

Kathleen Hartnett White, *Chairman*
Larry R. Soward, *Commissioner*
Martin A. Hubert, *Commissioner*
Glenn Shankle, *Executive Director*



TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

October 11, 2006

TO: Persons on the attached mailing list.

RE: Ryno Materials, Inc.
Permit No. 76818

Decision of the Executive Director.

The executive director has made a decision that the above-referenced permit application meets the requirements of applicable law. **This decision does not authorize construction or operation of any proposed facilities.** This decision will be considered by the commissioners at a regularly scheduled public meeting before any action is taken on this application unless all requests for contested case hearing or reconsideration have been withdrawn before that meeting.

Enclosed with this letter is a copy of the Executive Director's Response to Comments. A copy of the complete application, draft permit and related documents, including public comments, is available for review at the TCEQ Central office. A copy of the complete application, the draft permit, and executive director's preliminary decision are available for viewing and copying at the McKinney Memorial Public Library, 101 East Hunt, McKinney, Collin County, Texas.

If you disagree with the executive director's decision, and you believe you are an "affected person" as defined below, you may request a contested case hearing. In addition, anyone may request reconsideration of the executive director's decision. A brief description of the procedures for these two requests follows.

How To Request a Contested Case Hearing.

It is important that your request include all the information that supports your right to a contested case hearing. You must demonstrate that you meet the applicable legal requirements to have your hearing request granted. The commission's consideration of your request will be based on the information you provide.

The request must include the following:

- (1) Your name, address, daytime telephone number, and, if possible, a fax number.
- (2) If the request is made by a group or association, the request must identify:
 - (A) one person by name, address, daytime telephone number, and, if possible, the fax number, of the person who will be responsible for receiving all communications and documents for the group; and
 - (B) one or more members of the group that would otherwise have standing to request a hearing in their own right. The interests the group seeks to protect must relate to the organization's purpose. Neither the claim asserted nor the relief requested must require the participation of the individual members in the case.
- (3) The name of the applicant, the permit number and other numbers listed above so that your request may be processed properly.
- (4) A statement clearly expressing that you are requesting a contested case hearing. For example, the following statement would be sufficient: "I request a contested case hearing."

Your request must demonstrate that you are an **"affected person."** 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. Your request must describe how and why you would be adversely affected by the proposed facility or activity in a manner not common to the general public. For example, to the extent your request is based on these concerns, you should describe the likely impact on your health, safety, or uses of your property which may be adversely affected by the proposed facility or activities. To demonstrate that you have a personal justiciable interest, you must state, as specifically as you are able, your location and the distance between your location and the proposed facility or activities. A person who may be affected by emissions of air contaminants from the facility is entitled to request a contested case hearing. A person permanently residing within 440 yards of a concrete batch plant under a permit by rule is an affected person who is entitled to request a contested case hearing.

Your request must raise disputed issues of fact that are relevant and material to the commission's decision on this application. The request must be based on issues that were raised during the comment period. The request cannot be based solely on issues raised in comments that have been withdrawn. The enclosed Response to Comments will allow you to determine the issues that were raised during the comment period and whether all comments raising an issue have been withdrawn. The public comments filed for this application are available for review and copying at the Chief Clerk's office at the address below.

To facilitate the commission's determination of the number and scope of issues to be referred to hearing, you should: 1) specify any of the executive director's responses to comments that you dispute; and 2) the factual basis of the dispute. In addition, you should list, to the extent possible, any disputed issues of law or policy.

How To Request Reconsideration of the Executive Director's Decision.

Unlike a request for a contested case hearing, anyone may request reconsideration of the executive director's decision. A request for reconsideration should contain your name, address, daytime phone number, and, if possible, your fax number. The request must state that you are requesting reconsideration of the executive director's decision, and must explain why you believe the decision should be reconsidered.

Deadline for Submitting Requests.

A request for a contested case hearing or reconsideration of the executive director's decision must be in writing and must be **received by** the Chief Clerk's office no later than **30 calendar days** after the date of this letter: You should submit your request to the following address:

LaDonna Castañuela, Chief Clerk
TCEQ, MC-105
P.O. Box 13087
Austin, Texas 78711-3087

Processing of Requests.

Timely requests for a contested case hearing or for reconsideration of the executive director's decision will be referred to the alternative dispute resolution director and set on the agenda of one of the commission's regularly scheduled meetings. Additional instructions explaining these procedures will be sent to the attached mailing list when this meeting has been scheduled.

How to Obtain Additional Information.

If you have any questions or need additional information about the procedures described in this letter, please call the Office of Public Assistance, Toll Free, at 1-800-687-4040.

Sincerely,



LaDonna Castañuela
Chief Clerk

LDC/spb

Enclosures

MAILING LIST
for
Ryno Materials, Inc.
Permit No. 76818

FOR THE APPLICANT:

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Monique Wells, Consultant
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FOR THE EXECUTIVE DIRECTOR:

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FOR OFFICE OF PUBLIC ASSISTANCE:

Jodena Henneke, Director
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FOR PUBLIC INTEREST COUNSEL:

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FOR THE CHIEF CLERK:

LaDonna Castañuela
Texas Commission on Environmental Quality
Office of Chief Clerk MC-105
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Austin, Texas 78711-3087

INTERESTED PERSONS:

See attached list.

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TCEQ AIR QUALITY PERMIT NO. 76818

APPLICATION BY § BEFORE THE
RYNO MATERIALS, INC. § TEXAS COMMISSION ON
COLLIN COUNTY, TEXAS § ENVIRONMENTAL QUALITY

CHIEF CLERK'S OFFICE
2006 OCT -5 10:00 AM
TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

EXECUTIVE DIRECTOR'S RESPONSE TO PUBLIC COMMENT

The Executive Director (ED) of the Texas Commission on Environmental Quality (the Commission or TCEQ) files this Response to Public Comment (RTC or Response) on the request to issue Air Quality Permit No. 76818 filed by Ryno Materials, Inc. (Applicant), and the ED's preliminary decision. As required by 30 TEXAS ADMINISTRATIVE CODE (TAC) §55.156, before an application is approved, the ED prepares a response to all timely, relevant and material, or significant comments.

The Office of Chief Clerk timely received comment letters from the following persons: the City of Celina and Collin County. In addition, a public meeting was held in Celina, Texas, where formal comments were received from the following persons: Marion Wood, Christy Word, Gilberto & Mary Sanchez, Alfred & Amber Matthews, Luanne Laird, Celina City Councilperson Jim Lewis, Rex Glendenning & Old Celina Ltd., Jeanie Ready (speaking on behalf of the Carter Ranch Home Owners' Association residents and advisory committee; and speaking as proxy for Mike Davis), Sean K. White, Michael Chapman, Andrea Sallade, Celina City Councilperson Wendell O'neal, and Clay Hooten. Patrick Fulmer declined to speak at the public meeting, stating his comments had been addressed by other commenters. This Response addresses all timely public comments received, whether or not withdrawn. Comments received after the end of the comment period will not be addressed in this RTC.

BACKGROUND

Description of Facility

The Applicant has applied to the TCEQ for an Air Quality Permit, Registration No. 76818, which would authorize the construction of a concrete batch plant (CBP). The CBP is to be located 2 miles south of Celina on County Road 53, west of Highway 289, Celina, Collin County, Texas. The proposed facility will emit the following air contaminants: particulate matter including, but not limited to, aggregate, cement, and road dust.

Procedural Background

The application for a new permit was received on September 7, 2005. The application was declared administratively complete on September 13, 2005. The Notice of Receipt and Intent to Obtain (NORI) an Air Quality Permit was published on September 22, 2005 in the *Dallas Morning News*. Alternative Language Notice was published September 22, 2005 in *El Extra*. The Notice of Application and Preliminary Decision (NAPD) was published on January 5, 2006, in the *Dallas*

Morning News. Alternative Language Notice was published January 5, 2006, in *El Extra*. A Public Meeting was held in the City of Celina on February 16, 2006, and the public comment period ended on February 16, 2006. Since this application was administratively complete after September 1, 1999, this action is subject to the procedural requirements adopted pursuant to House Bill 801.

