

**U.S. ENVIRONMENTAL PROTECTION AGENCY  
REGION 7  
11201 Renner Boulevard  
Lenexa, Kansas 66219**

Received by  
EPA Region 7  
Hearing Clerk

**In the Matter of:** )  
)  
Lehigh Cement Company LLC, ) **Docket No. CAA 07-2021-0012**  
)  
**Respondent.** )  
\_\_\_\_\_ )

**CONSENT AGREEMENT**

**I. PRELIMINARY STATEMENT**

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

2. Complainant is the United States Environmental Protection Agency, Region 7 (the "EPA"). On the EPA's behalf and as delegated by the Administrator of the EPA, the Regional Administrator of Region 7, and the Director of the Enforcement and Compliance Division, the branch chief of the Air Branch is delegated the authority to settle civil administrative penalty proceedings under Section 113(d) of the Act.

3. Respondent is Lehigh Cement Company LLC, licensed as a limited liability company in the State of Delaware and authorized to do business in the State of Iowa.

4. Complainant and Respondent, having agreed that settlement of this action is in the public interest, consent to the entry of this consent agreement ("Consent Agreement" or "Agreement") and the attached final order ("Final Order" or "Order") without adjudication of any issues of law or fact herein, and Respondent agrees to comply with the terms of this Consent Agreement and Final Order.

**II. JURISDICTION**

5. This Consent Agreement is entered into under Section 113(d) of the Act, as amended, 42 U.S.C. § 7413(d), and the Consolidated Rules, 40 C.F.R. Part 22. The alleged violations in this Consent Agreement are enforced pursuant to Section 113(a)(1)(B) and 113(a)(3)(A).

6. The Regional Judicial Officer is authorized to ratify this Consent Agreement which memorializes a settlement between Complainant and Respondent. 40 C.F.R. §§ 22.4(a) and 22.18(b).

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

8. The EPA Administrator and the United States Attorney General, through their delegated representatives, have jointly determined that this administrative penalty action is appropriate for a larger penalty amount or longer period of violation than the time and penalty limitations set forth in Section 113(d) of the CAA.

### III. GOVERNING LAW

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

10. Section 110 of the Act, 42 U.S.C. § 7410, requires each state to adopt and submit to EPA for approval a state implementation plan (“SIP”) that provides for the attainment and maintenance of the National Ambient Air Quality Standards (“NAAQS”).

11. The Iowa Air Quality regulations were adopted as part of the federally approved Iowa SIP. The Iowa regulations governing air quality and air pollution control are codified under Chapter 22 of the Iowa Administrative Code (“IAC”), Rule 567. IAC Chapter 22 requires that a stationary source obtain a construction permit and provides that a permit may be issued subject to conditions including, but not limited to, emission limits, operating conditions, fuel specifications compliance testing, continuous monitoring, and excess emission reporting.

12. The regulations at IAC 567 Chapter 22 were incorporated into and part of the Iowa SIP at the time of the violations alleged in this Consent Agreement. Chapter 22 was approved by EPA as part of the Iowa SIP on September 9, 2016. *See* 81 FR 62426. *See* 40 C.F.R. 52.820(c).

13. The permittee must comply with the applicable provisions of IAC Chapter 22. Failure to comply shall constitute a violation of Rule 567. A stationary source subject to this rule shall be subject to applicable federal requirements for a major source, including rules 567-22.101(455B) to 567-22.116(455B) when the conditions specified in either subparagraph (1) or (2) below, occur: (1) Commencing on the first day following every 12-month rolling period in which the stationary source exceeds a limit specified in subrule 22.300(6), or (2) Commencing on the first day following every 12-month rolling period in which the owner or operator cannot demonstrate that the stationary source is in compliance with the limits in subrule 22.300(6). *See* 567 IAC 22.300(10).

14. IAC Chapter 22 also requires that a stationary source obtain a Title V operating permit if it is a major source. The permittee must comply with all conditions of the Title V

permit. Any permit noncompliance constitutes a violation of the Act and is grounds for enforcement action; for a permit termination, revocation and reissuance, or modification; or for denial of a permit renewal application. *See* 567 IAC 22.108(9)“a”.

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

16. Section 113(a)(1) of the CAA further provides that at any time after the expiration of thirty (30) days following the date on which such notice of a violation is issued, the Administrator may issue an order requiring such person to comply with the requirements or prohibitions of such plan or permit.

17. Section 112 of the Act, 42 U.S.C. § 7412, authorizes the Administrator of EPA to regulate hazardous air pollutants (HAPs) that may have an adverse effect on health or the environment. The Administrator established emissions standards, codified at 40 C.F.R. Part 63 Subpart LLL, National Emission Standards for Hazardous Air Pollutants (“NESHAPs”), specifically the regulations for the Portland Cement Manufacturing Industry (“Subpart LLL”). The requirements of NESHAP Subpart LLL apply to each new and existing portland cement plant which is a major source, or an area source as defined in 40 C.F.R. Part 63.2. The emissions standards in NESHAP Subpart LLL apply at all times pursuant to 40 C.F.R. § 63.1342 - 63.1348. Owners or operators are also subject to Title V permitting requirements under 40 C.F.R. Parts 70 or 71, as applicable. 40 C.F.R. § 63.541(c).

18. Section 302(e) of the Clean Air Act, 42 U.S.C. § 7602(e), defines “person” as an individual, corporation, partnership, association, State, municipality, political subdivision of a State, and any agency, department, or instrumentality of the United States and any officer, agent, or employee thereof.

19. Section 112(a)(1) of the Act, 42 U.S.C. § 7412(a)(1), defines “major source” as any stationary source or group of stationary sources located in a contiguous area and under common control that emits or has the potential to emit, considering controls, in the aggregate, ten (10) tons per year or more of any single HAP or twenty-five (25) tons per year or more of any combination of HAPs.

20. “Stationary source” means any building, structure, facility, or installation which emits or may emit any air pollutant. 42 U.S.C. § 7411(a)(3); 42 U.S.C. § 7412(a)(3).

21. Section 113(d) of the Act, 42 U.S.C. § 7413(d), authorizes the Administrator to issue an administrative order against any person assessing a civil penalty of up to \$25,000 per day of violation whenever, on the basis of any available information, the Administrator finds that such person has violated or is violating any requirement or prohibition of the Act referenced therein, including Section 112, and the implementing regulations. The Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701, as amended, and the Federal Civil Penalties

Inflation Adjustment Act Improvements Act of 2015, 28 U.S.C. § 2461, and implementing regulations at 40 C.F.R. Part 19, increased these statutory maximum penalties to \$37,500 for violations that occurred before November 2, 2015, and to \$48,762 for violations that occur after November 2, 2015, and for which penalties are assessed on or after December 23, 2020.

22. Section 113(d)(2)(B) of the Act, 42 U.S.C. § 7413(d)(2)(B), states that the Administrator may compromise, modify, or remit, with or without conditions, any administrative penalty which may be imposed under this subsection.

#### IV. STIPULATED FACTS

23. Respondent is, and at all times referred to herein was, a “person” as defined by Section 302(e) of the Act, 42 U.S.C. § 7602(e).

24. Respondent is the owner and/or operator of a portland cement manufacturing facility/kiln with a permitted rated capacity of 150 short tons of clinker per hour located at 700 25th Street NW, Mason City, Iowa (“Respondent’s facility”).

25. Respondent’s facility is a “stationary source” as that term is defined in Section 112(a)(3) of the Act, 42 U.S.C. § 7412(a)(3).

26. Respondent’s facility is a major air emissions source as defined at Section 112(a)(1) of the Act, 42 U.S.C. § 7412(a)(1).

27. Because it is a portland cement plant which is a major source, Respondent’s facility is required to demonstrate initial and continuous compliance with the standards of 40 C.F.R. Part 63, Subpart LLL.

28. Respondent is subject to the Title V permitting program, 42 U.S.C. § 7661a. The Iowa Department of Natural Resources (Iowa DNR) issued Title V Operating Permit 04-TV-011R2 to Respondent’s facility on May 19, 2017. The permit currently has an expiration date of May 18, 2022. The permit specifically states that Respondent’s facility is subject to, among other regulations, the requirements of 40 C.F.R. Part 63, Subpart LLL. Lehigh’s Kiln, Clinker Cooler and Coal Mill (Emission Points 25, 26, and 62) are subject to 40 C.F.R. Part 63, Subpart LLL.

29. Respondent obtained a Construction permit (03-A-968-P3) on March 9, 2015, for emission point 25 (EP 25) which includes the Electrostatic Precipitator (CE 25). Respondent obtained a Construction permit (03-A-969-P2) on January 6, 2010, for emission unit (EU 2) clinker cooler consisting of a baghouse (CE 26) with emissions emitted via emission point 26 (EP 26). Respondent obtained a Construction permit (87-A-089-S3) on January 6, 2010, for the Coal Pulverizing System emission unit 62 (EU 62), which includes a baghouse (CE 62) with emissions emitted via emission point 62 (EP 62).

30. On July 30, 2019, a duly authorized representative from EPA Region 7 conducted a CAA Inspection at Respondent’s facility. This inspection evaluated Respondent’s compliance

with CAA requirements, including but not limited to its Title V Operating Permit and 40 C.F.R. Part 63, Subpart LLL.

31. On November 21, 2019, the EPA sent an information request to Respondent pursuant to Section 114(a) of the CAA, 42 U.S.C. § 7414(a), which required Respondent to provide EPA specific data to assess Respondent's compliance status with 40 C.F.R. Part 63, Subpart LLL.

32. On December 19, 2019 and January 30, 2020, Respondent submitted responses to the Section 114(a) request.

33. On June 22, 2020, the EPA issued a Notice of Violation (NOV) to Respondent for violations of provisions of Iowa's Air Quality Regulations, approved by EPA as part of the Iowa SIP. On November 17, 2020, the EPA issued an Amended Notice of Violation and Opportunity to Confer (NOVOC) to Respondent for Clean Air Act Violations – provisions of Iowa's Air Quality Regulations, approved by EPA as part of the Iowa SIP.

## V. ALLEGED VIOLATIONS OF LAW

34. Paragraphs 1-33 are incorporated by reference herein.

35. On August 4, 2018, Lehigh failed to operate the Electrostatic Precipitator upon start-up of the kiln, which is required by Title V Permit 04-TV-011R2 condition IV G9.

36. Lehigh exceeded the EP 62 Coal Mill Emission Limit of 0.22 lb./hour for PM<sub>10</sub> imposed by Construction Permit 87-A-089-S3 and Title V Permit 04-TV-011R2 on August 18, 2017, July 10, 2018, July 13, 2018, and December 13, 2018 .

37. Lehigh failed to demonstrate compliance through stack testing with the 40 C.F.R. Part 63 Subpart LLL emission standards for Particulate Matter (PM) exceeding the 0.07 lb./ton clinker requirement for the intervals February 15, 2018 – August 22, 2018; December 12, 2018 – August 7, 2019; and September 19, 2019 – October 9, 2019.

38. Lehigh failed to submit the Semi-Annual Report on or before September 30, 2017, as required by the Title V Permit 04-TV-011R2.

39. Lehigh failed to submit the 2018 Title V Emissions Inventory on or before March 31, 2019, as required by 567 IAC 22.106 and the Title V Permit 04-TV-011R2.

40. Lehigh failed to notify the Iowa DNR, the Delegated Authority, of its intent to perform compliance testing occurring on September 19, 2019, and October 9, 2019, as required by 40 C.F.R. Part 63 Subpart LLL.

41. Lehigh failed to submit a written compliance demonstration report for compliance testing performed in July 2018, August 2018, and October 2019, in a timely manner as required by 567 IAC 25.1(7) and the Title V Permit 04-TV-011R2.

42. Lehigh failed to conduct a performance test for PM on EU25 within the required timeframes established in 40 C.F.R. Part 63 Subpart LLL on June 7, 2017. Lehigh failed to conduct a Stack test for PM/PM<sub>10</sub> on EU26 within the required timeframes established in 567 IAC 22.108(3) and the Title V Permit 04-TV-011R2 by May 18, 2019.

43. The above-listed violations demonstrate that Respondent was not in compliance with the requirements of its construction and Title V operating permits, and therefore was in violation of the CAA, its implementing regulations, and IAC Chapter 22 at its Mason City, facility.

## VI. TERMS OF CONSENT AGREEMENT

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

- (a) admits that the EPA has jurisdiction over the subject matter alleged in this Agreement;
- (b) neither admits nor denies the alleged violations of law stated above;
- (c) consents to the assessment of a civil penalty as stated below;
- (d) consents to the issuance of any specified compliance or corrective action order as provided herein;
- (e) consents to the conditions specified in this Agreement;
- (f) consents to any stated Permit Action;
- (g) waives any right to contest in this proceeding the alleged violations of law set forth in Section V of this Consent Agreement; and
- (h) waives its rights to appeal the Order accompanying this Agreement.

45. For the purpose of this proceeding, Respondent:

- (a) agrees that this Agreement states a claim upon which relief may be granted against Respondent;
- (b) acknowledges that this Agreement constitutes an enforcement action for purposes of considering Respondent's compliance history in any subsequent enforcement actions;
- (c) waives any right of judicial review under Section 307(b)(1) of the Clean Air Act, 42 U.S.C. § 7607(b)(1);

- (d) consents to personal jurisdiction in any action to enforce this Agreement or Order, or both, in the United States District Court; and
- (e) waives any rights it may possess at law or in equity to challenge the authority of the EPA to bring a civil action in a United States District Court to compel compliance with the Agreement or Order, or both, and to seek an additional penalty for such noncompliance, and agrees that federal law shall govern in any such civil action.

46. Respondent consents to receiving the filed Consent Agreement and Final Order electronically at the following e-mail address: [t.bergere@atllp.com](mailto:t.bergere@atllp.com).

#### **A. Penalty Payment**

47. To determine the amount of civil penalty to be assessed pursuant to section 113(e)(1) of the Act, 42 U.S.C. § 7413(e)(1), the EPA took into account, in addition to such other factors as justice may require, the size of Respondent's business, the economic impact of the penalty on Respondent's business, Respondent's compliance history and good faith efforts to comply, the duration of violation established by any credible evidence, payment by Respondent of penalties previously assessed for the same violations, the economic benefit of noncompliance, and the seriousness of the violations.

48. The EPA has determined that based on substantiated ability to pay information, the penalty for the violations may be paid on an extended schedule. Respondent agrees that, in settlement of the claims alleged in this Agreement, Respondent shall:

- (a) Pay the compromised civil penalty of \$197,500.00 ("EPA Penalty") within sixty (60) calendar days of the Effective Date of this Agreement. If Respondent is able to pay the EPA Penalty within thirty (30) days of such service, it shall pay \$197,500; if Respondent pays after 30 days, but within 60 days of such service, it shall pay \$197,664.58, an amount which reflects accrued interest.
- (b) The payment shall identify Respondent by name and docket number [CAA 07-2021-0012] and shall be by certified or cashier's check made payable to the "United States Treasury" and sent to:

U.S. Environmental Protection Agency  
Fines and Penalties  
Cincinnati Finance Center  
PO Box 979077  
St. Louis, Missouri 63197-9000

or by alternate payment method described at  
<http://www.epa.gov/financial/makepayment>.

- (c) A copy of the check or other information confirming payment shall simultaneously be emailed to the following:

Regional Hearing Clerk  
Office of Regional Counsel  
U.S. Environmental Protection Agency, Region 7  
Email: *R7\_hearing\_clerk\_filings@epa.gov*, and to

Joe Terriquez  
Enforcement and Compliance Assurance Division  
U.S. Environmental Protection Agency, Region 7  
11201 Renner Blvd.  
Lenexa, Kansas 66219  
Email: *Terriquez.Joe@epa.gov*

49. If Respondent fails to timely pay any portion of the EPA penalty assessed under this Agreement, the EPA may:

- (a) Request the Attorney General to bring a civil action in an appropriate district court to recover: the amount assessed; interest at rates established pursuant to 26 U.S.C. § 6621(a)(2); the United States' enforcement expenses; and a 10 percent quarterly nonpayment penalty, 42 U.S.C. § 7413(d)(5);
- (b) Refer the debt to a credit reporting agency or a collection agency, 42 U.S.C. § 7413(d)(5), 40 C.F.R. §§ 13.13, 13.14, and 13.33;
- (c) Collect the debt by administrative offset (i.e., the withholding of money payable by the United States to, or held by the United States for, a person to satisfy the debt the person owes the Government), which includes, but is not limited to, referral to the Internal Revenue Service for offset against income tax refunds, 40 C.F.R. Part 13, Subparts C and H; and
- (d) Suspend or revoke Respondent's licenses or other privileges, or (ii) suspend or disqualify Respondent from doing business with the EPA or engaging in programs the EPA sponsors or funds, 40 C.F.R. § 13.17.

