

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

January 5, 2010

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

Re: Splendora Ready Mix, Inc., Permit No. 91552
TCEQ Docket No. 2010-1711-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 and issue letter
- 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 cursive script that reads "Alexis Lorick".

Alexis Lorick
Staff Attorney
Environmental Law Division

Enclosures

Bryan W. Shaw, Ph.D., *Chairman*
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TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

[Date here]

MR. FEDERICO GARCIA
PRESIDENT
SPLENDORA READY MIX, INC.
4515 MOUNT HOUSTON RD.
HOUSTON TX 77093-1439

RE: AIR QUALITY STANDARD PERMIT FOR CONCRETE BATCH PLANTS
(AS AMENDED EFFECTIVE JULY 10, 2003)
STANDARD PERMIT REGISTRATION NUMBER: 91552
CONCRETE BATCH PLANT
SPLENDORA, MONTGOMERY COUNTY
REGULATED ENTITY NUMBER: RN105852701
CUSTOMER REFERENCE NUMBER: CN603599176

Dear Mr. Garcia:

This is in response to your Form PI-1S (Air Quality Standard Permit Registration for Concrete Batch Plants) concerning standard permit registration no. 91552 for the construction of a permanent concrete batch plant to be located in Splendora, Montgomery County at 26670 Midline Rd.

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 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).

Mr. Federico Garcia

Page 2 of 2

Re: Air Quality Standard Permit No. 91552

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 Ms. Catherine Chinni at (512) 239-1740 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

Air Quality Standard Permit for Concrete Batch Plants

Effective Date July 10, 2003

This air quality standard permit authorizes concrete batch plant facilities which meet all of the conditions listed in paragraphs (1) through (3) and one of paragraphs (4), (5) or (6). If a standard permit registration is based on paragraphs (4), (5), or (6) and changes are proposed which change the paragraph under which the facility will be constructed and operate, the concrete batch plant must reapply for a new standard permit.

(1) Administrative Requirements

- (A) Any concrete batch plant authorized under this standard permit shall be registered in accordance with 30 TAC 116.611, Registration to Use a Standard Permit. Owners or operators shall submit a completed current PI-1S-CBP, Table 20 and a Concrete Batch Plant Standard Permit checklist. Facilities which meet the conditions of this standard permit do not have to meet the emissions and distance limitations listed in 30 TAC 116.610(a)(1), Applicability.
- (B) Registration applications shall also comply with 30 TAC § 116.614 “Standard Permit Fees” when the registration is required to complete public notification under paragraph two of this standard permit.
- (C) No owner or operator of a concrete batch plant shall begin construction and/or operation without obtaining written approval from the executive director. The time period in 30 TAC § 116.611(b) (45 days) does not apply to facilities registering under this permit. Those facilities which are not required to comply with the public notification requirements of paragraph two should receive approval within 45 days after receipt of the registration request by the executive director. Start of construction of any facility registered under this standard permit shall comply with 30 TAC § 116.115 (b)(2)(A) and commence within 18 months of written approval from the TNRCC.
- (D) Any concrete batch plant which has registered but not constructed or filed a registration request for a permit-by-rule filed under 30 TAC §§ 106.201, 106.202, or 106.203 (relating to Permanent and Temporary Concrete Batch Plants [Previously SE 71]; Temporary Concrete Batch Plants [Previously SE 93]; and Specialty Batch Plants [Previously SE 117]) prior to the effective date of this permit will be processed under those rules.
- (E) Applicants are not required to submit air dispersion modeling as a part of any concrete batch plant standard permit application.
- (F) Records shall be maintained on-site for the following:
 - (i) production rates for each hour of operation which demonstrate compliance with the most applicable of paragraphs (4)(A), (5)(B) and (C), or (6)(C) and (D); and
 - (ii) production and other records as required by 30 TAC §§ 101.6-101.7 and by (1)(F)(i) of this standard permit shall be kept for lesser of either the most recent rolling 24-month period or the duration of operation at a given site.

(2) Public Notice

Unless the facility is to be a temporary concrete plant, as defined in paragraph five of this permit, which is located in, or contiguous to, the right-of-way of a public works project, public notice must be conducted. Notification must follow the requirements in 30 TAC Chapter 39, Subchapters H & K. In addition, sign posting must be performed following the requirements of 30 TAC § 39.604. The signs shall be headed by the words "PROPOSED AIR QUALITY STANDARD PERMIT".

(3) General Requirements

- (A) All cement/flyash storage silos and weigh hoppers shall be equipped with a fabric or cartridge filter or vented to a fabric or cartridge filter system.
- (B) Fabric filters and collection systems shall meet all of the following:
 - (i) any fabric or cartridge filter, any fabric or cartridge filter system, and any suction shroud shall be maintained and operated properly with no tears or leaks;
 - (ii) all filter systems (including any central filter system) shall be designed to meet at least 0.01 outlet grain loading (grains/dry standard cubic foot);
 - (iii) all filter systems, mixer loading, and batch truck loading emissions control devices shall meet a performance standard of no visible emissions exceeding 30 seconds in any six-minute period as determined using U.S. Environmental Protection Agency (EPA) Test Method (TM) 22; and
 - (iv) when cement or flyash silos are filled during non-daylight hours, the silo filter system exhaust shall be sufficiently illuminated to enable a determination of compliance with the visible emissions requirement in (3)(B)(iii) of this permit.
- (C) Conveying systems for the transfer of cement/flyash shall meet all of the following:
 - (i) conveying systems to and from the storage silos shall be totally enclosed, operated properly, and maintained with no tears or leaks; and
 - (ii) these systems, except during cement/flyash tanker connect and disconnect, shall meet a performance standard of no visible emissions exceeding 30 seconds in any six-minute period as determined using EPA TM 22.
- (D) A warning device shall be installed on each bulk storage silo. This device shall alert operators in sufficient time prior to the silo reaching capacity during loading operations, so that the loading operation can be stopped prior to filling to such a level as to potentially adversely impact the pollution abatement equipment. Any filling of the silo resulting in failure of the abatement system, or visible emissions in excess of paragraph (3)(B)(iii) of this standard permit, must be documented and reported following the requirements of 30 TAC § 101.6 or 30 TAC § 101.7, as appropriate.
- (E) Dust emissions from all in-plant roads and traffic areas associated with the operation of the concrete batch plant must be minimized at all times by at least one of the following methods:
 - (i) covered with a material such as, but not limited to, roofing shingles or tire chips (when used in combination with (ii) or (iii) of this subsection);

- (ii) treated with dust-suppressant chemicals;
 - (iii) watered; or
 - (iv) paved with a cohesive hard surface that is maintained intact and cleaned.
- (F) All stockpiles shall be sprinkled with water, dust-suppressant chemicals, or covered, as necessary, to minimize dust emissions.
- (G) Spillage of materials used in the batch shall be immediately cleaned up and contained or dampened so that dust emissions are minimized.

(4) Additional Requirements for Concrete Batch and Specialty Batch Concrete, Mortar, Grout Mixing, or Pre-cast Concrete Products Plants

- (A) Site production shall not exceed 30 cubic yards per hour.
- (B) As an alternative to the requirement in paragraph (3)(A) of this section, the cement/flyash weigh hopper may be vented inside the batch mixer.
- (C) Dust emissions at the batch mixer feed shall be controlled by one of the following:
- (i) a spray device which eliminates visible emissions;
 - (ii) a pickup device delivering air to a fabric or cartridge filter;
 - (iii) an enclosed batch mixer feed such that no visible emissions occur; or
 - (iv) conducting the entire mixing operation inside the enclosed process building such that no visible emissions from the building occur during mixing activities.
- (D) Except for incidental traffic, vehicles used for the operation of the concrete batch plant may not be operated within 25 feet of any property line, except for entrance and exit to the site. In lieu of meeting this distance requirement, roads and other traffic areas must be bordered by dust preventive fencing or other barrier along all traffic routes or work areas within the 25-foot specified buffer area. These borders shall be constructed to a height of at least 12 feet.

(5) Additional Requirements for Temporary Concrete Plants

For the purposes of this section, a temporary concrete plant is one that occupies a designated site for not more than 180 consecutive days or supplies concrete for a single project (single contract or same contractor for related project segments), but not other unrelated projects.

- (A) Site production shall be limited to no more than 300 cubic yards per hour.
- (B) Dust control at the truck drop or mixing point shall comply with one of the following:
- (i) Facilities which occupy a site for less than 180 consecutive days and have production rates less than 200 cy/hr may load rotary mix trucks through a discharge spout equipped with a water fog ring having low-velocity fog nozzles spaced to create a continuous fog curtain that minimizes dust emissions. If a water fog ring is used at the truck drop point, the visible emissions limitations (and associated compliance determination methods) of subsection (3)(B)(3) and (4) must be met.

- (ii) All other facilities must use a suction shroud and fabric filter /cartridge filter system. The suction shroud or other pickup device shall be installed at the batch drop point (drum feed for central mix plants) and vented to a fabric or cartridge filter system with a minimum of 4,000 actual cubic feet per minute of air and must meet subsection (3)(B).
- (C) All of the following applicable distance limitations must be met. For concrete batch plants which supply concrete for a single public works project, the "property line" measurements for purposes of compliance with this standard permit and 30 TAC § 111.155 shall be made to the outer boundaries of the designated public property, roadway project and associated rights-of-way.
 - (i) The suction shroud baghouse exhaust or truck drop point shall be located at least 100 feet from any property line.
 - (ii) For those facilities with a water fog ring, the truck drop point shall be a minimum of 300 feet from the nearest non-industrial receptor.
 - (iii) 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 from any property line:
 - (iv) for those facilities with production rates less than or equal to 200 cubic yards per hour, at least 25 feet; and
 - (v) for those facilities with production rates more than 200 and less than or equal to 300 cubic yards per hour, at least 50 feet.
- (D) In lieu of meeting the distance requirements for roads and stockpiles of (5)(C)(iii), the following may be followed:
 - (i) roads and other traffic areas within the buffer distance must be bordered by dust suppressing fencing or other barrier along all traffic routes or work areas. These borders shall be constructed to a height of at least twelve (12) feet; and
 - (ii) stockpiles within this buffer distance must be contained within a three-walled bunker which extends at least two (2) feet above the top of the stockpile.
- (E) The owner or operator of a temporary concrete plant that has previously been determined by the commission to be in compliance with the technical requirements of the standard permit in effect at the time of registration, which supplies concrete to a public works project and is located in or contiguous to the right of way of that public works project may, in lieu of the registration requirement in subsection(1)(A) of this standard permit, register by notifying the appropriate TCEQ regional office and any local air pollution control agency having jurisdiction in writing at least 30 calendar days prior to locating at the site. The notification shall include the owner and, if applicable, the operator's name, address, and phone number as well as the physical description of the site, scaled plot plan of site with location of equipment authorized by this standard permit, concrete plant serial number, account number or regulated entity number, expected hours of operation, expected date of arrival on site and expected date to vacate the site, a completed Table 20,

and a Concrete Batch Plant Standard Permit Checklist. Temporary concrete plants that do not supply concrete to a public works project must apply for a new registration under subsection (1)(A) of this standard permit in order to relocate at a new site.

(6) Additional Requirements for Other Concrete Plants

- (A) Site production shall be limited to no more than 300 cubic yard per hour.
- (B) A suction shroud or other pickup device shall be installed at the batch drop point (drum feed for central mix plants) and vented to a fabric or cartridge filter system with a minimum of 4,000 actual cubic feet per minute of air.
- (C) All entry and exit roads and main traffic routes associated with the operation of the concrete batch plant (including batch truck and material delivery truck roads) shall be paved with a cohesive hard surface that can be maintained intact and shall be cleaned. All batch trucks and material delivery trucks shall remain on paved surface when entering, conducting primary function, and leaving the property. Other traffic areas must comply with the control requirements of paragraph (3)(E).
- (D) The following distance limitations must be met:
 - (i) the suction shroud baghouse exhaust shall be at least 100 feet from any property line;
 - (ii) 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 from any property line:
 - (iii) for those facilities with production rates less than or equal to 200 cubic yards per hour, at least 25 feet; and
 - (iv) for those facilities with production rates more than 200 and less than or equal to 300 cubic yards per hour, at least 50 feet.
- (E) In lieu of meeting the distance requirements for roads and stockpiles of (5)(C)(ii), the following may be followed:
 - (i) roads and other traffic areas within the buffer distance must be bordered by dust suppressing fencing or other barrier along all traffic routes or work areas. These borders shall be constructed to a height of at least 12 feet; and
 - (ii) stockpiles within this buffer distance must be contained within a three-walled bunker which extends at least two feet above the top of the stockpile.

Concrete Batch Plant Standard Permit Source Analysis & Technical Review

Company	SPLENDORA READY MIX, INC	Permit Number	91552
City	Splendora	Project Number	153247
County	Montgomery	Account Number	N/A
Project Type	Initial	Regulated Entity Number	RN105852701
Project Reviewer	Ms. Catherine Chinni	Customer Reference Number	CN603599176
Site Address	26670 Midline Rd 0.5 miles west of and 2.93 mi n of the intersection of FM 2090 and HWY 59 in Splendora and 0.51 mi west of HWY 59 on Midline Rd		

Project Overview

This application is for a permanent concrete batch plant. The maximum requested operating schedule is 12 hours a day, 6 days a week, for 50 weeks a year, not to exceed 2,080 hours a year with no night-time operations. The maximum production requested is 300 yd³/hr and 120,000 yd³/yr. The plant is configured as a truck mix plant with the truck drop point and weigh hopper being vented to a central dust collector that has an air flow of 5,000 ACFM and an outlet grain loading that meets 0.01 gr/dscf. The two silos will be vented to silo-top dust collectors that meet an outlet grain loading of 0.01 gr/dscf. The Applicant represents that all requirements for a permanent concrete batch plant under this standard permit will be met.

None of the contested case hearing requestors reside in a permanent residence located within 440 yards of the plant.

Deficiencies

Has all required information been received by the TCEQ?	Yes
If no, date company notified of deficient items:	January 14, 2010
Comments:	Deficiencies, though now resolved, included the distance to the property line from the central dust collector.
Date registration claim complete:	January 14, 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?	NA
If the engine or generator will be at this site for more than one year does the engine meet 30 TAC § 106.512?	NA

Compliance History Evaluation - 30 TAC Chapter 60 Rules

A compliance history report was reviewed on:	January 14, 2010
Compliance period:	December 14, 2009 through December 15, 2004
Site rating & classification:	3.01 (ABD)
Company rating & classification:	3.01 (Average)
If the rating is 40<RATING<45, what was the outcome, if any, based on the findings in the formal report:	NA
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:	NA
	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?	NA

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

Permit No. 91552
Page 2

Regulated Entity No. RN105852701

Rule Citation	Requirement
	Comments: NA
	Date Application Received: December 14, 2009
	Date Administratively Complete: December 18, 2009
	Small Business Source? Yes
	Date Leg Letters mailed: December 18, 2009
39.603	Date Published: January 7, 2010
	Publication Name: <i>Houston Chronicle</i>
	Pollutants: Particulate matter including (but not limited to) aggregate, cement, road dust, and particulate matter with diameters of 10 microns or less and 2.5 microns or less
	Date Affidavits/Copies Received: January 20, 2010
	Is bilingual notice required? Yes
	Language: Spanish
	Date Published: January 10, 2010
	Publication Name: <i>Houston Chronicle dba La Voz de Houston</i>
	Date Affidavits/Copies Received: January 20, 2010
	Date Certification of Sign Posting / Application Availability Received: February 10, 2010
39.604	Public Comments Received? Yes, 16
	Hearing Requested? Yes, 7
	Meeting Request? Yes, 1
	Date Meeting Held: June 28, 2010
	Date Response to Comments sent to OCC:
	Request(s) withdrawn? No
	Date Withdrawn: NA
	Consideration of Comments: Yes, see Response to Comments
	Is 2nd Public Notice required? Yes
39.419	Date 2nd Public Notice Mailed: May 17, 2010
	Preliminary Determination: Meets standard permit requirements
39.603	Date Published: May 30, 2010
	Publication Name: <i>Houston Chronicle</i>
	Pollutants: Particulate matter including (but not limited to) aggregate, cement, road dust, and particulate matter with diameters of 10 microns or less and 2.5 microns or less
	Date Affidavits/Copies Received: June 7, 2010
	Is bilingual notice required? Yes
	Language: Spanish
	Date Published: May 30, 2010
	Publication Name: <i>Houston Chronicle dba La Voz de Houston</i>
	Date Affidavits/Copies Received: June 7, 2010
	Date Certification of Sign Posting / Application Availability Received: July 5, 2010
	Public Comments Received? Yes, oral comments at meeting and 1 written comment
	Meeting Request? No

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

Permit No. 91552
Page 3

Regulated Entity No. RN105852701

Rule Citation	Requirement
	Date Meeting Held: June 28, 2010
	Hearing Request? No
	Date Hearing Held:
	Request(s) withdrawn?
	Date Withdrawn:
	Consideration of Comments: Yes, see Response to Comments
39.421	Date RTC, Technical Review & Draft Permit Conditions sent to OCC:
	Request for Reconsideration Received?
	Final Action:
	Are letters Enclosed?

Recommendations

All conditions of Standard Permit satisfied?	Yes
Final Action:	
Comments:	The Applicant represents that all requirements for a permanent concrete batch plant under this standard permit will be met. None of the contested case hearing requestors reside in a permanent residence located within 440 yards of the plant.

Project Reviewer	Date	Team Leader/Section Manager/Backup	Date
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Compliance History Report

Customer/Respondent/Owner-Operator:	CN603599176 SPLENDORA READY MIX, INC	Classification:	Rating:
Regulated Entity:	RN105852701 SPLENDORA READY MIX	Classification:	Site Rating:
ID Number(s):	AIR NEW SOURCE PERMITS	REGISTRATION	91552
Location:	26670 MIDLINE RD 0.5 MI W OF AND 2.93 MI N OF THE INTERSECTION OF FM 2090 AND HWY 59 IN SPLENDORA AND 0.51 MI W OF HWY 59 ON MIDLINE RD		
TCEQ Region:	REGION 12 - HOUSTON		
Date Compliance History Prepared:	December 20, 2010		
Agency Decision Requiring Compliance History:	Permit - Issuance, renewal, amendment, modification, denial, suspension, or revocation of a permit.		
Compliance Period:	December 15, 2004 to December 14, 2009		
TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History			
Name:	Catherine Chinni	Phone:	239 - 1000

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.

Components (Multimedia) for the Site :

- A. Final Enforcement Orders, court judgements, and consent decrees of the state of Texas and the federal government.
N/A
- 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.)
N/A
- E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)
N/A
- 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

Splendora Ready Mix, Inc. Location Aerial Determination of Affected Person Status Map Requested by TCEQ Office of Legal Services for Commissioners' Agenda January 26, 2011



Texas Commission on Environmental Quality
 GIS Team (Mail Code 197)
 P.O. Box 13087
 Austin, Texas 78711-3087
 December 20, 2010



Projection: Texas Statewide Mapping System (TSMS)
 Scale 1:12,085

- Legend**
- Facility
 - Property Boundary
 - Requestor's Property

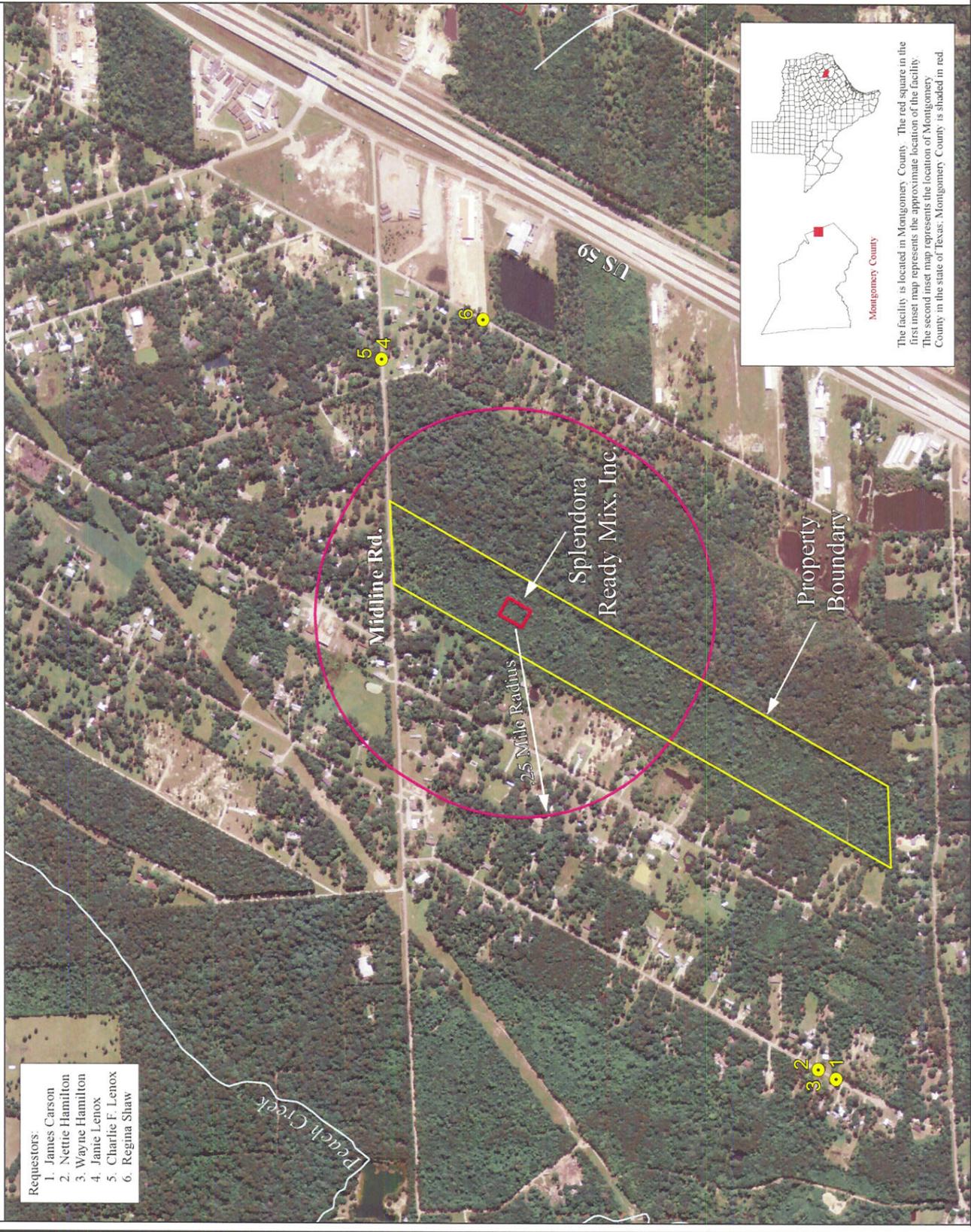
Source: The location of the facility was provided by the TCEQ Office of Legal Services (OLS). OLS obtained the site location information from the applicant and the requestor information from the requestor. The vector data are U.S. Census Bureau 1992 TIGER/Line Data (1:100,000). The background of this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

This map depicts the following:
 (1) The approximate location of the facility. This is labeled "Splendora Ready Mix, Inc."
 (2) Circle and arrow depicting 1/4 mile radius. This is labeled "25-Mile Radius"
 (3) Approximate property boundary. This is labeled "Property Boundary"
 (4) Requestors locations. These are labeled with an id number.

