

Jon Niermann, *Chairman*
Emily Lindley, *Commissioner*
Bobby Janecka, *Commissioner*
Erin E. Chancellor, *Interim Executive Director*



TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

May 25, 2023

TO: All interested persons.

RE: Mando Concrete Partners LLC
Standard Permit Registration No. 168180

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any action is taken on this application unless all requests for contested case hearing or reconsideration have been withdrawn before that meeting.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 are instructions to view the Executive Director's Response to Public Comment (RTC) on the Internet. Individuals who would prefer a mailed copy of the RTC or are having trouble accessing the RTC on the website, should contact the Office of the Chief Clerk, by phone at (512) 239-3300 or by email at chiefclk@tceq.texas.gov. A complete copy of the RTC (including the mailing list), complete application, draft permit and related documents, including public comments, are available for review at the TCEQ Central Office. The application, executive director's preliminary decision, and standard permit will be available for viewing and copying at the TCEQ Central Office, the TCEQ Houston Regional Office, and at Eula and David Wintermann Library, 101 North Walnut Avenue, Eagle Lake, Colorado County, Texas 77434. The facility's compliance file, if any exists, is available for public review at the TCEQ Houston Regional Office, 5425 Polk St Ste H, Houston, Texas. Visit www.tceq.texas.gov/goto/cbp to review the standard permit.

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 authorized by the Air Quality Standard Permit for Concrete Batch Plants is an affected person who is entitled to request a contested case hearing. The hearing request must state a personal justiciable interest.

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 www.tceq.texas.gov/agency/decisions/cc/comments.html or by mail to the following address:

Laurie Gharis, 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 Public Participation and Education Program, toll free, at 1-800-687-4040.

Sincerely,



Laurie Gharis
Chief Clerk

LG/erg

Enclosure

EXECUTIVE DIRECTOR'S RESPONSE TO PUBLIC COMMENT
for
Mando Concrete Partners LLC
Standard Permit Registration No. 168180

The Executive Director has made the Response to Public Comment (RTC) for the application by Mando Concrete Partners LLC for Standard Permit Registration No. 168180 available for viewing on the Internet. You may view and print the document by visiting the TCEQ Commissioners' Integrated Database at the following link:

<https://www.tceq.texas.gov/goto/cid>

In order to view the RTC at the link above, enter the TCEQ ID Number for this application (168180) and click the "Search" button. The search results will display a link to the RTC.

Individuals who would prefer a mailed copy of the RTC or are having trouble accessing the RTC on the website, should contact the Office of the Chief Clerk, by phone at (512) 239-3300 or by email at chiefclk@tceq.texas.gov.

Additional Information

For more information on the public participation process, you may contact the Office of the Public Interest Counsel at (512) 239-6363 or call the Public Education Program, toll free, at (800) 687-4040.

A complete copy of the RTC (including the mailing list), the complete application, the draft permit, and related documents, including comments, are available for review at the TCEQ Central Office in Austin, Texas. The application, executive director's preliminary decision, and standard permit will be available for viewing and copying at the TCEQ Central Office, the TCEQ Houston Regional Office, and at Eula and David Wintermann Library, 101 North Walnut Avenue, Eagle Lake, Colorado County, Texas 77434. The facility's compliance file, if any exists, is available for public review at the TCEQ Houston Regional Office, 5425 Polk St Ste H, Houston, Texas. Visit www.tceq.texas.gov/goto/cbp to review the standard permit.

MAILING LIST
for
Mando Concrete Partners LLC
Standard Permit Registration No. 168180

FOR THE APPLICANT:

Armando Aranda, President
Mando Concrete Partners LLC
8015 TX-35
Liverpool, Texas 77577

Alberto Gonzalez, Assistant Project Manager
Mando Concrete Partners LLC
11345 Eastex Freeway
Houston, Texas 77093

INTERESTED PERSONS:

See attached list.

FOR THE EXECUTIVE DIRECTOR
via electronic mail:

Ryan Vise, Deputy Director
Texas Commission on Environmental
Quality
External Relations Division
Public Education Program MC-108
P.O. Box 13087
Austin, Texas 78711-3087

Amanda Kraynok, Staff Attorney
Texas Commission on Environmental
Quality
Environmental Law Division MC-173
P.O. Box 13087
Austin, Texas 78711-3087

Andy Chase, Technical Staff
Texas Commission on Environmental
Quality
Air Permits Division MC-163
P.O. Box 13087
Austin, Texas 78711-3087

FOR PUBLIC INTEREST COUNSEL
via electronic mail:

Garrett T. Arthur, Attorney
Texas Commission on Environmental
Quality
Public Interest Counsel MC-103
P.O. Box 13087
Austin, Texas 78711-3087

FOR THE CHIEF CLERK
via electronic mail:

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

ARENDALE , AVERY
1388 PECAN VALLEY RD
ALLEYTON TX 78935-2101

ARENDALE , BRUCE C
1428 PECAN VALLEY RD
ALLEYTON TX 78935-2175

ARENDALE , BRUCE C
1388 PECAN VALLEY RD
ALLEYTON TX 78935-2101

ARENDALE , BRUCE C
STE 630
770 S POST OAK LN
HOUSTON TX 77056-6665

AULL , JANICE & MARY
1111 SWALLOW CIR
SUGAR LAND TX 77478-3474

AUSTIN , H & SUSAN
1081 HOFFMAN LN
ALLEYTON TX 78935-2047

AUSTIN , SUSAN
1081 HOFFMAN LN
ALLEYTON TX 78935-2047

BANKS , JESSIE
2105 COUNTY ROAD 111
GARWOOD TX 77442-4019

BARNES , GARY & KATHY
1093 HOFFMAN LN
ALLEYTON TX 78935-2047

BARNES , KATHY
1093 HOFFMAN LN
ALLEYTON TX 78935-2047

BATTLES , ELIZABETH & MICHAEL L
1775 RAMSEY RD
ALLEYTON TX 78935-2080

BATTLES , MICHAEL
1775 RAMSEY RD
ALLEYTON TX 78935-2080

BLASCHKE , CATHERINE & JOHN
118 RIVERBEND DR
COLUMBUS TX 78934-1414

CASE , BILLIE JEAN
1715 RAMSEY RD
ALLEYTON TX 78935-2080

CASE , BILLIE JEAN
1052 SCHINDLER RD
ALLEYTON TX 78935-8592

COBLE , JAMES & MIKE
4719 WILBURY HEIGHTS DR
PASADENA TX 77505-3824

COBLE , REGINA GAY
4719 WILBURY HEIGHTS DR
PASADENA TX 77505-3824

CONCERNED CITIZEN ,
MT CARMEL MISSIONARY BAPTIST CHURCH AND
CONGREGATION
1220 PECAN VALLEY RD
ALLEYTON TX 78935-2068

COOK , CHERYL
PO BOX 1073
COLUMBUS TX 78934-1073

CRAIN , GREG
PO BOX 1693
BAY CITY TX 77404-1693

CUTCHER , DONALD & SHARON
1717 MODESTO ST
CORPUS CHRISTI TX 78417-2923

CUTCHER , DONALD
1717 MODESTO ST
CORPUS CHRISTI TX 78417-2923

DUNCAN , JANET & WESLEY
1500 RAMSEY RD
ALLEYTON TX 78935-2168

DUNCAN , VANCE C
2146 CALHOUN RD
EAGLE LAKE TX 77434-7006

HOFFMAN , BARBARA
1051 HOFFMAN LN
ALLEYTON TX 78935-2047

HOFFMAN , BARBARA & JAMES W
1051 HOFFMAN LN
ALLEYTON TX 78935-2047

HOFFMAN , BELITA
1001 HOFFMAN LN
ALLEYTON TX 78935-2047

HOFFMAN , BETTY
1027 HOFFMAN LN
ALLEYTON TX 78935-2047

HOFFMAN , JAMES W
1051 HOFFMAN LN
ALLEYTON TX 78935-2047

MCKINNON , SHANE & SHEILA
1081 HOFFMAN LN
ALLEYTON TX 78935-2047

MCKINNON , TONI
1085 HOFFMAN LN
ALLEYTON TX 78935-2047

MILLIGAN , DELORIS
PO BOX 202
EAGLE LAKE TX 77434-0202

MINTON , BARBARA BABCOCK
PO BOX 514
SIMONTON TX 77476-0514

NOLAN , BOBBE
306 CLARK ST
EAGLE LAKE TX 77434-1710

PAVLISKA , ANN & EDWARD
1002 RAMSEY RD
ALLEYTON TX 78935-2076

PRIESMEYER , HARRY
1328 CANEY TRAIL DR
WHARTON TX 77488-2592

QUEEN , JEFFREY & JESSICA
1065 HOFFMAN LN
ALLEYTON TX 78935-2047

ROGERS , CHARLES L
1054 LYLE RD
ALLEYTON TX 78935-2063

ROGERS , CHARLES L
COLORADO COUNTY OFFICE OF EMERGENCY
MANAGEMENT
RM 103
305 RADIO LN
COLUMBUS TX 78934-3235

TATE , CURTIS & SALLY
1226 RAMSEY RD
ALLEYTON TX 78935-2125

TICE , DARRYL & RENEE
1395 RAMSEY RD
ALLEYTON TX 78935-2079

VESMEROSKI , ELYCE & MAX
1381 RAMSEY RD
ALLEYTON TX 78935-2079

WELLS , BRIAN
103 SANTA CLARA ST
CIBOLO TX 78108-3554

WILLIAMS , WILBERT L
PO BOX 472
EAGLE LAKE TX 77434-0472

WITTE , SHARON L
1146 PECAN VALLEY RD
ALLEYTON TX 78935-2067

**TCEQ AIR QUALITY STANDARD PERMIT NUMBER CONCRETE BATCH PLANT
REGISTRATION 168180**

APPLICATION BY	§	BEFORE THE
MANDO CONCRETE PARTNERS LLC	§	TEXAS COMMISSION ON
CONCRETE BATCH PLANT	§	ENVIRONMENTAL QUALITY
EAGLE LAKE, COLORADO COUNTY	§	

