

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

AMERICAN PORTLAND CEMENT)	
ALLIANCE,)	
)	
Petitioner,)	
)	
v.)	Case No. 99-1322
)	
U.S. ENVIRONMENTAL PROTECTION)	
AGENCY,)	
)	
Respondent.)	

SETTLEMENT AGREEMENT BY AND BETWEEN
THE AMERICAN PORTLAND CEMENT ALLIANCE AND
THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

WHEREAS, on June 14, 1999, the United States Environmental Protection Agency ("EPA") published in the Federal Register notice of a final rule entitled "National Emission Standards for Hazardous Air Pollutants for Source Categories: Portland Cement Manufacturing Industry ("final rule")." See 64 Fed. Reg. 31898;

WHEREAS, on August 6, 1999, the American Portland Cement Alliance ("APCA"), an association that represents the majority of domestic manufacturers of portland cement who are affected by the requirements of the final rule, filed in the United States Court of Appeals for the District of Columbia Circuit a petition for review ("Petition") of the final rule under §307(b)(1) of the Clean Air Act ("Act"), 42 U.S.C. §7607(b)(1);

WHEREAS, APCA and EPA ("parties") have negotiated in good faith, and voluntarily have agreed to, the terms of this Settlement Agreement ("Agreement"); the parties recognize that implementation of this Agreement will avoid protracted litigation between the parties concerning the final rule; and the Agreement is fair, reasonable, equitable, consistent with the goals of the Act, and in the public interest;

NOW, THEREFORE, without admission of the violations alleged in the Petition, the parties hereby agree as follows:

I. APPLICABILITY

1. The provisions of this Agreement shall apply to and be binding upon the APCA and the United States.

II. DEFINITIONS

2. For the purpose of this Agreement, APCA and EPA agree that:
 - a. "Act" shall mean the Clean Air Act, 42 U.S.C. § 7401 et seq.
 - b. "Administrator" shall mean the Administrator of the United States Environmental Protection Agency.
 - c. "Agreement" shall mean this Settlement Agreement, including all Attachments thereto.
 - d. "APCA" shall mean the American Portland Cement Alliance.
 - e. "EPA" shall mean the United States Environmental Protection Agency.
 - f. "Final Rule" shall mean the "National Emission Standards for Hazardous Air Pollutants for Source Categories: Portland Cement Manufacturing Industry," published in the Federal Register at 64 Fed. Reg. 31898 (June 14, 1999).
 - g. "Method 9" shall mean the United States Environmental Protection Agency reference test method 9 published in Appendix A to 40 C.F.R. Part 60.
 - f. "Method 22" shall mean the United States Environmental Protection Agency reference test method 22 published in Appendix A to 40 C.F.R. Part 60.
 - g. "NSPS Subpart Y" shall mean Subpart Y of 40 C.F.R. Part 60.
 - h. "Parties" shall refer to APCA and EPA.

III. REVISIONS TO THE FINAL RULE

3. On or before 180 days from the date on which notice of a final settlement agreement between the parties is published in the Federal Register, EPA shall submit to the Office of Federal Register for publication notice of a proposed amended and/or direct final rule to revise the Final Rule as follows:

A. Section 63.1340 Applicability and designation of affected sources.

1. NESHAP Applicability

EPA agrees that the requirements in the Final Rule do not apply to non-stationary or mobile sources of air pollutant emissions, such as trucks or loaders, or to fugitive emissions from open or unenclosed material stockpiles or haul roads. To clarify the applicability of §63.1340(a) of the final rule, EPA agrees to provide the APCA with written clarification that the final rule does not apply to these types of non-stationary or fugitive emissions sources.

2. Definition of "Bin"

The parties agree that the final rule should define the term "bin" as the term is used in §63.1340(b)(6). EPA will revise §63.1341 of the final rule to add the following definition: "Bin means a man-made enclosure for storage of raw materials, clinker, or finished product prior to further processing at a portland cement plant."

3. Applicability of the Final Rule to Crushers

The parties agree that the final rule should not apply to primary and secondary crushing operations located at portland cement plants with nonmetallic mineral processing operations. EPA agrees to revise § 63.1340(c) of the final rule to state: For portland cement plants with on-site nonmetallic mineral processing facilities, the first affected source in the sequence of materials handling operations subject to this subpart is the raw material storage, which is just prior to the raw mill. Any equipment of the on-site nonmetallic mineral processing plant which precedes the raw material storage is not subject to this subpart. In addition, the primary and secondary crushers of the on-site nonmetallic mineral processing plant, regardless of whether they precede the raw material storage, are not subject to this subpart. Furthermore, the first conveyor transfer point subject to this subpart is the transfer point associated with the conveyor transferring material from the raw material storage to the raw mill.

4. Processing Operations Subject to NSPS Subpart Y

The parties agree that the requirements of 40 C.F.R. Part 60, Subpart Y, Standards of Performance for Coal Preparation Plants, should not apply to conveying system transfer points used to transfer coal to the kiln located at a portland cement plant that is a major source under 40 C.F.R. Part 63, Subpart LLL. This is because Subpart LLL already covers these conveyor system transfer points associated with coal preparation at portland cement plants that are major sources. The parties further agree that the final rule otherwise does not affect the applicability of 40 C.F.R. Part 60, Subpart Y to portland cement plants that are major or area sources under 40 C.F.R. Part 63, Subpart LLL.

The parties agree to add a subsection (b) to § 63.1356 of the final rule that states:

"(b) The requirements of 40 C.F.R. Part 60, Subpart Y, Standards of Performance for Coal Preparation Plants, do not apply to conveying system transfer points used to convey coal to the kiln that are associated with coal preparation at a portland cement plant that is a major source under 40 C.F.R. Part 63, Subpart LLL."

The parties agree to revise § 63.1340 (b) (7) to read "Each conveying system transfer point including those associated with coal preparation used to convey coal to the kiln, at any portland cement plant which is a major source."

5. Delete Applicability to Bulk Loading or Unloading System

EPA agrees to revise § 63.1340(b)(8) of the final rule to delete the language "[e]ach bagging system at any portland cement plant which is a major source," and to insert the language "each bagging and bulk loading and unloading system at any portland cement plant which is a major source." EPA also agrees to delete § 63.1340(b)(9) of the final rule.

B. § 63.1344 Operating limits for kilns and in-line kiln/raw mills.

1. Dioxin/furan temperature for bypass stack at APCD inlet

The parties agree that the temperature of exhaust gases exiting a bypass stack of an in-line kiln equipped with a raw mill is not affected by whether the raw mill is operating. EPA agrees that the proposed amended final rule will revise § 63.1344(a)(3) to state that: "If the in-line kiln/raw mill is equipped with an alkali bypass, the applicable temperature limit for the alkali bypass specified in paragraph (b) of this section and established during the performance test, with or without the raw mill operating, is not exceeded."

C. § 63.1349 Performance testing requirements.

1. "Significant change in fuel or feed;" waiver of operating parameters during associated performance testing and pre-testing

The parties agree that sources that plan to undertake an operational change (e.g., a significant change in feeds or fuels to the kiln) that may adversely affect the source's compliance with an applicable standard under the final rule should be required to conduct the applicable performance test as specified under either § 63.1349 (b)(1) and/or (b)(3), and that the source may operate under the planned operational conditions while preparing for and conducting the performance test for a period not to exceed 360 hours.

EPA agrees to revise § 63.1349(e) of the final rule to state:

- (1) Changes in operation. If a source plans to undertake a change in operations that may adversely affect compliance with an applicable D/F standard under this subpart, the source must conduct a performance test and establish new temperature limit(s) as specified in § 63.1349 (b)(3).

- (2) If a source plans to undertake a change in operations that may adversely affect compliance with an applicable PM standard under § 63.1343 this subpart, the source must conduct a performance test as specified in § 63.1349 (b)(1).
- (3) Pre-test operation. In preparation for and while conducting a performance test required in subsection (1) of this section, a source may operate under the planned operational change conditions for a period not to exceed 360 hours, provided that the following conditions in paragraphs (i)- (iv) are met. The source shall submit temperature and other monitoring data that is recorded during the pretest operations.
 - (i) Notification. The source must provide the Administrator written notice at least 60 days prior to undertaking an operational change that may adversely affect compliance with an applicable standard under this subpart, or as soon as practicable where 60 days advance notice is not feasible. Notice provided under this subsection shall include a description of the planned change, the emissions standards that may be affected by the change, and a schedule for completion of the performance test required under subsection (1), including when the planned operational change period would begin.
 - (ii) The performance test results must be documented in a test report according §63.1349 (a).
 - (iii) A test plan must be made available to the Administrator prior to testing, if requested.
 - (iv) The performance test must be conducted, and it must be completed within 360 hours after the planned operational change period begins.

2. Performance testing under "representative conditions"

EPA will propose to revise § 63.1349(b)(1)(i), (b)(2), and (b)(3)(i) of the final rule to delete the language "highest load or capacity reasonably expected to occur," and to insert the language "representative performance conditions in accordance with 40 C.F.R. § 63.7(e)."

EPA also will provide APCA with written clarification that the production measured during dioxin/furan or particulate matter (PM) performance testing is not an operating limit for the source. However, if the kiln is operated under a condition not representative of the condition during the performance test, performance tests will need to be conducted and temperature limits will need to be re-established according to the requirements above in item C.1 of this settlement agreement.

D. Section 63.1350 Monitoring requirements.

1. Requirement to install PM CEMs

The final rule currently states that sources must install PM CEMs, but does not specify a deadline by which sources would be required to comply with this requirement. EPA agrees that prior to adopting a requirement under this subpart that cement kilns install and operate PM CEMs, the requirement to install and operate PM CEMs for cement kilns will be addressed through a separate administrative procedure.

EPA agrees to state in the preamble to the proposed amended final rule that "Section 63.1350(k) of the final rule currently requires sources to install PM CEMs, but did not specify a deadline by which sources would be required to comply with this requirements."

2. Visible emissions monitoring

a. Raw mill/finish mill monitoring

EPA agrees to revise § 63.1350(e)(2) of the final rule to state: "Within 24 hours of the end of the Method 22 test in which visible emissions were observed, conduct a follow up Method 22 test of each stack from which visible emissions were observed during the previous Method 22 test. If visible emissions are observed during the follow up Method 22 test from any stack from which visible emissions were observed during the previous Method 22 test, conduct a visual opacity test of each stack from which emissions were observed during the follow up Method 22 test in accordance with Method 9 of Appendix A of 40 C.F.R. Part 60. The duration of the Method 9 test shall be thirty minutes."

b. Continuous monitoring systems for raw mills and finish mills

The parties agree that sources that elect under the final rule to install continuous monitoring systems, such as continuous opacity monitors ("COMs") or broken bag detectors, on raw mills and finish mills should not be required under § 63.1350 of the final rule to conduct daily Method 22 testing.

However, if the source chooses to use a COM, any 6-minute reading above 10 % opacity would be a violation. EPA agrees to propose a new section to § 63.1350 of the final rule to state: "The requirements under § 63.1350(e) to conduct daily Method 22 testing shall not apply to any specific raw mill or finish mill equipped with a continuous opacity monitor or bag leak detection monitoring system. If the owner or operator chooses to install a COM in lieu of conducting the daily visual emissions testing required under 63.1350 (e), then the COM must be installed at the outlet of the PM control device of the raw mill or finish mill, and the COM must be installed, maintained, calibrated, and operated as required by subpart A, general provisions of this part, and according to PS-1 of appendix B to part 60 of this chapter. To remain in compliance, the opacity must be maintained such that the 6-minute average opacity for any 6-minute block period does not

exceed 10 percent. If the average opacity for any 6-minute block period exceeds 10 percent, this shall constitute a violation of the standard.

If the owner or operator chooses to install a bag leak detection system ("BLDS") in lieu of conducting the daily visual emissions testing required under 63.1350 (e), the following requirements apply to each BLDS:

- (1) The bag leak detection system must be certified by the manufacturer to be capable of detecting PM emissions at concentrations of 10 milligrams per actual cubic meter (0.0044 grains per actual cubic foot) or less. "Certify" shall mean that the instrument manufacturer has tested the instrument on gas streams having a range of particle size distributions and confirmed by means of valid filterable particulate matter tests that the minimum detectable concentration limit is at or below 10 milligrams per actual cubic meter (0.0044 grains per actual cubic foot) or less.
- (2) The sensor on the bag leak detection system must provide output of relative PM emissions.
- (3) The bag leak detection system must have an alarm that will activate automatically when it detects a significant increase in relative PM emissions greater than a preset level.
- (4) The presence of an alarm condition should be clearly apparent to facility operating personnel.
- (5) For a positive-pressure fabric filter, each compartment or cell must have a bag leak detector. For a negative-pressure or induced-air fabric filter, the bag leak detector must be installed downstream of the fabric filter. If multiple bag leak detectors are required (for either type of fabric filter), detectors may share the system instrumentation and alarm.
- (6) Bag leak detection systems must be installed, operated, adjusted, and maintained so that they are based on the manufacturers written specifications and recommendations. The EPA recommends that where appropriate, the standard operating procedures manual for each bag leak detection system include concepts from EPA's "Fabric Filter Bag Leak Detection Guidance" (EPA-454/R-98-015, September 1997).
- (7) The baseline output of the system must be established as follows:
 - (i) Adjust the range and the averaging period of the device.

- (ii) Establish the alarm set points and the alarm delay time.
- (8) After initial adjustment, the range, averaging period, alarm set points, or alarm delay time may not be adjusted except as specified in the operations and maintenance plan required by Sec. 63.1350(a) of this subpart. In no event may the range be increased by more than 100 percent or decreased by more than 50 percent over a one calendar year period unless a responsible official as defined in Sec. 63.2 of the general provisions in subpart A of this part certifies in writing to the Administrator that the fabric filter has been inspected and found to be in good operating condition.
 - (9) The owner or operator must maintain and operate the fabric filter such that the bag leak detector alarm is not activated and alarm condition does not exist for more than 5 percent of the total operating time in a 6-month block period. Each time the alarm activates, alarm time will be counted as the actual amount of time taken by the owner or operator to initiate corrective actions. If inspection of the fabric filter demonstrates that no corrective actions are necessary, no alarm time will be counted. The owner or operator must continuously record the output from the bag leak detection system during periods of normal operation. Normal operation does not include periods when the bag leak detection system is being maintained or during startup, shutdown or malfunction.
- c. Exclusion of totally enclosed or partially enclosed conveying system transfer points from Method 22 visible emissions monitoring requirements

The parties agree that the requirements under Section 63.1350(a)(4) to conduct method 22 visible emissions monitoring testing should not apply to any totally enclosed conveying system transfer point, regardless of where that transfer point is located. The enclosures for these transfer points shall be operated and maintained as total enclosures on a continuing basis in accordance with the facility operations and maintenance plan. The parties also agree that for any partially enclosed or unenclosed conveying system transfer point that is located within a building, the owner or operator of the portland cement plant shall have the option to conduct the Method 22 visible emissions monitoring required under § 63.1350(a)(4) either for the building or for each such conveying system transfer point.

EPA agrees to propose adding paragraphs (v) through (vii) to Section 63.1350(a)(4) to state:

- (v) The requirement to conduct a Method 22 visible emissions monitoring under this subsection shall not apply to any totally enclosed conveying system transfer point, regardless of the location

of the transfer point. "Totally enclosed conveying system transfer point" shall mean a conveying system transfer point that is enclosed on all sides, top, and bottom.

- (vi) If any partially enclosed or unenclosed conveying system transfer point is located in a building, the owner or operator of the portland cement plant shall have the option to conduct a Method 22 visible emissions monitoring test according to the requirements of 63.1350(a)(4)(i) through (iv) for each such conveying system transfer point located within the building, or for the building itself (according to paragraph 63.1350(a)(4)(vii) below).
- (vii) If visible emissions from a building are monitored, the requirements of paragraphs 63.1350(a)(4)(i) through (iv) apply to the monitoring of the building, and you must also do the following: Test visible emissions from each side, roof and vent of the building for at least 1 minute. The test must be conducted under normal operating conditions."

E. Section 63.1357 Extension of 96-hour aggregate compliance waiver

The parties agree that the 96-hour aggregate waiver from compliance with the PM and opacity standards under § 63.1357(e) of the final rule may not be sufficient to allow sources to correlate all PM CEMs devices adequately. EPA agrees to propose in the amended final rule a revision to § 63.1357(e) of the final rule to state: "Where additional time is required to correlate a PM CEMs device, a source may petition EPA for an extension of the 96-hour aggregate waiver of compliance with the PM and opacity standards. An extension of the 96-hour aggregate waiver is renewable at the discretion of the Administrator."

F. Section 63.1351 Compliance dates Compliance deadlines for existing and new/reconstructed sources

The parties agree that § 63.1351(a) and (b) of the final rule specify erroneous compliance deadlines for existing and new/reconstructed sources. Existing sources are required to comply within three years of promulgation of the final rule, i.e., by June 14, 2002. However, the final rule requires existing sources to comply by June 10, 2002. New or reconstructed sources (sources which began construction or reconstruction after March 24, 1998) are subject to the final rule as of the date the rule was promulgated, i.e., June 14, 1999, or upon startup, whichever is later. However, the final rule requires new or reconstructed sources to comply as of June 9, 1999, or upon startup, whichever is later.

Accordingly, EPA agrees to amend § 63.1351(a) and (b) of the final rule to state that the compliance date for existing sources is June 14, 2002, and for new/reconstructed sources, the compliance date is June 14, 1999, or upon startup of operations, whichever is later.

IV. IMPLEMENTATION

4. EPA shall submit for publication in the Federal Register notice of a proposed amended final rule that incorporates each of the requirements set forth in Section III of this Agreement. The notice of the proposed amended final rule shall provide at least a 30-day period for public review of, and submission of written comment on, the proposed amended final rule. Within 270 days of the close of the comment period on the proposed amended final rule, EPA shall submit for publication in the Federal Register an amended final rule that addresses the significant comments on the proposed amended final rule.
 - a. If within the time limits specified in this Agreement EPA promulgates a proposed amended final rule, no party to this Agreement shall submit an adverse comment on any provision of the proposed amended final rule that is expressly resolved by the terms of this Agreement. However, nothing in this Agreement shall limit the right of any party to this Agreement to submit an adverse comment on, or to seek review of (1) any provision of the proposed amended final rule that is not addressed specifically by this Agreement or that is not consistent with the specific terms of this Agreement, or (2) any other provision of any other proposed or final action of EPA that is not addressed specifically by this Agreement, including but not limited to any proposed or final action of EPA in accordance with *National Lime Ass'n et al. v. EPA*, 233 F.3d 625, Nos. 99-1325 and 99-1326 (D.C. Cir. Dec. 15, 2000).

5. In the alternative to promulgating a proposed amended final rule, EPA may publish in the Federal Register notice of a direct final rule and a proposed rule to revise the final rule in accordance with the provisions of Section III of this Agreement. Within 180 days from the date on which notice of a final settlement agreement between the parties is published in the Federal Register, EPA shall submit for publication in the Federal Register notice of a direct final rule and a proposed rule, and shall provide at least a 30-day period for public review of, and submission of written comment on, the direct final rule. A direct final rule promulgated in accordance with this subsection (14) shall become effective within 40 days of the date on which notice of the direct final rule appears in the Federal Register.
 - a. However, if EPA receives within the 30-day period for comment on the direct final rule a significant adverse comment on any provision of the direct final rule, EPA will withdraw each provision of the direct final rule that directly is the subject of a significant adverse comment. Within 270 days of the close of the comment period on the direct final rule and proposed rule, EPA shall submit for publication in the Federal Register a final rule that addresses each of those provisions for which a significant adverse comment was received. A final rule promulgated following the withdrawal of any provision of the direct final rule shall become effective on the thirtieth day after the date on which the final rule is published in the Federal Register.

6. Within 30 days after execution of this Agreement, EPA shall forward to the Office of the Federal Register for publication in the Federal Register a notice described in section 113(g) of the Act with respect to this Agreement, and, in such notice, EPA shall solicit written comment, pursuant to section 113(g) of the Act, to be submitted no later than 30 days after the date of publication of such notice in the Federal Register.
7. The parties may extend the dates set forth in this Agreement by written agreement executed by authorized counsel for each of the parties.
8. The parties agree and acknowledge that final approval and filing of this Agreement is subject to the requirements of section 113(g) of the Act. Section 113(g) requires public notice of this Agreement, that the public be provided a minimum of 30 days to comment on this Agreement, and that the Administrator of EPA, or the United States Attorney General, as appropriate, consider comments on this Agreement in deciding whether to consent to this Agreement. EPA shall, upon request, promptly make copies of all comments available to any party that requests such copies. Within 30 consecutive days of the close of the comment period the Administrator of EPA or the U.S. Attorney General, as appropriate, shall decide whether to consent to the Agreement. Within 15 consecutive days of the decision whether to consent to the Agreement, the parties shall be notified in writing of the decision and, if consent to the Agreement has been given, the executed Agreement shall be filed with the Court.
9. Nothing in this Agreement shall be construed to limit or to modify the discretion accorded to EPA under the Act or under general principles of administrative law.
10. Nothing in this Agreement shall be construed to limit or modify EPA's discretion to alter, amend, or revise, or to promulgate regulations that supersede, the regulations identified in section III of this Agreement. This Agreement also imposes no limitation on any rights to challenge any such alteration, amendment or revision. Nothing in this Agreement shall be interpreted to require EPA to obligate or to pay funds, or to take any other action in violation of the Anti-Deficiency Act or any other applicable appropriations law.
11. Not later than 30 days after the effective date of an amended final rule or direct final rule, that incorporates the requirements of, and within the time periods set forth in, this Agreement, APCA shall file a motion to withdraw its petition for review in the referenced case. The motion shall state that as a result of this Agreement and EPA's satisfaction of its obligations herein, APCA will not raise in this case or in any other case any challenge to EPA's final rule or, with respect to the issues listed below that are addressed in and resolved by this Agreement, any challenge to EPA's amended final rule or direct final rule:
 - a. The applicability of the final rule to (1) non-stationary or mobile source emissions or certain fugitive emission sources, (2) bins as defined in this Agreement, and (3) bagging and bulk loading and unloading systems as defined in this Agreement.

