



November 8, 2021

The Honorable Dave Min  
Senator, 37<sup>th</sup> District  
State Capitol, Room 2048  
Sacramento, CA 95814

Dear Senator Min:

As a unified City Council, we seek your assistance with the problems surrounding the All American Asphalt (AAA) plant in Irvine. At our City Council meeting on September 21, 2021, and again at a Planning Commission meeting on October 21, 2021, you expressed your strong desire to address the concerns of the many thousands of residents of north Irvine as they relate to emissions and smells emanating from the AAA plant, and from trucks leaving the plant. The City has devoted considerable time and effort to addressing those concerns. A short list of the City's actions includes:

- **Regulatory Options**: The City explored its ability to modify the requirements applicable to the AAA site and its operations. Those options are limited because the facility operates under a valid and vested land use permit which was issued by the County of Orange prior to annexation of the plant into the City's.
- **Testing**: The City commissioned air quality testing, reviewed air quality testing performed by others, and encouraged South Coast Air Quality Management District (SCAQMD) to conduct testing of its own. The City recently identified \$200,000 in American Rescue Plan Act funds as a potential source to acquire equipment for additional testing.
- **Outreach**: The City has encouraged SCAQMD to conduct, and has itself conducted, multiple meetings (both public and private) on the AAA issue. It has also established a website to serve as a central location for material information on this subject.
- **Enforcement**: The City encouraged, and continues to encourage, SCAQMD to take a more active role in enforcement against AAA and investigation into community complaints. The City has also reviewed all of the conditions on the County-issued permit and the City's business licensing requirements to determine if it has any locally enforceable standards to address the AAA problems.
- **Real Property Disclosures Ordinance**: The City Council authorized preparation of an ordinance that will require enhanced real property disclosures for sales of homes near the AAA facility.
- **Truck Routes Ordinance**: The City Council authorized revisions to locally mandated truck routes to keep asphalt (and other trucks) away from local neighborhoods.
- **Lawsuit**: Filed a lawsuit against AAA for public nuisance.

While the City's efforts have been substantial, the AAA problem and the community's concerns persists. We believe that your position in the State Legislature makes you uniquely situated to help solve some of the financial and legislative roadblocks that the City has encountered in its efforts to help the community.

To that end, we request your assistance on the following items:

1. **Purchase of the AAA Plant:** The optimal solution for the north Irvine community would be to remove the AAA plant from its current location. That option will require a significant amount of money to purchase the current plant property and facilitate the identification of a new property for relocation of the plant. The State has enjoyed substantial budget surpluses, and we can think of few (if any) better expenditures of excess taxpayer funds than to improve the safety and enjoyment of those residents' homes.
2. **Expansion of SCAQMD Enforcement Authority.** The City has worked closely with SCAQMD and the public to use the existing enforcement mechanisms to address the emissions and smells from AAA. SCAQMD has been hamstrung by State Law requirements that mandate a minimum of six verified complaints per "event" before SCAQMD will take enforcement action. The odor events are often of a short duration, which makes verification difficult. As an example, between September 1, 2021 and October 20, 2021 SCAQMD received 93 complaints alleging AAA as the source of odors. SCAQMD inspectors responded to all of the complaints, but were not able to verify a sufficient number on any one day to establish a public nuisance. In fact, of the 93 complaints, there was only **one** where SCAQMD staff could confirm odors, but even in that instance they were unable to determine whether AAA (or any other site) was the source.

This experience leaves the residents feeling helpless; it should not be this difficult to mobilize SCAQMD's enforcement authority. We therefore request that you introduce legislation to give SCAQMD the ability to enforce when it receives only one complaint per event concerning a crumb-rubber asphalt operation, and/or when it receives multiple complaints about the same crumb-rubber asphalt facility over an extended period of time.

3. **Vehicle Code Amendment.** The California Vehicle Code currently does not require that asphalt trucks be covered, and we believe that those uncovered trucks may be a significant contributor to the problems experienced by the residents. Data produced by SCAQMD suggests that smells emanating directly from the AAA site are substantially mitigated by a carbon absorption unit attached to AAA's crumb rubber/asphalt blending system. Site visits confirm that odors at the AAA plant are tolerable and not consistent with residents' experiences in their homes. These facts


suggest that the odors are, at least in part, emanating from trucks travelling through or near the residents' homes.


There is no practical/logistical reason that asphalt trucks cannot be covered. In fact, AAA has, in a settlement agreement with SCAQMD, agreed to "require" coverings on trucks leaving the plant. That agreement shows that covering asphalt trucks is feasible; but it is of limited value to the City because (i) it is not a party to the SCAQMD/AAA settlement agreement, and (ii) enforcement against truck drivers would be far more effective than enforcement against AAA. To that end, we request that you propose legislation to require that asphalt trucks be covered, and that the legislation allow the City to impose substantial penalties for violating that rule, e.g., \$5,000 per violation.

4. **Public Nuisance Requirements.** Because the City has limited options for addressing the AAA issues in its role as regulator, it has invoked its role as plaintiff by filing a public nuisance lawsuit. The City, your constituents, and the citizens of the State would all benefit from a legislative declaration that repeatedly subjecting residents to foul odors from a single source constitutes a public nuisance under State Law.

While each of our suggestions are precipitated by the residents' and the City's experience with AAA, they are also good policy on a statewide level. The six complaint rule stands in the way of SCAQMD and other AQMDs taking enforcement action where, as here, compelling evidence of a chronic problem exists. Trucks carrying asphalt should be covered, everywhere. And there is nowhere in the State where repeated exposure of residents to foul odors should be acceptable.

We appreciate your attention to the items in this letter, and are hopeful that you can assist with these important issues.

  
Farrah N. Khan  
Mayor

  
Tammy Kim  
Vice Mayor

  
Larry Agran  
Councilmember

  
Mike Carrol  
Councilmember

  
Anthony Kuo  
Councilmember