COMMENTS AND RESPONSES

Comments have been combined where it was determined that a common response could be provided.

COMMENT 1: Some commenters express concern regarding health impacts from air emissions from the proposed CBP on: public health (City of Celina, Gilberto & Mary Sanchez, Jim Lewis, Andrea Sallade), human health (Jeanie Ready, Andrea Sallade), the community (Christy Word, Jeanie Ready, Clay Hooten), citizens (Jeanie Ready), children (Jeanie Ready, Michael Chapman, Andrea Sallade), crops (Andrea Sallade), pets (Jeanie Ready), animals (Andrea Sallade), and livestock (Jeanie Ready, Andrea Sallade). One commenter states the proposed CBP will be a danger to protected species of wildlife, including, but not limited to migratory birds such as owls and red-tailed hawks. (Jeanie Ready)

Some commenters express concern the proposed facility will adversely affect air quality. (Luame Laird, Jeanie Ready, Michael Chapman, Andrea Sallade, Clay Hooten) One commenter expresses concern the residents of Celina and the residents of Collin County residing in Celina's extra-territorial jurisdiction will be adversely affected by the operations of the proposed CBP; exposing the residents to particulate matter emissions, aggregate, cement, road dust, noise and light pollution. (City of Celina)

One commenter expressed concern the Applicant has not shown the emissions from the proposed CBP will comply with all rules and regulations of the TCEQ and the Texas Clean Air Act, and be protective of health and property. (City of Celina) Some commenters state the emissions from the proposed facility will adversely affect the environment, or express concern for the protection of the environment. (City of Celina, Jim Lewis, Andrea Sallade) However, one commenter believes the impact to the environment will be negligible. (Clay Hooten) This commenter believes the health effects of the proposed CBP will be difficult to pinpoint. (Clay Hooten) This commenter also wants to be assured the EPA, TCEQ and other federal standards are monitored. (Clay Hooten) This commenter requests further research in regards to this permitting matter. (Clay Hooten)

RESPONSE 1: The proposed concrete batch plant is reviewed for the emission of particulate matter (PM). The technical requirements contained in the standard permit are designed to ensure that facilities operating under Standard Permit, Title 30 TAC § 116.611, achieve the emission standards determined to be protective of human health and the environment by the TCEQ protectiveness review. The protectiveness review determined CBP facilities operating under the standard permit would meet the requirements of standards in effect at the time, which were $400 \mu\text{g}/\text{m}^3$ (micrograms

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of PM per cubic meter) for an one-hour period and $200 \mu\text{g}/\text{m}^3$ for a three-hour period. The review also determined emissions from facilities operating under a standard permit will meet the National Ambient Air Quality Standards (NAAQS) for particulate matter with an aerodynamic diameter of 10 microns or less (PM_{10} ; $150 \mu\text{g}/\text{m}^3$ for a 24-hour period and $50 \mu\text{g}/\text{m}^3$ annually) and applicable TCEQ toxicology and risk assessment health effects guidelines.

All facilities emitting PM from a generic CBP were considered in the development of the standard permit. Emission rate calculations were based on emissions factors for CBPs found in the Compilation of Air Pollutant Emission Factors Manual (AP-42) developed by the EPA. Since PM and PM_{10} were the only air contaminants of concern from these plants, the PM and PM_{10} ground-level concentration standards were used to determine protectiveness as mentioned above. These standards are based upon short-term and long-term health effects considerations. Using AP-42 factors, emissions were modeled to ensure all configurations would meet the NAAQS and other standards in effect. The ground-level concentration standards are no longer in effect, however the distance limitations established under those standards remain a part of the standard permit. The distance limitations were established to ensure operation of a CBP would not adversely affect human health and the environment, regardless of the configuration of the CBP.

The NAAQS are created by the United States Environmental Protection Agency (EPA), and as defined in the federal regulations (40 Code of Federal Regulations (CFR) § 50.2), include both primary and secondary standards. The primary standards are those that the Administrator of the EPA determines are necessary, with an adequate margin of safety, to protect the public health, including sensitive members of the population such as children, the elderly, and individuals with existing lung or cardiovascular conditions. Secondary NAAQS are those that the Administrator determines are necessary to protect the public welfare and the environment, including animals, crops, vegetation, and buildings, from any known or anticipated adverse effects associated with the presence of an air contaminant in the ambient air. The NAAQS are set for the following criteria pollutants: ozone, lead, carbon monoxide, sulfur dioxide, nitrogen dioxide, and respirable particulate matter. If the proposed facility is operated as required, there should be no adverse health effects. It should be noted receipt of a state air quality permit does not relieve the regulated entity from complying with all applicable federal requirements under the Endangered Species Act.

The TCEQ has conducted a thorough review of this permit application to ensure it meets the requirements of all applicable state and federal standards. Provided the CBP is operated within the terms of the standard permit, adverse health effects are not expected. Therefore, the ED does not believe the requested research is necessary.

Concerning noise and light associated with operation of the CBP, the TCEQ's jurisdiction is established by the Legislature and is limited to the issues set forth in statute. Accordingly, the TCEQ does not have jurisdiction to consider noise or light from a facility when determining whether to approve a permit application.

Individuals are encouraged to report any concerns about nuisance issues or suspected noncompliance with terms of any permit or other environmental regulation by contacting the TCEQ Regional Office at 817-588-5800, or by calling the 24-hour toll-free Environmental Complaints Hotline at 1-888-777-3186. If the facility is found to be out of compliance with the terms and conditions of the permit, it will be subject to possible enforcement action. Citizen-collected evidence may be used in such an action. See 30 TAC § 70.4, Enforcement Action Using Information Provided by Private Individual, for details on gathering and reporting such evidence. The TCEQ has long had procedures in place for accepting environmental complaints from the general public but now has a new tool for bringing potential environmental problems to light. Under the citizen-collected evidence program, individuals can provide information on possible violations of environmental law and the information can be used by the TCEQ to pursue enforcement. In this program, citizens can become involved and may eventually testify at a hearing or trial concerning the violation. For additional information, see the TCEQ publication, "Do You Want to Report an Environmental Problem? Do You Have Information or Evidence?" This booklet is available in English and Spanish from the TCEQ Publications office at 512-239-0028, and may be downloaded from the agency website at www.tceq.state.tx.us (under Publications, search for document no. 278).

COMMENT 2: Some commenters state the emissions from the proposed facility will adversely affect the public's property and welfare, or express concern for the protection of property and welfare. (City of Celina, Jim Lewis)

RESPONSE 2: In addition to protecting health, the NAAQS are also set to address welfare effects such as visibility reduction, crop damage, and material damage. Section 302(h) of the Federal Clean Air Act (FCAA) defines effects on welfare to include effects on soils, water, crops, vegetation, manmade materials, animals, wildlife, weather, visibility and climate, damage to and deterioration of property, hazards to transportation, and impacts to personal comfort and well-being, whether caused by transformation, conversion, or combination with other air pollutants. Because the emissions from this facility should not cause an exceedance of the NAAQS, no impact to land, livestock, crops, or visibility is expected, nor should emissions interfere with the use and enjoyment of surrounding land. The Secondary NAAQS are set below levels which would be expected to cause nuisance conditions (dust accumulation, decreased visibility) or eye and throat irritation, and, therefore, should not impact the quality of life of those living near the proposed facility.

Furthermore, all facilities must comply with the Texas Clean Air Act (TCAA) and all TCEQ rules and regulations, including 30 TAC § 101.4, which prohibits a person from causing or maintaining a nuisance. Specifically the rule states, "No person shall discharge from any source whatsoever one or more air contaminants or combinations thereof, in such concentration and of such duration as are or may tend to be injurious to or to adversely affect human health or welfare, animal life, vegetation, or property, or as to interfere with the normal use and enjoyment of animal life, vegetation, or property." Based on the commission's experience regulating these types of facilities, they can be operated without causing a nuisance problem, provided the facilities are operated in compliance with

EXECUTIVE DIRECTOR'S RESPONSE TO PUBLIC COMMENT

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the terms and conditions of the permit.

COMMENT 3: One commenter believes the site of the proposed CBP is inappropriate for such a facility to receive a standard permit. (Jim Lewis) Some commenters state the conditions at the site are not standard. (Jim Lewis, Wendell O'neal) Those commenters cite the elementary school, inadequate roadway, the existing TXI plant, the southerly winds and accelerating growth of industrial sources in the area as reasons the site of the proposed CBP is not standard. (Jim Lewis, Wendell O'neal)

RESPONSE 3: The TCEQ's jurisdiction is established by the TCAA and is limited to the issues set forth in that statute. Therefore, the TCEQ does not have zoning authority, and it is beyond the agency's power to regulate an applicant's site selection. Zoning is usually controlled by local municipalities. As discussed in detail above, the standard permit has been designed to ensure that facilities operating under Title 30 TAC § 116.611 achieve the emissions standards determined to be protective of human health and the environment by the TCEQ protectiveness review. As discussed in Response 1, the air emissions from concrete batch plants operating under the standard permit have been modeled and shown to meet the existing state and federal requirements.

COMMENT 4: One commenter states he expects the TCEQ to play an aggressive role in protecting general environmental interests. (Jim Lewis)

RESPONSE 4: The TCEQ is charged with implementing the environmental laws of the State of Texas, which are designed and intended to protect human health and the environment. The ED takes that duty seriously, and makes every effort to investigate violations and follow-up on enforcement activity.

COMMENT 5: Some commenters express concern over the amount of particulate matter the proposed site will emit. (Collin County, Clay Hooten) One commenter states Collin County is in nonattainment for air quality, and if the county cannot reach attainment in reasonable time, then it runs the risk of losing highway funding. (Collin County) This commenter believes the approval of another CBP will be an obstacle in the county's attempt to achieve appropriate air quality. (Collin County)

RESPONSE 5: The Applicant is not a major stationary source as defined by the FCAA. Collin County is nonattainment for ozone federal air standards, and is classified as serious. Federal rules provide for specific technical review requirements for permitting new or modified major sources in nonattainment areas. A concrete batch plant is not a major source of any federally regulated criteria pollutant, therefore a nonattainment review is not required in this case. In Collin County, a nonattainment review is required for any new major sources of ozone that emit at least 50 tons per year (tpy) of oxides of nitrogen (NO_x) or volatile organic compounds (VOCs). The emissions from this proposed facility do not include NO_x or VOCs. Further, as discussed above, the TCEQ does not expect emissions from this plant will cause or contribute to an exceedance of the NAAQS.

EXECUTIVE DIRECTOR'S RESPONSE TO PUBLIC COMMENT

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COMMENT 6: One commenter expresses concern the emissions of the proposed CBP will adversely affect water quality. (Clay Hooten)

RESPONSE 6: While the TCEQ is responsible for the environmental protection of all media (including water), the law governing air permits deals specifically with air-related issues. The scope of this air quality permit application review does not include water assessment or consideration of issues involving water quality. However, as discussed above, the secondary NAAQS have been established to protect public welfare and the environment. Since the results of the air modeling performed in the development of the standard permit are below levels of concern under state and federal standards, emissions from the proposed facility are not expected to adversely impact water, vegetation, or animals in the area. Depending on the nature of the facility's operations, the Applicant may be required to apply for separate permits that regulate water quality.

COMMENT 7: One commenter states there are several batch plants operating five miles south of the proposed location for this CBP. (Collin County) This commenter suggests if this CBP is approved, it be located at the southern site, where there are no homes, schools or businesses, and the area allows greater traffic access. (Collin County) Some commenters believe there is a better location for the proposed facility to be located. (Gilberto & Mary Sanchez)

Some commenters state the proposed CBP is in close proximity to the lands and homes of residents of Celina, and there is at least one person residing in a permanent residence within 440 yards of the proposed CBP. (City of Celina, Luanne Laird, Gilberto & Mary Sanchez, Michael Chapman) One commenter asks why the Applicant chose a location for the proposed facility that is close to housing. (Christy Word) One commenter states industrial facilities are springing up in areas many local citizens assumed would be rural areas for a long time to come. (Jim Lewis)

Some commenters state Celina Elementary School is within 2000 feet of the proposed plant, or the proposed facility is near the elementary school. (City of Celina, Luanne Laird, Jim Lewis, Andrea Sallade)

RESPONSE 7: The TCEQ does not have zoning authority, and it is therefore beyond the agency's power to regulate an applicant's site selection. Further, the TCEQ cannot require an Applicant to relocate, or prohibit an applicant from locating at a particular site, if they meet any specific distance limitations that are enforceable by the TCEQ. Zoning is usually controlled by local municipalities. The duty of the TCEQ is to ensure the facilities comply with the TCAA and any applicable federal requirements.

COMMENT 8: One commenter expresses concern for the lack of information regarding the proximity of the proposed CBP to Castle Road, stating there are homes nearby and it is important to determine exactly where the CBP would be located. (Michael Chapman) One commenter states the proposed facility is or will be located in an area that violates applicable location and distance

EXECUTIVE DIRECTOR'S RESPONSE TO PUBLIC COMMENT

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restrictions. (City of Celina)

RESPONSE 8: The TCEQ does not have zoning authority, and it is therefore beyond the agency's power to regulate the effect of an applicant's site selection. However, the protectiveness review performed for the standard permit requires specific distances to the property line be set for equipment in order to meet all state and federal standards at the property line. This ensures its protectiveness to off-property receptors, including Castle Road and any neighboring residents.

The standard permit requires the suction shroud baghouse exhaust or truck mix point must be located at least 100 feet from any property line. Stationary equipment, stockpiles, or vehicles used for the operation of the concrete batch plant (except for incidental traffic and the entrance and exit to the site) may not be located or operated, respectively, within the following specified distances to any property line: for those facilities with production rates less than or equal to 200 cubic yards per hour, at least 25 feet; and for those facilities with production rates more than 200 and less than or equal to 300 cubic yards per hour, at least 50 feet.

The Applicant certifies they will be using a suction shroud for the truck drop with the exhaust air venting to a central dust collector and this emission point will be located more than 100 feet to any property line. The Applicant also ensures the facility's production rate will be 200 cubic yards or less requiring them to meet the 25 foot distance requirements for all applicable emission points. The Applicant represents they meet all distance requirements stipulated in the standard permit and therefore will be protective of any off-property receptors.

COMMENT 9: Some commenters express concern for the increase in traffic due to operation of the proposed facility. (Luanne Laird, Alfred & Amber Matthews, Marion Wood, Jim Lewis, Michael Chapman, Clay Hooten) Some commenters ask who will regulate traffic from the proposed facility. (Alfred & Amber Matthews) Some commenters state there is already heavy traffic from the operation of another ready mix plant less than a mile away. (Jim Lewis, Michael Chapman) One commenter states drought conditions will cause more traffic because trucks will have to carry water to the facility. (Luanne Laird)

Some commenters express concern for the amount of pollution caused by emissions from trucks or other vehicles and equipment associated with the proposed facility. (Luanne Laird, Marion Wood, Jim Lewis) One commenter expresses concern for the dust produced by trucks entering and leaving the proposed facility. (Marion Wood) Some commenters believe a 60 mile per hour speed limit is a safety concern. (Alfred & Amber Matthews)

RESPONSE 9: The TCEQ's jurisdiction is established by the TCAA and is limited to the issues set forth in that statute. Therefore, the TCEQ does not have jurisdiction over traffic or road safety. Jurisdiction over traffic on public roads is the responsibility of the cities, county, and/or other state agencies such as the Texas Department of Public Safety and the Texas Department of Transportation.

Further, the TCEQ may regulate stationary sources of air contaminants, but has no authority to regulate mobile sources. Accordingly, the TCEQ does not have jurisdiction to consider impacts of emissions from motor vehicles when determining whether to approve a permit application.

However, TCEQ rules state, "No person shall discharge from any source whatsoever such quantities of air contaminants, uncombined water, or other materials which cause or have a tendency to cause a traffic hazard or an interference with normal road use."¹ Therefore, emissions from the facility may not create a traffic hazard.

COMMENT 10: Some commenters state the proposed facility will cause nuisance conditions (City of Celina), or cause or contribute to the following nuisance conditions: dust (Jeanie Ready, Michael Chapman, Clay Hooten, City of Celina), ash mix (Clay Hooten), odor (Jeanie Ready, Clay Hooten), and light pollution (City of Celina).

RESPONSE 10: The TCEQ rule prohibiting nuisances states "no person shall discharge from any source" air contaminants which are or may "tend to be injurious to or adversely affect human health or welfare, animal life, vegetation, or property, or as to interfere with the normal use and enjoyment of animal life, vegetation, or property."² As long as the facility is operated in compliance with the terms of the air quality permit, nuisance conditions are not expected.

As stated, the NAAQS are set to address welfare effects such as visibility reduction, crop damage, and material damage. Section 302(h) of the FCAA defines effects on welfare to include effects on soils, water, crops, vegetation, manmade materials, animals, wildlife, weather, visibility and climate, damage to and deterioration of property, hazards to transportation, and impacts to personal comfort and well-being, whether caused by transformation, conversion, or combination with other air pollutants. Because the emissions from this facility are not expected to cause an exceedance of the NAAQS, no impact to land, livestock, crops, or visibility is expected, nor should any emissions interfere with the use and enjoyment of surrounding land.

As for odor control, nuisance conditions relating to odor are not expected. However, if citizens detect a problem with air quality, they may contact the TCEQ's environmental hot-line to report environmental violations. Calls to 1-888-777-3186 are automatically routed to the TCEQ office in the region from which the call originates. Citizens are encouraged to call this hot-line anytime nuisance odors or discharges are suspected. You may also contact the TCEQ Regional Office for your area, located in Dallas/Fort Worth, at (817) 588-5800. With rare exception, the TCEQ investigates all complaints received. Plants or facilities found to be out of compliance will be subject to the TCEQ's enforcement procedures.

¹ 30 Texas Administrative Code (TAC) § 101.5

² 30 TAC § 101.4

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As for light pollution (pollution from the lighting fixtures at the facility), the TCEQ does not have jurisdiction to regulate light pollution. If you have concerns regarding light pollution, or other issues which are not within the jurisdiction of the TCEQ, please contact your city or county officials.

COMMENT 11: Some commenters state operation of the proposed facility will cause or contribute to noise pollution. (Alfred & Amber Matthews, City of Celina) Some commenters ask who will regulate noise from the proposed facility. (Alfred & Amber Matthews) One commenter states the trucks associated with the operation of the proposed CBP will cause noise. (Jim Lewis)

RESPONSE 11: The TCEQ's jurisdiction is established by the TCAA and is limited to the issues set forth in that statute. Accordingly, the TCEQ does not have jurisdiction to regulate noise associated with the operation of the proposed facility. In addition, the TCAA does not grant the TCEQ authority over traffic noise. If you have concerns regarding noise, or other issues which are not within the jurisdiction of the TCEQ, please contact your city or county officials.

COMMENT 12: Some commenters state operation of the proposed facility will adversely affect property value. (Alfred & Amber Matthews, Gilberto & Mary Sanchez, Jeanie Ready, Michael Chapman)

RESPONSE 12: The TCEQ's jurisdiction is established by the TCAA and is limited to the issues set forth in that statute. Therefore, the TCEQ does not have zoning authority, and it is beyond the agency's power to regulate an applicant's site selection or the effect of that selection on property values. Zoning is usually controlled by local municipalities.

COMMENT 13: One commenter expresses concern the proposed CBP will adversely affect the local economy, and the proposed CBP will result in lower tax revenue for the city. (Michael Chapman) While another commenter states growth in business is beneficial to growing communities such as Celina, and the commenter believes the proposed CBP is an example of a business that will benefit the area's economy. (Clay Hooten)

Some commenters state operation of the proposed facility in close proximity to new development will adversely affect the sale of future homes, or prevent others from moving into the area. (Gilberto & Mary Sanchez, Michael Chapman) One commenter believes the proposed CBP might dissuade other acceptable businesses from locating in Celina. (Jeanie Ready)

RESPONSE 13: Under the TCAA, the positive or negative impact to the local economy is not a factor for consideration by the TCEQ when evaluating whether to approve particular permit application.

COMMENT 14: One commenter states the proposed facility fails to comply with the requisite emission control technology (BACT). (City of Celina)

RESPONSE 14: The TCAA and TCEQ rules require an evaluation of air quality permit applications to determine the facility will utilize BACT and no adverse effects to public health, general welfare, or physical property are expected to result from a facility's proposed emissions. The standard permit was developed with consideration of Best Available Control Technology (BACT), health impacts, and welfare impacts. BACT is based upon control measures that are designed to minimize the level of emissions from specific sources at a facility with consideration given to the technical practicability and economic reasonableness of reducing or eliminating emissions.

The primary control measures applied to this facility are: all dry material storage silos and the weigh hopper shall be equipped with a fabric filter or cartridge filter or vented to a fabric or cartridge filter system designed to meet at least 0.01 outlet grain loading (grains/dry standard cubic foot), and all silos shall be equipped with audible or visual warning devices to prevent overloading. The truck will be equipped with a suction shroud and vented to a fabric or cartridge filter system with a minimum of 4,000 actual cubic feet per minute of air. The stockpiles will be sprinkled with water to reduce fugitive emissions, and dust emissions from all in-plant roads and traffic areas associated with the operation of the concrete batch plant must be minimized at all times by either sprinkling water, treating them with dust-suppressant chemicals, or paving them with a cohesive hard surface that is maintained intact and cleaned. To reduce the nuisance potential, the standard permit includes property line setbacks to provide buffer zones and restrictions on visible fugitive emissions.

COMMENT 15: One commenter states the application is not adequate. (City of Celina) This commenter states the application has insufficient plans and specifications necessary to determine compliance with applicable federal and state air control rules and regulations. (City of Celina) This commenter also states the emissions modeling is not adequate to determine actual emissions. (City of Celina) This commenter states the commission cannot adequately monitor compliance with the terms of the standard permit. (City of Celina)

RESPONSE 15: The Air Quality Standard Permit for Concrete Batch Plants is authorized under the Texas Health and Safety Code Section 382.05195, which authorizes the commission to issue this standard permit for many similar facilities. In order to claim the standard permit, an applicant must comply with the following:

- Complete form (with instructions) PI-IS-CBP, "Air Quality Standard Permit Registration for Concrete Batch Plants or Concrete Batch Plants with Enhanced Controls."
- Pay a registration fee (a temporary plant that is in support of a public works project and will be sited contiguously with the right of way of that project is exempt from this fee).
- Complete Table 20 (Concrete Batch Plant) and Table 11 (Fabric Filters) for each dust collector.
- Complete the Concrete Batch Plant Standard Permit Checklist.

- Submit the appropriate plot plan, maps, and process descriptions as detailed in the PI-1S-CBP.

The Applicant submitted all the required information and documents for the standard permit application. These requirements provide adequate information necessary to determine all state and federal standards are met. Pursuant to the terms of the standard permit, the Applicant is required to maintain records on-site for the following: production rates for each hour of operation which demonstrate compliance with the applicable limitations set for the type of facility (Specialty, Temporary, or Permanent); and production and other records as required by 30 TAC §§ 101.201 and 101.211 for lesser of either the most recent rolling 24-month period or the duration of operation at a given site. These recordkeeping requirements enable the facility to be monitored for compliance. The emissions modeling performed in the development of the standard permit is adequate to prove protectiveness of concrete batch plants operating in accordance to the standard permit conditions as discussed in greater detail above.

COMMENT 16: One commenter states the applicant has a poor compliance history which justifies: denial of the application, the need for strong and enforceable permit provisions, and the permit expiration and renewal requirements. (City of Celina)

RESPONSE 16: During the technical review, a compliance history review of the company and the site is conducted based on the criteria in Title 30, Chapter 60 of the Texas Administrative Code (TAC). These Rules may be found at the following website: <http://www.tceq.state.tx.us/rules/index.html>. The compliance history for the company and site is reviewed for the five-year period prior to the date the permit application was received by the Executive Director. The compliance history includes multimedia compliance-related components about the site under review. These components include the following: enforcement orders, consent decrees, court judgments, criminal convictions, chronic excessive emissions events, investigations, notices of violations, audits and violations disclosed under the Audit Act, environmental management systems, voluntary on-site compliance assessments, voluntary pollution reduction programs, and early compliance.

The Applicant's company and site have been rated and classified pursuant to Title 30, Chapter 60 of the Texas Administrative Code. A company and site may have one of the following classifications and ratings:

- High: rating < 0.10 (above-average compliance record)
- Average by Default: rating = 3.01 (these are for sites which have never been investigated, usually new sites)
- Average: $0.10 < \text{rating} < 45$ (generally complies with environmental regulations)
- Poor: $45 < \text{rating}$ (performs below average)

This site has a rating of 3.01 and a classification of Average by Default. The company rating and

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classification, which is the average of the ratings for all sites the company owns, is 3.01 and a classification of Average by Default. This company's compliance history is in good standing with the TCEQ and therefore will not be a justification for denial of this permit.

COMMENT 17: Some commenters ask who will monitor the proposed facility to ensure compliance with the standard permit. (Luanne Laird, Wendell O'neal)

One commenter asks for clarification of the number of hours of operation, stating the figures change from one part of the application to another. (Wendell O'neal) This commenter also asks for the specific window of time the Applicant may operate on any given day. (Wendell O'neal) This commenter asks how the hours of operation are monitored to ensure the Applicant does not exceed the per day limit. (Wendell O'neal)

One commenter asks what the test is to determine if dust-emitting sources in the plant are watered as necessary. (Wendell O'neal)

RESPONSE 17: Compliance determinations and ensuring proper abatement and control are included in several portions of the standard permit. Since the impacts evaluation for the standard permit relied on compliance with the conditions of the standard permit, there are several requirements for recordkeeping and visible emissions limitations included throughout the permit. Specifically, paragraph (1)(F) requires production records for limited periods of time. The production record requirement is not anticipated to be a burden for companies as they use production to track their plant's receipts and income.

In addition, paragraphs (3)(B), (3)(C), and (5)(B) establish visible emissions limitations and compliance determination methods for filter systems. A simplified method to allow the owners/operators of plants to determine compliance without the assistance of a trained and certified opacity observer is the limitation of no visible emissions exceeding 30 seconds in a six-minute period in accordance with EPA Test Method (TM) 22. These subsections were also proposed with a requirement for illumination of all abatement exhausts (if these facilities operate at night) so that the operator, or TCEQ regional investigators, can verify visible emission limits are being met. Finally, subsection (3)(D) requires a warning system to alert operators before a silo is over-filled in order to avoid a potential upset condition.

Based on the permit application, the hours of operation are to be as follows: 12 hours a day, 5 days a week, and 52 weeks a year; totaling 3,120 hours a year. The Applicant represents the facility will not be operating at night, so the 12 hours of operation will be conducted during daylight hours. The plant will be classified as permanent, and all of the permit conditions for a permanent facility will apply including water controls and paved in-plant roads. Compliance with these conditions can be determined through record keeping.

COMMENT 18: One commenter asks how the TCEQ will inspect the site. (Wendell O'neal) This

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commenter asks whether the Applicant will be given advance notice of an inspection. (Wendell O'neal) This commenter asks if a citizen calls in a complaint, how long it will take a TCEQ investigator to arrive at the site. (Wendell O'neal) This commenter asks whether the City of Celina can conduct a random investigation, or whether the City could hire a consultant to conduct an investigation. (Wendell O'neal) This commenter asks if the City of Celina found violations, how the City would work with the TCEQ to impose a fine. (Wendell O'neal) This commenter asks what TCEQ records show the Applicant's compliance history to be at the Princeton site, and whether that includes admitted violations or just alleged violations. (Wendell O'neal)

RESPONSE 18: TCEQ investigations are primarily risk-based. . These types of facilities are generally considered low risk. If there is reason to raise the risk level, such as a complaint is received, TCEQ will investigate. If the TCEQ receives a complaint, the facility is generally not notified in advance of the investigation. Also, if the complaint concerns dust or odor, off-site surveillance is conducted prior to approaching the facility.

The TCEQ places a high priority on responding to citizen complaints. If a citizen files an environmental complaint with one of our regional offices, we will investigate the complaint according to established criteria for prioritizing complaints, and will provide the citizen with a report on the outcome of our investigation. Details of a complaint incident, or our investigation of that incident, can be found by accessing the following website: <http://www5.tceq.state.tx.us/oce/waci>.

It is not the purpose of this RTC for the ED to provide legal advice regarding rights and remedies available to the City of Celina under state law. However, the Ed directs the commenter's attention to Subchapter E of the TCAA, which addresses authority of local governments. Texas Health & Safety Code § 382.111 states:

“(a) A local government has the same power and is subject to the same restrictions as the commission under Section 382.015 to inspect the air and enter public or private property in its territorial jurisdiction to determine if:

(1) the level of air contaminants in an area in its territorial jurisdiction and the emissions from a source meet the levels set by: (A) the commission; or (B) a municipality's governing body under Section 382.113; or

(2) a person is complying with this chapter or a rule, variance, or order issued by the commission.

(b) A local government shall send the results of its inspections to the commission when requested by the commission.”

Further, Section 382.113 states:

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“(a) Subject to Section 381.002, a municipality has the powers and rights as are otherwise vested by law in the municipality to:

(1) abate a nuisance; and

(2) enact and enforce an ordinance for the control and abatement of air pollution, or any other ordinance, not inconsistent with this chapter or the commission's rules or orders.

(b) An ordinance enacted by a municipality must be consistent with this chapter and the commission's rules and orders and may not make unlawful a condition or act approved or authorized under this chapter or the commission's rules or orders.”

With regard to the Princeton site, the Applicant's company and site have been rated and classified pursuant to Title 30, Chapter 60 of the Texas Administrative Code. The Princeton site has a rating of 3.01 and is classified as Average by Default because the site has no investigations, and no violations have been found at the Princeton site.

COMMENT 19: Some commenters ask why the Applicant's permit application in Princeton was not approved. (Alfred & Amber Matthews)

RESPONSE 19: The status of the Applicant's permit application for a CBP in Princeton is irrelevant to the review of the permit that is the subject of this RTC. However, the Princeton application, TCEQ Air Quality Permit No. 75805, is still pending, and the ED has made the preliminary determination the Princeton application meets all the requirements of the TCAA and the TCEQ rules.

COMMENT 20: One commenter asks why the TCEQ does not require air dispersion modeling when an applicant seeks registration of a standard permit CBP. (Wendell O'neal)

RESPONSE 20: Air dispersion modeling was conducted during the development of the CBP standard permit. All configurations were taken into account, and the modeling determined each configuration would be protective of human health and the environment. Therefore, it is not necessary for each applicant to conduct air dispersion modeling when registering for a CBP standard permit.

COMMENT 21: Some commenters object to the application for failure to adequately identify the constituent particulate materials. (Jeanie Ready, Wendell O'neal) One commenter asks if this is a function of the type ash or gravel used to make the concrete. (Wendell O'neal) One commenter asks what type of mix will be used at the proposed CBP. (Clay Hooten)

RESPONSE 21: The Applicant proposes to manufacture concrete that will emit particulate matter

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(PM and PM₁₀), which consists primarily of cement and pozzolan dust, but includes some aggregate and sand dust emissions. PM is total particulate matter suspended in the atmosphere including PM₁₀. PM₁₀ is defined as finely-divided solid or liquid material emitted to the ambient air with an aerodynamic diameter less than or equal to a nominal ten micrometers as measured by an applicable reference method, or an equivalent or alternative method specified in 40 CFR Part 51, or by a test method specified in an approved state implementation plan.

At the time the Applicant submitted its application for review, there is no state or federal regulation requiring the pollutant particulate matter be speciated further than PM₁₀ for permitting processes.

COMMENT 22: Some commenters object to the lack of an air quality study for the specific area around the location around the proposed CBP. (Jeanie Ready, Andrea Sallade) One commenter objects to the lack of a cumulative impacts study for the area around the location of the proposed CBP, given the number of other concrete plants in the vicinity. (Jeanie Ready) Some commenters express concern about the exposure of the area to this facility and other CBPs. (Marion Wood, Andrea Sallade) One commenter states given the recent growth of the area, a more current assessment of the air quality should be conducted. (Luanne Laird)

RESPONSE 22: The area surrounding the proposed site is within the attainment standards for PM. The standard permit restricts each authorized site to production of 300 cubic yards per hour of concrete, regardless of how many batching facilities are located at the site. The protectiveness review determined that so long as each site meets the applicable requirements, off-property impacts are not expected; therefore, no cumulative impacts are expected.

COMMENT 23: One commenter asks whether representations made by the Applicant on the application are binding. (Wendell O'neal) This commenter asks whether the TCEQ will seek enforcement action if the Applicant meets the requirements of the standard permit, but violates representations made on the Application. (Wendell O'neal)

RESPONSE 23: All representations with regard to construction plans, operating procedures, and maximum emission rates in any registration for a standard permit become conditions upon which the facility, or changes thereto, must be constructed and operated. It is unlawful for any person to vary from such representations if the change will affect that person's right to claim a standard permit. Any change in condition such that a person is no longer eligible to claim a standard permit requires proper authorization under 30 TAC § 116.110 (relating to Applicability). If the facility remains eligible for a standard permit, the owner or operator of the facility shall notify the ED of any change in conditions which will result in a change in the method of control of emissions, a change in the character of the emissions, or an increase in the discharge of the various emissions as compared to the representations in the original registration or any previous notification of a change in representations. Notice of changes in representations must be received by the ED no later than 30 days after the change.

COMMENT 24: One commenter asks whether the roads at the proposed CBP will be paved, and if so how will the roads be paved. (Wendell O'neal)

RESPONSE 24: This application is for a permanent concrete batch plant, and the standard permit conditions specific to permanent facilities requires that roads be paved. Specifically, all entry and exit roads and main traffic routes associated with the operation of the concrete batch plant (including batch truck and material delivery truck roads) shall be paved with a cohesive hard surface that can be maintained intact and shall be cleaned. All batch truck and material delivery trucks shall remain on paved surfaces when entering, conducting primary function, and leaving the property. The Applicant represents the roads will be paved with either asphalt or concrete, and will be treated with environmentally sensitive chemicals or sprinkled with water as necessary to control fugitive dust emissions.

COMMENT 25: One commenter asks what testing has been performed to identify fugitive emissions, particularly those that escape from cracks in conveyer belts, covers, worn fabrics, and those that blow off of trucks. (Wendell O'neal) This commenter asks how often the cartridges are tested to ensure they are working as specified, and asks what tests are performed, (Wendell O'neal) Another commenter asks how the dust, sand, rocks, and gravel are contained. (Clay Hooten)

RESPONSE 25: The standard permit does not have conditions regulating how often a company inspects their abatement equipment. However, the standard permit does require the use of best management practices. Best management practices required in the standard permit regarding filter systems are as follows: any fabric or cartridge filter and any suction shroud shall be maintained and operated properly with no tears or leaks. Best management practices regarding conveying systems for the transfer of cement/flyash are as follows: conveying systems to and from the storage silos shall be totally enclosed, operated properly, and maintained with no tears or leaks.

The sand, rock and gravel are contained in aggregate storage bins before use. These materials are washed prior to delivery to the plant site and typically contain less than 5% silt or respirable material.

The permit requires visible emission criteria and opacity requirements from each fabric filter baghouse. These criteria are designed to indicate a need for additional best management practice controls and/or maintenance may be required of an abatement control device.

COMMENT 26: One commenter asks what the visible emissions standards are for the filters or the load-in pollution control devices, and asks how often they are tested to ensure the standards are met. (Wendell O'neal)

RESPONSE 26: The standard permit conditions stipulate all filter systems, mixer loading, and batch truck loading emissions control devices shall meet a performance standard of no visible emissions exceeding 30 seconds in any six-minute period as determined using the EPA Test Method 22. Conveying systems for the transfer of cement/flyash shall also meet this performance standard

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except during cement/flyash tanker connect and disconnect. If these standards are not met, the Applicant would be in violation of the standard permit which would make them subject to enforcement action. The visible emissions criteria and opacity restrictions are the methods by which compliance is determined with the proposed air quality permit.

COMMENT 27: One commenter asks how the 300 ton/hour maximum production rate is measured, asking whether it is an average for the day or week, or is it calculated by the hour. (Wendell O'neal) This commenter asks whether the rate is measured electronically or by a person making entries into a log. (Wendell O'neal) This commenter also asks whether these records are available to the public, and asks how long these records are kept. (Wendell O'neal)

RESPONSE 27: This application is for a permanent facility with a production rate of 200 cubic yards per hour and 624,000 cubic yards per year. The permit specifies the site production is limited to no more than 300 cubic yards per hour. This is the maximum hourly production authorized by the standard permit. Most modern batch plants have the capability to control their concrete recipes by computer which also tracks hourly manufacturing rates. Pursuant to the terms of the standard permit, the Applicant is required to maintain records on-site for the represented production rates. The records are kept for the lesser of either the most recent rolling 24-month period or the duration of operation at a given site. These records shall be made available at the request of personnel from the commission or any air pollution control program having jurisdiction.

COMMENT 28: One commenter asks how the emissions factors listed in the application are determined. (Wendell O'neal)

RESPONSE 28: The emission factors used in calculating emission rates for the concrete batch plant are taken from the EPA's *Compilation of Air Pollutant Emission Factors*, AP-42 Manual. These emission factors were developed by the EPA. The AP-42 Manual is available from the EPA website at <http://www.epa.gov/ttn/chief/ap42/index.html>. If you have questions that are not addressed by this website, or if you cannot find the document online, call the Info CHIEF help desk at (919) 541-1000.

COMMENT 29: One commenter asks how the percentages on Table 11 of the application were determined, and asks whether the TCEQ checked these figures. (Wendell O'neal)

RESPONSE 29: A Table 11 is submitted by the company to represent the vendor data associated with a particular fabric filter baghouse will meet the criteria established in the air quality standard permit. The Applicant is using a suction shroud device at the batch drop point which is vented to a fabric filter system with an air flow rate of a minimum of 4,000 actual cubic feet per minute. The filter systems need to be designed to meet at least 0.01 outlet grain loading (grains/dry standard cubic foot). The break down of the particle size distribution available on the Table 11 is not required for this application.

COMMENT 30: One commenter states the Applicant indicates it will have as many as five acres

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committed to stockpiling, but only shows emissions for one stockpile in the application, and asks how this is realistic. (Wendell O'neal)

RESPONSE 30: The Applicant represents in the application the facility will have five acres committed to stockpiling, but indicated only one stockpile will be active at any given time. Emissions for the stockpiles are calculated according to the number of active stockpiles, the number of inactive stockpiles, and also take into account meteorological effects such as wind erosion. All stockpiles are required by the conditions of the standard permit to be sprinkled with water, dust-suppressant chemicals, or covered, as necessary, to minimize dust emissions.

COMMENT 31: Some commenters object to the approval of the application. (Luanne Laird, Gilberto & Mary Sanchez, Christy Word, Jeanie Ready)

RESPONSE 31: The ED has reviewed the permit application in accordance with the applicable law, policy and procedures, and the Agency's mission to protect the State's human and natural resources consistent with sustainable economic development. Although the ED recognizes the opposition of the commenters, public opposition alone is not legally sufficient to justify denial of a permit application. The TCAA mandates the TCEQ must issue the permit if all criteria are met.

COMMENT 32: One commenter states the time frame to request a contested case hearing is too short to give adequate opportunity to review the permit. (City of Celina) Another commenter objects to the timeliness of the notice. (Jeanie Ready)

RESPONSE 32: The TCAA provides the commission can establish the form and content of the public notices and the manner of publication. For CBPs, the commission has determined fifteen days is an appropriate time period for those facilities. The Applicant published notice of the application in accordance with TCEQ rules. The notice included information required by the TCEQ about the procedure for requesting a contested case hearing.

COMMENT 33: One commenter states notice was not sent to the proper state senator or representative. (City of Celina)

RESPONSE 33: Texas Health & Safety Code § 382.0516 requires, upon receipt of an application for a construction permit, the commission send notice of the application to the senator and representative who represent the area in which the facility will be located. A review of the file in the TCEQ Chief Clerk's Office reveals notice of this application was sent to Senator Craig Estes and Representative Jodie Laubenberg by letter dated September 21, 2005.

COMMENT 34: One commenter states notice was not provided in the requisite alternative language. (City of Celina)

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RESPONSE 34: The Applicant verified all alternative language requirements relating to this application have been met. The Applicant submitted affidavits of publication for both the NORI and the NAPD, which verify the notices were published in *El Extra* on September 22, 2005 and January 5, 2006, respectively.

In addition, the Applicant submitted Forms NSR-PN1 and APD-PN2, which certify compliance with alternative language notice requirements. These requirements include the posting of a sign in the alternative language during the comment period associated with the NORI.

COMMENT 35: Some commenters state the NORI and the NAPD failed to correctly describe the location of the site of the proposed CPB by stating the site is two miles south of the municipality of Celina; the commenters state the site is adjacent to the municipality. (Rex Glendenning & Old Celina Ltd.)

RESPONSE 35: TCEQ rules require the Applicant provide a brief description of the location of the proposed facility. The published notice describes the facility's location as two miles south of the City of Celina on County Road 53, west of Highway 289. Upon review of the map attached to this application, this appears to be an accurate description of the proposed facility's location.

COMMENT 36: Some commenters state the Applicant's cover letter to the affidavit of publication shows the NORI and NAPD were published in the *Dallas Morning News* – Collin County Edition, however neither the affidavit nor the newspaper clipping indicate whether the notices appeared in the regular edition of the *Dallas Morning News* or in the Collin County edition. (Rex Glendenning & Old Celina Ltd.)

RESPONSE 36: In accordance with the English language public notice obligations, as set forth in Section 382.056 of the TCAA, the Applicant is required to publish notice in a newspaper of general circulation in the municipality in which the facility is located or is proposed to be located, or in the municipality nearest to the location or proposed location of the facility. It is the Applicant's responsibility to publish notice in compliance with this publication requirement.

The Notice of Receipt and Intent (NORI) and the Notice of Application and Preliminary Decision (NAPD) English notices were published in the *Dallas Morning News*. The affidavits of publication certify the edition of the *Dallas Morning News* in which the notices were printed is generally circulated in the City of Celina.

COMMENT 37: Some commenters state the affidavit of publication for the NORI shows the newspaper is published in Dallas County, and not in Collin County where the site is located. (Rex Glendenning & Old Celina Ltd.)

RESPONSE 37: TCEQ rules require notice be published in a newspaper of general circulation in the municipality in which the facility is located or is proposed to be located or in the municipality

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nearest to the location or proposed location of the facility. That rule imposes no geographic limitation regarding where the newspaper is printed, so long as the newspaper is generally circulated as described above. The Applicant chose to publish the required notices in the *Dallas Morning News*, and submitted affidavits of publication verifying the *Dallas Morning News* is a newspaper of general circulation in the City of Celina.

COMMENT 38: Some commenters state publication of notice did not occur in a newspaper of general circulation in the community in which the proposed facility is or will be located. (City of Celina, Sean White) Some commenters state 30 TAC § 39.603(c) requires the NORI and the NAPD be published in the newspaper in the municipality where the facility is to be located or the municipality nearest the location, and the commenters state Dallas is not the nearest municipality, rather Celina is the nearest municipality. (Rex Glendenning & Old Celina Ltd.) Some commenters state the newspaper of record for Celina is the *McKinney Courier Gazette*, and the Applicant did not publish in that newspaper or in the *Celina Record*, thus failing to comply with the newspaper publication requirements. (Rex Glendenning & Old Celina Ltd.)

RESPONSE 38: The TCAA and 30 TAC § 39.603(c) require notice of an air application be published in a newspaper of general circulation in the municipality in which the facility is located or is proposed to be located, or in the municipality nearest to the location or proposed location of the facility. The Applicant submitted an affidavit of publication for the NORI and the NAPD certifying the notices were published in the *Dallas Morning News*. These affidavits further certify the *Dallas Morning News* is a newspaper of general circulation in Celina, the municipality nearest to the proposed location of the facility. Further, there is no requirement to publish in the newspaper "of record" for any given municipality.

COMMENT 39: Some commenters state the TCEQ records do not contain the completed Form Affidavit APD-PN2 from the Applicant, and the affidavit is required to verify all requisite notice has been published, all bilingual materials have been distributed, copies of the application are available for public viewing and all signage is posted at the site. (Rex Glendenning & Old Celina Ltd.) Some commenters state the application should not move forward if the record is not complete. (Rex Glendenning & Old Celina Ltd.)

RESPONSE 39: The Applicant has submitted the APD-PN2 and it is available for viewing at the TCEQ Chief Clerk's Office. The affidavit verifies the Applicant provided notice as required by TCEQ rules by: submitting copies of the notices and affidavits of publication to the TCEQ, complying with bilingual notice requirements, and placing a copy of the application and draft permit at the McKinney Memorial Public Library. The affidavit also verifies the application and draft permit will remain at the McKinney Memorial Public Library until either the TCEQ acts on the application or the application is referred to the State Office of Administrative Hearings for a hearing. The Applicant also submitted Form NSR-PN1 which verifies signs were posted as required by TCEQ rules, and also verifies bilingual signs were posted in accordance with TCEQ requirements.

COMMENT 40: Some commenters state requisite signs for notice were not posted. (City of Celina, Rex Glendenning & Old Celina Ltd.) Some commenters state 30 TAC § 39.604 requires the Applicant to maintain visible signage on all site property lines paralleling a roadway, and those signs remain in place until the end of the comment period. (Rex Glendenning & Old Celina Ltd.) Some commenters state the Applicant is required to post signs in Spanish text in accordance with TCEQ alternative language requirements. (Rex Glendenning & Old Celina Ltd.) Some commenters state the Applicant did post one sign for a brief period of time, but this action failed to meet the requirements of the regulations because the sign was not: posted for the requisite time period, clearly visible from the road, and posted in Spanish, in addition to English. (Glendenning & Old Celina Ltd.)

RESPONSE 40: 30 TAC § 39.604 contains the requirements for public notice through sign posting. 30 TAC § 39.604(b) states "The sign or signs must be in place by the date of publication of the Notice of Receipt of Application and Intent to Obtain Permit and must remain in place and legible throughout that public comment period." 30 TAC § 55.152(a)(2) states the public comment period after publication of the NORI for a concrete batch plant standard permit is 15 days. Therefore, the Applicant was required to post signs according to TCEQ rules for 15 days after the publication of the NORI. Publication of the NORI occurred on September 22, 2005, and the comment period ended on October 7, 2005. The Applicant submitted Form NSR-PN1, dated October 12, 2005, and received in the Chief Clerk's Office on October 19, 2005, verifying signs were posted in accordance with the provisions of 30 TAC § 39.604. This form also verifies bilingual signs required by the TCEQ were posted.

There are no sign posting requirements associated with the NAPD. Therefore the Applicant was not required to maintain the requisite signage until the end of the final comment period.

COMMENT 41: One commenter states a copy of the application or draft permit was not available at the public place provided in the published notice. (City of Celina) Some commenters state according to 30 TAC § 39.405(g) the Applicant is required to make available for review and copying in a public place in Collin County a complete copy of the Application; and the application for this permit was placed in a packet behind another application for a CPB in Princeton, Texas. (Rex Glendenning & Old Celina Ltd.) Some commenters state burying information behind voluminous materials on another application is a violation of the regulations and fails to meet the standards that are in place. (Rex Glendenning & Old Celina Ltd.)

RESPONSE 41: 30 TAC § 39.405(g) requires a complete copy of the application be available for review and copying at a public place in the county in which the facility is located or proposed to be located. This section also requires the application be available on the first day of newspaper publication of the NORI and remain available for the publications' designated comment period. This section further requires a copy of the complete application (including any subsequent revisions to the application) and the executive director's preliminary decision be available for review and copying beginning on the first day of newspaper publication required by this section and remain available

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until the commission has taken action on the application or the commission refers issues to State Office of Administrative Hearings.

The Applicant has certified, via affidavit, a copy of the completed application was available for review and copying at the McKinney Memorial Public Library throughout the duration of the public comment period associated with the NORI. The Applicant also verified via affidavit the application and draft permit will remain at the McKinney Memorial Public Library until either the TCEQ acts on the application or the application is referred to the State Offices of Administrative Hearings for a hearing. The rules regarding public viewing allow the Applicant to make available in the same public place applications for separate projects within one county.

COMMENT 42: One commenter states the application was not readily available to the citizens of Celina, stating McKinney is a 20 to 25 minute drive from Celina. (Sean White)

RESPONSE 42: TCEQ rules require the application be made available in a public place in the county where the proposed facility is to be located. The Applicant chose the McKinney Memorial Public Library to satisfy this requirement.

COMMENT 43: One commenter states the notice of the public meeting issued January 30, 2006 states the ED's preliminary decision and standard permit are available for review and copying at the TCEQ's central office, but as of February 9th and 10th, these items were not in the file. (Rex Glendenning & Old Celina Ltd.)

RESPONSE 43: A review of the file for this permit application in the Chief Clerk's Office reveals the standard permit and the ED's preliminary decision were in the file by the dates mentioned in the comment. By letter dated December 22, 2005, the TCEQ informed the Applicant the technical review was complete and a preliminary decision had been prepared for the application. This letter included the ED's preliminary decision as an attachment. The ED's preliminary decision was also published as part on the NAPD in the *Dallas Morning News* and in *El Extra* on January 5, 2006.

The Standard Permit is also in the file as an attachment to the Declaration of Administrative Completeness, dated September 13, 2005. Further, the Standard Permit for CBPs is available online at <http://www.tceq.state.tx.us/permitting/air/newsourcereview/mechanical/cbp.html>.

COMMENT 44: Some commenters state TCEQ records do not contain the requisite notices to the EPA Region 6 Office and other affected agencies, including the Sabine River Authority, Dallas Water Utilities, U.S. Fish and Wildlife, and the North Texas Municipal Water District; and these commenters state the initial NORI was sent in September 2005, but the NAPD was not sent, thus failing to comply with the requisite notice. (Rex Glendenning & Old Celina Ltd.)

RESPONSE 44: 30 TAC § 39.602 states when notice is required for air applications, the chief clerk shall only mail notice to the Applicant, those persons on any relevant mailing list, any person the ED

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or the chief clerk may elect to include, and persons who filed public comment or hearing requests on or before the deadline for filing public comment or hearing requests. Notice to those entities listed in the comment is not required for air applications.

COMMENT 45: Some commenters state according to 30 TAC § 39.405, the ED should suspend further processing of the application and return it to the Applicant, and the Applicant should be forced to reapply and follow all the requirements in place to protect the public health and safety. (Rex Glendenning & Old Celina Ltd.)

One commenter states an independent review of the files of the TCEQ indicates the application does not meet all the relevant rules and regulations and the commenter requests the application be reviewed for compliance. (Rex Glendenning & Old Celina Ltd.) One commenter objects to the method of public notice and does not believe they were adequate or within the guidelines. (Jeanie Ready)

RESPONSE 45: The ED has conducted the review of this application and has determined it does meet all notice requirements and all technical requirements for registration under a CBP standard permit.

COMMENT 46: One commenter states given the inundation of aggregated industry facilities and plants in and around Celina, a hearing should be granted in the public interest to ensure residents are not being disproportionately impacted by air pollution generated by the facilities. (City of Celina) Another commenter states a contested hearing is necessary to determine if registering this standard permit is consistent with the protection of the public's health, property, welfare, and natural environment. (Jim Lewis)

RESPONSE 46: TCEQ rules provide only the commission, the ED, the Applicant, or an affected person may request a contested case hearing. For any application, 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.³ Governmental entities, including local governments and public agencies, with authority under state law over issues raised by the application may be considered affected persons.⁴ In determining whether a person is an affected person, all factors shall be considered, including, but not limited to, the following:

- (1) whether the interest claimed is one protected by the law under which the application will be considered;
- (2) distance restrictions or other limitations imposed by law on the affected interest;
- (3) whether a reasonable relationship exists between the interest claimed and the activity regulated;

³ 30 TAC § 55.203(a)

⁴ 30 TAC § 55.203(b)

- (4) likely impact of the regulated activity on the health and safety of the person, and on the 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.⁵

A contested case hearing is a legal proceeding similar to a civil trial in state district court. The hearing will only be granted based on disputed issues of fact that are relevant and material to the Commission's decision on the application. At a public meeting, the commissioners will decide whether a contested case hearing will be granted. A contested hearing, if granted, would allow affected persons to present evidence on whether the issuance of the permit would meet applicable standards. The hearing is conducted by an Administrative Law Judge (ALJ) from the State Office of Administrative Hearings. The Commissioners' review the ALJ's decision will result in the permit being denied, issues, or modified.

Changes Made in Response to Public Comments

No changes to the permit have been made in response to public comment.

Respectfully submitted,

TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY

Glenn Shankle
Executive Director

Stephanie Bergeron Perdue, Deputy Director
Office of Legal Services



Brad Alan Patterson, Staff Attorney
Environmental Law Division

REPRESENTING THE
EXECUTIVE DIRECTOR OF THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY

⁵ 30 TAC § 55.203(c)