CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
San Francisco Bay REGION

In the matter of:	)	
	)	
Lehigh Southwest Cement Company No. R2-2011-0023 for Administrative Civil Liability	)	**Order No. R2-2012-0039**
	)	**Settlement Agreement and Stipulation for Entry of Order; Order**

Section I: Introduction

This Settlement Agreement and Stipulation for Entry of Administrative Civil Liability Order ("Stipulation") is entered into by and between the Regional Water Quality Control Board Prosecution Staff ("Prosecution Staff") and Lehigh Southwest Cement Company operating under Lehigh Hanson, Inc. ("Settling Respondent") (collectively "Parties") and is presented to the San Francisco Bay Regional Water Quality Control Board ("Regional Water Board") for adoption as an Order, by settlement, pursuant to Government Code section 11415.60.

Section II: Recitals

1. The Settling Respondent is the owner of a cement plant located at 24001 Stevens Creek Boulevard in Cupertino, Santa Clara County, California (the "Property"). Cement is produced at the Facility from limestone and materials such as clay (containing silica, iron, and alumina) or other similar raw materials to make a material called clinker. This material is ground with other materials, such as gypsum, to produce cement, which may then be mixed with aggregate material to produce concrete. Materials used in this process are either imported or generated on site at a rock quarry. The Property is subject to the requirements set forth in the Clean Water Act, the California Water Code (CWC), the San Francisco Bay Basin Water Quality Control Plan ("Basin Plan"), and the General Permit for Discharges of Storm Water Associated with Industrial Activities, Excluding Construction Activities, NPDES Permit No. CAS000001 (Industrial Storm Water Permit).

2. On April 29, 2011, the Prosecution Staff issued Administrative Civil Liability Complaint No. R2-2011-0023 ("Complaint") pursuant to CWC section 13385, which recommended imposing an administrative civil liability totaling $10,000 for allegations of an unauthorized discharge of sediment-laden water to Permanente Creek in violation of the CWC and the Industrial Storm Water Permit. The Settling Respondent contests various factual allegations and legal conclusions in the Complaint.

3. To resolve by consent and without further administrative proceedings certain alleged violations of the CWC and Industrial Storm Water Permit set forth in the Complaint, the Parties have agreed to the imposition of $10,000 against the Settling

Respondent. Payment of $10,000 to the State Water Resources Control Board Cleanup and Abatement Account is due no later than 30 days following the Regional Water Board or its delegee executing the accompanying Order.

4. The Parties have engaged in settlement negotiations and agree to settle the matter without administrative or civil litigation and by presenting this Stipulation to the Regional Water Board for adoption as an Order pursuant to Government Code section 11415.60. The Prosecution Staff believes that the resolution of the alleged violations is fair and reasonable and fulfills its enforcement objectives, that no further action is warranted concerning the specific violations alleged in the Complaint except as provided in this Stipulation and that this Stipulation is in the best interest of the public.

Section III: Stipulations

The Parties stipulate to the following:

5. **Administrative Civil Liability:** The Settling Respondent hereby agrees to pay the administrative civil liability pursuant to CWC 13385, totaling $10,000 as set forth in Paragraph 3 of Section II herein.

6. **Compliance with Applicable Laws:** The Settling Respondent understands that payment of administrative civil liability in accordance with the terms of this Order or compliance with the terms of this Order is not a substitute for compliance with applicable laws, and that continuing violations of the type alleged in the Complaint may subject them to further enforcement, including additional administrative civil liability.

7. **Attorneys' Fees and Costs:** Except as otherwise provided herein, each Party shall bear all attorneys' fees and costs arising from the Party's own counsel in connection with the matters set forth herein.

8. **Matters Addressed by Stipulation:** Upon adoption by the Regional Water Board as an Order, this Stipulation represents a final and binding resolution and settlement of all claims, violations or causes of action alleged in the Complaint ("Covered Matters"). The provisions of this Paragraph are expressly conditioned on the full payment of the administrative civil liability by the deadlines specified in Paragraph 3 and the Settling Respondents full satisfaction of the obligations described in Paragraph 3.

9. **Settling Respondent's Denial of Liability:** In settling this matter, the Settling Respondent does not admit to any of the findings of the Complaint, or that it has been or is in violation of the CWC, or any other federal, state, or local law or ordinance, provided, the Settling Respondent agrees that in the event of any future enforcement actions by the Regional Water Board, this Order may be used as evidence of a prior enforcement action consistent with CWC sections 13323, 13350, and 13385.

10. **Public Notice:** The Settling Respondent understands that this Stipulation and proposed Order must be noticed for a 30-day public review period prior to final approval by the Regional Water Board or its delegee. In the event substantive objections are raised during the public comment period, the Regional Water Board or the Executive Officer may, under certain circumstances, require a public hearing regarding the Stipulation and proposed Order. The Parties agree to meet and confer concerning any such objections, and may agree to revise or adjust the proposed Order as necessary or advisable under the circumstances.

11. **Addressing Procedural Objections Raised During Public Comment Period:** The Parties agree that the procedure contemplated for adopting the Order by the Regional Water Board and review of this Stipulation by the public is lawful and adequate. In the event procedural objections are raised prior to the Order becoming effective, the Parties agree to meet and confer concerning any such objections, and may agree to revise or adjust the procedure as necessary or advisable under the circumstances.

12. **Interpretation:** This Stipulation and Order shall be construed as if the Parties prepared it jointly. Any uncertainty or ambiguity shall not be interpreted against any one Party. The Settling Respondent is represented by counsel in this matter.

13. **Modification:** This Stipulation and Order shall not be modified by any of the Parties by oral representation made before or after its execution. All modifications must be in writing, signed by all Parties and approved the Regional Water Board.

14. **If Order Does Not Take Effect:** In the event that this Order does not take effect because it is not approved by the Regional Water Board, or its delegee, or is vacated in whole or in part by the State Water Resources Control Board or a court, the Parties acknowledge that they expect to proceed to a contested evidentiary hearing before the Regional Water Board to determine whether to assess administrative civil liabilities for the underlying alleged violations, unless the Parties agree otherwise. The Parties agree that all oral and written statements and agreements made during the course of settlement discussions will not be admissible as evidence in the hearing. The Parties agree to waive any and all objections based on settlement communications in this matter, including, but not limited to:

a. Objections related to prejudice or bias of any of the Regional Water Board members or their advisors and any other objections that are premised in whole or in part on the fact that the Regional Water Board members or their advisors were exposed to some of the material facts and the Parties' settlement positions as a consequence of reviewing the Stipulation and/or the Order, and therefore may have formed impressions or conclusions prior to any contested evidentiary hearing on the Complaint in this matter; or

b. Laches or delay or other equitable defenses based on the time period

for administrative or judicial review to the extent this period has been extended by these settlement proceedings.

15. **Waiver of Hearing:** The Settling Respondent has been informed of the rights provided by CWC section 13323, subdivision (b), and hereby waives its right to a hearing before the Regional Water Board prior to the adoption of the Order.

16. **Waiver of Right to Petition:** The Settling Respondent hereby waives its right to petition the Regional Water Board's adoption of the Order for review by the State Water Resources Control Board, and further waives its rights, if any, to appeal the same to a California Superior Court and/or any California appellate level court so long as the Order accompanying this Stipulation is not substantively modified by the Regional Water Board or its delegee, as determined by the Settling Respondent.

17. **Settling Respondent's Covenant Not to Sue:** The Settling Respondent covenants not to sue or pursue any administrative or civil claim(s) against any State Agency or the State of California, their officers, Board Members, employees, representatives, agents, or attorneys arising out of or relating to any Covered Matter.

18. **Necessity For Written Approvals:** All approvals and decisions of the Regional Water Board under the terms of this Order shall be communicated to the Settling Respondent in writing. No oral advice, guidance, suggestions or comments by employees or officials of the Regional Water Board regarding submissions or notices shall be construed to relieve the Settling Respondent of its obligation to obtain any final written approval required by this Order.

19. **Authority to Bind:** Each person executing this Stipulation in a representative capacity represents and warrants that he or she is authorized to execute this Stipulation on behalf of and to bind the entity on whose behalf he or she executes the Stipulation.

20. **Effective Date**: The obligations of this Stipulation are effective and binding on the Parties only upon the entry of an Order by the Regional Water Board or its delegee which incorporates the terms of this Stipulation .

21. **Severability:** This Stipulation and Order are severable; should any provision be found invalid the remainder shall remain in full force and effect.

22. **Counterpart Signatures:** This Stipulation may be executed and delivered in any number of counterparts, each of which when executed and delivered shall be deemed to be an original, but such counterparts shall together constitute one document.

IT IS SO STIPULATED.

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Regional Water Board Prosecution Team

By: Dyan C. Whyte

Dyan Whyte
Assistant Executive Officer

Date: March 14, 2012

Lehigh Southwest Cement Company

By: H. Wessel 3-14-2012

NAME Henrik Wesseling
TITLE Plant Manager

Date: _____

Order of the Regional Water Board

23. This Order incorporates the foregoing Stipulation.

24. In accepting the foregoing Stipulation, the Regional Water Board has considered, where applicable, each of the factors prescribed in CWC section [*E.g.* 13327, 13351, or 13385(e)]. The Regional Water Board's consideration of these factors is based upon information obtained by the Regional Water Board' staff in investigating the allegations in the Complaint or otherwise provided to the Regional Water Board. In addition to these factors, this settlement recovers the costs incurred by the staff of the Regional Water Board for this matter.

25. This is an action to enforce the laws and regulations administered by the Regional Water Board. The Regional Water Board finds that issuance of this Order is exempt from the provisions of the California Environmental Quality Act (Public Resources Code, sections 21000 et seq.), in accordance with section 15321(a)(2), Title 14, of the California Code of Regulations.

Pursuant to CWC sections 13323, 13350 and 13385 and Government Code section 11415.60, **IT IS HEREBY ORDERED** on behalf of the California San Francisco Bay Regional Water Quality Control Board.

Digitally signed by Bruce Wolfe
Date: 2012.05.07 10:54:53 -07'00'

Bruce H. Wolfe
Executive Officer

Date: _____