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REGIONAL HEARING CLERK
EPA REGION VI

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 6
1201 Elm Street, Suite 500
Dallas, Texas 75270**

In the Matter of

Lehigh White Cement Company, LLC,

Respondent.

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Docket No. TSCA-06-2023-6158

CONSENT AGREEMENT AND FINAL ORDER

Preliminary Statement

The U.S. Environmental Protection Agency, Region 6 (“EPA” or “Complainant”), and Lehigh White Cement Company, LLC (“Respondent”) have agreed to a settlement of this action before the filing of a complaint. This action is simultaneously commenced and concluded pursuant to 22.13(b) and 22.18(b)(2) of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits, 40 C.F.R. §§ 22.13(b) and 22.18(b)(2).

Jurisdiction

1. This proceeding is an administrative action for the assessment of civil penalties initiated pursuant to Section 16(a) of the Toxic Substances Control Act (“TSCA”), 15 U.S.C. § 2615(a).

2. This Consent Agreement and Final Order serves as notice that the EPA has reason to believe that Respondent has violated Section 8(a) of TSCA, 15 U.S.C. § 2607(a), by failing to comply with the regulatory requirements of 40 C.F.R. Part 711, TSCA Chemical Data Reporting Requirements, as promulgated thereunder.

Parties

3. Complainant is the Director of Enforcement and Compliance Assurance Division of the EPA, Region 6, as duly delegated by the Administrator of the EPA and the Regional Administrator, EPA, Region 6.

4. Respondent is Lehigh White Cement Company, LLC.

5. Respondent is limited liability company organized under the laws of the State of Delaware and doing business in the State of Texas.

Statutory and Regulatory Background

6. Section 8(a) of TSCA, 15 U.S.C. § 2607(a), requires that each person (other than a small manufacturer or processor) who manufactures or processes or proposes to manufacture or process a chemical substance—with certain exceptions not applicable here—shall maintain such records, and shall submit to the Administrator such reports, as the Administrator may reasonably require.

7. Under the authority of section 8(a) of TSCA, 15 U.S.C. § 2607(a), EPA promulgated the Chemical Data Reporting Rule ("CDR"), 40 C.F.R. Part 711.

8. Each of the TSCA Chemical Data Reporting ("CDR") requirements codified in 40 C.F.R. Part 711 constitutes a rule promulgated under section 8(a) of TSCA, 15 U.S.C. § 2607(a).

9. According to 40 C.F.R. § 711.5, information must be reported for any chemical substance that is in the Master Inventory File at the beginning of a submission period described in section 711.20, unless the chemical substance is specifically excluded by section 711.6.

10. The regulation at 40 C.F.R. § 711.8 states that a person is subject to recurring reporting, except as provided in sections 711.9 and 711.10, who manufactured (including imported) for commercial purposes 25,000 pounds or more of a chemical substance described in section 711.5 at any single site owned or controlled by that person during any calendar year.

11. Per 40 C.F.R. § 711.20, information on the chemical substance must be submitted during the applicable Chemical Data Reporting submission period.

12. Section 15(3)(B) of TSCA, 15 U.S.C. § 2614(3)(B), provides that it is unlawful for any person to fail or refuse to submit any reports, notices or information required by TSCA, 15 U.S.C. § 2601 et seq., or a rule promulgated thereunder.

13. Section 16 of TSCA, 15 U.S.C. § 2615, authorizes the assessment of a civil penalty for violations of TSCA Section 15, 15 U.S.C. § 2614, in an amount not to exceed \$37,500 for each day of the violation.

14. For 2020 Chemical Data Reporting, the original submission period was from (and including) June 1, 2020, to September 30, 2020 (hereinafter, the "2020 submission period") and ultimately was extended to January 29, 2021, pursuant to 85 Fed. Reg. 75,235 (November 25, 2020).

Definitions

15. The regulation at 40 C.F.R. § 704.3 defines "person" as any individual, firm, company, corporation, joint venture, partnership, sole proprietorship, association, or any other business entity; any State or political subdivision thereof; any municipality; any interstate body; and any department, agency, or instrumentality of the Federal Government.

