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19 **UNITED STATES DISTRICT COURT**
20 **DISTRICT OF NEVADA**

21 _____)
UNITED STATES OF AMERICA,)
22)
Plaintiff,)
23)
v.)
24)
NEVADA CEMENT COMPANY, INC.)
25)
26)
Defendant.)
27 _____)
28)

Civil Action No.

COMPLAINT

1 The United States of America, by the authority of the Attorney General of the United
2 States and through the undersigned attorneys, acting at the request of the Administrator of the
3 United States Environmental Protection Agency (“EPA” or “Plaintiff”) alleges:

4 NATURE OF THE ACTION

5 1. This is a civil action brought against Defendant Nevada Cement Company
6 (“Nevada Cement” or “Defendant”), pursuant to Sections 113(b) and 167 of the Clean Air Act
7 (“Clean Air Act” or “the Act”), 42 U.S.C. §§ 7413(b) and 7477, for injunctive relief and the
8 assessment of civil penalties for violations of one or both of the following statutory and
9 regulatory requirements of the Act at the Portland cement plant owned and operated by
10 Defendant in Fernley, Nevada (the “Facility”): the Prevention of Significant Deterioration
11 (“PSD”) provisions of the Act, 42 U.S.C. §§ 7470-7492; and the federal PSD program as
12 delegated to the Nevada Department of Environmental Protection, and the enforceable state
13 implementation plan (“SIP”), which incorporates and/or implements the above-listed federal
14 PSD provisions of the Act, 42 U.S.C. §§ 7661-7661f.

15 2. The Plaintiff seeks an injunction ordering Defendant to undertake remedial
16 measures and operational improvements needed to comply with the above-cited Clean Air Act
17 provisions and the implementing regulations, and the regulatory requirements of the federally-
18 approved and enforceable SIP, and the award of a civil penalty for each past and ongoing
19 violation.

20 JURISDICTION AND VENUE

21 3. This Court has jurisdiction of the subject matter herein pursuant to Sections
22 113(b) and 167 of the Act, 42 U.S.C. §§ 7413(b) and 7477, and pursuant to 28 U.S.C. §§ 1331,
23 1345, and 1355.

24 4. Venue is proper in this District pursuant to Sections 113(b) of the Act, 42 U.S.C.
25 § 7413(b), and 28 U.S.C. §§ 1391(b) and (c) and 1395(a).

1 NOTICES

2 5. EPA provided notices of the violations alleged herein to Defendant and to the
3 state of Nevada where the Portland cement plant identified in this Complaint is located, pursuant
4 to Section 113(a) of the Act, 42 U.S.C. § 7413(a).

5 6. More than thirty days have elapsed since EPA provided the notices referred to in
6 the preceding paragraph.

7 7. The United States has provided notice of the commencement of this action to the
8 state of Nevada where the Portland cement plant identified in this Complaint is located, in
9 accordance with Section 113(b) of the Act, 42 U.S.C. § 7413(b).

10 STATUTORY AND REGULATORY BACKGROUND

11 The National Ambient Air Quality Standards

12 8. Section 109 of the Act, 42 U.S.C. § 7409, requires the Administrator of EPA to
13 promulgate regulations establishing primary and secondary national ambient air quality standards
14 (“NAAQS” or “ambient air quality standards”) for certain criteria air pollutants. The primary
15 NAAQS are to be adequate to protect the public health, and the secondary NAAQS are to be
16 adequate to protect the public welfare, from any known or anticipated adverse effects associated
17 with the presence of the air pollutant in the ambient air. Pursuant to Section 109, 42 U.S.C. §
18 7409, EPA has identified and promulgated NAAQS for nitrogen dioxide (“NO₂”), a form of
19 nitrogen oxides (“NO_x”) as such a pollutant. 40 C.F.R. § 50.11.

