



**CITY OF LOS ALTOS
CITY COUNCIL MEETING
May 26, 2015**

DISCUSSION ITEM

Agenda Item # 9

SUBJECT: Direct staff to draft a letter of support for the Environmental Protection Agency settlement against the Lehigh cement plant

BACKGROUND

On April 29, 2015, the U.S. Environmental Protection Agency, U.S. Department of Justice and the State of California (collectively EPA) announced a settlement requiring the Lehigh cement plant near Cupertino to reduce toxic discharges of selenium and other metals to Permanente Creek, a tributary of San Francisco Bay. The facility, owned by Hanson Permanente Cement Inc. and operated by Lehigh Southwest Cement Co. (Lehigh), will spend more than \$5 million to install wastewater treatment and make other facility improvements to prevent future violations. The company will also pay \$2.55 million in civil penalties to settle the case. The settlement addresses Lehigh's and Hanson's violations of the Clean Water Act. The Cupertino facility routinely discharged excessive selenium into Permanente Creek in violation of Lehigh's permits from at least 2009 to 2014.

For more information see www.justice.gov/enrd/Consent_Decrees.html

EXISTING POLICY

None

PREVIOUS COUNCIL CONSIDERATION

Last year the Council authorized up to \$7,500 to join other cities to fund an amicus brief in the Midpeninsula Regional Open Space District's appeal of its vested rights case against Lehigh and Santa Clara County. Recently the City joined an amicus brief for No Toxic Air/BACE's appeal of a separate environmental case brought pursuant to the California Environmental Quality Act.

DISCUSSION

The proposed Clean Water Act consent decree, filed concurrently with the complaint in U.S. District Court for the Northern District of California, San Jose division, is subject to a 30-day public comment period and court approval, which ends June 4, 2015.

Recently the Council was asked to consider sending a letter of support to the EPA's settlement with Lehigh. The City of Cupertino will be sending a letter of support to the EPA.

PUBLIC CONTACT

Posting of the meeting agenda serves as notice to the general public.

FISCAL/RESOURCE IMPACT

None

ENVIRONMENTAL REVIEW

Not applicable

RECOMMENDATION

Direct staff to draft a letter of support for the Environmental Protection Agency settlement against the Lehigh cement plant

ALTERNATIVES

Take no action

Prepared by: Jolie Houston, City Attorney

ATTACHMENT:

1. Environmental Protection Agency press release dated April 29, 2015

Direct staff to draft a letter of support for the Environmental Protection Agency settlement against the Lehigh cement plant

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News Releases By Date

EPA, Justice Department and State of California require Lehigh Cement to cut toxic discharges to San Francisco Bay

Release Date: 04/29/2015

Contact Information: Suzanne Skadowski, U.S. EPA, 415-972-3165, skadowski.suzanne@epa.gov

Company to spend over \$7.5 million for violations at cement facility near Cupertino, Calif.

SAN FRANCISCO – Today, the U.S. Environmental Protection Agency, U.S. Department of Justice and the State of California announced a settlement requiring the Lehigh cement plant near Cupertino to reduce toxic discharges of selenium and other metals to Permanente Creek, a tributary of San Francisco Bay. The facility, owned by Hanson Permanente Cement Inc. and operated by Lehigh Southwest Cement Co., will spend more than \$5 million to install wastewater treatment and make other facility improvements to prevent future violations. The company will also pay \$2.55 million in civil penalties to settle the case.

The settlement addresses Lehigh's and Hanson's violations of the Clean Water Act. The Cupertino facility routinely discharged excessive selenium into Permanente Creek in violation of Lehigh's permits from at least 2009 to 2014. The plant's discharges also routinely exceeded standards for total suspended solids, total dissolved solids, turbidity, and pH, and in some cases exceeded standards for mercury, hexavalent chromium, nickel, and thallium.

"EPA and California are working together to enforce the Clean Water Act and help restore San Francisco Bay," said Jared Blumenfeld, EPA's Regional Administrator for the Pacific Southwest. "Every action we take to remove selenium and other toxic metals improves water quality and leads to a healthier and more resilient Bay."

"Today's Clean Water Act settlement, done jointly with the state of California, will remove selenium and other toxic substances from Permanente Creek and help protect the fragile and life-sustaining ecosystem of San Francisco Bay," said Assistant Attorney General John C. Cruden of the Justice Department's Environment and Natural Resources Division. "By bringing this older facility up to contemporary standards, and by pushing it to introduce cutting-edge treatment technology, the Department of Justice and our partners are helping create a level playing field, where all industry members are held to the same standards and no company can gain an economic advantage over its competitors by shortchanging environmental compliance."

"This settlement will result in important reductions in pollutant discharges, in facility upgrades, and in improvements to help protect and restore water quality in Permanente Creek and San Francisco Bay," said Bruce Wolfe, San Francisco Bay Regional Water Board Executive Officer. "We will continue our multiagency efforts to regulate all water quality aspects of this facility, including installation of the full-scale wastewater treatment system, restoration of stream habitat, and control of stormwater runoff."

"Lehigh Cement discharged millions of gallons of industrial wastewater that flowed into the San Francisco Bay," said Attorney General Kamala D. Harris. "This settlement holds Lehigh Cement accountable for its actions and will prevent future toxic discharges. I thank our state and federal partners for their work to protect this precious resource and consumers from the serious environmental and health damage caused by water pollution."

Since at least 2009 to 2014, Lehigh's limestone mine and cement plant discharged millions of gallons of quarry process water and stormwater to Permanente Creek daily. These discharges contained thousands of pounds of sediment, and hundreds of pounds of selenium and other toxic metals each year in violation of the federal Clean Water Act. The settlement requires Lehigh to construct an advanced wastewater treatment system to significantly reduce its selenium and other metals discharges. Lehigh already installed an interim treatment system and a permanent system will be completed by 2017. Lehigh will make other facility improvements to remove sediment

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from its stormwater runoff, spending more than \$5 million overall to come into compliance.

Selenium is a naturally occurring element in limestone and other rock formations. When discharged at high concentrations to waterways, selenium becomes toxic to fish and other aquatic life, and to birds and other animals that consume selenium-contaminated aquatic organisms. Permanente Creek, to which the Lehigh cement facility discharges, is listed as "impaired" for selenium under the Clean Water Act. The creek provides important habitat for California red-legged frogs, a species listed as threatened under the Endangered Species Act.

The proposed Clean Water Act consent decree, filed concurrently with the complaint in U.S. District Court for the Northern District of California, San Jose division, is subject to a 30-day public comment period and court approval:

www.justice.gov/enrd/Consent_Decrees.html

For more information about the investigation and settlement, including photos, visit:

<http://www.epa.gov/region9/mediacenter/lehigh/index.html>

Information about the California Water Board's permits and enforcement actions is available at:

http://www.waterboards.ca.gov/sanfranciscobay/water_issues/hot_topics/lehigh.shtml

Learn more about EPA's work to restore San Francisco Bay: <http://www2.epa.gov/sfbay-delta/>

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