

Michele King

From: Rhoda Fry <fryhouse@earthlink.net>
Sent: Wednesday, January 16, 2019 5:54 PM
To: Board of Directors
Subject: Concerns about threat to Stevens Creek Reservoir Water Quality
Attachments: Lehigh-Hanson-Stevens-Creek-Rhoda-Fry-Letter-and-Attachments-version2.pdf

Dear Santa Clara Valley Water District Board Members,

Please include this email and the attached for the public comment section of the next board meeting.

I am very concerned about a new manufacturing operation that could threaten the water quality at Stevens Creek Reservoir and Stevens Creek.

Beginning in May 2018, Stevens Creek Quarry began importing mined materials from the Lehigh Hanson Quarry for processing into construction aggregate. Mined materials from Lehigh Hanson are known to create water pollution (and legal action from the EPA and the Sierra Club:

<https://www.losaltosonline.com/news/sections/news/297-news-features/50181->)

In November 2018, the Water Boards ordered Stevens Creek Quarry to perform water testing for pollution created by their operations and in particular, potential pollution created by newly imported mined materials. Test results are due by May 2019.

It is inconceivable, that Santa Clara County could allow this significant change in manufacturing operations at Stevens Creek Quarry without first explicitly permitting it. Santa Clara County has a reputation for lax management of mines in its jurisdiction that has led to permanent pollution.

Attached please find a letter that describes the issues pertaining to this new business, an 18-year history of County negligence, and the letter from the Water Boards.

We ask that you protect our water supply.

Sincerely,
Rhoda Fry, Cupertino Resident
fryhouse@earthlink.net 408 - 529 - 3560



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Concerns about Violations and New Business Venture between Lehigh Hanson and Stevens Creek Quarry

Second Draft by Rhoda Fry fryhouse@earthlink.net, January 14, 2018

Since Santa Clara County issued Lehigh Hanson / HeidelbergCement a Notice of Violation on August 17, 2018¹ for illegal grading and road construction, we have grown increasingly concerned about the Company's disregard for regulations, the County's ability to manage its mines, and the implications of a new business that processes Lehigh Hanson's mined material at Stevens Creek Quarry. In November 2018, the Water Boards demanded testing at Stevens Creek Quarry to determine whether operations, which specifically include the newly imported materials, pollute the adjacent drinking-water reservoir (see attached letter). The following topics shall be addressed:

- Illegal grading and road-building on City land owned by Lehigh Hanson
- Illegal grading and road-building on County land owned by Lehigh Hanson
- Lehigh Hanson / HeidelbergCement Business
- Stevens Creek Quarry Business
- The New Business of Lehigh Hanson Shipping Mined Material to Stevens Creek Quarry for Processing as Construction Aggregate
- Conclusions
- Attachments with images, maps, and letters

Illegal grading and road-building on City land owned by Lehigh Hanson

Lehigh Hanson built a road on their property within Cupertino City limits without first obtaining a permit. This violation must be viewed as unpermitted grading and construction of a private road. This is not a State Mining and Reclamation Act (SMARA) violation. Although this road was built on a mine's property, it is not a mining road. The road was built for shipping materials from one business to another, not for mining. Presently, City streets are being used to ship these mined materials. Because City streets are not mines, neither is this road. Although the City of Cupertino has previously signed agreements for the County to apply SMARA to mining land within City limits, this situation would not apply to SMARA and conventional Cupertino zoning rules must apply. In addition, the Stevens Creek Quarry use permit lists only three entrances to Parcel A at Stevens Canyon Road, therefore the illegal road leading to Stevens Creek Quarry at Parcel B is not an approved entrance.²

Illegal grading and road-building on County land owned by Lehigh Hanson

For the reasons listed above, it is imperative that the County enforce the illegal road-building project and any new road-building project under conventional property rules, not SMARA. Using SMARA would be incorrect and could lead to severe consequences.

Yet, the December 20, 2018 Santa Clara County Planning Commission Staff Presentation announced a future Reclamation Plan Amendment (RPA) to cure the 2018 Notice of Violation.³ Lehigh Hanson's

¹ Santa Clara County 8/17/2018 Notice of Violation for Illegal grading and road construction
https://www.sccgov.org/sites/dpd/DocsForms/Documents/2250_NOV_20180817.pdf

² Stevens Creek Quarry Use Permit, approved ingress and egress locations, condition #13.
https://www.sccgov.org/sites/dpd/DocsForms/Documents/1253_SCQ_UsePermit_ParcelA_COA.pdf

³ Santa Clara County Planning Commission, December 20, 2018, refer to n. Staff Presentation
http://sccgov.igm2.com/Citizens/Detail_Meeting.aspx?ID=9785

application⁴ and RPA⁵ extend the Reclamation Plan Boundary far beyond what would normally be expected for the new road's alignment. The County's approval of this new boundary could erroneously pave the way toward new mining activity. New mining must be permitted openly through appropriate means.

In the past, we have witnessed multiple overlapping plans from HeidelbergCement. Consequently, there is a legitimate concern that an RPA approved by the County for a road could turn into something else. Notably, Stevens Creek Quarry has restricted operating days and hours⁶ but Lehigh Hanson proposes that their expanded boundary area would be used 24 hours a day x 7 days a week x 365 days per year. This makes no sense if the only objective is to build a private road to a site with limited hours. At the December 20, 2018 County Planning Commission, Commissioner Scott Lefaver floated the idea of approving the original alignment of the illegal road (which traverses a parcel in the City of Cupertino). If this were to happen after an approved expanded reclamation plan boundary amendment, it would be difficult to reverse course and downsize the new reclamation plan boundary. The County is off track. The City of Cupertino must compel the County to abandon using SMARA to cure the Notice of Violation and instead employ conventional zoning laws.

