

SETTLEMENT AGREEMENT

WHEREAS, Baykeeper is a non-profit public benefit corporation dedicated to the preservation, protection, and defense of the environment, wildlife, and natural resources of the San Francisco Bay and other area waters;

WHEREAS, CEMEX, Inc., RMC Pacific Materials, Inc., and CEMEX Construction Materials Pacific, LLP (“CEMEX”) operates a cement bulk wholesale distribution facility (“Redwood City Cement Terminal”) located at 876 Seaport Boulevard, Redwood City, California and a concrete and asphalt recycling business with a sand and gravel resale distribution facility (“Harbor Sand & Gravel”) located at 775 Seaport Boulevard, Redwood City, California (collectively, the “Redwood City Facilities”) and a ready mix concrete facility located at 500 Amador Street, San Francisco, California, (the “San Francisco Facility”) (collectively the “Facilities” or “each Facility”);

WHEREAS, the discharge of pollutants into waters of the United States is regulated by the Federal Water Pollution Control Act, also known as the Clean Water Act (“CWA”), 33 U.S.C. §§ 1251, *et seq.* and is unlawful except as authorized by a National Pollutant Discharge Elimination System (“NPDES”) Permit issued pursuant to section 402 of the Federal Water Pollution Control Act, 33 U.S.C. §1342;

WHEREAS, on June 19, 2009, Baykeeper served CEMEX, the United States Environmental Protection Agency, the State Water Resources Control Board, the San Francisco Regional Water Quality Control Board, the United States Attorney General and other individuals and entities with a notice of intent to file suit (“60-Day Notice”) under CWA sections 505(a)(1)

and (f) of the Federal Water Pollution Control Act ("Clean Water Act" or "the Act"), 33 U.S.C. § 1365(a)(1) and (f), alleging CWA violations at the Facilities;

WHEREAS, Baykeeper filed a complaint ("Complaint") against CEMEX in the United States District Court, Northern District Court of California on October 13, 2009;

WHEREAS, Baykeeper contends in its 60-Day Notice and Complaint that CEMEX has repeatedly discharged polluted storm water in violation of the CWA and discharged pollutants without NPDES permit authorization, and CEMEX denies all allegations set forth in the 60-Day Notice and Complaint and contends that Baykeeper's Complaint should be dismissed;

WHEREAS, Baykeeper and CEMEX (the "Parties"), through their authorized representatives and without either adjudication of Baykeeper's claims or admission by CEMEX of any alleged violation or other wrongdoing, choose to resolve in full Baykeeper's allegations in the 60-Day Notice and Complaint through settlement and avoid the cost and uncertainties of further litigation; and

WHEREAS, Baykeeper and CEMEX agree that it is in their mutual interest to enter into this Agreement setting forth the terms and conditions appropriate to resolve this matter without further litigation;

NOW THEREFORE, THE PARTIES AGREE AS FOLLOWS:

I. COMMITMENT OF CEMEX

1. In order to reduce or prevent pollutants in storm water associated with industrial activity and to eliminate alleged unauthorized non-storm water discharges from each Facility into the waters of the United States, CEMEX shall implement appropriate structural and non-structural Best Management Practices ("BMPs") as described more fully below.

II. FACILITY COMPLIANCE MEASURES

2. **Site Maps:** Within sixty (60) days of the date upon which the District Court enters the Order dismissing Baykeeper's Complaint with prejudice and retaining jurisdiction to enforce the terms of this Agreement ("Effective Date"), to the extent not already implemented, CEMEX shall survey each of its Facilities and complete a topographic contour map ("Site Map") that comprehensively depicts the flow of storm water at the Facilities. The Site Maps shall clearly denote the contour intervals, which for the Redwood City Facilities shall be at least one half foot or less referenced to the vertical control datum (NAVD 88) and for the San Francisco Facility shall be based on site design maps, and the direction of storm water flow. The Site Maps for the Redwood City Facilities shall also reference the Mean High Water level and the Mean Sea Level as calculated from NAVD. The Site Maps shall clearly identify the property boundaries, known or suspected drop inlets, ground type (pervious or impervious), berms, dikes, walls and all other structures controlling the flow of surface water or tidally influenced water and the elevation and materials they are comprised of, any permanent structures and features, and all other physical structures or items relevant under this Agreement. Baykeeper shall have fourteen (14) days from receipt of the Site Maps to propose any changes or clarifications to be added to the Site Maps. CEMEX shall make all requested changes to the Facility Site Maps within sixty (60) days of receiving Baykeeper's comments unless the Parties agree otherwise or CEMEX timely invokes Dispute Resolution and prevails in Dispute Resolution. If CEMEX should alter the Site Maps during the term of this Agreement, CEMEX shall provide Baykeeper a copy of the Site Map(s) by no later than June 15th each year (*e.g.*, by June 15, 2011 for Site Map changes prior to that date, and June 15, 2012 for changes thereafter). Baykeeper shall have fourteen (14)

days from receipt of any revised Site Maps to propose any changes or clarifications to be added to the Site Maps. CEMEX shall make all requested changes to the Facility Site Maps within sixty (60) days of receiving Baykeeper's comments unless the Parties agree otherwise or CEMEX timely invokes Dispute Resolution and prevails in Dispute Resolution.

3. **Designated Discharge Points:** Within sixty (60) days of the Effective Date, to the extent not already implemented, CEMEX shall identify on the Site Map for each Facility every location at which storm water and non-storm water is known to be discharged or which may potentially be discharged ("Designated Discharge Point"). For the Redwood City Facilities, CEMEX will mark the area and extent of each Facility that has historically been inundated with water during tidal events. To the extent not already implemented, each Designated Discharge Point or Discharge Area shall be numbered and clearly labeled on each of the respective Site Maps. CEMEX shall investigate and determine the location of suspected drop inlets and their outfalls at part of this survey.

4. **Discharges Associated with Tidal Flow:** Within sixty (60) days of the Effective Date, CEMEX will prepare and submit to Baykeeper a Tidal Flow Plan for the Redwood City Facilities. The Tidal Flow Plan shall reference the Facilities' Site Map and describe, by location, the areas of the Redwood City Facilities prone to inundation by tidal flows, and all site activities, including structural improvements, that CEMEX or the Port of Redwood City is planning to perform or has performed to avoid inundation during high tides. For structural improvements, CEMEX shall provide calculations or other technical information to support that the improvement, alone or in combination with other improvements, will avoid inundation during high tides. The Tidal Flow Plan shall also require CEMEX to, during the 2010-2011 Wet

Season, inspect monthly the condition of all new and existing berms, dikes, walls, or any other visible structures controlling the flow of tidal water at the Redwood City Facilities. Baykeeper shall have fourteen (14) days from receipt of the Tidal Flow Plan to propose any changes or clarifications to be added to the Plan. CEMEX shall make all requested changes to the Tidal Flow Plan within thirty (30) days of receiving Baykeeper's comments unless the Parties agree otherwise or CEMEX timely invokes Dispute Resolution and prevails in Dispute Resolution.

5. **Designation of Industrial Activity Areas:** The portion of the Facilities where industrial activities occur, including but not limited to: (a) process areas such as manufacturing ready mix concrete; (b) preparation of trucks for loading with aggregates, concrete ready mix, recycled asphalt and concrete, fly ash, or other materials; (c) loading of trucks with aggregates, concrete ready mix, recycled asphalt and concrete, fly ash, or other materials; (d) loading and transport of cement or aggregates from bulk carrier to conveyor belt or conveyor belt to trucks; (e) loading and transport of cement or aggregates from rail cars to conveyor belt or trucks; (f) crushing and sorting of recycled asphalt or concrete, and (g) loading and transport of recycled concrete and asphalt for resale distribution will hereinafter be referred to, and within sixty (60) days of the Effective Date be designated on the Facilities' Site Map, as the "Industrial Activity Areas." CEMEX shall operate the Facilities such that industrial activity areas that generate dust, fine particulate matter, or other materials that can be tracked or entrained in storm water discharging from the Facilities are principally conducted within the Industrial Activity Areas. Within sixty (60) days of the Effective Date, CEMEX shall update the SWPPP for each Facility to fully describe all industrial activities that occur in the Industrial Activity Areas and where within the Industrial Activity Areas these activities occur.

6. **Designation of Storage Areas:** The outdoor storage areas at the Facilities where sand, gravel, base rock, or concrete and asphalt materials awaiting recycling are stored for later use or after they have been crushed and sorted will hereinafter be referred to as the “Material Storage Areas,” and within sixty (60) days of the Effective Date shall be designated on the Facilities’ Site Map as such.

7. **Dust Generating Activities:** Within sixty (60) days of the Effective Date, CEMEX shall update the SWPPP and Site Maps for each Facility to fully describe all industrial activities that generate dust or particulates that may be deposited within the Facility's boundaries and identify their discharge locations; the characteristics of dust and particulate pollutants; the approximate quantity of dust and particulate pollutants that may be deposited within the facility boundaries; and a description of the primary areas of the facility where dust and particulate pollutants would settle. CEMEX shall denote all actions taken to control the deposition of dust and particulate matter at the Facilities including a full description of its paved road dust suppression program at the Redwood City Facilities.

8. **Designation of All Sampling Locations:** Within sixty (60) days of the Effective Date, CEMEX shall update the SWPPP for each Facility to fully describe the protocol for taking storm water samples. The description shall set forth where and when the samples are to be collected and shall further explain why the sample points are representative of off-site discharge. For instance, if the discharge point is a driveway, CEMEX shall specify which side of the driveway the sample is collected and determine if additional collection points need to be added on the driveway to ensure that the sampling program characterizes all the constituents in the Facility’s storm water run off.

9. **Storm Drain Inlet/Catch Basin Inspection and Best Management Practices:**

a. Prior to October 1 of each year or within seven (7) days of the first forecasted storm event with a probability of 40% or greater in each Wet Season (*i.e.*, from October 1 to May 31 of each year that this Agreement is in effect), CEMEX shall inspect each storm drain inlet or catch basin at each of the Facilities. During this inspection, CEMEX shall clean as needed each drain inlet or catch basin using a vacuum or other suitable method in order to remove dust and solids that have entered the storm drain inlet or catch basin.

b. During each Wet Season (*i.e.*, from October 1 to May 31 of each year that this Agreement is in effect), CEMEX shall inspect each storm drain inlet or catch basin weekly at the Redwood City Facilities and bi-weekly (every two weeks) at the San Francisco Facility, and clean out any sediments deposited into these storm drain inlets or catch basins. CEMEX shall properly dispose of any dust, sediment, or other pollutants removed from storm drain inlets or catch basins.

c. During the Dry Season (*i.e.*, from June 1 to September 30 of each year that this Agreement is in effect), CEMEX shall cover each storm drain inlet or catch basin at each of the Facilities with a metal plate or some other solid material that will prevent dust and solids from collecting in the storm drain inlets or catch basins.

d. CEMEX shall prepare and maintain a log of the storm drain inlet/catch basin inspections and maintenance at each Facility (“Inspection Log”). The Inspection Log shall indicate the staff who completed the inspection and maintenance activity and when it was completed. The Inspection Log shall be made available for

inspection by Baykeeper at the site inspection authorized herein or otherwise within five (5) business days advance request by Baykeeper.

10. **Other Facility Monitoring:** Within sixty (60) days of the Effective Date, during the Wet Season, CEMEX shall conduct weekly inspections of those portions of the Redwood City Facilities from which storm water discharges and bi-weekly (every two weeks) inspections of those portions of the San Francisco Facility from which storm water discharges. Such inspections shall include driveways, outdoor equipment storage areas, Storage Areas, hazardous material areas, and all Industrial Activity Areas. All Designated Discharge Locations shall also be inspected for accumulation of dust, sediment, sand, grit, oily substances, oily sheens upon any standing water, and other materials associated with operations at the Facilities.

11. **Site Sweeping and Cleaning Best Management Practices:** Within sixty (60) days of the Effective Date, CEMEX shall amend the SWPPP for each Facility to incorporate a Site Sweeping and Cleaning Plan in accordance with this section.

a. **Site Sweeping and Cleaning Plans:** The Site Sweeping and Cleaning Plans shall provide for sweeping and cleaning actions that, in conjunction with other appropriate BMPs, shall be sufficient to prevent contaminants from being unintentionally moved around the Facilities, to reduce the entrainment of pollutants into storm water flows, to prevent pollutants from being blown off the Facilities, to keep all paved areas of the Facilities clean, and to prevent pollutants from being tracked off the Facilities onto surface streets. The Plans shall specifically include at least the following measures: (a) identification of areas where mechanical sweeping is feasible, areas where manual sweeping only, as needed, is feasible, and areas where

sweeping is not feasible (such as unpaved areas, or under piles of materials that are not reasonably movable), (b) Wet Season and Dry Season schedules for mechanical and manual sweeping of areas identified as appropriate for such sweeping of at least daily for the Redwood City Facilities and twice weekly for the San Francisco Facility, except during periods of rain, (c) triggers for more frequent ad hoc sweeping or cleaning such as visual accumulation of dust or debris, (d) identification of the type of equipment that will be employed for sweeping and a provision that regenerative sweepers or vacuum systems will be employed where “mechanical sweepers” are shown not to be adequate, (e) a thorough inspection of each Facility at least annually and, to the extent warranted by this inspection, perform additional comprehensive site cleaning as needed, (f) specification that CEMEX will not discharge any waste fluids or solid wastes generated in site cleaning to storm drain inlets or waterways, (g) sweeping of the public streets for approximately two hundred (200) feet within each of the entrances and exits of the Facilities at least twice weekly at the Redwood City Facilities, including Hinman Road and Seaport Boulevard, and twice weekly at the San Francisco Facility on Amador Street (this frequency assumes the Port of Redwood City sweeps Hinman Road and Seaport Boulevard on the alternate days, and that neighboring business Hanson sweeps Amador Street on the alternate days, resulting in daily public street sweeping), and (h) specification that CEMEX will collect and dispose of all wastes generated during Facility cleaning and sweeping in a manner that complies with all local, state, and federal laws.

b. **Site Sweeping and Cleaning Log:** CEMEX shall keep a log or checklist, as appropriate, of the sweeping and any other site cleaning activity performed at each Facility which identifies the staff who conducted the sweeping or cleaning, the location of the sweeping or cleaning, and the date of the sweeping or cleaning activities. The form for this log or checklist shall be adopted by CEMEX as part of the Site Sweeping and Cleaning Plans referred to in the preceding paragraph. CEMEX shall direct employees and/or contractors to accurately complete this form for those sweeping and cleaning actions specified in such log in accordance with the Site Sweeping and Cleaning Plan. CEMEX shall make the sweeping and cleaning log or checklist available for inspection by Baykeeper at the site inspection authorized herein or otherwise with five (5) business days advance request by Baykeeper.

12. **Traffic Flow:** Within sixty (60) days of the Effective Date, CEMEX shall update the SWPPP for each Facility to fully describe the type, direction, and volume of vehicle traffic at the Facilities.

13. **Tracking:** By October 1, 2010, CEMEX shall implement the following BMPs to reduce or prevent visible tracking of pollutants from each Facility by vehicle traffic:

a. At the San Francisco Facility, CEMEX shall maintain the existing pavement in good condition, and shall modify and improve the existing wheel wash system to effectively control any track-out as depicted on Exhibit 2 attached hereto and incorporated herein by reference as though fully set forth;

b. At the Harbor Sand & Gravel Facility, CEMEX shall install additional pavement and rumble grates at the entrance and/or exit from the facility as depicted

on Exhibit 3 attached hereto and incorporated herein by reference as though fully set forth; and

c. Cleaning and maintenance of these paved areas and the rumble grates will be address in the Site Sweeping and Cleaning Plans.

