

February 13, 2007

VIA HAND DELIVERY

Cynthia S Bertocci
Board of Environmental Protection
#17 State House Station
Augusta, ME 04333

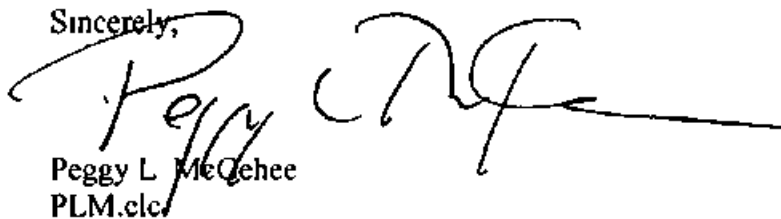
Re Neighbors for a Safe Dragon v Dragon Products Co., Inc
Motion to Open Hearing Record to Take Post-Hearing Evidence of the
Unreasonable Adverse Effect on Air from Emissions Caused by Dragon
Products' Crushing of Waste Clinker as Part of its Reclamation Activities

Dear Cindy

Enclosed for filing please find the above-referenced Motion with attachments
stated therein

As always, if you have any questions please do not hesitate to call me

Sincerely,



Peggy L. McGehee
PLM.clc

Enclosures
cc Service List

DOUGLAS S. CARR
PHILIP C. HUNT
JOHN S. UPTON
PEGGY L. MCGEEHEE
MELISSA HANLEY MURPHY
JOHN H. RICH II
JOHN A. GIRALDO
JOHN A. HOBSON
JAMES N. KATSIARAKAS
TIMOTHY P. BENOIT
J. GORDON SCANNELL, JR.
FRED W. BOPP III
MARK P. SNOW
WILLIAM J. SHEELS
DAVID B. MCCONNELL
PAUL D. PETROPAOLI
HOPE OREAL JACOBSEN
RANDY J. CRESWELL
JENNIFER H. PINCUS
DAWN M. HARMON
KATHERINE A. JOYCE
BRIANNA ADAMS
CHRISTOPHER M. DARGIE
ANTHONY J. MANHART
STEPHANIE A. WILLIAMS
BRIDGET S. STEVENS

OF COUNSEL
THOMAS SCHULTEN
OWEN W. WELLS
ANDREW A. CADOT
JULIANNE C. RAY
CATHERINE O. COFFINOR

STATE OF MAINE
DEPARTMENT OF ENVIRONMENTAL PROTECTION

IN THE MATTER OF

DRAGON PRODUCTS CO, INC)	APPLICATIONS FOR
)	RECLAMATION ACTIVITIES
Thomaston, Knox County, Maine)	LICENSE RELATED TO
)	DRAGON'S SPECIAL WASTE
S-020777-WO-B-N)	CKD AND WASTE CLINKER
S-020778-WO-C-N)	STORAGE PILES

**MOTION TO OPEN THE HEARING RECORD TO TAKE POST-HEARING
EVIDENCE OF THE UNREASONABLE ADVERSE EFFECT ON AIR FROM
EMISSIONS CAUSED BY DRAGON PRODUCTS' CRUSHING OF WASTE CLINKER
AS PART OF ITS RECLAMATION ACTIVITIES**

Pursuant to DEP Ch 30 (17) ("Reopening the Record")¹, Neighbors for A Safe Dragon herein files this Motion requesting the Board Open the Hearing Record to Take Post-Hearing Evidence of the Unreasonable Adverse Effect on Air From Emissions² Caused by Dragon Products' Crushing of Waste Clinker as Part of its Reclamation Activities

SUMMARY

Neighbors seeks leave to submit evidence for the Board's consideration that it obtained after the close of the Board's September public hearing³ Under the terms of the Board's prior

¹ Ch 30 ("Special Regulations for Hearings on Applications of Significant Public Interest") (17) states in full **Reopening the Record.** At any time prior to a final decision, the Board or Commissioner may reopen the record for further proceedings consistent with these regulations provided, however, that the Commissioner shall give notice of such further proceedings, in writing, to the applicant and intervenors at least 10 days prior to such proceedings, and further provided that the Commissioner shall notify other interested persons and the public in such manner as is appropriate

