

Lehigh NOV's

**Contrast and Comparisons
between
EPA vs. County and Lehigh**

County of Santa Clara

Department of Planning and Development
Administration

County Government Center, East Wing, 7th Floor
70 West Hedding Street
San Jose, California 95110-1705
(408) 399-6740 FAX (408) 288-9128



October 10, 2006

John Giovanola

Hanson Permanente Cement, Inc.

24001 Stevens Creek Road
Cupertino, CA 95014

ORDER TO COMPLY/NOTICE OF VIOLATION **(Pub. Res. Code § 2774.1)**

Dear Mr. Giovanola:

On September 22, 2006, the Department of Conservation's Office of Mine Reclamation (OMR) issued a "15-Day Notice" to the County of Santa Clara pursuant to Public Resources Code § 2774.1 (f)(1). The 15-Day Notice alleged several SMARA violations at Hanson Permanente Cement, Inc.'s (Hanson's) Permanente Quarry. Pursuant to § 2774.1(f), if the County does not take appropriate enforcement action in response to this notice, OMR may initiate enforcement.

Accordingly, the County hereby issues a Notice of Violation (NOV) and Order to Comply to Hanson's Permanente Quarry for mining-related disturbance outside the approved reclamation plan with the exception of the cement plant. At this time, the County is not requiring Hanson to include the adjacent cement plant site within the amended reclamation plan boundaries. As you know, the cement plant is a separately permitted and vested industrial facility which pre-dates SMARA by nearly 40 years and the County expressly excluded the cement plant from the approved reclamation plan in 1985. To date, the County has also been unable to find any clear guidance in the law or regulation regarding whether, under these circumstances, SMARA requires the cement plant to be included in the reclamation plan. Please note, however, that OMR may decide to take enforcement action on this issue. If this issue ultimately reaches the State Mining and Geology Board (SMGB), the County will adhere to the SMGB's decision on this issue.

File 2250

COMPLIANCE SCHEDULE – HANSON PERMANENTE

Deadline	Action
11/15/06- 11/30/06	Pre-application meeting between County Planning Department and Hanson concerning reclamation plan amendment.
12/15/06- 12/31/06	Hanson to submit an application for an amended reclamation plan, and interim financial assurance calculations.
1/15/07- 1/31/07	The County to complete its 30-day review of the application, and inform Hanson in writing whether the application is complete for processing or additional information is required.
No later than 3/16/07	Hanson to resubmit a revised application containing additional information required by the 30-day review letter.

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10/15/07	Prepare early response to OMR of public hearing on amended reclamation plan and revised financial assurances, pursuant to SB 668.
11/15/07	County to prepare staff report concerning application for amended reclamation plan and financial assurances.
11/30/07- 12/30/07	Public hearing on application for amended reclamation plan and financial assurances.

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Planning Office

County Government Center, East Wing, 7th Floor
70 West Hedding Street
San Jose, California 95110-1705
(408) 290-5770 FAX (408) 288-9108
www.sccplanning.org



June 20, 2008

Marvin E. Howell
Hanson Aggregates West, Inc.
P.O. Box 639069
San Diego CA 92163-9069

John Giovanola
Hanson Permanente Cement
24001 Stevens Creek Blvd
Cupertino CA 95014-5659

Subject: NOTICE OF VIOLATION (PRC §2774.1)

Dear Mr. Howell and Mr. Giovanola:

On April 3, 2008, the County of Santa Clara received a complaint alleging Hanson Permanente Quarry was storing stockpiles of petroleum coke on land owned and operated by the quarry. Subsequently, staff from the County Planning Office met with Hanson personnel in the field on April 8, 2008, to locate the stockpiled material in the field. Following this field inspection staff also met with the County Geologist and a consultant from the geology firm retained by the Planning Office to assist with the 2007 SMARA inspection of Hanson Permanente. Based on this field review and subsequent discussion with the County Geologist and consultant, both of who participated in the most recent SMARA inspection, the County has determined the following:

1. The material shown in the photographs included with the complaint is not petroleum coke.
2. The material is stockpiled overburden from the mine.
3. The location where the stockpiled materials were found is within an area included in the boundary of a proposed reclamation plan amendment, but is not located within the boundary of the current, approved reclamation plan boundary.

