CALIFORNIA
Water Boards

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SECRETARY FOR
ENVIRONMENTAL PROTECTION

San Francisco Bay Regional Water Quality Control Board

December 3, 2013
CIWQS Place ID: 273205(LW)
PCA Site ID: 2020435

Lehigh Southwest Cement Company
Attn: Axel Conrads (Axel.Conrads@LehighHanson.com)
24001 Stevens Creek Blvd.
Cupertino, CA 95014
Sent via email

Subject: Notice of Violation of California Water Code Section 13267, for Lehigh Southwest Cement Company for the property located at 24001 Stevens Creek Boulevard, Cupertino, Santa Clara County

Dear Mr. Conrads:

This letter is to inform you that Lehigh Southwest Cement Company (Lehigh) is in violation of section 13267 of the California Water Code (CWC) for failure to submit an acceptable technical report to the Assistant Executive Officer as required in a June 26, 2013, Water Board letter. The letter required a workplan to characterize the hydrogeology of the site in order to:

- Evaluate potential impacts to groundwater from onsite waste piles;
- Determine if surface water or groundwater that discharges to drinking water has been or could be impacted; and
- Develop a detection monitoring program in accordance with title 27 of the California Code of Regulations.

Lehigh submitted the *EMSA/WMSA Groundwater Investigation, Implementation, and Reporting Workplan* (the Workplan) on October 30, 2013. The Workplan proposes to use existing datasets to develop a Conceptual Site Model (CSM), including data from quarry dewatering, historic groundwater data from the EMSA area, surface water elevation data for Permanente Creek, and hydrogeologic data from offsite. No new data collection is proposed. The CSM would then be used to develop a detection monitoring program. While we concur with the proposal to develop a CSM, the submittal was unacceptable because the proposal will not satisfy the requirement and fails to meet the standards of practice for hydrogeologic investigations.

The Workplan proposes to use only available data, which is inadequate in quality and quantity, to develop a CSM. For example:

1. The Workplan proposes to use data from off-site and across a groundwater divide that is not informative of hydrogeological processes occurring on-site. Water Board staff (Staff) have directed that this data cannot be used in this manner several times, including in a comment letter associated with a notice of violation from January 22, 2013, and a letter providing conditional concurrence for the pond waste characterization workplan from April 10, 2013.

2. The Workplan proposes to use historic groundwater data (1970's and 1980's) from beneath the EMSA that is not representative of current conditions. Groundwater in this area has been impacted by changes in the elevation and dewatering of the adjacent quarry. There is no scientific basis for the use such irrelevant data in the development of a site conceptual model.

3. Currently no data exists for the WMSA or for groundwater at the perimeter of the site (see attached figure), and the Workplan does not include a proposal to collect this data. Our July 26, 2013 letter requires that these areas be investigated.

To meet the standards of practice for a Workplan, Lehigh should have eliminated offsite and irrelevant historic data from the CSM dataset, analyzed the available data to identify data gaps, and proposed tasks and a schedule to collect and analyze data to fill those data gaps to in order to develop the CSM. This is the standard of practice described in several guidance documents provided by the USEPA (see links below). Lehigh failed to complete any of these tasks in the four months allotted to produce the Workplan, which has resulted in unacceptable delays in data collection and reporting. This exemplifies a trend in Lehigh's recent submittals, which are submitted on time, but unacceptable due to technical deficiencies. In the past, in order to move the project forward, Staff have dictated to Lehigh the specific tasks necessary to comply in comment letters, as well as concurrence letters with substantial conditions (see attached letters).

http://www.clu-in.org/contaminantfocus/default.focus/sec/Sediments/cat/Conceptual_Site_Models

http://www.epa.gov/osw/hazard/correctiveaction/pdfs/workshop/csm_slides.pdf

In summary, the proposed Workplan is unacceptable because it will not provide the information necessary to meet the objectives of the investigation clearly outlined in the July 26, 2013, letter, and does not adhere to the standards of practice for subsurface investigations or reporting. The July 26, 2013, letter requires the submittal of a technical report "acceptable to the Assistant Executive Officer" by October 30, 2013. Therefore, the requirement has not been satisfied and Lehigh is in violation. Lehigh must revise and resubmit the Workplan. Section 13268 of the CWC allows the Water Board to penalize dischargers for failing to submit a timely report. The deficiencies noted above must be addressed immediately and all future submittals to this office must meet the standards of practice that we expect from all responsible parties and dischargers in our Region. The timeliness and quality of your required submittals will be taken into consideration as part of any enforcement action related to this violation.

If you have any questions, please contact Lindsay Whalin at (510) 622-2363 or by email at LWhalin@waterboards.ca.gov.

Sincerely,

Dyan C. Whyte
Assistant Executive Officer

Attachments:
1. Figure illustrating data gaps
2. NOV and Comment Letter for EMSA/WMSA Waste Characterization Workplan
3. Conditional Concurrence for EMSA/WMSA Waste Characterization Workplan
4. Conditional Concurrence for Pond Waste Characterization Workplan
5. Conditional Concurrence for Runoff and Seep Investigation Workplan

CC: Greg Knapp – Lehigh Hanson
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Mailing List