² Under Ch 400 4 G , which the Board has ruled in its Second Procedural Order, applies to Dragon Products' reclamation activities, Dragon has the burden to prove that the reclamation activities will not cause "unreasonable adverse effect on air quality"

³ Some of this evidence Dragon did not release until the end of December, 2007, and until February 7, 2007, although its DEP filing deadline for the latter 4th Quarter Air Emissions Report was January 31, 2007

rulings, the evidence Neighbors seeks to submit is relevant ⁴ It is proffered to establish three key points, currently unknown to the Board, or the Department.

1 Dragon took deliberate steps to conceal from the Board, the Department, and the public, the fact of its substantial air contamination, including its substantial air contamination caused by its waste clinker crushing/grinding reclamation activities in an open building located next to its manufacturing plant, by failing to disclose these facts to the Board, and by shutting down, without disclosure to the Board, its operations that cause dust during the Board's August site visit, during the Board's September hearing, and during the Commissioner's December 4 visit and during other DEP and ATSDR staff visits (see Attachment C), and,

2 Dragon's crushing and grinding of waste clinker reclamation material causes substantial air emissions, as to which Neighbors obtained in December, 2006, photographic and video-tape evidence, and as to which source of air emissions DEP staff were not previously aware but have advised that such emissions exceed DEP opacity limits (see Attachment B-1 (video-"stills", B-2 (1 minute video-clip) and B-3 (half hour video CD, showing air emissions on 2 different days in December); and,

3 Dragon's 2003 Air Emissions License does not address the crushing and grinding of waste clinker, or any air emissions from reclamation activities ⁵ The 2003 Air Emissions License

⁴ Prior to the commencement of the Board's public hearing on Dragon Products' waste storage pile license applications, and its reclamation activities licenses, the Board's Presiding Officer Scott established the scope of the Board's review. First, prior to the hearing the Presiding Officer issued a Fourth Procedural Order that ruled as relevant, evidence relating to "an alleged expansion of the piles, plant and quarry operations and emissions, and truck traffic." The Fourth Procedural Order states in applicable part

"Evidence which is relevant and material to the subject matter of the hearing and is of a type commonly relied upon by reasonable prudent persons in the conduct of their affairs shall be admissible. Evidence which is irrelevant, immaterial or unduly repetitious shall be excluded." [Chapter 30 10 A]"

Presiding Officer Scott's Order accordingly denied Dragon Products' motion to strike the testimony of Ms. Parnell and the Residents/Neighbors members, finding references to an alleged expansion of the piles, plant and quarry operations and emissions, and truck traffic relevant. Also admitted, and therefore presumed relevant, were the numerous statements regarding dust emissions from the facility, which appeared to have originated at the solid waste piles.

Secondly, at the commencement of the hearing, the Presiding Officer provided further guidance as to the limit of the Board's review, noting that "any issues related to mining operations or emissions from the manufacturing process are beyond the Board's proceedings." (emphasis supplied)

⁵ Dragon's 2003 30-page Air Emissions License does not mention any of the reclamation activities or any reclamation material, including the crushing and grinding of the reclaimed material in an open building next to the manufacturing plant. The License does not list reclamation materials as one of the intended constituents of the cement (rather the License only states that the cement is made from limestone "mined from quarries located at the site transported from the quarries to a crusher), does not list as one of the regulated units the grinding and crushing equipment for the reclaimed material located in the building next to the manufacturing plant (although it does list the crushers at the quarry), and does not list any monitoring equipment for dust from the crushing and grinding of the reclaimed material (although it does list monitoring equipment for the stack, clinker cooler, finish mills, stockpile and roadways). See Attachment A.

only regulates the grinding and crushing of limestone. Dragon began its unlicensed activities to reclaim CKD and waste clinker special waste in 2004, after the 2003 Air Emissions License was granted, and did not seek an amendment to the License to cover the reclamation activities. Thus, the air emissions caused by the reclamation activities in the crusher and grinder are currently unregulated, certainly as a matter of fact, and possibly as a matter of law (see Attachment A (Air Emissions License))

ARGUMENT

During the September, 2006 public hearing, the Board took extensive testimony and made numerous inquiries regarding the issue of air emissions from Dragon's existing, but as yet unlicensed, reclamation activities which had first commenced in 2004, including the excavation of the material from the waste storage CKD and waste clinker piles, the composition of the dust on the roads leading to and from the piles, whether the dust on the roads consists of special waste, the past and future monitoring of the air emissions from the reclamation activities, the transport of the reclaimed materials in trucks, and, most importantly for the purposes of this Motion, the grinding and crushing of waste clinker, and any air emissions related to such grinding and crushing.⁶

⁶ See, for example, from the Transcript of the Board's September 21-22 public hearing, the following excerpts of testimony from Dragon's witnesses:

Dragon Products' Environmental Manager, Mickey Kuhns: "We constantly are working on improving our dust control from these reclamation activities. The only dust that is observed can be seen on the transport, the roads, the trucks that drive. We have three water trucks, two primary, one in reserve. Two times a week we have a contractor come in to sweep the roads, the paved roads, to collect dust and we're looking for continual improvement on this. We're reviewing our existing dust control plan for improvement now." p. 65

Dragon Products witness Guy Cote, the project engineer for the closure and reclamation projects: "The goal of this reclamation process is to take all of the CKD and the waste clinker and to remove it and bring it back into the cement making process." pp. 76-77. "The reclamation process is very simple. Excavate with a front end loader, put the material into a dump truck and haul it back to the plant." p. 78. "The reclamation of the waste clinker as described by Mr. Kuhns does involve a few additional steps: there will be some sorting going on. Any materials that they located other than waste clinker could be recycled. The material then goes through several screening steps in order to be processed and sent back to the plant for use in---to be blended with the new clinker material."

Mr. Kuhns: In response to an inquiry regarding the representation in Dragon's application that there is no problem with the dust, and the air monitors were discontinued, but there is no data to show what the air monitors registered, Mr. Kuhns confirmed that the data is not in the application. p. 126

Upon adjournment of the Board's hearing on September 22, Presiding Officer Scott closed the public testimony portion of the hearing for all purposes with the exception of specifically requested documents regarding surface and groundwater containment measures at the piles. Except for certain air monitoring records that pre-date Dragon's reclamation activities, and Intervenor's responses thereto, the Presiding Officer closed the record to any further evidence regarding air emissions from the piles or from reclamation activities.

After September 22, however, Neighbors learned for the first time that Dragon is crushing and grinding reclaimed waste clinker in an open crushing/grinding building next to the manufacturing plant, causing "opaque" air emissions, which reclamation material or "activity" is not mentioned in Dragon's applications, and which activity is not regulated by Dragon's 2003 Air Emissions License. (The crushing and grinding of the waste clinker first commenced in 2004. The Air Emissions License was issued in 2003, and authorizes only the crushing and grinding of limestone from Dragon's quarry. Neighbors' fear is that, if this crushing and grinding of reclaimed material is not made part of Board's review of Dragon's reclamation license

Mr. Kuhns: In response to a question about crushing the clinker: "Not all the material will require crushing. Only the portion that is larger than what they can take -- even up to three inches or so is acceptable in their process. There will be a limited amount of crushing." p. 147

Mr. Sevee: In response to the question re the high pH of leachate and "What's the fate of it when it gets into the air?" No answer. pp. 158-106

Question from Attorney Gibbons to Mr. Kuhns: "Who is responsible for dust monitoring at the site?"

Answer by Mr. Kuhns: "We have seven staff at Thomaston who are trained and certified by the DEP in visual emissions, opacity monitoring." "[The opacity monitoring] is supposed to be done daily." "There's certain shift supervisors who are responsible for certain pieces of equipment especially to watch those and make their reading and enter the data." p. 154-155

Question of Dragon witness Mr. Cote: "Once those [waste clinker] materials are sorted out, then you're going to be crushing -- you'll crush the clinker, the waste clinker, at quarry one, is that right?"

Answer by Mr. Cote: "Not all the material will require crushing. Only the portion that is larger than what they can take."

applications, and if it fails to require that measures be taken to contain such emissions, its air contamination may continue unabated, affecting the health and safety of the residents) Dragon did not advise the Board of this unlicensed and unregulated reclamation activity in its license applications, or at the September hearing A copy of Dragon's 2003 Air Emissions License is attached as Attachment A

Dragon has taken pains to conceal from the Board and the Department the full extent of its reclamation activities, and its air emissions On February 7, 2007, Neighbors finally obtained Dragon's complete 2006 air emissions records (which were not delivered by Dragon to the DEP until February 6, in violation of DEP's January 31 deadline, and despite Neighbors' repeated requests for such 2006 records) Those records show that Dragon turned off its kiln and related equipment on days when it knew or anticipated that DEP or the Board, or ATSDR, would be observing its air emissions Dragon's completed 2006 air emissions records show that on each day or stretch of days when Dragon knew the Board members, DEP staff or ATSDR health assessment officials would be visiting or observing the facility, it shut down its operation This is indicated by the Air Emission Reports, that show

- The kiln was "down" on July 31, 2006 when DEP staff were scheduled to visit,
- **The kiln was down on August 17, 2006** from 9 50 a m until 4.44 p m. **during the Board members' site visit** Two silo dust collectors were also shut down,
- **The kiln was down before, during, and after the Board's September 2006 public hearing**, held near the Dragon facility, for **245.24 hours**, beginning on September 14, 2006, and ending on September 24, 2006 Within that time period two "pregrinder discharge dust collectors" were down and a "clinker transfer tower dust collector",
- In **November and December** and during the time that various observers went on or near the Dragon facility, **the kiln was down**, and not simply for the typical 1 to 8 hours, but for a remarkable **1,078 hours**, beginning on November 3, 2006 and ending on December 18, 2006 It was during this time that Neighbors was organizing a visit by ATSDR health assessment experts, and more importantly, was organizing a December 4, 2006 visit to

local residences, day care center, and business by the DEP Commissioner and his senior staff (Mssrs Dusch, Brooks, Hyland, and Ms Clark)

- **In addition, on the day the Commissioner and his staff visited the area, December 4, 2006, Dragon shut down not only its kiln, but also its "weightfeeder DC", its "pregrind weightfeeder", and its "#2 mill feeder".**

See the applicable excerpts from Dragon's 2006 Air Emissions reports, Attachment C

As residents knew that neither the Board nor the Department were witnessing the air contamination that residents typically experience because of Dragon's manipulation of its operation, a member of Neighbors, Steve Darney, took a video-camera to the public road across from the site to record, on December 14 and December 19, not to record the stack emissions, which are regulated by the 2004 Air Emissions License and as to which there are air monitors (although they are down 20% or more of the time, in violation of the License requirements)---but to record the air emissions from a building near the manufacturing plant, with numerous openings. (See Attachment B-1 (one minute video excerpt), Attachment B-2 (several photo "stills" of the one minute video excerpt), and Attachment B-3 (a half-hour CD showing opaque air emissions on December 14 and 19 [note the video of December 21, at some distance from the plant, records the sound of a blast-however, no sound is available with this CD]) When shown the one minute video-clip, the DEP Air Emissions Inspector, Roy Rike was surprised by what he saw and advised that it was his belief that the building in the video-clip is the building in which there is crushing/grinding of material, in preparation for the manufacture of the cement. He was surprised at the amount of fugitive dust shown on the video-clip, and advised that it would violate Dragon's opacity limitations, but that he was unfamiliar with the source of that dust, thinking initially, and before a closer examination of the video-clip, that the dust must be coming from the roads and trucks. A closer look showed him, however, that the dust appeared, instead, to be coming out of openings in the apparent "crushing/grinding" building. Mr Rike

advised that there are an estimated 80 sources of air emissions on Dragon's site, and not all of them are covered by the License. He was unaware of any air monitors at this location.

A subsequent review of the Air Emissions License by Neighbors revealed that the License was issued in 2003, before Dragon Products' began its unlicensed reclamation activities, and therefore explaining why the License did not refer to any reclamation activities, or the use, crushing or grinding of any reclamation materials, including the waste clinker.

