

Buddy Garcia, *Chairman*  
Larry R. Soward, *Commissioner*  
Bryan W. Shaw, Ph.D., *Commissioner*  
Glenn Shankle, *Executive Director*



TEXAS  
COMMISSION  
ON ENVIRONMENTAL  
QUALITY

2008 APR 24 PM 4:40

## TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

CHIEF CLERKS OFFICE

*Protecting Texas by Reducing and Preventing Pollution*

April 23, 2008

To: Persons on the attached mailing list (By mail and facsimile as indicated)

Re: Application by Bexar Quarry Services, LLC for Renewal of Permit No. 43957; TCEQ Docket No. 2007-2033-AIR.

In response to the April 18, 2008 request for continuance from Tim Eubank on behalf of the Executive Director, this letter is to advise you that the Texas Commission on Environmental Quality's Office of General Counsel is continuing the above-referenced matter currently scheduled for the May 7, 2008 Agenda to the Commission's public meeting on **Wednesday, July 9, 2008**, starting at **9:30 a.m.** in Room 201S, Building E, 12100 Park 35 Circle, Austin, Texas 78753. The Commission will not take oral argument on this matter, but may ask questions.

In addition, you are hereby notified that the deadlines for filing responses and replies have been re-set. Responses to the hearing requests by the Applicant, ED, or OPIC must be filed with the Chief Clerk's Office no later than **5:00 p.m. on Monday, June 16, 2008**. Any reply briefs by the requesters must be filed with the Chief Clerk's Office no later than **5:00 p.m. on Monday, June 30, 2008**. Filings should include an original and eleven (11) copies, reference the above-mentioned TCEQ Docket number, and filed to the attention of the Agenda Docket Clerk, Office of the Chief Clerk, MC 105, P.O. Box 13087, Austin, Texas, 78711.

If you have any questions about this matter, please contact Tracy H. Gross, Assistant General Counsel, at 512/239-1736.

Very truly yours,

A handwritten signature in cursive script, appearing to read "Les Trobman".

Les Trobman  
General Counsel

Mailing List

<h:/counsel/gross/letters/continuance/BexarQuarry.con2>

Mailing List  
Bexar Quarry Services, LLC  
TCEQ Docket No. 2007-2033-AIR

Steve Tolliver  
Bexar Quarry Services, LLC  
5002 Sinclair Road  
San Antonio, Texas 78222-2131  
210/648-3132 FAX 210/648-1134

Docket Clerk  
TCEQ Office of Chief Clerk MC 105  
P.O. Box 13087  
Austin, Texas 78711-3087  
512/239-3300 FAX 512/239-3311

Melissa Fitts  
Westward Environmental  
P.O. Box 2205  
Boerne, Texas 78006  
830/249-8284 FAX 830/249-0221

Bridget Bohac  
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Joe Freeland  
Mathews & Freeland, L.L.P.  
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512/404-7800 FAX 512/703-2785

Kyle Lucas  
TCEQ Alternative Dispute Resolution  
Program MC 222  
P.O. Box 13087  
Austin, Texas 78711-3087  
512/239-0687 FAX 512/239-4015

Jack Love  
P.O. Box 6301  
Mico, Texas 78056

Timothy Eubank  
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512/239-0600 FAX 512/239-0606

Michael Gould  
Beecher Cameron  
TCEQ Air Permits Division MC 163  
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Austin, Texas 78711-3087  
512/239-1250 FAX 512/239-1300

Blas Coy  
TCEQ Office of Public Interest Counsel MC 103  
P.O. Box 13087  
Austin, Texas 78711-3087  
512/239-6363 FAX 512/239-6377

Buddy Garcia, *Chairman*  
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Bryan W. Shaw, Ph.D., *Commissioner*  
Glenn Shankle, *Executive Director*



## TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

*Protecting Texas by Reducing and Preventing Pollution*

April 18, 2008

Les Trobman  
General Counsel  
Texas Commission on Environmental Quality  
MC 101  
P.O. Box 13087  
Austin, TX 78711-3087

TEXAS  
COMMISSION  
ON ENVIRONMENTAL  
QUALITY  
2008 APR 18 PM 3:16  
CHIEF CLERKS OFFICE

Re: TCEQ Docket Number 2007-2033-AIR; Request for Continuance

Dear Mr. Trobman:

This matter is scheduled for consideration by the Commission at the May 7, 2008 public meeting. The ED respectfully requests that the Commission continue this matter until a future agenda to allow for further discussion regarding the procedural posture of the application and additional settlement discussions with the Protestant.

