



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

REPLY TO THE ATTENTION OF

JUN 28 2005

(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 an Administrative Consent Order (AOC) and a filed stamped Consent Agreement and Final Order (CAFO) which resolves Lehigh Cement Company (Lehigh), CAA Docket No. CAA-05-2005 0029. As indicated by the filing stamp on its first page, we filed the CAFO with the Regional Hearing Clerk on 6/29/05.

Pursuant to paragraph 37 of the CAFO, Lehigh must pay the civil penalty within 30 days of 6/29/05. Your check must display the case docket number, CAA-05-2005-0029, and the billing document number, 050305032.

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

IN THE MATTER OF:)	Docket No. CAA-05- 2005 0029
)	
Lehigh Cement Company)	Proceeding to Assess an
121 North First Street)	Administrative Penalty
Mitchell, Indiana 47446,)	under Section 113(d) of the
)	Clean Air Act;
)	42 U.S.C. § 7413(d)
Respondent.)	

RECEIVED
 REGIONAL OFFICE
 JUN 29 P 2:59
 U.S. ENVIRONMENTAL PROTECTION AGENCY
 REGION 5

Consent Agreement and Final Order

Preliminary Statement

1. This is an administrative action instituted and settled under Section 113(d) of the Clean Air Act (the Act or CAA), 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.

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).

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 agrees to comply with its terms.

Jurisdiction and Waiver of Right to Hearing

7. Lehigh admits the jurisdictional allegations in this CAFO and 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 judicial or administrative hearing on any issue of fact or law set forth in this CAFO, and waives its right to appeal this final order under Section 113(d) of the Act, 42 U.S.C. § 7413(d).

Statutory and Regulatory Background

10. Section 502(a) of the CAA, 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

CAA, 42 U.S.C. § 7661 et. seq., no source subject to Title V may operate except in compliance with a Title V permit.

11. Section 113(a)(3) of the CAA, 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 CAA, or any rule promulgated, issued or approved under Title V of the CAA.

12. U.S. EPA granted final full approval to Indiana's Title V operating permit program on December 4, 2001. The program became effective on November 30, 2001. 66 Fed. Reg. 62969. Pursuant to 326 IAC 2-7-3, no Part 70 source may operate after the time that it is required to submit a timely and complete application except in compliance with a Part 70 permit issued under the rule.

13. The Administrator of U.S. EPA (the Administrator) may assess a civil penalty of up to \$27,500 per day of violation up to a total of \$220,000 for Title V permit violations that occurred from January 31, 1997 to 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, as amended by 69 Fed. Reg. 7121 (Feb. 13, 2004).

14. 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.

15. 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.

Findings of Fact and Conclusions of Law

16. Lehigh owns and operates a Portland cement plant at 121 North First Street, Mitchell, Indiana (the Facility).

17. Indiana Department of Environmental Management (IDEM) issued a Title V Permit (permit number T 093-5990-00002) to Lehigh for its Mitchell Facility on December 30, 2002.

18. The Mitchell Facility has two cement kilns identified as EU15 (Kiln #1) and EU16 (Kiln #2).

19. IDEM issued, on April 23, 2003, an Interim Significant Source Modification Permit (permit number I-093-15822-00002) for

the conversion of Lehigh's Kiln #1 and Kiln #2 from long dry kilns to one-stage preheater kilns.

20. IDEM issued, on July 11, 2003, a Title V Significant Permit Modification (permit number 093-16851-00002) ("Title V Permit") for the conversion of Kiln #1 and Kiln #2 from long dry kilns to one-stage preheater kilns.

21. In mid-2003, Lehigh commenced construction on Kiln #1 and Kiln #2 to convert these long dry kilns to one-stage preheater kilns.

Count 1

22. Paragraphs 16 through 21 of the CAFO are incorporated here by reference.

23. Pursuant to Condition D.4.1(e) of Lehigh's Title V Permit carbon monoxide ("CO") emissions from Kiln #1 shall not exceed 1.67 lb/ton clinker.

24. Per the requirements of Lehigh's Title V Permit Condition D.4.8, Lehigh conducted a stack test for a number of pollutants at Kiln #1 on December 16, 2003. Average CO emission rates were determined to be 2.84 pounds of CO per ton of clinker produced (89.6 lbs/hr) for Kiln #1.

25. Lehigh conducted a second round of stack tests at Kiln #1 on May 14, 2004. This test was performed as required by Condition C.18(b) of Lehigh's Title V Permit. The results of

the stack test indicated an average CO emission factor of 1.37 pounds of CO per ton of clinker from Kiln #1.

26. Lehigh's exceedance of the CO limit is a violation of Condition D.4.8 of its Title V Permit.

27. Lehigh's violation of Condition D.4.8 of its Title V Permit is a violation of Section 502(a) of the CAA, 42 U.S.C. § 7661a(a), 40 C.F.R. § 70.7(b), and 326 In. Admin. Code 2-7-3.

28. On April 7, 2004, U.S. EPA issued to Lehigh a Notice of Violation and Finding of Violation ("NOV/FOV") alleging that Lehigh violated its Title V Permit Condition D.4.1(e) by emitting more than 1.67 pounds of CO per ton of clinker produced at Kiln #1 from December 16, 2003 to May 14, 2004.

Count II

29. Paragraphs 16 through 21 of the CAFO are incorporated here by reference.

30. Pursuant to Condition D.4.1(e) of Lehigh's Title V Permit CO emissions from Kiln #2 shall not exceed 1.67 lb/ton clinker.

31. Per the requirements of Lehigh's Title V Permit Condition D.4.8, Lehigh conducted a stack test for a number of pollutants at Kiln #2 on December 12, 2003. Average CO emission rates were determined to be 2.92 pounds of CO per ton of clinker produced (90.1 lbs/hr) for Kiln #2.

32. Lehigh conducted a second round of stack tests at Kiln #2 on May 17, 2004. This test was performed as required by Condition C.18(b) of Lehigh's Title V Permit. The results of the stack test indicated an average CO emission factor of 1.31 pounds of CO per ton of clinker from Kiln #2.

33. Lehigh's exceedance of the CO limit is a violation of Condition D.4.8 of its Title V Permit.

34. Lehigh's violation of Condition D.4.8 of its Title V Permit is a violation of Section 502(a) of the CAA, 42 U.S.C. § 7661a(a), 40 C.F.R. § 70.7(b), and 326 In. Admin. Code 2-7-3.

35. On April 7, 2004, U.S. EPA issued to Lehigh a NOV/FOV alleging that Lehigh violated its Title V Permit Condition D.4.1.(e) by emitting more than 1.67 pounds of CO per ton of clinker produced at Kiln #2 from December 12, 2003 to May 17, 2004.

Civil Penalty

36. 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 \$40,000.

37. Lehigh must pay the \$40,000 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.

38. Lehigh must send the check to:

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

39. 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 60604-3590

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

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

41. 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.

42. 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

43. This CAFO settles U.S. EPA's claims for civil penalties for the violations alleged in the Findings of Fact and Conclusions of Law section of this CAFO.

44. This CAFO does not restrict U.S. EPA's authority to seek Lehigh's compliance with the Act and other applicable laws and regulations. Nor does this CAFO affect Lehigh's responsibility to comply with the Act and other applicable federal, state and local laws, and regulations.

45. 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).

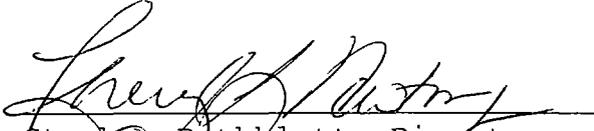
46. The terms of this CAFO bind Lehigh, and its successors, and assigns.

47. 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.

48. Each party agrees to bear its own costs and fees in this action.

U.S. Environmental Protection Agency, Complainant

6/27/05
Date


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

Lehigh, Respondent

6/17/05
Date


Edward Epping
PLANT Manager, Mitchell Plant
Lehigh Cement Company

~~CAA-05-~~ 2005 0029

CONSENT AGREEMENT AND FINAL ORDER

Lehigh Cement Company

Docket No.

~~CAA-05~~ 2005 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.

JUN 2 8 2005



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

In the Matter of Lehigh Cement Company, Mitchell, Indiana
Docket No: ~~CAA-05-~~ 2005 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-~~ 2005 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, Room 1001
Indianapolis, Indiana 46206-6015

on the 29th day of June, 2005.

Betty Williams
Betty Williams, Secretary
AECAS (IL/IN)

CERTIFIED MAIL RECEIPT NUMBER: 7001 0320 0006 0295 3109

RECEIVED
REGION 5 OFFICE
JUN 29 2 59 PM '05
US ENVIRONMENTAL
PROTECTION AGENCY
REGION 5

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5**

IN THE MATTER OF:)	
)	
Lehigh Cement Company)	Administrative Consent Order
121 North First Street)	
Mitchell, Indiana 47446)	EPA-5-05-113(a) IN-10
)	
Proceeding Under)	
Sections 113(a)(1)(A))	
of the Clean Air Act,)	
42 U.S.C. §§ 7413(a)(1)(A))	

Administrative Consent Order

1. The Director of the Air and Radiation Division, United States Environmental Protection Agency (U.S. EPA), Region 5, is issuing this Order to implement the terms of its agreement with Lehigh Cement Company (Lehigh), located at 121 North First Street, Mitchell, Indiana, under Section 113(a)(1)(A) of the Clean Air Act (the Act or CAA), 42 U.S.C. §§ 7413(a)(1)(A).

Statutory and Regulatory Background

1. Section 502(a) of the CAA, 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 CAA, no source subject to Title V may operate except in compliance with a Title V permit.

2. Section 113(a)(3) of the CAA, 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 CAA, or any rule promulgated, issued or approved under Title V of the CAA.

3. U.S. EPA granted final full approval to Indiana's Title V operating permit program on December 4, 2001. The program became effective on November 30, 2001. 66 Fed. Reg. 62969.

Facility Background

4. Indiana Department of Environmental Management (IDEM) issued a Title V Permit (permit number T 093-5990-00002) to Lehigh on December 30, 2002.
5. IDEM issued, on April 23, 2003, an Interim Significant Source Modification Permit (permit number I-093-15822-00002) for the conversion of Lehigh's Kiln #1 and Kiln #2 from long dry kilns to one-stage preheater kilns.
6. IDEM issued, on July 11, 2003, a Title V Significant Permit Modification (permit number 093-16851-00002) ("Title V Permit") for the conversion of Kiln #1 and Kiln #2 from long dry kilns to one-stage preheater kilns.
7. Pursuant to Condition D.4.1.(e) of Lehigh's Title V Permit "CO emissions from each Kiln #1 (EU15) and Kiln #2 (EU16) shall not exceed 1.67 lb/ton clinker."

Findings

8. Lehigh owns and operates a Portland cement plant at 121 North First Street, Mitchell, Indiana.
9. In mid-2003, Lehigh commenced construction on Kiln #1 and Kiln #2 to convert these long dry kilns to one-stage preheater kilns. The project was both a physical change and a change in the method of operation of the kilns.
10. Per the requirements of Lehigh's Title V Permit Condition D.4.8, Lehigh conducted stack tests for a number of pollutants at Kiln #2 on December 12, 2003, and at Kiln #1 on December 16, 2003. Average CO emission rates were determined to be 2.84 pounds of CO per ton of clinker produced (89.6 lbs/hr) for Kiln #1 and 2.92 pounds of CO per ton of clinker produced (90.1 lbs/hr) for Kiln #2.
11. Emissions from Lehigh's modified Kiln #1 and Kiln #2 are subject to federally enforceable emissions limitations as established in its Title V Permit under condition D.4.1. These emissions limitations were established as a means to avoid PSD review under 326 Ind. Admin. Code Rule 2-2.
12. On April 7, 2004, U.S. EPA issued to Lehigh a Notice of Violation ("NOV") alleging that Lehigh violated its Title V Permit Condition D.4.1.(e) by emitting more than 1.67 pounds of CO per ton of clinker produced.
13. Lehigh conducted a second round of stack tests at Kiln #1 and Kiln #2, on May 14, 2004 and May 17, 2004, respectively. These tests were performed as required by Condition C.18(b) of Lehigh's Title V Permit. The results of the stack tests indicated an average CO emission factor of 1.37 pounds of CO per ton of clinker from Kiln #1 and

an average CO emission factor of 1.31 pounds of CO per ton of clinker from Kiln #2.

14. On May 17, 2004, representatives of Lehigh and U.S. EPA discussed the April 7, 2004 NOV.

Compliance Program

15. By the effective date of this Order, Lehigh will achieve, demonstrate, and maintain compliance with the Title V Permit Condition D.4.1(e) at its Mitchell, Indiana facility.

16. Until the first compliant stack test performed in accordance with 17(a), Lehigh will limit the use of foundry sand to no more than the rate used in the May 14, 2004 and May 17, 2004 compliant CO tests for Kiln #1 and Kiln #2, respectively.

17. Lehigh will conduct concurrent CO and NOx stack testing at Kiln #1 and Kiln #2 in accordance with the following schedule:

- a. Stack tests with and without the use of foundry sand in the raw mix at each kiln will be performed by June 30, 2005; and
- b. One stack test at each kiln by November 1, 2005.

18. During the tests specified in Paragraph 17(a), Lehigh will conduct a CO and NOx stack test while operating with no foundry sand in the raw feed mix and a second set of CO/NOx tests while operating at the maximum projected foundry sand usage rate.

19. During each of the tests specified in Paragraph 17, Lehigh will monitor the foundry sand usage as it is incorporated into the raw mix during the raw grinding process, (as a percentage of the raw mix). If a compliant CO stack test is achieved during the test, the foundry sand percentage in the raw mix, at the time of the tests, will become an operational limit for the total raw mix in tons per hour going to the kilns.

20. Lehigh will develop a stack test protocol for testing of CO and NOx as specified in Paragraph 17 and submit the protocol document to both IDEM and U.S. EPA for review and approval.

21. If each of the two tests specified in Paragraph 17(b) indicates compliance with the 1.67 lb/ton clinker limitations (Condition D.4.1(e)), Lehigh can revert back to the Title V requirement to test the kiln stacks every 30 months.

22. After the first compliant CO stack test specified in Paragraph 17(a), Lehigh will limit the usage of foundry sand to no more than the rate used during that compliant

CO test. After the second compliant CO stack test (Paragraph 17(b)), Lehigh will not exceed the foundry sand usage rate established in either the first (Paragraph 17(a)) or second (Paragraph 17(b)) compliant stack test.

23. Within 60 days of the November 1, 2005 stack tests, Lehigh will submit a permit amendment application to IDEM to include the foundry sand usage limitation established during the most recent compliant stack test. Specifically, Lehigh will request permit terms that state that the use of foundry sand will be limited to the weight per time rate (i.e., tons/hour) established during one of the compliant stack tests.

24. Lehigh will send all reports required by this Order to:

Attention: Compliance Tracker (AE-17J)
Air Enforcement and Compliance Assurance Branch
U.S. EPA, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604.

General Provisions

25. This Order does not affect Lehigh's responsibility to comply with other local, state, and federal laws and regulations.

26. This Order does not restrict U.S. EPA's authority to enforce the Indiana SIP, or any section of the Act.

27. Nothing in this Order limits U.S. EPA's authority to seek appropriate relief, including penalties under Section 113 of the Act, 42 U.S.C. § 7413, for Lehigh's alleged violation of the Indiana SIP.

28. Failure to comply with this Order may subject Lehigh to penalties of up to \$32,500 per day for each violation under Section 113 of the Act, 42 U.S.C. § 7413, and 69 Fed. Reg. 7121 (Feb. 13, 2004)(amending 40 C.F.R. Part 19).

29. The terms of this Order are binding on Lehigh, its assignees and successors. Lehigh will give notice of this Order to any successors in interest, prior to transferring ownership, and will simultaneously verify to U.S. EPA, at the above address, that Lehigh has given the notice.

30. This Order is not subject to the Paperwork Reduction Act, 44 U.S.C. § 3501 et seq., because it seeks collection of information by an agency from specific individuals or entities as part of an administrative action or investigation. To aid in our electronic record keeping efforts, please provide your response to this Order without staples. Paper clips, binder clips, and 3-ring binders are acceptable.

31. U.S. EPA may use any information submitted under this Order in an administrative, civil or criminal action.

32. Lehigh agrees to the terms of this Order.

33. This Order is effective on the date of signature by the Director of the Air and Radiation Division. This Order will terminate one year from the effective date, provided that Lehigh has complied with all terms of the Order throughout its duration.

6/17/05
Date

Edward E. Epping
Edward Epping
PLANT Manager, Mitchell Plant
Lehigh Cement Company

6/27/05
Date

Stephen Rothblatt
Stephen Rothblatt, Director
Air and Radiation Division

Enclosure

|

CERTIFICATE OF FILING AND MAILING

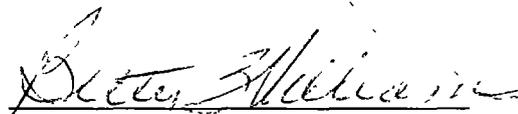
I, Betty Williams, certify that I sent the Administrative Consent Order, EPA-5-05-113(a)10-IN, by Certified Mail, Return Receipt Requested, to:

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

I also certify that a copy of the Administrative Consent Order was sent by First Class Mail to:

David McIver, Chief
Office of Enforcement Air Section
Indiana Department of Environmental Management
100 North Senate Avenue, Room 1001
Indianapolis, Indiana 46206-6015

on the 29th Day of June 2005


Betty Williams, Secretary
AECAS (IL/IN)

CERTIFIED MAIL RECEIPT NUMBER: 70010320 00060295 3/07