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February 21, 2006

VIA U.S. FIRST CLASS MAIL AND FACSIMILE: (512) 239-3311

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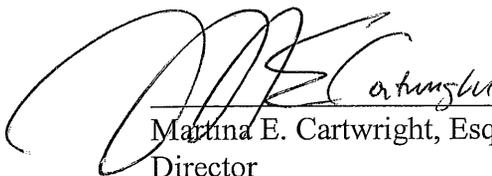
**Re: In the Matter of the Request by Southern Crushed Concrete, Inc. for
Relocation pursuant to Air Quality Permit No. 70136L001; TCEQ
DOCKET NO. 2004-0839-AIR**

Dear Ms. Castanuela:

Please find enclosed Protestants Texas Pipe & Supply, Co., Ltd and CASCC's Exceptions to the Administrative Law Judge's Proposal for Decision. Copies of the attached have been forwarded to all parties of record.

Thank you for your time and consideration of this matter. If you have any questions, please do not hesitate to call.

Regards,



Martina E. Cartwright, Esq.
Director

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

CLERK OF COURTS
STATE OF TEXAS
JAN 31 2 55 PM '06
OFFICE OF THE CLERK OF COURTS
STATE OF TEXAS

IN THE MATTER OF THE) BEFORE THE STATE OFFICE
REQUEST BY SOUTHERN CRUSHED)
CONCRETE, INC. FOR RELOCATION) OF
UNDER AIR QUALITY)
PERMIT NO. 40072) ADMINSTRATIVE HEARINGS

PROTESTANTS CASCC AND TEXAS PIPE & SUPPLY'S
EXCEPTIONS TO ADMINISTRATIVE LAW JUDGE'S
PROPOSAL FOR DECISION

COME NOW the Protestants and file this, their exceptions to Administrative Law Judge Craig R. Bennett's Proposal of Decision, and state as follows:

On or about January 31, 2006, the ALJ issued his proposal for decision in the above-referenced matter, recommending approval of the application, conditioned on changes to the Draft Permit, namely additional operating restrictions as it pertains to record keeping and stockpile height.

The Protestants support the ALJ's additional permit requirements, believing that these measures can potentially mitigate a mere handful of the extensive impacts to the community. However, these efforts will not be sufficient to protect human health and the environment, as mandated by various provisions of the Texas Administrative Code, specifically 30 TAC § 101.21 and 30 TAC § 111.155.

In response to the ALJ's conclusions and analysis, unless discussed *supra*, the Protestants refer the parties to their Closing and Reply Briefs, reducing the need to re-iterate those arguments.

A. Whether or not the Applicant's Emissions Calculations and Modeling are Accurate

3. Road Emissions

The Protestants disagree with the ALJ and re-iterate the arguments in their Closing and Reply Briefs. Further, Protestants incorporate herein the arguments presented by City of Houston and Harris County.

2. Stockpile Emissions

In discussing problems surrounding the issue of stockpile emissions, despite the burden of the Applicant to correctly model actual and accurate emissions rates, the ALJ concluded that the discrepancies between the MAERT in the prior draft permit and the proposed permit in the above referenced matter was not relevant to his consideration due to the uncertainties surrounding the different emissions cited by the parties. However, it is this uncertainty that should give the ALJ pause when considering if the Applicant had employed sound engineering judgment in modeling actual emissions from stockpiles. This issue cannot simply be resolved by stating that it is irrelevant to consideration. It is relevant when the Applicant cannot account for the discrepancies present in the two draft permits, with different throughputs, but remarkably similar emissions rates.

Moreover, despite the opposing parties arguments to the contrary, that height has a significant impact on emissions rates and calculations exist to considering the impact of height, the ALJ concluded "stockpile height does not have a significant impact on emissions." [ALJ's PFD, p. 17] This is certainly a strange result, as further within the body of the PFD, the ALJ notes that even the Applicant's own modeling expert concedes "higher stockpile heights increase the likelihood that emissions will travel further off

site.” Thus, “[a]ccordingly, the higher the stockpile height, the more likely the chance that emissions that would ordinarily be confined closer to the site will, in fact, reach local residential areas and places of education or worship.” In response to that “concern”, the ALJ recommended a stockpile height limitation.

Clearly, the ALJ does recognize that height can and does impact emissions rates. Thus, the Protestants disagree with the ALJ. Further, Protestants incorporate herein the arguments presented by City of Houston and Harris County.

3. *Background Concentrations*

In discussing the appropriate existing background concentrations of PM2.5, the ALJ and the Applicant rely heavily on an eight-year-old internal memo from the TCEQ, which encourages the use of data from monitors within 10 km of the proposed source. [Applicant Ex. 33] However, this memo clearly states that: “while the process can be used by engineers, it is primarily for use by ADMT.” Thus, an Applicant is not constrained to follow this guidance in determining background concentrations for modeling purposes.

However, despite its caution on the memo’s proper and appropriate uses, it is interesting to note that the memo emphasizes the importance of “representativeness.” Indeed, the memo notes that “[r]epresentativeness is determined by *reviewing monitor location, quality of the data, and currentness of the data.*” [Id. *emphasis added*]

In the instant matter, the Applicant’s expert used data from a monitor within the recommended “10 km” range. However, the location of that monitor is hardly representative of the proposed site. The ALJ’s description of the monitoring locate does

not do the site real justice. It is not JUST located in a park. It is located in a park in a heavily residential area, with few commercial or industrial facilities nearby and no major highways. Indeed, further in his analysis of the issue, the ALJ ultimately agrees that the site “is not entirely representative of the 288 yard.” However, he still maintains that the Applicant properly used data from the Bissonnet monitor.

