

**Lehigh Hanson**  
HEIDELBERGCEMENT Group

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VIA U.S. MAIL, EMAIL, FACSIMILE

March 23, 2015

Mr. Joshua A. Bennett  
Clayton & McEvoy  
333 W. Santa Clara Street, Suite 950  
San Jose, CA 95113-1721

**Subject: Proposition 65 Notice concerning Lehigh Southwest Cement Company**

Dear Mr. Bennett:

This letter responds to the notice letter dated January 30, 2015 sent to Lehigh Southwest Cement Company ("Lehigh") concerning its facility located at 24011 Stevens Creek Blvd., Cupertino, CA location ("Facility"). You allege that Lehigh violated and continues to violate the Safe Drinking Water and Toxic Enforcement Act of 1986 (Cal. Health and Safety §§ 25249.5 *et seq.*) ("Proposition 65") by exposing Santa Clara County residents to harmful levels of Arsenic, Benzene, and Chromium 6 and failing to provide notice of such alleged exposure under Proposition 65.

Your assertions lack any merit. Proposition 65 exempts from its notice requirement any exposure that poses no significant risk. See Cal. Health & Safety Code § 25249.10(c). Exposures below specific regulatory levels ("SRL's") are deemed to pose no significant risk within the meaning of Proposition 65's notice exemption. See 27 CCR § 25701 *et seq.*

We engaged an environmental consultant to compare the SRLs and the exposure levels for Arsenic, Benzene, and Chromium 6 (hexavalent chromium) in the Facility's most recent Health Risk Assessment – the October 2014 Health Risk Assessment Addendum ("HRA Addendum") which the Bay Area Air Quality Management District ("BAAQMD").<sup>1</sup> Our environmental

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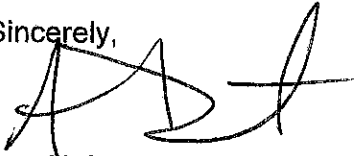
<sup>1</sup> In its February 3, 2015 memorandum, posted on the BAAQMD website as its approval, the BAAQMD concluded that "the proposed stack modifications allow the facility to operate at a capacity of 1,600,000 tons/yr of clinker production with potential toxic risk values that are below the public notification levels of significance established by the BAAQMD for the Hot Spots program and is in compliance with BAAQMD Regulation 9-13-303. Furthermore, the demonstration was made that Lehigh would not (at actual production rates) have exceeded notification

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consultant confirmed that the exposure levels for Arsenic, Benzene, and Chromium 6 (both under the Facility's former stack configuration and its new stack configuration) fall below the SRLs for those chemical exposures –for both cancer and reproductive and developmental effects. See Tables 1-4 and Attachments A and B.

In light of the foregoing, there is no basis for any suit for violation of Proposition 65. In the event that you initiate suit against Lehigh under Proposition 65, please be advised that we will vigorously defend the action and seek all legal means of redress for this frivolous claim.

Sincerely,

A handwritten signature in black ink, appearing to read 'Ana N. Damonte', with a stylized flourish extending to the right.

Ana N. Damonte  
Regional Counsel

Enclosures

cc: See attached Service List.

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thresholds during the two years preceding the startup of the new kiln stack; when those years are averaged with sixty eight years going forward with the new stack configuration at maximum permitted capacity.”

Notice of Service List

|  |   |
|--|---|
| Attorney General Kamala Harris<br>Attorney General's Office<br>1300 "I" Street<br>P.O. Box 944255<br>Sacramento, CA 94244-2550 | Santa Clara County, California<br>District Attorney<br>70 W. Hedding Street, West Wing<br>San Jose, CA 95110  |
| City of Los Altos Hills, California<br>City Attorney<br>Town Hall Offices<br>26379 Fremont Road<br>Los Altos Hills, CA 94022   | City of Los Altos, California<br>City Attorney<br>One North San Antonio Road<br>Los Altos, CA 94022   |
| City of Cupertino, California<br>City Attorney<br>20410 Town Center Lane #210<br>Cupertino, CA 95014-3220                      | City of Sunnyvale, California<br>City Attorney<br>456 W. Olive Avenue<br>Sunnyvale, CA 94086  |
| City of Mountain View, California<br>City Attorney<br>500 Castro Street<br>Mountain View, CA 94039-7540                        | Clayton & McEvoy<br>Joshua A. Bennett<br>333 West Santa Clara Street, Suite 950<br>San Jose, CA 95113-1721<br><br>jab@clayton-mcevoy.com<br>Facsimile: (408) 293-4172 |

**TABLE 1**  
**SUMMARY OF SPECIFIC REGULATORY LEVELS UNDER PROPOSITION 65 -**  
**CANCER AND REPRODUCTIVE/DEVELOPMENTAL EFFECTS**  
 Lehigh Southwest Cement Company  
 Cupertino Facility

| Chemical             | CAS No.  | Specific Regulatory Level <sup>1</sup><br>(µg/day) |            |                    |                                  |            |                    |
|----------------------|----------|--|------------|--------------------|----------------------------------|------------|--------------------|
|                      |          | Cancer NSRLs                                       |            |                    | Reproductive/Developmental MADLs |            |                    |
|                      |          | Oral   | Inhalation | Not Route Specific | Oral                             | Inhalation | Not Route Specific |
| Arsenic <sup>2</sup> | 7440382  | 10   | 0.06       | --                 | --                               | --         | 220                |
| Benzene              | 71432    | 6.4  | 13         | --                 | 24                               | 49         | --                 |
| Hexavalent chromium  | 18540299 | 14   | 0.001      | --                 | 8.2                              | --         | --                 |

**Notes:**

1. Regulatory levels for carcinogens and reproductive toxicants are termed "no significant risk levels" (NSRLs) and "maximum allowable dose levels" (MADLs), respectively. Values are published in *Proposition 65 Safe Harbor Levels: No Significant Risk Levels for Carcinogens and Maximum Allowable Dose Levels for Chemicals Causing Reproductive Toxicity*, August 15, 2013 (OEHHA, 2013).

Shaded values indicate values that were not promulgated by OEHHA. *Such values.*  
 USMx methodology specified in the Prop. 65 regulations

2. Total MADL for arsenic is presented in OEHHA, *Proposition 65 Maximum Allowable Dose Level (MADL) for Reproductive Toxicity for Arsenic (Inorganic Oxides)*, May 2001.

**Abbreviations:**

µg/day = micrograms per day  
 -- = not listed for the corresponding effect

**TABLE 2**  
**COMPARISON OF PREDICTED EXPOSURE**  
**TO SPECIFIC REGULATORY LEVELS - CANCER**  
Lehigh Southwest Cement Company  
Cupertino Facility

| Chemical            | Predicted Annual Average Concentration for Key Receptors ( $\mu\text{g}/\text{m}^3$ ) |         | Lifetime Exposure Factor <sup>1</sup> |      | Predicted Inhalation Exposure <sup>2</sup> ( $\mu\text{g}/\text{day}$ ) |         | NSRL <sup>3</sup> for Inhalation Exposure ( $\mu\text{g}/\text{day}$ ) |       | Predicted Oral Exposure for Key Receptor (AB2588 HRA) <sup>4</sup> (mg/kg-d) |         | Oral Exposure Factor (OEF) <sup>5</sup> (-) |      | Predicted Oral Exposure <sup>6</sup> ( $\mu\text{g}/\text{day}$ ) |        | NSRL <sup>3</sup> For Oral Exposure ( $\mu\text{g}/\text{day}$ ) |      |
|---------------------|---|---------|---------------------------------------|------|---|---------|--|-------|--|---------|---|------|---|--------|--|------|
|                     | MEIR  | MEIW    | MEIR                                  | MEIW | MEIR  | MEIW    | MEIR   | MEIW  | MEIR   | MEIW    | MEIR  | MEIW | MEIR  | MEIW   | MEIR   | MEIW |
| Arsenic             | 3.1E-05   | 2.7E-05 | 1                                     | 0.39 | 0.00061   | 0.00010 | 0.06   | 0.06  | 2.7E-07  | 8.0E-08 | 1.04  | 1.02 | 0.020   | 0.0057 | 10   | 10   |
| Benzene             | 4.1E-03   | 3.2E-03 | 1                                     | 0.39 | 0.083   | 0.012   | 13   | 13    | -  | -       | 1.04  | 1.02 | -   | -      | 6.4  | 6.4  |
| Hexavalent chromium | 3.2E-05   | 2.5E-05 | 1                                     | 0.39 | 0.00063   | 0.00010 | 0.001  | 0.001 | 1.0E-07  | 3.4E-08 | 1.04  | 1.02 | 0.0075  | 0.0025 | 1.4  | 1.4  |

**Notes:**

1. Lifetime exposure factor applies to occupational exposure to carcinogens and accounts for a 5 day per week, 50 weeks per year, and 40-year exposure period during a 70-year lifetime. A value of 1 was used for evaluating residential exposure.
2. Predicted Inhalation Exposure = (Predicted Concentration) x (Absorption Factor of 1) x (Inhalation Rate of 20 [MEIR] or 10 [MEIW]  $\text{m}^3/\text{day}$ ) x (Lifetime Exposure Factor).
3. Regulatory levels for carcinogens are termed "no significant risk levels" (NSRLs) (OEHA, 2015); exposure below these levels does not require notification.
4. Predicted by the HARP model in the HRA Addendum (AMEC, 2014); includes soil ingestion, dermal contact, ingestion of mother's milk, and ingestion of homegrown vegetables for the MEIR and soil ingestion and dermal contact for the MEIW.
5. Oral Exposure Factor (OEF) accounts for difference in exposure assumed between AB2588 risk assessment and Prop65 evaluation: (365 days/year / 350 days/year for MEIR and 250 days/year / 245 days/year for MEIW).
6. Dose ( $\mu\text{g}/\text{day}$ ) = Annual average dose (mg/kg-day) x OEF x 70 kg x 1000  $\mu\text{g}/\text{mg}$ . Dose of "-" indicates a volatile compound that does not deposit on soil and result in non-inhalation exposure. Oral dose was not calculated if an oral or total NSRL was not available.

**Abbreviations:**

- $\mu\text{g}/\text{m}^3$  = micrograms per cubic meter
- $\mu\text{g}/\text{day}$  = micrograms per day
- $\mu\text{g}/\text{mg}$  = micrograms per milligram
- $\text{m}^3/\text{day}$  = cubic meters per day
- $\text{mg}/\text{kg-day}$  = milligrams per kilogram body weight per day
- = not applicable

TABLE 3  
COMPARISON OF PREDICTED EXPOSURE  
TO SPECIFIC REGULATORY LEVELS - REPRODUCTIVE AND DEVELOPMENTAL ENDPOINTS  
"CURRENT CONFIGURATION" SCENARIO IN THE 2014 HRA ADDENDUM

