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Supervisor George Shirakawa
President of the Board
Santa Clara County
70 West Hedding Street
San Jose, CA 95110

June 21, 2012

Dear President Shirakawa & Supervisors,

We hereby appeal the approval granted by the Santa Clara County Planning Commission on June 7, 2012 of the Lehigh Southwest Permanente Quarry Environmental Impact Report (EIR) and Amended Reclamation Plan. We find the **EIR** to contain **material errors**, to be **incomplete** and **not fully compliant** with CEQA. As the basis for a very significant Reclamation Plan lasting 20 years and the first ever EIR covering the Lehigh operation it must be corrected and resubmitted to the Planning Commission.

The material errors are many. The critical Health Risk Assessment (HRA) in the EIR utilizes the AERMOD model to predict dispersion patterns of the Lehigh toxic emissions (Ref.1, page E-4). The Bay Area Air Quality Management District (BAAQMD) has determined that the AERMOD model does not adequately accommodate the complex terrain surrounding the Lehigh Facility (Ref. 2, page 17).

In addition to the misuse of AERMOD the HRA uses incorrect toxicity values (Ref.1, page E-16, Table 7) that do not agree with those currently in force. The California Office of Environmental Health Hazard Assessment (OEHHA) is responsible for setting environmental Reference Exposure Levels (RELS) and the current ones (Ref. 3) were set in February 2012 prior to the DEIR. The values used in the EIR are much more lenient.

For example the Mercury Acute REL trigger is stated as 1.8ug/cubic meter (Ref.1, Table 7) when it should be 3 times lower at 0.6ug/cubic meter according to the official OEHHA standards existing before the DEIR was issued (Ref.3 page 8). A worse example is Nickel where the Acute REL trigger is stated as 6.0ug/cubic meter (Ref.1, Table 7) while according to OEHHA it is 30 times lower at 0.2ug/cubic meter (Ref.3, page 9)

In essence the HRA Nickel siren does not go off until a toxic level 30 times above the OEHHA alarm level has been reached. The use of these higher triggers allows the EIR to sound the "all clear" but hopefully this was not a deliberate effort to fool the public. There are many other REL errors but all must be corrected.

The EIR is also incomplete as it does not include the environmental impact of the Cement Plant and the Diesel Trucks required servicing it. This deliberate exclusion misleads the public. The exclusion is justified on the basis that the Plant is separately permitted and separately managed as argued by the prior operator to the Office of Mine Reclamation (OMR) in 2007 (Ref.4).

There is no rule that adjacent Cement Plants cannot be included in a Mine Reclamation Plan. In fact some are and on September 22, 2006 OMR advised the County that the Cement Plant met the definition of "mined lands" as defined in Public Resources Code (PRC) Section 2729 and should be part of the Reclamation Plan. However the Plant Operator argued that the Plant was on land never used for mining production and was a separate operation from the Quarry and OMR then agreed if that was the case it need not be included in the Reclamation Plan.

However on February 8, 2011 Lehigh formally argued to the Supervisors that that was not the case as the Quarry and Cement Plant were one integrated operation with a single manager. Further Lehigh argued and the Supervisors agreed that all of Lot 16 on which the Cement Plant resides is vested mining land. This is now part of the public record.

As previously stated many reclamation plans include both the Limestone Quarry and its adjacent Cement Plant as they are inseparable. The pollution is easily intermixed as demonstrated by Lehigh Cement Plant Kiln waste being dumped on the Quarry's East Material Storage Area as confirmed by the EPA last month (Ref. 5, Page 38). The Water Board observed earlier on March 29, 2011 waste water discharge that Lehigh admitted was coming from the sub drains of the Cement Plant into Permanente Creek (Ref.6)

Further the County's own justification for the ongoing pollution of Permanente Creek is the public need for cement, not limestone. Finally the County states the urgency to approve the EIR is to insure that Lehigh is not removed from the list of State qualified cement suppliers (Ref. 7, page 27). The State buys Cement, not the intermediate product which is limestone. **Since the purpose of the Reclamation Plan is to allow limestone to be produced for the cement plant the environmental impact of the cement plant must be included in the EIR.** The EIR is **incomplete** without the inclusion of the Cement Plant.

The absence of the Cement Plant allows for the exclusion of the Cement Plant Trucks except as a cumulative source. A new HRA was added (labeled Cumulative HRA) in order to account for the emissions of the on road trucks transporting Lehigh production. This Cumulative HRA is in addition to the HRA in Appendix E and was issued by the Bay Area Air Quality Management District (BAAQMD) to cover emissions from the Cement Plant Kiln. It does not include emissions from the Diesel Trucks servicing the Cement Plant. Their emissions are lethal but not to be found in the EIR.

