



EDMUND G. BROWN JR.  
GOVERNOR

MATTHEW RODRIGUEZ  
SECRETARY FOR  
ENVIRONMENTAL PROTECTION

## San Francisco Bay Regional Water Quality Control Board

November 6, 2014  
Place ID: 252950 (FA)  
Regulatory Measure ID: 398073

CEMEX Construction Materials Pacific, LLC  
Attention: Mr. Robert Aldenhuisen, Environmental Manager  
1544 Stanley Boulevard (Unit A)  
PO Box 697  
Pleasanton, CA 94566

**Subject:** Conditional Offer to Settle Violations of National Pollutant Discharge Elimination System (NPDES) Permit No CAG912003 (Order Nos. R2-2002-0063 and R2-2008-0011)

**Facility:** CEMEX Sunol Aggregates Ponds Treatment System located at 6527 Calaveras Road, City of Sunol, Alameda County

Dear Mr. Aldenhuisen:

This letter notifies CEMEX Construction Materials Pacific (CEMEX) of alleged violations of permit effluent limitations and reporting requirements, and provides CEMEX the opportunity to settle the violations through payment of \$39,000 in mandatory minimum penalties pursuant to Water Code section 13385 and 13385.1. Please reply by **December 8, 2014**.

### NOTICE OF VIOLATION

The Assistant Executive Officer alleges that CEMEX has violated requirements identified in the attached Exhibit A. CEMEX has the opportunity to address the alleged violations as discussed below.

### STATUTORY LIABILITY

Water Code sections 13385(h) and 13385(i) require the assessment of a mandatory minimum penalty of \$3,000 for specified serious and other effluent limit violations. For the purposes of subdivision (h) of section 13385, failure to file a discharge monitoring report required pursuant to sections 13383 for each complete period of 30 days following the deadline for submitting the report constitutes a serious violation. CEMEX is also subject to discretionary administrative civil liabilities of up to \$10,000 for each day in which the violation occurs, plus \$10 for each gallon

DR. TERRY F. YOUNG, CHAIR | BRUCE H. WOLFE, EXECUTIVE OFFICER

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discharged but not cleaned up in excess of 1,000 gallons. These mandatory minimum penalties and discretionary administrative civil liabilities may be assessed by the Regional Water Board or the State Water Board (collectively “the Water Boards”), beginning with the date that the violations first occurred<sup>1</sup>. The formal enforcement action the Water Boards use to assess such liability is an administrative civil liability complaint followed by a public hearing, although the Water Boards may instead refer such matters to the Attorney General’s Office for prosecution. If referred to the Attorney General for prosecution, the Superior Court may assess up to \$25,000 per violation. In addition, the Superior Court may assess up to \$25 per gallon discharged but not cleaned up in excess of 1,000 gallons.

### **CONDITIONAL OFFER TO SETTLE**

CEMEX can avoid the issuance of a formal enforcement action and settle the alleged violations identified in the attached Exhibit A by accepting this conditional offer. Details of this offer are described below, as well as in the “Acceptance of Conditional Resolution and Waiver of Right to Hearing” (hereinafter “Acceptance and Waiver”) enclosed herewith.

This offer does not address liability for any violation that is not specifically identified in the attached Exhibit A.

### **OPTIONS FOR RESPONSE TO OFFER**

If CEMEX accepts this offer, please complete and return the enclosed “Acceptance of Conditional Resolution and Waiver of Right to Hearing” (Acceptance and Waiver) on or before the reply date specified in the first paragraph of this letter. Note that when we receive the Acceptance and Waiver, this notice and offer will become a proposed settlement and a part of the Regional Water Board files that are available to the public. The Acceptance and Waiver will then be posted for a 30-day public notice period. Based on comments received, the Executive Officer will decide whether to accept this proposed settlement. If acceptable, the Executive Officer will counter-sign the Acceptance and Waiver and an invoice will be sent to you for payment.

If CEMEX contests some but not all of the violations identified in the attached Exhibit A, CEMEX may elect to reserve the right to address the contested matters and resolve any uncontested violations through the payment of the mandatory minimum penalty for each uncontested violation. If CEMEX chooses this option, please communicate with the staff contact identified below to discuss the mechanism for memorializing that election on or before the reply date specified in the first paragraph of this letter.

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<sup>1</sup> Please note that there are no statutes of limitation that apply to administrative proceedings to assess mandatory minimum penalties. See *City of Oakland v. Public Employees’ Retirement System*, (2002) 95 Cal.App.4th 29, 48; 3 Witkin, Cal. Procedure (4th ed. 1996) Actions, §405(2), p. 510.) Additionally, the State Water Resources Control Board had determined that the equitable doctrine of laches does not apply to mandatory minimum penalties. (State Water Board Order Nos. 2013-0053, 2013-0054, 2013-0055, 2013-0099.)

To contest any of the violations alleged in the attached Exhibit A, please identify the specific violation and the basis for the challenge (factual error, affirmative defense, etc.) on or before the date specified in the first paragraph of this letter. Regional Water Board staff will evaluate the contested violation and take one of two actions:

- 1) Determine that the violation warrants dismissal and dismiss the alleged violation in the California Integrated Water Quality System (CIWQS) database, take no further action against CEMEX for the alleged violation, and notify CEMEX of that determination; or
- 2) Determine that the alleged violation is meritorious and notify CEMEX of that determination. CEMEX will then have 30 days from the date of the determination to accept settlement for those violations through mandatory minimum penalties. If CEMEX chooses not to accept, or makes no reply to the determination, CEMEX should expect to be contacted regarding formal enforcement action for the contested violations. In a formal enforcement action, information received by Regional Water Board staff during a formal investigation and assessment of the violation, as well as the staff costs associated with pursuing additional enforcement, may increase the liability amount beyond that which is set forth in this conditional offer.

#### **CONDITIONS FOR REGIONAL WATER BOARD ACCEPTANCE OF RESOLUTION**

Federal regulations require the Regional Water Board to publish and allow the public at least 30 days to comment on any settlement of an enforcement action addressing NPDES permit violations (Title 40 of Code of Federal Regulation section 123.27(d)(2)(iii)). Upon receipt of CEMEX's Acceptance and Waiver, Regional Water Board staff will publish a notice of the proposed settlement of the violations.

If we receive no comments within the 30-day period and there are no new material facts available to the Regional Water Board, the Executive Officer will execute the Acceptance and Waiver as a stipulated order assessing the uncontested mandatory minimum penalty amount pursuant to Water Code section 13385 and/or 13385.1.

If, however, significant comments are received in opposition to the proposed settlement, this offer may be withdrawn. In that case, CEMEX's waiver pursuant to the Acceptance and Waiver will also be treated as withdrawn. In that case, the alleged violations will be addressed in a formal liability assessment proceeding. At the liability assessment hearing CEMEX will be free to make arguments as to any of the alleged violations, and CEMEX's agreement to accept this conditional offer will not in any way be binding or used as evidence against CEMEX. CEMEX will be provided with further information on the liability assessment proceeding.

In the event that the Executive Officer executes the Acceptance and Waiver, payment of the assessed amount shall be due within 30 calendar days after the Regional Water Board Executive Officer's execution. In accordance with Water Code section 13385(n)(1), funds collected for violations of effluent limitations and reporting requirements pursuant to Water Code sections

13385 and 13385.1 shall be deposited in the State Water Pollution Cleanup and Abatement Account. Failure to pay the penalty within the required time period may subject CEMEX to further liability.

Should you have any questions regarding this matter, please contact Farhad Azimzadeh of my staff at (510) 622-2310 or [farhad.azimzadeh@waterboards.ca.gov](mailto:farhad.azimzadeh@waterboards.ca.gov). If you need to fax a copy of the signed waiver, you may send it to the attention of Farhad Azimzadeh at (510) 622-2460.

Sincerely,

A handwritten signature in black ink, appearing to read 'T. Mumley', with a long horizontal flourish extending to the right.

Thomas E. Mumley  
Assistant Executive Officer

Enclosures: (1) Acceptance and Waiver  
(2) Exhibit A - Notice of Violation

**ORDER NO. R2-20XX-1XXX**  
**ACCEPTANCE OF CONDITIONAL RESOLUTION**  
**AND WAIVER OF RIGHT TO HEARING**

By signing below and returning this Acceptance of Conditional Resolution and Waiver of Right to Hearing (Acceptance and Waiver) to the Regional Water Quality Control Board (Regional Water Board), CEMEX Construction Materials Pacific, LLC (CEMEX) hereby accepts the conditional offer to settle alleged violations through payment of mandatory minimum penalties (Conditional Offer) and waives the right to a hearing before the Regional Water Board to dispute the allegations of violations and attached hereto as Exhibit A and incorporated herein by reference.

