



## I. JURISDICTION

This Agreed Order ("Order") is issued pursuant to the authority of RCW 70.105D.050(1).

## II. DEFINITIONS

Unless otherwise specified, the definitions set forth in Chapter 70.105D RCW and Chapter 173-340 WAC shall control the meanings of the terms used in this Order.

Additional definitions are as follows:

1. Agreed Order or Order means this Order issued under WAC 173-340-530. The term includes the text of this Order, all Attachments to this Order, and all Ecology-approved submittals required pursuant to this Order. Order Attachments and Ecology-approved submittals are incorporated into this Order by this reference and are enforceable parts of this Order as if fully set forth herein.

2. Area of Concern (AOC) means any area of the facility where a release of dangerous constituents (including dangerous waste and hazardous substances) has occurred, is occurring, is suspected to have occurred, or threatens to occur.

3. Cleanup Action Plan (CAP) means the document issued by Ecology under WAC 173-340-360 which selects facility-specific corrective measures and specifies cleanup standards (cleanup levels, points of compliance and other requirements for the corrective measures).

4. Cleanup Standards means the standards promulgated under RCW 70.105D.030(2)(e) and include (1) hazardous substance concentrations (cleanup levels) that protect human health and the environment, (2) the location at the facility where those cleanup levels must be attained (points of compliance), and (3) additional regulatory requirements that apply to a cleanup because of the type of action and/or the location of the facility.

5. Corrective Action means any activities including investigations, studies, characterizations and corrective measures, including actions taken pursuant to Chapter

70.105D RCW and Chapter 173-340 WAC, undertaken in whole or in part to fulfill the requirements of WAC 173-303-646

6. Corrective Measure means any measure or action to control, prevent, or mitigate releases and/or potential releases of dangerous constituents (including dangerous waste and hazardous substances), which is reviewed and approved by Ecology for the facility and set forth in a facility-specific Cleanup Action Plan (CAP) prepared in compliance with the requirements of Chapter 173-340 WAC, including WAC 173-340-360. Corrective measures may include interim actions as defined by Chapter 173-340 WAC. Interim actions will not necessarily be set forth in a facility-specific CAP.

7. Dangerous Constituent means any constituent identified in WAC 173-303-9905 or 40 CFR Part 264 Appendix IX, any constituent which caused a waste to be listed or designated as dangerous under the provisions of Chapter 173-303 WAC, and any constituent defined as a hazardous substance at RCW 70.105D.020(7).

8. Dangerous Waste means any solid waste designated in WAC 173-303-070 through 173-303-100 as dangerous or extremely hazardous or mixed waste. Dangerous wastes are considered hazardous substances under RCW 70.105D.020(7).

9. Dangerous Waste Constituent means any constituent listed in WAC 173-303-9905 and any other constituent that has caused a waste to be a dangerous waste under Chapter 173-303 WAC.

10. Facility is defined at RCW 70.105D.020(4) as any area where a hazardous substance, including dangerous waste and dangerous constituents, has been deposited, stored, disposed of, or placed, or otherwise come to be located. For purposes of this Order, the Facility means the cement kiln dust (CKD) landfill controlled by Lehigh Portland Cement Company (Lehigh) located at Milepost 14.67 on Washington Highway 31 in the town of Metaline Falls, Washington, and all areas where hazardous substances including dangerous waste and dangerous constituents originating at the CKD landfill have come to be located.

11. Feasibility Study (FS) means the investigation and evaluation of potential corrective measures performed in accordance with the Feasibility Study (FS) requirements of WAC 173-340-350 and the RI/FS Scope of Work attached to this Order, which includes the substantive requirements for a RCRA Corrective Measures Study, and undertaken in whole or in part to fulfill the corrective action requirements of WAC 173-303-646.

12. Permit or Permitting Requirement, unless otherwise specified, means the requirements of Chapter 173-303 WAC for applying, obtaining, maintaining, modifying, and terminating dangerous waste facility permits.

13. Release means any intentional or unintentional spilling, leaking, pouring, emitting, emptying, discharging, injecting, pumping, escaping, leaching, dumping, or disposing of dangerous waste or dangerous constituents into the environment. It also includes the abandonment or discarding of barrels, containers, and other receptacles containing dangerous waste or dangerous constituents and includes the definition of release in RCW 70.105D.020(20).

14. Remedial Investigation (RI) means a facility wide investigation and characterization performed in accordance with the requirements of Chapter 173-340 WAC and the RI/FS Scope of Work attached to this Order, which includes the substantive requirements for a RCRA facility investigation, undertaken in whole or in part to fulfill the corrective action requirements of WAC 173-303-646.

