

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

April 8, 2009

TO: Persons on the attached mailing list.

RE: Genesis Quality Aggregates, Ltd.
Permit No. 84019L001

Decision of the Executive Director.

The executive director has made a decision that the above-referenced permit application meets the requirements of applicable law. **This decision does not authorize construction or operation of any proposed facilities.** This decision will be considered by the commissioners at a regularly scheduled public meeting before any action is taken on this application unless all requests for contested case hearing or reconsideration have been withdrawn before that meeting.

Enclosed with this letter is a copy of the Executive Director's Response to Comments. A copy of the complete application, draft permit and related documents, including public comments, is available for review at the TCEQ Central office. A copy of the complete application, the draft permit, and executive director's preliminary decision are available for viewing and copying at the TCEQ Central Office, the TCEQ Laredo Regional Office, and the Eagle Pass Public Library, 589 East Main Street, Eagle Pass, Maverick County, Texas.

If you disagree with the executive director's decision, and you believe you are an "affected person" as defined below, you may request a contested case hearing. In addition, anyone may request reconsideration of the executive director's decision. A brief description of the procedures for these two requests follows.

How To Request a Contested Case Hearing.

It is important that your request include all the information that supports your right to a contested case hearing. You must demonstrate that you meet the applicable legal requirements to have your hearing request granted. The commission's consideration of your request will be based on the information you provide.

The request must include the following:

- (1) Your name, address, daytime telephone number, and, if possible, a fax number.
- (2) If the request is made by a group or association, the request must identify:
 - (A) one person by name, address, daytime telephone number, and, if possible, the fax number, of the person who will be responsible for receiving all communications and documents for the group; and
 - (B) one or more members of the group that would otherwise have standing to request a hearing in their own right. The interests the group seeks to protect must relate to the organization's purpose. Neither the claim asserted nor the relief requested must require the participation of the individual members in the case.
- (3) The name of the applicant, the permit number and other numbers listed above so that your request may be processed properly.
- (4) A statement clearly expressing that you are requesting a contested case hearing. For example, the following statement would be sufficient: "I request a contested case hearing."

Your request must demonstrate that you are an **"affected person."** 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. Your request must describe how and why you would be adversely affected by the proposed facility or activity in a manner not common to the general public. For example, to the extent your request is based on these concerns, you should describe the likely impact on your health, safety, or uses of your property which may be adversely affected by the proposed facility or activities. To demonstrate that you have a personal justiciable interest, you must state, as specifically as you are able, your location and the distance between your location and the proposed facility or activities. A person who may be affected by emissions of air contaminants from the facility is entitled to request a contested case hearing.

Your request must raise disputed issues of fact that are relevant and material to the commission's decision on this application. The request must be based on issues that were raised during the comment period. The request cannot be based solely on issues raised in comments that have been withdrawn. The enclosed Response to Comments will allow you to determine the issues that were raised during the comment period and whether all comments raising an issue have been withdrawn. The public comments filed for this application are available for review and copying at the Chief Clerk's office at the address below.

To facilitate the commission's determination of the number and scope of issues to be referred to hearing, you should: 1) specify any of the executive director's responses to comments that you dispute; and 2) the factual basis of the dispute. In addition, you should list, to the extent possible, any disputed issues of law or policy.

How To Request Reconsideration of the Executive Director's Decision.

Unlike a request for a contested case hearing, anyone may request reconsideration of the executive director's decision. A request for reconsideration should contain your name, address, daytime phone number, and, if possible, your fax number. The request must state that you are requesting reconsideration of the executive director's decision, and must explain why you believe the decision should be reconsidered.

Deadline for Submitting Requests.

A request for a contested case hearing or reconsideration of the executive director's decision must be **received** by the Chief Clerk's office no later than **30 calendar days** after the date of this letter. You may submit your request electronically at <http://www.tceq.state.tx.us/about/comments.html> or by mail to the following address:

LaDonna Castañuela, Chief Clerk
TCEQ, MC-105
P.O. Box 13087
Austin, Texas 78711-3087

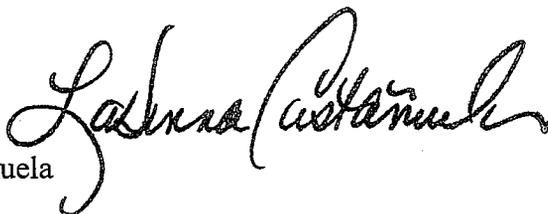
Processing of Requests.

Timely requests for a contested case hearing or for reconsideration of the executive director's decision will be referred to the alternative dispute resolution director and set on the agenda of one of the commission's regularly scheduled meetings. Additional instructions explaining these procedures will be sent to the attached mailing list when this meeting has been scheduled.

How to Obtain Additional Information.

If you have any questions or need additional information about the procedures described in this letter, please call the Office of Public Assistance, Toll Free, at 1-800-687-4040.

Sincerely,



LaDonna Castañuela
Chief Clerk

LDC/lg

Enclosures

MAILING LIST
For
Genesis Quality Aggregates, Ltd.
Permit No. 84019L001

FOR THE APPLICANT:

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FOR OFFICE OF PUBLIC ASSISTANCE
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FOR THE CHIEF CLERK
via electronic mail:

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INTERESTED PERSONS:

See attached list.

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TCEQ AIR QUALITY PERMIT NUMBER 84019L001

bc
TEXAS COMMISSION ON ENVIRONMENTAL QUALITY
2009 APR -3 AM 11:57
CHIEF CLERKS OFFICE

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

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 New Source Review Authorization application and Executive Director's preliminary decision.

As required by Title 30 Texas Administrative Code (TAC) § 55.156, before an application is approved, the Executive Director prepares a response to all timely, relevant and material, or significant comments. The Office of Chief Clerk timely received comment letters from the following persons: Terri & Arueliano Contreras, Alejandro Gonzalez, Rosalinda (Linda) Lehman, Maria Monreal, Fatima Salazar, Mario & Marina Salazar, and Rita & 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, Hermene Paine, and Fabiola Zamago. 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

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 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.

Procedural Background

Before work is begun on the construction of a new facility that may emit air contaminants, the person planning the construction must obtain a permit from the commission. This permit application is for an initial issuance of Air Quality Permit Number 84019L001.

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY
2009 APR -6 AM 11:57
CHIEF CLERKS OFFICE

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 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.

COMMENTS AND RESPONSES

COMMENT 1: Public Notice Concerns

Commenters express concerns regarding the applicant's compliance with the agency's public notice requirements. They specifically refer to the availability of the NORI English affidavit. (*Aureliano & Terri Contreras*)

RESPONSE 1:

Genesis Quality Aggregates (GQA) published the Notice of Receipt and Intent to Obtain an Air Quality Permit for this permit application on March 20, 2008, in *The Eagle Pass News Guide*. The tearsheets were received by the Office of the Chief Clerk on April 09, 2008 and the affidavit was received on May 21, 2008. The Spanish notice was published in *The News Gram* on July 18, 2008. The delay in publishing Spanish notice was due to the applicant's uncertainty of an appropriate paper's availability. The TCEQ's Office of Legal Services verified *The News Gram* as an appropriate paper and the applicant subsequently published their Spanish notice. The tearsheets and affidavit for the Spanish notice were received on August 1, 2008. The Public Notice Verification Form was received on August 28, 2008.

GQA published the Notice of Application and Preliminary Decision for an Air Quality Permit in both English and Spanish on November 2, 2008 in the aforementioned newspapers. The Spanish tearsheets and affidavit were received by the Office of the Chief Clerk on November 12, 2008. The English affidavit and tearsheets were received on December 3, 2008. A public meeting was held on February 10, 2009 at 7:00 pm at the Seco Mines Center in Eagle Pass and the close of the meeting ended the comment period. GQA satisfied the public notice requirements.

COMMENT 2: Air Quality and Health Concerns

Commenters express concerns regarding potential dust pollution created by the Applicant's facility and the potential impact it would have on the air quality, the environment, and the health of nearby residents. (*Aureliano & Terri Contreras, Pedro Fernandez, Guadalupe Flores, Rosendo Flores, Vastie Flores, Alejandro Gonzalez, Rosalinda Lehmann, Maria Monreal, Hermane Paine, Fatima Salazar, Bob & Rita Williams, and Fabiola Zamago*)

RESPONSE 2:

For permits such as this, 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 and effects screening levels.¹ The specific health-based standards or guidance levels employed in evaluating the potential emissions include the National Ambient Air Quality Standards (NAAQS) and TCEQ Effect Screening Levels (ESLs).

National Ambient Air Quality Standards (NAAQS), as created by the United States Environmental Protection Agency (EPA), are defined in the federal regulations (40 C.F.R. § 50.2), and include both primary and secondary standards. The primary standards are those that 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 that 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. If the proposed facility is operated as required, there should be no adverse health effects.

The overall evaluation process provides a conservative prediction that is protective of the public and the environment. The modeling predictions that were reviewed by the TCEQ Air Permits Division included all of the applicable criteria pollutants listed above emanating from the proposed rock crushing equipment and associated diesel generator. The modeling analysis was determined to be acceptable. In summary, based on potential concentrations reviewed by TCEQ staff, adverse effects to health, welfare and the environment are not expected as a result of the expected levels of emissions from this facility.

Furthermore, in the permit evaluation process, the permit reviewer identified all sources of air contaminants at the proposed facility and assured that the facility will be using the Best Available Control Technology (BACT).

Pursuant to TCAA § 382.0518, BACT is based upon control measures that are designed to minimize the level of emissions from specific sources with consideration given to technical practicability and economic reasonableness. The facility will emit particulate matter including particulate matter less than 10 micron in diameter (PM₁₀), carbon monoxide (CO), nitrogen oxides (NO_x), sulfur dioxide (SO₂), and total organic carbon (TOC).²

The primary control measures for particulate matter for rock crushing facilities include permanently mounted spray bars installed at the inlet and outlet of all crushers, at all shaker screens, and at all material transfer points, which is required for this facility. Area-type water sprays shall be installed at all stockpiles and active work areas. Fugitive dust from plant roads

¹ For details on air modeling, see TCEQ guidance document entitled "Air Quality Modeling Guidelines" located at <http://www.tceq.state.tx.us/assets/public/permitting/air/Guidance/NewSourceReview/rg25.pdf>

² Methane is included in TOC.

and aggregate stockpiles shall be controlled by applying water or environmentally sensitive chemicals to these dust sources.

In addition, the draft permit includes specific opacity restrictions. Opacity of emissions from any transfer point on belt conveyors or the screen shall not exceed ten percent and from any crusher shall not exceed fifteen percent, averaged over a six-minute period (as determined by EPA Test Method (TM) 9 or equivalent). The draft permit also includes restrictions on visible fugitive emissions from the two crushers, the screen, engine/generator, transfer points on belt conveyors, material storage or feed bins, stockpiles, and internal roads and work areas to determine compliance with abatement controls. In sum, TCEQ staff reviewed the proposed technology with current BACT guidelines and determined the controls constitute BACT for this type of facility.

The applicant 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 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." The permit conditions are drafted to prevent nuisance conditions and the Applicant is not permitted to operate in such a manner that causes nuisance conditions. As long as the applicant's facility is operated in compliance with the terms of the permit, nuisance conditions are not expected.

Individuals are encouraged to report any concerns about nuisance issues or suspected noncompliance with terms of any permit or other environmental regulation by contacting the San Angelo Regional Office at 325-655-9479, or by calling the twenty-four hour toll-free Environmental Complaints Hotline at 1-888-777-3186. If the facility is found to be out of compliance with the terms and conditions of its permit, it will be subject to investigation and possible enforcement action. If the facility is found to be out of compliance with the terms and conditions of the permit, it will be subject to possible enforcement action. Citizen-collected evidence may be used in such an action. See 30 TAC § 70.4, Enforcement Action Using Information Provided by Private Individual, for details on gathering and reporting such evidence. The TCEQ has long had procedures in place for accepting environmental complaints from the general public but now has a tool for bringing potential environmental problems to light. Under the citizen-collected evidence program, individuals can provide information on possible violations of environmental law and the information can be used by the TCEQ to pursue enforcement. In this program, citizens can become involved and may eventually testify at a hearing or trial concerning the violation. For additional information, see the TCEQ publication, "Do You Want to Report an Environmental Problem? Do You Have Information or Evidence?" This booklet is available in English and Spanish from the TCEQ Publications office at 512-239-0028, and may be downloaded from the agency website at www.tceq.state.tx.us (under Publications, search for document no. 278).

COMMENT 3: Water Quality Concerns

Commenters express concern that the emissions of the proposed CBP will adversely affect water quality. They further express concern about the nearby aquifer and Rio Grande River when heavy rains occur. (*Rosendo Flores*)

RESPONSE 3:

While the TCEQ is responsible for the environmental protection of all media (including water), the law governing air permits deals specifically with air-related issues. The scope of this air quality permit application review does not include water assessment or consideration of issues involving water quality. However, as discussed above, the secondary NAAQS have been established to protect public welfare and the environment. Since the results of the air modeling performed in the development of the standard permit are below levels of concern under state and federal standards, emissions from the proposed facility are not expected to adversely impact water, vegetation, or animals in the area. Depending on the nature of the facility's operations, the Applicant may be required to apply for separate permits that regulate storm water.

COMMENT 4: Proximity to Residential Area

Commenters express concern regarding the facility's close proximity to a residential area. (*Aureliano & Terri Contreras, Pedro Fernandez, Guadalupe Flores, Vastie Flores, Alejandro Gonzalez, Rosalinda Lehmann, Maria Monreal, Hermane Paine, Fatima Salazar, Bob & Rita Williams, and Fabiola Zamago*)

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 facility location choices made by an applicant when determining whether to approve or deny a permit application, unless state law imposes specific distance limitations that are enforceable by the TCEQ. Zoning and land use are beyond the authority of the TCEQ for consideration when reviewing air quality permit applications and such issues should be directed to local officials. As set forth in Section 382.052 of the Texas Clean Air Act (TCAA), the TCEQ shall consider possible adverse health effects on individuals attending schools which are located within 3,000 feet of a facility or proposed facility. A protectiveness review must be conducted for all contaminants emitted. The maximum concentrations are evaluated at the property line, at the nearest off-property receptor, and at any schools located within 3,000 feet of the facilities. The site review indicated that there was no school within 3,000 feet. The recommendation of the Region 16 Office was to proceed with the permit review, and the site review indicated no reasons to deny the permit application.

CHANGES MADE IN RESPONSE TO COMMENT

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

Respectfully submitted,

Texas Commission on Environmental Quality

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

Stephanie Bergeron Perdue, Deputy Director
Environmental Law Division



Amy Lynn Browning, Staff Attorney
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Representing the
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