

October 11, 2024

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Texas Commission on Environmental Quality

Ms. Laurie Gharis, Chief Clerk

Office of the Chief Clerk, MC-105

P.O. Box 13087

Austin, TX 78711-3087

**RE: Application by Texas Star Ready Mix, LLC, Air Quality Permit No. 171636
TCEQ Docket No. 2024-1455-AIR
Reply to Executive Director's Response to Hearing Requests and Requests
for Reconsideration and Office of Public Interest Counsel's Response to
Requests for Hearing and Request for Reconsideration**

Dear Ms. Gharis:

On behalf of its client, Joppa Freedmans Town Association ("JFTA"), Legal Aid of NorthWest Texas ("LANWT") submits in the above named and numbered matter the following Reply to Executive Director's Response to Hearing Requests and Requests for Reconsideration and Office of Public Interest Council's Response to Requests for Hearing and Request for Reconsideration.

All contact to JFTA on this matter should be directed to counsel at LANWT, listed below.

Respectfully submitted,



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DOCKET NO. 2024-1455-AIR

APPLICATION BY	§	BEFORE THE
TEXAS STAR READY MIX, LLC	§	TEXAS COMMISSION
CONCRETE BATCH PLANT	§	ON
DALLAS, DALLAS COUNTY	§	ENVIRONMENTAL QUALITY

**REPLY TO EXECUTIVE DIRECTOR'S RESPONSE TO HEARING REQUESTS AND
REQUESTS FOR RECONSIDERATION AND
OFFICE OF PUBLIC INTEREST COUNSEL'S RESPONSE TO REQUEST FOR
HEARING AND REQUESTS FOR RECONSIDERATION**

Joppa Freedmans Town Association (“JFTA”) requested reconsideration of the Executive Directors’s (“ED”) decision to approve Texas Star Ready Mix’s (“TSRM”) permit application. TCEQ’s Office of Public Interest Counsel (“OPIC”), in its Response to Requests for Hearing and Request for Reconsideration, wisely recognizes that the ED’s consideration of TSRM’s operational compliance history is deficient and recommends that the Commissioners remand the application to the ED to resolve this deficiency.¹ JFTA reiterates, once again, that the ED’s disjointed and circular responses result in a wholly absurd outcome that would leave the public perpetually vulnerable to TSRM, industries like it, and a state agency unwilling to regulate them. Although TSRM’s permit application is a direct result of TCEQ’s enforcement action against TSRM for a long-period of repeat major violations for operating with proper authorization, the ED insists that this permit application and enforcement action must be separately dealt with and never shall the two actions meet. Ultimately, the ED’s position is the epitome of someone who can’t see the forest for the trees—meanwhile, the forest is burning.

If the Commissioners were to follow the ED’s recommendations, it would be an embarrassing indictment and admission of TCEQ’s repeated failure to protect the public by allowing industry to benefit while knowingly violating the law. For the extensive reasons provided previously and below, the Commission should simply outright deny TSRM’s application. Alternatively, the Commission should grant JFTA’s request for reconsideration and contested case hearing and/or grant OPIC’s recommendation for a hearing in the public interest.

I. ARGUMENTS

A. Applicant has repeatedly demonstrated its unwillingness or inability to comply with the operational legal requirements to ensure the public’s health and safety.²

The procedural background provided in both the ED’s and OPIC’s filings require supplementation to include the evidentiary events and reasons explaining why TSRM filed this permit application, the actions TSRM did and did not take after filing its application, how TSRM and TCEQ’s actions negatively impacted the public participation process, and how the

¹ Office of Public Interest Counsel’s Response to Requests for Hearing and Request for Reconsideration, found at <https://www.tceq.texas.gov/downloads/agency/decisions/agendas/backup/2024/2024-1455-air-picr.pdf>, incorporate by reference.

² This section addresses ED’s Addresses TCEQ responses to Requests for Reconsideration of Response numbers 9, 10, 11, 13, 14, 17, 21, 22, and 28.

protectiveness of the standard permit has been so undermined to inadequately protect public health and safety as well as the environment.

The history of concrete batch plant operations on TSRM's site dates back to 1955, though TSRM gained ownership on August 13, 2021.³ TSRM claims it started operating almost a year later on July 23, 2022 under a Permit by Rule ("PBR") registration from previous site owners. TSRM finally admitted to operating illegally without proper authorization for over a year while the public repeatedly complained and governmental agencies repeatedly investigated.

Based on the Timeline of Events,⁴ when TSRM took ownership of the facility on August 13, 2021, TSRM knew or should have known that it would be operating illegally. If TSRM had been properly following the operational and recordkeeping requirements of its inherited PBR, then TSRM should have realized it wasn't in compliance with that PBR. However, TSRM repeatedly refused to accept responsibility and blamed TCEQ and others for failing to catch the facility's illegal operation earlier.⁵

And yet, TSRM still defiantly continued operating illegally and maintained a seemingly hostile posture towards the facility's surrounding neighborhood community. Even after being repeatedly informed on at least 10 different occasions by the public, City of Dallas, and TCEQ that its operations were illegal, and understanding enough about the illegality of its operations to eventually apply for a permit, TSRM continued to operate without proper authorization.⁶ As a result, TSRM has either sufficiently demonstrated: 1) at worst—a knowingly blatant disregard for the law to safely operate its concrete batch plant; or 2) at best—a dangerously ignorant inability to understand its basic legal requirements to operate in a safe manner that would be protective of the public's health and safety and the environment. ED's failure to grasp the consequences of TSRM's blatant disregard and/or dangerous ignorance not only endangers the public health and safety, but further undermines the agency's already dwindling credibility.

Meanwhile, during the public participation process under both TSRM's enforcement and permit application, JFTA continually submitted and updated TCEQ with available evidence of TSRM's long history of major violations even though TCEQ already had access to all of this evidence. JFTA also attempted to obtain access to additional public evidence available only onsite at TSRM's facility, but TCEQ refused to provide the public with access or even review the evidence itself.⁷

Even more recently on or around September 16, 2024, TCEQ again failed to properly assess TSRM's over-year-long illegal operations in a compliance history review.⁸ 30 Texas

³ Instead of providing excessive and repetitive evidentiary citations, JFTA includes for convenience and incorporates by reference a "Timeline of Events" that provides citations of the evidence previously submitted to TCEQ for the specific identified events. See, attached Exhibit A.

⁴ *Id.*

⁵ See JFTA's Request for Reconsideration, Reply to the Executive Director's Response to Comments, and Request for a Contested Case Hearing, Attachment 6, p. 126.

⁶ *Id.*

⁷ See also, attachment Exhibit B, evidence of TCEQ creating a rule of general applicability in violation of the Administrative Procedure Act's rulemaking process by taking the same position in a completely separate matter (i.e., in response to a Public Information Act request, TCEQ again refuses to provide the public access to public information concerning a concrete batch plants onsite records required to be maintained by the standard permit and to which TCEQ has a right of access).

⁸ TCEQ Draft Permit/Technical Information, Concrete Batch Plant Standard Permit – Source Analysis & Technical Review, September 2024, page 2, found at [reference.https://www.tceq.texas.gov/downloads/agency/decisions/agendas/backup/2024/2024-1455-air-info.pdf](https://www.tceq.texas.gov/downloads/agency/decisions/agendas/backup/2024/2024-1455-air-info.pdf), incorporate by reference.

Administrative Code § 60.1(c) requires TCEQ to include final enforcement orders, the dates of investigations, and all written notices of violation in a compliance history review. TCEQ cannot continue to designate TSRM's compliance history as "unclassified" when TSRM has a Final Agreed Order with TCEQ which includes multiple major violations including operating illegally for over a year.⁹ TCEQ instead must designate TSRM as an unsatisfactory performer who operated without authorization for over a year and deny this permit.¹⁰

After several years of illegal operations, public outrage, administrative filings, and an incredibly rare OPIC recommendation of a hearing in the public interest, and despite the volume of the available undisputed evidence showing that TSRM is not fit to operate, the ED continues to:

- classify TSRM's compliance history as "unclassifiable,"
- refuse to thoroughly investigate the extent of TSRM's repeated major violations, and
- refuse to consider any of the major violation evidence as part of this pending application's compliance review.

Inexplicably, the ED refuses to take a hard look at the overwhelming evidence of TSRM's repeated failures merely because TCEQ repeatedly failed in its statutory duty to protect the public from illegal operations at this location. As a result, TCEQ failed to have an accurate compliance record for this location within the five years before TSRM submitted its application after finally being caught unlawfully operating.

As OPIC's Response deftly points out, "Applicant should not be allowed to benefit from a lack of compliance history when that history is missing because Applicant was unlawfully operating without required authorization."¹¹

B. The Executive Director has no authority to allow Applicant to violate public notice requirements and negatively impact the public participation process.¹²

State regulations regarding public notice during permit application periods are crystal clear: TSRM must post signs during the entire public comment period to inform the public of the pending application so that the public can effectively evaluate the permit and provide public comment. Public notice requirements were especially important in this matter since TSRM operated illegally during a significant portion of the public comment period.¹³ The Executive Director cannot create an ad hoc rule with no legal basis to circumvent this requirement and deny the public their right to meaningful public participation.

⁹ TSRM Agreed Order TCEQ Case Number 63326, Docket Number: 2022-1557-AIR-E, incorporate by reference. Despite the Final Order being in litigation, the Final Order is considered effective on July 23, 2024, and should still be used as factual evidence during the required compliance history review.

¹⁰ 30 Texas Administrative Code §§ 60.1(c), 60.2, 60.3.

