

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY REGION IX

In the matter of:)	
)	DOCKET NO. CWA-09-2025-0005
CEMEX Construction Materials)	
Pacific, LLC)	CONSENT AGREEMENT AND FINAL ORDER
)	33 U.S.C. § 1319(g) and 40 C.F.R 22.13 and 22.18
10 Hill Ranch Road)	
Wadsworth, NV 89442)	
)	
Respondent.)	

CONSENT AGREEMENT

I. **AUTHORITY AND PARTIES**

1. This is a Class II civil administrative penalty proceeding under Section 309(g)(1)(A) and 2(B) of the Clean Water Act (CWA), 33 U.S.C. § 1319(g)(1)(A) and 2(B), and Consolidated Rules of the Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits, as codified at 40 C.F.R. Part 22.

2. Pursuant to CWA Section 309(g), 33 U.S.C. § 1319(g), the Administrator of the United States Environmental Protection Agency (EPA) is authorized to assess administrative penalties against persons who violate CWA Section 301(a), 33 U.S.C. § 1311(a). The Administrator has delegated this authority to the Regional Administrator of the EPA Region IX, who in turn has delegated this authority to the Director of the Enforcement and Compliance Assurance Division, hereinafter "Complainant."

3. Respondent is CEMEX Construction Materials Pacific, LLC (CEMEX or Respondent).

4. This Consent Agreement and Final Order (CA/FO), which contains the elements of a complaint required by 40 C.F.R. § 22.14(a), simultaneously commences and concludes this penalty proceeding, as authorized by 40 C.F.R. §§ 22.13(b) and 22.18(b)(2) and (3).

II. STATUTORY AND REGULATORY FRAMEWORK

5. CWA Section 301(a), 33 U.S.C. §1311(a), makes it unlawful for a person to discharge pollutants from a point source into waters of the United States, except as authorized by a National Pollutant Discharge Elimination System (NPDES) permit issued pursuant to CWA Section 402, 33 U.S.C. § 1342.

6. CWA Section 402, 33 U.S.C. § 1342, establishes the NPDES program and authorizes the EPA and authorized states to issue permits governing the discharge of pollutants from point sources into waters of the United States.

7. CWA Section 402(p), 33 U.S.C. § 1342(p), requires that NPDES permits be issued for stormwater discharges "associated with industrial activity."

8. 40 C.F.R. § 122.26(b)(14)(ii) defines stormwater discharges associated with industrial activity to include industrial sand mining classified under SIC Major Group 14.

9. Pursuant to CWA Section 402(p)(4), 33 U.S.C. § 1342(p)(4), dischargers of stormwater associated with industrial activity are required to seek coverage under a promulgated general permit or seek individual permit coverage.

10. On June 16, 2015, EPA issued the most recent version of the NPDES Multi-Sector General Permit Associated with Industrial Activity (2015 MSGP), which was effective on the

date of issuance. The 2015 MSGP replaced the 2008 MSGP, which expired on September 29, 2013, but was administratively continued until the 2015 MSGP became effective. Like the 2008 MSGP, the 2015 MSGP provides for a Master Permit (No. NVR 05I000) that covers industrial discharges associated with industrial activity on Indian Country in the State of Nevada. See 2015 MSGP Appendix C.9. The 2015 MSGP's Master Permit conditions for Indian Country remain similar to those under the 2008 MSGP. See 2015 MSGP Part 9.9.4. Facilities requiring coverage under the 2015 MSGP must develop a Storm Water Pollution Prevention Plan (SWPPP) and file a Notice of Intent (NOI) to obtain coverage.

11. Pursuant to CWA Section 309(g)(2)(B), 33 U.S.C. § 1319(g)(2)(B), and 40 C.F.R. Part 19.4, for violations that occurred after November 2, 2015, where penalties are assessed on or after December 27, 2023, the EPA may assess a penalty up to \$26,685 per day of violation, not to exceed \$333,552 in total. See 88 Fed. Reg. 89311, 89312 (Dec. 27, 2023).