15. Solid Waste Management Unit (SWMU) means any discernible location at the dangerous waste facility where solid wastes have been placed at any time, irrespective of whether the location was intended for the management of solid or dangerous waste. Such locations include any area at the dangerous waste facility at which solid wastes, including spills, have been routinely and systematically released and include regulated units as defined by Chapter 173-303 WAC.

### III. OBJECTIVES

The remedial action objectives for this facility are:

1. Lehigh Portland Cement Company (Lehigh) shall conduct a remedial investigation and feasibility study (RI/FS) as approved by Ecology and in accordance with the requirements of Chapter 173-340 WAC. The purpose of the RI/FS shall be in part, to concurrently satisfy the corrective action requirements of WAC 173-303-646 to conduct a RCRA facility investigation (RFI) and a RCRA corrective measures study (CMS).

2. After completion and approval of the remedial investigation and feasibility study, Lehigh may be required to draft a Cleanup Action Plan (CAP) to satisfy the requirements of WAC 173-340-400 and to concurrently satisfy the corrective action requirements of WAC 173-303-646.

3. If required, the Draft Cleanup Action Plan (CAP) will be circulated for public review and comment. Upon approval of the Final CAP by Ecology, Lehigh shall design, construct, operate, and monitor the selected cleanup or corrective actions via a consent decree, agreed order, enforcement order, or a permit, as determined by Ecology.

#### IV. FINDINGS OF FACT

Ecology makes the following Findings of Fact.

1. Lehigh Portland Cement Company (Lehigh) owned and operated the Metaline Falls cement plant from the early 1950s until 1989. During that time, cement kiln dust (CKD), a byproduct from the production of portland cement, was disposed in an on-site landfill located in the southeast quarter of Section 21, Township 39 North, Range 43 East, Willamette Meridian (WM) (Attachment 1). In 1989, Lehigh sold the cement plant and surrounding land to the LaFarge Corporation. Lehigh retained ownership of the CKD landfill. Evidence of Lehigh's ownership of the landfill and the company's disposal of CKD to the landfill is contained in the following documents:

- *Dangerous Waste Permit Application* (Forms 1 and 3), submitted to Ecology by Lehigh on November 5, 1984;
- *Notification of Dangerous Waste Activities* (Form 2), submitted to Ecology by Lehigh on November 16, 1984, January 23, 1986, and April 25, 1990; and

- *Generator Annual Dangerous Waste Reports* for 1986, 1987, 1988, and 1989, submitted to Ecology by Lehigh.

2. Lehigh owned and operated the CKD landfill as a dangerous waste facility on or after November 19, 1980, the date which subjects facilities to RCRA permitting requirements, including *interim status* requirements pursuant to Section 3005 of RCRA and implementing regulations thereunder, and including authorized state regulations promulgated in Chapter 173-303 WAC.

3. Prior to 1984, CKD was exempt from regulation as a hazardous or dangerous waste by both the federal government and the state of Washington. In 1984, the CKD exemption was withdrawn by the state, and CKD became a regulated waste under the amended Hazardous Waste Management Act (Chapter 70.105 RCW) and its implementing Dangerous Waste Regulations (Chapter 173-303 WAC). CKD is currently still exempt from the federal hazardous waste regulations [40 CFR 261.4(b)(8)].

4. On November 16, 1984, Lehigh submitted a "Notification of Dangerous Waste Activities" (Form 2) to notify Ecology that Lehigh would be generating and disposing dangerous waste (cement kiln dust) at the Metaline Falls cement plant.

5. Pursuant to the November 16, 1984 notification, Lehigh was issued EPA/State identification number WAD 009063116. When Lehigh sold the cement plant in 1989, the identification number was transferred to the LaFarge Corporation, the new owner of the Metaline Falls cement plant. On August 17, 1995, Lehigh submitted a new "Notification of Dangerous Waste Activities" for the 13-acre tract on which Lehigh's CKD landfill is located. EPA/State identification number WAR 000004598 was assigned to the landfill. The new number was issued with a retroactive start date of May 31, 1989, the date of sale of the cement plant.

6. On November 5, 1984, Lehigh submitted Part A of the Dangerous Waste Permit Application, to notify Ecology that cement kiln dust (CKD) would be managed at the Metaline Falls cement plant. Upon submittal of the Part A application, the Lehigh

cement plant became an *interim status* dangerous waste treatment, storage, and disposal (TSD) facility.

7. Lehigh did not submit Part B of the Dangerous Waste Permit Application, which is required to obtain a *final facility* TSD permit. Instead, Lehigh closed the cement kiln dust landfill at the former cement plant in accordance with all closure performance standards for *interim status* TSD facilities, which are given in the Washington Dangerous Waste Regulations (WAC 172-303-400), and by reference in the federal hazardous waste regulations (40 CFR Part 265, Subparts F through R).

8. Ecology has determined the Lehigh CKD landfill is a dangerous waste facility, which includes the landfill and properties adjacent to the landfill, regardless of control, which are affected by releases or threatened releases of dangerous constituents from the landfill.

9. In 1992 and 1993, Lehigh conducted an investigation to characterize the CKD landfill and to evaluate the quality of groundwater beneath and adjacent to it. Releases and/or potential releases of dangerous constituents from the DWMF were documented in the following reports:

- *Preliminary Site Characterization Report*, dated December 17, 1991, prepared by Dames & Moore Consultants; and
- *Addendum Preliminary Site Characterization Report, Metaline Falls, Washington*, dated October 5, 1993, prepared by Dames & Moore Consultants.

These reports document that CKD surface and subsurface samples were collected and analyzed, and groundwater monitoring wells were installed through and adjacent to the CKD landfill. Several of the CKD samples analyzed failed the acute static fish toxicity test [WAC 173-303-110(3)(b)], demonstrating the CKD designated as a Washington state dangerous waste based on the *toxicity criteria* [WAC 173-303-100(5)] at the time of testing. Geochemical analyses of the CKD samples also demonstrated some of the CKD samples were strongly alkaline (pH>12.5 standard units), indicating at least part of the CKD pile

also designated as a dangerous waste based on the *characteristic of corrosivity* [WAC 173-303-090(6)]. The CKD also was found to contain elevated concentrations of lead.

Geochemical analyses of groundwater samples collected from monitoring wells demonstrated that groundwater in some areas beneath and adjacent to the CKD landfill was strongly alkaline (pH up to 14 standard units) and contained elevated concentrations of arsenic and/or lead. Metal concentrations in water samples collected from some wells exceeded groundwater cleanup levels established in the Washington Model Toxics Control Act (MTCA) (Chapter 70.105D RCW and Chapter 173-340 WAC).

10. On April 11, 1996, Lehigh submitted to Ecology the "*Final Closure Plan, Cement Kiln Dust Pile, Metaline Falls, Washington*" for closure of the CKD landfill. Ecology reviewed the plan, and on May 31, 1996 issued a letter to Lehigh outlining deficiencies in the plan. On June 7, 1996, Lehigh submitted a revised "*Final Closure Plan*". Ecology reviewed and approved the revised plan in a letter to Lehigh dated June 13, 1996.

11. Lehigh implemented the approved closure plan during 1996. The CKD landfill was "closed" by constructing an "impermeable" cover on the surface of the CKD to minimize surface water infiltration and by constructing a stormwater management system to convey surface water run-on and run-off to and from the landfill. Components of the cover include a geosynthetic clay liner, a drainage geocomposite (geonet), reinforcement geotextile, and cover soils. The stormwater management system consists of catch basins, internal and external drainpipes, and a sediment basin. Closure certification, including documentation of the construction of the cover and stormwater management system, is given in the "*Closure Report for Cement Kiln Dust (CKD) Pile, Metaline Falls, Washington*", dated June 17, 1997.

12. Because dangerous waste (CKD) remains on site after closure of the landfill, all "clean closure" requirements in the Dangerous Waste Regulations have not been satisfied. As a result, postclosure care of the site is required.

13. On December 3, 1996, Ecology issued Administrative Order No. DE96HS-E934 to Lehigh, to require the company to submit and implement a plan for short-term postclosure care of the landfill. The Order was to remain in effect until two years of postclosure groundwater monitoring data was collected for the site.

14. On July 8, 1997, Lehigh submitted to Ecology the "Short-Term Postclosure Care Plan, Cement Kiln Dust (CKD) Pile, Metaline Falls, Washington", which documented Lehigh's plans for groundwater monitoring and for maintenance of the landfill cover and stormwater management system during the "short-term" post-closure period.

15. Between December 1996 and December 1998, Lehigh collected groundwater monitoring data on a monthly basis. Lehigh also maintained and repaired the landfill cover and stormwater management system during that time period.

