

Bryan W. Shaw, Ph.D., *Chairman*
Buddy Garcia, *Commissioner*
Carlos Rubinstein, *Commissioner*



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

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

June 7, 2010

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

Re: **TOMMY DAVIS DBA SLICK MACHINES**
TCEQ DOCKET NO. 2010-0660-AIR

Dear Ms. Castañuela:

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

Sincerely,

A handwritten signature in cursive script, appearing to read "Eli Martinez".

Eli Martinez, Attorney
Assistant Public Interest Counsel

cc: Mailing List

Enclosure

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

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Austin, Texas 78711-3087

512-239-1000

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TCEQ DOCKET NO. 2010-0660-AIR

IN THE MATTER OF THE APPLICATION	§	BEFORE THE
OF TOMMY DAVIS DBA SLICK	§	TEXAS COMMISSION ON
MACHINES ROCK CRUSHER NO. 1	§	ENVIRONMENTAL QUALITY
PERMIT NO. 82199L002	§	

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

COMES NOW, the Office of Public Interest Counsel ("OPIC") of the Texas Commission on Environmental Quality (the "Commission" or "TCEQ") and files this Response to Hearing Requests in the above-referenced matter.

I. INTRODUCTION

Tommy Davis dba Slick Machines (Slick Machines or Applicant) has applied to the TCEQ for a New Source Review Authorization under Texas Clean Air Act (TCAA) §382.0518. This will authorize the Change of Location of a facility that may emit air contaminants.

This permit will authorize the applicant to change the location of a previously permitted rock crushing facility to a location 200 yards east of 11209 US Highway 67 in Glen Rose, Summervell County. The facility will consist of one crusher, one screen, associated conveyors and stockpiles and will be authorized to operate 5 hours per day, 5 days per week, and 30 weeks per year for a total of 750 hours per year. Contaminants authorized under this permit consist of 0.56 tons per year of particulate matter (PM) which includes 0.28 tons per year of particulate matter less than 10 microns in diameter (PM₁₀).

Before work is begun on the change of location of an existing facility that may emit air contaminants, the person planning the change of location must obtain a permit from the commission. The permit application is for the issuance of Air Quality Permit Number 82199L002 for a change of location of a portable facility.

The Executive Director ("ED") received the application on July 25, 2008, and declared the application administratively complete on August 8, 2008. The Applicant published the Notice of Receipt of Application and Intent to Obtain an Air Quality Permit (NORI) on August 14, 2008, in the *Glen Rose Reporter*. A public meeting was held on October 23, 2008 in Glen Rose, Texas. The notice of public meeting was mailed to the interested parties on the Chief Clerk's mailing list on October 7, 2008.

The notice of Application and Preliminary Decision for an Air Quality Permit was published January 15, 2009 in the *Glen Rose Reporter*. Due to legislative interest, a second public meeting was held on March 31, 2009 in Glen Rose, Texas. The notice of public meeting was mailed to the interested parties on the Chief Clerk's mailing list on March 16, 2009.

Continued legislative interest resulted in a third public meeting held on September 3, 2009 in Glen Rose, Texas. The notice of public meeting was mailed to the interested parties on the Chief Clerk's mailing list on August 7, 2009. The public comment period ended on September 3, 2009 at the end of the third public meeting.

The Executive Director mailed a Response to Comments (RTC) on March 23, 2010. The deadline for requesting a hearing was April 22, 2010. Timely-filed hearing requests were submitted by 213 individuals. Based on the information submitted in the requests and a review of the information available in the Chief Clerk's file on this application, OPIC finds that each of the requestors has raised material and relevant issues of fact and recommends granting the request of each affected requestor.¹

¹ OPIC notes that, while each requestor has raised at least one issue properly referred to SOAH for a contested case hearing, the Executive Director's map indicating the relative location of each requestor from the proposed facility was unavailable to our office at the time of filing. OPIC therefore recommends granting the request of each affected requestor residing or recreating in proximity to the proposed plant such that a reasonable relationship exists between the interests stated and the activity regulated.

II. APPLICABLE LAW

Because this application was declared administratively complete after September 1, 1999, it is subject to the requirements of Texas Health and Safety Code Section 382.056 (commonly known as "House Bill 801"). Under the applicable statutory and regulatory requirements, a hearing request must substantially comply with the following: give the name, address, daytime telephone number, and, where possible, fax number of the person who files the request; identify the requestor's personal justiciable interest affected by the application showing why the requestor is an "affected person" who may be adversely affected by the proposed facility or activity in a manner not common to members of the general public; request a contested case hearing; list all relevant and material disputed issues of fact that were raised during the comment period that are the basis of the hearing request; and provide any other information specified in the public notice of the application. 30 TEXAS ADMIN. CODE (hereinafter "TAC") § 55.201(d) (2006). Hearing requests must be submitted to the Chief Clerk's Office in writing no later than 30 days after the Chief Clerk's transmittal of the Executive Director's Response to Comments. 30 TAC § 55.201(c).

Under 30 TAC section 55.203(a), an "affected person" is "one who has a personal justiciable interest related to a legal right, duty, privilege, power, or economic interest affected by the application." This justiciable interest does not include an interest common to the general public. *Id.* Relevant factors that will be considered in determining whether a person is affected include:

- (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, safety, and use of property of the person;
- (5) likely impact of the regulated activity on use of the impacted natural resource by the person; and
- (6) for governmental entities, their statutory authority over or interest in the issues relevant to the application.

