



ARIZONA PORTLAND CEMENT COMPANY

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August 7, 2008

Hand Delivered to the Public Hearing
Rillito Vista Recreation Center
Rillito, Arizona

Received by [Signature] Date: 8/7/8

Ms. Nancy Wrona, Director
Air Quality Division
Arizona Department of Environmental Quality
1110 West Washington Street, 3415A-1
Phoenix, Arizona 85007-2935

Re: Public Notice Draft Kiln 6 Permit and TSD, June 2008
APCC Comments

Dear Ms. Wrona:

Arizona Portland Cement Company welcomes the opportunity to present these comments concerning Public Notice Draft Permit #38592 (Draft Permit) and appreciates the efforts of ADEQ and its staff to prepare this permit, which, when final, would authorize APCC to modernize its cement plant located in Rillito, Arizona. This modernization is referred to herein as the Kiln 6 Project or Project.

Following are APCC's comments:

1. *The effective date of the permit must be clarified and improved.*

As drafted, applicable construction permit provisions are not effective until new or modified equipment become operational. However, if the provisions are not effective until new or modified equipment is operational, it is unclear under what authority APCC can first construct this new or modified equipment.

Because Arizona has a unitary permit program, the permit must authorize both the construction and authorization of the Kiln 6 Project. APCC recommends that the permit become effective immediately to authorize construction, and that the specific sections of Attachment E that authorize operation replace counterparts currently found in Attachment B when the new or modified equipment becomes operational.

Additionally, as a result of the approach in the Draft Permit, several conditions, such as notification requirements found in each section, would require APCC to submit notifications either on or before the date the requirement is even applicable. In at least one case, the permit condition requires action before the condition becomes effective. See IV.D.7.b. These problems would be cured by making the permit effective immediately.

2. *The Kiln 6 Project could be processed as a minor modification for PM₁₀, PM_{2.5}, or SO₂.*

In the spirit of cooperation, APCC has agreed with ADEQ to process the Project application as a major modification with respect to PM₁₀, PM_{2.5}, and SO₂ emissions. However, as explained in APCC's Application, submitted in December 2005, the Kiln 6 Project would not result in PM₁₀, PM_{2.5}, or SO₂ emission increases that would exceed significance thresholds, and therefore the Project is not subject to New Source Review.

Please note, APCC submits this comment to ensure the permitting record is complete and reflects APCC's position. While APCC reserves the position that the Project is not a major modification, APCC is not requesting that ADEQ restart the permitting process at this time.

3. *Emission increases are overestimated as a result of the use of a modified baseline.*

APCC's Application took a conservative approach to estimating emission increases associated with the Project. One of those conservative assumptions was the use of a hypothetical baseline to represent actual pre-change emissions that are lower than actual emissions. This is explained in detail in APCC's Application. While APCC reserves the right to challenge the use of this hypothetical baseline to estimate actual emissions, APCC is not requesting that ADEQ restart the permitting process at this time.

4. *R18-2-406(A)(5) does not provide authority to impose emission limits.*

A number of conditions that impose emission limits cite R18-2-406(A)(5). This rule requires applicants to perform an air quality impacts analysis. It does not authorize ADEQ to impose emission limits based on the air quality impacts analyses conducted. Additionally, these emission limits are duplicative of the emission limits that cite R18-2-406(A)(4).

5. *Flexibility must be provided in the event that emission limits established under Title 18, Chapter 2, Article 4, cannot be met in practice.*

Title 18, Chapter 2, Article 4, requires best available control technology for certain emissions, and lowest achievable emission rates for some others. The Draft Permit imposes emission limits designed to reflect BACT and LAER requirements.

However, BACT, as the name implies, is a requirement to adopt certain control technologies, not a requirement to adopt emission limits. Similarly, LAER is a requirement to adopt emission limits that are achievable. While it is true that permits often contain emission limits designed to reflect BACT and LAER, flexibility is needed in the event that these emission limits cannot be achieved in practice, even when best available controls are in place. This scenario played out numerous times at the beginning of this decade with natural gas-fired power plants in Maricopa County. Several permits contained emission limits that could not be met, and had to be changed, through no fault of the individual permittees.

