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January 30, 2015

Via U.S. First Class Mail

**ATTORNEY GENERAL COPY: CONTAINS OFFICIAL INFORMATION PURSUANT TO CALIFORNIA EVIDENCE CODE SECTION 1040.**

Lehigh Southwest Cement Company  
Attn: Plant Manager or current CEO or President  
Lehigh Southwest Cement Company  
24001 Stevens Creek Boulevard  
Cupertino, CA 95014-5659

Lehigh Southwest Cement Company  
Corporate Headquarters  
Attn: Current CEO or President  
Lehigh Hanson, Inc.  
300 E. John Carpenter Freeway  
Irving, TX 75062

CSC - LAWYERS INCORPORATING SERVICE  
C/o: Lehigh Southwest Cement Company  
Attn: Plant Manager or current CEO or President  
2730 Gateway Oaks Drive, Suite 100  
Sacramento, CA 95833

Re: *Notice of Violation of the Safe Drinking Water and Toxic Enforcement Act of 1986 (Proposition 65), Section 25249.6 of the California Health and Safety Code, for Exposing Individuals Present and Residing in Santa Clara County, California, to Arsenic, Benzene and Chromium 6, in the course of producing Type II/V (Low-Alkali), Type III (Hi-Early Strength), Slag Cement, Type I-P, APPC, and TioCem Cements.*

Dear Sir/Madam:

QuarryNo is an association of residents residing in Santa Clara County, California, and dedicated to the preservation and enhancement of human health and the environment. QuarryNo has a long-standing interest in reducing health hazards to the public posed by toxic chemicals and protecting the public from harmful substances.

QuarryNo and Mr. William J. Almon, acting individually and as QuarryNo's representative, hereby give you notice that the Lehigh Southwest Cement Company (hereinafter "Lehigh"), doing business at 24001 Stevens Creek Boulevard, Cupertino, CA 95014-5659, has violated and continues to violate provisions of the Safe Drinking Water and Toxic Enforcement Act of 1986, California Health and

Safety Code §§ 25249.5 et seq. Specifically, that Lehigh has violated and continue to violate the warning requirement of § 25249.6 of the California Health and Safety Code, which provides, "No person in the course of doing business shall knowingly and intentionally expose any individual to a chemical known to the state to cause cancer or reproductive toxicity without first giving clear and reasonable warning to such individual..."

Lehigh's production and sale of Type II/V (Low-Alkali), Type III (Hi-Early Strength), Slag Cement, Type I-P, APPC, and TioCem Cements, among others, has exposed and continues to expose individuals present and residing in Santa Clara County, California, including Mr. Almon, to harmful levels of Arsenic, Benzene, Chromium 6 and other toxins through the inhalation, dermal absorption and other bodily contact via Lehigh's industrial processes. The forgoing chemicals are known by the State of California to cause reproductive toxicity and cancer. Notably, for purposes of Proposition 65, the burden to prove compliance belongs to Lehigh.

Because Arsenic, Benzene, Chromium 6 and the other toxins are chemicals listed in Proposition 65 as human carcinogens and reproductive toxins, pursuant to California Health and Safety Code § 25249.6, Lehigh was, and is, required to provide clear and reasonable warnings before knowingly and intentionally exposing any individual to those substances in the course of its business. Since January 2013, to the present, Lehigh has exposed and continues to expose individuals present and residing in Santa Clara County, California, to harmful levels of these toxins through its daily industrial processes and without a clear and reasonable warning as required under the Safe Drinking Water and Toxic Enforcement Act of 1986 (Proposition 65), Section 25249.6 of the California Health and Safety Code. These violations will most likely continue to occur until Lehigh provides adequate warnings.

Lehigh has been adamantly representing to the public for years that it is in compliance in regards to restricting its emission of harmful airborne particulates. Lehigh's numerous assurances include the following statement by its President in a January 2011 Letter to the Santa Clara County Board of Supervisors:

**"FACT:** In 2013, EPA limits will be reduced for hundreds of airborne particulates, including mercury. Lehigh Cement will voluntarily reduce these airborne emissions to comply with the EPA NESHAP limits prior to the September 2013 Implementation. Lehigh Cement will operate at levels below those required by the EPA. Period."

