



except in compliance with a permit issued pursuant to the National Pollutant Discharge Elimination System (“NPDES”) program under Section 402 of the Act, 33 U.S.C. § 1342.

5. Section 402 of the Act, 33 U.S.C. § 1342(a), provides that the Administrator of EPA, or a state upon approval by EPA, may issue permits under the NPDES program for the discharge of pollutants from point sources to waters of the United States. The discharges are subject to specific terms and conditions as prescribed in the permit.
6. Pursuant to Section 402(b) of the Act, 33 U.S.C. § 1342(b), EPA authorized the Maryland Department of the Environment (“MDE”) to issue NPDES permits in the State of Maryland.
7. Section 402(p) of the Act, 33 U.S.C. § 1342(p), and 40 C.F.R. §§ 122.2 and 122.26 provide that, with some exceptions not relevant here, storm water discharges associated with industrial activity are subject to NPDES permitting requirements under Section 402(a) of the Act, 33 U.S.C. § 1342(a).
8. “Storm water” (or “stormwater”) is defined as “storm water runoff, snow melt runoff and surface runoff and drainage.” 40 C.F.R. § 122.26(b)(13).
9. An NPDES permit is required for discharges of storm water associated with industrial activity in accordance with Section 402(p) of the Act, 33 U.S.C. § 1342(p); 40 C.F.R. § 122.26(a), (c); and 40 C.F.R. § 122.21.
10. Pursuant to 40 C.F.R. § 122.26(b)(14)(ii), facilities classified as, inter alia, Standard Industrial Classification Group 32, including Industry Group 324 (Cement), are engaged in “industrial activity” within the meaning of Section 402(p) of the Act and 40 C.F.R. § 122.
11. The term “storm water discharge associated with industrial activity” means, in pertinent part, “the discharge from any conveyance that is used for collecting and conveying storm water and that is directly related to manufacturing, processing or raw materials storage areas at an industrial plant.” 40 C.F.R. § 122.26(b)(14).
12. Dischargers of storm water associated with industrial activities to waters of the United States are required to apply for an individual NPDES permit or seek coverage under a promulgated NPDES general permit. 40 C.F.R. § 122.26(c).
13. On September 26, 2013, pursuant to the authority of the Act and the NPDES program approval, the State of Maryland issued Respondent a NPDES Permit No. MD0000779 Discharge Requirements for Stormwater Associated with Industrial Activities (“the Permit”). The effective date of the Permit was November 1, 2013 with an expiration date of October 31, 2018, which has been extended administratively by the State of Maryland.

14. NPDES Permit No. MD0000779 authorizes discharges of storm water associated with industrial activities to waters of the United States, when in accordance with the conditions and terms of the Permit.
15. Respondent is a “person” within the meaning of Section 502(5) of the Act, 33 U.S.C. § 1362(5) and 40 C.F.R. § 122.2.
16. At all times relevant herein, upon information and belief, Respondent was the owner and/or operator of a site known as the Union Bridge Plant located at 675 Quaker Hill Road, Union Bridge, Maryland (the “Facility”).
17. At the Facility, the Respondent has been at all relevant times engaged in industrial activity that discharges storm water from a point source to Sam’s Creek, which flows into Monocacy River.
18. Monocacy River and Sam’s Creek are “navigable waters” within the meaning of Section 502(7) of the Act, 33 U.S.C. § 1362(7).
19. The industrial activity performed by Respondent at the Facility discharges stormwater that is directly related to manufacturing, processing, or raw materials storage areas at Respondent’s industrial plant within the meaning of 40 C.F.R. § 122.26(b)(14).
20. On June 12, 2019, representatives of EPA Region III (“the Inspection Team” or “the inspectors”) conducted an inspection at the Facility (hereinafter, “the Inspection”) to assess compliance with the NPDES Permit No. MD0000779.
21. The Inspection Team prepared an inspection report from the Inspection dated August 1, 2019 (“the Inspection Report”), which included multiple observations regarding Respondent’s compliance with the requirements of the Permit. EPA contends that it sent a copy of the Inspection Report to the Respondent on August 1, 2019. Respondent contends that it did not receive a copy of the Inspection Report from EPA until October 16, 2020.
22. On December 21, 2020, Respondent sent to EPA a comprehensive response to the Inspection Report which included narratives that described the corrective actions taken by Respondent since the time of the Inspection.

**III. FINDINGS OF FACT AND CONCLUSIONS OF LAW**

**Count I**

**Failure to Implement Stormwater Pollution Prevention Plan Requirements**

23. The allegations of Paragraphs 1 through 22 of this AOC are incorporated herein by reference.
24. Part I.O.1 of the Permit requires Respondent to, in pertinent part, “have and implement a stormwater pollution prevention plan beginning on the effective date of this permit...the plan shall describe and ensure the implementation of practices which are to be used to reduce the pollutants in storm water discharges associated with industrial activity at the facility and to ensure compliance with the terms and conditions of this permit.”
25. Respondent’s stormwater pollution prevention plan (“SWPPP”) states that the wash water from truck washing activities is recycled internally and not discharged. SWPPP at page 7.
26. At the time of the Inspection on June 12, 2019, the inspectors observed wash water from truck washing activities discharging into a ditch in the northwestern area of the Facility which is connected to Pond 5. Pond 5 discharges storm water to Sam’s Creek, which flows into Monocacy River. By letter dated December 21, 2020, Lehigh reported to EPA that it had modified the truck wash sidewalls to address the conditions observed by the Inspectors and supplied pictures documenting the modification.
27. Based upon the information described in Paragraph 26, above, Respondent failed to implement the SWPPP in accordance with the Permit.
28. Respondent’s failure to implement the SWPPP in accordance with the Permit constitutes a violation of the Permit and Sections 301 and 402 of the Act, 33 U.S.C. §§ 1311 and 1342.

**Count II**

**Failure to Maintain Good Housekeeping Standards**

29. The allegations of Paragraphs 1 through 28 of this AOC are incorporated herein by reference.
30. Part I.O.2.a.iii. of the Permit requires Respondent’s SWPPP to include “materials management practices employed to minimize contact of these materials with storm water runoff; materials loading and access areas; the location and description of existing

structural and non-structural control measures to reduce pollutants in storm water runoff...”

31. Part I.O.2.b.ii. of the Permit requires Respondent’s SWPPP to include “good housekeeping that requires the maintenance of a clean, orderly facility.”
32. Respondent’s SWPPP states “Any spills are cleaned up immediately using brooms, shovels, absorbents or other appropriate equipment. Other raw materials and fuels such as sand and coal are unloaded into storage areas that are bermed to control rainwater runoff.” SWPPP at page 12.
33. Respondent’s SWPPP states also that all bottom ash shall be stored under covered tents. SWPPP Appendix J, Part IV.A. The loader operator is responsible for cleaning the area of bottom ash outside of the tents to prevent releases of bottom ash during storage operations. SWPPP Appendix J, Part IV.A. Inlet protection mat shall be maintained at the storm water grate inlet and concrete curb around bottom ash area. SWPPP Appendix J, Part IV.B.
34. During the June 12, 2019 inspection, EPA representatives observed flow of raw industrial materials mobilizing to a storm drain inlet.
35. During the June 12, 2019 inspection, EPA representatives observed bottom ash outside of the storage tent areas that had been left unclean after storage operations potentially exposing the bottom ash to storm water.
36. Based upon the information described in Paragraphs 34 and 35, above, Respondent failed to maintain good housing keeping measures to prevent the flow of raw industrial materials from entering stormwater inlets as required by the Permit and SWPPP.
37. Respondent’s failure to maintain good housing keeping measures to prevent the flow of raw industrial materials from entering stormwater inlets at the Facility constitutes a violation of the Permit and Sections 301 and 402 of the Act, 33 U.S.C. §§ 1311 and 1342.

