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E-mail and Regular Mail

Mr. William J Clarke
NYSDEC Region 4 Headquarters
1150 North Westcott Rd
Schenectady, NY 12306

Re: Lafarge Building Materials
Ravena, NY
Application ID: 4-0124-00001/00112

Dear Mr. Clarke:

We represent Friends of Hudson, Inc. (FOH) and are submitting these comments on the application by Lafarge to burn whole tires at its facility in Ravena, New York. As is fully discussed below and in the accompanying report by Camp Dresser & McKee, the applicant has failed to meet its burden demonstrating compliance with applicable laws and is not entitled to issuance of the permit. Moreover, Lafarge's track record concerning compliance with its existing Title V permit raises significant concerns about its ability to manage the process associated with burning whole tires in a manner that both complies with a permit and is protective of human health and the environment. We are very concerned with the DEC's lackadaisical attitude toward the significant and recurring instances of Lafarge's deviations from its permit conditions and the dismissive manner in which the DEC has responded to FOH's concerns about those problems. The DEC's attitude does not provide the public with a high level of security that it will monitor and enforce the terms of any permit issued to Lafarge.

I. Introduction

Friends of Hudson is a grass-roots environmental organization based in Hudson, New York, with over 4,000 members. FOH is dedicated to supporting sustainable economic development and promoting the preservation and protection of the Hudson Valley. As you know, FOH was the lead organization in the ultimately successful fight against the ill-concieved plan to by St.

Lawrence Cement to build a new cement plant in Hudson and Greenport, New York. FOH approached that project and was ultimately successful because it relied upon dispassionate expert analysis of the impacts of the project and whether the plant met various applicable environmental standards. In particular, FOH focused on SLC's failure to comply with Clean Air Act and the applicable New York State statutes and regulations. While the project ultimately was denied a Coastal Zone Consistency Determination by the New York State Secretary of State and the project was subsequently abandoned, FOH had already been successful in having various air pollution issues accepted for adjudication. Moreover, FOH had successfully demonstrated that SLC was not meeting its LAER requirements for NO_x controls at the plant.

FOH has approached the issue of Lafarge's tire burning application with the same level of scrutiny and adherence to accepted regulatory and engineering application. Contrary to the statements of its detractors, FOH does not advocate for the de-industrialization of the Hudson Valley nor does it desire the closure of the Lafarge facility. FOH recognizes the role of industrial activities in the area and wants those current activities to prosper in manner that promotes and protects the area and is not a threat to public health by its emissions. Consistent with that goal, FOH has sought the expertise of our firm and CDM to evaluate Lafarge's application. The result, as shown below is significant concern with the proposal. Lafarge has provided incomplete and inconsistent information about its proposed operations and DEC staff have not demonstrated that they have given the application the careful scrutiny the application deserves. As demonstrated below and in the CDM report, the risks of error are manifold and include significant increases in the amount of dioxins and furans produced in the process with insufficient controls by the DEC to assure that such events will not occur. Coupled with Lafarge's inability to operate the facility in compliance with its existing permit, the public is presented with a significant threat.

FOH does not relish the prospect of resolving this dispute through the DEC's adjudicatory process. It is our expectation that based upon these comments, the DEC will require more information from Lafarge before the process continues. The DEC can also act in accordance with these comments and make the changes to the draft permit which bring it into conformity with the applicable regulations and places operating restrictions on Lafarge to assure that any burning of TDF does not result in an increase in dioxin and furan production. If however, the DEC is unwilling to require more information or change the permit as noted, then a referral to the Office of Hearings and Mediation Services is required for the convening of an Issues Conference and the commencement of the adjudicatory process.

II. Compliance Issue

FOH has repeatedly brought to DEC's attention the persistent history of Lafarge and its inability to meet the emission limits in its current permit. FOH has documented, based upon Lafarge's own compliance reports, the difficulty Lafarge has had in meeting its opacity of limit of 20%. Both the DEC and Lafarge have repeatedly down-played those deviations as being minor – i.e. lasting 6 minutes or less being only slightly over the 20% limit. However, further review of the Lafarge's documents obtained through the Freedom of Information Law demonstrates that deviations have not been minor. In fact, just for the period of January 1, 2002

through May 30, 2005 there have been 75 separate instances where the opacity limit was exceeded for more than 30 minutes. And in the first 5 months of 2005 alone there were 20 instances of deviations over 30 minutes – and four instances over one hour and two instances over two hours. Nevertheless there has not been any enforcement action taken by the DEC.

After this detailed breakdown of Lafarge's deviations were presented to DEC the response, presented at the September information hearing was that Lafarge's operating history was better than Blue Circle, the previous owner and that Lafarge's deviations amounted to less than 1% of operating times so no enforcement was warranted. However, while an improvement over Blue Circle's operations is certainly commendable, that is not the regulatory standard. Moreover, while there has been an improvement, Lafarge's operations are still far below the requirement of the permit which has built in provisions for the expected variations inherent in cement manufacture. Clearly, the track record for 2005 alone shows that there are current and continuing instances of violations of the air permit without any action by DEC. Finally, the reference to the 1% threshold is completely without any basis in regulations or even DEC guidance documents.

We are mystified at the DEC's attitude on these important issues. We are aware of other industrial facilities in the state that are subject to far stricter enforcement of the opacity standard, where every 6 minute deviation is the subject of an enforcement action. We have requested a meeting with DEC staff to discuss this issue and we have requested, through FOIL of copies of all correspondence, e-mails and telephone notes concerning staff follow-up on Lafarge's compliance reports. With respect the FOIL request we were not provided any documents and none were excluded based upon any privilege or FOIL exclusion – therefore we must assume that there has not been any follow-up. With respect to the request for a meeting, that request was flatly denied. Apparently DEC is not willing to enforce its permits nor meet with qualified representatives of the public to discuss the decisions not to enforce the permit. The callous disregard is alarming.

It is because of the willful refusal of DEC, that FOH to enforce the law that the comments below must be addressed and Lafarge be denied permission to burn tires unless adequate controls are in place.

The accompanying CDM report outlines the dearth of information on the expected emissions from Lafarge, including the uncertainty regarding the expected CO emissions, the relative benefits of shredded vs. whole tires and the need for a stricter CO limit to protect against incomplete combustion and the formation of dioxins and furans. Those comments are fully incorporated herein. Set forth below are comments on some of the deficiencies of the permit itself, which must be recognized in addition to the CDM comments.

III. The Permit Should be Revised to Include Enforceable Limits on Air Toxics.

The draft permit does not contain adequate emission limits and monitoring requirements to address emissions of toxic metals, hazardous organics and other non-criteria pollutants associated with tire burning. Existing Permit Conditions 34 and 35, carried over from the current

permit, prohibit emissions from violating the requirements in 6 NYCRR Part 212, Tables 2, 3 or 4 for the environmental rating issued by DEC and require compliance testing to be performed and reported *at the discretion of DEC*. The conditions contain no specific emission limits nor do they require even periodic testing. In addition, as discussed below, although Permit Condition 5-24 requires LaFarge to conduct initial performance tests for certain air toxics, it does not require the establishment of any emission limits as a result of those tests.

Currently, the only limits on hazardous air pollutants (HAPs) contained in LaFarge's Title V air permit arise under 40 CFR Part 63, Subpart LLL, National Emission Standards for Hazardous Air Pollutants (NESHAP) from the Portland Cement Manufacturing Industry. The cement plant NESHAP establishes emission limitations for particulate matter as a surrogate for HAP metals. The NESHAP also limits emissions of dioxins and furans.¹ To demonstrate compliance with these limits, the NESHAP contains monitoring provisions for particulate matter, dioxins and opacity, which are included in LaFarge's current Title V permit.

