

County of Santa Clara

Department of Planning and Development
Planning Office

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MEMORANDUM

Date: March 10, 2011

To: **President Dave Cortese 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*

Re: **Responses to comments made during the Public Comment portion of the Board of Supervisors Meeting on March 1, 2011, related to Lehigh Southwest Cement Plant and the Permanente Quarry**

During the Public Comment portion of the March 1, 2011, meeting of the Board of Supervisors two speakers made statements to the Board regarding the Lehigh Southwest Cement Plant and the reclamation plan amendments currently under review for the adjacent Permanente Quarry. Staff has prepared the following responses to questions and comments regarding factual issues known to County staff, for your information.

SPEAKER ONE: Barry Chang

"Good morning, Honorable Board of Supervisors. My name is Barry Chang. I am a Cupertino City Councilmember, but I'm here to represent myself, not my entire Council. This is my 15th time here, and this time I'm going to ask you, please do not cut the budget on the Sheriff and District Attorney's Office. You can generate about \$18 million dollars if you fine Lehigh Southwest Cement plant. You said on your website you can fine them \$5,000 a day. If that 's the case -- if you do that job, then you can generate \$1.825 million dollars for a year. Lehigh has been in violation for more than 10 years, so that means you can generate \$18 million dollars. That would help to not cut that severely on the District Attorney's office and the Sheriff's office. They both are doing a very good job. Please do not cut them. Thank you."

Response:

The potential instrument by which the County of Santa Clara could levy fines against Lehigh Southwest Cement Plant is for violations that occurred at the Permanente Quarry. As previously explained in earlier memoranda, the County issued two Notices of Violation for violations of the State Surface Mine and Reclamation Act. Should the mine operator (Lehigh) fail to take action towards abatement of the

violations, the County can impose fines for non-compliance: the state statute authorizes the County to fine a mine operator up to \$5,000.00 per day. In determining the amount, however, the lead agency must consider several criteria, including the nature, circumstances, extent, and gravity of the violations.

A penalty may only, however, be issued where a mine operator fails to comply with an order to comply, and the statute allows a mine operator to petition for reconsideration of a penalty, first to the legislative body (the County) or to the Superior Court. Lehigh has been working in good faith to date, to abate the violations. As a result, the County has not levied fines against Lehigh. No dollar amount of potential fines have been calculated as such would be inapplicable at this time.

Through preparation and publishing of these responses to comment, the speaker has been advised the County is not in a position to levy fines at this time, and chooses not to accept this legal and practical decision. His conclusion that there is money that could or should be levied against and collected from Lehigh at this time, and used by the County for any reason, is unfounded.

SPEAKER TWO: Rhoda Fry

“When will the new health risk assessment be released reflecting the revised Lehigh mercury emissions? The Cupertino plant would now be ranked from Number 2 emissions in the nation. The U. S. Department of Labor singled out this mine that considers egregious violations as the cost of doing business. The Water Board again called out (inaudible) Lehigh for violations. Billions of gallons per day prohibited discharges including toxic (selenium) into our watershed. The County is supposed to enforce land regulations according to the State of California; Hanson has been out of compliance for nearly a decade. Why haven’t you used AB3098 to encourage compliance? Lehigh obviously doesn’t care. Do you? How much tax revenue have they generated for the County in the past ten years? What will happen if Lehigh doesn’t comply with the new emission standards? Will you, who sit on BAAQMD again do nothing for the better part of a decade as you have with the land use violations while your constituents get poisoned? Thank you very much, and here’s the Department of Labor thing which you guys didn’t quite . . . last time I gave the aggregates and you guys ignored it. So here’s one from the Department of Labor.”

Response:

Health Risk Assessment:

The latest Health Risk Assessment (HRA) dated September 14, 2010, is posted on the County Planning Office web site. According to the BAAQMD a new HRA is expected to be released on or about April 15, 2011.

U.S. Department of Labor:

A copy of a News Release from the U. S. Department of Labor obtained from the Office of Public Affairs web site is attached. The attachment includes a spreadsheet that accompanied the news release. The information provided to the Board of Supervisors during public comment by Ms. Fry is the same information mentioned by this speaker when she addressed the Board on January 11, 2011, and quoted an article from *Pit & Quarry* magazine published on December 22, 2010. The news release states that Mine Safety and Health Administration (MSHA) inspectors issued 185 citations and 21 orders to Lehigh Permanente Cement Company in 2010. These

citations and orders related to miner safety violations, an example of which, according to the news release, included an incident where a supervisor failed to de-energize electrically powered equipment prior to removing a guard. Another example was for access where inadequately secured steel plates could have fallen on miners or delivery drivers accessing a storage area.

