
San Francisco Bay Regional Water Quality Control Board

July 9, 2019
Place ID 2020435 (LW)

Lehigh Southwest Cement Company
and Hanson Permanente Cement Inc.
Attn: Erika Guerra
24001 Stevens Creek Blvd.
Cupertino, CA 95014
(Sent via email to
Erika.Guerra@LehighHanson.com)

Subject: Notice of Violation for Discharge of Wasterock to Permanente Creek and Technical Report Requirements related to the Permanente Quarry and Cement Plant (Lehigh), Cupertino, Santa Clara County

Dear Ms. Guerra:

Water Board staff (Staff) inspected the Yeager Yard and adjacent reach of Permanente Creek on May 21, 2109. The Yeager Yard is a large stockpile of overburden (a type of mining wasterock) recently constructed on an older slope of wasterock, located southeast of the WMSA. During the inspection Staff observed evidence of a recent slide and discharge of wasterock to the creek. A memo is attached with details and photos; however, the primary findings are:

1. A fresh slide was observed on the Yeager Yard slope, as evident by visually distinct soil (darker in color) and significantly less, and younger vegetation within the slide area compared to areas immediately adjacent.
2. The slide surface extended from the slope to Permanente Creek and the distinct wasterock was evident in the creek at the slide location, but not upstream.
3. Significant fissures and cracks were observed on the slope of the Yeager Yard area, demonstrating the slope has been and continues to be unstable.

In short, staff found evidence of a recent unauthorized discharge of wasterock to Permanente Creek caused by a slide from the Yeager Yard slope and adverse impacts to creek waters from the discharge. Discharge of wasterock to Permanente Creek is a violation of Prohibition A.1 of Waste Discharge Requirements (WDRs, Order No. R2-2018-0028), which states:

The treatment, discharge, or storage of waste or other materials that may impact the beneficial uses of groundwater or surface water shall not be allowed to create a condition of pollution, contamination or nuisance as defined in CWC section 13050, nor degrade the quality of waters of the State or of the United States.

The discharge of inert wasterock creates a condition of pollution via sedimentation of the creek that adversely affects beneficial uses. However, we are also concerned about potential impacts from leaching of metal(loid)s from the wasterock particularly selenium. According to data submitted May 21, 2019, seeps from this slope contain elevated selenium concentrations (attached). Furthermore, unlike the tan sandstone material currently stored in the Yeager Yard which we understand to be relatively inert; the slide wasterock is dark in color, similar to site limestone, which is elevated in selenium.

Therefore, in addition to the corrective actions implemented and planned as outlined in your May 10, 2019, letter, please submit the following to GeoTracker:

1. An addendum to the site Operations, Maintenance and Contingency Plan, required by Provision 7 of the WDRs, detailing:
 - a. Corrective actions taken as of the due date;
 - b. Plans and schedules for future actions;
 - c. Details for regular monitoring and maintenance of *all* slopes of overburden and product on the site with the potential to impact water quality (including strictly from sedimentation); and
 - d. Identify if the wasterock in the slide is limestone and chemically characterize it to determine whether the material may have caused chemical water quality impacts in addition to sedimentation.

Due: August 30, 2019

2. All correspondence from and technical documentation submitted in response to the County of Santa Clara's June 13, 2019, letter *Notice of Violation and Public Nuisance*.

This requirement for reports is made pursuant to Water Code Section 13267, which allows the Water Board to require technical or monitoring program reports from any person who has discharged, discharges, proposes to discharge, or is suspected of discharging waste that could affect water quality. The reports are needed to evaluate the potential extent of impact and to demonstrate slope stability is being addressed, and future slides and discharges of this nature prevented. The evidence that supports requiring the reports are contained in the files for Lehigh Southwest Cement Company (GeoTracker) and in the attached memo, dated July 1, 2019. The third attachment provides additional information about Section 13267 requirements. Any extension in the above deadline must be approved in writing by Water Board.

Please feel free to contact Lindsay Whalin of my staff at lwhalin@waterboards.ca.gov or (510) 622-2363 should you have questions.

Sincerely,

Lisa Horowitz McCann
Assistant Executive Officer

CC:

Robert Salisbury, County of Santa Clara Planning Office – robert.salisbury@pln.sccgov.org

Attachments:

- Inspection Memo
- Seep Data Submittal
- 13267 Fact Sheet