LEHIGH
HEIDELBERGCEMENT Group

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April 15, 2010

Dyan C. Whyte
Assistant Executive Officer
California Regional Water Quality Control Board
San Francisco Bay Region
1515 Clay Street, Suite 1400
Oakland, CA 94612

Subject: **Re: NOTICE OF VIOLATION and required corrective action for failure to protect stormwater at industrial facility**

Facility: **Lehigh Southwest Cement Co. (formerly Hanson Permanente Cement) Industrial facility, located at 24001 Stevens Creek Boulevard, Cupertino, Santa Clara County**
WDID No. 2 43I0062677

Dear Ms. Whyte:

This is Lehigh Southwest Cement Company's response to the above-referenced notice of violation and your letter dated March 26, 2010. The text of the concerns raised in the NOV is set forth herein, followed by Lehigh's response.

At the outset, we note that Lehigh Southwest Cement Company – Permanente Plant's SWPPP was updated (SWPPP 15) and was submitted top the Board on March 3, 2010. The revised version addressed some of the inspectors initial concerns noted during the February 10, 2010 inspection. Further revisions (Revised SWPPP 15) are being made consistent with the response herein and will be provided to the Regional Board by May 15, 2010.

1. INSPECTION FINDINGS: A copy of the SWPPP, last revised in June 2009 and denoted SWPPP 14, was retained onsite as required by Section A.10.a of the Permit. The SWPPP was reviewed during the inspection and found to be inadequate for the following reason:

The Site Map did not clearly identify all structural control measures that affect storm water discharges, authorized non-storm water discharges, and run-on, as required by Section A.4.b of the Permit. SWPPP 14 states "Figure 3 shows the main drainage areas, flow patterns within drainage areas, settlement ponds, and discharge locations into the Permanente Creek within the Lehigh Southwest Cement Company property boundary."

However, none of the SWPPP 14 Site Maps (denoted Figures 1—6 of SWPPP 14) include the structural control measures or drainage collection and conveyance system associated with the reuse of onsite storm water runoff and non-storm water sources in the eastern portion of the site. During the inspection, Mr. Scott Renfrew (hereafter, the Environmental Manager) explained the current conditions of the eastern portion to include the following:

- A closed system of water recycling allows water to be reused in the industrial process (e.g., gas conditioning tower, washing aggregate, dust suppression, etc.).
- Drainage inlets and overland flow in the eastern portion of the site are directed to a lift station referred to as "Pearl Harbor" (see attached Photographs 2 and 3), which pumps

the water to a man-made pond referred to as the "Lake" (see attached Photographs 4 and 5), which gravity feeds a de-commissioned thickener unit that is used as a holding tank for recycled water (see attached Photograph 6).
• The recycled water system is operated to use water in the dry season, draw down the level of the "Lake," and create capacity for winter storms.

Because none of the SWPPP 14 Site Maps (denoted Figures 1—6) include the structural control measures associated with the recycled water system, the Facility is in violation. To come into compliance, the Facility must update the Site Map to clearly identify all structural control measures that affect storm water discharges.

VIOLATION: Inadequate site map

REQUIRED CORRECTIVE ACTION: By April 15, 2010, update site maps too clearly identify all structural control measures, authorized non-storm water discharges, and run-on. Provide a paper and electronic copy to the Regional Water Board.

Lehigh Response: Lehigh has utilized and submitted to the Board very similar maps to show the details and locations of the SWPPP infrastructure, including details of the terraced road ways banks to divert storm event contact water of one of the various sediment retention ponds, location and identification of the various retention ponds, sampling locations and Best Management Practices (BMPs) that affect storm water discharges.

