

Buddy Garcia, *Chairman*
Larry R. Soward, *Commissioner*
Bryan W. Shaw, Ph.D., *Commissioner*
Mark R. Vickery, P.G., *Executive Director*



TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

August 31, 2009

Office of the Chief Clerk
ATTN: Agenda Docket Clerk
Texas Commission on Environmental Quality
P.O. Box 13087, MC 105
Austin, Texas 78711-3087

Re: Executive Director's Response to Hearing Request on Genesis Quality Aggregates, Ltd.,
Application for Amendment and Renewal of Air Quality Permit No. 84019L001
TCEQ Docket No. 2009-0679-AIR

Dear Ms. Castañuela:

Enclosed for filing is the Executive Director's Response to Hearing Request in the above entitled matter.

If you have any questions, please do not hesitate to call me at extension 0891.

Sincerely,

A handwritten signature in black ink, appearing to read "Amy Browning", with a large, sweeping flourish extending to the right.

Amy L. Browning
Staff Attorney
Environmental Law Division

Cc: mailing list

Enclosure

TCEQ AIR QUALITY PERMIT NUMBER 84019L001
TCEQ DOCKET NO. 2009-0679-AIR

APPLICATION BY	§	BEFORE THE
	§	
Genesis Quality Aggregates Ltd	§	TEXAS COMMISSION ON
Rock Crushing Plant	§	
Eagle Pass, Maverick County	§	ENVIRONMENTAL QUALITY

EXECUTIVE DIRECTOR'S RESPONSE TO HEARING REQUESTS

The Executive Director (ED) of the Texas Commission on Environmental Quality (Commission or TCEQ) files this response (Response) to the requests for a contested case hearing submitted by persons listed herein. The Texas Clean Air Act (TCAA) §382.056(n) requires the commission to consider hearing requests in accordance with the procedures provided in Tex. Water Code §5.556.¹ This statute is implemented through the rules in 30 Texas Administrative Code (TAC) Chapter 55, Subchapter F.

A map showing the location of the site for the proposed facility is included with this response and has been provided to all persons on the attached mailing list. In addition, a current compliance history report, technical review summary, and draft permit prepared by the ED's staff have been filed with the TCEQ's Office of Chief Clerk for the commission's consideration. Finally, the ED's Response to Public Comments (RTC) and an amended RTC, which was mailed by the chief clerk to all persons on the mailing list, is on file with the chief clerk for the commission's consideration.

I. Application Request and Background Information

Genesis Quality Aggregates, Ltd has applied to the TCEQ for a New Source Review Authorization under Texas Clean Air Act (TCAA) §382.0518. This will authorize the construction of a new facility that may emit air contaminants. This permit will authorize the applicant to construct a rock crushing facility. The facility is located at 8035 North US Highway 277, Eagle Pass, Maverick County. Contaminants authorized under this permit include organic compounds, nitrogen oxides, sulfur dioxide, carbon monoxide, and particulate matter including particulate matter less than 10 microns in diameter.

The permit application was received on January 29, 2008, and declared administratively complete on February 20, 2008. The Notice of Receipt and Intent to Obtain an Air Quality Permit (NORI public notice) for this permit application was published on March 20, 2008, in *The Eagle Pass News Guide*, and in Spanish on July 18, 2008 in *The News Gram*. The Notice of Application and Preliminary

¹ Statutes cited in this response may be viewed online at www.capitol.state.tx.us/statutes/statutes.html. Relevant statutes are found primarily in the Texas Health and Safety Code and the Texas Water Code. The rules in the Texas Administrative Code may be viewed online at www.sos.state.tx.us/tac/index.shtml, or follow the "Rules, Policy & Legislation" link on the TCEQ website at www.tceq.state.tx.us.

EXECUTIVE DIRECTOR'S RESPONSE TO HEARING REQUESTS

Genesis Quality Aggregates Ltd, Air Quality Permit Number 84019L00; TCEQ Docket No. 2009-0679-AIR

Page 2 of 10

Decision (second public notice) for this permit application was published on November 2, 2008 in *The Eagle Pass News Guide* and in Spanish in *The News Gram*. A public meeting for this permit was held on February 10, 2009 in Eagle Pass. 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.

The executive director originally filed a Response to Comments (RTC) for this permit on April 6, 2009. The RTC was mailed by the Chief Clerk's Office on April 8, 2009, therefore the request for reconsideration/request for hearing period ended on May 8, 2009. On May 8, 2009, the Chief Clerk's Office received a letter from Mr. Douglas Frazier requesting a contested case hearing and reconsideration of the permit. In his request Mr. Frazier explained that the comments that he had submitted concerning this permit had not been addressed, and that his name had not been included in the list of commenters. Therefore, the executive director filed an amendment to the original RTC to ensure that all of Mr. Frazier's comments were adequately addressed. The amended RTC was filed on May 18, 2009, and mailed by the Chief Clerk's office on May 21, 2009. This continued the request for reconsideration/request for hearing period until June 22, 2009.

The TCEQ received timely hearing requests during the public comment period from the following persons: Terri and Arueliano Contreras, Douglas and Maria Frazier, Alejandro Gonzalez, Rosalinda (Linda) Lehman, Maria Monreal, Mario and Marina Salazar, Pedro Fernandez, Alenas Fernandez, and Rita and Bob Williams. Comment letters were also timely received, but later withdrawn from the following persons: Iris Fernandez, Maria Fernandez, Pedro Fernandez, Rosendo G. Flores, Guadalupe T. Flores, Rosendo T. Flores, Vastie E. Flores, Herman Paine, and Fabiola Zamago. The TCEQ also received two requests for reconsideration, and two additional hearing requests during the period for requesting a contested case hearing after the filing of the ED's RTC from Douglas and Maria Frazier.

II. Applicable Law

The commission must assess the timeliness and form of the hearing requests, as discussed above. The form requirements are set forth in 30 TAC § 55.201(d):

(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. If the request is made by a group or association, the request must identify one person by name, address, daytime telephone number, and, where possible, fax number, who shall be responsible for receiving all official communications and documents for the group;
- (2) identify the person's personal justiciable interest affected by the application, including a brief, but specific, written statement explaining in plain language the requester's location and distance relative to the proposed facility or activity that is the

EXECUTIVE DIRECTOR'S RESPONSE TO HEARING REQUESTS

Genesis Quality Aggregates Ltd, Air Quality Permit Number 84019L00; TCEQ Docket No. 2009-0679-AIR

Page 3 of 10

subject of the application and how and why the requester 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 requester should, to the extent possible, specify any of the executive director's responses to comments that the requester 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.

The next necessary determination is whether the requests were filed by "affected persons" as defined by Tex. Water Code § 5.115, implemented in commission rule 30 TAC § 55.203. Under 30 TAC § 55.203, 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. Local governments with authority under state law over issues raised by the application receive affected person status under 30 TAC § 55.203(b).

In determining whether a person is affected, 30 TAC § 55.203(c) requires all factors 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 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.

If the commission determines a hearing request is timely and fulfills the requirements for proper form and the hearing requester is an affected person, the commission must apply a three-part test to the issues raised in the matter to determine if any of the issues should be referred to the State Office of Administrative Hearings (SOAH) for a contested case hearing. The three-part test in 30 TAC § 50.115(c) is as follows:

EXECUTIVE DIRECTOR'S RESPONSE TO HEARING REQUESTS

Genesis Quality Aggregates Ltd, Air Quality Permit Number 84019L00; TCEQ Docket No. 2009-0679-AIR

Page 4 of 10

- (1) The issue must involve a disputed question of fact;
- (2) The issue must have been raised during the public comment period; and
- (3) The issue must be relevant and material to the decision on the application.

The law applicable to the proposed facility may generally be summarized as follows. A person who owns or operates a facility or facilities that will emit air contaminants is required to obtain authorization from the commission prior to the construction and operation of the facility or facilities.² Thus, the location and operation of the proposed facility requires authorization under the TCAA. Permit conditions of general applicability must be in rules adopted by the commission.³ Those rules are found in 30 TAC Chapter 116. In addition, a person is prohibited from emitting air contaminants or performing any activity that violates the TCAA or any commission rule or order, or that causes or contributes to a condition of air pollution.⁴ The relevant rules regarding air emissions are found in 30 TAC Chapters 101 and 111-118. In addition, the commission has the authority to establish and enforce permit conditions consistent with this chapter.⁵ The materials accompanying this response list and reference permit conditions and operational requirements and limitations applicable to this proposed facility.

III. Analysis of Hearing Requests

A. Were the requests for a contested case hearing in this matter timely and in proper form?

The hearing requests were submitted during the public comment period or during the period for requesting a contested case hearing after the filing of the ED's RTC. Furthermore, the ED has determined the hearing requests of Terri and Arueliano Contreras, Douglas and Maria Frazier, Alejandro Gonzalez, Rosalinda (Linda) Lehman, Maria Monreal, Mario and Marina Salazar, Pedro Fernandez, Alenas Fernandez, and Rita and Bob Williams substantially comply with all of the requirements for form in 30 TAC § 55.201(d).

The ED addressed all public comments in this matter by providing responses in the RTC and the amended RTC. The cover letter from the Office of the Chief Clerk attached to the RTC states that requesters should, to the extent possible, specify any of the ED's responses in the RTC that the requesters dispute and the factual basis of the dispute, and list any disputed issues of law or policy.⁶ Douglas and Maria Frazier filed a response to the ED's RTC, which included a request for a hearing and suggested list of issues that should be referred to SOAH if a contested case hearing is held for this permit. The disputed issues identified by Douglas and Maria Frazier are addressed in the issues listed below.

² TEXAS HEALTH & SAFETY CODE § 382.0518

³ TEXAS HEALTH & SAFETY CODE § 382.0513

⁴ TEXAS HEALTH & SAFETY CODE § 382.085

⁵ TEXAS HEALTH & SAFETY CODE § 382.0513

⁶ See 30 TAC § 55.201(d)(4).

B. Are those who requested a contested case hearing in this matter affected persons?

The hearing requesters Terri and Arueliano Contreras, Alejandro Gonzalez, Rosalinda (Linda) Lehman, Maria Monreal, Mario and Marina Salazar, Pedro Fernandez, Alenas Fernandez, and Rita & Bob Williams submitted a form letter requesting a hearing. These requesters have demonstrated that they are "affected persons" as defined in 30 TAC § 55.203. The threshold test of affected person status is whether the requestor has a personal justiciable interest affected by the application, and this interest is different from that of the general public.⁷ The hearing requesters Terri and Arueliano Contreras, Alejandro Gonzalez, Rosalinda (Linda) Lehman, Maria Monreal, and Mario and Marina Salazar stated that their air quality would be adversely affected by the proposed facility in their requests for a hearing. Hearing requestors Rita and Bob Williams further noted that Bob Williams suffers from the lung ailment COPD, and that their quality of life would be adversely affected by the proposed facility. Therefore these hearing requestors have identified personal justiciable interests that would make them affected persons under 30 TAC § 55.203. Furthermore, the ED has confirmed that Terri and Arueliano Contreras, Alejandro Gonzalez, Rosalinda (Linda) Lehman, Maria Monreal, Mario and Marina Salazar, and Rita and Bob Williams reside within one mile of the proposed facility. *See* attached map. The ED was unable to confirm the address of Pedro Fernandez and Alenas Fernandez, however, the physical address provided by these requestors is similar to the addresses provided by other hearing requestors that the ED was able to confirm, a physical address located on Lehmann Ranch Road. The address provided by Pedro Fernandez and Alenas Fernandez is 800 Lehmann Ranch Road, while the requestors farthest from the facility, Rita and Bob Williams have an address of 744 Lehmann Ranch Road, and reside approximately 2826 feet from the facility. Therefore, the ED presumes that Pedro Fernandez and Alenas Fernandez also reside within one mile of the proposed facility.

The hearing requestors Douglas and Maria Frazier submitted three separate requests for a contested case hearing, and two requests for reconsideration. The address provided by these requestors was confirmed to be within one mile of the proposed facility. *See* attached map. These requestors have also demonstrated that they are "affected persons" as defined in 30 TAC § 55.203, by identifying personal justiciable interests affected by the application that are different from that of the general public.

C. Which issues in this matter should be referred to SOAH for hearing?

If the commission determines any of the hearing requests in this matter are timely and in proper form, and some or all of the hearing requesters are affected persons, the commission must apply the three-part test discussed in Section II to the issues raised in this matter to determine if any of the issues should be referred to SOAH for a contested case hearing. The three-part test asks whether the

⁷ *United Copper Industries and TNRCC v. Joe Grissom*, 17 S.W.3d 797 (Tex. App.-Austin, 2000)

EXECUTIVE DIRECTOR'S RESPONSE TO HEARING REQUESTS

Genesis Quality Aggregates Ltd, Air Quality Permit Number 84019L00; TCEQ Docket No. 2009-0679-AIR

Page 6 of 10

issues involve disputed questions of fact, whether the issues were raised during the public comment period, and whether the issues are relevant and material to the decision on the permit application, in order to refer them to SOAH.

The ED addressed all public comments in this matter by providing responses in the RTC and amended RTC. The cover letter from the Office of the Chief Clerk transmitting the RTC cites 30 TAC § 55.201(d)(4), which states that requesters should, to the extent possible, specify any of the ED's responses in the RTC the requesters dispute and the factual basis of the dispute, and list any disputed issues of law or policy. In the absence of a response from any of the other hearing requesters within the thirty-day period after the RTC was mailed, the ED cannot determine or speculate on the issues of fact that may continue to be disputed by the hearing requesters, or any alleged outstanding issues of law or policy. However, the ED acknowledges the hearing requesters have one more opportunity to identify disputed issues of fact in their replies to the positions of the ED, Office of Public Interest Counsel, and the Applicant regarding the hearing request. Therefore, to facilitate the commission's consideration of this matter, the ED has analyzed the remaining two parts of the test, assuming that the issues raised in the comments in this matter remain disputed.

It should also be noted that in addition to their comments and hearing requests, Douglas and Maria Frazier also identified 38 issues they independently recommend be referred to SOAH. *See* Attachment B. The ED has evaluated this list and determined that the issues identified by the Fraziers that are appropriate for referral to SOAH have been adequately addressed by the ED's recommended issues for referral listed below.

1. Twenty-two issues involving questions of fact.

The following issues involving questions of fact regarding the operation of the Applicant's proposed facility were raised during the comment period:

The hearing requests raise the following issues:

1. Adverse effects on air quality claiming the project will cause or contribute to air pollution
2. Potential health impacts on the elderly, children, and the public.
3. Impact on the environment, livestock, plant life, crops, and wildlife/animals;
4. Adverse effects on leases used for deer hunting because of dust and noise;
5. Whether the draft permit achieves BACT for particulate matter, including PM₁₀;
6. Whether the rock crusher will cause or contribute to the following nuisance conditions: dust and noise;
7. Deficiencies in the applicant's modeling;
8. Questions about applicant's compliance history;
9. Deficiencies in the application such as cost information, accurate representation of emission sources, and emission rates;
10. Location and proximity to homes, roads, and a shallow aquifer;

EXECUTIVE DIRECTOR'S RESPONSE TO HEARING REQUESTS

Genesis Quality Aggregates Ltd, Air Quality Permit Number 84019L00; TCEQ Docket No. 2009-0679-AIR

Page 7 of 10

11. Enforceability of the permit conditions;
12. Compliance with all state rules and regulations;
13. Effects on the Rio Grande river, ground water and water quality;
14. Water usage and usage violations;
15. Effects on roads and traffic;
16. Pollution caused by trucks used in the process;
17. Effects on property values and property rights and economic impacts;
18. Inappropriate usage of farm easements for access to the facility, not closing gates on easements, parking in easement by trucks from the facility, refusal of applicant to abide by easement terms, and dust from traffic on easement;
19. Property damage such as damaged fences and gates, and stolen gates;
20. Pollution cause by the quarry;
21. Other necessary water related approvals; and
22. General opposition to issuance of the permit.

2. Were the issues raised during the public comment period?

The public comment period is defined in 30 TAC § 55.152. The public comment period begins with the publication of the Notice of Receipt and Intent to Obtain an Air Quality Permit. The end date of the public comment period depends on the type of permit. In this case, the public comment period began on March 20, 2008, and ended on February 10, 2009. The issues listed above upon which the hearing requests in this matter are based were raised in comments received during the public comment period. These issues may be considered by the commission.

3. Whether the issues are relevant and material to the decision on the application.

In this case, the permit would be issued under the commission's authority in Tex. Water Code § 5.013(11) (assigning the responsibilities in Chapter 382 of the Tex. Health & Safety Code) and the TCAA. The relevant sections of the TCAA are found in Subchapter C (Permits). Subchapter C requires the commission to grant a permit to construct or modify a facility if the commission finds the proposed facility will use at least the best available control technology (BACT) and the emissions from the facility will not contravene the intent of the TCAA, including the protection of the public's health and physical property. In making this permitting decision, the commission may consider the Applicant's compliance history. The commission by rule has also specified certain requirements for permitting. Therefore, in making the determination of relevance in this case, the commission should review each issue to see if it is relevant to these statutory and regulatory requirements that must be satisfied by this permit application.

The ED received additional filings from Douglas and Maria Frazier reiterating prior concerns after the RTC was mailed; these concerns are included in the list of issues below. The remaining hearing requesters did not file any additional responses. In the absence of identification by the other hearing

EXECUTIVE DIRECTOR'S RESPONSE TO HEARING REQUESTS

Genesis Quality Aggregates Ltd, Air Quality Permit Number 84019L00; TCEQ Docket No. 2009-0679-AIR

Page 8 of 10

requesters of disputed issues in the RTC, the ED cannot determine which issues remain disputed. However, if the assumption is made that the issues raised in the public comments continue to be disputed, the following is the ED's position on those issues.

The ED finds the following issues relevant and material to the decision on the application:

1. Whether the facility will have in adverse effects on air quality;
2. Whether adverse health impacts are expected on the elderly, children, and the public;
3. Whether there will be an adverse impact on the animal life or vegetation;
4. Whether the rock crusher will cause or contribute to the following nuisance conditions: dust and odor;
5. Whether the applicant's modeling was sufficient;
6. Whether the applicant's compliance history warrants denial of the permit;
7. Whether the permit complies with the following applicable rules and regulations:
 - a. Whether the draft permit achieves BACT for particulate matter;
 - b. Whether the permit demonstrates compliance with the NAAQS for PM₁₀;
 - c. Whether the application/permit is deficient with regard to representation and consideration of emission sources, emission rates, stockpile levels;
 - d. Whether the permit is based on correct usage of emission factors;
 - e. Whether the permit conditions as written are enforceable; and
 - f. Whether the permit's recordkeeping provisions are adequate to ensure compliance.

The ED finds the following issues are beyond the jurisdiction of TCEQ and thus not material to the decision on the application:

1. Whether the rock crusher will cause or contribute to noise;
2. Cumulative effects due to other rock quarries in the area;
3. Effects on roads and traffic;
4. Pollution caused by trucks used in the process;
5. Effects on property values, property rights, and economic impacts, including effects on leases used for deer hunting;
6. Inappropriate usage of farm easements for access to the facility, not closing gates on easements, parking in easement by trucks from the facility, refusal of applicant to abide by easement terms, and dust from traffic on easement; and
7. Property damage such as damaged fences and gates, and stolen gates.

The ED finds the following issues, although within the TCEQ's jurisdiction, not within the scope of this air permit review and thus not material to the decision on the application:

1. Effects on the ground water and water quality;
2. Water usage and usage violations;
3. Pollution caused by the quarry; and
4. Other necessary water related approvals.

IV. Maximum Expected Duration of the Contested Case Hearing

The ED recommends the contested case hearing, if held, should last no longer than six months from the preliminary hearing to the proposal for decision.

V. Executive Director's Recommendation

The Executive Director respectfully recommends the commission:

- A. Find all hearing requests in this matter were timely filed;
- B. Find the requests of Terri and Arueliano Contreras, Douglas and Maria Frazier, Alejandro Gonzalez, Rosalinda (Linda) Lehman, Maria Monreal, Mario and Marina Salazar, Pedro Fernandez, Alenas Fernandez, and Rita and Bob Williams satisfy the requirements for form under 30 TAC § 55.201(d) and are affected under 30 TAC § 55.203.
- C. If the commission determines any requester is an affected person, refer the following issues to SOAH:
 1. Whether the facility will have in adverse effects on air quality;
 2. Whether adverse health impacts are expected on the elderly, children, and the public;
 3. Whether there will be an adverse impact on the animal life or vegetation;
 4. Whether the rock crusher will cause or contribute to the following nuisance conditions: dust and odor;
 5. Whether the applicant's modeling was sufficient;
 6. Whether the applicant's compliance history warrants denial of the permit;
 7. Whether the permit complies with the following applicable rules and regulations:
 - a. Whether the draft permit achieves BACT for particulate matter;
 - b. Whether the permit demonstrates compliance with the NAAQS for PM 2.5;
 - c. Whether the application/permit is deficient with regard to representation and consideration of emission sources, emission rates, stockpile levels;
 - d. Whether the permit is based on correct usage of emission factors;
 - e. Whether the permit conditions as written are enforceable; and
 - f. Whether the permit's recordkeeping provisions are adequate to ensure compliance
- D. Find the maximum expected duration of the contested case hearing, if held, would be six months.

EXECUTIVE DIRECTOR'S RESPONSE TO HEARING REQUESTS

Genesis Quality Aggregates Ltd, Air Quality Permit Number 84019L00; TCEQ Docket No. 2009-0679-AIR
Page 10 of 10

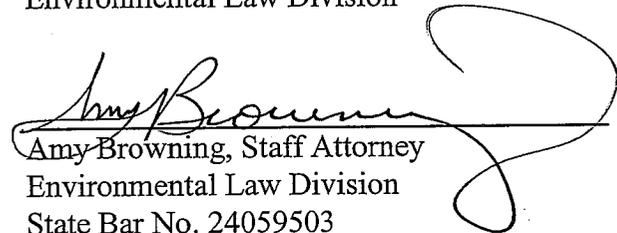
Respectfully submitted,

Texas Commission on Environmental Quality

Mark R. Vickery, P.G., Executive Director

Stephanie Bergeron Perdue, Deputy Director
Environmental Law Division

Robert Martinez, Division Director
Environmental Law Division

A handwritten signature in black ink, appearing to read "Amy Browning", is written over a horizontal line. The signature is stylized and extends to the right of the line.

Amy Browning, Staff Attorney
Environmental Law Division
State Bar No. 24059503
PO Box 13087, MC 173
Austin, Texas 78711-3087
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Representing the
Executive Director of the
Texas Commission on
Environmental Quality

Representing the Executive Director of the
Texas Commission on Environmental Quality

Attachment A – Map of Hearing Requestor Locations

Attachment B
List of Issues Recommended by Douglas and Maria Frazier for
Referral to SOAH

List of potential issues for referral to SOAH for a contested case hearing submitted by Douglas and Maria Frazier in their requests for a contested case hearing and requests for Reconsideration:

1. Whether the application contains all items and information necessary for administrative and technical completeness under the agency's rules.¹
2. Whether proper public notice of the application was provided by the applicant (e.g., published notice; signage; alternative language compliance).²
3. Whether the applicant has an acceptable compliance history in Texas and other jurisdictions.³
4. Whether the applicant has legal access to the facility, and if so, whether the applicant is complying with the legal requirements for access.⁴
5. Whether there are material discrepancies in the application concerning the facility's boundaries.⁵
6. Whether the applicant has sufficiently identified its property rights governing construction and operation of the facility and the modeling of off-site emissions.⁶
7. Whether the process description and equipment configuration set forth in the application are sufficiently definite to properly quantify, model, and regulate emission, from all sources at the facility including, without limitation, the screens, conveyors, drop points, stockpiles, and materials handling areas.⁷
8. Whether proper emission factors were used to determine emission rates for each identified source of emissions at the facility including, without limitation, the crusher, screens, and scrubbers.⁸
9. Whether all sources of fugitive emissions from the facility have been fully identified, quantified, and modeled.⁹
10. Whether all sources of emissions associated with the proposed facility are identified in the application.¹⁰

¹ Addressed in Executive Director's RTC Response 2.

² Addressed in Executive Director's RTC Response 1.

³ Addressed in Executive Director's RTC Response 2.

⁴ Addressed in Executive Director's RTC Response 6.

⁵ Addressed in Executive Director's RTC Response 2.

⁶ Addressed in Executive Director's RTC Response 2.

⁷ Addressed in Executive Director's RTC Response 2.

⁸ Addressed in Executive Director's RTC Responses 6 and 9.

⁹ Addressed in Executive Director's RTC Responses 6 and 9.

¹⁰ Addressed in Executive Director's RTC Responses 6 and 9.

11. Whether all species air contaminants that will be emitted by the operations have been identified, quantified, and modeled including, without limitation, silica.¹¹
12. Whether the air contaminants that have been identified, quantified, and modeled have been modeled correctly.¹²
13. Whether emissions particulate matter and other pollutants from roads at the facility have been properly identified, speciated, quantified, and modeled.¹³
14. Whether emissions of particulate matter and other pollutants from vehicles, including but not limited to transport vehicles at the facility have been properly identified, quantified, and modeled.¹⁴
15. Whether the application contains a sufficient demonstration that the facility's controls meet the "best available control technology" requirement.¹⁵
16. Whether the applicant's proposed controls actually constitute the "best available control technology."¹⁶
17. Whether the applicant's proposed control equipment is capable of meeting the performance characteristics and efficiencies set forth in the application.¹⁷
18. Whether proper control factors were applied to the control equipment at the facility.¹⁸
19. Whether the applicant's proposed control equipment is capable of sufficiently controlling small and fine particulate matter (e.g., respirable silica of all types listed in the TCEQ's effects screening levels guidance).¹⁹
20. Whether proper opacity limits have been established.²⁰
21. Whether proper inputs, assumptions and adjustments were made in the calculation and modeling of emissions from sources on the property including, without limitation, the stockpiles, materials handling areas, and area sources.²¹

¹¹ Addressed in Executive Director's RTC Responses 6 and 9.

¹² Addressed in Executive Director's RTC Responses 6 and 9.

¹³ Addressed in Executive Director's RTC Responses 6 and 9.

¹⁴ Addressed in Executive Director's RTC Response 6.

¹⁵ Addressed in Executive Director's RTC Response 2.

¹⁶ Addressed in Executive Director's RTC Response 2.

¹⁷ Addressed in Executive Director's RTC Response 2.

¹⁸ Addressed in Executive Director's RTC Response 2.

¹⁹ Addressed in Executive Director's RTC Response 2.

²⁰ Addressed in Executive Director's RTC Response 2.

²¹ Addressed in Executive Director's RTC Response 2.

22. Whether the health effects review was based on proper characterization of nearby properties, effects screening levels, exceedance frequencies, and toxicological considerations.²²

23. Whether appropriate background and ambient air quality conditions were determined and factored in to the air modeling and health effects review.²³

24. Whether the cumulative effects of existing operations and sources in the local and immediate area were properly determined and factored into the air modeling and health effects review.²⁴

25. Whether the facility will cause or contribute to a violation of air quality standards.²⁵

26. Whether the facility will cause or contribute to a condition of air pollution.²⁶

27. Whether the facility will cause or contribute to nuisance conditions.²⁷

28. Whether emissions from the facility will be injurious to human health, animals, and livestock.²⁸

29. Whether construction and operation of the proposed facility will violate other applicable state or federal requirements including, without limitation, those relating to protection of endangered species, wetlands, and historical or culturally significant resources.²⁹

30. Whether the draft permit is sufficiently definite in its terms and conditions to ensure that the applicant is held to representations that it made in the application and application process, including representations that were made in response to agency concerns and questions.³⁰

31. Whether the draft permit is sufficiently definite in its terms and conditions to ensure compliance with applicable air quality regulations and standards.³¹

32. Whether the draft permit lacks finality with respect to certain of its terms and conditions.³²

²² Addressed in Executive Director's RTC Response 2.

²³ Addressed in Executive Director's RTC Response 2.

²⁴ Addressed in Executive Director's RTC Response 2.

²⁵ Addressed in Executive Director's RTC Response 2.

²⁶ Addressed in Executive Director's RTC Response 2.

²⁷ Addressed in Executive Director's RTC Responses 2 and 5.

²⁸ Addressed in Executive Director's RTC Response 2.

²⁹ Addressed in Executive Director's RTC Response 2.

³⁰ Addressed in Executive Director's RTC Response 2.

³¹ Addressed in Executive Director's RTC Response 2.

³² Addressed in Executive Director's RTC Response 2.

33. Whether the issuance of the permit will contravene the intent of the Texas Clean Air Act.³³

34. Whether the applicant has correctly represented the amount of aggregate that it intends to produce.³⁴

35. Whether the applicant has correctly factored existing emissions into its modeling and calculations.³⁵

36. Whether the facility will adversely affect water quality.³⁶

37. Whether the facility has adequate water rights to provide the water required to comply with the permit.³⁷

38. Whether the facility is compatible with surrounding land uses.³⁸

³³ Addressed in Executive Director's RTC Response 2.

³⁴ Addressed in Executive Director's RTC Response 2.

³⁵ Addressed in Executive Director's RTC Response 2.

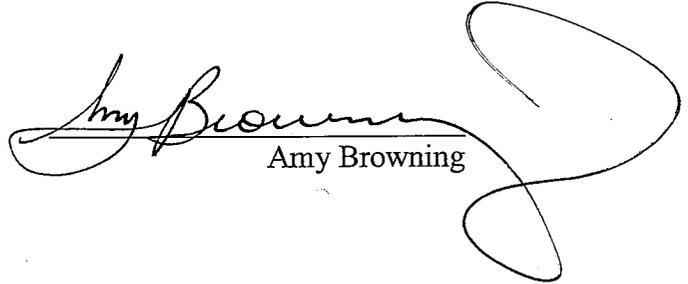
³⁶ Addressed in Executive Director's RTC Responses 3 and 10.

³⁷ Addressed in Executive Director's RTC Responses 3 and 10.

³⁸ Addressed in Executive Director's RTC Response 2.

CERTIFICATE OF SERVICE

On the 31st day of August, 2009, 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.


Amy Browning

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