

**TCEQ AIR QUALITY STANDARD PERMIT FOR CONCRETE BATCH PLANT
RENEWAL REGISTRATION 51836**

APPLICATION BY	§	BEFORE THE
MICHAEL BRADLEY SMITH	§	
CONCRETE BATCH PLANT	§	TEXAS COMMISSION ON
HUNTSVILLE, WALKER COUNTY	§	
	§	ENVIRONMENTAL QUALITY

EXECUTIVE DIRECTOR'S RESPONSE TO PUBLIC COMMENT

The Executive Director of the Texas Commission on Environmental Quality (the commission or TCEQ) files this Response to Public Comment (Response) on the Standard Permit application for continued operation.

As required by Title 30 Texas Administrative Code (TAC) §55.156, before an application is approved, the Executive Director prepares a response to all timely, relevant and material, or significant comments. The Office of Chief Clerk timely received comment letters from the following persons: Mr. Donald C. Brown, Mrs. Sharon A. Brown, Mr. James Bryan, and Ms. Judy Bryan. This Response addresses all timely public comments received, whether or not withdrawn. If you need more information about this permit application or the permitting process please call the TCEQ Public Education Program at 1-800-687-4040. General information about the TCEQ can be found at our website at www.tceq.texas.gov.

BACKGROUND

Description of Facility

Michael Bradley Smith has applied to the TCEQ for a Standard Permit under Texas Clean Air Act (TCAA), §382.05195. This permit will authorize the continued operation of an existing permanent concrete batch plant. The plant is located at 834 Farm-to-Market Road 2296, Huntsville, Walker County. Contaminants authorized under this permit include dust, aggregate, cement, and particulate matter (PM) less than or equal to 10 and 2.5 micrometers in aerodynamic diameter (PM₁₀ and PM_{2.5}, respectively).

Procedural Background

To continue operating an existing permitted facility that may emit air contaminants, the person planning the continued operation must obtain an authorization from the commission. This permit application is for the renewal of Air Quality Standard Permit for Concrete Batch Plant registration 51836. The permit application was received on October 9, 2012, and declared administratively complete on December 28, 2012. The Notice of Receipt and Intent to Obtain an Air Quality Permit (NORI or public notice) for this permit application was published on January 25, 2013 in *The Huntsville Item*.

COMMENTS AND RESPONSES

COMMENT 1: Donald C. Brown stated that his wife spoke with an employee at the TCEQ regarding the TCEQ's sign-posting requirements, and that the applicant "VERY CLEARLY" had not followed these requirements.

Donald C. and Sharon A. Brown provided several photos to support their contention that the applicant's signs were: not clearly visible from the road; not near the property lines; clearly more than ten feet from the driveway; and not posted parallel to the property's driveway. In later comments, Mr. and Mrs. Brown reported that the applicant moved the signs onto the company's identification sign near the front gate, but that they were still not parallel to the driveway, the correct number of feet from the property line, or placed at various property lines, as required by the TCEQ. Mrs. Brown asked whether the applicant had requested a waiver for the proper sign placement.

James and Judy Bryan stated that the applicant's signs were located about 15 feet behind the company's identification sign near the front gate, so that they were not visible from Farm-to-Market Road 2296, and that they were not parallel with the applicant's driveway. Mr. and Mrs. Bryan also commented that the applicant hides his public notice signs so that the neighbors cannot comment on permitting actions.

Mr. and Mrs. Brown requested that the TCEQ investigate the placement of the applicant's signs and either revoke the application or discontinue the permit review process until he followed the proper rules. Mr. Brown also asked whether the 15-day public notice period would be extended, since the applicant did not post the signs correctly.

RESPONSE 1: 30 TAC §39.604 requires that signs be placed, at the applicant's expense, at the site of the existing or proposed facility. The sign(s) must declare the filing of an application for a permit and state the manner in which the commission may be contacted for further information. The applicant must provide verification to the commission that the sign posting was conducted in accordance with TCEQ rules. Each sign placed at the site must be located within ten feet of every property line paralleling a public highway, street, or road. Signs must also be visible from the street and spaced at not more than 1,500-foot intervals. A minimum of one, but no more than three, signs shall be required along any property line paralleling a public highway, street, or road. The permit applicant may seek, and the TCEQ may grant, variances from the specific sign posting requirements if the applicant demonstrates that the requirements are not practical and suggested alternatives are at least as effective in providing public notice to the public. For this permit, the applicant did not request a variance from these requirements.

For this permit application and based on the photographs provided by the commenter and verbal confirmation from the applicant's representative, the permit reviewer determined that the applicant did not consistently meet the TCEQ's requirements for sign posting with regard to distance (10 feet) from their property line. The applicant was instructed to post the signs as required above or request a variance. TCEQ received confirmation that the signs were placed appropriately on February 5, 2013. As a result, the comment period for this application was extended to February 26, 2013. An e-mail was sent to Mrs. Brown on February 11, 2013, to inform her of this decision.

Executive Director's Response to Public Comment
Michael Bradley Smith, Standard Permit Registration No. 51836
Page 3 of 7

Review of the photographs provided by the commenter show the signs were posted parallel to the driveway entrance which is also parallel to the public road. Posting the signs in this manner indicate the applicant met the sign posting requirements relating to signs being posted parallel to a public highway, street, or road. The applicant's representative confirmed the signs were posted in accordance with 30 TAC § 39.604.

COMMENT 2: Donald C. and Sharon A. Brown and James and Judy Bryan noted that the applicant's public notice appeared in *The Huntsville Item* on January 25, 2013, and the notice stated that the permit application would then be available at the Huntsville Public Library for review. Mr. and Mrs. Brown stated that they attempted to view the permit application on January 29, and were told that it was not available. Mr. and Mrs. Bryan also commented that the permit application was not available for review at the library.

Mr. and Mrs. Brown stated that Mrs. Brown called the library on January 31, February 1, and February 4, and were told that the application was still not available. Mr. Brown asked whether it was possible for the TCEQ to e-mail the application directly to him. Mrs. Brown stated that on February 6, 2013, a staff member at the library informed her that library staff had misplaced the application. Mrs. Brown also stated that she had received an incorrect e-mail address from the permit reviewer, which prohibited her from submitting a comment promptly.

Mr. and Mrs. Brown requested that the TCEQ investigate the issue and extend the comment period, since the permit application was not available for review on January 25, 2013. Mr. and Mrs. Bryan commented that the application should be revoked, since copies of the draft permit were not made available by the applicant as required by TCEQ rules.

RESPONSE 2: Section 382.056(d) of the Texas Clean Air Act (TCAA) requires the applicant to make a copy of the application available for review and copying at a public place in the county in which the facility is located or proposed to be located. Additionally, 30 TAC §39.405(g) requires that the application be available for inspection beginning on the first day of newspaper publication of the NORI and remain available for the duration of the comment period, as set forth in the notice. This application was made available by the applicant at the Huntsville Public Library in Walker County. The applicant provided a signed receipt from the city librarian, Ms. Linda Dodson indicating the application was received on January 23, 2013 and available for public viewing.

As explained above, the comment period for this application was extended to February 26, 2013 which exceeds the 15 day comment period, after library staff acknowledged they misplaced the application on February 6, 2013. Therefore, the company has met the regulatory requirements in Section 382.056(d) of the TCAA.

COMMENT 3: Sharon A. Brown expressed concern, on behalf of the neighbors of the plant, stating that the applicant does not comply with TCEQ requirements to run his business in a manner that will protect their safety, and that the applicant does not follow TCEQ's rules. Mrs. Brown stated that several nearby families suffer from repeated respiratory illnesses. She further stated that if the applicant is not following the TCEQ's requirements regarding sign-posting and making the permit application available in a public place, then it is apparent that the applicant is

Executive Director's Response to Public Comment
Michael Bradley Smith, Standard Permit Registration No. 51836
Page 4 of 7

not following other TCEQ requirements. Mrs. Brown commented that perhaps she should contact the Houston Regional Office to investigate her concerns of the applicant's noncompliance. She stated that a viewing of the plant on Google Earth would substantiate her claims. Mrs. Brown stated that Mr. Smith constantly prevaricates to his neighbors and is not truthful to the TCEQ regarding his operations.

On behalf of herself and several neighbors, Sharon A. Brown requested that the TCEQ deny Mr. Smith's application for renewal of his permit. Mrs. Brown stated that the applicant has not followed the TCEQ's requirements for the past ten years, and she believes he will continue to not comply with the appropriate requirements if the permit is renewed. Mrs. Brown stated that the TCEQ ignored complaints when the permit was issued ten years ago, and should reconsider supporting the applicant for the renewal. Mrs. Brown asked whether the TCEQ's intent is to support noncompliant behavior.

As evidence that the applicant has not met permit requirements for the past ten years, Mrs. Brown stated that the applicant has not paved, tire-chipped, or installed a 12-foot fence at the entrance and exit to the property to protect neighbors. Mrs. Brown provided a Google Earth map to document these concerns.

Mrs. Brown provided a list of issues regarding the plant that, if addressed by the applicant, would satisfy the concerns of the neighbors:

- Add tire chips or upgrade the entrance/exit road so that there are no cracks/chunks missing from the driveway to reduce dust emissions [Registration checklist, (5)(E)(iii)]
- Completely pave driveway to reduce dust emissions [TCEQ requirements]
- Operate only 12 hours per day [Table 20, Maximum operations: 12 hours/day]; she stated that the applicant currently operates from 2 a.m. to 7 p.m.
- Construct barriers to a height of at least 12 feet [Amendment 10, Section E, Part ii]
- Water the entrance/exit during periods of extended drought to reduce dust emissions; she stated that currently the applicant waters only occasionally, as convenient

RESPONSE 3: The applicant's concrete batch plant is registered under a Standard Permit pursuant to 30 TAC § 116.611, Registration to Use a Standard Permit, which is protective of public health and welfare. The technical requirements contained in the Standard Permit for Concrete Batch Plants are designed to ensure that facilities operating within the parameters of the permit will achieve the emission standards determined to be protective of human health and the environment by the TCEQ protectiveness review. These technical standards require compliance with the National Ambient Air Quality Standards (NAAQS) for particulate matter (PM).

NAAQS are created by the United States Environmental Protection Agency (EPA) and, as defined in the federal regulations (40 CFR §50.2), include both primary and secondary standards. The primary standards are those which the Administrator of the EPA determines are necessary, with an adequate margin of safety, to protect the public health, including sensitive members of the population such as children, the elderly, and individuals with existing lung or cardiovascular conditions. Secondary NAAQS are those which the Administrator determines are necessary to protect the public welfare and the environment, including animals, crops, vegetation, and buildings, from any known or anticipated adverse effects associated with the

Executive Director's Response to Public Comment
Michael Bradley Smith, Standard Permit Registration No. 51836
Page 5 of 7

presence of an air contaminant in the ambient air. The standards are set for criteria pollutants: ozone, lead, carbon monoxide, sulfur dioxide, nitrogen dioxide, and respirable particulate matter (PM). "Criteria pollutants" are those pollutants for which a NAAQS has been established.

In addition to complying with the federal and state standards and guidelines mentioned above, applicants must also comply with 30 TAC §101.4, which prohibits nuisance conditions. Specifically the rule states, "No person shall discharge from any source whatsoever one or more air contaminants or combinations thereof, in such concentration and of such duration as are or may tend to be injurious to or to adversely affect human health or welfare, animal life, vegetation, or property, or as to interfere with the normal use and enjoyment of animal life, vegetation, or property." As long as the facility is operated in compliance with the terms of the permit, nuisance conditions are not expected.

30 TAC §116.615 (2) states in pertinent part: All representations with regard to construction plans, operating procedures, and maximum emission rates in any registration for a standard permit become conditions upon which the facility or changes thereto, must be constructed and operated. It is unlawful for any person to vary from such representations if the change will affect that person's right to claim a standard permit under this section. Any change in condition such that a person is no longer eligible to claim a standard permit under this section requires proper authorization under §116.110 of this title (relating to Applicability). If the facility remains eligible for a standard permit, the owner or operator of the facility shall notify the executive director of any change in conditions which will result in a change in the method of control of emissions, a change in the character of the emissions, or an increase in the discharge of the various emissions as compared to the representations in the original registration or any previous notification of a change in representations. Notice of changes in representations must be received by the executive director no later than 30 days after the change.

The applicant has represented he would operate the concrete batch plant up to 12 hours per day and 3,744 hours per year; 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) will be paved with a cohesive hard surface that can be maintained intact and cleaned; all batch trucks and material delivery trucks will remain on a paved surface when entering, conducting primary function, and leaving the property; all in-plant roads and traffic areas will be watered for dust suppression. The applicant has also represented that their property line ends at the end of the concrete driveway.

A compliance history report was prepared for the applicant on December 10, 2012 and a report under the previous company name (Service Ready Mix Concrete, Inc.) on January 30, 2013. Neither report listed any violations or investigations for the two entities. The compliance history is currently rated as Unclassified for the Company and Site. On February 11, 2013, Mrs. Brown was told that she could contact the TCEQ Regional Office about her specific complaints with the applicant's site, and given the region's contact information, so that her specific concerns regarding the current operations of the applicant could be addressed. On April 29, 2013, comments received on this permit application were forwarded to Region 12.

Individuals are encouraged to report any concerns about nuisance issues or suspected noncompliance with terms of any permit or other environmental regulation by contacting the

Executive Director's Response to Public Comment
Michael Bradley Smith, Standard Permit Registration No. 51836
Page 6 of 7

TCEQ Regional Office at (713-767-3500), or by calling the 24-hour toll-free Environmental Complaints Hotline at 1-888-777-3186. If the facility is found to be out of compliance with the terms and conditions of the permit, it will be subject to possible enforcement action. Citizen-collected evidence may be used in such an action. See 30 TAC § 70.4, Enforcement Action Using Information Provided by Private Individual, for details on gathering and reporting such evidence. The TCEQ has procedures in place for accepting environmental complaints from the general public and also has a tool for bringing potential environmental problems to light. Under the citizen-collected evidence program, individuals can provide information on possible violations of environmental law and the information can be used by the TCEQ to pursue enforcement. In this program, citizens can become involved and may eventually testify at a hearing or trial concerning the violation. For additional information, see the TCEQ publication, "Do You Want to Report an Environmental Problem? Do You Have Information or Evidence?" This booklet is available in English and Spanish from the TCEQ Publications office at 512-239-0028, and may be downloaded from the agency website at www.tceq.state.tx.us (under Publications, search for Document No. 278).

COMMENT 4: James and Judy Bryan stated that they live about three places away from the plant, and that the various trucks entering and exiting Farm-to-Market Road 2296 from the applicant's property create a danger for the public, as well as noise. Sharon A. Brown asked how many hours a day the applicant can operate his plant's trucks.

RESPONSE 4: The applicant has represented they would operate the concrete batch plant up to 12 hours per day and 3,744 hours per year. As long as the applicant maintains required illumination requirements for non-daylight hours of operation, the standard permit does not limit operations to daylight hours or specify which hours the facility can operate. The standard permit authorizes up to 24 hours a day operation. However, the site is only authorized to operate 12 hours per day. Truck traffic in and out of the site is not considered part of the operations.

The TCEQ's jurisdiction is established by the Legislature and is limited to the issues set forth in statute. Accordingly, the TCEQ does not have jurisdiction to consider additional traffic, road safety, or noise when determining whether to approve or deny a permit application. However, should additional traffic result in air emissions from the site, or facilities at the site, nuisance-related regulatory provisions may be triggered. 30 TAC §101.4, prohibits nuisance conditions. Specifically the rule states, "No person shall discharge from any source whatsoever one or more air contaminants or combinations thereof, in such concentration and of such duration as are or may tend to be injurious to or to adversely affect human health or welfare, animal life, vegetation, or property, or as to interfere with the normal use and enjoyment of animal life, vegetation, or property." Additionally, 30 TAC §101.5 states that "No person shall discharge from any source whatsoever such quantities of air contaminants, uncombined water, or other materials which cause or have a tendency to cause a traffic hazard or an interference with normal road use." As long as the facility is operated in compliance with the terms of the permit, nuisance conditions or conditions of air pollution are not expected.

Jurisdiction over traffic on public roads and road safety including any access, speed limits, and public roadway issues are typically the responsibility of local, county, or other state agencies, such as Texas Department of Transportation and the Department of Public Safety. An air quality

Executive Director's Response to Public Comment
Michael Bradley Smith, Standard Permit Registration No. 51836
Page 7 of 7

permit does not authorize a violation of any road safety restrictions. Concerns regarding roads should be addressed to the appropriate state or local officials.

COMMENT 5: Sharon A. Brown asked where the applicant is dumping the water that is used to clean the concrete trucks.

RESPONSE 5: While the TCEQ is responsible for the environmental protection of all media (including water), the law governing air permits deals specifically with air-related issues. The scope of this air quality permit application review does not include water assessment or consideration of issues involving waste, water quality or quantity. Depending on the nature of the facility's operations, the applicant may be required to apply for separate permits that regulate water quality and waste. The issuance of an air quality authorization does not negate the need for other permits, such as storm water, and it does not authorize the contamination of other media.

CHANGES MADE IN RESPONSE TO COMMENT

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

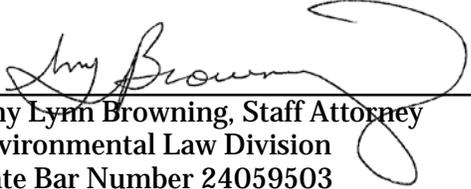
Respectfully submitted,

Texas Commission on Environmental Quality

Zak Covar, Executive Director

Caroline Sweeney, Deputy Director
Office of Legal Services

Robert Martinez, Division Director
Environmental Law Division



Amy Lynn Browning, Staff Attorney
Environmental Law Division
State Bar Number 24059503
PO Box 13087, MC 173
Austin, Texas 78711-3087
(512) 239-0891

REPRESENTING THE
EXECUTIVE DIRECTOR OF THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY