

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

In the matter of:	)	
	)	
<b>LEHIGH SOUTHWEST</b>	)	<b>SETTLEMENT AGREEMENT AND</b>
<b>CEMENT COMPANY</b>	)	<b>STIPULATION FOR ENTRY OF</b>
<b>SANTA CLARA COUNTY</b>	)	<b>ADMINISTRATIVE CIVIL LIABILITY</b>
	)	
<b>Discharges in violation of effluent</b>	)	<b>ORDER NO. R2-2017-1001</b>
<b>limits and interim effluent limits</b>	)	
	)	
	)	
<b>Section I: INTRODUCTION</b>	)	

1. 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 Lehigh Southwest Cement Company (Lehigh or Settling Respondent) (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 Lehigh in the amount of **\$465,500**.

**Section II: RECITALS**

2. Lehigh 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.
3. 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.
4. 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.

5. 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 six discharge points as described in Table 2 and the Permit (Fact Sheet section II, Facility Description). 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.

6. 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
<i>Discharge Point No. 001</i>		
Chromium (VI) <sup>[1]</sup>	8.0 µg/L	16 µg/L
Mercury	0.020 µg/L	0.041 µg/L
Nickel <sup>[1]</sup>	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-hr
Turbidity	5.0 NTU	10 NTU
<i>Discharge Point Nos. 002 through 005</i>		
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. <sup>[2]</sup>	
<i>Discharge Point No. 006</i>		
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:

<sup>[1]</sup> 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.

<sup>[2]</sup> Instantaneous, within the range from 6.5 through 8.5.

7. The Regional Water Board adopted Cease and Desist Order No. R2-2014-2011 (CDO) on March 12, 2014, because it found that Lehigh was violating or threatening to violate the new and more stringent Permit requirements, including certain effluent limits.

8. Per the CDO, page 7, paragraph 1(b), Lehigh 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

9. Since the Facility’s discharges currently exceed Permit discharge prohibitions and effluent limitations, Lehigh constructed and is operating an interim treatment system, which will be followed by a final treatment system. The interim treatment system is currently operational and designed to refine a treatment technology to be used in a final treatment system. The CDO requires that the final treatment system be constructed and operational by October 1, 2017.

10. As of the date of this Stipulated Order, Lehigh’s average selenium removal rate for the interim treatment system is approximately 90 percent.

11. 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.

12. 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.

13. Water Code section 13350, subdivision (a) provides that “[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).”

14. 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.”

15. 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.”

16. 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.”

17. 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.

18. 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.

19. 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.

20. As shown in Attachment A, Lehigh is subject to discretionary administrative civil liabilities for discharges of stormwater in violation of the interim effluent limitations in CDO Table 2, which are punishable under Water Code section 13350, subdivision (e):

- a. **Violation 1.** On December 2, 2014, Lehigh violated the CDO by discharging a combined total of approximately 290,000 gallons of Facility runoff to Permanente Creek with concentrations of total suspended solids (TSS) and turbidity above the numeric interim effluent limits in the CDO.
- b. **Violation 2.** On February 7, 2015, Lehigh violated the CDO by discharging approximately 270,200 gallons of Facility runoff to Permanente Creek with concentrations of settleable matter and TSS above the numeric interim effluent limits in the CDO.
- c. **Violation 3.** On April 7, 2015, Lehigh violated the CDO by discharging approximately 221,400 gallons of Facility runoff to Permanente Creek with concentrations of settleable matter and TSS above the numeric interim effluent limits in the CDO.
- d. **Violation 4.** On November 2, 2015, Lehigh violated the CDO by discharging approximately 194,000 gallons of Facility runoff to Permanente Creek with concentrations of settleable matter, TSS, and turbidity above the numeric interim effluent limits in the CDO.
- e. **Violation 5.** On November 9, 2015, Lehigh violated the CDO by discharging approximately 28,300 gallons of Facility runoff to Permanente Creek with concentrations of turbidity above the numeric interim effluent limits in the CDO.
- f. **Violation 6.** On December 3, 2015, Lehigh violated the CDO by discharging approximately 27,800 gallons of Facility runoff to Permanente Creek with concentrations of TSS and turbidity above the numeric interim effluent limits in the CDO.
- g. **Violation 7.** On December 13, 2015, Lehigh violated the CDO by discharging approximately 52,200 gallons of Facility runoff to Permanente Creek with concentrations of turbidity above the numeric interim effluent limits in the

CDO.

- h. **Violation 8.** On December 19, 2015, Lehigh violated the CDO by discharging approximately 8,900 gallons of Facility runoff to Permanente Creek with concentrations of TSS and turbidity above the numeric interim effluent limits in the CDO.
- 21. As indicated in Attachment B, Settling Respondent is subject to 61 MMPs pursuant to Water Code section 13385, subdivisions (h) and (i) for a total of \$183,000.
- 22. To resolve the alleged violations in Section II, paragraphs 20 and 21 by consent and without further administrative proceedings, the Parties have agreed to the imposition of an administrative civil liability of \$465,500 against the Settling Respondent. The discretionary violations were calculated and asserted by the Prosecution Team using Steps 1 through 10 of the State Water Resources Control Board's Water Quality Enforcement Policy (May 2010) as shown in Attachment A. MMPs were calculated and asserted by the Prosecution Team using Water Code section 13385, subdivisions (h) and (i). Payment of \$465,500 is due no later than 30 days following the Regional Water Board executing this Order.
- 23. The Parties have agreed to settle the 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.
- 24. The Prosecution Team believes that the resolution of the alleged violations is fair and reasonable and fulfills all of 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:

- 25. **CDO Interpretation:** For the life of the CDO, the Parties agree to the following:

  - a. If Settling Respondent violates a CDO interim effluent limitation, then the Settling Respondents shall be subject to MMPs for all Permit violations for any constituent at that Discharge Point for the entire calendar month during which the non-compliance occurs.
  - b. Settling Respondent shall be subject to MMPs for violations of Permit effluent limitations for constituents that 1) do not have a CDO numeric interim effluent limitation at that Discharge Point (regardless of compliance with CDO interim effluent limitations), and 2) are not Chromium (VI), Mercury, Nickel, nor Selenium, provided Settling Respondent is in compliance with

Table 2 of the CDO at the relevant Discharge Point and are implementing the tasks in Tables 3 (for Discharge Point No. 001) and 4 (for Discharge Point Nos. 002 through 006) of the CDO.

- c. Examples of CDO Interpretation Application:
- i. If Settling Respondent violates the CDO interim effluent limitation for turbidity at Discharge Point No. 001, Settling Respondent will be subject to MMPs for selenium at Discharge Point No. 001 if the Settling Respondent exceeds the Permit effluent limitation for selenium at Discharge Point No. 001.
  - ii. If Settling Respondent violates the CDO interim effluent limitation for turbidity at Discharge Point No. 005, Settling Respondent would not be subject to MMPs for selenium discharges above the Permit effluent limitations at Discharge Point No. 001 if Settling Respondent is in compliance with all CDO interim effluent limitations at Discharge Point No. 001.
  - iii. If Settling Respondent violates the Permit effluent limitation for Total Residual Chlorine at Discharge Point No. 001, Settling Respondent is subject to MMPs for Total Residual Chlorine regardless of compliance with CDO interim effluent limitations for other constituents at Discharge Point No. 001 because there is no CDO interim effluent limitation for Total Residual Chlorine.