16. In April 1999, Lehigh submitted to Ecology the "Post-Closure Care Groundwater Monitoring Data Review, Closed Cement Kiln Dust Pile, Metaline Falls, Washington", a report summarizing post-closure groundwater monitoring data collected between December 1996 and December 1998. These data indicate leachate has continued to emanate from the CKD landfill during the post-closure monitoring period, contaminating groundwater beneath and downgradient of the site. The contaminated groundwater is strongly alkaline and contains elevated concentrations of arsenic and/or lead. During the post-closure monitoring period, the pH of groundwater in the vicinity of "North Creek" (monitoring well MW-9) has frequently been measured at 13 standard units (su) or higher (Attachment 2). Total arsenic concentrations in well MW-9 during this period have varied between 180 and 470 ug/L, which exceed the MTCA Method A groundwater cleanup level of 5 ug/L and the federal drinking water maximum contaminant level (MCL) of 50 ug/L. The pH and arsenic concentration in groundwater decrease to the south as the distance from "North Creek" increases (Attachment 3). The extent of groundwater contamination to the north of "North Creek" is unknown.

17. The contaminated groundwater that flows northeast off Lehigh property beneath Washington Highway 31, flows onto three parcels of property located in the southeast quarter of Section 21 and the southwest quarter of Section 22, T. 39 N., R. 43 E. (WM). These properties are currently owned by the Washington Department of Transportation (WDOT), the town of Metaline Falls, and Mr. Cameron Grant (Attachment 3). The most highly contaminated groundwater apparently flows beneath and parallel to the former course of "North Creek" (now backfilled), a ditch which formerly transmitted water from the North Culvert beneath Highway 31 to Sullivan Creek. Until late 1998, the contaminated groundwater emerged to the surface at several springs located on the northeast side of the highway, but in November 1998 Lehigh backfilled the low-lying area on the WDOT and Cameron Grant properties with sediments, thereby preventing the contaminated groundwater from reaching the surface near Highway 31. However, contaminated groundwater still emerges to the surface in a series of springs in the west bank of Sullivan Creek near the mouth of "North Creek". Samples of the contaminated groundwater emerging at the springs have only been collected and analyzed once, on January 21, 1999 (Attachment 4). The seeps were strongly alkaline (pH approximately 12 su) and contained elevated concentrations (106 to 167 ug/L.) of total arsenic. During periods of low water in Sullivan Creek, the contaminated water emerging to the surface at the springs collects in pools on the Sullivan Creek floodplain (Attachment 4), then flows across the surface and discharges into clear water flowing in the west channel of Sullivan Creek. During periods of higher water in Sullivan Creek, the seeps of contaminated groundwater discharge directly into clear water flowing along the west bank of Sullivan Creek.

## V. ECOLOGY DETERMINATIONS

1. Lehigh is a person within the meaning of RCW 70.105D.020(14).
2. Lehigh is the owner of a dangerous waste facility that has operated under *interim status* subject to Section 3005(e) of RCRA and regulations promulgated thereunder,

including authorized state regulations in Chapter 173-303 WAC. The facility includes the cement kiln dust (CKD) landfill and properties adjacent to it, not controlled by Lehigh, onto which contaminated groundwater has migrated from Lehigh. The Lehigh property is located within portions of Sections 21 and 22, T. 39 N., R. 43 E. (WM) in Pend Oreille County, on the southern edge of the town of Metaline Falls, Washington.

3. The CKD and contaminated groundwater at the facility are dangerous constituents as defined in Section II of this Order.

4. These dangerous constituents are considered hazardous substances within the meaning of RCW 70.105D.020(7).

5. These dangerous constituents have been released into the environment from the Lehigh cement kiln dust landfill and have impacted groundwater beneath and beyond the landfill, surface water in the vicinity of the landfill, and human residential and work areas.

6. Based on the Findings of Fact and the administrative record, Ecology has determined that releases and potential releases of hazardous substances at and from the facility are a threat to human health and the environment. Contaminated groundwater emanating from the landfill flows to the east off of Lehigh property onto properties owned by the Washington Department of Transportation, the town of Metaline Falls, and Mr. Cameron Grant. The groundwater emerges to the surface in a series of springs that discharge into Sullivan Creek.

7. By letter dated October 15, 1998, Ecology notified Lehigh that the Department has determined Lehigh is a "potentially liable person" (PLP) under RCW 70.105D.040 for past releases of hazardous substances from the CKD landfill. By letter dated October 23, 1998, Lehigh voluntarily waived its rights to notice and comment and accepted Ecology's determination that Lehigh is a PLP under RCW 70.105D.040.

8. Pursuant to RCW 70.105D.030(1) and RCW 70.105D.050, the Department may require potentially liable persons to investigate or conduct other remedial actions with

respect to the release or threatened release of dangerous constituents, whenever it believes such action to be in the public interest.

