



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

SEP 08 2006

REPLY TO THE ATTENTION OF:

(AE-17J)

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Deborah E. Jennings
Piper Rudnick
1200 Nineteenth Street, N.W.
Washington, D.C. 20036

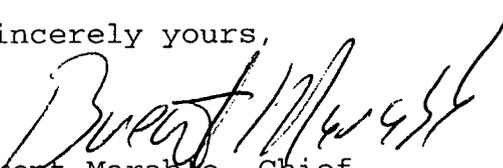
Dear Ms. Jennings:

Enclosed is a file stamped Consent Agreement and Final Order (CAFO) which resolves Lehigh Cement Company (Lehigh), CAA Docket No. CAA-05-2006-0029. As indicated by the filing stamp on its first page, we filed the CAFO with the Regional Hearing Clerk on SEP 11 2006.

Pursuant to paragraph 40 of the CAFO, Lehigh must pay the civil penalty within 30 days of SEP 11 2006. Your check must display the case docket number, CAA-05-2006-0029, and the billing document number, 2750603A009.

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

Sincerely yours,


Brent Marable, Chief
Air Enforcement and Compliance Assurance Section (IL/IN)

Enclosure

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

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IN THE MATTER OF:)	Docket No. CAA-05-2006-0029
)	
Lehigh Cement Company)	Proceeding to Assess an
121 North First Street)	Administrative Penalty
Mitchell, Indiana 47446,)	under Section 113(d) of
)	Clean Air Act,
)	42 U.S.C. § 7413(d)
Respondent.)	

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) 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 (2004).

2. Complainant is the Director of the Air and Radiation Division, United States Environmental Protection Agency, Region 5 (U.S. EPA).

3. Respondent is Lehigh Cement Company (Lehigh), 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) (2004).

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

8. Lehigh consents to the assessment of the civil penalty specified in this CAFO.

9. Lehigh 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

10. Under Section 112 of the Act, the Administrator of U.S. EPA promulgated the National Emission Standards for Hazardous

Air Pollutants (NESHAP) for Portland Cement Manufacturing Industry at 40 C.F.R. §§ 63.1340 through 63.1359.

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

12. 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).

13. The NESHAP, at 40 C.F.R. § 63.1343(b)(2), requires that each affected kiln at a major source shall not exhibit opacity greater than 20 percent.

14. The NESHAP, at 40 C.F.R. § 63.1344, requires that the owner or operator of a kiln subject to a Dioxin/Furan (D/F) emissions limitation under 40 C.F.R. § 63.1343 must operate the kiln such that the temperature of the gas at the inlet to the kiln particulate matter (PM) control device does not exceed the applicable temperature limit established during the D/F compliance test.

15. 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.

16. 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.

17. 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.

18. 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).

19. 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).

20. The Administrator may assess a civil penalty of up to \$27,500 per day of violation up to a total of \$220,000 for

NESHAP violations that occurred from January 31, 1997 through March 15, 2004, and 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 (2004).

21. Section 113(d)(1) limits the Administrator's authority to matters where the first alleged date of violation occurred no more than 12 months prior to initiation of the administrative action, except where the Administrator and Attorney General of the United States jointly determine that a matter involving a longer period of violation is appropriate for an administrative penalty action.

22. The Administrator and the Attorney General of the United States, each through their respective delegates, have determined jointly that an administrative penalty action is appropriate for the period of violations alleged in this CAFO.

Factual Allegations

23. Lehigh owns and operates a Portland cement plant at 121 North First Street, Mitchell, Indiana.

24. The Mitchell, Indiana facility currently operates three one-stage preheater cement kilns (Kiln #1, Kiln #2, and Kiln #3).

25. 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.

26. Lehigh is required by 40 C.F.R. § 63.10(e)(3) to submit an excess emissions and continuous monitoring system performance report and/or a summary report to the Administrator on a semi-annual basis.

27. In December 2003, Lehigh conducted compliance testing at Kiln #1 and Kiln #2 to demonstrate compliance with the D/F limitations of 40 C.F.R. § 63.1343(b)(3).

28. The average PM inlet temperature for Kiln #1 established during the December 16-17, 2003 D/F testing was 371 degrees Fahrenheit.

29. The average PM inlet temperature for Kiln #2 established during the December 11, 2003 D/F testing was 369 degrees Fahrenheit.

30. Lehigh is required by 40 C.F.R. § 63.1354(b)(9)(i) to submit a summary report semiannually which contains all exceedences of maximum control device inlet gas temperature limits.

31. Lehigh's Kiln #1 and Kiln #2 are subject to the twenty percent opacity limitations of 40 C.F.R. § 63.1343(b)(2).

32. The Indiana Department of Environmental Management (IDEM) issued to Lehigh a Title V operating permit, which became effective on December 30, 2002.

33. Condition D.4.4(b) of Lehigh's Title V operating permit states that visible emissions from Kiln #1 and Kiln #2, and Kiln #3 shall be limited to twenty percent opacity.

34. Condition D.4.4.(d) of Lehigh's Title V operating permit states that Kiln #1, Kiln #2, and Kiln #3 shall be operated such that the three hour rolling average temperature of the gas at the inlet to the kiln's particulate matter control device does not exceed the average of the run average temperatures determined during the required D/F performance tests.

Violations

35. Between January 1, 2005 and December 31, 2005, Lehigh exceeded the 3-hour rolling average D/F limits at cement Kiln #1 by not maintaining the optimum PM inlet exhaust gas temperature necessary to control D/F emissions, during a minimum of nine three-hour average periods. These temperature exceedences constitute violations of Section 112(d) of the Act, 42 U.S.C. § 7412(d), and its implementing regulation at 40 C.F.R. § 63.1344(a), and Section 502 of the Act, 42 U.S.C. § 7661a(a), and its implementing regulations at 40 C.F.R. § 70.7(b), and Condition D.4.4(d) of Lehigh's Title V operating permit.

36. Between January 1, 2005 and December 31, 2005, Lehigh exceeded the 3-hour rolling average D/F limits at cement Kiln #2 by not maintaining the optimum PM inlet exhaust gas temperature necessary to control D/F emissions, during a minimum of 181 three-hour average periods. These temperature exceedences constitute violations of Section 112(d) of the Act, 42 U.S.C. § 7412(d), and its implementing regulation at 40 C.F.R. § 63.1344(a), and Section 502 of the Act, 42 U.S.C. § 7661a(a), and its implementing regulations at 40 C.F.R. § 70.7(b), and Condition D.4.4(d) of Lehigh's Title V operating permit.

37. Between April 1, 2005 and December 31, 2005, emissions from Lehigh's Kiln #1 exceeded the twenty percent opacity limitation for 887 six-minute average periods during the six month period. These exceedences constitute violations of Section 112(d) of the Act, 42 U.S.C. § 7412(d), and its implementing regulation at 40 C.F.R. § 63.1344(b)(2), and Section 502 of the Act, 42 U.S.C. § 7661a(a), and its implementing regulations at 40 C.F.R. § 70.7(b), and Condition D.4.4(b) of Lehigh's Title V operating permit.

38. Between April 1, 2005 and December 31, 2005, emissions from Lehigh's Kiln #2 exceeded the twenty percent opacity limitation for 818 six-minute average periods during the six month period. These exceedences constitute violations of

Section 112(d) of the Act, 42 U.S.C. § 7412(d), and its implementing regulation at 40 C.F.R. § 63.1344(b)(2), and Section 502 of the Act, 42 U.S.C. § 7661a(a), and its implementing regulations at 40 C.F.R. § 70.7(b), and Condition D.4.4(b) of Lehigh's Title V operating permit.

Civil Penalty

39. 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, and Lehigh's good faith cooperation, U.S. EPA has determined that an appropriate civil penalty to settle this action is \$84,378.

40. Lehigh must pay the \$84,378 civil penalty by cashier's or certified check payable to the "Treasurer, United States of America," within 30 days after the effective date of this CAFO.