APCC requests that the permit reflects this possibility, and provides flexibility and a roadmap to develop alternative emission limits in the event the emission limits imposed herein cannot be met in practice. This flexibility could be achieved with the addition of the following language:

In the event that the emission limits in Condition _____ cannot be continuously met, APCC shall submit a report to ADEQ, detailing the reasons why the condition cannot be continuously met, and propose alternative emission limits. This report shall be submitted within 30 days after APCC determines that the emission limits are not

continuously achievable, and shall be submitted using the appropriate permit condition mechanism in Title 18, Chapter 2, Article 3 of the Arizona Administrative Code.

6. *A cost analysis under A.R.S. §49-422 must be included for any condition imposed under R18-2-306(A)(3)(c).*

While R18-2-306(A)(3)(c) provides the authority to require monitoring in limited circumstances, that monitoring must be shown to be cost-effective and feasible under A.R.S. §49-422(B) or (C). Section 49-422 simply reflects a tenet of good government that applicable requirements be achievable and cost-effective.

7. *R18-2-306(A)(3)(c) does not provide authority to impose emission limits or operational restrictions or deem an activity an excess emission.*

Rule 306(A)(3)(c) provides ADEQ with the authority to impose monitoring requirements, subject to other requirements, when an applicable requirement such as an emission limit or operational restriction does not include monitoring to ensure compliance.

Rule 306(A)(3)(c) is, on its face, limited to monitoring requirements. It does not provide the authority to impose emission limits or operational restrictions or deem an activity an excess emission. Because A.R.S. §41-1030(B) prohibits the imposition of requirements that are not specifically authorized, APCC requests that all non-monitoring or recordkeeping requirements that cite Rule 306(A)(3)(c) as authority be removed from the permit.

8. *Under 40 CFR 52.21(r), the Department has the authority to extend the 18-month period for construction.*

The introductory paragraph of Attachment E states that the permit shall automatically terminate if construction is not commenced within 18 months of issuance. APCC requests clarification and confirmation that under 40 CFR 52.21(r), the Department has the authority to extend the 18-month period for construction.

9. *Conditions identified as material should include the exception contained in R18-2-331.B.*

Several conditions in the Draft Permit, see, e.g., IV.B. and IV.C.3.a., are identified as material, but do not contain the exception found in R18-2-331.B. APCC requests that the exception in R18-2-331.B be added to each condition that is deemed to be a material permit condition.

10. *This permit meets the MACT preconstruction review requirements under 40 CFR 63.5(f).*

Under 40 CFR 63.5(f), MACT preconstruction review requirements can be satisfied as part of a state preconstruction review process. Because this current process meets the MACT preconstruction requirements under 40 CFR 63.5(f), APCC requests that the written findings required under 40 CFR 63.5(f), concerning MACT preconstruction review, be incorporated as part of this permit process.

11. *The Shakedown Period should be 180 days for new and modified equipment.*

For sources other than the kiln, raw mill, and clinker cooler, the Draft Permit only provides a 30 day shakedown period. The regulatory authority for this 30-day period was not identified. In accordance with R19-2-101(73)(g), the shakedown period should be 180 days.

12. *While APCC has voluntarily agreed to the conditions requiring notifications and updated netting analyses, these conditions are not being adopted to avoid classification of one or more applicable requirements.*

Several sections of the Draft Permit require APCC to submit written notification of the schedule for shutdown and modification of emissions units, and include with this notification an updated PM netting analysis. These conditions cite R18-2-306.01.

While APCC has volunteered to implement these conditions, the permit must reflect the fact that these conditions have not been adopted to avoid other applicable requirements. Accordingly, APCC requests that the citation for these conditions specify that they are "voluntary" rather than cite R18-2-306.01.

13. *Attachment B, I.Q.:*

APCC's current permit requires the Visible Emission Observation Procedure (VEOP) for non-point sources, and where applicable, fugitive emissions. The Draft Permit expands the scope of the VEOP to apply to "all equipment." APCC is unaware of authority to impose VEOP on all equipment and requests that this be limited to nonpoint sources only, as point sources are subject to other monitoring requirements.

