California Regional Water Quality Control Board
San Francisco Bay Region

Linda S. Adams
Secretary for
Environmental Protection

1515 Clay Street, Suite 1400, Oakland, California 94612
(510) 622-2300 • Fax (510) 622-2460
http://www.waterboards.ca.gov/sanfranciscobay

Arnold Schwarzenegger
Governor

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CIWQS Place ID: 234559

Sent via electronic mail: No hardcopy to follow

Lehigh Southwest Cement Company
24001 Stevens Creek Boulevard
Cupertino, CA 95014-5659

Attn: Henrik Wesseling, Plant Manager

Subject: Water Quality Certification for the Permanente Plant Stormwater Management Facilities Maintenance Project on Permanente Creek, west of the City of Cupertino in Santa Clara County

Dear Mr. Wesseling:

Regional Water Quality Control Board (Water Board) staff have reviewed materials submitted by the Huffman-Broadway Group on behalf of Lehigh Southwest Cement Company (the Applicant), and received at the Water Board on September 19, 2008, in application for water quality certification for the Applicant's project to remove sediment from ponds and culverts at the Applicant's Permanente Plant at 24001 Stevens Creek Boulevard, near the City of Cupertino in Santa Clara County (Project). This letter is being sent to inform you that the application is incomplete, and to outline for you what materials are still needed to comprise a complete application package.

Comment 1
Avoidance of Impacts (Box 16). The discussion of the avoidance of impacts does not address measures to avoid impacting the three in-channel ponds; Ponds 13, 14, and 22. In Response to Cleanup and Abatement Order (CAO) 99-018, the former owner of the cement plant, Hanson Permanente Cement, has constructed many off-channel sedimentation basins to protect Permanente Creek from the discharge of sediment generated by quarrying and cement manufacturing activities.

On August 10, 2000, the Water Board issued Water Quality Certification for Bank Stabilization Activities at the Hanson Permanent Cement Corporation, Cupertino, Santa Clara County (Site No. 02-43-C-295) for bank stabilization at Ponds 13 and 22. This Water Quality Certification stated:

> Hanson Permanente Cement proposes to complete bank stabilization of Pond 13 and Pond 22 located along Permanente Creek on Hanson Property in conjunction with previously

approved pond clean out activities. It is our understanding that the proposed stabilization project is to be implemented as an interim measure and shall be re-evaluated as part of Hanson Permanente Cement's forthcoming Long Term Creek Restoration Plan[1].

It was the intent of the Water Board that sediment management activities be relocated outside of the channel of Permanente Creek. During a meeting between Water Board and Hanson staff on July 19, 2001, Water Board staff repeated our request to explore the removal of in-channel ponds. In the years since the Water Board issued CAO 99-018, the Permanente Plant has made major improvements in managing sediment to prevent the discharge of sediment to Permanente Creek. Since most of the runoff from the plant is now intercepted by off-channel, created ponds, it is not clear why the three in-channel ponds are still necessary. We encourage the Applicant to revise the Project to remove ongoing maintenance of in-channel features to the maximum extent practicable.

In addition, ongoing in-channel maintenance has the potential to destabilize Permanente Creek. The Phase 1 report, prepared in response to Remedial and Long-Term Measure C.9 of CAO 99-018, noted a head cut upstream of Pond 13, and attributed the formation of the head cut to sediment removal from Pond 13. The potential for sediment removal to generate head cuts at the three in-channel ponds should be evaluated.

Comment 2
Environmental Documents (Box 17). The text provided by the Applicant states that a Biological Assessment will be submitted under separate cover. Water Board staff have not yet received this Biological Assessment.

Comment 3
Dredge and Fill Information (Box 18). The information provided by the Applicant in Box 18 does not include the surface area of each pond, including the surface area of wetlands, that will be impacted by the proposed removal of sediment from the in-channel ponds and culverts.

Comment 4
Mitigation (Box 19). No mitigation is proposed for the disturbance of wetlands. In supporting materials, the Project is described as self-mitigating. Water Board staff do not concur with this conclusion. Most of the surface areas of Ponds 13 and 22 appear to be wetlands, and Pond 14 appears to have a wetland fringe[2]. The proposed Project would remove all of these wetlands and excavate the ponds to depths of between 12 and 16 feet. Wetlands would not become re-established within the ponds until sufficient sediment had accumulated to allow the re-establishment of wetland vegetation. In addition, since the Project proposes to remove sediment annually for a period of five years, the accumulation of sufficient sediment to restore wetlands to the ponds would be delayed by five years. Mitigation must be provided for the temporal loss of wetland habitat at the site.

[1] The Long Term Creek Restoration Plan was required by Remedial and Long-Term Measure C.9 of CAO 99-018, but is not yet completed.
[2] Remedial and Long-Term Measure C.2 of CAO 99-018 required that Pond 14 be maintained as wetland habitat. The proposed Project does not appear to be consistent with this requirement.

Supporting material submitted with the application states that it is likely that ongoing sedimentation in the ponds may reduce their suitability as habitat for the California red-legged frog (CRLF). The supporting material further asserts that annual sediment removal will have a long-term beneficial impact on CRLF, despite the short-term impacts associated with annual disruption of habitat in the ponds. This assertion appears to be highly speculative. CRLF are currently present in some of the ponds, despite the passage of 8 years since the last authorization of sediment removal from the in-channel ponds. Following sediment removal, the ponds will lack the emergent vegetation necessary to provide breeding habitat for CRLF. While some sediment management may help to keep the ponds from completely silting in, annual disturbance of the ponds is likely to severely compromise the ponds suitability as CRLF habitat.

The supporting materials also assert that the Project will have beneficial affects on water quality by capturing sediment in the creek channel. Since the cement plant has installed many off-channel sedimentation ponds to keep sediment from quarrying and cement manufacturing activities from reaching the creek, it is not clear why the in-channel sedimentation ponds are still needed. Natural watersheds generate sediment that moves through the creek system. In-channel sedimentation basins disturb the natural equilibrium of sediment transport in the watershed. Therefore, in-channel sedimentation basins do not provide a benefit to water quality if they disturb the natural sediment transport equilibrium in the creek. The Applicant should either justify the need for ongoing maintenance of the in-channel ponds or develop a plan to remove the weirs that create the ponds. If ongoing maintenance of the ponds is necessary, the Applicant must propose adequate mitigation for impacts to waters of the State.

Comment 5

Proposed Bridge Abutments. More detail is needed to evaluate potential impacts of the proposed bridge abutments. The information submitted with the application does not adequately describe all potential impacts to waters of the State and does not demonstrate whether or not the abutments would be placed within the meander belt of Permanente Creek. In addition, it is not clear why the abutments are being proposed to support an arch culvert with earthen fill above the culvert. A free-span bridge is likely to have less impact on the creek. The application materials also fail to establish the need for an additional crossing of Permanente Creek.

Comment 6

CEQA Documents (Box 20). This application proposes to use a Categorical Exemption from the requirements of CEQA, but does not provide a Notice of Exemption from the Lead Agency. In addition, as was established in the SPAWN Case, Categorical Exemptions may not be used if a project has the potential to impact listed species, such as CRLF, and mitigation measures are necessary to reduce impacts to listed species.

Comment 7

Project Fee. The fee submitted with the application was based on the impacts associated with the placement of coffer dams in the channel. The fee should be based on either the linear feet of channel that will be impacted by sediment removal (including the footprint of any coffer dams) or the surface area of the ponds that will be impacted by sediment removal. The Applicant

should calculate the fee based on linear feet and the fee based on surface area. The larger of these two amounts is the appropriate fee. The fee should also include any impacts to waters of the State associated with the proposed abutments.

Please contact Brian Wines of my staff at (510) 622-5680 or bwines@waterboards.ca.gov if you have any questions. All future correspondence regarding this Project, should reference the Site Number indicated at the top of this letter.

Sincerely,

Dale Bowyer
Section Leader
South/East Bay Section

cc: CDFG, Bay Delta Region, Attn: Charles Armor, Acting Regional Manager, P.O. Box 47, Yountville CA 94599 (sbrunson@dfg.ca.gov)
CDFG, Bay Delta Region, Attn: David Johnston, P.O. Box 47, Yountville CA 94599 (djohnston@dfg.ca.gov)
USACE, San Francisco District, Attn: Regulatory Branch, 1455 Market Street, San Francisco, CA 94103-1398 (File No. 2008-00127) (
Santa Clara Valley Water Control District, Attn: Sue Tippets, Community Projects Review Unit 5750 Almaden Expressway, San Jose, CA 95118-3686 (stippets@valleywater.org)
Huffman-Broadway Group, Inc., Attn: Robert Perrera, 828 Mission Avenue, San Rafael, CA 94901 (rperrara@H-Bgroup.com)