

NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION

Office of General Counsel, Region 4
1130 North Westcott Road, Schenectady, NY 12306-2014
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Via E-mail

October 14, 2015

Michael Kralik, Plant Manager
LaFarge Building Materials, Inc.
PO Box 3
Ravena, NY 12143
mike.kralik@lafarge.com

Re: Order of Consent
R4-2014-0916-150M

Dear Mr. Kralik:

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

This will also acknowledge receipt of \$59,000 the civil penalty pursuant to Paragraph I.

Sincerely,



Richard Ostrov
Regional Attorney
Region 4

Enclosure

ec: Adam Sowatzka, asowatzka@kslaw.com
A. Dzierwa
J. Malcolm
R. Leone



Department of
Environmental
Conservation

STATE OF NEW YORK
DEPARTMENT OF ENVIRONMENTAL CONSERVATION

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In the Matter of the Violation of
Article 17 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)

MODIFICATION OF
ORDER
ON
CONSENT ("Modification")

DEC Case
R4-2014-0916-150M

By

Lafarge Building Materials, Inc.

Respondent.

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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.

2. Respondent, Lafarge Building Material s, 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 operates pursuant to a State Pollution Discharge Elimination System permit NY-0005037 (hereinafter "SPDES permit"). Respondent is subject to Order on Consent, R4-2014-0916-150 (December 12, 2014) ("Order on Consent").

SPDES Permit Effluent Limit Violations

3. Regulations at 6 NYCRR 750-2.1(e) require Respondent to comply with all the terms and conditions of its SPDES permit.

4. Appendix A of this Modification contains a list of SPDES permit effluent limit exceedances identified in Respondent's Monthly Discharge Monitoring Reports which are violations of the SPDES permit and 6 NYCRR 750-2.1(e).

Order on Consent and Permit Violations

5. The Order on Consent required Respondent to have its modified leachate treatment system operational on or before January 11, 2015.
6. Respondent began the operation of the leachate treatment system in mid-December 2014 and reported problems with its operation in their weekly updates to the Department. Respondent complied with deadline in the Order on Consent to commence operation of the system by January 11, 2015. Respondent alleges that partially due to system design problems they were not able to have the system in a fully functional mode. Respondent alleges that to prevent a release, Respondent directed a portion of partially treated leachate to Outfall No. 003 (Coeymans Creek) without prior approval by the Department. The SPDES permit requires that all leachate receive full treatment and be discharged to the Hudson River.
7. On January 12, 2015, the Department issued Respondent a Notice of Violation for ongoing violations of the Order on Consent Schedule of Compliance. The Department and Respondent met in March 2015 and in April 2015 and Respondent submitted to the Department treatability and pilot studies for a new treatment system.
8. Respondent alleges that it made best efforts to upgrade their existing leachate collection system at considerable cost and after repeated adjustments to the system and they have determined that they would need to install a parallel leachate collection system to achieve compliance.
9. 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."
10. The Department has determined that Respondent's failure to construct and operate a compliant leachate treatment system and its continued discharge of partially treated effluent to Outfall 003 are violations of 6 NYCRR 750-2.8(a) (2).

Treatment Violation

11. On July 11, 2015, Respondent's contractor removed 27,000 gallons of landfill leachate from the AB pump station and offloaded the leachate into a manhole that discharges to the Coeymans Creek via Outfall No. 003. Lafarge reported that such actions were accidental in nature and due contractor error.

12. Regulations at 6 NYCRR 750-2.1(e) provides that: "The permittee must comply with all terms and conditions of the permit. Any permit noncompliance constitutes a violation of the Environmental Conservation Law and the Clean Water Act and is grounds for: enforcement action; for permit suspension, revocation or modification; and for denial of a permit renewal application..."

13. The discharge of partially treated leachate by Respondent to Outfall 003 is a violation of the permit.

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."

Waiver of Hearing

15. Respondent has affirmatively waived their right to a hearing as provided by law and has consented to the issuing of this Modification and has agreed to be bound by the provisions, terms and conditions of this Modification.

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

I. Civil Penalty

In respect to the Modification's violations, a civil penalty for ONE HUNDRED EIGHTEEN THOUSAND DOLLARS (\$118,000) is assessed against the Respondent for the above violations. FIFTY NINE THOUSAND DOLLARS (\$59,000) 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 Modification. FIFTY NINE THOUSAND DOLLARS (\$59,000) of the civil penalty shall be suspended conditioned on Respondent's timely compliance with all the terms, conditions and provisions of this Modification including but not limited to the requirements of the Schedule of Compliance.

Respondent shall be notified in writing of the violations and payment of the suspended penalty shall be due within thirty (30) days of the receipt of the notice of violations. Further, any additional violations which occur during the period when Lafarge is implementing the corrective actions specified herein shall also be suspended

by the Department, provided that Lafarge completes all of the corrective actions in accordance with the schedule set forth in the Schedule of Compliance.

II. Schedule of Compliance

Respondent shall comply with the attached Schedule of Compliance that is incorporated and made part of this Modification. The Modification supersedes the Order on Consent including its Schedule of Compliance.

III. Summary Abatement

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

IV. Binding Effect

This Modification 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 4130
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

Adam G. Sowatzka
King & Spalding
1180 Peachtree Street, N.E.
Atlanta, GA 30309-3521

VI. Modifications

No change or modification to this Modification 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 Modification, 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 Modification

The effective date of this Modification 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 Modification

Except as specifically provided in this Modification, nothing contained in this Modification 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 Modification and whether or not this Modification 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 Modification 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 Modification 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 Modification.

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 Modification. 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 Modification, including the Schedule of Compliance, shall be in full settlement of the violations cited in this Modification.

XIII. Third Parties

This Modification 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.

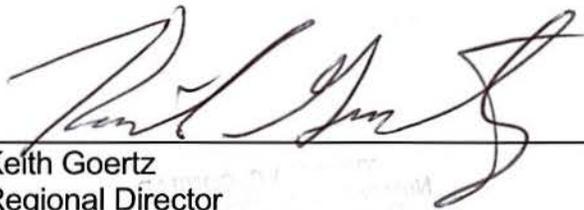
XIV. Force Majeure

Respondent shall not suffer any penalty or be subject to any proceeding or action if it cannot comply with any requirement of this Modification if the failure to comply is the result of a force majeure event. A force majeure event shall include acts of God, work stoppages due to labor disputes or strikes, fires, explosions, epidemics, riots, war rebellion, sabotage any other fact or circumstance beyond the reasonable control of the Respondent. If a failure of or delay in performance by the Respondent results from the occurrence of a force majeure event, the delay shall be excused and the time for performance extended by a period equivalent to the time lost because of the force majeure event, if and to the extent that the: (a) delay or failure was beyond the control of the Respondent and not due to its fault or negligence; (b) delay or failure was not extended because of the Respondent's failure to use all reasonable diligence to overcome the obstacle or to resume performance immediately after such obstacle was overcome; (c) Respondent provides notice to the Department within 5 days of the onset of the event, that it is invoking the protection of this provision; and (d) notice shall include the measures taken and to be taken to prevent or minimize any delays and may request an appropriate extension or modification as appropriate.

DATED: October 9, 2015
Rotterdam, New York

Marc Gerstman
Acting Commissioner
New York State Department of Environmental
Conservation

BY:



Keith Goertz
Regional Director
Region 4

CONSENT BY RESPONDENT

Respondent hereby consents to the issuance and entry of the foregoing Modification, waives their rights to a hearing herein as provided by law, and agrees to be bound by the provisions, terms and conditions contained herein.

BY: [Signature] TITLE: Plant Manager

DATE: 10/8/2015

STATE OF NEW YORK)
COUNTY OF ALBANY) ss.:

On the 8th day of OCTOBER 2015, before me, the undersigned, personally appeared MIKE P. KRALIK
(Full name)

personally known to me who, being duly sworn, did depose and say that he/she/they reside at ROUTE 9W RAVENNA NY 12143
WORKS (Full mailing address)

and that he/she/they is (are) the PLANT MANAGER
(President or other officer or director or attorney in fact duly appointed)
of the LAFARGE NORTH AMERICA
(Full legal name of corporation)

The company described in and which executed the above instrument; and that he/she/they signed his/her/their name(s) thereto by the authority of the board of directors of said company.

[Signature: Theresa C. Conrad]
Notary Public, State of New York

THERESA C. CONRAD
Notary Public, State of New York
Qualified in Albany County
Reg. No. 01CO5073888
Commission Expires March 3, 2019

Schedule of Compliance

	Requirement	Due Date
1.	<p>Complete an evaluation of the on-site sanitary sewer system by a Professional Engineer licensed to practice in New York State. The current design/operating system should be reviewed in order to develop a corrective action plan, if needed, to achieve compliance with the Department's 2014 Design Standards, 6 NYCRR Part 750, and the SPDES permit. A summary report with any necessary corrective actions that complies with 6 NYCRR Part 750-2.8 shall be submitted to the Department for review and approval. Once approved, the plan will become enforceable under the terms of this Modification.</p>	December 31, 2015.
2	<p>Prepare a formal plan for the safe transport and storage of leachate in the former slurry basin, including: i) formal procedures for monitoring and documenting the level of leachate in the equalization basins; ii) monitoring of weather for extended and/or heavy periods of rain/thaw; iii) determining technical/administrative criteria for use of the basins; iv) maximizing the use of storage capacity; and v) specifying changes required by cold weather. The plan shall emphasize providing sufficient leachate storage capacity at all times. Once approved, the plan will become enforceable under the terms of this Modification.</p>	December 31, 2015
3.	<p>Respondent shall install the equipment for the parallel leachate treatment system at Outfall No. 023 as approved by the Department in correspondence to Lafarge dated July 20, 2015. All existing and newly installed equipment shall be properly prepared for winter operations. All discharges from leachate treatment system shall be to the Hudson River</p>	December 31, 2015
4	Parallel leachate treatment system to be fully functional.	January 31, 2016
5	<p>Leachate treatment system configuration to be provided to the Department with the submittal of As-Built Drawings, Operations Plan, Process Flow Diagram, and documentation of compliance with the SPDES permit.</p>	February 28, 2016

Appendix A --DMR Reported Permit Effluent Limit Violations

Outfall No. 003A: Sanitary Wastewater Treatment Plant Effluent

1. Parameter: Fecal Coliform
Permit Limit: 200 counts per 100 mL (30 day Geometric Mean)
September 2014: 204
2. Parameters: Fecal Coliform
Permit Limit: 400 counts per 100 mL (7 Day Geometric Mean)
September 20 14: 540
3. Parameter : Fecal Coliform
Permit Limit: 400 counts per 100 mL (7 Day Geometric Mean)
February 2015: 1,600
4. Parameter: Fecal Coliform
Permit Limit: 400 counts per 100 mL (7 Day Geometric Mean)
March 20 15: 1,600
5. Parameter: Fecal Coliform
Permit Limit: 200 counts per 100 mL (30 day Geometric Mean)
January 20 14: Greater than 1,600

Outfall No. 003M - Non-Contact Cooling Water (NCCW) & Leachate

1. Parameter: pH
Permit Limit: 9.0 s.u. (Instantaneous Maximum)
August 2014: 9.5
2. Parameter: pH
Permit Limit: 9.0 s.u. (Instantaneous Maximum)
September 2014: 9.5
3. Permit Limit: 9.0 s.u. (Instantaneous Maximum)
October 2014: 9.8
4. Permit Limit: 9.0 s.u. (Instantaneous Maximum)
December 20 14: 9.5

5. Parameter: pH
Permit Limit: 9.0 s.u. (Instantaneous Maximum)
January 2015: 9.1
6. Parameter: pH
Permit Limit: 9.0 s.u. (Instantaneous Maximum)
February 2015: 10.6
7. Parameter: pH
Permit Limit: 9.0 s.u. (Instantaneous Maximum)
March 2015: 9.5
8. Parameter: Settleable Solids
Permit Limit: 0.1 mg/L (Daily Maximum)
January 2015: 3.5
9. Parameter: Total Suspended Solids
Permit Limit: 30 mg/L (Daily Maximum)
August 2014: 40
10. Parameter: Total Suspended Solids
Permit Limit: 50 mg/L (Daily Maximum)
October 2014: 123
11. Parameter: Total Suspended Solids
Permit Limit: 50 mg/L (Daily Maximum)
January 2015: 55
12. Parameter: Delta T (Upstream vs. Downstream)
Permit Limit: 2 Degrees F (Instantaneous Maximum) September 2014: 4.1
13. Parameter: Delta T (Upstream vs. Downstream)
Permit Limit: 5.0 Degrees F (Instantaneous Maximum) January 2015: 6.8
14. Parameter: Mercury
Permit Limit: 50 ng/L (Daily Maximum)
December 2014: 98.5

Outfall No. 010 –

1. Failure to sample for period ending June 2015.