

From: Joyce M Eden [comment@sonic.net]  
Sent: Wednesday, September 30, 2009 2:23 PM  
To: cityclerk@ci.petaluma; Jack Broadbent; Thu Bui; jordand@epa.gov; aldredc@epa.gov  
Cc: Joyce M Eden; James Pew; Deborah Behles; Helen Kang; Monica Wilson  
Subject: WVCAW Request for Suspension of Public Comment Period Major Facility Review Permit LSWCC Facility #A0017

Attachments: EPA enforcement letter to Lehigh Cement per Katie.pdf; ATT2535967.htm

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September 29, 2009

Bay Area Air Quality Management District (BAAQMD)  
Pamela Torliatt, Chair, Board of Directors, BAAQMD  
Jack Broadbent, CEO BAAQMD  
Tue Bui, BAAQMD

Deborah Jordan, Director, Air Division, US EPA Region IX  
Charles Aldred (AIR-5), US EPA Region IX

Re: Request for suspension of the public comment period for the Lehigh Southwest Cement Company Proposed Title V Permit Renewal, Facility #A0017

We ask that the Proposed Title V Renewal of the Major Facility Review Permit Draft and Draft Statement of Basis be amended to include all compliance issues; and we ask for suspension of the public comment period to recommence at such time as to allow the public to review all the relevant information and any potential compliance issues during this Title V Permit renewal process, and especially to include the information requested by the EPA in their letter of Sept 14, 2009, described as follows.

The attached letter dated Sept 14, 2009, from the US EPA to David Vickers, President, Lehigh Southwest Cement Company (LSWCC), has recently come to the attention of West Valley Citizens Air Watch (WVCAW). In that September 14, 2009 letter, EPA requests information related to the emissions from the LSWCC. This information, as characterized in the letter, is related to potential "compliance" issues.

West Valley Citizens Air Watch has made numerous records requests, e-mails and verbal requests for information and clarification regarding emissions from the cement kiln and plant. Specifically, WVCAW has sent numerous queries to Brian Bateman for clarification of emissions regarding the petroleum coke now being used as fuel for the cement kiln. Although myself and others have made numerous requests to the BAAQMD for this same type of information regarding the emissions from the Lehigh Southwest Cement Company kiln, the content of and emissions from the petroleum coke fuel, and in particular how the emissions from the current fuel being used since May 30, 2007 -- petroleum coke from the Conoco Phillips Refinery at Santa Maria, CA -- differ from the previous fuel mix of mostly coal plus approximately 4 tons/per hour of petroleum coke up to a total of 20 tons per hour of fuel burned in the cement kiln, we have not received the emission information. No one from the BAAQMD notified us or sent us the information that EPA is requesting in this attached letter. We were not even notified that the tests were performed on the petroleum coke and coal.

The lack of information related to this switch is especially problematic here since the public was given no prior or contemporaneous notification of the switch from mainly coal to 100% petroleum coke as the fuel used at the kiln. This is despite the fact that in November, 2007, WVCAW met with the CEO of BAAQMD and high level staff, Brian Bateman, Chief Engineer BAAQMD and Kelly Wee, Chief Compliance Officer BAAQMD, with the specific pre-stated purpose of getting clarity on the emissions from the kiln.

During the meeting of November, 2007, in which we discussed emissions and asked for information on monitoring, no one from the BAAQMD disclosed to us the major switch in fuel which had already taken place months before. At that meeting, we also asked for some or much of the information requested by the EPA in the attached letter regarding what we assumed to be the fuel being used (coal), including asking for a printout of the CEMS data for one month. Of course, we had no idea to ask whether the fuel had been switched from mainly coal to petroleum coke, because we assumed that it was still mainly coal, as it had been for years,. We were given no information or clue to think otherwise. To say that was not forthcoming of the BAAQMD officials and staff is an understatement.

