

January 3, 2012

Robert Cave
Senior Air Quality Engineer
Bay Area Air Quality Management District
939 Ellis Street
San Francisco, CA 94109
rcave@baaqmd.gov
Submitted via electronic mail

RE: Comments on Draft Regulation 9, Rule 13 – Nitrogen Oxides, Particulate Matter, and Toxic Air Contaminants from Portland Cement Manufacturing

Dear Mr. Cave:

Thank you for the opportunity to comment on the proposed rule for nitrogen oxides, particulate matter, and toxic air contaminants emitted from the Portland cement manufacturing industry (“Rule 9-13” or “draft rule”). San Francisco Baykeeper (“Baykeeper”) submits these comments on behalf of our 2,300 members that live and recreate in and around the San Francisco Bay. Baykeeper is a 501(c)(3) nonprofit organization with the mission to protect and enhance the water quality of the San Francisco Bay for the benefit of its ecosystems and surrounding communities.

Baykeeper commends the Bay Area Air Quality Management District (“BAAQMD”) for issuing a rule that implements the revised National Emission Standards for Hazardous Air Pollutants from the Portland cement manufacturing industry (“NESHAP amendments”). In particular, Baykeeper supports the draft rule’s comprehensive recordkeeping, reporting, and dust plan requirements. However, Rule 9-13 could be strengthened in several regards. Please address the following comments to ensure that the draft rule adequately reduces hazardous air and dust emissions from Lehigh Southwest Cement Company’s Permanente Plant.

1. The BAAQMD Should Remove the Compliance Delays from Rule 9-13 to Ensure Timely Implementation of the NESHAP Amendments.

All existing Portland cement manufacturing facilities, including Lehigh Permanente, must comply with the Environmental Protection Agency’s (“EPA”) recent NESHAP amendments by September 9, 2013. 40 C.F.R. § 63.1351(b). Despite this clear implementation deadline, the draft rule allows Bay Area Portland cement plants to demonstrate that they are in compliance with the NESHAP amendments 30 operation days *after* the deadline passes. Draft Rule 9-13-401 to 403. Instead, the draft rule should require facilities to demonstrate their compliance with the state and federal rules for Portland cement manufacturing on or before September 9, 2013.

2. Rule 9-13 Should Include Interim Deadlines Prior to September 9, 2013.

The draft rule does not include any standards, requirements, or deadlines to help Lehigh Permanente comply with the NESHAP amendments by the September 9, 2013 deadline. Since the new emission standards for the Portland cement manufacturing industry are far more stringent than the previous applicable standards, interim deadlines are crucial to ensure timely compliance. For example, Lehigh Permanente is planning to install complex emission control technologies to reduce mercury emissions by over 90 percent, which could take years to construct. According to the EPA, it typically takes about three years to install an activated carbon injection (“ACI”) system. 75 Fed. Reg. 54979 (Sept. 9, 2010). Since Lehigh has not started to construct its permanent ACI system, the plant may not be able to meet the 2013 compliance deadline if the BAAQMD does not set strict interim deadlines.

In addition, Rule 9-13 should require Bay Area Portland cement plants to prepare a progress report that describes the advancement of emission control technologies at least two times a year. These progress reports should be made available to the public and should be posted on the BAAQMD website.

3. Rule 9-13 Fails to Place a Cap on Hazardous Air Emissions.

Rule 9-13 measures nitrogen oxide, particulate matter, and mercury emissions by tons of clinker produced, allowing Lehigh Permanente to continue to increase its emissions as it expands and produces more clinker. It is clear that Lehigh plans to expand its cement manufacturing operations in the near future – the facility recently filed an application to amend the 1985 Reclamation Plan for its onsite quarry, which would allow Lehigh to expand its mining operations and production capacity with a new 251-acre limestone quarry. This expansion will greatly impact the already mercury-impaired waterways surrounding the facility and cause additional air pollution in the communities surrounding Cupertino. Therefore, the BAAQMD should place a cap on the Bay Area Portland cement plants’ annual nitrogen oxide, particulate matter, and mercury emissions to ensure that they do not continue to impair public health and the surrounding ecosystems.

This change to Rule 9-13 is particularly important because the waterways surrounding Lehigh Permanente are already greatly impaired by mercury pollution. According to a study conducted by the California Water Resources Control Board, all but one of the fish tested from Stevens Creek Reservoir, a water body approximately two miles from Lehigh, had mercury concentrations that exceeded both the EPA and the California Office of Environmental Health and Hazard’s standards for safe fish consumption.¹ Even more, the nearby San Francisco Bay is burdened by a TMDL for mercury, showing the severity of its mercury contamination.² This

¹ California Surface Water Ambient Monitoring Program, Concentrations in Fish Tissues from Selected Reservoirs and Coastal Areas in the San Francisco Bay Region, 19 (May 2005), *available at* <http://www.waterboards.ca.gov/sanfranciscobay/docs/RB2Fish%20Report%20Final2007.pdf>.

² For more information on the San Francisco Bay’s mercury TMDL, see San Francisco Bay Regional Water Quality Control Board, San Francisco Bay TMDL,

TMDL does not account for the pollution that results from aerial deposition of mercury emitted from Lehigh Permanente or other plants around the Bay Area. As a result, the continued operation and expansion of Lehigh will contribute to further mercury contamination in these waterways if the BAAQMD does not place an annual cap on hazardous air emissions.

4. **Rule 9-13 Should Include Punitive Measures for Noncompliance with the New Emission Standards.**

The new emission standards for the Portland cement manufacturing industry are far more stringent than the previous applicable standards, presenting Lehigh Permanente with the difficult task of dramatically reducing its hazardous air emissions over the next year and a half. To accomplish this goal, the plant will have to make costly and complex changes to its manufacturing processes and daily operations. Since these fundamental changes must occur within a relatively short timeframe, the BAAQMD should not assume that it is feasible for Lehigh to implement all of these necessary changes by the statutory deadline. Therefore, the BAAQMD must incorporate either steep civil penalties or a procedure for permit rescission into its rules. This would provide an incentive to Bay Area Portland cement plants to ensure that they comply with the new emission standards by the September 9, 2013 deadline and that they continue to be in compliance as long as they operate. It is essential that the BAAQMD does not simply trust facilities like Lehigh to make drastic modifications on their own accord and timeframe – the BAAQMD must provide oversight and guidance to Lehigh throughout this crucial transformation process.

5. **The BAAQMD Should Respond to Comments on the Draft Title V Permit for Lehigh Permanente as Soon as Possible.**

Baykeeper submitted comments on the proposed renewal of the Clean Air Act Major Facility Title V Permit for the Lehigh Southwest Cement Company's Permanente Plant on March 25, 2011, but has not received a response from the BAAQMD. Baykeeper is eager to see how the district responds to our concerns and would appreciate a timely response to our comments.

Thank you for considering Baykeeper's comments. If you have any questions, please feel free to contact me at (415) 856-0444, extension 109.

Sincerely,



Abigail D. Blodgett
Legal Fellow, San Francisco Baykeeper

http://www.swrcb.ca.gov/sanfranciscobay/water_issues/programs/TMDLs/sfbaymercurytml.shtml (last visited Mar. 25, 2011).