

Kathleen Hartnett White, *Chairman*
Larry R. Soward, *Commissioner*
H. S. Buddy Garcia, *Commissioner*
Glenn Shankle, *Executive Director*



TEXAS
COMMISSION
ON ENVIRONMENTAL
QUALITY

2007 AUG 21 PM 4: 24

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

CHIEF CLERKS OFFICE

Protecting Texas by Reducing and Preventing Pollution

August 21, 2007

To: Persons on the attached mailing list (By mail and facsimile as indicated)

Re: Application by Canyon Lake Ready Mix, Inc., for Permit No. 78844 and related requests and other filings, including responses and replies; TCEQ Docket No. 2007-1000-AIR.

The above-named matter is scheduled to be considered by the Texas Commission on Environmental Quality (Commission) at its September 5, 2007, public meeting. After review of the responses and the request by the Office of Public Interest Counsel (OPIC) for an extension of time for the filing of supplemental responses and replies, I have determined to continue this matter to a subsequent public meeting. The responses document that one of the two individuals who submitted requests for reconsideration, Dale Leacock, was inadvertently not treated as filing a request for reconsideration and as a result Dale Leacock was not served on the same day as filed a copy of the OPIC's first response as required by agency rule. Agency rules also establish certain other deadlines for the filing of responses and replies prior to the public meeting on which the application and related requests will be considered. Accordingly, this matter is continued to the Commission's public meeting scheduled to begin at **9:30 A. M. on Wednesday, October 10, 2007**. The meeting will take place in Room 201S of Building E, 12118 N. Interstate 35, Austin, Texas.

Supplemental or initial responses may be filed by the Applicant, the OPIC, or the Executive Director on or before **5:00 P.M. on Monday, September 17, 2007**, and supplemental or initial replies may be filed by the persons who submitted hearing requests and requests for reconsideration by **5:00 P.M. on Monday, October 1, 2007**. An original and 11 copies of any response or reply must be filed with the Chief Clerk of the agency at Office of Chief Clerk, ATTN: Docket Clerk, Mail Code 105, TCEQ, P.O. Box 13087, Austin Texas 78711-3087 (Fax number: 512-239-3311). On the same day any response is transmitted to the Chief Clerk, a copy must be sent to the Executive Director, the Applicant, and OPIC, as applicable, as well as the individuals who submitted hearing requests or requests for reconsideration and the Office of Public Assistance. On the same day any reply is transmitted to the Chief Clerk, a copy must be sent to the Executive Director, the Applicant and the OPIC as well as the Office of Public Assistance.

As explained in the Chief Clerk's letter dated July 30, 2007, the Commissioners will not take oral argument or additional comment on this matter, but they may ask questions of the Applicant, requester(s), or TCEQ staff. If you have any questions about this matter, please contact Celeste Baker, Assistant General Counsel, at 512/239-5527.

Respectfully,

A handwritten signature in black ink that reads "Derek Seal".

Derek Seal
General Counsel

Mailing List

h:counsel/baker/letters/07/continuance/CanyonLakeReadyMix.com

Mailing List
Canyon Lake Ready Mix, Inc.
TCEQ Docket No. 2007-1000-AIR

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210/658-4947 FAX 210/658-0681

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Christina Mann
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Bridget Bohac
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Kathleen Hartnett White, *Chairman*
Larry R. Soward, *Commissioner*
H. S. Buddy Garcia, *Commissioner*



Blas J. Coy, Jr., *Public Interest Counsel*

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

August 15, 2007

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

2007 AUG 15 PM 12: 27
CHIEF CLERKS OFFICE
TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

**RE: CANYON LAKE READY MIX, INC.
TCEQ DOCKET NO. 2007-1000-AIR**

Dear Ms. Castañuela:

Enclosed for filing is the Public Interest Counsel's Motion to Extend the Filing Deadline and Supplemental Response to Requests for Reconsideration in the above-entitled matter.

Sincerely,

A handwritten signature in cursive script that reads "Christina Mann".

Christina Mann, Attorney
Public Interest Counsel

cc: Mailing List

Enclosure

TCEQ DOCKET NO. 2007-1000-AIR

IN THE MATTER OF
THE APPLICATION OF
CANYON LAKE READY
MIX, INC. FOR AIR
QUALITY STANDARD
PERMIT
REGISTRATION NO.
78844

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§
§
§
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BEFORE THE TEXAS
COMMISSION ON
ENVIRONMENTAL
QUALITY

**THE OFFICE OF PUBLIC INTEREST COUNSEL'S MOTION TO EXTEND
THE FILING DEADLINE AND SUPPLEMENTAL RESPONSE TO REQUESTS
FOR RECONSIDERATION**

TO THE HONORABLE MEMBERS OF THE TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY:

COMES NOW, the Office of Public Interest Counsel (OPIC) of the Texas
Commission on Environmental Quality (the Commission or TCEQ) and files this Motion
to Extend the Filing Deadline and Supplemental Response to Requests for
Reconsideration in the above-referenced matter.

OPIC has recently been made aware of a written comment, received in the Office
of the Chief Clerk on August 4, 2006, from Dale Leacock, which could potentially be
considered a request for reconsideration. In an abundance of caution, OPIC moves to
extend the filing deadline for OPIC, the Executive Director, and the Applicant to respond
to his letter. In advance of the extension, OPIC will treat Mr. Leacock's letter as a
previously unmarked request of reconsideration and provides the following analysis of
the request as a supplement to OPIC's timely filed response to reconsideration and
hearing requests filed on August 13, 2007.

Mr. Leacock states that he plans to build on a specific lot nearby the facility. His
request for reconsideration is based on concerns about air quality related to emissions

from the proposed facility. The health concerns are within the jurisdiction of the commission to address in the context of proceedings on this application. An evidentiary record, however, would be necessary for OPIC to make a recommendation to the commission as to whether the registration should be denied based on these concerns. He further requests an investigation, possibly due to concerns related to wind direction by the Executive Director. As described in OPIC's original filing, the Commission will not consider case-specific air modeling information when making a decision on an application for registration under a standard permit. See TEXAS HEALTH & SAFETY CODE §382.058(d). Accordingly, the OPIC cannot recommend that the commission grant Mr. Leacock's request for reconsideration.

Respectfully submitted,

Blas J. Coy, Jr.
Public Interest Counsel

By 

Christina Mann
Assistant Public Interest Counsel
State Bar No. 24041388
(512)239.6363 PHONE
(512)239.6377 FAX

CERTIFICATE OF SERVICE

I hereby certify that on August 15, 2007 the original and eleven true and correct copies of the Office of the Public Interest Counsel's Motion to Extend the Filing Deadline and Supplemental Response to Requests for Reconsideration were filed with the Chief Clerk of the TCEQ and a copy was served to all persons listed on the attached mailing list via hand delivery, facsimile transmission, Inter-Agency Mail or by deposit in the U.S. Mail


Christina Mann

MAILING LIST
CANYON LAKE READY MIX, INC.
TCEQ DOCKET NO. 2007-1000-AIR

FOR THE APPLICANT:

William P. Murphy, Owner
Canyon Lake Ready Mix, Inc.
1929 Canyon Bend
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Fax: (210) 658-0681

JD Kelley, General Manager
Murphy's Mobile Concrete
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FOR THE EXECUTIVE DIRECTOR:

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FOR OFFICE OF PUBLIC ASSISTANCE:

Bridget Bohac, Director
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Office of Public Assistance, MC-108
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FOR ALTERNATIVE DISPUTE

RESOLUTION:

Kyle Lucas
Texas Commission on Environmental Quality
Alternative Dispute Resolution, MC-222
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FOR THE CHIEF CLERK:

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REQUESTERS:

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TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

July 30, 2007

TO: Persons on the Attached Mailing List

**RE: Docket No. 2007-1000-AIR
Canyon Lake Ready Mix, Inc.
Request(s) filed on Permit No. 78844**

The above-referenced application and all timely filed hearing requests/requests for reconsideration on the above-referenced application will be considered by the commissioners of the Texas Commission on Environmental Quality (TCEQ) during the public meeting on **September 5, 2007**. The meeting will begin at 9:30 a.m. in Room 201S of Building E, at the commission's offices located at 12100 Park 35 Circle in Austin, Texas.

In accordance with commission rules, copies of the timely hearing requests/requests for reconsideration have been forwarded to the applicant, the Executive Director of the TCEQ, and the Public Interest Counsel of the TCEQ. Each of these persons is entitled to file a formal written response to the hearing requests/requests for reconsideration on or before 5:00 p.m. on **August 13, 2007**. Persons who have filed timely hearing requests/requests for reconsideration may file a formal written reply to these responses on or before 5:00 p.m. on **August 27, 2007**.

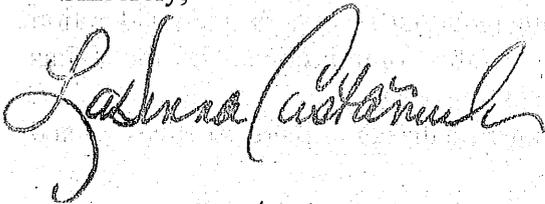
An original and 11 copies of any response or reply must be filed with the Chief Clerk of the TCEQ. The address of the Chief Clerk is: Office of Chief Clerk, ATTN: Agenda Docket Clerk, Mail Code 105, TCEQ, P. O. Box 13087, Austin, Texas 78711-3087 [Fax number (512) 239-3311]. On the same day any response is transmitted to the Chief Clerk, a copy must also be sent to the Executive Director, the Public Interest Counsel, the Director of the Office of Public Assistance, the Applicant and the requesters at their addresses listed on the attached mailing list. On the same day any reply is transmitted to the Chief Clerk, a copy must also be sent to the Executive Director, the Public Interest Counsel, the Director of the Office of Public Assistance, and other requesters and the applicant at their addresses listed on the attached mailing list.

The procedures for evaluating hearing requests/requests for reconsideration are located in 30 Texas Administrative Code (TAC) Chapter 55, Subchapter F (§§55.200-211) of the commission's rules. The procedures for the filing of responses and replies are located in 30 TAC Chapters 1 (§§1.10-11) and 55 (§55.209) of the commission's rules. Copies of these rules may be obtained by calling the Office of Public Assistance toll free at 1-800-687-4040.

The commissioners will not take oral argument or additional comment on this matter at the public meeting. Therefore, it is important to address the sufficiency of the requests in timely filed written responses and requesters' replies. At the public meeting, the commissioners may ask questions of the applicant, requesters, or TCEQ staff. The commissioners will make a decision on the request(s) during the meeting and will base that decision on the timely written requests, public comments, any written responses and replies, any responses to questions during the meeting, and applicable statutes and rules. Copies of all timely public comments and requests have been forwarded to the Office of Alternative Dispute Resolution to determine if informal, voluntary mediation might help resolve any dispute.

The attachment to this letter is intended to help you better understand how the TCEQ processes and evaluates hearing requests and requests for reconsideration. To obtain additional information, or to ask questions about anything in this letter, please call the TCEQ's Office of Public Assistance toll-free at 1-800-687-4040.

Sincerely,



LaDonna Castañuela
Chief Clerk

Enclosures: Copies of protestant correspondence to Applicant, Executive Director, Office of Public Interest Counsel, Office of Public Assistance and Alternative Dispute Resolution.

ATTACHMENT

Procedures Concerning Requests for Reconsideration and Requests for Contested Case Hearing

The purpose of this document is to describe commission procedures for evaluating requests for reconsideration and requests for contested case hearing. This document is not intended to be a comprehensive guide to public participation at the TCEQ.