I have conferred with OPIC, the Applicant's representative, and counsel for the Protestant, and they have indicated that they will not object to a short continuance.

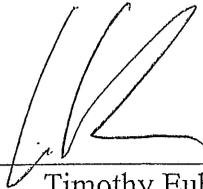
Sincerely,

A handwritten signature in black ink, appearing to read "Tim Eubank".

Tim Eubank  
Staff Attorney  
Environmental Law Division  
TCEQ Office of Legal Services

**CERTIFICATE OF SERVICE**

On April 18, 2008, a true and correct copy of the foregoing instrument was served on all persons on the attached mailing list by the undersigned via deposit into the U.S. Mail, inter-agency mail, facsimile, or hand delivery.

A handwritten signature in black ink, consisting of stylized, overlapping loops and a horizontal stroke at the end.

---

Timothy Eubank

MAILING LIST  
BEXAR QUARRY SERVICES, LLC.  
DOCKET NO. 2007-2033-AIR; PERMIT NO. 78844

For the Applicant:

Steve Tolliver  
Bexar Quarry Services, LLC  
5002 Sinclair Road  
San Antonio, Texas 78222-2131

Melissa Fitts  
Westward Environmental  
P.O. Box 2205  
Boerne, Texas 78006

For the Executive Director:

Tim Eubank, Staff Attorney  
Texas Comm. on Environmental Quality  
Environmental Law Division, MC 173  
P.O. Box 13087  
Austin, Texas 78711-3087

Michael D. Gould, Technical Staff  
Texas Comm. on Environmental Quality  
Air Permits Division, MC 163  
P.O. Box 13087  
Austin, Texas 78711-3087

Beecher Cameron  
Texas Comm. on Environmental Quality  
Air Permits Division, MC 163  
P.O. Box 13087  
Austin, Texas 78711-3087

For Public Interest Council:

Mr. Blas J. Coy, Jr., Attorney  
Texas Comm. on Environmental Quality  
Public Interest Council, MC 103  
P.O. Box 13087  
Austin, Texas 78711-3087

For Office of Public Assistance:

Ms. Bridget Bohac, Director  
Texas Comm. on Environmental Quality  
Office of Public Assistance, MC 108  
P.O. Box 13087  
Austin, Texas 78711-3087

For Alternative Dispute Resolution:

Mr. Kyle Lucas  
Texas Comm. on Environmental Quality  
Alternative Dispute Resolution, MC 222  
P.O. Box 13087  
Austin, Texas 78711-3087

For the Chief Clerk:

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

Requester:

Jack Love  
P.O. Box 6301  
Mico, Texas 78056

Joe Freeland  
Matthews & Freeland, L.L.P.  
P.O. Box 1568  
Austin, Texas 78768-1568

Buddy Garcia, *Chairman*  
Larry R. Soward, *Commissioner*  
Bryan W. Shaw, Ph.D., *Commissioner*  
Glenn Shankle, *Executive Director*



TEXAS  
COMMISSION  
ON ENVIRONMENTAL  
QUALITY

2008 MAR 24 PM 12: 02

CHIEF CLERKS OFFICE

## TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

*Protecting Texas by Reducing and Preventing Pollution*

March 21, 2008

To: Persons on the attached mailing list (By mail and facsimile as indicated)

Re: Application by Bexar Quarry Services, LLC for Renewal of Permit No. 43957; TCEQ Docket No. 2007-2033-AIR.

In response to the March 20, 2008 request for continuance from Joe Freeland on behalf of Jack Love, this letter is to advise you that the Texas Commission on Environmental Quality's Office of General Counsel is continuing the above-referenced matter currently scheduled for the April 2, 2008 Agenda to the Commission's public meeting on **Wednesday, May 7, 2008**, starting at **9:30 a.m.** in Room 201S, Building E, 12100 Park 35 Circle, Austin, Texas 78753. The Commission will not take oral argument on this matter, but may ask questions.

In addition, you are hereby notified that the deadlines for filing responses and replies have been re-set. Responses to the hearing requests by the Applicant, ED, or OPIC must be filed with the Chief Clerk's Office no later than **5:00 p.m. on Monday, April 14, 2008**. Any reply briefs by the requesters must be filed with the Chief Clerk's Office no later than **5:00 p.m. on Monday, April 28, 2008**. Filings should include an original and eleven (11) copies, reference the above-mentioned TCEQ Docket number, and be filed to the attention of the Agenda Docket Clerk, Office of the Chief Clerk, MC 105, P.O. Box 13087, Austin, Texas, 78711.

