



# DEPARTMENT OF CONSERVATION

*Managing California's Working Lands*

## OFFICE OF MINE RECLAMATION

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July 20, 2011

**Via Email:** [Scott.Renfrew@LehighHanson.com](mailto:Scott.Renfrew@LehighHanson.com)

**Via Certified Mail:** 7010 2780 0000 4767 7882

Mr. Scott Renfrew  
Designated Agent  
Lehigh Southwest Cement Company  
24001 Stevens Creek Boulevard  
Cupertino, CA 95014

Dear Mr. Renfrew:

**30-DAY PENDING REMOVAL FROM THE AB 3098 LIST, RECLAMATION PLAN NON-COMPLIANCE, PERMANENTE QUARRY, MINE ID #91-43-0004**

The purpose of this letter is to bring to your attention a matter of AB 3098 list eligibility pursuant to the Surface Mining and Reclamation Act of 1975 (SMARA) Section 2717(b) regarding the Permanente Quarry (Quarry). The Quarry is actively operated by the Lehigh Southwest Cement Company. The County of Santa Clara (County) is the SMARA lead agency for this surface mining operation.

On October 10, 2006, the County issued the Quarry an Order to Comply (OTC)/Notice of Violation (NOV) requiring the operator to prepare an amended reclamation plan and submit it for approval in accordance with a Compliance Schedule. Violations identified in the order included instability of the pit slopes and surface mining operations occurring outside the approved reclamation boundary. Based on that schedule, the Quarry should have come into compliance by December 2007. Subsequently, the schedule was extended for an additional two years to allow for completion of geotechnical investigations.

While still under the October 10, 2006 Order to Comply, the operator expanded operations outside the approved reclamation plan boundary and began dumping materials in the East Materials Storage Area (EMSA). The County issued a NOV on June 20, 2008 to the Quarry operator for the illegal stockpiling material outside the approved reclamation plan boundary.

In a status letter to the State Mining & Geology Board (SMGB), dated June 9, 2011, the County indicated that the CEQA review of the amended reclamation plan is underway.

The current target date for achieving full compliance with SMARA at the Quarry is June 2012. The letter states that this is the earliest date in which the Final Environmental Impact Report (FEIR) is expected to be certified, depending on the volume of public comments received by the County. This "best case" schedule is approximately five years longer than the OTC/NOV allowed for achieving compliance, and well after the original violations were brought to the County's attention.

Public Resources Code (PRC) Section 2770(a) provides that no person shall conduct surface mining operations unless a permit is obtained from, and a reclamation plan and financial assurances for reclamation have been submitted to, and approved by, the lead agency for the operation. Surface mining operations must be conducted in accordance with the approved reclamation plan. Except as provided under PRC Section 2714, any surface mining operations conducted without an approved reclamation plan is a violation of SMARA.

We understand that the County is reviewing two reclamation plans for the Quarry, one for the EMSA, and a more comprehensive reclamation plan. These plans cover two parts of the same operation. However, pursuant to California Code of Regulations (CCR) Section 3502(d) a surface mining operation as defined in PRC Section 2735 and Title 14 CCR Section 3501, shall have no more than one approved reclamation plan applicable to the operation.

Further, CCR Section 3502(g) provides that, should an expansion of an operation into an area not covered by an approved reclamation plan be determined by the lead agency to be a substantial deviation, an amended reclamation plan shall be prepared that ensures adequate reclamation for the surface mining operation. The EMSA should not be treated as a separate reclamation amendment, but included in a single amended reclamation plan which includes all areas disturbed by surface mining operations.

The Department of Conservation's Office of Mine Reclamation (OMR) periodically publishes a list of mining operations that meet the requirements of PRC Section 2717(b). This list is generally referred to as the AB 3098 list, in reference to the 1992 legislation that established it. The Public Contract Code prohibits state agency purchases of mined materials produced by mining operations that are not included on the AB 3098 list. Sections 10295.5 and 20676 of these statutes also prohibit the sale of such materials to local government agencies. The requirements for inclusion on the AB 3098 list include compliance with the financial assurance requirements developed pursuant to PRC Section 2773.1.

This letter serves as official notice that, if the violations noted in the OTC extend beyond 30 days after the date of this notice, the Quarry will be removed from the AB 3098 List. The appropriate steps that the Lehigh Southwest Cement Company must take to resolve this violation is to:



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1. Prepare and submit to the lead agency for approval, a reclamation plan amendment that encompasses all the area disturbed by surface mining operations, including those areas conducted outside the approved reclamation plan boundary. The Quarry will not be list eligible until the proposed reclamation plan amendment has been approved by the County.
2. Submit to the lead agency for approval, a revised financial assurance cost estimate (FACE) that includes the cost of reclaiming all the area disturbed by surface mining operations conducted outside the reclamation plan boundary. The Quarry will not be list eligible until the revised financial assurance has been approved by the County.

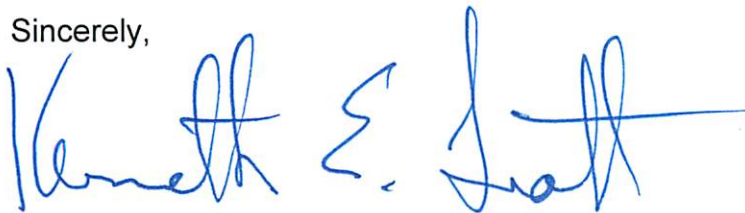
Proof of the adequacy of the FACE must be submitted to OMR by the lead agency, not by the mine operator. The submission must be in accordance with the SMGB financial assurance guidelines.

Reinstatement to the AB 3098 list requires an approved reclamation plan and financial assurances that cover the affected surface mining operation pursuant to PRC section 10295.5 (a). Prior to reinstatement, the Department will need to verify that the surface mining operations being conducted at the Quarry are covered by an approved reclamation plan and adequate financial assurances.

In summary, the Permanente Quarry, CA Mine ID #91-43-0004, is scheduled to be removed from AB 3098 list 30 days after the date of this notice unless the OTC violations are corrected.

If you have any questions regarding this letter, please contact Bret Koehler at (916) 323-9198.

Sincerely,



Kenneth E. Trott, Manager  
Reporting and Compliance Unit

cc: Marvin Howell, Lehigh Southwest Cement Company  
Gary Rudholm, County of Santa Clara  
Stephen Testa, State Mining & Geology Board