



California Regional Water Quality Control Board

San Francisco Bay Region



Linda S. Adams
Acting Secretary for
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Edmund G. Brown, Jr.
Governor

Certified Mail No. 7009 1410 0002 4300 8993
Return Receipt Requested

June 14, 2011
WDID No. 2 431006267

Lehigh Southwest Cement Company
Attn.: Mr. Henrik Wesseling
24001 Stevens Creek Boulevard
Cupertino, CA 95014

Subject: Water Code Section 13267 Order and Notice of Violation for unauthorized discharge to Permanente Creek.

Dear Mr. Wesseling:

This provides Lehigh Southwest Cement Company (Lehigh) with Notice that it remains in violation of water quality standards, permit requirements and San Francisco Bay Water Board (Water Board) orders as set forth below, discusses the attached Water Code section 13267 Order for Technical and Monitoring Reports, makes a request for a Report of Waste Discharge under Water Code section 13260 and clarifies some outstanding issues that remain from Water Board staff's previous letters and orders to Lehigh. The attached Order sets forth specific requirements with definite deadlines that we believe will serve to streamline our regulatory review of the Lehigh facility and bring it into compliance as expeditiously as possible.

- A. Water Code Section 13267 Order and Section 13260 Request for Report of Waste Discharge.**
- 1. Technical Reports Pursuant to Water Code Section 13267 and Report of Waste Discharge Section 13260.**

Water Code section 13267 provides that the Water Board may require dischargers, past dischargers, or suspected dischargers to furnish technical or monitoring reports as it may specify, provided that the burden, including costs, of these reports shall bear a reasonable relationship to the need for the reports and the benefits to be obtained from the reports. The technical reports required by the attached Order are needed to evaluate the nature, extent, circumstances, and impacts of discharges from the Lehigh facility to waters of the state. As detailed in the Order, the burden of providing the required reports bears a reasonable relationship to their need and the benefits the Water Board expects will be obtained from them.

Pursuant to Water Code section 13260, the attached Order further requires Lehigh to file a Report of Waste Discharge containing the specified information. We expect the information will help enable the Water Board to evaluate Lehigh's compliance with applicable water quality requirements and assist with our determination regarding appropriate permits for Lehigh's discharges of both stormwater and non-stormwater.

Water Code section 13268 (a) (1) provides that any person failing or refusing to furnish technical or monitoring report information as required by Water Code section 13267(b), or falsifying any information provided therein, is guilty of a misdemeanor and may become responsible for an administratively-imposed civil liability of up to \$1,000 per day for each day compliance is not achieved. For any underlying discharge violations, Water Code section 13385 provides that the Water Board may impose administrative civil liability for up to \$10,000 a day for each violation, and up to an additional \$10 per gallon of discharge over 1,000 gallons not cleaned up.

2. Enrollment for Coverage under the Sand and Gravel Permit.

Based on what we have so far learned about Lehigh's facility, we are hereby putting you on notice that we expect that Lehigh will need to apply for an individual NPDES permit in the near future. The nature, variety and extent of Lehigh's various discharges make it difficult to adequately regulate these discharges under any of the available NPDES General Permits. However, the individual NPDES permitting process can last several months to more than a year.

To resolve potential timing difficulties relating to our issuance of an individual NPDES permit, as an interim permitting structure, Lehigh is required before July 10, 2011, to submit a Notice of Intent (NOI) 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 (the Sand and Gravel Permit). The Sand and Gravel Permit is more relevant to Lehigh's discharges than the Industrial General Storm Water Permit. While it does not address the full set of potential constituents of concern relevant to the Lehigh facility, it is a better fit for the interim period during which the Water Board considers and develops a custom permit for the various discharges and constituents at Lehigh. As you may recall, we advised Lehigh in our April 8, 2011, letter that we would be granting an extension of the deadline for Lehigh to enroll under the Sand and Gravel Permit. We discussed extending this deadline to approximately the end of May at our April 29, 2011, meeting. We are hereby granting an additional extension to see if we can reach agreement on the definition of stormwater and discharges to be covered under this permit. **Lehigh is hereby formally notified that it must submit its NOI to enroll under the Sand and Gravel Permit no later than July 10, 2011.**

B. Status of Issues Raised In Recent Correspondence and Orders

1. The 13267 Order (attached) supersedes the sampling requirements stated in our February 18, 2011, Notice of Violation, Attachment No. 6:

The "Water Board staff review and response to Lehigh's letter of December 13, 2010, in response to our "13267" letter of November 29, 2010, stated additional sampling requirements for Lehigh, and indicated that Water Board staff would select the specific sampling locations that Lehigh would be required to monitor for a two-week period. Based on our observations at the Lehigh facility and the in light of the end of the rainy season, we have determined that the two week sampling protocol previously-contemplated will not provide us with as much information as we need to make

appropriate determinations about Lehigh's compliance with applicable water quality standards. Accordingly, the requirements in the attached Order supersede those listed in the February 18, 2011, communication. As we discussed on April 29, 2011, we agreed to this because we did not feel that Lehigh would be able to obtain meaningful data to characterize the nature and extent of Lehigh's stormwater discharges during the dry season.

2. This letter supersedes the, "Extension to Deadlines..." letter of April 8, 2011:

Per our field observations and evaluation of the information gathered during March and April 2011, Water Board staff has concluded that we have insufficient information to be able to instruct Lehigh as to where a complete set of samples necessary to fully characterize the nature and extent of Lehigh's discharges must be collected. In Attachment A to the attached Order, we are providing the list and mapped locations of the additional monitoring locations we recently identified. However, we provide this information only as a mandatory starting point. Lehigh must identify and fill any and all data gaps necessary to conduct a full assessment and characterization of all historic, ongoing, and potential discharges from the Lehigh facility. Because of the facility's size and the diverse nature of its discharges, Water Board staff does not have sufficient information to fully direct Lehigh about how to undertake this analysis. As you are no doubt well aware, the responsibility of disclosing and reporting each outfall from Lehigh's facility, and its characteristics, is Lehigh's. Thus, the requirements stated in the attached 13267 Order supersede all statements in the April 8, 2011, communication.

3. Lehigh continues to be in violation of the Clean Water Act, the California Water Code, and the Industrial Storm Water Permit:

As described in the February 18, 2011, Notice of Violation letter from the Water Board to Lehigh, the Lehigh facility continues to be in violation of the Industrial Storm Water Permit. Lehigh continues to discharge non-stormwater without permit coverage and, as we have recently alleged, is discharging -additional prohibited non-stormwater flows in violation of the General Permit and its own SWPPP.

4. Lehigh has not fully complied with the November 29, 2010, requirement to submit a technical report fully characterizing all non-stormwater discharges:

Additionally, Lehigh has not fully complied with the requirements in the November 29, 2010, 13267 Requirement for a Technical Report. The basis for this assessment is the discharge that Water Board staff observed on March 29, 2011, and which is subject to ACL Complaint No. 2011-0023. Specifically, Lehigh has not

- fully characterized any and all non-stormwater discharge(s) that occurred during (but possibly not limited to) mid-to-late September, 2010; and
- fully described any and all non-stormwater discharges to Permanente Creek from the Lehigh facility and/or resulting from Lehigh's operations at the facility during the past three years.

Lehigh continues to be subject to potential civil liabilities of up to \$1,000 per day until such time as it has fully complied with the November 29, 2010, Order.

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.

Sincerely,

Shin-Roei Lee
Division Chief
For Dyan C. Whyte,
Assistant Executive Officer
Prosecution Team Lead

Enclosures

- A. 13267 Investigative Order
Attachment A: Table and Map of additional monitoring locations per Water Board's
Spring 2011 inspections
- B. Monitoring Constituent Table
- C. 13267 Letter Fact Sheet

Interested Party Mailing List (Provided following the above-stated attachments)