

**NEW YORK STATE DEPARTMENT
OF ENVIRONMENTAL CONSERVATION**

In the Matter of the Application of

Application Number

4-1040-00011/00001

ST. LAWRENCE CEMENT COMPANY, LLC

PETITION FOR FULL PARTY STATUS
FOR
FRIENDS OF HUDSON

Dated: July 11, 2001

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PETITIONER

Friends of Hudson (“FOH”) submits this petition for full party status in accordance with the requirements of 6 NYCRR Part 624. FOH is opposed to the St. Lawrence Cement’s (“SLC”) cement plant proposed in the Town of Greenport and the conveyor and dock facilities proposed within the City of Hudson. FOH is an unincorporated association with its principal place of business located at 554 Warren Street, Hudson, New York. FOH is a sponsored project of The Open Space Institute, Inc. which manages the funds donated to FOH. There are over 2,100 dues-paying members of FOH who reside throughout Columbia, Greene and Dutchess Counties in New York, Berkshire County in Massachusetts, and New York City. Friends of Hudson has members who live, do business in and recreate in the communities in which the project is proposed to be located and all surrounding communities which will be impacted by the project. For example: 526 members list addresses in the Hudson zip code (12534); 110 in Claverack (12513); 103 in Ghent (12075) and 101 in Germantown (12526).

In this proceeding, Friends of Hudson will be represented by its attorneys, Young, Sommer, Ward, Ritzenberg, Wooley, Baker & Moore, LLC. The principal representative will be Jeffrey S. Baker of that firm.

PETITIONER’S STANDING

Friends of Hudson was formed in January 1999 with a mission to promote the quality of life in the mid-Hudson Valley by:

- Advocating for smart and balanced development.
- Protecting public health, air and water quality, as well as scenic, historic and agricultural resources
- Supporting the work of its sponsoring organization, the Open Space Institute, by empowering citizens to protect the environment.

Friends of Hudson advances its mission by:

- Educating and informing the general public about development issues and environmental threats to the area and working with governmental, political and business leaders who are involved in those issues.
- Taking timely and responsible action, based on scientific research, legal expertise and professionally crafted plans.
- Working closely with other local, regional and national groups which support balanced sustainable development in the region.

Since the announcement of this project, FOH has been concerned about the threats the proposed SLC cement plant posed to Hudson, Greenport and the surrounding region. While FOH was concerned with the project at the outset, it kept an open mind about the potential adverse impacts. Over time, and as a result of its careful monitoring and study of the project, FOH has become convinced that the project will not protect the environment, will provide little, if any economic benefit to the area and will result in significant unmitigated adverse environmental impacts. FOH is determined that this project cannot be approved, as presently designed in the proposed location.

The Board of Directors of Friends of Hudson is representative of its members and demonstrates that they live and work in proximity to the proposed project and will be impacted by the plant. The Board of Directors include:

Dr. Jeffrey Monkash who lives in the Town of Claverack (mailing address is 310 Miller Rd, Hudson, NY 12534) and has his medical office in the Town of Greenport (2A Milo Street West, Hudson, NY, 12534). Dr. Monkash's home is approximately 3 miles from the plant site and his business is located less than 1 mile from the plant site.

Peter Jung resides in the City of Hudson at 15 Rossman Avenue, Hudson, NY 12534 and is the owner of Peter Jung Art & Antiques located at 537 Warren Street in Hudson. Mr. Jung's residence is located in the Rossman-Worth Historic District and is located approximately 1 mile from the plant site. His business is located approximately 1.5 miles from the plant site.

Sam Pratt resides in the City of Hudson at 32 Warren Street, Hudson, NY 12534, approximately 2 miles from the plant site and less than 1 mile from the dock area.

Deborah Novack lives in the Town of Greenport on 310 Joslen Boulevard, with a mailing address in Hudson, NY, 12534. Ms. Novack's home is approximately 2.5 miles from the plant site.

Susan Falzone lives across the Hudson River from Hudson at 24 Brick Row, Athens, NY 12015. Ms. Falzone's home is in the Brick Row Historic District and is approximately 3.5 miles from the project.

FRIENDS OF HUDSON'S ENVIRONMENTAL INTERESTS

Friends of Hudson's 2,100 members live, work and recreate in the area which will be greatly affected by the SLC project. FOH's members enjoy the breathtaking aesthetic character of the mid-Hudson Valley, particularly the views along the river, looking westward from Claverack towards the Catskill Mountains and from Greene County looking east towards Columbia County. Many FOH members are members of The Olana Partnership and those and others

cherish the views from Olana established by Frederick Church, one of the preeminent masters of the Hudson River School of Painting. Construction of the SLC project will irreparably harm the visual and aesthetic character of the area.

Friends of Hudson members enjoy the relatively clean air of the area, and the lack of significant polluting industries. FOH has worked with other groups to preserve and protect local air quality by opposing the Athens Generating Station. The SLC project will create unacceptable air pollution in the form of particulate matter, acid rain precursors and ozone precursors which will adversely effect the health and safety of FOH members and the community.

FOH members boat and fish in the Hudson River and are actively involved in efforts to improve and expand public access to and enjoyment of the Hudson waterfront. Approval of the project will dramatically impact FOH members dredging and filling the river destroying habitat; adding inadequately treated stormwater runoff to the river; and increasing ship traffic to the waterfront by large ocean-going vessels which will present safety issues to other users of the river. SLC's project will exacerbate existing violations of past grants of lands underwater by continuing to block public access and use of the waterfront.

FOH members who live, work and recreate in the vicinity of the project will be adversely impacted by increased mining activities including the blasting associated with the mining and the noise generated by rock crushing, operation of the plant and operation of the dock facilities. Increased mining will also have a visual impact by eventually removing the remaining ridge line of the Becraft Hills.

FOH members are concerned that the supposed economic benefits of the project are seriously overstated in terms of employment and secondary benefits. FOH members are concerned that overstating the economic need of the area and the alleged benefits of the project will inappropriately be weighed against the significant adverse impacts presented by the project. FOH strongly supports responsible sustainable development and a decision on a project of this size can only be made after a careful consideration of reasonable alternatives that was not done for this project.

FRIENDS OF HUDSON'S INTERESTS RELATING TO STATUTES ADMINISTERED BY THE DEPARTMENT

Friends of Hudson's concerns are addressed by each of the statutes under which the Department is reviewing the project, including:

- SEQRA, as Lead Agency (ECL Article 8)
- Air State Facility Permit (ECL Article 19)
- SPDES and Protection of Waters (ECL Article 15)
- Mined Land Reclamation (ECL Article 23)
- Freshwater Wetlands (ECL Article 24)

The precise grounds for Friends of Hudson's opposition to the project are set forth in the following proposed issues for adjudication.

ISSUES FOR ADJUDICATION

I. Air Pollution Control

The single biggest group of issues ripe for adjudication concern the draft Air State Facility Permit. As set forth in full detail in the written comments submitted by Friends of Hudson on July 2, 2001, the draft permit is legally deficient in terms of the lack of emission limits for various contaminants and inadequate pollution control technologies. There is also evidence that SLC improperly modeled the projected air emissions by using a level less than full potential to emit. These issues are set forth below.

Issue 1: SLC's LAER Analysis is Inadequate.

In New York, DEC has adopted its own regulations to implement the so-called nonattainment new source review (NSR) program established under the Federal Clean Air Act. These regulations, which are set forth at 6 NYCRR Subpart 231-2, establish stringent emission control and other requirements intended to ensure that newly constructed or modified major sources located in areas designated as nonattainment for one or more contaminants do not adversely affect existing air quality. Because the air in nonattainment areas fails the National Ambient Air Quality Standards ("NAAQS"), these requirements are much stricter than those applicable to sources regulated under the Prevention of Significant Deterioration ("PSD") program. 40 C.F.R. Sec. 52.21.

As with the PSD program, the nonattainment NSR program applies only to "major sources" of nonattainment contaminants. As SLC recognizes in its application, New York State is currently part of the Northeast Ozone Transport Region (OTR). As a result, all of the state is classified, at minimum, as a moderate nonattainment area for ozone. This designation means that facilities are considered major if they have the potential to emit more than 50 tons per year of volatile organic compounds (VOCs) or 100 tons per year of nitrogen oxides (NO_x). The SLC plant is a major source of both VOCs and NO_x under this definition. As a result, the facility

must obtain a nonattainment NSR permit prior to commencing construction.¹

To obtain a nonattainment NSR permit, SLC must meet satisfy the following requirements:

a. Meet lowest achievable emission rate (LAER);

As with the Best Available Control Technology (“BACT”) analysis required under the PSD program, a LAER analysis is done on a case-by-case basis. However, LAER is stricter than BACT, representing the “most stringent emission limitation achieved in practice for a category of emission sources taking into consideration each air contaminant which must be controlled.” 6 NYCRR §§ 200.1(ak), 231-2.4(a)(iii), 231-2.5.

b. Obtain emission offsets;

In addition to achieving LAER, the source must obtain emission reductions (offsets) of the nonattainment pollutant from other sources which impact the same area as the proposed source. 6 NYCRR §§ 231-2.1(b)(13), 231-2.3(b), 231-2.4(b), (c).

c. Certify compliance with all applicable air regulations; and

Any nonattainment NSR application must include a certification from the applicant that any major facilities under its control are in compliance with, or are on a schedule of compliance with, all applicable state air regulations. 6 NYCRR § 231-2.4(a)(2)(i).

d. Prepare alternatives analysis.

The applicant must prepare an analysis of alternative sites, sizes, production processes and environmental control techniques which demonstrate that the benefits of the project outweigh the environmental and social costs. 6 NYCRR § 231-2.4(a)(2)(ii).

We believe that SLC’s air permit application and the draft permit circulated for review fails to comply with the requirements of the nonattainment NSR program for the following reasons,

¹ Traditionally, the Clean Air Act regulated only VOCs in its effort to control ground level ozone. However, both VOCs and NO_x are “ozone precursors” – that is, they both contribute to ground level ozone formation. In recognition of the role of NO_x in the creation of ozone, Congress amended the Clean Air Act in 1990 to specifically designate NO_x as an ozone precursor, making it subject to the nonattainment NSR program. However, NO₂, which is a subcategory of NO_x, remains subject to regulation under the PSD program as well. The PSD requirements for NO₂ are generally superseded by the stricter nonattainment NSR limits for NO_x.

among others: (1) SLC's NO_x LAER analysis rejects switching from coal to gas as a means of controlling emissions without proper justification; (2) the phased-in LAER approach violates NSR, which requires LAER to be established at the time the preconstruction permit is issued. At minimum, the permit must contain a baseline LAER limit that kicks in at the end of the third year regardless of the results of the LAER phase-in; moreover, any final LAER determinations after the phase-in period should be subject to public review; (3) SLC's LAER analysis ignores VOC controls at a facility owned by SLC's parent company; moreover, the permit contains no LAER limit whatsoever for VOCs; (4) SLC has failed to certify compliance at the Catskill facility as required by the nonattainment NSR regulations; (5) SLC's alternatives analysis is inadequate; and (6) SLC attempts inappropriately to take credit for emission decreases associated with the shutdown of the Catskill facility.

Issue 1-A: SLC's NO_x LAER Analysis is Inadequate by Failing to Use Gas as an Alternative Fuel to Coal for Reducing NO_x Emissions.

Ground level ozone has been one of the nation's most persistent air pollution problems. Ground level ozone is formed when VOCs and NO_x react in sunlight to form ozone. Although ozone in the upper atmosphere is essential to protect the earth from harmful ultraviolet radiation, at ground level it can cause various health problems, including decreased lung function and respiratory symptoms, particularly in sensitive populations such as children and the elderly. Combined with airborne PM, ground level ozone creates the air pollution problem commonly known as smog.

From the outset, SLC has proposed to use coal as the primary fuel at the Greenport facility. In support of this decision, SLC argues that natural gas typically produces the highest NO_x per ton of clinker of any fuel used at cement plants, even though it has the lowest nitrogen content. According to SLC, "coal and oil fired kilns typically have longer, less aggressive flames that disperse thermal energy more directly to the kiln feed and thereby reduce the quantity of thermal NO_x formed per unit of clinker produced" and many cement plants have converted from gas to coal for NO_x reduction purposes. SLC Air Permit Application, p. 6-13. However, SLC does not indicate whether it undertook any investigation to determine whether there is a technology available that would reduce the NO_x emissions associated with natural gas down to levels comparable to coal. Our review suggests that the Ash Grove cement plant in Durkee, Oregon, tested and utilized a low NO_x natural gas burner (Gyro-Therm) which gave similar results to coal for NO_x emissions. Although the facility recently switched to coal as the primary fuel because of the high price of natural gas, it meets its current NO_x permitted emission levels using either natural gas or coal as its primary fuel. The LaFarge Cement Co. plants in Richmond, British

Columbia, Canada, also tested and utilized the same low NO_x burner technology.² These examples contradict SLC's assertions that switching to gas from coal will inevitably result in the emission of additional thermal NO_x.

The existence of technologies that reduce NO_x emissions associated with burning gas at cement plants raises serious questions about the conclusions of SLC's LAER analysis. Natural gas combustion produces significantly less SO₂ and PM than coal. If NO_x levels associated with burning natural gas can be reduced to a level comparable to, or even slightly above those for coal, a switch to natural gas would be required under NSR since gas would represent a lower achievable emission rate. Using gas instead of coal would also be mandated under SEQRA as an alternative that would avoid numerous other environmental impacts, including extra dredging for the HudsonMax vessels; less fugitive emissions from coal stockpiles and activities associated with the conveyor and less noise impacts associated with those operations.

To the extent that burning coal, in fact, results in less NO_x production than natural gas, SLC has failed to explore options associated with reducing the NO_x associated with coal combustion. For example, certain coal contains a significantly higher nitrogen content than other coal. SLC should explore the possible air quality benefits of using low nitrogen coal.

This issue is substantive and significant because SLC's failure to properly consider the use of gas should result in a denial of the permit. This issue is significant because requiring SLC to switch fuels would constitute a major modification of the project and/or the imposition of a significant permit condition mandating the use of natural gas as the primary fuel.

Issue 1-A: Offer of Proof

Friends of Hudson will offer the testimony of Frank C. Sapienza, P.E. of Camp Dresser and McKee. Mr. Sapienza's curriculum vitae is attached as *Exhibit "A"*. Mr. Sapienza will testify to the foregoing including the feasibility of low NO_x burners.

Issue 1-B: SLC's NO_x LAER Analysis is Inadequate by Understanding the Availability of Installing SNCR.

Initially, SLC proposed a low-NO_x combustion calciner, a low NO_x burner in the kiln, and combustion optimizing controls aided by an expert process optimizing control system as LAER. After negotiations with DEC, SLC also agreed to include selective non-catalytic reduction

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In support of its argument that fuel switching is not an option for controlling NO_x, SLC cites an EPA report that states that thermal NO_x formation is higher from natural gas than coal. However, that report looks only at low NO_x burners that burn coal. It does not look at the Gyro-Therm low NO_x burners for gas.

(SNCR) as part of LAER. SLC, while reluctantly agreeing to install SNCR, nevertheless offers numerous criticisms of SNCR as LAER for its facility. Among other things, SLC argues that: (1) the SNCR chemical reaction can only occur in a narrow temperature band; (2) reagent injection must be strictly controlled to get optimum NO_x removal; (3) competing reactions involving the reagent will reduce NO_x reduction; and (4) ammonia slip may occur during direct operation. SLC has apparently used these arguments to avoid the requirement to use SNCR at the outset and to be bound by the lower emission limits achievable through the use of SNCR. Each of these arguments is discussed below:

- ***SNCR chemical reaction can only occur in a narrow temperature band.*** SLC argues that the SNCR chemical reaction can only occur in a temperature band between 1600% and 1900% F. According to EPA's NO_x Control Technologies for the Cement Industry Final Report, p. 70 (Sept. 19, 2000), (hereinafter "EPA 2000 Cement Report") "In preheater/precalciner type cement kilns, the temperatures at the cooler end of the rotating kiln, in the riser duct, and in the lower section of the cyclone preheater tower are likely to be in the temperature window appropriate for SNCR. Such kilns are therefore good candidates for application of SNCR technology." The Greenport facility will be a preheater/precalciner plant and is therefore a good candidate for SNCR application. The temperature range required can be found at the end of the kiln, in the riser duct or in the preheater. Temperature range thus is not an insurmountable obstacle. Moreover, according to the EPA report, the temperature window may be lowered to 1300% F by the addition of hydrogen along with the reducing agent.
- ***Reagent injection must be strictly controlled to get optimum NO_x removal.*** While reinjection may need to be strictly controlled, these types of controls are nothing new to the cement industry. Controls are used in the amount of fuel burned to keep the kiln in its optimum temperature range. Controls are used in the milling process to produce the optimum stone size. A continuous emission monitor (CEM) device for NO_x and ammonia concentration can be used to assist in the optimizing of the SNCR process. The CEM will provide a good indication of the NO_x and ammonia concentrations in the kiln. This information can then be used to control the reagent addition. Tests conducted at other SNCR plants and reported in the EPA document show that molar ratios of ammonia to NO_x of 0.5 to 1.2 have seen NO_x reductions of 40% to 85%.
- ***Competing reactions involving the reagent will reduce NO_x reductions.*** SLC argues that reactions involving the reagent will reduce the NO_x reduction. These competing species may include the SO₂, the fuel (in a fuel rich environment) and other species in the kiln exhaust. Although this statement may be true, the problem can be addressed by applying additional reagent. That is why there is a range of ammonia to NO_x molar ratios reported in the literature. Ideally, an exact stoichiometric molar ratio would give 100% NO_x

reduction. Non-ideal mixing conditions and competing reactions necessitate the greater than stoichiometric molar ratio. Real world tests reported reduced NO_x emissions up to 90% when the molar ratio was 10 to 20 percent in excess of the ideal stoichiometric ratio, competing reactions and all. EPA 2000 Cement Report, p. 72.³

- ***Ammonia slip may occur during direct operation.*** SLC argues in its application that ammonia slip may occur during direct operation (kiln exhaust bypasses the raw mill) due to the release of absorbed ammonia during the compound operation (kiln exhausts through the raw mill). If additional ammonia is added in the SNCR process, the plume may detach and the measured opacity may become greater than the permit level leading to fines and community complaints. However, an ammonia sensor in the kiln will let the operator know if there is a buildup of ammonia in the kiln. When the ammonia begins to build up in the kiln, the ammonia injection can be scaled back to maintain the correct NO_x to ammonia ratio for optimal NO_x removal. This is one of the controls necessary to maintain optimal SNCR performance.

As the above summary suggests, these concerns do not argue against installing SNCR at the Greenport facility. They only indicate that SLC will have to exercise care in installing and operating the system.

SLC rejects SNCR as representing “at best, an unproven potential transfer of technology.” SLC Air Permit Application, p. 6-20. However, according to EPA’s 2000 Cement Report (Sept. 19, 2000), referenced in the air permit application, SNCR has been piloted at two plants in the United States and is operating in 18 plants in Europe. The NO_x reductions in the European plants ranged between 10 and 85%. Reductions at the two U.S. plants averaged 50%. This history demonstrates that SNCR is far from an “unproven technology.”

The issue of requiring the installation of SNCR at a prescribed emission limit is substantive because the failure to properly consider and implement SNCR is a violation of the LAER requirement and should result in a denial of the permit. The issue is also significant because it should result in a permit condition mandating the immediate implementation of SNCR and the compliance with stricter emission limits for NO_x.

Issue 1-B: Offer of Proof

FOH will offer the testimony of Mr. Sapienza who will testify to the foregoing.

³ F.L. Smidth and Company tested SNCR on a preheater/precalciner kiln. Ammonia was injected into the lower cyclone of the preheater tower where temperatures are favorable for the reduction reactions to occur. NO_x emissions reductions during this experiment averaged 40 percent, but NO_x reductions of over 90 percent were obtained when the ammonia injection rate was 10 to 20 percent in excess of stoichiometric.

Issue 1-C: The Proposed Issuance of the Permit Without Establishing a Final NO_x LAER Standard Violates NSR.

New York's nonattainment NSR regulations require that LAER be established at the time the preconstruction permit is issued. 6 NYCRR § 231-2.5(c). SLC's permit does not comply with this requirement. Instead, in an apparent effort to accommodate SLC's concerns regarding the effectiveness of LAER generally and SNCR, in particular, the permit contains a series of rather complex permit conditions which delay establishment of final LAER until three years after first clinker. The provisions are summarized below:

- Permit Condition 52 – Caps total NO_x emissions from Emission Unit 0-CPROD (which includes all process equipment related to the actual manufacture of cement) at 4121 tons per year.
- Permit Condition 66 – Identifies technologies that will be installed at the kiln itself, presumably to satisfy LAER. These technologies include low-NO_x combustion calciner, a low NO_x burner in the kiln, combustion optimizing controls aided by an expert process optimizing control system, including continuous emission monitoring systems (CEMS), and SNCR. This provision specifies that implementation of SNCR will commence prior to the end of the 12th month after first clinker from the kiln.
- Permit Condition 67 – Establishes schedule for LAER determination as follows:
 - End of initial operation month 6 – SLC to submit protocol describing implementation of control optimization demonstration.
 - Between operating months 13 and 24 – Conduct optimization demonstration.
 - End of initial operating month 26 – Provide DEC with results of optimization study; submit protocol for statistical evaluation methodology which will be utilized on NO_x CEMS data obtained below.
 - Initial operating months 25-36 – Obtain actual CEMS NO_x performance results to provide basis for permanent LAER determination.
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End of initial operating month 38 – Submit report providing statistical analysis pursuant to protocol previously submitted, including review of SNCR performance.

At the close of this process, Permit Condition 67 calls for DEC to establish the permanent NO_x LAER limit for the facility. This LAER determination will be stated as an annual tonnage limit for NO_x based on a 12-month rolling total, a 12-month rolling average of pounds of NO_x per ton of clinker, and a 30-day average pound of NO_x per hour limit.

- Permit Condition 68 – Requires installation of NO_x CEMS within 180 days of first clinker from kiln; establishes upper limit of monitoring for NO_x of 4121 tons.
- Permit Condition 69 – Establishes limits on NO_x emissions per ton of clinker during initial operating months 1 to 36 as follows (12-month rolling average):
 - Months 1 - 24 – 3.6 lbs./ton of clinker (4121 tons per year).
 - Months 25 - 36 – gradual reduction in lbs./ton of clinker limit from 3.5 lbs./ton (initial operating months 25 and 26 to 2.8 lbs./ton (month 36 until LAER established).
 - Once LAER established – to be determined.
- Permit Condition 70 – Translates lbs./ton of clinker limits into ton per year limits (12-month rolling total).
- Permit Condition 71 – Translates lbs./ton of clinker limits into pound per hour limits (30-day rolling average calculated each 24 hours).

