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San Francisco, CA 94105  
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U.S.EPA - Region 09  
21SEP2015 - 01:39PM  
\*\* FILED \*\*

UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
REGION IX  
75 HAWTHORNE STREET  
SAN FRANCISCO, CA 94105

In the Matter of: )  
Lehigh Southwest Cement Company, ) Docket No. EPCRA-09-2015- 0002  
Respondent. ) **CONSENT AGREEMENT AND FINAL**  
\_\_\_\_\_ ) **ORDER PURSUANT TO 40 C.F.R.**  
 ) **§§ 22.13 and 22.18**

I. CONSENT AGREEMENT

The United States Environmental Protection Agency, Region IX ("EPA") and Lehigh Southwest Cement Company ("Respondent") agree to settle this matter and consent to the entry of this Consent Agreement and Final Order ("CAFO"), which simultaneously commences and concludes this matter in accordance with 40 C.F.R. §§ 22.13(b) and 22.18(b).

A. AUTHORITY AND PARTIES

This is a civil administrative penalty action instituted against Respondent pursuant to Section 325(c) of Title III of the Superfund Amendments and Reauthorization Act, 42 U.S.C. §§ 11001 et seq., also known as the Emergency Planning and Community Right-to-Know Act of 1986 (hereinafter "EPCRA") and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of

Permits, 40 C.F.R. Part 22, for violations of Section 313 of EPCRA, 42 U.S.C. § 11023, and its implementing regulations at 40 C.F.R. Part 372.

2. Complainant is the Assistant Director of the Air, Waste & Toxics Branch, Enforcement Division, EPA Region IX, who has been duly delegated the authority to commence and settle an enforcement action in this matter by EPA Regional Order R9-22-3-A, dated February 11, 2013.

3. Respondent is a California corporation that operates a cement manufacturing plant, also known as the Permanente Plant, located at 24001 Stevens Creek Boulevard, Cupertino, California.

#### **B. APPLICABLE STATUTES AND REGULATIONS**

4. Pursuant to Sections 313 and 328 of EPCRA, 42 U.S.C. §§ 11023 and 11048, EPA promulgated the Toxic Chemical Release Reporting: Community Right-to-Know Rule at 40 C.F.R. Part 372.

5. Section 313(a) of EPCRA, 42 U.S.C. § 11023(a), as implemented by 40 C.F.R. § 372.30, provides that an owner or operator of a facility that meets the criteria set forth in EPCRA Section 313(b), 42 U.S.C. § 11023(b), and 40 C.F.R. § 372.22, is required to submit annually to the Administrator of EPA and to the State in which the facility is located, no later than July 1<sup>st</sup> of each year, a Toxic Chemical Release Inventory Reporting Form (hereinafter "Form R") published under Section 313(g) of EPCRA, 42 U.S.C. § 11023(g), for each toxic chemical listed under 40 C.F.R. § 372.65 that was manufactured, processed or otherwise used at the facility during the preceding calendar year in quantities exceeding the thresholds established under EPCRA Section 313(f), 42 U.S.C. § 11023(f), and 40 C.F.R. §§ 372.25 and 372.28.

6. Section 313(b) of EPCRA, 42 U.S.C. § 11023(b), and 40 C.F.R. § 372.22 provide that the requirements of Section 313(a) and 40 C.F.R. § 372.30 apply to an owner or operator of

*In re: Lehigh Southwest Cement Company, 2015 EPCRA section 313, page 2*

a facility that has 10 or more full-time employees; that is in the North American Industrial Classification System (NAICS) sector code 327 – Nonmetallic Mineral Product Manufacturing (except portions of NAICS code 327112); and that manufactures, processes, or otherwise uses one or more toxic chemicals listed under Section 313(c) of EPCRA, 42 U.S.C. § 11023(c), and 40 C.F.R. § 372.65 in quantities exceeding the applicable thresholds established under EPCRA Section 313(f), 42 U.S.C. § 11023(f), and 40 C.F.R. §§ 372.25 and 372.28.

7. Section 313(g)(1)(B) of EPCRA, 42 U.S.C. § 11023(g)(1)(B), provides that Form Rs must include certification regarding the accuracy and completeness of the information provided therein.