From the 2007/8 Annual Storm Water Report, which the Inspector had already received prior to his inspection, the List of Figures (Maps) is as shown below:

List of Figures
Figure 1 Site Location Map
Figure 2 Site Layout Map
Figure 3 Storm Water Flow and Drainage Areas
Figure 4 Storm Water Sampling Locations
Figure 5 Best Management Practices Implemented for 2006/2007 Season
Figure 6 Proposed Best Management Practices 2007/2008 Season
Figure 7 Ongoing Best Management Practices

Each map details the specifics as titled above. It should be noted that the facility's SWPPP details an almost 3,500 acre site with operations / control measures implemented over 1/3 of the property. As reflected above, the structural stormwater control measures are delineated on these Figures. As to the recycled water system described in the NOV, that system collects water for reuse and it is a closed system subject to a separate Order by the Regional Board Order 94-038. As such, no stormwater discharges are associated with or affected by that system; it is not regarded as part of the facility's stormwater collection and discharge system. Therefore, it was not necessary (or appropriate) to show this facility on the Site layout to comply with Section A.4.b of the General Permit. Accordingly, the SWPPP and the Site Maps comply with applicable requirements. Lehigh considered adding the Lower Lift Station to the Site Maps as an accommodation to the inspector's recommendations, but we concluded that it is best to avoid confusion by not adding facilities to the Site Maps that are not associated with and do not affect storm water discharges.

2. INSPECTION FINDINGS: The Permittee's Monitoring Program was not in accordance with the sampling location requirements specified by Section B.7 of the Permit. Specifically, the sample collection location denoted SL-21-PD at the outlet of Pond 17 was not representative of the quality and quantity of the facility's storm water discharges from Pond 17.

Rather than collecting the sample at the outfall pipe to Permanente Creek (see attached Photograph 16), Figure 4 of SWPPP 14, Storm water Sampling Locations, indicates that the SL-21-PD sample is collected at the outlet of Pond 17 (see attached Photograph 12). Due to the existence of a complex plumbing configuration down-gradient of the Pond 17 outlet, the SL-21-PD sample collection location was not representative of the quality and quantity of the discharge from Pond 17.

The plumbing configuration down-gradient of the Pond 17 outlet includes an open vault with a sump pump (see attached Photograph 15), and several pipes (see attached Photographs 14 and 16). The Environmental Manager could not explain what the pipes and sump pump are used for. However, the sump pump had the ability to affect the quantity of the facility's storm water discharges from Pond 17. As a result, the SL-21-PD sample collection location did not meet the requirements specified in Section B.7 of the Permit. The Permittee must identify and collect samples from locations that represent all drainage areas, and the quality and quantity of the facility's storm water discharges.

VIOLATION: Inadequate and non-representative sampling locations

REQUIRED CORRECTIVE ACTIONS: By May 15, 2010, complete a water balance survey of all existing plumbing and drainage flows at the Facility, and update the engineering plans and documents to depict the current plumbing systems and drainage flows on the Facility property. The water balance survey and documentation must address all water onsite, including storm water, process water, and waste water. Provide a paper and electronic copy of the water balance survey to the Regional Water Board.
Based on the results of the above-described survey, revise storm water sampling locations, and update Facility maps and monitoring plan accordingly. Provide a paper and electronic copy of all related documents to the Regional Water Board.

Lehigh Response: In fact, the sampling locations, and specifically SL-21-PD, are in compliance with Section B.7. Section B.7 of the General Permit provides:

> Facility operators shall visually observe and collect samples of storm water discharges from all drainage areas that represent the quality and quantity of the facility's storm water discharges from the storm event.

Lehigh will add a new point near the creek to be sampled during storm water sampling events. The new location will be labeled SL-S21A-CR. Lehigh also will maintain SL-21-PD as a sampling point, to allow continuity in data collection and evaluation. To clarify the record, what the inspector characterized as "complex plumbing" downgradient of the discharge pipe of Pond 17 does not affect the quality or quantity of Pond 17 discharge. The corrugated pipe of the Pond 17 discharge was utilized as a lay-out conduit for enclosed water lines supplying fresh and makeup water (from Lehigh's Water Reclamation System) to the Rock Plant and take-away water from the lower garage area to the lower lift station; because these pipes are related to the closed water reclamation system (discussed above in response 1), they do not affect storm water collected in and discharged from Pond 17. Thus, the current sampling point SL-21-PD is representative of the storm water discharges from the drainage areas that flow into Pond 17.

The NOV also requests a water balance study and an update of the related engineering plans to be completed by May 15. A water balance study was completed in December 20, 2000. This study has also been referenced in all previous stormwater annual reports submitted to the Regional Board. See, for example, 2008 Annual Report, Appendix E (please let us know if you would like an additional copy of the water balance report). The 2000 Water Balance Study is

current because the water infrastructure at the Permanente facility has not changed since the year 2000.

3. INSPECTION FINDINGS: A visible discharge of pollutants sediment and/or other pollutants) into Permanente Creek was observed during inspection, as described below. Adequate BMPs were not implemented to prevent discharge of pollutants from Pond 17 the southeast portion of the site, down-gradient of the Rock Plant.

Pollutants were being actively conveyed the Rock Plant (see attached Photographs 8) to the Pond 17 inlet. Pollutant accumulation was present along the entire inlet portion Pond 17, including evidence of a high event that had caused the inlet check dams breach (see attached Photograph 9).

Moreover, pollutant-laden flow was observed passing over the outlet weir section (see attached Photographs 10 and 11) and through the outlet pipe (see attached Photographs 12 and 13). As specified in Figure 2 of SWPPP 14, the Pond 17 outlet is connected to an outfall to Permanente Creek below Dinky Shed Basin. The Pond 17 outlet flows to a drainage vault (see attached Photographs 14 and 15), which then discharges at the outfall to Permanente Creek. Pollutant-laden flow was observed at the outfall (see attached Photograph 16), and in the Permanente Creek receiving water (see attached Photograph 17 through 19).

As a result, there was an active pollutant-laden discharge during the inspection. Because Pond 17 was not functioning as an adequate BMP for pollutant removal, either the pond must be modified to provide additional filtering and settling of pollutants, or adequate BMPs must be implemented for the pollutant generating sources at the Rock Plant to reduce pollutant conveyance to the pond, and prevent the subsequent discharge of pollutants to Permanente Creek.

VIOLATION: Observed discharge of pollutants to waters of the state

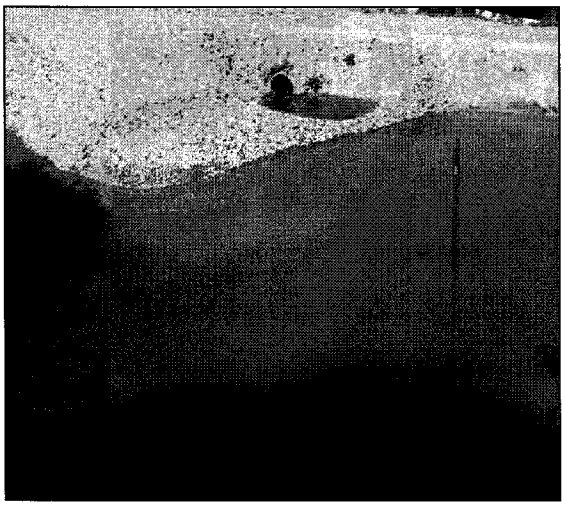
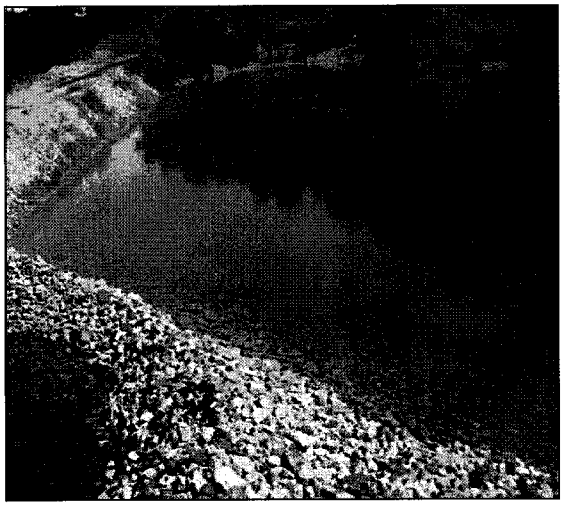
REQUIRED CORRECTIVE ACTIONS: By April 15, 2010, select, install, implement, and maintain BMPs to meet BAT and BCT to eliminate discharge of pollutants from Pond 17 into Permanente Creek. In order to come into compliance, you may need to implement temporary BMPs and later come back in and implement more permanent measures. Revise the Facility's SWPPP to document updates, and submit a paper and electronic copy to the Regional Water Board.

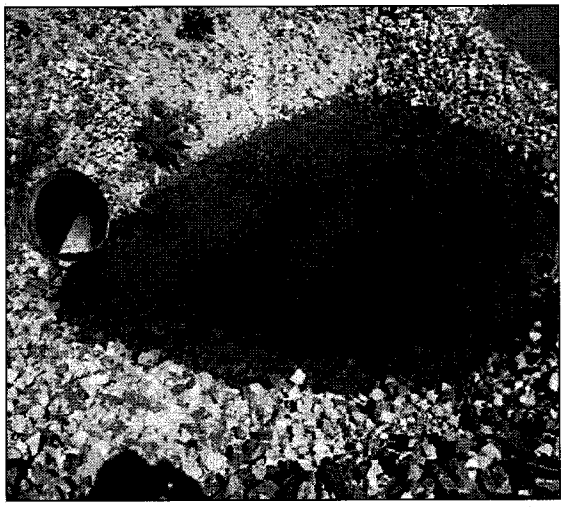
Lehigh Response: One of the storm water BMPs implemented to protect industrial discharges from entering Permanente Creek, as stated and implemented in SWPPP plans (most recent revision SWPPP 15, submitted to the Board on March 3, 2010) involves directing stormwater that contacts the operational facilities to retention ponds. These retention ponds allow for sediment carried via the stormwater streams to be settled out before the water is discharged to the creek. Pond 17, located Southeast of the aggregate facility located at the Permanente site (Rock Plant), is situated such that stormwater that may contact the lower portion of this facility would be directed to this pond for potential sediment control.

Pond 17 was cleaned out in the 2009 dry season, consistent with past practice. The frequency and intensity of the storms in late January/early February 2010 led Pond 17 to be completely filled with sediment just prior to the February inspection. The February 10th, 2010 inspection occurred before any pond sediment removal activities could be completed after conditions allowed following the most recent storm. However, these pond sediment removal activities were initiated on February 16th and completed on February 19th, 2010. As is consistent with all pond sediment

removal activities that occur at this site, a protected wildlife preconstruction survey was conducted prior to any work being started.

Pond 17 was completely cleaned out with the sediment removed and, as a function of stormwater quality, currently produces a very clean discharge. Please see the pictures below, reflecting post-cleanout Pond 17 water quality.



4. INSPECTION FINDINGS: The EPA Contract Inspector observed, during the inspection, that the Pond 9 BMP was not adequately inspected and maintained to prevent the discharge of sediment from the upgradient sediment generating sources in Drainage Area D to Permanente Creek. Table 6-1 of SWPPP 14 shows that the contributing area for Pond 9 is Drainage Area D, which includes the Rock Plant Road.

Sediment accumulation was present at the southwestern inlet to Pond 9, and sediment was being actively conveyed from the Rock Plant Road to the southwestern inlet to Pond 9 (see attached Photographs 20 and 21). Sediment-laden water was present in Pond 9, and erosion was observed at the northeastern inlet which lacked flow dissipation BMPs (see attached Photograph 22). As specified in Figure 2 of SWPPP 14, the Pond 9 outlet is connected to an outfall to

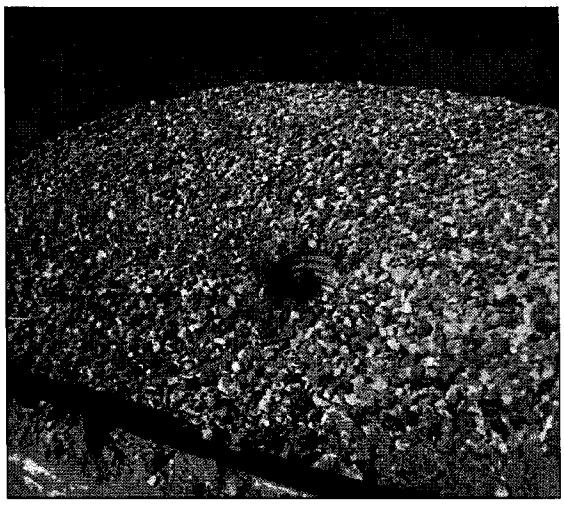
Permanente Creek denoted as the SL-17 PD sample collection location (see attached Photographs 23 and 24).

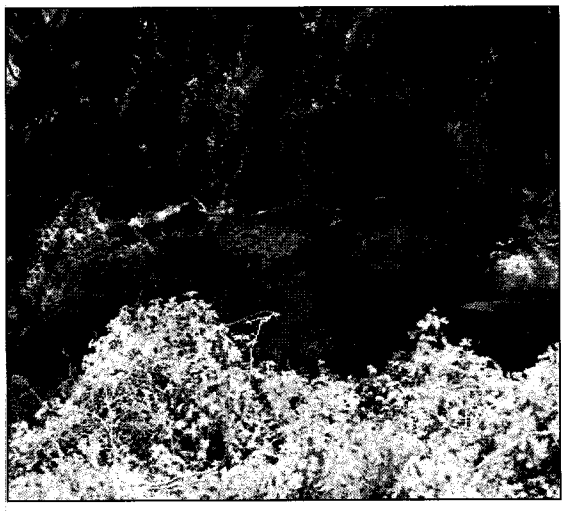
The Environmental Manager explained that maintenance of Pond 9 had been restricted by regulatory agency actions in the past, but maintenance of Pond 9 was re-instituted in 2007. As a result of the sediment accumulation and sediment-laden water present in Pond 9, there was a potential for the discharge of sediment to Permanente Creek. BMPs must be adequately inspected and maintained to reduce sediment conveyance to the pond from the sediment generating sources in Drainage Area D, and prevent the subsequent discharge of sediment to Permanente Creek.

VIOLATION: Potential discharge of pollutants to waters of the state

REQUIRED CORRECTIVE ACTIONS: By April 15, 2010, select, install, implement, and maintain BMPs to meet BAT and BCT to eliminate discharge of pollutants from Drainage Area D and Pond 9 into Permanente Creek. Please note that restrictions imposed by regulatory agencies for the dredging of these or other ponds does not prevent the facility from selecting, implementing, and maintaining appropriate and effective BMPs. In order to come into compliance, you may need to implement temporary BMPs and later come back in and implement more permanent measures. Revise the Facility's SWPPP to document updates, and submit a paper and electronic copy to the Regional Water Board.

Lehigh Response: Pond 9 receives stormwater that come into contact with aggregate customer bulk trucks and plant mobile equipment. The pond is designed to retain this storm water allowing potential sediment to dropout before moving to the discharge standpipe. Additionally, the pond structures a limestone material around the discharge standpipe for further sediment control and water "polishing" prior to discharge. The recent frequency and intensity of the storms in late January / early February 2010 resulted in the inlet of Pond 9, only one of the five roadway inlets, to be filled with sediment. Pond 9 was inspected late in January and, at that time, was holding up well. At the time of the inspection the pond still retained retention capacity to allow for sediment dropout. However, it was noted that the limestone filter material had fallen away during the most recent storms prior to the February 10th, 2010 inspection.





Because of contractor scheduling delays and storm events the scheduled Pond 9 clean out will be carried out the week of April 19, 2010.