

Unasked Questions from the 2/13/20 Lehigh Public Meeting

Answers provided by the responding agency.

BAAQMD

- Why do our regulatory agencies accept self-reporting of previously measured violations?

The Air District cannot speak to how other regulatory agencies view acceptance of self-reported (previously measured) violations. But from the Air District's perspective, self-reporting of (previously measured) violations encourages companies to audit their own facilities and correct violations in a timely manner. The Air District not only encourages self-reporting of violations, it requires it through standard operating conditions found in every Title V Permit to Operate issued in the Air District. Title V Permits to Operate are required for large industrial facilities such as Lehigh. Every self-reported (previously measured) violation is investigated by Air District inspection staff and, if confirmed, enforcement action is taken. In addition, the Air District maintains rigorous inspection and monitoring oversight in order to find non-self-reported violations. (more information on the Air District's Title V program can be found at: <https://www.baaqmd.gov/permits/major-facility-review-title-v>)

- Will the BAAQMD be looking at the issue of the secondary plume – how and when?

The secondary plume that occasionally forms above the large cement kiln stack at Lehigh is the result of stack gases that condense under certain conditions to form visible particles. This is a common problem for cement kiln stacks where ammonia, hydrogen chloride, and/or sulfur dioxide are present. This can become a compliance issue if the plume opacity violates Air District opacity standards and can be enforced by Air District inspection staff. To report a visible emissions concern, register a complaint online at: <https://www.baaqmd.gov> or call the 24-hour complaint line at (800) 334-ODOR.

Air District Regulation 9. Rule 13 – Nitrogen Oxides, Particulate Matter, and Toxic Air Contaminants from Portland Cement Manufacturing adopted in 2012

Unasked Questions from the 2/13/20 Lehigh Public Meeting

Answers provided by the responding agency.

and the soon to be finalized Consent Decree (United States of America, Bay Area Air Quality Management District, etc. al. vs Lehigh Cement Company LLC and Lehigh White Cement Company, LLC.) are regulatory measures that have or will have emission reduction requirements that affect secondary plume formation.

- How do the BAAQMD and its parent agency the CARB regulate greenhouse gas emissions from Lehigh? Is Lehigh under the cap and trade program? If so, have they participated?

The Air District calculates greenhouse gas emissions on an application-by-application basis to determine if the project triggers California Environmental Quality Act (CEQA), Title V, Prevention of Significant Deterioration (PSD) thresholds. Appropriate actions are taken for each scenario to ensure the project meets all local and federal regulations prior to permit issuance.

California Air Resources Board (CARB) has their own regulation(s) for greenhouse gas emissions under CA Code of Regulations, Title 17, Subchapter 10, Article 2, and Lehigh is one of the covered sectors. Lehigh annually reports emissions of greenhouse gases at both the state and federal level. Lehigh is required to annually surrender allocations for reported and independent third-party verified covered emissions as required by the California Air Resources Board in the Compliance Instrument Tracking System Service, which is a management system for the Cap and Trade program. Please contact CARB for more information regarding this program.

- When is the health study being held? How long will the study extend?

The Air District is currently reviewing Lehigh's toxic emissions inventory and emissions release data for Regulation 11, Rule 18, "Reduction of Risk from Air Toxic Emissions at Existing Facilities." The Air District is expecting to conduct a site-wide Health Risk Analysis (HRA) for Lehigh in the second and third quarter of 2020. The Air District will notify the facility of the preliminary HRA results and will hold a 90-day review and comment process with the facility

Unasked Questions from the 2/13/20 Lehigh Public Meeting

Answers provided by the responding agency.

pursuant to Regulation 11-18-403. The Air District will make any necessary corrections or updates to this preliminary HRA. Subsequently, the Air District will post the draft HRA results on the Air District web-site and will hold a 45-day public review process. The Air District is projecting to have the draft HRA results available for the public in late 2020. The Air District will answer questions and respond to all comments on the draft HRA before it is finalized.

- Has the Air District done Health Risk Assessments before and if so where can we find the results?

Health Risk Assessment Evaluation of Toxic Air Contaminant Impacts (AB2588 Air Toxics Hot Spots Program) was conducted in 2011. Addendums to the Health Risk Assessment Evaluation were conducted in 2013 and 2015. These addendums are available at the Air District's webpage:

<https://www.baaqmd.gov/~media/files/engineering/air-toxics-programs/lehigh-hra-2011/lehigh-hraaddendumjk-2.pdf>

<https://www.baaqmd.gov/~media/files/engineering/air-toxics-programs/lehigh-feb-2015/lehigh-hra-addendum-baaqmd-approval.pdf>

In addition, health risk assessments for Lehigh have been conducted on an application-by-application basis for new or modified stationary sources. For example, when Lehigh submits an application for a new stationary source or modification to an existing permitted source, the Air District conducts a health risk assessment if the emissions of toxic air contaminants (TACs) are at or exceed the trigger levels outlined in Regulation 2, Rule 5, Table 2-5-1.

Health risk assessment results for specific applications can be requested via Public Records at <http://www.baaqmd.gov/contact-us/request-public-records>.

- What is Lehigh's level of emissions for mercury and how can the public access the data the BAAQMD has?

Unasked Questions from the 2/13/20 Lehigh Public Meeting

Answers provided by the responding agency.

Lehigh is required to submit mercury continuous emission monitoring (CEM) reports to the Air District's Source Test Section on a monthly basis. For calendar year 2018, Lehigh reported a total 43.16 pounds of mercury. In addition, Lehigh is still required to annually test mercury emissions under Permit Condition # 603, Item 8.

CEM reports and source test reports can be requested via Public Records at <http://www.baaqmd.gov/contact-us/request-public-records>.

- How are fines determined and assessed?

The District does not itself “determine and assess” penalties or fines. Rather, it seeks to settle violations of District rules, regulations, permit conditions, and orders with the violator, thereby avoiding asking a court to assess a penalty. In developing a settlement proposal, the District applies the factors of Health and Safety Code section 42403 to the particular facts of the situation to determine an appropriate penalty for the specific violation(s).

City of Cupertino

- What are you doing about the illegal haul road issue?

The City has required Lehigh to submit permits for the illegal grading and removal of trees. These permits have been processed per City ordinance. Lehigh has also been required to submit a permit to return the road to a configuration close to its original condition. Currently, Lehigh is in the process of having design drawings prepared for this required work. The proposed plans will show the removal of fill that was placed to widen the road. Cut banks will be stabilized through grading operations, installation of retaining walls and vegetation, as recommended by a geotechnical engineer. The intent is to have the work completed over the summer months so that the work is completed prior to the start of the rainy season.

Unasked Questions from the 2/13/20 Lehigh Public Meeting

Answers provided by the responding agency.

San Francisco Regional Water Quality Control Board

- Why do our regulatory agencies accept self-reporting of previously measured violations?

While we do sample Permanente Creek periodically, most data collection is performed by Lehigh. This is because the Clean Water Act and California Code of Regulations establish self-monitoring programs, requiring dischargers pay for monitoring rather than taxpayers. However, Water Board staff oversee the entire process. We review reports and evaluate them for accuracy and adequacy, which includes scrutinizing sampling data; from how it is collected, analyzed, and interpreted. In addition, we require data be collected and analyzed by licensed professionals at laboratories that are also licensed and inspected. Geologic and engineering data submitted must be certified by a licensed geologist or engineer who is personally liable for its accuracy and all data is submitted under penalty of perjury. Finally, we are in frequent contact with Lehigh representatives and local enforcement agencies and we inspect the facility multiple times a year.

Note that the number of violations have significantly reduced since full-scale operation of the wastewater treatment system began in September of 2017 and recent violations have been exceedances of water quality limits for protecting wildlife, which are lower (more stringent) than those protecting human health because wildlife is more sensitive than humans. These violations were detected through the self-monitoring program, which demonstrates that it is effective. The dramatic decrease in the number and severity of violations demonstrates that our approach to working with Lehigh, providing technical guidance, and enforcing when appropriate, has been effective at bringing them into compliance.

- How are fines determined and assessed?

