



September 4, 2009

Ms. Lisa P. Jackson
Administrator
U.S. Environmental Protection Agency
Ariel Rios Bldg. – Room 3000
1200 Pennsylvania Ave., NW
Washington, DC 20460

Re: National Emissions Standards for Hazardous Air Pollutants from the
Portland Cement Manufacturing Industry, Docket ID No. EPA-HQ-OAR-
2002-0051

Dear Administrator Jackson:

It is our understanding that the US Environmental Protection Agency (EPA) is proposing amendments to the current National Emission Standards for Hazardous Air Pollutants (NESHAP) from the Portland cement industry, published at 74 Fed. Reg. 21136 (May 6, 2009). As a consumer organization, EmPower Consumers was founded on the premise that before America can reach agreement on a greener tomorrow, it must take care of its families and communities today.

EmPower Consumers earlier this year determined that, given the state of the economy (including the credit markets), it was time to launch an affordable housing initiative. Unfortunately, the rule proposed by EPA may have the effect of unreasonably constricting cement supply and increasing cement prices. Such a result can directly impact the availability of affordable housing. We strongly encourage EPA to reconsider its proposal in order to protect those in society least able to afford the impact of its rules: those living at or near the poverty level or on fixed incomes.

1. The United States Faces An Affordable Housing Crisis

It comes as no surprise that the recent downturn has made it particularly difficult for Americans facing economic challenges to maintain or acquire access to affordable housing. The Joint Center for Housing Studies at Harvard University found in their 2009 report on The State of the Nation's Housing that, "Millions of Americans entered the recession with severe housing cost burdens and deep in debt. The number of households paying more than half their incomes for housing jumped from 13.8 million in 2001 to 17.9 million in 2007."¹ The Harvard researchers further found that affordability pressures have continued to increase as unemployment levels have risen. With millions added to unemployment rolls, and with millions who have

¹ Joint Center for Housing Studies (JCHS) of Harvard University, The State of the Nation's Housing, 2009, at 2, available at http://www.jchs.harvard.edu/publications/markets/son2009/son2009_executive_summary.pdf

significantly reduced earning capacity, access to affordable housing is significantly threatened. As they noted, "Indeed, no American household earning the equivalent of the full-time minimum wage (\$11,500) can afford a modest two bedroom apartment at the federal fair market rent."²

Unfortunately, recent housing pressures are not a new phenomenon. As Professor Clampet-Lundquist at the University of Pennsylvania has noted, "Providing suitable and affordable housing for poor families has always been a problem in U.S. cities."³ In the 1990s, the US Department of Housing and Urban Development was already reporting that nearly 5 million Americans were spending more than half of their income on housing or living in sub-standard housing.⁴

This housing crisis does not fall equally among all parts of US society. The nature of the racial disparity in access to affordable housing was explained in Ohio State University sociologist K. Sue Howell's important 2003 book *The Survival of the African American Family*, in which she stated:

"Because affordable housing is an issue of monumental proportions, the housing shortage, in conjunction with housing discrimination practiced by financial institutions, has resulted in a major disparity in home ownership for African American families compared to white families."⁵

Data has shown that the additional hurdle of discrimination makes access to affordable housing particularly challenging for low-income African-American and Latino families. According to HUD data, 41% of Latino very low-income renters (without housing assistance and making less than 50% of area median income) faced severe housing affordability problems. Among African-American very low-income renters (without housing assistance), 49% had severe housing affordability problems.⁶ The Harvard report notes that the recent economic downturn has made matters worse for minority communities, with the "incidence of high-cost loans and foreclosures" being "much higher in minority than in white neighborhoods, and highest in low-income minority neighborhoods."⁷

2. The Proposed Rule Makes A Bad Housing Situation Worse

There is no surprise that finalizing the rule as proposed would result in an increase in cement prices and a decrease in cement supply. The rulemaking imposes substantial uncertainty on cement manufacturing, making investments in the sector less likely even as the signs of distant recovery may be appearing on the horizon. Witnesses at a recent public hearing on the proposal described the potential to put cement "plants out of business or penalize particular regions of the country based solely on differences in composition of the earth's crust." Initial studies

² Id.

³ Susan Clampet-Lundquist, Finding and keeping affordable housing: analyzing the experiences of single-mother families in North Philadelphia, *Journal of Sociology and Social Welfare* (Dec. 2003), available at http://findarticles.com/p/articles/mi_m0CYZ/is_4_30/ai_111933186

⁴ Id.

⁵ K. Sue Jewell, *Survival of the African American Family* (2003) at 272.

⁶ Clampet-Lundquist, 2003.

⁷ JCHS, 2009, at 3.

demonstrate that the industry will not be able to comply with the rule which, when coupled with potential greenhouse-gas limits, "would drive ... the industry offshore."⁸

While EmPower Consumers does not purport to be an expert on whether the cement industry can meet the terms of the proposed rule, we do speak for consumers who will suffer from higher-cost building materials should these predictions prove to have merit.

Even though building materials' supply and cost are not the only factors in determining the cost of housing, it is clear that they have an important impact – particularly for affordable housing. Business Week has reported that cement prices have "a disproportionate effect on lower-middle to middle-income families. Why? Because the denser housing that tends to get built for them uses lots of concrete, which is made from cement, sand, gravel, and water." Further, they found that when builders face high prices for cement and concrete products, they put "more of their efforts into homes that are built primarily of lumber. These are single-family homes or town homes that tend to be aimed at higher-income families."⁹ And because margins in the affordable housing construction market are so narrow, even small changes can have big impacts.¹⁰

There appears to be a direct relationship between the imposition of regulatory burdens and the constraints on supply that make affordable housing more difficult to come by. Business Week listed factors that "exacerbate the high prices and shortages" for cement and concrete products: high among them were "regulations that make it tough for cement manufacturers to increase capacity."¹¹ Indeed, some studies have shown that the overall impact of regulations can add as much as 20 to 35 percent to the price of housing.¹²

3. EPA Should Take Affordable Housing Into Account and Re-Propose the Rule

There are a number of mechanisms that can reduce the economic footprint of the rule. At the very least, EmPower Consumers call upon EPA to use the best data available (including actual emissions testing data) to set the NESHAP standards – even if that means having to re-propose the rule once all the facts are in. Further, EmPower Consumers asks that EPA design a rule that is protective but follows past precedent within the Air Toxics program. The EPA should not use overly conservative methods for establishing the basis of comparison for facility performance, also called the MACT floor. The EPA should penalize facilities for their raw materials inputs, or consumers and housing markets in certain areas of the nation will be disproportionately affected

⁸ Carolyn Whetzel, Proposal Will Devastate Cement Industry, Drive Plants Offshore, Officials Tell EPA, (BNA) Daily Environment Report, June 17, 2009, at A-17(citing statements of Portland Cement Association and California Construction and Industrial Materials Association).

⁹ Peter Coy, A Concrete Problem: Middle-Income Housing, Business Week, June 9, 2006, at http://www.businessweek.com/the_thread/hotproperty/archives/2006/06/a_concrete_prob.html.

¹⁰ See Mona Mehta, Rising cement prices to hit affordable housing projects, Financial Express, April 4, 2009, at <http://www.financialexpress.com/news/rising-cement-prices-to-hit-affordable-housing-projects/442934/> (citing one construction expert as stating, "The increase in cement prices will surely have a negative effect, not only on builders developing affordable homes, but also overall. Margins in affordable housing projects are anyway very conservative; hence, increases in costs will surely give way to a dip in margins.")

¹¹ Coy, 2006.

¹² Increasing Affordable Housing and Expanding Homeownership, Real Estate Services, March 12, 2005, at <http://kaktus.com/wordpress/real-estate-articles/increasing-affordable-housing-and-expanding-homeownership/>.

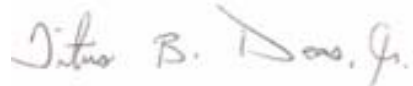
by the rule. And the rule should identify facilities actually achieving emissions limits for all pollutants and should not proceed on a pollutant-by-pollutant approach.

It is appropriate for EPA to consider secondary economic impacts on the housing market when it exercises its discretion related to this proposed rule. The Agency has already closely examined economic consequences of the rule. The very notion of a maximum "achievable" control standard is one that is sustainable under real-world circumstances. The constraints of consumer demand are one such circumstance.

As you know, EPA is asked to consider environmental justice concerns under the terms of Executive Order 12898 (Feb. 11, 1994). Section of that Executive Order establishes federal agency responsibilities related to the Order. Aside from the narrow obligation to assess environmental justice per se, agencies are not supposed to advance environmental regulatory programs that have the effect of "subjecting persons to discrimination...because of race, color, or national origin."¹³ Should EPA fail to consider the impact of the rule on affordable housing, the Agency will violate the letter and the spirit of the justice considerations present in the Executive Order.

Thank you for this opportunity to comment on the proposed NESHAP for Portland cement. We look forward to working closely with the Agency on this topic.

Very truly yours,



Bishop Titus B. Deas, Jr.
National Education and Outreach Spokesperson

Cc: EPA Docket Center (EPA/DC)

¹³ Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations, 59 Fed. Reg. (Feb. 16, 1994) at sec. 2.