



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

JUN 12 2008

REPLY TO THE ATTENTION OF:

AE-17J

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Scott Quaas, Environmental Manager
Lehigh Cement Company
180 North Meridian Road
Mitchell, Indiana 47446

Dear Mr. Quaas:

Enclosed is a file-stamped Consent Agreement and Final Order (CAFO) which resolves Lehigh Cement Company docket no. CAA-05-2008-0021. As indicated by the filing stamp on its first page, we filed the CAFO with the Regional Hearing Clerk on JUN 12 2008.

Pursuant to paragraph 28 of the CAFO, Lehigh Cement Company must pay the civil penalty within 30 days of JUN 12 2008. Your check, electronic funds transfer must display the case name Lehigh Cement Company, the docket number, CAA-05-2008-0021, and the billing document number, 2750803A019.

Please direct any questions regarding this case to Sabrina Argentieri, Associate Regional Counsel, at (312) 353-5485.

Sincerely,

A handwritten signature in black ink, appearing to read "Brent Marable".

Brent Marable
Section Chief
Illinois/Indiana Enforcement Section

Enclosure

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5**

In the Matter of:)
)
Lehigh Cement Company)
Mitchell, Indiana)
)
Respondent.)
_____)

Docket No. CAA-05-2008-0021
Proceeding to Assess a Civil Penalty
Under Section 113(d) of the Clean Air
Act, 42 U.S.C. § 7413(d)

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Consent Agreement and Final Order

Preliminary Statement

1. This is an administrative action commenced and concluded under Section 113(d) of the Clean Air Act (the Act), 42 U.S.C. § 7413(d), and Sections 22.1(a)(2), 22.13(b), and 22.18(b)(2) and (3) 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 Director of the Air and Radiation Division, United States Environmental Protection Agency (U.S. EPA), Region 5.
3. Respondent is Lehigh Cement Company, a corporation doing business in Indiana.
4. Where the parties agree to settle one or more causes of action before the filing of a complaint, the administrative action may be commenced and concluded simultaneously by the issuance of a consent agreement and final order (CAFO). 40 C.F.R. § 22.13(b).
5. The parties agree that settling this action without the filing of a complaint or the adjudication of any issue of fact or law is in their interest and in the public interest.
6. Respondent consents to entry of this CAFO and the assessment of the specified civil penalty, and agrees to comply with the terms of the CAFO.

Jurisdiction and Waiver of Right to Hearing

7. Respondent admits the jurisdictional allegations in this CAFO and neither admits nor denies the factual allegations in the CAFO.

8. Respondent waives its right to request a hearing as provided at 40 C.F.R. § 22.15(c), any right to contest the allegations in this CAFO, and its right to appeal this CAFO.

Statutory and Regulatory Background

9. Under Section 112 of the Act, U.S. EPA promulgated the National Emission Standards for Hazardous Air Pollutants (NESHAP) for Portland Cement Manufacturing Industry at 40 C.F.R. Part 63, Subpart LLL.

10. The owner or operator of an existing affected facility was required to comply with the requirements of 40 C.F.R. Part 63, Subpart LLL by June 14, 2002.

11. The NESHAP for Portland Cement Manufacturing Industry applies to each new and existing Portland cement plant which is a major source or an area source, as defined in 40 C.F.R. § 63.2. 40 C.F.R. § 63.1340(a).

12. The NESHAP, at 40 C.F.R. § 63.1345(a)(1), prohibits the owner and operator of a clinker cooler to discharge into the atmosphere from the clinker cooler particulate matter in excess of 0.050 kilograms per megagram [0.10 pound (lb) per ton] of feed (dry basis) to the kiln.

13. Section 502 of the Act, 42 U.S.C. § 7661a(a), and 40 C.F.R. § 70.7(b) provide that, after the effective date of any permit program approved or promulgated under Title V of the Act, no source subject to Title V may operate except in compliance with a Title V permit.