III. FINDINGS OF FACT, JURISDICTIONAL ALLEGATIONS, AND CONCLUSIONS OF LAW

12. Respondent is a limited liability corporation formed under the laws of Delaware and is a "person" within the meaning of CWA Section 502(5), 33 U.S.C. § 1362(5).

13. Since 2006, Respondent has owned and/or operated the sand and gravel mining facility located at 10 Hill Ranch Road, Wadsworth, Nevada (Facility). The Facility is on Tribal land owned by the Pyramid Lake Paiute Tribe. Respondent is primarily engaged in excavation, material transfer, material storage with ancillary fuel storage at the Facility. Respondent's operations at the Facility fall within activities classified under SIC Code 1446 and is therefore an

“industrial activity” for purposes of CWA Section 402(p), 33 U.S.C. § 1342(p), and 40 C.F.R. § 122.26(b)(14)(iii).

14. Stormwater collected within the Area A active mine discharges to the Holding Pond then to a tributary of the Truckee River and travels approximately one mile before discharging to the Truckee River. This discharge was from a “point source” within the meaning of CWA Section 502(14), 33 U.S.C. § 1362(14).

15. Stormwater runoff from the Facility is a “stormwater discharge associated with industrial activity” as defined by 40 C.F.R. § 122.26(b)(14)(iii). Stormwater discharges from the Facility include total dissolved solids, total suspended solids, pH, and diesel/gas fuel oils and therefore contain “pollutants,” as defined by CWA Section 502(6), 33 U.S.C. § 1362(6).

16. Pit dewatering water from the Facility discharges to the Holding Pond, then to a tributary of the Truckee River and travels approximately one mile before discharging to the Truckee River.

17. The Truckee River ultimately discharges to Pyramid Lake. The Truckee River and Pyramid Lake are “waters of the United States” within the meaning of CWA Section 502(7), 33 U.S.C. § 1362(7), and implementing regulations.

18. Respondent’s discharge of pollutants in stormwater into waters of the United States constitutes a “discharge of pollutants” within the meaning of CWA Section 502(12), 33 U.S.C. § 1362(12).

19. Respondent's discharge of pollutants into waters of the United States, via pit dewatering water discharges, constitutes a "discharge of pollutants" within the meaning of CWA Section 502(12), 33 U.S.C. § 1362(12).

IV. ALLEGED VIOLATIONS

20. Respondent discharged stormwater associated with industrial activity to the Truckee River from when it began operating the Facility in 2006, until June 18, 2020. Respondent's discharges were authorized under the 2008 MSGP.

21. Respondent failed to submit an NOI to obtain coverage under the subsequent 2015 MSGP.

22. Respondent discharged stormwater associated with industrial activity to the Truckee River after the expiration of the 2008 MSGP on June 16, 2015.

23. Respondent discharged pit dewatering water to the Truckee River until June 18, 2020. Respondent's pit dewatering water discharges were not authorized under the 2008 MSGP.

24. Since 2015, Respondent has not obtained authorization under the 2015 MSGP or any other NPDES permit for the discharge of stormwater or pit dewatering water from the Facility to the Truckee River.

25. By discharging stormwater associated with industrial activity without NPDES permit authorization, Respondent violated CWA Sections 301(a) and 402(p), 33 U.S.C. §§ 1311(a), 1342(p).

26. By discharging pit dewatering water from the Area A Mine Pit without NPDES permit authorization, Respondent violated CWA Sections 301(a) and 402, 33 U.S.C. §§ 1311(a), 1342.

V. ADMINISTRATIVE PENALTY

27. In consideration of the penalty factors of CWA Section 309(g), 33 U.S.C. § 1319(g), Respondent agrees to pay a civil penalty in the amount of THREE HUNDRED TEN THOUSAND DOLLARS (\$310,000) (“Assessed Penalty”) within thirty (30) days after the date the Final Order ratifying this Agreement is filed with the “Regional Hearing Clerk” (“Filing Date”).

