

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*

September 12, 2011

Bridget Bohac, Chief Clerk  
Texas Commission on Environmental Quality  
P.O. Box 13087, MC 105  
Austin, Texas 78711-3087

Re: J.R. Thomson, Inc. Air Quality Permit No. 92504L001  
TCEQ Docket No. 2011-1524-AIR

Dear Ms. Bohac:

Enclosed please find an original plus seven copies of the Executive Director's Response to Hearing Request brief for the above permit.

If you have any questions, please do not hesitate to call me at extension 2253.

Sincerely,

A handwritten signature in cursive script that reads "Douglas Brown".

Douglas M. Brown  
Staff Attorney  
Environmental Law Division

Enclosure

**TCEQ AIR QUALITY PERMIT NUMBER 92504L001**  
**TCEQ DOCKET NO. 2011-1524-AIR**

<b>APPLICATION BY</b>	<b>§</b>	<b>BEFORE THE TEXAS</b>
<b>J.R. THOMPSON, INC</b>	<b>§</b>	<b>COMMISSION ON</b>
<b>PORTABLE ROCK CRUSHER</b>	<b>§</b>	<b>ENVIRONMENTAL QUALITY</b>
<b>COOKE COUNTY, TEXAS</b>	<b>§</b>	

**EXECUTIVE DIRECTOR'S RESPONSE TO HEARING REQUESTS**

The Executive Director (ED) of the Texas Commission on Environmental Quality (Commission or TCEQ) files this response (Response) to the requests for a contested case hearing submitted by persons listed herein. The Texas Clean Air Act (TCAA) §382.056(n) requires the Commission to consider hearing requests in accordance with the procedures provided in Tex. Water Code §5.556.<sup>1</sup> This statute is implemented through the rules in 30 Texas Administrative Code (TAC) Chapter 55, Subchapter F.

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

**I. Application Request and Background Information**

J.R. Thompson, Inc. (Applicant) has applied to the TCEQ for a New Source Review Authorization under Texas Clean Air Act (TCAA) § 382.0518. This permit will authorize Applicant to construct a rock crushing plant comprised of two crushers, one screen, assorted material handling conveyors, and five acres of stockpiled material. Power will be supplied by three diesel engines. Hourly throughput at this plant will be limited to 500 tons per hour with an annual throughput of 1,000,000 tons per year. The facility is limited to a maximum operating schedule of 18 hours per day, 7 days per week, and 52 weeks per year with the total hours of operation not to exceed 4,380 hours per year in any rolling 12-month period.

The facility will be located on the east side of County Road 343 approximately 2 miles south of Farm-to-Market Road 1630 near Muenster in Cooke County. Contaminants authorized under this permit include: particulate matter, particulate matter with

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

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diameters of 10 microns or less and 2.5 microns or less, organic compounds, nitrogen oxides, sulfur dioxide, and carbon monoxide.

The permit application was received on May 7, 2010, and declared administratively complete on May 24, 2010. The Notice of Receipt of Application and Intent to Obtain Permit (public notice) for this permit application was published on June 11, 2010, in the *Muenster Enterprise*. The Notice of Application and Preliminary Decision for an Air Quality Permit (2nd public notice) for this permit application was published on December 17, 2010, in the *Muenster Enterprise*. A public meeting was held on March 3, 2011, at the Muenster ISD Cafetorium in Muenster, Cooke County, Texas. The public comment period ended on March 3, 2011.

The Office of Chief Clerk received timely hearing requests from the following: Kenneth Bierschenk, Lydia Springer on behalf of Kenneth and Marilyn Bierschenk, Michelle Sandmann, Cathy Luttmer, Wayne Luttmer, Michelle Sandmann on behalf of Concerned Neighbors of Proposed Rock Crusher (CNPRC), and David Frederick on behalf of Michelle Sandmann and CNRPC.

The ED's Response to Comments (RTC) was filed with the Chief Clerk on July 21, 2011, and mailed on July 25, 2011, to all interested persons, including those who asked to be placed on the mailing list for this application and those who submitted comment or requests for contested case hearing. The cover letter attached to the RTC included information about making requests for contested case hearing or for reconsideration of the ED's decision.<sup>2</sup> The letter also explained hearing requesters should specify any of the ED's responses to comments they dispute and the factual basis of the dispute, in addition to listing any disputed issues of law or policy.

## **II. Applicable Law**

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

- (d) A hearing request must substantially comply with the following:
- 1) give the name, address, daytime telephone number, and, where possible, fax number of the person who files the request. If the request is made by a group or association, the request must identify one person by name, address, daytime telephone number, and, where possible, fax number, who shall be responsible for receiving all official communications and documents for the group;
  - 2) identify the person's personal justiciable interest affected by the

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<sup>2</sup> See TCEQ rules at 30 TAC Chapter 55, Subchapter F. Procedural rules for public input to the permit process are found primarily in 30 TAC Chapters 39, 50, 55, and 80.

application, including a brief, but specific, written statement explaining in plain language the requester's location and distance relative to the proposed facility or activity that is the subject of the application and how and why the requester believes he or she will be adversely affected by the proposed facility or activity in a manner not common to members of the general public;

- 3) request a contested case hearing;
- 4) list all relevant and material disputed issues of fact that were raised during the public comment period and that are the basis of the hearing request. To facilitate the Commission's determination of the number and scope of issues to be referred to hearing, the requester should, to the extent possible, specify any of the executive director's responses to comments that the requester disputes and the factual basis of the dispute and list any disputed issues of law or policy; and
- 5) provide any other information specified in the public notice of application.

The next necessary determination is whether the requests were filed by "affected persons" as defined by Tex. Water Code § 5.115, and implemented in Commission rule 30 TAC § 55.203. Under 30 TAC § 55.203, an affected person is one who has a personal justiciable interest related to a legal right, duty, privilege, power or economic interest affected by the application. An interest common to members of the general public does not qualify as a personal justiciable interest. Local governments with authority under state law over issues raised by the application receive affected person status under 30 TAC § 55.203(b).

In determining whether a person is affected, 30 TAC § 55.203(c) requires all factors be considered, including, but not limited to, the following:

- 1) whether the interest claimed is one protected by the law under which the application will be considered;
- 2) distance restrictions or other limitations imposed by law on the affected interest;
- 3) whether a reasonable relationship exists between the interest claimed and the activity regulated;
- 4) likely impact of the regulated activity on the health and safety of the person, and on the use of property of the person;
- 5) likely impact of the regulated activity on use of the impacted natural

resource by the person; and

- 6) for governmental entities, their statutory authority over or interest in the issues relevant to the application.

In addition to the requirements noted above regarding affected person status, in accordance with 30 TAC § 55.205(a), a group or association may request a contested case hearing only if the group or association meets all of the following requirements:

- 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.<sup>3</sup>

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

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

The law applicable to the proposed facility may generally be summarized as follows. A person who owns or operates a facility or facilities that will emit air contaminants is required to obtain authorization from the Commission prior to the construction and operation of the facility or facilities.<sup>4</sup> Thus, the location and operation of the proposed facility requires authorization under the TCAA. Permit conditions of general applicability must be in rules adopted by the Commission.<sup>5</sup> Those rules are found in 30 TAC Chapter 116. In addition, a person is prohibited from emitting air contaminants or performing any activity that violates the TCAA or any Commission rule or order, or that

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<sup>3</sup> 30 TAC § 55.205(a)

<sup>4</sup> TEXAS HEALTH & SAFETY CODE § 382.0518

<sup>5</sup> TEXAS HEALTH & SAFETY CODE § 382.0513

causes or contributes to air pollution.<sup>6</sup> The relevant rules regarding air emissions are found in 30 TAC Chapters 101 and 111-118. In addition, the Commission has the authority to establish and enforce permit conditions consistent with this chapter.<sup>7</sup>

### **III. Analysis of Hearing Requests**

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

The following persons submitted timely hearing requests and provided an address in close proximity to the proposed facility (see attached map): Kenneth Bierschenk, Marilyn Bierschenk, Cathy Luttmer, Wayne Luttmer, and Michelle Sandmann. The hearing requests were submitted during the public comment period. Furthermore, the ED has determined the hearing requests of all the requests substantially comply with all of the requirements for form in 30 TAC § 55.201(d).

The ED addressed all public comments in this matter by providing responses in the RTC. The cover letter from the Office of the Chief Clerk attached to the RTC states that requesters should, to the extent possible, specify any of the ED's responses in the RTC that the requesters dispute and the factual basis of the dispute, and list any disputed issues of law or policy.<sup>8</sup> The ED is unaware that any responses were filed by any of the hearing requesters. In the absence of a response from any of the hearing requesters or their representatives within the thirty-day period after the RTC was mailed, the ED cannot determine or speculate whether the hearing requesters continue to dispute issues of fact, or whether there are any outstanding issues of law or policy. The ED assumes the requesters continue to dispute all of the issues raised by hearing requesters and commenters regarding this application as listed below.

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

All of the requesters have demonstrated that they are "affected persons" as defined in 30 TAC § 55.203. The threshold test of affected person status is whether the requester has a personal justiciable interest affected by the application, and this interest is different from that of the general public.<sup>9</sup> All of the hearing requesters who submitted requests on this application listed at least one personal justiciable interest affected by the application, which is discussed in more detail in Section D of this Response. For Air authorizations, given the dispersion and effects of individual air contaminants, distance from the proposed facility (30 § TAC 55.203(c)(2)) is particularly relevant to the issue of

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<sup>6</sup> TEXAS HEALTH & SAFETY CODE § 382.085 (a) and (b).

<sup>7</sup> TEXAS HEALTH & SAFETY CODE § 382.0513

<sup>8</sup> See 30 TAC § 55.201(d)(4).

<sup>9</sup> *United Copper Industries and TNRCC v. Joe Grissom*, 17 S.W.3d 797 (Tex. App.-Austin, 2000)

whether or not there is a likely impact of the regulated activity on a person's interests such as the health and safety of the person, and on the use of property of the person. The ED has identified that all hearing requesters reside in close proximity of the proposed facility and thus may be affected in a manner different from the general public (see attached map). Kenneth and Marilyn Bierschenk reside 0.98 miles from the rock crusher boundary.<sup>10</sup> Carol and Wayne Luttmer reside 0.68 miles of the boundary, and Michelle Sandmann resides 0.87 miles of the boundary.

*C. Do those groups who requested a hearing meet the group or associational standing requirements?*

Michelle Sandmann sent in a timely hearing request on behalf of the CNPRC, and the ED has determined the hearing request substantially complies with all of the requirements for form in 30 TAC § 55.201(d). Michelle Sandmann signed the request as a representative of CNPRC and attached a list of the names and addresses of the CNPRC members. The request states that the members of CNPRC live within close proximity of the proposed facility and that the group seeks to preserve the health and wellbeing of its members, as well as the use and enjoyment of their property. The request further states the members will be negatively impacted by the daily operations of the proposed facility in ways different from the general public. The request goes on to list specific concerns the members have regarding the proposed facility. One or more members of CNPRC have demonstrated that they would have standing to request a hearing in their own right<sup>11</sup>, and their claims asserted and relief requested would not require participation of individual members. Therefore, the ED finds that CNPRC meets the requirements of 30 TAC 55.03 for group standing.

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

If the Commission agrees with the assessment of the ED and finds that some or all of the hearing requesters are affected persons, the Commission must apply the three-part test discussed in Section II to the issues raised in this matter to determine if any of the issues should be referred to SOAH for a contested case hearing. The three-part test asks whether the issues involve disputed questions of fact, whether the issues were raised during the public comment period, and whether the issues are relevant and material to the decision on the permit application, in order to refer them to SOAH.

The ED addressed all public comments in this matter by providing responses in the RTC. The cover letter from the Office of the Chief Clerk transmitting the RTC cites 30 TAC § 55.201(d)(4), which states that requesters should, to the extent possible, specify

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<sup>10</sup> If approved, this permit would authorize portable rock crushers that can be moved to different locations on Applicant's property as long as they are located no closer than 499 feet from Applicant's property line. For purposes of the attached map, requesters' distances were measured from this 499-foot boundary.

