

**BEFORE THE UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION III**

In the Matter of:

**Lehigh Cement Company, LLC
Argos USA LLC**

Respondents,

**1826 South Queen Street
Martinsburg, West Virginia**

Facility.

EPA Docket No. CAA-03-2019-0042

U.S. EPA-REGION 3-RHC
FILED-28MAR2019AM10:54

**Proceeding under Section 113(d) of the
Clean Air Act, as amended,
42 U.S.C. § 7413(d)**

CONSENT AGREEMENT

A. PRELIMINARY STATEMENT

1. This administrative consent agreement is entered into by and between the Director, Air Protection Division, United States Environmental Protection Agency, Region III (“EPA” or “Complainant”), and Lehigh Cement Company, LLC, formerly known as Essroc Cement Corp. (“Lehigh”), and Argos USA LLC (“Argos”) (collectively referred to herein as “Respondents”), pursuant to Section 113(d), 42 U.S.C. § 7413(d), of the Clean Air Act, 42 U.S.C. §§ 7401-7671q (the “Act” or “CAA”), 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 of Practice”), as codified at 40 C.F.R. Part 22. The Consolidated Rules of Practice at 40 C.F.R. § 22.13 provides, in pertinent part, that “where the parties agree to settlement of one or more causes of action before the filing of a complaint, a proceeding may be commenced and concluded simultaneously by the issuance of a consent agreement and final order pursuant to 40 C.F.R. § 22.18(b)(2) and (3).”
2. This Consent Agreement and the accompanying Final Order (collectively referred to as the “CAFO”) addresses alleged violations set forth herein, which occurred during each Respondent’s ownership and operation of the portland cement manufacturing facility located at 1826 South Queen Street, Martinsburg, WV.

B. GENERAL PROVISIONS

3. Section 113(d) of the Act, 42 U.S.C. § 7413(d), authorizes the Administrator of EPA (“Administrator”) to issue an administrative order assessing a civil administrative penalty whenever, on the basis of any information available to the Administrator, the Administrator finds that any person has violated, or is in violation of, any requirement, rule, plan, order, waiver, or permit promulgated, issued, or approved under Subchapters I,

IV-A, V and VI [also referred to as Titles I, IV-A, V and VI] of the Act. The authority to issue the accompanying Final Order has been duly delegated to the Regional Judicial Officer, EPA Region III.

4. Pursuant to Section 113(d)(1), 42 U.S.C § 7413(d)(1), the Administrator and the Attorney General, each through their respective delegates, have determined jointly that an administrative penalty action is appropriate in this matter.
5. For purposes of this proceeding only, Respondents admit the jurisdictional allegations set forth in this CAFO and agree not to contest EPA's jurisdiction with respect to the issuance, execution and enforcement of this CAFO.
6. Except as provided in paragraph 5 above, Respondents neither admit nor deny the specific findings of fact and the conclusions of law set forth in this CAFO.
7. Respondents consent to the issuance of this CAFO, agree to comply with the terms and conditions set forth therein, including payment of the indicated civil penalty as set forth in this CAFO.
8. Respondents shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, res judicata, collateral estoppel, issue preclusion, or claim-splitting for violations not addressed by this CAFO.
9. Respondents agree to pay their own costs and attorney fees in connection with this proceeding.
10. Respondents agree that this CAFO shall apply to, and be binding upon, Respondents, their officers, directors, servants, employees, agents, successors, and assigns.

C. EPA'S FINDINGS OF FACT AND CONCLUSIONS OF LAW

11. In accordance with 40 C.F.R. §§ 22.13(b) and 22.18(b)(2) and (3), EPA alleges the following findings of fact and conclusions of law:
12. Lehigh is registered in the state of Delaware as a limited liability company and did business in the state of West Virginia at times pertinent to the violations set forth herein. Argos is registered in the state of Delaware as a limited liability company and is doing business in the state of West Virginia.
13. Respondents are "persons" within the meaning of Section 113(a) of the CAA, 42 U.S.C. § 7413(a), and as defined in Section 302(e) of the CAA, 42 U.S.C. § 7602(e).
14. Under Section 112 of the CAA, 42 U.S.C. § 7412, EPA promulgated the National Emission Standards for Hazardous Air Pollutants ("NESHAP") for the Portland Cement Industry at 40 C.F.R. Part 63, Subpart LLL, §§ 63.1340-1359 ("Subpart LLL").

15. At all times relevant to the violations alleged in this CAFO, the facility located at 1826 South Queen Street, Martinsburg, WV 25401 (the “Facility”) has manufactured portland cement and is, therefore, a “Portland Cement Plant,” as that term is defined at 40 C.F.R. § 63.1341 of Subpart LLL.
16. Subpart LLL applies to each new and existing portland cement plant which is a major source or an area source, as defined in 40 C.F.R. § 63.2, per 40 C.F.R. § 63.1340(a), and requires that portland cement plants subject to any provision of Subpart LLL are also subject to Title V permitting requirements, per 40 C.F.R. § 63.1340(d).
17. The Facility was owned and operated by Essroc Cement Corp. (“Essroc”), from approximately 2009 until June 30, 2016. On July 1, 2016, Lehigh’s parent corporation, HeidelbergCement AG, closed a stock acquisition of Italcementi S.p.A, the parent company of Essroc. From July 1, 2016 until November 30, 2016, Essroc remained the owner and operating entity of the Facility. Argos assumed ownership and control of the Facility on December 1, 2016, and currently owns and operates the Facility.
18. Essroc is an “owner or operator,” as defined in Section 112(a)(9) of the CAA, 42 U.S.C. § 7412(a)(9), of the Facility, with respect to all violations alleged in this CAFO occurring from January 1, 2013 through June 30, 2016. Lehigh is an “owner or operator,” as defined in Section 112(a)(9) of the CAA, 42 U.S.C. § 7412(a)(9), of the Facility, with respect to all violations alleged in this CAFO occurring from July 1, 2016 through November 30, 2016. Argos is an “owner or operator” of the Facility, with respect to all violations alleged in this CAFO occurring from December 1, 2016 through December 31, 2016.
19. Title V of the CAA, 42 U.S.C. §§ 7661-7661f, establishes an operating permit program for major sources of air pollution. Section 502(d) of the CAA, 42 U.S.C. § 7661a(d), requires that each state submit to the Administrator a permit program meeting the requirements of Title V, and that EPA act to approve or disapprove each program.
20. Pursuant to Section 502(b) of the CAA, 42 U.S.C. § 7661a(b), the Administrator promulgated regulations providing for the establishment of Title V permitting programs at 40 C.F.R. Part 70.
21. EPA granted full approval of the State of West Virginia Title V operating permit program on October 3, 2001 (*see* 66 Fed. Reg. 50325 (2001)), and the program became effective on November 19, 2001. *See also*, 40 C.F.R. Part 70, Appendix A.
22. Section 502(a) of the CAA, 42 U.S.C. § 7661a(a), and 40 C.F.R. § 70.7(b) provide that, after the effective date of any permit program approved or promulgated under Title V of the CAA, no source subject to Title V may operate except in compliance with a Title V permit.
23. The West Virginia Department of Environmental Protection (WVDEP) is a “permitting authority” for Title V purposes, as defined in Section 501(4) of the CAA, 42 U.S.C. § 7661(4).