30 TAC § 55.203(c).

The Commission shall grant an affected person's timely filed hearing request if: (1) the request is made pursuant to a right to hearing authorized by law; and (2) the request raises disputed issues of fact that were raised during the comment period and that are relevant and material to the Commission's decision on the application. 30 TAC § 55.211(c).

The Commission has also set forth specific criteria for judging whether a group or organization should be considered an "affected person." 30 TAC § 55.205(a) states that a group or association may request a hearing if:

- 1) one or more members of the group or association would otherwise have standing to request a hearing in their own right;
- 2) the interests the group or association seeks to protect are germane to the organization's purpose; and
- 3) neither the claim asserted nor the relief requested requires the participation of the individual members in the case.

Any group or association meeting all of these criteria shall be considered an "affected person."

Accordingly, responses to hearing requests must specifically address:

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

30 TAC § 55.209(e).

III. DISCUSSION

A. Senator Kip Averitt

Senator Averitt submitted correspondence urging that a contested case hearing be granted on this application. Because Senator Averitt did not personally request a hearing, OPIC has treated this correspondence as comment submitted on behalf of his constituents rather than a hearing request.

B. Affected Person Status of Requestors

1. Group A

Timely-filed hearing requests were submitted by Sandra Stringer and Patti Webb which included relevant contact information and raised disputed, relevant and material issues of fact outlining why the requestors would be adversely affected by the proposed activity in a manner not common to members of the general public. These requests raise the concern that emissions from the proposed facility would compromise the air quality where they live and recreate. This concern is protected by the law under which the application will be considered.²

2. Group B

A joint, timely-filed hearing request was submitted by Barry & Claire Payne which included relevant contact information and raised disputed, relevant and material issues of fact outlining why the requestors would be adversely affected by the proposed activity in a manner not common to members of the general public. The request states that a large part of the requestors' land is designated as wildlife habitat and that they have developed a conservation plan in coordination with the Texas Parks and Wildlife and the Texas State Soil and Water

² 30 TAC § 55.203(c)(1).

Conversation Board. The requestors raise the concern that emissions from the proposed activity will adversely affect wildlife near the facility, including the endangered Golden-cheeked Warbler and Black-capped Vireo. This concern is protected by the law under which the application will be considered.³

3. Group C

Timely -filed hearing requests were submitted by Bonnie Bowman, on behalf of the Tarrant Coalition for Environmental Awareness (TCEA); Rhett H. Johnson, on behalf of the Chalk Mountain Wildlife Association (CMWA); Margaret Adams; Steve Allen; Mark & Patricia Beauregard; George D. & Mary Best; Heather Bienko; Grady & Lera Brittain; Charles S., Cyd F., and Florence Brown; Beverly & Lee Clauser Concerned Citizen, 101 East Elm Street, Glen Rose, TX 76043; Patrick R. Condry, on behalf of the Fossil Rim Wildlife Center; Zach Cummings; Jo Ann Duman; Donna Edwards; Patricia K. & William Edwards; Jo Evans; Modena Fite; Gloria & Ken Fossler; David & Lynda Greer; Sherman Griffith; Linda Gustafson; Douglas Hickok; Brent & Kelly Hoodenpyle; Carol F. Lee; Mary Lee Lilly; Edith Long; Wayne & Betty McKethan; Russ Miller; Brandon Mills; Stan & Kay Myers; Michael Oliver; Robert K. Portman, Jr.; Ernest & Shirley Reinke; Ron & Francine Singleterry; Karen & Ron Stepp; Allen & Jimmie Sumners; Joan Taylor; Mary O. & Robert J. Taylor; Sam & Teri Teaff; Susan Thompson; Tina Weinert; David Whitsitt; Sarah Williams; and Dana R. Zauf.

The requestors in this group share the concerns relating to air quality with those in Group A. Seventy-five families live within two miles of the proposed facility, and these requestors are concerned about the impact to the air quality in and around their homes. Further, operations

³ 30 TAC § 55.203(c)(1).

could potentially interfere with the region's ability to meet National Ambient Air Quality Standards (NAAQS).

The requestors in this group also share the concerns of those in Group B relating to protection of wildlife, including destruction of the habitat of endangered species. Crops and plant life may also be negatively impacted by plant operations.

In addition to the concerns previously raised, requestors in this group are additionally concerned about the issue of potential negative effects on human health caused by contaminants from the proposed facility. Plant operations may worsen allergies, asthma, chronic obstructive pulmonary disease (COPD), and create other health conditions. These concerns are protected by the law under which the application will be considered.⁴

The requests submitted by the TCEA and CMWA did not include statements indicating the purpose of the organizations they represent or naming one or more members of the group or association who would otherwise have standing to request a hearing in their own right as required by 30 TAC §55.205(a)(1)& (2). Pursuant to 30 TAC §55.205(b), OPIC therefore requests that these organizations provide a statement of purpose and the name and contact information of such a member by the reply deadline of June 21, 2010. If this information is timely filed, OPIC recommends that the hearing requests of the TCEA and CMWA be granted.

4. Group D

Thirty individuals filed timely hearing requests on a form letter that begins, "The purpose of this letter is to submit public comments, to request a public meeting and to request a contested case hearing to the Office of the Chief Clerk." These requests were submitted by Brenda S. Alvarez; Frank & Pat Barrow; Deirdre & Paul Boccafogli; Scarlett Brown; Alexandra, Brannan,

⁴ 30 TAC § 55.203(c)(1).

& Michael Cockerham; Concerned Citizen, 2402 Arbuckle Court, Dallas, TX 75229; Concerned Citizen, PO Box 2400, Glenn Rose, TX 76043; Concerned Citizen 1267 PR 1263, Iredell, TX 76649; Lewis Duff; Nathan & Kelly Eldridge; Robert Logan Haynes; Tanner Hill; Dawn M. Klipfel; Dorothy Jean Lane; Donna & Larry Lemons; Julie Matthews; Ivory Mize; Otela Paul; Kathryn Piepho; James E. Talley; Gerard & Jennifer Thompson; Ruth Wiederkehr; and Charlsie Wright. These requests raise the same disputed, material and relevant issues of fact as those raised by the requestors in Group C. These concerns are protected by the law under which the application will be considered.⁵

5. Group E

Thirty-five individuals filed timely hearing requests on a form letter that begins, "I am opposed to a rock-crushing facility (permit number 82199L002) scheduled for construction in the Chalk Mountain area." These requests were submitted by Gail Morris, on behalf of the Fort Worth Audubon; Caren Beck; Rebecca Bloch; Concerned Citizen 1595 County Road 1006, Walnut Springs, TX 76690; Concerned Citizen 2912 Riverplace Dr. Apt. 2102, Arlington, TX 76006; Concerned Citizen 2473 County Road 199, Iredell, TX 76649; Nick F. Cooney; Carol Culin; Thomas & Judith D'Amico; Walt Debill; Lyn E. Edwards; Kelly Freeman; Susan Gechter; Laura C. Groome; Linda Heideman; John & Ann Hoover; Dorothy Hoover; Laura K. Huber; Mary L. Johnson; Darwin Mann; Cynthia & Mike McVean; Kathy Moss; Lynn & Mike O'Neil; Viola Osborn; Jared Roberts; Danath Roden; Angela Jean Thompson; Ann Trenton; Mark H. Wagner; and Betty L. & John W. Wenzel. These requests raise the same disputed,

⁵ 30 TAC § 55.203(c)(1).

material and relevant issues of fact as those raised by the requestors in Group D. These concerns are protected by the law under which the application will be considered.⁶

The request submitted by the Fort Worth Audubon (FWA) did not include a statement indicating the purpose of the organization or name one or more members of the group or association who would otherwise have standing to request a hearing in their own right as required by 30 TAC §55.205(a)(1)& (2). Pursuant to 30 TAC §55.205(b), OPIC therefore requests that the Fort Worth Audubon provide a statement of purpose and the name and contact information of such a member by the reply deadline of June 21, 2010. If this information is timely filed, OPIC recommends that the hearing requests of the FWA be granted.

6. Group F

Forty-eight individuals filed timely hearing requests on a form letter that begins, "We live in Somervell County at [requestor's address here] and are opposed to a rock crushing facility (Permit Request No. 82199L002) scheduled for construction in the Chalk Mountain area of Somervell County." These requests were submitted by Don & Sandra Bodenheimer; Gloria L. Brosseau; Yvonna Brown; Dan & Iris Broyles; Lavone M. Carlson; Joyce Doss; Susan A. Fidler; David, Hunter, Michelle, & Tiffany Fisher; Nelda Frazee; Stephen Gattis; Molly Golson; Shay Green; Holly J. Haefele; Kent, Shelby, & Janelle M. Lacey; Jean Lambert; Alton Langford; Donna & Walter Lawson; Olla Mae Mayfield; Tommie McGlothlen; Carrie B. Miller; Eddy & Lynn E. Spurgin; Mr. Gerald & Mrs. Gerald Stein; Clark H. & Grace Holley Stewart; Leroy A. & Sharon E. Sunby; Gusteen Jenkins & John Trimble; Frederick Turner; Steve Vardeman; Eugenie & Lonnie D. Vaughn; Leslie Wasilchak; Rudy L. Watson; Charlotte Ann & L.G. Willis;

⁶ 30 TAC § 55.203(c)(1).

Pat Windham; and Leta Yochan. These requests raise the same disputed, material and relevant issues of fact as those raised by the requestors in Group E. These concerns are protected by the law under which the application will be considered.⁷

7. Group G

Thirty-two individuals filed timely hearing requests on a form letter that begins, "With this letter, we officially request a Public Hearing in regards to Air Quality Permit Number 82199L002 being applied for by Tommy Davis of Slick Machines, Brownwood, Texas." These requests were submitted by Charley Amos; Lynn E. Barber; Jane Choun; Greg Cook; John A. Eastman; Amber & Patrick Fager; Michael Francis; Patricia Gerard; Barbara & Marvin Goff; Karla Grimwood; Ann Hoover; James Jones; Glenda Keilstrup; Gary Lawrence; David E. Lenifer; Martin Mattingly; Marion Midgley; Melissa Nawrocki; Glenn Olsen; Dale Roberts; Lawrence W. Sallee; Guy S. Sawyer; Polly Schulle; Robert O. Scott; B.J. Shoemaker; Keith & Margaret Ann Smith; Lee Snaples; Elaine Talbert; and Susan Thrower. These requests raise the same disputed, material and relevant issues of fact as the requestors in Group F, and additionally raise the concern that the proposed facility will affect their use and enjoyment of public property, including Roadside Park. Roadside Park is within sight of the proposed facility and the requestors are concerned that dust, debris, or nuisance conditions will affect their use and enjoyment of the premises. These concerns are protected by the law under which the application will be considered.⁸

⁷ 30 TAC § 55.203(c)(1).

