



Rashi Kesarwani  
Councilmember District 1

## **REVISED AGENDA MATERIAL for Supplemental Packet 2**

**Meeting Date:** September 28, 2021

**Item Number:** 22

**Item Description:** Referral to Strengthen Public Health and Environmental Impact Mitigation for Industrial Facilities in the Manufacturing Zone

**Submitted by:** Rashi Kesarwani, Councilmember District 1

This supplemental material adds Councilmembers Droste, Taplin and Wengraf as co-sponsors. It also adds limited refinements to the recommendation specifying ongoing monitoring and reporting of pollutants associated with the particular process proposed in the initial or amended use permit; and adds soil pollution to the list of potential environmental impacts.



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Councilmember District 1

## CONSENT CALENDAR

September 28, 2021

TO: Honorable Mayor and Members of City Council

FROM: Councilmember Rashi Kesarwani ([author](#)), [Councilmembers Terry Taplin, Lori Droste and Susan Wengraf \(co-sponsors\)](#)

SUBJECT: Referral to Strengthen Public Health and Environmental Impact Mitigation for Industrial Facilities in the Manufacturing Zone

### RECOMMENDATION

Refer to the City Manager to:

- Establish a procedure for enhanced review of use permits in the manufacturing zone for industrial facilities—upon initial submission or upon submission of an amended use permit—in order to ensure public health and environmental impacts are appropriately [avoided and](#) mitigated as a condition of the use permit. Further, if appropriate, consider mitigation that includes the use-permit applicant contracting with a certified third-party to install air quality monitoring device(s) that can enable [ongoing monitoring and periodic](#) reporting on pollutants [associated with](#)~~relevant to~~ the particular industrial process proposed in the initial or amended use permit.
- Explore feasibility of increasing penalty fee schedule as a deterrence for use-permit violations related to public health and environmental impacts, such as air, noise, ~~and~~-water, [and soil](#) pollution [and/or contamination](#).

### CURRENT SITUATION AND ITS EFFECTS

Industrial facilities can be in compliance with the requirements of their use permit without necessarily utilizing industry-standard best practices intended to safeguard public health and mitigate environmental impacts of their operations. For example, the City's use permit for the LeHigh Hanson asphalt plant requires an enhanced enclosure for the asphalt loading area, but it does not require installation of a Blue Smoke Abatement System to control the emission of pollutants. The City Planning Department issues a use permit in perpetuity, and therefore, is unable to change the conditions for a use permit unless the applicant seeks a use-permit amendment in

order to alter their operations in some capacity. In effect, use permits issued many years ago for industrial facilities lack a clear mechanism to be updated in order to adapt to evolving technologies and industry standards. While the California Air Resources Board (CARB) is the primary agency responsible for protecting the public from the harmful effects of air pollution, we note that CARB does not regulate asphalt plants. This Council referral seeks to ensure that initial and amended use permit applications from industrial facilities receive appropriate review and include conditions that safeguard public health and mitigate any environmental impacts.

Possible appropriate mitigation to safeguard public health and mitigate environmental impacts may include:

- Requirements to install new equipment and/or technologies to address air, noise, and water pollution as well as disposal of hazardous materials;
- State-of-the-art containment and enclosure mechanisms in order to ensure that release of noise, particulate matter, and/or chemical compounds are reduced or eliminated;
- Requirements to install monitoring systems in order for third parties to easily discern when pollutants exceed regulatory limits;
- Increased penalty fees for violations as a means of deterring unwanted behavior by industrial actors; and-
- Conditions requiring construction to follow a schedule of compliance, with interim milestones.

## BACKGROUND

Portions of West Berkeley are zoned specifically for heavy manufacturing and industrial uses. Over time, the area has been home to an array of industries that have provided blue-collar union jobs, such as the now-closed Pacific Steel Casting and Macauley Foundry. Currently, the LeHigh Hanson Aggregates asphalt plant—located on Virginia Street between Second and Fourth streets—and Berkeley Forge—located on Eastshore Highway between Camelia and Gilman—continue to operate in West Berkeley. Over the years, industrial facilities in West Berkeley have elicited neighbor complaints and concerns related to public health and environmental impacts, such as air and noise pollution.

### ***History of Impacts from LeHigh Hanson (formerly Berkeley Asphalt)***

In 1999, the Oceanview Neighborhood Association entered into a settlement agreement (attached) with both the City of Berkeley and Berkeley Asphalt Company (now LeHigh Hanson) to specify terms for mitigating noise and air quality impacts on neighbors. The terms of the agreement focused on: traffic patterns in order to prevent trucks from driving through residential neighborhoods; air quality controls to reduce dust and odors, such as enclosures for loading facilities; noise mitigations and sound barrier installations; and implementation of a complaint and response mechanism for resident concerns.

