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June 7, 2006

CHIEF CLERKS OFFICE

BY HAND DELIVERY

Ms. LaDonna Castañuela
Chief Clerk
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78711-3087

Re: TCEQ Docket No. 2004-0839-AIR; SOAH Docket No. 582-05-1040;
*Application by Southern Crushed Concrete, Inc. to Change the Location of a
Concrete Crushing Facility in Harris County*

Dear Ms. Castañuela:

Enclosed for filing in the above-referenced and numbered proceeding please find and original and twelve (12) copies of Applicant Southern Crushed Concrete, Inc.'s Reply to Executive Director's Brief Supporting Applicant's Emissions Calculations and Modeling. Please return one file-stamped copy with the messenger.

Thank you for your attention to this matter. If you have any questions concerning this filing, please do not hesitate to contact me.

Sincerely,



Derek R. McDonald

Enclosures

cc: The Honorable Craig R. Bennett (via hand delivery)
Martina Cartwright (via electronic and U.S. mail)
Iona McAvoy (via electronic and U.S. mail)
Snehal Patel (via electronic and U.S. mail)
Mary Alice McKaughan (via electronic and U.S. mail)
Brad Patterson (via electronic and U.S. mail)

SOAH DOCKET NO. 582-05-1040
TCEQ DOCKET NO. 2004-0839-AIR

2006 JUN -7 PM 4:46

APPLICATION BY SOUTHERN
CRUSHED CONCRETE, INC., TO
CHANGE THE LOCATION OF A
CONCRETE CRUSHING FACILITY IN
HARRIS COUNTY

§ BEFORE THE STATE OFFICE
§ CHIEF CLERK'S OFFICE
§ OF
§ ADMINISTRATIVE HEARINGS

**APPLICANT SOUTHERN CRUSHED CONCRETE, INC.'S
REPLY TO EXECUTIVE DIRECTOR'S BRIEF SUPPORTING
APPLICANT'S EMISSIONS CALCULATIONS AND MODELING**

TO THE HONORABLE COMMISSIONERS OF THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY:

Applicant Southern Crushed Concrete, Inc. ("Applicant" or "SCC") files this Reply to the Executive Director's Brief, dated May 26, 2006, supporting Applicant's emissions calculations and modeling. As requested by the General Counsel, the Executive Director reviewed the record in the above-referenced contested case hearing and concluded, like the Honorable Craig R. Bennett in his Proposal for Decision, dated January 31, 2006, that Applicant's emissions calculations and modeling were properly conducted in accordance with agency practice and guidelines. For the reasons set forth below, in the Executive Director's Brief, in the Proposal for Decision, and in the Applicant's Replies to Exceptions and Brief in Support of Proposal for Decision, SCC respectfully urges the Commission to approve the above-referenced change of location request and adopt the Executive Director's Response to Comments in accordance with the findings and conclusions set forth in the Proposed Order.

BACKGROUND

By letter dated May 10, 2006, the General Counsel requested the Executive Director to file a brief addressing whether certain aspects of Applicant's emissions calculations and modeling were conducted in accordance with agency practice and guidelines, pursuant to 30 Tex. Admin. Code ("TAC") § 80.257. This request followed the Honorable Craig R. Bennett's own conclusion after weighing all of the evidence presented and, importantly, the credibility of the witnesses in the hearing, that not only was Applicant's modeling was properly conducted in accordance with agency guidelines, but that "Applicant's emissions calculations are accurate"

and “[t]he modeling runs performed by Applicant represent accurate and conservative predictions of air quality impacts from the proposed facility.”¹ Confining itself to the law and policy implications of the issues presented by the General Counsel’s request in accordance with 30 TAC § 80.257(a),² the Executive Director concludes, like Judge Bennett, that “Applicant’s emissions calculations and modeling are consistent with Agency practice and/or guidelines and the ED’s preliminary decision.”³ It bears emphasis that the conclusions reached by Judge Bennett and the Executive Director in this proceeding do not rest on unsupported pronouncements of agency practice and policy. Rather, the record in this proceeding includes clear and credible evidentiary support explaining why such practice and policy is appropriate in this case.

ARGUMENT

The General Counsel requested the Executive Director to address six specific aspects of one issue referred by the Commission for hearing concerning the accuracy of Applicant’s emissions calculations and modeling. SCC’s reply concerning each aspect follows.

1. Whether Applicant’s use of the AP-42 unpaved road factor is consistent with agency practice and/or guidelines, and whether it was appropriate in this case.

The Executive Director confirmed that SCC’s use of the unpaved road factor is consistent with agency practice and Air Permits Division guidelines. The Executive Director’s conclusion is consistent with the conclusion of Judge Bennett, who found that SCC appropriately used the unpaved road factor, with a control efficiency for paving, for calculating road emissions at the 288 Yard.⁴

This shared conclusion regarding the use of the unpaved road factor is well-supported by the record in this matter, as the expected conditions at the 288 Yard (low speeds,

¹ Proposed Order concerning the Application by Southern Crushed Concrete, Inc., to Change the Location of a Concrete Crushing Facility in Harris County, TCEQ Docket No. 2004-0839-AIR, SOAH Docket No. 582-05-1040 [hereinafter Proposed Order] at 11.

² 30 TAC § 80.257(a) provides: “For permit hearings in which the executive director has not participated as a party, the commission or general counsel may request in writing that the executive director file briefs concerning legal or policy issues.”

³ Executive Director’s Response to Office of General Counsel Letter of May 10, 2006 [hereinafter Executive Director’s Brief] at 5.

⁴ Proposal for Decision, Application by Southern Crushed Concrete, Inc., to Change the Location of a Concrete Crushing Facility in Harris County; TCEQ Docket No. 2004-0839-AIR, SOAH Docket No. 582-05-1040; [hereinafter PFD] at 8; Proposed Order, at 7-8.

stop-and-go traffic) more closely match those used in developing the unpaved road factor, and coincide with the conditions for which EPA issued an explicit warning against using the paved road factor.⁵ Moreover, as recognized by both Judge Bennett and the Executive Director, current TCEQ air permitting guidance allows applicants to use the unpaved road factor for paved roads.⁶ Under agency guidance, applicants that are calculating emissions for paved plant roads may use the unpaved road factor to calculate emissions (if appropriate) and then apply a control efficiency for paving.⁷

The use of a control efficiency for paving in calculating haul road emissions recognizes that lower road-dust emissions are expected from a paved road surface than from an unpaved road surface, due to differences in factors such as silt content. The silt content of a road surface, from both deposition of material on the road and the degradation of the road surface itself, is a key factor in determining road emissions. A paved road would be expected to experience less surface degradation than an unpaved road, and traffic on a paved road will result in less dust. The air permitting guidance relied upon by SCC in calculating its haul road emissions recognizes the impact of silt content on haul road emissions by allowing the application of the control efficiency for paving when road and traffic conditions dictate that emissions are more appropriately calculated using the unpaved road factor.

The conditions at the 288 Yard more closely match those used in developing the unpaved road factor, and the record supports Judge Bennett's and the Executive Director's determination that SCC's emissions calculations are reliable and appropriate for calculating 288 Yard haul road emissions. Moreover, the Commission has approved similar uses of the unpaved road factor in no fewer than two previous rulings following contested case hearings.⁸ SCC's use of the AP-42 unpaved road factor is consistent with agency policy, Commission precedent, and appropriate for use at the 288 Yard.

⁵ Protestants' Ex. 2, at 13.2.1-5 - 13.2.1-6 (AP-42 Section 13.2.1, *Paved Roads*).

⁶ PFD, at 9; Proposed Order, at 8; Executive Director's Brief, at 2.

⁷ Applicant's Ex. 30, at 46 (TCEQ *Concrete Batch Plants* guidance).

⁸ 2 Tr. 320:19-321:8 (M. Hunt); PFD, at 8 & n.15 (citing *Frontier Materials*, SOAH Docket No. 582-01-2303 and *Ingram Ready Mix*, SOAH Docket No. 582-98-1009).

2. Whether Applicant's exclusion of road emissions from its short-term modeling runs is consistent with agency practice and/or guidelines, and whether it was appropriate in this case.

