

Buddy Garcia, *Chairman*
Larry R. Soward, *Commissioner*
Bryan W. Shaw, Ph.D., *Commissioner*
Mark R. Vickery, P.G., *Executive Director*



TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

July 30, 2009

TO: Persons on the attached mailing list.

RE: Quality Readymix, Ltd., LLP
Permit No. 85181

Decision of the Executive Director.

The executive director has made a decision that the above-referenced permit application meets the requirements of applicable law. **This decision does not authorize construction or operation of any proposed facilities.** This decision will be considered by the commissioners at a regularly scheduled public meeting before any action is taken on this application unless all requests for contested case hearing or reconsideration have been withdrawn before that meeting.

Enclosed with this letter is a copy of the Executive Director's Response to Comments. A copy of the complete application, draft permit and related documents, including public comments, is available for review at the TCEQ Central office. A copy of the complete application, the draft permit, and executive director's preliminary decision are available for viewing and copying at the TCEQ Central Office, the TCEQ Corpus Christi Regional Office, and at the San Patricio Courthouse, 400 West Sinton, Sinton, San Patricio County, Texas. The facility's compliance file, if any exists, is available for public review at the TCEQ Corpus Christi Regional Office, NRC Building, Suite 1200, 6300 Ocean Drive, Unit 5839, Corpus Christi Texas.

If you disagree with the executive director's decision, and you believe you are an "affected person" as defined below, you may request a contested case hearing. In addition, anyone may request reconsideration of the executive director's decision. A brief description of the procedures for these two requests follows.

How To Request a Contested Case Hearing.

It is important that your request include all the information that supports your right to a contested case hearing. You must demonstrate that you meet the applicable legal requirements to have your hearing request granted. The commission's consideration of your request will be based on the information you provide.

The request must include the following:

- (1) Your name, address, daytime telephone number, and, if possible, a fax number.
- (2) If the request is made by a group or association, the request must identify:
 - (A) one person by name, address, daytime telephone number, and, if possible, the fax number, of the person who will be responsible for receiving all communications and documents for the group; and
 - (B) one or more members of the group that would otherwise have standing to request a hearing in their own right. The interests the group seeks to protect must relate to the organization's purpose. Neither the claim asserted nor the relief requested must require the participation of the individual members in the case.
- (3) The name of the applicant, the permit number and other numbers listed above so that your request may be processed properly.
- (4) A statement clearly expressing that you are requesting a contested case hearing. For example, the following statement would be sufficient: "I request a contested case hearing."

Your request must demonstrate that you are an **"affected person."** An affected person is one who has a personal justiciable interest related to a legal right, duty, privilege, power, or economic interest affected by the application. Your request must describe how and why you would be adversely affected by the proposed facility or activity in a manner not common to the general public. For example, to the extent your request is based on these concerns, you should describe the likely impact on your health, safety, or uses of your property which may be adversely affected by the proposed facility or activities. To demonstrate that you have a personal justiciable interest, you must state, as specifically as you are able, your location and the distance between your location and the proposed facility or activities. A person who may be affected by emissions of air contaminants from the facility is entitled to request a contested case hearing. A person permanently residing within 440 yards of a concrete batch plant under a permit by rule is an affected person who is entitled to request a contested case hearing.

Your request must raise disputed issues of fact that are relevant and material to the commission's decision on this application. The request must be based on issues that were raised during the comment period. The request cannot be based solely on issues raised in comments that have been withdrawn. The enclosed Response to Comments will allow you to determine the issues that were raised during the comment period and whether all comments raising an issue have been withdrawn. The public comments filed for this application are available for review and copying at the Chief Clerk's office at the address below.

To facilitate the commission's determination of the number and scope of issues to be referred to hearing, you should: 1) specify any of the executive director's responses to comments that you dispute; and 2) the factual basis of the dispute. In addition, you should list, to the extent possible, any disputed issues of law or policy.

How To Request Reconsideration of the Executive Director's Decision.

Unlike a request for a contested case hearing, anyone may request reconsideration of the executive director's decision. A request for reconsideration should contain your name, address, daytime phone number, and, if possible, your fax number. The request must state that you are requesting reconsideration of the executive director's decision, and must explain why you believe the decision should be reconsidered.

Deadline for Submitting Requests.

A request for a contested case hearing or reconsideration of the executive director's decision must be **received** by the Chief Clerk's office no later than **30 calendar days** after the date of this letter. You may submit your request electronically at <http://www.tceq.state.tx.us/about/comments.html> or by mail to the following address:

LaDonna Castañuela, Chief Clerk
TCEQ, MC-105
P.O. Box 13087
Austin, Texas 78711-3087

Processing of Requests.

Timely requests for a contested case hearing or for reconsideration of the executive director's decision will be referred to the alternative dispute resolution director and set on the agenda of one of the commission's regularly scheduled meetings. Additional instructions explaining these procedures will be sent to the attached mailing list when this meeting has been scheduled.

How to Obtain Additional Information.

If you have any questions or need additional information about the procedures described in this letter, please call the Office of Public Assistance, Toll Free, at 1-800-687-4040.

Sincerely,



LaDonna Castañuela
Chief Clerk

LDC/lg

Enclosures

MAILING LIST
for
Quality Readymix, Ltd., LLP
Permit No. 85181

FOR THE APPLICANT:

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FOR THE EXECUTIVE DIRECTOR
via electronic mail:

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FOR OFFICE OF PUBLIC ASSISTANCE
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FOR PUBLIC INTEREST COUNSEL
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FOR THE CHIEF CLERK
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Texas Commission on Environmental Quality
Office of Chief Clerk MC-105
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INTERESTED PERSONS:

See attached list.

ALLBRIGHT, JOHN A
9587 COUNTY ROAD 249
MATHIS TX 78368-4057

BAGGS, HAZEL
BAGGS LANE 3
MATHIS TX 78368

BARKSDALE, ALEXIS
115 COUNTY ROAD 346
MATHIS TX 78368-4094

BARKSDALE, COY
115 COUNTY ROAD 346
MATHIS TX 78368-4094

BAUCH, WESLEY
9381 COUNTY ROAD 505
MATHIS TX 78368-4321

BENNETT, JO MARIE & ROBERT
9335 COUNTY ROAD 505
MATHIS TX 78368-4321

BENNETT, ROBERT
9335 COUNTY ROAD 505
MATHIS TX 78368-4321

BENNETT, GAROLD E
120 BAYVIEW DR
LAKE CITY TX 78368-9413

BERTHOLD, ARTY
288 CR 372
SANDIA TX 78383

BLAND, W KATHERINE
24763 COUNTY ROAD 360
MATHIS TX 78368-4007

BOWMAN, GENE
24535 LA PONDEROSA LN
MATHIS TX 78368-4166

BOWMAN, GENE & TEENA
24535 LA PONDEROSA LN
MATHIS TX 78368-4166

BRAUN, CHERYL
PO BOX 519
MATHIS TX 78368-0519

BRAUN JR, NICHOLAS L
PO BOX 519
MATHIS TX 78368-0519

BRISSARD, CLARENCE
9481 COUNTY ROAD 505
MATHIS TX 78368-4322

BRISSARD, SUSAN
9481 COUNTY ROAD 505
MATHIS TX 78368-4322

BROWN, DALTON
120 LAKE ST
LAKE CITY TX 78368-9433

BROWN, INA
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MATHIS TX 78368-0388

BUFF, LLOYD
9505 COUNTY ROAD 505
MATHIS TX 78368-4323

BUFF, RITA
9505 COUNTY ROAD 505
MATHIS TX 78368-4323

BURKHART, JOE
24849 COUNTY ROAD 350
MATHIS TX 78368-4003

BURKHART, SUSAN
24849 COUNTY ROAD 350
MATHIS TX 78368-4003

CHOPELAS, CLARENCE
9547 COUNTY ROAD 325
MATHIS TX 78368-4009

CONCERNED CITIZEN,
880 FM 888
MATHIS TX 78368-4072

CONCERNED CITIZEN,
21485 COUNTY ROAD 1136
MATHIS TX 78368-4226

CONCERNED CITIZEN,
152 ZENNA DR
MATHIS TX 78368-3408

CONCERNED CITIZEN,
525 VISTA DR
ODEM TX 78370-4321

CUMMINGS, DARRYL
337 STEPHENS LOOP
LAKE CITY TX 78368-9410

CUMMINGS, SALLY
337 STEPHENS LOOP
LAKE CITY TX 78368-9410

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MATHIS TX 78368-0342

DIERINGER , DARVIN
9796 FM 888
SKIDMORE TX 78389-3629

DIRCKENE , THOMAS
9884 FM 3377
MATHIS TX 78368-4255

FINCH , KATHY
124 LAKEMONT LN
MATHIS TX 78368-4071

FOYE , PATRICK
225 BAYVIEW DR
LAKE CITY TX 78368-9468

FOYE , TOMMIE J
225 BAYVIEW DR
LAKE CITY TX 78368-9468

GALLOWAY , AUDREY
24677 COUNTY ROAD 370
MATHIS TX 78368-4013

GILLENWATER , CHERYL
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MATHIS TX 78368-0975

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24434 LA PONDEROSA LN
MATHIS TX 78368-4018

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MATHIS TX 78368

GREEN , BILL
24663 COUNTY ROAD 330
MATHIS TX 78368-4011

HAMMON , JOHN & LISA
9401 PR 512
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HAWKINS , JOHN R
132 COUNTY ROAD 181
SANDIA TX 78383-4049

HAWKINS , NORMA J
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SANDIA TX 78383-4049

HEDGCOTH , JOHN
24937 COUNTY ROAD 350
MATHIS TX 78368-4004

HEDGCOTH , REGINA
24937 COUNTY ROAD 350
MATHIS TX 78368-4004

HEFLIN , CHESTER
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HEFLIN , PATTY
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MATHIS TX 78368-2908

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MATHIS TX 78368-4467

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HC 1 BOX 492
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9632 COUNTY ROAD 505
MATHIS TX 78368-4324

LECHNER , DAN & DENISE
150 ZENNA DR
MATHIS TX 78368-3408

LEMMONS , PAT
24747 COUNTY ROAD 360
MATHIS TX 78368-4007

LEMMONS , MRS & MR PAUL
24747 COUNTY ROAD 350
MATHIS TX 78368-4002

LEMMONS , PAUL
24747 COUNTY ROAD 360
MATHIS TX 78368-4007

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MATHIS TX 78368-2624

LOPEZ , ROSEMARY
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MATHIS TX 78368-2624

LUHALL , BILL
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MATHIS TX 78368-4323

LUMPKIN , MICHAEL
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LUMPKIN , MICHAEL T
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MATHIS , ROBERT DALE
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MATHIS , ROXANNE
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MATHIS TX 78368-4323

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MILLER , TAMAIA
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MURRAY , ERWIN
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MATHIS TX 78368-4323

MUSTYL , MARY
22575 COUNTY ROAD 924
MATHIS TX 78368-4118

NICHOLS , GAY
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MATHIS TX 78368-4072

ORTMAYER , DAVID
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MATHIS TX 78368-4016

ORTMAYER , ULRIKE
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ROSS , BEVERLY
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MATHIS TX 78368-2907

ROSS , MICHAEL
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SIMONS , CYNTHIA
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MATHIS TX 78368-4321

SIMONS , MRS & MR TIM
9325 COUNTY ROAD 505
MATHIS TX 78368-4321

SIMONS , TIM
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MATHIS TX 78368-4321

SMITH , JEAN
24758 COUNTY ROAD 330
MATHIS TX 78368-4011

SMITH , SYLVIA
24758 COUNTY ROAD 330
MATHIS TX 78368-4011

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103 CANAL ST
MATHIS TX 78368-4052

STRONG , STEVE
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MATHIS TX 78368-4052

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MATHIS TX 78368-4166

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MATHIS TX 78368-4166

TREVINO , HENRY
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MATHIS TX 78368-3312

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VILLARREAL , CIRI
CITY MAYOR
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MATHIS TX 78368

WALTERS , FAY
121 REDWOOD DR
MATHIS TX 78368-1529

WARNER , PAULETTE
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MATHIS TX 78368-4322

WEST , GAIL
PO BOX 163
TYNAN TX 78391-0163

TCEQ AIR QUALITY STANDARD FOR CONCRETE BATCH PLANTS
REGISTRATION NUMBER 85181

TEXAS
COMMISSION
ON ENVIRONMENTAL
QUALITY

2009 JUL 27 AM 9:15

APPLICATION BY	§	BEFORE THE	CHIEF CLERKS OFFICE
Quality Readymix Ltd., LLP	§	TEXAS COMMISSION ON	
Concrete Batch Plant	§	ENVIRONMENTAL QUALITY	
Mathis, San Patricio County	§		

EXECUTIVE DIRECTOR'S RESPONSE TO PUBLIC COMMENT

The Executive Director of the Texas Commission on Environmental Quality (the Commission, Agency, or TCEQ) files this Response to Public Comment (Response) on the Air Quality Standard Permit registration application and Executive Director's preliminary decision.

As required by Texas Health and Safety Code §§ 382.056 and 382.058, before a registration 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: Robert Bennett, Gene Bowman, Audry Galloway, Lou LeBoeuf, Pat Lemons, Paul Lemons, Michael T. Lumpkin, Robert Dale Mathis, Roxanne Mathis, David Ortmyer, Mary Jane Robertson, Tim Simons, Jean Smith, Sylvia Smith, Robert W. Szalwinski, Shawna K. Szalwinski, and Ronald V. Tate. Additional comments were received in a petition signed by: Ann Anderson, Terry M. Anderson, Bill Boultinghouse, Gene Bowman, Teena Bowman, David Carr, Julie Carr, Clarence C. Chopelas, K. Chopelas, Ruby Harris, Ann Hinton, Billy Hinton, Terry Hinton, Beverly Howard, Johnnie Howard, Jeung Jerkins, Thomas Karkoska, Laura Karkoska, Roberta Mengers, Scott Mengers, James A. O'Neal, David Ortmyer, Becky Perrin, Lynn Perrin, Robert W. Szalwinski, Shawna K. Szalwinski, Ronald V. Tate, and three Concerned Area Citizens (hereinafter collectively referred to as "Petitioners"). This Response addresses all timely public comments received, whether or not withdrawn. If you need more information about this registration application or the permitting process please call the TCEQ Office of Public Assistance at 1-800-687-4040. General information about the TCEQ can be found at our website at www.tceq.state.tx.us.

BACKGROUND

Description of Facility

Quality Readymix Ltd, LLP (Applicant) has applied to the TCEQ for a standard permit registration under the Texas Clean Air Act (TCAA), Texas Health and Safety Code § 382.05195. If granted, this registration will authorize new facilities for a concrete batch plant that may emit air contaminants.

This registration will authorize the applicant to construct and operate a permanent concrete batch plant in accordance with the TCEQ's Air Quality Standard Permit for Concrete Batch Plants.

The plant would be located one mile north of Farm-to-Market 3377 on County Road 441/15, Mathis, San Patricio County. Contaminants authorized under this standard permit include particulate matter (PM), including (but not limited to) aggregate, cement, road dust, and particulate matter with an aerodynamic diameter of 10 microns (μm) or less (PM_{10}).

Procedural Background

Before work is begun on the construction of a new facility or a modification of an existing facility that may emit air contaminants, the person planning the construction or modification must obtain a permit, permit amendment, or registration from the Commission. This registration application is to register for the Air Quality Standard Permit for Concrete Batch Plants. The registration application was received on September 5, 2008, and declared administratively complete on September 16, 2008. The Notice of Receipt and Intent to Obtain an Air Quality Standard Permit Registration (first public notice) for this registration application was published on October 16, 2008, and again on February 12, 2009, in the *Mathis News*. The Notice of Application and Preliminary Decision (second public notice) for this registration application was published on March 12, 2009, in the *Mathis News*. A public meeting was held on May 19, 2009, in Mathis. The public comment period ended on May 19, 2009, at the adjournment of the public meeting. Since this registration application was administratively complete after September 1, 1999, this action is subject to the procedural requirements adopted in accordance with House Bill 801, 76th Legislature, 1999.

COMMENTS AND RESPONSES

Comments have been combined where it was determined that a common response could be provided.

COMMENT 1: Commenters generally express concerns regarding potential negative impacts to air quality, public health, and welfare from plant emissions (specifically dust and PM) and request that the application be denied. Commenters specifically note the proposed site's proximity to nearby residential subdivisions, the Cenizo Hill Cemetery, and Lake Corpus Christi, and express concerns for human health, wildlife, livestock, vegetation, and agricultural land. Commenters also express specific concerns for children, as well as the many elderly and other citizens in the area that have health problems including lung conditions and breathing disorders (Michael Lumpkin, Robert Szalwinski, Shawna Szalwinski, Ronald Tate, Mary Jane Robertson, David Ortmyer, Gene Bowman, Paul Lemmons, Pat Lemmons, Sylvia Smith, Robert Mathis, Roxanne Mathis, Robert Bennett, and Petitioners).

RESPONSE 1: In promulgating the Air Quality Standard Permit for Concrete Batch Plants, potential impacts to human health and welfare and the environment were determined by comparing predicted emission concentrations from concrete batch plant (CBP) facilities to appropriate state and federal standards and effects screening levels.^{1,2} The specific health-based

¹ See the document "Air Quality Modeling Guidelines" for details on air modeling at the TCEQ website at <http://www.tceq.state.tx.us/assets/public/permitting/air/Guidance/NewSourceReview/rg25.pdf>. Also visit the agency air modeling page at http://www.tceq.state.tx.us/permitting/air/nav/modeling_index.html.

standards or guidance levels employed in evaluating the potential emissions include the National Ambient Air Quality Standards (NAAQS); TCEQ standards contained in 30 Texas Administrative Code (30 TAC); and TCEQ Effect Screening Levels (ESLs).³

NAAQS are created by the United States Environmental Protection Agency (EPA), and as defined in the federal regulations (40 C.F.R. § 50.2), include both primary and secondary standards. The primary standards are those which the EPA Administrator 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 presence of an air contaminant in the ambient air. "Criteria pollutants" are those pollutants for which NAAQS have been established, including ozone, lead, carbon monoxide, sulfur dioxide, nitrogen dioxide, and particulate matter (PM).

Particulate matter consists of solid particles and liquid droplets found in the air, and includes PM, total suspended particulates (TSP), PM₁₀, and particulate matter less than 2.5 µm in aerodynamic diameter (PM_{2.5}). Particles up to 50 µm in diameter are collectively referred to as "total suspended particulate" or (TSP). PM₁₀ particles are referred to as "coarse" particles and PM_{2.5} particles are referred to as "fine" particles. Sources of coarse particles include wind-blown dust, dust generated by vehicles traveling on unpaved roads, material handling, and crushing and grinding operations. Fine particles are usually produced via industrial and residential combustion processes and vehicle exhaust. PM₁₀ and PM_{2.5} are criteria air pollutants for which EPA has established NAAQS.

Per the EPA PM_{2.5} surrogate policy, the TCEQ uses the PM₁₀ program as a surrogate for the PM_{2.5} program until the EPA fully implements and integrates PM_{2.5} into the New Source Review program. On October 23, 1997, EPA issued a memorandum providing for PM₁₀ to be used as a surrogate for PM_{2.5}.⁴ EPA reaffirmed that conclusion in a memorandum dated April 5, 2005.⁵ EPA continued to recognize the issue and outstanding difficulties in implementing PM_{2.5} in its Proposed Rule to Implement the Fine Particle National Ambient Air Quality Standards.⁶ EPA also noted in the Final Rule that it did not include final PM_{2.5} requirements and that they would be issued in a later rule.⁷ With respect to the transition to the PM_{2.5} standard, EPA established different requirements for delegated states and SIP-approved (State Implementation Plan) states. For SIP-approved programs, the EPA will allow the state to "continue to implement a PM₁₀

² Documents referenced in this response that are available on the TCEQ website are also available in printed form at a small cost from the TCEQ Publications office at 512-239-0028.

³ To view the ESL list or obtain more information on ESLs, visit the TCEQ website at http://www.tceq.state.tx.us/implementation/tox/esl/list_main.html.

⁴ U.S. EPA Memorandum from John S. Seitz, Director of Office of Air Quality Planning and Standards, Interim Implementation of New Source Review Requirements for PM_{2.5}, October 23, 1997.

⁵ U.S. EPA Memorandum from Stephen D. Page, Director, Implementation of New Source Review Requirements in PM-2.5 Nonattainment Areas, April 5, 2005.

⁶ 70 Fed. Reg. 65984, 66043 (November 1, 2005).

⁷ 72 Fed. Reg. 20586 (April 25, 2007).

program as a surrogate to meet the PSD program requirements pursuant to the 1997 guidance . . .⁸ Therefore, PM₁₀ controls and emissions were modeled and predicted PM₁₀ concentrations were compared to the PM₁₀ NAAQS, and compliance with the PM₁₀ NAAQS was used as the surrogate for compliance with the PM_{2.5} NAAQS.

The technical requirements contained in the standard permit are designed to ensure that facilities achieve emission standards which meet both the primary and secondary NAAQS, as well as state and other regulations. This assures that the standard permit is protective of human health, welfare, and the environment. All facilities emitting PM from a generic CBP were considered in the development of the standard permit. The analysis used surface meteorology from Austin and upper air data from Victoria for the years 1983, 1984, 1986, 1987, and 1988. Since this analysis is primarily for short-term concentrations, this five-year set would include all worst-case short-term meteorological conditions that could occur anywhere in the state. Emission rate calculations were based on emissions factors for CBPs found in the EPA's Compilation of Air Pollutant Emission Factors Manual (AP-42). The PM and PM₁₀ ground-level concentration standards were used to determine protectiveness. The PM₁₀ ground-level concentration standards are based upon short-term and long-term health effect considerations. Using AP-42 factors, emissions were modeled to ensure that all CBP configurations would meet both the primary and secondary NAAQS, as well as state and other standards. The state ground-level concentration standards are no longer in effect; however, the distance limitations established under those standards remain a part of the standard permit. The distance limitations were established to ensure that operation of a CBP would not adversely affect human health and the environment, regardless of the configuration of the CBP.

The NAAQS for PM₁₀ is based on a 24-hour time period. The measurement for predicted concentrations of air contaminants in modeling exercises is expressed in terms of micrograms per cubic meter ($\mu\text{g}/\text{m}^3$). One microgram is 1/1,000,000 of a gram, or 2.2/1,000,000,000 of a pound (approximately the weight of a dust mite) of air contaminant per cubic meter of ambient air. The air volume of a cubic meter is approximately the size of a washing machine. Predicted air concentrations occurring below the 24-hour NAAQS of 150 $\mu\text{g}/\text{m}^3$ are not expected to exacerbate existing conditions or cause adverse health effects. The potential for emissions of particulate matter (PM) from CBPs was reviewed, and it was determined that CBP facilities operating under the standard permit would meet the 24-hour federal National Ambient Air Quality Standard (NAAQS) for PM₁₀.⁹ The review further determined that emissions from facilities operating under a standard permit would meet the state standards in effect at the time, which were 400 micrograms per cubic meter ($\mu\text{g}/\text{m}^3$) (one-hour period) and 200 $\mu\text{g}/\text{m}^3$ (three-hour period). Therefore, based on the potential concentrations reviewed by the Executive Director's staff, facilities operating under the standard permit are not expected to have adverse effects on public health (including sensitive subgroups such as children, elderly, or people with existing lung or cardiovascular conditions), public welfare, animal life, plant life, or the environment as a result of exposure to the expected levels of PM.

⁸ 73 Fed. Reg. 28321, 28341 (May 16, 2008).

⁹ Emissions from facilities operating under the standard permit also meet the former NAAQS of 50 $\mu\text{g}/\text{m}^3$ annually, which the EPA has since repealed.

The Executive Director has conducted a thorough review of this registration application in accordance with the relevant law, policy, and procedures, and the Agency's mission to protect the state's human and natural resources consistent with sustainable economic development. Provided the CBP is operated within the terms of the standard permit, the proposed emissions are not expected to adversely impact human health, air quality, the welfare of persons living in the area, or the environment. Furthermore, the TCEQ appreciates the comments and interest from the public regarding environmental matters before the agency. TCEQ staff evaluates air quality standard permit application registrations based on whether the registration application meets the standards outlined in the TCAA and the applicable state and federal rules and regulations. Although the ED recognizes the commenters' opposition to the application, public opposition alone is not legally sufficient to justify denial of a standard permit registration application.

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 TCEQ Regional Office at 361-825-3100, 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 long had procedures in place for accepting environmental complaints from the general public but now has a new 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 2: Several commenters express concern regarding crystalline silica being emitted from the proposed facility and possible effects such as eye, skin, and lung irritation. One commenter inquired about the U.S. Occupational Health and Safety Administration's (OSHA) requirements in dealing with silica (Robert Bennett, Michael Lumpkin, and Roxanne Mathis).

RESPONSE 2: As described in Response 1 above, during the standard permit's protectiveness review considerable effort was dedicated to demonstrating the operation of these plants will not be detrimental to human health and welfare or the environment. The review indicates that no adverse health impacts due to particulate matter are expected beyond 100 feet from the CBP facilities. This result is dependent upon the plant operating in compliance with the standard permit and all air quality rules and regulations.

Crystalline silica, or quartz, is a component of sand. Regarding the proposed plant, sand and gravel will be washed prior to delivery to the site. The washing process removes at least 95% of the coarse (PM₁₀) and fine (PM_{2.5}) particles. Additionally, the standard permit requires that moisture be applied to the sand and gravel stockpiles at the site for added dust control.

Crystalline silica is not classified as a Hazardous Air Pollutant by the EPA. Therefore, there are no specific air quality standards for crystalline silica, except for the NAAQS established for PM₁₀ and PM_{2.5}. As stated above in Response 1, the concrete batch plant standard permit was developed to meet the EPA's NAAQS for PM₁₀. The standard permit, therefore, also complies with the NAAQS for PM_{2.5} via the EPA's surrogate policy. As such, the standard permit is considered protective of human health and welfare, property, and the environment.

The Occupational Safety and Health Administration (OSHA) is a separate federal agency. Its policies and procedures do not address off-property air quality issues required by the state or the EPA. The OSHA's regulation of workplace safety does not relate to the TCEQ's standard permit protectiveness review, nor does it influence the TCEQ's consideration of this registration application.

COMMENT 3: Some commenters express concern that the 440-yard distance used to determine affected party status is not appropriate for this site due to the predominantly strong winds in the area (Michael Lumpkin, Robert Mathis, Mary Jane Robertson, and Ronald V. Tate).

RESPONSE 3: The TCEQ's authority is established by the Texas Legislature. For concrete batch plant standard permit registration applications, Texas Health and Safety Code § 382.058(c) states: "only those persons actually residing in a permanent residence within 440 yards of the proposed plant may request a hearing under [Texas Health and Safety Code] Section 382.056 as a person who may be affected." The TCEQ is therefore bound by the 440-yard hearing request requirement.

In addition, as described above in Response 1, in promulgating the Air Quality Standard Permit for Concrete Batch Plants the TCEQ's protectiveness review showed that in worst-case modeling scenarios, no off-property impacts are expected beyond 100 feet from the facility. As such, the standard permit requires that the central baghouse be maintained at least 100 feet from the plant boundaries.

COMMENT 4: One commenter inquires about compliance and enforcement (Lou LeBoeuf).

RESPONSE 4: Violations are usually addressed through a notice of violation letter that allows the operator a specified period of time within which to correct the problem. The violation is considered resolved upon timely corrective action. A formal enforcement referral will be made if the cited problem is not timely corrected, if the violation is repeated, or if a violation is causing substantial impact to the environment or the neighboring public. In most cases, formal enforcement results in an agreed enforcement order including penalties and technical requirements for corrective action. Penalties are based upon the severity and duration of the violation(s). Violations are maintained on file and are included in the calculation of compliance history for both the site and the operating entity.

During the technical review, a compliance history review of the company and the site was conducted based on the criteria set forth in 30 Texas Administrative Code Chapter 60. These rules may be found at the following website: <http://www.tceq.state.tx.us/rules/index.html>. The compliance history for the company and site was reviewed for the five-year period prior to the

date the registration application was received by the Executive Director. The compliance history includes multimedia compliance related components about the site under review. These components include the following: enforcement orders, consent decrees, court judgments, criminal convictions, chronic excessive emission events, investigations, notices of violations, audits and violations disclosed under the Audit Act, environmental management systems, voluntary on-site compliance assessments, voluntary pollution reduction programs, and early compliance.

A company and site may have one of the following classifications and ratings:

- High: rating less than 0.01 (above average compliance record);
- Average by Default: rating equal to 3.01 (sites which have never been investigated);
- Average: rating greater than 0.01 but less than 45 (generally complies with environmental regulations); and
- Poor: rating greater than 45 (performs below average).

This proposed site has a rating of 3.01 for a classification of "Average by Default." The company rating and classification, which is the average of the ratings for all sites the company owns, is 2.35 for a classification of "Average."

COMMENT 5: One commenter expresses concern regarding monitoring and suggests that the TCEQ use on site webcams to monitor the site to ensure it operates in accordance with the standard permit (Tim Simmons).

RESPONSE 5: Based on the registration application, air contaminants from this facility will consist of PM, including (but not limited to) aggregate, cement, road dust and PM₁₀. Emissions will be monitored by maintaining records of production rates for each hour of operation as required by the standard permit, and other records as required by 30 TAC §§ 101.201 and 101.211. These records shall be kept for the lesser of either the most recent rolling 24-month period or for the duration of operation at a given site.

Unfortunately, the TCEQ does not have the resources to provide 24-hour monitoring or webcams at every permitted facility. In addition, the TCEQ has no statutory authority to require the use of webcams at the proposed facility. However, the TCEQ's Office of Compliance and Enforcement (OCE) is responsible for monitoring and enforcing compliance with the state's environmental laws. The OCE includes a Field Operations Division consisting of 16 regional offices located throughout the state with responsibility of conducting investigations for compliance at the permitted and registered air facilities and developing enforcement action referrals for any violations identified during investigations. The OCE also has an Enforcement Division that is responsible for investigating violations of state environmental laws and taking corrective action.

TCEQ investigations are primarily risk-based. If the TCEQ receives a complaint, the facilities are generally not notified in advance of the investigation. Also, if the complaint concerns dust or odor, off-site surveillance is conducted prior to approaching the facility.

The TCEQ places a high priority on responding to citizen complaints. If a citizen files an environmental complaint with one of our regional offices, we will investigate the complaint and

provide the citizen with a report on the outcome of our investigation. Details of a complaint incident, or our investigation of that incident, can be found by accessing the following website: <http://www5.tceq.state.tx.us/oce/waci>. The TCEQ investigates all complaints received. If the Applicant is found to be out of compliance with the terms and conditions of the standard permit, it will be subject to possible enforcement action.

Again, as described in Response 1 above, 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 TCEQ Regional Office at 361-825-3100, or by calling the 24-hour toll-free Environmental Complaints Hotline at 1-888-777-3186. Possible violations will be addressed in accordance with the procedure described above in Response 4.

COMMENT 6: Some commenters express concern that the proposed plant will negatively affect the use and enjoyment of their home, property, and public property (Pat Lemmons, Paul Lemmons, Robert T. Lumpkin, Mary Jane Robertson, and Ronald V. Tate).

RESPONSE 6: As discussed above, in addition to protecting health, the NAAQS are also set to address welfare effects. Section 302(h) of the Federal Clean Air Act (FCAA) defines effects on welfare to include effects on soils, water, crops, vegetation, manmade materials, animals, wildlife, weather, visibility and climate, damage to and deterioration of property, hazards to transportation, and impacts to personal comfort and well-being, whether caused by transformation, conversion, or combination with other air pollutants. Because the emissions from this facility should not cause an exceedance of the NAAQS, no impact to land, water, livestock, crops, or visibility is expected, nor should emissions interfere with the use and enjoyment of surrounding land. The secondary NAAQS are set below levels which would be expected to cause nuisance conditions.

In addition, Applicant must comply with 30 TAC § 101.4 which prohibits nuisance conditions. It states that "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 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." The standard permit conditions are drafted to prevent nuisance conditions and the Applicant is not permitted to operate in such a manner as to cause nuisance conditions.

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 Corpus Christi Regional Office at 361-825-3100, or by calling the twenty-four hour toll-free Environmental Complaints Hotline at 1-888-777-3186. If the plant is found to be out of compliance with the terms and conditions of its standard permit, it will be subject to investigation and possible enforcement action.

COMMENT 7: Several commenters express concerns regarding additional truck traffic and the potential for road damage, increased danger to area citizens including children, obstruction of traffic including emergency medical services and school buses, and possible fugitive emissions

from roads and trucks impairing visibility (Robert Bennett, Robert Dale Mathis, Tim Simons, Sylvia Smith, Gene Bowman, Jean Smith, and Petitioners).

RESPONSE 7: The TCEQ's jurisdiction is established by the Texas Legislature and is limited to the issues set forth in statute. The definition of facility, as set forth in Texas Health and Safety Code § 382.003, specifically excludes roads. Therefore, the TCEQ does not have jurisdiction over traffic or road safety. Jurisdiction over traffic on public roads is the responsibility of the cities, county, and/or other state agencies such as the Texas Department of Public Safety and the Texas Department of Transportation.

Furthermore, as mobile sources, the TCEQ does not have jurisdiction to consider impacts of emissions from motor vehicles when determining whether to approve a standard permit registration application.

The emissions from plant roads and work areas are controlled, however, by best management practices as required in the standard permit. All entry and exit roads and main traffic routes associated with the operation of the concrete batch plant (including batch truck and material delivery truck roads) shall be paved with a cohesive hard surface that is maintained intact and cleaned. All batch trucks and material delivery trucks shall remain on paved surfaces when entering, conducting primary functions, and leaving the property. The Applicant represents the roads will be paved and will be treated with environmentally sensitive chemicals or watered as necessary to control fugitive dust emissions. Additionally, all other traffic areas associated with the operation of the CBP must be minimized by watering, treating with dust-suppressant chemicals, or paving with a cohesive hard surface that is maintained intact and cleaned. Stockpiles will also be watered to reduce fugitive emissions. To reduce the potential for nuisance conditions, the standard permit includes property line setbacks to provide buffer zones and restrictions on visible fugitive emissions. If the plant is operated in accordance with the terms of the standard permit, no nuisance conditions are expected from plant roads or trucks carrying dust out of the plant.

In addition, 30 TAC § 101.5 states, "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." Therefore, emissions from the facility may not create a traffic hazard.

COMMENT 8: Many commenters express concerns relating to noise emanating from plant operations (Mary Jane Robertson, Ronald V. Tate, and Petitioners).

RESPONSE 8: The TCEQ's jurisdiction is established by the Texas Legislature and is limited to the issues set forth in statute. Accordingly, the TCEQ does not have jurisdiction to consider noise from a facility when determining whether to approve a registration for an air quality standard permit. Concerns regarding noise should be directed to local officials.

COMMENT 9: Several commenters express concerns regarding the location of the proposed plant, noting specifically predominant wind patterns and the site's proximity to residential subdivisions, Lake Corpus Christi, the Cenizo Hill Cemetery, wildlife, livestock, and agricultural

land (Robert Bennett, Audry Galloway, Michael T. Lumpkin, Mary Jane Robertson, Robert V. Tate, Jean Smith, and Petitioners). Many commenters note that the proposed site is in a rural residential area that is not appropriate for industrial use (Petitioners). Some commenters express concern regarding the facility's impact on their property value (Michael Lumpkin, Audrey Galloway).

RESPONSE 9: 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 an applicant's choice for plant location when determining whether to approve or deny a registration application, except to the extent that state law imposes specific distance limitations that are enforceable by the TCEQ. The TCEQ does not have authority to consider zoning, land use, property values, or site selection when reviewing air quality standard permit registrations. Such issues should be directed to local officials. However, as stated in Response 1 above, worst-case short-term meteorological conditions, including wind, were considered in the standard permit's modeling. If the plant is operated in compliance with the terms of the standard permit, no impacts to human health, welfare, property, or the environment are expected.

COMMENT 10: Several commenters express concern that the emissions from the proposed plant will adversely affect the water quality in nearby wells and in Lake Corpus Christi, noting specific concerns for the area's predominant wind patterns (Michael Lumpkin, Mary Jane Robertson, Robert Szalwinski, Ronald V. Tate, and Petitioners).

RESPONSE 10: While the TCEQ is responsible for the environmental protection of all media (including water), the law governing air permitting deals exclusively with the regulation of air emissions. Since this is an air quality permit application, water quality is outside the scope of the review. Depending upon the nature of the facility's operations, the Applicant may need to apply for separate permits to regulate water quality. In addition, the Texas Clean Air Act does not give the TCEQ authority to regulate air emissions beyond the direct impacts (inhalation) that the air emissions have on human health or welfare. Therefore, the TCEQ does not set emission limits to restrict, or perform analysis to determine, impacts emissions may have (by themselves or in combination with other contaminants or pathways), after being deposited on land or water or incorporated into the food chain. However, as discussed in Response 1 above, the secondary NAAQS have been established to protect public welfare and the environment. Since the results of the air modeling performed in the development of the standard permit are below levels of concern under state and federal standards, emissions from the proposed facility are not expected to adversely impact water, vegetation, or animals in the area.

COMMENT 11: One commenter asks whether the plant will be a staging area for mixing cement or a processor of the components of cement (David Ortmayer).

RESPONSE 11: The proposed plant will not be manufacturing cement. It will be using cement to mix and manufacture concrete using the following process.

Raw materials including sand, gravel, crushed limestone, cement, and fly ash are transported to the plant site via tandem trailer or cement tanker trucks, which enter the plant through the driveway. The sand and aggregate are unloaded and stockpiled on site. The bulk cement and fly

ash are unloaded into the elevated silos through pressurized lines from the transport truck to the top of the silo. All haul trucks exit the plant through the driveway.

The process by which ready-mix concrete is batched for sale begins with the charging of the load hopper with sand and aggregate from the various stockpiles by a front-end loader. The material is then conveyed to the overhead aggregate bins. From the overhead aggregate bins, the material is gravity loaded into the aggregate weigh batcher. From the aggregate weigh batcher the material is conveyed to the truck charging chute. Simultaneously, while the sand and aggregate are being weighed out, the cement/fly ash is loaded into the cement weigh batcher through an enclosed auger system. A proportioned amount of water is deposited into the mixer truck through the charge chute. The final mixing occurs in the truck on the way to the job site.

COMMENT 12: One commenter believes that the Applicant did not use an appropriate publication to satisfy the public notice requirements of the standard permit registration application (Silvia Smith).

RESPONSE 12: To satisfy English public notice obligations as set forth in Texas Health and Safety Code § 382.056, the Applicant is required to publish notice in a newspaper of general circulation in the municipality in which the facility is located or is proposed to be located, or in the municipality nearest to the location or proposed location of the facility. It is the Applicant's responsibility to publish notice in compliance with this publication requirement.

The TCEQ does not have the authority to prescribe a specific publication location beyond the municipality requirement set forth in Tex. Health and Safety Code § 382.056. It is the Applicant's burden to determine which newspaper and which location is most appropriate under the statute. The proposed facility is to be located in Mathis, Texas and the Applicant published all notice requirements in the local newspaper, the *Mathis News*. Therefore, it appears that the Applicant has satisfied the minimum requirements of the statute.

COMMENT 13: One commenter asks how many employees the Applicant will have at the site and what the hours of operation will be (Robert Dale Mathis and Tim Simons).

RESPONSE 13: The TCEQ's jurisdiction is established by the Texas Legislature and is limited to the issues set forth in statute. Accordingly, the TCEQ does not have jurisdiction over the size of the Applicant's company, except for issues relating to the physical operation of the plant such as throughput, stockpiles, and establishment and maintenance of buffer zones.

In addition, the TCEQ does not mandate certain hours of operation for concrete batch plants. The Applicant, however, has represented in its registration application that it would limit operations to 16 hours per day, 6 days per week. All representations made in registration applications are incorporated into the registration.

As described above in Response 1, individuals are encouraged to report any concerns about nuisance issues or suspected noncompliance with terms of any permit, including issues related to the Applicant's represented hours of operation, by contacting the Corpus Christi Regional Office at 361-825-3100, or by calling the twenty-four 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 its permit, it will be subject to investigation and possible enforcement action.

CHANGES MADE IN RESPONSE TO COMMENT

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

Respectfully submitted,

Texas Commission on Environmental Quality

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