Regional Water Quality Control Board:

The Regional Water Quality Control Board (RWQCB) conducted a storm water inspection of the Lehigh Southwest Cement Plant on February 10, 2010, and issued an inspection report. The RWQCB issued a Notice of Violation based on this report on March 26, 2010. Lehigh provided a response to this NOV in a letter dated April 15, 2010.

The RWQCB determined that Lehigh's April 2010 response was not adequate and, for this and several other reasons, issued a second NOV on February 18, 2011, a copy of the cover letter from which is attached to this memorandum. This NOV indicates that the Permanente Quarry and Lehigh Southwest Cement Plant are operating under an inappropriate water discharge permit, and Lehigh is required to file a Notice of Intent to apply for and obtain a different permit that would be suitable for this facility. Among the reasons for the change in coverage to a different general permit is that water from the quarry pit is discharged directly to Permanente Creek, and that the water contained in those discharges consists of industrial process water, which is prohibited under the Industrial Storm Water General Permit that currently covers Permanente Quarry and the cement plant. The deadline for Lehigh to issue the Notice Of Intent to apply for the alternate permit is April 30, 2011.

The RWQCB correspondence includes a table that lists documentation accrued by the Regional Board's staff that forms the basis for its NOV. In Table 1 on page 5 the NOV refers to Lehigh's selenium exceedance report dated March 18, 2010. In this table the RWQCB notes that Lehigh failed to show compliance with the Water Quality Control Plan for the San Francisco Bay Basin's Selenium criteria.

AB3098:

The State Legislature adopted Assembly Bill 3098 in 1992. This statute authorizes the State Office of Mine Reclamation (OMR) to maintain a list of mine operations that may sell materials to state agencies, such as the State Department of Transportation. In order for OMR to include an operation on the AB 3098 list the operation must satisfy all the following conditions:

- The operation has an approved reclamation plan;
- The operation has an approved financial assurance;
- The operation has filed its annual report with the Office of Mine Reclamation;
- The operation has paid its reporting fee to the Office of Mine Reclamation;
- The operation has had its annual inspection by the lead agency, which reflects the operation is in full compliance with the law.

If a mine operation is found by OMR to be out of compliance with these criteria OMR may, at its discretion, remove a facility from this list. The decision whether to place or remove a surface mine from the AB3098 list rests with the State Office of Mine Reclamation; it is not a decision over which the County of Santa Clara has any role or authority.

Tax Revenue:

The Department of Planning and Development does not have the tax information requested. The question has been referred to the Tax Collector for response.

New Emission Standards:

The phrase "emission standards" is understood to mean air emissions, which are enforced under federal and state law. The Bay Area Air Quality Management District is the local agency with enforcement responsibilities of these standards, which is conducted through the Title V permit process. BAAQMD enforcement division inspects the Lehigh facility and will determine the means of enforcement when it is required.

ATTACHMENTS:

- U.S. Dept. of Labor, Office of Public Affairs, "News Release," December 21, 2010.
- California Regional Water Quality Control Board, San Francisco Bay Region, "Notice of Violations and Requirement to Obtain Coverage for Discharges to Waters of the U.S. under Different Permit," February 18, 2011.

cc:

Colleen Valles, District One
Gustavo Caraveo, District Two
Mike Donohoe, District Three
Tony Filice, District Four
Scott Strickland, District Five

Jody Hall Esser, Director, Department of Planning & Development
Michael M. Lopez, Planning Manager, Planning Office
Rob Eastwood, Senior Planner
Marina Rush, Associate Planner

Miguel Márquez, County Counsel
Orry Korb, Assistant County Counsel
Lizanne Reynolds, Deputy County Counsel

News Release



U.S. Department of Labor
Office of Public Affairs
Washington, D.C.
Release Number: 10-1774-NAT

For Immediate Release
Dec. 21, 2010
Contact: Amy Louviere
Phone: 202-693-9423

MSHA announces results of November impact inspections

ARLINGTON, Va. – The U.S. Department of Labor’s Mine Safety and Health Administration today announced that federal inspectors issued 250 citations, orders and safeguards during special impact inspections conducted at 12 coal and 10 metal/nonmetal mine operations last month.

These inspections, which began in force during April following the explosion at Upper Big Branch Mine, involve mines that merit increased agency attention and enforcement due to their poor compliance history or particular compliance concerns, including high numbers of violations or closure orders; indications of operator tactics, such as advance notification of inspections that prevent inspectors from observing violations; frequent hazard complaints or hotline calls; plan compliance issues; inadequate workplace examinations; a high number of accidents, injuries or illnesses; fatalities; and adverse conditions such as increased methane liberation, faulty roof conditions and inadequate ventilation.

During November’s impact inspections, coal mines were issued 114 citations, 11 orders and one safeguard. For metal/nonmetal mines, 113 citations and 11 orders were issued. Since April, MSHA has conducted impact inspections at 182 coal and metal/nonmetal mines.

During an inspection conducted during the week of Nov. 15 at Lehigh Permanente Cement Co. Mine in Santa Clara County, Calif., MSHA issued 30 citations and six orders to the company. Five 104(d) orders were issued, including a violation for a supervisor’s failure to de-energize electrically powered equipment prior to removing a guard. Another 104(d) order was issued for unsafe access where inadequately secured steel plates could have fallen on miners or delivery drivers accessing a storage area; this hazard had been reported to mine management two weeks earlier. A 104(b) order was issued for failure-to-abate in a timely manner a fall protection violation, in which miners working at the top of a mill were exposed to an approximately 36-foot drop to the concrete below. Sixty percent of the citations and orders were significant and substantial violations. So far this year, MSHA inspectors have issued 185 citations and 21 orders at this mine.

“MSHA’s impact inspection program is helping to reduce the number of mines that consider egregious violation records a cost of doing business,” said Joseph A. Main, assistant secretary of labor for mine safety and health. “We will continue using this important enforcement tool to protect the nation’s miners.”

Editor’s note: A spreadsheet containing the entire results of November’s impact inspections accompanies this news release.

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U.S. Department of Labor releases are accessible on the Internet at <http://www.dol.gov>. The information in this news release will be made available in alternate format (large print, Braille, audio tape or disc) from the COAST office upon request. Please specify which news release when placing your request at 202-693-7828 or TTY (202) 693-7755. The Labor Department is committed to providing America’s employers and employees with easy access to understandable information on how to comply with its laws and regulations. For more information, please visit <http://www.dol.gov/compliance>.

Master MSHA Impact Inspection List
(November 2010) / Revised 01/07/2011 *

November 2010		Coal		Mine Information		Type of Issuance		S&S Information		Issuances - Type of Action										Justifications															
District	State	Mine ID	Controller Name	Operator Name	Mine Name	Cit	Orders	Safe -guards (Coal only)	Total	S&S	S&S	Non-S&S	Total	Rate	104(a)	104(b)	104(d)(1) Citation	104(d)(2)	314(b)	103(k)	103(g)(1)	103(g)	Total	1	2	3	4	5	6	7	8				
DISTRICT 01	PA	3607805	John W Rich Jr.	Waste Management & Processors Inc	W M P I	0	0	0	0	0	0	0	0	0.00%	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0		
DISTRICT 02	PA	3609603	J Clifford Forrest III	Rosebud Mining Company	Tracy Lynne	1	0	0	1	0	1	0	1	0.00%	1	0	0	0	0	0	0	0	0	0	0	1	1	1	1	1	1	1	1		
DISTRICT 03	WV	4609060	David M. Reynard	Ten-Mile Coal Co., Inc	#4 Mine	11	0	0	11	6	5	11	0	54.55%	11	0	0	0	0	0	0	0	0	0	0	11	1	1	1	1	1	1	1	1	
DISTRICT 04	WV	4609154	Massey Energy Corporation	White Buck Coal company	Pocahontas Mine	1	0	0	1	0	1	0	1	0.00%	1	0	0	0	0	0	0	0	0	0	0	1	1	1	1	1	1	1	1	1	
DISTRICT 05	VA	4406499	Sunoco, Inc.	Dominion Coal Corporation	Dominion No 7	21	3	0	24	11	13	24	0	45.83%	21	0	0	3	0	0	0	0	0	0	24	1	1	1	1	1	1	1	1	1	
DISTRICT 06	KY	1517720	Rodney Bentley, Ted Thornsberry	TRC Mining Corp	#2	26	2	1	29	13	15	28	0	46.43%	26	0	0	2	0	0	0	0	0	0	29	1	1	1	1	1	1	1	1	1	
DISTRICT 06	KY	1519048	James River Coal Company	McCoy Elkhorn Coal Corp	Mine #15A	5	1	0	6	5	1	6	0	83.33%	4	0	1	0	0	0	0	0	0	0	6	1	1	1	1	1	1	1	1	1	
DISTRICT 07	KY	1518182	Horace Garrison Hill	D & C Mining Corp	D & C Mining Corp	11	2	0	13	3	10	13	0	23.08%	11	0	0	2	0	0	0	0	0	0	13	1	1	1	1	1	1	1	1	1	1
DISTRICT 08	IN	1202215	Alliance Resource Partners LP	GIBSON COUNTY COAL LLC	GIBSON MINE	22	3	0	25	9	16	25	0	36.00%	22	0	0	3	0	0	0	0	0	0	25	1	1	1	1	1	1	1	1	1	1
DISTRICT 09	CO	0504591	Bowie Resources LLC	Bowie Resources LLC	Bowie No. 2	2	0	0	2	1	1	2	0	50.00%	2	0	0	0	0	0	0	0	0	0	2	1	1	1	1	1	1	1	1	1	1
DISTRICT 10	KY	1517741	Robert E. Murray	KenAmerican Resources Inc	Paradise #9	10	0	0	10	4	6	10	0	40.00%	10	0	0	0	0	0	0	0	0	0	10	1	1	1	1	1	1	1	1	1	1
DISTRICT 11	AL	0100347	Waller Energy Incorporated	Telf Coal Sales & Associates Inc.	Cheebaw Mine	4	0	0	4	0	4	0	4	0.00%	4	0	0	0	0	0	0	0	0	0	4	1	1	1	1	1	1	1	1	1	1
National Totals						114	11	1	125	52	73	125	41.80%	113	0	1	4	7	1	0	0	0	0	125	2	2	3	2	5	2	6	3			