Notwithstanding its numerous assurances, Lehigh is currently out of compliance with the production limits established by the Bay Area Air Quality Management District (BAAQMD) to insure there is no public health risk from its emission of harmful airborne particulates. In May 2013, BAAQMD determined that any production by Lehigh exceeding 1,116,071 tons of clinker in a given year would be injurious to public health, given emissions of 4,666 lbs of Benzene and 0.318 lbs of Chromium 6, for example. Applying such emission factors to Lehigh's then current clinker production produced an overall cancer risk of 8.96/1,000,000 and 10.0/1,000,000 (i.e., Maximum Exposed Individual Resident (MEIR) exceeds the 10.0/1,000,000 value limit requiring public notice) at a production level of 1,116,071 tons per year. This led BAAQMD to determine in its HRA Addendum of May 2013, that any production by Lehigh above that would require public notification:

"Based on the findings of this Addendum to the HRA for Lehigh Southwest Cement Company, the BAAQMD makes the following recommendations:

1. The BAAQMD should use 1,116,071 tons/yr of clinker production as the current upper limit for demonstrating compliance with Regulation 9-13-303.

2. Lehigh and the BAAQMD should use 1,116,071 tons/yr of clinker production as a loose guideline for discussing near term permit limits or ongoing compliance with Regulation 9-13-303.

3. If Lehigh seeks a higher clinker production rate than 1,116,071 tons/yr, then Lehigh should refine and resubmit the HRA to demonstrate that it can continue to be below the Air Toxics "Hot Spots" notification thresholds."

For reasons unknown, Lehigh's clinker production limit was raised slightly by the BAAQMD to 1,127,500 tons per 12 month period in a Settlement Agreement with Lehigh signed on September 16, 2013. Notably, this Agreement was hidden from the public and only became publicly available in 2014. This level was Lehigh's clinker production level in 2012, and the easing appears to be an accommodation by the BAAQMD to obtain Lehigh's support.

Despite the foregoing Agreement to limit clinker production, Lehigh chose to ramp production well above the "safe" level and did so in 2013 (1,272,991 tons) and particularly the 12 month periods ending September 9, 2014 (1,232,610 tons) and October 9, 2014 (1,258,907 tons) with no notice to the public, but certainly with awareness it was not safe due to the advice and limits set by BAAQMD. Lehigh has never given notice to the public of the toxicity of its emissions from its clinker production. Repeated Health Risk Assessments (HRA) created by Lehigh, as required under AB2588, have always sounded the "all clear" even in years when highly toxic emissions such as Mercury approached a ton per year pursuant to Lehigh's own documentation. It is quite possible that clinker production has surged beyond October 2014 but BAAQMD has not answered requests for the data.

Unfortunately, the methodology employed by Lehigh has been to talk to the future and ignore the present. For example, the 2011 HRA projected Lehigh's compliance in 2013 at 1,600,000 tons of clinker per year assuming the existence of a single Kiln stack that is yet to be operational in 2015. Subsequently, when Lehigh's future emissions projections failed it selectively dismissed some high level toxic readings as "outliers", and in one case (Mercury) readings were plugged with the verbatim number needed directly from the regulations. BAAQMD has already been made aware of this. Hopefully, there are many mitigating actions that Lehigh may take, but compliance as agreed to in Lehigh's Settlement Agreement must be demonstrated over a 12 month period. That has yet to occur.

Lehigh can no longer be relied upon to notify the public of the health risks inherent in its operation. The statutory public protection found in Proposition 65 must be utilized. Lehigh has consistently, and continues to, underreport its harmful emissions from its clinker production in Santa Clara County, California. Therefore, pursuant to Health and Safety Code § 25249.7(d), QuarryNo and Mr. William J. Almon intend to bring suit in the public interest against Lehigh sixty (60) days hereafter to correct the violation occasioned by Lehigh's failure to warn all those individuals exposed in Santa Clara County, California, to its harmful levels of toxins emitted.

Pursuant to 27 California Code of Regulations § 25903(b)(1), attached hereto as Exhibit "1" is a copy of "The Safe Drinking Water and Toxic Enforcement Act of 1986 (Proposition 65): A Summary," a summary of Proposition 65 prepared by the Office of Environmental Health Hazard Assessment of the California Environmental Protection Agency.

Pursuant to Health and Safety Code § 25249.7(d)(1), the undersigned hereby includes with the copy of this Notice to the California Attorney General a confidential Certificate of Merit. Pursuant to 27 California Code of Regulations § 25903(c)(3), the noticing parties are providing this Notice to the California Attorney General, the District Attorney of Santa Clara County and the City Attorneys of the cities of Los Altos, Los Altos Hills, Cupertino, Mountain View and Sunnyvale as evidenced in Exhibit "2" attached hereto.

The noticing parties are represented by Clayton & McEvoy, P.C. All communications concerning this matter should please be directed to:

Joshua A. Bennett  
Clayton & McEvoy, P.C.  
333 W. Santa Clara St., Suite 950  
San Jose, CA 95113-1717  
Email: jab@clayton-mcevoy.com  
Telephone: (408) 293-9100

Very truly yours,

CLAYTON & McEVOY, P.C.



Joshua A. Bennett  
JAB/lc

Enclosures:

cc: Attorney General of California (Confidential factual information supporting  
Certificate of Merit attached)  
District Attorney of Santa Clara County, California  
City Attorney of Los Altos Hills, California  
City Attorney of Los Altos, California  
City Attorney of Cupertino, California  
City Attorney of Sunnyvale, California  
City Attorney of Mountain View, California

(See attached Certificate of Service)

Exhibit "1"

**OFFICE OF ENVIRONMENTAL HEALTH  
HAZARD ASSESSMENT  
CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY**

**THE SAFE DRINKING WATER AND TOXIC ENFORCEMENT ACT OF 1986  
(PROPOSITION 65): A SUMMARY**

The following summary has been prepared by the Office of Environmental Health Hazard Assessment, the lead agency for the implementation of the Safe Drinking Water and Toxic Enforcement Act of 1986 (commonly known as "Proposition 65"). A copy of this summary must be included as an attachment to any notice of violation served upon an alleged violator of the Act. The summary provides basic information about the provisions of the law, and is intended to serve only as a convenient source of general information. It is not intended to provide authoritative guidance on the meaning or application of the law. The reader is directed to the statute and its implementing regulations (see citations below) for further information.

Proposition 65 appears in California law as Health and Safety Code Sections 25249.5 through 25249.13. Regulations that provide more specific guidance on compliance, and that specify procedures to be followed by the State in carrying out certain aspects of the law, are found in Title 22 of the California Code of Regulations, Sections 12000 through 14000.

**WHAT DOES PROPOSITION 65 REQUIRE?**

The "Governor's List." Proposition 65 requires the Governor to publish a list of chemicals that are known to the State of California to cause cancer, or birth defects or other reproductive harm. This list must be updated at least once a year. Over 735 chemical listings have been included as of November 16, 2001. Only those chemicals that are on the list are regulated under this law. Businesses that produce, use, release or otherwise engage in activities involving those chemicals must comply with the following:

Clear and reasonable warnings. A business is required to warn a person before "knowingly and intentionally" exposing that person to a listed chemical. The warning given must be "clear and reasonable." This means that the warning must: (1) clearly make known that the chemical involved is known to cause cancer, or birth defects or other reproductive harm; and (2) be given in such a way that it will effectively reach the person before he or she is exposed. Exposures are exempt from the warning requirement if they occur less than twelve months after the date of listing of the chemical.

Prohibition from discharges into drinking water. A business must not knowingly discharge or release a listed chemical into water or onto land where it passes or probably will pass into a source of drinking water. Discharges are exempt from this requirement if they occur less than twenty months after the date of listing of the chemical.

**DOES PROPOSITION 65 PROVIDE ANY EXEMPTIONS?**

Yes. The law exempts: Governmental agencies and public water utilities. All agencies of the federal, State or local government, as well as entities operating public water systems, are exempt.

Businesses with nine or fewer employees. Neither the warning requirement nor the discharge prohibition applies to a business that employs a total of nine or fewer employees. Exposures that pose no significant risk of cancer. For chemicals that are listed as known to the State to cause cancer ("carcinogens"), a warning is not required if the business can demonstrate that the exposure occurs at a level that poses "no significant risk." This means that the exposure is calculated to result in not more than one excess case of cancer in 100,000 individuals exposed over a 70-year lifetime. The Proposition 65 regulations identify specific "no significant risk" levels for more than 250 listed carcinogens.

Exposures that will produce no observable reproductive effect at 1,000 times the level in question. For chemicals known to the State to cause birth defects or other reproductive harm ("reproductive toxicants"), a warning is not required if the business can demonstrate that the exposure will produce no observable effect, even at 1,000 times the level in question. In other words, the level of exposure must be below the "no observable effect level (NOEL)," divided by a 1,000-fold safety or uncertainty factor. The "no observable effect level" is the highest dose level which has not been associated with an observable adverse reproductive or developmental effect.

Discharges that do not result in a "significant amount" of the listed chemical entering into any source of drinking water. The prohibition from discharges into drinking water does not apply if the discharger is able to demonstrate that a "significant amount" of the listed chemical has not, does not, or will not enter any drinking water source, and that the discharge complies with all other applicable laws, regulations, permits, requirements, or orders. A "significant amount" means any detectable amount, except an amount that would meet the "no significant risk" or "no observable effect" test if an individual were exposed to such an amount in drinking water.

### **HOW IS PROPOSITION 65 ENFORCED?**

Enforcement is carried out through civil lawsuits. These lawsuits may be brought by the Attorney General, any district attorney, or certain city attorneys (those in cities with a population exceeding 750,000). Lawsuits may also be brought by private parties acting in the public interest, but only after providing notice of the alleged violation to the Attorney General, the appropriate district attorney and city attorney, and the business accused of the violation. The notice must provide adequate information to allow the recipient to assess the nature of the alleged violation. A notice must comply with the information and procedural requirements specified in regulations (Title 22, California Code of Regulations, Section 25903). A private party may not pursue an enforcement action directly under Proposition 65 if one of the governmental officials noted above initiates an action within sixty days of the notice.

A business found to be in violation of Proposition 65 is subject to civil penalties of up to \$2,500 per day for each violation. In addition, the business may be ordered by a court of law to stop committing the violation.

### **FOR FURTHER INFORMATION. . .**

Contact the Office of Environmental Health Hazard Assessment's Proposition 65 Implementation Office at (916) 445-6900.

Exhibit "2"

Notice Service List

<p>Lehigh Southwest Cement Company Attn: Plant Manager or current CEO or President Lehigh Southwest Cement Company 24001 Stevens Creek Boulevard Cupertino, CA 95014-5659</p>	<p>Lehigh Southwest Cement Company Corporate Headquarters Attn: Current CEO or President Lehigh Hanson, Inc. 300 E. John Carpenter Freeway Irving, TX 75062</p>
<p>CSC - LAWYERS INCORPORATING SERVICE C/o: Lehigh Southwest Cement Company Attn: Plant Manager or current CEO or President 2730 Gateway Oaks Drive, Suite 100 Sacramento, CA 95833</p>	<p>Attorney General Kamala Harris Attorney General's Office 1300 "I" Street P.O. Box 944255 Sacramento, CA 94244-2550</p> <p>(With confidential factual information supporting the Certificate of Merit Included)</p>
<p>Santa Clara County, California District Attorney 70 W. Hedding Street, West Wing San Jose, CA 95110</p>	<p>City of Los Altos Hills, California City Attorney Town Hall Offices 26379 Fremont Road Los Altos Hills, CA 94022</p>
<p>City of Los Altos, California City Attorney One North San Antonio Road Los Altos, CA 94022</p>	<p>City of Cupertino, California City Attorney 20410 Town Center Lane #210 Cupertino, CA 95014-3220</p>
<p>City of Sunnyvale, California City Attorney 456 W. Olive Ave. Sunnyvale, CA 94086</p>	<p>City of Mountain View, California City Attorney 500 Castro Street Mountain View, CA 94039-7540</p>

**CERTIFICATE OF SERVICE**  
**STATE OF CALIFORNIA, COUNTY OF SANTA CLARA**

I, Dorothy Mallory, hereby declare:

I am a citizen of the United States, over 18 years of age, and not a party to the within action. I am employed in the County of Santa Clara; my business address is 333 W. Santa Clara St., Suite 950, San Jose, CA 95113.

On January 30, 2015, I served the within:

*Notice of Violation of the Safe Drinking Water and Toxic Enforcement Act of 1986 (Proposition 65), Section 25249.6 of the California Health and Safety Code, for Exposing Individuals Present and Residing in Santa Clara County, California, to Arsenic, Benzene and Chromium 6, in the course of producing Type II/V (Low-Alkali), Type III (Hi-Early Strength), Slag Cement, Type I-P, APPC, and TioCem Cements;*

*Proposition 65: A Summary;*

*Certificate of Merit;*

*Certificate of Merit Attachments (Served only on the California Attorney General).*

on all parties in this action, as addressed below, by causing a true copy thereof to be distributed as follows: *See Attachment 1 – Service List.*

- BY MAIL:** I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if the postal cancellation date or postage meter date is more than one day after date of deposit for mailing an affidavit.
- BY HAND DELIVERY:** I caused such documents to be hand delivered to the stated parties.
- VIA TELEFACSIMILE:** I caused such documents to be transmitted via telefacsimile to the stated parties at their respective facsimile numbers. The facsimile transmission(s) was reported as complete and without error and said transmission report(s) is attached to this proof of service.
- VIA FEDERAL EXPRESS:** I caused such documents to be collected by an agent for Federal Express to be delivered to the offices of the stated parties, next day service/Saturday delivery requested.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Dated: January 30, 2015

  
\_\_\_\_\_  
Dorothy Mallory

Notice Service List

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City of Los Altos, California City Attorney One North San Antonio Road Los Altos, CA 94022	City of Cupertino, California City Attorney 20410 Town Center Lane #210 Cupertino, CA 95014-3220
City of Sunnyvale, California City Attorney 456 W. Olive Ave. Sunnyvale, CA 94086	City of Mountain View, California City Attorney 500 Castro Street Mountain View, CA 94039-7540

**CERTIFICATE OF MERIT**  
**[California Health & Safety Code § 25249.7(d)]**

I, Joshua A. Bennett, hereby declare:

1. This Certificate of Merit accompanies the attached notice of violation in which it is alleged that the parties identified in the notice have violated California Health & Safety Code § 25249.6, by failing to provide clear and reasonable warnings.

2. I am an attorney representing the Noticing Parties, QuarryNo and Mr. William J. Almon.

3. I have consulted with one or more persons with relevant and appropriate experience or expertise who has reviewed facts, studies, or other data regarding the alleged exposure to the listed chemicals that are the subject of the action.

4. Based upon the information obtained through those consultations, and on all other information in my possession, I believe there is a reasonable and meritorious case for the underlying private action. I understand that “reasonable and meritorious case for the private action” means that the information provides a credible basis that all elements of the Plaintiffs’ case can be established and the information did not prove that the alleged violator will be able to establish any of the affirmative defenses set forth in the statute.

5. The copy of this Certificate of Merit served upon the California Attorney General attaches to it factual information sufficient to establish the basis for this Certificate, including the information identified in California Health & Safety Code § 25249.7(h)(2), i.e., (1) the identity of the persons consulted with and relied on by the Certifier, and (2) the facts, studies, or other data reviewed by those persons.

Date: January 30, 2015



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Joshua A. Bennett  
Attorney for Noticing Parties, QuarryNo  
and Mr. William J. Almon

RECEIVED  
JAN 30 2015  
10:11 AM  
FBI