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CHIEF CLERKS OFFICE

TEXAS  
COMMISSION  
ON ENVIRONMENTAL  
QUALITY

January 29, 2007

Ms. LaDonna Castañuela  
Chief Clerk  
Texas Commission on Environmental Quality  
12100 Park 35 Circle  
MC-105, Building F  
Austin, TX 78753

Via Hand-Delivery

Re: City of Celina's Reply to Responses to Hearing Requests, *Application of Ryno  
Materials Inc.*, TCEQ Standard Permit Registration No. 76818, Docket No. 2006-  
1947-AIR

Dear Ms. Castañuela:

Enclosed for filing is the original and eleven copies of the City of Celina's Reply to Responses to Hearing Requests. There is an additional copy to be file stamped and returned to our courier.

Thank you for your attention to this matter.

Sincerely,

  
L. Layla Mansuri

Copies to: Service List  
The Honorable Jodie Laubenberg, Texas House of Representatives

TCEQ DOCKET NO. 2006-1947-AIR

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

**REPLY TO RESPONSE TO HEARING REQUESTS**

COMES NOW the City of Celina ("City") and files this, its reply to the Responses to Hearing Requests and Requests for Reconsideration.

**I. BACKGROUND & REPLY**

The City of Celina's corporate boundaries are well within 440 yards of the plant site.<sup>1</sup> This fact is undisputed. What appears to be in dispute is whether a city may ever reside 'in a permanent residence within 440 yards of the proposed plant' for the purposes of standing in a concrete batch plant contested case hearing. See, Texas Health and Safety Code, § 382.058(c).

Unfortunately, the Executive Director and OPIC have failed to provide an analysis of how the City of Celina (or any local government for that matter) may be an affected person under the statutory requirement of Texas Health and Safety Code, § 382.058(c).

This provision states that:

only those persons actually residing in a permanent residence within 440 yards of the proposed plant may request a hearing under section 382.056 as a person who may be affected.

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<sup>1</sup> As presented in earlier City filings with the Commission, while the application states that the proposed plant is located two miles south of the City of Celina on County Road 53, west of Highway 289, it is actually located two miles south of downtown Celina.

In fact, the Executive Director's response to hearing request implies that a city may never be a party to a contested case hearing on a concrete batch plant. If that is the position the Commission is prepared to take, it should be clear as there will be state-wide impact.

The Texas Clean Air Act's definition of person<sup>2</sup> includes cities and should be read in conjunction with the provision on concrete batch plants at 382.058(c) to give full meaning to both sections of the Act. To avoid a construction, one would assume, that would always bar cities from participating in concrete batch plant hearings, the Applicant notes that it could be argued that if the City's main office were within 440 yards, the City might be affected. This limited example, however, cannot be the correct interpretation. Much as an individual may reside in his home or place of business, a city resides within its corporate boundaries.

## I. CONCLUSION AND PRAYER

Throughout its prior filings, the City of Celina has demonstrated that it should be considered an affected person within the meaning of Texas Health and Safety Code section 382.058(c).<sup>3</sup> The City respectfully requests the Commission grant a contested

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<sup>2</sup> See, Texas Health and Safety Code §382.003(10).

<sup>3</sup> Applicant raises the notion that the City cannot be affected because it 'does not have authority under state law for the air quality permitting issues raised in Ryno's application.' See p. 7 of Applicant's Response to Requested for Contested Case Hearing and Request for Reconsideration. If counsel correctly understands Applicant's arguments, this very line of argument has been thoroughly briefed and recently rejected by the Administrative Law Judges, in *Consolidated Applications of TXU Generating Co., LP*, for State Air Quality Permits and PSD permits, SOAH Docket No. 582-01-0614, TCEQ Docket No. 2006-1851-AIR. The City of Celina is happy to provide additional briefing on this issue if requested by the Commission.

case hearing on all relevant and material issues that were raised in public comments on the application of Ryno Materials, Inc., for proposed air quality standard permit registration number 76818.

Respectfully submitted,

**LOWERRE & FREDERICK**

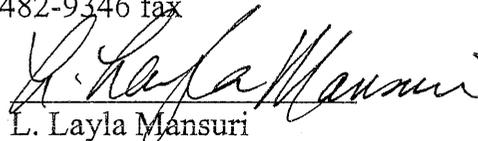
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By:



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ATTORNEYS FOR THE CITY OF CELINA

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing document has been served on the following, facsimile and/or mail, on this the 29th day of January 2006.

For the Applicant

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Via Facsimile and Mail

For the Executive Director:

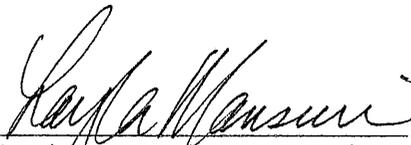
Mr. Brad Patterson  
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For the Public Interest Counsel:

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