This makes very little sense especially in light of the data employed by the Protestants’ expert. Mr. Hunt toured the areas near and around the monitoring sites—specifically Mae Drive, Clinton Drive, and Bissonnet. He specifically chose monitoring data from a site representative of the proposed site, near and around major highways, and in an area with some industrial activity. This, of course, was in contrast with the Applicant’s expert who did not spend as much time determining the *representativeness* of the monitoring site, and instead chose a site within the 10km range. The ALJ disagreed with the use of the Mae Drive monitoring data, ultimately finding the “proximity” rather than “representativeness” is the rule of thumb in determining the best background monitoring data to employ in conducting modeling.

This defies any kind of logic as it—more likely than not—will result in inaccurate emissions calculations and rates. Thus, the Protestants disagree with the ALJ. Further, Protestants incorporate herein the arguments presented by City of Houston and Harris County.

A. Would operation of the Facility have an Adverse Effect on the Health of the Requesters Who Live Within One Mile of The Facility

The Protestants disagree with the ALJ and re-iterate the arguments in their Closing and Reply Briefs. Further, Protestants incorporate herein the arguments presented by City of Houston and Harris County.

B. Would operation of the Facility Adversely Affect the Ability of the Requesters to Use and Enjoy their Property or Cause Damage to the Requesters' Property?

The ALJ discounts the testimony of the requesters Horticultural Consultants, Inc. and Texas Pipe & Supply, Co. Inc., by noting that it is “lacking in persuasive value because neither of them offered any actual analysis to show the likely effects of the concrete crushing facility on their business.” [ALJ’s PFD, p. 31] However, as lay witnesses—both with extensive experience in their respective fields—both men could and did discuss the potential harm and the financial impact that would be borne by an increase in emissions from the proposed site. For instance, Grant Stephenson—a licensed nurseryman with a number of years of experience in the horticultural business—testified to the effect of dust on plant life, noting that: “It can affect the overall quality of the plant from the amount of photosynthesis that the plant is about to conduct in order to produce chlorophyll to give the plant a deeper, richer green appeal.” [TR, p. 382]

Beyond his extensive experience with plant life, Mr. Stephenson has some familiarity with other nurseries adjacent to concrete crushers and the difference in landscape, particularly the lack or presence of buffers. In his testimony—based on his experiences and observations—he noted that a nursery located next to an SCC site did not deal with a “dust problem” as there were a number of buffers between that particular site and SCC’s operations. [TR 378] In contrast, however, the HWY 288 site had few buffers. Indeed, Mr. Stephenson testified that: “This is pretty open in that whole area.

And you know, it's—I've noticed when I first moved to this site from my old location that the wind was—is much stronger there. I have to water the plant material a lot more often." [Id.] Without question, that "watering duty" would substantially increase the moment operations commenced at the proposed site.

Mr. Rubenstein provided testimony on the additional cost that would be incurred from potential and likely emissions from the proposed site. For instance, dust could potentially damage pipe stored on TPS property—that would not likely be salvaged by cleaning. [TR 490] Damaged pipe would result in lower value and less profits. Further, Protestants incorporate herein the arguments presented by City of Houston and Harris County:

C. Would operation of the Facility have an Adverse Effect on Air Quality

The Protestants disagree with the ALJ and re-iterate the arguments in their Closing and Reply Briefs. Further, Protestants incorporate herein the arguments presented by City of Houston and Harris County.

D. Is a Stockpile Limitation Necessary and are Stockpile Emissions Adequately Addressed in the Permit Conditions

The Protestants agree with the ALJ, except as provided in Harris County and City of Houston's exceptions. Further, Protestants incorporate herein the arguments presented by City of Houston and Harris County.

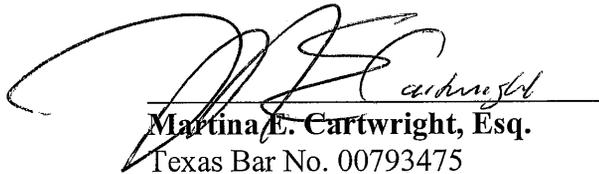
E. Whether or Not the Record Keeping Requirements Set Forth in the Draft Permit are Sufficient to Enable Enforcement.

With the exception of the "watering requirements," the Protestants disagree with the ALJ and re-iterate the arguments in their Closing and Reply Briefs. Further, Protestants incorporate herein the arguments presented by City of Houston and Harris County.

CONCLUSION

The Protestants support ALJ's proposed modifications to the permit. However, the Protestants still vigorously hold that application should be denied, as the Applicant has not demonstrated that the proposed operation will be protective of human health and the environment.

Respectfully Submitted,


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CERTIFICATE OF SERVICE

By my signature below, I hereby certify that a true and correct copy of Protestants CASCC and Texas Pipe & Supply, Co., Ltd.'s Exceptions to the ALJ's Proposal for Decision has been provided to all parties of record, via the methods specified, on the 21st day of February 2006.

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