

TCEQ AIR QUALITY PERMIT NO. 43957

2007 DEC 18 PM 2:06

APPLICATION BY	§	BEFORE THE
BEXAR QUARRY SERVICES, LLC	§	TEXAS COMMISSION ON
MICO, MEDINA COUNTY	§	ENVIRONMENTAL QUALITY

CHIEF CLERKS 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 request to renew Air Quality Permit No. 43957 filed by Bexar Quarry Services, LLC (Applicant or Bexar Quarry).

As required by Title 30 Texas Administrative Code (TAC) § 55.156, before an application is approved, the Executive Director (ED) prepares a response to all timely, relevant and material, or significant comments. The Office of Chief Clerk received a timely comment letter from the following person: Jack Love (Commenter). This Response addresses all timely public comments received, whether or not withdrawn.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

The Applicant has applied to the TCEQ for an air quality permit renewal that would authorize continued operation of a Rock Crushing Plant located at 18394 FM 1283, Mico, Medina County, Texas (the plant). The renewal, if approved, will not authorize the construction of any new facilities or any increase in hourly or annual production. The permit renewal would not result in an authorized increase in emissions because the plant would continue to have production limits that do not exceed previous production limits. The existing facility is authorized to emit the following air contaminants: particulate matter including (but not limited to) particulate matter less than 10 microns in diameter (PM₁₀).

Procedural Background

The permit application was received on August 28, 2007, and declared administratively complete on September 4, 2007. The Notice of Receipt and Intent to Obtain an Air Quality Permit Renewal (public notice) for this permit application was published on September 6, 2007 in the *San Antonio Express-News*. The public comment period ended on September 21, 2007. 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: The Commenter expressed concerns regarding health and air quality impacts from the air emissions authorized by this permit.

RESPONSE 1: For many permits, potential impacts to human health and welfare or the environment are determined by comparing air dispersion modeling predicted emission concentrations from the proposed facility to appropriate state and federal standards.^{1, 2} The specific health-based standards or guidance levels employed in evaluating the potential emissions include the National Ambient Air Quality Standards (NAAQS).

NAAQS are developed by the Environmental Protection Agency (EPA) and are set to protect sensitive members of the population such as children, the elderly, and individuals with existing respiratory conditions. The NAAQS, as defined in the federal regulations (40 Code of Federal Regulations § 50.2), include both primary and secondary standards. The primary standards are those which the Administrator of the EPA determines are necessary, with an adequate margin of safety, to protect the public health, including sensitive members of the population such as children, the elderly, and individuals with existing lung or cardiovascular conditions. Secondary NAAQS are those which the Administrator determines are necessary 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 standards are set for criteria pollutants: ozone, lead, carbon monoxide, sulfur dioxide, nitrogen dioxide, and respirable particulate matter (PM). "Criteria pollutants" are those pollutants for which a NAAQS has been established. In the case of PM, EPA set the primary and secondary standards at the same level.

The NAAQS for PM₁₀ is based on a 24-hour time period. The measurement for predicted concentrations of air contaminants in modeling exercises is expressed in terms of micrograms per cubic meter ($\mu\text{g}/\text{m}^3$). One microgram is 1/1,000,000 of a gram, or 2.2/1,000,000,000 of a pound of air contaminant per cubic meter of ambient air. The air volume of a cubic meter is approximately the size of a washing machine. The primary and secondary 24-hour NAAQS for PM₁₀ are the same. A predicted air concentration occurring below the 24-hour NAAQS of 150 $\mu\text{g}/\text{m}^3$ is not expected to exacerbate existing conditions or cause adverse health effects.

A conservative air dispersion modeling evaluation was conducted by the Applicant to support an amendment to the permit submitted August 31, 2006. The analysis was reviewed and found to be technically correct by the ED. Results of the evaluation demonstrated that at a distance of 160

¹ See the document "Air Quality Modeling Guidelines" for details on air modeling at the TCEQ website at <http://www.tceq.state.tx.us/assets/public/permitting/air/Guidance/NewSourceReview/rg25.pdf>. Also visit the agency air modeling page at http://www.tceq.state.tx.us/permitting/air/nav/modeling_index.html.

² Documents referenced in this response that are available on the TCEQ website are also available in printed form at a small cost from the TCEQ Publications office at 512-239-0028.

meters (approximately 525 feet) from the facility, which is the protectiveness distance established and defined in the permit, the predicted PM₁₀ concentration, including the background concentration for this area, would be expected to be 149 µg/m³ (24-hour). Thus, the 24-hour protective concentration required by the NAAQS has been met.

The ED has reviewed the Applicant's permit renewal application in accordance with the applicable law, policy and procedures, and the Agency's mission to protect the State's human and natural resources consistent with sustainable economic development. If the facilities are operated as specified in the permit terms and conditions, the emissions from the equipment covered by this permit should not adversely impact people or air quality.

In summary, based on the potential concentrations reviewed by the ED's staff, it is not expected that existing health conditions will worsen, or that there will be adverse health effects in the general public, sensitive subgroups, or animal life as a result of exposure to the expected levels of PM₁₀.

COMMENT 2: The Commenter stated that air emissions would affect his property more than the general public's.

RESPONSE 2: The ED has reviewed the permit renewal application and has determined that the emissions from the equipment covered by this permit should not adversely impact people or air quality if the facilities are operated as specified in the permit terms and conditions.

As discussed in the response above, secondary NAAQS are those which the Administrator determines are necessary 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. In this case, the 24-hour protective concentration required by the NAAQS for PM₁₀ has been met. Therefore, damage to the Commenter's property is not expected.

In addition to complying with the federal and state standards and guidelines mentioned above, applicants must also comply with 30 TAC § 101.4, which prohibits nuisance conditions. Specifically the rule states, "No person shall discharge from any source whatsoever one or more air contaminants or combinations thereof, in such concentration and of such duration as are or may tend to be injurious to or to 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." As long as the facility is operated in compliance with the terms of the permit, nuisance conditions or conditions of air pollution are not expected. According to the facility's maximum allowable³ emission rate table in the permit, the facility will emit approximately 8.7 tons per year (tpy) of PM and 3.7 tpy of PM₁₀. These emissions are not expected to create nuisance conditions.

³ The term "allowable" means the maximum emission rate of a specific pollutant from a given source, as specified in the permit.

During the technical review of this application renewal, a compliance history review of the company and the site was conducted based on the criteria in 30 TAC Ch. 60. These rules may be found at the following website: <http://www.tceq.state.tx.us/rules/index.html>. The compliance history for the company and site has been reviewed for the five-year period prior to the date the permit application was received by the ED. The compliance history includes multimedia compliance-related components about the site under review. These components include the following: enforcement orders, consent decrees, court judgments, criminal convictions, chronic excessive emissions events, investigations, notices of violations, audits and violations disclosed under the Audit Act, environmental management systems, voluntary on-site compliance assessments, voluntary pollution reduction programs and early compliance.

The Applicant's permit renewal application was received after September 1, 2002, and the company and site have been rated and classified pursuant to 30 TAC Ch. 60. A company and site may have one of the following classifications and ratings:

High: rating < 0.10 (above-average compliance record)

Average by Default: rating = 3.01 (these are for sites which have never been investigated)

Average: 0.10 < rating < 45 (generally complies with environmental regulations)

Poor: 45 < rating (performs below average)

The Applicant was granted permission to move to the site in May 2006. It has been determined that this site has a rating of 0.0 and a classification of "High." The company rating and classification, which is the average of the ratings for all sites the company owns, is 2.22 and "Average."

Thus, although the Commenter's property is close to the Applicant's site, the ED has determined that the Applicant has a compliance history that does not indicate past compliance problems and that there should not be an adverse impact on the Commenter's property if the facilities are operated as specified in the permit terms and conditions.

COMMENT 3: The Commenter expressed concern regarding blasting activities at the quarry.

RESPONSE 3: The TCEQ's jurisdiction is established by the Legislature and is limited to the issues set forth in statute. Accordingly, the TCEQ does not have jurisdiction to consider blasting or mining in determining whether to approve a permit application for facilities that will emit air contaminants. Blasting operations are associated with quarry operations, and the Texas Clean Air Act, Tex. Health & Safety Code § 382.003(6) provides that quarries are not facilities for purposes of air quality permitting. Therefore, quarry blasting operations are not included as part of the review of an air quality permit application.

COMMENT 4: The Commenter expressed concerns regarding the noise that would emanate from the rock crushing activities.

RESPONSE 4: The TCEQ's jurisdiction is established by the Legislature and is limited to the issues set forth in statute. Accordingly, the TCEQ does not have jurisdiction to consider noise from a facility when determining whether to approve an application for an air quality permit. The scope of the TCEQ's regulatory jurisdiction does not affect or 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 property. Concerns regarding noise should be directed to local officials.

COMMENT 5: The Commenter expressed concern regarding the increase in truck traffic associated with transportation of crushed rock produced at this facility.

RESPONSE 5: The TCEQ does not have jurisdiction over public roads. The Texas Departments of Public Safety and Transportation, as well as local law enforcement authorities, together with county and city governments, maintain jurisdiction over traffic safety and public roadway issues. Questions or concerns about traffic or public road issues should be directed to those authorities.

COMMENT 6: The Commenter questioned the use of the *San Antonio Express-News* for public notification of this renewal instead of the more local *Hondo Anvil* which is located in Medina County.

RESPONSE 6: In accordance with 30 TAC § 39.603(c) "... the applicant shall publish notice in a newspaper of general circulation in the municipality in which the facility is located or is proposed to be located or in the municipality nearest to the location or proposed location of the facility ...". The determination of what is defined as a newspaper of general circulation was determined in the case of City of Corpus Christi v. Jones, 144 S.W.2d 388 (Tex. Civ. App. - San Antonio 1940, writ dismissed judgment corrected). The Applicant provided verification of publication in the form of an affidavit and completed and signed the public notice verification form stating that signs were posted. The TCEQ believes that publication and sign posting were conducted in accordance with TCEQ rules as required by 30 TAC §§ 39.603 and 39.604.

CHANGES MADE IN RESPONSE TO COMMENT

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

Respectfully submitted,

Texas Commission on Environmental Quality

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REPRESENTING THE
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