The Executive Director correctly determined that SCC's exclusion of haul road emissions from its short-term modeling runs is consistent with agency practice and Air Permits Division guidelines. The Executive Director's conclusion is consistent with that reached by Judge Bennett, who found that the documentary evidence and expert witness testimony in the record support the exclusion of road emissions from short-term modeling runs, and that SCC's short-term modeling runs represent accurate and conservative predictions of the proposed facility's air quality impacts.⁹

The Executive Director's Brief notes that two guidance documents from the agency's Air Permits Division direct applicants to exclude road emissions from short-term (*i.e.*, 1-hour, 3-hour and 24-hour) modeling runs.¹⁰ TCEQ has long held the policy that road emissions should not be included in short-term modeling runs, and SCC followed that policy in modeling impacts of the proposed 288 Yard operations. In addition to the documentary evidence of agency policy, the record contains persuasive expert testimony regarding the problems associated with including road emissions in short-term modeling runs. Including road emissions in short-term modeling runs leads to inaccurate modeling results.¹¹ SCC's expert witness air modeler testified that dispersion models assume that the emissions from a source are continuous.¹² The 299 Yard haul roads were modeled in 14-meter segments. Even under the heaviest anticipated traffic conditions, however, each segment will have truck traffic (and be a source of emissions) only a small percentage of the time, and represents "much more of an intermittent source" than other operations.¹³ Such sources simply do not lend themselves to accurate dispersion modeling.¹⁴ By excluding haul road segments from short-term modeling runs, an applicant generates more reliable modeling that more accurately predicts the emissions impacts of its operations.

⁹ PFD, at 10; Proposed Order, at 8-9, 11.

¹⁰ Applicant's Ex. 23, at 58-59 (TCEQ *Air Quality Modeling Guidelines*); Applicant's Ex. 32, at 1 (TNRCC Interoffice Memorandum, *Policy for Road Emissions Evaluation*).

¹¹ Applicant's Ex. 52, at 23:23-24:4 (T. Prince); 1 Tr. 210:18-23 (T. Prince).

¹² Applicant's Ex. 52, at 23:27-28 (T. Prince).

¹³ 1 Tr. 214:2-11 (T. Prince).

¹⁴ 1 Tr. 214:2-11 (T. Prince).

As stated in the Executive Director's brief, the Commission relies on best management practices, rather than inaccurate predictions of road emissions, to ensure protectiveness when evaluating potential impacts of haul road emissions. This policy is particularly appropriate in this matter, where SCC has committed to go beyond best management practices for control of road dust emissions through the daily use of its own wet sweep and vacuum truck on the 288 Yard's main entrance and exit road.¹⁵ Excluding haul road emissions from short-term modeling runs is consistent with current agency guidance and appropriate for evaluation of the potential air quality impacts of the 288 Yard.¹⁶

3. Whether Applicant's use of the paved road control factor for milled asphalt roads is consistent with agency practice and/or guidelines, and whether it was appropriate in this case.

The Executive Director correctly determined that SCC's use of the paved road control factor for estimating emissions from the milled asphalt road segments is appropriate for calculating haul road emissions from SCC's proposed 288 Yard operations. The Executive Director's position is consistent with that reached by Judge Bennett, who concluded that it was proper for SCC to apply a control factor for paving in calculating emissions from *all* of the 288 Yard haul roads.¹⁷

SCC intends to pave the 288 Yard haul roads with three different surfaces: concrete, hot-mix asphalt and milled asphalt.¹⁸ Milled asphalt roads are surfaced with the same material as hot-mix asphalt roads, but the road surface is formed through high-pressure compaction rather than hot liquid.¹⁹ The record contains extensive testimony from SCC representative Mr. James Miller regarding the roads that will be paved with milled asphalt, including testimony that the surface of milled asphalt roads is a cohesive hard surface that is

¹⁵ 1 Tr. 92:1-10 (J. Miller); PFD, at 11.

¹⁶ SCC's short-term modeling demonstrated that the maximum predicted particulate matter emission impacts of the proposed 288 Yard operations would not exceed the net ground level concentrations for total suspended particulate ("TSP") established in 30 TAC § 111.155. On May 17, 2006, the Commission approved the repeal of 30 TAC § 111.155. While SCC demonstrated compliance with 30 TAC § 111.155, the § 111.155 TSP standards no longer apply to SCC's operations, effective June 11, 2006. 31 *Tex. Reg.* 4651 (June 2, 2006).

¹⁷ PFD, at 13; Proposed Order, at 9.

¹⁸ 3 Tr. 692:10-13 (J. Miller) (concrete approach); 3 Tr. 692:14-20 (J. Miller) (hot-mix asphalt road segments); 3 Tr. 696:8-13, 698:2-18, 717:6-719:5 (J. Miller) (milled asphalt road segments).

¹⁹ 3 Tr. 698:4-11; 17-18 (J. Miller).

impermeable to water, can be swept or washed, and has shown no signs of degradation during extended use at other 288 Yards.²⁰

Perhaps more importantly, the permit itself requires that all on-site haul roads be paved.²¹ If TCEQ or another regulatory authority with jurisdiction determines that certain 288 Yard haul road segments are not paved with a cohesive hard surface, as required by the permit, SCC may be forced to resurface those roads to comply with permit requirements. The Executive Director and Judge Bennett have accurately concluded that the use of a control efficiency for paved roads is appropriate for all 288 Yard haul roads, including those roads paved with milled asphalt.

4. Whether Applicant's failure to take into account stockpile heights when modeling stockpile emissions is consistent with agency practice and/or guidelines, and whether it was appropriate in this case.

The Executive Director correctly determined that SCC's use of an emissions calculation methodology that does not account for stockpile height when estimating stockpile emissions is consistent with agency practice and Air Permits Division guidelines. Judge Bennett similarly determined that SCC's use of the emissions calculation methodology established in TCEQ's current *Rock Crushing Plants* guidance, which does not account for stockpile height, is appropriate for estimating the stockpile emissions from SCC's proposed 288 Yard operations.

It is undisputed that SCC's stockpile emissions calculations were conducted in accordance with the formula provided in TCEQ's current *Rock Crushing Plants* guidance document.²² The formula, which calculates stockpile emissions based on the size of the stockpile (the footprint) and the number of active stockpile days, is a reliable and accurate method for calculating stockpile emissions.²³ As noted by the Executive Director, the agency's current stockpile emissions calculation guidance does not take stockpile height into account when estimating stockpile emissions. Moreover, SCC's stockpile emissions calculations incorporate several layers of conservatism.²⁴

²⁰ 3 Tr. 698:20-22; 701:5-25; 712:12-15; 715:15-21; 717:6-12; 718:25-719:5 (J. Miller).

²¹ Applicant's Ex. 8, at 2 (Draft Permit).

²² Applicant's Ex. 52, at 17:13-18 (T. Prince); 2 Tr. 364:13-17 (M. Hunt); PFD, at 17; Proposed Order, at 9.

²³ 3 Tr. 551:13-18 (T. Prince).

²⁴ 3 Tr. 554:7-14; 555:1-17 (T. Prince).

While SCC did not take stockpile height into account when estimating stockpile emission rates, SCC did account for stockpile height in *modeling* the predicted emissions impacts from the stockpiles. The raw material stockpile at the 288 Yard is approximately 40 feet tall,²⁵ and the PFD recommends an additional permit condition limiting stockpile height to 45 feet.²⁶ SCC assumed a stockpile height of 25 feet in modeling stockpile emissions.²⁷ As explained in the prefiled testimony of SCC's modeling expert witness, using an emission release height of 25 feet for modeling stockpile emissions represents a conservative assumption in predicting emissions impacts from the 288 Yard stockpiles. An increase in the assumed emissions release height from the stockpiles would result in greater dispersion of emissions and thus would be expected to result in lower predicted impacts from the stockpiles.²⁸

The record supports the Executive Director's and Judge Bennett's approval of SCC's stockpile emissions calculations, which were performed in strict accordance with TCEQ's current *Rock Crushing Plants* guidance. Moreover, SCC's use of a 25-foot emission release height for stockpile emissions represents a conservative assumption in modeling stockpile impacts, given the overall stockpile heights at the 288 Yard. As stated by the Executive Director, increasing the stockpile release heights in the model would result in greater dispersion, with associated decreases in ground-level concentrations of particulate matter emissions at the property line.

5. Whether Applicant's use of the "Bissonnet" monitor to provide background concentrations of PM_{2.5} is consistent with agency practice and/or guidelines, and whether it was appropriate in this case.

The Executive Director correctly states that, under current agency policy and practice, an applicant is *not* required to evaluate PM_{2.5} impacts in order to demonstrate that an application will comply with State and federal air quality standards. While current agency policy allows the use of PM₁₀ as a surrogate for PM_{2.5}, SCC nevertheless evaluated potential PM_{2.5} impacts of the 288 Yard for this contested case hearing, to further demonstrate that SCC's 288 Yard operations will be protective. For purposes of that PM_{2.5} modeling work, SCC used the Bissonnet monitor for background concentrations. The record strongly supports the Executive

²⁵ Applicant's Ex. 51, at 14:27-28 (J. Miller).

²⁶ PFD, at 35; Proposed Order, at 21.

²⁷ Applicant's Ex. 52, at 24:21-22 (T. Prince).

²⁸ Applicant's Ex. 52, at 24:23-27 (T. Prince).

Director's and Judge Bennett's shared conclusion that SCC's use of the Bissonnet monitor was consistent with agency practice and Air Permits Division guidelines.

There is no legal requirement to evaluate PM_{2.5} as part of the permitting process. As noted in the Executive Director's Brief, current TCEQ policy directs permit applicants to evaluate the potential impacts of PM₁₀ and to use the PM₁₀ impacts evaluation as a surrogate for a PM_{2.5} evaluation.²⁹ EPA has adopted the same position.³⁰ A demonstration limited to PM₁₀ satisfies SCC's obligations with regard to establishing the protectiveness of any PM_{2.5} emissions impacts. Judge Bennett's PFD states that the modeling performed by both SCC and the Protestants predicts maximum impacts of PM₁₀ that fall below the NAAQS.³¹ Under TCEQ and EPA permitting policy, no further analysis of PM_{2.5} is required.

Despite current policy allowing the use of PM₁₀ as a surrogate, SCC evaluated potential PM_{2.5} impacts of the 288 Yard for this contested case hearing, to further demonstrate that SCC's 288 Yard operations will be protective of human health and the environment. SCC followed current agency guidance in selecting the background monitor location.³² As noted in the Executive Director's Brief, Air Permits Division guidance regarding the selection of background monitor location stresses the proximity of the background monitor to the site of the permit application, and states a preference for monitors located within 10 kilometers of the site.³³ The Bissonnet monitor used by SCC is approximately 10 kilometers from the 288 Yard and is the nearest available monitor.³⁴ SCC also selected the Bissonnet monitor location because it is representative of background conditions in the area of the 288 Yard.³⁵ As noted in the PFD, the Bissonnet monitor and the 288 Yard are in the same relative location and similar distances from both downtown Houston and the industrial corridor along the Houston Ship Channel, two areas that will impact background concentrations of fine particulate emissions.³⁶

²⁹ Applicant's Ex. 23, at 17 (TCEQ *Air Quality Modeling Guidelines*); Applicant's Ex. 52, at 26:23-27:14 (T. Prince).

³⁰ Applicant's Ex. 34, at 1 (EPA, *Interim Implementation of New Source Review Requirements for PM_{2.5}*).

³¹ Applicant's Ex. 27 (Applicant's Maximum Predicted Concentrations); Protestants' Ex. 9 (Protestants' Maximum Predicted Concentrations); Proposed Order, at 11.

³² 3 Tr. 558:14-19; 559:9-12 (T. Prince); Applicant's Ex. 33, at 1 (TCEQ *Background Concentration Determination for Use in NAAQS Analyses*).

³³ Applicant's Ex. 33, at 1 (TCEQ *Background Concentration Determination for Use in NAAQS Analyses*).

³⁴ 3 Tr. 558:14-19; 559:9-12; 561:9-11 (T. Prince).

³⁵ 3 Tr. 577:24-25 (T. Prince).

³⁶ 3 Tr. 559:20-560:5 (T. Prince); PFD, at 19.

SCC's use of the Bissonnet monitor was consistent with agency guidelines regarding the selection of monitors for background concentrations, and provided representative background concentrations of PM_{2.5} emissions that were appropriate for the modeling work performed in this matter.

6. Whether Applicant's inclusion in the screen modeling of the "empty areas" between the various aspects of the rock crushing operations is consistent with agency practice and/or guidelines, and whether it was appropriate in this case.

The Executive Director correctly determined that SCC's inclusion of the "empty areas" in conducting initial screen modeling of the proposed 288 Yard operations is consistent with agency practice.

SCC has performed both screen modeling *and* refined air dispersion modeling that support the pending change of location request. Prior to submitting the change of location request, SCC applied for an alteration to its permit aimed at establishing a 100-foot property-line setback for the aggregate handling, screening and crushing operations authorized in SCC's permit. SCC submitted the screen modeling results in support of that alteration. Screen modeling is a conservative modeling tool, and was prepared for the limited purpose of demonstrating that operations would be protective given the property-line setback.³⁷ The Executive Director approved the permit alteration request, and then used the screen modeling results in determining that SCC's operations at the 288 Yard would be protective.

SCC conducted full refined modeling, a less conservative and more accurate modeling tool, for purposes of this contested case hearing. The results of SCC's refined modeling are part of the record in this proceeding, and SCC's expert witness toxicologist bases his conclusions regarding air quality and the potential for adverse health impacts of the proposed operations on that refined modeling.

While the refined modeling results were the focus of the expert witnesses' opinions in this matter, one party to this matter has taken the position that the various sources included in SCC's initial screen modeling should be fit together like a puzzle, rather than treated as a single volume source that covers the crushing operations and includes the empty areas between sources. SCC's expert witness modeler explained in prefiled testimony and during the

³⁷ Applicant's Ex. 52, at 31:1-3 (T. Prince).

hearing on the merits that screen modeling is single-source modeling, and that the size of the source used in SCC's screen model was an imaginary "box" placed around all of the aggregate handling, screening, and crushing operations.³⁸ SCC's screening, crushing and conveying equipment will be spread out on the crushing yard, not stacked like a puzzle into the smallest possible shape. In addition, as pointed out in the Executive Director's Brief, a front-end loader will operate in the areas between the crushing equipment and stockpiles. Because potential sources of emissions will be spread across the 288 Yard operations, the proper source for screen modeling is a volume source that encompasses the entire operation. SCC's expert witness modeler testified that the screen modeling submitted by SCC was accurate and proper for its purpose.³⁹

The record supports the Executive Director's conclusion that including the "empty areas" in the screen modeling followed agency practice. The Executive Director's position is consistent with that taken by Judge Bennett, who found no error in SCC's screen modeling and that it was logical and proper to include the empty space between the various operations in determining the size of the volume source.⁴⁰

Conclusion

The emissions calculations and modeling presented by SCC demonstrate that operation of the 288 Yard in accordance with the draft permit will not have an adverse effect on the health of the requesters who live within one mile of the facility, nor will it not adversely affect the ability of the requesters to use or enjoy their property. The record in this matter strongly supports the conclusions of both Judge Bennett and the Executive Director that SCC's emissions calculations and modeling have been conducted in accordance with current TCEQ policy and guidelines. The record also strongly supports Judge Bennett's conclusion, after weighing the evidence presented and the credibility of the parties' witnesses, that SCC's emissions calculations and modeling represent accurate calculations and predictions of the proposed 288 Yard operations' air quality impacts. Both agency guidance and reliable expert

³⁸ Applicant's Ex. 52, at 31:14-19 (T. Prince)

³⁹ Applicant's Ex. 52, at 32:9-16 (T. Prince)

⁴⁰ PFD, at 21.

witness testimony support the emissions calculation and modeling methodologies employed by SCC in this matter.

Accordingly, SCC respectfully requests that the Commissioners issue an Order approving SCC's change of location request and directing issuance of Air Quality Permit No. 70136L001 authorizing construction and operation of a portable concrete crushing facility at SCC's 288 Yard.

Respectfully submitted,

BAKER BOTTS, L.L.P.

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CERTIFICATE OF SERVICE

I hereby certify that on the 7th day of June, 2006, a true and correct copy of Applicant Southern Crushed Concrete, Inc.'s Reply to Executive Director's Brief Supporting Applicant's Emissions Calculations and Modeling was served on the following via electronic mail and U.S. mail:

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