20 9. Section 110 of the Act, 42 U.S.C. § 7410, requires each state to adopt and submit
21 to EPA for approval a SIP that provides for the attainment and maintenance of the NAAQS.

22 10. Under Section 107(d) of the Act, 42 U.S.C. § 7407(d), a state is required to
23 designate those areas within its boundaries where the air quality is better or worse than the
24 NAAQS for each criteria pollutant, or where the air quality cannot be classified due to
25 insufficient data. Designations that have been approved by EPA are set forth at 40 C.F.R. Part
26 81. An area that meets the NAAQS for a particular pollutant is designated as an “attainment”
27 area with respect to such pollutant. An area that does not meet the NAAQS for a particular
28 pollutant is designated a “nonattainment” area with respect to such pollutant. An area that

1 cannot be designated for a particular pollutant due to insufficient data is termed “unclassifiable”
2 with respect to such pollutant. The State of Nevada has been designated as: “Cannot be
3 classified or better than national standards” with respect to the 1971 NO_x Annual Standard and as
4 “Unclassifiable/Attainment” with respect to the 2001 one hour NO_x Standard. The Facility has
5 been covered by these designations during the period of time covered by the activities described
6 herein. 40 C.F.R. § 81.329.

7 11. At all times relevant to this action, the Facility was within the jurisdiction of the
8 Nevada Division of Environmental Protection (“NDEP”), which has primary jurisdiction over
9 major stationary sources of air pollution in the Northwest Nevada Intrastate Air Quality Control
10 Region (“AQCR”), an area that includes the Facility.

11 The Prevention of Significant Deterioration Requirements

12 12. Part C of Title I of the Act, 42 U.S.C. §§ 7470-7492, sets forth requirements for
13 those areas designated as either attainment or unclassifiable for purposes of attaining and
14 maintaining the NAAQS standards. These requirements are designed to protect public health
15 and welfare, to assure that economic growth will occur in a manner consistent with the
16 preservation of existing clean air resources, and to assure that any decision to permit increased
17 air pollution is made only after careful evaluation of all the consequences of such a decision and
18 after public participation in the decision-making process. Section 160 of the Act, 42 U.S.C. §
19 7470.

20 13. Section 165(a) of the Act, 42 U.S.C. § 7475(a), among other things, prohibits the
21 construction and subsequent operation of a major emitting facility in an area designated as
22 attainment or unclassifiable unless a permit has been issued that conforms with the requirements
23 of Section 165 and the facility employs the best available control technology (“BACT”) for each
24 pollutant emitted from the facility that is subject to regulation under the Act.

25 14. Portland cement plants which emit or have the potential to emit one hundred
26 (100) tons per year (“tpy”) or more of any air pollutant are included among certain enumerated
27 categories of “major emitting facilities” pursuant to Section 169(1) of the Clean Air Act, 42
28 U.S.C. § 7479(1).

1 15. Sections 110(a) and 161 of the Act, 42 U.S.C. §§ 7410(a) and 7471, require each
2 state to adopt a SIP that contains emission limitations and such other measures as may be
3 necessary to prevent significant deterioration of air quality in areas designated as attainment or
4 unclassifiable. A state may comply with Sections 110(a) and 161 of the Act by being delegated
5 by EPA the authority to enforce the federal PSD regulations set forth at 40 C.F.R. § 52.21, or by
6 having its own PSD regulations approved as part of its SIP by EPA. State PSD regulations must
7 be at least as stringent as those set forth at 40 C.F.R. § 51.166. If a state does not have a PSD
8 program that has been approved by EPA and incorporated into the SIP, then the EPA federal
9 PSD regulations set forth at 40 C.F.R. § 52.21 shall be incorporated by reference into the SIP.
10 40 C.F.R. § 52.21(a).

