

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

September 15, 2010

TO: Persons on the attached mailing list.

RE: Capitol Aggregates, Ltd.
TPDES Permit No. WQ0001510000

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.** Unless a timely request for contested case hearing or reconsideration is received (see below), the TCEQ executive director will act on the application and issue the permit.

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 San Antonio Central Library, 600 Soledad Street, 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.

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/er

Enclosures

MAILING LIST
for
Capitol Aggregates, Ltd.
TPDES Permit No. WQ0001510000

FOR THE APPLICANT:

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Capitol Aggregates, Ltd.
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San Antonio, Texas 78265

Nancy Koch
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805 Las Cimas Parkway, Suite 300
Austin, Texas 78746

PROTESTANTS/INTERESTED PERSONS:

Santa Garcia
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San Antonio, Texas 78217-2894

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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Texas Commission on Environmental Quality
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FOR THE CHIEF CLERK
via electronic mail:

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Texas Commission on Environmental Quality
Office of Chief Clerk MC-105
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Austin, Texas 78711-3087

TPDES PERMIT NO. WQ0001510000

2010 SEP 13 PM 4:13

APPLICATION BY	§	BEFORE THE
CAPITOL AGGREGATES, LTD.	§	CLERKS OFFICE
TPDES PERMIT NO. WQ0001510000	§	TEXAS COMMISSION ON
	§	ENVIRONMENTAL QUALITY

EXECUTIVE DIRECTOR'S RESPONSE TO PUBLIC COMMENT

The Executive Director (ED) of the Texas Commission on Environmental Quality (the Commission or TCEQ) files this Response to Public Comment (Response) on the Capitol Aggregates, Ltd. (Applicant) application for a major amendment with renewal of Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0001510000 and on the ED's preliminary decision. As required by 30 Texas Administrative Code (30 TAC) Section (§) 55.156, before an application is approved, the ED prepares a response to all timely, relevant and material, or significant comments.

The Office of the Chief Clerk received timely comments from the following person: Mr. Santa Garcia. This response addresses all such timely public comments received, whether or not withdrawn.

If you need more information about this permit application or the wastewater 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

The Applicant operates the San Antonio Portland Cement Plant, a portland and masonry cement manufacturing facility. The Applicant has requested a major amendment to its existing permit to authorize the addition of the discharge of cooling tower blowdown, facility sink water, dust suppression water from the primary crusher, and air compressor condensate via Outfalls 001 and 002; to revise Other Requirement No. 3 of the draft permit to allow the discharge of cooling tower blowdown; and to remove the authorization to discharge wastewater via Outfall 003. The proposed draft permit would authorize the discharge of material storage pile runoff, vehicle/plant wash water, road dust suppression water, cooling tower blowdown, air compressor condensate, water from facility sinks, dust suppression water from the primary crusher, and storm water on an intermittent and flow variable basis via Outfalls 001 and 002. The discharge route is to unnamed tributaries of Salado Creek, then to Salado Creek in Segment No. 1910 of the San Antonio River Basin. The facility is located at 11551 Nacogdoches Road, on the west side of

Nacogdoches Road at the junction of Bulverde Road and Nacogdoches Road in the City of San Antonio, Bexar County, Texas.

Procedural Background

The application was received on September 3, 2009, declared administratively complete on November 18, 2009, and declared technically complete on February 19, 2010. The Notice of Receipt of Application and Intent to Obtain Permit (NORI) was published in Spanish in *La Prensa de San Antonio* on November 25, 2009 and in English in the *San Antonio Express – News* November 20, 2009. The ED prepared a draft permit and the Notice of Application and Preliminary Decision (NAPD) was published in *Conexion* on June 10, 2010 and the *San Antonio Express – News* on June 10, 2010. The public comment period ended on July 12, 2010. This application is subject to the procedural requirements adopted pursuant to House Bill 801, 76th Legislature, 1999.

COMMENTS AND RESPONSES

COMMENT 1:

Mr. Garcia is concerned that the discharge from this facility will further impact the existing flooding issues in the receiving stream.

RESPONSE 1:

The permitting process is limited to controlling the discharge of pollutants into waters in the state and protecting the water quality of the state's rivers, lakes, and coastal waters. For flooding concerns, please contact the local floodplain administrator for this area. If you need help finding the local floodplain administrator, please call the TCEQ Resource Protection Team at 512/239-4691.

The TCEQ does not address flooding issues in the wastewater permitting process, unless there is a potential impact to water quality. However, the draft permit includes effluent limits and other requirements that the Applicant must meet, even during rainfall events and periods of flooding. Page 1 of the draft permit includes the following language:

The issuance of this permit does not grant to the permittee the right to use private or public property for conveyance of wastewater along the discharge route described in this permit. This includes, but is not limited to, property belonging to any individual, partnership, corporation or other entity. Neither does this permit authorize any invasion of personal rights nor any violation of federal, state, or local laws or regulations. It is the responsibility of the permittee to acquire property rights as may be necessary to use the discharge route.

The discharges from this facility are intermittent. The facility last reported a discharge of wastewater via Outfall 001 in November of 2004, and via Outfalls 002 and 003 in November of

2007. Discharges from this facility are generally in response to large rainfall events.

The TCEQ conducts routine inspections of facilities to ensure the facilities comply with their authorizations and that all authorizations are obtained properly. Any observance or complaints about discharges from this facility can be reported for investigation to the TCEQ Region 13 Office in San Antonio at 210-490-3096, or by using the statewide toll-free number at 1-888-777-3186. Citizen complaints may also be filed on-line at <http://www.tnrcc.state.tx.us/cgi-bin/enforcement/complaints>. If the facility is found to be out of compliance with the terms or conditions of its permit or with TCEQ regulations, it may be subject to enforcement.

CHANGES MADE TO THE DRAFT PERMIT IN RESPONSE TO COMMENT

No changes were made to the draft permit in response to public comments.

Respectfully submitted,

Texas Commission on Environmental Quality

Mark R. Vickery, P.G.
Executive Director

Robert Martinez, Director
Environmental Law Division



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REPRESENTING THE
EXECUTIVE DIRECTOR OF THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY