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Subject: Draft comments

West Valley Citizens Air Watch

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October 1, 2009

Bay Area Air Quality Management District (BAAQMD)

Pamela Torliatt, Chair, Board of Directors, BAAQMD (via lharper@baaqmd.gov)

Thu Bui, BAAQMD

Deborah Jordan, Director, Air Division, US EPA Region IX

Charles Aldred (AIR-5), US EPA Region IX

Re: West Valley Citizen Air Watch (WVCAW) Comments on the Proposed Title V Permit Renewal, Facility #A0017, Lehigh Southwest Cement Company (LSWCC)

INTRODUCTION

Since we have not received notice of suspension of the public comment period, we ask that the comment period be reopened at such time as all the information we requested in our comment letter of Sept 30, 2009, is made available to the public for their consideration for the Proposed Title V Permit Renewal.

The mission statement of the BAAQMD is, "To protect and improve public health, air quality, and the global climate."

However, in reality the BAAQMD is an agency that issues Permits to Pollute. It manages the air pollution to fit the industry not to ensure quality, healthful air to the public. We have no choice but to breathe the air around us. It is making many of us sick. Much of this is due to the weak and lax regulations and regulatory processes of the BAAQMD. We ask for this to be reversed.

The BAAQMD area is out of attainment for the California 8 hour and 1 hour Ozone and particulate Matter PM10 and PM2.5 standards, and for the Federal 8 hour Ozone and 24 hour PM2.5 standards.
http://hank.baaqmd.gov/pln/air_quality/ambient_air_quality.htm

The air monitor at Stevens Creek Blvd. in Cupertino has shown at least two exceedances of the 24 hour PM 10 standard (the monitor in Cupertino is for PM 10, no monitor was set up for PM2.5). The LSWCC plant has not been operating a significant amount of the time since the monitor was set up due to the economy. Truck traffic has also been reduced from its previous highs; therefore, this data does not reflect the usual amount of PM emitted from the kiln and from the diesel trucks. As the monitor has not yet been in operation for a year, It is not yet know whether the yearly average will be exceeded.
<http://gate1.baaqmd.gov/aqmet/AQMonthly.aspx>

We ask that decreases in these emissions from LSWCC be mandatory in the Title V Permit.

There is much latitude for the staff to propose and for the Board of Directors (BOD) to either propose or support changes to the 70% of the rules and regulations under which the BAAQMD operates which could and can be more in line with the mission by significantly reducing air pollution. At the same time, we want to acknowledge there are staff members of the BAAQMD who are attempting to fulfill that mission or who have that intention but are hampered by the rules and regulations, their superiors or for other reasons. We would like to encourage staff members who are knowledgeable regarding the rules and regulations, monitoring, etc, to take the initiative to make proposals directly to the BOD, rather than getting proposals filtered through the upper management. We are generally supportive of the current effort, the Draft Bay Area 2009 Clean Air Plan, to reign in some of the air pollution, but ask that this opportunity to strengthen the rules and pollution criteria be used to significantly reduce air pollution, not merely to tweek it in a too small incremental manner.

Either we are going to actually move towards clean air and a clean earth or not. The toxic body burden of each person is too large and increases every year. We are asking the BAAQMD to begin using your regulatory authority to make an actual and significant reduction in the air pollution.

Those of us who attended a BAAQMD BOD meeting in San Francisco around 9 months ago were horrified when we heard residents of other communities tell the BOD about the highly inadequate, lax and unprotective regulation by the BAAQMD in other areas of the air district and the resulting unacceptable amounts of pollution to which they are exposed: West Oakland, Bay View Hunter's Point, Berkeley, Richmond. Communities are left to twist slowly in the polluted wind, in which the polluting industries get a Fast Pass to Pollute. Even when the facilities are documented to violate the weak rules and regulations, many violations go unresolved for years and then are "resolved" by a compromise of regulations or are given a meaningless miniscule "fine". We are specifically familiar with the poor regulation and monitoring of the Lehigh Southwest Cement Company kiln and quarry operations located in our community.