28. Respondent shall pay the Assessed Penalty and any interest, fees, and other charges due using any method, or combination of appropriate methods, as provided on the EPA website: <https://www.epa.gov/financial/makepayment>. For additional instructions see: <https://www.epa.gov/financial/additional-instructions-making-payments-epa>.

29. When making a payment, Respondent shall:

a. Identify every payment with Respondent’s name and the docket number of this Agreement, DOCKET NO. CWA-09-2025-0005,

b. Concurrently with any payment or within 24 hours of any payment, Respondent shall send via electronic mail proof of such payment to the following persons:

Regional Hearing Clerk
R9 – Office of Regional Counsel
r9HearingClerk@epa.gov

and

EPA Case Contact: John Tinger

U.S. Environmental Protection Agency, Region 9
tinger.john@epa.gov

and

U.S. Environmental Protection Agency
Cincinnati Finance Center
CINWD_AcctsReceivable@epa.gov

“Proof of payment” means, as applicable, a copy of the check, confirmation of credit card or debit card payment, or confirmation of wire or automated clearinghouse transfer, and any other information required to demonstrate that payment has been made according to EPA requirements, in the amount due, and identified with the appropriate docket number and Respondent’s name.

30. Interest, Charges, and Penalties on Late Payments. Pursuant to 33 U.S.C. § 1319, 31 U.S.C. § 3717, 31 C.F.R. § 901.9, and 40 C.F.R. §13.11, if Respondent fails to timely pay the full amount of the Assessed Penalty, interest or other charges and penalties per this Agreement, the entire unpaid balance of the Assessed Penalty and all accrued interest shall become immediately due and owing, and EPA is authorized to recover, the following amounts:

a. Interest. Interest begins to accrue from the Filing Date. If the Assessed Penalty is paid in full within thirty (30) days, interest accrued is waived. If the Assessed Penalty is not paid in full within thirty (30) days, interest will continue to accrue until any unpaid portion of the Assessed Penalty as well as any interest, penalties, and other charges are paid in full. Interest will be assessed at prevailing rates, per 33 U.S.C. § 1319(g)(9). The rate of interest is the IRS “large corporate” underpayment rate.

b. Handling Charges. The United States' enforcement expenses including, but not limited to, attorneys' fees and costs of collection proceedings.

c. Late Payment Penalty. A late payment penalty of six percent (6%) per annum, will be assessed monthly on all debts, including any unpaid portion of the Assessed Penalty, interest, penalties, and other charges, that remain delinquent more than ninety (90) days. Any such amounts will accrue from the Filing Date.

31. Late Penalty Actions. In addition to the amounts described in the prior Paragraph, if Respondent fails to timely pay any portion of the Assessed Penalty, interest, or other charges and penalties per this Agreement, EPA may take additional actions. Such actions EPA may take include, but are not limited to, the following.

a. Refer the debt to a credit reporting agency or a collection agency, per 40 C.F.R. §§ 13.13 and 13.14.

b. Collect the debt by administrative offset (i.e., the withholding of money payable by the United States government to, or held by the United States government for, a person to satisfy the debt the person owes the United States government), which includes, but is not limited to, referral to the Internal Revenue Service for offset against income tax refunds, per 40 C.F.R. Part 13, Subparts C and H.

c. Suspend or revoke Respondent's licenses or other privileges, or suspend or disqualify Respondent from doing business with EPA or engaging in programs EPA sponsors or funds, per 40 C.F.R. § 13.17.

d. Request that the Attorney General bring a civil action in the appropriate district court to recover the full remaining balance of the Assessed Penalty, in addition to interest and the amounts described above, pursuant to 33 U.S.C. § 1319(g)(9). In any such action, the validity, amount, and appropriateness of the Assessed Penalty shall not be subject to review.