16. The regulation at 40 C.F.R. § 711.3 defines “site” to mean a contiguous property unit. Property divided only by a public right-of-way shall be considered one site. More than one manufacturing plant may be located on a single site.

17. The regulation at 40 C.F.R. § 711.3 defines “manufacture” as to manufacture, produce, or import, for commercial purposes. Manufacture includes the extraction, for commercial purposes, of a component chemical substance from a previously existing chemical substance or complex combination of chemical substances. A chemical substance is co-manufactured by the person who physically performs the manufacturing and the person contracting for such production when that chemical substance, manufactured other than by import, is: (1) Produced exclusively for another person who contracts for such production, and (2) That other person dictates the specific chemical identity of the chemical substance and controls the total amount produced and the basic technology for the manufacturing process.

18. Section 3(2)(A) of TSCA, 15 U.S.C. § 2602(2)(A) defines “chemical substance” to mean any organic or inorganic substance of a particular molecular identity, including (i) any combination of such substances occurring in whole or in part as a result of a chemical reaction or occurring in nature and (ii) any element or uncombined radical. Section 3(2)(B) of TSCA, 15 U.S.C. § 2602(2) (B) states, “Such term does not include--(i) any mixture.”

19. Section 3(10) of TSCA, 15 U.S.C. § 2602(10) defines “mixture” as any combination of two or more chemical substances if the combination does not occur in nature and is not, in whole or in part, the result of a chemical reaction; except that such term does include any combination which occurs, in whole or in part, as a result of a chemical reaction if none of the chemical

substances comprising the combination is a new chemical substance and if the combination could have been manufactured for commercial purposes without a chemical reaction at the time the chemical substances comprising the combination were combined.

EPA Findings of Facts and Conclusions of Law

20. For the period including calendar years 2016 through 2020, Respondent owned and controlled a site (and continues to do so) located at 100 South Wickson Road, Woodway, Texas, 76712. The Lehigh Waco plant is in the North American Industrial Classification System code 327310 (cement manufacturing).

21. For the period including calendar years 2016 through 2020, Respondent was (and continues to be) a "person" as defined by 40 C.F.R. § 704.3.

22. For the period including calendar years 2016 through 2020, Respondent has been (and continues to be) a "manufacturer" as defined by 40 C.F.R. § 711.3.

23. In calendar years 2016, 2017, 2018, and 2019, Respondent manufactured greater than 25,000 pounds of four chemical substances at the Site, with the following Chemical Abstract Services Registry Numbers (CASRN):

- (a) Calcium oxide silicate ($\text{Ca}_3\text{O}(\text{SiO}_4)$), CASRN 12168-85-3;
- (b) Silicic acid (H_4SiO_4), calcium salt (1:2), CASRN 10034-77-2;
- (c) Aluminum calcium oxide ($\text{Al}_2\text{Ca}_3\text{O}_6$), CASRN 12042-78-3; and
- (d) Aluminum calcium iron oxide ($\text{AlCa}_2\text{FeO}_5$), CASRN 12068-35-8.

24. The chemicals manufactured as described in Paragraph 23 were manufactured for a commercial use as defined by 40 C.F.R. § 711.3.

25. The chemical substances described in Paragraph 23 were included in the Master Inventory File prior to the submission period for the 2020 CDR and were therefore reportable chemical substances as defined in 40 C.F.R. § 711.5

26. For the 2020 reporting period, because Respondent was a person who must report under 40 C.F.R. § 711.8 and because it manufactured each of the four reportable chemical substances described in paragraph at the Site for a commercial purpose in production volumes exceeding the thresholds for reporting in 2016, 2017, 2018, and 2019 (the reporting years for the 2020 CDR), Respondent was required to submit four separate reports to the EPA (one per chemical per site) by 40 C.F.R. § 711.15.

