

TCEQ DOCKET NO. 2007-0491-AIR

2007 MAY 21 PM 3:09

<p>APPLICATION BY JOBE MATERIALS, L.P. FOR AIR QUALITY PERMIT NO. 78295L001, EL PASO, EL PASO COUNTY, TEXAS</p>	<p>§ § § §</p>	<p>BEFORE THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY</p>	<p>CHIEF CLERKS OFFICE</p>
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**APPLICANT, JOBE MATERIALS, L.P.'S RESPONSE
TO REQUESTS FOR CONTESTED CASE HEARING**

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

COMES NOW Jobe Materials, L.P. ("Jobe"), Applicant in this proceeding, and hereby submits this, its *Response to Requests for Contested Case Hearing* ("Response"), arguing that all requests for contested case hearing filed with the Texas Commission on Environmental Quality ("TCEQ" or the "Commission") in this proceeding should be denied and Air Quality Permit No. 78295L001 should be approved, and would respectfully show the Honorable Commissioners as follows:

I. BACKGROUND

Jobe has applied to TCEQ for Air Quality Permit No. 78295L001 (the "Permit"). When approved, the Permit will authorize the construction of a portable rock crushing plant to be located approximately one-half mile west of the intersection of State Highway 3255 (Martin Luther King) and the Texas/New Mexico state line, in the City of El Paso, El Paso County, Texas. The primary purpose of the proposed Jobe facility is to support the growth and development of the Fort Bliss military base, resulting from the U.S. Department of Defense base realignment and closure ("BRAC") recommendations, and other development in northeast El Paso. The proposed facility has the support of the City of El Paso and local and state elected

officials.¹ The permit for the proposed Jobe facility will authorize only the emissions of particulate matter, including PM₁₀. The facility's total PM₁₀ emissions will be less than 10.5 tons per year.

Jobe's application for the Permit was filed on March 8, 2006. The application was declared administratively complete on March 29, 2006. All appropriate notices have been published, including: (1) the Notice of Receipt and Intent to Obtain an Air Quality Permit on April 17, 2006, in the *El Paso Times*; (2) the Alternative Language Notice on April 18, 2006, in *El Diario*; (3) the Notice of Application and Preliminary Decision on December 13, 2006, in the *El Paso Times*; and (4) the Alternative Language Notice on December 13, 2006, in *El Diario*. A public meeting on the application was held in the City of El Paso on January 18, 2007. Because the application was deemed administratively complete after September 1, 1999, the application is subject to the procedural requirements established by House Bill 801.

II. ARGUMENT AND AUTHORITIES

Pursuant to Commission regulations, a request for a contested case hearing is only to be granted if the request is:

- (1) made by the applicant or the executive director;
- (2) made by an *affected person*²

With regard to the term "affected person" Commission rules provide the following:

- (a) For any application, an affected person is one who has a personal justiciable interest related to a legal right, duty, privilege, power, or economic

¹ See, e.g., Letter from Ms. Melina Castro, City Representative, City of El Paso, to Office of the Chief Clerk (Jan. 17, 2007); Letter from Representative Patrick B. Haggerty, Texas House of Representatives, to Mr. Glenn Shankle, Executive Director, TCEQ (Oct. 26, 2006), attached hereto as Attachment 1.

² 30 TEX. ADMIN. CODE § 55.211(c) (2007) (emphasis added).

interest affected by the application. *An interest common to members of the general public does not qualify as a personal justiciable interest.*

* * *

(c) In determining whether a person is an affected person, all factors shall be considered, including, but not limited to, the following:

(1) whether the interest claimed is one protected by the law under which the application will be considered;

(2) distance restrictions or other limitations imposed by law on the affected interest;

(3) whether a reasonable relationship exists between the interest claimed and the activity regulated;

(4) likely impact of the regulated activity on the health and safety of the person, and on the use of the property of the person;

(5) likely impact of the regulated activity on use of the impacted natural resource by the person³

In addition, for requests for hearing filed by a group or association, the Commission is to consider the following factors:

(a) A group or association may request a contested case hearing only if the group or association meets all of the following requirements:

(1) *one or more members of the group or association would otherwise have standing to request a hearing in their own right;*

(2) the interests the group or association seeks to protect are germane to the organization's purpose; and

(3) neither the claim asserted nor the relief requested requires the participation of the individual members in the case.⁴

³ *Id.* § 55.203(a)&(c) (2007) (emphasis added). In addition, Texas Health and Safety Code Section 5.115(a) provides, in relevant part:

For the purpose of an administrative hearing held by or for the commission involving a contested case, "affected person," or "person affected," or "person who may be affected" means a person who has a personal justiciable interest related to a legal right, duty, privilege, power, or economic interest affected by the administrative hearing. *An interest common to members of the general public does not qualify as a personal justiciable interest.*

TEX. HEALTH & SAFETY CODE ANN. § 5.115(a) (2007) (emphasis added).

⁴ 30 TEX. ADMIN. CODE § 55.205(a) (2007) (emphasis added).

In this proceeding, no individual or entity that has requested a contested case hearing meets the Commission's regulatory requirements for "affected person."⁵ Therefore, all requests for contested case hearing should be denied and the Permit should be issued.

Based on correspondence received by the Commission, it appears that requests for a contested case hearing were submitted by approximately twenty-five individuals/couples⁶ and one group or association.⁷ Neither the individual/couple hearing requesters nor the group/association are affected persons as contemplated by Commission rules; therefore, all hearing requests should be denied.

A. NONE OF THE INDIVIDUAL/COUPLE HEARING REQUESTERS ARE AFFECTED PERSONS

As identified above, to grant a request for contested case hearing, the Commission must determine that the requester is an affected person. In making the affected person determination, the Commission must first determine that a particular hearing requester has a personal justiciable interest that is not common to members of the general public. "An interest common to members of the general public does not qualify as a personal justiciable interest."⁸ None of the

⁵ Also, neither the applicant nor the Executive Director of TCEQ requested a contested case hearing.

⁶ It is unclear whether the request filed by Ms. Christina Koerber was filed on her behalf as an individual or whether it was filed on behalf of the North Hills Neighborhood Pride Association. See Letter from Ms. Christina M. Koerber to Chief Clerk, TCEQ (May 17, 2006). As addressed below, Ms. Koerber is not an affected person, nor did she provide any information in her hearing request letter identifying that any other member of the North Hills Neighborhood Pride Association would be an affected person pursuant to Commission rules. As such, the hearing request should not be granted for Ms. Koerber, nor should a hearing request for the North Hills Neighborhood Pride Association be granted.

⁷ Nearly identical requests for contested case hearing were filed on behalf of the El Paso Regional Group of the Sierra Club by Mr. Bill Addington and Mr. Laurence Gibson. See Letter from Mr. Bill Addington, El Paso Regional Group, Sierra Club, to Office of the Chief Clerk, TCEQ (Mar. 27, 2007); Letter from Mr. Laurence Gibson, El Paso Regional Group, Sierra Club, to Office of the Chief Clerk, TCEQ (Mar. 27, 2007); Letter from Mr. Laurence Gibson, El Paso Regional Group, Sierra Club, to Office of the Chief Clerk, TCEQ (Mar. 27, 2007).

⁸ TEX. HEALTH & SAFETY CODE ANN. § 5.115(a) (2007).

individual/couple hearing requesters have identified a justiciable interest that is not common to members of the general public.

Of the approximately twenty-five individual/couple hearing requesters, none lives within three miles of the proposed Jobe facility. In fact, the closest of these hearing requesters lives more than 3.2 miles from the proposed Jobe facility. As illustrated on the Area Map in Attachment 2 there are no residences within three miles of the proposed Jobe facility. Also, contrary to claims made by some hearing requesters, the nearest school is approximately 3.2 miles from the proposed Jobe facility. Because of the great distance between the proposed Jobe facility and the hearing requesters, the hearing requesters have failed to raise any issues that could be considered justiciable interests not common to the general public. Instead, they simply raise very general issues, failing to show how they would be affected any differently than the general public. As such, pursuant to Texas Health and Safety Code Section 5.115(a) and Texas Administrative Code Title 30, Section 55.203(a), all of the individual/couple hearing requests should be denied.

B. THE EL PASO REGIONAL SIERRA CLUB GROUP IS NOT AN AFFECTED PERSON

As with the individual/couple hearing requesters, the El Paso Regional Sierra Club Group ("Sierra Club") fails to assert an interest that is not common to the general public, and thus cannot be considered an affected person. As identified above, for a group or association to be considered an affected person, one or more members of the group or association must otherwise have standing to request a hearing in their own right. The Sierra Club members on which the hearing request is based live more than three miles from the proposed Jobe facility. The Sierra Club's letters identify three members that live 3.2 miles, 4 miles, and 6.5 miles from the

individual Sierra Club members identified in Sierra Club's requests letters, Sierra Club has failed to raise any issues that could be considered justiciable interests not common to the general public. As such, pursuant to Texas Health and Safety Code Section 5.115(a) and Texas Administrative Code Title 30, Section 55.203(a), Sierra Club's request for contested case hearing should be denied.

III. CONCLUSION AND PRAYER

All requests for contested case hearing filed in this proceeding should be denied because they were not submitted by affected persons, as required by statute and TCEQ rules. Jobe Materials, L.P. respectfully requests that the Honorable Commissioners of the Texas Commission on Environmental Quality deny all requests for contested case hearing and approve Air Quality Permit No. 78295L001.

Respectfully submitted,

Erich M. Birch
Birch, Becker & Moorman, LLP
7000 North MoPac Expressway
Plaza 7000, Second Floor
Austin, Texas 78731
(512) 514-6747
(512) 514-6267 – fax

By: _____

ERICH M. BIRCH
State Bar No. 02328395

ATTORNEYS FOR JOBE MATERIALS, L.P.

CERTIFICATE OF SERVICE

I certify that an original and eleven true and correct copies of the foregoing document have been filed with the Office of the Chief Clerk of the Texas Commission on Environmental Quality. I also certify that a true and correct copy of the foregoing document has been served upon all required individuals and entities as identified on the General Counsel's Mailing List for this docket via facsimile, certified mail return receipt requested, hand delivery, overnight delivery, or electronic mail addressed to:

<p>Ms. LaDonna Castañuela Office of the Chief Clerk (MC-105) Texas Commission on Environmental Quality P.O. Box 13087 Austin, Texas 78711-3087 (512) 239-3300 (512) 239-3311 (Fax)</p>	<p>For the Office of the Chief Clerk of the Texas Commission on Environmental Quality</p>
<p>Mr. Brad Patterson Staff Attorney, Environmental Law Division (MC-173) Texas Commission on Environmental Quality P.O. Box 13087 Austin, Texas 78711-3087 (512) 239-0600 (512) 239-0606 (Fax)</p>	<p>For the Executive Director of the Texas Commission on Environmental Quality</p>
<p>Mr. Michael D. Gould Technical Staff Air Permits Division (MC-163) Texas Commission on Environmental Quality P.O. Box 13087 Austin, Texas 78711-3087 (512) 239-1097 (512) 239-1300 (Fax)</p>	<p>For the Executive Director of the Texas Commission on Environmental Quality</p>
<p>Mr. Beecher Cameron Air Permits Division (MC-163) Texas Commission on Environmental Quality P.O. Box 13087 Austin, Texas 78711-3087 (512) 239-1495 (512) 239-1300 (Fax)</p>	<p>For the Executive Director of the Texas Commission on Environmental Quality</p>

<p>Mr. Blas J. Coy, Jr. Public Interest Counsel (MC-103) Texas Commission on Environmental Quality P.O. Box 13087 Austin, Texas 78711-3087 (512) 239-6363 (512) 239-6377 (Fax)</p>	<p>For the Office of Public Interest Counsel of the Texas Commission on Environmental Quality</p>
<p>Ms. Bridget Bohac Acting Director Office of Public Assistance (MC-108) Texas Commission on Environmental Quality P.O. Box 13087 Austin, Texas 78711-3087 (512) 239-4000 (512) 239-4007 (Fax)</p>	<p>For the Office of Public Assistance of the Texas Commission on Environmental Quality</p>
<p>Mr. Kyle Lucas Alternative Dispute Resolution (MC-222) Texas Commission on Environmental Quality P.O. Box 13087 Austin, Texas 78711-3087 (512) 239-4010 (512) 239-4015</p>	<p>For Alternative Dispute Resolution, Texas Commission on Environmental Quality</p>
<p>Mr. Bill Addington P.O. Box 9191 El Paso, Texas 79995-9191</p>	<p>Requester</p>
<p>Mr. Joel A. Bay 4282 Loma Casitas Road El Paso, Texas 79934-3773</p>	<p>Requester</p>
<p>Mr. Charles E. Brown 4312 Loma Clara Court El Paso, Texas 79934-3806</p>	<p>Requester</p>
<p>Mr. Gregory K. Brown 4245 Loma Taurina Drive El Paso, Texas 79934-3732</p>	<p>Requester</p>

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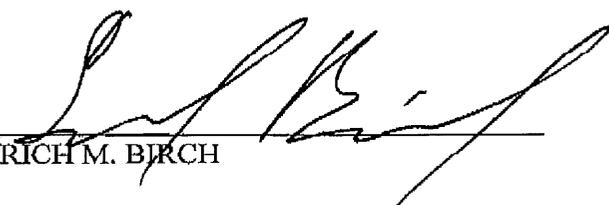
Ms. Peggy Brown 4245 Loma Taurina Drive El Paso, Texas 79934-3732	Requester
Concerned Citizen 4377 Loma de Brisas Drive El Paso, Texas 79934-3741	Requester
Ms. Barbara Crotte 10815 Loma del Sol Drive El Paso, Texas 79934-3782	Requester
Ms. Patricia Esparza 4312 Loma del Norte Drive El Paso, Texas 79934-3776	Requester
Mr. Leon C. Gauthier, III 4316 Loma del Norte Drive El Paso, Texas 79934-3776	Requester
Mr. Laurence Gibson 3120 Red Sails Drive El Paso, Texas 79936-2122	Requester
Mr. Daniel Gómez 11344 Stanley Green Way El Paso, Texas 79934-3809	Requester
Ms. Ruth M. Gomez 11344 Stanley Green Way El Paso, Texas 79934-3809	Requester
M.A. Hunter 4116 Loma Rosada Drive El Paso, Texas 79934-3769	Requester
Pat Jacquez 4361 John B. Oblinger Drive El Paso, Texas 79934-3797	Requester
Ms. Christina M. Koerber 4113 Loma Rosada Drive El Paso, Texas 79934-3769	Requester

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Mr. James Koerber 4113 Loma Rosada Drive El Paso, Texas 79934-3769	Requester
Ms. Anita Martin 11348 Stanley Green Way El Paso, Texas 79934-3809	Requester
Mr. Camille J. Martin 11348 Stanley Green Way El Paso, Texas 79934-3809	Requester
Ms. Sylvia Y. Mueller 4108 Loma Rosada Drive El Paso, Texas 79934-3769	Requester
Mr. William Mueller 4108 Loma Rosada Drive El Paso, Texas 79934-3769	Requester
Mr. and Mrs. James Ray Myrick Jr. 4316 Loma Clara Court El Paso, Texas 79934-3806	Requester
Mr. James W. Pate 4368 Loma de Brisas Drive El Paso, Texas 79934-3741	Requester
Ms. Sandra Rivera 11352 Stanley Green Way El Paso, Texas 79934-3809	Requester
Mr. James Ryan 11032 Loma de Color Drive El Paso, Texas 79934-3583	Requester
Ms. Alice Takase Box 6945 Fort Bliss, Texas 79906	Requester
Mr. Ingo Thomas 11009 Loma Grande Drive El Paso, Texas 79934-3526	Requester

Ms. Raquel A. Torres 9552 Blue Wing Drive El Paso, Texas 79924-6302	Requester
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On this the 21st day of May, 2007,


ERICH M. BIRCH

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Attachment 1

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El Paso, Texas
The International City

DPA RECEIVED

JAN 18 2007

MELINA CASTRO
CITY REPRESENTATIVE
DISTRICT NO. 4

January 17, 2007

HAND DELIVERED TO TCEQ AT PUBLIC MEETING HELD AT THE HILTON EL PASO AIRPORT/WYNDHAM EL PASO AIRPORT, 2027 AIRWAY BLVD., EL PASO, TX ON JANUARY 18, 2007

Office of the Chief Clerk
MC-105
TCEQ
P.O. Box 13087
Austin, Texas 78711-3087

TEXAS
COMMISSION
ON ENVIRONMENTAL
QUALITY
2007 JAN 30 PM 3:50
CHIEF CLERK'S OFFICE

**Re: Jobe Materials, L.P.
Permit Application for Section 3/Hitt Canyon Rock Crusher
Air Quality Permit No. 78295L001**

To Whom It May Concern:

Please be advised that I am the District 4 Representative for the El Paso City Council. My district includes Northeast El Paso and the area where Jobe has applied to the TCEQ for an air quality permit for a portable rock crushing plant.

When this matter came before the El Paso City Council regarding the zoning of the property where the rock crusher will be located, I supported and voted for the granting of the zoning for this property as a quarry.

At this time, I would like to go on record as being in support of the Texas Commission on Environmental Quality's approval of Jobe Materials, L.P.'s application of Air Quality Permit No. 78295L001, which would authorize construction of a portable rock crushing plant at the site approximately 1/2 mile west of the intersection of State Highway 3255 (Martin Luther King, Jr.) and Stan Roberts (State Highway 2539).

I believe that having another source of construction rock in Northeast El Paso will be beneficial to Northeast El Paso, the City of El Paso, and Fort Bliss, and the many construction projects that are now ongoing at Fort Bliss and in Northeast El Paso.

Very truly yours,

Melina Castro
City Representative
District #4 - Northeast

767



Patrick B. Haggerty

District 78

NOV 08 2006
EYES ONLY

October 26, 2006

RECEIVED BY OPA
TRACKING # 15263
ASSIGNED TO: LPR

NOV 08 2006

DUE DATE: 11-16-06

Mr. Glenn Shankle
Executive Director
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, TX 78711-3087

Re: Application by Jobe Materials, L.P. for Section 3 Rock Crusher
Air Quality Permit No. 782951001
Customer Reference No. ICN602822869
Regulated Entity No. IRN104915202

Dear Mr. Shankle:

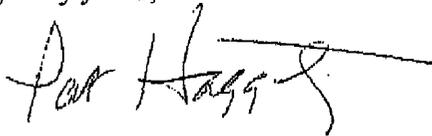
The above-referenced application for a permit for a rock crusher is located in my district in El Paso County, Texas. By this letter, I wish to indicate to the TCEQ my strong support for the granting of this application.

The growth and development that is occurring at Fort Bliss at the present time is unprecedented. As a result, there is a tremendous demand for construction materials and aggregates to support the growth and development at Fort Bliss and in Northeast El Paso. Jobe Materials, L.P. has substantial contracts and commitments to provide materials for this growth and development; both at Fort Bliss and in Northeast El Paso, and this Site, by reason of its location in Northeast El Paso, has the potential of playing a key role in providing those needed aggregate and construction materials in an efficient manner.

Anything that you can do to make sure that the processing of this permit application moves through the TCEQ regulatory process in a timely manner would be appreciated.

Please do not hesitate to contact me if you should have any questions.

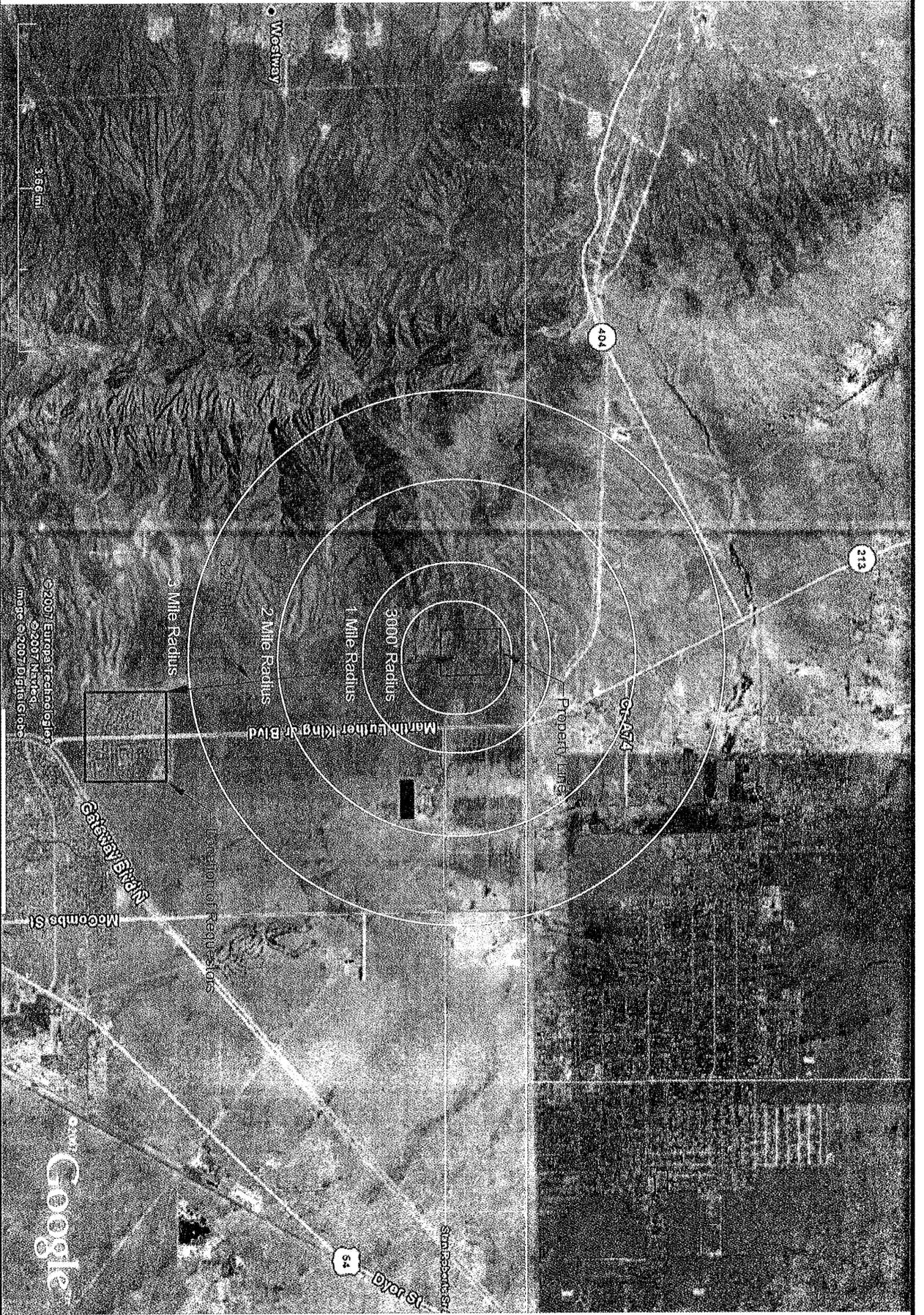
Very truly yours,

A handwritten signature in black ink, appearing to read "Pat Haggerty", with a horizontal line drawn through the middle of the signature.

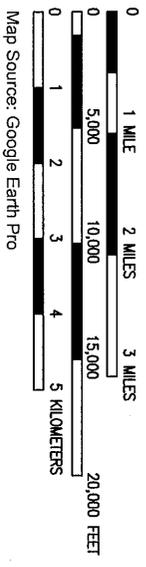
Representative Patrick B. Haggerty
District 78

pc: Mr. Mike Gould
TCEQ Office of Permitting, Remediation and Registration
Air Permits Division (MC-163)
P.O. Box 13087
Austin, TX 78711-3087

Attachment 2



SCALE 1:100,000



Map Source: Google Earth Pro



MAP LOCATION



Aggregate Manufacturing	
Designed by:	Project No.:
K. Ellis	05099.067
Filename:	Date:
Sec3 Maps.dwg	5/21/2007

AREA MAP

JOBE MATERIALS, L.P.
Hitt Canyon Crusher

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Image ©2007 DigitalGlobe

Google