

**ADMINISTRATIVE CIVIL LIABILITY ASSESSMENT
COMPLAINT NO. R2-2011-0023**

The Regional Water Board's Prosecution Team proposes administrative civil liability against Lehigh Southwest Cement Company in the amount of \$10,000. This proposed liability is based on an assessment of the following factors in accordance with the violations alleged in Complaint No. R2-2011-0023, requirements of CWC section 13385(e), and the penalty calculation methodology described in the Water Quality Enforcement Policy (Enforcement Policy), dated November 17, 2009.

- **CWC section 13385(e)**

This statute requires consideration of the following factors for administrative civil liability assessments: the nature, circumstances, extent, and gravity of the violation or violations; susceptibility of the discharge to cleanup or abatement; degree of toxicity of the discharge; ability of the violator to pay and the effect on the violator's ability to continue its business; any voluntary cleanup efforts undertaken; any prior history of violations; the degree of culpability; economic benefit or savings, if any, resulting from the violation; and other matters that justice may require.

- **Enforcement Policy**

The State Water Resources Control Board amended the Enforcement Policy on November 17, 2009 with the adoption of Resolution No. 2009-00. The policy became effective on May 20, 2010 upon approval by the Office of Administrative Law.

The amended policy addresses factors required by statute (above), and it provides a statewide methodology for calculating administrative civil liabilities. The methodology considers duration of the violation and volume of discharge (if applicable), and it allows for quantitative assessments of the following: 1) potential for harm to beneficial uses; 2) physical, chemical, biological or thermal characteristics of the discharged material; 3) susceptibility of the discharge to cleanup; 4) deviation from regulatory requirements; 5) culpability; 6) cleanup and cooperation; 7) history of violations; 8) ability to pay; 9) economic benefit; and (10) other factors as justice may require.

The Enforcement Policy should be used as a companion document in conjunction with this administrative civil liability assessment since the penalty calculation methodology and definition of terms that are in the policy are not replicated herein. A copy of the Enforcement Policy can be found at:

http://www.waterboards.ca.gov/water_issues/programs/enforcement/docs/enf_policy_final111709.pdf

The remainder of this document discusses how the various factors that are required to be considered were addressed in the assessment of administrative civil liabilities for the alleged discharge.

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PENALTY FACTOR	ASSESSMENT	DISCUSSION
Days of Discharge	1	This assessment considers one day of discharge on March 29, 2011
Gallons Discharged	Not Assessed	Gallons discharged during the alleged event were not considered for this penalty assessment
Factor 1 (Harm)	2	Sediment impacts (increased turbidity) to Permanente Creek were observed during a site inspection on March 29, 2011. The overall harm to beneficial uses was considered minor for this event.
Factor 2 (Discharge Characteristics)	3	Sediment-laden discharges with potential pollutants from an industrial process are a direct threat to potential receptors. The discharges have deleterious effects on aquatic environments and a variety of aquatic organisms. Some of the most significant impacts from increased turbidity and sedimentation in surface waters include: (1) reduction of light penetration and decreased rates of photosynthesis (food generation) within the food chain; (2) reduction in the respiratory capacity and feeding efficiency of fish; and (3) smothering of aquatic habitats decreased survival rates of hatchlings and juvenile species.
Factor 3 (Susceptibility to Cleanup)	1	The alleged discharge is not considered susceptible to cleanup
Deviation from Standard	Major	The alleged discharge is a major deviation from standard because the point of discharge was not disclosed to Regional Water Board staff despite multiple requirements to identify such discharges from the facility, and the observed discharge is not authorized under applicable permits.
Culpability	1.5	There is a wood board placed within a diversion structure that is used to direct water flow to a pump station, the pipe outfall (where the discharge was observed), or both. Physical manipulation of water flow using this board is an intentional act to discharge water to Permanente Creek.
Cleanup & Cooperation	1.5	Regional Water Board staff has worked with the Discharger and its representatives to identify and rectify violations of the Industrial Storm Water Permit, including unauthorized non-stormwater discharges, for over a year. Identification of this type of discharge was further required to be identified in

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		accordance with a 13267 order. Despite Water Board's significant interaction with and requirement for information from the Discharger, this discharge was not disclosed.
History of Violations	1.2	Cleanup and Abatement Order issued in 1999 and Notices of Violation issued on March 26, 2010 and February 18, 2011
Maximum Penalty	\$10,000	
Economic Benefit	No	This penalty assessment considers discharge on a single day. Economic benefit would be considered with this type of event over time, where there may be accrued costs associated with not protecting the creek from this type of discharge.
Ability to Pay	Yes	Lehigh is one of the largest suppliers of heavy building materials to the construction industry in North America according to a job posting announcement. The parent company, Lehigh Hanson, Inc. has an international presence with multiple facilities through the US and Canada.
Staff Costs	\$3,000	Staff costs are estimated to be 20 hours at a rate of \$150 per hour.
Other Factors as Justice may Require	Yes	A \$5,900 liability was calculated as the total base liability in accordance with the penalty methodology of the Water Quality Enforcement Policy. An increase in this liability is recommended up to the maximum penalty for 1 day of violation (increase by a factor of an approximately 1.68) due to circumstances surrounding the discovery of the discharge, since the penalty assessment did not seek additional liability for the volume and duration of discharge, and considering the staff costs incurred to bring forward this enforcement action.