

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
1650 Arch Street
Philadelphia, Pennsylvania 19103**

In the Matter of :
 :
Lehigh Cement Company LLC. : **U.S. EPA Docket No. CWA-03-2021-0061**
675 Quaker Hill Road :
Union Bridge, MD 21791 : **Proceeding under Section 301,**
 : **Clean Water Act**
 :
Respondent.

CONSENT AGREEMENT

I. PRELIMINARY STATEMENT

1. This Consent Agreement is entered into by the Enforcement & Compliance Assurance Division, U.S. Environmental Protection Agency, Region III (“Complainant”) and Lehigh Cement Company LLC. (“Respondent”) (collectively the “Parties”), pursuant to Section 301 of the Clean Water Act, 33 U.S.C. §1311, and 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. Section 309(g) of the CWA, 33 U.S.C. § 1319(g), authorizes the Administrator of the U.S. Environmental Protection Agency to assess penalties and undertake other actions required by this Consent Agreement. The Administrator has delegated this authority to the Regional Administrator who, in turn, has delegated it to the Complainant. This Consent Agreement and the attached Final Order (hereinafter jointly referred to as the “CAFO”) resolve Complainant’s civil penalty claims against Respondent under the Clean Water Act (“CWA” or the “Act”) for the violations alleged herein.
2. In accordance with 40 C.F.R. §§ 22.13(b) and 22.18(b)(2) and (3) of the Consolidated Rules of Practice, Complainant hereby simultaneously commences and resolves this administrative proceeding.

II. JURISDICTION

3. The U.S. Environmental Protection Agency has jurisdiction over the above-captioned matter, as described in Paragraph 1, above.

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4. The Consolidated Rules of Practice govern this administrative adjudicatory proceeding pursuant to 40 C.F.R. § 22.1(a)(6).

III. GENERAL PROVISIONS

5. For purposes of this proceeding only, Respondent admits the jurisdictional allegations set forth in this CAFO.
6. Except as provided in Paragraph 5, above, Respondent neither admits nor denies the specific factual allegations set forth in this Consent Agreement.
7. Respondent agrees not to contest the jurisdiction of EPA with respect to the execution of this Consent Agreement, the issuance of the attached Final Order, or the enforcement of this CAFO.
8. For purposes of this civil penalty proceeding only, Respondent hereby expressly waives its right to contest the allegations set forth in this CAFO and waives its right to appeal the accompanying Final Order.
9. Respondent consents to the assessment of the civil penalty stated herein and to any conditions specified herein.
10. Respondent shall bear its own costs and attorney's fees in connection with this proceeding.
11. Pursuant to Section 309(g)(4)(A) of the Act, 33 U.S.C. § 1319(g)(4)(A), and 40 C.F.R. § 22.45(b), EPA is providing public notice and an opportunity to comment on the Consent Agreement prior to issuing the Final Order.

IV. FINDINGS OF FACT AND CONCLUSIONS OF LAW

12. In accordance with 40 C.F.R. §§ 22.13(b) and 22.18(b)(2) and (3) of the Consolidated Rules of Practice, Complainant alleges and adopts the Findings of Fact and Conclusions of Law set forth immediately below.
13. Section 309(g)(2)(B) of the Act, 33 U.S.C. § 1319(g)(2)(B), authorizes the assessment of administrative penalties against any person who violates any National Pollutant Discharge Elimination System ("NPDES") permit condition or limitation in an amount not to exceed \$10,000 per day for each day of violation, up to a total penalty amount of \$125,000.

14. Pursuant to the Civil Monetary Penalty Inflation Adjustment Rule, 40 C.F.R. Part 19, and Section 309(g)(2)(B) of the Act, 33 U.S.C. § 1319(g)(2)(B), any person who has violated any NPDES permit condition or limitation after November 2, 2015 where the penalty is assessed on or after December 23, 2020, the maximum administrative penalty per day for each day of violation is up to \$ 22,584, up to a total penalty amount of \$ 282,293. (Part 19 also specifies the maximum penalties applicable to other time periods.)
15. Section 301(a) of the Act, 33 U.S.C. § 1311(a), prohibits the discharge of any pollutant (other than dredged or fill material) from a point source into waters of the United States, except in compliance with a permit issued pursuant to the NPDES program under Section 402 of the Act, 33 U.S.C. § 1342.
16. Section 402(a) of the Act, 33 U.S.C. § 1342(a), provides that the Administrator of EPA, or a state upon approval by EPA, may issue permits under the NPDES program for the discharge of pollutants from point sources to waters of the United States. The discharges are subject to specific terms and conditions as prescribed by the permit.
17. Section 402(p) of the Act, 33 U.S.C. § 1342(p), and 40 C.F.R. §§ 122.2 and 122.26 provide that, with some exceptions not relevant here, storm water discharges associated with industrial activity are subject to NPDES permitting requirements under Section 402(a) of the Act, 33 U.S.C. § 1342(a).
18. “Storm water” (or “stormwater”) is defined as “storm water runoff, snow melt runoff and surface runoff and drainage.” 40 C.F.R. § 122.26(b)(13).
19. An NPDES permit is required for discharges of storm water associated with industrial activity in accordance with Section 402(p) of the Act, 33 U.S.C. § 1342(p); 40 C.F.R. § 122.26(a), (c); and 40 C.F.R. § 122.21.
20. Pursuant to 40 C.F.R. § 122.26(b)(14)(ii), facilities classified as, inter alia, Standard Industrial Classification Group 32, including Industry Group 324 (Cement), are engaged in “industrial activity” within the meaning of Section 402(p) of the Act and 40 C.F.R. § 122.
21. The term “stormwater discharge associated with industrial activity” means, in pertinent part, “the discharge from any conveyance that is used for collecting and conveying storm water and that is directly related to manufacturing, processing or raw materials storage areas at an industrial plant.” 40 C.F.R. § 122.26(b)(14).
22. Dischargers of storm water associated with industrial activities to waters of the United States are required to apply for an individual NPDES permit or seek coverage under a promulgated NPDES general permit. 40 C.F.R. § 122.26(c).
23. The State of Maryland has been approved by EPA to administer the NPDES program in the State of Maryland.

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24. On September 26, 2013, pursuant to the authority of the Act and the NPDES program approval, the State of Maryland issued Respondent a NPDES Permit No. MD0000779, Discharge Requirements for Stormwater Associated with Industrial Activities (“the Permit”). The effective date of the Permit was November 1, 2013 with an expiration date of October 31, 2018, which has been extended administratively by the State of Maryland.
25. NPDES Permit No. MD0000779 authorizes discharges of storm water associated with industrial activities to waters of the United States, when in accordance with the conditions and terms of the Permit.
26. Respondent is a “person” within the meaning of Section 502(5) of the Act, 33 U.S.C. § 1362(5) and 40 C.F.R. § 122.2.
27. At all times relevant to this CAFO, upon information and belief, Respondent was the owner and/or operator of a site known as the Union Bridge Plant located at 675 Quaker Hill Road, Union Bridge, Maryland (the “Facility”).
28. At the Facility, the Respondent has been at all relevant times engaged in industrial activity that discharges storm water from a point source to Sam’s Creek, which flows into the Monocacy River.
29. Sam’s Creek and the Monocacy River are “navigable waters” within the meaning of Section 502(7) of the Act, 33 U.S.C. § 1362(7).
30. The industrial activity performed by Respondent at the Facility discharges stormwater that is directly related to manufacturing, processing, or raw materials storage areas at Respondent’s industrial plant within the meaning of 40 C.F.R. § 122.26(b)(14).
31. On June 12, 2019, representatives of EPA Region III and EPA contractors from PG Environmental (jointly “the Inspection Team” or “the inspectors”) conducted an inspection at the Facility (hereinafter, “the Inspection”) to assess compliance with the NPDES Permit No. MD0000779.
32. The Inspection Team prepared an inspection report from the Inspection dated August 1, 2019 (“the Inspection Report”), which included multiple observations regarding Respondent’s compliance with the requirements of the Permit. EPA contends that it sent a copy of the Inspection Report to the Respondent on August 1, 2019. Respondent contends that it did not receive a copy of the Inspection Report from EPA until October 16, 2020.
33. On December 21, 2020, Respondent sent to EPA a comprehensive response to the Inspection Report which included narratives that described the corrective actions taken by Respondent since the time of the Inspection.

Count I

Failure to Implement Stormwater Pollution Prevention Plan Requirements

34. The allegations of Paragraphs 1 through 33 of this CAFO are incorporated herein by reference.
35. Part I.O.1 of the Permit requires Respondent to, in pertinent part, “have and implement a stormwater pollution prevention plan beginning on the effective date of this permit...the plan shall describe and ensure the implementation of practices which are to be used to reduce the pollutants in storm water discharges associated with industrial activity at the facility and to ensure compliance with the terms and conditions of this permit.”
36. Respondent’s stormwater pollution prevention plan (“SWPPP”) states that the wash water from truck washing activities are recycled internally and not discharged. SWPPP at page 7.
37. At the time of the Inspection on June 12, 2019, the inspectors observed wash water from truck washing activities discharging into a ditch in the northwestern area of the Facility which is connected to Pond 5. Pond 5 discharges storm water to Sam’s Creek, which flows into Monocacy River. By letter dated December 21, 2020, Lehigh reported to EPA that it had modified the truck wash sidewalls to address the conditions observed by the Inspectors and supplied pictures documenting the modification.
38. Based upon the information described in Paragraph 37, above, Respondent failed to implement the SWPPP in accordance with the Permit.
39. Respondent’s failure to implement the SWPPP in accordance with the Permit constitutes a violation of the Permit and Sections 301 and 402 of the Act, 33 U.S.C. §§ 1311 and 1342.

Count II

Failure to Maintain Good Housekeeping Standards

40. The allegations of Paragraphs 1 through 39 of this CAFO are incorporated herein by reference.
41. Part I.O.2.a.iii. of the Permit requires Respondent’s SWPPP to include “materials management practices employed to minimize contact of these materials with storm water runoff; materials loading and access areas; the location and description of existing structural and non-structural control measures to reduce pollutants in storm water runoff...”
42. Part I.O.2.b.ii. of the Permit requires Respondent’s SWPPP to include “good housekeeping that requires the maintenance of a clean, orderly facility.”

43. Respondent's SWPPP states "Any spills are cleaned up immediately using brooms, shovels, absorbents or other appropriate equipment. Other raw materials and fuels such as sand and coal are unloaded into storage areas that are bermed to control rainwater runoff." SWPPP at page 12.
44. Respondent's SWPPP states also that all bottom ash shall be stored under covered tents. SWPPP Appendix J, Part IV.A. The loader operator is responsible for cleaning the area of bottom ash outside of the tents to prevent releases of bottom ash during storage operations. SWPPP Appendix J, Part IV.A. Inlet protection mat shall be maintained at the storm water grate inlet and concrete curb around bottom ash area. SWPPP Appendix J, Part IV.B.
45. During the June 12, 2019 inspection, EPA representatives observed flow of raw industrial materials mobilizing to a storm drain inlet.
46. During the June 12, 2019 inspection, EPA representatives observed bottom ash outside of the storage tent areas that had been left unclean after storage operations potentially exposing the bottom ash to storm water.
47. Based upon the information described in Paragraphs 45 and 46, above, Respondent failed to maintain good housing keeping measures to prevent the flow of raw industrial materials from entering stormwater inlets as required by the Permit and SWPPP.
48. Respondent's failure to maintain good housing keeping measures to prevent the flow of raw industrial materials from entering stormwater inlets at the Facility constitutes a violation of the Permit and Sections 301 and 402 of the Act, 33 U.S.C. §§ 1311 and 1342.

V. CIVIL PENALTY

49. In settlement of EPA's claims for civil penalties for the violations alleged in this Consent Agreement, Respondent consents to the assessment of a civil penalty in the amount of Twenty-Five Thousand (\$25,000) Dollars, which Respondent shall be liable to pay in accordance with the terms set forth below.
50. The civil penalty is based upon EPA's consideration of a number of factors, including the nature, circumstances, extent and gravity of the violation(s), Respondent's ability to pay, prior history of compliance, degree of culpability, economic benefit or savings resulting from the violations, and such other matters as justice may require. These factors were applied to the particular facts and circumstances of this case with specific reference to the statutory penalty criteria and factors set forth at Section 309(g) of the Act, 33 U.S.C. § 1319(g), the appropriate *Adjustment of Civil Monetary Penalties for Inflation*, pursuant to 40 C.F.R. Part 19, and the applicable EPA memoranda addressing EPA's civil penalty policies to account for inflation.

51. Payment of the civil penalty amount, and any associated interest, administrative fees, and late payment penalties owed, shall be made by either cashier's check, certified check or electronic wire transfer, in the following manner:

- a. All payments by Respondent shall include reference to Respondent's name and address, and the Docket Number of this action, *i.e.*, **U.S. EPA Docket No. CWA-03-2021-0061**.
- b. All checks shall be made payable to the "United States Treasury"
- c. All payments made by check and sent by regular mail shall be addressed and mailed to:

U.S. Environmental Protection Agency
Cincinnati Finance Center
P.O. Box 979077
St. Louis, MO 63197-9000

- d. For additional information concerning other acceptable methods of payment of the civil penalty amount see:

<https://www.epa.gov/financial/makepayment>

- e. A copy of Respondent's check or other documentation of payment of the penalty using the method selected by Respondent for payment shall be sent simultaneously via email to:

Louis F. Ramalho
Senior Assistant Regional Counsel
U.S. EPA, Region III (3RC40)
1650 Arch Street
Philadelphia, PA 19103-2029
Ramalho.Louis@epa.gov

52. 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, Respondent's failure to make timely payment of the penalty as specified herein shall result in the assessment of late payment charges including interest, penalties and/or administrative costs of handling delinquent debts.

53. Payment of the civil penalty is due and payable immediately upon the effective date of the CAFO. Receipt by Respondent or Respondent's legal counsel of such copy of the fully executed CAFO, with a date stamp indicating the date on which the CAFO was

filed with the Regional Hearing Clerk, shall constitute receipt as of the effective date of this CAFO or the date of receipt, whichever is later, of written initial notice that a debt is owed EPA by Respondent in accordance with 40 C.F.R. § 13.9(a).

54. Interest on the civil penalty assessed in this CAFO will begin to accrue on the effective date of this CAFO. However, EPA will not seek to recover interest on any amount of the civil penalties that is paid within thirty (30) calendar days after the effective date of this CAFO. 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).
55. **ADMINISTRATIVE COSTS:** The costs of the EPA's administrative handling of overdue debts will be charged and assessed monthly throughout the period a debt is overdue. 40 C.F.R. § 13.11(b). Pursuant to Appendix 2 of EPA's *Resources Management Directives – Case 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.
56. **LATE PAYMENT PENALTY:** A late payment penalty of six percent per year will be assessed monthly on any portion of the civil penalty that remains delinquent 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).
57. Respondent agrees not to deduct for federal tax purposes the civil penalty assessed in this CAFO.

VI. GENERAL SETTLEMENT CONDITIONS

58. By signing this Consent Agreement, Respondent acknowledges that this CAFO will be available to the public and represents that, to the best of Respondent's knowledge and belief, this CAFO does not contain any confidential business information or personally identifiable information from Respondent.
59. Respondent certifies that any information or representation it has supplied or made to EPA concerning this matter was, at the time of submission true, accurate, and complete and that there has been no material change regarding the truthfulness, accuracy or completeness of such information or representation. EPA shall have the right to institute further actions to recover appropriate relief if EPA obtains evidence that any information provided and/or representations made by Respondent to the EPA regarding matters relevant to this CAFO, including information about respondent's ability to pay a penalty, are false or, in any material respect, inaccurate. This right shall be in addition to all other rights and causes of action that EPA may have, civil or criminal, under law or equity in such event. Respondent and its officers, directors and agents are aware that the submission of false or misleading information to the United States government may subject a person to separate civil and/or criminal liability.

VII. CERTIFICATION OF COMPLIANCE

60. Respondent certifies to EPA, upon personal investigation and to the best of its knowledge and belief, that it currently is in compliance with regard to the violations alleged in this Consent Agreement.

VIII. OTHER APPLICABLE LAWS

61. Nothing in this CAFO shall relieve Respondent of its obligation to comply with all applicable federal, state, and local laws and regulations, nor shall it restrict EPA's authority to seek compliance with any applicable laws or regulations, nor shall it be construed to be a ruling on the validity of any federal, state or local permit. This CAFO does not constitute a waiver, suspension or modification of the requirements of the CWA, 33 U.S.C. §§ 1251 *et seq.*, or any regulations promulgated thereunder.

IX. RESERVATION OF RIGHTS

62. This CAFO resolves only EPA's claim for civil penalties for the specific violations alleged against Respondent in this CAFO. EPA reserves the right to commence action against any person, including Respondent, in response to any condition which EPA determines may present an imminent and substantial endangerment to the public health, public welfare, or the environment. This settlement is subject to all limitations on the scope of resolution and to the reservation of rights set forth in Section 22.18(c) of the Consolidated Rules of Practice, 40 C.F.R. § 22.18(c). EPA reserves any rights and remedies available to it under the Clean Water Act, 33 U.S.C. § 1251 *et seq.*, the regulations promulgated thereunder and any other federal law or regulation to enforce the terms of this CAFO after its effective date.

X. EXECUTION /PARTIES BOUND

63. This CAFO shall apply to and be binding upon the EPA, the Respondent and the officers, directors, employees, contractors, successors, agents and assigns of Respondent. By his or her signature below, the person who signs this Consent Agreement on behalf of Respondent is acknowledging that he or she is fully authorized by the Respondent to execute this Consent Agreement and to legally bind Respondent to the terms and conditions of this CAFO.

XI. EFFECTIVE DATE

64. Pursuant to 40 C.F.R. § 22.45(b), this CAFO shall be issued only after a 40-day public notice and comment period is concluded. This CAFO will become final and effective thirty (30) days after having been signed by the Regional Administrator or his delegate, the Regional Judicial Officer, filed with the Regional Hearing Clerk, and served on Respondent.

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XII. ENTIRE AGREEMENT

65. This CAFO constitutes the entire agreement and understanding between the Parties regarding settlement of all claims for civil penalties pertaining to the specific violations alleged herein and there are no representations, warranties, covenants, terms, or conditions agreed upon between the Parties other than those expressed in this CAFO.

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For Respondent:

Lehigh Cement Company LLC.

Date: 4/21/2021

By: Quentin A. McGahey
Quentin A. McGahey
Vice President

In Re: Lehigh Cement Company LLC.
U.S. EPA Docket No. CWA-03-2021-0061

For the Complainant:

After reviewing the Consent Agreement and other pertinent matters, I, the undersigned Director of the Enforcement and Compliance Assurance Division of the United States Environmental Protection Agency, Region III, agree to the terms and conditions of this Consent Agreement and recommend that the Regional Administrator, or his/her designee, the Regional Judicial Officer, issue the attached Final Order.

Date: _____

By: _____

Karen Melvin
Director, Enforcement and Compliance
Assurance Division
U.S. EPA – Region III
Complainant

Attorney for Complainant:

Date: _____

By: _____

Louis F. Ramalho
Senior Assistant Regional Counsel
U.S. EPA – Region III

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

In the Matter of)	
)	
Lehigh Cement Company LLC.)	U.S. EPA Docket No. CWA-03-2021-
675 Quaker Hill Road)	0061
Union Bridge, MD 21791)	
)	Proceeding under Section 301,
Respondent.)	Clean Water Act
)	

FINAL ORDER

The Complainant, the Director for the Enforcement and Compliance Assurance Division, U.S. Environmental Protection Agency, Region III and Respondent Lehigh Cement Company 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)0. The terms of the foregoing Consent Agreement are accepted by the undersigned and incorporated into this Final Order as if set forth fully herein.

Based upon the representations of the parties in the attached Consent Agreement, the penalty agreed to therein is based upon consideration of the statutory factors set forth in Section 309(d) of the Clean Water Act ("CWA"), 33 U.S.C. § 1329(d).

NOW, THEREFORE, PURSUANT TO Section 309(g) of the CWA, 33 U.S.C. § 1319(g), and Section 22.18(b)(3) of the Consolidated Rules of Practice, **IT IS HEREBY ORDERED** that Respondent pay a civil penalty in the amount of **Twenty Five Thousand Dollars (\$25,000.00)** in accordance with the payment provisions set forth in the attached 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

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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 CWA, and the regulations promulgated thereunder.

The effective date of this Final Order and the accompanying Consent Agreement is thirty (30) days after this Final Order is filed with the Regional Hearing Clerk, pursuant to 33 U.S.C. §1319(g)(5), and served on the Respondent.

Date: _____

Joseph J. Lisa
Regional Judicial Officer
U.S. EPA - Region III