14. Section 113(a)(3) of the Act, 42 U.S.C. § 7413(a)(3), authorizes the Administrator to initiate an enforcement action whenever, among other things, the Administrator

finds that any person has violated or is in violation of a requirement or prohibition of Title V of the Act, or any rule promulgated, issued, or approved under Title V of the Act.

15. The U.S. EPA promulgated final interim approval of the Indiana Title V program on November 14, 1995 (60 Fed. Reg. 57191), and the program became effective on that date.

16. The permittee must comply with all conditions of its Title V/Part 70 operating permit. Any permit noncompliance constitutes a violation of the Act and is grounds for enforcement action; for permit termination, revocation and re-issuance, or modification; or for denial of a permit renewal application. 40 C.F.R. § 70.6(a)(6)(i).

17. All terms and conditions in a Title V permit, including any provisions designed to limit a source's potential to emit, are enforceable by the Administrator and citizens under the Act. 40 C.F.R. § 70.6(b).

18. The Administrator of U.S. EPA (the Administrator) may assess a civil penalty of up to \$32,500 per day of violation up to a total of \$270,000 for violations that occurred after March 15, 2004, under Section 113(d)(1) of the Act, 42 U.S.C. § 7413(d)(1), and 40 C.F.R. Part 19.

Factual Allegations and Alleged Violations

19. Lehigh owns and operates a Portland Cement Manufacturing facility which includes a Clinker Cooler #3 at 121 North First Street, Mitchell, Indiana.

20. The Lehigh facility is a major stationary source for Hazardous Air Pollutants (HAP) and, therefore, is subject to the major source requirements of 40 C.F.R. Part 63, Subparts A and LLL.

21. Lehigh's Clinker Cooler #3 is subject to the requirements at 40 C.F.R. § 63.1345(a)(1).

22. Lehigh conducted performance testing for particulate matter on Clinker Cooler #3

on June 26-27, 2007 and October 30, 2007.

23. The results from each of the June 26-27 and October 30, 2007, tests showed Clinker Cooler #3 was discharging an average of 0.13 lb. per ton and 0.11 lb. per ton of feed on a dry basis to the kiln, respectively.

24. Lehigh conducted a third performance test for particulate matter on Clinker Cooler #3 on February 12, 2008.

25. The results of the February 12, 2008, test showed Clinker Cooler #3 was discharging an average of 0.013 lb per ton of feed on a dry basis to the kiln.

26. From at least June 27, 2007 through February 11, 2008, Lehigh discharged from Clinker Cooler #3 particulate matter emissions in excess of 0.10 lbs per ton of feed on a dry basis to the kiln in violation of 40 C.F.R. § 63.1345(a)(1) and condition D.5.4 of the Part 70 operating permit number T093-5990-00002.

Civil Penalty

27. Based on analysis of the factors specified in Section 113(e) of the Act, 42 U.S.C. § 7413(e), the facts of this case, Lehigh's good faith cooperation, and prompt return to compliance, Complainant has determined that an appropriate civil penalty to settle this action is \$74,700.

28. Within 30 days after the effective date of this CAFO, Respondent must pay a \$74,700 civil penalty by electronic funds transfer, payable to the "Treasurer, United States of America," and sent to:

Federal Reserve Bank of New York
ABA No. 021030004
Account No. 68010727
33 Liberty Street
New York, NY 10045
Field Tag 4200 of the Fedwire message should read:
"D68010727 Environmental Protection Agency"

In the comment or description field of the electronic funds transfer, state In The Matter of Lehigh Cement Company, the docket number of this CAFO and the billing document number.

29. This civil penalty is not deductible for federal tax purposes.

30. If Respondent does not pay timely the civil penalty in Paragraph 28, U.S. EPA may bring an action to collect any unpaid portion of the penalty with interest, handling charges, nonpayment penalties and the United States' enforcement expenses for the collection action under Section 113(d)(5) of the Act, 42 U.S.C. § 7413(d)(5). The validity, amount, and appropriateness of the civil penalty are not reviewable in a collection action.