11 16. NDEP has been delegated the authority to implement the federal PSD program
12 under 40 C.F.R. § 52.21 since May 1983. 40 C.F.R. § 52.1485; See also 47 Fed. Reg. 26621
13 (June 21, 1982) and 48 Fed. Reg. 28269, 28271 (June 21, 1983). The area under NDEP's
14 jurisdiction, which includes all of Nevada outside of Clark and Washoe Counties, has at all
15 relevant times been classified as unclassifiable/attainment for NO_x and hence the federal PSD
16 program applies to construction and modification of major sources of this pollutant.

17 17. Under the PSD regulations, consistent with the Clean Air Act, “major stationary
18 sources” is defined, *inter alia*, as Portland cement plants which emit or have the potential to emit
19 100 tpy or more of any regulated air pollutant. 40 C.F.R. § 52.21(b)(1)(i)(a).

20 18. As set forth at 40 C.F.R. § 52.21(a)(2)(iii)), at all relevant times, any major
21 stationary source in an attainment area that intends to construct a major modification must first
22 obtain a PSD permit. “Major modification” is defined at 40 C.F.R. § 52.21(b)(2)(i), at all
23 relevant times, as meaning any physical change in or change in the method of operation of a
24 major stationary source that would result in a significant net emission increase of a regulated
25 NSR pollutant (NSR pollutant includes NO_x, SO₂, particulate matter (PM) and volatile organic
26 compounds (VOCs), see 40 C.F.R § 52.21(b)(50) and 40 C.F.R. § 51.166(b)).
27
28

1 19. “Significant” is defined at 40 C.F.R. § 52.21(b)(23)(i) in reference to a net
2 emission increase or increase in the potential of a source to emit the following pollutant, as a rate
3 of emissions that would equal or exceed the following: 40 tpy for NO_x.

4 20. As set forth at 40 C.F.R. § 52.21(j), a new major stationary source or a major
5 modification in an attainment area shall apply Best Available Control Technology (BACT), as
6 defined at 40 C.F.R. § 52.21(b) and 42 U.S.C. § 7479(3), for each pollutant subject to regulation
7 under the Act for which the modification would result in a significant net emissions increase.
8 The PSD regulations further require, among other things, that any application for a PSD permit
9 must be accompanied by an analysis of ambient air quality in the area (40 C.F.R. § 52.21(m))
10 and that the owner or operator of a proposed source or modification must submit all information
11 necessary to perform any analysis or make any determination required under 40 C.F.R. § 52.21,
12 including whether the new source or modification would result in a significant net increase in
13 emissions of a regulated pollutant. 40 C.F.R. § 52.21(n).

14 21. Pursuant to the PSD regulations, any owner or operator who commences
15 construction or modification of a major stationary source without applying for and receiving
16 approval for such construction or modification is in violation of the Act, and subject to an
17 appropriate enforcement action. 40 C.F.R. § 52.21(r)(1). See also 40 C.F.R. § 52.23.

18 ENFORCEMENT PROVISIONS

19 22. Section 113(a)(1) and (3) of the Act, 42 U.S.C. § 7413(a)(1) and (3), provide that
20 the Administrator of EPA may bring a civil action in accordance with Section 113(b) of the Act,
21 42 U.S.C. § 7413(b), whenever, on the basis of any information available to the Administrator,
22 the Administrator finds that any person has violated or is in violation of any requirement or
23 prohibition of the Clean Air Act, to include, *inter alia*, the PSD requirements of Section 165(a)
24 of the Act, 42 U.S.C. § 7475(a); any rule or permit issued thereunder; or the PSD requirements
25 of the relevant state SIP.

26 23. 40 C.F.R. § 52.23 provides, *inter alia*, that any failure by a person to comply with
27 any provision of 40 C.F.R. Part 52, or with any approved regulatory provision of a SIP, shall
28

1 render such person in violation of the applicable SIP, and subject to enforcement action pursuant
2 to Section 113 of the Act, 42 U.S.C. §7413.

3 24. Section 113(b) of the Act, 42 U.S.C. § 7413(b), authorizes the Administrator of
4 EPA to initiate a judicial enforcement action for permanent or temporary injunction and/or for a
5 civil penalty against any person whenever such person has violated, or is in violation of, *inter*
6 *alia*, the requirements or prohibitions described in the preceding paragraph. CAA Section
7 113(b), 42 U.S.C. § 7413(b), authorizes civil penalties of up to \$25,000 per day for each
8 violation. The Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461, as
9 amended by 31 U.S.C. § 3701 (Debt Collection Improvement Act), and 40 C.F.R. § 19.4, 73 Fed.
10 Reg. 75,340 (Dec. 11, 2008); 78 Fed. Reg. 66,643 (Nov. 6, 2013) requires the EPA to
11 periodically adjust its civil penalties for inflation, as listed in Table One in Appendix A
12 (attached).

13 25. Section 167 of the Act, 42 U.S.C. § 7477, authorizes the Administrator of EPA to
14 initiate an action for injunctive relief, as necessary to prevent the construction, modification or
15 operation of a major emitting facility which does not conform to the PSD requirements in Part C
16 of the Act, CAA §§ 160–169B, 42 U.S.C. §§ 7470-7492.

17 FACTUAL ELEMENTS

18 26. Nevada Cement is a Nevada corporation and a “person” within the meaning of
19 Section 302(e) of the Act, 42 U.S.C. § 7602(e).

20 27. At all times relevant to this Complaint, Nevada Cement owned and operated the
21 Facility, located just off Interstate Highway 80, in or near Fernley, Nevada.

22 28. The Facility is an existing “major stationary source” because it emits more than
23 100 tons per year (tpy) of a criteria pollutant (i.e., NO_x, among others) and is subject to the PSD
24 requirements of the Act identified above. See 40 C.F.R. § 52.21(b)(1)(i)(a).

25 29. Defendant produces and/or at relevant times produced Portland cement at the
26 Facility by, among other things, burning raw materials in a kiln.

27 30. The Facility contains two cement kilns (Kiln #1 and #2) and two clinker coolers
28 (Clinker Cooler #1 and #2), among other components and equipment.

1 31. Defendant has not applied for a PSD permit from EPA and/or NDEP for the
2 Facility at any relevant time during the claims listed below nor has otherwise complied with the
3 PSD requirements including performing any analysis or making any determination required
4 under 40 C.F.R § 52.21 as to whether any of the modifications listed in this Complaint would
5 result in a significant net increase of a regulated pollutant, and installing and operating with
6 BACT pollution controls.

7 32. EPA has conducted an investigation of the Facility, which included a review of
8 permitting history and emissions data, and analysis of other relevant information obtained from
9 the Defendant concerning construction and operation of the plant. The Plaintiff alleges the
10 following based on the results of EPA's investigations, information, and belief.

11 FIRST CLAIM FOR RELIEF

12 (PSD Violation – Kiln #2 Upgrade to One Stage Preheater)

13 33. Paragraphs 1 through 32 are realleged and incorporated herein by reference.

14 34. In 1987, the Defendant constructed and began operating a one stage preheater on
15 long dry Kiln #2 at the Facility.

16 35. As a result of this physical change, the Facility emitted an additional amount of
17 NO_x in excess of 40 tpy, making it a major modification under PSD as defined in the Act.

18 36. Defendant failed to meet the PSD requirements by not applying for, obtaining, or
19 operating pursuant to a PSD permit for this modification, installing and operating BACT, or
20 meeting other PSD requirements.

21 37. As a result of this major modification, Defendant violated and is in continuous
22 and ongoing violation of Section 165(a) of the Clean Air Act, 42 U.S.C. § 7475(a), and 40
23 C.F.R. § 52.21, and the corresponding SIP for PSD, by failing to undergo PSD review for the
24 major modification, by failing to obtain a PSD permit, install and operate BACT for control of
25 such air pollutants, and meet other PSD requirements, which caused significant net emissions
26 increases of NO_x.