If you have any questions about this matter, please contact Tracy H. Gross, Assistant General Counsel, at 512/239-1736.

Very Truly Yours,

A handwritten signature in black ink, appearing to read "Les Trobman".

Les Trobman  
General Counsel

### Mailing List

[h:/counsel/gross/letters/continuance/BexarQuarry.com](http://counsel/gross/letters/continuance/BexarQuarry.com)

Mailing List  
Bexar Quarry Services, LLC  
TCEQ Docket No. 2007-2033-AIR

Steve Tolliver  
Bexar Quarry Services, LLC  
5002 Sinclair Road  
San Antonio, Texas 78222-2131  
210/648-3132 FAX 210/648-1134

Docket Clerk  
TCEQ Office of Chief Clerk MC 105  
P.O. Box 13087  
Austin, Texas 78711-3087  
512/239-3300 FAX 512/239-3311

Melissa Fitts  
Westward Environmental  
P.O. Box 2205  
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Kyle Lucas  
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Blas Coy  
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# MATHEWS & FREELAND, L.L.P.

ATTORNEYS AT LAW

JIM MATHEWS  
JOE FREELAND

P.O. Box 1568  
AUSTIN, TEXAS 78768-1568

(512) 404-7800  
FAX: (512) 703-2785

March 20, 2008

VIA FAX (239-5533)/MAIL (Original +11 Copies)

TCEQ  
Mr. Les Trobman, General Counsel  
MC 101  
PO Box 13087  
Austin, TX 78711-3087

Re: Docket No. 2007-2033-AIR – Request for Continuance

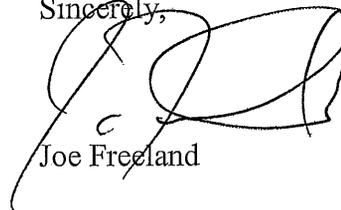
Dear Mr. Trobman,

This matter is scheduled for consideration by the Commission at the April 2, 2008, open meeting. On behalf of Mr. Jack Love, I request that the Commission continue this matter until the next available agenda.

The deadline for Mr. Love to file replies to the responses filed by the Executive Director and OPIC is March 24, 2008. I have only recently been engaged by Mr. Love to look into this matter, and because of the difficulty I have encountered in obtaining the relevant files for this matter, I will not be able to file an adequate reply by that date. Additionally, I would like to set up a meeting with staff to explore a number of issues prior to filing a reply. I cannot do this in the next four days.

I have conferred with the Executive Director, and OPIC regarding this request, and they have indicated that they will not object to a short continuance. This request is not made for the purpose of delay but to serve the interests of justice.

Sincerely,



Joe Freeland

c: Chief Clerk 239-3311  
Timothy Eubank (ED) 239-0606  
Eli Martinez (OPIC) 239-6377  
Steve Tolliver (Applicant) 210-648-1134  
Bridget Bohac (OPA) 239-4007

RECEIVED

MAR 21 2008

Texas Commission on Environmental Quality  
Commissioners' Offices

CHIEF CLERKS OFFICE

2008 MAR 24 AM 9:47

TEXAS  
COMMISSION  
ON ENVIRONMENTAL  
QUALITY

Buddy Garcia, *Chairman*  
Larry R. Soward, *Commissioner*  
Bryan W. Shaw, Ph.D., *Commissioner*  
Glenn Shankle, *Executive Director*



## TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

*Protecting Texas by Reducing and Preventing Pollution*

February 25, 2008

**TO: Persons on the Attached Mailing List**

**RE: Docket No. 2007-2033-AIR  
Bexar Quarry Services, LLC  
Request(s) filed on Permit No. 43957**

The above-referenced application and all timely filed hearing requests/requests for reconsideration on the above-referenced application will be considered by the commissioners of the Texas Commission on Environmental Quality (TCEQ) during the public meeting on **April 2, 2008**. The meeting will begin at 9:30 a.m. in Room 201S of Building E, at the commission's offices located at 12100 Park 35 Circle in Austin, Texas.

In accordance with commission rules, copies of the timely hearing requests/requests for reconsideration have been forwarded to the applicant, the Executive Director of the TCEQ, and the Public Interest Counsel of the TCEQ. Each of these persons is entitled to file a formal written response to the hearing requests/requests for reconsideration on or before 5:00 p.m. on **March 10, 2008**. Persons who have filed timely hearing requests/requests for reconsideration may file a formal written reply to these responses on or before 5:00 p.m. on **March 24, 2008**.

An original and 11 copies of any response or reply must be filed with the Chief Clerk of the TCEQ. The address of the Chief Clerk is: Office of Chief Clerk, ATTN: Agenda Docket Clerk, Mail Code 105, TCEQ, P. O. Box 13087, Austin, Texas 78711-3087 [Fax number (512) 239-3311]. On the same day any response is transmitted to the Chief Clerk, a copy must also be sent to the Executive Director, the Public Interest Counsel, the Director of the Office of Public Assistance, the Applicant and the requesters at their addresses listed on the attached mailing list. On the same day any reply is transmitted to the Chief Clerk, a copy must also be sent to the Executive Director, the Public Interest Counsel, the Director of the Office of Public Assistance, and other requesters and the applicant at their addresses listed on the attached mailing list.

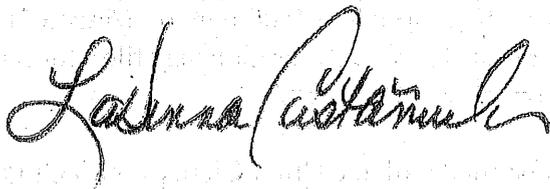
The procedures for evaluating hearing requests/requests for reconsideration are located in 30 Texas Administrative Code (TAC) Chapter 55, Subchapter F (§§55.200-211) of the commission's rules. The procedures for the filing of responses and replies are located in 30 TAC Chapters 1 (§§1.10-11) and 55 (§55.209) of the commission's rules. Copies of these rules may be obtained by calling the

Office of Public Assistance toll free at 1-800-687-4040.

The commissioners will not take oral argument or additional comment on this matter at the public meeting. Therefore, it is important to address the sufficiency of the requests in timely filed written responses and requesters' replies. At the public meeting, the commissioners may ask questions of the applicant, requesters, or TCEQ staff. The commissioners will make a decision on the request(s) during the meeting and will base that decision on the timely written requests, public comments, any written responses and replies, any responses to questions during the meeting, and applicable statutes and rules. Copies of all timely public comments and requests have been forwarded to the Office of Alternative Dispute Resolution to determine if informal, voluntary mediation might help resolve any dispute.

The attachment to this letter is intended to help you better understand how the TCEQ processes and evaluates hearing requests and requests for reconsideration. To obtain additional information, or to ask questions about anything in this letter, please call the TCEQ's Office of Public Assistance toll-free at 1-800-687-4040.

Sincerely,



LaDonna Castañuela  
Chief Clerk

Enclosures: Copies of the Executive Director's Response to Comments. Copies of protestant correspondence to Applicant, Executive Director, Office of Public Interest Counsel, Office of Public Assistance and Alternative Dispute Resolution.

## ATTACHMENT

### **Procedures Concerning Requests for Reconsideration and Requests for Contested Case Hearing**

The purpose of this document is to describe commission procedures for evaluating requests for reconsideration and requests for contested case hearing. This document is not intended to be a comprehensive guide to public participation at the TCEQ.

The three commissioners determine the validity of requests for reconsideration and requests for contested case hearing and vote to grant or deny the requests during a public meeting. These public meetings are usually held every other Wednesday in Austin. Prior to the meeting, the following occurs:

- 1) the written requests are distributed to the executive director, the public interest counsel, and the applicant. These persons may file a response at least 23 days before the meeting;
- 2) the requester may then file a reply to the responses at least 9 days before the meeting. This is the requester's opportunity to address any deficiencies in the request that have been identified by TCEQ staff or the applicant. The requester must submit any information he or she wishes the commissioners to consider (ex: maps or diagrams showing requester's location relative to the applicant's proposed activities) by this deadline; and
- 3) the commissioners read the requests, the responses to requests, and the replies, before the public meeting. Then, during the public meeting, the commissioners vote to grant or deny the requests.

#### **Requests for Reconsideration**

A request for reconsideration must expressly state that the person is requesting that the commission reconsider the executive director's decision and state the reasons why the commission should reconsider the executive director's decision. The commission will consider a request for reconsideration at a scheduled public meeting and grant or deny the request.

#### **Requests for Contested Case Hearing**

A contested case hearing is an evidentiary proceeding, similar to a hearing in civil court. The law allows for holding a contested case hearing on certain types of applications.

A valid request for a contested case hearing must:

- 1) demonstrate that the requester is an "affected person" with a "personal justiciable interest" related to a legal right, duty, privilege, power or economic interest which would be affected by the application in a manner not common to the general public;

- 2) if the request is made by a group or association, identify one or more members who have standing to request a hearing, and the interests the group or association seeks to protect;
- 3) expressly request a contested case hearing;
- 4) raise disputed issues of fact that are relevant and material to the commission's decision on the application which were raised during the comment period and not withdrawn prior to the filing of the Executive Director's Response to Comment; and
- 5) include any other information as specified in public notices.

The commission is authorized to protect human health and safety, and natural resources. The commission cannot address other matters outside the commission's authority, such as the effect of the existence of a proposed facility on nearby property values.

When the commissioners deny hearing requests, they often proceed to vote on approval or denial of the application. Alternatively, they may remand the application to the executive director for final action. If a hearing request is granted and the application is referred to the State Office of Administrative Hearings (SOAH), the commissioners will specify a list of issues which will be the subject of the hearing and an expected date for the SOAH judge's proposal for decision. The SOAH judge will conduct the hearing and submit a proposal to the commission to approve or deny the application.

The Alternative Dispute Resolution Office may contact requesters to determine their interest in informal discussions with the permit applicant and a mediator.

By necessity this document gives a very general description of commission procedures. If you have any questions, please call OPA toll-free at 1-800-687-4040.

**MAILING LIST**  
**BEXAR QUARRY SERVICES, LLC**  
**DOCKET NO. 2007-2033-AIR; PERMIT NO. 43957**

FOR THE APPLICANT:

Steve Tolliver  
Bexar Quarry Services, LLC  
5002 Sinclair Road  
San Antonio, Texas 78222-2131  
Tel: (210) 648-3132  
Fax: (210) 648-1134

FOR THE EXECUTIVE DIRECTOR:

Timothy Eubank, Staff Attorney  
Texas Commission on Environmental Quality  
Environmental Law Division, MC-173  
P.O. Box 13087  
Austin, Texas 78711-3087  
Tel: (512) 239-0600  
Fax: (512) 239-0606

Michael Gould, Technical Staff  
Texas Commission on Environmental Quality  
Air Permits Division, MC-163  
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Tel: (512) 239-1097  
Fax: (512) 239-1300

Beecher Cameron  
Texas Commission on Environmental Quality  
Air Permits Division, MC-163  
P.O. Box 13087  
Austin, Texas 78711-3087  
Tel: (512) 239-1495  
Fax: (512) 239-1300

FOR PUBLIC INTEREST COUNSEL:

Mr. Blas J. Coy, Jr., Attorney  
Texas Commission on Environmental Quality  
Public Interest Counsel, MC-103  
P.O. Box 13087  
Austin, Texas 78711-3087  
Tel: (512) 239-6363  
Fax: (512) 239-6377

FOR OFFICE OF PUBLIC ASSISTANCE:

Ms. Bridget Bohac, Director  
Texas Commission on Environmental Quality  
Office of Public Assistance, MC-108  
P.O. Box 13087  
Austin, Texas 78711-3087  
Tel: (512) 239-4000  
Fax: (512) 239-4007

FOR ALTERNATIVE DISPUTE  
RESOLUTION:

Mr. Kyle Lucas  
Texas Commission on Environmental Quality  
Alternative Dispute Resolution, MC-222  
P.O. Box 13087  
Austin, Texas 78711-3087  
Tel: (512) 239-4010  
Fax: (512) 239-4015

FOR THE CHIEF CLERK:

Ms. LaDonna Castañuela  
Texas Commission on Environmental Quality  
Office of Chief Clerk, MC-105  
P.O. Box 13087  
Austin, Texas 78711-3087  
Tel: (512) 239-3300  
Fax: (512) 239-3311

REQUESTER:

Jack Love  
P.O. Box 6301  
Mico, Texas 78056

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](http://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 (PM<sub>10</sub>).

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.<sup>1, 2</sup> 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 PM<sub>10</sub> 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 PM<sub>10</sub> 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

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<sup>1</sup> 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](http://www.tceq.state.tx.us/permitting/air/nav/modeling_index.html).

<sup>2</sup> 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 PM<sub>10</sub> concentration, including the background concentration for this area, would be expected to be 149 µg/m<sup>3</sup> (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 PM<sub>10</sub>.

**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 PM<sub>10</sub> 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 allowable<sup>3</sup> emission rate table in the permit, the facility will emit approximately 8.7 tons per year (tpy) of PM and 3.7 tpy of PM<sub>10</sub>. These emissions are not expected to create nuisance conditions.

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<sup>3</sup> 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,

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REPRESENTING THE  
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