

County of Santa Clara

Department of Planning and Development
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MEMORANDUM

Date: October 21, 2010

To: **President Ken Yeager and Members of the Board of Supervisors**

Jeffrey V. Smith, County Executive
Gary Graves, Deputy County Executive
Sylvia Gallegos, Deputy County Executive

From: Marina Rush, Associate Planner, Planning Office *MR*
Michael M. Lopez, Planning Manager, Planning Office

Re: **Responses to comments made during the Public Comment portion of the Board of Supervisors Meeting on October 19, 2010, related to Lehigh Southwest Cement Plant and the Permanente Quarry**

During the Public Comment portion of the October 19, 2010, meeting of the Board of Supervisors one speaker made statements to the Board regarding the Lehigh Southwest Cement Plant air emissions, and the Notices of Violation (NOV) for the adjacent Permanente Quarry issued by the County. The aforementioned NOVs require reclamation plan amendment applications that are currently under review by the Planning Office. The speaker was Barry Chang. In order to ensure the Board and the County Executive have clear and accurate information related to the issues raised by this speaker, staff has prepared the following responses for your information.

SPEAKER ONE: Barry Chang :

“Good morning Honorable Supervisors and President Yeager. My name is Barry Chang. I’m the Cupertino City Council Member. This is my sixth time here. This has been three months regarding putting the Notice of Violation from Lehigh—from the County issued to Lehigh Southwest Cement Plant. Please put on the agenda because their Notice of Violation including the violation of the California Environmental Quality Act. But, there is no penalty; no enforcement. To me, that is very unusual because if you’re driving on the street and you get a ticket, you got a fine, and then the current violation continue. And then the violation was-- the one I got was since 2006, Oct 10, so 4 years it has been past by the violation continues, and we’re still breathing all this bad air, in this with mercury and sulfur dioxide, which is really bad for all our health. Thank you very much.”

Response:

The speaker's comment relates to two Notices of Violation (NOVs) issued by the County to the mine operator in 2006. The County is the lead agency implementing the Surface Mining and Reclamation Act (SMARA) for the local jurisdiction. Unlike a "ticket" where one would pay a fine for a Vehicle Code violation, SMARA provides for a process to cure a violation that includes filing for and obtaining a Reclamation Plan Amendment from the local lead agency. SMARA regulations stipulate that the County can impose fines if the mine operator fails to take action to rectify the violation(s). The mine operator, Lehigh Southwest Cement Company, has submitted the Reclamation Plan Amendment application materials as required, which are currently in process, and upon approval this will correct or "cure" the 2006 and 2008 violations.

2006 Notice of Violation

In October 2006, the County issued the Notice of Violation and Order to Comply (NOV/OTC) requiring that the Reclamation Plan be amended to encompass all disturbed areas related to mining operations outside the Reclamation Plan boundary. In January 2007, the operator submitted an application in accordance with the NOV/OTC. The County determined that extensive geological analysis was necessary to address the slope stability issues in the existing pit. In December 2007, the mine operator requested, and was given, 24 months to complete the geological analysis. The analysis was completed and the analysis resulted in major modifications to the proposal. Lehigh submitted a revised application on May 28, 2010 and the application was deemed complete on September 24, 2010. This project is subject to the California Environmental Quality Act (CEQA).

2008 Notice of Violation

In June 2008, the County issued a second NOV to the mine operator due to unauthorized material disposal on a portion of the Permanente/Lehigh property called the East Materials Storage Area (EMSA). Lehigh met with the County staff and explained that disposing the mined overburden in the EMSA was necessary for the continual operation of the quarry and that waiting for the proposed Reclamation Plan Amendment to be completed (estimated September 2011) would severely impact operations. The County and mine operator signed an Agreement that: 1) required the mine operator to cease operations until an application to amend the Reclamation Plan to include the East Materials Storage Area was submitted; 2) granted a four month extension of time for processing the comprehensive Reclamation Plan Amendment; 3) imposed fines by the County if the EMSA application was not submitted as stipulated in the Agreement; and 4) allowed the mine operator to use the EMSA for disposal of materials upon receipt of the new Reclamation Plan Amendment application. This application was submitted on April 20, 2009 and is being processed subject to CEQA. The Draft EIR will be published in December 2010.

With respect to the speaker's comments regarding emissions, these are regulated by the Bay Area Air Quality Management District (BAAQMD).

Mercury:

A Health Risk Assessment (HRA) was recently distributed by the BAAQMD, which contains information regarding mercury and other facility emissions. A copy of the executive summary from the HRA was included with the September 16, 2010- Responses to Comments Made During the Board of

Supervisors Meeting (9/14/10). This included Table ES-2, which showed the average annual emission rate for mercury by the Lehigh cement plant is 582 pounds per year during 2005, high end of the plant's production, and shows the current rate to be 337 pounds per year, due to reduced production. As noted in the September 16, 2010 Responses, this figure is not the amount of material that is actually emitted into the air. Current technology does not provide a means to measure the actual mercury emissions; however, in the future all cement plants in the country will be required to measure continuous mercury emissions that do reach the air. This requirement will take effect in 2013. Lehigh has installed certain process improvements in anticipation of meeting this new requirement and advises that additional retrofits will be installed before the 2013 deadline.

Sulfur Dioxide (SO₂)

The Bay Area Air Quality Management District (BAAQMD) confirmed that Lehigh Southwest Cement Company operates under a valid Title V permit, as previously reported on the September 30, 2010 Responses to Comments Made During the Public Comment portion of the Board of Supervisors meeting on September 28, 2010. The Lehigh Title V Permit limits the SO₂ to a maximum of 2,107 tons per year. BAAQMD has calculated their current emissions to be at 420 tons per year, which is in compliance with the requirements of their Title V permit.

cc:

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