

**CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
SAN FRANCISCO BAY REGION**

RESPONSE TO WRITTEN COMMENTS

on Proposed Settlement Agreement and Stipulation for
Entry of Administrative Civil Liability Order
Lehigh Southwest Cement Company
Permanente Plant
Cupertino, Santa Clara County

On July 6, 2018, the Regional Water Board received written comments from Ms. Cathy Helgerson on a proposed Settlement Agreement and Stipulation for Entry of Administrative Civil Liability Order (Stipulated Order) distributed for public comment on June 21, 2018. The proposed Stipulated Order relates to alleged violations of NPDES Permit No. CA0030210 (Order No. R2-2014-0010, as amended by Order No. R2-2017-0030) and Cease and Desist Order (CDO) No. R2-2014-0011, as amended by Order No. R2-2017-0031.

Water Board prosecution staff has summarized the comments, shown below in *italics* (paraphrased for brevity), and followed each comment with prosecution staff's response. For the full content and context of the comments, refer to the comment letter, which is attached with annotations from prosecution staff to correlate the comments with the responses below.

Prosecution staff believes the proposed liability is appropriate given the factors to be considered pursuant to the California Water Code and State Water Board Enforcement Policy, past enforcement actions, and ongoing modifications to the Lehigh facility intended to protect water quality and prevent future violations. Thus, prosecution staff recommends approval of the proposed Stipulated Order by the Water Board or its Executive Officer.

Ms. Cathy Helgerson's Comments and Prosecution Staff Responses

Comment 1: *Ms. Helgerson asks who determined the amount of the \$250,000 discretionary penalty in the proposed Stipulated Order and how this amount was derived.*

Response: Water Board prosecution staff calculated the penalties and Lehigh agreed to the settlement. As explained in the Stipulated Order, prosecution staff calculated the \$250,000 discretionary penalty in accordance with the Water Code and Enforcement Policy as follows:

- a. Between January 1 and October 1, 2017, Lehigh discharged by bypassing its interim treatment system for 21 days in violation of the CDO (specifically CDO Table 3, item i). Prosecution staff concluded that 18 of the 21 days of violation merit discretionary penalties (the remaining 3 days are subject to separate mandatory minimum penalties). The penalty for the 18 days of violation was calculated based on the per-day statutory maximum under Water Code section 13350, subdivision (e), which is \$5,000 for each day of violation, for a total of \$90,000.

- b. On February 21, 2017, Lehigh's discharge from Discharge Points Nos. 004 and 005 violated the CDO's interim effluent limits for total suspended solids. The penalty for these two violations was also calculated based on the per-day statutory maximum under Water Code section 13350, subdivision (e), for a total of \$10,000.
- c. In January and February 2017, Lehigh discharged untreated combined process wastewater and stormwater from Pond 1 without authorization for 15 days. The discharge occurred during exceptionally large January and February 2017 storms. The penalty for these 15 days of violation was calculated based on the per-day statutory maximum under Water Code section 13385, subdivision (c)(1), which is \$10,000 for each day of violation, for a total of \$150,000.

Comment 2: *Ms. Helgerson argues that the proposed \$51,000 mandatory minimum penalty and \$301,000 total penalty are too low. Ms. Helgerson states that Lehigh should be charged millions of dollars for the environmental damage its violations have caused. Ms. Helgerson expresses concern that Lehigh might not have to pay the total liability \$301,000.*

Response: Prosecution staff believes the penalties, taken together, are appropriate considering the nature of the violations, the penalties authorized under the Water Code, and the Enforcement Policy. If the Water Board or its Executive Officer approves the proposed penalties, Lehigh will have to pay \$301,000 within 30 days, less \$158,000 of suspended penalties pending completion of a Supplemental Environmental Project (SEP) of that value.

Comment 3: *Ms. Helgerson inquires as to why the \$158,000 suspended liability pending completion of the SEP for Lower South Bay sediment transport monitoring was not instead directed to Santa Clara County and the City of Cupertino. She asserts that the City and County have suffered from pollution.*

Response: The SEP Policy does not allow prosecution staff or the Water Board to compel Lehigh to complete any particular SEP; however, the Water Board may approve a SEP a discharger proposes if the SEP has an appropriate nexus to the discharger's violations. This nexus requirement can be fulfilled by a SEP to be completed in the same watershed where the violations occurred, or by a SEP addressing the harm caused by the violations. The SEP Policy does not allow payments to local agencies, such as the City and County, unless a clearly defined environmental project is completed. Prosecution staff reached out to local special districts, such as the Mid-Peninsula Regional Open Space District, and other local non-government organizations to determine whether they had any viable projects for a SEP. Prosecution staff contacted the San Francisco Estuary Institute when it could not identify a feasible SEP to be implemented by local entities.

Comment 4: *Ms. Helgerson suggests that the SEP should fund Water Board monitoring of Lehigh's wastewater or monitoring by an independent contractor.*

Response: The SEP Policy does not allow SEPs that benefit the Water Board and does not allow the Water Board to pay a third-party contractor to complete a SEP. Therefore, SEP funds cannot be used for Water Board monitoring.

Comment 5: *Ms. Helgerson questions how the Water Boards verify Lehigh's monitoring and reporting.*

Response: Lehigh is required to monitor and report in accordance with the NPDES permit. Water Board staff verifies Lehigh's submittals through report reviews and inspections. The NPDES permit requires Lehigh's responsible corporate officer (or his or her duly authorized representative) to certify all reports and information submittals as follows:

I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

Comment 6: *Ms. Helgerson questions why Heidelberg Cement and Quarry is not named in the proposed Stipulated Order since it is Lehigh's parent company.*

Response: The proposed Stipulated Order would impose administrative civil liability against Lehigh for allegedly violating the NPDES permit and CDO, which name both Hanson Permanente Cement, Inc., and Lehigh Southwest Cement Company as jointly responsible parties. Hanson Permanente Cement, Inc., is named because it owns the property on which the facility is located, and Lehigh Southwest Cement Company is named because it leases the property and operates the cement plant, rock plant, and quarry as Hanson's corporate affiliate. By signing the proposed Stipulated Order, Lehigh has accepted the proposed liabilities for the alleged violations. Therefore, there is no reason to add Heidelberg Cement and Quarry as a responsible party.

Comment 7: *Ms. Helgerson says the Lehigh Cement Plant and Quarry needs to be shut down and should not apply for a permit for new mining.*

Response: The Water Board does not have the jurisdictional authority to shut down the plant and quarry, and the alleged violations do not justify prohibiting all its discharges to waters of the State. To our knowledge, no application for additional mining is pending, but if one were submitted to Santa Clara County, there would be significant opportunity for public comment at that time.

Comment 8: *Ms. Helgerson opposes the settlement agreement and says Lehigh should be taken to court for strict fines and criminal charges.*

Response: The proposed Stipulated Order would impose administrative civil liability against Lehigh for alleged violations of its NPDES permit and CDO. Based on prosecution staff's review of available information, it did not find evidence of intentional or criminal intent. Most of the violations occurred during January and February 2017, when the Bay Area received approximately 31 inches of rain, which overwhelmed Lehigh's storage ponds and treatment system.

Comment 9: *Ms. Helgerson asks what good it is to impose fines if Lehigh is allowed to continue to pollute.*

Response: The NPDES permit and CDO do not allow Lehigh to pollute waters of the State. To the contrary, they impose specific conditions to ensure that discharges are sufficiently controlled to meet water quality standards. The proposed Stipulated Order is intended to penalize Lehigh for its permit and CDO violations, and deter it from future violations, thereby protecting water quality.

Comment 10: *Ms. Helgerson questions how NPDES permit requirements are determined and suggests that Lehigh selects the least expensive, rather than the most effective, equipment.*

Response: The bases for all the NPDES permit requirements are explained in the permit's Fact Sheet (permit Attachment F). Lehigh must choose equipment as necessary to comply with those requirements. The Water Board may not dictate any permittee's manner and method of compliance. The Water Board can and does, however, use enforcement actions, such as the proposed Stipulated Order, to compel compliance with permit requirements.

Comment 11: *Ms. Helgerson argues that the proposed \$301,000 liability is not enough, stating that the violations have been going on for many years. Ms. Helgerson says she has worked many years to get Lehigh fined and closed down. She asks why Santa Clara County has not fined Lehigh.*

Response: Regarding whether the proposed penalty is enough, see Response to Comment 2. Regarding closing down Lehigh, see Response to Comment 7. Regarding Santa Clara County's actions, the Water Board cannot speak for the County; it can only exercise its enforcement authorities as set forth in the Water Code.

Regarding the desire to fine Lehigh, the proposed Stipulated Order would do just that. Moreover, since 2012 the Water Board has taken three previous enforcement actions against Lehigh:

- ACL Order No. R2-2012-0039 fined Lehigh \$10,000.
- ACL Order No. R2-2017-1001 fined Lehigh \$465,500.
- ACL Order No. R2-2017-1023 fined Lehigh \$375,000.

In addition, in November 2015, a U.S. District Court approved a Consent Decree (Case No. 5:15-cv-01896-HRL) whereby Lehigh agreed to a \$2,550,000 fine. In light of this progressive enforcement, and Lehigh's investment in site improvements and new treatment, prosecution staff believes the proposed liability is appropriate.

Comment 12: *Ms. Helgerson argues that Lehigh cannot operate without polluting air, water, and soil, and states that there has not been appropriate enforcement in the past.*

Response: In the past, the Water Board saw fit to take the enforcement actions listed in Response to Comment 11. Although the proposed Stipulated Order addresses only the specific alleged violations described therein, and not past violations, in proposing maximum penalties for many of the alleged violations, the proposed Stipulated Order accounts for Lehigh's compliance history.

Regarding alleged air pollution, the Water Board does not have jurisdiction over air quality; however, it does coordinate with other environmental agencies to improve overall environmental compliance.

Comment 13: *Ms. Helgerson poses many questions regarding the NPDES permit and its requirements, such as where the various discharge points are located and how the permit's effluent limits were determined. Ms. Helgerson would like to know if Lehigh has tested other contaminants not mentioned in the Stipulated Order, and if so, why those contaminants are not included in the Stipulated Order.*

Response: The bases for all the NPDES permit requirements are explained in permit Attachment F. The permit's monitoring requirements are set forth in its Monitoring and Reporting Program (permit Attachment E). Lehigh has undertaken the monitoring required by the NPDES permit, which addresses a number of constituents not mentioned in the proposed Stipulated Order. Because the proposed Stipulated Order is an enforcement action for specific NPDES permit and CDO violations, it does not discuss constituents unrelated to the alleged violations.

Comment 14: *Ms. Helgerson advises that Table 1 (Permit Effluent Limits) and Table 2 (CDO Numeric Interim Effluent Limits) of the proposed Stipulated Order could have been presented more clearly, such as by presenting both tables on one page and using red font for violations.*

Response: Tables 1 and 2 list NPDES permit and CDO effluent limits, not alleged violations. These limits are separate requirements; therefore, they need not be presented on the same page. Because Tables 1 and 2 do not identify violations, there is no need to highlight violations using a red font or by other means. The alleged violations are identified in Finding 19 of the proposed Stipulated Order.

Comment 15: *Ms. Helgerson states that the interim treatment system is undersized, that Lehigh continues to be in violation, and that the \$301,000 liability is insufficient. Ms. Helgerson asks whether Lehigh chose a cheaper treatment system hoping it would be sufficient.*

Response: The NPDES permit prohibits discharges greater than 167,000 gallons per hour at Discharge Point No. 001, which effectively limits the size of the treatment system (see permit Discharge Prohibition III.B). The interim treatment system the CDO required was designed to treat up to 24,000 gallons per hour. During the heavy rains of January and February 2017, the wastewater storage pond (Pond 1) filled up and flows exceeded the treatment plant capacity. Lehigh should have pumped the accumulated runoff to the quarry pit, but its auxiliary pumps failed and it had insufficient pumping capacity to pump the wastewater up hill. This proposed Stipulated Order addresses this shortcoming.

Prosecution staff believes the proposed penalties are appropriate considering the nature of the violations, the penalties authorized under the Water Code, and the Enforcement Policy. Regarding the cost of Lehigh's treatment system, Lehigh must choose equipment as necessary to comply with the NPDES permit. The Water Board cannot dictate the manner and method of compliance.

Comment 16: *Ms. Helgerson argues that Lehigh has contaminated drinking water because its discharge ends up in groundwater, Permanente Creek, Stevens Creek, and San Francisco Bay, thereby threatening public health.*

Response: The proposed Stipulated Order enforces the NPDES permit, which contains effluent limits based on water quality objectives for municipal supply beneficial uses. We are unaware of any Lehigh discharges harming any aquifer or drinking water system. The State Water Board oversees the local water purveyor to ensure that water supplies are safe to drink.

Comment 17: *Ms. Helgerson questions Lehigh's choice of best management practices and equipment. She says the Water Board and Santa Clara County should help with such decisions.*

Response: Lehigh must comply with the NPDES permit issued. The Water Code does not allow the Water Board to specify Lehigh's manner and method of compliance.

Comment 18: *Ms. Helgerson asks who determines maximum daily effluent limits and requests the formulas for the calculations.*

Response: Staff proposes and the Regional Water Board approves the requirements in the NPDES permit consistent with relevant law and policy, including determining the effluent limits. The bases for all the NPDES permit requirements are explained in the permit's Fact Sheet (permit Attachment F). Likewise, the CDO contains findings that explain the bases for its requirements.

Comment 19: *Ms. Helgerson objects to CDO provision 5, regarding the applicability of mandatory minimum penalties during the term of the CDO.*

Response: The proposed Stipulated Order relates to the NPDES permit and CDO violations, but it cannot modify those documents. This enforcement action does not allow reconsideration of any provisions of the NPDES permit or the CDO. As explained in CDO finding 20, at the time the CDO was established, the Water Board notified interested persons of its intent to consider adoption of the CDO, and provided an opportunity to submit written comments and appear at a public hearing. The Water Board then considered all comments and adopted the CDO in 2014. In this current enforcement action, the Water Board may only propose penalties associated with violations of the NPDES permit and the CDO.

Comment 20: *Ms. Helgerson objects to the CDO setting aside mandatory minimum penalties when Lehigh returns to compliance. She argues that the fines are too small to deter noncompliance.*

Response: See Response to Comment 19. Although the CDO sets aside mandatory minimum penalties under certain circumstances, it does not prevent the Water Board from imposing discretionary penalties, which can be much larger than minimum penalties. Prosecution staff's penalty includes both mandatory minimum and discretionary penalties calculated using the Enforcement Policy. The enforcement taken to date (see Response to Comment 11) has improved Lehigh's compliance. For example, there were fewer violations due to mandatory minimum penalties than in previous years. The third-party lawsuit that resulted in significant selenium treatment has resulted in improved water quality discharges. The NPDES permit and now-expired CDO provided an incentive to complete the final treatment system timely. The past

enforcement, and the potential for future enforcement by any party, continues to deter non-compliance.

Comment 21: *Ms. Helgerson states that air quality limits are set too high, which allows Lehigh to emit air pollutants, including cement dust, at unhealthy levels. Ms. Helgerson believes the facility should be closed.*

Response: The Water Board does not have jurisdiction over air quality and does not have the jurisdictional authority to shut down the facility; however, it does coordinate with other environmental agencies to improve overall environmental compliance.

Comment 22: *Ms. Helgerson questions the maximum daily penalties of \$5,000 and \$10,000 per violation. She prefers to calculate penalties on a per-gallon basis.*

Response: The Water Code specifies the maximum daily penalties. Prosecution staff considered penalties based on volume, but decided penalties based on days would be reasonable and appropriate given the nature of the violations. Prosecution staff has the discretion to decide whether to use volume or days to calculate penalties.

Comment 23: *Ms. Helgerson believes Water Code section 13385 is confusing. She asks why the Water Board bases penalties on discharge volumes instead of the seriousness of the violation. She contends that the proposed penalties are too low, and that if Lehigh cannot comply, it should be closed.*

Response: Prosecution staff's penalty recommendation is based on the Water Code, the Enforcement Policy, and Lehigh's history of violations (i.e., past enforcement). The Water Board cannot change the law and does not have the jurisdictional authority to shut down the facility.

Comment 24: *Ms. Helgerson points out that the Water Board must abide by the Water Code and objects to the discretion the Water Code leaves to the Water Board. She disagrees with how Water Code sections 13385(h) and (i) sets forth mandatory minimum penalties (e.g., allowing three non-serious violations within a six-month period before assessing a mandatory minimum penalty).*

Response: The Water Board cannot change the minimum penalties set forth in Water Code sections 13385(h) and (i), but these sections do not prevent the Water Board from imposing higher discretionary penalties. The proposed Stipulated Order would impose maximum daily penalties for several alleged violations.

Comment 25: *Ms. Helgerson states that Lehigh should not be protected from mandatory minimum penalties when it complies with the CDO. Ms. Helgerson says the Water Board is not doing enough.*

Response: See Responses to Comments 11, 19, and 20.

Comment 26: *Ms. Helgerson believes Lehigh's treatment system is ineffective and that the public has been lied to. Ms. Helgerson wonders where cement kiln waste is taken. She asks when Lehigh will be closed down.*

Response: The proposed Stipulated Order addresses violations related to the interim treatment system. Lehigh appears to have resolved those problems and has expanded its treatment capacity. The Water Board does not have the jurisdictional authority to shut down the facility.

Regarding cement kiln waste, Lehigh indicates that the existing cement kiln came online in 1981 and replaced the former wet process kiln technology, which produced cement kiln dust. The new and existing dry process kiln technology does not generate such dust. Lehigh's reports have indicated that some dust generated prior to 1981 was placed at what is now the East Materials Storage Area, primarily in the former Upper Level Landfill area.¹ The Water Board has issued a waste discharge requirements to Lehigh specifying provisions to manage waste areas, including characterizing materials in these storage areas.

Comment 27: *Ms. Helgerson asks whether Lehigh built the interim treatment system in compliance with the Consent Decree and voices concern that the wastewater treatment system will be unable to handle all of Lehigh's wastewater. She asks how the treatment plant will be monitored and hopes U.S. EPA will be involved.*

Response: Lehigh constructed the interim treatment system and final treatment system in accordance with the NPDES permit and CDO, which are both consistent with the Consent Decree. The wastewater treatment system is designed to handle all process wastewater onsite. (During wet weather, Lehigh may need to store some wastewater onsite until it can be treated.) The Water Board will oversee the treatment system's effectiveness through inspections and report reviews (including evaluating wastewater monitoring results). U.S. EPA may be involved based on its oversight priorities.

Comment 28: *Ms. Helgerson believes that the \$301,000 proposed liability is too small and Lehigh should not get out of these penalties by simply complying with the CDO. She asks why Santa Clara County has not cited Lehigh.*

Response: See Responses to Comments 2, 19, and 20. Contrary to Ms. Helgerson's statement, the proposed Stipulated Order does not allow Lehigh to set aside any of the proposed penalties if it complies with the CDO.

The Water Board cannot speak for Santa Clara County; its regulatory authorities are distinct from the Water Board's authorities.

Comment 29: *Ms. Helgerson disagrees with the proposed settlement and states that this matter should be brought before a criminal court. Going forward, Ms. Helgerson wants more done if Lehigh continues to violate the NPDES permit.*

Response: Based on prosecution staff's review of available information, it did not find evidence of intentional or criminal intent. Consistent with the Enforcement Policy, the Water Board will consider Lehigh's compliance history when weighing enforcement options for any future NPDES permit violations.

¹ Lehigh, *Site History*, December 2013; Ecology and Environment, Inc. *CERCLA Screening Site Inspection of Kaiser Cement Report Prepared for U.S. EPA Region 9*, Feb. 2, 1991; and Weston Solution, Inc. *Preliminary Assessment Report of the Permanente Facility Prepared for U.S. EPA Region 9*, May 1, 2012.

Comment 30: *Ms. Helgerson does not agree with the proposed liability of \$301,000 and states that Lehigh should not get out of these penalties by complying with the CDO. Ms. Helgerson questions why some of the penalty money would go to the San Francisco Estuary Institute instead of Santa Clara County and the City of Cupertino.*

Response: See Responses to Comments 2, 3, 19, 20, and 28.

Comment 31: *Ms. Helgerson wants the penalty to finance a television audio conferencing system for the Water Board, rather than be paid to the Waste Discharge Permit Fund and State Water Pollution Cleanup and Abatement Account.*

Response: Prosecution staff acknowledges Ms. Helgerson's interest in making public Water Board meetings more accessible, but the SEP Policy does not allow SEP funds to benefit the Water Board.

Comment 32: *Ms. Helgerson says something should have been done in 2017 when these violations took place and asks what is being done now. Ms. Helgerson contends that Lehigh cannot be trusted to conduct self-monitoring and reporting, and that the Water Board or a Water Board contractor should do the monitoring. Ms. Helgerson says the public is sick and dying because of the pollution allowed under the NPDES permit, and it is time to close Lehigh down.*

Response: Water Board staff were not idle during Lehigh's 2017 violations. Lehigh's NPDES permit requires Lehigh to notify Water Board staff verbally of violations within 24 hours of their discovery and to send letter reports describing violations and corrective actions within five business days. Staff reviewed those reports and followed up on corrective actions where necessary. Specifically, staff inspected Lehigh in February 2017 and again in December 2017 to ensure that Lehigh implemented corrective actions, complied with the tasks and schedule set forth in the CDO, and accurately performed permit-required monitoring and reporting. As a result, Water Board staff required Lehigh to correct monitoring and reporting deficiencies and to submit additional information. Prosecution staff also thoroughly reviewed Lehigh's monitoring reports for the period from January 2017 through September 2017, and other reports regarding the unauthorized discharges and NPDES permit and CDO violations. The proposed Stipulated Order is the result of those investigations. As of October 1, 2017, Lehigh's final treatment system includes two treatment trains, an upper and lower treatment system. The upper treatment train is the upgraded interim treatment system. The lower treatment train (originally designed to be the final treatment system) provides flexibility in case of needed maintenance and capacity to treat additional quarry or wet weather flows. Lehigh increased the flow capacity of the upper treatment system and added additional flow capacity with the new lower treatment system. This more efficient and higher capacity treatment system brings Lehigh into compliance with its NPDES permit requirements.

Regarding self-monitoring, see Response to Comment 5. Regarding closing Lehigh down, see Response to Comment 11.

Comment 33: *Ms. Helgerson claims the Stevens Creek Quarry is a dangerous polluter and hopes they will have to pay for their contamination.*

Response: The proposed Stipulated Order relates to Lehigh's NPDES permit and CDO violations. Water Board oversight of the Stevens Creek Quarry is a separate matter.

Comment 34: *Ms. Helgersen asks where and when public comments will be listed on the Water Board website.*

Response: Comments and prosecution staff responses related to the proposed Stipulated Order are posted on the Water Board's website at
https://www.waterboards.ca.gov/sanfranciscobay/public_notices/enforcement_db.html#LEH

Attachment: Ms. Cathy Helgersen's Comments — annotated (the comment letter was not dated, but it was emailed to prosecution staff on July 6, 2018)

To: California Regional Water Quality Control Board San Francisco Bay Region

Attn: Habte Kifle – Prosecution Staff – 510-622-2371

From: Cathy Helgersen – Phone No. 408-253-0490

Regarding: Lehigh Southwest Cement Company – Cease and Desist Order

Pertaining To: Violations, Unauthorized Discharges, and Mandatory Minimum Penalties

Proposed Order: Settlement Agreement and Stipulation for Entry of Administrative Civil Liability Order

① I would first like to start with the Notice of Proposed Settlement Agreement and Stipulated Order I received stating that \$250,000.00 dollars is a discretionary penalty I looked up the meaning of this word and it states in The American Heritage Dictionary that it means – Left to or regulated by one's own discretion or judgement something that is to be used responsibly as needed. It seems to me to be a problem of who makes that decision is Lehigh deciding if they should pay this \$250,000.00 dollars I would not want to leave it up to them to decide? The \$51,000.00 dollars mandatory minimum penalty is not enough by any means. Lehigh should be charged millions of dollars for the damage they have done and it looks like they may even get out of paying this Settlement Agreement amount total of \$301,000.00 dollars.

③ The other issue so far as I begin is that Santa Clara County and the City of Cupertino is not going to get any money from the \$301,000.00 dollars in this Proposed Settlement Agreement and I have to ask why not? It seems that they have suffered from the pollution and they get nothing and to allow \$158,000.00 dollars to be suspended pending a Supplemental Environmental Project to fund the San Francisco Bay Regional Monitoring Program, specifically for Lower South Bay sediment transport monitoring is not fair and just.

④ I would like to see this money going to a fund that would allow for testing of the pollution by the California Regional Water Quality Control Board San Francisco Bay Region office or the State Regional Water Quality Control Board Region 2. This money could be used to contract with a company that could test the water and bring in reports that would make sure the public is protected. I understand that Lehigh is the one who reported themselves to be in violation and I suppose they did their own testing or hired some company to do it. My concern is that there is no verification without the CRWQCBSF or the SRWQCB Region 2 doing water pollution testing, how can we be sure that Lehigh has reported honestly?

⑤ I would think that there may even be a possibility that there was even more pollution and that they reported what they did which is a lot lower hoping that this would satisfy all concerned. The \$301,000.00 dollars could be nothing compared to what really was the damage and it seems Lehigh is more than happy to pay this amount instead of the millions of dollars they should be paying for this pollution crime and lawbreaking. Lehigh Southwest Cement and Quarry is part of a larger company the Heidelberg Cement who employee 60,000 employees at 3,000 locations in more than 60 countries and have been around for 140 years since 1874, they have 139 cement plants annual cement capacity of 176 million tons, more than 1,500 ready-mixed concrete production sites, and over 600 aggregates quarries.

The question that people I wonder about and that people have been asking is why is Heidelberg Cement the mother company not on any of the paperwork? It seems that the disregard for Heidelberg Cement not controlling Leigh Southwest Cement and the Quarry's pollution and allowing them to break the law is a crime on their part as well. They have been in business for 140 years and counting and they are very able to pay this \$301,000.00 dollars which to them is just an operating business expense and they can just right it off. Lehigh Southwest Cement Company and the Heidelberg Cement Company have never retrofitted the Cupertino Lehigh Southwest Cement and Quarry is a disgrace and a health and safety hazard to the people that live near it and in the Silicon Valley and the SF Bay Area. I have to ask when will the agencies overall really do the job of enforcement and finally realize that real enforcement does not mean just a fine and then look the other way. The fact that Lehigh reports their own violations should send shivers down our spines and tears to our eyes because they are polluting our communities and our children's lives are at stake.

I ask that Heidelberg Cement Company come out of hiding and own up to their responsibility and be recorded as part of this Settle Agreement and that they would have to pay millions of dollars to compensate for their pollution crimes. I ask that this matter be brought before the two boards, that this matter is seriously looked at and rectified with the highest of fines and if necessary allowing criminal charges to be brought against them. The Lehigh Cement Plant and Quarry needs to be shut down and there should be no other application for a permit to mine a new mine in the future in order to protect the public from further harm.

There should also be no settlement agreement if necessary they should be taken to court and strict fines imposed and I would also ask that criminal charges be brought up against the polluters. It is time to protect the public what good are agencies that just impose fines and then allow the polluters to continue to possess Permits as the NPFDES Permit which gives them the right to pollute. The maximum levels set by the agencies are set high and the polluter always seem to come in under the level I have to wonder who sets these maximum levels. The Best Available Technologies are not enough who decides what is best Lehigh or other companies that will pick the least expensive equipment which is not the best, who is monitoring that. Then we have the economic aspect if the company has trouble buying the latest and greatest retrofit equipment than the agencies let them off the hook and Lehigh can buy whatever. The economic factor is a really serious matter how can we allow this pollution just because a company cannot pay to stop the serious pollution they are emitting? This is why the people are sick from all kinds of diseases and dying from these diseases because this sort of thing is being allowed to happen there is no real enforcement and there is no real protection.

Section I: Introduction

Comment: The amount of \$301,000.00 dollars against the polluter is not enough and these violations have been going on for 90 years and counting. I have to ask the question here where has the California Regional Water Quality Control Board, San Francisco Bay Region, (Prosecution Team), and Enforcement Divisions been all this time? I worked for 13 -1/2 years and counting trying to get Lehigh fined and closed down and no one would listen to me why is that? Santa Clara County would not fine Lehigh and to this day still will not fine Lehigh why is that?

Section II: RECITALS – more

12 Comment: The ongoing issues pertaining to the NPDES Permit have been burdensome giving Lehigh Southwest Cement Company a permit to pollute and that is exactly what has taken place and because they continually violated the permit. Item 4 especially mentions – The Facility discharges process wastewater from cement manufacturing, quarry dewatering aggregate materials processing, truck washing, and dust control. The Facility also discharges industrial storm water. Lehigh cannot operate without polluting the Air, Water and Soil. Looking at the Permit and amendments and the disregards taken by Lehigh and the noting of the Permit that contains prohibitions, limitations, and provisions it is obvious to me that there has not been appropriate enforcement in the past. The question in my mind is why should the continuation of paying fines do not do justice the violations are serious and people are subjected to Lehigh's ongoing pollution.

Item 5 States that the Permit contains effluent limitations, including those listed on Table 1 below: more

Comment:

13 I would like to look at the Average Monthly Effluent Limit and the Maximum Daily Effluent Limit at Discharge Point No. 001 the first question is what is the location is it a pond or what? I would think that the public needs to know. The Parameter list has Chromium (VI), Mercury, Nickel, Selenium, Total Dissolved Solids, Settleable Matter and Turbidity. The Total Suspended Solids does not have an Average Monthly Effluent Limit why not? The others have listed the Average Monthly Effluent Limit and Maximum Daily Effluent Limit. The public must be made aware that this is not what Lehigh is emitting and that we need to know the levels of pollution especially if they are in violation.

Discharge Point Nos. 002, 004, and 005 – this information should be broken out separately for each location and there needs to be a description mentioning the location of these Discharge Points. The Turbidity has not Average Monthly Effluent Limit but does have a Maximum Daily Effluent Limit of 40 NTU = Nephelometric Turbidity Units. The Total Suspended Solids has not Average Monthly Effluent Limit but has a Maximum Daily Effluent Limit of 50 mg/L. The Settleable Matter has a Average Monthly Effluent Limit and a Maximum Daily Effluent Limit. The pH is in between both the Average Monthly Effluent Limit and the Maximum Daily Effluent Limit listed as 6.5 – 8.5 s.u. (2) Unit abbreviations states s.u = standard units. It seems to me this is very unclear and should be made easier to understand.

Note: I believe that the public has a right to know exactly what Lehigh is emitting the levels of pollution and just exactly where the violation is. I would also like to know if Lehigh was tested for other contaminants and if so why have they not included on this report?

Discharge Point No. 006 – Total Suspended Solids there is no Average Monthly Limit and there is a Maximum Daily Effluent Limit at 50 mg/L the question again where is this Discharge Point? I would also like to know why the Average Monthly Effluent Limit was not put in this Table.

7. Per the CDO, page 7, paragraph 1 (b), the Discharger is required to comply with the numeric interim effluent limitations listed in Table 2 below: - more

14 Comment: The report is difficult to read and a person needs to bounce back and forth to figure out what is taking place. The CDO Discharge point Nos. 002, 004, and 005 under Settleable Matter reads 2.6 mL/L-hr. is what Lehigh is violating Table 1: Permit Effluent Limits reads 0.2 mL/L-hr. Maximum Daily Effluent Limit. I think in order to have made things very clear to the public and the board members this information should have been on one page and the violation should have been in red. This is just one of the items here in Table 2 and the same applies to the others.

Note: Lehigh must have known how much water was coming down to the Interim Treatment System prior to the systems being set up based on 90 + years in operation so why did they not put in a larger capacity system? I find it hard to understand after being told by Santa Clara County all along that the upper and lower interim treatment systems were working and there was no problem that this now is apparent that there was and is a great problem. It is very hard to understand what is and has taken place and it seems that even now Lehigh is still in violation and continues to be in violation. I must state here that the amount of \$301,000.00 dollars is not enough of a penalty for Lehigh to pay and it should be in the millions of dollars.

15 8. Since the Facility's discharges violated Permit discharge prohibitions and exceeded Permit effluent limitations, (read more)

Comment: The question that people should ask is how did this become a problem the history of water flow at Lehigh should have been adequate and the vendor who sold them the Interim Treatment Systems should have provide large enough of a system to accommodate the need. I have to wonder did Lehigh decide on a cheaper capacity system in hopes that it would do the job. The engineers at Lehigh and at the company that sold them the Interim Treatment Systems must have miscalculated what the Interim Treatment Systems could handle and so who is to blame? I was told by SCC that the Interim Treatment Systems were doing the job and that nothing was wrong this was simply not true. The public is subjected to high levels of pollution and a fine payed is not enough to compensate for the health issued that will come of it.

16 Note: This ongoing problem needs to end and SCC and the State Regional Water Quality Control Enforcement Division must take responsibility for solving this serious problem. The pollution does not just harm the aquatic life but it is doing great harm to human and animal life. There is no way to control water flow everything comingles under the ground the pollution from Lehigh is going into the Permanente Creek, Stevens Creek and the SF Bay, it is also going into the aquifer below the Silicon Valley. This contamination to our aquifer needs to stop because this water is taken up by the San Jose Water Company and the California Water Service Company who should be complaining about Lehigh.

9. CDO paragraph 16 states, in part: (read more)

17 Comment: The Best Management Practices are not always the best who decides what the best equipment or Interim Treatment System is? I suppose Lehigh decided on the vendor and no one made sure that what they proposed would do the job. There are many technologies out there new ones every day and so I would think that the State Regional Water Quality Control Board and Santa Clara County would have looked to make sure that Lehigh had found the Best Vendor. This whole matter has been a

18
disappointment to me and I would imagine the public if they all knew what was really happening. Who decides on the levels Maximum Daily Effluent Limits and how are these levels calculated, what formula is used to calculate them? I think if anyone really tried to look into this that they would find that no one wants to tell people exactly how these levels are calculated.

10. CDO page 10, paragraph 5 states, in part (read more)

19
Comment: Well here the agency is giving Lehigh a chance to get away with their pollution and it states if the Discharger returns to compliance, Permit violations shall again not be subject to mandatory minimum penalties as of the first day of the first day of the month following the return to full compliance. I see that never mind the non-compliance all these years and the pollution why not just let them off the hook. This kind of politics is criminal and I want everyone to realize that it is breaking the laws that pertain to permits or rules or regulations should have strict consequences so as to insure that the Discharger does not commit the same violations. The State Regional Water Quality Control Enforcement Department and the Boards should not Lehigh get away with this.

11. Water Code section 13350 – (more read)

Comment: I am amazed that Lehigh Southwest Cement and Quarry and Heidelberg Cement the mother company have been allowed to pollute for 100 years and counting and now under the permit Water Code Section 13350 the State Regional Water Quality Control Board Region 2 states as follows:

“A person who (1) violates a cease and desist order or cleanup and abatement order hereafter issued, reissued, or amended by a regional board or state board shall be liable civilly, and remedies maybe proposed, in accordance with subdivision (d) or (e).”

20
I am concerned that after Lehigh's repeated violations and cease and desist order violations over the years that it is possible the State Regional Water Quality Control Board would allow Lehigh if they return to compliance Permit violations shall again not be subject to mandatory minimum penalties as stated in item 10. What good are permits that have rules and regulations that are not imposed? Why should we bother to set up a system that allows the Discharger/Polluter to continue to pollute and giving them chance after chance to clean up their act and still they do not abide by the Permit? I am sorry but this seems like foolishness on our part and the Governments that regulate the Dischargers and Polluters and it must not continue. The civil liability that can be imposed is just not enough the cost to the Discharger and Polluter is just written off by the company as an operating cost and they can just right it off. Lehigh and Heidelberg Cement know very well what the permit states and can well afford to pay any amount set by the Permit so what is the problem?

The Lehigh Southwest Cement and Quarry cause a great deal of pollution in the Air and also on the ground with the cement dust all over the properties and the dust is flying all over the valley it is every place making people sick and killing the public this needs to stop. The Bay Area Air Quality Control Department will not stop the pollution and they are the regulators the Maximum Level so pollution set by them and the EPA are always way above the Discharger/Polluter levels of course this makes it easy for them to emit with no problems. The levels are false and there is no real science to back them up and

20 { the public is subjected to ongoing dangerous pollution and no one will end the ridiculous lies about the levels they say are safe they are not. It is time to look into the science that allows these so called safe levels to be imposed on the public because we have to ask ourselves, why are people terribly sick and dying if there is no problem? We cannot blame this on genetics or pollution from automobiles.

21 { The pollution that the public must endure is serious and I believe that the Discharger/Polluter's facility or facilities should be closed down until the problem is corrected and if they cannot correct the problem they should be closed down for good.

12. Pursuant to Water Code section 13350 - (read more)

Comment: I think that the mention of either on a daily basis or on a per gallon basis, but not both is wrong it should be based on a gallon bases for a 24 hour period 7 days a week.

13 & 14 Pursuant to Water Code section 13350 – (read more)

22 { Comment: They have put a limit on civil liability calculated on a daily basis "shall not exceed five thousand dollars (\$5,000) for each day of the violation occurs." I have to ask how does this work in with item 12 which states a per gallon bases maybe we should take both into account and why is there a limit just \$5,000.00 Dollars or \$10,000.00 Dollars? I truly believe that the cost should be based on the seriousness of the pollution, and also if the Discharger has been operating with disregard of the permit than a stronger dollar amount should be imposed. I believe if the Discharger/Polluter is aware of this, they are less likely to violate the law. It seems again that the agencies and Santa Clara County are more willing to accommodate Lehigh the Discharger/Polluter than to take into consideration the real seriousness of the pollution going out to the public.

15. Pursuant to Water Code section 13385 – (read more)

23 { Comment: It seems to me there are too many variances this makes it more difficult to decide on what to actually impose as a penalty. The mention of exceeds 1,000 gallons and where they can clean it up or no is not the issue they are in violation? If they cannot stop polluting or clean up their act close them down. Why are we judging based on gallons instead of the seriousness of the violation the penalty is not sufficient in this regard, not strict enough. The agencies have not real power to enforce and what is real enforcement as the public is subjected to more and more pollution the agencies are fooling around with semantics, how much should we impose as a fine or how much should we not and how should we administer this penalty? When are the issues going to be looked at as a real threat to the future of humanity instead of accommodating the Discharger/Polluter in any way that the Government decides leaving us to constantly question our Government continually?

16. Water code section 13385 – (read more)

24 { Comment: The continued complications are evident the Codes call out for individual occurrences again giving Lehigh the Discharger a way to decide in what area they wish to violate giving them leeway such as in item c. A through D. The State Regional Water Quality Control board has to abide by the Codes but it seems even with that there is a great deal of leeway to their own discretion which is not acceptable.

Giving them a four or more times in a period of six months, except that the requirement to assess the mandatory minimum penalty shall not be applicable to the first three violations is wrong. I want to state again giving Lehigh or any other company such accommodations to pollute and hide what they are doing is wrong. The public is subjected to constant ongoing pollution because of this Code and it seems that no one has had any regard for this crime and no real enforcement has taken place.

17. Pursuant to Water Code section 13385 – (read more)

24
Comment: I have mentioned before that MMP's – Mandatory Minimum Penalties should apply even if a discharger complies with a cease and desist order because the Discharger/Polluter in this case Lehigh knows what is expected of them and have been in constant violation for 100 years and counting they should have to pay the penalty. I would use the example of a person who breaks a serious law and goes before the judge, and the judge says to that law breaker "are you sorry for your crime and do you say you will not commit this crime anymore" the person say of course judge no problem". The man walks out of the court room free as a bird, of course this does not happen because our laws are just and the man serves time and also pays a fine. My question is why is this Discharger/Polluter Lehigh able to circumvent the system and why would they be allowed to keep breaking the law over and over and even then they may not have to pay for their crimes because they have complied with a cease and desist order? It is no wonder that there is so much pollution in our cities and towns the laws are not protecting the public and they are too lenient something needs to be done about this. The list of a. – d. are stated to protect the Discharger/Polluter Lehigh and not the public.

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18. Under Water Code section 13385, subdivision (j) (3), a discharger is only protected from MMP's – Mandatory Minimum Penalties when it is in compliance with the cease and desist order. No MMP protection is afforded when the discharger/polluter Lehigh is not in compliance with the cease and desist order. I added Lehigh because I want to bring attention to the polluter. I do not think this is fair to the public who must endure the pollution and I have stated this time and time again what is going to be done about this ongoing crime that keeps getting committed? With a way out the polluter just keeps obstructing justice to be served are we the public to just stand by why this is happening and not do anything to stop it. Why is the State Regional Water Quality Control Boards not fighting for our lives because that is what is at stake here again there is no real enforcement or justice served.

19. The Discharger Lehigh is subject to four categories of violation: (read more)

26
Comment: The Interim Treatment System (ITS) Violations of CDO table 3 (i) are very serious the levels of pollution are high see Permit Effluent Limit and then read Reported ITS Effluent Value – note Lehigh reports these levels they are not taken from the State Regional Water Quality Control Enforcement Department. The question here is all of this water where is it coming from and from what I understand it is coming from the Lehigh Cement Plant the Quarry and the any other water that is running on the property. This has been taking place for 100 years and counting the Interim Treatment Systems 2 of them were put in and they were supposed to treat the problem and it looks like they are not doing the job so a cease and desist order was established. Note: there have been other cease and desist orders. Santa Clara County all along informed me that the Interim Treatment Systems were doing a good job of

26 cleaning up the pollution this was not the case and so it would seem the public was being lied to. I still do not really know if they are even doing the job now and the public continues to be polluted by Lehigh. The Lehigh Southwest Cement plant is a major contributor to the pollution water is used to cool down the kiln and to make cement the toxic waste material from the Cement plant is moved from the site by truck and I am not sure where it is taken but it is removed. I was told for a very long time prior to this information that I received that the Cement plant toxic waste material was burned in the kiln and that there was not waste I believe this to now be a lie. He public and I continually are lied to and Lehigh continues to be subject to investigations that prove that they are a serious polluter, so when will someone shut them down?

27 e. I am concerned alleged violations of the November 2015 Consent Decree entered into between the United States, the Regional Water Board, and the Discharger in case 5:15-cv-01896-HRL. Any such violations may be resolved in a separate document. Note: This case is between the Sierra Club vs. Lehigh Southwest Cement Company and settled for 7.5 million dollars part of this money about 5 million is now being used to build a large Lehigh Wastewater Treatment Plant. This plant will not be large enough to handle all of the polluted Lehigh Wastewater and the Interim Treatment Plant or Plants will have to be used as well. I am very surprised to hear of this because I have to wonder why the large Lehigh Wastewater Treatment Plant was not designed to handle all of the wastewater it seems someone dropped the ball at Lehigh, Santa Clara County and the State Regional Water Control Boards in Oakland and Sacramento. I believe a great deal of this problem with Lehigh and the reason there is a cease and desist order on the Interim Treatment Plants is that this whole matter was poorly constructed and the overseeing of the project was wrong. I know someone is totally responsible maybe all concerned. I am also worried about how the Interim Treatment Plants and the Lehigh Wastewater Treatment plant will be monitored in the future and can only hope the EPA Region 9 and the Federal EPA in Washington will be involved. It will take the public being involved in order to make sure that the water is being treated properly and I can only hope enough people will join together to make sure that that happens.

20. To resolve the alleged violations in section II – (read more)

28 Comment: The amount of \$301,000.00 dollars is in my opinion not sufficient to cover the damage done by Lehigh Southwest Cement Company and Heidelberg Cement. The fact that they can even get out of paying this amount by simply complying with the cease and desist order is shameful and a crime. I can only hope that something can be done to change this terrible injustice against the public. My question here also is where was Santa Clara County while all of this, disregard for the permit was going on and why did they not site Lehigh and or notify the State Regional Water Quality Control Board?

21. The Parties have agreed to settle – (read more)

29 Comment: I do not agree with this settlement on many counts and this matter should have been brought before a criminal court but of course I know with the present system of things this could never happen. I can only hope that somehow some kind of justice can be served here and if nothing else Lehigh will have to pay \$301,000.00 dollars for their crime. I also would hope that going ahead something more can be done if they continue to violate their permit.

22. The Prosecution Team – (read more)

Comment: I do not agree

Section III. STIPULATIONS (read more)

30 { Comments: 1. Administrative Civil Liability: The Discharger hereby agrees to the imposition of an administrative civil liability totaling \$301,000.00 dollars to resolve the alleged violations as set forth in Section II as follows: a. – through d. the penalties are not enough and the implication that Lehigh can even get out of some of the penalties if they comply with the cease and desist order is wrong.

Question – The money taken as penalties is disbursed and some of it goes to the San Francisco Estuary Institute why is this happening and that Santa Clara County and Cupertino are getting none of this money even thou they are the ones who are being affected by this pollution.

2. Payment of Administrative Civil Liability: (read more)

Comment: It states a.to resolve the violations in section II, paragraph 19(b), no later than 30 days after the Regional Water Board or its delegate signs this Stipulated Order, the Discharger shall submit a check of \$45,000.00 dollars made payable to the "Waste Discharge Permit Fund," referencing the Order number on page one of this Stipulated Order.

31 { Question: I would like to know why the State Regional Water Quality Control Board Region 2 who stated to me at the meeting in Oakland, Ca. just recently that they have money to set up a Television Audio Conferencing System when there is money available going to the "Waste Discharge Permit Fund" and other funds? There is also money available from penalties from other violators and that money could also be used to set up a system. The Television Audio Conferencing System would be used to bring the community together so that at each location in a number of cities could connect with the Boards in Oakland and San Francisco, the people could hear and comment at these meetings without attending and all concerned could be involved. This system would save the public driving time, gas, and help to stop pollution on our highways. The public who is reluctant to show up at these meetings because they are working and have a family to take care of could just go to a local location and attend. Many people who work do not get paid unless they work and this would help because they could use their lunch hour to attend the local location where the Television Audio Conferencing meeting is held. I think more people would attend these meeting if they did not have to drive a long distance and deal with traffic and parking so I hope that the State Regional Water Quality Control Board will try and consider this as an option that would serve all concerned. Note: I have been trying to get the Bay Area Air Quality Management Department to also consider such a possibility.

Attachment A Page A-1 of 5 –

32 { Comment: Reading the Violation Date year 2017, Violated Parameter and Unit, permit Effluent Limit, & Reported ITS Effluent Value and seeing the high levels of pollution it is extremely evident that something should have been done back in 2017 and I have to seriously wonder what is being done now. Lehigh Company send in their own reports so how can we be sure they are reporting correctly even if they

32 report high levels that could even be higher. The State Regional Water Quality Control Board should be the ones conducting the testing or finding a company that can do the tests leaving this up to Lehigh is wrong. I am told by the Water Board staff that this is just the way it is done well it is time to change all of that in order to protect the public. The levels of contamination and pollution are high and it does affect humans, not just aquatic life so please all concerned look at it for what it really is. The public is sick and dying from the pollution and we cannot disregard that it is because of the pollution that is allowed under permits. These violations at Lehigh have been going on for 100 years and counting and they will continue because Lehigh cannot operate without polluting. The Interim Treatment Plants and the Lehigh Wastewater Treatment Plant will not clean the water down to zero pollution they say that they just can't and the laws do not require them to so we the public, animals and aquatic life are left to parish and to suffer with all kinds of disease. I ask no I beg you to hear my cry and to change the system before it is too late if it is not to late already.

33 I will not further comment on the rest of the report because I believe I have made myself clear on the subjects except that I will say that Lehigh has not only polluted the whole Silicon Valley and surrounding areas but also the SF Bay area for 100 years and counting. It is time to stop this pollution and close them down once and for all and I will not leave out the Steven Creek Quarry who is also a dangerous polluter. The State Regional Water Quality Control Enforcement Department is in the process of investigating them and I can only hope that they will also have to pay for their contamination of the Steven Creek Reservoir and the aquifer below the Silicon Valley.

I hope that all concerned will read my comments and take them to heart because all of our lives depend on it. Please send these comments to the State Regional Water Quality Control Board in Oakland and to the Board in San Francisco.

34 I would also like to know where and when will the publics comments be listed on the web?

Thank you,