8. Section 325(c) of EPCRA, 42 U.S.C. § 11045(c), and 40 C.F.R. Part 19 authorizes EPA to assess a penalty of up to \$37,500 for each violation of Section 313 of EPCRA that occurred after January 12, 2009

### C. ALLEGATIONS

9. Respondent is a California corporation and therefore is a “person” as that term is defined by Section 329(7) of EPCRA, 42 U.S.C. § 11049(7).

10. At all times relevant to this matter, Respondent was an operator of a “facility,” as that term is defined at Section 329(4) of EPCRA, 42 U.S.C. § 11049(4), and 40 C.F.R. § 372.3, which is located at 24001 Stevens Creek Boulevard, Cupertino, California (hereinafter the “Facility”).

11. At all times relevant to this matter, the Facility had 10 or more “full-time employees,” as that term is defined at 40 C.F.R. § 372.3, and is classified in NAICS code 327310, which is in the NAICS sector code 327 – Nonmetallic Mineral Product Manufacturing.

12. At all times relevant to this matter, Respondent “manufactured” or “processed” at the Facility, as those terms are defined in 40 C.F.R. § 372.3, nickel compounds

(chemical category number N495), thallium compounds (chemical category number N760), lead compounds (chemical category number N420) and mercury compounds (chemical category number N458), which are each a toxic chemical listed under 40 C.F.R. § 372.65.

13. The threshold for reporting nickel compounds and thallium compounds “manufactured” or “processed” at the Facility is 25,000 pounds, as established under Section 313(f) of EPCRA, 42 U.S.C. § 11023(f), and 40 C.F.R. § 372.25.

14. The threshold for reporting lead compounds “manufactured” or “processed” at the Facility is 100 pounds, as established under Section 313(f) of EPCRA, 42 U.S.C. § 11023(f), and 40 C.F.R. § 372.28.

15. The threshold for reporting mercury compounds “manufactured” or “processed” at the Facility is 10 pounds, as established under Section 313(f) of EPCRA, 42 U.S.C. § 11023(f), and 40 C.F.R. § 372.28.

16. During the calendar years 2009 and 2010, Respondent “manufactured” or “processed” over 25,000 pounds of nickel compounds and thallium compounds, over 100 pounds of lead compounds, and over 10 pounds of mercury compounds at the Facility.

17. Therefore, Respondent was required to submit a complete and accurate Form R for nickel compounds, thallium compounds, lead compounds, and mercury compounds to EPA and the State of California for calendar years 2009 and 2010 on or before July 1 of the following year, respectively.

#### COUNTS 1-4

18. Respondent failed to submit a Form R for nickel compounds and thallium compounds for calendar years 2009 and 2010 to EPA and the State of California on or before July 1 of the following year.

19. Respondent's failure to submit Form Rs for nickel compounds and thallium compounds for calendar years 2009 and 2010 to EPA and the State of California on or before July 1 of the following year constitutes four violations of Section 313 of EPCRA, 42 U.S.C. § 11023, and 40 C.F.R. Part 372.

#### COUNTS 5-8

20. Respondent submitted Form Rs for lead compounds and mercury compounds for calendar years 2009 and 2010 to EPA and the State of California on or before July 1 of the following year but those Form Rs were not complete and accurate.

21. Respondent's failure to submit complete and accurate Form Rs for lead compounds and mercury compounds for calendar years 2009 and 2010 to EPA and the State of California on or before July 1 of the following year constitutes four violations of Section 313 of EPCRA, 42 U.S.C. § 11023, and 40 C.F.R. Part 372.

#### **D. RESPONDENT'S ADMISSIONS**

22. In accordance with 40 C.F.R. § 22.18(b)(2) and for the purpose of this proceeding, Respondent (a) admits that EPA has jurisdiction over the subject matter of this CAFO and over Respondent; (b) neither admits nor denies the specific factual allegations contained in Section I.C of this CAFO; (c) consents to any and all conditions specified in this CAFO and to the assessment of the civil administrative penalty under Section I.G of this CAFO; (d) waives any right to contest the allegations contained in Section I.C of this CAFO; and (e) waives the right to appeal the proposed final order contained in this CAFO.

#### **E. RESPONDENT'S CERTIFICATION**

23. In executing this CAFO, Respondent certifies that (a) it has now fully completed and submitted to EPA all of the required Form Rs in compliance with Section 313 of

EPCRA and the regulations promulgated thereunder; and (b) it has complied with all other EPCRA requirements at all facilities under its control.

#### **F. SUPPLEMENTAL ENVIRONMENTAL PROJECTS**

24. Consistent with this Section, Respondent shall perform the following supplemental environmental projects (SEPs): (a) an Emergency Response Equipment Project (“Equipment Project”) and (b) the Permanente Conveyor Belt Improvement Project (“Conveyor Project”).

##### Equipment Project

25. Within ninety (90) calendar days of the Effective Date of this CAFO, Respondent shall purchase and coordinate the donation and delivery of the emergency response equipment identified in Attachment A to the Santa Clara County Fire Department (SCCFD, ATTN: Chief John Justice). The parties agree that this project is intended to secure significant environmental and public health protection and benefits. The purchase of this equipment for SCCFD will enhance its ability to respond to and prepare for emergencies involving chemicals that are regulated pursuant to Section 313 of EPCRA and the regulations promulgated thereunder at 40 C.F.R. Part 372.

##### Conveyor Project

26. Within one year of the Effective Date of this CAFO, Respondent shall fully cover and enclose its clinker cake conveyor belt (6BC10), which is approximately seventy (70) feet long and thirty-six (36) inches wide. The new system shall include new covers, sealed inspection ports, and specialized dust/debris collectors consistent with the design blueprint included as Attachment B. EPA and Respondent agree that this SEP is intended to result in benefit to the environment and public health by preventing the fine-grained material conveyed on the belt from escaping as fugitive dust.

### General Requirements

27. Six (6) months after the Effective Date of this CAFO, Respondent shall provide a status report to the EPA regarding any outstanding SEP set forth in Section I.F. for which a SEP Completion Report has not yet been submitted. The status report shall include:

- a. a brief description of the work undertaken during the reporting period;
- b. compliance with the schedules and milestones set forth in Section I.F. of this CAFO; and
- c. a summary of costs incurred.

28. If Respondent fails to meet, or has reason to believe that it will fail to meet, any requirement of Section I.F. of this CAFO, Respondent shall notify EPA of such failure and its likely duration in writing within seven (7) business days of the day Respondent first becomes aware of the failure, with an explanation of the failure's likely cause and of the remedial steps taken, or to be taken, to prevent or minimize such failure. If the cause of a failure cannot be fully explained at the time this report is due, Respondent shall so state in the report. Respondent shall then investigate the cause of the failure and shall submit a report that includes a full explanation of the cause of the failure, within thirty (30) calendar days of the day Respondent becomes aware of the cause of the failure.

29. Not later than thirty (30) calendar days after completion of each of the SEPs, Respondent shall submit to EPA a SEP Completion Report for the completed SEP that includes (a) all of the information specified for the status report, as described in Paragraph 27; (b) an itemized list of all SEP costs and copies of supporting documentation verifying Respondent's expenditures for the SEP (including copies of receipts, invoices, purchase orders and/or contracts); and (c) a discussion of any issues or challenges that arose during SEP implementation and how such issues were resolved (or not resolved and reasons therefore).

30. After receipt of an original SEP Completion Report, EPA shall notify Respondent, in writing, (a) of its determination that the SEP has been satisfactorily completed; (b) of its determination that the SEP has not been satisfactorily completed along with a grant of an additional thirty (30) calendar days for Respondent to correct any identified deficiencies in the SEP and provide an initial revised SEP Completion Report; or (c) provide notice regarding any deficiencies in the SEP Completion Report itself along with a grant of an additional thirty (30) calendar days for Respondent to correct any identified deficiencies in the Report and provide an initial revised SEP Completion Report.