Lehigh Hanson / HeidelbergCement Business

Lehigh Hanson's Cupertino location sells cement that it manufactures onsite. Cement is comprised of limestone that is processed with other materials in a kiln which is fueled by petroleum coke.⁷ The Cupertino site neither sells "unprocessed aggregate" nor "construction aggregate."⁸ In the past it sold construction aggregate, which was manufactured onsite from unprocessed aggregate mined onsite. Confusion arises when using the general term "aggregate," as it can apply to either a raw material or to a processed product.⁹ The company ceased construction aggregate sales around 2011, the same year as the mass murders and a Water Boards order to prevent water pollution from its operations.^{10,11,12} Perhaps installing water pollution controls for the construction aggregate manufacturing business was not economically viable. In 2018, instead of resuming its construction aggregate business (and dealing with the processing waste), Lehigh Hanson shipped the mined materials to Stevens Creek Quarry for processing.

⁴ Permanente Quarry RPA Application for the Haul Road

https://www.sccgov.org/sites/dpd/DocsForms/Documents/2250_HaulRoad_AppForms.pdf

⁵ Permanente Quarry RPA

https://www.sccgov.org/sites/dpd/DocsForms/Documents/2250_HaulRoad_RPA.pdf

⁶ Stevens Creek Quarry Conditions of Approval for Parcel B including hours of operation

https://www.sccgov.org/sites/dpd/DocsForms/Documents/1253_SCQ_Agreement_ParcelB_COA.pdf

⁷ Learn about cement manufacturing from the Portland Cement Association

<https://www.cement.org/cement-concrete-applications/how-cement-is-made>

⁸ Lehigh Hanson Website

<https://www.lehighhanson.com/home/locations>

⁹ Learn about aggregates from the Portland Cement Association

<https://www.cement.org/cement-concrete-applications/concrete-materials/aggregates>

¹⁰ 2011 Waterboards request for technical reports

https://www.waterboards.ca.gov/rwqcb2/water_issues/hot_topics/Lehigh/10-15-13/3Workplans&TechnicalReports/11-30-2011ReportofWasteDischarge.pdf

¹¹ 2013 Workplan for Pond Characterization

https://www.waterboards.ca.gov/rwqcb2/water_issues/hot_topics/Lehigh/04-13-13/Pond_Workplan.pdf

¹² 2017 Settlement Agreement

https://www.waterboards.ca.gov/sanfranciscobay//board_info/agendas/2016/December/Lehigh/R2_2017_1001.pdf

Stevens Creek Quarry Business

Stevens Creek Quarry Parcel A recycles concrete and other materials. Stevens Creek Quarry Parcel B is a bluestone aggregate mining operation that processes its own aggregate to make construction aggregate.¹³ The County allows the Quarry to operate under a special agreement because it is out of SMARA compliance and cannot renew its conditional use permit which expired in 2015.¹⁴ Additionally, the County is not enforcing the creation of a new Reclamation Plan Amendment (RPA). As of the 2015 Surface Mining Report, Stevens Creek Quarry had “applied for a Reclamation Plan Amendment to add an end date. The application is under review by the lead agency.”¹⁵ The 2016 Surface Mining Report re-iterated that an RPA “application be submitted as soon as possible.”¹⁶ The 2017 Surface Mining Report repeated the need for an RPA and “confirmed mining-related ground cracks are located beyond the north & west property lines.”¹⁷ As of January 14, 2019, the 2018 Surface Mining Report is not available and the promised RPA continues to be years overdue.

The New Business of Lehigh Hanson Shipping Mined Material to Stevens Creek Quarry for Processing as Construction Aggregate

In 2018, Lehigh Hanson built an illegal private road to Stevens Creek Quarry to transport mined materials to manufacture construction aggregate. When the County shut down the illegal private road, the materials were transported via City streets. This new business, which has not explicitly been permitted by Santa Clara County, raises a number of questions:

1. Will Using the Internal Road Solve the Traffic Problem?

An internal road will not solve the traffic problem. Instead it could create a near infinite supply of raw materials to make construction aggregate for sale by Stevens Creek Quarry. This would create more traffic. Steven Creek Quarry’s 1300 truck-limit per day that pencils out to over 185 trucks per hour, 7 hours a day is tantamount to no limit at all. Residents have complained about traffic and dust. While spillage from trucks is not permitted, enforcement is lacking.

2. Is Lehigh Hanson Permitted to Export these Mined Materials?

SMARA ensures that mining occurs in such a way that when the mine is exhausted, sufficient funds (determined by a Financial Assurance Cost Estimate, FACE) are available to reclaim the land to a secondary beneficial use, such as open space. The Division of Mine Reclamation requires that a Reclamation Plan describe how mining operations shall proceed. Lehigh Hanson’s 2011 Permanente Quarry Reclamation Plan Amendment¹⁸ clearly states that customer haul trucks pick

¹³ Santa Clara County Stevens Creek Quarry website

<https://www.sccgov.org/sites/dpd/Programs/SMARA/Pages/StevensCreek.aspx>

¹⁴ Stevens Creek Quarry 2018 Compliance Agreement

https://www.sccgov.org/sites/dpd/DocsForms/Documents/1253_2018_ComplianceAgreement_StipulatedOrdertoComply.pdf

¹⁵ 2015 Stevens Creek Quarry Surface Mining Report

https://www.sccgov.org/sites/dpd/DocsForms/Documents/1253_2015_MRRC.pdf

¹⁶ 2016 Stevens Creek Quarry Surface Mining Report

https://www.sccgov.org/sites/dpd/DocsForms/Documents/1253_2016_MRRC.pdf

¹⁷ 2017 Stevens Creek Quarry Surface Mining Report

https://www.sccgov.org/sites/dpd/DocsForms/Documents/1253_2017_MRRC.pdf

¹⁸ 2011 Reclamation Plan Amendment for Permanente Quarry

https://www.sccgov.org/sites/dpd/DocsForms/Documents/Lehigh_RPA_20111213_AmendedMainDoc.pdf

up aggregate products at the Rock Plant (section 3.3). The document goes into great detail as to how the Rock Plant consists of equipment and facilities that screen, wash, sort and temporarily store processed materials prior to distribution off-site (section 3.7). There is no mention of customer haul trucks picking up unprocessed aggregate as is happening today. Consequently, the sale and transportation of unprocessed aggregate is an unpermitted activity.

3. ***What is Lehigh Hanson's Haul Route?***

The 2011 Permanente Quarry Reclamation Plan Amendment section 3.14 Off-Site Traffic describes the haul route as follows, "customer haul trucks visiting the Rock Plant utilize Stevens Creek Boulevard, Foothill Boulevard, Highway 280, and the Foothill Expressway." There is no description of a right turn onto Foothill Expressway as is being done today. Furthermore, the section continues, "No change in existing traffic levels is anticipated while mining operations continue." That Lehigh Hanson is creating more traffic now than it has in the past is undisputable. Nevertheless, per #2 above, the shipping of unprocessed aggregate is not permitted.

4. ***Is Stevens Creek Quarry Permitted to Process these Materials?***

The 2008 Stevens Creek Quarry Reclamation Plan Amendment¹⁹ makes no mention of processing imported materials, nor does the Conditions of Approval, SMARA inspection documents, or other Stevens Creek Quarry information, which available on the County's website.²⁰ Only specific materials to be recycling on Parcel A are permitted (processing mined materials to make construction aggregate is not recycling). According to the inspection reports, portions of the Stevens Creek Quarry have been fully mined and areas are beginning to be filled in to achieve its final objective of reclaiming the land for secondary beneficial uses. If Stevens Creek Quarry Parcel B only processes imported mined materials, then it must obtain an industrial permit.

5. ***What is Stevens Creek Quarry's Haul Route?***

According to Condition #13 of the Parcel B Mediated Conditions, the "approved haul route is Stevens Canyon Road-Foothill Boulevard to Highway 280 and Foothill Expressway. No other route to be used."²¹ Note there is an implied expectation that empty trucks arrive at the site to pick up construction aggregate whose raw materials are mined onsite. This is very different from what is happening today where trucks deliver unprocessed mined material, thus doubling the number of truck trips to manufacture and sell construction aggregate.

6. ***Can Two Quarry Haul Routes be Combined into One?***

To ask whether the two quarry haul routes can be combined into one is absurd.

7. ***What is Lehigh Hanson Shipping?***

Lehigh Hanson is shipping overburden from its limestone mining operation. Overburden means soil, rock, or other materials that lie above the natural mineral deposit or in between deposits, before or after their removal by surface mining operations.²² It is unclear as to whether the

¹⁹ 2008 Reclamation Plan Amendment for Stevens Creek Quarry
https://www.sccgov.org/sites/dpd/DocsForms/Documents/1253_SCQ_RPA.pdf

²⁰ Stevens Creek Quarry information on the Santa Clara County Website
<https://www.sccgov.org/sites/dpd/Programs/SMARA/Pages/StevensCreek.aspx>

²¹ Stevens Creek Quarry Mediated Conditions Parcel B
https://www.sccgov.org/sites/dpd/DocsForms/Documents/1253_SCQ_Agreement_ParcelB_COA.pdf

²² California Statutes and Regulations for the Division of Mine Reclamation § 2732.
<https://www.conservation.ca.gov/index/Documents/dmr-regs2018.pdf>

material that Lehigh Hanson is shipping is the same as or similar to the Group B mining waste at Lehigh Hanson's waste material areas EMSA and WMSA. Group B mining waste is defined as "mining wastes that consist of or contain nonhazardous soluble pollutants of concentrations which exceed water quality objectives for, or could cause, degradation of waters of the state"^{23,24} If the exported material is characterized as Group B mining waste, then it would need to be regulated as WMUs (waste management units) subject to WDRs (waste discharge regulation). However, it is possible that its end-use as a processed product has put it in a different category. Nevertheless, the pollution concerns remain the same.

8. ***What are the Potential Effects on Water Quality?***

Mined materials from the Lehigh Hanson Permanente Quarry are known to contain pollutants. It is possible that fines, which would otherwise be captured during processing, spill from trucks during transportation. Consequently, spillage from trucks might impair water quality in the storm drain system (along with the air we breathe).

Processing these materials at Stevens Creek Quarry might further impair Stevens Creek Reservoir. Because Stevens Creek Quarry operations may be discharging pollutants (including newly imported pollutants from Lehigh Hanson) to creeks and the Stevens Creek Reservoir, the Water Boards is demanding water testing. The attached November 8, 2018 Technical Report Order from the San Francisco Bay Regional Water Quality Control Board to the Stevens Creek Quarry expresses concern about these new materials as follows.

"We also understand that the Quarry has recently started accepting aggregate materials from the Lehigh Permanente Quarry for processing and sale. Those materials may contain pollutants, including selenium, that are different from the ones previously at the facility." And "In addition, materials transported to the facility from other facilities (e.g., Lehigh Permanente Quarry) may be sources of selenium, nickel, and other metals to storm water runoff."

In 2010, Stevens Creek was designated as impaired by toxicity. This 20-mile creek supplies Stevens Creek Reservoir and flows through Monte Bello Open Space area, the cities of Los Altos, Sunnyvale, and Mountain View, and into the Lower South Bay via Whisman Slough.²⁵ There is more information in the May 30, 2017 Stevens Creek Quarry Water Boards Notice of Violation.²⁶

Pollution from processing Lehigh Hanson's Permanente Quarry materials already has impacted the Permanente Creek which flows into Stevens Creek, well beyond the Santa Clara Valley Water District's Stevens Creek Reservoir. It would make matters even worse, if Lehigh Hanson's pollutants impacted our drinking-water reservoir.

²³ Title 27 – Cal Recycle Title 27, Environmental Protection--Division 2, Solid Waste
<https://www.calrecycle.ca.gov/laws/regulations/title27>

²⁴ Pages 9, 10 Water Boards Staff Summary Report June 13, 2018 Appendix A, Revised Tentative Order
https://www.waterboards.ca.gov/sanfranciscobay/board_info/agendas/2018/June/7_ssr.pdf

²⁵ Description of Stevens Creek Impairment
https://www.waterboards.ca.gov/sanfranciscobay/water_issues/programs/TMDLs/stevenscktoxicity.html

²⁶ May 30, 2017 Water Boards Notice of Violation to Stevens Creek Quarry
https://www.sccgov.org/sites/dpd/DocsForms/Documents/1253_2017_NOV_AndAttachments.pdf

9. ***What Happens with Waste from Aggregate Processing?***

Waste from aggregate processing, called cake, typically remains on site.²⁷ The County must require a waste management plan. Reclamation Plans per SMARA PRC §3710 require performance standards for stream protection, including surface and groundwater. The County has allowed Stevens Creek Quarry to start a potentially polluting new business without proper planning.

Santa Clara County Allowed Damage to Continue Unabated

By April 2018, Google Earth images demonstrate that illegal road construction beyond the reclamation boundary commenced (see attachments). According to the Notice of Violation, at least two months later, on June 28, 2018, the County claims it first observed illegal grading. By the time the road was completed seven weeks later, on August 15, 2018, the County closed the newly-built road.²⁸ Sadly, the damage occurred during prime bird-nesting season. The County's failure to regulate timely follows an 18-year pattern of its disregard for our natural resources. To learn more, read the attached letter by Rhoda Fry to the State of California.

Lehigh Hanson's reclamation boundary is well-defined both by markers in the field and on maps; images of these from the 2017 annual SMARA report are attached. The Reclamation Plan Condition of Approval #22 requires that the boundary be visibly marked and Condition of Approval #23 requires confirming #22 with GPS and Aerial Data annually.²⁹

If this road had been built within the reclamation boundary, an argument could be made that the road was permissible. However, the road was clearly outside of the boundary and should be subject to conventional zoning regulations. This is followed by a complaint letter to the State of California for the County's chronic inability and unwillingness to regulate our natural resources and the recent Water Boards letter to Stevens Creek Quarry.

Conclusions

The above demonstrates a number of problems associated with the County's defacto approval of Lehigh Hanson and Stevens Creeks Quarry's new business operation. We urge you to carefully consider all of the ramifications of their inaction as outlined above. Unfortunately, the County has allowed Stevens Creek Quarry to import potentially polluted materials without a pollution prevention plan for storing, processing, and disposing of manufacturing waste. Before considering legitimizing the illegal road, the issue as to whether this new business is permissible must be addressed.

Sincerely,

Rhoda Fry

Attachments: Lehigh Hanson boundary markers and map, Complaint letter about County oversight of mines to the State of California, Water Boards letter to Stevens Creek Quarry

²⁷ Article about Processing Aggregates at Stevens Creek Quarry

<https://www.aggregateresearch.com/news/waste-busting-water-recycling-quarries/>

²⁸ August 17, 2018 Santa Clara County Notice of Violation to Lehigh Hanson

https://www.sccgov.org/sites/dpd/DocsForms/Documents/2250_NOV_20180817.pdf

²⁹ Pages 29, 30, 58, and 222 from the December 20, 2018 Santa Clara County Planning Commission Packet
<http://sccgov.igam2.com/citizens/FileOpen.aspx?Type=1&ID=9357&Inline=True>



A series of freshly painted boundary markers within the EMSA.



Freshly painted boundary markers along the southern edge of the Rock Plant.



Some posts were obscured by vegetation, however all observed posts were painted.



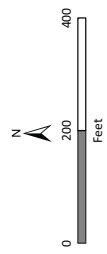
A series of freshly painted boundary markers in the WMSA.

BMP Status Report 2018

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Lehigh Permanente Quarry,
Santa Clara County,
California

- Quarry Areas**
- Cement Factory
 - Crusher/Support Area
 - EMSA
 - North Quarry
 - PCRA Subareas
 - Surge Pile/Rock Plant
 - WMSA
- BMP Infrastructure**
- Hay Bales
 - Silt Fence
 - Straw Wattles
 - Wire Back Silt Fence
 - Other Linear BMPs
 - Unmaintained Linear BMPs
 - Check Dams
 - Other Point BMPs
 - Unmaintained Point BMPs
 - Siltation Basin
 - Straw Wattles
 - Other BMP Areas
 - Unmaintained BMP Areas



Sources: Sonoma Veg 2013 Aerial, WRA | Prepared By: pkobylarz, 9/25/2018

From: Rhoda Fry (fryhouse@earthlink.net), Date: January 3, 2019

RE: Chronic Mismanagement of Mining Oversight in Santa Clara County

To: John Laird, California Natural Resources Agency; David Bunn, Department of Conservation; Pat Perez, Assistant Director, Paul Fry, Manager, Engineering and Geology Unit Division of Mine Reclamation; Jeffrey Schmidt, Executive Director, Amy Scott, Executive Assistant, and board members of the State Mining and Geology Board (and board members); CC: City, County, State Representatives

Dear State of California Responsible Agencies for Mining,

I am writing to request that the Department of Conservation launch a full investigation of Santa Clara County's oversight of its mines; the State Mining and Geology Board (SMGB) revoke Santa Clara County's authority to manage its mines under the State Mining and Reclamation Act (SMARA); and the Division of Mine Reclamation (DMR) remove mines that are out of compliance from the AB 3098 list (the list of compliant mines approved to sell product to State of California projects). In 2018, once again, we have been reminded of the County's inability and unwillingness to manage our natural resources.

Stevens Creek Quarry (California Mine ID 91-43-0007) The County is allowing the Quarry to continue operating even though it has been out of SMARA compliance for three years and cannot renew its conditional use permit which expired in 2015.¹ This is in violation of the Surface Mining Ordinance Part 1 E § 4.10.370.² Why does the DMR allow this quarry to remain on the AB 3098 list?³

Permanente Quarry (California Mine ID 91-43-004) Lehigh Hanson / Heidelberg Cement Group The County allowed the continuation of multiple violations and illegal grading of land outside of the well-marked reclamation plan area boundary for seven weeks after it was first discovered.^{4,5} Additionally, satellite images confirm that construction of an illegal haul road connecting to Stevens Creek Quarry commenced in April 2018, at least three months prior to when it was first reported on June 28, 2018 (see page 3). The December 20, 2018 Planning Commission suggested a retroactive approval of this road.

