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County of Santa Clara

Department of Planning and Development
Planning Office

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September 14, 2010

Kris Wang, Mayor
City of Cupertino
10300 Torre Avenue
Cupertino CA 95014-3255

**Subject: Permanente Quarry Notices of Violation Issued by the
 County of Santa Clara to Lehigh Hanson, Inc. for Violations by the
 Permanente Quarry of the State Surface Mine and Reclamation Act**

Dear Mayor Wang:

This letter is in response to your letter dated August 3, 2010, regarding the Permanente Quarry, operated by Lehigh Hanson, Inc. In your letter you requested information to clarify the nature of the Notices of Violation (NOV) issued to Lehigh by the County.

By way of background, the Permanente Quarry operates under a reclamation plan approved by the County in 1985. Reclamation plans became mandated under state law under the Surface Mine and Reclamation Act (SMARA), which was approved by the state legislature in 1976. The approved reclamation plan for Permanente Quarry delineates areas where extraction of overburden and minerals takes place as of the year in which the County approved the plan (1985); however, it does not delineate all the area that has been disturbed by mine operations since the mine commenced operations in the 1930's.

In 2006 the State Office of Mine Reclamation (OMR), after reviewing the approved plan, advised the County that a violation of SMARA exists because the approved reclamation plan does not cover or include all the lands disturbed by mine operations to date. For this reason, the County issued an NOV and Order to Comply (OTC) in October 2006 that requires the mine operator to amend the reclamation plan in order to have the plan encompass all the areas of disturbance.

The mine operator applied for an amendment to the reclamation plan in January 2007 in compliance with the NOV/OTC. This application included a proposal to expand the quarry by creating a second pit. The application was not complete because it did not have adequate geology analysis to form the basis of an adequate design to provide stable, reclaimed slopes within the existing pit. Consequently, the mine operator provided a schedule from a geologist who determined that 24 months would be required to prepare the geology report and submit a revised reclamation plan amendment proposal. The

- In 2007, when the first application was made for a reclamation plan amendment that encompassed the all the areas of disturbance, and the first proposed location of a second pit, the County indicated a vested rights determination would be necessary. Because the application was incomplete, and new, revised plans were expected with a re-submittal, the County decided not to proceed with a vested rights determination until the revised plan was received that would show the location of the proposed, new mine area. Now that a new application has been submitted, with revised plans, a new location for a new mine pit, the County has determined that a vested rights determination is still required and one will be scheduled. This process requires a detailed review of historic information regarding the land where the mine operations and reclamation would take place. When County-staff complete this review the hearing will be scheduled and we will advise the City of Cupertino of the date of the hearing.
- Lehigh Hanson, Inc. has posted a financial assurance (similar to a bond) that is intended to provide for reclamation of the existing surface mine, including all the areas of disturbance both inside the approved reclamation plan boundary, and outside the plan boundary. This required "assurance" is reviewed annually and submitted OMR for their concurrence. The financial assurance posted by Lehigh is in the amount of \$9.7 million.
- We understand that there is concern the Lehigh Cement Title V Permit issued by the Bay Area Air Quality Management District (BAAQMD) was declared invalid. According to staff of the BAAQMD, the Lehigh Southwest Cement Company's Title V permit is still valid. The BAAQMD issued a Title V permit for the facility on November 5, 2003. The operator (Lehigh) submitted an application for renewal of the Title V Permit on April 28, 2008. On January 5, 2010, the BAAQMD withdrew the proposed Title V permit renewal for the Lehigh facility because the Federal EPA was expected to adopt significantly more stringent standards for mercury and other air contaminants from cement plants. The new standards were announced on August 9, 2010. The District is expected to incorporate those standards in a Title V renewal, and will re-issue a draft permit for public review. Staff from the BAAQMD advised us that the Title V permit previously issued to Lehigh will remain valid until the District takes an action regarding the renewal application.

The County is committed to working diligently with the community and the mine operator to ensure that the proposed reclamation plan amendments are processed as timely as possible. We will also work to keep the community and City of Cupertino informed of the status of the reclamation plan amendments, and involved in the CEQA and public hearing processes for each proposal.

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MEMORANDUM

Date: September 30, 2010

To: President Ken Yeager and Members of the Board of Supervisors

Jeffrey V. Smith, County Executive
Gary Graves, Deputy County Executive
Sylvia Gallegos, Deputy County Executive

From: Gary Rudholm, Senior Planner, Planning Office *GR*
Michael M. Lopez, Planning Manager, Planning Office *ML*

Re: Responses to comments made during the Public Comment portion of the Board of Supervisors Meeting on September 28, 2010, related to Lehigh Southwest Cement Plant and the Permanente Quarry

During the Public Comment portion of the September 28, 2010, meeting of the Board of Supervisors three speakers made statements to the Board regarding the Lehigh Southwest Cement Plant air emissions, and the Notices of Violation (NOV) for the adjacent Permanente Quarry issued by the County. The aforementioned NOVs require reclamation plan amendment applications that are currently under review by the Planning Office. The three speakers included Barry Chang, Joyce Eden, and Derek Wong. In order to ensure the Board and the County Executive have clear and accurate information related to the issues raised by these speakers staff has prepared the following responses for your information.

SPEAKER ONE: Barry Chang :

"Good Morning, Supervisors. This is Barry Chang from Cupertino City Counsel. This is my fifth time coming over here to ask please put the Leigh High Southwest Cement Plant's Notice of Violation on your agenda on the next meeting, please, because this is impacting the public health. As we all know, that the air pollution has no boundary. It flows to everywhere. It's not only Cupertino residents will get it; all the county residents will get it. And, then it spills out quite a lot of toxins in the air. Okay, just NOx alone is over 5,000 tons a year, and sulfur dioxide is over 21 hundred tons a year, and, plus the mercury, we all know is over-- average over 500 pounds a year. That's very toxic. So, please, put on your agenda. I don't understand why the County give them two notice of violations, there is no enforcement. In the EPA Notice of Violation and also Water resource Notice of Violation, there's enforcement. Thank you."

Response:

Emissions from the facility are regulated by the Bay Area Air Quality Management District (BAAQMD). Therefore, we contacted BAAQMD staff for assistance with preparing responses to the comments.

NO_x and SO₂:

Staff from the Bay Area Air Quality Management District (BAAQMD) provided information related to NO_x and SO₂ emissions in correspondence provided via email (copy attached). The basis for the amount of emissions stated by the speaker appears to be information contained in the Title V permit¹ issued to Lehigh cement. The Title V permit is still in effect. According to the BAAQMD, the Title V permit allows a maximum NO_x of 5,072 tons per year at this facility. BAAQMD pointed out that the current emissions from the facility are calculated at 1,235 tons per year.

BAAQMD staff further explained that SO₂ emissions are also limited under the Title V permit to a maximum of 2,107 tons per year, and they calculate that current emissions to be 420 tons per year.

Mercury:

A Health Risk Assessment (HRA) was recently distributed by the BAAQMD, which contains information regarding Mercury emissions. A copy of the executive summary from the HRA is attached, for reference, including Table ES-2, which shows that the average annual emission rate for mercury by the Lehigh plant is 582 pounds per year. (See additional information under response to speaker #3, below.)

SPEAKER TWO – Joyce Eden

"Hi. Joyce Eden, West Valley Citizens Air Watch, Cupertino. I'm speaking also about the ongoing violation of the mining operation that Santa Clara County has issued a Notice of Violation only after a member of our organization had to call and call and call the County to get them to go out there to see what was going on, and see if, in fact, it was a violation, which it is. It's ongoing, and the staff solution is to allow it to continue. So, as a Board of Supervisor, we're asking you to direct the staff to not be so compliant with this pollution and allowing violations like this to continue because it doesn't feel to us as if the rules and regulations that the County has mean anything if this is the outcome of it. So, and you can see this pile that is illegally placed not only did they not make them remove it, they allowed them to continue growing it. You can see it from the Powerline Trail at Rancho, not very far up and Stevens Creek Boulevard."

Response:

This comment relates to a Notice of Violation (NOV) issued by the County on June 20, 2008 related to the unapproved use of an area referred to as the East Materials Storage Area (EMSA) of the Permanente Quarry. The mine operator was required to cease operations under the NOV.

¹ The Title V Permit is a compilation of all existing applicable air quality requirements including emissions limits and standards, monitoring, record keeping, and reporting requirements. The Title V permit renewal is required every five years subject to public notice and the EPA review process. (Source: BAAQMD web site.)