24. Provisions included by state permitting authorities in Title V permits issued under a program approved by EPA are enforceable by EPA unless denoted in the permit as a state or local requirement that is not federally enforceable. 40 C.F.R. § 70.6(b).
25. The Facility was issued a Title V permit, under number R30-00300006-2012, by WVDEP effective on February 2, 2012, with an expiration date of January 19, 2017 (“Title V Permit”). On August 9, 2016, WVDEP issued a minor modification permitting action of the Title V Permit, known as modifications MM05 and MM06, to modify the Facility’s material storage handling areas and add an alternate crushing system consisting of three mobile crushers (“August 2016 Permit Modification”). The Title V Permit terms, as modified by the August 2016 Permit Modification where applicable, were in effect at all times relevant to the violations alleged in this CAFO.
26. Lehigh submitted a timely Title V renewal application on July 18, 2016, and the Title V permit was renewed and reissued to Argos, effective October 26, 2017 (#R30-00300006-2017).
27. Permittees must comply with all conditions of their Title V/Part 70 operating permit. Any permit noncompliance constitutes a violation of the Act and is grounds for enforcement action; for permit termination, revocation and re-issuance, or modification; or for denial of a permit renewal application. 40 C.F.R. § 70.6(a)(6)(i).
28. In accordance with Permit Condition 3.5.5 of Respondents’ Title V Permit, Respondents submitted Annual Compliance Certifications to WVDEP and EPA on forms provided by WVDEP, certifying compliance for the periods ending December 31 of each year, for 2013 (“2013 Annual Certification”), 2014 (“2014 Annual Certification”), 2015 (“2015 Annual Certification”), and 2016 (“2016 Annual Certification”).
29. EPA sent Essroc and Lehigh requests for information pursuant to Section 114(a) of the CAA, 42 U.S.C. § 7414(a), by letters dated July 8, 2015 and September 13, 2016, and an email dated June 19, 2017. Essroc and/or Lehigh responded to EPA’s requests via letters dated September 17, 2015, November 10, 2016, January 6, 2017, July 21, 2017, and in Attachment A to an August 30, 2018 settlement letter. EPA reviewed and considered all of the responses and positions expressed by Essroc and/or Lehigh, and such consideration is reflected in EPA’s allegations and scope of resolution herein.

Count 1 - Failure to Comply with TSP and PM₁₀ Emission Limits for Certain Sources

30. The allegations in each of the preceding paragraphs are incorporated by reference herein as though fully set forth at length.
31. Permit Conditions 4.1.9, 4.1.43, and 4.1.56 of the Title V Permit require that emissions from the Facility’s quarry and crushing, cement production, and other miscellaneous sources, known as Group 1, Group 6 and Group 8 fugitive and point sources, respectively, may not exceed the annual limits for total suspended particulates (“TSP”) and particulate

matter less than 10 micrometers in diameter (“PM₁₀”) specified for such sources in the permit.

32. The Facility’s 2013 Annual Certification and 2014 Annual Certification, as amended by letter dated September 17, 2015, state that certain of the Facility’s Group 1, Group 6 and Group 8 sources exceeded the TSP and PM₁₀ annual emission limits required by Permit Conditions 4.1.9, 4.1.43 and 4.1.56, respectively, in 2013 and 2014. The Facility’s 2015 Annual Certification, as amended by letter dated July 21, 2017, states that the Facility’s Group 1 sources exceeded the TSP and PM₁₀ annual emission limits required by Permit Condition 4.1.9, in 2015.
33. Based on EPA’s review of information submitted in Essroc’s/Lehigh’s November 10, 2016 and July 21, 2017 responses to EPA’s information requests, EPA calculated the percentages by which Essroc exceeded its annual emissions limits for each year, in 2013, 2014 and 2015, as set forth below, in paragraphs 34 through 36.
34. In 2013, the Facility’s emissions from its Group 1 sources, identified as EP0X.03.02 and EP0X.03.03, exceeded the annual limits for those sources in Permit Condition 4.1.9 for TSP (0.40 tons per year (“tpy”)) by 182%, and for PM₁₀ (0.19 tpy) by 181%. Emissions from the Facility’s Group 6 sources, identified as EP27.01, EP27.02, and EP27.03, exceeded the annual limits for those sources in Permit Condition 4.1.43 for TSP (2.21 tpy) by 55%, and for PM₁₀ (1.04 tpy) by 55%. Emissions from the Facility’s Group 8 source, identified as EP25.03, exceeded the annual limit for that source in Permit Condition 4.1.56 for TSP (15.10 tpy) by 90%, and for PM₁₀ (4.46 tpy) by 90%.
35. In 2014, the Facility’s emissions from its Group 1 sources, identified as EP0X.03.02 and EP0X.03.03, exceeded the annual limits for those sources in Permit Condition 4.1.9 for TSP (0.40 tpy) by 158%, and for PM₁₀ (0.19 tpy) by 156%. Emissions from the Facility’s Group 6 sources, identified as EP27.04 and EP27.05, exceeded the annual limits for those sources in Permit Condition 4.1.43 for TSP (2.21 tpy) by 20% and for PM₁₀ (1.04 tpy) by 21%. Emissions from the Facility’s Group 8 source, identified as EP25.03, exceeded the annual limit for that source in Permit Condition 4.1.56 for TSP (15.10 tpy) by 73%, and for PM₁₀ (4.46 tpy) by 74%.
36. In 2015, the Facility’s emissions from its Group 1 sources, identified as EP0X.03.02 and EP0X.03.03, exceeded the annual limits for those sources in Permit Condition 4.1.9 for TSP (0.40 tpy) by 15%, and for PM₁₀ (0.19 tpy) by 15%.
37. Essroc’s emissions in excess of the required annual limits for TSP and PM₁₀, in 2013, 2014 and 2015, as set forth in paragraphs 31 through 36, above, are violations of Title V Permit Conditions 4.1.9, 4.1.43, and 4.1.56, and, therefore, also are violations of Section 502(a) of the CAA.

Count 2 - Failure to Operate Kiln Within Required Temperature Limits

38. The allegations in each of the preceding paragraphs are incorporated by reference herein as though fully set forth at length.
39. Permit Condition 4.1.6 of the Title V Permit requires the owner or operator of a kiln subject to a dioxin/furan (“D/F”) emission limitation under 40 C.F.R. § 63.1343 to operate the kiln such that the temperature of the gas at the inlet to the kiln particulate matter control device (“PMCD”) and alkali bypass PMCD, if applicable, does not exceed the applicable temperature limits determined in accordance with Permit Condition 4.1.7.
40. 40 C.F.R. § 63.1343 applies to each kiln and any alkali bypass associated with that kiln, clinker cooler, raw material dryer, and open clinker storage pile, and, therefore, is applicable to Respondents’ kiln at the Facility.
41. The 2014, 2015 and 2016 Annual Certifications each self-reported noncompliance with Permit Condition 4.1.6, and state that “[a]ll exceedances are documented in the applicable PC MACT Summary Report.” The Facility’s required summary reports, known as Portland Cement Maximum Available Control Technology (“PCMACT”) Summary Reports, identify exceedances of the temperature of the gas at the inlet to the kiln main baghouse thermocouple, and exceedances of the temperature for the alkali bypass.
42. In 2014, the Facility’s Kiln “Thermocouple Excess Emission Report” portion of its PCMACT Summary Report, for the July 1-December 31, 2014 reporting period, identified that the temperature at the kiln baghouse inlet and/or the kiln bypass baghouse exceeded the required limits on 9/23 and 9/24/2014.
43. In 2015, the Facility’s Kiln “Thermocouple Excess Emission Report” portion of its PCMACT Summary Report, for July 1-December 31, 2015, identified that the temperature at the kiln bypass baghouse inlet exceeded its required limits on the following dates: 8/13, 12/3, 12/4, 12/6, 12/7, 12/8, 12/9, 12/10, and 12/22/2015.
44. In 2016, the Facility’s “Excess Emission Report” portion of its PCMACT Summary Reports, for the January 1-June 30, 2016 and July 1-December 31, 2016 time periods, identified that the temperature at the kiln alkali inlet exceeded the required limits on the following dates: 4/17, 5/23, 6/2, 6/3, 6/15, 6/28, 7/2, 7/4, 7/8, 7/13, 7/15, 7/20, 7/21, 7/30, 7/31, 8/14, 8/24, 8/31, 9/3, 9/7, 9/9, and 9/14/2016.
45. Essroc’s operation of the kiln at temperatures exceeding the required temperature limits for gas at the inlet to its kiln and alkali bypass PMCDs, in 2014, 2015 and 2016, as set forth in paragraphs 39 through 44, above, are violations of its Title V Permit Condition 4.1.6, and, therefore, also are violations of Section 502(a) of the CAA.

