

# County of Santa Clara

Department of Planning and Development  
Planning Office

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## MEMORANDUM

Date: October 28, 2010

To: **President Ken Yeager and Members of the Board of Supervisors**

**Jeffrey V. Smith, County Executive**  
**Gary Graves, Deputy County Executive**  
**Sylvia Gallegos, Deputy County Executive**

From: Gary Rudholm, Senior Planner, Planning Office *GR*  
Michael M. Lopez, Planning Manager, Planning Office

Re: **Responses to comments made during the Public Comment portion of the Board of Supervisors Meeting on October 26, 2010, related to Lehigh Southwest Cement Plant and the Permanente Quarry**

During the Public Comment portion of the October 26, 2010, meeting of the Board of Supervisors one speaker made statements to the Board regarding the Lehigh Southwest Cement Plant Notices of Violation (NOV) issued by the County for the adjacent Permanente Quarry. The aforementioned NOV's require amending the reclamation plan. Applications to amend the Reclamation Plan are currently under review by the Planning Office. The speaker was Barry Chang. In order to ensure the Board and the County Executive have clear and accurate information related to the issues raised by this speaker, staff has prepared the following responses for your information.

### **SPEAKER THREE: Barry Chang :**

*"Good Morning President Yeager and honorable Board of Supervisors. My name is Barry Chang. I'm Cupertino City Counsel member. This is my seventh consecutive time here to ask you for a favor to please put Leigh High Southwest Cement plant's Notice of Violation from the County on the agenda because there is no fine, there is no enforcement.*

*On October 10, 2006, County issue a Notice of Violation for illegally dumping the mining waste in the non permitted area. And, then they work it out, the agreement. Lehigh, at that time, was Hanson. And, then they agreed to get all the work done. And, so, there is a compliance schedule on that Notice of Violation. Suppose to be everything-- Is suppose to be done by November 30—December 30, 2007. Nothing. Nothing. Okay, so, 2008, after the complaint from the residents because of the illegal dumping that's really close to the resident area and the*

*hazardous material that it does impact the resident health, they call and call. After 6 months, the County sent someone out and find out, Wow, that's another intensified of the violation. So, they issue another Notice of Violation on October 10, and on October 10, it's clearly stated that the Lehigh had to cease the problem that the mining west in the area because it violated the California Environmental Quality Act. And there is no, no enforcement. As of today, as I am speaking, the violation continues.*

*So, please put on the agenda. Let's find out why. My constituents is pressuring me to find out why there is no enforcement. Thank you.*

**Response:**

To date, the speaker has appeared before the Board on six occasions and before the Planning Commission on one occurrence.

**Notices of Violation**

The speaker's comments imply the NOV's issued by the County are related to the cement plant, and that there is no fine or enforcement. The County issued NOV's in 2006 and 2008 to the operator of the Permanente Quarry for the disturbed areas outside of the reclamation plan boundary, and violations are not related to the cement plant operation. As previously noted in the October 20, 2010, responses to public comments made before the Board, the Surface Mine and Reclamation Act (SMARA) process to cure a violation includes filing for and obtaining a Reclamation Plan Amendment from the lead agency. Fines may be imposed if the mine operator fails to take action to correct the violation(s). In this case, the mine operator, Lehigh Southwest Cement Company, has submitted Reclamation Plan Amendment application materials in response to each of the two NOV's, as required. The approval of the proposed amendments would correct or "cure" the 2006 and 2008 violations.

**Order to Comply Schedule**

With respect to the speaker's comment regarding the compliance schedule, the County issued an Order to Comply (OTC) with the 2006 NOV, which included milestones to be completed at a specified schedule. In accordance with the schedule, on January 5, 2007, the mine operator submitted the application materials to amend the reclamation plan. It was determined, however, that the geological information submitted with the application was insufficient and additional analysis was required. In May 2008, the OTC was modified by the County to extend the schedule by 24 months to allow for the geological data collection and report preparation.

Subsequently, the Planning Office issued a second NOV in 2008 for stockpiling of mine overburden within the East Materials Storage Area (EMSA). In response to this violation, the mine operator requested a four-month extension of time on the OTC in order for them to prepare and complete the necessary application materials for a Reclamation Plan Amendment for the EMSA. On April 14, 2009, the County modified the OTC schedule postponing the submittal date for the comprehensive Reclamation Plan Amendment by four months (from February 1 to May 30, 2010). This change was made through an Agreement between the County and the mine operator. Per the modified schedule, the projected date for a public hearing is September 2011.



## **Depositing Hazardous Materials**

On April 3, 2008, the Planning Office received a complaint alleging Lehigh was storing (stockpiling) petroleum coke in an area now commonly referred to as the East Materials Storage Area. On April 8, 2008, staff inspected the site to determine (1) whether stockpiling was taking place, and (2) what type of material did it include. Following the field inspection and consultation with the County Geologist and a geologist who assisted the Planning Office with the annual SMARA inspection in 2007, the Planning Office determined that the material was not petroleum coke; however, the material consisted of overburden from the mine pit. Because the material from the mine was stockpiled in an area not included in the approved reclamation plan for Permanente Quarry, the Planning Office issued a second Notice of Violation, which is discussed in the next section.

### **Cease Activity - 2008 NOV**

On June 20, 2008, the County issued a second Notice of Violation for actively stockpiling overburden material within the East Materials Storage Area (EMSA), a portion of land owned by the mine operator, adjacent to the mine pit. This active stockpiling was deemed an intensification of the existing NOV of 2006. For this reason, the Planning Office issued the second NOV and required the operator cease the activity.

The mine operator subsequently met with the County and explained that the EMSA area is required for continued operation at the quarry because adequate room to permanently store overburden within an authorized area was running out, that without removing the overburden the mineral deposits within the mine pit could not be extracted, and that waiting until the comprehensive Reclamation Plan Amendment was approved (no sooner than September 2011) would impact the operator's ability to continue operating. Consequently, the County agreed that the mine operator could submit an application for a Reclamation Plan Amendment to address just the EMSA, subject to compliance with the stipulations contained in an agreement that provides for fines imposed by the County should the mine operator fail to make progress in submitting an acceptable amendment to the existing reclamation plan.

The mine operator has submitted the application materials required to process a Reclamation Plan Amendment focused on mitigating the second NOV. Preparation of an environmental impact report is underway as required under CEQA, and Planning Office staff anticipates publishing the Draft Environmental Impact Report in December 2010. Because the operator has made a good faith effort to comply with the NOV and the terms of the agreement, fines need not be assessed at this time.

cc:

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