

1 JOHN C. CRUDEN
Assistant Attorney General
2 DEBORAH A. GITIN (CABN 284947)
Senior Counsel
3 Environmental Enforcement Section
Environment and Natural Resources Division
4 United States Department of Justice
301 Howard Street, Suite 1050
5 San Francisco, CA 94105
Telephone: (415) 744-6488
6 Facsimile: (415) 744-6476
E-mail: deborah.gitin@usdoj.gov

7 MELINDA HAAG (CABN 132612)
United States Attorney
8 ALEX G. TSE (CABN 152348)
Chief, Civil Division
9 MICHAEL T. PYLE (CABN 172954)
Assistant United States Attorney
10 150 Almaden Boulevard, Suite 900
San Jose, CA 95113
11 Telephone: (408) 535-5087
Facsimile: (408) 535-5081
12 E-mail: michael.t.pyle@usdoj.gov

13 *Attorneys for Plaintiff United States of America*
(Additional Attorneys Listed on Following Page)

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15 UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
16 SAN JOSE DIVISION

17 UNITED STATES OF AMERICA and PEOPLE OF THE
18 STATE OF CALIFORNIA by and through the
19 CALIFORNIA REGIONAL WATER QUALITY
CONTROL BOARD, SAN FRANCISCO BAY REGION,

20 Plaintiffs,

21 v.

22 LEHIGH SOUTHWEST CEMENT COMPANY and
23 HANSON PERMANENTE CEMENT, INCORPORATED,

24 Defendants.

CASE NO.

CONSENT DECREE

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1 KAMALA D. HARRIS
Attorney General of the State of California
2 GAVIN G. MCCABE
Supervising Deputy Attorney General
3 MARC N. MELNICK (CABN 168187)
Deputy Attorney General
4 1515 Clay Street, 20th Floor
P.O. Box 70550
5 Oakland, CA 94612
(510) 622-2133 (telephone)
6 (510) 622-2270 (facsimile)
marc.melnick@doj.ca.gov
7

8 *Attorneys for Plaintiff People of the State of California by and*
through the California Regional Water Quality Control Board, San
Francisco Bay Region
9

10 NICOLE E. GRANQUIST (CABN 199017)
Downey Brand LLP
11 621 Capitol Mall, 18th Floor
Sacramento, CA 95814
12 (916) 444-1000 (telephone)
(916) 444-2100 (facsimile)
13 ngranquist@downeybrand.com

14 *Attorney for Defendants Lehigh Southwest Cement Co. and Hanson*
Permanente Cement, Inc.
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1 WHEREAS:

2 A. The United States of America, on behalf of the United States Environmental
3 Protection Agency (“EPA”), and the People of the State of California, by and through the California
4 Regional Water Quality Control Board, San Francisco Bay Region (“Regional Water Board”)
5 (hereinafter referred to as “Plaintiffs,” unless otherwise noted) have filed a Complaint in this action
6 concurrently with this Consent Decree, alleging that Defendants Lehigh Southwest Cement
7 Company (“Lehigh”) and Hanson Permanente Cement, Incorporated (“Hanson”) (hereinafter
8 referred to collectively as “Defendants,” or individually as “Defendant,” unless otherwise noted)
9 violated sections 301(a) and 402 of the Clean Water Act (“CWA” or “Act”), 33 U.S.C. §§ 1311(a),
10 1342, and the California Porter-Cologne Water Quality Control Act, including California Water
11 Code (“Cal. Water Code”) sections 13376, 13385, and 13386.

12 B. This case is related to *Sierra Club v. Lehigh Southwest Cement Company and*
13 *Hanson Permanente Cement, Inc.*, Case No. 5:11-cv-06392-HRL, in which this Court entered a
14 consent decree on June 18, 2013.

15 C. Hanson owns and Lehigh operates a facility located at 24001 Stevens Creek
16 Boulevard in Cupertino, California, Santa Clara County (“Facility”).

17 D. The Facility engages in the mining, crushing, and storage of limestone and aggregate
18 rock and in the manufacturing of cement products. It discharges process water from mine
19 dewatering, cement manufacturing, aggregate materials processing, truck washing, and dust control
20 and discharges stormwater associated with industrial activity.

21 E. The Facility discharges process water and stormwater from various impoundments,
22 settling ponds, outlets, culverts, pipes, and other discernible, confined, and discrete conveyances to
23 Permanente Creek, a water of the United States, which ultimately flows into the San Francisco Bay,
24 a traditionally navigable water.

25 F. Section 301(a) of the CWA, 33 U.S.C. § 1311(a), prohibits the discharge of any
26 pollutant by any person except as authorized by and in compliance with certain other sections of the
27 Act, including section 402 of the CWA, 33 U.S.C. § 1342.
28

1 G. Pursuant to section 402(a) of the CWA, 33 U.S.C. § 1342(a), the EPA may issue
2 National Pollutant Discharge Elimination System (“NPDES”) permits, which authorize the
3 discharge of pollutants into waters of the United States, subject to the conditions and limitations set
4 forth in such permits.

5 H. Under section 402(b) of the CWA, 33 U.S.C. § 1342(b), the EPA may approve a
6 proposal submitted by a state to administer the NPDES program in that state.

7 I. The EPA approved California's proposal to administer the NPDES permit program in
8 California in 1973. At all times relevant to this action, the Regional Water Board has been
9 authorized to issue NPDES permits in conformity with federal law through application of the Cal.
10 Water Code.

11 J. Defendants are or have been authorized to discharge pollutants from the Facility in
12 accordance with either the Industrial Storm Water General NPDES Permit, the Sand & Gravel
13 General NPDES Permit, and/or the Facility Individual NPDES Permit, as those permits are defined
14 below.

15 K. The Complaint alleges that Defendants violated section 301(a) of the CWA, 33
16 U.S.C. § 1311(a), and sections 13376 and 13385 of the Cal. Water Code, by discharging pollutants
17 from the Facility to waters of the United States in violation of the Industrial Storm Water General
18 NPDES Permit and the Sand & Gravel General NPDES Permit issued pursuant to section 402 of the
19 CWA, 33 U.S.C. § 1342, and sections 13377 and 13385 of the California Water Code; and violated
20 section 301(a) of the Act, 33 U.S.C. § 1311(a), and section 13376 of the California Water Code, by
21 discharging pollutants from the Facility into waters of the United States without obtaining an
22 NPDES permit.

23 L. More specifically, the Complaint alleges that Defendants’ discharge of selenium
24 from Discharge Point 001 (Pond 4A) violated effluent limitations in the Industrial Storm Water
25 General NPDES Permit in violation of the Act; Defendants’ discharges of process water from the
26 Cement Plant Reclaim System Emergency Bypass violated the Act’s prohibition of discharge of a
27 pollutant without obtaining an NPDES permit; and Defendants’ discharge of selenium, mercury,
28 chromium (VI), nickel, thallium, total dissolved solids (“TDS”), pH, settleable matter, turbidity,

1 total suspended solids (“TSS”), chlorine residual, and chloride from Discharge Points 001 (Pond
2 4A), 002 (Pond 13B), 003 (Pond 9), 004 (Pond 17), 005 (Pond 20), and 006 (Pond 30) violated
3 effluent limitations in the Sand & Gravel General NPDES Permit in violation of the Act.

4 M. Defendants deny all of Plaintiffs’ allegations and claims in the Complaint.

5 N. The Parties recognize, and the Court by entering this Consent Decree finds, that this
6 Consent Decree has been negotiated at arms’ length by the Parties in good faith and will avoid the
7 uncertainty and expense of litigation among the Parties, and that this Consent Decree is fair,
8 reasonable, and in the public interest. Plaintiffs believe that this settlement is in the best interests of
9 the people of the State of California.

10 NOW, THEREFORE, IT IS HEREBY ADJUDGED, ORDERED, AND DECREED as follows:

11 **I. JURISDICTION AND VENUE**

12 1. For purposes of this Consent Decree only, Defendants agree that this Court has
13 jurisdiction over the subject matter of Plaintiffs’ Complaint and this Consent Decree pursuant to 28
14 U.S.C. §§ 1331, 1345, 1355, and 1367, section 309(b) of the CWA, 33 U.S.C. § 1319(b), and
15 sections 13376, 13385, and 13386 of the California Water Code; and that this Court has jurisdiction
16 over Defendants. Except for purposes of this Consent Decree, the filing of the Complaint and
17 Consent Decree (nor any other action by plaintiff People of the State of California by and through
18 the Regional Water Board, in this matter) does not constitute a waiver of the Eleventh Amendment
19 to the U.S. Constitution by the People of the State of California, the State of California, or any state
20 agency or state official.

21 2. Venue lies in this District pursuant to section 309(b) of the CWA, 33 U.S.C.
22 § 1319(b), and 28 U.S.C. §§ 1391(b) and 1395(a), because a substantial part of the events or events
23 or omissions giving rise to the claims occurred, and the property that is the subject of the action is
24 situated, in this District (Santa Clara County, California).

25 3. Plaintiffs and Defendants consent to this Court’s jurisdiction to enter and enforce this
26 Consent Decree. For purposes of enforcement of this Consent Decree only, Defendants agree that
27 the Complaint states claims upon which relief may be granted pursuant to the CWA and the Cal.
28

1 Water Code.

2 **II. APPLICABILITY**

3 4. The obligations of this Consent Decree apply to and are binding upon the United
4 States, the Regional Water Board, and upon Defendants (collectively the “Parties”) and any
5 successors, assigns, transferees, purchasers, or other entities or persons otherwise bound by law.

6 5. Each Defendant shall provide a copy of this Consent Decree to any successor in
7 interest at least thirty (30) Days prior to transfer of that interest, and simultaneously shall verify in
8 writing to Plaintiffs that such notice was given in accordance with Section XIV (Notices). Such
9 notice shall include the name and contact information of the successor in interest as well as a
10 description of any agreement between Defendants and the successor in interest relating to the
11 Consent Decree, as of the date of the notice; if applicable, Defendants may assert a claim that such
12 information is Confidential Business Information pursuant to 40 C.F.R. § 2.201. Absent agreement
13 of the Parties or order of the Court, any sale or transfer of a Defendant’s interests in, or operating
14 role with respect to, the Facility shall not in any manner relieve that Defendant of its responsibilities
15 for meeting the terms and conditions of this Consent Decree. Any attempt to transfer ownership or
16 operation of the Facility without complying with this Paragraph constitutes a violation of this
17 Consent Decree.

18 6. Each Defendant shall provide a copy of this Consent Decree to all officers,
19 employees, and agents whose duties might reasonably include compliance with any provision of
20 this Consent Decree. Defendants may comply with the preceding sentence by providing a link to a
21 website. Defendants shall require all contractors who perform any Work to perform such Work in
22 compliance with the terms of this Consent Decree.

23 7. In any action to enforce this Consent Decree, no Defendant shall raise as a defense
24 the failure by any of its officers, directors, employees, contractors, or agents to perform the Work.

25 **III. OBJECTIVES**

26 8. The express purpose of the Parties entering into this Consent Decree is for
27 Defendants to take all necessary measures, consistent with the objectives of the CWA as set forth in
28

1 section 101 of the Act, 33 U.S.C. § 1251, and with the objectives of Cal. Water Code sections
2 13000, 13001, 13370, and 13372, to achieve compliance with the CWA and Cal. Water Code, the
3 regulations promulgated thereunder, and the Facility Individual NPDES Permit at the time of the
4 completion of the Work. All plans, reports, construction, remedial maintenance, and other
5 obligations in this Consent Decree, and under any amendment to this Consent Decree, shall be
6 consistent with the objectives of this Consent Decree.

7 **IV. DEFINITIONS**

8 9. Unless otherwise defined herein, terms used in this Consent Decree shall have the
9 meaning given to those terms in the CWA, 33 U.S.C. §§ 1251 *et seq.*, and the regulations
10 promulgated thereunder. Whenever terms set forth below are used in this Consent Decree, the
11 following definitions shall apply:

12 **“Act” or “CWA”** shall mean the Clean Water Act, 33 U.S.C. §§ 1251 *et seq.*

13 **“Complaint”** shall mean the complaint filed by the United States and the Regional Water
14 Board in this action.

15 **“Consent Decree” or “Decree”** shall mean this Consent Decree including all Appendixes
16 and any modifications adopted pursuant to this Consent Decree.

17 **“Day”** shall mean a calendar day unless expressly stated to be a working day. A working
18 day is any day that is not a Saturday, Sunday, or federal holiday. In computing any period of time
19 under this Consent Decree, where the last day would fall on a Saturday, Sunday, or federal holiday,
20 the period shall run until the close of business of the next working day.

21 **“Defendant(s)”** shall mean Lehigh Southwest Cement Company and Hanson Permanente
22 Cement, Incorporated.

23 **“EPA”** shall mean the United States Environmental Protection Agency.

24 **“Effective Date”** is the date established in Section XV of this Consent Decree.

25 **“Facility”** shall mean the location of Defendants’ mining, crushing, storage, cement
26 manufacturing, and associated operations located at 24001 Stevens Creek Boulevard in Cupertino,
27 California, Santa Clara County.

28

1 **“Facility Individual NPDES Permit”** shall mean Water Quality Order No. R2-2014-0010,
2 NPDES No. CA0030210.

3 **“Hanson”** shall mean Hanson Permanente Cement, Incorporated.

4 **“Industrial Storm Water General NPDES Permit”** shall mean Water Quality Order No.
5 97-03-DWQ, NPDES General Permit No. CAS000001, Waste Discharge Requirements for
6 Discharges of Storm Water Associated with Industrial Activities Excluding Construction Activities.

7 **“Lehigh”** shall mean Lehigh Southwest Cement Company.

8 **“Paragraph”** shall mean a portion of this Consent Decree identified by an Arabic numeral.

9 **“Parties”** shall mean the United States, the Regional Water Board, Lehigh and Hanson.

10 **“Plaintiffs”** shall mean the United States and the People of the State of California by and
11 through the Regional Water Board. The Regional Water Board is the only state entity or state
12 official that is a party to this Consent Decree. Nothing in this Consent Decree shall be construed to
13 bind other state entities or state officials or any local entity or official not a party to this Consent
14 Decree.

15 **“Process Water”** shall include process waste water as defined in 40 C.F.R. § 401.11(q) and
16 process generated waste water as defined in 40 C.F.R. §§ 436.21(e) and 436.31(e).

17 **“Regional Water Board”** shall mean the California Regional Water Quality Control Board,
18 San Francisco Bay Region.

19 **“Sand & Gravel General NPDES Permit”** shall mean Water Quality Order No. R2-2008-
20 0011, General Waste Discharge Requirements for Discharges of Process Wastewaters from
21 Aggregate Mining, Sand Washing, and Sand Offloading Facilities to Surface Waters.

22 **“Section”** shall mean a portion of this Consent Decree (unless another document is
23 specified) identified by an uppercase Roman numeral.

24 **“State”** shall mean the State of California.

25 **“United States”** shall mean the United States of America.

26 **“Wastewater”** as used in Paragraph 16 shall mean domestic sewage treated at the
27 wastewater treatment plant located at the Facility.

28

1 **“Wet Season”** shall mean October 1st through April 30th.

2 **“Work”** shall mean the activities Defendants are required to perform under Section VI of
3 this Consent Decree, as may be modified pursuant to Section XVII (Modification).

4 **V. CIVIL PENALTIES**

5 10. Defendants shall pay a total civil penalty of two million five hundred fifty thousand
6 dollars (\$2,550,000), which shall be paid to Plaintiffs in accordance with Paragraphs 11-14.

7 11. Within thirty (30) Days after the Effective Date of this Consent Decree, Defendants
8 shall pay to the United States one million two hundred seventy-five thousand dollars (\$1,275,000)
9 as a civil penalty, together with interest accruing from the date on which this Consent Decree is
10 lodged with the Court, at the rate specified in 28 U.S.C. § 1961.

11 12. Defendants shall pay their civil penalty due to the United States by FedWire
12 Electronic Funds Transfer (“EFT”) to the U.S. Department of Justice in accordance with written
13 instructions to be provided to Defendants, following lodging of this Consent Decree, by the
14 Financial Litigation Unit of the U.S. Attorney’s Office for the Northern District of California,
15 Federal Courthouse, 450 Golden Gate Avenue, 11th Floor, San Francisco, CA 94102. At the time
16 of payment, Defendants shall send a copy of the EFT authorization form and the EFT transaction
17 record, together with a transmittal letter, which shall state that the payment is for the civil penalty
18 owed pursuant to the Consent Decree in *United States et al. v. Lehigh Southwest Cement Co., et al.*,
19 and shall reference the DOJ case number 90-5-1-1-10741, to the United States in accordance with
20 Section XIV of this Decree (Notices); by email to cinwd_acctsreceivable@epa.gov; and by mail to:

21 EPA Cincinnati Finance Office
22 26 West Martin Luther King Drive
23 Cincinnati, Ohio 45268

24 13. Within thirty (30) Days after the Effective Date of this Consent Decree, Defendants
25 shall pay to the Regional Water Board one million two hundred seventy-five thousand dollars
26 (\$1,275,000), as a civil penalty, together with interest accruing from the date on which the Consent
27 Decree is entered by the Court, at the rate specified in California Code of Civil Procedure §
28 685.010.

1 14. Defendants shall pay their civil penalty due to the Regional Water Board by cashier's
2 or certified check payable to the "State Water Pollution Cleanup and Abatement Account" and sent
3 to:

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

8 At the time of payment, Defendants shall include a transmittal letter, which shall state that the
9 payment is for the civil penalty owed pursuant to the Consent Decree in *United States et al. v.*
10 *Lehigh Southwest Cement Co., et al.*, with a copy of that transmittal letter and a copy of the check
11 sent to the Regional Water Board in accordance with Section XIV of this Decree (Notices).

12 **VI. WORK**

13 15. The purpose of the Work in this Consent Decree is for the Facility to achieve
14 compliance with the CWA and the Cal. Water Code, the regulations promulgated thereunder, and
15 the Facility Individual NPDES Permit by no later than October 1, 2017.

16 16. Discharge Prohibitions

17 a. Beginning on the Effective Date, Defendants shall be prohibited from
18 discharging any Process Water, Wastewater, or stormwater from any point source not authorized by
19 the Facility Individual NPDES Permit. The specific locations of permitted Discharge Points 001-
20 006, which discharge to Permanente Creek, are identified in Appendix A (Discharge Locations).

21 17. Treatment Systems

22 a. Defendants shall design, construct, and operate a treatment system at the
23 Facility to treat all process and storm waters prior to discharge from Discharge Point 001 as
24 prescribed in Paragraphs 17.b. and 17.c. below.

25 b. Interim Treatment System. No later than October 1, 2014, Defendants shall
26 have completed construction and begin operation of an interim treatment system. Within thirty (30)
27 Days of the Effective Date of this Consent Decree, Defendants shall notify the Plaintiffs in
28 accordance with Section XIV of this Consent Decree (Notices) that construction is complete and the
interim treatment system is operational and constructed in accordance with Appendix B (Interim

1 Flow Configuration C-2). The interim treatment system shall treat no less than 24,000 gallons per
2 hour of quarry pit water before discharge to Permanente Creek, except at those times when only
3 flows less than 24,000 gallons per hour are available from the quarry, in which case Defendants
4 shall treat all lesser flows from the quarry.

5 c. Final Treatment System. No later than October 1, 2017, Defendants shall
6 complete construction and begin operation of a final treatment system as described in the Facility
7 Individual NPDES Permit Fact Sheet. All discharges from the Facility through Discharge Point 001
8 shall be treated by the final treatment system, as described in the Facility Individual NPDES Permit,
9 before discharge to Permanente Creek. Not later than thirty (30) Days after construction is
10 complete and the final treatment system is operational, Defendants shall notify the Plaintiffs in
11 accordance with Section XIV of this Consent Decree (Notices) that construction is complete and
12 that the final treatment system is operational and constructed in accordance with Appendix C (Final
13 Flow Configuration C-3).

14 18. Stormwater Management

15 a. Defendants shall design, select, install, implement, and maintain best
16 management practices (“BMPs”) at the Facility to manage stormwater in order to reduce pollutants
17 prior to discharge from Discharge Points 002, 003, 004, 005, and 006 in accordance with the
18 Facility Individual NPDES Permit, at Provision VI.C.6.

19 b. As described in the Facility Individual NPDES Permit, Defendants shall
20 develop and maintain a Stormwater Pollution Prevention Plan (“SWPPP”) and a Best Management
21 Practices Plan (“BMP Plan”) to facilitate the design, selection, installation, implementation, and
22 maintenance of BMPs at the Facility. Defendants shall regularly review, and revise or update as
23 necessary, the SWPPP and BMP Plan to ensure that the plans remains useful and relevant to current
24 equipment and operations. At a minimum, the SWPPP and BMP Plan shall be reviewed annually
25 with any revisions made as soon as possible thereafter. Appropriate revisions to the BMP plan shall
26 be completed within ninety (90) Days of significant changes in Facility equipment or operations.

27 c. Within thirty (30) Days of Entry of the Consent Decree, Defendants shall
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1 submit to Plaintiffs the SWPPP and BMP Plan, as described in the Facility Individual NPDES
 2 Permit Provision VI.6.

3 19. Numeric Effluent Limitations

4 a. Interim Numeric Effluent Limitations. Defendants shall comply with the
 5 following interim numeric effluent limits:

6 i. For Discharge Point 001, from October 1, 2014 until September 30,
 7 2017:

<u>Parameter</u>	<u>Maximum Daily Effluent Limit</u>
Settleable Matter	1.3 mL/L-hr
Total Suspended Solids (TSS)	230 mg/L
Turbidity	600 NTU

11 ii. For flows treated by the interim treatment system described in
 12 Paragraph 17.b., from December 1, 2014 until September 30, 2017: Defendants shall achieve a
 13 reduction in selenium concentrations discharged from the interim treatment system (a) by at least
 14 fifty percent (50%) when the influent selenium concentration exceeds 20 µg/L, or (b) to less than or
 15 equal to 10 µg/L when the influent selenium concentration is less than or equal to 20 µg/L.
 16 Defendants shall determine the selenium reduction by comparing samples collected at the inlet to
 17 the interim treatment system to samples collected simultaneously at the outlet of the interim
 18 treatment system and in accordance with the monitoring requirements in the Facility Individual
 19 NPDES Permit.

20 iii. For Discharge Points 002, 004, and 005, from October 1, 2014 until
 21 September 30, 2017:

<u>Parameter</u>	<u>Maximum Daily Effluent Limit</u>
Settleable Matter	2.6 mL/L-hr
TSS	340 mg/L
Turbidity	920 NTU

25 iv. For Discharge Point 006, from October 1, 2014 until September 30,
 26 2017:

<u>Parameter</u>	<u>Maximum Daily Effluent Limit</u>
TSS	240 mg/L

b. Final Numeric Effluent Limitations. The Defendants shall comply with the following final numeric effluent limits.

i. For Discharge Point 001, beginning on October 1, 2017:

<u>Parameter</u>	<u>Average Monthly Effluent Limit</u>	<u>Maximum Daily Effluent Limit</u>	<u>Instantaneous Minimum Effluent Limit</u>	<u>Instantaneous Maximum Effluent Limit</u>
TSS	-	58 lbs/day ¹	-	-
Oil and Grease	10 mg/L	20 mg/L	-	-
pH	-	-	6.5 s.u.	8.5 s.u.
Total Residual Chlorine	-	-	-	0.0
Settleable Matter	0.10 mL/L-hr	0.20 mL/L-hr	-	-
Chromium (VI)	8.0 µg/L	16 µg/L	-	-
Mercury	0.020 µg/L	0.041 µg/L	-	-
Nickel	82 µg/L	160 µg/L	-	-
Selenium	4.1 µg/L	8.2 µg/L	-	-
Thallium	1.7 µg/L	3.4 µg/L	-	-
Total Dissolved Solids (TDS)	1,000 mg/L	2,000 mg/L	-	-
Turbidity	5.0 NTU	10 NTU	-	-

ii. For Discharge Points 002, 003, 004 and 005 beginning on October 1, 2017:

<u>Parameter</u>	<u>Average Monthly Effluent Limit</u>	<u>Maximum Daily Effluent Limit</u>	<u>Instantaneous Minimum Effluent Limit</u>	<u>Instantaneous Maximum Effluent Limit</u>
TSS	-	50 mg/L	-	-
Oil and Grease	10 mg/L	20 mg/L	-	-
pH	-	-	6.5 s.u.	8.5 s.u.

¹Compliance with the TSS requirement shall be at Monitoring Location EFF-001A, as described in Attachment E, Section II, to the Facility Individual NPDES Permit (Monitoring Location). For description purposes only, this location is a point after filtration of water from the Cement Plant Reclaim Water System and before any other treatment step, prior to discharge via Discharge Point 001.

Settleable Matter	0.10 mL/L-hr	0.20 mL/L-hr	-	-
Turbidity		40 NTU	-	-

iii. For Discharge Point 006 beginning on October 1, 2017:

<u>Parameter</u>	<u>Average Monthly Effluent Limit</u>	<u>Maximum Daily Effluent Limit</u>	<u>Instantaneous Minimum Effluent Limit</u>	<u>Instantaneous Maximum Effluent Limit</u>
TSS	-	50 mg/L	-	-
pH	-	-	6.5 s.u.	8.5 s.u.
Settleable Matter	0.10 mL/L-hr	0.20 mL/L-hr	-	-

20. Monitoring

a. In order to determine compliance with the Consent Decree, including the numeric effluent limitations in Paragraph 19, Defendants shall sample and measure the concentration of pollutants discharged from Discharge Points 001, 002, 004, 005, and 006 as described in the Facility Individual NPDES Permit's Monitoring and Reporting Program ("MRP") at Attachment E, Sections II, III, IV, and VII.

VII. REPORTING REQUIREMENTS

21. Semi-Annual Reports

a. Beginning on the Effective Date and for the duration of this Consent Decree, Defendants shall submit to Plaintiffs, a semi-annual progress report ("Semi-Annual Report") covering the periods January 1st through June 30th and July 1st through December 31st for the duration of this Consent Decree. The submission of the Semi-Annual Reports shall be required thirty (30) Days after the reporting period ends. For example, the Semi-Annual Report for the January 1st through June 30th reporting period shall be due to Plaintiffs on July 30th.

b. All Semi-Annual Reports shall include, at a minimum, the following for the reporting period:

i. A description of any known noncompliance with this Consent Decree during the reporting period;

ii. Any recommended changes to the Work required of that Defendant by this Consent Decree;

1 iii. Identification of any planned or completed operational or structural
2 modifications to the Facility that may have an impact on the Facility’s compliance with this Consent
3 Decree; and

4 iv. On an annual basis, due July 30th, the then current SWPPP and BMP
5 Plan with a detailed narrative that describes any changes from the previous version of the SWPPP
6 and BMP Plan.

7 22. Annual Storm Water Report

8 a. After the Effective Date, for the duration of the Consent Decree, by July 1st
9 of each year, Defendants shall submit to Plaintiffs the Annual Storm Water Report for the previous
10 Wet Season required by Provision VI.C.6.a.iii. of the Facility Individual NPDES Permit.

11 b. As described in the Facility Individual NPDES Permit, the Annual Storm
12 Water Report shall include, at a minimum, the following for the reporting period:

13 i. A tabulated summary of all sampling results and a narrative summary
14 of visual observations taken during inspections;

15 ii. A comprehensive discussion of the compliance record and any
16 corrective actions taken or planned to ensure compliance with the Facility Individual NPDES
17 Permit; and

18 iii. A comprehensive discussion of the source identification and control
19 programs for selenium, mercury, chromium (VI), nickel, thallium, conductivity, visible color, and
20 visible oil.

21 **VIII. STIPULATED PENALTIES**

22 **A. Defendants Shall be Liable for Stipulated Penalties to Plaintiffs for the**
23 **Following Violations of this Consent Decree as Specified Below**

24 23. Late Payment of a Civil Penalty. If Defendants fail to pay any civil penalty required
25 to be paid under Section V of this Decree (Civil Penalties) when due, in addition to any interest due,
26 a stipulated penalty of \$5,000 per Day may be assessed against Defendants for each Day that the
27 payment is late.

28 24. Failure to Complete Construction of Treatment System. For each Day the

1 Defendants fail to complete construction of the wastewater treatment system as described in
 2 Paragraph 17, a stipulated penalty may be assessed against Defendant as follows:

<u>Period of Noncompliance</u>	<u>Penalty Per Day</u>
1-15 Days	\$2,000
16-30 Days	\$4,000
31-60 Days	\$5,000
More than 60 Days	\$10,000

9 25. Failure to Meet Numeric Effluent Limitations. For each violation of a numeric
 10 effluent limitation set forth in Paragraph 19, a stipulated penalty may be assessed against that
 11 Defendant as follows:

<u>Numeric Effluent Limitation</u>	<u>Penalty Per Violation Per Day</u>
Interim	\$3,000
Final	\$3,000

16 26. Failure to Comply with Discharge Prohibitions. For each Day Defendants discharge
 17 pollutant(s) in violation of the discharge prohibitions set forth in Paragraph 16, a stipulated penalty
 18 of \$3,000 may be assessed against Defendants for each Day there is a discharge at a point source
 19 not authorized to discharge pollutants.

