

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA, STATE OF )  
INDIANA, STATE OF IOWA, STATE OF )  
MARYLAND, STATE OF NEW YORK, )  
PENNSYLVANIA DEPARTMENT OF )  
ENVIRONMENTAL PROTECTION, )  
JEFFERSON COUNTY BOARD OF HEALTH, )  
and BAY AREA AIR QUALITY MANAGEMENT )  
DISTRICT, )

Plaintiffs, )

v. )

LEHIGH CEMENT COMPANY LLC, and )  
LEHIGH WHITE CEMENT COMPANY, LLC, )

Defendants. )

Civil Action No. 5:19-cv-05688-JFL

**FIRST AMENDMENT TO CONSENT DECREE**

The United States, on behalf of the U.S. Environmental Protection Agency, the State of Indiana (“Indiana”), on behalf of the Indiana Department of Environmental Management, and Lehigh Cement Company LLC (“Lehigh”) (together the “Parties”), enter into this First Amendment to Consent Decree (“First Amendment”) to modify two dates contained in the Consent Decree entered by the Court in this case on November 19, 2020: (1) the date for electing between two injunctive relief measures (Options A and B) at one Lehigh facility, and (2) if “Option B” is selected, the date for completing the installation of emission controls at that facility.

On December 3, 2019, the United States and seven states and state or local agencies (“State Plaintiffs”)<sup>1</sup> filed a Complaint alleging violations of the Clean Air Act, its regulations,

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<sup>1</sup> The states and state or local agencies that are co-plaintiffs consist of Indiana, Iowa, Maryland, New York, the Pennsylvania Department of Environmental Protection, the Jefferson County Board of Health (Alabama), and the Bay Area Air Quality Management District (California).

and related state provisions at one or more of 11 Portland cement facilities owned or operated by Lehigh and Lehigh White Cement Company, LLC (“Lehigh White”). One of these facilities is located in Mitchell, Indiana (the “Mitchell facility”), and is owned and/or operated by Lehigh. The Mitchell facility is the subject of this amendment.

Simultaneously with filing the Complaint, the United States lodged a proposed Consent Decree that would resolve the claims alleged in the Complaint. The Consent Decree requires, *inter alia*, installation of emissions control technology for oxides of nitrogen (“NO<sub>x</sub>”) and sulfur dioxide (“SO<sub>2</sub>”), emissions monitoring systems, fixed emissions limits for NO<sub>x</sub> and SO<sub>2</sub> (including one “test and set” limit for SO<sub>2</sub>, at the Cupertino, California facility).

For the Mitchell facility, the Consent Decree allows Lehigh two options for meeting NO<sub>x</sub> and SO<sub>2</sub> limits. Under Option A, existing Mitchell Kilns 1, 2, and 3 will be retired no later than 54 months after the Effective Date of the Consent Decree or 180 days following the initial startup of a new kiln or kilns at the Mitchell facility, whichever occurs first. *See* Paragraphs 14 and 22 of Consent Decree. Under Option B, Lehigh would retrofit the existing Mitchell kilns to install add-on emissions controls for NO<sub>x</sub> and SO<sub>2</sub> by 20 months after the Effective Date of the Consent Decree for Mitchell Kiln 1, and by 24 months after the Effective Date of the Consent Decree for Mitchell Kilns 2 and 3. *See* Paragraph 12, Table 2, and Paragraph 20, Table 3 of Consent Decree. Lehigh must select between Options A and B (“Mitchell Compliance Election”) within 8 months after the Effective Date. If Lehigh fails to make its selection by the required date, it shall be deemed to have selected Option B. *Id.*

After lodging but before entry of the Consent Decree, the COVID-19 pandemic impacted the United States, and the world. Lehigh has made the following representations to the United States and Indiana and, after review, the Governments have no reason to doubt such

representations. The pandemic has affected Lehigh's ability to meet two deadlines relating to the Mitchell injunctive relief. Although the Mitchell Compliance Election deadline under the Consent Decree has not yet occurred, Lehigh has been pursuing Option A – construction of a new cement kiln at the Mitchell facility – while endeavoring to overcome and address, without having to terminate the new kiln project, those delays and disruptions to its engineering, part fabrication and acquisition, and construction schedule related to the impacts of the COVID-19 pandemic. Lehigh's domestic and global contractors have experienced significant challenges in meeting the timelines associated with the construction of the new cement kiln due to quarantines, stay-at-home orders, and travel restrictions issued by various national, state, and local governments related to the COVID-19 pandemic.