9. The actions, including investigations, required by this Order are in the public interest.

## VI. WORK TO BE PERFORMED

Based on the foregoing Facts and Determinations, it is hereby ordered that Lehigh take the following remedial actions and that these actions be conducted in accordance with Chapter 173-340 WAC and applicable provisions of Chapter 173-303 WAC, unless otherwise specifically provided for herein:

1. Lehigh shall conduct a focused remedial investigation (RI) and a feasibility study (FS) of groundwater contamination at the Lehigh CKD landfill. A "Scope of Work" for the RI/FS is attached to this Order as Attachment 5. The Scope of Work requires Lehigh to complete the following tasks in accordance with the timelines established in the "Schedule of Deliverables" in Attachment 5:

- Submittal of a work plan for the focused remedial investigation and feasibility study (RI/FS);
- Implementation of the approved RI/FS work plan;
- Submittal of a technical report documenting the results of the focused remedial investigation; and
- Submittal of a Feasibility Study technical report.

2. The work plan for the RI/FS shall consist of a detailed description of work to be performed, personnel requirements, and schedules for implementation. The work plan shall include a Health and Safety Plan, a Sampling and Analysis Plan, and a Public Participation Plan.

3. The RI/FS work plan and each element thereof shall be designed, implemented, and completed in accordance with the Model Toxics Control Act (Chapter 70.105D RCW) and its implementing regulations (Chapter 173-340 WAC) as amended, in

accordance with the corrective action requirements for a RCRA facility investigation and a RCRA corrective measures study in WAC 173-303-646, and in accordance with all other applicable federal, state, and local laws and regulations.

4. After review of the RI/FS work plan, Ecology shall notify Lehigh's project coordinator, in writing, of Ecology's approval or disapproval of the work plan. In the event of disapproval, Ecology shall specify in writing both the deficiencies and modifications recommended by Ecology.

5. Once approved, or modified and approved, in writing by Ecology, submittals will be incorporated by reference and become enforceable parts of this Order as if fully set forth herein.

6. Lehigh shall notify Ecology's project coordinator in writing of any newly-discovered areas of concern at the facility no later than thirty (30) days after discovery, and shall investigate and report on these areas as directed by Ecology's project coordinator. If required, the investigation and reporting shall be done in accordance with the attached RI/FS Scope of Work.

7. Progress reports shall be completed on a quarterly basis, and shall be submitted by the tenth day of the month in which they are due after the effective date of this Order. The reports shall address progress made during the period, work in progress, problem areas, key activities, deliverables submitted, field work and data generated, subcontracting, analytical services performed, and any key staffing changes.

## VII. TERMS AND CONDITIONS OF ORDER

1. Public Notices: WAC 173-340-600(10)(c) requires that, at a minimum, this Order be subject to concurrent public notice. Ecology shall be responsible for providing such public notice and reserves the right to modify or withdraw any provisions of this Order should public comment disclose facts or considerations which indicate to Ecology that the Order is inadequate or improper in any respect.

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2. Remedial and Investigative Costs: Lehigh agrees to pay costs incurred by Ecology pursuant to this Order. These costs shall include work performed by Ecology or Ecology's contractors for investigations, remedial actions, Order preparation, negotiations, oversight and administration. Ecology costs shall include costs of direct activities and support costs of direct activities as defined in WAC 173-340-550(2). Lehigh agrees to pay the required amount within thirty (30) days of receiving from Ecology an itemized statement of costs that includes a summary of costs incurred, an identification of involved staff, and the amount of time spent by involved staff members on the project. A general description of work performed will be provided upon request. Itemized statements will be prepared quarterly. Failure to pay Ecology's costs within thirty (30) days of receipt of the itemized statement of costs will result in interest charges. In order to assure these payments get to the proper staff as soon as possible, the address for mailing via the post office is:

Cashiering Section  
P.O. Box 5128  
Lacey, WA 98509-5128

If Lehigh chooses to send a check by a messenger/overnight delivery service, the address to use is:

Cashiering Section  
300 Desmond Drive  
Lacey, WA 98503

Please indicate the check is for "cost recovery" for the Lehigh Portland Cement Company project, so it is properly credited. Enclosing the bottom portion of our invoice will accomplish this.

