



Councilmember Maio, District 1
Councilmember Droste, District 8

REVISED AGENDA MATERIAL

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Meeting Date: July 14, 2015

Item Number: 69

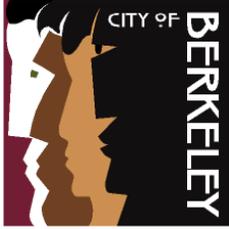
Item Description: **Status Report: West Berkeley Industry**

Submitted by: **Council Members Maio and Droste**

Due to scheduling difficulties, City staff and Councilmembers met with several directors within the Bay Area Air Quality Management District (BAAQMD) on July 1st. Consequently, a final version of this status report could not be available by the regular agenda publishing deadline.

Office of Councilmember Linda Maio, Vice Mayor of the City of Berkeley, District 1
510.981.7110 | Imaio@cityofberkeley.info | cityofberkeley.info/lindamaio

Office of Councilmember Lori Droste, District 8
510.981.7180 | ldroste@cityofberkeley.info | loridroste.com



CITY COUNCIL

INFORMATION CALENDAR

July 14, 2015

TO: Honorable Mayor and Members of the City Council

FROM: Council Members Linda Maio and Lori Droste

SUBJECT: Status Report #2: West Berkeley Industry

INTRODUCTION

On January 20, 2015, the Berkeley City Council passed the following actions:

1. Council Members Linda Maio and Lori Droste to work with residents, businesses, and City Staff to review complaints and make good faith efforts to mitigate impacts in the areas where the City has authority such as noise and odors and to bring their findings back to City Council.
2. Direct the City Manager to enforce the terms of the Use Permit and the 1999 Settlement Agreement with the Oceanview Neighborhood Association.
3. If the City Manager and delegated staff or department finds the West Berkeley Lehigh Asphalt Company plant is not compliant with the Use Permit or the 1999 Settlement Agreement with the Oceanview Neighborhood Association, the City and its jurisdictional bodies or the appropriate authority implements corrective action and enforces the 1999 Settlement Agreement Use Permit immediately.

This report documents the information the Council Members found in their good faith efforts to address residents' concerns. In addition to the recommendations provided within this report, Councilmember Maio and Droste will continue to pursue action plans to improve air, noise, and odor emissions in West Berkeley.

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CURRENT SITUATION AND ITS EFFECT

- On January 20, 2015, the City Council tasked Council Members Maio and Droste to review complaints made regarding air quality in West Berkeley. Subsequently, Council Members Maio and Droste discussed concerns with residents.

- On May 12, 2015, City Council was provided a status update on residents' concerns, site visits and potential questions for a meeting with BAAQMD (Appendix A).
- On July 1, 2015, Council Members Maio and Droste, along with City staff, met with BAAQMD staff, including the Director of Compliance and Enforcement and Air Quality Manager.

FINDINGS

BAAQMD is a nine-county agency jurisdiction that regulates air quality according to federal standards and oversees an air quality monitoring network throughout the Bay Area, including eight air monitor sites in Alameda County.¹ As the only regulator of emissions and air quality of the Bay Area, BAAQMD determines whether industries in West Berkeley are operating in accordance with local, state, and federal regulations.

2009 West Berkeley Air Monitoring Report

In response to the City's request, in 2009 BAAQMD placed a temporary monitor (for over one year) at the intersection of 6th St. near Gilman St. to measure ambient air quality in West Berkeley. BAAQMD monitored the site at irregular times of the day which were often unannounced. BAAQMD found that "West Berkeley air quality levels were well below all applicable State and National Ambient Air Quality Standards (NAAQS) for gaseous criteria pollutants."² According BAAQMD's findings, cancer risk associated with toxic air contaminants is likely associated with proximity to the freeway:

The compounds that contribute most significantly to cancer risk in West Berkeley are diesel PM, benzene, 1,3-butadiene, and carbon tetrachloride. This is consistent with other monitoring sites. These pollutants are emitted primarily from mobile sources, with the exception of carbon tetrachloride. There are no known local sources of carbon tetrachloride due to the phase-out of this compound as a stratospheric ozone-depleting compound.³

To better identify the impacts of traffic-related air pollution, in 2014, BAAQMD opened two permanent air monitoring stations along Bay Area freeways. They are in the process of installing a third air monitoring station in West Berkeley to better analyze the health effects of traffic related air pollution along the I-80 corridor.

Technology

BAAQMD indicated that they have recently approved several technologies to address air quality concerns at Hanson Aggregates Berkeley Asphalt. In January of 2015, Hanson Aggregates Berkeley Asphalt introduced a new warm mix which lowers the temperature preparation by

¹ *Bay Area Air Quality Management District*. (n.d.) District Air Monitor Sights. Retrieved from http://hank.baaqmd.gov/tec/maps/dam_sites.htm

² *Bay Area Air Quality Management District*. (April 14, 2009). Summary and Analysis of West Berkeley Air Monitoring Results. Retrieved from http://www.ci.berkeley.ca.us/uploadedFiles/Council_1/Level_3_-_General/summary_analysis_west_berkeley_air_monitoring.pdf, p.1.

³ *Ibid.*, p. 3.

approximately 50-70 degrees Fahrenheit.⁴ The new warm mix is expected to significantly reduce emissions. In addition, Pacific Steel and Casting (PSC) is assessing new materials for molds that receive hot pourings that will result in a reduction in odor emissions. For more information on technology updates, refer to Councilmembers Maio and Droste's previous report.⁵

Monitoring

During our conversations with BAAQMD, they indicated that they oversaw a source test in March 2015 which led them to conclude that Hanson Aggregates Berkeley Asphalt was in compliance with its requirements and regulations. BAAQMD also performs 24 hour source tests as well as night tests throughout the region. City Councilmembers Maio and Droste have requested information regarding these findings, which will be examined at a later date.

In addition to new technologies, BAAQMD requires a specific type of air quality stack testing, which has been in place at Pacific Steel Casting. This usually consists of sampling emissions from a single location. Industry is required to provide the stack monitoring data to BAAQMD. Once BAAQMD receives the data, it is reviewed to ensure that the data is accurate and free from manipulation. Councilmembers Maio and Droste have requested Information regarding specific stack monitoring.

BAAQMD also incorporates spot checks into their monitoring procedures. Spot checks consist of measuring compounds with additional instrumentation in order to ensure that the industries' instrumentation is accurate. Additionally, spot checks measure emissions to determine what compounds are emitting from facilities. City Councilmembers have requested information regarding specific spot test results.

Complaint Investigation

BAAQMD has a complaint line in operation 24/7 with translation services. During normal office hours, staff handles the complaints. If the complaint is generated during off-hours, an answering service processes the complaint. Although inspection staff is in the field during normal working hours, if a rash of complaints come in at night staff is contacted and makes a determination how to respond. BAAQMD expressed that they attempt to respond to all complaints within an hour and dispatch within 30 minutes (during normal working hours). Confirmation of an odor must consist of 1) the inspector and complainant simultaneously smelling the odor and 2) the inspector tracing the odor directly back to the source. BAAQMD emphasized that it still follows up with every complaint regardless of whether or not it is confirmed. The agency is working to improve their complaint process.

BAAQMD also has the power to issue public nuisance violations. If BAAQMD has approximately five "face-to-face" confirmations within 24 hours and can trace the odor back to a source, the

⁴ Maio, L.& and Droste, L. (May 26, 2014). Status Report: Berkeley Asphalt; Pacific Steel Casting; Air Quality Inquiries. Retrieved from http://www.ci.berkeley.ca.us/Clerk/City_Council/2015/05_May/Documents/2015-05-26_Item_38_Status_Report_Berkeley_Aspphalt.aspx, p. 94.

⁵ Ibid., p. 92-93.

facility may be deemed a public nuisance. Complaints must be self-generated instead of solicited by something such as an email tree to insure validity in a court proceeding.

According to BAAQMD, these particular steps are necessary in order to have court standing and be legally defensible in a court of law. When it issues the nuisance, the agency identifies the issue and serves as a mediator in order to fix the problematic source of the violation. If information is unavailable regarding a particular violation, it is because BAAQMD is still remedying the issue with the violator.

Inspector Training

Residents state that the current odor process is unscientific because inspectors rely on their sense of smell to validate complaints. Council Members Maio and Droste reviewed inspector training with BAAQMD to address these concerns.

In order to qualify as an inspector, an individual must meet the criteria for employment and have an “average nose.” Potential inspectors participate in a panel in order to determine whether their nose is not overly or under sensitive. Inspectors may be subjected to hazardous compounds during trainings. Although the process appears to be unscientific and antiquated, BAAQMD utilizes these steps to have court standing and legal defense.

Council Members Maio and Droste find the complaint and detection system to be in need of improvement and WILL strongly encourage BAAQMD to implement alternative devices to detect odors. While the district has purchased equipment to measure a wide variety of compounds in odor emissions, it is still trying to develop expertise in odor detection. Nevertheless, it is essential that BAAQMD develop capabilities and implement objective odor detection devices.

In order to reduce odorous and non-odorous emissions, Council Members Maio and Droste have confirmed that BAAQMD is pursuing the following to address monitoring technologies, regulations, reporting protocol, and inspector training:

1. BAAQMD is placing an additional air monitor in West Berkeley.
2. BAAQMD is reviewing and updating Regulation 7 “Odorous Substances” that specifically focuses on odors.⁶
3. BAAQMD is reevaluating its reporting protocol and will make significant efforts to outreach to stakeholders prior to this process. *Note: BAAQMD expressed willingness to workshop a new process with concerned stakeholders in 2016.*

⁶ Bay Area Air Quality Management District. (1982). “Regulation 7: Odorous Substances.” Retrieved from <http://www.baaqmd.gov/~media/Files/Planning%20and%20Research/Regulations/Reg%207/Reg700.ashx?la=en>

4. BAAQMD wishes to acquire objective odor detection devices and to incorporate these devices as the primary determinate of odor detection.
5. BAAQMD has been asked to make regular status reports on the implementation status of PSC's odor control plan.
6. BAAQMD is incorporating new technologies that will assist in reducing emissions.
7. BAAQMD is investigating shrouding operations with Berkeley Asphalt, in particular, to reduce noise and odors.
8. BAAQMD agreed to improve its oversight and detection of Berkeley Forge's emissions.

In order to address concerns with the city's regulatory mechanisms, Council Members Maio and Droste will obtain and assess BAAQMD's response to the Tetra Tech (2008) finding regarding the PSC Health Risk Assessment and how the Community Environmental Advisory Commission's (2007) air quality recommendations re acted upon. City staff has been asked in the previous item to provide information regarding enforcement procedures and assessed penalties in West Berkeley from 2000-2015. Results will be provided in the third status report.

Businesses Practices in West Berkeley

Residents claim that the larger industries in West Berkeley may not be following protocols for good business in order to reduce emissions. Namely, they seem to be concerned with weekend and after-hour operations. Residents also voiced displeasure over the lack of truck tarping at Hanson Aggregates Berkeley Asphalt as required in the 1999 Settlement Agreement.

In order to address concerns with the city's regulatory mechanisms, Council Members Maio and Droste will further follow up on:

1. City staff providing a report in response to City Council's January 20, 2015, second and third directives regarding use permit compliance using the information gathered in interviews and in this informational report.
2. Hanson Aggregates Berkeley Asphalt requiring trucks to tarp their loads.
3. Hanson Aggregates Berkeley Asphalt installing new shrouds to mitigate emissions caused when the hot asphalt hits cold truck beds.

Information Access

Finally, some neighbors were alarmed that they were not aware of emissions when purchasing or renting their homes. Overall, these residents had a lack of understanding when the plants are most active.

In order to address challenges regarding information access, Council Members Maio and Droste will pursue the following:

1. West Berkeley Asphalt and Pacific Steel Casting Company holding a meeting with concerned citizens to begin a constructive dialogue and share information regarding evolving technologies and their operations as they relate to public health.
2. West Berkeley industries posting and providing information alerts to the City of Berkeley regarding production schedules, particularly when plants are most active. This information should be on their website and communicated, via link, to concerned residents.

A third status report will be provided that will provide additional information, as relevant, and recommendations will be proposed. Although the proposed next steps go well beyond the 1999 settlement agreement, the third report will also provide an assessment of compliance with that agreement.

CONTACT

Office of Councilmember Linda Maio, Vice Mayor of the City of Berkeley, District 1
510.981.7110 | Imaio@cityofberkeley.info | cityofberkeley.info/lindamaio

Office of Councilmember Lori Droste, District 8
510.981.7180 | ldroste@cityofberkeley.info | loridroste.com