26. **Administrative Civil Liability:** The Settling Respondent hereby agrees to the imposition of an administrative civil liability totaling \$465,500 to resolve the alleged violations as follows:

- a. To resolve the alleged discretionary violations as described in Section II, paragraph 20 and Attachment A, no later than 30 days after the Regional Water Board, or its delegate, signs this Stipulated Order, the Settling Respondent shall submit a check for \$141,250 made payable to the "Waste Discharge Permit Fund," reference the Order number on page one of this Stipulated Order, and mailed to:

State Water Resources Control Board Accounting Office  
Attn: ACL Payment  
P.O. Box 1888  
Sacramento, CA 95812-1888

The Settling Respondent shall provide a copy of the check via e-mail to the State Water Resources Control Board, Office of Enforcement ([Julie.Macedo@waterboards.ca.gov](mailto:Julie.Macedo@waterboards.ca.gov)) and the Regional Water Board ([Habte.Kifle@waterboards.ca.gov](mailto:Habte.Kifle@waterboards.ca.gov)).



- b. To resolve the alleged MMPs as described in Section II, paragraph 21 and Attachment B, no later than 30 days after the Regional Water Board, or its delegate, signs this Stipulated Order, the Settling Respondent shall submit a check for \$84,000 made payable to the “State Water Pollution Cleanup and Abatement Account,” reference the Order number on page one of this Stipulated Order, and mailed to:

State Water Resources Control Board Accounting Office  
Attn: ACL Payment  
P.O. Box 1888  
Sacramento, CA 95812-1888

The Settling Respondent shall provide a copy of the check via e-mail to the Office of Enforcement and the Regional Water Board at the e-mail addresses set forth above.

- c. The Settling Respondent agrees that \$240,250, consisting of half of the discretionary penalty amount (\$141,250) and \$84,000 related to the MMPs per Water Code section 13385, subdivision (l) (i.e.,  $\$15,000 + (\$183,000 - \$15,000)/2 = \$84,000$ ), of the administrative liability amount shall be paid to the Regional Monitoring Program care of the San Francisco Estuary Institute for implementation of a Supplemental Environmental Project (SEP) as follows:
- i. \$240,250 (SEP Amount) shall be paid solely for use towards the Supplemental Environmental Project (SEP) Fund for the San Francisco Bay Regional Monitoring Program. Funding this project will include a study related to hydrodynamic and water quality model calibration and application in San Francisco Bay and Lower South Bay. A complete description of this project is provided in Attachment C, incorporated herein by reference.
  - ii. Settling Respondent shall not be liable for administrative and oversights costs associated with the specific project described above.
  - iii. 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.

27. **Supplemental Environmental Project:** 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 Settling Respondent's SEP obligations will be satisfactorily completed upon the San Francisco Estuary Institute's written notification to Regional Water Board staff and Settling Respondent. The written notification shall acknowledge that the Regional Monitoring Program received the SEP Amount from the Settling Respondent and the payment will be spent on the project described in Section III, paragraph 26(c)(i) and Attachment C 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.

28. **Publicity Associated with the SEP:** Whenever Settling Respondent or its agents publicize one or more elements of the SEP, they 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 Settling Respondent.

29. **Regional Water Board is not Liable:** Neither the Regional Water Board, its members, or staff shall be held as parties to or guarantors of any contract entered into by Settling Respondent, its directors, officers, employees, agents, representatives or contractors in carrying out activities pursuant to this Stipulated Order.

30. **Compliance with Applicable Laws:** Settling Respondent 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.

**31. Party Contacts for Communications related to this Stipulation and Order:**

**For the Regional Water Board:**

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

Counsel:  
Julie Macedo, Attorney IV  
Office of Enforcement  
State Water Resources Control Board  
1001 I Street, 16<sup>th</sup> Floor  
Sacramento, CA 95814  
[Julie.Macedo@waterboards.ca.gov](mailto:Julie.Macedo@waterboards.ca.gov)  
(916) 323-6847

**For Settling Respondent:**

Lehigh Southwest Cement Company  
Attn: Sam Barket, Environmental Manager  
24001 Stevens Creek Blvd.  
Cupertino, CA 95014  
[Sam.Barket@LehighHanson.com](mailto:Sam.Barket@LehighHanson.com)  
(408) 996-4269

Counsel:  
Nicole E. Granquist  
Downey Brand LLP  
Attorney for Settling Respondent  
621 Capitol Mall, 18<sup>th</sup> Floor  
Sacramento, CA 95814  
[ngranquist@downeybrand.com](mailto:ngranquist@downeybrand.com)  
(916) 520-5369

32. **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.

33. **Matters Addressed by this Stipulation:** 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 through December 31, 2015, as of the effective date of this Stipulated Order, as to both Lehigh Southwest Cement Company and Hanson Permanente Cement, Inc. The provisions of this paragraph are expressly conditioned on the full payment of the administrative civil liability by the deadlines specified in Section III, paragraph 22, and Settling Respondent's full satisfaction of the obligations described in Paragraph 26.

34. **Public Notice:** The Settling Respondent 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 Settling Respondent agreed that it may not rescind or otherwise withdraw its approval of this proposed Stipulated Order.

35. **Addressing Objections Raised During Public Comment Period:** The Parties agree that the procedure contemplated for the Regional Water Board's or its delegate's adoption of the Order, and public review of this Stipulated Order is lawful and adequate. The Parties understand that the Regional Water Board, or its delegate, have the authority to require a public hearing on this Stipulated Order. In the event procedural objections are raised or the Regional Water Board requires a public hearing prior to the 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.

36. **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.

37. **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.

38. **If the Order Does Not Take Effect:** In the event that the Order does not take effect because the Regional Water Board or its delegate does not approve it, or the State Water Resources Control Board (State Water 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 and 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 Stipulation and/or the Order, and therefore may have formed impressions or conclusions prior to any contested evidentiary hearing on the violation 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.

39. **Waiver of Hearing:** Settling Respondent had 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 Order's adoption.

40. **Waiver of Right to Petition or Appeal:** Settling Respondent hereby waives their right to petition the Regional Water Board's adoption of the Order for review by the State Water Board, and further waives their rights, if any, to appeal the same to a California Superior Court and/or any California appellate level court.

41. **Covenant Not to Sue:** Settling Respondent covenants not to sue or pursue any administrative or civil claim(s) against any State agency or the State of California, their officers, Board Members, employees, representatives, agents, or attorneys arising out of any alleged violation resolved by this Stipulated Order.

42. **No Admission of Liability:** In settling this matter, Settling Respondent 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).

43. **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 Settling Respondent 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 Settling Respondent of its obligation to obtain any final written approval this Stipulated Order requires.

44. **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.

45. **No Third Party Beneficiaries:** This Stipulated Order is not intended to confer any rights or obligations on any third party or parties, and no third party or parties shall have any right of action under this Stipulated Order for any cause whatsoever.

46. **Severability:** This Stipulated Order is severable; should any provision be found invalid, the remainder shall remain in full force and effect.

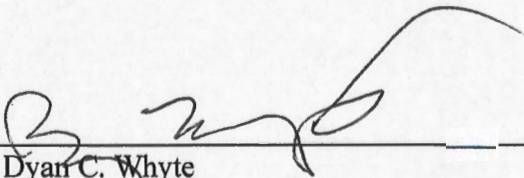
47. **Counterpart Signatures; Facsimile and Electronic Signature:** This Stipulated Order may be executed and delivered in any number of counterparts, each of which when executed and delivered shall be deemed to be an original, but such counterparts shall together constitute one document. Further, this 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.

48. **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.

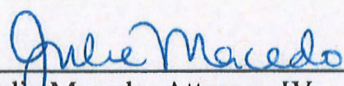
**IT IS SO STIPULATED.**

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

Date: 11/7/16

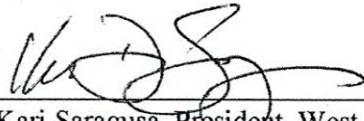
By:   
Dyan C. Whyte  
Assistant Executive Officer

Approved as to form:

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

**LEHIGH SOUTHWEST CEMENT COMPANY**

Date: 11-3-16

By:   
Kari Saragusa, President, West  
Region, Lehigh

Approved as to form:

By:   
Nicole E. Granquist  
Downey Brand LLP

**ORDER OF THE REGIONAL WATER BOARD**

49. This Order incorporates the foregoing Sections I through III by this reference as if set forth fully herein.

50. 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 has applied the Penalty Calculation Methodology set forth in 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.

51. This is an action to enforce the laws and regulations administered by the Regional Water Board. The Regional Water Board finds that issuance of this 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.

52. The Executive Officer of the Regional Water Board is authorized to refer this matter directly to the Attorney General for enforcement if Lehigh fails to perform any of its obligations under the 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.

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

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Date

## **ATTACHMENT A**

### **Factors in Determining Stipulated Administrative Civil Liability for Lehigh Southwest Cement Company Discharges in Violation of CDO Interim Effluent Limits in Cupertino, Santa Clara County**

The State Water Resources Control Board Water Quality Enforcement Policy (Enforcement Policy) establishes a methodology for assessing administrative civil liability. Use of the methodology addresses the factors required by Water Code section 13327. Each factor in the Enforcement Policy and its corresponding category, adjustment, and amount for each of the eight violations is presented below.

#### **ALLEGED VIOLATIONS**

##### **Violation 1: December 2, 2014 discharge in violation of CDO interim effluent limits from Discharge Points No. 005 and 006 to Permanente Creek**

On December 2, 2014, Lehigh violated Cease and Desist Order No. R2-2014-0011 (CDO) by discharging a combined total of approximately 290,000 gallons of facility runoff to Permanente Creek with concentrations of total suspended solids (TSS) and turbidity above the numeric interim effluent limits in the CDO. Lehigh is subject to administrative liabilities pursuant to Water Code section 13350, subdivision (e).

##### **Violation 2: February 7, 2015 discharge in violation of CDO interim effluent limit from Discharge Point No. 005 to Permanente Creek**

On February 7, 2015, Lehigh violated the CDO by discharging approximately 270,200 gallons of facility runoff to Permanente Creek with concentrations of settleable matter and TSS above the numeric interim effluent limits in the CDO. Lehigh is subject to administrative liabilities pursuant to Water Code section 13350, subdivision (e).

##### **Violation 3: April 7, 2015 discharge in violation of CDO interim effluent limit from Discharge Point No. 005 to Permanente Creek**

On April 7, 2015, Lehigh violated the CDO by discharging approximately 221,400 gallons of facility runoff to Permanente Creek with concentrations of settleable matter and TSS above the numeric interim effluent limits in the CDO. Lehigh is subject to administrative liabilities pursuant to Water Code section 13350, subdivision (e).

##### **Violation 4: November 2, 2015 discharge in violation of CDO interim effluent limit from Discharge Point No. 005 to Permanente Creek**



On November 2, 2015, Lehigh violated the CDO by discharging approximately 194,000 gallons of facility runoff to Permanente Creek with concentrations of settleable matter, TSS, and turbidity above the numeric interim effluent limits in the CDO. Lehigh is subject to administrative liabilities pursuant to Water Code section 13350, subdivision (e).

**Violation 5: November 9, 2015 discharge in violation of CDO interim effluent limit from Discharge Point No. 005 to Permanente Creek**

On November 9, 2015, Lehigh violated the CDO by discharging approximately 28,300 gallons of facility runoff to Permanente Creek with concentrations of turbidity above the numeric interim effluent limits in the CDO. Lehigh is subject to administrative liabilities pursuant to Water Code section 13350, subdivision (e).

**Violation 6: December 3, 2015 discharge in violation of CDO interim effluent limit from Discharge Point No. 005 to Permanente Creek**

On December 3, 2015, Lehigh violated the CDO by discharging approximately 27,800 gallons of facility runoff to Permanente Creek with concentrations of TSS and turbidity above the numeric interim effluent limits in the CDO. Lehigh is subject to administrative liabilities pursuant to Water Code section 13350, subdivision (e).

**Violation 7: December 13, 2015 discharge in violation of CDO interim effluent limit from Discharge Point No. 005 to Permanente Creek**

On December 13, 2015, Lehigh violated the CDO by discharging approximately 52,200 gallons of facility runoff to Permanente Creek with concentrations of turbidity above the numeric interim effluent limits in the CDO. Lehigh is subject to administrative liabilities pursuant to Water Code section 13350, subdivision (e).

**Violation 8: December 19, 2015 discharge in violation of CDO interim effluent limit from Discharge Point No. 005 to Permanente Creek**

On December 19, 2015, Lehigh violated the CDO by discharging approximately 8,900 gallons of facility runoff to Permanente Creek with concentrations of TSS and turbidity above the numeric interim effluent limits in the CDO. Lehigh is subject to administrative liabilities pursuant to Water Code section 13350, subdivision (e).

**ADMINISTRATIVE CIVIL LIABILITY  
CALCULATION STEPS**

## **STEP 1 – POTENTIAL FOR HARM FOR DISCHARGE VIOLATIONS**

The “potential harm” factor considers the harm to beneficial uses that resulted or that may result from exposure to the pollutant(s) in the discharge, while evaluating the nature, circumstances, extent, and gravity of the violation(s). A three-factor scoring system is used for each violation or group of violations: (1) the harm or potential harm to beneficial uses; (2) the degree of toxicity of the discharge, and (3) whether the discharge is susceptible to cleanup or abatement.

### **Factor 1: Harm or Potential Harm to Beneficial Uses**

The Enforcement Policy specifies that a score between 0 and 5 be assigned based on a determination of whether direct or indirect harm, or potential for harm, from a violation is negligible (0) to major (5).

**Violations 1 through 4:** The potential harm to beneficial uses from the discharge is below moderate (2). Below moderate is assigned when “impacts are observed or reasonably expected, harm to beneficial uses is minor.”

The sediment-laden water that discharged to the Permanente Creek had the potential to cause harm to beneficial uses. The San Francisco Bay Basin Water Quality Control Plan lists the beneficial uses of Permanente Creek. The listed uses potentially impacted by the discharge are groundwater recharge (GWR), cold freshwater habitat (COLD), warm freshwater habitat (WARM), preservation of rare, threatened or endangered species (RARE), fish spawning (SPWN), wildlife habitat (WILD), contact water recreation (REC-1), non-contact water recreation (REC-2), and municipal and domestic water supply (MUN).

The threat to beneficial uses is considered below moderate because although freshwater aquatic biota related to beneficial uses could have potentially been harmed by a sediment-laden discharge, the discharge occurred during a storm and most likely received dilution from Permanente Creek wet weather high water flow.

**Violations 5 through 8:** The potential harm to beneficial uses from the discharge is minor (1). Minor is assigned when there are “no observed impacts but potential impacts to beneficial uses without appreciable harm.”

The threat to beneficial uses is considered minor because the discharge volume is small and although freshwater aquatic biota related to beneficial uses could have potentially been harmed by a sediment-laden discharge, the discharge occurred during a storm and most likely received dilution from Permanente Creek wet weather high water flow.

### **Factor 2: The Physical, Chemical, Biological or Thermal Characteristics for the Discharge**

The Enforcement Policy specifies that a score between 0 and 4 be assigned based on a determination of the risk or threat of the discharged material to potential receptors. It defines “potential receptors” as those identified considering human, environmental and ecosystem health exposure pathways.

The risk or threat of the discharges in Violations 1 through 8 are moderate (2) for the reasons described below. Moderate is assigned when “the chemical and/or physical characteristics of the discharged material have some level of toxicity or pose a moderate level of concern regarding receptor protection.”

**Violation 1:** The discharge consisted of TSS up to 7,100 mg/L (i.e., about 30 times higher than the 240 mg/L interim effluent limit) and turbidity over 1,000 NTU, which is slightly higher than the 920 NTU interim effluent limit.

**Violation 2:** The discharge consisted of settleable matter up to 5.1 mL/L-hr (i.e., about two times higher than the 2.6 mL/L-hr interim effluent limit) and TSS up to 1,900 mg/L (i.e., about six times higher than the 340 mg/L interim effluent limit).

**Violation 3:** The discharge consisted of settleable matter up to 15 mL/L-hr, which is about six times higher than the 2.6 mL/L-hr interim effluent limit. The runoff discharged also consisted of TSS at 2,100 mg/L, which is about six times more than the 340 mg/L interim effluent limit.

**Violation 4:** The discharge consisted of TSS up to 11,000 mg/L (i.e., about 32 times higher than the 340 mg/L interim effluent limit); settleable matter up to 80 mL/L-hr (i.e., about 31 times higher than the 2.6 mL/L-hr interim effluent limit); and turbidity greater than 1,000 NTU, which is slightly higher than the 920 NTU interim effluent limit. Follow up monitoring 15 days later showed compliance with TSS and settleable matter interim effluent limits.

**Violation 5:** The discharge consisted of turbidity greater than 1,000 NTU, which is slightly higher than the 920 NTU interim effluent limit.

**Violation 6:** The discharge consisted of TSS up to 780 mg/L (i.e., about two times higher than the 340 mg/L interim effluent limit) and turbidity up to 2355 NTU (i.e., about 2.5 times higher than the 920 NTU interim effluent limit).

**Violation 7:** The discharge consisted of turbidity up to 1030 NTU, which is slightly higher than the 920 NTU interim effluent limit.

**Violation 8:** The discharge consisted of TSS up to 550 mg/L and turbidity up to 1074 NTU, both higher than the respective 340 mg/L and 920 NTU interim effluent limits.

### **Factor 3: Susceptibility to Cleanup or Abatement**

The Enforcement Policy specifies that if 50 percent or more of the discharge is susceptible to cleanup or abatement, then a score of 0 is assigned. A score of 1 is assigned if less than 50 percent of the discharge is susceptible to cleanup or abatement. This factor is evaluated regardless of whether the discharge was actually cleaned up or abated.

For Violations 1 through 8, the discharges were not susceptible to cleanup or abatement and are assigned a score of 1. In each instance, the discharged material flowed into and commingled with ambient receiving waters. There was no opportunity for abating the effects.

## **STEP 2 – ASSESSMENTS FOR DISCHARGE VIOLATIONS**

The Enforcement Policy specifies that when there is a discharge, an initial liability amount based on a per-gallon and/or a per-day basis is determined using the sum of the Potential for Harm scores from Step 1 and a determination of Deviation from Requirement. The Deviation from Requirement reflects the extent to which a violation deviates from the specific requirement that was violated.

**Violations 1 through 8:** The sum of the three factors from Step 1 is 5. The **Deviation from Requirement** for each of the Violations is **major**. A “major” Deviation from Requirement is one where “the requirement has been rendered ineffective....” The discharges violated the CDO interim effluent limits. An interim effluent limit is in essence a prohibition on any discharge that is not within the limit. Discharges not in compliance with an interim effluent limit render that limit ineffective.

The resulting per-gallon multiplier factor is 0.150 from the matrix in Table 1 of the Enforcement Policy, based the Potential for Harm score and extent of Deviation from Requirement described above. The Prosecution Team used only per-gallon factors because using only per-day liabilities would result in an inappropriately low penalty given the volume of each of the discharges.

### **Initial Liability Amounts for Violations 1 through 4**

The Enforcement Policy gives the Prosecution Team the discretion to reduce the statutory maximum per gallon (\$10) when there is a high volume discharge. Each of these discharges qualifies as a high volume discharge because of the high volume of stormwater discharged and reducing the maximum amount does not result in an inappropriately small penalty. The Prosecution Team elects to use its discretion in assigning a maximum \$2 per gallon in determining the initial liabilities as follows:

#### **Violation 1:**

Per Gallon Liability: (290,000 gallons) x (0.150) x (\$2/gallons) = \$87,000

**Initial Liability** = \$87,000

#### **Violation 2:**

Per Gallon Liability: (270,200 gallons) x (0.150) x (\$2/gallons) = \$81,060

**Initial Liability** = \$81,060

#### **Violation 3:**

Per Gallon Liability: (221,400 gallons) x (0.150) x (\$2/gallons) = \$66,420

**Initial Liability** = \$66,420

#### **Violation 4:**

Per Gallon Liability: (194,000 gallons) x (0.150) x (\$2/gallons) = \$58,200  
**Initial Liability = \$58,200**

**Initial Liability Amounts for Violations 5 Through 8**

There was no adjustment of the maximum \$10/gallon for the discharges in Violations 5 through 8 because each of the discharges does not qualify as high volume given the number of gallons discharged. The initial liability amount calculated on a per-gallon and per-day basis is as follows:

**Violation 5:**

Per Gallon Liability: (28,300 gallons) x (0.025) x (\$10/gallons) = \$7,075  
**Initial Liability = \$7,075**

**Violation 6:**

Per Gallon Liability: (27,800 gallons) x (0.025) x (\$10/gallons) = \$6,950  
**Initial Liability = \$6,950**

**Violation 7:**

Per Gallon Liability: (52,200 gallons) x (0.025) x (\$10/gallons) = \$13,050  
**Initial Liability = \$13,050**

**Violation 8:**

Per Gallon Liability: (8,900 gallons) x (0.025) x (\$10/gallons) = \$2,225  
**Initial Liability = \$2,225**

**STEP 3 – PER DAY ASSESSMENT FOR NON-DISCHARGE VIOLATIONS**

This step is not applicable because the violations are discharge violations.

**STEP 4 – ADJUSTMENTS TO INITIAL LIABILITY**

The Enforcement Policy specifies that three additional factors should be considered for modification of the amount of initial liability: the violator's culpability, efforts to clean up or cooperate with regulatory authority, and the violator's compliance history.

**Culpability**

The Enforcement Policy specifies that higher liabilities should result from intentional or negligent violations as opposed to accidental violations. It specifies use of a multiplier between 0.5 and 1.5, with a higher multiplier for intentional or negligent behavior.

**Violation 1:** The culpability multiplier is decreased at 0.9. A lower culpability is appropriate because the discharge resulted due to a heavy storm event (i.e., up to 4.5 inches of rainfall in 36 hours), which was the second wettest December on record for the San Jose area, causing electrical failure to one of the two new crusher sump pumps, and the single pump was unable to keep up with the storm runoff inflow. The storm runoff also inundated a power pole, which caused a safety hazard. Lehigh temporarily shut off the power to the entire area to prevent the live power lines from striking the ground should the power pole fall.

**Violation 2:** The culpability multiplier is decreased at 0.9. A lower culpability is appropriate because the discharge was not the result of failure to maintain or operate any water pumps, but happened due to heavy storm of up to 3.31 inches of precipitation during the incident week for the San Jose proximity. The discharge involved stormwater associated with industrial activity flowing into Ponds 19 and 20, and ultimately discharged to Permanente Creek from Discharge Point No. 005. Normally, industrial stormwater runoff flows into the Cement Plant Reclaimed System and is stored in Pond 11 for consumptive use. However, during the storm, stormwater runoff from adjacent areas comingled with the industrial stormwater and both flows overwhelmed a constructed berm and overflowed into the ponds and discharged to Permanente Creek. As a corrective action measure, Lehigh increased the length and height of the constructed berm so such circumstance does not repeat in the future.

**Violation 3:** The culpability multiplier is decreased at 0.9. A lower culpability is appropriate because the discharge was not the result of a failure to maintain or operate any water pumps, but happened due to heavy storm of up to 2.06 inches of precipitation during the incident 24-hour period for the Lehigh Southwest Cement site proximity. The discharge involved stormwater associated with industrial activity flowing into Ponds 19 and 20, and ultimately discharged to Permanente Creek from Discharge Point No. 005. Normally, industrial stormwater runoff flows into the Cement Plant Reclaimed System and is stored in Pond 11 for consumptive use. However, during the storm, stormwater runoff from adjacent areas comingled with the industrial stormwater and both flows overwhelmed a constructed berm and overflowed into the ponds and discharged to Permanente Creek. As a corrective action measure, Lehigh increased the length and height of the constructed berm so such circumstance does not repeat in the future.

**Violation 4:** The culpability multiplier is decreased at 0.9. A lower culpability is appropriate because the discharge was not the result of a failure to maintain or operate any water pumps. The discharge occurred due to heavy storm of 4.03 inches of precipitation during the incident.

In addition to the heavy storm, Lehigh believes that the major contributor to the elevated TSS, settleable matters, and turbidity was the ongoing construction activities for the new stormwater containment reservoir, which is located near Discharge Point No. 005 (Pond 20). Despite Lehigh's sweeping of the area, the number of trucks likely contributed to surface deposition of debris, which the storm runoff carried to Pond 20.

**Violation 5:** The culpability multiplier is decreased at 0.9. A lower culpability is appropriate because the discharge was the result of a storm and not the result of a failure to maintain or operate any water pumps. Record shows that there was up to 0.6 inch of rainfall during the incident.

In addition to the storm, Lehigh reported that the major contributor to the elevated TSS, settleable matters, and turbidity was the ongoing construction activities for the new stormwater containment reservoir, which is located near Discharge Point No. 005 (Pond 20). Despite Lehigh's sweeping of the area, the number of trucks likely contributed to surface deposition of debris, which the storm runoff carried to Pond 20.

**Violation 6:** The culpability multiplier is decreased at 0.9. A lower culpability is appropriate because the discharge was the result of a heavy storm onset and not the result of a failure to maintain or operate any water pumps. Lehigh reported a 0.426-inch during the incident.

As stated above, Lehigh reported that the major contributor to the elevated TSS and turbidity was the result of construction of the new stormwater reservoir, which is located just uphill from Discharge Point No. 005.

**Violation 7:** The culpability multiplier is decreased at 0.9. A lower culpability is appropriate because the discharge was the result of a heavy storm and not the result of a failure to maintain or operate any water pumps. Lehigh reported a 0.56-inch storm during the incident.

As stated above, Lehigh believes that the major contributor to the elevated TSS and turbidity were the result of construction of the new stormwater reservoir, which is located just uphill from Discharge Point No. 005.

**Violation 8:** The culpability multiplier is decreased at 0.9. A lower culpability is appropriate because the discharge was the result of a heavy storm and not the result of a failure to maintain or operate any water pumps. Lehigh reported a 0.18-inch storm during the incident.

As stated above, Lehigh believes that the major contributor to the elevated TSS and turbidity were the result of construction of the new stormwater reservoir, which is located just uphill from Discharge Point No. 005.

### **Cleanup and Cooperation**

The Enforcement Policy provides for an adjustment to reflect the extent to which a violator voluntarily cooperated in returning to compliance and correcting environmental damage. The adjustment is a multiplier between 0.75 and 1.5, with a higher multiplier where there is a lack of cooperation.

**Violations 1 – 8:** The cleanup and cooperation multiplier is decreased at 0.75. A credit is appropriate because Lehigh is implementing a major facility change that is above and beyond the actions required by the CDO. Lehigh is increasing the storage capacity of the Reclaim Water System to control future unauthorized discharges from Discharge Point No. 005 (Pond 20). Construction of a new 11.5 acre-foot (approximately 3.8 million gallon) retention basin at the Cement Plant is underway to accomplish the plan. Lehigh completed construction of the new basin in early 2016.

Lehigh also implemented best management practices for erosion and sediment control measures at Discharge Point 006 (Pond 30). Such measures include the following:

- Cover all limestone surfaces with non-limestone materials;
- Hydroseed and stabilize slopes;
- Install approximately 10,000 feet of wattles to stabilize slopes;
- Remove all silt and vegetation from Ponds 30, 31A, and 31B to increase storage capacity;
- Remove all silt and vegetation from sedimentation basin 7 (SB7) and clean out the ditch that leads to SB7;
- Reconstruct the berm around the contractor parking area around Pond 30, including wire-backed silt fence;
- Install rock-lined stormwater channel, which check dams, along approximately 300 feet of eastern material storage area; and
- Construct of a new berm at the base of the new eastern material storage area slope above SB7.

