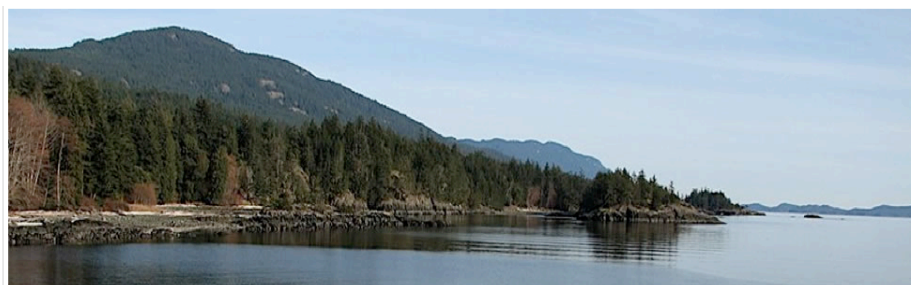


# F R I E N D S   O F   D A V I E   B A Y .



## **REQUEST FOR EXPLANATIONS AND INFORMATION November 18, 2009**

<http://daviebay.com/>

BY E-MAIL TO:

Hon John Baird, Minister of Transport, Infrastructure, and Communities.

Hon Jim Prentice, Minister of the Environment.

Hon Gail Shea, Minister of Fisheries and Oceans.

Hon Barry Penner, Minister of the Environment, BC

Hon Pat Bell, Minister of Forests and Range, BC

Dear Ministers,

**Re: Lehigh Northwest Minerals Ltd. Texada South Quarry. Barge Loadout and Conveyor, Davie Bay, Texada Island. Transport Canada, CEAR reference number 09-01-49595.**

Friends of Davie Bay would be grateful if the applicant, Lehigh Northwest Minerals Ltd, would respond to the following information request with respect to CEAR reference number 09-01-49595

1 **Environmental obligations and credit quality.**

HeidelbergCement AG. (“HC Group”) the parent company of Lehigh Northwest Minerals Ltd, has a corporate credit rating of B- (S&P) and B1 (Moody’s) and senior unsecured debt ratings CCC+ and B3 respectively, with a negative outlook from both agencies. These are low sub-investment grade ratings and carry a substantial potential for default.

HC Group has significant debt subjecting it to certain financial covenants and undertakings and has high refinancing requirements in 2010 and 2011. As of June 30, 2009, approximately 38.3% of HC Group’s total assets were intangible assets, 37.4% of total assets corresponded to goodwill, the premium paid over book value for assets acquired. Substantial cash flows are needed to cover HC Group’s debt service expenditure and an increase in market interest rates as well as a further downgrade in HC Group’s credit ratings may further increase HC Group’s interest expense. Limitations on the availability of financing could have a material adverse impact on HC Group’s business, liquidity and financial condition. The current worldwide economic downturn has impaired and is expected to continue to impair HeidelbergCement AG’s result of operations. *(Source: Heidelberg. Prospectus dated Sept 14, 2009)*

HC Group is subject to significant reclamation, recultivation and quarry closure obligations, which may not be sufficiently covered by provisions and HC Group is required to maintain financial assurances to meet these obligations. ( *Source: Heidelberg. Prospectus dated Sept 14, 2009*)

- 1-1 Given the sub-investment grade status of the HC Group, statements made in the recent prospectus, and the uncertainty with respect to the covering of provisions within the HC Group, would you please detail the dollar value of the environmental liabilities and obligations that the HC Group and its subsidiary Lehigh Northwest Minerals Ltd will be committing to with respect to the Texada South Quarry. Would you confirm these obligations carry the guarantee of the HC Group. Given the low sub-investment grade status of the HC Group in the face of developing environmental and energy costs, please confirm the amount of cash collateral required to cover these liabilities and obligations, pledged with the BC Government to protect the Province from the risk of default.

## **2 Economic viability of the Texada South Quarry.**

Lehigh Northwest Minerals Ltd currently purchases a substantial quantity of aggregate under long term contract from Texada Quarrying Limited (TQL). As you are aware, economies of scale are crucial in this competitive resource industry, and the TQL quarry owned by Lefarge, located just 15 km up the coast north of Gillies Bay, is Canada's largest limestone quarry and the lowest cost producer with a production rate of over 5 million tonnes per year. In its application Lehigh Northwest Minerals Ltd states that its projected production tonnage will be at an annual rate of 240,000 tonnes per annum, [or just 5% of the TQL production rate].