EXECUTIVE DIRECTOR’S RESPONSE TO PUBLIC COMMENT

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

As required by Title 30 Texas Administrative Code (TAC) § 55.156, before an application is approved, the Executive Director prepares a response to all timely, relevant and material, or significant comments. The Office of Chief Clerk received timely comments from the following persons: Avery Arendale, Bruce C. Arendale (individually and representative Stakeholder for the Colorado and Lavaca Rivers and Matagorda and Lavaca Bays as member of the Basin and Bay Area Stakeholder Committee (BBASC)), Susan Austin, Jessie Banks, Kathy Barnes, Michael L. Battles, Billie Jean Case, Cheryl Cook, Donald Cutcher, Wesley Duncan, Janet Duncan, Barbara Hoffman, Belita Hoffman, James W. Hoffman, Deloris Milligan, Harry Priesmeyer, Jeffrey P. Queen, Charles L. Rogers, Wilbert L. Williams, and Sharon L. Witte, and Group A (Mary Aull, Janice Aull, H. L. Austin, Susan Austin, Gary Barnes, Kathy Barnes, Elizabeth M. Battles, Michael L. Battles, Catherine Blaschke, John Blaschke, Billie Jean Case, James Coble, Mike Coble, Regina Gay Coble, Greg Crain, Donald Cutcher, Sharon Cutcher, Janet Duncan, Wesley Duncan, Barbara Hoffman, Belita Hoffman, Betty Hoffman, James Hoffman, Shane McKinnon, Sheila McKinnon, Toni McKinnon, Ann Pavliska, Edward Pavliska, Jeffrey P. Queen, Jessica Queen, Curtis Tate, Sally Tate, Darryl Tice, Renee Tice, Elyce Vesmeroski, Max Vesmeroski, Brian Wells, and Mt. Carmel Missionary Baptist Church). This Response addresses all timely public comments received, whether or not withdrawn. If you need more information about this permit application or the permitting process please call the TCEQ Public Education Program at 1-800-687-4040. General information about the TCEQ can be found at our website at www.tceq.texas.gov.

BACKGROUND

Description of Facility

Mando Concrete Partners LLC (Applicant) has applied to the TCEQ for a Standard Permit under Texas Clean Air Act (TCAA) § 382.05195. This will authorize the construction of a new facility that may emit air contaminants.

This permit will authorize the Applicant to construct a Concrete Batch Plant. The facility is proposed to be located at the following, amended driving directions: from the intersection of Interstate 10 and Texas State Highway 71 East head south on Texas State Highway 71 East for 10 miles, turn left onto U.S. Highway 90 East and continue onto U.S. Highway 90 Alternate for 5.5 miles, destination will be on the left, Eagle Lake,

Colorado County. Contaminants authorized under this permit include: particulate matter including (but not limited to) aggregate, cement, road dust, and particulate matter with diameters of 10 microns or less and 2.5 microns or less.

Procedural Background

Before work is begun on the construction of a new facility that may emit air contaminants, the person planning the construction must obtain an authorization from the commission. This permit application is for an initial issuance of Air Quality Permit Number 168180.

The permit application was received on March 8, 2022 and declared administratively complete on March 15, 2022. The Consolidated Notice of Receipt of Application and Intent to Obtain Permit and Notice of Application and Preliminary Decision for this permit application was published in both English and Spanish on April 7, 2022, in the *Banner Press*. A separate Spanish language publication was not available. A public meeting was held on Tuesday, July 26, 2022. After comments were received at the Public Meeting regarding inaccuracies in the application, the Applicant was required to provide an Amended Consolidated Notice of Receipt of Application and Intent to Obtain Permit and Notice of Application and Preliminary Decision and the comment period was reopened. The Amended Consolidated Notice of Receipt of Application and Intent to Obtain Permit and Notice of Application and Preliminary Decision for this permit application was published in English and Spanish on December 22, 2022, in the *Banner Press*. The public comment period ended on January 23, 2023. Because this application was received after September 1, 2015, it is subject to the procedural requirements of and rules implementing Senate Bill 709 (84th Legislature, 2015).

COMMENTS AND RESPONSES

COMMENT 1: PUBLIC NOTICE

Commenters expressed concerns that they did not receive proper notice on the application.

(Group A)

RESPONSE 1: Public participation is an integral part of the permitting process. The TCAA § 382.056 requires that an applicant publish notice. Notice must be published in a newspaper of general circulation in the municipality in which the proposed facility is located or proposed to be located. The notice must include a description of the facility, information on how an affected person may request a public hearing, pollutants the facility will emit, and any other information the TCEQ requires by rule.

As detailed in the Procedural Background section above, the Applicant published the Consolidated Notice of Receipt of Application and Intent to Obtain Permit and Notice of Application and Preliminary Decision for this permit application in both English and Spanish on April 7, 2022, in the *Banner Press*. A separate Spanish language publication was not available. A public meeting was held on Tuesday, July 26, 2022. After comments were received at the Public Meeting regarding inaccuracies in the

application, the Applicant was required to provide an Amended Consolidated Notice of Receipt of Application and Intent to Obtain Permit and Notice of Application and Preliminary Decision and the comment period was reopened. The Amended Consolidated Notice of Receipt of Application and Intent to Obtain Permit and Notice of Application and Preliminary Decision for this permit application was published in English and Spanish on December 22, 2022, in the *Banner Press*. The public comment period ended on January 23, 2023.

To demonstrate compliance with public notice requirements, applicants are required to provide the Office of the Chief Clerk with copies of the published notice and a publisher's affidavit verifying facts related to the publication, including that the newspaper is a paper of general circulation in the municipality in which the proposed facility is located or proposed to be located. The Applicant provided the Office of the Chief Clerk with copies of the published notice and a publisher's affidavit and met all public notice requirements. When it is determined that public notice is required, applicants must ensure that signs regarding the requested permit action are posted as required by 30 TAC § 39.604, Sign-Posting. The sign(s) must declare the filing of an application for a permit and state the manner in which the commission may be contacted for further information. The signs must consist of dark lettering on a white background and must be no smaller than 18 inches by 28 inches and all lettering must be no less than 1½ inches in size and block printed capital lettering. In addition, 30 TAC § 39.604 requires that each sign placed at the site be located within ten feet of every property line paralleling a public highway, street, or road. Signs must also be visible from the street and spaced at not more than 1,500-foot intervals. A minimum of one sign, but no more than three signs, are required along any property line paralleling a public highway, street, or road. The signs are required to remain in place throughout the duration of the comment period.

COMMENT 2: HEALTH EFFECTS/AIR QUALITY

Commenters are concerned about the effect of the emissions from the proposed project on the air quality and health of people, particularly sensitive populations such as the elderly, children, and people with existing medical conditions, such as asthma, emphysema, cancer, breathing problems, and COPD. Commenters stated that they will be living in unhealthy conditions and won't know the dangers of the air they breathe. Additionally, commenters are concerned about wind blowing particulates, and that they will not be able to monitor particulate matter size. James Hoffman raised concerns about the chemicals found in cement. Bruce C. Arendale asked if an ESG (Environmental, Social, Governance) audit was completed.

(Group A, Avery Arendale, Bruce C. Arendale, Susan Austin, Jessie Banks, Kathy Barnes, Michael L. Battles, Billie Jean Case, Cheryl Cook, Donald Cutcher, Wesley Duncan, Janet Duncan, Barbara Hoffman, Belita Hoffman, James W. Hoffman, Deloris Milligan, Harry Priesmeyer, Jeffrey P. Queen, Charles L. Rogers, Wilbert L. Williams, and Sharon L. Witte)

RESPONSE 2: During the development of the Standard Permit, the Executive Director conducted an extensive protectiveness review to ensure protectiveness of human health and the environment. The protectiveness review determined potential impacts to human health and welfare or the environment by comparing emissions allowed by the standard permit to appropriate state and federal standards and guidelines. These standards and guidelines include the National Ambient Air Quality Standards (NAAQS) and TCEQ rules. As described in detail below, the Executive Director determined that the emissions authorized by the standard permit are protective of both human health and welfare and the environment.

The U.S. Environmental Protection Agency (EPA) created and continues to evaluate the NAAQS, which include both primary and secondary standards, for pollutants considered harmful to public health and the environment. Primary standards protect public health, including sensitive members of the population such as children, the elderly, and those individuals with preexisting health conditions. Secondary NAAQS protect public welfare and the environment, including animals, crops, vegetation, visibility, and buildings, from any known or anticipated adverse effects from air contaminants. The EPA has set NAAQS for criteria pollutants, which include carbon monoxide (CO), lead (Pb), nitrogen dioxide (NO₂), ozone (O₃), sulfur dioxide (SO₂), particulate matter less than or equal to 10 microns in aerodynamic diameter (PM₁₀), and PM less than or equal to 2.5 microns in aerodynamic diameter (PM_{2.5}). The Standard Permit is designed to be in compliance with the NAAQS.

The primary contaminants that have the potential to be emitted from the plant are dust particles having particle sizes of less than or equal to 10 and 2.5 micrometers in aerodynamic diameter (PM₁₀ and PM_{2.5}, respectively). All of the potential dust concentrations, as well as emissions from combustion sources, have been evaluated using reasonable worst-case operating parameters and compared to the federal criteria mentioned above. The Standard Permit requires substantial dust control processes to minimize dust issues, which include paving in-plant roads and work areas, using water sprays on stockpiles, and using a suction shroud and three-sided curtain to prevent flyaway dust. When a company operates in compliance with the Standard Permit, they should not cause or contribute to a violation of the NAAQS and are protective of human health and the environment.

During the development of the Standard Permit for Concrete Batch Plants, the Executive Director conducted an extensive protectiveness review to ensure that emissions authorized by the Standard Permit will be protective of human health and the environment.¹ The protectiveness review evaluated potential impacts to human health and welfare or the environment by comparing emissions authorized by the Standard Permit to appropriate state and federal standards and guidelines. These standards and guidelines include the National Ambient Air Quality Standards (NAAQS) and TCEQ rules. As described in detail below, the Executive Director determined that the emissions authorized by the Standard Permit are protective of both human health and welfare and the environment.

¹ More information about the Standard Permit for Concrete Batch Plants is available on the TCEQ's website at <https://www.tceq.texas.gov/permitting/air/newsourcereview/mechanical/cbp.html>.

