

ALLEGHENY COUNTY HEALTH DEPARTMENT
AIR QUALITY PROGRAM

In the Matter of: Glen-Gery Corporation – Pittsburgh (formerly Harmar) Plant
230 Rich Hill Road
Harmar Township, PA 15024

CONSENT ORDER AND AGREEMENT

This Consent Order and Agreement (“Consent Agreement”) is entered into this 16 th day of March, 2022, by and between the Allegheny County Health Department (“ACHD”) and Brickworks Eddie Acquisition Corp. (“Permittee”) (hereinafter referred to collectively as the “Parties”).

WHEREAS, the Director of the ACHD has been delegated authority pursuant to the federal Clean Air Act, 42 U.S.C. §§ 7401 et seq., and the Pennsylvania Air Pollution Control Act, 35 P.S. §§ 4001 et seq., and the ACHD is a local health agency organized under Local Health Administration Law, Act 315 of August 24, 1951, P.L. 1304, as amended, 16 Pa.C.S. § 12001 et seq., whose powers and duties include the enforcement of laws relating to public health within Allegheny County, including the Allegheny County Health Department’s Rules and Regulations, Article XXI, Air Pollution Control (hereinafter “Article XXI”);

WHEREAS, Permittee owns a brick manufacturing facility in Allegheny County, Pennsylvania. The facility is physically located at 230 Rich Hill Road, Harmar Township, Pennsylvania.

WHEREAS, on or about February 6, 2020, Permittee acquired the facility from Redland Brick Inc.

WHEREAS, on September 2, 2020, the ACHD issued an amended Operating Permit No. 0103-OP10b (hereinafter “Operating Permit”) for the operation of a plant that includes the

following emission sources, as more fully described in the Operating Permit: A brick drying and firing tunnel kiln; crushing, grinding and screening operations; a coating/extrusion line; clay/shale mining; raw material storage sheds; and fugitive emissions from vehicular traffic.

WHEREAS, Operating Permit condition V.A.3.g., regarding the continuous emissions monitoring system (CEMS), requires a relative accuracy test audit (RATA) for sulfur dioxide (SO₂), carbon monoxide (CO), hydrogen chloride (HCl), and hydrogen fluoride (HF) by stating in relevant part: “At least once every eight calendar quarters . . . the permittee shall perform a RATA for SO₂ and CO, and at least once every 5 years the permittee shall perform a RATA for HCl and HF.” The RATA test is a quality assurance and a quality control test to determine if the CEMS is accurately reading the emissions.

WHEREAS, Operating Permit condition V.A.3.h. requires: “The permittee shall perform an audit of the CEMS once each calendar quarter using either a cylinder gas audit (CGA) or a relative accuracy audit (RAA) in accordance with the procedures outlined in 40 CFR Part 60, Appendix F Procedure 1. Should the CEMS not pass an RAA or CGA on the first attempt for two consecutive quarters, the permittee shall complete a RATA within sixty (60) days of the second quarter’s failed test in accordance with 40 CFR 60, Appendix F, Sections 5.1.2, 5.1.3.”

WHEREAS, Operating Permit condition V.A.1.a.5. requires: “During periods where the [CEMS] required by Condition V.A.3.a [is] not operating properly or is shutdown, the lime injection feed rate shall be set at the level during the most recent stack test that demonstrated compliance with the emission limitations of sulfur oxides, hydrogen chloride, and hydrogen fluoride.”

WHEREAS, on September 25, 2020, Permittee failed the first quarterly CGA.

WHEREAS, on March 17, 2021, Permittee failed the second quarterly CGA.

WHEREAS, on June 28, 2021, Permittee failed the third quarterly CGA.

WHEREAS, on July 22, 2021, Permittee failed a RATA for sulfur dioxide and carbon monoxide. Currently, Permittee does not have a passing RATA for those aforementioned pollutants, and the Parties intend to pursue corrective action through an updated Operating Permit renewal application instead of relying on another RATA.

WHEREAS, on July 22, 2021, Permittee conducted a voluntary stack test on sulfur dioxide, nitrogen oxides, carbon monoxide, hydrogen fluoride, and hydrogen chloride at a lime feed rate of 186 pounds/hour. All measured pollutants were in compliance with applicable emissions limits. The pollutant with the highest recorded emissions relative to the pollutant's Operating Permit limit was hydrogen fluoride which emitted an average of only 23% of its permitted limit.

WHEREAS, the ACHD and Permittee recognize that this Consent Agreement has been negotiated in good faith and that any actions undertaken by Permittee in accordance with this Consent Agreement do not constitute an admission of fault or liability;

WHEREAS, after a full and complete negotiation of all matters set forth in this Consent Agreement and upon mutual exchange of covenants contained herein, the Parties agree that this Consent Agreement is in the best interest of the Parties and the public.

NOW, THEREFORE, without any final determination or admission of fact or law, and intending to be legally bound hereby, the Parties hereto agree as follows:

I. JURISDICTION

1. Solely for the purposes of this Consent Agreement, Permittee waives all objections and defenses that it may have to jurisdiction or venue. Permittee shall not challenge ACHD's jurisdiction to enter into or to enforce this Agreement.

II. APPLICABILITY

2. The provisions of this Consent Agreement shall apply to, be binding upon, and inure to the benefit of the ACHD and Permittee and upon their respective officers, directors, agents, contractors, employees, servants, successors, and assigns.

3. The duties and obligations under this Consent Agreement shall not be modified, diminished, terminated, or otherwise altered by the transfer of any legal or equitable interest in Permittee or any part thereof. In the event that Permittee proposes to sell or transfer its Pittsburgh Plant or any part thereof to an unaffiliated entity after the effective date of this Consent Agreement, Permittee shall provide written notice to the ACHD of such purchaser or transferee at least thirty (30) days prior to the sale or transfer. Permittee shall also provide a copy of this Consent Agreement to any person or entity Permittee intends to make any such sale or transfer to at least thirty (30) days prior thereto.

4. The undersigned representative of Permittee certifies that he or she is fully authorized to execute this Consent Agreement on behalf of Permittee, and to legally bind Permittee to this Agreement.

III. GENERAL TERMS

5. This Consent Agreement addresses and is intended to resolve all outstanding issues between the Parties relating to the CEMS, including in conditions V.A.1 through V.A.5 of the Operating Permit, the multiple failures of the CGA and the RATA, as well as any related penalties, corrective actions, or other actions by the ACHD for enforcement of such issues.

6. The Parties do not authorize any other persons to use the findings in this Consent Agreement in any matter or proceeding.

7. Nothing herein is intended to limit the authority of the ACHD with respect to violations that may have occurred prior to the date of this Consent Agreement, if any, that are not

intended to be the subject of resolution hereunder, or to limit the authority of ACHD to seek enforcement of this Agreement in the event that Permittee fails to comply with its terms and conditions.

IV. CONDITIONS

8. Within ninety (90) days from the effective date of this Consent Agreement, Permittee shall submit an updated Operating Permit renewal application to the ACHD which will include removal of the CEMS in conditions V.A.1 through V.A.5. The date for submitting the updated application for an Operating Permit renewal may be extended upon written permission by the ACHD.

9. Permittee shall comply with Operating Permit condition V.A.1.a.5 until the Operating Permit renewal submitted pursuant to Paragraph 8 of this Agreement has been issued: “During periods where the [CEMS] required by Condition V.A.3.a [is] not operating properly or is shutdown, the lime injection feed rate shall be set at the level during the most recent stack test that demonstrated compliance with the emission limitations of sulfur oxides, hydrogen chloride, and hydrogen fluoride.” The current lime injection rate was established during the July 22, 2021 stack test. Alternatively, the lime injection feed rate may be adjusted with written approval of ACHD, upon demonstration by a more recent stack test that a reduced lime injection rate shall demonstrate compliance with permitted emissions limitations.

10. During the July 22, 2021 Source Test and RATA, Permittee established the lime injection feed rate of 186 pounds/hour by independently proving that the emissions were maintained even though they failed CGAs. This 186 pounds/hour feed rate shall be maintained unless a more recent feed rate applies in accordance with Paragraph 9.

11. Pursuant to Operating Permit conditions V.A.5.c and V.A.5.d, which require reporting of CEMS data “unless otherwise specified by the Department,” and that “such report

shall include at a minimum . . . [,]" ACHD is hereby specifying that Permittee is not required to submit a written report of CEMS data pursuant to Operating Permit condition V.A.5.

V. FORCE MAJEURE

12. For purposes of this Consent Decree, “force majeure” as applied to Permittee or to any entity or person controlled by Permittee, is defined as any event arising from circumstances or causes beyond the control of Permittee or of any entity or person controlled by Permittee, including but not limited to, its officers, directors, employees, agents, representatives, contractors, subcontractors and consultants, that delays or may delay or prevent the performance of any condition under this Consent Agreement despite Permittee’s diligent efforts to fulfill the condition. Such force majeure events include, but are not limited to, events such as floods, fires, tornadoes, other natural disasters, labor disputes, and unavailability of necessary equipment or qualified labor beyond the reasonable control of Permittee. The requirement to exercise “diligent efforts to fulfill the condition” includes using diligent efforts to mitigate any delay caused by a force majeure event (i) as it is occurring, and (ii) following the force majeure event, such that the delay or nonperformance is minimized to the greatest extent possible.

13. If Permittee is prevented from complying with any requirement of this Agreement due to a potential force majeure event, and if Permittee is to have the right to claim such event constitutes force majeure, Permittee shall:

- (a) Telephonically notify and inform the ACHD of the occurrence of the event within seventy-two (72) hours after Permittee first knew, or with the exercise of reasonable care should have known, of the event;
- (b) Provide in writing to ACHD, within five (5) days after Permittee first knew, or with the exercise of reasonable care should have known, of the event, a statement which:
 - (1) Describes and explains the reasons for the delay or nonperformance;

- (2) Describes and explains the reasons for the duration or anticipated duration of the delay or nonperformance;
- (3) Identifies all measures taken or to be taken by Permittee to prevent or minimize the delay or nonperformance;
- (4) Includes a timetable and schedule pursuant to which such measures shall be implemented;
- (5) Contains Permittee's rationale for attributing such delay or nonperformance to a force majeure event if it intends to assert such a claim;
- (6) States whether, in the opinion of Permittee, such event may cause or contribute to an endangerment to public health, welfare or the environment; and
- (7) Includes available documentation which, to the best knowledge and belief of Permittee, supports Permittee's claim that the delay or nonperformance was attributable to a force majeure event.

14. Failure by Permittee to comply with each of the notice requirements above shall constitute a waiver of Permittee's right to invoke the Force Majeure provision as a basis for delay or nonperformance under this Consent Agreement.

VI. GENERAL PROVISIONS

15. In the event that Permittee fails to comply with any provision of this Consent Agreement, the ACHD may pursue any remedy available under Article XXI of the ACHD's Rules and Regulations for a violation of an Order of the ACHD, including an action to enforce this Consent Agreement.

16. The ACHD reserves the right to require additional measures to achieve compliance with this Consent Agreement. Permittee reserves the right to challenge any action that the ACHD may take to require those measures.

17. Permittee shall be liable for any violations of this Consent Agreement, including those caused by, contributed to, or allowed by its officers, agents, employees, or contractors.

18. All correspondence with ACHD concerning this Consent Agreement shall be addressed to:

Dean DeLuca
Program Manager
Air Quality Program
Allegheny County Health Department
301 39th Street, Building 7
Pittsburgh, PA 15201-1811

With a copy to:

Jeffrey Bailey, Esq.
Allegheny County Health Department
Legal Section
301 39th Street, Building 7
Pittsburgh, PA 15201-1811

19. All correspondence with Permittee concerning this Consent Agreement shall be addressed to:

John Vrobel
Vice President - Production
Brickworks Eddie Acquisition Corp.
1166 Spring Street
Wyomissing, PA 19610

With a copy to:

Mike Krzyzanowski
Technical Services Manager
433 S. Pottsville Pike
Shoemakersville, PA 19555

Stephen J. Matzura, Esq.
Saxton & Stump, LLC
4250 Crums Mill Road, Suite 201
Harrisburg, PA 17112

20. Permittee shall notify ACHD whenever there is a change in the contact person's name, title or address. Service of any notice or any legal process for any purpose under this Consent Agreement, including its enforcement, may be made by mailing an original or true and correct copy by first class mail to the above addresses.

21. The paragraphs of this Consent Agreement are severable, and should any part hereof be declared invalid or unenforceable, the remainder shall remain in full force and effect between the Parties.

22. This Consent Agreement shall constitute the entire integrated agreement of the parties. No prior or contemporaneous communications or prior drafts shall be relevant or admissible for the purposes of determining the meaning or intent of any provisions herein in any litigation or other proceeding.

23. The Parties shall bear their respective attorneys' fees, expenses, and other costs with regard to the prosecution or defense of this matter or any related matters arising prior to the execution of this Consent Agreement.

24. This Consent Agreement may be modified only by written agreement of the Parties hereto.

V. DISPUTE RESOLUTION

25. Unless otherwise expressly provided for in this Settlement Agreement, the dispute resolution procedures of this Section shall be the exclusive procedure for resolution of disputes arising between the Parties regarding matters included in this Settlement Agreement. Appeals of ACHD actions on the updated Operating Permit renewal application pursuant to Paragraph 8 are governed by Article XI of the ACHD's Rules and Regulations ("Hearings and Appeals"), not the dispute resolution procedures of this Section.

26. If, in one Party's opinion, there is a dispute between the Parties with respect to implementation of this Settlement Agreement or the implementation of any provision of this Settlement Agreement, that Party may send a written Notice of Dispute to the other Party, outlining the nature of the dispute and requesting informal negotiations to resolve the dispute. The Parties shall make reasonable efforts to informally and in good faith resolve all disputes or differences of

opinion regarding the implementation of this Settlement Agreement. Such period of informal negotiations shall not extend beyond thirty (30) days from the date when the Notice of Dispute was received unless the period is extended by written agreement of the Parties. The dispute shall be considered to have arisen when one Party receives the other Party's Notice of Dispute.

27. In the event that the Parties cannot resolve a dispute by informal negotiations under this Section, the position advanced by the ACHD shall govern, control, and be binding unless, within twenty (20) days after the conclusion of the informal negotiation period, Permittee invokes the formal dispute resolution procedures of this Section by mailing to the ACHD a written statement of position on the matter in dispute, including available factual data, analysis, or opinions supporting that position. Within twenty (20) days following receipt of Permittee's statement of position submitted pursuant to this paragraph, the ACHD shall issue a written statement of position ("ACHD's Position") on the matter in dispute, including available factual data, analysis, opinions and/or legal arguments supporting the ACHD's Position. The ACHD's Position shall be binding upon Permittee unless Permittee, within thirty (30) days of receipt of the ACHD's Position, files with the Allegheny County Health Department's Hearing Officer ("Hearing Officer") and serves upon the ACHD a petition for dispute resolution ("Petition"). This Petition shall set forth the matter in dispute, the efforts made by the Parties to resolve it, the relief that the Parties request, and any factual data analysis, opinion, affidavits, legal argument, and documentation supporting their respective positions. The Petition and ACHD's Position shall constitute the initial record for purposes of resolving the dispute. Either Party may request of the Hearing Officer the opportunity to supplement the record with appropriate additional information, provided that such information could not reasonably have been obtained or discovered prior to filing the Petition. The Hearing Officer shall render a final decision on the basis of the full record, including any supplemental

materials received. The final decision of the Hearing Officer shall be appealable by either Party to the Court of Common Pleas of Allegheny County.

28. Judicial and administrative review of any dispute governed by this Section shall be governed by applicable provisions of law.

29. Except as provided in Section V (Force Majeure), the invocation of informal or formal Dispute Resolution procedures under this Section shall not of itself extend, postpone, act as a stay, or affect in any way any obligation of Permittee under this Settlement Agreement.

30. Whenever service, process, or notice is required of any dispute pursuant to this Section, such service, process, or notice shall be directed to the individuals at the addresses specified in Section VI (General Provisions) of this Settlement Agreement, unless those individuals or their successors give notice in writing to the other Parties that another individual or address has been designated.


VI. EFFECTIVE DATE AND TERMINATION

31. The effective date of this Consent Agreement (“Effective Date”) shall be the date on which it is signed by both the ACHD and Permittee. This Consent Agreement shall remain in effect until terminated. The Consent Agreement shall be terminated by the earliest of the following: (i) mutual agreement of the Parties; or (ii) automatically upon the date of the ACHD’s issuance of the updated Operating Permit renewal submitted pursuant to Paragraph 8 of this Agreement which removes the CEMS referenced in conditions V.A.1 through V.A.5. However, either party may request of the other party an extension of the terms of this Consent Agreement beyond the termination date, in which case this Section of this Agreement may be modified only by written agreement of the Parties.

IN WITNESS WHEREOF, the Parties hereto have caused this Consent Agreement to be executed by their duly authorized representatives. The undersigned representatives of Permittee and ACHD certify under penalty of law, as provided by 18 Pa.C.S. § 4909, that he or she is authorized to execute this Consent Agreement on behalf of a party; that Permittee consents to the entry of this Agreement as a final ORDER of the ACHD; and that, except as otherwise provided herein, Permittee hereby knowingly waives its rights to appeal this Consent Agreement and to challenge its content or validity, which rights may be available under Article XI of the ACHD Rules and Regulations for Hearings and Appeals, and Pennsylvania Administrative Agency Law, 2 Pa.C.S. §103(a), or any other applicable provision of law. Signature by Permittee’s attorney certifies only that this Consent Agreement has been signed after consulting with counsel.

**FOR PERMITTEE BRICKWORKS EDDIE ACQUISITION CORP.
GLEN-GERY CORPORATION – PITTSBURGH (FORMERLY HARMAR) PLANT**


Date: 3 16, 2022



John Vogel
Vice President - Production



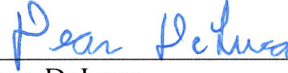
Mike Krzyzanowski
Technical Services Manager




Stephen J. Matzura, Esq.
Attorney for Permittee

FOR THE ALLEGHENY COUNTY HEALTH DEPARTMENT

Date: 3/16, 2022



Dean DeLuca
Air Quality Program Manager



Jeffrey R. Bailey, Esquire
ACHD Assistant Solicitor