

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION VII  
901 NORTH FIFTH STREET  
KANSAS CITY, KANSAS 66101

IN THE MATTER OF: ) AGREEMENT FOR RECOVERY OF  
 ) PAST RESPONSE COSTS AND FOR  
Lehigh Portland Cement Company Site ) COMPENSATION FOR NATURAL  
Cerro Gordo County, Iowa ) RESOURCE DAMAGES  
 )  
 ) CERCLA Docket No. 07-2001-0006  
Lehigh Portland Cement Company )  
 ) PROCEEDING UNDER SECTION  
Settling Party. ) 122(h)(1) of CERCLA 42 U.S.C.  
 ) § 9622(h)(1)

**I. JURISDICTION**

1. This Agreement is entered into pursuant to the authority vested in the Administrator of U.S. Environmental Protection Agency ("EPA") by Section 122 (h)(1) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended ("CERCLA"), 42 U.S.C. § 9622(h)(1), which authority has been delegated to the Regional Administrators of the EPA by EPA Delegation No. 14-14-D. The Regional Administrator, EPA Region VII, has further delegated this authority to the Director of the Superfund Division, EPA, Region VII, by Delegation No. R7-14-14-D. This Agreement is also entered into pursuant to the authority of the United States, on behalf of the United States Department of Interior ("DOI"), on behalf of the United States Fish and Wildlife Service, which by Executive Order 12580, as amended by Executive Order 13016, 61 Fed. Reg. 45872 (August 30, 1996), has been delegated with the authority vested in the President as Federal Trustee for natural resources that may have been, or in the future may be, injured by the release of hazardous substances at or from the Lehigh Portland Cement Company Superfund Site. The portion of this Agreement related to Natural Resource Damages is further entered into pursuant to the inherent authority of the Attorney General of the United States to compromise and settle claims of the United States, which authority, in the circumstances of this settlement, has been

delegated to the Assistant Attorney General, Environment and Natural Resources Division.

2. This Agreement is made and entered into by the EPA, the United States on behalf of the Federal Trustee, and the Lehigh Portland Cement Company ("Settling Party"). The Settling Party consents to and will not contest the jurisdiction of the EPA, the United States on behalf of the Federal Trustee, to enter into this Agreement or to implement or enforce its terms.

## **II. BACKGROUND**

3. This Agreement concerns the Lehigh Portland Cement Company Superfund Site ("Site") located in Mason City, Cerro Gordo County, Iowa, as defined in Paragraph 9(j) herein. The EPA, and the United States on behalf of the Federal Trustee, allege that the Site is a "facility" as defined by Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

4. The EPA, and the United States on behalf of the Federal Trustee, allege that hazardous substances within the definition of Section 101(14) of CERCLA, 42 U.S.C. § 9601(14), have been, or are threatening to be, released into the environment at or from the Site.

5. In response to the release or threatened release of hazardous substances at or from the Site, the EPA undertook response actions at the Site pursuant to Section 104 of CERCLA, 42 U.S.C. § 9604, including the investigation of the Site and oversight of the Settling Party's performance of response activities under the terms of an administrative order issued by the EPA (Docket No. VII-92-F-0031).

6. The release or threatened release of hazardous substances at the Site may have injured, or may injure, Natural Resources within the meaning of Section 107(a) of CERCLA, 42 U.S.C. § 9607(a).

7. The EPA incurred costs for the response actions taken at or in connection with the Site.

8. The EPA, and the United States on behalf of the Federal Trustee, allege that the Settling Party is a responsible party pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), for response costs incurred at or in connection with the Site.

9. The EPA, the United States on behalf of the Federal Trustee, and the Settling Party desire to resolve the Settling Party's alleged civil liability for the EPA's Past Response Costs, and for Natural Resource Damages, incurred or to be incurred at or in connection with the Site, without litigation and without the admission or adjudication of any issue of fact or law.

### **III. PARTIES BOUND**

10. This Agreement shall be binding upon the EPA, upon the United States on behalf of the Federal Trustee, and upon the Settling Party and its successors and assigns. Any change in ownership or corporate or other legal status of the Settling Party, including, but not limited to, any transfer of assets or real or personal property, shall in no way alter the Settling Party's responsibilities under this Agreement. Each signatory to this Agreement certifies that he or she is authorized to enter into the terms and conditions of this Agreement and to bind legally the party represented by him or her.

### **IV. DEFINITIONS**

11. Unless otherwise expressly provided herein, terms used in this Agreement which are defined in CERCLA or in regulations promulgated under CERCLA have the meaning assigned to them in CERCLA or in such regulations. Whenever terms listed below are used in this Agreement or in any appendix attached hereto, the following definitions shall apply:

a. "CERCLA" shall mean the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. § 9601, et seq.

b. "Day" shall mean a calendar day. In computing any period of time under this Agreement, where the last day would fall on Saturday, Sunday, or federal holiday, the period shall run until the close of business the next working day.

c. "DOI" shall mean the United States Department of Interior and any successor departments, agencies, or instrumentalities of the United States.

d. "EPA" shall mean the United States Environmental Protection Agency and any successor departments, agencies or instrumentalities of the United States.

e. "Federal Trustee" shall mean the United States Department of Interior acting on behalf of the Fish and Wildlife Service.

f. "Interest" shall mean interest at the current rate specified for interest on investments of Hazardous Substance Superfund established by 26 U.S.C. § 9507, compounded annually on October 1 of each year, in accordance with 42 U.S.C. § 9607(a).

g. "Natural Resources" shall have the meaning provided in Section 101(16) of CERCLA, 42 U.S.C. § 9601(16).

h. "Natural Resource Damages" means damages, including costs of damages assessment, recoverable under Section 107 of CERCLA, 42 U.S.C. § 9607, for injury to, destruction of, or loss of any and all Natural Resources at or relating to the Site.

i. "Paragraph" shall mean a portion of this Agreement identified by an arabic numeral or a lower case letter.

j. "Parties" shall mean the United States, the EPA, and the Settling Party.

k. "Past Response Costs" shall mean all costs, including but not limited to direct and indirect costs, that the EPA or the U.S. Department of Justice, on behalf of the EPA, has paid at or in connection with the Site through May 31, 2000, plus accrued Interest on all such costs through such date.

l. "Section" shall mean a portion of this Agreement identified by a roman numeral.

m. "Settling Party" shall mean the Lehigh Portland Cement Company.

n. "Site" shall mean the Lehigh Portland Cement Company Superfund Site, encompassing a portion of the Lehigh Cement manufacturing plant and portions of a public outdoor recreation area known as the Line Creek Nature Center, located north of Mason City in Cerro Gordo County, Iowa, as depicted generally on the maps attached as Appendix A.

o. "United States" shall mean the United States of America.

## **V. PAYMENT**

12. Within 30 days of the effective date of this Agreement, the Settling Party shall pay to the EPA Hazardous Substance Superfund \$640,000 in reimbursement of Past

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0007020

**Response Costs and to the Natural Resources Damage Assessment and Restoration Fund  
\$35,000 for Natural Resource Damages**

13. Payments to the Hazardous Substance Superfund shall be made by certified or cashier's check made payable to "EPA Hazardous Substance Superfund." Each check shall reference the name and address of the Settling Party, the Site name ("Lehigh Portland Cement Company Site"), the EPA Region and Site/Spill ID Number assigned to the Site ("07CM") and the EPA docket number for this action (07-2001-0006) and shall be sent to:

Mellon Bank  
Attn: Superfund Accounting  
EPA Region VII  
(Comptroller Branch)  
P.O. Box 360748M  
Pittsburgh, PA 15251

Payments to the Natural Resource Damage Assessment and Restoration Fund shall be made by certified or cashier's check made payable to the "Department of the Interior." The following information must be included with each check: the account number "14X5198 (NRDAR)", the Site name ("Lehigh Portland Cement Company Site"), the location of the Site ("Mason City, Iowa"), and the paying party. Checks should be sent to:

Department of Interior  
NBC/Division of Financial Management Services  
Branch of Accounting Operations  
Mail Stop 1313  
1849 C St. NW  
Washington, D.C. 20240

14. At the time of payment to the Hazardous Substance Superfund and/or the Natural Resource Damage and Assessment Fund, the Settling Party shall send notice that such payment has been made to:

Barbara L. Peterson  
Assistant Regional Counsel  
U.S. Environmental Protection Agency, Region VII

901 N. 5<sup>th</sup> Street  
Kansas City, KS 66101

John C. Cruden  
Acting Assistant Attorney General  
Environment and Natural Resources Division  
U. S. Department of Justice  
Washington, D.C. 20530

(For Superfund Payments)  
Michael J. Sanderson  
Director, Superfund Division  
U. S. Environmental Protection Agency, Region VII  
901 N. 5<sup>th</sup> Street  
Kansas City, KS 66101

(For Natural Resource Damages Payments)  
Department of the Interior  
Natural Resource Damage Assessment and Restoration  
Program  
Attn: Restoration Fund Manager  
1849 C Street, NW  
Mail Stop 4449  
Washington, D.C. 20240

## **VI. FAILURE TO COMPLY WITH AGREEMENT**

15. In the event that any payment required by Paragraph 12 is not made when due, Interest shall continue to accrue on the unpaid balance from the date payment is due through the date of payment.

