



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2
290 BROADWAY
NEW YORK, NY 10007-1868

U.S. ENVIRONMENTAL
PROTECTION AGENCY-REG. II
2012 SEP 13 P 2:42
REGIONAL HEARING
CLERK

Certified Mail – Return Receipt Requested

September 13, 2012

Adam G. Sowatzka
Shareholder
Baker, Donelson, Bearman, Caldwell & Berkowitz, PC
Monarch Plaza, Suite 1600
3414 Peachtree Road, N.E.
Atlanta, Georgia 30326

RE: In the Matter of Lafarge Building Materials, Inc.
Docket No. CWA-02-2012-3401

Dear Adam:

Enclosed is a Consent Agreement and Final Order (CA/FO) in the above-referenced matter. This CA/FO was fully executed on September 12, 2012, and it is being filed with the Regional Hearing Clerk today.

Please note the first installment of the penalty is required to be paid in full and received by EPA no later than forty-five days after the Order's effective date.

Sincerely,

Diane T. Gomes, Esq.

Enclosure

cc: Karen Maples
Regional Hearing Clerk (w/original CA/FO and copy)

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
Region 2

U.S. ENVIRONMENTAL
PROTECTION AGENCY-REG. II
2012 SEP 13 P 2:42
REGIONAL HEARING
CLERK

IN THE MATTER OF:

Lafarge Building Materials, Inc.
Ravena Cement Plant
1916 Route 9W, Ravena, New York
SPDES Permit NY0005037

Respondent.

Proceeding pursuant to Section 309(g) of
the Clean Water Act, 33 U.S.C. §1319(g)

CONSENT AGREEMENT
AND
FINAL ORDER

DOCKET NO. CWA-02-2012-3401

SPDES PERMIT NO. NY0005037

CONSENT AGREEMENT AND ORDER

Complainant, the United States Environmental Protection Agency ("EPA"), having issued the Complaint herein on October 31, 2011, against Respondent Lafarge Building Materials, Inc., ("Respondent"), and

Complainant and Respondent having agreed that settlement of this matter is in the public interest, and that entry of this Consent Agreement and Final Order without further litigation is the most appropriate means of resolving this matter;

NOW, THEREFORE, before the taking of any testimony, upon the pleadings, without adjudication of any issue of fact or law, and upon consent and agreement of the Parties, it is hereby agreed, and ordered as follows:

I. PRELIMINARY STATEMENT

1. EPA initiated this proceeding for the assessment of a civil penalty, pursuant to Section 309 of the Clean Water Act, 33 U.S.C. § 1319.
2. The Complaint alleges that Respondent failed to comply with the terms of State Pollutant Discharge Elimination System ("SPDES") Permit No. NY0005037, which is the duly issued SPDES permit for Respondent's facility located at 1916 Route 9W, Ravena, New York.

3. EPA notified the New York State Department of Environmental Conservation (“NYSDEC”) regarding this action and offered an opportunity for the NYSDEC to confer with EPA on the proposed penalty assessment, pursuant to 40 CFR Part 22.
4. This action was public noticed. No public comment was received.
5. Respondent filed an Answer and requested a Hearing in this matter.
6. This Consent Agreement and Final Order shall apply to and be binding upon Respondent, its officers, directors, employees, successors and assigns, including, but not limited to, subsequent purchasers.
7. Respondent stipulates that EPA has jurisdiction over the subject matter alleged in the Complaint and that the Complaint states a claim upon which relief can be granted against Respondent. Respondent waives any defenses it might have as to jurisdiction and venue, and, without admitting or denying the factual or legal allegations contained in the Complaint, consents to the terms of this Consent Agreement and Final Order.
8. Respondent hereby waives its right to a judicial or administrative hearing or appeal on any issue of law or fact set forth in the Complaint.

II. TERMS OF SETTLEMENT

9. Pursuant to Section 309(g) of the Clean Water Act, 33 U.S.C. § 1319(g), the nature of the violations and other relevant factors, EPA has determined that an appropriate civil penalty to settle this action is in the amount of **One Hundred Twenty Thousand DOLLARS (\$120,000.00)**.
10. For purposes of settlement, Respondent consents to the issuance of this Consent Agreement and consents to the payment of the civil penalty cited in the foregoing Paragraph.

Penalty

11. Respondent shall pay a civil penalty in the amount of One Hundred Twenty Thousand Dollars to the "Treasurer of the United States of America." Such penalty shall be paid in three installments in accordance with the schedule set forth below:

	Payment	Due Date
1 st installment	\$40,000.00	No later than forty-five (45) calendar days after the date of the signature of the Final Order (at the end of this document).
2 nd Installment	\$40,000.00 principal plus \$300.00 interest = \$40,300.00	No later than one hundred eighty (180) calendar days after the date of the signature of the Final Order (at the end of this document).
3 rd Installment	\$40,000.00 principal plus \$200.00 interest = \$40,200.00	No later than Three hundred sixty (360) calendar days after the date of the signature of the Final Order (at the end of this document).

12. The checks (cashier's or certified checks only) shall be identified with a notation of the name and docket number of this case, set forth in the caption on the first page of this document. Payment methods are described below:

CHECK PAYMENTS:

US Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
PO Box 979077
St. Louis, MO 63197-9000

WIRE TRANSFERS:

Federal Reserve Bank of New York
ABA = 021030004
Account = 68010727
SWIFT address = FRNYUS33
33 Liberty Street
New York NY 10045

Field Tag 4200 of the Fedwire message should read "D 68010727 Environmental Protection Agency."

OVERNIGHT MAIL:

U.S. Bank
1005 Convention Plaza
Mail Station SL-MO-C2GL
ATTN Box 979077
St. Louis, MO 63101
Contact: Natalie Pearson
314-418-4087

ACH (also known as REX or remittance express)
Automated Clearinghouse (ACH) for receiving US currency

PNC Bank
808 17th Street, NW
Washington, DC 20074
Contact – Jesse White 301-887-6548
ABA = 051036706
Transaction Code 22 - checking
Environmental Protection Agency
Account 310006
CTX Format

ON LINE PAYMENT:

There is now an On Line Payment Option, available through the Department of Treasury. This payment option can be accessed from the information below: WWW.PAY.GOV. Enter sfo 1.1 in the search field. Open form and complete required fields.

Respondent shall also send copies of this payment to each of the following:

Diane Gomes, Esq.
Water and General Law Branch
Office of Regional Counsel
U.S. Environmental Protection Agency, Region 2
290 Broadway, 16th Floor
New York, New York 10007

and

Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 2
290 Broadway, 16th Floor
New York, New York 10007.

The payment must be received at the above address on or before the dates set forth in the table set forth in Paragraph 11, above (the dates by which the respective payments must be received shall hereafter be referred to as the “due date”).

13. Failure to pay the penalty in full according to the above provisions may result in referral of this matter to the United States Department of Justice or the United States Department of the Treasury for Collection.
14. Further, if the payment is not received on or before the due date, interest will be assessed at the annual rate established by the Secretary of Treasury pursuant to the Debt Collection Act, 31 U.S.C. § 3717, on the overdue amount from the due date through the date of payment. In addition, a late payment handling charge of \$15.00 will be assessed for each 30-day period (or any portion thereof) following the due date in which the balance remains unpaid. A 6% per annum penalty also will be applied on any principal amount not paid within 90 days of the due date.
15. In addition, pursuant to Section 309(g)(9) of the Act, 33 U.S.C. § 1319(g)(9), if payment is not received by the due date, a quarterly nonpayment penalty will be imposed for each calendar quarter during which such nonpayment persists. The quarterly nonpayment penalty is 20% of the aggregate amount of penalties and quarterly nonpayment penalties, which are unpaid as of the beginning of such quarter. You also may be required to pay attorneys fees and costs for collection proceedings in connection with nonpayment.
16. The penalty to be paid is a civil penalty assessed by the EPA and shall not be deductible from Respondent’s federal or New York State taxes.