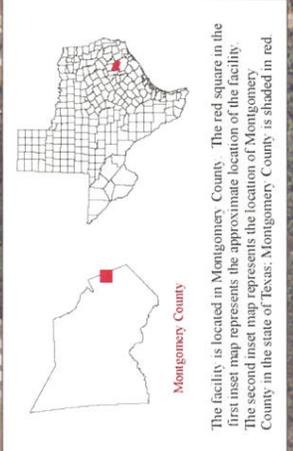


This map was generated by the Information Resources Division of the Texas Commission on Environmental Quality. This map was not generated by a licensed surveyor, and is intended for illustrative purposes only. No claims are made to the accuracy or completeness of the data or to its suitability for a particular use. For more information concerning this map, contact the Information Resource Division at (512) 239-0800.

MAP/Inmaph. CPE-327248



- Requestors:**
1. James Carson
 2. Nettie Hamilton
 3. Wayne Hamilton
 4. Janie Lenox
 5. Charlie F. Lenox
 6. Regina Shaw



TCEQ AIR QUALITY PERMIT NUMBER 91552
TCEQ DOCKET NUMBER 2010-1711-AIR

APPLICATION BY	§	BEFORE THE
	§	
SPLENDORA READY MIX, INC.	§	TEXAS COMMISSION ON
	§	
EUSTACE, HENDERSON COUNTY	§	ENVIRONMENTAL QUALITY

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) § 5.556.¹ 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

Splendora Ready Mix, Inc., (Splendora 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.² This permit will authorize Splendora to construct and operate a permanent concrete batch plant with the truck drop point and weigh hopper vented to a central dust collector, and with two silos

¹ Statutes cited in this response may be viewed online at 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, or follow the “Rules, Policy & Legislation” link on the TCEQ website at 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 (PM₁₀), and particles less than or equal to 2.5 microns in aerodynamic diameter (PM_{2.5}).

vented to silo-top dust collectors, all designed to limit the amount of excess dust emissions. In all, the site will operate 12 hours a day, 6 days a week, for 50 weeks a year, not to exceed 2,080 hours a year. Night-time operations at Splendora's plant are expressly prohibited. Plant throughput will be authorized at 300 cubic yards per hour, or less, with an annual throughput of 120,000 cubic yards per year. The facility is located at 26670 Midline Road in the city of Splendora, in Montgomery County, Texas.

Splendora's permit application was received December 14, 2009 and declared administratively complete on December 18. The Notice of Receipt of Application and Intent to Obtain an Air Quality Permit Registration (NORI) for this permit application was published on January 7, 2010 in the Houston Chronicle. An alternative language NORI was subsequently published January 10, 2010 in La Voz de Houston. Seven hearing requests were timely received by the TCEQ, one of which was a duplicate request by Mr. Wayne Hamilton. Because timely hearing requests were received, Splendora was required to publish a second notice of their application to the public. The second public notice, or the Notice of Application and Preliminary Decision for an Air Quality Standard Permit (NAPD), was published in both the Houston Chronicle and in an alternative language in La Voz de Houston on May 30, 2010. The public comment period for permit application 91552 ended on June 14, 2010. The RTC was filed September 15, 2010.

Seven hearing requests were filed by six individuals: Mr. James Carson, Ms. Nettie Hamilton, Mr. Wayne Hamilton, Mr. Charlie Lenox, Ms. Janie Lenox, and Ms. Regina Shaw. Mr. Hamilton is listed by TCEQ's Office of the Chief Clerk as two hearing requestors. Mr. Hamilton's hearing requests will be evaluated as a singular request by the Executive Director.

II. Applicable Law

The commission must assess the timeliness and form of the hearing requests, as discussed 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

EXECUTIVE DIRECTOR'S RESPONSE TO HEARING REQUESTS

Splendora Ready Mix Inc., Air Quality Permit No. 91552

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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" as defined by TWC § 5.115, and implemented in commission rule 30 TAC § 55.203. Under 30 TAC § 55.203, 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 TCAA, THSC § 382.058 (c), individuals are considered an "affected person," and 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 . . .³

³ TEXAS HEALTH & SAFETY CODE ANN. § 382.058 (Vernon 2001).

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 must involve a disputed question of fact;
- (2)The issue must have been raised during the public comment period; and
- (3)The issue must be relevant and material to the decision on the application.

The law applicable to the facility proposed by Splendora 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 prior to the construction and operation of the facility or facilities.⁴ Thus, the location and operation of the proposed facility requires authorization under the TCAA. Permit conditions of general applicability must be in rules adopted by the commission.⁵ 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.⁶ 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.⁷ The materials accompanying this response list and reference permit conditions and operational requirements and limitations applicable to this proposed facility.

For permit application 91552, the Executive Director's staff referred to the pertinent provisions of TCAA, THSC § 382.058, Notice of and Hearing on Construction of Concrete Plant Under Permit by Rule, Standard Permit, or Exemption, in effect at the time the permit application was declared administratively complete December 18, 2009.

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. James Carson, Ms. Nettie Hamilton, Mr. Wayne Hamilton, Mr. Charlie F. Lenox, Sr., Ms. Janie Lenox, and Ms. Regina Shaw.

⁴ TEXAS HEALTH & SAFETY CODE ANN. § 382.0518 (Vernon 2001).

⁵ TEXAS HEALTH & SAFETY CODE ANN. § 382.0513 (Vernon 1995).

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

⁷ TEXAS HEALTH & SAFETY CODE ANN. § 382.0513 (Vernon 1995).

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; therefore, all hearing requests were received in a timely manner. As for the proper form, all the hearing requestors provided information that is in compliance with the applicable law, 30 TAC § 55.201(d). Because the requestors provided information that is in compliance with 30 TAC § 55.201(d), 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.

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 requestors should, to the extent possible, specify any of the Executive Directors' responses in the RTC that the requestors dispute and the factual basis of the dispute, and list any disputed issues of law or policy.⁸ 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 other hearing requestors or their representatives within the thirty-day period after the RTC was mailed, the Executive Director cannot determine or speculate whether the hearing requestors 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 requestors and commenters regarding this application as listed below.

B. Are those who requested a contested case hearing in this matter affected persons?

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.⁹ 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.¹⁰ 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.¹¹ All of the hearing requestors who submitted requests on application 91552 fail to meet this distance requirement as none of them permanently reside within 440 yards of the proposed plant, as indicated on the enclosed map.¹² The requestors' inability to

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

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

¹⁰ TEXAS HEALTH & SAFETY CODE ANN. 382.058(c) (Vernon 2001).

¹¹ 30 TAC § 55.203(c)(2) (1999) (Tex. Comm'n on Env. Quality, Determination of an Affected Person).

¹² See, attached map and legend listing the locations of the hearing requestors. TCEQ utilizes internal mapping software (GIS maps) in conjunction with MapQuest, or Google Earth to show any homes within this purported distance from either the plant's boundary lines or the facility. The Executive Director acknowledges there are homes within the statutory distance required in the rule; however, none of the requestors who made timely hearing

meet the distance requirement of THSC § 382.058(c) bars by operation of law their affected person status. In addition, because the Executive Director determined that the hearing requestors for application 91552 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; accordingly, the requestors have failed to state any "personal justiciable interest" under 30 TAC § 55.203. Without a "personal justiciable interest," these hearing requestors are 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 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 requestors 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.¹³

IV. Conclusion and Recommendation

The Executive Director respectfully recommends the Commission:

1. Deny the hearing requests for permit no. 91552 as a matter of law pursuant to 30 TAC § 55.201(d)(4), and;
2. Approve the issuance of Applicant's permit No. 91552.

Respectfully submitted,

Texas Commission on Environmental Quality

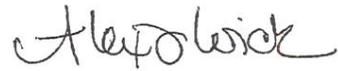
Mark R. Vickery P.G.
Executive Director

Stephanie Bergeron Perdue, Deputy Director
Office of Legal Services

Robert Martinez, Division Director
Environmental Law Division

requests permanently reside in any of those homes.

¹³ TEXAS HEALTH & SAFETY CODE ANN. § 382.058(c) (Vernon 2001).



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Texas Commission on Environmental Quality