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October 18, 2007

Celeste Baker, Acting General Counsel
General Counsel
Texas Commission on Environmental Quality
PO Box 13087
Austin Texas 78711-3087

Re: SOAH Docket No. 582-07-2610; TCEQ Docket No. 2006-1748-AIR; In Re: Application of Lonestar Prestress Mfg., Inc. For Air quality Standard Permit no. 76688L001

Dear Ms. Baker:

The above-referenced matter will be considered by the Texas Commission on Environmental Quality on a date and time to be determined by the Chief Clerk's Office in Room 201S of Building E, 12118 N. Interstate 35, Austin, Texas.

Enclosed are copies of the Proposal for Decision and Order that have been recommended to the Commission for approval. Any party may file exceptions or briefs by filing the original documents with the Chief Clerk of the Texas Commission on Environmental Quality no later than November 7, 2007. Any replies to exceptions or briefs must be filed in the same manner no later than November 19, 2007.

This matter has been designated **TCEQ Docket No. 2006-1748-AIR; SOAH Docket No. 582-07-2610**. All documents to be filed must clearly reference these assigned docket numbers. Copies of all exceptions, briefs and replies must be served promptly on the State Office of Administrative Hearings and all parties. Certification of service to the above parties and an **original and eleven copies** shall be furnished to the Chief Clerk of the Commission. Failure to provide copies may be grounds for withholding consideration of the pleadings.

Sincerely,

Kerry D. Sullivan
Administrative Law Judge

KDS/ds
Enclosures
cc: Mailing List

SOAH DOCKET NO. 582-07-2610
TCEQ DOCKET NO. 2006-1748-AIR

APPLICATION OF LONESTAR PRESTRESS MFG., INC. FOR AIR QUALITY STANDARD PERMIT NO. 76688L001	§ § § § § § §	**BEFORE THE STATE OFFICE OF ADMINISTRATIVE HEARINGS**

PROPOSAL FOR DECISION

Lonestar Prestress Mfg., Inc. ("Applicant"), filed an application with the Texas Commission on Environmental Quality ("Commission") for a Specialty Mix Concrete Batch Plant Standard Air Quality Permit to authorize a small-scale specialty mix concrete batch plant. The Commission received numerous requests for hearing and referred five issues to the State Office of Administrative Hearings. The Administrative Law Judge (ALJ) finds that the Applicant satisfied the regulatory criteria pertaining to each of the issues referred, and recommends that the application be approved.

I. PROCEDURAL HISTORY AND OVERVIEW

A. Background

The Applicant is in the business of manufacturing a variety of precast concrete products including poles, panels, and specialty items. Its facility is located on a 21-acre tract of land at 9316 Reid Lake Drive in a mixed rural, commercial, and residential area of northwestern Houston. The Applicant began business in 1992. For more than ten years, its production process included a small concrete batch plant in which it made the concrete required by the business on-site. The Applicant closed the plant in 2005, when the Commission informed the Applicant that it did not possess Commission-required authorization. Since that time, the Applicant has met its concrete needs by having cement mixers deliver mixed cement to the site as needed. The requested permit would allow the Applicant to resume making concrete for its on-site needs in a new facility.

B. Procedural history

A preliminary hearing was held on June 21, 2007, in Houston, Texas, at which time jurisdiction was established and the following parties were designated: the Applicant, (represented by Chris Pepper); the Office of Public Interest Counsel of the TCEQ (represented by Garrett Arthur); and the following aligned Protestants: Ann Bonefas, Alma Mongonia, Harvey Prasek, James W. Deveau, Floyd Telschow, and Pablo Garza. The Protestants represented themselves during the preliminary hearing, but were represented by attorney Richard R. Morrison, IV, during the hearing on the merits. The Executive Director did not participate in the hearing except to submit pertinent staff for requested depositions.

The evidentiary hearing was held September 19, 2007, in Austin. The record closed on October 8, 2007, with the filing of post-hearing briefs. The Commission's Order of Referral directed that the Proposal for Decision should be issued within four months of the preliminary hearing. Accordingly, the Commission's deadline for this Proposal for Decision is Monday, October 22, 2007.

C. Issues Referred

The Commission's Order of Referral identified five issues to be addressed at hearing:

(1) Whether the air emissions from the proposed facility will adversely affect the health of the residents, animals, and vegetation in the area;
(2) Whether the air emissions from the proposed facility will adversely affect air quality in the area;
(3) Whether the air emissions from the proposed facility will adversely affect the requesters' welfare or damage the requesters' property;
(4) Whether operation of the proposed facility will create nuisance conditions in the area; and
(5) Whether the Applicant's compliance history justifies denial of the registration.[1]

[1] Order of Referral, p. 4, ordering provisions (5), included in Applicant Ex. 1.

The Applicant presented testimony and exhibits sponsored by four witnesses to address these issues: Brad E. Boyer, P.E., the Applicant's President; Michael Hunt, P.E., who performed a dust evaluation based on estimated particulate matter emissions; Dr. Lucy Fraiser, a toxicologist who primarily addressed potential health effects; and Mark Boyer, an officer of the Applicant who lives adjacent to the site with his family. The Applicant and the Protestants also submitted deposition testimony from the Executive Director's staff. The Protestants also presented the testimony of Ann Bonefas, a long-time resident who lives within a quarter mile of the site and who expressed concern that the plant would harm her health as well as her enjoyment of her property.

D. Summary of Arguments, Legal Framework, and Analysis

In general, the ALJ finds the evidence and arguments presented by the Applicant to be straightforward and persuasive. Standard permits for specialty mix plants are available only for small facilities that produce no more than 30 cubic yards per hour, which is one tenth the limit for other types of concrete batch plants.[2] As summarized below, this facility would be much smaller in scale, even, than required by the specialty mix plant limitation. The Commission evaluated and approved the standard permit after performing a protectiveness review in order to set limits that would comply with national ambient air quality standards (NAAQS) designed for the protection of public health and welfare.[3] Accordingly, operation of a specialty mix concrete batch plant in accordance with the provisions of the Standard Permit should satisfy the regulatory criteria and presumably answer the questions referred by the Commission in a manner that would support permit issuance.

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[2] Applicant Ex. 2 (TCEQ Air Quality Standard Permit).

[3] Applicant Ex. 9(Gould Deposition), pp. 26-27.

Concrete batch plants, however, occupy a unique regulatory position. They are eligible for standard permits but, unlike the procedures applicable to other standard permits, a narrow class of affected persons may request a contested case hearing prior to final Commission action. While a hearing is available, the Legislature and the Commission have restricted its scope in some respects. Section 382.058(d) of the Texas Clean Air Act (the Act)[4] provides that, if the Commission considered air dispersion modeling information in the course of adopting an exemption (which it did with respect to concrete batch plants), the Commission may not require a qualified applicant to conduct air dispersion modeling. Moreover, the Legislature and the Commission, *via* rule, have directed that evidence regarding air dispersion modeling is not to be submitted at a hearing on such an application, including, per the rule, the hearing on an application for a standard permit.[5]

The applicability and impact of the foregoing modeling restriction were first raised by the OPIC in its post-hearing brief – after the evidence was in. In any event, as quoted above, the Commission referred broad substantive issues for determination in this hearing. It seems unlikely that the analysis sought in response to these questions could be a purely administrative assessment of whether the Applicant filled out the prescribed checklist for a standard permit. The Applicant recognized this and presented site-specific expert testimony, including modeling,[6] to substantively address the issues referred, and no parties objected to this approach. The ALJ finds this evidence credible and persuasive, and it is unchallenged by any other expert testimony.

In their closing arguments, the Protestants focused exclusively on emissions from roads at the facility as the basis for permit denial. They assert that Mr. Hunt acknowledged the importance

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[4] TEX. HEALTH & SAFETY CODE CH. 382.

[5] Act § 382.058(d); 30 Tex. Admin. Code (TAC) 80.128.

[6] In light of the OPIC's reference to the apparent prohibition on modeling evidence, the Applicant recharacterizes Mr. Hunt's activities as "a conservative evaluation of dust emissions" rather than "modeling." (Reply Brief at 3). But modeling by any other name is still modeling.

of appropriately analyzing road emissions but failed to include emissions from five drive paths at the facility and underestimated traffic volume on others. Aside from questioning these inputs into road emissions calculations, neither the Protestants nor the OPIC have raised any technical concerns regarding the Applicant's emission's calculation methodologies or inputs. OPIC supports issuance of the permit, although it does note reservations with the Applicant's compliance history, discussed below, which the Protestants also share.

E. Facility Description

Course and fine aggregate would be delivered to the facility and placed in a stockpile area. From there, the aggregate would be delivered *via* a front-end loader to elevated bins, dropped into a weigh batcher, and transported by conveyer belt to the wet station mixer where it would be mixed with water, cement, and admixture. The cement would be separately delivered in delivery trucks, pumped into an elevated silo, dropped into a weigh batcher, and routed to the wet stationary mixer. The physical air emission controls would include a fabric filter baghouse that would treat emissions routed from the cement silo, the enclosed cement weigh batcher, and the enclosed wet stationary mixer. The identified emission points would be at the stockpiles, the aggregate drop points in and out of the elevated bins, and the central baghouse. A diagram depicting these structures and activities is included as Attachment 1 to this Proposal for Decision.

In addition to the central bag house, other emissions control procedures would include a dust fence along the property line adjacent to in-plant haul roads, use of pre-washed sand and gravel, sprinkling of stock piles as necessary, enclosing the stockpiles on three sides, and daily sweeping and vacuuming roads on the facility.[7]

[7] Applicant Ex. 1 (Air Quality Standard Permit Checklist).

The facility would be relatively small in size, and the Applicant agrees to confine its operations to significantly below the maximum limits that could be authorized by a standard permit. Under the terms of the requested authorization, the Applicant would operate no more than four hours per day, produce no more than ten cubic yards of concrete per hour, and limit annual production to 3,750 cubic yards.[8] In comparison, the maximum parameters that could be authorized under a standard air quality permit for a specialty mix plant would be ten hours per day, thirty cubic yards per hour, and 93,600 cubic yards per year.[9]

II. DISCUSSION OF ISSUES

The discussion below will first provides an evaluative summary of the expert testimony presented by the Applicant on the issues referred. Following this is an assessment of the Applicant's compliance history and the Protestants' challenge to the Applicant's road emissions calculations.

A. Whether the Air Emissions From the Proposed Facility Will Adversely Affect the Health of the Residents, Animals, and Vegetation in the Area.

The Applicant retained Michael Hunt, a licensed professional engineer, to verify the emission calculations and to evaluate the potential for an adverse impact on air quality, human health, and the environment. Mr. Hunt testified that he employed a conservative methodology "designed to be more protective of human health, air quality and the environment."[10]

In completing his evaluation of the site, Mr. Hunt calculated the emissions from drop points (*e.g.*, where material is dropped onto storage piles), from wind erosion (from storage piles),

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[8] The Applicant would be bound by these requested production rates. 30 Tex. Admin. Code § 116.615(2).

[9] Applicant Ex. 5 (Brad Boyer Direct), p. 10.

[10] Applicant Ex. 7 (Michael Hunt Direct) p. 7

and from haul roads.[11] Mr. Hunt prepared a report in which he predicted that emissions from the Applicant's plant would be below the federal National Ambient Air Quality Standards and below federal "*de minimis levels.*" According to Mr. Hunt, for permitting purposes, being below *de minimis* levels means that the predicted impacts of the proposed facility are not a concern to air quality, human health, or the environment.[12]

The Applicant also presented the testimony of Dr. Lucy Fraiser, a toxicologist who evaluated the site for human health effects. Dr. Fraiser visited the proposed site and prepared a report in which she concluded that the proposed plant "is not likely to pose a threat to human health, adversely affect nearby properties, or create nuisance conditions."[13] Specifically, concerning impacts to vegetation (ecological receptors) and property, she noted that the "potential for impacts to property or ecological receptors from emissions and/or storm water runoff appears to be very low."[14]

Dr. Fraiser's opinion relied in part on the health effects review process for air permits in Texas[15] and on her understanding that emissions would be below "effects screening levels" (ESLs) for silica. Dr. Fraiser observed that the Commission may issue a standard permit to authorize the construction or modification of new or existing facilities which are similar in terms of operations, processes and emissions.[16] According to Dr. Fraiser, the TCEQ determined that such facilities

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[11] Applicant Ex. 7 (Hunt Direct) pp. 6-7.

[12] Applicant Ex. 7 (Hunt Direct) p. 10.

[13] Applicant Ex. 8 (Fraiser Direct), p. 2, Section 4. Conclusions.

[14] *See* ApplicantEx. 8 (Fraiser Direct), p. 3, Section 4.2 Property or Ecological Receptors.

[15] Applicant Ex. 5 (Brad Boyer Direct), pp. 3-4.

[16] Applicant Ex. 4 (Standard Exemption 117 Review Document), p. 3.

do not make a "significant contribution of air contaminants to the atmosphere" and have already undergone a comprehensive TCEQ internal modeling, impacts, and health effects review.[17]

Specifically, Dr. Fraiser explained that, in March 2000, TCEQ's Toxicology Section evaluated worst case batch plant operating scenarios and concluded that releases in compliance with the Standard Permit would satisfy the TCEQ's Total Suspended Particulate (TSP) standard and the NAAQS for PM_{10} (Particulate matter with a diameter of less than ten microns)[18] Dr. Fraiser described the NAAQS as "air limits set to protect public health, including the health of 'sensitive' populations such as asthmatics, children, and the elderly. Secondary standards are limits set to protect public welfare, including protection against decreased visibility, damage to animals, crops, vegetation, and buildings."[19]

Dr. Fraiser also compared anticipated emissions from this particular facility, based on Mr. Hunt's modeling, with the NAAQS. Of interest in this proceeding, NAAQS have been established for PM_{10} and $PM_{2.5}$ (particulate matter with a diameter of less than 2.5 microns). The existing NAAQS for PM_{10} (both primary and secondary) are 50 microns per cubic meter ($\mu g/m^{3)}$ for the annual standard and 150 $\mu g/m^3$ for the 24-hour standard. According to Mr. Hunt's calculations, the Applicant's the anticipated maximum off-site impact from facility would be approximately 0.259 $\mu g/m^3$ and 4.56 $\mu g/m^3$ for the annual and 24-hour standard, respectively.[20]

The existing NAAQS for $PM_{2.5}$ (both primary and secondary) are 15 $\mu g/m^3$ for the annual standard and 35 $\mu g/m^3$ for the 24-hour standard. According to Mr. Hunt's calculations, the

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[17] Applicant Ex. 8 (Frazier Direct, p. 4)

[18] Applicant Ex. 8 (Frazier Direct), pp. 4-5; Frazier attachment 2 (TNRCC Health Efffects Review Memo).