⁸ 30 TAC § 55.203(c)(1).

Several requestors did not use the Group G form letter but also raised the issue of use and enjoyment of public property, including Roadside Park. These individuals have already been included in other groups listed above.⁹

8. The Chalk Mountain Foundation

David Frederick, on behalf of the Chalk Mountain Foundation (CMF), submitted a hearing request that included relevant contact information and raised disputed, relevant and material issues of fact outlining why the requestors would be adversely affected by the proposed activity in a manner not common to members of the general public.

CMF included a statement indicating the purpose of the group is to preserve the natural beauty and habitat of Chalk Mountain and its environs. CMF identifies Charles Brown and George Darrell Best as members who would have standing in their own right to request a contested case hearing due to affected justiciable interests not common to members of the general public. Charles Brown owns an interest in land that adjoins the Slick Machines property and he recreates on his land. Darrell Best has land less than a mile east of the Slick Machines property and he also recreates on his land.

CMF raises disputed material and relevant issues of fact relating to the propriety of emission factors, inclusion of all particulate emissions, proper identification of emissions points, Best Available Control Technology emissions determinations, inclusion of all PM limitations, proper background PM concentration levels for NAAQS analyses, emissions rates errors, production weights and recordation procedures, notice deficiencies, potential nuisance conditions, and legal sufficiency of the response to comments in this proceeding.

⁹ These individuals consist of: Patrick R. Condy, on behalf of the Fossil Rim Wildlife Center; Rhett H. Johnson, on behalf of the Chalk Mountain Wildlife Association; Charles S., Cyd F., & Florence Brown; George D. & Mary Best; Zach Cummings; David & Lynda Greer; Douglas Hickok; Russ Miller; Robert K. Portman, Jr.; Allen & Jimmie Summers; Susan Thompson; and Dana R. Zauf.

The stated purpose of CMF presents a purpose that is germane to the interests it seeks to protect in its hearing request.¹⁰ Each of the named affected parties owns property within a mile of the proposed facility, demonstrating that a reasonable relationship exists between the interests stated and the activity regulated.¹¹ The request also states concerns that are protected by the law under which the application will be considered.¹² OPIC therefore recommends that CMF be determined an affected person.

9. Additional Issues

Charles S., Cyd F., & Florence Brown, already grouped above, raises additional issues of application deficiencies. Patrick R. Condy, already grouped above, additionally raises the issue of negative impact on the economic interests of the Fossil Rim Wildlife Center. This concern is also protected by the law under which the application will be considered.¹³

C. Disputed Issues

No agreement exists between the parties on the issues discussed above.

D. Issues of Fact

The issues listed above are issues of fact, rather than issues of law or policy, and are therefore appropriate for referral to hearing.¹⁴

However, OPIC finds that the issue of whether the proposed permit is enforceable raised by CMF is a question of law and therefore not appropriate for referral to hearing.

¹⁰ 30 TAC § 55.205(a)(2)

¹¹ 30 TAC § 55.203(c)(3).

¹² 30 TAC § 55.203(c)(1).

¹³ 30 TAC § 55.203(c)(1).

¹⁴ 30 TAC § 55.211(b)(3)(A), (B).

E. Issues Raised in Comment Period

All of the above concerns were raised during the comment period and have not been withdrawn.

F. Relevant and Material Issues

In order to refer an issue to the State Office of Administrative Hearings (SOAH), the Commission must find that the issue is relevant and material to the Commission's decision to issue or deny this permit.¹⁵ Relevant and material issues are those that are governed by the substantive law under which this permit is to be issued.¹⁶

Issues raised by the requestors that are addressed by the substantive law governing this application, are within the jurisdiction of the TCEQ, and can be addressed in a hearing on the pending application¹⁷ are: air quality, including issues relating to emission factors, particulate emissions, identification of emissions points, Best Available Control Technology emissions determinations, PM limitations, proper background PM concentration levels for NAAQS analyses, and emissions rates errors; production weights and recordation procedures; potential negative effects on human health, plants, crops, and wildlife; potential interference with use and enjoyment of property; potential nuisance conditions; legal sufficiency of the response to comments; sufficiency of notice; proper completion of application materials; and potential impacts on economic interests.

¹⁵ See *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248-251(1986) (in discussing the standards applicable to reviewing motions for summary judgment the Court stated "[a]s to materiality, the substantive law will identify which facts are material. ... it is the substantive law's identification of which facts are critical and which facts are irrelevant that governs.")

¹⁶ See 30 TAC §55.209(e)(6)

¹⁷ 30 TAC Section 55.201(d)(4); and, 55.211(c)(2)(A)

However, the requestors also state issues that are not material and relevant to the Commission's permitting decision. Issues which are speculative or otherwise not addressed by the substantive law governing this application and therefore cannot be considered relevant and material to the Commission's decision include: impacts of increased particle emission on surface water solids loadings, the experience of the Slick Machines principals with rock quarrying and crushing, endangered species and antiquities impacts of the proposed facility, probable response times of TCEQ investigators, property values or impacts on tourism generally, archeological or historical sites, fossils, light or vibration, traffic, blasting safety concerns, and erosion. OPIC therefore finds that these issues are inappropriate for referral to the State Office of Administrative Hearings.

1. Issues Recommends for Referral.

In light of the requirements of 30 TAC sections 50.115(b) and 55.211(b)(3)(A)(i), OPIC recommends that any referral to the State Office of Administrative Hearings ("SOAH") include the following issues:

- (1) Will the permitted emissions tend to be injurious to or adversely affect human health or welfare, animal life, vegetation, or property?
 - a. Have the application emission factors and values accorded the emission factors been properly established?
 - b. Were particulate emissions from haul roads and blasting, in addition to the emissions from rock crushing operations, properly considered?
 - c. Have all emission points at the facility been properly identified?
 - d. Does the permit ensure that no more than BACT-level emissions are to be expected given the method by which BACT levels of emissions were identified?
 - e. Were all species of PM properly identified?
 - f. Were the proper background concentrations of PM_{2.5} and PM₁₀ properly calculated for the NAAQS analyses?
 - g. Were all emissions sources at the proposed facility included in the NAAQS analyses?

- h. Were the proposed annual emissions rates for the facility properly calculated?
 - i. Does the Applicant provide for proper measurement and recordation of production weights?
- (2) Will the permitted emissions interfere with the normal use and enjoyment of property, including public property?
 - (3) Will the permitted emissions negatively impact ambient air quality where the requestors live and/or recreate?
 - (4) Does the application meet the requirements of 30 TAC §116, Subchapter B, Division 1?
 - (5) Was notice provided as required by 30 TAC §116, Subchapter B, Division 3?
 - (6) Will the proposed facility unreasonable interfere with the requestors' economic interests?
 - (7) Will the proposed operation result in nuisance conditions?
 - (8) Does the response to comments in this permitting proceeding meet the standards of §5.55, Tex. Water Code, and §382.056(1), Texas Health & Safety Code, and their implementing regulations?

G. OPIC Estimates that the Maximum Expected Duration of Hearing will be One Year.

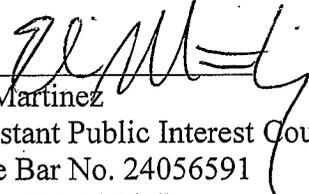
Commission rule 30 TAC section 50.115(d) requires that any Commission order referring a case to SOAH specify the maximum expected duration of the hearing by stating a date by which the judge is expected to issue a proposal for decision. The rule further provides that no hearing shall proceed longer than one year from the first day of the preliminary hearing to the date the proposal for decision is issued. In assisting the Commission to state a date by which the judge is expected to issue a proposal for decision, and as required by 30 TAC section 55.209(e)(7), OPIC estimates that the maximum expected duration of any hearing on this application would be one year from the first date of the preliminary hearing until the proposal for decision is issued.

III. CONCLUSION

For the reasons set forth above, the Office of Public Interest Counsel recommends granting the contested case hearing requests of each affected requestor and referring this matter to the State Office of Administrative Hearings for a hearing on the issues described. If the information requested of the Tarrant Coalition for Environmental Awareness (TCEA), Chalk Mountain Wildlife Association (CMWA), and Fort Worth Audubon (FWA) is submitted by June 21, 2010, OPIC will also recommend granting their hearing request. OPIC recommends a maximum hearing duration of one year.

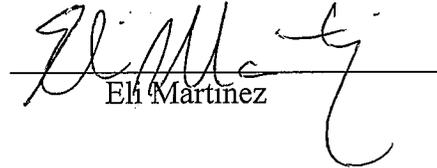
Respectfully submitted,

Blas J. Coy, Jr.
Public Interest Counsel

By 
Eli Martinez
Assistant Public Interest Counsel
State Bar No. 24056591
(512) 239-3974 PHONE
(512) 239-6377 FAX

CERTIFICATE OF SERVICE

I hereby certify that on June 7, 2010, the original and seven true and correct copies of the Office of Public Interest Counsel's Response to Hearing Requests were filed with the Chief Clerk of the TCEQ and a copy was served to all persons listed on the attached mailing list via hand delivery, facsimile transmission, Inter-Agency Mail or by deposit in the U.S. Mail.


Eli Martinez

MAILING LIST
TOMMY DAVIS DBA SLICK MACHINES
TCEQ DOCKET NO. 2010-0660-AIR

FOR THE APPLICANT:

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RESOLUTION

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FOR THE CHIEF CLERK:

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HEARING REQUESTORS:

See attached list.

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CONCERNED CITIZENS
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REBECCA BLOCH
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GRANBURY TX 76048-2701

CONCERNED CITIZEN
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STEVE ALLEN
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JANE CHOUN
818 CLOVER PARK DR
ARLINGTON TX 76013-1433

CAREN BECK
2303 AVALON CT
FORT WORTH TX 76103-2609

SANDRA & DON BODENHAMER
9049 W HWY 67
GLEN ROSE TX 76043

BEVERLY & LEE CLAUSER
818 COUNTY ROAD 104
BLUFF DALE TX 76433-4927

GEORGE D & MARY BEST
PO BOX 2809
GLEN ROSE TX 76043-2809

SCARLETT BROWN
2402 ARBUCKLE CT
DALLAS TX 75229-4506

ALEXANDRA COCKERHAM
300 HEREFORD ST
GLEN ROSE TX 76043-4628

BRANNAN COCKERHAM
300 HEREFORD ST
GLEN ROSE TX 76043-4628

CAROL CULIN
1004 EDGECLIFF DR
BEDFORD TX 76022-7418

JO EVANS
4216 COUNTY ROAD 1007
GLEN ROSE TX 76043-5572

MICHAEL COCKERHAM
300 HEREFORD ST
GLEN ROSE TX 76043-4628

ZACH CUMMINGS
PO BOX 28
GLEN ROSE TX 76043-0028

AMBER & PATRICK FAGER
4904 TRENTMAN ST
FORT WORTH TX 76119-5043

CONCERNED CITIZEN
PO BOX 2400
GLEN ROSE TX 76043-2400

JUDITH A D'AMICO
1322 FM 205
GLEN ROSE TX 76043-5637

SUSAN A FIDLER
102 CAMELOT ST
GLEN ROSE TX 76043-4331

CONCERNED CITIZEN
1595 COUNTY ROAD 1006
WALNUT SPRINGS TX 76690-3106

THOMAS X D'AMICO
1322 FM 205
GLEN ROSE TX 76043-5637

DAVID FISHER
PO BOX 745
GLEN ROSE TX 76043-0745

CONCERNED CITIZEN
2912 RIVERPLACE DR APT 2102
ARLINGTON TX 76006-4934

WALT DEBILL
9102 SAN DIEGO RD
AUSTIN TX 78737-1261

HUNTER C FISHER
PO BOX 745
GLEN ROSE TX 76043-0745

CONCERNED CITIZEN
2473 COUNTY ROAD 199
IREDELL TX 76649-3523

JOYCE DOSS
PO BOX 2189
GLEN ROSE TX 76043-2189

MICHELLE FISHER
PO BOX 745
GLEN ROSE TX 76043-0745

CONCERNED CITIZEN
1267 PR 1263
IREDELL TX 76649-3515

JO ANN DUMAN
4109 SHAMROCK DR
ARLINGTON TX 76016-4430

TIFFANY FISHER
PO BOX 745
GLEN ROSE TX 76043-0745

PATRICK R CONDY
PO BOX 2189
GLEN ROSE TX 76043-2189

JOHN A EASTMAN
2700 AMBERTON PL
EULESS TX 76040-6377

MODENIA FITE
3142 COUNTY ROAD 304
RAINBOW TX 76077-2106

GREG COOK
701 RIVERPLACE DR
ARLINGTON TX 76006-4935

DONNA EDWARDS
PO BOX 2400
GLEN ROSE TX 76043-2400

GLORIA & KEN FOSSLER
12016 CARMEL PARK LN
AUSTIN TX 78727-5916

NICK F COONEY
4273 COUNTY ROAD 2230
CADDO MILLS TX 75135-8249

PATRICIA K & WILLIAM A EDWARDS
2018 COUNTY ROAD 1012
BLUFF DALE TX 76433-6510

MICHAEL FRANCIS
508 CANDLEWOOD RD
FORT WORTH TX 76103-1146

NELDA FRAZEE
PO BOX 846
GLEN ROSE TX 76043-0846

KARLA GRIMWOOD
8104 SLIDE ROCK RD
FORT WORTH TX 76137-5233

NATHAN & KELLY ELDRIDGE
2402 ARBUCKLE CT
DALLAS TX 75229-4506

DAVID FREDERICK
LOWERRE FREDERICK PERALES ALLMON & ROCKWELL
707 RIO GRANDE ST STE 200
AUSTIN TX 78701-2719

LAURA C GROOME
PO BOX 145
RAINBOW TX 76077-0145

DOROTHY HOOVER
2801 HITSON LN
FORT WORTH TX 76112-6015

KELLY FREEMAN
1521 SUNFLOWER LN
GRANBURY TX 76048-2711

LINDA GUSTAFSON
1348 COUNTY ROAD 2013
WALNUT SPRINGS TX 76690-3080

LAURA K HUBER
1347 MOODY LN
GLEN ROSE TX 76043-6124

STEPHEN GATTIS
PO BOX 1889
GLEN ROSE TX 76043-1889

HOLLY J HAEFELE
1076 HUFFMAN DR
GLEN ROSE TX 76043-5157

MARY L JOHNSON
1022 OAK HURST DR
GRAPEVINE TX 76051-5039

SUSAN GECHTER
3609 WINDSONG LN
BEDFORD TX 76021-2742

ROBERT LOGAN HAYNES
404 NANCY DR
GLEN ROSE TX 76043-9777

RHETT H JOHNSON
8504 AUBURN CT
GRANBURY TX 76049-4751

PATRICIA GERARD
304 DALE HOLLOW RD
FORT WORTH TX 76103-1052

LINDA HEIDEMAN
PO BOX 188
GLEN ROSE TX 76043-0188

JAMES JONES
PO BOX 210726
BEDFORD TX 76095-7726

BARBARA & MARVIN GOFF
8309 WINTER FALLS TRL
HURST TX 76053-7452

DOUGLAS HICKOK
5305 VILLAGE CREEK DR
PLANO TX 75093-4810

GLENDA KEILSTRUP
3411 HASTINGS DR
ARLINGTON TX 76013-1922

SHAY GREEN
PO BOX 2113
GLEN ROSE TX 76043-2113

TANNER HILL
1604 COUNTY ROAD 200
STEPHENVILLE TX 76401-1441

DAWN M KLIPFEL
PO BOX 2400
GLEN ROSE TX 76043-2400

LYNDA & DAVID GREER
PO BOX 1429
GLEN ROSE TX 76043-1429

BRENT & KELLY HOODENPYLE
PO BOX 2732
GLEN ROSE TX 76043-2732

JANELLE M LACEY
PO BOX 730
GLEN ROSE TX 76043-0730

SHERMAN GRIFFITH
2009 SHUMARD LN
FLOWER MOUND TX 75028-7621

ANN & JOHN HOOVER
2801 HITSON LN
FORT WORTH TX 76112-6015

KENT S LACEY
PO BOX 730
GLEN ROSE TX 76043-0730

SHELBY M LACEY
PO BOX 730
GLEN ROSE TX 76043-0730

DARWIN MANN
4305 BONNELL VISTA CV
AUSTIN TX 78731-4619

GAIL MORRIS
6084 ALTA MIRA CIR APT 1217
FORT WORTH TX 76132-5432

JEAN LAMBERT
PO BOX 2896
GLEN ROSE TX 76043-2896

JULIE MATTHEWS
PO BOX 1615
STEPHENVILLE TX 76401-0016

KATHY MOSS
PO BOX 1906
GLEN ROSE TX 76043-1906

DOROTHY JEAN LANE
3131 MAPLE AVE APT 10F
DALLAS TX 75201-1263

MARTIN MATTINGLY
607 W COUNTY ROAD 714
BURLESON TX 76028-6755

KAY MYERS
3142 COUNTY ROAD 304
RAINBOW TX 76077-2106

MELISSA NAWROCKI
1725 WHISPERING COVE TRL
FORT WORTH TX 76134-4911

TOMMIE MCGLOTHLEN
4168 N FM 199 UNIT B
CLEBURNE TX 76033-9460

STAN MYERS
3142 COUNTY ROAD 304
RAINBOW TX 76077-2106

ALTON LANGFORD
102 CAMELOT ST
GLEN ROSE TX 76043-4331

CYNTHIA & MIKE MCVEAN
2875 COUNTY ROAD 2021
GLEN ROSE TX 76043-6161

MICHAEL OLIVER
3131 MAPLE AVE APT 10F
DALLAS TX 75201-1263

GARY LAWRENCE
2707 OLYMPIA DR
ARLINGTON TX 76013-1237

MARION MIDGLEY
1209 SPRINGWOOD CT
EULESS TX 76040-5959

GLENN OLSEN
14730 FOREST TRAILS DR
HOUSTON TX 77095-2952

DONNA & WALTER LAWSON
2792 COUNTY ROAD 312
GLEN ROSE TX 76043-6061

CARRIE B MILLER
3926 COUNTY ROAD 2008
GLEN ROSE TX 76043-5977

LYNN & MIKE O'NEIL
5956 SHERRY LN STE 1000
DALLAS TX 75225-6519

DONNA & LARRY LEMONS
256 HILLCREST DR
NOCONA TX 76255-3011

RUSS MILLER
4168 FM 51
BLUFF DALE TX 76433-6506

VIOLA OSBORN
317 OLD MILL CREEK DR
WACO TX 76712-6448

DAVID E LENIFER
6719 FIRE HILL DR
FORT WORTH TX 76137-2384

BRANDON MILLS
106 DOUBLEHORN ST
STEPHENVILLE TX 76401-2172

OTELA PAUL
PO BOX 2400
GLEN ROSE TX 76043-2400

MARY LEE LILLY
PO BOX 7
GLEN ROSE TX 76043-0007

IVORY MIZE
406 COUNTY ROAD 105
WALNUT SPRINGS TX 76690-3057

BARRY & CLAIRE PAYNE
3218 COUNTY ROAD 2013
WALNUT SPRINGS TX 76690-3073

KATHRYN PIEPHO
1200 CRAWFORD CT APT 105
GRANBURY TX 76048-2267

ROBERT O SCOTT
1101 CIRCLE LN
BEDFORD TX 76022-7413

KAREN & RON STEPP
1436 CR 1006
GLEN ROSE TX 76043

ERNEST & SHIRLEY REINKE
PO BOX 1049
GLEN ROSE TX 76043-1049

B J SHOEMAKER
101 N ROARING SPRINGS RD APT 10203
WESTWORTH VILLAGE TX 76114-3506

CLARK H & GRACE STEWART, JR
1425 MOODY LN
GLEN ROSE TX 76043-6125

LYN EDWARDS
1306 COUNTY ROAD 1004
WALNUT SPRINGS TX 76690-3020

FREDERICK TURNER
1275 WATERS EDGE LN
GLEN ROSE TX 76043

EDITH LONG
3142 COUNTY ROAD 304
RAINBOW TX 76077-2106

MOLLY GOLSON
207 GRACE ST
GLEN ROSE TX 76043-4840

FRANCINE & RON SINGLETERRY
1202 FM 51
WALNUT SPRINGS TX 76690-3065

SANDRA STRINGER
1909 COUNTY ROAD 2021
GLEN ROSE TX 76043-5987

DALE ROBERTS
5868 LANCE CT
HALTOM CITY TX 76148-3723

KEITH & MARGARET ANN SMITH
6008 WONDER DR
FORT WORTH TX 76133-3623

ALLEN & JIMMIE SUMNERS
10200 W HWY 67
WALNUT SPRINGS TX 76690-3101

JARED ROBERTS
2621 HEREFORD RD
DENTON TX 76210-0329

CAROL LEE
4585 CR 2013
GLEN ROSE TX 76043

LEROY A SUNDBY
1183 COUNTY ROAD 2022
GLEN ROSE TX 76043-6175

DANATH RODEN
1403 MONTAGUE ST NW
WASHINGTON DC 20011-2852

LEE SNAPLES, JR
5799 WOODVINE CT
FORT WORTH TX 76140-9533

SHARON E SUNDBY
1183 COUNTY ROAD 2022
GLEN ROSE TX 76043-6175

LAWRENCE W SALLEE
103 TANGLEWOOD DR
ALEDO TX 76008-3968

EDDY SPURGIN
1197 COUNTY ROAD 2008
GLEN ROSE TX 76043-6112

ELAINE TALBERT
2928 5TH AVE
FORT WORTH TX 76110-3427

GUY S SAWYER
121 MEANDERING LN
BURLESON TX 76028-3314

LYNN E SPURGIN
1197 COUNTY ROAD 2008
GLEN ROSE TX 76043-6112

JAMES E TALLEY
PO BOX 2400
GLEN ROSE TX 76043-2400

POLLY SCHULLE
2805 N BRITAIN RD
IRVING TX 75062-8936

MR GERALD & MRS GERALD STEIN
2884 COUNTY ROAD 2021
GLEN ROSE TX 76043-6183

JOAN TAYLOR
PO BOX 1218
GLEN ROSE TX 76043-1218

MARY O & ROBERT J TAYLOR
104 SUMMIT EDGE CT
GLEN ROSE TX 76043-5341

EUGENIE VAUGHN
106 SUMMIT EDGE CT
GLEN ROSE TX 76043-5341

SARAH WILLIAMS
1922 COUNTY ROAD 2021
GLEN ROSE TX 76043-5945

SAM TEAFF
PO BOX 968
NEMO TX 76070-0968

LONNIE D VAUGHN
106 SUMMIT EDGE CT
GLEN ROSE TX 76043-5341

CHARLOTTE ANN WILLIS
PO BOX 1253
GLEN ROSE TX 76043-1253

TERI TEAFF
PO BOX 968
NEMO TX 76070-0968

MARK H WAGNER
1403 MONTAGUE ST NW
WASHINGTON DC 20011-2852

L G WILLIS
PO BOX 1253
GLEN ROSE TX 76043-1253

ANGELA JEAN THOMPSON
1278 GLENNEYRE ST APT 266
LAGUNA BEACH CA 92651-3103

LESLIE WASILCHAK
PO BOX 792
GLEN ROSE TX 76043-0792

PAT WINDHAM
PO BOX 1240
GLEN ROSE TX 76043-1240

GERARD & JENNIFER THOMPSON
PO BOX 2400
GLEN ROSE TX 76043-2400

RUDY L WATSON
PO BOX 1710
GLEN ROSE TX 76043-1710

CHARLSIE WRIGHT
1099 COUNTY ROAD 334
RAINBOW TX 76077-2509

SUSAN THOMPSON
10122 CROMWELL DR
DALLAS TX 75229-5920

PATTI WEBB
1052 COUNTY ROAD 2022
GLEN ROSE TX 76043-5946

LETA YOCHAN
PO BOX 7267
GLEN ROSE TX 76043-7267

SUSAN THROWER
2805 N BRITAIN RD
IRVING TX 75062-8936

TINA WEINERT
963 S RUSTIC CIR
DALLAS TX 75218-2940

DANA R ZAUF
2761 COUNTY ROAD 2021
GLEN ROSE TX 76043-6195

ANN TRENTON
4008 BROOKMOOR DR
ARLINGTON TX 76016-1409

BETTY L & JOHN W WENZEL
1516 ROSEWOOD DR
KELLER TX 76248-5403

OLLA MAE MAYFIELD
202 AUSTIN RD
GLEN ROSE TX 76043-5101

GUSTEEN JENKINS & JOHN TRIMBLE
PO BOX 120
GLEN ROSE TX 76043-0120

DAVID WHITSITT
1014 COUNTY ROAD 2013
WALNUT SPRINGS TX 76690-3079

ROBERT K PORTMAN, JR
2209 SHADYWOOD CT
ARLINGTON TX 76012-2940

STEVE VARDEMAN
PO BOX 100519
FORT WORTH TX 76185-0519

RUTH WIEDERKEHR
3131 MAPLE AVE APT 2C
DALLAS TX 75201-1263

BETTY & WAYNE MCKETHAN
9703 NOTTAWAY CT
GRANBURY TX 76049-4604