The problem with the NESHAP is that it does not regulate all hazardous air pollutants potentially emitted from cement plants. In developing MACT for the portland cement industry, EPA established emission floors of no control for sulfuric acid, mercury and total hydrocarbons (a surrogate for organic HAPs other than dioxin/furan) because EPA found no cement plants using control technologies for these pollutants. In *National Lime Association v. Environmental Protection Agency*, 233 F.3d 625 (D.C. Cir. 2000), the Sierra Club argued that EPA's failure to set limits for these contaminants violated CAA § 112's requirement that EPA establish emission limits for each of the hazardous air pollutants listed for regulation. The Court of Appeals for the District of Columbia Circuit agreed, noting that "[n]othing in the statute suggests that EPA may set emission levels only for those listed HAPs controlled with technology." *Id.* at 633. The court therefore remanded the regulation back to EPA to set emission standards for these pollutants. The court also remanded the statute back to EPA to assess potential "beyond the floor" standards for HAP metals, concluding that EPA failed to consider non-air quality health and environmental impacts of such standards for these metals. To date, EPA has not revised the cement plant MACT to address the court's concerns.

The Circuit Court's decision holds that the existing MACT standards do not properly regulate emissions of key HAPs, including mercury, total hydrocarbons, sulfuric acid and hazardous metals, from cement plants. These weaknesses in the MACT standard mean that DEC must regulate individual HAP emissions under 6 NYCRR Part 212; otherwise, such emissions will go essentially unregulated.

Part 212 authorizes DEC to set emission standards for "general process sources," a category which encompasses sources and pollutants not regulated under other DEC standards. With respect to cement plants, Part 212 specifically authorizes DEC to set limits on so-called "A-rated

¹ The NESHAP also limits total hydrocarbons as a surrogate for organic HAPs. However, the emission limitations for total hydrocarbons apply only to new "greenfield" kilns.

contaminants” from cement kilns and clinker coolers.² Most of the metals and other non-criteria contaminants listed in Permit Condition 5-24 (requiring performance testing) would be classified as A-rated contaminants and so are subject to Part 212.

Section 212.5 of 6 NYCRR does not bar DEC from issuing the requested limits. That section provides that process emission sources covered by a NESHAP in 40 CFR *Part 61* satisfy the requirements of Part 212 for the contaminants regulated by the standard if the source owner can show that the source is in compliance with the federal regulation. This section addresses only NESHAPs issued under Part 61 (not Part 63). Thus, 40 CFR Part 63, Subpart LLL, applies *in addition to* Part 212 not instead of it. Equally important, the exclusion applies only to “contaminants regulated by the [NESHAP] standard.” As noted above, the cement plant MACT specifically limits only emissions of PM and dioxins/furans; all other air toxics may be regulated under Part 212.

In the present case, the LaFarge facility emits numerous air toxics, none of which are subject to emission limits under the draft permit offered by DEC for public comment. DEC should be required to establish emission limits for the non-criteria pollutants listed in Permit Condition 5-24. For reasons discussed in the CDM Report, these limits are necessary to ensure that LaFarge properly manages combustion at the facility; these limits are also necessary to fill in the “gaps” in the regulation of HAPs from cement kilns under the existing NESHAP. DEC should reevaluate these limits after the initial stack test required under Permit Condition 5-24 is complete and make any changes necessary based on the results of those tests. LaFarge also should be required to conduct periodic stack tests to ensure that it does not exceed these limits once it begins regularly burning tires.

IV. DEC Must Limit Emissions of Zinc and Carbon Monoxide to Prevent Possible Increases in Dioxin/Furan Emissions.

As discussed in the CDM Report, improperly controlled CO, when combined with zinc, may result in significant increases in emissions of highly toxic dioxins and furans. To address this problem, DEC should establish enforceable limits on CO and zinc under Part 212.

The current permit limits CO emission increases associated with tire burning to 99 tons to avoid triggering PSD. As noted by CDM and EPA, Lafarge’s projections for CO increases have changed over time without any explanation for the derivation of the projections. On one hand

² 6 NYCRR 212.7 provides that the following process emissions are not subject to the provisions of Part 212:

(b) kilns and clinker coolers in portland cement plants subject to Part 220 of this Title with respect to emissions which are not given an A rating . . . and process emission sources other than kilns and clinker coolers in a portland cement plant with respect to opacity of emissions only.

