

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION VII  
901 NORTH 5<sup>TH</sup> STREET  
KANSAS CITY, KANSAS 66101

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ENVIRONMENTAL PROTECTION  
AGENCY-REGION VII  
REGIONAL HEARING CLERK

IN THE MATTER OF	)	Docket No.	CWA-07-2004-0340
	)		
Lehigh Cement Company	)		
Respondent	)		
	)		
NPDES Permit No. 1700100	)	FINDING OF VIOLATION	
	)	AND ORDER FOR COMPLIANCE	
	)		
Proceeding under Sections 308(a) and	)		
309(a) of the Clean Water Act, 33 U.S.C.	)		
§ 1319(a)	)		
_____	)		

**I. Statutory Authority**

NOW THEREFORE, the following FINDINGS OF VIOLATION are made and ORDER FOR COMPLIANCE is issued pursuant to the authority vested in the Administrator of the United States Environmental Protection Agency (EPA), by Sections 308(a) and 309(a) of the Clean Water Act (CWA or the Act), 33 U.S.C. § 1319(a) as amended, which authority has been delegated by the Administrator to the Regional Administrator, EPA Region VII, and further delegated to the Director, Water, Wetlands and Pesticides Division.

**II. Findings of Violation**

1. Lehigh Cement Company (Respondent) is a “person” as defined by Section 502(5) of the CWA, 33 U.S.C. § 1362(5), and is thus subject to its requirements.
2. Respondent owns a cement plant operating under the National Pollutant Discharge Elimination System (NPDES) Permit Number 1700100. This plant discharges pollutants as a point source into Calmus Creek, a “Water of the United States”, as defined in Section 502(7) of the Act, 33 U.S.C. § 1362(7).
3. Respondent’s discharge of pollutants from the plant requires a permit issued pursuant to Section 402 of the CWA, 33 U.S.C. § 1342.
4. The Iowa Department of Natural Resources (IDNR) is the state agency with the authority to administer the federal NPDES program pursuant to Section 402 of the Act, 33 U.S.C. § 1342, and EPA’s implementing regulations. The EPA maintains concurrent enforcement authority with authorized state NPDES programs for violations of NPDES permits.

5. The IDNR issued NPDES Permit No.1700100 to the Respondent with the effective date of September 18, 2000, and the expiration date of September 17, 2005.

6. On March 8-11, 2004, the EPA conducted an inspection of the Respondent's facility.

Count I

7. Respondent's permit includes the following limit for discharges from outfalls #002 and #007, effective upon issuance:

- a. Total Suspended Solids (TSS) shall be limited to a daily maximum of 50mg/L.

8. The EPA sampled the effluent from outfall #002 during three (3) days of the inspection. Sampling results taken on three (3) days of the inspection revealed the following TSS violations:

- a. Respondent's discharge exceeded the permitted (Daily maximum) limitations for TSS as follows:

<u>Date</u>	<u>Limit</u>	<u>Reported Value</u>
March 9, 2004	50 mg/L	60 mg/L
March 10, 2004	50 mg/L	57 mg/L
March 11, 2004	50 mg/L	62 mg/L

9. A review of the monthly Discharge Monitoring Reports for Outfall #002 and Outfall #007 revealed the following TSS violations:

- a. Respondent's discharge exceeded the permitted (Daily maximum) limitations for TSS at Outfall #002 as follows:

<u>Date</u>	<u>Limit</u>	<u>Reported Value</u>
June 2003	50 mg/L	101 mg/L
Sept. 2003	50 mg/L	128 mg/L
March 25, 2004	50 mg/L	89 mg/L

- b. Respondent's discharge exceeded the permitted (Daily maximum) limitations for TSS at Outfall #007 as follows:

<u>Date</u>	<u>Limit</u>	<u>Reported Value</u>
March 2003	50 mg/L	72 mg/L
Sept. 2003	50 mg/L	124 mg/L
March 25, 2004	50 mg/L	83 mg/L
June 2004	50 mg/L	138 mg/L

10. Respondent's failure to meet these permit limitations is a violation of 40 C.F.R. § 133.102 and the terms and conditions of the NPDES permit for the Lehigh Cement Company and as such, is a violation of Sections 301(a) and 402 of the CWA, 33 U.S.C. § 1311(a) and § 1342, and implementing regulations.

#### Count II

#### Failure to Perform and Document Storm Water Structural Control Site Inspections.

11. Section III (A) of Respondent's NPDES permit also contains the following storm water pollution prevention plan requirements:

- a. Qualified personnel shall conduct at least monthly inspections to assess the effectiveness of the storm water pollution prevention plan. Such inspections shall be documented and this documentation shall be retained as part of the pollution prevention plan. Changes based on the results of these inspections shall be made in a timely manner.  
All areas exposed to precipitation shall be visually inspected for evidence of, or the potential for, pollutants entering the drainage system. Measures to reduce pollutant loading shall be evaluated to determine whether they are adequate and properly implemented or whether additional control measures are needed. Structural storm water management measures (diking, berming, curbing, sediment and erosion control measures, stabilization controls, etc.) shall be observed to ensure that they are operating correctly. A visual inspection of equipment needed to implement the plan, such as spill response equipment, shall be made.

12. During the Inspection, the EPA noted the following practices:

- a. Storm water Outfalls 005 and 006 had a thick layer of settled solids in the channels/catch basins; and
- b. Sixteen inch storm lines were half full of solids, causing water to pool within the plant and improperly drain.

13. According to documentation provided by the Facility pursuant to a Request for Information under Section 308(a) of the CWA, the Facility has been visually inspecting the effluent from the Storm Water Outfalls pursuant to Section VI of the Facility's permit. The Facility, however, has failed to inspect and document on a monthly basis the Facility's storm water structural controls such as berming, diking, or other sediment and erosion control measures pursuant to Section III (A) of the Facility's permit.

14. Respondent's failure to inspect the storm water structural controls and document these inspections is in violation of the terms and conditions of the NPDES permit for the Lehigh Cement Company and as such, is a violation of Sections 301(a) and 402 of the CWA, 33 U.S.C. § 1311(a) and § 1342, and the EPA's implementing regulations.

### **III. Order for Compliance**

Based on the foregoing Findings of Violation and pursuant to the authority of Sections 308(a) and 309(a) of the Act, 33 U.S.C. § 1319(a) and § 1318(a), Respondent is hereby ORDERED AS FOLLOWS:

1. In accordance with the Facility's NPDES permit, Lehigh must inspect the storm water structural controls on a monthly basis and maintain adequate documentation of these inspections. The facility must submit these inspection reports to the EPA for the next 12 months on a quarterly basis with the first quarter beginning in October 2004. Reports should be submitted to EPA within the first fifteen (15) days of the quarter. The first inspection report is due January 15, 2004.

2. The Facility must identify the cause of the TSS violations within 60 days of receipt of this Order and submit to the EPA in writing a plan for reducing the high levels of TSS in the effluent within 90 days of receipt of this Order.

- a. If the EPA approves of the plan, then the plan shall be implemented according to the time frames in the approved plan.
- b. If the EPA approves of the plan with comments, the Facility shall incorporate the comments into the plan and implement the plan according to the time frames in the approved plan.
- c. If the EPA disapproves the plan, the Facility shall address the comments and resubmit the plan for approval within thirty (30) days of receipt of disapproval.
- d. Upon re-submission, the EPA, in their sole discretion, may either approve the plan, or if the EPA determines that the plan does not adequately address the comments, the EPA may unilaterally modify the plan, and will provide Respondent with a copy of the plan as modified. If, upon re-submission, the plan or portion thereof, is modified by EPA, Respondent shall be deemed to have failed to submit the plan timely and adequately and therefore in violation of this Order.

3. Upon receipt of the EPA approval of the plan submitted under Paragraph 2 above, and modified and resubmitted (if required) under Paragraph 2 above, the approved plan shall be

incorporated into and become enforceable under this Order. Respondent shall implement the provisions of the plan, as approved.

4. The Respondent shall provide the EPA and IDNR with a report of progress under the plan within thirty (30) days after receipt of notice of approval of the plan, and every thirty (30) days thereafter, until the Facility has completed all activities required under the plan.

5. Upon receipt of this Order until one year after Lehigh has finished activities pursuant to paragraph 2 above, the Respondent must provide to the EPA on a quarterly basis laboratory records and Discharge Monitoring Reports (DMRs) demonstrating that the City has resolved the TSS violations noted above in Count I.

6. Respondent shall send all responses required by this Order to be submitted to EPA to:

Berla Johnson  
Environmental Engineer  
Water, Wetlands and Pesticides Division  
U.S. Environmental Protection Agency  
Region VII  
901 North 5<sup>th</sup> Street  
Kansas City, Kansas 66101

7. Respondent shall send copies of all deliverables required under this Order to:

Jeffrey B. Vansteenbure  
**Enforcement Chief**  
**Water Pollution Control Program**  
**Water Protection and Soil Conservation Division**  
Iowa Department of Natural Resources  
2300 15<sup>th</sup> Street Southwest  
P.O. Box 1443  
Mason City, Iowa 50402-1443

#### **IV. Failure to Comply**

8. The Respondent's compliance with this Order does not constitute compliance with the provisions of the Clean Water Act, 33 U.S.C. § 1251 *et seq.*, or with the Respondent's NPDES permits. The Respondent shall remain solely responsible for compliance with the terms of the Clean Water Act and this Order. Issuance of this Order shall not be deemed an election by EPA to forego any civil or criminal action to seek penalties, fines, or other appropriate relief under this Act, including criminal punishment as provided in Section 309 of the Act, 33 U.S.C. § 1319.

**V. Not a Permit**

9. This Order does not waive or modify or in any way relieve the Respondent of its obligations imposed by its permits, the Act or any Local, State, or Federal law.

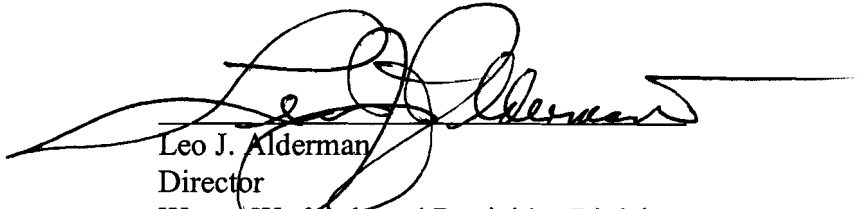
**VI. Effective Date**

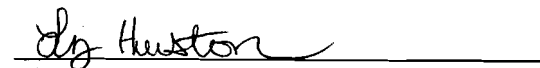
10. EPA has notified the State of Iowa of the above Findings and this Order.

11. This Order shall become effective upon the date of receipt by Respondent as documented by the certified mail, return receipt requested card signed by employee upon receipt.

12. This Order shall remain in effect until a written notice of termination is issued by an authorized representative of the U.S. EPA. Such notice shall not be given until all of the requirements of this Order have been met.

9/23/04  
Date

  
Leo J. Alderman  
Director  
Water, Wetlands and Pesticides Division  
U.S. Environmental Protection Agency  
Region VII  
901 North 5<sup>th</sup> Street  
Kansas City, Kansas 66101

  
Liz Huston  
Assistant Regional Counsel  
U.S. Environmental Protection Agency  
Region VII  
901 North 5<sup>th</sup> Street  
Kansas City, Kansas 66101

CERTIFICATE OF SERVICE

I certify that on the date indicated below, I hand delivered the original and one true and correct copy of this Finding of Violation and Order for Compliance to the Regional Hearing Clerk, United States Environmental Protection Agency, 901 North 5<sup>th</sup> Street, Kansas City, Kansas 66101.

I further certify that on the date noted below I sent by certified mail, return receipt requested, a true and correct copy of the signed original Finding of Violation and Order for Compliance and a copy of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation or Suspension of Permits, 40 C.F.R. Part 22 to:

Jane B. McAllister  
Ahlers & Cooney, P.C.  
100 Court Avenue Suite 600  
Des Moines, Iowa 50309-2231

CT Corporation  
Registered Agent  
Lehigh Cement Company  
2222 Grand Ave  
Des Moines, IA 50312

Mr. Jeffrey B. Vansteenburgh  
Enforcement Section  
Water Pollution Control Program  
Iowa Department of Natural Resources  
2300 15<sup>th</sup> Street Southwest  
P.O.Box 1443  
Mason City, Iowa 50402-1443

9/29/14  
Date

Debby White