

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

<b>In the Matter of:</b>	:
	:
<b>Lehigh White Cement Company 200 Hokes Mill Road York, PA 17404</b>	: <b>U.S. EPA Docket No. CWA-03-2021-0015</b>
	:
<b>Respondent.</b>	: <b>Proceeding under Section 309(g) of the Clean Water Act to Assess Class II Penalty</b>
	:
<b>Hokes Mill Plant,</b>	:
	:
<b>Facility.</b>	:
	:
	:
	:

**CONSENT AGREEMENT**

**PRELIMINARY STATEMENT**

1. This Consent Agreement is entered into by the Director of the Enforcement & Compliance Division, U.S. Environmental Protection Agency, Region III (“Complainant”) and Lehigh White Cement Company (“Respondent”) (collectively the “Parties”), pursuant to Section 309(g) of the Clean Water Act (“CWA” or “Act”), 33 U.S.C. § 1319(g), 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 “Consent Agreement and Final Order”) resolve Complainant’s civil penalty claims against Respondent under Section 309(g) of the CWA, 33 U.S.C. § 1319(g) 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.

**JURISDICTION**

3. The U.S. Environmental Protection Agency has jurisdiction over the above-captioned matter, as described in Paragraph 1, above.
4. The Consolidated Rules of Practice govern this administrative adjudicatory proceeding pursuant to 40 C.F.R. § 22.1(a)(6).

**GENERAL PROVISIONS**

5. For purposes of this proceeding only, Respondent admits the jurisdictional allegations set forth in this Consent Agreement and Final Order.
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 Consent Agreement and Final Order.
8. For purposes of this proceeding only, Respondent hereby expressly waives its right to contest the allegations set forth in this Consent Agreement and Final Order and waives its right to appeal the accompanying Final Order.
9. Respondent consents to the assessment of the civil penalty stated herein, to the issuance of any specified compliance order 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.

**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 violation, up to a total penalty amount of \$125,000.

14. Pursuant to the Civil Monetary Penalty Inflation Adjustment Rule, 40 C.F.R. 19.4, Table 2, 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 January 15, 2019, the maximum administrative penalty per day for each violation is up to \$22,230, up to a penalty amount of \$278,995. (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 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 in the permit. Section 402(b) of the Act, 33 U.S.C. § 1342(b) provides that the Administrator may authorize a state to issue NPDES permits.
17. Section 402(p) of the Act, 33 U.S.C. § 1342(p), and 40 C.F.R. sections 122.2 and 122.26 provide that, with some exceptions not pertinent here, storm water dischargers are “point sources” subject to NPDES permitting requirements under Section 402(a) of the Act, 33 U.S.C. § 1342(a).
18. “Storm water” is defined as “storm water runoff, snow melt runoff and surface runoff and drainage.” 40 C.F.R. § 122.26(b)(13).
19. “Storm water discharge associated with industrial activity means 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” and “includes, but is not limited to, storm water discharges from industrial plant yards; immediate access roads . . . used or traveled by carriers of raw materials, manufactured products, waste material, or by-products used or created by the facility; material handling sites; refuse sites; sites used for the application or disposal of process waste waters . . . ; sites used for the storage and maintenance of material handling equipment; sites used for residual treatment, storage, or disposal; shipping and receiving areas; manufacturing buildings; storage areas (including tank farms) for raw materials, and intermediate and final products . . . .” 40 CFR § 122.26(b)(14).
20. An NPDES permit is required for discharges associated with industrial activity. CWA Section 403(p), 33 U.S.C. § 1342(p); 40 C.F.R. § 122.26(a), (c); 40 C.F.R. § 122.21.
21. Pursuant to 40 C.F.R. § 122.26(b)(14)(ii), facilities classified as, inter alia, Standard Industrial Classification Group 32, including Industry Group 3241 (Cement, Hydraulic) are engaged in “industrial activity” within the meaning of Section 402(p) of the Act and 40 C.F.R. § 122.26.

22. Dischargers of stormwater associated with industrial activities to waters of the United States are required to seek NPDES permit coverage. 40 C.F.R. § 122.26(c).
23. The Commonwealth of Pennsylvania has been approved by EPA to administer the NPDES program in the Commonwealth of Pennsylvania.
24. Pursuant to the authority of the Act, the NPDES program approval, and the Pennsylvania Clean Streams Law 35 P.S. § 691.1 et seq., Pennsylvania issued to the Respondent NPDES Permit No. PA0010375, Authorization to Discharge Under the National Pollutant Discharge Elimination System Discharge Requirements for Industrial Wastewater Facilities (“the Permit”). The Permit was effective January 1, 2018 and expires on December 31, 2022.
25. NPDES Permit No. PA0010375 authorizes the Respondent to discharge stormwater associated with industrial activities to waters of the United States through Outfall No. 002, in accordance with the conditions of the permit.
26. The Permit requires the Respondent to implement and maintain certain Best Management Practices (“BMP”) to prevent pollution and minimize the exposure of industrial activities to precipitation and runoff. Permit, Part C.II.C.
27. The Permit requires Respondent to develop and implement a Preparedness, Prevention, and Contingency Plan (“PPC Plan”) to minimize the potential for leaks, spills or releases that may be exposed to stormwater. Permit, Part C.II.C.
28. Lehigh White Cement Company, as a corporation, 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.
29. At all times relevant to this Consent Agreement and Final Order, upon information and belief, Respondent was the owner and/or operator of a facility known as the Hokes Mill Plant or the Lehigh White Cement Company York Pennsylvania Plant (“Facility”), located in York, Pennsylvania.
30. The Facility is used to manufacture cement, and the industrial activities occurring onsite include raw and waste material storage, vehicle maintenance, equipment storage, and chemical storage.
31. At the Facility, the Respondent has been at all relevant times engaged in industrial activities that discharge stormwater from a point source to an unnamed tributary of Codorus Creek. Codorus Creek is tributary of the Susquehanna River, both of which are “waters of the United States” within the meaning of Section 502(7) of the Act, 33 U.S.C. § 1362(7).
32. On June 19, 2019 representatives of EPA Region III and EPA contractors from PG Environmental, along with the Pennsylvania Department of Environmental Protection (collectively “the Inspection Team”) conducted an inspection at the Facility (hereinafter,



33. During the inspection, the Inspection Team observed the conditions at the Facility.
34. Thereafter, the Inspection Team reviewed records pertaining to inspections, training, monitoring, and maintenance activities which were provided on July 10, 2019.
35. The Inspection Team prepared an inspection report from the inspection (“the Inspection Report”), which included multiple observations concerning Respondent’s non-compliance with the requirements of the Permit.
36. EPA sent a copy of the Inspection Report to Respondent on or about August 1, 2019.

### **Count I**

#### **Failure to Sample for pH in Accordance with the Requirements of 40 CFR Part 136**

37. The allegations of Paragraphs 1 through 36 of this Consent Agreement are incorporated herein by reference.
38. The Permit requires that test procedures (methods) for the analysis of pollutants or pollutant parameters be those approved under 40 CFR Part 136 or required under 40 CFR Chapter I, Subchapters N or O. Permit, Part A.III.A.4.b.
39. 40 CFR § 136.3 Table II requires that the maximum allowable holding time for a pH sample cannot exceed fifteen (15) minutes and thus samples for pH must be analyzed within 15 minutes of sample collection.
40. Based on the review of the discharge monitoring report, EPA saw a sample was collected on July 24, 2018 and then analyzed on July 26, 2018. Respondent failed to analyze the July 24, 2018 sample for pH within 15 minutes of sample collection.
41. Respondent violated the Act and Permit, Part A.III.A.4.b., by failing to analyze the sample for pH within 15 minutes of sample collection in accordance with 40 CFR Part 136.
42. In failing to comply with the Act and Part A.III.A.4.b. of the Permit and 40 C.F.R. § 136.3, Respondent is subject to the assessment of penalties under Section 309 of the Act, 33 U.S.C. § 1319.

### **Count II**

#### **Failure to Discharge in Accordance with the Requirements of the Permit as a Result of Failure to Maintain Systems of Treatment and Control – Sump Pump**

43. The allegations of Paragraphs 1 through 42 of this Consent Agreement are incorporated herein by reference.

44. Sections 301 and 402(p) of the Act, 33 U.S.C. § 1311 and § 1342(p), together require that industrial stormwater discharges to point sources be in accordance with the requirements of an industrial stormwater permit.
45. The Permit requires that industrial stormwater from the Facility discharge through Outfall 002. Permit Part C.II.A.
46. The Permit requires that Respondent properly operate and maintain all facilities and systems of treatment and control used to achieve compliance with the terms and conditions of the Permit. Permit Part B.I.D.
47. As the Inspection Team observed on June 19, 2019, as a result of the failed sump pump, stormwater collected in a large pool on a concrete basin adjacent to Lemon Street, mixed with raw limestone, and overflowed onto Lemon Street into the curb and gutter line.
48. At the time of the Inspection, Respondent failed to maintain in proper operating condition the sump pump used to pump collected stormwater to a location where it is used in the cement manufacturing process.
49. Respondent's failure to properly operate and maintain all stormwater controls used to achieve compliance with the terms and conditions of the Permit, and its discharge of industrial stormwater in a manner not authorized by the Permit, are violations of the Permit and the Act.
50. In failing to comply with the Act and Part C.II.A. and Part B.I.D. of the Permit, Respondent is subject to the assessment of penalties under Section 309 of the Act, 33 U.S.C. § 1319.

### **Count III**

#### **Failure to Discharge in Accordance with the Requirements of the Permit as a Result of Failing to Maintain Systems of Treatment and Control – Sock Filters**

51. The allegations of Paragraphs 1 through 50 of this Consent Agreement are incorporated herein by reference.
52. Sections 301 and 402(p) of the Act, 33 U.S.C. § 1311 and § 1342(p), together require that industrial stormwater discharges to point sources be in accordance with the requirements of an industrial stormwater permit.
53. The Permit requires that industrial stormwater from the Facility discharge through Outfall 002. Permit Part C.II.A.
54. The Permit requires that Respondent properly operate and maintain all facilities and systems of treatment and control used to achieve compliance with the terms and

conditions of the Permit. Permit Part B.I.D.

55. At the time of the Inspection, Respondent failed to maintain the sock filters along the eastern fence running adjacent to Hokes Mill Road as indicated by inundation and accumulation of sediment over or along the sock filters which the Inspection Team observed. Multiple sock filters also appeared to be torn.
56. During the Inspection, EPA also observed erosion under the improperly maintained sock filters leading to sediment accumulation in proximity to the storm drain inlet on Hokes Mill Road, indicating that the Facility had discharged stormwater from a location other than Outfall 002.
57. Respondent's failure to properly operate and maintain all stormwater controls used to achieve compliance with the terms and conditions of the Permit and its discharge of industrial stormwater in a manner not authorized by the Permit are violations of the Permit and the Act.
58. In failing to comply with the Act and Permit Parts C.II.A. and B.I.D., Respondent is subject to the assessment of penalties under Section 309 of the Act, 33 U.S.C. § 1319.

#### **Count IV**

#### **Failure to Use Controls on Lidless Dumpsters**

59. The allegations of Paragraphs 1 through 58 of this Consent Agreement are incorporated herein by reference.
60. The Permit requires that dumpster lids remain closed when not in use and that dumpsters and roll off boxes without lids have proper controls. Permit, Part C.II.C.1.h.
61. At the time of the Inspection, Respondent failed to use any controls for its lidless dumpsters.
62. Specifically, the Inspection Team observed uncovered dumpsters with no controls and filled with garbage, debris, and scrap metal which were left out in the open exposed to stormwater.
63. At the time of the Inspection, Respondent violated the Act and the Permit, Part C.II.C.1.h by failing to use any controls for its lidless dumpsters.
64. In failing to comply with the Act and Part C.II.C.1.h. of the Permit, Respondent is subject to the assessment of penalties under Section 309 of the Act, 33 U.S.C. § 1319.

#### **Count V**

#### **Failure to Cover Fueling Areas**

65. The allegations of Paragraphs 1 through 64 of this Consent Agreement are incorporated

66. The Permit, Part C.II.C.1.i, requires that the Facility minimize contamination of stormwater runoff from fueling areas by implementing certain BMPs including covering fueling areas, using spill/overflow protection and cleanup equipment, and treating and/or recycling collected stormwater runoff where feasible.
67. At the time of the Inspection, Respondent failed to minimize contamination of stormwater runoff from fueling areas by implementing certain BMPs including the covering of fueling areas.
68. Specifically, the Inspection Team observed Respondent failed to provide overhead coverage for a diesel fuel tank which had liquid accumulated in its secondary containment.
69. At the time of the Inspection, Respondent violated the Act and Part C.II.C.1.i of the Permit by failing to minimize contamination of stormwater runoff from fueling areas by implementing the BMP of covering the fueling area.
70. In failing to comply with the Act and Part C.II.C.1.i of the Permit, Respondent is subject to the assessment of penalties under Section 309 of the Act, 33 U.S.C. § 1319.

#### **Count VI**

#### **Failure to implement an effective means of preventing discharge from chemical and oil drums**

71. The allegations of Paragraphs 1 through 70 of this Consent Agreement are incorporated herein by reference.
72. Part C.II.C.3.b of the Permit requires that Respondent implement procedures for material storage and handling, including the use of secondary containment, or a similarly effective means of preventing the discharge of pollutants from such areas.
73. At the time of the Inspection, Respondent failed to implement an effective means of preventing the discharge of pollutants from areas with material storage and handling.
74. Specifically, the Inspection Team observed that at the time of the inspection, Respondent left open, uncovered, and without secondary containment drums that were labeled as oil or hydrophobe 31.
75. At the time of the Inspection, Respondent violated the Act and Part C.II.C.3.b. of the Permit by failing to implement an effective means of preventing the discharge of pollutants from areas with material storage and handling.
76. In failing to comply with the Act and Part C.II.C.3.b. of the Permit, Respondent is subject to the assessment of penalties under Section 309 of the Act, 33 U.S.C. § 1319.

**Count VII**

**Failure to implement routine cleaning and maintenance programs for impervious areas where sediment from stockpiled raw material accumulated**

77. The allegations of Paragraphs 1 through 76 of this Consent Agreement are incorporated herein by reference.
78. The Permit, Part C.II.C.2.a requires that the Facility implement a routine cleaning and maintenance program for all impervious areas of the Facility where particulate matter, dust or debris may accumulate in order to minimize the discharge of pollutants in stormwater.
79. At the time of the Inspection, Respondent failed to implement procedures for routine cleaning and maintenance for impervious areas of the Facility where particulate matter, dust or debris accumulated.
80. Specifically, the Inspection Team observed significant track out of sediment from upgradient areas with stockpiles of raw materials via the Facility's exits onto Lemon Street and Hokes Mill Road.
81. At the time of the Inspection, Respondent violated the Act and Part C.II.C.2.a. of the Permit by failing to implement procedures for routine cleaning and maintenance for impervious areas of the Facility where particulate matter, dust or debris accumulated.
82. In failing to comply with the Act and Part C.II.C.2.a. of the Permit, Respondent is subject to the assessment of penalties under Section 309 of the Act, 33 U.S.C. § 1319.

