California Regional Water Quality Control Board

San Francisco Bay Region

RESPONSE TO WRITTEN COMMENTS

On the Tentative Order for
Lehigh Southwest Cement Company and Hanson Permanente, Inc., Permanente Plant,
Cupertino, Santa Clara County

On or before August 25, 2025, the Regional Water Board received written comments on a draft NPDES permit (tentative order) distributed for public comment on July 24, 2025. The following parties provided comments:

1. U.S. Environmental Protection Agency (U.S. EPA)
2. Lehigh Southwest Cement Company (Lehigh)
3. Ms. Cathy Helgerson

Regional Water Board staff have summarized the comments, shown below in *italics* (paraphrased for brevity) and followed each comment with a response. For the full content and context of the comments, please refer to the original comment letter.

All revisions to the tentative order are shown with underline text for additions and ~~strikethrough text~~ for deletions.

Staff-Initiated Changes

In addition to making minor editorial and formatting changes, we revised the tentative order as follows:

1. We revised the first page of the tentative order to reflect new effective and expiration dates, as well as a new application for reissuance due date 270 days prior to permit expiration:

This Order was adopted on:	**[DATE]**
This Order shall become effective on:	**~~May 1~~ August 1, 2026**
This Order shall expire on:	**~~April 30~~ July 31, 2031**
CIWQS regulatory measure number:	**[XXXXXX]**

   The Discharger shall file a Report of Waste Discharge as an application for updated WDRs in accordance with title 23, California Code of Regulations, and an application for reissuance of a National Pollutant Discharge Elimination System (NPDES) permit no later than **~~August 3~~ November 3, 2030…**

2. We revised the reopener provisions and the Fact Sheet basis for them to account for ongoing litigation of the State's toxicity policy (*Camarillo Sanitary District et al. v. State Water Resources Control Board*, case number F087362). We added Provision 5.3.1.7. to the draft permit:

   To revise the aquatic toxicity provisions if the California Supreme Court determines that the Test of Significant Toxicity cannot be used in NPDES permits and the State Water Board suspends or revises the aquatic toxicity water quality standards.

   We also revised Fact Sheet section 3.3.4 as follows:

   Toxicity Provisions. ~~The State Water Board adopted the *State Policy for Water Quality Control: Toxicity Provisions* (Toxicity Provisions) on October 5, 2021. U.S. EPA approved the Toxicity Provisions on May 1, 2023. Toxicity Provisions sections II.C.1 and II.C.2 establish numeric chronic and acute toxicity objectives that apply to all inland surface waters, enclosed bays, and estuaries in the State with aquatic life beneficial uses. The Toxicity Provisions include related implementation provisions and require that compliance with the chronic toxicity water quality objectives be assessed using U.S. EPA's Test of Significant Toxicity (TST) (U.S. EPA, *National Pollutant Discharge Elimination System Test of Significant Toxicity Implementation Document* [EPA/833-R-10-003], June 2010).~~ On December 1, 2020, the State Water Board adopted *State Policy for Water Quality Control: Toxicity Provisions* (Toxicity Provisions), which established statewide numeric water quality objectives for both acute and chronic toxicity using the Test of Significant Toxicity (TST) and a program of implementation to control toxicity. On October 5, 2021, the State Water Board adopted a resolution confirming that the Toxicity Provisions were adopted as a state policy for water quality control for all inland surface waters, enclosed bays, estuaries, and coastal lagoons of the state, regardless of their status as waters of the United States. The Toxicity Provisions establish a uniform regulatory approach to provide consistent protection of aquatic life beneficial uses and protect aquatic habitats and life from the effects of known and unknown toxicants. The Toxicity Provisions were approved by the Office of Administrative Law on April 25, 2022, and by U.S.EPA on May 1, 2023.

   On December 14, 2023, the State Water Board applied for U.S. EPA Region IX review and approval of a limited-use alternative test procedure (ATP) for the use of one effluent concentration when conducting whole effluent toxicity (WET) tests, pursuant to 40 C.F.R. section 136.5 (Aug. 28, 2017). The application is specific to acute or chronic WET tests in Table 1 of the application when using the TST statistical approach (U.S. EPA, 2010) for analyzing the data. The application is being sought for all dischargers or facilities in the State of California and their associated laboratories. The ATP application is still pending with U.S. EPA.

The use of the TST has been the subject of litigation. In December 2024, the Second District Court of Appeal upheld the use of the TST in an NPDES permit in the case *Camarillo Sanitary District v. California Regional Water Quality Control Board - Los Angeles Region*.

A separate legal challenge to the State Water Board's adoption of the Toxicity Provisions originated in Fresno County Superior Court on July 18, 2022, through a petition for writ of mandate filed by Camarillo Sanitary District, City of Simi Valley, City of Thousand Oaks, Central Valley Clean Water Association, and Clean Water SoCal (formerly known as Southern California Alliance of Publicly Owned Treatment Works) (Petitioners) . One of the claims was that the Toxicity Provisions was inconsistent with the Clean Water Act. On October 9, 2023, the superior court denied the petition in its entirety.

On December 19, 2023, three of the Petitioners filed a notice of appeal of the Fresno Superior Court's decision upholding the Toxicity Provisions. On August 5, 2025, the Fifth District Court of Appeal issued a published opinion holding that the TST statistical approach, which is an integral component of the Toxicity Provisions, cannot be utilized in NPDES permitting to evaluate WET data because the TST is not an approved method under 40 Code of Federal Regulations Part 136. The Court of Appeal did not, however, disturb the Toxicity Provisions' use of the TST as a part of its water quality objectives. The State Water Board prevailed on all other claims in the litigation. The Court of Appeal's decision became final on September 4, 2025.

On September 15, 2025, the State Water Board filed a petition for review of the Fifth Circuit Court of Appeal's decision with the California Supreme Court. On November 12, 2025, the California Supreme Court granted review. The issues to be briefed and argued are limited to the issues raised in the State Water Board's petition for review.

Pending the California Supreme Court's review, the opinion of the Fifth Circuit Court of Appeal is not binding on the Water Boards. However, the opinion may be cited, not only for its persuasive value, but also for the limited purpose of establishing the existence of a conflict in authority.

In accordance with Water Code sections 13146 and 13247, the Regional Water Board must fully implement the water quality objectives and their implementation procedures in the Toxicity Provisions. The numeric water quality objectives for chronic and acute toxicity established by the Toxicity Provisions, which are based on the TST, were approved by U.S. EPA and remain in effect. As such, the numeric water quality objectives continue to serve as the applicable federal water quality standards in California.

The Regional Water Board must also continue to comply with federal Clean Water Act NPDES regulations for determining reasonable potential and establishing applicable water quality-based effluent limitations (WQBELs). NPDES regulations (40 C.F.R. section122.44(d)(1)(vii)(A)) require that all WQBELs be derived from and comply with all applicable water quality standards. Moreover, although the Toxicity Provisions left in place narrative water quality objectives for aquatic toxicity in the Basin Plan, the Toxicity Provisions did supersede Basin Plan provisions and portions of the *Policy for Implementation of Toxics Standards for Inland Surface Waters, Enclosed Bays, and Estuaries of California* (SIP) for implementing narrative water quality objectives. As such, there are currently no Basin Plan or SIP procedures in effect for implementing narrative water quality objectives to determine reasonable potential as required by 40 C.F.R. section 122.44(d)(1)(ii). As a result, the Regional Water Board must fully implement all of the Toxicity Provisions.

U.S. EPA

U.S. EPA Comment 1. *U.S. EPA requests that we clarify the geographic extent to which the selenium site-specific water column criterion would apply. U.S. EPA states that the data used to calculate the site-specific water column criterion are insufficient to establish one for the entirety of Permanente Creek, as the sampling reaches were limited to above the confluence with Stevens Creek and West Permanente Creek, and may not reflect downstream conditions.*

Response to U.S. EPA Comment 1. Please see our response to U.S. EPA Comments 3 and 4, below.

We agree that the data used are insufficient to establish a selenium site-specific water column criterion for the entirety of Permanente Creek. The site-specific water column criterion was intended to apply from Discharge Point 007 downstream no further than to the Rancho San Antonio County Park parking lot. Moreover, we have addressed this comment by revising the draft permit to implement U.S. EPA's *Final Aquatic Life and Aquatic-Dependent Wildlife Selenium Water Quality Criterion for Freshwaters of California* (EPA-822-R-24-014, December 2024 [Final Freshwater Selenium WQC]). Specifically, the draft permit now implements the Final Freshwater Selenium WQC's water column criterion for lotic waters of 3.1 µg/L, as described in our response to U.S. EPA Comments 3 and 4, below.

U.S. EPA Comment 2. *U.S. EPA asks if we expect typical flow regimes in the upper reaches of Permanente Creek to support fish. U.S. EPA also requests that we explain why a site-specific water column criterion translated from selenium fish tissue criterion elements for California fresh water (Final Freshwater Selenium WQC) is appropriate. U.S. EPA states that, according to* Method for Translating Selenium Tissue Criterion

Elements into Site-specific Water Column Criterion Elements for California, Version 2 *(U.S. EPA, EPA Office of Science and Technology, EPA 820R24008, December 2024) (Selenium Translation Method V2), the State should not determine a site-specific water column criterion if fish are not present or not expected to be present at the site. U.S. EPA further comments that Lehigh's* Final Report for Reasonable Potential Study for Selenium in Permanente Creek *(Robertson-Bryan, Inc. [RBI], December 2023 [Selenium RPA Study]) notes that fish colonization in upper reaches of Permanente Creek is hindered by an impassable barrier at the confluence of Permanente Creek and Stevens Creek, and no resident fish were observed during the field survey in 2021 or during sampling in 2022 and 2023.*

Response to U.S. EPA Comment 2. Please see our response to U.S. EPA Comments 3 and 4, below.

Permanente Creek has historically supported fish. Groundwater flow in the area near the quarry is altered by the quarry and currently flows away from the creek to the quarry. We expect groundwater flows to return to the creek when the quarry is reclaimed. Thus, we expect that creek flows will support fish. The Discharger's Selenium RPA Study reports that fish were observed and collected from Pond 14, which is connected to Permanente Creek during high wet-weather flows. Fish from Pond 14 could plausibly colonize Permanente Creek. Fish could also colonize the creek from its tributaries or headwaters (if not from downstream), or be introduced by other means.

State and federal antidegradation policy (40 C.F.R. section 131.12 and State Water Board Resolution 68-16) require the Water Board to protect a water body's designated beneficial uses. Because Permanente Creek's designated beneficial uses include those that support fish and fish habitat, it would be appropriate to translate a site-specific water column criterion from the fish tissue element of the Final Freshwater Selenium WQC that protects such uses if based on sufficiently representative data.

As stated in the draft permit (Fact Sheet § 3.3.1.), the designated beneficial uses of Permanente Creek include cold freshwater habitat (COLD), warm freshwater habitat (WARM), preservation of rare, threatened or endangered species (RARE), and fish spawning (SPWN), all of which support fish and fish habitat. However, the data presented were not sufficient to support a site-specific criterion; therefore, the draft permit uses the Final Freshwater Selenium WQC's water column criterion for lotic waters of 3.1 µg/L. We also revised the draft permit to allow the Discharger to do a new or updated reasonable potential study during this permit term (see Provision 5.3.5 in Response to U.S. EPA Comments 3 and 4, below). That study may propose a calculated site-specific water column criterion based on sufficiently representative data.

U.S. EPA Comments 3 and 4. *U.S. EPA states that it is unclear that the Selenium RPA Study's site-specific selenium criterion (4.9 µg/L) provides sufficient protection of downstream beneficial uses. U.S. EPA points out that the mean fish tissue selenium concentrations collected from Pond 14 are higher than the whole-body criterion element of the Final Freshwater Selenium WQC (8.5 mg/kg). U.S. EPA states that the Selenium RPA Study discusses selenium sensitivity of specific aquatic species as a reason why*

there is no reasonable potential for Pond 14. However, there is no U.S. EPA-approved site-specific criterion for whole tissue at this site; thus, the whole-body criterion element of 8.5 mg/kg should be used for reasonable potential analysis.

U.S. EPA also points out that the Selenium RPA Study concludes that its site-specific criterion of 4.9 ug/L may be unrepresentative and not reflect site-specific conditions that could occur when the facility's FTS-Upper and FTS-Lower are discharging. U.S. EPA states that the site-specific criterion may not adequately consider the worst-case condition of the receiving water or protect receiving water quality and beneficial uses, contrary to State and federal antidegradation policies.

Response to U.S. EPA Comments 3 and 4. Given uncertainty about whether the Selenium RPA Study's site-specific criterion of 4.9 µg/L would protect downstream beneficial uses, we revised the draft permit to implement the Final Freshwater Selenium WQC's water column criterion for lotic waters of 3.1 µg/L. This includes finding reasonable potential for this discharge to cause or contribute to an exceedance of the water quality criterion for selenium. We also revised the draft permit by adding Provision 5.3.5. and a permit reopener clause as Provision 5.3.1.6. These revisions would allow the Discharger to do a new or updated reasonable potential study and request reopening of the permit if that study supports it with sufficiently representative data.

We revised Table 2 as follows:

Parameter	Units	Average Monthly	Maximum Daily	Instantaneous Minimum	Instantaneous Maximum
⋮	⋮	⋮	⋮	⋮	⋮
Dissolved Oxygen (DO)	mg/L	—	—	7.0	—
Selenium	µg/L	~~3.7~~ 2.9	~~8.2~~ 8.1	—	—

We added the reopener clause as Provision 5.3.1.6., as follows:

> If the selenium fish tissue reasonable potential study allowed by Provision 5.3.5. demonstrates that the discharges governed by this Order do not have a reasonable potential to cause or contribute to adverse impacts on water quality or beneficial uses of the receiving waters.