27 38. Unless restrained by an Order of the Court, this violation of the Act and the
28 implementing regulations is likely to continue.

1 45. As provided in Section 113(b) of the Act, 42 U.S.C. § 7413(b), and Section 167 of
2 the Act (for PSD violations), 42 U.S.C. § 7477, and pursuant to the Federal Civil Penalties
3 Inflation Adjustment Act of 1990, 28 U.S.C. § 2461, as amended by 31 U.S.C. § 3701, and 40
4 C.F.R. § 19.4, the violations set forth above subject the Defendant to injunctive relief and civil
5 penalties as described in Table One attached (Attachment A).

6 THIRD CLAIM FOR RELIEF

7 (PSD Violation – Changes to Clinker Cooler #1)

8 46. Paragraphs 1 through 32 are realleged and incorporated herein by reference.

9 47. In 1992, the Defendant made physical changes to Clinker Cooler #1 at the Facility
10 and began operating the Facility with those changes, which included the following: (1) new
11 moveable frame and grate supports, rebuilding of concrete foundation for the drag chain
12 conveyor and clinker breaker, (2) improved intercompartmental seals, (3) replacement of grates,
13 side casting, and refractory, (4) installation of ten rows of Claudius-Peters Mulden grates in the
14 first compartment with two fans with drives, valves, hoses, and ductwork, and (5) modification
15 of the structure of the cooler building and electrical work to accommodate new equipment.

16 48. As a result of these physical changes, the Facility emitted an additional amount of
17 NO_x in excess of 40 tpy, making it a major modification under PSD as defined in the Act.

18 49. Defendant failed to meet the PSD requirements by not applying for, obtaining, or
19 operating pursuant to a PSD permit for this modification, installing and operating BACT, or
20 meeting other PSD requirements.

21 50. As a result of this major modification, Defendant violated and is in continuous
22 and ongoing violation of Section 165(a) of the Clean Air Act, 42 U.S.C. § 7475(a), and 40
23 C.F.R. § 52.21, and the corresponding SIP for PSD, by failing to undergo PSD review for the
24 major modification, by failing to obtain a PSD permit, install and operate BACT for control of
25 such air pollutants, and meet other PSD requirements, which caused significant net emissions
26 increases of NO_x.

27 51. Unless restrained by an Order of the Court, this violation of the Act and the
28 implementing regulations is likely to continue.

FIFTH CLAIM FOR RELIEF

(PSD Violation - Operational Changes Increasing Production and Throughput)

60. Paragraphs 1 through 32 are realleged and incorporated herein by reference.

61. As a result of the physical changes made to the Facility in 1987-1993 as alleged in Paragraphs 33-59 of this Complaint, the throughput and clinker production capacity of the Facility were increased.

62. In January of 1997, Defendant received a Nevada air permit after applying for same that allowed for a production limit increase of the Facility's clinker production.

63. The increase in the permitted production level and the actual NCC increase in production after that time were operational changes of the Facility that exceeded the original design capacity of the Facility.

64. As a result of this change in the method of operation, the Facility emitted an additional amount of NO_x in excess of 40 tpy, making it a major modification under PSD as defined in the Act.

65. Defendant failed to meet the PSD requirements by not applying for, obtaining, or operating pursuant to a PSD permit for this increased production throughput modification, did not install and operate BACT, or meet other PSD requirements.

66. As a result of this major modification, Defendant violated and is in continuous and ongoing violation of Section 165(a) of the Clean Air Act, 42 U.S.C. § 7475(a), and 40 C.F.R. § 52.21, and the corresponding SIP for PSD, by failing to undergo PSD review for the major modification, by failing to obtain a PSD permit, install and operate BACT for control of such air pollutants, and meet other PSD requirements, which caused significant net emissions increases of NO_x.

