

April 19, 2005

Mr. David Loomes  
Director, Greenport Project  
St. Lawrence Cement Company, LLC  
4303 Route 9  
Hudson, New York 12534

Re: F-2004-0863  
Army Corps of Engineers/New York District Permit  
Application #2000-00943-YN  
St. Lawrence Cement Company, LLC - Greenport Project -  
Hudson River  
Town of Greenport/City of Hudson, Columbia County and Town  
of Catskill, Greene County  
DEC #4-1040-000011  
**Objection to Consistency Certification**

Dear Mr. Loomes:

The Department of State has completed its evaluation of your Federal Consistency Assessment Form and certification that the above proposed activity complies with, and will be conducted in a manner consistent with, New York State's approved Coastal Management Program. Pursuant to 15 CFR 930.63, and based upon the project information submitted, the Department of State objects to your consistency certification. This objection rests with the unique nature of the proposal. It does not stand for the proposition that the affects caused by a different siting, configuration and design of a manufacturing facility with a lesser visual impact and a riverfront shipping facility with a reduced level of activity and located so as not to compete and conflict with adjacent uses, would result in a similar finding.

**Subject of the Review:**

Pursuant to Sections 9 and 10 of the Rivers and Harbors Act and Section 404 of the Clean Water Act, St. Lawrence Cement (SLC) has requested authorization from the U.S. Army Corps of Engineers to: (1) construct and operate elements of a new cement manufacturing facility in its presently active mine in Greenport; (2) to expand existing docking structures and construct a new dock in the City of Hudson; and (3) to construct a 2.5 mile long tube conveyor for transporting material between the dock in Hudson with the manufacturing facility in Greenport.

The SLC facility includes a 1,222-acre mine and 547 acres of land contiguous to the mine in the Town of Greenport and a 14-acre riverfront industrial area in the City of Hudson. The new cement manufacturing plant would be constructed within SLC's existing mine in the Town of Greenport. Construction of the proposed 2 million metric ton per year (mty) cement manufacturing facility would involve drainage of water currently occupying a portion of the mine site where the manufacturing facility would be located. The project would

include a preheater tower (337 feet in height), and attached main stack (363 feet in height); eight blending silos (20 feet in diameter by 174 feet tall and 207 feet to the top of the bucket elevator); 2 clinker silos (140 feet in diameter by 189 feet tall); and 8 cement silos (66 feet in diameter by 171 feet tall, with 228 feet to the top of the bucket elevator).

The 2.5 mile-long tube conveyor between the Greenport facility and riverfront industrial facilities in Hudson would travel primarily at grade, and would be completely enclosed. The cross section of the enclosure traveling at grade would be approximately 4 feet wide by 10 feet tall. At road crossings, the conveyor would rise to 28 feet above grade; at the CSX rail tracks it would rise to 45 feet above grade and these enclosures would have a cross section of 8 feet wide by 10 feet tall.

To accommodate deep-draft HudsonMax vessels, the proposed project would involve dredging approximately 62,000 cubic yards of material from the nearshore area of the Hudson River near the dock. The area to be dredged would be 5.71 acres in extent, including 5.45 acres of subtidal habitat and 0.26 acres of intertidal habitat. Stone revetment would be placed along the newly dredged slope, filling approximately 1180 linear feet over 1.09 acres of Hudson River intertidal and subtidal area. Steel sheet piling would be driven waterward approximately 420 feet of existing bulkhead on the northern portion of the property. To the south of the bulkheading, an open-pile, T-shaped dock for barge breasting and mooring would be constructed and a portion of industrial fill would be removed and relocated eastward. In this area, submerged stone rip-rap would be placed along the contours of approximately 900 feet of shoreline, filling approximately 0.06 acres of Hudson River intertidal zone.

Proposed in-water work includes the construction of 2 dolphins to be used in the berthing of HudsonMax vessels. Each dolphin would be connected to the shoreline by a 4 foot wide fixed steel grate gangway. A breasting barge (250 feet long by 63 feet wide) would also be moored at the bulkhead to hold the HudsonMax vessels away from the dock, in water deeper than water adjacent to the bulkhead. A new 260 feet long steel grate dock parallel to the shore is proposed to be constructed approximately 500 feet south of the existing SLC dock, for berthing of cement barges. The dock would be approximately 15 feet wide, supported by 4 dolphins, and connected to the shore in the center via a fixed steel grate gangway (20 feet wide by approximately 50 feet long). The cement barges that would use this dock are approximately 400 feet long and 72 feet wide, and weigh approximately 12,000 tons.

Existing structures on SLC's dock property include a stock house, a large concrete storage building (315-feet, by 115-feet, by 65-feet high), and an inactive 147-foot tall silo and barge-loading tower on the northern portion of the property. Proposed on-shore structures at the riverfront industrial facility include an 82 foot tall pump house, a 75 foot tall conveyor-reversing structure, a dock conveyor and a raw material stockpile area. The dock conveyor system would be used in the transfer of raw materials at the dock. The system would run approximately parallel to the riverbank, rising at a 10-degree angle to a height of 56 feet above ground to a transfer point within the 75 foot tall conveyor reversing structure, where material would be fed into the tube conveyor for transport to the Greenport manufacturing facility. This dock conveyor would be approximately 3 ½ feet wide. Loading of finished cement onto a barge would be performed using a pneumatic loading system. This system would connect the 82 foot tall pump house to a cement barge. Additionally, a public walkway leading to a landscaped area on the southern end of the dock facility would be created along the landside boundary of the riverfront industrial facility, adjacent to the CSX railroad tracks.

Activities at the riverfront industrial facility in Hudson would include the loading and unloading of cement products and raw materials. HudsonMax vessels would dock 16 to 22 times per year, operating 24 hours per day for up to 3 days each time, or 48 to 66 days annually. The largest class of ship capable of navigating this portion of the Hudson River, HudsonMax vessels are up to approximately 754 feet long, 80 feet wide, and have a 32 foot draft. Large cement barges would also transport finished material from the dock up to 4 times per week. The raw materials that would be unloaded at the riverfront industrial facility include coal/petroleum coke, gypsum, or granulated blast furnace slag (GBFS). Since raw materials can be unloaded from the HudsonMax vessels faster than they can be transported via the conveyor, material would be stockpiled at the Hudson facility. A containment

area would be constructed to house stockpiles of raw materials (54 to 60 feet high) for time periods ranging from 10 to 100 hours, estimated by SLC to be used up to 56 days a year. Post manufacturing at the Greenport facility, the finished cement product would be transported to the Hudson facilities via the tube conveyor and loaded onto barges for shipment.

SLC currently operates a cement kiln in Catskill, approximately 13 miles south of Hudson on the west side of the Hudson River in Greene County. As part of the proposed project, the existing cement manufacturing operations at the SLC facility in Catskill would cease. SLC would retain ownership of and continue to rely upon the Catskill site for materials handling and other logistical support for the Greenport facility. Continued activities at the Catskill site would include some grinding, packaging, storage, and shipping, as well as cement kiln dust (CKD) landfilling, to the extent that CKD generated at the Greenport facility would not be beneficially reused or recycled. SLC would dismantle or otherwise remove several structures in Catskill made obsolete by the cessation of certain existing cement manufacturing operations, including diminution of a plume resulting from the cessation of manufacturing at Catskill, removal of six 100 foot tall cement loading silos currently located on a jetty in the Hudson River, and removal of an 82 foot tall kiln stack located upland. Twenty-two silos (100 feet tall) and a stack (200 feet tall) would be demolished at the former Atlas site in the Town of Greenport, and a silo (147 feet tall) and barge loader would be removed from the SLC dock in Hudson.

In addition to the fixed components to be constructed as part of the Greenport facility, activities at the proposed plant would also generate noise and plumes of visible vapor and particulate matter. These plumes would be visible for many miles from areas in and beyond the coastal area. Particulate matter, not readily visible from surrounding areas, would travel greater distances.

The proposed cement manufacturing facility would employ 155 individuals. There are currently 144 employees at the Catskill facility, and 10 at the Greenport facility. The proposal would result in a shift of labor, with 25 employees remaining in Catskill, and 130 at the Greenport facilities. Construction of the Greenport manufacturing facility and the Hudson riverfront facilities would employ 1500 people over 2 years.

### **Factors Relevant to the Review**

In accordance with the federal and State consistency provisions of the federal Coastal Zone Management Act (CZMA) and Article 42 of the State Executive Law, respectively, certain federal and State agency actions and activities requiring agency authorizations are required to be consistent with the enforceable policies of New York's federally approved Coastal Management Program (CMP) and Local Waterfront Revitalization Programs (LWRP). The proposed activities, requiring authorization from the U.S. Army Corps of Engineers, are subject to the consistency provisions of the CZMA.

A federal consistency certification and supporting information for this proposed activity was submitted on October 22, 2004, and the Department's review began on October 23, 2004. In conducting this consistency review, DOS considered all supporting information submitted by the applicant relative to the October submission, including relevant information submitted prior to that date. DOS participated in site visits, balloon flight demonstrations, and a demonstration by the applicant's consultant of the software used in visual simulations submitted by the applicant. DOS issued a public notice for the proposed activity in accordance with 15 CFR Part 930.61, and over 13,000 comments were received and considered. Comments were received from interested citizens, organizations, businesses, community groups, professionals, union representatives, elected officials in New York State and neighboring states. Testimony from the Department of Environmental Conservation (DEC) issues conferences, rulings by DEC's Administration Law Judges (ALJ), and decisions made during the DEC issues conferences were also considered.

The CZMA authorizes a coastal state to review activities requiring federal agency authorizations for their consistency with the enforceable policies of the state's approved CMP wherever those activities are or would be located and their affect on resources or uses of the coastal area. (16 USC § 1456). Therefore, the geographic scope of the DOS review depends upon the nature of activities and their effects on coastal resources and uses.

In determining whether activities requiring federal agency authorizations affect the coastal area, the term "affect" is construed broadly. The term includes "direct effects which are caused by that activity and occur at the same time and place as the activity, and indirect (cumulative and secondary) effects which result from the activity and are later in time or farther removed in distance, but are still reasonably foreseeable. Indirect effects are effects resulting from the incremental impact...when added to other past, present, and reasonably foreseeable actions, regardless of what person(s) undertakes(s) such actions". (see 15 CFR 930.11(g); Conference Report, Congressional Record, September 26, 1990, H. 8076)

A state can review for consistency an activity requiring federal agency authorization located in one portion of the coastal area, for its effects on another portion of the coastal area. The potential affects from the SLC, as will be discussed, reach beyond the project site. Accordingly, the DOS review of the SLC project relies upon a region-wide approach because of the proposed project's potential far-ranging effects.

### **Regional Factors and Patterns of Development**

From a regional perspective, most communities along the Hudson River are reconnecting with the river through a mix of residential, commercial and recreational development that maximizes public access to the river. Tourism is the leading industry in the Valley, employing one of every ten workers and generating approximately two billion dollars a year. The Valley is a recreational resource for the 8 million people who live in and near the region (Hudson River Valley Special Resource Study Report. National Park Service. 1996.). DOS has been working with 35 riverfront communities in preparation and implementation of Local Waterfront Revitalization Programs (LWRP). In the past decade, the DOS has awarded 116 Environmental Protection Fund (EPF) grants totaling over \$25 million to waterfront communities in the Hudson Valley. The majority of this funding has been focused on revitalizing urban industrial waterfronts. Waterfront revitalization provides the catalyst for these riverfront communities to enhance their economic vitality, revitalize downtown areas, and provide public recreation opportunities on the waterfront. Through the Hudson River Valley Greenway and the Hudson River Valley National Heritage Area, waterfront communities are also planning for and implementing plans to create a recreational corridor for residents and visitors to explore.

The Hudson River region is recognized as a vital and changing area. Here, one large project located in two municipalities, such as SLC's project, may have significant regional effects. Because of this, the geographic scope of DOS's consistency review of this project includes not only the City of Hudson waterfront, but coastal resources and uses in the Village of Athens across the Hudson River from part of the project site, and other locations in the coastal area, such as the Olana Historic Site and certain designated Scenic Areas of Statewide Significance in the Hudson Valley. The riverfront industrial area is visible from the Hudson River, portions of the City of Hudson, and portions of the shoreline areas within the Village of Athens. Considerations such as scenic views and vistas, absence of pollution-based haze or other pollution, or water resources may be components, where appropriate, of the character of the coastal area of a community. The Athens LWRP was approved and incorporated into the CMP in accordance with Article 42 of the Executive Law and the CZMA and the potential effects of SLC's proposal on the policies and purposes of the Village's LWRP were considered by DOS. Effects on those resources and their characteristics and uses of those resources and the coastal area may be considered.

In recent decades there has been a shift in many urban waterfronts from water-dependent industrial uses, to a mix of compatible, higher economically valued mixed uses that include commercial, residential, tourism, retail, office and water-dependent recreational uses. Such a shift has been occurring in the Hudson River region. Historically, the urban centers along the Hudson River began as transshipment points for agricultural products to reach market. In the late 18th and the 19th centuries, the river became the focus for intensive industrial activity – from whaling to brickworks to iron manufacturing. Industries lined the waterfront in the cities and villages of the Hudson Valley. In the mid-19th century, railroad lines were extended into the Valley. While the lines hugged the riverbank for long stretches, the tracks were located away from the shoreline in areas where substantial industrial uses occupied waterfront acreage.

By the mid-20th century, industrial activity along the river, especially in urban centers, was in decline. The result was outdated industrial structures, brownfields, as well as derelict land fronting a severely polluted river. As New York State invested millions to clean the Hudson River, communities began to rediscover their waterfronts. Since the 1980's, urban centers along the Hudson have experienced a dramatic shift, moving from industrial uses and brownfields to mixed use redevelopment, recreation, cultural activities, and, increasingly, high-tech businesses. This shift in land use coincides with a shift in the Valley's economic engine from industrial uses to tourism, office, high-tech and retail activities. These new uses have generated spin-off businesses and a wide range of stable and growing employment and revenues, including significant public revenues that include property, sales, business and other taxes.

In developed waterfront areas on the Hudson River, land for new economic activity is at a premium. The most significant acreage available is underused industrial land between the river and the railroad tracks. Redevelopment of large parcels between the river and the railroad tracks for non-industrial uses is now occurring in nearly every major urban area in the Hudson Valley and is being supported by millions of dollars in federal and state grant funds and private investment. Throughout the Hudson Valley, these projects are transforming industrial sites into retail commercial uses, restaurants, parks, marinas and other tourist destinations, giving a needed boost to the local economy. Waterfront revitalization is providing the catalyst for these riverfront communities to enhance their economic vitality, increase tax revenues, add jobs, revitalize downtowns, and provide public recreation opportunities to the waterfront. This is particularly the case in Hudson River areas such as Yonkers, Irvington, Poughkeepsie, Sleepy Hollow, Tarrytown, Peekskill, Newburgh, Kingston, and Hudson. This Hudson Valley trend – converting riverfront industrial land to higher economically valued multiple mixed uses – started in the City of Hudson more than 2 decades ago. Since then, governments and the private sector have moved forward by denying approval for an oil refinery on the site of what is now the waterfront park, removing oil tanks and discontinuing other industrial uses, and creating a vision for a recreational and mixed use waterfront.

### **Applicable Policies and Policy Analysis**

#### **NYS CMP Policy #1: Restore, revitalize, and redevelop deteriorated and underutilized waterfront areas for commercial, industrial, cultural, recreational, and other compatible uses.**

This policy provides guidance for the restoration, revitalization, and redevelopment of deteriorated and underutilized waterfronts for certain compatible uses. The explanation of Policy 1 includes standards for determining whether uses are compatible and appropriate in deteriorated and underutilized waterfront areas. The explanation of policy also includes guidelines that must be followed when determining whether or not a federal or State action proposed for a specific urban waterfront area is suitable. The action should: (a) give priority to uses which are dependent on a location adjacent to the water; (b) enhance existing and anticipated uses; (c) serve as a catalyst to private investment in the area; (d) improve the deteriorated condition of a site and, at a minimum, must not cause further deterioration; (e) lead to development which is compatible with the character of the area, with consideration given to scale, architectural style, density, and intensity of use; (f) have the potential to improve the existing economic base of the community and, at a minimum, not jeopardize this base; (g) improve adjacent and upland views of the water, and, at a minimum, not affect these views in an insensitive manner; and, (h) have the potential to improve the potential for multiple uses of the site.

The explanation for this policy also states that revitalization of underutilized waterfront areas is one of the most effective means of energizing economic growth and that waterfront redevelopment is one of the most effective means of rejuvenating and stabilizing residential and commercial districts adjacent to the redevelopment area. The SLC waterfront comprises 14 acres and is currently the site of limited industrial activity. The SLC dock receives 2 to 3 HudsonMax bulk cargo ships each year. Other bulk cargo ships that come into SLC's dock to deliver materials are generally smaller. Coast Guard icebreakers and buoy tenders tie up at the SLC docking facility, which is also used seasonally for storage of navigational buoys. The Coast Guard has advised DOS that they consider the SLC dock a "critical" buoy staging area, the only one currently available to them north of Bayonne, New Jersey. According to SLC, the dock is also used by 6-10 pleasure craft during the summer, and

by tug-directed barges, which are typically 60 feet wide and 300 feet long. The present use of the dock area for small scale shipping and recreational boating certainly comports with the nature of this small harbor area.

The SLC proposal represents a dramatic expansion in industrial activity at the SLC dock in Hudson. The proposed riverfront industrial facility, immediately adjacent to the City's waterfront parks, would serve as the shipping center for one of the largest cement manufacturing facilities in the nation, producing 2 million metric tons per year. Under the proposal, HudsonMax vessel activity would increase to 16-22 stops per year at the docking facility, a 433 - 1000% increase in the presence of a HudsonMax vessel at the Hudson waterfront, and include mooring for up to 3 days at a time. Unloading and loading operations, including the transport and stockpiling of road salt, gypsum, and GBFS, would occur on a 24-hour basis. Cement barges of twelve-thousand metric ton capacity, which are about 400 feet long and 72 feet wide, would be used to transport finished material up to 4 times per week. Loading of these vessels takes up to 14 hours. In addition to the increased activity of HudsonMax vessels, tugs and barges, and associated loading and unloading operations, the proposed project would also entail the construction and operation of an enclosed conveyor system connecting the riverfront industrial activity to the Greenport facility. The product transfer and storage associated with the proposed SLC riverfront industrial facility would transform the existing dock into a major shipping terminal. Rather than revitalize the waterfront, at its proposed scale, this shipping complex will dominate this and surrounding waterfront areas for the 50 to 60 year useful life of the industrial complex.

Policy 1 guidelines and conclusions:

(A) *Priority should be given to uses which are dependent on a location adjacent to the water:*

An extensive discussion of water dependent uses appears in Policy 2.

(B) *Actions proposed should enhance existing and anticipated uses:*

Waterfront revitalization depends upon location, circumstances and proposed use. A large-scale heavy industrial facility is not appropriate in all waterfront locations but requires the right setting. In the state's urban areas, particularly major ports, the introduction of large new industries and expansion of waterborne transportation of cargo can serve as a source of economic rejuvenation. Not all areas however benefit from the introduction of heavy industry.

At one time in the City of Hudson, cement manufacturing was a significant local industry. Beginning in the late 19th century, with improvement and expansion in railroads, waterborne movement of cargo and people declined. The economy of Hudson worsened and the slower economy served to preserve much of Hudson's history and architectural heritage. A recent newspaper article described the city's economic revitalization: "City administrations maintained the historic integrity of Hudson while upgrading the infrastructure . . . They kept our main street intact,' [Mayor] Scalera said" (Times-Union, 1/09/2005). Beginning in the 1960's, the City's development trend moved toward non-industrial uses. Significant effort has been made by the private sector, state agencies, the City of Hudson, and the Village of Athens to attract a broad base of users to waterfront parks, retail areas, and recreational facilities, such as marinas and boat launches.

Along with other State agencies, DOS has been involved with the City of Hudson for more than 20 years in the redevelopment of its waterfront. In 1984, DOS objected to the consistency certification for the proposed expansion of an existing oil storage terminal facility on the City of Hudson waterfront. The proposed oil facility relied heavily on waterborne transportation and it was the Department's position that the increased industrialization of the City of Hudson's waterfront represented an incompatible use (DOS consistency decision letter, July 6, 1984). Today, using, in part, State financial assistance, that the largest former oil facility in the City, has been transformed into Hudson's newly completed waterfront park, while plans are being advanced to add adjacent mixed-use development on the river to anchor the west end of the Warren Street revitalization. A \$10 million cleanup of another riverfront brownfield is being completed, which will enable the City of Hudson public waterfront to expand until immediately adjacent to the proposed significantly expanded SLC riverfront industrial uses.

The 1996 Hudson Vision Plan and 2002 Comprehensive Plan are the most recent completed planning documents guiding development efforts in the City. As noted in the City's adopted 2002 Comprehensive Plan, the Vision Plan as the guide for waterfront development projects. (See Hudson Comprehensive Plan (HCP) Executive Summary pp. xii - xiii). Many of the recommendations contained within the plans have been implemented. One project that is largely completed is the development of the new waterfront park on the site of the former Hudson Petroleum parcel, complete with landscaping, walkways, docking facilities and a gazebo. The State is also considering relocation of the public boat launch from the Hudson waterfront's northern edge to a site at its southern edge, just north of, and directly adjacent to, the proposed SLC riverfront industrial facility. The Hudson Power Boat Association will relocate to the current State Boat Launch site, with proposed redevelopment of the current Hudson Power Boat Association parcel to include a new restaurant, mixed use retail/office, river café and a new ferry terminal office. Other uses proposed for the Hudson Power Boat Association site include docks, shoreline improvements and open space for use by visitors and residents. Improvements for nearby Promenade Hill, located on the waterfront just to the north of the waterfront park, include the construction of a new visitor amenities building, the incorporation of new landscaping, and development of a promenade walk to connect with the waterfront. The Vision Plan also recommends the development of a bicycle lane along Front Street to strengthen the link between Hudson's downtown, its waterfront and the regional network of transportation paths.

The magnitude of industrial activity proposed at the SLC dock would compete with the revitalization of the City's waterfront and surrounding area. Over the past 20 years, the City has experienced a resurgence in private investment with individual owners and proprietors funding building restoration projects and establishing new businesses. This investment has led to development of antique shops, galleries, gift shops, home furnishing stores, sporting goods stores, clothing boutiques, restaurants, cafes, bars, a concert hall and cabaret theater all on Warren Street, Hudson's main street. This investment has created new jobs in the City and resulted in the adaptive rehabilitation of many of Hudson's historic buildings. The economic revitalization is expanding outward from Warren Street, continuing along several streets, including Allen, Union, Columbia, and State Streets anchored at the west end by plans for waterfront mixed use immediately adjacent to the proposed SLC riverfront industrial facility. These redevelopment projects on the river would function as the riverfront anchor of the Warren Street revitalization.

SLC's proposed riverfront industrial facility also does not comport with the City's *1996 Hudson Vision Plan* and the *2002 City of Hudson Comprehensive Plan* (see discussion under Policy #2).

The introduction of SLC's proposed large riverfront industrial uses in close juxtaposition will not enhance, but instead would detract from, these existing and anticipated uses.

*(C) The action should serve as a catalyst to private investment in the area;*

As previously mentioned, the City of Hudson is enjoying a significant revitalization of its waterfront and community. It relies on a diversified economy in which tourism, commercial, retail, recreation and second home purchases play a large role. Hudson relies on the area's high quality of life, contributed to by the visual appeal of the area, its historic fabric and texture, its pastoral setting, and attractions such as its waterfront park and Olana as the basis for continued economic growth.

The SLC facility will not advance or serve as a catalyst for the type of private investment and the kind of commercial development that has been unfolding in Hudson in the past twenty years, and as envisioned in the Hudson Vision Plan significantly expanded riverfront industrial activity, contrasts with the continued economic growth in the City and region based, in part, on a revitalized mixed-use waterfront development or other more compatible light industrial options. It can be anticipated that the proposed increase in scale and intensity of industrial operations at the Hudson dock will not encourage future retail and tourism-focused investment, and may diminish future private investment for these types of activities in the City or adjacent areas.

*(D) The action should improve the deteriorated condition of a site and, at a minimum, must not cause further deterioration*

As part of its project, SLC has proposed several significant site improvements and mitigation measures. At the dock facility, SLC plans to remove a dock tank and barge loader. At the Catskill facility, SLC proposes to remove six bunker silos on the jetty in the Hudson River. SLC proposes to close the Catskill kiln, and remove portions of the plant, and silos on its jetty in the river. Elimination of the plume resulting from the plant closure and removal of several substantial structures would result in a major visual improvement in the Hudson Valley, particularly since it is in the primary southern viewshed from Olana. All of these actions will improve the conditions at its waterfront property.

*(E) Action should lead to development which is compatible with the character of the area, with consideration given to scale, architectural style, density, and intensity of use:*

The proposed project represents a tremendous increase in the scale of local and regional cement manufacturing operations. The new plant, if built, would be the largest in the State and one of the largest in the nation. According to the DEIS, "construction of the 2 million metric ton per year Greenport cement plant and a net increase in production of 1.4 million mty would decrease the country's dependence on imported cement by 7 percent." Dock activities and vessel operations would generate potentially significant dust and noise impacts on a relatively continuous basis. This would occur through constant transit of ships to transport 80% of the cement plant's product to market, utilization of heavy equipment on the dock to load and unload materials, the pneumatic loading system, and storage dockside of large quantities of raw materials. There would be significant noise, fumes and dust associated with these activities which would likely impair recreational use on the adjoining waterfront park, neighboring areas and on the Hudson River.

The increased industrial activity on the waterfront described above would be out of scale and character with the surrounding pedestrian-oriented parks, small-scale historic architecture and the City's Historic District, recreational boating activities, commercial retail, and tourism-oriented uses on the City's waterfront, as envisioned in its Vision Plan, and other planning documents. The Village of Athens has also determined the proposed project would have similar negative impacts on the character of their waterfront development (Village of Athens, letter, 3/16/05). Despite the fact that the proposed riverfront industrial structures would have historic industrial facades, the overall scale and intensity of use would not be compatible with the character of the area.

*(F) Proposed actions should have the potential to improve the existing economic base of the community and, at a minimum, not jeopardize this base:*

The City of Hudson is experiencing an economic upturn, with nearly a 5 percent rise in private sector jobs between 1998 and 2002. The economic engine driving revitalization in the City of Hudson and elsewhere in the region is commercial, retail, tourism, residential real estate and business support services. The resurgence in local investment has led to a dramatic expansion in the development of retail uses, restaurants, arts, and recreational opportunities. This investment has spurred new jobs, has resulted in the adaptive rehabilitation of historical structures, and is fueling mixed retail and recreational uses of the waterfront. The proposed increase in scale and intensity of industrial operations at the Hudson riverfront would not encourage future retail and tourism-focused investment, and may jeopardize the base of the current revitalization effort. The City of Hudson's waterfront capacity for siting and implementation of the public recreational and access uses, as well as the ability of the waterfront to host mixed commercial uses is hindered, not improved, by the nature, intensity, and scale of SLC's proposed riverfront industrial facility.

The proposed riverfront industrial facility would be situated across the Hudson River from the Village of Athens' historic waterfront district, which is listed in the National Register of Historic Places and includes more than 270 historic structures, and would present a significant level of intense industrial activity in an area where an emphasis is placed on recreational, tourist-related, and waterfront-related retail commercial activity. With financial assistance from DOS, the Village is presently completing a \$1.2 million restoration project to refurbish its historic ferry slip and Riverfront Park, resulting in increased waterfront park area and development of new dockage, walks and promenades. The Deputy Mayor of the Village of Athens submitted a letter strongly opposing the proposed project.



*(G) Actions should improve adjacent and upland views of the water, and, at a minimum, not affect these views in an insensitive manner:*

The Hudson River viewshed in this area is important. The Hudson Valley was the setting for the Hudson River School of artists and the geographic center of the American Romantic Movement, a cultural movement that took place during the first half of the 19th Century. The region is also a significant resource for tourism and recreation. Portions of the landscape are included within Scenic Areas of State-Wide Significance (SASS) as designated by the New York State Coastal Management Program (CMP) -- the Catskill-Olana SASS and the Columbia-Greene North SASS, as fully discussed in Policies 23, 24 and 25.

As part of its project, SLC proposes to refurbish and expand the existing dock facility on the Hudson River. The SLC project incorporates an access area from which the public can observe the working waterfront. The dock area impacts depend upon ship traffic, loading, unloading, and stockpiling activities at the docks. Although current use of the dock area involves some stockpiling of materials, the proposed project will significantly increase the level and intensity of material handling operations at the site, with accompanying noise, dust and light impacts.

The current outstanding scenic views of the water from adjacent and surrounding areas, however, will be profoundly changed. Views of the water from the City park, which adjoins the SLC site, will be marred by a steady parade of large ships and barges maneuvering in and out of the docking area. Diesel emissions and plumes from ship and barges while in transit and when engaged in loading operations can be expected to have an adverse effect on views of the water from the park. Across the river, views of the water from the Village of Athens will change. The Village has expressed strong concerns about the negative visual impact the project would have on the Athens Riverfront Park and the Hudson-Athens lighthouse, and the Village's plans to refurbish its historic ferry slip and Riverfront Park.

The impact on visual quality will be to impair, not to improve adjacent and upland views of the water.

*(H) The action should have the potential to improve the potential for multiple uses of the site.*

SLC's project is a cement plant operation occupying more than 1000 acres with almost no provision for creating multiple uses at the site. The current use of the dock for Coast Guard operations and recreational boats may not be available at that location. No other commercial uses consistent with the economic development trend occurring in the City of Hudson are planned for the site. As noted, SLC has offered to construct a public pathway along the waterfront. The City of Hudson's waterfront capacity for siting multiple uses may not be improved by the proposed riverfront industrial facility.

In conclusion, the proposed increase in industrial activity at this location, as described above, does not enhance existing and anticipated uses, lead to development which is compatible with the character of the area, with consideration given to scale, architectural style, density, and intensity of use, serve as a catalyst to private investment in the area, or improve adjacent and upland views of the water. For these reasons, the proposed activity is inconsistent with this policy.

**NYS CMP Policy #2: Facilitate the siting of water-dependent uses and facilities on or adjacent to coastal waters.**

This policy provides guidance for facilitating appropriate siting of compatible water dependent uses. SLC states the proposed cement manufacturing facility in Greenport is a water dependent use. This position, however, is not consistent with Executive Law Section 911(7), which provides:

"Water dependent use" means an activity which can only be conducted on, in, over or adjacent to a water body because such activity requires direct access to that water body, and which involves, as an integral part of such activity, the use of the water.

Key to this definition is that the activity can only operate if conducted on, in, over or adjacent to a water body. Activities which can be carried on elsewhere are not water dependent. Also, the definition provides that as an “integral” part of the activity, the use must involve water.

The cement manufacturing facility proposed does not use river water, and it is not nor need not be located on, in, or over the water. It is, therefore, not water dependent. The proposed method of transportation of certain raw materials and some of the product, however, is water dependent.

The NYSCMP makes it clear that water dependent uses are not intended to be facilitated in all locations. Not only do the guidelines for this policy make this clear, but in a section of the CMP, describing "changes the program will make," it is clear governments must do this only in existing major ports, "Within existing major ports, State agencies and local governments with approved local waterfront revitalization programs must site land uses and development which are essential to or in support of waterborne transportation of cargo and people." (I-6)

Further, the NYSCMP states cement is one of a limited group of water-related, not water-dependent industries that benefit from water transportation, and "cost savings for water shipment are directly responsible for the location of those industries [particularly gypsum and gravel, not cement] along the Hudson." (NYSCMP II-29)

The proposed, new significantly large shipping facility in Hudson, is water dependent. NYSCMP Policy #1 states water dependent uses "must be given priority in any redevelopment effort. (Refer to Policy 2 for the means to effectuate this priority)".

The applicable Policy 2 guidelines, state, when choosing a site for a water dependent use, the potential for competition for the space must be considered, as well as its compatibility with adjacent uses.

The City of Hudson's limited waterfront space includes public parks, a public boat launch that will be relocated to the parcel immediately adjacent to the proposed SLC riverfront industrial facilities, boat association dockage, and other recreational opportunities discussed in Policy 1.

Current zoning along Hudson's waterfront is industrial (I1) and residential (R4), covering both the SLC property and riverfront park space. The Comprehensive Plan states: "For all intents and purposes, the 1996 Hudson Vision Plan outlined recommendations for Hudson's waterfront that are consistent with the goals and objectives of this comprehensive plan. However, the existing zoning districts are not consistent with these preferred future land use patterns." (2002 Hudson Comprehensive Plan, p. 52)

The 1996 Hudson Vision Plan lays out the preferred future land use patterns for the waterfront. The plan states: "The area defined as the 'waterfront', for purposes of this study, extends from South Bay to North Bay - south to north...." (Hudson Vision Plan, p. 88). This area includes all of the SLC riverfront property.

The Vision Plan articulates the intent of the City in revising the existing zoning along the waterfront to include a mixed-use district:

The waterfront is currently zoned for industrial use....The current zoning is far too broad and does not recognize the value of the waterfront as a historical, cultural, commercial and recreational resource for the City. The zoning classification also does not encourage the highest and best use of the land and thus reduces potential tax revenues to the City.

It is recommended a new "Waterfront Zone" be created that addresses the goals of the Vision Plan and the specifics of the Master Plan. The zone should be created immediately. To minimize conflict existing property uses could be grand fathered, but if they change ownership, the new owners would be subject to the new provisions. Permitted uses should include: recreation/open space, parking, residential (second story and above), retail, galleries, studios, office, restaurants, museums, outdoor markets, outdoor performances, street vending, marine stores, marine fuel and boat storage. Conditional uses could include: electronic transmission towers,

public utility uses, transportation centers, railroad, ferry terminals. Accessory Uses should include: signs, outdoor cafes. Prohibited Uses should include: manufacturing, assembling, storing and processing products or facilities, outdoor storage of lumber, construction and building materials, contractor's equipment, trucks, vans, buses, retail or wholesale of vehicles or boats. Building heights should be limited to 45 feet from ground elevation to ridge or parapet line. (Hudson Vision Plan, pp. 85-88)

Further, the Vision Plan states that the land now owned by SLC, "has good development potential for a variety of public and private uses. The City should try to secure an option on the land or should have a letter of understanding expressing its interest." (Hudson Vision Plan, p. 89)

Indeed, Hudson has steadily pursued this waterfront vision, beginning with a waterfront development plan for the Best Oil tank farm site in 1995. In 1997, the City of Hudson acquired and remediated the tank farm, subsequently developing the site into a waterfront park with a lawn, gazebo and comfort stations. Moving steadily southward, in 2003 the City acquired the former Lockwood parcel, directly south of the former Best Oil site, which will be used to expand the park once site remediation has been completed. The most recent acquisition, the former CSX parcel, closed in late 2004. This parcel, directly south of the former Lockwood parcel and adjacent to the SLC property at its northern boundary, is the proposed location for the upgraded and expanded State boat launch facility that is described in the Vision Plan. Acquisition and redevelopment of the SLC property, as recommended by the Vision Plan, could conceivably continue the City's ongoing waterfront transformation.

The uses expressed in the Vision Plan are also reiterated in the City's only adopted planning document, the 2002 Comprehensive Plan. This plan states that in changing portions of the industrial zoning to a new zoning district to promote a mixed use waterfront environment, "permitted uses should be a variety of water-dependent and water-enhanced activities such as marinas, public boat launches, restaurants, parks and residential uses. Design standards, similar to those recommended for downtown, should also be developed and incorporated for this district." (Hudson Comprehensive Plan, pp xiii - xiv)

The Comprehensive Plan identifies the new zoning as the Urban Waterfront District, and states that "the general limits of the district should be the area west of the railroad tracks, north perpendicular to Warren Street and south perpendicular to Broad Street." In 2002, Broad Street represented the southern extent of the publicly owned waterfront. Since that time, as described above, the City of Hudson has acquired both the former Lockwood and CSX properties south of this artificial boundary, moving steadily southward along the waterfront. From these activities it is clear that additional phases of waterfront redevelopment would target the City's southern waterfront, including the SLC property, according to the Hudson Vision Plan's recommendations for this area.

Based on this review of Hudson's past planning and implementation activities, it is clear the City's waterfront has been and will continue to be transformed from a private industrial waterfront to a public waterfront for boating, tourism, commercial and other compatible uses. These uses are in direct competition with SLC's proposed industrial riverfront facilities. Given the extreme limitation on space along the Hudson waterfront, this is not a suitable location for the proposed SLC industrial facilities and uses.

Policy 2 guidelines and conclusions:

*(1) Competition for space: Competition for space, or the potential for it, should be indicated before any given site is promoted for water-dependent uses. The intent is to match water-dependent uses with suitable locations and thereby reduce any conflicts between competing uses that might arise..... The choice of a site should be made with some meaningful impact on the real estate market anticipated:*

The proposed project would not reduce any conflicts between competing uses. Instead, it would result in greater conflict between two water dependent uses by substantially increasing industrial activity in the City of Hudson's existing public waterfront space which provides water dependent recreational access to the Hudson River. Currently, the SLC dock is used for 2-3 shipments per year of granulated blast furnace slag and gypsum that are

stockpiled on site and then trucked to Catskill for use in the cement manufacturing process. The Catskill cement manufacturing plant produces 600,000 metric tons per year (mt) of cement. The proposed Greenport facility would be one of the largest cement plants in the United States, and would produce 2 million mt, a 230% increase in production activity. This would result in significant increases in the level of operations at the SLC dock in Hudson. Shipments via HudsonMax vessels would increase between 433% and 1000% with the proposed expansion of the riverfront industrial facility. Additionally, the proposal includes the construction of a new T-shaped dock which would serve as the berthing area for 12,000 ton cement barges visiting up to 4 times per week. Loading and unloading operations would occur on a 24-hour basis as would the operation of the proposed conveyor connecting the dock in Hudson to the plant in Greenport. Overall, the proposed activities would result in a significant increase in the scale and scope of material handling activities, and would substantially increase the level of operations at the Hudson dock.

The physical presence and operation of the Hudson Max and other vessels, and the 24-hour continuous loading and unloading operations at the dock adjacent to the City parks, would directly conflict with the use of the parks and the River, as described above. Further, the City of Hudson has experienced an increase in selling prices of both downtown buildings and single family homes in recent years. The value of Warren Street properties increased over 400% from 1993 to 2004. This is not only due to rising market conditions, but reflects the significant public and private investment in deteriorated downtown property and existing and planned recreational and commercial waterfront amenities. Introducing significantly increased industrial activities at the waterfront would adversely impact this real estate market and would also be contrary to this guideline.

*(2) Compatibility with adjacent uses and the protection of other coastal resources: Water-dependent uses should be located so that they enhance, or at least do not detract from, the surrounding community. Consideration should also be given to such factors as the protection of nearby residential areas from odors, noise and traffic.*

The proposed new significantly large shipping facility is adjacent to an existing and expanding public waterfront space in an area being revitalized into the previously described mix of compatible, higher economically valued mixed uses that include commercial, residential, tourism, retail, office and water dependent recreational uses. This economic rejuvenation is occurring not only in Hudson, but in waterfront communities throughout the Valley. The massive size of the operation renders it out of scale in relation to its surroundings. The level of increase in heavy marine traffic, and the duration of that traffic in a narrow reach of the navigable Hudson River is a significant change in scale and scope of operation. The proposed significantly increased level of industrial activity would not be compatible with adjacent uses, nor would it enhance the surrounding community. The presence of the heavy industrial activity, typified on the waterfront by the 24 hour operation of HudsonMax vessels, would also pose direct conflicts between that proposed use and the anticipated ferry service (described in the Athens LWRP) between the Village of Athens and the City of Hudson.

According to the DEIS, among the principal noise sources from the facility are those which would originate from the operation at the dock area and of the conveyor system. DEIS at 15.1. As noted, the dock facility will operate twenty-four hours a day, the noise levels are not expected to decrease on Saturdays or Sundays, days when greater public activity along the waterfront can be expected. With respect to noise at the dock area, SLC represented at the DEC Issues Conference that it would design and construct its facilities at the dock area to comply with the City of Hudson's noise code and certain unspecified best management practices as part of a DEC permit.

DOS has reviewed substantial evidence concerning potential noise impacts at the riverfront industrial facility. SLC has indicated that it expects an increase in the sound level of 5 to 10 decibels (dBA) and deemed that satisfactory for daytime operations. (DEC Issues Conference). While those noise levels may be appropriate in an industrial area, there are residential and recreational areas in proximity to the dock facility, including those across the river in Athens. DEC's Noise Policy states that noise levels for receptors in non-industrial settings should not exceed an increase of 6 dBA. (DEC Noise Policy, Feb. 2001 at p. 14). The current dockside setting is one of waterborne recreation and limited commercial uses and not heavy industrial uses. SLC has not shown that its dockside noise would not exceed an increase of the 6 dBA level. Based on the evidence before DOS, the noise levels identified by SLC would in many instances exceed DEC's Noise guidelines for non-industrial settings. It is

additionally noted that the DEC Commissioner has found noise to be of sufficient concern and not adequately attenuated by SLC's proposed mitigation measures as to require that the issue of noise be submitted to adjudication. (DEC Commissioner's First Interim Decision, December 6, 2002)

Additionally, the loading and unloading of cement products and raw materials would create fugitive dust emissions that could also be incompatible with the surrounding community.

Given the existence of the water dependent riverfront park adjacent to the proposed large riverfront industrial facilities, the impending relocation of the State boat launch to a site immediately adjacent to the St. Lawrence Cement dock, the conflict between the proposed SLC industrial expansion on the river and the existing and future water-dependent and water-related uses, and the potential impact on the anticipated real estate market for compatible, higher economically valued non-industrial mixed uses, it is clear the project would result in unacceptable impacts to the existing and anticipated future Hudson waterfront. The proposed large riverfront industrial facilities would be inconsistent with this policy.

**NYC CMP Policy #4: Strengthen the economic base of smaller harbor areas by encouraging the development and enhancement of those traditional uses and activities which have provided such areas with their unique maritime identity.**

Policy 4 recognizes that traditional activities occurring in and around smaller harbors contribute to a community's economic strength and attractiveness. According to the policy, state efforts should center on promoting such desirable activities as recreational and commercial fishing, ferry services, marinas, historic preservation, cultural pursuits, and other compatible activities which have made smaller harbor areas appealing as tourist destinations. "Particular consideration will be given to the visual appeal and social benefits of smaller harbors which, in turn, can make significant contributions to the State's tourism industry."

The City of Hudson enjoys a unique maritime heritage and relationship to the water. Beginning with its founding in the late 18<sup>th</sup> century by displaced New Englanders, Hudson prospered as it developed its shipbuilding, whaling and sealing, sailmaking, blacksmithing and cooperage industries. The City was reputedly the home of one of the largest whaling and shipping fleets on the Atlantic coast until the mid-1800's, by which time political and technological change had steered the City onto a new course.

The explanation for Policy 4 provides guidelines that shall be used in determining consistency. The following is a discussion of the applicable guidelines:

*(1) The action will enhance or not detract from or adversely affect existing traditional and/or desired anticipated uses:*

The City of Hudson has been experiencing a resurgence in local investment that has helped the City in its evolving waterfront revitalization and has led to a dramatic expansion in the development of retail uses, restaurants, arts, and recreational opportunities. This investment has spurred new jobs, has resulted in the adaptive rehabilitation of historical structures, and is fueling mixed retail and recreational uses of the waterfront. City efforts on the waterfront include recreational boating activities immediately adjacent to the proposed SLC dock and conveyor, as well as many active and passive recreational uses associated with the City parks, as identified in the 1996 Hudson Vision Plan. The proposed SLC waterfront facilities and activities would adversely affect the desired anticipated uses as expressed in the adopted comprehensive plan and the Hudson Vision Plan, they would directly conflict and compete with those uses that are in place and that are being promoted and expanded.

*(2) The action shall not be out of character with, nor lead to development, which would be out of character with, existing development in terms of the area's scale, intensity of use, and architectural style:*

The proposed project conflicts with the community character of the City of Hudson, which has evolved significantly in recent years, away from industry toward mixed commercial and residential uses with an emphasis on riverfront recreation. This is a desired trend and is reinforced in local planning documents such as the 1996

*Hudson Vision Plan* and the adopted *2002 City of Hudson Comprehensive Plan*. The City's revitalized core, centered on Warren Street, and anchored on the west by the City's waterfront park, borders the proposed SLC riverfront industrial facility, which would serve as the shipping center for one of the largest cement manufacturing facilities in the nation. The dock is currently used 2-3 times per year by HudsonMax sized vessels for shipments of raw materials. The proposed project, however, would result in periods of 24-hour per day industrial operations up to 66 days per year. The intensity of the industrial operations, the size and scale of the structures and stockpiles proposed on the dock, and the size and scale of the vessels and their operation, would frequent the dock would be out of character with the area's existing development in terms of scale, intensity of use, and architectural style.

*(3) The action will not adversely affect the existing economic base of the community:*

The local economy in Columbia County has been growing steadily, with nearly a 5 percent rise in private sector jobs between 1998 and 2002. This economic growth has been fueled by real estate, retail and wholesale trade and business support services. The City of Hudson in particular has enjoyed a boom in its residential and commercial real estate market which could be threatened through the introduction of increased industrial activities affecting the quality of life. The proposed expansion and change in industrial activities on the river directly competes with the previously mentioned plans for recreational and commercial activities immediately adjacent to the proposed dock and conveyor and the current revitalization in Hudson. It could also jeopardize the possibility of tapping into the Hudson River's multi-million dollar recreational boating industry which, as noted by Hudson City Alderman Colum Riley (Riley, letter, 3/18/05) could provide much needed revenue for the City. The increased SLC industrial activities would impact the recent economic growth felt as their downtown has revitalized and may adversely affect the existing economic base. It may also lead to diminished marketability of the planned uses, and adversely impact the tax revenues anticipated from those uses.

Further, the relocation of SLC operation from Catskill to Greenport would have a negative impact on Catskill. Direct job loss would be 119 jobs and about 257 secondary service jobs.

The proposal will adversely affect the existing economic base of Hudson and Catskill.

*(4) The action will not detract from views of the water and smaller harbor area, particularly where the visual quality of the area is an important component of the area's appeal and identity:*

The presence and operation of the Hudson Max vessels, 82 feet tall pump house, a 75 feet tall conveyor-reversing structure, 56 feet tall trough conveyor system, 82 feet tall pneumatic loading system, stock piled raw materials, lighting would detract from views of the water and smaller harbor area both in the City of Hudson, and from the Village of Athens. The Village of Athens, also a small harbor area rich in maritime history, identifies "enjoying the view" as one of the most important recreational activities of its residents, in its LWRP. The visual quality of this region of the Hudson River is a very important component of the area's appeal and identity, and would be negatively impacted by the introduction of the proposed riverfront industrial activities.

The proposed plant, and its increased industrial use at the waterfront, would not promote activities that would make the small harbor areas of Hudson and Athens appealing to residents and tourists. The project would not enhance planned redevelopment activities, and would detract from views of the water, in an area where the visual quality of the waterfront is an important component of the area's appeal and identity. Therefore, the proposed project is inconsistent with this policy.

**NYS CMP Policy #18: To safeguard the vital economic, social and environmental interests of the State and of its citizens, proposed major actions in the coastal area must give full consideration to those interests, and to the safeguards which the State has established to protect valuable coastal resource areas.**

The purpose of this policy is to ensure that proposed major actions do not significantly impair valuable coastal waters and resources, thus frustrating the achievement of the safeguards which the State has established to protect those waters and resources. Proposed actions must take into account the social, cultural, economic and

environmental interests of the State and their citizens in such matters that would affect natural resources, water levels and flows, shoreline damage, hydro-electric power generation, and recreation.

As previously discussed, in the last 20 years, communities in the Hudson Valley have been moving away from waterfront industry, toward a more diversified economy with higher valued economic uses. Increasingly, Hudson River communities such as Hudson and Athens rely upon the area's high quality of life, contributed to by the visual appeal of the area, its historic fabric and texture, its pastoral setting, and attractions such as Olana as the basis for continued economic growth. This community character would be jeopardized by the proposed plant and riverfront industrial facility.

The proposed project could negatively impact Catskill and would diminish the current revitalization trend in Hudson. The change in direct employment regionally is only one position. Catskill would lose 119 jobs directly, and potentially lose 257 secondary service jobs in the area as a result. The new Greenport facility would directly employ 155 individuals after construction. There are currently 144 employees at the Catskill facility and 10 at the Greenport facility. The proposal would result in a shift of labor, with 25 employees remaining in Catskill, and 130 at the Greenport site. The total estimated gain in property taxes is \$563,964 for the Hudson/Greenport area. This includes the total change in taxes in the Town of Greenport, Greenport Fire District, Greenport Lighting District, Greenport Water District, the City of Hudson, Hudson School District and Columbia County. However, SLC stated in the DEIS that there would be no change in the existing property tax assessment or tax revenues generated by the project at the Catskill facility. Therefore, SLC claims the current annual tax levy of about \$275,000 to county town and school districts would be the same.

Given that the economic engine driving the revitalization in Hudson and elsewhere in the region currently is commercial retail, real estate, tourism and business support services, it can be anticipated that the proposed increase in scale and intensity of industrial operations at the Hudson dock will not encourage future retail and tourism-focused investment, and may diminish future private investment for these types of activities in the City and adjacent areas. The City of Hudson's waterfront capacity for siting and implementation of public recreational and access uses and ability of the waterfront to host multiple uses is hindered, not improved, by the proposed riverfront industrial facility.

The proposed plant, and its resultant shift in jobs, tax base, and increased industrial use at the waterfront, would adversely impact the social, cultural, and environmental interests of the region's citizens. The project will not enhance planned redevelopment activities and may adversely affect the economic activity generated by current redevelopment efforts.

Given the foregoing, the proposed activities are inconsistent with this policy.

**NYS CMP Policy #19: Protect, Maintain, and Increase the Level and Types of Access to Public Water-related Recreation Resources and Facilities.**

One of the purposes of this policy is to guide the protection, maintenance, and enhancement of the level and types of access to public water-related recreation resources and facilities, particularly in urban coastal areas. The explanation for this policy identifies the following guidance to be used in determining the consistency of a proposed action with this policy:

*The existing access from adjacent or proximate public lands or facilities to public water-related recreation resources and facilities shall not be reduced, nor shall the possibility of increasing access in the future from adjacent or proximate public lands or facilities to public water-related recreation resources and facilities be eliminated... An elimination of the possibility of increasing public access in the future includes... construction of private facilities which physically prevent the provision of convenient public access to public water-related recreation resources or facilities from public lands and facilities.*

As described earlier, both the City of Hudson and the Village of Athens have made substantial efforts in recent years to promote and develop their respective waterfronts in an effort to attract a broad base of users, particularly recreational users, to the waterfront. Related to this redevelopment, a number of capital improvement projects and development plans for the waterfront have been funded through a variety of public finance vehicles. The NYS Office of Parks, Recreation and Historic Preservation operates a publicly accessible boat launch in the City of Hudson and is planning to relocate the facility from its present location to a site, reclaimed and rehabilitated with public funds, immediately adjacent to the north of the SLC dock in the City of Hudson. DOS is currently funding the feasibility study for the new launch location under Title 11 of the Environmental Protection Fund.

The significant increase in the presence and operation of HudsonMax vessels and other craft associated with the proposed increase in industrial activities immediately adjacent to the public waterfront would likely interfere with, and thereby reduce, public use and vessel access of the Hudson River and of the City of Hudson's waterfront recreational opportunities. Even with the proposed "warning" agreements in which SLC employees would advise park users of the anticipated movement of HudsonMax vessels, the public's ability to access the River and use of navigable waters by recreational boaters. Additionally, the 24-hour loading and unloading of cement products and raw materials would create noise, fumes, and fugitive dust emissions that would also impact the public enjoyment of the neighboring parks. The construction of the proposed private facility and its associated uses would reduce existing access from adjacent or proximate public lands or facilities to public water-related recreation resources and facilities, and would physically prevent the provision of convenient public access to public water-related recreation resources or facilities from public lands and facilities.

As a component of the proposed project, SLC proposes to develop a "semi-naturalized public park and promenade" between the landside boundary of the riverfront industrial facility and the CSX railroad. While improving public access on a private site is encouraged, the quality of the experience of using the footpath through a heavy industrial area, as proposed, is not comparable to the recreational access from the City's adjacent waterfront park to the River, and use of the River, which would be diminished by the physical presence of the HudsonMax vessels and other industrial activities at the site such as 24-hour loading and unloading operations. The public access park proposed by the applicant is not in itself compatible with the increased industrial activities proposed at the same site, and those increased industrial activities and presence of massive ships would not be compatible with the adjoining uses of the City parklands.

Despite the trail access proposed by SLC, the increased industrial activities would negatively impact the existing access from the parks, and future access-related development opportunities would be reduced, the proposed activity is inconsistent with this policy.

#### **NYS CMP Policies 23, 24 and 25 address protection of historic sites and visual quality**

#### **NYS CMP Policy #23: Protect, enhance and restore structures, districts, areas or sites that are of significance in the history, architecture, archaeology or culture of the state, its communities, or the nation.**

The explanation of Policy 23 states that:

*The structures, districts, areas or sites that are of significance in the history, architecture, archaeology or culture of the State, its communities, or the Nation comprise the following resources:*

- (a) A resource, which is in a federal or State park established, among other reasons, to protect and preserve the resource.*
- (b) A resource on, nominated to be on, or determined eligible to be on the National or State Registers of Historic Places.*
- (c) A resource on or nominated to be on the State Nature and Historic Preserve Trust.*

The explanation goes on to say "all practicable means to protect structures, districts, areas or sites that are of significance in the history, architecture, archaeology or culture of the State, its communities or the Nation shall be deemed to include the consideration and adoption of any techniques, measures, or controls to prevent a



significant adverse change to such significant structures, districts, areas or sites." A significant adverse change includes, but is not limited to, "3. All proposed actions within 500 feet of the perimeter of the property boundary of the historic, architectural, cultural, or archaeological resource and all actions within an historic district that would be incompatible with the objective of preserving the quality and integrity of the resource. Primary considerations to be used in making judgement about compatibility should focus on the visual and locational relationship between the proposed action and the special character of the historic, cultural, or archaeological resource."

#### **NYS CMP Policy #24: Prevent Impairment of Scenic Resources of Statewide Significance.**

Scenic Areas of Statewide Significance (SASS) were designated in accordance with Article 42 of the NYS Executive Law, 19 NYCRR Part 603, and the NYS CMP. These areas were designated in order to implement Policy 24 of the CMP. Prior to that designation, DOS performed an extensive assessment of the State's most scenic coastal areas in the Hudson Valley. The resulting SASS report identified a number of coastal landscapes, that through their unique composition of scenic, geologic, historic, and cultural components, merit special protection through SASS designations. The guidelines to Policy 24 state: "When considering a proposed action...first determine whether the action could affect a scenic area of statewide significance. This determination would involve: (a) a review of the coastal area maps to ascertain if it shows an identified scenic resource which could be affected...and (b) a review of the type of activities proposed to determine if they would be likely to impair the scenic beauty of the identified resource." Further, the explanation for Policy #24 states "impairment [of a SASS] will include: (I) the irreversible modification of geologic forms; the destruction or removal of vegetation; the modification, destruction, or removal of structures, whenever the geologic forms, vegetation or structures are significant to the scenic quality of an identified resource; and, (ii) with the addition of structures which, because of siting or scale, will reduce identified views or which because of scale, form, or materials will diminish the scenic quality of an identified resource."

#### **NYS CMP Policy #25: Protect, restore or enhance natural and man-made resources which are not identified as being of statewide significance but which contribute to the overall scenic beauty of the coastal area.**

The explanation of policy states when considering a proposed action, "the action will be undertaken so as to protect, restore or enhance the overall scenic quality of the coastal area. Activities which would impair or further degrade scenic quality are the same as those cited under the previous policy [NYCMP Policy 24]."

#### **Policy Guidelines and Conclusions**

Based on the guidelines above, it is clear that the SLC proposal including the riverfront industrial facility and portions of the Greenport manufacturing facility and its associated plume, visible about 39% of daylight hours would affect historic resources and visual quality of the area.

The proposed riverfront industrial facilities would be located on the City of Hudson's waterfront, located within close proximity to Parade Hill, the City of Hudson's Historic District, and the historic rail station, among other historic resources that are listed or eligible to be listed on the National Register of Historic Places. The proposed project would also be situated across the Hudson River from the Village of Athens. The Village's coastal area includes the Athens Lower Village Historic District; the Brick Row Historic District; and four individual historic structures including the Hudson-Athens Lighthouse. Each is listed on the National Register of Historic Places. The proposal would present a significant increase in the level of intense industrial activity. As stated above, "Primary considerations to be used in making judgement about compatibility should focus on the visual and locational relationship between the proposed action and the special character of the historic, cultural, or archaeological resource."

Consideration must be given to the proposal's affect on scenic areas of statewide significance (SASS) and other areas which contribute to the overall scenic beauty of the coastal area. The Catskill-Olana SASS would be affected by the proposal. The Catskill-Olana SASS, unique in that it inspired the first indigenous American

painting movement, consists of a portion of the Hudson River and its shorelands, an area approximately 5½ miles long and 3 miles wide. The significance of this SASS is its unusual landscape variety and unity of major landscape components among striking contrasts. With a central unity established by the Hudson River and the topography of the two shorelands, the diverse landforms present in the SASS include flood plains and steep ravines that rise 250 feet above the Catskill and Katterskill Creeks; Rogers Island and Ramshorn Marsh; forested bluffs along the Hudson River and the Roeliff Jansen Kill; plateaus and rolling farmland south of Catskill Village and the promontory of the Olana summit. The water elements in the SASS are equally diverse, including the Hudson River and its coves, channels, and inlets; the Catskill and Katterskill Creeks; small streams that meander through marshes along the Hudson River; and tidal flats that lie adjacent to the Catskill Creek and the Roeliff Jansen Kill at their junctions with the Hudson River.

The Olana subunit of the SASS encompasses approximately one square mile and consists entirely of the Olana State Historic Site. Olana is a renowned and beautiful Hudson River estate built by Frederic Church, a well-known painter of the Hudson River School.

The Olana subunit was included in the Catskill-Olana SASS not only for its own beauty but also for the beauty of its surrounding views, which Church often included in his paintings. The Olana subunit is unique. The Olana property is a designed landscape of extraordinary importance that recognizes its connection to the landscape beyond its borders. Olana's viewsheds are some of the most dramatic and famous in the Hudson River Valley. The estate grounds and the views from the estate were represented in several of Church's paintings, and they are highly recognized by the public for their scenic, historic, and artistic values. The site is considered one of the finest designed landscapes and a masterpiece of American landscape design. Olana's landscape is recognized as one of national significance (Landscape Restoration Plan, Olana State Historic Site). The incorporation of the superlative views of the Hudson Valley in the design of both the mansion and the grounds establishes an intrinsic connection between the property and the land outside its borders.

There are plans to restore sections of the Olana Historic Site to its original character. The Olana Landscape Recreation Plan includes as a fundamental goal recommendations to clear brushy and woody vegetation from much of Olana's historic "North Meadow", which has reverted to second growth woodland condition over the past several decades. Implementation of the restoration plan would significantly open up views northward, and thus increase the visibility of portions of the Greenport plant and plume from Cosy Cottage and other viewpoints within the SASS (Landscape Restoration Plan, Olana State Historic Site).

Previous consistency decisions are often useful to inform subsequent decisions. In 2000, DOS objected to the consistency certification submitted by Athens Generating Plant due, in large part, to the visual impacts of the proposed plant's plume upon scenic and historic resources. In that instance, the DOS objection was based in large part on a visible plume projected to exist for approximately 114 hours annually (Athens Generating Project, Federal Consistency Statement, February 2000). SLC reports that the cement manufacturing facility in Geenport would generate a visible plume approximately 1540 daylight hours annually. Even under "fair to clear weather conditions," SLC estimates that a plume would be visible 811 hours per year, close to 600% more frequent than the plume predicted by Athens Generation to which DOS objected.

The primary views recognized in the Catskill-Olana SASS document are toward the south. There are a significant number of discordant features in this view, of which the SLC Catskill facility is only one. These structures are discordant because of their scale, color, or materials in that they generally introduce an incompatible metallic or industrial element into the predominantly natural landscape. The SASS report states that "the addition of similar structures in the viewshed or within the SASS boundaries would impair the scenic quality of the SASS."

If the proposed project were constructed as planned, the existing Catskill facility, a discordant feature recognized in the SASS report, would cease operations, and therefore its plume would no longer be visible. The bunker silos associated with this facility would also be removed. The overall result would be a reduction of total discordant features within the southern viewshed of Olana.

While the SASS document emphasizes the importance of the south and west views, the north/northeast viewshed, which contains the existing Atlas silos as the major discordant feature and where the manufacturing facility would be located, is also noted as important. Removal of the Atlas silos as planned would eliminate a significant discordant feature. However, the resulting viewshed would be impaired by the portion of the proposed Greenport plant visible above Becraft Ridge and the plant's associated plume. The average annual plume estimated by SLC will be 1106 feet long x 588 feet high and is estimated by SLC to be visible about 39% of daylight hours. Whereas Atlas currently represents close to 100% of the discordant features in this view, and would be removed, the visible portion of the proposed plant with the plume visible about 39% of daylight hours, as depicted in the simulation for viewpoint #142, would result in a greater increase in discordant features, compared to what is present with the Atlas structures. Through a significant positive visual improvement, the removal of the Atlas silos does not depend upon completion of this project. The silos are not in use and can be removed at any time with no consequence to the applicant other than disposal.

The proposed cement manufacturing facility, its large plume, and the riverfront industrial facilities and activities would also be visible from and would impact scenic resources of the Hudson River which are not within a designated SASS. In particular, the proposed plant's plume, the proposed significantly expanded riverfront industrial facilities and activities would be visible from both the City of Hudson's waterfront and the Village of Athens waterfront across the River.

The Athens LWRP states "enjoying the view" as the most popular recreation activity identified in a survey of its citizens. In a discussion of its scenic resources, this document states: "The River can be seen from throughout the Village at the end of most of the streets. The Hudson-Athens Lighthouse, the Rip Van Winkle Bridge, Mount Merino and the lights of Hudson, wildlife in the marshes, and the myriad types of river traffic and trains on the eastern shore provide an active and varied scene." In recent public comment on the Greenport project, the Deputy Mayor states "the Village of Athens has concluded that the visual impact of the proposed dockside facilities, plumes and conveyor would be inconsistent with the LWRP and the Village's development objectives and priorities under coastal policies. The proposed SLC project is inconsistent in terms of scale and incompatible with the landscape..... The SLC project does not enhance the overall scenic quality of the coastal area."

Additionally, the *Initial Rulings of the Administrative Law Judges on Party Status and Issues* (p. 102) communicates the Village of Athens' "concerns regarding negative visual impacts to the Athens Riverfront Park and the Hudson-Athens lighthouse due to the visibility of the conveyor system, plumes and structures from the main plant. The Village is currently undergoing a \$1.2 million restoration project to refurbish its historic ferry slip and Riverfront Park. This will increase the waterfront park area and include the development of dockage, walks and promenades. The 24 hour use of the dock in Hudson for the project, and the lighting that will be required for nighttime activities, are seen as potential eyesores." Athens Pet., IC Ex. 43, pp.1-5. SLC has indicated that it is not possible to provide a lighting plan prior to project approval (February 2005 SLC submission).

The current proposal by SLC, while improving the southern viewshed of the SASS, would significantly impair the northern viewshed, by a portion of the plant being visible above Becraft Ridge and the associated plume being visible about 39% of daylight hours.

The SASS report clearly states that "the addition of similar structures [incompatible metallic or industrial elements] in the viewshed or within SASS boundaries would impair the scenic quality of the [Olana] SASS."

Further, the impairment definition in the explanation of Policy 24 clearly states that "the scenic beauty of an identified resource" would be impaired by "the addition of structures which because of siting or scale will reduce the identified views...or diminish the scenic quality of an identified resource."

The proposal is inconsistent with Policies 23, 24 and 25, for the following reasons:

- the significantly increased scale of activity and visual impact of the proposed, significantly expanded riverfront industrial facilities, including Hudson Max vessels and their frequency would not be

compatible with the special character of Hudson and Athens historic resources, and would present a significant adverse change to the scale, proportions, compositions and enjoyment of nearby historic resources, and would not protect, restore or enhance the scenic riverfront resources.

- the siting of the Greenport plant causes a portion of it to be visible above Becraft Ridge affecting the Olana historic site, and the scale of the associated plume visible about 39% of daylight hours would be incompatible with the objective of preserving the quality and integrity of the Olana historic resources and SASS.

### **Conclusion**

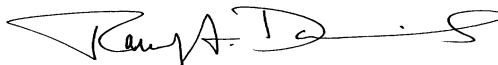
Based on the foregoing, the proposed activities are inconsistent with New York's federally approved Coastal Management Program's enforceable policies 1, 2, 4, 18, 19, 23, 24, and 25, and with the enforceable policies of the New York Coastal Management Program as they are expressed in the policies and purposes of the State and federally approved Local Waterfront Revitalization Program of the Village of Athens. This conclusion rests with the unique nature of the proposal. It does not stand for the proposition that the affects caused by a different siting of a manufacturing facility with a lesser visual impact and a riverfront shipping facility with a reduced level of activity and located so as not to compete and conflict with adjacent uses, would result in a similar finding.

Pursuant to 15 CFR Part 930, Subpart H, and within 30 days from receipt of this letter, you may request that the U.S. Secretary of Commerce override this objection. In order to grant an override request, the Secretary must find that the activity is consistent with the objectives or purposes of the Coastal Zone Management Act, or is necessary in the interest of national security. A copy of the request and supporting information must be sent to the New York Department of State, which administers the New York Coastal Management Program, and to the federal permitting or licensing agency. The Secretary may collect fees from you for administering and processing your request.

Given that the appeal process can be a lengthy one, if you would like to continue discussions with this office while pursuing an appeal, please call Mr. George R. Stafford at (518) 474-6000, or you may wish to have your counsel contact Mr. William Sharp of the Department of State's Counsel's Office, at (518) 474-6740.

The U.S. Department of Commerce and the New York District of the U.S. Army Corps of Engineers are being notified of this decision by copy of this letter.

Sincerely,

A handwritten signature in black ink, appearing to read "Randy A. Daniels". The signature is stylized and written in a cursive-like font.

Randy A. Daniels

c: NOAA OCRM - John King  
USACOE/NY - Richard Tomer, Christine Delorier  
NYS DEC IV - William Clarke, Michael Higgins  
NYS OPRHP - Jayne McLaughlin, Robert Kuhn  
LLG&M - Robert Alessi