

Permanente Plant  
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December 18, 2009

Dale Bowyer  
San Francisco Bay Regional Water Quality Control Board  
1515 Clay Street, Suite 1400  
Oakland, CA 94612

Re: Inquiries regarding Pond 13 Maintenance  
Lehigh Hanson Permanente Quarry

Dear Mr. Bowyer:

On behalf of Lehigh Southwest Cement Company (together, "Lehigh"), I am pleased to provide this report to the San Francisco Bay Regional Water Quality Control Board ("Regional Board"). This responds to the Regional Board's December 15, 2009 email inquiries regarding the recent maintenance work on Pond 13 at the Permanente Quarry facility.

This letter is to update you regarding the work, and our views regarding the potential enforcement actions that we are, frankly, somewhat shocked that the Regional Board's staff member would threaten "future enforcement action." This letter also will convey our great frustration over an ongoing pattern by the Regional Board staff member assigned to this facility to hinder, rather than assist, maintenance which has the sole function of protecting water quality in Permanente Creek, a goal that we take very seriously.

As the Regional Board is aware, sedimentation basins are one of the main defenses which protect water quality in Permanente Creek. It also is well known to the Regional Board that, among the basins that Lehigh maintains, Pond 13 is perhaps the most important because it is one of the only basins with the ability to capture sediment in Permanente Creek channel from potential upstream discharges. As such, it is a critical and an indispensable part of the Storm Water Pollution prevention Plan program for water-quality protection that Lehigh follows at the Quarry.

As the Regional Board also are aware, Lehigh has been concerned recently over the accumulation of sediment in Pond 13, and the resulting need for maintenance to clean out this sediment and return Pond 13 to a functioning condition. We have shared these concerns with the Regional Board beginning in 2008. The Regional Board's staff

*SWPPP is for individual ponds*

also inspected Pond 13 during a May 11, 2009 site tour and the need for maintenance was apparent at that time.

We are pleased and relieved to have completed this critical maintenance before the onset of winter rains, particularly the recent winter storm set, which would have tested our ability to control sediment in Permanente Creek had this work not been performed. There should be no question in anyone's mind that Lehigh has proceeded in a manner that provided the fullest protection to the environment. It should be clear to everyone that in the absence of this work, Permanente Creek would have lacked critical protection against sediment discharges during heavy winter rains, particularly in what has been forecast as an "El Nino" year.

We are greatly troubled by the Regional Board staff's suggestion, as we understand it, that maintenance was barred by the general industrial storm water permit (NPDES General Permit No. CAS-000001) and associated Waste Discharge Requirements (the "Permit"). To the contrary, we believe that maintenance is legally required by the Permit. The Permit requires Best Management Practices (BMPs) to reduce and prevent pollutants in stormwater. The Permit expressly describes basins as a BMP when appropriate, as it is here, and requires that basins be constantly maintained. The facility's Storm Water Pollution Prevention Plan, accordingly, has these features. We believe that maintenance also was required under the Regional Board's 1999 Cleanup and Abatement Order (CAO), which requires Lehigh, to the extent feasible, to clean out sedimentation basins to achieve adequate retention volume. And as we believe the Regional Board's staff has acknowledged, the work did not require authorization under Section 404 or 401 of the Clean Water Act.

Thus, far from being prohibited from performing maintenance, Lehigh was affirmatively required to do this work to stay compliant under the Porter-Cologne Water Quality Control Act and CAO. Had Lehigh not performed the work, Lehigh would have been in violation of the Permit and possibly the CAO. By performing this maintenance, Lehigh chose the course that best complies with its legal duties, and more importantly, that best protects Permanente Creek and the environment. This circumstance leads to a point of considerable confusion on Lehigh's part. The Regional Board's staff recent statements appear to endorse a position that would not only lead Lehigh into violations, but would endanger Permanente Creek, despite the legal justification for the activity. We are having a difficult time reconciling this with Regional Board's mission of environmental protection.

This difficult situation is further compounded by what we can only describe as unprofessional behavior by this staff member. On December 16, 2009, Lehigh's environmental manager received the following voicemail:

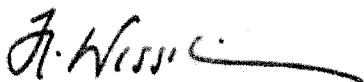
Scott, Brian Wines, Regional Board. (510) 662-5660. Just have gotten confirmation that you did indeed desediment Pond 13. As I explained in multiple letters, emails, and in person, removing sediment from that pond, although it was not subject to a 404 permit, 401 certification, it was subject to waste discharge requirements. The fact that you've done

that work, even in light of that information, puts you in violation of the Porter Cologne Act of the California Water Code. We will be taking a future enforcement action against your facility. And of course this puts all work on rescinding the CAO on hold until we've resolved this. So congratulations on messing this up.

Putting aside our disagreement over staff's legal views, this is an improper personal attack. It is even more inappropriate that staff has threatened to hold hostage the finalization of the CAO, currently before the Regional Board, which includes a restoration plan for Permanente Creek. This also continues a pattern of other, similarly abusive, communications from this staff member, which we have documented. We therefore have good reason to be concerned that Lehigh is not being, and will not be, fairly treated in this or in other matters. It is imperative that this be addressed by the Regional Board and that Lehigh has assurances of fair treatment. At a minimum, we believe the Regional Board must assign a different staff member to matters involving Lehigh.

In sum, the Regional Board staff member's threat of enforcement puts the company in a very difficult position. Not only did the company do what it believes was required by law, but in the absence of that work the company would be placed in a more tenuous compliance status before the Regional Board, and water quality and habitat in Permanente Creek would have been placed at risk. We find it frustrating, and disheartening, that the agency's staff member is considering enforcement and project delays when the need for this work has been made so plain for so long, and when the work only protected the environment. We are committed, however, to addressing this in a reasonable and professional manner, and to restoring a good working relationship with the Regional Board.

Very truly yours,

A handwritten signature in black ink, appearing to read "H. Wesseling", with a long horizontal flourish extending to the right.

Henrik Wesseling  
Plant Manager