14. Harbor Sand & Gravel Facility Seaport Boulevard Terminus Projects:

CEMEX shall install a drive-over concrete berm at the Harbor Sand & Gravel between the rail car line and the terminus of Seaport Boulevard. CEMEX shall also perform a one-time removal of existing aggregate and solids on the ground at the terminus of Seaport Boulevard.

Certification of completion of both projects described in this paragraph shall be provided in the End of Season Summary described in Paragraph 34 of this Agreement, as well as an evaluation of whether the berm is effective at containing aggregate and other solids from being deposited at the terminus of Seaport Boulevard. If the berm is ineffective, CEMEX shall propose an alternative plan for controlling aggregate and other solids from being deposited at the terminus of Seaport Boulevard. This area shall be included in the facility monitoring described in Paragraph 10 and additional removal of aggregate and solids on the ground at the terminus of Seaport Boulevard shall occur, as necessary, to keep the area free of debris.

15. Pavement Inspection and Repair: Within sixty (60) days of the Effective Date, CEMEX shall repair or replace cracking pavement and concrete berms at Facility entrances, Industrial Activity Areas, and Operation Areas, and around the perimeter at each Facility, if any exists, to the extent that the cracks are interfering with the function of the pavement or berm. CEMEX shall routinely inspect paved areas and implement additional repairs or replacement of pavement on an as needed basis.

16. **Hazardous Waste Materials Segregation and Handling:** Within sixty (60) days of the Effective Date, to the extent not already implemented, CEMEX shall implement a system: (1) for identifying any toxic and hazardous materials handled at the Facilities and (2) for segregating such identified materials from other materials at each Facility and storing all such materials under cover and on an impermeable surface, out of potential contact with storm water or site flooding, with the exception of satellite accumulation stations, which may be located on a permeable surface so long as they are not located near a storm drain inlet or catch basin. The requirement that hazardous waste materials be stored "under cover" may be satisfied by storage in a covered drum or sealed or covered container. CEMEX shall update the SWPPPs for each of the Facilities to reference any Hazardous Materials Management Plans to account for all the ready-mix additives handled, used, or stored at the Facilities.

17. **Inutile Equipment and Parts Removal:** By October 1, 2010, CEMEX shall conduct an inspection of its Facilities, including the Facilities' respective boneyards, if any, and shall identify and remove from each Facility all abandoned or broken equipment, scrap metals, or other equipment no longer considered for future use that have the potential to serve as the source for pollutant loading.

18. **Vehicle and Equipment Management:** Within sixty (60) days of the Effective Date, to the extent not already implemented, CEMEX shall implement BMPs to reduce or minimize pollutant release from mobile equipment such as forklifts, hydraulic lifts, and other heavy equipment that are parked or stored in areas of the Facilities from which storm water discharges. Such BMPs shall include placing drip pans under stored or parked equipment, including overnight parking and storage, as necessary as an interim measure to control any

leaking equipment prior to the equipment repair, inspections during the Wet Season for evidence of leaks from such equipment (weekly for Redwood City Facilities and bi-weekly (every two weeks) for the San Francisco Facility), and promptly (as soon as reasonably possible and in no case later than in advance of forecasted rainfall events) cleaning up of spills, drips, or leaks from such equipment. Any spilled substances and absorbent materials used in cleaning up spills shall be disposed of in accordance with all local, state, and federal laws and regulations.

19. **Vehicle and Equipment Maintenance:** Within sixty (60) days of the Effective Date, to the extent not already implemented, CEMEX shall conduct routine or major vehicle or movable equipment maintenance or repair activities in the covered areas designated for such maintenance at the San Francisco Facility and on paved, bermed surfaces at the Redwood City Facilities. Whenever CEMEX conducts non-routine or emergency vehicle or movable equipment maintenance or repair activities in non-covered or unpaved areas from which storm water discharges from each Facility, CEMEX shall clean-up any waste products, including pollutant containing fluids, deposited or spilled on the ground as a result of the maintenance or repair. Any spilled substances and absorbent materials used in cleaning up spills shall be disposed of in accordance with all local, state, and federal laws and regulations.

20. **Fueling Activities:** By October 1, 2010, to the extent not already implemented and except in unusual and unexpected circumstances where equipment located on a pervious surface has run out of fuel and requires refueling to be operational, CEMEX shall conduct fueling activities only on an impervious surface, and CEMEX shall also require that its fuel supplier or employees immediately clean-up, remove and dispose of any fuel spills in accordance with all applicable local, state, and federal laws and regulations.

21. **Training:** Within sixty (60) days of the Effective Date, and annually thereafter, and within thirty (30) days of hiring of new employees, CEMEX shall conduct training for all appropriate employees to explain the requirements of the Facilities' SWPPPs to the extent applicable to such employee. Training shall focus on the employee's role in implementing various storm water control measures including, for example, implementation of BMPs, sweeping, or facility inspections. Training shall be conducted bilingually (*i.e.*, Spanish/English or other pertinent language) to the extent that such employee is not reasonably able to comprehend training in English. Within sixty (60) days of the Effective Date, CEMEX shall update each Facilities' SWPPP to include the training requirements set forth herein, to the extent such training is not already performed, and to identify all personnel responsible for carrying out storm water management, monitoring, sampling, and SWPPP implementation at each Facility.

22. **Maintenance of BMP Structural Controls:** After the Effective Date, CEMEX shall maintain structural BMPs at each Facility in good operating condition during the Wet Season and shall promptly repair any damaged or degraded structural BMPs.

23. **Amendment of SWPPP:** Unless otherwise specified, within sixty (60) days of the Effective Date, CEMEX shall amend each Facility's SWPPP to incorporate the facility compliance measures set forth in paragraphs 5 through 22 of this Agreement.

III. SAMPLING, MONITORING, INSPECTION & REPORTING

24. **Sampling Program:** After the Effective Date, subject to the limitations set forth below, CEMEX shall collect and analyze storm water samples from each Designated Discharge Point at the Facilities according to the following sampling schedule:

a. During the Wet Seasons for 2010-2011 (“First Year”) and 2011-2012 (“Second Year”), CEMEX shall collect four storm water samples per year from each Designated Discharge Point unless a Designated Discharge Point does not discharge four times during each Wet Season, in which case, CEMEX shall collect as many storm water samples as possible, provided that all samples are at least 48 hours apart. If the sampling results for the First Year are significantly improved from the sample results obtained in the Wet Season for 2009-2010, CEMEX shall be required to collect three storm water samples during the Second Year from each Designated Discharge Point.

b. CEMEX shall analyze each storm water sample collected for the presence of each of the parameters listed on the Sampling Chart attached hereto as Exhibit 1. If CEMEX obtains two consecutive samples from each of the Designated Discharge Points at a Facility which are below the Benchmark Levels in Exhibit 1 for a given constituent, CEMEX need not have its storm water from that Facility analyzed for that particular constituent for the remainder of this Agreement. Should operations materially change at any of the Facilities, CEMEX shall conduct sampling for any additional toxic priority pollutants listed in 40 C.F.R. § 131.38 likely to be present in CEMEX’s storm water discharges in quantities that will cause or contribute to exceedance of receiving water quality standards as a result of the changed operations.

c. Where CEMEX discharges storm water into a storm drain inlet or catch basin, CEMEX may collect a sample below any insert or treatment system.

25. **Certified Lab:** CEMEX shall have all storm water samples collected pursuant to this Agreement delivered to a California state certified environmental laboratory for analysis within the time needed for analysis within laboratory method allowable hold times. The laboratory shall conduct analysis sufficient to detect individual constituents at or below the levels set forth in the attached Exhibit 1.

26. **Sample Result Reporting:** CEMEX shall provide complete results from CEMEX's sampling and analysis to Baykeeper within fifteen (15) days of receipt of the laboratory report from each sampling event.

27. **Action Plan Trigger Levels:** CEMEX will compare analytical results of its storm water samples with the Target and Benchmark levels in Exhibit 1 to evaluate the effectiveness of BMPs. If the level of pollutants in CEMEX's storm water discharges exceeds the Target or Benchmark levels in Exhibit 1 during each Wet Season, CEMEX shall comply with the assessment and Action Plan requirements specified below. Regardless of whether an Action Plan is required, CEMEX shall ensure that all BMPs at the Facilities are maintained in proper working condition.

28. **Action Plan, Additional Management/Treatment of Storm Water:** By June 15, 2011 and June 15, 2012, CEMEX shall prepare and send to Baykeeper an Action Plan for a Facility if storm water sample results for that Facility exceed Target Levels and Benchmark levels set forth in Exhibit 1 ("Action Plan").

29. **Contents of Action Plans:** An Action Plan shall set forth: (1) the constituent concentrations from Designated Discharge Point samples collected at each Facility exceeding the Target or Benchmark Levels in Exhibit 1 ("Exceedances"), (2) the possible sources of such

Exceedances, (3) to the extent not already evaluated by CEMEX (*e.g.*, in prior Action Plan), BMPs that CEMEX will evaluate to attempt to reduce the level of pollutants associated with the Exceedances in future storm water discharges to the Target or Benchmark levels (considering, if appropriate, specific subsequent storm water testing within the Facility to attempt to identify areas within the Facility that may generate material levels of storm water pollutants), (4) any completed evaluations of additional BMPs (to the extent that such evaluations are then complete), (5) recommended BMPs (if any) resulting from such evaluation, (6) BMPs to be implemented; and (7) a schedule to implement any new BMPs by the earliest practicable time (in all cases, CEMEX shall propose an BMP implementation schedule that provides for BMP implementation as expeditiously as feasible, and before the next Wet Season, if possible). The Action Plan may include, for Target Levels, any technical or regulatory information relevant to calculating compliance with relevant Target Levels. The following BMPs should generally be evaluated in order to attain Benchmark levels or Target Levels:

- a. Hydraulic Controls: in appropriate paved portions of the Facilities, installation of berms or equivalent structural controls (if necessary to reduce or prevent storm water from flowing into or, other than through the engineered storm water conveyance system, out of one or more areas within the Facilities that serve as potential sources of contaminated storm water runoff to the extent that such storm water would discharge from the Facilities).
- b. Detention: Additional on-site retention or detention of storm water to minimize storm water discharges (overall or from specific areas) or to detain storm water runoff for sufficient detention time so as to reduce pollutants in the discharge.

c. Sweeping Technology: The use or increased use of regenerative sweepers (a regenerative sweeper is a mechanized sweeper that uses a blast of air in front of the brushes to raise tiny particles and improve sweeping performance) and high efficiency vacuum assisted dry sweepers, as well as alternate sweeping-vacuum as CEMEX deems appropriate, to substantially reach and clean all material areas where mechanized sweepers cannot effectively reach. Sweeping frequency shall also be evaluated, and increased if the assumptions regarding public street sweeping referenced in paragraph 11.a. of this Agreement change.

d. Visual “Track Off” To Public Streets: additional BMPs necessary to reduce or prevent visual “track off” of material from the facility onto public streets.

e. Paving Additional Unpaved Areas: to the extent not already implemented, paving appropriate portions of unpaved portions of the Process, Storage, or Operating Areas where significant vehicle traffic occurs and from which storm water discharges from the Facility.

f. Treatment Systems: installing alternative treatment systems that would provide more effective treatment of storm water prior to discharge than currently installed systems, such as a fixed bed (media-sand) filter system or other improved filter system.

g. Operations Under Cover: Identifying and segregating pollutant generating materials from areas which discharge storm water from the Facilities to areas where they can be covered and isolated from rainfall and storm water flow and/or to areas where storm water can be effectively filtered and/or otherwise treated on-site prior to

discharge from the Facility, and/or to areas from which storm water does not discharge from the Facility.

h. Evaluation of BMPs: CEMEX shall consider replacing, rehabilitating, or eliminating existing BMPs, by taking into account the age of the BMPs involved or employed, the engineering aspect of the application of various BMPs, the cost of the BMPs, and any adverse environmental impact of the BMPs.

i. Such other additional BMPs as CEMEX deems appropriate for evaluation.

30. Baykeeper shall have thirty (30) days from receipt of an Action Plan to comment on and/or propose revisions to the Action Plan and explain in writing the basis for each such revision. Within forty-five (45) days of receiving Baykeeper's comments and/or proposed revisions, CEMEX shall adopt Baykeeper's requested revisions to the Action Plan unless the Parties otherwise agree or CEMEX timely invokes and prevails in Dispute Resolution.

31. CEMEX shall implement the Action Plan(s) adopted pursuant to this Agreement as an obligation of this Agreement.

32. Within thirty (30) days after an Action Plan is adopted pursuant to this Agreement, CEMEX shall amend its SWPPP to include all BMPs set forth in the Action Plan not otherwise implemented and included in the SWPPP. Within thirty (30) days thereafter pursuant to this paragraph, CEMEX shall provide Baykeeper with a copy of such revised SWPPP.

33. During each Wet Season, CEMEX is under an ongoing obligation to evaluate the BMPs implemented at each Facility and discussed in current or previous Action Plans and continue to attempt to reduce the level of pollutants for the remainder of the Wet Season.

CEMEX shall use the results from subsequent storm water samples as they become available to assist with its ongoing evaluation of the effectiveness of BMPs.

34. **End of Season Summary:** By September 30, 2010, CEMEX shall provide Baykeeper an end of season summary report that includes a summary chart with all the sample results from the 2009-2010 Wet Season. In the event that no Action Plan is required either by July 1, 2011 and/or July 1, 2012, CEMEX shall provide Baykeeper an end of season summary report for each Facility that includes (1) a summary chart with all the sample results from the previous Wet Season, (2) an explanation of whether CEMEX has implemented or will implement new BMPs not already discussed in a prior summary report or Action Plan, and (3) an evaluation of the effectiveness of any new BMPs implemented in the prior year.

35. **Stipulated Payments:** CEMEX shall pay the following stipulated payments during the term of this Agreement:

a. In the event CEMEX fails to submit to Baykeeper any document, report or other communication required under paragraphs 2, 4, 9.d., 11.b., 26, 28, 34, and 39-41 of this Agreement, for any report more than five (5) business days (Monday through Friday, excluding state and federal holidays) late, CEMEX shall pay a per day payment of Three Hundred and Fifty Dollars (\$350) commencing on the sixth (6th) business day after the report due date;

b. CEMEX shall pay One Thousand Five Hundred Dollars (\$1500) per Facility for any sample results during each Wet Season (First and Second Years) for which there was an Exceedance of the Benchmark Levels for Total Suspended Solids, Oil & Grease, or Iron; and

c. For every business day (Monday through Friday, excluding state and federal holidays) past the date that Baykeeper provided written notice to CEMEX that a document, report or other communication referenced in paragraph 35.a. or measure of specific performance required by this Agreement does not comply with the Agreement, and CEMEX has failed to correct the non-performance or invoke Dispute Resolution, CEMEX shall pay a per day payment of Three Hundred and Fifty Dollars (\$350), unless CEMEX's position prevails in Dispute Resolution;

d. CEMEX shall incur a Three Hundred and Fifty Dollar (\$350) per day payment for every business day (Monday through Friday, excluding state and federal holidays) five (5) days past the due date that CEMEX fails to submit to any payments required under paragraphs 39-41 of this Agreement.

e. All payments of stipulated payments described above shall be paid annually by CEMEX no later than September 1st of each year, via overnight mail to: Rose Foundation, 6008 College Avenue, Oakland, CA 94618, Attn: Tim Little, with a copy of payment sent concurrently to Baykeeper. Stipulated payment funds will be used by the Rose Foundation to fund projects that benefit water quality in the San Francisco Bay watershed south of the San Francisco Bay Bridge. The Rose Foundation and Baykeeper shall provide in writing to CEMEX a description of how funds were used on a specific water quality project(s) that benefited waters south of the San Francisco Bay Bridge. In no case shall any of the funds be used for any projects carried out by Baykeeper.

