

Bay Area Air Quality Management District
Cupertino Room, Quinlan Community Center
10185 N. Stelling Rd
Cupertino, CA 95014
(415) 749-5000

Board of Directors Special Meeting
May 21, 2012

APPROVED MINUTES

CALL TO ORDER

Chairperson John Gioia called the meeting to order at 10:11 a.m.

ROLL CALL

Present: Chairperson John Gioia; Vice Chairperson Ash Kalra; and Directors John Avalos, Susan Garner, Scott Haggerty, Jennifer Hosterman, David E. Hudson, Liz Kniss, Eric Mar, Mary Piepho, Mark Ross, Jim Spering, Brad Wagenknecht and Ken Yeager.

Absent: Secretary Nate Miley; and Directors Tom Bates, Susan Gorin, Carole Groom, Carol L. Klatt, Edwin M. Lee, Katie Rice and Shirlee Zane.

OPENING COMMENTS

Chairperson Gioia explained that a Stationary Source Committee meeting was initially scheduled for this time and location but because of Board member interest it was canceled and re-noticed as a Special Meeting of the Board of Directors.

PLEDGE OF ALLEGIANCE

Director Kniss led the Pledge of Allegiance.

Chairperson Gioia explained the meeting agenda item regarding the Lehigh Southwest Cement Company (Lehigh) is an informational item which will be followed by a tour of the exterior of the facility, located not in the City of Cupertino but in the unincorporated area of Santa Clara County, District 5.

PUBLIC COMMENT ON NON-AGENDA MATTERS

Cathy Helgerson, Citizens Against Pollution, addressed the Board regarding her concerns about and request for Air District assistance with emissions from the Apple, Inc., prototype manufacturing facility located in close proximity to her residence.

NOTED PRESENT: Directors Haggerty and Avalos were noted present at 10:20 a.m.

CONSENT CALENDAR (Item 1)

The Board of Directors observed a moment of silence in recognition of the late Supervisor Gayle Uilkema.

1. Board Communications Received from May 16, 2012, through May 20, 2012

Board Comments: None.

Public Comments: None.

Board Action: Director Kniss made a motion to approve Consent Calendar Item 1; Director Yeager seconded; unanimously approved without objection.

PRESENTATION

2. Overview of the Lehigh Southwest Cement Company – Permanente Plant, update on proposed Regulation 9, Rule 13: Portland Cement Manufacturing, and tour of the Lehigh Facility

Jack Broadbent, Executive Officer/Air Pollution Control Officer (APCO), introduced Jeffrey McKay, Deputy APCO, who began to give the staff presentation, Overview of Lehigh Southwest Cement Plant and Update on Proposed Air District Cement Manufacturing Rule, regarding background information.

NOTED PRESENT: Director Mar was noted present at 10:25 a.m.

Mr. McKay introduced Brian Bateman, Director of Compliance & Enforcement, who continued to give the staff presentation, Overview of Lehigh Southwest Cement Plant and Update on Proposed Air District Cement Manufacturing Rule, regarding regulatory issues and air monitoring.

NOTED PRESENT: Director Sperring was noted present at 10:28 a.m.

Mr. Bateman added, regarding slide 7, Amended U.S. Environmental Protection Agency (EPA) National Emission Standards for Hazardous Pollutants (NESHAP), introductory information regarding how the NESHAP standards were established and a newly introduced provision took into consideration the raw materials used by a facility when setting emissions standards.

Director Ross asked, regarding slide 7, Amended EPA NESHAP, the maximum annual clinker tonnage permitted at the Lehigh facility. Mr. Bateman responded that the maximum is 1.7 million tons but production is down, primarily due to a slow-down in construction projects, so current levels are generally less than one million tons.

Chairperson Gioia noted, regarding slide 7, Amended EPA NESHAP, the mercury emission standard of 55 lb. per million tons is not required by the EPA until September 9, 2013, and that some other standard will need to be put in place in the interim. Mr. Bateman responded in the affirmative, noted that the EPA may opt to move back its deadline and the Air District has included in its proposed rule the current deadline in the event of an EPA extension.

Director Hosterman noted, regarding slide 7, Amended EPA NESHAP, that the figures are 30-day averages and asked for information regarding daily emissions. Mr. Bateman responded that the information is not readily available in the presentation but that it will be provided in follow up and noted that CEMs are required for all of these and currently in place for most of them.

Mr. Bateman added, regarding slide 7, Amended EPA NESHAP, that the large variation in hydrochloric acid emissions is a function of one the plant's several modes, called a raw mill where limestone is ground to a fine powder, and because limestone powder works to neutralize the hydrochloric acid emissions, the emissions increase to the high end of the range during the 25% of the time the raw mills are off for maintenance, a situation that should have fully effective controls in place by September 2012 pending the resolution of some County permitting issues.

Director Mar asked, regarding slide 10, Compliance Status, whether the monitoring sites and new health risk assessment (HRA) methods take into account sensitive populations. Mr. Bateman responded that the presentation includes information on that topic and asked for permission to defer the response momentarily.

Director Garner asked, regarding slide 10, Compliance Status, for staff to comment on the number of Notices of Violation (NOVs) at the Lehigh facility as compared with other large facilities. Mr. Bateman responded that refineries are the biggest facilities and receive the most NOVs, often get as many as three to five times this amount per year but there are some, generally less complex facilities, that get fewer.

Chairperson Gioia asked, regarding slide 11, Air Monitoring Sites, where the emissions sources are on the map and the distance between the kiln and monitors. Mr. Bateman responded that the kiln is located approximately at the bottom of the "t" in "Cement" and the distance between the kiln and Monta Vista Park monitor is approximately 0.75 miles and between the kiln and Stevens Creek Elementary School is approximately 1.75 miles.

Director Garner noted, regarding slide 11, Air Monitoring Sites, comments from the broader community regarding wind patterns and concerns about the placement of the monitoring stations. Mr. Bateman said that staff at the Air District and Lehigh have each done their own meteorological tests both showing that, although the wind can blow any direction at particular times, the prevailing winds flow west to east out of the gap in the hills and there is veering in the valley, generally to the south but sometimes to the north, depending on whether it is night or day.

Chairperson Gioia asked, regarding slide 12, Air Monitoring Results, what is meant by "lifetime inhalation cancer risk." Mr. Bateman responded that it represents the risk factor for an individual who was born and remained at the site for 72 years.

Chairperson Gioia asked, regarding slide 20, if all of the data provided came from the Monta Vista Park monitoring site to which Mr. Bateman responded in the affirmative.

Director Haggerty asked, regarding slide 22, Measured Mercury Levels: Comparisons to Reference Exposure Levels (RELs), for confirmation that the amended Title V permit will allow up to 1.5 million tons of clinker annually. Mr. Bateman responded that the permit will allow up to 1.7 million tons of concrete annually, 95% of which is clinker. Director Haggerty asked if the Title V permit was done based on the 1.7 million tons figure or the current level of approximately 1 million tons. Mr.

Bateman responded that there are a number of different scenarios, one of which was operating at full capacity, but the program requires the use of actual emissions. Director Haggerty asked, in an effort to make some sense of what 1 million tons of concrete looks like, how many houses it will build. Mr. Bateman responded that he too didn't have a sense of it either but suggested that staff from Lehigh may be able to touch on that in their presentation. Director Haggerty asked if there are other, similar facilities in the area. Mr. Bateman responded that there are not in the Bay Area. Director Haggerty asked if it is likely that a spike in production will occur to supply the new stadium to be constructed in Santa Clara. Mr. Broadbent responded in the affirmative. Director Haggerty asked if Air District staff have taken this into consideration or whether it will even amount to a measurable quantity. Mr. Bateman responded that Air District staff has not but suggested that Lehigh staff may be able to answer that during their presentation.

Mr. Bateman introduced, Robert Cave, Senior Air Quality Specialist of Planning, Rules & Research, who finished giving the staff presentation, Overview of Lehigh Southwest Cement Plant and Update on Proposed Air District Cement Manufacturing Rule, regarding the proposed Air District rule.

Director Hosterman asked, regarding slide 26, Workshop Proposal, how opacity is measured and what 10% means. Mr. Cave responded that a chart is used to determine how much blockage of a clear view there is, with 100% opacity meaning that one cannot see at all and 10% being the most stringent regulatory standard, a standard similar to that set by the South Coast Air Quality Management District for similar facilities. Director Hosterman suggested that the measurement process seems likely a somewhat subjective, visual test. Mr. Cave responded that performing the measurement requires training and certification.

Chairperson Gioia asked where else continuous emissions monitors (CEM) are used in the Bay Area. Mr. Broadbent responded that CEM can be found at most of the major sources, certainly all of the power plants and refineries. Chairperson Gioia replied that each of the five refineries has CEM on some of their stacks. Mr. Broadbent answered in the affirmative, adding that it varies by facility as to which processes have the CEM.

Mr. Cave added, regarding slide 27, Comments Received, that written comments were received by the Air District at the workshop from Lehigh, concerned members of the public, local and regional environmental organizations, and elected officials, including the mayors of the cities of Cupertino, Los Altos and Los Altos Hills.

Board Comments:

Director Garner asked, regarding slide 31, Current Proposal, for staff to provide more information on the stack requirements configuration. Mr. Cave responded that the updated HRA proposed a 300 foot stack under the full production capacity scenario and an analysis based on this showed the Lehigh facility would stay below the notification levels under the toxic hot spots program, that Lehigh has responded that a 300 foot stack may be difficult to implement, and that whatever the solution, Air District staff will make sure that it meets the requirements of the HRA. Director Garner asked if a single stack is still being considered. Mr. Cave responded that there may be more than one stack but that CEM are required at every emission point so a single stack makes more sense economically.

Axel Conrads, Vice President of Cement Operations for Lehigh Region West, Lehigh Southwest Cement, gave the company presentation, Lehigh Southwest Cement, including historical and production information regarding cement, a history of the Permanente Plant and a look to its current role in the community.

Chairperson Gioia asked, regarding slide 5, History of the Permanente Plant, how the Permanente Plant compares in size to its counterparts. Mr. Conrads responded that it is a mid-size facility.

Timothy Matz, Director of Environmental Affairs for North America, Lehigh Southwest Cement, continued to give the company presentation, Lehigh Southwest Cement, including information regarding the Cement Sustainability Initiative, regulation of the cement industry, Title V air operating permit, local air monitoring studies, NESHAP and its proposed limits, Permanente compliance plans, the HRA and the new cement rule from the Air District.

Mr. Conrads gave the company presentation, Lehigh Southwest Cement, including Lehigh's commitment to environmental stewardship and how the company intends to live up to that commitment, a summary of Lehigh's community relations efforts and a summary of the presentation.

Director Hosterman asked, regarding slide 18, Community Relations, whether today's tour might be allowed an opportunity to go inside the plant. Mr. Conrads responded that it is not possible with a group of this size. Mr. Broadbent said that staff purposefully provided notice of an exterior tour in an effort to avoid putting the company in a position of complying with public meeting law inside its facility but that Air District staff can work with Lehigh staff to schedule later tours for interested Directors. Director Hosterman replied that a tour of the facility today would have been appreciated. Mr. Conrads repeated that anyone who is interested is welcome to return and apologized for the confusion.

Director Piepho asked, regarding slide 18, Community Relations, about the size of the facility and for some financial information to put the permit fees in perspective. Mr. Conrads responded that the Permanente plant has 158 direct employees but that he could not provide financial information. Director Piepho asked for a revenue-to-fees ratio. Mr. Conrads responded that he could not provide specifics but stated that fees represent a significant cost for the facility.

Board Comments:

Director Garner noted that the Lehigh facility is an open-pit mine and asked how construction and reconstruction are defined. Mr. Matz responded that construction of a greenfield facility is exactly what it sounds like, construction of a brand new facility, and reconstruction is specifically defined in the Clean Air Act and is a function of the percentage of construction costs, adding that none of the construction at the Lehigh facility meets the requirements of a new facility. Director Garner asked if Air District staff agree. Mr. Broadbent clarified that the New Source Performance Standard is what is being discussed and responded to Director Garner's inquiry in the affirmative. Director Garner asked what a detached plume is. Mr. Matz responded that certain meteorological conditions, such as found on a very cool, humid morning, result in the formation of opacity, mainly aerosols, as emissions exit a stack and Lehigh is abating the issue with the lime injection.

Director Kniss stated that the cement produced by the Permanente plant is considered among the highest quality available and is produced in a highly competitive industry and offered Lehigh staff an opportunity to explain further. Mr. Conrads responded that the Permanente plant is a very efficient facility producing cement with a high quality raw material.

Chairperson Gioia noted that the public will be given an opportunity to comment on the proposed cement plant rule at the Board meeting in September and asked that speakers keep in mind that today's agenda item is merely to provide an overview and to get the discussion started. Mr. Broadbent responded that the cement rule will be considered by the Board at the meeting on September 19, 2012, at which time there will be an opportunity for public comment, as there will be leading up to that meeting.

Public Comments:

Gary Latshaw submitted printed materials, including Citizen's Report on Cement Plant Regulation in the San Francisco Bay Area, and addressed the Board regarding sulfur dioxide, nitrogen oxide and particulate matter levels, namely the possibility of imposing stricter and more effective controls than those contained in the current NESHAP proposals and the Air District's authority to do so without EPA concurrence.

Rod Sinks, a City of Cupertino Council Member, addressed the Board regarding the economic and public health value of the residents of the City of Cupertino and urged the Air District to consider more stringent regulation than that proposed by staff, namely in accordance with the information provided by Dr. Latshaw.

Barry Chang, Bay Area for Clean Environment, addressed the Board regarding Lehigh's unfair and noncompliant business practices that threaten public health.

Michelle Bazargun addressed the Board regarding her family's diminished quality of life due to the cement dust deposits on and in their residence and vehicles, suggested that air quality monitoring results cannot be accurate given her experiences and asked for government agencies to step forward and work for the benefit of the public.

Bill Almon, Quarry No, submitted Missing Facts in Lehigh Fact Sheet and addressed the Board regarding the concern held by his organization's membership, the loss suffered with Gayle Uilkema's passing, noted that a major polluter is located in a residential area where production and pollution will only increase over time. Mr. Almon referred to the Missing Facts in Lehigh Fact Sheet and suggested that Air District staff is running interference for Lehigh as facts have been omitted by staff.

Tim Brand, West Valley Citizen's Air Watch, addressed the Board regarding the belief that an HRA doesn't replace a central stack that is critical to getting accurate measurements and proper filtering of emissions and which has been promised for a long time. Mr. Brand stated that more proactive measures are needed than injecting mercury waste into the cement product as an alternative to disposing of it properly as solid waste.

Dennis Acha, Breathe California, addressed the Board regarding his organization's support for cement production so long as public health is strongly considered and protective measures are put into place.

Rhoda Fry addressed the Board regarding the misleading data being provided to the Board, the ramifications of the cancer risk it presents and suggested the Lehigh facility should be considered fully constructed. Ms. Fry expressed her concerns about Lehigh's use of imported limestone with lower toxicity levels than that quarried locally and urged the Air District to take meaningful and swift enforcement action.

Karen Del Compare addressed the Board regarding the unfair disadvantage members of the public are suffering in terms of general access to staff and specifically today as the time for comment before the Board is drastically less than that provided Lehigh. Ms. De Compare suggested that much of the health risk data has been skewed by a variety of methods, including the importation of less toxic limestone, and noted the mercury poisoning of the local water.

Cathy Helgerson, Citizens Against Pollution, addressed the Board regarding the poor air quality on Friday and her plans to grow a grassroots effort to engage this issue more fully.

Board Action: None; informational only.

PUBLIC COMMENT ON NON-AGENDA MATTERS

None.

BOARD MEMBERS' COMMENTS

None.

OTHER BUSINESS

3. Report of the Executive Officer/APCO:

Mr. Broadbent stated that staff has been working on this proposal for at least 18 months and believe the proposed rule is a balanced and very health-protective measure that staff believes will reduce mercury and nitrogen oxide emissions, that Lehigh Southwest Cement Company does not want mercury included and staff feels that it should be, that staff has heard community concerns that the Air District doesn't go far enough but believe staff has pushed very hard on this facility, noted that there will be ample opportunity for continued public input and clarified that the Board meeting where the Board will consider the proposed cement plant rule will likely be September 5, 2012, instead of September 19, 2012.

Director Garner asked if staff will comment on the written materials received from the public today. Mr. Broadbent responded that staff will treat them as comments on the rule proposal process and address them in kind.

4. Chairperson's Report: None.

5. Time and Place of Next Meeting: Wednesday, June 6, 2012, Bay Area Air Quality Management District Office, 939 Ellis Street, San Francisco, CA 94109 at 9:45 a.m.

6. **Adjournment:** The Board of Directors meeting adjourned at 12:04 p.m. to a tour of the Lehigh Facility located at 24001 Stevens Creek Boulevard, Cupertino, California 95014.

151 Sean Gallagher

Sean Gallagher
Clerk of the Boards