



DEPARTMENT OF THE ARMY
SAN FRANCISCO DISTRICT, U.S. ARMY CORPS OF ENGINEERS
1455 MARKET STREET
SAN FRANCISCO, CALIFORNIA 94103-1398

02-43-C0596
Add site #
Add to site.

Regulatory Division

MAR 2 2009

SUBJECT: File Number 2008-00356S

Lehigh Southwest Cement Company
Attn: Henrik Wesseling, Plant Manager
24001 Stevens Creek Boulevard
Cupertino, California 95014-5659

Dear Mr. Wesseling:

This letter is in response to your submittal of September 6, 2008, requesting confirmation of the extent of Corps of Engineers jurisdiction at the Lehigh Southwest Cement Company on Permanente Creek, in the city of Cupertino, Santa Clara County, California.

Enclosed is a map showing the extent and location of Corps of Engineers jurisdiction. We have based this jurisdictional delineation on the current conditions on the site as verified during a site visit performed by our staff on November 5, 2008. A change in those conditions may also change the extent of our jurisdiction. This jurisdictional delineation will expire in five years from the date of this letter. However, if there has been a change in circumstances that affects the extent of Corps jurisdiction, a revision may be completed before that date.

All proposed discharges of dredged or fill material into waters of the United States must be authorized by the Corps of Engineers pursuant to Section 404 of the Clean Water Act (CWA) (33 U.S.C. Section 1344). Waters of the United States generally include tidal waters, lakes, ponds, rivers, streams (including intermittent streams), and wetlands.

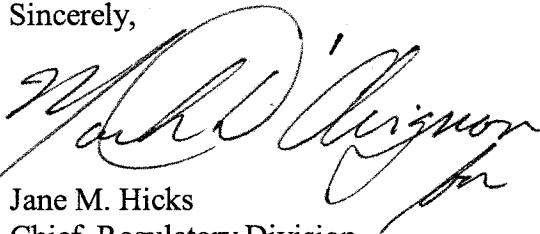
Your proposed activity is within our jurisdiction and a permit will be required for your project. Since an Individual Permit may be required to authorize your project, it could be necessary for you to demonstrate to the Corps that your proposed fill is necessary because there are no practicable alternatives as outlined in the U.S. Environmental Protection Agency's Section 404(b)(1) Guidelines. You should also note, in planning your project, that upon receipt of a properly completed application and plans, it may be necessary to advertise the proposed work by issuing a Public Notice for a period of 30 days. You are advised to refrain from starting your proposed activity until we complete our review of your application and issue you the required authorization. Commencement of work before you receive our notification will be interpreted as a violation of our regulations.

You are advised that the Corps has established an Administrative Appeal Process, as described in 33 C.F.R. Part 331 (65 Fed. Reg. 16,486; March 28, 2000), and outlined in the enclosed flowchart and "Notification of Administrative Appeal Options, Process, and Request for

Appeal" form (NAO-RFA). If you do not intend to accept the approved jurisdictional determination, you may elect to provide new information to the District Engineer for reconsideration or submit a completed NAO-RFA form to the Division Engineer to initiate the appeal process. You will relinquish all rights to appeal, unless the Corps receives new information or a completed NAO-RFA form within sixty (60) days of the date of the NAO-RFA.

Should you have any questions regarding this matter, please contact Ian Liffmann of our Regulatory Division by phone at (415) 503-6769, or by email at ian.liffmann@usace.army.mil. Please address all correspondence to the Regulatory Division and refer to the File Number at the head of this letter. If you would like to provide comments on our permit review process, please complete the Customer Survey Form available online at <http://per2.nwp.usace.army.mil/survey.html>.

Sincerely,



Jane M. Hicks
Chief, Regulatory Division

Enclosures

Copy Furnished:

WRA Environmental Consultants; Attn: Rosie Wilson
CA RWQCB, Oakland, CA