As previously noted, nonattainment NSR requires LAER to be established at the time the permit for the project is issued. SLC's permit, by comparison, does not establish LAER until more than three years after the facility begins operation in direct violation of NSR and even then does not have a specified NO_x emission limit. Based on documentation available to date, it appears DEC adopted this approach because SLC has concerns about how well the various control strategies proposed to be implemented, in particular, SNCR, will perform. Theoretically, delaying the final determination regarding LAER until after these strategies are operational could result in stricter emission limits than if LAER were established at the time the permit is issued. Friends of Hudson is concerned, however, because the permit contains no stated minimum once the transition period ends. The permit establishes specific emission limits through the 36th month after the initial operating month. Thereafter, LAER is whatever DEC and SLC decide it

should be. This approach violates the requirements of nonattainment NSR and basic rules for source air permitting.

For the reasons set forth above, we believe SNCR has been adequately demonstrated to be LAER for DEC to set a final enforceable LAER limit now. A review of emission limits in other cement kilns in the U.S. and Europe demonstrates that significantly lower NO_x limits can be achieved from the outset. SLC's draft permit of 3.6 lb/ton of clinker for the first two years and 2.8 lb/ton of clinker for the next two years should be compared to other cement plants with emission of limits as low as 1.2 lb/ton of clinker! That low level is at a Holnam plant in Midlothian, Texas. None of the other plants had to meet anything stricter than a BACT requirement. Obviously the LAER standards require at least that low a level.

This issue is substantive because as presented the project fails to meet the regulatory standard for LAER. This issue is significant because the project should be modified to mandate use of SNCR from the outset at an emission rate for NO_x which is significantly lower than the initial level of 3.6 lb/ton of clinker or the later limit of 2.8 lb/ton of clinker.

Issue 1-C: Offer of Proof

Mr. Frank Sapienza will testify as to the ability to establish low NO_x limits in the permit.

Issue 1-D: The Lack of Clarity in the Permit Condition will Allow SLC to Operate in Excess of Permitted Emission Levels.

The permit schedule measures compliance milestones based on "initial operating months" (e.g., SLC shall conduct optimization demonstration during initial operating months 13-24). However, the term "initial operating month" is not well defined. The state's nonattainment NSR regulations speak in terms of "commencing operation" which is defined as the date the facility first increases emissions of any nonattainment contaminant subject to regulation under Part 231. Where a source is a functional replacement for another source (and will use ERCs from the replaced source), the definition allows for a 180-day shakedown period. 6 NYCRR § 231-2.1(b)(7). Permit Condition 68 requires installation of a NO_x CEMS within 180 days of first clinker from the kiln, and establishes an upper limit for NO_x of 4121 tons. Since compliance with the various operating limits presumably cannot be determined until the CEMS is installed, this would suggest that the "initial operating month" is the month the CEMS becomes operational. Thus, as drafted, the permit will seem to allow SLC to operate for six months without the CEMS and before the schedule begins of the initial operating months. The permit should specifically state that the ERC's will come from the Catskill facility, that the Catskill facility will cease operations before the Greenport facility begins operations, that the CEMS be installed before commencement of operations and that the initial operating months will begin on the date of commencement of operations.

This issue is substantive because there is sufficient doubt about whether the permit meets the regulatory requirements of 6 NYCRR § 231-2.1(b)(7) by protecting the public from excess emissions. The issue is significant because it should result in the imposition of significant operating conditions for the plant.

Issue 1-D: Offer of Proof

Mr. Frank Sapienza will testify with respect to the limited need for a shakedown period. The balance of the issue concern of law.

Issue 1-E: SLC's LAER for VOCs is Inadequate Because it Fails to Include the Use of a Regenerative Thermal Oxidizer

In its application, SLC asserts that its review of new and existing cement plants in the United States and world wide “did not reveal any facilities operating add-on control technologies for the control of VOCs.” SLC Air Permit Application, p. 6-3. It goes on to note that while two facilities in the United States are considering installing thermal oxidizers due to the “uniquely high organic content” of the raw material feed, the performance of these units is unknown. What SLC fails to mention is that more than two months ago, a facility in Dundee, Michigan, owned by Holnam, its parent company, installed a valveless regenerative thermal oxidizer to control VOC emissions. According to the air permit application for the Dundee facility, the unit is expected to reduce VOCs by 80% to 90% and to reduce CO between 75% and 85%.

SLC's failure to specifically mention the Dundee facility is, at best, disingenuous and, at worst, grossly misleading. It was incumbent upon SLC to specifically discuss the Dundee plant in its LAER analysis and to explain why the technology being implemented there is (or is not) LAER for Greenport.

As previously noted, LAER is the “most stringent emission limitation achieved in practice for a category of emission sources taking into consideration each air contaminant which must be controlled.” 6 NYCRR § 200.1(ak). Under this definition, if a new effective technology has already been implemented at other similar facilities an NSR applicant must consider that technology in its LAER analysis. Failure to do so renders the LAER analysis inadequate. Not only is SLC's LAER analysis inadequate, SLC must be required to install a regenerative thermal oxidizer to meet the lowest available emission rate for VOCs.

This issue is substantive and significant because SLC's failure to properly consider the use of regenerative thermal oxidizers is a violation of LAER and should result in a denial of the permit. At a minimum the project should be modified by requiring the installation of a regenerative thermal oxidizer.

Issue 1-E: Offer of Proof

Mr. Frank Sapienza will testify regarding the ability of RTO's to reduce VOC's. Mr. Alex Sagady will also testify regarding the permitting of the Dundee, Michigan facility. Mr. Sagady's curriculum Vitae is attached as *Exhibit "B"*.

Issue 1-F: The Permit Contains no LAER Limits for VOCs.

Emission limits for VOCs are omitted altogether from the permit. Although VOCs are listed as being emitted from the facility, the permit contains no emission limitations for them, despite the fact that they are regulated by the nonattainment NSR. For VOCs, SLC has proposed that its projected standardized VOC emission rate of 0.10 lb. total hydrocarbons (THC) per ton of clinker meets the LAER requirement for comparably designed cement facilities. [SLC Air Permit Application, p. 6-4.] As noted in Issue 1-E above, that is not a proper LAER limit. Once a regenerative thermal oxidizer is studied, an actual LAER rate for VOCs must be established and listed in the permit as a federally enforceable standard.

This issue is substantive and significant because failure to include an emission limit as a federally enforceable limit in the permit is a violation of the law and the permit must be denied.

Issue 1-F: Offer of Proof

FOH will present the draft permit to demonstrate that there are no enforceable emission limits for VOCs in the draft permit.

Issue 1-G: SLC Must Commit to Obtaining Emission Offsets From Its Catskill Plant

6 NYCRR Part 231-2 requires sources that trigger nonattainment NSR to offset increased emissions of nonattainment contaminants associated with a new or modified major source. Under 6 NYCRR § 231-2.4(b), prior to issuance of a permit for a proposed major facility, the applicant must submit a list of offset sources, including the name and location of the facility, the DEC ID number (if applicable), and the emission reduction mechanism. If a part or all of the list is submitted or if the list changes after the department's notice of complete application, then a supplemental public notice and 30-day comment period is required.

In this case, the draft permit (in particular, Permit Conditions 37 and 38) indicates that SLC will obtain a specified number of emission offsets for NO_x and VOCs; however, it does not provide any details regarding the source of these offsets. Throughout the DEIS and the application, SLC emphasizes that it intends to shut down the kiln at Catskill; presumably

Catskill will be the source of some or all of SLC's emission offsets for Greenport. However, the application does not commit SLC to acquiring offsets from Catskill. Accordingly, information about the source must be made available before the permit is issued and must be subject to a supplemental notice and 30-day public comment period, consistent with 6 NYCRR § 231-2.4(b)(1).

However, leaving the identification and consideration of the ERC's to a later date will adversely effect the Department's ability to issue the air permit and to comply with SEQRA. Since the foundation of SLC's SEQRA analyses rests upon the claim of closing Catskill, the draft permit must not only specifically require Catskill to shut down, but the ERC' from Catskill must be identified at this time. There is no hardship to SLC in identifying and verifying those credits at this time. Any reluctance on SLC's part leads to the inexorable conclusion that SLC is seeking the regulatory flexibility to keep operating Catskill and will seek to obtain ERC's elsewhere.

This issue is substantive and significant because failure to identify and obtain ERC's will result in a denial of the permit. The issue is also substantive and significant because without evidence of that Catskill will close and the source of the ERC's, DEC cannot make its required SEQRA findings.

Issue 1-H: SLC has Failed to Certify Compliance as Required by the Nonattainment NSR Regulations.

6 NYCRR § 231-2.4(a)(2)(i) specifically requires applicants for source projects subject to nonattainment NSR to "certify that all emission units which are part of any major facility located in New York State and under the applicant's ownership or control (or under the ownership or control of any entity which controls, is controlled by, or has common control with the applicant) are in compliance, or are on a schedule for compliance, with all applicable emission limitations and standards under Chapter III of this title." SLC's application does not contain a certification of compliance as required by this section for its existing Catskill facility which is currently a "major source". Our review of records obtained from DEC concerning the past compliance history of Catskill indicate that the facility has been cited in the past for violations of various state air regulations. In light of this history, it is imperative that SLC be required to certify its compliance status now, as part of this nonattainment NSR application. If it cannot certify compliance, it must submit a schedule of compliance, particularly for those emission units at Catskill that will remain in operation after the Greenport plant becomes operational.

Also, SLC should be required to certify the compliance status of other facilities it controls in New York State. SLC's ultimate parent, Holcim, is a 10% owner of Dyckerhoff AG which owns Glens Falls Cement. Glens Falls Cement is in a joint venture with Lehigh Cement for the Lehigh/Glens Falls facility in Catskill. As a the owner of 10% of the shares of Dyckerhoff, Holcim is deemed an "owner" under SEC regulations and EPA guidance of Dyckerhoff. Therefore, SLC must certify compliance of Glens Falls and the Leigh/Glens Falls Joint Venture facilities.

This issue is substantive and significant because failure to comply with the certification requirements of 6 NYCRR § 231-2.4(a)(2)(i) requires denial of the permit.

Issue 1-H: Offer of Proof

Friends of Hudson will offer proof in the form of the permit application that SLC has not certified that its Catskill facility is in compliance with all applicable emission limitations. Friends of Hudson will also offer proof in the form of Holcim financial statements and reports from the financial press attesting to Holcim's ownership interest in Dyckerhoff. Friends of Hudson will offer evidence from application materials submitted to DEC that Lehigh/Glens Falls is a joint venture.

Issue 1-I: SLC Has Not Conducted an Adequate Alternatives Analysis for NSR

6 NYCRR Section 231-2.4(a)(2)(ii) requires applicants for major NSR sources to submit an analysis of "alternative sites, sizes, production processes, and environmental control techniques which demonstrates that the benefits of the proposed source project or proposed major facility significantly outweigh the environmental and social costs imposed as a result of its location, construction, or modification within New York State." The Air Permit Application is completely devoid of any alternatives analyses. As noted with respect to the foregoing proposed conditions, there are clearly alternative processes and treatment technologies, including, but not limited to alternative fuel, greater use of SNCR for NO_x and RTO for control of VOCs. SLC has also not adequately considered either a smaller scale plant or a different location which could mitigate some of the air pollution impacts. Accordingly, SLC has failed to satisfy this requirement of New York's nonattainment NSR regulations.

This issue is substantive and significant because the failure to engage in any alternatives analyses in the air permit application is a violation of State and Federal law and the permit should be denied. The issue is also substantive and significant because a proper alternatives analyses could result in a significant modification of the plant.

Issue 1-I: Offer of Proof

FOH will offer proof in the form of the permit application to demonstrate the failure to conduct an alternative analysis. FOH will also offer the testimony of Mr. Sapienza regarding available alternatives.

Issue 2: SLC and the Draft Permit Fail to Meet the Requirements of the Prevention of Significant Deterioration Program

Emissions of various contaminants from the SLC plant, including sulfur dioxide (SO₂), nitrogen dioxide (NO₂), particulate matter (PM), carbon monoxide (CO) and sulfuric acid, are regulated under the federal Prevention of Significant Deterioration (PSD) program, set forth at 40 CFR § 52.21. Authority to issue permits under the PSD program has been delegated to New York State, which is authorized to implement the federal regulations. 6 NYCRR § 200.10(a). Congress adopted the basic PSD program requirements as part of the 1977 amendments to the Clean Air Act. The goal of the program is to ensure that major facilities proposed to be constructed or modified in areas that have achieved the National Ambient Air Quality Standards (NAAQS) for a particular pollutant do not cause a “significant deterioration” in the air quality of that region. This goal is achieved both by assessing the anticipated impact of proposed newly constructed or modified major facilities on existing air quality (including the impact on national parks designated as “Class I areas” deserving of additional protection) and by ensuring that facilities that trigger the PSD regulations install appropriate emission controls. Facilities covered by the PSD program must obtain a preconstruction permit from the appropriate regulatory authority prior to commencing construction.

The PSD program applies only to “major emitting facilities” (otherwise known as “major sources”), a term which includes facilities in specific source categories with potential emissions of any regulated air pollutant of 100 tons per year or more (250 tons for sources not included in the listed source categories). SLC concedes in its permit application that it is a major source of the following contaminants for which Columbia County is in attainment: SO₂, NO₂, PM, and CO. As a result, the facility must obtain a PSD permit prior to commencing construction.

To obtain a PSD permit, SLC must meet satisfy the following requirements:

a. apply the best available control technology (BACT);

A BACT analysis is done on a case-by-case basis, and considers energy, environmental, and economic impacts in determining the maximum degree of reduction achievable for the proposed source or modification. In no event can the determination of BACT result in an emission limitation which would not meet the applicable standard of performance under 40 CFR Parts 60 and 61, [the federal New Source Performance Standards (NSPS) and the National Emission Standards for Hazardous Air Pollutants (NESHAP)].

b. conduct an ambient air quality analysis;

Each PSD source or modification must perform an air quality analysis to demonstrate that its new pollutant emissions would not violate either the applicable NAAQS or the applicable PSD increment. [NOTE: The PSD increment represents the maximum allowable increases in a pollutant’s predicted ambient concentrations over the existing ambient baseline concentration.]

c. analyze impacts to soils, vegetation, and visibility:

An applicant is required to analyze whether its proposed emissions increases would impair visibility, or adversely affect soils or vegetation. Not only must the applicant look at the direct effect of source emissions on these resources, but it also must consider the indirect impacts from general commercial, residential, industrial, and other growth associated with the proposed source or modification.

d. not adversely impact a Class I area; and

If the reviewing authority receives a PSD permit application for a source that could have an impact on a Class I area, it must notify the Federal Land manager and the federal official charged with direct responsibility for managing these lands. . . [who can recommend that the reviewing authority deny the permit].

e. undergo adequate public participation by the applicant.

Specific public notice requirements and a public comment period are required before the PSD review agency takes final action on a PSD permit.

EPA, *New Source Review Workshop Manual*, pp. 6-7 (Oct. 1990) (Draft).⁴

Issue 2-A: The Draft Permit Does Not Include Any Permit Conditions Whatsoever Specifically Addressing PSD.

Although emissions of various contaminants (in particular, PM, NO₂, CO, SO₂ and sulfuric acid) from the SLC facility are regulated under the PSD program and are subject to BACT requirements, the permit includes no reference whatsoever to the PSD regulations. To satisfy the PSD regulations, DEC must issue a preconstruction permit to SLC that includes permit conditions identifying BACT for each PSD-regulated contaminant/source. Typically, these permit conditions take the form of emission limitations based on a determination of what constitutes BACT for a particular contaminant/source. The permit also must contain specific provisions detailing how the permittee will monitor compliance with the PSD-based emission limits, including compliance monitoring, record keeping and reporting requirements. None of these provisions have been included in SLC's draft preconstruction permit, rendering the permit facially invalid. In fact, the PSD regulations are not even cited.

The only specific mention of PSD in the permit documents issued for review is in the Fact Sheet accompanying the draft permit, which is specifically entitled "Draft PSD Permit

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Although the NSR Workshop Manual was issued in 1990 and remains a draft document, it is still considered one of EPA's primary resources for understanding the PSD program.

Conditions” and includes a brief reference to the PSD program and the need to install BACT. It also includes a table entitled “PSD Pollutants” which lists five pollutants (PM₁₀, SO₂, NO_x, CO and VOC) and their ton per year “emission limits.” With the exception of NO_x and SO₂, however, none of these ton per year limits are expressly included in the permit itself. Moreover, the table includes VOCs which are not even regulated under the PSD program in New York. The permit itself contains no reference whatsoever to PSD, let alone any permit conditions specifically addressing compliance with BACT requirements under that program. This glaring omission must be addressed.⁵

Newly constructed or modified sources that exceed PSD thresholds must obtain preconstruction permits under that program. These permits must contain all provisions necessary to ensure compliance with the requirements of the PSD program. The permit, as currently drafted, does not compel SLC to install the controls and comply with other requirements necessary to satisfy BACT and thus violates both the federal PSD program and the state’s air permit regulations governing the issuance of preconstruction permits.

This is a substantive and significant issue because as drafted the permit cannot be issued and must be denied.

Issue 2-A: Offer of Proof

Friends of Hudson will present proof of the missing elements of the draft permit and the legal requirements for PSD and BACT limits.

Issue 2-B: SLC Did Not Model Ambient Air Impacts for the Proposed Plant at the Maximum Potential to Emit for PM₁₀ in Violation of Key PSD and Modeling Requirements

Federal PSD regulations provide:

“(k) Source impact analysis. The owner or operator of the proposed source or modification shall demonstrate that **allowable emission increases** from the proposed source or modification, in conjunction with all other applicable emissions increases or reductions (including secondary emissions), would not cause or contribute to air pollution in violation of (1) Any national ambient air quality standard in any air quality control region; or (2) Any applicable maximum allowable increase over the baseline concentration in any area.” 40 CFR 51.21(k) (emphasis added)

⁵ The omission of any reference to the PSD program in the draft preconstruction permit is striking. The draft permit recently issued to the owner/operator of the proposed Athens Generating Station includes a whole section devoted specifically to PSD and nonattainment NSR compliance, which includes all of the components missing from the SLC permit.

According to EPA's Draft 1990 NSR workshop manual:

"For both NAAQS and PSD increment compliance demonstrations, the emissions rate for the proposed new source or modification must reflect the maximum allowable operating conditions as expressed by the federally enforceable emissions limit, operating level, and operating factor for each applicable pollutants and averaging time. The applicant should base the emissions rates on the results of the BACT analysis..... [NOTE: It is important that the applicant demonstrate that all modeled emission rates are consistent with the applicable permit conditions.]" EPA 1990 draft NSR workshop manual, Section IV.D.4, p. c.45.

According to the Air Quality Modeling Guideline (Appendix W):

"At a minimum, the source should be modeled using the design capacity (100 percent load). Section 9.1.2 recommendation, Appendix W. [see also table 9-2, Appendix W indicating that the model should use "maximum allowable emissions or federally enforceable permit limit"]

Tables C-7, p. C-11 and C-8, p. C-13 in Appendix 10 of the air permit application shows that the maximum PM₁₀ emission rate modeled for the facility for SCREEN3 (simple and complex terrain) in preliminary analysis was 4.89 grams per second for the main kiln stack. Table C-9, p. C-15 and C-10, p. C-16 of Appendix C shows that the refined modeling effort used 4.42 grams per second for PM₁₀ in the refined modeling exercise for the main kiln stack with 153.6 tons per year used for the annual average emissions.

Information on p. E-20 indicates the main kiln stack will have the potential to emit 55.7 lbs. per hour of total particulate. At a factor of 0.85 for PM₁₀, this is equivalent to a PM₁₀ potential to emit of 47.3 lbs. per hour or 5.97 grams per second, and 208 tons per year. The PM₁₀ hourly potential to emit is 22% higher than the PM₁₀ emission rate used in the screening modeling and 35% higher than the PM₁₀ emission rate used in the refined modeling exercise. The annual potential to emit for PM₁₀ is also 35% higher than what was used in the modeling.

Under the procedures articulated in the PSD regulations, the draft EPA NSR workshop manual and the Appendix W Guideline on Air Quality Models, SLC's failure to use the PM₁₀ potential to emit for the maximum PM₁₀ emissions for the facility renders its PM₁₀ air quality modeling effort defective and unapprovable.

Given that SLC found that the proposed facility consumed 76% of the short term PM₁₀ significant deterioration increment, this is not merely an academic failure. A reiteration of the modeling effort must be done at the PM₁₀ potential to emit to ensure that the facility does not cause significant deterioration of air quality for PM₁₀.

This is a significant and substantive issue because the failure to properly model PM emissions should result in a denial of the permit or the imposition of significant conditions on the permit.

Issue 2-B: Offer of Proof

FOH will offer the testimony of Gabriel Miller, Ph.D who will testify to the foregoing. Mr. Miller's curriculum vitae is attached as *Exhibit "C"*.

Issue 2-C: SLC has Failed to Undertake a Proper BACT Analysis for PM and the Permit Does Not Include the Proper Conditions

SLC's permit application indicates that it intends to install approximately three dozen baghouses on the kiln and other PM sources to control PM and PM₁₀ emissions for purposes of satisfying the BACT requirements of the PSD program. According to the application, these baghouses will be designed to achieve a maximum PM concentration in the exhaust of 0.01 gr/dscf. SLC Air Permit Application, p. 5-10, 28.

SLC fails to perform a complete BACT analysis for PM, calling into serious question the merits of its final BACT determination for this crucial contaminant. The draft application provides no engineering information about the mix of baghouse options selected. There is no information on the air-to-cloth ratios, the type of bags to be used, the design of compartment baghouse pressure drop monitoring systems, or the type of bag-cleaning method to be employed. There is no information on PM control device inlet loading and separated volumetric flows in dry standard conditions for the kiln/in-line mill, coal mill and clinker cooler. In section 5.3.1.2 of the air permit application, SLC readily admits that these factors are determinative of the performance to be achieved by any selection of baghouse controls. Then, in section 5.3.1.5, without providing any engineering details about the types of baghouses to be selected and consideration of alternatives, the leap is made to select the final technology solely on the basis of a baghouse vendor guarantee that the baghouses will achieve control levels of 0.01 gr/dscf or 25 mg/Nm³. There is no consideration of alternate baghouse design specifications and/or a larger baghouse with lower air-to-cloth ratios. There is no discussion of alternate emission control efficiencies associated with different baghouse designs in the original selection of control options. A larger baghouse with more efficacious controls could achieve greater control efficiencies⁶.

Attempting to base a BACT determination solely on a vendor guarantee and without supplying engineering information on the technology selected undermines the "top down" BACT requirement. Presumably, a different design would produce a different vendor guarantee so the mere existence of a vendor guarantee cannot become the absolute determinative factor in the

⁶ There is also no discussion of particle size considerations in the selection of specific baghouse designs and the potential to reduce PM_{2.5} which poses the greatest potential health threat. At present, PM_{2.5} emissions are not specifically regulated (except as PM₁₀) so the control technology discussion of all PM should have considered how design alternatives for baghouse controls would affect PM_{2.5} emissions.

selection of BACT.

Second, although the application represents that a main stack outlet gas concentration of 0.01 gr/dscf or 25 mg/Nm³ is BACT for PM/PM₁₀, these emission limitations are not provided anywhere in the draft permit.⁷ The only emission limit for PM is found in Permit Condition 59 which cites as the controlling regulatory authority the federal portland cement NESHAP (in particular, 40 CFR § 63.1343(b)) and sets an emission limit of 0.30 lb. per ton of dry feed. This limit of 0.30 lbs. of PM per ton of dry feed is exactly the same emission limitation that was applied in federal New Source Performance Standards for the portland cement industry adopted in 1977, over 25 years ago.

At 1.03E6 Nm³/hr. of exit flow and 24.55 mg./Nm³ PM gas concentration, the plant discharges 55.7 lbs. of PM per hour. At 7275 tons of clinker per day, the plant processes 303 tons of clinker per hour with 1.59 feed-to-clinker ratio, or a feed rate of 481 tons of feed per hour. Taking the ratio of the hourly emission rate to the hourly feed rate gives a final rate of 0.116 lbs. PM per ton of dry feed at the conditions deemed in the application to be PM BACT. The emission limitation of 0.30 lb. PM/ton of feed is over twice as high as the calculated rate at the conditions specified for PM BACT.

This 0.30 lb. PM/ton dry feed rate does not represent a BACT level of particulate emission control and the permit cannot be approved as complying with the PSD BACT emission limitation requirement in its current form. At the very least, the draft permit must be amended to set a short- term emission limitation of 25 mg/Nm³ or 0.01 gr/dscf as a federally enforceable PM BACT emission limitation for the main stack. Consistent with the BACT requirements, the BACT analysis should be revised to more thoroughly address the baghouse design details to see if greater emission reductions are “achievable”. The permit must specifically reference the PSD program as the basis for the resulting PM limit and must specify how the facility will monitor operations of the baghouse (e.g., installation of pressure monitoring device to measure pressure drop across the baghouse) as well as any other monitoring, record keeping and reporting requirements necessary to demonstrate compliance with BACT.

The foregoing is based on the PM figures used in the application, which as noted in the previous section understated the PM emissions by more than 20%. A BACT emission based on the rate of 4.89 grams per second from the main kiln should result in a baghouse limit 0.008 gr/dscf instead of the 0.01 gr/dscf. A baghouse limit of 0.008 gr/dscf is achievable with existing technology.

The permit also must be revised to include a PM limit as BACT for all PM sources other

⁷ There is mention of 0.01 gr/dscf in Permit Condition 82.1, but it is stated as a vendor guarantee and not as a permitted emission limitation. Moreover, it is included only in the “state enforceable” section and thus is not a federally enforceable limitation under PSD.

than those regulated under the kiln. Currently, the permit includes PM limits only for Emission Unit O-CPROD, Emission Unit 1KILN. No emission limits are included for other PM sources (e.g., raw and finish mills, storage bins, conveying system transfer points, etc.) that are required to install BACT. DEC must revise the permit to establish an emission limit of 0.01 gr/dscf (or lower based on a more thorough BACT analysis) to satisfy the BACT requirement for these sources. The permit also should require installation of continuous opacity monitors on MILL1 and MILL2 because of the magnitude of potential emissions from these facilities in the event the baghouse controls fail; it should also require a stack compliance test for PM emissions at least every five years.

These issues are substantive and significant because as drafted the permit is facially illegal. These issues are also substantive and significant because a proper BACT analyses will result in a project modification of a permit condition that limits emissions from the baghouses to 0.008 gr/dscf.

Issue 2-C: Offer of Proof

Frank C. Sapienza will testify to the foregoing.

Issue 2-D: The Draft Permit Fails to Establish an Opacity Limit to Satisfy BACT for PM

Under the federal PSD regulation, BACT includes “an emission limitation *including a visible emission standard.*” 40 C.F.R. § 52.21(j) (emphasis added.) The federal PSD regulations thus contemplate establishing opacity limits to satisfy BACT for PM. The chief advantage of this approach is that opacity can easily be monitored using a continuous emission monitoring system while PM cannot.

Permit Conditions 31.1, 56.2, 60.2 and 73.2, as well as the federal MACT standard for portland cement plants, require a 20% opacity limit. However, as noted in Issue 2-C, BACT for the kiln and other key sources of PM at the facility is 0.008 gr/dscf lower. That standard would translate into an opacity limit much lower than 20%. This lower opacity limit should be included in the permit as BACT for PM emissions from the kiln. The main stack PM opacity limitation should, at minimum, be reduced to 10% to more closely reflect the PM BACT limit.

The failure to reduce the 20% opacity limit down to 10% for the main stack will allow the company the latitude to operate with broken and degraded bags or other degraded conditions in the baghouses with ducts to the main stack. The opacity monitor is the only federally enforceable continuous monitoring check on the efficacy and performance of the PM emission control system. To allow the facility to operate its PM emission control system so that opacities marginally approaching 20% are achieved is to fail to ensure adequate continuous compliance with good PM emissions control practice.

This issue is substantive and significant because failure to include an opacity limit for PM is a violation of the BACT requirement for PSD purposes. This issue is also substantive and significant because it should result in a significant condition limiting opacity at the main stack to 10%.

Issue 2-D: Offer of Proof

Mr. Sapienza will testify to the foregoing.

Issue 2-E: The Draft Permit Does not Establish Emission Limits for Sulfur Dioxide that Constitute BACT

For SO₂ emissions, the permit does not include any condition specifically citing the PSD program and establishing emission limits for SO₂ that constitute BACT. The permit application indicates that SLC intends to use inherent dry scrubbing, wet scrubbing and dry scrubbing to satisfy its obligations to meet BACT under PSD but does not propose an emission limit. Permit Condition 57 proposes to cap emissions of SO₂ at 850 tons per year, citing as the regulatory authority 6 NYCRR § 220.6(a), which contains the state regulations for establishing gaseous emission limits for SO₂ under the state's portland cement regulations. Permit Condition 58 specifies that a CEMS will be used to determine compliance with this limit, based on a 12-month rolling total.

The permit does not specify that the 850 ton annual limit is intended to satisfy BACT; in fact, the permit contains no reference to PSD for SO₂ whatsoever. Moreover, reliance on an annual limit violates EPA guidance on establishing BACT which specifies that PSD permits "must contain short-term emission limits to ensure protection of the applicable . . . NAAQS and PSD increments." Memo from G. Emison, Director, EPA Office of Air Quality Planning and Standards, to D. Kee, Director, EPA Air Management Division, Region V, *Need for Short-Term Best Available Control Technology (BACT) Analysis for Proposed William A. Zimmer Power Plant* (Nov. 24, 1986).

SLC's approach also does not satisfy the requirements for BACT because compliance with this limit does not necessarily require reliance on BACT controls. The 850 ton per year limit was derived based on certain assumptions regarding how the kiln will be operated (e.g., number of hours, anticipated controls, etc.) It is theoretically possible that SLC could operate at less than "BACT levels" and still meet the cap by simply shutting down. The permit must be modified to clearly specify what conditions SLC must meet to satisfy BACT.

To address this problem, the permit should include enforceable hourly and/or per ton of

feed emission limits that reflect the emission rates achievable using the control technologies identified in the permit application as BACT for SO₂ (i.e., inherent dry scrubbing, wet scrubbing and dry scrubbing), as well as all the other regulated pollutants. At minimum, the permit must include enforceable permit conditions for achieving BACT, in the form of specific controls, work practice standards, etc., together with provisions governing monitoring, record keeping, etc. necessary to demonstrate compliance with the standard.

Moreover, the application and the permit do not contain any detail concerning the wet scrubber recirculation rate, the rate of limestone addition to the wet scrubber solution, and expected injection rates and causticity of lime water for the dry scrubber. The scrubbers will not work at their optimum efficiencies unless their design parameters are met on a continuous basis. There is no provision in the permit that explicitly requires these two scrubbers to be operated at optimum efficiencies at all times and that the devices not be bypassed during source operation

. This issue is substantive and significant because as written it fails to meet the requirements of the PSD program. It is also substantive and significant because it could result in significant conditions establishing emission limits and operating conditions affecting the operation of the plant.

Issue 2-E: Offer of Proof

Mr. Sapienza will offer testimony regarding the foregoing.

Issue 2-F: SLC's BACT Analyses for Carbon Monoxide and Sulfuric Acid are Inadequate and the Draft Permit Does Not Contain Provisions for Those Contaminants

Although the permit application includes BACT analyses for both CO and sulfuric acid, the permit contains no permit provisions whatsoever addressing these contaminants under PSD or any other regulatory program. In the case of CO, the air permit application identifies combustion optimization design and good combustion practices as BACT. However, the application does not endeavor to translate implementation of these practices into an enforceable emission limit. Numeric limits for CO are a common element of many PSD permits for portland cement plants and SLC has provided no explanation for why they are not part of the Greenport permit. In the absence of numeric limits, the permit must include enforceable work practice standards reflecting SLC's BACT determination for CO. Without such provisions, any PSD determinations are unenforceable. Limitations reflecting the PSD determinations for sulfuric acid also must be included in the permit either as numeric or work practice standards.

In addition to this basic concern regarding the absence of any PSD permit conditions for

CO, SLC's application and the resulting draft permit are based on an inadequate BACT analysis. As a preliminary matter, SLC does not appear to have accounted for disassociation of carbon dioxide in the sintering zone to carbon monoxide, a process which increases CO emissions. This effect was identified by EPA in its rulemaking on hazardous waste combustion in cement kilns and may be occurring here as well. 61 Fed. Reg. 17397. Although SLC has not made available emission factor data to estimate the additional carbon monoxide emissions, the presence of additional carbon monoxide may influence PSD BACT cost calculations in favor of additional add-on controls. SLC must address this issue in its BACT analysis for CO.

Moreover, the required PSD BACT determination for carbon monoxide does not satisfy the requirements for a "top-down" BACT analysis. The first defect in SLC's analysis is the failure to consider the combination of two technically feasible options – optimized combustion design and good combustion practices along with a regenerative thermal oxidizer (RTO) – as yet a third technically feasible option that must be considered, compared and analyzed in the top-down hierarchy. Moreover, SLC improperly assumed when considering the environmental impact review of the RTO (in the context of the BACT decision) and its potential to generate higher sulfuric acid aerosol that it would not also operate in conjunction with a wet limestone scrubber which the applicant had already selected for both sulfur dioxide and sulfuric acid control.

SLC's analysis also is misleading in its discussion of RTO implementation on the existing Holnam cement kiln in Michigan. SLC writes that:

Suppliers have not manufactured a single thermal oxidizer unit for the treatment of large volumes of gas typical of a cement kiln exhaust. Operation of multiple units will create significant operating difficulties in trying to balance flow among four to six units as well as concerns about increased maintenance requirements.

There are two U.S. facilities in the early stages of evaluating thermal oxidizer installations, Holnam in Dundee, MI , and TXI in Midlothian, TX. . . . Neither facility has completed permitting the proposed thermal oxidizers and no operational data has been obtained on the effectiveness of thermal oxidation operation on a cement kiln exhaust. . . . There are no RTO systems in application on a cement kiln in the U.S. and RTO is not a demonstrated technology for cement kilns.

SLC Air Permit Application, p. 5-16.

SLC's assertions in this section are either flatly wrong or deliberately misleading. The RTO/scrubber installation at the plant in Michigan, which is owned by Holnam, SLC's parent company, was permitted on March 20, 2000, over a year before SLC's final air permit application was submitted. Based on conversations with Michigan Department of Environmental Quality staff, it appears that the equipment has been installed and the units have

been running for the last two and one-half months. That the Holnam Plant in Michigan is under common ownership by SLC's parent corporation makes SLC's assertions particularly troubling.

SLC's next error was failing to conform to Step 3 of the top-down BACT procedures which requires an exposition of the following analysis and ranking of all remaining technically feasible options:

In step 3, all remaining control alternatives not eliminated in step 2 are ranked and then listed in order of overall control effectiveness for the pollutant under review, with the most effective control alternative at the top. A list should be prepared for each pollutant and for each emissions unit (or grouping of similar units) subject to a BACT analysis. The list should present the array of control technology alternatives and should include the following types of information:

- control efficiencies (percent pollutant removed);
- expected emission rate (tons per year, pounds per hour);
- expected emissions reduction (tons per year);
- economic impacts (cost effectiveness);
- environmental impacts [includes any significant or unusual other media impacts (e.g. water or solid waste), and, at a minimum, the impact of each control alternative on emissions of toxic or hazardous air contaminants];
- energy impacts.

NSR Workshop Manual, p. B 7-8. SLC failed adequately to address the best control technology available – combustion optimization and RTO – and thus failed to conduct a complete top-down BACT analysis. SLC's evaluation of the "most effective control technology" in Section 5.3.3.4 of the air permit application is thus inadequate.

SLC's analysis also failed to acknowledge the environmental benefits associated with RTO control of hazardous air pollutants, volatile organic compounds and odors associated with organic carbon compounds found in the Greenport rock. This failure to incorporate the environmental

benefits of RTO implementation violates basic principles of BACT analysis.

As discussed in Issue 1-E, above, RTO controls should be required as LAER controls for VOC emissions from the facility. This requirement would reduce the cost of RTO controls to zero for the control of carbon monoxide, further buttressing comments that this technology and an appropriate emission limitation reflecting its ability to control carbon monoxide emissions should be selected as BACT for this pollutant.

Finally, Table 5-2 on Page 5-19 of SLC's application provides further basis to reject the implied conclusion of the application that 3.0 lb. CO per ton of clinker constitutes a valid carbon monoxide BACT determination. Five permits issued in 9/2000, 8/1997, 2/1997, 11/1995, and 7/1994 all show standardized rates for pounds of carbon monoxide emissions per ton of clinker to be lower than the implied limit cited by SLC of 3.0 lb. CO/ton clinker. This provides further support for an argument that lower carbon monoxide emissions are achievable in this industry even without using an RTO, undermining any suggestion that the limit represents a valid PSD BACT determination.

These are substantive and significant issues because as written, the permit violates the PSD requirements. These issues are also substantive and significant because a proper BACT analysis will result in significant conditions requiring better controls for CO and sulfuric acid.

Issue 2-F: Offer of Proof

FOH will present Mr. Sapienza and Mr. Sagady who will testify to the foregoing.

Issue 2-G: SLC Improperly Failed to Use Available Site-Specific Meteorological Data that it Had Collected

Section 52.21(m) of 40 C.F.R. requires applicants for PSD permits to obtain air quality monitoring data collected over a period of at least one year prior to submission of the application for a permit to construct for purposes of assessing the impact of the project on PSD increments and on ambient air quality generally. Meteorological data also is needed as part of the air quality analysis. This data must be "representative of the atmospheric dispersion and climatological conditions at the site of the proposed source," making site-specific data "preferable to data collected elsewhere." Draft NSR Workshop Manual, p. C.22.

In the present case, SLC obtained permission from the Town of Greenport to construct a meteorological tower at the proposed site of the Greenport facility in late Summer 1999. It is our understanding that the tower was constructed shortly thereafter and began collecting data in approximately January 2000. Despite undertaking the significant burden and expense of installing the tower, SLC successfully petitioned EPA for a waiver to allow them to use data from Albany Airport, which is located approximately 40 miles away, instead of the site-specific

data being collected to this day by the on-site meteorological tower. SLC's decision to seek a waiver raises serious questions. Where, as here, site-specific data which would allow for a true and accurate picture of site conditions for modeling purposes is available, it is perplexing that the applicant has elected not to use that data, relying instead on data collected 40 miles away. Given differences in topography and wind conditions there is at least a 50% chance that local meteorological data would result in stricter emission limits.

In recent discussions, SLC representatives have indicated that the met data collected using the tower has not been validated and that this is a long and complex process. However, SLC has been collecting met data using the tower for approximately 18 months; presumably the data could have been validated during this period. SLC also has suggested that meteorologists believe that five years' worth of data from Albany Airport is preferable to one years' worth of on-site data. However, the local data could be used to verify the appropriateness of using the Albany Airport data at the Greenport site. Since the data has been collected it should be analyzed to determine if it results in any different modeling results.

This issue is substantive and significant because there is a presumption in the law that one-year of local data be collected. Since the data was collected it must be considered because there is a reasonable likelihood that it will affect the modeling and require either a denial of the permit application or the imposition of significant conditions.

Issue 2-G: Offer of Proof

FOH will present the testimony of George W. Siple who will testify to the likelihood that local meteorological data can impact air modeling. Mr. Siple's curriculum vitae is attached as *Exhibit "D"*.

Issue 3: The Draft Permit Fails to Comply With the New Source Performance Standard for Nonmetallic Mineral Processing Plants and Coal Preparation Plants.

The New Source Performance Standards (NSPS) under 42 U.S.C. § 7411, establish technology-based emission standards for new and modified sources of criteria and other contaminants in specific categories. The NSPS essentially establish a "technological floor" ensuring that all new or modified sources in a particular source category meet certain minimum emission standards. Unlike PSD and NSR, these standards apply throughout the country, regardless of whether the facility is located in an attainment or nonattainment area.

EPA has established a NSPS standard in 40 CFR Part 60, Subpart OOO that applies to "non-metallic mineral processing plants," a category that includes any facility with equipment that is used to crush or grind any non-metallic mineral, such as cement plants. 40 CFR § 60.670, 671. Subpart OOO establishes limits for particulate matter and/or opacity associated with

various equipment at such facilities, including transfer points on belt conveyors, crushers, storage bins, and other equipment. EPA also has established a NSPS for “coal preparation plants,” set forth in 40 CFR Part 60, Subpart Y.

Issue 3-A: The Draft Permit Includes No Permit Conditions Addressing Compliance with the NSPS for Nonmetallic Mineral Processing Plants or Coal Preparation Plants.

SLC’s Air Permit Application provides that:

Subparts Y and OOO will apply to various aspects of the Greenport Project. Since the kiln gases will be used to thermally dry the coal in the coal mill, Subpart Y will be invoked. Subpart OOO will apply because new crushing, handling and storage equipment will be located at the mine. SLC will comply with all applicable sections of these NSPS.

SLC Air Permit Application, p. 3-6. However, the draft permit contains no permit conditions whatsoever addressing compliance with these requirements. The NSPS provisions should, at minimum, be specifically referenced in the permit even if the standards are superseded by other, stricter emission limits. This information is necessary to ensure that the permit is complete and that all applicable requirements are specifically identified in the permit for enforcement purposes.

In fact, however, it appears that the standards for certain sources are stricter under the NSPS than other applicable regulations. For example, Subpart OOO establishes an opacity limit of 7 percent for discharges from baghouses that control emissions only from an individual, enclosed storage bin. 40 CFR § 60.672(f). These stricter standards must be included in the preconstruction permit as enforceable permit limits.

This issue is substantive and significant because federally enforceable NSPS standards are required to be included and if not make the permit facially invalid. The issue is also substantive and significant because application of the NSPS standard could result in stricter opacity limits for certain emission points.

Issue 3-A: Offer of Proof

FOH will present the testimony of Mr. Sapienza who will testify to the foregoing.

Issue 4: SLC Fails to Control Air Emissions from Material Handling

The air permit application, draft permit and the DEIS fail to adequately address material handling issues and the control of fugitive dust emissions. These proposed issues deal with those

deficiencies and present substantive and significant issues. If these issues are not addressed the permit should be denied for failing to avoid significant adverse environmental impacts. At a minimum, significant conditions need to be imposed to prevent the creation of fugitive dust emission problems.

Issue 4-A: The Application and Draft Permit Fail Adequately to Address Clinker Handling Activities.

a. Clinker Storage.

The application fails to clearly articulate all possible adverse scenarios for the potential storage of clinker. Outdoor storage of clinker and subsequent stacking and reclamation of such outdoor clinker storage piles, particularly with front end loaders, can be a serious cause of fugitive dust emissions which is entirely avoidable by providing for adequate slack clinker storage silo capacity. As the plant will be first built, it will incorporate a single 45,000 metric ton capacity clinker storage silo; a future silo of similar size is planned. A single 45,000 metric ton silo can store 7.5 days of clinker production at 6,000 metric tons of clinker per day. If the silo started empty and one of the finish mills went down (171 tons cement per hour – unknown clinker handling capacity but assumed at 171 tons/hour), the excess clinker production while operating at the full rate would use up the clinker silo capacity in 11 days in the absence of a kiln production cutback. While the company also plans to utilize the clinker handling capacity at the Catskill mill for clinker produced at Greenport the applications failu to discuss the worst case problems associated with dispatch of clinker to silo storage and potential problems that can occur as a result of extended mechanical malfunction at one of the finish cement mills.

The draft permit should be amended to prohibit outdoor storage of both specification and non-specification clinker as an unnecessary source of fugitive emissions that can be completely eliminated by the use of adequate clinker storage and handling capacity.

b. Clinker Transfer.

While the company clearly contemplates using Greenport clinker at the Catskill finish mill site, the application contains few details on how this transfer will be accomplished. There are no indications of truck loadout and the type of truck to be used for such transfers and there is no indication at the Catskill site as to how such trucks will be unloaded. The overriding concern is the control of fugitive emissions for transfers of specification clinker. The plans should prohibit loading and transferring clinker in open top trucks, either with or without soft covers. All clinker transport should take place in enclosed truck units similar to those used to transport cement..

c. Management of Off-Specification Clinker.

While the application shows an off-specification clinker silo, there are no details that indicate the storage capacity of this silo. Production of off-specification clinker can result during inadequate heating conditions of the kiln or improper mix of feed materials to the kiln. These adverse production conditions should be assigned a worst case condition time interval to justify whether the off-spec clinker silo is adequately sized. The permit should explicitly ban the use of outdoor storage for off-specification clinker.

Figure 2-14 of the air permit application shows three conveyance exits from the off-specification clinker silo. Two of these exits are to the existing cement finish mill conveyor and one of these exits shows loading to open top trucks. Loading open-top trucks with off-specification clinker is a needless source of fugitive emissions that can be controlled by loading to enclosed tank trucks. There is no information on how such trucks would be unloaded. Dumping of open trucks of off-specification clinker and subsequent front end loading of off-specification clinker to raw material hoppers should not be allowed. There is no conveyor from the off-specification clinker silo to recycle such materials back into the raw feed system. The application should not be approved until all features of off-specification clinker handling are clearly shown and any needless generation of fugitive emissions are eliminated.

Each of the foregoing are substantive and significant issues which will if found in Petitioner's favor will result in the imposition of significant conditions upon the project.

Issue 4-A: Offer of Proof

Mr. Sapienza will testify regarding the risk of fugitive emissions from the clinker handling.

Issue 4-B: SLC and the Draft Permit Fail to Address Other Material Handling Issues.

The air permit application and resulting draft permit raise other material handling issues with air impacts:

- ***Spray conditioning towers.*** Spray conditioning towers are known to generate dust drop-out that must be removed from the bottom of towers. While the spray tower in the alkali bypass system shows a controlled conveyor removal system for spray tower drop-out PM, the spray conditioning tower for the main precalciner/preheater flue gas output (tower 441-IJ, Figure 2-7 of the Air Permit Application) does not show any control of tower bottom drop out. This activity can be a significant source of PM and should be handled by a controlled conveyor system or other means to ensure that collected air contaminants are not re-entrained in outdoor air as fugitive emissions during loadout operations.

- **Raw material blending.** Although the raw material blending hall is shown in Figure 2-1 of the Air Permit Application, there are no details provided sufficient to determine the air pollution potential of this structure. For example, there is no information to show whether the blending haul is totally enclosed or whether it is open on the sides. There is no detail indicating how stacking of corrective limestone and mill scale piles occurs. No information is provided on the moisture content as typically delivered for corrective limestone and mill scale to make a determination on whether front end loading reclamation of the pile will cause emissions.
- **Raw mill system.** In reviewing the raw mill system in Figure 2-3 of the Air Permit Application and associated text there is no adequate information available to determine how pressurization of the flash feedstock and raw feed input locations to raw feed grinder assembly 361 will be avoided. For example, the drawings do not show air lock feeders for the fly ash and raw feed inputs into the raw feed grinder assembly. These details are important because fugitive emissions at this location would represent uncontrolled kiln gas emissions that would be escaping at the grinder with no stack. It is presumed that the baghouse control at EP#11 is intended to control raw feed conveyors and bucket elevators and not fugitive emissions from the feed entrance points to the raw feed grinder.
- **Baghouse cement kiln dust (CKD).**

All drawings show that baghouse collected particulate matter in the main kiln/in-line mill PM collection system is recycled back into the raw feed conveyor system. If SLC intends to waste any of the main baghouse cement kiln dust, then the air permit application must be amended to show the emission control system and handling equipment to ensure that cement kiln dust from the main baghouse system will not be released as a fugitive emission.
- **Offloading from alkali bypass.** Drawings of the alkali bypass system in Figure 2-12 of the application show two points where cement kiln dust will be loaded into open top trucks. The principal offloading point shows a water spray on a conveyor which subsequently loads to an open top truck. This type of system is not an acceptable or state-of-the-art system for offloading and transport of cement kiln dust from the alkali bypass system and this further does not represent BACT for PM emission control. A water spray on a conveyor of cement kiln dust does not even come close to achieving efficient or complete wetting of such dust. As a result, conveyor dumping of such CKD material into open top trucks can be expected to cause severe fugitive dust emissions. Subsequent operation of such trucks, either as open container vehicles or with soft covers, can also be expected to be significant PM emission sources.
- **CKD transportation.** At the August, 2000 forum event in Hudson, company officials specifically committed to a pelletizing system and enclosed trucks for handling and transport of cement kiln dust from the Greenport plant. The system as proposed in the latest application not only fails to provide either a pelletizing or pug mill system for complete wetting of CKD, it also fails to provide the state-of-the-art type of PM control required by

PSD BACT rules.

- ***Loading of ships and barges.*** Page 1-40 of the EIS indicates that pneumatically conveyed loading of Hudson River ships and barges will be used to load cement coming from the cement buffer bin at the terminus of the tube conveyor into the barges and ships. Although air displacement and loading emissions at the buffer bin will be baghouse controlled, no emission control system is shown, proposed or discussed in regard to pneumatic loading of the ships and barges in either the text or in Figure 2-19 of the application. Uncontrolled pneumatic loading of ships and barges will produce highly objectionable, very heavy fugitive emissions of cement dust at the Hudson River dockside location. This is completely unacceptable and the application and permit must not be approved until and unless fugitive emissions from ship loading is controlled with an air tight loading technique and a baghouse control system for PM-laden displacement air.
- ***Baghouse hopper collection points.*** Many baghouse hopper collection points are shown throughout the schematic drawings of the material handling equipment. However, SLC has provided no details on how the collected dust will be managed except for the very largest of the baghouses on the principal emission points for the kiln, the alkali bypass, the clinker cooler and the raw feed storage silos. No information is provided on baghouse hopper loadout at baghouses numbered 01, 10, 11, 13, 12, 14, 20, 60, 19, 18, 26, 29, 33, 39, 37, 30, 34, 40, 38, 44, 54 and 52.
- ***Reintroduction of collected contaminants.*** The draft permit attempts at Permit Conditions 8-10 to ensure that collected air contaminants are not re-entrained and released to the atmosphere. At the very least, SLC must disclose whether these loadout points are directed to enclosed conveyors or will be serviced with mobile enclosed bins with baghouse control for receiving these collected air contaminants. In addition, SLC should be required to disclose how these collected PM materials will either be re-introduced to the process without causing dust emissions or disposed. Use of open top, uncontrolled dump vehicles for this purpose should be prohibited by the draft permit.
- ***Coal, coke and raw material dockside transfer.*** Figure 2-19 of the application indicates dockside material transfer activities involving coal, petroleum coke, gypsum and corrective/additive unloading. The transfer activities show a crane-clamshell loading system, a conveyor loading system, a surge pile at dockside and front end loader utilization to an open hopper and conveyor transfer system. Additionally, the EIS indicates that the open hopper system is a traveling one that can traverse a length of the shoreline. Many details necessary to determine the PM emission potential of this set of dockside material transfer operations are not disclosed in the application. There is no information on worst case low material moisture conditions. A baghouse emission control system appears to be shown for the control of the buffer bin at the terminus of the tube conveyor and for the transfer point from the traveling hopper conveyor. However, it not at all clear that the conveyor for unloading barges and ships will be a covered, controlled conveyor system. There is no information

about over-pile stacking of the dockside storage piles and the nature of any such drop height controls on this stacking operation. It is clear that ordinary front end loader/hopper operations will be used to reclaim the dockside storage piles to the hopper. This is not the most effective system for limiting PM emissions from dockside loading operations in this sensitive area, which is adjacent to public property intended for recreation.

- ***Crane clamshell transfer operations.*** Finally, crane-clamshell transfer operations from ships and barges to the dockside hopper will likely cause spilling of materials into the Hudson River; this should be identified as a potential transfer operation whose environmental impact must be identified and clarified in the EIS. Mitigation measures must be included to prevent such spills.

The foregoing represent substantial and significant issues which if not properly addressed must result in permit denial. These issues further represent substantial and significant issues that will result in significant permit conditions to address and eliminate those issues.

Issue 4-B: Offer of Proof

Mr. Sapienza will testify regarding the threat of fugitive emissions from material handling.

Issue 4-C: SLC's Provisions Governing Preparation of a Fugitive Dust Control Plan are Inadequate.

Permit Condition 86.2 provides for SLC submittal and DEC approval of a comprehensive site fugitive dust plan. This condition is found in the "state enforceable" section of the permit and cites to 6 NYCRR § 211.2, New York's general prohibition against pollution. The permit should not be approved without a federally enforceable fugitive dust control plant that embodies BACT for sources of fugitive dust.

Fugitive dust control is a crucial element of environmental protection associated with the operation of every cement plant. Such plans can have a considerable range of stringency, specificity and enforceability. Because of the high probability of fugitive dust emissions and adverse environmental impacts from this facility, SLC should prepare a draft fugitive dust plan for public comment as part of the permit issuance process. Appendix H to SLC's air permit application concerning the development of the fugitive dust control plan offers few specifics. What language there is suggests that the fugitive plan is likely to be inadequate. For example, Appendix H indicates that control measures will be required only "when needed." Those types of fugitive dust control plans do not provide adequate stringency, accountability and enforceability to be effective.

In particular, DEC should insist that SLC commit now by amendment of Appendix H to a fugitive dust control plan that requires the following types of stringent control measures:

- Enforceable Performance Standards

- Visible emissions from paved and unpaved roadways and storage piles should not exceed 5% opacity, instantaneous average, as an enforceable visible emission limitation.

- Visible emissions from conveyor transfer points should not exceed 10%, six-minute average.

- Truck speeds on paved roads should be limited to 10 MPH; speeds on unpaved roads should be limited to 5 MPH.

- Enforceable Plan Elements

- All main haulage ways at the site should be paved.

- Overhead stack loading of all uncovered storage piles should incorporate drop height controls in order to limit emissions during conveyor loading.

- Paved roads should be subject to twice daily wet sweeping and additional watering with clean (not turbid silt-containing) water to avoid visible emissions. Unpaved roads should be subject to watering to ensure that visible emission goals are met.

- Truck tire washing should be incorporated to control trackout of material from unpaved roads and surfaces onto paved surfaces. Truck tire washing facilities should also ensure that material on paved roads is not tracked out onto city and county public roads. Truck washing facilities should also ensure that loaded trucks do not have non-bin surfaces with visible accumulations of material that can be spilled on or off-site.

- Site operational requirements should ensure that spilled materials on paved roads are promptly removed before such materials are tracked to adjacent areas.

- Site operational requirements should ensure that all loaded and empty open bin trucks

are tarped in order to leave or enter the site.

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Trained visible emission observers and mandatory record keeping on visible emission observations of roads and storage piles should be required to ensure compliance.

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Mandatory record keeping requirements should ensure that road sweeping and watering activities can be tracked for compliance purposes.

- Onsite Equipment Requirements

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Onsite equipment must include a street sweeper capable of sweeping and collecting fine particles without re-entraining such collected air contaminants.

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A mobile vacuum truck with baghouse control should be available to clean up spills and to empty collection points.

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Variable length chute controls should be required on all overhead stacking conveyors to limit uncontrolled drop heights onto storage piles.

- Employee Training and Staffing

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All process areas must have at least one certified visible emission observer for all daylight shifts.

The foregoing represent substantial and significant issues for adjudication because failure to adequately address the fugitive dust emission issues should result in a denial of the permit for failure to comply with the Clean Air Act, 6 NYCRR Part 211 and SEQRA. These are also substantial and significant issues as they will result in significant conditions imposed upon the project.

Issue 4-C: Offer of Proof

Mr. Sapienza will testify regarding the need for the above-mentioned elements to be included in a fugitive dust emission plan.

Issue 5: PM_{2.5}

SLC's air permit application addresses only emissions of contaminants that are regulated by specific federal or state-enforceable applicable requirements. However, the Greenport facility will be emitting other contaminants which, while not currently regulated under federal law, nevertheless pose a significant risk to public health. Of particular concern are emissions of fine particulate matter known as PM_{2.5} (particulate matter with a diameter of less than 2.5 microns). SLC's analysis of PM_{2.5} emissions from the Greenport facility focuses solely on whether the emissions will exceed the newly adopted NAAQS, omitting any discussion whatsoever of the adverse effects of additional PM_{2.5} emissions on the health of persons living near the plant. These effects must be addressed as part of a complete SEQRA analysis. In addition, SLC's PM_{2.5} analysis ignores the impact of emissions from other nearby PM_{2.5} sources.

Issue 5-A: The DEIS Failed to Adequately Consider the Impacts from PM_{2.5}

SLC addresses emissions of fine particulate in Appendix H2 to the DEIS. As SLC correctly notes, EPA traditionally regulated PM₁₀ (particulate matter with a diameter of 10 microns or under) under the National Ambient Air Quality Standards (NAAQS). In conjunction with its mandatory review of the NAAQS for PM, EPA concluded that fine particulate posed a particular threat to public health and should be regulated separately. This conclusion was reached following an assessment of thousands of peer-reviewed scientific studies on PM emissions and extensive review by the scientific community, public interest groups, industry, and the general public. Among other things, EPA concluded that fine particles penetrate deeply in the lungs and thus are more likely than coarse particles to contribute to adverse health effects such as premature death, increased hospital admissions and emergency room visits (primarily involving the elderly and individuals with heart and lung conditions) and aggravation of existing conditions such as asthma.

Based on the results of this review, EPA revised the NAAQS for PM₁₀ and adopted a new NAAQS for PM_{2.5} in 1997. Implementation of the new standards was slowed somewhat by litigation challenging the standard on various grounds. The District Court for the District of Columbia Circuit vacated the new standards, concluding, among other things, that EPA had failed to articulate an "intelligible principle" for setting the NAAQS. Early this year, however, the Supreme Court reversed the D.C. Circuit Court, concluding that Congress had properly delegated rulemaking authority to EPA and upholding the PM_{2.5} standard.⁸ DEC currently is collecting the necessary data on ambient air concentrations of PM_{2.5} and should begin the process of designating nonattainment areas in the next several years.

For the reasons set forth below the analysis of PM_{2.5} in Appendix H2 of the DEIS is both

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Although dated April 27, 2001, SLC's DEIS fails to address the Supreme Court's decision, implying that the status of the PM_{2.5} standard is still uncertain.

legally and scientifically suspect. As a preliminary matter, Appendix H2 is improperly slanted toward enforcement of the Clean Air Act, analyzing the impact of PM_{2.5} emissions solely in relation to the NAAQS. SLC discusses only whether an assumed emission rate for PM_{2.5} would raise nearby ambient concentrations enough to exceed the assumed standard of 15 micrograms per cubic meter given a wide range of assumed possible PM_{2.5} levels. In particular, it provides estimates of an annual average PM_{2.5} increment over a 24-hour period, plus an estimate of the maximum increment that will be experienced only once per year. Appendix H2 does not, however, evaluate in any way the health risks posed by PM_{2.5}.

Unlike the air permitting process, SEQRA is focused, not on compliance with applicable requirements, but on assessing the actual impacts of the facility on the surrounding community. In particular, the SEQRA process requires SLC to carefully consider the potential adverse environmental impacts associated with the action and mitigate, avoid or minimize those impacts to the maximum extent practicable. This analysis is utterly lacking in Appendix H2.

SLC briefly mentions the adverse public health effects of PM_{2.5} but then suggests that there are scientific uncertainties concerning those effects. In discussing PM_{2.5}, SLC ignores the very abundant evidence summarized by EPA in the criteria document supporting the standard and accepted by the majority of scientists in the field. This research shows that PM_{2.5} poses a threat to public health at levels well below the standard.⁹ SLC fails to discuss in any meaningful way the public health impacts of PM_{2.5} from the Greenport facility, let alone specifically evaluate what impact the additional emissions of PM_{2.5} from the facility will have on the surrounding community.

The absence of this analysis is particularly striking since the Greenport facility will be located a short distance from several sensitive receptors. In particular, the plant will be located only 1 mile from Columbia Memorial Hospital and an elementary school. Appendix H2 does not address the impact of the Greenport facility on these receptors in any way. Moreover, although H2 averages emissions of PM_{2.5} over the year, the prevailing winds in the area are different in the summer and winter months. As a result, the concentrations of PM_{2.5}, and the potential impact on public health, may be significantly higher in one season than another. Appendix H2 fails to address this issue.

The scientific bases for SLC's emission estimates are also suspect. As a preliminary matter, SLC does not specify in Appendix H2 what emission rate it modeled. As a result, it is impossible to assess the accuracy of its emission estimates for the Greenport facility. Equally

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In fact, the Court of Appeals, in remanding the standard back to EPA, essentially acknowledged that there are no safe levels of PM_{2.5} in the atmosphere and any addition posed increased health risks. As a result, it concluded that EPA failed to articulate an "intelligible principle" for setting the standard at 15 micrograms annual average rather than at some lower level.

important, SLC modeled the dispersion of only its own assumed PM_{2.5} emissions. It ignored the impact of all other local sources of PM_{2.5} listed in the DEIS, including the Athens power plant which will be located a mere 4 miles away and will be a significant source of PM_{2.5}. Preliminary calculations suggest that if emissions from the Athens plant were properly considered, total PM_{2.5} emissions would be much higher than those estimated in Appendix H2 and could exceed the NAAQS standard set by EPA.

Finally, SLC focuses extensively on emissions of secondary PM_{2.5} which is produced spontaneously in the atmosphere by reactions among pollutant gases. In particular, SLC suggests that the reductions in emissions of NO_x and SO₂ associated with the shutdown of Catskill will result in significant reductions in secondary PM formation, offsetting emissions from the Greenport facility. As noted in the comments on SLC's draft air permit, SLC does not specifically commit in its permit to shut down Catskill, making reliance on these emission reductions questionable. Moreover, as SLC itself acknowledges, these reductions would occur in a different location than the primary PM emissions from the Greenport plant. Thus, it is uncertain what benefit, if any, these reductions will have for the members of the community living and working in the immediate vicinity of the Greenport plant who directly affected by primary PM_{2.5} emissions from the facility.

Where, as here, there is no enforceable standard and thus no firm basis for regulating emissions under the air program, DEC *must* assess under SEQRA whether these emissions will cause a significant adverse environmental impact, including a threat to public health. In particular, SLC must analyze various operating scenarios to determine the maximum daily, average daily and yearly maximum PM_{2.5} emissions from the facility and what areas those emissions are likely to impact, with particular attention to sensitive receptors. SLC must then examine what impact emissions at those levels will have on public health and the environment. DEC must then undertake the SEQRA analyses and issue findings and impose conditions demonstrating that adverse impacts have been mitigated to the maximum extent practicable.

The failure to properly consider PM_{2.5} raises a substantive and significant issue since DEC cannot satisfy its obligations under SEQRA without taking a hard look at the potential impacts from this project on that contaminant.

Issue 5-B: SLC's Own Data Indicates a Significant Increase in PM and PM_{2.5} Deposits on Sensitive Receptors in Proximity to the Plant

Friends of Hudson's consultants's, Camp, Dresser & McKee have reviewed the CD-ROM containing modeling files supplied by SLC's consultant's, Malcolm Pirnie to DEC as part of the air permit application. While CDM could not fully access the data on the disk, it did reveal that there will be a dramatic increase in PM at residential areas in close proximity to the Greenport facility, possibly including the hospital and an elementary school.

Impacts from SLC Greenport are determined from a simple terrain analysis (ISC modeling) and a complex terrain analysis (CTSCREEN). The CTSCREEN analysis is for receptors whose elevation is above the kiln stack. These receptors are the “hills” referred to in the Air Permit Application and on the CD-ROM, and are at a significant distance from the plant. The area around the plant is all simple terrain (ISC modeling).

Table C-17 of the Air Permit Application (p. C-28) shows the maximum impacts from the two modeling exercises. Note that except for PM₁₀ the complex terrain (“hills”) impacts are greater. Malcolm Pirnie uses these numbers and runs in its submission to DEC, but correctly use the highest (simple terrain) impacts for PM₁₀ on its tables in the permit application.

CDM was unable to determine the ISC outputs and thus could not know the exact locations of maximum and other impacts locally. However, CDM was able to use Figures H-1, H-2, and H-3 of Appendix H of the DEIS as a guide. Those figures present isopleths which generally correspond with the ISC outputs. In developing the isopleths for Appendix H, Malcolm Pirnie has assigned a PM_{2.5} percentage of about 35% of PM₁₀. That figure is in the low range of generally accepted PM_{2.5} percentage of PM₁₀, which is often considered to be closer to 60%. Nevertheless it still demonstrates the significant impact of the project on the simple (local) terrain.

Consider Table C-18 (page C-36) of the permit application. The annual PM₁₀ number is 5.23 NG/M^3 for emissions from SLC Greenport (at a location consistent with between the 2-2.0 NG/M^3 isopleths in the PM_{2.5}, Figure H-1). At that location, the total PM₁₀, adding all the other sources, including Catskill is 5.38 NG/M^3 . In other words at that location, PM₁₀ impact went from 0.15 NG/M^3 to 5.38 NG/M^3 .

A more dramatic increase is seen with the 24 hour numbers which more directly correlate with acute health problems caused by PM_{2.5}. The maximum PM₁₀ impact from SLC Greenport is 22.8 NG/M^3 , with other sources 22.9 NG/M^3 . In other words at that position PM₁₀ (and PM_{2.5}) impacts will increase by 2 orders of magnitude). Using SLC’s 35% allocation for PM_{2.5} for the 24 hour numbers would be 7.98 NG/M^3 for the facility and 8.015 NG/M^3 for the total, an increase of 229% (from 0.035 NG/M^3).

SLC must be asked to perform a health risk assessment for the sensitive receptors around the plant, given these local increases in PM_{2.5}. Unlike Catskill, which is not sited near sensitive receptors, the Greenport facility EIS must address such issues, and the present document does not, relying completely on the point that the new facility is only using 76% of the allowable 24 hours PSD increment for PM₁₀. That statement ignores the significant adverse impacts of PM_{2.5} in an area that appears to have low ambient levels of PM_{2.5} but will see an increase of almost 230% in PM_{2.5} levels.

This presents a substantial and significant issue that must be addressed by DEC under SEQRA and could result in a denial of the permit as an unmitigated adverse environmental impact.

Issue 5-B: Offer of Proof

Friends of Hudson will offer the testimony of Gabriel Miller of CDM who will testify to foregoing and explain how the SLC's air data shows a significant increase in direct deposits of PM_{2.5} in surrounding areas of Hudson and Greenport.

Friends of Hudson joins in the offer of proof presented by the Hudson Valley Preservation Coalition on the likely health effects of PM_{2.5}, specifically the testimony of Mr. Dennis Hlinka, Dr. George Thurston and Dr. Brenda Berry.

II. IMPACTS FROM MINING

Issue 6-A: DEC Must Consider All of the Potential Mining Activities Within the Context of SEQRA

Based upon SLC's unfounded claims that all of its mining activities, regardless of how they are expanded, are exempt from SEQRA, DEC has essentially failed to take a hard look at the mining activities. By failing to do so, DEC is failing to place restrictions on the mine operations including impacts from blasting, noise from rock crushing and visual impacts.

There seems to be little disagreement between DEC and SLC that the current Mined Land Reclamation Permit is based upon a Mined Land Use Plan (MLUP) which is based upon an extraction rate of 2 million tons per year (tpy) of total extraction or 1.8 million metric tons per year (mty). In one respect this is the maximum amount of output from the mine which can be considered grandfathered under SEQRA. However, SLC also recognizes that the mine has largely been unused for limestone production for the last quarter of a century and portions of the mine have been leased to A. Colarusso & Sons (Colarusso) for aggregate and shale mining at an annual rate of approximately 453,000 mty (500,000 tpy). Under this application, SLC seeks to expand the total output of the mine to 6.1 million mty a **338% increase** over the existing MLUP amount and a **1,346% increase** over the existing use!¹⁰

As noted, SEQRA excludes from its requirement actions undertaken or approved prior to September 1, 1976, the effective date of the legislation. However, there are two important exclusions:

¹⁰ Even those enormous increases do not represent the ceiling of potential impacts since SLC does not recognize any right of DEC to limit the level of operations and the draft Mining permit contains no limit on the annual rate of extraction.

(i) In the case of an action where it is still practicable either to modify the action in such a way as to mitigate potentially adverse environmental effects or to choose a feasible and less environmentally damaging alternative, in which case the commissioner may, at the request of any person or on his own motion, in a particular case, or generally in one or more classes of cases specified in rules and regulations, require the preparation of an environmental impact statement pursuant to this article; or

(ii) In the case of an action where the responsible agency proposes a modification of the action and the modification may result in a significant adverse effect on the environment, in which case an environmental impact statement shall be prepared with respect to such modification.

ECL Sec. 8-0111(5)(a).

Subparagraph (ii) above specifically requires consideration of the environmental impacts associated with the modification of a previously approved action. The first exemption, subparagraph (i) specifically vests in the Department the discretion to require an EIS and consider the potential environmental impacts when it is still practicable to modify an action to avoid adverse impacts. Both circumstances are clearly present in this case. In the first instance, the request to increase extraction activities more than three-fold clearly requires consideration of its environmental impacts. Secondly, where the life of the mine is greater than 100 years and adverse impacts will result from blasting, processing, traffic and visual impacts, it is practicable to mitigate those impacts by the imposition of reasonable conditions that do not impact SLC's ability to operate the mine. This is especially true in light of the fact that SLC has essentially not used the mine since the enactment of SEQRA. Instead, SLC has effectively warehoused the limestone in the mine and leased a portion of the mine to an adjoining mining operation (Colarusso) to allow it to take aggregate and shale from the mine.

This is a significant and substantive issue that may result in a denial of a permit or the imposition of significant conditions which will limit the operations of the mine to avoid the adverse environmental impacts that would otherwise result.

Issue 6-B: Blasting in the Mine Has Not Been Adequately Studied and Will Likely Result in Significant Adverse Impacts

SLC claims that the current MLUP permits 3 blasts per week with 3-5 seconds per blast. This equals 9-15 seconds of blast noise per week. The proposed updated MLUP calls for 2 blasts per week with 5-7 seconds per blast, or 10-14 seconds of blast noise per week. The total duration is essentially the same. SLC claims that the magnitude of the blasts will remain the same. Thus, leaving the impression that there is no change or potential adverse impact from the increased extraction rate. That is not an accurate assessment of the amount of blasting.

SLC claims it will produce a maximum of 80,000 metric tons of material per blast. [DEIS

Appendix A; p. A-15]. At the current approved extraction rate of 1.8 mty that equates to approximately 22.5 blasts a year, less than SLC's claim of 2 blasts a month as its current operations. What SLC does not disclose is that at its projected extraction rate of 6.1 mty, there will be more than 76 blasts at the at the maximum level equating to between 1 and 2 blasts each and every week of the year. Thus from a weekly rate standpoint, the duration of an individual blast may be similar but over a year there would be more than three times as many blast events (thus three times the potential for offsite damage). Blasting effects are unpredictable-the more blasts, the more chance something unexpected will happen with potentially damaging consequences.

The potential increase over the existing rate of extraction is even greater than over what may have been approved in previous MLUPs. Giving credence to SLC's claim that Colarusso currently removes 453,000 mty at the maximum blast level, that equals only 6.25 blasts a year, whereby SLC seeks permission to increase the number of blasting events more than 12 times!

SLC understates the blasting impacts by claiming that the perception of blasting will be about the same, except with a greater frequency. [DEIS p. A-17, emphasis added]. This is inaccurate because SLC has not conducted any study of the impacts on surrounding properties of existing blasting levels and an assessment of the impacts from the increased activity. While individual blasts may not produce vibrations sufficient to cause damage, the cumulative effects of a tripling of the number of blasts all at a maximum level is likely to cause structural damage. Reliance upon the U.S. Bureau of Mines standards is of no comfort and provides no protection for nearby landowners, since it only controls the size of individual blasts and does not address cumulative impacts of frequent, long-term blasting.

Current blasting occurs very infrequently and is of lesser magnitude than proposed by SLC. Nevertheless, that change has not been fully studied. Even more disturbing is that SLC has implicitly recognized the potential damage that will be caused by its blasting operations. On May 25, 2001, after the DEIS was released for public comment, SLC conducted some test blasting. As reported in the Register-Star, SLC placed 150 seismographs in Hudson, Greenport and Claverack and undertook a series of four test shots and one production shot. The Register-Star reported numerous citizen reports of impacts from the test blasts.

While SLC has conducted the test blast and collected seismic data, none of that information has been included in the DEIS or been made available to the public. What is known is that people who have lived for years in proximity to the existing mine noticed a substantial difference over past blasting operations by Colarusso. Thus, it would appear that Colarusso has not been using the same magnitude blasts as contemplated by SLC and the SLC blasting will have a significant impact on surrounding properties.

The draft mining permit does not protect against these impacts since it has not limitations on the duration or frequency of any blasting.

This is a significant and substantive issue as a proper consideration of the increased blasting activities is likely to result in significant conditions limiting the amount of blasting and the rate of extraction from the mine.

Issue 6-B: Offer of Proof

Friends of Hudson will present the expert testimony of Henry Boucher of CDM. Mr. Boucher's resume is attached as *Exhibit "E"*. Mr. Boucher will testify to the foregoing, including the amount of increased blasting and the inability of the Bureau of Mine Standards to address issues of cumulative impacts from blasting. Mr. Boucher will also testify that normal protocol for assessing possible impacts from blasting is to do an initial inventory of surrounding properties to get baseline data on structural conditions before blasting begins. Mr. Boucher will also testify regarding the importance of evaluating the seismic data collected by SLC to assess the off-site impacts of the blasts and the ability to use that data to design a blasting protocol that is protective of surrounding properties.

Friends of Hudson will also present the testimony of Peter Jung. Mr. Jung lives on Rossman Avenue, approximately 1 mile from the mine site. Mr. Jung will testify that he was home during the May 2001 test blast and that the blast was significantly stronger and more disruptive than previous blasts at the mine.

Issue 6-C: Noise Impacts from Mine Activities

Increased operation of the mine will also result in greater noise impacts which have not been fully considered in the DEIS. Specifically under the Future No-Build scenario, SLC claims with the increased off-site handling of an additional 500,000 tpy of aggregate, noise levels would be increased by an imperceptible 0.8 dBA. There is absolutely no substantiation of that claim. Moreover, the increased noise levels from the off-site transport of the additional aggregate are completely ignored. The projected negligible increase under the No-Build is unlikely because the projected doubling of aggregate removal implies a doubling of haul traffic, which would suggest an increase in haul traffic noise generation of 3 dBA, which is a noticeable increase..

SLC claim that movement of an additional 2 million mty of rock onsite is negligible to offsite receptors is not substantiated by quantitative analysis using the methodology established in the DEIS for estimating offsite noise levels.

The noise impact of the primary crusher on the Federation of Polish Sportsmen Club (FPS) is not adequately assessed. SLC's attenuation factor for the primary crusher appears overstated. A crusher noise level of 86.1 dBA at 50 feet was measured at the Catskill facility. To achieve the 30 dB of distance attenuation claimed by SLC, the receptor would need to be 1,600 feet from the crusher noise source. SLC's attenuation factor table provides for 30 dB of attenuation for distances of 800 to 1,600 feet. The table should provide for 24-30 dB of attenuation at this range

of distances. This means that unless the primary crusher is at least 1600 feet from the FPS Club, SLC's noise analysis underestimates the potential noise impact from this source. This potential underestimation of noise levels at the receptors applies to all the Catskill stationary noise sources measured at 50 feet. As a result, it is apparent that the noise analysis consistently understates the potential overall noise impact of the project.

This is a substantial and significant issue since a proper consideration of noise impacts would result in significant conditions to mitigate the noise impacts from the mine.

Issue 6-C: Offer of Proof

Friends of Hudson will present the expert testimony of Henry Boucher of CDM. Mr. Boucher will testify to the foregoing demonstrating the lack of supporting information in the DEIS regarding noise levels. Mr. Boucher will also testify about the errors in SLC's noise analyses which serves to understate the noise impacts from the mining activities.

Issue 6-D: Visual Impacts from Mining

The proposed MLUP continues SLC's intention at the latter stages of the use of the mine to continue mining until even the ridge of Becraft Hill is removed. While that impact is not expected to occur for some 50 years and after the cement plant is dismantled, it will nevertheless permanently remove an important feature in the area and permanently change the topography in Columbia County. Just recently the DEC Commissioner has ruled that the complete removal of a mountain for the sake of a gravel mining operation is an unmitigated adverse environmental impact which is inconsistent with the needs of the surrounding community. Lane Construction Corp. v. Cahill, 270 A.D. 2d 609 (3rd Dept. 2000). Clearly, such an issue should be considered in the context of the modification of the MLUP for SLC's Greenport quarry. It is still practicable to mitigate that adverse impact by modifying the permit to require SLC to maintain the ridge of Becraft Hill. While it may not result in SLC maximizing its profits from the mine, the standard under SEQRA is not a maximization of profit but a balancing of legitimate social and economic interests and the interest of maintaining the environment. Therefore the DEC should take the opportunity under ECL Sec. 8-0111(5)(a)(i) to consider the environmental impacts, including the visual impacts of the complete destruction of Becraft Hill and mitigate those adverse impacts that will result from the unnecessary removal of the ridge line.

Issue 6-D: Offer of Proof

FOH will offer the testimony of Richard Katzman. Mr. Katzman is president of KAZ, Inc. whose main factory is located immediately facing Becraft. Mr. Katzman will testify that he chose that location for his factory in large part to the aesthetic appeal and that removal of the ridgeline will irreparably harm the area.

III. HUDSON WATERFRONT ISSUES

Issue 7-A: SLC and Its Predecessors Have Illegally Filled Lands of the People of New York and Have Violated the Conditions of Previous Grants of Land

SLC proposes to expand the use of its existing dock area on the Hudson waterfront for the purpose of receiving HudsonMax vessels unloading coal, gypsum and other materials and simultaneously handle barges receiving cement. As part of its applications, SLC is seeking permits from the Army Corps of Engineers and DEC to dredge and fill the area adjacent to the dock. SLC has also applied to the Office of General Services for a grant of lands underwater.

Research by Friends of Hudson has revealed that SLC and/or its predecessors in interest have illegally filled in the Hudson River in excess of grants previously received from the State. SLC and its predecessors have also violated the express terms of the grant by failing to maintain a public boat landing within the property.

The entire area of the current lands along the Hudson River now occupied by SLC's dock is landfill in the bed of the Hudson River. The issue of title ownership concerns approximately 1400 feet along the River's edge that comprises SLC's primary area for its current and proposed active dock use. Authority for a precisely defined fill-in of this area of the Hudson River, along with conditions for the fill-in, was granted by State Legislative Act, Chapter 195, Laws of 1855, and was reconfirmed and slightly revised in a subsequent State Legislative Act, Chapter 167, Laws of 1861. These two Legislative Acts redefined the size and conditions of a previous "Grant of Land Underwater" issue by the State Land Commissioner through Letter Patent to John L. Graham dated December 12, 1836. There is no other apparent State authorization that provides any other definition of this area of the Hudson River permitted to be filled in or any other definition of conditions accompanying any fill-in. The Legislative Acts provide: (a) precise measurements of the area of the Hudson River allowed to be filled in for use of commerce (b) the condition for the filling of the River that states "hereby required forever hereafter to keep open the slip or space now opened by them to the south of their furnace of a width of at least sixty feet, and extending back from the channel of said river at least two hundred and fifty feet, for the use of the public." The restrictions defined by these acts for permitted landfill and the maintenance of the required public dock were honored for generations. Additional, and apparently unauthorized, landfill running most of the entire length of these 1400 feet of the Hudson River as well as the closing of the public dock was carried out by SLC and/or its immediate predecessor company at some time after approximately 1915.

This is a significant and substantive issue which may result in denial of the permit and/or the imposition of significant conditions. The issue of legal ownership of upland properties is a critical feature in the DEC's decision to issue a Protection of Waters Certification in connection with the application to the Army Corps of Engineers. The issue is also relevant under SEQRA and the coastal consistency determination. SLC has proposed a pedestrian access on the

landward side of its dock area as a means of mitigating the impact of its project and to improve access to the waterfront. Based upon the research uncovered by Friends of Hudson, SLC's proffered mitigation is clearly inadequate. SLC must restore direct public access to the river and modify its plans to accommodate waterfront revitalization, and any such plans must be designed to compensate the residents of the City for the nearly 100 years that SLC has illegally barred access to the river.

Issue 7-A: Offer of Proof

Friends of Hudson will offer the testimony of Don Christensen who did the title search which revealed the illegal fill by SLC or its predecessors and the failure to honor the condition of the original grant. Mr. Christensen will testify regarding the steps he took in his research and produce copies of the relevant deeds, grants, surveys, maps and historic paintings and photographs showing the presence of the public dock up to approximately 1915.

Friends of Hudson will also present the expert testimony of Robert McLean, Esq., a former attorney in the Office of General Services Bureau of Lands Underwater. A copy of Mr. McLedan's resume is attached as *Exhibit "F"*. Mr. McLean will testify that he reviewed Mr. Christensen's work and verified its accuracy and the lack of any intervening deeds which may have changed the conditions of the grants of lands underwater.

IV. NOISE IMPACTS

Issue 8: The SLC Project will Result in Unmitigated Noise Impacts

The noise impacts from the project have been seriously understated by SLC and will, by its own projected numbers result in a significant increase in noise levels at identified receptors. Department have not avoided, minimized or mitigated the problem. DEC has not required a mitigation plan as part of the DEIS and is only requiring a noise mitigation plan as a condition of the permit for the project and allowing SLC to operate with a 10 dBA increase in daytime ambient noise levels, even though a 10 dBA increase is often perceived as a doubling of noise levels. By sanctioning these unmitigated noise levels, the Department is violating its own guidance and permitting unnecessary adverse impacts on those who live and work near the SLC facilities.

In the DEIS, SLC relies heavily upon the Noise Control ordinances of Greenport and Hudson as support for its claim that noise from its operations will not have an adverse impact on the environment. The Town of Greenport and City of Hudson Noise Control Codes, which are essentially identical, establish a sound level standard of 70 decibels (at the nearest property line under the Greenport code, the Hudson ordinance appears to require that standard on the subject property). Contrary to the DEIS, the NYSDEC "Program Policy on Assessing and Mitigating Noise Impacts" does not state that local regulations have precedence over NYSDEC guidance

levels. The policy only states that it does not supersede any local noise ordinances or regulations. By limiting the project noise impact standard to the local code 70 dB level, SLC has not evaluated the project noise against other relevant and more stringent guidance/regulations. One example is 6NYCRR 360- 1.14 (p), which stipulates a 57 dB(A) Leq residential property noise level limit from 7 am to 10 p.m. in rural areas (47 dB(A) from 7 am to 10 p.m.). If this standard were applied to the project, it appears the facility would not comply with the standard without consideration of mitigation measures. Other noise regulations and guidelines typically used in evaluating project noise impacts (a purpose of the SEQRA process) include U.S. Department of Housing & Urban Development site acceptability standards, based on day-night energy-equivalent noise levels (Ldn) and EPA guidance on yearly Ldn values that protect public health and welfare with a margin of safety. In the case of the HUD guidance, Ldn levels above 65dB are usually considered unacceptable. For residential areas, EPA identifies an Ldn equal to or less than 55dB as sufficient to protect public health and welfare with a margin of safety. Since the facility is proposed for 24/7 operation, use of the Ldn should have been employed to evaluate the project against these recognized standards.

The DEIS states that for the purposes of noise code compliance, the 70dB limit in the local codes means a one-hour Leq of 70 dBA. This arbitrarily biases the analysis in SLC's favor because the one-hour Leq is a time-weighted average sound level over a one-hour period. By definition, a time weighted average level of 70dBA means actual sound levels will exceed 70dBA some of the time. In other words, the facility could meet a 70 dBA Leq (1) standard while violating the 70 dB local ordinance limit. Furthermore, because the local codes do not specify a time limit (e.g., Leq (1 hr.) or L10 (20 min.)), the codes are of questionable validity and usefulness for environmental impact assessment. It is likely that they are intended for enforcement use to measure whether the 70 dB limit is being exceeded instantaneously.

It is incorrect to state that the local codes are the applicable noise criteria and standards for evaluating the project's noise impacts. SEQRA requires evaluation of noise impacts and requires identification of adverse impacts and measures to avoid or mitigate those impacts to maximum extent practicable. In evaluating a project it is necessary to assess both compliance with applicable regulations and the degree of project impacts. Equating regulatory compliance with no adverse impact is not advisable because it is possible to achieve compliance with a particular code and have severe adverse impact at the same time. SLC's analysis basically asserts this conclusion.

The DEIS has other deficiencies with respect to noise:

1.

Table 15-2 is inconsistent with typical guidance on assessing the impacts of changes in noise levels. Other agencies (e.g., FHWA, NYCDEP) consider an increase of more than 5 dBA as a significant impact. This is important because at most receptors (Nos. 1, 2, 3, 5 & 6) predicted project noise increments under certain conditions are greater than 5 dBA; in fact, several receptors are predicted to have more than a 10 dBA increase. Yet the DEIS erroneously

concludes that the project would not result in any significant adverse impact from stationary or mobile noise sources.

2.

According to the NYSDEC “Program Policy on Assessing and Mitigating Noise Impacts”, increases as small as 3-6 dB may have adverse noise impact where the most sensitive of receptors are present. Increases more than 6 dB require closer analysis of impact potential and increases of 10 dB or more deserve consideration of avoidance and mitigation measures in most cases. As noted at several project receptors, increases of considerably more than 10 dB are predicted. Further guidance in the document states that in non-industrial settings (e.g., at receptor No. 6 at the Federation of Polish Sportsman Club) project noise levels should not exceed ambient levels at the receptor by more than 6 dBA. At receptor No. 6 the exceedance is up to 14.7 dBA. The applicant’s analysis does not comply with NYSDEC guidance.

3.

For sensitive receptors, severe impacts can occur with noise increases as low as 1 or 2 dBA. For example, consider the Federal Transit Administration “Transit Noise and Vibration Impact Assessment” document which relates project noise levels to ambient noise levels. According to the FTA document, where ambient levels are low (45-50 dBA), noise increases with a project of 5 to 7 dBA constitute an impact. However, where ambient noise levels are high (65 to 70 dBA), noise increases of as little as 1 dBA constitute an impact and increases of 3 to 4 dBA constitute a severe impact. A review of Tables 15-6 and 15-7 in the DEIS shows major impacts according to these criteria.

4.

Many of the monitoring locations were too close to roads and highways to accurately represent ambient conditions in the study area. Over influence of road noise will result in an overestimate of background ambient levels.

5.

There is no spectral analysis of project noise levels. The use of octave-band SPL’s as a noise descriptor for industrial sources is typically included in a comprehensive noise impact assessment because industrial facilities can generate substantial low-frequency noise levels with significant impacts. The non-linearity of human hearing causes sounds dominated by low frequency components to seem louder than broadband sounds that have the same A-weighted level.

6.

Noise from the mining operations including blasting should be included and should be viewed as part of the project. Considering only part of an action is contrary to the intent of SEQRA. Excluding evaluation of blasting noise and vibration impacts and mitigation is an omission in the analysis.

7.

Sunday noise levels are sometimes lower than Saturday. Since the project proposes a 7-day-a-week operation, the maximum change in noise (impact) may occur on Sunday not Saturday. The evaluation of weekend project noise impacts based on Saturday levels is a deficiency in the analysis unless it was verified that Sunday levels are not significantly different than Saturday levels in the study area.

8.

Substantiation is lacking that use of Catskill plant measurements accurately represents the potential noise generation of the Greenport plant. Differences in size of operation, for example, can have a substantial effect on noise levels. Documentation of the actual noise to be generated by the extensive conveyor system is inadequate. Absent more data, it is not possible to determine if the project noise levels have been underestimated or overestimated.

9.

The DEIS is lacking in any assessment of the noise impacts from the dock operations. No potential noise levels from the unloading or loading of ships and barges are presented nor is there any mention of any measures to limit the noise generated from those operations. Related to the lack of information on noise generated from the dock is the lack of any assessment of noise impact to Athens which is directly across the river from the dock. Even if the Hudson noise ordinance was a definitive limitation for SEQRA consideration in the City of Hudson (which it is not), as Lead Agency, DEC has an to assure that the project will not result in adverse noise impacts on surrounding communities such as Athens and Claverack.

Individually and collectively these present substantive and significant issues for adjudication that could result in a denial of the requested permits or the imposition of significant conditions. As presented, DEC cannot issue SEQRA findings for the project without further information on the noise impacts and further information from the applicant regarding the planned mitigation of the noise impacts.

Issue 8: Offer of Proof

Friends of Hudson will present the expert testimony of Henry Boucher of CDM. Mr. Boucher will testify to the foregoing and as to the nature and methodologies of measuring sound and the means to mitigate noise impacts.

V. VISUAL IMPACTS

Issue 9-A: The Project Will Have A Significant Adverse Impact on the Visual Character of the Area

Mack Rugg of CDM has reviewed the Visual Resources chapter of the DEIS and will testify to the following:

The Visual Resources chapter of the DEIS presents extensive information relevant to the visual impacts of the proposed Greenport project, and also draws general conclusions about the visual impacts of the project, but the DEIS does not provide an assessment of the visual impacts at the individual viewpoints chosen for use in the study. The attached tables 1 and 2 were compiled by CDM to provide such an analysis, based entirely on the information provided in the DEIS.

The visual impact analysis presented in tables 1 and 2 is based on the following guidelines:

- The primary cause of negative visual impact is incongruity. Visual incongruities with particular relevance to the proposed SLC project include the following:
 - A built structure in an otherwise natural setting
 - A modern structure in an otherwise historic setting
 - An industrial structure in an otherwise residential or agricultural setting
 - Breaks in the horizon or ridgeline
- An object that extends above the horizon or ridgeline has greater visual impact than an identical object that does not.
- The greater the otherwise unbroken visual expanse in which an object appears, the greater its visual impact.
- An object in the background has less visual impact in a scene dominated by objects in the foreground.
- Because the human eye is drawn to water in a scene consisting primarily of land, an impact to the view of the water is more significant than an impact to the view of the land.
- Objects that appear large have greater visual impact than objects that appear small.
- The presence of a well-maintained barge at a dock neither enhances nor detracts from the aesthetic quality of the dock. This analysis assumes that barges stopping at the Hudson dock will be well maintained.

In its visual resources analysis, SLC states several times that the proposed project site has a history of industrial use. In an analysis of visual impacts, compatibility with existing land use is relevant only to the extent that it reduces the visual incongruity of the proposed structures. The fact that the proposed cement plant would be generally consistent with historic land use in the vicinity of the Greenport site does not in any way mitigate the aesthetic damage the plant would cause at locations from which the previous industrial uses were not visible.