Diesel Particulate Matter (DPM) is extensively addressed in the HRA but with old data, the most recent from 2001 (Ref.1, page e-5). Nowhere is there mention that DPM is more deadly now than what was known in 2001. Small Particulate Matter (labeled PM2.5) emitted by Diesel Trucks is the most harmful pollutant in the Bay Area but this is not mentioned. Neither is the Air

District Study of September 2011 stating that \$2.95 Billion could be saved in Santa Clara County from a reduction of PM2.5. Probably the benefits from retrofitting the Lehigh on road Diesel trucks would surpass the economic benefits of a local supply of cement. Those “benefits” however are not quantified in the EIR and another reason the EIR is incomplete.

The Air District must submit a State Implementation Plan to reduce PM 2.5 to the California Air Resources Board (CARB) this year. Key to the Plan is the development of a “Transportation Conformity Budget” reducing PM2.5 from Heavy Duty Diesel Engines. The absence of treatment of the Diesel Trucks in the EIR puts it at odds with CARB’s objectives.

More significantly the EIR omits any reference to the forthcoming EPA rule further reducing PM 2.5 emissions below current CARB standards. While CARB will require Santa Clara County to meet a standard of 15 micrograms per cubic meter of air the new EPA standard is 12 micrograms.

If the EPA standard is not met there will be a loss of Federal Funds but the reduction of PM2.5 emissions from the Lehigh trucks is not addressed. CEQA requires that all reasonably foreseeable events be identified in an EIR. The EIR goes to great lengths documenting other environmental impacts for the next 20 years but sidesteps the near term impact of the Lehigh diesel truck emissions colliding soon with these new rules on PM2.5 emissions.

Before the DEIR was released in March of this year NIOSH of the Center For Disease Control published a study demonstrating that diesel truck emissions caused lung cancer. This study was then approved by the World Health Organization (WHO) commenting that the diesel truck emissions were more carcinogenic than secondhand cigarette smoke (Ref. 8). Nowhere in the EIR is this recognized or even considered. In fact the EIR states no diesel truck emissions mitigation is required which is true using 2001 standards.

The Draft EIR (DEIR) in March established that Selenium pollution of Permanente Creek was due to Lehigh dumping Quarry Pit waste water into the Creek and that while being significant was unavoidable for the next 20 years. Public, County and State entities rejected this conclusion and the County picked CH2MHill to do a hurried study to evaluate the feasibility and costs to install a selenium treatment plant.

The study had to quickly pick a solution and they selected a Fluidized Bed Reactor solution which turned out to be expensive (\$63.6 million estimated cost) and unproven leading to the call for 3 more studies and crude interim abatement steps using tarps to prevent leaching. (CH2MHill does studies. They do not install selenium treatment plants).

The Planning Commission was never told by the County Staff or the Consultants that the General Electric Corporation had an operating cost effective selenium treatment technology (Advanced Biological Metals) in hand as a result of 10 years of pilot installations. A proposal should have been requested of them and presented to the Commission but apparently the

urgency to approve the Reclamation Plan left no time to do so. That must be done now to make the EIR complete but more importantly stop the selenium pollution of Permanente Creek.

No consideration was given to the fact that Lehigh simply needed to stop dumping Pit water into Permanente Creek. Lehigh maintains they must do so but while they have a vested right to mine they do not have a vested right to pollute a creek. The County viewed the \$63.6 million Fluid Bed Reactor solution as being too expensive. That suggests the financial benefit of having local cement production (the only benefit identified in the EIR) is worth more than that amount.

However there is no proof. There is no financial analysis of the benefit stated. Many laudatory words are used and judgments are made but the value is not quantified. There must be in the EIR an analysis of the financial benefits accruing to Santa Clara County from having a local source of cement. Only then can the cost of mitigation be balanced.

Many areas of the United States have no cement plants and even some States do not. Louisiana is a good example. They must have been at a great disadvantage when they had to rebuild New Orleans after Hurricane Katrina with no local cement plants. They were not. Over 4 million tons of cement was brought in by barge at a cost apparently lower than here. The true value of having a local source of cement must be established.

Given that the only justification stated in the EIR is the availability of local cement there must be a financial analysis in the EIR that provides quantified proof of the value. Currently it is only a warm feeling but enough to say a selenium treatment facility is too costly at \$63.6 million. The EIR is incomplete. The errors in it must be corrected and the missing environmental impacts must be inserted and the EIR made compliant with CEQA. Thank you for your consideration of this appeal.

Bill Almon
QuarryNo

REFERENCES

1. Health Risk Assessment, Appendix E, DEIR
2. BAAQMD Measure SSM-9 Workshop Report November 2011
3. OEHHA References Exposure Levels February 2012
4. OMR Letter to County Planning of August 23, 2007
5. EPA Preliminary Assessment Report May 2012
6. RWQCB Complaint R2-2011-0023 April 29, 2011
7. Staff Report, Item 1, May 24, 2012 Planning Commission Hearing
8. EPA Seeks Tighter Standards, Wall Street Journal, June 16, 2012