

Kathleen Hartnett White, *Chairman*
Larry R. Soward, *Commissioner*
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Glenn Shankle, *Executive Director*



TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

November 28, 2006

TO: Persons on the attached mailing list.

RE: Vulcan Construction Materials, L.P.
Permit No. 337M

Decision of the Executive Director.

The executive director has made a decision that the above-referenced permit application meets the requirements of applicable law. **This decision does not authorize construction or operation of any proposed facilities.** This decision will be considered by the commissioners at a regularly scheduled public meeting before any action is taken on this application unless all requests for contested case hearing or reconsideration have been withdrawn before that meeting.

Enclosed with this letter is a copy of the Executive Director's Response to Comments. A copy of the complete application, draft permit and related documents, including public comments, is available for review at the TCEQ Central office. A copy of the complete application, the draft permit, and executive director's preliminary decision are available for viewing and copying at the TCEQ central office, TCEQ San Antonio regional office, and the Bexar County Courthouse, 100 Dolorosa #108, San Antonio, Bexar County, Texas.

If you disagree with the executive director's decision, and you believe you are an "affected person" as defined below, you may request a contested case hearing. In addition, anyone may request reconsideration of the executive director's decision. A brief description of the procedures for these two requests follows.

How To Request a Contested Case Hearing.

It is important that your request include all the information that supports your right to a contested case hearing. You must demonstrate that you meet the applicable legal requirements to have your hearing request granted. The commission's consideration of your request will be based on the information you provide.

The request must include the following:

- (1) Your name, address, daytime telephone number, and, if possible, a fax number.
- (2) If the request is made by a group or association, the request must identify:
 - (A) one person by name, address, daytime telephone number, and, if possible, the fax number, of the person who will be responsible for receiving all communications and documents for the group; and
 - (B) one or more members of the group that would otherwise have standing to request a hearing in their own right. The interests the group seeks to protect must relate to the organization's purpose. Neither the claim asserted nor the relief requested must require the participation of the individual members in the case.
- (3) The name of the applicant, the permit number and other numbers listed above so that your request may be processed properly.
- (4) A statement clearly expressing that you are requesting a contested case hearing. For example, the following statement would be sufficient: "I request a contested case hearing."

Your request must demonstrate that you are an **"affected person."** An affected person is one who has a personal justiciable interest related to a legal right, duty, privilege, power, or economic interest affected by the application. Your request must describe how and why you would be adversely affected by the proposed facility or activity in a manner not common to the general public. For example, to the extent your request is based on these concerns, you should describe the likely impact on your health, safety, or uses of your property which may be adversely affected by the proposed facility or activities. To demonstrate that you have a personal justiciable interest, you must state, as specifically as you are able, your location and the distance between your location and the proposed facility or activities. A person who may be affected by emissions of air contaminants from the facility is entitled to request a contested case hearing.

Your request must raise disputed issues of fact that are relevant and material to the commission's decision on this application. The request must be based on issues that were raised during the comment period. The request cannot be based solely on issues raised in comments that have been withdrawn. The enclosed Response to Comments will allow you to determine the issues that were raised during the comment period and whether all comments raising an issue have been withdrawn. The public comments filed for this application are available for review and copying at the Chief Clerk's office at the address below.

To facilitate the commission's determination of the number and scope of issues to be referred to hearing, you should: 1) specify any of the executive director's responses to comments that you dispute; and 2) the factual basis of the dispute. In addition, you should list, to the extent possible, any disputed issues of law or policy.

How To Request Reconsideration of the Executive Director's Decision.

Unlike a request for a contested case hearing, anyone may request reconsideration of the executive director's decision. A request for reconsideration should contain your name, address, daytime phone number, and, if possible, your fax number. The request must state that you are requesting reconsideration of the executive director's decision, and must explain why you believe the decision should be reconsidered.

Deadline for Submitting Requests.

A request for a contested case hearing or reconsideration of the executive director's decision must be in writing and must be **received by** the Chief Clerk's office no later than **30 calendar days** after the date of this letter: You should submit your request to the following address:

LaDonna Castañuela, Chief Clerk
TCEQ, MC-105
P.O. Box 13087
Austin, Texas 78711-3087

Processing of Requests.

Timely requests for a contested case hearing or for reconsideration of the executive director's decision will be referred to the alternative dispute resolution director and set on the agenda of one of the commission's regularly scheduled meetings. Additional instructions explaining these procedures will be sent to the attached mailing list when this meeting has been scheduled.

How to Obtain Additional Information.

If you have any questions or need additional information about the procedures described in this letter, please call the Office of Public Assistance, Toll Free, at 1-800-687-4040.

Sincerely,



LaDonna Castañuela
Chief Clerk

LDC/cz

Enclosures

MAILING LIST

for

Vulcan Construction Materials, L.P.

Permit No. 337M

FOR THE APPLICANT:

Aleisha Knochenhauer, Environmental
Services Manager
Vulcan Construction Materials, LP
P.O. Box 791550

Debbie Mathews, Office Manager
Westward Environmental, Inc.
P.O. Box 2205
Boerne, Texas 78006

INTERESTED PERSONS:

M. B. Farias
10608 Saltillo Flat
Helotes, Texas 78023

William Mack Rigby
11075 Leslie Road
Helotes, Texas 78023

Melissa Steele
P.O. Box 2205
Boerne, Texas 78006

FOR THE EXECUTIVE DIRECTOR:

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FOR OFFICE OF PUBLIC ASSISTANCE:

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FOR PUBLIC INTEREST COUNSEL:

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FOR THE CHIEF CLERK:

LaDonna Castañuela
Texas Commission on Environmental Quality
Office of Chief Clerk MC-105
P.O. Box 13087
Austin, Texas 78711-3087

PERMIT NO. 337M

APPLICATION BY	§	BEFORE THE
	§	
Vulcan Construction Materials LP	§	TEXAS COMMISSION ON
Hot Mix Asphalt Plant No. 1	§	
Helotes, Bexar County	§	ENVIRONMENTAL QUALITY

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY
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 CHIEF CLERK'S OFFICE

EXECUTIVE DIRECTOR'S RESPONSE TO PUBLIC COMMENT

The Executive Director of the Texas Commission on Environmental Quality (the commission or TCEQ) files this Response to Public Comment (Response) on the renewal application and Executive Director's preliminary decision filed by Vulcan Construction Materials, LP (Applicant). As required by Title 30 Texas Administrative Code § 55.156 (30 TAC § 55.156), before an application is approved, the Executive Director prepares a response to all timely, relevant and material, or significant comments. The Office of Chief Clerk timely received comment letters from the following persons: William Mack Rigby, and M.B. Farias. This Response addresses all timely public comments received, whether or not withdrawn. If you need more information about this permit application or the permitting process please call the TCEQ Office of Public Assistance at 1-800-687-4040. General information about the TCEQ can be found at our website at www.tceq.state.tx.us.

BACKGROUND

Description of Facility

Vulcan Construction Materials LP has applied to the TCEQ for renewal of Air Permit No. 337M under Texas Clean Air Act (TCAA) § 382.055.

This permit will authorize the applicant continued operation of a hot mix asphalt plant. The facility is located at 12354 FM 1560 North, in Helotes, Bexar County. The facility is authorized to operate for 2,600 hours per year. Hourly production is limited to 400 tons, for both standard hot mix and hot mix with crumb rubber. Annual production is limited to 500,000 tons per year (TPY) for standard hot mix, and 40,000 TPY for hot mix with crumb rubber.

Contaminants authorized under this permit consist of particulate matter, including particulate matter less than 10 microns in diameter, organic compounds, nitrogen oxides, sulfur dioxide and carbon monoxide.

Procedural Background

Before work is begun on the construction of a new facility or a modification of an existing facility that may emit air contaminants, the person planning the construction or modification must obtain a permit or permit amendment from the commission. This permit application is for a renewal. The permit application was received on August 18, 2005, and declared administratively complete on August 25, 2005. The Notice of Receipt and Intent to Obtain an Air Quality Permit (public notice) for this permit application was published on September 15, 2005, in the *San Antonio, Express News*. The alternate (Spanish) language public notice was published on September 15, 2005, in *Conexion*. Since this application was administratively complete after September 1, 1999, this action is subject to the procedural requirements adopted in accordance with House Bill 801, 76th Legislature, 1999.

COMMENTS AND RESPONSES

COMMENT 1: Mr. Rigby commented that he, his family, and his neighbors would be adversely affected by the renewal of this permit, which would allow the applicant to continue emitting organic compounds, nitrogen oxides, sulfur dioxides, and carbon monoxide. Mr. Rigby is concerned about the effects of particulate matter, nitrogen oxides, and sulfur dioxide on health, the environment, and property.

RESPONSE 1: The facility will emit the pollutants listed in the comment. However, the permit includes a Maximum Allowable Emission Rates Table, which limits the amounts that can be emitted for each pollutant. These limits were evaluated to ensure they are protective of the public's health and physical property.

The objective of an air permit issued by the TCEQ is to protect the State's air quality by controlling air pollution, so as to protect the public's health, general welfare, and property. The TCEQ applies national health-based standards for certain pollutants, including those emitted by this facility. The National Ambient Air Quality Standards (NAAQS) include both primary and secondary standards. The primary standards are those which the U.S. Environmental Protection Agency (EPA) determines are necessary (with a reasonable margin of safety) to protect the public health, including sensitive members of the population. The secondary NAAQS were developed to protect the public welfare and the environment, including animals, crops, vegetation, and buildings, from any known or anticipated adverse effects associated with the presence of an air contaminant in the ambient air. The evaluation performed on this facility predicted that the resulting emissions would comply with the NAAQS for all pollutants, thus off-property concentrations should not present a health risk.

Compliance with permit conditions should not result in concentrations of pollutants that exceed these standards. If citizens believe the Applicant is causing a nuisance or violating the terms of the permit or other TCEQ rules or regulations, they are encouraged to call the TCEQ Environmental Complaints Hotline at 1-888-777-3186, or the TCEQ San Antonio Regional

Office at (210) 490-3096. If the facility is found to be out of compliance with the terms and conditions of the permit, it will be subject to possible enforcement action.

COMMENT 2: Mr. Rigby commented that the trucks carrying the asphalt from the plant spill the asphalt on Leslie Road.

RESPONSE 2: The air permit authorizes the facility to emit air pollutants that result from the production of hot mix asphalt. The TCEQ does not have jurisdiction to consider material spills that occur during transportation as part of the air permitting process. Please contact your local TDPS officials to address this issue.

COMMENT 3: M. B. Farias commented that the applicant has produced blasts without notifying anyone in proximity. Mr. Rigby commented that a gas build-up led to an explosion that was investigated by the TCEQ regional office.

RESPONSE 3: This air permit authorizes the operation of a hot mix asphalt plant; it does not authorize any blasting, or the emissions that may result. Conducting activities not authorized by the draft permit could subject the Applicant to possible enforcement action.

COMMENT 4: Mr. Rigby commented that the Vulcan facility sits right in the middle of the Helotes Creek and/or its drainage and is in the transition area of the recharge zone of the Edwards Aquifer. Mr. Rigby is concerned about standing water that may be contaminated with chemicals, particularly asphalt, seeping into the water table.

RESPONSE 4: Under the proposed permit, Vulcan is not authorized to contaminate bodies of water. Should a citizen observe that such activities are being conducted, he/she is encouraged to contact the TCEQ, as indicated in Response to Comment Number 1. If proposed operations require permits or review for water issues, the applicant is required to submit the appropriate application to the TCEQ or appropriate authority. However such reviews are separate from the air quality permit application procedure.

COMMENT 5: Mr. Rigby is concerned about the emission of greenhouse gases (water vapor, nitrogen oxides and carbon dioxide, and other gases) into the atmosphere, as well as the removal of some trees within the property.

RESPONSE 5: The air permit which would allow Vulcan to continue with its current operation has a list of specific pollutants it regulates. Emission limits for these pollutants are set at concentrations lower than the National Ambient Air Quality Standards and State regulations. The permit does not set limitations on emission rates for greenhouse gases, other than the ones included in the Maximum Allowable Emission Rates Table.

Further, on July 5, 2000, the agency received a petition for rulemaking from the law firm of Henry, Lowerre, and Frederick on behalf of Public Citizen's Texas Office, Clean Water Action, Lone Star Sierra Club, Sustainable Energy and Economic Development Coalition, and Texas Campaign for the Environment. The petition requested the TCEQ to create new air rules

to encourage reductions in greenhouse gases, promote the efficient use of energy, offer training in methods to reduce carbon dioxide and methane, and develop a climate change action plan. On August 23, 2000, the Commission responded to the petition by issuing a commission decision (Docket No. 2000-0845-RUL). The Commission declined to regulate CO₂ as a greenhouse gas.

COMMENT 6: M. B. Farias commented that, "Vulcan has neglected to personally notify each of us that they are operating a Hot Mix Asphalt Plant at the particular location."

RESPONSE 6: The Executive Director directs applicants to provide public notice as required by commission rules, in accordance with statutory requirements. The required newspaper notice invites citizens to request mailed notice on matters of interest by submitting their contact information to the Office of the Chief Clerk, so that they may receive information regarding particular matters. The Executive Director is required to mail notice to persons on mailing lists maintained by the Office of the Chief Clerk. Additionally, for certain air quality applications, including this application, applicants are required to post signs at the site that provide notice of the filing of an application and commission contact information.

COMMENT 7: M. B. Farias requested the name and qualification of the qualitative and quantitative chemist who is overlooking environmental checks and to be provided collected monitoring data at the site. M. B. Farias also requested the name and qualification of the organic chemist who overlooks the emissions and up to date collected data, along with a personal statement that this environment is safe.

RESPONSE 7: The proposed permit includes requirements for a variety of controls to limit emissions and establishes production and opacity limits as a means to demonstrate compliance with state and federal air quality standards.

The TCEQ does not assign personnel to perform continuous air monitoring at individual facilities. However, if it is determined that the facility exceeded the opacity limits mandated by the permit, the company may be required to perform stack sampling. These tests must prove satisfactory equipment performance, and demonstrate compliance with permit conditions.

The company is required to maintain records of its daily operations over a rolling two year period. These records include maintenance on emission control devices, daily production, and duration of start-up and shutdown, and equipment malfunctions.

Permits are issued by the TCEQ with the legal requirement that the permit holder will comply with the permit conditions and maximum allowable emissions rate table. Funding resource considerations do not allow the TCEQ to make regular visits to all permitted facilities. However, the Agency does have procedures in place to conduct investigations. Please refer to Response to Comment Number 1, which details some of the investigative efforts pursued by the TCEQ.

COMMENT 8: M. B. Farias requested to be sent the date of hearing by October 10, 2005.

RESPONSE 8: Under 30 TAC §55.209(c), the chief clerk shall mail notice to the applicant, executive director, public interest counsel, and all timely commenters and requestors at least 35 days before the first meeting at which the commission considers the requests. The notice shall explain how to participate in the commission decision, describe alternative dispute resolution under commission rules, and explain the relevant requirements of this chapter.

This application, however, may be one for which there is no right to a contested case hearing. Under 30 TAC §55.201(i)(3)(C), there is no right to a contested case hearing on an air application for amendment, modification, or renewal that would not result in an increase in allowable emissions and would not result in the emission of an air contaminant not previously emitted. The commission may hold a contested case hearing if the application involves a facility for which the applicant's compliance history contains violations that are unresolved and that constitute a recurring pattern of egregious conduct that demonstrates a consistent disregard for the regulatory process, including the failure to make a timely and substantial attempt to correct the violations.

COMMENT 9: Mr. Rigby commented that the plant is close enough that he hears noise from the plant almost every day.

RESPONSE 9: The TCEQ's jurisdiction in a permit application is limited to the issues set out by statute. TCEQ does not have jurisdiction to consider noise in determining whether to approve or deny an application. However, the draft permit does not allow the Applicant to create or maintain a condition of nuisance that interferes with a landowner's use and enjoyment of his property. Nor does it limit the ability of a landowner to seek relief from a court in response to activities that interfere with the landowner's use and enjoyment of his property.

COMMENT 10: Mr. Rigby commented that he would adjust the permit by denying renewal. He stated that denying renewal would help assure a better environment and quality of life for all people, animals, and plants that live near the Vulcan plant.

RESPONSE 10: Air quality permit applications are evaluated to determine whether standards outlined in the Texas Clean Air Act (TCAA) and applicable state and federal rules and regulations are met. As part of the permit evaluation process, the permit reviewer identifies all sources of air contaminants at the proposed facility, assures that the facility will be using the best available control technology (BACT) applicable for the sources and types of contaminants emitted, and determines that no adverse effects to public health, general welfare, or physical property are expected to result from a facility's proposed emissions. The TCEQ cannot deny a permit if the applicant demonstrates that all applicable statutes, rules, and regulations will be met. Special conditions and a maximum allowable emission rates table are created to establish guidelines for the operation of the facility. The permit conditions are developed such that a facility that is operated within the terms and conditions of the permit should be able to operate in compliance with standards outlined in the TCAA and applicable state and federal rules and regulations.

COMMENT 11: Mr. Rigby commented that on occasion he can smell sulfur being emitted from the plant.

RESPONSE 11: Permit applicants must comply with 30 Texas Administrative Code § 101.4, which prohibits nuisance conditions. The rule states that "no person shall discharge from any source" air contaminants which are or may "tend to be injurious to or adversely affect human health or welfare, animal life, vegetation, or property, or as to interfere with the normal use and enjoyment of animal life, vegetation, or property." "Air contaminant" is defined in the Texas Clean Air Act (TCAA) § 382.003(2), to include "particulate matter, radioactive material, dust, fumes, gas, mist, smoke, vapor, or odor." Emissions from the facility are not expected to produce nuisance odors. However, individuals are encouraged to report any concerns about nuisance issues by contacting the Regional Office at 210-490-3096, or by calling the twenty-four hour toll-free Environmental Complaints Hotline at 1-888-777-3186. The TCEQ investigates all complaints received. If the facility is found to be out of compliance with the terms and conditions of the permit, it will be subject to possible enforcement action.

CHANGES MADE IN RESPONSE TO COMMENT

No changes to the draft permit have been made in response to public comment.

Respectfully submitted,

Texas Commission on Environmental Quality

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Environmental Law Division

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