The three commissioners determine the validity of requests for reconsideration and requests for contested case hearing and vote to grant or deny the requests during a public meeting. These public meetings are usually held every other Wednesday in Austin. Prior to the meeting, the following occurs:

- 1) the written requests are distributed to the executive director, the public interest counsel, and the applicant. These persons may file a response at least 23 days before the meeting;
- 2) the requester may then file a reply to the responses at least 9 days before the meeting. This is the requester's opportunity to address any deficiencies in the request that have been identified by TCEQ staff or the applicant. The requester must submit any information he or she wishes the commissioners to consider (ex: maps or diagrams showing requester's location relative to the applicant's proposed activities) by this deadline; and
- 3) the commissioners read the requests, the responses to requests, and the replies, before the public meeting. Then, during the public meeting, the commissioners vote to grant or deny the requests.

Requests for Reconsideration

A request for reconsideration must expressly state that the person is requesting that the commission reconsider the executive director's decision and state the reasons why the commission should reconsider the executive director's decision. The commission will consider a request for reconsideration at a scheduled public meeting and grant or deny the request.

Requests for Contested Case Hearing

A contested case hearing is an evidentiary proceeding, similar to a hearing in civil court. The law allows for holding a contested case hearing on certain types of applications.

A valid request for a contested case hearing must:

- 1) demonstrate that the requester is an "affected person" with a "personal justiciable interest" related to a legal right, duty, privilege, power or economic interest which would be affected by the application in a manner not common to the general public;
- 2) if the request is made by a group or association, identify one or more members who have standing to request a hearing, and the interests the group or association seeks to

- protect;
- 3) expressly request a contested case hearing;
- 4) raise disputed issues of fact that are relevant and material to the commission's decision on the application which were raised during the comment period and not withdrawn prior to the filing of the Executive Director's Response to Comment; and
- 5) include any other information as specified in public notices.

The commission is authorized to protect human health and safety, and natural resources. The commission cannot address other matters outside the commission's authority, such as the effect of the existence of a proposed facility on nearby property values.

When the commissioners deny hearing requests, they often proceed to vote on approval or denial of the application. Alternatively, they may remand the application to the executive director for final action. If a hearing request is granted and the application is referred to the State Office of Administrative Hearings (SOAH), the commissioners will specify a list of issues which will be the subject of the hearing and an expected date for the SOAH judge's proposal for decision. The SOAH judge will conduct the hearing and submit a proposal to the commission to approve or deny the application.

The Alternative Dispute Resolution Office may contact requesters to determine their interest in informal discussions with the permit applicant and a mediator.

By necessity this document gives a very general description of commission procedures. If you have any questions, please call OPA toll-free at 1-800-687-4040.

MAILING LIST
CANYON LAKE READY MIX, INC.
DOCKET NO. 2007-1000-AIR; PERMIT NO.78844

FOR THE APPLICANT:

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FOR ALTERNATIVE DISPUTE

RESOLUTION:

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FOR THE CHIEF CLERK:

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*See attached for a complete list of Requesters
and Commenters*

REQUESTER(S)

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CANYON LAKE TX 78133-5542

BARRY HARGROVE
642 HIGHLAND TERRACE DR
CANYON LAKE TX 78133-5267

ANA & ROBERT BARTLETT
1041 BLUE WATER DR
CANYON LAKE TX 78133-5377

PAUL D HUNSUCKER
1409 HIGHLAND TERRACE DR
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JOHN P DONAHUE
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DALE LEACOCK
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ROBIN NAVA
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JACKIE M LOVELL
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MANFRED J NIEDER
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INTERESTED PERSON(S)

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3491 LARIAT RDG
CANYON LAKE TX 78132-2016

GEORGE & JEANNE WALKER
PO BOX 2022
CANYON LAKE TX 78133-0007

MR K & MRS K BOLT
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DAVIS & INES BRADLEY
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DAVID BRAY
720 HIGHLAND TERRACE DR
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