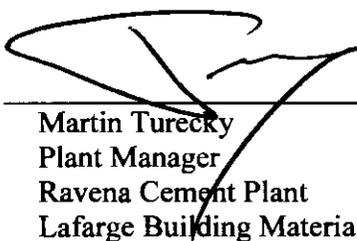
General Provisions

17. The Respondent waives any right it may have pursuant to 40 C.F.R. § 22.8 to be present during discussions with or to be served with and to reply to any memorandum or communication addressed to the Director or the Regional Administrator where the purpose of such discussion, memorandum, or communication is to discuss a proposed settlement of this matter or to recommend that such official accept this Consent Agreement and issue the accompanying Final Order.
18. Nothing in this agreement shall be construed as prohibiting, altering or in any way limiting the ability of EPA to seek any other remedies or sanctions available by virtue of Respondent's violation of this agreement or of the statutes and regulations upon which this agreement is based, or for Respondent's violation of any applicable provision of law.
19. This Consent Agreement and Order shall not relieve Respondent of its obligation to comply with all applicable provisions of federal, state or local law, nor shall it be

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

20. This Consent Agreement and Final Order constitutes a settlement by EPA of all claims for civil penalties pursuant to the Clean Water Act for the violations alleged in the Complaint as well as those violations identified in the Compliance Evaluation Inspection Report of the inspection of the Ravenna Cement Plant that occurred on November 3-4, 2011. Nothing in this Consent Agreement and Final Order is intended to nor shall be construed to operate in any way to resolve any criminal liability of the Respondent. Compliance with this Consent Agreement and Final Order shall not be a defense to any actions subsequently commenced pursuant to Federal laws and regulations administered by EPA, and it is the responsibility of Respondent to comply with such laws and regulations.
21. Each undersigned representative of the parties to this Consent Agreement certifies that he or she is fully authorized by the party represented to enter into the terms and conditions of this Consent Agreement and to execute and legally bind that party to it.
22. Each party shall bear its own costs and attorneys' fees in connection with the action resolved by this Consent Agreement and Order.

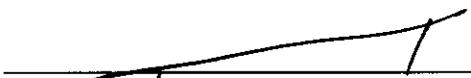
RESPONDENT:

BY: 

Martin Turecky
Plant Manager
Ravenna Cement Plant
Lafarge Building Materials, Inc.

DATE: 8/20/2012

COMPLAINANT:

BY: 

Dore LaPosta, Director
Division of Enforcement and
Compliance Assistance
U.S. EPA, Region 2
290 Broadway, 21st Floor
New York, New York 10007-1866

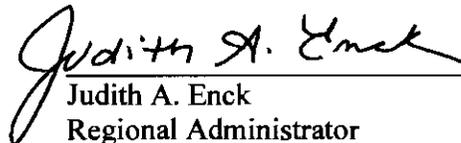
DATE: SEPTEMBER 12, 2012

III. FINAL ORDER

The Regional Administrator of the U.S. Environmental Protection Agency Region 2, ratifies the foregoing Consent Agreement. The Agreement entered into by the parties is hereby approved, incorporated herein, and issued as an Order. The effective date of this Order shall be the date of filing with the Regional Hearing Clerk, U.S. EPA Region 2, New York, New York.

SEP 12 2012

Date



Judith A. Enck
Regional Administrator
United States Environmental
Protection Agency-Region 2
290 Broadway
New York, NY 10007-1866

**UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 2**

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DOCKET NO. CWA-02-2012-3401

CERTIFICATE OF SERVICE

I certify that, on the date noted below, I served the foregoing fully executed Consent Agreement and Final Order, bearing the above-referenced docket number, in the following manner.

Copy by Certified Mail
Return Receipt Requested:

Adam G. Sowatzka, Esq.
Baker, Donelson, Bearman, Caldwell & Berkowitz, PC
Monarch Plaza, Suite 1600
3414 Peachtree Rd. NE
Atlanta, Georgia 30326-1153

Original and One Copy
By Internal Mail (pouch):

Karen Maples, Regional Hearing Clerk
U.S. Environmental Protection Agency
290 Broadway, 16th floor
New York, New York 10007-1866

Copy By Internal Mail (pouch):

Honorable Susan L. Biro
Chief, Administrative Law Judge (1900)
U.S. Environmental Protection Agency
Ariel Rios Building
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460

Honorable Barbara A. Gunning
Administrative Law Judge (1900)
U.S. Environmental Protection Agency
Ariel Rios Building
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460

SEP 13 2012

Date



Secretary