27. On or about July 26, 2021, a representative of EPA Region 6 contacted Respondent to discuss compliance with TSCA.

28. On February 17 and March 2, 2022, representatives of EPA Region 6 met with Respondent to describe potential violations of the 2020 CDR requirements, to provide Respondent an opportunity to confer with EPA about those potential violations, and to facilitate resolution through settlement.

EPA Alleged Violations

29. The facts stated in the EPA Findings of Facts and Conclusions of Law above are herein incorporated.

30. Complainant hereby states and alleged that Respondent has violated TSCA, and federal regulations promulgated thereunder as follows:

Count 1: Calcium oxide silicate (Ca3O(SiO4))

31. During calendar years 2016, 2017, 2018, and 2019, Respondent manufactured Calcium oxide silicate ($\text{Ca}_3\text{O}(\text{SiO}_4)$), identified in Paragraph 23, in excess of the applicable threshold quantities for reporting for the 2020 CDR.

32. Respondent failed to report to EPA for Calcium oxide silicate ($\text{Ca}_3\text{O}(\text{SiO}_4)$) during the 2020 submission period.

33. Respondent violated section 15(3)(B) of TSCA, 15 U.S.C. § 2614(3)(B), by failing to submit this report required by a rule promulgated under TSCA.

Count 2: Silicic acid (H_4SiO_4), calcium salt (1:2)

34. During calendar year 2016, 2017, 2018, and 2019, Respondent manufactured Silicic acid (H_4SiO_4), calcium salt (1:2), identified in Paragraph 23, in excess of the applicable threshold quantity for reporting for the 2020 CDR.

35. Respondent failed to report to EPA for Silicic acid (H_4SiO_4), calcium salt (1:2) during the 2020 submission period.

36. Respondent violated section 15(3)(B) of TSCA, 15 U.S.C. § 2614(3)(B), by failing to submit this report required by a rule promulgated under TSCA.

Count 3: Aluminum calcium oxide ($\text{Al}_2\text{Ca}_3\text{O}_6$)

37. During calendar years 2016, 2017, 2018, and 2019, Respondent manufactured Aluminum calcium oxide ($\text{Al}_2\text{Ca}_3\text{O}_6$), identified in Paragraph 23, in excess of the applicable threshold quantity for reporting for the 2020 CDR.

38. Respondent failed to report to EPA for Aluminum calcium oxide ($\text{Al}_2\text{Ca}_3\text{O}_6$) during the 2020 submission period.

39. Respondent violated section 15(3)(B) of TSCA, 15 U.S.C. § 2614(3)(B), by failing to submit this report required by a rule promulgated under TSCA.

Count 4: Aluminum calcium iron oxide (AlCa2FeO5)

40. During calendar years 2016, 2017, 2018, and 2019, Respondent manufactured Aluminum calcium iron oxide (AlCa2FeO5), identified in Paragraph 23, in excess of the applicable threshold quantity for reporting for the 2020 CDR.

41. Respondent failed to report to EPA for Aluminum calcium iron oxide (AlCa2FeO5) during the 2020 submission period.

42. Respondent violated section 15(3)(B) of TSCA, 15 U.S.C. § 2614(3)(B), by failing to submit this report required by a rule promulgated under TSCA.

CONSENT AGREEMENT

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

Respondent:

- a. admits the jurisdictional allegations set forth herein;
- b. neither admits nor denies the factual and other legal allegations stated herein;
- c. consents to the assessment of a civil penalty, as stated herein;
- d. consents to any conditions specified herein;
- e. waives any right to contest the allegations set forth herein; and
- f. waives its rights to appeal the Final Order accompanying this Consent Agreement.

44. Respondent consents to the issuance of this Consent Agreement and Final Order and consents for the purposes of settlement to the payment of the civil penalty specified herein.

45. Respondent and EPA agree to conciliate this matter without the necessity of a formal hearing and to bear their respective costs and attorneys' fees.