November 2010		Metal/Nonmetal		Mine Information		Type of Issuance		S&S Information		Issuances - Type of Action										Justifications															
District	State	Mine ID	Controller Name	Operator Name	Mine Name	Cit	Orders	Safe -guards (Coal only)	Total	S&S	S&S	Non-S&S	Total	Rate	104(a)	104(b)	104(d)(1) Citation	104(d)(2)	314(b)	103(k)	103(g)(1)	103(g)	Total	1	2	3	4	5	6	7	8				
DISTRICT 01	NC	1102658	Richard L Nelson	Tri-Con Materials, Inc	Hennepin Pit	14	0	0	14	1	13	14	0	7.14%	14	0	0	0	0	0	0	0	0	0	14	1	1	1	1	1	1	1	1		
DISTRICT 02	AZ	0209888	Cemex S.A.	Cemex Construction Materials South LLC	Cemex-19th Ave	3	0	0	3	1	2	3	0	33.33%	3	0	0	0	0	0	0	0	0	0	3	1	1	1	1	1	1	1	1	1	1
DISTRICT 03	OK	3400066	Lattimore Properties Inc	Lattimore Materials Company	Stringtown Crusher Plant #67	9	0	0	9	6	3	9	0	66.67%	9	0	0	0	0	0	0	0	0	0	9	1	1	1	1	1	1	1	1	1	1
DISTRICT 04	CA	0404075	Heidelberg Cement AG	Lehigh Southwest Cement Co.	Lehigh Permanente Co.	30	6	0	36	21	14	35	0	60.00%	30	1	0	0	5	0	0	0	0	0	36	1	1	1	1	1	1	1	1	1	
DISTRICT 05	WA	4502618	Harbor Rock Inc	Harbor Rock Inc	Portable Harbor Rock	1	1	0	2	1	1	2	0	50.00%	1	0	0	0	0	0	0	0	0	0	2	1	1	1	1	1	1	1	1	1	1
DISTRICT 06	CA	0406222	American Sierra Gold Corporation	Gold Run Enterprises	Discovery Day Mine	0	0	0	0	0	0	0	0	0.00%	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
DISTRICT 07	NV	2601621	Tukon-Nevada Gold Corp	Queenstake Resources	Jerrit Canyon Mill	22	1	0	23	16	7	23	0	69.57%	21	1	0	0	0	0	0	0	0	0	23	1	1	1	1	1	1	1	1	1	1
DISTRICT 08	WV	2802335	Great Basin Gold	Rodeo Creek Gold	Hollister Mine	12	3	0	15	6	6	12	0	50.00%	12	0	0	0	0	0	0	0	0	0	12	1	1	1	1	1	1	1	1	1	1
DISTRICT 09	NV	2802335	Great Basin Gold	Rodeo Creek Gold	Hollister Mine	12	3	0	15	6	6	12	0	50.00%	12	0	0	0	0	0	0	0	0	0	12	1	1	1	1	1	1	1	1	1	1
DISTRICT 10	OH	3300172	Wysong Stone Company	Wysong Stone Company	Wysong Stone Co.	103	11	0	114	61	52	113	0	53.98%	102	1	1	3	6	0	0	0	0	0	114	1	1	1	1	1	1	1	1	1	1
National Totals						103	11	0	114	61	52	113	53.98%	102	1	1	3	6	0	0	0	0	0	114	1	1	1	1	1	1	1	1	1		

Running Total: 217 22 1 240 113 125 238 47.48% 215 1 2 7 13 1 0 1 0 0 240 3 4 3 3 6 3 13 3

Note: 04-05222 Discovery Day Mine Under MSHA Closure Order

* Caldwell Stone's Danville Mine & Mill (Mine ID: 15-00009) has been removed

Prepared 01/07/2011



Linda S. Adams
Acting Secretary for
Environmental Protection

California Regional Water Quality Control Board San Francisco Bay Region

1515 Clay Street, Suite 1400, Oakland, California 94612
(510) 622-2300 • Fax (510) 622-2460
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Edmund G. Brown, Jr.
Governor

Date: February 18, 2011
WDID 2 43I0062677

Distributed by e-mail

Lehigh Southwest Cement Company
Attn. Henrik Wesseling, Plant Manager, Permanente Plant
24001 Stevens Creek Boulevard
Cupertino, CA 95014

SUBJECT: Notice of Violations and Requirement to Obtain Coverage for Discharges to Waters of the U.S. under Different Permit

Dear Mr. Wesseling:

Over the past two years, the San Francisco Bay Water Board has received a number of citizen complaints regarding the operation of the Lehigh Permanente Quarry and Cement Plant (the Facility) and requests that we investigate the status of compliance with water quality requirements. These complaints and requests have come from other environmental regulatory agencies, local governments, non-profit organizations, and private individuals. In response, we have evaluated the status of the Facility's compliance with applicable laws and regulations, including the Federal Clean Water Act (CWA), the California Water Code (Water Code), and the Water Quality Control Plan for the San Francisco Bay Basin (Basin Plan). Our evaluation necessarily included an assessment of the Facility's compliance with its current permit, Order No. 97-03-DWQ (the Industrial Storm Water General Permit).

This letter sets forth the results of our evaluation and the bases for our conclusion that the Facility is not and cannot be appropriately regulated under the Industrial Storm Water Permit. Herein we describe options for Lehigh to obtain coverage under a different permit and provide notice of outstanding violations.

I. Lehigh needs coverage under an individual NPDES permit because it is in violation of the Industrial Storm Water General Permit and is discharging non-stormwater without permit coverage

Lehigh's substantial and ongoing non-storm water discharges are unpermitted and prohibited by the Industrial Storm Water General Permit.

The Industrial Storm Water General Permit conditionally allows the discharge of storm water and a very specific list of non-storm water discharges (see Special Condition D.1 in Table 2,

below). All other non-storm water discharges are strictly prohibited (see Discharge Prohibition 1 in Table 2, below). Because discharging quarry bottom water, wash-down water, and dust suppression water is not specifically authorized by Special Condition D.1, these types of discharges are prohibited. Quarry bottom water and dust suppression water may originate as storm water and/or ground water, but as soon as clean water comes into contact with quarry equipment, facility operations, or mine materials, that water is considered process water. The same is true for dust suppression and wash-down water.

Lehigh must immediately cease and desist any and all discharges of quarry bottom water, dust suppression water, and wash down water because those discharges violate the CWA and the Water Code. If Lehigh continues its unpermitted discharge of non-storm water, including but not limited to, quarry bottom water, dust suppression water, and wash down water, it is subject to administrative civil liabilities under Water Code section 13385 of up to \$10,000 per day for each violation and \$10 per gallon of wastes discharged. If we decide this is an appropriate matter to refer to the California Attorney General to pursue civil liabilities in Superior Court, Lehigh would be subject to civil liabilities of up to \$25,000 per day for each violation and \$25 per gallon of wastes discharged.

Lehigh is in violation of the Industrial Storm Water General Permit Effluent Limitation 3 due to inadequate erosion and sediment controls.

After reviewing Lehigh's SWPPP and twice inspecting the Facility, we conclude that Lehigh is far short of achieving the required Best Available Technology/Best Conventional Technology (BAT/BCT) standard for erosion and sediment controls. While we are focused here on Lehigh's failure to meet the required BAT/BCT standards for erosion and sediment controls, Lehigh has additional effluent limitation violations, which are detailed in the attachments to this letter.

In our first inspection report, we documented several violations, including:

- Muddy water flowing into Permanente Creek from the Facility;
- Sedimentation ponds and sediment traps overwhelmed with sediment in the middle of what was a normal-to-low rainfall year; and
- Over-reliance on sediment management practices and insufficient use of erosion control.

We communicated these violations to Lehigh in our Notice of Violation letter dated March 26, 2010. In its April 15, 2010, response letter, Lehigh argued with and attempted to refute our observations, rather than attempting to correct the violations we had noted. Our second inspection confirmed that Lehigh has not corrected the violations noted in the first inspection.

This provides Lehigh with further formal notice that failure to correct the noted violations may result in the imposition of administrative civil liabilities under Water Code section 13385 of up to \$10,000 per day for each violation and \$10 per gallon of wastes discharged. As noted above, higher civil liabilities could be sought judicially.

Lehigh needs coverage under an individual NPDES permit.

Consistent with our authority, as explained in the Fact Sheet of the Industrial Storm Water General Permit, we are requiring Lehigh to obtain coverage for its discharges under a different permit. This requirement for Lehigh to obtain a different permit is based on our determination that potential water quality impacts are not being appropriately addressed by Lehigh under the Industrial Storm Water General Permit. We have further determined that, in light of Lehigh's compliance history, the Industrial Storm Water General Permit is not an appropriate permit for the Facility. Lehigh discharges hundreds of thousands to millions of gallons per day of unpermitted non storm water, which is expressly prohibited under the Industrial Storm Water General Permit. Furthermore, we find that Permanente Creek is not being adequately protected under the existing permit.

The San Francisco Bay Water Board has already adopted a general permit that is more appropriate for regulating Lehigh and the type of discharges at the Facility: Order No. R2-2008-0011, General Waste Discharge Requirements for Discharges of Process Wastewaters from Aggregate Mining, Sand Washing, and Sand Offloading Facilities to Surface Waters (the Sand and Gravel Permit). Therefore, pursuant to our authority under Section F.1.b. of the Industrial Storm Water General Permit, we hereby require Lehigh to obtain coverage for its discharges under Order No. R2-2008-0011.

Because Lehigh is discharging industrial process water (quarry bottom water, wash down water, and dust suppression water), which is prohibited under the Industrial Storm Water General Permit, Lehigh is currently discharging without a permit. Water Code section 13260(a)(1) requires all dischargers to submit a Report of Waste Discharge before commencing their discharge. Filing a Notice of Intent to obtain coverage under Order No. R2-2008-0011 would be equivalent, in Lehigh's case, to submitting a Report of Waste Discharge for the non-storm water flows it is currently discharging at the Facility.

II. Additional requirements for Lehigh, including obtaining coverage under Order No. R2-2008-0011 and collecting and submitting new data

Enrolling under Order No. R2-2008-0011:

Lehigh must obtain coverage under Order No. R2-2008-0011 by one of the following two methods:

1. No later than April 30, 2011, Lehigh must
 - a. Submit a Notice of Intent to obtain coverage under Order No. R2-2008-0011, General Waste Discharge Requirements for Discharges of Process Wastewaters from Aggregate Mining, Sand Washing, and Sand Offloading Facilities to Surface Waters; and
 - b. Submit a Notice of Termination of the Industrial Storm Water General Permit.

OR

2. The San Francisco Bay Water Board will hold a publicly noticed hearing, and prosecution staff will recommend that the Water Board impose coverage under Order No. R2-2008-0011 on the Lehigh Facility.

As we have stated on prior occasions, and as will remain the case in either of the above scenarios, in-stream treatment ponds are not allowed to be used for sediment removal or any other water quality treatment. Under Order No. R2-2008-0011, Lehigh will be required to monitor at all discharge points to the Creek and compliance will be evaluated at the inflow points to any in-stream ponds, not downstream of the in-stream ponds.

Lehigh must collect and submit additional data characterizing non-storm water flows on/from the Facility.

The proposal Lehigh submitted to us in response to our Water Code section 13267 Order to provide a technical report is unacceptable. Accordingly, Lehigh is subject to administrative civil liabilities of up to \$1,000 per day until the time at which an acceptable technical report is provided. A detailed explanation of what Lehigh is required to do is provided in Attachment 7 of this letter. Our staff will visit the Facility to determine the exact locations where samples must be collected.

III. Our determinations are based on inspections, “paper review”, and documented non-storm water discharges.

In the following tables, we set forth the bases for our determinations. The first table explains the contents of each attachment to this letter, noting which entity (Water Board or Lehigh) wrote the document, the nature of the document, notes regarding the document, and the date it was first mailed. Please note that many of the attachments are being sent for the first time with this letter.

The second table contains the sections of the Industrial Storm Water General Permit and the Water Code to which we have referred in this letter.

Table 1 - Attachments

#	From	Document Title or Description	Notes	Date First Distributed
1	Water Board	Notice of Violation and Report, February 2010 Inspection	Documents several effluent limitation violations	March 26, 2010
2	Water Board	May 2010 Inspection Report	Documents that effluent violations noted in February have not been corrected. Documents discharge prohibition violations	<i>Distributed for first time with this letter</i>

#	From	Document Title or Description	Notes	Date First Distributed
3	Lehigh	Response to the March 26, 2010, Notice of Violation	Demonstrates Lehigh's recalcitrance and non-responsiveness to the Notice of Violation	April 19, 2010
4	Water Board	"13267 Order for technical report regarding non-storm water discharges	Requires technical report that explains the nature of the discharge observed in Permanente Creek on September 15, 2010	November 29, 2010
5	Lehigh	Response to the 13267 Order	Establishes that Lehigh discharges hundreds of thousands to millions of gallons per day of prohibited non-storm water discharges. However, also demonstrates Lehigh's misinterpretation of what is allowed (or not allowed) under the Industrial Storm Water Permit	December 13, 2010
6	Water Board	Staff's response to Lehigh's Response to the 13267 Order	Explains that Lehigh's proposed monitoring plan is not acceptable and outlines what Lehigh must do. Contains deadlines.	<i>Distributed for first time with this letter</i>
-	<i>Lehigh</i>	<i>Current Storm Water Pollution Prevention Plan (SWPPP)</i>	<i>This is a document that all dischargers covered by the Industrial Storm Water Permit are required to create and use to protect water quality on/leaving a Facility.</i>	<i>March 4, 2010 *We refer to this document but do not attach it to this letter because it is a large file. It is available at our office upon request.</i>
7	Lehigh	Selenium Exceedance Report	As the Industrial Storm Water Permit requires, Lehigh prepared this document because it was likely to exceed receiving water limitations for selenium. This report is a general overview of what might be done to control concentrations of selenium in storm water at a quarry with high naturally occurring selenium. Lehigh fails to demonstrate the specific actions it will take to control selenium in its discharges. Lehigh has failed to show compliance with the Basin Plan's Selenium criteria and the Industrial Storm Water Permit's Receiving Water Limitation C.2, which prohibits the Facility's discharges from causing or contributing to an exceedance of any water quality standards contained in the Basin Plan.	March 18, 2010

Table 2 – Relevant Permit and Water Code references

Quoted section of the Industrial Storm Water General Permit or applicable law	Text	Type of requirement or Water Board Authority
Special Condition D.1	<p>Excerpt from the Industrial Storm Water Permit, Special Condition D.1</p> <p>a. The following non-storm water discharges are authorized by this General Permit provided that they satisfy the conditions specified in Paragraph b. below: fire hydrant flushing; potable water sources, including potable water related to the operation, maintenance, or testing of potable water systems; drinking fountain water; atmospheric condensates including refrigeration, air conditioning, and compressor condensate; irrigation drainage; landscape watering; springs; ground water; foundation or footing drainage; and sea water infiltration where the sea waters are discharged back into the sea water source.</p>	Explains the specific list of types of non-storm water that are allowed to be discharged under the Industrial Storm Water Permit
Discharge Prohibition 1	<p>Excerpt from the Industrial Storm Water General Permit, Discharge Prohibition 1</p> <p>Except as allowed in Special Conditions (D.1.) of this General Permit, materials other than storm water (non-storm water discharges) that discharge either directly or indirectly to waters of the United States are prohibited. Prohibited non-storm water discharges must be either eliminated or permitted by a separate NPDES permit.</p>	Explains that most non-storm water discharges (any that are not expressly listed in Special Condition D.1) are strictly prohibited under the Industrial Storm Water General Permit.
Effluent Limitation 3	<p>Excerpt from the Industrial Storm Water General Permit, Effluent Limitation 3</p> <p>Facility operators covered by this General Permit must reduce or prevent pollutants associated with industrial activity in storm water discharges and authorized non-storm water discharges through implementation of BAT for toxic and nonconventional pollutants and BCT for conventional pollutants. Development and implementation of an SWPPP that complies with the requirements in Section A of the General Permit and that includes BMPs that achieve BAT/BCT constitutes compliance with this requirement.</p>	Explains the level of “best management practice” (BMP) implementation that must be achieved in order to comply with the permit.

Quoted section of the Industrial Storm Water General Permit or applicable law	Text	Type of requirement or Water Board Authority
Fact Sheet No. 3, Facilities determined to be ineligible [for coverage under the Industrial Storm Water General Permit] by Regional Water Boards	Regional Water Boards may determine that discharges from a facility or groups of facilities, otherwise eligible for coverage under this General Permit, have potential water quality impacts that may not be appropriately addressed by this General Permit. In such cases, a Regional Water Board may require such discharges to be covered by an individual or general NPDES permit. Interested persons may petition the appropriate Regional Water Board to issue individual NPDES permits. The applicability of this General Permit to such discharges will be terminated upon adoption of an individual NPDES permit or a different general NPDES permit.	This explains that the Water Board has the authority to require Lehigh to be covered under a different permit for its ongoing discharges of storm water and non-storm water.
F.1.b, Regional Water Board Authorities	Following adoption of this General Permit, Regional Water Boards shall issue other NPDES general permits or individual NPDES storm water permits as they deem appropriate to individual facility operators, facility operators of specific categories of industrial activities.... Upon issuance of such NPDES permits by a Regional Water Board, the affected facility operator shall no longer be regulated by this General Permit. Any new NPDES permit issued by the Regional Water Board may contain different requirements than the requirements of this General Permit.	This is further explanation of Water Board authority to require Lehigh to be covered under a different permit.
Water Code § 13260. Reports; fees; exemptions	(a) All of the following persons shall file with the appropriate regional board a report of the discharge, containing the information which may be required by the regional board:(1) Any person discharging waste, or proposing to discharge waste, within any region that could affect the quality of the waters of the state, other than into a community sewer system.	This section of the Water Code requires Lehigh to submit a Report of Waste Discharge (which is an application to discharge waste water).

Quoted section of the Industrial Storm Water General Permit or applicable law	Text	Type of requirement or Water Board Authority
California Water Code § 13385, Civil Liability	§ 13385. Civil liability	This section of the Water Code gives the Water Board the authority to issue monetary penalties for violations of an NPDES Permit or of the Clean Water Act.
California Water Code § 13267. Investigations; inspections	§ 13267. Investigations; inspections	This section of the Water Code gives the Water Board the authority to require technical reports.

If you have any questions, please contact Cris Carrigan at 916-322-3626, or via e-mail at ccarrigan@waterboards.ca.gov, or me directly. Also, we anticipate that you may wish to meet with us to discuss these matters. Please contact us with your available dates.

Sincerely,

Dyan C. Whyte
Assistant Executive Officer

Interested Party Mailing List – see attached.

Lehigh Mailing List

Type of party	Party name	Party contact	E-mail address	Street Address	City, State, Zip
	<i>BayKeeper</i>	Alex Arensberg Jason Flanders Sejal Choksi	alex@baykeeper.org jason@baykeeper.org sejal@baykeeper.org		
	<i>City of Cupertino</i>	David W. Knapp, City Manager Rick Kitson, Dir. Public and Envil. Affairs	manager@cupertino.org rickk@cupertino.org		
	<i>Committee for Green Foothills</i>	Brian Schmidt	brian@greenfoothills.org		
	<i>Lehigh Southwest Cement Company</i>	Jeff Brummert, VP Stuart Tomlinson, VP		12667 Alcosta Boulevard, Suite 400 12667 Alcosta Boulevard, Suite 400	San Ramon, CA 94583 San Ramon, CA 94583
	<i>PG Environmental</i>	Brenner Perryman Scott Coulson	brenner.perryman@pgenv.com scott.coulson@pgenv.com		

<i>Type of party</i>	<i>Party name</i>	<i>Party contact</i>	<i>E-mail address</i>	<i>Street Address</i>	<i>City, State, Zip</i>
	<i>QuarryNo</i>	Bill Almon	balmon@pacbell.net		
	<i>Santa Clara Valley Audobon Society</i>	Shani Kleinhaus	shani@scvas.org		
	<i>Stevens and Permanente Creeks Watershed Council</i>	Mondy Lartz, Executive Director	execdir@spcwc.org		
Private Party					
		Cathy Helgerson	sharpset1@aol.com		
		Trish Mulvey	mulvey@ix.netcom.com		
Public Agency					
	<i>CA Air Resources Control Board</i>	Thu Bui	tbui@baaqmd.gov		
	<i>CA Department of Fish and Game</i>	Timothy Stevens	tstevens@dfg.ca.gov		

<i>Type of party</i>	<i>Party name</i>	<i>Party contact</i>	<i>E-mail address</i>	<i>Street Address</i>	<i>City, State, Zip</i>
	<i>County of Santa Clara Planning Office</i>	Clara Spaulding Gary Rudholm Marina Rush	clara.spaulding@pln.sccgov.org gary.rudholm@pln.sccgov.org marina.rush@pln.sccgov.org		
	<i>Los Altos Hills City Council</i>	Councilman Waldeck	gcwaldeck@gmail.com		
	<i>Los Altos Hills Planning Office</i>	Debbie Pedro	dpedro@losaltoshills.ca.gov		
	<i>Santa Clara County Department of Environmental Health</i>	Jennifer Kaahaaina	jennifer.kaahaaina@deh.sccgov.org		
	<i>US Department of Labor, Mine Safety, and Health Administration</i>	Diane Watson	watson.diane@dol.gov		
	<i>US Environmental Protection Agency</i>	Ann Murphy	murphy.ann@epamail.epa.gov		

