
San Francisco Bay Regional Water Quality Control Board

October 1, 2013
CIWQS Place ID: 273205(LW)
PCA Site ID: 2020435

Lehigh Southwest Cement Company
Attn: Axel Conrads (Axel.Conrads@LehighHanson.com)
24001 Stevens Creek Blvd.
Cupertino, CA 95014
Sent via email

Subject: Staff Response to Submittal of Pond Characterization (Addendum) and Response to Conditions Pond (Waste) Characterization, for the property located at 24001 Stevens Creek Boulevard, Cupertino, Santa Clara County

Dear Mr. Conrads:

This letter responds to Lehigh's *Submittal of Pond Characterization and Response to Conditions* letter (the Submittal) from June 17, 2013. That letter addressed conditions required of the *Conditional Concurrence on the Workplan for Pond (Waste) Characterization* letter sent by Water Board staff (Staff) on April 10, 2013. Below, are responses to each point in the Submittal:

1. **Addendum to address all liquid waste storage areas:**
 - a. The Dinkey Shed Basin, Pond 18, and Basins A, B, and E are sumps or catch basins, which Lehigh suggested do not merit analysis as surface impoundments and do not pose a threat to groundwater.

RESPONSE - These ponds do in fact meet the title 27 definition of surface impoundments:

"**Surface impoundment**" (SWRCB) means a waste management unit which is a natural topographic depression, excavation, or diked area, which is designed to contain liquid wastes or wastes containing free liquids, and which is not an injection well.

However, based on information provided in the addendum and supported by our discussions during the September 9, 2013, meeting, we concur that that except for Basin E, these ponds do not pose a significant threat to groundwater and therefore do not merit analysis. As a sump for the Primary Crusher that contains among other things petroleum products; soils beneath Basin E should be evaluated for contamination. We concur with Lehigh's proposal to conduct such an investigation when the pond is decommissioned in the near future. The investigation will be addressed in the site Waste Discharge Requirements (WDR), if appropriate.

- b. Ponds 19 and 20 are inhabited by the federally protected California Red Legged Frog, which Lehigh indicated will prevent cleanup, negating the objective of sampling.

RESPONSE – Lehigh has been unable to submit documentation to support this claim, and hand sampling of liquids and solids from these ponds is not considered significant disturbance. Therefore, Lehigh is still required to sample ponds 19 and 20.

- c. Ponds 14, 21, and 22 are delineated as waters of the US and are habitat for the California Red Legged Frog, and therefore Lehigh suggested they do not require analysis for groundwater impact.

RESPONSE - These ponds do meet the definition of a surface impoundment. However, given that they are in-stream impoundments within Permanente Creek (verified by staff during a 2012 inspection), it may be imprudent to disturb them. Nonetheless, the potential impact to groundwater is unknown, as it is unknown if this portion of the Creek is gaining or losing. Fortunately, this information can be obtained via the hydrogeological investigation required of the June 26, 2013 Requirement for Additional Investigation Technical Reports for WDR Development. We therefore agree at this time that these ponds can be removed from the sampling requirements of the Workplan as amended by the condition of concurrence in our April 10, 2013 letter.

- 2. **Sample solid waste beneath lined ponds:** Lehigh suggested, but did not demonstrate, that it is infeasible to sample wastes beneath Pond 4A, and proposed to evaluate these wastes when the pond is decommissioned.

RESPONSE – It has not been demonstrated that it is infeasible to sample solid waste beneath Pond 4A with an angled drill rig. This is a standard field method that Staff has overseen at other sites. However, we concur that this waste poses only a minor threat to groundwater as it is capped by an HDPE liner and therefore unlikely to migrate. We concur with Lehigh's plan to suspend sampling of this waste until the pond is decommissioned. This investigation will be included in the WDR developed for this site.

- 3. **Evaluate all CCR title 22 metals against applicable regulatory water quality criteria:** Lehigh agreed to meet this condition.
- 4. **Applicable Water Quality Criteria:** Lehigh requested that the results of the analysis of liquid wastes be compared to groundwater quality criteria, instead of surface water criteria.

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RESPONSE - Presumably this concern arises over the condition of concurrence that site data be compared against Environmental Screening Levels for the protection of aquatic habitat (or drinking water, whichever is more stringent). Please note that in this context, the aquatic habitat criteria are groundwater standards, intended to protect aquatic species at the groundwater–surface water interface. As an initial comparison, without a risk assessment or site conceptual model, the surface water standard is applied without dilution. This is the standard approach when initiating an investigation and will not preclude the application of appropriate attenuation factors or use of different water quality standards in the future, if supported by adequate analyses.

5. **Analyze liquid samples for both total and dissolved metals and metalloids:** Lehigh suggested that the requirement to measure total metals and metalloids (including particulates, rather than simply the dissolved phase) in liquid waste is superfluous given that the objective of the sampling is to evaluate if groundwater might be impacted.

RESPONSE - The purpose of sampling is to characterize waste. This information is necessary for this investigation and will additionally be shared with surface water case managers at the Water Board for use in regulating the site, in an effort to minimize Lehigh's sampling efforts.

The conditions of the conditional concurrence letter, as amended here, must be adhered to in order to obtain concurrence with the pond waste characterization investigation. Please send case manager Lindsay Whalin the sampling schedule when it is determined.

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Finally, in a September 9, 2013 meeting, Lehigh requested several extensions of deadlines required pursuant to Water Code section 13260, as part of the waste characterization and Waste Discharge Requirement developments efforts. The deadlines for submittal are now as follows:

Submittal Requirement	Action	Date Action Required by WB	Original Due Date	Modified Due Date
Groundwater Investigation Workplan	Extension	June 26, 2013	September 30, 2013	October, 31, 2013
Waste Pile Runoff Investigation Workplan	No Change	June 26, 2013	September 30, 2013	October 15, 2013
Pond Characterization Technical Report	Extension	January 22, 2013	November 30, 2013	May 15, 2014
Waste Pile Characterization Technical Report	No Change	January 22, 2013	November 30, 2013	May 30, 2014

This action is an official extension of deadlines made pursuant to Water Code section 13260. If you have any questions, please contact her at (510) 622-2363 or by email at LWhalin@waterboards.ca.gov.

Sincerely,

Dyan C. Whyte
 Assistant Executive Officer

CC: Nicole Granquist – Downey Brand
 NGranquist@DowneyBrand.com