

LAW OFFICE OF
JOHN J. VAY

512.329.2010 tel
512.329.2011 fax

john@vay.net
www.vay.net

February 9, 2009

Chairman Buddy Garcia
Commissioner Larry R. Soward
Commissioner Brian W. Shaw, Ph.D.
Texas Commission on Environmental Quality
12100 Park 35 Circle, Bldg. F
Austin, TX 78753

2009 FEB - 9 PM 4:52
CHIEF CLERKS OFFICE
TEXAS
COMMISSION
ON ENVIRONMENTAL
QUALITY

Re: Applicant's Letter Reply
Application of Block Creek Concrete Products LLC
SOAH Docket No. 582-08-4460
TCEQ Docket No. 2008-1009-AIR

Dear Commissioners:

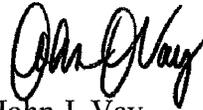
On or about February 6, 2009, the sole protesting party, Mr. Dennis Spinelli, filed a response in which he expressly stated that the decision reached by the Administrative Law Judge in this case "is reasonable and, therefore, an appeal is not being made from it." This is consistent with Mr. Spinelli's previous decision not to file any exceptions to the ALJ's proposal for decision.

The applicant would like to briefly respond to Mr. Spinelli's suggestion that the evidence somehow shows his residential structure is located within 440 yards of the concrete batch plant *site* (as distinguished from the plant itself). This is not correct. During the evidentiary hearing, the applicant through various fact and expert witnesses delineated on a survey map a line behind which all concrete mixing/batching activities take place on the property (all more than 440 yards away). It is uncontroverted that any personal, recreational and business activities that take place beyond the delineated line do not involve the mixing/batching of concrete. The area to which Mr. Spinelli continues to point is neither the concrete batch plant *nor* the plant site. His consultant (who never inspected the plant site) mistakenly assumed that mixing/batching activities are taking place in that area because of disturbed vegetation in a dated aerial photograph from the internet. Mr. Spinelli does not reside within 440 yards of the concrete batch plant (the statutory standard) *nor* does he reside within 440 yards of the plant *site* (if at all relevant). He simply owns a ranch cabana located within 440 yards of a much larger piece of property owned by Burt and Susie Seidensticker and used for a variety of purposes.

Applicant's Exceptions
February 9, 2009
Page 2

Consistent with Mr. Spinelli's decision not to file any exceptions or appeal the ALJ's decision, it is respectfully requested that the Commissioners deny the hearing request of Mr. Dennis Spinelli and otherwise approve the pending application and air quality standard permit.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "John J. Vay". The signature is written in a cursive style with a large initial "J".

John J. Vay

cc: Certificate of Service

Certificate of Service

I hereby certify that on February 9, 2009, a true and correct copy of the foregoing *Minor Exceptions to the ALJ's Proposal for Decision* was filed with the Chief Clerk of the Texas Commission on Environmental Quality (original and eleven copies) and served on the Administrative Law Judge and all parties in the manner indicated below:

Hon. Tommy Broyles
Administrative Law Judge
State Office of Administrative Hearings
300 West 15th Street, Suite 502
Austin, Texas 78701

Mr. Joe Davis, Esq.
P.O. Box 2349
Boerne, Texas 78006

Ms. Alicia Lee, Esq.
Environmental Law Division (MC-173)
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78711-3087

Mr. Eli Martinez, Esq.
Office of Public Interest Counsel (MC-103)
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78711-3087

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