We replaced Provision 5.3.4. as follows. (The previous Provision 5.3.4 is deleted as described in our Response to Lehigh Comment 3):

> 5.3.4. ~~**Receiving Water Data Reporting.** The Discharger shall submit receiving water data for selenium at Monitoring Locations RSW-001, RSW-001A, and RSW-004 to the California Environmental Data Exchange Network (CEDEN) to the extent that CEDEN accommodates the data type. Other receiving water data the MRP requires the Discharger to collect shall be submitted to SWAMP Information Management and Quality Assurance Center (SWAMP~~

~~IQ) for upload starting when CEDEN can accommodate the data type. These data and results shall be submitted annually by March 1 and as described in the MRP.~~ **Selenium in Fish Tissue Reasonable Potential Study**

5.3.4.1. The Discharger may submit a study plan and schedule to evaluate reasonable potential for selenium using U.S. EPA's final California fish tissue selenium criterion (Final Freshwater Selenium WQC).[1] The study may be a new study or an update of the Discharger's previous study.[2] The objectives of the study shall be as follows:

- Determine if the Discharger can collect sufficient representative fish tissue data, or an alternative form of data if necessary, from Permanente Creek to evaluate reasonable potential using U.S. EPA's Final Freshwater Selenium WQC;
- Collect sufficient representative data, as described above, from Permanente Creek to evaluate reasonable potential using U.S. EPA's Final Freshwater Selenium WQC; and
- Recommend a reasonable potential finding based on the above.

5.3.4.2. If the Discharger submits a study plan and schedule, it shall provide for the following:

- Data-collection and evaluation;
- Interim reporting;
- Follow-up data collection and analysis; and
- Final report.

The study plan and schedule shall be acceptable to the Executive Officer.

5.3.4.2.1. Unless the Executive Officer objects to the study plan and proposes changes necessary to meet the conditions in section 5.3.4.2., above, by 45 days after submittal of the study plan, the Discharger shall begin implementing the study plan and schedule.

[1] *Final Aquatic Life and Aquatic-Dependent Wildlife Selenium Water Quality Criterion for Freshwaters of California*, EPA-822-R-24-014 (December 2024)

[2] *Final Report for Reasonable Potential Study for Selenium in Permanente Creek* (Robertson-Bryan, Inc., December 2023)

5.3.4.2.2. By the date set forth in the study plan and schedule, the Discharger shall submit an interim report that:

5.3.4.2.2.1. Determines if the Discharger can collect sufficient representative fish tissue data or, if such fish tissue data are unavailable, an alternative form of data, from Permanente Creek to evaluate reasonable potential for selenium to exceed the Final Freshwater Selenium WQC;

5.3.4.2.2.2. Provides a plan and schedule to collect representative data, as described above, from Permanente Creek, and conduct a reasonable potential analysis by U.S. EPA's *Method for Translating Selenium Tissue Criterion Elements into Site-specific Water Column Criterion Elements for California, Version 2* (December 2024).

5.3.4.2.3. Fish tissue monitoring shall conform to U.S. EPA's *Technical Support for Fish Tissue Monitoring for Implementing the EPA's 2016 Selenium Criterion* (December 2024). The interim report and schedule shall be acceptable to the Executive Officer, who will confirm that they meet the conditions set forth in items 5.3.4.2.2.1 and 5.3.4.2.2.2, above.

5.3.4.2.4. Unless the Executive Officer objects to the interim report and proposes changes necessary to meet the conditions in section 5.3.4.2., above, by the date set forth in the interim report and schedule, the Discharger shall begin implementing the interim report plan and schedule.

5.3.4.2.5. No later than with the Report of Waste Discharge required in Table 3 of this Order, the Discharger shall provide a final report that includes the results of the sampling effort, a recommended finding regarding reasonable potential, and all supporting data and analysis.

5.3.4.3 Any subsequent revisions to U.S. EPA criteria and guidance cited above shall be incorporated into all data collection and analysis, and into the interim and final reports to the extent possible.

We revised Fact Sheet section 3.4.1 as follows:

> **Selenium**….The Regional Water Board adopted the previous order, which contained effluent limitations and required implementation of BMPs to achieve water quality standards in Permanente Creek. This Order continues the previous order's requirements and implements a revised water quality standard, including a newly-promulgated water quality

criterion, for selenium (see Fact Sheet § 4.3.2.3). It also contains monitoring and reporting requirements to allow the Regional Water Board to evaluate progress toward achieving the revised water quality standards and eliminating the impairment.

We revised Fact Sheet section 4.3.2.3 as follows:

> **CTR Criteria.** The CTR specifies numeric aquatic life and human health criteria for numerous priority pollutants…
>
> ⋮
>
> In December 2024, U.S. EPA promulgated a revised CTR selenium criterion for California freshwater receiving waters in *Final Aquatic Life and Aquatic-Dependent Wildlife Selenium Water Quality Criterion for Freshwaters of California*, EPA-822-R-24-014 (Final Freshwater Selenium WQC)….The revised criteria include fish tissue and bird tissue elements to protect against bioaccumulation and reproductive toxicity, a water column criterion derived from those elements of 3.1 µg/L, and an option to calculate a site-specific water quality criterion using a mechanistic model according to U.S. EPA's *Method for Translating Selenium Tissue Criterion Elements into Site-specific Water Column Criterion Elements for California, Version 2* (December 2024).[2] With its Report of Waste Discharge, the Discharger calculated a site-specific criterion of 4.9 µg/L for Permanente Creek (*Reasonable Potential Study for Selenium in Permanente Creek, Final Report*, Robertson-Bryan, Inc. [RBI], December 2023). However, because the RBI report's calculated site-specific criterion was based on insufficiently representative data, this Order applies the more protective default water column criterion of 3.1 µg/L.

We revised Fact Sheet section 4.3.3.1.4 as follows:

> **Reasonable Potential Analysis.** The maximum effluent concentrations, most stringent applicable water quality criteria and objectives, and ambient background concentrations used in the analysis are presented in the following table, along with the reasonable potential analysis results for each pollutant. Based on this analysis, the only pollutant that demonstrates reasonable potential is selenium ~~by Trigger 3, as explained in Table F-9, Footnote 5, below~~.

We replaced Fact Sheet section 5.3.4. similarly to Provision 5.3.4., as follows:

> 5.3.4. ~~**Receiving Water Data Reporting.** This Order requires the Discharger to upload specified receiving water data to the California Environmental Data Exchange Network (CEDEN) to the extent that CEDEN accommodates the data type. This requirement ensures that the public can access these data through CEDEN's database, and that the State and Regional Water Boards can use these data to evaluate whether Permanente Creek~~

~~meets water quality standards pursuant to CWA section 303(d).~~ This provision allows the Discharger to conduct a future reasonable potential analysis for the Discharger's selenium discharges to Permanente Creek based on selenium in fish tissue according to the U.S. EPA's new selenium water quality criterion for California freshwater (see Fact Sheet § 4.3.2.3). The criterion establishes tiered water quality criteria; fish tissue criteria supersede water column criteria and could serve as the basis for a reasonable potential analysis. The required study would be conducted in phases. The requirements recognize and reflect the potentially limited availability of fish to sample and analyze.

We revised Fact Sheet Table F-9 as follows:

CTR #	Pollutant	C or Governing Criterion or Objective (mg/L)	MEC or Minimum DL [1][2] (mg/L)	B or Minimum DL [1][2] (mg/L)	Result [3]
1	Antimony	6.0	0.72	1.6	No
⋮	⋮	⋮	⋮	⋮	⋮
9	Nickel	100	6.3	13	No
10	**Selenium**	**~~4.9~~ 3.1**	**4.6**	**0.30**	**Yes ~~[5]~~**
11	Silver	24	< 0.10	< 0.10	No
⋮	⋮	⋮	⋮	⋮	⋮

We revised Fact Sheet Table F-10 as follows:

PRIORITY POLLUTANTS	Selenium
Units	**µg/L**
Basis and Criteria type	Freshwater Selenium WQC
Criteria -Acute	—
Criteria -Chronic	~~4.9~~ 3.1
Water Effects Ratio (WER)	1
Lowest WQO	~~4.9~~ 3.1
Dilution Factor (D) (if applicable)	0
⋮	⋮
Applicable Acute WQO	—
Applicable Chronic WQO	~~4.9~~ 3.1
HH criteria	—
⋮	⋮
ECA acute	—
ECA chronic	~~4.9~~ 3.1
ECA HH	—

PRIORITY POLLUTANTS	Selenium
Units	µg/L
Number of data points <10 or at least 80% of data reported non detect? (Y/N)	N
Avg of effluent data points	~~1.3~~ 0.31
Std Dev of effluent data points	~~1.0~~ 0.21
CV calculated	~~0.79~~ 0.68
CV (Selected) – Final	~~0.79~~ 0.68
ECA acute mult99	~~0.25~~ 0.29
ECA chronic mult99	~~0.72~~ 0.76
LTA acute	—
LTA chronic	~~3.5~~ 2.3
minimum of LTAs	~~3.5~~ 2.3
AMEL mult95	~~1.3~~ 1.2
MDEL mult99	~~4.0~~ 3.4
AMEL (aq life)	~~4.4~~ 2.9
MDEL (aq life)	~~14~~ 8.1
MDEL/AMEL Multiplier	~~3.2~~ 2.8
AMEL (human hlth)	—
MDEL (human hlth)	—
minimum of AMEL for Aq. Life vs HH	~~4.4~~ 2.9
minimum of MDEL for Aq. Life vs HH	~~14~~ 8.1
Previous order limit (30-day average)	3.7
Previous order limit (daily)	8.2
Final limit – AMEL	~~3.7~~ 2.9
Final limit – MDEL	~~8.2~~ 8.1

LEHIGH

Lehigh Comment 1. *Lehigh requests that we revise the tentative order to delete references to the Upper Water Treatment System (Upper WTS) in Table 1 and elsewhere throughout. Lehigh states that the Upper WTS is being removed to accommodate stream restoration work and will be relocated once that work is complete if the Permanente facility's operations make further use of it necessary. Lehigh provided an updated Attachment C (Flow Diagram) reflecting this change. Lehigh also requests*

that the Lower WTS be referred to as the Lower Final Treatment System (Lower FTS) for consistency with the current permit.

Response to Lehigh Comment 1. We agree. Water Board and U.S. EPA personnel observed that the Upper WTS is being removed during a June 2025 compliance evaluation inspection. We revised Table 1 as follows:

Discharge Point	Effluent Description	Discharge Point Latitude	Discharge Point Longitude	Receiving Water
001	Treated quarry dewatering water… and stormwater~~,~~ treated at ~~either~~ the ~~Upper Water Treatment System (Upper WTS) or Lower Water Treatment System (Lower WTS)~~ Lower Final Treatment System (Lower FTS)	37.31713°	-122.11165°	Permanente Creek
⋮	⋮	⋮	⋮	⋮
007	Same sources as Discharge Point 001, treated at the Lower ~~WTS~~ FTS	37.31778°	-122.08750°	Permanente Creek

We also included the revised flow diagram as Attachment C and made the following revisions to the tentative order.

We revised Attachment E (Monitoring and Reporting Program [MRP]), Table E-1:

Table E-1. Monitoring Locations

Discharge Point	Monitoring Location	Monitoring Location Description [1]
Effluent	EFF-001	A point in the outfall (Discharge Point 001) following treatment at the ~~Upper Water Treatment System (Upper WTS) or~~ Lower ~~Water~~ Final Treatment System (Lower ~~WTS~~ FTS)~~,~~ and prior to the receiving water, at which all waste tributary to the outfall is present. *Latitude 37.31703º Longitude -122.11165º*
⋮	⋮	⋮
Effluent	EFF-007	A point in the outfall (Discharge Point 007) following treatment at the Lower ~~WTS~~ FTS, and prior to the receiving water, at which all waste tributary to the outfall is present. *Latitude 37.31778° Longitude -122.08750°*
⋮	⋮	⋮

We revised Fact Sheet section 2.2:

> **Wastewater Treatment and Control.** During normal operations, the Discharger pumps quarry dewatering water and stormwater collected in the quarry pit ~~to Pond 1250, then to the Upper Water Treatment System (Upper WTS). Alternatively, the Discharger pumps this water~~ to Tank 950, where flow can then be sent to the Lower Final Treatment System (Lower FTS) (See Attachment C.)...
>
> The Discharger directs process wastewater from the Rock Plant and Truck Wash, and stormwater from the Dinky Shed basin and Cement Plant area, to Pond 1, then to Pond 11…The Discharger either reclaims water collected in Pond 11 for on-site reuse or sends it to the quarry pit for subsequent treatment at ~~either~~ the ~~Upper WTS or~~ Lower FTS. The Discharger uses the quarry pit as equalization storage to store water for later treatment and discharge.
>
> The Discharger discharges stormwater that does not require treatment at the ~~WTS~~ FTS to Permanente Creek at two other locations: Discharge Points 002 (from Pond 13B) and 005 (from Pond 20)….

We revised Fact Sheet section 2.4.4.2.2:

> **January 14 through 19, 2023.** An estimated intermittent flow of between 100 and 312 gpm of stormwater normally directed for treatment was discharged from the Yeager Yard sediment basin. High intensity rainfall caused this discharge when the suction line to the pump that transfers stormwater from the Yeager Yard sediment basin to the ~~WTS~~ FTS was blocked by material accumulation. The suction line became blocked at approximately 11:00 a.m….

We revised Fact Sheet section 4.3.3.5.:

> **Dissolved Oxygen.** Basin Plan section 3.3.5 requires minimum dissolved oxygen (DO) levels in non-tidal waters with the COLD or WARM beneficial uses of 7.0 mg/L and 5.0 mg/L, respectively, and that the median DO concentration for any three consecutive months not be less than 80 percent of the dissolved oxygen content at saturation….Therefore, reasonable potential is analyzed by review of other information. The Lower ~~and Upper WTS~~ FTS removes selenium and other metals by an anaerobic attached growth process and aerates the effluent using a fine bubble diffuser prior to discharge (Regional Water Board, *Compliance Evaluation Inspection Report, Lehigh Southwest Cement Company*, August 4, 2023). Thus, there is reasonable potential for the discharge, if inadequately aerated, to exceed the narrative DO water quality objective and an effluent limit is required to ensure proper operation of the treatment system~~s~~.

Lehigh Comment 2. *Lehigh requests that we remove the finding of reasonable potential and the instantaneous minimum effluent limit for dissolved oxygen (DO) from the tentative order. The reasonable potential finding and effluent limit replace the receiving water limits for DO recently struck down by the United States Supreme Court's ruling in* City and County of San Francisco v. U.S. EPA*. Lehigh points to the lack of effluent and receiving water DO data and recommends that we require a special study to collect such data, pointing out that we may reopen the permit if reasonable potential is found.*

Lehigh points to six permits recently adopted by the Central Valley Regional Water Quality Control Board (CVWB). In each of those permits, the CVWB considered effluent limits for temperature to replace receiving water limits struck down in City and County of San Francisco v. U.S.EPA*. In each case, the CVWB found no reasonable potential to exceed the applicable narrative water quality objective for temperature. For one of the six cases, the City of Vacaville Easterly Wastewater Treatment Plant (NPDES Permit CA0077691), the CVWB found no reasonable potential due to lack of temperature data and required a special study to provide such data. Lehigh also points to the U.S EPA's comment on the City of Vacaville permit supporting that approach.*

Response to Lehigh Comment 2. We did not revise the tentative order. The U.S. EPA comment that Lehigh points to primarily pertains to the discharge from the City of Vacaville. U.S. EPA commented that the draft permit contained conflicting information on whether that discharge had reasonable potential to exceed the water quality objective for temperature (which limits the temperature increase in the receiving water to no more than five degrees Fahrenheit [5 ºF]). U.S. EPA recommended that the CVWB clarify whether the discharge had reasonable potential, via requiring a special study if the existing data were not sufficient to complete a reasonable potential analysis. U.S. EPA's comment also points out that if the CVWB found reasonable potential for temperature, it would be required to impose an effluent limit for temperature.

For the Permanente Plant's discharge and the Basin Plan's minimum DO water quality objective, reasonable potential is clear. As stated in the tentative order, Lehigh's treatment system is an anaerobic attached-growth biological treatment system (in contrast to more typical aerobic attached-growth biological treatment systems). As such, it's effluent must be re-oxygenated before discharge, which is done by a fine bubble diffuser as the final treatment step; therefore, there is reasonable potential for discharges below the DO water quality objective, and a minimum effluent limit is required to ensure proper operation of the treatment system. That Lehigh cannot supply data showing its effluent is adequately aerated underscores the point that a minimum effluent limit for DO is necessary. If data collected over this permit term shows there is not reasonable potential, the finding of reasonable potential can be re-evaluated during the normal course of permit reissuance – though even in that case, a limit would likely be retained to ensure proper operation of the treatment system.

Lehigh Comment 3. *Lehigh requests that we revise the tentative order to remove the requirement to upload receiving water selenium data to the California Environmental Data Exchange Network (CEDEN) and submit receiving water data for all other*

parameters to the State Water Board Information Management and Quality Assurance Office (SWAMP IQ). Lehigh points out that these data are uploaded to the California Integrated Water Quality System (CIWQS) in monthly self-monitoring reports and argues that also submitting them to CEDEN and SWAMP IQ is redundant. Lehigh adds that that the State Water Resources Control Board (State Water Board) now exports receiving water data directly from CIWQS for the 2028 Integrated Report/303(d) process, thus upload to CEDEN and SWAMP IQ is unnecessary. Lehigh further states that uploading or submitting data to CEDEN and SWAMP IQ is burdensome and time intensive.

Response to Lehigh Comment 3. We agree. The rationale for requiring Lehigh to upload receiving water data to CEDEN (or report those data to SWAMP IQ) was, as stated in the current permit (Order R2-2019-2025, Fact Sheet §VI.C.4):

> *This Order requires the Discharger to upload receiving water data to the California Environmental Data Exchange Network (CEDEN) to the extent that CEDEN accommodates the data type. This requirement ensures that the public can access these data through CEDEN's database, and that the State and Regional Water Boards can use these data to evaluate whether Permanente Creek meets water quality standards pursuant to CWA section 303(d).*

In practice, the data were used to support a TMDL for toxicity in Permanente Creek and to evaluate Permanente Creek water quality pursuant to CWA section 303(d). As no toxicity related to the discharge was found, a TMDL for toxicity in Permanente Creek is no longer being considered and there is no longer a need to collect and upload receiving water data to CEDEN to support a TMDL. Furthermore, the public can access these data from CIWQS.

We deleted this reporting requirement, formerly Provision 5.3.4, and its Fact Sheet basis, formerly Fact Sheet section 5.3.4, from the tentative order as shown in our Response to U.S. EPA Comments 3 and 4, above.

We deleted Attachment E (Monitoring and Reporting Program) section 1.5:

> ~~1.5 For parameters reported to the California Environmental Data Exchange Network (CEDEN), monitoring data must be Surface Water Ambient Monitoring Program (SWAMP) comparable. Minimum data quality shall be consistent with the latest version of the *SWAMP Quality Assurance Program Plan* (*QAPP*), currently the 2017 version (SWAMP, May 2017), for applicable parameters, including data quality objectives, field and laboratory blanks, field duplicates, laboratory spikes, and clean techniques using the most recent SWAMP Standard Operating Procedures. To achieve SWAMP comparable and acceptable data quality, monitoring under this Order shall be consistent with the "Regulation" intended data use of the SWAMP QAPP (SWAMP, May 2017, page 54). The data shall be~~

~~collected under this Order's terms, conditions, and requirements. All laboratories performing analytical work shall be NELAP or ELAP certified. In addition, methods shall be compliant with 40 C.F.R. part 136 where applicable. At a minimum, method minimum quality control samples and acceptance criteria specified in the following SWAMP Measurement Quality Objectives apply to monitoring conducted under this Order:~~

- ~~*Conventional Parameters in Fresh and Marine Water* (SWAMP, 2013)~~
- ~~*Field Measurements in Fresh and Marine Water* (SWAMP, 2013),~~
- ~~*Inorganic Analytes in Fresh and Marine Water* (SWAMP, 2013), and~~
- ~~*Chronic Freshwater Toxicity Testing* (SWAMP, January 27, 2020).~~

~~SWAMP documents on the above topics can be found at the *SWAMP – Quality Assurance* webpage and *SWAMP - Quality Control and Sample Handling Guidelines* webpage.~~

Lehigh Comment 4. *Lehigh requests that we revise the tentative order to require monitoring for electrical conductivity (EC) in place of salinity and TDS. Lehigh points out that salinity monitoring is required only at Monitoring Locations EFF-001 and -007, while TDS monitoring is already required at those locations. EC monitoring is also already required in addition to TDS monitoring at stormwater discharge and receiving water monitoring locations. Lehigh also states that the units in which salinity is to be reported – parts per thousand (ppt) – are not appropriate for monitoring a freshwater creek. Lehigh states that consistent monitoring for EC across all effluent and receiving water locations will help Lehigh manage their monitoring and reporting program, limit confusion, and promote comparison among locations.*

Response to Lehigh Comment 4. We agree. EC and TDS are measures of salinity that can be converted to salinity in ppt using standard formulas and thus can be used for monitoring and reasonable potential analysis. (Conversion from EC in micromhos [µmhos] to salinity in parts per thousand is water temperature-dependent, but the tentative order would also require effluent and receiving water temperature monitoring.) We revised the tentative order as shown below.

We revised Attachment E, Monitoring and Reporting Program (MRP), Table E-2, Effluent Monitoring Locations EFF-001 and EFF-007, as follows:

Parameter	Unit	Sample Type [1]	Minimum Sampling Frequency
Flow [2]	MGD	Continuous	Continuous/D
⋮	⋮	⋮	⋮
Dissolved Oxygen	mg/L	Grab	1/Week
~~Salinity~~	~~ppt~~	~~C-24~~	~~1/Quarter~~

Parameter	Unit	Sample Type [1]	Minimum Sampling Frequency
Settleable Matter	mL/L-hr	Grab	1/Month
⋮	⋮	⋮	⋮
Chlorine, Total Residual [3]	mg/L	Grab	1/Day
Selenium	µg/L	Grab	2/Month
Electrical Conductivity ~~Total Dissolved Solids (TDS)~~	µmhos/cm ~~mg/L~~	Grab	1/Quarter
Chronic Toxicity [4]	"pass" or "fail" and % effect	C-24	2/Year
⋮	⋮	⋮	⋮

We revised Attachment E, MRP, Table E-3, Effluent Monitoring Locations EFF 002 and EFF-005, as follows:

Parameter	Unit	Sample Type [1]	Minimum Sampling Frequency
Electrical Conductivity	µmhos/cm	Grab	1/Quarter
Flow [2]	MG	Continuous	1/Month
⋮	⋮	⋮	⋮

We revised Attachment E, MRP, Table E-4, Receiving Water Monitoring Locations RSW-001 and 001A, as follows:

Parameter	Units	Sample Type	Minimum Sampling Frequency [1]
Chloride [2]	mg/L	Grab	1/Year
Electrical Conductivity	µmhos/cm	Grab	[3]
Dissolved Oxygen	mg/L and % Saturation	Grab	[3]
⋮	⋮	⋮	⋮
Priority Pollutants [6]	µg/L	Grab	1/Year
~~TDS~~	~~mg/L~~	~~Grab~~	~~1/Year~~
Trace Metals [2, 7]	µg/L	Grab	2/Year
⋮	⋮	⋮	⋮

We revised Attachment E, MRP, Receiving Water Monitoring Location RSW-002, Table E-5 as follows:

Parameter	Units	Sample Type	Minimum Sampling Frequency
Dissolved Oxygen	mg/L and % Saturation	Grab	1/Quarter
⋮	⋮	⋮	⋮
Selenium	µg/L	Grab	1/Quarter

Parameter	Units	Sample Type	Minimum Sampling Frequency
~~TDS~~ Electrical Conductivity	~~mg/L~~ µmhos/cm	Grab	1/Year
Standard Observations [1]	—	—	1/Quarter

We revised Attachment E, MRP, Table E-6, Receiving Water Monitoring Location RSW-004, as follows:

Parameter	Units	Sample Type	Minimum Sampling Frequency [1]
Chloride	mg/L	Grab	2/Year [3]
⋮	⋮	⋮	⋮
Selenium	µg/L	Grab	[2]
~~TDS~~ Electrical Conductivity	~~mg/L~~ µmhos/cm	Grab	1/Year
Trace Metals [6]	µg/L	Grab	2/Year [3]
⋮	⋮	⋮	⋮

We revised Fact Sheet Table F-11, Monitoring Requirements Summary, as follows:

Parameter	Effluent EFF-001 and EFF-007	Effluent EFF-002 and EFF-005	Receiving Water RSW-001 and RSW-001A	Receiving Water RSW-002	Receiving Water RSW-004
Chloride	—	—	1/Year [1]	—	2/Year
Electrical Conductivity	1/Quarter	1/Quarter	[2]	1/Year	1/Year
Dissolved Oxygen	1/Week	—	[2]	1/Quarter	[2]
⋮	⋮	⋮	⋮	⋮	⋮
pH	Continuous/ D or 1/Day [5]	1/Quarter	[2]	1/Quarter	[2]
~~Salinity~~	~~1/Quarter~~	~~—~~	~~—~~	~~—~~	~~—~~
Settleable Matter	1/Month	1/Quarter	1/Year [4]	—	—
⋮	⋮	⋮	⋮	⋮	⋮
Selenium [6]	2/Month	[2]	[2]	1/Quarter	[2]
~~TDS~~	~~1/Quarter~~	~~—~~	~~1/Year~~	~~1/Year~~	~~1/Year~~
Trace Metals [7]	—	—	2/Year [1]	—	2/Year
⋮	⋮	⋮	⋮	⋮	⋮

Lehigh Comment 5. *Lehigh requests that we delete references to chronic toxicity surveillance monitoring from Attachment A to the tentative order and delete the*

Surveillance Monitoring flow chart (Appendix E-4 to Attachment E, MRP). Lehigh states that chronic toxicity surveillance monitoring is not applicable to its discharge and references to it should be deleted to avoid confusion.

Response to Lehigh Comment 5.

We generally do not revise Attachment A and the appendices to Attachment E, MRP, as they are standard attachments for all NPDES Permits. However, Lehigh is correct that surveillance monitoring does not apply to its discharge to Permanente Creek, because it does not have a toxicity effluent limit and is required to monitor at an in-stream waste concentration (IWC) of 100 percent. Thus, we revised Attachment E, MRP, section 5. as follows.

> The Discharger shall monitor effluent chronic toxicity at Monitoring Locations EFF-001 and EFF-007 and receiving water chronic toxicity at Monitoring Locations RSW-001 and RSW-004. <u>The Discharger is not required to conduct surveillance monitoring, as defined in Attachment A, and the associated Appendix E-4: Toxicity Reduction Evaluation Process Flowchart for Discharges with Chronic Toxicity Limits is not applicable to the discharges covered by this Order</u>.

Lehigh Comment 6. *Lehigh requests that we revise Attachment E, MRP, Section 5.1.2., Chronic Toxicity Sensitivity Screening, to remove the requirement to do chronic toxicity species sensitivity screening in this permit term, as it submitted the results of its species screening with its permit reissuance application. Lehigh points out that Fact Sheet section 6.1.3. confirms this, stating:*

> On December 5, 2023, the Discharger submitted a permit reissuance application with a chronic toxicity species screening that satisfies the minimum screening requirements in Toxicity Provisions Section III.C.2.a.

Response to Lehigh Comment 6. We partly agree. MRP, Appendix E-1, section 2.1, requires a species sensitivity screening under three conditions stated in sections 2.1.1. through 2.1.3. The species screening submitted by the Discharger satisfies sections 2.1.1 and 2.2.2. Section 2.1.3 requires a new species screening "no later than 18 months after any significant change in the nature of the effluent discharged due to changes in sources or treatment, except those changes resulting from reductions in pollutant concentrations attributable to source control efforts." We revised Attachment E, MRP, section 5.1.2. as follows.

> **Test Species.** The test species shall be water flea (*Ceriodaphnia dubia*) unless a more sensitive species is identified in accordance with MRP, Appendix E-1<u>, section 2</u>. ~~The~~ <u>If required by that section,</u> the Discharger shall conduct chronic toxicity species sensitivity screening as described in Appendix E-1. Upon completion of the chronic toxicity screening, the most sensitive species shall be the species that exhibits the highest percent effect at the Instream Waste Concentration (IWC) as determined by the screening.

MS. CATHY HELGERSON

We numbered Ms. Helgerson's comments in the order in which she presented them. Ms. Helgerson's comments are presented lightly edited for typographical errors with occasional explanation, but otherwise are as she presented them.

[Comments 1 through 7 are made in reference to Table 1 of the tentative order, except for the last paragraph of Ms. Helgerson Comment 7, which is made in reference to tentative order section 2.2.]

Ms. Helgerson Comment 1. *First and foremost, this NPDES Permit should not be renewed or reissued. The U.S. EPA and the Regional Water Board have classified this discharge as major.*

There is a Seepage Report that Santa Clara County has not made public. The Lehigh Company mined the quarry below the water table, which was illegal. This water ties into the aquifer below the ground, a very serious matter. This aquifer is the Silicon Valley's drinking water. This needs to be investigated and Lehigh has never been fined for this for this violation. My question here is why not? The aquifer water seeps into the Lehigh quarry, and the Lehigh water can seep back into the aquifer. This quarry pit is open to the back and forth of the water between the two areas. This needs to be investigated. The public's health and safety considerations must be considered.

Response to Ms. Helgerson Comment 1. To clarify, Lehigh does not renew or reinstate its own permit; Lehigh must apply to the Regional Water Board to reissue it. Lehigh does not regulate itself.

This discharge is classified as major based on several criteria, including potential toxicity (based on the industrial category), discharge and stream flow volume, receiving water impairment, nearby drinking water sources, and proximity to the San Francisco Bay/Delta estuary. This classification guides our establishment of permit requirements to protect water quality. However, it is not an indicator of the level of pollution caused or threatened by the discharge, nor does it determine if a permit should not (or should) be issued.

Regarding the potential for the Regional Water Board to deny this NPDES permit renewal, see our response to Ms. Helgerson Comment 7.

On September 2, 2014, the Regional Water Board received the report: *WMSA and EMSA Runoff and Seep Investigation Report*, which details a study conducted by Golder Associates, Inc., on behalf of the Discharger to assess potential impacts from stormwater and seepage of pollutants to groundwater associated with the Discharger's facilities. The report was compiled by an independent third-party contractor and was prepared under the direction of William Fowler, a certified professional geologist (Certification No. 1401). The study was conducted according to a workplan reviewed

and approved by the Regional Water Board on November 5, 2013 (https://geotracker.waterboards.ca.gov/view_documents?global_id=SL1821M610&enforcement_id=6268124).

Based on the monitoring data collected, the report concluded that "petroleum hydrocarbons, VOCs, SVOCs, PCBs, pesticides and cyanide do not pose a significant threat to the site's groundwater or surface water" and that "Potential impacts to surface and/or ground waters related to metals are being handled through the individual NPDES permit facility improvements or will be evaluated further as part of the hydrogeologic investigation that will be initiated in the upcoming year." The report is publicly available through Geotracker (https://geotracker.waterboards.ca.gov/esi/uploads/geo_report/7178102612/SL1821M610.PDF).

The Regional Water Board is not aware of any other Seepage Reports produced by or filed with Santa Clara County that have not been made public. Any reports in Santa Clara County's possession are public records that may be requested pursuant to the California Public Records Act, Government Code § 7920.000 et seq., as described at https://prc.santaclaracounty.gov/procurement-department/request-public-records.

This comment states that water from the nearby Santa Clara Valley groundwater basin, which is used as drinking water supply, is connected (i.e., "ties into") the water table underlying the quarry pit with water flowing back and forth between the aquifer and quarry. This topic has been investigated previously, including in a 2012 Superfund Preliminary Assessment (described in greater detail in our Response to Ms. Helgerson Comment 5 below). Although sampling of groundwater from on-site monitoring wells in 1991 detected elevated concentrations of cadmium, selenium and arsenic, the 2012 investigation determined that the shallow water table on-site is underlain by a thick bedrock formation that ensures the site is hydrogeologically "separated from the unconfined alluvial aquifer of the Santa Clara Valley groundwater basin". Therefore, the assertion that the shallow on-site groundwater is connected to the Santa Clara Valley aquifer that is used for drinking water is not supported by past investigations.

The Santa Clara Valley aquifer is recharged downstream of the quarry where surface waters, including Permanente Creek, leave the foothills, encounter alluvial deposits, and become losing streams. Thus, the requirements of this tentative order would protect the drinking water aquifer by preventing pollutants from exiting the site via surface water. Any limited potential for site groundwater to reach the deeper aquifer is addressed by the requirements of Regional Water Board Order R2-2018-0028, which include groundwater monitoring to ensure that pollutants leaving the site in groundwater would be detected before they present a problem.

The quarry contains groundwater from the shallow water table (approximately 25 to 90 feet below the ground surface) and stormwater that either flows to the quarry or is directed there for storage prior to treatment. The quarry extraction wells are only deep

enough to dewater the quarry for quarrying operations. (With the cement plant shut down and Lehigh processing already mined material at the Rock Plant, Lehigh no longer dewaters the quarry.) The quarry extraction wells are not deep enough to draw water from the deep aquifer into the quarry.

The nearest downgradient municipal supply wells are over two miles northeast of the site and are operated by California Water Services Company (CWSC) – Los Altos Suburban water system (Public Water System No. CA4310001), the City of Cupertino (Public Water System No. CA4310018), and the City of Sunnyvale (Public Water System No. CA4310014), respectively. For additional information about those public water systems, links are included above to the Water System Details pages for each water system through California Drinking Water Watch. For each of these public water systems, the closest wells to the Lehigh quarry are as follows:

- CWSC:
    - Well 015-01 (CA4310001_008_008), which is located at 37°20'48.2"N, 122°04'14.7"W, approximately 2.7 miles from the quarry.
    - Well 018-01 (CA4310001_011_011), which is located at 37°21'09.7"N, 122°03'49.4"W, approximately 3.2 miles from the quarry.
    - Well 006-02 (CA4310001_007_007), which is located at 37°21'41.4"N, 122°04'26.6"W, approximately 3.4 miles from the quarry.
    - Well 032-01 (CA4310001_022_022), which is located at 37°21'22.6"N, 122°03'41.6"W, approximately 3.7 miles from the quarry.
    - Well 017-01 (CA4310001_010_010), which is located at 37°21'49.5"N, 122°03'53.2"W, approximately 3.9 miles from the quarry.
    - Well 039-01 (CA4310001_037_037), which is located at 37°22'05.2"N, 122°03'55.9"W, approximately 4.1 miles from the quarry.
- Sunnyvale:
    - Westmoor Well (CA4310014_012_012), which is located at 37°20'15.8"N, 122°02'51.6"W, approximately 3.3 miles from the quarry.
    - Hamilton Wells 02 and 03 (CA4310014_003_003 and CA4310014_004_004), which are located at 37°21'19.2"N, 122°03'33.8"W, approximately 3.5 miles from the quarry.
    - Serra Well (CA4310014_010_010), which is located in Serra Park at 37°20'40.6"N, 122°02'34.6"W, approximately 4.0 miles from the quarry.
- Cupertino:
    - Franco Court Well (CA4310018_002_002), which is located at 37°20'12.8"N, 122°02'13.1"W, approximately 4.0 miles from the quarry.
    - Flowering Pear Court Well (CA4310018_003_003), which is located at 37°20'21.9"N, 122°02'04.9"W, approximately 4.1 miles from the quarry.

Links are included above to the monitoring results for each of these drinking water supply wells. The monitoring results are stored in the Safe Drinking Water Information System (SDWIS) and displayed on California Drinking Water Watch. Additionally, links are provided for the locations of each supply well (on Google Maps).

CWSC, Cupertino, and Sunnyvale actively monitor these wells for compliance with State and federal drinking water standards to protect the health of consumers. No pollutants of concern associated with the Discharger, including selenium, arsenic, and chromium (VI), have been detected at levels above a drinking water standard (i.e., maximum contaminant levels or MCLs) in any of the nearby municipal water supply wells.

Ms. Helgerson Comment 2. *The Lehigh cement plant was supposed to be dismantled after it was finally shut down and to this day it has not been. This cement plant continues to pollute with rainwater. The ground is saturated with the dust from the cement plant process which has been polluting the Silicon Valley. The homes and the condos next door have been subject to this dust and pollution. My serious concern is that the cement plant could be dismantled, and a new cement plant could be built. This would mean that Lehigh would have to abide by the new pollution rules pertaining to cement plants. This is devastating, a horrible thought.*

There is also a gas line that has been capped off but not dismantled. This is serious. If there is a fire the cement plant gas line could explode, and it would be like a bomb going off. The condos, the public's homes, would go up in smoke and people would be killed. Santa Clara County is aware of this and so are the agencies. Lehigh just recently has mentioned at a meeting that they would dismantle the cement plant. I have yet to witness this happening. I can see the cement plant from Stevens Creek Boulevard, and will be watching and waiting for this to happen.

Response to Ms. Helgerson Comment 2. The Regional Water Board is aware that the cement plant equipment is still present on site. U.S. EPA noted this as an area of concern in its report on its June 20, 2025, inspection performed with the Regional Water Board. U.S. EPA further stated in that report "Removal of industrial equipment that is no longer used or needed (e.g., the old rock crushing plant and cement plant) would remove pollutant sources and reduce the need for downstream treatment." The tentative order would continue to require treatment of runoff from the cement plant area at the treatment plant prior to discharge at Discharge Points 001 or 007 to protect water quality pursuant to the Clean Water Act.

Dismantling the cement plant and Lehigh's current land use are outside the scope of this tentative order because the Regional Water Board is not a land use agency. The relevant land use permitting authority is the Santa Clara County Planning Commission. If the Santa Clara County Planning Commission were to approve a new cement plant, Lehigh would need to apply for a new or amended NPDES permit. The Regional Water Board would provide for public comment prior to considering any such changes.

The Regional Water Board is unaware of any explosive hazards due to old gas lines at this site and has not observed any during recent compliance inspections. If there were any such hazards, they would be beyond the scope of this tentative order, which implements State and federal clean water law.

Ms. Helgerson Comment 3. *The East Material Storage Area (EMSA) is a dumping ground for mine waste. Lehigh has been allowed to cover up this area. I witnessed this dumping myself and contacted Santa Clara County letting them know what Lehigh was doing. I was against this and no one would do anything about it. To this day nothing has been done to find out what is under this pile of mine waste which has been polluting the water, air, and soil. The fact that there was an aluminum plant at this location and that they made bombs there is no problem to the agencies that are supposed to protect the public. How can this have happened?*

The West Material Storage Area (WMSA) is a dumping ground for polluted mine waste material which not only includes overburden, bricks used at the cement plant, but much more. The stormwater that flows over the cement plant when it rains, and also general water that was used in the process of making cement, has been and is a serious problem. It is time that Lehigh dismantle the cement plant and that the soil there be trucked off of the Lehigh property to a place that takes in and handles waste such as this. The cement plant should be part of the Lehigh Reclamation Plan Amendment 2023 and it is not. Why is that? If the cement plant is not part of the plan, then it should be cleaned up now. There should not be any of this mine waste going into the quarry pit for reclamation.

Response to Ms. Helgerson Comment 3. The Regional Water Board has investigated and documented previous site uses and potential pollutant sources, including the locations of the EMSA and WMSA, as described in the Waste Discharge Requirements in Regional Water Board Order R2-2018-0028, which is overseen by the Regional Water Board's Groundwater Protection Division. Pursuant to that order, the Regional Water Board's Groundwater Protection Division continues to require site characterization. The Regional Water Board is aware of the former aluminum plant on site and that it was reportedly used to manufacture magnesium incendiary bombs during World War II. However, to the extent that waste pile runoff could enter the wastewater stream, the tentative order's requirements would be sufficient to protect water quality. The tentative order would continue to require runoff from the EMSA and WMSA areas to be treated to remove selenium, nickel, and other pollutants at the treatment plant prior to discharge to protect receiving water quality pursuant to the Clean Water Act.

Regarding dismantling the cement plant, please see our response to Ms. Helgerson Comment 2.

The Reclamation Plan for the site is outside the scope of the tentative order because the Regional Water Board is not the permitting authority for the Reclamation Plan. The Santa Clara County Planning Commission is the permitting authority for the Reclamation Plan.

Ms. Helgerson Comment 4. *The Rock Plant is still operating and causing pollution to the air, water, and soil here in the Silicon Valley. It needs to be shut down. Lehigh is making money from this aggregate processing, selling it to the contractors in the Valley. There are also two silos that the product is stored in and the customers, building contractors, can come by and buy this product. Why is this allowed?*

Response to Ms. Helgerson Comment 4. Lehigh's current land use does not relate to this tentative order because the Regional Water Board is not a land use agency. The relevant land use permitting authority is the Santa Clara County Planning Commission.

The tentative order would continue to require treatment of all process wastewater generated by the Rock Plant to levels that are protective of water quality prior to discharge, pursuant to the Clean Water Act. The Regional Water Board has the authority to regulate pollutant sources that could reasonably harm water quality. If the Regional Water Board had evidence of ongoing violations of permit limits attributable to the Rock Plant that could harm water quality, it could use its enforcement authority to force Lehigh to cease or alter its operations to protect water quality. However, the Regional Water Board has no such evidence; currently, there are no ongoing violations of the existing order's effluent discharge limitations caused by the Rock Plant's process wastewater.

Ms. Helgerson Comment 5. *The U.S. EPA Superfund Site Division should take over the Lehigh property, all of it, and conduct a Superfund Site Cleanup. The Lehigh Reclamation Plan 2012, the Amendment 2023, and EIR should not be left up to the local agencies. My question is, why have the County, cities, agencies, and State of California allowed Lehigh to pollute all these years? They state that the Lehigh Reclamation Plan will take 40 years; add that to the date on the last Reclamation plan back in 2012, thirteen years, and the 1½ – 3 years that the EIR will take, and you have 53 years. The public still waits for justice. All the Lehigh land is polluted and must be cleaned up. This land should be used for housing, commercial use, and open space.*

Response to Ms. Helgerson Comment 5. The tentative order is an NPDES permit that would continue to require wastewater treatment to levels that are protective of water quality pursuant to the Clean Water Act. Regulatory oversight of site cleanup and groundwater protection activities at this site are outside the scope of this tentative order. Those regulatory activities are conducted by the Regional Water Board's Groundwater Protection Division under Order R2-2018-0028 (see Response to Ms. Helgerson Comment 3). Information about all regulatory actions taken by the Regional Water Board under that order is publicly available through GeoTracker (https://geotracker.waterboards.ca.gov/profile_report?global_id=SL1821M610).

In response to this comment, the Regional Water Board has summarized key regulatory actions taken related to site characterization and cleanup at this site. In February 1991, a Field Investigation Team (FIT) from Ecology and Environment, Inc., conducted a Screening Site Inspection of the site to determine whether cleanup actions under U.S. EPA oversight were required. The investigation was conducted pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act of 1980

(CERCLA) and the superfund Amendments and Reauthorization Act of 1986 (SARA), commonly referred to collectively as “Superfund”. The FIT determined that the site did not require remedial actions under CERCLA.

Subsequently, a Superfund Preliminary Assessment (PA) was conducted at the site by Weston Solutions, Inc., (Weston) on behalf of U.S. EPA in 2012. The purpose of the Superfund PA was to assess environmental and public health threats at the site and determine whether further investigation was warranted under the Superfund program. The Superfund PA was initiated in response to a citizen petition from Ms. Helgerson submitted pursuant to CERCLA Section 105(d) regarding concerns about potential release of hazardous substances from the site. Ms. Helgerson was notified by U.S. EPA at the time that the Superfund PA would be conducted.

The updated Superfund PA determined that the site was low priority for further assessment under CERCLA. Specific findings from the Superfund PA included that there was no indication of impacts to drinking water supplies from the facility because the nearest drinking water well is approximately 2 miles from the site and was meeting all federal and state standards for drinking water quality. The Superfund PA also determined that ongoing discharges from the site would most effectively be regulated by the Regional Water Board and U.S. EPA under the Clean Water Act, including actions taken by the Regional Water Board’s Site Cleanup Program and through NPDES permits issued by the Regional Water Board. The Superfund PA concluded the following: “Because this facility is being actively regulated…, further evaluation under Superfund is not warranted at this time. However, if air and water regulatory activities reveal new information that suggest that additional work under Superfund may be needed to protect public health or the environment, U.S. EPA will consider appropriate action at that time.”

The findings from the 1991 and 2012 Superfund assessments at the site are available through GeoTracker. Since the completion of the Superfund PA in 2012, the Regional Water Board has not been made aware of new information or environmental data that would indicate that additional work under Superfund would be needed to protect public health or the environment in addition to the Regional Water Board’s ongoing regulatory activities pursuant to Order R2-2018-0028 and the NPDES permitting process. Anyone in possession of specific and actionable information to that effect is encouraged to share it with the Regional Water Board and U.S. EPA.

Parts of this comment on Lehigh’s current land use do not relate to this tentative order because the Regional Water Board is not a land use agency. The relevant land use permitting authority is the Santa Clara County Planning Commission. However, it should be noted that converting a site with a history of concerns about environmental and public health risks to housing, commercial use, or public-access open space may be difficult due to public and regulatory concerns.

Ms. Helgerson Comment 6. *Permanente Creek pollution and Lehigh’s destruction to the creek that has had a problem with crystallization; I have pictures of what the creek looks like with this formation. Question: how can Permanente Creek be restored if*

Lehigh is still allowed to pollute Permanente Creek with its polluted water? Lehigh conducted a private groundbreaking ceremony ribbon cutting just the other day and it was invitation only. Needless to say, I was not included in this Santa Clara County show of support. They held this ceremony on Lehigh land, but it should have been held on natural ground next to the creek. The public should all have been notified and allowed to attend. Even the news media did not know where the meeting was going to be held. Lehigh also had a tour of the property, get on the bus and away they went, just those that were invited and selected by Lehigh. Why did Santa Clara County Board members allow this display of catering to Lehigh and leaving the public who elected them out? The Sierra Club member was there and spoke giving their support to Lehigh, no question about that, after all they are an open space nonprofit and they would love to have some of the land for themselves. I know how this sounds, but the truth is the truth and no one can go without saying it. Rod Sinks, an old City of Cupertino City Council member who favors Lehigh, was there. Margaret, a City Council member, cut the ribbon and I have a picture of that. I suppose that this information is not a problem with the Regional Water Board and staff, but it is to me and the public. Lehigh does not own Permanente Creek, it is a tributary of San Francisco Bay. I am really discouraged by all this and so should the public be up in arms over it. I understand that Permanente Creek restoration will cost 25 million dollars and Lehigh has to pay to have the work done restoring.

Response to Ms. Helgerson Comment 6. The Regional Water Board has not been made aware of Ms. Helgerson's claims of crystallization in Permanente Creek before this letter. Further, Regional Water Board staff are unsure what "crystallization" means in this context and have not observed anything during their regular compliance inspections they would call crystallization. If the Regional Water Board finds or is provided evidence of this phenomenon, it will follow up to ensure that water quality is protected.

Comments related to Permanente Creek restoration and any associated publicity events are outside the scope of this tentative order. However, the July 22, 2025, groundbreaking ceremony this comment refers to marked the beginning of Lehigh's Permanente Creek restoration project. Contrary to the comment, the news media was present (see Cupertino Quarry Owner Begins $25 Million Permanente Creek Cleanup Effort | KQED; City To Host Ribbon Cutting Ceremony Celebrating Permanente Creek Restoration; Project to revive health of Permanente Creek, damaged by quarry operation, breaks ground - Local News Matters) and the public was informed (Sierra Club July 21, 2025, press release). Staff found the foregoing, which are not exhaustive, by a simple internet search.

The tentative order would continue to regulate wastewater discharges and, by preventing pollution of Permanente Creek, would facilitate Permanente Creek restoration. This tentative order would continue to require wastewater treatment to levels that protect water quality in Permanente Creek pursuant to the Clean Water Act.

Ms. Helgerson Comment 7. *I do not suppose that my comments as such will be answered by the Water Board, from what I have seen in the past they decide which*

question to answer and how. No comments on the processes, things I have known for years will be included in the Water Board responses. I commented on the last discharge renewal and that is how I know that my feelings and comments will be omitted. Lehigh should not be allowed to renew or reinstate this permit. They should also not be allowed to monitor themselves, police themselves. Lehigh has violated so many regulations, and they have paid large sums of money to Santa Clara County and the agencies, so how can anyone expect any honest reporting on their part? I have mentioned before that I feel that the U.S. EPA Superfund Site Division should take over the Reclamation Plan Amendment and EIR. The sad case is that the pollution to the air, water, and soil continues. This needs to be dealt with right away. The quarry pit must be filled in order to stop the seepage water coming in from the Silicon Valley aquifer below. Santa Clara County has a seepage report that they need to make public.

Lehigh has, for decades, and continues to violate the Clean Water Act. The fact that Lehigh monitors themselves has not helped to stop the violations. This continued allowance of pollution to our water, air, and soil has made many people wonder what is really going on here. The question is, in my view: is this about fines being paid and not real enforcement taking place? How can this continue? What good are the laws and regulations if these polluters can just pay a fine and go right on polluting over and over again? This form of government needs to change.

Response to Ms. Helgerson Comment 7. The Regional Water Board welcomes public comments on all items under consideration and strives to provide meaningful responses to all comments and questions. The Regional Water Board has determined that the comments provided herein do not include actionable information that would justify the denial of the reissuance of this NPDES permit. We reiterate that Lehigh does not renew or reinstate its own permit; Lehigh must apply to the Regional Water Board to reissue it. Lehigh does not regulate itself.

The Clean Water Act places the burden of compliance monitoring and reporting on dischargers, recognizing the limited resources of regulatory agencies to take this on and ensuring that dischargers are financially responsible for preventing and cleaning up their pollution. This nationwide approach has historically worked well and continues to be the approach the Regional Water Board takes for all its discharge permits. Attachment G, section 3.1.1, of the tentative order requires dischargers to use a certified laboratory; thus, Lehigh's monitoring results are processed at laboratories certified by the State's Environmental Laboratory Accreditation Program (ELAP). These laboratories are audited regularly where their performance is checked against known quantities to ensure they are reporting accurate results. Attachment D, section 5.2, requires Lehigh to report results under penalty of perjury. Submitting false information carries with it the risk of significant penalties for the Discharger, including the possibility of imprisonment for knowing violations. The Regional Water Board has not found evidence that would support the serious accusation that Lehigh or its contract laboratories knowingly submit false information.

The Regional Water Board does not profit from permit fees or enforcement-related monetary penalties. In this case, the Regional Water Board's enforcement efforts,

including both administrative civil liabilities and a cease and desist order, have resulted in substantial improvement in compliance with permit requirements. Since October 1, 2017, Lehigh's permit violations have plummeted in both number and severity. All monetary penalties have either been transmitted to the State Water Pollution Cleanup and Abatement Account to fund cleanup projects throughout the State, or have directly funded supplemental environmental projects, such as the Regional Monitoring Program (RMP) which evaluates and interprets water quality data throughout the San Francisco Bay.

Comments related to Lehigh's current land use do not relate to this tentative order because the Regional Water Board is not the permitting authority to approve any such uses. The relevant land use permitting authority is the Santa Clara County Planning Commission. Please see our responses to Ms. Helgerson Comments 2 and 4.

Regarding groundwater protection, Superfund assessments, and potential impacts to drinking water, please see our response to Ms. Helgerson Comments 1 and 5.

Please see our response to Ms. Helgerson Comment 1 regarding the Seepage Report referred to in this comment.

Ms. Helgerson Comment 8. *Section 2.3 states:*

> *"*Attachment G, Provision 1.9.1, is included to implement state law only. This provision is not required or authorized under the federal CWA; consequently, violations of the provision are not subject to the enforcement remedies that are available for NPDES violations.*"*

I am very concerned about this lack of enforcement on the continued pollution from the Lehigh property. Lehigh has been in violation of the Clean Water Act and has also been polluting the air and soil for over 100 years and still counting; this needs to end. My question here is, where was the Regional Water Board and Staff while Lehigh was destroying and polluting Permanente Creek? The laws need to be changed; Lehigh's property, all of it, should be subject to a full cleanup and the U.S. EPA Superfund Site Division should take over and make sure that it is done right. I have mentioned this before and it seems that the agencies are in charge, but for how long?

Response to Ms. Helgerson Comment 8. Although violations of the referenced provision are not subject to enforcement remedies available under federal law, they are still subject to remedies under State law. These remedies are largely comparable to those found in federal law but cannot be enforced under NPDES regulations specifically. The referenced language within the tentative order does not indicate that the Regional Water Board would not bring enforcement against the Discharger for violations of these provisions; it merely states that such enforcement would be done under State, not federal, law.

Tentative order Provision 2.3 states:

> **Provisions and Requirements Implementing State Law.** Attachment G Provision 1.9.1 is included to implement state law only. This provision is not required or authorized under the federal CWA; consequently, violations of this provision are not subject to the enforcement remedies that are available for NPDES violations.

Attachment G, section 1.9.1, states:

> The treatment of pollutants shall not create nuisance as defined by California Water Code section 13050.

This is necessary to implement state law, namely Water Code section 13263, which requires discharge permits to take into consideration the need to prevent nuisance. Thus, any violations of it must be enforced using State enforcement remedies only.

Comments regarding changes to the law and air pollution from the facility are outside the scope of this tentative order, which regulates wastewater discharges under the Clean Water Act. The Bay Area Air Quality Management District (BAAQMD) is the permitting authority for controlling air pollution from facilities in the Bay Area, including the facilities covered under this tentative order.

Regarding site cleanup and Superfund considerations, please see our response to Ms. Helgerson Comment 5.

Ms. Helgerson Comment 9. **[This comment is made in reference to tentative order §2.4.]** *The public is allowed to submit comments, and it looks like, attend the meeting at the Regional Water Board location. I am really disturbed over the continued renewal of the Lehigh discharge permit. This permit has allowed Lehigh to pollute our waterways and Permanente Creek is still being polluted with Lehigh's wastewater that has selenium and other pollutants in it. Permanente Creek also suffers from the crystallization harmful to aquatic life and humans. It seems that no one really wants to talk about this, and the State Regional Water Quality Control Division needs to address this fact and explain it to the public. How can Lehigh perform the Reclamation Plan if the polluted Lehigh water is still allowed to stream down the creek? Will the water be routed to Stevens Creek and released down to the San Francisco Bay? There is no mention about the time frame of Permanente Creek restoration; how soon will they start the work?*

Response to Ms. Helgerson Comment 9. To clarify, "Reclamation," which includes backfilling of the quarry, is different from "restoration," which refers to restoring Permanente Creek.

Regarding the public participation process for this regulatory action and the potential for the Regional Water Board to deny this NPDES permit renewal, please see our response to Ms. Helgerson Comment 7.

This tentative order includes effluent limits for selenium and other pollutants of concern and requires wastewater treatment under the Clean Water Act to achieve levels of those

pollutants that are protective of receiving water quality. For more regarding the causes of water quality issues observed in Permanente Creek and the time frame of the restoration plan, please see our response to Ms. Helgerson Comments 5 and 6.

To the questions at the end of this comment:

- Lehigh's schedule to perform the Reclamation Plan is not controlled by this tentative order. Regardless, polluted discharges to the creek are not authorized under this order – please see the preceding paragraph and our response to Ms. Helgerson Comment 6.
- Discharge from the Lehigh plant will not be routed to San Francisco Bay through Stevens Creek. The tentative order would authorize no such discharge and Lehigh has no means of discharging to Stevens Creek in any case.
- The Permanente Creek restoration project has already begun. See our response to Ms. Helgerson Comment 6.

Ms. Helgerson Comment 10. **[This comment is made in reference to Attachment G, §§8.2 and 8.3; tentative order Provisions 3.1 through 3.3; tentative order §4; and Table 2.]** *Leaving things up to the discharger (Lehigh) is risky business. Read 8.2 page - G17 it reads "*Blending – The practice of bypassing biological treatment units and recombining the bypass wastewater with biologically-treated wastewater*."*

It seems that Discharger (Lehigh) is allowed to monitor and police themselves. They state [in Attachment G, section 8.3] *that;*

> *"*For flow-based composites, the proportion of each grab sample included in the composite sample shall be within a plus or minus of five percent (+1-5%) of the representative flow-weighed weighted average calculated by averaging flow weighed ratio of each grab sample analytical result*."*

Lehigh should not be allowed to monitor themselves for any reason. How can this form of measurement be accurate and who decides if Lehigh has met the requirements? Lehigh has violated many regulations and all they do is pay a fine. The Rock Plant is still in operation, and they are selling the aggregate, storing it in their silos for building contractors to pick up. This rock was supposed to be put in the Lehigh Quarry pit for the Reclamation Plan, and no one seems to care about that. The pollution coming from the Rock Plant is polluting the public; dust, and any water they are using in this process, is causing pollution to Permanente Creek. They need to be closed down, and the rock material should be used to help with the filling of the quarry. This is extremely urgent and the Regional Water Board and Staff need to work to see that the quarry has no more seepage that is harming our aquifer. There is a seepage report that Lehigh and Santa Clara County have, and the U.S. EPA may also have, that needs to be provided to the public for review.

[Tentative order Provision] *3.1 states that the discharge of the treated or untreated wastewater at a location or in a manner different than described in this order is prohibited. Question on this: seems that Lehigh monitors themselves. How can the*

State Regional Water Quality Control Division allow them to do this? The public is subjected to the Lehigh polluted wastewater and stormwater which runs into Permanente Creek. Permanente Creek is still being polluted. Again, [tentative order Provision] *3.3 states:*

> "Discharge from Discharge Points 002 and 005 is prohibited, except as a result of precipitation or as necessary to discharge retained stormwater."

Lehigh again monitors themselves; just how can anyone trust them?

In the Footnote [to Table 2] *it states that "the Discharger monitors the pH continuously". It seems that it is ok to monitor themselves because it is too expensive to have the agencies and the U.S. EPA conduct their own testing. Lehigh hires companies to do the testing and then has reports that they give to the agencies. Is there ever any spot checking to make sure that these reports are honest and that Lehigh or the companies hired by Lehigh are not acting illegally? Is the Water Board ever doing testing of its own?*

Table 2 indicates that Lehigh emits selenium at a monthly average of 3.7 and the Maximum Daily limit is 8.2. With the limitations that are stated in the table, how can anyone really believe that Lehigh stays in compliance? How does anyone really know if 3.7 is not a hazard, a serious pollution taking place? There are other pollutants, not just selenium, and there is the cumulative effect to consider. The Maximum Daily limit, who makes that decision and how is it decided? Just how can anyone believe Lehigh stays in compliance. If they ever report that there is a violation, all they have to do is pay a fine and walk away; no one will close down the Rock Plant. Why is this being allowed? Paying a fine does not change the crimes committed.

Response to Ms. Helgerson Comment 10. Attachment G consists of provisions generally applicable to all NPDES permits. However, not all its provisions apply to every NPDES permit. Attachment G, section 8, merely defines certain terms. Section 8.2 defines "Blending," which is discharge of combined primary-treated and secondary-treated domestic wastewater by sewage treatment plants that lack the biological treatment capacity to fully treat peak wet-weather flows and have no feasible alternatives to blending. This does not apply to Lehigh. Lehigh does not discharge domestic wastewater. Blending is not authorized by Lehigh's existing permit and would not be authorized by the tentative order.

To clarify, the footnote to Table 2 does not state that the Discharger monitors pH continuously; it states how compliance with the pH effluent limitations is to be determined if the Discharger monitors continuously.

There are overlapping safeguards against Lehigh and its subcontractors submitting false reports. Regarding the federal requirements for self-monitoring and reporting that would continue to be implemented by the tentative order, please see our response to Ms. Helgerson Comment 7. Furthermore, the Regional Water Board continuously tracks all monitoring reports and data submitted electronically by Dischargers and manually

reviews a subset of those reports and data for accuracy versus the laboratory reports and field measurements during every NPDES inspection. Moreover, in addition to being submitted under penalty of perjury, most reports are signed and stamped by professional engineers and geologists that could lose their licenses and be subject to additional disciplinary action for submitting false information.

The tentative order would retain the requirement that Lehigh collect flow-proportional composite samples. This requirement has been in Lehigh's NPDES permit since its initial issuance; it was requested by Valley Water in a comment on the tentative order adopted by the Water Board to issue Lehigh's NPDES permit in 2014. This is the preferred method for collecting representative samples for facilities in which the volume of discharge can vary appreciably over time.

Regarding the potential closure of the Rock Plant and related land use decisions, please see our response to Ms. Helgerson Comment 4.

Regarding the Reclamation Plan and material to be used to backfill the quarry, please see our response to Ms. Helgerson Comment 12.

Regarding the Seepage Report referred to in this comment, please see our response to Ms. Helgerson Comment 1.

As stated in our response to U.S. EPA Comments 3 and 4, we revised the tentative order to implement the Final Freshwater Selenium WQC's water column criterion for lotic waters of 3.1 µg/L instead of a site-specific selenium criterion of 4.9 µg/L. This revision has resulted in more stringent Average Monthly and Maximum Daily selenium effluent limits of 2.9 µg/L and 8.1 µg/L (reduced from the referenced values of 3.7 µg/L and 8.2 µg/L, respectively). To clarify, Table 2 sets selenium effluent limits at 2.9 µg/L and 8.1 µg/L; it does not indicate that Lehigh will emit selenium at these concentrations. In fact, monitoring data show that selenium levels at these discharge points are typically significantly lower. Please see our response to U.S. EPA Comments 3 and 4 for more information.

The selenium effluent limits were calculated as described in Fact Sheet section 4.3.4.3 and Table F-10. The calculation method uses the average concentrations and variability in the current permit term's selenium effluent dataset, the required sampling frequency, and probability-based projections to determine the levels of selenium in individual daily and average monthly measurements that must be met to ensure that discharges from the facility will not cause the water quality criterion for selenium to be exceeded in the receiving water. The method assumes a lognormal distribution of effluent concentrations and sets the water quality criterion at the 99th percentile value in that distribution—a highly conservative and protective approach. This is the method recommended by U.S. EPA in its *Technical Support Document for Water Quality-based Toxics Control* (March 1991, second printing, EPA/505/2-90-001) and is the standard approach used by permitting authorities to develop water quality-based effluent limits in NPDES permits.

As stated in Fact Sheet section 4.3.4.3., the new selenium water column criterion is based on a 30-day instead of a 96-hour averaging period typical for chronic criteria. Therefore, the average monthly effluent limit calculation assumes a monitoring frequency of once per day (i.e., 30 times per month) and a 30-day averaging period because the assumed monitoring frequency used in the calculation should not be less than the averaging period the criterion is based on. This approach is consistent with U.S. EPA's *Water Quality Criteria; Notice of Availability; 1999 Update of Ambient Water Quality Criteria for Ammonia;* (Federal Register, Vol. 64, No. 245, page 71976, December 22, 1999).

Ms. Helgerson Comment 11. *Best Management Practices and Table A, Stormwater Action Levels, states chromium at Instantaneous Action Level at 16 µg/L, but it does not state an Annual Action Level; why not? Selenium Annual Action Level at 5.0 µg/L, no mention of Instantaneous Action Level; why? Question should be in most people's minds is: how can Lehigh actually monitor the pollution levels accurately? Best management practices are not enough; the pollution is still flowing down Permanente Creek and mingling with Stevens Creek waters that are full of mercury pollution, which flows from the Stevens Creek Reservoir. The Stevens Creek Reservoir is polluted, and this pollution comes from the Stevens Creek Quarry right across the street that processes and recycles concrete. The concrete is delivered to the site by contractors in the Silicon Valley and the surrounding cities and these contractors pay the Stevens Creek Quarry Company to process this concrete. The Stevens Creek Quarry sells this recycled concrete to the contractors. The public is told not to eat the fish in Stevens Creek Reservoir, and if they must eat the fish, that they eat the younger fish who I guess have less mercury in them. Stevens Creek Quarry also has a discharge permit and that should not be renewed. The U.S. EPA Superfund Division should shut down the quarry and take over their Reclamation Plan. This pollution is polluting Stevens Creek and the San Francisco Bay area with mercury and other pollution; this needs to end ASAP! What is more important, concrete or human lives? Why are the agencies, State, counties, and cities not recognizing where cancer and other serious diseases are coming from? The pollution in the air, water, and soil is causing a great deal of suffering, and it seems that We the People have nothing to say about stopping it; why is that? My fear is that Lehigh will sooner or later apply for another permit to open up a new quarry in the south land; the public will not permit this. The Valley population is growing; the pollution must stop.*

If things were not bad enough, there is the seeding of the clouds to make it rain; the Regional Water Board needs to look into this pollution that has been polluting since the 1930's. It seems no one is realizing that this is a serious matter and stopping this seeding with silver iodide into our communities, and the agencies just look the other way while this is happening. Our State and federal governments need to put an end to this. I believe there is one State Senator that is doing just that.

The Permanente Creek restoration has no starting date, so who really knows when this will begin; why is that? How can it take place anyway if the Lehigh land is not cleaned up? My thinking is that it should take place before the Lehigh 2023 Reclamation Plan Amendment and EIR approvals are complete. This I understand could take 1½ to

3 years to complete the EIR; this is to long a wait. This plan will take 40 years to complete but I think if you do the math, it will all take 56 years. We have waited from the last Reclamation Plan in 2012 for 13 years and with the EIR time period it is just too long a time to clean up the Lehigh land. Do not reissue Lehigh's permit.

The U.S. EPA Superfund Site Division needs to establish a massive Superfund site cleanup declaration of all of the Lehigh property ASAP! Lehigh is under a State NPDES Wastewater Treatment Plan and the federal Plan, a stricter plan, does not apply. The U.S. EPA Superfund Site Division will impose stricter federal requirements pertaining to the discharge of polluted wastewater at Lehigh and possibly the Stevens Creek Quarry; both sites need to be turned over to the U.S. EPA Superfund Site Division.

Response to Ms. Helgerson Comment 11. This comment requests clarification on why Table A (Stormwater Action Levels) in Provision 5.1.3 of the tentative order only includes an instantaneous action level of 16 µg/L (with no annual action level) for chromium (VI) and an annual action level of 5.0 µg/L (with no instantaneous action level) for selenium.

For chromium (VI), the stormwater action level of 16 µg/L was retained from the previous order based on the water quality-based effluent limit for that constituent in the previous order. Note that this order does not retain a water quality-based effluent limit for chromium (VI) because it no longer demonstrates reasonable potential to cause or contribute to exceedances of the relevant water quality objective (see Fact Sheet, Attachment F, Section 4.4.1.2). The stormwater action level for chromium (VI) is evaluated on an instantaneous basis because chromium (VI) has potential for acute impacts and is a constituent of concern for drinking water sources. Compliance is therefore best assessed on an instantaneous basis.

The stormwater action level for selenium is derived from the Industrial General Permit (Order 2014-0057-DWQ amended by Order 2015-0122-DWQ & Order 2018-0028-DWQ), which includes an annual action level of 5.0 µg/L for selenium (Table 2, Section XI.B.7) for stormwater discharges from industrial sites. The stormwater action level for selenium is evaluated on an annual basis because the selenium objectives are based on chronic and bioaccumulative impacts that are best assessed annually.

Stormwater best management practices (BMPs) are included in the permit because they are specifically authorized by the federal regulations under 40 C.F.R. section 122.44(k) for the control of stormwater discharges and when numeric effluent limitations are infeasible. Stormwater BMPs are highly effective when selected, designed, implemented, and maintained correctly. This tentative order ensures that stormwater BMPs will be effective by requiring the discharger to implement, monitor, and assess the effectiveness of a set of standard BMPs according to Attachment S, Sections 1.5.7-1.5.8 and 1.6, and implement more advanced BMPs according to Attachment S, Section 1.7, if the minimum BMPs in Section 1.6 prove insufficient.

This tentative order does not regulate discharges from the Stevens Creek Quarry. Comments regarding the Stevens Creek Quarry are outside the scope of this tentative order.

Future land uses, such as the closure of this quarry or the permitting of future quarries at nearby or adjacent sites, are outside the scope of this tentative order. The Regional Water Board is not the permitting authority to approve any such uses. The relevant land use permitting authority is the Santa Clara County Planning Commission. If the Santa Clara County Planning Commission were to approve a new quarry, Lehigh would need to apply for a new or amended NPDES permit. The Regional Water Board would provide for public comment prior to considering any such changes.

Comments regarding cloud-seeding are outside the scope of this tentative order. The Regional Water Board is not aware of, and would not be the permitting authority for, cloud-seeding projects in Region 2 if they were proposed or implemented. There does appear to be an active cloud-seeding research project that includes part of Region 5 around Lake Tahoe (see the Desert Research Institute).

Regarding the Permanente Creek restoration's starting date, please see our response to Ms. Helgerson Comment 6.

Regarding the potential for the Regional Water Board to deny this NPDES permit reissuance, please see our response to Ms. Helgerson Comment 7.

Regarding U.S. EPA's Superfund program, please see our response to Ms. Helgerson Comment 5. The Regional Water Board's Groundwater Protection Division implements both federal and State requirements for site cleanup and groundwater protection at this site through regulatory oversight and enforcement under Order R2-2018-0028.

Ms. Helgerson Comment 12. **[This comment is made in reference to tentative order §5.1.4.]** *Question: has anyone looked at the cumulative effect of the pollutants as they are mixing all together? The stormwater on the Lehigh property is continually polluted with mine waste pollution. The Lehigh land is full of cement plant and quarry dust. The ground is like concrete and the wind blows this pollution all over the Silicon Valley, a health hazard that no one seems to do anything about. There is a pile of mine waste overburden up in the foothills and it can be seen from Stevens Creek Boulevard; no one seems to know what it is. I have inquired to Santa Clara County on several occasions and get no answers about it; why is that? Will this mine waste be used to fill the quarry pit? How soon will that take place? Why is this information kept from the public?*

The Rock Plant is still operating, polluting the air, water, and soil; it needs to be shut down immediately. This Rock Plant rock was going to be put into the quarry pit, but Lehigh changed their mind about that and is selling this aggregate to the building contractors in the Silicon Valley and surrounding cities. I understand also, from what some people have told me, that Lehigh wants to keep this Rock Plant open for 3 more years; this is wrong, and Santa Clara County and the agencies need to stop this and

close down the plant. The U.S. EPA Superfund Site Division needs to come in and take over the Lehigh Reclamation Plan Amendment and EIR in order to stop this pollution and save lives. The lives of the people should be the first consideration, not the mining at the Rock Plant.

Response to Ms. Helgerson Comment 12. This tentative order would regulate wastewater discharges pursuant to the Clean Water Act. In addition to pollutant-specific effluent limits, it includes provisions that would require chronic toxicity monitoring (Attachment E, Section 5) to evaluate the cumulative effect of pollutant mixtures. The tentative order would require chronic toxicity monitoring because numerical objectives for individual pollutants do not take the additive toxic effects of mixtures into account and because numerical objectives do not necessarily exist for all pollutants.

Air quality impacts from the site are outside the scope of this tentative order because the Regional Water Board is not the permitting authority for air emissions.

Regarding potential closure of the Rock Plant and related land use decisions, please see our response to Ms. Helgerson Comment 4.