#### IV. ORDER

AND NOW, Pursuant to Section 309(a) of the Act, 33 U.S.C. § 1319(a), Respondent is hereby ORDERED to do the following:

**Monthly Facility Inspection - Stormwater**

38. The Respondent shall conduct Monthly Facility Inspections related to all aspects of stormwater management at the facility. The Monthly Facility Inspections shall be conducted in accordance with Paragraph 39 below.
39. Beginning within 30 days from the effective date of this AOC (Monthly Facility Inspection Start Date), Respondent shall conduct, for a period of twenty-four (24) months commencing on the Monthly Facility Inspection Start Date, a Facility inspection that will review the effectiveness of Respondent's SWPPP. Respondent shall document the Monthly Facility Inspections using the inspection form attached to this AOC (Attachment - A). One or more members of the Facility's stormwater pollution prevention personnel shall conduct and document the Monthly Facility Inspections. The Monthly Facility Inspection form must either:
  - i. include a certification that the Respondent is in compliance with the Permit and the SWPPP; or
  - ii. record the storm water management deficiencies and the necessary follow up corrective actions that Respondent will take to return to compliance with the Permit and the SWPPP. Respondent shall track and document such corrective actions taken including appropriate modifications to the SWPPP, if necessary, in subsequent Monthly Facility Inspection forms.
40. Respondent shall maintain copies of completed stormwater Monthly Facility Inspection forms on-site for at least five years from the date of the Monthly Facility Inspection Start Date and present such documentation upon request by representatives of the MDE and/or EPA.

**NPDES Compliance Audit**

41. Respondent shall conduct, for a period of thirty-six (36) months, an annual stormwater NPDES Compliance Audit (the "NPDES Stormwater Audit") at the Facility, as described below.
  - i. The first audit will evaluate compliance during the calendar year of 2021 and must be completed not later than April 30, 2022. The subsequent audits will be completed no later than March 31<sup>st</sup> of the following years.
  - ii. The person(s) conducting the NPDES Audit shall be adequately trained in stormwater compliance, shall have appropriate corporate authority to require implementation of any measures necessary for compliance with the applicable

CWA requirements for stormwater discharges and shall have the appropriate corporate authority to take corrective actions regarding stormwater compliance at the Facility.

iii. The audit must review compliance with all the NPDES permit requirements listed in Attachment B.

iv. The findings of the audit must be documented in a report as shown in Attachment B.

v. Respondent shall submit a copy of the NPDES Audit to EPA within thirty (30) days after the completion date set forth in Paragraphs 41i-ii, above, including a certification that the monthly facility inspections were performed for the previous calendar year in accordance with Paragraphs 42-44, below.

42. For purposes of this AOC, any submissions and inspection reports made to MDE and/or EPA pursuant to Paragraphs 38 through 41 herein shall require certification by a responsible corporate officer, or a duly authorized representative in accordance with 40 C.F.R. § 122.22(b), as provided in Paragraph 43 below.

43. Any notice, submission, certification, data presentation, or other document submitted by Respondent to EPA pursuant to this AOC which discusses, describes, demonstrates, or supports any finding or makes any representation concerning Respondent's compliance or non-compliance with any requirements of this AOC shall be certified by a responsible corporate officer, or a duly authorized representative in accordance with 40 C.F.R. § 122.22(b), of the Respondent. A responsible corporate officer means: (1) a president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy- or decision-making functions for the corporation; or (2) the manager of one or more manufacturing, production, or operating facilities, provided, the manager is authorized to make management decisions which govern the operation of the regulated facility including having the explicit or implicit duty of making major capital investment recommendations, and initiating and directing other comprehensive measures to assure long term environmental compliance with environmental laws and regulations; the manager can ensure that the necessary systems are established or actions taken to gather complete and accurate information for permit application requirements; and where authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures. The aforesaid certification shall provide the following statement above the signature of the responsible corporate officer or duly authorized representative signing the certification on behalf of Respondent:

*I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that*

*qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fines and imprisonment for knowing violations.*

Signature: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

44. Any notice, submission, certification, data presentation, or other document submitted by Respondent to EPA pursuant to this AOC shall be sent via-email transmission to the attention of:

Chuck Schadel (3ED32)  
NPDES Section, Water Branch  
Enforcement and Compliance Assurance Division  
U.S. Environmental Protection Agency  
[Schadel.Chuck@epa.gov](mailto:Schadel.Chuck@epa.gov)

and

Sharon Talley  
Chief  
Enforcement Division, Compliance Program  
Water and Science Administration  
Maryland Department of the Environment  
1800 Washington Boulevard  
Baltimore, Maryland 21230  
[Talley.Sharon@mde.gov](mailto:Talley.Sharon@mde.gov)

and

Louis F. Ramalho (3RC40)  
Sr. Asst. Regional Counsel  
U.S. Environmental Protection Agency, Region III  
[Ramalho.Louis@epa.gov](mailto:Ramalho.Louis@epa.gov)

