

Buddy Garcia, *Chairman*
Larry R. Soward, *Commissioner*
Bryan W. Shaw, Ph.D., *Commissioner*
Mark R. Vickery, P.G., *Executive Director*



TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

February 19, 2009

TO: Persons on the attached mailing list.

RE: Potter Ready Mix, LLC
Permit No. 52168L019

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any action is taken on this application unless all requests for contested case hearing or reconsideration have been withdrawn before that meeting.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 TCEQ Fort Worth Regional office and at the Tarrant County Courthouse, 100 West Weatherford Street, Room 130, Fort Worth, Tarrant County, Texas. The facility's compliance file, if any exists, is available for public review at the TCEQ Dallas/Fort Worth Regional Office, 2309 Gravel Dr, Fort Worth, 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 **received** by the Chief Clerk's office no later than **30 calendar days** after the date of this letter. You may submit your request electronically at <http://www.tceq.state.tx.us/about/comments.html> or by mail 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/ka

Enclosures

MAILING LIST
for
Potter Ready Mix, LLC
Permit No. 52168L019

FOR THE APPLICANT:

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Tristan Walker
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INTERESTED PERSONS:

See attached list.

FOR THE EXECUTIVE DIRECTOR
via electronic mail:

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FOR OFFICE OF PUBLIC ASSISTANCE
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FOR PUBLIC INTEREST COUNSEL
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FOR THE CHIEF CLERK
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TCEQ AIR QUALITY STANDARD PERMIT NUMBER 52168L019

APPLICATION BY
Potter Ready Mix LLC
Concrete Batch Plant
Southlake, Tarrant County

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§
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§
§

BEFORE THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY

2009 FEB 17 AM 11:54

CHIEF CLERKS OFFICE

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: Representative Vicki Truitt, Mayor Andy Wambsganss, Danny and Gina Blaser, Jere L. Francis, Scott L. Haire, Boyd and Susan Herndon, Gerald and Karen Hodges, Keith A. and Barbara E. Houser, Barry and Barbara Johnson, Harold and Shirley Knight, William and Carol Lloyd, Ronald and Renee Lorenz, Sid and Gloria Lorio, Cynthia and Allen Melton, Jim and Karen Mertz, Jeff. C. Pannell, Glenn and Aloha Payne, Phillip and Meg Rydzewski, Ernie and Roxanne Sadau, Phillip and Ann Swanson, John Underwood, Marvin and Fabienne Williams, and Alex and Karen Zaal. 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.

BACKGROUND

Description of Facility

Potter Ready Mix LLC has applied to the TCEQ for a Standard Permit under Texas Clean Air Act (TCAA), §382.05195. This will authorize new or existing similar facilities for a temporary concrete batch plant.

This permit will authorize the applicant to construct a temporary concrete batch plant. The facility is located on the north side of SR 114 west of North Kimball Avenue and east of North Carroll Avenue Southlake, Tarrant County. Contaminants authorized under this permit include particulate matter (including but not limited to) aggregate, cement, road dust, and particulate matter less than 10 microns in diameter (PM₁₀).

Procedural Background

Before work is begun on the construction of a new facility or a modification of an existing facility that may emit air contaminants, the person planning the construction or modification must obtain a permit or permit amendment from the commission. This permit application is for an Air Quality Standard Permit for Concrete Batch Plants. The permit application was received on September 29, 2008, and declared administratively complete on October 7, 2008. The Notice of Receipt and Intent to Obtain an Air Quality Permit (public notice) for this permit application was published on October 15, 2008, in the *Fort Worth Star Telegram*. A public meeting was held on January 22, 2009 in Southlake. The public comment period ended on January 22, 2009. 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: Commenters expressed concerns regarding health impacts from air emissions from the proposed concrete batch plant (CBP) on public health. (*Mayor Andy Wambsganss, Danny and Gina Blaser, Jere L. Francis, Scott L. Haire, Gerald and Karen Hodges, Keith A. and Barbara E. Houser, Barry and Barbara Johnson, Harold and Shirley Knight, William and Carol Lloyd, Ronald and Renee Lorenz, Sid and Gloria Lorio, Cynthia and Allen Melton, Jim and Karen Mertz, Jeff. C. Pannell, Glenn and Aloha Payne, Phillip and Meg Rydzewski, Ernie and Roxanne Sadau, Phillip and Ann Swanson, John Underwood, Marvin and Fabienne Williams, and Alex and Karen Zaal*)