Penalty Payment

46. For the reasons set forth above, Respondent has agreed to pay civil penalty which has been determined in accordance with section 16(a)(1) of TSCA, 15 U.S.C. § 2615(a)(1).¹ Upon consideration of the entire record herein, including the Alleged Facts and Violations of Law, which are hereby adopted and made a part hereof, and upon consideration of the nature, circumstances, extent and gravity of the alleged violations, and with respect to Respondent's ability to pay, history of prior TSCA violations, the degree of culpability, economic benefit or savings (if any) resulting from the violations, and other factors as justice may require, it is **ORDERED** that Respondent shall be assessed a civil penalty of **Forty Thousand Dollars and no cents (\$40,000.00)**, as set forth below.

47. Respondent shall pay the penalty within thirty (30) days of receiving notice of the effective date of the Final Order. Such payment shall identify Respondent by name and docket

¹ The statutory maximum penalty level under section 16(a)(1) of TSCA, 42 U.S.C. § 2615(a)(1) has been adjusted over time as required by the Federal Civil Penalties Inflation Adjustment Act of 1990 (28 U.S.C. § 2461 note; Pub. L. 101-410), as amended by the Debt Collection Improvement Act of 1996, and most recently, by the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (28 U.S.C. § 2461 note; Pub. L. 114-74, Section 701). EPA implements these adjustments through rulemaking which are codified in 40 CFR Part 19. As adjusted by the Civil Monetary Penalty Inflation Adjustment, 87 Fed. Reg. 1676 (January 12, 2022), 40 C.F.R. § 19.4, the Administrator may assess a civil penalty of up to \$43,611 per violation per day of violation occurring after November 2, 2015, where penalties are assessed on or after January 12, 2022.

number 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>. **PLEASE**

NOTE: Docket number TSCA-06-2023-6158 shall be clearly typed on the check, or other method of payment, to ensure proper credit.

48. A copy of the check or other information confirming payment shall simultaneously be sent by electronic mail to the following:

Lorena Vaughn
Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 6
1201 Elm Street, Suite 500 (ORC)
Dallas, TX 75270-2102
vaughn.lorena@epa.gov; and

David Riley
Core TSCA Enforcement Coordinator
U.S. Environmental Protection Agency, Region 6
Toxic Enforcement Section (ECDST)
1201 Elm Street, Suite 500
Dallas, TX 75270-2102
riley.david@epa.gov

49. Respondent understands that its failure to timely pay any portion of the civil penalty may result in the commencement of a civil action in Federal District Court to recover the full remaining balance, along with penalties and accumulated interest. In such case, interest shall begin

to accrue on a civil or stipulated penalty from the date of delinquency until such civil or stipulated penalty and any accrued interest are paid in full. 31 C.F.R. § 901.9(b)(1). Interest will be assessed at a rate of the United States Treasury Tax and loan rates in accordance with 31 U.S.C. § 3717.

Additionally, a charge will be assessed to cover the costs of debt collection including processing and handling costs, and a non-payment penalty charge of six percent (6%) per year compounded annually will be assessed on any portion of the debt which remains delinquent more than ninety (90) days after payment is due. 31 U.S.C. § 3717(e)(2).

Effect of Settlement and Reservation of Rights

50. Full payment of the penalty proposed in this Consent Agreement shall only resolve Respondent's liability for federal civil penalties for the violations alleged herein. Complainant reserves the right to take any enforcement action with respect to any other violations of TSCA or any other applicable law.

51. The effect of settlement described in the immediately preceding paragraph is conditioned upon the accuracy of Respondent's representations to the EPA, as memorialized in paragraph directly below.

52. Respondent hereby certifies that as of the date of the execution of this CAFO, Respondent has corrected the violations alleged in this CAFO and is now, to the best of its knowledge, in compliance with the applicable provisions of the 40 C.F.R. Part 711 TSCA Chemical Data Reporting requirements for the 2020 submission period.

53. Full payment of the penalty proposed in this Consent Agreement 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 law. This Consent Agreement and Final Order does not waive, extinguish, or otherwise affect Respondent's obligation to comply with all applicable provisions of TSCA and regulations promulgated thereunder.