36. **Reduction in Stipulated Payments:** CEMEX shall be allowed a fifty percent (50%) reduction of any stipulated payment due in any given year pursuant to the preceding paragraph if CEMEX provides Baykeeper with a certification signed under penalty of perjury stating that CEMEX will, within one year, spend or be under contract to spend the balance of the sum that would otherwise be due as a stipulated payment on alternative environmental enhancements. CEMEX's proposal(s) for alternative environmental enhancements shall be submitted for review and approval by Baykeeper prior to CEMEX's submittal of a certification pursuant to this paragraph. After Cemex and Baykeeper have reached written agreement on an alternative environmental enhancement measure, CEMEX shall implement the measure as an obligation of this Agreement. Permissible alternative environmental enhancements shall include: (a) completing indoor or covered facilities including the construction of canopies over processing, operation, maintenance, or material storage areas; (b) the acquisition of an improved storm water filtration system designed for ready mix and aggregate processing and recycling facilities approved by Baykeeper (including any storm water retention capacity integrated with the filtration system), (c) construction and operation of the appurtenances needed to discharge storm water runoff from the Redwood City or San Francisco Facilities to a publicly owned treatment works sanitary sewer system provided that CEMEX includes as part of this sewer connection project the construction and operation of storm water retention devices (such as retention ponds, basins, or tanks) to allow storage of storm water for disposal after peak rainfall-related sewer collection system flows have subsided, or (d) purchase of a regenerative sweeper. CEMEX must further submit within thirty (30) days of completing the foregoing alternative environmental enhancement project a subsequent notice to Baykeeper explaining how CEMEX

expended the funds and how this expenditure met the required terms. If CEMEX fails to meet all conditions of this paragraph, then it must pay the balance of the stipulated payment sum not yet paid within thirteen (13) months from the date the payment was originally due.

37. **Site Access:** During the term of this Agreement, CEMEX shall permit representatives of Baykeeper to perform one (1) physical inspection per year of each Facility during operating hours, which may include sampling, and agreed-upon photographing and/or videotaping compliant with applicable Federal Rules of Civil Procedure. Baykeeper shall provide CEMEX notice at least five (5) business days in advance of such physical inspection, and CEMEX shall have the right to deny access if circumstances would make the inspection unduly burdensome and pose significant interference with business operations. In such case, CEMEX shall specify at least three (3) days within the next four (4) weeks upon which a Baykeeper inspection may proceed, with twenty-four (24) hours notice, during normal business hours. CEMEX shall not use the period of Baykeeper advance notice pursuant to this paragraph to make any alterations to Facility conditions that CEMEX would not otherwise have made but for receiving advance notice of Baykeeper's requested site access such that Baykeeper will be allowed to inspect and sample normally representative Facility conditions and storm water discharge.

38. **Reports:** During the term of this Agreement, CEMEX shall provide Baykeeper with a copy of all documents submitted to the Regional Water Quality Control Board, San Francisco Region ("the Regional Board") or the State Water Resources Control Board ("State Board") concerning storm water or non-storm water discharges from the Facilities. Such documents and reports shall be transmitted to Baykeeper via electronic mail, if feasible, or by

U.S. Mail when electronic transmission is not feasible, at the time the documents are due to be submitted to the Regional Board or State Board.

IV. MITIGATION, FEES, AND COSTS

39. **Environmental Mitigation Funding:** As mitigation of the violations alleged in Baykeeper's 60-Day Notice and Complaint, within thirty (30) days of the Effective Date, CEMEX shall pay the sum of forty-five thousand (\$45,000) to the Rose Foundation for the Environment to fund projects that will benefit water quality in the San Francisco Bay watershed south of the San Francisco Bay Bridge. Payment shall be made to the Rose Foundation for the Environment, 6008 College Avenue, Oakland, California 94618, Attn: Tim Little, with a copy of payment sent concurrently to Baykeeper. The Rose Foundation and Baykeeper shall providing in writing to CEMEX a description of how funds were used on a specific water quality project(s) that benefited waters south of the San Francisco Bay Bridge. In no case shall any of the funds be used for any projects carried out by Baykeeper.

40. **Reimbursement of Fees and Costs:** CEMEX shall reimburse Baykeeper in the amount of seventy thousand dollars (\$70,000) to help defray Baykeeper's reasonable investigation, expert, and attorneys' fees and costs, and all other reasonable costs incurred as a result of investigating the activities at the Facilities related to this Agreement, bringing these matters to CEMEX's attention, and negotiating a resolution of this action in the public interest. CEMEX shall tender payment to Environmental Advocates Attorney-Client Trust Account within thirty (30) days of the Effective Date.

41. **Compliance Monitoring Funds:** CEMEX shall reimburse Baykeeper six thousand two hundred and fifty dollars (\$6,250) per year for each of the two years of the term of

this Agreement, in the total amount of twelve thousand five hundred dollars (\$12,500) for costs and fees associated with monitoring CEMEX's compliance with this Agreement. Monitoring activities include the authorized site inspection, review of water quality sampling reports, review of Action Plans and other documents submitted pursuant to this Agreement, discussion with representatives of CEMEX concerning potential changes to compliance requirements, water quality sampling, informal dispute resolution, and other actions necessary to monitor and ensure CEMEX's compliance with this Agreement. The total compliance monitoring fund payment of \$12,500 shall be made payable to Environmental Advocates Attorney-Client Trust Account within thirty (30) days of the Effective Date.

42. **Dispute Resolution:** If a dispute under this Agreement arises, or either Party believes that a breach of this Agreement has occurred, the Parties shall schedule a meet and confer within ten (10) business days of receiving written notification from the other Party of a request for a meeting to determine whether a violation has occurred and to develop a mutually agreed upon plan to resolve the dispute. If the Parties fail to meet and confer or the meet and confer does not resolve the issue, after at least seven (7) days have passed after the meet and confer occurred or should have occurred, either Party shall be entitled to all rights and remedies under the law, including bringing a motion before the United States District Court for the purposes of enforcement of the terms of this Agreement. The parties shall be entitled to seek fees and costs incurred in any such action, and such fees and costs shall be awarded, pursuant to the provisions set forth in the Section 505(d) of the Clean Water Act, 33 U.S.C. §1365(d), and applicable case law interpreting such provision.

V. JURISDICTION AND STIPULATION TO DISMISS

43. **Jurisdiction.** For the purposes of this Agreement, the Parties agree that the United States District Court of California, Northern District of California (“District Court”) has jurisdiction over the Parties and the subject matter of this Agreement. The Parties further agree that venue is appropriate in the Northern District of California and that CEMEX will not raise in the future as part of enforcement of this Agreement whether Baykeeper has standing to bring the Complaint.

44. **Submission of Settlement Agreement to DOJ.** Within three (3) business days of receiving all of the Parties’ signatures to this Agreement, Baykeeper shall submit this Agreement to the U.S. Department of Justice (“DOJ”) for agency review consistent with 40 C.F.R. § 135.5. The agency review period expires forty-five (45) calendar days after receipt by the DOJ, evidenced by the certified return receipt, a copy of which shall be provided to CEMEX upon receipt by Baykeeper. In the event DOJ comments negatively on the provisions of this Agreement, the Parties agree to meet and confer to attempt to resolve the issue(s) raised by DOJ.

