

Questions Not Addressed at 11/4/15 Public Information Meeting on Lehigh Cement and Quarry

EPA:

1. Why is there a statute of limitations? Lehigh should be charged for all the years they are in violation. Why aren't they? *Typically, the five-year federal statute of limitations set forth in the United States Code -- Title 28 U.S.C. Section 2462 -- is applicable in administrative proceedings for EPCRA reporting violations.*
2. In March 2010 EPA issued a Notice of Violation concerning plant modifications made without necessary permits. When can we expect a final resolution? *EPA's investigation concerning Clean Air Act is ongoing. At this point, we cannot provide any additional details as to the timing of any resolution of the claims set forth in the NOV. However, we will provide the public and the County with any information as it becomes publicly available.*
3. What is the relationship between County and EPA actions regarding selenium? *EPA and the Regional Board jointly oversee compliance with the Clean Water Act through, among other means, the issuance and enforcement of National Pollutant Discharge Elimination System permits. In this case the NPDES permit and our enforcement action require the installation of a treatment system to remove selenium from wastewater and various best management practices to address the discharge of selenium in storm water. The County is the lead agency for the Surface Mining and Reclamation Act (SMARA) within the unincorporated portions of Santa Clara County. The County's responsibilities under SMARA include review and approval of the Reclamation Plan for the Lehigh quarry, which also includes requirements for use of BMPs to address storm water pollutants.*

SF Regional Water Quality Control Board:

4. How many Notices of Violation has the SFRWQCB issued in the last year to Lehigh and what has been done with these NOVs? *At least one NOV was issued in the past year. Since the Sierra Club lawsuit and the recent Consent*

Decree between EPA and the Regional Board, there have been fewer NOVs issued to Lehigh for water quality. Under the Cease and Desist Order and new permit, adopted in spring of 2014, Lehigh may be subject to enforcement for stormwater discharges and effluent violations. Details regarding any pending enforcement actions are confidential.

5. The Water Board is charged with protecting creeks and enforcing the Clean Water Act. Why did it take a lawsuit by the Sierra Club to expose and arrest the dumping of millions of gallons of toxic wastewater by Lehigh into Permanente Creek. *The Clean Water Act allows third parties to file suit for certain violations. We do not stand in the way. We sent a notice of violation to Lehigh informing them that they needed to cease and desist its unauthorized discharge and obtain appropriate permits. Once Sierra Club expressed an interest in filing suit we provided them with our records. For us to pursue enforcement of the same violation would have been a waste of time. Instead we consulted on the settlement terms in order to make sure they were consistent with our Cease and Desist Order and permit requirements. It was more of a win-win arrangement.*

6. How much of pollution impacts are from Stevens Creek v. Lehigh Quarry? *We do not have any information that suggests Stevens Creek Quarry is a pollution source. We will be inspecting it this winter. They are not mining limestone, so selenium is not likely to be a problem.*

Santa Clara County Department of Environmental Health:

7. Why can't the County police the noise and pollution from Lehigh with 24/7 on-going monitoring? *Noise monitoring for compliance purposes requires a highly trained professional to interpret the plant noises from the surrounding extraneous noises (such as sirens, lawnmowers, moving cars, etc). That makes it difficult to place noise monitors in the neighborhoods. The surrounding noises can be difficult to isolate and remove from the noise patterns. As we monitor noise from the Lehigh facility for compliance purposes – we have to be sure the noise we are measuring is coming from the plant and not another source.*

Bay Area Air Quality Management District:

