

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*

December 15, 2010

TO: Persons on the attached mailing list.

RE: Conners Construction, Inc.  
Permit No. 87730L001

**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any action is taken on this application unless all requests for contested case hearing or reconsideration have been withdrawn before that meeting.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 Texas Commission on Environmental Quality Waco Regional Office, 6801 Sanger Avenue, Suite 2500, Waco, 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/er

Enclosure

MAILING LIST  
for  
Conners Construction, Inc.  
Permit No. 87730L001

FOR THE APPLICANT:

Jeff Conners, Vice President  
Conners Construction, Inc.  
2513 US Highway 77  
Lott, Texas 76656-3595

Tristan Walker, Environmental  
Specialist  
Westward Environmental, Inc.  
P.O. Box 2205  
Boerne, Texas 78006-3602

INTERESTED PERSONS:

See attached list.

FOR THE EXECUTIVE DIRECTOR  
via electronic mail:

Douglas M. Brown, Staff Attorney  
Texas Commission on Environmental  
Quality  
Environmental Law Division MC-173  
P.O. Box 13087  
Austin, Texas 78711-3087

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

FOR OFFICE OF PUBLIC ASSISTANCE  
via electronic mail:

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

FOR PUBLIC INTEREST COUNSEL  
via electronic mail:

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

FOR THE CHIEF CLERK  
via electronic mail:

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

AVERITT , THE HONORABLE KIP  
TEXAS SENATE  
PO BOX 12068  
AUSTIN TX 78711-2068

BOHLS , JAN  
967 COUNTY ROAD 227  
MARLIN TX 76661-4626

BOHLS , JIM  
967 COUNTY ROAD 227  
MARLIN TX 76661-4626

BOSTICK , EVELYN L  
1281 FM 2413  
KOSSE TX 76653-4475

BOSTICK , PAUL H  
1281 FM 2413  
KOSSE TX 76653-4475

COBB , JUDITH  
129 PR 607  
MARLIN TX 76661-4701

CORUM , ALFRED  
774 FM 1771  
MARLIN TX 76661-4675

DUNNAM , THE HONORABLE JIM  
TEXAS HOUSE OF REPRESENTATIVES  
PO BOX 2910  
AUSTIN TX 78768-2910

FARR , JAMES & JOYCE  
70 EAGLE MEAD PL  
SPRING TX 77382-6309

FARR , JOYCE  
70 EAGLE MEAD PL  
SPRING TX 77382-6309

GUEDRY , JOEL D  
25317 HAZY HOLW  
SAN ANTONIO TX 78255-3602

HARLAN , GEORGE  
213 ROYAL DR  
MARLIN TX 76661-2038

HARLAN , MARY & ZILL  
372 COUNTY ROAD 246  
MARLIN TX 76661-4604

HARLAN , ZILL  
372 COUNTY ROAD 246  
MARLIN TX 76661-4604

JONES , JUDY  
4610 FM 413  
MARLIN TX 76661-4684

KELLY , PAMELA  
PO BOX 5  
MARLIN TX 76661-0005

KINARD , DAVID  
PO BOX 3  
REAGAN TX 76680-0003

OGLE , ARTHUR & BRENDA JARRETT  
5077 FM 413  
KOSSE TX 76653-4441

SLAYBAUGH , DIANE  
PO BOX 73  
OGLBSBY TX 76561-0073

SWINNEA , ROBIN  
PO BOX 92  
REAGAN TX 76680-0092

TATE , GREG  
380 FM 1771  
MARLIN TX 76661-4671

THOMASON , HENRY  
573 FM 1771  
MARLIN TX 76661-4673

WHITE , ALVENA  
403 COUNTY ROAD 246  
MARLIN TX 76661-4764

WHITE , ANNETTE & BILLY  
4715 FM 413  
MARLIN TX 76661-4753

WHITE , BILLY  
4715 FM 413  
MARLIN TX 76661-4753

WHITE , BOB  
1126 CHURCH ST  
SAN FRANCISCO CA 94114-3404

WOLIVER , JIM & KAY  
1780 FM 1771  
KOSSE TX 76653-4430

TCEQ AIR QUALITY PERMIT NUMBER 87730L001

2010 DEC 10 PM 3: 24

APPLICATION BY	§	BEFORE THE	CHIEF CLERKS OFFICE
	§		
CONNERS CONSTRUCTION, INC.	§	TEXAS COMMISSION ON	
	§		
KOSSE, FALLS COUNTY, TEXAS	§	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 (RTC) on the request to obtain State Air Quality Permit Number 87730L001 filed by Conners Construction, Inc. (Conners or Applicant) and the ED's preliminary decision.

As required by 30 Texas Administrative Code (30 TAC) § 55.156, before an application is approved, the ED 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: The Honorable Kip Averitt, The Honorable Jim Dunnam, Evelyn Bostick, Paul Bostick, Judith Cobb, Alfred Corum, James and Joyce Farr, George Harlan, Mary and Zill Harlan, Judy Jones, Pamela Kelly, David Kinard, Arthur and Brenda Jarrett Ogle, Robin Swinnea, Henry Thomason, Alvena White, Billy and Annette White, Bob White, Jim and Kay Woliver, Joel Guedry, Diane Slaybaugh, and Greg Tate. This Response addresses all timely public comments received, whether or not withdrawn. If you need more information about this permit application or the permitting process please call the TCEQ Office of Public Assistance at 1-800-687-4040. General information about the TCEQ can be found at our website at [www.tceq.state.tx.us](http://www.tceq.state.tx.us).

### BACKGROUND

#### Description of Facility

Applicant has applied to the TCEQ to obtain State Air Quality Permit Number 87730L001, which would authorize the construction and operation of a rock crushing plant. The plant would operate up to 24 hours per day, 7 days per week, and 52 weeks per year. The proposed plant throughput is 350 tons per hour with an annual throughput of 1,500,000 tons.

The plant is proposed to be located on the east and west side of County Road 246, approximately three fourths of a mile north of FM 413, in Falls County.

#### Procedural Background

The permit application was received on March 19, 2009 and declared administratively complete on March 31, 2009. The Notice of Receipt and Intent to Obtain an Air Quality Permit (first public notice) for this permit application was published on April 8 and May 13, 2009 in the *Marlin Democrat*. The Notice of Application and Preliminary Decision (second notice) was published on

February 10, 2010 in the *Marlin Democrat*. A public meeting regarding this permit application was held on March 11, 2010.

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:** Commenters are concerned Applicant's proposed facility will degrade the air quality and public welfare of the area. They are also concerned that the operation of the proposed facility will adversely impact their health, particularly the health of the elderly and citizens with preexisting respiratory conditions. Some commenters are especially concerned about the effects of particulate matter and dust. Commenters also worry about the impacts the proposed facility will have on their property, wildlife, livestock, and crops (Jim and Kay Wolive, Pamela Kelley, David Kinard, Bobby White, Alvena White, Billy White, Annette White, George Harlan, Judith Cobb, Robin Swinnea, Zill Harlan, Paul Bostick, Alfred Corum, Brenda Ogle, Arthur Ogle, Henry Thomason, James and Joyce Farr, Judy Jones, Mary Harlan, and Joel Guedry).

**RESPONSE 1:** The review of an air quality permit application, such as the one submitted by Conners, includes the identification of emission sources and rates, the review of Best Available Control Technology (BACT), and the impact of emissions from the facility. Potential impacts to human health and welfare or the environment are determined by comparing predicted emission concentrations from the proposed facility to appropriate state and federal standards and effects screening levels (ESLs). The specific health-based standards or guidance levels employed in evaluating the potential emissions include the National Ambient Air Quality Standards (NAAQS) and TCEQ standards contained in Title 30 of the Texas Administrative Code.

NAAQS, as created by the United States Environmental Protection Agency (EPA), are defined in the 40 Code of Federal Regulations (40 CFR) Part 50, and include both primary and secondary standards. The primary standards are those that 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 EPA 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.

Air dispersion modeling is usually performed to determine the air dispersion effects of particulate matter with an aerodynamic diameter of 10 microns or less ( $PM_{10}$ ) and to provide a reasonable worst case representation of potential impacts from the applicant's facility on the surrounding area. Additionally, NAAQS requirements exist for particulate matter with an aerodynamic diameter of 2.5 microns or less ( $PM_{2.5}$ ). The likelihood of whether adverse health effects caused by emissions from the facility could occur in members of the general public is determined by comparing the facility's predicted air dispersion computer modeling concentrations to the relevant federal standards. The permit reviewer uses modeling results to verify that predicted ground level concentrations from the proposed facility are not likely to adversely impact off-property receptors.

Connors submitted to the TCEQ air dispersion modeling to predict the off-property impacts of emissions from the operations of the proposed facility, and the results were compared to the applicable NAAQS. The results for PM<sub>10</sub> impacts were estimated to be 72 micrograms per cubic meter (µg/m<sup>3</sup>). When added to the background concentration of 60 µg/m<sup>3</sup>, the total impact was 132 µg/m<sup>3</sup>, which is below the 24-hour averaging time NAAQS of 150 µg/m<sup>3</sup>. For the annual averaging time, the maximum off-property impact was found to be 14 µg/m<sup>3</sup>. The annual background concentration of 20µg/m<sup>3</sup> was added to the maximum off-property concentration to obtain the total annual impact of 34 µg/m<sup>3</sup>, which is below the annual NAAQS of 50 µg/m<sup>3</sup>. Therefore, based on the potential concentrations, it is not expected that existing health conditions would worsen, or that adverse health effects in the general public, sensitive subgroups, or animal life would occur as a result of exposure to the expected levels of PM<sub>10</sub>.

The PM<sub>10</sub> program continues to be a reasonable surrogate for the PM<sub>2.5</sub> program as technical difficulties remains, including those relating to emission factor availability and the poor ratings of existing PM<sub>2.5</sub> emission factors. Additionally, the 24-hour NAAQS for PM<sub>2.5</sub> is approximately 23 percent of the 24-hour NAAQS for PM<sub>10</sub>. Existing PM<sub>2.5</sub> emission factors and particle size multipliers identified for use in the rock crushing plant calculations are typically less than or equal to 15 percent of the PM<sub>10</sub> emission factor for the same sources. Therefore, the predicted 24-hour and annual PM<sub>10</sub> concentrations will be a conservative predictor of PM<sub>2.5</sub> NAAQS compliance and is used as a surrogate.

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

**COMMENT 2:** Commenters are concerned about the cumulative effects that might occur if the emissions from Applicant's facility combine with the emissions of other operating rock crushing facilities and power plants in the area (Jim and Kay Woliver, and Pamela Kelley).

**RESPONSE 2:** The TCEQ does account for cumulative impacts from rock crushing operations. Both the Federal Clean Air Act and the Texas Health and Safety Code provide the agency statutory authority to evaluate ambient air impacts. The TCEQ considers the cumulative effect of air contaminants regionally and in specific counties throughout the state.

As stated **RESPONSE 1**, Connors submitted to the TCEQ air dispersion modeling to predict the off-property impacts of emissions from the operations of the proposed facility, and the results were compared to the applicable NAAQS. The results for PM<sub>10</sub> impacts were estimated to be 72 micrograms per cubic meter (µg/m<sup>3</sup>). When added to the background concentration of 60 µg/m<sup>3</sup>, the total impact was 132 µg/m<sup>3</sup>, which is below the 24-hour averaging time NAAQS of 150 µg/m<sup>3</sup>. For the annual averaging time, the maximum off-property impact was found to be 14 µg/m<sup>3</sup>. The annual background concentration of 20µg/m<sup>3</sup> was added to the maximum off-property concentration to obtain the total annual impact of 34 µg/m<sup>3</sup>, which is below the annual NAAQS of 50 µg/m<sup>3</sup>. Therefore, based on the potential concentrations, it is not expected that existing health conditions would worsen, or that adverse health effects in the general public, sensitive subgroups, or animal life would occur as a result of exposure to the expected levels of PM<sub>10</sub>.

**COMMENT 3** Commenter wants assurance that the operation of Applicant's proposed facility will not degrade the air quality beyond Applicant's property line. Commenter also wants a description of all available control technology (not just BACT) for dust suppression throughout the process. Commenter states that air dispersion modeling should be done based on data from existing plants in the area. Commenter says the effects of PM<sub>10</sub> from sedimentary rock should be known, and mitigation technology should be described and defined. Commenter asks what the dispersion of PM<sub>10</sub> is, and if water sprays adequately suppress PM<sub>10</sub> (David Kinard).

**RESPONSE 3:** For most permit applications, an air quality analysis, which may include air dispersion modeling, is performed in order to predict the impacts of emissions outside the plant property. After a permit application's modeling review is complete, in most instances, the modeling results are then sent to the TCEQ's Toxicology Section to evaluate whether emissions from the proposed facility are expected to cause health or nuisance problems. The Toxicology Section reviews the results from air dispersion modeling and compares these to the ESLs. However, emissions from certain industries on the toxicology section "screening list" do not require a toxicology impacts review. Emissions of particulate matter from facilities like rock crushers, concrete batch plants, and soil-stabilization plants are included on the screening list because particulate matter emissions are not expected to have adverse impacts. Therefore, if expected emissions are within the NAAQS, the permit is considered protective.

During the review of this application, the technical consultant for Conners submitted appropriate air dispersion modeling to estimate the impacts of the facility emissions. The model was audited by the Air Permits Division Air Dispersion Modeling Team and was accepted. The results showed that all pollutants would meet their respective federal and state standards.

For information on cumulative effects, see **RESPONSE 2**.

The primary type of PM<sub>10</sub> or inhalable coarse particulates from rock crushing operations is in solid form. These particles are capable of traveling long distances, and the EPA has set the NAAQS 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. For emissions of particulate matter from rock crushing plants, water sprays are used at the inlet and outlet of crushers, at the screens, at material drop and transfer points, and at stockpiles. When used properly, water sprays are very effective in suppressing particulate matter emissions.

**COMMENT 4:** Commenter asks how Applicant's proposed facility will be monitored and what recourse those affected have when violations occur (David Kinard).

**RESPONSE 4:** Persons who are issued authorizations by the TCEQ are required to operate their facilities in compliance with the permit conditions and all applicable state and federal regulations at all times. Permit holders are required to keep records of their operation as detailed in the permit special conditions, including production records and maintenance of pollution abatement equipment. These records must be provided to TCEQ staff upon request. Failure to keep records to demonstrate compliance with permit conditions and state and federal regulations may result formal enforcement action.

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 Waco Regional Office at 254-751-0335, 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 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 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](http://www.tceq.state.tx.us) (under Publications, search for document no. 278).

**COMMENT 5:** Commenters are concerned about the truck traffic and road conditions associated with Applicant's proposed facility (Jim and Kay Woliver, Alvena White, James and Joyce Farr, and Billy White). Additionally, one commenter requests the specific location of Applicant's proposed facility and the proposed trucking routes for hauling the crushed rock (Bobby White).

**RESPONSE 5:** 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 trucks or roads outside the facility when determining whether to approve an application for an air quality permit.

The proposed rock crushing plant is located at UTM coordinates N3462600, E717600. TCEQ regulations governing this application relate only to air quality and do not include vehicle traffic to and from the proposed facility. All concerns regarding traffic should be directed to local authorities.

**COMMENT 6:** Commenters are concerned Applicant's proposed facility will harm rare bird species in the area (Joyce Farr).

**RESPONSE 6:** The Executive Director has reviewed the protectiveness modeling associated with this permit application and has determined that the air emissions beyond Applicant's property line will meet the NAAQS and will be protective of the health and well being of the general population. In addition to protecting health, the NAAQS are also set to address welfare effects. Section 302(h) of the Federal Clean Air Act (FCAA) defines effects on welfare to include effects on a number of categories. Because the emissions from this facility should not cause an exceedence of the NAAQS, no impact to land, animals, crops, or visibility is expected. Also, receipt of a State air quality permit does not relieve the regulated entity from complying with all applicable federal requirements under the Endangered Species Act or any other law.

**COMMENT 7:** Commenters are concerned about the level of noise that could come from Applicant's proposed facility, and how it could affect, among other things, their sleep patterns. (Jim and Kay Woliver, James and Joyce Farr, and Billy White)

**RESPONSE 7:** The TCEQ's jurisdiction is established by the Legislature and is limited to the issues set forth in statute. Accordingly, the TCEQ does not have jurisdiction to consider noise from a facility when determining whether to approve an application for an air quality permit.

Noise ordinances are normally enacted by cities or counties and enforced by local law enforcement authorities. Concerns regarding noise should be directed to local officials.

**COMMENT 8:** Commenters are concerned about the effects from the blasting on Applicant's property (Paul Bostick, Brenda Ogle, and Arthur Ogle).

**RESPONSE 8:** In accordance with the general definitions documented in 30 TAC § 116.10(6), "[a] mine, quarry, well test, or road is not a facility" and thus, the TCEQ does not have regulatory authority over emissions from these sources. In addition, blasting is considered a quarrying operation. 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 quarrying operations when determining whether to approve an application for an air quality permit.

**COMMENT 9:** Commenters are concerned about the effect the proposed facility will have on surface water, ground water, and their water collection systems (Pamela Kelley, Zill Harlan, and James and Joyce Farr).

**RESPONSE 9:** The draft permit regulates the control and abatement of air emissions only, and therefore issues regarding ground water, and the effect on water wells, are not within the scope of this permit review. It is the responsibility of Applicant to comply with any local, state, or

federal water quality or disposal requirements. This responsibility is not relevant in the review of an application for an air quality permit.

**COMMENT 10:** Commenters do not believe Applicant's facility belongs in its proposed location. Commenters say the proposed location and routes leading to it are too close to their homes, farmland, and historic landmarks. Some commenters believe it will hurt their businesses and property values and destroy the tranquil quality of the land (James and Joyce Farr, Jim and Kay Woliver, Paul Bostick, Annette White, Zill and Mary Harlan, Joel Guedry, Pamela Kelley, and Robin Swinnea).

**RESPONSE 10:** 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.

**COMMENT 11:** Some commenters support the proposed facility (Diane Slaybaugh and Greg Tate).

**RESPONSE 11:** The ED acknowledges the comments and appreciates the interest in environmental matters before the agency.

**CHANGES MADE IN RESPONSE TO COMMENT**

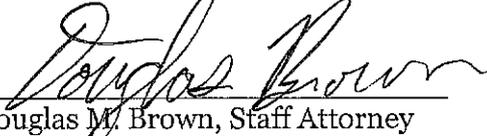
No changes to the draft permit have been made in response to public comment.

Respectfully submitted,

Texas Commission on Environmental Quality

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

Stephanie Bergeron Perdue, Deputy Director  
Office of Legal Services  
Robert Martinez, Director  
Environmental Law Division



Douglas M. Brown, Staff Attorney  
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Representing the  
Executive Director of the  
Texas Commission on  
Environmental Quality