Regarding the pile of mine waste overburden visible from Stevens Creek Boulevard, the comment states that it is mine waste overburden before stating that no one knows what it is. Also, the material that will be used to backfill the quarry is one of the subjects of Lehigh's 2023 application to Santa Clara County to revise its Reclamation Plan. This information is publicly available from the Santa Clara County Department of Planning and Development. The Santa Clara County Planning Division's January 27, 2025, letter to Lehigh, section I.B., summarizes the current proposal:

> *Importation of approximately 42 million cubic yards (c.y.) of clean fill to fill the quarry pit as part of final reclamation design. Under the approved 2012 Reclamation Plan, overburden material at the West Materials Storage Area ("WMSA") was proposed to be used for backfilling of the quarry pit. The Application instead proposes that 31.2 million cubic yards of off-site clean fill would be used in combination with acceptable WMSA overburden material to fill (reclaim) the quarry pit. The remainder WMSA overburden material would be left in place.*

Regarding U.S. EPA's Superfund program, please see our response to Ms. Helgerson Comment 5.

Ms. Helgerson Comment 13. **[This comment is made in reference to tentative order §5.3.1.]** *My question is: if the U.S. EPA Superfund Division takes over the Lehigh Reclamation Plan overall, how does this action effect the local Regional Water Board with respect to the Lehigh discharge permit? It shall become very important to look at the pollution on the Lehigh property and alter the permit requirements. Federal requirements are stricter, and Lehigh would have to comply with them. We want tighter requirements to save lives.*

Response to Ms. Helgerson Comment 13. Regarding U.S. EPA's Superfund program, please see our response to Ms. Helgerson Comment 5.

Regarding the effect on the NPDES permit for this discharge, the tentative order would continue to implement the National Pollutant Discharge Elimination System (NPDES) program's federal requirements in addition to State-specific discharge requirements. Therefore, the tentative order is likely already stricter than one that would only implement federal requirements.

Ms. Helgerson Comment 14. **[This comment is made in reference to tentative order §5.3.1.1.]** *Question: just how does the State Regional Water Quality Control Division conduct investigations? It has been evident that Lehigh has violated many regulations and have had to pay stiff fines to the State agencies. It seems that Lehigh can just keep violating and paying fines with no real consequences; why is that? It just can't be about the money, or is it? Laws need to change.*

Permanente Creek has been destroyed and is up for reconstruction due to Lehigh's criminal actions, and they have been allowed to pollute for over 100 years and still counting. The agencies have just sat back and allowed this continued polluting. Lehigh is now supposed to pay $25,000.00 dollars to restore Permanente Creek. Just how is this supposed to happen with the pollution still flowing down from the Lehigh land into Permanente Creek? Will this water be diverted to Stevens Creek and will it be full of pollution that is going out to the San Francisco Bay area? There seems to be no real enforcement and that is why the U.S. EPA Superfund Division needs to be called in to take over and make sure that the regulations are abided by and that all of the Lehigh land is cleaned up. The sooner the better please!

Response to Ms. Helgerson Comment 14. All records related to the Regional Water Board's inspections of the Lehigh facilities are publicly available through the California Integrated Water Quality System (CIWQS) "Facility-At-A-Glance" (https://ciwqs.waterboards.ca.gov/ciwqs/readOnly/CiwqsReportServlet?reportName=facilityAtAGlance&inCommand=reset) system. The page for the facility, under the name: "Lehigh Southwest and Hanson Limestone Quarry Cement Plant" (Place ID, 273205) has records from 19 inspections dating back to February 22, 1995, which include downloadable attachments of inspection reports, transmittal letters, and inspection photos, as available. The inspection reports include relevant information regarding how the Regional Water Board conducts those inspections including lists of items inspected, narratives, and other associated findings. The Regional Water Board follows U.S. EPA guidance included in its *NPDES Compliance Inspection Manual* (January 2017, EPA/305/K-17-001) when conducting inspections to evaluate compliance with NPDES permits. For more regarding the Regional Water Board's inspections and the federal requirements for self-monitoring and reporting that would continue to be implemented by the tentative order, please see our responses to Ms. Helgerson Comments 7 and 10.

Regarding U.S. EPA's Superfund program, please see our response to Ms. Helgerson Comment 5.

Regarding whether Lehigh's discharge will divert polluted waters to Stevens Creek and San Francisco Bay, please see our response to Ms. Helgerson Comment 9.

Ms. Helgerson Comment 15. **[This comment is made in reference to tentative order §5.3.1.2.]** *The U.S. EPA Superfund Division with federal regulations can implement the necessary regulations to make sure that Lehigh complies. The Lehigh land, all of it, should be under U.S. EPA Superfund Site cleanup efforts. Lehigh has contaminated and polluted Permanente Creek and Stevens Creek long enough. The aquifer below the Silicon Valley has also been polluted by the creeks and the quarry waters. There is a seepage report that Santa Clara County has that shows the aquifer water below the Silicon Valley seeping and being brought into the Lehigh quarry. This information has been kept a secret from the public. I am not sure if the State Regional Water Quality Control Division is aware of this seepage report. The polluted water in the Lehigh Quarry and the two creeks are contaminating our drinking water with mine waste water runoff. The question is, how can Permanente Creek be restored if the pollution is still flowing down the creek?*

Some of the regulations with the NPDES permit under State regulations, not federal, and some of the regulations do not apply to the Lehigh permit. The U.S. EPA Superfund Division could take over the cleanup of all of the Lehigh land and could move things along instead of the Reclamation taking 40 or 56 years. Lehigh has stalled for years in so many ways to keep from complying with permits and the violations and fines that have been applied should make some kind of difference, but they don't. The State Regional Water Control Division should have taken the lead many times in shutting down things on the Lehigh property but have not. The public has and is suffering from the pollution from Lehigh, and it is time that the federal government step in and push for a complete cleanup of the Lehigh property leaving nothing out. The WMSA and EMSA have been a great problem; U.S. EPA Superfund Cleanup could solve that problem.

Response to Ms. Helgerson Comment 15. Regarding the Seepage Report referred to in this comment and the statement that the deep aquifer has been polluted by quarry water, please see our response to Ms. Helgerson Comment 1.

Regarding site cleanup and U.S. EPA's Superfund program, please see our response to Ms. Helgerson Comment 5.

Ms. Helgerson Comment 16. **[This comment is made in reference to tentative order §§5.3.1.4. and 5.3.1.5.]** *It is stated that a strong possibility that the Lehigh stormwater discharge permit will be modified or replaced. The U.S. EPA Superfund Site Division, if brought in and is taking over the Reclamation Plan Amendment and EIR, they will need to adjust the permit. The tests that the U.S. EPA conducts will show the ongoing pollution coming from all of the locations on the Lehigh property. The WMSA and the EMSA waste material will have to be taken away off site and delivered to places that handle such hazardous waste. All of the Lehigh land is polluted so the U.S. EPA would have to conduct testing of the soil in order to make sure that the pollution of all the Lehigh land is cleaned up.*

The Rock Plant will have to be closed right away, and the rock should be used to close the quarry pit as it should have been years ago. The cement plant needs to be demolished, and the soil underneath has to be cleaned up and taken away. This should take place right away even before the Reclamation Plan Amendment and EIR have been finalized. How many more amendments should the public be subjected to there really is no telling? The amendments are not even numbered, and they should be.

Response to Ms. Helgerson Comment 16. To clarify, the tentative order does not state that modification or replacement of this discharge permit (referred to as "stormwater discharge permit" in the comment letter) is likely; only that under certain circumstances the Regional Water Board may reopen the permit.

Regarding site cleanup and U.S. EPA's Superfund program, please see our response to Ms. Helgerson Comment 5.

Regarding potential closure of the Rock Plant and related land use decisions, please see our response to Ms. Helgerson Comment 4.

Regarding the rock and other material to be used to backfill the quarry pit, please see our response to Ms. Helgerson Comment 12.

Regarding dismantling the cement plant, please see our response to Ms. Helgerson Comment 2.

Ms. Helgerson Comment 17. **[This comment is made in reference to tentative order §5.3.2.1.]** *Lehigh should not be allowed to have their stormwater discharge permit reissued. Reissuance every 5 years or so is a waste of time and if the issues were dealt with, then the Lehigh land would be cleaned up and there would be no need for a permit. Wishful thinking I guess, but after all, the pollution is there and it does not matter what levels are set. The pollution levels are set high so as to allow the polluters to pollute to stay in business. I have to say this because it is true; otherwise, with the levels that they pollute under, if the regulations were lower and tighter, then the companies like Lehigh would not be able to comply. The Best Technology is not available because it is not cleaning up the pollution and the public is suffering. It states that the Discharger (Lehigh) and all of the land have been and are causing an exceedance of the pollution, and that they are in violation of the water quality objectives, which are serious. This is serious and Lehigh should close down the Rock Plant and the rock should be brought over to fill the quarry.*

Lehigh will have to treat all of the stormwater and other wastewater at the Lehigh Wastewater Treatment Plant. This needs to be done before they release it into Permanente Creek or Stevens Creek, and before they allow this water to pollute the San Francisco Bay waters. I wonder, is the water clean.

Response to Ms. Helgerson Comment 17. A 5-year period is standard for reissuance of individual NPDES permits. Regarding the potential for the Regional Water Board to deny this NPDES permit renewal, please see our response to Ms. Helgerson Comment 7.

The effluent limitations included in the tentative order are based on water quality objectives promulgated by the U.S. EPA and are protective of water quality and associated beneficial uses. The analysis and calculation of these effluent limitations do not consider or account for Lehigh's cost of compliance.

Regarding potential closure of the Rock Plant and related land use decisions, please see our response to Ms. Helgerson Comment 4.

Regarding the final statement of this comment, the purpose of this discharge permit is to ensure that wastewater, including stormwater from most of the large surface area of the Lehigh Permanente Plant, will be treated at Lehigh's wastewater treatment plant before it is released to Permanente Creek and flows to San Francisco Bay. Information on the quality of the discharges from the facility is available in monitoring reports and other public documents, and can be accessed by CIWQS as described in our response to Ms. Helgerson Comment 14 or by request.

Ms. Helgerson Comment 18. **[This comment is made in reference to tentative order §§5.3.2.2.1. and 5.3.2.1.2. Please note that the tentative order, and thus this comment, contain an incorrect table reference to Fact Sheet Table F-7; the correct table reference is to Fact Sheet Table F-9. We corrected this reference in the revised tentative order and below.]** *Lehigh is and has been policing themselves; this should not be allowed. They are self-monitoring in a report, it states, each month. The real problem is that it states that the Fact Sheet Table F-9 for objectives does not apply to pollutants with effluent limitations (See Table 2 of this order), question: why not? All of the pollutants and pollution levels should be reported. The pollution is carried down Permanente Creek which also drains into the Silicon Valley aquifer below. The California Water Service Company and the San Jose Water Company are aware of this happening. I have to wonder, just what processes do they use to clean up this water. I have inquired years ago and they will not tell me anything about it. The public needs to know how their drinking water is cleaned and at what level. Seeing that cancer and other disease are on the rise, is pollution causing this as yourselves?*

It seems that the State Regional Water Quality Control Division is aware of these happenings via an annual report generated by Lehigh, who polices itself; this is a problem. How can anyone be sure that the public's drinking water is safe to drink? I would like to see the U.S. EPA Superfund Division through their specialized scientists test this water and also that they look at the cumulative effects of the many different serious pollutants in our water. The public would like to also see these reports that they could generate. It this about politics, or saving lives?

This may lead the public to believe that the Discharger (Lehigh) could do any kind of sample tampering to benefit themselves. Policing and monitoring themselves can leave things to coverup the real levels of pollution; even if they contract a lab one just never knows what can take place. I do not trust the levels that are in place; as it is, they favor the polluter.

Response to Ms. Helgerson Comment 18. Regarding the federal requirements for self-monitoring and reporting that would continue to be implemented by the tentative order, please see our response to Ms. Helgerson Comment 7.

The statement "[the tentative order] states that the Fact Sheet Table F-7 for objectives does not apply to pollutants with effluent limitations..." refers to Provision 5.3.2.2.1 as part of the Effluent Characterization Study and Report requirement. The language of this section is standard language included in all NPDES permits adopted by the Regional Water Board and is intended to require the Discharger to analyze for pollutants that are not already frequently monitored and reported. Pollutants with effluent limits (listed in Table 2) are already subject to at least monthly monitoring and reporting. Additionally, this requirement does not exempt the Discharger from reporting the data to the Regional Water Board. Instead, it requires the Discharger to note pollutant results that exceed the applicable water quality objective in the transmittal letter associated with the self-monitoring report for the month in which the sample was collected, in addition to reporting the data.

Regarding the Regional Water Board's evaluation of potential impacts to drinking water and how this tentative order would protect those uses, please see our response to Ms. Helgerson Comment 1.

Comments related to the treatment processes used by the commenter's drinking water supplier are outside the scope of this tentative order and should be directed to the appropriate agency. However, brief descriptions of such treatment processes are often available on those agencies' web sites, such as Valley Water (https://www.valleywater.org/learning-center/water-treatment-process). If the comment refers to Lehigh's wastewater treatment processes, these are described in Fact Sheet section 2.2 of the tentative order.

Regarding site cleanup and U.S. EPA's Superfund program, please see our response to Ms. Helgerson Comment 5.

Regarding self-monitoring and reporting, and safeguards against the submittal of false reports, please see our response to Ms. Helgerson Comments 7 and 10.

Ms. Helgerson Comment 19. **[Comments 19 through 23 are made in reference to Attachment D, §§1.1 through 1.8. Comment 19 is made in reference to tentative order Attachment D, §§1.1. and 1.2.]** [Attachment D, §1.1.1] *also states that any noncompliance constitutes a violation of the Clean Water Act and the California Water Code and is grounds for enforcement action, permit termination, revocation and reissuance, or modification; denial of a permit renewal application or a combination thereof.*

[The comment letter then quotes tentative order Attachment D, §1.1.2.]

Lehigh, the Discharger, has not been in compliance with the Clean Water Act and the California Water Code. They have not complied with the effluent standards or

prohibitions established under Clean Water Act section 307 (a) for toxic pollutants. Just paying fines to the State Regional Water Control Board for decades is not correcting the pollution problems. Lehigh needs to be made accountable even to the point of closing down the Rock Plant at this time. The pollution that they are still spewing into the water and the dust that they are causing from the grinding processes and truck delivery is still a problem. This pollution effects the public; their health and safety is being compromised.

