

July 26, 2008

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

2008 AUG -4 AM 11:24
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
Docket No. 2008-1009-AIR**

Dear Ms. Castanuela:

This is a follow-up letter to you after my initial one dated June 16, 2008 at which time I requested the above hearing and reconsideration and after which you sent me your letter of July 11, 2008.

In regard to the above upcoming public meeting scheduled for August 20, 2008, I am enclosing the below-listed documents to be entered into the proceedings and reviewed by the Commission for their consideration:

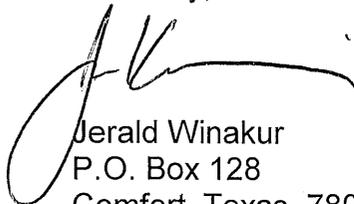
--My letter to Ms. Joy Thurston-Cook dated 7/26/08 in response to her letter to me July 23, 2008 in reference to the results of a TCEQ investigation.

--My letter to Mr. David K. Langford in response to his letter to me and to you dated July 21, 2008.

It is of the utmost importance that these materials be made available to Commission members in advance of, or at the time of this August 20 meeting. I will not be in attendance as I have had a long-standing commitment to be out of the State on that date that I cannot change.

I thank you in advance for your help in getting this accomplished.

Sincerely,



Jerald Winakur
P.O. Box 128
Comfort, Texas 78013
830-995-5217; 210-912-5962

July 26, 2008

Ms. Joy Thurston-Cook
Water Section Work Leader
TCEQ
14250 Judson Road
San Antonio, Texas 78233-4480

RE: Complaint Investigation Incident No.: 111383
Block Creek Concrete Products, 444A Old Hwy No. 9, Comfort (Kendall
County) Texas, RN105469787, TCEQ Additional ID: TXR05X060,
Investigation No. 638787

Dear Ms. Thurston-Cook:

Thank you for your letter of July 23, 2008 in which you send to me a "final report" of an investigation made referenced above.

However, I am confused. I sent a sample of what I felt was concrete debris or slag from my creek bed on March 3, 2008, to Ms. Lyn Bumgardner. I received no response for over 3 months, and then on 6/20/08 I was told by you that the sample was not analyzed (and presumably discarded) because I did not follow your designated procedure for "citizen collected evidence." You attached information about how one properly submits "citizen collected evidence" in your email to me on June 20, 2008.

However, I did not submit another sample. So I must ask: where did this evidence come from and who submitted it?

Did TCEQ send someone to collect evidence in my creek bed unbeknownst to me? Or was it submitted by another as yet unidentified third party?

Because of these open questions, I cannot accept the conclusions of your investigation. There are literally dozens of what appear to be concrete slag deposits along my creek bed and a single sample is certainly not representative of these deposits—especially when the source of the sample is in question.

If TCEQ wants to finally go on the record about the material found in my creek bed, they should be willing to do a proper investigation and obtain multiple samplings at a time that I, the landowner, can be present to point out the various sites of these deposits.

Once again, I request that (1) TCEQ do a proper investigation regarding the issues discussed above, and (2) that TCEQ provide me with the "corrective action plan" that was to be filed by Block Creek Concrete Products with your office in response to your "Notice of Violation" referencing storm water runoff

problems ascribed to this entity in your report of December 27, 2007.
(Investigation #608774, Incident # 99916)

I also want to be apprised if TCEQ has made a follow-up investigation at Block Creek Concrete Products since January 21, 2008, the due date for the "Corrective Action Plan" to be submitted to your agency and a report as to what this follow-up investigation revealed.

As you know, TCEQ has scheduled a public meeting on this issue (**Docket No. 2008-1009-AIR, Permit No. 83958**) on August 20, 2008, and your prompt, thorough investigation as well as your response to the questions raised in this letter will be essential to the outcome of this hearing.

Sincerely,

Jerald Winakur
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Mr. David K. Langford
Vice President, Emeritus
Texas Wildlife Association
PO Box 1059
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July 25, 2008

Mr. David K. Langford
Vice President, Emeritus
Texas Wildlife Association
P.O. Box 1059
Comfort, TX 78013

RE: Block Creek Concrete Products, LLC, Permit No. 83958
Docket No.: 2008-1009-AIR

Dear David:

Thank you for sending me a copy of your letter dated 7/21/08 to the Office of Chief Clerk of the Texas Commission on Environmental Quality.

I want to begin by saying how much I appreciate the emails and attachments you have been sending to me about the work of your organization, and your concerns about environmental quality issues throughout our state. I applaud your efforts on behalf of all Texans.

I find it unfortunate, however, that in your letter you have resorted to unfair categorizations designed to create divisiveness between folks like you and me: inexperienced "urbanites" versus poor, put upon, "rural farmers." By doing this you have set up a straw man which might play well politically but is not at all conducive to problem solving.

All of us in Texas—as you have so eloquently written—should want to keep open land and should want this land and the waters that course through it to be as clean and free of pollution as possible. None of us wants more subdivisions parceled out on smaller and smaller lots. Those of us willing to put our life savings into larger parcels of land only help this cause.

Who would you rather have as a neighbor: someone to whom you sold 100 acres of land who goes to the trouble of obtaining a wildlife management exemption, who is restoring the native prairie, who has made a personal and financial commitment working alongside Texas Parks and Wildlife and the National Audubon Society to open his property—at no charge—to other folks who appreciate the natural world? Or someone who buys or inherits 1000 acres, and begins a surreptitious industrial operation without permits in the floodplain of a pristine creek subject to flooding?

You point out that the concrete batch plant is "not visible from any public road," as if the lack of visibility was done as a public service. The plant is certainly visible from Mickey Bush's property; it's right under her nose. But why do you think there's no sign for Block Creek Concrete on the highway, when trucks come

and go daily to the operation? Could it be that the applicants wanted to operate "under the radar"? Don't you think-- in all fairness--that the surreptitious nature of this operation has something to do with the lack of signage that you tout as being a neighborly thing?

You state that the Seidenstickers "did not realize they needed a permit." You also state that they "have done everything in their power to take care of the natural resources that have been placed in their hands." But we know that on November 12, 2007, TCEQ found and documented fiberglass on the ground, exposed to storm water, at the plant. Certainly people who are interested in protecting the environment don't leave fiberglass exposed to possible flood waters, whether or not they are familiar with TCEQ rules and regulations!

You state that you have observed the Seidenstickers' careful approach to the environment over many years. You are certainly someone who is familiar with state rules and regulations, and it is hard to believe that YOU, at least, were not aware that this business was being operated in violation of the law. Why didn't you step forward, talk to the Seidenstickers, and insist that they comply---or at the very least that they look into what was necessary in order to comply?

Surely, David, you realize that Block Creek Concrete Products, LLC is a sophisticated operation with many employees. I assume they had to retain a lawyer to obtain their corporate status, a status they sought in order to protect themselves from personal liability. This was a wise and calculated business decision made by people who are not unsophisticated. If they chose not to go through the proper permitting process it was not out of "aw shucks" naiveté. The rules and regulations in place are, I am sure, problematic and expensive. But I trust they have been put in place to protect the environment and you and me with some forethought on the part of those who know about these sorts of things.

You write that "it's as if someone willingly bought a house next to an airport and then began to complain about the planes being too loud." As far as your "airport" metaphor is concerned, you must know that you have presented it exactly backwards. This is not my issue, however, but you are representing this unfairly as far as my knowledge of the situation goes. It is my understanding that the concrete batch plant was built AFTER the property was sold by the owners of Block Creek Concrete to one of the "urbanites."

My issue is the threat to the water in Block Creek. One thing is for certain: TCEQ has already documented that Block Creek Concrete exposed fiberglass to storm water. (See their report 12/21/07, with a photo taken 11/12/2007 and the Commission's comment: "Notice on the ground within the yard of the facility the amount of fiberglass exposed to storm water that is on the ground.") Do you want your animals drinking this? Or yourself? Check it out online if you want to learn about the negative health effects when it is imbibed or inhaled. Who knows how long this was the case?

In addition, there is debris on the banks along my creek bed. No one—not TCEQ, not the owners of Block Creek Concrete, and not you—ever took me up on my offer to actually come and see what is there. I sent a single specimen to TCEQ months ago, which they ignored for months, then said the specimen was not properly submitted and could not be analyzed (and so presumably discarded), and now—suddenly—have said is “clay.” I have no idea where the specimen they have said they analyzed came from. Of course, there are many more deposits—they all look a bit different—but no one from TCEQ is offering to come out here, visualize them, and analyze a fair sample of them.

Given that Block Creek Concrete Products maintained(s?) a “waste pile” (again, the words and pictures from TCEQ in their report of 12/21/07) in the floodplain of the creek bed, does it seem far-fetched to think that the stuff could wash downstream in a flood? You state in your letter that “it would be unlikely for any concrete refuse to wash from the plant downstream in Block Creek” and yet, in the next paragraph, you say write that “(d)uring last year’s flood, the water raged through Block Creek causing more damage than I’ve seen in my lifetime.”

Despite my many inquiries—by phone and mail—to TCEQ requesting copies of the response filed by Block Creek Concrete to their storm water runoff citation (which should have been completed by January 21, 2008)—this information was never sent to me by anyone: not Block Creek Concrete, not TCEQ. You complain about the deck being stacked against the rural landowner. I feel it is stacked in just the opposite direction. But let me state again that I feel it is up to Block Creek Concrete—already cited for leaving dangerous substances exposed to storm water—who should have the burden of proof here, not concerned neighbors.

I would also like to point out that when the Seidenstickers called us in response to our initial letter to the TCEQ, we offered to meet with them and show them our creek bed, but were told that they would be away on vacation to their place on the coast. We suggested we meet another time, but were never contacted by the Seidenstickers again.

Finally, David, I have never wanted Block Creek Concrete Products to cease operating—legally. But I do want them to obtain the proper permits. I want them to operate by all the rules. Whatever it takes for them to be compliant I want them to do. I want them to be respectful of their neighbors and be good stewards of their land and the water that flows through it.

Is this not what you ask for, what the Texas Wildlife Association stands for? If it is not, then you will find yourself with fewer and fewer allies as time goes by. At a time when we should be united, we will be divided. Instead of creating an “us versus them” attitude as you do in your letter, you should encourage cooperation among all of us who live in the state and appreciate the natural world. One

day—very soon--all of us will need each other as allies in a much bigger struggle over the stewardship of our lands.

Yes, I am a newcomer, an ex-urbanite. This label you have put on me you use with derision. Ask my neighbor on the other side of me if I have ever in the last nine-plus years complained about his dairy farm or ranching operation. We have maintained a neighborly, cooperative approach and a friendly relationship. I appreciate and value his long connection to his land and the respect he has for it. You are right: I didn't make my living off the land. But I have worked hard for what I have and a big chunk of it is in my 100 acres. I think that because this land wasn't given to me by birthright and that I had to earn it and the right to finally have some time in my life to enjoy it, that I may have more respect for it than some folks who have lived their entire lives out here in rural Kendall county.

With all due respect, I remain

Sincerely yours,

Jerald Winakur
PO Box 128
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