Under this provision, emissions of A-rated contaminants from the kiln and clinker cooler and all emissions (except opacity) from other sources at portland cement plants are potentially regulated under 6 NYCRR Part 212.

Lafarge has projected CO emissions far in excess of the PSD threshold while in its latest revised application it indicates that CO increases could be nominal with proper management. As noted by CDM, there does not appear any intrinsic reason for a significant CO increase given the experiences at the Ash Grove cement plant in Texas. On the other hand, the Colton, California plant had significant increases in CO. It is possible that Ash Grove does a better job managing the process than Colton. Regardless, as noted by EPA there must be more information to justify the belief that Lafarge can operate under the PSD thresholds. Lafarge should either be required to go through the PSD review process on the assumption that based upon prior filings it is likely to exceed the thresholds and increase the formation of HAPs or in the alternative, DEC should exercise its authority under Part 212 to limit CO to the present levels as a means of assuring proper operations.

V. The Current Carbon Monoxide Capping Provisions are Inadequate and Should be Revised.

While DEC should require Lafarge to go through the PSD process or cap CO emissions at the current level, the permit, even as written does not meet state and federal requirements. DEC has proposed various conditions designed to ensure that the modifications to allow tire burning do not cause emissions of carbon monoxide (CO) to increase by more than 100 tons per year (tpy), thus triggering the PSD program. Currently, the provisions comprising the CO limit are contained in four permit conditions, two of which are federally enforceable, two of which are state-only enforceable:

Federally Enforceable

- Permit Conditions 5-28, 40 CFR 52.21(r), Compliance Certification: Establishes standards for installing and operating CO CEMs.
- Permit Condition 5-29, 40 CFR 52.21(r), Compliance Certification: Establishes standards for installing, calibrating, maintaining and operating CEMs. Also sets upper permit limit for CO of 99 tpy, annual maximum, rolled monthly. The monitoring description provides as follows “See the monitoring description for the 40 CFR 52 A 21 capping permit condition for an explanation of the upper permit limit below.”

State-Only Enforceable

- Permit Condition 5-31, 6 NYCRR 201-7, Federally Permissible Emissions: Limits the potential to emit CO from the entire facility to 2,892,509 pounds per year (1446.25 tons).
- Permit Condition 5-33, 6 NYCRR 201-7, Capping Monitoring Condition: Establishes a cap on increases in emissions of CO of 99 tpy to avoid “40 CFR 52-A-21”. The section requires the installation of a CEMS. CEMS data from the first 10 years of TDF firing will be used to determine if there is a major modification. The data will be collected 180 days after first firing of TDF as required by 40 CFR 52.21(r)(6)(iii). Compliance will be determined via a monthly rolling average. The responsible official must certify annually that the facility has operated all emission units within the limits imposed by the emission cap.

As a preliminary matter, the permit does not appear to contain an enforceable limit on CO emissions from the kiln, the emission unit directly affected by the proposed modification. The only limit on CO emissions is found in Permit Condition 5-31, which limits the potential to emit CO from the *facility* to 2,892,509 pounds per year. This number is contained in Attachment D to LaFarge's permit application. Revised Application for Mid Kiln Firing of Tire Derived Fuel, LaFarge Building Materials, Inc. (Jan. 2005) (prepared by Trinity Consultants) (hereinafter "Revised Air Permit Application"). To avoid PSD, the permit should cap total CO emissions from the *kiln* at a level equivalent to the kiln's past actual emissions (i.e., the "baseline), plus 99 tons (one ton less than the 100 tpy significant net emission increase threshold). The Revised Permit Application estimates actual baseline emissions of CO at 982.2 tpy. *Id.* at 13. Accordingly, the permit should limit emissions of CO from the kiln to 1081.2 (baseline actual emissions plus 99 tons), assuming the baseline estimate is, in fact, accurate³

The permit, as currently drafted, also may not ensure that all of the key requirements relating to the CO cap are federally enforceable. Permit Condition 5-29 establishes standards for installing, calibrating, maintaining and operating CEMs and sets an upper permit limit for CO of 99 tpy, annual maximum, rolled monthly. However, the monitoring description merely cross-references "the monitoring description of the 40 CFR 52 A 21 capping permit condition for an explanation of the upper permit limit." To ensure that the 99 tpy limit is federally enforceable, DEC must include a new condition, similar to Permit Condition 5-33 in the federally enforceable section.

This change is particularly important in light of the current status of the PSD program in New York. Because of concerns regarding the 2002 revisions to the PSD program, DEC has ceded all authority for the program to EPA. As a result, DEC has no role in the PSD permitting process. Under these circumstances, it is particularly important that federal authority for enforcing the PSD program is clearly spelled out.

VI. DEC Should Limit the Quantity of Tires Burned

³ The provisions of the permit addressing CO emissions, particularly with respect to PSD, are confusing, to say the least. The permit modification application states: (1) that emissions of all PSD pollutants other than CO will stay the same or decrease as a result of the project; and (2) that calculated net emission increase of CO is 99 tons per year (tpy), less than the 100 tpy PSD major modification threshold for CO. The application therefore states that the project is not subject to PSD permitting review. Revised Air Permit Application, p. 14. This discussion suggests LaFarge anticipated that no CO limits of any kind would be necessary, although LaFarge did propose to install a CO CEMS to continuously monitor actual CO emissions. Subsequent correspondence with DEC and EPA apparently raised doubts about the merits of this conclusion; as a result, the draft permit contains an enforceable CO emissions cap.

The ambiguity surrounding the origins of the cap reflect a more general problem with the LaFarge application generally. The application documents submitted to the DEC appear to have been drafted months, if not years ago. As a result, many of the details in the application are incorrect and/or out-of-date. For example, the Beneficial Use Determination document suggests that the project can be classified as a pollution control project under federal and state air regulations, a concept that both agencies rejected many months ago. These types of errors make it difficult to ascertain the details of the current proposal.

The draft permit contains no limit on the quantity of tires that can be burned at the LaFarge facility. The description of Emission Unit 0-41000, Process K12 contained in Permit Condition 59, Item 59.3 provides only that “The plant *anticipates using* TDF to replace up to 20% of the fossil solid fuel heat input (approximately 6 tires per revolution) for each of the two cement kilns.” Limiting the quantity of tires burned is essential to ensure that LaFarge meets its CO limits; it is also essential to ensuring that LaFarge does not encounter any problems relating to receipt and storage of tires. For these reasons, FOH believes that the permit should be revised to specifically limit LaFarge to burning tires accounting for no more than 20% of its fossil solid fuel heat input. In particular, FOH proposes to revise draft Permit Condition 59, Item 59.3 as follows:

As a solid fuel, the kilns may also utilize tire-derived fuel (TDF) which may be fired in the kiln through a mid-kiln injection system and associated conveying and handling equipment. The plant may not anticipate using more than 20% TDF (approximately 6 tires per revolution) to replace ~~up to 20% of~~ the fossil solid fuel heat input (~~approximately 6 tires per revolution~~) for to each of the two cement kilns. TDF will not be used during kiln start up and shut down; TDF usage will be ceased during malfunction. A mixing fan will be installed in the kilns to aid TDF combustion.

VII. Initial Performance Testing Should be Required Sooner than 180 Days of First Firing TDF in the Kiln.

Permit Conditions 5-23 and 5-24 require LaFarge to conduct a 2-run stack test for numerous pollutants within **180 days** of firing TDF in the kiln. By comparison Permit Condition 47, 40 CFR 63.1349, requires LaFarge to repeat performance tests for kilns specified in 40 CFR 63.1349(b)(1) within **90 days** of initiating any significant change in the feed or fuel from that used in the previous performance test. It appears, however, that the applicable requirement underlying Permit Condition 47 has been revised since the Title V permit was issued. The current provision requires new performance tests if a source plans to undertake a change that may affect compliance with the dioxins/furans or particulate matter standard. In preparation for and while conducting a performance test required under this provision, the source may operate under the planned operational change conditions for a period not to exceed **360 hours**. 40 CFR 63.1349(e).

In the Revised Air Permit Application, LaFarge indicates that it does not expect the switch to tire burning to adversely affect compliance with the dioxins/furans and PM standards. Revised Air Permit Application, p. 18. For the reasons outlined in the CDM report, we disagree with that conclusion, particularly with respect to dioxins/furans. Furthermore, the August letter from EPA demonstrates a concern with the levels of condensable PM. We therefore urge DEC to require post-change performance tests within 360 hours of operations rather than the proposed 180 days, consistent with the requirements of the NESHAP.

Moreover, given the uncertainties inherent in the process and Lafarge's ability to meet the standards, the construction and operation of the TDF process should be staged until the test results are complete. In its application Lafarge indicates it will install and operate the TDF equipment at one kiln first and then install the equipment at the second kiln at some later date. DEC should permit the installation for only one kiln, require the stack testing within 360 hours of operation of that kiln and suspend permission to proceed to the second kiln until the test results have been obtained, analyzed and an opportunity provided for public comment.

VIII. The Permit Should be Revised to Require Further Review Following the Initial Performance Test.

Permit Condition 5-24 requires LaFarge to conduct a stack test to measure emissions of numerous regulated contaminants, including various criteria pollutants, toxic metals, organic compounds, ammonia, and other potentially toxic compounds. After the test report is completed, LaFarge is directed to compare the results for SO₂, PM, PM₁₀, VOC, lead, and fluorides with the baseline stack test to project if a major modification under PSD is expected. However, the permit does not explain what happens once the test results are received with respect to toxic metals, organic compounds and other pollutants not subject to PSD or nonattainment NSR.

To ensure that emissions of air toxics associated with tire burning are properly managed, after the stack test required in Permit Condition 5-24 is complete, LaFarge should be required to conduct an Air Guide-1 analysis for each air pollutant listed in Permit Condition 5-24 and not specifically limited regulated under PSD or NSR. The results of this analysis should be used to adjust the proposed limits on air toxics (discussed in Comment I. above). This review process should be incorporated into the Monitoring Description contained in Permit Condition 24.

IX. LaFarge Should be Required to Update its NOx RACT Compliance Plan Under Part 220.

The draft permit includes a pair of conditions (Permit Conditions 65 and 66) establishing criteria for assessing compliance with reasonably available control technology (RACT) for NOx under 6 NYCRR Part 220. It includes two emission limits, the first of which is applicable generally, the second of which applies during the production of low alkali or BWS clinker. These limits were established on the assumption that the facility would be burning coal only. LaFarge should be required to reassess the NOx RACT limits in light of the proposed change in its fuel mix. If burning tires reduces NOx emissions (as LaFarge predicts), those reductions should be reflected in the emission limits established for NOx RACT. If necessary, the permit could include separate limits for NOx when burning coal only and coal and tires; these limits could be further broken down consistent with the current permit (NOx generally versus production of low-alkali or BWS clinker).

Section 220.6(b) of 6 NYCRR required cement plants to submit facility-specific compliance plans by October 20, 1994. These plans were required to be reviewed by DEC and approved by EPA as a revision to New York's state implementation plan. As DEC is aware, RACT is a technology-based standard which changes over time as technology improves. In light of (1) the

significant time that has elapsed since LaFarge's NOx RACT compliance plan was submitted; and (2) LaFarge's proposal to burn a new fuel (i.e., tires), LaFarge should be required to update its NOx RACT compliance plan.⁴

X. Minor Comments:

- **Overlapping or duplicate permit conditions.** The draft permit includes numerous overlapping permit conditions, particularly in the general conditions section at the beginning. We recognize that this anomaly is the result of DEC's recent reorganization of its Title V permits in response to a mandate from EPA to require compliance certifications for certain conditions that previously did not require them. It appears that the outdated conditions can be distinguished both by their condition number and their effective date. Nevertheless, the presence of duplicate conditions is extremely confusing and makes the permit unnecessarily long. It would be helpful if DEC could delete all superseded permit conditions or, at the very least, specifically label them in bold, capital letters as superseded.
- **Permit Condition 5-22, 6 NYCRR 212.10(a)(2), Applicability – Located Outside Lower Orange County and NYC Metro:** This provision specifies that owners/operators outside the Lower Orange County and New York City metropolitan area with an annual potential to emit of 100 tpy or more of NOx or 50 tpy of VOCs must comply with the RACT requirements of section 212.10 for major sources. This condition is vague and must be clarified. LaFarge was presumably required to prepare a NOx RACT compliance plan for the kiln pursuant to 6 NYCRR 220.6, discussed above. If DEC believes that LaFarge is subject NOx RACT compliance obligations under 6 NYCRR 212.10, it should identify the affected emission units/sources and require the preparation of an appropriate compliance plan. Absent this information, it is not clear what purpose is served by this condition.
- **Permit Condition 59, 6 NYCRR 201-6, Process Definition by Emission Unit, EU 0-42000; Process DS2 and PEL (Item 59.15 and 59.16):** These conditions reference installation of "Dust Scoop #2" to be installed in 1999 and CKD pelletizer system, to be installed in 1998. If this equipment has been installed, DEC should revise this condition to reflect this change. If not, DEC should reconsider whether this equipment is properly referenced in the permit, given the length of time that has passed since the predicted installation date.
- **Permit Condition 5-32, 6 NYCRR 211.2, Compliance Demonstration:** This condition requires LaFarge to comply with control methods in Chapter 2 and contingency measures

⁴ DEC regularly requires facilities to update NOx RACT compliance plans. For example, facilities with coating lines or printing operations that are granted facility-specific VOC content limits typically are required to reassess coating alternatives and submit updated requests for a VOC RACT variance every five years. As part of a recent rulemaking to revise the State's NOx RACT standards for combustion installations, DEC required facilities granted variances from 6 NYCRR Part 227-2 to reevaluate their alternative emission limits.

in Chapter 4 of the Fugitive Dust Control Plan dated 3/12/1993. The revised plan must be submitted concurrently with the tire burning stack test protocol for the first kiln to fire tires. Copies of the plan should be made available for public review to allow all interested parties to comment.

- **PM_{2.5} Analysis.** In December 2003, DEC issued a Commissioner Policy CP-33 entitled *Assessing and Mitigating Impacts of Fine Particulate Matter Emissions*. The policy provides a mechanism for assessing emissions of fine particulate matter (otherwise known as PM_{2.5}) under the State Environmental Quality Review Act (SEQRA). Under the policy, where DEC is lead agency on a project, applicants must perform a PM_{2.5} assessment if annual potential emissions of PM₁₀ from the project are 15 tons or more. Attachment A to LaFarge's Environmental Assessment Form includes a brief assessment of PM_{2.5} emissions with respect to mobile sources, concluding that total PM_{2.5} emissions associated with the additional trucks needed for the project are 2 tpy, well below the 15 tpy threshold. However, neither the EAF form nor the Revised Air Permit Application contain any discussion of possible PM_{2.5} emissions from stationary sources associated with the modification (in particular, the kiln).⁵ LaFarge should revise its PM_{2.5} analysis to address both mobile and stationary sources.

XI. Conclusion

The burning of tires in cement kilns is not as simple a process as Lafarge presents. There is great variations among the types of TDF as well as the cement kilns in which they are used. Attention must be given to the ability of the operator to manage the facility and comply with existing permits. Given the lack of supporting information, DEC is not in a position to approve this project. DEC must require additional information, must modify the permit and must bring Lafarge's operations into compliance. To do anything less necessitates an adjudicatory hearing.

Respectfully submitted,

/s/

Jeffrey S. Baker

⁵ The only discussion of fine particulate matter in the Revised Air Permit Application is found on p. 9 of the application and is repeated below:

Although particulate matter less than 2.5 microns in diameter (PM_{2.5}) is a federally regulated NAAQS pollutant, EPA has not implemented a rule for regulating this pollutant under the federal NSR program. Accordingly, no analysis of PM_{2.5} is necessary for this project. We should note, however, that emissions of PM_{2.5} are a subset of PM₁₀ and would be expected to trend with PM₁₀ emissions from a cement kiln.