

# CKD Proposed Rule NODA Comments

## NODA - Additional Comments on the 1999 Proposed Rule

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<b>Comment Id</b>	<b>Document Number</b>	<b>Comment</b>
1141	NODA0546	<p>1999 Comments on CKD Management Standards□</p> <p>□</p> <p>In the July 25, 2002, NODA, the Agency states that it has "reviewed all comments on the proposed rule, including comments directed to the Subtitle D option," and "is now considering an approach whereby it would finalize the proposed option of issuing the CKD management standards as described in the August 20, 1999, proposal (64 CFR 45632), as a RCRA Subtitle D rule ..." Lafarge is very concerned that there has been no acknowledgment to date that, based on the substantive comments submitted concerning the 1999 proposed management standards, substantial revisions will be needed to the management standards before they can be finalized in any form.□</p> <p>□</p> <p>Lafarge believes that the Agency must consider and carefully review the need for revisions and changes to the draft CKD management standards before they can be finalized in any form. Lafarge submitted 40 pages of comments with supporting technical data, including specific recommendations to changes in the management standards. A response to these comments is mandated before the Agency proceeds any further in developing CKD standards.□</p> <p>□</p> <p>While Lafarge is not submitting additional comments regarding EPA's 1999 proposed management standards, Lafarge strongly urges the Agency to consider and respond to the comments submitted by Lafarge and others in February 2000 before the Agency proceeds any further in developing CKD standards. Specifically, the February 2000 comments submitted by Lafarge include the following recommendations with respect to management standards which have, to date, received no response from the EPA:</p>
1142	NODA0546	<p>Applicability□</p> <p>□</p> <p>Lafarge recommends that a concise discussion of the applicability of the proposed rules appear in one complete section of text in the rules. (Lafarge actually supports the development of CKD management standards in the form of an Agency guidance document rather than formal rules.) For the reasons stated below, the final CKD rule should not apply to CKDLF units that stop receiving waste before the effective date of the rules. The rules should not revoke the permitted status of CKDLF units currently permitted by states, regardless of the stage of construction.</p>
1143	NODA0546	<p>Variances□</p> <p>□</p> <p>Lafarge recommends a general variance provision to eliminate the rigidity of the proposed rules that may be detrimental to achieving their objective. Flexibility is especially appropriate with respect to CKD regulations, where existing operations are long-standing, where large volumes of CKD are generated, and where most of the existing CKDLF units have not caused environmental harm or do not present significant risk to the environment, as the monitoring data supports.</p>
1144	NODA0546	<p>[First Bullet] Lafarge recommends that the final CKD standards include a chemical waste characterization step using a water leaching test to establish the appropriate design standards.</p>
1145	NODA0546	<p>[Second Bullet] Lafarge recommends that the outright ban on managing CKD below the natural water table be deleted from the proposed standards and a broader approach adopted to allow for management below the water table where warranted by site-specific conditions.</p>
1146	NODA0546	<p>[Third Bullet] Lafarge recommends that the proposed standards allow for existing state regulations governing groundwater investigations and stabilization design measures to be applied to facilities within their jurisdictions as the data submitted supports the effectiveness of state programs.</p>
1147	NODA0546	<p>[Fourth Bullet] Lafarge recommends that daily cover not be required for CKDLF units that accept conditioned CKD because it is an unnecessary waste of resources.</p>

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1148	NODA0546	[Fifth Bullet] Lafarge recommends that the composite liner requirement be deleted and replaced with language that allows for various types of liner systems.
1149	NODA0546	Lafarge reiterates its opinion that the CKD management standards if implemented as proposed in the Agency’s 1999 notice, would have a direct, significant, and adverse operational and economic impact on Lafarge’s business operations and the operations of other cement companies.
1153	NODA0546	<p>Issue CKD Management Standards as a Guidance Document</p> <p>Lafarge requests that the Agency consider several key reasons why it is most appropriate to issue the CKD management standards as a guidance document rather than a rule. First, the industrial solid waste rules are different from state to state, and for good reason. Each state has a different hydrogeologic setting. The specific industrial waste rules of each state were developed with the acknowledgement of this difference, and the rules therefore contain different requirements to match the needs of the technical setting.</p> <p>As proposed, the CKD management standards are very prescriptive; they are not simply performance standards. The prescriptive requirements do not allow for the natural differences that have evolved in the state’s rules.</p> <p>A second key reason to issue the standards as a guidance document is to maximize the beneficial reuse of CKD. As noted in the APCA’s comments, the amount of CKD that is recycled or reused has grown significantly over the past several years. Each state has different requirements governing this recycling and reuse. Lafarge believes that the Agency desires to continue to promote recycling and reuse and therefore suggests that it is vital that the final action on CKD promote rather than discourage this practice. The integration of numerous states beneficial use protocols with a single federal rule is an onerous task and will likely result in conflicts and the potential to limit beneficial use. If there are specific federal rules for CKD, there will be a stigma that could discourage beneficial use. While recycling in cement production may not be impacted, this type of stigma translates to a real third party liability concern to contractors, companies, and owners that may be considering use of CKD.</p> <p>Lastly, issuing the management standards as guidance would be consistent with the federal approach to industrial waste. The May 1999 Guide for Industrial Waste Management is published as a guidance document, available to the states for consideration and reference. They are not promulgated as a rule. Lafarge believes that this approach is appropriate for the CKD management standards.</p> <p>Lafarge recommends that EPA issue the CKD Management Standards as a guidance document rather than a rule under Subtitle D.</p>
1154	NODA0546	<p>Cost Impact of CKD Management Standards Case Study</p> <p>A case study is presented below for the Lafarge Alpena, Michigan, cement plant. Alpena is one of Lafarge’s largest U.S. operations with a sound environmental management structure. The current CKDLF is permitted by the Michigan Department of Environmental Quality (MDEQ). The third cell of the landfill was recently constructed following successful operation of the first cells and final closure of Cell 1. Table 1 demonstrates the expected increased compliance cost burden if the proposed federal management standards become final as proposed.</p> <p>[See Table 1 in original comment document].</p> <p>The EPA’s proposed action regarding CKD, if implemented as proposed, would have a direct, significant, and adverse operational and economic impact on Lafarge’s business operations. Lafarge strongly believes that there would be little to no improvement to the environment with the additional \$48 million cost and the ongoing annual costs of 1 million at just one plant. These costs would be an unnecessary waste of resources.</p>

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1159	NODA0547	Third, the only category of LAKD that has ever been of concern to EPA is LAKD generated by waste-burning kilns. There are now only three such facilities in the United States, the two Solite facilities in Virginia and the Norlite facility in Cohoes, New York, and no prospect that additional facilities will burn hazardous waste fuel in the foreseeable future. All three facilities have been burning waste fuel for many years and have generated a large quantity of data showing that the LAKD that they produce is not hazardous and meets the health-based standards of 40 CFR § 266.112(b)(2). Data submitted to EPA in the Hazardous Waste Combustor MACT rulemaking by Solite and the Cement Kiln Recycling Coalition further shows that the long-term trend has been for the concentrations of metals and chlorine in waste fuel to decline, and the new HWC MACT standards will reinforce this process. This will further reduce the level of hazardous constituents in LAKD.
1161	NODA0547	EPA has an opportunity, and an obligation, to finally eliminate a long-standing regulatory anomaly. Subtitle C regulation is not appropriate for LAKD produced by waste-burning lightweight aggregate kilns, regardless of Bevill status. Extensive testing over many years, and the absence of environmental damage, has demonstrated that LAKD is not hazardous and is appropriately regulated at the state level.
1186	NODA0552	SECTION 6: Environmental Justice Considerations□□□ □□□ There are also environmental justice concerns which remain unaddressed. If some facilities have tremendously reduced their CKD production while others continue to produce large amounts, then certain types of communities may be at elevated risk for CKD contamination. Similarly, if water runoff, fugitive dust emissions, or groundwater protection measures are instituted in some communities but not others, discrimination may be occurring. Segments of the cement industry has a history of racism. Holnam Inc. (now Holcim) initiated hazardous waste burning primarily in impoverished communities of color in the deep south including their facilities in Alabama, Mississippi, and South Carolina thereby disproportionately burdening these communities. In the 1990's, Holnam was listed as a significant violator of the Clean Air Act at their South Carolina facility, a poor showing in a community of color as compared to their record in other communities. Without specific data, the EPA and the public are unable to determine whether the reduction in CKD mismanagement, implementation of surface water and storm water runoff controls, fugitive dust controls, increased groundwater monitoring, or other affirmative measures have occurred in all communities or only those communities with money, power, and a predominantly white population.□□□

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1221	NODA0558	<p>As co-chairman of the Congressional Cement Caucus, we [Ken Lucas and Johnny Isakson] are writing to you once again to express support for a cement industry request that the Environment Protection Agency (EPA) withdraw its proposed rule addressing the management of cement kiln dust (CKD), a by-product of cement manufacturing, and reinstate CKD's status as a Bevill waste under the Resource Conservation and Recovery Act (RCRA). The cement industry first made this request more than two years ago. Recent EPA pronouncements indicate that the agency does not plan to take final action on the CKD issue in the foreseeable future. This inaction is having an unacceptable impact on the cement industry.□□□ □□□</p> <p>During the last decade, cement manufacturers not only produced record amounts of cement, they also greatly increased the amount of CKD recycled in the manufacturing process thereby reducing the amount of CKD disposed in on-site facilities. Cement is the key ingredient of concrete, a vital building material used in the construction and rebuilding of our nation's infrastructure. The commitment of the cement industry to superior environmental performance was recognized by EPA in 2000 when the Agency conferred on the American Portland Cement Alliance and its member companies the Climate Protection Award.□□□ □□□</p> <p>The cement industry has developed protective management standards for CKD disposal and continues to work closely with state agencies to implement these standards. We agree with EPA that the states are capable of addressing CKD management and therefore oppose any further delay by EPA in acting on the industry's request. We strongly urge you to bring this issue to a close by withdrawing the proposed CKD rule and revising the determination addressing CKD's Bevill status.□□□ □□□</p> <p>[Response from Christine Todd Whitman, Dec. 6, 2002 to Ken Lucas and Johnny Isakson]□□□ □□□</p> <p>I appreciate your viewpoint that the cement manufacturers have developed effective management standards, and that CKD should be exempted from regulation under the Bevill Amendment of the Solid Waste Disposal Act of 1980. As you may know, the Bevill Amendment was intended by Congress to be a temporary exemption until the Agency completed certain studies examining the adverse effects on human health and the environment, if any, from the disposal of CKD waste. The Agency determined in 1995 that practices and controls at the time were inadequate to limit releases and associated risks of CKD, particularly regarding discharges to ground water and air.□□□ □□□</p> <p>Currently, as you know, the Agency is accepting comment on a July 25, 2002, Notice of Data Availability. In this notice, EPA is soliciting comment on new data provided by the cement industry on current CKD disposal practices, groundwater monitoring, state programs, and similar subjects. The Agency also stated that it is now considering an approach in which it would suspend activity on a hazardous waste rule, and develop a non-hazardous waste regulation. Once the comment period has closed on December 9, 2002, the Agency will consider all of the various options and determine next steps. Agency officials recently met with industry representatives on this matter and we will remain open to further discussions with all stakeholders.</p>
1157	NODA0547	<p>EPA's proposed approach for CKD of issuing management standards under RCRA Subtitle D and temporarily suspending consideration of a mismanagement-based listing would not be appropriate for LAKD for the following reasons.□□ □</p> <p>First, there is no indication that current state regulatory programs for LAKD are inadequate. Most LAKD is incorporated into products or otherwise beneficially used. To the extent that it is land-disposed it is subject to state mining waste and/or industrial waste requirements. The absence of environmental damage incidents suggests that these requirements are adequate.</p>
1158	NODA0547	<p>Second, LAKD poses lower environmental risks than CKD. Unlike CKD, LAKD does not potentially generate run-off that has a high ph, and LAKD is produced in much smaller quantities and at many fewer facilities than CKD. Management standards developed for CKD may be inappropriate and excessive for LAKD, and there is no justification for creating a separate category of management standards under Subtitle D just for LAKD. Like other non-hazardous mining wastes, LAKD disposal should be managed pursuant to existing state programs.</p>

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1160	NODA0547	Solite submits that in view of the foregoing EPA should (1) add LAKD to the solid wastes identified in 40 CFR § 261.3(c)(2)(ii) as non-hazardous (unless it exhibits a hazardous characteristic), simultaneously finalizing the removal of LAKD from Bevill status, and (2) over the next three to five years review the adequacy of the Subtitle D and mining waste programs in Virginia and New York that potentially apply to LAKD, as an adjunct to its assessment of the effectiveness of state regulatory programs for CKD. If EPA should find that Virginia or New York do not have adequate management standards, any deficiencies can be addressed through the issuance of guidance, and by oversight by EPA Regions II and III.
1165	NODA0549	The Work Group supports the approach being considered to issue protective CKD management standards as a RCRA Subtitle D rule with the concurrent temporary suspension of the previously-proposed listing of mismanaged CKD as a hazardous waste until further assessment has been made. Based on a review of the analysis by Tetra Tech EM Inc. of the groundwater monitoring data submitted by the American Portland Cement Alliance (APCA), it is the consensus of the Work Group that the amount of data and the quality of the groundwater monitoring reports are inadequate to base a conclusive determination that waste CKD is being adequately managed and that federal regulatory standards are not necessary. The Work Group also believes that further risk analysis for CKD used as an agricultural soil amendment is appropriate. These comments have not been reviewed or adopted by the ASTSWMO Board of Directors. In addition, some individual State waste programs may also provide comments based on their own evaluation of the data provided by APCA.
1176	NODA0552	<p>SECTION 1. EPA is required to regulate CKD under RCRA subtitle C.□□□□ □□□</p> <p>RCRA (Resource Conservation and Recovery Act) requires that RCRA standards must be sufficient to protect public health and the environment. In the case of CKD (cement kiln dust), EPA was required to "either determine to promulgate regulations under this subchapter [RCRA Subtitle C] for [CKD, cement kiln dust] or determine that such regulations are unwarranted." [42 U.S.C. section 6921 (b) (3) (c)] EPA's 1995 regulatory determination on cement kiln dust states, "[A]dditional control of CKD is warranted in order to protect the public from human health risks and to prevent environmental damage resulting from current disposal of this waste. The primary environmental concerns to be addressed through additional controls are documented damages to ground water and potable water supplies, and potential human health risks from inhalation of airborne CKD and ingestion via food chain pathways."□□□□ □□□</p> <p>The EPA specifically identified the potential for groundwater contamination from CKD management in karst terrain, fugitive emissions from CKD handling and management and runoff from surface water and storm water from CKD management areas. EPA stated that "[u]nder Subtitle C of RCRA, the Agency will develop a tailored set of standards for CKD that controls releases to ground water." So, under RCRA, having determined that CKD is subject to regulation as a hazardous waste (subtitle C), EPA must regulate CKD as a hazardous waste. EPA did not and does not have the option to now regulate CKD as a solid waste (subtitle D).</p>
1177	NODA0552	<p>SECTION 2. EPA's proposal to abandon Subtitle C regulation of CKD is arbitrary and capricious.□□□□ □□□</p> <p>In 1999, EPA proposed to regulate CKD provisionally by making only mismanaged CKD subject to subtitle C. Given that regulation of a specific CKD site would be dependent upon the detection or discovery of ongoing environmental damage and given the poor quality of monitoring data and record of inspections, then as now, the EPA failed to demonstrate that this proposed provisional regulation would have been effective in providing adequate protection to public health and the environment. Nevertheless, EPA is now proposing to suspend the very weak subtitle C regulation of mismanaged CKD which they proposed based upon EPA's claim in the NODA (Notice of Data Availability) that it does not know if state management practices are sufficient to protect human health and the environment. So, despite documented evidence of past damage to human health and the environment and the inadequacy of state regulation and enforcement, EPA is proposing to abrogate its duty to prevent future damage based upon a claim of ignorance of the current effectiveness of state regulation, a decision which would be arbitrary and capricious.□□□□</p>

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1151	NODA0546	<p>Act on APCA Petition ☐☐</p> <p>☐</p> <p>Lafarge concurs with the rule-making petition filed by the APCA in May 2001 requesting that the Agency withdraw the CKD proposal and revise the regulatory determination addressing the Bevill status of CKD. The petition is supported with the same logic that the EPA used to make the Fossil Fuel Combustion (FFC) Waste Determination. In fact, the EPA used the APCA's previous arguments to publicly justify not regulating FFC waste at all. It is important to note that CKD is only a small fraction of the volume of FFC waste, and it leaches lower levels of constituents with the potential for environmental consequences. In its Petition, the APCA stressed that, in light of the recent FCC determination, the EPA's treatment of CKD stands out as being particularly inconsistent, arbitrary, and capricious. Every Bevill waste that the EPA has studied, both before and after CKD, can be shown to have more potential for environmental impact than CKD has; yet, for every one of those wastes, the EPA has determined not to proceed with stringent regulation except for CKD. ☐</p> <p>☐</p> <p>Lafarge requests that the Agency act on the APCA's rule-making petition before proceeding any further in developing CKD standards, and that it adopt the petition's request for withdrawing the proposed CKD rules and revising the regulatory determination addressing the Bevill status of CKD.</p>
1152	NODA0546	<p>Delayed Decision on the Need for Subtitle C Rules ☐☐</p> <p>☐</p> <p>For the reasons outlined in the comments of Lafarge and other parties submitted in response to the Agency's 1999 proposed CKD rules, as well as for the reasons set forth in the rulemaking petition submitted by the APCA, there is simply no need or justification for promulgating rules under Subtitle C of RCRA that would "transform" CKD into a hazardous waste in situations involving egregious or repeated facility violations. Without restating the arguments against such over-regulation, Lafarge points out that the EPA's latest proposal in its July 25, 2002 NODA to defer a final decision on this issue for three to five years is equally untenable. ☐</p> <p>☐</p> <p>The proposal to delay a final decision on this issue for upwards of five years raises serious questions regarding EPA's compliance with its obligations under Section 8002(0) of RCRA, ignores the existing wealth of information which demonstrates that CKD should not be managed under any circumstance as a hazardous waste, and subjects cement manufacturers who engage in CKD disposal to a period of protracted uncertainty regarding their future CKD obligations. In short, cement companies will be unable to effectively engage in long-term planning and budgeting concerning their CKD management because they simply will not know if and when Subtitle C rules may fall upon them, and what the ramifications of such rules might be. The Agency should not knowingly place this type of cloud over the cement industry, particularly when there is no justification for delay. ☐</p> <p>☐</p> <p>Lafarge is deeply concerned that the recent NODA only prolongs what has already been a very protracted process, particularly as concerns the question of whether CKD should be managed under Subtitle C of RCRA. Lafarge believes that there is no basis to continue to prolong this process when there is ample evidence to conclude that the cement companies and the states are properly managing CKD and no Subtitle C regulation is necessary or appropriate.</p>

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1181	NODA0552	<p>Reduced CKD Disposal□□□                      □□□                      No data is presented demonstrating that CKD production has decreased.□□□                      □□□                      The APCA petition "Rulemaking petition of the American Portland Cement Alliance Relating to CKD" asserts that CKD disposal has decreased and presents a tabular summary of results. The supposed data set was apparently not shared with US EPA and was not shared with the public. The APCA provided no information as to the methodology utilized by the industry for measuring the amount of CKD produced and no data associated with trends for individual facilities over a period of years. Of course, such data is necessary if the EPA and the public is to evaluate whether the supposed trend toward reduced CKD disposal is shared equally among all facilities, is greater with certain types of facilities (wet or dry kilns), is accounted for by abrupt changes of individual facilities which are unlikely to produce a continuing trend industry-wide, what variability and reliability exist in the reporting data, and what each facility projects for the future rather than what the industry alliance asserts.□□□                      □□□                      The results which are presented on page 10 of the APCA petition against US EPA, Table 3, do not identify units of measure. Assuming that the units displayed in Table are tons, Table 3 would indicate that in 2000, industry figures indicate that millions of tons of CKD waste are still produced each year. Thus, even if the amount of CKD is decreased by a significant percentage over the next few years, the enormous quantity of CKD and its inherently characteristics (caustic, toxic, abrasive, frequently airborne) and the failure of the industry to manage CKD responsibly ensure that CKD will continue to pose significant health and environmental impacts as well as the usual and ubiquitous nuisance to nearby neighborhoods.□□□                      □□□                      The APCA concludes that in the "not so distant future" there will be no CKD disposal, however, there is no information provided as to how this feat is to be accomplished. The APCA represents an industry which has formally notified the EPA of its intent to sue should regulations over CKD go forward. It stands to reason that if the industry intended to cease production of CKD waste soon, it would not be concerned about CKD waste regulations. Thus, whether or not it is possible for the industry to become waste-free, their actions strongly suggest that it is not the intention of industry to do so in the near future.</p>
1182	NODA0552	<p>Increased Fugitive Dust Controls□□□                      □□□                      Page 11 of the APCA petition asserts that 32 facilities self-reported that they have road dust controls. The EPA previously determined that road dust controls were frequently inadequate. The EPA previously found that emissions frequently exceeded legal limits at the fence line of facilities. An assertion by the cement industry that increased fugitive dust controls are in place does not constitute evidence that they are in place, are being implemented, or that they are in any way adequate or effective. An assertion by the cement industry or its APCA representatives that they have road dust controls does not constitute data. An independent scientific survey of nearby residents downwind of facility roads or data collected from particulate monitoring stations would be appropriate to characterize the status of fugitive dust control.□□□</p>

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1184	NODA0552	<p>Improved State Programs□□□ □□□</p> <p>The Summary of Meeting for July 6, 2001 between US EPA and APCA includes a list of information which EPA indicated would be valuable. EPA specifically listed, "Information to support APCA's claim that poor management practices which previously caused damage cases, such as placement of CKD in direct contact with groundwater, no longer occur." Despite this pointed identification of a data need by US EPA, no evidence or information was supplied by APCA or their client facilities to prove that the dumping of CKD in direct contact with groundwater or any other poor management practices have been discontinued, decreased, or even reconsidered. In addition to failing to provide any information to support the claim that such practices have been discontinued, the APCA failed to provide information supporting the contention that state regulation, implementation, and enforcement procedures are now in place to prevent future damage.□□□ □□□</p> <p>There is no chart listing states and comparing the key elements of state programs for CKD management in past years with current elements. There is no narrative describing how states with cement plants have improved their state programs. There are no evaluations provided by state regulators overseeing state solid waste disposal programs which attest to their belief that state programs have improved and are adequate to protect groundwater, surface water, environmental quality, and human health from CKD.□□□ □□□</p> <p>It seems very unlikely that state programs would have duplicated apparent federal efforts to develop stronger solid waste provisions governing CKD over the last decade. Lacking any evidence to the contrary, the assertion that state programs have improved over the last decade lacks credibility.</p>
1140	NODA0546	<p>The APCA's Groundwater Data□□ □</p> <p>In July 2001, the APCA met with the Agency to discuss the status of the proposed CKD rule-making. In summarizing the Agency's position at that time, the Agency stated that, based upon the information the industry had provided to date, the industry had advanced a very compelling position for no federal regulation of CKD. The Agency indicated that its only remaining issue was with the groundwater monitoring for these landfill units. Therefore, the industry voluntarily agreed to provide a copy of available groundwater monitoring results. Lafarge understood that the EPA's reported intent was to confirm, to the extent possible, that the CKD landfills had groundwater monitoring programs in place and that, in the case of groundwater exceedences, there was a corrective plan of action by the state.□□ □</p> <p>The APCA provided EPA with groundwater data from 18 CKD facilities to highlight the high level of monitoring already taking place under state-lead programs, permits and initiatives. These 18 CKD facilities represent a large portion of the sites throughout the United States where CKD disposal is occurring. Consistent with the discussions held during the July 2001 meeting with the EPA, the data was not compiled or presented in a fashion designed to evaluate the potential for CKD disposal sites to adversely impact groundwater. Many companies, including Lafarge, do have detailed hydrogeologic information for their CKD sites and have conducted thorough reviews of the groundwater monitoring data. The fact that this information was not included in the submittal to EPA was simply because that was not the intended purpose of conveying the information.□ □</p> <p>In a surprising turn of events, the EPA contracted with Tetra Tech to conduct a detailed analysis of the results presented by the APCA. Tetra Tech reviewed the data critically and noted numerous alleged hydrogeologic and technical deficiencies when it was not the intent of the original submittal to be a detailed technical treatise. In short, the industry provided sufficient information to convincingly answer the EPA's question on whether a state-regulated groundwater monitoring program is currently in place for most, if not all, active landfills. Monitoring programs do exist, and can be readily tailored, if appropriate, to meet any new recommendations developed by the EPA.□ □</p> <p>Lafarge submits that the EPA should acknowledge that the data provided by the APCA evidences the prevalence of state-based groundwater monitoring programs at CKD disposal facilities, which monitoring programs can be modified, if needed, to meet future federally recommended testing standards for insuring that CKD disposal sites are not having an adverse effect on groundwater quality.</p>
1156	NODA0546	<p>The groundwater data submitted by the APCA clearly supports Lafarge's position that the□ appropriate regulatory approach to federal CKD management standards is to issue the□ standards as a guidance document rather than a rule. The data also supports the position that current industry practice and state regulatory programs are providing an acceptable and efficient manner of managing CKD.</p>



