

This Settlement Agreement (Agreement) is entered into between the STATE OF CALIFORNIA AIR RESOURCES BOARD (ARB) 1001 I Street, Sacramento, California 95814, and LEHIGH SOUTHWEST CEMENT COMPANY (LEHIGH), 12667 Alcosta Blvd., Suite 400, San Ramon, California 94583. ("The Parties")

RECITALS

1. The Global Warming Solutions Act of 2006 authorized ARB to adopt regulations requiring the reporting and verification of greenhouse gas emissions. (Health & Saf. Code §38530.) Pursuant to that authority, ARB adopted the Regulation for the Mandatory Reporting of Greenhouse Gas Emissions (MRR), title 17, California Code of Regulations (CCR), §95100 et seq.
2. The MRR is crucial to the development of the greenhouse gas (GHG) inventory, and supports other regulatory programs, including the cap on GHG emissions established by title 17 CCR §95801 et seq., known as the Cap-and-Trade Regulation. The MRR requires most reporting entities to submit, by April 10 of each year, an emissions data report containing emissions and product data that is certified to be complete and accurate within stated standards. (17 CCR §95103.) The April 10 deadline is intended to precede other regulatory events later in the year, such as verification under the MRR, and the distribution of allowances and surrender of compliance instruments under the Cap-and-Trade Regulation.
3. Where a report required under the MRR is late or does not meet the regulation's standards for accuracy, completeness, or third-party verification, the MRR provides that each day a report remains unsubmitted, incomplete or inaccurate constitutes a separate violation. (17 CCR §95107.)
4. California Health & Safety Code sections 38580 and 42402 provide that one who violates the MRR or related regulations is strictly liable for a penalty of up to \$10,000 for each violation.
5. ARB contends that for the reporting period 2011 LEHIGH, with regard to its facilities at Cupertino and Redding, failed to comply with the MRR by certifying its emissions reports after the deadline. In addition, the reports did not conform in all regards to the requirements in title 17 CCR §§95103 and 95105, which resulted in an adverse verification finding. As a result, ARB was obligated to conduct its own review and to assign an emissions level for the facilities. The assigned emissions levels were within 1% of the reported emissions.
6. In reaching this settlement, ARB considered a variety of circumstances, including the size and complexity of the violator's operations, the nature, magnitude, and duration of the violation, any harm to the environment or the regulatory program, efforts the violator took to prevent the violation and to correct it, and the financial burden to the violator.
7. In this matter, there were a number of mitigating factors, including that this is the first time ARB has noted the company as being in violation, the company cooperated in providing additional data, emissions were not under reported, the company's explanation indicates an innocent error, and the company has agreed to submit an updated GHG monitoring plans to ARB to demonstrate that reporting will be accurate in future reporting years.

8. In order to resolve these alleged violations, LEHIGH has taken, or agreed to take, the actions enumerated below. Further, ARB accepts this Agreement in termination and settlement of this matter.

9. In consideration of the foregoing, and of the promises and facts set forth herein, the parties desire to settle and resolve all claims, disputes, and obligations relating to the above-listed violations, and voluntarily agree to resolve this matter by means of this Agreement. Specifically, ARB and LEHIGH agree as follows.

TERMS

10. Within 15 business days following execution of this agreement, LEHIGH shall deliver the sum of \$10,000.00 made payable to the "State of California."

The check should note "LEHIGH 2011 MRR settlement" in the memo section. Please submit the signed settlement agreement and check to:

Mr. Will Brieger
Air Resources Board, Office of Legal Affairs
P.O. Box 2815
Sacramento, CA 95812

11. It is further agreed that the penalties described in the prior paragraph are punitive in nature, rather than compensatory. Furthermore, the penalty is intended to deter and punish LEHIGH for violations of the MRR, and these penalties are payable to a governmental unit. Therefore, it is agreed that these penalties imposed on LEHIGH by ARB arising from the facts described in recital paragraphs 1 – 9 are non-dischargeable under 11 United States Code § 523, (a)(7), which provides an exception from discharge for any debt to the extent such debt is for a fine, penalty or forfeiture payable to and for benefit of governmental unit, and is not compensation for actual pecuniary loss, other than certain types of tax penalties.

12. LEHIGH shall not violate the MRR, title 17 CCR section 95100 et seq.

13. Within 60 days of executing this Agreement, LEHIGH shall submit to ARB an updated Greenhouse Gas Monitoring Plan for each facility that meets the requirements of 17 CCR section 95105(c), and that addresses any omissions and errors in the gathering and reporting of information identified by a verifier or ARB in connection with reporting emissions from the year 2011.

