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Blas J. Coy, Jr., *Public Interest Counsel*

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

May 21, 2007

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

2007 MAY 21 PM 3:03
CHIEF CLERKS OFFICE
TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

RE: JOBE MATERIALS, L.P.
TCEQ DOCKET NO. 2007-0491-AIR

Dear Ms. Castañuela:

Enclosed for filing is the Public Interest Counsel's Response to Hearing Requests in the above-entitled matter.

Sincerely,

A handwritten signature in cursive script, appearing to read "Garrett Arthur".

Garrett Arthur, Attorney
Public Interest Counsel

cc: Mailing List

Enclosure

REPLY TO: PUBLIC INTEREST COUNSEL, MC 103 • P.O. BOX 13087 • AUSTIN, TEXAS 78711-3087 • 512-239-6363

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TCEQ DOCKET NO. 2007-0491-AIR

2007 MAY 21 PM 3:03

APPLICATION BY
JOB MATERIALS, L.P.
FOR AIR QUALITY PERMIT
NO. 78295L001

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BEFORE THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY

CHIEF CLERKS OFFICE

**THE OFFICE OF PUBLIC INTEREST COUNSEL'S
RESPONSE TO HEARING REQUESTS**

To the members of the Texas Commission on Environmental Quality:

The Office of Public Interest Counsel (OPIC) of the Texas Commission on Environmental Quality (TCEQ or the "Commission") files this response to hearing requests.

I. Introduction

On March 8, 2006, Jobe Materials, L.P. ("Jobe" or the "Applicant") applied to the TCEQ for an air quality permit. This permit would authorize the construction of a portable rock crushing plant at a site in El Paso located approximately 0.5 mile southwest of the intersection of State Highway 3255 and the Texas / New Mexico state line. The application was declared administratively complete March 29, 2006. On April 17, 2006, Jobe published the first notice in the *El Paso Times*, and the alternative language notice was published April 18, 2006, in *El Diario*. The second newspaper notice was published December 13, 2006, in the *El Paso Times* and in *El Diario*. A public meeting was held January 18, 2007, in El Paso, and the Executive Director's (ED) Response to Comments (RTC) was filed February 16, 2007.

The agency received 27 hearing requests from the following persons: Bill Addington, Joel Bay, Charles Brown, Gregory Brown, Peggy Brown, Concerned Citizen, Barbara Crotte, Patricia Esparza, Leon Gauthier, Laurence Gibson, Daniel Gomez, Ruth Gomez, Ma Hunter, Pat Jacquez, Christina Koerber, James Koerber, Anita Martin, Camille Martin, Sylvia Mueller,

William Mueller, James Ray Myrick, James Pate, Sandra Rivera, James Ryan, Alice Takase, Ingo Thomas, and Raquel Torres.

II. Applicable Law

This application was declared administratively complete after September 1, 1999, and is therefore subject to the procedural requirements adopted pursuant to House Bill 801 (76th Leg., 1999).

Under Title 30 Texas Administrative Code (TAC) § 55.201(d), a hearing request must substantially comply with the following:

- (1) give the name, address, daytime telephone number, and, where possible, fax number of the person who files the request;
- (2) identify the person's personal justiciable interest affected by the application, including a brief, but specific, written statement explaining in plain language the requestor's location and distance relative to the proposed facility or activity that is the subject of the application and how and why the requestor believes he or she will be adversely affected by the proposed facility or activity in a manner not common to members of the general public;
- (3) request a contested case hearing;
- (4) list all relevant and material disputed issues of fact that were raised during the public comment period and that are the basis of the hearing request. To facilitate the commission's determination of the number and scope of issues to be referred to hearing, the requestor should, to the extent possible, specify any of the executive director's responses to comments that the requestor disputes and the factual basis of the dispute and list any disputed issues of law or policy; and
- (5) provide any other information specified in the public notice of application.

Under 30 TAC § 55.203(a), 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. An interest common to members of the general public does not qualify as a personal justiciable interest. Section 55.203(c) provides relevant factors to be considered in determining whether a person is affected. These factors include:

- (1) whether the interest claimed is one protected by the law under which the application will be considered;
- (2) distance restriction 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, safety, and use of property of the person;
- (5) likely impact of the regulated activity on use of the impacted natural resource by the person; and
- (6) for governmental entities, their statutory authority over or interest in the issues relevant to the application.

As provided by 30 TAC § 55.205(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.

Under 30 TAC § 55.211(c)(2), a hearing request made by an affected person shall be granted if the request:

- (A) raises disputed issues of fact that were raised during the comment period, that were not withdrawn by the commenter by filing a withdrawal letter with the chief clerk prior to the filing of the executive director's response to comment, and that are relevant and material to the commission's decision on the application;
- (B) is timely filed with the chief clerk;
- (C) is pursuant to a right to hearing authorized by law; and
- (D) complies with the requirements of § 55.201.

Accordingly, pursuant to 30 TAC § 55.209(e), responses to hearing requests must specifically address:

- (1) whether the requestor is an affected person;
- (2) which issues raised in the hearing request are disputed;
- (3) whether the dispute involves questions of fact or law;
- (4) whether the issues were raised during the public comment period;
- (5) whether the hearing request is based on issues raised solely in a public comment withdrawn by the commenter in writing by filing a withdrawal letter with the Chief Clerk prior to the filing of the Executive Director's Response to Comment;
- (6) whether the issues are relevant and material to the decision on the application; and
- (7) a maximum expected duration for the contested case hearing.

III. Analysis

A. Hearing Requests

1. El Paso Regional Sierra Club Group

The El Paso Regional Sierra Club Group states that the following members of the group would have standing to request a hearing in their own right: Pat Jacquez, Nancy Bain, and Joe and Inga Groff. The group's hearing request raises the following issues:

- Adverse impacts on human health, the environment, and air quality
- Issuance of an air permit to Jobe is inconsistent with sustainable economic development
- Asthma, respiratory problems, and cardio-pulmonary impacts for children and the elderly
- TCEQ cannot accurately predict air emissions because particulate matter (PM) and chemical monitoring stations do not exist near the proposed site
- Minerals other than limestone are present at the proposed site
- Jobe's formula and modeling of limestone PM emissions are incorrect
- Compliance history and lack of enforcement

- Adverse effects on plants and animals
- Independent geologic testing of the proposed site is needed

2. Pat Jacquez

Ms. Jacquez states that her house is 3.2 miles from the proposed site. Her hearing request raises the following issues: adverse effects on health, safety, and quality of life; health effects for her daughter; PM emissions from the plant; and PM emissions from truck traffic.

3. North Hills Neighborhood Pride Association

The hearing request from the North Hills Neighborhood Pride Association raises the following issues: air quality; expansion of the site to include concrete and asphalt plants; and health effects.

4. Form Letters

Form letter hearing requests were submitted by the following people: Joel Bay; Charles Brown; Gregory and Peggy Brown; Concerned Citizen; Barbara Crotte; Patricia Esparza; Leon Gauthier; Daniel and Ruth Gomez; M.A. Hunter; James Koerber; Anita and Camille Martin; Sylvia and William Mueller; James Ray Myrick; James Pate; Sandra Rivera; James Ryan; Alice Takase; Ingo Thomas; and Raquel Torres. These requests all raise the following issues: quality of life; health risks including respiratory problems such as asthma for schoolchildren; dust; noise; and industrial traffic.

B. Affected Persons

According to the attached map, which was prepared by the ED, all of the hearing requestors reside over 3 miles from the proposed plant site. Under 30 TAC § 55.211, a hearing request can only be granted if the request is made by an affected person. Section 55.203 provides factors to consider in determining affected person status. Two of these factors are the

likely impact of the regulated activity on the health, safety, and use of property of the person; and the likely impact of the regulated activity on use of the impacted natural resource by the person. With the closest of the hearing requestors residing at least 3.29 miles from the proposed site, OPIC finds it unlikely that the proposed emissions will negatively impact health, safety, or use of property for any of the hearing requestors. The intervening distances also cause OPIC to find it unlikely that the hearing requestors' use of air resources will be negatively impacted by the proposed emissions. OPIC therefore concludes that none of the hearing requestors qualify as affected persons.

IV. Conclusion

Under 30 TAC § 55.211, a hearing request can only be granted if the request is made by an affected person. Having found that none of the hearing requestors qualify as affected persons, OPIC respectfully recommends that all of the hearing requests be denied.

Respectfully submitted,

Blas J. Coy, Jr.
Public Interest Counsel

By 

Garrett Arthur

Assistant Public Interest Counsel

State Bar No. 24006771

P.O. Box 13087, MC-103

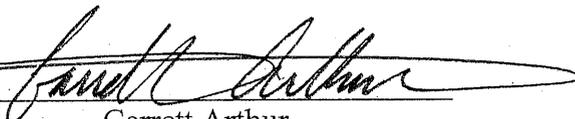
Austin, TX 78711-3087

Tel: 512-239-5757

Fax: 512-239-6377

CERTIFICATE OF SERVICE

I hereby certify that on May 21, 2007, the original and eleven true and correct copies of the foregoing document were filed with the TCEQ Chief Clerk, and copies were served to all parties listed on the attached mailing list via hand delivery, facsimile transmission, inter-agency mail, or by deposit in the U.S. Mail.



Garrett Arthur

MAILING LIST
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TCEQ DOCKET NO. 2007-0491-AIR

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EL PASO TX 79934-3773

CHARLES E BROWN
4312 LOMA CLARA CT
EL PASO TX 79934-3806

GREGORY K BROWN
4245 LOMA TAURINA DR
EL PASO TX 79934-3732

PEGGY BROWN
4245 LOMA TAURINA DR
EL PASO TX 79934-3732

CONCERNED CITIZEN
4377 LOMA DE BRISAS DR
EL PASO TX 79934-3741

BARBARA CROTTE
10815 LOMA DEL SOL DR
EL PASO TX 79934-3782

PATRICIA ESPARZA
4312 LOMA DEL NORTE DR
EL PASO TX 79934-3776

LEON C GAUTHIER, III
4316 LOMA DEL NORTE DR
EL PASO TX 79934-3776

LAURENCE GIBSON
3120 RED SAILS DR
EL PASO TX 79936-2122

DANIEL GOMEZ
11344 STANLEY GREEN WAY
EL PASO TX 79934-3809

RUTH M GOMEZ
11344 STANLEY GREEN WAY
EL PASO TX 79934-3809

M.A. HUNTER
4116 LOMA ROSADA DR
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PAT JACQUEZ
4361 JOHN B OBLINGER DR
EL PASO TX 79934-3797

CHRISTINA M KOERBER
4113 LOMA ROSADA DR
EL PASO TX 79934-3769

JAMES KOERBER
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ANITA MARTIN
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CAMILLE J MARTIN
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SYLVIA Y MUELLER
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WILLIAM MUELLER
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JAMES RAY MYRICK
4316 LOMA CLARA CT
EL PASO TX 79934-3806

JAMES W PATE
4368 LOMA DE BRISAS DR
EL PASO TX 79934-3741

SANDRA RIVERA
11352 STANLEY GREEN WAY
EL PASO TX 79934-3809

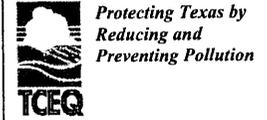
JAMES RYAN
11032 LOMA DE COLOR DR
EL PASO TX 79934-3583

ALICE TAKASE
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INGO THOMAS
11009 LOMA GRANDE DR
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FUJEL A TORRES
BLUE WING DR
EL PASO TX 79924-6302

Jobe Materials, L.P.
Permit No. 78295L001
Map requested by TCEQ Office of Legal Services
for Commissioners Agenda



Texas Commission on Environmental Quality
 GIS Team (Mail Code 197)
 P.O. Box 13087
 Austin, Texas 78711-3087

March 20, 2007

0 0.1 0.2 0.4 0.6 Miles

Projection: Texas Statewide Mapping System
 (TSMS)
 Scale 1:50,000

Legend

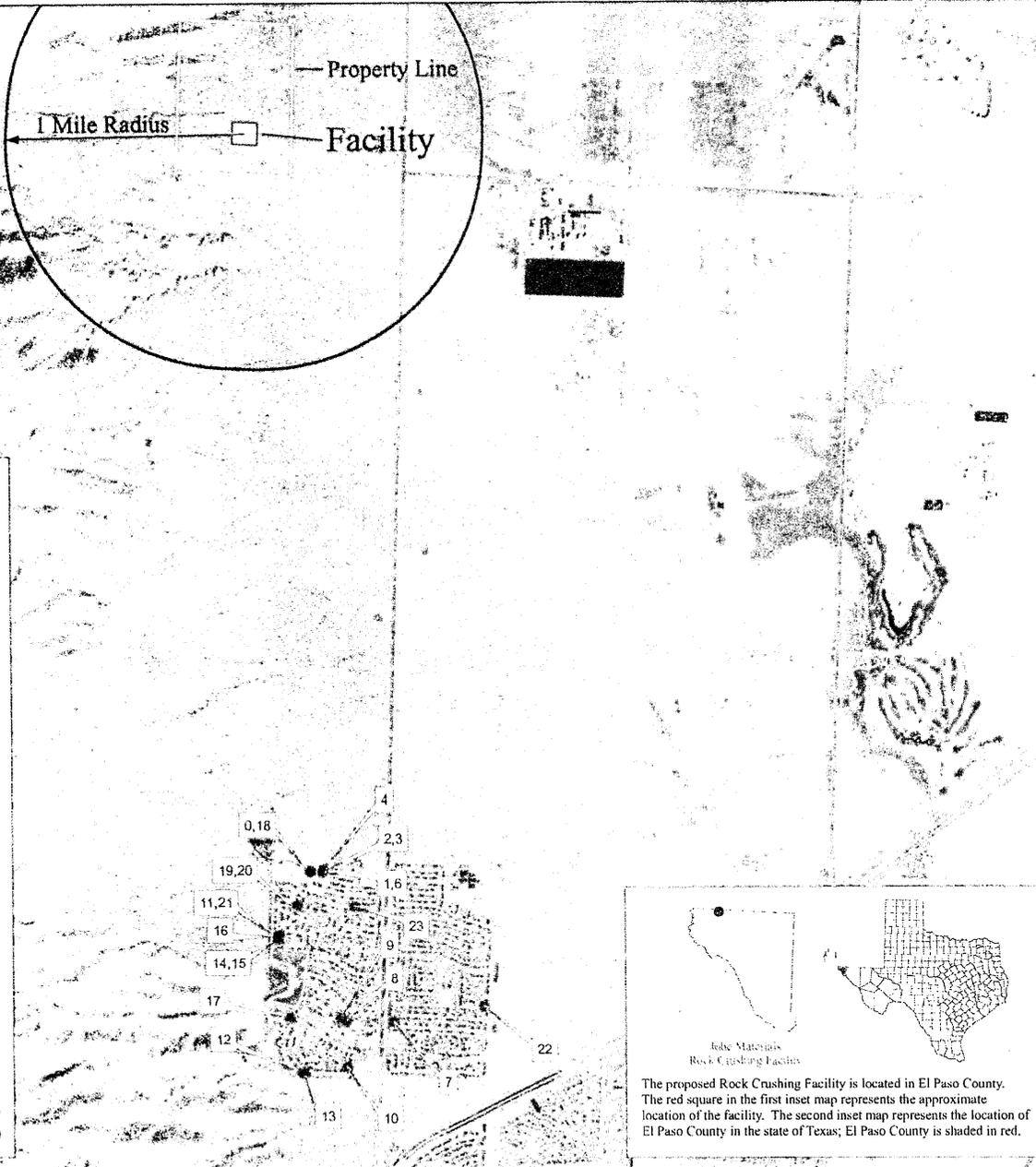
- Requestors
- Facility
- Radius

Source: The location of the Rock Crushing Facility site was provided by the TCEQ Office of Legal Services (OLS). OLS obtained the site location information from the applicant. The locations of the requestors were obtained by geocoding. The counties are U.S. Census Bureau 1992 TIGER/Line Data (1:100,000). The background of this map is a source photograph from the 2004 U.S. Department of Agriculture Imagery Program. The imagery is one-meter Color-Infrared (CIR). The image classification number is tx141_1-1.

- This map depicts the following:
- (1) The approximate location of the facility. This is labeled "Facility".
 - (2) Approximate locations of requestors.
 - (3) A circle and arrow depicting the 1 mile radius from the plant. This is labeled "1 Mile Radius".
 - (4) A list of the requestors and the distance of each from the plant.
 - (5) A rectangle depicting the property line. This is labeled "Property Line".

Requestor - Miles from Plant

- 0) Mr. & Mrs. James Myrick - 3.29
- 1) Ruth Gomez - 3.3
- 2) Anita Martin - 3.3
- 3) Camille Martin - 3.3
- 4) Sandra Rivera - 3.3
- 5) Raquel Torres - 7.92 (Not shown)
- 6) Daniel Gomez - 3.3
- 7) Ingo Thomas - 4.02
- 8) Concerned Citizen - 3.98
- 9) James Pate - 3.96
- 10) Barbara Crotte - 4.19
- 11) James Koerber - 3.57
- 12) Patricia Esparza - 4.2
- 13) Leon Gauthier III - 4.21
- 14) William Mueller - 3.58
- 15) Sylvia Mueller - 3.58
- 16) M.A. Hunter - 3.57
- 17) Joel Bay - 3.94
- 18) Charles Brown - 3.29
- 19) Peggy Brown - 3.44
- 20) Gregory Brown - 3.44
- 21) Christina Koerber - 3.57
- 22) James Ryan - 4.03
- 23) Pat & Natalia Jacquez - 3.47
- 24) Bill Addington - 12.4 (Not shown)
- 25) Nancy Bain - 5.5 (Not shown)
- 26) Joe & Inga Groff - 8.26 (Not shown)
- 27) Laurence Gibson - 16.3 (Not shown)



Jobe Materials
 Rock Crushing Facility

The proposed Rock Crushing Facility is located in El Paso County. The red square in the first inset map represents the approximate location of the facility. The second inset map represents the location of El Paso County in the state of Texas; El Paso County is shaded in red.

This map was generated by the Information Resources Division of the Texas Commission on Environmental Quality. This map was not generated by a licensed surveyor, and is intended for illustrative purposes only. No claims are made to the accuracy or completeness of the data or to its suitability for a particular use. For more information concerning this map, contact the Information Resource Division at (512) 239-0800.