The information requested by the US EPA in the attached letter should have been available to the public during the public comment period for the Title V Permit Renewal consideration for the Lehigh Southwest Cement plant. The Clean Air Act requires that "[a] copy of each permit application, compliance plan (including a schedule of compliance) emissions or compliance monitoring report,

certification, and each permit. . . shall be made available to the public.” Clean Air Act § 503(e). The Clean Air Act further states that: "Any permit application, compliance plan, permit, and monitoring or compliance report” under Title V must be “ma[d]e available to the public.” Clean Air Act §502(b)(8). A court interpreting this provision summarized this requirement as:

If a source is not in compliance, it must develop a “schedule of compliance,” outlining how it plans to come into compliance with “all applicable requirements” of the CAA. HYPERLINK "[http://web2.westlaw.com/find/default.wl?tf=-1&rs=WLV9.09&referencepositiontype=T&referenceposition=SP%3b13ff00009a271&fn=\\_top&sv=Split&docname=40CFRS70.5&tc=-1&pb=194756E0&ordoc=2016621992&findtype=L&db=1000547&vr=2.0&rp=%2ffind%2fdefault.wl&mt=208](http://web2.westlaw.com/find/default.wl?tf=-1&rs=WLV9.09&referencepositiontype=T&referenceposition=SP%3b13ff00009a271&fn=_top&sv=Split&docname=40CFRS70.5&tc=-1&pb=194756E0&ordoc=2016621992&findtype=L&db=1000547&vr=2.0&rp=%2ffind%2fdefault.wl&mt=208)" \t "\_top" Id. § 70.5(c)(8)(iii)(C). The schedule of compliance must be included in the permit itself. HYPERLINK "[http://web2.westlaw.com/find/default.wl?tf=-1&rs=WLV9.09&referencepositiontype=T&referenceposition=SP%3b8b3b0000958a4&fn=\\_top&sv=Split&docname=42USCAS7661C&tc=-1&pb=194756E0&ordoc=2016621992&findtype=L&db=1000546&vr=2.0&rp=%2ffind%2fdefault.wl&mt=208](http://web2.westlaw.com/find/default.wl?tf=-1&rs=WLV9.09&referencepositiontype=T&referenceposition=SP%3b8b3b0000958a4&fn=_top&sv=Split&docname=42USCAS7661C&tc=-1&pb=194756E0&ordoc=2016621992&findtype=L&db=1000546&vr=2.0&rp=%2ffind%2fdefault.wl&mt=208)" \t "\_top" 42 U.S.C. § 7661c(a). And the permittee must promptly report any deviations from the permit's requirements. Id. § 7661b(b)(2).

Citizens Against Ruining the Environment v. EPA, 535 F3d 670 (7th Cir. 2008). Pursuant to these requirements, the emission information requested by EPA, most or all of which we have previously requested in general terms at various times, should be made available to the public as part of the Title V permit process.

This emissions information will describe in more detail than the information previously available what types of pollutants will be emitted from the facility which is of great public concern. (<http://www.epa.gov/region09/air/permit/titlev-public-part.html>) This information should have been available to the public after the tests because the public has a right to know what is being emitted from this facility. The information available to the public should include reports and certifications related to the operation of the facility. (see <http://www.epa.gov/region09/air/permit/titlev-public-part.html>). Furthermore, the emissions information requested will help the public determine whether the public should object to the permit, this is one of the purposes of the comment period. Without this information, the public cannot adequately assess, nor adequately comment on, the Proposed Title V Permit renewal for the Lehigh Southwest Cement Company plant.

We note here that the coal which was tested during the testing period indicated, may or may not have had the same content as the coal previously burned in the cement kiln prior to May 30, 2007. (e-mails from Brian Bateman, BAAQMD re dates and types of fuel use)

In addition, there are likely compliance issues, which may require compliance plans, that have not been included in the proposed permit. These compliance issues and plans need to be included in the Title V permit. See *New York Public Interest Research Group v. Johnson*, 427 F.3d 172 (2d Cir. 2005) (finding compliance plans need to be included in a Title V permit). The Lehigh Southwest Cement Company plant is not in compliance. For the time period, "DATE: November 1, 2007 - October 31, 2008, . . . This facility is:  Not in-compliance[.]" Signed 8/13/09, Dick Hansen Roderiguez, Inspector, and initialed by the BAAQMD Supervisor on 9/4/09. (See Title V Annual Compliance Certification Form, Site Number A0017, Date Submitted, July 29, 2009.)

Since there is a compliance issue a compliance plan needs to be included in the Title V permit.

HYPERLINK "<http://www.titlev.org/Publications/checklists.pdf>" <http://www.titlev.org/Publications/checklists.pdf>

HYPERLINK "<http://openjurist.org/427/f3d/172/new-york-public-interest-research-group-inc-v-l-johnson>" <http://openjurist.org/427/f3d/172/new-york-public-interest-research-group-inc-v-l-johnson>  
A Title V permit cannot be issued unless compliance is assured.

Some other unresolved compliance issues that we know about are as follows:

The "Report of Required Monitoring Deviation Report for the Lehigh Southwest Cement Company, Major Facility Review Permit -- BAAQMD Facility ID # A0017, Period November 1, 2008 through April 30, 2009, Report Date May 30, 2009" pages 1 and 2 indicate 7 exceedences of Ringelmann opacity requirements. These exceedences are of concern to the public not only because of the opacity issue, but also, of potential implications from the toxic components of the emissions which make up the particles and other substances emitted. In addition, the Ringelmann reading requires the presence of an inspector. The inspector is only able to conduct a reading on a very limited basis, therefore, indicating the potential of many more unrecorded exceedences. When members of the public call in concerns, if the inspector is not on duty and if he is not able to respond, the incident reported is probably over. In addition, the public has concerns in the early evening as they drive home from work when they can see the plume, yet at this time of day, an inspector is required to go into the cement plants property and behind it to make a reading. By this time, the inspector's hours of employment are post and there is no ability of the public to do a reading. Do the operators of the plant know this? Of course they do. Is the public frustrated? Yes. Is the public discouraged by this situation from calling in reports? Yes. So are the number of exceedences reported reflective of the actual number of exceedences? Highly doubtful.

The public is also concerned that since Lehigh Southwest kiln is now and has been since May, 30, 2007 burning 100% petroleum coke for fuel in the cement kiln, there is likelihood of an increase in vanadium, selenium and cadmium and potentially other heavy metals such as hexavalent chromium as well as SO<sub>x</sub>.

We ask that these and other potential Toxic Air Contaminants also be tested in the content of the petroleum coke and in the emissions. (e-mails from Brian Bateman, BAAQMD to Joyce M Eden, WVCAW, September, 2009). This type of emission information should be made available to the public in order to fully assess the proposed Title V permit for this facility.

In addition, as part of the Title V process, we request more reliable emission measurements so we can access the emissions from this facility that are impacting our community. We question the validity of the extrapolation of the amount of emissions from both criteria pollutants, and toxic pollutants by using data from the current or former one or even four CEMS placed on one or four of the 32 (THIRTY TWO) baghouse vents which emit the pollutants directly into our air. There is no central stack at the Lehigh Southwest Cement plant kiln which amasses all the emissions in one place and on which a calibrated and monitored CEMS can be placed to determine emissions. (See attachment #2, submitted on June, 2009, as a part of WVCAW comments to EPA Docket ID No. EPA-HQ-OAR-2002-0051)

When the BAAQMD refers to, "stack emissions" we have only found out on our own in June, 2009, they are in fact referring to emissions from 32 individual vents on top of the baghouse not to a single stack (see [googlemaps.com/satellite](http://googlemaps.com/satellite)). This was never clarified to us either in our correspondence, telephone conversations, or meetings with the BAAQMD over the last 13 years of our attempts to get clarity about the operation's emissions regarding amounts, data collection records, monitoring and reporting.

Therefore, we request an immediate withdrawal of the public comment period for the Lehigh Southwest Cement Company Title V renewal. We ask that a new public comment period for the proposed renewal be set after the EPA has received all the information requested in the attached letter and after all that information has been made readily available to the public by the BAAQMD. We ask that the public comment period be reset for a new 45 - 60 day comment period duration after the information requested in the attached letter is sent to the BAAQMD and made readily available to the public either by e-mail or posted on the BAAQMD web site for public consideration. In addition, we request that the above discussed compliance issues be included in this amended proposed Title V permit renewal proposal.

Please inform us by e-mail to <HYPERLINK "mailto:comment@sonic.net" comment@sonic.net> when this information requested by the EPA will be readily available to the public, in what form and by what means (eg posted on the BAAQMD web site).

These comments and attachments are also to be considered as a part of the public comment period for the Proposed Title V renewal and to be made a part of the record thereof.

Thank you,

Joyce M Eden, for West Valley Citizens Air Watch

ps: Please note that the Lehigh Southwest Cement Company cement kiln, Site Number A0017, has not been operating at full capacity during 2009, during 2008, and possibly during 2007. However, previous to this recent and current time period, Lehigh Southwest operated at or close to full capacity producing approximately 1.6 million tons of clinker per year, using a total of 20 tons of a mixture of coal and petroleum coke 24/7 except for approximately 2 - 3 weeks for yearly maintenance. Therefore, the amount of emissions for any air pollutant must be considered in the amounts which would be produced if the plant was operating at full capacity. (e-mail correspondence with Brian Bateman, 2009, BAAQMD)

2 Attachments:

Attachment #1: