

**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>ORDER</b>
<b>Discharges in violation of effluent</b>	)	
<b>limits and interim effluent limits</b>	)	
	)	<b>ORDER NO. R2-2017-1023</b>
	)	
	)	

**Section I: INTRODUCTION**

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 \$375,000.

**Section II: RECITALS**

2. Settling Respondent 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
<b>Discharge Point No. 001</b>		
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
<b>Discharge Point Nos. 002 through 005</b>		
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>	
<b>Discharge Point No. 006</b>		
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

Settlement Agreement and Stipulated Administrative Civil Liability  
Lehigh Southwest Cement Company

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. On January 12, 2017, the Executive Officer approved Settlement Agreement and Stipulation for Entry of Administrative Civil Liability Order No. R2-2017-1001. Order No. R2-2017-1001 imposed \$465,500 in administrative civil liability against Settling Respondent for outstanding violations before December 31, 2015. This Stipulated Order covers alleged violations from January 1, 2016 to December 31, 2016.

14. 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).”

15. 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.”

16. 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.”

17. 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.”

18. Pursuant to Water Code section 13385, subdivision (a)(2), a person that violates a waste discharge requirement is subject to administrative civil liability under Water Code section 13385, subdivision (c):

[I]n an amount not to exceed the sum of the following: (1) Ten thousand dollars (\$10,000) for each day in which the violations occurs. (2) Where there is a discharge, any portion of which is not susceptible to cleanup or is not cleaned up, and the volume discharged but not cleaned up exceeds 1,000 gallons, an additional liability not to exceed ten dollars (\$10) multiplied by the number of gallons by which the volume discharged but not cleaned up exceeds 1,000 gallons.

19. 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.

20. 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.
21. 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.
22. Settling Respondent is subject to three categories of violation:
- a. *July 2016 CDO Violations:* On July 13, 2016, Settling Respondent violated the CDO by discharging approximately 1,338,900 gallons of treated process wastewater to Permanente Creek with concentrations of total suspended solids (TSS) and settleable matter above the numeric interim effluent limits in the CDO at Discharge Point 001.
  - b. *July 2016 Selenium Violations:* On July 7, 13, 20, and 28, 2016, Settling Respondent violated the maximum daily effluent limit for selenium at Discharge Point 001 contained in the Permit. Settling Respondent also violated the average monthly effluent limit for selenium at Discharge Point 001 on July 31, 2016. Mandatory minimum penalties based on the effluent limitations in the Permit are triggered due to the violations of the CDO identified in Section II, paragraph 22(a) above. Although Settling Respondent is subject to mandatory minimum penalties for these violations, the Water Board Prosecution Team elected to take discretionary enforcement for these violations and they are not included in the mandatory minimum penalties identified in Section II, paragraph 22(c) and Attachment A, as these mandatory minimum penalties are satisfied because the discretionary penalty is above the mandatory minimum penalty for these selenium violations.

- c. *Mandatory Minimum Penalties:* Settling Respondent is subject to 20 MMPs pursuant to Water Code section 13385, subdivisions (h) and (i), as shown in Attachment A, hereby incorporated by reference.

23. To resolve the alleged violations in Section II, paragraph 22 by consent and without further administrative proceedings, the Parties have agreed to the imposition of an administrative civil liability of \$375,000 against the Settling Respondent.

24. 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.

25. 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:

26. **Administrative Civil Liability:** The Settling Respondent hereby agrees to the imposition of an administrative civil liability totaling \$375,000 to resolve the alleged violations as follows:

- a. *July 2016 CDO Violations:* The Parties agree to resolve the July 2016 CDO violation identified in Section II, paragraph 22(a) above for the per-day statutory maximum of \$5,000 under Water Code section 13350, subdivision (e).
- b. *July 2016 Selenium Violations:* The Parties agree to resolve the July 2016 selenium violations identified in Section II, paragraph 22(b) above for the per-day statutory maximum of \$10,000 per day under Water Code section 13385, subdivision (c) for 31 days of violation, for a total of \$310,000. The Water Board Prosecution Team pursued the per-day statutory maximum because of the potential harm caused by the selenium discharges and Settling Respondent's history of selenium violations as represented in the CDO.
- c. *Mandatory Minimum Penalties:* The Parties agree to resolve the MMPs identified in Section II, paragraph 22(c) and Attachment A for \$60,000.
- d. **Payment of Administrative Civil Liability:**
  - i. To resolve the July 2016 CDO violation identified in Section II, paragraph 22(a), no later than 30 days after the Regional Water Board,

