

Cement Plant Opposition

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An Informational Newsletter by  The Hudson Valley Preservation Coalition



Volume 2, Issue 1
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* ACTION ITEM *

Time to Act! Let the Feds Know You're Against the Plant!

WHAT: Army Corps of Engineers (Army Corps) public hearings regarding SLC's permit.

WHEN: Tuesday, March 18
Wednesday, March 19

WHERE: The hearings will be held at the Columbia-Greene Community College Arts Center in two 3/18 sessions: 1–4:30 p.m. and 6–11:00 p.m.; and on 3/19 from 3–6:00 p.m. The college is located in the Town of Greenport on Route 23 between the Rip Van Winkle Bridge and Route 9. Enter the college just west of the intersection of Route 23 and Middle Road. Bear left to the Arts Center parking lot. Arrive early to get a good seat, and if you wish to speak, sign in immediately upon arrival.

BACKGROUND: The Army Corps is required to consider “all factors in the public interest” when deciding on whether to grant, deny or set conditions on permits. These factors include, but are not limited to, economic, environmental, aesthetic,

water supply and quality, navigation and conservation, fish and wildlife value, energy needs and safety. Permit applicants must also prove they are in compliance with the Clean Water Act (CWA), Endangered Species Act (ESA), Fish and Wildlife Act (FWA), Coastal Zone Management Act (CZMA) and National Historic Preservation Act (NHPA). Army Corps staff is obliged to schedule a public hearing which can result in additional information that can assist them in making a permit determination.

The Department of State provides certification on coastal consistency and the Department of Environmental Conservation provides certification on water quality standards per Section 401 of the CWA. Not only will the Army Corps not issue a permit decision without these certifications, if either agency issues a negative finding, the Army Corps will not issue the permit.

YOU CAN HELP!!

It is crucial the Army Corps (and SLC) hear from you, so we urge all our supporters and plant opponents to attend.

If you could send a letter to the Army Corps voicing your opposition to the proposed plant, it would be very helpful as well, because written comments are weighed the same as oral testimony. **Written comments should be sent to the Army Corps by the 5 p.m. April 1 deadline.**

ADDRESS:
U. S. Army Corps of Engineers
NY District Regulatory Branch
RE: Public Notice #2000-00943-YN
26 Federal Plaza, Room 1937
New York, NY 10278-0090

Citizens for a Healthy Environment

Citizens for the Hudson Valley

Clover Reach

Concerned Women of Claverack

Environmental Defense

Historic Hudson, Inc.

Historic Hudson Valley

Hudson Antiques Dealers Association

Hudson River Heritage

Hudson River Sloop Clearwater, Inc.

Natural Resources Defense Council

New York League of Conservation Voters

Riverkeeper, Inc.

Scenic America

Scenic Hudson

Sierra Club, Atlantic Chapter

c/o: Scenic Hudson, Inc.
One Civic Center Plaza
Suite 200
Poughkeepsie, NY 12601
(845) 473-4440
www.scenichudson.org



Scale depiction of proposed cement plant

credit: Friends of Hudson

First Ruling Ordered

On December 6, 2002, NYS DEC Commissioner Erin Crotty issued her first interim decision on some of the issues regarding the SLC plant. We were encouraged by the commissioner's decision, which as expected, had its ups and downs.

A positive step was that the commissioner ordered an expedited hearing to determine whether SLC's mining activities should be "ungrandfathered" from SEQRA (State Environmental Quality Review Act) and thus subject to rigorous environmental review. When passed in 1976, SEQRA allowed that certain activities that were "undertaken and approved" before the effective date be allowed to continue without being subject to the new law requiring a full environmental review. This provision, known as "grandfathering," is what SLC is attempting to invoke. However, the company would like to expand from a historic high of 1.5 million tons per year of limestone removal to 6.7 million tons. We argue that their proposed mining expansion is of a scale large enough to warrant a new review. A decision from the commissioner is not expected until May or June. Check out www.scenichudson.org or www.stoptheplant.com for updates.

