

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



## TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

*Protecting Texas by Reducing and Preventing Pollution*

October 7, 2010

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

Re: Texas Concrete Enterprises, L.L.C., Permit No. 91708  
TCEQ Docket No. 2010-1553-AIR

Dear Ms. Castañuela:

Enclosed is a copy of the following documents for inclusion in the background material for the Commissioner's Agenda scheduled for this permit application:

- Standard Permit for Concrete Batch Plants
- The summary of the technical review of the permit application
- The compliance summary of the Applicant.
- A map indicating the proximate location of the hearing requestors
- The Executive Director's Response to Hearing Requests

If you have any questions, please do not hesitate to call me at extension 0649.

Sincerely,

A handwritten signature in black ink, appearing to read "Alexis Lorick".

Alexis Lorick  
Staff Attorney  
Environmental Law Division

Enclosures

Bryan W. Shaw, Ph.D., *Chairman*  
Buddy Garcia, *Commissioner*  
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TEXAS COMMISSION ON ENVIRONMENTAL QUALITY  
*Protecting Texas by Reducing and Preventing Pollution*

MS DEBORAHA DEMPS  
SAFETY DIRECTOR  
TEXAS CONCRETE ENTERPRISE LLC  
3506 CHERRY ST  
HOUSTON TX 77026-3502

Re: Air Quality Standard Permit for Concrete Batch Plants  
(As amended effective July 10, 2003)  
Standard Permit Registration Number: 91708  
Concrete Batch Plant  
Kendleton, Fort Bend County  
Regulated Entity Number: RN105808018  
Customer Reference Number: CN603171026

Dear Ms. Demps:

This is in response to your Form PI-1S (Air Quality Standard Permit Registration for Concrete Batch Plants) concerning standard permit registration no. 91708 for the construction of a permanent concrete batch plant to be located near Kendleton, Fort Bend County, Texas. The driving directions are: Take 59 South exit to Kendleton. Take Farm-to-Market (FM) Road 2919; go right on FM Road 2919 to Pink Taylor Run. Go to the right, the plant will be down on the right before West Tavener Road.

Your permit referenced above is hereby authorized under 30 Texas Administrative Code (TAC) § 116.611, as codified in the Texas Health & Safety Code § 382.05195, if constructed and operated as described in your registration. The Standard Permit for Concrete Batch Plants was authorized by the Texas Commission on Environmental Quality (TCEQ) in accordance with 30 TAC Chapter 116, and amended to be effective on July 10, 2003.

Enclosed please find a copy of the air quality standard permit for concrete batch plants with (effective date July 10, 2003). You must begin construction of your facility in accordance with the standard permit no later than 18 months after the date of this letter. After completion of construction, the appropriate TCEQ Regional Office must be notified prior to commencing operation and the facility shall be operated in compliance with all applicable conditions of the

Ms. Deborah Demps  
Page 2

Re: Air Quality Standard Permit no. 91708

claimed standard permit. Also enclosed is a notification form for you to complete and send in prior to your construction or site move. We appreciate your careful review of the permit conditions and assuring that all requirements are consistently met. This permit will be in effect for ten years from the date of approval (Commission's final decision).

This standard permit authorizes operations including planned startup and shutdown emissions. Maintenance activities are not authorized by this standard permit. These maintenance activities will need to be authorized separately prior to January 5, 2013.

You are reminded that regardless of whether a permit is required, these facilities must be in compliance with all rules and regulations of the TCEQ and of the U.S. Environmental Protection Agency at all times.

If you need further information or have any questions, please contact Mr. Don Nelon at (512) 239-0894 or write to the Texas Commission on Environmental Quality, Office of Permitting and Registration, Air Permits Division, MC-163, P.O. Box 13087, Austin, Texas 78711-3087.

Sincerely,

Bryan W. Shaw, Ph.D., Chairman  
For the Texas Commission on Environmental Quality

Enclosures

cc: Air Section Manager, Region 12 - Houston Bureau Chief of Air Quality Control, Health and Human Services Department, City of Houston, Houston, Texas

Project Number: 154044

## Concrete Batch Plant Standard Permit Source Analysis & Technical Review

|                  |  |                           |             |
|------------------|--|---------------------------|-------------|
| Company          | Texas Concrete Enterprise, L.L.C.  | Permit Number             | 91708       |
| City             | Kendleton  | Project Number            | 154044      |
| County           | Fort Bend  | Account Number            | N/A         |
| Project Type     | Initial  | Regulated Entity Number   | RN105808018 |
| Project Reviewer | Mr. Don Nelon  | Customer Reference Number | CN603171026 |
| Site Address     | Take 59 South Exit to Kendleton, take FM 2919, go right on FM 2919 to Pink Taylor Run, go to the right, plant will be down on the right before West Tavener Road |                           |             |

### Project Overview

Texas Concrete Enterprise, L.L.C., has applied for a permanent standard permit to authorize a concrete batch plant. The hours of operation will be 11 hours/day, 6 days/week, 52 weeks/year not to exceed 3,432 hours/year. The proposed production rate will be limited to 180 cubic yards per hour and 120,000 cubic yards per year. The applicant was not aware of an existing Spanish publication and published the Spanish notice in the English paper. During the technical review, they were notified of an existing Spanish publication and republished their Spanish notice appropriately. During the first comment period, eight hearing requests, nine public meeting requests, and one comment were received.

### Deficiencies

|   |            |
|---|------------|
| Has all required information been received by the TCEQ?   | No         |
| If no, date company notified of deficient items:  | 02/02/2010 |
| Comments: <b>Deficiencies, though now resolved, included a Table 20, Area Map, Process Description, along with numerous discrepancies on the Standard Permit Checklist.</b> |            |
| Date registration claim complete:   | 02/05/2010 |

### Power Source Information

|   |     |
|---|-----|
| Does this facility utilize an engine or generator?  | No  |
| If yes, will the engine or generator be located at this site less than one year?                              | N/A |
| If the engine or generator will be at this site for more than one year does the engine meet 30 TAC § 106.512? | N/A |

### Compliance History Evaluation - 30 TAC Chapter 60 Rules

|  |                       |
|--|-----------------------|
| A compliance history report was reviewed on:   | 03/22/2010            |
| Compliance period:   | 01/20/2010-01/20/2005 |
| Site rating & classification:  | N/A (New Site)        |
| Company rating & classification:   | 6.42 (AVG)            |
| If the rating is 40<RATING<45, what was the outcome, if any, based on the findings in the formal report: | N/A                   |
| Has the permit changed on the basis of the compliance history or rating?                                 | No                    |

### Public Notice Information - 30 TAC Chapter 39 Rules

| Rule Citation | Requirement  |            |
|---------------|--|------------|
| 39.403        | Is Public Notice Required?   | Yes        |
|               | If no, give reason:  | N/A        |
|               | Was verification provided to demonstrate that the proposed plant site is adjacent to and contiguous with the right of way of a public works project? | N/A        |
|               | Date Application Received:   | 01/20/2010 |

**Concrete Batch Plant Standard Permit  
Source Analysis & Technical Review**

Permit No. 91708  
Page 2

Regulated Entity No. RN105808018

| Rule Citation | Requirement   |   |
|---------------|---|---|
|               | Date Administratively Complete:   | January 28, 2010  |
|               | Small Business Source?  | Yes   |
|               | Date Leg Letters mailed:  | January 28, 2010  |
| 39.603        | Date Published:   | February 4, 2010  |
|               | Publication Name:   | Fort Ben Sun  |
|               | Pollutants:   | PM, PM <sub>10</sub> , PM <sub>2.5</sub> , aggregate, cement, road dust |
|               | Date Affidavits/Copies Received:  | 02/16/2010  |
|               | Is bilingual notice required?   | Yes   |
|               | Language:   | Spanish   |
|               | Date Published:   | 02/25/2010  |
|               | Publication Name:   |   |
|               | <b>Note: The applicant originally published the Spanish notice in the English paper. They were later required to publish in the existing Spanish publication.</b> |   |
|               |   | La Subasta  |
|               | Date Affidavits/Copies Received:  | 03/04/2010  |
|               | Date Certification of Sign Posting / Application Availability Received:   | 03/04/2010  |
| 39.604        | Public Comments Received?   | Yes (6)   |
|               | Hearing Requested?  | Yes (5)   |
|               | Meeting Request?  | Yes (5)   |
|               | Date Meeting Held:  | Denied per ELD  |
|               | Date Response to Comments sent to OCC:  | 8/16/2010   |
|               | Request(s) withdrawn?   | No  |
|               | Date Withdrawn:   | NA  |
|               | Consideration of Comments:  | No  |
|               | Is 2nd Public Notice required?  | Yes   |
| 39.419        | Date 2nd Public Notice Mailed:  | 04/16/2010  |
|               | Preliminary Determination:  |   |
| 39.603        | Date Published:   | 05/13/2010  |
|               | Publication Name:   | Fort Bend Sun   |
|               | Pollutants:   | PM, PM <sub>10</sub> , PM <sub>2.5</sub> , aggregate, cement, road dust |
|               | Date Affidavits/Copies Received:  | 05/24/2010  |
|               | Is bilingual notice required?   | Yes   |
|               | Language:   | Spanish   |
|               | Date Published:   | 04/29/2010  |
|               | Publication Name:   | La Subasta  |
|               | Date Affidavits/Copies Received:  | 05/19/2010  |
|               | Date Certification of Sign Posting / Application Availability Received:   | 05/20/2010  |
|               | Public Comments Received?   | Yes(9)  |
|               | Meeting Request?  | Yes(9)  |
|               | Date Meeting Held:  | Denied  |
|               | Hearing Request?  | Yes(8)  |
|               | Date Hearing Held:  | November 3, 2010  |
|               | Request(s) withdrawn?   | No  |
|               | Date Withdrawn:   | NA  |

**Concrete Batch Plant Standard Permit  
Source Analysis & Technical Review**

Permit No. 91708  
Page 3

Regulated Entity No. RN105808018

| <b>Rule Citation</b> | <b>Requirement</b>  |
|----------------------|---|
|                      | Consideration of Comments:  |
| 39.421               | Date RTC, Technical Review & Draft Permit Conditions sent to OCC: <span style="float: right;"><b>8/16/2010</b></span> |
|                      | Request for Reconsideration Received?   |
|                      | Final Action:   |
|                      | Are letters Enclosed?   |

**Recommendations**

|  |                         |
|--|-------------------------|
| All conditions of Standard Permit satisfied? | <b>Yes</b>              |
| Final Action:                                | <b>Authorize Permit</b> |

| Project Reviewer | Date | Team Leader/Section Manager/Backup | Date |
|------------------|------|------------------------------------|------|
|------------------|------|------------------------------------|------|

# Compliance History Report

**PENDING**

Customer/Respondent/Owner-Operator: CN603171026 Texas Concrete Enterprise, L.L.C. Classification: AVERAGE Rating: 3.36

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Regulated Entity: RN105808018 TEXAS CONCRETE ENTERPRISE Classification: AVERAGE E Site Rating: 3.01  
PLANT III

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ID Number(s): AIR NEW SOURCE PERMITS REGISTRATION 91708

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Location: TAKE EXIT 2919 FROM 59 SOUTH TURN LEFT ONTO  
TAYLOR RD FACILITY LOCATED AT THE CORNER OF  
TAYLOR RD AND DORIS RD

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TCEQ Region: REGION 12 - HOUSTON

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Date Compliance History Prepared: September 27, 2010

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Agency Decision Requiring Compliance History: Permit - Issuance, renewal, amendment, modification, denial, suspension, or revocation of a permit.

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Compliance Period: January 21, 2005 to January 20, 2010

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TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History

Name: Don Nelson Phone: 239 - 0894

## Site Compliance History Components

1. Has the site been in existence and/or operation for the full five year compliance period? No
2. Has there been a (known) change in ownership/operator of the site during the compliance period? No
3. If Yes, who is the current owner/operator?  
N/A
4. If Yes, who was/were the prior owner(s)/operator(s)?  
N/A
5. When did the change(s) in owner or operator occur?  
N/A
6. Rating Date: 9/1/2010 Repeat Violator: NO

## Components (Multimedia) for the Site :

- A. Final Enforcement Orders, court judgments, and consent decrees of the State of Texas and the federal government.  
....
  - B. Any criminal convictions of the state of Texas and the federal government.  
N/A
  - C. Chronic excessive emissions events.  
N/A
  - D. The approval dates of investigations. (CCEDS Inv. Track. No.)  
....
  - E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)  
....
  - F. Environmental audits.  
N/A
  - G. Type of environmental management systems (EMSs).
  - H. Voluntary on-site compliance assessment dates.  
N/A
  - I. Participation in a voluntary pollution reduction program.  
N/A
  - J. Early compliance.  
N/A
- Sites Outside of Texas  
N/A

**Texas Concrete Enterprise, LLC.**  
**Permit No. 91708**  
**Map Requested by TCEQ Office of Legal Services**  
**for Commissioners' Agenda**



Texas Commission on Environmental Quality  
 GIS Team (Mail Code 197)  
 P.O. Box 13087  
 Austin, Texas 78711-3087

July 6, 2010



Projection: Texas Statewide Mapping System (TSMAS)  
 Scale 1:13,000

- Legend**
- Plant
  - Stockpiles
  - ⊙ Requestor's Property

Source: The location of the facility was provided by the TCEQ Office of Legal Services (OLS). OLS obtained the site location information from the applicant and the requestor information from the requestor. The vector data are U.S. Census Bureau 1992 TIGER/Line Data (1:100,000). The background of this map is a one-half meter photograph from the 2008 Texas Orthomagey Project.

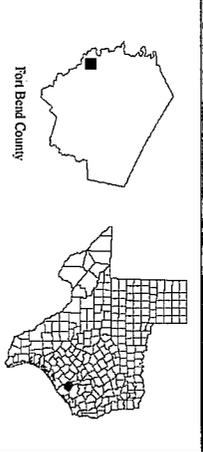
This map depicts the following:  
 (1) The approximate location of the plant. This is labeled "Plant".  
 (2) Circle and arrow depicting 1/4-mile radius.  
 (3) This is labeled "25 Mile Radius".  
 (4) Dots representing the approximate location of the stockpiles. These are labeled "Stockpiles".  
 (5) Dots representing the approximate locations of requestors. These are labeled with numbers that correspond to the names on the list.

This map was generated by the Information Resources Division of the Texas Commission on Environmental Quality. This product is for informational purposes and may not have been prepared for or be suitable for legal, engineering, or surveying purposes. It does not represent an on-the-ground survey and represents only the approximate relative location of property boundaries. For more information concerning this map, contact the Information Resource Division at (512) 239-0800.

LA1624.mxd (7/1/2010)



- Requestors**
- 0 Lawrence Dillard (Not Shown)
  - 1 Hasan Rasheed (Not Shown)
  - 2 Flora Brown Smith
  - 3 Oscar Taylor
  - 4 Arthia Taylor
  - 5 Hazel Taylor
  - 6 Saudi Newkirk
  - 7 Cornell Dillard (Not Shown)



The facility is located in Fort Bend County. The red square in the first inset map represents the approximate location of the facility. The second inset map represents the location of Fort Bend County in the state of Texas. Fort Bend County is shaded in red.

