UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2

In the Matter of: Argos Puerto Rico Corp. Dorado, Puerto Rico, Respondent, In a proceeding under Section 113(d) of the Clean Air Act, 42 U.S.C. § 7413(d)	**CONSENT AGREEMENT AND FINAL ORDER** **CAA-02-2024-1210**

A. PRELIMINARY STATEMENT

1. This is an administrative penalty assessment proceeding under Section 113(d) of the Clean Air Act (the CAA or the Act), 42 U.S.C. § 7413(d), and Sections 22.13 and 22.18 of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits (Consolidated Rules), codified at 40 C.F.R. Part 22.

2. On behalf of the United States Environmental Protection Agency (EPA or Complainant), the Director of the Caribbean Environmental Protection Division (CEPD) for EPA Region 2 is delegated the authority to settle civil administrative penalty proceedings under Section 113(d) of the Act. Specifically, under EPA Delegation of Authority 7-6-A and EPA Region 2 Delegation of Authority 7-6-A, the EPA Administrator has delegated to the Director of CEPD, through the Regional Administrator of EPA Region 2, the authority to, *inter alia*, (a) make findings of violations, (b) issue CAA Section 113(d) administrative penalty complaints, and (c) agree to settlements and sign consent agreements memorializing those settlements, for CAA violations that occur in the Commonwealth of Puerto Rico.

3. Section 113(d) of the CAA authorizes the EPA Administrator to issue an order assessing civil administrative penalties against any person who has violated or is violating any requirement or prohibition of subchapters I, III, IV-A, V, or VI of the Act, or any requirement or prohibition of any rule, order, waiver, permit, or plan promulgated pursuant to any of those subchapters, including but not limited to any regulation promulgated pursuant to Sections 111, 112, and 114 of the Act, 42 U.S.C. §§ 7411, 7412, and 7414.

4. Under EPA Delegation of Authority 7-6-C, the EPA Administrator has delegated to the Regional Administrator of EPA Region 2 the authority to execute CAA Section 113(d) Final Orders.

B. JURISDICTION

5. Respondent is Argos Puerto Rico Corp. (Respondent or Argos), a corporation doing business in the Commonwealth of Puerto Rico.

6. Respondent is a "person" as defined in Section 302(e) of the Act, 42 U.S.C. § 7602(e).

7. EPA has determined that Argos violated the CAA and its implementing regulations promulgated under the CAA. The violations occurred at an Argos facility located at State Road, PR-2, Km. 26.7, at Espinosa Ward in Dorado, Puerto Rico (the Facility). Specifically, EPA has determined that Argos violated the requirements of 40 C.F.R. Part 63 Subpart LLL, the "National Emission Standards for Hazardous Air Pollutants From the Portland Cement Manufacturing Industry", promulgated pursuant to Section 112 of the CAA, 42 U.S.C. § 7412. The violations found by EPA are set forth in detail in Section E of this Consent Agreement, entitled "Conclusions of Law".

8. This Consent Agreement is entered into pursuant to Section 113(d) of the Act, as amended, 42 U.S.C. § 7413(d), and the Consolidated Rules, 40 C.F.R. Part 22.

9. Under Section 113(d)(1)(C), the EPA Administrator and the Attorney General,

through their respective delegates, have jointly determined that this matter is appropriate for an administrative penalty assessment. *See* 42 U.S.C. § 7413(d)(1)(C); *see also* 40 C.F.R. § 19.4.

10. The Regional Administrator is authorized to ratify this Consent Agreement, which memorializes a settlement between Complainant and Respondent. 40 C.F.R. § 22.18(b)(3).

11. The issuance of this Consent Agreement and attached Final Order simultaneously commences and concludes this proceeding. 40 C.F.R. §§ 22.13(b) and 22.18(b).

C. GOVERNING LAW

Portland Cement Manufacturing Industry NESHAP – 40 C.F.R. Part 63 Subpart LLL

12. Section 112(d) of the Act, 42 U.S.C. § 7412(d), requires the EPA Administrator to promulgate regulations establishing the National Emissions Standards for Hazardous Air Pollutants (NESHAP), including Maximum Achievable Control Technology (MACT) standards, for each category or subcategory of major and area sources of listed hazardous air pollutants (HAPs).

13. Under Sections 112 and 114 of the Act, 42 U.S.C. §§ 7412 and 7414, EPA promulgated the "National Emission Standards for Hazardous Air Pollutants from the Portland Cement Manufacturing Industry," codified at 40 C.F.R. Part 63, Subpart LLL, §§ 63.1340 et seq. (the Portland Cement MACT). *See* 64 Fed. Reg. 31898 (Jun. 14, 1999) (as amended). The Portland Cement MACT provisions cited in this Consent Agreement and Final Order (CAFO) are those in effect at the time the violations occurred.

14. Under 40 C.F.R. § 63.1340(a), the Portland Cement MACT applies to each new and existing portland cement plant that is a major source or an area source as defined in 40 C.F.R. § 63.2.

15. Under 40 C.F.R. § 63.1340(d), a source that is subject to any of the provisions of Subpart LLL is also subject to the Title V permitting requirements at 40 C.F.R. Part 70.

16. Under 40 C.F.R. § 63.2, "affected source" means the collection of equipment,

activities, or both within a single contiguous area and under common control that is included in a section 112(c) source category or subcategory for which a section 112(d) standard or other relevant standard is established under section 112 of the Act.

17. Under 40 C.F.R. § 63.1340(b), the affected sources subject to Subpart LLL are:

a. Each kiln including alkali bypasses and inline coal mills, except for kilns that burn hazardous waste and are subject to and regulated under 40 C.F.R. Part 63, Subpart EEE (the NESHAP for Hazardous Waste Combustors);

b. each clinker cooler at any portland cement plant;

c. each raw mill at any portland cement plant;

d. each finish mill at any portland cement plant;

e. each raw material dryer at any portland cement plant;

f. each raw material, clinker, or finished product storage bin at any portland cement plant that is a major source;

g. each conveying system transfer point including those associated with coal preparation used to convey coal from the mill to the kiln at any portland cement plant that is major source;

h. each bagging and bulk loading and unloading system at any portland cement plant that is a major source; and

i. each open clinker storage pile at any portland cement plant.

18. 40 C.F.R. § 63.1341 defines "clinker" as the product of the process in which limestone and other materials are heated in the kiln and is then ground with gypsum and other materials to form cement.

19. 40 C.F.R. § 63.1341 defines "dioxins and furans" (D/F) as tetra-, penta-, hexa-, hepta-, and octa-chlorinated dibenzo dioxins and furans.

20. 40 C.F.R. § 63.1341 defines "facility" as all contiguous or adjoining property that

is under common ownership or control, including properties that are separated only by a road or other public right-of-way.

21. 40 C.F.R. § 63.1341 defines "kiln" as a device, including any associated preheater or pre-calciner devices, inline raw mills, inline coal mills or alkali bypasses that produces clinker by heating limestone and other materials for subsequent production of portland cement. Because the inline raw mill and inline coal mill are considered an integral part of the kiln, for purposes of determining the appropriate emissions limit, the term kiln also applies to the exhaust of the inline raw mill and the inline coal mill.

22. 40 C.F.R. § 63.1341 defines "portland cement plant" as any facility manufacturing portland cement.

23. 40 C.F.R. § 63.1341 defines "raw mill" as a ball and tube mill, vertical roller mill or other size reduction equipment, that is not part of an in-line kiln/raw mill, used to grind feed to the appropriate size. Moisture may be added or removed from the feed during the grinding operation. If the raw mill is used to remove moisture from feed materials, it is also, by definition, a raw material dryer. The raw mill also includes the air separator associated with the raw mill.

24. 40 C.F.R. § 63.1341 defines "TEQ" as the international method of expressing toxicity equivalents for dioxins and furans as defined in U.S. EPA, Interim Procedures for Estimating Risks Associated with Exposures to Mixtures of Chlorinated Dibenzo-p-dioxins and -dibenzofurans (CDDs and CDFs) and 1989 Update, March 1989.

25. 40 C.F.R. § 63.1343 provides the standards and emission limits applicable to a portland cement plant's kilns, clinker coolers, raw material dryers, and open clinker storage piles.

26. 40 C.F.R. § 63.1343(a) provides that the provisions in the section apply to each kiln and any alkali bypass associated with that kiln, clinker cooler, raw material dryer, and open clinker storage pile. All D/F, hydrochloric acid (HCl), and total hydrocarbon (THC) emissions limits are on a dry basis. The D/F, HCl, and THC limits for kilns are corrected to 7 percent (%)

oxygen. All THC emissions limits are measured as propane. Standards for mercury and THC are based on a rolling 30-day average. If the portland cement plant uses a continuous emission monitoring system (CEMS) to determine compliance with the HCl standard, this standard is based on a rolling 30-day average. The portland cement plant must ensure appropriate corrections for moisture are made when measuring flow rates used to calculate mercury emissions. The 30-day period means all operating hours within 30 consecutive kiln operating days excluding periods of startup and shutdown.

27. Under 40 C.F.R. § 63.1343 Table 1, an existing kiln under normal operation and located at a major source shall comply with the following emission limits:

a. Particulate Matter (PM): 0.07 lb/ton clinker;

b. D/F: 0.2 ng/dscm (TEQ), 7% oxygen correction factor. However, if the average temperature at the inlet to the first PM control device (fabric filter or electrostatic precipitator) during the D/F performance test is 400°F or less, this limit is changed to 0.40 ng/dscm (TEQ);

c. Mercury: 55 lb/MM tons clinker;

d. THC: 24 ppmvd, 7% oxygen correction factor; and

e. HCl: 3 ppmvd, 7% oxygen correction factor.

28. 40 C.F.R. § 63.1343(b)(2) establishes that when there is an alkali bypass and/or an inline coal mill with a separate stack associated with a kiln, the combined PM emissions from the kiln and the alkali bypass stack and/or the inline coal mill stack are subject to the PM emissions limit. Existing kilns that combine the clinker cooler exhaust and/or alkali bypass and/or coal mill exhaust with the kiln exhaust and send the combined exhaust to the PM control device as a single stream may meet an alternative PM emissions limit. This limit is calculated using the following equation:

$$PM^{alt} = (0.0060 \times 1.65)\ (Q^{k} + Q^{c} + Q^{ab} + Q^{cm}) / (7000)$$

Where:

PM^{alt} = Alternative PM emission limit for commingled sources.

0.0060 = The PM exhaust concentration (gr/dscf) equivalent to 0.070 lb per ton clinker where clinker cooler and kiln exhaust gas are not combined.

1.65 = The conversion factor of ton feed per ton clinker.

Q^k = The exhaust flow of the kiln (dscf/ton feed).

Q^c = The exhaust flow of the clinker cooler (dscf/ton feed).

Q^{ab} = The exhaust flow of the alkali bypass (dscf/ton feed).

Q^{cm} = The exhaust flow of the coal mill (dscf/ton feed).

7000 = The conversion factor for grains (gr) per lb.

29. 40 C.F.R. § 63.1345 establishes that the owner or operator of each new or existing raw material, clinker, or finished product storage bin; conveying system transfer point; bagging system; bulk loading or unloading system; raw and finish mills; and each existing raw material dryer, at a facility which is a major source subject to the provisions of this subpart must not cause to be discharged any gases from these affected sources which exhibit opacity in excess of 10 percent.

30. 40 C.F.R. § 63.1349(b)(3) establishes that if a source is subject to limitations on D/F emissions under Subpart LLL, the source must conduct a performance test using Method 23 of Appendix A-7 to 40 C.F.R. Part 60. If the kiln or in-line kiln/raw mill is equipped with an alkali bypass, the source must conduct simultaneous performance tests of the kiln or in-line kiln/raw mill exhaust and the alkali bypass. The source 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.

31. 40 C.F.R. § 63.1346(a) establishes that the owner or operator of a kiln subject to a D/F emissions limitation under § 63.1343 must operate the kiln such that the temperature of the gas at the inlet to the kiln PM control device (PMCD) and alkali bypass PMCD, if applicable,

does not exceed the applicable temperature limit. The owner or operator of an in-line kiln/raw mill subject to a D/F emissions limitation under § 63.1343 must operate the in-line kiln/raw mill, such that:

a. 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, established during the performance test when the raw mill was operating, is not exceeded, except during periods of startup and shutdown when the temperature limit may be exceeded by no more than 10 percent.

b. 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 established during the performance test when the raw mill was not operating, is not exceeded, except during periods of startup/shutdown when the temperature limit may be exceeded by no more than 10 percent.

c. If the in-line kiln/raw mill is equipped with an alkali bypass, the applicable temperature limit for the alkali bypass established during the performance test, with or without the raw mill operating, is not exceeded, except during periods of startup/shutdown when the temperature limit may be exceeded by no more than 10 percent.

32. 40 C.F.R. § 63.1349(b)(7) provides the performance testing procedures to determine emissions of total organic HAP and site-specific THC emissions limit. Specifically, 40 C.F.R. § 63.1349(b)(7)(xiii) establishes that if the THC level exceeds by 10 percent or more the site-specific THC emissions limit, the facility must:

a. As soon as possible but no later than 30 days after the exceedance, conduct an inspection and take corrective action to return the THC CEMS measurements to within the established value;

b. Within 90 days of the exceedance or at the time of the 30-month compliance test, whichever comes first, conduct another performance test to determine compliance with the organic HAP limit and to verify or re-establish your site-specific THC emissions limit.

33. 40 C.F.R. § 63.1349(c) provides that "[e]xcept as provided in § 63.1348(b), performance tests are required at regular intervals for affected sources that are subject to a dioxin, organic HAP or HCl emissions limit. Performance tests required every 30 months must be completed no more than 31 calendar months after the previous performance test except where that specific pollutant is monitored using CEMS; performance tests required every 12 months must be completed no more than 13 calendar months after the previous performance test."

34. 40 C.F.R. § 63.1354(b)(11)(C) establishes that within 60 days after the date of completing each performance evaluation or test, as defined in 40 C.F.R. § 63.2, conducted to demonstrate compliance with any standard covered by Subpart LLL, you must submit the relative accuracy test audit data and performance test data, except opacity data, to the EPA by successfully submitting the data electronically to the EPA's Central Data Exchange (CDX) system by using the ERT (ERT Submissions).

35. 40 C.F.R. § 63.1350(k) establishes that the owner or operator of a kiln subject to an emission limitation on mercury emissions must install and operate a mercury continuous emissions monitoring system (Hg CEMS) in accordance with Performance Specification 12A (PS 12A) of appendix B to 40 C.F.R. part 60 or an integrated sorbent trap monitoring system in accordance with Performance Specification 12B (PS 12B) of appendix B to 40 C.F.R. part 60. Under this provision, the owner or operator must monitor mercury continuously according with paragraphs (k)(1) through (5) of 40 C.F.R. § 63.1350.

36. 40 C.F.R. § 63.1354(b)(9) establishes that the owner or operator shall submit a summary report semiannually within 60 days of the reporting period to the EPA via the

Compliance and Emissions Data Reporting Interface (CEDRI) (CEDRI Report). The report must contain the information specified in 40 C.F.R. § 63.10(e)(3)(vi).

37. 40 C.F.R. § 63.1354(b)(11)(i)(C) establishes that as of December 31, 2011 and within 60 days after the date of completing each performance evaluation or test, as defined in 40 C.F.R. § 63.2, conducted to demonstrate compliance with any standard covered by this subpart, the owner or operator must submit the relative accuracy test audit data and performance test data, except opacity data, to the EPA by successfully submitting the data electronically via CEDRI and by using the Electronic Reporting Tool (ERT). For any performance evaluations with no corresponding RATA pollutants listed on the ERT website, you must submit the results of the performance evaluation to the Administrator at the appropriate address listed in 40 C.F.R. § 63.13.

38. 40 C.F.R. § 63.1354(c) establishes that for each failure to meet a standard or emissions limit caused by a malfunction at an affected source, the owner or operator must report the failure in the CEDRI Report. The report must contain the date, time and duration, and the cause of each event (including unknown cause, if applicable), and a sum of the number of events in the reporting period. The report must list for each event the affected source or equipment, an estimate of the amount of each regulated pollutant emitted over the emission limit for which the source failed to meet a standard, and a description of the method used to estimate the emissions. The report must also include a description of actions taken by an owner or operator during a malfunction of an affected source to minimize emissions in accordance with 40 C.F.R. § 63.1348(d), including actions taken to correct a malfunction.

Puerto Rico Regulations for the Control of Atmospheric Pollution—Title V Operating Permit Program

39. Section 502(a) of the Act makes unlawful the operation of any source subject to Title V except in compliance with a permit issued by a permitting authority under Title V. *See* 42

U.S.C. § 7661a(a).

40. Section 502(d) of the Act requires each state to develop and submit to EPA a permit program meeting the requirements of Title V. *See* 42 U.S.C. § 7661a(d).

41. To meet its Title V requirements, and the requirements of 40 C.F.R. Part 70, the Puerto Rico Environmental Quality Board (PREQB), currently the Puerto Rico Department of Natural and Environmental Resources (DNER), developed and submitted the Puerto Rico Title V Operating Permit Program (PR Title V Operating Permit Program).

42. EPA granted full approval of the Puerto Rico Title V Operating Permit Program on February 26, 1996. The approval became effective on March 27, 1996. *See* 61 Fed. Reg. 7073-02 (Feb. 26, 1996).

43. The Puerto Rico Regulations for the Control of Atmospheric Pollution (RCAP) contains the regulatory provisions for the PR Title V Operating Permit Program at RCAP Rule 601 *et seq*.

44. Under RCAP Rule 602(a)(1)(iv), permittees must submit a Title V operating permit renewal application at least 12 months prior to the Title V permit's expiration date.

45. Under RCAP Rule 605(b), with certain exceptions, no Title V source may operate after the time that it is required to submit a timely and complete application, except in compliance with a permit issued under the PR Title V Operating Permit Program. However, if the source submits a timely and complete application for permit issuance (including for renewal), the source's failure to have a Title V permit (including a renewal permit) is not a violation of the PR Title V Operating Permit Program until DNER takes final action on the permit application.

46. Under RCAP Rule 602(a)(2)(v), a source's ability to operate without a Title V permit under RCAP Rule 605(b) shall be in effect from the date the application is determined or deemed to be complete until the final permit is issued, provided that the applicant submits any requested additional information by the deadline specified by DNER.

47. Under RCAP Rule 605(c)(4), if a source submits a timely and complete application for a Title V permit renewal, but the Board has failed to issue or deny the renewal permit before the end of the term of the previous permit, then:

a. The permit shall not expire until the renewal permit has been issued or denied and any permit shield that may be granted under section (d) of RCAP Rule 603 may extend beyond the original permit term until renewal; or

b. All the terms and conditions of the permit including any permit shield that may be granted under section (d) of RCAP Rule 603 shall remain in effect until the renewal permit has been issued or denied.

48. Under Section 502(e) of the Act, EPA retains authority to enforce Title V operating permits issued by a state, including the Commonwealth of Puerto Rico. *See* 42 U.S.C. § 7661a(e).

D. FINDINGS OF FACT

49. Respondent, a corporation duly organized under the laws of the Commonwealth of Puerto Rico, has owned and operated, since February 2017, a Portland cement manufacturing plant (the Facility) located at State Road PR-2, Km. 26.7, at Espinosa Ward in Dorado, Puerto Rico.

50. The Facility has been in operation under several different owners and operators since 1972.

51. EPA Region 2 conducted an investigation of the Facility under Section 114 of the Act, 42 U.S.C. § 7414 (EPA Investigation). The EPA Investigation has included, to date: a) two on-site inspections of the Facility; b) multiple information requests made to Argos about the Facility and its operations; and c) a review of Respondent's records and data, as provided to EPA subsequent to the on-site inspections and information requests.

52. The Facility operates under a major air emissions source Title V permit, Permit

No. PFE-TV-3241-26-0397-0026 (the Permit), issued to Respondent by DNER under the PR Title V Operating Permit Program on January 30, 2009.[1]

53. Section VII of the Permit requires Respondent to comply with the Portland Cement MACT.

54. The noncompliance relevant to this Consent Agreement occurred between February 3, 2017 and September 4, 2020 (Investigation Timeframe).

2017

55. Essroc San Juan, Inc. conducted a performance test on February 3, 2017 to demonstrate compliance with the emission limits established under the Portland Cement MACT (40 C.F.R. § 63.1343(b) Table 1) (Feb. 3, 2017 Performance Test). According to the results of the Feb. 3, 2017 Performance Test, the THC applicable emission limit was established as 9.49 ppmvw (30-day rolling average).

56. EPA inspectors from Region 2 (EPA Inspectors) conducted an on-site inspection of the Facility on February 27, 2017 (EPA 2017 Inspection).

57. During the EPA 2017 Inspection, EPA Inspectors observed various process areas at the Facility, including the cement kiln.

58. During the EPA 2017 Inspection, Facility personnel stated that the Facility had been acquired by Argos on February 7, 2017, from Essroc San Juan, Inc.

59. At the conclusion of the EPA 2017 Inspection, EPA requested from Respondent a list of documents to be provided via electronic mail subsequent to the on-site inspection (EPA

[1] The Permit expired on January 30, 2014. Respondent informed EPA that it submitted a renewal application for the Permit to DNER on January 18, 2013. On November 7, 2014, DNER determined Respondent's permit renewal application was administratively complete and in compliance with RCAP Rule 602. In accordance with RCAP Rule 605, Respondent is operating under a permit shield, pending issuance of a renewal permit from DNER.

2017 Request). The EPA 2017 Request included, among other items, Argos' emission data and compliance reports for the Portland Cement MACT.

60. Between March 21, 2017 and July 20, 2017, Argos electronically transmitted responses to the EPA 2017 Request (as well as responses to amended requests made by EPA).

2018

61. Respondent conducted a performance test for D/F on February 8-10, 2018 and provided a hard copy of the performance test results to EPA on March 19, 2018 (Feb. 2018 D/F Performance Test Results). The average D/F with the "raw mill on" was 0.011 ng/dscm (TEQ), corrected to 7% O_2, when the kiln baghouse inlet temperature was 268.1ºF, which indicated that Argos' kiln was in compliance with the Portland Cement MACT D/F performance standard of 0.4 ng/dscm (TEQ), corrected to 7% O_2 for baghouse inlet temperatures ≤ 400°F.[2] The results also showed that the average D/F with the "raw mill off" was 2.56 ng/dscm (TEQ), corrected to 7% O_2, when the kiln baghouse inlet temperature was 472º F (over 400º F), which indicated that Argos' kiln was not in compliance with the Portland Cement MACT D/F performance standard of 0.2 ng/dscm (TEQ) corrected to 7% O_2.

62. Respondent conducted a performance test for D/F on April 24-26, 2018 and provided an electronic copy of the performance test results to EPA on May 9, 2019 (Apr. 2018 D/F Performance Test Results). The results showed that the average D/F with the "raw mill on" was 0.034 ng/dscm (TEQ) corrected to 7% O_2 when the kiln baghouse inlet temperature was 242.1ºF, which indicated that Argos' kiln was in compliance with the Portland Cement MACT D/F performance standard of 0.4 ng/dscm (TEQ) corrected to 7.0% O_2 for baghouse inlet

[2] According to 40 C.F.R. § 63.1343 Table 1, if the average temperature at the inlet to the first PM control device (fabric filter or electrostatic precipitator) during the D/F performance test is 400°F or less, this limit is changed to 0.40 ng/dscm (TEQ).

temperatures ≤ 400°F. The results showed that the average D/F with the "raw mill off" was 0.313 ng/dscm (TEQ) corrected to 7% O_2 when the kiln baghouse inlet temperature was 406.7° F (over 400° F), which indicated that Argos' kiln was not in compliance with the D/F emission limit of 0.2 ng/dscm (TEQ) corrected to 7% O_2.

63. On May 3, 2018, Respondent requested a compliance extension via EPA's eDisclosure system (eDisclosure) regarding the 2018 Deviations, and EPA granted Respondent an extension until June 5, 2018 to correct the violations, as well as a June 27, 2018 extension to certify compliance.

64. On June 5, 2018, Respondent submitted a request via eDisclosure for additional time beyond June 5, 2018 to correct the violations.

65. That same day, EPA granted, via eDisclosure, Respondent's request for an extension to correct the D/F emission limit violations. EPA allowed for Respondent to meet the D/F emission limit by September 4, 2018 and to certify compliance with the D/F emission limit by September 26, 2018.

66. On July 18, 2018, Respondent shared with EPA the results of another D/F performance test conducted on May 30-31, 2018 (May 2018 D/F Performance Test Results). The test was only performed under the "raw mill off" condition. According to the May 2018 D/F Performance Test Results, the test was conducted at an average baghouse temperature of 396.8°F, and demonstrated a D/F emission value of 0.486 ng/dscm (TEQ) corrected to 7% O_2, which exceeded the applicable D/F emission limit of 0.40 ng/dscm (TEQ) corrected to 7% O_2.

67. On August 31, 2018, Respondent sent EPA an electronic mail providing a letter on which Respondent requested additional time to correct and certify compliance with the self-disclosed violations in accordance with the Audit Policy and eDisclosure system requirements (Argos Aug. 31, 2018 E-Mail Request). Respondent's letter indicated that the eDisclosure system was not allowing Respondent to request a time extension and requested that EPA grant an

extension until November 15, 2018 to correct the violation.[3]

68. On September 24, 2018, Respondent provided EPA with documentation of actions Respondent took after the May 2018 D/F Performance Test, including a series of D/F runs performed by a contractor on July 16-22, 2018. After reviewing the D/F runs, Respondent was unable to identify the cause(s) of increases in D/F emissions after the last successful performance test conducted in October 2015.

69. Respondent did not correct the violations from the 2018 Deviations by the September 4, 2018 deadline date and did not certify compliance by the September 26, 2018 deadline.

70. Respondent conducted a performance test for D/F on December 6, 2018 and provided an electronic copy of the performance test results to EPA on December 19, 2018 (Dec. 6, 2018 D/F Performance Test Results). The results showed that the average D/F with the "raw mill off" was 0.163 ng/dscm (TEQ) corrected to 7% O_2 when the kiln baghouse inlet temperature was 397.9° F (below 400° F), which indicated that Argos' kiln was in compliance with the D/F emission limit of 0.4 ng/dscm (TEQ) corrected to 7% O_2.

2019

71. EPA Inspectors also conducted an on-site inspection of the Facility on March 6-7, 2019 (EPA 2019 Inspection).

72. During the EPA 2019 Inspection, Facility personnel explained changes that had been made to equipment and processes in response to high emissions of D/F measured during calendar year 2018 when the raw mill was off/not in operation. These changes included the use of

[3] On September 27, 2018, EPA determined Respondent was not eligible for additional time extensions and notified Respondent via eDisclosure.

urea from a different supplier for the selective non-catalytic reduction system, the use of "dust shuttling" during periods when the raw mill is not operating, and the installation of a new stack gas cooling system in the down comer section prior to the inlet to the kiln's baghouse.

73. During the EPA 2019 Inspection, EPA Inspectors observed various process areas at the Facility, including the cement kiln and associated pollution control equipment, and Facility personnel showed EPA Inspectors the nearly completed installation of the new stack gas cooling system.

74. On March 18, 2019, EPA sent an electronic mail request for documents to Argos (EPA Mar. 18, 2019 Request). EPA requested updated emission data and compliance reports for the Portland Cement MACT subsequent to the EPA 2017 Inspection, including 180-minute rolling average baghouse inlet temperature data from April 2018 through March 2019 and THC 30-day rolling average data from October 2017 through March 2019.

75. Between April 10, 2019 and June 18, 2019, Argos electronically transmitted responses to the EPA Mar. 18, 2019 Request (as well as responses to EPA's amended requests). On April 10, 2019, Argos electronically transmitted its 180-minute rolling average baghouse inlet temperature data and THC 30-day rolling average data (Apr. 10, 2019 180 MinRollingAveData; and Apr. 10, 2019 NOx-SO_2-THC 30 DRA).

76. The Apr. 10, 2019 180 MinRollingAveData showed, in pertinent part, the following results:

a. 46 total (180-minute rolling average) exceedances or 8 days of aggregated exceedances of the D/F operating limit (*see* Feb. 2018 D/F Performance Test Results) from April 3, 2018, through April 23, 2018;

b. 22.7 (23)[4] aggregated days of exceedances (180-minute rolling average) of the D/F operating limit (*see* Apr. 2018 Performance Test Results)[5] from April 24, 2018 through November 26, 2018; and

c. 1.51 (2) aggregated days of exceedances of the D/F operating limit (*see* Dec. 6, 2018 D/F Performance Test Results) from December 6, 2018 through December 31, 2018.

77. The Apr. 10, 2019 NOx-SO_2-THC 30 DRA showed, in pertinent part, 85 exceedances of the THC 9.49 ppmvw (30-day rolling average) emission limit (*see* Feb. 3, 2017 Performance Test Results) from January 13, 2018 through December 31, 2018.

78. On July 30, 2019, Argos submitted to DNER and EPA the Portland Cement MACT Semiannual Report for Opacity Excess Emissions and Monitoring System Performance covering the period of January 1, 2019 to June 30, 2019 (Argos July 30, 2019 Summary Report), which in pertinent part, showed the following results:

a. 8 aggregated days of exceedances of the D/F operating limit (242.1ºF limit with raw mill on) during the January 1, 2019 through June 30, 2019 reporting period;

b. 3 aggregated days of exceedances of the D/F operating limit (397.9ºF limit with raw mill off) during the January 1, 2019 through June 30, 2019 reporting period;

c. 31 aggregated days of exceedances of the THC emission limit during January 1, 2019 through June 30, 2019 reporting period; 10.33 (11) aggregated days of exceedances from February 11, 2019 through February 21, 2019; and 20.66 (21)

[4] Each fractional number of days is increased to the next highest round number, as denoted by the parentheticals.
[5] The length of violation is equivalent to 90 days where exceedances were reported within this reporting period.

aggregated days of exceedances from February 23, 2019 through March 15, 2019; and

d. 4 aggregated days of exceedances of the mercury emission limit during January 1, 2019 through June 30, 2019 reporting period.

79. On December 18, 2019, EPA sent an electronic mail request for documents to Argos (EPA Dec. 18, 2019 E-Mail Request). EPA requested, in part, the following items:

a. The final report of the Portland Cement MACT compliance test performed in June 2019;

b. Details of the actions taken to correct the issues found with the NOx and SO_2 analyzers during the June 2019 test;

c. Results of the evaluation of the Facility's CEMS; and

d. Reports of any Portland Cement MACT compliance tests performed at the Facility after EPA's 2019 Inspection.

80. That same day, in response to the EPA Dec. 18, 2019 E-Mail Request, Argos submitted hard copies of Portland Cement MACT compliance and CEMS testing reports (Argos Dec. 18, 2019 Testing Reports).[6] Argos' response included the following:

a. a Portland Cement MACT source and CEMS test report conducted on June 12-15 and 17, 2019 and dated July 22, 2019 (June 2019 Performance Test Report);

b. a letter to DNER and EPA dated December 18, 2019, summarizing the Facility's 2019 Portland Cement MACT Performance and CEMS testing reports results;

c. an October 15, 2019 Particulate Matter Compliance Test Report;

[6] Argos submitted electronic versions of these reports to EPA on December 24, 2019.

d. an August 14-15, 2019 Hydrogen Chloride Compliance Emission Testing Report; and

e. an August 14, 2019 CEMS Test Report.

81. The Argos June 2019 Performance Test Report Table 1-2 included a summary of the stack testing results for the kiln No. 3 baghouse stack with the raw mill off. The summary established that the HCl emissions were 22.05 ppmvd @ 7% O_2, exceeding the 3 ppmvd @ 7% O_2 Portland Cement MACT HCl emission limit.

82. According to the Argos June 2019 Performance Test Report, Argos established an alternate PM CEMS operating limit of 6.64 mAmps on a 30-day rolling average, which was in compliance with 40 C.F.R. § 63.1343(b)(2).

83. On December 26, 2019, Argos contacted EPA to request an in-person meeting at the EPA Region 2 CEPD office to discuss the Facility's compliance status and details of the Argos Dec. 18, 2019 Testing Reports. EPA granted the meeting as requested and the meeting was held that same day (Dec. 26, 2019 Meeting). Among the topics discussed were:

a. a demonstration of the Facility's PM operational limit;

b. EPA's potential PM operational limit exceedance interpretation;

c. the Facility's current PM operational limit;

d. Argos' update on the Facility's current compliance with opacity monitoring requirements;

e. the Facility's overall compliance status as well as completed and planned improvement projects;

f. the status of Argos' compliance with CEDRI reporting requirements as to the Facility; and

g. Argos informing EPA that the lime injection system was repaired in May 2019.

2020

84. On January 22, 2020, EPA sent an electronic mail to Argos requesting an update on the information discussed during the Dec. 26, 2019 Meeting. That same day, Argos replied via electronic mail and informed EPA that Argos was working on a report including information regarding NOx, SO_2, THC, HCl (SO_2 surrogate), Hg, and baghouse inlet temperature control. Argos also informed EPA that:

a. a summary of all monthly Method 22 inspections and certified personnel was being developed and would be submitted to EPA;

b. the submission of compliance reports due by the end of the month was delayed due to the problems at the Facility after the January 7, 2020 and January 11, 2020 earthquakes that affected Puerto Rico; and

c. the company's intention was to submit the compliance report by the end of January 2020.

85. On February 5, 2020, Argos submitted to EPA hard copies of the "Portland Cement MACT Summary Report – Gaseous and Opacity Excess Emission and Continuous Monitoring System Performance" reports, corresponding to the reporting period from July 1, 2019 to December 31, 2019 (dated January 30, 2020) (Argos Jan. 30, 2020 Summary Report). On February 29, 2020, Argos uploaded the Argos Jan. 30, 2020 Summary Report to CEDRI CDX.

86. The Argos Jan. 30, 2020 Summary Report included, in pertinent part, the following results:

a. 0.79 (1) aggregated days of exceedances of the D/F operating limit (242ºF limit with raw mill on) during the July 1, 2019 through December 31, 2019 reporting period; and

b. 0.98 (1) aggregated days of exceedances of the D/F operating limit (397.9ºF limit with raw mill off) during the July 1, 2019 through December 31, 2019 reporting period.

87. On February 5, 2020, EPA sent an electronic mail (EPA Feb. 5, 2020 E-Mail Request),[7] which requested, in part, the following information:

a. all kiln baghouse inlet temperature data (180-min rolling averages) with designation of raw mill on/off status from April 2019 through December 2019;

b. CEMS Data from April 2019 through December 2019;

c. all THC (ppmvd, 30-day rolling average), SO_2 (ppmvd and lb/ton clinker produced, both as 30-day rolling averages), and NOx (lb/ton clinker produced, 30-day rolling average) CEMS data from April 2019 through December 2019; and

d. confirmation that the ducts and worn sections of the Facility tower and roller mill were replaced.

88. That same day, Argos responded via electronic mail, informing EPA that the requested information would be submitted by February 7, 2020. Argos did not submit the requested information by February 7, 2020.

89. On February 20, 2020, EPA sent an electronic mail to Argos regarding Argos' pending response to the EPA Feb. 5, 2020 E-Mail Request. That same day, Argos submitted, via electronic mail, the requested emissions data as well as a summary of the improvement projects performed at the Facility (Argos Feb. 20, 2020 Response).

90. On March 9, 2020, Argos sent an electronic mail to EPA and DNER containing the Portland Cement MACT compliance performance testing protocol for EPA's and DNER's review (Argos Test Protocol).

91. On April 1, 2020, Argos sent an electronic mail to EPA submitting the Title V

[7] EPA also acknowledged the receipt of the Argos Jan. 30, 2020 Summary Report and the CEDRI CDX notifications related to the submission of the most recent RATA evaluations and HCl and PM performance tests.

permit annual compliance certification and emissions inventory corresponding to reporting year 2019.

92. On April 16, 2020, EPA sent an electronic mail to Argos containing a letter with comments on the Argos Test Protocol (EPA Protocol Comments).

93. On April 28, 2020, EPA sent an electronic mail to Argos to coordinate a call to discuss: a) the Facility's operational status, b) the EPA Protocol Comments, and c) whether there were any significant changes to report as a result of the improvement projects discussed in the Argos Feb. 20, 2020 Response.

94. On May 7, 2020, EPA sent an electronic mail to Argos requesting that Argos provide the following emissions information:

a. 180-minute Rolling Baghouse Inlet Temperatures from January 2020 through April 2020, and

b. CEMS 30 DRA Data from January 2020 through April 2020 including: PM data (mAmps), SO_2 (lb/ton of clinker), SO_2 (ppm raw wet), NOx (lb/MMton of clinker), Hg (lb/MMton), and THC (wet raw ppmw) (EPA May 7, 2020 E-Mail Request).

95. On May 26, 2020, EPA sent an electronic mail to Argos to follow up on the status of the pending emissions information requested in the EPA May 7, 2020 E-Mail Request.

96. On June 1, 2020, Argos sent an electronic mail response containing the information requested in the EPA May 7, 2020 E-Mail Request (Argos June 1, 2020 E-Mail Response).

97. The Argos June 1, 2020 E-Mail Response included, in pertinent part, the following results:

a. 1.16 (2) aggregated days of exceedances of the D/F operating limit (242^{o}F limit with raw mill on) during the January 1, 2020 through April 30, 2020 reporting

period (*see also infra* Argos September 14, 2020 Hg Deviation Notification Letter); and

b. 0.63 (1) aggregated day of exceedances of the D/F operating limit (397.9ºF limit with raw mill off) during the January 1, 2020 through April 30, 2020 reporting period.

98. On September 11, 2020, Argos sent an electronic mail informing EPA and DNER about a potential Hg emission limit deviation identified on August 17, 2020. The deviation was identified after evaluating the Hg sorbent traps data. According to the e-mail, Argos calculated 8 days of exceedances of the 55 lbs/MMton 30-day rolling average Hg emission limit.

99. On September 14, 2020, Argos sent a letter to EPA as an attachment to an electronic mail, which provided more details about the Hg deviation (Argos September 14, 2020 Hg Deviation Notification Letter). In the letter, Argos:

a. stated that the Hg sorbent traps sampling ran from July 27, 2020 through August 7, 2020 for a total of 70.5 actual hours;

b. stated that the facility had no power during July 28, 2020 through August 3, 2020 due to Hurricane Isaias;

c. confirmed the information provided by Argos on September 11, 2020 (*i.e.*, the 8-day Hg emission deviation); and

d. claimed that the sorbent traps sampling was affected by inconsistent operational status that may have led to improper data gathering by the sorbent traps system.

100. On September 14, 2020, EPA sent an electronic mail to Argos requesting the mercury sorbent traps analysis results and the 30-day rolling average Hg emission (30 DRA Hg emission) referred to in the Argos September 14, 2020 Hg Deviation Notification Letter.

101. On September 25, 2020, Argos sent an electronic mail to EPA that included a spreadsheet with the mercury sorbent traps analysis results and the 30 DRA Hg emission referred

to in the Argos September 14, 2020 Hg Deviation Notification Letter. The email included the following statement: "Please note that after the notification was sent to your office, calculations were revised since stack flow and production data were unavailable for a number of days due to power failures." According to the 30 DRA Hg emission data provided, which covered the period from June 25, 2020 through September 4, 2020 (Sept. 25, 2020 30 DRA Hg emissions), the 55 lbs/MMton 30 DRA Hg emission limit was exceeded for a total of 15 days.