[19] Applicant Ex. 8 (Frazier Direct), p. 11.

[20] Applicant Ex. 7 (Hunt Direct); Table 3-1 and attachments 8 and 9.

anticipated maximum off-site impacts would be approximately 0.0306 $\mu g/m^3$ and 0.669 $\mu g/m^3$ for the annual and 24-hour standard, respectively.[21]

Dr. Fraiser also assessed the potential of health effects related to exposure to silica and concluded that the emissions from the proposed specialty mix plant would be below the 24-hour and/or annual Effects Screening Level for silica.[22] She stated that ESLs are used to evaluate the potential for effects to occur as a result of exposure to concentrations of constituents in the air. According to Dr. Fraiser, the Commission staff sets ESLs based on health effects, the potential for odors to be a nuisance, effects on vegetation, and corrosive effects. She stated that ESLs are used as a screening tool to separate constituent concentrations not expected to present a problem from those that require further study. If expected concentrations do not exceed ESLs, Dr. Fraiser stated that no further evaluation is required. If they do exceed ESLs, however, further consideration is required. Based on her evaluation, Dr. Fraiser ultimately concluded that no adverse impacts to human health, property or vegetation were identified.[23]

The Applicant also relies on the fact that its President, Brad Boyer, is a licensed professional engineer and should be well situated to ensure that the facility operates within the authorized parameters. As discussed in Section II(E), below, Mr. Boyer has previously operated a specialty mix batch plant and his brother's family lives adjacent to the proposed batch plant and experienced no adverse health effects from the plant. Finally, the Applicant asserts that its contentions are supported by the fact that no specific instances of adverse effects were ever documented during the more than 10 years of continuous operation of the similar facility shut down in 2005.[24]

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[21] See Exhibit Hunt-7, Table 3-1; See Also, Hunt-8 and Hunt-9.

[22] Applicant Ex. 8 (Fraiser Direct) p. 17.

[23] Applicant Ex. 8 (Fraiser Direct) p. 3, 16-17.

[24] Applicant Ex. 5,(Brad Boyer Direct)pp. 13-14, 16.

Analysis. In the ALJ's view, Mr. Hunt and Dr. Fraiser were experienced and credible expert witnesses. Their expert testimony stands unrebutted in the record. Their detailed site-specific evaluations of the expected emissions reinforce the Commission's generic determination in adopting the standard permit that, if the facility complies with the terms of the standard permit and the even more restrictive limits of this particular application, emissions from the facility would comply with NAAQS, be under applicable ESLs, and would not adversely affect the health of the residents, animals, and vegetation in the area. The only questions regarding their analyses raised during cross examination are whether the emissions calculations properly took roads into account and whether the Applicant's compliance history suggests that it would not abide by the terms of its permit. Those issues are addressed below in Section II (E) and (F), below.

B. Whether the Air Emissions from the Proposed Facility would Adversely Affect Air Quality in the Area?

The analysis of this issue is similar to that of the last issue. The evidence indicates that the emission controls set out in the Standard Permit constitute Best Available Control Technology in reducing emissions from the site.[25] Additionally, as previously discussed, the Applicant's operations, and the resulting emissions, would be of a significantly smaller scale than the maximum that could be authorized pursuant to the Standard Permit. If accepted, Mr. Hunt's emissions predictions, which would readily comply with NAAQS and be under ESLs, would establish that the proposed facility would not adversely affect air quality in the area. Again, the only potential basis suggested for not accepting these predictions are road emissions and compliance history, which are addressed below.

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[25] Applicant Ex. 9 (Gould Deposition), p. 50.

C. Whether the Air Emissions From the Proposed Facility Will Adversely Affect the Requesters' Welfare or Damage the Requesters' Property?

D. Whether Operation of the Proposed Facility Will Create Nuisance Conditions in the Area?

Dr. Fraiser testified that the "welfare" assessment is tied to the Texas air permit's health effects review process[26] and to ESLs.[27] As addressed in Section II(A), above, the expected emissions from the facility would be lower than the ESL for silica, which is the constituent of interest for which an ESL has been established.

Also as previously stated, Mr. Fraiser testified that secondary NAAQS were implemented to be protective of "public welfare, including protection against decreased visibility, damage to animals, crops, vegetation, and buildings."[28] As addressed in Section II(A), above, both Mr. Hunt and Dr. Fraiser testified that the Applicant's emissions from the specialty mix plant, including the roads, would result in ground level concentrations well below the NAAQS. Accordingly, the Applicant asserts, the proposed facility should not adversely affect the requesters' welfare or damage the requesters' property.

Finally, the Applicant asserts that the evidence pertaining to emissions from the specialty mix plant that formerly operated at the site indicates that they did not adversely impact the welfare of the neighbors around the site. It observes that, for more than ten years of operation from approximately 1994 to 2005, no complaints were filed with the TCEQ. Additionally, Protestant witness Ann Bonefas acknowledged that she noticed no problems with the Applicant's facility until 2005. In another exchange, however, Ms. Bonefas stated she had experienced emissions

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[26] Applicant Ex. 8 (Fraiser Direct) p. 4.

[27] Applicant Ex. 8 (Fraiser Direct) p.3.

[28] Applicant Ex. 8 (Hunt Direct) p. 7.

from the facility sometime before September 2006 that interfered with her use and enjoyment of her property.[29]

Another neighbor is Mark Boyer, the brother of Brad Boyer, the Applicant's president, who currently resides in a home that has a yard and swimming pool located approximately 350 feet from the proposed plant site. He stated that his swimming pool has never been damaged in any way by historic operations of a specialty mix batch plant. His home is located due north from Lonestar, and he stated that his yard, pool, vehicles and other personal property, including his children's pet rabbits, were never adversely impacted by the previous operations of a similar specialty mix plant.[30]

The Applicant asserts that the above showings establish that the facility would not cause nuisance conditions in the area. The ALJ agrees. While the ALJ takes Ms. Bonefas's testimony and concerns seriously, she did not notice the previous speciality mix batch plant while it was in operation and, as a lay witness, she claimed no technical knowledge about the workings of the proposed facility. Additionally, Ms. Bonefas's concerns since 2005 appear to relate primarily to the general dust , truck traffic, and noise associated with industrial activity near her home. This activity should decrease to some extent upon approval of the plant, since the Applicant will no longer have to truck in mixed concrete. For these reasons, and the additional reasons set out in Section II(A), above, the ALJ finds the Applicant's evidence persuasive, subject to the discussion of the road emissions issue and the Applicant's compliance history, discussed in the following sections.

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[29] Tr. 266, 290.

[30] Applicant Ex. 6 (Mark Boyer Direct) pp. 5-8.

E. Whether the Applicant's Compliance History Justifies Denial of the Registration.

The OPIC expresses concern regarding the Applicant's compliance history but ultimately does not conclude that it forms a basis for denial of the requested standard permit. OPIC points out that, in 2005, TCEQ issued Lonestar a notice of violation for operating its specialty batch plant without authorization and that, as part of a settlement with the TCEQ, Lonestar ceased operation of the batch plant. Mark Boyer was responsible for the batch plant when Lonestar constructed and began operating the plant in 1992 or 1993. Although Mark Boyer remains an officer of Lonestar, responsibility for the batch plant passed to Brad Boyer, the Applicant's current President, in 2001.

Mark Boyer testified that he was unaware of the need to obtain Commission authorization to operate the batch plant when that facility began operations. He subsequently became aware of the requirement and was under the impression that an engineer he had hired had obtained the required approval.[31] When Brad Boyer took over, he assumed Lonestar had Commission approval to operate the batch plant, but he had no paperwork and did not check.[32] While OPIC expresses concern at what if views as a lack of diligence on Lonestar's part, it acknowledges that Lonestar stopped operating when requested and is now seeking the necessary authorization. OPIC states that it is unaware of any other compliance problems. Under these circumstances, OPIC states that it "cannot say that Lonestar's compliance history justifies denial of this permit."[33]

Protestant witness Ann Bonefas weighed in on the compliance issue in her brief prefiled testimony, stating that the Applicant's failure to secure Commission authorization for a period of

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[31] Tr. 232-233.

[32] Tr. 154.

[33] OPIC Closing Argument, p. 5.

thirteen years while it operated its prior plant led her to doubt that the Applicant would abide by the permit limitations now.[34] The Protestants also offered TCEQ complaint-driven investigative records indicating that two dust complaints were received and investigated in 2005 but no violations were observed by the investigators. Shortly after the filing of this permit application, thirteen additional complaints were made against Lonestar, but no violations or nuisance conditions were observed by investigators.[35]

The Applicant does not quibble with OPIC's assessment, but does observe that its compliance history is rated 3.01 or "average by default."[36] It notes that this rating exceeds the requirements of the law and would allow the Applicant to seek an air quality standard permit for the proposed specialty mix batch plant. The Applicant also points out that, during a TCEQ investigation conducted between November 9th and November 18th, 2005, TCEQ noted that there were no complaints filed against the Applicant in the previous two years and there were no enforcement actions filed against the Applicant in the previous five years.[37] That inspection and a subsequent one in 2006 revealed no nuisance conditions or other violations.

The Applicant also observes that it holds other environmental permits under the TCEQ air and water quality permit programs. Specifically, Applicant holds two air permits-by-rule (No. 78748 and No. 77880) that authorize all existing industrial activities related to the precast

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[34] Prefiled Testimony of Ann Bonefas.

[35] Protestants Exs.5-11; Applicant Ex. 5 (Brad Boyer Direct) p. 13.

[36] TCEQ staff completed a compliance history rating assessment for this permit application and rated the facility at 3.01 or "average by default." The assessment also indicated the preparer did not believe the permit should be denied or modified based on the Applicant's compliance history. (Applicant Ex. 1, final page) Additionally, the Compliance history worksheet prepared in conjunction with the enforcement action that resulted in the closure of the prior batch plant in 2005 classified the Applicant's compliance history as "Average Performer."Protestants Ex. 5, Attachment A, page 2 of 4.

[37] Protestant Ex 10 (TCEQ Investigation Report) pp. 2 and 3 of 4.

concrete manufacturing operation (e.g., surface coating and pole manufacturing process). In addition, it holds a stormwater permit, No. TXR05L635, to authorize any stormwater discharge.[38]

Based on this record, the ALJ concludes that the Applicant's compliance history does not warrant denial of the application. The ALJ agrees with the OPIC that the Applicant's management should have been more proactive in ensuring that the Applicant held all required environmental permits. It has, however, worked cooperatively with the TCEQ once the error was discovered, resolved the enforcement action, and has now requested the appropriate permit. The TCEQ rates the Applicant's compliance history as acceptable overall, and the ALJ has no basis in the record to reject that designation or to suspect that this Applicant would not comply with its permit.

F. Whether Emissions from Roads were appropriately calculated.

Mr. Hunt testified that, "In order to perform a thorough analysis of the potential dust problems associated with authorizing the specialty mix batch plant, the haul roads must be included. He stated that the inclusion of haul roads in the emissions calculations led to a more thorough and conservative analysis than is required by the TCEQ.[39] His basis for this view of what the TCEQ requires was a TCEQ Technical Guidance Package for Concrete Batch Plants which provides that "Road emissions are calculated on an annual basis only."[40]

The Protestants quite naturally seize on Mr. Hunt's acknowledgment of the importance of assessing roads emissions, and then note accurately that Mr. Hunt did not model several drive paths on the Applicant's property. These include Drive Paths 6A, 5D, 5A, and 5E shown on the plot

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[38] Applicant Ex. 5 (Brad Boyer Direct) pp. 12-13.

[39] Applicant Ex. 7 (Hunt Direct), p. 5-6.

[40] Applicant Ex. 7 (Hunt Direct), attached exhibit Hunt-6, p. 37.

plan included as Attachment 2 to this PFD and a road exiting the facility to the south referred to as "the Road to Lot 21." Mr. Hunt stated that Drive Paths 6A, 5D, 5A, and 5E are storage areas for another company, Boyer Industries, and are used infrequently, perhaps once every six months.[41]

The Protestants assert that Mr. Hunt should have modeled all roads and that at least some of his assumptions regarding frequency of use were shown to be wrong by other evidence. In support of this proposition, they cite a somewhat confused section of transcript in which Brad Boyer was questioned about the Road to Lot 21. He was asked if that road was used "frequently." Mr. Boyer asked for a definition of "frequently," and then, being asked to define it himself, indicated that "one or two trips a week" was the typical usage of the road, which he characterized as "infrequent."

Upon further questioning, Mr. Boyer then provided his own definition of "frequent" for an industrial facility as "eight or ten trips per hour." At this point, Mr. Boyer was shown a transcript from his deposition in a separate civil lawsuit in which he stated that Lonestar uses the Road to Lot 21 "frequently."

Upon being asked again at this permit hearing whether the Road to Lot 21is used frequently, Mr. Boyer replied, "Well, since I'm defining 'frequently,' I'll testify that it's used frequently." Mr. Boyer was then asked whether the Road to Lot 21 would be used more than the "roads located to the west of the facility" (which the Protestants' took as a reference to the roads modeled by Mr. Hunt). Mr. Boyer responded, "Actually, they would be more frequently. They're used on a daily basis for the industrial products being shipped in and out."[42]

As the ALJ understands the Protestants' argument, they believe Mr. Boyer has grudgingly acknowledged that the Road to Lot 21 is used frequently, meaning eight to ten trips per hour,

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[41] Tr. 177-179.

[42] The entire exchange occurred on pages 56 and 57 of the transcript.

and that the other roads modeled by Mr. Hunt are used even more frequently than this. Contrasting this characterization of Mr. Boyer's testimony with Mr. Hunt's assumption that the roads he modeled would be used by one large truck and two or three small trucks per hour,[43] they urge that the modeling dramatically underestimates the traffic and cannot be trusted.

The ALJ disagrees. Before the convoluted discussion summarized above, Mr. Boyer had previously identified all roads used on a daily basis, and the Road to Lot 21 was not among them. At that time, he stated that Lot 21 is a storage area for the construction business and is used "on occasion."[44] Likewise, in the passage summarized above, Mr. Boyer first answered that the typical usage of the Road to Lot 21 was one or two trips per week. The subsequent discussion regarding Mr. Boyer's prior deposition testimony certainly confused the issue; however, even after Mr. Boyer decided to recharacterize usage of the Road to Lot 21 as "frequent," he continued to contrast it with usage of the modeled roads on the basis that the modeled roads are used on a "daily basis."

This predominant theme of Mr. Boyer's road usage testimony is reinforced by the fact that Mr. Hunt made his road usage assessments based on the information provided by the Applicant. These estimates appear reasonable based on the scale of the proposed operations, and the ALJ finds no basis to reject them based on the garbled dialogue relied upon by the Protestants.[45]

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[43] Tr. 176-177.

[44] Tr. p. 50. Mr. Boyer testified that aggregate was never stored on lot 21to his knowledge.

[45] In any event, Mr. Hunt also testified without contradiction that, even if these unmodeled roads were used more frequently than assumed and were modeled accordingly, it would not have made a difference because the maximum short term impact occurred around the storage pile area on the other side of the property and would not have added anything on a short-term basis. (Tr. 178).

III. ADDITIONAL FACTS

In addition to the facts addressed in the preceding discussion, the Findings of Fact contained in the attached order include other facts established during the hearing that are necessary to show compliance with regulatory requirements applicable to this proceeding. These additional facts were not seriously contested and are incorporated by reference into this PFD.

IV. CONCLUSION

Based on the resolution of the referred issues discussed above, the ALJ recommends that the Commission adopt the attached Order, including the Findings of Fact and Conclusions of Law[46] contained therein, and that the that the application for Standard Permit No. 76688L001 be approved.

SIGNED October 18, 2007.

KERRY D. SULLIVAN
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS

[46] The Order of referral requested the ALJ to assess specified issues but did not expressly request an overall recommendation regarding issuance of the permit. It appears, however, that the resolution of the broad issues referred addresses all matters necessary for issuance of the standard permit. That, at least, was the approach taken by both the Applicant and the OPIC in requesting that the permit be issued based on the record developed at hearing. In any event, if there are additional necessary findings pertaining to issues not referred by the Commission, the parties or the Executive Director may wish to file exceptions in order to identify them.

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

AN ORDER concerning the Application by Lonestar Prestress Mfg., for Air Quality Standard Permit No. 76688L001; TCEQ Docket No. 2006-1748-AIR, SOAH Docket No. 582-07-2610

On _____, the Texas Commission on Environmental Quality (Commission or TCEQ) considered the application of Lonestar Prestress Mfg., for Air Quality Standard Permit No. 76688L001 to authorize construction and operation of a specialty mix concrete batch plant in Houston, Harris County, Texas. The application was presented to the Commission with a Proposal for Decision (PFD) by Kerry D. Sullivan, an Administrative Law Judge (ALJ) with the State Office of Administrative Hearings (SOAH), who conducted a hearing on the application on September 19, 2007.

After considering the PFD and the evidence and arguments presented, the Commission makes the following Findings of Fact and Conclusions of Law:

FINDINGS OF FACT

1. On August 22, 2005, Lonestar Prestress Mfg., Inc. (Applicant) filed an application (Application) with the TCEQ seeking to authorize a Specialty Mix Concrete Batch Plant facility at 9316 Reid Lake Drive in Houston, Harris County, Texas.
2. The Application was declared administratively complete on September 26, 2005.

3. Applicant published the Notice of Receipt of Application and Intent to Obtain Permit in the *La Voz de Houston* on October 26, 2005, and also in the *Houston Chronicle* on October 27, 2005. Signs were posted at the site giving notice of Application. A copy of the Application was timely placed in the Harris County Public Library at 7122 North Gessner, Houston, Texas. On November 15, 2005, copies of the publication were sent to various government entities, including the TCEQ, TCEQ Region 12, the U.S. EPA Region 6 Office, Harris County Public Health and Environmental Services and the City of Houston Bureau of Air Quality Control.

4. On November 21, 2005, the Executive Director (ED) of the TCEQ declared the Application to be technically complete.

5. The Applicant published Notice of Application and Preliminary Decision in the *Houston Chronicle* on February 2, 2006, and also in the *La Voz de Houston* on February 1, 2006, announcing the ED's preliminary decision to approve the Application and to issue Permit No. 76688L001 authorizing the Specialty Mix Concrete Batch Plant.

6. On August 25, 2006, the ED issued his Response to Public Comments, and the ED filed an Amended Response to Public Comment on November 7, 2006. The Amended Response to Public Comment was filed to note that Applicant would produce no more than 10 cubic yards of concrete per hour and not more than 3,750 yards of concrete per year.

7. During its public notice and comment period for the Application, the Commission received numerous hearing requests.

8. By Interim Order dated April 16, 2007, the Commission referred the Application to SOAH for a contested case hearing.

9. In its Interim Order, the Commission referred five issues to SOAH:

   a. Whether the air emissions from the proposed facility will adversely affect the health of the residents, animals, vegetation in the area;

   b. Whether the air emissions from the proposed facility will adversely affect air quality in the area;

   c. Whether the air emissions from the proposed facility will adversely affect the requesters' welfare or damage the requesters' property;

   d. Whether operation of the proposed facility will create nuisance conditions in the area; and

   e. Whether the Applicant's compliance history justifies denial of the registration.

10. After the ED made a preliminary determination to register Applicant under the standard permit on the basis that it meets all the rules and regulations of 30 TAC 116.611, on June 21, 2007, the ALJ held a preliminary hearing in this matter at Houston City Hall, 901 Bagby, Houston, Texas.

11. Notice of the preliminary hearing was published in the *Houston Chronicle*, a newspaper generally circulated in the City of Houston, on May 17, 2007, and mailed by the Commission's Chief Clerk to all interested persons.

12. At the preliminary hearing, the following were admitted as parties: Applicant, Ann Bonefas, Alma Mongonia, Harvey Prasek, James W. Deveau, Floyd Telschow, and Pablo Garza; the Office of Public Interest Counsel (OPIC). Don and Judy Christian, Rick Ashby, Vernon and Carol Wiggins, Galene Guerra parties requested party status but were denied party status. The ED did not participate in the hearing.

13. The ALJ established a docket control order designed to complete the proceeding within the maximum expected duration set by the Commission, which established a four month time period from the date of the preliminary hearing as the deadline for the PFD.

14. ALJ Kerry D. Sullivan conducted the hearing on the merits at SOAH's offices on September 19, 2007, in Austin, Texas.

15. Applicant owns and operates a precast concrete manufacturing facility on 9316 Reid Lake Drive, Houston, Texas.

16. To support its precast manufacturing operation, Applicant is currently purchasing concrete from off-site concrete batch plants and is using mixer trucks to deliver such concrete for the purposes of manufacturing concrete utility poles and other items.

17. Applicant operated a small specialty mix concrete batch plant on the proposed site from approximately 1994 to 2005.

18. The proposed site in Houston is located on a 21-acre tract of land owned by Applicant. The area around the site is mixed industrial and residential, including both a closed and an active landfill, a construction company, a landscaping business, sheet metal businesses, a fabrication and repair shop, a welding shop, a public storage facility, a dog kennel, and an automotive shop.

19. Applicant's Specialty Mix Concrete Batch Plant will conform to the requirements of the Standard Air Permit as set out in 30 TEX. ADMIN. CODE (TAC) §116.111 as follows:

    a. Consistent with Paragraph (1)(F), records will be maintained on-site to show hourly production and kept for 24 months.

    b. Consistent with Paragraphs (3)(A) and (B), the specialty mix batch plant shall be equipped with a fabric filter system (also known as the enclosed silo collection

system or baghouse), which will collect and capture particulate matter, including dust, that is produced during the unloading process. These emissions will be captured and the material will be recycled back into the silo.

c. Consistent with Paragraph (3)(C), conveyance of materials will utilize an enclosed system. From elevated storage, rock, sand and cement along with water and admixtures will be weighed and conveyed into an enclosed mixer, which is also consistent with Paragraph (3)(C) of the Standard Air Permit for a Specialty Mix Batch Plant. The mixer and cement weigh basket are connected to a central baghouse that collects particulates. Once wetted and mixed, the concrete batching operation is complete. Concrete is dispensed into hand-pushed carts for use in pole forms or buckets for delivery by fork lift to casting forms all within the existing manufacturing facility.

d. The silo will be equipped with an alarm or warning device, which is consistent with Paragraph (3)(D) of the standard air permit.

e. Consistent with Paragraph (3)(E), all in-plant roads and traffic areas will be paved with a cohesive hard surface that will be maintained.

f. Consistent with Paragraph (3)(F) of the Standard Air Permit for a Specialty Mix Batch Plant, a sprinkler system will maintain moisture in the stock piles to control wind erosion and dust emissions. The sand and rock will be moved to elevated batch plant bins with a fork lift using a fork mounted hopper.

g. Consistent with Paragraph (3)G) of the Standard Air Permit for a Specialty Mix Batch Plant, all material spills will be immediately cleaned up and contained or dampened so dust emissions will be minimized.

h. Consistent with Paragraph (4)(A) of the Standard Air Permit for a Specialty Mix Batch Plant, the site production rate will not exceed 30 cubic yards per hour.

I. Consistent with Paragraph (4)(B) of the Standard Air Permit for a Specialty Mix Batch Plant, the weigh hopper will be vented to a fabric filter system and will be vented inside the batch mixer.

j. Consistent with Paragraph (4)(C) dust emissions will be controlled in the concrete manufacturing process because cement will be delivered in an enclosed tanker and pneumatically conveyed into an enclosed elevated silo.

k. Additionally, roads and other traffic areas within the buffer distance will be bordered by 12-foot high dust-preventive fencing.

20. Permit No. 76688L001 requires Applicant to install emissions control equipment, which is consistent with Best Available Control Technology (BACT), and includes the use of fabric filter baghouse, using washed sand and gravel to be stored in ground level three-sided containment walls that will extend above the materials, and installing a 12-foot high dust fence around the facility.

21. Consistent with the requirements of 30 TAC §116.615, Applicant will utilize a Plant Manager and a Plant Coordinator to accomplish operational tasks; hourly, daily, and scheduled recordkeeping; and other best management practices required by the permit to ensure all permit requirements are satisfied, including that the air pollution emission capture and abatement equipment will be kept in good working order and appropriate corrections and/or repairs to any facility equipment will be made.

22. Consistent with Permit No. 76688L00, Applicant will ensure that all filter systems and emission control devices meet a performance standard of no visible emissions exceeding 30 seconds in any six-minute period as determined by using US EPA Test Method 22.

23. Historically, the Air Quality Standard Air Permit for Specialty Mix Plants evolved from Standard Exemption 117, which received a health effects and compliance evaluation from TCEQ Staff.

24. A compliance analysis and protectiveness review performed during the issuance of the Air Quality Standard Air Permit for Specialty Mix Plants indicated that the Commission assumed a distance of zero feet between the property line and the mixing point of the concrete batch plant.

25. A Registration Checklist was developed so that the Commission's Air Permits Division could confirm that the proposed specialty mix batch plant would be operated under the standard air permit's requirements.

26. A standard permit authorizes the construction or modification of new or existing facilities which are similar in terms of operations, processes, and emissions. These facilities have been determined by the TCEQ not to make a significant contribution of air contaminants to the atmosphere pursuant to the Texas Health and Safety Code (i.e., the Texas Clean Air Act,) and have already undergone a comprehensive TCEQ internal modeling of impacts and a health effects review.

27. Applicant will produce concrete at a rate not to exceed 10 cubic yards per hour and 3,750 cubic yards per year.

28. The Applicant will operate no more than four hours per day, produce no more than ten cubic yards of concrete per hour, and limit annual production to 3,750 cubic yards. In comparison, the maximum parameters that could be authorized under a standard air quality permit for a specialty mix plant would be ten hours per day, thirty cubic yards per hour, and 93,600 cubic yards per year.

29. The Applicant's proposed specialty mix plant is protective of air quality because Applicant's proposed operational scenario is significantly less than the specialty mix plant TCEQ considered when it issued the Standard Air Quality Permit.

Facility's Affect on Health of Residents, Animals, and Vegetation in the Area

30. The United States Environmental Protection Agency (EPA) has established National Ambient Air Quality Standards (NAAQS) for pollutants, including PM_{10} and $PM_{2.5}$. PM_{10} is particulate matter with a diameter less than 10 microns, while $PM_{2.5}$ is particulate matter with a diameter less than 2.5 microns.

31. Emissions resulting in maximum off-site concentrations less than NAAQS are presumed to be protective of public health. The existing NAAQS for $PM_{2.5}$ (both primary and secondary) are 15 $\mu g/m^3$ for the annual standard and 35 micrograms per cubic meter ($\mu g/m^{3)}$ for the 24-hour standard; Applicant's maximum anticipated off-site impacts are approximately 0.0306 $\mu g/m^3$ and 0.669 $\mu g/m^3$ for the annual and 24-hour standard.

32. The protectiveness review for the concrete batch plant standard air permit determined emissions from facilities operating under the Standard Air Permit would meet NAAQS for particulate matter with an aerodynamic diameter of 10 microns or less and applicable TCEQ toxicology and risk assessment health effects guidelines.

33. The existing NAAQS for PM_{10} (both primary and secondary) are 50 $\mu g/m^3$ for the annual standard and 150 $\mu g/m^3$ for the 24-hour standard; Applicant's maximum anticipated off-site impacts are approximately 0.259 $\mu g/m^3$ and 4.56 $\mu g/m^3$ for the annual and 24-hour standard respectively.

34. Historically, the Commission established state property-line standards governing the emission of total suspended particulate (TSP) matter. Under these property-line standards, emissions of TSP from sources on contiguous properties are not to exceed the following net ground level concentrations: 200 $\mu g/m^3$ for a 3-hour averaging period and 400 $\mu g/m^3$ for a 1-hour averaging period; Applicant's proposed emission rates are approximately 183 and 348 for the 3-hour and 1-hour averaging periods, respectively.

35. Applicant utilized an appropriate formula and conservative method for calculating emissions for the facility's proposed haul roads.

    a. Applicant calculated the emission rates specific to batch plants and the emission rates for the facility utilizing the formula from EPA's AP-42 emission factors for calculating emissions from unpaved roads, AP-42 Section 13.2.2.

    b. TCEQ guidance on calculating haul road emissions, establishes a method by which an applicant can apply a control efficiency for paving when haul road emissions are properly calculated using the unpaved road emission factor.

36. The haul roads at the specialty concrete batch plant will be paved and vacuumed.

37. Even conservative emissions calculations show that the 1-hour and 3-hour property line standards for TSP would not be exceeded by the operation of the facility.

38. Applicant conservatively considered the haul roads when calculating emissions from the proposed facility.

    a. The permit requires that dust emission from in-plant roads be minimized at all times by at least one of the following methods: covered with material such as roofing shingles or tire chips, treated with dust-suppressant chemicals, watered or paved with a hard cohesive surface that is maintained intact and cleaned.

b. Applicant will pave, vacuum and clean haul roads associated with the specialty mix plant.

39. Applicant's emissions calculations for the proposed facility's stockpiles represent accurate and conservative calculations of the proposed facility's actual stockpile emissions.

40. The emission rates calculated by Applicant for the facilities authorized by Permit No. 76688L001 are projected to be less than the emission limits allowed under the Standard Permit for Concrete Batch Plants, the NAAQS, and below federal *de minimis* levels.

41. Applicant selected appropriate background air monitor locations and used appropriate background concentrations of PM_{10} and $PM_{2.5}$ to assess potential for cumulative impacts on air quality.

a. The air monitors selected by Applicant are the nearest available monitors to the facility and are located at 4510 ½ Aldine Mail Road, Houston, Texas ("Aldine Mail Road Monitor") and at 4401 ½ Lang Road, Houston, Texas (Lang Road Monitory).

b. The totals of the maximum measured impact of the facility when using these monitors were less than the federal standards

42. Applicant utilized appropriate formulas that were consistent with TCEQ policy for calculating emissions for the proposed facility's aggregate handling, batching, screening and conveying operations when it used the formulas provided in the TCEQ's *Technical Guidance Package for Mechanical Sources, Concrete Batch Plants* (January 2001).

43. Applicant's emissions calculations for the proposed facility's aggregate handling, batching, mixing, screening and conveying operations represent emission calculations consistent with the proposed facility's actual emissions and the requirements of the Standard Air Permit.

44. Applicant predicted the maximum impacts of emissions from the proposed facility would be below *de minimis* standards.

45. The Applicant's dust impacts analysis represents an accurate and conservative prediction of the proposed facility's lack of impact to air quality.

46. Emissions of TSP, PM_{10} and $PM_{2.5}$ from the proposed facility will not adversely affect the health of the residents, animals and vegetation in the area.

a. Applicant predicts that emissions of PM_{10} from the proposed facility, when added to PM_{10} ambient background concentrations, will not cause maximum ground level concentrations to exceed 150 $\mu g/m^3$ averaged over any 24-hour period of 50 $\mu g/m^3$ averaged over any annual period, the EPA's primary and secondary NAAQS for PM_{10}.

b. Applicant's emission calculations show PM_{10} predicted maximum ground level concentrations as being at 0.259 $\mu g/m^3$ annually and 4.56 $\mu g/m^3$ for the 24-hour averaging period for the batch plant and 0.266 $\mu g/m^3$ annually and 4.68 $\mu g/m^3$ for the 24-hour averaging period for the entire faculty. These amounts are less than the federal PM_{10} standards.

47. Emissions of $PM_{2.5}$ from operation of the proposed facility will not cause adverse health effects to people, animals and vegetation near the facility.

a. Emissions of $PM_{2.5}$ from the proposed facility, when added to $PM_{2.5}$ ambient background concentrations, will not cause maximum ground level concentrations to exceed 35 $\mu g/m^3$ averaged over any 24-hour period or 15 $\mu g/m^3$ averaged over any annual period, the U.S. EPA's current primary and secondary NAAQS for $PM_{2.5}$.

b. The current $PM_{2.5}$ NAAQS is the proper standard for evaluating potential adverse health impacts associated with emissions of $PM_{2.5}$ from the proposed facility.

c. Applicant's emission calculations show $PM_{2.5}$ predicted maximum ground level concentrations as being at 0.0306 $\mu g/m^3$ annually and 0.669 $\mu g/m^3$ for the 24-hour averaging period for the batch plant and 0.0316 $\mu g/m^3$ annually and 0.672 $\mu g/m^3$ for the 24-hour averaging period for the entire facility. These amounts are less than the federal $PM_{2.5}$ standards.

48. Emissions of crystalline silica from operation of the proposed facility will not adversely affect the health of the residents, animals and vegetation in the area.

a. TCEQ staff has developed effects screening levels (ESLs) for ground level concentrations of emitted constituents. The ESLs are prepared by the staff of the Commission's Toxicology Section and identify the levels at which the members of that section believe that a constituent may be emitted without causing adverse health or other effects and without the need for further assessment.

b. Applicant's emission calculations predicts that emissions of silica from the proposed facility will not exceed the ESLs for silica, which are 1.0 $\mu g/m^3$ for a one-hour averaging period and 0.1 $\mu g/m^3$ for an annual averaging period.

c. Applicant's emission calculations show the predicted impact of silica at <0.266 $\mu g/m^3$ annually and 9.3 $\mu g/m^3$ for the 1-hour averaging period, which are less than the amounts listed in the TCEQ Effects Screening Levels guidance document.

49. If the Applicant is allowed to register under the standard air permit for concrete batch plants and the Applicant fully complies with the permit, there is no basis to expect that the welfare of people, property, plants or animals will be harmed by the Applicant's permitted emissions.

50. The primary NAAQS are set to protect public health, which includes sensitive members of the population, such as asthmatics, children and the elderly; therefore, emission limits established in air quality permits, including Permit No. 76688L001, are set within parameters determined to be protective of those same sensitive subpopulations.

Facility's Affect on Air Quality in the Area

51. The operation of the specialty mix plant will result in minor levels of emissions that will have a *de minimis* impact that will not result in the exceedance of any existing NAAQS.

52. Emissions from the proposed facility will not have an adverse affect on air quality. As required by the standard air permit, the Applicant will utilize emission control equipment that satisfies BACT requirements for the specialty mix plant, and the concrete produced will be used onsite only to minimize dust emissions.

53. The Applicant has self-limited operations to ensure that on-site concrete production will be below the production capacity and operational-hour limits of the Standard Air Permit.

54. Although NAAQS are promulgated by the federal government, the NAAQS will be enforced throughout the State of Texas, and the protectiveness review for the concrete batch plant standard air permit will meet NAAQS for PM_{10}.

Facility's Affect on Requesters' Welfare and Property

55. If the permit is issued, no significant emissions are likely to occur offsite in the area of Lonestar Prestress Mfg., Inc. or on any of the Protestants' property.

56. None of Applicant's facilities have had any Notices of Violation or nuisance dust complaints prior to 2005, and there have been no verified complaints filed with the TCEQ by the Protestants about adverse affects to their property.

57. Operation of the facility is not likely to have an adverse affect on the ability of persons or entities around the facility to use and enjoy their property or cause damage to property around the facility.

58. The proposed specialty mix batch plant will not be operated in a manner that would adversely affect others' property, pets, gardens or welfare.

59. Upon TCEQ's investigation of the proposed site, including property within 25 yards of the proposed plant, TCEQ noted that there were no dust deposits found on the complainant's property and emissions were not observed leaving the property.

60. Prior to 2005, when a similar, small-scale batch plant operated on the proposed site for this facility, Applicant never received a nuisance dust complaint.

61. Since the operation will be making concrete on-site, there will be fewer mixer trucks delivering concrete for the purposes of supporting on-site manufacturing operations. Therefore, the potential for nuisance conditions related to truck traffic, road dust and noise will be reduced.

62. Since the Applicant's production process is self-limited to less than 10 cubic yards per hour or less, well below the limits of the worst case assumptions used when TCEQ issued the Specialty Mix Concrete Batch Plant Standard Air Permit (a Standard Air Permit written to ensure no nuisance conditions would result), the proposed operation is not expected to create a nuisance problem.

63. As long as the proposed specialty mix plant operates in compliance with the standard permit, nuisance conditions are not expected.

64. The review process for the Specialty Mix Standard Air Permit evaluated a "worst case" batch plant operating scenario in March 2000 and such evaluation concluded that the TSP and PM10 NAAQS standards would be satisfied.

65. Applicant's compliance history has been classified by the TCEQ at 3.01 or "average by default." This compliance history rating is acceptable.

66. In response to complaints from the public, Applicant was investigated by Pollution Control Department of Harris County Public Health & Environmental Services Office and the TCEQ's Houston Regional Office. Applicant voluntarily closed the concrete batching portion of the facility when it was determined that the Applicant had not obtained TCEQ authorization for it. Applicant had mistakenly believed the specialty mix batch plant was authorized.

67. At the time of TCEQ field inspections conducted between November 9th and 18th of 2005, there had been no complaints filed against the Applicant in the previous two years and there were no enforcement actions filed against Applicant in the previous five years.

68. TCEQ's records indicate Applicant is not a repeat violator and that Applicant's compliance history was rated as "average performer."

69. One March 6, 2006, TCEQ conducted a similar investigation and wrote a letter stating that no violations were being alleged as a result of the investigation. On April 5, 2006, after approximately 9 days worth of investigation, TCEQ wrote a letter finding no violations at Applicant's facility.

70. Applicant maintains existing TCEQ environmental permits under the TCEQ air and water quality permit programs. Specifically, Applicant holds two permits-by-rule (No. 78748 and No. 77880), that authorize all existing industrial activities related to the precast concrete manufacturing operation (e.g., surface coating and pole manufacturing process). Applicant holds a stormwater permit, No. TXR05L635 to, authorize any stormwater discharge.

71. When Applicant applied for the Standard Air Permit, he believed his specialty mix batch plant was authorized and was being operated under an historic standard exemption, Standard Exemption 117 or Permit-by-Rule 106.203.

CONCLUSIONS OF LAW

1. The Commission has jurisdiction to consider the Applicant's application pursuit to TEX. HEALTH & SAFETY CODE ANN. §382.05198.

2. SOAH has jurisdiction to conduct a hearing and to prepare a PFD in this matter. TEX. GOV'T CODE ANN. § 2003.047.

3. Notice was provided pursuant to TEX. HEALTH & SAFETY CODE ANN. §382.056, TEX. GOV'T CODE ANN. §2001.051 and 2004.052, and 30 TAC §39.601, *et seq.*

4. In a contested case hearing involving an air quality permit application, the burden of proof is on the applicant to demonstrate that it has addressed the issues referred by the Commission to SOAH by a preponderance of the evidence. 30 TAC §80.17(a).

5. Pursuant to 30 TAC §116.615, Applicant demonstrated that the emissions from the specialty mix plant will comply with all Commission rules and regulations and with the intent of the Texas Clean Air Act, including the protection of public health and welfare.

6. The NAAQS are ambient air quality standards that EPA has determined are requisite to protect the public health and welfare from any known or anticipated adverse affects associated with the presence of such air pollutant in the ambient air. 42 U.S. CODE ANN. (U.S.C.A.) §§ 7409(a) and 7409(b)(1) and (2).

7. The Commission has adopted the NAAQs by reference and specified that they are to be enforced throughout Texas. 30 TEX. ADMIN. CODE §101.21.

8. The Commission has established the Air Quality Standard Permit for Concrete Batch Plants pursuant to 30 TEX. ADMIN. CODE §116.111.

10. Expected emissions from the facility will not exceed the NAAQS, state property line standards, or any applicable ESLs.

11. Operation of the facility is not expected or likely to have an adverse effect on the health of the people, animals or vegetation in the area.

12. Operation of the facility is not expected or likely to have an adverse affect on the air quality in the area.

13. Operation of the facility is not expected or likely to have an adverse affect on the requesters' welfare or damage the requesters' property.

14. Operation of the facility is not expected or likely to create nuisance conditions in the area.

15. The proposed facility will use best available control technology, considering the technical practicability and economic reasonableness of reducing or eliminating the emissions resulting from the facility.

16. There is no indication that the emissions from the proposed facility will contravene the intent of Chapter 382 of the TEXAS HEALTH AND SAFETY CODE, including protectiveness of the public's health and physical property.

17. The Applicant's compliance history does not justify denial of the registration and is consistent with 30 TAC Chapter 60.

18. The application the Air Quality Standard Permit No. 76688L001 should be approved, because under the Texas Clean Air Act and TCEQ rules, a project that meets the requirements for a standard air permit issued by the TCEQ is entitled to the standard air permit. 30 TAC §116.610(a) and TEX. HEALTH& SAFETY CODE ANN. §382.051.

19. Under 30 TAC §116.115(1), TCEQ may not issue a standard air permit unless it is protective of public heath and welfare.

NOW, THEREFORE, IT IS ORDERED BY THE TEXAS COMMISSION ON ENVIRONMENT QUALITY THAT:

1. The application of Lonestar Prestress Mfg., for Air Quality Standard Permit No. 7688L001is approved.

2. Lonestar Prestress Mfg shall comply with all Findings of Fact and Conclusions of Law contained herein and with the terms of Air Quality Standard Permit No. 7688L001.

3. All other motions, requests for entry of specific Findings of Fact or Conclusions of Law, and any other requests for general or specific relief, if not expressly granted herein, are hereby denied.

4. The effective date of this Order is the date the Order is final, as provided by 30 TAC § 80.273 and Gov't Code § 2001.144.

5. The Commission's Chief Clerk shall forward a copy of this Order to all parties.

6. If any provision, sentence, clause, or phrase of this Order is for any reason held to be invalid, the invalidity of any provision shall not affect the validity of the remaining portions of this Order.

ISSUED:

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Buddy Garcia, Chairman
For the Commission