

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 6
DALLAS, TX

FILED
2016 DEC 20 AM 10:46
REGIONAL HEARING CLERK
EPA REGION VI

IN THE MATTER OF:	§	
	§	
Texas Lehigh Cement Company LP	§	
701 Cement Plant Rd.	§	
Buda, Texas 78610	§	EPA Docket No. RCRA-06-2017-0913
	§	
RESPONDENT	§	Consent Agreement and Final Order

I.
PRELIMINARY STATEMENT

1. This Consent Agreement and Final Order ("CAFO") is entered into by the United States Environmental Protection Agency, Region 6 ("EPA" or "Complainant") and Texas Lehigh Cement Company LP ("Lehigh" or "Respondent"), and concerns the facility located at 701 Cement Plant Rd., Buda, Texas, 78610.

2. Notice of this action has been given to the State of Texas, under Section 3008(a)(2) of the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. § 6928(a)(2).

3. For the purpose of these proceedings, Respondent admits the jurisdictional allegations herein; however, Respondent neither admits nor denies the specific factual allegations and conclusions of law contained in this CAFO. This CAFO states a claim upon which relief may be granted.

4. Respondent explicitly waives any right to contest the allegations and its right to appeal the final order contained in this CAFO, and waives all defenses which have been raised or could have been raised to the claims set forth in the CAFO.

5. Full payment of the penalty as provided below shall resolve Respondent's liability for Federal civil penalties for the violations and facts alleged herein.

6. Respondent consents to the issuance of the CAFO hereinafter recited, consents to the assessment and payment of the stated civil penalty in the amount and by the method set out in this CAFO, and consents to the specific stated compliance order.

II.
JURISDICTION

7. This CAFO is issued by the EPA pursuant to Section 3008(a) of RCRA, 42 U.S.C. § 6928, as amended by the Hazardous and Solid Waste Amendments of 1984 (“HSWA”) and is simultaneously commenced and concluded through the issuance of this CAFO under 40 C.F.R. §§ 22.13(b) and 22.18(b) (2) and (3).

8. Respondent agrees to undertake and complete all actions required by the terms and conditions of this CAFO. In any action by the EPA or the United States to enforce the terms of this CAFO, Respondent agrees not to contest the authority or jurisdiction of the EPA to issue or enforce this CAFO, and agrees not to contest the validity of this CAFO or its terms or conditions.

III.
FINDINGS OF FACT AND CONCLUSIONS OF LAW

A. Preliminary Allegations

9. Respondent is a limited partnership authorized to do business in the State of Texas.

10. Respondent is a “person” within the meaning of Section 1004(15) of RCRA, 42 U.S.C. § 6903(15); and 30 TEX.ADMIN.CODE § 3.2(25), [40 C.F.R. § 260.10]¹.
11. Respondent owns and/or operates the facility located at 701 Cement Plant Rd., Buda, TX 78610 (the “Facility”).
12. Respondent is engaged in the primary business of manufacturing Portland cement at the Facility.
13. EPA conducted a RCRA investigation and record review (“Investigation”) of Respondent’s performance and operations as a generator of hazardous waste at the Facility during calendar years 2011 through 2015.
14. During the Investigation, EPA discovered that Respondent generated, accumulated, and offered for transport and treatment hazardous waste streams including the following:
 - A. Cement kiln refractory containing chromium (D007);
 - B. Lab waste – methanol containing barium chloride (D001, D005, F003); and
 - C. Feed shelf analyzer condensate containing sulfuric acid (D002).
15. The waste streams identified in Paragraph 14 are “hazardous waste” as defined in 30 TEX.ADMIN.CODE § 335.1 (69), [40 C.F.R. §§ 261.21, 261.22, 261.24, and 261.31].

¹ All citations to the EPA authorized Texas hazardous waste program refer to Title 30 of the Texas Administrative Code (T.A.C.) as amended, effective through December 31, 2009. 77 Fed. Reg. 71344, 71352 (November 30, 2012); 40 C.F.R. Part 272, Appendix A, Texas. The corresponding Code of Federal Regulation (C.F.R.) citations are also provided.

16. From the Investigation, EPA determined that from time to time during the period of 2012 through 2015, Respondent generated the hazardous waste streams identified in Paragraph 14 in quantities that exceeded the threshold amount of 1000 kg of hazardous waste per month, which qualified Respondent for the large quantity generator status under 30 TEX.ADMIN.CODE, Chapter 335, Subchapter C, [40 C.F.R. Part 262].

17. Respondent is a “generator” of “hazardous waste” as those terms are defined in Sections 1004(5) & (6) of RCRA, 42 U.S.C. §§ 6903(5) & (6), and 30 TEX ADMIN.CODE §§ 335.1(65) & (69), [40 C.F.R. § 260.10].

18. The Facility listed in Paragraph 11 above is a “facility” within the meaning of 30 TEX. ADMIN. CODE § 335.1 (59), [40 C.F.R. § 260.10].

19. As a generator of hazardous waste, Respondent is subject to Sections 3002 and 3010 of RCRA, 42 U.S.C. §§ 6922 and 6930, and the regulations set forth at 30 TEX.ADMIN.CODE, Chapter 335, Subchapter C, [40 C.F.R Part 262].

B. Alleged Violations

Claim 1 – Failure to Give Required Notification

20. The allegations in Paragraphs 1-19 are re-alleged and incorporated herein by reference.

21. Pursuant to Section 3010(a) of RCRA, 42 U.S.C. § 6930(a), any person generating a characteristic or listed hazardous waste shall file with the Administrator or authorized State a notification stating the location and general description of such activity and the identified characteristic or listed hazardous wastes handled by such person. No identified or listed

hazardous waste subject to this subchapter may be transported, treated, stored, or disposed unless the required notification has been given.

22. Respondent filed with the Administrator or the authorized State notification of its hazardous waste activities at the Facility during the period of 2012 through 2015, but the notification did not include the appropriate generator status, in violation of Section 3010(a) of RCRA, 42 U.S.C. § 6930(a).

Claim 2 - Failure to Operate within Its Stated Generator Status

23. The allegations in Paragraphs 1-22 are re-alleged and incorporated herein by reference.

24. During the Investigation, EPA determined that Respondent declared its generator status as a conditionally exempt small quantity generator (“CESQG”).

25. Pursuant to 30 TEX.ADMIN.CODE § 335.78(b) and 40 C.F.R. § 261.5(b), as long as a CESQG complies with the applicable requirements under 30 TEX.ADMIN.CODE §§ 335.78(e), (f), (g) and (j) and 40 C.F.R. §§ 261.5 (e), (f), (g) and (j), the generator's hazardous waste is not subject to regulation under 30 TEX.ADMIN.CODE, Chapter 335, Subchapters C-H and O; 40 C.F.R. Parts 262 through 268; 40 C.F.R. Parts 270 and 124.

26. During the period of 2012 through 2015, Respondent exceeded its declared CESQG status on several occasions and operated as a large quantity generator (“LQG”) in violation of one or more requirements for LQGs at 30 TEX.ADMIN.CODE, Chapter 335, Subchapter C, [40 C.F.R. § 262.34].

IV.
COMPLIANCE ORDER

27. Pursuant to Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), Respondent is hereby ordered within thirty (30) calendar days of the effective date of this Order, to provide written certification to the EPA that Respondent completed the following to actions:

- A. Filed an updated Notification to reflect accurate waste generation information to accurately and adequately comply with RCRA § 3010, 42 U.S.C. § 6930;
- B. Assessed all solid waste streams to determine accurate waste codes;
- C. Implemented procedures intended to ensure that Respondent is operating in compliance with RCRA and the regulations promulgated thereunder; and
- D. Is currently in compliance with all applicable requirements for its designated generator status.

28. In all instances in which this CAFO requires written submission to EPA, the submittal made by Respondent shall be signed by an owner or officer of Lehigh and shall include the following certification:

“I certify under the penalty of law that this document and all its attachments were prepared by me or under my direct supervision in accordance with a system designed to assure that qualified personnel properly gathered and evaluated 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 fine and imprisonment for knowing violations.”

Copies of all documents required by this CAFO shall be sent to the following:

U.S. Environmental Protection Agency
Compliance Assurance and Enforcement Division
Waste Enforcement Branch
Waste Compliance III Section (6EN-H3)
1445 Ross Avenue
Dallas, TX 75202-2733
Attn: Ashley Pederson

V.
TERMS OF SETTLEMENT

A. Penalty Provisions

29. Pursuant to the authority granted in Section 3008 of RCRA, 42 U.S.C. § 6928, and upon consideration of the entire record herein, including the above referenced Findings of Fact and Conclusions of Law, which are hereby adopted and made a part hereof, upon the seriousness of the alleged violations, and Respondent's good faith efforts to comply with the applicable regulations, it is ordered that Respondent be assessed a civil penalty of **Seventy two Thousand Five Hundred and Twelve Dollars (\$72,512)**.

30. The penalty shall be paid within thirty (30) days of the Effective Date of this CAFO and made payable to the Treasurer, United States of America.

31. The following are Respondent's options for transmitting the penalties:

For checks sent via U.S. Postal Service Mail (including certified mail) or U.S. Postal Service Express Mail, the check should be remitted to:

U.S. Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, MO 63197-9000

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For checks sent via overnight mail (non-U.S. Postal Service), the check should be remitted to:

U.S. Environmental Protection Agency
Government Lockbox 979077
Fines and Penalties
1005 Convention Plaza
SL-MO-C2-GL
St. Louis, MO 63101
314-418-1028

Automated Clearinghouse payments may be made through:

US Treasury REX/Cashlink ACH Receiver
ABA: 051036706
Account No.: 310006, Environmental Protection Agency
CTX Format Transaction Code 22 – checking
5700 Rivertech Court
Riverdale, MD 20737
866-234-5681

Wire Transfers should be remitted to:

Federal Reserve Bank of New York
ABA: 021030004
Account No.: 68010727
SWIFT address: FRNYUS33
33 Liberty Street
New York, NY 10045

*Foreign banks must use a United States bank to send a wire transfer to the US EPA.