31. After receipt of an initial revised SEP Completion Report, following a notification made by EPA pursuant to Paragraphs 30(b) or 30(c), EPA shall notify Respondent, in writing, of its determination of whether a SEP has been satisfactorily completed or not, and provide thirty (30) calendar days for Respondent to correct any identified deficiencies and submit a final revised SEP Completion Report if EPA's determination is that a SEP has not been satisfactorily completed.

32. For purposes of this Paragraph, "satisfactory completion" or "satisfactorily completed" means that Respondent: (a) completed the Equipment Project as described in Paragraph 25 within ninety (90) calendar days of the Effective Date of this CAFO; (b) completed the Conveyor Project as described in Paragraph 26 within one year of the Effective Date of this CAFO; and (c) complied with all reporting requirements set forth in this Section of the CAFO.

33. If EPA identifies a deficiency in one or both of the SEPs and/or SEP Completion Reports, pursuant to either Paragraphs 30 or 31, Respondent shall make corrections to the SEP(s) and/or modify the SEP Completion Report(s) in accordance with the schedule specified by this CAFO and EPA.

34. Respondent agrees that failure to submit any report required by Paragraphs 27 through 29 shall be deemed a violation of this CAFO, and Respondent may be subject to

stipulated penalties pursuant to Section I.H.

35. Any report submitted to EPA under Section I.F of this CAFO shall be signed by a responsible official of the Respondent, as defined below, and shall include the following certification:

*I certify under penalty of law that I have examined and am familiar with the information submitted in this document and all attachments and that this document and its attachments were prepared under my direction in a manner designed to ensure that qualified and knowledgeable personnel properly gather and present the information contained therein. I further certify, based on my personal knowledge or on my inquiry of those individuals immediately responsible for obtaining the information, that to the best of my knowledge the information is true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fines and imprisonment for knowingly and willfully submitting a material false statement.*

A responsible official is defined, in pertinent part, as:

for a corporation, a president, secretary, treasurer or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy or decision-making functions for the corporation; or the manager of one or more manufacturing, production, or operating facilities employing more than 250 persons or having gross annual sales or expenditures exceeding \$35 million (in 1987 dollars when the Consumer Price Index was 345.3), if authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures;

36. Respondent shall continuously use the conveyor hooding, described in Paragraph 26, in a manner that minimizes fugitive dust emissions, for not less than five (5) years subsequent to its installation, unless operations of the Facility cease before expiration of this timeframe, in which case use of the conveyor hooding will not be required so long as the Facility remains non-operational for the remainder of the (5) five year period.

37. Respondent shall maintain legible copies of the underlying documentation for the reports submitted to EPA pursuant to this CAFO for a period of 3 years following completion

of each SEP and shall provide such documentation to EPA not more than ten (10) business days after a request for such information.

38. In executing the SEPs, Respondent certifies that, as of the date of executing this CAFO:

- a. That all cost information provided to EPA in connection with EPA's approval of the SEPs is complete and accurate and that Respondent in good faith estimates that the cost to implement the Equipment Project is \$48,848.17 and the cost to implement the Conveyor Project is at least \$95,400;
- b. Respondent is not required to perform or develop the SEPs by any federal, state, international or local law or regulation and is not required to perform or develop the SEPs by agreement, grant, or as injunctive relief awarded in any other action in any forum;
- c. Respondent has not received, and is not presently negotiating to receive, credit in any other enforcement action for the SEPs;
- d. Respondent will not receive reimbursement for any portion of the SEPs from another person or entity other than an entity within the Lehigh Hanson Inc. corporate structure;
- e. That for federal income tax purposes. Respondent agrees that it will neither capitalize into inventory or basis nor deduct any costs or expenditures incurred in performing the SEPs;
- f. Respondent is not a party to any open federal financial assistance transaction that is funding or could fund the same activity as the SEPs;
- g. Respondent has inquired of the SCCFD whether the SCCFD is a party to

an open federal financial assistance transactions that is funding or could fund the same activity as the Equipment Project and has been informed by the SCCFD that it is not a party to such a transaction; and

- h. The SEPs are not projects that Respondent was planning or intending to perform or implement other than in settlement of the claims resolved in this CAFO.

39 Any submission to EPA required under Section I.F of this CAFO shall be sent to:

Matt Salazar, Chief (ENF-2-2)  
Air and Toxics Group  
Enforcement Division  
U.S. Environmental Protection Agency, Region IX  
75 Hawthorne Street  
San Francisco, CA 94105  
Phone: (415) 947-4163  
Email: Salazar.matt@epa.gov

With a copy to:

Ivan Lieben (ORC-2)  
Office of Regional Counsel  
U.S. Environmental Protection Agency, Region IX  
75 Hawthorne Street  
San Francisco, CA 94105  
Phone: (415) 972-3914  
Email: lieben.ivan@epa.gov

40. Any submission to Respondent required under Section I.F of this CAFO shall be sent to:

Alan Sabawi  
Plant Manager, Permanente Facility  
Lehigh Southwest Cement Company  
24001 Stevens Creek Blvd.  
Cupertino, CA 95014  
Phone: (408) 996-4231  
Email: Alan.Sabawi@hanson.biz

With a copy to:

Ana N. Damonte  
Regional Counsel  
Lehigh Hanson  
12667 Alcosta Blvd, Suite 400  
San Ramon, CA 94583  
Phone: (925) 244-6542  
Email: Ana.Damonte@LehighHanson.com

And

Nicole E. Granquist  
Downey Brand LLP  
621 Capitol Mall, 18th Floor  
Sacramento, CA 95814  
Phone: (916) 444-1000  
Email: n.granquist@downeybrand.com

41. Any public statement, oral or written, in print, film, or other media, made by Respondent making reference to either of the SEPs under this CAFO shall include the following language: "This project was undertaken as part of a settlement of an enforcement action taken by the U.S. Environmental Protection Agency under Section 313 of the Emergency Planning and Community Right-to-Know Act."

#### **G. CIVIL ADMINISTRATIVE PENALTY**

42. Respondent agrees to the assessment of a civil penalty in the amount of FORTY-SEVEN THOUSAND, SIX HUNDRED DOLLARS (\$47,600) as final settlement of the civil claims against Respondent arising under EPCRA as alleged in Section I.C. Respondent shall pay the civil penalty within thirty (30) calendar days of the Effective Date of this CAFO and according to the terms of the CAFO. The assessed penalty shall be paid by certified or cashier's check, payable to "Treasurer, United States of America," or paid by one of the other methods listed below and sent as follows:

Regular Mail:

U.S. Environmental Protection Agency  
Fines and Penalties  
Cincinnati Finance Center  
PO Box 979077  
St. Louis, MO 63197-9000

Wire Transfers:

Wire transfers must be sent directly to the Federal Reserve Bank in New York City with the following information:

Federal Reserve Bank of New York  
ABA = 021030004  
Account = 68010727  
SWIFT address = FRNYUS33  
33 Liberty Street  
New York, NY 10045  
Field Tag 4200 of the Fedwire message should read "D 68010727 Environmental Protection Agency"

Overnight Mail.

U.S. Bank  
1005 Convention Plaza  
Mail Station SL-MO-C2GL  
ATTN Box 979077  
St. Louis, MO 63101

ACH (also known as REX or remittance express):

Automated Clearinghouse (ACH) for receiving US currency  
PNC Bank  
808 17th Street, NW  
Washington, DC 20074  
ABA = 051036706  
Transaction Code 22 – checking  
Environmental Protection Agency  
Account 31006  
CTX Format

On Line Payment:

This payment option can be accessed from the information below:

[www.pay.gov](http://www.pay.gov)

Enter "sf01.1" in the search field  
Open form and complete required fields

If clarification regarding a particular method of payment remittance is needed, contact the EPA Cincinnati Finance Center at 513-487-2091.

Concurrently, a copy of the check or notification that the payment has been made by one of the other methods listed above, including proof of the date payment was made, shall be sent with a transmittal letter indicating Respondent's name, the case title, and the docket number to:

- a) Regional Hearing Clerk  
Office of Regional Counsel (ORC-1)  
U.S. Environmental Protection Agency, Region IX  
75 Hawthorne Street  
San Francisco, California 94105
- b) Russell Frazer  
Enforcement Division (ENF 2-1)  
U.S. Environmental Protection Agency, Region IX  
75 Hawthorne Street  
San Francisco, CA 94105
- c) Ivan Lieben  
Office of Regional Counsel (ORC-2)  
U.S. Environmental Protection Agency, Region IX  
75 Hawthorne Street  
San Francisco, CA 94105

43. In accordance with the Debt Collection Improvement Act of 1982 and U.S. Treasury directive (TFRM 6-8000), the penalty payment must be received within thirty (30) calendar days of the Effective Date of this CAFO to avoid additional charges. If payment is not received within thirty (30) calendar days, interest will accrue from the Effective Date of this CAFO at the current rate published by the United States Treasury as described in 40 C.F.R. § 13.11(a). A late penalty charge will be imposed after thirty (30) calendar days with an additional charge for each subsequent 30-day period, in accordance with 40 C.F.R. § 13.11(b). A 6% per

annum penalty will further apply on any principal amount not paid within ninety (90) calendar days of the due date, as described at 40 C.F.R. § 13.11(c). Respondent further will be liable for stipulated penalties, as described in Section I.H of this CAFO, for any payment not received by its due date.

44. In addition, failure to pay the civil administrative penalty may lead to any or all of the following actions:

- a. The debt being referred to a credit reporting agency, a collection agency, or to the Department of Justice for filing of a collection action in the appropriate United States District Court. 40 C.F.R. §§ 13.13, 13.14, and 13.33. In any such collection action, the validity, amount, and appropriateness of the assessed penalty and of this CAFO shall not be subject to review.
- b. The debt being collected by administrative offset (*i.e.*, the withholding of money payable by the United States to, or held by the United States for, a person to satisfy the debt the person owes the Government), which includes, but is not limited to, referral to the Internal Revenue Service for offset against income tax refunds. 40 C.F.R. Part 13, Subparts C and H.
- c. EPA may (i) suspend or revoke Respondent's licenses or other privileges; or (ii) suspend or disqualify Respondent from doing business with EPA or engaging in programs EPA sponsors or funds. 40 C.F.R. § 13.17.

The penalties specified in this CAFO shall represent civil penalties assessed by EPA and shall not be deducted by the Respondent or any other person or entity for federal, state or local taxation purposes.

## **H. STIPULATED PENALTIES**

45. In addition to the interest and per annum penalties described in Paragraphs 43 and 44, above, in the event that Respondent fails to pay the full amount of the penalty assessed in Paragraph 42 within the time specified therein, Respondent shall pay EPA a stipulated penalty in the amount of five hundred dollars (\$500) for each day the default continues, upon written demand by EPA.

46. In the event that Respondent fails to comply with any of the terms or conditions of this CAFO relating to the performance of the SEPs, Respondent shall be liable for stipulated penalties according to the provisions set forth below:

- a. For failure to submit one of the required reports pursuant to Paragraphs 27-30, Respondent shall pay a stipulated penalty in the amount of two hundred dollars (\$200) for each calendar day that the report is late until the report is submitted;
- b. For failure to satisfactorily complete one or both of the SEPs, as described in Paragraphs 25, 26, and 30-33, Respondent shall pay, after the thirty (30) day corrective action periods specified in paragraphs 30(b) or 31 have elapsed for the particular SEP that was not satisfactorily completed, and the SEP remains not satisfactorily completed, a stipulated penalty in the amount of one thousand dollars (\$1,000) per calendar day per project that the project is not satisfactorily completed;
- c. Total stipulated penalties accrued pursuant to Paragraphs 45.a and 45.b shall not exceed the following amount: (i) \$61,060 for stipulated penalties

related to the Equipment Project SEP; and (ii) \$119,250 for stipulated penalties related to the Conveyor Project SEP; and

- d. Where a SEP has not been satisfactorily completed, but Respondent can demonstrate that the partially completed SEP provides some of the expected environmental and/or public health benefits, the EPA may, in its discretion, choose to reduce or waive stipulated penalties otherwise due under this CAFO.