E. CONCLUSIONS OF LAW

Based on the Findings of Fact set forth above, EPA reaches the following Conclusions of Law:

102. Respondent is a "person" within the meaning of Section 302(e) of the Act.

103. Respondent is the owner and operator of the Facility.

104. The Facility is an area source of HAPs within the meaning of Section 112(a)(2) of the Act and 40 C.F.R. § 63.2.

105. The Facility, a Portland cement manufacturing facility, is subject to Subpart LLL.

D/F emission standard and operating limit

106. In violation of 40 C.F.R. §§ 63.1343(b) and 63.1346(a), Respondent failed to demonstrate continuous compliance with the emission standard for D/F as follows:

a. by exceeding the applicable operating limit, established during a February 2018 performance test (3-hour rolling average basis) at a maximum baghouse inlet temperature of 268.1°F with the raw mill on, for 48 total exceedances (the equivalent of 1.89 (2) aggregated days) between April 3, 2018 and April 23, 2018.

b. by exceeding the applicable operating limit, established during an April 2018 performance test (3-hour rolling basis) at a maximum baghouse inlet temperature of 242.1°F with the raw mill on, on the following instances:

i. 22.7 (23) aggregated days of exceedances between April 24, 2018 and November 26, 2018;

ii. 7.78 (8) aggregated days of exceedances between January 1, 2019 and June 30, 2019;

iii. 0.79 (1) aggregated days of exceedances between July 1, 2019 and December 31, 2019;

iv. 1.16 (2) aggregated days of exceedances between January 1, 2020 and June 30, 2020; and

v. 0.16 (1) aggregated days of exceedances in July 2020.

c. by exceeding the applicable operating limit, 0.2 ng/cm (TEQ) corrected to 7% O_2 with the raw mill off, from February 2018 through December 2018 for 84.84 (85) aggregated days.

d. by exceeding the applicable operating limit, established during a December 2018 performance test (3-hour rolling basis) at a maximum baghouse inlet temperature of 397.9°F with the raw mill off, on the following instances:

i. 1.51 (2) aggregated days of exceedances between December 6, 2018 and December 31, 2018;

ii. 2.59 (3) aggregated days of exceedances between January 1, 2019 and June 30, 2019;

iii. 0.98 (1) aggregated days of exceedances between July 1, 2019 and December 31, 2019;

iv. 0.63 (1) aggregated days of exceedances between January 1, 2020 and June 30, 2020; and

v. 0.17 (1) aggregated days of exceedances between July 14, 2020 and September 1, 2020.

107. In total, Argos failed to demonstrate D/F compliance for the equivalent of 130 days during the Investigation Timeframe.

THC performance testing

108. In violation of 40 C.F.R. § 63.1349(b)(7)(xiii), Argos failed to conduct a new test within 90 days of an exceedance or at the time of the 30-month compliance test, whichever comes first, to determine compliance with the organic HAP limit and to verify or re-establish the site-specific THC emissions limit.

109. Argos failed to demonstrate THC performance testing compliance for the equivalent of 1 day during the Investigation Timeframe.

Hg emission monitoring requirements

110. In violation of 40 C.F.R. § 63.1350(k), Argos failed to install and operate a mercury continuous emissions monitoring system (Hg CEMS) in accordance with Performance Specification 12A (PS 12A) of appendix B to 40 C.F.R. part 60 or an integrated sorbent trap monitoring system in accordance with Performance Specification 12B (PS 12B) of appendix B to 40 C.F.R. part 60.

111. In violation of 40 C.F.R. § 63.1350(k), Argos failed to monitor mercury continuously according to paragraphs (k)(1) through (5) of that section.

112. In violation of 40 C.F.R. § 63.1343(b) Table 1 and 40 CFR § 63.1348(b), Argos failed to demonstrate Hg compliance for 19 days during the Investigation Timeframe.

Respondent's Reporting Submissions

113. In violation of 40 C.F.R. § 63.1354(b)(9), Argos failed to submit, within 60 days of the appropriate reporting periods, a CEDRI Report for the second half of 2017, the first half of 2018, and the second half of 2018 (3 violations) during the Investigation Timeframe.

114. In violation of 40 C.F.R. § 63.1354(b)(11)(i)(C), Argos failed to submit the following ERT Submissions within 60 days after the date of completing each performance

evaluation or test:

a. For the performance tests for D/F compliance performed in February 2018, April 2018, May 2018, and December 2018, respectively (4 violations);

b. For the performance tests (PM, THC, and HCl) and CEMS RATA (NOx, SO_2, O_2, CO_2, NH_3, Hg, Flow) conducted on June 12 and 17, 2019, respectively (2 violations);

c. For the performance tests (HCl) and CEMS RATA Re-Testing (NOx and SO_2) conducted on August 14 and 15, 2019, respectively (2 violations); and

d. For the performance test (PM) completed on October 15, 2019 (1 violation).

115. In total, Argos failed to comply with 40 C.F.R. § 63.1354(b) reporting requirements on 12 occasions during the Investigation Timeframe.

F. TERMS OF CONSENT AGREEMENT

116. For purposes of this proceeding, as required by 40 C.F.R. § 22.18(b)(2), Respondent:

a. admits that the EPA has jurisdiction over the subject matter discussed in this Consent Agreement;

b. makes no admissions regarding the factual allegations and alleged violations of law stated above;

c. consents to the assessment of a civil penalty as stated below;

d. consents to the issuance of any specified compliance or corrective action order, as applicable;

e. consents to the conditions specified in this Consent Agreement;

f. consents to any stated "permit action" (as that term is defined in 40 C.F.R. § 22.3(a) of the Consolidated Rules), as applicable;

g. waives any right to contest the allegations, and waives its right to appeal the proposed final order accompanying the consent agreement; and

h. waives its right to appeal the Final Order accompanying this Consent Agreement.

117. For purposes of this proceeding, Respondent:

a. agrees that this Consent Agreement states a claim upon which relief may be granted against Respondent;

b. acknowledges that this Consent Agreement constitutes an enforcement action for purposes of considering Respondent's compliance history in any subsequent enforcement actions;

c. consents to the issuance of the attached Final Order;

d. waives any and all remedies, claims for relief, and otherwise available rights to judicial or administrative review that Respondent may have with respect to any issue of fact or law set forth in this Final Order, including any right of judicial review under Section 307(b)(1) of the Clean Air Act, 42 U.S.C. § 7607(b)(1);

e. consents to personal jurisdiction in any action to enforce this Consent Agreement or Final Order, or both, in the United States District Court for the District of Puerto Rico; and

f. waives any rights it may possess at law or in equity to challenge the authority of the EPA to bring a civil action in a United States District Court to compel compliance with the Consent Agreement or Final Order, or both, and to seek an additional penalty for such noncompliance, and agrees that federal law shall govern in any such civil action.

Civil Penalty

118. Respondent agrees to pay a civil penalty in the amount of $111,168 (Assessed Penalty) within 30 calendar days after the date the Final Order ratifying this Agreement is filed

with the Regional Hearing Clerk and Respondent is notified of the filing with the Regional Hearing Clerk (Filing Date).

119. Respondent shall pay the Assessed Penalty and any interest, fees, and other charges due using any method, or combination of appropriate methods, as provided on the EPA website: https://www.epa.gov/financial/makepayment. For additional instructions see: http://www2.epa.gov/financial/additional-instructions-making-payments-epa.

120. When making a payment, Respondent shall:

a. Identify the payment with Respondent's name and the docket number of this Agreement, "Docket No. CAA-02-2024-1210".

b. Concurrently with any payment or within 24 hours of any payment, Respondent shall serve proof of the payment to the following person(s):

Karen Maples
Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 2
290 Broadway – 16th Floor
New York, NY 10007
Maples.Karen@epa.gov

Nancy Rodríguez, Supervisor
Multimedia Permits and Compliance Branch
Caribbean Environmental Protection Division
U.S. Environmental Protection Agency - Region 2
City View Plaza II – Suite 7000
#48 Road. 165 Km. 1.2
Guaynabo, Puerto Rico 00968-8073
rodriguez.nancy@epa.gov

Robert DeLay
Assistant Regional Counsel
U.S. Environmental Protection Agency, Region 2
290 Broadway – 16th Floor
New York, NY 10007
Delay.Robert@epa.gov

and

U.S. Environmental Protection Agency
Cincinnati Finance Center

Via electronic mail to:
CINWD_AcctsReceivable@epa.gov

121. "Proof of payment" means, as applicable, a copy of the check, confirmation of credit card or debit card payment, or confirmation of wire or automated clearinghouse transfer in the amount due, and any other information required to demonstrate that payment has been made according to EPA requirements, in the amount due, and identified with the appropriate docket number and Respondent's name.

122. Interest, Charges, and Penalties on Late Payments. Pursuant to 42 U.S.C. § 7413(d)(5), 31 U.S.C. § 3717, 31 C.F.R. § 901.9, and 40 C.F.R. § 13.11, if Respondent fails to timely pay any portion of the Assessed Penalty per this Agreement, the entire unpaid balance of the Assessed Penalty and all accrued interest shall become immediately due and owing, and EPA is authorized to recover the following amounts.

a. Interest. Interest begins to accrue from the Filing Date. If the Assessed Penalty is paid in full within thirty (30) days, interest accrued is waived. If the Assessed Penalty is not paid in full within thirty (30) days, interest will continue to accrue until any unpaid portion of the Assessed Penalty as well as any interest, penalties, and other charges are paid in full. Per 42 U.S.C. § 7524(c)(6), interest will be assessed pursuant to 26 U.S.C. § 6621(a)(2), that is the IRS standard underpayment rate, equal to the Federal short-term rate plus 3 percentage points.

b. Handling Charges. The United States' enforcement expenses including, but not limited to, attorneys' fees and costs of handling collection.

c. Late Payment Penalty. A ten percent (10%) quarterly non-payment penalty.

123. Late Penalty Actions. In addition to the amounts described in the prior Paragraph, if Respondent fails to timely pay any portion of the Assessed Penalty per this Agreement, EPA may take additional actions. Such actions EPA may take include, but are not limited to, the

following.

a. Refer the debt to a credit reporting agency or a collection agency, per 40 C.F.R. §§ 13.13 and 13.14.

b. Collect the debt by administrative offset (i.e., the withholding of money payable by the United States government to, or held by the United States government for, a person to satisfy the debt the person owes the United States government), which includes, but is not limited to, referral to the Internal Revenue Service for offset against income tax refunds, per 40 C.F.R. Part 13, Subparts C and H.

c. Suspend or revoke Respondent's licenses or other privileges, or suspend or disqualify Respondent from doing business with EPA or engaging in programs EPA sponsors or funds, per 40 C.F.R. § 13.17.

d. Request that the Attorney General bring a civil action in the appropriate district court to enforce the Final Order and recover the full remaining balance of the Assessed Penalty, in addition to interest and the amounts described above, pursuant to 42 U.S.C. § 7413(d)(5). In any such action, the validity, amount, and appropriateness of the Assessed Penalty and Final Order shall not be subject to review.

124. Allocation of Payments. Pursuant to 31 C.F.R. § 901.9(f) and 40 C.F.R. § 13.11(d), a partial payment of debt will be applied first to outstanding handling charges, second to late penalty charges, third to accrued interest, and last to the principal that is the outstanding Assessed Penalty amount.

125. Tax Treatment of Penalties. Penalties, interest, and other charges paid pursuant to this Agreement shall not be deductible for purposes of federal taxes.

Supplemental Environmental Projects

126. In response to the violations of the Act and in settlement of this matter, although

not required by the Act or any other federal, state or local law, Respondent agrees to implement supplemental environmental projects (SEPs), as described below.

127. Respondent shall complete two SEPs. Each SEP shall consist of a photovoltaic solar rooftop installation for a minimum of 24.5 kW and a battery backup installation totaling 27 kWh.

128. Respondent shall spend no less than $210,928 on implementing the SEPs. Respondent shall include documentation of the expenditures made in connection with each SEP as part of the SEP Completion Reports described below.

129. Respondent shall complete the SEPs within 180 days of the Filing Date of this CAFO (SEP Completion Date).

130. Use of SEPs Implementer and Identification of SEPs Recipient.

a. SEPs Implementer

i. Respondent has chosen to use a contractor to assist it with implementation of the SEPs. The contractor Respondent has chosen is Prosolar Puerto Rico LLC.

b. SEPs Recipients

i. Respondent has chosen to locate the SEPs at facilities owned by two organizations. The organizations Respondent has selected are: (1) Casa de Niños Manuel Fernández Juncos, and (2) Escuela Elisa Dávila Vázquez.

ii. Casa de Niños Manuel Fernández Juncos is located at 918 Calle Villaverde Esq., Refugio Pda. 11, San Juan, PR 00907, and Escuela Elisa Dávila Vázquez is located at Carr. 679 Km 2 Hm 3, Sect. Fortuna, Bo. Espinosa, Vega Alta, 00692, Puerto Rico (collectively, SEP Recipients' Facilities).

c. The EPA had no role in the selection of the SEPs Implementer, SEPs Recipients, SEP Recipients' Facilities, or specific equipment identified in the SEPs, nor shall this CAFO be construed to constitute EPA approval or endorsement of any SEPs

Implementer, SEPs Recipients, SEP Recipients' Facilities, or specific equipment identified in this CAFO.

131. The SEPs are not inconsistent with any provision of the Act, and they are consistent with applicable EPA policy and guidelines, specifically EPA's 2015 Update to the 1998 Supplemental Environmental Projects Policy (March 10, 2015). The SEPs advance at least one of the objectives of the Act by reducing emissions generated from nearby power plants and reducing PM emissions from the operation of diesel-fueled emergency power generators at the SEP Recipients' Facilities. The SEPs also relate to the alleged violations by reducing PM emissions from the operation of diesel-fueled emergency power generators at the SEP Recipients' Facilities, and they are designed to reduce PM emissions.

132. Respondent certifies the truth and accuracy of each of the following:

a. That all cost information provided to the EPA in connection with the EPA's approval of the SEPs is complete and accurate and that the Respondent in good faith estimates that the cost to implement the SEPs, exclusive of administrative costs, is $210,928;

b. That, as of the date of executing this CAFO, neither Respondent, SEP Implementer, nor SEP Recipients are required to perform or develop the SEPs by any federal, state, or local law or regulation and are not required to perform or develop the SEPs by agreement, grant, or as injunctive relief awarded in any other action in any forum;

c. That the SEPs are not projects that Respondent was planning or intending to construct, perform, or implement other than in settlement of the claims resolved in this CAFO;

d. That Respondent has not received and will not have received credit for the SEPs in any other enforcement action;

e. That Respondent will not receive reimbursement for any portion of the SEPs from another person or entity;

f. That for federal income tax purposes, Respondent agrees that it will neither capitalize into inventory or basis nor deduct any costs or expenditures incurred in performing the SEPs; and

g. That Respondent is not a party to any open federal financial assistance transaction that is funding or could fund the same activity as the SEPs.

h. That Respondent has inquired of the SEPs Recipients and the SEPs implementer whether either is party to an open federal financial assistance transaction that is funding or could fund the same activity as the SEPs and has been informed by the SEPs Recipients and the SEPs implementer that neither is a party to such a transaction.

133. Any public statement, oral or written, in print, film, or other media, made by Respondent or a representative of Respondent making reference to the SEPs under this CAFO from the date of its execution of this CAFO shall include the following language: "This project was undertaken in connection with the settlement of an enforcement action taken by the U.S. Environmental Protection Agency for alleged violations of federal law."

134. SEPs Completion Reports.

a. Respondent shall submit a SEP Completion Report for each project to EPA within 180 days from the Filing Date of this CAFO. Each SEP Completion Report shall contain the following information, with supporting documentation:

i. A detailed description of the SEP as implemented;

ii. A description of any operating problems encountered and the solutions thereto;

iii. Itemized costs; and

iv. Certification that the SEP has been fully implemented pursuant to the provisions

of this CAFO.

135. SEP Final Reports. Within 13 months of the SEP Completion Date for each SEP, Respondent shall submit a final report for each SEP that details the system's operational status, power production for the first 365 days of operation, and a description of the environmental and public health benefits resulting from implementation of the SEP, including a quantification of the benefits and pollutant reductions.

136. Respondent agrees that failure to submit any SEP Completion Reports or SEP Final Reports shall be deemed a violation of this CAFO, and Respondent shall become liable for stipulated penalties pursuant to paragraph 139 below.