While there are many federal and state regulations that apply to the air pollution amounts emitted from the LSWCC plant, the BAAQMD has a large amount of latitude to set regulatory amounts of many pollutants. According to a power point presentation given by Brian Bateman, BAAQMD, to the Santa Clara County Medical Association Environmental Committee, the BAAQMD sets around 70% of the rules and regulations themselves.

It appears that, for some pollutants, the BAAQMD configures the air permits based on the amount of pollution being emitted from the cement plant. So it's statement, "Permit renewal can also be denied if a facility is found to be incapable of complying with its permit conditions," ("The Title V Permit Program in Your Community, What You Should Know", BAAQMD, p3) is a moving target. From our experience with the BAAQMD and the Lehigh Southwest Cement Company plant (formerly Hanson, formerly Kaiser), too often the BAAQMD appears to adjust the air pollution requirements and regulations to accommodate the amount of pollution from various TACs according to the amount emitted, so that the amount tends to remain under the permitted amount. Could this be true for the recent hexavalent chromium adjustment? Once the BAAQMD determined that the amount of hexavalent chromium being emitted from the Lehigh Southwest Cement Company kiln to be two times the previous modeled estimated amount, instead of requiring the plant to reduce that amount, it appears they may have set a new criteria. Therefore, the regulated amount allowed may track the amount emitted. That would not be protection of the public, at best that would be accommodation of the industry's pollution.

The frequent statements by the BAAQMD and the regulated industries that they are in compliance with regulations, even if that were so, gives the public the false impression that everything is ok and that they are being protected from harmful pollutants. This is just not the case.

SPECIFIC COMMENTS

1) The proposed permit indicates that the amount of coal burned for fuel could rise to 29 tons/hour. (See pages 116, 140, 163).

During the Sept. 17 Proposed Title V Permit Renewal meeting, the BAAQMD gave out a "Fact Sheet" dated September 17, 2009, that said, "Lehigh has withdrawn a permit application that had been submitted to further increase the permitted coke usage at their facility," (p 2) but there was no mention of the proposed increase in coal.

2) The Proposed Permit, p 182, states, "5000 tons/day import Clinker if kiln is down for more than 45 days in last 366 days" There is no acceptable reason to import clinker into Cupertino. We strongly object to this and ask that it be stricken from the Permit.

3) We ask that the permit clearly state that LSWCC is not allowed to transport limestone into their facility from other quarries outside their boundaries. When the local limestone reserves are depleted, it will be energy consuming to transport limestone, which is much heavier than cement into the Bay Area. This would greatly increase fuel consumption. Increased fuel consumption would lead to increased air pollution and increased carbon dioxide emissions. The LSWCC has repeatedly stated that the reason the kiln is there is because the limestone is there. This is well documented. So, no limestone, no kiln.

4) The only regulated limit is for diesel trucks is for cement trucks. According to the proposed permit, page 339 "The owner/operator ... shall not load out more than its percent maximum throughput of current trucks, a maximum of 70,000 cement trucks loaded to capacities." That in itself is a huge amount of diesel trucks and air pollution. There is no limit on the number of diesel trucks carrying aggregate. As the LSWCC continues to mine areas less rich in limestone, the number of aggregate trucks has the potential to increase substantially. As the limestone percentage decreases, the portion of aggregates may increase. We ask for a limit in the permit on the total number of diesel trucks transporting ALL materials. Furthermore, if the increase in coal referred to in above (see 1)) is approved, there will be even more trucks/rail cars running through our city. The LSWCC operations are currently permitted to operate 24 hours/7days per week as are the diesel trucks. We ask for limits to be placed on the operating hours of these large noisy trucks running through our streets. We ask for the nighttime hours to be finally disallowed in the permit. Of note, the truck route directly passes in front of two sensitive receptors, Monarch Christian Preschool and Sunnyview Retirement Community.

4) The LSWCC plant is one of the largest emitters of mercury in the USA. We ask the mercury be reduced at least to the 47 pounds per year proposed by the EPA's Proposed Rule. BAAQMD has authority to require this.