20 27. Failure to Timely Submit Deliverables

21 a. For each Day Defendants fail to timely submit to Plaintiffs any Deliverable
 22 listed in Paragraph 27.b, a stipulated penalty for each such Deliverable may be assessed against
 23 Defendants as follows:

<u>Period of Noncompliance</u>	<u>Penalty Per Deliverable Per Day</u>
1-15 Days	\$500
16-30 Days	\$750
31-60 Days	\$1,000
More than 60 Days	\$3,000

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1 b. For purposes of this Paragraph, a Deliverable shall mean:

<u>Deliverable</u>	<u>Reference Paragraphs</u>
Interim Treatment Notification	Paragraph 17.b
Final Treatment Notification	Paragraph 17.c
Initial BMP Plan	Paragraph 18.c
Initial SWPPP	Paragraph 18.c
Semi-Annual Reports	Paragraph 21
Annual Storm Water Report	Paragraph 22

9 **B. Miscellaneous**

10 28. Unless otherwise specified, stipulated penalties assessed under this Section shall
11 begin to accrue on the Day after performance is due or on the Day a violation subject to stipulated
12 penalties occurs, whichever is applicable, and shall continue to accrue until performance is
13 satisfactorily completed or until the violation ceases. Either Plaintiff may, in the un-reviewable
14 exercise of its discretion, reduce or waive stipulated penalties otherwise due to it under this Consent
15 Decree. One Plaintiff’s reduction or waiver of stipulated penalties due to that Plaintiff does not
16 waive or reduce stipulated penalties due to the other Plaintiff. Defendants may provide information
17 for consideration as to whether a violation resulted from events outside the control of Defendants,
18 and the effect of the amount of the penalty on Defendant’s ability to comply with the requirements
19 of this Consent Decree.

20 29. Defendants shall pay stipulated penalties to the United States and the Regional Water
21 Board within one hundred twenty (120) Days of receiving a written demand from either Plaintiff, or
22 both jointly; only one demand shall be made. Defendants shall pay fifty percent (50%) of the total
23 stipulated penalty amount due to the United States, and fifty percent (50%) to the Regional Water
24 Board, using the penalty payment procedures set forth in the following Paragraph. Plaintiffs may
25 modify these payment procedures through written notice to Defendants. Any demand for payment
26 of a stipulated penalty shall be simultaneously sent to all other Parties.

27 30. Defendants shall pay stipulated penalties owing to the United States by FedWire
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1 Electronic Funds Transfer (“EFT”) to the U.S. Department of Justice, in accordance with written
2 instructions to be provided to Defendants by the Financial Litigation Unit of the U.S. Attorney’s
3 Office for the Northern District of California, 450 Golden Gate Avenue, 11th Floor, San Francisco,
4 CA 94102. At the time of payment, Defendants shall send a copy of the EFT authorization form
5 and the EFT transaction record, together with a transmittal letter, which shall state that the payment
6 is for stipulated penalties owed pursuant to the Consent Decree in *United States et al. v. Lehigh*
7 *Southwest Cement Co., et al.*, and shall reference the DOJ Case No. 90-5-1-1-10741, to the United
8 States in accordance with Section XIV of this Consent Decree (Notices); by email to
9 cinwd_acctsreceivable@epa.gov; and by mail to:

10 EPA Cincinnati Finance Office
11 26 West Martin Luther King Drive
12 Cincinnati, OH 45268

13 31. Defendants shall pay stipulated penalties owing to the Regional Water Board by
14 sending a certified check or warrant payable to the “State Water Pollution Cleanup and Abatement
15 Account.” At the time of payment, Defendants shall state in their transmittal letter that the payment
16 is for stipulated penalties owed pursuant to the Consent Decree in *United States et al. v. Lehigh*
17 *Southwest Cement Co., et al.*, and shall address it to:

18 Accounting Office, Attn: ACL Payment
19 P.O. Box 1888
20 Sacramento, CA 95812-1888

21 with a copy of that transmittal letter and a copy of the check sent to the Regional Water Board in
22 accordance with Section XIV of this Decree (Notices).

23 32. If Defendants fail to pay stipulated penalties according to the terms of this Consent
24 Decree, Defendants shall be liable for interest on such penalties, as provided for in 28 U.S.C.
25 § 1961 for stipulated penalties owed to the United States and California Code of Civil Procedure
26 Section 685.010 for stipulated penalties owed to the Regional Water Board, accruing as of the date
27 payment became due, subject to Paragraph 33 below. Nothing in this Paragraph shall be construed
28 to limit the United States or the Regional Water Board from seeking any remedy otherwise provided
by law for Defendants’ failure to pay any stipulated penalties.

1 33. Upon receipt of a written demand for payment of a stipulated penalty, Defendants
2 may dispute their liability for such stipulated penalty pursuant to the Dispute Resolution Section
3 (Section X) of this Consent Decree. Pending resolution of any such dispute, stipulated penalties
4 need not be paid but shall continue to accrue if the obligation at issue has not been met and interest
5 on any unpaid penalties accrues pursuant to the terms of the preceding Paragraph; provided that
6 Defendants may argue to the Court that stipulated penalties shall not run after the matter has been
7 fully briefed. Upon the completion of Dispute Resolution, any stipulated penalties that are
8 ultimately determined to be due, plus interest as applicable, up to the date Judicial Dispute
9 Resolution was commenced, shall be paid within thirty (30) Days of (1) the date a motion must be
10 filed under Paragraph 40 if the Defendant(s) do(es) not initiate Judicial Dispute Resolution pursuant
11 to Paragraph 43, or, if Judicial Dispute Resolution pursuant to Paragraph 43 is pursued, (2) any
12 Court order directing payment.

13 34. The payment of stipulated penalties shall not alter in any way Defendants' obligation
14 to complete the performance of all activities required under this Consent Decree. Demand for
15 and/or payment of stipulated penalties pursuant to this Section shall be in addition to any other
16 rights or remedies that shall be available to Plaintiffs by reason of a Defendant's failure to comply
17 with the requirements of this Consent Decree, or any other applicable federal, State or local laws,
18 regulations, permits (including those under the Clean Water Act and Porter-Cologne Water Quality
19 Control Act (including the Facility Individual NPDES Permit)), or administrative orders (including
20 the Regional Water Board's Cease and Desist Order No. R2-2014-0011). The payment of
21 stipulated penalties under this Consent Decree shall not be deemed an admission of a violation of
22 any law, regulation, or any of Defendants' NPDES permits or other regulatory orders.

23 **IX. FORCE MAJEURE**

24 35. A "force majeure event" is any event beyond the control of a Defendant, its agents
25 and contractors, or any entity controlled by a Defendant that delays the performance of any Work
26 under this Consent Decree despite the Defendant's best efforts to fulfill the obligation to do that
27 Work. "Best efforts" includes anticipating reasonably foreseeable force majeure events and taking
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1 appropriate preventive actions, if they exist, before a force majeure event occurs. “Best efforts”
2 also includes addressing the effects of any force majeure event (a) as it is occurring and (b) after it
3 has occurred, to prevent or minimize any resulting delay to the extent reasonably practicable.
4 “Force majeure” does not include a Defendant’s financial inability to perform any obligation under
5 this Consent Decree.

6 36. A Defendant shall provide the Chief of EPA Region 9, Water Section, Enforcement
7 Division, and to the Regional Water Board written notice, as provided in Section XIV of this
8 Consent Decree (Notices), within seven (7) Days of the time a Defendant first knew of, or by the
9 exercise of due diligence, should have known of, a claimed force majeure event. The written notice
10 shall state the anticipated duration of any delay, its cause(s), the Defendant’s past and proposed
11 actions to prevent or minimize any delay, a schedule for carrying out those actions, and the
12 Defendant’s rationale for attributing any delay to a force majeure event. Failure to provide written
13 notice as required by this Paragraph shall preclude the Defendant from asserting any claim of force
14 majeure.

15 37. If EPA and the Regional Water Board agree that a force majeure event has occurred,
16 they may agree to extend the time for a Defendant to perform the affected requirements for the time
17 necessary to complete those obligations. An extension of time to perform the obligations affected
18 by a force majeure event shall not, by itself, extend the time to perform any other obligation. Where
19 EPA and the Regional Water Board agree to an extension of time, the appropriate modification shall
20 be made pursuant to Section XVII of this Consent Decree (Modification).

21 38. If EPA or the Regional Water Board does not agree that a force majeure event has
22 occurred, or does not agree to the extension of time sought by a Defendant, that position shall be
23 binding, unless the Defendant invokes Dispute Resolution under Section X of this Consent Decree.
24 In any such dispute, the Defendant bears the burden of proving, by a preponderance of the evidence,
25 that each claimed force majeure event is a force majeure event, that the Defendant gave the notice
26 required hereunder, that the force majeure event caused any delay the Defendant claims was
27 attributable to that event, and that the Defendant exercised best efforts to prevent or minimize any
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1 delay caused by the event.

2 **X. DISPUTE RESOLUTION**

3 39. Unless otherwise expressly provided for in this Consent Decree, all disputes under
4 this Consent Decree are subject to dispute resolution, and the dispute resolution procedures of this
5 Section shall be the exclusive mechanism to resolve disputes arising under or with respect to this
6 Consent Decree. A Defendant's failure to seek resolution of a dispute under this Section shall
7 preclude that Defendant from raising any such issue as a defense to an action by the United States
8 or the Regional Water Board to enforce any obligation of that Defendant under this Decree.

9 40. Informal Dispute Resolution. Any dispute subject to dispute resolution under this
10 Consent Decree shall first be the subject of informal negotiations. The dispute shall be considered
11 to have arisen when a Defendant sends the United States and the Regional Water Board a written
12 notice of dispute ("Notice of Dispute"). Such Notice of Dispute shall state clearly the matter in
13 dispute, and the Defendant may argue that no stipulated penalties or interest should be imposed for
14 actions that are the subject of the Notice of Dispute. The period of informal negotiations shall not
15 exceed sixty (60) Days from the date the Notice of Dispute was sent, unless that period is modified
16 by written agreement. If the Parties cannot resolve a dispute by informal negotiations, then the
17 position advanced by the United States and the Regional Water Board shall be considered binding
18 unless, within thirty (30) Days after the conclusion of this informal negotiation period, a Defendant
19 invokes the dispute resolution procedures as set forth in the following Paragraph.

20 41. Formal Dispute Resolution. A Defendant shall invoke the dispute resolution
21 procedures of this Section within the time period provided in the preceding Paragraph by serving on
22 the United States and the Regional Water Board a written statement of position ("Statement of
23 Position") regarding the matter in dispute. The Statement of Position shall include, but may not
24 necessarily be limited to, any factual data, analysis, opinion, or legal analysis supporting the
25 position and any supporting documentation relied upon by the Defendant. The Defendant may
26 argue that no stipulated penalties or interest should be imposed.

27 42. If the United States and/or the Regional Water Board wish to serve responses, the
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1 United States and/or the Regional Board shall serve their Statement(s) of Position within forty-five
2 (45) Days after service of a Defendant's Statement of Position. Failure to submit such statement(s)
3 is not a violation of this Consent Decree. The Parties may agree to extend this time frame. Any
4 Defendant may also serve a Statement of Position responsive to another Defendant during this
5 period. The United States' and the Regional Water Board's Statement(s) of Position shall include,
6 but may not necessarily be limited to, any factual data, analysis, opinion, or legal analysis
7 supporting that position and all supporting documentation relied upon by the United States and the
8 Regional Water Board. If the United States or the Regional Water Board do not serve a Statement
9 of Position within forty-five (45) Days after service of a Defendant's Statement of Position, or
10 within any mutually agreed-upon extended time frame, the Party invoking dispute resolution may
11 initiate Judicial Dispute Resolution under Paragraph 43, and accrual of interest shall be stayed
12 unless otherwise ordered by the Court.

13 43. Judicial Dispute Resolution. A Defendant may seek judicial review of the dispute by
14 filing with the Court and serving on the United States and the Regional Water Board a motion
15 requesting judicial resolution of the dispute. The motion must be filed within sixty (60) Days after
16 service of the Statement of Position by the United States and the Regional Water Board pursuant to
17 Paragraph 42. The Parties may agree to extend this time frame. The motion shall contain a written
18 statement of the moving Defendant's position on the matter in dispute, as generally set forth in its
19 Statement of Position, including any supporting factual data, analysis, opinion, or legal analysis,
20 and any documentation, and shall set forth the relief requested and any schedule within which the
21 dispute must be resolved for orderly implementation of this Consent Decree. When the motion is
22 filed, accrual of interest shall be stayed unless otherwise ordered by the Court. The United States
23 and the Regional Water Board shall have sixty (60) Days in which to respond to a Defendant's
24 motion, and a Defendant shall have thirty (30) Days in which to file a reply memorandum. These
25 time frames may be extended by agreement of the Parties or by approval of the Court.

26 44. Except as otherwise provided in this Consent Decree, in any dispute in District Court
27 under this Section, a Defendant shall bear the burden of demonstrating that the Defendant's position
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1 on the issues in dispute complies with this Consent Decree and best furthers the objectives of this
2 Consent Decree, pursuant to deference given to agency decisions according to law.

3 45. Effect on Consent Decree Obligations. The invocation of Dispute Resolution
4 procedures under this Section shall not, by itself, extend, postpone, or affect in any way any
5 obligation of a Defendant under this Consent Decree, unless and until the final resolution of the
6 dispute so provides, whether that resolution is by agreement of the Parties or otherwise. Stipulated
7 penalties with respect to the disputed matter shall continue to accrue from the first Day of
8 noncompliance, but payment shall be stayed pending resolution of the dispute as provided in
9 Paragraph 33. In addition, interest shall not accrue during the period Judicial Dispute Resolution is
10 noticed, heard, and under submission, unless requested by a Plaintiff and awarded by the Court for
11 good cause to that Plaintiff. If a Defendant does not prevail on the disputed issue, stipulated
12 penalties shall be paid, if ordered by the Court, as provided in Section VIII.B (Stipulated Penalties).

13 **XI. INFORMATION COLLECTION AND RETENTION**

14 46. Plaintiffs and their representatives, including attorneys, contractors, and consultants,
15 shall have the right of entry on Defendants' property upon reasonable notice at all reasonable times,
16 upon presentation of credentials, to:

- 17 a. monitor the progress of activities required under this Consent Decree;
- 18 b. verify any data or information submitted to Plaintiffs in accordance with the
19 terms of this Consent Decree;
- 20 c. obtain documentary evidence, including photographs and similar data; and
- 21 d. assess a Defendant's compliance with this Consent Decree.

22 47. For five (5) years after the date of termination of this Consent Decree and any
23 subsequent order or decree entered in this matter, Defendants shall retain all final versions of
24 records and documents (including records or documents in electronic form) that document a
25 Defendant's performance of its obligations under this Consent Decree, unless such documents or
26 records have already been provided to the Plaintiffs as part of a Defendant's Semi-Annual Report or
27 other deliverable required under this Consent Decree. Such records shall include, but are not
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1 limited to, monitoring information, modeling inputs and outputs, flow data, rainfall data, inspection
2 records, construction plans or as-built drawings, specifications, construction contracts, final
3 payments and notices of completion, and all deliverables, in addition to records or documents
4 specified by Plaintiffs from time to time, that are necessary to evaluate a Defendant's performance
5 of its obligations under this Consent Decree, provided they exist. A Defendant may seek a
6 determination from EPA as to whether any particular document or record must be preserved
7 pursuant to this Paragraph by submitting that document or record to EPA. This record retention
8 requirement shall apply regardless of any Defendant, corporate, or institutional document-retention
9 policy to the contrary. At any time during this record-retention period, Plaintiffs may request copies
10 of any documents or records required to be maintained under this Paragraph, unless such documents
11 or records have already been provided to Plaintiffs as part of a Defendant's Semi-Annual Report or
12 other deliverable required under this Consent Decree.

13 48. This Consent Decree in no way limits or affects any right of entry and inspection, or
14 any right to obtain information, held by Plaintiffs pursuant to applicable federal or state laws,
15 regulations, or permits, nor does it limit or affect any duty or obligation of Defendants to maintain
16 records or information imposed by applicable federal or state laws, regulations, or permits.

17 49. Notwithstanding the foregoing, nothing in Section XI (Information Collection and
18 Retention) shall be construed to require any party to disclose any communication, document, or
19 electronic record that is protected by the attorney-client privilege, the attorney work product
20 doctrine, the common interest doctrine, or any other applicable privilege or protection. All
21 applicable privileges, doctrines, and protections shall remain in effect unless the Court orders that
22 the communication, document, or electronic record must be disclosed. If, during Judicial Dispute
23 Resolution pursuant to Paragraph 43 or judicial enforcement of this Consent Decree, after a request
24 by Plaintiffs to a Defendant for such document, or a request by a Defendant to Plaintiffs for a such a
25 document (including enforcement-related documents), a Party withholds a document based on the
26 assertion of a privilege, doctrine, or protection, that Party shall provide, within thirty (30) Days of
27 such an assertion, a log that identifies, to the extent known: the general nature of the document
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1 (without disclosing its contents); the identity and position of its author; the date it was written; the
2 identity and position of all addressees and recipients; the document's present location; and the
3 specific reason(s) it was withheld (which privilege claimed and the basis for such claim).

4 **XII. EFFECT OF SETTLEMENT/RESERVATIONS OF RIGHTS**

5 50. Effect of Settlement

6 a. This Consent Decree resolves the civil claims of the Plaintiffs (including
7 those for mandatory minimum penalties under California Water Code section 13385(h)-(l)) for the
8 violations specifically alleged in the Complaint filed in this action, through April 30, 2014. This
9 Consent Decree shall not be construed to prevent or limit the rights of Plaintiffs to obtain penalties,
10 injunctive relief, or other appropriate relief under the CWA or the California Water Code, or under
11 other federal or state laws, regulations, or permit conditions, except as to the claims specifically
12 alleged in the Complaint. This Consent Decree shall not be construed to prevent or limit any rights
13 or defenses Defendants may have to any claim, demand, or cause of action under state or federal
14 law that is not addressed in this Consent Decree.

15 b. Plaintiffs, on the one hand, and Defendants, on the other hand, reserve their
16 respective rights to initiate judicial or administrative action against each other for any matter not
17 released by this Consent Decree. Nothing in this Consent Decree shall constitute or be construed as
18 a satisfaction or release from liability for any conditions or claims arising as a result of past, current,
19 or future operations or activities of Defendants that are not matters covered by this Consent Decree.
20 Nothing herein is intended or shall be construed as a waiver of Plaintiffs' right to institute an action
21 to compel compliance with this Consent Decree. In addition, nothing in this Consent Decree is
22 intended or shall be construed to preclude any Plaintiff from exercising its authority under any
23 statute, regulation, ordinance, or other law.

24 c. In this and any subsequent administrative or judicial proceeding initiated by
25 the United States or the Regional Water Board for injunctive relief, civil penalties, or other
26 appropriate relief relating to Defendants' compliance with the CWA and/or the Cal. Water Code,
27 Defendants shall not assert, and may not maintain, that any claims or defenses based upon the
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1 principles of waiver, res judicata, collateral estoppel, issue preclusion, claim preclusion, claim-
2 splitting, or other defenses based upon any contention that the claims raised by the United States or
3 the Regional Water Board in the subsequent proceeding were or should have been brought in the
4 instant case, except with respect to claims that have been specifically resolved pursuant to
5 Paragraph 50.a.

6 d. Plaintiffs reserve all legal and equitable remedies available to enforce the
7 provisions of this Consent Decree and Defendants reserve all available defenses.

8 51. Additional Covenant Between the Regional Water Board and Defendants

9 a. Upon the Effective Date of this Consent Decree, and except as provided in
10 Paragraphs 50.a. and b., Defendants shall and do release, discharge, and covenant not to sue the
11 State of California, including each and every constituent agency, board, department, office,
12 commission, fund or other entity thereof, as well as all past, present and future political
13 subdivisions, officers, agents, directors, employees, contractors, subcontractors, attorneys,
14 representatives, predecessors-in-interest, and successors and assigns of each and every constituent
15 of the State of California, for matters arising out of or related to the allegations in the Complaint.

16 b. Except as provided in Paragraphs 50.a. and b., the Regional Water Board
17 shall and does release, discharge, and covenant not to sue or to take administrative action against
18 Defendants and their successors, assigns, directors, officers, agents, attorneys, representatives, and
19 employees for matters covered. "Matters covered" are the causes of action alleged in the Complaint
20 in this matter for violations that occurred prior to May 1, 2014. This covenant not to sue shall
21 become ineffective only upon the occurrence of one or both of the following: (1) failure of
22 completion by Defendants, to the Regional Water Board's satisfaction, of the activities required by
23 Sections VI (Work) and VII (Reporting Requirements) of this Consent Decree; and (2) failure to
24 make the payments by Defendants pursuant to Section V (Civil Penalties) of this Consent
25 Decree. This covenant not to sue shall not act to release from liability any person or entity other
26 than Defendants and their successors, assigns, directors, officers, agents, attorneys, representatives,
27 and employees.

1 52. This Consent Decree resolves the claims of the Regional Water Board for litigation
2 costs (including attorneys' fees) pursuant to California Code of Civil Procedure section 1021.8
3 related to this action. Defendants agree to pay to the Attorney General of the State of California the
4 sum of thirty-two thousand dollars (\$32,000) in full satisfaction of all of the Regional Water
5 Board's litigation costs (including attorneys' fees) incurred up to the Effective Date of this Consent
6 Decree. This payment obligation of Defendants to the Attorney General is joint and several and
7 shall be made within twenty-one (21) Days of the Effective Date of this Consent Decree. The
8 payment shall be made in the form of a check(s) payable to the California Department of Justice,
9 and sent via overnight delivery to Marc N. Melnick, Deputy Attorney General, California Attorney
10 General's Office, 1515 Clay Street, 20th Floor, Oakland, CA 94612. The receipt and negotiation by
11 the Attorney General of full payment shall constitute satisfaction of any and all litigation costs
12 (including attorneys' fees) pursuant to California Code of Civil Procedure section 1021.8 incurred
13 by the Regional Water Board in this matter that have been or could have been claimed in connection
14 with or arising out of this matter, up to and including the Effective Date of this Consent Decree.
15 The Regional Water Board shall be entitled to recover their litigation costs (including attorneys'
16 fees) incurred to enforce this Consent Decree if the Regional Water Board is a prevailing party in
17 such enforcement action.

18 53. This Consent Decree is not a permit or order, or a modification of any permit or
19 order, under any federal, state, or local laws or regulations. Defendants are responsible for
20 achieving and maintaining compliance with all applicable federal, state, and local laws, regulations,
21 orders and permits; and Defendants' compliance with this Consent Decree shall be no defense to
22 any action commenced pursuant to said laws, regulations, orders, or permits. Plaintiffs do not, by
23 their consent to the entry of this Consent Decree, warrant or represent in any manner that
24 Defendants' compliance with any aspect of this Consent Decree will result in compliance with
25 provisions of the CWA or the Cal. Water Code.

26 54. Reservation of Rights

27 a. Nothing in this Consent Decree shall constitute an admission of any fact or of
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1 any liability or a waiver of any right unless explicitly set forth in this Section or Section I
2 (Jurisdiction and Venue).

3 b. This Consent Decree does not limit or affect the rights of Defendants or
4 Plaintiffs against any third parties not party to this Consent Decree, nor does it limit the rights of
5 third parties not party to this Consent Decree against Defendants, except as otherwise provided by
6 law.

7 c. Nothing in this Consent Decree shall limit any Defendant's ability to modify
8 its program for the design, planning, construction, operation, and maintenance of the Facility in any
9 fashion not inconsistent with this Consent Decree.

10 d. This Consent Decree shall not be construed to create rights in, or grant any
11 cause of action to, any third party not party to this Consent Decree.

12 **XIII. COSTS**

13 55. The Parties shall bear their own costs of this action, including attorneys' fees, except
14 as provided in Paragraph 52 above and except that the United States shall be entitled to collect the
15 costs (including attorneys' fees) incurred in any judicial action necessary to collect any stipulated
16 penalties due but not paid by a Defendant if the United States is a prevailing party in such collection
17 action. For the purposes of this Paragraph, stipulated penalties are not "due" until after the
18 conclusion of dispute resolution proceedings regarding the stipulated penalties pursuant to the
19 Dispute Resolution Section (Section X) of this Consent Decree.

20 **XIV. NOTICES**

21 56. A Defendant shall provide the Regional Water Board and the Chief, Environmental
22 Enforcement Section, U.S. Department of Justice, with a copy of any report, notice, or Deliverable
23 submitted to EPA under this Consent Decree at the time it submits the document to EPA. Unless
24 otherwise specified herein, whenever notifications, submissions, or communications are required by
25 this Consent Decree they shall be made in writing and addressed as follows:

26 To the Regional Water Board:

27 Dyan Whyte, Assistant Executive Officer
28 San Francisco Bay Regional Water Quality Control Board

1 1515 Clay Street, Suite 1400
Oakland, CA 94612

2 and

3 Julie Macedo, Senior Staff Counsel
4 Office of Enforcement
5 State Water Resources Control Board
1001 I Street, P.O. Box 100
Sacramento, CA 95812

6 and

7 Marc N. Melnick
8 Deputy Attorney General
9 California Attorney General's Office
1515 Clay Street, 20th Floor
P.O. Box 70550
Oakland, CA 94612

10 To the United States:

11 Chief, Clean Water Act, Water Section I, (ENF 3-1)
12 Enforcement Division
13 U.S. Environmental Protection Agency, Region 9
75 Hawthorne Street
San Francisco, CA 94105

14 and

15 Chief, Environmental Enforcement Section
16 Environment and Natural Resources Division
17 U.S. Department of Justice
P.O. Box 7611
Ben Franklin Station
Washington, DC 20044-7611
18 Re: DOJ No. 90-5-1-1-10741

with copies to:

19 Deborah A. Gitin
20 Senior Counsel
21 U.S. Department of Justice, Environmental Enforcement Section
301 Howard Street, Suite 1050
San Francisco, CA 94105

22 and

23 Ellen Blake
24 Attorney-Advisor
25 Office of Regional Counsel
U.S Environmental Protection Agency, Region 9
75 Hawthorne Street
San Francisco, CA 94105

26 To Lehigh and Hanson:

27 Alan Sabawi
28 Plant Manager, Permanente Facility

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Lehigh Southwest Cement Company
24001 Stevens Creek Blvd.
Cupertino, CA 95014

and

Ana N. Damonte
Regional Counsel
Lehigh Hanson
12667 Alcosta Blvd, Suite 400
San Ramon, CA 94583

and

Nicole E. Granquist
Downey Brand LLP
621 Capitol Mall, 18th Floor
Sacramento, CA 95814

57. Any Party may, by written notice to the other Parties, change its designated notice recipient(s) or notice address(es) provided above.

58. Notices submitted pursuant to this Section shall be deemed submitted upon mailing or emailing, unless otherwise provided in this Consent Decree or by mutual agreement of the Parties in writing.

XV. EFFECTIVE DATE

59. The Effective Date of this Consent Decree shall be the date upon which this Consent Decree is entered by the Court or a motion to enter is granted, whichever occurs first, as recorded on the Court’s docket. Defendants hereby agree that they shall be bound to perform duties scheduled to occur prior to the Effective Date. In the event that the United States withdraws or withholds consent to this Consent Decree prior to entry, or the Court declines to enter the Consent Decree, then the preceding requirement to perform duties scheduled to occur before the Effective Date shall terminate.

XVI. RETENTION OF JURISDICTION

60. The Court shall retain jurisdiction over this case for the purpose of resolving disputes arising under this Consent Decree pursuant to the Dispute Resolution Section of this Consent Decree, hearing motions and entering orders awarding or denying attorneys’ fees and costs, entering orders modifying this Consent Decree pursuant to the Modification Section of this Consent Decree, or effectuating or enforcing compliance with the terms of this Consent Decree.

1 **XVII. MODIFICATION**

2 61. Material and Non-Material Modifications

3 a. Any material modification to this Consent Decree must be with the written
4 agreement of the Parties and approval by the Court, except as provided herein.

5 b. Notwithstanding subparagraph 61.a. above, Plaintiffs and a Defendant can
6 agree in writing and without Court approval to make non-material modifications to the requirements
7 of this Consent Decree applicable to that Defendant. Time extensions for submission of
8 deliverables and minor modifications to the Work section may be considered non-material
9 modifications to this Consent Decree.

10 c. Notwithstanding subparagraph 61.a. above, any Party may seek modification
11 of this Consent Decree pursuant to Rule 60(b) of the Federal Rules of Civil Procedure following
12 Dispute Resolution pursuant to Section X of this Consent Decree.

13 **XVIII. FINAL COMPLIANCE AND TERMINATION**

14 62. EPA shall periodically review the performance of Defendants and shall determine,
15 following consultation with the Regional Water Board, whether Defendants have satisfactorily
16 complied with and accomplished the Objectives of this Decree.

17 63. Defendants shall achieve final compliance with all terms of this Consent Decree no
18 later than October 1, 2017. After Defendants have: (a) completed all Work required under Section
19 VI of this Decree, (b) demonstrated compliance with the final numeric effluent limitations and
20 discharge prohibitions for two consecutive Wet Seasons after October 1, 2017; (c) complied with all
21 other requirements of this Consent Decree; (d) paid the civil penalties, and any stipulated penalties
22 previously demanded by the United States and Regional Water Board pursuant to Section VIII
23 (Stipulated Penalties) and not paid (unless the parties achieve alternative agreement, or the Court
24 orders otherwise, pursuant to the Dispute Resolution procedures in Section X of this Consent
25 Decree); and (e) paid any Court-ordered award, if any, of attorneys' fees and/or costs, Defendants
26 may serve upon the United States and the Regional Water Board a Request for Termination, stating
27 that Defendants have satisfied those requirements, together with all necessary supporting
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1 documentation.

2 64. Following receipt by the United States and the Regional Water Board of Defendants'
3 Request for Termination, the Parties shall confer informally concerning the Request and any
4 disagreement that the Parties may have as to whether Defendants have satisfactorily complied with
5 the requirements for termination of this Consent Decree. If the United States and the Regional
6 Water Board agree that the Decree may be terminated, the Parties shall submit, for the Court's
7 approval, a joint stipulation and proposed order terminating the Decree.

8 65. If the United States or the Regional Water Board does not agree that the Decree may
9 be terminated, Defendants may invoke Dispute Resolution under Section X of this Decree.
10 However, Defendants shall not seek Dispute Resolution of any dispute regarding termination under
11 Section X, until sixty (60) Days after service of its Request for Termination.

12 **XIX. PUBLIC PARTICIPATION**

13 66. This Consent Decree shall be lodged with the Court for a period of not less than
14 thirty (30) Days for public notice and comment in accordance with 28 C.F.R. § 50.7. Plaintiffs
15 reserve the right to withdraw or withhold their consent if comments regarding this Consent Decree
16 disclose facts or considerations indicating that this Consent Decree is inappropriate, improper, or
17 inadequate. Defendants consent to entry of this Consent Decree as written without further notice.

18 **XX. SIGNATORIES/SERVICE**

19 67. Each undersigned representative of each Defendant, the Regional Water Board, and
20 the Assistant Attorney General for the Environment and Natural Resources Division of the
21 Department of Justice certifies that he or she is fully authorized to enter into the terms and
22 conditions of this Consent Decree and to execute and legally bind the Party he or she represents to
23 this document.

24 68. This Consent Decree may be signed in counterparts, and its validity shall not be
25 challenged on that basis.

26 **XXI. INTEGRATION**

27 69. This Consent Decree, including its appendices, constitutes the final, complete, and
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1 exclusive agreement and understanding among the Parties with respect to the settlement embodied
2 in this Consent Decree, and this Consent Decree supersedes all prior agreements and
3 understandings, whether oral or written, concerning the settlement embodied herein. Other than
4 deliverables that are submitted pursuant to this Consent Decree, no other document and no other
5 representation, inducement, agreement, understanding, or promise constitutes any part of this
6 Consent Decree or the settlement it represents, nor shall they be used in construing the terms of this
7 Consent Decree.

8 **XXII. HEADINGS**

9 70. Headings to the sections and subsections of this Consent Decree are provided for
10 convenience and do not affect the meaning or interpretation of the provisions of this Consent
11 Decree.

12 **XXIII. APPENDICES**

- 13 71. The Appendices to this Consent Decree are:
14 A. Discharge Locations
15 B. Interim Flow Configuration C-2
16 C. Final Flow Configuration C-3

16 **XXIV. FINAL JUDGMENT**

17 72. Upon approval and entry of this Consent Decree by the Court, this Consent Decree
18 shall constitute a final judgment between the Parties. The Court enters this judgment as a final
19 judgment under Fed. R. Civ. P. 58.

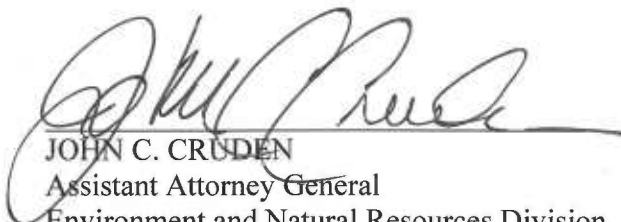
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21 Dated and entered this ____ day of _____, 2015.

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24 _____
25 UNITED STATES DISTRICT JUDGE
26 Northern District of California
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1 WE HEREBY CONSENT to the entry of this Consent Decree, subject to the public notice and
2 comment provisions of 28 C.F.R. § 50.7:

3 For Plaintiff the United States of America:

4
5 Dated: 4/6/15


6 JOHN C. CRUDEN
7 Assistant Attorney General
8 Environment and Natural Resources Division
9 U.S. Department of Justice

10 Dated: 4/8/15


11 DEBORAH A. GITIN (CABN 284947)
12 Senior Counsel
13 Environmental Enforcement Section
14 Environment and Natural Resources Division
15 U.S. Department of Justice
16 301 Howard Street, Suite 1050
17 San Francisco, CA 94105

Attorneys for Plaintiff, United States of America


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1 WE HEREBY CONSENT to the entry of this Consent Decree, subject to the public notice and
2 comment provisions of 28 C.F.R. § 50.7:

3 For Plaintiff the United States of America:

4 MELINDA HAAG (CABN 132612)
5 United States Attorney

6
7 Dated: April 7, 2015

8 
9 _____
10 ALEX G. TSE (CABN 152348)
11 Chief, Civil Division
12 MICHAEL T. PYLE (CABN 172954)
13 Assistant United States Attorney
14 150 Almaden Boulevard, Suite 900
15 San Jose, CA 95113

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Attorneys for Plaintiff, United States of America

1 WE HEREBY CONSENT to the entry of this Consent Decree, subject to the public notice and
2 comment provisions of 28 C.F.R. § 50.7:

3 For the United States Environmental Protection Agency:

4 Dated: 4/20/15


CYNTHIA GILES, Assistant Administrator
Office of Enforcement and Compliance Assurance
U.S. Environmental Protection Agency
1200 Pennsylvania Ave., NW
Washington, DC 20460


9 Dated: 4/17/15


SUSAN SHINKMAN, Director
Office of Civil Enforcement
Office of Enforcement and Compliance Assurance
U.S. Environmental Protection Agency
1200 Pennsylvania Ave., NW
Washington, DC 20460

15 Dated: 4-9-15


MARK POLLINS, Director
Water Enforcement Division
Office of Civil Enforcement
Office of Enforcement and Compliance Assurance
U.S. Environmental Protection Agency
1200 Pennsylvania Ave., NW
Washington, DC 20460

21 Dated: 3-24-15


JOANNA CITRON DAY, Attorney
Water Enforcement Division
Office of Civil Enforcement
Office of Enforcement and Compliance Assurance
U.S. Environmental Protection Agency
1200 Pennsylvania Ave., NW
Washington, DC 20460

1 WE HEREBY CONSENT to the entry of this Consent Decree, subject to the public notice and
2 comment provisions of 28 C.F.R. § 50.7:

3 For the United States Environmental Protection Agency:

4
5
6 Dated: _____

9/14/15

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JARED BLUMENFELD
Regional Administrator
U.S. Environmental Protection Agency, Region 9

10 Of Counsel:
11 ELLEN BLAKE
12 Attorney Advisor
13 Office of Regional Counsel
14 U.S. Environmental Protection Agency, Region 9

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WE HEREBY CONSENT to the entry of this Consent Decree:

For Plaintiff People of the State of California ex rel. California Regional Water Quality Control Board, San Francisco Bay Region:

KAMALA D. HARRIS
Attorney General of the State of California

Dated: 3/5/15



MARC N. MELNICK (CABN 168187)
Deputy Attorney General

Attorneys for Plaintiff People of the State of California

Dated: 3/5/15



BRUCE H. WOLFE
Executive Officer
California Regional Water Quality Control Board
San Francisco Bay Region

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WE HEREBY CONSENT to the entry of this Consent Decree:


For Defendant Lehigh Southwest Cement Company:

Dated: March 11, 2015


By: KARI SARAGUSA
President, Region West
Lehigh Hanson

Approved as to Form:

Dated: March 12, 2015


By: NICOLE E. GRANQUIST (CABN 199017)
Downey Brand LLP

For Defendant Hanson Permanente Cement Inc.:

Dated: March 11, 2015


By: KARI SARAGUSA
President, Region West
Lehigh Hanson

Approved as to Form:

Dated: March 12, 2015


By: NICOLE E. GRANQUIST (CABN 199017)
Downey Brand LLP

Appendices to

U.S., et al. v. Lehigh Southwest Cement Co., et al.
Consent Decree

Appendix A

Discharger Information

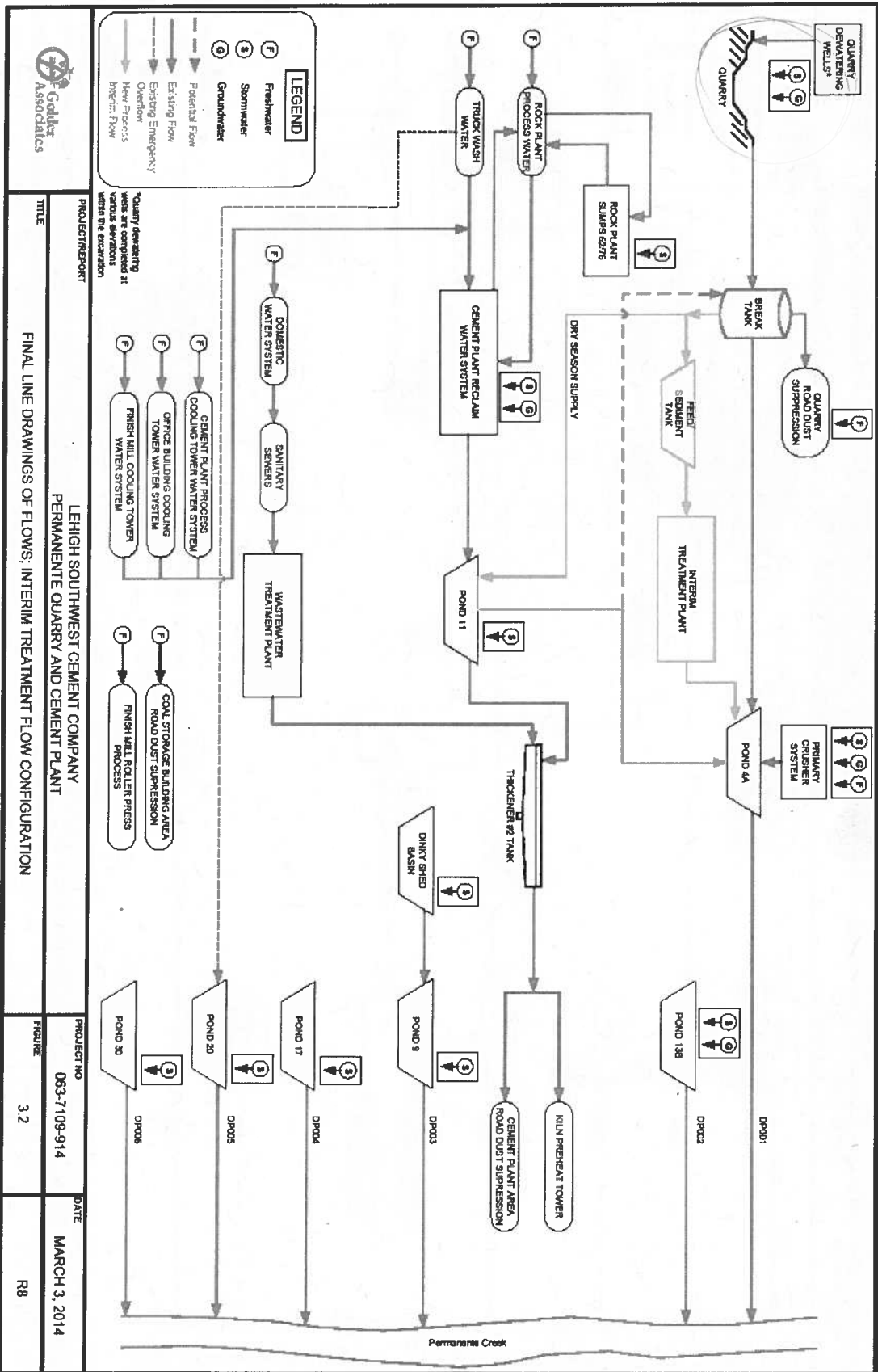
Discharger	Lehigh Southwest Cement Company & Hanson Permanente Cement, Inc.
Facility Name	Permanente Plant
Facility Address	24001 Stevens Creek Blvd. Cupertino, CA 95014 Santa Clara County

Discharge Point	Effluent Description	Discharge Point Latitude (North)	Discharge Point Longitude (West)	Receiving Water
001	Treated quarry dewatering water, primary crusher wash water, cement plant reclaim water system wastewater, rock plant aggregate wash water, truck wash water, non-storm water, and storm water discharged from Pond 4A	37.31713 °	-122.11165 °	Permanente Creek
002	Settled storm water, including storm water from crusher slope drainage area east of Pond 13B, discharged from Pond 13B	37.31674 °	-122.10167 °	Permanente Creek
003	Storm water from roads and hillsides, pumped from dinky shed basin and discharged from Pond 9	37.31339 °	-122.09058 °	Permanente Creek
004	Settled storm water discharged from Pond 17	37.31431 °	-122.08893 °	Permanente Creek
005	Settled storm water from aluminum plant, entry road, and nearby hillside, discharged from Pond 20	37.31899 °	-122.087159 °	Permanente Creek
006	Settled storm water from east materials storage area, discharged from Pond 30	37.32241 °	-122.08551 °	Permanente Creek

LEHIGH SOUTHWEST CEMENT COMPANY
PERMANENTE PLANT

Appendix B

ORDER No. R2-2014-0010
NPPDES No. CA0030210



LEGEND

- (F) Freshwater
- (S) Stormwater
- (G) Groundwater
- (P) Potentials Flow
- (E) Existing Flow
- (O) Existing Emergency Overflow
- (N) New Process Interm. Flow

Query dewatering wells are completed at various elevations within the excavation

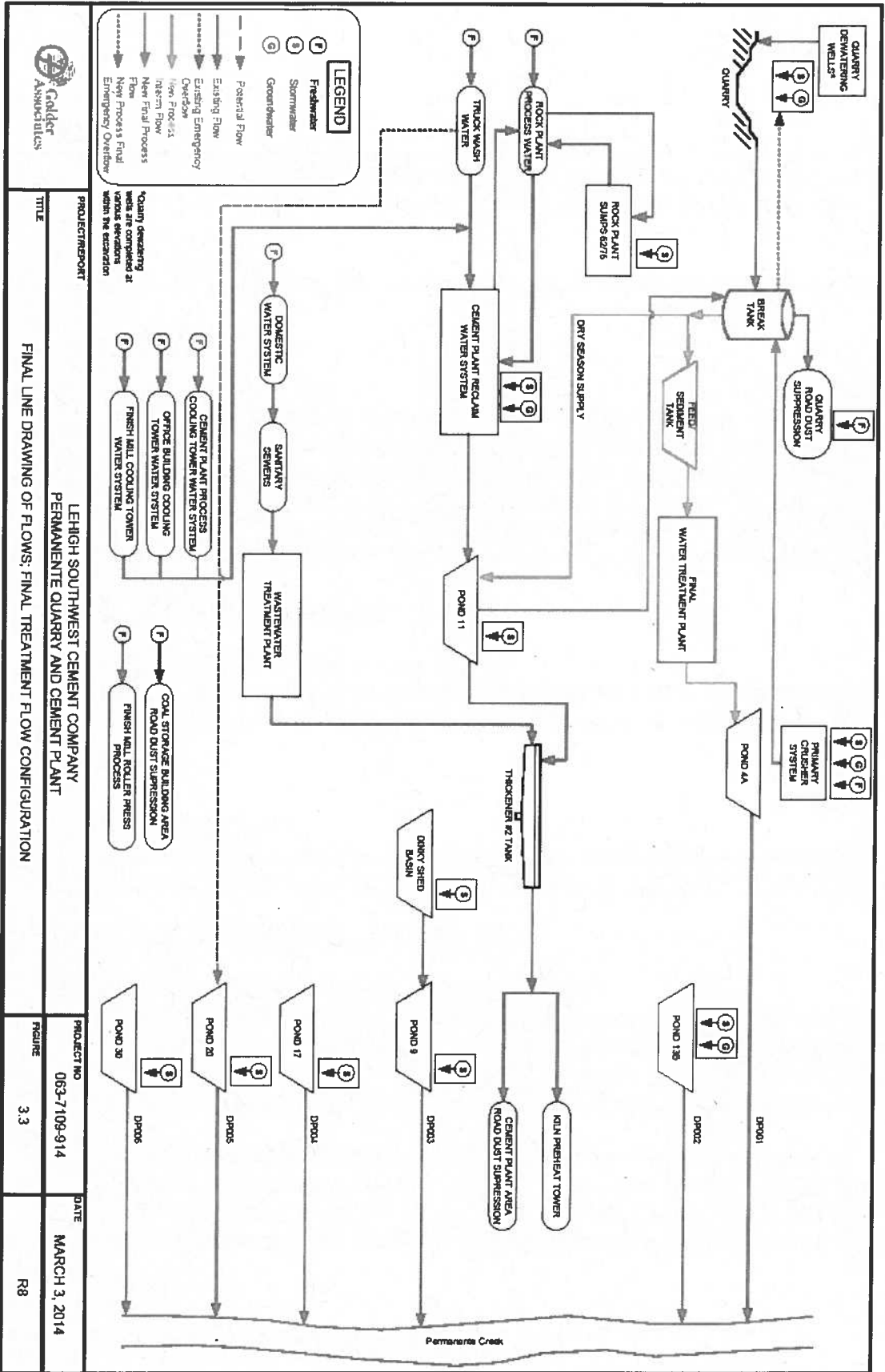
PROJECT/REPORT	LEHIGH SOUTHWEST CEMENT COMPANY PERMANENTE QUARRY AND CEMENT PLANT	
TITLE	FINAL LINE DRAWINGS OF FLOWS; INTERIM TREATMENT FLOW CONFIGURATION	
PROJECT NO	063-7109-914	DATE
FIGURE	3.2	MARCH 3, 2014
		R8

Attachment C-Process Flow Diagrams C-1 Through C-3

LEHIGH SOUTHWEST CEMENT COMPANY
PERMANENTE PLANT

Appendix C

ORDER No. R2-2014-0010
NPDES No. CA0030210



Attachment C-Process Flow Diagrams C-1 Through C-3