#### **B. Conditions**

50. As a condition of settlement and in compromise of the civil penalty that EPA could otherwise impose herein, Respondent agrees to the following:

- (a) For EP 25, conduct quarterly stack tests for a period of one year, beginning 90 days after the Effective Date of this Consent Agreement, for PM as required in 40 C.F.R. Part 63 Subpart LLL. All stack test reports



will include data on operational parameters of the control equipment (i.e., ESP Voltage, ESP Amperage, ESP Total Power).

- (b) For EP 25 and EP 62, within 60 days of operating the sources on coal, simultaneous PM stack testing is required to be conducted via EPA Method 5 to demonstrate compliance with the 40 C.F.R. Part 63 Subpart LLL requirements. If Coal Mill operation and Kiln Coal firing is not conducted by December 31, 2021, then Respondent is required to submit an air construction permit application to the Iowa DNR within eight (8) months of the Effective Date of this Consent Agreement to include in its construction permit that a confirmatory test is required to be performed no more than 60 days after the Coal Mill (EP62) is placed in operation and firing EP 25 on Coal. The test shall be conducted under representative conditions while operating the Coal Mill.
- (c) For EP 25, conduct one stack test within 180 days of the Effective Date of this Consent Agreement to demonstrate compliance with the 0.516 lb/ton PM and PM<sub>10</sub> Best Available Control Technology (BACT) emission limits and the 77.4 lb./hr. PM<sub>10</sub> emission limit established to protect the Prevention of Significant Deterioration (PSD) increment and the health-based National Ambient Air Quality Standards (NAAQS). These limits are in Iowa DNR construction permit 03-A-968-P3 and Title V operating permit 04-TV-011R2. Respondent must conduct this testing in accordance with all permit requirements of Iowa DNR construction permit 03-A-968-P3 and Title V operating permit 04-TV-011R2 or any revised permit issued for EP 25 for PM and PM<sub>10</sub> after the effective date of this Order and then in effect. Each test plan must be submitted timely to Iowa DNR and EPA. Each test plan should include the production rate and those operating parameters identified in Paragraph 50(a) above, which are monitored during the test and included in the test report submission to Iowa DNR and EPA.
- (d) For EP 26, conduct one stack test within 180 days of the Effective Date of this Consent Agreement to demonstrate compliance with the 0.015 gr/dscf PM and PM<sub>10</sub> Best Available Control Technology (BACT) emission limits and the 13.8 lb./hr. PM<sub>10</sub> emission limit established to protect the Prevention of Significant Deterioration (PSD) increment and the health-based NAAQS. These limits are in Iowa DNR construction permit 03-A-969-P2 and Title V operating permit 04-TV-011R2. Respondent must conduct this testing in accordance with all permit requirements of Iowa DNR construction permit 03-A-969-P2 and Title V operating permit 04-TV-011R2 or any revised permit issued for EP 26 for PM and PM<sub>10</sub> after the effective date of this Order and then in effect. Each test plan must be submitted timely to Iowa DNR and EPA. Each test plan should include the production rate and those operating parameters identified in Paragraph 50