137. In itemizing its costs in the SEP Completion Reports, Respondent shall clearly identify and provide acceptable documentation for all eligible SEPs costs. Where the SEP Completion Reports include costs not eligible for SEPs credit, those costs must be clearly identified as such. For purposes of this Paragraph, "acceptable documentation" includes invoices, purchase orders, or other documentation that specifically identifies and itemizes the individual costs of the goods and/or services for which payment is being made. Canceled drafts do not constitute acceptable documentation unless such drafts specifically identify and itemize the individual costs of the goods and/or services for which payment is being made.

138. EPA acceptance of SEP Reports.

a. After receipt of the SEP Completion Reports and SEP Final Reports (SEP Reports), EPA will, in writing to the Respondent, either:

i. Identify any deficiencies in the SEP Reports themselves along with a grant of an additional 30 days for Respondent to correct any reporting deficiencies; or

ii. Indicate that EPA concludes that the project has been completed satisfactorily; or

iii. Determine that the project has not been completed satisfactorily and seek stipulated penalties in accordance with paragraph 139 herein.

b. If EPA elects to exercise option (i) above, i.e., if any SEP Report is determined to be deficient but EPA has not yet made a final determination about the adequacy of the completion of one or both SEPs, Respondent may object in writing to the notification of deficiency given pursuant to this paragraph (Notification of Objection) within 10 days of receipt of such notification. EPA and Respondent shall then have 30 days from the receipt by EPA of the Notification of Objection to reach written agreement on changes necessary to the SEP Report. If written agreement is not reached on any issue identified in the Notification of Objection within this 30-day period, EPA shall provide a written statement of its decision on adequacy of the completion of the SEP to Respondent, and that decision shall be final and binding upon Respondent.

139. Stipulated Penalties

a. Except as provided in subparagraphs (b) and (c) below, if Respondent fails to satisfactorily complete any requirements regarding a SEP, Respondent agrees to pay, for each SEP that is not satisfactorily completed, in addition to the civil penalty in Paragraph 118, the following per day per violation stipulated penalty for each day the Respondent is late meeting the applicable SEP requirement:

i. $250 per day for days 1-30;

ii. $350 per day for days 31-60; and

iii. $500 per day for days 61 and over.

b. If Respondent fails to timely submit any SEP Report in accordance with the timelines set forth in this CAFO, Respondent agrees to pay, for each SEP Report that is not timely submitted, in addition to the civil penalty in Paragraph 118, the

following per day stipulated penalty for each day after the report was due until Respondent submits the report in its entirety:

i. $100 per day for days 1-30;

ii. $150 per day for days 31-60; and

iii. $250 per day for days 61 and over.

140. If Respondent does not satisfactorily complete the SEPs, Respondent shall pay a stipulated penalty to the United States in the amount of $263,660. "Satisfactory completion" of the SEPs is defined as Respondent spending no less than $210,928 to install and begin operation of both SEP projects within 180 days of the Filing Date of this CAFO. The determination of whether the SEPs have been satisfactorily completed shall be in the sole discretion of EPA.

141. EPA retains the right to waive or reduce a stipulated penalty at its sole discretion.

142. Respondent shall pay stipulated penalties not more than 15 days after receipt of written demand by EPA for such penalties. The payment shall be made in accordance with the "Civil Penalty" provisions listed above. Interest and late charges shall be paid as stated in paragraph 122.

G. EFFECT OF CONSENT AGREEMENT AND ATTACHED FINAL ORDER

143. In accordance with 40 C.F.R. § 22.18(c), completion of the terms of this Consent Agreement and Final Order resolves only Respondent's liability to the United States for federal civil penalties for the violations specified above.

144. Penalties paid pursuant to this Consent Agreement shall not be deductible for purposes of federal taxes.

145. This Consent Agreement constitutes the entire agreement and understanding of the parties and supersedes any prior agreements or understandings, whether written or oral, among the parties with respect to the subject matter hereof.

146. The terms, conditions, and compliance requirements of this Consent Agreement may not be modified or amended except upon the written agreement of both parties, and approval of the Regional Administrator or other delegate.

147. Any violation of this Consent Agreement and Final Order may result in EPA pursuing a civil judicial action for an injunction or civil penalties of up to $109,024 per day per violation, or both, as provided in Section 113(b)(2) of the Act, 42 U.S.C. § 7413(b)(2) (as adjusted for inflation pursuant to 40 C.F.R. § 19.4), as well as criminal sanctions, as provided in Section 113(c) of the Act, 42 U.S.C. § 7413(c). The EPA may use any information submitted under this Consent Agreement and Final Order in an administrative, civil judicial, or criminal action. Respondent reserves and may assert any available argument and defense, and may use any information submitted under this Consent Agreement and Final Order, in response to any such action pursued by the EPA.

148. This CAFO and any provision herein shall not be construed as an admission of liability in any adjudicatory or administrative proceeding, except in an action, suit, or proceeding to enforce this CAFO or any of its terms and conditions.

149. Nothing in this Consent Agreement shall relieve Respondent of the duty to comply with all applicable provisions of the Act and other federal, state, or local laws or statutes, nor shall it restrict the EPA's authority to seek compliance with any applicable laws or regulations, nor shall it be construed to be a ruling on, or determination of, any issue related to any federal, state, or local permit.

150. Nothing herein shall be construed to limit the power of the EPA to undertake any action against Respondent or any person in response to conditions that may present an imminent and substantial endangerment to the public health, welfare, or the environment.

151. The EPA reserves the right to revoke this Consent Agreement and settlement penalty if and to the extent that the EPA finds, after signing this Consent Agreement, that any

information provided by Respondent was materially false or inaccurate at the time such information was provided to the EPA. The EPA reserves the right to assess and collect any and all civil penalties for any violation described herein. Under such circumstance, Respondent reserves the right to assert any available argument and defense to any such claim by the EPA. The EPA shall give Respondent notice of its intent to revoke, which shall not be effective until received by Respondent in writing.

H. EFFECTIVE DATE

152. Respondent and Complainant agree to issuance of the attached Final Order. Upon filing, the EPA will transmit a copy of the filed Consent Agreement to the Respondent. This Consent Agreement and attached Final Order shall become effective after execution of the Final Order by the Regional Administrator, on the date of filing with the Hearing Clerk.

SIGNATURES

The foregoing Consent Agreement in the Matter of Argos Puerto Rico Corp., Docket No. CAA-02-2024-1210, is Hereby Stipulated, Agreed, and Approved for Entry.

FOR RESPONDENT:

Jose Guillermo Araujo, Vice President
Argos Puerto Rico Corp.
State Road PR-2, Km. 26.
Espinosa Ward
Dorado, Puerto Rico

FOR COMPLAINANT:

CARMEN GUERRERO PEREZ

Digitally signed by CARMEN GUERRERO PEREZ
Date: 2024.09.16 12:14:36 -04'00'

Carmen Guerrero, Director
Caribbean Environmental Protection Division
U.S. Environmental Protection Agency - Region 2

FINAL ORDER

Under 40 C.F.R. § 22.18(b) of the EPA's Consolidated Rules of Practice and Section 113(d) of the Clean Air Act, 42 U.S.C. § 7413(d), the Regional Administrator of EPA Region 2 concurs in the foregoing Consent Agreement, *In the Matter of Argos Puerto Rico Corp.*, CAA-02-2024-1210. The attached Consent Agreement resolving this matter, entered into by the parties, is incorporated by reference into this Final Order and is hereby approved, ratified, and issued.

The Respondent is ORDERED to comply with all terms of the Consent Agreement, effective immediately.

SO ORDERED.

LISA GARCIA

Digitally signed by LISA GARCIA
Date: 2024.09.16 17:04:13 -04'00'

Lisa F. Garcia
Regional Administrator
United States Environmental Protection Agency
Region 2
290 Broadway, 26th Floor
New York, New York 10007-1866

Bcc: H. Patel, ECAD-ACB-SSCS
A. Rivera, CEPD-MPCB
L. Villatora, ORC-AB
R. DeLay, ORC-AB
CEPD-MPCB, Air Source File
ORC-AB