32. Allocation of Payments. Pursuant to 31 C.F.R. § 901.9(f) and 40 C.F.R. § 13.11(d), a partial payment of debt will be applied first to outstanding handling charges, second to late penalty charges, third to accrued interest, and last to the principal that is the outstanding Assessed Penalty amount.

33. Tax Treatment of Penalties. Penalties, interest, and other charges paid pursuant to this Agreement shall not be deductible for purposes of federal taxes.

VI. SUPPLEMENTAL ENVIRONMENTAL PROJECT

34. In response to the alleged violations of the CWA and in settlement of this matter, although not required by the CWA or any other federal, state or local law, Respondent agrees to implement a supplemental environmental project ("SEP"), as described herein in Paragraphs 35 – 44.

35. SEP Description – Cold Creek Lower Floodplain Restoration. As an environmental restoration and protection SEP, Respondent shall complete the Cold Creek Lower Floodplain Restoration project supporting the restoration of the floodplain and riparian habitat along the lower reach of Cold Creek between the mouth of Coldstream Canyon and the confluence with Donner Creek, a tributary to the Truckee River, located southeast of Truckee, California ("SEP

Site”). The Truckee River is listed as impaired for sediment on the CWA Section 303(d) list.

Respondent will provide funding directly to the Project Lead for Project construction activities.

The Project Lead for implementation will be the Truckee River Watershed Council (TRWC). The

SEP is part of the larger Coldstream Canyon Watershed Restoration Project, proposed and

being implemented by the TRWC, to restore hydrologic and ecosystem function to the

Coldstream Canyon watershed and manage sediment supply to the Truckee River. The SEP

construction activities include:

- a. Excavation of approximately 11,400 cubic yards of material to recreate a functional floodplain.
- b. Excavation of low benches within the high stream banks of the current channel.
- c. Lowering of floodplain bars;
- d. Stabilization of the banks and installation of roughness elements, such as buried logs and hummocks, along 1,600 feet of the stream channel to reduce erosion.
- e. Installation of three in-channel boulder grade control structures to stabilize upstream bed elevations.
- f. Finish of the floodplain with a variety of roughness elements, such as buried logs, hummocks and shallow depressions, and revegetation of the area features.
- g. Improvement of the hydrologic and ecosystem function of the floodplain and riparian habitat by (i) enhancing the quantity and quality of baseline stream flow, (ii) increasing the stream and floodplain connectivity and (iii) re-establishing the riparian. The SEP will create

approximately 3.2 acres of new floodplain and will increase the acreage of riparian habitat by approximately 1.93 acres.

36. Respondent shall complete the SEP no later than March 1, 2027. Respondent shall visit the SEP site to review SEP pre-construction, construction and post-construction site activities, and will review the SEP project plan, budget and schedule. Respondent will act to assure that the project is planned and implemented properly and on schedule. Respondent shall spend no less than EIGHT HUNDRED THOUSAND DOLLARS (\$800,000) on implementing the SEP. Respondent shall include documentation of the expenditures made in connection with the SEP as part of the SEP Completion Report.

37. Use of SEP Implementer and Identification of SEP Recipient:

a. SEP Implementer – Respondent has selected TRWC to assist with implementation of the SEP, and TRWC may use a contractor/consultant to implement specific SEP tasks.

b. SEP Recipient – Respondent has selected the landowner, Stonebridge Development LLC, to receive the SEP.

c. EPA had no role in the selection of any SEP Implementer, SEP Recipient, nor shall this Consent Agreement be construed to constitute EPA approval or endorsement of any SEP Implementer or SEP Recipient identified in this Consent Agreement.

38. SEP Reports.

a. Respondent shall submit a SEP Completion Report to EPA within 30 days of

Completion of the SEP. The SEP Completion Report shall contain the following information, with supporting documentation:

- i. A detailed description of the SEP as implemented;
 - ii. A description of any operating problems encountered and solutions thereto;
 - iii. Itemized costs;
 - iv. Certification that the SEP has been fully implemented pursuant to the provisions of this Consent Agreement;
 - v. A description of the environmental and public health benefits resulting from implementation of the SEP;
 - vi. A site map showing what was completed and photographic evidence showing that construction has been completed; and
 - vii. A copy of all approvals related to the SEP, issued by any governmental agencies.
- Should the applicable agency issue its approval after the SEP Completion Report is due, Respondent shall note the pending status and submit the approval to EPA within fourteen (14) days of Respondent's receipt of the approval.
- viii. A letter from the Truckee River Watershed Council confirming that the SEP habitat restoration project has been completed.

b. Status Reports.

- i. If Respondent has not completed the SEP by March 1, 2027, Respondent shall

submit a Status Report by March 31, 2027, documenting the milestones completed as of March 1, 2027.

ii. Since this SEP is expected to be constructed during a two-month window in 2025, interim milestones are not applicable.

c. Respondent agrees that failure to submit the SEP Completion Report or the Status Report, required by subsection b., above, shall be deemed a violation of this Consent Agreement and Respondent shall become liable for stipulated penalties pursuant to Paragraph 45, below.

d. Respondent shall submit all notices and reports required by this Consent Agreement to John Tinger (tinger.john@epa.gov).

e. In itemizing its costs in the SEP Completion Report, Respondent shall clearly identify and provide acceptable documentation for all eligible SEP costs. Where the SEP completion report includes costs not eligible for SEP credit, those costs must be clearly identified as such. For purposes of this Paragraph, "acceptable documentation" includes, but is not limited to, invoices, purchase orders, or other documentation that specifically identifies and itemizes the individual costs of the goods and/or services for which payment is being made. Canceled drafts do not constitute acceptable documentation unless such drafts specifically identify and itemize the individual costs of the goods and/or services for which payment is being made.

39. The SEP will be deemed to be satisfactorily completed only when Respondent has (a) completed the floodplain and riparian habitat restoration along the lower reach of Cold Creek between the mouth of Coldstream Canyon and the confluence with Donner Creek, a tributary to the Truckee River, located southeast of Truckee, as described in Paragraph 35; and (b) expended the minimum amount identified in Paragraph 36; and (c) submitted the SEP Completion Report to EPA. Respondent agrees that failure to submit the SEP Completion Report or any periodic report required by Paragraph 38 shall be deemed a violation of this CA/FO and Respondent shall become liable for stipulated penalties pursuant to Paragraphs 45 and 46 below.

40. The SEP is consistent with applicable EPA policy and guidelines regarding SEPs, including the U.S. Environmental Protection Agency Supplemental Environmental Projects Policy 2015 Update to *the 1988 Supplemental Environmental Projects Policy* (March 10, 2015).¹ The SEP is not inconsistent with any provision of the CWA. The SEP advances at least one of the objectives of the CWA and the regulations cited above by reducing the alleged adverse impacts to public health or the environment caused by unpermitted discharges from Respondent's sand and gravel mining to the Truckee River. The SEP relates to the violations alleged in Section IV of this CA/FO. The SEP and the alleged violations relate to similar contaminants (sediment, temperature, dissolved solids); addresses similar historical impacts (which include legacy gravel mining in the SEP project area which have contributed to channelization and the current deeply

¹ See, <https://www.epa.gov/sites/default/files/2015-04/documents/sepupdatedpolicy15.pdf>.

incised; straightened channel that no longer accesses the floodplain); the same media (surface water); is located within the same geographic area as the violations (the Truckee River watershed); and the reduction in pollutant loadings will beneficially impact the ecosystem and aquatic species that may have been impacted by the violation.