Settlement Agreement and Stipulated Administrative Civil Liability  
Lehigh Southwest Cement Company

- or its delegate, signs this Stipulated Order, the Settling Respondent shall submit a check for \$2,500 made payable to the "Waste Discharge Permit Fund," referencing the Order number on page one of this Stipulated Order.
- ii. To resolve the July 2016 selenium violations identified in Section II, paragraph 22(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 \$155,000 made payable to the "State Water Pollution Cleanup and Abatement Account," referencing the Order number on page one of this Stipulated Order.
  - iii. To resolve the MMPs identified in Section II, paragraph 22(c), 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 \$22,500 made payable to the "State Water Pollution Cleanup and Abatement Account," referencing the Order number on page one of this Stipulated Order.
  - iv. The Settling Respondent may write one check for \$177,500 made payable to the "State Water Pollution Cleanup and Abatement Account" to satisfy the requirements in Section II, paragraph 26(d)(ii) – (iii).
  - v. All payments shall be mailed to:  
State Water Resources Control Board Accounting Office  
Attn: ACL Payment  
P.O. Box 1888  
Sacramento, CA 95812-1888
  - vi. The Settling Respondent shall provide a copy of the checks 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))
- e. Payment for a Supplemental Environmental Project (SEP): The Settling Respondent agrees that \$195,000, consisting of half of the discretionary penalty amount (\$157,500) and \$37,500 related to the MMPs per Water Code section 13385, subdivision (l) (i.e.,  $\$15,000 + (\$60,000 - \$15,000) / 2 = \$37,500$ ), 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. \$195,000 (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



an investigation related to harmful algae blooms in the San Francisco Bay. A complete description of this project is provided in Attachment B, incorporated herein by reference.

- ii. Settling Respondent shall not be liable for administrative and oversight 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(e)(i) and Attachment B 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:  
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State Water Resources Control Board  
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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:  
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Attorney for Settling Respondents  
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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 from January 1, 2016 to December 31, 2016, as of the effective date of this Stipulated Order. 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 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 agrees 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 Stipulated 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 Stipulated 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 otherwise 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 has 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 Stipulated Order's adoption.

40. **Waiver of Right to Petition or Appeal:** Settling Respondent hereby waives its right to petition the Regional Water Board's adoption of the Stipulated Order for review by the State Water Board, and further waives its 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

or relating to 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 Respondents 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.

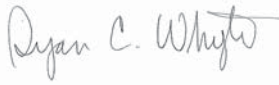
48. **Effective Date:** This Stipulated Order shall be effective and binding on the Parties upon the date the Regional Water Board, or its delegate, enters the Order incorporating the terms of this Stipulated Order.

**IT IS SO STIPULATED.**

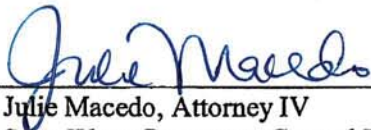
Settlement Agreement and Stipulated Administrative Civil Liability  
Lehigh Southwest Cement Company

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

Date: July 11, 2017

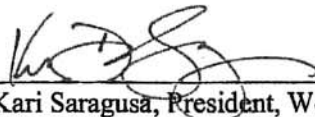
By:   
Dyan C. Whyte  
Assistant Executive Officer

Approved as to form:

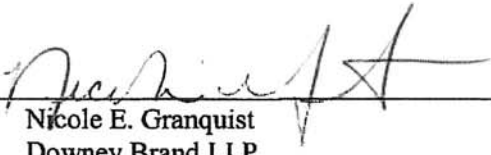
By:   
Julie Macedo, Attorney IV  
State Water Resources Control Board  
Office of Enforcement

**LEHIGH SOUTHWEST CEMENT COMPANY**

Date: JULY 11, 2017

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.

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

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Date

**ATTACHMENT A**

**JANUARY – DECEMBER 2016 DISCRETIONARY AND MANDATORY MINIMUM PENALTIES  
FOR  
LEHIGH SOUTHWEST CEMENT COMPANY  
NPDES No. CA0030210 (Order No. R2-2014-0010)  
Cease and Desist Order No. R2-2014-0011**

This summarizes the categories of violations resolved by the Settlement Agreement. For purposes of this settlement agreement, the Prosecution Team sought the maximum penalty allowable under certain categories as described below, and made other negotiated compromises related to discretionary enforcement and available Water Code penalties, given the category of violation. Because in some instances the maximum penalty was used, the Parties will not provide a detailed explanation of the factor analysis set forth in the Enforcement Policy, which might lower the recommended penalty amount. Instead, the Parties have agreed to the imposition of penalties as set forth, recognizing Lehigh's prior history of violations and given the overall amount of selenium discharged.

*1. July 2016 CDO Violations:*

On July 13, 2016, Lehigh violated Cease and Desist Order No. R2-2014-0011 (CDO) by discharging approximately 1,338,900 gallons of treated process wastewater to Permanente Creek with concentrations of total suspended solids (TSS) and settleable matter above the numeric interim effluent limits in the CDO at Discharge Point 001. Lehigh is subject to administrative civil liability for this violation under Water Code section 13350, subdivision (e). As agreed to in the Settlement Agreement, the Prosecution Team has assessed a per-day statutory maximum of \$5,000 for this violation.

*2. July 2016 Selenium Exceedances:*

On July 7, 13, 20, and 28, 2016, Lehigh violated the maximum daily effluent limit for selenium at Discharge Point 001 contained in NPDES Permit No. CA0030210, Order No. R2-2014-0010 (Permit). Lehigh also violated the average monthly effluent limit for selenium at Discharge Point 001 on July 31, 2016. Mandatory minimum penalties based on the effluent limitations in the Permit are triggered due to the violations of the CDO identified above. As such, Lehigh is also subject to administrative civil liability for these violations under Water Code section 13385. Although Lehigh is subject to mandatory minimum penalties for these violations, Water Board Prosecution Staff elects to take discretionary enforcement for these violations and they are therefore not included in the calculation of mandatory minimum penalties below.

Settlement Agreement and Stipulated Administrative Civil Liability Attachment A  
 Lehigh Southwest Cement Company

As agreed to in this settlement, the Prosecution Team assess a per-day statutory maximum of \$10,000 per day for 31 days of violation, for a total of \$310,000.

3. *Mandatory Minimum Penalties:*

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	Monitoring Location, Pollutant Limit Type (Units)	Permit Limit	CDO Interim Limit	Reported Value	Percent a Group I or Group II Pollutant Exceeds Limit	Exceedance Type	CWC Section 13385(h) and/or (i) Required MMP
1	1004196	1/5/2016	EFF-005, pH Instantaneous Maximum (s.u.)	8.5	n/a	8.7	> 1.6 times	>C3, NA	\$ 3,000
2	1004200	1/6/2016	EFF-005, pH Instantaneous Maximum (s.u.)	8.5	n/a	9.3	> 6.3 times	>C3, NA	\$ 3,000
3	1015554	1/6/2016	EFF-005, pH Instantaneous Maximum (s.u.)	8.5	n/a	9.4	> 7.9 times	>C3, NA	\$ 3,000
4	1015555	1/6/2016	EFF-005, pH Instantaneous Maximum (s.u.)	8.5	n/a	9.2	> 5 times	> C3; NA	\$3,000
5	1015557	4/10/2016	EFF-005, pH Instantaneous Maximum (s.u.)	8.5	n/a	9.0	> 3.2 times	> C3, NA	\$ 3,000
6	1015558	4/10/2016	EFF-005, pH Instantaneous Maximum (s.u.)	8.5	n/a	8.9	> 2.5 times	> C3, NA	\$3,000
7	1008125	4/30/2016	EFF-001, Total Dissolved Solids AMEL (mg/L)	1,000	n/a	1,167	17%	> C3	\$3,000
8	1009787	5/31/2016	EFF-001, Total Dissolved Solids AMEL (mg/L)	1,000	n/a	1,125	13%	> C3	\$3,000
9	1010911	6/30/2016	EFF-001, Total Dissolved Solids AMEL (mg/L)	1,000	n/a	1,140	14%	> C3	\$3,000
10	1012443	7/13/2016	EFF-001, Nickel MDEL (µg/L)	160	n/a	170	6.3%	> C3	\$ 3,000
11	1016385	7/29/2016	EFF-001, Turbidity MDEL (NTU)	10	600	12	20%	> C3	\$3,000
12	1012435	7/31/2016	EFF-001, Nickel AMEL (µg/L)	82	n/a	154	88%	> C3, S	\$ 3,000
13	1012436	7/31/2016	EFF-001, Total Dissolved Solids AMEL (mg/L)	1,000	n/a	1,200	20%	> C3	\$ 3,000
14	1016386	7/31/2016	EFF-001, Turbidity AMEL (NTU)	5.0	n/a	5.2	4.0%	> C3	\$3,000
15	1013441	8/31/2016	EFF-001, Total Dissolved Solids AMEL (mg/L)	1,000	n/a	1,100	10%	> C3	\$3,000
16	1014575	9/30/2016	EFF-001, Total Dissolved Solids AMEL (mg/L)	1,000	n/a	1,070	7%	> C3	\$3,000
17	1017105	11/27/2016	EFF-005, pH Instantaneous Maximum (s.u.)	8.5	n/a	9.9	> 25 times	> C3	\$3,000



Settlement Agreement and Stipulated Administrative Civil Liability Attachment A  
 Lehigh Southwest Cement Company

No.	CIWQS Violation ID No.	Date	Monitoring Location, Pollutant Limit Type (Units)	Permit Limit	CDO Interim Limit	Reported Value	Percent a Group I or Group II Pollutant Exceeds Limit	Exceedance Type	CWC Section 13385(h) and/or (i) Required MMP
18	1018944	12/16/2016	EFF-005, pH Instantaneous Maximum (s.u.)	8.5	n/a	9.1	> 4 times	> C3	\$3,000
19	1018945	12/20/2016	EFF-005, pH Instantaneous Maximum (s.u.)	8.5	n/a	8.6	> 1.3 times	> C3	\$3,000
20	1021463	11/27/2016	EFF-005, pH Instantaneous Maximum (s.u.)	8.5	n/a	9.5	> 10 times	> C3	\$3,000
<b>Total</b>									<b>\$60,000</b>

**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.

CWC = California Water Code

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, subdivision (i) applies.

NA = Not Applicable (pollutant neither Group I nor Group II)

n/a = Not applicable (no limit)

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

\* Lehigh had more than three additional effluent limit violations in the previous six months as detailed in Attachment B to Settlement Agreement and Stipulation for Entry of Administrative Civil Liability, Order No. R2-2017-1001.

Regulatory Measure ID: 395340

Place: 273205

WDID: 2 438668001

## **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: Harmful Algae Bloom (HAB) Investigation in San Francisco Bay

Study Budget, Total: \$195,000

#### **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 record-setting and long-lived toxic algae bloom along the US west coast in Spring/Summer 2016 clearly illustrated the severe impacts of harmful algal blooms (HABs). It also illustrated how the factors that lead to HABs developing and persisting are complex and difficult to predict. A major outstanding question is why the offshore bloom did not affect the Bay more than it did. Many of the same species are routinely detected in the Bay and conditions are favorable for these algae to grow. Understanding the mechanisms that control harmful algae growth and production in the Bay is essential for assessing the risk of major HAB events occurring in the Bay, both now and under future conditions.

Therefore, this project will conduct a series of investigations of HABs in the Bay to:

- Develop improved understanding of the source(s) of HAB-forming organisms and toxins in San Francisco Bay (SFB)
- Through a combination of observational data or experiments, characterize the growth requirements and toxin production of priority HAB-forming organisms, and identify conditions that have inhibited large-scale blooms from developing in SFB

The types of investigations to be completed have been vetted through the Nutrient Management Strategy Science Plan and discussed extensively over the past two years with experts (collaborators and advisors), including at a May 31-June 1 2017 HABs workshop at SFEI. The high-priority investigations that have not been completed due to lack of funds are listed below:

1. Expanded biota sampling for improved understanding of toxin sources, spatio-temporal variability, and food web exposure.

2. Continuous deployment of the Imaging Flow CytoBot (IFCB) in Central Bay: building moored capacity and establishing a coastal end-member signal.
3. Determine whether SFB hosts internal sources of Alexandrium in the form of cysts in sediments.
4. Determine if coastal Pseudo-nitzschia or Alexandrium isolates can grow in SFB, or face obstacles beyond low-light and strong-mixing.

Depending on the funding available, scalability of the projects, and leveraging opportunities, 2-4 of the investigations listed above will be completed for this Supplemental Environmental Project.

#### **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 violation(s) is that is located within the same Water Board region in which violation(s) occurred.

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

- This project is a study (or studies) and associated product (or projects) 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**

A progress report will be produced 1 year after the project start date.

A final report with project results and conclusions will be produced 2 years after the project start date.

#### **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.