Furthermore, Lehigh constructed a reservoir to collect stormwater runoff from the facility to improve compliance and further reduce pollutant loading from Discharge Point No. 005. The construction of Pond 20 drainage area diversion pipelines is also in progress. In addition, Lehigh is investigating the possibility of installing “floc-logs” upstream of the pond to help reduce the TSS loading even further.

Lehigh submitted required monitoring and other written reports consistent with the Permit (Order No. R2-2014-0010) and CDO (Order No. R2-2014-0011), and no credit is provided for complying with these requirements.

### **History of Violations**

The Enforcement Policy provides that where there is a history of repeat violations, a minimum multiplier of 1.1 should be used.

**Violations 1 – 8:** The history multiplier is increased at 1.3. This increase is appropriate because Lehigh has a history of multiple violations. In 2012, the Regional Water Board assessed an administrative civil liability in the amount of \$10,000 against Lehigh for one day of violation for an unauthorized discharge of an unknown volume of process wastewater (Settlement Agreement and Stipulation of Entry of Order No. R2-2012-0039).

On November 2, 2015, the United States District Court Northern District of California San Jose Division entered an Order approving a Consent Decree between United States of America and People of the State of California by and through the Regional Water Board (Plaintiffs) and Lehigh for a total civil penalty of \$2,550,000 for discharging process water and stormwater from various impoundments, settling ponds, outlets, culverts, pipes, and other discernible, confined, and discrete conveyances from the Discharger’s facility to Permanente Creek, a water of the



United States, which ultimately flows into the San Francisco Bay, a traditionally navigable water (Case5:15-cv-01896-HRL).

## **STEP 5 – DETERMINATION OF TOTAL BASE LIABILITY**

The Total Base Liability is determined by applying the adjustment factors from Step 4 to the Initial Liability Amount determined in Step 2.

### **Violation 1:**

Total Base Liability = \$87,000 (Initial Liability) x 0.9 (Culpability Multiplier) x 0.75 (Cleanup and Cooperation Multiplier) x 1.3 (History of Violations Multiplier)

**Total Base Liability = \$76,300 (rounded)**

### **Violation 2:**

Total Base Liability = \$81,060 (Initial Liability) x 0.9 (Culpability Multiplier) x 0.75 (Cleanup and Cooperation Multiplier) x 1.3 (History of Violations Multiplier)

**Total Base Liability = \$71,100 (rounded)**

### **Violation 3:**

Total Base Liability = \$66,420 (Initial Liability) x 0.9 (Culpability Multiplier) x 0.75 (Cleanup and Cooperation Multiplier) x 1.3 (History of Violations Multiplier)

**Total Base Liability = \$58,300 (rounded)**

### **Violation 4:**

Total Base Liability = \$58,200 (Initial Liability) x 0.9 (Culpability Multiplier) x 0.75 (Cleanup and Cooperation Multiplier) x 1.3 (History of Violations Multiplier)

**Total Base Liability = \$51,100 (rounded)**

### **Violation 5:**

Total Base Liability = \$7,075 (Initial Liability) x 0.9 (Culpability Multiplier) x 0.75 (Cleanup and Cooperation Multiplier) x 1.3 (History of Violations Multiplier)

**Total Base Liability = \$6,200 (rounded)**

### **Violation 6:**

Total Base Liability = \$6,950 (Initial Liability) x 0.9 (Culpability Multiplier) x 0.75 (Cleanup and Cooperation Multiplier) x 1.3 (History of Violations Multiplier)

**Total Base Liability = \$6,100 (rounded)**

### **Violation 7:**

Total Base Liability = \$13,050 (Initial Liability) x 0.9 (Culpability Multiplier) x 0.75 (Cleanup and Cooperation Multiplier) x 1.3 (History of Violations Multiplier)

**Total Base Liability = \$11,400 (rounded)**

### **Violation 8**

Total Base Liability = \$2,225 (Initial Liability) x 0.9 (Culpability Multiplier) x 0.75 (Cleanup and Cooperation Multiplier) x 1.3 (History of Violations Multiplier)

**Total Base Liability = \$2,000 (rounded)**

### **COMBINED TOTAL BASE LIABILITY**

The combined Total Base Liability Amount for Violations 1 through 8 is: \$76,300 + \$71,100 + \$58,300 + \$51,100 + \$6,200 + \$6,100 + \$11,400 + \$2,000 = **\$282,500 (rounded)**.

### **STEP 6 – ABILITY TO PAY AND TO CONTINUE IN BUSINESS**

The Enforcement Policy provides that if there is sufficient financial information to assess the violator’s ability to pay the Total Base Liability or to assess the effect of the Total Base Liability on the violator’s ability to continue in business, then the Total Base Liability amount may be adjusted downward if warranted.

In this case, Regional Water Board Prosecution Team has sufficient information to suggest Lehigh has the ability to pay the proposed liability. The Regional Water Board Prosecution Staff has no evidence that Lehigh would be unable to pay the proposed liability or that payment of the proposed liability would cause undue financial hardship. Lehigh is not contesting the Prosecution Team’s ability to pay determination.

### **STEP 7 – OTHER FACTORS AS JUSTICE MAY REQUIRE**

The Enforcement Policy provides that if the Regional Water Board believes that the amount determined using the above factors is inappropriate, the amount may be adjusted under the provision for “other factors as justice may require.” The Enforcement Policy includes the costs of investigation and enforcement as “other factors as justice may require,” that could be added to the liability amount. In this case, the Prosecution Team has elected not to pursue staff costs.

The Total Base Liability remains \$282,500.

### **STEP 8 – ECONOMIC BENEFIT**

The Enforcement Policy requires recovery of the economic benefit gained associated with the violations plus 10 percent. Economic benefit is any savings or monetary gain derived from the act or omission that constitutes the violation.

The Regional Water Board Prosecution Team did not find a significant economic benefit associated with the violations as the alleged violations occurred during heavy storm onset.

### **STEP 9 – MAXIMUM AND MINIMUM LIABILITY**

a) *Minimum Liability*

There is no minimum administrative civil liability for the violations.

b) *Maximum Liability*

The maximum administrative civil liability is \$10,928,000. This is based on the maximum allowed by Water Code section 13350(e). The maximum liability for Violation 1 is \$2,900,000. The maximum liability for Violation 2 is \$2,702,000. The maximum liability for Violation 3 is \$2,214,000. The maximum liability for Violation 4 is \$1,940,000. The maximum liability for Violation 5 is \$283,000. The maximum liability for Violation 6 is \$278,000. The maximum liability for Violation 7 is \$522,000. The maximum liability for Violation 8 is \$89,000. For each violation, the Total Base Liability is within the maximum liability allowed by statute.

#### **STEP 10 – FINAL LIABILITY**

The final liability proposed is **\$282,500 (rounded)** for Violations 1 through 8, based on consideration of the penalty factors discussed above. It is within the minimum and maximum liabilities.