CEMEX agrees that the attached Exhibit A shall serve as a complaint pursuant to Article 2.5 of the Water Code and that no separate complaint is required for the Regional Water Board to assert jurisdiction over the alleged violations through its Assistant Executive Officer. CEMEX agrees to pay the penalties authorized by Water Code sections 13385 and 13385.1, which shall be deemed payment in full of any civil liability pursuant to the Water Code section 13385 that otherwise might be assessed for the violations described in the attached Exhibit A. CEMEX understands that this Acceptance and Waiver waives its right to contest the allegations in Exhibit A and the amount of civil liability for such violations.

CEMEX understands that this Acceptance and Waiver does not address or resolve liability for any violation that is not specifically identified in the attached Exhibit A.

Upon execution by CEMEX, the Acceptance and Waiver shall be returned to:  
California Regional Water Quality Control Board, San Francisco Bay Region  
NPDES Enforcement Section, Regulatory Measure ID No. 398073  
Attention: Farhad Azimzadeh  
1515 Clay Street, Suite 1400  
Oakland, California 94612

CEMEX understands that federal regulations set forth at title 40, Code of Federal Regulations, section 123.27(d)(2)(iii) require the Regional Water Board to publish notice of and provide at least 30 days for public comment on any proposed resolution of an enforcement action. Accordingly, this Acceptance and Waiver, prior to execution by the Executive Officer of the Regional Water Board, will be published as required by law for public comment.

If no comments are received within the notice period which causes the Executive Officer of the Regional Water Board to reject the settlement amount, the Executive Officer will execute the Acceptance and Waiver. Resolution of these violations by the Regional Water Board will preclude State Water Board action for these same violations.



**EXHIBIT A**  
**Notice of Violation**

CEMEX Construction Materials Pacific Sunol Aggregates Ponds Treatment System located at  
6527 Calaveras Road Sunol, Alameda County

The following table lists alleged permit violation(s) for which CEMEX is subject to civil liabilities pursuant to Water Code sections 13385 and 13385.1. The table shows mandatory minimum penalty (MMP) for the violation(s), and descriptions of the abbreviations that appear in the table.

No	CIWQS Violation ID No.	Violation or Effluent Limitation Description	Date of Occurrence or Monitoring Report Due Date	Effluent Limit or Date Monitoring Report Received	Effluent Result Reported (Percent a Pollutant is over an Effluent Limitation) or Number of Days and Months a Discharge Monitoring Report Overdue	Type of Violation	CWC Section 13385(h) and/or (i) Required MMP
1-8	908803	Late First Quarter 2006 Discharge Monitoring Report Submittal	4/30/2006	1/18/2007	263 days = about eight months	C1, S (See Note 1)	8 x \$3,000 = \$24,000
9-10	798600	Late First Quarter 2007 Discharge Monitoring Report Submittal	4/30/2007	7/18/2007	79 days = about 2 months	C1, S (See Note 1)	2 x \$3,000 = \$6000
11	791364	Late Second Quarter 2008 Discharge Monitoring Report Submittal	7/30/2008	9/5/2008	37 days = about one month	C1, S (See Note 1)	\$3,000
12	835332	Settable Matter Daily Maximum (ml/L/hr)	9/4/2008	0.2	0.4 (100%)	C1, S	\$3,000
13	835331	Settable Matter Daily Maximum (ml/L/hr)	6/9/2009	0.2	0.3 (50%)	C1, S	\$3,000
Total							\$39,000

Legend for Table:

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

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

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

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

Note 1: Water Code section 13385.1 (a)(1) defines a "serious violation" to include a failure to file a discharge monitoring report required pursuant to section 13383 for each complete period of 30 days following the deadline for submitting the report, if the report is designed to ensure compliance with limitations contained in waste discharge requirements that contain effluent limitations.

Regulatory Measure ID: 398073

Place ID: 252950

WDID No.: 2 019135003