Count 3 - Failure to Timely Demonstrate Compliance with Opacity Emissions Standards

46. The allegations in each of the preceding paragraphs are incorporated by reference herein as though fully set forth at length.
47. Permit Condition 3.1.24 of the Title V Permit requires a permittee, who is subject to the ten percent opacity limitation of Permit Condition 3.1.20, to demonstrate initial compliance with the opacity emissions standards for affected sources other than kilns, using the Method 9 test methods and procedures in 40 C.F.R. § 63.1349(b)(2) (“Method 9 Performance Test”). “Affected sources” subject to Subpart LLL include each kiln, clinker coolers, raw mill, finish mill raw, material dryer, and certain other sources at any portland cement plant, as set forth in 40 C.F.R. § 63.1340(b).
48. 40 C.F.R. § 63.7(a)(2), which is applicable to Subpart LLL per 40 C.F.R. § 63.1359 (Table 1-Applicability of General Provisions), requires the owner or operator of affected sources to perform required performance tests within 180 days of the startup of such sources.
49. Based on information from the 2013, 2014 and 2015 Annual Certifications, and Essroc’s and/or Lehigh’s September 17, 2015, January 6, 2017 and July 21, 2017 responses to EPA’s information requests, Essroc failed to conduct the required Method 9 Performance Tests within 180 days from the dates of startup of its affected sources CD43.20, CD43.21, CD21.12, CD21.13, and CD22.08.
50. Lehigh’s July 21, 2017 response to EPA stated that that “CD43.20 began operation in March 2013. No initial Method 9 Performance Test has been conducted for this source.” Based on this information, EPA calculated that the Method 9 Performance Test, which was required to be completed within 180 days of startup in accordance with Permit Condition 3.1.24 and 40 C.F.R. § 63.7(a)(2), or by September 2013, was at least 39 months late as of December 31, 2016.
51. The 2014 Annual Certification self-reported noncompliance with Permit Condition 3.1.24, stating that sources CD43.21, CD21.12 and CD21.13 “began operation in 2013 and their 180-day start-up period ended during the 2014 reporting period without their initial Method 9 Performance Tests being conducted.” Essroc’s November 10, 2016 letter in response to EPA’s information request stated that its source CD43.21 began operation in December 2013, and its initial Method 9 Performance Test was conducted on February 17, 2015; its sources CD21.12 and CD21.13 both began operation, by venting outdoors, in August 2013, and the initial Method 9 Performance Tests were conducted on February 12, 2015 and December 12, 2015, respectively. Based on this information, EPA calculated that the performance tests for these sources were conducted late, as follows: source CD43.21 was conducted 233 days (7.7 months) late; source CD21.12 was conducted 350 days (11.5 months) late; and source CD21.13 was conducted 653 days (21.5 months) late.
52. The 2015 Annual Certification self-reported non-compliance with Permit Condition 3.1.24, stating that that source CD22.08 “began operation on 12/1/14, and the initial

Method 9 Performance Test for this source was conducted on 8/21/15, which was outside of the required 180-day period from the source's start of operation." Based on this information, EPA calculated that the performance test for source CD22.08 was 83 days late.

53. Essroc's failure to conduct initial compliance performance tests within 180 days of the startup of its sources CD43.20, CD43.21, CD21.12, CD21.13, and CD22.08, in 2013, 2014 and 2015, as set forth in paragraphs 47 through 52 above, are violations of its Title V Permit Condition 3.1.24 and 40 C.F.R. § 63.7(a)(2) and, therefore, also are violations of Section 502(a) of the CAA.

Count 4 - Failure to Properly Conduct Opacity Performance Tests

54. The allegations in each of the preceding paragraphs are incorporated by reference herein as though fully set forth at length.
55. Permit Condition 3.3.3(2) of the Title V Permit requires that permittees who are subject to an opacity limit under Subpart LLL must conduct opacity tests in accordance with Method 9 for a duration of three hours (30 6-minute averages), unless specified conditions, which are not relevant to Respondents, allow for a shorter duration.
56. Respondents are subject to a ten percent opacity limit, per 40 C.F.R. § 63.1345 of Subpart LLL, which establishes an emissions limit of ten percent opacity for affected sources at the Facility, including each new or existing raw material, clinker, or finished product storage bin; conveying stem transfer point, bagging system, bulk loading or unloading system, raw and finish mills, and each existing raw material dryer.
57. Essroc's January 6, 2017 letter in response to EPA's information request acknowledged noncompliance with the requirement to conduct three-hour Method 9 Performance Tests for its affected sources CD43.21, CD21.12, and CD21.13 in 2015, stating "the Method 9 performance tests were conducted for 30-minute durations in certain instances, instead of the requisite 3 hours. . . ." (*see* Response to Item No. 5)
58. Based on EPA's review of information submitted with Essroc's September 17, 2015 letter (Attachment 9) and November 10, 2016 letter (Response to Request No. 2(a)-(c)), Essroc's February 12, 2015 Method 9 Performance Test for source CD43.21 was conducted for only 30 minutes from 915 to 945 hours; its February 17, 2015 Method 9 Performance Test for source CD43.21 was conducted for only 30 minutes from 1400 to 1430 hours; and its December 12, 2015 Method 9 Performance Test for source CD21.13 was conducted for only 30 minutes from 1000 to 1030 hours.
59. Essroc's failure to conduct opacity tests in accordance with Method 9 on the Facility's sources CD43.21 CD21.12, and CD21.13 for the required three-hours duration, as set forth in paragraphs 55 through 58, above, is a violation of the Title V Permit Condition 3.3.3(2) and, therefore, also is a violation of Section 502(a) of the CAA.

Count 5 – Failure to Submit Required Protocol, Notice and Results of Testing

60. The allegations in each of the preceding paragraphs are incorporated by reference herein as though fully set forth at length.
61. Permit Condition 3.3.1 of the Title V Permit requires the permittee to conduct stack testing, also known as ‘performance testing,’ to determine compliance with emissions limitations. Permit Condition 3.3.1(c) specifies that the stack testing must be conducted according to an approved test protocol, which must be submitted to WVDEP in writing at least 30 days prior to any testing, and that notice of the scheduled date of the stack testing must be provided to WVDEP at least 15 days prior to the testing. Permit Condition 3.3.1(d) specifies that a report of the results of the stack testing must be submitted to WVDEP within 60 days of completing the test.
62. The 2013 Annual Certification self-reported noncompliance with Permit Condition 3.3.1, stating that it conducted an initial performance test of its source CD45.16 on June 12, 2013, but it “failed to submit a protocol of the conduct of this performance test to the WVDEP.” In addition, Essroc’s November 10, 2016 letter in response to EPA’s information request states that “results of the June 12, 2013 initial Method 9 Performance Test for Rail Transloader CD45.16 were submitted to the WVDEP on November 7, 2016.” (See Response to Request No. 7). Based on EPA’s calculations, Essroc’s submission of results to WVDEP on November 7, 2016 was more than three years late.
63. The 2014 Annual Certification self-reported noncompliance with Permit Condition 3.3.1, stating that a “protocol was not submitted, as required, thirty days prior to the conduct of testing” for its dioxin/furan (“D/F”) performance testing of the preheater/precalciner kiln (source CD42.04), which occurred on September 22, 2014 and October 7, 2014.
64. The 2016 Annual Certification self-reported noncompliance with Permit Condition 3.3.1, stating that “[t]he NO_x, SO₂, CO, CO₂, TCH CEMS RATA was conducted 6/13/16 . . . however, the RATA report was not submitted to WVDEP until 8/18/16, which was not within the required 60 days from testing.” The 2016 Annual Certification further stated that “the Mercury [Continuous Emissions Monitoring System Relative Accuracy Test or “CEMS RATA”] was conducted starting on 8/24/16 [however] protocol and notification of the testing was submitted to WVDEP on 8/18/16, which was not within the 30 days required for the protocol to be submitted or the 15 days required for notification of testing.”
65. Essroc’s failure to timely submit the required protocol, notice, and results of its performance testing in 2013, 2014 and 2016, as set forth in paragraphs 61 through 64, above, are violations of Permit Conditions 3.3.1(c) and (d), and, therefore, also are violations of Section 502(a) of the CAA.

**Count 6 – Failure to Comply with Prohibition Against Visible Emissions
from Storage Structures**

66. The allegations in each of the preceding paragraphs are incorporated by reference herein as though fully set forth at length.
67. Permit Condition 3.1.12 of the Title V Permit requires that no person shall cause, suffer, allow or permit visible emissions from any storage structure associated with any manufacturing process that generates fugitive particulates, which is required pursuant to Permit Condition 3.1.15 to have a full enclosure and be equipped with a PMCD.
68. The 2013 Annual Certification self-reported noncompliance with Permit Condition 3.1.12, stating that “[v]isible emissions were observed being emitted from the Multicell Silo on 3/21/13. . . from the preheater tower on 4/23/13. . . from the preheater tower on 6/21/13 and . . . from the Finish Mill Long Belt on 10/2/13 and were documented in an Incident Report to WVDEP.”
69. The 2016 Annual Certification self-reported noncompliance with Permit Condition 3.1.12, stating that “WVDEP notified the Facility of observed opacity from storage structures on the following dates: 3/24/16 (cement packer bin), 6/9/16 (cement storage silos), 10/19/16 (cement storage silos), and 12/14/16 (cement storage silos). . . .”
70. The incidents of visible emissions from Respondents’ specified storage structures in 2013 and 2016, as set forth in paragraphs 67 through 69, above, are violations of Permit Condition 3.1.12 and, therefore, also are violations of Section 502(a) of the CAA.