- (a) above, which are monitored during the test and included in the test report submission to Iowa DNR and EPA.
- (e) For EP 62, conduct one stack test within 180 days of the Effective Date of this Consent Agreement to demonstrate the unit can meet the 0.22 lb./hr PM<sub>10</sub> emission limit in Iowa DNR permit 87-A-089-S3 and Title V operating permit 04-TV-011R2. If Coal Mill operation is not conducted within 180 days of the Effective Date, then Respondent must submit a construction permit application to the Iowa DNR in accordance with the scope and schedule set forth in Paragraph 50(b), above.
- (f) For BACT permit limits set forth in Iowa DNR construction permits and incorporated in the facility's Title V operating permit, compliance demonstrations required in Paragraphs 50(c), (d), and (d) above, shall be conducted in accordance with the methods outlined in the permits or an alternative test approved by the Iowa DNR. Tests conducted in accordance with Paragraphs 50(a) and (b) that demonstrate an exceedance of the BACT limits shall conduct a confirmatory test within 60 days using the methods in the permits, including the use of Method 5/202 or 201A/202.
- (g) Identify and schedule all of the Title V and 40 C.F.R. Part 63 Subpart LLL reporting requirements for the time period November 1, 2021 to November 1, 2022 (*i.e.* reports due following a defined reporting period specified in 40 C.F.R. Part 63 Subpart LLL, Iowa DNR construction permit 03-A-969-P2 and Title V operating permit 04 TV-011R2) that must be submitted to EPA or Iowa DNR for the Lehigh Mason City facility into Respondent's scheduling software program within 90 days after the Effective Date of this Consent Agreement. This should include, but not be limited to, all annual or semi-annual reports. Respondent shall submit confirmation to EPA that this requirement has been completed.
- (h) Evaluate and certify as set forth below to EPA that the Continuous Parametric Monitoring System (SICK FWE 200 Serial Number 14098481) is operating in accordance with 40 C.F.R. §§ 63.1349(b)(1)(i)(A)-(B) within 60 days after the effective date of this Consent Agreement. All final CPMS values need to be reported to the nearest tenth of a milliamp with intermediate calculation carried out as required by June 6, 1990 EPA guidance. (<https://www.epa.gov/sites/production/files/2020-08/documents/tid-024.pdf>).

### **C. Certification and Submittals**

51. All documents required to be submitted to EPA by this Order shall be in accordance with Paragraph 51 of this Consent Agreement.

- (a) The submissions required by Paragraph 50 and any subparagraphs shall be made in electronic format (native format is preferred, including any original Excel file that was used to perform the relevant calculations) to:

Joe Terriquez  
 Enforcement and Compliance Assurance Division  
 U.S. Environmental Protection Agency, Region 7  
 11201 Renner Blvd.  
 Lenexa, Kansas 66219  
 Email: *Terriquez.Joe@epa.gov*.

- (b) To the extent this Agreement requires Respondent to submit any information to the EPA, Respondent may assert a business confidentiality claim covering part or all of that information, but only to the extent and only in the manner described in 40 C.F.R. Part 2, Subpart B. The EPA will disclose information submitted under a confidentiality claim only as provided in 40 C.F.R. Part 2, Subpart B. If Respondent does not assert a confidentiality claim, the EPA may make the submitted information available to the public without further notice to Respondent.

**VII. STIPULATED PENALTIES**

52. Respondent shall be liable for stipulated penalties to the United States in the amounts set forth below for failure to comply with the requirements of Paragraph 50 of this Consent Agreement. The following stipulated penalties shall accrue per violation per day:

- (a) For failure to certify and submit reports and deliverables to EPA or Iowa DNR as required by Paragraph 50:

<u>Penalty Per Violation Per Day</u>	<u>Period of Noncompliance</u>
\$ 500	1st through 15th day
\$ 1,000	15th day and beyond

- (b) For failure to complete required stack testing at the referenced source as required by Paragraph 50:

<u>Penalty Per Violation Per Day</u>	<u>Period of Noncompliance</u>
\$ 1,500	1st through 15th day
\$ 3,000	15th day and beyond

53. All penalties shall begin to accrue on the day after the complete performance is due or the day a violation of a Consent Agreement deadline or other Consent Agreement requirement occurs and shall continue to accrue through the final day of the correction of the noncompliance or completion of the activity. Nothing herein shall prevent the simultaneous accrual of separate penalties for separate violations of this Consent Agreement.

54. The payment of stipulated penalties under this Consent Agreement shall not alter in any way Respondent's obligations to comply with the provisions of this Consent Agreement.