**ATTACHMENT B**

**MANDATORY MINIMUM PENALTIES  
 FOR  
 LEHIGH SOUTHWEST CEMENT COMPANY  
 NPDES No. CA0030210 (Order No. R2-2014-0010)  
 Cease and Desist Order No. R2-2014-0011**

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

No	CIWQS Violation ID No.	Date of Occurrence	Monitoring Location, Pollutant, Limit Type, Units	Permit Limit	CDO Interim Limit	Reported Value	Percent a Group I or Group II Pollutant is over Effluent Limitation	Type of Exceedance	CWC Section 13385(h) and/or (i) Required MMP
1	1009312	8/21/2014	EFF-003, Settleable Solids, MDEL, mL/L/hr	0.20	n/a	0.30	50%	C1, S	\$ 3,000
2	1009323	8/31/2014	EFF-003, Settleable Solids, AMEL, mL/L/hr	0.10	n/a	0.30	200%	C2, S	\$ 3,000
3	984422	9/12/2014	EFF-001, pH, Max, s.u.	8.5	n/a	8.6	> 1.3 times	C3, NA (Other)	\$ 3,000
4	984421	9/25/2014	EFF-005, pH, Max, s.u.	8.5	n/a	9.5	> 10 times	> C3, NA (Other)	\$ 3,000
5	1009336	12/2/2014	EFF-003, Turbidity, MDEL, NTU	40	n/a	69	72.5%	> C3, S	\$ 3,000
6	1009343	12/2/2014	EFF-005, TSS, MDEL, mg/L	50	340	460	820%	> C3, S	\$ 3,000
7	1009345	12/2/2014	EFF-005, Turbidity, MDEL, NTU	40	920	1000	2400%	> C3, S	\$ 3,000
8	1009347	12/2/2014	EFF-006, Settleable Solids, MDEL, mL/L/hr	0.2	n/a	80	39900%	> C3, S	\$ 3,000
9	1009348	12/2/2014	EFF-006, TSS, mg/L	50	240	7100	141900%	> C3, S	\$ 3,000
10	1009349	12/27/2014	EFF-001A, TSS, MDEL, lb/day	58	n/a	62.4	7.6%	> C3, S	\$ 3,000
11	1009352	12/31/2014	EFF-006, Settleable Solids, AMEL, mL/L/hr	0.1	n/a	80	79900%	> C3, S	\$ 3,000
12	987402	1/3/2015	EFF-001, pH, Min, s.u.	6.5	n/a	6.2	> 2 times	> C3, NA (Other)	\$ 3,000
13	1009354	1/31/2015	EFF-001, TDS, AMEL, mg/L	1000	n/a	1100	10%	> C3, S	\$ 3,000
14	988640	2/7/2015	EFF-003, TSS, MDEL, mg/L	50	n/a	110	120%	> C3, S	\$ 3,000
15	988643	2/7/2015	EFF-005, pH, Max, s.u.	8.5	n/a	10.1	> 40 times	> C3, NA (Other)	\$ 3,000
16	988646	2/7/2015	EFF-005 Settleable Solids, MDEL, ml/l/hr	0.2	2.6	5.1	2450%	> C3, S	\$ 3,000

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17	988644	2/7/2015	EFF-005, TSS, MDEL, mg/L	50	340	1900	3700%	> C3, S	\$ 3,000
18	988647	2/7/2015	EFF-005, Turbidity, MDEL, NTU	40	920	1000	2400%	> C3, S	\$ 3,000
19	1009355	2/12/2015	EFF-005, Turbidity, MDEL, NTU	40	920	65	63%	> C3, S	\$ 3,000
20	988645	2/12/2015	EFF-005, pH, Max, s.u.	8.5	n/a	10.3	> 63 times	> C3, NA (Other)	\$ 3,000
21	1009358	2/28/2015	EFF-005 Settleable Solids, AMEL, ml/l/hr	0.1	2.6	5.1	5000%	> C3, S	\$ 3,000
22	991539	4/7/2015	EFF-005, pH, Max, s.u.	8.5	n/a	9.5	> 10 times	> C3, NA (Other)	\$ 3,000
23	991546	4/7/2015	EFF-005 Settleable Solids, MDEL, ml/l/hr	0.2	2.6	15	7400%	> C3, S	\$ 3,000
24	991543	4/7/2015	EFF-005, TSS, MDEL, mg/L	50	340	2100	4100%	> C3, S	\$ 3,000
25	991540	4/7/2015	EFF-005, Turbidity, MDEL, NTU	40	920	501	1153%	> C3, S	\$ 3,000
26	1009360	4/30/2015	EFF-005 Settleable Solids, AMEL, ml/l/hr	0.1	2.6	15	14900%	> C3, S	\$ 3,000
27	1009361	9/14/2015	EFF-001, Total Residual Chlorine, Instantaneous Maximum, mg/L	0.0	n/a	0.1	>20% (See Note 1)	> C3, S	\$ 3,000
28	1009363	9/15/2015	EFF-001, Total Residual Chlorine, Instantaneous Maximum, mg/L	0.0	n/a	0.1	> 20% (see Note 1)	> C3, S	\$ 3,000
29	1000691	9/16/2015	EFF-001, Total Residual Chlorine, Instantaneous Maximum, mg/L	0.0	n/a	0.1	> 20% (See Note 1)	> C3, S	\$ 3,000
30	1000693	9/16/2015	EFF-001, pH, Max, s.u.	8.5	n/a	9.3	> 6 times	> C3, NA (Other)	\$ 3,000
31	1000694	9/17/2015	EFF-001, pH, Max, s.u.	8.5	n/a	9.7	> 16 times	> C3, NA (Other)	\$ 3,000
32	1009364	9/28/2015	EFF-001, Total Residual Chlorine, Instantaneous Maximum, mg/L	0.0	n/a	0.1	> 20% (See Note 1)	> C3, S	\$ 3,000
33	1009365	9/30/2015	EFF-001, Total Residual Chlorine, Instantaneous Maximum, mg/L	0.0	n/a	0.1	> 20% (see Note 1)	> C3, S	\$ 3,000
34	1000695	9/30/2015	EFF-001, pH, Max, s.u.	8.5	n/a	8.9	> 3 times	> C3, NA (Other)	\$ 3,000
35	1009366	10/5/2015	EFF-001, Total Residual Chlorine, Instantaneous Maximum, mg/L	0.0	n/a	0.1	> 20% (See Note 1)	> C3, S	\$ 3,000
36	1009368	10/6/2015	EFF-001, Total Residual Chlorine, Instantaneous Maximum, mg/L	0.0	n/a	0.1	> 20% (see Note 1)	> C3, S	\$ 3,000
37	1009369	10/7/2015	EFF-001, Total Residual Chlorine, Instantaneous Maximum, mg/L	0.0	n/a	0.1	> 20% (See Note 1)	> C3, S	\$ 3,000
38	1009370	10/12/2015	EFF-001, Total Residual Chlorine, Instantaneous Maximum, mg/L	0.0	n/a	0.1	> 20% (see Note 1)	> C3, S	\$ 3,000
39	1009371	10/13/2015	EFF-001, Total Residual Chlorine, Instantaneous Maximum, mg/L	0.0	n/a	0.1	> 20% (See Note 1)	> C3, S	\$ 3,000

