



111274

DATE: June 7, 2022

TO: Board of Supervisors

FROM: James R. Williams, County Counsel
Jacqueline R. Onciano, Director, Dept. of Planning and Development

SUBJECT: Report Back on Lehigh Cement Plant and Quarry Violations Over Last 10 Years

RECOMMENDED ACTION

Under advisement from January 25, 2022 (Item No. 14): Receive report from the Office of the County Counsel and the Department of Planning and Development relating to list of all noticed violations of permits, laws, statutes, regulations, ordinances, consent decrees, or other court actions involving Lehigh Cement Plant and Quarry over the ten-year period January 1, 2012 through December 31, 2021.

COMMITTEE RECOMMENDATIONS

The Housing, Land Use, Environment, and Transportation (HLUET) Committee considered this item on May 19, 2022 and made a favorable recommendation to forward to the Board of Supervisors' June 7, 2022 meeting. The Committee also requested an off-agenda memorandum to the Board addressing: (1) whether Lehigh's response to Administration's request for copies of notices of violations constitutes a violation of Final Condition of Approval No. 15 to the Reclamation Plan Amendment Application approved in 2012; and (2) options available to the County related to Lehigh's continued operation in light of Lehigh's record of non-compliance.

FISCAL IMPLICATIONS

There is no direct impact to the County General Fund as a result of receiving this report.

REASONS FOR RECOMMENDATION

At its January 25, 2022 regular meeting (Item No. 14), the Board of Supervisors (Board) approved a referral from Supervisor Simitian to Administration and County Counsel to report to the Board, through the Housing, Land Use, Environment, and Transportation Committee, by the first Board meeting in May 2022, with a list of all noticed violations of permits, laws, statutes, regulations, ordinances, consent decrees, or other court actions involving Lehigh Cement Plant and Quarry over the past ten years (January 1, 2012 – December 31, 2021). At

that January 25, 2022 Board meeting, Supervisor Simitian asked that “County Counsel ... take the lead to assemble the list.”

The Office of the County Counsel (CCO), with the assistance of the Department of Planning and Development (Department), obtained responsive information from relevant agencies by researching online databases, contacting agency representatives, and submitting public records requests.

CCO and the Department also attempted to obtain relevant information from Lehigh itself by requesting that Lehigh provide the County with any responsive records in its possession by no later than March 22, 2022. The request letter noted that Final Condition of Approval No. 15 to the Reclamation Plan Amendment (RPA) approved in 2012 requires Lehigh to provide “copies of all violations or abatement notices” related to the 2012 RPA and issued by federal, state, or local jurisdictions/agencies within ten business days of the County’s request. In a response letter, Lehigh noted that “[n]oticed violations are a matter of public record,” and provided a list of links to various agency websites, many of which do not include copies of noticed violation documents. Copies of the correspondence between the Department and Lehigh regarding this referral are provided in Attachment A.

CCO’s findings are described below. The list of violations is broken out by entity because each entity provides different types of information about its violations and enforcement actions; this format best preserves that detail and allows for supporting explanation. In addition, for transparency, the data source(s) for the findings about each agency or entity are described.

Summary of All Violations

The following table provides an overview of the total number of violations that were recorded and/or the subject of citations issued by each entity during the ten-year period from January 1, 2012 through December 31, 2021.

Entity	Number of Violations	Notes
Bay Area Air Quality Management District	37	34 noticed violations (not including 2 cancelled violations) + 2 violations leading to compliance agreements + 1 violation of compliance agreement
California Air Resources Board	1	
San Francisco Bay Regional Water Quality Control Board	809	
California Department of Fish & Wildlife	0	

Entity	Number of Violations	Notes
U.S. Fish & Wildlife Service	1	
U.S. Environmental Protection Agency	+	Discrete number of violations not discernable from each consent decree or enforcement document
California Division of Occupational Health & Safety (Cal/OSHA)	21	20 cited violations (not including 4 deleted violations) + 1 notice of failure to abate
U.S. Mine Safety & Health Administration	791	
California Division of Mine Reclamation	0	
City of Cupertino	4	
City of Palo Alto	0	
County Department of Planning and Development	5	
County Consumer Protection Division (Noise)	5	
County Hazardous Materials Compliance Program	461	
TOTAL	2,135+	

The violations issued by each entity are discussed in detail below.

Bay Area Air Quality Management District

Summary: The Bay Area Air Quality Management District (BAAQMD) issued 36 Notices of Violation to Lehigh over the ten-year period from January 1, 2012 through December 31, 2021. Two of the noticed violations were cancelled, and one was deemed “no further action.” For the remaining 33 violations, Lehigh was fined a total combined penalty amount of \$189,250. Lehigh came into compliance on all violations, and the status of all violations is now “closed.” A complete list with details of all noticed violations issued by BAAQMD from January 1, 2012 through December 31, 2021 is provided in Attachment B.

In addition to these noticed violations, BAAQMD entered into two compliance agreements with Lehigh during the relevant ten-year time period to address and abate two violations that were not formally noticed. Lehigh violated the terms of one of the compliance agreements.

A total penalty amount of \$60,000 was imposed under the two agreements for the underlying noncompliance, and an additional penalty of \$275,000 was imposed for violating one of the compliance agreements, for a total penalty amount of \$335,000. Further details about these compliance agreements are provided in Attachment B.

Data Source: In response to a California Public Records Act request submitted by CCO, BAAQMD provided a detailed spreadsheet with all the violation and compliance agreement data that is included in Attachment B.

California Air Resources Board

Summary: The California Air Resources Board (CARB) entered into one settlement agreement with Lehigh during the ten-year period from January 1, 2012 through December 31, 2021. The settlement agreement addressed an alleged violation of the Regulation for the Mandatory Reporting of Greenhouse Gas Emissions (MRR), California Code of Regulations, Title 17, section 95100 et seq. CARB determined that for the 2011 reporting period Lehigh, with regard to its facilities at Cupertino and Redding, failed to comply with the MRR because Lehigh certified its emissions reports after the deadline and the reports did not conform in all regards to the applicable requirements. The report received an adverse verification statement, although it was ultimately determined to be free of any material misstatement. To resolve the matter, Lehigh agreed to update its Greenhouse Gas Monitoring Plan and to pay a penalty of \$10,000.

Data Source: CCO reviewed the Enforcement Case Settlements for 2012 through 2021 on CARB's website, available at <https://ww2.arb.ca.gov/our-work/programs/enforcement-policy-reports/enforcement-case-settlements>. The page for 2013 Settlements includes an entry for Lehigh, with a link to the relevant settlement agreement, available at https://ww2.arb.ca.gov/sites/default/files/classic/enf/casesett/sa/lehigh_sa.pdf.

San Francisco Bay Regional Water Quality Control Board

Summary: The San Francisco Bay Regional Water Quality Control Board (RWQCB) identified 809 violations by Lehigh over the ten-year period from January 1, 2012 through December 31, 2021. These 809 violations were classified as follows: 1 Class A violation; 11 Class B violations; 1 Class One violation; 643 Class Two violations; 9 Class Three violations; and 144 unclassified violations. The RWQCB Enforcement policy that was adopted in 2017 uses Class A and Class B categorizations, with Class A being the more serious violation. The RWQCB Enforcement Policy that was in place from 2010 through 2017 used Class 1 through Class 3 categorizations, with Class 1 being the most serious violation. Definitions of these classifications as well as a complete list with details of all violations identified by the RWQCB from January 1, 2012 through December 31, 2021 is provided in Attachment C.

These violations resulted in various enforcement actions summarized below:

<u>Enforcement Type</u>	<u>Enforcement Order No.</u>	<u>Effective Date</u>	<u>Notes</u>
Admin Civil Liability	R2-2021-1021	06/14/2021	Settlement Agreement and Stipulated Order for imposition of \$60,000 administrative civil liability and implementation of Selenium Fish Tissue Monitoring Study
Admin Civil Liability	R2-2020-1016	02/04/2020	Acceptance of Conditional Resolution and Waiver of Hearing – agreement to pay total mandatory minimum penalty of \$6,000 for three violations from 2019 for excessive levels of selenium
Notice of Violation	N/A (Notice of Violation only)	07/09/2019	Notice of Violation for Discharge of Wasterock to Permanente Creek and Technical Reporting Requirements that required corrective actions to address discharge of wasterock to the creek caused by a slide from the Yeager Yard (a large stockpile of overburden)
Admin Civil Liability	R2-2019-1014	05/21/2019	Acceptance of Conditional Resolution and Waiver of Hearing – agreement to pay total mandatory minimum penalty of \$6,000 for three violations from 2017 and 2018 involving exceedance of maximum daily effluent limitation levels for suspended solids, selenium, and turbidity
Admin Civil Liability	R2-2018-1007	08/27/2018	Settlement Agreement and Stipulated Order for imposition of \$301,000 administrative civil liability to address violations of discharge effluent limitations and unauthorized discharges of untreated combined process wastewater and stormwater
Cease and Desist Order	R2-2017-0031	09/01/2017	Amendment of Cease and Desist Order No. R2-2014-0011 (see below) to reflect an amendment made to Lehigh’s NPDES permit that included changes to the final treatment system and final process flow such as additional ultrafiltration/reverse osmosis treatment as part of the final treatment system

<u>Enforcement Type</u>	<u>Enforcement Order No.</u>	<u>Effective Date</u>	<u>Notes</u>
Admin Civil Liability	r2-2017-1023	08/14/2017	Settlement Agreement and Stipulated Order for imposition of \$375,000 administrative civil liability to address violations of discharge effluent limitations
Admin Civil Liability	R2-2017-1001	01/12/2017	Settlement Agreement and Stipulated Order for imposition of \$465,500 administrative civil liability
Notice of Violation	N/A (Notice of Violation only)	08/30/2016	Notice of Violation requiring corrective actions to address violations of failure to report data accurately and in accordance with permit requirements and
Settlement - Court Order	Case5:15-cv-01896	04/28/2015	Consent Decree requiring Lehigh to pay total civil penalty of \$2,550,000, of which \$1,275,000 was to the RWQCB, and comply with various other terms. This Consent Decree was the result of a court action filed jointly by the U.S. EPA and the RWQCB alleging violations of the federal Clean Water Act and California Porter-Cologne Water Quality Control Act for various discharges by Lehigh. This case is related to <i>Sierra Club v. Lehigh Southwest Cement Company and Hanson Permanente Cement, Inc.</i> , Case No. 5:11-cv-06392-HRL, in which the Court entered a consent decree on June 18, 2013.
Cease and Desist Order	R2-2014-0011	05/01/2014	Cease and Desist Order requiring Lehigh to construct and operate an interim treatment system, followed by a final treatment system, to address exceedances of permit discharge prohibitions and effluent limitations
Notice of Violation	N/A (Notice of Violation only)	01/22/2013	Notice of Violation of California Water Code Section 13260 for failure to submit a report of waste discharge, requiring corrective actions including workplans and technical reports

Total penalties imposed as a result of these enforcement actions: \$2,488,500.

Data Source: The violations data included in Attachment C was obtained from the California Integrated Water Quality System Project Public Reports portal, available at

https://www.waterboards.ca.gov/water_issues/programs/ciwqs/publicreports.html.¹

Information about the enforcement actions taken against Lehigh, including links to the relevant enforcement documents, was obtained from the Facility-At-A-Glance report for Lehigh, available at

<https://ciwqs.waterboards.ca.gov/ciwqs/readOnly/CiwqsReportServlet?reportName=facilityAtAGlance&placeID=273205>. Information about additional enforcement actions taken against

Lehigh, including links to the relevant documents, was obtained from the State Water Resources Control Board's GeoTracker site, available at

https://geotracker.waterboards.ca.gov/profile_report?global_id=SL1821M610, by clicking on the "Regulatory Activities" tab and filtering for "Enforcement/Orders."

California Department of Fish & Wildlife

Summary: The California Department of Fish and Wildlife (CDFW) did not issue any notices of violation or file any cases against Lehigh in the ten-year period from January 1, 2012 through December 31, 2021.

Data Source: CCO communicated with CDFW staff. CCO also confirmed with the Office of the District Attorney that no cases had been filed against Lehigh during the relevant period.

U.S. Fish & Wildlife Service

Summary: The U.S. Fish and Wildlife Service (USFWS) did not issue any formal notices of violation to Lehigh during the ten-year period from January 1, 2012 through December 31, 2021. However, USFWS did recently informally identify a violation of federal law, which Lehigh and USFWS are working to resolve as described below.

On September 25, 2018, biological monitors working for Lehigh relocated a federally listed as threatened California red-legged frog (*Rana draytonii*) from storm water detention basin Pond 31b after it was found stuck in the mud after work in the detention basin. The frog was safely relocated to Pond 14 on Lehigh's property; however, neither Lehigh nor the biologist had a proper permit from USFWS under Endangered Species Act § 10(a)(1)(B) to capture and relocate the California red-legged frog. Since then, Lehigh has been working with USFWS to develop a habitat conservation plan which would give Lehigh the proper incidental take permit under the Endangered Species Act to relocate California red-legged frogs from work areas in detention basins. Specifically, Lehigh has submitted a draft habitat conservation plan and is seeking a 10(a)(1)(B) incidental take permit from USFWS to cover the effects of maintenance of its storm water detention basins on the California red-legged frog. The draft habitat conservation plan was submitted to the Federal Register for public comment on December 28, 2021, which ended on January 27, 2022. USFWS has been

¹ The relevant data can be accessed by taking the following steps: Click on "Interactive Violation Reports"; select "County," enter the date range 01/01/2012 to 12/31/2021, and click "Run Report"; click on the number "2007" next to Santa Clara County; scroll down to the entry for "Lehigh Southwest and Hanson Limestone Quarry Cement Plant (Permanente)" and click on the number "809"; and click on the column title "(+) Description" to expand the descriptions.

reviewing the comments received from the public and preparing the final documents before issuing Lehigh its 10(a)(1)(B) incidental take permit.

Data Source: CCO communicated with USFWS staff.

U.S. Environmental Protection Agency

Summary: The United States Environmental Protection Agency (EPA) has taken several enforcement actions against Lehigh for various asserted violations over the ten-year period from January 1, 2012 through December 31, 2021. These actions are summarized in the following table and discussed in more detail below.

EPA Case Identifier	Case Status	Primary Law/ Section	Filed/ Issued Date	Settlement Date	Federal Penalty Assessed or Agreed To	Value of Complying Actions
09-2010-0503	Final Order Entered	Clean Air Act/165	12/03/2019	11/18/2020	\$187,651	\$2,895,000
09-2012-1541	Demand for Stipulated Penalties	Clean Water Act/301/402	04/28/2015	11/02/2015	\$1,275,000	\$5,200,000
09-2015-3002	Final Order Issued	Emergency Planning & Community Right-to-Know Act/313	09/21/2015	09/21/2015	\$47,600	\$0

Note: The Settlement Date field in the table above is defined by EPA as follows: For federal judicial actions, this is the date the settlement document is signed by the presiding judge and entered by the Clerk of the Court. For administrative actions, this is the date that the final order is signed and issued by the enforcement authority.

EPA Case Number 09-2010-0503 – Civil Judicial Action

This enforcement action entailed a lawsuit brought in the United States District Court for the Eastern District of Pennsylvania (Court Docket Number: 5:19-cv-05688-JFL) against Lehigh for alleged violations of the Clean Air Act at facilities in numerous states, including the Lehigh Cement Plant and Quarry in Santa Clara County. Specifically, the complaint alleged violations of one or more of the following statutory and regulatory requirements of the Clean Air Act at one or more of Lehigh Cement Company LLC’s (Lehigh) nine (9) Portland cement plants and Lehigh White Cement Company, LLC’s (Lehigh White) two (2) Portland cement plants, collectively located in eight (8) different states within the United States: the Prevention of Significant Deterioration provisions of the Clean Air Act, 42 U.S.C. §§ 7470-7492; the non-attainment New Source Review provisions of the Clean Air Act, 42 U.S.C. §§ 7501-7515; and the federally-approved and enforceable state implementation plans, which

incorporate and/or implement the above-listed federal requirements. The litigation was resolved through a Consent Decree negotiated by the parties and entered by the Court on November 18, 2020.

Under that Consent Decree, Lehigh and Lehigh White agreed to invest approximately \$12 million in pollution control technology at their 11 Portland cement manufacturing plants in eight states to resolve alleged violations of the Clean Air Act. Lehigh agreed to mitigate the effects of past excess emissions from its facilities by replacing old diesel truck engines at its facilities in Union Bridge, MD, and Mason City, IA, at an estimated cost of approximately \$650,000, which is expected to reduce smog-forming NOx by approximately 25 tons per year. Lehigh was also required to pay a civil penalty of \$1.3 million total to resolve CAA violations. The civil penalty was split among the federal government and state plaintiffs, with the Bay Area Air Quality Management District receiving \$119,353.

EPA Case Number 09-2012-1541 – Civil Judicial Action

This enforcement action entailed a lawsuit brought in the United States District Court for the Northern District of California (Court Docket Number 5:15-cv-01896) against Lehigh for alleged violations of the Clean Water Act National Pollutant Discharge Elimination System (NPDES) regulations and California Porter-Cologne Water Quality Control Act.

Specifically, the complaint alleged that Lehigh's discharge of selenium from Discharge Point 001 (Pond 4A) violated effluent limitations in the Industrial Storm Water General NPDES Permit in violation of the Clean Water Act; that Lehigh's discharges of process water from the Cement Plant Reclaim System Emergency Bypass violated the Clean Water Act's prohibition of discharge of a pollutant without obtaining an NPDES permit; and that Lehigh's discharge of selenium, mercury, chromium (VI), nickel, thallium, total dissolved solids, pH, settleable matter, turbidity, total suspended solids, chlorine residual, and chloride from Discharge Points 001 (Pond 4A), 002 (Pond 13B), 003 (Pond 9), 004 (Pond 17), 005 (Pond 20), and 006 (Pond 30) violated effluent limitations in the Sand & Gravel General NPDES Permit in violation of the Clean Water Act. The litigation was resolved through a Consent Decree negotiated between Lehigh, the U.S. EPA, and the San Francisco Bay Regional Water Quality Control Board and entered by the Court on November 2, 2015. This case was related to *Sierra Club v. Lehigh Southwest Cement Company and Hanson Permanente Cement, Inc.*, Case No. 5:11-cv-06392-HRL, in which the Court entered a consent decree on June 18, 2013.

The Consent Decree between the EPA, RWQCB, and Lehigh required Lehigh to implement measures to achieve compliance with the Clean Water Act, California Water Code regulations, and Lehigh's Facility Individual NPDES Permit. The Consent Decree also required Lehigh to pay a civil penalty of \$2,550,000, of which half (i.e., \$1,275,000) was to be paid to the United States and the other half was to be paid to the Regional Water Quality Control Board.

Violations of Consent Decree: On June 8, 2016, the EPA and RWQCB sent Lehigh a Determination of Non-Compliance with Consent Decree and Demand for Stipulated Penalties. The letter explained that Lehigh violated the Consent Decree because Lehigh: failed to timely submit the stormwater pollution prevention plan, the best management practices plan, and a notification that the interim treatment system was operational and

constructed in accordance with Consent Decree requirements; failed to submit the first semi-annual progress report, which was due on February 2, 2016; and failed on various dates at various discharge points to meet interim effluent limits for selenium, settleable matter, total suspended solids, and turbidity. As a result, the EPA and RWQCB demanded payment of \$176,250 pursuant to the stipulated penalties provisions of the Consent Decree.

On July 9, 2018, the EPA and RWQCB again sent Lehigh a Determination of Non-Compliance with Consent Decree and Demand for Stipulated Penalties. The letter explained that Lehigh violated the Consent Decree when Lehigh: discharged unauthorized, untreated combined process wastewater and stormwater runoff from Pond 1 on numerous dates; failed to meet interim effluent limits for total suspended solids at two discharge points on February 21, 2017; and failed to achieve a reduction in selenium concentrations discharged from the interim treatment system when the influent selenium concentration exceeded a certain level on three separate dates. As a result, the EPA and RWQCB demanded payment of \$60,000 pursuant to the stipulated penalties provisions of the Consent Decree.

On December 20, 2019, the EPA and RWQCB sent Lehigh a third Determination of Non-Compliance with Consent Decree and Demand for Stipulated Penalties. The letter explained that Lehigh violated the Consent Decree when Lehigh: discharged unauthorized, untreated wastewater overflow on two dates; failed on various dates at various discharge points to meet its final effluent limits for total suspended solids, turbidity, and selenium; and violated the reporting requirements under Section VII of the Consent Decree when it failed to timely submit three semi-annual reports that were due on January 31, 2018 (received 509 days late on June 24, 2019); July 30, 2018 (received 310 days late on June 5, 2019); and January 31, 2019 (received 125 days late on June 5, 2019). As a result, the EPA and RWQCB demanded payment of \$264,750 pursuant to the stipulated penalties provisions of the Consent Decree.

EPA Case Number 09-2015-3002 – Formal Administrative Action

This enforcement action entailed a civil administrative penalty action instituted by the EPA against Lehigh pursuant to Section 325(c) of Title III of the Superfund Amendments and Reauthorization Act, 42 U.S.C. § 11001 et seq., also known as the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA), for violations of Section 313 of EPCRA, 42 U.S.C. § 11023, and its implementing regulations at 40 C.F.R. Part 372. The EPA alleged that Lehigh failed to submit required Toxic Chemical Release Inventory Reporting Forms for nickel compounds and thallium compounds for calendar years 2009 and 2010 to EPA and the State of California on or before July 1 of the following year and failed to submit complete and accurate Toxic Chemical Release Inventory Reporting Forms for lead compounds and mercury compounds those same years, resulting in 8 total violations of Section 313 of EPCRA, 42 U.S.C. § 11023, and 40 C.F.R. Part 372. The action was resolved through a negotiated Consent Agreement and Final Order entered on September 21, 2015.

The Consent Agreement and Final Order required Lehigh to perform two supplemental environmental projects and pay a civil penalty of \$47,600.

Data Source: Information about the EPA's enforcement actions against Lehigh was obtained using the enforcement case search tool on the EPA's Enforcement and Compliance History Online (ECHO) site, available at <https://echo.epa.gov/facilities/enforcement-case-search>,

using the following search criteria: Case Type: Any; Case Category: Any; Case Lead: Federal EPA; City: Cupertino; State: California; County: Santa Clara County; Case Milestone(s) Date Range: 01/01/2012 - 12/31/2021. In addition, upon request from CCO, EPA staff provided relevant documents with further information.

California Division of Occupational Safety & Health

Summary: The California Division of Occupational Safety and Health (Cal/OSHA) noticed 24 violations to Lehigh over the ten-year period from January 1, 2012 through December 31, 2021, of which 4 violations were deleted. In addition, at least one Notification of Failure to Abate Violation was issued to Lehigh during this period. Of the 20 total violations that have not been deleted, 6 were classified as “serious,” and 4 are related to an inspection that has not yet been closed. A complete list with details of all violations cited by Cal/OSHA from January 1, 2012 through December 31, 2021 is provided in Attachment D.

Data Source: The violations data included in Attachment D was obtained from the U.S. Occupational Safety and Health Administration’s Integrated Management Information System through the Establishment Search query tool, available at <https://www.osha.gov/pls/imis/establishment.html>.² Information about the Notification of Failure to Abate Violation was obtained in response to a public records request submitted to Cal/OSHA by CCO. Cal/OSHA’s response to the public records request is not yet complete, and thus more information may be forthcoming.

U.S. Mine Safety and Health Administration

Summary: The U.S. Mine Safety and Health Administration (MSHA) issued 761 Citations and 30 Orders to Lehigh for 791 total violations over the ten-year period from January 1, 2012 through December 31, 2021. (There were an additional 152 violations by contractors working at the Lehigh site during this time period.) The total penalty amount paid by Lehigh for its violations is \$1,601,932. Of the 791 total violations, 134 were categorized as “serious and substantial” violations. A complete list with details of all violations issued by MSHA from January 1, 2012 through December 31, 2021 is provided in Attachment E.

Data Source: The violations data included in Attachment E was obtained from the U.S. Mine Safety and Health Administration’s Mine Data Retrieval System, available at <https://www.msha.gov/mine-data-retrieval-system>, by entering Mine ID 404075 in the Search Criteria, clicking on “Violations” under “Related Reports Links,” and entering the applicable date range.

California Division of Mine Reclamation

Summary: CCO and the Department are not aware of any noticed violations issued to Lehigh by the California Division of Mine Reclamation during the ten-year period from January 1,

² The relevant data can be accessed using the following search criteria: Establishment: Lehigh Southwest Cement Company; State: California; Fed & State; OSHA Office: All Offices; Site Zip Code: 95014; Case Status: All; Violation Status: All; Inspection Date Range: 01/01/2012 - 12/31/2021. On the Establishment Search Results page, click “Select All” and then “Get Detail.”

2012 through December 31, 2021. The County, not the Division of Mine Reclamation, is the lead enforcement agency for violations of California’s Surface Mining and Reclamation Act of 1975 (SMARA).³

Data Source: CCO consulted with County staff knowledgeable about SMARA enforcement. In addition, CCO researched the Division of Mine Reclamation’s website, but did not find any information about enforcement beyond a note that the Division provides “enforcement action support [to lead agencies] when appropriate.” CCO also contacted the Division by email but received no response as of May 9, 2022.

City of Cupertino

Summary: The City of Cupertino has issued one Notice of Violation to Lehigh over the ten-year period from January 1, 2012 through December 31, 2021. On May 28, 2019, the City of Cupertino issued an Administrative Citation and Notice of Violation listing four violations of the Cupertino Municipal Code relating to Lehigh’s expansion and grading of an existing utility road that extends from Lehigh’s Permanente Quarry to neighboring Steven Creek Quarry (Haul Road). The Notice explains that in expanding the Haul Road, Lehigh cut and filled significant volumes in a steeply sloped setting, built and graded a larger road designed for heavy vehicles, and removed approximately 35 trees, all within the City’s jurisdiction and without providing notice to the City or obtaining the required permits. This resulted in an administrative citation fee of \$100 and citation for the following four violations:

- Grading without a permit. *See* Cupertino Municipal Code (CMC) §§ 16.08.050.2, 16.08.080-160, 16.08.230.
- Violation of design standards. *See* CMC § 16.08.200.
- Lack of erosion control in violation of City requirements. *See* CMC §§ 9.18.020(10), 9.18.210(2).
- Unauthorized removal of protected trees. *See* CMC §§ 14.18.110, 14.18.210(A).

A copy of the May 28, 2019 Administrative Citation and Notice of Violation, which provides additional detail, is available at

<https://www.cupertino.org/home/showpublisheddocument/24419/636948094465100000>.

According to the City of Cupertino, Lehigh is currently in the process of designing corrective improvements to address these violations.

Data Source: CCO reviewed the website maintained by the City of Cupertino with information about Lehigh Quarry (and Stevens Creek Quarry), including relevant documents such as the above-described Notice of Violation. That website is available at

³ The Division of Mine Reclamation only issues violations when it has taken over as lead agency from a local jurisdiction; CCO and the Department are not aware of this having occurred with respect to Santa Clara County and Lehigh during the ten-year period from January 1, 2012 through December 31, 2021. When the Division of Mine Reclamation is not acting as the lead agency, it serves as the hearing body for appeals of certain lead agency actions. It also reviews and comments on new reclamation plans or reclamation plan amendments, financial assurance cost estimates, and financial assurance mechanisms.

<https://www.cupertino.org/our-city/city-news/quarry-information>. In addition, CCO communicated with Chad Mosley, Assistant Director of Public Works for the City of Cupertino, to confirm that the City had not issued any noticed violations during the relevant time period beyond those described above.

City of Palo Alto

Summary: CCO and the Department are not aware of any noticed violations issued to Lehigh by the City of Palo Alto during the ten-year period from January 1, 2012 through December 31, 2021.

Data Source: CCO searched the City of Palo Alto’s website but did not find any information about Lehigh. CCO also contacted the City of Palo Alto’s Planning and Development Services Staff by phone and email but received no response as of May 9, 2022. CCO contacted the Office of the City Attorney and received a phone call requesting additional information, which CCO provided, but as of May 9, 2022, the Office of the City Attorney has not substantively responded to CCO’s inquiry.

County of Santa Clara Department of Planning and Development

Summary: The Department issued two Notices of Violation to Lehigh over the ten-year period from January 1, 2012 through December 31, 2021, specifically on August 17, 2018 and June 13, 2019. Those two Notices of Violation identified the following five violations:

- Grading outside the boundaries of the approved 2012 Reclamation Plan Amendment for Permanente Quarry (Reclamation Plan). *See* Surface Mining and Reclamation Act (SMARA) at California Public Resources Code § 2773(a).
 - “On June 28, 2018, County inspectors observed a recently widened haul road between Permanente Quarry and Stevens Creek Quarry. The cuts and fills for this haul road violate SMARA because they are mining-related ground disturbances located outside of the Reclamation Plan boundaries.”
- Steep cut and fill slopes. *See* California Code of Regulations Title 14 § 3704(f).
 - “The cut and fill slopes for the haul road appear very steep and require slope-stability analysis to prove they meet State standards.”
- Lack of erosion control. *See* California Code of Regulations Title 14 § 3706.
 - “On June 28, 2018, County staff observed a lack of erosion controls at the haul road area or Lehigh rock plant. Stormwater at these areas could potentially overwhelm existing drainage systems and result in an extreme discharge into Permanente Creek.”
- Failure to control sedimentation. *See* California Code of Regulations Title 14 § 3706.
 - “Permanente Quarry ... is currently causing a discharge of sediment into Permanente Creek”
- Failure to comply with Approved Reclamation Plan Conditions of Approval (Condition Nos. 79d, 78f). *See* Zoning Ord. § 4.10.370III(C)(1).

- “Permanente Quarry ... is currently causing a discharge of sediment into Permanente Creek”

The Notices of Violation required various corrective actions to abate the violations. Lehigh eventually completed these actions and the violations are now closed.

Data Source: Copies of the Notices of Violation issued to Lehigh by the Department are available on the Department’s website at <https://plandev.sccgov.org/policies-programs/surface-mining-and-reclamation-act-smara/permanente-quarry-lehighhanson/permanente-notices-of-violation>.

County of Santa Clara Consumer Protection Division (Noise)

Summary: The County’s Department of Environmental Health (DEH) - Consumer Protection Division issued three Notices of Violation to Lehigh over the ten-year period from January 1, 2012 through December 31, 2021, specifically on May 5, 2016; February 16, 2017; and May 16, 2017. Those three Notices of Violation detail violations of the County’s Noise Ordinance (County Ordinance Code Section B11-152) as measured by DEH staff on five separate occasions:

April 14, 2016

April 24, 2016

January 29, 2017

March 31, 2017

April 28, 2017

The Notices required Lehigh to immediately reduce the noise generated on its property to permissible levels and to submit reports detailing the measures taken to reduce the noise.

Data Source: Upon request from CCO, the Department of Environmental Health provided the three Notices of Violation discussed above. The Notices are on file with CCO.

County of Santa Clara Hazardous Materials Compliance Division

Summary: The County’s Hazardous Materials Compliance Division issued 461 Notices of Violation to Lehigh over the ten-year period from January 1, 2012 through December 31, 2021. Two violations issued on October 13, 2021 remain “open”; the status of all other 459 violations is “closed.” Of the 461 violations, 257 were classified as “minor” under state law, 60 were classified as “Class II” under state law, none were classified as “Class I” under state law, and 144 were violations of the County of Santa Clara Ordinance Code such that a state law classification was inapplicable. Class I violations are the most serious, followed by Class II violations. Definitions of these classifications as well as a complete list with details of all violations issued by the Hazardous Materials Compliance Division from January 1, 2012 through December 31, 2021 is provided in Attachment F.

Data Source: Upon request from CCO, the Hazardous Materials Compliance Division provided a detailed spreadsheet with all the violation data that is included in Attachment F.

County of Santa Clara Solid Waste Program

Summary: The County’s Solid Waste Program, which has regulatory oversight related to Lehigh’s waste tire generation, has not noted any violations at Lehigh during the ten-year period from January 1, 2012 through December 31, 2021.

Data Source: Upon request from CCO, the Department of Environmental Health provided this information.

Litigation

Summary: The referral also requested information about “court actions involving Lehigh Cement Plant and Quarry over the past ten years.” A list of court actions involving Lehigh filed in either the Superior Court of California, County of Santa Clara or the United States District Court for the Northern District of California is provided in Attachment G. Information about the outcome and subject matter of the cases is provided where available; the existence of a case is not equivalent to a confirmed violation because in some cases Lehigh was the plaintiff or prevailed as the defendant.

Data Source: Information about cases filed in the Superior Court of California, County of Santa Clara was obtained by searching the Case Information Portal, available at <https://portal.scscourt.org/search>, using the search criteria Business Name: Lehigh. Information about cases filed in the U.S. District Court for the Northern District of California was obtained by searching the court’s Case Management/Electronic Case Files system, available at <https://ecf.cand.uscourts.gov/cgi-bin/iquery.pl>, using the query criteria Filed Date: 1/1/2012 -12/31/2021 and Last/Business Name: Lehigh Southwest Cement. Note that this system requires a Public Access to Court Electronic Records (PACER) account and that charges may be incurred by executing a search.

CHILD IMPACT

The recommended action will have no/neutral impact on children and youth.

SENIOR IMPACT

The recommended action will have no/neutral impact on seniors.

SUSTAINABILITY IMPLICATIONS

The recommended action will have no/neutral sustainability implications.

BACKGROUND

At its January 25, 2022 regular meeting (Item No. 14), the Board of Supervisors approved a referral from Supervisor Simitian to Administration and County Counsel to report to the Board, through the Housing, Land Use, Environment, and Transportation Committee, by the first Board meeting in May 2022, with a list of all noticed violations of permits, laws, statutes, regulations, ordinances, consent decrees, or other court actions involving Lehigh Cement Plant and Quarry over the past ten years (January 1, 2012 – December 31, 2021).

As explained in the referral, the Lehigh Cement Plant and Quarry are subject to regulatory oversight at the federal, state, regional, and local levels by multiple agencies across a wide spectrum of activities. There is no centralized location where the public can find information

about Lehigh's compliance with all the laws and regulations to which it is subject and the enforcement actions taken by various agencies. This report creates transparency by compiling and presenting in an organized fashion ten years of violation and enforcement data from relevant agencies and departments.

ATTACHMENTS:

- Attachment A - Correspondence with Lehigh (PDF)
- Attachment B - Bay Area Air Quality Management District Violations (PDF)
- Attachment C - San Francisco Bay Regional Water Quality Control Board Violations (PDF)
- Attachment D - California Division of Occupational Safety and Health Violations (PDF)
- Attachment E - US Mine Safety and Health Administration Violations (PDF)
- Attachment F - Hazardous Materials Compliance Division Violations (PDF)
- Attachment G - Court Cases Involving Lehigh (PDF)