Count 7 – Failure to Comply with the Opacity Emission Limit

71. The allegations in each of the preceding paragraphs are incorporated by reference herein as though fully set forth at length.
72. Permit Condition 3.1.19 of the Title V Permit requires that the permittee’s existing or new raw or finish mill sources are subject to a ten percent opacity emissions limit.
73. The 2013, 2014 and 2015 Annual Certifications each self-reported noncompliance with Permit Condition 3.1.19 during the 2013, 2014 and 2015 reporting periods, and each stated that “all opacity exceedances from Finish Mill 1, Finish Mill 2, or Finish Mill 3 are documented in the Semiannual PC MACT Reports,” which the Facility submitted as required pursuant to Permit Condition 3.5.11(9) and 40 C.F.R. § 63.1354(b)(9) of Subpart LLL. In addition, the 2016 Semiannual PC MACT Reports were submitted to EPA with Lehigh’s July 21, 2017 letter in response to EPA’s information request.
74. Based on EPA’s review of the Facility’s Semiannual PC MACT Reports for 2013, 2014, 2015, and 2016, EPA identified 108 days on which exceedances of the ten percent opacity limit occurred from the Facility’s Finish Mill 1 and 2, as tabulated below:

Month/Year	Dates Exceeded - Finish Mill 1	Dates Exceeded – Finish Mill 2
January 2013	1/14	1/9
March 2013	3/26	3/26
May 2013		5/13, 24
June 2013	6/25	
August 2013	8/16, 17, 18	8/30
September 2013	9/19, 24	9/6, 19, 23, 24, 27, 30
October 2013		10/1
November 2013		11/15
December 2013	12/17	12/4, 17
January 2014	1/24	
March 2014	3/27, 28	3/6, 10, 11, 25, 27, 31
April 2014	4/7, 10	4/6, 10
May 2014	5/6, 17, 18	5/5, 6, 21, 22, 27
June 2014	6/18	6/3, 6, 17, 18, 20
July 2014	7/26, 30	7/30
August 2014	8/22	
September 2014	9/5, 9	9/5, 6, 9, 15
October 2014		10/14
December 2014	12/1	12/1, 9, 25
January 2015	1/9	1/15, 29, 31
February 2015	2/21, 27	2/2, 27
March 2015	3/3, 5, 11, 23, 24, 25	3/3
April 2015	4/2	4/8
June 2015	6/9	6/4, 9
July 2015	7/26	
August 2015		8/29
September 2015	9/3, 9, 30	9/9
October 2015	10/9, 10, 14	10/10, 30
November 2015	11/7, 12	11/17
December 2015	12/6, 15	12/4, 7, 10, 15, 30
May 2016		5/27
TOTAL days (108 day)	46 days	62 days

75. Essroc’s failure to comply with the ten-percent opacity limit for its existing or new raw or finish mills, in 2013, 2014, 2015 and 2016, as set forth in paragraphs 72 through 74, above, is a violation of Permit Condition 3.1.19 and, therefore, also is a violation of Section 502(a) of the CAA.

**Count 8 – Failure to Demonstrate Continuous Compliance
with Opacity Emissions Standards using COMS**

76. The allegations in each of the preceding paragraphs are incorporated by reference herein as though fully set forth at length.
77. Permit Condition 3.2.2 of the Title V Permit requires a permittee, who installs a Continuous Opacity Monitor System (“COMS”) in lieu of conducting daily visible emissions testing required under 40 C.F.R. § 63.1350(f)(2), to demonstrate continuous compliance with the ten percent opacity limitation of Permit Condition 3.1.20, by operating and maintaining the COMS such that it meets the installation, maintenance, calibration and operation requirements of 40 C.F.R. § 1350(f)(4)(i).

78. The Facility has a COMS installed on a common main stack, into which it vents three separate baghouses from its Preheater/Precalciner (“PH/PC”) kiln, clinker cooler, and in-line raw mill, its PH/PC kiln alkali bypass gas, and its coal mill, as described in Permit Condition 3.2.2.
79. The 2013, 2014 and 2015 Annual Certifications each self-reported noncompliance with Permit Condition 3.2.2 during the respective reporting periods, and each state that “all opacity exceedances recorded by the Preheater/Precalciner Kiln COMS and all COMS downtime periods are documented in the Semiannual PC MACT Reports.”
80. Based on EPA’s review of the Facility’s Semiannual PC MACT Reports for 2013, 2014, and 2015, including the “Kiln Stack COM Excess Emission Reports,” EPA identified exceedances of the ten percent opacity limit on 67 days in 2013, 62 days in 2014, and 66 days in 2015, as tabulated below:

Permit Condition 3.2.2 – Exceedances of 10% Opacity Limit 2013-2016

Month/Year	Number of Days Exceeded	Dates
March 2013	4	3/1, 14, 25, 26
April 2013	5	4/8, 9, 11, 17, 27
May 2013	6	5/9, 11, 23, 25, 29, 30
June 2013	5	6/1, 13, 19, 21, 25
July 2013	4	7/10, 15, 20, 31
August 2013	6	8/1, 11, 15, 25, 30, 31
September 2013	11	9/4, 5, 6, 12, 13, 15, 18, 22, 24, 29, 30
October 2013	6	10/1, 2, 5, 10, 26, 31
November 2013	9	11/1, 8, 13, 14, 17, 18, 19, 20, 22
December 2013	11	12/5, 9, 10, 11, 12, 17, 24, 25, 27, 29, 30
January 2014	7	1/10, 15, 16, 17, 23, 26, 28
February 2014	4	2/14, 21, 25, 28
March 2014	4	3/8, 14, 15, 27
April 2014	6	4/5, 9, 10, 11, 12, 22
May 2014	6	5/13, 14, 16, 24, 25, 26
June 2014	4	6/1, 2, 12, 18
July 2014	5	7/7, 13, 21, 23, 24
August 2014	2	8/15, 20
September 2014	4	9/2, 5, 6, 9
October 2014	1	10/10
November 2014	10	11/2, 3, 10, 21, 24, 25, 26, 28, 29, 30
December 2014	9	12/1, 5, 9, 16, 20, 23, 24, 30, 31
January 2015	4	1/3, 4, 17, 18
February 2015	1	2/7
March 2015	5	3/3, 6, 24, 25, 26
April 2015	8	4/1, 5, 6, 7, 14, 16, 20, 30
May 2015	9	5/3, 7, 9, 10, 12, 24, 27, 28, 31
June 2015	5	6/2, 9, 16, 20, 27
July 2015	3	7/6, 7, 15
August 2015	1	8/28
September 2015	6	9/13, 17, 20, 21, 24, 29
October 2015	11	10/3, 9, 13, 14, 19, 22, 24, 26, 27, 28, 30
November 2015	8	11/1, 2, 9, 16, 17, 23, 24, 25
December 2015	5	12/4, 15, 29, 30, 31
Total Number Days	195 days	

81. Essroc's failure to demonstrate continuous compliance with the ten percent opacity emission limit, as set forth in paragraphs 77 through 80, above, is a violation of Permit Condition 3.2.2 and, therefore, also is a violation of Section 502(a) of the CAA.