31. Pursuant to 31 C.F.R. § 901.9, Respondent must pay the following on any amount overdue under this CAFO. Interest will accrue on any overdue amount from the date payment was due at a rate established by the Secretary of the Treasury. Respondent must pay a \$15 handling charge each month that any portion of the penalty is more than 30 days past due. In addition, Respondent must pay a quarterly nonpayment penalty each quarter during which the assessed penalty is overdue according to Section 113(d)(5) of the Act, 42 U.S.C. § 7413(d)(5). This nonpayment penalty will be 10 percent of the aggregate amount of the outstanding penalties and nonpayment penalties accrued from the beginning of the quarter.

General Provisions

32. This CAFO resolves only Respondent's liability for federal civil penalties for the violations alleged in this CAFO.

33. The CAFO does not affect the right of U.S. EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violation of law.

34. This CAFO does not affect Respondent's responsibility to comply with the Act and other applicable federal, state, and local laws. Except as provided in paragraph 33, above, compliance with this CAFO will not be a defense to any actions subsequently commenced pursuant to federal laws administered by Complainant.

35. Respondent certifies that Clinker Cooler #3 is complying fully with Condition D.5.4 of its Title V Permit.

36. This CAFO constitutes an "enforcement response" as that term is used in U.S. EPA's *Clean Air Act Stationary Source Civil Penalty Policy* to determine Respondent's "full compliance history" under Section 113(e) of the Act, 42 U.S.C. § 7413(e).

37. The terms of this CAFO bind Respondent, its successors, and assigns.

38. Each person signing this consent agreement certifies that he or she has the authority to sign for the party whom he or she represents and to bind that party to its terms.

39. Each party agrees to bear its own costs and attorneys' fees in this action.

40. This CAFO constitutes the entire agreement between the parties.

Lehigh Cement Company, Respondent

5/30/08
Date

Edward E. Epping
Edward Epping
Plant Manager, Mitchell Plant
Lehigh Cement Company

United States Environmental Protection Agency, Complainant

6/10/08
Date

Cheryl L. Newton
Cheryl L. Newton,
Acting Director
Air and Radiation Division
U.S. Environmental Protection
Agency, Region 5

CAA-05-2008-0021

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CONSENT AGREEMENT AND FINAL ORDER

In the Matter of:

Lehigh Cement Company

Docket No. CAA-05-2008-0021

Final Order

This Consent Agreement and Final Order, as agreed to by the parties, shall become effective immediately upon filing with the Regional Hearing Clerk. This Final Order concludes this proceeding pursuant to 40 C.F.R. §§ 22.18 and 22.31. IT IS SO ORDERED.

6/11/08
Date

Walter M. Kovalich
for
Bharat Mathur
Acting Regional Administrator
U.S. Environmental Protection
Agency, Region 5

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In the Matter of:
Lehigh Cement Company
Docket No. CAA-05-2008-0021

Certificate of Service

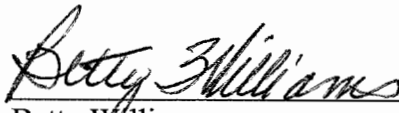
I, Betty Williams, certify that I hand delivered the original of the Consent Agreement and Final Order (CAFO), docket number CAA-05-2008-0021 to the Regional Hearing Clerk, Region 5, United States Environmental Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604; and that I mailed correct copies by first-class, postage prepaid, certified mail, return receipt requested, to Lehigh Cement Company, by placing them in the custody of the United States Postal Service addressed as follows:

Scott Quaas, Environmental Manager
Lehigh Cement Company
180 North Meridian Road
Mitchell, Indiana 47446

I also certify that a copy of the CAFO was sent by first-class mail to:

Craig Henry, Acting Section Chief
Office of Enforcement Air Section
Indiana Department of Environmental Management
100 North Senate Avenue / Mail Code 60-02
Indianapolis, Indiana 46204

On this 12th day of June, 2008.


Betty Williams
Administrative Program Assistant
AECAS (IL/IN)

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