

4/23/2015
Supplemental Packet

Item # 5

To: Santa Clara County Planning Commission
Subject: Item 5, 4/23/2015 meeting

4/22/2015

Please remember that the selenium discharge problem would not exist if Lehigh had begun construction of the EMSA following an approved Reclamation Plan and EIR as required by SMARA and CEQA. Considering the County's role in allowing this problem to develop, they should now give deference to the environment and be proactive to make certain future discharges comply with Federal Clean Water Act.

The planned 1 foot thick non-limestone EMSAA cap is not guaranteed to bring creek discharges within legal limits:

- The example project given by the County in the final EIR showed a 3 foot thick cap and no explanation was provided of why a 1 foot thick cap would be adequate for the EMSA.
- The following RWQCB comment leaves considerable doubt about the final success of the one foot cap. "We recommend evaluating the results of ongoing source control measures (i.e. capping the EMSA with non-limestone materials) at the end of the next rainy season before designing and implementing a final treatment system to include pumping Pond 30 water up to the Quarry pit..." (emphasis added)
- Lehigh may not be able to complete the cap before the next rainy season. Lehigh has shown a pattern of delay tactics and if they miss this important deadline they will likely not have to pay any price. Consequently, they are more prone to service their bottom line than worry about more discharges to the creek.

The County should take the following precautions:

1. Require that Lehigh expand pond 30 as proposed with the addition of a lining to prevent impacts to groundwater. This has already been determined as "feasible" (although not with the lining yet), and completion should be required well in advance of the next rainy season. If necessary, after a large event, water can be released in a controlled manner which limits the damage, or trucked to pond 4A at a much slower rate after the storm when the roads have dried up and it is safe to do so. The analysis for trucking the water to pond 4A did not consider an expanded pond 30. This expanded pond 30 may very well be needed in the long run anyway.
2. Lehigh should deliver a final feasibility study ASAP on piping the water from pond 30 to pond 4A. They were instructed to do this after the November 2014 Planning Commission meeting but their new report shows little progress. It emphasizes all the "unknowns" for this measure but does not claim technical infeasibility. Lehigh has not done due diligence on this task which they should have completed long ago. Their delay tactics should not be accommodated because this remediation measure may very well be necessary in the near future.

The County Staff once again seems willing to accommodate Lehigh's profit at the expense of the environment. Please go beyond the Staff recommendations and take adequate precautions so that Permanente Creek might someday recover from the significant damage Lehigh has inflicted.

Sincerely,

Timothy K. Brand