

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*

June 4, 2008

TO: Persons on the attached mailing list.

RE: Block Creek Concrete Products, L.L.C.  
Permit No. 83958

### **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any action is taken on this application unless all requests for contested case hearing or reconsideration have been withdrawn before that meeting.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 TCEQ Central Office, the TCEQ San Antonio Regional Office, and the Comfort Public Library, 701 High Street, Comfort, Kendall County, Texas. The facility's compliance file, if any exists, is available for public review at the TCEQ San Antonio Regional Office, 14250 Judson Road, San Antonio, 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

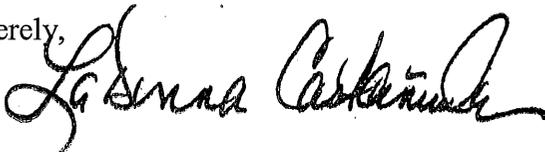
### **Processing of Requests.**

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/er

Enclosures

MAILING LIST  
for  
Block Creek Concrete Products, L.L.C.  
Permit No. 83958

FOR THE APPLICANT:

Burt Seidensticker, Owner  
Block Creek Concrete Products, L.L.C.  
444 Old No. 9 Highway No. A  
Comfort, Texas 78013

Tracy Powell, Senior Production Specialist  
WAID and Associates  
14205 North Mopac Expressway, Suite 600  
Austin, Texas 78728

INTERESTED PERSONS:

Mickey V. Bush  
430 Old No. 9 Highway  
Comfort, Texas 78013-3803

Deanna Rich & Janice Sparger  
607 Old No. 9 Highway  
Comfort, Texas 78013-3810

Dennis Spinelli  
520 Old No. 9 Highway  
Comfort, Texas 78013-3825

Jerry Winakur  
P.O. Box 128  
Comfort, Texas 78013-0128

FOR THE EXECUTIVE DIRECTOR:

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

Mike Gould, Technical Staff  
Texas Commission on Environmental Quality  
Air Permits Division MC-163  
P.O. Box 13087  
Austin, Texas 78711-3087

FOR OFFICE OF PUBLIC ASSISTANCE:

Bridget Bohac, Director  
Texas Commission on Environmental Quality  
Office of Public Assistance MC-108  
P.O. Box 13087  
Austin, Texas 78711-3087

FOR PUBLIC INTEREST COUNSEL:

Blas J. Coy, Jr., Attorney  
Texas Commission on Environmental Quality  
Public Interest Counsel MC-103  
P.O. Box 13087  
Austin, Texas 78711-3087

FOR THE CHIEF CLERK:

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

Block Creek Concrete Products, L.L.C.

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**TCEQ AIR QUALITY PERMIT NO.83958**

**APPLICATION BY**

**BLOCK CREEK CONCRETE  
PRODUCTS, L.L.C.**

**KENDALL COUNTY, TEXAS**

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**BEFORE THE**

**TEXAS COMMISSION ON**

**ENVIRONMENTAL QUALITY**

TEXAS  
COMMISSION  
ON ENVIRONMENTAL  
QUALITY  
2008 JUN -3 AM 11:29  
CHIEF CLERKS OFFICE

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**EXECUTIVE DIRECTOR'S RESPONSE TO PUBLIC COMMENT AND MEETING  
AND HEARING REQUESTS**

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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. 83958 filed by Block Creek Concrete Products, L.L.C. (Applicant). As required by the Texas Clean Air Act (TCAA), Texas Health and Safety Code (THSC) § 382.05199, the ED shall issue a written response to any public comments received related to the issuance of an authorization to use the standard permit at the same time or as soon as practicable after the ED grants or denies the application. 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).

The following persons submitted timely comment letters, and or meeting and hearing requests to the Office of Chief Clerk: Deanna Rich & Janice Sparger, Jerry Winakur, Dennis Spinelli, and Mickey Bush. This Response addresses all timely public comments received, whether or not withdrawn.

**BACKGROUND**

Description of Facility

The Applicant has applied to the TCEQ for an Air Quality Standard Permit, Registration No. 83958, which would authorize the construction of a permanent specialty concrete batch plant (CBP) under a Standard Permit (30 TAC § 116.611). The CBP is to be located at 444 Old Number 9 Highway A, near Comfort, Kendall County, Texas. The primary function of the plant is to manufacture concrete for septic tanks, water storage tanks, and electrical pads. The materials to be mixed include, but are not limited to, sand, aggregate, cement, and water in the production of concrete. The concrete is mixed on site and poured into the appropriate forms on site.

### Procedural Background

The application for the permit was received on January 23, 2008. The application was declared technically complete on February 7, 2008. The Notice of Receipt of Application and Intent to Obtain an Air Quality Standard Permit Registration for a Concrete Batch Plant was published on February 14, 2008 in *The Comfort News*. The public comment period ended on February 29, 2008. The Notice of Application and Preliminary Decision for an Air Quality Standard Permit for Concrete Batch Plant Registration was published on April 14, 2008 in *The Comfort News*. The public comment period ended on May 19, 2008. Alternate language publication was not required.

### **COMMENTS AND RESPONSES**

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

#### **Comments related to health, welfare and air quality**

**COMMENT 1:** Some commenters express concerns regarding health impacts of air emissions from the proposed CBP on individuals living in the area, and how they will adversely affect air quality. They also state air emissions from the proposed facility will aggravate their respiratory problems, as well as adversely affect their property and natural habitats on the property. The commenters also believe air emissions from the proposed CBP will adversely affect animals, plants, and other wildlife on their property. (Dennis Spinelli, Jerry Winakur, Mickey Bush)

**RESPONSE 1:** The primary function of the National Ambient Air Quality Standards (NAAQS), as created by the United States Environmental Protection Agency (EPA), and as defined in the federal regulations, 40 Code of Federal Regulations (CFR) § 50.2, is to protect public health and welfare using both primary and secondary standards. The primary standards are those 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 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 several criteria pollutants, and particulate matter with a diameter of less than or equal to 10 microns (PM<sub>10</sub>) is the applicable pollutant and associated NAAQS of concern regarding CBPs.

The TCEQ performed a rigorous protectiveness review for the CBP Air Quality Standard Permit for both total suspended particulate matter (PM) and PM<sub>10</sub>. All stationary sources emitting particulate matter (PM) from a generic CBP, operating under reasonable worst case conditions, 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*

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(AP-42) developed by the EPA. The predicted PM and PM<sub>10</sub> ground-level concentration standards were used to determine compliance with the NAAQS, and State protectiveness standards. These standards are based upon short-term and long-term health effects considerations. The state regulation governing total suspended particulate was repealed in 2006, leaving the NAAQS as the overriding standard. Using AP-42 factors, the resulting emissions were evaluated using EPA standardized computer air dispersion modeling to ensure all configurations would meet the NAAQS and other standards in effect.

The protectiveness review determined that emissions from facilities operating under a standard permit will meet the NAAQS for PM<sub>10</sub>, which is 150 µg/m<sup>3</sup> for a 24-hour period and 50µg/m<sup>3</sup> annually. While in effect and evaluated during the development of the CBP standard permit, EPA revoked the annual standard in 2006. When the proposed facilities are operating in compliance with their permit, they are expected to be in compliance with the primary and secondary NAAQS requirements, and to be protective of public health and welfare.

Furthermore, all facilities must comply with the 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 the terms of any permit or other environmental regulation by contacting the TCEQ's San Antonio Regional Office at 210-490-3096, or by calling the 24-hour toll-free Environmental Complaints Hotline at 1-888-777-3186. If the facilities are found to be out of compliance with the terms and conditions of the permit, they may 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), by clicking on Publications, and searching for document no. 278.

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**Comments related to water quality or quantity**

**COMMENT 2:** Commenters expressed concern that air emissions from the proposed CBP will adversely affect the quality of the water in the area. (Jerry Winakur, Dennis Spinelli, Mickey Bush)

**RESPONSE 2:** While the TCEQ has responsibility 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 soil and water assessments or consideration of issues involving water quality. Therefore, the possible effects on the soil and water are not part of this review. However, the secondary NAAQS are established to protect public welfare and the environment, as discussed above. All facilities operating under an air permit must comply with the TCAA and all applicable TCEQ rules and regulations. The TCAA prohibits any person from causing or contributing to air pollution. This permit does not authorize the discharge of pollution into a body of water. If the facility is not operated in compliance with its permit or TCEQ rules, it may be subject to an investigation, and possible administrative actions, fines, and penalties. Any citizen that is concerned that the facility is failing to comply with the terms of its air quality permit or other environmental requirements is encouraged to call the 24-hour toll-free Environmental Complaints Hotline at 1-888-777-3186, or contact the San Antonio Regional Office at 210-490-3096.

**Comments related to roads/traffic**

**COMMENT 3:** Some commenters express concern that traffic associated with the proposed CBP will pose a risk to public safety. They also state traffic associated with the proposed CBP will cause increased road wear and maintenance. (Deanna Rich, Janice Sparger)

**RESPONSE 3:** The TCEQ's jurisdiction is established by the Texas Legislature and is limited to the issues set forth in statute. Accordingly, the TCEQ does not have jurisdiction over public roads. The Texas Departments of Public Safety and Transportation, as well as local law enforcement authorities, together with county and city governments, maintain jurisdiction over traffic safety and public roadway issues. Questions or concerns about traffic or public road issues should be directed to those authorities.

**Comments related to nuisance conditions**

**COMMENT 4:** Some commenters express concern air emissions from the proposed CBP will result in nuisance conditions related to dust. (Jerry Winakur, Mickey Bush)

**RESPONSE 4:** The TCEQ rule prohibiting nuisances, 30 TAC § 101.4, generally states that 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. Emissions from this facility

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are not expected to cause an exceedence of the NAAQS or a nuisance as long as it is operated in compliance with the terms of the air quality permit.

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 if nuisance odors or discharges are suspected. You may also contact the TCEQ's Regional Office for your area, located in San Antonio, at (210)490-3096. With rare exception, the TCEQ investigates all complaints received. Plants or facilities found to be out of compliance may be subject to the TCEQ's enforcement procedures.

**COMMENT 5:** One commenter states operation of the proposed CBP will cause or contribute to noise pollution. (Dennis Spinelli)

**RESPONSE 5:** The TCEQ's jurisdiction is established by the Texas Legislature and is limited to the issues set forth in 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.

#### **Comments related to quality of life/serenity/aesthetics**

**COMMENT 6:** One commenter expresses concern the air emissions from the proposed CBP will interfere with the use and enjoyment of his property. (Mickey Bush)

**RESPONSE 6:** Please refer to Responses 1 and 4 for more information on nuisance and interference with the normal use and enjoyment of property. Furthermore, the TCEQ does not have jurisdiction to consider plant appearance (except as may be related to control of air contaminants) when determining whether to approve or deny a permit application. The Executive Director has reviewed the permit application in accordance with the applicable law, policy and procedures, in accordance with the agency's mission to protect our state's human and natural resources consistent with sustainable economic development.

#### **Comments related to property value/economy**

**COMMENT 7:** One commenter states air emissions from the proposed CBP will adversely affect the value of homes and property in the area. (Dennis Spinelli)

**RESPONSE 7:** The TCEQ's jurisdiction is established by the Texas Legislature and is limited to the issues set forth in that statute. Accordingly, the TCEQ does not have zoning authority, and it is beyond the agency's power to regulate an applicant's site selection, unless state law imposes specific

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distance limitations enforceable by TCEQ. Similarly, the TCEQ does not have jurisdiction to consider the effect of site selection on property values. Zoning is usually controlled by local municipalities.

### **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

Robert Martinez, Director  
Environmental Law Division

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REPRESENTING THE  
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TEXAS COMMISSION ON  
ENVIRONMENTAL QUALITY