NAAQS

The U.S. Environmental Protection Agency (EPA) created and continues to evaluate the NAAQS, which include both primary and secondary standards.² Primary standards protect public health, including sensitive members of the population such as children, the elderly, and those individuals with preexisting health conditions. Secondary NAAQS protect public welfare and the environment, including animals, crops, vegetation, visibility, and buildings, from any known or anticipated adverse effects from air contaminants. The EPA has set NAAQS for criteria pollutants, which include carbon monoxide (CO), lead (Pb), nitrogen dioxide (NO₂), ozone (O₃), sulfur dioxide (SO₂), particulate matter less than or equal to 10 microns in aerodynamic diameter (PM₁₀), and PM less than or equal to 2.5 microns in aerodynamic diameter (PM_{2.5}). The Standard Permit for Concrete Batch Plants was developed to be in compliance with the NAAQS. The primary contaminants that have the potential to be emitted are particulate matter, including but not limited to aggregate, cement, road dust, and particulate matter having particle sizes of less than or equal to 10 and 2.5 microns in aerodynamic diameter (PM₁₀ and PM_{2.5}, respectively).

During the protectiveness review, the TCEQ performed an Air Quality Analysis (AQA), which included air dispersion modeling that was inherently conservative and tended to over-predict ground-level concentrations of emissions. The emission generating facilities or activities included in the AQA were material handling operations, truck loading, stockpiles, cement silos, and an internal combustion engine to generate power for equipment at the site. The TCEQ calculated emission rates using conservative emission factors and methodologies from the EPA in the Compilation of Air Pollution Emission Factors, AP-42 manual. The TCEQ ensured the conservative nature of these calculations by evaluating each emission point at the maximum material throughput on both an hourly and an annual basis.

The TCEQ applied the model in a screening mode to ensure predictions were conservative (higher than expected concentrations) and applicable for any location in the state. For example, the protectiveness review evaluated both rural and urban dispersion coefficients and the higher of the two was used as the maximum predicted concentration for developing the conditions of the Standard Permit. The model also incorporated five years of meteorological data, including wind directions, which would include worst-case, short-term meteorological conditions that could occur anywhere in the state. In addition, all emissions sources were co-located in order to minimize bias due to source configuration and wind direction. This technique also provided conservative results since the impact from all sources was maximized. The results of the protectiveness review for all pollutants authorized by the Standard Permit demonstrated that emissions will not exceed any state or federal standards, including the NAAQS. Emission rates authorized under the Standard Permit for Concrete Batch Plants were evaluated at the property line. Therefore, any emissions rates, including variations based on weather, operating times, etc., are considered protective of human health and the environment at the property line of a facility.

² 40 CFR § 50.2

Standard permits are air quality authorizations for specific, well-characterized classes of facilities. Because standard permits have been developed by the commission to ensure that operations authorized by any standard permit are protective, an applicant seeking to obtain authorization under a standard permit is not required to submit site-specific emission calculations or air dispersion modeling. As long as the proposed plant is operated in compliance with the terms of the Standard Permit for Concrete Batch Plants, no adverse impacts are expected.

Comments were made regarding chemicals and additives found in cement, which is manufactured at a facility commonly referred to as a cement kiln which are typically significant sources of NO_x, SO₂, and CO emissions. However, this application is for a concrete batch plant, not a cement plant or cement kiln. Additionally, comments asked if an ESG audit was completed. The Texas Clean Air Act and TCEQ rules do not require a ESG audit, however an AQA (mentioned above) was performed during the protectiveness review of the Standard Permit.

The Standard Permit for Concrete Batch Plants is designed such that a facility that is operated within the terms and conditions of the permit would be expected to operate in compliance with standards outlined in the TCAA and all applicable state and federal rules and regulations. The representations in the application demonstrated that the Applicant will comply with the technical requirements of the Standard Permit for Concrete Batch Plants.

COMMENT 3: LIVESTOCK/HABITAT LOSS

Commenters are concerned about the effect of the proposed project on livestock, exotic animals, native wildlife, farms, soil, and habitat loss.

(Group A, James Hoffman, Barbara Hoffman, Bruce C Arendale, and Harry Priesmeyer)

RESPONSE 3: The secondary NAAQS are those the EPA Administrator determines are necessary to protect public welfare and the environment, including animals, crops, vegetation, visibility, and buildings, from any known or anticipated adverse effects associated with the presence of a contaminant in the ambient air. Because the emissions from this facility should not cause an exceedance of the NAAQS, air emissions from this facility are not expected to adversely impact land, livestock, wildlife, crops, or visibility, nor should emissions interfere with the use and enjoyment of surrounding land or water. Please see Response 2 for an evaluation of the Standard Permit's impacts in relation to the NAAQS. In addition, 30 TAC § 101.4 prohibits the discharge of contaminants which may be injurious to, or adversely affect, animal life.

COMMENT 4: DUST CONTROL/NUISANCE

Commenters are concerned about dust generated by the proposed project, and what controls are required to minimize dust emissions.

(Group A, Avery Arendale, Wesley Duncan, Janet Duncan, Susan Austin, Jeffrey P. Queen, James Hoffman, Barbara Hoffman, Belita Hoffman, Deloris Milligan, and Michael Battles, Charles L. Rogers, and Bruce C. Arendale)

RESPONSE 4: The primary activities that have the potential to emit particulate matter (i.e., dust) resulting from this project are vehicle traffic and material handling. All of the potential dust concentrations from the sources authorized by the Standard Permit for Concrete Batch Plants were evaluated during the development of the standard permit. The Standard Permit for Concrete Batch Plants requires control processes to minimize dust and fugitive emissions. For permanent concrete batch plants authorized under the Standard Permit for Concrete Batch Plants, the owner or operator is required to pave all entry and exit roads and main traffic routes associated with the operation of the concrete batch plant, including any that may be used by batch trucks or material delivery trucks. All batch trucks and material delivery trucks are required to remain on the paved surfaces. The Standard Permit for Concrete Batch Plants also requires these paved surfaces to remain intact and be cleaned. The standard permit also requires operators to ensure that all equipment is properly functioning, including any baghouses. The onsite distance setback requirements also help to ensure flyaway dust does not leave the property. Additionally, the Applicant will be required to receive washed sand and gravel and to ensure stockpiles are sprinkled with water to prevent flyaway dust.

Nuisance dust is dust that is created from a source in a high enough concentration and duration that may tend to be injurious to or to 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. When a company operates in compliance with the requirements of the Standard Permit for Concrete Batch Plants, there should be no deterioration of air quality or the generation of dust such that it impacts visibility. While nuisance conditions are not expected if the plant is operated in compliance with the terms of the permit, operators must also comply with 30 TAC § 101.4, which prohibits 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 TCEQ Houston Regional Office at 713-767-3500 or by calling the 24-hour toll-free Environmental Complaints Hotline at 1-888-777-3186. The TCEQ evaluates all complaints received. If a 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.

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. Under the citizen-collected evidence program, individuals can provide information on possible violations of environmental law. The information, if gathered according to agency procedures and guidelines, 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 <http://www.tceq.texas.gov> (under Publications, search for document number 278).

COMMENT 5: CUMULATIVE EFFECTS

Harry Priesmeyer is concerned about the cumulative effects of this project.

RESPONSE 5: The TCEQ conducted a protectiveness review during the development of the standard permit to ensure that the requirements of the standard permit were protective of human health and the environment. The maximum modeled concentration typically occurs at a relatively short distance from the source, so that the peak modeled concentrations represent the source's impact at a few receptors within the modeled area. Therefore, review of other off-site sources is not necessary when determining approval of any particular standard permit application.

As described in Response 2, the technical requirements contained in the Standard Permit for Concrete Batch Plants are designed to ensure that facilities operating under the standard permit will meet the NAAQS. As long as the proposed plant is operated in compliance with the terms of the Standard Permit for Concrete Batch Plants, no adverse impacts are expected.

COMMENT 6: LOCATION/QUALITY OF LIFE/LAND OWNERSHIP

Commenters expressed concern regarding the location of the facility as it relates to residents, farms, EMS, community centers, and churches. Commenters stated there is a locally zoned area for industrial facilities and this plant should be placed in that area. Commenters raised concerns about land ownership and who owns and operates the company. Jeffery P. Queen stated this facility is a threat to residents' way of life. Bruce C. Arendale that the property has discarded land and gravel equipment and is in a wetland area that is subject to flooding.

(Group A, Bruce C. Arendale, Cheryl Cook, James Hoffman, Barbara Hoffman, Charles L. Rogers)

RESPONSE 6: 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 plant location choices, including purchasing of property, made by an applicant when determining whether to approve or deny a permit application, unless a statute or rule imposes specific distance limitations that are enforceable by the TCEQ, as explained below. The TCEQ also does not have jurisdiction to consider potential effects from plant location, aesthetics, land use issues, or effects on property values when determining whether to approve or deny this air permit. Zoning is beyond the authority of the TCEQ for consideration when reviewing air quality permit applications and such issues should be directed to local officials. The issuance of an air quality authorization does not override any local zoning requirements that may be in effect and does not authorize an applicant to operate outside of local zoning requirements. In addition, the TCEQ does not have jurisdiction over feedlots or landfills.

In addition, the standard permit contains the following distance requirements: the suction shroud baghouse exhaust must be located more than 100 feet from any property line; stationary equipment, stockpiles, and vehicles used at the proposed plant (except for incidental traffic and vehicles entering/exiting the site) must be located or operated more than 100 feet from any property line; and if the plant is

located in an area not subject to municipal zoning regulation, the central baghouse must be located at least 440 yards from any building used as a single or multifamily residence, school, or place of worship at the time the standard permit registration is filed with the commission.

When an applicant submits their application, they must comply with TCEQ rules and regulations regarding ownership and operation of a facility. A permit reviewer will review the Texas Secretary of State website to confirm the name of the operator of the proposed plant, as named in the application. When reviewing a permit application, TCEQ does not review lease agreements, easements, or professional relationships that may exist between an operator and other entities or individuals. Additionally, TCEQ only reviews the individual site and plot plan submitted by the Applicant.

