

**CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
SAN FRANCISCO BAY REGION**

In the matter of:)	
)	
LEHIGH SOUTHWEST CEMENT)	SETTLEMENT AGREEMENT AND
COMPANY)	STIPULATION FOR ENTRY OF
SANTA CLARA COUNTY)	ADMINISTRATIVE CIVIL LIABILITY
)	ORDER
Cease and Desist Order Violations,)	
Unauthorized Discharges, and)	PROPOSED ORDER
Mandatory Minimum Penalties)	
)	

Section I: INTRODUCTION

This Settlement Agreement and Stipulation for Entry of Administrative Civil Liability Order (Stipulated Order) is entered into by and between the California Regional Water Quality Control Board, San Francisco Bay Region, Prosecution Team (Prosecution Team), and the Lehigh Southwest Cement Company (Discharger) (collectively Parties), and is presented to the California Regional Water Quality Control Board, San Francisco Bay Region (Regional Water Board), or its delegate for adoption as an Order by settlement pursuant to Government Code section 11415.60. This Stipulated Order resolves the violations alleged herein by the imposition of administrative civil liability against the Discharger in the amount of **\$301,000**.

Section II: RECITALS

1. The Discharger operates the Permanente Plant (Facility), located at 24001 Stevens Creek Blvd., Cupertino, Santa Clara County. The Facility is a limestone quarry and cement production facility that also produces construction aggregate. Hanson Permanente Cement, Inc. owns the property on which the Facility is located.
2. The Facility's discharges to surface waters had been regulated by waste discharge requirements in the *General Waste Discharge Requirements for Discharges of Process Wastewaters from Aggregate Mining, Sand Washing, and Sand Offloading Facilities to Surface Waters*, NPDES Permit No. CAG982001, and the *Waste Discharge Requirements for Discharges of Storm Water Associated with Industrial Activities Excluding Construction Activities*, NPDES General Permit No. CAS000001.
3. The Regional Water Board adopted Order No. R2-2014-0010 (Permit) on March 12, 2014, issuing new waste discharge requirements as NPDES Permit No. CA0030210. This Permit contains prohibitions, limitations, and provisions regulating some of the same discharges as those covered under NPDES Permit Nos. CAG982001 and CAS000001. The Regional Water Board amended the Permit on July 12, 2017, through Order No. R2-2017-0031, and the amendments became effective on "August 1, 2017 or the first day of the month after the

Court approves the corresponding amendments to its 2015 Consent Decree in Case No. 5:15-cv-01896-HRL, involving the Discharger, U.S. EPA, and the Regional Water Board, whichever is later.” The Court approved of the corresponding amendments on November 13, 2017. Case 5:15-cv-01896-HRL, Document 21.

4. The Facility discharges process wastewater from cement manufacturing, quarry dewatering, aggregate materials processing, truck washing, and dust control. The Facility also discharges industrial stormwater. These discharges occur at five discharge points as described in Table 2 and Fact Sheet section II, Facility Description, of the Permit, as amended. (A sixth, Discharge Point 003, discharges only non-industrial stormwater and upwelled groundwater.) The discharge points and their locations are shown in Attachment B, page B-2, of the Permit. The existing wastewater flow configuration is shown in Attachment C, page C-1, of the Permit.
5. The Permit contains effluent limitations, including those listed in Table 1 below:

Table 1: Permit Effluent Limits

Parameter	Average Monthly Effluent Limit	Maximum Daily Effluent Limit
Discharge Point No. 001		
Chromium (VI) ^[1]	8.0 µg/L	16 µg/L
Mercury	0.020 µg/L	0.041 µg/L
Nickel ^[1]	82 µg/L	160 µg/L
Selenium	4.1 µg/L	8.2 µg/L
Total Dissolved Solids	1,000	2,000 mg/L
Total Suspended Solids	---	58 lbs/d
Settleable Matter	0.1	0.2 mL/L-
Turbidity	5.0 NTU	10 NTU
Discharge Point Nos. 002, 004, and 005		
Turbidity	--	40 NTU
Total Suspended Solids	--	50 mg/L
Settleable Matter	0.1 mL/L-hr	0.2 mL/L-hr
pH	6.5 – 8.5 s.u. ^[2]	
Discharge Point No. 006		
Total Suspended Solids	--	50 mg/L

Unit Abbreviations:

µg/L = micrograms per liter
mg/L = milligrams per liter
mL/L-hr = milliliters per liter - hour
NTU = nephelometric turbidity units
s.u. = standard units
lbs/d = pounds per day

Footnote:

^[1] Compliance with the average monthly effluent limit shall be determined by the flow-weighted average effluent concentration, defined as the sum of the products of all concentration-based results and their corresponding volumetric flow rates, measured at the time the sample was collected during the calendar month, divided by the sum of those flow rates. Non-detect results shall be treated as zero.

^[2] Instantaneous, within the range from 6.5 through 8.5.

6. The Regional Water Board adopted Cease and Desist Order No. R2-2014-2011 (CDO) on March 12, 2014, because it found that the Discharger was violating or threatening to violate the new and more stringent Permit requirements, including certain effluent limits.
7. Per the CDO, page 7, paragraph 1(b), the Discharger is required to comply with the numeric interim effluent limitations listed in Table 2 below:

Table 2: CDO Numeric Interim Effluent Limits

Parameter	Maximum Daily Effluent Limit
<i>Discharge Point No. 001</i>	
Settleable Matter	1.3 mL/L-hr
Total Suspended Solids	230 mg/L
Turbidity	600 NTU
<i>Discharge Point Nos. 002, 004, and 005</i>	
Settleable Matter	2.6 mL/L-hr
Total Suspended Solids	340 mg/L
Turbidity	920 NTU
<i>Discharge Point No. 006</i>	
Total Suspended Solids	240 mg/L

Unit Abbreviations:

mg/L = milligrams per liter

mL/L-hr = milliliters per liter - hour

NTU = nephelometric turbidity units

8. Since the Facility's discharges violated Permit discharge prohibitions and exceeded Permit effluent limitations, the Discharger constructed an interim treatment system (now known as the "upper treatment system," to be followed by a final treatment system. The CDO required that the final treatment system be constructed and operational by October 1, 2017. The Discharger installed a final treatment system (comprised of the "upper treatment system" and a "lower treatment system") in compliance with CDO requirements.
9. CDO paragraph 16 states, in part:

The interim limits consist of numeric limits for total suspended solids, settleable matter, and turbidity, and narrative effluent limits for all pollutants listed in Table 1 expressed as prescribed actions and deadlines. Total suspended solids, settleable matter, and turbidity are controllable with current best management practices. These numeric effluent limits also serve as proxies for the metals in Table 1 because metals often adhere to solids. The numeric interim effluent limits are intended to ensure that the Discharger maintains at least its existing performance for currently controllable parameters while completing all tasks required during the time schedule.
10. CDO page 10, paragraph 5 states, in part:

Permit effluent limitation violations shall not be subject to the mandatory minimum penalties required by Water Code sections 13385(h) and (i) as long as the Discharger

complies with this Cease and Desist Order. If the Discharger fails to comply with this Cease and Desist Order, including but not limited to any numeric interim effluent limitation in Table 2..., the Discharger shall be subject to mandatory minimum penalties for Permit violations for the entire calendar month during which the non-compliance occurs. This could include a daily, weekly, or monthly mandatory minimum penalty for the same exceedance. If the Discharger returns to compliance, Permit violations shall again not be subject to mandatory minimum penalties as of the first day of the month following the return to full compliance.

11. Water Code section 13350, subdivision (a), provides, "A person who (1) violates a cease and desist order or cleanup and abatement order hereafter issued, reissued, or amended by a regional board or the state board...shall be liable civilly, and remedies may be proposed, in accordance with subdivision (d) or (e)."
12. Pursuant to Water Code section 13350, subdivision (e), the Regional Water Board "may impose civil liability administratively pursuant to Article 2.5 (commencing with Section 13323) of Chapter 5 either on a daily basis or on a per gallon basis, but not on both."
13. Pursuant to Water Code section 13350, subdivision (e)(1), civil liability calculated on a daily basis "shall not exceed five thousand dollars (\$5,000) for each day the violation occurs."
14. Pursuant to Water Code section 13350, subdivision (e)(2), civil liability calculated on a per-gallon basis "shall not exceed ten dollars (\$10) for each gallon of waste discharged."
15. Pursuant to Water Code section 13385, subdivision (a)(2), a person that violates a waste discharge requirement is subject to administrative civil liability under Water Code section 13385, subdivision (c):

...in an amount not to exceed the sum of the following: (1) Ten thousand dollars (\$10,000) for each day in which the violation occurs. (2) Where there is a discharge, any portion of which is not susceptible to cleanup or is not cleaned up, and the volume discharged but not cleaned up exceeds 1,000 gallons, an additional liability not to exceed ten dollars (\$10) multiplied by the number of gallons by which the volume discharged but not cleaned up exceeds 1,000 gallons.
16. Water Code section 13385, subdivisions (h) and (i), require assessment of mandatory minimum penalties (MMPs) for certain discharge violations.

a. Water Code section 13385, subdivision (h)(1), states:

Notwithstanding any other provisions of this division, and except as provided in subdivisions (j), (k), and (l), a mandatory minimum penalty of three thousand dollars (\$3,000) shall be assessed for each serious violation.

b. Water Code section 13385, subdivision (h)(2), states:

For the purposes of this section, a "serious violation" means any waste discharge that violates the effluent limitations contained in the applicable waste discharge

requirements for a Group II pollutant, as specified in Appendix A to Section 123.45 of Title 40 of the Code of Federal Regulations, by 20 percent or more or for a Group I pollutant, as specified in Appendix A to Section 123.45 of Title 40 of the Code of Federal Regulations, by 40 percent or more.

c. Water Code section 13385, subdivision (i)(1), states in part:

Notwithstanding any other provision of this division, and except as provided in subdivisions (j), (k), and (l), a mandatory minimum penalty of three thousand dollars (\$3,000) shall be assessed for each violation whenever the person does any of the following four or more times in any period of six consecutive months, except that the requirement to assess the mandatory minimum penalty shall not be applicable to the first three violations:

- (A) Violates a waste discharge requirement effluent limitation.
- (B) Fails to file a report pursuant to Section 13260.
- (C) Files an incomplete report pursuant to Section 13260.
- (D) Violates a toxicity effluent limitation contained in the applicable waste discharge requirements where the waste discharge requirements do not contain pollutant-specific effluent limitations for toxic pollutants.

17. Pursuant to Water Code section 13385, subdivision (j)(3), MMPs required by Water Code sections 13385, subdivisions (h) and (i), do not apply when a discharger complies with a cease and desist order issued pursuant to Water Code section 13301 if all of the following conditions are met:

- a. The cease and desist order specifies actions the discharger must take to correct the violations that would otherwise be subject to MMPs.
- b. The discharger is unable to consistently comply with effluent limitations because the effluent limitations are new, more stringent, or modified regulatory requirements; new or modified control measures are necessary to comply with the effluent limitations; and the new or modified control measures cannot be designed, installed, and put into operation within 30 calendar days.
- c. The Regional Water Board establishes a time schedule of no more than five years for bringing the discharge into compliance. (The time schedule must be as short as possible, taking into account the technological, operational, and economic factors that affect the design, development, and implementation of the control measures necessary to comply with the effluent limitations. If the time schedule exceeds one year, it must include interim requirements and the dates for their achievement. The interim requirements must include effluent limitations for the pollutants of concern, and actions and milestones leading to compliance with the limitations.)
- d. The discharger has prepared and is implementing in a timely and proper manner a pollution prevention plan pursuant to Water Code section 13263.3.

18. Under Water Code section 13385, subdivision (j)(3), a discharger is only protected from MMPs when it is in compliance with a cease and desist order. No MMP protection is afforded when the discharger is not in compliance with the cease and desist order.
19. The Discharger is subject to four categories of violation:
 - a. *January – September 2017 Interim Treatment System (ITS) Violations of CDO Table 3(i):* The Discharger violated the ITS discharge effluent limitations for 21 days as shown in Attachment A, hereby incorporated by reference.
 - b. *February 21, 2017, CDO Interim Effluent Limit Violations for TSS from Discharge Points 004 and 005:* On February 21, 2017, the Discharger violated the CDO interim effluent limit for TSS of 340 mg/L at Discharge Points 004 and 005. The Discharger discharged approximately 136,200 gallons of treated process wastewater from Discharge Point 004 with TSS up to 1,700 mg/L. The Discharger discharged approximately 227,100 gallons of treated process wastewater from Discharge Point 005 with TSS up to 430 mg/L. Additional information is detailed in Attachment A.
 - c. *January and February 2017 Unauthorized, Untreated Combined Process Wastewater and Stormwater Runoff from Pond 1:* In January and February 2017, the Discharger discharged approximately 40.5 million gallons of unauthorized, untreated combined process wastewater and stormwater during 10 days in January and 5 days in February 2017, as detailed in Attachment A.
 - d. *Mandatory Minimum Penalties:* The Discharger is subject to 17 MMPs pursuant to Water Code section 13385, subdivisions (h) and (i), as shown in Attachment A.
 - e. This Order does not consider any alleged violations of the November 2015 Consent Decree entered into between the United States, the Regional Water Board, and the Discharger in case 5:15-cv-01896-HRL. Any such violations may be resolved in a separate document.
20. To resolve the alleged violations in section II, paragraph 19 by consent and without further administrative proceedings, the Parties have agreed to the imposition of an administrative civil liability of **\$301,000** against the Discharger.
21. The Parties have agreed to settle this matter without administrative or civil litigation, and to present this Stipulated Order to the Regional Water Board or its delegate for adoption as an Order by settlement, pursuant to Government Code section 11415.60.
22. The Prosecution Team contends that the resolution of the alleged violations is fair and reasonable, and fulfills all its enforcement objectives; that no further action is warranted concerning the violations, except as provided in this Stipulated Order; and that this Stipulated Order is in the public's best interest.

Section III: STIPULATIONS

The Parties incorporate the foregoing Recitals and stipulate to the following:

1. **Administrative Civil Liability:** The Discharger hereby agrees to the imposition of an administrative civil liability totaling \$301,000 to resolve the alleged violations as set forth in Section II as follows:
 - a. *January – September 2017 Interim Treatment System (ITS) Violations of CDO Table 3(i):* The Parties agree to resolve the violations identified in section II, paragraph 19(a), for 18 of the 21 days of violation for the per-day statutory maximum under Water Code section 13350, subdivision (e), of \$5,000 per each day of violation, for a total of \$90,000.
 - b. *February 21, 2017, CDO Interim Effluent Limit Violations for TSS from Discharge Points 004 and 005:* The Parties agree to resolve the violations identified in section II, paragraph 19(b), for the per-day statutory maximum under Water Code section 13350 subdivision (e) of \$5,000 for each violation, for a total of \$10,000.
 - c. *January and February 2017 Unauthorized, Untreated Combined Process Wastewater and Stormwater Runoff from Pond 1:* The Parties agree to resolve the violations identified in section II, paragraph 19(c), for the per-day statutory maximum under Water Code section 13385 of \$10,000 per day for 15 days of violation, for a total of \$150,000.
 - d. *Mandatory Minimum Penalties:* The Parties agree to resolve the MMPs identified in section II, paragraph 19(d), and Attachment A for \$51,000.
2. **Payment of Administrative Civil Liability:**
 - a. To resolve the violations identified in section II, paragraph 19(a), no later than 30 days after the Regional Water Board or its delegate signs this Stipulated Order, the Discharger shall submit a check for \$45,000 made payable to the “Waste Discharge Permit Fund,” referencing the Order number on page one of this Stipulated Order.
 - b. To resolve the violations identified in section II, paragraph 19(b), no later than 30 days after the Regional Water Board or its delegate signs this Stipulated Order, the Discharger shall submit a check for \$5,000 made payable to the “Waste Discharge Permit Fund,” referencing the Order number on page one of this Stipulated Order.
 - c. To resolve the violations identified in section II, paragraph 19(c), no later than 30 days after the Regional Water Board or its delegate signs this Stipulated Order, the Discharger shall submit a check for \$75,000 made payable to the “State Water Pollution Cleanup and Abatement Account,” referencing the Order number on page one of this Stipulated Order.
 - d. To resolve the MMPs identified in section II, paragraph 19(d), no later than 30 days after the Regional Water Board or its delegate signs this Stipulated Order, the Discharger shall submit a check for \$18,000 made payable to the “State Water Pollution Cleanup and Abatement Account,” referencing the Order number on page one of this Stipulated Order.

- e. The Discharger may write one check for \$50,000 made payable to the "Waste Discharge Permit Fund" to satisfy the requirements of section III, paragraph 2(a)-(b).
 - f. The Discharger may write one check for \$93,000 made payable to the "State Water Pollution Cleanup and Abatement Account" to satisfy the requirements of section III, paragraph 2(c)-(d).
 - g. All payments shall be mailed to:
 - State Water Resources Control Board Accounting Office
 - Attn: ACL Payment
 - P.O. Box 1888
 - Sacramento, CA 95812-1888
 - h. The Discharger shall provide a copy of the checks via e-mail to the State Water Resources Control Board, Office of Enforcement (Julie.Macedo@waterboards.ca.gov) and the Regional Water Board (Habte.Kifle@waterboards.ca.gov).
3. **Payment for a Supplemental Environmental Project (SEP):** The Discharger agrees that \$158,000, consisting of half of the discretionary penalty amount (\$125,000) and \$33,000 related to the MMPs per Water Code section 13385, subdivision (l) (i.e., $\$15,000 + [\$51,000 - \$15,000]/2 = \$33,000$), of the administrative liability amount shall be paid to the Regional Monitoring Program care of the San Francisco Estuary Institute for implementation of a SEP as follows:
- a. \$158,000 (SEP Amount) shall be paid solely for use toward the SEP Fund for the San Francisco Bay Regional Monitoring Program. The funding for this project under this agreement will partially fund the Lower South Bay sediment flux monitoring and research at Dumbarton Bridge. A complete description of this project is provided in Attachment B, incorporated herein by reference.
 - b. The Discharger shall not be liable for administrative and oversight costs associated with the specific project described above.
 - c. Payment shall be made no later than 30 days after the Regional Water Board or its delegate signs this Stipulated Order. All payments associated with the SEP shall be sent to the San Francisco Estuary Institute in the form of a single check payable to the "Regional Monitoring Program," reference the Order number on page one of this Stipulated Order, and mailed to:
 - Regional Monitoring Program
 - c/o San Francisco Estuary Institute
 - 4911 Central Avenue
 - Richmond, CA 94804.