55. Respondent shall pay stipulated penalties not more than thirty (30) days after receipt of written demand by EPA for such penalties. Method of payment shall be in accordance with the provisions set forth in Paragraphs 47-49 of this Consent Agreement.

56. The stipulated penalties provided for in this Consent Agreement shall be in addition to any other rights, remedies, or sanctions available to the EPA for Respondent's violation of this Consent Agreement or applicable law. Where a violation of this Consent Agreement is also a violation of statutory or regulatory requirements, Respondent shall be allowed a credit, for any stipulated penalties paid, against any statutory penalties imposed for such violation.

57. Respondent agrees that the time period from the Effective Date of this Agreement until all of the conditions specified in Paragraph 50 are completed (the "Tolling Period") shall not be included in computing the running of any statute of limitations potentially applicable to any action brought by Complainant on any claims (the "Tolled Claims") set forth in Section V of this Agreement. Respondent shall not assert, plead, or raise in any fashion, whether by answer, motion or otherwise, any defense of laches, estoppel, or waiver, or other similar equitable defense based on the running of any statute of limitations or the passage of time during the Tolling Period in any action brought on the Tolled Claims.

58. The provisions of this Agreement shall apply to and be binding upon Respondent and its officers, directors, employees, agents, trustees, servants, authorized representatives, successors, and assigns. From the Effective Date of this Agreement until the end of the Tolling Period, as set out in Paragraph 57, Respondent must give written notice and a copy of this Agreement to any successors in interest prior to any transfer of ownership or control of any portion of or interest in the 700 25<sup>th</sup> Street NW facility. Simultaneously with such notice, Respondent shall provide written notice of such transfer, assignment, or delegation to the EPA. In the event of any such transfer, assignment, or delegation, Respondent shall not be released from the obligations or liabilities of this Agreement unless the EPA has provided written approval of the release of said obligations or liabilities.

59. By signing this Agreement, Respondent acknowledges that this Agreement and Order will be available to the public and agrees that this Agreement does not contain any confidential business information or personally identifiable information.

60. By signing this Agreement, the undersigned representative of Complainant and the undersigned representative of Respondent each certify that he or she is fully authorized to execute and enter into the terms and conditions of this Agreement and has the legal capacity to bind the party he or she represents to this Agreement.

61. By signing this Agreement, Respondent certifies that the information it has supplied concerning this matter was at the time of submission true, accurate, and complete for each such submission, response, and statement. Respondent acknowledges that there are

significant penalties for submitting false or misleading information, including the possibility of fines and imprisonment for knowing submission of such information, under 18 U.S.C. § 1001.

62. Respondent and EPA agree to conciliate this matter without the necessity of a formal hearing and to bear their respective attorney's fees, costs, and disbursements incurred in this proceeding.

### **VIII. EFFECT OF CONSENT AGREEMENT AND ATTACHED FINAL ORDER**

63. In accordance with 40 C.F.R. § 22.18(c), completion of the terms of this Consent Agreement and Final Order resolves Respondent's liability for federal civil penalties for the violations and facts specifically alleged above.

64. Complainant covenants not to sue Respondent for injunctive or other equitable relief for the violations and facts alleged in this matter, but such covenant automatically terminates if and when Respondent fails to timely and satisfactorily complete every condition stated in Paragraph 50 (including payment of any stipulated penalties owed). If and when such covenant terminates, the United States at its election may seek to compel performance of the conditions stated in Paragraph 50 in a civil judicial action under the Act or as a matter of contract. The covenant not to sue becomes permanent upon satisfactory performance of the conditions stated in Paragraph 50.

65. For the purpose of the identification requirement in Section 162 (f)(2)(A)(ii) of the Internal Revenue Service Code, 26 U.S.C. § 162(f)(2)(A)(ii) and 26 CFR 162-21-(b)(2), performance of Paragraph 50 and the Penalty Payment paid pursuant to CAA Section 113 are restitution, remediation, or required to come into compliance with the law."

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

67. The terms, conditions and compliance requirements of this Agreement may not be modified or amended except upon the written agreement of both parties, and approval of the Regional Judicial Officer.

68. Any violation of this Order may result in a civil judicial action for an injunction or civil penalties of up to \$101,439 per day per violation, or both, as provided in Section 113(b)(2) of the Act, 42 U.S.C. § 7413(b)(2) and adjusted for inflation pursuant to 40 C.F.R. Part 19, as well as criminal sanctions as provided in Section 113(c) of the Act, 42 U.S.C. § 7413(c). The EPA may use any information submitted under this Order in an administrative, civil judicial, or criminal action.

69. Nothing in this Agreement shall relieve Respondent of the duty to comply with all applicable provisions of the Act and other federal, state, or local laws or statutes, nor shall it restrict the EPA's authority to seek compliance with any applicable laws or regulations, nor shall

it be construed to be a ruling on, or determination of, any issue related to any federal, state, or local permit.

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

#### **IX. EFFECTIVE DATE**

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

72. Unless otherwise stated, all time periods stated herein shall be calculated in calendar days from such date.

The foregoing Consent Agreement in the Matter of Lehigh Cement Company LLC, Docket No. CAA 07-2021-0012, is Hereby Stipulated, Agreed, and Approved for Entry.

**FOR RESPONDENT**

Lehigh Cement Company LLC:

  
\_\_\_\_\_  
Signature

12 Nov 2021  
\_\_\_\_\_  
Date

Printed Name: Tom O'Neill

Title: Vice President - Cement Operations Midwest

Address: 8909 Purdue Rd, Suite 100 Indianapolis IN 46268

Respondent's Federal Tax Identification Number: 23-0797050

The foregoing Consent Agreement in the Matter of Lehigh Cement Company LLC, Docket No. CAA 07-2021-0012 is Hereby Stipulated, Agreed, and Approved for Entry.

**FOR COMPLAINANT:**

U.S. Environmental Protection Agency Region 7

\_\_\_\_\_  
DATE

\_\_\_\_\_  
Tracey Casburn, Branch Chief  
Enforcement and Compliance Assurance Division  
U.S. EPA Region 7  
11201 Renner Boulevard  
Lenexa, Kansas 66219

\_\_\_\_\_  
DATE

\_\_\_\_\_  
Sara Hertz Wu, Senior Counsel  
Office of Regional Counsel  
U.S. EPA Region 7  
11201 Renner Boulevard  
Lenexa, Kansas 66219



**U.S. ENVIRONMENTAL PROTECTION AGENCY  
REGION 7  
11201 Renner Boulevard  
Lenexa, Kansas 66219**

**BEFORE THE ADMINISTRATOR**

**In the Matter of:** )  
 )  
Lehigh Cement Company LLC, ) **Docket No. CAA 07-2021-0012**  
 )  
 **Respondent.** )  
\_\_\_\_\_ )

**FINAL ORDER**

Pursuant to 40 C.F.R. § 22.18(b) of the EPA’s Consolidated Rules of Practice and Section 113(d) of the Clean Air Act, 42 U.S.C. § 7413(d), the foregoing Consent Agreement resolving this matter is hereby ratified and incorporated by reference into this Final Order.

Respondent is ORDERED to comply with all terms of the Consent Agreement. In accordance with 40 C.F.R. § 22.31(b), the effective date of the foregoing Consent Agreement and this Final Order is the date on which this Final Order is filed with the Regional Hearing Clerk.

**IT IS SO ORDERED,**

\_\_\_\_\_  
DATE

\_\_\_\_\_  
Karina Borromeo  
Regional Judicial Officer  
United States Environmental Protection Agency  
Region 7

**CERTIFICATE OF SERVICE**

I certify that a true and correct copy of the foregoing Consent Agreement and Final Order in the Matter of Lehigh Cement Company LLC, Docket No. CAA 07-2021-0012, was sent this day in the following manner to the addressees:

Copy delivered to Complainant:

Sara Hertz Wu  
*Hertzwu.sara@epa.gov*

Joe Terriquez  
*terriquez.joe@epa.gov*

Copy delivered to the Respondent:

Adam N. Swercheck  
*Adam.Swercheck@lehighhanson.com*

Copy delivered to the Respondent's Attorney of Record:

Timothy J. Bergere  
*TBergere@atllp.com*

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DATE

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Regional Hearing Clerk  
U.S. Environmental Protection Agency Region 7