Based upon the foregoing, Lehigh asked, *inter alia*, that the deadline for selecting between Options A and B at the Mitchell facility be extended from 8 months after the Effective Date of the Consent Decree until 10 months after the Effective Date. Lehigh also asked that the deadline for installing emission controls and meeting the emissions limits for SO<sub>2</sub> and NO<sub>x</sub> at Mitchell Kiln 1 under Option B, should Lehigh choose that option, be extended from 20 months after Consent Decree entry until 24 months after entry. (*See* Paragraph 12, Table 2, and Paragraph 20, Table 3 of Consent Decree.) The four-month extension for the retrofit of Mitchell Kiln 1 would allow Lehigh to continue to resolve pandemic-related delays and disruptions impacting construction of a new kiln under Option A while still meeting the deadline for completion of the new kiln, without simultaneously having to take significant steps to implement Option B that would detract from Lehigh's efforts under Option A.

Counsel and technical representatives for the United States, Indiana, and Lehigh have engaged in discussions regarding Lehigh's request, and the United States and Indiana have reviewed documentation provided by Lehigh.

The United States and Indiana acknowledge that the COVID-19 pandemic has had an impact on Lehigh's operations in general and on injunctive relief-related work at the Mitchell facility and therefore have agreed to extend the deadline for selection between Options A and B from 8 months until 10 months after the Effective Date.

The United States and Indiana have also agreed to extend the deadline, if Lehigh selects Option B, to install emission controls and meet emission limits for NO<sub>x</sub> and SO<sub>2</sub> at Mitchell Kiln 1 from 20 months to 24 months. These delays will not impact emissions at any other facility subject to the Consent Decree, and the impact on emissions at the Mitchell facility will be limited to one kiln over a four-month period. The parties have also revised the "default" option if Lehigh fails to make an election from Option B to Option A. Thus, if Lehigh fails to make the selection between these two options in a timely manner, it will be deemed to have selected Option A – construction of a new kiln or kilns.

The Parties agree that the modification set forth herein is a material modification within the meaning of Paragraph 106 of the Consent Decree, and requires Court approval. The modification relates only to the Mitchell facility and therefore requires the agreement of only the United States, Indiana, and Lehigh. *See id.*

NOW, THEREFORE, upon the consent and agreement of the Parties in accordance with Paragraph 106 of the Consent Decree, the Consent Decree is hereby modified as follows:

## AMENDED CONSENT DECREE PROVISIONS

1. The Consent Decree shall remain in full force and effect in accordance with its terms, except as specified in Paragraphs 2 to 4 below.

2. The row in Table 2, Paragraph 12, related to Mitchell Kiln 1 (Mitchell Option B) is deleted and replaced with the following:

Mitchell Kiln 1 (Mitchell Option B)	SNCR	Effective Date + 24 months	3.0
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3. The row in Table 3, Paragraph 20, related to Mitchell Kiln 1 (Option B) is deleted and replaced with the following:

Mitchell Kiln 1 (Option B)	Lime Injection	Effective Date + 24 months	2.5
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4. The first sentence of Paragraph 14 and the first sentence of Paragraph 22 are each deleted and replaced with the following:

***Mitchell Compliance Election:*** Lehigh shall provide notice no later than 10 months after the Effective Date, as to whether it has elected Mitchell Option A or Mitchell Option B. Failure to provide notice by the deadline shall be deemed an election of Mitchell Option A.

The rest of Paragraphs 14 and 22 remains unchanged.

Respectfully submitted,

*FOR THE UNITED STATES OF AMERICA:*

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