



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION IX

75 Hawthorne Street
San Francisco, CA 94105-3901

June 3, 2010

Mr. David W. Knapp, City Manager
City of Cupertino
10300 Torre Avenue
Cupertino, California 95014-3255

Dear Mr. Knapp:

We would like to thank the Cupertino City Council for inviting the United States Environmental Protection Agency, Region IX (EPA) to participate in the City Council Meeting on January 12, 2010. This letter is in response to the questions raised in your letter dated January 21, 2010 to EPA as a follow-up to this meeting. Below are our responses.

1. Question: "Does the Lehigh facility provide its own information to EPA?"

Response: Yes. Lehigh provides several different types of information to EPA and the Bay Area Air Quality Management District (District). When required by federal rule or statute, or when requested by EPA, Lehigh has provided information directly to EPA.

Lehigh's Title V air permit requires the facility to submit permit applications to the District for proposed changes at the facility. The permit also requires Lehigh to submit semi-annual monitoring reports to the District, and compliance certifications to both the District and EPA. Semi-annual monitoring reports must include all instances of noncompliance and the document must be signed by a responsible official to ensure that the information contained in the report is true, accurate, and complete. Annual compliance certifications are required to contain each applicable requirement in the permit and the compliance status of the applicable requirement throughout the year.

The permit also contains federal standards, such as the New Source Performance Standards (NSPS) and National Emission Standards for Hazardous Air Pollutants (NESHAP), which require Lehigh to comply with additional reporting requirements. These reports include exceedances and excess emissions; periods of startups, shutdown, and malfunction; and emissions test reports, if required. This information is submitted to both the District and EPA.

EPA may request specific information, including requiring additional testing and/or monitoring of air emissions, from the facility through certain targeted information requests. For example, EPA has requested information from Lehigh in response to several requests issued under section 114 of the Clean Air Act ("114 requests"). Some of the information that Lehigh has submitted to EPA in response to the 114 requests is publicly available, and the company has also claimed business confidentiality for certain other information. There are

significant penalties that EPA can apply for submitting false information in required NSPS and NESHAP reports or in response to a request under section 114 of the Clean Air Act.

In addition, a federal law called the Emergency Planning and Community Right to Know Act (EPCRA) gives communities the right to know about toxic chemicals being released into the environment. The law requires facilities in certain industries, which manufacture, process, or use significant amounts of toxic chemicals, to report annually on their releases of these chemicals. The reports contain information about the types and amounts of toxic chemicals that are released each year to the air, water, and land as well as information on the quantities of toxic chemicals sent to other facilities for further waste management. EPA maintains this information in a database called the Toxics Release Inventory (TRI), which is available to the public over the Internet (<http://www.epa.gov/tri>) and in written reports.

Industry is required, by law, to provide accurate data to TRI. EPA conducts a number of activities every year to ensure the quality of TRI data reported to EPA, which include data validation and analysis after the data are received (for more information, see http://www.epa.gov/tri/tridata/data_quality_reports/about.htm). EPA has provided detailed guidance for more than 20 years on calculating and reporting releases, and has provided training and other resources for industry. If we do become aware of a facility that is subject to TRI and may not be reporting or reporting correctly, we can follow up with an inspection.

2. **Question:** “How can the city and community members access the reports and data submitted to EPA?”

Response: Much of EPA’s information (e.g., TRI, emissions inventory) is available online (see the link in the response listed above). Here are a few other links to websites that may also be useful:

- <http://www.epa.gov/region09/air/schools-monitor/resources.html>
- <http://www.epa.gov/region09/air/schools-monitor/resources.html> - cement

However, some of the information the city or community may want might not be readily available online. Certain types of information may be obtained through a Freedom of Information Act (FOIA) request to EPA. Instructions for submitting a FOIA request can be found here: <http://www.epa.gov/region09/foia>. If you are interested in submitting a FOIA request to EPA to obtain information related to air quality compliance reports, we recommend you talk to Charles Aldred of our Air Enforcement Office at (415) 972-3986 to determine what information is releasable by our agency.

3. **Question:** “Why has it taken so long to develop a mercury standard for EPA to enforce specifically in regards to cement plants?”

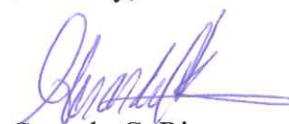
Response: The NESHAP for Portland cement plants is a national rule that was promulgated on June 14, 1999 and amended on December 20, 2006. The 2006 rule contained mercury, emissions limits for new and reconstructed cement kilns, and mercury work practice standards for existing kilns. Several entities, including representatives of the regulated

industry, States, and environmental groups, petitioned EPA to reconsider the amended 2006 rule. In order to address mercury emissions, EPA undertook a substantial additional data gathering effort, including mercury emissions testing. Most of the time since 2006 has been spent gathering and evaluating the mercury data prior to proposing a mercury emissions limit in May 2009. We are now in the process of responding to comments on the proposed limit.

EPA entered into a settlement agreement to address the petitions filed and is currently under a court-ordered deadline to promulgate an amended standard in August 2010. The final rule will contain numerical mercury emissions limits for existing cement kilns, such as the kiln at the Lehigh plant. More information about the rule and specific changes to the rule can be found at <http://www.epa.gov/ttn/atw/pcem/pcempg.html>. Questions concerning the proposed amended rule should be addressed to Mr. Keith Barnett in the Office of Air Quality Planning and Standards of EPA at (919) 541-5605.

We hope that this information is useful to you. If you have any questions, please do not hesitate to contact Shaheerah Kelly of my staff at (415) 947-4156 or kelly.shaheerah@epa.gov.

Sincerely,



Gerardo C. Rios,
Chief, Permits Office
Air Division

cc: Brian Bateman, Bay Area Air Quality Management District