

VORYS

Vorys, Sater, Seymour and Pease LLP
Legal Counsel

700 North Louisiana St.
Suite 4100
Houston, TX 77002
713.588.7000 | www.vorys.com
Founded 1909

Latosha Lewis Payne
Direct Dial (713) 588-7018
Facsimile (713) 588-7068
E-Mail - llpayne@vorys.com

April 28, 2010

Via First Class Mail and Facsimile:

Office of The Chief Clerk
Texas Commission on Environmental Quality
MC-105
P.O. Box 13087
Austin, Texas 78711

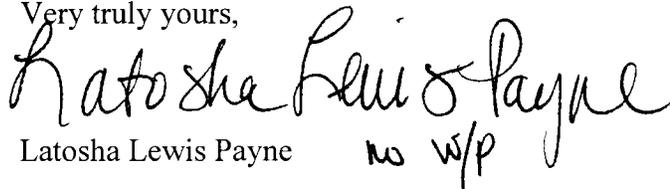
Re: SOAH Docket No. 582-10-2070; TCEQ Docket No. 2009-1691-AIR; In Re:
Application by East Texas Precast Co., LTD., for Registration and Approval to
Use the Air Quality Standard Permit for Concrete Batch Plants, Registration No.
86593.

Dear, Chief Clerk:

Enclosed please find Protestants and Other Hearing Requestors' Exceptions to Proposal
for Decision and Motion for Rehearing.

Please do not hesitate to contact me if you have any questions or concerns.

Very truly yours,


Latosha Lewis Payne no w/p

LLP/no

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	§	

**PROTESTANTS AND OTHER HEARING REQUESTORS’
EXCEPTION TO PROPOSAL FOR DECISION AND MOTION FOR REHEARING**

Protestants ESEL D. BELL, MARSHALL V. BROWN, LUTHER V. FRANCIS, AND CLIFTON AND HAZEL GILLIARD and Other Hearing Requestors PRAIRIE VIEW ASSOCIATION FOR ENVIRONMENTAL QUALITY (“PVAEQ”), CITY OF PRAIRIE VIEW, JOHN L. BRANDON, citizen of the City of Prairie View and member of Prairie View Association for Environmental Quality, CAROLYN SIMPSON, citizen of the City of Prairie View and member of Prairie View Association for Environmental Quality, (collectively referred to herein as “Protestants”) file these Exceptions to the Proposal for Decision and Motion for Rehearing.

I.
EXCEPTIONS

Protestants except and object to the ALJ’s consideration of the opinions and documents relating to East Texas Precast Co.’s environmental consultant. Protestants objected to such hearsay and unreliable evidence and thus it should have been excluded and not a part of the consideration of the ALJ. The ALJ referred to such opinions and documents as the “best evidence” in the case but the evidence should not have been considered under the Texas Rules of Civil Procedure.

Protestants except and object to the ALJ’s consideration of non-expert testimony of East Texas Precast’s representative. This witness was not qualified, admitted or designated as an expert and admitted that he did not personally conduct any measurements from the emissions points to Protestants homes. Further, this witness was not a qualified surveyor and his measurements of the distances within the plant were speculative.

The only qualified evidence submitted to prove the distances from the Protestants’ homes to the East Texas Precast plant were provided by the admitted expert surveying opinions of Luther Francis and Marshall Brown.

Protestants except and object to the ALJ's denial of their motion to designate the Prairie View Association for Environmental Quality ("PVAEQ"), City of Prairie View, Carolyn Simpson and John L. Brandon as parties to the hearing. Requests were properly made for a hearing on behalf of these entities and individuals who are within 440 yards of the emissions points.

Protestants except and object to the ALJ's failure to consider the testimony of Marshall Brown as representative of the Prairie View Association for Environmental Quality. Mr. Brown provided uncontroverted evidence that he file a request on behalf of the Association whose membership includes Carolyn Simpson and John L. Brandon, individuals who live within the Villa Capri subdivision. The evidence submitted demonstrates that this subdivision, and Mrs. Simpson and Mr. Brandon's home are undeniably within 440 yards of the emissions point.

II. **MOTION FOR REHEARING**

Protestants, the City of Prairie View and PVAEQ requests a rehearing that fully includes all proper protestants.

The Commission should set this matter for rehearing because the Prairie View Association for Environmental Quality properly includes in its membership individuals who reside within 440 yards of East Texas Precasts' emissions and they timely filed a request for hearing. *See* the hearing recording from Marshall Brown, its President, concerning its membership and attached exhibits. A request for contested case hearing was filed on behalf of this organization under its prior name, and yet PVAEQ was not added as a party by the Commission. The ALJ's failure to consider the testimony of Marshall Brown as representative of the Prairie View Association for Environmental Quality. Mr. Brown provided uncontroverted evidence that he file a request on behalf of the Association whose membership includes Carolyn Simpson and John L. Brandon, individuals who live within the Villa Capri subdivision. The evidence submitted demonstrates that this subdivision, and Mrs. Simpson and Mr. Brandon's home are undeniably within 440 yards of the emissions point. The subdivision runs along the east side of the plant separating only by a wire fence.

The Commission should set this matter for rehearing because the City of Prairie View, represented by its Mayor Frank D. Jackson, timely filed its request for contested case hearing but was not designated a party to the proceedings. *See* Requests for Contested Case Hearing filed by Frank. D. Jackson, Mayor of the City of Prairie View, dated December 4, 2008 and January 12, 2009, attached as Exhibit 1 and 2. The City moved at the preliminary hearing to be designated a party but was not designated. Significantly, East Texas Precast stipulated that the facility resides within the municipal boundaries of the City of Prairie View. They also conceded that East Texas Precast pays taxes to the City of Prairie View, and not the City of Hempstead, as is listed in their application. As such, the City of Prairie View is well within the 440 yards of the emissions points and is a proper protestant to the application.

Mayor Jackson submitted a request on December 12, 2008 that indicated “**this is an official request**” to contest East Texas Precasts’ application for air permit. *See* Exhibit 1. In his correspondence on January 12, 2008, Mayor Jackson specifically states that his company is the “City of Prairie View,” East Texas Precast “is in the City of Prairie View and not Hempstead,” East Texas Precast “is presenting a very serious health hazard to the *residents*,” and most importantly, that he “**would like a public hearing.**” *See* Exhibit 2. Mayor Jackson’s official request on behalf of the residents and citizens of the City of Prairie View, the municipality in which the East Texas Precast plant is located, should have been acknowledged and the City of Prairie should be a party to a contested case hearing.

III. CONCLUSION

Accordingly, Protestants except and object to the Proposal for Decision, and the Protestants request that this Commission grant a rehearing of the contested case that includes the Prairie View Association for Environmental Quality and the City of Prairie View, deny the permit application of East Texas Precast Co., and for such other and further relief to which they are entitled.

Respectfully submitted,

Latosha Lewis Payne

Latosha Lewis Payne
Texas Bar No. 24027452

Vorys Sater Seymour & Pease LLP

700 Louisiana, Suite 4100

Houston, Texas 77002

Office: 713-588-7018

Fax: 713-588-7068

llpayne@vorys.com

(no) w/p

ATTORNEYS FOR PROTESTANTS

CERTIFICATE OF SERVICE

I hereby certify that I served the parties below via regular mail on April 28, 2010.

Tucker Henson
TCEQ
P.O. Box 13087
Austin, Texas 78711

Tracy Glenn
1221 Lamar, 4 Houston Center, 16th Floor
Houston, Texas 77010

Eli Martinez
Public Interest Counsel
TCEQ
12100 Park 35 Circle, MC-103, Building F
Austin, Texas 78753

Latosha Lewis Payne

Latosha Lewis Payne

(no) w/p

From: PUBCOMMENT-OPA
To: PUBCOMMENT-OCC2
Date: 12/12/2008 1:21 PM
Subject: Fwd: Public comment on Permit Number 86593
Place: PUBCOMMENT-OCC2

H

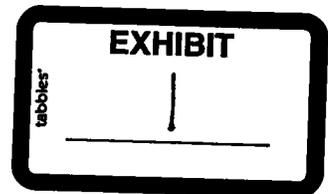
>>> PUBCOMMENT-OCC 12/4/2008 9:39 AM >>>

>>> [REDACTED] 12/4/2008 9:27 AM >>>

REGULATED ENTY NAME: EAST TEXAS PRECAST CO
RN NUMBER: RN100889872
PERMIT NUMBER: 86593
DOCKET NUMBER: Not Found
COUNTY: WALLER
PRINCIPAL NAME: EAST TEXAS PRECAST CO LTD
CN NUMBER: CN602907446
FROM
NAME: Frank Jackson
E-MAIL: [REDACTED]

COMPANY:
ADDRESS: PO BOX 475
PRAIRIE VIEW TX 77446-0475
PHONE: 9368575550
FAX:

COMMENTS: East Texas Pre-Cast is located south of the sub-division where my home is located and is in the City of Prairie View and not Hempstead as is indicated on its application. The concrete dust from this plant site at times is so thick that it gives the impression that it is smoke from a fire. The dust is in the trees and covers the roadways. The dust is in our home and creates an additional expense by causing us to change out our air filters more frequently. The cancer rate in this small City is very abnormal. This is an official request that I wish to contest this application for East Texas Pre-Cast. Sincerely, Frank D. Jackson



From: PUBCOMMENT-OPA
To: PUBCOMMENT-OCC2
Date: 1/12/2009 1:41 PM
Subject: Fwd: Public comment on Permit Number 86593
Place: PUBCOMMENT-OCC2

NBR
LS785

H

>>> PUBCOMMENT-OCC 1/12/2009 9:23 AM >>>

>>> [REDACTED] > 1/12/2009 8:33 AM >>>

REGULATED ENTITY NAME:EAST TEXAS PRECAST CO
RN NUMBER:RN100889872
PERMIT NUMBER:86593
DOCKET NUMBER:Not Found
COUNTY:WALLER
PRINCIPAL NAME:EAST TEXAS PRECAST CO LTD
CN NUMBER:CN602907446
FROM
NAME:Frank Jackson
E-MAIL: [REDACTED]

COMPANY:City of Prairie View
ADDRESS:PO BOX 475
PRAIRIE VIEW, TX 77446-0475
PHONE:9368575550
FAX:

COMMENTS:I wish to contest the application of East Tex Pre-Cast Company and would like a public hearing. The company is located in the City of Prairie View and not Hempstead which is 5 miles away. The company runs 24hrs and gives off serious amounts of concrete dust. It is presenting a very serious health hazzard to the residents.



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