

July 7, 2006

Jim Dusch
Policy Services
Office of the Commissioner
Department of Environmental Protection
17 State House Station
Augusta, ME 04333-0017

Re: Dragon Products Company

Dear Mr. Dusch:

On behalf of our client, Neighbors for a Safe Dragon (“Neighbors”), we ask the Department of Environmental Protection (“the Department” or “DEP”) to: 1) initiate an enforcement action against Dragon Products Company (“Dragon”) based on its numerous, documented violations of Maine’s environmental laws and regulations; and 2) increase the scope and frequency of air, water and blasting testing in and around the cement plant and quarry operated by Dragon in Thomaston so that the Department is better able to monitor the ongoing environmental effects of Dragon’s operations.

DOCUMENTED VIOLATIONS

Dragon has violated state law and regulations for many years with respect to ground and surface water quality, air quality and blasting. Despite these violations, Dragon Products has expanded its operations by 40% since 1990. In addition, Dragon’s blasting activities have been moving closer to the surrounding neighborhood, with increasing impacts. We ask the Department, as the agency charged with enforcing Maine’s environmental laws, to protect the people and the environment in and around the plant and quarry from Dragon’s documented and continuing unlawful operations.

Groundwater and Surface Water Violations

Neighbors has prepared a table from DEP records (attached with supporting documentation at Tab 1) showing the results of water testing performed at various monitoring locations near Dragon’s cement kiln dust (“CKD”) pile in Thomaston from

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PHILIP C. HUNT
JOHN S. UPTON
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MELISSA HANLEY MURPHY
JOHN H. RICH III
JOHN A. CIRALDO
JOHN A. HOBSON
JAMES N. KATSIAFICAS
TIMOTHY P. BENOIT
GORDON SCANNELL, JR.
FRED W. BOPP III
MARK P. SNOW
WILLIAM J. SHELS
DAVID B. McCONNELL
PAUL D. PIETROPAOLI
HOPE CREAL JACOBSEN
RANDY J. CRESWELL
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1990 up to 2006. During that period, Dragon consistently violated the DEP's contamination limits for chromium, iron, manganese, pH, sodium, sulfate and total dissolved solids referred to by DEP as "exceedances." For example, the DQ-1 leachate testing site registered a prohibited hazardous pH level¹ in 45.5% of all monitoring tests at well "DQ-1" from 2000-2005, and 42.9% of the monitoring tests at DQ-1 from July of 1990.²

Neighbors has prepared a table from DEP records (attached with supporting documentation at Tab 2) showing the results of groundwater testing performed at various monitoring locations near Dragon's clinker pile in Thomaston from 1990 up to 2006. During that period, Dragon reported exceedances of the DEP's contamination limits for iron, pH, sodium, sulfate and total dissolved solids.

Neighbors has prepared a table from DEP records (attached with supporting documentation at Tab 3) showing the results of surface water testing performed at two surface water points, one beyond Quarry 5, and another east of the clinker pile, from 1990 up to 2006. During that period, Dragon reported a number of exceedances of DEP's contamination limits for iron, pH, sodium, sulfate and total dissolved solids.

Neighbors has prepared a table with information derived from data provided by Richard Heath, Senior Geologist in the DEP's Division of Technical Services, listing all of the water sampling results which have been provided by Dragon to date.³ This table lists all of the exceedances of MCLs and MEGs shown in the groundwater testing performed at the Dragon facility *after* the capping of the CKD pile (attached at Tab 5).

Air Emissions and Opacity Violations

Neighbors has prepared a table from DEP records (attached at Tab 6) showing air emissions at the Dragon plant during the second half of 2004 and all of 2005. While the reports from 2004 and 2005 are fairly complete, Dragon has failed to provide a number of reports from 2000 through 2003 as required by Section III (23-28) of the Part 70 Air Emission License. Much of the data that was provided by Dragon is incomplete. However, it appears DEP staff has been unable to confirm which "Average Time" Dragon used in its Semi-Annual Reports, and that the NO_x(4) level permitted by Dragon's air license was exceeded in both 2004 and 2005. Furthermore, Dragon's continuous emissions monitors ("CEM's") were malfunctioning 17.28% of the time during the third quarter of 2005 (July 1- September 30), which is also a violation of the air license.⁴

¹ A substance with a pH level greater than 12.5 is categorically considered "hazardous." 40 CFR 261.22.

² When the CKD pile was capped in 2005, Dragon filled in the DQ-1 testing pond, so it is no longer possible to evaluate the positive or negative effect of the capped pile on the surface water near the pile.