RESPONSE 1: 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 potential for emissions of particulate matter (PM) from the proposed CBP was reviewed, and the protectiveness review determined that CBP facilities operating under the standard permit would meet the requirements of state standards in effect at the time, which were 400 micrograms per cubic meter ($\mu\text{g}/\text{m}^3$) for an one-hour period and 200 $\mu\text{g}/\text{m}^3$ for a three-hour period. The review also determined emissions from facilities operating under a standard permit will meet the federal National Ambient Air Quality Standards (NAAQS) for particulate matter with an aerodynamic diameter of 10 microns or less (PM_{10}), which are 150 $\mu\text{g}/\text{m}^3$ for a 24-hour period and 50 $\mu\text{g}/\text{m}^3$ annually.

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 PM_{10} were the only air contaminants of concern from these plants, the PM and PM_{10} ground-level concentration standards were used to determine protectiveness as mentioned above. The PM_{10} ground-level concentration 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 state 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.

National Ambient Air Quality Standards (NAAQS), as created by the United States Environmental Protection Agency (EPA), are defined in the federal regulations (40 C.F.R. § 50.2), and 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. If the proposed facility is operated as required, there should be no adverse health effects.

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.

COMMENT 2: Some commenters express concern that the proposed facility will adversely affect air quality like an existing facility at Brumlow and Highway 26. (*Mayor Andy Wambsganss, Danny and Gina Blaser, Jere L. Francis, Scott L. Haire, Gerald and Karen Hodges, Keith A. and Barbara E. Houser, Barry and Barbara Johnson, Harold and Shirley Knight, William and Carol Lloyd, Ronald and Renee Lorenz, Sid and Gloria Lorio, Cynthia and Allen Melton, Jim and Karen Mertz, Jeff. C. Pannell, Glenn and Aloha Payne, Phillip and Meg Rydzewski, Ernie and Roxanne Sadau, Phillip and Ann Swanson, John Underwood, Marvin and Fabienne Williams, and Alex and Karen Zaal*)

RESPONSE 2: As discussed in detail in Response 1, if the CBP is operated in accordance with the terms stipulated in the standard permit there should be no adverse impacts on public health or air quality.

In addition to complying with the federal and state standards and guidelines mentioned above, applicants must also comply with 30 TAC §101.4, which prohibits nuisance conditions. 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." As long as the applicant's facility is operated in compliance with the terms of the permit, nuisance conditions or conditions of air pollution are not expected.

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 (under Publications, search for document no. 278).

COMMENT 3: Some commenters express concerns regarding the increase in noise, traffic, and subsequent smog. (*Mayor Andy Wambsganss, Danny and Gina Blaser, Jere L. Francis, Scott L. Haire, Gerald and Karen Hodges, Keith A. and Barbara E. Houser, Barry and Barbara Johnson, Harold and Shirley Knight, William and Carol Lloyd, Ronald and Renee Lorenz, Sid and Gloria Lorio, Cynthia and Allen Melton, Jim and Karen Mertz, Jeff. C. Pannell, Glenn and Aloha Payne, Phillip and Meg Rydzewski, Ernie and Roxanne Sadau, Phillip and Ann Swanson, John Underwood, Marvin and Fabrienne Williams, and Alex and Karen Zaal*)

RESPONSE 3: The TCEQ's jurisdiction is established by the TCAA and is limited to the issues set forth in that statute. Therefore, the TCEQ does not have jurisdiction over traffic or road safety. Jurisdiction over traffic on public roads is the responsibility of the cities, county, and/or other state agencies such as the Texas Department of Public Safety and the Texas Department of Transportation.

Further, the TCEQ may regulate stationary sources of air contaminants, but has no authority to regulate mobile sources. Accordingly, the TCEQ does not have jurisdiction to consider impacts of emissions from motor vehicles when determining whether to approve a permit application.

However, TCEQ rules state, "No person shall discharge from any source whatsoever such quantities of air contaminants, uncombined water, or other materials which cause or have a tendency to cause a traffic hazard or an interference with normal road use."¹ Therefore, emissions from the facility may not create a traffic hazard.

Concerning noise associated with operation of the CBP, the TCEQ's jurisdiction is established by the Legislature and is limited to the issues set forth in statute. Accordingly, the TCEQ does not have jurisdiction to consider noise from a facility when determining whether to approve a permit application.

¹ 30 Texas Administrative Code (TAC) § 101.5

COMMENT 4: Some commenters express concern that the proposed CBP will adversely affect property value and that the proposed site is not appropriate for this type of facility. (Mayor Andy Wambsganss, Danny and Gina Blaser, Jere L. Francis, Scott L. Haire, Gerald and Karen Hodges, Keith A. and Barbara E. Houser, Barry and Barbara Johnson, Harold and Shirley Knight, William and Carol Lloyd, Ronald and Renee Lorenz, Sid and Gloria Lorio, Cynthia and Allen Melton, Jim and Karen Mertz, Jeff. C. Pannell, Glenn and Aloha Payne, Phillip and Meg Ryzewski, Ernie and Roxanne Sadau, Phillip and Ann Swanson, John Underwood, Marvin and Fabrienne Williams, and Alex and Karen Zaal)

RESPONSE 4: The TCEQ's jurisdiction is established by the TCAA and is limited to the issues set forth in that statute. Therefore, the TCEQ does not have zoning authority, and it is beyond the agency's power to regulate an applicant's site selection or the effect of that selection on property values. Zoning is usually controlled by local municipalities.

COMMENT 5: Some commenters express concern regarding the close proximity of the proposed facility to Johnson Elementary School. (Mayor Andy Wambsganss, Danny and Gina Blaser, Jere L. Francis, Scott L. Haire, Boyd and Susan Herndon, Gerald and Karen Hodges, Keith A. and Barbara E. Houser, Barry and Barbara Johnson, William and Carol Lloyd, Sid and Gloria Lorio, Jim and Karen Mertz, Jeff. C. Pannell, Glenn and Aloha Payne, Phillip and Ann Swanson, John Underwood, Marvin and Fabrienne Williams, and Alex and Karen Zaal)

RESPONSE 5: The TCEQ does not have zoning authority, and it is therefore beyond the agency's power to regulate the effect of an applicant's site selection. However, the protectiveness review performed for the standard permit requires specific distances to the property line be set for equipment in order to meet all state and federal standards at the property line. When a plant is operating in compliance with the permit, including the distance requirements, then no adverse health effects are expected to off-property receptors, including Johnson Elementary School and any neighboring residents.

The standard permit requires the suction shroud baghouse exhaust or truck mix point must be located at least 100 feet from any property line. Stationary equipment, stockpiles, or vehicles used for the operation of the concrete batch plant (except for incidental traffic and the entrance and exit to the site) may not be located or operated, respectively, within the following specified distances to any property line: for those facilities with production rates less than or equal to 200 cubic yards per hour, at least 25 feet; and for those facilities with production rates more than 200 and less than or equal to 300 cubic yards per hour, at least 50 feet.

The Applicant certifies they will be using a suction shroud for the truck drop with the exhaust air venting to a central dust collector and this emission point will be located more than 100 feet to any property line. The Applicant also ensures the facility's production rate will be 150 cubic yards or less requiring them to meet the 25 foot distance requirements for all applicable emission points. The Applicant represents they meet all distance requirements stipulated in the standard permit and therefore will be protective of any off-property receptors.

CHANGES MADE IN RESPONSE TO COMMENT

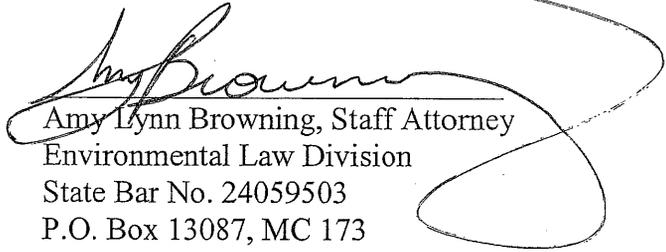
No changes have been made to the Executive Director's preliminary determination that the application meets the requirements for permit issuance.

Respectfully submitted,

Texas Commission on Environmental Quality

Mark R. Vickery, P.G., Executive Director

Robert Martinez, Director
Environmental Law Division



Amy Lynn Browning, Staff Attorney
Environmental Law Division

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REPRESENTING THE
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