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

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

April 30, 2010

TO: Persons on the attached mailing list.

RE: Martin Marietta Materials Southwest, Inc.
Permit No. 89957L001

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any action is taken on this application unless all requests for contested case hearing or reconsideration have been withdrawn before that meeting.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 San Antonio Regional Office, and the Medina County Courthouse, 1100 16th Street, Hondo, Medina 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
Martin Marietta Materials Southwest, Inc.
Permit No. 89957L001

FOR THE APPLICANT:

Jason R. Reed
Senior Environmental Engineer
Martin Marietta Materials Southwest, Inc.
5710 Hausman Road West, Suite 121
San Antonio, Texas 78249-1646

INTERESTED PERSONS:

See attached list

FOR THE EXECUTIVE DIRECTOR
via electronic mail:

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Mike Gould, Technical Staff
Texas Commission on Environmental Quality
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FOR OFFICE OF PUBLIC ASSISTANCE
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Bridget Bohac, Director
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FOR PUBLIC INTEREST COUNSEL
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FOR THE CHIEF CLERK
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TCEQ AIR QUALITY PERMIT NUMBER 89957L001

APPLICATION BY	§	BEFORE THE
	§	
Martin Marietta Materials Southwest Inc	§	TEXAS COMMISSION ON
Rock Crushing Plant	§	
Hondo, Medina County	§	ENVIRONMENTAL QUALITY

EXECUTIVE DIRECTOR'S RESPONSE TO PUBLIC COMMENT

The Executive Director (ED) 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: Roy and Carol Long, Barbara Thompson, and Robert Van Derbur. 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

Martin Marietta Materials Southwest, Inc. 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 plant consisting of one crusher, one screen, assorted conveyors, 20 acres of stockpiled aggregate and one 475 hp Caterpillar Diesel engine. The plant will be authorized to operate 24 hours per day, 7 days per week and 52 weeks per year for a total of 8,760 hours per year. The facility is located approximately ten miles north of Highway 90 on Farm-to-Market Road 462 (from Hondo) to Private Road 322 then west to Mine Lease Boundary, Hondo, Medina County. Contaminants authorized under this permit include 38.43 tons per year (tpy) of particulate matter (PM) including 16.14 tpy of particulate matter less than 10 microns in diameter (PM_{10}), 0.92 tpy of organic compounds (VOC), 5.41 tpy of carbon monoxide (CO), 4.27 tpy of sulfur dioxides (SO_2), and 31.19 tpy of nitrogen oxides (NO_X).

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 89957L001.

The permit application was received on July 30, 2009, and declared administratively complete on August 7, 2009. The Notice of Receipt and Intent to Obtain an Air Quality Permit (public notice) for this permit application was published on August 13, 2009, in the *Hondo Anvil Herald.* The Notice of Application and Preliminary Decision for an Air Quality Permit (public notice) for the permit application was published on January 7, 2010 in the *Hondo Anvil Herald.* 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: One commenter asked how the dust that would be generated by the crushing operation would be mitigated and what effects the dust would have on the air quality including the effects on wildlife, livestock, the environment and the general public. (Robert Van Derbur)

RESPONSE 1: The crushing, screening and stockpiling operations at the Martin Marietta Materials Southwest, Inc. facilities is expected to generate 38.43 tons per year (tpy) of PM which includes 16.14 tpy PM_{10}. Mitigation of the dust generated by the crushing operation will be achieved through the use of wet suppression, such as water sprays. The most recent emission factors published by the US Environmental Protection Agency (EPA) indicate that wet suppression through water sprays, etc., can achieve over 90 percent control, and some sprays could be as effective as an enclosure. To be conservative and protective, the protocol adopted by the TCEQ has been to associate a 70 percent control with regard to water spray and to insure that the facility is protective 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 by comparing predicted emission concentrations from the facilities to state and federal standards and effects screening levels.[1] The specific health-based standards used in evaluating the potential emissions are the National Ambient Air Quality Standards ("NAAQS").

The NAAQS, as created by the United States Environmental Protection Agency ("EPA"), are defined in federal regulations, specifically in Title 40 Code of Federal Regulations (CFR) § 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

[1] See the document "Air Quality Modeling Guidelines" for details on air modeling at the TCEQ website at http://www.tceq.state.tx.us/assets/public/permitting/air/Guidance/NewSourceReview/rg25.pdf. Also visit the agency air modeling page at http://www.tceq.state.tx.us/permitting/air/nav/modeling_ index.html. Documents referenced in this RTC that are available on the TCEQ website are also available in printed form at a small cost from the TCEQ Publications office at 512-239-0028

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 affects associated with the presence of an air contaminant in the ambient air. If the proposed facilities are operated as required, there should be no adverse health effects.

For most permit applications an air quality analysis is performed using air dispersion modeling to predict the impacts of emissions outside the plant property. With regard to this specific permit application, the conservative SCREEN3 (Version 96043) air dispersion model was utilized to determine the air dispersion effects of PM_{10} and to provide a reasonable worst case representation of potential impacts from the Applicant's facility on the surrounding area. The likelihood of whether adverse health effects caused by emissions from the facilities could occur in members of the general public was determined by comparing the facility's predicted air dispersion computer modeling concentrations to the relevant federal standards. The permit reviewer used modeling results to verify that predicted ground level concentrations from the proposed facility are not likely to adversely impact off-property receptors. A receptor is defined in 40 CFR § 50.1(e) as the ambient air at "that portion of the atmosphere, external to buildings, to which the general public has access."

The predicted concentration of PM_{10} emissions are below the NAAQS. The NAAQS for PM_{10} is based on a 24-hour time period. The measurement for predicted concentrations of air contaminants in modeling exercises is expressed in terms of micrograms per cubic meter ($\mu g/m^3$). One microgram is 1/1,000,000 of a gram, or 2.2/1,000,000,000 of a pound (approximately the weight of a dust mite) of air contaminant per cubic meter of ambient air. The air volume of a cubic meter is approximately the size of a washing machine. Predicted air concentrations occurring below the 24-hour NAAQS of 150 $\mu g/m^3$ are not expected to exacerbate existing conditions or cause adverse health effects. Modeling for this facility resulted in the maximum off-property predicted PM_{10} concentrations of 101 $\mu g/m^3$ (24-hour) which is significantly below the NAAQS.[2] Therefore, based on the potential concentrations reviewed by the ED's staff, it is not expected that existing health conditions will worsen or that adverse health effects will occur as a result of operation of the plant.

In addition to modeling the proposed emissions from the permit application, the concentration values provided above included the addition of a conservative background screening concentration to the predicted concentrations from the model. The background emissions are an estimate of the concentration of the contaminant within the county – not including the emissions predicted from this proposed facility. The background emissions are found in emission inventories that are available for each county. In this case, the PM_{10} concentrations reflecting the average of the TCEQ Region 13 counties were used as the background screening concentration. The overall evaluation process provides a conservative prediction that is protective of the public.

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[2] EPA repealed the annual time period standard, which had been set at 50 $\mu g/m^3$. Despite the repeal, annual time period modeling was conducted. It was found that this facility would meet the repealed standard.

The PM_{10} emissions discussed above include emissions of particulate matter equal to 2.5 microns in diameter ($PM_{2.5}$) or less. At this time, the PM_{10} emission evaluations continue to be a reasonable surrogate for the evaluation of $PM_{2.5}$ emissions as technical difficulties regarding the evaluation of $PM_{2.5}$ remain. These technical difficulties include, but are not limited to, the complete availability of emission factors for rock crushing facilities and the poor ratings of the existing emission factors. However, the 24-hour NAAQS for $PM_{2.5}$ has currently been set by the EPA at approximately 23% of the 24-hour NAAQS for PM_{10}. Existing $PM_{2.5}$ emission factors as well as EPA designated particle size multipliers that have been identified for use in the emission evaluation of rock crushing plants are typically less than, or equal to, 15% of the PM_{10} emission factor for the same source. Thus, the predicted 24-hour and annual PM_{10} concentrations have been determined to be a conservative predictor of $PM_{2.5}$ NAAQS compliance and is used at this time as a surrogate. It is not expected that existing health conditions will worsen or that adverse health effects will occur as a result of exposure to the expected levels of $PM_{2.5}$ emissions from this site.

In addition to complying with the federal and state standards and guidelines mentioned above, applicants must also comply with 30 TEX. ADMIN. CODE § 101.4, which prohibits nuisance conditions. Specifically the rule states, "No person shall discharge from any source whatsoever one of more air contaminants or combinations thereof, in such concentration and of such duration as are or may tend to be injurious to or to adversely affect human health or welfare, animal life, vegetation, or property, or as to interfere with the normal use and enjoyment of animal life, vegetation, or property." As long as the facility is operated in compliance with the terms of the permit, nuisance conditions, or conditions of air pollution are not expected and the emissions are not expected to create nuisance conditions.

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 TCEQ Regional Office at 210-490-3096, or by calling the 24-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 the permit, it will be subject to possible enforcement action. Citizen-collected evidence may be used in such an action. See 30 TEX. ADMIN. CODE § 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 new 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 2: One commenter mentioned that some of the largest bat colonies in South Texas are in close proximity to the proposed crushing operation and asked if there was a potential for harm to these colonies or to any other endangered species in the area. (Robert Van Derbur)

RESPONSE 2: As stated in the previous response, the Administrator of the EPA has developed the Secondary NAAQS which are those limits 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 affects associated with the presence of an air contaminant in the ambient air. Section 302(h) of the Federal Clean Air Act (FCAA) defines effects on welfare to include effects on soils, water, crops, vegetation, manmade materials, animals, wildlife, weather, visibility and climate, damage to and deterioration of property, hazards to transportation, and impacts to personal comfort and well-being, whether caused by transformation, conversion, or combination with other air pollutants. As discussed in Response 1, the ED has determined that emissions from this facility should not cause an exceedance of the NAAQS. Thus, based on the emission estimates, the air dispersion modeling, and the NAAQS limitations described in the previous response, if the proposed facilities are operated as required, no impact due to emissions from this facility to livestock or any other animal species is expected.

COMMENT 3: One commenter expressed concerns regarding the expected increase in truck traffic including public safe guards, how the dust from transporting the crushed aggregate would be controlled during transportation, and if the increase in diesel traffic would cause any degradation of the air quality. (Robert Van Derbur)

RESPONSE 3: Emissions relating to increased road traffic within the facility are addressed in Special Condition 6D of the draft permit. It states, "a functional water truck shall be maintained on site at all times to spray all stockpiles, in-plant roads, traffic areas and active work areas with water and/or environmentally sensitive chemicals upon detection of visible particulate emissions to maintain compliance with all TCEQ rules and regulations." Special Condition 11C also requires that record keeping for "road cleaning, application of road dust control, or road maintenance for dust control" be kept and maintained on-site.

Regarding increased traffic outside of the facility, the TCEQ's jurisdiction is established by the TCAA and is limited to the issues set forth in that statute. Therefore, the TCEQ does not have jurisdiction over traffic or road safety. Jurisdiction over traffic on public roads is the responsibility of the cities, county, and/or other state agencies such as the Texas Department of Public Safety and the Texas Department of Transportation.

Further, the TCEQ may regulate stationary sources of air contaminants, but has no authority to regulate mobile sources. The TCEQ accordingly does not have jurisdiction to consider impacts of emissions from motor vehicles when determining whether to approve a permit application.

However, 30 TAC § 101.5 states, "No person shall discharge from any source whatsoever such quantities of air contaminants, uncombined water, or other materials which cause or have a tendency to cause a traffic hazard or an interference with normal road use." The facility is thus prohibited from creating a traffic hazard with its emissions.

COMMENT 4: One commenter asked about potential affects on the water quality and the possibility of the quarrying and rock crushing operations changing the natural flows of top soil waters that occur during rains and replenish local ranch stock tanks. (Robert Van Derbur)

RESPONSE 4: This permit allows emissions of particulate matter and products of combustion. No hazardous emissions are permitted by this authorization and thus, no hazardous material is expected to be in the downstream water due to the operations of these facilities.

The effects of top soil water patterns and storm water runoff impacts on the surface or groundwater is not within the scope of review for an air quality permit application. The Applicant is required to have a storm water permit and any water pollution abatement plan that may be required and follow all TCEQ rules and regulations regarding public notification if required. All permit authorizations must be in effect prior to start of operations.

COMMENT 5: One commenter expressed concern that there has been little to no comment from Martin Marietta on this project, how it would affect the community, and how the company plans to work with the community on issues that will occur in the future. (Robert Van Derbur)

RESPONSE 5: The concern regarding communication should be addressed to the Applicant. The TCEQ's jurisdiction is established by the Legislature and is limited to the issues set forth in statute. The TCEQ can not speak for the Applicant.

COMMENT 6: Several commenters are concerned about the accompanying railroad that is to be built from the aggregate being crushed by the Applicant's facilities being permitted with this authorization. The concerns, expressed by Roy and Carol Long and Barbara Thompson include (1) how the railroad would affect the drainage from fields and pastures, (2) how the dust from the rail cars would be contained and what effect the aggregate dust might have on property, and (3) whether there is danger of fire along the rail line due to sparks, and if so, who is liable and should the land owner carry extra fire insurance.

Additionally, Barbara Thompson asked how fast the trains would be moving while Roy and Carol Long wanted to know the number of trains that would be passing their property including what type and how much noise would emanate from the moving rail cars.

RESPONSE 6: The TCEQ's jurisdiction is established by the Legislature and is limited to the issues set forth in statute. Under this delegation, the TCEQ does not have permitting authority over mobile sources such as railroads and does not have jurisdiction to consider additional issues associated with railroad installation and traffic when determining whether to approve or deny an air quality permit application. Jurisdiction over railroad operation and safety is held by the Office of Railroad Safety within the Federal Railroad Administration (FRA); created by the Department of Transportation Act of 1966.

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

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