8. I have photos of dust plumes over the top of the stack – who do I submit these to if I want to document the event? *The photos can be submitted to Wayne Kino at wkino@baaqmd.gov or John Marvin at jmarvin@baaqmd.gov. To report an air pollution complaint call the 24-hour, toll free complaint line at 1-800-334 ODOR (6367) or report it online at the Air District's website www.baaqmd.gov.*
9. How does the BAAQMD monitor, measure, regulate, control and reduce the air pollution caused by the hundreds of cement trucks driving the area daily? *The Air District controls dust pollution from trucks leaving the Lehigh facility by requiring HEPA filter vacuuming of spilled cement powder during cement bulk loading operations and mandatory washing of aggregate trucks. The Air District does not regulate truck emission standards but does limit the number of cement / hydrated lime/ powdered activated carbon truck trips to 70,000 per year. The California Air Resources Board (CARB) regulates diesel emissions from trucks. The primary pollutants targeted are diesel PM (particulate matter) and Nitrogen Oxides (NOx). More information can be found at <http://www.arb.ca.gov/msprog/onrdiesel/onrdiesel.htm>. California vehicle code infractions are enforced by the Santa Clara County Sherriff's Office or California Highway Patrol.*
- In addition, there are also at least two incentive programs, operated by the Air District, that trucks using this facility may qualify for to upgrade truck emission controls.*
10. Who is responsible if air quality from trucks are out of compliance? *The California Air Resources Board (CARB) is responsible for emissions related compliance. The Air District enforces the truck trip (70,000) limit and material transfer processes.*
11. Can we have a continuous emissions monitor to measure benzene and other hazardous air pollutants? *The Air District is confident that periodic source testing combined with continuous parametric monitoring to determine the*

Total Organic Hazardous Air Pollutant (HAP) concentration in the cement kiln exhaust adequately protects public health. Although emissions of some organic HAPs such as benzene fluctuate due to variabilities in the fuel and raw materials, dispersion modeling of the new kiln and clinker cooler stacks has shown that even large fluctuations have little impact on health risk to the exposed population. Therefore, there are no plans to require continuous emissions monitors for benzene or other organic HAPs.

12. How many Notices of Violation has the BAAQMD issued in the last year to Lehigh and what has been done with these NOV's? *The last Notice of Violation (NOV) was issued on October 8, 2014. That NOV was issued for excessive visible emissions documented on September 30, 2014. The NOV penalty has not been settled, yet.*
13. Are upset events such as today counted in the monthly or yearly emissions? *Yes and no. All emissions exiting through a continuously monitored emission point, including those from a malfunction, are counted except those from start-up or shutdown; fugitive emissions from an incident such as this would not be counted towards the monthly or yearly emissions inventory. However, if Lehigh sought breakdown relief for an upset/malfunction, such as the one referred, emission estimates from the facility are required in the breakdown report.*
14. When was the last time the BAAQMD collected a fine from Lehigh, how much was it and how long did it take to collect? *The most recent settlement with Lehigh was for \$39,750. The agreement was signed in late May 2014 and included a combined settlement for 7 violations. The money was collected in June 2014.*
15. How many breakdowns has Lehigh had in recent years? Can the BAAQMD say this plant is too old and require a major upgrade? *One breakdown relief request was filed by the facility during the period 1/1/2014 to 11/15/2015. Recently, in the 1stQ of 2015, several major upgrades in the emissions control/abatement configuration were made. These engineering controls/upgrades went through full permit review by the Engineering staff at the*

BAAQMD.

16. When do you plan to enforce to modern standards? And what would it take to modernize the cement plant to new plant standards? *Lehigh is currently subject to the requirements of recently adopted Portland Cement Manufacturing rules from the BAAQMD and US EPA. These regulations go far beyond what existed previously and should be considered "modern standards" for an existing cement plant. The Air District does not have regulatory authority to impose more stringent standards unless (1) the facility is modified or (2) additional regulations are adopted through the rule making process.*
17. On October 16th emissions from Lehigh's stack were coming out at ground level, not from the stack. This was reported to the BAAQMD. What caused this episode and how was it followed up? *We were not aware this event occurred. Thanks for bringing this to our attention. We did receive notice in November about a dust cloud over Lehigh on October 15th, which might be what the questioner's referring to. Inspection staff was at the facility at least once on the 15th and did not observe visible dust, but we suspect there may have been an afternoon quarry blast.*
18. How can the BAAQMD encourage correctly operating equipment? *The Air District inspects Lehigh on a weekly basis to ensure compliance. In addition, the Air District encourages through permit conditions of the facilities permit to operate, Regulation 9-13, and various State and Federal statutes, the facility in obligated to operate equipment and processes in compliance with these requirements/standards. Equipment and processes that have a potential to cause excess emissions (fugitive or otherwise) are required to be repaired immediately or shut down the process.*
19. Problems often happen outside regular working hours. How does BAAQMD respond to these incidents? *During non-business hours, the Air District staffs an on-call supervisor and inspector for response to major incidents or complaint situations. Depending on the severity of the air pollution problem, staff may be called back to work on evenings, nights, and weekends to investigate.*

Also, investigations can determine violations even when investigations are conducted at a later date. To report an air pollution complaint call the 24-hour, toll free complaint line at 1-800-334 ODOR (6367) or report it online at the Air District's website www.baaqmd.gov.

20. Why has there been no study of how much cancer Lehigh's pollution has caused in Cupertino? *In California, the Office of Environmental Health Hazard Assessment (OEHHA) is responsible for evaluating the health risk associated with chemical contaminants found in the air. Rather than studying individual populations to determine the health risks associated with various chemical compounds, OEHHA conducts scientific studies and laboratory research to develop cancer potency factors and reference exposure levels for compounds known to be or thought to be hazardous to humans. The health related factors and exposure parameters assigned for each compound are designed to protect the most vulnerable members of the population, specifically infants and children.*

The California Air Resources Board and local Air Districts use OEHHA guidance to conduct health risk assessments using air dispersion modeling to determine the statistical excess cancer risk to an exposed population. The most recent assessment for Cupertino was conducted in 2013-2014 and is available on the BAAQMD website.

21. How much of pollution impacts are from Stevens Creek v. Lehigh Quarry? *Lehigh has a much larger quarry operation. Particulate emissions from Stevens Creek Quarry are estimated to be less than 10% of those from Lehigh. Also, Lehigh manufactures cement and Stevens Creek does not.*

Santa Clara County Planning Department:

22. After the county issued the Notice of Violation for illegal waste dumping in the East Materials Storage Area, the County met privately with Lehigh. There was not a public process. Can you explain how the public can stay informed of these matters if the meetings are taking place in private? *The County provides public noticing for all land use approvals subject to public hearings. Issues regarding code enforcement and condition compliance do not*

require a public hearing until such time the land use approval or permit must be modified, revoked, or reaffirmed. For code enforcement cases, County staff regularly meets with a property owner or applicant to discuss the violation along with actions necessary to abate the violation, and describe means for the owner or applicant to pursue a path towards compliance. The County maintains an Interested Party list for individuals, organizations, and agencies who have requested information regarding Lehigh, and distributes public meeting notices to those on the list. If anyone would like to be added to the Interested Party list, please have them contact Marina Rush at marina.rush@pln.sccgov.org or at (408)299-5784.

23. How much did Lehigh pay the County for the ownership of the access road running through the plant? *In 2011, County staff discovered the existence of a public road easement – Permanente Road - on the Lehigh Permanente Quarry property that was dedicated in 1893. The road had not been used for road purposes for more than seven decades and the County had not spent any public money maintaining the road. Lehigh Permanente submitted an application to the County to vacate the public road easement, which was approved by the Board of Supervisors on August 23, 2011. The County received payment from Lehigh for staff services to process and complete the public road vacation for Permanente Road in 2011. As documented in the resolution adopted by the Board of Supervisors in August, 2011, the County determined that the road was abandoned and no longer needed for County purposes.*

24. What is Lehigh doing to improve the viewshed? Please be sure to reference the scenic easement in your response? *Aesthetics and visual quality impacts were analyzed in the Environmental Impact Report (EIR) for the 2012 Reclamation Plan (DEIR, Sect. 4.1.1, pages 4.1-1 through -52). Reclamation will occur in three phases over a 20 year period. Currently, Lehigh is in Phase 1 of reclamation, which covers active reclamation of the East Materials Storage Area. The EIR concluded that after the quarry was reclaimed there would be less than significant visual impacts, but during reclamation there will be significant and unavoidable visual impacts. Lehigh accelerated the reclamation schedule for the EMSA and will begin revegetation planting in approximately two years. The*

West Materials Storage Area, Quarry Pit and remaining quarry areas will be reclaimed and revegetated over Phases II and III, concluding by 2032.

The “Permanente Ridge” that is included within the referenced scenic easement, as defined by a 1972 Ridgeline Protection Easement Deed, was lowered by a landslide that occurred in 1987. A geological analysis, prepared by a licensed certified engineering geologist, was conducted in April 2012 to determine what it would take to restore the pre-existing ridgeline with an earthen or rockfill berm 30 feet tall. It concluded that replacing the ridgeline cannot be safely done. The ridgecrest is narrow and steep, and comprised of heavily weathered and weak greenstone volcanic rocks. The slopes are too steep to be stable and the weak nature of the underlying rocks was a primary contributor to the landslide, and adding significant load on this could result in further slope instabilities. Also, there is a dormant slide mapped on the slope and the existence of this dormant slide would not provide a suitable foundation for restoration. And lastly, replacing the berm would require extending the northfacing hillside and that would necessitate clearing large amount of vegetation, furthering instability.

25. When will the EMSA be complete? *Reclamation of the quarry will take place in three phases in accordance with the approved reclamation plan and is complete by July 2032. Lehigh is currently in Phase I (2012-2021). The East Material Storage Area (EMSA) final grades for the finished slopes were completed in 2015, and the non-limestone material cover put in place. The EMSA will be planted in accordance with the approved revegetation plan as soon as testing concludes that the cover is preventing increased selenium levels in stormwater runoff. Monitoring to ensure vegetation growth occurs as prescribed by the Plan will occur until the quarry is determined by the State and County to be fully reclaimed. As such, the EMSA will be reclaimed by 2032 or sooner.*

26. Why does the County have a history of not doing building or demolition inspections particularly in areas with hazardous materials? *The County conducts inspections for buildings and demolitions that have obtained building permits, including inspections for buildings and demolitions in areas with hazardous materials. Building permits must be issued before any work requiring a*

permit may begin. Any applicant seeking a demolition permit must provide the County with a Job number (J number) issued by the Bay Area Air Quality Management District before the permit may be issued. For building permits, the County inspects permitted projects during construction before work is enclosed or covered. In the case of demolition, inspections by the Building Inspection Office occur after completion of the demolition. Additionally, given the nature of the structures and hazardous materials at Lehigh, the building and demolition permit applications must be approved by the SCC Department of Environmental Health and the SCC Fire Marshal before the permit is issued.

The County of Santa Clara, Department of Environmental Health (DEH) is responsible for implementing several local and State programs related to hazardous materials and hazardous waste. DEH performs periodic inspections of the hazardous materials facilities that are subject to these programs. Additionally, DEH reviews construction and closure plans for hazardous materials systems and facilities prior to construction, remodel, retrofit, and closure. Inspections are conducted during and/or upon completion of the projects to confirm whether the facility implemented the plans as approved. This helps to ensure that hazardous materials facilities are constructed and decommissioned in a way that prevents the release of hazardous materials to the environment. For additional information on the programs and requirements implemented by DEH, visit www.EHInfo.org/hazmat.

Regarding requirements for inspections where there are hazardous materials, BAAQMD permitting actions are required for demolitions and building asbestos removal, this would apply to the old aluminum plant buildings and cement plant.

27. Does the County have a role to play in regulating dust? *The Bay Area Air Quality Management District (BAAQMD) regulates dust and particulate matter. The 2012 Reclamation Plan requires that the reclamation activities comply with the BAAQMD requirements for dust control and suppression. Concerns about dust should be directed to BAAQMD at:*

<https://complaints.baaqmd.gov/PublicForms/ComplaintWizardSelection>

28. There are trucks coming from Stevens Creek Quarry before the 6 a.m. start time. Who do I call to complain about that? *Stevens Creek Quarry operates under a Use Permit (File # 1253), Reclamation Plan, and Mediated Operating Conditions by Board Resolution. These approvals included limitations for trucks associated with their operations, and include: a) limit operating hours between 6:30 AM to 7:00 PM; b) allow trucks to enter the property as early as 6:00 AM but no departures until 6:30 AM, and c) truck queuing, parking, and loading related to the Stevens Creek operations must be on the Stevens Creek property (no truck queuing is allowed on public streets). If a violation of the condition is observed, please contact the Santa Clara County Code Enforcement at 408-299-5770 to report violations. Please provide as much details as possible, including date and time of the violation, license plate information, and description of vehicle. You may also contact the quarry office at: Jason Voss, 408-253-2512 or jvoss@scqinc.com.*

29. What is the state of the Stevens Creek Quarry Use Permit? *Stevens Creek Quarry has an approved Use Permit, originally approved on September 20, 1950 (#173.977), subsequently modified on October 6, 1983 (#1253-86P) and again in the mid-1990s. The Use Permit had several renewals, the most recent was for a 20 year period on February 18, 1995. Stevens Creek Quarry applied to renew their Use Permit on July 17, 2014, prior to the expiration date, and is an active application. Before the County will complete the processing of the application, the County is in the process of reviewing the 2015 Financial Assurance Cost Estimate (FACE) and bond of \$2,304,756.29 is consistent with the SMARA Financial Assurance Guidelines. Once the County concludes the new FACE and bond are adequate, it will complete processing the 2014 renewal application, and schedule for public hearing before the Planning Commission. If anyone would like to be added to the Interested Party list, please have them contact Marina Rush at marina.rush@pln.sccgov.org or at (408)299-5784.*

30. How much of pollution impacts are from Stevens Creek v. Lehigh Quarry? *Potential environmental impacts from the Stevens Creek Quarry and Lehigh*

Permanente Quarry, including pollution impacts, were evaluated within the CEQA documents prepared separately for each quarry, in association with the Reclamation Plans and Use Permit (Stevens Creek) approved for each quarry. These documents, prepared in compliance with State Law, are available for review at the County Planning Office. The EIR, and all supporting documents, for Lehigh Permanente Quarry are available online at the County Planning Lehigh webpage, at: www.sccplanning.org

31. Is it possible to get a second opinion from Bureau of Mines as to how much limestone remains? *The amount of limestone resources at Lehigh is unknown, and the mineral deposits mapped with California Geological Survey (CGS) is not enough detail to have an accurate estimate. The 2012 Reclamation Plan estimates mining to cease in the Quarry Pit in 2020, please refer to the 2012 Reclamation Plan for further information regarding mining.*

32. Does blasting cause earthquakes? *Santa Clara County Geologist states this is not likely, all seismic energy is stored and released from rocks more than two miles deep. In addition, Dr. Parrish, California State Geologist has stated to the County the following:*

Quarry blasting cannot cause an "earthquake." Although the ground might "shake" or rumble as a nearby result of a blast, this is not a damaging tectonic earthquake, and these blasts do not contain enough energy to trigger a pre-existing fault to slip and generate an earthquake. Tectonic earthquakes in California generally occur at depths between five and eleven miles below the land surface – significantly deeper than a quarry blast at perhaps several hundred feet below the land surface. The energy released by a quarry blast is several million times less than that required to nucleate a fault to move and produce an earthquake. Earthquakes can be caused by human activity, and are labeled "induced" seismicity or "triggered" earthquakes. However, there has not been a recorded case of a quarry blast inducing or triggering an earthquake. (Email from Dr. Parrish to Marina Rush, Planner III County of Santa Clara, dated Nov. 18, 2015, on file at the Department of Planning and Development)

33. What is the contact information for the agency responsible for worker health and safety at Lehigh? *Mine Safety and Health Administration, contact: Ramiro Jimenez, 408-996-4006.*

Miscellaneous Questions:

34. Is there any mechanism by which the Board and residents could buyout the cement works and quarry and build housing instead? *A market-rate offer could be put together by public entities for a public purpose, private entities, or a combination of both. It would be at Lehigh's discretion to accept or reject the offer.*
35. What can be done to provide better means for input from public? *On the back of each agenda is a participant contact list. It contains the names, emails and phone numbers for all the agency professionals who participated on the panel.*
36. If there is not enough time to answer all the questions tonight, can the agencies respond in writing and post the questions and answers online for the public to view? *Yes.*