

STATE OF NEW YORK  
DEPARTMENT OF ENVIRONMENTAL CONSERVATION

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In the Matter of Violations  
of the Environmental Conservation  
Law Article 17, Article 24 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. R4-2008-0721-113

- by -

Lehigh Northeast Cement Company

Respondent

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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 over the regulation of work in protected wetlands as shown on the Final Freshwater Wetlands Maps filed by county for the State of New York and described in Article 24 of the Environmental Conservation Law and the rules and regulations promulgated pursuant thereto.
3. 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.
4. Respondent owns the Lehigh Alsen Dust Disposal Facility, located east of NYS Route 9W in Catskill, New York (Greene County), which is a closed cement kiln dust landfill ("landfill"). On May 7, 1987 Respondent became subject to an Order on Consent (R4-0434-87-02) which required it to develop and implement a closure plan for the landfill. The landfill underwent a phased closure between 1987 and 1997.
5. Freshwater Wetland HS-101 ("wetland") is located on property owned by the Respondent and is located immediately down slope of the landfill.
6. Respondent is a "person" as defined in 6 NYCRR §663.2(w).
7. On July 11, 2008 Department staff conducted an inspection of the landfill. During the inspection, Department staff observed that leachate from the landfill was being discharged to the surface and groundwaters and the wetland without a SPDES permit.

8. 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.”
9. 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.”
10. 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 and the wetland without a SPDES permit.
11. On July 30, 2008, Department staff conducted an inspection of the wetland. During the inspection, Department staff observed that an orange colored precipitate and cement kiln dust precipitate had been deposited in the wetland. The cement kiln dust precipitate varied in thickness from a thin coating to as much as a foot in some places.
12. 6 NYCRR 663.4(38) requires that a permit be issued to introduce or store any substance, including any chemical, petrochemical, solid waste, nuclear waste, toxic material, sewage effluent, or other pollutant in a wetland.
13. The deposition of cement kiln dust precipitate in the wetland by Respondent is a violation of 6 NYCRR 663.4(38).
14. 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 dollars (\$37,500). Injunctive relief is also available.
15. ECL § 71-2303(1) provides for up to three thousand dollars (\$3,000) in civil penalties for each violation of article twenty-four and any rule or regulation, local law or ordinance, permit or order issued pursuant thereto and the restoration of the affected freshwater wetland to its condition prior to the violation, insofar as that is possible, within a reasonable time.
16. 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.
17. 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 FIFTY THOUSAND DOLLARS (\$50,000) is hereby assessed against the Respondent. FORTY THOUSAND DOLLARS (\$40,000) of the civil penalty is due within ten days of receipt of a fully signed copy of this Order on Consent. The civil penalty shall be paid by certified or bank check made payable to the NYS DEC.

The balance of the penalty, TEN THOUSAND DOLLARS (\$10,000), is suspended and shall not be payable, provided that Respondent fully complies with the requirements of this Order in a timely fashion. In the event that Respondent fails to comply with the requirements of this Order the entire suspended portion of the penalty shall become due and payable upon written notice to Respondent without prejudicing the Department from seeking further appropriate penalties for violations of this Order by Respondent.

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

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, its 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 Alsen 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: \_\_\_\_\_, 2008  
Rotterdam, New York

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

BY:

\_\_\_\_\_  
Stuart Gruskin  
Executive Deputy Commissioner

CONSENT BY RESPONDENT  
Lehigh Northeast Cement Company

Respondent hereby consents to the issuing and entering of this Order, waives its right to a hearing herein, and agrees to be bound by the provisions, terms and conditions contained herein.

BY: \_\_\_\_\_ TITLE: \_\_\_\_\_

DATE: \_\_\_\_\_

STATE OF )  
 )ss.:  
COUNTY OF )

On the \_\_\_ day of \_\_\_\_\_ in the year \_\_\_\_ before me, the undersigned, a Notary Public in and for the State, personally appeared \_\_\_\_\_, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

\_\_\_\_\_  
Notary Public  
Qualified in the County of:  
My Commission Expires:

## Schedule of Compliance

As of the effective date of the Order, Respondent has implemented interim measures to contain, pump and treat leachate outbreaks occurring at the landfill. Respondent shall continue to operate the interim system until the Department approves the permanent system under Paragraph 5 below.

- A. By December 31, 2008, Respondent shall submit for Department approval a preliminary design plan for the capture, containment and treatment of the discharge of leachate occurring at the landfill, which may include the installation of neutralization system(s) for treatment of leachate prior to discharge into the wetland.
3. Within 45 days after the Department's approval of the design plan, Respondent shall submit construction drawings for the approved design.
4. To the extent required by the approved preliminary design, Respondent shall submit to the Department a SPDES permit application within 60 days after approval of the preliminary design plan
5. After Department's approval of the construction drawings, Respondent will commence construction of the of the approved plan according to a construction schedule submitted to the Department.
6. The Department will notify Respondent of its decision and comments on the preliminary design plan and the construction drawings within 45 days of receipt.
7. After the first full week of the effective date of this Order, Respondent will collect samples on a weekly basis for four weeks, and thereafter bi-monthly for two months, and thereafter monthly until the issuance of a SPDES permit for the treated discharge or incorporation of the treated discharge into the existing SPDES permit, the following parameters: pH (6.0-9.0 s.u.), Dissolved Oxygen (DO) (daily minimum of 7.0 mg/L), Total Suspended Solids (TSS) (daily maximum of 50 mg/L), flow (monitor only in GPM), and temperature (daily maximum of 70 deg. F). In addition, after one full week of operation, a total metal analysis shall be conducted for Lead, Antimony, Arsenic, Barium, Beryllium, Cadmium, Chromium and Thallium. The metals data will be reviewed by the Department and the need for additional sampling will be determined at that time.
8. Within 60 days of the effective date of this Order, Respondent shall develop a plan and schedule to conduct a study to determine the following:
  - A. The aerial extent of Wetland HS-101 that has received cement kiln dust precipitate from the landfill.
  - B. An assessment of impacts to the wetland that have resulted from the deposition of cement kiln dust precipitate.

- C. A strategy for mitigation to the extent possible all adverse impacts to Wetland HS-101 caused by the deposition of cement kiln dust precipitate that have entered the wetland from the landfill.

Once approved by the Department, the plan and schedule shall become enforceable under this Order.

- 9. 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.