3. Financial Assurance: Lehigh shall establish and maintain financial assurance for corrective action in the amount necessary to implement the Cleanup Action Plan (CAP) and the Compliance Monitoring Plan (CMP), as provided in WAC 173-340-360(10) and WAC 173-340-410, respectively, and required by WAC 173-303-646. In the absence of detailed regulations, Federal Register/Vol. 51, No. 206/Friday, October 24,

1986/Proposed rules and Federal Register/Vol. 55, No. 145/Friday, July 27, 1990/Proposed Rules shall be used as guidance. Acceptable mechanisms include trust funds, surety bonds guaranteeing performance, letters of credit, insurance, the financial test, and corporate guarantee. Lehigh shall provide Ecology's project coordinator with documentation of this financial assurance within sixty (60) days of Ecology's issuance of the final CAP. Lehigh shall adjust the financial assurance coverage for changes in cost estimates and/or for inflation within thirty (30) days after each anniversary of the date that the preceding costs were first prepared and shall provide Ecology's project coordinator with documentation of the updated financial assurance. Lehigh shall notify Ecology's project coordinator by certified mail of the commencement of a voluntary or involuntary bankruptcy proceeding under Title 11, United States Code, naming Lehigh, within ten (10) days after commencement of the proceeding. A guarantor of a corporate guarantee must make such a notification if he is named as debtor as required under the terms of the corporate guarantee.

Lehigh, who has established financial assurance for corrective action with an acceptable mechanism mentioned above, will be deemed to be without the required financial assurance or liability coverage:

- a) in the event of bankruptcy of the trustee or issuing institution; or
- b) the authority of the trustee institution to act as trustee has been suspended or revoked; or
- c) the authority of the institution issuing the surety bond, letter of credit or insurance policy has been suspended or revoked.

Lehigh must establish other financial assurance within sixty (60) of bankruptcy, or suspension/revocation of authority.

4. Designated Project Coordinators:

The project coordinator for Ecology is:

Name: Mr. Keith Stoffel  
Address: Department of Ecology

4601 North Monroe  
Spokane, WA 99205-1296  
Telephone: (509) 456-3176  
FAX: (509) 456-6175

The project coordinator for Lehigh is:

Name: Ms. Elizabeth Mikols  
Address: Lehigh Portland Cement Company  
7660 Imperial Way  
Allentown, PA 18195  
Telephone: (610) 366-4753  
FAX: (610) 366-4684

The project coordinators shall be responsible for overseeing the implementation of this Order. To the maximum extent possible, communications between Ecology and Lehigh, and all documents, including reports, approvals, and other correspondence concerning the activities performed pursuant to the terms and conditions of this Order, shall be directed through the project coordinators. Should Ecology or Lehigh change project coordinators, written notification shall be provided to Ecology or Lehigh at least ten (10) calendar days prior to the change if possible.

5. Performance: All work performed by Lehigh pursuant to this Order shall be under the direction and supervision, as necessary, of a professional engineer or hydrogeologist, or similar expert, with appropriate training, experience and expertise in hazardous waste facility investigation and cleanup. Lehigh shall notify Ecology as to the identity of such engineer(s) or hydrogeologist(s), and of any contractors and subcontractors to be used in carrying out the terms of this Order, in advance of their involvement at the facility. Lehigh shall provide a copy of this Order to all agents, contractors and subcontractors retained to perform work required by this Order and shall ensure that all work undertaken by such agents, contractors and subcontractors will be in compliance with this Order.

Except where necessary to abate an emergency situation, Lehigh shall not perform any remedial actions at the Metaline Falls cement kiln dust landfill other than those

required by this Order unless Ecology concurs, in writing, with such additional remedial actions.

WAC 173-340-400(7)(b)(i) requires that any "construction" performed at the site must be under the supervision of a professional engineer registered in Washington.

Lehigh shall provide seven (7) days notice to Ecology's project manager prior to conducting work activities that Ecology identifies on site.

6. Access: Ecology or any Ecology authorized representative shall have the authority to enter and freely move about the facility at all reasonable times for the purposes of, among other things, inspecting records, operation logs, and contracts related to the work being performed pursuant to this Order; reviewing the progress in carrying out the terms of this Order; conducting such tests or collecting samples as Ecology or the project manager may deem necessary; using a camera, sound recording, or other documentary type equipment to record work done pursuant to this Order; and verifying the data submitted to Ecology by Lehigh. By signing this Agreed Order, Lehigh agrees that this Order constitutes reasonable notice of access, and agrees to allow access to those portions of the facility owned and controlled by Lehigh at all reasonable times for purposes of overseeing work performed under this Order. If access to property not owned or controlled by Lehigh is necessary to complete work under this Order, Lehigh shall attempt to obtain access in a timely fashion. If Lehigh is unable to gain access to such property under reasonable conditions, Ecology will, at Lehigh's request, assist in gaining access to the property. Lehigh shall allow split or replicate samples to be taken by Ecology and shall provide seven (7) days notice before any sampling activity. Ecology shall allow split or replicate samples to be taken by Lehigh and shall provide seven (7) days notice before sampling activity, unless Ecology determines there is an emergency or urgent concern that requires immediate sampling.

