

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD  
CENTRAL VALLEY REGION

ADMINISTRATIVE CIVIL LIABILITY COMPLAINT R5-2013-0511  
For

MANDATORY PENALTY  
IN THE MATTER OF

LEHIGH SOUTHWEST CEMENT COMPANY  
SHASTA COUNTY

WDID NO. 5A452008001

This Administrative Civil Liability Complaint (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 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 Executive Officer of the California Regional Water Quality Control Board, Central Valley Region (Central Valley Water Board) finds the following:

1. 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 Rivers.
2. On 6 December 2007, the Central Valley Regional Water Quality Control Board (Central Valley Water Board) adopted Waste Discharge Requirements Order No. 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. WDRs Order No. R5-2007-0168 includes, Effluent Limitations A.1.a states, in part, the following effluent limitations:

1.a. The Discharger shall maintain compliance with the following effluent limitations at Discharge Point OOX, with compliance measured at Monitoring Location EFF-OOX as described in the attached MRP (Attachment E):

**Table 6. Effluent Limitations**

Parameter	Units	Effluent Limitation			
		Average Monthly <sup>2</sup>	Maximum Daily	Instantaneous Minimum	Instantaneous Maximum
Suspended Solids	mg/L		50 <sup>1</sup>		
Settleable Solids	mL/L	0.1	0.2		
pH	Standard units			6.0 <sup>1</sup>	9.0 <sup>1</sup>

1. Except for discharges associated with a 10-year 24-hour rainfall event, or greater.
2. For calculating Monthly Averages, use zero for Non-Detects (<0.1).

6. WDRs Order No. R5-2007-0168 includes, Effluent Limitations B.1.a states, in part, the following effluent limitations:

1.a The Discharger shall maintain compliance with the following effluent limitations at Discharge Points 001A and 001B, with compliance measured at Monitoring Location SW-001A and SW-001B respectively as described in the attached MRP (Attachment E):

**Table 7. Effluent Limitations**

Parameter	Units	Effluent Limitation			
		Average Monthly	Maximum Daily	Instantaneous Minimum	Instantaneous Maximum
Suspended Solids	mg/L		50		
Settleable Solids	mL/L		0.2		
pH	Standard units			6.0 <sup>1</sup>	9.0 <sup>1</sup>

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

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. Copper, total recoverable, and lead, total recoverable, are group II pollutants under 40 CFR 123.45. The measured violations are “serious violation” under CWC section 13385(h), because copper, total recoverable, and lead, total recoverable, are group II pollutant, and the measured violations exceeded 20% or more of the permit limit.
8. According to the Discharger’s self-monitoring reports, the Discharger committed three (3) serious Group I violations of the above effluent limitations contained in the WDRs Order R5-2007-0168 during the period during March 2012. A detailed list of the cited effluent violations is included in Attachment A, a part of this Complaint. The mandatory minimum penalty for these three (3) serious violations is **nine thousand dollars (\$9,000)**.
9. Issuance of this Administrative Civil Complaint to enforce CWC Division 7, Chapter 5.5 is exempt from provisions of the California Environmental Quality Act (Pub. Resources Code section 21000 et seq.), in accordance with California Code of Regulations, title 14, section 15321 subsection (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 an Administrative Civil Liability in the amount of **nine thousand dollars (\$9,000)**.
- 2) A hearing on this matter will be conducted at the Central Valley Water Board meeting scheduled **on 11/12 April 2013**, unless either of the following occurs by 31 January 2013.
  - a) The Discharger waives the hearing by completing the attached form (checking off the box next to Option #1) and returning it to the Central Valley Water Board, along with payment for the proposed civil liability of **nine thousand dollars (\$9,000)**; or
  - b) The Central Valley Water Board agrees to postpone any necessary hearing after the Discharger requests to engage in settlement discussions by checking off the box next to Option #2 on the attached form, and returns it to the Board along with a letter describing the issues to be discussed; or
  - c) The Central Valley Water Board agrees to postpone any necessary hearing after the Discharger requests a delay by checking off the box next to Option #3 on the attached form, and returns it to the Board along with a letter describing the issues to be discussed.
- 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.

If this matter proceeds to hearing, the Executive Officer reserves the right to amend the proposed amount of civil liability to conform to the evidence presented, including but not limited to, increasing the proposed amount to account for the costs of enforcement (including staff, legal and expert witness costs) incurred after the date of the issuance of this Complaint through completion of the hearing.

Original signed by \_\_\_\_\_  
PAMELA C. CREEDON, Executive Officer

\_\_\_\_\_ 11 January 2013  
(date)

**WAIVER FORM  
FOR ADMINISTRATIVE CIVIL LIABILITY COMPLAINT**

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

I am duly authorized to represent the Lehigh Southwest Cement Company (hereafter Discharger) in connection with Administrative Civil Liability Complaint **R5-2013-0511** (hereafter Complaint). 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. The person who has been issued a complaint may waive the right to a hearing."

- (OPTION 1: Check here if the Discharger waives the hearing requirement and will pay in full.)**
- a. I hereby waive any right the Discharger may have to a hearing before the Central Valley Water Board.
  - b. I certify that the Discharger will remit payment for the proposed civil liability in the full amount of **nine thousand dollars (\$9,000)** by check that references "ACL Complaint **R5-2013-0511**" made payable to the *State Water Pollution Cleanup and Abatement Account*. Payment must be received by the Central Valley Water Board by **31 January 2013**.
  - c. I understand the payment of the above amount constitutes a proposed settlement of the Complaint, and that any settlement will not become final until after a 30-day public notice and comment period. Should the Central Valley Water Board receive significant new information or comments during this comment period, the Central Valley Water Board's Executive Officer may withdraw the complaint, return payment, and issue a new complaint. I also understand that approval of the settlement will result in the Discharger having waived the right to contest the allegations in the Complaint and the imposition of civil liability.
  - d. 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.
- (OPTION 2: Check here if the Discharger waives the 90-day hearing requirement in order to engage in settlement discussions.)** I hereby waive any right the Discharger may have to a hearing before the Central Valley Water Board within 90 days after service of the complaint, but I reserve the ability to request a hearing in the future. I certify that the Discharger will promptly engage the Central Valley Water Board Prosecution Team in settlement discussions to attempt to resolve the outstanding violation(s). By checking this box, the Discharger requests that the Central Valley Water Board delay the hearing so that the Discharger and the Prosecution Team can discuss settlement. It remains within the discretion of the Central Valley Water Board to agree to delay the hearing. Any proposed settlement is subject to the conditions described above under "Option 1."
- (OPTION 3: Check here if the Discharger waives the 90-day hearing requirement in order to extend the hearing date and/or hearing deadlines. Attach a separate sheet with the amount of additional time requested and the rationale.)** I hereby waive any right the Discharger may have to a hearing before the Central Valley Water Board within 90 days after service of the complaint. By checking this box, the Discharger requests that the Central Valley Water Board delay the hearing and/or hearing deadlines so that the Discharger may have additional time to prepare for the hearing. It remains within the discretion of the Central Valley Water Board to approve the extension.

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(Print Name and Title)

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(Signature)

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(Date)

**ATTACHMENT A - ADMINISTRATIVE CIVIL LIABILITY COMPLAINT NO. R5-2013-0511**

**Lehigh Southwest Cement Company**

Record of Violations (March 2012)

Violation Date	Discharge Point	Pollutant/Parameter	Effluent Limit	Analytical Results	Percentage Over	Violation Type	180-day Violation Count	MMP	Penalty Status
3/13/2012	00X	Settleable Solids	0.2 mL/L MDEL	0.4 mL/L	100%	Serious Group I	1	\$3,000	New Assessment
3/13/2012	00X	Total Suspended Solids	50 mL/L MDEL	190 mL/L	280%	Serious Group I	2	\$3,000	New Assessment
3/14/2012	001B	Settleable Solids	0.2 mL/L MDEL	5.5 mL/L	2,650%	Serious Group I	3	\$3,000	New Assessment
						<b>Total New Assessment:</b>		<b>\$9,000</b>	

Notes: Serious Group I: any waste discharge that exceeds the effluent limitations for a group I pollutant by 40% or more.  
 Serious Group II: any waste discharge that exceeds the effluent limitations for a group II pollutant by 20% or more.  
 Non-Serious Violation: A non-serious violation occurs if the discharger does any one of the following four or more times in any period of 180 days:

- (a) violates a WDR effluent limitation;
- (b) fails to file a report of waste discharge pursuant to California Water Code section 13260;
- (c) files an incomplete report of waste discharge pursuant to California Water Code section 13260; or
- (d) violates a whole effluent toxicity limitation where the WDRs do not contain pollutant-specific effluent limitations for any toxic pollutants.

AMEL: Average Monthly Effluent Limitation  
 MDEL: Daily Maximum Effluent Limitation  
 N/A: Not Applicable