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method of payment to ensure proper credit.

32. Respondent shall send a simultaneous notice of such payment to the following:

Lorena S. Vaughn
Regional Hearing Clerk (6RC-D)
U.S. EPA, Region 6
1445 Ross Avenue, Suite 1200
Dallas, Texas 75202-2733

Mark Potts, Chief
Waste Enforcement Branch (6EN-H)
Compliance Assurance and Enforcement Division
U.S. EPA, Region 6
1445 Ross Avenue, Suite 1200
Dallas, Texas 75202-2733
Attention: Ashley Pederson

Your adherence to this request will ensure proper credit is given when penalties are received by EPA.

33. Pursuant to 31 U.S.C. § 3717 and 40 C.F.R. § 13.11, unless otherwise prohibited by law, EPA will assess interest and late payment penalties on outstanding debts owed to the United States and a charge to cover the cost of process and handling a delinquent claim. Interest on the civil penalty assessed in this CAFO will begin to accrue on the effective date of the CAFO and will be recovered by EPA on any amount of the civil penalty that is not paid within thirty (30) calendar days of the civil penalty's due date and will be assessed at the rate of the United States Treasury tax and loan rate in accordance with 40 C.F.R. § 13.11(a). Moreover, the costs of the Agency's administrative handling overdue debts will be charged and assessed monthly throughout the period the debt is overdue. 40 C.F.R. § 13.11(b). EPA will also assess a \$15.00 administrative handling charge for administrative costs on unpaid penalties for the thirty (30) day period after the payment is due and an additional \$15.00 for each subsequent thirty (30) day period the penalty remains unpaid. In addition, a penalty charge of up to six percent per year will

be assessed monthly on any portion of the debt which remains delinquent more than ninety (90) days. 40 C.F.R. § 13.11(b). Should a penalty charge on the debt be required, it shall accrue from the first day payment is delinquent. 31 C.F.R. § 901.9(d). Other penalties for failure to make a payment may also apply.

B. Cost

34. Each party shall bear its own costs and attorney's fees. Furthermore, Respondent specifically waives its right to seek reimbursement of its costs and attorney's fees under the Equal Access to Justice Act (5 U.S.C. § 504), as amended by the Small Business Regulatory Enforcement Fairness Act (P.L. 04-121), and any regulations promulgated pursuant to those Acts.

C. Termination and Satisfaction

35. When Respondent has paid the civil penalty as provided in Paragraph 29, and submitted certification pursuant to Paragraph 27, this CAFO shall be deemed satisfied and terminate.

D. Effective Date of Settlement

36. This CAFO shall become effective upon filing with the Regional Hearing Clerk.

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**THE UNDERSIGNED PARTIES CONSENT TO THE ENTRY OF THIS CONSENT
AGREEMENT AND FINAL ORDER:**

FOR THE RESPONDENT:

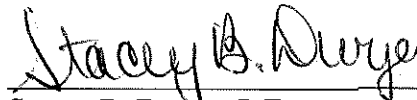
Date: 12-13-16



Tony Thompson
President
Texas Lehigh Cement Company LP

FOR THE COMPLAINANT:

Date: 12/15/2016



Stacey B. Dwyer, P.E.
Acting Director
Compliance Assurance and
Enforcement Division

FINAL ORDER

Pursuant to the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, 40 CFR Part 22, the foregoing CAFO 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 herein. 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 CAFO. Pursuant to 40 CFR § 22.31(b) this Final Order shall become effective upon filing with the Regional Hearing Clerk.

Date: 12/20/16



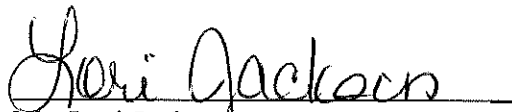
Renea Ryland
Regional Judicial Officer

CERTIFICATE OF SERVICE

I hereby certify that on the 20th day of Dec, 2016, the original of the foregoing Consent Agreement and Final Order was hand delivered to the Regional Hearing Clerk, U.S. EPA - Region 6, 1445 Ross Avenue, Dallas, Texas 75202-2733, and that a true and correct copy of the CAFO was sent to the following by the method identified below:

CERTIFIED MAIL - RETURN RECEIPT REQUESTED 7014 0150 0000 2454 5248

Ms. Lisa Dyar
Winstead PC
401 Congress Ave., Ste. 2100
Austin, TX 78701


Ms. Lori Jackson
Paralegal