67. Unless restrained by an Order of the Court, this violation of the Act and the implementing regulations is likely to continue.

68. As provided in Section 113(b) of the Act, 42 U.S.C. § 7413(b), and Section 167 of the Act (for PSD violations), 42 U.S.C. § 7477, and pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461, as amended by 31 U.S.C. § 3701, and 40

1 C.F.R. § 19.4, the violations set forth above subject the Defendant to injunctive relief and civil
2 penalties as described in Table One attached (Attachment A).

3 SIXTH CLAIM FOR RELIEF

4 (PSD Violation – Replacement of Drives for Kiln #1 & #2)

5 69. Paragraphs 1 through 32 are realleged and incorporated herein by reference.

6 70. From 1997 to 1998, the Defendant upgraded the kiln drives for both kilns,
7 including motors, gears, and associated equipment that rotate the kilns, to increase the speed of
8 the kilns, among other reasons.

9 71. As a result of these physical changes, the Facility increased production and
10 emitted an additional amount of NO_x in excess of 40 tpy, making it a major modification under
11 PSD as defined in the Act.

12 72. Defendant failed to meet the PSD requirements by not applying for, obtaining, or
13 operating pursuant to a PSD permit for this modification, installing and operating BACT, or
14 meeting other PSD requirements.

15 73. As a result of this major modification, Defendant violated and is in continuous
16 and ongoing violation of Section 165(a) of the Clean Air Act, 42 U.S.C. § 7475(a), and 40
17 C.F.R. § 52.21, and the corresponding SIP for PSD, by failing to undergo PSD review for the
18 major modification, by failing to obtain a PSD permit, install and operate BACT for control of
19 such air pollutants, and meet other PSD requirements, which caused significant net emissions
20 increases of NO_x.

21 74. Unless restrained by an Order of the Court, this violation of the Act and the
22 implementing regulations is likely to continue.

23 75. As provided in Section 113(b) of the Act, 42 U.S.C. § 7413(b), and Section 167 of
24 the Act (for PSD violations), 42 U.S.C. § 7477, and pursuant to the Federal Civil Penalties
25 Inflation Adjustment Act of 1990, 28 U.S.C. § 2461, as amended by 31 U.S.C. § 3701, and 40
26 C.F.R. § 19.4, the violations set forth above subject the Defendant to injunctive relief and civil
27 penalties as described in Table One attached (Attachment A).

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests that this Court:

- i. Order Defendant to immediately comply with the state and federal statutory and regulatory requirements cited in this Complaint, under the Clean Air Act;
- ii. Order Defendant to remedy its past violations by, among other things, requiring Defendant to employ BACT under PSD at the Facility for violations of the Act due to NOx air emissions that have occurred and are subject to regulation under the Act;
- iii. Order Defendant to apply for and comply with a permit for its Facility that conforms to the requirements of the PSD provisions of the Act and the Nevada SIP, as appropriate;
- iv. Order Defendant to take other appropriate actions to address or offset the past and current unlawful emissions of NOx attributable to the violations of the Clean Air Act alleged above;
- v. Assess civil penalties against Defendant for up to the amounts provided by applicable law;
- vi. Award Plaintiffs their costs of this action; and,
- vii. Grant the Plaintiffs such other relief as this Court deems just and proper.

Respectfully submitted,

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Attachment A

Table One, Federal Civil Penalties

pursuant to 42 U.S.C. § 7413(b), 28 U.S.C. § 2461, 31 U.S.C. § 3701, and 40 C.F.R. § 19.4.

Date Range	Penalty per Day for Each Violation
On or before January 30, 1997	\$25,000
On or after January 31, 1997 and up to and including March 15, 2004	\$27,500
On or after March 16, 2004 and up to and including January 12, 2009	\$32,500
Occurring after January 12, 2009 and up to and including November 2, 2015	\$37,500
Occurring after November 2, 2015 to the present	\$93,750