The commissioner also agreed with the administrative law judges' (ALJ) 2001 ruling that impacts such as noise must be subject to adjudicatory hearings. The judges made the determination that, due to the failure of SLC to properly evaluate noise impacts, it must be considered an aspect of the environment and thus subject to a review under SEQRA. We have been advocating a different method of noise analysis be chosen other than the one SLC recommends. We assert that Sound Pressure Designation, which shows the percentage of time a particular noise level standard is

exceeded, is more accurate. SLC's preferred method, Equivalent Sound Level, would take fluctuating sound levels over a period of time and translate them into one, steady level. We maintain it would not accurately represent any one sound level exceeding noise standards.

We were pleased that the commissioner found two issues pertaining to traffic to be adjudicable. She said that, because the Department of Environmental Conservation is lead agency on this permit application, traffic would fall under its auspices. Therefore, a hearing must be held to determine whether a limit on the number of truck trips should be made a permit condition, to determine the need for a contingency plan in case the conveyor between facility and dock cannot be used.

Commissioner Crotty overruled the ALJs' prior decision that SLC use on-site rather than off-site meteorological data collection in its air-modeling analysis. The commissioner found that the use of meteorological data from Albany was satisfactory in evaluating potential air impacts. The commissioner's reasoning for this determination was that at the time DEC staff approved the protocol the company needed to follow for data collection, the on-site data was not available. As a matter of fact, that information did exist and had been given to both the DEC and SLC. We have been strongly advocating for these measurements to be made at SLC's Greenport facility, which would result in a much more accurate reading. HVPC will join with Friends of Hudson to petition for a rehearing on this matter.

We were surprised by the commissioner's ruling that SLC need not complete a record of compliance form. We have repeatedly shed light on SLC's poor environmental record at plants around the country. SLC/Holcim have been levied huge fines for air pollution violations at plants from New Jersey to Texas. While SLC has applied for permits

to operate a coal-fired plant, it has proven itself untrustworthy since it has historically expanded operations to include hazardous waste and tire incineration. A refusal to state this as an option for the Greenport plant logically leads one to think that the company is holding this close to the vest for a reason: it has every intent to do this later but cannot admit to it now because it would certainly bring down the curtain on their proposed plan. With this decision Commissioner Crotty overruled the ALJs, who in our opinion correctly required that the record of compliance be shown for all Holcim and SLC plants.

Despite a minimal and insufficient alternative analysis submitted in SLC's Draft Environmental Impact Statement, the commissioner also found there was no need for SLC to require further examinations of alternatives to this plant, one of which would be to retrofit and upgrade the existing facility in Catskill. Scenic Hudson, Natural Resources Defense Council and Riverkeeper, all coalition members, have demonstrated their willingness to work with companies that are repowering energy facilities to be more efficient and environmentally benign, such as the Bethlehem Energy Center.

Finally the commissioner ended her ruling by stating she had reviewed remaining appeals to the ALJs' findings and had no reason to overturn them. We, along with other interested parties, thought this to mean that many of our significant issues, including visual impacts, riverine habitat mitigation, impacts on community character and coastal zone management program consistency among others, would be adjudicated. However, 10 days after receiving the commissioner's ruling, a pre-hearing conference for the interested parties was called and held by the assistant commissioner. The point was to "clarify" that those issues we thought were to be adjudicated had not yet been decided.

They were now to be the subject of a second interim decision, which we are still awaiting. The commissioner does not have a deadline by which she has to issue a 2nd ruling. We will continue to ask Governor Pataki and the DEC to call for full adjudication.

We are continuing our vigilance in following the issues at stake and, having party status, will be active participants in the hearing process.

Coalition Members Strike Back at False Advertising

In November we discovered that a sham organization for SLC was running ads on 10 regional radio stations. These spots intimated that several of our member organizations looked favorably on the plant. Scenic Hudson, NRDC and Riverkeeper, along with PSEG Power, were mentioned as being supportive of the proposed Bethlehem Energy Center and misleading parallels were drawn between that plant and the one proposed by SLC. While these groups do favor the proposed Bethlehem Energy Center, the ads made comparisons that are not honest.

The Bethlehem plant will be run on natural gas, which is known as one of the cleanest-burning fossil fuels. SLC will be fueled by coal, which is highly polluting and causes soot and other particulate matter to fill the air. The Bethlehem plant will be placed on its current site and be of a scale consistent with the area and existing industry, while SLC plans to locate to a site on the opposite riverbank nearer a populated city and its hospital, schools and re-energized and vibrant downtown.

Warren Reiss, general counsel for Scenic Hudson, said "In the context of false and misleading ads, the

way the regulatory bodies and courts have looked at it, it is the totality of the circumstances, the overall impression that is given," adding that the ad "deliberately attempts to delude listeners into believing that we endorse the mammoth, polluting cement plant the company has proposed."

PSEG Power, the Bethlehem plant developer, also took issue with the ads, according to Neil R. Brown, a spokesman for the company. He said PSEG was not contacted during the development phase of the ad and, therefore, did not grant permission for the use of the Bethlehem Energy Center name. Further, he stated that PSEG "neither endorses nor agrees with" the content and conclusions of the ad.

According to Katherine Kennedy, an attorney for NRDC, her organization had not heard from the group who ran the ad. "We are going to continue to vigorously object to the ads as long as they distort our opposition to the St. Lawrence plant and make this misleading comparison," she stated.

In December the ad, while acknowledging the fact that Scenic Hudson, NRDC and Riverkeeper opposed the SLC plant, distorted the truth even further, claiming that they had only financial gain in mind and accused them of hypocrisy. Ned Sullivan, president of Scenic Hudson, countered by saying "this is another company tactic to distract and mislead the public." Ms. Kennedy added, "the real issue is that we shouldn't be building another large coal-burning plant on the Hudson."

However hard the SLC-sponsored group tries to discredit our members, it does so disingenuously. Running a smear campaign against environmental organizations that are devoted to protecting the health and well-being of valley and regional residents is a risky proposition because it begs the question, "what is their real agenda?"

Connecticut Campaign Heats Up

Meeting with Connecticut Environmental Agency

On December 13, 2002, we gathered with Connecticut State Representative Roberta Willis and Connecticut Attorney General Richard Blumenthal at the office of the Connecticut Department of Environmental Protection (DEP) and urged them to take another look at the SLC proposal.

Both Attorney General Blumenthal and Representative Willis asked the DEP to urge the New York DEC to re-notice SLC's air permit in order for Connecticut to become an interested party in the current adjudication proceedings on the air quality issues, because it appears that the DEP is relying on pollution figures that are inaccurate and out of date. The issue of degraded air quality is of the most significance to Connecticut, particularly the northwest corner, because prevailing winds will carry great masses of air pollution directly to this area, which is only 20 miles from the proposed plant site.

A science-based study of the Ozone Transport Assessment Group, to which Connecticut was a party, analyzed the effects of airborne pollutants. It was found that ozone precursors such as nitrogen oxides and volatile organic compounds are able to affect air quality and subsequently human health as far as 400 miles away from the source. SLC is seeking significant increases of these pollutants over existing baseline levels. They also seek to increase permitted levels of carbon monoxide by 10 times and total suspended particulate emissions by double.

Because of the air quality issues, we, joined with Attorney General Blumenthal and Rep. Willis, urging the DEP to support a reconsideration of the air-monitoring ruling.

Rep. Willis said, “we want the state DEP to look at the revised air pollution data in New York and the expressed concerns of Connecticut’s constituents and elected officials before announcing a new position on the project that will take a participatory stance. We hope they will find the need to intervene in the debate going on in New York.” Attorney General Blumenthal added that the plant holds no benefits for Connecticut, saying it will add “no jobs, no economic benefits – only air quality impacts.”