A copy of the check shall be sent to the Office of Enforcement and the Regional Water Board at the e-mail addresses set forth above.

4. **SEP:** The Parties agree that the payment of the SEP Amount is a SEP, and that the SEP Amount will be treated as a suspended administrative civil liability for purposes of this Stipulated Order. The Discharger's SEP obligations will be satisfactorily completed upon the San Francisco Estuary Institute's written notification to Regional Water Board staff and the Discharger. The written notification shall acknowledge that the Regional Monitoring Program received the SEP Amount from the Discharger and the payment will be spent on the project described in section III, paragraph 3(a), and Attachment B in accordance with the terms of this Stipulated Order. The San Francisco Estuary Institute's annual and quarterly financial reports to the Regional Water Board shall be considered a final post-project accounting of expenditures.
5. **Publicity Associated with the SEP:** Whenever the Discharger, or its agents or subcontractors, publicize one or more elements of the SEP, it shall state in a prominent manner that the project is undertaken as part of a settlement to a Regional Water Board enforcement action against the Discharger.
6. **Regional Water Board is not Liable:** Neither the Regional Water Board, its members, or its staff shall be held as parties to or guarantors of any contract entered into by the Discharger or its directors, officers, employees, agents, representatives, or contractors in carrying out activities pursuant to this Stipulated Order.
7. **Compliance with Applicable Laws:** The Discharger understands that payment of administrative civil liability in accordance with the terms of this Stipulated Order and/or compliance with the terms of this Stipulated Order is not a substitute for compliance with applicable laws, and that continuing violations of the type alleged herein may subject it to further enforcement, including additional administrative civil liability.
8. **Party Contacts for Communications related to this Stipulated Order:**

For the Regional Water Board:

Staff:
San Francisco Bay Regional Water Quality
Control Board
Attn: Habte Kifle
1515 Clay Street, 14th Floor
Oakland, CA 94612
Habte.Kifle@waterboards.ca.gov
(510) 622-2300

Counsel:
Julie Macedo, Attorney IV
Office of Enforcement
State Water Resources Control Board
801 K Street, Suite 2300
Sacramento, CA 95814
Julie.Macedo@waterboards.ca.gov
(916) 323-6847

For the Discharger:

Lehigh Southwest Cement Company
Attn: Erika Guerra, Environmental
Director - Cement
24001 Stevens Creek Blvd.
Cupertino, CA 95014
Erika.Guerra@LehighHanson.com
(408) 996-4269

Counsel:
Nicole E. Granquist
Downey Brand LLP
Attorney for Lehigh Southwest Cement
Company
621 Capitol Mall, 18th Floor
Sacramento, CA 95814
ngranquist@downeybrand.com
(916) 520-5369

9. **Attorney's 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.
10. **Matters Addressed by This Stipulated Order:** Upon the Regional Water Board's or its delegate's adoption, this Stipulated Order represents a final and binding resolution and settlement of the alleged violations as of the effective date of this Stipulated Order. The provisions of this paragraph are expressly conditioned on the full payment of the administrative civil liability by the deadlines specified in section III, paragraphs 2 and 3, and the Discharger's full satisfaction of the obligations described in section III, paragraphs 2 and 3.
11. **Public Notice:** The Discharger understands that this Stipulated Order must be noticed for a 30-day public review and comment period prior to consideration by the Regional Water Board or its delegate. If significant new information is received that reasonably affects the propriety of presenting this Stipulated Order to the Regional Water Board or its delegate for adoption, the Prosecution Team may unilaterally declare this Stipulated Order void and decide not to present it to the Regional Water Board or its delegate. The Discharger agrees that it may not rescind or otherwise withdraw its approval of this proposed Stipulated Order.
12. **Addressing Objections Raised During Public Comment Period:** The Parties agree that the procedure contemplated for public review of this Stipulated Order and the Regional Water Board's or its delegate's adoption of this Stipulated Order is lawful and adequate. The Parties understand that the Regional Water Board or its delegate has the authority to require a public hearing on this Stipulated Order. If procedural objections are raised or the Regional Water Board requires a public hearing prior to the Stipulated Order becoming effective, the Parties agree to meet and confer concerning any such objections, and may agree to revise or adjust the procedure and/or this Stipulated Order as necessary or advisable under the circumstances.
13. **Interpretation:** This Stipulated Order shall be construed as if the Parties prepared it jointly. Any uncertainty or ambiguity shall not be interpreted against any one Party. The Parties are represented by counsel in this matter.
14. **Modification:** The Parties shall not modify this Stipulated Order by oral representation made before or after its execution. All modifications must be in writing, signed by all Parties, and approved by the Regional Water Board or its delegate.
15. **If the Order Does Not Take Effect:** If this Stipulated Order does not take effect because the Regional Water Board or its delegate does not approve it, or because the State Water Resources Control Board or a court vacates it in whole or in part, 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, the following:

- a. Objections related to prejudice or bias of any of the Regional Water Board members or their advisors, or 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 Stipulated Order, and therefore may have formed impressions or conclusions prior to any contested evidentiary hearing on the violations alleged herein 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.
16. **Waiver of Hearing:** The Discharger has been informed of the rights Water Code section 13323, subdivision (b), provides and hereby waives its right to a hearing before the Regional Water Board prior to the Stipulated Order's adoption.
17. **Waiver of Right to Petition or Appeal:** The Discharger hereby waives its right to petition the Regional Water Board's adoption of the Stipulated 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.
18. **Covenant Not to Sue:** The Discharger covenants not to sue or pursue any administrative or civil claims against the State of California, any State agency, or its officers, Board members, employees, representatives, agents, or attorneys arising out of or relating to any matter expressly resolved by this Stipulated Order.
19. **No Admission of Liability:** In settling this matter, the Discharger does not admit to any of the allegations stated herein, or that it has been or is in violation of the Water Code, or any other federal, State or local law or ordinance, with the understanding that in the event of any future enforcement actions by the Regional Water Board, the State Water Board or any other Regional Water Quality Control Board, this Stipulated Order may be used as evidence of a prior enforcement action consistent with Water Code section 13327 or section 13385, subdivision (e).
20. **Necessity for Written Approvals:** All approvals and decisions of the Regional Water Board under the terms of this Stipulated Order shall be communicated to the Discharger in writing. No oral advice, guidance, suggestions, or comments from Regional Water Board employees or officials regarding submissions or notices shall be construed to relieve the Discharger of its obligation to obtain any final written approval this Stipulated Order requires.
21. **Authority to Bind:** Each person executing this Stipulated Order in a representative capacity represents and warrants that he or she is authorized to execute this Stipulated Order on behalf of, and to bind, the entity on whose behalf he or she executes the Stipulated Order.

22. **No Third Party Beneficiaries:** This Stipulated Order is not intended to confer any rights or obligations on any third party and no third party shall have any right of action under this Stipulated Order for any cause whatsoever.
23. **Severability:** This Stipulated Order is severable; if any provision is found invalid, the remainder shall remain in full force and effect.
24. **Counterpart Signatures; Facsimile and Electronic Signature:** This Stipulated Order 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. Further, this Stipulated Order may be executed by facsimile or electronic signature, and any such facsimile or electronic signature by any Party hereto shall be deemed to be an original signature and shall be binding on such Party to the same extent as if such facsimile or electronic signature were an original signature.
25. **Effective Date:** This Stipulated Order shall be effective and binding on the Parties upon the date the Regional Water Board or its delegate enters the Order incorporating the terms of this Stipulated Order.

IT IS SO STIPULATED.

**CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
SAN FRANCISCO BAY REGION, PROSECUTION TEAM**

Digitally signed by
Lisa Horowitz McCann
Date: 2018.06.20
13:47:22 -07'00'

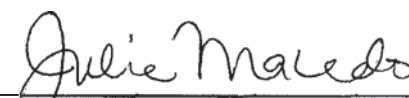


Date: _____

By: _____

Lisa Horowitz McCann
Assistant Executive Officer

Approved as to form:

By:  _____

Julie Macedo, Attorney IV
State Water Resources Control Board
Office of Enforcement

Settlement Agreement and Stipulated Administrative Civil Liability
Lehigh Southwest Cement Company

LEHIGH SOUTHWEST CEMENT COMPANY

Date: June 8th 2018

By: 

Daniel Fritz, President, West
Region, Lehigh

Approved as to form:

By: 

Nicole E. Granquist, Attorney
Downey Brand LLP

ORDER OF THE REGIONAL WATER BOARD

1. This Stipulated Order incorporates the foregoing sections I through III by this reference as if set forth fully herein.
2. In accepting this Stipulation, the Regional Water Board has considered, where applicable, each of the factors prescribed in Water Code sections 13351 and/or 13385, subdivision (e), and the State Water Resource Control Board's Enforcement Policy, which is incorporated herein by this reference. The Regional Water Board's consideration of these factors and application of the Penalty Calculation Methodology is based upon information obtained by the Prosecution Team in investigating the allegations set forth in the Stipulation or otherwise provided to the Regional Water Board.
3. This is an action to enforce the laws and regulations administered by the Regional Water Board. Issuance of this Stipulated Order is exempt from the provisions of the California Environmental Quality Act (Public Resources Code, § 21000 et seq.) in accordance with section 15321, subdivision (a)(2), Title 14, of the California Code of Regulations.
4. The Executive Officer of the Regional Water Board is authorized to refer this matter directly to the Attorney General for enforcement if the Discharger fails to perform any of its obligations under this Stipulated Order.

IT IS HEREBY ORDERED pursuant to Water Code section 13323 and Government Code section 11415.60, on behalf of the California Regional Water Quality Control Board, San Francisco Bay Region.

Bruce H. Wolfe
Executive Officer
California Regional Water Quality Control Board
San Francisco Bay Region

Date

ATTACHMENT A

JANUARY 1, 2017, TO OCTOBER 1, 2017, DISCRETIONARY AND MANDATORY MINIMUM PENALTIES FOR

**LEHIGH SOUTHWEST CEMENT COMPANY
NPDES Permit No. CA0030210 (Order Nos. R2-2014-0010 and R2-2017-0031)
Cease and Desist Order No. R2-2014-0011**

San Francisco Bay Regional Water Quality Control Board (Water Board) Prosecution Staff identified four categories of violations for Lehigh from January 1, 2017, through October 1, 2017, as indicated below.

DISCRETIONARY ADMINISTRATIVE CIVIL LIABILITY

Water Board Prosecution Staff believe the proposed discretionary administrative civil liability for these violations is appropriate, is in the best interest of the public, and reflects the significance of the violations.

1. January – September 2017 Interim Treatment System (ITS) Violations of CDO Table 3(i)

Lehigh violated the ITS discharge effluent limit for 21 days, as shown in the following table.

Violation Date	Violated Parameter and Unit	Permit Effluent Limit	Reported ITS Effluent Value
1/17/2017	Selenium, MDEL, µg/L	8.2	37
	Nickel, MDEL, µg/L	160	280
1/24/2017	Selenium, MDEL, µg/L	8.2	13
1/31/2017	Selenium, AMEL, µg/L	4.1	16
	Nickel, AMEL, µg/L	82	109
	Total Dissolved Solids, AMEL, mg/L	1,000	1,173
2/1/2017	Selenium, MDEL, µg/L	8.2	9.3
2/14/2017	Selenium, MDEL, µg/L	8.2	26
2/24/2017	Selenium, MDEL, µg/L	8.2	25
	Turbidity, MDEL, NTU	10	22
2/28/2017	Selenium, MDEL, µg/L	8.2	62
	Nickel, MDEL, µg/L	160	210
2/28/2017	Selenium, AMEL, µg/L	4.1	25
	Nickel, AMEL, µg/L	82	123
	Total Dissolved Solids, AMEL, mg/L	1000	1,440
	Turbidity, AMEL, NTU	5	7.5
3/31/2017	Selenium, AMEL, µg/L	4.1	5.5
	Total Dissolved Solids, AMEL, mg/L	1,000	1,300
4/30/2017	Total Dissolved Solids, AMEL, mg/L	1,000	1,225
5/31/2017	Selenium, AMEL, µg/L	4.1	5.6
	Total Dissolved Solids, AMEL, mg/L	1,000	1,200
6/28/2017	Turbidity, MDEL, NTU	10	11
6/28/2017	Selenium, AMEL, µg/L	4.1	6.2
	Total Dissolved Solids, AMEL, mg/L	1,000	1,200
	Turbidity, MDEL, NTU	5	5.6

Violation Date	Violated Parameter and Unit	Permit Effluent Limit	Reported ITS Effluent Value
7/5/2017	Mercury, MDEL, µg/L	0.041	0.055
7/20/2017	Selenium, MDEL, µg/L	8.2	26
	Turbidity, MDEL, NTU	10	14
7/31/2017	Selenium, AMEL, µg/L	4.1	8.9
	Total Dissolved Solids, AMEL, mg/L	1,000	1,075
8/24/2017	Selenium, MDEL, µg/L	8.2	46
8/30/2017	Selenium, MDEL, µg/L	8.2	21
	Nickel, MDEL, µg/L	160	420
8/31/2017	Selenium, AMEL, µg/L	4.1	9.6
	Nickel, AMEL, µg/L	82	123
9/6/2017	Selenium, MDEL, µg/L	8.2	59
	Nickel, MDEL, µg/L	160	330
9/30/2017	Selenium, AMEL, µg/L	4.1	17
	Nickel, AMEL, µg/L	82	106
Note: MDEL = Maximum Daily Effluent Limit; AMEL = Average Monthly Effluent Limit Blue Lines = Violations excluded from discretionary action due to overlap with violations subject to mandatory minimum penalties.			

Lehigh is subject to administrative civil liability for these violations under Water Code section 13350, subdivision (e). For purposes of settlement, Water Board Prosecution Staff sought administrative civil liability for 18 of the 21 days of violation for the per-day statutory maximum of \$5,000 for each day of violation, for a total of \$90,000. Water Board Prosecution Staff did not seek administrative civil liability for the violations on April 30, August 24, and September 30, 2017, because they are addressed with discharge violations discussed under category 4, below. Given the settlement as a whole, Water Board Prosecution Staff believe the per-day statutory maximum is a reasonable and appropriate penalty for these violations.

2. February 21, 2017, CDO Interim Effluent Limit Violations for TSS from Discharge Points 004 and 005:

On February 21, 2017, Lehigh violated the CDO interim effluent limit for total suspended solids (TSS) at two discharge points to Permanente Creek (Discharge Points 004 and 005, monitored at Monitoring Locations EFF-004 and EFF-005). The CDO interim effluent limit for TSS is 340 mg/L at Discharge Points 004 and 005. Lehigh discharged approximately 136,200 gallons of treated process wastewater from Discharge Point 004 with TSS up to 1,700 mg/L. Lehigh discharged approximately 227,100 gallons of treated process wastewater from Discharge Point 005 with TSS up to 430 mg/L. Thus, Lehigh is subject to administrative civil liability for these two violations.

For purposes of settlement, Water Board Prosecution Staff sought administrative civil liability under Water Code section 13350, subdivision (e), for a per-day statutory maximum of \$5,000 for each violation, for a total of \$10,000. Given the settlement as a whole, Water Board Prosecution Staff believe the per-day statutory maximum is a reasonable and appropriate penalty for these violations.

3. *January and February 2017 Unauthorized, Untreated Combined Process Wastewater and Stormwater Runoff from Pond 1:*

In January and February 2017, Lehigh discharged approximately 40.5 million gallons of unauthorized, untreated combined process wastewater and stormwater runoff from Pond 1 (a new stormwater detention basin). The discharge occurred during 10 days in January (January 9–13 and January 20–24) and 5 days in February (February 7, 8, 20, 21, and 22). The January discharge contained pH, selenium, and hexavalent chromium above the NPDES permit effluent limits. The February discharge also contained selenium above the NPDES permit effluent limits. Lehigh is not authorized to discharge from Pond 1.

For purposes of settlement, Water Board Prosecution Staff sought administrative civil liability under Water Code section 13385 for a per-day statutory maximum of \$10,000 per day for 15 days of violation, for a total of \$150,000. Given the settlement as a whole, Water Board Prosecution Staff believe the per-day statutory maximum is a reasonable and appropriate penalty for these violations.

MANDATORY MINIMUM PENALTIES

4. The following table lists violations for which the Discharger is subject to mandatory minimum penalties pursuant to Water Code section 13385(h) and/or 13385(i).

CIWQS Violation ID No.	Date of Occurrence	Monitoring Location Pollutant, Effluent Limit or Violation Description (Unit)	Permit Effluent Limit	Reported Value	CDO Interim Limit	Percent a Group I or Group II Pollutant is over Effluent Limitation	Type of Exceedance	CWC Section 13385(h) and/or (i) Required MMP
1021282	1/5/2017	EFF-005, pH, Max., s.u.	6.5	6.1	n/a	> 2.5	Other	\$3,000
1023253	2/21/2017	EFF-004, Turbidity, MDEL, NTU	40	788	920	1870%	> C3*	\$3,000
1023254	2/22/2017	EFF-004, Turbidity, MDEL, NTU	40	82	920	105%	> C3	\$3,000
1023256	2/21/2017	EFF-004, Settleable Solids, MDEL, mL/L/hr	0.2	0.9	2.6	350%	> C3, S	\$3,000
1035841	2/28/2017	EFF-001, Total Dissolved Solids, AMEL, mg/L	1000	1240	n/a	24%	> C3	\$3,000
1024215	3/31/2017	EFF-001, Total Dissolved Solids, AMEL, mg/L	1000	1200	n/a	20%	> C3	\$3,000
1025443	4/30/2017	EFF-001, Total Dissolved Solids, AMEL, mg/L	1000	1175	n/a	18%	> C3	\$3,000

Attachment A - Settlement Agreement and Stipulated Administrative Civil Liability
Lehigh Southwest Cement Company

CIWQS Violation ID No.	Date of Occurrence	Monitoring Location Pollutant, Effluent Limit or Violation Description (Unit)	Permit Effluent Limit	Reported Value	CDO Interim Limit	Percent a Group I or Group II Pollutant is over Effluent Limitation	Type of Exceedance	CWC Section 13385(h) and/or (i) Required MMP
1027618	5/31/2017	EFF-001, Total Dissolved Solids, AMEL, mg/L	1000	1096	n/a	10%	> C3	\$3,000
1028843	6/30/2017	EFF-001, Total Dissolved Solids, AMEL, mg/L	1000	1200	n/a	20%	> C3	\$3,000
1020521	7/31/2017	EFF-001, Total Dissolved Solids, AMEL, mg/L	1000	1048	n/a	5%	> C3	\$3,000
1032827	8/8/2017	EFF-001, Total Recoverable Selenium, MDEL, µg/L	8.2	13.8	n/a	68%	> C3, S	\$3,000
1032826	8/24/2017	EFF-001, Total Recoverable Selenium, MDEL, µg/L	8.2	25.9	n/a	216%	> C3, S	\$3,000
1032828	8/31/2017	EFF-001, Total Recoverable Selenium, AMEL, µg/L	4.1	19.9	n/a	385%	> C3, S	\$3,000
1033979	9/7/2017	EFF-001, Total Recoverable Selenium, MDEL, µg/L	8.2	55.2	n/a	573%	> C3, S	\$3,000
1033977	9/7/2017	EFF-001, Total Nickel, MDEL, µg/L	160	300	n/a	88%	> C3, S	\$3,000
1033976	9/30/2017	EFF-001, Total Recoverable Selenium, AMEL, µg/L	4.1	30.3	n/a	639%	> C3, S	\$3,000
1033978	9/30/2017	EFF-001, Total Nickel, AMEL, µg/L	82	159	n/a	94%	> C3, S	\$3,000
Total								\$51,000

TOTAL DISCRETIONARY AND MANDATORY MINIMUM PENALTIES

The Parties have agreed to an administrative civil liability of \$301,000 to resolve the violations identified in Categories 1-4, above (\$90,000 + \$10,000 + \$150,000 + \$51,000).

EXHIBIT B

Study Description for Supplemental Environmental Project Fund for the San Francisco Bay Regional Monitoring Program

Basic Information

Study Name: Lower South Bay Sediment Transport Monitoring

Study Budget, Total: \$158,000

San Francisco Estuary Institute (SFEI) Contacts:

- Technical – Philip Trowbridge, philt@sfei.org, (5100 746-7345
- Financial – Patrick Walsh, patrickw@sfei.org, (510) 746-7356

Study Description

From January through September 2019, the San Francisco Bay Regional Monitoring Program (RMP) will continue the observations of suspended-sediment flux obtained in 2018 and will study the effects of flocculation on suspended-sediment flux measurements at the Dumbarton Bridge. The study will provide a monitoring dataset to understand the amount of sediment that is transported into and out of Lower South Bay (the “sediment flux”). An interpretive technical report for RMP’s 2018 – 2019 results will be submitted. This data is critically important for restoring marshes for the South Bay Salt Ponds Restoration Project and for understanding transport of sediment-associated contaminants.

At two locations in the water column at Dumbarton Bridge, continuous, 15-minute observations of turbidity, water velocity, and depth will be collected. These datasets will be related to suspended-sediment concentration and channel discharge using periodic boat-based measurements; the product of these two quantities is suspended-sediment flux. This sediment flux monitoring will follow previously established United States Geological Survey (USGS) methods (Shellenbarger et al., 2013). To quantify the effect of flocculation on these sediment flux computations, additional field campaigns will be conducted to observe *in situ* floc size and particle size distributions through an entire tidal cycle during spring and neap tides of the dry (July – Sept) and wet (Oct – June) seasons. *In-situ* floc size, density, and particle size distributions will be measured using the floc-cam (Manning and Schoellhamer 2013) and LISST-100x laser grain-size analyzer (e.g., Gartner et al., 2001), respectively. Water samples for determining suspended-sediment concentration will be collected throughout tidal cycles at 30-minute intervals using an automatic water sampler. These data will be used to determine settling velocity parameters over the range of tidal and seasonal conditions, which are expected to provide data necessary to develop a correction to suspended-sediment flux measurements for flocculation effects. Because the direction of net sediment flux measurements changed when accounting for flocculation, determining this correction is crucial for ongoing sediment flux monitoring in Lower South Bay. Results of this study will be published in a technical report, and all data will be publicly available on USGS public websites.

Recent work on sediment flux monitoring at Dumbarton Bridge has focused on reducing uncertainty in sediment flux measurements by accounting for flocculation (the aggregation of sediment particles) in the water column because the computed flux is sensitive to this process. When accounting for flocculation, net suspended-sediment flux direction computed from optical sensors changed from seaward (Lower South Bay losing sediment) to landward (Lower South Bay gaining sediment) over a 3.5-year period (Fig. 1) and more closely agrees with flux measurements from previous numerical modeling efforts (Bever and MacWilliams, 2013). Preliminary analyses indicate that flocculation varies over the tidal cycle and increases on flood tides. If corroborated with additional field data proposed herein, these results would: 1) validate the proposed correction of previous suspended-sediment flux measurements, which, by not accounting for flocculation, underestimated flood-directed flux and overestimated ebb-directed flux; and 2) reduce uncertainty in Lower South Bay suspended-sediment flux measurements.

Compliance with Supplemental Environmental Project (SEP) Criteria

This study complies with the following SEP criteria:

- It supports development and implementation of a surface water quality monitoring program.
- Its nexus to the violations is that it is located within the same Water Board region in which the violations occurred.

This study goes above and beyond applicable obligations of dischargers because of the following:

- This project is a study above and beyond what is required in permits or orders issued by the Regional Water Board or what can be accomplished with the dischargers' required monetary contributions to the Regional Monitoring Program for Water Quality in San Francisco Bay.

Study Milestone and Performance Measure

Study milestones and performance measures will include the following:

- For the period 1/1/2019 – 09/30/2019, 15-minute records of turbidity, suspended-sediment concentration, and suspended-sediment flux served on USGS public website.
- For the period 1/1/2019 – 09/30/2019, discrete suspended-sediment sample results served on USGS public website.
- Particle size and density data needed to measure effects of flocculation served on a USGS public website.
- Interpretive technical report for the RMP of the results of the work conducted in 2018 – 2019.

Monitoring will commence on January 1, 2019, and continue through September 30, 2019. Data products will be made available online by March 30, 2020. The interpretive report will be submitted to the RMP as a draft by December 31, 2020, and will be published by March 31, 2021.

Study Budget and Reports to Water Board

Pursuant to the October 2015 Supplement to the Memorandum of Understanding (MOU) between SFEI and the Regional Water Board, SFEI is responsible for identifying in each annual work plan and annual budget for the RMP those studies or elements, or portions of a study or element, that are to be funded by SEP funds. SFEI will keep a copy of accounting records of SEP fund contributions and expenditures separately from regular RMP funds. In its annual and quarterly financial reports to the Regional Water Board, SFEI will separately itemize SEP fund contributions and expenditures by each SEP funder.

SFEI will provide notice to the Regional Water Board within one month after receiving funds from a discharger for the SEP and the notice will state SFEI's agreement to use the funds received as described herein.

Publicity

Pursuant to the October 2015 MOU, SFEI will indicate on its Regional Monitoring Program website, and annual and other reports, that funding for the study is the result of settlement of "San Francisco Bay Water Board" enforcement actions.

References

- Bever, A.J and MacWilliams, M.L. Evaluation of sediment flux at Dumbarton Bridge based on data estimates and model predictions. Technical Memorandum, November 25, 2013. Delta Modeling and Associates
- Gartner, Jeffrey W., et al. "Laboratory and field evaluations of the LISST-100 instrument for suspended particle size determinations." *Marine Geology* 175.1 (2001): 199-219.
- Manning, A. J., and D. H. Schoellhamer. "Factors controlling flocc settling velocity along a longitudinal estuarine transect." *Marine Geology* 345 (2013): 266-280.
- Shellenbarger, Gregory G., Scott A. Wright, and David H. Schoellhamer. "A sediment budget for the southern reach in San Francisco Bay, CA: implications for habitat restoration." *Marine Geology* 345 (2013): 281-293.

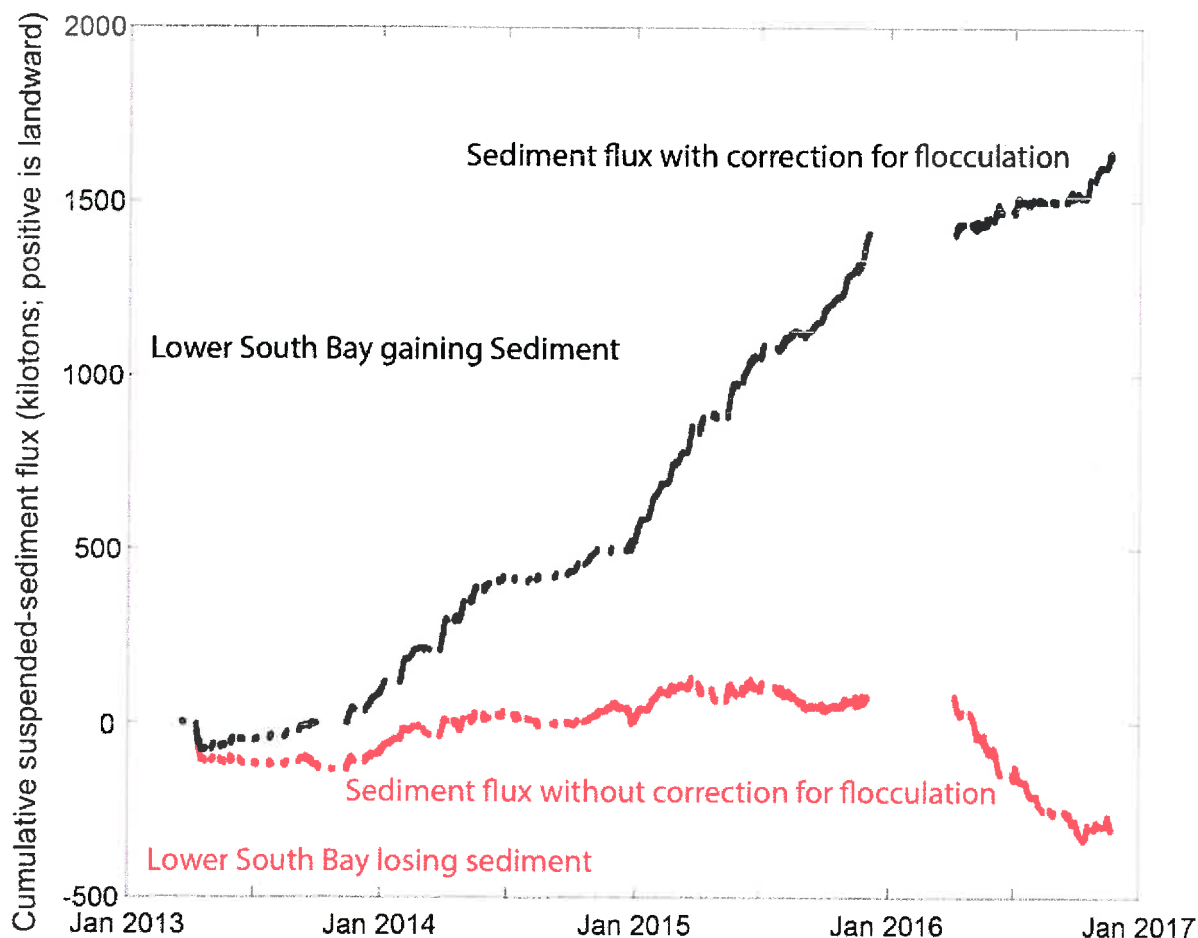


Figure 1. Cumulative suspended-sediment flux at Dumbarton Bridge for 2013 – 2016 with (black) and without (red) correcting for flocculation effects. Net flux at Dumbarton Bridge informs whether Lower South Bay (sub-embayment south of bridge) accumulates (positive net flux) or loses (negative net flux). Correcting for flocculation changes the magnitude and direction of sediment flux measurements, which has major impacts to sediment management. This study aims to validate this proposed correction through targeted data collection and analysis of sediment flux, particle size, and density.