14. *Comments to other conditions in Attachment E:*

- a) I.: The introductory section concerning permit effectiveness is circular due to a typo. The reference to Section I should be changed to Section II. See also Comment #1.
- b) I.B.1.c.(5): APCC requests deletion of phrase "Dust Control Plan approved" because the Dust Control Plan applies to roads, not material handling.
- c) I.C.1: Property Boundary Plan

The Property Boundary Plan is currently the subject of an administrative appeal, No. 08A-A025-DEQ. For the reasons outlined in APCC's Notice of Appeal in that matter, incorporated by reference herein, APCC requests that this condition be removed from the permit. At a minimum, the permit must be revised to clarify that this condition will no longer be applicable if found invalid in Administrative Appeal, No. 08A-A025-DEQ.

An additional concern is timing of the current appeal and final action on this permit. If the Plan is ultimately determined to be unlawful, then this condition would be severed from the permit. However, it is possible that the administrative appeal may not be decided until after this permit is effective. The permit must reflect this potential outcome. This can be accomplished by either:

- Issuing the property boundary plan separately from the Kiln 6 Permit.
- Revising the condition to toll its applicability until Administrative Appeal, No. 08A-A025-DEQ is resolved.

In the event ADEQ is unwilling to make any changes to the proposed condition, APCC requests confirmation that future actions in Administrative Appeal, No. 08A-A025-DEQ would constitute good cause to accept an appeal of this condition under A.R.S. §41-1092.03(C).

- d) I.C.2: The current permit requires the VEOP for non-point sources, and where applicable, fugitive emissions. The Draft Permit expands the scope of the VEOP to apply to "all equipment." APCC is unaware of authority to impose VEOP on all equipment and requests that this be limited to nonpoint sources only, as point sources are subject to other monitoring requirements.
- e) I.C.2.g: Under current rules, monitoring changes that are not significant do not require prior approval. To be consistent with R18-2-319(A)(2) and 320(A), APCC recommends that condition be revised to require prior approval for "Any significant changes...."
- f) I.C.4.f: APCC is unaware of any authority to deem a failure to comply with Dust Control Plan "excess emissions" as that phrase is defined under R18-2-101. R18-2-306(A)(4), the cited rule, does not provide that authority. APCC requests that ADEQ provide the authority for this condition or remove it.
- g) II.: Introductory section should specify that corresponding section in Attachment B is no longer applicable when this section becomes applicable. See also Comment #1.
- h) II: It is unclear when Section II becomes effective because there are no new or modified quarry equipment. See TSD, page 2.
- i) II.E.2.i and j.: Pima County Rule 17.16.370 is not in SIP and therefore should not be cited under A.R.S. §49-402.D.
- j) III.: Introductory section should specify that corresponding section in Attachment B is no longer applicable when this section becomes applicable. See also Comment #1.
- k) III.E.1.: Condition requires testing for existing sources required once during permit term. What is the term of this SPR? If it becomes effective shortly before the renewal title V permit, then there may not be sufficient time to conduct tests on all existing sources. APCC recommends that condition be revised to require testing "once within the permit term, or within five years, whichever is later."
- l) IV.B.8.: EPA is currently reconsidering its new MACT regulations governing mercury emissions. As a result of that federal process, several conditions, including this one, may cease to be federal applicable requirements. Rather than incorporate current rule language that may no longer be valid in the future, and therefore severable from the remainder of the permit, APCC recommends that the permit simply incorporate by reference the MACT mercury requirements (e.g., "permittee shall comply with the mercury emission standards found in 40 CFR Part 63, Subpart LLL.") This can be done since permits are not subject to the limitation on incorporation by reference in agency rules that is found in A.R.S. § 41-1028.

This approach would ensure that APCC's permit contains the federal applicable requirement, rather than be left with no valid, enforceable requirement at all.

- m) IV.C.3.: Citations to R18-2-406(A)(4) should specify that rule only applies to SO₂ monitoring and recordkeeping requirements.
- n) IV.D.1.b: APCC requests clarification as to the authority for the requirement that monitoring devices are accurate within 2%. If this condition is being imposed under R18-2-306(A)(3)(c) rather than a specific standard, APCC requests that ADEQ either: 1) provide its demonstration as to the feasibility of this requirement; or 2) revise the

condition to require accuracy with 5%, as is the standard approach in other rules such as R18-2-722.F.

- o) IV.D.3.h: R18-2-306(A)(3) and R18-2-406(A) do not provide the authority to deem something as an "excess emission" as that phrase is defined under R18-2-101. For emissions in excess of voluntarily accepted limits, APCC suggests citation to voluntarily adopted rule instead for these voluntarily accepted emission limits. Emissions above the limits established for SO₂ should not be deemed excess emissions and APCC does not voluntarily accept that condition. See also Comment #5.
- p) IV.D.4.d.: APCC is unaware of any authority to deem failures to comply with MACT requirement "excess emissions" as that phrase is defined under R18-2-101. Because cited rules do not use that terminology, APCC requests deletion of that phrase.
- q) IV.D.6: EPA is currently reconsidering its new MACT regulations governing mercury emissions. As a result of that federal process, several conditions, including this one, may cease to be federal applicable requirements. Rather than incorporate current rule language that may no longer be valid in the future, and therefore severable from the remainder of the permit, APCC recommends that the permit simply incorporate by reference the MACT mercury requirements (e.g., "permittee shall comply with the mercury monitoring and recordkeeping requirements found in 40 CFR Part 63, Subpart LLL."). This approach would ensure that APCC's permit contains the federal applicable requirement, rather than be left with no valid, enforceable requirement at all.
- r) IV.D.7.b: Condition is unworkable as currently written. It requires monitoring upon startup, but is not applicable until Kiln 6 is operational. See also Comment #1.
- s) IV.D.7.e.: APCC is unaware of any authority to deem failures to meet CAM plan requirements "excess emissions" as that phrase is defined under R18-2-101. Because cited rule does not provide that authority, APCC requests removal of this phrase.
- t) IV.E.: Testing requirement conditions should also cite R18-2-306(A)(3), as non-MACT tests are not specifically required by law and are instead being imposed under gap-filling authority.
- u) IV.E.1.: Performance tests conducted under MACT rules are not required to be conducted within 60 days of achieving maximum production. Accordingly, APCC requests that condition be rewritten in a manner consistent with MACT rules.
- v) IV.E.4.d.(1): APCC is unaware of any authority to require testing at highest load or capacity level reasonably expected to occur. In the absence of any authority to require testing under this condition, tests should be conducted under representative operational conditions.
- w) V.: Introductory section should specify that corresponding sections in Attachment B. Sections VI and VIII, are no longer applicable when this section becomes applicable. See also Comment #1.
- x) V.D.: The reference to R18-2-306(A)(3)(c) in heading of condition is not necessary and should be removed. Monitoring and recordkeeping requirements are imposed under MACT requirements.

- y) V.D.1.: The requirement to prepare written O&M Plans should be clarified to apply only to new or modified equipment. Existing equipment already have approved O&M Plans.
- z) V.D.2.c.: APCC is unaware of any authority to deem failures to meet bag leak detection system requirement "excess emissions" as that phrase is defined under R18-2-101. Because the cited rule does not provide that authority, phrase should be deleted.
- aa) V.D.5.: Monitoring provisions should also reference R18-2-306(A)(3) as monitoring is not specifically required by law and is instead being imposed under gap-filling authority.
- bb) V.E.: Testing provisions should also cite R18-2-306(A)(3), as non-MACT tests are not specifically required by law and are instead being imposed under gap-filling authority.
- cc) XIII: Effective date of section needs to be identified. See also Comment #1.
- dd) XIII.B.4: In addition to the use of diesel fuel, APCC requests that this condition be revised to also authorize the use of bio-fuel or other fuels that have a maximum sulfur content of 15 ppm. This revision would be consistent with the BACT analysis conducted for the Project, provide operational flexibility, and allow APCC to use a renewable resource as a fuel source.

15. Comments concerning Technical Support Document.

- a) II.B: The Project will have an *average* clinker production capacity of 300 tons per hour. Maximum capacity is higher.
- b) IV.A, Table 2: Pima County Rule 17.16.370 is not in SIP and therefore is not an applicable requirement. It should be removed from the TSD and permit
- c) IV.B: The PM10 limits included in the Draft Permit are not "synthetic minor" permit terms. The Project went through PSD review for PM2.5 and nonattainment NSR for PM10.
- d) VIII: It appears that text was omitted at the end of this section.

The Arizona Portland Cement Company, a CalPortland Company, wishes to thank the Arizona Department of Environmental Quality for the efforts of all involved to bring the Kiln 6 Project to this milestone.

Sincerely,



David N. Bittel
Plant Manager
Arizona Portland Cement Company

cc: Jay Grady