

September 29, 2009

Thu Bui
Bay Area Air Quality Management District
939 Ellis Street
San Francisco, CA 94109

Dear Ms. Bui,

QuarryNo, a community of Santa Clara County residents, hereby submits its comments regarding the proposed renewal of Lehigh Southwest Cement Company's (hereinafter "LSCC") Title V Permit to operate its facility located at 24001 Stevens Creek Blvd., Cupertino CA, 95014, for the next 5 years.

We find dust on the ground, we understandably fear Mercury and Chromium in the air and we lack confidence in the clearly outdated *Health Risk Assessment* (hereinafter "H.R.A.") the BAAQMD has used to justify its approval. We look to the BAAQMD to "protect and improve public health, air quality, and the global climate," as called out in its mission statement. In particular, we look to Jack Broadbent, as Chief Executive Officer and Air Pollution Control Officer, to weigh these comments in considering the proposed renewal of LSCC's 5 Year Permit. We appreciate the BAAQMD time spent in reviewing our following comments.

A Clear Nuisance: LSCC's Incessant Airborne Limestone Emissions

Throughout the BAAQMD *Statement for Basis of Renewal*, it proffers that the Cement Plant complies with existing regulations and in particular Regulation 6-305, which mandates that no visible particulates fall on adjacent property in such quantities as to be a nuisance. Without question, this representation is untrue.

From August 11, 2009 through September 1, 2009, we observed and recorded numerous pictures of highly visible particulate emissions coming from LSCC's Cement Plant. A sampling of these pictures are attached and identified below as Pictures 1-18. The particulate emissions occurred on a daily basis,

generally in the afternoon, and settled on the ground as thick dust that blanketed cars, patios, skylights and residents. Notwithstanding the documented emissions, according to the BAAQMD *Statement of Basis for Renewal* there were supposedly only 4 such emissions at LSCC in all of 2009. We believe these pictures to be "credible evidence" that Regulation 6-305 is violated daily.

As you can see, the "dust" falling from the sky is literally everywhere as demonstrated further in photographs attached and identified below as Pictures 19-26. Since this dust contains limestone its presence constitutes far more than simply a visible nuisance, as it cannot be removed with a water spray alone, but requires an acidic wash to remove it. Yet, an acidic wash voids the exterior warranty on any automobile. Repainting a car costs a minimum of \$2,000.00, and based on the impacted locations, as reported by numerous residents, we believe approximately 9,000 cars have been adversely affected by LSCC's "dust". This quantifiable impact on residents is in excess of \$18,000,000.00, without counting damage to skylights, air filters, etc. LSCC's emissions are well beyond the nuisance level and require prompt corrective action.

Pictures 1-26 also directly contradict the annual compliance statement by LSCC's Compliance Officer that there are no such emissions. The photos clearly demonstrate dust levels in residential areas at such a high level of visibility as to be undeniably noticeable. Despite this proverbial elephant sitting on neighborhood cars, patios, skylights and residents, we are led to the incredible conclusion that no one from LSCC or the BAAQMD, with its 10PM particulate monitoring station, has detected the dust. Calls to complain have been ineffective as the Inspector must be notified prior to 3:00PM, while shortly thereafter the emissions, generally, begin. As a consequence, discouraged residents have simply given up calling, which has resulted in the BAAQMD acknowledging only 4 reported violations, although LSCC's emissions occur almost daily.

This present situation is profoundly disturbing as it allows BAAQMD's *Statement of Basis for Renewal* to be based upon the obviously incorrect assumption of "no violations" and relied upon by the EPA and the BAAQMD to justify less regulation, when just the opposite is the case. For example, on page 44 of the *Statement of Basis for Renewal*, it states the "District has determined the operation is not out of compliance and hence no Title V permit compliance schedule is required". On page 49, it states further that the "annual source test

requirement is adequate because previous source tests have consistently demonstrated compliance”.

Yet, this has been proven untrue time and again. It should not be up to residents alone to monitor the particulate emanating from LSCC. In considering the numerous discrepancies between what has been reported by LSCC and what the residents have observed, there should be daily checks at random hours by the BAAQMD to ensure compliance and protect the health of the community.

Inadequate and Unreliable Air Quality Testing and Monitoring At LSCC

For purposes of clarity, Title V calls for a re-examination of all monitoring and compliance, however, this has not been done at the LSCC due to the erroneous assumption of no violations at LSCC. The only, ongoing, source monitoring at LSCC has been for NOX and SOX emissions. There has been no source monitoring for other known Toxic Air Contaminants (hereinafter “TACS”). Though the annual “source tests” suggest so, the words are misleading as they are not based upon fact but rather modeling. The “source tests” apparently involve only third-party input-output analysis which attempts to predict what LSCC's emissions, theoretically, may contain. In essence, predictive models are constructed using a compilation of data including, but not limited to, average values, average temperatures, and best practices rather than actual source measurements. Such modeling appears to be the only TACS monitoring conducted by LSCC and the BAAQMD over the last 10 years. Unfortunately, this flawed and obviously incomplete level of monitoring is allowed to continue with the new permit, even though Title V calls for a re-examination of all such monitoring. We believe that this real problem must be addressed with real data, not simply hypothetical modeling.

We also believe a re-examination would reveal the inadequacy of prior “source test” monitoring at LSCC, as LSCC has been let off the hook for years. In 2001, the “source test” conducted by a contractor picked by LSCC set the average Hexavalent Chromium emission at 0.457 lbs. per year. LSCC supposedly met this limit for Hexavalent Chromium emissions from 2002 to 2007, when a new “source test” was conducted. This test, disturbingly, suggested the emissions were much higher and LSCC officially then reported the Hexavalent Chromium emissions had been understated for 7 years. The actual emissions are unknown as there were no actual measurements made apparently. The number was determined by modeling

with variable assumptions such as coke or coal for fuel and whether the mill was on or off. In the absence of a real number the LSCC and the BAAQMD agreed to a doubling of Hexavalent Chromium emissions (1.059 lbs. per year). This number was very convenient as it, on paper, allowed all to say that there were no health risks.

Instead of garnering additional scrutiny, the prior lower number was categorized as a "miscalculation" and LSCC's new permit has been adjusted to double the amount of Hexavalent Chromium it is allowed to emit. This very significant adjustment occurred even though Hexavalent Chromium is a deadly carcinogenic. We believe any permitted increase, much less a doubling, must be thoroughly analyzed and carefully considered prior to any issuance. The inadequacy of "source tests" was further illustrated when the same miscalculation occurred with Beryllium and Lead and lasted also for 7 years before being revealed.

According to LSCC, it contends that it never exceeded or violated the lower Hexavalent Chromium level between 2002 and 2009. Yet, there have been no public announcements or recordings by LSCC of its Hexavalent Chromium emissions beyond the 0.457 lb limit until now with the official statement they had been understated. According to the BAAQMD, LSCC has allegedly been in full compliance with a "low likelihood" of committing a violation despite the official recognition of understatement. The understatement was not defined as a violation but as a miscalculation by a vendor. However it does require doubling the amount of Hexavalent Chromium allowed to be emitted while at the same time saying there were no violations but on the other hand whatever was emitted was understated. Since there were no actual measurements no one apparently knows what level of Hexavalent Chromium fell on the residents. Simply put, since there were no violations LSCC has demonstrated the ability to meet the current permit level of 0.457 lbs. per year. Consequently we believe there should be no increase in allowable Hexavalent Chromium emissions included in the new Permit.

We also find the absence of meaningful monitoring of LSCC, and substantial deferral to LSCC by the BAAQMD, quite troubling. LSCC has been allowed to propose its own predictive Toxic emission levels, which the BAAQMD appears to readily accept after checking the data provided, but without any real monitoring to independently validate or confirm any of the data LSCC chooses to provide. It appears that every few years LSCC hires a third-party to revalidate its emissions levels which the BAAQMD reviews, and readily approves, without further inquiry. The obvious problem with this methodology is that LSCC appears to remain in

compliance, the BAAQMD is credited for "monitoring" and, if there is a violation, it really is only a miscalculation by a third-party.

