

---

**San Francisco Bay Regional Water Quality Control Board**

January 22, 2013  
CIWQS Place ID: 273205(LW)  
Site ID: 2020435

Lehigh Southwest Cement Company  
Attn: Axel Conrads ([Axel.Conrads@LehighHanson.com](mailto:Axel.Conrads@LehighHanson.com))  
24001 Stevens Creek Blvd.  
Cupertino, CA 95014  
*Sent via Certified Mail and email*

**Subject: Notice of Violation of California Water Code Section 13260, 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 California Water Code (CWC) section 13260, for failure to submit a report of waste discharge (ROWD) with respect to discharge of waste to land. The July 2012 Water Board letter <sup>(1)</sup>, informed Lehigh of its long overdue obligation under the CWC to submit a ROWD for the discharge of waste to land that could affect the quality of waters of the State. Our 13260 letter suggested a submittal date of October 1, 2012; however, to date Lehigh has failed to comply with CWC section 13260.

Our letter defined the requirements of CWC section 13260 and specified that waste in the following potential waste management units must be characterized, at a minimum:

1. Waste materials in the East Materials Storage Area (EMSA);
2. Waste materials in the West Materials Storage Area (WMSA);
3. Ponds 4, 9, 11, 13A, 13B, 17, 30, 31A, and 31B.

**Lehigh Response to our 13260 Letter**

Lehigh did not submit a ROWD. Instead, Staff received a letter from Downey Brand Attorneys on behalf of Lehigh <sup>(2)</sup>, contending that several of the ponds do not meet the requirements for coverage under land disposal regulations in California Code of Regulations Title 27, (CCR Title 27), and indicating Lehigh's intention to develop a plan to address the remaining units. Specifically, in response to the requirement to characterize waste in the EMSA and WMSA, Lehigh indicated that waste in these units was characterized in the Amended Reclamation Plan included as an appendix to an Environmental Impact Report (EIR) <sup>(3)</sup> to address CEQA requirements. Lehigh further

stated it would “build upon and supplement” the existing information with a workplan, which was submitted on December 1, 2012.

In response to the requirement to characterize waste in ponds, Lehigh noted that a ROWD for ponds on site was submitted in November 2011 to obtain an Individual NPDES Permit for discharge of waste to water. In addition, several ponds are considered by Lehigh to collect stormwater or process water runoff and are therefore covered under either the Industrial Stormwater NPDES General Permit (Industrial Stormwater Permit) or the Aggregate Mining and Sand Washing/Offloading Permit (Aggregate General Permit). Lehigh contends that regulation under these permits exempts it from regulation under CCR Title 27.

### **Violations of 13260 and Staff Response**

#### *General*

1. Lehigh failed to submit a ROWD for discharge of waste to land as required under CCR Title 27 and is therefore in violation of CWC section 13260. We are aware that Kaiser Cement and Gypsum Corporation submitted a ROWD in 1971, but to our knowledge it covered only stormwater discharges to Permanente Creek.
2. As discussed further below, it is Staff’s responsibility to determine whether waste storage areas and ponds on site meet the conditions necessary to be regulated under CCR Title 27, or whether other regulations and permits are more applicable. Under the CWC it is Lehigh’s duty to submit a complete ROWD to provide Staff the information necessary to make that determination. The objective of our 13260 letter was to remind you of this obligation.

#### *Characterization of Waste in EMSA and WMSA*

Lehigh failed to submit a characterization of waste in these units. Specifically:

1. To comply with CWC section 13260, it is insufficient to simply refer to the Amended Reclamation Plan. Information from such documents may be applied to the ROWD; however it must be provided in a manner that is relevant to the specific ROWD objectives.
2. In accordance with the CEQA process, and as stated in your letter, Staff commented on the waste characterization reported in the Amended Reclamation Plan appended to the EIR <sup>(4)</sup>. You are therefore aware that Staff found the waste characterization in that report inadequate because waste in the units was not analyzed. Instead, fresh rock specimens from the quarry wall were analyzed. This is deficient for two reasons:
  - a. The primary constituents of concern for wastes from the limestone quarry are metals and selenium. These constituents leach into water that comes into contact with the waste. It is expected that leaching of metals from rocks (waste) in the EMSA and WMSA will be significantly greater than

from rocks freshly quarried. This is because leaching is increased in rocks that have been exposed to air. The longer the exposure, the greater the leaching capacity. Rocks in the EMSA and WMSA have been exposed to air significantly longer than those recently mined from the quarry.

- b. Several forms of evidence, including staff inspections, the ROWD submitted in November 2011 for an Individual NPDES Permit <sup>(5)</sup>, and historical documents submitted to the Water Board <sup>(6; 7)</sup> indicate that wastes other than overburden were placed in the EMSA and WMSA. This includes filter cake and fines from the Rock Plant, and potentially wastes from the cement plant and former site facilities, such as the Kaiser Aluminum Plant. Therefore, waste in these units must be characterized directly.
3. Lehigh indicated that a workplan for further characterization of waste in the EMSA and WMSA was necessary, and that this workplan would be shared with Staff by December 1, 2012. Staff concur that a workplan is necessary to adequately characterize waste in these units. However it is inappropriate to submit this workplan after the requested submittal date from our letter (October 1, 2012) without prior Staff concurrence. Please note however, that we received this workplan and have provided comments in an attached letter.

#### *Characterization of Waste in Ponds*

Lehigh failed to submit a characterization of waste in these units. Specifically:

1. We recognize that Lehigh submitted a ROWD for an Individual NPDES permit in November 2011 <sup>(5)</sup>. While this information about source areas is helpful, the information provided does not adequately characterize the waste stored in the ponds or the pond sediment. Furthermore, a ROWD specific to potential discharges to land with characterization of the properties of the waste is necessary to meet Lehigh's obligations with respect to land disposal under CCR Title 27 regulations.
2. Lehigh correctly stated that ponds cannot be simultaneously regulated by CCR Title 27 as well as individual or general (Industrial Stormwater and Aggregate General) Permits that enforce other water quality regulations and policies. However, Staff require the information in a ROWD to determine which regulations apply, and therefore which permit is applicable to each pond. It is inappropriate for Lehigh to unilaterally make this decision, as done on page four of your October 1, 2012 letter.
3. Several ponds are currently regulated under the Industrial Stormwater Permit, based on information submitted by Lehigh which inaccurately characterized the water stored in these units as "stormwater runoff" <sup>(5)</sup> <sup>(8)</sup>. As clearly defined in CWC section 13050, and quoted in our letter; "liquid waste materials from the extraction, beneficiation, and processing of ores and minerals" is considered

mining waste. Therefore, runoff that comes into contact with solid mining waste (for example, runoff from the EMSA, WMSA, roads where waste might spill from trucks, and any other area where mining waste exists on site) must be managed and regulated as liquid mining waste. Ponds that collect runoff from these areas may require regulation under CCR Title 27.

Furthermore, we are concerned that coverage under the Industrial Stormwater Permit is inadequate to address all constituents of concern at the site. In accordance with the Stormwater Permit, Lehigh is treating runoff using best management practices designed to abate sediment only, which are ineffective at addressing dissolved selenium. It is Lehigh's responsibility to submit to Staff, via a ROWD, the information to determine which regulatory permits are necessary. Coverage under the Industrial Stormwater Permit was previously allowed because Lehigh inaccurately characterized this runoff as stormwater, and did not identify selenium as a potential pollutant.

4. Several ponds are currently regulated under the Aggregate General Permit, based on information submitted by Lehigh. However, it is unclear whether this is the appropriate permit to regulate this wastewater, especially since Lehigh has not met the water quality limits of this permit <sup>(9)</sup> <sup>(10)</sup> <sup>(11)</sup> <sup>(12)</sup>. Process water and runoff from these areas must be better defined and characterized. As stated previously, the purpose of the ROWD is for Lehigh to provide Staff the information necessary to make this determination.
5. Page five of your October 1, 2012 letter states that ponds with liners are exempt from regulation by CCR Title 27. Liners do not necessarily exempt ponds from regulation under CCR Title 27.

### **Requirements and Explanation of Potential Enforcement Actions**

In summary, Lehigh has been and remains in violation of CWC section 13260. Staff urges you to come into compliance forthwith. Consistent with the July 20, 2012 13260 letter, the following information must be submitted:

1. A revised workplan, acceptable to the Executive Officer, to characterize the waste in the EMSA and WMSA. The revision must address the comments provided by Staff in the attached letter, and the investigation must take place during the 2013 dry season.  
**Compliance Due Date: February 22, 2013**
2. A workplan, acceptable to the Executive Officer, to characterize the waste (liquid and solid) in pond Nos. 4, 9, 11, 13A, 13B, 17, 30, 31A, and 31B; and any other solid or liquid mining waste storage area or management unit that should be evaluated by Staff for potential coverage under CCR Title 27. The investigation must take place during the 2013 dry season.  
**Compliance Due Date: February 22, 2013**

3. A technical report, acceptable to the Executive Officer, detailing the results of the waste characterization investigations from the workplans in points 1 and 2.

**Compliance Due Date: November 30, 2013**

Any revisions to the above schedule must be approved in writing by Staff.

Please note that the Regional Water Board reserves the right to fully exercise its enforcement rights for violations of this and the July 20, 2012 letter. As stated on page 2 of this letter, the information Lehigh will provide in these reports is needed to make determinations about whether this site must be regulated under Title 27. However, submission of the information is required pursuant to the CWC section 13260, whether or not Title 27 regulation is ultimately appropriate for each waste unit. For Lehigh to comply with the July 20, 2012 letter, we are requiring resubmission of this information according to the schedule above.

In an effort to assist you in this matter, Staff have provided the attached comment letter, and are willing to meet with Lehigh representatives to further clarify what information would be acceptable to fully characterize the discharges of waste to land. Please contact Lindsay Whalin of my staff at (510) 622-2363 or by email at [LWhalin@waterboards.ca.gov](mailto:LWhalin@waterboards.ca.gov) before February 1, 2013, to schedule a meeting.

Sincerely,

Dyan C. Whyte  
Assistant Executive Officer

#### Bibliography:

1. **San Francisco Bay Water Board.** *13260 Letter Requiring Report of Waste Discharge.* July 18, 2012.
2. **Downey Brand Attorneys LLP.** *Response to Letter of July 20, 2012 Requesting Report of Waste Discharge for Lehigh Southwest Cement Company.* October 1, 2012.
3. **Santa Clara County Department of Planning and Development Planning Office.** *Draft Lehigh Permanente Quarry Reclamation Plan Amendment - Environmental Impact Report.* December 2011.
4. **San Francisco Bay Water Board.** *Comments on the Draft Environmental Impact Report for Lehigh Permanente Quarry Reclamation Plan Amendment.* February 21, 2012.
5. **Lehigh Southwest Cement Company.** *Permanente Plant Report of Waste Discharge (for Individual NPDES Permit).* November 30, 2011.
6. **Woodward-Clyde Consultants.** *Kaiser Aluminum Chemical Corporation Data Transmittal Report.* August 1992.
7. **Kaiser Aluminum Chemical Corporation.** *Environmental Evaluation Report.* June 1993.
8. **Lehigh Southwest Cement Company.** *Notice of Intent to Obtain Coverage Under the Industrial Stormwater General Permit.* 1992.
9. —. *Quarterly Self Monitoring Report, Order No. R2-2008-0011, NPDES Permit No. CAG982001, 4th Quarter 2011.* January 30, 2012.
10. —. *Quarterly Self Monitoring Report, Order No. R2-2008-0011, NPDES Permit No. CAG982001, 1st Quarter 2012.* April 30, 2012.
11. —. *Quarterly Self Monitoring Report, Order No. R2-2008-0011, NPDES Permit No. CAG982001, 2nd Quarter 2012.* July 30, 2012.
12. —. *Quarterly Self Monitoring Report, Order No. R2-2008-0011, NPDES Permit No. CAG982001, 3rd Quarter 2012.* October 30, 2012.

#### Attachments:

Staff comment letter on the Workplan for Characterization of the Eastern and Western Materials Storage Areas submitted November 30, 2012

#### Mailing List