

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION VII  
901 NORTH FIFTH STREET  
KANSAS CITY, KANSAS 66101

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ENVIRONMENTAL PROTECTION  
AGENCY-REGION VII  
REGIONAL HEARING CLERK

BEFORE THE ADMINISTRATOR

IN THE MATTER OF )  
)  
Lehigh Cement Company ) Docket No. CAA-07-2006-0104  
700 25<sup>th</sup> Street NW )  
Mason City, Iowa )  
)  
Respondent )  
)  
AFS ID No. 19-033-00035 )  
FRS ID No. 110000767705 )

CONSENT AGREEMENT AND FINAL ORDER

The United States Environmental Protection Agency, Region VII (“EPA”) and Lehigh Cement Company (“Respondent” or “Lehigh”) have agreed to a settlement of this action before filing of a complaint, and thus this action is simultaneously commenced and concluded pursuant to Rules 22.13(b) and 22.18(b)(2) of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits (“Consolidated Rules”), 40 C.F.R. §§ 22.13(b), 22.18(b)(2).

FACTUAL ALLEGATIONS

Jurisdiction

1. This is an administrative action for the assessment of civil penalties instituted pursuant to Section 113(d) of the Clean Air Act (the “Act”), 42 U.S.C. § 7413(d).

2. This Consent Agreement and Final Order serves as notice that EPA has reason to believe that Respondent has violated Iowa Department of Natural Resources (IDNR) Administrative Consent Order 1999-AQ-32 (Order), which is incorporated into the Iowa State implementation plan (SIP), approved by the EPA pursuant to Section 110 of the Act, 42 U.S.C. § 7410, and federally enforceable pursuant to Section 113 of the Act, 42 U.S.C. § 7413. Furthermore, this Consent Agreement and Final Order serves as notice pursuant to Section 113(d)(2)(A) of the Act, 42 U.S.C. § 7413(d)(2)(A), of EPA's intent to issue an order assessing penalties for this violation.

#### Parties

3. The Complainant, by delegation from the Administrator of the EPA and the Regional Administrator of EPA Region VII, is the Director of the Air, RCRA, and Toxics Division at EPA Region VII.

4. The Respondent is Lehigh Cement Company, 700 25<sup>th</sup> Street NW, Mason City, Iowa.

#### Statutory and Regulatory Requirements

5. Section 110 of the Act, 42 U.S.C. § 7410, grants the Administrator of the EPA authority to approve a state plan which provides for implementation, maintenance, and enforcement of a standard in each air quality control region within the state.

6. The Iowa SIP was approved by EPA pursuant to Section 110 of the Clean Air Act, 42 U.S.C. § 7410 and is federally enforceable pursuant to Section 113 of the Act, 42 U.S.C. § 7413.

7. On September 2, 1999, Lehigh entered into IDNR Administrative Consent Order 1999-AQ-32 (Order), which was incorporated into the Iowa SIP. Said Order was incorporated

into the Iowa SIP and published in the Federal Register at 67 FR 67563 on November 6, 2002.

Said Order was entered into between the IDNR and Lehigh for the purpose of addressing alleged monitored violations of the National Ambient Air Quality Standards (NAAQS) for particulate matter with an aerodynamic diameter less than or equal to 10 microns (PM-10) in Mason City, Iowa.

8. The State of Iowa Title V Operating Permit Program was granted final approval by EPA on July 14, 1997, pursuant to Section 502 of the Act. Federal Regulations 40 C.F.R. §§ 70.6 (b)(1) and (c)(1) specify that all terms and conditions in a permit issued under an approved operating permit program are enforceable by EPA under the Act.

9. IDNR Title V Operating Permit 04-TV-011 incorporates IDNR Administrative Consent Order 1999-AQ-32.

10. Pursuant to Section 113 of the CAA, 42 U.S.C. § 7413, the requirements of the Iowa State Implementation Plan, as approved by EPA, are enforceable by EPA. Section 113(a)(1) of the CAA, 42 U.S.C. § 7413(a)(1), states that once the Administrator finds that any person is in violation of any requirement of an applicable implementation plan or permit, the Administrator shall notify the person and the State in which the plan applies of such finding.

11. Section 113(a)(1) of the CAA further provides that at any time after the expiration of 30 days following the date on which such notice of violation is issued, the Administrator may issue an administrative penalty order in accordance with CAA Section 113(d), 42 U.S.C. § 7413(d).

12. An initial Notice of Violation was issued by EPA to Lehigh on August 22, 2005. On September 30, 2005, EPA issued a second Notice of Violation to Lehigh.

13. Section 113(d) of the Act, 42 U.S.C. § 7413(d), as amended by the Civil Monetary Penalties Inflation Rule, 40 C.F.R. Parts 19 and 27, states that the Administrator may issue an administrative order against any person assessing a civil administrative penalty of up to \$32,500 per day of violation whenever, on the basis of any available information, the Administrator finds that such person has violated or is violating any requirement or prohibition of the Act referenced therein, including Section 110.

#### Violations

14. EPA hereby states and alleges that Respondent has violated a requirement or prohibition of an applicable state implementation plan approved by the EPA pursuant to the Clean Air Act. The Complainant also hereby states and alleges that Respondent has violated the Clean Air Act and federal regulations, promulgated pursuant to the Act, as follows:

#### General Allegations

15. Respondent owns and operates a cement manufacturing facility that manufactures Portland cement located at 700 25<sup>th</sup> Street NW, Mason City, Iowa.

16. Respondent is, and at all times referred to herein, was a "person" as defined at 42 U.S.C. § 7602(e).

17. On or about March 27, 2003, IDNR performed an Air Quality Inspection at Lehigh's Mason City, Iowa, facility.

18. On or about June 1, 2005, EPA, Region VII performed an Air Compliance Inspection at Lehigh's Mason City, Iowa, facility.

Count I

19. The facts alleged in paragraphs 15 through 18 are realleged and incorporated herein as if fully stated.

20. Respondent is subject to IDNR Administrative Consent Order 1999-AQ-32, which is incorporated into the Iowa SIP.

21. Section V.11 of said Order referenced in paragraph 20 above requires Respondent to limit Respondent's number of round trips per day and per calendar year on the paved haul road.

22. Respondent failed to comply with Section V.11 of said Order referenced in paragraphs 20 & 21 above, in that Respondent exceeded the round trip per day limit on the paved haul road on the following dates: February 16-17, 22-25, and 28, 2005.

23. Respondent's failure to comply with Section V.11 of the IDNR Administrative Consent Order 1999-AQ-32 by exceeding the trip per day limit for the paved haul road is a violation of the Order, which is incorporated into the Iowa SIP and the IDNR Operating Permit 04-TV-011.

Count II

24. The facts alleged in paragraphs 15 through 18 are realleged and incorporated herein as if fully stated.

25. Respondent is subject to IDNR Administrative Consent Order 1999-AQ-32, which is incorporated into the Iowa SIP.

26. Section V.5 of said Order referenced in paragraph 25 above designates the content of storage pile EP 58 to coal only.

27. Respondent failed to comply with Section V.5 of said Order referenced in paragraphs 25 and 26 above, in that Respondent stored off spec clinker in pile EP 58, which is designated for coal only, for a period of at least seven months prior to the issuance of this Consent Agreement and Final Order. The off-spec clinker was removed on or before September 6, 2005.

28. Respondent's failure to comply with Section V.5 of the IDNR Administrative Consent Order 1999-AQ-32 by improperly storing off spec clinker in pile EP 58 was a violation of the Order, which is incorporated into the Iowa SIP and the IDNR Operating Permit 04-TV-011.

### Count III

29. The facts alleged in paragraphs 15 through 18 are realleged and incorporated herein as if fully stated.

30. Respondent is subject to IDNR Administrative Consent Order 1999-AQ-32, which is incorporated into the Iowa SIP.

31. Section V.5 of said Order referenced in paragraph 30 above designates the content of storage pile EP 14 to clay only.

32. Respondent failed to comply with Section V.5 of said Order referenced in paragraphs 30 and 31 above, in that Respondent stored ash and slag in pile EP 14, which is designated for clay only, for a period of at least seven months prior to the issuance of this Consent Agreement and Final Order. The ash pile was removed on or before October 12, 2005. The slag pile was removed on or before October 31, 2005.

33. Respondent's failure to comply with Section V.5 of the IDNR Administrative Consent Order 1999-AQ-32 by improperly storing ash and slag in pile EP 14 was a violation of the Order, which is incorporated into the Iowa SIP and the IDNR Operating Permit 04-TV-011.

34. Section V.5 of said Order referenced in paragraph 30 above designates the content of storage pile EP 60 to clay only.

35. Respondent failed to comply with Section V.5 of said Order referenced in paragraphs 30 and 31 above, in that Respondent stored ash in pile EP 60, which is designated for clay only, for a period of at least seven months prior to the issuance of this Consent Agreement and Final Order. The ash was removed on or before the effective date of this Consent Agreement and Final Order.

36. Respondent's failure to comply with Section V.5 of the IDNR Administrative Consent Order 1999-AQ-32 by improperly storing ash in pile EP 60 was a violation of the Order, which is incorporated into the Iowa SIP and the IDNR Operating Permit 04-TV-011.

#### CONSENT AGREEMENT

1. For purposes of this proceeding, Respondent admits the jurisdictional allegations set forth above.

2. Respondent neither admits nor denies the specific factual allegations set forth above.
3. Respondent waives its right to a judicial or administrative hearing on any issue of fact or law set forth above.
4. Respondent and EPA agree to conciliate this matter without the necessity of a formal hearing and to bear their respective costs and attorney's fees.
5. Respondent certifies, by the signing of this Consent Agreement and Final Order, that to the best of its knowledge, Respondent's facility is presently in compliance with all requirements of IDNR Administrative Consent Order 1999-AQ-32, which is incorporated into the Iowa State Implementation Plan, approved by the EPA pursuant to Section 110 of the Act, 42 U.S.C. § 7410, and federally enforceable pursuant to Section 113 of the Act, 42 U.S.C. § 7413.
6. Nothing in the Final Order shall alter or otherwise affect Respondent's obligation to comply with all applicable federal, state, and local environmental statutes and regulations and applicable permits.
7. Respondent consents to the issuance of the Final Order hereinafter recited and consents, for the purposes of settlement, to the payment of the mitigated civil penalty as set forth below. This Consent Agreement and Final Order shall resolve all violations of the Act alleged herein.
8. Respondent understands that the failure to pay any portion of the civil penalty assessed herein in accordance with the provisions of this order may result in commencement of a civil action in Federal District Court to recover the total penalty, together with interest at the applicable statutory rate.



*In the Matter of:  
Lehigh Cement Company  
Consent Agreement and Final Order*

FINAL ORDER

Pursuant to the provisions of the Clean Air Act, 42 U.S.C. § 7401, and based upon the information set forth in this Consent Agreement, IT IS HEREBY ORDERED THAT:

1. Respondent shall pay a mitigated civil penalty of One Hundred Forty Thousand Dollars (\$140,000), within thirty days of entry of this Consent Agreement and Final Order. Payment shall be by cashier's or certified check made payable to the "United States Treasury" and shall be remitted to:

EPA-Region VII  
Attn: Regional Hearing Clerk  
EPA- Cincinnati Finance Center  
Post Office Box 371099M  
Pittsburgh, Pennsylvania 15251.

2. A copy of the check should be sent to:

Julie L. Murray  
EPA-Region VII  
Office of Regional Counsel  
901 North Fifth Street  
Kansas City, Kansas 66101

and


Kathy M. Robinson  
Regional Hearing Clerk  
901 North Fifth Street  
Kansas City, Kansas 66101.

3. Respondent and Complainant shall bear their own costs and attorneys' fees incurred as a result of this matter.

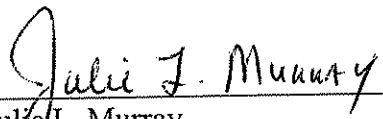
In the Matter of:  
Lehigh Cement Company  
Consent Agreement and Final Order

COMPLAINANT:  
UNITED STATES ENVIRONMENTAL  
PROTECTION AGENCY

Date: 2/9/06


By:   
William A. Spratlin  
Director  
Air, RCRA, and Toxics Division

Date: February 9, 2006

By:   
Julie L. Murray  
Senior Assistant Regional Counsel

In the Matter of:  
Lehigh Cement Company  
Consent Agreement and Final Order

RESPONDENT:  
Lehigh Cement Company

Date: February 7, 2006 By:   
Gerry McKervey

Title: Plant Manager  
Plant Manager

*In the Matter of:  
Lehigh Cement Company  
Consent Agreement and Final Order*

IT IS SO ORDERED. This Final Order shall become effective immediately.

Date: Feb. 14, 2006

Karina Borromeo  
Karina Borromeo  
Regional Judicial Officer

**Penalty Calculation**  
**Lehigh Cement Company**  
**700 25<sup>th</sup> Street NW**  
**Mason City, IA 50401**  
**January 26, 2006**

A. Gravity Component

1. Actual or possible harm

a. Amount above standard	N/A
b. Toxicity of pollutant	N/A
c. Sensitivity of environment	\$ 5,000
d. Length of time of violation (7-12 months)	\$15,000

2. Importance to regulatory scheme

Work Practice Standard Violations

Truck trip exceedances on Paved Haul Road	\$15,000
Storing clinker in coal pile EP58	\$15,000
Storing ash/slag in clay pile EP 14 and ash in clay pile EP 60	\$15,000

3. Size of Violator (assume net worth of \$20-40 million) - \$35,000

Unadjusted Gravity \$100,000

4. Inflation adjustment for 12 months violation (x 0.2895) \$ 29,000

Adjusted Gravity \$129,000

5. Adjustment for history of noncompliance (8.5%) \$ 11,000

Total gravity \$140,000

IN THE MATTER OF Lehigh Cement Company. Respondent  
Docket No. CAA-07-2006-0104

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing Consent Agreement and Final Order was sent this day in the following manner to the addressees:


Copy hand delivered to  
Attorney for Complainant:

Julie L. Murray  
Senior Assistant Regional Counsel  
Region VII  
United States Environmental Protection Agency  
901 N. 5<sup>th</sup> Street  
Kansas City, Kansas 66101

Copy by Certified Mail Return Receipt to:

Jane B. McAllister  
Ahlers & Cooney, P.C.  
100 Court Avenue, Suite 600  
Des Moines, Iowa 50309

2/15/06  
Dated

  
Kathy Robinson  
Regional Hearing Clerk