The County of Santa Clara previously issued a combined Order to Comply/Notice of Violation (NOV) to Hanson on October 10, 2006, for having areas of disturbance outside the approved reclamation plan boundary. Hanson subsequently applied for a reclamation plan amendment to address this issue. The NOV effectively placed Hanson on notice that work outside the reclamation plan boundary is not authorized. For this reason, the County views this additional stockpiling as an intensification of an existing violation.

In keeping with the requirements of SMARA §2774.1, the County hereby issues a Notice of Violation for mining related disturbance outside the approved reclamation plan, and specifically for stockpiling in an area east of the approved reclamation plan.

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION IX

In the Matter of:

LEHIGH SOUTHWEST CEMENT COMPANY

Proceeding under Section 113(a)
of the Clean Air Act,
42 U.S.C. § 9613(a)

)
)
) Docket No. R9-10-02
) NOTICE OF VIOLATION
) AND FINDING OF
) VIOLATION
)
)

NOTICE OF VIOLATION/FINDING OF VIOLATION

This Notice of Violation and Finding of Violation ("NOV/FOV") is issued to the Lehigh Southwest Cement Company ("Lehigh") for violations of the Clean Air Act ("CAA" or the "Act"), as amended, 42 U.S.C. §§ 7401-7671q, at its Portland cement manufacturing facility located in Cupertino, California (the "Facility"). Lehigh violated the Prevention of Significant Deterioration ("PSD") and Title Operating Permit Program requirements of the Act at the Facility. This NOV/FOV is issued pursuant to Sections 113(a)(1), 113(a)(3) and 167 of the Act. Section 113(a)(1) requires the Administrator of the United States Environment Protection Agency ("EPA") to notify any person she finds in violation of an applicable implementation plan or a permit. The federal PSD regulations also clarify that failure to comply with the PSD provisions renders a source subject to enforcement under Section 113 of the Act. See 40 C.F.R. § 52.23. The authority to issue this NOV has been delegated to the Regional Administrator of EPA Region 9 and further re-delegated to the Director of the Air Division in EPA Region 9.

emissions. Lehigh's failure to apply for a PSD permit or install and operate additional emissions controls meeting best available control technology ("BACT") covering these pollutants when it constructed and began operating the physical or operational changes was a violation of the PSD requirements of the Act.

Lehigh has also violated the Title V Operating Permit Program requirements of the Act set forth at 42 U.S.C. §§ 7461-7661f, the federal Title V regulations set forth at 40 C.F.R.

Part 70, and the approved Bay Area Air Quality Management District ("BAAQMD") Title V program set forth at Regulation 2 Rule 6. BAAQMD has administered an approved Title V Operating Permit Program since November 29, 1994. Lehigh's failure to identify PSD requirements in its application submitted to BAAQMD for a Title V permit, supplement or correct that application to include PSD requirements, or obtain a Title V permit that contains the PSD requirements after the construction and operation of the physical or operational changes are violations of Title V requirements. See 42 U.S.C. §§ 7661b(a)-(b) and 7661c(a); 40 C.F.R. §§ 70.5(a)(c); BAAQMD Regulation 2 Rule 6.

As a result, Lehigh obtained a deficient Title V permit, i.e., one that did not include all applicable requirements, and therefore is operating the Facility without a valid Title V

permit in violation of 42 U.S.C. §§ 7661a, 7661b, and 7661c; 40 C.F.R. §§ 70.1, 70.5 and 70.6; and BAAQMD Regulation 2 Rule 6.

individually or in the aggregate, resulted in an increase in annual clinker production at the Facility.

Prevention of Significant Deterioration

37. The Title V Permit issued by BAAQMD included, among other conditions, the following annual emissions limits for NO_x and SO₂ emissions from the Kiln at the Facility:

	NO _x	SO ₂
Emissions limit (tpy)	5,072	2,106.8

38. As the limits in the Title V Permit for the Facility are federally enforceable, they constitute the Facility's Potential to Emit ("PTE").

39. Based upon a comparison of pre-construction actual emissions to post-construction PTE, the physical or operational changes identified in Paragraph 34, either individually or in the aggregate, resulted in net emissions increases from the Facility of NO_x and SO₂.

40. The net emissions increases of NO_x and SO₂ as a result of the physical or operational changes identified in Paragraph 34, either individually or in the aggregate, constitute a PSD significant net emissions increase since the increases were above 40 tpy for NO_x and SO₂.

41. Each of the physical or operational changes identified in Paragraph 34 constituted, either individually or in the aggregate, a "major modification" to the Facility for PSD purposes, as defined by 40 C.F.R. § 52.21 (b) (2) (i).

42. Lehigh did not apply for a PSD Permit covering NO_x and

its application to include PSD requirements, Lehigh obtained a deficient Title V operating permit that did not contain all applicable requirements.

48. Pursuant to Section 502(a) of the CAA, 42 U.S.C. § 7661a(a), it is unlawful for any person to operate a source required to have a PSD permit except in compliance with a permit issued by a permitting authority under Title V. Similarly, 40 C.F.R. §§ 70.1(b), 70.6(a) and BAAQMD Rule 2-6-409 require sources subject to Title V to have an operating permit that assures compliance with all applicable requirements.

49. Lehigh has operated and continues to operate the Facility without a valid Title V operating permit in violation of Sections 502, 503 and 504 of the Act, 42 U.S.C. §§ 7661a, 7661b, and 7661c; 40 C.F.R. §§ 70.1, 70.5 and 70.6; and BAAQMD Regulation 2 Rule 6.

FINDING OF VIOLATION

Prevention of Significant Deterioration

50. Pursuant to Section 113(a)(1) of the Act, notice is hereby given to Lehigh that the Administrator of the EPA, by authority duly delegated to the undersigned, finds that Lehigh is in violation of federal PSD requirements at the Facility described in this NOV/FOV. EPA reserves the right to amend this NOV/FOV or issue a new NOV/FOV based on additional information obtained through Section 114 of the Act or any other source available to the Administrator at any point.

Title V Operating Permit Program

51. Notice is also given to Lehigh that it failed to supplement or correct its Title V application submitted to BAAQMD to include PSD requirements or obtain a Title V permit that contained PSD requirements, and therefore is in violation of Title V of the Act.

ENFORCEMENT

52. For any violation of a SIP, such as for PSD violations, Section 113(a)(1) of the Act, 42 U.S.C. § 7413(a)(1), provides that at any time after the expiration of 30 days following the date of the issuance of a notice of violation, the Administrator may, without regard to the period of violation, issue an order requiring compliance with the requirements of the SIP, issue an administrative penalty order, or bring a civil action pursuant to Section 113(b) for injunctive relief and/or civil penalties of

not more than \$25,000 per day for each violation that occurs on or before January 30, 1997, not more than \$27,500 per day for each violation that occurs after January 30, 1997, not more than \$32,500 per day for each violation that occurs after March 14, 2004; and not more than \$37,500 per day for each violation that occurs after January 12, 2009. 42 U.S.C. § 7413(a)(1); Federal

Civil Penalties Inflation Adjustment Act of 1990, Pub. L. 101-410, as amended; 40 C.F.R. Part 19.

53. Sections 113(a)(3) and 167 of the Act, 42 U.S.C. §§ 7413(a)(3) and 7477, provide additional authority for EPA to enforce against violators of the Act.

