

WHEREAS, air pollution is a significant environmental issue that can threaten the health of human beings and impacts the ecological systems of the Earth; and

WHEREAS, the primary air pollutants of concern to the Dallas-Fort Worth area are nitrogen oxides (NO_x), volatile organic compounds (VOCs), particulate matter (PM), carbon dioxide (CO₂), and carbon monoxide (CO); and

WHEREAS, these air pollutants are released from a variety of sources, including vehicles, construction equipment, power plants, cement kilns and other stationary sources; and

WHEREAS, emissions of green house gases, such as CO₂, can contribute to climate change; and

WHEREAS, climate change may cause the Earth's temperature to rise, leading to a variety of environmental concerns, such as changing weather patterns, rising sea levels and extinction of a variety of species; and

WHEREAS, emissions of NO_x and VOCs, when combined in sunlight, form ground-level ozone, which ozone can cause respiratory problems for people, particularly for the young and elderly; and

WHEREAS, the DFW region is classified as a non-attainment area with respect to the eight-hour ozone standard of 85 parts per billion (ppb) of the Environmental Protection Agency (EPA); and

WHEREAS, the EPA has announced it will further strengthen the eight-hour ozone standard to somewhere between 60 and 70 ppb; and

WHEREAS, a State Implementation Plan (SIP) will be submitted to the EPA by the Texas Commission on Environmental Quality (TCEQ) for the purpose of reducing ozone levels in the DFW region to the new eight-hour ozone standard; and

WHEREAS, the EPA allows the TCEQ to take credit as part of the weight of evidence for those measures that cannot be easily quantified or regulated and could assist in lowering the levels to below eight-hour ozone standard; and

WHEREAS, cement kilns make up approximately 43% of all point sources of NO_x emissions in the DFW region; and

WHEREAS, the City of Dallas has made significant progress in addressing air quality issues through purchasing of clean vehicles, construction of green buildings, and reductions in energy consumption; and

WHEREAS, on May 23, 2007, the City Council adopted Resolution No. 07-1608, which established a cement purchasing policy authorizing city staff to require bidders on city projects to specify cement produced only from a dry kiln as the base bid, and an alternative bid for cement from any type of kiln with a preference to bids from cement kilns with emission rates of 1.7 pounds per tons of clinker produced when determining which bid to accept; and

WHEREAS, cement manufacturer Ash Grove Texas, L.P., filed suit against the City and four other local governmental entities, alleging Resolution No. 07-1608 and similar resolutions violate Texas bid law and Ash Grove's federal constitutional rights; and

WHEREAS, following a court-ordered mediation, the parties reached a settlement agreement in principle that, if approved by the City Council, would (1) revise the City's cement purchasing resolution to allow Ash Grove's cement to be competitive for City projects by authorizing a preference for cement produced at any kiln that operates with emissions that are a specific amount below the applicable state standard, and (2) require Ash Grove to reduce its NOx emissions rate to 3.6 lbs of NOx per ton of clinker produced; and

WHEREAS, the settlement terms, by requiring Ash Grove to adopt cleaner practices for all of its cement production, is expected to cut NOx emissions more than Resolution No. 07-1608; and

WHEREAS, the City Attorney and the City Manager seek authorization to settle Ash Grove's lawsuit along the terms agreed to in principle; **Now, Therefore,**

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF DALLAS:

SECTION 1. That Resolution No. 07-1608 is hereby repealed.

SECTION 2. That the City Manager or his designee shall, where allowed by law and unless otherwise directed by the City Council, is hereby authorized, but not required, where allowed by law, to give a preferential bid evaluation of all cement produced by vendors who:

- (1) are in compliance with all applicable state and federal environmental standards relating to the emission of NOx, including all applicable TCEQ and EPA rules and regulations; and
- (2) operate kilns with emissions that exceed the standards for NOx emissions set out in 30 Tex. Admin. Code § 117.3110(a)(1)-(4) (as provided presently and as may be amended in the future) by the following percentage amounts:

March 9, 2011

- (a) for each long wet kiln, 10 percent lower than the standard for long wet kilns located in Ellis County, Texas as set out in 30 Tex. Admin. Code § 117.3110(a)(1)(B);
- (b) for each long dry kiln, 20 percent lower than the standard for long dry kilns located in Ellis County, Texas, as set out in 30 Tex. Admin. Code § 117.3110(a)(2);
- (c) for each preheater kiln, 20 percent lower than the standard for preheater kilns located in Ellis County, Texas, as set out in 30 Tex. Admin. Code § 117.3110(a)(3); and
- (d) for each preheater-precalciner or precalciner kiln, 35 percent lower than the standard for preheater-precalciner and precalciner kilns located in Ellis County, Texas, as set out in 30 Tex. Admin. Code § 117.3110(a)(4).

SECTION 3. That, to be eligible for the preference, a vendor must meet the requirements in Section 2 of this resolution, regardless of where the vendor's kiln is located.

SECTION 4. That the settlement of the lawsuit styled Ash Grove Texas, L.P. v. City of Dallas, et al., Cause No. 3:08-CV-02114-O in the U. S. District Court for the Northern District of Texas in accordance with the proposed settlement terms executed subsequent to the mediation of this case is hereby approved.

SECTION 5. That if the EPA deems selective catalytic reduction (SCR) or any other technology that decreases NOx emissions from a cement kiln by at least 80 percent on a 30-day rolling average to be optimized as set forth in the Consent Decree (Document No. 45) entered in the lawsuit styled United States v. Lafarge North America, Inc., No. 10-00044, in the United States District Court for the Southern District of Illinois, then, following a period of no less than one year, the City Manager or his designee shall, where allowed by law and unless otherwise directed by the City Council, give preferential bid evaluation of cement produced by kilns with emission rates of 1.7 pounds of NOx per ton of clinker or less and that are in compliance with all applicable state and federal environmental standards relating to the emission of NOx.

SECTION 6 5. That this resolution shall take effect immediately from and after its passage in accordance with the provisions of the Charter of the City of Dallas, and it is accordingly so resolved.

DISTRIBUTION: Office of Environmental Quality

APPROVED BY
CITY COUNCIL

MAR -9 2011


City Secretary