- b. The applicability of NSPS Subpart Y to conveying system transfer points used to transfer coal to the kiln located at a portland cement plant that is a major source under 40 C.F.R. Part 63, Subpart LLL.
- c. Compliance with the applicable temperature limit for the alkali bypass of an in-line kiln/raw mill established during the performance test may be demonstrated with or without the raw mill operating.
- d. Sources that undertake an operational change that may adversely affect compliance with the applicable standards under the final rule must conduct a performance test in accordance with § 63.1349(b)(1) and/or (b)(3). In preparation for and while conducting the performance test, the source may operate under the planned operational conditions for a period not to exceed 360 hours. The source must provide EPA written notice at least 60 days prior to undertaking an operational change that may adversely affect compliance, or as soon as practicable where 60 days advance written notice is not feasible.
- e. Performance testing shall be conducted under representative performance conditions in accordance with 40 C.F.R. § 63.7(e). The production rate is not an operating limit.
- f. Sources must conduct a follow-up Method 22 test within 24 hours of observing visible emissions from any stack during an initial Method 22 test. Sources must conduct a Method 9 test if visual emissions are observed during a follow-up Method 22 test from any stack from which visual emissions also were observed during the previous Method 22 test.
- g. Sources that elect under the final rule to install continuous monitoring systems on raw mills and finish mills are not required to conduct a daily Method 22 test under § 63.1350 of the final rule. See our detailed comments on this in section III.
- h. The requirement to conduct Method 22 visible emissions monitoring testing under § 63.1350(a)(4) does not apply to totally enclosed conveying system transfer points regardless of the location of such transfer points or to partially enclosed conveying system transfer points located within an enclosed structure that is equipped with an air pollution control device.
- i. Sources may petition EPA to extend the 96-hour waiver of compliance with the PM and opacity standards under § 63.1357(e) of the final rule during correlation of PM CEMs. An extension of the 96-hour waiver is renewable at the Administrator's discretion.
- j. Existing sources are required to comply with the final rule within three years of promulgation B by June 14, 2002. New or reconstructed sources are subject to the final rule as of June 14, 1999.

12. If within the time limits specified in this Agreement, EPA promulgates an amended final rule or a direct final rule to revise the final rule in accordance with the requirements of, and the time periods set forth in, this Agreement, APCA shall be deemed to have waived hereby any right to seek judicial review of those provisions of the amended final rule or direct final rule that are addressed expressly in Section III of this Agreement.
13. In the event that EPA does not accomplish one or more of the items specified in this Agreement within the time periods specified therein, the only remedies available to APCA shall be the right to seek imposition of a schedule for briefing the issues that were not resolved due to EPA's failure to accomplish items specified in this Agreement, and the right to seek judicial review of any amended final rule or direct final rule for which the APCA otherwise would have waived the right to challenge under the express terms of this Agreement. Nothing in this Agreement shall be construed to limit a party from initiating a claim under section 304(a) of the Clean Air Act to allege a failure of EPA to perform a nondiscretionary duty as set forth in the Act. Any party desiring to exercise its rights under this subsection (13) shall provide EPA seven (7) days advance written notice prior to exercising its rights.
14. If any party files an appeal or petition for review that it has waived its rights to file under this Agreement, EPA shall move to dismiss such action and any other party may seek to intervene in such action for the sole purpose of moving to dismiss such action based on the express waivers contained in this Agreement.
15. The undersigned representatives of each party to this Agreement certify that they are fully authorized to bind the designated parties to the terms of this Agreement. This Agreement will be deemed to be executed and shall become effective when signed by each of the designated representatives for the parties set forth below. Each party agrees to bear its own costs and attorney fees in implementing this Agreement..

Approved by counsel for the parties:

Approved subject to completion of the requirements of Section 113(g) of the Clean Air Act.

FOR RESPONDENTS
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
AND CHRISTINE TODD WHITMAN, ADMINISTRATOR

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