41. Lehigh must send the check to:

U.S. Environmental Protection Agency
Region 5
P.O. Box 70753
Chicago, Illinois 60673

42. A transmittal letter, stating Respondent's name, complete address, the case docket number, and the billing document number must accompany the payment. Respondent must write the case docket number and the billing document number on the face of the check. Respondent must send copies of the check and transmittal letter to:

Attn: Regional Hearing Clerk, (E-19J)
U.S. Environmental Protection Agency, Region 5
77 West Jackson Blvd.
Chicago, Illinois 60604-3511

Attn: Compliance Tracker, (AE-17J)
Air Enforcement and Compliance Assurance Branch
Air and Radiation Division
U.S. Environmental Protection Agency, Region 5
77 West Jackson Blvd.
Chicago, Illinois 60604-3511

Sabrina Argentieri, (C-14J)
Office of Regional Counsel
U.S. Environmental Protection Agency, Region 5
77 West Jackson Blvd.
Chicago, Illinois 60604-3511

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

44. If Lehigh does not pay timely the civil penalty, 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.

45. Interest will accrue on any overdue amount from the date payment was due at a rate established under 31 U.S.C.

§ 3717. Lehigh will pay a \$15 handling charge each month that any portion of the penalty is more than 30 days past due.

Lehigh will 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.

Final Statement

46. This CAFO resolves only Lehigh's liability for federal civil penalties for the violations alleged in the Violations section of this CAFO.

47. This 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.

48. This CAFO does not affect Lehigh's responsibility to comply with the Act and other applicable federal, state and local laws, and regulations. Except as provided in paragraph 45 above, compliance with this CAFO will not be a defense to any actions subsequently commenced pursuant to federal laws and regulations administered by Complainant.

49. Lehigh certifies that it is complying fully with NESHAP at 40 C.F.R. subpart LLL and its Title V operating permit.

50. 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 Lehigh's "full compliance history" under Section 113(e) of the Act, 42 U.S.C. § 7413(e).

51. The terms of this CAFO bind Lehigh, and its successors, and assigns.

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

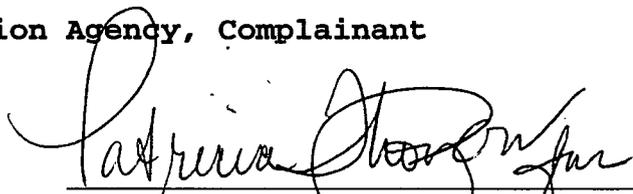
53. Each party agrees to bear its own costs and attorneys' fees in this action.

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

U.S. Environmental Protection Agency, Complainant

9/1/06

Date

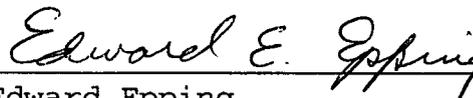


Cheryl Newton, Acting Director
Air and Radiation Division
U.S. Environmental Protection
Agency, Region 5 (A-18J)

Lehigh Cement Company, Respondent

8/18/06

Date



Edward Epping
Plant Manager, Mitchell Plant
Lehigh Cement Company

CONSENT AGREEMENT AND FINAL ORDER
Lehigh Cement Company
Docket No. CAA-05-2006-0029

Final Order

It is ordered as agreed to by the parties and as stated in the consent agreement, effective immediately upon filing of this CAFO with the Regional Hearing Clerk. This final order disposes of this proceeding pursuant to 40 C.F.R. § 22.18.

9-8-06

Date

Richard Kalor

Bharat Mathur
Acting Regional Administrator
U.S. Environmental Protection
Agency, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604-3511

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CONSENT AGEEMENT AGREEMENT AND FINAL ORDER
Lehigh Cement Company
Docket No. **CAA-05-2006-0029**

CERTIFICATE OF SERVICE

I, Betty Williams, certify that I hand delivered the original of the Consent Agreement and Final Order, docket number CAA-05-2006-0029 to the Regional Hearing Clerk, Region 5, United States Environmental Protection Agency, and that I mailed correct copies by first-class, postage prepaid, certified mail, return receipt requested, to Lehigh Cement Company's Counsel by placing them in the custody of the United States Postal Service addressed as follows:

Deborah E. Jennings
Piper Rudnick
1200 Nineteenth Street, N.W.
Washington, D.C. 20036

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

David McIver, Chief
Office of Enforcement Air Section
Indiana Department of Environmental Management
100 North Senate Avenue
Indianapolis, Indiana 46204-3535

on the 11th day of September, 2006.


Betty Williams, Secretary
AECAS (IL/IN)

CERTIFIED MAIL RECEIPT NUMBER: 7001 0320 0006 1565 0295

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SEP 11 2006