

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



TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

April 28, 2010

LaDonna Castañuela, Chief Clerk
Texas Commission on Environmental Quality
P.O. Box 13087, MC 105
Austin, Texas 78711-3087

Re: East Texas Precast Co., Ltd. Application for Air Quality Standard Permit Registration
No. 86593
SOAH Docket No. 582-10-2070; TCEQ Docket No. 2009-1691-AIR
Executive Director's Proposed Revisions to the Administrative Law Judge's Proposal for
Decision and Order

Dear Ms. Castañuela:

Enclosed please find a copy of the Executive Director's Proposed Revisions to the
Administrative Law Judge's Proposal for Decision and Order for the matter listed above.

If you have any questions, please do not hesitate to call me at (512) 239-0891.

Sincerely,

A handwritten signature in cursive script that reads "Amy L. Browning". The signature is written in black ink and is positioned above the typed name and title.

Amy L. Browning
Staff Attorney
Environmental Law Division

Enclosures

**SOAH DOCKET NO. 582-10-2070
TCEQ DOCKET NO. 2009-1691-AIR**

| | | |
|---------------------------------------|----------|--------------------------------|
| APPLICATION BY EAST TEXAS | § | BEFORE THE STATE OFFICE |
| PRECAST CO., LTD. FOR | § | |
| REGISTRATION AND APPROVAL TO | § | OF |
| USE THE AIR QUALITY STANDARD | § | |
| PERMIT FOR CONCRETE BATCH | § | ADMINISTRATIVE HEARINGS |
| PLANTS, REGISTRATION NO. 86593 | § | |

**EXECUTIVE DIRECTOR'S PROPOSED REVISIONS TO
THE ADMINISTRATIVE LAW JUDGE'S PROPOSED ORDER**

TO: HONORABLE ADMINISTRATIVE LAW JUDGE WILLIAM G. NEWCHURCH

COMES NOW the Executive Director of the Texas Commission on Environmental Quality ("TCEQ" or "Commission") and files the Executive Director's Proposed Revisions to the Administrative Law Judge's (ALJ) Proposal for Decision and Order, and in support thereof shows the following:

I. Introduction / Background

On October 15, 2008, East Texas Precast Co., LTD. ("East Texas") submitted an application to the TCEQ for an Air Quality Standard Permit, Registration Number 86593, which would authorize construction of a concrete batch plant at 44855 Old Houston Highway, Waller County, Texas. Many hearing requests were submitted during the public comment period, and these requests were considered at the December 9, 2009 Commissioners' Agenda. The Commission referred five requests (submitted by Esel D. Bell, Marshall V. Brown, P.E., Luther V. Francis, and Clifton and Hazel Gilliard (hereinafter, "Protestants")) to the State Office of Administrative Hearings ("SOAH") to determine if the Protestants are affected in accordance

with the distance requirements in section 382.058(c) of the Texas Clean Air Act ("TCAA").¹ The preliminary hearing in this matter was held on March 10, 2010 in Prairie View, Texas.

II. Proposed Corrections and Additions.

Upon reviewing the Proposal for Decision ("PFD") and the proposed order, the Executive Director does not believe that exceptions to the proposed order are necessary. Although the executive director agrees with the substance of the ALJ's Findings of Fact and Conclusions of Law, the Executive Director respectfully believes that some administrative matters are worthy of attention. Therefore, the executive director recommends that the commission replace the ALJ's recommendations with the following:

1. In Finding of Fact 1, replace "would be" with "is located." The new sentence would then read: "East Texas' plant is located at 44855 Old Houston Highway, Waller County, Texas."
2. In Finding of Fact 10, clarify that Esel D. Bell was not present at the hearing, but was represented by counsel. The new sentence would read "Each of the Protestants was present at the preliminary hearing personally or ~~and~~ through counsel, although Esel D. Bell was not present; hence, each of them had actual notice of the preliminary hearing."
3. In Finding of Fact 11, add an additional sentence to note the address of Esel D. Bell. The Finding of Fact 11 would then read: "Marshall V. Brown has lived for over 30 years at 301 Sycamore Street, Prairie View, Texas. Luther Francis lives at

¹ TEX. HEALTH & SAFETY CODE § 382.058(c).

201 Hill Street, and Clifton and Hazel Gilliard live at 300 Sycamore St. in Prairie View. Esel D. Bell lives at 200 University Drive in Prairie View."

4. In Finding of Fact 14 replace the existing sentence with the following:
"Additional emissions authorized under the permit would come from existing, fixed emission points."
5. In Finding of Fact 17, remove the word "even" from the sentence. The sentence would then read: "The homes of the other Protestants are ~~even~~ further away from the emission points than Mr. Francis' home."

III. Conclusion.

Based on evidence admitted and disputed issues identified in the record, the Executive Director contends that all procedures and analysis required for an air quality permit review were followed in accordance with applicable rules and guidance established by the TCEQ. Therefore the TCEQ Executive Director respectfully requests that the Commission grant the revisions to the Findings of Facts and issue the proposed order.

Respectfully submitted,

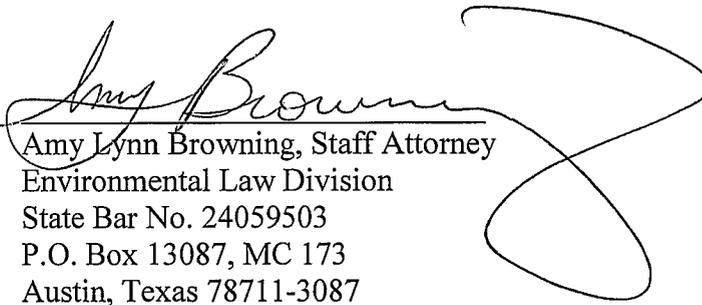
Texas Commission on Environmental Quality

Mark R. Vickery, P.G., Executive Director

Stephanie Bergeron Perdue, Deputy Director
Office of Legal Services

Robert Martinez, Division Director
Environmental Law Division

Executive Director's Proposed Revisions to Administrative Law Judge's Proposal for Decision and Order
East Texas Precast Co., LTD, Air Quality Standard Permit Registration No. 86593
SOAH DOCKET NO. 582-10-2070
TCEQ DOCKET NO. 2009-1691-AIR
Page 4 of 5

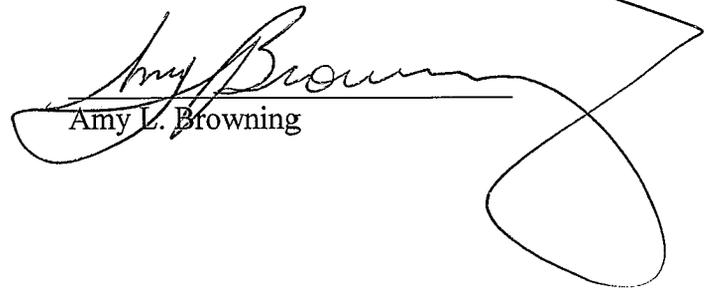


Amy Lynn Browning, Staff Attorney
Environmental Law Division
State Bar No. 24059503
P.O. Box 13087, MC 173
Austin, Texas 78711-3087
(512) 239-0891

REPRESENTING THE
EXECUTIVE DIRECTOR OF THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY

CERTIFICATE OF SERVICE

On this 28th day of April, 2010, a true and correct copy of the foregoing instrument (TCEQ Executive Director's Proposed Revisions to Administrative Law Judge's Proposal for Decision and Order) was served on all persons on the attached mailing list by the undersigned via deposit into the U.S. Mail, inter-agency mail, facsimile, electronic mail, or hand delivery.


Amy L. Browning

MAILING LIST
EAST TEXAS PRECAST CO., LTD
TCEQ DOCKET NO. 2009-1691-AIR
SOAH DOCKET NO. 582-10-2070

FOR THE APPLICANT:

East Texas
Tracey Glenn
1221 Lamar, 4 Houston Center
16th Floor
Houston, Texas 77010
Fax: (713)535-5533

FOR THE EXECUTIVE DIRECTOR:

Amy Browning
Staff Attorney
Texas Commission on Environmental
Quality
P.O. Box 13087, MC 173
Austin, Texas 78711-3087
Fax: (512) 239-0606

FOR THE OFFICE OF
PUBLIC INTEREST COUNSEL
OF THE TEXAS COMMISSION
ON ENVIRONMENTAL QUALITY:

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

FOR THE CHIEF CLERK:

Ms. LaDonna Castañuela
Texas Commission on Environmental
Quality
Office of the Chief Clerk, MC 105
P.O. Box 13087
Austin, Texas 78711-3087

OFFICE OF PUBLIC ASSISTANCE:

Ms. Bridget Bohac, Director
TCEQ Office of Public Assistance
P.O. Box 13087, MC 103
Austin, Texas 78711-3087
Fax: (512) 239-4007

ALTERNATIVE DISPUTE
RESOLUTION:

Kyle Lucas
Office of Alternative Dispute Resolution
Texas Commission on Environmental
Quality, MC 103
P.O. Box 13087
Austin, Texas 78711-3087

PROTESTANTS:

Latasha Lewis Payne
700 Louisiana, Suite 4100
Houston, Texas 77002
Fax: (713) 588-7068

STATE OFFICE
OF ADMINISTRATIVE HEARINGS
Honorable William G. Newchurch
State Office of Administrative Hearings
300 West 15th Street
Austin, Texas 78711
Fax: (512) 475-4994