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San Jose, California 95110-1705
(408) 299-5770 FAX (408) 288-9198
www.sccplanning.org



September 14, 2010

Kris Wang, Mayor
City of Cupertino
10300 Torre Avenue
Cupertino CA 95014-3255

**Subject: Permanente Quarry Notices of Violation Issued by the
County of Santa Clara to Lehigh Hanson, Inc. for Violations by the
Permanente Quarry of the State Surface Mine and Reclamation Act**

Dear Mayor Wang:

This letter is in response to your letter dated August 3, 2010, regarding the Permanente Quarry, operated by Lehigh Hanson, Inc. In your letter you requested information to clarify the nature of the Notices of Violation (NOV) issued to Lehigh by the County.

By way of background, the Permanente Quarry operates under a reclamation plan approved by the County in 1985. Reclamation plans became mandated under state law under the Surface Mine and Reclamation Act (SMARA), which was approved by the state legislature in 1976. The approved reclamation plan for Permanente Quarry delineates areas where extraction of overburden and minerals takes place as of the year in which the County approved the plan (1985); however, it does not delineate all the area that has been disturbed by mine operations since the mine commenced operations in the 1930's.

In 2006 the State Office of Mine Reclamation (OMR), after reviewing the approved plan, advised the County that a violation of SMARA exists because the approved reclamation plan does not cover or include all the lands disturbed by mine operations to date. For this reason, the County issued an NOV and Order to Comply (OTC) in October 2006 that requires the mine operator to amend the reclamation plan in order to have the plan encompass all the areas of disturbance.

The mine operator applied for an amendment to the reclamation plan in January 2007 in compliance with the NOV/OTC. This application included a proposal to expand the quarry by creating a second pit. The application was not complete because it did not have adequate geology analysis to form the basis of an adequate design to provide stable, reclaimed slopes within the existing pit. Consequently, the mine operator provided a schedule from a geologist who determined that 24 months would be required to prepare the geology report and submit a revised reclamation plan amendment proposal. The

- In 2007, when the first application was made for a reclamation plan amendment that encompassed the all the areas of disturbance, and the first proposed location of a second pit, the County indicated a vested rights determination would be necessary. Because the application was incomplete, and new, revised plans were expected with a re-submittal, the County decided not to proceed with a vested rights determination until the revised plan was received that would show the location of the proposed, new mine area. Now that a new application has been submitted, with revised plans, a new location for a new mine pit, the County has determined that a vested rights determination is still required and one will be scheduled. This process requires a detailed review of historic information regarding the land where the mine operations and reclamation would take place. When County-staff complete this review the hearing will be scheduled and we will advise the City of Cupertino of the date of the hearing.
- Lehigh Hanson, Inc. has posted a financial assurance (similar to a bond) that is intended to provide for reclamation of the existing surface mine, including all the areas of disturbance both inside the approved reclamation plan boundary, and outside the plan boundary. This required "assurance" is reviewed annually and submitted OMR for their concurrence. The financial assurance posted by Lehigh is in the amount of \$9.7 million.
- We understand that there is concern the Lehigh Cement Title V Permit issued by the Bay Area Air Quality Management District (BAAQMD) was declared invalid. According to staff of the BAAQMD, the Lehigh Southwest Cement Company's Title V permit is still valid. The BAAQMD issued a Title V permit for the facility on November 5, 2003. The operator (Lehigh) submitted an application for renewal of the Title V Permit on April 28, 2008. On January 5, 2010, the BAAQMD withdrew the proposed Title V permit renewal for the Lehigh facility because the Federal EPA was expected to adopt significantly more stringent standards for mercury and other air contaminants from cement plants. The new standards were announced on August 9, 2010. The District is expected to incorporate those standards in a Title V renewal, and will re-issue a draft permit for public review. Staff from the BAAQMD advised us that the Title V permit previously issued to Lehigh will remain valid until the District takes an action regarding the renewal application.

The County is committed to working diligently with the community and the mine operator to ensure that the proposed reclamation plan amendments are processed as timely as possible. We will also work to keep the community and City of Cupertino informed of the status of the reclamation plan amendments, and involved in the CEQA and public hearing processes for each proposal.

Important Information Update

December 2010

There is a lot of misinformation currently circulating regarding Lehigh's operations – we hope that the following document will help add clarity to a few complicated issues. If you have any questions, please call our community hotline at (408) 500-5034 or email us at Lehigh.Permanente@gmail.com. You can also visit our website at www.LehighPermanente.com.

Title V Permit

Santa Clara County has stated the following in response to Councilmember Chang's comments about Title V permit at the October 19th Santa Clara County Board of Supervisors meeting ¹: ***The Bay Area Air Quality Management District (BAAQMD) confirmed that the **Lehigh Southwest Cement Company** operates under a valid Title V permit, as previously reported on September 30, 2010.***

Emission Monitoring

As required by Federal and State regulations, all emission testing at the Permanente Plant is performed by BAAQMD engineers or by independent emission testing companies certified by the State of California. All continuous emission monitors at the Permanente Plant are frequently calibrated by these companies to deliver the most accurate data.

Health Risk Assessment

Based on current operating conditions at the facility, potential health risks were below levels (set by the BAAQMD) requiring notification for both residents and workers – this includes levels set for benzene and mercury. The BAAQMD requested an updated health risk assessment since they adopted more stringent limits by considering an age sensitivity factor, which was established in January 2010. A health risk analysis looks at a 70-year period, under the worst-case exposure assumptions.

Mercury

Mercury occurs naturally in the limestone found in the Santa Clara Hills. After more than two years studying various technologies to reduce emissions at the Permanente site, Lehigh installed new equipment to immediately reduce annual mercury emissions by more than 25 percent. The second phase of Lehigh's environmental leadership strategy is underway and will include a pilot study with the installation of an Activated Carbon Injection (ACI) system, which will further reduce mercury emissions. This will enable Lehigh to meet the EPA's standards long before the 2013 deadline. The air district estimates current mercury emissions to be **337 lbs per year.**

NO_x and SO₂

Santa Clara County Board of Supervisors has stated the following in response to Councilmember Chang's comments on NO_x and SO₂ at the September 28th Santa Clara County Board of Supervisors meeting ²:

According to the Bay Area Air Quality Management District (BAAQMD), the Title V permit allows a maximum NO_x of 5,072 tons per year at this facility. BAAQMD pointed out that the current emissions from the facility are calculated at 1,235 tons per year.

BAAQMD staff further explained that SO₂ emissions are also limited under the Title V permit to a maximum of 2,107 tons per year, and they calculate that current emissions to be 420 tons per year.

Monta Vista Mobile Air Monitor

A mobile monitoring station is in place today at Monta Vista Park where the BAAQMD will perform air quality tests over the next year. Most of the data gathered from the station is available instantaneously online at the BAAQMD site.

Instructions for data retrieval: <http://www.baaqmd.gov/>

On the home page, under the "Know" option, select "Real Time Air Quality Data."

Use the "Measurement" field to the left of the page to select various data (for example, PM 2.5 Continuous). Use the tabs to view data by "Daily," "Monthly" and "Annual" layouts.

Chromium 6

Air monitoring tests for chromium 6 (also referred to as hexavalent chromium) were conducted by the U.S. EPA at Stevens Creek Elementary between June and September of 2009. After a thorough analysis of the data, the EPA recently announced the following results:

- Based on the individual monitoring results from the three-month sampling period, the EPA stated that there is "no concern for risk of health problems from short-term exposures to hexavalent chromium."
- The analysis also found that levels of hexavalent chromium are "below levels of concern for long-term exposure."
- The analysis indicates that hexavalent chromium concentrations in the air near the school "do not appear to be influenced by a nearby industrial facility."
- The most recently available chromium emission estimates for Lehigh from EPA's Toxics Release Inventory for 2008 are lower than previously available estimates.

For more information, please reference the EPA's full write-up on their site at:
<http://www.epa.gov/schoolair/StevensCre.html>

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MEMORANDUM

Date: September 30, 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 *ML*

Re: Responses to comments made during the Public Comment portion of the Board of Supervisors Meeting on September 28, 2010, related to Lehigh Southwest Cement Plant and the Permanente Quarry

During the Public Comment portion of the September 28, 2010, meeting of the Board of Supervisors three speakers made statements to the Board regarding the Lehigh Southwest Cement Plant air emissions, and the Notices of Violation (NOV) for the adjacent Permanente Quarry issued by the County. The aforementioned NOVs require reclamation plan amendment applications that are currently under review by the Planning Office. The three speakers included Barry Chang, Joyce Eden, and Derek Wong. In order to ensure the Board and the County Executive have clear and accurate information related to the issues raised by these speakers staff has prepared the following responses for your information.

SPEAKER ONE: Barry Chang :

"Good Morning, Supervisors. This is Barry Chang from Cupertino City Counsel. This is my fifth time coming over here to ask please put the Leigh High Southwest Cement Plant's Notice of Violation on your agenda on the next meeting, please, because this is impacting the public health. As we all know, that the air pollution has no boundary. It flows to everywhere. It's not only Cupertino residents will get it; all the county residents will get it. And, then it spills out quite a lot of toxins in the air. Okay, just NOx alone is over 5,000 tons a year, and sulfur dioxide is over 21 hundred tons a year, and, plus the mercury, we all know is over-- average over 500 pounds a year. That's very toxic. So, please, put on your agenda. I don't understand why the County give them two notice of violations, there is no enforcement. In the EPA Notice of Violation and also Water resource Notice of Violation, there's enforcement. Thank you."

Response:

Emissions from the facility are regulated by the Bay Area Air Quality Management District (BAAQMD). Therefore, we contacted BAAQMD staff for assistance with preparing responses to the comments.

NO_x and SO₂

Staff from the Bay Area Air Quality Management District (BAAQMD) provided information related to NO_x and SO₂ emissions in correspondence provided via email (copy attached). The basis for the amount of emissions stated by the speaker appears to be information contained in the Title V permit¹ issued to Lehigh cement. The Title V permit is still in effect. According to the BAAQMD, the Title V permit allows a maximum NO_x of 5,072 tons per year at this facility. BAAQMD pointed out that the current emissions from the facility are calculated at 1,235 tons per year.

BAAQMD staff further explained that SO₂ emissions are also limited under the Title V permit to a maximum of 2,107 tons per year, and they calculate that current emissions to be 420 tons per year.

Mercury:

A Health Risk Assessment (HRA) was recently distributed by the BAAQMD, which contains information regarding Mercury emissions. A copy of the executive summary from the HRA is attached, for reference, including Table ES-2, which shows that the average annual emission rate for mercury by the Lehigh plant is 582 pounds per year. (See additional information under response to speaker #3, below.)

SPEAKER TWO – Joyce Eden

"Hi. Joyce Eden, West Valley Citizens Air Watch, Cupertino. I'm speaking also about the ongoing violation of the mining operation that Santa Clara County has issued a Notice of Violation only after a member of our organization had to call and call and call the County to get them to go out there to see what was going on, and see if, in fact, it was a violation, which it is. It's ongoing, and the staff solution is to allow it to continue. So, as a Board of Supervisor, we're asking you to direct the staff to not be so compliant with this pollution and allowing violations like this to continue because it doesn't feel to us as if the rules and regulations that the County has mean anything if this is the outcome of it. So, and you can see this pile that is illegally placed not only did they not make them remove it, they allowed them to continue growing it. You can see it from the Powerline Trail at Rancho, not very far up and Stevens Creek Boulevard."

Response:

This comment relates to a Notice of Violation (NOV) issued by the County on June 20, 2008 related to the unapproved use of an area referred to as the East Materials Storage Area (EMSA) of the Permanente Quarry. The mine operator was required to cease operations under the NOV.

¹ The Title V Permit is a compilation of all existing applicable air quality requirements including emissions limits and standards, monitoring, record keeping, and reporting requirements. The Title V permit renewal is required every five years subject to public notice and the EPA review process. (Source: BAAQMD web site.)