45. **Stipulation to Dismiss With Prejudice.** Within ten (10) calendar days of the expiration of the DOJ’s 45-day review period as provided in this Agreement, the Parties will submit this Agreement to the District Court along with a Stipulation and proposed Order which shall provide:

- a. For dismissal of the Complaint and all claims therein with prejudice pursuant to Federal Rule of Civil Procedure 41(a)(2);
- b. That the Court shall retain and have jurisdiction over the Parties with respect to resolving disputes arising under this Agreement; and

c. If any court of competent jurisdiction subsequently finds that the Court lacks jurisdiction to resolve any dispute that may arise under this Agreement and enforce this Agreement in accord with the Court's resolution of the dispute, the Parties stipulate that (1) they will jointly request the Court to set aside dismissal of the Complaint and to reinstate the Complaint for the sole purpose of providing the Court jurisdiction to resolve the dispute and enforce this Agreement accordingly and (2) should the Court decline to do so, this Agreement shall be deemed a binding contract enforceable as a contract by either the California Superior Court for the County of San Mateo or the California Superior Court for the County of San Francisco.

VI. WAIVER, RELEASES, AND COVENANT NOT TO SUE

46. Baykeeper Waiver and Release of Noticed Parties and Covenant Not to Sue:

Upon the Effective Date, Baykeeper, on its own behalf and on behalf of its officers, directors, employees, members, parents, subsidiaries, affiliates and each of their successors and assigns and its agents, attorneys, and other representatives covenants not to sue CEMEX or its officers, directors, employees, members, parents, subsidiaries, affiliates, or their successors or assigns, or its agents, attorneys and other representatives with respect to any discharges of storm water from the Facilities that arose before or may arise during, the term of this Agreement. Baykeeper, on its own behalf and on behalf of its officers, directors, employees, members, parents, subsidiaries, affiliates and each of their successors and assigns and its agents, attorneys, and other representatives, releases CEMEX or its officers, directors, employees, members, parents, subsidiaries, affiliates, or their successors or assigns, or its agents, attorneys and other

representatives from and waives all claims which arose from or pertain to the Complaint, including all claims for fees (including fees of attorneys, experts, and others), costs, expenses or any other sum incurred or claimed or which could have been claimed for matters associated with or related to the Complaint.

47. **CEMEX Waiver and Release of Baykeeper:** CEMEX, on its own behalf and on behalf of its officers, directors, employees, members, parents, subsidiaries, affiliates, or their successors or assigns, or its agents, attorneys and other representatives, releases Baykeeper and its officers, directors, employees, members, parents, subsidiaries, and affiliates, and each of their successors and assigns and its agents, attorneys and other representatives from, and waives all claims which arise from or pertain to the 60-Day Notice or Complaint, including all claims for fees (including fees of attorneys, experts, and others), costs, expenses or any other sum incurred or claimed or which could have been claimed for matters associated with or related to the 60-Day Notice or Complaint.

48. **No Admission:** The Parties enter into this Agreement for the purpose of avoiding prolonged and costly litigation. Nothing in this Agreement shall be construed as, and CEMEX expressly does not intend to imply, any admission as to any fact, finding, issue of law, or violation of law, nor shall compliance with this Agreement constitute or be construed as an admission by CEMEX of any fact, finding, conclusion, issue of law, or violation of law. However, this paragraph shall not diminish or otherwise affect the obligation, responsibilities, and duties of the Parties under this Agreement.

49. The Parties acknowledge that they are familiar with section 1542 of the California Civil Code, which provides:

A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor.

The Parties hereby waive and relinquish any rights or benefits they may have under California Civil Code section 1542 with respect to any other claims against each other arising from, or related to, the allegations and claims as set forth in the 60-Day Notice and/or the Complaint.

VII. MISCELLANEOUS PROVISIONS

50. **Effective Date:** The Effective Date of this Agreement shall be the date upon which the District Court enters the Order dismissing Baykeeper's Complaint with prejudice and retaining jurisdiction to enforce the terms of this Agreement.

51. **Term of Agreement:** This Agreement shall terminate on September 30, 2012.

52. **Execution in Counterparts:** The Agreement may be executed in one or more counterparts which, taken together, shall be deemed to constitute one and the same document.

53. **Facsimile Signatures:** The Parties' signatures to this Agreement transmitted by facsimile or electronic mail transmission shall be deemed binding.

54. **Severability:** In the event that any of the provisions of this Agreement are held by a court to be unenforceable, the validity of the enforceable provisions shall not be adversely affected.

55. **Construction:** The language in all parts of this Agreement, unless otherwise stated, shall be construed according to its plain and ordinary meaning.

56. **Authority to Sign:** The undersigned are authorized to execute this Agreement on behalf of their respective parties and have read, understood and agreed to all of the terms and conditions of this Agreement.

57. **Integrated Agreement:** All agreements, covenants, representations and warranties, express or implied, oral or written, of the Parties concerning the subject matter of this Agreement are contained herein.

58. **Choice of Law:** This Agreement shall be governed by the laws of the United States, and where applicable, the laws of the State of California.

59. **Full Settlement:** This Agreement constitutes a full and final settlement of this matter. It is expressly understood and agreed that the Agreement has been freely and voluntarily entered into by the Parties with and upon advice of counsel.

60. **Negotiated Agreement:** The Parties have negotiated this Agreement, and agree that it shall not be construed against the party preparing it, but shall be construed as if the Parties jointly prepared this Agreement, and any uncertainty and ambiguity shall not be interpreted against any one party.

61. **Modification of the Agreement:** This Agreement, and any provisions herein, may not be changed, waived, discharged or terminated unless by a written instrument, signed by the Parties.

62. **Correspondence:** Any notices or documents required or provided for by this Agreement or related thereto that are to be provided to Baykeeper pursuant to this Agreement shall be, to the extent feasible, sent via electronic mail transmission to the e-mail addresses listed

below or, if electronic transmission is not feasible, via U.S. Mail or hand delivery to the following addresses:

Baykeeper:

Jason Flanders
San Francisco Baykeeper
785 Market Street, Suite 850
San Francisco, CA 94103
E-mail: jason@baykeeper.org

With copies sent to:

Jodene Isaacs
Environmental Advocates
5135 Anza Street
San Francisco, California 94121
E-mail: jisaacs@enviroadvocates.com

Unless requested otherwise by CEMEX, any notices or documents required or provided for by this Agreement or related thereto that are to be provided to CEMEX pursuant to this Agreement may be provided by electronic mail transmission to the e-mail addresses listed below, or alternatively may be sent by U.S. Mail to the addresses below:

CEMEX:

Louis Schipper
Sr. Environmental Manager - Environmental Department
CEMEX, Inc.
5180 Golden Foothill Pkwy. Suite 200
El Dorado Hills, California 95762-9608
E-Mail: louisb.schipper@cemex.com

With copies sent to:

Keith Nicholson
Counsel
CEMEX, Inc.
920 Memorial City Way
Suite 100

Houston, Texas 77024
Email: keith.nicholson@cemex.com

And

Nicole Granquist
Downey Brand LLP
621 Capitol Mall, 18th Fl
Sacramento, California 95814
Email: ngranquist@downeybrand.com

63. **Impossibility of Performance:** No Party shall be considered to be in default in the performance of any of its obligations under this Agreement when performance becomes impossible, despite the timely good faith efforts of the Party, due to circumstances beyond the Party's control, including without limitation any act of God, war, fire, earthquake, flood, and restraint by court order or public authority. "Circumstances beyond the Party's control" shall not include normal inclement weather, economic hardship or inability to pay. Any Party seeking to rely upon this paragraph shall have the burden of establishing that it could not reasonably have been expected to avoid, and which by exercise of due diligence has been unable to overcome, the impossibility of performance.

64. **Assignment:** Subject only to the express restrictions contained in this Agreement, all of the rights, duties and obligations contained in this Agreement shall inure to the benefit of and be binding upon the Parties, and their successors and assigns.