In 2015, Councilmembers Linda Maio and Lori Droste presented two informational status reports on West Berkeley Industries (attached) as a result of continued complaints from West Berkeley neighbors residing in close proximity to Pacific Steel Casting and LeHigh Hanson. According to a January 2015 Council item submitted by the Community Health Commission, more than 100 complaints were made in the 2012 to 2013 timeframe by Berkeley residents and community groups to the Bay Area Air Quality Management District (BAAQMD)—the regional air pollution control agency charged with regulating pollution emissions in the nine Bay Area counties.

Most recently, beginning in the end of October 2020, the office of Councilmember Rashi Kesarwani began receiving multiple complaints of a noxious, sulfuric smell, most strongly noticed in West Berkeley, though also experienced as far east as neighborhoods surrounding the North Berkeley BART station. According to a BAAQMD December 9, 2020 fact sheet (attached), the agency fielded more than 190 complaints about this odor in less than a two-month span of time.

### ***Current Enforcement Actions Against LeHigh Hanson***

While BAAQMD has regulatory authority over industries that negatively impact air quality, the City of Berkeley regulates the 1999 Settlement Agreement and use permit conditions. As the noxious odors continued into February 2021, BAAQMD issued four Notices of Violation (NOVs) related to nuisances due to odors on Dec. 3, 2020 through Feb. 5, 2021. The last reported complaint about the odor occurred on Feb. 12, 2021. BAAQMD staff indicated that the facility's plan to construct an enhanced enclosure for loading, in addition to adding a Blue Smoke Abatement System would help alleviate the odors, according to April 2, 2021 correspondence from Planning Director Jordan Klein.<sup>1</sup>

The City of Berkeley began issuing NOVs on Jan. 11, 2021 as recent inspections uncovered insufficient enclosures of the asphalt truck loading area. LeHigh Hanson was required to resubmit application materials for a building permit for construction of an enhanced enclosure as well as a Blue Smoke Abatement System that the company was opting to install in the loading area. As LeHigh Hanson failed to resubmit the materials by the stated February 1, 2021 deadline, the City issued a citation warning on February 10, 2021, indicating that if the company failed to comply within 15 days, the City would issue daily administrative citations with penalties. Additionally, a second violation was added to the warning related to their failure to entirely vacuum sweep the required portion of their facility to control dust. LeHigh Hanson was able to comply shortly thereafter, resubmitting their plans by Feb. 16, 2021; the city approved the plans on March 1, 2021. Two days later, on March 3, the City issued another citation warning to complete construction and inspections

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<sup>1</sup> See Planning Director Jordan Klein's letter to the Sierra Club regarding enforcement of pollution control measures at Lehigh Hanson's asphalt plant, attached.

associated with the enhanced enclosure system and Blue Smoke Abatement System. While the asphalt plant was able to complete construction of the enhanced enclosure shortly thereafter, it wasn't until July 2021 that the company secured the permitting for the electrical work for the Blue Smoke Abatement System and made it operational. In total, City staff conducted seven different inspections from Dec. 2020 to April 2021.

### ***Health Outcomes in West Berkeley***

One of the major contributing causes of asthma, which itself is a leading cause of childhood hospitalizations, is air pollution, according to Berkeley's 2018 Health Status Report.<sup>2</sup> The report finds that the West Berkeley zip code 94710 has the highest rates of asthma hospitalizations, particularly among children 0 to 14. The report also finds significant racial disparities, with asthma rates among our Black residents 10 times higher than white residents.<sup>3</sup> Given these health outcomes, we find that it is incumbent upon the City to fully exercise its permitting authority in order to ensure that industrial facilities mitigate any public health and environmental impacts.

### **FISCAL IMPLICATIONS**

Staff time.

### **ENVIRONMENTAL IMPACTS**

Strengthening the requirements of a use permit for industrial facilities is likely to result in mitigations that enhance environmental indicators, leading to a cleaner, safer environment for all.

### **CONTACT PERSON**

Councilmember Rashi Kesarwani, District 1 (510) 981-7110

### **Attachments:**

1999 Settlement Agreement

May 26, 2015 Status Report: Berkeley Asphalt; Pacific Steel Casting: Air Quality Inquiries (#38)

July 14, 2015 Status Report: West Berkeley Industry (#69)

January 20, 2015 Community Health Commission Council item (#25): West Berkeley Industrial Plants Air Quality

Bay Area Air Quality Management's Fact Sheet on Berkeley Asphalt, Dec. 9, 2020

Planning Director Jordan Klein's email to the Sierra Club regarding enforcement of pollution control measures at Lehigh Hanson's asphalt plant

<sup>2</sup> See [City of Berkeley Health Status Report 2018](#), pages 42 & 43

<sup>3</sup> [City of Berkeley Healthy Status Report 2018](#), p. 43