Because Dragon will not allow Neighbors to go on the site, Neighbors cannot prove for a certainty that waste clinker is being crushed and ground in a location other than the crusher on the waste management pile, and that, such crushing and grinding is the cause, or a contributing cause, to the air emissions shown coming from a building near the manufacturing plant, and not from the monitored stack. What Neighbors hopes to accomplish with the evidence described in this Motion is to show that there is enough of a question raised to persuade the Board to require Dragon to prove that its crushing and grinding of reclaimed material, wherever it is done on the site, does not cause, or contribute, to excessive levels of fugitive dust. Thusfar, Dragon has been able to avoid answering those questions because it has manipulated what the Board and Department staff have observed visually and apparently persuading the board that dust from reclamation activities is not an impact that needs to be substantively addressed as a condition of Dragon receiving a reclamation activities license. (Neighbors noticed that there was no staff member from the DEP Air Bureau attending the Board hearing.) The Board will recall that Dragon had attempted the same concealment with the leachate--through misleading maps (that identified what the Board ultimately determined to be unconfined hazardous leachate) that identified an undersized "impoundment" of leachate, through up-gradient well monitors that underreported the caustic levels of the leachate, and through the withholding of various other

relevant maps and data ⁷ In like regard, Dragon made sure to provide as little evidence regarding air contamination as it could. In February 2006, when it received a Notice of Violation for two years of Air Emissions Violations, it replaced its long-term Environmental Manager, Ann Thayer, with a replacement, Mickey Kuhns. Then Dragon presented Mr. Kuhns as its only employee witness for the Company at the hearing, and had Mr. Kuhns limit most of his

⁷ For example, there is this exchange regarding this issue, between Board member Hilton and DEP staff member Mr. Heath:

MR. Hilton: Over the course of the last 10 or 15 minutes of our discussion here, it appears as though there's been a bit of a lack of information necessary to -- to substantiate the kinds of inquiries that we're trying to make here for this proceeding. Has that been an issue for the Department?

MR. Heath: Well, for instance, the shot rock issue which became apparent last fall of 2005, we weren't aware that there was a transmissive shallow zone within that overburden up to that point. It wasn't until we actually ran into the leachate outbreaks that we understood that that layer was there. Is that what you're referring to?

MR. Hilton: Well, that and also the fact that we only -- I guess it's only fairly recently that you got this bedrock map from Dragon?

MR. Heath: That's correct.

MR. Hilton: When did you receive it?

MR. Heath: Within the last several weeks.

MR. Hilton: And I gather there has been other information which would seem to be naturally necessary for this kind of proceeding that the Department has only recently received?

MR. Heath: The 1996 aerial photograph was something that I found within the last month at the Maine Geologic Survey.

MR. Hilton: Does Dragon have any aerial photographs?

MR. Heath: I understand they do. I understand they have a more recent aerial photograph.

MR. Hilton: I would imagine a facility of this nature would probably be taking aerial photographs on a fairly frequent basis.

Neighbors' expert hydrogeologist, Dr. Peter Garrett, also noted this concealment by Dragon, stating in his testimony before the Board:

" [T]his moment in time is unlikely to be repeated. It's too time consuming for us to do it too often. Even if the CKD pile is not completely removed until 2090. So this is a very important moment in time. [M]any new discoveries have come along since those applications got to you and me. There's Dragon's map, geological map. There's air photos of the site from 1966. There is an air photo that arrived on my computer just a few days ago from 1972. I think it is from Dragon. There's a map showing homes within 2,000 feet of the piles, a couple of which have their own wells, and then there's, of course, the shot rock investigation and piezometers placed within the CKD piles. There's the revelation that the waste clinker leachate pond has no real value to the south which I wasn't aware of before. So I submit to you that there could be more new things that come before you or before the DEP after this hearing.

See Page 458 of the Hearing Transcript

testimony to what he "personally" had observed, (although Neighbors has been advised that Mr Kuhns' works out of Portland) or to that he didn't know the answer to the question⁸

⁸ A few of the Q and A exchanges with Mr Kuhns illustrate this point

Dragon's witness Mickey Kuhns " dust does not come from the [CKD]pile " p 100

Question of Mr Kuhns And when there's reclamation of the dust, you're saying there is no dust?

Answer by Mr Kuhns "I have never seen any " p 100

Question by Attorney Gibbons of Mr Kuhns " did you testify that CKD materials, the CKD pile, does not produce any dust?

Answer by Mr Kuhns "I have personally not seen dust off that pile " p 156

Question "That's not the question, though I thought you testified that chemically CKD does not recreate any dust "

Answer " it cakes together "

Question "Is it impossible for CKD to become dust?"

Answer "I've never tried. I don't know I suppose you'd have to heat it to dry all the moisture out of it "

Question "Have you made any estimate of the dust reductions as a result of covering the CKD pile? It would be consistent with your testimony that with respect to the pile, there would be no dust created by that pile while it was uncovered and there will not be any when it is covered, is that right?" p 157

MR GOODALE Are you planning on paving the roads leading up to and around the piles?

MR KUHNS I don't know I know the section we're planning for next year is on the other side of the facility I don't know about going out to where the traffic from the trucks would be I'm uncertain about that.

MR GOODALE I was struck when we were driving there on our visit that there was a lot of dust coming up from our vehicles

MR KUHNS I noticed it on the back side I noticed that, too

MR GOODALE Yes To clarify it, if you had a paved road or a gravel road, just judging from your application here where you're saying you have roads to minimize dust, a paved road minimizes dust more than a gravel road?

MR KUHNS Overall I would agree with that

MR GOODALE That's a yes?

MR KUHNS Yes

MR GOODALE Thank you

CHAIRMAN SCOTT Nancy

MS ZIEGLER Yes I just want to follow up on Mr Goodale's questioning about the roads I think we all observed the dust when we were on the back roads, and I asked a question when I was out there and I guess I didn't really frame it the right way There is a road that is right next to the CKD pile, right next to it, and I asked whether they knew what the composition of the road was and there was a lot of dust coming off it, and really my question was how were these roads created in the first place Do you have any -- I mean, I know you've been there six months Do you know?

MR KUHNS I don't know how or when they were constructed I don't know I do know that very rarely do people drive back there It's mostly just access on the back side to get to the monitoring wells So it's not like we have a lot of traffic back there

MS ANDERSON I have two clarifying questions I think the first one is for Mr Kuhns The bag house which is where the cement kiln dust comes from is in the smokestack, is that correct?

MR KUHNS It's on the tower, yes

MS ANDERSON Okay At any point in the collection of the dust, was that bag house also filtering emissions from your fuel source?

MR KUHNS The kiln is -- everything that goes through the kiln goes through the bag house

MS ANDERSON So fossil fuels or whatever else you burn went up through the bag house as well so the dust may not simply be cement particles?

MR KUHNS Well, we had done an analysis on this and provided it to the DEP so we know what is in it

MS ANDERSON I just am asking you if it would also contain emissions from whatever you're burning to heat your process?

MR KUHNS It may be carpet. I can't answer that question (9/21-22 Transcript, Pages 172 - Page 178, Pages 203- 205)

Question by Board Member Culley of Mr. Kuhns "When I was out on the site I didn't see nor hear a frog the entire time. Do you ever hear or see frogs out there in and around the leachate areas?"

Answer "I have never gone looking for them, sir. That's a good point. Maybe I'll hang out there and go have lunch there."

Question Right. Well, I'm just curious about the effects on the fauna. I didn't notice waterfowl either in the wetland area." (9/21-22 Transcript, Page 208)

MS ZIEGLER I just want to -- just to clarify a couple of things, one, Elizabeth Ehrenfeld was asking questions about the data or lack thereof or even data showing low or no observable dust, and I was wondering if any of this information -- because I gather from rebuttal testimony of Mr. Kuhns that these four ambient air monitoring stations which were located around the Dragon facility, and this in on page 2 of your rebuttal testimony that talks about Buttermilk Lane to the southeast of the plant, Dexter Street northeast, March Road to the southwest and Old County Road to the northwest, and that these four were monitoring total suspended particulates and two of them monitored for PM 10, the fraction of TSP, which I don't understand, but so be it. Anyway, that these particular monitoring stations were starting in 1985--they were installed then and then a couple more installed in 1988 and then years of collecting all of the information and that they were then dismantled. I'm just wondering whether it would be possible to see that. I imagine that it would show low levels. It wouldn't be that they would show no levels.

MR KUHNS All that data resides with the DEP. We maintained the stations. They came and gathered the information. We didn't do anything with it, and I just draw the conclusion that they ceased using those situations because it wasn't going to give them any useful information.

MS ZIEGLER: So you actually didn't see any of this data?

MR KUHNS In response to closing down the last station on Dexter Street, I believe it was submitted as part of the record by somebody, the DEP responded with some data and they said the numbers speak for themselves, we really don't have a problem shutting down the stations.

MS ZIEGLER Okay. So maybe we'll be able to see that at some point. (9/21-22 Transcript, Pages 209- 211)

MR GOODALE Okay. To Mr. Kuhns, talking about the clinker pile a little bit, when we were there, we saw the sieving and the crushing, and I guess the first questions is you had mentioned in response to a complaint when a contractor was crushing that they use water in those machines to reduce fugitive dust. When we were there on site were they using water in those machines to reduce fugitive dust? When we were there on site were they using water in those machines to reduce fugitive dust?

MR KUHNS Could you repeat the question, please?

MR GOODALE You responded to -- there was somebody who complained about some dust coming off a different site and you said there was a rock crusher being used and you said you were able to fix that problem by asking that contractor to use more water. My question is, I believe -- maybe I wasn't understanding properly -- but there was rock crushing going on in the clinker pile. Was water being used there when we were visiting and is that a standard procedure there?

MR KUHNS For rock crushers it's my understanding that it is a standard procedure, however but I don't know if he was using water to crush the clinkers. I can find that out if you'd like. I don't know if it's needed for clinker.

MR GOODALE Thank you, and secondly, so they've crushed up their rocks in the clinker pile and then presumably a front loader comes and dumps it in one of these big trucks and then drives off, is that correct?

MR KUHNS Well, after they screen it, then they put it in the truck, yeah.

MR GOODALE Is there dust generated in that process, the picking, the dumping?

MR KUHNS Not that I have seen, no. What we do is we water the road up to the clinker pile so that the truck when it goes back and forth doesn't generate dust.

MR GOODALE the dust wouldn't be coming off the top of the truck when it's driving away, is that correct?

MR KUHNS I have not seen that, no.

MR GOODALE You have not seen that. Oh, yes, one question talking about the street sweeping of the roads, these sweepers, when I've seen sweepers going along, this is what I'm used to seeing, they actually generate quite a bit of dust as they are going along. It is watered down to reduce --

MR KUHNS Yes, it waters and sweeps. (9/21-22 Transcript, Pages 215-217)

In making this Motion, Neighbors' hope is that this Board will require Dragon to implement further measures to reduce dust, such as the following

MR. HILTON Probably an hour ago, and there have been complaints about dust throughout the Town. We heard a complaint from one of the Neighbor's witnesses a few minutes ago and we've seen the photographs of dust on the automobiles or whatever. It's my understanding that there is -- there are technical abilities through computational devices and digitized particles, et cetera, and one can actually characterize individual particles statistically from coming -- as to whether they come from source A or source B. Is that anything that you're aware of? Is that technology something you're aware of?

MR. SEVEE It's beyond my area of expertise.

MR. HILTON It's outside your area?

MR. SEVEE Way out, yeah.

MR. HILTON Mr. Kuhns, I'm fairly certain that this is something which is available. Has Dragon investigated that at all?

MR. KUHNS I was -- again, what I was told is before I got there, there was a complaint from one of the auto dealerships about dust and so we came over and obtained samples and analyzed them and it was neither CKD nor clinker. So we didn't identify what it was. We identified what it wasn't.

MR. HILTON I believe that Ms. Thayer, your predecessor, had advised someone to -- that perhaps the materials came from Chem-Rock which is another -- I'm not sure what they do but they also quarry limestone?

MR. KUHNS No, they are simply a silo storage system for vermiculite. The materials gets pumped in and pumped out, yeah. (9/21-22 Transcript, Pages 220- 221, 302-303)

Dragon's witness Mickey Kuhns " dust does not come from the [CKD] pile " p. 100

Question of Mr. Kuhns And when there's reclamation of the dust, you're saying there is no dust?

Answer by Mr. Kuhns "I have never seen any." p. 100

Question by Attorney Gibbons of Mr. Kuhns " did you testify that the CKD pile, does not produce any dust?

Answer by Mr. Kuhns "I have personally not seen dust off that pile " p. 156

Question "That's not the question, though. I thought you testified that chemically CKD does not recreate any dust "

Answer " it cakes together "

Question "Is it impossible for CKD to become dust?"

Answer "I've never tried. I don't know. I suppose you'd have to heat it to dry all the moisture out of it "

Question "Have you made any estimate of the dust reductions as a result of covering the CKD pile? It would be consistent with your testimony that with respect to the pile, there would be no dust created by that pile while it was uncovered and there will not be any when it is covered, is that right?" p. 157

Answer "...I haven't seen it myself when it was uncovered."

Question "No I don't mean that you're telling us that it would have been impossible for that uncovered pile to create dust because CKD material can't become dust?"

Answer "You may be asking about the question that was asked about generating odors."

Question "No, I'm asking about dust."

Answer "About dust? Okay, well, what I believe was said is that it hydrates very well and holds moisture. Beyond that I don't know of anything indicating it was producing dust, no " p. 158

Question of Dragon's witness, Mr. Kuhns "When we were at the site visit, was there any reclamation activity going on at the [CKD] reclamation area?

Answer by Mr. Kuhns No, not at that time

Question So the Board was not able to see whether there was any dust created?

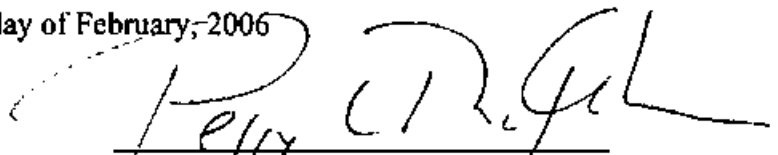
Answer by Mr. Kuhns No (9/21-22 Transcript, Pages 99-100)

- Additional wetting of piles during reclamation,
- Paving, gravelling or further road-wetting measures,
- Wetting and improved covering of trucks carrying reclamation materials,
- Containment of fugitive dust from crushing and grinding of reclamation materials in preparation for its use in the manufacturing process, whether outdoors or indoors,
- Purchase and installation of additional monitoring equipment, including month to month dust-accumulation monitoring devices, measuring not only amount but also size of accumulated matter, as recommended by ATSDR,
- Strict incentives to comply with fugitive dust reduction measures with the imposition of automatic shut-down of the plant upon the failure to comply with dust control measures
- Installation of around the clock video cameras that have the capability to record fugitive dust at night

Neighbors proposes a Phase I and Phase II of the licensing, or in the alternative, separation of the closure licenses from the reclamation activities licenses, and to require Dragon to submit all information requested of it at the September hearing regarding dust created from reclamation activities, and submission of a reclamation activities operations manual that includes detailed measures for the reduction of dust--sufficient for the Board to determine what measures Dragon must take to contain the dust from the reclamation activities This approach will allow Dragon and the Department to proceed with the same due diligence the Department has paid to developing a protocol to reduce and confine the leachate surface and groundwater contamination to the development of a protocol to reduce and confine the fugitive dust air and surface water contamination Thank you for your consideration of this

Motion

Dated at Portland, Maine this 12th day of February, 2006



Peggy L. McGehee (Bar No. 2277)
Counsel for Plaintiffs

PERKINS | THOMPSON
One Canal Plaza, P O Box 426
Portland, ME 04112-0426
(207) 774-2635
(207) 871-8026 (fax)