Salisbury Event Draws Officials

The public information session hosted by the Hotchkiss School on Feb. 9 drew support from several Connecticut officials in attendance. Attorney General Blumenthal was among the speakers. He promised to take the matter to court if the New York approves SLC’s application. “We will be there because the law will be violated if this plant is built.” No polluter ought to be able to profit at the cost of health and the environment that will be imposed by a plant like this one.”

While the governor and commissioner of the DEP have been asked by state officials such as Val Bernardoni, first selectman of the Town of Salisbury, to seek intervenor status, the state so far has not. Attorney General Blumenthal said that because new information has been brought to light, which was not available to the commissioner earlier, he is hopeful that it will spur him into joining the effort to stop the plant. However, the attorney general said he can go to court as an intervener without the governor or commissioner. “If they now join in this effort, all the better. We will be stronger if they do and my hope is they will.”

Alix Gerosa, director of the Environmental Program at Scenic Hudson, explained how SLC has filed a motion to challenge opposition’s right to public hearings. “Through a slick advertising campaign and closed-door meetings,

SLC feels that this permit has been through the proper review. I believe they think the application will not stand up to the scrutiny it will receive in the public hearings or that they don’t have enough faith in their experts to put them on the stand under oath to be cross-examined.”

Meanwhile, a senior scientist with the NRDC, Allen Hershkowitz, told the audience that scientists recently confirmed there is no safe threshold for humans to inhale PM_{2.5}, which will be produced at the plant. “This is not just another plant. It’s a gigantic industrial complex that will saturate this area with lots of nasty pollutants that are not good for health or food supply. It’s one of those projects that needs to be stopped.”

Campaign Goes National

On January 31 we held both a press conference and an informational roundtable spotlighting several residents from other communities who are facing their own battles with either SLC or Holcim, the parent company. The events were held to give local media and residents first hand accounts of what it is like to have an SLC plant as a neighbor.

Bonnie Sanders of South Camden Citizens in Action from South Camden, N.J. spoke about her experiences with SLC. “They spread around a lot of promises of jobs and grants for local organizations. Once they had their permits, we learned that all they cared about was making money.”

The Camden plant was fined \$20,500 by the New Jersey DEP for failing to accurately report emissions of fine particulates in its first three months of operation – July through September 2002. Ms. Sanders added, “I don’t care how much they promise you; if you have to struggle to breathe, it’s not worth it.”

Jim Schermbeck and Katy Hubener traveled from Texas to speak about their experiences with the Holcim plant in Midlothian. Mr. Schermbeck, who is with Downwinders at Risk, a Texas citizens group, said the company has not lived up to its promises. While Holcim pledged to cut in half nitrogen oxide emissions, they actually doubled. “We were promised a state-of-the-art plant. We got a second-rate plant. They said compliance wouldn’t be a problem, but it never happened. We were out of compliance from day one for NO_x, particulate matter and volatile organic chemicals.” He also criticized SLC’s cement kiln dust (CKD) policy. The CKD is buried, with no containment, in the same quarry the limestone is mined from. It contains the same contaminants that are emitted into the air from the smokestacks. They cause further pollution by leaching into the groundwater.

It is important to note that in 2000, SLC brought local citizens and elected officials to the Holcim plant in Midlothian to showcase it as an example of a model plant they want to build in our region. That facility has received numerous fines for non-compliance.

Ms. Hubener, of the Texas group Blue Skies Alliance, said it is not a good omen that SLC has refused to sign a deed restriction saying it will never burn hazardous waste. “Make sure they sign a binding agreement that says they won’t burn tires or hazardous wastes. They don’t want to pay for their fuel costs.” Ms. Hubener said there are many stories out there that are not being told. Stories such as children losing their hair, dogs that cannot reproduce, and incidents of cancer and leukemia.

Mr. Schermbeck said, “The company says the operating permit does not allow burning tires or hazardous waste. It’s the typical M.O. They’ll introduce hazardous waste later.”