COMMENT 7: TRUCK TRAFFIC

Commenters are concerned about increased traffic of cars and trucks as a result of the proposed plant. Commenters are also concerned about road damage, an increase in accidents, the lack of acceleration and deceleration lanes, and other driving dangers of the rural highway around this plant.

(Group A, Bruce C. Arendale, Kathy Barnes, Barbara Hoffman, Belita Hoffman, James W. Hoffman, Deloris Milligan, Harry Priesmeyer, Charles L. Rogers, and Sharon L. Witte)

RESPONSE 7: The Applicant is prohibited by TCEQ rule (30 TAC § 101.5) from discharging air contaminants, uncombined water, or other materials from any source which could cause a traffic hazard or interference with normal road use. If the sources are operated in compliance with the terms and conditions of the permit, these conditions should not occur. If the facility is found to be out of compliance with the terms and conditions of the permit, it may be subject to possible enforcement action.

Although TCEQ rules prohibit creation of a nuisance, the TCEQ does not have jurisdiction to consider traffic, road safety, or road repair costs when determining whether to approve or deny a permit application. In addition, trucks are considered mobile sources, which are not regulated by the TCEQ. The TCEQ is also prohibited from regulating roads per the TCAA § 382.003(6) which excludes roads from the definition of "facility."

Similarly, TCEQ does not have the authority to regulate traffic on public roads, load-bearing restrictions, and public safety, including access, speed limits, and public roadway issues. These concerns are typically the responsibility of local, county, or other state agencies, such as the Texas Department of Transportation (TxDot) and the Texas Department of Public Safety (DPS). Concerns regarding roads should be addressed to the appropriate state or local officials. However, the Standard Permit requires all entry and exit roads and main traffic routes associated with the operation of the concrete batch plant to be paved and cleaned in order to prevent nuisance dust from in-plant roads.

COMMENT 8: PERMIT REVIEW PROCESS

Commenters stated that the application had missing and incorrect information, including objections to the operating hours. Donald Cutcher had questions about there was no representative from TCEQ Region Office in the public meeting.

(Group A, Donald Cutcher, Wilbert L Williams, and Barbara Hoffman)

RESPONSE 8: The TCAA states that “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 from the commission.”³ The Air Permits Division staff conducted a thorough review of this permit application to ensure it meets the requirements of the Standard Permit for Concrete Batch Plants and all applicable state and federal standards. The first step of the application review process is an administrative review which verifies the following:

- The correct application was submitted;
- The application form and TCEQ Core Data Form have been signed by the Responsible Official;
- The company is an entity legally entitled to do business in Texas;
- The information is accurately recorded in the TCEQ's Central Registry;
- The appropriate application fee was received;
- The mailing addresses for the company and site are USPS validated; and
- There are no delinquent fees owed by the company.

The TCEQ cannot prevent any applicant from applying for an air quality permit and the Executive Director is required by TCAA § 382.056(f) to conduct a technical review of and issue a preliminary decision on applications. During the technical review, the permit reviewer evaluates the following:

- That all sources of air contaminants at the proposed facility have been properly identified;
- Appropriate controls have been proposed for each emission source;
- Proposed operations meet all applicable Standard Permit requirements;
- Verifies the site with a street address or driving directions provided by the applicant;
- The compliance history for the site and the operator; and
- Ensures that the public notice requirements are fulfilled;

Many of the forms required to be submitted with applications to register a standard permit are required for all standard permit applications. However, not every question contained in each form is applicable to every application. If errors or omissions are found in the application, the permit reviewer will send the applicant a deficiency email

³ TEX. HEALTH & SAFETY CODE § 382.0518(a)

which provides a date by which corrections must be received. If supplemental information is not received, the Executive Director may suspend or void the application. The review does not start over but rather continues until all information is verified. Administrative omissions are not detrimental to the Application, as long as the information is available elsewhere in the application.

Prior to receiving authorization to construct and operate a source of air contaminants, an applicant must demonstrate that the proposed facility meets all the applicable state and federal statutes and regulations. This demonstration is based on the representations in the application. For this type of application, the reviewer ensures those representations comply with the Standard Permit for Concrete Batch Plants. Upon issuance of the permit, the representations in the application become binding conditions upon which the permit is issued and may be enforced.

An application to register a Standard Permit for Concrete Batch Plants must include a process description and a plot plan. The process description should be sufficiently descriptive so that the permit reviewer can determine all technical information regarding the proposed plant including the raw materials to be used in the process; all major processing steps and major equipment items; individual emission points associated with each process step; and the location and identification of all emissions abatement devices. The plot plan must clearly show a scale, contain a north arrow, all property lines, emission points, buildings, tanks, process vessels, other process equipment, and include two benchmark locations. The plot plan submitted with the application was sufficient to allow the permit reviewer to confirm that the representations provided met the requirements of the Standard Permit for Concrete Batch Plants.

A public meeting was held on Tuesday, July 26, 2022, that was attended by the Applicant and TCEQ staff. Due to the current workload from TCEQ Houston Regional Office, the TCEQ Houston Regional Office was not able to attend the meeting.

After the public meeting the applicant updated the driving directions and street address, which were provided in the amended public notice. The Applicant verified that the original coordinates are accurate. The amended application was made available during the notice period, *see* Response 1 for more information.

Hours of Operation

The TCEQ does not have the authority to regulate the hours of operations of a facility or site if the permit review demonstrates all applicable federal and state regulations are met. Accordingly, TCEQ cannot limit the hours of operation unless an emission rate is dependent on a limit on operational hours or there are issues associated with the air quality analysis that require the limitation. As described in Response 2, the protectiveness review conducted during the development of the Standard Permit for Concrete Batch Plants conservatively assumed a 24 hour per day operating schedule and determined that emissions are protective. The Applicant represented operations up to 12 hours per day for 365 days per year, which is an annual production rate of 4,380 hours per year.

The Air Permits Division and other applicable TCEQ staff have conducted a thorough review of this permit application to ensure it meets the requirements of all applicable state and federal standards. An applicant is bound by its representations in the application and those representations become an enforceable part of the permit, including production rates, authorized emission rates, and equipment. If the Applicant deviates from the representations made in the application on which the permit was developed, the Applicant may be subject to enforcement action.

COMMENT 9: WATER/WATER QUALITY/FLOODING

Commenters are concerned about runoff and water contamination from the proposed plant. Commenters are concerned about the amount of well water that will be used to spray roads, and the contamination of well water. Bruce C. Arendale stated the facility is within a wetland area and is underwater during rainy parts of the year. Commenters are concerned about the effect of the actives from the proposed project on the water quality and water resources/river degradation from the Colorado River. The potential flooding impact is considered as well.

(Sharon L Witte, Bruce C Arendale, Michael Battles, Barbara Hoffman, and Kathy Barnes)

RESPONSE 9: While the TCEQ is responsible for the environmental protection of air and water, as well as the safe management of waste, this registration will regulate the control and abatement of air emissions only. Therefore, issues regarding water quality or discharge and the handling of waste are not within the scope of this review. However, the Applicant may be required to apply for separate authorizations for water quality, water usage, or the handling of waste. It is the Applicant's responsibility to secure any authorizations necessary for operation of the proposed plant, and accordingly, the Applicant may be required to apply for separate authorizations to regulate water use/water quality or waste at the proposed site. The issuance of an air quality permit does not negate the responsibility of an applicant to apply for any additionally required authorizations before operating a plant.

Individuals are encouraged to report environmental concerns, including water quality issues, or suspected noncompliance with the terms of any permit or other environmental regulation by contacting the TCEQ Houston Regional Office at 713-767-3500 or by calling the 24-hour toll-free Environmental Complaints Hotline at 1-888-777-3186. The TCEQ evaluates all complaints received. If the plant is found to be out of compliance with the terms and conditions of the permit, the Applicant may be subject to enforcement action.

COMMENT 10: EMERGENCY/FIRE PROTECTION

Susan Austin is concerned about the safety of the facility, especially for fire protection.

RESPONSE 10: In the event of an emergency, a Local Emergency Planning Committee and the regulated entity have the primary responsibility of notifying potentially impacted parties regarding the situation. In addition, as set forth in 30 TAC § 101.201(a), regulated entities are required to notify the TCEQ regional office within 24 hours of the discovery of releases into the air and in advance of maintenance activities that could or have resulted in excess emissions.

COMMENT 11: GROUNDS FOR PERMIT DENIAL / RESPONSIBILITY OF THE TCEQ

Commenters asked that the TCEQ consider residents and their wishes and deny the registration for another concrete batch plant in their area.

(Group A, Avery Arendale, Bruce C. Arendale, Susan Austin, Jessie Banks, Kathy Barnes, Michael L. Battles, Billie Jean Case, Cheryl Cook, Donald Cutcher, Wesley Duncan, Janet Duncan, Barbara Hoffman, Belita Hoffman, James W. Hoffman, Deloris Milligan, Harry Priesmeyer, Jeffrey P. Queen, Charles L. Rogers, Wilbert L. Williams, and Sharon L. Witte)

RESPONSE 11: The Executive Director's staff has reviewed the registration application in accordance with the applicable state and federal law, policy and procedures, and the agency's mission to protect the state's human and natural resources consistent with sustainable economic development. The TCEQ cannot deny authorization of a facility if a permit application contains a demonstration that all applicable statutes, rules, and regulations will be met.

CHANGES MADE IN RESPONSE TO COMMENT

After comments were received at the Public Meeting regarding inaccuracies in the application, the Applicant was required to provide an Amended Consolidated Notice of Receipt of Application and Intent to Obtain Permit and Notice of Application and Preliminary Decision and the comment period was reopened. The following information was updated: driving address and address.

Respectfully submitted,

Texas Commission on Environmental Quality
Erin E. Chancellor, Interim Executive Director

Charmaine Backens, Acting Director
Office of Legal Services

Guy Henry, Acting Deputy Director
Environmental Law Division



Amanda Kraynok, Staff Attorney
Environmental Law Division
State Bar Number 24107838
PO Box 13087, MC 173
Austin, Texas 78711-3087

REPRESENTING THE
EXECUTIVE DIRECTOR OF THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY