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SPOKANE WA 99201-5001

PEND OREILLE COUNTY, WASHINGTON  
MARIANNE NICHOLS, AUDITOR

LBLORE

### DECLARATION OF ENVIRONMENTAL COVENANT

**Reference numbers of related documents:** n/a

**Grantor(s):** Lehigh Cement Company, a Pennsylvania corporation

**Grantee(s):** State of Washington, Department of Ecology

**Legal Description:**

1. Abbreviated form: Ptn SW 1/4 Sec. 22, Twp 39N, Rg 43 EWM; Ptn Secs. 21 & 22, Twp 39N, Rg 43 EWM; Defiance Placer Claim; Ptn. Secs. 21, 22, 27 & 28, Twp 39N, Rg 43 EWM
2. Additional legal descriptions are on pages 7 through 10 of document

**Assessor's Property Tax Parcel Account Number(s):** 4339-21-44-0001 (Parcel 5); 433922-33-0002 (Parcels A & 4); 433922-46-0008 (Parcel 1); 433922-33-9001 (Parcels 2 & 3)

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### DECLARATION OF ENVIRONMENTAL COVENANT

The undersigned, Lehigh Cement Company, a Pennsylvania corporation (hereafter "Lehigh Cement Company"), is the fee owner of real property (hereafter the "Property") in the County of Pend Oreille, State of Washington, that is subject to this Declaration of Environmental Covenant (hereafter the "Covenant"). The Property consists of six (6) separate parcels, each of which is legally described in Attachment A of this Covenant and incorporated herein by reference.

#### Recitals

This Covenant is made by Lehigh Cement Company pursuant to RCW 70.105D.030(1)(f) and (g) and WAC 173-340-440. A remedial action (hereafter "Remedial Action") is being conducted at the Property that is the subject of this Covenant. The Remedial

Action being conducted at the Property is described in the following documents:

1. Cleanup Action Plan for the Closed Cement Kiln Dust Pile, Metaline Falls, Washington dated February 2006 (Cleanup Action Plan).
2. Engineering Design Report dated 30 June 2006 and Construction Plans and Specifications dated February 2007.

These documents are currently on file at the Washington State Department of Ecology's (hereafter "Ecology") Eastern Regional Office, located at N. 4601 Monroe, Spokane, Washington. The Remedial Action includes installation of a groundwater remediation system on the Property. The groundwater remediation system includes a subsurface gravity drain pipe that extends from Parcel 5 (Tax Parcel Number 4339-21-440001) to Parcel A (Tax Parcel Number 433922-33-0002), then under State Route 31 to Parcel 4 (Tax Parcel Number 433922-33-0002); a funnel-and-gate treatment system that has been installed on Parcels 1 (Tax Parcel Number 433922-46-0008), 2 and 3 (Tax Parcel Number 433922-33-9001), and 4 (Tax Parcel Number 433922-33-0002); and monitoring wells installed on Parcels 1 (Tax Parcel Number 433922-46-0008), 2 and 3 (Tax Parcel Number 433922-33-9001), and 4 (Tax Parcel Number 433922-33-0002). These components of the groundwater remediation system are depicted on the Overall Site Plan (Drawing RC-1) in Attachment B of this Covenant.

This Covenant is required because a conditional point of compliance has been established for groundwater. Arsenic, lead, chromium, manganese, and high pH are present in groundwater upgradient of the conditional point of compliance in concentrations that exceed the Model Toxics Control Act Method B cleanup levels established under WAC 173-340-720. Groundwater captured by the groundwater remediation system is treated through an in situ treatment system, with the treated effluent discharged to surface water (Sullivan Creek) through an engineered subsurface outfall.

Lehigh Cement Company makes the following declaration as to limitations, restrictions, and uses to which each of the parcels on the Property may be put and specifies that such declarations shall constitute covenants to run with the land, as provided by law and shall be binding on the legal representatives, successors and assigns of all persons having or in the future acquiring any right, title, or interest in any of the parcels on the Property (hereafter "Owner"). Lehigh Cement Company hereby binds Owner to the land use restrictions identified herein and grants such other rights under this Covenant in favor of the State of Washington, Department of Ecology (hereafter "Ecology"). Ecology shall have full right of enforcement of the rights conveyed under this Covenant pursuant to RCW 70.105D.030(1)(g) and the Uniform Environmental Covenants Act, chapter 64.70 RCW.