41. For a period of five (5) years following the Effective Date of this CA/FO, Respondent shall maintain legible copies of all documentation relevant to the SEP or reports submitted to EPA pursuant to this CA/FO and shall provide such documentation or reports to EPA not more than seven (7) days after a request for such information.

42. Respondent certifies the truth and accuracy of each of the following:

a. That all cost information provided to the EPA in connection with the EPA's approval of the SEP is complete and accurate and that the Respondent in good faith estimates that the cost to implement the SEP is a minimum of EIGHT HUNDRED THOUSAND DOLLARS (\$800,000);

b. That Respondent will not include administrative costs for employee oversight of the implementation of the SEP in its project costs;

c. That, as of the date of executing this CA/FO, Respondent is not required to perform or develop the SEP by any federal, state, or local law or regulation and is not required to perform or develop the SEP by agreement, grant, or as injunctive relief awarded in any other action in any forum;

d. That the SEP is not a project that Respondent was planning or intending to construct, perform, or implement other than in settlement of the claims resolved in this CA/FO;

e. That Respondent has not received and will not have received credit for the SEP in any other enforcement action;

f. That Respondent will not receive reimbursement for any portion of the SEP from another person or entity;

g. That Respondent is not a party to any open federal financial assistance transaction that is funding or could fund the same activity as the SEP described in Paragraph 36;

h. That Respondent has inquired of TRWC and Stonebridge Development LLC, whether either is party to an open federal financial assistance transaction that is funding or could fund the same activity as the SEP and has been informed by both of these entities that neither is a party to such a transaction; and

i. 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 SEP.

43. Any public statement, oral or written, in print, film, or other media, made by Respondent or a representative of Respondent making reference to the SEP from the Effective Date of this CA/FO shall include the following language:

“This project was undertaken in connection with the settlement of an enforcement action taken by the U.S. Environmental Protection Agency for alleged violations of the Clean Water Act.”

44. EPA acceptance of SEP Completion Report.

- a. After receipt of the SEP Completion Report described in Paragraph above,

EPA will, in writing to the Respondent, either:

- i. Identify any deficiencies in the SEP Completion Report itself along with a grant of an additional thirty (30) days for Respondent to correct any deficiencies; or
- ii. Indicate that EPA concludes that the project has been completed satisfactorily; or
- iii. Determine that the project has not been completed satisfactorily and seek stipulated penalties in accordance with Paragraph 45 and 46 herein.

- b. If EPA elects to exercise option (i) above, i.e., if the SEP Report is determined to be deficient but EPA has not yet made a final determination about the adequacy of SEP completion itself, Respondent may object in writing to the notification of deficiency given pursuant to this paragraph within ten (10) days of receipt of such notification. EPA and Respondent shall have an additional thirty (30) days from the receipt by EPA of the notification of objection to reach agreement on changes necessary to the SEP Report. If agreement cannot be reached on any such issue within this thirty (30) day period, EPA shall provide a written

statement of its decision on adequacy of the completion of the SEP to

Respondent, which decision shall be final and binding upon Respondent.

45. Stipulated Penalties

a. Except as provided in subparagraphs (b) and (c) below, if Respondent fails to satisfactorily complete the requirements regarding the SEP specified in Paragraph 33 by the deadline in Paragraph 36, Respondent agrees to pay, in addition to the civil penalty in Paragraph 27, the following per day per violation stipulated penalty for each day the Respondent is late meeting the applicable SEP requirement:

i. \$250 per day for days 1-30

ii. \$300 per day for days 31 – 60

iii. \$400 per day after day 61

b. If Respondent fails to timely submit any SEP reports, such as those referred to in Paragraph 38, in accordance with the timelines set forth in this CAFO, Respondent agrees to the following per day stipulated penalty for each day after the report was due until Respondent submits the report in its entirety:

i. \$100 per day for days 1-30

ii. \$150 per day for days 31 – 60

iii. \$300 per day after day 61

c. If Respondent does not spend the minimum \$800,000 on the SEP set forth in Paragraph 36 above, and if EPA determines that the amount remaining reasonably could be

applied toward additional floodplain or riparian habitat restoration activities in the Coldstream Canyon Basin, Respondent will identify and implement such additional floodplain or riparian habitat restoration activities in the Coldstream Canyon Basin area.