Count 9 – Failure to Conduct Daily Visual Emissions Observations for Opacity in Accordance with Method 22 Requirements

82. The allegations in each of the preceding paragraphs are incorporated by reference herein as though fully set forth at length.
83. Permit Condition 3.2.4 of the Title V Permit requires the owner or operator of a raw mill or finish mill to monitor opacity by conducting daily six-minute visual emissions observations of these affected sources using the procedures of Method 22, 40 C.F.R. Part 60, Appendix A-7 ("Method 22"), which require recording specific information.
84. The 2013, 2014 and 2015 Annual Certifications each self-reported noncompliance with Permit Condition 3.2.4 during the respective reporting year, and identified the time period for which the Facility had no documentation that the required daily 6-minute Method 22 observations were conducted on Finish Mill 3.
85. The 2013 Annual Certification regarding Permit Condition 3.2.4, states, "[d]ocumentation of daily 6-Minute Method 22 observations for Finish Mill 3 sources is missing for the following weeks in 2013: 2/18, 3/18, 5/13, 6/24, 7/1, 7/8, 7/15, 8/5, 8/12, 9/2, 9/16, 9/23, 10/7, 10/14, 10/21, 11/4, 11/18, 11/25, 12/2, 12/16, 12/23, and 12/30."
86. The 2014 Annual Certification regarding Permit Condition 3.2.4 states, "[d]ocumentation of daily 6-Minute Method 22 observations for Finish Mill 3 sources is lacking for the 2014 reporting year."
87. The 2015 Annual Certification regarding Permit Condition 3.2.4 states, "[d]ocumentation of daily 6-Minute Method 22 observations for Finish Mill 3 sources is incomplete for the first half of the 2015 reporting year." Based on Lehigh's July 21, 2017 letter in response to EPA's information request concerning Permit Condition 3.2.4, EPA identified two days in 2015 (May 15, 2015 and August 25, 2015) on which Finish Mill 3 operated, but the required Method 22 visible emissions records were "not available." (See Response to Item No. 11).
88. In 2016, based on Lehigh's July 21, 2017 letter in response to EPA's information request, which included visible emissions observation records for calendar year 2016, EPA identified two days (June 10, 2016 and August 29, 2016) on which Finish Mill 3 operated but the required Method 22 observations were "not available." (See Response to Item No. 11). In addition, the Facility's Title V Operating Permit Semi-Annual Monitoring Report for the period July 1 through December 31, 2016 (see p.6, Deviation Report, Permit Term 3.2.2/4.2.12) self-reported that although the Finish Mill 2 COM was not operational on two days (August 20 and 21, 2016), "[n]o 6-minute visible emission monitoring was

conducted on the finish mill during these dates as required when no continuous opacity monitoring is being performed.”

89. Essroc’s failure to conduct daily six-minute opacity observations of the Facility’s Finish Mills 2 and 3 in accordance with Method 22, as set forth in paragraphs 83 through 88, above, is a violation of Permit Condition 3.2.4 and, therefore, also is a violation of Section 502(a) of the CAA.

**Count 10 - Failure to Conduct and to Keep Records of
Required Visible Emissions Monitoring**

90. The allegations in each of the preceding paragraphs are incorporated by reference herein as though fully set forth at length.
91. Permit Conditions 3.2.7, 3.2.12, and 3.2.13 of the Title V Permit each require the permittee to conduct visible emissions monitoring of specified sources at the Facility: Permit Condition 3.2.7 requires, among other things, monthly ten-minute visible emissions testing of affected sources in accordance with Method 22, which requires keeping a record of specific information of each emissions observation. Permit Condition 3.2.12 requires weekly visible emissions observations of certain fugitive emissions sources and maintaining a record of each observation with specific information, including the date, time, name of emission unit, and results of the weekly inspection. Permit Condition 3.2.13 requires weekly visible emissions observations of all Facility dust collectors and maintaining records with specific information.
92. Permit Conditions 3.4.1 and 3.4.2 also require the permittee to keep records of monitoring information, and to retain all monitoring records for at least five years from the date of such monitoring, respectively.
93. With regard to Permit Condition 3.2.7, the 2015 and 2016 Annual Certifications each self-report noncompliance and state that records are missing to demonstrate that the monthly required ten-minute visible emissions observations were performed during the respective periods. The 2015 Annual Certification states that “[r]ecords are missing for the months July through December 2015 to demonstrate that monthly visible observations were performed for the fugitive PC MACT sources located within the Craneway Storage Hall.” The 2016 Annual Certification states that “[r]ecords are missing for the months January through May 2016 and August through December 2016 to demonstrate that monthly 10-minute visible emissions testing was conducted on all PC MACT affected sources.”
94. With regard to Permit Condition 3.2.12, the 2013, 2014, 2015 and 2016 Annual Certifications each self-report noncompliance and state that “Weekly Visible Emission Monitoring for all fugitive particulate emissions activities was not documented as required during the reporting period. Documentation is missing to demonstrate that the required observations were conducted. . . .” Based on information provided in the 2013, 2014, 2015 and 2016 Annual Certifications, and EPA’s review of records submitted with Essroc’s

September 17, 2015 letter in response to EPA’s information request, EPA determined that 78 weeks of required weekly visible emissions observations are missing or incomplete, during the 2013 to 2016 reporting periods, as summarized below:

Permit Condition 3.2.12 – Weekly Records Missing or Incomplete		
Weeks	Record Missing	Record Incomplete
1	Week of Jan. 6 th 2013	
2	Week of Feb. 24 th 2013	
3	Week of March 24 th 2013	
4	Week of March 31 st 2013	
5	Week of April 7 th 2013	
6		April 15 th 2013
7		April 23 rd 2013
8	Week of April 28 th 2013	
9		May 14 th 2013
10		May 24 th 2013
11	Week of May 26 th 2013	
12	Week of June 16 th 2013	
13	Week of July 7 th 2013	
14	Week of July 21 st 2013	
15	Week of August 18 th 2013	
16	Week of September 1 st 2013	
17	Week of September 29 th 2013	
18	Week of October 20 th 2013	
19	Week of November 3 rd 2013	
20	Week of November 24 th 2013	
21	Week of December 1 st 2013	
22	Week of December 8 th 2013	
23	Week of December 15 th 2013	
24	Week of December 22 nd 2013	
25	Week of Jan. 5 th 2014	
26	Week of Jan. 26 th 2014	
27		April 10 th 2014
28	Week of April 13 th 2014	
29	Week of April 20 th 2014	
30	Week of April 27 th 2014	
31	Week of May 4 th 2014	
32	Week of May 11 th 2014	
33	Week of May 18 th 2014	
34	Week of May 25 th 2014	
35	Week of June 15 th 2014	
36	Week of June 29 th 2014	
37	Week of July 6 th 2014	
38	Week of July 13 th 2014	
39	Week of July 20 th 2014	
40	Week of July 27 th 2014	
41	Week of August 3 rd 2014	
42	Week of August 10 th 2014	
43	Week of August 24 th 2014	
44	Week of September 7 th 2014	
45	Week of September 14 th 2014	
46	Week of September 28 th 2014	
47	Week of October 5 th 2014	
48	Week of October 19 th 2014	
49	Week of November 9 th 2014	
50	Week of November 23 rd 2014	
51	Week of December 7 th 2014	
52	Week of December 21 st 2014	
53	Week of December 28 th 2014	
54	Week of July 6 th 2015	
55	Week of July 20 th 2015	

56	Week of August 10 th 2015	
57	Week of November 2 nd 2015	
58	Week of March 13 th 2016	
59	Week of March 20 th 2016	
60	Week of March 27 th 2016	
61		Week of April 3 rd 2016
62	Week of April 10 th 2016	
63	Week of April 17 th 2016	
64		Week of April 24 th 2016
65	Week of May 8 th 2016	
66	Week of May 22 nd 2016	
67	Week of May 29 th 2016	
68		Week of June 26 th 2016
69		Week of July 3 rd 2016
70		Week of July 10 th 2016
71	Week of July 17 th 2016	
72	Week of July 31 st 2016	
73	Week of August 14 th 2016	
74		Week of August 28 th 2016
75	Week of September 11 th 2016	
76	Week of September 25 th 2016	
77	Week of October 9 th 2016	
78	Week of November 27 th 2016	

95. With regard to Permit Condition 3.2.13, the 2013 and 2016 Annual Certifications each self-reported noncompliance for the respective reporting periods, stating that “documentation is missing” to demonstrate that the required weekly emissions observations of dust collector were conducted. The 2013 Annual Certification reported that “documentation is missing for the weekly dust collector inspections for the week of 10/1/13.” The 2016 Annual Certification reported that “documentation is missing to demonstrate that the required inspections were conducted for the weeks of 8/7/16, 8/21/16, 9/11/16 and 11/20/16. Additionally, records were found to be incomplete or partially done for the weeks of 6/19/16, 12/4/16, 12/11/16, 12/18/16, and 12/25/16.”
96. Respondents’ failures to conduct and/or keep records of required visible emissions monitoring of Facility sources, as set forth in paragraphs 91 through 95, above, are violations of Permit Conditions 3.2.7, 3.2.12, 3.2.13, 3.4.1, and 3.4.2, and, therefore, also are violations of Section 502(a) of the CAA.

**Count 11 - Failure to Install, Operate, Calibrate and Maintain the
Continuous Emissions Monitoring System**

97. The allegations in each of the preceding paragraphs are incorporated by reference herein as though fully set forth at length.
98. Permit Condition 3.2.16 of the Title V Permit requires the permittee to install, operate, calibrate, and maintain instruments to continuously measure and record the stack gas flow rate to allow determination of the pollutant mass emissions rate to the atmosphere, from sources subject to an emissions limitation that have pounds per ton of clinker unit and are required to be monitored by a Continuous Emission Monitoring System (“CEMS”). The Facility’s PH/PC kiln is such a source.

99. Permit Condition 4.1.22, per the August 2016 Permit Modification, specifies the allowable emissions limitations for the Facility's PH/PC Kiln System and states that the limit for pollutant hydrochloric acid ("HCl") is 3.0 parts per million, volumetric dry ("ppmvd") at 7% Oxygen. Permit Condition 4.1.22 of the August 2016 Permit Modification further requires, in Footnote 3, that the Plant must demonstrate compliance with the HCl emission limit and CEMS monitoring requirements by September 9, 2016, per a 1-year extension granted by WV DEP on July 1, 2015.
100. The 2016 Annual Certification self-reported noncompliance with Permit Condition 3.2.16, stating that "a continuing emission rate monitoring system for HCl was not operated by the [WVDEP's] extension compliance date of 9/9/16 as required. Compliance with the HCl emission limit was demonstrated on 2/9/17. . . ."
101. Essroc's failure to install, operate, calibrate and maintain the HCl CEMS by the extended compliance date of 9/9/2016, as set forth in paragraphs 98 through 100, above, is a violation of Permit Conditions 3.2.16 and 4.1.22, per the August 2016 Permit Modification, and, therefore, also is a violation of Section 502(a) of the CAA.

Count 12 - Failure to Conduct the Required Initial Performance Test for Existing Sources For PM and Organic Hazardous Air Pollutants ("HAPs") by the Compliance Date

102. The allegations in each of the preceding paragraphs are incorporated by reference herein as though fully set forth at length.
103. Permit Condition 3.1.22 of the Title V Permit requires the permittee to comply with all applicable amended requirements for existing sources under 40 C.F.R. Part 63, Subpart LLL, no later than September 9, 2013 or a new compliance date set by EPA.
104. 40 C.F.R. § 63.7, which is applicable to Subpart LLL pursuant to 40 C.F.R. § 63.1359 (Table 1-Applicability of General Provisions), requires the owner or operator of an affected source to conduct performance testing, if required to do such performance testing by a relevant standard, and unless a waiver is obtained, within 180 days of the compliance date for such source.
105. 40 C.F.R. § 63.1351(c) of Subpart LLL, which became final on February 12, 2013, states that the compliance date for existing sources for all the requirements that became effective on February 12, 2013, except for the open clinker pile requirements, will be September 9, 2015. (*See* 78 Fed. Reg. 10006, 10053, Feb. 12, 2013). The requirements that became effective on February 12, 2013 included amended standards, or limits, for PM and organic HAPs.
106. 40 C.F.R. § 63.1348 of Subpart LLL requires the owner or operator to demonstrate initial compliance with the emissions standards and operating limits by using the test methods and procedures in 40 C.F.R. § 63.7.

107. Based on 40 C.F.R. § 63.7, and Sections 63.1348 and 63.1351(c) of Subpart LLL, Essroc was required to conduct performance testing to demonstrate initial compliance with the PM and organic HAP emission standards within 180 days from September 9, 2015, or by March 6, 2016.
108. The 2016 Annual Certification self-reported noncompliance with Permit Condition 3.1.22, stating, “the Martinsburg Plant was required to complete initial performance testing demonstrating compliance with the PM and total organic HAPS limits by 3/6/16. However, the Martinsburg Plant was unable to complete the required initial performance testing by this date. The initial PM and total organic HAPS performance testing was conducted starting on 4/6/16. . . .”
109. Essroc’s failure to conduct its initial performance testing on the Facility’s existing sources for PM and organic HAPs, within 180 days of its compliance date, by March 6, 2016, as set forth in paragraphs 103 through 108, above, is a violation of Permit Condition 3.1.22 and, therefore, also is a violation of Section 502(a) of the CAA.

Count 13 - Failure to Timely Submit Required Notifications

110. The allegations in each of the preceding paragraphs are incorporated by reference herein as though fully set forth at length.
111. Permit Condition 3.5.10 of the Title V Permit requires each owner or operator subject to Subpart LLL to comply with certain requirements of 40 C.F.R. § 63.9 by providing EPA or WVDEP with notification of specific activities at the Facility.
112. Permit Condition 3.5.10(1) and 40 C.F.R. §§ 63.9(b) through (d) require notification of the actual date of startup of an affected source, delivered or postmarked within 15 calendar days after that date.
113. The 2015 Annual Certification self-reported noncompliance with Permit Condition 3.5.10(1), stating that “no notice of startup of operation was submitted to WVDEP within 15 days of the startup date, as required” for its emission source CD22.08, which began operation on December 1, 2014. Source CD22.08 is an ‘affected source’ subject to Subpart LLL, per 40 C.F.R. §63.1340(b). Lehigh’s July 21, 2017 response to EPA’s information request further states that “no notification of startup was submitted to the WVDEP for CD22.08.”
114. Permit Condition 3.5.10(2) and 40 C.F.R. §§ 63.7 and 63.9(e) require notification of the anticipated date for conducting a performance test, at least 60 calendar days before the performance test is scheduled to begin.
115. The 2016 Annual Certification self-reported noncompliance with Permit Condition 3.5.10(2), stating that “no performance test notification was submitted to WVDEP . . . prior to the April 6-7, 2016 PM/OHAP stack test, as required.” Lehigh’s July 21, 2017

letter in response to EPA's information request also states that "no official performance test notification was submitted to WVDEP to notify them of the specific test date for the April 6 and 7, 2016 PM/OHAP Initial Performance Test."

116. Permit Condition 3.5.10(3) requires notification of the opacity and visible emission observations required by 40 C.F.R. § 63.1349, at least 60 calendar days before the opacity or visible emissions observations are scheduled to begin in accordance with 40 C.F.R. §§ 63.6(h)(5) and 63.9(f).
117. The 2015 Annual Certification self-reported noncompliance with Permit Condition 3.5.10(3), stating that "[n]o notification was submitted to the WVDEP for initial Method 9 Performance Tests conducted by the Plant in February and August 2015" for its emission sources CD22.05, CD22.06, CD22.07 and CD22.08.
118. Permit Condition 3.5.10(5) requires submission of a notification of compliance status ("NOCS"), per 40 C.F.R. § 63.9(h), before close of business on the 60th day following completion of the relevant compliance demonstration activity.
119. The 2016 Annual Certification self-reported noncompliance with Permit Condition 3.5.10(5), stating that "[t]he Martinsburg Plant submitted an initial notice of compliance ("NOC") for PC MACT PM and THC/OHAP limits to the WVDEP on 7/15/2016, which was more than 60 days from the initial performance test. The initial compliance period for mercury ended on 10/12/16 (i.e. first 30 operating days from 9/9/16). The Mercury NOC was submitted to WVDEP on 1/26/17, more than 60 days from end of the initial compliance period." The PM and THC/OHAP NOC was submitted 99 days after its April 6-7, 2016 PM and THC/OHAP performance test, therefore, its PM and THC/OHAP NOC was submitted 39 days late. The Mercury NOC was submitted 106 days after the 30-day Mercury test period, per 40 C.F.R. § 63.1349(b)(5), ended on October 12, 2016, therefore, its Mercury NOC was submitted 46 days late.
120. Respondents' failures to submit required notifications and late submission of required notifications, as set forth in paragraphs 111 through 119, above, are violations of Permit Conditions 3.5.10(1), (2), (3) and (5), and, therefore, also are violations of Section 502(a) of the CAA.

Count 14 - Failure to Comply with Reporting Requirements

121. The allegations in each of the preceding paragraphs are incorporated by reference herein as though fully set forth at length.
122. Permit Condition 3.5.11 of the Title V Permit requires the owner or operator of an affected source to comply with the certain reporting requirements specified in 40 C.F.R. § 63.10.
123. Permit Condition 3.5.11(2) requires the owner or operator of an affected source to report results of the opacity tests required by 40 C.F.R. § 63.1349, per 40 C.F.R. § 63.10(d)(3).

In addition, 40 C.F.R. § 63.10(d)(2) requires that such test results shall be reported within 60 days after completion of the tests.

124. The 2015 Annual Certification self-reported noncompliance with Permit Condition 3.5.11(2), stating that “[n]o report was submitted to the WVDEP for initial Method 9 Performance Tests conducted by [the Facility] in February and August 2015 on the four emission sources,” identified as CD22.05, CC22.06, CD22.07 and CD22.08. Lehigh’s July 21, 2017 letter in response to EPA’s information request further states that the “[i]nitial Method 9 Performance Tests were conducted on 2/12/15 for CD22.05, CD22.06, and CD22.07 and 8/21/15 for CD22.08. As of July 2017, the results of these performance test have not been submitted to WVDEP.”
125. Permit Condition 3.5.11(9) requires submission of semiannual summary reports, containing specific information set forth in 40 C.F.R. § 63.10(e)(3)(vi), as well as information specified in Permit Condition 3.5.11(9).
126. 40 C.F.R. § 63.10(e)(3)(v), requires that “all summary reports, if required, shall be delivered or postmarked by the 30th day following the end of each calendar half or quarter, as appropriate.”
127. The 2016 Annual Certification self-reported noncompliance with Permit Condition 3.5.11(9), stating that the Facility’s semi-annual summary report for the first half of 2016, which it submitted on October 12, 2016, “was not submitted within the required 30 days from the end of the reporting period.”
128. The Facility’s semi-annual summary report for the first half of 2016 should have been submitted within 30 days after June 30, 2016, or by July 31, 2016, therefore its submission on October 12, 2016 was 74 days late.
129. Essroc’s failure to comply with reporting requirements, as set forth in paragraphs 122 through 128, above, are violations of Permit Conditions 3.5.11(2) and 3.5.11(9), and, therefore, also are violations of Section 502(a) of the CAA.

Count 15 - Failure to Perform Required Stack Test on PH/PC Kiln System

130. The allegations in each of the preceding paragraphs are incorporated by reference herein as though fully set forth at length.
131. Permit Condition 4.3.9 of the Title V Permit requires the permittee to perform stack tests on the Facility’s PH/PC kiln system exhaust stack, initially within 180 days of the startup of the system, followed by retests every five years, in order to determine compliance with the volatile organic compounds (“VOC”), TSP and PM₁₀ emissions limits under the permit.
132. The 2015 Annual Certification self-reported noncompliance with Permit Condition 4.3.9, stating that “Initial Performance Testing including VOC, PM and PM₁₀ was conducted on

the Preheater/Precalciner kiln system from 3/27/10 to 3/29/10. A re-test for VOC was conducted on 6/17/10 and 6/18/10 . . . the required VOC and PM₁₀ stack testing was not conducted in 2015 by the Martinsburg Plant.” The 2016 Annual Certification stated that “[t]he 5-year retest for VOC, PM, and PM₁₀, was conducted on the Preheater/Precalciner kiln system from April 6-7, 2016.”

133. Essroc’s retest of its PM₁₀ performance testing should have taken place by March 29, 2015, within five years after its March 27-29, 2010 initial performance testing; therefore, its PM₁₀ retest on April 6-7, 2016 was 12.2 months late. Essroc’s retest of its VOC performance testing should have taken place by June 18, 2015, within five years after its June 17-18, 2010 initial performance testing; therefore, its VOC retest on April 6-7, 2016 was 9.8 months late.
134. Essroc’s failure to timely conduct retests of the Facility’s PH/PC kiln system exhaust stack, as set forth in paragraphs 131 through 133, above, is a violation of Permit Condition 4.3.9 and, therefore, also is a violation of Section 502(a) of the CAA.

**D. SETTLEMENT RECITATION, SETTLEMENT CONDITIONS,
AND CIVIL PENALTY**

135. Complainant and Respondents enter into this Consent Agreement and the accompanying Final Order to settle the violations specifically set forth in Section C of this Consent Agreement.
136. In settlement of the alleged violations enumerated above in Section C of this Consent Agreement, Respondents consent to the assessment and agree to pay a civil penalty in the amount of \$1,505,309 within the time and manner specified herein.
137. The settlement amount of \$1,505,309 is based upon Complainant’s consideration of and application of the statutory penalty factors set forth in Section 113(e) of the Act, 42 U.S.C. § 7413(e), which include the size of the business, the economic impact of the penalty on the business, the violator’s full compliance history and good faith efforts to comply, the duration of the violation as established by any credible evidence, the economic benefit of noncompliance, the payment of penalties previously assessed for the same violation, the seriousness of the violation, and such other matters as justice may require. The settlement amount also considered EPA’s Clean Air Act Stationary Source Civil Penalty Policy (dated October 25, 1991), as indexed for inflation in keeping with 40 C.F.R. Part 19 (Adjustment to Civil Monetary Penalties for Inflation). Complainant has determined that Respondents’ payment of this civil penalty shall resolve the violations set forth in Section C of this Consent Agreement.
138. Respondents shall pay the civil penalty of \$1,505,309 no later than thirty (30) days after the effective date of this CAFO in order to avoid the assessment of interest, administrative costs, and late payment penalties in connection with such civil penalty as described in this CAFO.

139. Pursuant to 31 U.S.C. § 3717 and 40 C.F.R. § 13.11, EPA is entitled to assess interest and late payment penalties on outstanding debts owed to the United States and a charge to cover the costs of processing and handling a delinquent claim, as more fully described below. Accordingly, Respondents' failure to make timely payment shall result in the assessment of late payment charges including interest, penalties, and/or administrative costs of handling delinquent debts.
140. Interest on the civil penalty assessed in this CAFO will begin to accrue on the date that a copy of this executed CAFO is mailed or hand-delivered to Respondents. However, EPA will not seek to recover interest on any amount of the civil penalty that is paid within thirty (30) calendar days after the date on which such interest begins to accrue. Interest will be assessed at the rate of the United States Treasury tax and loan rate in accordance with 40 C.F.R. § 13.11(a).
141. The cost of EPA's administrative handling of overdue debts will be charged and assessed monthly throughout the period the debt is overdue. 40 C.F.R. § 13.11(b). Pursuant to Appendix 2 of EPA's Resources Management Directives – Cash Management, Chapter 9, EPA will assess a \$15.00 administrative handling charge for administrative costs on unpaid penalties for the first thirty (30) day period after the payment is due and an additional \$15.00 for each subsequent thirty (30) days the penalty remains unpaid.
142. A penalty charge of six percent per year will be assessed monthly on any portion of the civil penalty which remains delinquent for more than ninety (90) calendar days. 40 C.F.R. § 13.11(c). Should assessment of the penalty charge on the debt be required, it shall accrue from the first day payment is delinquent. 31 C.F.R. § 901.9(d).
143. Thus, in accordance with the above provisions, to avoid the assessment of interest, late payment penalties, and handling charges on the penalty set forth herein, Respondents must pay the full amount of the civil penalty, in the manner directed, within thirty (30) days of the effective date of this CAFO.
144. Payment of the penalty amount shall be made by cashier's check, certified check, or electronic wire transfer, Automated Clearing House ("ACH"), or an online, internet payment as specified below. All payments are payable to "Treasurer, United States of America" and shall reference the above case caption and docket number CAA-03-2019-0042.
145. Instructions for submitting payment of the penalty using the methods, or combination of methods, described above are provided at the following EPA website addresses:

<http://www2.epa.gov/financial/additional-instructions-making-payments-epa>
<http://www2.epa.gov/financial/makepayment>
146. Any payment made by any method must reference the above case caption and docket number, CAA-03-2019-0042. Within 24 hours of payment of any penalty amount, Respondents shall send copies of any corresponding check, or written notification

confirming any electric transfer through wire transfer, ACH, or interest payment, to Regional Hearing Clerk (3RC00), U.S. EPA Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103-2029, and to Air Branch Chief (3RC10), U.S. EPA Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103-2029.