16. If any amounts due to the EPA under Paragraph 12 are not paid by the required date, the Settling Party shall pay to the EPA, as a stipulated penalty, in addition to the Interest required by Paragraph 15, \$500.00 per day that such payment is late.

17. Stipulated penalties are due and payable within 30 days of the date of demand for payment of the penalties. All payments to the EPA made under this

Paragraph shall be identified as "stipulated penalties" and shall be made in accordance with Paragraphs 13 and 14.

18. Penalties shall accrue as provided above regardless of whether EPA has notified the Settling Party of the violation or made a demand for payment, but need only be paid upon demand. All penalties shall begin to accrue on the day after performance is due, or the day a violation occurs, and shall continue to accrue through the final day of correction of the noncompliance or completion of the activity. Nothing herein shall prevent the simultaneous accrual of separate penalties for separate violations of this Agreement.

19. In addition to the Interest and Stipulated Penalty payments required by this Section and any other remedies or sanctions available to EPA or the United States by virtue of the Settling Party's failure to comply with the requirements of this Agreement, the Settling Party's failure or refusal to comply with any term or condition of this Agreement shall be subject to enforcement action pursuant to Section 122(h)(3) of CERCLA, 42 U.S.C. § 9622(h)(3). If the United States, on behalf of the EPA or the Federal Trustee, brings an action to enforce this Agreement, the Settling Party shall reimburse the United States for all costs of such action, including but not limited to costs of attorney time.

20. Notwithstanding any other provision of this Section, the EPA may, in its unreviewable discretion, waive payment of any portion of the stipulated penalties that have accrued pursuant to this Agreement.

**VII. COVENANTS NOT TO SUE BY EPA  
AND BY THE UNITED STATES ON BEHALF OF THE FEDERAL TRUSTEE**

21. Except as specifically provided in Section VIII (RESERVATIONS OF RIGHTS), the EPA covenants not to sue the Settling Party pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), to recover Past Response Costs. This covenant shall take effect upon receipt by the EPA of all amounts required by paragraphs 12, 15 and 16. This covenant not to sue is conditioned upon the satisfactory performance by the Settling Party of its obligations under this Agreement. This covenant not to sue extends only to the Settling Party and does not extend to any other person.

22. Except as specifically provided in Section VIII (RESERVATIONS OF RIGHTS), the United States on behalf of the Federal Trustee covenants not to sue the Settling Party pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), to recover

Natural Resource Damages. This covenant shall take effect upon receipt by the Natural Resource Damage Assessment and Restoration Fund of all amounts required by paragraphs 12, 15 and 16. This covenant not to sue is conditioned upon the satisfactory performance by the Settling Party of its obligations under this Agreement. This covenant not to sue extends only to the Settling Party and does not extend to any other person.

### **VIII. RESERVATIONS OF RIGHTS**

23. The covenants not to sue by the EPA and by the United States on behalf of the Federal Trustee set forth in Section VII do not pertain to any matters other than those expressly identified therein. The EPA and the United States on behalf of the Federal Trustee reserve, and this Agreement is without prejudice to, all rights against the Settling Party with respect to all other matters, including but not limited to:

- a. liability for failure of the Settling Party to meet a requirement of this Agreement;
- b. liability for costs incurred or to be incurred by the United States that are not within the definition of Past Response Costs or Natural Resource Damages;
- c. liability for injunctive relief or administrative order enforcement under Section 106 of CERCLA, 42 U.S.C. § 9606; and
- d. criminal liability.

24. Notwithstanding any other provision of this Agreement, the United States, on behalf of the Federal Trustee, reserves the right to institute proceedings against the Settling Party in this action or in a new action seeking recovery of Natural Resource Damages, based on (1) conditions with respect to the Site, unknown to the United States at the date of lodging of this Agreement, that result in releases of hazardous substances that contribute to injury to, destruction of, or loss of Natural Resources, or (2) information received after the date of lodging of the Agreement which indicates that there is injury to, destruction of, or loss of Natural Resources of a type that was unknown, or of a magnitude greater than was known, to the United States at the date of the lodging of this Agreement.

25. Except as provided in Paragraph 33, nothing in this Agreement is intended to be nor shall it be construed as a waiver of any defense(s) which the Settling Party may

have against the EPA and/or the United States with regard to any claim or matter other than Past Response Costs or Natural Resource Damages as defined in this Agreement.

26. Nothing in this Agreement is intended to be nor shall it be construed as a release, covenant not to sue, or compromise of any claim or cause of action, administrative or judicial, civil or criminal, past or future, in law or in equity, which the United States may have against any person, firm, corporation or other entity not a signatory to this Agreement.

#### **IX. COVENANT NOT TO SUE BY THE SETTLING PARTY**

27. The Settling Party agrees not to assert any claims or causes of action against the United States, or its contractors or employees, with respect to Past Response Costs or Natural Resource Damages of this Agreement including but not limited to:

a. any direct or indirect claim for reimbursement from the EPA Hazardous Substance Superfund established by 26 U.S.C. § 9507, based on Sections 106(b)(2), 107, 111, 112 or 113 of CERCLA, 42 U.S.C. §§9606(b)(2), 9607, 9611, 9612, or 9613, or any other provision of law;

b. any claims arising out of the response actions at the Site for which the Past Response Costs were incurred; and

c. any claim against the United States pursuant to Sections 107 and 113 of CERCLA, 42 U.S.C. §§ 9607 and 9613, relating to Past Response Costs or Natural Resource Damages.

28. Nothing in this Agreement shall be deemed to constitute approval or preauthorization of a claim within the meaning of Section 111 of CERCLA, 42 U.S.C. § 9611, or 40 C.F.R. § 300.700(d).

#### **X. EFFECT OF SETTLEMENT/CONTRIBUTION PROTECTION**

29. Nothing in this Agreement shall be construed to create any rights in, or grant any cause of action to, any person not a Party to this Agreement. EPA, the United States on behalf of the Federal Trustee, and the Settling Party each reserve any and all rights (including, but not limited to, any right to contribution), defenses, claims, demands, and causes of action which each party may have with respect to any matter, transaction, or occurrence relating in any way to the Site against any person not a party hereto.

30. EPA, the United States on behalf of the Federal Trustee, and the Settling Party agree that the actions undertaken by the Settling Party in accordance with this Agreement do not constitute an admission of any liability by the Settling Party. The Settling Party does not admit, and retains the right to controvert in any subsequent proceedings other than proceedings to implement or enforce this Agreement, the validity of the facts or allegations contained in Section II of this Agreement.

31. The Parties agree that the Settling Party is entitled, as of the effective date of this Agreement, to protection from contribution actions or claims as provided by Sections 113(f)(2) and 122(h)(4) of CERCLA, 42 U.S.C. §§ 9613(f)(2) and 9622(h)(4), for "matters addressed" in this Agreement. The "matters addressed" in this Agreement are Past Response Costs and Natural Resource Damages.

32. The Settling Party agrees that with respect to any suit or claim for contribution brought by it for matters related to this Agreement, it will notify the EPA in writing no later than 60 days prior to the initiation of such suit or claim. The Settling Party also agrees that, with respect to any suit or claim for contribution brought against it for matters related this Agreement, it will notify EPA in writing within 10 days of service of the complaint or claim upon it. In addition, the Settling Party shall notify the EPA within 10 days of service or receipt of any Motion for Summary Judgment and within 10 days of receipt of any order from the court setting a case for trial, for matters related to this Agreement.

33. In any subsequent administrative or judicial proceeding initiated by EPA or the United States, for injunctive relief, Natural Resource Damages, recovery of response costs, or other appropriate relief relating to the Site, the Settling Party shall not assert, and may not maintain, any defense or claim based upon the principles or waiver, res judicata, collateral estoppel, issue preclusion, claim-splitting, or other defenses based upon any contention that the claim raised in this proceeding were or should have been brought in the instant case; provided, however, that nothing in this Paragraph affects the enforceability of the covenants not to sue set forth in Paragraph 19.

#### **XI. RETENTION OF RECORDS**

34. The Settling Party shall preserve and retain all records and documents now in its possession or control, or which come into its possession or control, that relate in any manner to the Site in accordance with the requirements of Section XXII of the

administrative order issued by the EPA to the Settling Party on September 30, 1992, Docket No. VII-92-F-0031.

35. By signing this Agreement the Settling Party certifies individually that, to the best of its knowledge and belief it has:

a. conducted a through, comprehensive, good faith search for documents, and has fully and accurately disclosed to EPA, all information currently in its possession, or in the possession of its officers, directors, employees, contractors or agents, which relates in any way to the ownership, operation or control of the Site, or the ownership, possession, generation, treatment, transportation, storage or disposal of a hazardous substance, pollutant or contaminant at or in connection with the Site;

b. not altered, mutilated, discarded, destroyed or otherwise disposed or any records, documents or other information relating to its potential liability regarding the Site, after notification of potential liability of the filing of a suit against the Settling Party regarding the Site.

c. fully complied with any and all the EPA's requests for information regarding the Site pursuant to Sections 104(e) and 122 (e) of CERCLA, 42 U.S.C. §§ 9604(e) and 9622(e).

## **XII. NOTICES AND SUBMISSIONS**

36. Whenever, under the terms of this Agreement, notice is required to be given or a document is required to be sent by one Party to the others, it shall be directed to the individuals at the addresses specified below, unless those individuals or their successors give notice of a change to the other Party in writing. Written notice as specified herein shall constitute complete satisfaction of any written notice requirement of this Agreement with respect to the Parties.

As to the EPA:

Michael J. Sanderson  
Director, Superfund Division  
U. S. Environmental Protection Agency, Region VII  
901 N. Fifth Street  
Kansas City, KS 66101

Barbara L. Peterson  
Assistant Regional Counsel  
U.S. Environmental Protection Agency, Region VII  
901 N. 5<sup>th</sup> Street  
Kansas City, KS 66101

As to the United States on behalf of the Federal Trustee:

Assistant Attorney General  
Environment and Natural Resources Division  
U. S. Department of Justice  
Washington, D.C. 20530

Paul Stokstad  
Trial Attorney  
Environment and Natural Resources Division  
U.S. Department of Justice  
P.O. Box 7611, Ben Franklin Station  
Washington, D.C. 20044-7611

Janet Wong  
Attorney-Advisor  
U.S. Department of the Interior  
Pittsburgh Field Solicitor's Office  
Three Parkway Center, Suite 385  
Pittsburgh, PA 15220

As to the Settling Party:

Susan Mensch  
Lehigh Portland Cement Company  
7600 Imperial Way  
Allentown, PA

Jane B. McAllister  
Ahlers, Cooney, Dorweiler, Haynie, Smith & Allbee, P.E.  
100 Court Avenue, Suite 600  
Des Moines, Iowa 50309-2231

**XIII. INTEGRATION/APPENDICES**

37. This Agreement and its Appendix A constitute the final, complete and exclusive agreement and understanding among the Parties with respect to the settlement embodied in this Agreement. The Parties acknowledge that there are no representations, agreements or understandings relating to the settlement other than those expressly contained in this Agreement.

**XIV. PUBLIC COMMENT**

38. This Agreement shall be subject to a public comment period of not less than 30 days pursuant to Section 122(i) of CERCLA, 42 U.S.C. §9622(i). In accordance with Section 122(i)(3) of CERCLA, the EPA, or the United States on behalf of the Federal Trustee, may modify or withdraw consent to this Agreement if comments received disclose facts or considerations which indicate that this Agreement is inappropriate, improper or inadequate.

**XV. ATTORNEY GENERAL APPROVAL**

39. The Attorney General or his designee has approved the settlement embodied in this Agreement in accordance with Section 122(h)(1) of CERCLA, 42 U.S.C. § 9622(h)(1) and pursuant to the inherent authority of the Attorney General to compromise and settle claims of the United States.

**XVI. EFFECTIVE DATE**

40. The effective date of this Agreement shall be the date upon which the EPA issues written notice that the public comment period pursuant to Section XIV (PUBLIC COMMENT) has closed and that comments received, if any, do not require modification of or withdrawal from this Agreement by the EPA, or the United States on behalf of the Federal Trustee.

IT IS SO AGREED:

By: Michael J. Sanderson  
Michael J. Sanderson  
Director, Superfund Division  
U. S. Environmental Protection Agency  
Region VII

02/06/01  
Date

UNITED STATES DEPARTMENT OF JUSTICE  
On behalf of the Federal Trustee

By: *John C. Cruden*  
John C. Cruden  
Acting Assistant Attorney General  
Environment and Natural Resources Division

2-19-01  
Date

LEHIGH PORTLAND CEMENT COMPANY

By: *Arthur C. Wilson*  
President - Western Div.

12/5/00  
Date