Lehigh Southwest Cement Company  
Cupertino Facility

| Chemical            | Predicted Daily Concentration for Key Receptors (µg/m <sup>3</sup> ) |         | Predicted Inhalation Exposure <sup>1</sup> (µg/day) |        | MADL <sup>2</sup> for Inhalation (µg/day) | Predicted Oral Exposure for Key Receptors (AB2588 HRA) <sup>3</sup> (mg/kg-d) |         | Oral Exposure Factor (OEF) <sup>4</sup> (-) |      | Predicted Oral Exposure <sup>5</sup> (µg/day) |        | MADL <sup>2</sup> for Oral Exposure (µg/day) | Total Exposure (µg/day) |       | MADL <sup>2</sup> for Total Exposure (µg/day) |        |      |
|---------------------|--|---------|---|--------|---|---|---------|---|------|---|--------|--|-------------------------|-------|---|--------|------|
|                     | MEIR   | MEIW    | MEIR  | MEIW   |   | MEIR  | MEIW    | MEIR  | MEIW | MEIR  | MEIW   |  | MEIR                    | MEIW  |   | MEIR   | MEIW |
| Arsenic             | 2.5E-04  | 2.4E-04 | 0.0050  | 0.0024 | -   | 3.2E-07   | 9.3E-08 | 1.04  | 1.02 | 0.022   | 0.018  | 0.0065                                       | -                       | 0.027 | 0.023   | 0.0090 | 220  |
| Benzene             | 1.1E+00  | 8.3E-01 | 22  | 8.3    | 49  | -   | -       | 1.04  | 1.02 | -   | -      | 24   | 22                      | 22    | 8.3   | -      | -    |
| Hexavalent chromium | 2.2E-04  | 1.9E-04 | 0.0045  | 0.0019 | -   | 1.2E-07   | 3.9E-08 | 1.04  | 1.02 | 0.0081  | 0.0067 | 0.0027                                       | 8.2                     | 0.013 | 0.011   | 0.0047 | -    |

oral + inhalation

Notes:

1. Predicted Inhalation Exposure = (Predicted Concentration) x (Absorption Factor of 1) x (Inhalation Rate of 20 [MEIR] or 10 [MEIW] m<sup>3</sup>/day).
2. Regulatory levels for reproductive toxicants are termed "maximum allowable dose levels" (MADLs) (OEHA, 2013); exposure below these levels does not require notification.
3. Predicted by the HARP model in the HRA Addendum (AMEC, 2014); includes soil ingestion, dermal contact, ingestion of mother's milk, and ingestion of homegrown vegetables for the MEIR and soil ingestion and dermal contact for the MEIW.
4. Oral Exposure Factor (OEF) accounts for difference in exposure assumed between AB2588 risk assessment and Prop65 evaluation: (365 days/year / 350 days/year for MEIR and 250 days/year / 245 days/year for MEIW).
5. Oral dose was not calculated if an oral or total MADL was not available.  
Dose (µg/day) = Annual average dose (mg/kg-day) x OEF x 70 kg x 1000 µg/mg.  
MEIR - Female Dose (µg/day) = Annual average dose (mg/kg-day) x OEF x 58 kg x 1000 µg/mg.

Abbreviations:

- µg/m<sup>3</sup> = micrograms per cubic meter
- µg/day = micrograms per day
- m<sup>3</sup>/day = cubic meters per day
- mg/kg-day = milligrams per kilogram body weight per day
- = not applicable

**TABLE 4**  
**COMPARISON OF PREDICTED EXPOSURE**  
**TO SPECIFIC REGULATORY LEVELS - REPRODUCTIVE AND DEVELOPMENTAL ENDPOINTS**  
**"FUTURE CONFIGURATION" SCENARIO IN THE 2014 HRA ADDENDUM**

Lehigh Southwest Cement Company  
Cupertino Facility

| Chemical            | Predicted Daily Concentration for Key Receptors (µg/m <sup>3</sup> ) |         | Predicted Inhalation Exposure <sup>1</sup> (µg/day) |        | MADL <sup>2</sup> for Inhalation (µg/day) | Predicted Oral Exposure for Key Receptors (AB2588 HRA) <sup>3</sup> (mg/kg-d) |         | Oral Exposure Factor (OEF) <sup>4</sup> (-) |      | Predicted Oral Exposure <sup>5</sup> (µg/day) |        | MADL <sup>2</sup> for Oral Exposure (µg/day) | Total Exposure (µg/day) |       | MADL <sup>2</sup> for Total Exposure (µg/day) |      |
|---------------------|--|---------|---|--------|---|---|---------|---|------|---|--------|--|-------------------------|-------|---|------|
|                     | MEIR   | MEIW    | MEIR  | MEIW   |   | MEIR  | MEIW    | MEIR  | MEIW | MEIR  | MEIW   |  | MEIR                    | MEIW  |   | MEIR |
| Arsenic             | 2.1E-04  | 2.2E-04 | 0.0042  | 0.0022 | -   | 2.7E-07   | 8.0E-08 | 1.04  | 1.02 | 0.019   | 0.015  | 0.0056                                       | 0.023                   | 0.020 | 0.0078  | 220  |
| Benzene             | 2.1E-02  | 1.8E-02 | 0.42  | 0.18   | 49  | -   | -       | 1.04  | 1.02 | -   | -      | 24   | 0.42                    | 0.42  | 0.18  | -    |
| Hexavalent chromium | 2.0E-04  | 1.9E-04 | 0.0040  | 0.0019 | -   | 1.0E-07   | 3.4E-08 | 1.04  | 1.02 | 0.0071  | 0.0059 | 0.0024                                       | 0.011                   | 0.010 | 0.0043  | -    |

Notes:

1. Predicted Inhalation Exposure = (Predicted Concentration) x (Absorption Factor of 1) x (Inhalation Rate of 20 [MEIR] or 10 [MEIW] m<sup>3</sup>/day).
2. Regulatory levels for reproductive toxicants are termed "maximum allowable dose levels" (MADLs) (OEHA, 2013); exposure below these levels does not require notification.
3. Predicted by the HARP model in the HRA Addendum (AMEC, 2014); includes soil ingestion, dermal contact, ingestion of mother's milk, and ingestion of homegrown vegetables for the MEIR and soil ingestion and dermal contact for the MEIW.
4. Oral Exposure Factor (OEF) accounts for difference in exposure assumed between AB2588 risk assessment and Prop65 evaluation: (365 days/year / 350 days/year for MEIR and 250 days/year / 245 days/year for MEIW).
5. Oral dose was not calculated if an oral or total MADL was not available.  
Dose (µg/day) = Annual average dose (mg/kg-day) x OEF x 70 kg x 1000 µg/mg.  
MEIR - Female Dose (µg/day) = Annual average dose (mg/kg-day) x OEF x 58 kg x 1000 µg/mg.

Abbreviations:

- µg/m<sup>3</sup> = micrograms per cubic meter
- µg/day = micrograms per day
- m<sup>3</sup>/day = cubic meters per day
- mg/kg-day = milligrams per kilogram body weight per day
- = not applicable

**ATTACHMENT A**  
**CALCULATION OF SPECIFIC REGULATORY LEVELS UNDER PROPOSITION 65 -**  
**CANCER AND REPRODUCTIVE/DEVELOPMENTAL EFFECTS**  
 Lehigh Southwest Cement Company  
 Cupertino Facility

| Chemical            | Cancer NSRL                                       |                                      | Reproductive/Developmental MADL              |   |
|---------------------|---|--------------------------------------|--|---|
|                     | Oral Slope Factor (Sf)<br>(mg/kg-d) <sup>-1</sup> | NSRL - Oral <sup>1</sup><br>(µg/day) | Study NOEL <sup>2</sup><br>Dose<br>(mg/kg-d) | MADL <sup>3</sup><br>All Routes<br>(µg/day) |
| Arsenic             | --  | --                                   | 3.8  | Reference<br>OEHHA, 2001<br>220             |
| Hexavalent chromium | 0.5   | 1.4                                  | --   | --  |

**Notes:**

- Hexavalent chromium:** Based on oral slope factor (Sf) from OEHHA Toxicity Criteria Database  
 $NSRL - oral (\mu g/day) = (1 \times 10^{-5} / Sf) \times 70 \text{ kg} \times 1000 \mu g/mg$
- Arsenic:** Based on animal studies on pregnancy outcomes (OEHHA, 2001).
- MADL** ( $\mu g/day$ ) =  $NOEL \text{ mg/kg-d} \times 1000 \mu g/mg \times 58 \text{ kg (female body weight)} / 1000$  (MADL safety factor)

Abbreviations:

- µg/day = micrograms per day
- NSRL = No Significant Risk Level
- MADL = Maximum Allowable Dose Level
- NOEL = No Observable Effect Level
- µg/mg = micrograms per milligram
- kg = kilogram
- mg/kg-d = milligrams per kilogram per day
- = not applicable

References:

OEHHA, Proposition 65 Maximum Allowable Dose Level (MADL) for Reproductive Toxicity for Arsenic (Inorganic Oxides), May 2001. [http://www.oehha.org/prop65/law/pdf\\_zip/arsenic%20MADLr6.pdf](http://www.oehha.org/prop65/law/pdf_zip/arsenic%20MADLr6.pdf)



**ATTACHMENT B**  
**PREDICTED 24 - HOUR AVERAGE CONCENTRATIONS<sup>1</sup>**  
 Lehigh Southwest Cement Company  
 Cupertino Facility

| Chemical   | Receptor | UTM Coordinates (m) |         | 24 HOUR AVERAGE CONCENTRATION ( $\mu\text{g}/\text{m}^3$ ) | Receptor Elevation (ZELEV) (m) | AVERAGING PERIOD | SOURCE GROUP | RANK | DATE PREDICTED |
|--|----------|---------------------|---------|--|--------------------------------|------------------|--------------|------|----------------|
|  |          | X                   | Y       |  |                                |                  |              |      |                |
| <b>CURRENT CONFIGURATION SCENARIO IN THE 2014 HRA ADDENDUM<sup>2</sup></b> |          |                     |         |  |                                |                  |              |      |                |
| Arsenic  | MEIW     | 581334              | 4131199 | 2.44E-04   | 151.08                         | 24-HR            | ALL          | 1ST  | 10121124       |
|  | MEIR     | 581556              | 4130679 | 2.49E-04   | 200.47                         | 24-HR            | ALL          | 1ST  | 10121224       |
| Benzene  | MEIW     | 581334              | 4131199 | 8.29E-01   | 151.08                         | 24-HR            | ALL          | 1ST  | 11062724       |
|  | MEIR     | 581556              | 4130679 | 1.10E+00   | 200.47                         | 24-HR            | ALL          | 1ST  | 10121224       |
| Hexavalent Chromium (CrVI)   | MEIW     | 580104              | 413979  | 1.91E-04   | 119.19                         | 24-HR            | ALL          | 1ST  | 11062324       |
|  | MEIR     | 581961              | 4130184 | 2.24E-04   | 165.16                         | 24-HR            | ALL          | 1ST  | 11010424       |
| <b>FUTURE CONFIGURATION SCENARIO IN THE 2014 HRA ADDENDUM<sup>3</sup></b>  |          |                     |         |  |                                |                  |              |      |                |
| Arsenic  | MEIW     | 581334              | 4131199 | 2.16E-04   | 151.08                         | 24-HR            | ALL          | 1ST  | 10121124       |
|  | MEIR     | 581556              | 4130679 | 2.08E-04   | 200.47                         | 24-HR            | ALL          | 1ST  | 11010724       |
| Benzene  | MEIW     | 581334              | 4131199 | 1.75E-02   | 151.08                         | 24-HR            | ALL          | 1ST  | 11051524       |
|  | MEIR     | 581871              | 4129749 | 2.08E-02   | 264.15                         | 24-HR            | ALL          | 1ST  | 11050824       |
| Hexavalent Chromium (CrVI)   | MEIW     | 580104              | 4131979 | 1.90E-04   | 119.19                         | 24-HR            | ALL          | 1ST  | 11062324       |
|  | MEIR     | 581556              | 4130679 | 2.00E-04   | 200.47                         | 24-HR            | ALL          | 1ST  | 10092524       |

**Notes:**

- AERMOD (version 14134) output of 1st highest 24-hour values for all source groups.
- 24-hour concentration modeled using historical kiln and clinker cooler multiple stack configuration.
- 24-hour concentration modeled using redesigned kiln and clinker cooler single stack configuration.

**Abbreviations**

- (m) = meters
- $\mu\text{g}/\text{m}^3$  = micrograms per cubic meter of air
- MEIW = maximally exposed individual worker
- MEIR = maximally exposed individual resident