

NSP
61898

TEXAS
COMMISSION
ON ENVIRONMENTAL
QUALITY

2008 FEB 21 PM 2:38

CHIEF CLERKS OFFICE

February 19, 2008

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

PM OPA
H FEB 27 2008
BY EB

Re: Application of Block Creek Concrete Products LLC for Air Quality
Standard Permit Registration (Kendall County-Reg. No. 83958)

Dear Commission:

I hereby request a public meeting and contested case hearing regarding the above-referenced application.

I reside at 430 Old Highway No. 9, within 440 yards of the plant. My daytime phone number and fax number are listed below. This concrete batch plant has been in operation for several years prior to the present application. In other words, the business has been operating in violation of your regulations. I believe that the application for an air quality standard permit has been filed only because a complaint was lodged about storm water issues involving the business.

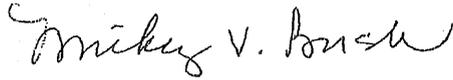
Dust from the plant is a constant problem. This dust is visible from my house. These emissions interfere with my use of my property. I raise Dexter cattle and these animals drink out of Block Creek. Block Creek Concrete Products LLC has situated its business very near the creek and undoubtedly its emissions affect water quality in the creek. In the last year two of my cows have suffered aborted pregnancies. I suffer from allergies and have found it difficult to sit on my own front porch on dry, windy days because of the emissions from the concrete plant. I have a hay field which is adversely affected by the blowing dust and concrete particles. I raise hay for my cows so therefore it is also on the hay that they eat.

While I understand that the current application concerns only air quality, I also understand that there is an ongoing storm water investigation involving this same business. I have observed that the water in my section of Block Creek, just downstream from Block Creek Concrete Products, is often milky, and that from time to time I have noticed actual small pieces of concrete flow down the creek. From my house I can see that the plant is built next to the creek, and it is obvious to me that in times of flood, waste products and chemicals used in the concrete-making process will flow into Block Creek. I have several neighbors downstream who are concerned about this as well.

MW

Please notify me as to the date of any public meeting and/or contested case hearing.
If you need any further information from me, I am certainly willing to provide it.

Sincerely,



Mickey V. Bush
430 Old No. 9
Comfort, Texas 78013
Phone: 830-995-3016
Fax: 281-208-3393

H
RFR

OPA

JUL 07 2008

BY BP

NSR
61898

The Davis Law Firm

PO Box 2349
Boerne, TX. 78006
Fax: 830-331-9387
Phone: 830-331-9386
davislawfirm@gvtc.com

Joe M. Davis
Board Certified
Civil Trial Law since 1989

With Emphasis in Real Estate
and Probate Litigation

CHIEF CLERKS OFFICE

2008 JUL -3 PM 12:03

TEXAS
COMMISSION ON
ENVIRONMENTAL
QUALITY

July 3, 2008

2008-1009-AIR

Ms. LaDonna Castanuela
Chief Clerk @TCEQ, MC-105
PO Box 13087
Austin, Texas 78711

Via telecopier: 512 239-3311

Re: Block Creek Concrete Products LLC, Permit No. 83958
Interested Person: Dennis Spinelli, 520 Old No. 9 Hwy, Comfort, Texas 78013
Attorney for Interested Person: Joe M. Davis, PO Box 2349, Boerne Tx 78006

Dear Ms. Castanuela:

I request a contested case hearing and/or reconsideration of the Executive Director's decision in respect to the above referenced permit number. Dennis Spinelli is an affected person. He owns property immediately adjoining to the property operated by Block Creek Concrete Products LLC. Mr. Spinelli is a person permanently residing within 440 yards of the Concrete Batch Plant in issue.

The basis of the appeal of the Executive Director's decision is the timeliness of the application itself. The applicant has applied to the TCEQ for an Air Quality Standard Permit, Permit No. 83958, which would authorize the construction of a permanent specialty Concrete Batch Plant (CBP) under a standard permit.

The undisputed fact is that the applicant has been operating such a plant now for a significant amount of time in violation of all permitting requirements. To issue a construction permit now, in light of the fact that the facility is complete and has been operating without proper permitting, is to defeat the underlying principle under the law. Now that the applicant has spent substantial money in the construction of the facility, the public policy may well weigh in favor of the applicant and against the position of the interested party. Under the equitable principles, including the "Clean Hands Doctrine", the existing facility should not be allowed to operate under the requested standard permit, but rather rebuilt under current standards and guidelines and under TCEQ regulatory supervision. To allow otherwise, is to leave the harm unpunished.

MW

Further, the operations prior to the actions of TCEQ were emitting particular matter in excess of permanent levels and were discharging pollutants into the soil and water.

In such respect, the undersigned requests that this matter be deferred to the State Office of Administrative Hearings, and that the SOAH judge order an inspection of the applicant's premises, including soil, water and air testing, to determine the extent of the pollution caused by the operation of the facility.

Further, Spinelli requests that the commission refer this matter to the agency's Alternative Dispute Resolution Program for mediation between the disputing parties prior to a contested case hearing being convened.

Sincerely,



Joe M. Davis,
Attorney at Law

2008 JUL -3 PM 12:03
CHIEF CLERKS OFFICE

TEXAS
COMMISSION
ON ENVIRONMENTAL
QUALITY

JMD/ns

Dennis Spinelli
520 Old Highway No. 9
Comfort, Tx 78013

NSP
61893

TEXAS
COMMISSION
ON ENVIRONMENTAL
QUALITY

2008 FEB 22 PM 3:18
CHIEF CLERKS OFFICE

February 20, 2008

Office of the Chief Clerk, MC-105
Texas Commission of Environmental Quality
P.O. Box 13087
Austin, Tx 78711-3087

PM OPA
H FEB 25 2008
BY *PL*

Ref: Application of Block Creek Concrete Products LLC for Air Quality
Standard Permit Registration (Kendall County-Reg. No. 83958)

To whom it may concern:

I am hereby requesting a public meeting and contested case hearing regarding the above referenced application.

I am a resident at 520 Old Highway No. 9, within 440 yards of the plant. My day time phone number and fax number are as listed 830-249-9563 and fax number is 830-249-2859 and cell number 210-527-7715.

This concrete plant has been illegally operating for several years prior to the present application. I believe that the application for an air quality standard permit has been filed only because a complaint was lodged about storm water issues involving the business .

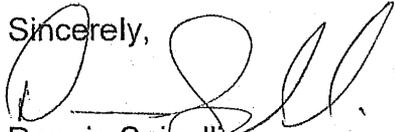
Six years ago I purchased my home and property because of the unparalleled quality of the air and water. Today I find myself within Three Hundred yards of a noisy, polluting, industrial operation that aggravates my allergies and poses a health threat to me and my family, livestock and pets. I have had to give up all plans to build a larger home and I am considering moving out of my home, due to the health issues and air and noise pollution and it is to my determinate that I am unable to sell my property, because future buyers will not consider these acceptable health risk, I am also concerned with the pollutants they may find there way to Block Creek it would be a crime to pollute such a pristine creek that runs all year.

MW

Several of my immediate neighbors who are not at 440 feet from this plant and can not legally complain, has asked me to let you know, that we all are concerned about this matter.

Please notify me of the date and time of any meetings regarding the above. My e-mail address is dennis @boernevistro.com.

Sincerely,



Dennis Spinelli

Cc: Attn: Bernice Back and Steve Brown
TCEQ Regional Office
14250 Judson Rd.
San Antonio, Tx 78233

February 23, 2008

*NSR
6/8/98*

PM OPA
H FEB 27 2008

BY *AL*

2008 FEB 26 PM 2:50
CHIEF CLERKS OFFICE

TEXAS
COMMISSION
ON ENVIRONMENTAL
QUALITY

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

Re: Application of Block Creek Concrete Products LLC for Air Quality Standard Permit Registration (Kendall County-Reg. No. 83958)

Dear Commission:

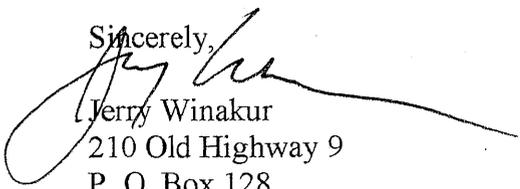
I hereby request a public meeting and contested case hearing regarding the above-referenced application. I reside at 210 Old Highway No. 9, Comfort (Kendall County). My daytime phone number and e-mail address are indicated below.

