

STATE OF NEW YORK
DEPARTMENT OF ENVIRONMENTAL CONSERVATION

In the Matter of Violations
of the Environmental Conservation
Law ("ECL") Article 17 and Article 27
and Title 6 of the Official Compilation
of Codes, Rules and Regulations of
the State of New York ("6 NYCRR")

ORDER ON CONSENT

File No. R4-2009-0610-104

- by -

Lehigh Northeast Cement Company

Respondent

WHEREAS:

1. The Department of Environmental Conservation has jurisdiction to protect the waters of the State pursuant to Environmental Conservation Law ("ECL") Article 17 and the State Pollutant Discharge Elimination System ("SPDES") permit program.
2. The Department of Environmental Conservation has jurisdiction in all matters pertaining to the collection, treatment and disposal of solid waste pursuant to ECL Article 27 and the rules and regulations promulgated thereto.
3. Respondent owns the Lehigh Cementon Facility, 120 Alpha Boulevard, in Catskill, New York (Greene County), which is a closed cement kiln dust landfill ("landfill").
4. Respondent reported to the Department that it observed leachate from the landfill.
5. On May 14, 2009 Department staff conducted an inspection of the landfill. During the inspection, Department staff observed that leachate from the landfill, as previously reported by Respondent, was being discharged to the surface and groundwaters without a SPDES permit.
6. ECL §17-0511 states that "the use of existing or new outlets or point sources, which discharge sewage, industrial waste or other wastes into waters of this state is prohibited unless such use is in compliance with all standards, criteria, limitations, rules and regulations promulgated or applied by the department pursuant to this article."
7. 6 NYCRR 360-1.14(b)(2) provides that "all solid waste management facilities must be constructed, operated and closed in a manner that minimizes the generation of leachate that must be disposed of and prevent the migration of leachate into surface and groundwaters. Leachate must not be allowed to drain or discharge into surface water except pursuant to a State Pollutant Discharge Elimination System permit and must not cause or contribute to contravention of groundwater quality standards established by the department pursuant to ECL section 17-0301."

8. Respondent has violated ECL §17-0511 and 6 NYCRR 360-1.14(b)(2)) by discharging leachate from the landfill to the surface and groundwaters without a SPDES permit.

9. ECL §71-1929 provides that any person who violates any provision of Titles 1 through 11 inclusive and title 19 of Article 17 of the ECL or any rule or regulation, order or determination of the Commissioner promulgated thereunder shall be liable for a civil penalty of up to thirty seven thousand five hundred dollars (\$37,500). Injunctive relief is also available.

10. ECL § 71-2703(1) provides that any person who violates any provision of Article 27 of the ECL or any rule or regulation promulgated thereunder shall be liable for a civil penalty not to exceed seven thousand five hundred dollars (\$7,500) for a first violation and one thousand five hundred dollars (\$1,500) for each day the violation continues.

11. Respondent has affirmatively waived their right to notice and hearing in the manner provided by law, and has consented to the issuing and entering of this Order and agree to be bound by the terms, provisions and conditions contained herein.

NOW, having considered this matter and being duly advised, it is ORDERED that:

I. In respect of the aforesaid violations, a civil penalty in the amount of THREE THOUSAND DOLLARS (\$3,000) is hereby assessed against the Respondent. Payment of the civil penalty is due upon the return of a signed and notarized copy of this Order to the Department. The civil penalty shall be paid by certified or bank check made payable to the NYS DEC.

II. The provisions of this Order shall be deemed to bind Respondent, their agents, employees, and all persons, firms, corporations acting under or for them.

III. The terms of this Order shall not be construed to prohibit the Commissioner or his duly authorized representative from exercising any summary abatement powers, either at common law or as granted pursuant to statute or regulation.

IV. Respondent shall indemnify and hold harmless the Department, the State of New York, and their representatives and employees 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.

V. No change in this Order shall be made or become effective except as set forth by a written order of the Commissioner or the Commissioner's designee.

VI. Respondent shall allow duly authorized representatives of the DEC access to the Lehigh Cementon Dust Disposal Facility at reasonable times without proper notice, in order for the DEC to inspect and determine the status of Respondent's compliance with this Order, the ECL and regulations promulgated thereunder.

VII. The Schedule of Compliance is incorporated into the Order and is enforceable thereunder.

VIII. This Order is deemed effective on the date signed by the Department.

IX. Upon completion of all obligations created in this Order, this Order settles only all claims for civil and administrative penalties concerning the violations described in this Order against Respondent and its successors (including successors in title) and assigns.

This Order is made strictly for the purposes of the Department and the State and is not intended for use by any third party.

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 thereunder or permits issued thereunder;
- 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, their agents, their servants, their employees, their successors and their assigns;
- C. Whatever right the Department has to bring any action or proceeding against Respondent and/or any of Respondent's' employees, servants, agents, successors, and assigns with respect to claims for natural resource damages; and
- D. 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.

X. 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 written 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.

XI. Compliance with the terms and conditions of this Order, including the Schedule of Compliance, shall be in full civil settlement of the violations in this Order.

XII. If Respondent can not comply with a deadline or requirement of this Order, because of an act of God, war, strike, riot, catastrophe or other condition which is not caused by the negligence or misconduct of Respondent and which could not have been avoided by Respondent through the exercise of due care, Respondent shall make its best effort to comply nonetheless and shall, within seventy-two hours (unless notice is required sooner by State or Federal law), notify the Department by telephone and in writing, pursuant to the communications provision of this Order, after it obtains knowledge of any such condition or event and request an appropriate extension or modification of this Order.

XIII. Notifications to or communications with the State or Respondent required under this Order shall be deemed submitted on the date they are postmarked and sent either by overnight mail, return receipt requested, or by certified, or registered mail, return receipt requested and shall be deemed received two (2) days after the date of submission. Notifications shall be sent to the following representatives overnight, certified or registered mail at the addresses set forth below:

(a) New York State Department of Environmental Conservation:

Regional Engineer New York State
Department of Environmental
Conservation Region 4
1130 North Westcott Road
Schenectady, NY 12306

(b) Lehigh Northeast Cement Company:

Gregory M. Brown, Esq.
Gilberti Stinziano Heintz & Smith
555 East Genesee Street
Syracuse, NY 13202

Plant Manager
Lehigh Northeast Cement
Company
313 Lower Warren St.
Glens Falls, NY 12801

XIV. This Order shall terminate upon Respondent's completion of all of the requirements in the Schedule of Compliance.

DATED: _____, 2009
Rotterdam, New York

Alexander B. Grannis
Commissioner
New York State Department of
Environmental Conservation

BY:

Eugene J. Kelly
Regional Director
Region 4

1. Within 30 days of the effective date of this Order, Respondent shall commence implementation of the design for the seepage water control system specified in the letter from Geosyntec to the Department, dated June 24, 2009 (Control System). The Control System shall be installed and operational by October 1, 2009.
2. For the first sixty days after the Control System is fully operational, Respondent shall perform continuous pH monitoring of the effluent of the Cementon Neutralization System, as identified on the existing SPDES permit. All data collected during this time period shall be retained on the plant premises for future review by the Department.
3. Within 60 days after the Control System is fully operational, Respondent shall submit to the Department a report detailing the performance of the system and any related deficiencies. All deficiencies noted in the report shall be addressed, after Department review and approval, by December 31, 2009.
4. Within 30 days of the effective date of this Order, Respondent shall submit engineering plans to the Department for approval for an automated pumping system in the leachate collection pond. This system shall be completed in conjunction with the collection trench work which is described in the seepage water control system plan.
5. Once a month Respondent shall visually inspect the entire area between the landfill and the Hudson River for leachate outbreaks. If access to the area is not possible due to winter weather conditions, Respondent shall inform the Department as such and will not have to conduct that monthly inspection. If a new outbreak is discovered, or existing outbreaks are not remedied, Respondent shall submit a plan to the Department for approval to address the outbreaks within 60 days from the date of the inspection.
6. Respondent may petition the Department to seek an extension for any deadline set forth in this Order. It shall be in the Department's reasonable discretion, based on the data and analysis submitted by the Respondent and any other relevant information, to determine whether any deadline need be extended, and the length of any extension.