

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
CENTRAL VALLEY REGION

ADMINISTRATIVE CIVIL LIABILITY COMPLAINT R5-2009-0544

MANDATORY PENALTY
IN THE MATTER OF

LEHIGH SOUTHWEST CEMENT COMPANY
SHASTA COUNTY

This Administrative Civil Liability 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, 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 R5-2007-0168 (NPDES No. CA0081191).

The Assistant Executive Officer of the California Regional Water Quality Control Board, Central Valley Region (Central Valley 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, 11, 14, 15, 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.
2. On 6 December 2007, the Central Valley Water Board issued Waste Discharge Requirements Order R5-2007-0168 (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.

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. Order R5-2002-0057 includes, in part, the following effluent limitations:

B. Effluent Limitations - Discharges 001A and 001B)

1. The Discharger shall maintain compliance with the following effluent limitations at Discharge Point 001A and 001B, with compliance measured at Monitoring Locations SW-SW-001A and SW-001B respectively as described in the attached MRP: of storm water from sedimentation basins in excess of the following is prohibited:

Table 7. Final Effluent Limitations – Discharge Points 001A and 001B.

Parameter	Units	Effluent Limitations			
		Average monthly	Maximum Daily	Instantaneous Minimum	Instantaneous Maximum
Settleable Solids	mL/L		0.2		
pH ¹	Units			6.0 ¹	9.0 ¹

(1) Except for discharges associated with a 10-year 24-hour rainfall event, or greater

6. On 16 February 2009 the daily maximum effluent settleable solids concentration in Discharge Point 001A was measured at 0.5 mL/L, or 150 percent greater than the allowed daily maximum of 0.2 mL/L. The violation was reported by Lehigh Southwest Cement Company in its February 2009 monthly monitoring report.
7. CWC section 13385(h)(2) defines a serious violation as an exceedance of 40% or more of a group I pollutant as defined in 40 CFR 123.45 or an exceedance by 20% or more of a group II pollutant as defined in 40 CFR 123.45. Settleable solids is a group I pollutant under 40 CFR 123.45. The measured violation is a “serious violation” under CWC section 13385(h), because settleable solids is a group I pollutant, and the measured violation exceeded 40% or more of the permit limit. The mandatory minimum penalty for this serious violation is **three thousand dollars (\$3,000)**.
8. 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 COPMPANY 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 conducted at the Central Valley Water Board meeting scheduled on **13/14 August 2009**, unless the Discharger agrees to complete the attached following by **29 June 2009**.
 - a. Waive the hearing by completing the attached form and returning it to the Central Valley 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 conducted, the Central Valley 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

28 May 2009

(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 (Discharger) in connection with Administrative Civil Liability Complaint R5-2009-0544 (Complaint);
2. I am informed that California Water Code section 13323, subdivision (b), states that, "a hearing before the regional board shall be conducted within 90 days after the party has been served" with the Complaint;
3. I hereby waive the Discharger's right to a hearing before the Central Valley Regional Water Quality Control Board (Central Valley Water Board) within ninety (90) days of the date of service of the Complaint; and
4. I certify that the Discharger will remit payment for the proposed civil liability in the amount of **three thousand dollars** (\$3,000) by check, which will contain a reference to "ACL Complaint R5-2009-0544" and will be made payable to the "State Water Pollution Cleanup and Abatement Account." Payment must be received by the Central Valley Water Board by **29 June 2009** or this matter will be placed on the Central Valley Water Board's agenda for adoption at the 13/14 August 2009 Central Valley Water Board meeting.
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 Central Valley Water Board receive new information during this comment period, the Central Valley Water 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.
7. If a hearing on this matter is conducted, the Central Valley Water Board will consider whether to issue, reject, or modify the proposed Administrative Civil Liability Order, or whether to refer the matter to the Attorney General for recovery of judicial civil liability. Modification of the proposed Administrative Civil Liability Order may include increasing the dollar amount of the assessed civil liability.

(Print Name and Title)

(Signature)

(Date)