My 102-acre ranch is a wildlife refuge listed on the Texas Parks and Wildlife "Heart of Texas Wildlife Trail—West." I have worked very hard to preserve the natural habitats on my property, including my section of Block Creek, which is downstream from the business seeking the permit. I have developed and sustained a wildlife management plan over several years. I am very concerned about air quality affecting the wildlife on my property, as well as about the related issue of water quality in Block Creek. Numerous species of birds and other native animals drink out of the creek and eat the plant matter that may be adversely affected by air emissions, including particulate matter, produced by this business.

It is my understanding that the above-referenced application was filed only after a complaint was received about this ongoing business, and that the concrete batch plant has been in operation for several years---in violation of the law---before this application was filed. I am therefore concerned that the owner has not made environmental concerns a priority in the operation of his business. This does not bode well for future compliance with your regulations.

Please notify me as to the date of any public meeting and/or contested case hearing.

Sincerely,



Jerry Winakur
210 Old Highway 9
P. O. Box 128
Comfort, Texas 78013
(830) 995-5217
jwinakur@aol.com

mw

152
6/18/08

RECEIVED BY OPA
TRACKING # _____
ASSIGNED TO: _____

JUN 19 2008

RECEIVED

JUN 19 2008

June 16, 2008

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

DUE DATE: _____

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY
Commissioner's Office

RE: Request for Contested Case Hearing and Reconsideration of the Executive Director's decision in accordance with your letter dated June 4, 2008 in regards to:

**Block Creek Concrete Products, LLC
Permit No. 83958**

OPA
JUN 18 2008
RFIR
BY EB

CHIEF CLERKS OFFICE

2008 JUN 20 PM 2:13

TEXAS
COMMISSION
ON ENVIRONMENTAL
QUALITY

Dear Ms. Castanuela:

In regard to the application of Block Creek Concrete Products, LLC for an air quality permit, I am requesting the following:

- A contested case hearing
- A reconsideration of the Executive Director's Decision

I am a property owner approximately 2.5 miles downstream from Block Creek Concrete Products. Block Creek flows through my property for approximately one-half mile and proceeds to empty into the Guadalupe River a few miles further on.

My property, Canyon Wren Ranch, is a designated eco-tourist site by Texas Parks and Wildlife ("Heart of Texas Wildlife Trial—West, Site #81) and it has been set aside for its pristine riparian and grassland prairie habitat for future generations of Texans and visitors to enjoy. In addition, my ranch has been designated a part of the "Quail Restoration Project in Texas" by the National Audubon Society.

In two separate letters to Ms. Lyn Bumgardner dated February 23, 2008 and March 3, 2008 I detailed my finding of malformed concrete or "slag" littering the banks of Block Creek on my property (see attached photographs). I also pointed out to her that the TCEQ investigated Block Creek Concrete Products on 12/27/07 and found violations of 30TAC Chapter 281.25 (a)(4) by operating a concrete batch plant without a permit when a permit is required.

In addition, TCEQ investigated (#608774) Block Creek Concrete Products LLC on 11/12/07 for compliance with STORMWATER run-off issues and found that this business—which operates in the flood plain of Block Creek—was found to have (1) "fiberglass exposed to storm water that is on the ground," (2) "water

mw

and concrete slurry" on the ground, and (3) a "waste pile" of concrete and other products also in the flood plain of Block Creek.

As a result of these findings—which have directly affected the water quality in my downstream portion of Block Creek—I am filing this request for a contested case hearing and a reconsideration of the Executive Director's decision as an "affected" person.

The negative impact of the alkaline pH materials and heavy metals present in ill-formed concrete and/or "slag" on sensitive plant and animal life has been well-documented. So has the negative effect of fiberglass on the respiratory and gastrointestinal tracts of those exposed to it. On March 3, 2008 I sent Ms. Bumgardner a sample of this material taken from the banks of Block Creek on my property and asked her to have it analyzed. I have yet to hear anything from her or TCEQ in this regard.

According to the letter sent to me dated June 4, 2008 by TCEQ, this agency:

*has responsibility for the environmental protection of all media, **including water**...the secondary NAAQS are established to protect public welfare and the environment...All facilities operating under an air permit must comply with TCAA and all applicable TCEQ rules and regulations...**This (air) permit does not authorize the discharge of pollution into a body of water...***

This same letter states the following:

*Individuals are encouraged to report any concerns about...suspected noncompliance with the terms of any permit or other environmental regulation...**Citizen-collected evidence may be used in such an action**...Under the citizen-collected evidence program, individuals can provide information on possible violations of environmental law and the information can be used by TCEQ to pursue enforcement.*

Finally, I ask the Executive Director to ponder a number of questions as he gives consideration to my above requests, because I am not asking them just for myself, but for all Texans concerned with the quality of our environment:

--Why was Block Creek Concrete Products allowed to operate **for years** without any permits? Were any penalties or fines levied for this?

--Why was Block Creek Concrete Products allowed to continue to operate after it finally applied for an "air permit" but before such a permit was issued and appropriate air pollution devices were installed? Were any penalties or fines levied for this?

--Why was Block Creek Concrete Products allowed to continue to operate after it was cited for **violations of stormwater runoff issues** (Investigation # 608774) on 11/12/07? Were any penalties or fines levied for this?

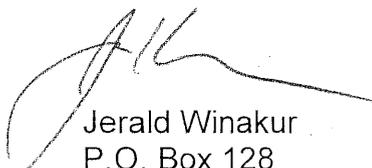
--Why is Block Creek Concrete Products operating **today** in the flood plain of a major tributary of the Guadalupe River--a tributary that is subject to frequent high flood waters that will carry the dust, concrete, slag, fiberglass and other pollutants and byproducts from this plant directly into a river that feeds into Canyon Lake and is ultimately the source of drinking water for thousands of Texans?

--Do TCEQ inspectors know what the regulations and laws passed by the legislature of the State of Texas are in regard to the inspection of concrete batch plants, and what the applicable penalties are for violations under these laws?

It is disturbing to me, as a citizen, a taxpayer and a person concerned with the quality of our environment, that I have received nothing but "form" responses to my several written complaints and numerous telephone calls to the Commission. Despite my sending samples of the slag/concrete I found along my creek bed, no one from the Commission has come to my property. It is the Commission's responsibility to investigate complaints and enforce applicable law, but I feel that it has shown little or no interest in this case. This experience has made me wonder whether the Commission is indeed an independent agency committed to protecting the environment or just a friend of industry, slapping it on the wrists occasionally but unwilling to take a firm stand when necessary. Certainly we Texans deserve better, and I intend to remain vigilant in order that the laws passed by our legislature are enforced by those charged to do so.

Once again, I request both a contested case hearing and a reconsideration of the Executive Director's decision.

Sincerely,



Jerald Winakur
P.O. Box 128
Comfort, Texas 78013
830-995-5217
210-912-5962
Fax: 210-616-0449

Attachments: Photographs of ill-formed concrete/slag along Block Creek approx. 2.5 miles downstream from Block Creek Concrete Products, LLC.

Copies to:

Ms. Lyn Bumgardner
TCEQ
14250 Judson Road
San Antonio, Texas 78233-4480

Buddy Garcia, Chairman
TCEQ
P.O. Box 13087
Austin, Texas 78711-3087

Glenn Shankle, Executive Director
TCEQ
P.O. Box 13087
Austin, Texas 78711-3087

Alicia Lee, Staff Attorney
Environmental Law Division
P.O. Box 13087, MC 173
Austin, Texas 78711-3087

Michael K. Stewart, President
Texas Aggregates and Concrete Association
900 Congress Avenue
Suite 200
Austin, Texas 78701

Jan Wrede
Director
Cibolo Nature Center
140 City Park Road
Boerne, TX 78006

Andrew C. Kasner, Ph.D.
Director of Bird Conservation
Deputy Director
Audubon Texas
10750 Pleasanton Road
San Antonio, Texas 78221

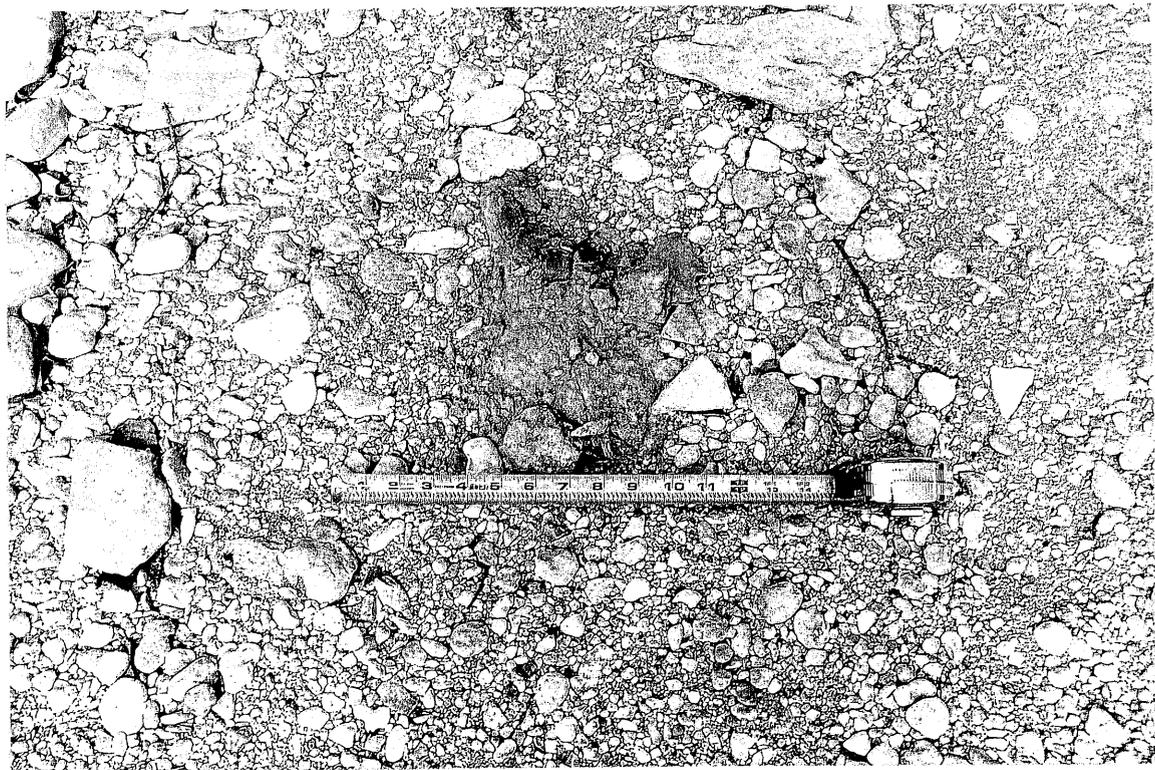
Senator Jeff Wentworth
925 North Frost Center
1250 NE Loop 410
San Antonio, Texas 78209

