

STATE OF CALIFORNIA
REGIONAL WATER QUALITY CONTROL BOARD
SAN FRANCISCO BAY REGION

STAFF SUMMARY REPORT (John Madigan)
MEETING DATE: March 12, 2014

ITEMS: 6 and 7

SUBJECT: **Lehigh Southwest Cement Company and Hanson Permanente Cement, Inc., Permanente Plant, Cupertino, Santa Clara County – Issuance of New NPDES Permit and Cease and Desist Order**

CHRONOLOGY: The Board has not previously considered this discharge.

DISCUSSION: The Revised Tentative Order (Appendix A) would issue a new NPDES permit for Lehigh Southwest Cement Company's Permanente Plant. This facility has operated adjacent to upper Permanente Creek since 1939. The facility consists of an active mining area, a quarry pit, a cement manufacturing plant, several crushers and mills, a pre-calcining tower, and roads and a conveyor system for transporting mined raw materials. Discharges include quarry dewatering water, truck and equipment wash water, aggregate crushing and washing water, cement manufacture process wastewater, and industrial stormwater.

The Revised Tentative Order is an important step in a larger and more comprehensive effort to protect and restore surface and groundwater quality at and downstream of the facility. We are overseeing Lehigh's operations on three fronts: (1) discharges to surface water, (2) discharges to groundwater, and (3) restoration of Permanente Creek. We intend to draft permits that address all these fronts, and the Revised Tentative Order dealing with surface water discharges is the first. We are closely coordinating our efforts amongst Board staff in all programs to avoid regulatory gaps.

Lehigh enrolled under the State Board's industrial stormwater permit some time ago when that permit was issued. Following a complaint in 2010, we inspected the site and, because it discharges industrial process wastewater in addition to stormwater, directed Lehigh to apply for an individual permit. In the interim, we directed Lehigh to obtain coverage under a general permit for sand and gravel washing. While the sand and gravel general permit did not adequately address all the site's discharges, its requirements were more appropriate than those in the industrial stormwater general permit.

Concurrently, the Sierra Club sued Lehigh, and the parties arrived at a settlement that requires site cleanup and restoration. The settlement also requires Lehigh to treat its selenium discharges. The facility appears to be a significant source of selenium impairment in Permanente Creek. The Revised Tentative Order includes selenium requirements for surface water discharges based on current water quality objectives while Board staff develops a plan to address the selenium impairment from this and possibly other sources to the creek.

Lehigh cannot immediately comply with the Revised Tentative Order; therefore, we also prepared the Revised Tentative Cease and Desist Order – or CDO (Appendix B). This is an exercise of prosecutorial discretion that allows Lehigh relief from mandatory minimum penalties if Lehigh complies with the schedule in the CDO. The CDO does not insulate Lehigh from citizen suits for failure to meet effluent limits in the permit, however. This proposed enforcement action is consistent with the Sierra Club settlement and requires major site reconfigurations, initiation of interim treatment by October 2014, and full compliance through completion of additional treatment facilities by October 2017.

We received a number of comments (Appendix C) on the tentative order circulated for public comment. As we explain in our Response to Comments (Appendix D), we made many revisions to the tentative order in response to these comments. For example, we removed three discharge points, requiring wastewater that flows toward those points to be diverted for treatment. We also pointed out that we are developing additional actions to address groundwater discharges and Permanente Creek restoration, so it is not necessary to fully address those issues in the Revised Tentative Order. We anticipate significant public interest in these items.

**RECOMMEN-
DATIONS:** Adopt the Revised Tentative Order
Adopt the Revised Tentative Cease and Desist Order after adoption of the Revised Tentative Order

CIWQS: Place ID 273205

APPENDICES: A. Revised Tentative Order
B. Revised Tentative Cease and Desist Order
C. Comment Letters
D. Response to Comments