5) We object to any open storage piles of petroleum coke or coal. According to the Statement of Basis page 107, "Lehigh did not want to over-water the fuel material storage piles for fear that the run off water might flow into the Permanente Creek, and the wet fuels and raw materials may result in the use

of more energy." However, during the rainy season it is very likely that materials would enter the Creek. We oppose this until a proper EIR can be done and all alternatives are explored. The permit should not allow LSWCC to store fuels or any potentially hazardous or dangerous or polluting materials outside. There are numerous homes in close proximity as well as Permanente Creek which flows into San Francisco Bay.

<http://www.baaqmd.gov/Divisions/Engineering/Title-V-Permit-Programs/Title-V-Permits/Santa-Clara/A0017/Lehigh-Southwest-Cement-Company.aspx>

5) We ask that the New Source Review criteria proposed in the BAAQMD 2009 Clean Air Plan be applied to the LSWCC facility and incorporated into its Title V Permit as soon as it is enacted. In the meantime, a New Source Review investigation regarding recent actions, equipment and processes should be completed before a new Title V Permit is issued as well as an investigation into Prevention of Significant Deterioration potentials.

6) We have been unsuccessfully asking for an analysis of relevant samples of rocks in the quarry by a State Certified Geologist in order to determine whether there is asbestos or asbestos like components in the rocks in the quarry. We ask this be a requirement in the Title V Permit.

GENERAL COMMENTS

Modeling v. CEMS on a central stack for determining actual kiln emissions
(see our attached comments to the EPA)

Toxic Hot Spot Program, Boundaries and HRA:

The Toxic Hot Spot Program requires a threshold that is completely inadequate to support health. The boundaries of 1,000 ft. for determining risk triggers are much too small. There are numerous schools, nursing homes, retirement communities close to the LSWCC plant, yet they are not taken into consideration in this narrowly confined boundary. The Health Risk Assessment is not health protective. It does not take into account either cumulative effects nor synergistic interactions of the various HAPS, VOCS, TACS, etc. both among themselves and within the body interactions with body processes and chemistry. There are many pollutants which have no set level of acceptability as they are toxic in any miniscule amounts, such as various dioxins. So when the BAAQMD says that certain pollutants are only present in small amounts, that is only 1/2 of the story, the other half is that they are highly toxic, teratogenic, mutagenic, etc, in miniscule amounts. In addition, the HRA only takes into account (and not adequately at that) individual cancer causing agents.

Precautionary Principle:

We ask the BAAQMD to adopt the Precautionary Principle in which it is the responsibility of the industry or the agency to prove that a substance will not be harmful and reverse the burden put on agencies and communities to prove a substance is harmful. Time and again a substance or process which is not proven to be harmful is released into the environment, does its harm for 20 years or longer until it gets so burdensome that it is finally regulated at all, then many more years or decades until it's regulations even begin, if at all, to reflect its actual detrimental impacts. Meanwhile, children, the environment, the atmosphere has been sickened or degraded.

Information Requests:

We have found the Public Records Request process too often to be a frustrating unresponsive or delayed process. While we have received many prompt responses to many of our questions to individual staff members, what we have also found, is that if we do not know the exact question to ask, we do not get the information we want. In our comments sent yesterday, for example, we told about our efforts to get clarity on the emissions from the plant -- but were never informed about the major switch in fuel, as we did not have a clue that had happened and thus did not know to specifically ask for that information. We are not mind readers. The same thing happened just recently in trying to find out about the content of the petroleum coke and its emissions when burned in the kiln and the differences between that and the coal formerly used as the main fuel. It turns out that there was some analysis and test burns and comparisons of the petroleum coke to coal, but we were never informed that these tests took place, so we could not know to ask for the results. We only found out about this recently through a letter that the US EPA wrote to Lehigh Southwest Cement Company management asking for this information.

CONCLUSION

It would appear that the Proposed Title V Permit Renewal would be intended to firstly determine whether or not the facility will get a renewed permit. It is pretty obvious that a fresh look is not being taken at whether or not to renew the permit, and instead a predetermined assumption of renewal is behind the Proposed Title V Permit Renewal document.

Please note that WVCAW comments are made of up three separate comment letters and four attachments.

Thank you,

Joyce M Eden and Karen Del Compare for West Valley Citizens Air Watch

Attachments to follow in a separate e-mail