³ Results from the April 2006 water testing were due 30 days after completion of testing. As per an email from Carla Hopkins dated June 8, 2006, no data from the April 2006 test had been received at the DEP as of that date. (A copy of the email is attached at Tab 4).

⁴ Pursuant to Section III, 14(N) of Dragon's Part 70 Air Emission License: "If the parameter monitor is recording accurate and reliable data less than 98% of the source-operating time within any quarter of the calendar year, the

In addition to the known emissions violations, as well as the potential violations recorded in data not yet received, Dragon has had numerous violations of its air opacity standards. Neighbors has prepared a table from DEP records (attached at Tab 8) which lists the results of Dragon's opacity reporting in 2004 and 2005, although Dragon failed to submit much of the data that was required in such reports. Notwithstanding these data gaps, in just the second quarter of 2005 Dragon reported 248 violations of the 10% opacity standard at the Raw Mill Clean Out Bin and 346 violations of the 10% opacity standard at the Hot Clinker Discharge. Photographs of contamination and dust being emitted from the facility are attached at Tab 9.

Blasting Violations

Neighbors has prepared a table (attached hereto at Tab 10) showing blasting violations compiled from Dragon's annual blasting logs from 2001-2005. Although Dragon is required by the terms of its November 3, 1987 Site Location Order to submit blasting reports on a monthly basis⁵, it has failed to monitor or report with the required frequency.⁶ Specifically, no reports have been submitted for the months of January 2006, February 2006, March 2006, April 2006, and May 2006. Even so, when Dragon did file a report, and the monitoring equipment was operating properly (the logs indicate that the monitoring equipment failed to trigger on a number of occasions) Dragon exceeded the allowable air-blast and/or ground vibration levels during at least 22 separate incidents over the five year tracking period.⁷ Blasting is occurring ever closer to residences and causing excessive noise and apparent damage to residential structures. (See Diagram of blasting by Dragon Products and Affidavit of Jennifer Rodgers attached hereto as Tab 14).

TESTING

Dragon's consistent and ongoing pattern of water, air and blasting violations compels enforcement action by the Department to protect the abutting residential community. Although

Department may initiate enforcement action...unless the licensee can demonstrate...that the failure of the system...was due to the performance of established quality assurance and quality control procedures or unavoidable malfunctions." (A copy of the license is attached at Tab 7).

⁵ The Site Location Order states in relevant part, "All major blasts shall be monitored. Results shall be submitted to the Department on a monthly basis." See #2 in the conditions of approval. (A copy is attached at Tab 11).

⁶ In an email to Andrew Fisk dated May 3, 2004, Mark Stebbins, the DEP's Mining Coordinator, states "Dragon's permit only requires them to send the reports to the Department on a yearly basis. I've asked Ann Thayer only to send blast reports to my attention when they receive a complaint or if requested by the Department. Dragon shoots over 60 shots a year and [sic] be quite frank I'm not interested in reviewing every report unless there is a problem." (See Email to Andrew Fisk attached as Tab 12).

⁷ The Blasting Plan submitted by Dragon Products states specifically "Dragon will continue to prevent damage to nearby residential and other structures by strict adherence to the performance standards detailed in this report...we will continue our ongoing monitoring program to demonstrate compliance with these accepted safety standards." (Emphasis added. See Blasting Plan attached as Tab 13).

some testing of air, water and blasting is currently required by Dragon's Site License and Air License, Dragon has failed to regularly submit complete test results to the Department. The significant gaps in the frequency and scope of testing, coupled with the serious and ongoing violations that have been reported when Dragon does submit test data, suggests that additional testing is warranted.

Water

Neighbors asks that DQ-1, the leachate testing site near the CKD pile which consistently showed exceedances until it was filled in by Dragon, be restored as a testing site to ensure that the leachate quality is improving due to the Short Paper Fiber cap on the CKD pile. Additional groundwater monitoring wells and surface water test sites should also be added off site, to track the progress of any offsite contamination. The list of constituents tested for should be expanded to include all constituents of CKD which are known to jeopardize or damage human health and the environment, and Dragon should be required to report test results no less than quarterly.⁸

As initially proposed by Michael Hudson in an April 7, 2003 email message to DEP Project Manager Carla Hopkins, Division of Solid Waste, Dragon should be required "to conduct a hydrogeological study to identify and locate any and all fractures that may serve as escape routes for the leachate [related to the CKD and/or clinker piles] that is generated, and use the results of the study to implement improvements to the groundwater and leachate monitoring network."⁹ Mr. Hudson went on to propose that Dragon should be required "to increase the gw/leachate network and pumping at or near any and all fractures to minimize the amount of leachate that can enter such fractures." (A copy of Mr. Hudson's email is attached at Tab 17).

Air

Dragon's certified "Method 9" opacity testers should periodically be "re-calibrated" by Department personnel to ensure proper execution of the "Method 9" opacity test. Dragon should also be required to establish and maintain off site passive air monitoring systems to track air quality near the facility. In addition, the list of constituents tested for at the stacks should be expanded to include all constituents of the emitted particulate matter which are known to jeopardize or damage human health or the environment, and Dragon should be required to report test results no less frequently than quarterly.¹⁰

A number of citizens living near the plant and quarry have experienced excessive dust blowing from Dragon that coats their homes and businesses and causes a variety of health problems. I

⁸ The DEP has the regulatory authority to require these conditions in accordance with Chapter 400.3.F of the Department's Rules, which states: "The Department may impose any requirement as a license condition to assure compliance with State law or these rules." (A copy of this rule is attached at Tab 15).

⁹ Chapter 405.2.A of the Department's Rules states "...downgradient and upgradient (or background) ground water monitoring wells must be placed in sufficient numbers to meet the standards of this chapter as determined through a hydrogeological investigation of the facility site." (A copy of this rule is attached at Tab 16).

¹⁰ See DEP Rules Chapter 400.3.F.

understand that Dragon denies any connection, but, where Dragon is such a likely source of dust, to ensure that the dust is not linked to Dragon, it should be required to take dust samples from homes and businesses of those who register complaints with the Department about the dust. For example, in addition to many community members (whose complaints are attached at Tab 18), the Darney family at 24 Old County Road and the Cross family at 21 Marsh Road have complained to DEP about the dust, and their homes should be tested.

The samples taken from those test sites should then be compared with samples of dust taken from Dragon's facility and quarry and samples taken at its control sites, to compare chemical signatures and rule out (or establish) any connection. If there is a connection, Dragon should be required to bear the cost of any remediation.

Blasting

We ask that Dragon's monitoring and reporting requirements be enforced and renewed carefully by the DEP.¹¹ Some of the blasting monitors should be placed off-site. We ask that DEP require Dragon to take "before and after" foundation surveys of homes and businesses within a one mile radius of the quarry,¹² so that both Dragon and neighboring property owners would have a benchmark against which to measure any subsequent vibration damage.

Complaints

The violations discussed above are not occurring in a vacuum. They are occurring in a community, which is deeply affected by Dragon's operations. A list of complaints from the community to Dragon, the Department and the Town of Thomaston regarding Dragon's operations is attached at Tab 18.

CONCLUSION

Given Dragon's consistent and ongoing pattern of water, air and blasting violations, coupled with its chronic failure to submit complete test results, Neighbors asks the Department to initiate an enforcement action based on the known violations, and to require Dragon to increase the scope and frequency of on and off-site testing at its Thomaston facility. Neighbors also asks DEP to require Dragon to take immediate and substantive measures to stop, or at least to reduce and to remediate the impact on the community. Neighbors asks the Department to require as a condition of Dragon's continuing operation, strict corrective action to bring Dragon Products into compliance with federal and state rules and regulations to ensure the safety and health of the surrounding community, and that Dragon Products be held liable for previous violations of these regulations and compensate those members of the community directly affected through damage

¹¹ See DEP Rules Chapter 400.3.F.

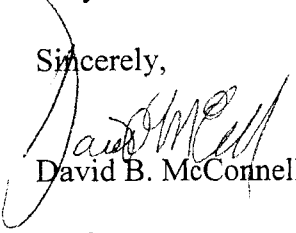
¹² Dragon's Blasting Plan recommends pre-blast surveys be performed on structures which are not owned by Dragon that are generally 1,000 feet or less from the quarry. (See Blasting Plan attached at Tab 13). However, the attached complaints indicate that significant blasting effects have been felt as far away as Georges Valley High School, 2.64 miles from the Dragon Products facility. (See complaint list attached at Tab 18).

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to their homes and health caused by the operations at Dragon Products. It is our hope that, upon institution of an enforcement action, you will permit and invite the community to participate in any negotiations with Dragon regarding any proposed Consent Order.

After you have had an opportunity to consider Neighbors' requests, please contact me to let me know what action, if any, the Department plans to take with respect to these requests. Thank you for your attention to this matter.

Sincerely,



David B. McConnell

Encl.

cc: Thomas R. Doyle, Esq.
Paul L. Gibbons, Esq.