Lehigh, the Discharger, should have years ago been cited for their pollution contamination. It seems that even with this Duty to Comply [Attachment D, §1.1], no one stopped Lehigh in their pollution of the Silicon Valley and the San Francisco Bay Area. I have to wonder; what does this permit reinstated renewal cost Lehigh? How much is the government making off of these permits? The public should ask why is the Discharger (Lehigh) allowed to continue to pollute our water?

Response to Ms. Helgerson Comment 19. Regarding the potential for the Regional Water Board to deny this NPDES permit renewal, please see our response to Ms. Helgerson Comment 7. Incidents of non-compliance with the provisions of an NPDES permit do not automatically constitute grounds for denial of a renewed permit.

Regarding enforcement actions the Regional Water Board has taken (including actions beyond monetary penalties) and the improvements that have come about as a result of these actions, please see our response to Ms. Helgerson Comment 7. For a summary of compliance and enforcement over the current permit term, please see Fact Sheet section 2.4. We emphasize that the Regional Water Board does not profit from NPDES permit fees or monetary enforcement penalties, and that the point of permitting and enforcement is to prevent dischargers from polluting. Information on the fees for water quality permits, including how they are calculated, can be found at https://www.waterboards.ca.gov/resources/fees/water_quality/.

Regarding potential closure of the Rock Plant and related land use decisions, please see our response to Ms. Helgerson Comment 4.

Ms. Helgerson Comment 20. **[This comment is made in reference to tentative order Attachment D, §1.3.]** *The discharger (Lehigh), due to their continued disregard for the regulations of this permit, have adversely affected human health and the environment for over 100 years. The pollution of the air, water, and soil continues. The Lehigh Rock Plant is still in operation and they are storing the aggregate in two silos on the Lehigh land. This aggregate is sold to the building contractors in the valley at a high price and Lehigh is making a great deal of money from this material. I have mentioned how this aggregate rock material should be delivered to the quarry pit for reclamation. It was supposed to be years ago and now Lehigh has cheated the public from this solution to filling the quarry pit. Santa Clara County should have required Lehigh to fill the pit in order to keep the pollution from our aquifer and they did not. They knew that the seepage issues were serious and they have left things still pending; this is unacceptable. Where is the State Regional Water Quality Control Department and the U.S. EPA Regional office 9 while all this is taking place? It seems to me under a special*

order issued by the agencies that the Lehigh quarry pit can be filled at this time and we the public cannot, and should not, have to wait. The Reclamation Plan Amendment and the EIR should not hold up the pit closure; it is a very serious matter and human lives are at stake.

My family and I can testify to the fact that this pollution has brought on terrible disease and hardship to me and the public who continue to suffer each and every day. The dust is all over my house and it is impossible to control. The whole valley is affected by this dust. This dust combined with the silver iodide used to seed the clouds to make it rain is very serious. No one seems to try and figure out why people are sick with cancer and other diseases; how can this go on. It does seem evident that this pollution should be looked at by the State Regional Water Quality Control Board and Staff.

It seems that keeping the levels of pollution high and (Lehigh) and other polluters coming in below the limits is ok. How can the polluters always come in under the levels set by the U.S. EPA, Water Board, and the Air District are just ok? Even if the polluter (Lehigh) the discharger comes in over at time they give an excuse and pay the fine. I hate to say this, but it sure looks like everything is in favor or the polluters. The cumulative effects of the pollutants are making the pollution more lethal. The pollution over the decades years of continued dust settling on the land has made the soil like concrete and this is true all over the Silicon Valley. The public needs to be informed about this; we are breathing in this pollution.

Response to Ms. Helgerson Comment 20. Regarding violations and enforcement activities, please see our response to Ms. Helgerson Comment 7.

Regarding air quality impacts associated with this facility and cloud-seeding, please see our response to Ms. Helgerson Comments 8, 11, and 12.

Regarding potential closure of the Rock Plant and related land use decisions, please see our response to Ms. Helgerson Comment 4.

Regarding the Seepage Report referred to in this comment, please see our response to Ms. Helgerson Comment 1.

Ms. Helgerson Comment 21. *Property Rights [Attachment D, §1.5]; it seems Lehigh, the Discharger, has all the rights and the public who continues to be harmed has no rights of any kind at all. How can this injustice be allowed, is the question? If the State Regional Water Quality Control Board decides to renew or reinstate this (Lehigh) discharge permit it will be to the terrible misfortune that is directed to the people. Permanente Creek in its past and present state has been polluting the homes next to Permanente Creek. This happens when Permanente Creek overflows during the rainy season. I have visited a home that had the water overflow into the person's backyard. This is serious; the pollution is in the water and the soil is then polluted due to this problem. Permanente Creek restoration is still pending and I have not heard of a date that it will begin. Question: how can Permanente Creek restoration start if the Lehigh land is still polluted? Will they have to bypass the polluted water into Stevens Creek in*

order to restore Permanente Creek? Many questions go unanswered. Santa Clara County should make sure that they have meetings, open forum meetings, where the public can ask questions of the County and the agencies. The Brown Act demands that the people are heard. At the recent last meeting the County allowed the MidPen District and the Sierra Club to ask questions, but the public was not allowed to. This is wrong and is not legal according to the Brown Act. At Town Hall meetings with our Congressman Ro Khanna, he must allow the public to ask their own questions, and he does. Yet his staff still conducts the decision and choosing who is heard. All of this is wrong, but what can a person do?

Response to Ms. Helgerson Comment 21. Regarding the potential for the Regional Water Board to deny this NPDES permit renewal, please see our response to Ms. Helgerson Comments 7 and 19.

Comments related to the effects of and damage caused by the swelling of Permanente Creek due to natural causes (i.e., wet weather) are outside the scope of the tentative order.

Regarding Permanente Creek restoration and the question about bypassing discharge to Stevens Creek, please see our response to Ms. Helgerson Comments 6 and 9.

Comments related to the actions of Santa Clara County on land use planning are outside the scope of this tentative order. For more information, please see our responses to Ms. Helgerson Comments 2, 3, 4, 5, 7, 10, 11, 12, and 20.

Regional Water Board actions, including the proposed adoption of this tentative order, are conducted openly at public meetings in accordance with the Bagley-Keene Open Meeting Act (Gov. Code § 11120 et seq.) Agendas for such meetings are available on the Regional Water Board website (https://www.waterboards.ca.gov/sanfranciscobay/board_info/agenda.html). Members of the public are encouraged to attend virtually or in person to provide testimony about items for consideration before the Board. Santa Clara County is subject to the similar public participation requirements (under the Brown Act) as the Regional Water Board; comments about the County's compliance with them or lack thereof are outside the scope of the tentative order.

Ms. Helgerson Comment 22. **[This comment is made in reference to tentative order Attachment D, §1.6.]** *The Discharger (Lehigh's) documents meaning water reports and such are presented. The Discharger (Lehigh) monitors and polices themselves; this is not acceptable. I ask that the U.S. EPA Superfund Division come in and conduct their own tests and that they consider the cumulative effect and the pollutants at the Lehigh be tested. There are many parts of the Lehigh property that will not be tested by the State Regional Water Quality Control Board. The Lehigh Reclamation Plan Amendment does not cover all of the Lehigh land and it should for reclamation. It is crazy to think that there is not more pollution that will go down Permanente Creek after the restoration of the creek. These contaminants are antimony at 8.2 micrograms per liter, arsenic at 4.5 µg/L, hexavalent chromium at 2.0 µg /L,*

barium at 41 µg/L, boron at 69 µg/L, cadmium at 0.53 µg/L, copper at 1.5 µg/L, manganese at 21 µg/L, nickel at 160 µg/K, selenium at 82 µg/L, thallium at 0.39 µg/L, vanadium at 400 µg/L and zinc at 120 µg/L. Permanente Creek water quality is noted as an impaired body of water. This pollution is listed in an U.S. EPA Superfund Site Preliminary Assessment Report conducted in 2012 EPA ID No. CAD009539 prepared by the U.S. Environmental Protection Agency Region 9 according to the Toxic Release (TRI) Report, Lehigh, then known as the Kaiser Cement site, during 2010 reporting year released 33,161.80 pounds of toxic chemicals. The site released 2.2 pounds of chromium compounds, 32,521 pounds of hydrochloric acid, 5,548 pounds of lead compounds, and 613,15 pounds of mercury compounds. These, according to Lehigh, were attributed to fugitive air emissions and point source air emissions. These air emissions polluted the air, but also the water and soil. The Report is a clear picture of the pollution at Lehigh's cement plant and quarry. There was also a report done for the Stevens Creek Quarry by the U.S. EPA Superfund Site Division which shows high levels of pollution. These polluters should be shut down and the U.S. EPA Superfund Division should take over the 2012 Reclamation Plan, and the 2023 Lehigh Reclamation Plan Amendment, and the EIR. All of these pollutants are extremely harmful to aquatic and human life. We must remember the cumulative effect of these pollutants and their toxins.

Response to Ms. Helgerson Comment 22. Regarding the requirement for Lehigh to self-monitor and report to the Regional Water Board, please see our response to Ms. Helgerson Comment 7.

Fact Sheet section 3.4 of the tentative order describes the pollutants for which Permanente Creek is listed as impaired, and how those impairments affect the effluent limitations included with the tentative order. We did not make changes to this section in response to this comment.

Regarding the 2012 Preliminary Assessment conducted under U.S. EPA's Superfund program, please see our responses to Ms. Helgerson Comment 5. Regarding site cleanup and U.S. EPA's Superfund program generally, please also see our response to Ms. Helgerson Comment 11.

Regarding air quality impacts associated with this facility, please see our response to Ms. Helgerson Comments 8 and 12.

Regarding land use decisions related to the Stevens Creek Quarry, please see our response to Ms. Helgerson Comment 11.

Regarding Permanente Creek restoration, see our response to Ms. Helgerson Comment 6.

Ms. Helgerson Comment 23. **[This comment is made in reference to tentative order Attachment D, §§1.7. and 1.8.]** *I was told in the past that Discharger (Lehigh) does not direct all of the stormwater polluted waste water through the Lehigh wastewater treatment plant. Lehigh is in the process of a Permanente Creek restoration*

after they destroyed the creek for over 100 years and still counting. The restoration, I am told, will take 25 million dollars. They are paying for this and they have not told anyone when the starting date will be. My question here is, how can they restore the creek without cleaning up all of the Lehigh property, which will still allow polluted stormwater to flow down the creek during the Restoration? Will the Lehigh wastewater stormwater polluted water be somehow diverted to Stevens Creek? The public has not been told anything about this possible happening. How can we depend on Lehigh and what they say after all of their violations over the years?

The Discharger (Lehigh) is in violation of these measures. The seeping into the quarry pit from the aquifer is in the report that the Santa Clara County has, but they do not make it public. The aquifer under the Silicon Valley is the people's drinking water. Water in the quarry can also seep backwards into the aquifer. The polluted quarry water can also work its way back into the aquifer. This is a very serious matter and the State Regional Water Quality Control Division and their board need to look into this ASAP! I have also contacted the U.S. EPA Superfund Division and would like them to look in to this as well. I would like to see all of the Discharger (Lehigh) land cleaned up not just the limited acres that they mention in the Lehigh Reclamation Plan Amendment 2023; this is very important. The public cannot and should not have to live with this ongoing pollution for 40 years as stated in the plan. Lehigh violated the limit, they mined all the way down to the water table, and this has allowed the water to flow from the aquifer into the pit. I found out this information from a Santa Clara County staff member many years ago. This information has been hidden from the public and even some of the agencies, and this should be made public. This violation was never noted by Santa Clara County and the Discharger (Lehigh) has never had to pay a fine nor have they had to correct this serious problem. The quarry should be closed, sealed off, and this should not have to wait for the Reclamation Plan or the next EIR.

The Lehigh Rock Plant has the rock that should have been used to fill the quarry pit and they are selling it to the building contractors in the Silicon Valley and surrounding areas. There needs to be extreme measures taken by filling the quarry pit with large boulders and then covering them up with concrete in order to seal off the seepage. Then clean soil must be put into the pit on top of that. There should be no EMSA or WMSA mine waste soil put into the quarry pit. The aquifer must be protected and this process should not have to wait for the Lehigh Reclamation Plan Amendment 2023 and the EIR to be finalized.

Well, I could go on and on with these comments on the Lehigh's Permit renewal, but what is the point if the State Regional Water Quality Control Department and the Board, U.S. EPA Region 9 and the U.S. EPA Superfund Department will not stop this pollution. Polluting the Silicon Valley and the San Francisco Bay seems to continue; the public is unaware of the circumstances taking place. This lack of real enforcement is shameful, and unless the U.S. EPA Superfund Department takes over the Discharger (Lehigh's) Reclamation Plan 2012 & 2023 Amendment, the changes and Amendments to the plan could go on and on for decades or indefinitely. There is a seventy-million-dollar bond held by Santa Clara County from Lehigh for reclamation; it is not enough, it will take many more millions. All of the Lehigh land needs to be cleaned.

It is with the utmost urgency that I beg the U.S. EPA Superfund Division to do another investigation and would also like to see another investigation with the Stevens Creek Quarry. Stevens Creek Reservoir is full of mercury from the Stevens Creek Quarry right across the street. Letting polluters pollute for all these decades, and to allow them to continue to pollute is a crime. The cleanup, they state, will take 40 years and that is not for all of Lehigh's property. The real time frame is more like 56 years if you count the time from 2012 to 2025 - 13 years - and the time for the EIR processing of 3 years; well, how can the public wait that long? I have repeated some things under different topics to make certain people know the seriousness of the situation. We will all have passed away before the Reclamation Plan is completed. How can we wait much longer? Our children and their children will have to suffer.

Please do not renew this permit; it is time for real justice to take place. I will keep on hoping that the time will come when the people will see justice served.

Response to Ms. Helgerson Comment 23. Regarding Permanente Creek restoration, please see our response to Ms. Helgerson Comments 6 and 9.

Regarding land use decisions under the authority of Santa Clara County, including those related to the Stevens Creek Quarry and the Rock Plant closure, please see our responses to Ms. Helgerson Comments 4 and 11.

Regarding the Seepage Report referred to in this comment and potential impacts to drinking water, please see our response to Ms. Helgerson Comment 1.

Regarding site cleanup and U.S. EPA's Superfund program, please see our responses to Ms. Helgerson Comments 5 and 11.

Regarding the potential for the Regional Water Board to deny this NPDES permit renewal, please see our response to Ms. Helgerson Comments 7 and 19.