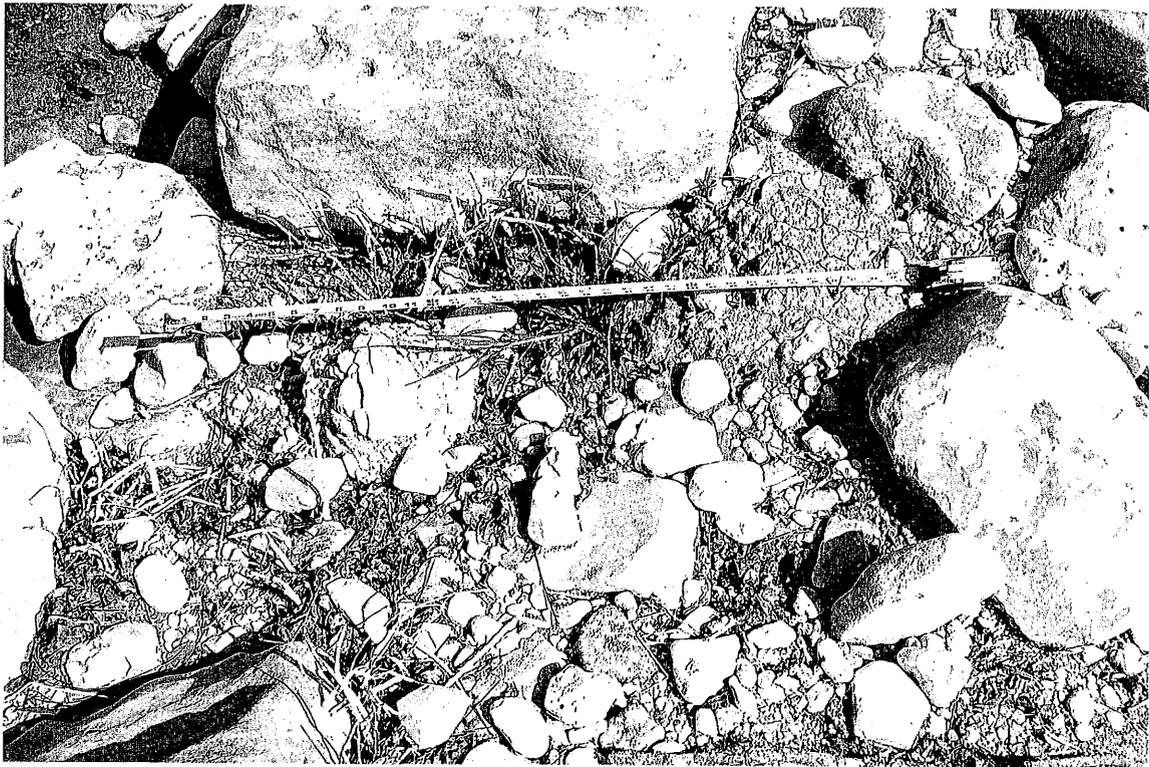
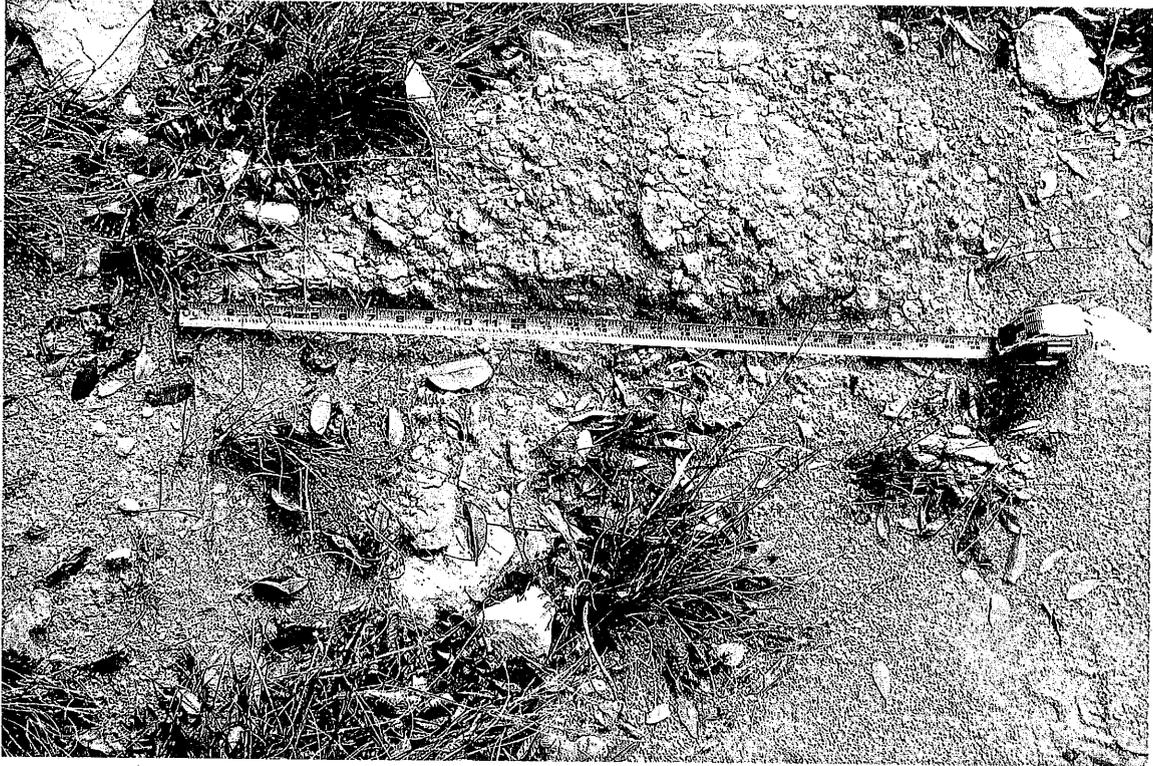




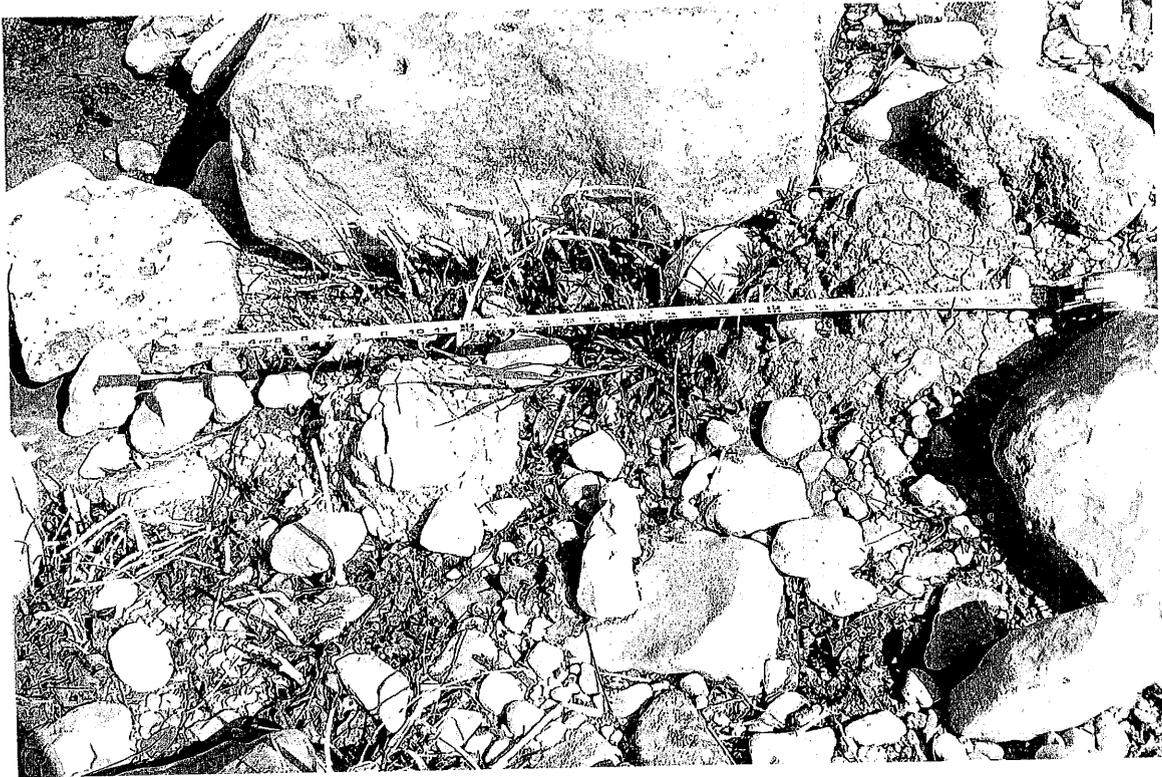


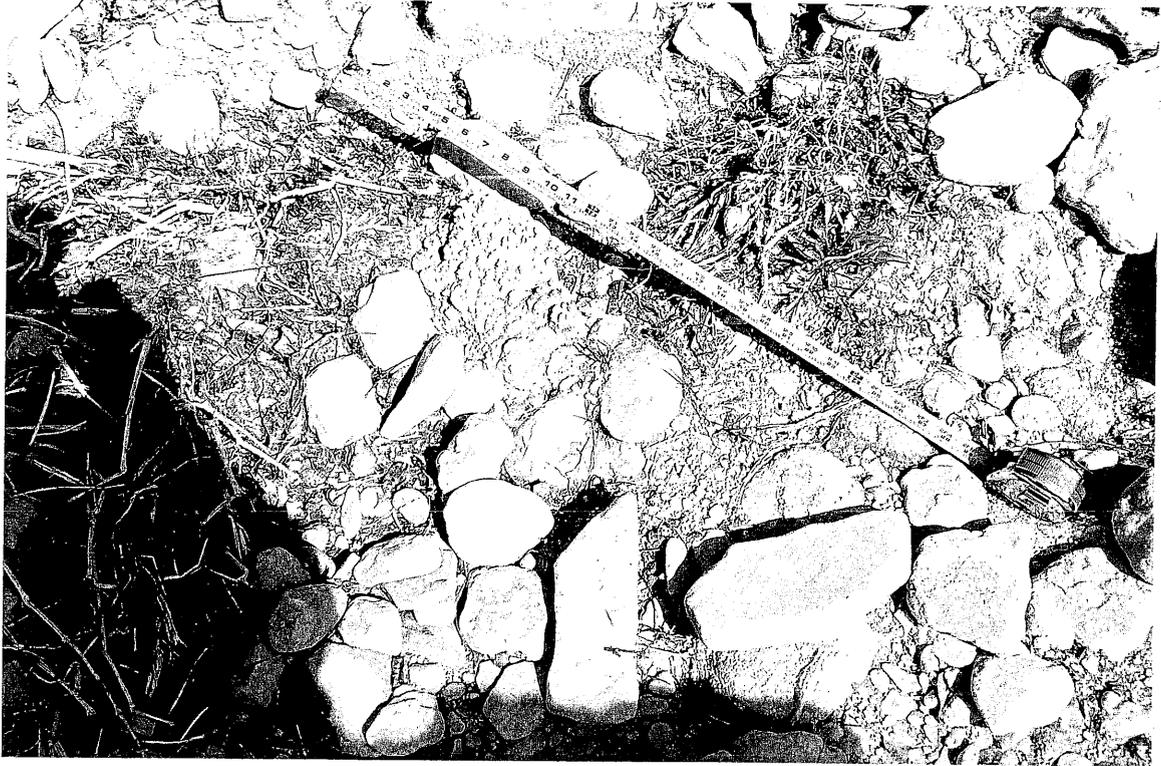












June 16, 2008

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

H
RFR
BY EB
OPA
JUN 20 2008

NSR
L18018

2008 JUN 19 PM 2:52
CHIEF CLERKS OFFICE

TEXAS
COMMISSION
ON ENVIRONMENTAL
QUALITY

RE: Request for Contested Case Hearing and Reconsideration of the Executive Director's decision in accordance with your letter dated June 4, 2008 in regards to:

**Block Creek Concrete Products, LLC
Permit No. 83958**

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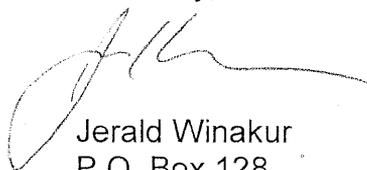
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Jerald Winakur
P.O. Box 128
Comfort, Texas 78013
830-995-5217
210-912-5962
Fax: 210-616-0449

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Copies to:

Ms. Lyn Bumgardner
TCEQ
14250 Judson Road
San Antonio, Texas 78233-4480

Buddy Garcia, Chairman
TCEQ
P.O. Box 13087
Austin, Texas 78711-3087

Glenn Shankle, Executive Director
TCEQ
P.O. Box 13087
Austin, Texas 78711-3087

Alicia Lee, Staff Attorney
Environmental Law Division
P.O. Box 13087, MC 173
Austin, Texas 78711-3087

Michael K. Stewart, President
Texas Aggregates and Concrete Association
900 Congress Avenue
Suite 200
Austin, Texas 78701

Jan Wrede
Director
Cibolo Nature Center
140 City Park Road
Boerne, TX 78006

Andrew C. Kasner, Ph.D.
Director of Bird Conservation
Deputy Director
Audubon Texas
10750 Pleasanton Road
San Antonio, Texas 78221

Senator Jeff Wentworth
925 North Frost Center
1250 NE Loop 410
San Antonio, Texas 78209

