



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

MAR 31 2005

REPLY TO THE ATTENTION OF

(AE-17J)

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mike Gonzalez, Plant Manager
Cemex, Inc.
3250 Linebaugh Road
Xenia, Ohio 45385

Re: Notice of Violation and Finding of Violation
Cemex, Inc.
Xenia, Ohio

Dear Mr. Gonzalez:

The United States Environmental Protection Agency (U.S. EPA) is issuing the enclosed Notice of Violation (NOV) and Finding of Violation (FOV) to Cemex, Inc. (Cemex) under Section 113(a)(1) and (a)(3) of the Clean Air Act, 42 U.S.C. § 7413(a)(1) and (a)(3). We find that you are violating the Prevention of Significant Deterioration requirements in Part C of the Clean Air Act, 42 U.S.C. §§ 7470-7479 and 42 U.S.C. §§ 7491-7492, Sections 502 and 503 of the Clean Air Act, 42 U.S.C. §§ 7661a-7661b and the Ohio State Implementation Plan at your Xenia, Ohio facility.

Section 113 of the Clean Air Act gives us several enforcement options. These options include issuing an administrative compliance order, issuing an administrative penalty order, and bringing a judicial civil or criminal action. The options we select may depend on, among other things, the length of time you take to achieve and demonstrate continuous compliance with the rules cited in the NOV/FOV.

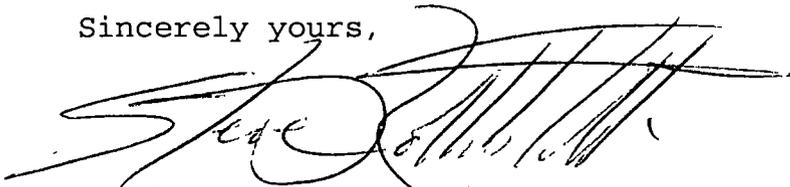
We are offering you an opportunity to confer with us about the violations alleged in the NOV/FOV. The conference will give you an opportunity to present information on the specific findings of violation, any efforts you have taken to comply, and the steps you will take to prevent future violations.

Please plan for your facility's technical and management personnel to attend the conference to discuss compliance measures and commitments. You may have an attorney represent you at this

conference if you choose.

The contacts in this matter are Kushal Som, Environmental Engineer, and Terry Stanuch, Associate Regional Counsel. You may call them at (312) 353-5792 and (312) 886-8044 respectively to request a conference. You should make the request as soon as possible, but no later than 10 calendar days after you receive this letter. We should hold any conference within 30 calendar days of your receipt of this letter.

Sincerely yours,

A handwritten signature in black ink, appearing to read "Stephen Rothblatt", written over a horizontal line.

Stephen Rothblatt, Director
Air and Radiation Division

cc: Robert Hodanbosi, Chief
Division of Air Pollution Control
Ohio Environmental Protection Agency

Curt Marshall, Supervisor
Abatement Unit
Regional Air Pollution Control Agency

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5**

IN THE MATTER OF:)
)
Cemex, Inc.) **NOTICE AND FINDING OF**
Xenia, Ohio) **VIOLATION**
)
) EPA-5-05-OH-07
Proceedings Pursuant to)
Section 113(a)(1) and (a)(3))
of the Clean Air Act, 42)
U.S.C. § 7413(a)(1) and)
(a)(3))
_____)

NOTICE AND FINDING OF VIOLATION

The Administrator of the United States Environmental Protection Agency (U.S. EPA) is issuing this Notice of Violation and Finding of Violation under Section 113(a)(1) and (a)(3) of the Clean Air Act (CAA or the Act), 42 U.S.C. § 7413(a)(1) and (a)(3). U.S. EPA finds that Cemex, Inc. (Cemex) is violating the Ohio State Implementation Plan (SIP), and Sections 502 and 503 of the CAA, 42 U.S.C. § 7661a-7661b, as follows:

Statutory and Regulatory Background

1. On June 19, 1978, U.S. EPA promulgated the prevention of significant deterioration (PSD) of air quality standards pursuant to Subtitle I, Part C of the Act. 43 Fed. Reg. 26403 (June 19, 1978). The PSD regulations were revised on August 7, 1980 (45 Fed. Reg. 52676) in response to a decision of the U.S. Court of Appeals for the D.C. Circuit. These regulations are codified at 40 C.F.R. § 52.21 in the 1999 edition of the Code of Federal Regulations. Subsequent to 1980, the PSD regulations have been repeatedly revised.
2. The authority to implement the federal PSD regulations was delegated to the State of Ohio in a letter from U.S. EPA dated May 1, 1980 and thereby incorporated into the Ohio SIP. 40 C.F.R. § 52.1884 and 46 Fed. Reg. 9580 (January 29, 1981).
3. On October 10, 2001, U.S. EPA approved the Ohio SIP for PSD provisions for attainment areas. 66 Fed. Reg. 51570 (October 10, 2001). Ohio's PSD program is located in Ohio Administrative Code (OAC) 3745-31-01 through 3745-31-20. These rules mirror the federal PSD regulations codified in

40 C.F.R. §52.21 in the 1999 edition of the Code of Federal Regulations.

4. Facilities in Ohio were required to comply with the federal PSD program prior to October 10, 2001. Facilities in Ohio are required to comply with the Ohio PSD program on and after October 10, 2001. Revisions to the federal PSD program made on or after October 10, 2001 are not currently effective in Ohio.
5. 40 C.F.R. § 52.21(b)(1)(i)(a)(1999) defines a "major stationary source" as any stationary source within one of 28 source categories which emits, or has the potential to emit, 100 tons per year or more of any air pollutant subject to regulation under the Act. Portland cement plants are included among the 28 source categories.
6. 40 C.F.R. § 52.21(b)(2)(i)(1999) defines a "major modification" as any physical change in or change in the method of operation of a major stationary source that would result in a significant net emissions increase of any pollutant subject to regulation under the Act.
7. 40 C.F.R. § 52.21(b)(3)(i)(1999) defines "net emissions increase" as the amount by which the sum of the following exceeds zero:
 - (a) Any increase in actual emissions from a particular physical change or change in method of operation at a stationary source; and
 - (b) Any other increases and decreases in actual emissions at the source that are contemporaneous with the particular change and are otherwise creditable.
8. 40 C.F.R. § 52.21(b)(21)(1999) defines "actual emissions" and states that for any emissions unit that has not begun normal operations on the particular date, actual emissions shall equal the potential to emit (PTE) of the unit on that date. 40 C.F.R. § 52.21(b)(21)(iv)(1999).
9. 40 C.F.R. § 52.21(b)(23)(1999) defines "significant" and states that in reference to nitrogen oxides (NO_x), Sulfur dioxide (SO₂), particulate matter (PM) and particulate matter smaller than 10 microns (PM₁₀), significant net emissions increase means an emissions rate that would equal or exceed 40 tons or more per year of NO_x, 40 tons or more per year of SO₂, 25 tons or more per year of PM, and 15 tons or more per year of PM₁₀. 40 C.F.R. §52.21(b)(23)(i)(1999).

10. An applicant for a permit to modify a stationary source is required to submit all information necessary to allow the permitting authority to perform any analysis or make any determination required in order to issue the appropriate permit. 40 C.F.R. § 52.21(n).
11. Any owner or operator of a source or modification subject to 40 C.F.R. § 52.21 who commences construction after the effective date of the PSD regulations without applying for and receiving a PSD permit, shall be subject to appropriate enforcement action. 40 C.F.R. § 52.21(r)(1)(1999).
12. 40 C.F.R. § 52.21(i)(1999) prohibits the construction of any new major stationary source or any major modification without a permit which states that the source or modification would meet the requirements of 40 C.F.R. § 52.21(j) through (r)(1999). 40 C.F.R. § 52.21(j) through (r)(1999) require that a source subject to PSD regulations undergo a control technology review, install Best Available Control technology (BACT), and conduct air quality modeling.

Requirements for SIP Permits to Install

13. OAC 3745-31-02(A) states that no person shall cause, permit, or allow the installation of a new source of air pollutants or allow the modification of an air containment source without first obtaining a permit to install from the director.
14. OAC 3745-31-05 provides that the director shall issue a permit to install if he determines, among other things, that the modification will not result in a violation of applicable laws such as those in 3745-31-10 to 3745-31-20 containing requirements pertaining to installation of major modifications in attainment areas.

Requirements for Title V Operating Permits

15. Section 502(a) of the CAA, 42 U.S.C. § 7661a(a), and 40 C.F.R. § 70.7(b) provide that, after the effective date of any permit program approved or promulgated under Title V of the CAA, no source subject to Title V may operate except in compliance with a Title V permit.
16. 40 C.F.R. § 70.1(b) provides that all sources subject to the Part 70 regulations shall have a permit to operate that assures compliance by the source with all applicable

requirements.

17. 40 C.F.R. § 70.7(b) provides that no source subject to Part 70 requirements may operate without a permit issued under a Part 70 program.
18. U.S. EPA fully approved the Ohio Title V program, effective October 1, 1995. 60 Fed. Reg. 42045 (August 15, 1995). Ohio's Title V permit requirements are codified at OAC 3745-77.
19. OAC 3745-77-02(A) prohibits operation of a source subject to Title V permitting requirements without a permit issued under Chapter 3745-77. OAC 3745-77-02(A)(1) requires that each Title V permit shall include emission limits and standards, including those operational requirements and limitations that assure compliance with all applicable requirements at the time of issuance.

Cemex's Facility

20. Cemex operates a Portland cement plant at 3250 Linebaugh Road, Xenia, Ohio. This plant consists of a pre-heater cement kiln (P003), a clinker cooler (P904) and several other emission units utilized to produce Portland cement.
21. The pre-heater cement kiln and the clinker cooler are controlled by independent baghouses.
22. In 1995, Southdown, Inc. (Southdown), the owner of the facility at the time, was in the planning stages of the "Fairborn Cement Plant Modernization And Expansion Project". Southdown discussed these plans in an Authorization for Expenditure (AFE # C-94006) and estimated the cost at \$48,200,000. This AFE stated that the project "will increase clinker capacity to 680,000 tons per year".
23. A "Fixed Asset Reconciliation" document, dated November 19, 1998, indicated which parts of the Fairborn Modernization and Expansion Project (AFE # C-94006) were completed. The document listed several significant changes that were completed during the project which included: a new Pre-heater induced draft (ID) fan, a modified clinker cooler and clinker cooler drags, new mill equipment, a new clay handling system, bypass improvements, a new finish mill, new mill equipment and new feeder equipment.

24. As a result of the Fairborn Cement Plant Modernization And Expansion Project, the Potential-To-Emit (PTE) of SO₂ from the Cemex plant increased from actual emissions of 337 tons per year of SO₂ in 1995 and 1996 to potential emissions of 420 tons/yr. The project also increased the PTE of NO_x from actual emissions of 1,642 tons/yr in 1995 and 1996 to potential emissions of 2,043 tons/yr of NO_x. This project also increased the PTE of PM and PM-10 emissions from actual emissions in 1995 and 1996 of 146 tons/yr and 124 tons/yr respectively, to potential emissions of 230 tons/yr and 187 tons/yr, respectively.
25. The Fairborn Cement Plant Modernization And Expansion Project caused a significant net emission increase of SO₂ and NO_x greater than 40 tons per year, PM greater than 25 tons per year, and PM-10 greater than 15 tons per year.
26. In 2003, Cemex emitted 396 tons of SO₂, 1,926 tons of NO_x, 171 tons of PM, and 145 tons of PM-10.
27. The Cemex cement plant meets the definition of "major stationary source" in 40 C.F.R. § 52.21(b)(1)(i)(a), because it is a Portland cement plant and it has the potential to emit in excess of 100 tons of NO_x, PM, PM-10 and SO₂ per year.
28. Cemex's facility is subject to the PSD regulations in the Ohio SIP, and the requirements to obtain PSD permits to install incorporating such PSD requirements, as required by the CAA and the Ohio SIP rules.
29. Cemex's facility is subject to Title V of the CAA (Sections 502 and 503) because it is a major source (as defined in Section 501(2) of the CAA) with the potential to emit more than 100 tons of NO_x, PM, PM-10, and SO₂ per year.
30. The State of Ohio issued a Title V permit to Cemex on January 29, 2004.

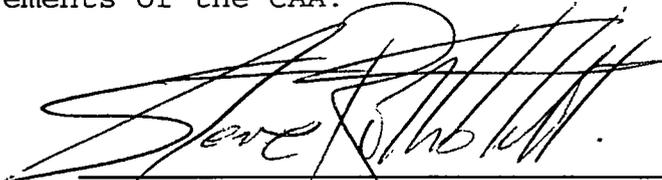
Violations

31. The Fairborn Cement Plant Modernization And Expansion Project conducted by Cemex caused emissions of SO₂, NO_x, PM, and PM-10 to increase above the significance level for each pollutant resulting in a "major modification" as defined in 40 C.F.R. §52.21(b)(2).
32. Cemex failed to obtain a PSD permit or undergo PSD review,

including applying BACT, prior to beginning actual construction, in violation of 40 C.F.R. Part 52.

33. Cemex failed to undergo PSD review, including applying BACT, prior to allowing the modification without first obtaining a PSD permit from the director, in violation of OAC Chapter 3745-31.
34. The violations noted in paragraphs 31-33 exist from at least the date of start of construction and continue until the appropriate permits are obtained and the necessary pollution control equipment is installed and operated.
35. Cemex failed to obtain a Title V permit that assures compliance with all applicable requirements of the CAA prior to operating a source subject to Title V permitting requirements, in violation of the Section 504 of the CAA and 40 C.F.R. § 70.1(b).
36. Cemex failed to obtain a Title V permit that includes emission limits and standards, including those operational requirements and limitations that assure compliance with all applicable requirements, prior to operating a source subject to Title V permitting requirements in violation of OAC 3745-77-02(A)(1)
37. The violations noted in paragraphs 35-36 exist from at least 1997, the year on which construction was complete and operation of the upgraded facility began and continues until Cemex obtains a Title V permit that assures compliance with all applicable requirements of the CAA.

3/31/2005
Date



Stephen Rothblatt, Director
Air and Radiation Division

CERTIFICATE OF MAILING

I, Loretta Shaffer, certify that I sent a Notice of Violation/Finding of Violation, No. EPA-5-05-OH-0, by Certified Mail, Return Receipt Requested, to:

Mike Gonzalez, Plant Manager
Cemex, Inc.
3250 Linebaugh Road
Xenia, Ohio 45385

I also certify that I sent copies of the Notice of Violation/Finding of Violation by first class mail to:

Robert Hodanbosi, Chief
Division of Air Pollution Control
Ohio Environmental Protection Agency
Lazarus Government Center
P.O. 1049
Columbus, Ohio 43216-1049

and

Curt Marshall, Administrator
Regional Air Pollution Control Agency
117 South Main Street
Dayton, Ohio 45422-1280

on the _____ day of _____, 2005.

Loretta Shaffer, Secretary
AECAS, (MN/OH)

CERTIFIED MAIL RECEIPT NUMBER: _____

CERTIFICATE OF MAILING

I, Betty Williams, certify that I sent a Notice of Violation/Finding of Violation, No. EPA-5-05-OH-07 by Certified Mail, Return Receipt Requested, to:

Mike Gonzalez, Plant Manager
Cemex, Inc.
3250 Linebaugh Road
Xenia, Ohio 45385

I also certify that I sent copies of the Notice of Violation/Finding of Violation by first class mail to:

Robert Hodanbosi, Chief
Division of Air Pollution Control
Ohio Environmental Protection Agency
Lazarus Government Center
P.O. 1049
Columbus, Ohio 43216-1049

and

Curt Marshall, Supervisor
Abatement Unit
Regional Air Pollution Control Agency
117 South Main Street
Dayton, Ohio 45422-1280

on the 1st day of April, 2005.


Betty Williams, Secretary
AECAS, (IL/IN)

CERTIFIED MAIL RECEIPT NUMBER: 70010320000589096721