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1180	NODA0552	<p>SECTION 5. The Agency has specifically requested comments on "the new data provided by APCA regarding reduced disposal, more extensive groundwater monitoring, increased fugitive dust controls, and improved CKD management and state programs." □□□                      □□□</p> <p>The data submitted by APCA provides no scientific basis for the delay or withdrawal EPA of proposed rules to regulate mismanaged CKD. Rather, the data submitted by APCA and the Agency review of that data indicate that the provisional regulation of "mismanaged" CKD is inadequate and that all CKD should be regulated.</p>
1183	NODA0552	<p>Improved CKD Management □□                      □</p> <p>In 1995, the US EPA determination on CKD specified that uncontrolled or poorly controlled surface water and storm water runoff were practices with the potential to result in significant damage to the environment. The APCA petition provides survey results indicating that 77% of facilities surveyed have water runoff control. If this figure were to be accepted, then it would appear that nearly a quarter of facilities are not controlling their water runoff. This is evidence of poor CKD management and reconfirmation of the US EPA determination that CKD mismanagement continues to pose a significant and continued threat to natural resources. However, since this APCA data was generated by unverified self-reporting by the cement industry, the APCA figures may represent the tip of the iceberg. □□                      □</p> <p>CKD compaction decreases the volume of CKD but likely increases the concentration of toxic constituents within any given dump area. Unless groundwater and surface water are fully protected, a small dump with concentrated contaminants is not a significant improvement over a large dump with dilute contaminants. CKD compaction without additional protective measures does not constitute improved management.</p>

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1185	NODA0552	<p>Analysis of Groundwater Monitoring Data□□□                      □□□                      Groundwater monitoring at CKD dump sites is presently inadequate as evidenced by the data set submitted by the APCA on behalf of the cement industry. EPA (contracted to Tetra Tech) concluded that "In most cases, the reports submitted by the APCA were not detailed enough to make any meaningful determinations."□□□                      □□□                      The EPA found that only two facilities of the eighteen which submitted data were able to provide adequate information. Typically, the data set provided was pitiful. A fair summary of the finding of EPA regarding the data submitted by APCA is that it demonstrates that most facilities provided no subsurface description and no site map, most sampled a few wells a few times, many failed to specify upgrade and downgrade wells adequately or at all, most presented inadequate discussion and conclusions, and most failed to supply citations.□□□                      □□□                      EPA noted numerous times that reports, data, studies, and other documentation which were referred to in the submitted reports was not included in the reports. For example, Cemex., Inc., Charlevoix, Michigan states that investigations on the property have been conducted in accordance with and under the oversight of the Michigan Department of Environmental Quality. EPA states that the results of those investigations should have been included along with an explanation of why the Michigan DEQ became involved with the site. Of course, it is not possible to determine whether this and other such missing information was absent due to the generally sloppy reporting or due to efforts by facilities to conceal data which would reveal additional ongoing environmental damage. However, in either case, this failure to provide information which is relevant and readily available is troubling.□□□                      □□□                      The summary of data quality provided for each facility's data set by EPA does not quantify the incomplete and inadequate testing for various chemical constituents and characteristics (e.g. pH) of the groundwater. Many critical measurements are missing, much of the data is poor quality, and some of the methodology was so crude that they were unable to detect levels of contaminants at levels relevant to water quality health and environmental standards.□□□                      □□□                      The US EPA issued "Guidance Document on the Statistical Analysis of Ground-Water Monitoring Data at RCRA Facilities," (hereby incorporated by reference) a document reviewed by the Office of Solid Waste, Waste Management Division) and approved for publication shortly after the issuance of regulations (53FR39720: Oct 11, 1988, incorporated by reference here) concerning the statistical analysis of ground-water monitoring data at RCRA facilities. Despite the availability of this resource for those inclined to develop a useful data set regarding groundwater quality, cement plants have, evidently, failed to make use of these guidelines in their collection and analyses of groundwater data.□□□                      □□□                      The conclusions drawn and assertions made in the facility reports could not, for the most part, be substantiated because of the poor condition of the data set. In some cases, however, there was sufficient data to determine that the conclusions were incorrect. For example, Ash Grove, Montana City, Montana claimed that their CKD management was not impacting the groundwater, but their data showed the opposite to be true.□□□                      □□□                      Degradation of groundwater is occurring according to the EPA data analysis submitted by APCA (e.g. CEMEX., Inc, Charlevoix, Michigan; Ash Grove Cement, Montana City, Montana; Lone Star, Greencastle, Indiana; Lone Star, Cape Girardeau, Missouri). EPA found, "even with the very limited information provided:□□□                      [First Bullet] Several facilities indicated elevated levels of antimony, arsenic, beryllium, cadmium, lead, selenium, thallium and some others□□□                      [Second Bullet] A significant number of the reports are inconsistent with regard to sampled constituent (i.e., parameter)□□□                      [Third Bullet] A number of reports do not include parameters of potential interest to the EPA (various metals and inorganics)□□□                      □□□                      There is evidence that monitoring is so poor and state oversight so inadequate that future releases from CKD management units will not be detected (e.g. Ash Grove, Chanute, KS).□□□                      □□□                      The text of the EPA report is included as a part of these comments because it well documents the extremely poor condition of the data set. (Appendixes 1, 2, &amp; 3)</p>

Comment Id	Document Number	Comment
1188	NODA0553	<p>I. APCA’s Data Fails to Provide a Basis For Delay□□□ □□□</p> <p>The American Portland Cement Alliance’s (APCA’s) "new" data about Cement Kiln Dust ("CKD") does not alleviate the serious threats to public health and the environment that EPA documented in its 1999 proposal and 1995 determination. Indeed, APCA has limited the facilities included in its data to produce statistics that do not address the scope of the CKD problem addressed by EPA in 1995 and 1999 and provides no basis for comparison with the data that EPA relied on in those federal register notices. Accordingly, the APCA data are irrelevant.□□□ □□□</p> <p>In 1995, after substantial investigation, EPA documented "concerns about the harm to human health and the environment posed by CKD [that] suggest the need for regulation under RCRA Subtitle C authority." 60 Fed. Reg. 7366, 7375 (Feb. 7, 1995) (emphasis added). EPA announced its intent to develop a "creative, affordable, and common sense approach" to control CKD pollution. Id. EPA based its 1999 proposed rules and□□□ management standards for CKD on documented evidence of damage, potential risks to human health and the environment, waste characteristics, and the fact that "current practices are inadequate to limit contaminant releases and associated risks." 64 Fed. Reg. 45632, 45637 (Aug. 20, 1999). Now, EPA is considering a ‘wait and see’ position for the next 3-5 years regarding CKD. This despite of the very real and present dangers of CKD reflected in the fact that "two [CKD] sites . . . Are listed on the CERCLA (Superfund) National Priorities List (NPL)." 60 Fed. Reg. at 7372. EPA has suggested it can justify this ‘wait and see’ approach with data submitted by the American Portland Cement Alliance (APCA) and has limited this round of comments to these data. (67 FR 48648, 7/25/02). However, APCA’s data do not alleviate the serious threats to public health and the environment that EPA documented in its 1999 proposal and 1995 determination.</p>
1189	NODA0553	<p>II. APCA’ Analysis is Unsupported, Lacks Credibility, and is Misleading□□□ □□□</p> <p>EPA has reported that "25 of 91 cement manufacturing facilities (27 percent) were reported in a 1991 industry survey to be located within one mile of a public drinking water well." 60 Fed. Reg. at 7375. Only 17% of CKD facilities had ground water monitoring systems. Id. At 7372. The APCA data fails to show any progress in this regard. Instead, APCA produced seemingly better looking statistics by limiting the pool of facilities it examined that is APCA polled only the 35 largest producers of waste and reported that only 20 of those 35 (a mere 57%) monitor ground water. 67 Fed. Reg. 48648, 48649 (July 25, 2002). Because APCA declined to include all CKD producers in its data, these "new" data do not provide any basis for comparison with EPA’s prior findings and do not indicate any increase in nation-wide ground water monitoring. Moreover, APCA provides no information about how close public drinking water supplies are to the 15 plants (from APCA’s limited database of the largest waste□ producers) that have no monitoring systems. Clearly, APCA’s new data do not rebut EPA’s earlier data and thus provides no basis for changing EPA’s prior conclusions about the need for regulation. Indeed, the documented problems of proximity to drinking water, the number incidents of affected water to relatively few plants, and the lack of continued complete adequate ground water monitoring by the industry call for immediate□ attention□ □</p> <p>EPA’s analysis of data on ground water monitoring from the APCA found "[i]n most cases, the reports submitted by the APCA were not detailed enough to make any meaningful determinations" and "reasonable review/assessment of the influence of CKD facilities cannot be made with respect to these file reports." <a href="http://www.epa.gov/epaoswer/other/ckd/ckd/gw_analysis.pdf">http://www.epa.gov/epaoswer/other/ckd/ckd/gw_analysis.pdf</a>. Data from plants that monitor ground water "indicated elevated levels of antimony, arsenic, beryllium, cadmium, lead, selenium, thallium," and "are inconsistent with regard to sampled constituent," plus "[a] number of reports do not include parameters of potential interest to the EPA." Id.□□□ □□□</p> <p>The tables purporting to show reductions in CKD disposal are irrelevant. Initially it should be noted that the tables do not supply units, and are not supported by underlying data. As with APCA’s other data only 34 of 110 cement plants were polled, leaving 76 plants out of consideration. Thus, the data neglect to account for roughly 130,000 units of CKD. Moreover, because APCA’s tables are unsupported by underlying data, not labeled in specific units, and in light of EPA’s analysis of APCA’s ground water monitoring data, APCA’s tables are unreliable. Additionally, any reduction in the volume of existing CKD eliminates the traditional "high volume" justification for excluding Bevill waste. Further, APCA’s concerns about possible "stigma" are not appropriate considerations for EPA. <i>Hazardous Waste Treatment Council v. EPA.</i>, 861 F.2d 270 (D. C. Cir. 1988).</p>

Comment Id	Document Number	Comment
1162	NODA0548	<p>Tetra Tech EM Inc. (Tetra Tech), under contract to the United States Environmental Protection Agency (USEPA or EPA), evaluated monitoring information for eighteen cement kiln dust (CKD) landfills provided to the EPA by the American Portland Cement Alliance (APCA). Included with this review was information pertaining to the Ash Grove Cement Company facility in Montana City, Montana. Based upon their review of the Montana City data, Tetra Tech concluded that the data indicates that the CKD source area does impact the local groundwater. This conclusion was based on laboratory data indicating that 14 of 21 constituents analyzed were present at concentrations greater than background conditions at downgradient sample locations during one or more sampling events. The summary provided by Tetra Tech also stated that the information provided for the review contained limited information in regard to subsurface description, physical description, a discussion section, or conclusions. □ □</p> <p>□</p> <p>A review of the data provided to Tetra Tech from the Montana City CKD monofill, in consideration of the newly presented hydrogeologic background information, indicates that the conclusion reached by Tetra Tech in regard to a release from the CKD monofill is premature and not adequately substantiated by the available data. Evidence of a release from the CKD monofill is stipulated by the presence of constituents of concern (COC) at levels above those prescribed by the operating permit, or by the statistically significant increase over background conditions for a COC. Neither of these conditions is supported by the available data from the Montana City CKD monofill with the exception of one occurrence of selenium in a downgradient well exceeding the prescribed permit level. Two additional parameters show occurrences exceeding MCL/permit levels, however, those parameters also exceed the MCL/permit level in the upgradient monitoring well for the site and therefore, cannot be used as an indicator of a release. Rather, the primary evidence used by Tetra Tech to support a release has occurred is based on directly comparing downgradient concentrations of various constituents against the upgradient concentrations during three sampling events. Although increases in many of the inorganic parameters are noted in the second (June 1999) of three sampling events referenced, those increases are followed by a subsequent decrease in values for the third (May 2000) sampling event, which indicates a variation in water chemistry and not an increasing trend associated with a release from a leaking landfill.</p>
1163	NODA0548	<p>Further, the data provided to Tetra Tech did not include background information with respect to the subsurface geology, which provides a possible explanation for some of the geochemical variation between upgradient and downgradient wells. Specifically, the upgradient monitoring well was installed in the Park Shale; whereas, the three downgradient monitoring wells were installed in the Meagher Limestone. Additional background information provided as part of a previous hydrologic investigation (Tetra Tech, 2000) also explains that the air rotary well installation technique may have temporarily affected the geochemistry of the groundwater.</p>
1164	NODA0548	<p>Based on the information discussed above, the conclusion that a release has occurred from the CKD monofill is premature and not adequately substantiated based on the available data. Although downgradient levels of analytes measured exceed background levels for 14 of 21 constituents, many of the exceedences do not appear to be statistically significant and may be affected by: 1) the differences in host rock geochemistry; 2) insufficient temporal data to account for seasonal variations in water quality; and 3) potential short-term effects in water quality caused by air rotary drilling.</p>
1166	NODA0550	<p>PCA comments are summarized briefly below and will be elaborated upon further herein. □</p> <p>□</p> <p>[First Bullet] The Agency's analysis of the cement industry groundwater information did not comport with the purpose and intent of the submittal. □</p> <p>□</p> <p>[Second Bullet] The Agency's federal legal and policy directions completely ignore the principal arguments made by the cement industry in its pending rulemaking petition, fail to appropriately address the negligible risks posed to human health and the environment by CKD and hopelessly delay a final decision on the fate of the CKD issue.</p>

Comment Id	Document Number	Comment
1167	NODA0550	<p>I. The Agency’s Review of the Cement Industry Groundwater Information was Inappropriate. □</p> <p>□</p> <p>PCA has had the opportunity to review the analysis conducted by Tetra Tech on behalf of EPA of the groundwater information (submittal) prepared by the cement industry and submitted to EPA in October 2001. PCA is very disappointed with the nature of the Tetra Tech review and the firm’s observations and recommendations. It is clear that there was a disconnect between the instructions given the contractor on the scope of the Agency’s desired review and the intent of the submittal. □ □</p> <p>□</p> <p>In July 2001, PCA staff and several member company representatives met with Michael Shapiro (Principal Deputy Administrator of the Office of Solid Waste and Emergency Response), Elizabeth Cotsworth (Director of the Office of Solid Waste), and several other EPA officials. The purpose of the meeting was to review the Agency’s current thinking on the CKD proposed rulemaking and for the cement industry to provide the agency with additional information concerning the status of state program development and CKD generation and management trends. □ □</p> <p>□</p> <p>Also discussed during the meeting were CKD management practices at cement plants, including groundwater monitoring. Specifically, EPA inquired about groundwater monitoring programs at cement plants that dispose of CKD. PCA explained that many plants have comprehensive programs which have been developed with state government oversight. EPA expressed an interest in additional information which would explain the nature of the ongoing programs. The objective was to demonstrate that cement manufacturers were indeed monitoring groundwater around active CKD sites and that these groundwater programs were being developed with state government involvement. □ □</p> <p>□</p> <p>The Tetra Tech analysis of the groundwater information, therefore, completely missed the intent of the compilation. The analysis was designed primarily to be an overview of groundwater monitoring policy and programs, not a critique of site-specific hydrogeology and groundwater quality. Of key focus were the types of parameters being monitored, number of wells being sampled, and whether the state was working actively with the cement manufacturer. The submittal clearly addressed all of these areas. □ □</p> <p>□</p> <p>The conclusions were very apparent. □</p> <p>□</p> <p>[First Bullet] Cement manufacturers are implementing comprehensive groundwater monitoring programs □</p> <p>[Second Bullet] The programs are being overseen by state environmental agencies □ □</p> <p>[Third Bullet] Where plants have encountered groundwater concerns, states have worked with cement manufacturers to address them. □ □</p> <p>□</p> <p>It would have taken PCA months to compile the type of information that Tetra Tech identified as being necessary to assess the submittal. While individual cement manufacturers likely possess the comprehensive hydrogeologic information, groundwater flow data, monitoring well maps and multiple years of groundwater quality data identified as being lacking Tetra Tech, it was never intended to be a part of the submittal. □ □</p> <p>□</p> <p>In sum, the submittal addressed quite satisfactorily all questions raised by the Agency in July 2001 concerning the nature of groundwater monitoring programs at cement plants. The few plants that continue to dispose of CKD in significant volumes have worked cooperatively with their respective state agencies to assess groundwater quality through hydrogeologic investigations and groundwater sampling and analysis. Many of these plants also have active, comprehensive groundwater monitoring programs.</p>

Comment Id	Document Number	Comment
1175	NODA0552	<p>EXECUTIVE SUMMARY: APCA (American Portland Cement Alliance) data was submitted to EPA and a detailed EPA analysis of that data was released by the Agency in a NODA (Notice of Data Availability) for public review. The Agency proposes to conform with the request by the APCA to delay and to consider revocation of the 1999 proposed RCRA Subtitle C rules governing CKD management.□□□ □□□</p> <p>By my reading of the proposed rules, only mismanaged CKD was to be regulated under Subtitle C (hazardous waste rules). The Agency analysis of the APCA data contained in this NODA demonstrates that the ongoing monitoring at CKD management units continues to be so poor that at most sites it is impossible for the Agency to determine whether or not CKD is being mismanaged. The Agency did determine that the APCA data demonstrated ongoing environmental damage at many CKD management sites. In addition, the submitted APCA survey revealed that nearly a quarter of CKD management units still fails to control runoff of surface water and storm water, the very type of mismanagement which led to severe environmental damage in the past and which the Agency determined must be addressed by new rules.□□□ □□□</p> <p>The proposed 1999 regulatory standards were provisional; only mismanaged CKD was to be regulated under RCRA subtitle C. Protecting the environment under this provision would be impossible, because, as the APCA data demonstrates, the monitoring data available to the Agency makes it impossible for the Agency to determine with any certainty where mismanagement is occurring, where environmental damage is occurring, and the degree and duration of damage which is known to be occurring.□□□ □□□</p> <p>I strongly urge the EPA to strengthen the 1999 proposed rules in accordance with the information made available to the Agency by the APCA and to issue those rules without further delay. Hazardous waste rules should apply to any facility which fails to demonstrate to the Agency that good management practices have been implemented, that the facility is in compliance with the law, and that their monitoring plan is adequate to detect and quantify damage to air, surface water, or ground water quality. Any facility unable to verify good practices, legal compliance, and an adequate monitoring plan within a few months of the issuance of the final rule should be regulated under RCRA as a hazardous waste facility.□□□</p>
1218	NODA0556	<p>Lehigh agrees with the perspectives and concerns outlined in the PCA’s comments and believes that:□□□ □□□</p> <p>[First Bullet] The Agency’s analysis of the cement industry groundwater information did not comport with the purpose and intent of the submittal.□□□ □□□</p> <p>[Second Bullet] The Agency’s federal legal and policy directions completely ignore the principal arguments made by the cement industry in its pending rulemaking petition, fail to appropriately address the negligible risks posed to human health and the environment by CKD and hopelessly delay a final decision on the fate of the CKD issue.</p>
1220	NODA0557	<p>CEMEX, INC. agrees with the perspectives and concerns outlined in the PCA comments and believes that:□□□ □□□</p> <p>[First Bullet] The Agency’s analysis of the cement industry groundwater information did not comport with the purpose and intent of the submittal.□□□</p> <p>[Second Bullet] The Agency’s federal legal and policy directions completely ignore the principal arguments made by the cement industry in its pending rulemaking petition, fail to appropriately address the negligible risks posed to human health and the environment by CKD and hopelessly delay a final decision on the fate of the CKD issue.□□□</p>
1138	NODA0546	<p>Lafarge offers the comments that follow for the Agency’s consideration and requests that the Agency modify its position to be consistent with the preponderance of data that suggest that CKD is being properly managed by cement companies and the state’s regulatory programs today.</p>
1139	NODA0546	<p>Lafarge believes that the Agency cannot and should not proceed further with its latest proposed CKD rules without first: 1) responding to the myriad of comments and issues previously raised by interested parties in response to the EPA’s proposed CKD rules published on August 20, 1999; 2) responding to the rulemaking petition submitted by the APCA to EPA on July 6, 2001; and 3) accepting and considering comments to the general regulatory approach outlined in the July 25, 2002 NODA.</p>

Comment Id	Document Number	Comment
1150	NODA0546	Lafarge requests that the Agency consider and provide a written response to Lafarge's detailed technical comments dated February 20, 2000. Lafarge is concerned that the Agency has changed the course it is recommending for CKD management without preparing a specific response to the comments already received.
1155	NODA0546	Before finalizing the draft CKD management standards in any form, Lafarge urges the Agency to: 1) respond to the comments and issues previously raised by interested parties in response to EPA's proposed CKD rules published on August 20, 1999; 2) respond to the rulemaking petition submitted by the APCA to EPA on July 6, 2001; and 3) accept and consider comments to the general regulatory approach outlined in the July 25, 2002 NODA.
1168	NODA0550	<p>II. The Agency's CKD Legal and Policy Directions Are Inappropriate.</p> <p>In the NODA the Agency outlines a series of steps addressing federal policy on CKD management. PCA opposes the direction that the Agency is now headed and respectfully requests that the Agency instead implement the steps outlined in the rulemaking petition sent to the Agency in May 2001. In the petition, the cement industry requested that EPA take two steps: (1) withdraw the CKD rulemaking, and (2) revise the CKD regulatory determination addressing the "Bevill" status of the material.</p> <p>The request was supported with detailed information addressing the negligible risks posed by CKD, the amount recycled as a raw material and for other beneficial purposes, and the breadth of state CKD programs. Also addressed was the wholly inappropriate regulatory treatment of CKD when compared to other Bevill wastes that arguably present more potential environmental concerns. The petition maintained that all of the Bevill wastes EPA has addressed both before and after the CKD regulatory determination, CKD is the least toxic and least risky. Yet for all other Bevill wastes, EPA has made a negative Bevill determination. We maintain that this makes EPA's treatment of CKD arbitrary and capricious.</p> <p>The Agency has not responded to the industry's petition, and, therefore, has not provided the industry with any reasons why the requests contained therein should not be implemented. Moreover, even though the Agency mentioned the petition in its NODA and summarized some parts of the petition, nowhere in the NODA does the Agency acknowledge the industry's principal argument-summarized above-regarding the arbitrary and capricious nature of the Agency's actions in light of the fact that CKD is the least toxic and potentially risky of all Bevill wastes.</p> <p>To make matters worse, the next steps discussed in the NODA envision a very prolonged period during which the Agency will "temporarily suspend its active consideration of the proposed mismanagement-based listing (but would not formally withdraw the proposed rule) for a period of three to five years." (67 Fed. Reg. 48650). This will add to the already long, almost ten-year period during which CKD has been unfairly stigmatized due to EPA's positive Bevill determination and proposed Subtitle C regulations.</p> <p>Such delay is not acceptable, nor is it warranted based upon the information that has been provided to the Agency by the cement industry over the last decade. The record, considered in its entirety, clearly indicates that this material does not merit federal attention. There are no valid reasons to delay taking final action.</p> <p>We also note, that EPA's announced plan of action for CKD unfairly discriminates against CKD in another fundamental way. EPA says in the NODA it plans to implement a national Subtitle D approach for CKD during which time the Agency will leave in place the positive Bevill determination for CKD. Yet for another Bevill waste (fossil fuel combustion (FFC) waste), EPA has announced intentions to take a "national Subtitle D" approach without making a positive regulatory determination. EPA's actions regarding FFC waste clearly show that EPA does not need to have a positive Bevill determination in place to consider national Subtitle D standards. While we oppose EPA's plans to undertake a national Subtitle D program for CKD, we point this out to show one more significant example of how EPA is unfairly and illegally discriminating against CKD.</p> <p>Moreover, nothing in the Resource Conservation and Recovery Act precludes the Agency from revisiting the CKD issue in the future, if, for some reason, a situation arises where CKD is found to present a risk to human health and the environment. While PCA believes that such a situation is not remotely possible, the Agency would have ample authority to step in should it be warranted. Indeed, the Agency has had at its disposal for well over 25 years, imminent and substantial endangerment authority under Section 7003 of RCRA.</p>

Comment Id	Document Number	Comment
1169	NODA0550	In conclusion, PCA opposes the course of action outlined for CKD in the NODA preamble. It is unfair to the cement industry and entirely unwarranted. PCA instead requests that the Agency implement the recommendations contained in the May 2001 rulemaking petition.
1170	NODA0551	<p data-bbox="461 373 1425 449">[The following comment is from a copy of a letter submitted to the Divison of Minerals and Geology in Colorado by the St. Vrain Valley Community Watchdogs. The Sept. 5, 2002 letter was attached to a comment in which the Watchdogs "urge the EPA to maintain strict regulatioins for CKD.]" □□□</p> <p data-bbox="461 449 1425 697">□□□ Here is our latest update. There have been at least 10 recent reports filed with the Boulder County Health Department from citizens in this community who have witnessed fugitive dust emissions originating at Cemex-Lyons. (Ten reported incidents may be a conservative figure as many residents work during the hours of operation at the plant and some dust events may go unreported.) I would emphasize that the County and State regulatory agencies would not even be aware of these incidents if it were not for the conscientious efforts of people in the community who take the time to report the incidents they see to the Boulder County Health Department. We are chagrined and puzzled about why citizens have to continue functioning in this watchdog role here. Something is wrong with this process as the official regulators are 10 to 50 miles away, and would never know that these incidents ever occurred.</p>
1171	NODA0551	<p data-bbox="461 747 1425 823">[The following comment is from a copy of a letter submitted to the Divison of Minerals and Geology in Colorado by the St. Vrain Valley Community Watchdogs. The Sept. 5, 2002 letter was attached to a comment in which the Watchdogs "urge the EPA to maintain strict regulatioins for CKD.]" □□□</p> <p data-bbox="461 823 1425 1117">□□□ For decades, Cemex-Lyons has been unable to contain its airborne assault of toxic substances that have blown into our homes, interjecting fear, anxiety, and disease into our lives. This is completely intolerable. Each person in this community has the right to enjoy a healthy and a safe environment. This is an agricultural community, and people came to live here because of the peace, quiet, the natural beauty here; (and the fresh air that the St. Vrain Valley should offer.) We are fearful because we know the content of this industrial white dust that settles in our gardens, our homes, pitting the windshield of our automobiles. We can only surmise what it is doing to our lungs. It seems dangerous that the local regulatory agencies have not yet adopted effective provisions to correct the slovenly management practices at Cemex-Lyons. The fact that the company has improved is not safe enough. OSHA protects the employees at the plant, but we citizens living on the windward side and our children attending the Hygiene school are helpless victims until an astute regulatory agency decides enough is enough and comes to our assistance. We are resting our hope in you.</p>



Comment Id	Document Number	Comment
1172	NODA0551	<p>[The following comment is from a copy of a letter submitted to the Division of Minerals and Geology in Colorado by the St. Vrain Valley Community Watchdogs. The Sept. 5, 2002 letter was attached to a comment in which the Watchdogs "urge the EPA to maintain strict regulations for CKD."] □□□</p> <p>□□□</p> <p>Your last inspection report and the stipulations that you established for controlling CKD should have been sufficient to bring the company into compliance with proper management practices. That has not been the case. Did you know that 18 months after your inspection report, Joni Rix from the Boulder County Health Department conducted an inspection. The following is a quote from page 42 of Ms. Rix's report: □□□</p> <p>□□□</p> <p>Item 19: Good Operating Practices: "Although this source has taken many positive steps to control fugitive emissions from the plant and have worked hard with the North Boulder Environmental Health Community Task Force, there is still room for improvement. At the time of inspection, roads were adequately watered, however, under parts of the kiln and cooler, piles of cement dust could be seen. This area is swept/shoveled by hand since the sweeper can not get under the equipment. There areas should be cleaned more frequently since it is source of fugitive dust when it gets windy." □□□</p> <p>□□□</p> <p>It is frequently very windy in this valley, and the company takes refuge behind the ancient 30mph wind regulation established by the Air Quality Control Commission more than 25 years ago. In a letter to the Watchdogs on February 10, 2000, Ms. Margie Perkins, Director of the CDPHE, states that "The Commission has attempted to provide a reasonable approach in the application of its fugitive dust regulations when events are beyond the control of facility operators such as might be the case on very windy days. Even so, operators are required to continue to implement fugitive dust control measures during these high wind events. This can be viewed as a 'safeguard' built into the regulation and we believe it will prevent abuse of the 30mph provision." The Watchdogs can appreciate this provision when it is conscientiously followed by plant operators, but we feel that "piles of cement dust under parts of the kiln and cooler" constitutes an abuse of this regulation, and yet another abuse to the residents in the community. □□□</p> <p>□□□</p> <p>The St. Vrain Valley Watchdogs remember that up until 1998, when we first organized, the company was dumping its CKD in piles in an open field just a few hundred feet from Hygiene Road. Windy conditions caused almost daily occurrences of CKD dust storms. We remember that residents kept the windows closed year round, and we still had layers of white dust inside and out. We were elated when Mr. Jorgenson from the CDPHE directed the company to cover the CKD with shale after it was dumped so that it would not go airborne. True to form, 45 days passed before the first load of top coating for the CKD arrived. □□□</p> <p>□□□</p> <p>44 months have passed since the DMG attempted to get Cemex's CKD problem resolved, and it still isn't under control. Recently the sprinkler system at the CKD disposal site was broken for weeks because the company didn't keep spare parts on hand. □□□</p> <p>□□□</p> <p>On April 5, 1999, Mr. David Quimette, and Ms. Margie Perkins submitted a memo to Ms. Jane Norton advising her of the regulatory agency's activities to control fugitive CKD dust from the disposal area at Cemex-Lyons. The memo concludes with the assurance that the combination of activities should significantly reduce blowing dust from the disposal site. But, the recent photos submitted to the DMG and the CDPHE clearly depict that dust plums from the disposal site continue.</p>
1173	NODA0551	<p>[The following comment is from a copy of a letter submitted to the Division of Minerals and Geology in Colorado by the St. Vrain Valley Community Watchdogs. The Sept. 5, 2002 letter was attached to a comment in which the Watchdogs "urge the EPA to maintain strict regulations for CKD."] □□□</p> <p>□□□</p> <p>We very much appreciate your efforts, and feel you are in the position to protect the citizens here. Given the long history of this company's careless abuse of our environment and our very lives, we are very hopeful that the DMG will design the most stringent controls for CKD. The quality of life of the citizens here has been compromised for far too long. It is for these reasons that: □□□</p> <p>□□□</p> <p>The Watchdogs respectfully request that the DMG apply tailored RCRA Subtitle C standards to improperly managed CKD at this facility as specified in the 1999 EPA Standards for the Management of Cement Kiln Dust.</p>

Comment Id	Document Number	Comment
1174	NODA0552	<p>Thank you for this opportunity to comment on the Notice of Data Availability on cement kiln dust (CKD). Thank you for extending the comment period in response to my request.□□□            □□□            INDEX [of comments submitted by the commenter]□□□            □□□            EXECUTIVE SUMMARY: The data and analysis released by the EPA regarding CKD (cement kiln dust) management shows that the EPA's 1999 proposed rules must be strengthened and issued soon to protect the environment and human health. □□□            SECTION 1. EPA is required to regulate CKD (cement kiln dust) under RCRA subtitle C. □□□            SECTION 2. EPA's proposal to abandon Subtitle C regulation of CKD is arbitrary and capricious. □□□            SECTION 3. There is no scientific justification for delaying CKD rule implementation, reversing the regulatory determination, or withdrawing the proposed rule. □□□            SECTION 4. Citizens have expressed a deep concern with this issue over the span of a decade. □□□            SECTION 5. Specific comments as requested by EPA on "the new data provided by APCA regarding reduced disposal, more extensive groundwater monitoring, increased fugitive dust controls, and improved CKD management and state programs."□□□            SECTION 6. Environmental Justice Considerations□□□            CONCLUSIONS. Continuing, pervasive CKD mismanagement and poor groundwater monitoring as evidenced by the APCA data set indicate that CKD regulation should not be further delayed, that provisional regulation of "mismanaged" CKD is inadequate, and that any facility which fails to demonstrate that it is managing and monitoring CKD adequately should be regulated as a hazardous waste unit under RCRA.</p>

Comment Id	Document Number	Comment
1178	NODA0552	<p>SECTION 3. There is no scientific justification for delaying the implementation of the proposed rule, reversing the regulatory determination, or withdrawing the proposed rule. The data released in the NODA indicates immediate, stringent regulation of all CKD is required to protect the environment and human health. □□□ □□□</p> <p>The current NODA states that "If after its evaluation the Agency deems CKD management practices and State regulatory programs to be effective in protecting human health and the environment, the Agency would formally withdraw the Subtitle C portion of the 1999 proposal and would revisit the 1995 CKD regulatory determination. On the other hand, if the Agency deems CKD management practices and State regulatory programs to be ineffective after this period, the Agency would pursue regulation of mismanaged CKD under RCRA Subtitle C, as described in the 1999 proposal." □□□ □□□</p> <p>But the question as to whether CKD poses a sufficient threat to the environment to warrant regulation as a hazardous waste was asked and answered in EPA's 1995 regulatory determination. And, of critical importance is that EPA's own analysis of the "new" APCA data concludes that "even with the very limited information provided: Several facilities indicated levels of antimony, arsenic, beryllium, cadmium, lead, selenium, thallium and some [other contaminants]" (Appendix 1, submitted separately). [Appendixes 1, 2, and 3 are EPA's own supporting documents entitled "Analysis of Groundwater Monitoring Data Submitted by the American Portland Cement Alliance"] □□□ □□□</p> <p>APCA (American Portland Cement Alliance) data documents numerous examples of groundwater which has excess pollutants, both environmental quality and health-based limits, and EPA's analysis confirms these exceedences. (Appendix 2, submitted separately). □□□ □□□</p> <p>EPA determined that the data submitted by APCA and released in this 2002 NODA is poor quality, incomplete, unreliable, inscrutable, and/or undocumented, and that the conclusions drawn from this data by industry are not supported by the data. Therefore, there is no scientific justification for EPA to reverse its regulatory determination, to withdraw the 1999 draft rule, or to further delay issuance of a final rule regulation CKD under RCRA subtitle C (See Appendix 3, submitted separately). □□□ □□□</p> <p>In addition to the conclusions drawn by EPA, it should be pointed out that the survey results submitted by APCA to demonstrate improved CKD management practices show that, even among respondents to the survey, nearly 1/4 of cement manufacturing facilities still does not have water runoff control. Failure to control runoff was identified by US EPA in their 1995 Finding to be one of the significant types of mismanagement identified as a cause of contamination of ground water and potable water supplies [See Section 1, above]. Thus, APCA's data demonstrate that industry compliance with good management standards and state regulation and enforcement, continues to be inadequate to protect the environment. Based on this demonstrable failure, it would be reasonable to assume that human health remains at risk as well. The failure of EPA to issue a final rule regulating CKD under Subtitle C and the issuance of the NODA in lieu of a final rule each constitutes an unwarranted and unjustified delay which places both the environment and public health at risk. □□□ □□□</p> <p>This commentator agrees with much of the Agency's own analysis of the data supplied in this NODA by the APCA: environmental damage from CKD mismanagement continues and that current monitoring to detect environmental damage is spotty and inadequate. Both factors, ongoing pollution and poor monitoring, argue for the immediate implementation of Subtitle C regulation for all CKD and argue against provisional regulation of CKD with only "mismanaged" CKD regulated, against delayed regulation of CKD, and against a failure to regulate CKD.</p>

Comment Id	Document Number	Comment
1179	NODA0552	<p>SECTION 4. Citizens have expressed a deep concern with this issue over the span of a decade.□□□ □□□</p> <p>The NODA specifically states that no citizen groups made comments on the 1999 Proposed Rule. However, many community activists participated for many years in the process by which the US EPA made the determination to regulate CKD and in the rule making. On March 8, 1994, on behalf of Adans for a Clean Environment, Marti Sinclair submitted official public comments, on "US EPA Report to Congress on Cement Kiln Dust and Policy Options," a 21 page document with 9 exhibits.□□□ □□□</p> <p>The stakeholder’s process contributing to the 1999 rulemaking was lengthy, burdensome, unfair, and discouraging to citizens attempting to participate in what was supposed to be a public process. Citizens had to file suit to put a stop to closed-door negotiations between the US EPA and the cement industry (Heal v. EPA, Civ. No. 95-2124 CRR), meetings which violated the Federal Advisory Committee Act. Once the regulatory determination was issued, EPA imposed a "silent period" which went on for years and years. Despite years of service and important contributions of data and information, citizen participants were unable to get any information on the progress of the rule development and were not provided with any updates. Since the April 12, 1995 meeting between US EPA and Environmental and Citizens’ Groups on CKD Rulemaking, some citizen participants have relocated away from the cement plants, some became so discouraged that they withdrew from citizen activism, and one died after a lengthy bout with cancer. Citizen activists do not have the resources to continue to wait indefinitely outside the closed door of OSWER (Office of Solid Waste and Emergency Response). The public silence mentioned in the NODA evidences the failure of the EPA to move forward in a fair and timely process.□□□ □□□</p> <p>It is encouraging that the Agency has extended the public comment period on the NODA and it would be beneficial if the Agency would continue to be responsive to citizens.</p>

Comment Id	Document Number	Comment
1187	NODA0552	<p>CONCLUSIONS: Continuing, pervasive CKD mismanagement and poor groundwater monitoring as evidenced by the APCA data set indicate that CKD regulation should not be further delayed, that provisional regulation of "mismanaged" CKD is inadequate and that all CKD should be regulated immediately.□□□</p> <p>□□□</p> <p>APCA provided many assertions but little or no evidence to support their claims that the tonnage of CKD waste produced has decreased, no evidence that the current several million tons of CKD waste produced annually does not and will not continue to pose a significant risk to human health and to the environment, no evidence that groundwater monitoring is more extensive than it ever was, no evidence that groundwater monitoring is adequate to establish the existing threat to groundwater or to detect future threats which may result from CKD mismanagement, no evidence that fugitive dust control measures are now being regularly practiced by the cement industry, no evidence that fugitive dust control measures have become effective, no evidence that CKD management practices have improved, no evidence that practices which have repeatedly proven to result in significant and sometimes irreparable damage to the environment are no longer practiced by the industry, and no evidence that state regulatory programs have strengthened their regulations, implementation, inspections, and enforcement programs sufficiently to ensure that CKD mismanagement cannot occur.□□□</p> <p>□□□</p> <p>The petition submitted by APCA indicates that the industry anticipates that CKD management will remain an industry concern for some time to come and that the industry does not want to conform to the minimal safeguards which the US EPA has crafted with heavy participation and input by the industry itself.□□□</p> <p>□□□</p> <p>The data submitted by APCA regarding groundwater quality demonstrates that groundwater monitoring data is inadequate to fully identify existing threats to groundwater posed by CKD management and mismanagement and that the groundwater monitoring data is inadequate to detect future groundwater contamination. The groundwater monitoring data showed that both environmental and health-based water quality limits were exceeded in many places. Given the spotty and incomplete nature of the groundwater data, this is very worrisome. When even a very poor, spotty, and incomplete data set reveals pollution problems, it indicates the potential for severe widespread ongoing contamination which is not being detected, measured, or addressed.□□□</p> <p>□□□</p> <p>The EPA has no authority and no scientifically-valid justification for delaying or reversing its 1995 regulatory determination for CKD. The previous EPA finding and the data submitted by APCA indicate that EPA should regulate all CKD as hazardous waste because CKD mismanagement and poor environmental monitoring are pervasive and damage to the environment continues.□□□</p> <p>□□□</p> <p>I strongly urge the EPA to strengthen the 1999 proposed rules in accordance with the information made available to the Agency by the APCA and to issue those rules without further delay. Hazardous waste rules should apply to any facility which has failed to demonstrate to the Agency that good management practices have been implemented, that the facility is in compliance with the law, and that their monitoring plan is adequate to detect and quantify damage to air, surface water, or ground water quality. Any facility unable to verify good practices, legal compliance, and an adequate monitoring plan within a few months of the issuance of the final rule should be regulated under RCRA as a hazardous waste facility.</p>
1190	NODA0553	<p>III. Communities Continue to Be Injured By Mismanaged Cement Kiln Dust□□□</p> <p>□□□</p> <p>The cement industry represents itself as self-regulated. Residents of the City of Alpena Michigan, however, would disagree. The local cement factory emits CKD into the air causing a "bad odor" in addition to covering vehicles, houses and flowers with a "white film," which "allegedly causes damage vinyl siding and has killed rose bushes." Olden v. LaFarge Corp., 203 F.R.D. 254 at 258 (E.D. Michigan 2001). This class action□□□ suit illustrates the pressing problem and concerns CKD raises for our commenters.□□□</p> <p>□□□</p> <p>CKD should be regulated as a hazardous waste. The inconclusive data provided by the APCA provides no grounds for EPA to further delay or abandon the work and momentum of the past decade.</p>

Comment Id	Document Number	Comment
1191	NODA0554	<p>[From a letter to the Lyons Board of Trustee, Lyons, Colorado from the St. Vrain Valley Community Watchdogs regarding fugitive dust issues at Cemex-Lyons:] □□□                      □□□                      Trust:□□□                      □□□                      Still unable to contain its toxic dust, Cemex-Lyons is now launching a new project to increase corporate profits by burning 700,000 to 1,000,000 waste tires as fuel in the cement kiln. There are many resident in Lyons, Hygiene, and Longmont who are opposed to this potentially hazardous practice of using tires as fuel. Cemex-Lyons, however, is scheduling a test burn in November.□□□                      □□□                      The EPA’s position is that burning tires in a cement kiln may be an acceptable practice provided that the kiln is appropriately designed, operated, and maintained. However, the observations stated in the enclosed complaint investigation reports have raised a serious trust issue within the community that has lead us to believe that Cemex-Lyons may not be able to consistently meet the high EPA standards that tire burning requires in order to avoid toxic air emissions accidents. The Watchdogs are wary of corporate rhetoric and suspicious of what might happen after the test burn when no regulators are present.</p>
1192	NODA0554	<p>[From a letter to the Lyons Board of Trustee, Lyons, Colorado from the St. Vrain Valley Community Watchdogs regarding fugitive dust issues at Cemex-Lyons:] □□□                      □□□                      Problems with regulating toxic substances that can’t be seen:□□□                      □□□                      Previous to citizen involvement in the Portland cement dust issue, the regulatory agencies were unaware of the dire conditions in the St. Vrain Valley because the agencies are located in Boulder and Denver. Since the residents here have been able to see these dust clouds, we have been able to report these incidents to the agencies. In a tire burning situation; however, any malfunctions resulting in chemically unknown fugitive emissions may presumably go unseen, and air pollution from these malfunctions could disperse for many miles.</p>
1193	NODA0554	<p>[From a letter to the Lyons Board of Trustee, Lyons, Colorado from the St. Vrain Valley Community Watchdogs regarding fugitive dust issues at Cemex-Lyons:] □□□                      □□□                      The potential health hazards of tire burning:□□□                      □□□                      Tires are not benign substances to burn. We are researching what toxins could be released into the atmosphere when there is an operating malfunction or even a worse case scenario. Will the EPA and other agencies know if malfunctions in combustion occur? Will Cemex-Lyons be able to consistently meet the stringent standards of performance required by the EPA?□□□                      □□□                      According to John Ray, President of the Montana Environmental Information Center, "When tires are burned in a cement kiln new and deadly compounds are produced. The most deadly are dioxins." The EPA says of dioxins: “Exposure to dioxins, even at minute levels, poses cancer risks and health concerns including possible damage to the immune and reproductive systems." Are the risks really worth it? Is it worth giving this corporation carte blanche to launch burning tires strictly for its own personal profit and risk endangering our communities and residents?</p>
1194	NODA0554	<p>[From a letter to the Lyons Board of Trustee, Lyons, Colorado from the St. Vrain Valley Community Watchdogs regarding fugitive dust issues at Cemex-Lyons:] □□□                      □□□                      Economic and environmental concerns:□□□                      □□□                      Residents have expressed apprehensions in regard to the economic and environmental impact that tire burning could have. Depressed real estate values, increased truck traffic, contaminated agricultural products, exposure to toxins through the food chain, the contamination of the St. Vrain River, and the potential impact to fish, game, and bird populations are issues of concern.</p>

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1195	NODA0554	<p>[From a letter to the Lyons Board of Trustee, Lyons, Colorado from the St. Vrain Valley Community Watchdogs regarding fugitive dust issues at Cemex-Lyons:] □□□ □□□ Bottom line:□□□ □□□ Mr. Oakley, editor of "The Old Lyons Recorder," aptly focused on the essence of this controversy in his editorial opinion.□□□ □□□ The idea that we should err on the side of caution where human health is concerned...seems to be the best guiding principle at work in this controversy.□□□ □□□ The Watchdogs respectfully request that the Lyons Board of Trustees review the enclosed documents, consider the serious consequences that tire burning may pose to the neighboring communities, and lend your advocacy that this project should be opposed.</p>
1196	NODA0554	<p>[From a letter to the Lyons Board of Trustee, Lyons, Colorado from the St. Vrain Valley Community Watchdogs regarding fugitive dust issues at Cemex-Lyons:] □□□ □□□ [First Bullet] The CKD pit (Lyons Quarry) uses both a sprinkler system on the perimeter and water trucks on the interior for control of fugitive dust. The sprinklers operate throughout each day and the water trucks apply water and/or calcium chloride dust suppressant as needed throughout each day. It is the Division’s understanding that the sprinkler system froze during the Spring 2002 and was inoperable for an extended period of time due to a delay in receiving the necessary parts. The Division recommends that Cemex keep spare parts for the sprinkler system on site to minimize downtime during maintenance activities. □□□ [Second Bullet] Piles of dust were noted under conveyor belts, kiln, dryer, etc., during the inspection. These areas have a significant potential fugitive dust impact during windy conditions, which is a frequent occurrence in the area. According to Cemex, these areas are currently cleaned up once per week. The Division recommends a more frequent schedule for housekeeping in these areas to minimize the potential for fugitive emissions.</p>
1197	NODA0554	<p>[From a letter to the Lyons Board of Trustee, Lyons, Colorado from the St. Vrain Valley Community Watchdogs regarding fugitive dust issues at Cemex-Lyons:] □□□ □□□ Another area of concern to the Division is the fugitive dust generated during blasting activities at the Dowe Flats Quarry. Colorado Regulation No.1, Section III.D.1 .c., describes "Emission Limitation Guidelines for the Submission of Control Plans". This regulation states that if the Division determines that a source of activity that is subject to this section is operating with visible emissions that are being transported off the property on which the source is located and such source is subject to the no off property transport emission limitation guideline, it shall require the owner or operator of that source or activity to submit a written plan to the Division for the control of fugitive particulate emissions. Based on complaints received from the community, as well as observations made during blasting activities, the Division has determined that visible emissions are being transported off the property on which the source is located. Based on this information, the Division is requesting that Cemex develop a fugitive dust control plan for blasting activities at the Dowe Flats Quarry.</p>
1198	NODA0554	<p>[From a letter to the Lyons Board of Trustee, Lyons, Colorado from the St. Vrain Valley Community Watchdogs regarding fugitive dust issues at Cemex-Lyons:] □□□ □□□ Control measures and operating procedures to be employed may include, but are not limited to, the removal of overburden prior to blasting, watering down the blast area both prior to and as soon as practicable after blasting, or other equivalent methods or techniques approved by the Division (Regulation No. 1, Section III.D.2.i.). The Division recommends that the fugitive dust control plan include the use of a wind direction and wind speed monitoring device. Through the use of this device, blasting would not occur under either of the following circumstances: wind direction is from 180 degrees to 0 degrees or wind speed greater than 30 mph.</p>

Comment Id	Document Number	Comment
1199	NODA0554	<p>[From a letter to the Lyons Board of Trustee, Lyons, Colorado from the St. Vrain Valley Community Watchdogs regarding fugitive dust issues at Cemex-Lyons:] □□□ □□□</p> <p>We are alarmed at the possible consequences of this action. Least of all, this activity and the way in which it is being handled is not in keeping with the spirit of the Memorandum of Understanding that you and Mr. Lohr and I signed on August 13, 2001 agreeing "to pursue a collaborative working relationship to improve the health, environment, and quality of life of the St. Vrain Valley." Most alarming, the well-being of this environment and its residents may be threatened once again. I requested that Mr. Lohr prepare and distribute educational materials on tire burning so that citizens in the County can be informed prior to the onset of any burning.</p>
1200	NODA0554	<p>[From a letter to the Lyons Board of Trustee, Lyon, Colorado from the St. Vrain Valley Community Watchdogs regarding fugitive dust issues at Cemex-Lyons:] □□□ □□□</p> <p>The Watchdogs have been gathering information regarding "tire burning in cement kilns." What we have discovered so far leads us to believe that Cemex's project may pose a threat to public health and the environment. John Lohr and I discussed tire burning more than a year ago. It was Mr. Lohr's viewpoint then that the plant would not burn tires. At that time, however, the company was called Southdown. Now the company is Cementos de Mexico, (Cemex) and as of June 12, 2002, Cementos de Mexico has permits or authorizations to burn hazardous waste as fuel in 11 of the 18 plants in Mexico. Cementos de Mexico operates in a country with notoriously low environmental standards, and now that company wants to bring those burning practices here to Boulder County.</p>
1201	NODA0554	<p>[From a letter to the Lyons Board of Trustee, Lyon, Colorado from the St. Vrain Valley Community Watchdogs regarding fugitive dust issues at Cemex-Lyons:] □□□ □□□</p> <p>The Watchdogs respectfully requests the Boulder County Board of Health to:□□□ □□□</p> <ol style="list-style-type: none"> <li>1. Be adamant about safeguarding our health, environment, and quality of life.□□□</li> <li>2. Provide educational resources and appropriate assessments of the hazards of tire burning prior to the commencement of any tire burning.□□□</li> <li>3. Provide staff to assist in addressing concerns expressed in future community discussion groups.□□□</li> <li>4. Fully assess the health risks, hazards, and environmental impacts of tire burning prior to the onset of any burning.□□□</li> <li>5. Assess the differences in emissions between the current practices of fuel burning and the proposed change to include the burning of tires.□□□</li> <li>6. What have been the problems in other communities in which tires have been burned as cement kiln fuel?□□□</li> <li>7. Does tire burning open the door to the burning of any other solid or liquid waste? (The USGS include tires in the category of waste along with undefined other solids and liquids.)</li> </ol>
1202	NODA0554	<p>[From a letter to the Lyons Board of Trustee, Lyon, Colorado from the St. Vrain Valley Community Watchdogs regarding fugitive dust issues at Cemex-Lyons:] □□□ □□□</p> <p>The Watchdogs feel that the manipulative manner in which Cemex's "tire-burning" project is being forged may greatly stress this community, and may compromise the spirit of cooperation that was so difficult to attain. People are already asking hard questions like, how many more truck-trips will Cemex-Lyons need in order to transport 700,000+ tires a year. (Please note that the Boulder County Commissioners recently restricted the number of truck trip permitted to Lafarge's gravel operations in this community in order to maintain safety standards on our roadways.) Where are the tires going to be stock piled? What happens when tires are burned? What gets released at the stack? Are heavy metals, styrene, dioxins or other toxins present? What will happen to property values? Mr. Lohr spoke at the meeting of the Task Force about reducing the stockpile of used tires around the country as a service. But, I haven't met anyone yet who would be willing to put his or her health at risk so that Cemex-Lyons can reduce this stockpile. There are many other effective and wise ways to recycle and reduce the stockpile of used tires.</p>



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1203	NODA0554	<p>[From a letter to the Lyons Board of Trustee, Lyon, Colorado from the St. Vrain Valley Community Watchdogs regarding fugitive dust issues at Cemex-Lyons:] □□□ □□□</p> <p>We strongly feel that it would be in the best interest of the Health Department, the County, and the public for Cemex-Lyons to postpone indefinitely any test burn until appropriate public education has been completed, and until we have had an opportunity to discuss compliances, violations, and safeguards with the Air Quality Control commission and other appropriate regulatory agencies.</p>
1204	NODA0554	<p>[From a letter to the Lyons Board of Trustee, Lyon, Colorado from the St. Vrain Valley Community Watchdogs regarding fugitive dust issues at Cemex-Lyons:] □□□ □□□</p> <p>We respectfully request immediate assistance of the Boulder County Health Department in directing Cemex-Lyons to delay the test burn.</p>
1205	NODA0554	<p>[From a letter to the Lyons Board of Trustee, Lyon, Colorado from the St. Vrain Valley Community Watchdogs regarding fugitive dust issues at Cemex-Lyons:] □□□ □□□</p> <p>The Watchdogs have persevered relentlessly for four years in our campaign to contain fugitive dust emissions from the cement plant; to secure a proper disposal plan for cement kiln dust so that it would not be released into the atmosphere and water shed; to persuade the company to install a truck wash so that cement spills on the tops of transports would be removed before the trucks entered traffic on Highway 66; to insure that traffic on Highway 66 is maintained at a reasonable level; to seek solutions to poor housekeeping practices at the cement plant; and to ferret out reasons for the cracks in the regulatory process. Enormous progress has been made. Complaints about air quality have been quieted; and residents are grateful to the Watchdogs, the Task Force, the Boulder County Health Department, the Colorado Department of Public Health and Environment, the press, the County Commissioners, Senator Campbell, Representative Saliman, John Lohr, the employees at Cemex-Lyons, and many others.</p>
1206	NODA0554	<p>[From a letter to the Lyons Board of Trustee, Lyon, Colorado from the St. Vrain Valley Community Watchdogs regarding fugitive dust issues at Cemex-Lyons:] □□□ □□□</p> <p>This tapestry of success may be about to take a giant step backwards in the interest of Cemex-Lyons saving money on fuel bills at the expense of our lungs and our health and the good will we so laboriously built. Is Cemex-Lyons courting the State and public by claiming that the company wants to help Colorado reduce the stockpile of tires? Does Cemex-Lyons truly believe that we will sit in silence while the company burns waste that may be hazardous? We have witnessed, through the Task Force, that a model of cooperative effort between citizens, government, and industry is possible. Cementos de Mexico; however, is far removed from Boulder County geographically; far removed from the magnificent St. Vrain Valley with its legacy of geological and ecological treasures. Cementos de Mexico appears arrogant and uncaring by venturing into its tire burning project without providing even a single paragraph of information to the public.</p>
1207	NODA0554	<p>[From a letter to the Lyons Board of Trustee, Lyon, Colorado from the St. Vrain Valley Community Watchdogs regarding fugitive dust issues at Cemex-Lyons:] □□□ □□□</p> <p>We all remember the terrifying story of the family in the St. Vrain Valley who had to keep the windows of their house closed for ten years because fugitive cement kiln dust was entering through the windows. We remember, too, how thankful this family was when the fugitive dust was appropriately contained and appropriately regulated, thanks to the Watchdogs and the Task Force. Let's not go gently into this situation allowing Cementos de Mexico to manipulate this family and the rest of us in Boulder County into harm's way again.</p>
1208	NODA0554	<p>[From a letter to the Lyons Board of Trustee, Lyon, Colorado from the St. Vrain Valley Community Watchdogs regarding fugitive dust issues at Cemex-Lyons:] □□□ □□□</p> <p>I sincerely hope that this questionable situation of tire burning at Cemex-Lyons may be resolved in a speedy and cooperative manner, and I hope that the Health Department and the Task Force and Cemex-Lyons may abide by the spirit of the Memorandum of Understanding: "To work for the benefit of the general public"</p>

Comment Id	Document Number	Comment
1209	NODA0554	<p>[From a letter to the Lyons Board of Trustee, Lyon, Colorado from the St. Vrain Valley Community Watchdogs regarding fugitive dust issues at Cemex-Lyons:] □□□ □□□</p> <p>The last several months have been a back slide. Plumes are still present from the CKD disposal pit and from the factory complex. The investigation by Ms. Hoefler and Ms. Milmoie confirms our suspicions that housekeeping problems are still issues. The improper handling of materials in the clinker pit; and the lack of compliance for cleaning up piles of dust noted in previous inspections may well have been the source of the recent plumes blowing off the company's property into the community.</p>
1210	NODA0554	<p>[From a letter to the Lyons Board of Trustee, Lyon, Colorado from the St. Vrain Valley Community Watchdogs regarding fugitive dust issues at Cemex-Lyons:] □□□ □□□</p> <p>This week, three plumes were reported to the Boulder County Health Department and to Cemex-Lyons on October 6, 2002. The compliance manager at the facility seeks refuge behind the 30 mph regulation. The community; however, has no refuge from Portland cement dust blowing in the wind.</p>
1211	NODA0554	<p>[From a letter to the Lyons Board of Trustee, Lyon, Colorado from the St. Vrain Valley Community Watchdogs regarding fugitive dust issues at Cemex-Lyons:] □□□ □□□</p> <p>One of the problems with this industry coming into compliance with an effective fugitive dust control plan could be that most inspections are "announced," which gives the plant time to clean up their housekeeping problems before the inspectors come.</p>
1212	NODA0554	<p>[From a letter to the Lyons Board of Trustee, Lyon, Colorado from the St. Vrain Valley Community Watchdogs regarding fugitive dust issues at Cemex-Lyons:] □□□ □□□</p> <p>The St. Vrain Watchdogs have been stewards of this area for several years out of necessity not choice. No one from the county or the State is within visibility of this plant to directly see these dust events, so we continue to have to alert government officials such as you. We would rather be living our lives in the peace and beauty of this gem of a valley. We hope that the practice of giving this company advance notice that an inspection will be occurring will shift. That practice allows time to "clean up their act" temporarily in order to stay in compliance and may delude regulators as to what is really the case. Until Ms. Hoefler and Ms. Milmoie made their unannounced inspection, they had no direct knowledge as to what we have been subject to here.</p>
1213	NODA0554	<p>[From a letter to the Lyons Board of Trustee, Lyon, Colorado from the St. Vrain Valley Community Watchdogs regarding fugitive dust issues at Cemex-Lyons:] □□□ □□□</p> <p>Many citizens have put in thousands of unpaid hours on this industry alone, and we still don't have containment of what we consider a hazardous and dangerous material spewing out of Cemex-Lyons. E. M. Forester once offered his countrymen words we might heed: □□□ □□□</p> <p>If you desire to save the countryside there is only one way; through good laws rightly applied... That is your only hope. A little has already been done: much more can be done in the future. It needs men and women of goodwill who can continue and work together lest destruction spread and cover the fields and the hills.</p>

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1214	NODA0554	<p>[From a letter to the Lyons Board of Trustee, Lyon, Colorado from the St. Vrain Valley Community Watchdogs regarding fugitive dust issues at Cemex-Lyons:] □□□ □□□</p> <ol style="list-style-type: none"> <li>1. The A-frame storage building has excess dust on the roof and piled-up clinker dust around it that should be covered or removed.□□□</li> <li>2. The Clinker Pit had fugitive dust emissions in excess of 20% due to improper handling by the loader operator. The Clinker Pit should be unloaded on a set schedule rather than using the presence of dust as an indicator for removal.□□□</li> <li>3. The haul road behind the A-Frame was particularly dusty and should be watered frequently or treated with dust suppressant.□□□</li> <li>4. Piles of dust were noted under the conveyor belt at the south end of the plant, just before reaching the stacker. This source of potential fugitive emissions has been identified in previous inspections and should be removed daily.□□□</li> <li>5. Material stockpiles could be a potential source of fugitive emissions during high winds. It was suggested that the plant find a way to water the top of the piles, possibly running the conveyor belt periodically to mist the piles with the automatic mister.</li> </ol>
1215	NODA0555	<p>Howard and Howard, P.C. is one of the counsel of record in the Olden matter. In response to Tulane’s comments relative to Olden it should be noted that the complaint filed in the matter is not specific as to CKD and is, therefore, irrelevant to the regulation and management of CKD at issue in this docket. Furthermore, to date there has been no discovery or any factual adjudication relative to any harm arising from Lafarge’s management of CKD. The reported decision referenced by Tulane related only to class certification and rulings upon motions otherwise based upon the pleadings alone.</p>
1216	NODA0555	<p>Tulane’s reference to Olden as an illustration of CKD concerns raised by commenters is misplaced. The available objective evidence indicates that there is no basis to believe that CKD management practices as currently conducted by Lafarge create any public harm. For example, according to a March 15, 2000 Petitioned Public Health Assessment authored by the Michigan Department of Community Health Under a Cooperative Agreement with Agency for Toxic Substances and Disease Registry, "no apparent public health hazard" can be attributed to Lafarge’s Alpena, Michigan operations. According to this report, the particulate concentrations measured in Alpena air did not exceed the current U.S. EPA standards. Furthermore, the 2000 Annual Air Quality Report, as published by the Michigan Department of Environmental Quality, reported that the mean concentration for PM 2.5 in Alpena was 7.6 ug/m3, which is approximately one-half the current standard of 15 ug/m3. In addition, the 98th percentile reading PM 2.5 in Alpena was 25 ug/m3, while the current standard is 65 ug/m3.</p>
1217	NODA0555	<p>In sum, although the Olden action remains pending in the federal court, neither the complaint in the case, the reported decision in the matter, nor the available data from public authorities in Michigan support in any way Tulane’s assertion that this action illustrates a pressing problem regarding CKD management in Alpena which is germane to this docket.</p>
1219	NODA0556	<p>Since 1990, Lehigh has shown a reduction of CKD going to on site landfills, from 132,254 metric tons per year to 44,000 mtpy, a reduction of 67%. This reduction was mainly due to the conversion of wet and long dry kilns to preheater pre-calciner kilns.</p>

Comment Id	Document Number	Comment
1222	NODA0559	<p>On November 8, 2002, Cemex ran a full page advertisement in the Daily Times-Call entitled: "10 Frequently Asked Questions Regarding Tire Derived Fuels at Cemex, Lyons Cement Plant." This advertisement concludes with a guarantee for the public:□□□</p> <p>□□□</p> <p>"We all live in this community so I want to insure that any action our plant takes is safe for our families' health and yours. This approach allows us all to make informed and wise decisions." (Plant Manager)□□□</p> <p>□□□</p> <p>Reality Check: Here's what has been found at Cemex-Lyons.□□□</p> <p>□□□</p> <p>[Bullet] \$282,000.00 fine for violations of air quality laws and regulations:□□□</p> <p>□□□</p> <p>In 2003 inspectors from the Boulder County Health Department and the Colorado Air Pollution Control Division took decisive action at Cemex through series of unannounced inspections. The inspectors found significant problems and cited the facility for non-compliance with its operating permit and for air pollution violations. This matter was eventually finalized in a Compliance Order on Consent in the Matter of Cemex Inc., and fines of \$282,000.00. Mike Oatley, editor of The Old Lyons Recorder, reports that "the fines are among the largest fines ever levied for air quality violations in Colorado." (March 4, 2004)</p>
1223	NODA0559	<p>[Bullet] "Three-Foot-deep piles of dust" [Cemex-Lyons]□□□</p> <p>□□□</p> <p>In 2003, a Cemex employee came forth with three hours of video footage taken inside the facility which not only confirm citizens' complaints, but shows the problem is much worse than even the neighbors realized. The following is quoted from editor Pamela White's investigative report: "Concrete Evidence: Whistle-blower Gives Boulder Weekly an Inside Look at Conditions at Cemex."□□□</p> <p>□□□</p> <p>The 3 video tapes show "images of foot-deep piles of dust beneath conveyor belts; conveyor belt covers leaking plumes of dust; foot-deep dust on walkways; dust-covered cables crossing walkways; open transformer and breaker boxes; ceiling beams buried beneath six-inch-high piles of cement dust; oil-soaked rags tied around leaking machines; pipes swathed in duct tape; three-foot-deep piles of cement dust on roofs, particularly the A-Frame. ('If that much built up on the roof, think how much went into the air,' the insider says in the tape narration.')" (Boulder Weekly, November 20, 2003, p. 11)□□□</p> <p>□□□</p> <p>Mike Oatley, editor of the The Old Lyons Recorder writes that "the plant operated an A-frame used to store clinker "a predecessor to finished Portland cement" without any pollution control devices in place at all between April 2001 and August 2003 while reporting that it was using a baghouse of 99% efficiency on the A-frame. The order states, 'At the time [the company reported that a baghouse was in place], there was no baghouse on the A-Frame and had not been such a baghouse for at least two years.'" (March 4, 2004)□□□</p> <p>□□□</p> <p>Margie Perkins, the Director of the Colorado Air Pollution Control Division, advised the Boulder Weekly on February 26, 2004 that, "the real issue at Cemex is one overall management of environmental compliance."</p>
1224	NODA0559	<p>[Bullet] Legacy Burden: [Cemex-Lyons]□□□</p> <p>□□□</p> <p>In 2003, Mary Lou Dobbs, Executive Director of the Environmental Justice Project, requested an inquiry into recently uncovered inter-office memos in a Boulder County Land Use Department docket written by inspectors from the Colorado Department of Public Health and Environment. The inspectors wrote that it was discovered in December of 1990 that personnel at the facility "were burning waste or used oil in addition to other fuels." The inspectors determined that the facility had been burning waste oil and other solvents since about 1975 and,□□□</p> <p>□□□</p> <p>"a rough estimate of quantities burned, based on three tanker trucks per day and 6700 gallons/load is 20,100 gallons/day x 5 day/week x 52 week/year resulting in an annual quantity of 5,226,000 gallons." (Inter-Office Communication from Tom Tistic, APCD, Stationary Sources Program, dated February 28, 1991)□□□</p> <p>□□□</p> <p>This facility may have burned in excess of 80 million gallons of oils and solvents from 1975 to 1990. The burning ceased shortly after state inspectors discovered that the facility did not have a permit modification of this activity.</p>

Comment Id	Document Number	Comment
1225	NODA0559	<p>[Bullet] Cause and Effect: [Cemex-Lyons]□□□            □□□            For more than a decade, citizens have witnessed fugitive dust events from the facility and suffered the ill effects of this dust--paint discoloration on automobiles, windshields pitted, respiratory problems, and cement dust settling in their hones. The sole motive in the Watchdogs' initiative for better air quality was being able to live without fears of breathing toxic Portland cement dust, and to inform authorities of the problems at this facility.□□□            □□□            For years, the Boulder County Health Department and the Colorado Air Pollution Control Division advised Cemex to revise its fugitive dust control plans and to improve housekeeping processes. For whatever reasons, the dust events kept appearing, and residents continued complaining to the Boulder County Health Department and to Cemex.□□□            □□□            The Compliance Order on Consent in the Matter of Cemex, Inc has finally given us some relief!!□□□</p>
1226	NODA0559	<p>[Bullet] Recent Incidents: [Cemex-Lyons]□□□            □□□            Three dust complaints were reported to the Boulder County Health Department and to Cemex since the issuance of the Compliance Order.□□□            □□□            1. February 27, 2004. Dust plume after blasting activity on spray tower.□□□            □□□            2. March 18, 2004. Heavy concentrations of dust in the air about the facility.□□□            □□□            3. March 25, 2004. Dust plume from dumping.□□□            □□□            These complaints are being investigated by Gabi Hoefler, Inspector, Boulder County Health Department.□□□</p>
1227	NODA0559	<p>[Bullet] Mine Safety and Health Administration Inspection: [Cemex-Lyons]□□□            □□□            Editor Pamela White reports in "The Dust Settles," that "the conflict came to a peak this past fall when a whistleblower from Cemex presented the state and Boulder Weekly with videotapes showing deep piles of dust in and around the facility, some of them waist-high. The whistleblower's actions resulted in a month-long inspection of the plant by worker-safety officials from the Mining Safety and Health Administration (MSHA), a branch of the U.S. Labor Department. MSHA issued citations as a result of that inspection, but the reports are not yet available to the public." (Boulder Weekly, February 26, 2004)</p>
1228	NODA0559	<p>[Bullet] Review of sufficiency of reclamation bond recalculated from \$369,100 to \$8,039,100:□            □            In July of 2003, the Watchdogs received a letter from the Colorado Division of Minerals and Geology informing us that the Division had approved a new cost estimate for the future demolition of the facility and the reclamation of the property to irrigated pasture. The Division increased Cemex's bond from \$369,100 to \$8,039,100.</p>

Comment Id	Document Number	Comment
1229	NODA0559	<p>Here's what Cemex requested:  <input type="checkbox"/>                      [Bullet] Tire Burning Permit (SU-88-21):  <input type="checkbox"/></p> <p>Cemex is proceeding with its plans to burn tires as fuel using a tire burning permit originally approved for Southwestern Portland Cement Inc in 1990. (See "Legacy Burden" p. 2) On April 10, 2003, Cemex notified the Director of the Boulder County Land Use Department that it reserves the right to pursue a claim against the county in that regard.  <input type="checkbox"/></p> <p>The Director of the Boulder County Land Use Department determined that the 1990 permit (SU-88-21) is still in force, and Cemex may resume tire burning under this permit. The Sierra Club and the Caribou Springs Ranch Homeowners Association are challenging this decision with a legal action asserting that the Land Use Department violated the law. District Court Judge, Roxanne Bailin, is expected to rule in this matter this summer. Should Judge Bailin rule in favor of the aggrieved parties, then the tire burning permit will be deemed lapsed and of no further force and effect.  <input type="checkbox"/>  <input type="checkbox"/>  <input type="checkbox"/></p> <p>If this occurs, Cemex then may apply for a new special use permit to burn used tires as a supplemental fuel. The permitting process affords an opportunity for public hearings before the Boulder County Planning Commission and the Boulder County Board of County Commissioners. In the meantime, continued public awareness and education concerning the issues will hopefully bring more citizens forward to oppose this activity.</p>
1230	NODA0559	<p>[Bullet] Large Population at Risk:  <input type="checkbox"/>  <input type="checkbox"/>  <input type="checkbox"/></p> <p>Could improper combustion of tires at Cemex put a large population at risk? Yes, according to a team of students in the Environmental Design Department of the University of Colorado who researched and wrote a report entitled: Cemex Corporation Environmental Impact Statement: Cement Kiln Tire Incineration (2003)  <input type="checkbox"/>  <input type="checkbox"/>  <input type="checkbox"/></p> <p>Section: Issues and Concerns: (Item 3, page 9) "The Cemex Plant lies in close proximity to the city of Boulder, Colorado. Improper incineration and the release of additional emissions could put a large population at risk."  <input type="checkbox"/>  <input type="checkbox"/>  <input type="checkbox"/></p> <p>Section: Issues and Concerns: (Item 6, page 9) "Cemex has a poor environment track record for compliance with the EPA. Safety issues are amplified due to the possibility of wide scale negative consequences. Research indicates problems at the Lyons plant as well as other Cemex operations around the country. Proper tire incineration relies on consistent management practices that may not be present at Cemex."  <input type="checkbox"/>  <input type="checkbox"/>  <input type="checkbox"/></p> <p>This EIS was performed under the supervision of Brian Muller of the Environmental Design Department at the University of Colorado at Boulder. This EIS may be the only one available on this local issue. It appears to be an unbiased and a researched document.</p>
1231	NODA0559	<p>[Bullet] Health Consultation:  <input type="checkbox"/>  <input type="checkbox"/>  <input type="checkbox"/></p> <p>In July of 2003, the Agency for Toxic Substances and Disease Registry (ATSDR) conducted a Health Consultation on the test burn data that was submitted for evaluation.  <input type="checkbox"/>  <input type="checkbox"/>  <input type="checkbox"/></p> <p>The ATSDR concluded the concentration of the chemicals detected in the stack gases are unlikely to result in adverse public health effects. (p. 13)  <input type="checkbox"/>  <input type="checkbox"/>  <input type="checkbox"/></p> <p>ATSDR recommends that agencies with regulatory authority over the Cemex plant regularly inspect the facility, enforce operating conditions that will assure the stack emissions remain within the ranges measured during the source test, and require periodic retesting of the stack emissions." (p. 13)  <input type="checkbox"/>  <input type="checkbox"/>  <input type="checkbox"/></p>
1232	NODA0559	<p>[Bullet] Are the Risks Worth It?  <input type="checkbox"/></p> <p>On August 8, 2002, Mike Oatley, the editor of The Old Lyons Recorder wrote in a "Commentary &amp; Opinion" entitled: "Cemex tire burning plan requires a leap of faith,"  <input type="checkbox"/>  <input type="checkbox"/></p> <p>"The idea that we should err on the side of caution where human health is concerned, seems to be the best guiding principle at work in this controversy. Cemex's bottom line is not nearly so significant of a concern."</p>

<b>Comment Id</b>	<b>Document Number</b>	<b>Comment</b>
1233	NODA0559	<p>[Bullet] "Good laws rightly applied"</p> <p>There is an unmistakable note of urgency in the matter of Cemex-Lyons. The regulatory agencies must continue to act decisively if we are to assert the right to clean air. □</p> <p>E.M. Forster once offered his countrymen words that might guide us in the matter of what to do about Cemex: □</p> <p>"If you desire to save the countryside there is only one way: through good laws rightly applied. That is your only hope. A little has already been done: much more can be done in the future. It needs men and women of good will who can continue and work together lest destruction spread and cover the fields and the hills."</p>