

Zoning Adjustments Board
2120 Milvia St.
Berkeley, CA 94704



September 6, 2009

Members of the Board,

The West Berkeley Alliance for Clean Air and Safe Jobs is deeply concerned about the Planning and Development Department Land Use Planning Division's recommendation to the ZAB regarding Pacific Steel Casting Company's Use Permit #06-10000045. The ZAB staff report is basing its recommendation to take no action on faulty data.

The Alliance recommends reexamination of the method by which Pacific Steel Casting Company (PSC) might be considered a public nuisance by the ZAB and City of Berkeley. ZAB reliance on the Bay Area Air Quality Management District (BAAQMD) regarding PSC and public nuisance is imprudent for the following reasons:

- The BAAQMD does not regularly send inspectors out in early mornings, late evenings or anytime on weekends to investigate nuisance complaints from the public, as per complaint policy fabricated by the BAAQMD.
- According to the BAAQMD's complaint records, investigations might be made days after the complaint is made. Therefore no timely enforcement action can be taken, preventing the issuance of a violation notice to PSC.
- BAAQMD inspectors usually do not arrive within 10 minutes when the public phones in complaints. Frequent changes in atmospheric conditions can make confirmation of complaints almost impossible when complaints are investigated long after they are made.
- To confirm an odor complaint, the BAAQMD inspector must confirm the complaint by smelling PSC's odor with the complainant and then by following the odor, block by block, back to PSC. Because odors do not necessarily remain at ground level or follow the grid of city blocks, this may not be possible.
- Members of the public eventually become very frustrated and discouraged when odor complaints are not confirmed by the inspector and the problem is not resolved. Over time, complaints decline in number such that the mayor and PSC then erroneously claim that the odor/nuisance problem has diminished. Remember that members of the public have been calling in nuisance complaints about PSC for over three decades, and that not all toxic emissions from PSC are odorous.
- In July of 2009, the West Berkeley Alliance for Clean Air and Safe Jobs joined with other environmental justice organizations to meet with BAAQMD Compliance and Enforcement Division staff to discuss the flawed and ineffective BAAQMD complaint guidelines. (Attached find a list of suggested changes the Alliance compiled for the current BAAQMD Complaint Guidelines). Changes will not be forthcoming in the near future, so it falls to the ZAB to resolve the nuisance problem in the absence of effective BAAQMD complaint guidelines.

Given these flaws, it is a testament to the air pollution's noxiousness, and the community's resulting determination to stop it, that **violation notices have been issued to PSC every year since ZAB last addressed the PSC issue in 2007**. In addition, the BAAQMD has permitted PSC to use other methods to avoid nuisance proceedings. For example, the supposedly reassuring results of the final Health Risk Assessment (HRA) submitted by PSC to the BAAQMD in 2007 were challenged by the City of Berkeley's independent consulting firm, Tetra Tech EM Inc. In Tetra Tech's letter of March, 6, 2008 to City Toxics Manager, Nabil Al-Hadithy, note Tetra Tech's (subsequently ignored) specific recommendations to have PSC correct a number of flaws in its HRA which resulted in unreliable results and methods.

The ZAB would do well to gather better information from community members and various local and regional government sources. Examine how many complaints are made to the BAAQMD, not just how many times five confirmed complaints in a 24 hour period result in a notice of violation. Please feel free to examine the Alliance's archives at <http://www.westberkeleyalliance.org/index/researchlibrary/archives.htm> for comprehensive listings of local and regional organizations.

Considering the past, present, and likely future evidence that PSC causes an air pollution nuisance, the logical next step is for the ZAB to initiate a public hearing per BMC 23B.64.

Sincerely,

Janice Schroeder
Volunteer
West Berkeley Alliance for Clean Air and Safe Jobs