



CUPERTINO

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Assistant Attorney General
United States Department of Justice
Environment and Natural Resources Division
P.O. Box 7611
Washington, DC 20044-7611

E-mail: pubcomment-ees.enrd@usdoj.gov

Re: Consent Decree: *United States v. Lehigh Southwest Cement Co.*, Case No. 5:15-cv-01896, D.J. Ref. No. 90-5-1-1-10741

Dear Assistant Attorney General:

I am writing on behalf of the City of Cupertino to comment on the Consent Decree between U.S. Environmental Protection Agency (“EPA”) and the State of California and Lehigh Southwest Cement Company (“Lehigh”) in *United States v. Lehigh Southwest Cement Co.*, Case No. 5:15-cv-01896. After reviewing the settlement, the Cupertino City Council voted unanimously to support the Consent Decree.

The Lehigh quarry and cement plant (“Plant”) sits in unincorporated Cupertino at the headwaters of Permanente Creek, which runs through Midpeninsula Regional Open Space District parkland and through Cupertino and other South Bay cities into the San Francisco Bay. For years, the Plant dumped industrial wastewater containing thousands of pounds of pollutants—including selenium, mercury, hexavalent chromium, nickel, chloride, and thallium—into Permanente Creek, sending these toxic substances through the parks and cities downstream and into the Bay. Pollution from the Plant also regularly exceeded the standards for total suspended solids, total dissolved solids, turbidity, and pH. Discharges like these can threaten both wildlife and environmental health and public health.

The City of Cupertino’s residents value the high quality of life provided by the natural beauty of the area and the proximity of outdoor recreation on area parklands and on the Bay. Cupertino’s residents also desire clean water and clean air, both of which have been negatively impacted by the Plant’s operations. The City recognizes that the Plant is an important part of the area’s economy. However, the City believes that the Plant must operate in harmony with the natural environment and protect public health by using the latest and best technology to minimize its pollution.

The City believes the Consent Decree takes an important step toward achieving this by requiring the Plant to comply with its discharge permits and requiring the Plant to bring its wastewater treatment systems into the twenty-first century by constructing a state-of-the-art wastewater treatment facility. The Plant is already operating an interim wastewater treatment system required by the Consent Decree. By October 1, 2017, the Plant must have constructed and be operating a wastewater treatment plant that will use modern technology to minimize the pollution discharged into Permanente Creek.

The City also supports the Consent Decree's requirement that the Plant pay \$2.55 million in civil penalties. The Plant polluted Permanente Creek for years, exceeding its own permit levels and violating federal and state law while fouling the Bay and harming wildlife like the endangered California red-legged frog, which inhabits the creek. This should not go unpunished, and a substantial penalty will deter future illegal pollution by the Plant or other potential polluters.

Because the Plant is located so close to important ecosystems like the Bay and to millions of people living in the South Bay Area, it must be held to the highest environmental standards. Accordingly, the City encourages EPA and the State continue to rigorously enforce the Clean Water Act and the terms of the Consent Decree, including levying the stipulated penalties against the Plant if it violates the Consent Decree's terms. The Consent Decree's monitoring and reporting requirements for the Plant should help prevent future illegal water pollution but are only effective if subject to the continued vigilance of the overseeing agencies. Further, EPA and the State must continue to enforce all environmental laws to which the Plant is subject, including laws regulating air pollution from the Plant's kilns, which emit dangerous pollutants like particulate matter and mercury.

The City of Cupertino and its City Council commend the efforts of EPA and the State of California in sanctioning the Plant's past illegal pollution and requiring the Plant to avoid such environmental harm going forward.

Very truly yours,

A handwritten signature in black ink, appearing to read 'David Brandt', with a long horizontal flourish extending to the right.

David Brandt
City Manager
City of Cupertino