

**New York State Department of Environmental Conservation**

**Office of General Counsel, Region 4**

1130 North Westcott, Schenectady, New York 12306-2014

Phone: (518) 357-2048 § Fax: (518) 357-2087

Website: [www.dec.ny.gov](http://www.dec.ny.gov)



Joe Martens  
Commissioner

CERTIFIED - RETURN RECEIPT REQUESTED

7012 3050 0000 4246 3665

December 15, 2014

Adam G. Sowatzka  
King & Spalding LLP  
1180 Peachtree Street, N.E.  
Atlanta, GA 30309-3521  
[asowatzka@kslaw.com](mailto:asowatzka@kslaw.com)

Re: Lafarge Building Materials, Inc.  
Order on Consent  
R4-2014-0916-150

Dear Mr. Sowatzka:

Enclosed please find a copy of the fully executed Order on Consent referenced above.

Pursuant to Paragraph I payment in the amount of \$100,000 civil penalty is due within 30 days of the effective date of this Order.

Sincerely,

Richard Ostrov  
Regional Attorney  
Region 4

cc: Sarah Sweeney, Lafarge  
[sarah.sweeney@lafarge-na.com](mailto:sarah.sweeney@lafarge-na.com)

Brian Gasiorowski, P.E., Lafarge  
[brian.gasiorowski@lafarge.com](mailto:brian.gasiorowski@lafarge.com)

C. Jacoby, BECI

M. Franklin

J. Quinn

A. Dzierwa

L. Winterberger

J. Malcolm

STATE OF NEW YORK  
DEPARTMENT OF ENVIRONMENTAL CONSERVATION

----- x

In the Matter of the Violation of  
Articles 17 and 40 of the Environmental Conservation  
Law and Title 6 of the Official Compilation  
of Codes, Rules and Regulations of the  
State of New York (6 NYCRR)

ORDER  
ON  
CONSENT

DEC Case  
R4-2014-0916-150

by

Lafarge Building Materials, Inc.

Respondent.

----- x

WHEREAS:

1. The New York State Department of Environmental Conservation (DEC or Department) is the State agency with jurisdiction over the environmental law and policy of the State pursuant to § 3-0301 of the Environmental Conservation Law (ECL). In particular, DEC is and has been responsible for the protection of water resources of the State, pursuant to ECL Article 17 and the rules and regulations promulgated there under at Title 6 of the Official Compilation of Codes, Rules and Regulations of the State of New York (6 NYCRR), Part 750, et seq. and responsible for setting forth standards for the registration and operation of Hazardous Substance Bulk Storage Facilities and the reporting of spill or releases from those facilities, pursuant to ECL Article 40 and the rules and regulations promulgated there under at Title 6 of the Official Compilation of Codes, Rules and Regulations of the State of New York (6 NYCRR), Part 595, et seq.
2. Respondent, Lafarge Building Materials, Inc. owns and operates a Portland cement manufacturing facility at Route 9W in the Town of Coeymans, Albany County, New York (“hereinafter manufacturing facility”) that for the purposes of this Order operates pursuant to a State Pollution Discharge Elimination System permit NY-0005037 (“hereinafter SPDES permit”) and a Hazardous Substance Bulk Storage registration No. 4-000045.
3. On July 1, 2014, Respondent’s leachate treatment system sulfuric acid tank (“tank”) experienced a leak causing the sulfuric acid to spill into its secondary containment system. The tank was removed from service. The sulfuric acid in the secondary containment system was either hauled away under a RCRA manifest or relocated into 260-gallon totes. The sulfuric acid stored has a density of 15.3 lbs. per gallon. The totes have been used since July 2014.

### SPDES Permit Effluent Limit Violations

4. Regulations at 6 NYCRR 750-2.1(e) require Respondent to comply with all the terms and conditions of its State Pollution Discharge Elimination System (“hereinafter SPDES”) permit.
5. Appendix A of this Order contains a list of SPDES permit effluent limit exceedences identified in Respondent’s Monthly Discharge Monitoring Reports. The SPDES permit effluent limit exceedences are violations of the SPDES permit and 6 NYCRR 750-2.1(e).

### SPDES -Failure to Operate Treatment System

6. Regulations at 6 NYCRR 750-2.8(a)(2) requires that: “The permittee shall, at all times, properly operate and maintain all disposal facilities, which are installed or used by the permittee to achieve compliance with the conditions of the permit.
7. Respondent altered the manner of applying sulfuric acid in its leachate treatment system.
8. Respondent’s altered method of operating its leachate treatment system is a violation of 6 NYCRR 750-2.8(a) (2).

### CBS- Failure to Register and Meet Standards

9. Respondent’s facility is subject to the Hazardous Substance Bulk Storage Facility regulations in 6 NYCRR Parts 595-599 commonly referred to as the Chemical Bulk Storage (“CBS”) regulations and operates pursuant to a registration issued pursuant to 6 NYCRR 596.2.
10. Regulations at 6 NYCRR 596.1(b)(iii) require registration of any non-stationary tank(s) used to store one thousand (1,000) kilograms (2,200 lbs.) or more of a hazardous substance or mixture thereof for a period of ninety (90) consecutive days or more.
12. Regulations at 6 NYCRR Part 599 require new storage tanks to meet certain standards including but not limited to: tank design (6 NYCRR 599.8(b)); secondary containment (6 NYCRR 599.9); monitoring (6 NYCRR 599.100); installation (6 NYCRR 599.11); new piping systems (6 NYCRR 599.13); and spill and overfill protection (6 NYCRR 599.17).
13. Respondent’s failure to register its totes and meet the applicable operating standards are violations of 6 NYCRR 596.2; 6 NYCRR 599.8(b); 6 NYCRR 599.9; 6 NYCRR 599.100; 6 NYCRR 599.11; 6 NYCRR 599.13; and spill and overfill protection 6 NYCRR 599.17.

### Civil Penalty

14. ECL Section 1929 provides for the following civil penalties: “A person who violates any of the provisions of, or who fails to perform any duty imposed by titles 1 through 11 inclusive and title 19 of article 17, or the rules, regulations, orders or determinations of the commissioner promulgated thereto or the terms of any permit issued there under, shall be liable to a penalty of not to exceed thirty-seven thousand five hundred dollars per day for each violation, and, in addition thereto, such person may be enjoined from continuing such violation as hereinafter provided.

15. ECL Section 4303 provides for the following civil penalties: “Any person who violates any of the provisions of, or who fails to perform any duty imposed by, article forty of this chapter or any rule or regulation promulgated thereunder, or any terms or conditions of any certificate or permit issued pursuant thereto, or any final determination or order of the commissioner made pursuant to this title, shall be liable in the case of a civil penalty not to exceed twenty-five thousand dollars and an additional penalty of not more than twenty-five thousand dollars for each day during which such violation continues...”

#### Waiver of Hearing

16. Respondent has affirmatively waived its right to a hearing as provided by law and has consented to the issuing of this Order on Consent and has agreed to be bound by the provisions, terms and conditions of this Order.

NOW THEREFORE, having considered this matter and having been duly advised, IT IS ORDERED THAT:

#### I. Civil Penalty

In respect to the Order’s violations, a civil penalty in the amount of ONE HUNDRED THOUSAND DOLLARS (\$100,000) is assessed against the Respondent for the above violations and said penalty shall be paid to the Department by company or bank check made payable to the Department of Environmental Conservation within 30 days of the effective date of this Order.

#### II. Schedule of Compliance

Respondent shall comply with the attached Schedule of Compliance that is incorporated and made part of this Order.

#### III. Summary Abatement

Pursuant to ECL Section 71-0301, the Commissioner specifically reserves the right to exercise summary abatement authority.

#### IV. Binding Effect

This Order is binding upon the Respondent, its agents, employees, successors, assigns and to all persons and firms, and corporations acting subordinate thereto.

V. Communications

For Department:

Regional Water Engineer  
New York State Department of Environmental Conservation - Region 4  
1130 N. Westcott Road  
Schenectady, New York 12306

For Respondent:

Lafarge Building Materials, Inc.  
Director of Environmental and Public Affairs  
1916 NYS Route 9W  
Ravena, NY 12143

VI. Modifications

No change or modification to this Order shall be made or be effective except as may be specifically set forth in writing by the Commissioner or Regional Director. Such application shall be made to the Regional Director.

VII. Access

For insuring compliance with this Order, duly authorized representatives of this Department shall be permitted access to the site in question in order to inspect and/or require such tests as may be deemed necessary to determine the status of Respondent's compliance herewith.

VIII. Effective Date of Order

The effective date of this Order shall be the date upon which it is signed on behalf of the Department.