**Count VIII**

**Failure to Clean Storm Drains of Accumulated Sediment**

83. The allegations of Paragraphs 1 through 82 of this Consent Agreement are incorporated herein by reference.
84. Part C.II.E.1. requires that the Facility develop and implement a Preparedness, Prevention and Contingency (PPC) Plan.
85. The PPC Plan, Part C.4, requires the Facility to clean out storm drains if they contain significant quantities of sediment.
86. At the time of the Inspection, Respondent failed to properly implement the PPC Plan because it had not cleaned out storm drains that had accumulated significant quantities of sediment.
87. Specifically, the Inspection Team observed that certain storm drain inlet catch basins contained significant quantities of sediment.



88. At the time of the Inspection, Respondent violated the Act and Part C.II.E.1. of the Permit by failing to implement Part C.4 of the PPC Plan to clean out storm drains of significant quantities of sediment.
89. In failing to comply with the Act and Part C.4 of the PPC Plan and thus Part C.II.E.1. of the Permit, Respondent is subject to the assessment of penalties under Section 309 of the Act, 33 U.S.C. § 1319.

### **CIVIL PENALTY**

90. 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 Thirty-Thousand dollars (\$30,000), which Respondent shall be liable to pay in accordance with the terms set forth below.
91. The civil penalty is based upon EPA's consideration of a number of factors, including the penalty criteria ("statutory factors") set forth in Section 309(g) of the Act, 33 U.S.C. § 1319(g), including, the following: "the nature, circumstances, extent and gravity of the violation, or violations, and, with respect to the violator, ability to pay, any prior history of such violations, the degree of culpability, economic benefit or savings (if any) resulting from the violation, and such other matters as justice may require," and 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.
92. 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.*, **CWA-03-2021-0015**;
  - 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

<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 e-mail to:

Jacobine K. Dru  
Assistant Regional Counsel  
U.S. EPA, Region III (3RC50)  
1650 Arch Street  
Philadelphia, PA 19103-2029  
[dru.jacobine@epa.gov](mailto:dru.jacobine@epa.gov)

93. 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.
94. Payment of the civil penalty is due and payable immediately upon the effective date of this Consent Agreement and Final Order. Receipt by Respondent or Respondent's legal counsel of such copy of the fully executed Consent Agreement and Final Order, with a date stamp indicating the date on which the Consent Agreement and Final Order was filed with the Regional Hearing Clerk, shall constitute receipt of written initial notice that a debt is owed as of the effective date of this Consent Agreement and Final Order by Respondent in accordance with 40 C.F.R. § 13.9(a).
95. INTEREST: Interest on the civil penalty assessed in this Consent Agreement and Final Order will begin to accrue on the effective date of this Consent Agreement and Final Order. 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 Consent Agreement and Final Order. 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).
96. 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.
97. 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).

98. Respondent agrees not to deduct for federal tax purposes the civil penalty assessed in this Consent Agreement and Final Order.

### **GENERAL SETTLEMENT CONDITIONS**

99. By signing this Consent Agreement, Respondent acknowledges that this Consent Agreement and Final Order will be available to the public and represents that, to the best of Respondent's knowledge and belief, this Consent Agreement and Final Order does not contain any confidential business information or personally identifiable information from Respondent.
100. 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 Consent Agreement and Final Order, 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.

### **CERTIFICATION OF COMPLIANCE**

101. 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.
102. Respondent certifies to EPA, upon personal investigation and to the best of its knowledge and belief, that it is currently in compliance with the Administrative Order on Consent between Respondent and EPA, Docket No. CWA-03-2020-0138DN, which addresses the violations alleged here.

### **OTHER APPLICABLE LAWS**

103. Nothing in this Consent Agreement and Final Order 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 Consent Agreement and Final Order 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.

### **RESERVATION OF RIGHTS**

104. This Consent Agreement and Final Order resolves only EPA's claims for civil penalties for the specific violations alleged against Respondent in this Consent Agreement and Final Order. 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 CWA, Section 301, 33 U.S.C. § 1311 *et seq.*, the regulations promulgated thereunder and any other federal law or regulation to enforce the terms of this Consent Agreement and Final Order after its effective date. Respondent reserves whatever rights or defenses it may have to defend itself in any such action.

### **EXECUTION /PARTIES BOUND**

105. This Consent Agreement and Final Order 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 Consent Agreement and Final Order.

### **EFFECTIVE DATE**


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

### **ENTIRE AGREEMENT**

107. This Consent Agreement and Final Order 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 Consent Agreement and Final Order.

For Respondent: Lehigh White Cement Company

Date: Sept 10, 2020

By:   
John Murphy  
Plant Manager



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: 11/12/20

By: KAREN MELVIN Digitally signed by KAREN MELVIN  
Date: 2020.11.12 14:05:51 -05'00'  
Karen Melvin  
Director, Enforcement and Compliance  
Assurance Division  
U.S. EPA – Region III  
Complainant

Attorney for Complainant:

Date: 9/24/20

By: JACOBINE DRU Digitally signed by JACOBINE DRU  
Date: 2020.09.24 07:26:57 -04'00'  
Jacobine K. Dru  
Assistant Regional Counsel  
U.S. EPA – Region III

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

**In the Matter of:**

*Lehigh White Cement Company  
200 Hokes Mill Rd.  
York, PA 17404,*

**Respondent.**

**EPA Docket No. CWA-03-2021-0015**

**FINAL ORDER**

**Proceeding under Section 309(g) of the  
Clean Water Act**

**FINAL ORDER**

Complainant, the Director of the Enforcement & Compliance Assurance Division, U.S. Environmental Protection Agency, Region III, and Respondent, Lehigh White Cement Company 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 upon the representations of the parties in the attached Consent Agreement, the penalty agreed to therein is based upon consideration of, *inter alia*, the statutory factors set forth in Section 309(d) and (g) of the Clean Water Act ("CWA"), 33 U.S.C. § 1319(d) and (g).

**NOW, THEREFORE, PURSUANT TO** Section 309 of the Clean Water Act, 33 U.S.C. § 1319, 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 **THIRTY-THOUSAND DOLLARS (\$30,000)**, 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 Water Act and the regulations promulgated thereunder.

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

11/16/20

\_\_\_\_\_  
Date

**JOSEPH LISA** Digitally signed by JOSEPH LISA  
Date: 2020.11.16 11:17:21 -05'00'

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

**In the Matter of:**

**Lehigh White Cement Company  
200 Hokes Mill Road  
York, PA 17404,**

**Respondent.**

**Hokes Mill Plant,**

**Facility.**

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:  
: **U.S. EPA Docket CWA-03-2021-0015**  
:  
: **Proceeding under Section 309(g) of the Clean**  
: **Water Act to Assess Class II Penalty**  
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**CERTIFICATE OF SERVICE**

I certify that on 11/16/20, the foregoing **Consent Agreement and Final Order**, was filed with the EPA Region III Regional Hearing Clerk. I further certify that on the date set forth below, I electronically served a true and correct copy of the foregoing to each of the following persons, in the manner specified below, at the following electronic mail addresses:


John Murphy, Plant Manager  
Lehigh White Cement Company  
200 Hokes Mill Road  
York, PA 17404-5540  
[John.Murphy@lehighwhitecement.com](mailto:John.Murphy@lehighwhitecement.com)

Todd Silliman, Esq.  
Dentons US LLP  
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Jacobine Dru, Assistant Regional Counsel  
Office of Regional Counsel (3RC50)  
U.S. EPA, Region III  
1650 Arch Street  
Philadelphia, PA 19103-2029  
[Dru.Jacobine@epa.gov](mailto:Dru.Jacobine@epa.gov)

Dated: 11/16/20

**BEVIN  
ESPOSITO**

 Digitally signed by BEVIN  
ESPOSITO  
Date: 2020.11.16 11:57:28  
-05'00'

Regional Hearing Clerk (3RC00)  
Office of Regional Counsel  
U.S. Environmental Protection Agency, Region III  
1650 Arch Street  
Philadelphia, Pennsylvania 19103-2029