65. If for any reason the District Court should decline to approve this Agreement in the form presented, the Parties shall use their best efforts to work together to modify the Agreement within thirty (30) days of receiving notice by District Court so that it is acceptable to the District Court. If the Parties are unable to modify this Agreement in a mutually acceptable

manner that is also acceptable to the District Court, this Agreement shall immediately be null and void as well as inadmissible as a settlement communication under Federal Rule of Evidence 408.

Date: March 22, 2010

Date: _____, 2010



by: Deb Self
Executive Director
San Francisco Baykeeper

by: Leslie S. White
Executive VP & General Counsel
CEMEX, Inc.

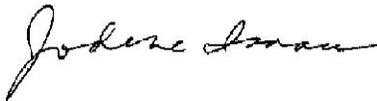
Approved as to form:

ENVIRONMENTAL ADVOCATES

DOWNEY BRAND, LLP

Date: March 22, 2010

Date: _____, 2010



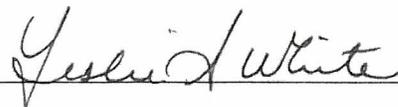
by: JODENE ISAACS
CHRISTOPHER SPROUL
Attorneys for Baykeeper

by: NICOLE E. GRANQUIST
Attorneys for CEMEX

manner that is also acceptable to the District Court, this Agreement shall immediately be null and void as well as inadmissible as a settlement communication under Federal Rule of Evidence 408.

Date: _____, 2010

Date: March 22, 2010



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Executive Director
San Francisco Baykeeper

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CEMEX, Inc.

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DOWNEY BRAND, LLP

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Attorneys for Baykeeper

by: NICOLE E. GRANQUIST
Attorneys for CEMEX

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DOWNEY BRAND, LLP

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Date: March 22, 2010

by: JODENE ISAACS
CHRISTOPHER SPROUL
Attorneys for Baykeeper


by: NICOLE E. GRANQUIST
Attorneys for CEMEX

Exhibit 1

EXHIBIT 1

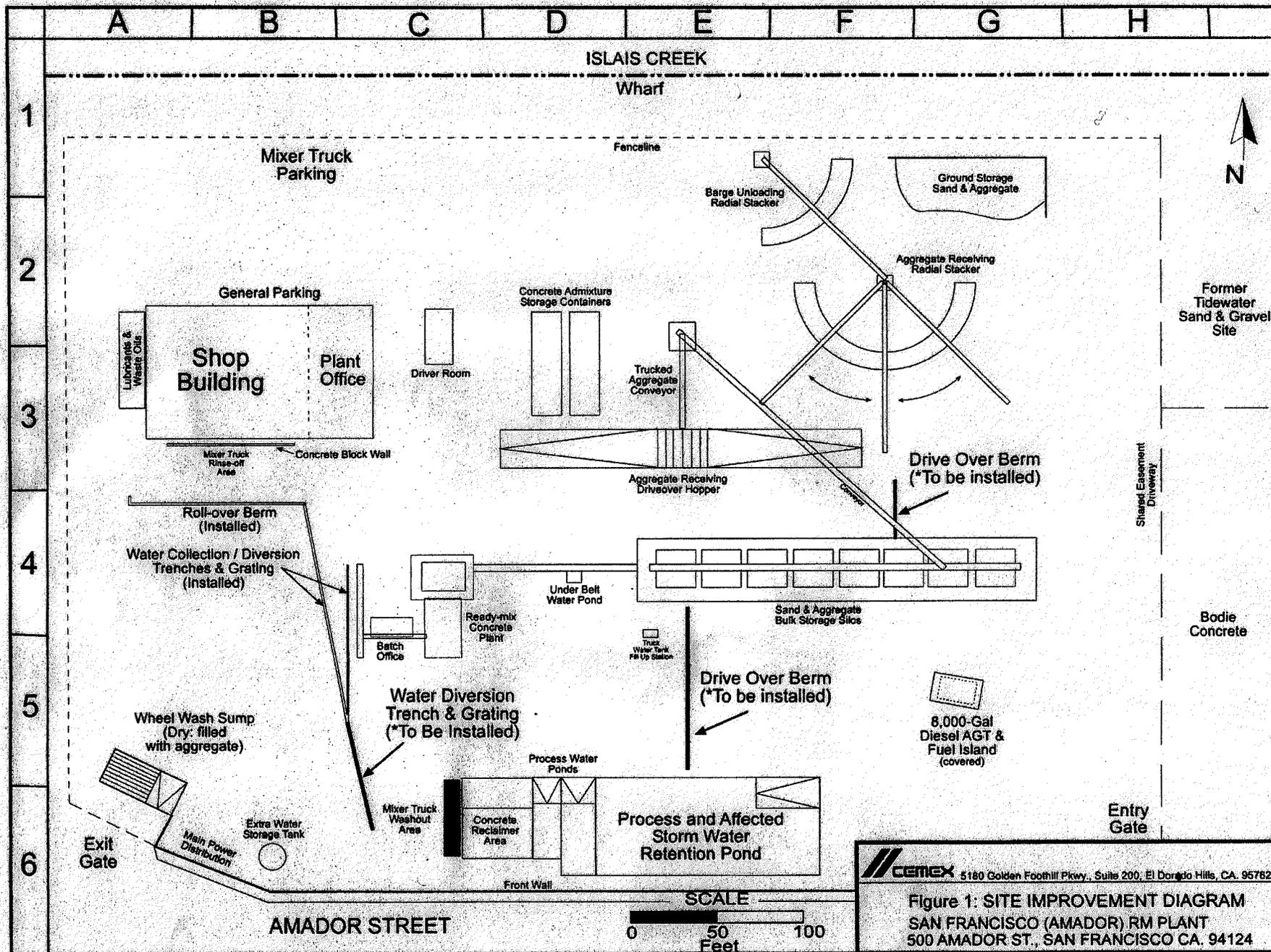
Target Levels and Benchmark Levels for CEMEX's Redwood City and San Francisco Facilities

Constituent	Target Levels (Water Quality Standards)	Target Reference	EPA Benchmark Values	EPA Analysis Method or Minimum Detection Limit
Total Suspended Solids	25 mg/L	<i>Proposed Best Available Technology (BAT) Limits for Scrap Yard Storm Water Discharges¹</i>	100 mg/L	Method 160.2
Oil and Grease	10 mg/L	<i>Proposed BAT Limits for Scrap Yard Storm Water Discharges</i>	15 mg/L	Method 418.1 or Method 1664
Specific Conductivity	200 umhos/cm	<i>EPA Storm Water Benchmark</i>	200 umhos/cm	Method 120.1
pH	6.5 to 8.5	<i>SF-RWQCB Basin Plan, all surface waters</i>	6.0-9.0	Method 9040b
Aluminum	0.750 mg/L	<i>EPA Storm Water Benchmark</i>	0.750 mg/L	0.05 mg/L
Copper	0.0031 mg/L	<i>CTR-Based Criteria: <u>Saltwater Aquatic Life protection CCC</u> Chronic</i>	0.0636 mg/L	0.003 mg/L
Iron	1.0 mg/L	<i>EPA NAWQC- EPA Storm Water Benchmark</i>	1.0 mg/L	0.1 mg/L
Lead	0.0081 mg/L	<i>SF-RWQCB, Table 3.3, Basin Plan, Salt Water Chronic</i>	0.816 mg/L	0.001 mg/L
Zinc	0.081 mg/L	<i>SF-RWQCB, Table 3.3, Basin Plan, Salt Water</i>	0.117 mg/L	0.01 mg/L

¹ International Stormwater Best Management Practices (BMP) Database Project 1999-2005, Analysis of Treatment System Performance, February 2006. Available at <http://www.bmpdatabase.org/downloads.htm>.

Exhibit 2

EXHIBIT 2



CEMTEX 5180 Golden Foothill Pkwy., Suite 200, El Dorado Hills, CA. 95782
Figure 1: SITE IMPROVEMENT DIAGRAM
 SAN FRANCISCO (AMADOR) RM PLANT
 500 AMADOR ST., SAN FRANCISCO CA. 94124

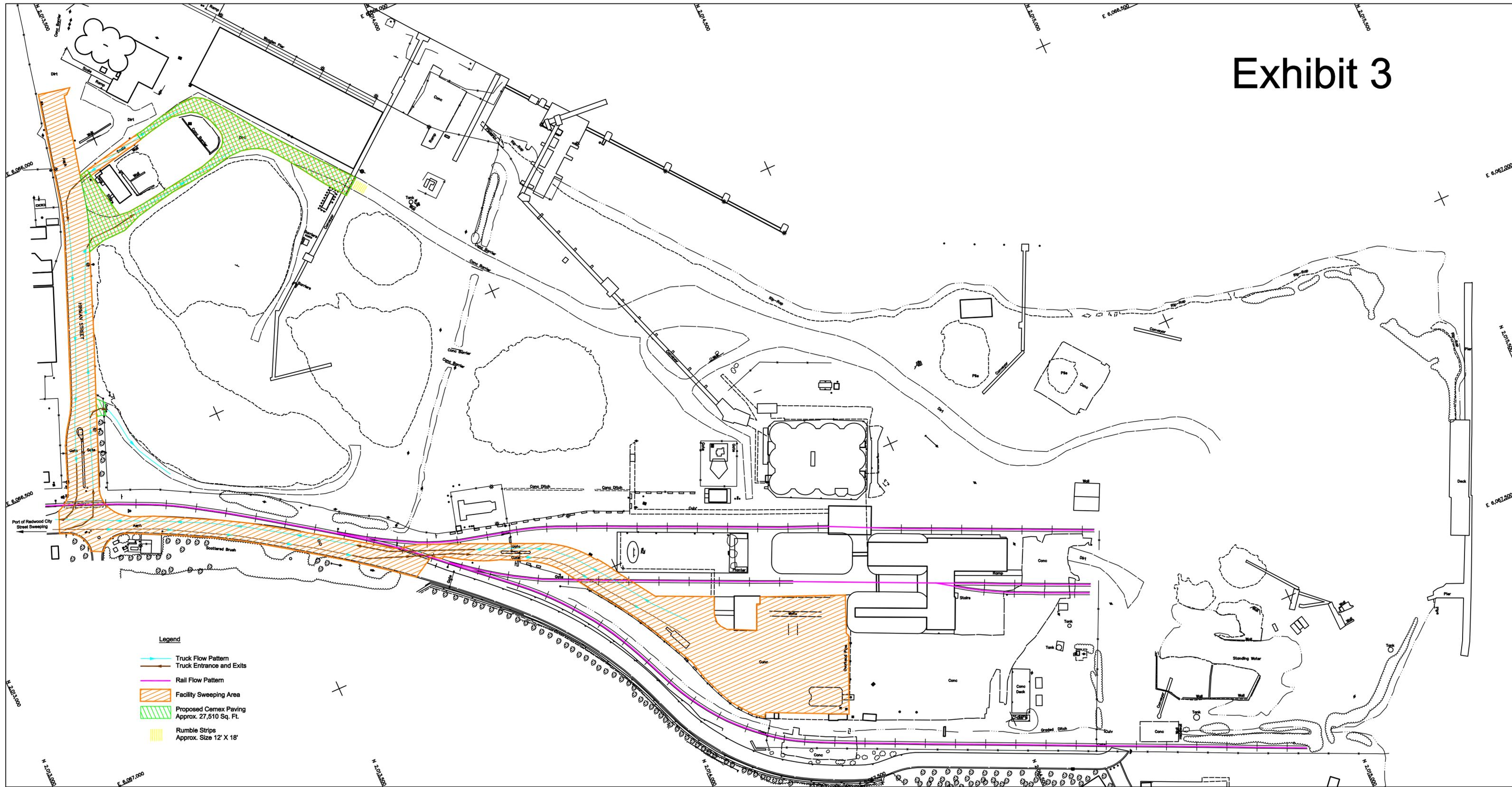
Exhibit 2, Continued

Description of San Francisco Facility Improvements Depicted on Site Map

1. Existing wheel wash located near the exit gate at Amador Street has been dewatered and filled with loose aggregate (1 ½” crushed and washed from Clayton Quarry) to minimize track-out potential. The existing wheel wash and inserted loose aggregate will be inspected and maintained consistent with paragraphs 9.a., b., and d. of the Agreement to ensure continued intended use and efficacy. Loose aggregate will be replaced, as appropriate, to minimize track-out potential.
2. A drive-over berm (~100 feet long by 8 inches tall by 16 inches wide at base) has been installed at the mixer truck rinse-off area to divert water toward the new diversion trenches.
3. Water diversion trenches and surface grating (two sections; Each ~100 feet long by 10 inches wide by 5 inches deep) were installed to collect and route water toward the Facility’s process and affected storm water retention pond (water reused in industrial processes). These trenches and surface grating will be inspected and maintained consistent with paragraphs 9.a., b., and d. of the Agreement to ensure continued intended use and efficacy.
4. A drive-over berm (~ 50 feet by 8 inches tall by 12 inches wide at base) will be installed just east of the truck water tank fill station to divert process-affected water towards the Facility’s retention pond.
5. A drive-over berm (~ 25 feet by 8 inches tall by 12 inches wide at base) will be installed on the north side of the sand and aggregate silo to control and divert process-affected water towards the center of the Facility for retention and evaporation.

Exhibit 3

Exhibit 3



Legend

- Truck Flow Pattern
- Truck Entrance and Exits
- Rail Flow Pattern
- Facility Sweeping Area
- Proposed Cemex Paving
Approx. 27,510 Sq. Ft.
- Rumble Strips
Approx. Size 12' X 18'

Map Accuracy:
This map was prepared using LIDAR data and photogrammetric computer aided drafting techniques.

In open, unobstructed areas, this map complies with National Accuracy Standards for 1" = 50' with a 1' contour interval. In areas of dense vegetation or where overhead structures obscure the ground from clear view in the aerial photography, contours may deviate from their correct elevation and planimetric features may not be included.

Supplemental contours are provided at a 1/2' interval.



Scale: 1" = 100'
Contour Interval: 1'

Date of Photography: October 16, 2009
Scale of Photography: 1:3000
Horizontal Datum: California Coordinate System, Zone 5
North American Datum of 1983 (NAD83, 2007.0)
Vertical Datum: North American Vertical Datum of 1988 (NAVD88)
Ground Control Survey by: Towill, Inc.

Sheet No. 1 of 1 Sheets Towill File No. 13143-103-011

Topographic Map of
Harbor Sand & Gravel
for
CEMEX



Exhibit 3, Continued

Description of Harbor Sand & Gravel Improvements Depicted on Site Map

1. The specifications for the rumble grates depicted on the Harbor Sand & Gravel Site Map are as follows:

Raised dividers (rails, pipes or grates), a minimum of three inches tall, six inches apart, and designed to allow for two tire rotations, to allow a vibration to be produced such that dust is shaken off the wheels of a vehicle as the entire circumference of each wheel of the vehicle passes over the rumble grate.

Typical steel specifications:

- Frame is made out of 3 I-Beams, 10 inch 30 lbs per foot
- Bars in middle are made out of 2 x 4 1/4 " wall tube
- End Caps 1/4 X 4 flat bar

2. The rumble grates will be inspected, maintained, and a log of inspections will be kept consistent with paragraphs 9.a., b., and d. of the Agreement to ensure continued intended use and efficacy. However, during the Wet Season, the rumble grates will be inspected daily, and cleaned once daily, or more frequently as necessary, to prevent mud, silt, sand, or other debris from affecting the effectiveness of the grates.