147. Respondents agree not to deduct for federal tax purposes the civil penalty specified in, and any civil penalty amount paid pursuant to this CAFO.
148. This CAFO shall constitute satisfaction of all civil claims for penalties for the specific violations alleged in Section C of this Consent Agreement. Compliance with this CAFO shall not be a defense to any action commenced at any time for any other violation of any federal laws and regulations administered by EPA.
149. Respondents' failure to make timely payment of the civil penalty or any portion of the civil penalty provided herein may result in referral of this matter to the United States Attorney for enforcement of this CAFO in the appropriate United States District Court, in accordance with Section 113(d)(5) of the Act, 42 U.S.C. § 7413(d)(5).

E. RESERVATION OF RIGHTS

150. This CAFO resolves only the civil penalty claims for the specific violations alleged in Section C of this Consent Agreement. EPA reserves the right to commence action against any person, including Respondents, in response to any condition which EPA determines may present an imminent and substantial endangerment to the public health, public welfare, or the environment. Nor shall anything in this CAFO be construed to limit the United States' authority to pursue criminal sanctions. In addition, this settlement is subject to all limitations on the scope of resolution and to the reservation of rights set forth in 40 C.F.R. § 22.18(c).
151. Further, Complainant reserves any rights and remedies available to it under the Act, the regulations promulgated thereunder, and any other federal laws or regulations for which Complainant has jurisdiction, to enforce the provisions of this CAFO following its filing with the Regional Hearing Clerk.

F. EFFECTIVE DATE

152. The effective date of this CAFO is the date on which the CAFO is filed with the Regional Hearing Clerk of EPA Region III.

G. WAIVER OF HEARING

153. For the purposes of this proceeding only, Respondents hereby expressly waive their rights to a hearing pursuant to Section 113(d)(2)(A) of the Act, 42 U.S.C. § 7413(d)(2)(A), with respect to any issue of law or fact set forth in this CAFO. Respondents also waive any rights to appeal the accompanying Final Order.

H. ENTIRE AGREEMENT

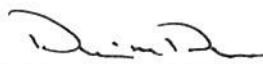
154. This CAFO constitutes the entire agreement and understanding of the parties concerning settlement of the above-captioned action and there are no representations, warranties, covenants, terms or conditions agreed upon between the parties other than those expressed in this CAFO. Nothing in this CAFO shall be construed to affect or limit in any way the obligation of Respondents to comply with all federal, state and local laws and regulations governing any activity required by this CAFO.

I. EXECUTION

155. Each person signing this Consent Agreement on behalf of a Respondent acknowledges and certifies by his/her signature that he/she is fully authorized to enter into this Consent Agreement and to legally bind such specific Respondent to the terms and conditions of this CAFO.

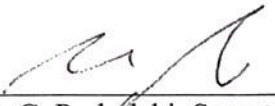
FOR RESPONDENT LEHIGH CEMENT COMPANY, LLC:

3/22/19
Date


Title Vice President (President - North Region)
Dennis Dolan

FOR RESPONDENT ARGOS USA LLC:

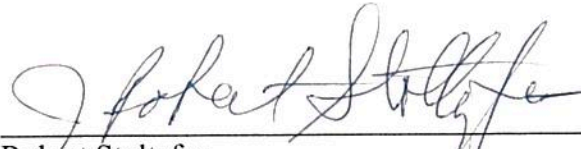
3/18/19
Date


Mark C. Prybylski, Secretary and General Counsel

FOR COMPLAINANT:

3/26/19

Date



Robert Stoltzfus,
Acting Air Branch Chief, Office of Regional Counsel
U.S. Environmental Protection Agency, Region III

Accordingly, the Air Protection Division, United States Environmental Protection Agency, Region III, recommends that the Regional Administrator of EPA Region III or his designee, the Regional Judicial Officer, ratify this Consent Agreement and issue the accompanying Final Order (CAA-03-2019-0042). The amount of the recommended civil penalty assessment is \$1,505,309.00.

3/26/19

Date



Cristina Fernandez, Director
Air Protection Division
U.S. Environmental Protection Agency, Region III
1650 Arch Street
Philadelphia, PA 19103-2029

BEFORE THE UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION III

In the Matter of:

**Lehigh Cement Company, LLC and
Argos USA LLC**

Respondents,

**Martinsburg Facility
1826 South Queen Street
Martinsburg, WV 25401**

Facility.

EPA Docket No. CAA-03-2019-0042

U.S. EPA-REGION 3-RHC
FILED-28MAR2019AM10:54

**Proceeding under Section 113 of the
Clean Air Act**

FINAL ORDER

Complainant, the Director of the Air Protection Division, U.S. Environmental Protection Agency, Region III, and Respondents, Lehigh Cement Company, LLC and Argos USA LLC, have executed a document entitled "Consent Agreement," which I hereby ratify as a Consent Agreement in accordance with the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits ("Consolidated Rules of Practice"), 40 C.F.R. Part 22 (with specific reference to Sections 22.13(b) and 22.18(b)(2) and (3)). The terms of the foregoing Consent Agreement are accepted by the undersigned and incorporated into this Final Order as if fully set forth at length herein.

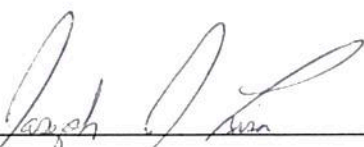
Based on the representation of the parties in the attached Consent Agreement, the penalty agreed to therein is based upon consideration of, *inter alia*, EPA's Clean Air Act Stationary Source Civil Penalty Policy (1991) and the statutory factors set forth in Section 113(e) of the Clean Air Act, 42 U.S.C. § 7413(e).

NOW, THEREFORE, PURSUANT TO Section 113(d) of the Clean Air Act, 42 U.S.C. § 7413(d), and Section 22.18(b)(3) of the Consolidated Rules of Practice, **IT IS HEREBY ORDERED** that Respondents pay a civil penalty of **ONE MILLION, FIVE HUNDRED AND FIVE THOUSAND, THREE HUNDRED AND NINE DOLLARS (\$1,505,309.00)**, in accordance with the payment provisions set forth in the Consent Agreement, and comply with the terms and conditions of the Consent Agreement.

This Final Order constitutes the final Agency action in this proceeding. This Final Order shall not in any case affect the right of the Agency or the United States to pursue appropriate injunctive or other equitable relief, or criminal sanctions for any violations of the law. This Final Order resolves only those causes of action alleged in the Consent Agreement and does not waive, extinguish or otherwise affect Respondent's obligation to comply with all applicable provisions of the Clean Air Act and the regulations promulgated thereunder.

The effective date of the attached Consent Agreement and this Final Order is the date on which this Final Order is filed with the Regional Hearing Clerk.

March 28, 2019
Date



Joseph Lisa
Regional Judicial and Presiding Officer
U.S. EPA Region III

In the Matter of:

**Lehigh Cement Company, LLC and
Argos USA LLC**

Respondents,

**Martinsburg Facility
1826 South Queen Street
Martinsburg, WV 25401**

Facility.

EPA Docket No. CAA-03-2019-0042

**Proceeding under Section 113 of the
Clean Air Act**

CERTIFICATE OF SERVICE

I certify that on MAR 28 2019, the original and one (1) copy of the foregoing *Consent Agreement and Final Order*, were filed with the EPA Region III Regional Hearing Clerk. I further certify that on the date set forth below, I caused to be served a true and correct copy of the foregoing to each of the following persons, in the manner specified below, at the following addresses:

Copies served via UPS Next Day Delivery to:

Brian Montag, Esq.
K&L Gates LLP
One Newark Center, 10th Fl.
1085 Raymond Blvd.
Newark, NJ 07102

Steven C. Kohl, Esq.
Warner Norcross & Judd LLP
2000 Town Center, Suite 2700
Southfield, MI 48075

For Argos USA LLC

For Lehigh Cement Company, LLC

Copies served via Hand Delivery or Inter-Office Mail to:

Humane Zia
Senior Assistant Regional Counsel
ORC – 3RC10
U.S. EPA, Region III
1650 Arch Street
Philadelphia, PA 19103

Erin Malone
Air Inspector
Air Protection Division – 3AP20
U.S. EPA, Region III
1650 Arch Street
Philadelphia, PA 19103

MAR 28 2019

Date

Beverly Esposito

Regional Hearing Clerk

U.S. Environmental Protection Agency, Region III

TRACKING NUMBERS: 1Z A43 F7101 92004372
1Z A43 F7101 90254365