IX. Indemnification

Respondent shall indemnify and hold the Department, the State of New York, and their representatives and employees harmless for all claims, suits, actions, damages and costs of every name and description arising out of or resulting from the fulfillment or attempted fulfillment of the provisions hereof by Respondent, their directors, officers, employees, servants, agents, successors or assigns.

## X. Scope of Order

Except as specifically provided in this Order, nothing contained in this Order shall be construed as barring, diminishing, adjudicating or in any way affecting:

A. Any legal or equitable rights or claims, actions, proceedings, suits, causes of action or demands whatsoever that the State may have against Respondent for any other violations of the ECL, rules or regulations promulgated there under or permits issued there under based upon other than existing contamination.

B. Any legal or equitable rights or claims, actions, proceedings, suits, causes of action or demands whatsoever that the State may have against anyone other than Respondent, its officers, directors, agents, servants, employees, successors and assigns; and

C. Respondent's right to assert all available defenses to any claims, actions, proceedings, suits, causes of actions or demands made or commenced by the State or the Department provided, however, that Respondent waives all legal or equitable rights claims, actions, proceedings, appeals, suits, causes of action, defenses or demands whatsoever that it may have to a judicial review of the validity and binding effect of this Order and whether or not this Order has been entered into voluntarily by Respondent.

## XI. Review of Submitted Documents

(A) Whenever the Department's approval of a submittal under the terms of this Order is required, the Department shall review such submittal to determine whether it was prepared, and whether the work done to generate the data and other information in the submittal was done, in accordance with this Order and applicable state and federal regulations and laws and generally accepted technical and scientific principles. The Department shall notify Respondent in writing of its approval or disapproval of the submittal. All Department-approved plans and reports shall be incorporated into and become an enforceable part of this Order.

(B) (1) if the Department disapproves a submittal, its notice shall specify the reasons for disapproval. Respondent shall make a revised submittal to the Department within thirty (30) days after receiving written notice of disapproval that specifically addresses all of the Department's stated reasons for disapproving the first submittal.

(2) After receipt of the revised submittal from Respondent, the Department shall notify Respondent in writing of its approval or disapproval. If the Department approves the revised submittal, it shall be incorporated into and become an enforceable part of this Order. If the Department disapproves the revised submittal, it shall notify the Respondent in writing and specify its reasons. The Department reserves its right to take whatever action it deems necessary after the second disapproval of a submittal.

XII. Settlement Terms

Compliance with the terms and conditions of this Order on Consent, including the Schedule of Compliance, shall be in full settlement of the violations cited in this Order on Consent.

XIII. Third Parties

This Order shall not create any presumption of law or fact that shall inure to the benefit of any person other than the Department, State or Respondent.

DATED: *December 12*, 2014  
Rotterdam, New York

Joseph Martens  
Commissioner  
New York State Department of  
Environmental Conservation

BY:



Keith Goertz  
Regional Director  
Region 4



Schedule of Compliance

	<b>Respondent Shall:</b>	<b>Due Date:</b>
1	Inspect the totes on a daily basis and locate them within a protected area to prevent accidents.	As of the effective date of the Order
2	Submit a report to the Department that accounts for the total amount of sulfuric acid that was stored in the tank immediately prior to its release on or before July 1, 2014. The report shall include the recovered sulfuric acid placed in the totes, the sulfuric acid shipped off site by manifest, and any remaining unaccounted for sulfuric acid.	Within 15 days of the effective of the Order
3	Register the existing totes in accordance with 6 NYCRR 596-599.	Within 15 days of the effective of the Order
4	Install a replacement tank (for the sulfuric acid storage) in accordance with the regulations for new tank systems under 6 NYCRR Parts 598 and 599, and update the Chemical Bulk Storage registration in accordance with 6 NYCRR 596.2	Within 60 days of the effective date of the Order
5	Repair and replace piping at leachate treatment system and complete startup of system (chemical treatment for pH neutralization and filtration for mercury removal) with vendor. This shall include training of all staff for proper weekday and weekend coverage, receipt/review of an operation and maintenance plan, and preventive maintenance tasks for treatment system and acid loading/storage and document compliance with the SPDES permit Outfall 003 limits.	Within 30 days of the effective date of the Order
6	Submit certification statement for design and of installation of tank and piping in accordance with 6 NYCRR 599.11(f) (4) & (5) and 6 NYCRR 599.16(e) (3) & (4), respectively.	Due within 30 days from the installation of the new tank as required in Paragraph 4
7	Prepare and implement a draft preventive maintenance program for all environmental systems/areas as required by 6 NYCRR Part 750-2.8, for review and approval by the Department. This program shall include the current temporary leachate treatment system, stormwater management basins, water treatment chemical systems (if applicable), Beaver Pond berm, landfill leachate pump stations, and acid storage/loading areas.	Within 60 days of the effective, date of the Order.
8	Complete adding any additional quench capacity in the program and be operational.	April 15, 2015