## **V. GENERAL PROVISIONS**

45. Issuance of this AOC is intended to address the violations described herein. EPA reserves the right to commence action against any person, including Respondent, in response to any condition which EPA determines may present an imminent and substantial endangerment to the public health, public welfare, or the environment. Further, EPA reserves any rights and remedies available to it under the CWA, 33 U.S.C. §§ 1251-1388, the regulations promulgated thereunder, and any other federal laws or regulations for which EPA has jurisdiction, to enforce the provisions of this Consent Order, following its effective date (as defined below).
46. This AOC does not constitute a waiver or modification of the terms or conditions of the Respondent's Permit. Compliance with the terms and conditions of this Consent Order does not relieve Respondent of its obligations to comply with any applicable federal, state, or local law, regulation or permit.
47. By signing this AOC, Respondent neither admits nor denies the specific factual allegations set forth in this AOC.
48. Respondent agrees not to contest the jurisdiction of EPA with respect to the execution or enforcement of this Order.
49. Except with respect to any other civil action, administrative proceeding, claim or enforcement proceeding relating to the same alleged facts or alleged violations of law, whether pursued by any other agency, person or entity, Respondent waives any and all remedies, claims for relief and otherwise available rights to judicial or administrative review that Respondent may have with respect to any issue of fact or law set forth in this AOC, including any right of judicial review pursuant to Chapter 7 of the Administrative Procedure Act, 5 U.S.C. §§ 701-706.
50. EPA reserves all existing inspection authority otherwise available to EPA pursuant to Section 308 of the CWA, 33 U.S.C. § 1318, or pursuant to any other statute or law.
51. The undersigned representative of Respondent certifies that he or she is fully authorized by the Respondent to enter into the terms and conditions of this AOC and to execute and legally bind the party.
52. The provisions of this AOC shall apply to and be binding upon the Respondent and its officers, directors, employees, contractors, agents, trustees, successors and assigns of Respondent.
53. Respondent certifies that any information or representation it has supplied or made to EPA concerning this matter was, at the time of submission true, accurate, and complete and that

there has been no material change regarding the truthfulness, accuracy or completeness of such information or representation. EPA shall have the right to institute further actions to recover appropriate relief if EPA obtains evidence that any information provided and/or representations made by Respondent to the EPA regarding matters relevant to this AOC are false or, in any material respect, inaccurate. This right shall be in addition to all other rights and causes of action that EPA may have, civil or criminal, under law or equity in such event. Respondent and its officers, directors and agents are aware that the submission of false or misleading information to the United States government may subject a person to separate civil and/or criminal liability.

54. Respondent may assert a business confidentiality claim covering part or all of the information which this AOC requires it to submit to EPA, but only to the extent and only in the manner described in Part 2 Subpart B of Title 40 of the C.F.R. The EPA will disclose information submitted under a confidentiality claim only as provided in Part 2 Subpart B of Title 40 of the C.F.R. If Respondent does not assert a confidentiality claim, EPA may make the submitted information available to the public without further notice to Respondent.
55. This AOC shall terminate upon EPA's determination that Respondent has completed the requirements set forth in Paragraphs 38 through 41, above. After Respondent has completed the requirements set forth in Paragraphs 38 through 41, Respondent shall send to EPA a written request for termination. If EPA agrees that Respondent has complied with the AOC, EPA shall provide Respondent with written notification of termination. EPA reserves the right to unilaterally terminate this AOC in its unreviewable discretion.

#### **VI. EFFECTIVE DATE**

This AOC is effective after receipt by Respondent of a fully executed document.

SO ORDERED:

Date: \_\_\_\_\_

\_\_\_\_\_  
Karen Melvin  
Director, Enforcement  
& Compliance Assurance Division  
U.S. EPA Region III

In Re: Administrative Order on Consent  
Lehigh Cement Company LLC  
Docket No. CWA-03-2021-00DN

AGREED TO:

Lehigh Cement Company LLC.

Date: 4/21/2021

  
\_\_\_\_\_  
Quentin A. McGahey  
Vice President