

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

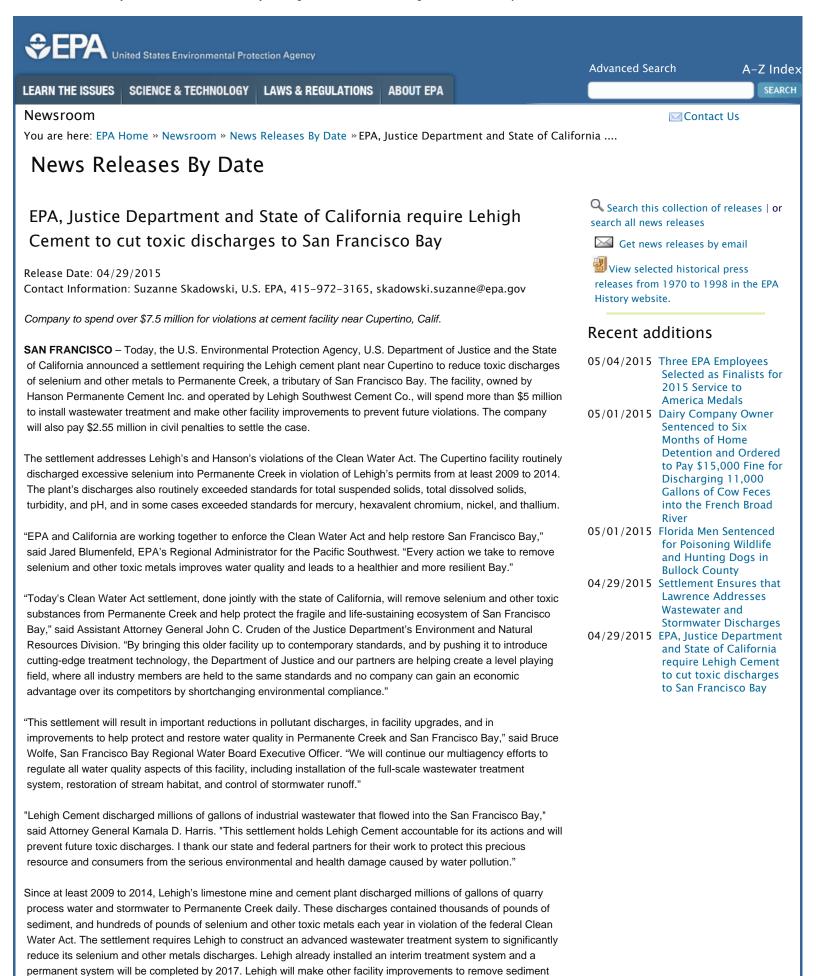
Prepared by: Jolie Houston, City Attorney

ATTACHMENT:

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

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04/29/2015: EPA, Justice Department and State of California require Lehigh Cement to cut toxic discharges to San Francisco Bay



ATTACHMENT 1

04/29/2015: EPA, Justice Department and State of California require Lehigh Cement to cut toxic discharges to San Francisco Bay

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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