

**STATE OF CALIFORNIA
CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
SAN FRANCISCO BAY REGION**

COMPLAINT NO. R2-2011-0023

ADMINISTRATIVE CIVIL LIABILITY
IN THE MATTER OF
UNAUTHORIZED DISCHARGE
LEHIGH SOUTHWEST CEMENT COMPANY
SANTA CLARA COUNTY

This Complaint is issued to Lehigh Hanson Cement Plant (the Discharger) under the authority of California Water Code (CWC) to assess administrative civil liability pursuant to CWC section 13385. The Complaint addresses an unauthorized discharger at the Discharger's facility in Cupertino.

The Assistant Executive Officer of the California Regional Water Quality Control Board, San Francisco Bay Region (Regional Water Board) hereby gives notice that:

RESPONSIBLE PARTY & FACILITY

1. Lehigh Southwest Cement Company owns and operates a cement plant in Cupertino under the parent company Lehigh Hanson, Inc., which is part of the Heidelberg Cement Group (collectively, the Discharger). The cement plant was formerly operated under Hanson Permanente Cement and Kaiser Cement Corporation.
2. The cement plant is located at 24001 Stevens Creek Boulevard, Cupertino (the Facility). Cement is produced at the Facility from limestone and materials such as clay (containing silica, iron, and alumina) or other similar raw materials to make a material called clinker. This material is ground with other materials, such as gypsum, to produce cement, which may then be mixed with aggregate material to produce concrete. Materials used in this process are either imported or generated on site at a rock quarry. Other facility operations in addition to cement production include:
 - a) Rock excavation, crushing, and transport – Some aggregate material is suitable for cement and used in plant processes and other aggregate, which is not suitable raw material for cement, but is still useful as a sand or gravel product, is routed to the on-site “rock plant,” where it is washed, sorted, and sold.
 - b) Waste storage - Waste materials, which include unusable rock from the quarrying operations and “mud cake” from the rock washing operations, are trucked to and deposited in the West and East Materials Storage Areas on the Facility.
 - c) Raw material and water storage – Materials generated at the site and imported to the site are stockpiled along with clinker in both open and sheltered storage. There are a number of ponds at the Facility for storing water.

- d) Wastewater treatment - The Facility treats its own domestic sewage on site, and the treated wastewater is recycled and used around the Facility. The Facility's main lift station, which is located between Permanente Creek and the railcar offloading station by the bauxite and coke piles, transports the reclaimed water to Pond 11 for storage. Pond 11 is situated on a steep hill above the Cement Plant portion of the Facility.
3. Permanente Creek flows from West to East along the southern perimeter of Facility operations and then cuts through the Facility as it bends to the North adjacent to a raw material storage area, approximately 500 feet to the East of the cement plant.

AUTHORITY & REGULATORY HISTORY

4. The Regional Water Board has legal authority under the Clean Water Act (CWA), the CWC, and the San Francisco Bay Water Quality Control Plan (Basin Plan) to protect water quality and regulate discharges of wastewater, stormwater, and non-stormwater including CWA sections 301 and 402; CWC sections 13385(a)(2) and (a)(5), and Basin Plan Water Quality Objectives sections 3.3.12 through 3.3.14 and 3.3.19. Each of the following documents issued to the Discharger by the Regional Water Board provides more specific legal context and more information about regulation of the Facility:
 - a) 1992 – Facility obtained coverage under the NPDES General Permit for Discharges of Storm Water Associated with Industrial Activities, Excluding Construction Activities, NPDES Permit No. CAS000001 (Industrial Storm Water Permit). The Facility's WDID number is 2 43I006267, and the current version of the Industrial Storm Water Permit is Order No. 97-03-DWQ.
 - b) 1994 – Water Reclamation Requirements Order No. 94-028 issued for the treatment and use of reclaimed water from the Facility's wastewater treatment system.
 - c) 1999 – Cleanup and Abatement Order No. 99-018 issued to address unacceptable discharges of sediment-laden water from various locations at the Facility to Permanente Creek.
 - d) March 26, 2010 – Notice of Violation issued with requirements for corrective actions for violations of the Industrial Storm Water Permit at the Facility. This Notice of Violation documented the Facility's numerous water quality violations as noted by a U.S. Environmental Protection Agency (US EPA) contract inspector on February 10, 2010.
 - e) November 29, 2010 – Technical report required under CWC section 13267 to document non-stormwater discharges from the Facility, including “a description of any and all non-stormwater discharges to Permanente Creek from the Lehigh facility and/or resulting from Lehigh's operations at the facility during the past three years.”
 - f) February 18, 2011 – Notice of Violation issued for violations observed during a multi-agency inspection of the Facility on May 26, 2010. In the NOV, the Regional Water Board identified and required some non-stormwater discharges at

- the Facility to cease and desist. The Facility was required to obtain coverage under the General Waste Discharge Requirements for Discharges of Process Wastewaters from Aggregate Mining, Sand Washing, and San Offloading Facilities to Surface Waters, Order No. R2-2008-0011. In the NOV, the Discharger's response to the November 29, 2010, 13267 order was stated to be inadequate.
5. March 4, 2010 – “Storm Water Pollution Prevention Plan” (SWPPP) submitted to the Regional Water Board by URS Corporation for the Facility on behalf of the Discharger to comply with requirements of the Industrial Storm Water Permit. The pipe discharge discussed under the allegations of this complaint is not discussed in the SWPPP, nor is the discharge from the pipe covered under the Industrial Storm Water Permit.
 6. April 8, 2011 – Letter issued by to the Discharger by Regional Water Board with documentation of efforts by Regional Water Board staff during the months of March and April 2011 to obtain information about the Facility, which includes five (5) site inspections and four (4) meetings with the Discharger and its representatives.

ALLEGATIONS

7. A pipe outfall to Permanente Creek was not disclosed to Regional Water Board staff despite a 13267 requirement, under penalty of law, that such non-stormwater discharges be disclosed.
 - a) Christine Boschen (Regional Water Board staff) observed a discharge of sediment-laden water to Permanente Creek from an unknown pipe during a site visit on March 29, 2011. The location and contents of this discharge were captured on video, which shows a significant increase in the turbidity of the creek water as a pipe with brown water discharges to the creek and mixes with the receiving water. A rough estimate of flow from the pipe was on the order of hundreds of gallons per minute.
 - b) Scott Renfrew, Environmental Compliance Officer for the Facility, was accompanying Christine Boschen at the time she observed the discharge. Mr. Renfrew indicated that he did not know from where the discharge originated. Mr. Renfrew and Ms. Boschen, accompanied by two URS consultants, spent the next 1-2 hours investigating possible sources of the discharge. The group explored a pipe along the side of the hill adjacent to the cement loading silos. Ms. Boschen observed that the color and flow of the water in that area did not seem to be the same as the water discharged from the pipe observed below (or at least not the full source). Videos were taken of this flow as well.
 - c) Mr. Renfrew mentioned that he would ask a long-time staffer who used to work on the site's plumbing for more information about the source of the pipe and flow. During a following inspection on April 7, 2011, Mr. Renfrew reported to Ms. Boschen that he had learned that the pipe contained the discharge collected in sub-drains from the entire cement plant facility “footprint.” Mr. Renfrew further explained that the discharge observed on March 29, 2011, was flow diverted from the recycling system, which is designed to collect water from the cement plant

foot print and route it to the primary lift station, which pumps the water to Pond 11.

- d) Mr. Renfrew then showed Ms. Boschen the diversion structure, which is underground in a flat area down hill from the cement plant and near to the crossroads that leads down to the railroad tracks. At the diversion structure, the flow from the cement plant footprint can go through one of two pipes: one pipe, which leads to the lift station, and the other pipe, which leads to the creek. Flow is diverted manually by placing a wooden board across one pipe opening to direct the flow into the other pipe. Ms. Boschen observed the system and took video to document it as well as the surrounding area. On April 7, 2011, the board was in place across the pipe leading to the creek, and as such, no discharge was reaching the creek on that day.
 - e) Mr. Renfrew mentioned that he had opened the manhole cover to observe the diversion structure on March 29, 2011. He stated that, when he observed it, the board was in place. He did not point out this feature to Ms. Boschen on March 29, 2011 or identify it as a possible source for the discharge observed.
8. Any discharge from the sub-drain collection system under the cement plant footprint, connected to the pipe outfall (observed on March 29, 2011), is of concern because water collected by this system includes water that has come in contact with industrial operations and materials. Such water, regardless of its origin as rainfall, is industrial process water, and its discharge is prohibited unless specifically covered by an NPDES permit.
- a) The sub-drain collection system is located within Drainage Area B (SWPPP, Figure 3), which encompasses the primary industrial operations of the Facility. During inspections on March 29 and April 7, 2011, unprotected stockpiles of what was described to Ms. Boschen as an intermediate cement product (clinker) were observed in the vicinity of stormdrain catchments. These piles are documented on video taken on April 7, 2011.
 - b) As defined by 40 CFR Section 401.11 q, the term “**process waste water**” means any water which, during manufacturing or processing, comes into direct contact with or results from the production or use of any raw material, intermediate product, finished product, by-product, or waste product. Therefore, stormwater that flows through the cement plant footprint and comes into direct contact with clinker, an intermediate product, is process waste water, and, thus, is regulated as a point-source process waste water discharge under CWC section 13385.
9. The discharge to Permanente Creek on March 29, 2011, was not disclosed in the SWPPP, is prohibited under the Industrial Storm Water Permit, and constitutes an unpermitted discharge in violation of the CWA and CWC Section 13385(c)(1) and (c)(2).

PROPOSED CIVIL LIABILITY

10. Pursuant to CWC Section 13385(c)(1) and (c)(2), the Regional Water Board can administratively assess a liability of \$10,000 for each day in which a violation occurs,

and \$10 per gallon for volume discharges that are not cleaned-up and exceed 1,000 gallons.

11. In determining the amount of civil liability to be assessed against the Discharger, the Regional Water Board must take into consideration the factors described in CWC section 13385(e) as discussed in the Water Quality Enforcement Policy.¹ These factors are addressed in the “Administrative Civil Liability Assessment” attached to this Complaint.
12. The Regional Water Board’s Prosecution Team recommends imposing administrative civil liability in the amount of \$10,000. This recommendation is based on assessing the maximum liability for one day of discharge (\$10,000) considering the attached administrative civil liability assessment and circumstances surrounding the alleged violation.

CEQA EXEMPTION

13. This action is an enforcement action and is, therefore, exempt from the California Environmental Quality Act (CEQA) pursuant to Title 14, California Code of Regulations, Section 15321.

Dyan Whyte
Assistant Executive Officer

April 29, 2011
Date

Attachments: Waiver Form
 Administrative Civil Liability Assessment

¹ On November 17, 2009, the State Water Resources Control Board (State Water Board) adopted Resolution No. 2009-00 amending the Water Quality Enforcement Policy (Enforcement Policy). The Enforcement Policy was approved by the Office of Administrative Law and became effective on May 20, 2010. The Enforcement Policy establishes a methodology for assessing administrative civil liability. Use of the methodology addresses the factors in CWC section 13385(e). The policy can be found at: http://www.waterboards.ca.gov/water_issues/programs/enforcement/docs/enf_policy_finall11709.pdf