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40	1009372	10/15/2015	EFF-001, Total Residual Chlorine, Instantaneous Maximum, mg/L	0.0	n/a	0.1	> 20% (See Note 1)	> C3, S	\$ 3,000
41	1009373	10/19/2015	EFF-001, Total Residual Chlorine, Instantaneous Maximum, mg/L	0.0	n/a	0.1	> 20% (See Note 1)	> C3, S	\$ 3,000
42	1009374	10/20/2015	EFF-001, Total Residual Chlorine, Instantaneous Maximum, mg/L	0.0	n/a	0.1	> 20% (See Note 1)	> C3, S	\$ 3,000
43	999941	10/21/2015	EFF-001, pH, Min, s.u.	6.5	n/a	6.3	> 2 times	> C3, NA (Other)	\$ 3,000
44	1009375	10/23/2015	EFF-001, Total Residual Chlorine, Instantaneous Maximum, mg/L	0.0	n/a	0.1	> 20% (See Note 1)	> C3, S	\$ 3,000
45	1009376	10/27/2015	EFF-001, Total Residual Chlorine, Instantaneous Maximum, mg/L	0.0	n/a	0.1	> 20% (See Note 1)	> C3, S	\$ 3,000
46	1009377	10/28/2015	EFF-001, Total Residual Chlorine, Instantaneous Maximum, mg/L	0.0	n/a	0.1	> 20% (See Note 1)	> C3, S	\$ 3,000
47	1009378	11/2/2015	EFF-005, TSS, MDEL, mg/L	50	340	11000	21900%	> C3, S	\$ 3,000
48	1009379	11/2/2015	EFF-005, Turbidity, MDEL, NTU	50	920	1000	1900%	> C3, S	\$ 3,000
49	1009380	11/2/2015	EFF-005 Settleable Solids, MDEL, ml/l/hr	0.2	2.6	80	39900%	> C3, S	\$ 3,000
50	1001378	11/6/2015	EFF-001, Total Residual Chlorine, Instantaneous Maximum, mg/L	0.0	n/a	0.1	> 20% (See Note 1)	> C3, S	\$ 3,000
51	1009386	11/9/2015	EFF-005, Turbidity, MDEL, NTU	50	920	1000	1900%	> C3, S	\$ 3,000
52	1009389	11/15/2015	EFF-005, Turbidity, MDEL, NTU	50	920	322	544%	> C3, S	\$ 3,000
53	1009400	12/3/2015	EFF-005, TSS, MDEL, mg/L	50	340	780	1460%	> C3, S	\$ 3,000
54	1009401	12/3/2015	EFF-005, Settleable Solids, MDEL, ml/l/hr	0.2	2.6	2.5	1150%	> C3, S	\$ 3,000
55	1009404	12/3/2015	EFF-005, Turbidity, MDEL, NTU	50	920	1030	1960%	> C3, S	\$ 3,000
56	1009408	12/13/2015	EFF-005, TSS, MDEL, mg/L	50	340	340	580%	> C3, S	\$ 3,000
57	1009412	12/13/2015	EFF-005, Turbidity, MDEL, NTU	50	920	2355	4610%	> C3, S	\$ 3,000
58	1009417	12/19/2015	EFF-005, TSS, MDEL, mg/L	50	340	550	1000%	> C3, S	\$ 3,000
59	1009418	12/19/2015	EFF-005, Turbidity, MDEL, NTU	50	920	1074	2048%	> C3, S	\$ 3,000
60	1009420	12/22/2015	EFF-005, TSS, MDEL, mg/L	50	340	110	120%	> C3, S	\$ 3,000
61	1009421	12/22/2015	EFF-005, Turbidity, MDEL, NTU	50	920	74	48%	> C3, S	\$ 3,000
<b>Total</b>									<b>\$ 183,000</b>

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**Legend for Table:**

CIWQS = California Integrated Water Quality System database used by the Water Boards to manage violation and enforcement activities.

Violation ID = Identification number assigned to a permit exceedance in CIWQS.

C = Count – The number that follows represents the number of exceedances in the past 180 days, including this violation. A count greater than three (> C3) means that a penalty under Water Code section 13385(i) applies.

NA – Not Applicable; pH classified as other pollutant, which is not listed neither with Group I nor Group II

S = Serious, which means that a penalty under Water Code section 13385(h) applies when an effluent limitation is exceeded 40 percent or more for a Group I pollutant or 20 percent or more for a Group II pollutant.

Note 1 = Chlorine is a Group II pollutant and the percent above the limit of 0.0 mg/L is more than 20 but not quantifiable.

Regulatory Measure ID: 395340

Place: 273205

WDID: 2 438668001

## **ATTACHMENT C**

### **Study Description for Supplemental Environmental Project (SEP) Fund for the San Francisco Bay Regional Monitoring Program**

This is for use in documenting how a specific San Francisco Bay Regional Monitoring Program study by the San Francisco Estuary Institute (SFEI) complies with the State Water Resources Control Board Policy on Supplemental Environmental Projects (SEP) ([http://www.waterboards.ca.gov/water\\_issues/programs/enforcement/#policy](http://www.waterboards.ca.gov/water_issues/programs/enforcement/#policy)).

#### **Basic Information**

Study Name: Hydrodynamic and water quality model calibration and application in San Francisco Bay and Lower South Bay

Study Budget, Total: \$240,250

SFEI Contact:

- Technical – David Senn, [davids@sfei.org](mailto:davids@sfei.org), office (510) 746-7366
- Financial – Lawrence Leung, [lawrence@sfei.org](mailto:lawrence@sfei.org), (510) 746-7356

#### **Study Description**

The primary goals for this study are to calibrate and validate numerical models used for (1) predicting how anthropogenic nutrients (nitrogen and phosphorous) enter and react within the Bay; (2) predicting how the Bay responds to these inputs, including phytoplankton blooms and low dissolved oxygen; and (3) exploring how various nutrient load reduction management decisions will affect habitat condition. The models will also be useful for tracing how inflows, including streams, rivers and discharges, influence salinity distributions, and how contaminants and materials present in these flows are transported throughout the Bay, including Lower South Bay.

#### **Compliance with SEP Criteria**

This study complies with the following SEP criteria:

- It is a monitoring program and/or study of surface water quality or quantity and/or the beneficial uses of the water.
- Its nexus to violations is that is located within the same Water Board region in which violations occurred and downstream of the receiving waterbody for the discharge violations.

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

- This project is a study and associated products above and beyond what is



required in permits or orders issued by the Regional Water Board or what can be accomplished with Dischargers' required monetary contributions to the Regional Monitoring Program for Water Quality in San Francisco Bay.

### **Study Milestone and Performance Measure**

An interim report on hydrodynamic and nutrient model calibration and associated development will be available December 31, 2017.

A final hydrodynamic and nutrient calibration and validation report will be available December 31, 2018.

These milestone dates are based on having in place funds for the full study budget by December 30, 2016. If there are delays, then the dates may be adjusted accordingly and subject to the approval of the Executive Officer.

### **Study Budget and Reports to Water Board**

Pursuant to the October 2015 Supplemental to 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 a portion 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 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.