- 2-1 Would you please explain how the Texada South Quarry would be economic at the 240,000 production rate, providing a full project analysis to support the economics of the project and the internal rate of return.
- 2-2 Given the current precarious state of the HC Group balance sheet, the need to preserve capital, and developing environmental risks and greenhouse gas costs, why is it that Lehigh Northwest Minerals Ltd is proposing the Texada South Quarry, when it has a long standing secure supplies of limestone aggregate under contract with neighbouring TQL?

## **3 Production rate and economies of scale**

HeidelbergCement AG takes pride in its ability to enhance its group earnings and turnover profile by its ability to generate economies of scale resulting from higher efficiency of large production units and bundling of purchasing volumes, as well as from the relatively stable price levels for HC Group's key products. (*Source Prospectus September 14, 2009*).

- 3-1 Would you please explain why Lehigh Northwest Minerals Ltd has applied to pursue this low volume Texada South Quarry, contrary to the corporate ethos, when it has plentiful, secure, low-cost supplies of aggregate under contract from TQL, located 15 kms up the coast at Gillies Bay, which is the largest limestone quarry in Canada?

## **4 Capacity of facilities and equipment**

Lehigh Northwest Minerals Ltd states in its application that the conveyor or belt would be 1.8 metres wide capable of loading 2,500 tonnes per hour. [It is noteworthy that the ramp at Highland Valley Copper, with a belt 1.52 metres wide, is capable of loading at 6,000 tonnes per hour]. At a tonnage loading rate of 2,500 tonnes per hour the loading facility would need to operate just 96 hours per year, and if the Highland Valley rates are achieved, just 40 hours per year.

- 4-1 Would you please explain why you intend to install such a high capacity ramp when the projected production rate is 240,000 tonnes per annum. Please provide an economic justification to support the capital investment.
- 4-2 The BC Environment regulation requires an environmental review of projects under the EAA when capacity is 250,000 tonnes or greater. Given the HC Group corporate ethos on economies of scale and the need for economic rates of return, would you confirm that the intended production rate will be vastly in excess of 240,000 tonnes per year.

## 5 Energy costs and carbon dioxide emissions

HC Group operates cement plants and other industrial facilities worldwide and substantial quantities of carbon dioxide (CO<sub>2</sub>) are released. The HC Group also recognizes that a rise in energy prices is a significant risk. Furthermore the company recognizes that regulations regarding carbon dioxide emissions, an unfavorable allocation of rights to emit carbon dioxide or other air emission related issues could have a material adverse effect on HC Group's business, financial condition and results of operations. ( *Source: Heidelberg. Prospectus dated Sept 14, 2009*). The Lehigh-Hanson cement plant in Delta is BC's 3<sup>rd</sup> largest GHG emitter.

The following are extracts from the HeidelbergCement AG, Prospectus dated September 14, 2009)

*HC Group operates cement plants and other industrial facilities worldwide. Substantial quantities of carbon dioxide (CO<sub>2</sub>) are released by HC Group, in particular during cement clinker production. Compliance with existing, new or proposed regulations governing such emissions might lead to a need to reduce such greenhouse gas emissions, to purchase rights to emit from third parties, or to make other changes to HC Group's business, all of which could result in significant additional costs or could reduce demand for HC Group's products, as regulations and the enforcement of those regulations tend to become more stringent over time. In addition, HC Group is a significant purchaser of energy. Existing, new and proposed regulations relating to the emission of carbon dioxide by HC Group's energy suppliers could result in materially increased energy costs for its operations and HC Group may be unable to pass along these increased energy costs to its customers, which could have a material adverse effect on HC Group's business, financial condition and results of operations. (Page 48)*

*Should no exemption from auctioning be granted for the third trading period, which HC Group considers very unlikely, HC Group would have to purchase a significant (and steadily increasing) amount of Emission Rights in auctions (from 20% in 2013 to 70% in 2020 and to 100% in 2027) to cover its carbon dioxide emissions, which would result in massive additional costs for HC Group. In addition, significant additional costs may arise for HC Group due to the stricter caps applicable to the share of Emission Rights allocated for free, which would require HC Group to purchase additional Emission Rights. Therefore, HC Group could suffer a massive loss in market share to competitors outside the EU should no exemption from auctioning be granted. Furthermore, the revised emission trading system is expected to result in a significant increase in indirect costs for HC Group. Full auctioning will be the rule for the energy sector from 2013 onwards, which will probably increase energy prices in the EU significantly (page 49)*

### *North American carbon emission laws*

*In addition, considerable and increasing government attention in the United States and Canada is being paid to carbon dioxide and other greenhouse gas emissions. Legislators are considering the adoption of significant new laws and regulators are considering using existing laws to limit greenhouse gas emissions, including carbon dioxide. Laws and regulations that are being considered include:*  
*k Federal legislation. The U.S. House of Representatives recently passed, and the Senate is currently considering, greenhouse gas legislation that would, among other things, impose a nationwide cap on greenhouse gas emissions and require major sources, including some of HC Group's cement facilities, to*

obtain allowances to meet that cap. U.S. President Obama has expressed support for such legislation.

*k Federal regulation. In April 2009, the U.S. Environmental Protection Agency (the "EPA") issued a proposed finding that emissions of carbon dioxide and other greenhouse gases contribute to air pollution and endanger human health and welfare (the "Endangerment Finding"). The Endangerment Finding, if ultimately adopted, would permit the EPA to begin regulating greenhouse gas emissions under the U.S. Clean Air Act.*

*k State and provincial action. A growing number of states in the United States and provinces in Canada, including those in which HC Group has operations, have adopted measures or are considering adopting measures, sometimes as part of regional initiatives, to reduce carbon dioxide and other greenhouse gas emissions within their jurisdictions, including by requiring reductions on carbon dioxide emissions from cement plants. For example, in California, Governor Arnold Schwarzenegger signed AB32 into law in late 2006. AB32 calls for specific emissions reduction measures as well as a cap on greenhouse gas emissions throughout California, including from HC Group's cement plants, and a state-wide reduction of greenhouse gas emissions to 1990 levels by 2020.*

*In addition, HC Group's operations are or will be impacted by other measures to reduce greenhouse gas emissions that are being imposed already, including the following:*

*k Canadian regulations. The province of British Columbia enacted a carbon tax law that went into effect in 2008 and imposes a tax on each metric ton of carbon dioxide equivalent emissions. This tax started at C\$ 15/metric ton in 2009 and will increase by C\$ 5/metric ton annually until it reaches C\$ 30/metric ton in 2012. In 2007, the province of Alberta implemented its Specified Gas Emitters Regulation, which requires a 12% reduction in greenhouse gas emission intensity vis-à-vis a baseline calculated as an average of emission intensity in 2003, 2004 and 2005.*

*k Regional actions. At the regional level, ten northeastern and mid-Atlantic states have formed the Regional Greenhouse Gas Initiative agreement, or RGGI. RGGI calls for signatory states to hold carbon dioxide emissions from power plants constant at current levels from 2009 to 2014, followed by a 2.5% reduction each year from 2015 to 2018. Auctions for carbon dioxide allowances under the program began in September 2008 and occur on a quarterly basis. This has and will in the future result in increased energy costs for HC Group's operations in the states party to RGGI. Also in other jurisdictions, measures to reduce carbon dioxide and other greenhouse gas emissions that could affect HC Group are currently being developed or may be developed in the future, in particular, in connection with the UN climate conference in Copenhagen in December 2009. These existing and possible new regulations regarding carbon dioxide and other greenhouse gas emissions, especially the revised emission trading scheme for Emission Rights in the EU and any future federal actions in the United States and Canada, could have a material adverse effect on HC Group's business, financial condition and results of operations. (page 49)*

- 5-1 As indicated in your prospectus the viability of the aggregate/cement/construction chain is likely to be materially impacted by escalating government actions to contain CO2 emissions, and Heidelberg recognise these actions could have a significant influence on its business model affecting investment decisions, corporate viability and the solvency of HeidelbergCement AG itself. Judging from the corporate credit ratings and outlook for the sector, HeidelbergCement AG. is in a weak position to face these threats. Would you please explain how HC Group's strategy and business plan takes into account these material changes effecting the financial viability of the aggregate sector and, HeidelbergCement AG in particular, and given those conclusions, how is it that the HC Group is persisting in the Texada South Quarry, when an optimum and low risk strategy is to continue to purchase from TQL?

## 6 Sustainability

*"Sustainability provides an important foundation for the Company. HC Group strives to act in a socially and ecologically responsible way. Central parts of HC Group's sustainability strategy are derived from its core business and its effects on the environment and society. The focal areas of this sustainability strategy are occupational health and safety, energy and climate protection, biological diversity,*

*sustainable building, use of alternative fuels and reduction of other detrimental environmental effects". (Source HeidelbergCement AG. Prospectus September 14,2009).*

Friends of Davie Bay have filed a letter dated October 26, 2009 with the Minister of Transport (CEAR reference 09-01-49595 <http://daviebay.com/>) highlighting issues and concerns with the Texada South Quarry. With reference to that letter would you please address how HeidelbergCement AG will meet its obligations under it's sustainability ethos while at the same time operate a quarry and loading dock at Davie Bay, Texada. Please address specifically how Heidelberg will:

- 6-1 Preserve and protect the local flora (Rare Plants around Davie Bay. Adolf Ceska, Oct 19-09) where Dr Ceska observes that the quarry would have an immense impact on the area in the middle of Texada Island and threaten blue listed species.
- 6-2 Preserve and protect the caves and karst in and around Davie Bay. These have been observed as the most extensive and well decorated of all known karst caves along the BC Mainland Coast between Washington and Alaska. (Letter from Paul Griffiths to Hon.B. Penner, September 16-09)
- 6-3 Preserve and protect the fish habitat in Davie Bay. The site of the proposed barge loading facility is well within an established rockfish conservation area set up by the Department of Fisheries and Oceans (DFO) where there are widespread eelgrass beds. As announced on November 5-09, B.C Supreme Court Justice Bruce Cohen will head a federal enquiry into the decline of the Fraser River sockeye salmon stocks, as collapse of the stocks is causing concern. It is accepted science that eelgrass provides valuable forage, spawning and refuge areas for a number of marine species. Eelgrass fills an important function in the marine foodweb at two levels. Eelgrass is directly consumed by organisms such as waterfowl, urchins, worms, snails, and microorganisms. In addition, many other species ( such as salmon, crabs, and heron) consume the organisms that live in the eelgrass colonies. Eelgrass provides a spawning habitat for Pacific herring, which lay their eggs on he blades of eelgrass. Eelgrass beds are also a critical nursery area for juvenile salmon and cod which seek protection within the beds from predators. [http://www.whatcom-mrc.whatcomcounty.org/Fact\\_Sheets/common\\_eelgrass.htm](http://www.whatcom-mrc.whatcomcounty.org/Fact_Sheets/common_eelgrass.htm)
- 6-4 You are also asked to reconcile the company's corporate sustainability ethos with the damage the company will do to the Coastal Douglas-Fir ("CDF") zone. Just 1% of the CDF zone in the lower mainland is relatively untouched, and preservation of the zone is a conservation challenge due to the limited size of the zone and the unique flora and fauna that inhabit it. The coastline shelters many species of waterfowl, and the offshore islets are havens for colony-nesting species such as the glaucous-winged gull and Brandt's cormorant. This zone is home to the greatest diversity of wintering birds found anywhere in Canada.
- 6-5 By motion dated September 24, 2009 the Powell River Regional District (PRRD) indicated that it is very concerned that public access will be curtailed to the Davie Bay foreshore, the island containing the conveyor, the 66ft strip of Crown land fronting District Lot 235 and the existing UREP fronting District Lot 303 in Davie Bay [a UREP is a BC provincial designation of lands reserved in planning for the use, recreation and enjoyment of the public]. Would you please explain how your plans for a quarry and loading dock in Davie Bay would preserve and enhance the public access to the area as indicated by the PRRD.
- 6-6 By motion dated September 24, 2009 the PRRD also indicated that public access through the Lehigh property to the Shingle Beach campground and the Hydro substation should be formalized. Would you please provide details of your proposed legal arrangements of how the public access will be assured.

- 6-7 The quarries on Texada are to the north of the island. To the south Texada is still largely a natural wilderness area, with the most stunning rugged natural beauty of all the Gulf Islands.

Davie Bay is by many accounts, the single most stunning part of Texada. The lands in and around Davie Bay have a high public amenity value. Preservation of this area would be a key to preserving Texada's huge potential for recreation, nature tourism, wilderness activities, as a holiday destination and as a retirement community. These activities create their own economic opportunities offering sustainable economic base. Indeed, abuse of Texada's environment could affect the decisions of people wanting to move or stay here, and threaten economic options for the future. Hence the opportunity cost of the Davie Bay project or economic opportunity loss to Texada is judged to be very high.

Lehigh Northwest Minerals Ltd is asked to respond to the motion of the Powell River Regional District dated September 24, 2009 and to prepare a cost/benefit analysis assessing the economic, social and environmental impacts of the Texada South Quarry on Texada, in the short and long run. That assessment must measure the displacement expected to occur between the existing 3 quarries and the new Texada South Quarry, and the opportunity cost or gain to Texada of the Texada South Quarry compared to the development of a regional park at Davie Bay (see also 9 below) and the development of Texada's tourism sector.

- 6-8 You are asked to file an environmental assessment assuming you will use the full economic value of the capacity of the facilities installed which is about 5 million tonnes per annum. [This calculation assumes one shift of 8 hours per working day, 52 weeks of the year at a loading rate of 2,500 tonnes per hour-- $8 \times 5 \times 52 \times 2,400 = 4.9\text{m tonnes per year}$ ]. This assessment must include an appraisal under this production scenario, of whether the marine habitat, the flora, the CDF zone, the caves and karst, and the beauty and utility of Davie Bay, can be adequately protected or whether the impact of the quarry and loading dock would be so extreme so as to obliterate, meaning any effort at mitigation would be worthless. As you are aware the Davie Bay area experiences high winds on frequent occasions, so your assessment must take into account how the company intends to prevent limestone dust permeating the area.

**7 Financial standing. Lehigh Northwest Minerals Ltd, and the parent company, HeidelbergCement AG. ("HC Group")**

In June 2009, after Lehigh Northwest Minerals Ltd. applied for the Texada South Quarry, HC Group completed a comprehensive refinancing of its existing bank debt involving more than 50 international lenders. The new syndicated facilities agreement (the "SFA") totaling approximately Euro 8.7 billion matures on December 15, 2011. In connection with the refinancing, HeidelbergCement and HeidelbergCement Finance B.V. had to grant security over bank accounts and intra-group loan receivables as well as numerous guarantees by subsidiaries. The lenders under the SFA have also obtained share pledges over the shares in HeidelbergCement's major direct or indirect subsidiaries. The SFA and certain other financing agreements of HC Group provide for substantial restrictions with respect to HC Group's operational flexibility. In particular, HC Group has to adhere to certain financial ratios (covenants) and general undertakings, allowing the lenders to claim immediate repayment of the outstanding loans if such covenants or undertakings are not satisfied. HC Group state there is a potential risk that the requirements in connection with the financial covenants in particular will not be met in the future and that the HC Group will not be able to meet the now agreed maturities or implement refinancing measures in time, which would have a material adverse effect on HC Group. The difficulties in refinancing HC Group's bank financing which matures in December 2011 are further increased by the tight credit market conditions and weak economic environment in which HC Group could continue to face decreasing operating results. HC Group's comparably high indebtedness in general combined with the resulting interest burden and below investment grade credit rating, as well

as the restrictions under the SFA in particular, will negatively affect its business, financial condition and results of operations rendering HC Group more vulnerable to the consequences of the economic downturn ". (Source HeidelbergCement Prospectus, pages 43 & 44, September 14, 2009).

- 7-1 Given the declarations above, and the rising environmental risk profile of the company, is it still your intention to proceed with the application for the Texada South Quarry? And, is the Province justified in seeking performance guarantees via cash collateral?

## **8 Regulatory, other Legal and Tax-related Risks**

The following is an extract from the HeidelbergCement. Prospectus dated Sept 14, 2009

*In November 2008, the EU Commission conducted on-site investigations of a number of locations of cement producers in Germany, Belgium, The Netherlands and the UK investigating suspected infringements of EU competition law. Offices of HeidelbergCement and its respective subsidiaries in Heidelberg/Germany (Head- quarters), Mainz/Germany (Sales Office), Brussels/Belgium (Country Headquarters), s'Hertogenbosch/The Netherlands (Country Headquarters) and Maidenhead/UK (Country Headquarters) were searched and a number of documents and electronic files were seized. HeidelbergCement has no information about any conclusion the EU Commission may draw from its investigation which is in a preliminary phase. Although preliminary internal investigations and a preliminary review of the seized documents and files do not confirm the far-reaching suspected infringements as stated in the investigation authorization, HeidelbergCement can offer no assurance regarding the outcome of this proceeding. If the EU Commission concludes that HeidelbergCement or any of its affiliates participated in anti-competitive practices, the EU Commission may impose a fine on HeidelbergCement, which requires a comprehensive factual, legal and economic analysis, and HeidelbergCement may face follow-on civil actions by its customers and the customers of other companies involved in the anti-competitive practices.*

*In addition, certain subsidiaries of HeidelbergCement are subject to investigations and proceedings by anti-trust and competition authorities in various countries, including Belgium, Hungary, India, Indonesia, Poland (two of the proceedings, relating in particular to the slag market, concern preliminary general market investigations by the Polish Competition Agency) and Ukraine which are at different stages including court proceedings. HeidelbergCement cannot predict the outcome of pending proceedings or investigations, including, but not limited to, the amount of any fine. With respect to five of these proceedings, those in Belgium, Hungary, Indonesia, Poland and Ukraine, new fine orders might be issued in the future while the other pending proceedings are at the appeal stage and/or payments had to be made. For two of these proceedings in Poland and Ukraine, a fine of more than c 10 million may be assessed – based on the current provisions applicable to the calculation of fines.*

*(source: HeidelbergCement AG. Prospectus dated Sept 14, 2009, pages 46 and 47)*

- 8-1 Would you please confirm there are no Regulatory, other Legal and Tax-related Risks relating to the United States and Canada affecting the HC Group and its subsidiaries operating in the US and Canada.

## **9 Crown Land Allocation Principles.**

About 60% of the proposed Texada Quarry South would exist in Crown land, and additionally Lehigh requires a provincial tenure for the barge loading facility.

The Province of BC follows a strategic policy and strict principles in the allocation of Crown land. Essentially the Province has stewardship obligation on behalf of the public to allocate land based on

“highest and best use”. In valuing Crown land and resources, consideration is given to their degree of scarcity, and the associated economic, social and environmental benefits.

Friends of Davie Bay have proposed a “best use” to the Powell River Regional District and others which is superior to the Lehigh proposal to extract limestone aggregate from the lands in and around Davie Bay. Due to the high social, economic and environmental value of the Davie Bay lands we propose that these lands be preserved for the use and enjoyment of the public in perpetuity. Others have informed the media of the investment potential on a community basis. (Future Vision <http://www.prpeak.com/articles/2009/11/04/opinion/letters/doc4af0e94bcbccc312255028.txt> )

Would you please justify your request for the release of crown land to Lehigh in relation to the following tests demonstrating that your proposal to quarry the lands is the best and highest use of the lands.

- 9-1 Crown land allocation should promote investment and open trade, and provide improved access to markets. Innovation should be encouraged, especially where entrepreneurship and investment opportunities can be leveraged.
- 9-2 Crown land allocation should support healthy communities after identifying and considering community values and interests.
- 9-3 Crown land allocation should maintain or create a high quality natural environment.

We look forward to your response

Yours truly,

Richard Fletcher  
Friends of Davie Bay.  
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<http://daviebay.com/>

By e-mail to:

Hon John Baird, Minister of Transport, Infrastructure, and Communities.

Hon Jim Prentice, Minister of the Environment.

Hon Gail Shea, Minister of Fisheries and Oceans.

Hon Barry Penner, Minister of the Environment, BC

Hon Pat Bell, Minister of Forests and Range, BC

Cc Nicholas Simons MLA  
Robert Sisler, Regional Manager, Environmental Services, Transport Canada.  
Karen Christie, Project Assessment Director, Ministry of Environment, BC.  
Scott Northrup DFO