¹¹ The Office of Public Interest Counsel's Response to Requests for Hearing and Request for Reconsideration, p. 9.

¹² This section addresses ED's TCEQ responses to Requests for Reconsideration of Response numbers 2, 9, 14, 17, 21, and 28.

¹³ TSRM Agreed Order TCEQ Case Number 63326, Docket Number: 2022-1557-AIR-E, incorporate by reference.

30 Texas Administrative Code § 39.604(b) requires TSRM to post signage during the entire public comment period.¹⁴ Even the Consolidated Notice of Application and Intent to Obtain Permit specifies TSRM's requirement to "[i]nspect each posted sign daily to ensure it is present and visible throughout the entire comment period."¹⁵ Contrary to the ED's response asserting a bifurcated "initial" public comment period, the Texas Administrative Code and the consolidated notice of application and intent to obtain permit do not designate an "initial" period where signage is only required for a portion of the public comment period. Rather, signs must remain in place and legible during the entire public comment period.¹⁶ TSRM's entire public comment period ended on March 6, 2024, and **it is an undisputed fact that signs were not in place throughout this entire public comment period.**

Through public comments, JFTA provided evidence of multiple instances where TSRM failed to have signage posted throughout the entirety of the public comment period.¹⁷ TCEQ's own staff stated that TCEQ initially extended the public comment period to September 29, 2023 because "[i]t was determined Applicant did not have signs up until the close of the public meeting. As a result, [they] extended the comment period including a new publication of notice, application for viewing at the Dallas public library and sign postings along the property to allow for greater public participation in this permitting action."¹⁸

TCEQ again extended the public comment period to March 6, 2024, due to substantial changes in TSRM's application. Despite TCEQ staff acknowledging that "the public comment period will be extended 30 days to allow for public viewing and involvement given the new requirements," the same staff member stated, "sign postings do not need to be reposted."¹⁹ TSRM failed to post signage through March 6, 2024.²⁰ TCEQ did not provide any legal justification for not requiring proper signage throughout the entire public comment period, and nor could they, because 30 Texas Administrative Code § 39.604(b) *requires* signage throughout the entire comment period.

TCEQ and Applicant failed to comply with statutory public notice requirements, regulatory public notice requirements, and the application itself because Applicant failed to post required signs and display the application at the library²¹ through March 6, 2024.

¹⁴ 30 Texas Administrative Code § 39.604(b) The sign or signs must be in place by the date of publication of the Notice of Receipt of Application and Intent to Obtain Permit and must remain in place and legible throughout that public comment period. The applicant shall provide a verification that the sign posting was conducted according to this section.

¹⁵ Texas Star Ready Mix Consolidated Notice of Application and Intent to Obtain Permit, incorporate by reference.

¹⁶ 30 Texas Administrative Code § 39.604.

¹⁷ Public Comments, Request for Public Meeting, and Request for a Contested Case Hearing on Application for Air Quality Standard Permit for Concrete Batch Plants Proposed Registration No. 171636 authorizing the operation of a concrete batch plant located at 4500 Great Trinity Forest Way, Dallas, Texas 75085, Joppa Freedmans Town Association, electronically submitted to Ms. Laurie Gharis, Office of the Chief Clerk, Texas Commission on Env't Quality on April 14, 2023, August 17, 2023, September 28, 2023, and March 6, 2024 (hereinafter referred to as "JFTA Public Comments"). JFTA incorporates all of these documents by reference; Request for Reconsideration, pages 10 – 14, incorporate by reference.

¹⁸ JFTA Public Comments, September 28, 2023, incorporate by reference.

¹⁹ JFTA Request for Reconsideration, pages 11, 189, and 195, incorporate by reference.

²⁰ JFTA Public Comments, March 6, 2024, incorporate by reference.

²¹ TSRM's new permit application in January 2024 included representations they could meet new standards designed to protect the public which include, but are not limited to, setback distances, record keeping requirements, aggregate washing, emissions controls, productions limits, and sediment prevention. JFTA Request for Reconsideration, pages 11-12, incorporate by reference.

C. If the Commission refuses to deny TSRM's application, then JFTA's contested case hearing request should be granted.

In addition to its request for reconsideration, JFTA also requested a contested case hearing. While the ED and OPIC both stated that while JFTA's request was procedurally adequate, they stated that no member of JFTA had a dwelling within the 440 yard distance limitation. However, JFTA asserts that it qualifies as an affected person because JFTA may be adversely affected by the proposed concrete batch plant in a way not common to the general public. For example, due to TSRM's repeated illegal operations and TCEQ's refusal to review the legally required onsite records or allow the public access to these records, the ED has unilaterally undermined the protectiveness of TCEQ's concrete batch plant standard permit. By allowing TSRM to operate without any legitimate oversight by TCEQ or the public—especially when taking into consideration the already egregious past timeline events—TCEQ would fail to adequately protect the immediate surrounding and historically environmentally disadvantaged community members of JFTA previously identified.

Additionally, OPIC recommended granting a public interest hearing due to TCEQ's failure to properly investigate and assess TSRM's compliance history. JFTA supports OPIC's recommendation for public interest hearing and requests to be named a party should the Commissioners choose to grant this hearing.

For convenience, JFTA once again provides the previously filed relevant and material disputed issues that should be referred to the State Office of Administrative Hearings ("SOAH") for a contested case hearing:

- Whether the Applicant's public notice failed to comply with applicable federal and state laws and regulations.
- Whether the application and proposed standard permit registration fail to protect the public health, welfare, property and the environment.
- Whether the emissions from the proposed facility will have adverse impacts on the public's health, welfare, property and the environment.
- Whether the application fails to include the requisite information necessary to determine compliance with applicable federal and state air control statutes, regulations, and policies.
- Whether Executive Director's preliminary decision fails to include the requisite information necessary to determine compliance with applicable federal and state air control statutes, regulations and policies.
- Whether the standard permit fails to include the requisite information necessary to determine compliance with applicable federal and state air control statutes, regulations and policies.
- Whether the proposed emissions are reasonable in light of the degree of injury and interference with the public's health and physical property.

- Whether the proposed emissions are reasonable in light of the source's lack of social and economic value.
- Whether the proposed emissions are reasonable in light of the non-priority of location of the area involved.
- Whether the proposed emissions are reasonable in light of the technical practicability and economic reasonableness of further reducing or eliminating the proposed emissions.
- Whether the proposed activity will cause nuisance conditions in violation of 30 TAC § 101.4.
- Whether the permit conditions are adequate to protect against nuisance conditions.
- Whether the proposed activity will create visible emissions at the property line.
- Whether the facility fails to provide paved roads or maintenance at entry and exit road.
- Whether the permit conditions are adequate to protect against visible emissions at the property line.
- Whether the proposed activity will cause or contribute to any exceedance of NAAQS for PM₁₀ and PM_{2.5}.
- Whether the permit conditions are adequate to protect against causing or contributing to exceedances of NAAQS for PM₁₀ and PM_{2.5}.
- Whether the proposed activity will utilize Best Available Control Technology (BACT).
- Whether the modeling conducted to support the application, including the proposed activity air dispersion modeling, is inadequate or flawed.
- Whether there are insufficient air monitoring requirements in the draft permit.
- Whether the proposed activity will threaten the health and safety of nearby residents.
- Whether the draft permit fails to account for other potential air contaminants resulting from the proposed activity.

Examples of the deficiencies and problems with Applicant's proposed concrete batch plant were provided in the public comments; however, these examples were in addition to, and in no way should be construed to limit in any way the above identified relevant and material disputed issues to be addressed during a contested case hearing. Each of these issues are within TCEQ's jurisdiction and are relevant and material to the approval of the registration authorization.

Because JFTA timely submitted a request for a contested case hearing, raised relevant and material issues during the comment period, the Commission should forward its request along with all disputed issues to SOAH for further proceedings.

II. CONCLUSION AND PRAYER FOR RELIEF

For the foregoing reasons, JFTA respectfully requests that the Commission grant this Request for Reconsideration and deny the Executive Director's preliminary decision to issue Permit No. 171636. Alternatively, if the Commission fails to deny the permit, then the Commission should grant Joppa Freedmans Town Association's request for reconsideration and contested case hearing and/or grant the Office of Public Interest Counsel's recommendation for a hearing in the public interest.

Respectfully submitted,



Wendi Hammond



Michael Bates



Haley Varnadoe

CERTIFICATE OF SERVICE

A copy of the forgoing Reply to Executive Director's Response to Hearing Requests and Requests for Reconsideration and Office of Public Interest Counsel's Response to Requests for Hearing and Request for Reconsideration was sent by US Mail, fax, electronic delivery or electronic filing to the parties below on October 11, 2024.

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I certify on this day, October 11, 2024, this document was
filed with the Chief Clerk and a copy served to all above
listed persons via electronic mail or electronic filing.



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Exhibit A

TIMELINE OF EVENTS¹

Date	Event
1955	Concrete Batch Plant operations start at this location under various ownership throughout the years. TSRM claims the facility originally operated under a Standard Exemption that “was voided years before” TSRM owned the facility. ²
August 31, 1998	Facility improperly registered under Permit By Rule (PBR) 30 TAC 106.144 for Bulk Mineral Handling. ³
August 13, 2021	TSRM becomes owners of the facility. ⁴ <i>At this point, TSRM knew (or should have known) its legal requirements for operating under the PBR.</i>
July 23, 2022	TSRM claimed this is when it started operating the facility illegally under the Permit By Rule (PBR) registration. ⁵ <i>However, if TSRM actually followed the requirements of this PBR, then TSRM should have known that it was violating the requirements of this PBR.</i>
September 12, 2022	In response to public complaints, City of Dallas investigates TSRM’s legal compliance and investigator verbally informs TSRM owner that TSRM is operating illegally under a PBR and needs to obtain proper authorization to operate under the concrete batch plant standard permit. ⁶
September 15, 2022	City of Dallas investigator emails TSRM owner copy of TCEQ Exit Interview with violations informing TSRM <i>again</i> of the September 12 th investigation findings that TSRM is operating illegally under a PBR and needs to obtain proper authorization to operate under the concrete batch plant standard permit. ⁷
October 13, 2022	City of Dallas mails written letter to TSRM owner informing TSRM <i>again</i> of the September 12 th investigation findings that TSRM is operating illegally under a PBR and needs to obtain proper authorization to operate under the concrete batch plant standard permit. ⁸
December 27, 2022	The month TSRM withdrew its TCEQ permit by rule. ⁹ <i>Again, TSRM knew (or should have known) was illegally operating without proper authorization.</i>
January 30, 2023	TSRM files with TCEQ TSRM’s application for a concrete batch plant (CBP) standard permit. <i>Again, TSRM knew (or should have known) was illegally</i>

¹ All citations citing JFTA’s Request for Reconsideration, Reply to the Executive Director’s Response to Comments, and Request for a Contested Case Hearing will be referred to as “JFTA’s RFR”. Also, all bold and highlighted dates indicate events when TSRM knew or should have known it was illegally operating without proper authorization. Likewise, all bold, italicized and underlined dates indicate events occurring under TCEQ’s enforcement action against TSRM for illegally operating with proper authorization.

² JFTA’s RFR, Attachment 5: TCEQ Commissioner’s Agenda Transcript Excerpt from Agenda Item 9 (May 22, 2024), p. 164. See also, Attachment 6: TCEQ Commissioner’s Agenda Transcript Excerpt from Agenda Item 7 (July 17, 2024), p. 178.

³ See, JFTA’s RFR, Attachment 1, p.78.

⁴ On August 13, 2021, TSRM began as owner operator for RN102390051 and CN605903574. See, *Id.* at p. 19.

⁵ JFTA’s RFR, Attachment 5: TCEQ Commissioner’s Agenda Transcript Excerpt from Agenda Item 9 (May 22, 2024), p. 165. Specifically, TMSR claims it is operating under 30 TAC 106.144 for bulk mineral handling. See also, JFTA’s RFR, Attachment 1, p. 73.

⁶ *Id.* at p. 71 & 79.

⁷ *Id.* at p. 79.

⁸ *Id.* at p. 71-92.

⁹ Public Meeting regarding TSRM’s proposed Permit No. 171636 (Aug. 17, 2023), at 36:30, 42:00, 54:30, & 59:00 (TSRM could not provide information on the permit by rule it claimed to be currently operating under and TCEQ staff stated they were “aware” that Applicant withdrew its permit by rule in December 2022).

	<i>operating without proper authorization. TSRM failed to disclose that this permit application was in response to an enforcement action.</i>
February 1, 2023	TCEQ declares TSRM's application for a CBP standard permit administratively complete. <i>Again, TSRM knew (or should have known) it was illegally operating without proper authorization.</i>
March 15, 2023	TSRM publishes in English the Consolidated Notice of Receipt of Application and Intent to Obtain permit and Notice of Application and Preliminary Decision. <i>Again, TSRM knew (or should have known) it was illegally operating without proper authorization.</i>
March 17, 2023	TSRM publishes in Spanish the Consolidated Notice of Receipt of Application and Intent to Obtain permit and Notice of Application and Preliminary Decision. <i>Again, TSRM knew (or should have known) it was illegally operating without proper authorization.</i>
April 14, 2023	JFTA files public comments, Request for Public Meeting and Request for a Contested Case Hearing.
June 15, 2023	TSRM was observed to be operating its facility. ¹⁰ <i>Again, TSRM knew (or should have known) it was illegally operating without proper authorization.</i>
July 6, 2023	TSRM was observed to be operating its facility. ¹¹ <i>Again, TSRM knew (or should have known) it was illegally operating without proper authorization.</i>
July 12, 2023	TSRM was observed to be operating its facility. ¹² <i>Again, TSRM knew (or should have known) it was illegally operating without proper authorization.</i>
July 14, 2023	TSRM was observed to be operating its facility. ¹³ <i>Again, TSRM knew (or should have known) it was illegally operating without proper authorization.</i> A Public Information Act request is filed with TCEQ for TSRM's operational records required to be maintained onsite by law and to which TCEQ has a right of access.
July 19, 2023	TCEQ refuses to release TSRM's public information, specifically TSRM's operational records required to be maintained onsite by law and to which TCEQ has a right of access.
July 28, 2023	TCEQ refuses to provide public information in response to the Public Information Request filed with TCEQ for TSRM's operational records required to be maintained onsite by law and to which TCEQ has a right of access. ¹⁴
August 9, 2023	In response to public complaints, City of Dallas investigates TSRM's legal compliance and <u>again</u> finds TSRM continues to illegally operate without proper authorization. ¹⁵
August 16, 2023	Per TCEQ's instructions, a request is filed with TSRM for TSRM's operational records required to be maintained onsite by law and to which TCEQ has a right of access. TSRM has never responded.
August 17, 2023	TCEQ holds public meeting on TSRM's pending application for a CBP Standard Permit. TSRM admits to continuing to operate. ¹⁶ JFTA's and numerous other

¹⁰ *Id.* at p.13.

¹¹ *Id.*

¹² *Id.*

¹³ *Id.*

¹⁴ JFTA's RFR, Attachment 10, pp. 218-222.

¹⁵ JFTA's RFR, Attachment 1, p. 29

¹⁶ *Id.*

	public comments provided complaining about TSRM's continued illegal operation with proper authorization.
August 29, 2023	TCEQ investigates TSRM again in response to the City of Dallas' August 9 th investigation and TSRM's admissions during public meeting of continuing to illegally operate without proper authorization. TSRM now claims it stopped operating on August 9, 2023 even though on August 17 th TSRM admitted it was still operating. TCEQ investigator fails to check TSRM's onsite records to confirm exactly when TSRM stopped operating illegally, and instead informs TSRM that its continued operation until the claimed date of August 9, 2023, without proper authorization is a major violation.
<u>September 1, 2023</u>	TCEQ issues TSRM a Notice of Enforcement for illegally operating without proper authorization.
September 28, 2023	JFTA again files public comments, Request for Public Meeting and Request for a Contested Case Hearing.
January 9, 2024	PIA request filed with TCEQ for TSRM's operational records required to be maintained onsite by law and to which TCEQ has a right of access. ¹⁷ JFTA requests operational records from TSRM's attorney, Erich Birch.
January 10, 2024	TCEQ files request for an Attorney General decision regarding the Public Information Act request for TCEQ enforcement documents. TCEQ's request did <u>NOT</u> address the portion of the PIA request concerning TSRM's legally required onsite operational records. Rather it only addressed TSRM's claimed confidential business records submitted to TCEQ in response to TCEQ's pending enforcement matter. ¹⁸
February 1, 2024	TCEQ issues a Notice of Deficiency to TSRM requesting an updated application that complies with TCEQ's January 24, 2024 amended CPB Standard Permit.
February 2, 2024	<i>TCEQ informs TSRM that public notice sign postings during the public comment period were not necessary.</i> ¹⁹
March 6, 2024	TCEQ officially declares the <i>public comment period ended</i> on this date.
<u>May 22, 2024</u>	Commissioner Agenda Meeting discussing proposed Agreed Order on TCEQ enforcement action against TSRM for illegally operating without proper authorization. Commissioner Janeck states his "serious concerns" about TSRM's seemingly hostile comments concerning TSRM's surrounding community neighbors. Commissioners remand matter back to staff due to TSRM admitting to operating longer than TCEQ staff originally considered.
<u>July 17, 2023</u>	Commissioners Agenda Meeting discussing proposed Agreed Order on TCEQ enforcement action against TSRM for illegally operating without proper authorization. Despite the Commissioner Janeck's prior warning, TSRM's attorney again maintains TSRM's seemingly hostile posture against TSRM's surrounding community neighbors, specifically calling it a "vendetta" against TSRM. ²⁰
July 22, 2024	EPA files letter with TCEQ detailing the numerous concerns with TCEQ's Executive Director's preliminary decision to issue TSRM's CBP standard permit.

¹⁷ JFTA's RFR, Attachment 10, p. 217.

¹⁸ JFTA's RFR, Attachment 1, p. 26-27; Attachment 9 and Attachment 10.

¹⁹ JFTA's RFR, Attachment 8, p. 189.

²⁰ JFTA's RFR, Attachment 6, p. 176.

<u>July 23, 2024</u>	TCEQ issues final Agreed Oder in TCEQ's enforcement action against TSRM for the major violations of continuing to illegally operate without proper authorization. ²¹
September 16, 2024	TCEQ staff again assesses TSRM's compliance history and still classifies it as "unclassifiable" despite the Final Agreed Order in TCEQ's enforcement action. ²²

²¹ JFTA's RFR, Attachment 2, p. 144-150.

²² TCEQ Draft Permit/Technical Information, Concrete Batch Plant Standard Permit – Source Analysis & Technical Review, September 2024, page 2, found at reference.<https://www.tceq.texas.gov/downloads/agency/decisions/agendas/backup/2024/2024-1455-air-info.pdf>, incorporate by reference.

Exhibit B

Adam Pirtle

From: AirPIR <AirPir@tceq.texas.gov>
Sent: Monday, August 12, 2024 1:11 PM
To: Adam Pirtle; Deanna Moreno
Cc: AirPIR
Subject: RE: TCEQ Public Information Request 96078

Good afternoon,

After discussing with our Legal Office about your concerns for PIR 24-96078, please see below:

A Public Information Act request can only encompass public information in existence at the time the request was made, and governmental bodies are not obligated to prepare new information in response to a request. Private third-party records are only considered public information if they are “created by, transmitted to, received by, or maintained by . . . a person or entity performing official business or a governmental function on behalf of a governmental body. . . .” Tex. Gov’t Code § 552.002(a-1). Regulated entities that are required to maintain certain records to demonstrate permitting compliance are not performing TCEQ business or governmental functions when doing so. See Open Records Decision No. 462 (1987).

As Triple C Concrete of Lubbock does not maintain the requested information in the role of an agent acting on behalf of TCEQ, and TCEQ has not acquired this information from Triple C Concrete of Lubbock through 30 Tex. Admin. Code § 106.8(c), TCEQ has no additional information to provide that is responsive to your request. Please let me know if you have any further questions.

Thanks,

LEIGH FLORES
TEAM LEADER
TEXAS COMMISSION ON ENVIRONMENTAL QUALITY
AIR PERMITS DIVISION
BUSINESS SUPPORT SECTION MC-163
PO BOX 13087
AUSTIN, TEXAS 78711-3087
512-239-0361
leigh.flores@tceq.texas.gov



From: Adam Pirtle <pirtlea@lanwt.org>
Sent: Friday, August 9, 2024 5:46 PM
To: Deanna Moreno <Deanna.Moreno@tceq.texas.gov>
Cc: AirPIR <AirPir@tceq.texas.gov>
Subject: RE: TCEQ Public Information Request 96078

Good afternoon, Ms. Moreno:

On August 1, 2024, I requested Triple C Concrete's operating logs and other records it was required to keep onsite as a condition of the standard permit from January 1, 2023, to the date of the request. For your convenience, I have duplicated that portion of the request below my signature and attached the original request receipt.

In the records you provided in response to my request, I did not find any records that Triple C maintained onsite as required by the standard permit and other law. Did TCEQ attempt to request these documents from Triple C Concrete to fulfill this request?

Under the standard permit and other law, owners or operators are required to make these records available at the request of TCEQ personnel or any air pollution control program having jurisdiction. TCEQ has a lawful right of access to these records. Under the Texas Public Information Act, public information includes "information that is written, produced, collected, assembled, or maintained" for a governmental body that "has a right of access to the information." TEX. GOV'T CODE § 552.002(a). Because state law requires Triple C to write, produce, collect, assemble or maintain the requested records for TCEQ and because TCEQ has a right of access to the records, these records are public information. TCEQ needed to exercise its right of access to obtain this public information from Triple C to comply with this request.

Thank you,
Adam

Request excerpt:

"We request the written records that Triple C is required to keep on-site pursuant to recordkeeping requirements of Section (3)(J) of the Air Quality Standard Permit for Concrete Batch Plants¹¹ and relevant sections of the Texas Administrative Code. Specifically, we request the records maintained on-site for the following including:

- *30 TAC § 101.201, Emissions Event Reporting and Recordkeeping Requirements;*
- *30 TAC § 101.211, Scheduled Maintenance, Startup, and Shutdown Reporting and Recordkeeping Requirements;*
- *production rates for hourly and annual operations that demonstrate compliance with the tables in subsection (8)(A) or the production limitations in subsection (9)(A) of this standard permit, as applicable;*
- *all repairs and maintenance of abatement systems and other dust suppression controls;*
- *Material Safety Data Sheets for all additives and other chemicals used at the site;*
- *road cleaning, application of road dust control, or road maintenance for dust control;*
- *stockpile dust suppression;*
- *monthly silo warning device or shut-off system tests;*
- *quarterly visible emissions observations and any corrective actions required to control excess visible emissions;*
- *demonstration of compliance with subsection (6)(B) of this standard permit;*
- *type of fuel used to power engines authorized by this standard permit; and*
- *demonstration of compliance with subsection (5)(L) of this standard permit.*

Under the standard permit and other law, owners or operators are required to make these records available at the request of TCEQ personnel or any air pollution control program having jurisdiction. In other words, TCEQ has a lawful right of access to these records.”

Adam Pirtle
Staff Attorney
Community Revitalization Project
Legal Aid of NorthWest Texas
P: 806-696-3601
E: pirtlea@lanwt.org

Legal Aid of NorthWest Texas...Bringing justice to North and West Texans since 1951.

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Unless expressly stated otherwise, nothing contained in this message should be construed as a digital or electronic signature, nor is it intended to reflect an intention to make an agreement by electronic means.

From: Deanna Moreno <Deanna.Moreno@tceq.texas.gov>
Sent: Friday, August 9, 2024 11:28 AM
To: Adam Pirtle <pirtlea@lanwt.org>
Cc: AirPIR <AirPir@tceq.texas.gov>
Subject: TCEQ Public Information Request 96078

Good morning,

Attached please find our response to your Public Information Request (PIR) to Texas Commission on Environmental Quality. This PIR is now closed.

Please contact me with any questions regarding this request.

Thank you, and have a great day!

Deanna Moreno
Permit Support Specialist II
Air Permit Division, MC 163
Texas Commission on Environmental Quality
PO Box 13087

Austin, TX 78711-3087
(P) 512-239-0701
deanna.moreno@tceq.texas.gov

^[1] Texas Commission on Environmental Quality, Air Quality Standard Permit for Concrete Batch Plants (Effective January 24, 2024) <https://www.tceq.texas.gov/downloads/permitting/air/nsr/nsr-stakeholders/22033-oth-nr-cbbsp-stdpmt.pdf>. (Please also provide the records Triple C was required to keep under the previous iteration of the standard permit.

PIR Request submitted on 08/01/2024 05:15 PM

PIR Code: 24-96078-PIR

Due Date: 08/15/2024

Page One

Name Prefix:

Name: Adam Pirtle

Company/Organization: Legal Aid Of NorthWest Texas

Requestor Type: Attorney

Mailing Address 1: 1001 Main Street, Suite 501

Mailing Address 2:

City: Lubbock

State/Province/Region: Texas

Zip/Postal Code: 79401

Country: United States

E-mail Address: pirtlea@lanwt.org

Phone Number: (806) 696-3601

FAX Number:

Page Two

Sites/Facilities :

RN	Facility	CN	Customer	Program	Additional ID
RN111965935	TRIPLE C CONCRETE OF LUBBOCK				

Area Description: Triple C Concrete of Lubbock, LTD, RN111965935 1521 Erskine Street, Lubbock, Texas 79403.

Page Three

Date Range: January 1, 2023, to the present.

Agency Programs: Other (OAS)

Addition Record Search: Re: North and East Lubbock Coalition request under the Texas Public Information Act for records of Triple C Concrete of Lubbock, LTD, RN111965935 Dear Public Information Officer: Pursuant to the Texas Public Information Act ("TPIA"), Chapter 552 of the Texas Government Code, and on behalf of my client, the North and East Lubbock Coalition ("NELC"), I respectfully request the following from the Texas Commission on Environmental Quality ("TCEQ"). If this request is unclear, please contact me using the information in my signature block below for clarification. A. Information requested This request involves Triple C Concrete of Lubbock, LTD, ("Triple C") located at 1521 Erskine Street, Lubbock, Texas 79403. The RN number is RN111965935. We request the following for the period starting on January 1, 2023, to the date of this of this letter. We request the written records that Triple C is required to keep on-site pursuant to recordkeeping requirements of Section (3)(J) of the Air Quality Standard Permit for Concrete Batch Plants¹ and relevant sections of the Texas Administrative Code. Specifically, we

request the records maintained on-site for the following including: • 30 TAC § 101.201, Emissions Event Reporting and Recordkeeping Requirements; • 30 TAC § 101.211, Scheduled Maintenance, Startup, and Shutdown Reporting and Recordkeeping Requirements; • production rates for hourly and annual operations that demonstrate compliance with the tables in subsection (8)(A) or the production limitations in subsection (9)(A) of this standard permit, as applicable; • all repairs and maintenance of abatement systems and other dust suppression controls; • Material Safety Data Sheets for all additives and other chemicals used at the site; • road cleaning, application of road dust control, or road maintenance for dust control; • stockpile dust suppression; • monthly silo warning device or shut-off system tests; • quarterly visible emissions observations and any corrective actions required to control excess visible emissions; • demonstration of compliance with subsection (6)(B) of this standard permit; • type of fuel used to power engines authorized by this standard permit; and • demonstration of compliance with subsection (5)(L) of this standard permit. Under the standard permit and other law, owners or operators are required to make these records available at the request of TCEQ personnel or any air pollution control program having jurisdiction. In other words, TCEQ has a lawful right of access to these records. B. Confidential information requested We request all records and information responsive to this request including confidential information. If TCEQ believes that certain responsive information is confidential, please contact me to discuss this further. C. Request for waiver of costs NELC is a membership-based, Texas non-profit corporation serving neighborhoods in the north and east sides of Lubbock. The information NELC requests is in the public interest. Further, NELC will share any information received from this request without charge. Therefore, NELC asks for a waiver of all fees for producing this information pursuant to Section 552.267 of the Texas Government Code. Should TCEQ not grant a waiver, please provide me with a cost estimate before producing this material if the cost estimate is greater than \$40.00.

Data Only: No

Confidential Information: Yes

Certified Information: No

Request Documents: No data found