Table 1 assesses the visual impact at the "Key Viewpoints" listed in Table 5-17 of the DEIS. The DEIS indicates that the key viewpoints were selected to be representative of all viewpoints in the area, with some preference given to relatively unobstructed views, viewpoints of public significance, views that would be seen by relatively large numbers of people, and viewpoints that would improve the geographic distribution of the "key viewpoints" as a whole. Table 2 assesses the visual impact at additional viewpoints. Many viewpoints for which photographs are provided in Appendix B of the DEIS.

The visual impact assessment presented in tables 1 and 2 is based on the photographs reproduced in DEIS Appendix B1, Key Viewpoints, and Appendix B2, Photographic Simulations. For each photograph from each viewpoint, appendices B1 and B2 include a color photocopy of the photograph as taken, as well as a color photocopy with the addition of a computer simulation of elements of the proposed facility that would be visible in the scene.

For each view of the plant, Appendix B1 also includes a color copy of the photograph with a computer simulation of the "likely worst case winter plume" from the stack. Although the stack is visible in many of the scenes intended to show the worst-case plume, none of the drawn-in plumes are discernible on the color copies in the DEIS. It was therefore impossible to assess the visual impact of the plume. Unless specifically indicated, all visual impacts referred to in this analysis are impacts of the proposed structures alone. Any visible plume would add to the impact.

If no element of the proposed project is discernible in a simulation reproduced in Appendix B2, the view for which that simulation was prepared is not included in Table 2. It could not be determined whether the project was indiscernible because of the quality of the reproduction or because no element of the proposed project would be visible in the view in question.

For purposes of the analysis presented in tables 1 and 2, elements of the proposed project that would have a significant negative visual impact during "leaf-off" season but would not be visible during "leaf-on" season are assigned a "slight" negative visual impact. Similarly, elements of the proposed project that would have a significant positive visual impact during leaf-off season but would have no visual impact during leaf-on season are assigned a "slight" positive visual impact.

The detailed visual impacts analysis summarized in tables 1 and 2 shows the following:

- SLC's proposed changes at the Hudson dock would have a positive visual impact at three "key viewpoints" in Table 1 and no net impact at two. The changes at the dock would have a negative impact on the view from the Rossman-Prospect Avenue Historic District, a "key viewpoint," because the proposed conveyor and conveyor tower would partially block the view of the Hudson River. The changes at the dock would have a positive visual impact at four of the additional viewpoints in Table 2 and no net impact at two of the additional

viewpoints.¹¹

- SLC's proposed changes at the former Atlas Cement plant would have a positive visual impact at two key viewpoints because structures would be removed.
- The proposed cement manufacturing plant in the Greenport mine would have a negative impact at 25 of the 27 "key viewpoints" for which simulated views of the plant are provided in Appendix B1 of the DEIS. The plant would have no impact at the other two "key viewpoints." Of the 25 negative impacts, 12 would be significant and 5 severe. Among the significantly impacted views would be the view from the Rossman-Prospect Avenue Historic District in Hudson and the view from New York State Route 385 north of Athens, a designated "scenic byway" and "scenic area of statewide significance." Among the five severely impacted views would be the following:
 - The view from Promenade Hill Park, a community park in Hudson
 - The view from the Front Street-Parade Hill-Lower Warren Street Historic District in Hudson
 - The view from Cosy Cottage and grounds at Olana State Historic Site, a designated "scenic area of statewide significance."
 - The view of the Hudson-Athens Lighthouse from Hudson River point 1. The Hudson is a designated American Heritage River and the lighthouse is a registered historic site.

The proposed Greenport cement plant would have a negative impact at all 15 of the additional viewpoints in Table 2 for which discernible simulations of the plant are provided in Appendix B2 of the DEIS. The visual impact of the proposed facility would be significant at 10 of the 15 viewpoints and would be severe at 3 others.

The negative visual impacts of the proposed cement plant far outweigh the positive impacts of the proposed changes at the former Atlas Cement plant and the Hudson dock. The negative impacts of the plant would affect many more viewpoints than the positive impacts of the changes at the Hudson dock and the Atlas site. Perhaps more important, construction of the proposed Greenport cement plant would introduce a modern industrial presence into many formerly natural, historic, residential and agricultural scenes. Improving the appearance of existing industrial sites, some of which were essentially abandoned by the applicant and allowed to detract from the landscape, cannot mitigate this type of aesthetic impact.

Demolition of the Catskill cement manufacturing facility will not offset the impacts of the

¹¹ While SLC may have a positive impact from the removal of the occasional salt piles, the DEIS fails to discuss where those piles will be relocated to, therefore there may no be any positive impact.

proposed cement plant, because the largest structures at the Catskill facility are more than 200 feet shorter than the proposed preheated tower and stack.

Viewpoint 20 is next to a ball field behind Hudson High School, with the upper portion of the preheated tower and stack visible on the other side of the school. It appears that the visual impact would be greater in front of the school, which is probably a more active area on most days than the ball field.

Two of the "key viewpoints" in SLC's visual resources analysis, VP#64.1 and VP#138.2, are highway intersections: Because the foreground tends to be more cluttered in views from intersections than in views from other points along the road, the use of intersections as viewpoints distorts the visual analysis in SLC's favor. The rating for viewpoint 64.1 might be severely negative rather than significantly negative if the photograph had not been taken at the intersection, where the foreground includes two utility poles and a road sign. The rating for viewpoint 138.2 would probably be significantly negative if the photographs had been taken with the intersection behind the photographer rather than in front of the photographer. The foreground of the photographs is cluttered with road signs, utility poles, parked mobile homes, vehicles waiting at the light, and in one photo the traffic lights themselves.

Several statements from the Visual Resources chapter of the DEIS are worthy of special note:

"The preheated and cement silos are tall vertical elements that break the sinuous horizontal flow of the visible horizon" (page 5-56).

"The height and mass of the proposed cement plant would be disproportionate in scale to other elements of the regional landscape. The proposed cement plant would be a highly dominant visual element" (page 5-57).

"During the 1830s and 1840s, the popularity of this region helped to establish Columbia and Greene counties as the geographic center of the American Romantic Movement, which was founded on the beauties and value of our relationship to nature" (page 5-11). More than 150 years later, millions of people feel the same way about the Columbia/Greene area and the Hudson Valley as a whole, making the preservation of its aesthetic resources especially important. A current 10-part series in *The New York Times*, "In Art's Footsteps," is exploring the ways in which contemporary residents and visitors of the Hudson River region reflect the values of the 19th century landscape painters of the Hudson River School. What the painters and many current residents and visitors have in common is an appreciation for the aesthetic values of the region combined with an acute awareness of the threats posed by increasing human use.

"The Greenport Project will clearly alter the visual impression in the visual study area as the facilities are perceived at the site, from nearby and, in some instances, from a considerable distance" (page 5-62).

In the minds of millions of people inside and outside the Hudson Valley, the essence of the Columbia County area is the beauty of its land forms. Industry can be a welcome element of the regional landscape if it conforms to the dimensions of the land. SLC has proposed to construct a facility on a scale larger than that of the land around it. This would do significant damage to the aesthetic qualities for which the Hudson Valley is most valued, both by residents and by travelers. SLC's own visual analysis shows that the proposed preheated tower and primary stack would be visible above the horizon at numerous locations for miles around the plant. The tower and stack would become hard focal points of otherwise soft and natural vistas, ruining their aesthetic quality and restorative power.

The proposed Greenport cement plant would have substantial visual impacts that can not be mitigated without fundamental changes in the project.

The foregoing represent a substantial and significant issue that should result in a denial of the project. The adverse visual impacts of the project cannot be mitigated at that location and the minimal social, economic and other issues that can be considered do not outweigh the unmitigated adverse impacts.

Issue 9-A: Offer of Proof

As noted previously, Mack Rugg of CDM will provide the foregoing expert testimony on the visual impacts of the project. Mr. Rugg's resume is attached as *Exhibit "G"*.

Issue 9-B: Simulations Commissioned by Friends of Hudson Demonstrate that the Visual Impacts Will Be Even Greater

Friends of Hudson has retained the services of Vincent Bilotta, an experienced graphic designer with over 15 years of experience with graphic design, animation and visual simulation. Using SLC's own data information in the DEIS, Mr. Bilotta has created independent simulations from some of the same viewpoints used by SLC. Mr. Bilotta will present the simulations at the adjudicatory hearing and will bring samples. Mr. Bilotta's simulations demonstrate that, in fact, the plant will appear far larger than shown in the DEIS. Mr. Bilotta used standard simulation software, including World Construction Set, ER Mapper and ArcGIS 8.1 plus USGS elevation data and SLC's own description of its structures set forth at Table 1-3 of the DEIS.

By contrast, Mr. Bilotta will testify that there is no foundation in the DEIS for the methodology employed by SLC's consultant who did the visual simulations, so there is no way of knowing what programs were used or the accuracy of the representations. Mr. Bilotta will also testify that the best way to create accurate visual simulations is for SLC to fly another tethered balloon on a day when he is given notice. At that time Mr. Bilotta can take pictures from the relevant viewpoints and use the balloon as a definitive reference point for the visual simulations.

Presentation of professionally prepared visual simulations which demonstrate significantly greater visual impacts than even those recognized by the applicant present a substantive and significant issue which can result in the denial of the permits for the project.

VI. Socioeconomic and Fiscal Conditions

In most instances the DEIS overstates the economic benefits of the project, however, with respect to the property tax implications, the DEIS dramatically understates the value of the project. The DEIS also misrepresents the current employment conditions in Columbia County without recognizing the growth in the area and the inability of local employers to find skilled employees.

Economic issues are relevant in the SEQRA process as the potential social and economic implications of the action are one of the elements of an EIS. 6 NYCRR Sec. 617.9(b)(5)(i). These issues are relevant, not because SEQRA is intended to protect any particular economic interest, but rather as a necessary element in the final balancing required for the SEQRA Findings. At the culmination of the SEQRA process, the Lead Agency and each Involved Agency must issue findings that certify that “consistent with social, economic and other essential considerations from among the reasonable alternatives available, the action is one that avoids or minimizes adverse environmental impacts to the maximum extent practicable . . .”. 6 NYCRR Sec. 617.11(d)(5).

Issue 10-A: SLC Overstates the Direct and Indirect Economic Benefits

In the first instance is the question of any change in employment when the facility is in full operation. In the DEIS [p. 3-14] SLC admits “the proposed project would result in little net change to SLC employment”. Comparing its total employment today with projected employment, SLC sees a net increase of only one job. SLC recognizes that most of its current Catskill employees will transfer to Greenport, yet SLC claims that 20% of its total employment will represent new hires. SLC provides no substantiation for that estimate, since the Greenport facility is in such close proximity to its existing operations and if the wages and benefits claimed by SLC are so attractive, there is no discernable reason why all the employees at Catskill would not seek to retain their jobs. Therefore, there is a real possibility that none of the employment will constitute “new” jobs.

SLC disguises the lack of economic benefit of the project by projecting annual local input in the economy of approximately \$ 48 Million (DEIS Table 3-10). However, that table should be more clearly characterized as a gross or existing input to the economy. It does not show the net increase provided by the project, but includes the supposed economic input from the existing Catskill and Greenport operations. If one were to accept, without question, SLC’s claim that 20% of its total employment will be new hires, then at best the 20% figure for direct and indirect

economic inputs must be used for all the calculations. Thus instead of the claimed \$ 48 Million economic benefit, the benefit is only \$ 9.7 Million. Even that figure is without validation by SLC regarding its claimed wage scale, distribution of employees, rate of new hires and validity of the assumptions for multipliers and direct expenditures by SLC in the local economy.

Economic Benefits from Annual Operation
of Greenport Facility

	DEIS	Probable
	Total in Columbia & Greene Counties	Total in Columbia & Greene Counties
Direct Benefits	(2000 Dollars)	(2000 Dollars)
Wages & Salaries	\$ 10,200,000.00	\$ 2,040,000.00
Other	\$ 23,130.00	\$ 4,626,000.00
Indirect Benefits		
Wages & Salaries	\$ 10,800.00	\$ 2,016,000.00
Other	\$ 5,330.00	\$ 1,066,000.00
Total	\$ 48,740.00	\$ 9,748,000.00

The DEIS also overstates the economic value of the construction phase of the project. While SLC projects that \$121.7 Million of its \$320 Million construction budget will be a direct input into the local economy, (DEIS Table 3-8) the actual amount will more likely be approximately \$ 71 Million.

Summary of Capital Investments
In Construction of the Greenport Facility

		DEIS	Probable
		Assumed Direct Input in Local Economy	Assumed Direct Input in Local Economy
	Total Value		
Expenditure	(2000 Dollars)	(2000 Dollars)	
Equipment	\$ 131,407,000.00	\$ 6,848,000.00	\$ 6,848,000.00
Construction	\$ 128,727,000.00	\$ 106,438,000.00	\$ 55,870,000.00
Engineering	\$ 28,021,000.00	\$ 8,042,000.00	\$ 8,042,000.00
Misc. Costs & Fees	\$ 2,940,000.00	\$ 398,000.00	\$ 398,000.00
Contingency	\$ 29,110,000.00	\$-0-	-0-
Total	\$ 320,205,000.00	\$ 121,726,000.00	\$ 71,158,000.00

Even those assumptions are likely to be overstated. SLC provides no definition of its term “local” and thus raises questions about its assumptions. For example, SLC claims a local benefit of over \$ 8 Million in engineering fees. However, SLC does not identify what engineering firm in Columbia or Greene Counties it intends to retain for the project. In fact, other than its own in-house engineering concern, SLC seems to be relying upon Malcolm Pirnie as its primary engineer. Malcolm Pirnie’s offices are in White Plains and Latham and thus cannot be considered as a local economic benefit to Columbia or Greene Counties. Furthermore, most of the cost is associated with construction costs, however there is insufficient support for the claim that much if any of

those jobs will be from Columbia County. The latest labor statistics for Columbia County show that 666 persons were employed in construction. While the project will require 813 person years of employment over the two year construction schedule it is evident that there is insufficient local skilled construction labor to meet that need, resulting in a likelihood that most jobs will be filled from outside the area, thus providing far less local employment. It also should go without saying, that construction related benefits, even if they were projected accurately are, by definition, extremely temporary, in this case lasting at most two years, and are insufficient reason to support a project with unmitigated environmental impacts.

Issue 10-A: Offer of Proof

With respect to the direct and indirect economic benefits, FOH will present the testimony of Robert B. Pauls. Mr. Pauls is managing partner of Robert B. Pauls, LLC a New York City based Real Estate and Planning Consultancy. Mr. Pauls' curriculum vitae is attached as *Exhibit "H"*. Mr. Pauls has extensive experience performing market studies, financial analyses and economic impact analysis. Mr. Pauls will testify that he used standard methodologies for analyzing economic impacts, including application of the RIMS II program. He will testify that a proper analysis of the economic impacts of the project would look at the net change created from the project and not simply the existing economic contribution of SLC. Mr. Pauls will also testify as to how he calculated the economic impact from construction by using SLC's figures to extrapolate from the estimated sales tax revenue to calculate the total amount of locally purchased materials and that using that method the proper amount is \$24.3 Million.

Issue 10-B: SLC Understates its Property Tax Obligations

While SLC overstates the economic benefits of construction and operation, it understates the tax benefit it would provide to Greenport and Hudson if the project were actually built. It must first be noted that Friends of Hudson does not support constructing the facility in Greenport and Hudson. Friends of Hudson believes that if any new cement plant is built, it should be built in the vicinity of the existing Catskill plant. Nevertheless, in the unlikely event an SLC facility is built in Greenport and Hudson, Friends of Hudson is determined that any such facility pay its fair share of property and school taxes. In order for that to happen, the facility must be properly assessed.

At pages 3-16 and 3-17 of the DEIS, SLC claims that the assessed valuation of the Greenport properties will increase from \$ 6.6 Million to \$ 18.4 Million and the Hudson properties will increase from \$ 793,900 to \$ 6.2 Million. SLC claims that most of the \$320 Million construction costs are for equipment which is not included in property tax assessments. SLC's claim grossly underestimates its tax obligations to the communities. While SLC sees a total assessed valuation of approximately \$ 24.6 Million, a more accurate figure would conservatively be set at \$ 250 Million. If in fact this plant were to be built, it is important that there be a finding of fact and a commitment by SLC recognizing its tax obligations, otherwise any economic benefits of the project would be cursory, at best.

Issue 10-B: Offer of Proof

With respect to the proper assessed value of SLC's plant, FOH will present the testimony of Barry M. Herbold, ASA, President of Empire State Appraisal Consultants. Mr. Herbold's statement of qualifications is attached as *Exhibit "I"*. Mr. Herbold has served as a consultant to the Town of Coeymans and the Town of Catskill regarding the appraisal of the Blue Circle Cement plant in Coeymans and the Lehigh/Glens Falls facility in Catskill. Mr. Herbold also appraised the SLC holdings in Greenport on behalf of the Town of Greenport. Mr. Herbold will testify that an appraisal of cement plants uses a comparable sales analysis as well as a replacement cost less depreciation method and the appraiser will then make adjustments between the two methods. Mr. Herbold will testify that the majority of components of a cement plant are considered taxable real property and that in his experience the reproduction cost of a cement plant is at least \$125 per ton of production capacity. As a result he will testify that the assessed value of the plant would be at least \$ 250 Million.

Issue 10-C: SLC is Unlikely to Improve the Local Economic Environment

SLC claims that it's project will improve the local economy by its direct and indirect investment. SLC's claim is based, in part, on assumptions of its local hiring, hiring by others stimulated by SLC's presence and the assumptions about the local labor force. Those assumptions are not supported by the facts.

While Hudson has a noticeable presence of unemployed and underemployed persons, most of those people are unskilled and lack fundamental work skills necessary to compete in the modern economy. Local employers have difficulty finding skilled, reliable workers and many of the better paying jobs are filled by people commuting from the Albany area. SLC has not identified the type of employees it will be hiring, the skills they will be required to possess or where it expects to find the employees. Similarly, there is no indication of the type of employment that will be generated indirectly. If the jobs created will be relatively low-paying unskilled jobs, there is a surplus of those jobs available and local employers are increasing their wage and benefit packages to attract and retain those employees.

To fill skilled higher paying jobs the community must be attractive for those workers willing to relocate to the area. Such workers are concerned not only with good-paying jobs but a community that has a good quality of life. While local employers originally welcomed the SLC project, some are now questioning whether the scale of its operations and the pollution, traffic and noise it will generate will detract more from the community than it will add. The net result is that it may drive away the types of skilled employees that those employers are trying to attract. SLC has not undertaken the type of analysis necessary to demonstrate that there will be an improvement to the area, rather than a deterioration.

Issue 10-C: Offer of Proof

With respect to the economic conditions in Hudson, FOH will present the testimony of Richard Katzman, CEO of Kaz, Inc., the largest manufacturing employer in Columbia County. Mr. Katzman will testify with respect to his current work force, the difficulties in hiring skilled employees and the problems with an adequate supply of unskilled employees. Mr. Katzman will also testify regarding some of the decisions regarding Kaz, Inc.'s decision to build a large new manufacturing facility in Greenport and his concerns that the SLC project will adversely effect the community and the ability of companies to attract skilled talent to live and work in the community should the project proceed as proposed.

VII. WATER QUALITY/SPDES PERMITS

The SPDES application covers outfall 001 for discharges from the detention pond at the dock area to the Hudson River and outfall 002 for discharges from the detention pond in the main plant area to the mine impoundment. The SPDES application contains substantial errors and omissions concerning both the quantity and the quality of the discharges to be included in the permit. These errors and omissions should cause the permit application to be denied.

Issue 11-A: SLC's Stormwater Control Structures Are Inadequate to Store and Treat Runoff

SLC fails to provide an estimate of the daily average flow of stormwater into the detention ponds, as required by item 9 of Section I of the SPDES application form.

SLC's SPDES application states that the daily maximum flow and the maximum design flow rate at both outfalls are 0.01 million gallons per day, or 10,000 gallons per day. The *Conceptual Storm Water Pollution Prevention Plan--Operations*, attached to the application, states that "the detention pond for the manufacturing plant area will have sufficient capacity to handle the 10-year, 24-hour storm event" (Section 2.2.1(b), page 6). The plan also states that "storm water from the entire dock area including the stockpiled raw materials will be collected and conveyed to a storm water detention pond, which will be designed to handle a 10-year, 24-hour storm event" (Section 2.2.2(b), page 7). These statements contradict Chapter 1 of the DEIS, which states that both the detention pond for the plant area and the detention pond for the dock area would have sufficient capacity to handle the 25-year, 24-hour storm event (pages 1-21 and 1-30).

The "Cement Plant Drainage Plan" provided in the SPDES application gives the capacity of the detention pond in the plant area as 120,000 gallons. The drawing indicates that the impervious surfaces (pavement and buildings) that drain to the detention pond total approximately 8.6 acres. The 10-year, 24-hour storm at the site brings approximately 4.8 inches of rain. Based on 90-percent runoff, a conservative estimate for impervious surfaces in a storm of that magnitude, the total runoff from the impervious surfaces that drain to the detention pond

would be approximately 1.0 million gallons in the 24 hours of the storm. This estimate does not include any runoff from the landscaped portions of the site.

If the stormwater detention pond were entirely empty when the storm began, the 1-day discharge to the mine impoundment would be approximately 1.0 millions gallons minus 120,000 gallons, or approximately 880,000 gallons. This is almost two orders of magnitude greater than the maximum daily discharge of 10,000 gallons listed in the SPDES permit. Under such circumstances, or even under less severe conditions, the detention pond could not be effective as a settling basin for solids or as an oil-water separator, as claimed by SLC.

The Greenport Dock Grading Layout Plan provided in the SPDES application does not indicate the capacity of the detention pond proposed for the dock area. To handle the 10-year, 24-hour storm event, a detention pond with the length and width indicated on the layout plan would need more than 6 feet of available depth just to handle the runoff from the concrete portion of the dock area.

It should be noted that the scale of 1 to 750 given on the Cement Plant Drainage Plan and the scale of 1 to 1,000 given on the Greenport Dock Grading Layout Plan are inaccurate. The actual drainage areas, which must be calculated based on the scales provided on other drawings, are approximately 4.5 times as large as is indicated by the scales listed on the drawings in the SPDES permit.

These comments raise substantive and significant issues which demonstrate that a SPDES permit for this project cannot be approved as the stormwater control measures are currently designed.

Issue 11-A: Offer of Proof

Friends of Hudson will offer the expert testimony of Mack Rugg of CDM. Mr. Rugg will testify to the foregoing.

Issue 11-B: SLC Provides Inadequate Information of the Contaminants in the Stormwater and the Ability of the System to Treat the Stormwater

Item 19 of Section I of the SPDES application (form NY-2C) requires information on substances, chemicals and chemical elements that are present at the facility in significant quantity and are listed in tables 6 through 10 of the instructions to form NY-2C. SLC fails to list settleable solids, included in Table 7 of the instructions, and total calcium, included in Table 8 of the instructions. All of the solid materials SLC uses, including coal and gypsum stored in open piles at the dock and the limestone from the existing Greenport mine, contain substantial quantities of settleable solids. The limestone (calcium carbonate) and the lime (calcium oxide) SLC derives from the limestone both contain a large percentage of total calcium. SLC also uses calcium in the form of gypsum, whose chemical name is hydrous calcium sulfate.

SLC's list of substances in item 19 of Section I includes sulfate, total sodium, chloride, total aluminum, total magnesium, total manganese, and total titanium. The only substance indicated as being present in the discharge is chloride. Sodium must also be present in the discharge, because its source is rock salt, or sodium chloride. Every chloride ion in dissolving rock salt is accompanied by a sodium ion. More important is the likelihood that any substance stored or handled outdoors in significant quantity is or will be present in the discharge. If SLC claims that a substance it stores or handles outdoors will not be present in the discharge, it should provide a detailed and specific explanation of how the substance will be kept out of the discharge. It is not sufficient to say that a substance will be removed in the detention ponds, especially in light of SLC's failure to provide any technical information on the functioning of the detention ponds.

The instructions for item 19 of Section I of the SPDES application directs the applicant to provide sampling results for any substances that are listed in tables 6 through 8 of the instructions and that may be present in the discharge. Each of the seven substances SLC lists in item 19 (see paragraph above) is listed in Table 7 of the instructions, and total calcium is listed in Table 8. Of the total of eight substances, SLC only provides sampling results for chloride.

Item 11 of Section II of the SPDES application asks if the discharge from the outfall is treated to remove pollutants. SLC answers "no" to this question for both outfalls, and therefore provides none of the information requested in the application form concerning the treatment process, the pollutants the treatment is intended to remove, and the design flow rate. In Chapter 1 of the DEIS and in the *Conceptual Storm Water Pollution Prevention Plan--Operations* attached to the SPDES application, however, SLC states that the stormwater detention ponds will be used to remove solids and oil and grease from the stormwater prior to discharge (DEIS 1-21 and 1-30; SPDES divider 4, pages 6 and 7). If this is true, the treatment should be addressed in the permitting process.

Item 12 of Section II of the SPDES application asks if the facility has "planned changes in production, which will materially alter the quantity or quality of the discharge from this outfall." SLC answers "no" to this question for outfall 001 (dock area), despite the fact that its response to item 10 of Section I of the application indicates that the current storage of road salt at the dock will be replaced by storage of coal, petroleum coke, gypsum, bauxite, and granulated blast furnace slag. It is probable that this change in material storage, which is a direct result of the planned changes in production at the plant site, will materially alter the quality of the discharge from outfall 001.

SLC answers "no" to the same question for outfall 002 (plant area), despite the fact that it proposes to build a major manufacturing facility on the site that will drain to outfall 002. Because the outfall will be created as an element of the proposed facility, the "planned changes in production" that the proposed facility represents will materially alter the quantity and quality of the discharge from the outfall.

SLC should answer “yes” to item 12 of Section II for both outfalls and should provide the information requested under item 12.

The foregoing represent substantive and significant issues that preclude issuance of a SPDES permit until the information is provided and the applicant can demonstrate the treatability of the effluent.

Issue 11-B: Offer of Proof

Friends of Hudson will offer the expert testimony of Mack Rugg of CDM. Mr. Rugg will testify to the foregoing.

VIII. TRAFFIC AND TRANSPORTATION

Issue 12: There Is No Condition to Assure Maintenance of the Assumption in the Traffic Analyses

While the fundamental methodology of the traffic section of the DEIS appears acceptable, it is based upon an assumption that is not embodied in any operating condition in the draft permits. The traffic analysis assumes that 80% of the finished product will be shipped from the site via conveyor to the dock and assumes 120 trucks a day carrying cement. If that ratio changes, there will be significant traffic problems that will result. Therefore to assure that the project does not result in significant adverse traffic problems not considered in the DEIS, any permits for this facility must include as a condition a requirement that total cement transported by truck does not exceed 400,000 tpy and that the truck traffic does not exceed 120 trips per day or a reasonably limited number above that. If for market reasons or any other reason, SLC is using the conveyor system to the dock significantly less than it planned, then the traffic analyses in the DEIS will be invalid and the resulting traffic in terms of Level of Service, safety, noise and nuisance effects will be significant.

This is a substantive and significant issue because it requires the imposition of a significant condition on the transportation flexibility of SLC.

Issue 12: Offer of Proof

Friends of Hudson will offer the testimony of Henry Boucher of CDM to testify to the foregoing. Mr. Boucher will testify that a significant increase in the amount of cement shipped by truck, will invalidate the analyses in the DEIS and likely result in significant adverse impacts to traffic conditions in the area.

IX. TERRESTRIAL ECOLOGY

Issue 13: The DEIS Contains a Fatally Flawed Assessment of Flora and Fauna.

FOH retained the services of Eric Kiviat, Executive Director of Hudsonia, Ltd. to assess the existing biota conditions in the area of the SLC project, including the tidal habitat. Mr. Kiviat has prepared a report for FOH which is attached hereto as *Exhibit "J"* and incorporated herein in its entirety. Mr. Kiviat's curriculum vitae is attached *Exhibit "K"*.

As presented in striking detail in Mr. Kiviat's report, he is struck by the failure of DEIS to list numerous plants and animal species that Mr. Kiviat knows are on the site and likely to be impacted by the project. Mr. Kiviat knows these species are present because he toured the site and likely to be impacted by the project. Mr. Kiviat knows these species are present because he toured the site in the Fall of 2000, with members of Malcolm Pirnie. For example, he observed swamp agrimony a plant on the New York Natural Heritage Program Watch List in the vicinity of the proposed conveyor. However, swamp agrimony was not listed in the DEIS. That was one example as to why Mr. Kiviat is skeptical of the quality of the plant and animal survey in the DEIS.

Mr. Kiviat's report convincingly establishes the inadequacy of the DEIS and the inability to rely on that document as the basis for determining that the project will not have an adverse impacts on wildlife, plants and wetlands. Mr. Kiviat's report clearly raises substantive and significant issues regarding SLC's ability to obtain the requested permits.

X. ALTERNATIVES

Issue 14-A: The DEIS Failed to Consider a Smaller Alternative

The DEIS completely fails to reasonably consider a smaller sized alternative. While the DEIS ostensibly considers a 1 million mty plant, it skews the analysis by assuming that such a plant would have to be located in Greenport and the Catskill facility would have to keep operating. That is an absurd construct which acts as a slap in the face to a SEQRA analysis and is contrary to the final scoping document that required the consideration of a smaller alternative but did not condition that alternative on maintaining Catskill in operation.

The first fatal flaw in SLC's analysis is that there is some magical need or vested right in a 2 million mty plant. Once again, there is no explanation for such a need. By contrast, in the early 1990's SLC initially announced plans, later withdrawn due to a change in the cement market, to construct a 1 million mty plant in Greenport to replace the Catskill facility. Obviously, such that was a viable option then, and the presumption is that it continues to be viable option until SLC is able to prove otherwise. Since Catskill continues to be profitable, and a 1 million mty plant would nearly double the output of Catskill, it would seem that the smaller plant with less impacts would be viable.

A plant at half the capacity will have, in general, half the impacts associated with the larger facility. A 1 million mty plant will require less limestone and rock from the Greenport mine, thus not requiring a modification of its mining permit and the three-fold increase in the

extraction rate, thus reducing the impacts from blasting, noise and dust. A smaller plant would reduce air emissions by at least 50% and some emissions, assuming the alternative fuel would be gas, would be eliminated, such as SO₂.

A smaller capacity plant would have reduced stormwater impacts since the stockpiles of gypsum and GBFS would be reduced by half. By also eliminating coal, the quantity of material stored on the Hudson dock would be reduced by 80 % and the surface area exposed to precipitation would be reduced by approximately 66 %.

A smaller capacity plant would also have benefits on the visual impacts from the plant. While SLC claims, without substantiation that the height of the preheater tower would not be lowered, it does admit that the bulk of the tower would be narrowed by 35 feet, a considerable amount that should be compared in the visual analysis. Moreover, a smaller capacity plant will cause less of a vapor plume, further reducing the visual impacts.

Issue 14-A: Offer of Proof

Friends of Hudson will offer evidence through news articles of SLC's past plans to build a 1 million mty plant. Friends of Hudson will also offer evidence through Mr. Rugg, Mr. Brocher and Mr. Sapienza of the lesser impacts associated with a cement plant at one-half the size.

Issue 14-B: SLC Fails to Consider Building a Smaller Plant at the Catskill SiteB

SLC never considers the obvious alternative of the construction of a new gas-fired 1 million mty or smaller plant on the site of the existing Catskill plant. SLC only discounts its ability to build a 2 million mty plant on the site. Even that analysis is internally inconsistent.

SLC discounts the ability to rebuild at Catskill on a variety of grounds. First it claims, without any supporting information, that its mine in Catskill does not have a sufficient supply of limestone. However there is no evidence supporting that claim. SLC also claims that it would be too expensive to transport by barge or otherwise limestone from Greenport to Catskill, claiming that "it would result in significant additional costs that would measurably add to the cost of the finished cement product, making this alternative less economically attractive in a marketplace already flooded with highly competitive overseas cement products" DEIS p. 17-16.

That is a curious statement, since it questions the need for the project in the first place if imported cement is so available and so price competitive with domestic supplies. It also raises questions how importing cement thousands of miles remains cheaper than conveying the rock to the dock and transshipping by barge across the river. That assumes in the first place that Greenport is a necessary source of the limestone and that the existing Catskill mine or the adjacent Lehigh mine are not viable options.

SLC also argues against Catskill on the grounds that it would require greater dredging to expand the dock than would be required at Hudson. Once again, no dimensions are provided by which that statement can be assessed. It also flies in the face of the facts. First, Catskill currently operates as a coal-fired plant with the necessary dock. It does so by accepting coal deliveries by train and shipping cement by barge and truck.¹² Secondly, at the smaller alternative of 1 million mty, there is insufficient information to assess whether the current dock would not be sufficient for those needs.

Finally, SLC claims that rebuilding Catskill would force it to cease production there for at least two years causing a disruption that “would result in inadequate supply of cement for existing customers and is not a feasible business strategy for SLC” DEIS p. 17-16. Given the world-wide capacity of Holcim and its current practice of importing cement in a cost-effective manner to compete in the marketplace, it is hard to imagine that a temporary loss of 600,000 tons of production will cause an unbearable harm. It is not uncommon in an industrial context for a large corporation to have to shut down a facility for two years or more to rebuild when the old facility is obsolete. The enormous environmental benefits of reconstruction at Catskill clearly outweigh the short term economic cost to SLC and Holcim.

Taken a whole, Catskill is clearly a better alternative. Rather than expanding industrial uses onto Bercraft Mountain where no cement kiln ever existed or into Greenport where the cement industry ceased to exist a quarter of a century ago, rebuilding Catskill would represent a true brownfield redevelopment. The most striking difference between Catskill and Greenport/Hudson is the difference in the nature of the surrounding neighborhood. The lands surrounding SLC’s Catskill operation are surrounded by two other cement plants. One, Alsen Cement has not been in operation for decades. The other, Lehigh/Glens Falls operates a mine and a recently permitted slag dryer and grinding facility, although its kiln has not operated for sometime. There are few if any residences in close proximity to the Catskill plant. Within a 1 mile radius of Catskill there lives a population of approximately 454 persons. Within a 1 mile radius of the Greenport facility, approximately 14,000 people reside. Catskill already represents a buffered area which protects the populace from the worst effects of cement operations.

Catskill also represents a striking improvement in visual impacts. While FOH cannot specifically accept a particular plant for Catskill without a visual impact assessment, the fact remains that the western shore of the Hudson is already degraded by the presence of industrial activity. Redevelopment of that site would be consistent with existing land use patterns and would not add a new industrial element in the visual landscape. By contrast, Greenport will dramatically change the eastern shore of the Hudson, an area that has largely been unaffected by industrial visual impacts. It is the stated policy of this State, as embodied in Coastal Zone policies, the Hudson River Heritage Program and the Governor’s Smart Growth Task Force, to

¹² Presumably finished product could also be shipped out by rail, but no information on that option is provided.

limit the sprawl of development and concentrate future industrial growth in existing industrial areas. The Cementon area of Catskill is an existing industrial area. Greenport is not and the fact that SLC left the carcasses of its past operations to decay, does not preserve Greenport as an industrial area.

Issue 14-B: Offer of Proof

Friends of Hudson will offer the testimony of Frank Sapienza of CDM, who will testify that a 1 million mty plant can be located on the lands in Catskill.

Issue 14-C: SLC Has Not Considered the Feasibility of Redevelopment with Lehigh/Glens Falls

Another viable alternative is the redevelopment of Catskill in conjunction with the redevelopment of the Lehigh/Glens Falls facility. In the first instance, SLC has not stated why it could not lease the Lehigh/Glens Falls mine for limestone, assuming that the Catskill mine truly lacks sufficient capacity. As revealed in the Lehigh/Glens Falls application for a slag dryer, Lehigh and SLC already cooperate on the use of dock storage areas and thus may be willing to enter into a lease agreement for the mine.

There is another reason why Lehigh/Glens Falls is an option. That facility is a joint venture between Glens Falls Cement and Lehigh Cement. Glens Falls Cement is owned by a German company, Dyckerhoff, AG. Lehigh is owned by Heidelberger Zement. Holcim, SLC's parent corporation, owns approximately 10% of the stock of Dyckerhoff.¹³ Under the rules of the Securities and Exchange Commission, a 10% ownership of a corporation is considered a controlling ownership and as Joint Venture, each party to the venture is considered to be a controlling party. As a result, it appears that SLC through its parent may have the means to control and or negotiate a reasonable deal not only for access to the Glens Falls/Lehigh mine, but to the whole site thus facilitating its redevelopment.

This scenario presents a unique situation for the Department. Consistent with State policy there is a recognition that the cement industry has a role in the Hudson Valley. Presently all the existing plants are reaching the end of their useful lives and are making plans for significant reinvestments.¹⁴ Given the close relationship of the cement companies and in this case the existence of joint venture involving most of the cement industry in the valley (with the exception of Blue Circle in Ravena), the Department has an obligation to look at all the reasonable

¹³ A May 17, 2001 European Wire Report states that the family owners of Dyckerhoff are looking to sell their 38 % stake in the company to Holcim.

¹⁴ Reportedly, Lehigh/Glens Falls has approached DEC about obtaining a permit to renew operations of its cement kiln.

alternatives that may involve a comprehensive redevelopment plan which meets the reasonable needs of the marketplace while conserving and protecting the unique character of the Hudson Valley. To do otherwise is to abdicate responsibility and to allow the cement industry to dictate the future development of the area in a piecemeal fashion. Since these are decisions that the region will have to live with for up to a 100 years, there must be a thorough alternatives analysis which explores the possibility of such a sharing of resources, before any particular project is approved.

Issue 14-C: Offer of Proof

Friends of Hudson will offer documentary proof of the relationship between Holcim and the parent corporations of Lehigh/Glens Falls. Friends of Hudson will also seek through discovery of SLC, information regarding the ability of SLC to coordinate activities with Lehigh/Glens Falls.

XI. Record of Compliance

Issue 15: SLC and Holnam's Record of Compliance in New York State and North America Do Not Warrant the Grant of a Permit

According to DEC's Record of Compliance Enforcement Guidance Memorandum (herein ROC/EGM) dated February, 1993, the DEC must evaluate a person's history of compliance with the Environmental Conservation Law in order to insure that unsuitable persons do not receive new or renewed permits, certificates, licenses or grants. *See* DEC Enforcement Directives, No. II. 24, Record of Compliance Enforcement Guidance Memorandum (issued August, 8, 1991, revised February 1993) p. 1. Under the Uniform Procedure Act, § 70-0115, the DEC, specifically the Commissioner, has the authority to modify, deny, suspend, condition or revoke permits if the applicant is unsuitable. *See id.* at 3. An applicant is unsuitable if they have a history of noncompliance, criminal or civil violations. *See id.* at 2.

Every applicant must provide a record of compliance. *See id.* at 4. However, DEC is also required to look into an applicant's history of compliance by using enforcement data collected by the Division of Law Enforcement, the Division of Environmental Enforcement or the Regional and Central Office programs.¹⁵ *See id.* Additionally, any allegations of violations can be made by any party. *See In the Matter of the Application of Palumbo Block Co.*, 2001 WL 176029 *5 (N.Y. Dept. Env. Conserv. 2001), *In the Matter of the Application of Accurate Asbestos Transport, Inc.*, 1994 WL 1656363 (N.Y. Dept. Env. Conserv. 1994). The record of compliance must list any and all violations of the ECL, however, those resulting in penalties of \$25,000 or more are given greater weight. *See* DEC Enforcement Directives, No. II.24, Record of Compliance Enforcement Guidance Memorandum, p. 1, 9. The record of compliance must also

¹⁵ Friends of Hudson has submitted several Freedom of Information requests to DEC regarding this project requesting all applicable materials and correspondence, FOH has not received and is unaware of SLC's submissions of the required Record of Compliance

list any criminal and civil violations that would go to an applicant's suitability. *See* DEC Enforcement Directives, No. II. 24, Record of Compliance Enforcement Guidance Memorandum, p. 2, 4-5. Specifically the record of compliance must include, but not limited to:

- 1) Whether the applicant has been convicted of a crime related to the permitted activity under Federal or State Law.
- 2) Whether the applicant has been determined in an administrative, civil or criminal proceeding to have violated any provision of the ECL, any related order or determination of the Commissioner, any regulation of the DEC, any condition or term of any permit issued by the DEC, or any similar statute, regulation, order or permit condition of the Federal or other State Government, or agency, on one or more occasions and in the opinion of the DEC, the violation that was the basis for the action posed a significant potential threat to the environment or human health, or is part of a pattern of noncompliance.
- 3) Whether the applicant has been denied a permit for the same or a substantially similar activity, or for the violation of a similar provision of federal or state law by New York or by any other State or Federal authority.
- 4) Whether the applicant has engaged in conduct that constitutes fraud or deceit or has made false or inaccurate statements in the permit application or supporting papers
- 5) Whether the applicant has exceeded the scope of the project as described in any permit.
- 6) Whether the applicant has been convicted of the crime of filing a false instrument or making a false statement to the DEC or any other agency regarding compliance with the laws of any State or the United States. *See id.*

The DEC usually goes back ten years from the date the applicant completes their compliance record in reviewing the record of compliance. *See id.* at 4. Violations of similar laws that occurred out of state or federally are taken into consideration, as well as misdemeanor or felony convictions or civil settlements of matters which resulted in a penalty in excess of \$25,000. *See id.* at 6, *In the Matter of 4C's Development Corp.*, 1998 WL 158695 *27 (N.Y. Dept. Env. Conserv. 1998). However, the DEC has discretion to look at violations that were less than \$25,000. *See id.* Further, if the DEC determines that additional inquiry is required because of questionable compliance, they may review or require information regarding environmental violations outside the United States. *See* DEC Enforcement Directives, No. II.24, Record of Compliance Enforcement Guidance Memorandum, p. 6. The guidelines are applicable to any other corporations, partnerships, associations or organizations the applicant holds or has held a substantial interest or a high managerial agent or director of. *See id.* at 5. The ROC/EGM requires that each applicant is dealt with on a case by case bases and the DEC has discretion within the process. *See id.* at 4.

While SLC has not, to our knowledge, submitted a Record of Compliance, and there is no evidence that DEC has conducted its own investigation, Friends of Hudson has investigated SLC's record. Our review includes not only SLC's operations but also the operations of Holnam, which owns 64% of SLC. For all intents and purposes, Holnam and St. Lawrence Cement are the same company. Holnam and SLC have a number of substantial, recent and reoccurring violations at their other plants. The severity of these violations makes SLC either unsuitable for a new permit or, at the least, requires significant operating conditions to assure its compliance with applicable laws. Set forth below is a detailed list of SLC and Holnam's compliance history.

Plant-by-plant Record of Compliance for SLC

1. SLC's Catskill Facility

SLC's Catskill plant has had the following violations:¹⁶

1. In 1991, a DEC Division of Air Resources investigation uncovered a violation of 6 NYCRR Part 201 and 212 in the coal reclaim process. *See* Notice of Compliance Determination, dated June 9, 1991 and June 21, 1991.

2. In December 17, 1991, SLC was required to submit a malfunction report to DEC on a monthly basis due to the frequent problems associated with the electrostatic precipitator (ESP). *See* Letter to Dennis Turner, Environmental Manager of SLC, from Michael S. Styk, Environmental Engineer, Region 4, DEC, dated December 17, 1991.

3. On January 22, 1992, a DEC inspection of the kiln dust disposal facility found the facility to be operating illegally because the facility was not permitted and did not have a consent order for said activity. *See* Letter from Theodore Robak, Sr. Engineering Geologist, Region IV, DEC, to Dennis Turner, Independent Cement Corporation, dated January 27, 1992.

4. On June 25, 1992, the DEC Division of Air Resources during an annual inspection found the plant in violation of 6 NYCRR, § 200.7, because all equipment was not maintained, the water spray device was shut down and the air pollution control device was not operating. The Catskill plant was also in violation of 6 NYCRR § 613.3(c)(6) because SLC had not installed the secondary containment system for tank number QU-1, which became mandatory on December 27, 1990. DEC offered a consent order dated December 4, 1992 and fined SLC \$6,000. *See* Notice of Compliance Determination, dated June 25, 1992 and Order on Consent, dated December 4, 1992.

5. On December 15, 1992, DEC withdrew the December 4th consent order because the

¹⁶ FOH can provide copies of the referenced documents at the adjudicatory hearing and/or the issues conference.

Catskill plant was found to have other violations. The plant was found in violation of 6 NYCRR § 200.7, because of a snap band failure on the collector in the Griffin 1F40. The failure caused the stack to emit dust for an excessive period of time and showed a failure to maintain emission control equipment in satisfactory operating condition. Also the weight activated spray system on transfer from W10 to W13 conveyor was not operational during material transfer. *See* Letter from Robert K. Warland, Regional Air Pollution Control Engineer for DEC, to Dennis Turner, Environmental Manager for SLC, dated December 15, 1992; Notice of Compliance Determination, dated December 9, 1992 and December 18, 1992; and Consent Order, dated May 12, 1993.

6. Then again on December 18, 1992, the plant was found to be in violation of 6 NYCRR § 200.7 again for failure to keep equipment in satisfactory operating condition because a conveyor belt was not operating during material transfer. *See* Notice of Compliance Determination, dated December 18, 1992.