14. This Agreement shall apply to and be binding upon LEHIGH, and its officers, directors, receivers, trustees, employees, successors and assignees, subsidiary and parent corporations and upon ARB and any successor agency that may have responsibility for and jurisdiction over the subject matter of this Agreement.

15. This Agreement is a compromise of disputed claims as to which the Parties have not had an opportunity to present all their claims and evidence. This Agreement fully and finally settles

all allegations herein relating to the MRR for the year 2011 by the ARB against LEHIGH, and prevents any further actions against LEHIGH regarding such claims. The Parties agree that, in light of the expense of litigation and the uncertainty of any possible verdict, the amount of monies paid should not be construed as anything other than the compromise of disputed liability. Neither the payment of any consideration hereunder nor anything contained in this Agreement shall be interpreted or construed to be an admission on the part of, nor to the prejudice of, any person hereto.

16. This Agreement constitutes the entire agreement and understanding between ARB and LEHIGH concerning the subject matter hereof, and supersedes and replaces all prior negotiations and agreements between ARB and LEHIGH concerning the subject matter hereof.

17. No agreement to modify, amend, extend, supersede, terminate, or discharge this Agreement, or any portion thereof, is valid or enforceable unless it is in writing and signed by all parties to this Agreement.

18. Each provision of this Agreement is severable, and in the event that any provision of this Agreement is held to be invalid or unenforceable, the remainder of this Agreement remains in full force and effect.

19. This Agreement shall be interpreted and enforced in accordance with the laws of the State of California, without regard to California's choice-of-law rules.

20. This Agreement is deemed to have been drafted equally by the Parties; it will not be interpreted for or against either party on the ground that said party drafted it.

21. Health & Safety Code section 39619.7 requires ARB to explain the manner in which the penalty was determined, the law on which it is based, and whether that law prohibits emissions at a specified level. LEHIGH acknowledges that ARB has complied with section 39619.7 in investigating, prosecuting and settling this case. Specifically, ARB has considered all relevant facts, including those listed at Health & Safety Code section 42403, has explained the manner in which the penalty amount was calculated, has identified the provision of law under which the penalty is being assessed, which provision does not prohibit the emission of pollutants at a specified level. That information, some of which is also elsewhere in this settlement agreement, is summarized here.

The manner in which the penalty was determined. Penalties must be set at levels sufficient to deter violations. The penalties in this matter were determined based on all relevant circumstances, including the unique circumstances of this case, giving consideration to the eight factors specified in Health & Safety Code section 42403. Consideration was given to the reporting entity's size and complexity, the extent to which the monitoring and reporting deviated from MRR requirements, the cause of any errors and omissions, the magnitude of any errors, and whether emissions were over reported or under reported. Those circumstances were considered together with the need to remove any economic benefit from noncompliance, the goal of deterring future violations and obtaining swift compliance, penalties sought in other cases, and

the potential costs and risk associated with litigating these particular violations. Penalties in future cases might be smaller or larger.

In this matter the penalty was discounted based on the fact that the violation was a first time violation for this company, the company's emissions reports were ultimately deemed accurate within 1%, the company made diligent efforts to comply and to cooperate with ARB's investigation, and the company agreed to submit an updated Greenhouse Gas Monitoring Plan.

The legal provisions under which the penalty was assessed. The penalty is based on Health & Safety Code section 42402 and title 17 CCR section 95107, the provisions intended to govern MRR violations.

Whether the governing provisions prohibit emissions at a specified level. The MRR does not prohibit emissions above a stated level. Instead the MRR requires timely, accurate reporting of emissions.

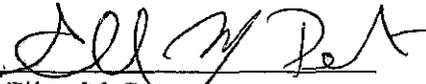
22. The penalty was based on confidential settlement communications between ARB and LEHIGH that ARB does not retain in the ordinary course of business. The penalty is the product of an arms length negotiation between ARB and LEHIGH and reflects ARB's assessment of the relative strength of its case against LEHIGH, the desire to avoid the uncertainty, burden and expense of litigation, obtain swift compliance with the law and remove any unfair advantage that LEHIGH may have secured from its actions.

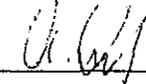
23. In consideration of the penalty payment and undertakings above, ARB hereby releases LEHIGH and its principals, officers, agents, predecessors and successors from any claims the ARB may have based on the circumstances described in paragraph 5, above.

24. The undersigned represent that they have the authority to enter into this Agreement.

California Air Resources Board

Lehigh Southwest Cement Co.

By: 
Ellen M. Peter
Chief Counsel

By: 
Name: Axel Contreras
Title: VP Gen'l Op. Reg. Aff. Aff.

Date: 4/12/2013

Date: April 12, 2013