

Jon Niermann, *Chairman*  
Emily Lindley, *Commissioner*  
Bobby Janecka, *Commissioner*  
Toby Baker, *Executive Director*



## TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

*Protecting Texas by Reducing and Preventing Pollution*

April 29, 2021

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

Re: Bosque Solutions, LLC, Contested Case Hearing for Application for Concrete Batch Plant Standard Permit Registration No. 152013  
SOAH Docket #582-19-6473; TCEQ Docket # 2019-0665-AIR  
Executive Director's Motion to Remand the Administrative Law Judge's Proposal for Decision

Dear Ms. Gharis:

Enclosed for consideration by the Commissioners at the May 19, 2021 Agenda please find a copy of the Executive Director's Motion to Remand the Administrative Law Judge's Proposal for Decision.

If you have any questions, please do not hesitate to call me at (512) 239-0891, or email at [amy.browning@tceq.texas.gov](mailto:amy.browning@tceq.texas.gov).

Sincerely,

A handwritten signature in cursive script, appearing to read "Amy Browning".

Amy L. Browning  
Staff Attorney  
Environmental Law

cc: Mailing List

**SOAH DOCKET NO. 582-19-6473  
TCEQ DOCKET NO. 2019-0665-AIR**

<b>APPLICATION OF</b>	<b>§</b>	<b>BEFORE THE TEXAS COMMISSION</b>
<b>BOSQUE SOLUTIONS, LLC FOR</b>	<b>§</b>	
<b>PERMIT NO. 152013,</b>	<b>§</b>	<b>ON</b>
<b>CONCRETE BATCH PLANT</b>	<b>§</b>	
<b>TARRANT COUNTY, TEXAS</b>	<b>§</b>	<b>ENVIRONMENTAL QUALITY</b>

**EXECUTIVE DIRECTOR'S MOTION TO REMAND THE ADMINISTRATIVE LAW  
JUDGE'S PROPOSAL FOR DECISION**

TO THE HONORABLE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY CHAIRMAN  
NIERMANN, AND COMMISSIONERS LINDLEY AND JANECKA

COMES NOW the Executive Director of the Texas Commission on Environmental  
Quality (TCEQ or Commission) and files the Executive Director's Motion to Remand the  
Administrative Law Judge's Proposal for Decision (PFD) to the State Office of  
Administrative Hearings (SOAH), and in support thereof shows the following:

**I. INTRODUCTION**

On May 23, 2018, Bosque Solutions, LLC (Bosque or the Applicant) applied to the  
TCEQ for an Air Quality Standard Permit for Concrete Batch Plants under Texas Clean  
Air Act § 382.05195.

The Application is opposed by Patricia Baines, Rene Luna, Vicki Polson,  
Misty Smitherman, Larry Smitherman, Sr., Lyle Lowery, Bob McClacherty, Jeffrey Alan  
Baines, Dennis Gene Martini, and Carolyn Kinney Martini (Protestants). TCEQ Office of  
Public Interest Counsel also recommends that the Application be denied. A virtual  
hearing on the merits was held August 11 and 12, 2020 via Zoom. On November 20,  
2020, Administrative Law Judge (ALJ) Joanne Summerhays issued her PFD to the  
Commission. In the PFD, the ALJ recommended denying the permit application on the  
basis that the application did not meet the applicable statutory and regulatory  
requirements for issuance of the registration to use the Concrete Batch Plant Standard

Permit.<sup>1</sup> At the April 14, 2021 Agenda the Commission considered the ALJ's PFD. After hearing from the parties, and considering the evidence in the record, the Commission continued the matter to the May 19, 2021 Agenda, for further consideration.

## **II. Request for Remand to SOAH**

The parties have briefed arguments and exceptions to the ALJ's PFD, and the Executive Director is not repeating those arguments here. The Executive Director is requesting that the Commission remand this application back to SOAH to allow further development of the record relating to the protectiveness of the Concrete Batch Plant Standard Permit and specifically related to the exemption for complying with the distance and emissions limitations in Title 30, Texas Administrative Code (TAC) § 116.610(a)(1). The Executive Director continues to support the determination that the permit would be protective of human health and the environment, general welfare, air quality, and that the permit will not cause a nuisance so long as the plant is operated in accordance with the requirements of the standard permit.<sup>2</sup> However, at the April 14, 2021 Agenda the commissioners indicated that more information in the record to demonstrate that the permit would be protective would be useful in aiding their decision on whether or not to grant this permit registration.

The Executive Director is currently engaged in rulemaking to correct the inadvertent removal of the exemption from the Concrete Batch Plant Standard Permit. In order to continue processing pending applications for registrations under the Concrete Batch Plant Standard Permit, the Executive Director has developed additional information that demonstrates how the requirements of the Standard Permit

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<sup>1</sup> ALJ's Proposal for Decision (PFD), November 20, 2020, pp. 1-2.

<sup>2</sup> Exhibit ED-2, 0009:16 - 0010:5 and 0011:29 - 0012:6; Exhibit ED-5, Response 1, 0041-0043, at 0042; Transcript at 342:20 - 343:15.

necessarily means that an applicant will also meet the emissions limits of 30 TAC § 116.610(a)(1). The additional information includes how the four primary ingredients of concrete, which include negligible amounts of crystalline silica, meets the emission limits of 30 TAC § 106.261. This argument is not new, and is, in fact, at the center of the Executive Director's conclusion that that the permit would be protective of human health and the environment if granted.

This information and how it was developed would likely be useful to the Commission in making its decision on this application. Therefore, the Executive Director is requesting that the Commission remand this application to SOAH to re-open the record and allow further discovery and evidence on the issue of the protectiveness of the Concrete Batch Plant Standard Permit.

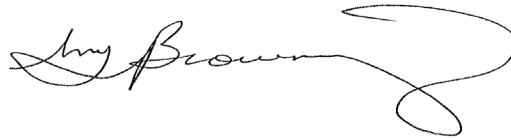
Respectfully submitted,

Texas Commission on Environmental Quality

Toby Baker, Executive Director

Erin E. Chancellor, Director  
Office of Legal Services

Robert Martinez, Deputy Director  
Environmental Law Division



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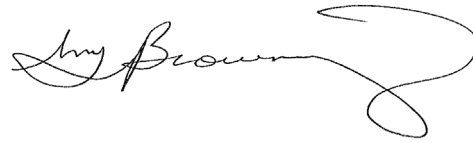
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REPRESENTING THE  
EXECUTIVE DIRECTOR OF THE  
TEXAS COMMISSION ON  
ENVIRONMENTAL QUALITY

**CERTIFICATE OF SERVICE**

I hereby certify that true and correct copies of the foregoing Executive Director's Motion to Remand the Administrative Law Judge's Proposal for Decision have been served on the following service list via electronic mail/service on this 29<sup>th</sup> day of April 2021.

A handwritten signature in black ink, appearing to read "Amy Browning", with a large, stylized flourish at the end.

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Amy Browning

**MAILING LIST**  
**BOSQUE SOLUTIONS LLC**  
**SOAH DOCKET NO. 582-19-6473**  
**TCEQ AIR QUALITY STANDARD REGISTRATION NO. 152013**  
**TCEQ DOCKET NUMBER 2019-0665-AIR**

**FOR THE ADMINISTRATIVE LAW  
JUDGE**

via electronic service:

The Honorable Joanne Summerhays  
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The Honorable Rebecca Smith  
Administrative Law Judge  
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**FOR THE CHIEF CLERK OFFICE**

via electronic service:

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Texas Commission on Environmental  
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**FOR THE APPLICANT**

via electronic mail:

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**FOR THE PROTESTANTS**

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