7. Also on December 18, 1992, an investigation showing excessive smoke and odor emissions in violation of 6 NYCRR § 220. The source was not discovered. *See* Notice of Compliance Determination, dated December 1992.

8. In May of 1993, a second consent order was agreed to. SLC paid a civil penalty of \$8,000 and was to be fined \$200 a day for the first 30 days if violations continued beyond scheduled compliance, \$300 a day after thirty one days, \$400 a day after forty one days and \$500 a day after fifty one days. SLC had thirty to ninety days, depending on the violations, to fully comply with the consent order. *See* Consent Order, dated May 12, 1993.

9. In 1994, an investigation revealed that the Catskill plant was operating a solid waste management facility without a permit and had excessive dusting in two baghouses. A consent order was agreed to. SLC was fined \$110,000 and had to comply with a compliance schedule. *See* Letter to Denise Brubaker, Environmental Manager for SLC, from Ann Lapinski, Assistant Regional Attorney for DEC, dated January 4, 1994.

10. In 1996, the plant's ESP Computer was burned out and had additional electrical problems, resulting in excess dust from kiln stack and a violation of 6 NYCRR Part 220. Upon reinspection the plant was still in violation of Part 220. *See* Notice of Compliance Determination, dated May 22, 1996 and Letter from Robert K. Warland, Regional Air Pollution Control Engineer, Region 4, to Independent Cement Corporation, dated May 24, 1996.

11. Also in 1996, the plant was found in violation of 40 CFR § 60 (this requirement is also set forth at 6 NYCRR § 220.8) for failure to demonstrate that its continuous emission monitor operated in conformity with the law and in violation of 6 NYCRR § 201.29(C) for failure to submit to the Department of Quality Assurance documentation of opacity CEM since its installation in 1993. A consent order was agreed to; SLC was penalized \$11,000 and had to comply with compliance schedule. *See* Consent Order, dated January 1997.

12. In 1997, the Catskill plant was found in violation of 6 NYCRR § 220.6(b)(1) for failing to install RACT at the kiln by May 31, 1995. A consent order was issued and SLC was penalized \$12,000 for the violation. *See* Consent Order, dated June 1997.

13. In March of 1998, a clinker cooler baghouse caught fire because of unexpected temperature profile change in the newly upgraded clinker cooler. The fire was severe. A whole new unit was required. *See* Letter from Charlie Klotz, Environmental Manager, to Peter Empie, Environmental Engineer for NYS DEC and Notice of Compliance Determination, dated April 9, 1998.

14. In April 1998, about a month after the fire, Inspector Empie found the plant to be in violation of the 6 NYCRR § 220.8, because the plant was using the fire damaged clinker cooler and it was malfunctioning. A civil penalty in the amount of \$8,000 was assessed against SLC. *See* Letter to Victor Cifuentes, Production Manager, from Ricky M. Leone, DEC Regional Air Pollution Control Engineer; Consent Order, dated April 20, 1998 and Notice of Compliance Determination, dated March 16, 1998.

15. In August of 1998, Inspector Houten found the plant to be in violation of 6 NYCRR § 200.7, because of poor maintenance of equipment, specifically the baghouse. A consent order was agreed to and SLC had to pay a civil penalty in the amount of \$3,000. *See* Consent Order, dated December 17, 1998 and Notice of Compliance Determination dated August 17, 1998.

2. Dundee, MI (Holnam)

Holnam's cement plant in Dundee, Michigan has the following violations:

1. In 1998, the Federal Mine Safety Health Administration (MSHA) temporarily shut down the Dundee mine after an accident at the Dundee fly ash dump site. A worker, Richard Wells, "was crushed between the two trailers of his tractor-trailer rig" and had not received training in accordance with 30 CFR Part 48. *See* U.S. Department of Labor Mine Safety and Health Administration, *Fatal Investigation Report*, Duluth office, March 13, 1998.

2. In 1998, a local environmental group sent Holnam a Notice of Intent to Sue, for failure to report emissions under Federal Community Right to Know Laws. According to the Ecology Center, the company's two Dundee kilns were emitting over 12 million pounds of volatile organic compounds into the air annually, as well as other criteria pollutants, from 1990-1996. *See* Ecology Center of Ann Arbor (News Release, Aug. 11, 1998).

3. In 1999, as a result of investigations triggered by the Ecology Center's notice of intent letter, a fine of \$576,500 was imposed by the Michigan Department of Environmental Quality (MDEQ) on Holnam for emitting particulate matter emissions from its facility in excess of allowable limits over a period of 17 years. Those emissions proved to be 7.5 times the limits for particulate set on January 1, 1981. The plant was required to achieve compliance with

Michigan's SIP by January 1, 1981, however, it was not until the EPA investigated in 1998 that Michigan or Holnam attempted to verify compliance. See Michigan Department of Environmental Quality, *Letter of Violation*, March 11, 1999; see also Letter from Francis Lyons, Regional Administrator of the EPA, to the Honorable John D. Dingell, dated December 15, 1999.

4. In addition to the \$576,500 fine, the MDEQ consent order for the above violations required: installation of a scrubber/oxidizer to reduce SO₂ and VOC emissions at a cost exceeding \$25 million; replacement of top plant management; hiring of a second environmental engineer; addition of a baghouse; and enclosure of the clinker hall. See Michigan Department of Environmental Quality, *Staff Activity Report*, Aug. 30, 1999.

5. Although MDEQ signed the Consent order with Holnam, EPA continued its enforcement action against Holnam's Dundee plant. In response to an inquiry from Congressman John Dingell, EPA stated that "from 1981, Holnam may have emitted an estimated 27,850 tons of particulate matter in excess of allowable limits-a major violation of the Michigan SIP." EPA informed Dingell that they had not been consulted about the size of the penalty, and that "the MDEQ settlement with Holnam remains deeply troubling in two critical aspects. First, the failure to collect an adequate penalty not only rewards Holnam for many years of noncompliance, but encourages future noncompliance. Secondly, the State's inadequate enforcement effectively undermines the Clean Air Act." Further, the EPA commented that "by not upgrading its clinker cooler emissions control equipment for the past 18 years, Holnam effectively postponed the capital expenditure necessary to achieve compliance until Federal enforcement was imminent." U.S. EPA referred the matter to the Department of Justice. See U.S. Environmental Protection Agency Responses to FOIL request, various dates; see also Letter from Francis Lyons, Regional Administrator of the EPA, to the Honorable John D. Dingell, dated December 15, 1999.

3. •LaPorte-Fort Collins, CO (Holnam)

Holnam's LaPorte-Fort Collins plant, located in Colorado, has had the following violations:

1. In 2000, Colorado regulators cited the Laporte facility for "failure to pass a stack test on its coal mill and dryer stack," exceeding emissions limits for both. The Compliance Advisory stated that Holnam would be liable for penalties of up to \$15,000 per day if the problems were not swiftly remedied. See Colorado Department of Public Health and Environment Air Pollution Division (Oct. 24, 2000). In fact, "State officials discovered that particulate emissions from a coal mill and dryer stack were about twice the company's permitted level." See *The Fort Collins Coloradoan, Holnam faces state fine over emissions*, November 30, 2000.

4. Clarksville, MO (Holnam)

Holnam's Clarksville, Missouri plant burns hazardous waste and tire-derived fuel. Its violations include the following:

1. In 1994, the Clarksville plant, which "began burning hazardous waste in 1986, paid a \$100,874 fine to resolve a six-count complaint filed by the EPA, which had recommended a fine of \$300,055 for violations ranging from failing to analyze waste and keeping waste in open containers." *See* The St. Louis Post-Dispatch, *Missouri plants that burn hazardous waste*, Sept. 22, 1996.

5. Midlothian, TX (Holnam)

Holnam's Midlothian, Texas plant, Texas, burns tire-derived fuel. The Midlothian plant was selected by the St. Lawrence Cement Greenport Project team as a showcase for the SLC Community Forum, which traveled to Texas to inspect the plant. Members of the forum were not informed of the following violations:

1. In 1993, the Texas Air Control Board fined the Midlothian plant \$135,000 after discovering emissions "about 50 percent higher than what they were permitted to do" for a 180-day period. ACB spokesman, Steve Davis, noted that "the plant failed to report the violation on its own." Holnam plant manager, Barry Lower, complained that the fine "was within the top 1 percent of all the fines that have ever been levied by the Air Control Board in this sort of matter." Texans United, an environmental group, countered that Holnam had been let off lightly, stating that the plant should have been fined \$10-25,000 a day, not just \$750 a day. *See* The Dallas Morning News, *Fine against Midlothian cement plant OK'd*, Sept. 1, 1993.

2. In 1997, "a welding accident caused a fire on a rubber conveyor belt at the Midlothian cement plant," taking 45 minutes to bring under control. *See* The Dallas Morning News, *Welding accident causes fire at Midlothian plant*, March 14, 1997.

3. In 1998, there were numerous complaints against the Midlothian plant filed with the Texas Natural Resources Conservation Commission (TNRCC). These complaints included specific complaints about odors, blasting, respiratory problems, corrosive dust on cars, truck traffic, and plume opacity. *See* Texas Natural Resources Conservation Commission, *Complaint Reports*, January 1997-February 1999.

6. Saratoga, AK (Holnam)

Holnam previously operated a cement plant in, Saratoga, Arkansas, which prior to closure in or around 1992, had the following violations:

1. In 1992, following complaints about a Holnam landfill, DEPCE Inspectors Lori Wilson and James Shumate inspected the plant and wrote that "the plant is operating an unpermitted landfill which consists of solid wastes and the plant's raw materials. The new landfill has waste hanging from the side slopes, and part of the waste was being dumped in water." Oil, tires, and

chromium brick were found buried onsite. The report resulted in six alleged violations related to hazardous waste management at the plant, including a lack of permits, failure to mark containers, and failure to file required annual reports to the State. *See* State of Arkansas Department of Pollution Control and Ecology, Hazardous Waste Division, Little Rock, Dec. 8, 1992.

7. Mason City, IA (Holnam)

The Holnam Mason City, Iowa plant burns tire-derived fuel. Its violations include:

1. In 1999, resident protested the amount of dust and sulfur emissions, which prompted the Iowa Department of Natural Resources to inspect the Mason City plant. The DNR concluded that plant emissions "posed a risk to air quality." *See* The Des Moines Register, Iowa News Service (March 16, 1999). The EPA referred the case to the Iowa Attorney General's office, and DNR officials "reviewed Holnam permits and found that at least 24 emission sources were not tested to ensure they met standards. The DNR also alleged that the company failed to install proper monitoring equipment and to report excess emissions." *See* Associated Press/The Dubuque Telegraph-Herald (March 16, 1999) and Iowa Department of Natural Resources, Administrative Consent Order, dated August 23, 1999.

2. Again in 1999, Pete Hamlin, DNR Air Bureau Chief, requested that the Iowa Attorney General's office take action against the Mason City plant, accusing Holnam of "a variety of air permit violations and excess emissions." Due to above average particulate emissions, "air in the north end of Mason City approached unhealthy levels for highly sensitive individuals" over a two-day period. *See* The Des Moines Register, Iowa News Service, *Cement dust, unhealthy for some, floats in Mason City Air*, June 10, 1999.

3. Still in 1999, residents' complaints about excess sulfur in the air "triggered an inspection of Holnam" by Iowa DNR. Department spokesman Brian Button said that "studies showed violations of the Clean Air Act." *See* The Des Moines Register, Iowa News Service (Sept. 21, 1999). "After an investigator visited Mason City, the DNR agreed with residents" that Holnam Mason City's sulfur dioxide emissions "posed unacceptable risks." To help remedy the problem, DNR mandated the use of "natural gas, instead of coal, to power one of its kilns," as well as lower-sulfur quarry rock, and daily reports on hourly emissions. Brian Button of DNR said "The fact is the residents were paying attention and let us know that the air quality was a problem." *See* The Associated Press (Sept. 17, 1999).

8. West Seattle, WA (Holnam)

Holnam previously operated a cement plant in west Seattle, Washington, but the company has since sold the plant due to the following violations:

1. In 1996, the Waste Action Project sued Holnam for "alleged violations of its discharge permit. Stormwater carried cement kiln dust and other particulate from the company's West

Seattle plant" into the Duwamish River. The company paid \$36,615 to the Duwamish Indian Tribe to settle the case, as well as paying \$36,000 for water-quality improvements to the Holnam property. The company has since sold the plant. *See* The Seattle Post-Intelligencer, *Cement company resolves lawsuit over river pollution*, Sept. 20, 1996.

2. In 1998, the King County applied for a \$300,000 Federal grant to clean up "a four-acre parcel where a history of contamination dates back to the 1970s, when wetlands were filled with cement kiln dust from the nearby Holnam cement plant." *See* The Seattle Post-Intelligencer, *U.S. program aids reclamation of contaminated sites*, Aug. 1998.

9. Holly Hill, SC (Holnam)

Holnam's Holly Hill, South Carolina, plant has had the following violations:

1. In 1993, Holly Hill was fined \$838,850 by the EPA for waste and air emissions violations, because it "failed to make a hazardous waste determination on its cement kiln dust and refractory brick, and also "failed to comply with air emission standards for equipment leaks and didn't submit an adequate certification of compliance." *See* The Charlotte Observer, *EPA to fine Carolinas Companies*, Sept. 29, 1993.

2. In addition to the major EPA penalty above, the South Carolina Department of Health and Environmental Control (DHEC) fined the Holly Hill plant for a host of smaller violations in the first half of the 1990s, including excess emissions, improper handling of hazardous materials, and failure to file required reports: \$5,000 on August 7, 1990; \$3,000 on November 30, 1990; \$1,000 on March 1, 1991; \$40,000 on August 30, 1994; \$4,000 on June 7, 1995; and \$4,000 on July 12, 1995. *See* EPA response to FOIL request.

3. In 1996, Holnam's Holly Hill operation was cited under the provisions of Section 104(a) of the Mine Act for a violation of 30 CFR 56.9313 after the death of 24-year-old excavator operator Chad Frantz. Mr. Frantz drowned "when the excavator he was operating slipped into the settling pond." The accident was attributed to unsafe conditions, specifically a "roadway covered in 6 to 12 inches of silt and water, making it impossible to be seen by the equipment operators." *See* U.S. Department of Labor Mine Safety and Health Administration, *Fatal Investigation Report*, Birmingham office, Oct. 29, 1996.

10. Devil's Slide, UT (Holnam)

Holnam's Devil's Slide, Utah plant burns tire-derived fuel and its violations include:

1. Through 1998-99, tests at Holnam's Devil's Slide plant "have shown that NOx emissions

are greater than approval order limitations," according to the Utah Air Quality Board. However, Holnam has repeatedly applied for variances "from the NOx pounds-per-hour limitation." See Utah Air Quality Board minutes, Sept. 9, 1998-March 4, 1999.

11. •Ada, OK (Holnam)

Holnam's Ada, Oklahoma plant burns tire-derived fuel and its operating problems include:

1. In 1999, "a blast ruined a five-story dust-collecting device" leaving "an unknown number of workers temporarily jobless." About 60 employees were on duty at the time of the explosion. A company spokesman said of the blast, "where it came from is the million-dollar question." See The Daily Oklahoman, *Ada Explosion Being Studied*, July 13, 1999.

12. •Price-fixing (SLC and Holnam)

St. Lawrence Cement and Holnam have also been involved in criminal activity. For example:

1. In 1990, St. Lawrence Cement and three other cement companies "rigged bids and conspired to reduce competition for the supply of cement and concrete in Ontario municipalities" over a 12 year period, according to search warrants issued March 14, 1990 by the Federal Court of Canada. See The Toronto Star (June 19, 1990).

2. In 1994, the Justice Department "requested information about price fixing and market allocation in the cement industry" from at least five cement producers, including Holnam, as part of an investigation into "pricing practices in the cement industry nationwide." See The Plain Dealer, *News of Medusa Pricing Probe Lowers Stock*, July 26, 1995.

3. In 1995, the Quebec City newspaper, Le Soleil, reported that "taxpayers were taken for millions of dollars over the years" by a cement "cartel" which included SLC. Company officials denied the allegations of preventing "open competition" to Le Soleil and The Montreal Gazette. See The Montreal Gazette, *Quebec City cement cartel fixed prices for years*, July 26, 1995.

4. In 1996, St. Lawrence Cement was fined \$1.88 million, and its subsidiary Beton Orleans was fined \$300,000, for "collaborating with other persons to share the sales of ready-mix concrete intended for public building projects in the Quebec City region" A federal Bureau of Competition Policy investigation found that a cartel of four companies had inflated "the cost of the city's new convention center" by about \$400,000. See The Globe & Mail, *Quebec Cement Firms Socked*, Aug. 20, 1996.

Based on the notorious noncompliance record of St. Lawrence Cement and its parent corporations, an investigation into SLC's environmental violations that have been committed outside the United States is more than warranted. SLC and Halnom have plants in Canada and their violations include the following:

1. •Mississauga (Ontario) (St. Lawrence Cement)

1. In 1990, the Ministry of the Environment senior environmental engineer, Tom Brankovic, said that "in the past three years alone, his department has received 104 calls from residents who complain about dust covering their houses, cars, and gardens. Residents are losing patience... The time has come to say 'enough is enough.'" The Ministry plans to order SLC to install a million-dollar system to improve pollution control. "The company has regularly exceeded the plume opacity standard," Brankovic added. *See The Toronto Star, Mississauga firm faces cleanup order*, June 14, 1990.

2. Still in 1990, the District officer, John Budz. of the Ontario Ministry of the Environment said of St. Lawrence Cement, "they have proven that they are not capable of dealing with problems in an effective manner." *See The Oakville Beaver* (November 20, 1990).

3. Again in 1990, after "having issued a decade's worth of warnings, the Ontario Ministry of the Environment is preparing to order St. Lawrence Cement company to clean up emissions from its smokestacks." Margaret Marland, a Member of Provincial Parliament for Mississauga South, said she was not impressed that a ministry order had to be issued against SLC: "Suddenly, St. Lawrence is trying to prove it's Mr. Goody Two shoes. In fact, we've spent thousands of dollars getting them to this public meeting tonight... They've been warned and warned and warned."

See The Mississauga News, St. Lawrence about to get 'clean up or else' order, Oct. 26, 1994.

4. In 1991, SLC appealed an order to "install a \$10-12 million baghouse to clean up particulates from its emissions." John Budz, manager of the Halton-Peel District branch of the Ministry of the Environment, said that he placed "little stock" in St. Lawrence Cement claims to be conducting its own investigation: "That's all they've been doing since 1982, is investigating and not dealing with the problem. It's been an uphill battle, and we're not getting any cooperation from management at that company. It's frustrating to us and to the local people who have to live with the problem." The Ministry issued eight offense tickets to the company "for exceeding provincial opacity standards," with SLC stating its intention to challenge those violations as well. *See The Oakville Beaver, St. Lawrence Cement to appeal clean up order*, March 15, 1991.

5. In 1992, St. Lawrence Cement's Mississauga plant appealed a provincial order to "make expensive upgrades to its pollution control equipment," which the company had already delayed over 19 months. Residents said they had been filing complaints for 12 years against SLC. The plant's use of chlorinated waste solvents, along with coal and waste oils, fueled residents' and regulators' concerns about "high emissions of toxic metals, dioxins, PCBs and hydrochloric acid coming from the plant." SLC was "issued a number of tickets by the Ministry of the Environment," but resisted an order requiring the company to install a \$7 million baghouse on its newest kiln. A company proposed to replace 20 percent of its fuel with garbage was also defeated. Company spokesman Charlie Coles complained that limiting the company's ability to burn waste "effects our ability to remain competitive on a world basis." *See The Toronto Star*,

Cement makers emissions go before environment board, Oct. 1, 1992. In 1994, "the board's decision followed 40 days of hearings over three years, 28 witnesses, and 247 exhibits." See *The Globe & Mail, Board orders Mississauga firm to reduce dust emissions*, Sept. 28, 1994.

6. In 1994, an early morning conveyor belt fire at the St. Lawrence Cement Mississauga plant caused \$1.5 million of damage to "over 200 meters of belt." The fire "sent flames shooting from the conveyor gallery and happened as a ship was being unloaded at the plant near Lakeshore Road West and Southdown Road." See *The Toronto Sun, \$1.5 million fire at cement plant*, Dec. 1, 1994.

7. Again in 1994, a 43-page ruling from the Ontario Environmental Appeals Board said that SLC "had not demonstrated an acceptable track record relative to fulfilling its commitments to the Ministry of the Environment and the area residents." Canada's largest newspaper noted that the company "has had many work orders to improve maintenance of dust control equipment, install a special vacuum system to prevent emissions, and clean up the pollution problem. But all have been appealed. Despite company promises to study causes and solutions, tests are often not completed." The paper noted that "residents have been fighting with the company since 1979 to stop billowing emissions of cement dust and gases." Activist Julie Desjardins Bart stated that "2,000 pounds of dust was spewing out of one of the stacks each hour when the company was burning chlorinated hazardous waste." Area Councillor Pat Mullin said that "the Ministry [of the Environment] must crack down on the company once and for all." Margaret Marland, a member of Provincial Parliament for Mississauga, described St. Lawrence Cement as "a major industrial polluter." See *The Toronto Star, Ruling fuels anger at plant pollution*, Oct. 6, 1994.

8. In 1995, the St. Lawrence Cement plant "topped the list of kilns that created dioxin" in Great Lakes region, according to a Queens College study. See *The Toronto Star* (May 19, 1995).

9. In 1997, St. Lawrence Cement "appealed a government order to install proper pollution control devices to curb emissions. The two-year process ruled against St. Lawrence Cement [and] the case cost the company millions of dollars. One reported estimate is as high as \$28 million." See *Canada's Industry Newspaper* (June 16, 1997).

The forgoing violations and operational problems demonstrate that SLC is not qualified to be granted the requested permit. SLC/Holnam's record of non-compliance, delay and obfuscation raise significant questions regarding the veracity of its claims in the DEIS and permit applications, certainly creating an issue for adjudication. SLC's history of noncompliance contains numerous violations of the ECL in addition to other state and federal environmental laws. Furthermore, SLC and its parent companies have been involved in crimes involving fraud and deceit; they have been sued and settled cases for enormous amounts of money with promises to remedy the misconduct. The recency and consistency of SLC's and Holnam's violations can not be ignored. They have showed over and over again a lack of care and caution in preventing pollution. SLC has avoided operating their plants up to standard until they have been forced to. The fires and deaths that have occurred at the various plants demonstrates the danger SLC poses

to the environment and the public. Furthermore, SLC's violations across the United States and in Canada shows their lack of respect for the environment and laws. The number or reoccurring violations prove that SLC has not been rehabilitated. Yet, most importantly it guarantees that SLC will have violations at the Greenport plant.

CONCLUSION

Based upon the foregoing, Friends of Hudson respectfully requests to be granted full party status and that the preferred issues be accepted for adjudication.

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Respectfully Submitted,

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