

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD  
CENTRAL VALLEY REGION

COMPLAINT NO. R5-2008-0542

MANDATORY PENALTY  
IN THE MATTER OF  
LEHIGH SOUTHWEST CEMENT COMPANY  
SHASTA COUNTY

This complaint is issued to Lehigh Southwest Cement Company (hereafter Discharger) pursuant to California Water Code (CWC) section 13385, which authorizes the imposition of Administrative Civil Liability (ACL), CWC section 13323, which authorizes the Executive Officer to issue this complaint, and CWC section 7, which authorizes the delegation of the Executive Officer's authority to a deputy, in this case the Assistant Executive Officer. This complaint is based on findings that the Discharger violated provisions of Waste Discharge Requirements (WDRs) Order No. R5-2002-0057 (NPDES No. CA0081191).

The Assistant Executive Officer of the California Regional Water Quality Control Board, Central Valley Region (Regional Water Board) finds the following:

1. The Discharger owns and operates a limestone quarry, shale quarry, and cement manufacturing plant approximately one mile north of the community of Mountain Gate, in portions of Sections 2, 3, 4, 8, 9, 10, 16 and 17, T33N, R4W, MDB&M. Surface water drainage from the property is to Shasta Lake and/or the West Fork of Stillwater Creek, a tributary of Stillwater Creek and the Sacramento River, a water of the United States.
2. On 26 April 2002, the Central Valley Regional Water Quality Control Board (Central Valley Water Board) adopted Waste Discharge Requirements Order No. R5-2002-0057 (NPDES No. CA0081191), to regulate discharges of process water and storm water runoff generated from the limestone and shale quarry operations and cement manufacturing plant at the facility.
3. CWC section 13385(h) and (i) require assessment of mandatory penalties and state, in part, the following:

*CWC section 13385(h)(1) states, "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 serious violation."*

*CWC section 13385 (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."*

CWC section 13385(i)(1) states, *“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.”*

4. CWC section 13323 states, in part:

*“Any executive officer of a regional board may issue a complaint to any person on whom administrative civil liability may be imposed pursuant to this article. The complaint shall allege the act or failure to act that constitutes a violation of law, the provision authorizing civil liability to be imposed pursuant to this article, and the proposed civil liability.”*

5. WDRs Order No. R5-2002-0057 include, in part, the following effluent limitations:

**A. Effluent Limitations – Discharge Point OOX**

- 1. The discharge of storm water from sedimentation basins in excess of the following is prohibited:

| Constituent            | Unit | Maximum Daily Effluent Limit (MDEL) |
|------------------------|------|-------------------------------------|
| Total Suspended Solids | mL/L | 50                                  |

6. Table 1 details violations reported in the monitoring reports submitted to the Central Valley Water Board by Lehigh Southwest Cement Company.

**Table 1.**

| Exceedence Date | Discharge Point | Pollutant              | Pollutant Group | Effluent Limit | Analytical Results | Percentage Over |
|-----------------|-----------------|------------------------|-----------------|----------------|--------------------|-----------------|
| 1/04/2008       | OOX             | Total Suspended Solids | Group I         | 50 mL/L MDEL   | 92 mL/L            | 84%             |

7. According to monitoring report submitted by the Discharger, the Discharger committed one serious violation during the period beginning 1 January 2008 and ending 31 January 2008. The violation is considered a "serious violation" for settleable solids, a group I pollutant, that exceeded 40% or more of the permit limit. The mandatory minimum penalty for this serious violation is **three thousand dollars (\$3,000)**.
8. The total amount of the mandatory penalties assessed for the cited effluent violation is **three thousand dollars (\$3,000)**.
9. Issuance of this Administrative Civil Liability Complaint to enforce CWC Division 7, Chapter 5.5 is exempt from the provisions of the California Environmental Quality Act (Pub. Resources Code § 21000 et seq.), in accordance with California Code of Regulations, title 14, section 15321(a)(2).

**LEHIGH SOUTHWEST CEMENT COMPANY IS HEREBY GIVEN NOTICE THAT:**

1. The Assistant Executive Officer of the Central Valley Water Board proposes that the Discharger be assessed a Mandatory Penalty in the amount of **three thousand dollars (\$3,000)**.
2. A hearing on this matter will be held at the Regional Water Board meeting scheduled on **11/12 September 2008**, unless the Discharger agrees to complete the following by **3 July 2008**:
  - a. Waive the hearing by completing the attached form and returning it to the Regional Water Board; and
  - b. Pay the proposed civil liability of **three thousand dollars (\$3,000)** in full.
3. If a hearing on this matter is held, the Regional Water Board will consider whether to affirm, reject, or modify the proposed Administrative Civil Liability, or whether to refer the matter to the Attorney General for recovery of judicial civil liability.

Original signed by  
JAMES C. PEDRI, Assistant Executive Officer

20 June 2008  
(date)

**WAIVER OF HEARING FOR  
ADMINISTRATIVE CIVIL LIABILITY COMPLAINT**

By signing this waiver, I affirm and acknowledge the following:

1. I am duly authorized to represent the Lehigh Southwest Cement Company (hereinafter "Discharger") in connection with Administrative Civil Liability Complaint No. R5-2008-0542 (hereinafter the "Complaint");
2. I am informed of the right provided by California Water Code section 13323, subdivision (b), to a hearing within ninety (90) days of service of the Complaint;
3. I hereby waive the Discharger's right to a hearing before the California Regional Water Quality Control Board, Central Valley Region, within ninety (90) days of the date of service of the Complaint; and
4. I certify that the Discharger has remitted payment for the civil liability imposed in the amount of **three thousand dollars (\$3,000)** by check, which is made payable to the "*State Water Pollution Cleanup and Abatement Account.*"
5. I understand the payment of the above amount constitutes a settlement of the Complaint, and that any settlement will not become final until after the 30-day public notice and comment period mandated by Federal regulations (40 CFR 123.27) expires. Should the Regional Board receive new information during this comment period, the Regional Board may withdraw the complaint, return payment, and issue a new complaint.
6. I understand that payment of the above amount is not a substitute for compliance with applicable laws and that continuing violations of the type alleged in the Complaint may subject the Discharger to further enforcement, including additional civil liability.

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(Print Name and Title)

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(Signature)

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(Date)