7. Public Participation: Lehigh shall prepare and/or update a public participation plan for the facility by November 1, 1999. Ecology will review and approve the plan and

will maintain the responsibility for public participation at the facility. Lehigh shall help coordinate and implement public participation for the facility as specified in the Ecology-approved public participation plan.

8. Retention of Records: Lehigh shall preserve in a readily retrievable fashion, during the pendency of this Order and for ten (10) years from the date of issuance by Ecology of written notification that all requirements of this Order have been satisfactorily completed, reports, documents, and underlying data in its possession relevant to this Order. Should any portion of the work performed hereunder be undertaken through contractors or agents of Lehigh, then Lehigh agrees to include in their contract with such contractors or agents a record retention requirement meeting the terms of this paragraph.

9. Dispute Resolution: Lehigh may request Ecology to resolve disputes that may arise during the implementation of this Order. Such requests shall be in writing and directed to the signatory, or his/her successor(s) to this Order. Lehigh may request a meeting with the Section Manager of the Hazardous Waste & Toxics Reduction (HWTR) Program in Ecology's Eastern Regional Office or with the Program Manager of the HWTR Program before Ecology makes a final decision on the disputed matter. Ecology resolution of the dispute shall be binding and final. Lehigh is not relieved of any requirement of this Order during the pendency of the dispute and remains responsible for timely compliance with the terms of the Order unless otherwise provided by Ecology in writing.

10. Reservation of Rights/No Settlement: This Agreed Order is not a settlement under Chapter 70.105D RCW. Ecology's signature on this Order in no way constitutes a covenant not to sue or a compromise of any Ecology rights or authority. Ecology will not, however, bring an action against Lehigh to recover remedial action costs paid to and received by Ecology under this Agreed Order. In addition, Ecology will not take additional enforcement actions against Lehigh to require those remedial actions required by this Agreed Order, provided Lehigh complies with this Agreed Order.

Ecology reserves the right, however, to require additional remedial actions at the facility allowable by applicable federal, state, and local laws and regulations should it deem such actions necessary.

Ecology also reserves all rights regarding the injury to, destruction of, or loss of natural resources resulting from the releases or threatened releases of hazardous substances from the Lehigh CKD landfill.

In the event Ecology determines that conditions at the facility are creating or have the potential to create a threat to the health or welfare of the people on the facility or in the surrounding area or to the environment, Ecology may order Lehigh to stop further implementation of this Order for such period of time as needed to abate the threat.

11. Transference of Property: Prior to any voluntary or involuntary conveyance or relinquishment of title, easement, leasehold, or other interest in any portion of the facility, Lehigh shall provide for continued implementation of all requirements of this Order and implementation of any remedial actions found to be necessary as a result of this Order.

Prior to transfer of any legal or equitable interest Lehigh may have in the facility or any portions thereof, Lehigh shall serve a copy of this Order upon any prospective purchaser, lessee, transferee, assignee, or other successor in such interest. At least ninety (90) days prior to finalization of any transfer, Lehigh shall notify Ecology of the contemplated transfer.

12. Compliance with Other Applicable Laws:

A. All actions carried out by Lehigh pursuant to this Order shall be done in accordance with all applicable federal, state, and local requirements, including requirements to obtain necessary permits, except as provided in paragraph B of this section.

B. Pursuant to RCW 70.105D.090(1), the substantive requirements of chapters 70.94, 70.95, 70.105, 75.20, 90.48, and 90.58 RCW and of any laws requiring or authorizing local government permits or approvals for the remedial action under this Order

that are known to be applicable at the time of issuance of the Order, have been included in Section VI (Work to be Performed) and Attachment 5 (Scope of Work) of this Order, and are binding and enforceable requirements of the Order.

Lehigh has a continuing obligation to determine whether additional permits or approvals addressed in RCW 70.105D.090(1) would otherwise be required for the remedial action under this Order. In the event Lehigh determines that additional permits or approvals addressed in RCW 70.105D.090(1) would otherwise be required for the remedial action under this Order, it shall promptly notify Ecology of this determination. Ecology shall determine whether Ecology or Lehigh shall be responsible to contact the appropriate state and/or local agencies. If Ecology so requires, Lehigh shall promptly consult with the appropriate state and/or local agencies and provide Ecology with written documentation from those agencies of the substantive requirements those agencies believe are applicable to the remedial action. Ecology shall make the final determination on the additional substantive requirements that must be met by Lehigh and on how Lehigh must meet those requirements. Ecology shall inform Lehigh in writing of these requirements. Once established by Ecology, the additional requirements shall be enforceable requirements of this Order. Lehigh shall not begin or continue the remedial action potentially subject to the additional requirements until Ecology makes its final determination.