**TCEQ STATE AIR QUALITY PERMIT NUMBER 91708  
TCEQ DOCKET NUMBER 2010-1553-AIR**

|                                  |   |                              |
|----------------------------------|---|------------------------------|
| <b>APPLICATION BY</b>            | § | <b>BEFORE THE</b>            |
|                                  | § |                              |
| <b>TEXAS CONCRETE</b>            | § | <b>TEXAS COMMISSION ON</b>   |
| <b>ENTERPRISE, L.L.C.</b>        | § |                              |
| <b>EUSTACE, HENDERSON COUNTY</b> | § | <b>ENVIRONMENTAL QUALITY</b> |

**EXECUTIVE DIRECTOR'S RESPONSE TO HEARING REQUESTS**

The Executive Director of the Texas Commission on Environmental Quality (commission or TCEQ) files this response (Response) to the requests for a contested case hearing submitted by the persons listed herein regarding the above-referenced matter. The Texas Clean Air Act (TCAA), TEXAS HEALTH & SAFETY CODE (THSC) § 382.056(n) requires the commission to consider hearing requests in accordance with the procedures provided in TEX. WATER CODE (TWC)§5.556.<sup>1</sup> This statute is implemented through the rules in 30 TEXAS ADMINISTRATIVE CODE (TAC) Chapter 55, Subchapter F.

A map showing the location of the site for the proposed facility is included with this response and has been provided to all persons on the attached mailing list. In addition, a current compliance history report, technical review summary, and a copy of the standard permit for concrete batch plants prepared by the Executive Director's staff have been filed with the TCEQ's Office of Chief Clerk for the commission's consideration. Finally, the Executive Director's Response to Public Comments (RTC), which was mailed by the chief clerk to all persons on the mailing list, is on file with the chief clerk for the commission's consideration.

**I. Application Request and Background Information**

Texas Concrete Enterprise, L.L.C. (Texas Concrete or Applicant) has applied to the TCEQ for an Air Quality Standard Permit for Concrete Batch Plants under THSC § 382.05195, which would authorize the construction of a permanent concrete batch plant.<sup>2</sup> This permit will authorize Texas Concrete to construct a concrete batch plant utilizing a suction shroud for the truck drop, with the exhaust air venting to a central dust collector. Additionally, the Applicant certifies that its production rate will be 180 cubic yards or less. That rate triggers state rules requiring the Applicant to set back all emission points 25 feet from the site's property line. In all, the site will operate 11 hours per day, 6 days per week, and 52 weeks per year not to exceed a total of 3,432 hours per year. Therefore, the

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1 Statutes cited in this response may be viewed online at [www.capitol.state.tx.us/statutes/statutes.html](http://www.capitol.state.tx.us/statutes/statutes.html). Relevant statutes are found primarily in the Texas Health and Safety Code and the Texas Water Code. The rules in the Texas Administrative Code may be viewed online at [www.sos.state.tx.us/tac/index.shtml](http://www.sos.state.tx.us/tac/index.shtml), or follow the "Rules, Policy & Legislation" link on the TCEQ website at [www.tceq.state.tx.us](http://www.tceq.state.tx.us).

2 The contaminants authorized under this permit include road dust, aggregate, and cement. The contaminants emitted also have the potential to contain particles less than or equal to 10 microns in aerodynamic diameter (PM<sub>10</sub>), and particles less than or equal to 2.5 microns in aerodynamic diameter (PM<sub>2.5</sub>).

**EXECUTIVE DIRECTOR'S RESPONSE TO HEARING REQUESTS**

*Texas Concrete Enterprise, L.L.C., State Air Quality Permit No. 91708*

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plant's hourly throughput will be authorized at 180 cubic yards or less with an annual throughput of 120,000 cubic yards per year. The facility is located near Kendleton in Fort Bend County, Texas.

The permit application was received on January 20, 2010, and declared administratively complete on January 28, 2010. The Notice of Receipt of Application and Intent to Obtain an Air Quality Permit (Public Notice) Registration for this permit application was published on February 4, 2010 in the *Fort Bend Sun*. An alternative language Public Notice was published in *La Subasta* on February 25, 2010. Several hearing requests were timely received by the TCEQ; therefore, Texas Concrete was required to publish a second public notice. The second public notice, or the Notice of Application and Preliminary Decision for an Air Quality Standard Permit, was published on May 13, 2010 in the *Fort Bend Sun*. An alternative language Public Notice was published April 29, 2010 in *La Subasta*. The public comment period ended on June 14, 2010. The RTC was filed on August 16, 2010. 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.