These recent transgressions follow an eighteen-year pattern established in 2000 of willful negligence in allowing irreparable harm to occur and later legitimizing it without penalty:

- From 2000 to 2003, the County failed to conduct any inspections of their mines and subsequently was lax in their oversight. In 2006, in response to ongoing complaints from neighbors of Lexington Quarry (Mine ID# 91-43-0006), the SMGB threatened to assume oversight of all County mines.^{6,7}
- Beginning in 2006, the County allowed an unpermitted mountain of mining waste (EMSA) to be erected over many years without the benefit of appropriate planning. For years, the County ignored concerns from both citizens and public agencies; now we have permanent water pollution.^{8,9}

¹ Compliance Agreement and Stipulated Order to Comply, page 2

https://www.sccgov.org/sites/dpd/DocsForms/Documents/1253_2018_ComplianceAgreement_StipulatedOrdertoComply.pdf

² "no person shall conduct a surface mining operation unless a use permit is approved by the Planning Commission"

³ December 2018 AB 3098 list: <ftp://ftp.consrv.ca.gov/pub/omr/AB3098%20List/AB3908List.pdf>

⁴ Santa Clara County NOV https://www.sccgov.org/sites/dpd/DocsForms/Documents/2250_NOV_20180817.pdf

⁵ For relevant Conditions of Approvals, photos of markers, and map, refer to pages 29, 30, 222, and 58 from the December 20, 2018 Santa Clara County Planning Commission Packet
<http://sccgov.igm2.com/citizens/FileOpen.aspx?Type=1&ID=9357&Inline=True>

⁶ July 13, 2006 SMGB status report on 45-day notice to Santa Clara County to conform to SMARA
<https://www.cupertino.org/home/showdocument?id=4158>

⁷ Skipartes, Connie. State Moves to Take Over Quarry Inspections. Mercury News, 4 Sept. 2006.

⁸ July 27, 2016 Letter to Santa Clara County from the Midpeninsula Regional Open Space District
https://www.sccgov.org/sites/dpd/DocsForms/Documents/2250_PC_20160728_Item5_Supplemental_MROSD.pdf

⁹ Sample letter from the San Francisco Bay Regional Water Quality Control Board
https://www.waterboards.ca.gov/sanfranciscobay/water_issues/hot_topics/Lehigh/LDRoWD/Lehigh.pdf

- In October 2009, without levying fines, the County orchestrated a land swap between Lehigh and the Open Space District to resolve a 2001/2002 landslide near a limestone deposit at the property line.¹⁰
- In October 2010, the Office of Mining Reclamation (OMR, now DMR), projected that the County had allowed non-compliance at the Hanson Permanente Quarry for at least 10 years.¹¹
- In February 2011, the County gifted vested rights to Lehigh Southwest (even the company's own maps did not consider some of that land vested). Among others, the County made an egregious error of considering land that had been acquired in 1990 from Kaiser Aluminum, a separate publicly-traded company established in 1941 as Permanente Metals; it manufactured magnesium metal, incendiary bombs (during WWII), phosphate fertilizer, and later aluminum products. Any potential for mining activity had been superseded by unrelated land uses.^{12,13} A group of concerned citizens, supported by amicus briefs from Los Altos, Los Altos Hills, Portola Valley, Sunnyvale, Midpeninsula Regional Open Space District, Committee for Green Foothills, and Breathe California, challenged the decision but ultimately lost in appeals in July 2016.¹⁴ Additionally, the County has failed to conduct inspections of demolished buildings with a toxic history; these are likely buried on the property.¹⁵
- In July 2011, due to the County's ongoing mismanagement and failure to bring the Permanente Mine into compliance for at least five years, the Department of Conservation issued a 30-day notice to prohibit the quarry to supply mined materials to public projects per AB 3098.^{16,17}
- In December 2011, the Sierra Club sued Hanson Permanente Cement, Inc., HeidelbergCement, Inc., and Lehigh Southwest Cement Company, for polluting Permanente Creek and settled in 2013.^{18,19}
- In 2012, the Midpeninsula Regional Open Space District, which manages County land, challenged the Santa Clara County's approval of the quarry's EIR and settled out of court.²⁰
- In 2015, EPA, U.S. Department of Justice, and State of California settled with Lehigh over water pollution.²¹ The San Francisco Regional Water Quality Control Board has continued to be challenged by this site due to the County's chronic recalcitrant behavior.²²

Had the County engaged in appropriate oversight, the above environmental damage and burdens upon our public and private organizations could have been prevented. I sincerely hope that this condensed summary will convince the California Department of Conservation to finally take meaningful action. Sincerely, Rhoda Fry

¹⁰ This letter's author has an electronic copy of the certified land trade.

¹¹ OMR (now called DMR) presentation to SMGB, October 2010
<http://www.southbayquarrylibrary.org/Catalog/OMR%20Staff%202011-02-10%20Report%20on%20Lehigh%20to%20State%20Mining%20Board.pdf>

¹² Wilson, Matt. Mining Firm's Grandfather Rights Preserved. Mercury News. 10 Feb, 2011.

¹³ Fry, Rhoda. Letter to County Board of Supervisors pertaining to vested rights 2011.
http://www.southbayquarrylibrary.org/Catalog/S10_TMPKeyboard203395757.pdf

¹⁴ Citizen's Group, "No Toxic Air," and Midpeninsula Regional Open Space District attorney letters
https://www.sccgov.org/sites/dpd/DocsForms/Documents/PCArchive/PC2012_05_31_supplement3_2.pdf

¹⁵ This letter's author has a list of incomplete demolition permits and Google Earth has other missing structures

¹⁶ Wilson, Matt. Lehigh Sues over Reclamation Plan. Mercury News. 24 Aug, 2011.

¹⁷ July 20, 2011 Letter from Office of Mining Reclamation to Lehigh Hanson
<https://www.cupertino.org/home/showdocument?id=4952>

¹⁸ Wilson, Matt. Lehigh Cement, Sierra Club reach settlement on Permanente Suit. 2 May, 2013.

¹⁹ Copy of the Sierra Club Consent Decree submitted to the Water Boards
https://www.waterboards.ca.gov/rwqcb2/water_issues/hot_topics/Lehigh/10-15-13/5MiscDocuments/4-24-2013ConsentDecreeWithSierraClub.pdf

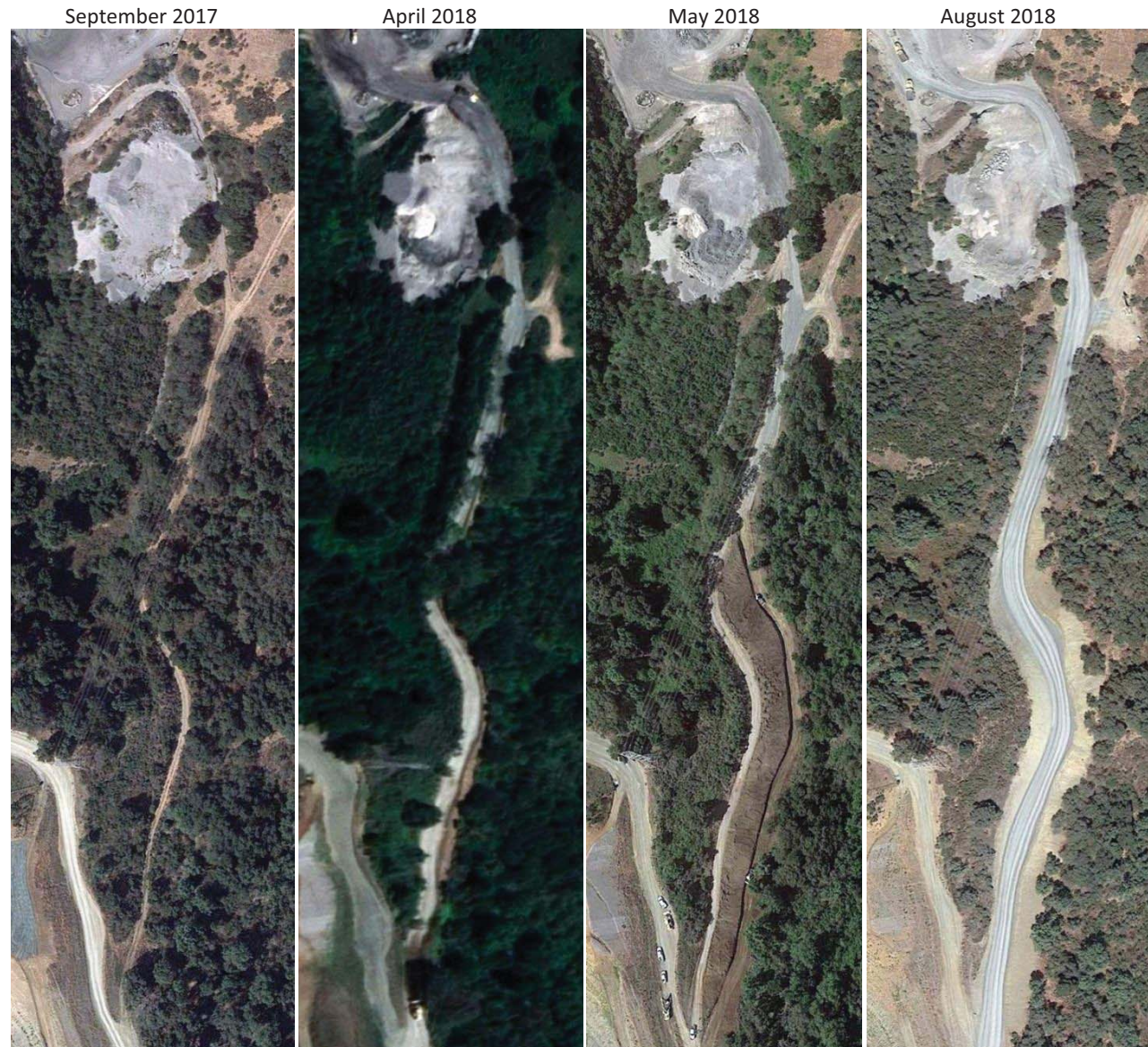
²⁰ November 29, 2012, Press Release Midpeninsula Regional Open Space District
http://www.openspace.org/CGI-BIN/press_releases/121129_LehighPR.pdf

²¹ EPA, U.S. Department of Justice, and State of California settle with Lehigh over water pollution
<https://archive.epa.gov/region9/mediacenter/web/html/index-25.html>

²² San Francisco Regional Water Quality Control Board website for Lehigh Southwest (now Lehigh Hanson)
https://www.waterboards.ca.gov/rwqcb2/water_issues/hot_topics/lehigh.html

2018 Progression of Illegal Grading at Lehigh Hanson / HeidelbergCement and New Business Traffic

- On June 28, 2018, the County first reported illegal grading. Why didn't the monthly inspections detect disturbances prior to April 2018? Why did illegal grading proceed unabated through August 15, 2018? Why did the Planning Commission suggest legitimizing this new road which cuts through City (not County) non-vested land instead of the new RPA? Why didn't Lehigh seek permission to build the road that was outside of the reclamation plan boundary and on their City non-vested land?
- In 2018, Lehigh Hanson and Stevens Creek Quarry (SCQ) started a new business relationship which has not been explicitly approved by the County. Up to 1300 trucks of overburden are being shipped daily upon City streets to SCQ for processing as aggregate.²³ This traffic is contrary to the 2011 Lehigh Southwest Reclamation Plan's anticipation of no new traffic.²⁴ The County has ignored complaints about dust clouds blowing from these trucks and is refusing to provide any mitigations.²⁵ According to annual SMARA reports, portions of SCQ is finished mining, consequently it appears that SCQ might be operating as a processing facility which should be separately permitted.²⁶



²³ City Meeting: <https://patch.com/california/cupertino/mining-truck-traffic-stevens-creek-be-discussed-week>

²⁴ 2011 Lehigh Reclamation Plan, see .pdf page 44

https://www.sccgov.org/sites/dpd/DocsForms/Documents/Lehigh_RPA_20111213_AmendedMainDoc.pdf

²⁵ California Vehicle Code 23114, contents must be prevented from escaping the vehicle

https://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?lawCode=VEH§ionNum=23114

²⁶ SCQ annual SMARA reports <https://www.sccgov.org/sites/dpd/Programs/SMARA/Pages/StevensCreek.aspx>



San Francisco Bay Regional Water Quality Control Board

*Sent via email and certified mail
Certified Mail No. 7014-0510-0001-3749-9412*

November 8, 2018
WDID No. 2 43I006687

Stevens Creek Quarry, Inc.
Attn.: Jason Voss
12100 Stevens Canyon Road
Cupertino, CA 95014

Subject: Technical Report Order Per Water Code Section 13267, Stevens Creek Quarry, Inc., Santa Clara County

Dear Mr. Voss:

This Water Code section 13267 order requires Stevens Creek Quarry, Inc. (Quarry) to submit a technical report of monitoring results for its discharges to Rattlesnake and Swiss creeks **by May 15, 2019**. As explained below, we require monitoring information to evaluate the nature and extent of potential impacts to Rattlesnake Creek, Swiss Creek, and waters downstream from the Quarry, and to determine whether the current Industrial Stormwater General Permit¹ (Permit), another permit, or a combination of permits is appropriate to regulate this facility.

Background

The Quarry owns and operates an industrial facility at 12100 Stevens Canyon Road, Cupertino, Santa Clara County. Facility operations include quarrying, processing, and hauling aggregate materials, and recycling construction and landscaping materials. Rattlesnake and Swiss creeks, which are both waters of the United States, merge within the facility and discharge to Stevens Creek Reservoir, a drinking water reservoir.

The Quarry is currently enrolled under the Permit, which requires enrollees to develop and implement site-specific stormwater pollution prevention plans (SWPPPs) to minimize or prevent pollutant discharges, to monitor stormwater, and to improve management practices over time. Where particularly high levels of those pollutants for which the permit has established numeric action levels are found in a facility's stormwater discharges, the facility must improve management practices through an "exceedance response action." The Quarry has reported stormwater discharges that frequently exceed numeric action levels for total suspended solids, iron, and nitrate.

¹ State Water Board Order No. 2014-0057 DWQ, General Permit for Storm Water Discharges Associated with Industrial Activities, NPDES Permit No. CAS000001.

Data Requirements

The Quarry shall conduct the monitoring described in Table 1, which sets forth monitoring locations, analytes, field parameters, and sampling frequencies. The Quarry shall use monitoring and analytical methods capable of achieving the minimum levels discussed in Attachment 1 and listed in Tables 2 through 6. The Quarry shall follow the toxicity testing requirements discussed in Attachment 2. The bases for these data requirements are explained below:

- Monitoring constituents in the Permit that have exceeded numeric action levels (listed in Table 2) is required at outfalls OF-1 through OF-6 (Figure 1) for a minimum of three runoff-generating storms during the 2018-19 rainy season. Stormwater samples taken during the 2016-17 rainy season exceeded the numeric action levels for iron in 10 of 12 samples and for nitrate in 9 of 12 samples. Samples taken during the 2017-18 rainy season exceeded the numeric action levels for total suspended solids in 5 of 7 samples, for iron in 5 of 5 samples, and for nitrate in 5 of 5 samples. The sampling required here is intended to help us determine the source of these constituents within the Quarry property and provide a comparison to background data so we can determine whether there may be off-site sources of these constituents. These data may also be of use to the Quarry to evaluate changes in runoff quality as new management practices are implemented.
- Monitoring conventional analytes (listed in Table 3a) and field parameters (listed in Table 3b), and monitoring or estimating volumetric flow rates is required at outfalls OF-1 through OF-6 (Figure 1) for a minimum of three runoff-generating storms during the 2018-19 rainy season. The conventional analytes and field parameters affect how metals and other chemicals behave in water and how, in turn, biota are affected. For example, changes in total dissolved solids and hardness affect the toxicity of dissolved metals in water. We will use the flow estimates to understand the approximate volume of stormwater discharged from the facility and the proportional contributions from each outfall to the total discharge flow, and to evaluate the effectiveness of management practices in the runoff areas associated with these outfalls. We will also use flow information, in combination with suspended solids measurements, to assess the total discharge of suspended solids from the facility and how that compares with the suspended solids discharged from the watershed above the facility.
- Monitoring total and dissolved concentrations of metals and metalloids (listed in Table 4) is required at outfalls OF-1 through OF-6 (Figure 1) for a minimum of three runoff-generating storms during the 2018-19 rainy season. Metals and metalloids naturally occur at the facility and on adjacent land, and may be present in runoff. In addition, materials transported to the facility from other facilities (e.g., Lehigh Permanente Quarry) may be sources of selenium, nickel, and other metals to stormwater runoff. We will use these data to determine whether facility operations are increasing metals and metalloids in Rattlesnake and Swiss creeks above background conditions, and whether the concentrations in facility discharges are potentially toxic to freshwater organisms (i.e., above the concentrations listed in Table 3-4 of the San Francisco Bay Water Quality Control Plan [Basin Plan]).²

² The Basin Plan can be accessed at: https://www.waterboards.ca.gov/sanfranciscobay/basin_planning.html

- Monitoring priority pollutants specified in the California Toxics Rule³ (listed in Table 5) and pollutants with Basin Plan water quality objectives for municipal supply⁴ (listed in Table 6) (some of which are also priority pollutants) is required at outfalls OF-1, OF-2, and OF-4 (Figure 1) for a minimum of one runoff-generating storm each during the 2018-2019 rainy season. These three outfalls are associated with discharges from the upper, middle, and lower facility areas. These data are needed to determine whether the discharges pose a reasonable potential to cause or contribute to exceedances of water quality objectives because monitoring by the Quarry and the Water Board has indicated that facility operations may be discharging pollutants to creeks and the Stevens Creek Reservoir. These data will allow the Water Board to determine if the facility requires an individual, site-specific discharge permit.
- Monitoring of background and receiving waters is required at locations BG-1, BG-2, RW-1, and RW-2 (Figure 1) for the constituents listed in Tables 2, 3a, 3b, and 4 for a minimum of two runoff-generating storms during the 2018-19 rainy season. In addition, the Quarry shall monitor or estimate volumetric flow rates at stations BG-1 and BG-2 during the monitored runoff-generating storm events. The background measurements will represent water quality in portions of the creek from watersheds not affected by facility operations. The receiving water measurements will represent how the facility affects background and downstream water quality.
- Testing for acute toxicity to water fleas (*Ceriodaphnia dubia*), fathead minnows (*Pimephales promelas*), and green algae (*Selenastrum capricornatum*) is required for water discharged from outfalls representing the upper, middle, and lower facility (OF-1, OF-2, and OF-4, Figure 1) for one storm during the 2018-2019 rainy season. Water samples from the three sampling locations shall be tested individually, not combined prior to testing. The Surface Water Ambient Monitoring Program measured toxicity to each of those species in Stevens Creek during an assessment of nine San Francisco Bay Area watersheds in 2002-2003.⁵ That study prompted additional toxicity testing, the designation of Stevens Creek as an impaired water body in 2010⁶, and ongoing efforts by the Water Board and others to identify the sources of toxicity to Stevens Creek. Water Board staff also measured toxicity to the water flea in 2018 using water collected in Rattlesnake Creek adjacent to Quarry property.⁷ We will use the required toxicity measurements to evaluate whether the facility contributes to the observed toxicity adjacent to and downstream of the facility.

Technical Report Requirements

The Quarry shall submit a technical report by May 15, 2019, that provides the results of the monitoring described above and in this Order's attachments, figure, and tables. The technical report shall include a description of field and laboratory procedures; copies of monitoring, sampling, and analytical records; and a summary and discussion of the results relative to facility operations. For volumetric flow rates, the Quarry shall provide information on the procedures and methods used to measure or estimate flows, start and end times for measurements and estimates, and estimates of the proportion of total facility stormwater runoff discharged from each of the six outfalls (OF-1 through OF-6). The Quarry shall

³ See <https://www.epa.gov/wqs-tech/water-quality-standards-establishment-numeric-criteria-priority-toxic-pollutants-state>

⁴ Basin Plan Table 3-5.

⁵ Water Quality Monitoring and Bioassessment in Nine San Francisco Bay Region Watersheds in 2001-2003 (June 2007), Surface Water Ambient Monitoring Program, State Water Resources Control Board.

⁶ https://www.waterboards.ca.gov/sanfranciscobay/water_issues/programs/TMDLs/stevenscktoxicity.html

⁷ Draft Surface Water Ambient Monitoring Program Contract Progress Report #1, dated May 4, 2018 (final pending).

include a map of the facility and surroundings showing the catchment areas and drainage pathways flowing to each outfall.

Statutory Authority

These requirements are made pursuant to California Water Code section 13267, which allows the Water Board to require technical or monitoring program reports from any person who has discharged, discharges, proposes to discharge, or is suspected of discharging waste that could affect water quality. This sampling is necessary because existing data show exceedances of total suspended solids, iron, and nitrate numeric action levels in facility discharges, aquatic toxicity adjacent to and downstream of the facility, and potential impacts to water quality in the Stevens Creek Reservoir, which includes municipal and domestic supply as a beneficial use. The Water Board has considered the facility's operations and communicated with facility owners, operators, and consultants to arrive at an appropriate scope of sampling. The burden, including costs, of this report bears a reasonable relationship to the benefits to be obtained from it. Specifically, the report is necessary to ensure protection of human health and the environment. For more information regarding the Water Board's authority to require technical reports, please refer to the attached fact sheet (Attachment 3).

Failure to respond or late response may subject the Quarry to civil liability imposed by the Water Board up to a maximum amount of \$1,000 per day. Any extension to the above deadline must be confirmed in writing by Water Board staff.

Industrial Stormwater General Permit Compliance

The rainy season has started, and the Quarry must ensure that all required erosion and sediment control management practices are in place and appropriately maintained in preparation for upcoming storms. Water Board staff plan to inspect the facility in November to evaluate compliance with the Permit and preparations for the monitoring required by this directive.

You informed Water Board staff on September 21, 2018, that the Quarry was expanding Pond 5 to detain additional runoff from the upper quarry and is planning to create a new detention pond to the northeast of the former sediment pond #4 in Rattlesnake Creek. We also understand that the Quarry has recently started accepting aggregate materials from the Lehigh Permanente Quarry for processing and sale. Those materials may contain pollutants, including selenium, that are different from the ones previously at the facility. The facility's July 16, 2018, SWPPP, in Section 7.5, states that total selenium is not being monitored because it has not been identified at the facility. Pursuant to Permit Section X.B, a facility's SWPPP shall be revised whenever necessary, and significant revisions must be uploaded to SMARTS within 30 days of the revision. For more minor revisions, the SWPPP must be uploaded at least once every three months. The Quarry shall upload an amended SWPPP by December 1, 2018, that addresses any changes at the facility since the July 16 SWPPP, including to drainage paths, the composition, processing, and storage of material imported to the facility, the potential impacts of imported materials to the quality of stormwater runoff, and the management practices implemented to address those impacts. The amended SWPPP must also include a revised monitoring program consistent with Permit requirements.

Conclusion

This Water Code section 13267 order requires the Quarry to submit a technical report of monitoring results for its discharges to Rattlesnake and Swiss Creeks **by May 15, 2019**. It also orders the Quarry to comply with Permit requirements for the Quarry to update and file in SMARTS its facility SWPPP, and sets a

deadline of no later than December 1, 2018, for submittal of an updated SWPPP. The information above explains the requirements and the reasons for them.

If you have any questions about this letter, please contact Jack Gregg at (510) 622-2437 or by e-mail to Jack.Gregg@waterboards.ca.gov.

Sincerely,

Lisa Horowitz McCann
Assistant Executive Officer

cc: Christopher Hoem, Santa Clara County, Christopher.Hoem@pln.sccgov.org
Kirsten Struve, Santa Clara Valley Water District, KStruve@valleywater.org
Brenda Blinn CA Dept. Fish and Wildlife, Brenda.Blinn@wildlife.ca.gov
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Figures

Figure 1. Monitoring locations

Tables:

Table 1. Monitoring locations, constituents, and minimum sampling frequencies

Table 2. Analytes that exceeded the Industrial Stormwater General Permit numeric action levels

Table 3a. Conventional analytes

Table 3b. Field measurements

Table 4. Metals and metalloids (total and dissolved analysis)

Table 5. Priority pollutants list based on the California Toxics Rule, suggested methods and acceptable minimum detection limits

Table 6. Water Quality Objectives for Municipal Supply

Attachments:

Attachment 1 - Monitoring and Flow Measurement Requirements

Attachment 2 – Toxicity Testing Requirements

Attachment 3 - Water Code Section 13267 Fact Sheet