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Larry R. Soward, *Commissioner*
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Blas J. Coy, Jr., *Public Interest Counsel*

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

January 12, 2007

TEXAS
COMMISSION
ON ENVIRONMENTAL
QUALITY
707 JAN 12 PM 4:17
CHIEF CLERKS OFFICE

LaDonna Castañuela, Chief Clerk
Texas Commission on Environmental Quality
Office of the Chief Clerk (MC-105)
P.O. Box 13087
Austin, Texas 78711-3087

Re: **RYNO MATERIALS, INC.**
TCEQ DOCKET NO. 2006-1947-AIR

Dear Ms. Castañuela:

Enclosed for filing is the Public Interest Counsel's Response to Hearing Requests and Requests for Reconsideration in the above-entitled matter.

Sincerely,

Garrett Arthur
by jlc

Garrett Arthur, Attorney
Public Interest Counsel

cc: Mailing List

Enclosure

REPLY TO: PUBLIC INTEREST COUNSEL, MC 103 • P.O. BOX 13087 • AUSTIN, TEXAS 78711-3087 • 512/239-6363

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TEXAS COMMISSION ON ENVIRONMENTAL QUALITY
2007 JUN 12 PM 4: 17
CHIEF CLERK'S OFFICE

TCEQ DOCKET NO. 2006-1947-AIR

APPLICATION BY	§	BEFORE THE
RYNO MATERIALS, INC.	§	
FOR AIR QUALITY	§	TEXAS COMMISSION ON
REGISTRATION NO. 76818	§	
CELINA, COLLIN COUNTY	§	ENVIRONMENTAL QUALITY

THE OFFICE OF PUBLIC INTEREST COUNSEL'S RESPONSE TO HEARING REQUESTS AND REQUESTS FOR RECONSIDERATION

To the members of the Texas Commission on Environmental Quality:

The Office of Public Interest Counsel (OPIC) of the Texas Commission on Environmental Quality (TCEQ or the "Commission") files this Response to Hearing Requests and Requests for Reconsideration.

I. Introduction

On September 7, 2005, Ryno Materials, Inc. ("Ryno" or the "Applicant") applied to the TCEQ for a concrete batch plant standard permit. This registration would authorize the Applicant to construct and operate a concrete batch plant at a site on County Road 53, west of Highway 289 in Celina, Collin County. The registration application was declared administratively complete September 13, 2005. On September 22, 2005, Ryno published the first notice in the *Dallas Morning News*, and the alternative language notice was published the same day in *El Extra*. The second public notice was published January 5, 2006, in the *Dallas Morning News* and *El Extra*. A public meeting was held in the City of Celina on February 16, 2006. The TCEQ received timely hearing requests from: Jennifer and Michael Chapman, Melissa and Thomas Clarke, Rhonda Detro, Collin County Commissioner Joe Jaynes, the City of Celina, Old Celina, Ltd., Carter Ranch Homeowners Association, Marion D. Wood, and Christy and Jason Word.

Rhonda Detro and Melissa and Thomas Clarke filed hearing requests which state that they wish to contest this plant. Their requests do not provide any further information.

Jennifer and Michael Chapman state that they live in Carter Ranch, which is across Preston Road from the proposed plant site. They are concerned about increased truck traffic, air pollution, and decreased property values.

Marion D. Wood raises issues of truck traffic and dust emissions resulting from truck traffic.

Christy and Jason Word's hearing request states that according to proven studies, this permit will bring harm to their community.

Old Celina, Ltd.'s ("Old Celina") hearing request states that both published notices failed to accurately describe the location of the plant property, and the notices were not published in the appropriate newspaper. Old Celina also states that Ryno failed to comply with sign posting requirements and provided misleading information for public review. Additionally, Old Celina states that it owns property located directly adjacent to the proposed site, and granting this permit will have a costly and negative impact on future development plans for Old Celina's property. Old Celina alternatively requests reconsideration of the Executive Director's (ED) preliminary decision to grant the permit.

The City of Celina is requesting a hearing and reconsideration of the ED's response to comments. The City asserts that Ryno's application incorrectly states the location of the proposed plant. The City states that the proposed plant boundary is adjacent to Celina's city limits and within 440 yards of the City's corporate limits. The City also states that the proposed facility is within the City's extraterritorial jurisdiction (ETJ). The City further states that at least one person resides in a permanent residence within 440 yards of the proposed facility, and Celina

Elementary School is located within 2,000 feet of the proposed facility. The City raises the following issues: violation of ambient air quality standards resulting from the plant; violation of health effects standards resulting from the plant; Ryno's failure to submit an adequate application; and TCEQ's failure to propose an adequate and enforceable permit.

Joe Jaynes is apparently requesting a hearing in his official capacity as Commissioner of Precinct 3 in Collin County. Commissioner Jaynes submitted one hearing request on Collin County letterhead ("first request"), and another hearing request was submitted by an attorney on behalf of Commissioner Jaynes ("second request"). The first request states that the County is concerned about particulate matter emissions from the proposed batch plant and feels that approval of this batch plant will be another obstacle in the County's attempt to achieve appropriate air quality. The first request also states that the County would prefer that Ryno locate in a different area where other batch plants are already operating. The second request discusses the proposed highway system in Collin County known as the "Outer Loop" and raises the possibility that the Outer Loop project will require acquisition or condemnation of part or all of Ryno's tract. The second request also contains a request for reconsideration of the ED's decision.

Jeanie Ready is requesting a hearing on behalf of the Carter Ranch Homeowners Association ("HOA"). This request contests the timeliness and methods of notice. The HOA raises issues of health effects from increased emissions and decreased air quality affecting citizens, children, pets, and livestock. The HOA is also concerned about nuisance dust and odors affecting the use and enjoyment of property and an adverse impact on property values. The HOA objects to the lack of a specific air quality study, the lack of a cumulative impacts study, and the failure to adequately identify particulate materials. The HOA raises the issue of danger

to protected species of wildlife, including migratory birds such as owls and red-tailed hawks. Lastly, the HOA objects to the use of proximity to the facility for designation of "affected persons."

Based on the available information, and for the reasons discussed herein, OPIC recommends that the Commission deny all the hearing requests and all the requests for reconsideration.

II. Applicable Law

This application was declared administratively complete after September 1, 1999, and is therefore subject to the procedural requirements adopted pursuant to House Bill 801 (76th Leg., 1999).

Texas Clean Air Act (TCAA) § 382.058(c) states that only those persons actually residing in a permanent residence within 440 yards (1/4 mile) of the proposed standard permit concrete batch plant may request a hearing as a person who may be affected.

Under 30 Texas Administrative Code (TAC) § 55.201(d), a hearing request must substantially comply with the following:

- (1) give the name, address, daytime telephone number, and, where possible, fax number of the person who files the request;
- (2) identify the person's personal justiciable interest affected by the application, including a brief, but specific, written statement explaining in plain language the requestor's location and distance relative to the proposed facility or activity that is the subject of the application and how and why the requestor believes he or she will be adversely affected by the proposed facility or activity in a manner not common to members of the general public;
- (3) request a contested case hearing;
- (4) list all relevant and material disputed issues of fact that were raised during the public comment period and that are the basis of the hearing request. To facilitate the commission's determination of the number and scope of issues to be referred to hearing, the requestor should, to the extent possible, specify any of the

executive director's responses to comments that the requestor disputes and the factual basis of the dispute and list any disputed issues of law or policy; and

- (5) provide any other information specified in the public notice of application.

Under 30 TAC § 55.203(a), an affected person is one who has a personal justiciable interest related to a legal right, duty, privilege, power, or economic interest affected by the application. An interest common to members of the general public does not qualify as a personal justiciable interest. Subsection (b) states that governmental entities, including local governments and public agencies, with authority under state law over issues raised by the application may be considered affected persons. Subsection (c) provides relevant factors to be considered in determining whether a person is affected. These factors include:

- (1) whether the interest claimed is one protected by the law under which the application will be considered;
- (2) distance restriction or other limitations imposed by law on the affected interest;
- (3) whether a reasonable relationship exists between the interest claimed and the activity regulated;
- (4) likely impact of the regulated activity on the health, safety, and use of property of the person;
- (5) likely impact of the regulated activity on use of the impacted natural resource by the person; and
- (6) for governmental entities, their statutory authority over or interest in the issues relevant to the application.

As provided by 30 TAC § 55.205(a), a group or association may request a contested case hearing only if the group or association meets all of the following requirements:

- (1) one or more members of the group or association would otherwise have standing to request a hearing in their own right;
- (2) the interests the group or association seeks to protect are germane to the organization's purpose; and

- (3) neither the claim asserted nor the relief requested requires the participation of the individual members in the case.

Under 30 TAC § 55.211(c)(2), a hearing request made by an affected person shall be granted if the request:

- (A) raises disputed issues of fact that were raised during the comment period, that were not withdrawn by the commenter by filing a withdrawal letter with the chief clerk prior to the filing of the executive director's response to comment, and that are relevant and material to the commission's decision on the application;
- (B) is timely filed with the chief clerk;
- (C) is pursuant to a right to hearing authorized by law; and
- (D) complies with the requirements of § 55.201.

III. Analysis

A. Notice

The hearing requests of Old Celina, the City of Celina, and the Carter Ranch HOA raise the possibility of notice defects, including the description of the proposed location, the newspaper used, the sign posting, and the availability of the application for review. Both newspaper notices describe the location of the proposed site as "2 miles south of Celina on County Road 53, west of Highway 289, Celina, Collin County, Texas." While more specificity is always helpful, OPIC finds that this description, albeit brief, does describe the area in a manner sufficient to allow interested persons to find the proposed site. Ryno used the *Dallas Morning News* to publish notices. Under 30 TAC § 39.603(c), Ryno was required to publish notice in a newspaper of general circulation in Celina. According to the publisher's affidavit, the *Dallas Morning News* is a newspaper of general circulation in Celina. Ryno's use of the *Dallas Morning News* therefore satisfies the requirements of § 39.603(c). Regarding the sign posting, the required certification form (Form NSR-PN1) was submitted by Ryno, and on it J. Jeff Ryno,

the director of Ryno Materials, Inc., certifies that the bilingual signs required by the TCEQ were posted. According to another submitted verification form (Form APD-PN2), Ryno verifies that copies of the complete application and the draft permit are available for review and copying at the McKinney Memorial Public Library.

OPIC does not find that notice was defective and recommends that the Commission proceed with its consideration of the hearing requests and requests for reconsideration.

B. Hearing Requests

Given the distance restriction in TCAA § 382.058(c), hearing requests on a concrete batch plant standard permit must be analyzed using the distance from the plant to a permanent residence. Jeanie Ready submitted the Carter Ranch HOA's hearing request and did not name a different member of the HOA who resides within 440 yards of the proposed site. OPIC will therefore use the distance to Ms. Ready's residence to make a recommendation on the standing of the HOA. For Commissioner Joe Jaynes, his hearing requests give his business address but not his residential address. Therefore, OPIC must use this business address to analyze his hearing requests.

According to maps provided by the Executive Director's staff (Exhibit 1), the following hearing requesters do not reside within 440 yards of the proposed plant site: Jennifer and Michael Chapman, Melissa and Thomas Clarke, Rhonda Detro, Commissioner Joe Jaynes, Jeanie Ready, Marion D. Wood, and Christy and Jason Word. Under the quarter-mile distance restriction in § 382.058(c), none of these requesters can qualify as an affected person. Similarly, Old Celina and the City of Celina have not provided information showing how they come within the statutory 440 yard distance requirement and therefore do not qualify as affected persons.

C. Requests for Reconsideration

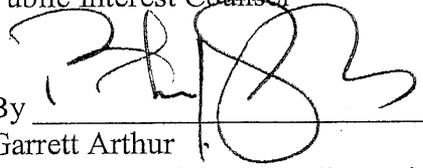
Requests for reconsideration of the Executive Director's decision were submitted by Commissioner Jaynes and Old Celina. Additionally, the City is requesting reconsideration of the ED's Response to Comments (RTC). No specific mechanism exists within TCEQ rules to request reconsideration of the ED's RTC, and OPIC will therefore assume that the City is requesting reconsideration of the ED's decision. Under 30 TAC § 55.201(e), any person may file a request for reconsideration of the Executive Director's decision, and the request must expressly state that the person is requesting reconsideration of the ED's decision and give reasons why the decision should be reconsidered. The factual disputes raised in the motions filed would require an evidentiary record for OPIC to make a recommendation to the Commission on whether the ED's decision to grant this permit should be reconsidered. At this time an evidentiary record does not exist, and therefore OPIC cannot recommend that the requests for reconsideration be granted.

IV. Conclusion

Texas Clean Air Act § 382.058(c) prevents any of the hearing requesters from qualifying as an affected person. OPIC therefore respectfully recommends that the Commission deny all of the hearing requests. OPIC also recommends that all requests for reconsideration be denied.

Respectfully submitted,

Blas J. Coy, Jr.
Public Interest Counsel

By 
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CERTIFICATE OF SERVICE

I hereby certify that on January 12, 2007, the original and eleven true and correct copies of the foregoing document were filed with the TCEQ Chief Clerk, and copies were served to all parties listed on the attached mailing list via hand delivery, facsimile transmission, inter-agency mail, or by deposit in the U.S. Mail.


For Garrett Arthur

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TCEQ DOCKET NO. 2006-1947-AIR

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The Honorable Joe Jaynes
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Marion D. Wood
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Christy & Jason Word
400 Tarpan Tr.
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Ryno Materials, Inc.
Permit No. 76818
Map requested by TCEQ Office of Legal Services
for Commissioners Agenda



Texas Commission on Environmental Quality
 GIS Team (Mail Code 197)
 P.O. Box 13087
 Austin, Texas 78711-3087
 June 12, 2006



Projection: Texas Statewide Mapping System
 (TSM8)
 Scale 1:16,233

Legend

- Ryno Materials, Inc.
- (440 Yard Radius
- (Protestant

Source: The location of the facility was provided by the TCEQ Office of Legal Services (OLS). OLS obtained the site location information from the applicant. The counties are U.S. Census Bureau 1992 TIGER/Line Data (1:100,000). The background of this map is a source photograph from the 2004 U.S. Department of Agriculture Imagery Program. The imagery is one-meter Color-Infrared (CIR). The image classification number is IS085_1-1.

This map depicts the following:

- (1) The approximate location of the proposed Ryno Materials Inc. concrete batch plant located in Collin County. This facility is labeled "Ryno Materials, Inc."
- (2) A circle and arrow representing a 440 yard radius from the proposed facility. This is labeled "440 Yard Radius"
- (3) Numbers which correspond to the names in the key.



This map was generated by the Information Resources Division of the Texas Commission on Environmental Quality. This map was not generated by a licensed surveyor, and is intended for illustrative purposes only. No claims are made to the accuracy or completeness of the data or to its suitability for a particular use. For more information concerning this map, contact the Information Resource Division at (512) 239-0800.

M.A.G.Donoghue, CRP-0609/2047

Approx. 7 miles
 The Honorable
 Joe Jaynes

Ryno
 Materials Inc.

440 Yard Radius

- Key**
- 1 - Thomas & Melissa Clarke
 200 Darmoor Dr. (Approx. 1373 yards from proposed plant)
 - 2 - Jason & Chinsay Word
 400 Tarpan Tr. (Approx. 1549 yards from proposed plant)
 - 3 - Jennie Ready
 402 Connamara Tr. (Approx. 1653 yards from proposed plant)
 - 4 - Michael & Jennifer Chapman
 425 Darmoor Dr. (Approx. 1870 yards from proposed plant)
 - 5 - Marione Wood
 3779 Hay Meadow St. (Approx. 3369 yards from proposed plant)
 - 6 - Rhonda Detro
 3928 Preston Hills (Approx. 3389 yards from proposed plant)
- Not on map (Approx. 7 miles from proposed plant):
 The Honorable Joe Jaynes
 210 S. McDonald St. Suite 626
 McKinney, TX



Collin County

The proposed concrete batch plant is located in Collin County. The red square in the first inset map represents the approximate location of the facility. The second inset map represents the location of Collin County in the state of Texas; Collin County is shaded in red.

Ryno Materials, Inc.
Permit No. 76818
 Map requested by TCEQ Office of Legal Services
 for Commissioners Agenda

Ryno Materials Inc.

440 Yard Radius



Plant Structures

Stockpiles

Collin County

The proposed concrete batch plant is located in Collin County. The red square in the first inset map represents the approximate location of the facility. The second inset map represents the location of Collin County in the state of Texas; Collin County is shaded in red.



Texas Commission on Environmental Quality
 GIS Team (Mail Code 197)
 P.O. Box 13087
 Austin, Texas 78711-3087

June 12, 2006



Projection: Texas Statewide Mapping System
 (TSMMS)
 Scale 1:5,092

Legend

- Facility Structures
- 440 Yard Radius

Source: The location of the facility was provided by the TCEQ Office of Legal Services (OLS). OLS obtained the site location information from the applicant. The counties are U.S. Census Bureau 1992 TIGER/Line Data (1:100,000). The background of this map is a source photograph from the 2004 U.S. Department of Agriculture Imagery Program. The imagery is one-meter Color-Infrared (CIR). The image classification number is rx085_1-1.

This map depicts the following:

- (1) The approximate location of the proposed Ryno Materials Inc. concrete batch plant structures and stockpiles located in Collin County. These are labeled "Stockpiles" and "Plant Structures".
- (2) A circle and arrow representing a 440 yard radius from the proposed structures and stockpiles. This is labeled "440 Yard Radius".



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