It is instructive to compare BAAQMD's seemingly "hands off" approach regarding its monitoring of LSCC's Hexavalent Chromium emissions with that of the South Coast Air Quality Management District (hereinafter "SCAQM"). Proactively, SCAQM mounted an independent study of air toxins and installed monitoring stations throughout its District. These stations went beyond predictive modeling studies and were designed and specifically implemented to provide SCAQM with real data. As detailed on its website, SCAQM's testing detected elevated levels of Chromium 6 in the air and traced it to a cement plant almost 3 miles away. (SCAQMD Website). In unfortunate contrast, and in the same time period, BAAQMD did nothing until it was ordered by the EPA in March 2009, to test for and measure the presence of Hexavalent Chromium at the Stevens Creek Grade School. Here, the school is located just 2 ominous miles from LSCC.

In what appears to be an effort to avert community scrutiny, the BAAQMD *Statement of Basis for Renewal*, continually recites Regulation 2-1-412. The Regulation allows LSCC to not have to alert residents because its cement plant is located more than 1,000 feet from a public school. It appears that whenever an air quality threat appears at LSCC, the BAAQMD seeks the path of least resistance, though that has led to additional emissions.

Apparently with Mercury, that path of least resistance is to issue the LSCC Title V Permit as soon as possible, before the new EPA Mercury restrictions (40CFR parts 60 & 63) become effective. The EPA has concluded that the risks for Mercury emissions from Cement Plants are far higher than originally expected. The LSCC Cement Plant and Quarry has been one of the worse cement kilns for Mercury pollution in the country (EPA Toxic Release Inventory). According to LSCC the new regulations will require major changes and even then emissions may not be acceptable (Mercury Register, June 25, 2009). Only now is the debilitating nature of Mercury poisoning becoming known. We understand that studies are ongoing linking Cement Plants directly with Autism cases in Texas.

We sincerely hope that before the BAAQMD decides to renew LSCC's permit that it exercises regulatory prudence and fulfills its charge to be at the forefront of air quality improvement and act to ensure that all Bay Area residents enjoy their right to breathe clean air.

LSCC's Application for Renewal of Its Permit Is Based Upon An Unreliable, Outdated and An Incomplete *Health Risk Assessment*.

We are not dealing with theoretical calculations, unknown substances and unrecorded violations common in 19th Century industrializing nations. Here, the underlying issues deal with the health of a large community and its exposure to known carcinogens. Notably, the *Health Risk Assessment* incorporated into the BAAQMD *Statement of Basis for Renewal* is almost a year old and, while stating concerns, declares that LSCC meets health protective risk standards. The concern stated is that they are still awaiting a Toxic Emissions Report even though the BAAQMD Fact Sheet of June 24, 2009 says it was received March 30, 2009, prior to the release of the *Statement of Basis for Renewal*, again raising questions as to the accuracy and completeness of the H.R.A. Furthermore, on Page 3 of the Fact Sheet, it states risk levels are rising which suggests the H.R.A. is no longer reliable.

We are also dismayed that while the BAAQMD *Health Risk Assessment* is almost a year old, it is based on even older emissions data from 2007, which, again, are only estimates and not actual measurements of LSCC's substantial emissions. These "estimates" are then combined along with additional assumptions to construct a model which supposedly predicts the impact on the local "receptor", or more commonly known as the resident. Surprisingly, the prediction is that no adverse health effects are expected to occur even for sensitive members of the population like children and the elderly. The *Health Risk Assessment* ominously concludes with an admonition that an updated *Health Risk Assessment* may be necessary. We believe an updated *Health Risk Assessment* is not only necessary but should be mandatory prior to the renewal of LSCC's Permit.

In considering all the inadequacies discussed herein, it is very difficult for the community to have faith in the current *Health Risk Assessment* assurance that "all is well", given the dependence solely on LSCC data, the numerous documented emissions limit errors since 2001, the absence of any direct monitoring of LSCC's emissions, the substantial evidence of dangerous Chromium and Mercury emissions at other cement plants, and the apparent willingness of the BAAQMD to go along with it all. Consequently, we do not believe a new 5 year permit, allowing LSCC to continue down this harmful path, should be issued at this time

Again, the mission of the BAAQMD is to protect our health. Based upon what has transpired at LSCC we do not believe that the BAAQMD is fulfilling its duty. However, there is still time to reverse what has been allowed to take place at LSCC for far too long. We thank you for taking the time to consider the contents of this letter and hope that our comments and concerns are taken under consideration prior to the renewal of LSCC's permit.

Sincerely,

Bill Almon, on behalf of the Members of QuarryNo



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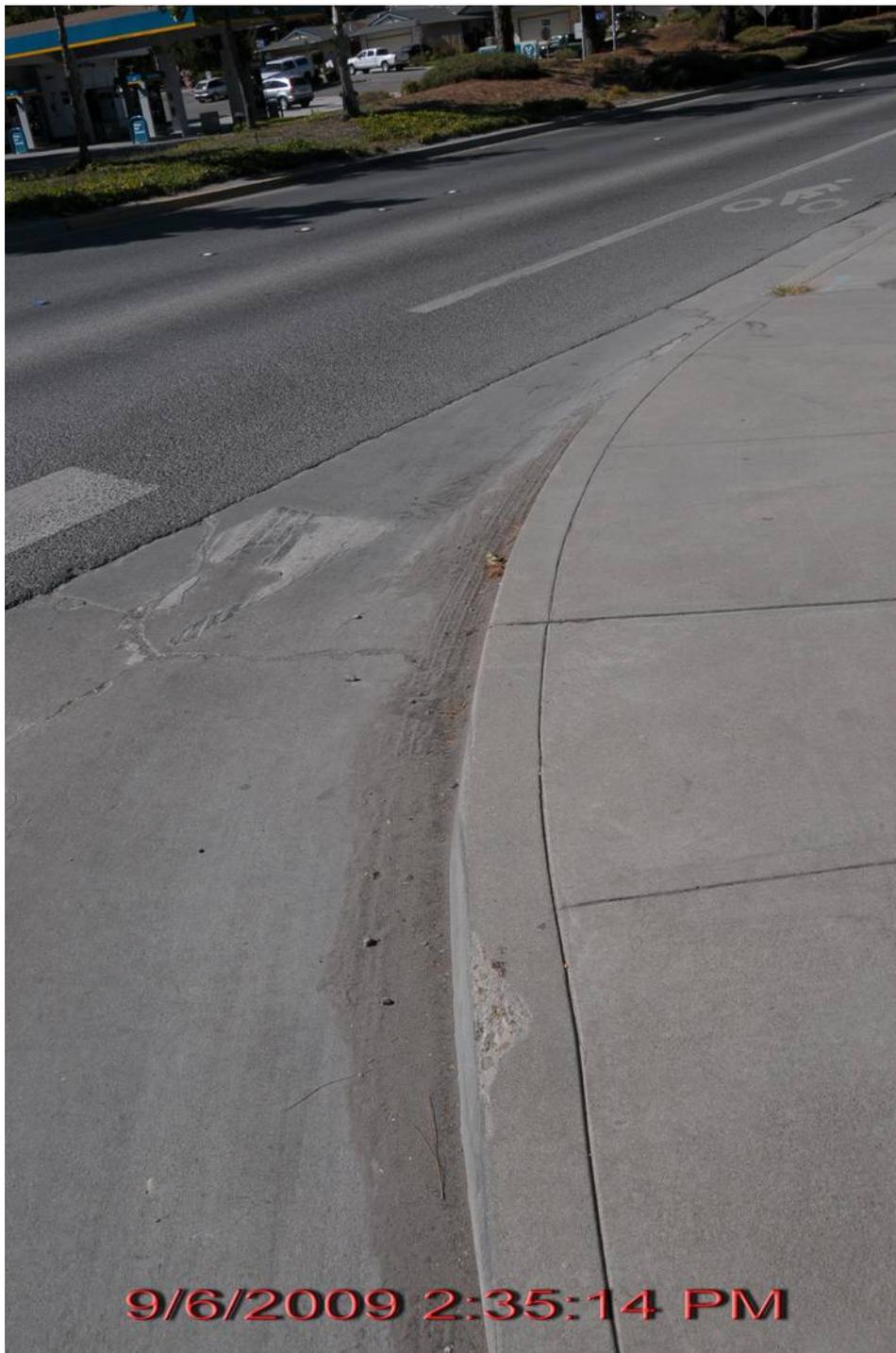
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