

Buddy Garcia, *Chairman*  
Larry R. Soward, *Commissioner*  
Bryan W. Shaw, Ph.D., *Commissioner*  
Glenn Shankle, *Executive Director*



## TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

*Protecting Texas by Reducing and Preventing Pollution*

December 20, 2007

TO: Persons on the attached mailing list.

RE: Transit Mix Concrete & Materials Company  
Permit No. 80840

### **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any action is taken on this application unless all requests for contested case hearing or reconsideration have been withdrawn before that meeting.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 standard permit, and executive director's preliminary decision are available for viewing and copying at the TCEQ central office, the TCEQ Fort Worth regional office, and at Kaufman County Library, 3790 South Houston Street, Kaufman, Kaufman 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

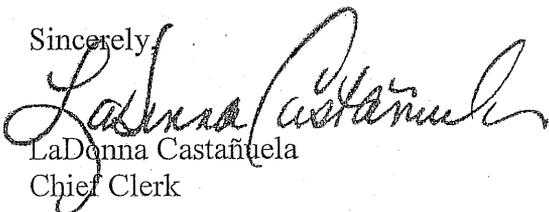
### **Processing of Requests.**

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/mr

Enclosures

MAILING LIST  
for  
Transit Mix Concrete & Materials Company  
Permit No. 80840

FOR THE APPLICANT:

Matthew Hallmark, Environmental Manager  
Transit Mix Concrete & Materials Company  
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FOR THE CHIEF CLERK:

LaDonna Castañuela  
Texas Commission on Environmental Quality  
Office of Chief Clerk MC-105  
P.O. Box 13087  
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INTERESTED PERSONS:

See attached list.

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APPLICATION BY  
  
TRANSIT MIX CONCRETE  
& MATERIALS COMPANY  
CONCRETE BATCH PLANT  
PERMIT NO. 80840  
KAUFMAN, KAUFMAN COUNTY

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BEFORE THE

2007 DEC 13 PM 1:02

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY  
CHIEF CLERKS OFFICE

ENVIRONMENTAL QUALITY

### EXECUTIVE DIRECTOR'S RESPONSE TO PUBLIC COMMENT

The Executive Director of the Texas Commission on Environmental Quality (the commission or TCEQ) files this Response to Public Comment (Response) on the Standard Permit application and Executive Director's preliminary decision.

As required by Title 30 Texas Administrative Code § 55.156 [30 TAC § 55.156], before an application is approved, the Executive Director 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: Texas State Senator Robert Deuell, Texas State Representative Betty Brown, Bryan W. Chambers, Dr. Brent Gentzel, Curtis Snow, City Manager of the City of Kaufman, Jennifer McBride, Lana McCallie, Roy Gardner, Karel Holloway, Todd Williams, Superintendent of Kaufman Independent School District, and Anne Glasscock, President of the Kaufman Chamber of Commerce. In addition, a petition signed by twenty people was received. This Response addresses all timely public comments received, whether or not withdrawn. If you need more information about this permit application or the permitting process please call the TCEQ Office of Public Assistance at 1-800-687-4040. General information about the TCEQ can be found at our website at [www.tceq.state.tx.us](http://www.tceq.state.tx.us).

### BACKGROUND

#### Description of Facility

Transit Mix Concrete & Materials Company has applied to the TCEQ for a Standard Permit under Texas Clean Air Act (TCAA), §382.05195. This permit will authorize the applicant to construct a concrete batch plant (CBP). The facility is located at 3372 US Highway 175 Kaufman, Kaufman County. Contaminants authorized under this permit include particulate matter including (but not limited to) aggregate, cement, road dust, and particular matter less than 10 microns in diameter.

#### Procedural Background

Transit Mix applied to the TCEQ for an Air Quality Standard Permit for Concrete Batch Plants authorization to construct a CBP. The TCEQ received the permit application on January 8, 2007, and declared it administratively complete on January 23, 2007. The Notice of Receipt and Intent to Obtain an Air Quality Permit (public notice) for this permit application was published on February 1, 2007, in the *The Kaufman Herald*. The Notice of Application and Preliminary Decision (NAPD)

was published on May 24, 2007, in the *The Kaufman Herald*. The public meeting was held on June 26, 2007 in Kaufman, and a second public meeting was held on October 16, 2007, also in Kaufman. The public comment period ended on October 16, 2007. Since this application was administratively complete after September 1, 1999, this action is subject to the procedural requirements adopted in accordance with House Bill 801, 76th Legislature, 1999.

## COMMENTS AND RESPONSES

### COMMENT 1: Air Quality and Health Concerns

Commenters express concern that the particulate matter and other air emissions from the proposed facility will adversely affect public health and air quality (McCallie, Gardner, Gentzel, Williams, Glasscock, Holloway, McBride, Chambers). Commenters are specifically concerned about adverse effects on children attending a dance studio within 300 feet of the proposed site, those living within 440 yards who have existing health problems, the nearby city water treatment plant, and nearby Kaufman County Jail prisoners. They also express specific concern for the 4000 Kaufman households residing directly downwind from the proposed site (Senator Deuell, Representative Brown, Gardner, Holloway, Williams, Glasscock, Gentzel, McCallie, McBride, Chambers, Snow).

**RESPONSE 1:** The technical requirements contained in the standard permit are designed to ensure that facilities operating under this Standard Permit are protective of human health and the environment. The TCEQ developed the permit through an extensive protectiveness review that stipulated when a CBP was operating in accordance with the requirements and conditions of the standard permit that all state and federal air quality standards should be met.

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 per cubic meter) for an one-hour period and  $200 \mu\text{g}/\text{m}^3$  for a three-hour period at the property line. 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 ( $\text{PM}_{10}$ ;  $150 \mu\text{g}/\text{m}^3$  for a 24-hour period and  $50 \mu\text{g}/\text{m}^3$  annually<sup>1</sup>) 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  $\text{PM}_{10}$  were the only air contaminants of concern from these plants, the PM and  $\text{PM}_{10}$  ground-level concentration standards were used to determine protectiveness as mentioned above.

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<sup>1</sup> The annual standard was applicable at the time the standard permit was created, but has since been repealed. The 24-hour standard for  $\text{PM}_{10}$  has not been repealed.

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. 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.

In addition to protecting health, the NAAQS are 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 the terms and conditions of the permit.

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](http://www.tceq.state.tx.us) (under Publications, search for document no. 278).

**COMMENT 2: Location of Facility**

Commenters express concerns regarding location of the site and its close proximity to the Kaufman City limits (McCallie, Gardner, Gentzel, Williams, Glasscock, Holloway, McBride, Chambers). Commenter states there are other sites located in Kaufman County that are more appropriate for this type of facility. The facility should be located in an industrial zone and not in an area where it will be surrounded by existing and future residential areas. Commenters further state that although this site is currently located in the Extraterritorial Jurisdiction, this area is being considered for annexation where the City's zoning laws would apply (Snow).

**RESPONSE 2:** The TCEQ's jurisdiction is established by the TCAA and is limited to the issues set forth in statute. Accordingly, the TCEQ does not have jurisdiction to consider facility location choices made by an applicant when determining whether to approve or deny a permit application. Zoning and land use are beyond the authority of the TCEQ for consideration when reviewing air applications and such issues should be directed to local officials. 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 3: Water Quality**

Commenters are concerned about the effects the facility will have on water quality, specifically the tributaries that feed into the Trinity River, Kings Creek or Cedar Creek Lake (McBride, Chambers).

**RESPONSE 3:** This is an air quality permit application and water quality is outside the scope of this review. 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 other media, such as water quality.

**COMMENT 4: Regulations**

Commenter expresses concern that there are no regulations in place that would require the operator to pave all roads and parking surfaces, maintain a properly clean site and to ensure the operation will not be a nuisance or health hazard to the surrounding residential and retail areas (Snow).

**RESPONSE 4:** The standard permit requirements for permanent plants are 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) be paved with a cohesive hard surface that can be maintained intact and be cleaned. All batch truck and material delivery trucks shall remain on paved surface when entering, conduction primary function, and leaving the property. Other traffic areas on site must either be paved, covered with roofing shingles, tire chips, treated with dust-suppressant chemicals, or watered. The standard permit also requires that spillage of materials used in the batch shall be immediately cleaned up and contained or dampened so that dust emissions are minimized.

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. See Response 1 for more information.

**COMMENT 5: Dust Control**

Commenter expresses concern that there are no applicable building codes, building standards or zoning laws that would require the operator to build a site that would minimize dust from leaving the site (Snow).

**RESPONSE 5:** The TCAA and TCEQ rules require an evaluation of air quality permit applications to determine whether the facility will utilize Best Available Control Technology (BACT) and whether adverse effects to public health, general welfare, or physical property may result from a facility's proposed emissions. The standard permit was developed with consideration of BACT and predicted health and welfare impacts. BACT is the implementation of 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 drop 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 6: Comprehensive Plan and Future Land Use Plan**

Commenter expresses concern that the use of the site being considered for a permit is in conflict with the City of Kaufman's Comprehensive Plan and Future Land Use Plan (Snow).

**RESPONSE 6:** The issuance of an air permit authorization would not override any local laws or ordinances which may require further review by local authorities. However, the TCEQ does not have zoning authority nor does it make determinations on impacts to surrounding land values.

**COMMENT 7: Compliance History**

Commenter asks how many violations the company has at all its sites in the past, to better understand how this facility will affect the neighborhood (Snow).

**RESPONSE 7:** 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). The compliance history for the company and site is reviewed for the five-year period prior to the date the permit application was received.

A company and site may have one of the following classifications and ratings:

High: rating < 0.10

Average by Default: rating 3.01

Average: 0.10 < rating < 45

Poor: 45 < rating

This site has a rating of 3.01 and a classification of Average by Default. The company rating and classification, which is the average of the ratings for all sites the company owns, is 2.77 and Average. The compliance history is always available to the public. The compliance history may be viewed on the TCEQ website at [http://www.tceq.state.tx.us/compliance/enforcement/history/get\\_list.html](http://www.tceq.state.tx.us/compliance/enforcement/history/get_list.html)

CHANGES MADE IN RESPONSE TO COMMENT

No changes have been made to the Executive Director's preliminary determination that the application meets the requirements for permit issuance.

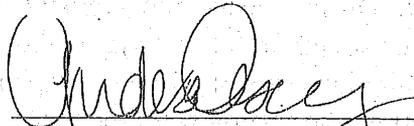
Respectfully submitted,

Texas Commission on Environmental Quality

Glenn Shankle, Executive Director

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REPRESENTING THE  
EXECUTIVE DIRECTOR OF THE  
TEXAS COMMISSION ON  
ENVIRONMENTAL QUALITY

CHIEF CLERKS OFFICE

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COMMISSION  
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