## **Appendix A --DMR Reported Permit Effluent Limit Violations**

### **Outfall No. 003A: Sanitary Wastewater Treatment Plant Effluent**

1. Parameter: Total Residual Chlorine  
Permit Limit: 2 mg/L (Daily Maximum)  
March 2013: 2.2 mg/L
2. Parameters: Fecal Coliform  
Permit Limit: 400 counts per 100 mL (7 Day Geometric Mean)  
April 2013: Greater than 1,600
3. Parameter: Fecal Coliform  
Permit Limit: 400 counts per 100 mL (7 Day Geometric Mean)  
May 2013: Not Reported
4. Parameter: Fecal Coliform  
Permit Limit: 200 counts per 100 mL (30 day Geometric Mean)  
May 2013: Greater than 1,600
5. Parameter: Settleable Solids  
Permit Limit: 0.3 mL/L (Daily Maximum)  
November 2013: Less than 1.0
6. Parameter: Fecal Coliform  
Permit Limit: 400 counts per 100 mL (7 Day Geometric Mean)  
January 2014: Greater than 1,600
7. Parameter: Fecal Coliform  
Permit Limit: 200 counts per 100 mL (30 day Geometric Mean)  
January 2014: Greater than 32.83

### **Outfall No. 003B – CKD Leachate**

1. Parameter: Settleable Solids  
Permit Limit: 0.3 mL/L (Daily Maximum)  
July 2012: Not Reported

### **Outfall No. 003C – Settling Pond Overflow**

1. Parameter: pH

Permit Limit: 9.0 s.u. (Daily Maximum)  
August 2011: 10.1

2. Parameter: Total Suspended Solids  
Permit Limit: 30 mg/L (Daily Maximum)/25 mg/L (Monthly Average)  
August 2011: 52/35

**Violation Summary & Penalty Calculation (Continued)**

**Outfall No. 003M – Non-Contact Cooling Water (NCCW), Leachate, & Truck Wash**

1. Parameter: pH  
Permit Limit: 9.0 s.u. (Instantaneous Maximum)  
August 2011: 10.0
2. Parameter: pH  
Permit Limit: 9.0 s.u. (Instantaneous Maximum)  
September 2011: 9.4
3. Parameter: pH  
Permit Limit: 9.0 s.u. (Instantaneous Maximum)  
October 2011: 9.6
4. Parameter: pH  
Permit Limit: 9.0 s.u. (Instantaneous Maximum)  
November 2011: 9.2
5. Parameter: pH  
Permit Limit: 9.0 s.u. (Instantaneous Maximum)  
December 2011: 10.5
6. Parameter: pH  
Permit Limit: 9.0 s.u. (Instantaneous Maximum)  
January 2014: 10.1
7. Parameter: pH  
Permit Limit: 9.0 s.u. (Instantaneous Maximum)  
July 2014: 9.19
8. Parameter: Settleable Solids  
Permit Limit: 0.1 mL/L (Daily Maximum)  
September 2011: 0.3
9. Parameter: Settleable Solids  
Permit Limit: 0.1 mL/L (Daily Maximum)  
November 2011: 0.2
10. Parameter: Settleable Solids

Permit Limit: 0.1 mL/L (Daily Maximum)  
November 2013: 0.6

11. Parameter: Settleable Solids  
Permit Limit: 0.1 mL/L (Daily Maximum)  
December 2013: 2.0

12. Parameter: Settleable Solids  
Permit Limit: 0.1 mL/L (Daily Maximum)  
July 2014: 0.2

13. Parameter: Total Suspended Solids  
Permit Limit: 30 mg/L (Daily Maximum)/25 mg/L (Monthly Average)  
September 2011: 175/47

14. Parameter: Total Suspended Solids  
Permit Limit: 30 mg/L (Daily Maximum)/25 mg/L (Monthly Average)  
October 2011: 96/30

15. Parameter: Total Suspended Solids  
Permit Limit: 30 mg/L (Daily Maximum)/25 mg/L (Monthly Average)  
November 2011: 157/36

16. Parameter: Total Suspended Solids  
Permit Limit: 30 mg/L (Daily Maximum)  
December 2011: 60

17. Parameter: Total Suspended Solids  
Permit Limit: 30 mg/L (Daily Maximum)  
January 2012: 33.5

18. Parameter: Total Suspended Solids  
Permit Limit: 30 mg/L (Daily Maximum)  
April 2012: 44

19. Parameter: Total Suspended Solids  
Permit Limit: 30 mg/L (Daily Maximum)  
January 2013: 39

20. Parameter: Total Suspended Solids  
Permit Limit: 30 mg/L (Daily Maximum)  
July 2013: 44

21. Parameter: Total Suspended Solids  
Permit Limit: 30 mg/L (Daily Maximum)  
October 2013: 40

22. Parameter: Total Suspended Solids  
Permit Limit: 30 mg/L (Daily Maximum)/25 mg/L (Monthly Average)  
November 2013: 38.6/144.3
  
23. Parameter: Total Suspended Solids  
Permit Limit: 30 mg/L (Daily Maximum)/25 mg/L (Monthly Average)  
December 2013: 481/75
  
24. Parameter: Total Suspended Solids  
Permit Limit: 30 mg/L (Daily Maximum)  
January 2014: 75
  
25. Parameter: Total Suspended Solids  
Permit Limit: 30 mg/L (Daily Maximum)  
April 2014: 34.5
  
26. Parameter: Total Suspended Solids  
Permit Limit: 30 mg/L (Daily Maximum)  
July 2014: 58.0
  
27. Parameter: Temperature Differential (Upstream – Downstream)  
Permit Limit: 4 Degrees F (Instantaneous Maximum)  
July 2012: 4.7
  
28. Parameter: Temperature Differential (Upstream – Downstream)  
Permit Limit: 4 Degrees F (Instantaneous Maximum)  
August 2012: 4.4
  
29. Parameter: Temperature Differential (Upstream – Downstream)  
Permit Limit: 4 Degrees F (Instantaneous Maximum)  
September 2012: 4.2
  
30. Parameter: Temperature Differential (Upstream – Downstream)  
Permit Limit: 5 Degrees F (Instantaneous Maximum)  
January 2014: 11.8 -> Required by December 31, 2013
  
31. Parameter: Temperature Differential (Upstream – Downstream)  
Permit Limit: 5 Degrees F (Instantaneous Maximum)  
February 2014: 12.2 -> Required by December 31, 2013
  
32. Parameter: Temperature Differential (Upstream – Downstream)  
Permit Limit: 5 Degrees F (Instantaneous Maximum)  
March 2014: 9.4 -> Required by December 31, 2013
  
33. Parameter: Temperature Differential (Upstream – Downstream)

Permit Limit: 5 Degrees F (Instantaneous Maximum)  
April 2014: 12.0 -> Required by December 31, 2013

34. Parameter: Temperature Differential (Upstream – Downstream)  
Permit Limit: 5 Degrees F (Instantaneous Maximum)  
May 2014: 13.7 -> Required by December 31, 2013

35. Parameter: Temperature  
Permit Limit: 70 Degrees F (Instantaneous Maximum)  
May 2014: 71.9 -> Required by December 31, 2013

36. Parameter: Temperature Differential (Upstream – Downstream)  
Permit Limit: 5 Degrees F (Instantaneous Maximum)  
June 2014: 15.5 -> Required by December 31, 2013

37. Parameter: Temperature  
Permit Limit: 70 Degrees F (Instantaneous Maximum)  
June 2014: 78.5 -> Required by December 31, 2013

38. Parameter: Temperature Differential (Upstream – Downstream)  
Permit Limit: 5 Degrees F (Instantaneous Maximum)  
July 2014: 14.7 -> Required by December 31, 2013

39. Parameter: Temperature  
Permit Limit: 70 Degrees F (Instantaneous Maximum)  
June 2014: 81.4 -> Required by December 31, 2013

#### **Outfall No. 003T – Whole Effluent Toxicity Testing Action Limits**

40. Parameter: Toxicity (chronic): Ceriodaphnia dubia  
Permit Limit: 1.6 (Maximum)  
September 2012: 3.07