Ecology shall ensure that notice and opportunity for comment is provided to the public and appropriate agencies prior to establishing the substantive requirements under this section.

C. Pursuant to RCW 70.105D.090(2), in the event Ecology determines that the exemption from complying with the procedural requirements of the laws referenced in RCW 70.105D.090(1) would result in the loss of approval from a federal agency which is necessary for the State to administer any federal law, the exemption shall not apply and Lehigh shall comply with both the procedural and substantive requirements

of the laws referenced in RCW 70.105D.090(1), including any requirements to obtain permits.

D. Some requirements herein are based on the applicable requirements of Chapter 70.105 RCW and Chapter 173-303 WAC.

### VIII. STIPULATED PENALTIES

1. For each day Lehigh fails to comply with any time schedules contained within Section VI (Work to be Performed) and Attachment 5 (Scope of Work) of this Agreed Order, or any other time schedules approved or modified in writing by Ecology, Lehigh stipulates and agrees that Ecology may, at its discretion, assess a stipulated penalty. The stipulated penalties to be assessed are no more than \$5,000 for each day of noncompliance. If Ecology chooses to pursue a civil penalty greater than \$5,000 for each day of violation, it shall utilize its authority under RCW 70.105D.050(1)(b) and Section X of this Agreed Order to request a court of competent jurisdiction to issue such a penalty. In any such proceeding, Lehigh may raise whatever defenses it deems appropriate. Should a stipulated penalty be assessed under this Part, the penalty shall accrue from the date on which the work was to have been performed, or the submittal was to have been made, and shall cease to accrue on the date when Lehigh performs the required work or delivers the required submittal to Ecology. If imposed, all stipulated penalties shall be payable within thirty (30) days of assessment to the Department of Ecology, Cashiering Section, PO Box 5128, Lacey, WA 98503-0210. Stipulated penalties may not be appealed to the Pollution Control Hearings Board. The internal dispute resolution procedures in Section VII.9 of this Agreed Order will apply to all stipulated penalties.

2. Lehigh shall not be liable for payment under this Section if Lehigh has submitted to Ecology a timely request for an extension of schedules established in Section VI and Attachment 5 of this Agreed Order, and if Ecology has not denied the request.

3. The stipulated penalties provisions of this Agreed Order do not preclude Ecology from pursuing any other remedies or sanctions that may be available to Ecology based on

Lehigh's failure to comply with provisions of applicable law, except that issuance of stipulated penalties pursuant to this section shall preclude Ecology from issuing civil penalties under Chapter 70.105 RCW, or from requesting a court to impose civil penalties under Chapter 70.105D RCW, based upon the same facts underlying issuance of the stipulated penalty.

4. Stipulated penalties paid under these provisions shall not be deemed damages or any form of payment for any harm caused as a result of Lehigh's failure to comply with a time schedule established in or pursuant to this Agreed Order.

#### IX. SATISFACTION OF THIS ORDER

The provisions of this Order shall be deemed satisfied upon Lehigh's receipt of written notification from Ecology that Lehigh has completed the corrective actions required by this Order, as amended by any modifications, and that all other provisions of this Agreed Order have been complied with.

#### X. ENFORCEMENT

Pursuant to RCW 70.105D.050, this Order may be enforced as follows:

- A. The Attorney General may bring an action to enforce this Order in a state or federal court.
- B. The Attorney General may seek to recover, by filing an action if necessary, the amounts spent by Ecology for investigative and remedial actions and orders related to the facility.
- C. In the event Lehigh refuses, without sufficient cause, to comply with any term of this Order, Lehigh will be liable for:
  - (1) up to three times the amount of any costs incurred by the state of Washington as a result of its refusal to comply; and
  - (2) civil penalties of up to \$25,000 per day for each day it refuses to comply.

D. This Order is not appealable to the Washington Pollution Control Hearings Board. This Order may be reviewed only as provided under RCW 70.105D.060.

Effective date of this Order October 11, 1999:

LEHIGH PORTLAND CEMENT COMPANY

STATE OF WASHINGTON  
DEPARTMENT OF ECOLOGY

By Jeffrey H. Brozyna  
Jeffrey H. Brozyna  
Vice President

By James L. Malm  
James L. Malm  
Section Supervisor, Hazardous Waste  
and Toxics Reduction Program  
Eastern Region Office