54. Complainant reserves the right to enforce the terms and conditions of this Consent Agreement and Final Order.

General Provisions

55. By signing this Consent Agreement, the undersigned representative of Respondent certifies that it is fully authorized to execute and enter into the terms and conditions of this Consent Agreement and has the legal capacity to bind the party it represents to this Consent Agreement.

56. This Consent Agreement shall not dispose of the proceeding without a final order from the Regional Judicial Officer or Regional Administrator ratifying the terms of this Consent Agreement. This Consent Agreement and Final Order shall be effective upon the filing of the Final Order by the Regional Hearing Clerk for EPA, Region 6. Unless otherwise stated, all time periods stated herein shall be calculated in calendar days from such date.

57. The penalty specified herein shall represent civil penalties assessed by EPA and shall not be deductible for purposes of Federal, State, and local taxes.

58. This Consent Agreement and Final Order shall apply to and be binding upon Respondent and Respondent's agents, successors and/or assigns. Respondent shall ensure that all contractors, employees, consultants, firms, or other persons or entities acting for Respondent with respect to matters included herein comply with the terms of this Consent Agreement and Final Order.

59. The EPA and Respondent agree to the use of electronic signatures for this matter pursuant to 40 C.F.R. § 22.6. The EPA and Respondent further agree to electronic service of this Consent Agreement and Final Order by email to the following:

To EPA: *riley.david@epa.gov*

To Respondent: *jesus.olivares@lehighwhitecement.com, and
Todd.silliman@dentons.com*

RESPONDENT
LEHIGH WHITE CEMENT COMPANY, LLC

Date: 6/8/2023

By:



Signature

Jesus Olivares Trejo

Print Name

Plant Manager

Title

FOR THE COMPLAINANT:
U.S. ENVIRONMENTAL PROTECTION AGENCY

Date: June 9, 2023



Digitally signed by CHERYL
SEAGER
Date: 2023.06.09 11:58:32 -05'00'

Cheryl T. Seager
Director
Enforcement and
Compliance Assurance Division
U.S. EPA Region 6
Dallas, TX 75270-2102

FINAL ORDER

Pursuant to section 16(a) of TSCA, 15 U.S.C. § 2615(a), and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits, 40 C.F.R. Part 22, the foregoing Consent Agreement is hereby ratified. This Final Order shall not in any case affect the right of EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law. This Final Order shall resolve only those causes of action alleged in the Consent Agreement. Nothing in this Final Order shall be construed to waive, extinguish, or otherwise affect Respondent's (or its officers, agents, servants, employees, successors, or assigns) obligation to comply with all applicable federal, state, and local statutes and regulations, including the regulations that were the subject of this action. Respondent is ordered to comply with the terms of settlement and the civil penalty payment instructions as set forth in the Consent Agreement. In accordance with 40 C.F.R. § 22.31(b), this Final Order shall become effective upon filing with the Regional Hearing Clerk.

THOMAS
RUCKI

Digitally signed by THOMAS RUCKI
DN: cn=US, ou=U.S. Government, ou=Environmental
Protection Agency, cn=THOMAS RUCKI,
0 9.2342.19200300.100.1.1+68001003655804
Date: 2023.06.09.14:51:36 -0400

Thomas Rucki
Regional Judicial Officer

CERTIFICATE OF SERVICE

I certify that that a true and correct copy of the foregoing Consent Agreement and Final Order was delivered to the Regional Hearing Clerk, U.S. EPA, Region 6, 1201 Elm Street, Dallas, Texas 75270-2102, and that a true and correct copy was sent this day in the following manner to the addressees:

Copy via Email to Complainant:

*riley.david@epa.gov, and
mcdonald.ashley@epa.gov*

Copy via Email to Respondent:

*Jesus.Olivares@lehighwhitecement.com,
John.Murphy@lehighwhitecement.com, and
Todd.silliman@dentons.com*

ASHLEY
MCDONALD
Digitally signed by
ASHLEY MCDONALD
Date: 2023.06.11
19:39:34 -05'00'

Ashley S. McDonald
Assistant Regional Counsel
U.S. EPA Region 6
Dallas, TX 75270-2102