### **Covenant**

#### **Limitations, Restrictions, and Uses for Parcels A, 1, 2, 3, 4, and 5:**

Section 1. No groundwater may be taken from the parcel, except for purposes related

to the Remedial Action, such as groundwater monitoring.

Section 2. The Owner shall maintain components of the groundwater remediation system installed on this parcel in accordance with the Maintenance Requirements of the Operations and Maintenance Plan prepared in accordance with requirements of the Consent Decree filed on March 9, 2006 in *State of Washington, Department of Ecology v. Lehigh Cement Company*, Pend Oreille County Superior Court No. 06-2-00034-6, as now written and hereafter amended.

Section 3. The Owner shall maintain a suitable barrier that restricts unauthorized access to the groundwater remediation system, as described in the Operations and Maintenance Plan prepared in accordance with requirements of the Consent Decree filed on March 9, 2006 in *State of Washington, Department of Ecology v. Lehigh Cement Company*, Pend Oreille County Superior Court No. 06-2-00034-6, as now written and hereafter amended.

Section 4. The Owner shall maintain one or more signs warning of the hazardous conditions caused by the Remedial Action systems and the groundwater containing elevated levels of arsenic, lead, chromium, manganese, and pH, as described in the Operations and Maintenance Plan prepared in accordance with requirements of the Consent Decree filed on March 9, 2006 in *State of Washington, Department of Ecology v. Lehigh Cement Company*, Pend Oreille County Superior Court No. 06-2-00034-6, as now written and hereafter amended.

Section 5. The Owner is prohibited from blocking access by authorized personnel to any component of the groundwater remediation system installed on this parcel. This includes, but is not limited to, placing structures above any component of the groundwater remediation system (except structures needed to operate, maintain, or repair the system).

Section 6. Any activity on the parcel that may result in the release or exposure to the environment of a hazardous substance that remains on the parcel as part of the Remedial Action, or create a new exposure pathway, is prohibited without prior written approval from Ecology. Such activities include, but are not limited to, the following when conducted within twenty-five (25) feet of any component of the groundwater remediation system: drilling or digging; placing any objects or using any equipment that deforms or stresses the ground surface beyond its load-bearing capability; or bulldozing or earthwork.

Section 7. Any activity on the parcel that may interfere with the integrity of the Remedial Action and the resultant continued protection of human health and the environment is prohibited.

Section 8. The Owner must give thirty (30) days advance written notice to Ecology of the Owner's intent to convey any interest in the parcel. No conveyance of title, easement, lease, or other interest in the parcel shall be consummated by the Owner

without adequate and complete provision for continued monitoring, operation, and maintenance, if any, as required by the Remedial Action. The Owner must include in any instrument conveying any interest in the parcel notice of this Restrictive Covenant.

Section 9. The Owner must restrict leases to uses and activities consistent with the Restrictive Covenant and notify all lessees of the restrictions on the use of the parcel.

Section 10. The Owner must notify and obtain approval from Ecology prior to any use of the parcel that is inconsistent with the terms of this Restrictive Covenant. Ecology may approve any inconsistent use only after public notice and comment.

Section 11. The Owner shall allow authorized representatives of Ecology the right to enter the parcel at reasonable times for the purpose of evaluating the Remedial Action, to take samples, to inspect the Remedial Action conducted at the parcel, and to inspect records that are related to the Remedial Action. Except in an emergency, Ecology shall notify the Owner of its intention to enter the parcel at least 48 hours before entry.

Section 12. The Owner of the parcel reserves the right under WAC 173-340-440 to record an instrument that provides that this Restrictive Covenant shall no longer limit use of the parcel or be of any further force or effect. However, such an instrument may be recorded only if Ecology, after public notice and opportunity for comment, concurs.

### **Miscellaneous Provisions**

**Governing Law.** The validity, performance, and enforceability of this Covenant shall be governed by the laws of the State of Washington.

**Notices.** All notices or other communications that are required or permitted to be given under this Covenant shall be in writing, and either personally delivered or mailed to the following addresses:

Notices or other communications to Ecology:

Washington State Department of Ecology  
Eastern Regional Office  
Toxics Cleanup Program  
N. 4601 Monroe  
Spokane, WA 99205

Notices or other communications to Lehigh Cement Company:

Lehigh Cement Company  
7660 Imperial Way  
Allentown, PA 18195

(Signature blocks appear on next two pages)

**LEHIGH CEMENT COMPANY, a Pennsylvania corporation**

*Jeffrey H Brozyna*

By JEFFRY H. BROZYNA

Its SR. VICE PRESIDENT, CORPORATE SERVICES/GENERAL COUNSEL

COMMONWEALTH OF PENNSYLVANIA)

) ss.

COUNTY OF LEHIGH )

On this 14TH day of February, 2008, before me, the undersigned, a Notary Public in and for the Commonwealth of Pennsylvania, duly commissioned and sworn, personally appeared JEFFRY H. BROZYNA, to me known to be the person who signed as SR. VICE PRESIDENT, CORPORATE SERVICES/GENERAL COUNSEL of LEHIGH CEMENT COMPANY, the corporation that executed the within and foregoing instrument, and acknowledged said instrument to be the free and voluntary act and deed of said corporation for the uses and purposes therein mentioned, and on oath stated that he was duly elected, qualified and action as said officer of the corporation, that he was authorized to execute said instrument and that the seal affixed, if any, is the corporate seal of said corporation.

IN WITNESS WHEREOF I have hereunto set my hand and affixed my official seal the 14TH day of February, 2008.

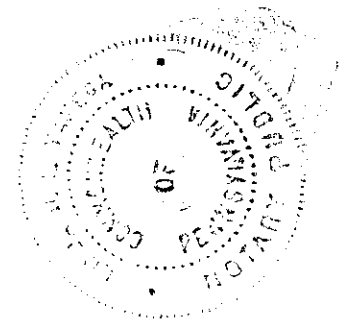
*Linda M L Yanega*

Print Name: LINDA M.L. YANEGA  
Notary Public in and for the Commonwealth of Pennsylvania

Residing at BETHLEHEM, PA

My commission expires: MARCH 6, 2008

COMMONWEALTH OF PENNSYLVANIA  
NOTARIAL SEAL  
LINDA M. L. YANEGA, Notary Public  
City of Allentown, Lehigh County  
My Commission Expires March 6, 2008



STATE OF WASHINGTON, DEPARTMENT OF ECOLOGY

*Michael A. Hibbler*

By: MICHAEL A. HIBBLER

Its: REGIONAL SECTION MANAGER

APPROVED AS TO FORM:

*Andrew A. Fitz*

By: ANDREW A. FITZ

Assistant Attorney General

STATE OF WASHINGTON)

) ss.

COUNTY OF Spokane)

On this 19<sup>th</sup> day of February, 2008, before me personally appeared Michael A. Hibbler, to me known to be the duly appointed Regional Section Manager of the STATE OF WASHINGTON, DEPARTMENT OF ECOLOGY, and that he executed the within and foregoing instrument and acknowledged the said instrument to be the free and voluntary act and deed of said State of Washington, for the uses and purposes therein set forth, and on oath stated that he/she is authorized to execute said instrument.

IN WITNESS WHEREOF I have hereunto set my hand and official seal the day 19<sup>th</sup> day of February, 2008.

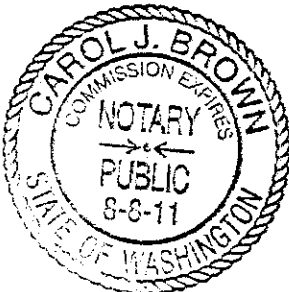
*Carol J. Brown*

Print Name: CAROL J. BROWN

Notary Public in and for the State of Washington

Residing at Spokane

My commission expires: 8/8/11



**Attachment A**  
**Legal Descriptions**

Parcel A

That portion of the following described parcel "A" lying southwesterly of a line drawn parallel with and 30 feet southwesterly of the SR 31 line survey of SR 31, Metaline Falls North.

Parcel "A":

That portion of the southwest quarter of Section 22, Township 39 North, Range 43 East of the Willamette Meridian, being part of the Defiance Placer claim Located as follows:

Beginning at a point 75 feet north of Corner No. 2 of the Defiance claim and on a projection of a line from Corner No. 1 to Corner No. 2 of the Defiance; thence north 78°11' East 363 feet to the southeast corner of this tract; thence north 11°79' west 300 feet to the northeast corner; thence South 78°11' West 363 feet to the northwest corner; thence South 11°79' East to the southwest corner and the place of beginning.

Parcel 1

A tract of land in Sections 21 and 22 of Township 39 North, Range 43EWM more particularly described as follows: Beginning at the intersection of the City Limits of the Town of Metaline Falls, Wa. and the easterly right-of-way line of State Route 31 adjacent approximate Highway Station 15+92.3; thence, North 89 degrees 54' 21" East along said City Limits 241.04 feet; thence, South 00 degrees 5' 39" East 181.03 feet to the Northeast corner of a tract of land recorded in Deed Book 46, pages 116 and 117, Auditor's Recording No. 119795; thence, South 78 degrees 5' 19" West along the North line of said tract 225 feet to its intersection with said easterly right-of-way line of State Route 31; thence, along the arc of a curve to the right, along said right-of-way line, 32.29 feet (Delta 3 degrees 51' 6" West, R = 480.39 feet, Chord = North 37 degrees 32' 39" West, 32.29 feet); thence, North 17 degrees 39' 19" West along said right-of-way line, 19.85 feet; thence, along the arc of a curve to the left along said right-of-way line, 156.32 feet (Delta = 10 degrees 21' 30", R = 864.68 feet, Chord = North 6 degrees 50' 4" west, 156.11 feet) to the point of beginning.

Parcel 2

That part of DEFIANCE PLACER SURVEY 955, being a tract of land between Washington State Highway Number Six and Sullivan Creek immediately North of the two and one-half acre plot occupied by the State Highway Garage located in Sections 21 and 22 of Township 39 North, Range 43 East of the Willamette Meridian, and described by the following traverse:

Beginning at a point No. 1 on the East edge of the Washington State Highway Number Six right of way, located North 09°09' West, 499.87 feet distant from the section corner common to Sections 21, 22, 27 and 28 in Township 39 North, Range 43 E.W.M., the property line follows the edge of the right of way Northerly to a point No. 2, North 07°11' West, 212.00 feet distant; thence North 78°11' East, 225.00 feet distant to point No. 3; thence South 11°17' West 229.73 feet distant to point No. 4; and thence South 78°11' West, 152.00 feet to Point No. 1 and place of beginning, all being in Pend Oreille County, Washington, said tract of land being carried on the County Assessor's Tax Rolls as Tax No. 9. (Assessor's Parcel No. 433922-33-9001)

Parcel 3

A tract of land located in the Southwest Quarter (SW1/4) of Section 22, Township 39 North, Range 43 E.W.M., Pend Oreille County, Washington, more particularly described as follows:

Beginning at the Northeasterly corner of that property owned by the State of Washington Department of Transportation and further described in Warranty Deed Auditor's No. 20896, thence S 78°05'19" W, along the Northerly line of said Warranty Deed Auditor's No. 20896, 174.00 feet to the Southeasterly corner of that tract of land described in recorded deed Auditor's No. 119795; thence N 8°24'27" E, along the Easterly line of said tract described in recorded deed Auditor's No. 119795, 225.91 feet to the Northeasterly corner of said tract of land described in recorded deed Auditor's No. 119795; thence N 0°05'39" W, along the Easterly line of that tract of land shown on record of survey Auditor's No. 244497, 65.00 feet; thence N 89°54'21" E 105.50 feet; thence S 0°05'39" E, parallel with the Easterly line of said tract of land shown on record of survey Auditor's No. 244497, 72.40 feet; thence S 9°58'22" E 183.11 feet to the point of beginning.



Parcel 4

That portion of Parcel "A" lying northeasterly of a line drawn parallel with and 30 feet northeasterly of the SR 31 Line Survey of Metaline Falls North.

Parcel "A":

That portion of the Southwest quarter of Section 22, Township 39 North, Range 43 East, W.M., being part of the Defiance Placer Claim described as follows:

BEGINNING at a point 75 feet north of Corner No. 2 of the Defiance Claim on a projection of a line from Corner No. 1 to Corner No. 2 of the Defiance Claim; thence North  $78^{\circ} 11'$  East 363 feet to the Southeast corner of this tract; thence North  $11^{\circ} 79'$  West 300 feet to the Northeast corner; thence South  $78^{\circ} 11'$  West 363 feet to the Northwest corner; thence South  $11^{\circ} 79'$  East to the Southwest corner and the point of beginning.

Parcel 5

Commencing at a point where the west boundary of state highway no. 31 intersects the city limits of the town of Metaline Falls at a point on course #7 of that certain instrument recorded in book 1 of mining deeds, page 88, records of the auditor of Pend Oreille county, Wa.; thence, south  $45^{\circ}$  west to a point which is a corner common to the city limits of the town of Metaline Falls and to that parcel of land described in instrument #83825, records of the auditor of Pend Oreille county, Wa., said point also being corner #6 of that parcel of land described in said book 1 of mining deeds, page 88; thence, north  $59^{\circ} 5'$  west 116.79 feet to a point; thence, south  $22^{\circ} 9'$  west to a point on the easterly boundary of the county road to the limestone quarry; thence, southerly along the easterly boundary of the said road leading to the limestone quarry a distance of 610 feet to a point; thence, south  $50^{\circ}$  east a distance of 325 feet to a point; thence, south 148 feet to a point; thence, south  $75^{\circ}$  east a distance of 250 feet to a point; thence, north  $13^{\circ} 19' 30''$  east to the point of intersection with the southerly boundary of state highway no. 31; thence, northwesterly along the southerly boundary of said state highway no. 31 to the point of intersection with the southerly boundary of that parcel of land conveyed to the state of Washington under instrument #20896, records of the auditor of Pend Oreille county, Wa.; thence, south  $78^{\circ} 11'$  west along the southerly boundary of said parcel conveyed to the state of Washington to the southwest corner thereof; thence, north  $11^{\circ} 49'$  west along the westerly boundary of said parcel conveyed to the state of Washington to the intersection with the southwesterly boundary of state highway no. 31 thence, northwesterly along the westerly boundary of state highway no. 31 to the point of beginning. Except therefrom all that land lying west of a line described as follows:

Commencing at the corner common to sections 21, 22, 27 and 28, township 39 north, range 43 e., w.m.; thence north  $74^{\circ} 40'$  west 370.91 feet to a point which is on the south boundary of placer survey #955 and is also a corner to the city limits of the town of

Metaline Falls; thence, north 600 feet to a point which is a corner common to the city limits of the town of Metaline Falls and land owned by the Lehigh Portland Cement Company; thence, north  $59^{\circ}5'$  west 116.79 feet; thence, south  $22^{\circ}9'$  west 75.32 feet to a point which is the true point of beginning of aforementioned "line"; thence, south  $8^{\circ}35'$  east 182.4 feet to a point; thence, south  $19^{\circ}18'$  west 158.9 feet to a point; thence, south  $18^{\circ}44'$  east 81.8 feet to a point; thence, south  $11^{\circ}37'$  east 142.2 feet to a point; thence, south  $9^{\circ}50'$  west to the point of intersection with the city limits of the town of Metaline Falls; said point being the termination point of the aforementioned "line".

**Attachment B – Overall Site Plan (Drawing RC-1)**