Fines are determined and assessed in accordance with the specific laws and/or regulations violated and our 2017 enforcement policy. The enforcement policy

Unasked Questions from the 2/13/20 Lehigh Public Meeting

Answers provided by the responding agency.

specifies in detail how to assess the significance of violations and calculate penalties based on the significance and laws governing penalty amounts. It can be found here:

https://www.waterboards.ca.gov/board_decisions/adopted_orders/resolutions/2017/040417_9_final%20adopted%20policy.pdf

Fines for NPDES permit violations are determined per the federal Clean Water Act and California Water Code (CWC). The Regional Water Board took several discretionary enforcement actions that fined Lehigh about \$1.2 million for violations from 2013 through 2017 following the enforcement policy. The Regional Water Board recently assessed mandatory minimum penalties (MMPs) which are required fines of \$3,000 per enforceable violation for effluent limit violations, as determined per the CWC (§13385). We issued MMPs for three of Lehigh's five effluent limit violations in 2019. Enforcement for the remaining two violations is pending. These violations occurred in December 2019 and were exceedances of the daily maximum selenium limit and monthly average settleable matter limit. The Regional Water Board fined Lehigh the mandatory minimum amount in these cases because the violations were operational in nature, meaning they were caused by an error in or unforeseen consequence of normal operation, and Lehigh responded quickly to prevent further such violations. Also, there were no observed impacts to water quality (dead fish, discoloration, etc.) as a result of these violations. In other egregious circumstances, these types of violations can be assessed at higher amounts if considered as part of a discretionary penalty calculated using the factors in the enforcement policy. The Regional Water Board may impose greater fines using discretionary enforcement authority under State and federal law; has done so for Lehigh's previous, more serious violations; and will do so again if appropriate.

The Regional Water Board has also cited violations associated with waste disposal (governed by Water Code and Title 27 California Code of Regulations). These have all been operational in nature. This means there were no observed impacts to water quality (e.g., incomplete reports). Our enforcement therefore focused on correcting the problem and preventing

Unasked Questions from the 2/13/20 Lehigh Public Meeting

Answers provided by the responding agency.

reoccurrence. These efforts were successful; therefore, no fines were levied.

- Do you believe filling quarry pits with materials from the WMSA is a bad idea? Won't residual toxic elements degrade groundwater supplies to aquifer?

We know that site groundwater is not connected to drinking water aquifers, except through discharges to Permanente Creek, which are negligible. However, we must ensure this remains the case through reclamation. At this time, we cannot state whether filling the Quarry Pit with WMSA materials may impact water quality, because we do not have data to make that assessment. We will require Lehigh collect necessary data if this method of reclamation is chosen. Our process for guiding and overseeing reclamation is outlined in Provisions 4, 5, and 6 of Waste Discharge Requirements Order (WDRs, No. R2-2018-0028), which requires Lehigh submit a series of technical reports (data, analysis, modelling, etc.) to demonstrate whichever reclamation methods are chosen will be protective. We will review those technical reports and determine if the methods chosen are protective and require any conditions (operational practices, monitoring and reporting) to make sure water quality will not be impacted. We are working with Lehigh, Santa Clara County planning and SMARA enforcement departments to assist this decision. The following is an excerpt from our October 2, 2019, letter to the County on the subject (note that Findings are the first section in the WDRs):

Current data suggests that some overburden material may leach metal(loid)s, particularly selenium from limestone, but potentially also other metal(loid)s from non-limestone rocks under future geochemical conditions. Of potential additional concern, as described in Findings 8 and 33 through 35 of the WDRs, wastes other than overburden have been identified in previous investigations and observed in the WMSA by Water Board staff, including cement kiln dust and bricks, construction debris, and rock-crushing fines. The long, unrecorded history of the site means there may be other wastes as well.

Despite these concerns, we have not received any information that suggests it is infeasible to use the bulk of materials from the WMSA as backfill. A robust and highly-regulated strategy to chemically characterize and segregate suspect material may be sufficient to keep mobile contaminants from the WMSA out of

Unasked Questions from the 2/13/20 Lehigh Public Meeting

Answers provided by the responding agency.

the Quarry Pit. If Lehigh Hanson selects this method, our WDRs require they demonstrate it can be done safely (Provisions 4 and 5), including waste characterization, as well as hydrogeological and geochemical modelling.

However, the WDRs only require this analysis if this method is selected for reclamation. If they select to leave the material in the WMSA as proposed in the Application, then the WDRs require they demonstrate that can be protective of water quality.

In short, the WDRs require evaluation only of selected methods and do not require they evaluate alternatives. We therefore recommend these options be thoroughly evaluated in the alternatives analysis required of the Environmental Impact Report and also suggest including the option to leave the Quarry Pit to fill into a lake. We can review the submittals and provide you technical guidance on potential water quality impacts of these alternatives as needed.

- What are the plans to test the water in Stevens Creek for heavy metals, especially the part of Stevens Creek that runs through McClellan Ranch Park?

We require Stevens Creek Quarry to monitor and control pollutants in stormwater runoff, including metals. We also required Stevens Creek Quarry to sample the creek during the 2018-2019 wet season. We have also tested the water in Stevens Creek immediately upstream and downstream and near where the quarry discharges stormwater runoff. Results show very low levels of metals, but below safe levels. Given these low levels, we do not have plans to test the water in Stevens Creek where it runs through McClellan Ranch Park.

- Lehigh still has a Selenium pollution problem and you fine them, but this does not stop the pollution. What are you going to do to stop this pollution? The Lehigh Treatment Plant is not cleaning this up, why is that?

The Regional Water Board took several enforcement actions that fined Lehigh about \$1.2 million for violations from 2013 through 2017, and required Lehigh to install wastewater treatment and facility improvements. These actions have resulted in successful wastewater treatment and stormwater handling, and

Unasked Questions from the 2/13/20 Lehigh Public Meeting

Answers provided by the responding agency.

significantly reduced discharges of selenium and other constituents. Violations have been for exceedances of limits to protect aquatic life and are not exceeding human health limits. While we have had significant success in obtaining Lehigh's compliance in the last couple of years, we continue to oversee their compliance with their permits and water quality conditions. We work consistently to ensure water quality is protected, coordinating with other agencies as needed.

Santa Clara County, Department of Environmental Health

- Most of the noise measurements by the DEH last year were invalid due to excess background noise. How can this be improved? Has the county considered using a spectrometer?

DEH uses a high-quality Larson Davis Type 1 meter for all noise measurements. The Noise Ordinance specifically lists the regulatory limits in the A-weighted sound network, listed as dBA. We must use a meter that measures the sound in a way that can be compared with the ordinance limits, which are defined in dBA.

The equipment we use records and analyzes all the noises emitted at the time of the noise evaluation and all test results are valid. DEH performs quarterly noise monitoring sessions around the Plant and responds to complaints from the general public. In majority of the noise sessions last year, background noise was the dominant noise. The Plant noise was either barely audible or not detected at all except during the noise session on December 26, 2019. When the dominant noise is from the Plant and it exceeds noise limits set forth in the SCC Ordinance Code of 40 decibels between 10:00 pm – 7:00 am, a notice of violation is issued against Lehigh.

- How are fines determined and assessed?

DEH conducts quarterly noise monitoring sessions for the Lehigh Cement Plant and has issued four (4) Notices of Violation against Lehigh for all exceedances

Unasked Questions from the 2/13/20 Lehigh Public Meeting

Answers provided by the responding agency.

observed during noise monitoring sessions since 2016. The County has not assessed fines against Lehigh Cement Plant for violations of the County Noise Ordinance. Since 2016, DEH has been actively working with Lehigh to mitigate noise coming from the facility. The plant hired a noise consultant and has taken measures to reduce the noise and has implemented a formal noise monitoring program.

- Has Lehigh been paying its fines?

At this time, the County has not assessed against Lehigh Cement Plant. Hence, no fines have been paid.

Santa Clara County, Planning and Development Department

- Why do our regulatory agencies accept self-reporting of previously measured violations?

The County of Santa Clara does not rely on or use self-reported data or correspondence from a property owner to determine that a violation exists or has been corrected; County staff must verify all reports, whether from a property owner or other party. Property owners may only abate violations issued by complying with the requirements specified in an issued Notice of Violation (“NOV”). As part of the process for correcting a violation, property owners may explain why they believe that a violation has been corrected and how the correction has been implemented; however, such responses are not verification that the violation has been corrected. County staff verifies that violations have been corrected through review of submitted plans, supporting documents, as applicable, and subsequent field inspection, depending on the specific violation and the requirements listed in the NOV.