Hearing requests were filed by: Mr. Cornell Dillard, Mr. Lawrence Dillard, Ms. Sandi Newkirk, Mr. Hasan Rasheed, Ms. Flora Brown Smith, Mr. Charles Taylor, Mrs. Hazel Taylor, Mr. Oscar Taylor and Mrs. Arlilia Taylor. The Office of the Chief Clerk subsequently received from Mr. Charles Taylor a written request to withdraw his previous request for a contested case hearing.

## **II. Applicable Law**

The commission must assess the timeliness and form of the hearing requests, noted above. The form requirements are set forth in 30 TAC § 55.201(d):

(d) A hearing request must substantially comply with the following:

- (1) give the name, address, daytime telephone number, and, where possible, fax number of the person who files the request. If the request is made by a group or association, the request must identify one person by name, address, daytime telephone number, and, where possible, fax number, who shall be responsible for receiving all official communications and documents for the group;
- (2) identify the person's personal justiciable interest affected by the application, including a brief, but specific, written statement explaining in plain language the requester's location and distance relative to the proposed facility or activity that is the subject of the application and how and why the requester believes he or she will be adversely affected by the proposed facility or activity in a manner not common to members of the general public;
- (3) request a contested case hearing;
- (4) list all relevant and material disputed issues of fact that were raised during the public comment period and that are the basis of the hearing request. To facilitate the commission's determination of the number and scope of issues to be referred to hearing, the requester should, to the extent possible, specify any of the executive director's responses to comments that the requester disputes and the

- factual basis of the dispute and list any disputed issues of law or policy; and
- (5) provide any other information specified in the public notice of application.

The next necessary determination is whether the requests were filed by "affected persons," pursuant to TWC § 5.115 and 30 TAC § 55.203(a). 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. An interest common to members of the general public does not qualify as a personal justiciable interest. Local governments with authority under state law over issues raised by the application receive affected person status under 30 TAC § 55.203(b).

In determining whether a person is affected, 30 TAC § 55.203(c) requires all factors be considered, including, but not limited to, the following:

- (1) whether the interest claimed is one protected by the law under which the application will be considered;
- (2) distance restrictions or other limitations imposed by law on the affected interest;
- (3) whether a reasonable relationship exists between the interest claimed and the activity regulated;
- (4) likely impact of the regulated activity on the health and safety of the person, and on the use of property of the person;
- (5) likely impact of the regulated activity on use of the impacted natural resource by the person; and
- (6) for governmental entities, their statutory authority over or interest in the issues relevant to the application.

In addition, this application is for a registration for the Standard Permit for Concrete Batch Plants. In accordance with THSC § 382.058(c), individuals are considered an "affected person," and thusly may request a hearing on the construction of a concrete plant under a standard permit, if:

- (c) . . . those persons actually residing in a permanent residence within 440 yards of the proposed plant . . . request a hearing under Section 382.056 . . .<sup>3</sup>

If the commission determines a hearing request is timely, fulfills the requirements for proper form, and the hearing requester is an affected person, the commission must then apply a three-part test to the issues raised in the matter to determine if any of the issues should be referred to the State Office of Administrative Hearings (SOAH) for a contested case hearing. The three-part test in 30 TAC § 50.115(c) is as follows:

- (1) The issue involves a disputed question of fact;
- (2) The issue was raised during the public comment period; and
- (3) The issue is relevant and material to the decision on the application.

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<sup>3</sup> TEXAS HEALTH & SAFETY CODE ANN. § 382.058 (Vernon 2001).

The law applicable to the facility proposed by Texas Concrete may generally be summarized as follows. A person who owns or operates a facility or facilities that will emit air contaminants is required to obtain authorization from the commission pursuant to the TCAA prior to the construction and operation of the facility or facilities.<sup>4</sup> Permit conditions of general applicability must be in rules adopted by the commission.<sup>5</sup> Those rules are found in 30 TAC Chapter 116. In addition, a person is prohibited from emitting air contaminants or performing any activity that violates the TCAA or any commission rule or order, or that causes or contributes to air pollution.<sup>6</sup> The relevant rules regarding air emissions are found in 30 TAC Chapters 101 and 111-118. In addition, the commission has the authority to establish and enforce permit conditions consistent with this chapter.<sup>7</sup> The materials accompanying this response list and reference permit conditions and operational requirements and limitations applicable to this proposed facility.

### **III. Evaluation and Analysis of the Requests**

#### *A. Were the requests for a contested case hearing in this matter timely and in proper form?*

The following persons submitted a timely hearing request and provided an address that is beyond one-quarter mile from the facility: Mr. Cornell Dillard, Mr. Lawrence Dillard, Ms. Sandi Newkirk, Mr. Hasan Rasheed, Mr. Charles Taylor, Mrs. Hazel Taylor, Mr. Oscar Taylor, and Mrs. Arlilia Taylor. Two individuals, Mr. Oscar Taylor and Mrs. Arlilia Taylor, also included in their requests a location for their place of residence from the facility as “. . . approximately 300 feet southwest. . .” on Pink Taylor Run Road, which contradicts the distance dictated by their residential address. Ms. Flora Brown Smith submitted a P.O. Box for her residential address. The Executive Director's staff was able to ascertain Ms. Smith's address through a search of public voting records, and evaluated her request for a contested case hearing accordingly.

The hearing requests were submitted during the public comment period or during the period for requesting a contested case hearing after the filing of the RTC. Furthermore, the Executive Director has determined that the hearing requests substantially comply with all of the form requirements in 30 TAC § 55.201(d).

The Executive Director addressed all public comments in this matter by providing responses in the RTC. The cover letter from the Office of the Chief Clerk attached to the RTC states that requesters should, to the extent possible, specify any of the Executive Directors' responses in the RTC that the requesters dispute and the factual basis of the dispute, and list any disputed issues of law or policy.<sup>8</sup> As of the date of this filing, none of the hearing requestors have filed a response to the RTC which reiterated issues raised during the comment period. In the absence of a response from any of the

<sup>4</sup> TEXAS HEALTH & SAFETY CODE ANN. § 382.0518 (Vernon 2001).

<sup>5</sup> TEXAS HEALTH & SAFETY CODE ANN. § 382.0513 (Vernon 1995).

<sup>6</sup> TEXAS HEALTH & SAFETY CODE ANN. § 382.085 (a) and (b) (Vernon 1997).

<sup>7</sup> TEXAS HEALTH & SAFETY CODE ANN. § 382.0513 (Vernon 1995).

<sup>8</sup> See 30 TAC § 55.201(d)(4) (2009)(Tex. Comm'n on Env. Quality, Requests for Reconsideration or Contested Case Hearing).

**EXECUTIVE DIRECTOR'S RESPONSE TO HEARING REQUESTS**

**Texas Concrete Enterprise, L.L.C., State Air Quality Permit No. 91708**

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other hearing requesters or their representatives within the thirty-day period after the RTC was mailed, the Executive Director cannot determine or speculate whether the hearing requesters continue to dispute issues of fact, or whether there are any outstanding issues of law or policy. The Executive Director nevertheless has included all of the issues raised by hearing requesters and commenters regarding this application as listed below.

**B. Analysis of the Hearing Requests utilizing the Other Factors the Commission must Consider in Evaluating the Hearing Requests**

**1. *Were the Hearing Requests received in a Timely Manner and the Proper Form?***

All hearing requests were received in a timely manner. As for the proper form, all of the hearing requests provided information that could be considered substantial compliance with the applicable law. For these requestors, the Executive Director can determine whether it is likely that these requestors will be impacted differently than any other member of the general public or if there is a likely impact of the regulated activity on these persons' interests. This will be discussed in detail below.

**2. *Are any of the Hearing Requestors an Affected Person?***

The threshold test of affected person status is whether the requestor has a personal justiciable interest affected by the application and whether this interest is different from that of the general public.<sup>9</sup> The definition of an affected person for Standard Permits for Concrete Batch Plants is limited to only those persons who reside in a permanent residence within 440 yards of the proposed plant.<sup>10</sup> In determining whether a person is affected, one of the factors of 30 TAC § 55.203(c) requires the Executive Director to consider distance restrictions or other limitations imposed by law on the affected interest.<sup>11</sup> All of the hearing requestors who submitted requests on application 91708 fail to meet this distance requirement.<sup>12</sup> As indicated on the included map, none of the hearing requestors permanently reside within the 440 yard distance requirement. The requestors' inability to meet the distance requirement of THSC § 382.058(c) bars their affected person status. In addition, because the Executive Director determined that the hearing requestors for application 91708 reside greater than 440 yards from the proposed facility, they are also not likely to be impacted differently than any other member of the general public; therefore, the requestors have failed to state any "personal justiciable interest" under 30 TAC § 55.203. Without a "personal justiciable interest," these hearing requestors are also not "affected persons" as defined by 30 TAC § 55.203, and do not meet the requirements of a person able to request a contested case hearing

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<sup>9</sup> *United Copper Indus. v. Joe Grissom*, 17 S.W.3d 797 (Tex. App.—Austin 2000, pet. abated).

<sup>10</sup> TEXAS HEALTH & SAFETY CODE ANN. 382.058(c) (Vernon 2001).

<sup>11</sup> 30 TAC § 55.203(c)(2) (1999) (Tex. Comm'n on Env. Quality, Determination of an Affecter Person).

<sup>12</sup> See, attached map and legend listing the locations of the hearing requestors. While Mr. and Mrs. Oscar and Arlilia Taylor stated in their hearing requests that their residence was located 300 feet southwest from the facility, none of the mapping software that TCEQ utilizes to create its maps (GIS maps, MapQuest, or Google Earth) show any homes within this purported distance from either the plant's boundary lines or the facility.

**EXECUTIVE DIRECTOR'S RESPONSE TO HEARING REQUESTS**

**Texas Concrete Enterprise, L.L.C., State Air Quality Permit No. 91708**

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according to 30 TAC § 55.201.

**C. Which Issues in this Matter should be Referred to SOAH for a Hearing?**

If the commission determines any of the hearing requests in this matter are timely and in proper form, and some or all of the hearing requesters are affected persons, the commission must apply the three-part test discussed in Section II to the issues raised in this matter to determine if any of the issues should be referred to SOAH for a contested case hearing. Based on the analysis previously offered, none of the persons requesting a hearing on this permit are affected persons as a matter of law; therefore, none of the hearing requests meet the prerequisites necessary for the commission to consider issues for referral to SOAH.<sup>13</sup>

**IV. Conclusion and Recommendation**

The Executive Director respectfully recommends the Commission: (1) deny the hearing requests for permit no. 91708 as a matter of law pursuant to 30 TAC § 55.201(d)(4), and; (2) approve the issuance of Applicant's permit Nno. 91708.

Respectfully submitted,

Texas Commission on Environmental Quality

Mark R. Vickery P.G.  
Executive Director

Stephanie Bergeron Perdue, Deputy Director  
Office of Legal Services

Robert Martinez, Division Director  
Environmental Law Division



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Alexis Lorick, Staff Attorney  
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Representing the Executive Director of the Texas  
Commission on Environmental Quality

## CERTIFICATE OF SERVICE

On the 7th day of October, 2010, I certify that a true and correct copy of the foregoing instrument has been served via hand delivery, facsimile, electronic mail, first class mail, interagency mail, and/or overnight mail on the undersigned



Alexis Lorick  
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