

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

November 20, 2009

To: Persons on the Attached Mailing List (by mail and facsimile as indicated)

Re: Appeal of the Executive Director's Use Determination regarding American Marazzi Tile, Inc.'s Use Determination for Application No. 13868, TCEQ Docket No. 2009-1598-MIS-U.

This letter is to notify you that the Texas Commission on Environmental Quality (Commission) will consider the above-described appeal and all related filings during the Commission's public meeting scheduled to begin at **9:30 A.M. on Wednesday, December 9, 2009**. The meeting will take place in Room 201S of Building E, 12118 N. Interstate 35, Austin, Texas. Complete copies of all filings may be obtained from the Office of Chief Clerk, TCEQ, Mail Code 105, P.O. Box 13087, Austin, Texas 78711-3087.

During the public meeting, the Dallas Central Appraisal District (DCAD) may speak first and save part of its time for rebuttal since DCAD has filed the appeal at issue here. DCAD has five minutes for its oral presentation, including the time for rebuttal argument. American Marazzi Tile, Inc. may speak next, followed by the Executive Director, and thereafter, the Office of Public Interest Counsel. American Marazzi Tile, Inc., the Executive Director, and the Office of Public Interest Counsel each have five minutes for their oral presentations.

If you have any questions about the public meeting or related matters, please contact John Sedberry at (512) 239-6575.

Very truly yours,

A handwritten signature in black ink, appearing to read "Les Trobman".

Les Trobman
General Counsel

Mailing List

Mailing List
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TCEQ Docket No. 2009-1598-MIS-U

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TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

October 30, 2009

To: Persons on the Attached Mailing List (by mail and facsimile as indicated)

Re: Appeal of the Executive Director's Use Determination regarding American Marazzi Tile Inc.'s Use Determination Application No. 13868, TCEQ Docket No. 2009-1598-MIS-U.

By letter dated October 29, 2009, Mr. Whitt L. Wyatt on behalf of his client, the Dallas Central Appraisal District (District), requested an extension to file his Reply in the above matter. The District requests the extension because it did not receive a complete copy of the Executive Director's Response to the District's appeal until Thursday, October 30, 2009. The Executive Director mailed his Response on Friday, October 23, 2009. The District requests that the deadline to file its Reply be extended until 5:00 p.m. on November 6, 2009. The District also states that the Executive Director and the Office of Public Interest Counsel do not object to an extension of time to file the Reply. American Marazzi Tile Inc., the Applicant, has indicated that it objects to the sough relief.

In light of the indication that all parties received an incomplete set of response briefs due to clerical error, equities would dictate granting a limited extension of the District's Reply brief deadline. Accordingly, the District's new deadline for the filing of their Reply is extended to **5:00 P.M. on Wednesday, November 4, 2009**. To be considered timely, an original and seven copies of the reply brief must be received in the Office of Chief Clerk on or before the deadline and mailed to all parties. If you have any questions about the briefing schedule or related matters, please contact John Sedberry, Assistant General Counsel, at 512/239-6575.

Respectfully,

A handwritten signature in black ink, appearing to read "Les Trobman".

Les Trobman
General Counsel

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TCEQ Docket No. 2009-1598-MIS-U

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NICHOLS, JACKSON, DILLARD, HAGER & SMITH, L.L.P.

Whitt L. Wyatt
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ROBERT L. DILLARD, JR. (1913-2000)
H. LOUIS NICHOLS
LAWRENCE JACKSON
OF COUNSEL

October 29, 2009

Via Facsimile 512-239-3311
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TEXAS
COMMISSION
ON ENVIRONMENTAL
QUALITY
2009 OCT 29 PM 4:22
CHIEF CLERKS OFFICE

Re: Motion for Continuance in the Appeal of the Executive Director's Use Determination regarding American Marazzi Tile Inc.'s Use Determination Application No. 13868, TCEQ Docket No. 2009-1598-MIS-U

Dear Docket Clerk and General Counsel:

The undersigned firm has been retained to represent the Dallas Central Appraisal District ("Appellant") in the above-referenced appeal. We have been engaged to prepare and submit the Appellant's reply brief in this matter and to represent the Appellant throughout the remaining stages of this appeal.

At this time we respectfully request a short extension of the Appellant's deadline to file the reply brief which is currently set for Monday, November 2, 2009 by 5:00 P.M. The response date for the Executive Director, Office of Public Interest Counsel, and American Marazzi Tile Inc. was Friday, October 23, 2009 and the Appellant did not receive the parties' responses (some of which are quite voluminous) until 3 days ago on Monday, October 26, 2009.

This extension is not sought for the purpose of delay but rather in light of the fact that neither Appellant or Appellant's counsel received the entirety of the Executive Director's Response to Appellant's appeal until 3:00 P.M. today, after Appellant noticed that copy it received only contained the odd numbered pages of the Response and had to request the other half of the response be produced. Portions of the Executive Director's Response that were received today (which include over 30 pages of new material) contain the Executive Director's legal basis for their argument and must be reviewed and addressed by Appellant's counsel in Appellant's reply.

In an effort to secure a brief extension, I have personally contacted Tim Reidy, staff counsel for the TCEQ, Vlas Coy from the Office of Public Interest Counsel, and Howard Gilberg, attorney for American Marazzi Tile Inc. Mr. Reidy and Mr. Coy were informed of the facts surrounding this request and do not object to the requested extension. Mr. Gilberg informed me that he is unable to agree at this time without first contacting his client.

Docket Clerk
October 29, 2009
Page 2

Accordingly, we would respectfully request that the deadline to file Appellant's reply brief be extended until Friday, November 6, 2009 at 5:00 P.M. It is our understanding that this short extension would not in any way interfere with this matter being brought before the Commission in a timely manner on the next available date.

Best regards,

NICHOLS, JACKSON, DILLARD,
HAGER & SMITH, L.L.P.

By: Whitt Wyatt/ds
Whitt L. Wyatt

WLW/ds
Enclosures

cc: Mailing List (attached)
Howard Gilbert, *Via Facsimile 214-692-6610*

Mailing List
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TCEQ Docket No. 2009-1598-MIS-U

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CHIEF CLERKS OFFICE

2009 OCT 29 PM 4: 21

TEXAS
COMMISSION
ON ENVIRONMENTAL
QUALITY

PLEASE DELIVER THE FOLLOWING TO:

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	Bridget Bohac		512-239-4007
	Kyle Lucas		512-239-4015
	Howard Gilbert		214-692-6610

DATE: October 29, 2009

FROM: Whitt L. Wyatt

TRANSMITTED BY: Dana Stephenson

NUMBER OF PAGES (Including Cover Sheet): 4

RE: Motion for Continuance in the Appeal of the Executive Director's Use Determination regarding American Marazzi Tile Inc.'s Use Determination Application No. 13868, TCEQ Docket No. 2009-1598-MIS-U

COMMENTS:

THE INFORMATION CONTAINED IN THIS FACSIMILE IS ATTORNEY PRIVILEGED AND CONFIDENTIAL INFORMATION INTENDED ONLY FOR THE USE OF THE INDIVIDUAL OR ENTITY NAMED ABOVE. IF THE RECIPIENT IS NOT THE INTENDED RECIPIENT, YOU ARE HEREBY NOTIFIED THAT ANY DISTRIBUTION, DISSEMINATION OR COPYING OF THIS COMMUNICATION IS STRICTLY PROHIBITED. IF YOU HAVE RECEIVED THIS IN ERROR, PLEASE NOTIFY US IMMEDIATELY BY PHONE AND RETURN THE ORIGINAL MESSAGE TO US AT THE ABOVE ADDRESS VIA THE U.S. POSTAL SERVICE.

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

Protecting Texas by Reducing and Preventing Pollution
October 1, 2009

To: Persons on the Attached Mailing List (by mail and facsimile as indicated)

Re: Appeal of the Executive Director's Use Determination regarding American Marazzi Tile Inc.'s Use Determination Application No. 13868, TCEQ Docket No. 2009-1598-MIS-U.

The above-referenced appeal (Appeal) was filed by the Dallas Central Appraisal District (Appellant). Appellant requests Commission consideration of the positive use determination for Amercian Marazzi Tile Inc.'s (Applicant) new clay storage facility. As is our general practice with regard to Use Determination appeals, this office is requesting the filing of legal briefs or responses to the Appeal by the Executive Director, the Office of Public Interest Counsel, and the Applicant and the subsequent filing of a legal reply to the responses by the Appellant. The briefs should contain a full discussion of the parties' legal and factual reasons for their positions, including any timeliness issues associated with the appeal.

This letter is to notify the Applicant, the Executive Director, and the Office of Public Interest Counsel that they may file a response brief in the Commission's Office of Chief Clerk (OCC) on or before **5:00 P.M. on Friday, October 23, 2009**. The Appellant may file a reply brief to the response briefs on or before **5:00 P.M. on Monday, November 2, 2009**. To be considered timely, an original and seven copies of any response or reply brief must be received in the OCC on or before the applicable 5:00 P.M. deadline. All briefs filed with the OCC should also be addressed to the attention of the Agenda Docket Clerk and be marked with the TCEQ Docket number provided above. All response and reply briefs should also be mailed to all other persons on the attached mailing list on the same day mailed or filed in the Office of Chief Clerk. You will be notified by subsequent letter of the Commission meeting during which the Commissioners will consider this matter.

Chapter 17 of the Commission's rules (30 Texas Administrative Code Chapter 17) contains the requirements applicable to Use Determinations, including the rules that address the review standards and appeal process. The website of the Texas Secretary of State (<http://www.sos.state.tx.us/tac/index.shtml>) contains a complete copy of the Texas Administrative Code, including Chapter 17 of Title 30.

If you have any questions about the briefing schedule or related matters, please contact John Sedberry, Assistant General Counsel, at 512-239-6575.

Very Truly Yours,

A handwritten signature in black ink, appearing to read "Les Trobman".

Les Trobman
General Counsel

Mailing List

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TCEQ Docket No. 2009-1598-MIS-U

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