

Earthjustice
Friends of Hudson
New York Public Interest Research Group
Physicians for Social Responsibility
Sierra Club Atlantic Chapter

The Honorable Pete Grannis
Commissioner
New York State Department of Environmental Conservation
625 Broadway
Albany, New York 11233-1010

October 25, 2007

Dear Commissioner Grannis:

It has come to our attention that recent stack tests performed at the Lafarge cement plant in Ravena, New York, reveal that the plant's mercury emissions are much higher than previously estimated. Specifically, while Lafarge had been reporting annual mercury emission levels of about 40 pounds, a 2004 stack test revealed that the plant is actually emitting about 400 pounds each year. We are writing to urge the DEC to move quickly to address this public health hazard. In particular, we request that the DEC place a strong, enforceable mercury limit in Lafarge's Title V permit, which is currently under DEC review. We also request that the DEC immediately test the state's other two operating cement kilns (St. Lawrence and Lehigh Northeast) to confirm their actual mercury emissions, and incorporate appropriate mercury limits into their Title V permits as well.

As you are aware, mercury is a neurotoxin and poses a significant threat to public health and the natural resources of New York State. Even at low levels of exposure, mercury can cause developmental disorders in young children. People are frequently exposed to the harmful neurotoxin when they eat fish that are contaminated with mercury. To date, the New York State Department of Health ("DOH") has issued fish consumption advisories on at least 85 specific water bodies or sections of water bodies, warning women of childbearing age and children not to eat fish because of the high levels of mercury. Developing fetuses can be exposed to mercury *in utero* when their mothers eat contaminated fish. Similarly, babies can be exposed to mercury through their mothers' breast milk. A University of North Carolina study found that as many as 1 in 5 women had high levels of mercury in hair samples taken, while the U.S. EPA estimates that 1 in 6 women have mercury levels high enough in their blood to harm fetal development. It is estimated that over 600,000 babies are born every year with an increased risk for developmental disorders and learning disabilities due to mercury exposure.

Mercury also poses a significant threat to New York's natural resources. The Adirondacks have been labeled a mercury "hotspot," characterized by concentrations of mercury in fish, birds and mammals that are elevated when compared to the surrounding landscape. In addition to at least 85 specific fish consumption advisories, DOH has issued blanket advisories for all water bodies in both the Adirondack and Catskill regions. Evidence also suggests that mercury contamination has caused decreased reproductive success and growth-related problems

in loons. It is estimated that as much as 21% of the mercury deposited in New York comes from in-state sources.

The DEC has already given Lafarge's mercury emissions an "A" rating under the state's air toxic regulations. An "A" rating is assigned to "an air contaminant whose discharge results, or may result, in serious adverse effects on receptors or the environment. These effects may be of a health, economic or aesthetic nature or any combination of these." 6 NYCRR § 212.9(a). The regulations prohibit any person from causing or allowing emissions that violate the requirements listed therein. 6 NYCRR § 212.3(a). Specifically, for an "A"-rated air contaminant, where a facility's Emission Rate Potential ("ERP") is greater than 1 pound/hour, the degree of air cleaning required is 99% or Best Available Control Technology ("BACT"); where a facility's ERP is less than 1 pound/hour, the control level is left to the Commissioner's discretion. 6 NYCRR §212.9(b). Thus, the DEC plainly has regulatory authority to restrict Lafarge's mercury emissions. We understand that the DEC is currently considering whether to include a mercury emissions limit in Lafarge's Title V permit, which is currently up for renewal. Due to the highly toxic nature of mercury even in very small amounts, we urge the DEC to include a mercury emission limit in Lafarge's Title V permit that would require the facility to reduce emissions by 99% or to the level achieved through use of BACT.

In response to the harm mercury causes to public health and the environment, and in recognition of the weaknesses in the federal Clean Air Mercury Rule, New York's recently adopted "Mercury Reduction Program for Coal-fired Electric Utility Steam Generating Units" (6 NYCRR Part 246) requires steep mercury reductions from coal-fired power plants. The DEC's rule correctly requires more substantial mercury emission reductions at each of New York's coal-fired power plants than would otherwise be required by the federal rule. We also applaud the State's legal challenge to EPA's recently promulgated cement kiln rule, in which the State correctly argues that the rule illegally omits mercury emission limits. Consistent with the State's position on the federal rules, the DEC should act immediately to restrict cement plant mercury emissions under state law.

Altogether, the DEC estimates that New York's three operating cement kilns emit about 600 pounds of mercury each year, or about half the total annual emissions from all 26 of the state's coal-fired power plant boilers. As actual mercury emissions from two of the three cement plants have not been measured, it is possible that the real number is much higher. The DEC need not and must not wait for federal action before restricting harmful mercury emissions from these plants.

We urge the DEC to act quickly to reduce mercury emissions from cement plants in New York State. In particular, the DEC immediately should (1) exert its authority under Part 212 to include a strict mercury limit in Lafarge's Title V permit, (2) test actual mercury emissions from the St. Lawrence and Lehigh Northeast plants, and (3) assuming that the test results show significant mercury emissions, revise the St. Lawrence and Lehigh Northeast plants' Title V permits to place strict limits on such emissions.

Sincerely,

s/Keri N. Powell

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