47. All penalties shall begin to accrue on the date that performance is due or a violation of this CAFO occurs and shall continue to accrue through the final day of correction of the noncompliance. Nothing herein shall prevent the simultaneous accrual of separate penalties for separate violations.

48. All penalties owed to EPA under this Section shall be due within thirty (30) calendar days of Respondent's receipt of a notification of noncompliance and request for payment from EPA. Such notification shall describe the noncompliance and shall indicate the amount of penalties due. Interest at the current rate published by the United States Treasury, as described at 40 C.F.R. § 13.11, shall begin to accrue on the unpaid balance at the end of the thirty (30) day period.

49. Payment of stipulated penalties shall be made in accordance with the methods set forth for payment of the penalty in Section I.G of this CAFO.

50. All payments shall indicate the name of the Facility, Respondent's name and address, and the EPA docket number assigned to this action.

51. The stipulated penalties set forth in this Section do not preclude EPA from pursuing any other remedies or sanctions which may be available to EPA by reason of Respondent's failure to comply with any of the requirements of this CAFO.

52. Notwithstanding any other provision of this Section, EPA may, in its unreviewable discretion, waive all or any portion of stipulated penalties that have accrued pursuant to this CAFO.

53. The payment of stipulated penalties specified in this Section shall not be deducted by Respondent or any other person or entity for federal, state or local taxation purposes.

#### **I. RETENTION OF RIGHTS**

54. In accordance with 40 C.F.R. § 22.18(c), this CAFO only resolves Respondent's liability for federal civil penalties for the violations and facts specifically alleged in Section I.C of this CAFO. Nothing in this CAFO is intended to or shall be construed to resolve (i) any civil liability for violations of any provision of any federal, state, or local law, statute, regulation, rule, ordinance, or permit not specifically alleged in Section I.C of this CAFO; or (ii) any criminal liability. EPA specifically reserves any and all authorities, rights, and remedies available to it (including, but not limited to, injunctive or other equitable relief or criminal sanctions) to address any violation of this CAFO or any violation not specifically alleged in Section I.C of this CAFO.

55. This CAFO does not exempt, relieve, modify, or affect in any way Respondent's duty to comply with all applicable federal, state, and local laws, regulations, rules, ordinances, and permits, nor shall it be construed to be a ruling on, or determination of, any issue related to any federal, state or local permit, nor shall it be construed to constitute EPA approval

of the equipment or technology installed by Respondent in connection with the SEPs undertaken pursuant to this Agreement.

**J. ATTORNEYS' FEES AND COSTS**

56. Each party shall bear its own attorneys' fees, costs, and disbursements incurred in this proceeding.

**K. EFFECTIVE DATE**

57. In accordance with 40 C.F.R. §§ 22.18(b)(3) and 22.31(b), this CAFO shall be effective on the date that the final order contained in this CAFO, having been approved and issued by either the Regional Judicial Officer or Regional Administrator, is filed.

**L. BINDING EFFECT**

58. The undersigned representative of Complainant and the undersigned representative of Respondent each certifies that he or she is fully authorized to enter into the terms and conditions of this CAFO and to bind the party he or she represents to this CAFO.

59. The provisions of this CAFO shall apply to and be binding upon Respondent and its officers, directors, employees, agents, trustees, servants, authorized representatives, successors, and assigns.

FOR RESPONDENT, LEHIGH SOUTHWEST CEMENT COMPANY:

AUGUST 28, 2015  
DATE

  
Kari Saragusa  
President  
Lehigh Southwest Cement Company

# ATTACHMENT A



267 East Airway Blvd  
Livermore, CA 94551  
Phone: 925-449-7210  
Fax: 925-449-7201

To:  
George Tsivikas  
Santa Clara County FD  
Phone: 415-515-7874  
Email: george.tsivikas@sccfd.org

Date: 7/27/2015

**Quotation Valid for 60 Days.**

**Attention: George Tsivikas**

<u>ITEM</u>	<u>QTY</u>	<u>DESCRIPTION</u>	<u>PRICE</u>	<u>AMOUNT</u>
1	6	Trelleborg VPS Flash Vapor Protective Suit Size Medium P/N 476520092 Size Large P/N 476520093 Size X Large P/N 476520094 Size XX Large P/N 476520095	\$2749.50	\$16,497.00
2	6	Anti Fog Lens, VP1 Size P/N 072270300	\$133.00	\$798.00
3	6	Exhaust Valve (Black) P/N 072131200	\$25.00	\$150.00
4	3	Ansell Barrier Glove w/Bayonet Ring Attachment, Pair P/N 072251410	\$24.00	\$72.00
5	1	Pressure Test Kit (Encapsulated) P/N 487090077		<u>\$470.00</u>
		Sub Total		\$17,987.00
		Sales Tax 8.75%		\$1,573.86
		Shipping & Handling		<u>\$150.00</u>
		Total		\$19,710.86

# BAUER COMPRESSORS

267 East Airway Blvd  
Livermore, CA 94551  
Phone: 925-449-7210  
Fax: 925-449-7201

To:  
George Tsivikas  
Santa Clara County FD  
Phone: 415-515-7874  
Email: george.tsivikas@sccfd.org

Date: 6/16/15

**Quotation Valid for 60 Days.**

**Attention: George Tsivikas**

ITEM	QTY	DESCRIPTION	PRICE	AMOUNT
1	6	Trelleborg EVO (HPS) Vapor Protective Suit Size Medium P/N 477520062 Size Large P/N 477520063 Size X Large P/N 477520064 Size XX Large P/N 477520065	\$4,405.50	\$26,433.00
2	6	Exhaust Valve (Black) P/N 072131200	\$25.00	\$150.00
3	3	Ansell Barrier Glove w/Bayonet Ring Attachment, Pair P/N 072251410	\$24.00	\$72.00
		Sub Total		\$26,655.00
		Sales Tax 8.75%		\$2,332.31
		Shipping & Handling		\$150.00
		Total		\$29,137.31

Prices do not include shipping/handling charges or sales tax unless specified.  
**Quotation prices are valid for 60 days.** Call 925-449-7210 if past expiration date.

Thank you for the opportunity to submit this quotation. If you have any questions please give us a call.



FOR COMPLAINANT, EPA REGION IX:

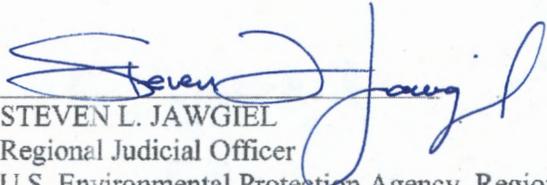
9/16/15  
DATE

  
\_\_\_\_\_  
JOEL JONES  
Assistant Director  
Air, Waste & Toxics Branch, Enforcement Division  
U.S. Environmental Protection Agency, Region IX

II. FINAL ORDER

IT IS HEREBY ORDERED that this CAFO (Docket No. EPCRA-09-2015-0002) be entered, and that Respondent shall comply with the terms and conditions set forth in the Consent Agreement. This CAFO shall become effective upon filing.

09/18/15  
DATE

  
STEVEN L. JAWGIEL  
Regional Judicial Officer  
U.S. Environmental Protection Agency, Region IX

**CERTIFICATE OF SERVICE**

I certify that the original and one copy of the foregoing Consent Agreement and Final Order, Docket Number EPCRA-09-2015-0002, was filed on September 21, 2015, with the Regional Hearing Clerk, U.S. EPA, Region IX, 75 Hawthorne Street, San Francisco, California 94105, and that a true and correct copy of the Consent Agreement and Final Order was placed in the United States Mail, certified mail, return receipt requested, addressed to the following:

Kari Saragusa  
President  
Lehigh Southwest Cement Company  
12667 Alcosta Blvd., Suite 400  
San Ramon, CA 94583  
Certified Return Receipt Article No: 7013 1090 0000 1618 3257

Nicole E. Granquist, Esq.  
Downey Brand, L.L.P.  
621 Capital Mall, 18<sup>th</sup> Floor  
Sacramento, CA 95814

Dated: \_\_\_\_\_

9/21/15

*For:*



Steve Armsey  
Regional Hearing Clerk  
Office of Regional Counsel  
United States Environmental Protection Agency  
Region IX