- The quarry is planning an expansion closer to homes. Can you guarantee no harm to the six commercial vineyards on Montebello Road?

Lehigh Quarry has submitted an Application for a Reclamation Plan

Unasked Questions from the 2/13/20 Lehigh Public Meeting

Answers provided by the responding agency.

Amendment to expand both the current main quarry pit, and open a new mining area (“Rock Plant Reserve”) south and east of the existing main pit and north of Lehigh’s property boundary with Stevens Creek Quarry. The proposed Rock Plant Reserve site would be located approximately one mile from existing residential parcels to the north (located in the City of Cupertino) and is not proposed to be located closer to residential areas or vineyards along Montebello Road than the current quarry operations of Lehigh and Stevens Creek. The proposed Reclamation Plan Amendment and environmental impact associated with the expansion are currently under review. The County will soon begin preparation of the Environmental Impact Report (EIR) for the proposed expansion. A Notice of Preparation (NOP) will be published and circulated to the community. Any member of the public may provide comments in response to the NOP. Additionally, there will be a public comment period once the Draft EIR is released when members of the public can submit comments on the Draft EIR.

- Will Lehigh be significantly fined for violations such as the illegal grading and tree removal. Can they avoid those fines even if in non-compliance?

Lehigh will not be fined for the unpermitted grading of the Haul Road (Pacific, Gas & Electric Access Easement) between Lehigh Quarry and Stevens Creek Quarry that occurred in 2018 because Lehigh has performed all corrective actions required in the NOV for this unpermitted work and there is no basis to assess fines for non-compliance. These corrective action measures included installation of erosion control measures for the area disturbed and submission of a Reclamation Plan Amendment (County File No. PLN19-0067) that expands the Reclamation Plan boundary to encompass the portion of the Haul Road within the County’s jurisdiction that was graded illegally.

Separately, on June 13, 2019, the County issued an NOV for discharge of sediment into Permanente Creek and this violation has not been corrected. Should Lehigh fail to correct this violation to the satisfaction of the County of Santa Clara, the County may assess fines as they relate to the June 13, 2019 NOV.

Unasked Questions from the 2/13/20 Lehigh Public Meeting

Answers provided by the responding agency.

- What route do the truckers use between Lehigh and Stevens Creek Quarry now that the illegal road is closed?

In accordance with the NOV issued to Stevens Creek Quarry on February 15, 2019, transport of material from Lehigh to Stevens Creek Quarry has ceased. Should the transport of aggregate from Lehigh to Stevens Creek Quarry start again, the County will pursue all available remedies to stop such transport, such as levying fines and/or initiating legal action.

- With regards to the proposal to add 666 trucks per day for 30 years to fill the hole, why not use the rail line and conveyer site transit to fill it?

It may or may not be feasible to utilize rail transport for the purposes of importing clean fill for backfilling of the main pit, as Lehigh is currently proposing to do. During the EIR process, the impacts from Lehigh's proposed expansion, including the proposal for an additional 600 truck trips per day will be evaluated. Utilization of the existing rail line for some amount of import of clean fill may be evaluated as one of the mitigation measures, if feasible.

- Flood control facilities on Permanente Creek will also be compromised by high sediment loads and unseasonal pulse flows. It would seem prudent to require Lehigh Permanente to increase its performance bond and insurance to cover an extreme event?

SMARA, County Ordinance Code, and Lehigh's 2012 Reclamation Plan Conditions of Approval prohibit Lehigh from impacting the water quality and sediment load of Permanente Creek. Water quality and sediment controls are required in the 2012 Reclamation Plan Conditions of Approval and these controls are in SMARA, County Ordinance Code, and Lehigh's 2012 Reclamation Plan Conditions of Approval which prohibit Lehigh from impacting the water quality and sediment load of Permanente Creek. Water quality and sediment controls are required in the 2012 Reclamation Plan Conditions of Approval and these controls are inspected by County staff.

Unasked Questions from the 2/13/20 Lehigh Public Meeting

Answers provided by the responding agency.

Corrective actions are required when inadvertent sediment discharges.

- How does Santa Clara County Planning Department intend to restore watershed topography and remove sediment associated with the unpermitted haul road?

Lehigh, through the proposed Reclamation Plan Amendment applied for by Lehigh, is responsible for restoring the watershed topography. The unpermitted Haul Road is not located close to a creek or tributary. The nearest creek (Permanente Creek) is located approximately 500 meters northwest of the Haul Road and there is a significant intervening ridge between the Haul Road and Permanente Creek. As a result, eroded soils from the Haul Road slope cannot reach Permanente Creek. The County has directed Lehigh to implement erosion control Best Management Practices (BMPs) to prevent erosion and sediment flows downslope from the Haul Road and Lehigh has implemented corrective action. The County regularly inspects the erosion control BMPs to ensure that they are adequately maintained.

- Will a full EIR be done to assess the haul road impact to endangered species habitat, loss of oak woodlands and vegetation that anchors hillsides and sediment, and loss of critical watershed integrity? If not, why not?

The County will prepare an EIR, in association with processing the Reclamation Plan Amendment application, to address construction of the Haul Road. The EIR will evaluate biotic impacts, tree removal, and impacts to endangered species.

- Why is Lehigh allowed to “correct” violations by proposing “reclamation amendments” that actually allow more mining? Why can’t the BOS just say no?

Lehigh submitted a Reclamation Plan Amendment to correct the Haul Road violation (County File No. PLN19-0067) in response to direction from the County’s NOV issued in 2018. The Reclamation Plan Amendment addressed restoration of the haul road and did not authorize additional mining activities. Separately, Lehigh applied for a Major Reclamation Amendment to allow an expansion in mining activities (County File No. PLN19-0106). In order to more efficiently process these applications, which overlap geographically, the County

Unasked Questions from the 2/13/20 Lehigh Public Meeting

Answers provided by the responding agency.

has requested Lehigh to combine the two applications into one consolidated Reclamation Plan Amendment. The consolidated Reclamation Plan Amendment will be considered by the Planning Commission and can be appealed to the Board of Supervisors.

- Given that Santa Clara County has declared a climate emergency, what is the County doing to reduce GHG emissions from the cement plant?

The cement plant is not part of the quarry operation. In April 1939, the County of Santa Clara issued a Use Permit for the cement plant. Lehigh Quarry as a vested mine, operates without a Use Permit.

Cement plants are required by the state to reduce greenhouse gas (“GHG”) emissions consistent with state reduction targets for the year 2030. These reductions will be achieved by compliance with California Code of Regulations Title 17, Article 5. The reduction in GHG’s will be achieved through the establishment, administration, and enforcement of the California Greenhouse Gas Cap-and-Trade Program. The California Greenhouse Gas Cap-and-Trade Program requires the application of an aggregate greenhouse gas allowance budget on covered entities and provides a trading mechanism for compliance instruments. Cement Plants are specifically listed in Title 17 of the California Code of Regulations § 95811 as one of the types of operations that are required to participate in this cap-and-trade GHG emission reduction scheme.

- Previous rulings to support continued development and expansion seem to be based on economic arguments. Has the County commissioned an economic cost/benefit analysis (including comprehensive alternatives)?

The County of Santa Clara has not commissioned an economic cost/benefit analysis.

- What is happening with the letter that was sent to Lehigh on 2/7/20 telling them to pull back the illegal utility road, 60 acres, and Ridgeline application and reclamation plan?

The County did not send a letter to Lehigh dated February 7, 2020. As documented in a previous question, Lehigh applied for a Reclamation Plan

Unasked Questions from the 2/13/20 Lehigh Public Meeting

Answers provided by the responding agency.

Amendment to correct the Haul Road violation (County File No. PLN19-0067), in response to direction from the County's Notice of Violation. Separately, Lehigh applied for a Major Reclamation Amendment for expansion of the quarry (County File No. PLN19-0106). The County has requested Lehigh to combine these two applications, which Lehigh has agreed to do.

The County is currently finalizing the scope and budget for the EIR required to analyze and disclose the environmental impacts that might result from approval of this consolidated Reclamation Plan. Once that is completed an EIR preparation schedule will be prepared and a Notice of Preparation will be published.

- What measures will Santa Clara County mandate to reverse adverse impacts to Swiss Creek and Stevens Creek Reservoir associated with the unpermitted road construction?

As noted in the response to a previous question, Lehigh was required to apply for a Reclamation Plan Amendment which amends their Reclamation Plan boundary to encompass and ultimately restore the haul road. Based on the location of the haul road, the surrounding topography, and the relatively limited area of disturbance, potential adverse impacts to Swiss Creek, Permanente Creek, or Stevens Creek Reservoir appear unlikely. The County is currently finalizing the scope for the required EIR which will fully evaluate and disclose environmental impacts resulting from the proposed Reclamation Plan Amendment.

- How are fines determined and assessed?

Ordinance Code sections A1-33, et seq., and A37-1, et seq., describe the general process for assessing fines for violations of County Code. In general, Ordinance Code section A37-6 permits daily fines of up to \$1,000 per violation until abated. However, surface mines such as Lehigh Quarry are generally handled differently insofar as they are subject to the State Surface Mining and Reclamation Act (SMARA). The County implements SMARA fines under Zoning Ordinance section 4.10.370, which allows penalties of up to \$5,000 per day, assessed from the original date of noncompliance, for failure to comply

Unasked Questions from the 2/13/20 Lehigh Public Meeting

Answers provided by the responding agency.

with an approved Reclamation Plan. Fines may be waived if a property owner works in good faith to timely correct any violation.

- Can the County adopt addition penalties and/or influence penalties and how they are applied?

Changes to County imposed fine amounts and any other related provisions, require approval by the County Board of Supervisors and must be consistent with State law. Fines related to the quarry operations that require SMARA compliance include administrative penalties of up to \$5,000 per day. The County does not have the authority to influence or dictate fines that may be assessed by another government agency.

Santa Clara County, Office of the County Counsel

- Could there be an alternative oversight/enforcement model such as a State-Federal-County Memorandum of Understanding?

Each agency responsible for regulatory oversight at Lehigh has independent enforcement authority over its regulations applicable to Lehigh, and the responsible agencies understand the regulatory oversight roles of the other agencies. A Memorandum-of-Understanding between the responsible agencies could be explored to affirm the existing regulatory oversight roles of each agency.

- Will Lehigh be significantly fined for violations such as the illegal grading and tree removal. Can they avoid those fines even if in non-compliance?

Lehigh may be fined in accordance with the County's Ordinance Code for violations of the County's Ordinance Code, up to \$1,000 per day per violation of the County's grading ordinance and up to \$5,000 per non-heritage tree removed without a permit.

Unasked Questions from the 2/13/20 Lehigh Public Meeting

Answers provided by the responding agency.

- As Lehigh is not shut down on spare the air days, can the Supervisors establish an air quality standard at which certain activities at Lehigh would cease?

Air quality standards are established by Federal and State agencies.

US Environmental Protection Agency

- Will comments on the draft consent decree be added to the USEPA website?
- How will public comments be considered?
- When will the consent decree be final?
- The recent consent decree only places a fine of \$120,000 on Lehigh for violations dating back to 1996 for unpermitted changes. How can we increase this amount to be a real deterrent?

The United States is following its typical procedures. The comment period closed on February 10th, and the comments received are under consideration.

The United States does not plan to put comments on the web. The comments will be attached to a publicly available filing to the federal court for the Eastern District of Pennsylvania, as explained in further detail below.

After completing its review and consideration of the comments received on the consent decree, the United States will (1) withdraw from the consent decree; (2) seek to revise the decree; or (3) ask the Court to approve and enter the consent decree as written. The United States has not yet determined which of the above options it will pursue. I cannot provide a date by which that will occur at this time. If the United States decides to seek the Court's approval of the consent decree, we will describe all public comments, submit them to the Court, and respond to them in our filing. Should the United States seek to enter the proposed consent decree, or a revised consent decree, the Court will determine whether to approve and enter the decree. If the Court enters a consent decree, it becomes effective at that time.

Unasked Questions from the 2/13/20 Lehigh Public Meeting

Answers provided by the responding agency.

Valley Water

- Do you believe filling quarry pits with materials from the WMSA is a bad idea? Won't residual toxic elements degrade groundwater supplies to aquifer?

The Santa Clara Valley Water District (Valley Water) is not a regulatory agency and therefore does not regulate discharges of pollutants, however, Valley Water works with regulatory agencies to protect water quality in creeks and reservoirs under its jurisdiction. Both Lehigh Cement and Stevens Creek Quarry (the Quarry site) are permitted and within the jurisdiction of the County of Santa Clara and the San Francisco Bay Regional Water Quality Control Board (RWQCB).

The Quarry Pit is located within bedrock which is not part of the Santa Clara groundwater Subbasin. Surface water leaves the site via Permanente Creek, a relatively small watershed which has only a short reach over the groundwater recharge area. The primary constituents of concern from the quarry are selenium, arsenic, and mercury which generally do not move readily through soils. Additionally, given the large volume of groundwater in the Santa Clara Subbasin, any recharge from surface water runoff is likely to be readily diluted and would likely have little impact on water quality in the drinking water aquifers.

Groundwater quality data downgradient of the Quarry site shows that arsenic, mercury, and selenium are not typically detected in groundwater; this is similar to regional conditions.

- What are the plans to test the water in Stevens Creek for heavy metals, especially the part of Stevens Creek that runs through McClellan Ranch Park?

Stevens Creek is monitored as part of the Santa Clara Valley Urban Runoff Pollution Prevention Program (SCVURPPP) monitoring program. Valley Water is a member of SCVURPPP. Monitoring in Stevens Creek included several parameters, including copper, nutrients, pesticides, toxicity and

Unasked Questions from the 2/13/20 Lehigh Public Meeting

Answers provided by the responding agency.

pathogens (bacteria). Information on monitoring performed by SCVURPPP can be found here: <https://scvurppp.org/monitoring/> Valley Water staff monitor Stevens Creek reservoir as part of the mercury program. Information on mercury monitoring of Stevens Creek Reservoir can be found here: <https://www.valleywater.org/project-updates/b1-impaired-water-bodies-improvement>.

Miscellaneous

- How much money does the County get from Lehigh’s property tax?

	<i>*Property Tax: County share of 1% Property Tax and Debt Levy [Note 1]</i>	<i>*Property Tax: County's Special Assessment Levy [Note 2]</i>	<i>*Measure A Transaction and Use Tax [Note 3]</i>	<i>*Total</i>
<i>FY 2017-18</i>	<i>\$ 359,000</i>	<i>\$ 1,300</i>	<i>\$ 17,000</i>	<i>\$ 377,300</i>
<i>FY 2018-19</i>	<i>\$ 365,000</i>	<i>\$ 700</i>	<i>\$ 14,000</i>	<i>\$ 379,700</i>
<i>FY 2019-20</i>	<i>\$ 391,000</i>	<i>\$ 800</i>	<i>\$ 14,000</i>	<i>\$ 405,800</i>

Source: Assessor’s Office for the assessed valuation, parcel number and tax rate area information. The Controller-Treasurer Department used this information to calculate the County’s share in Property Tax columns. The information in the Measure A column was provided by the County’s sales tax consultant, HdL Companies.

*[*These are estimated amounts with rounding; actual will differ.]*

Note 1: County's 1% property tax share is calculated based on the assessed valuation provided by the Assessor's Office; The Debt Levy includes County Retirement Levy, County Hospital Facility Bond and County Housing Bond.

Note 2: The balance represents Special Assessments for Vector Control and Weed Abatement (which are County programs).

Unasked Questions from the 2/13/20 Lehigh Public Meeting

Answers provided by the responding agency.

Note 3: The balance represents Measure A Transaction and Use Tax. Per the County's sale tax consultant, Lehigh generates no sales tax paid to the County.

- Does Lehigh contribute to BOS elections?

You can access information about who is making contributions to elected officials in Santa Clara County through the Registrar of Voters website. The URL is: <https://ssl.netfile.com/static/agency/scc/> - then select the link to the Public Access Portal.