d. EPA retains the right to waive or reduce a stipulated penalty at its sole discretion.

e. Respondent shall pay stipulated penalties not more than fifteen (15) days after receipt of written demand by EPA for such penalties. The method of payment shall be in accordance with the provisions of Paragraph 29 above. Interest and late charges shall be paid as stated in Paragraph 30.

VII. STIPULATED PENALTIES

46. Pursuant to 31 U.S.C. § 3717 and 40 C.F.R. § 13.11, in addition to any stipulated penalties due under Section VI, Respondent must pay the following on any amount overdue under this CA/FO, or for missing any compliance deadlines in Section VI for the SEP: interest accrued on any overdue amount from the date payment was due at a rate established by the Secretary of the Treasury pursuant to 26 U.S.C. § 6621(a)(2); the United States' enforcement expenses, including but not limited to attorneys' fees and costs incurred by the United States for collection proceedings; a \$15 handling charge fee each month that any portion of the penalty is more than thirty (30) days past due; and 6% per year penalty on any principal amount ninety (90) days past due.

47. If Respondent does not pay timely the civil penalty due under Paragraph 27 and/or any stipulated penalties due under Section VII, EPA may request the United States Department of Justice bring an action to collect any unpaid portion of the penalty with interest, handling charges, non-payment penalties, and the United States' enforcement expenses for the collection action under CWA Section 309(g)(9), 33 U.S.C. § 1319 2(g)(9). The validity, amount, and appropriateness of the civil penalty are not reviewable in a collection action.

VIII. TAX IDENTIFICATION

48. Pursuant to 26 U.S.C. § 6050X and 26 C.F.R. § 1.6050X-1, EPA is required to send to the Internal Revenue Service ("IRS") annually, a completed IRS Form 1098-F ("Fines, Penalties, and Other Amounts") with respect to any court order or settlement agreement (including administrative settlements), that require a payor to pay an aggregate amount that EPA reasonably believes will be equal to, or in excess of, \$50,000 for the payor's violation of any law or the investigation or inquiry into the payor's potential violation of any law, including amounts paid for "restitution or remediation of property" or to come "into compliance with a law." EPA is further required to furnish a written statement, which provides the same information provided to the IRS, to each payor (i.e., a copy of IRS Form 1098-F). Failure to comply with providing IRS Form W-9 or Tax Identification Number ("TIN"), as described below, may subject Respondent to a penalty, per 26 U.S.C. § 6723, 26 U.S.C. § 6724(d)(3), and 26 C.F.R. § 301.6723-1. In order to provide EPA with sufficient information to enable it to fulfil these obligations, EPA herein requires, and Respondent herein agrees, that:

- a. Respondent shall complete an IRS Form W-9 ("Request for Taxpayer Identification Number and Certification"), which is available at <https://www.irs.gov/pub/irs-pdf/fw9.pdf>;
- b. Respondent shall therein certify that its completed IRS Form W-9 include Respondent's correct TINs or that Respondent has applied and is waiting for issuance of a TIN;
- c. Respondent shall email its completed Form W-9 to EPA's Cincinnati Finance Center in Paragraph 29b within 30 days after the Final Order ratifying this Agreement is filed, and EPA recommends encrypting IRS Form W-9 email correspondence; and;
- d. In the event that either Respondent has certified in its completed IRS Form W-9 that it has applied for a TIN and that TIN has not been issued to Respondent within 30 days after the Effective Date, then Respondent, using the same email address identified in the preceding sub-paragraph, shall further: i. notify EPA's Cincinnati Finance Center of this fact, via email, within 30 days after the 30 days after the Effective Date, as defined in Section XIII. below, and ii. provide EPA's Cincinnati Finance Center with Respondent's TIN, via email, within five (5) days of Respondent's issuance and receipt of the TIN.

IX. APPLICABILITY

49. This CA/FO shall apply to and be binding on Respondent, Respondent's officers, directors, partners, agents, employees, contractors, successors and assigns. Action or inaction of any persons, firms, contractors, employees, agents, or corporations acting under, through,

or for Respondent shall not excuse any failure of Respondent to fully perform its obligations under this CA/FO. Changes in ownership, real property interest, or transfer of personal assets shall not alter Respondent's obligations under this CA/FO.

X. RESPONDENT'S ADMISSIONS AND WAIVERS

50. In accordance with 40 C.F.R. §22.18(b), for the purpose of this proceeding, Respondent:

- a. admits the jurisdictional allegations of this CA/FO;
- b. neither admits nor denies specific factual allegations contained in this CA/FO;
- c. consents to all conditions specified in this CA/FO and to the assessment of the civil administrative penalty set forth in Section V above;
- d. waives any right to contest the allegations set forth in this CA/FO; and
- e. waives its right to appeal the proposed Final Order accompanying this consent agreement.

51. By signing this Consent Agreement, Respondent waives any rights or defenses that Respondent has or may have for this matter to be resolved in federal court, including but not limited to any right to a jury trial, and waives any right to challenge the lawfulness of the final order accompanying the consent agreement.

XI. RESERVATION OF RIGHTS

52. In accordance with 40 C.F.R. § 22.18(c), full payment of the penalty set forth in this CA/FO only resolves Respondent's CWA civil penalty liabilities for the violations specifically

alleged herein and does not in any case affect the right of the EPA to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law.

53. This CA/FO is not a permit or modification of any existing permit issued pursuant to any federal, state, or local laws or regulations, and shall in no way relieve or affect Respondent's obligations under any applicable federal, state or local laws, regulations, or permits.

XII. ATTORNEY FEES AND COSTS

54. Each party shall bear its own attorney fees and costs.

XIII. EFFECTIVE DATE AND TERMINATION

55. In accordance with 40 C.F.R. §22.18(b)(3) and 22.31(b), the Effective Date of this CA/FO is the date that the Final Order, having been signed by the Regional Judicial Officer, is filed with the Regional Hearing Clerk.

56. This CA/FO shall terminate when Respondent has complied with the requirements of this CA/FO in full.

XIV. PUBLIC NOTICE

57. Pursuant to CWA Section 309(g)(4), 33 U.S.C § 1319(g)(4), and 40 C.F.R. § 22.45(b), this Consent Agreement is subject to public notice and comment prior to issuance of the proposed Final Order. Complainant reserves the right to withhold or withdraw consent to this Consent Agreement if public comments disclose relevant and material information that was not considered by Complainant in entering into this Consent Agreement. Respondent may

withdraw from this Consent Agreement only upon receipt of written notice from the EPA that it no longer supports entry of this Consent Agreement.

For Complainant the U.S. Environmental Protection Agency, Region IX:

 /s/ DATE: 5/29/2025

Amy C. Miller-Bowen

Director

Enforcement and Compliance Assurance Division

For Respondent CEMEX Construction Materials Pacific LLC:

_____/s/_____
Francisco Rivera Trevino
Regional President, West Region

_____**2/20/2025**_____
Date

FINAL ORDER

It is Hereby Ordered that this Consent Agreement and Final Order (U.S. EPA Docket No. CWA 09-2025-0005) be entered, and that Respondent shall pay a civil penalty in the amount of \$310,000 and perform the Supplemental Environmental Project described in Section VII in accordance with the terms of this Consent Agreement and Final Order.

Beatrice Wong
Regional Judicial Officer
U.S. EPA, Region IX