/raw mill subject to a D/F emission limitation under Sec. 63.1343 must operate the in-line kiln/raw mill, such that:

(1) When the raw mill of the in-line kiln/raw mill is operating, the applicable temperature limit for the main in-line kiln/raw mill exhaust, specified in paragraph (b) of this section and established during the performance test when the raw mill was operating is not exceeded.

(2) When the raw mill of the in-line kiln/raw mill is not operating, the applicable temperature limit for the main in-line kiln/raw mill exhaust, specified in paragraph (b) of this section and established during the performance test when the raw mill was not operating, is not exceeded.

(b) The temperature limit for affected sources meeting the limits of paragraph (a) of this section or paragraphs (a)(1) through (a)(3) of this section is determined in accordance with Sec. 63.1349(b)(3)(iv).

9. 40 C.F.R. § 63.1349 of Subpart LLL requires, in pertinent part, that:

(b) Performance tests to demonstrate initial compliance with this subpart shall be conducted as specified in paragraphs (b)(1) through (b)(4) of this section.

(3) The owner or operator of an affected source subject to limitations on D/F emissions under this subpart shall demonstrate initial compliance with the D/F emission limit by conducting a performance test using Method 23 of appendix A to part 60 of this chapter. The owner or operator of an in-line kiln/raw mill shall demonstrate initial compliance by conducting separate performance tests while the raw mill of the in-line kiln/raw mill is under normal operating conditions and while the raw mill of the in-line kiln/raw mill is not operating. The owner or operator of a kiln or in-line kiln/raw mill equipped with an alkali bypass shall conduct simultaneous performance tests of the kiln or in-line kiln/raw mill exhaust and the alkali bypass. However, the owner or operator of an in-line kiln/raw mill may conduct a performance test of the alkali bypass exhaust when the raw mill of the in-line kiln/raw mill is operating or not operating.

(i) Each performance test shall consist of three separate runs; each run shall be conducted under the conditions that exist when the affected source is operating at the representative performance conditions in accordance with Sec. 63.7(e). The duration of each run shall be at least 3 hours, and the sample volume for each run shall be at least 2.5 dscm (90 dscf). The concentration shall be determined for each run, and the arithmetic average of the concentrations

measured for the three runs shall be calculated and used to determine compliance.

(ii) The temperature at the inlet to the kiln or in-line kiln/raw mill PMCD, and where applicable, the temperature at the inlet to the alkali bypass PMCD, must be continuously recorded during the period of the Method 23 test, and the continuous temperature record(s) must be included in the performance test report.

(iii) One-minute average temperatures must be calculated for each minute of each run of the test.

(iv) The run average temperature must be calculated for each run, and the average of the run average temperatures must be determined and included in the performance test report and will determine the applicable temperature limit in accordance with Sec. 63.1344(b).

10. 40 C.F.R. § 63.1350 of Subpart LLL requires, in pertinent part, that:

(f) The owner or operator of an affected source subject to a limitation on D/F emissions shall monitor D/F emissions in accordance with paragraphs (f)(1) through (f)(6) of this section.

(1) The owner or operator shall install, calibrate, maintain, and continuously operate a continuous monitor to record the temperature of the exhaust gases from the kiln, in-line kiln/raw mill and alkali bypass, if applicable, at the inlet to, or upstream of, the kiln, in-line kiln/raw mill and/or alkali bypass PM control devices.

11. 40 C.F.R. § 63.1354 of Subpart LLL requires, in pertinent part, that:

(b)(9) The owner or operator shall submit a summary report semiannually which contains the information specified in §63.10(e)(3)(vi). In addition, the summary report shall include:

(i) All exceedences of maximum control device inlet gas temperature limits specified in §63.1344(a) and (b)

GENERAL ALLEGATIONS

12. The Facility is located at 695 South Rancho Avenue, Colton, California, 92324.

13. CPCC owned and/or operated the Facility during all times pertinent to this Complaint.

14. CPCC is a registered corporation in the state of Delaware.
15. CPCC is a "person" as that term is defined in Section 302(e) of the Act, 42 U.S.C. § 7602(e).
16. The Facility is a portland cement manufacturing plant that contains two rotary kilns and other components used to produce clinker which is the essential component of portland cement.
17. The two kilns at the Facility were constructed prior to June 14, 2002.
18. The two kilns at the Facility meet the Portland Cement NESHAP's definition of either a "kiln" or "in-line kiln/raw mill" set forth at 40 C.F.R. § 63.1341.
19. The two kilns at the Facility utilize particulate matter control devices.
20. The Facility emits hazardous air pollutants ("HAPs").
21. The Facility's actual emissions and potential to emit of HAPs are less than 10 tons per year of any particular HAP and less than 25 tons per year of all HAPs combined.
22. The Facility is considered an "area source" of HAPs pursuant to 40 C.F.R. § 63.2.
23. The Facility has been subject to 40 C.F.R. Part 63 Subpart A and the Portland Cement NESHAP since at least June 14, 2002, because it is an existing portland cement plant with a kiln or an in-line kiln/raw mill that is an area source for HAPs.
24. Under the Portland Cement NESHAP, the Facility must maintain the temperature of the kiln at the inlet to the particulate matter control device at or below the maximum temperature limit established pursuant to 40 C.F.R. §§ 63.1344 and 63.1349.
25. Under the Portland Cement NESHAP, the Facility must continuously

monitor the temperature of the kiln at the inlet to the particulate matter control device to ensure that this temperature limit is met pursuant to 40 C.F.R. § 63.1350.

SPECIFIC ALLEGATIONS

Count I

26. Complainant realleges and incorporates herein by reference Paragraphs 1 through 25.

27. Pursuant to Portland Cement NESHAP, since June 14, 2002, the Facility has been required to submit semi-annual excess emissions and continuous monitoring system performance reports (“NESHAP Semi-Annual Reports”) to EPA containing the information set forth in 40 C.F.R. §§ 63.10(e)(3)(vi) and 63.1354(b)(9), including but not limited to an identification of any exceedances of the temperature limit.

28. The Facility has never submitted a NESHAP Semi-Annual Report to EPA, Region IX.

29. The Facility’s failure to submit NESHAP Semi-Annual Reports to EPA, Region IX, constitutes a continuous and continuing violation of 40 C.F.R. §§ 63.10 and 63.1354 and Section 112 of the Act.

GENERAL PLEADING FOR A CIVIL PENALTY

Section 113(d) of the Act, 42 U.S.C. § 7413(d), authorizes a civil administrative penalty of up to Twenty-Five Thousand Dollars (\$25,000) per day for each violation of the Act, provided that the total amount of penalty assessed does not exceed Two Hundred Thousand Dollars (\$200,000). These maximum amounts have been adjusted to \$27,500 per day not to exceed a total penalty of \$220,000, pursuant to the Civil Monetary Penalty Inflation Adjustment Rule at 40 C.F.R. Part 19, which implements the Debt Collection

\$32,500 per day not to exceed a total penalty of \$270,000, pursuant to the Civil Monetary Penalty Inflation Adjustment Rule at 40 C.F.R. Part 19, which implements the Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701, for violations occurring after March 15, 2004.

For purposes of determining the amount of the civil penalty to be assessed, Section 113(e) of the Act, 42 U.S.C. § 7413(e), requires the Administrator to consider the size of the business, the economic impact of the penalty on the business, the violator's compliance history and good faith efforts to comply, the duration of the violation as established by any credible evidence, payment by the violator of penalties previously assessed for the same violation, the economic benefit of noncompliance, and the seriousness of the violation. Accordingly, Complainant requests that after consideration of these statutory assessment factors, the Administrator assess against Respondent a civil administrative penalty of up to \$32,500 per day for each violation of the Act set forth above.

OPPORTUNITY TO REQUEST A HEARING

The Consolidated Rules of Practice, 40 C.F.R. Part 22, govern these proceedings. A copy of the Consolidated Rules of Practice accompanies this Complaint. Under those rules, you have the right to request a hearing. Any request for a hearing must be in writing and must be filed with the Regional Hearing Clerk, United States Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, California, 94105, within thirty (30) days of receipt of this Complaint. In the event that you intend to

request a hearing to contest any material facts set forth in the Complaint, to dispute the amount of the penalty proposed in the Complaint, or to assert a claim for judgment as a matter of law, you must file a written Answer to this Complaint with the Regional Hearing Clerk at the above address within thirty (30) days of receipt of this Complaint. A copy of your Answer should also be sent to Ivan Lieben, Assistant Regional Counsel (ORC-2), United States Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, California 94105.

Your Answer should clearly and directly admit, deny, or explain each factual allegation contained in this Complaint with regard to which you have any knowledge. The Answer should state: (1) the circumstances or arguments which are alleged to constitute the grounds of defense; (2) a concise statement of the facts which you intend to place at issue in the hearing; and (3) whether a hearing is requested. Hearings held in the assessment of the civil penalties will be conducted in accordance with the provisions of the Administrative Procedures Act, 5 U.S.C. § 551 et seq. and the Consolidated Rules of Practice, 40 C.F.R. Part 22.

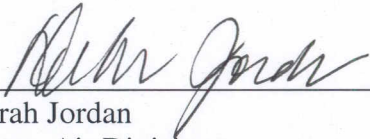
After the hearing, the Administrative Law Judge may issue an order resolving the alleged violations and assessing a civil penalty. You have the right to appeal the decision of the Administrative Law Judge to the Environmental Appeals Board. If you fail to file an Answer to this Complaint with the Regional Hearing Clerk within thirty (30) days of receipt, such failure shall constitute an admission of all facts alleged in the Complaint and a waiver of your right to a hearing under Section 113(d)(2). Complainant understands that the collection of any proposed penalty must be pursued by Complainant through the bankruptcy court proceeding and will only be upon Bankruptcy Court approval.

The EPA encourages all parties against whom civil penalties are proposed to pursue the possibilities of settlement through informal conferences. As Region IX and CPCC are already engaged in settlement discussions, you may continue to confer informally with the Agency concerning the alleged violations or the amount of the proposed penalty. At any future conference, you may wish to appear at the conference yourself or be represented by counsel. If a settlement is reached, it shall be finalized by the issuance of a written Consent Agreement and Final Order by the Regional Judicial Officer, EPA, Region IX. The issuance of such Consent Agreement and Final Order shall constitute a waiver of your right to request a hearing of any matter stipulated to therein. To continue to explore the possibility of settlement in this matter, address your correspondence to Ivan Lieben, Assistant Regional Counsel (ORC-2), United States Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, California, 94105.

After this Complaint is issued, the Consolidated Rules of Practice prohibit *ex parte* (unilateral) discussion of the merits of any action with the EPA Regional Administrator, Chief Judicial Officer, Administrative Law Judge, or any person likely to advise these officials in the decision of this case.

Dated at San Francisco, California on this 19 day of September, 2008

Dated: 9/19/08



Deborah Jordan
Director, Air Division
United States Environmental Protection Agency
Region IX
75 Hawthorne Street
San Francisco, California 94105

CERTIFICATE OF SERVICE

I certify that the original and one copy of the foregoing Complaint was hand-delivered to:

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

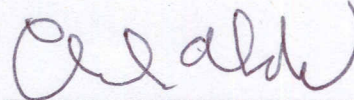
And that a true and correct copy of the Complaint was placed in the United States Mail, certified mail, return receipt requested, addressed to the following party:

James A. Repman
President
California Portland Cement Company
2025 E. Financial Way
Glendora, CA 91741
Certified Return Receipt No. 7007 1490 0000 4710 0396

Dated: _____

9-24-08

By: _____



Charles Aldred
Air Enforcement Office
United States Environmental
Protection Agency
Region IX
San Francisco, CA 94105