



west virginia department of environmental protection

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RESPONSE TO COMMENTS

Premier Concrete Inc.

Princeton, Mercer County, West Virginia

Permit Application Number: G50-C132

Facility Identification Number 055-00154

Date: May 9, 2024

Promoting a healthy environment.

The following is the Division of Air Quality's (WV DAQ) response to comments regarding Permit Application G50-C132 for Premier Concrete Inc.'s proposed Concrete Batch Plant that were received between March 1, 2024, and April 16, 2024.

Premier Concrete Inc. published their 'Legal Notice of Application' on March 22, 2024. The public comment period expired on April 22, 2024.

Pursuant to §45-13-8.8, all submitted comments received during the public comment period have been reviewed and are addressed in this document.

ORGANIZATION OF COMMENT RESPONSE

The DAQ's response to the submitted comments includes both a general and specific response section. The general response defines issues over which the DAQ has authority and by contrast, identifies those issues that are beyond the purview of the DAQ. The general response also describes the statutory basis for the issuance/denial of a permit, DAQ Compliance/Enforcement Procedures, details the current status of the ambient air quality of Mercer County and how that is determined, and discusses the minor source determination. The specific response summarizes each relevant non-general comment/question that falls within the purview of the DAQ and provides a response to it (if it requires a response). The DAQ makes no claim that the summaries are complete; they are provided only to place the responses in a proper context. For a complete understanding of submitted comments, please see the original documents in the file. Written comments are available on the DAQ (AX) database at a link (with instructions) located on the following page:

<https://dep.wv.gov/daq/permitting/Pages/NSR-Permit-Applications.aspx>

Comments that are not directly identified and responded to in the specific response section of this document are assumed to be answered under the general response section (or not relevant to the Premier Concrete Inc. permit application or an air quality-related issue).

Statutory Authority of the DAQ

The statutory authority of the DAQ is given under the Air Pollution Control Act (APCA) West Virginia Code §22-5-1, et. seq. - which states, under §22-5-1 ("Declaration of policy and purpose"), that:

"It is hereby declared the public policy of this state and the purpose of this article to achieve and maintain such levels of air quality as will [underlining and emphasis added] protect human health and safety, and to the greatest degree practicable, prevent injury to plant and animal life and property, foster the comfort and convenience of the people, promote the economic and social development of this state and facilitate the enjoyment of the natural attractions of this state."

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Therefore, while the code states that the intent of the rule includes the criteria outlined in the latter part of the above sentence, it is clear by the underlined and bolded section of the above sentence that the scope of the delegated authority does not extend beyond the impact of air quality on these criteria. Based on the language under §22-5-1, et. seq., the DAQ, in making determinations on issuance or denial of permits under WV Legislative Rule 45CSR13 (Rule 13), does not take into consideration substantive non-air quality issues such as job creation, economic viability of proposed projects, zoning related issues, strategic energy issues, non-air quality environmental impacts, nuisance issues, etc.

Statutory Basis for Permit Denial

The basis for issuance or denial of an air quality permit is given under 45CSR13 - "Permits for Construction, Modification, Relocation and Operation of Stationary Sources of Air Pollutants, Notification Requirements, Administrative Updates, Temporary Permits, General Permits, and Procedures for Evaluation." Pursuant to §45-13-5.7, the DAQ shall issue a permit unless:

"a determination is made that the proposed construction, modification, registration or relocation will violate applicable emission standards, will interfere with attainment or maintenance of an applicable ambient air quality standard, cause or contribute to a violation of an applicable air quality increment, or be inconsistent with the intent and purpose of this rule or W. Va. Code §22-5-1 et seq., in which case an order denying such construction, modification, relocation and operation shall be issued. The Secretary shall, to the extent possible, give priority to the issuance of any such permit so as to avoid undue delay and hardship."

It is clear under 45CSR13 that denial of a permit must be based on one of the above explicitly stated criteria or, as noted, is inconsistent with the intent of 45CSR13 or §22-5-1, et. seq. As is stated above, it is the DAQ's position that the intent of both the APCA and 45CSR13 is to circumscribe the authority of the DAQ to air quality issues as outlined in the APCA and in West Virginia's State Implementation Plan (SIP).

The air quality issues evaluated relating to Premier Concrete's proposed construction are outlined in the DAQ's Engineering Evaluation. The issues covered under that document represent the extent of the substantive air quality issues over which the DAQ believes it has authority to evaluate under 45CSR13 and the APCA as relating to Premier Concrete's Permit Application G50-C132.

DAQ Compliance/Enforcement Procedures

It is important to note here that the DAQ permitting process is but one part of a system that works to meet the intent of the APCA. In WV the DAQ maintains a Compliance and Enforcement (C/E) Section, an Air Monitoring Section, a Planning Section, etc. to accomplish this. Most pertinent to the permitting process, the C/E Section inspects permitted sources to determine the compliance status of the facility including compliance with all testing,

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parametric monitoring, record-keeping, and reporting requirements. These inspections are scheduled by the C/E Section taking into consideration such issues as the size and compliance history of the source, resource management and inspector workloads, and program applicability.

When inspecting a facility, the inspectors will, in addition to visually inspecting the facility, generally review all required certified record-keeping to determine compliance with required monitoring. When violations are discovered, the C/E Section has the authority to issue a Notice of Violation (NOV) and a Cease and Desist Order (C&D) to compel facilities to stop operating the equipment/process responsible for the violation. Finally, a negotiated Consent Order (CO) may be entered into between the DAQ and the violator that lays out a finding of facts, a path back into compliance for the violator, and often includes a monetary penalty as determined on a case-by-case basis.

Additionally, the C/E Section investigates citizen complaints directed against a facility (including odor complaints), reviews monitoring reports submitted to the DAQ (again with the authority to issue violations based on the submitted reports), reviews performance test protocols submitted to the DAQ, and will often observe performance tests at the facility site. All records and documents submitted to the DAQ for compliance purposes must be certified as accurate (and subject to criminal penalties if knowingly inaccurate) by a properly designated "responsible official." All of these documents - including C/E documents such as NOVs, C&Ds, and COs - when in final form, and minus any confidential information, are available to the public via a Freedom of Information Act (FOIA) request (for documents prior to 2015) or (for new facilities) are available on the DAQ (AX) database at the link given above.

Ambient Air Quality Status of Mercer County

The quality of the air of a defined local area - in this case for Mercer County - is determined by its status with respect to the National Ambient Air Quality Standards (NAAQS). The Clean Air Act, which was last amended in 1990, requires the Environmental Protection Agency (EPA) to set NAAQS for pollutants considered harmful to public health and the environment. The Clean Air Act established two types of national air quality standards. Primary standards set limits to protect public health, including the health of sensitive populations such as asthmatics, children, and the elderly. Secondary standards set limits to protect public welfare, including protection against decreased visibility, damage to animals, crops, vegetation, and buildings. The EPA Office of Air Quality Planning and Standards (OAQPS) has set National Ambient Air Quality Standards for six principal pollutants, which are called criteria pollutants. They are listed at:

<https://www.epa.gov/criteria-air-pollutants/naaqs-table>.

Counties that are known to be violating these standards are, for specific pollutants, designated by the EPA as in "non-attainment" with the NAAQS. Counties that are not known to be violating these standards are, for specific pollutants, designated by the EPA as in "attainment/unclassifiable" with the NAAQS. It is important to note that while some counties

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have no on-site air monitoring, EPA will still designate these areas as in "attainment/unclassifiable" based on a variety of submitted data. These areas are still properly called "attainment areas." However, this designation is not the same as a designation of just "unclassifiable." As stated on EPA's website: "In some cases, EPA is not able to determine an area's status after evaluating the available information. Those areas are designated "unclassifiable." (<https://www.epa.gov/criteria-air-pollutants/naaqs-designations-process>).

Premier Concrete Inc.'s facility is proposed to be located in Mercer County, WV. Mercer County has not been designated as "non-attainment" or as "unclassifiable" and is, therefore, designated as an attainment area.

The DAQ Air Monitoring Section, with ambient air quality sampling sites located throughout West Virginia, monitors air pollutants on either a continuous or periodic basis. The DAQ operates an air monitor located northeast in Greenbrier County and other monitors throughout the State. Princeton, WV is actually surrounded by air monitors. There is the East Vinton Elementary location just east, and Rural Retreat location just south, operated by the Virginia Department of Environmental Quality. Kentucky DEP operates a monitor northwest in Pikeville, KY. For a full list of air monitors in WV, see the table at:

<https://dep.wv.gov/daq/air-monitoring/Pages/AirQualityIndex.aspx>

The location of air monitors are chosen to provide the most efficient means of assessing the ambient air quality in WV with limited resources and are based on such metrics as a location's population exposure, local emission sources, existing pollutant background levels, and other considerations. There is currently no evidence, based on available data and standard analysis procedures, to indicate that Mercer County is not in attainment of the NAAQS or that the impacts from the potential air emissions at the proposed Princeton facility would cause or contribute to a violation of the NAAQS. The location and data from air monitoring sites may be accessed at the following EPA web address:

[AirNow Interactive Map \(epa.gov\)](https://www.epa.gov/airnow)

As noted above, the proposed CBP facility was reviewed pursuant to the requirements of 45CSR13 - the permitting rule that contains the requirements for the review of minor sources. This rule does not require a cumulative air impact analysis that includes other sources in the determination to issue or deny the permit in question. Further, the DAQ does not believe that if such modeling was conducted, it would show that the proposed source would cause or contribute to a NAAQS violation.

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General Points

This permit will allow Premier Concrete Inc. to install and operate a Concrete Batch Plant facility. The permit will limit the amount of CBP produced and hours operated annually. Any change to the process, amount produced, added engines or the installation of any additional emission unit(s) will require Premier to apply for a permit modification in accordance with 45CSR13.

- In response to all comments that referenced substantive non-air quality issues, the APCA and 45CSR13 does not grant the DAQ the authority to take into consideration such issues in determining whether to issue or deny the permit;
- The requirements of 45CSR13 require the DAQ to, when denying a permit, explicitly state the reason pursuant to §45-13-5.7.;
- An issued permit is but the beginning of the involvement of the DAQ with a source. After issuance, a facility will receive inspections to determine compliance with the requirements as outlined in the applicable permit;
- With respect to the quality of the ambient air of Mercer County, the EPA has designated the county as in attainment with all the NAAQS;
- DAQ's rules allows applicants to perform some pre-construction activities without a permit at the applicant's risk (e.g., construct a building, store equipment);
- The WV DAQ does not take into consideration the economic impact or lack of due to a particular facility when making a final decision on any permit application;
- The DAQ has determined that the proposed CBP facility is properly defined as a minor stationary source;
- As a proposed minor source, there is no requirement for Premier Concrete to conduct a multi-source air impact analysis nor does the DAQ believe that such modeling, if conducted, would show that the proposed source would cause or contribute to a NAAQS violation.

Questions/Comments

Email 1:

Road access for this operation does not seem to be shown on the permit application - a major concern because of the nature of Greasy Ridge Road.

Plan drawings are incorrect - this may be minor, but roads (US 460) are not depicted and, even though many buildings are shown in the plan, some buildings and residences are not depicted - specifically our home which is the closest to the property in question

What will the DEP be monitoring if this project proceeds, how often will it be monitored and will the public be allowed to see the test results? Is dust monitored? If the public is allowed to see the results, when will it be made available? What can we expect from the DEP?

Who in the DEP will be a contact for concerns and complaints?

How do we go about requesting a meeting with the community to discuss all concerns?

I know your presentation mentioned the monitoring but how will that be monitored and then shared with residents? Is that something that then we have to go online to look for those results. Or will they be sent out?

Email 2:

*This is to formally inform you of our **PROTEST** of this permit being granted. Our family farm borders this property - the farm that the Mannings have lived on since before West Virginia was a State.*

*The pollution from this plant (and the future plant he is intending to build) will **critically affect our lives, our cattle, our water, our food, our health, essentially our whole way of life. Not to mention the multiple bee hives surrounding this area.** My husband has chronic breathing issues due to a motor vehicle accident several years ago **but** once this plant is open and polluting, it will be almost impossible for him to be outdoors tending to our farm, cattle, etc. This will cause a substantial hardship for our family. Our grandchildren also live on this farm with their father and they play outdoors. They will not be able to be in several of our fields closest to the plant or even possibly our entire property due to potential health risks. We are not willing to "chance it" that no harm will come to them.*

From speaking with a neighbor, we were informed that there are no regulations about how far away from a residence this plant should be. How is that even possible? So, they can stick any commercial plant right beside a family home? Beside a food source? Schools? That is crazy and needs to be changed. What good is protecting the environment if there are no people left?

We have spoken to a large portion of Greasy Ridge residents and residents in surrounding neighborhoods. EVERY SINGLE ONE OF THEM IS AGAINST THIS PLANT. Not just for the pollution it will produce but the road traffic it will cause. Already there have been two almost collisions with Mr. Parks' trucks while they are bringing in gravel in preparation for him

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getting this permit. There are several businesses the traffic alone will infer with. It is almost impossible to turn left out of Walmart parking lot onto Greasy Ridge now, once his trucks are running daily, it will be impossible. This will affect the restaurants on Greasy Ridge. People will stop going to a business that they can't get in or out of. Or risk their lives going to. I realize the roads are not a concern for your office. But once again it should be.

We have begun distributing a petition for the residents of Greasy Ridge to sign. As we are a rural area with mainly farms, we will not have thousands of names but we will have the majority of the residents, if not all. Until just recently the ridge families believed it was zoned agricultural. Our local County Commission said there is no zoning in Mercer County.

Please consider our objection and rule against this plant and any future plants at this location. It is not wanted at this location and will cause several problems in the future.

Email 3:

We wish to address our concerns regarding the concrete batch plant applied for by general permit from Premier Concrete. The facility ID, application number and legal notice ID are noted above. We have reviewed the application online and studied the plot layout map attached to the application. We are opposed to the granting of this application for the following reasons.

Obviously, the most important concern is the pollutant emissions. Although the proposal for this permit is supposedly 30 TPY of pollutants emissions, it is our understanding that the majority of these emissions are defined as fugitive. The mere definition of fugitive would lead one to believe that these emissions are an unmeasurable quantity as they cannot be captured....they will go basically wherever the wind blows. With homes and businesses nearby, this seems like an unacceptable consequence of the location and operation of this type of industry.

We are assuming the majority of these emissions are dust from the facility's operation as well as fumes from the processing plant and the numerous diesel vehicles used to transport the plant's product.

The proposed location of this plant is unique as it sits adjacent to both an agricultural area and a highly developed commercial intersection due to its proximity to 177. This area is also monitored by a minority owned bee farm which produces both queen bees and honey. The farm's location is approximately one and a half miles direct flight path from the proposed plant. This farm is protected from aerial sprays by utilities, etc. and works with the federal government in various studies for the bee industry. The owner will be addressing you with their concerns as well.

We have been told that the very fact of it being located right along 177 will be helpful in discovering any major fugitive pm problems as they will be visible. Our contention is, at that point, it is a bit too late. (Furthermore, one of our neighbors said he had been told by your office that inspection of this facility will occur only every three years.). Why, if the goal is environmental protection, would you allow a permit to be granted at this location with little regulation (apparently to be done by the visible eye) when there are other locations available for this permit applicant, specifically near the rock quarry that the he currently owns as well as in the county's industrial park located within a mile of Greasy Ridge?

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Email 4:

I'm reaching out with concerns about a concrete facility moving close to my home. As you are aware living close to a concrete plant causes quite a bit of dust, a kind of air pollution called particulate matter. Inhalation of this can cause pulmonary issues in one with no underlying issues, worsening issues will arise in people with existing medical issues.

In addition to this, heavy diesel trucks will be in and out daily releasing many pollutants in the air like black carbon and nitrogen dioxide. Livestock, gardens, restaurants also are within close proximity to the proposed site.

My husband served in a tour overseas. Years after being home, he was found to have cancer, which was directly linked to burn pit exposure. Currently, he is still in oral chemo. Inhaling toxic pollutants I've seen first hand has harmful effects. If this was you, would you feel comfortable inhaling this daily? Who will be responsible for health issues that will occur due to the pollution forced on us?

In addition, our property value will decrease, we will be forced to travel on a narrow road with large heavy trucks, our road will be dirty and have debris that can damage our vehicles.

Will there be a meeting to voice our concerns? Is this completely out of our hands? Just sit and wait for health issues to arise? Accidents to happen? Property to be damaged?

DAQ Summary Response to Comments:

The DAQ initially received calls inquiring about a Hot Mix Asphalt plant that was rumored to be locating along Greasy Ridge Road in Princeton, WV on March 1, 2024 and again on March 4, 2024. References to ownership of the rumored facility helped to confirm that no application had been received at that time.

Premier Concrete Inc. applied for a General Permit (G50-C) Registration to Construct a Concrete Batch Plant on March 6, 2024 and published their Legal Notice of Application on March 22, 2024.

On March 11, 2024, the DAQ responded to an email concerning work being conducted along Greasy Ridge Road prior to having any permit. The rule citation, for work prior to permit, was provided along with information for public access to ESS, to view the application and proposed facility.

On March 14, 2024, Compliance and Enforcement personnel visited the proposed site at 974 Greasy Ridge Road and reported that normal site preparation was being conducted, any major fugitive emissions issues would be highly visible and that the location meets General Permit siting requirements.

On March 25, 2024, the DAQ responded to an email with information regarding the General Permit Requirements for fugitive emissions, permitting triggers, who to contact with any

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complaints, the resulting scope of any meetings regarding General Permits, and that under State Code, it must be demonstrated an Applicant cannot meet the requirements, before a permit can be denied.

The 30-day, open-comment period expired on April 22, 2024. All emails received have been presented above with the last received on April 16, 2024. The DAQ would like to provide the following information for those who may not have had a chance to express their concerns:

The Compliance and Enforcement (C/E) Section inspects permitted sources to determine the compliance status of the facility including compliance with all testing, parametric monitoring, record-keeping, and reporting requirements.

It is the C/E Section that will ensure that the facility is adhering to their permit requirements once a permit is issued. Minor sources are placed on an inspection schedule and inspected throughout the life of the permit. Any complaints regarding the facility (not adhering) to the permit requirements are welcomed and will be addressed. Their contact information is:

Contact Us or Report a Complaint

West Virginia Department of Environmental Protection

Division of Air Quality

Compliance and Enforcement Section

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Please be sure to include the Facility ID: 055-00154 and Application No.: G50-C132.

All records and documents submitted to the DAQ for compliance purposes must be certified as accurate (and subject to criminal penalties if knowingly inaccurate) by a properly designated "responsible official." All, of these documents - including C/E documents such as NOV's, C&Ds, and CO's - when in final form, and minus any confidential information, will be available on the DAQ Application Xtender (AX) database.

As a common minor source, there will be no real time emissions data or actual emissions stack testing. Our (AX) database is available to the public and can be accessed from the Data Tab on our website:

<https://dep.wv.gov/Data/Pages/default.aspx> ; use DEP as the Username and DEP as the Password.

In regards to requests for a public meeting to discuss this facility, the DAQ respectfully declines. A public meeting would allow you to ask questions about and make comments

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regarding this particular facility, however, as noted above, DAQ believes all questions have been addressed. Since this is a general permit registration application, there can be NO changes to the general permit itself. Overall, if an Applicant can meet all of the General Permit requirements, the permit MUST be issued under the WV State Code. The only way it would be denied, is if it can be demonstrated that the facility cannot meet the requirements of the permit.

The statutory authority of the DAQ (Division of Air Quality) does not extend beyond air quality itself. Restrictions for siting do exist for General Permit Registrations, to which this source will be subject, even though Individual Permits are available which contain no such restrictions. In the absence of zoning laws, which do not exist in Mercer County, industry and residents must exist as neighbors.

Fortunately, Mercer County is considered an “attainment area” for NAAQS and is centrally located within a network of air monitoring stations that can provide important, up-to-date, Air Quality information.

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