<sup>11</sup> Review the above analysis of requests sent in individually by Kenneth Bierschenk, Marilyn Bierschenk, Cathy Luttmer, Wayne Luttmer, and Michelle Sandmann who are all also members of CNPRC.

any of the ED's responses in the RTC the requesters dispute and the factual basis of the dispute, and list any disputed issues of law or policy. In the absence of a response from any of the hearing requesters considered to be affected persons or their representatives within the thirty-day period after the RTC was mailed, the ED cannot determine or speculate whether the hearing requesters considered to be affected persons continue to dispute issues of fact, or whether there are any outstanding issues of law or policy. The ED nevertheless has included all of the issues raised by hearing requesters regarding this application as listed below.

*1. Issues involving questions of fact.*

Requesters raised the following issues in comments and hearing requests filed on this application:

1. Whether operation of the proposed facility will cause a violation of the National Ambient Air Quality Standards (NAAQS). (Michelle Sandmann and CNPRC)
2. Whether air emissions from the proposed facility will adversely affect human health and welfare. (Kenneth Bierschenk, Marilynn Bierschenk, Cathy Luttmer, Wayne Luttmer, Michelle Sandmann, and CNPRC)
3. Whether air emissions from the proposed facility will adversely affect the environment. ( Kenneth Bierschenk, Marilynn Bierschenk , Cathy Luttmer, Wayne Luttmer, Michelle Sandmann, and CNPRC)
4. Whether air emissions from the proposed facility will adversely affect air quality in the area. ( Kenneth Bierschenk, Marilynn Bierschenk , Cathy Luttmer, Wayne Luttmer, Michelle Sandmann, and CNPRC)
5. Whether the proposed facility will negatively impact requesters land and personal property, including livestock. (Kenneth Bierschenk, Marilynn Bierschenk, Cathy Luttmer, Wayne Luttmer, Michelle Sandmann and CNPRC)
6. Whether the facility would adversely impact sensitive subgroups, such as the elderly and people with existing respiratory conditions. (Kenneth Bierschenk and Marilynn Bierschenk)
7. Whether Applicant has provided sufficient public notice during the permitting process. (Kenneth Bierschenk, Marilynn Bierschenk, Michelle Sandmann, and CNPRC)
8. Whether operation of the proposed facility will create nuisance conditions. (Michelle Sandman and CNPRC)
9. Whether the proposed facility will use adequate control technologies. (Michelle Sandmann and CNPRC)

10. Whether the proposed facility will comply with all applicable distance requirements. (Kenneth Bierschenk, Cathy Luttmer, Wayne Luttmer, Michelle Sandmann, and CNPRC)
11. How Best Available Control Technology (BACT) was determined for the emissions of the proposed facility. (Michelle Sandmann and CNPRC)
12. Whether the representations in Applicant's application are accurate. (Michelle Sandmann and CNPRC)
13. Whether the air dispersion modeling performed by Applicant was performed appropriately. (Michelle Sandmann and CNPRC)
14. Whether the air quality around the proposed facility will be adequately monitored. (Kenneth Bierschenk, Michelle Sandmann, and CNPRC)
15. Whether Applicant's compliance history warrants denial of this permit. (Kenneth Bierschenk, Marilynn Bierschenk, Wayne Luttmer, Michelle Sandmann, and CNPRC)
16. Whether noise created by the proposed facility will negatively impact the surrounding area. (Kenneth Bierschenk, Marilynn Bierschenk, Michelle Sandmann, and CNPRC)
17. Whether the truck traffic caused by the proposed facility will negatively impact the surrounding area and its roads. (Kenneth Bierschenk, Marilynn Bierschenk, Cathy Luttmer, Wayne Luttmer, Michelle Sandmann, and CNPRC)
18. Whether Applicant should be allowed to build the facility at the proposed location. (Kenneth Bierschenk and Marilynn Bierschenk)
19. Whether blasting activities conducted at the proposed facility will negatively impact the surrounding area. (Kenneth Bierschenk Marilynn Bierschenk, Michelle Sandmann, and CNPRC)
20. Whether Applicant will have to be bonded or have liability insurance to operate the proposed facility. (Cathy Luttmer and Wayne Luttmer)
21. What methods Applicant will use to take measurements and keep records of production rates. (Michelle Sandmann and CNPRC)
22. How the permit for this proposed facility will be enforced and how violations will affect the proposed facility's operation. (Kenneth Bierschenk, Marilynn Bierschenk, Wayne Luttmer, Michelle Sandmann, and CNPRC)

23. Whether the proposed facility will adversely affect the surrounding water quality. (Kenneth Bierschenk, Marilyn Bierschenk, Michelle Sandmann, and CNPRC)

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

The public comment period is defined in 30 TAC § 55.152. The public comment period begins with the publication of the Notice of Receipt and Intent to Obtain an Air Quality Permit. The end date of the public comment period depends on the type of permit. In this case, the public comment period began on June 10, 2010, and ended on March 3, 2011, with a public meeting. All of the issues listed above upon which the hearing requests in this matter are based were raised in comments received during the public comment period.

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

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

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

1. Whether operation of the proposed facility will cause a violation of the National Ambient Air Quality Standards (NAAQS). (Michelle Sandman and CNPRC)
2. Whether air emissions from the proposed facility will adversely affect human health and welfare. (Kenneth Bierschenk, Marilyn Bierschenk, Cathy Luttmer, Wayne Luttmer, Michelle Sandmann, and CNPRC)
3. Whether air emissions from the proposed facility will adversely affect the environment. (Kenneth Bierschenk, Marilyn Bierschenk, Cathy Luttmer, Wayne Luttmer, Michelle Sandmann, and CNPRC)

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4. Whether air emissions from the proposed facility will adversely affect air quality in the area. ( Kenneth Bierschenk, Marilynn Bierschenk , Cathy Luttmer, Wayne Luttmer, Michelle Sandmann, and CNPRC)
5. Whether the proposed facility will negatively impact requesters land and personal property, including livestock. (Kenneth Bierschenk, Marilynn Bierschenk, Cathy Luttmer, Wayne Luttmer, Michelle Sandmann and CNPRC)
6. Whether the facility would adversely impact sensitive subgroups, such as the elderly and people with existing respiratory conditions. (Kenneth Bierschenk and Marilynn Bierschenk)
7. Whether Applicant has provided sufficient public notice during the permitting process. (Kenneth Bierschenk, Marilynn Bierschenk, Michelle Sandmann, and CNPRC)
8. Whether operation of the proposed facility will create nuisance conditions. (Michelle Sandmann and CNPRC)
9. Whether the proposed facility will use adequate control technologies. (Michelle Sandmann and CNPRC)
10. Whether the proposed facility will comply with all applicable distance requirements. (Kenneth Bierschenk, Cathy Luttmer, Wayne Luttmer, Michelle Sandmann and CNPRC)
11. How Best Available Control Technology (BACT) was determined for the emissions of the proposed facility. (Michelle Sandmann and CNPRC)
12. Whether the representations in Applicant's application are accurate. (Michelle Sandmann and CNPRC)
13. Whether the air dispersion modeling performed by Applicant was performed appropriately. (Michelle Sandmann and CNPRC)
14. Whether the air quality around the proposed facility will be adequately monitored. (Kenneth Bierschenk, Michelle Sandmann, and CNPRC)
15. Whether Applicant's compliance history warrants denial of this permit. (Kenneth Bierschenk, Marilynn Bierschenk, Wayne Luttmer, Michelle Sandmann, and CNPRC)
16. What methods Applicant will use to take measurements and keep records of production rates. (Michelle Sandmann and CNPRC)
17. How the permit for this proposed facility will be enforced and how violations will affect the proposed facility's operation. (Kenneth Bierschenk, Marilynn Bierschenk, Wayne Luttmer, Michelle Sandmann, and CNPRC)

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

1. Whether noise created by the proposed facility will negatively impact the surrounding area. (Kenneth Bierschenk, Marilyn Bierschenk, Michelle Sandmann, and CNPRC)
2. Whether the truck traffic caused by the proposed facility will negatively impact the surrounding area and its roads. (Kenneth Bierschenk, Marilyn Bierschenk, Cathy Luttmer, Wayne Luttmer, Michelle Sandmann, and CNPRC)
3. Whether Applicant should be allowed to build the facility at the proposed location. (Kenneth Bierschenk and Marilyn Bierschenk)
4. Whether blasting activities conducted at the proposed facility will negatively impact the surrounding area. (Kenneth Bierschenk Marilyn Bierschenk, Michelle Sandmann, and CNPRC)
5. Whether Applicant will have to be bonded or have liability insurance to operate the proposed facility. (Cathy Luttmer and Wayne Luttmer)

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

1. Whether the proposed facility will adversely affect the surrounding water quality. (Kenneth Bierschenk, Marilyn Bierschenk, Michelle Sandmann, and CNPRC)

#### **IV. Maximum Expected Duration of the Contested Case Hearing**

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

#### **V. Executive Director's Recommendation**

For the foregoing reasons, the Executive Director respectfully recommends the Commission:

- A. Find all hearing requests in this matter were timely filed.

Find that the requests of the following groups or persons satisfy the requirements for form under 30 TAC§ 55.201(d) and are affected under 30 TAC § 55.203: Kenneth

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Bierschenk, Marilynn Bierschenk, Michelle Sandmann, Cathy Luttmer, Wayne Luttmer, and the Concerned Neighbors of Proposed Rock Crusher

If the Commission determines any requester is an affected person, refer the following issues to SOAH:

1. Whether operation of the proposed facility will cause a violation of the National Ambient Air Quality Standards (NAAQS). (Michelle Sandman and CNPRC)
2. Whether air emissions from the proposed facility will adversely affect human health and welfare. (Kenneth Bierschenk, Marilynn Bierschenk, Cathy Luttmer, Wayne Luttmer, Michelle Sandmann, and CNPRC)
3. Whether air emissions from the proposed facility will adversely affect the environment. (Kenneth Bierschenk, Marilynn Bierschenk, Cathy Luttmer, Wayne Luttmer, Michelle Sandmann, and CNPRC)
4. Whether air emissions from the proposed facility will adversely affect air quality in the area. (Kenneth Bierschenk, Marilynn Bierschenk, Cathy Luttmer, Wayne Luttmer, Michelle Sandmann, and CNPRC)
5. Whether the proposed facility will negatively impact requesters land and personal property, including livestock. (Kenneth Bierschenk, Marilynn Bierschenk, Cathy Luttmer, Wayne Luttmer, Michelle Sandmann and CNPRC)
6. Whether the facility would adversely impact sensitive subgroups, such as the elderly and people with existing respiratory conditions. (Kenneth Bierschenk and Marilynn Bierschenk)
7. Whether Applicant has provided sufficient public notice during the permitting process. (Kenneth Bierschenk, Marilynn Bierschenk, Michelle Sandmann, and CNPRC)
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12. Whether the representations in Applicant's application are accurate. (Michelle Sandmann and CNPRC)
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  14. Whether the air quality around the proposed facility will be adequately monitored. (Kenneth Bierschenk, Michelle Sandmann, and CNPRC)
  15. Whether Applicant's compliance history warrants denial of this permit. (Kenneth Bierschenk, Marilyn Bierschenk, Wayne Luttmer, Michelle Sandmann, and CNPRC)
  16. What methods Applicant will use to take measurements and keep records of production rates. (Michelle Sandmann and CNPRC)
  17. How the permit for this proposed facility will be enforced and how violations will affect the proposed facility's operation. (Kenneth Bierschenk, Marilyn Bierschenk, Wayne Luttmer, Michelle Sandmann, and CNPRC)
- B. Find the maximum expected duration of the contested case hearing, if held, would be six months.

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



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Representing the Executive Director of the  
Texas Commission on Environmental Quality

**J.R. Thompson, Inc.**  
**Permit No. 92504L001**  
**Map Requested by TCEQ Office of Legal Services**  
**for Commissioners' Agenda**



Texas Commission on Environmental Quality  
 GIS Team (Mail Code 197)  
 P.O. Box 13087  
 Austin, Texas 78711-3087

September 7, 2011

0 0.1 0.2 0.4 0.6 Miles

Projection: Texas Statewide Mapping System (TSMS)

Scale 1:26,000

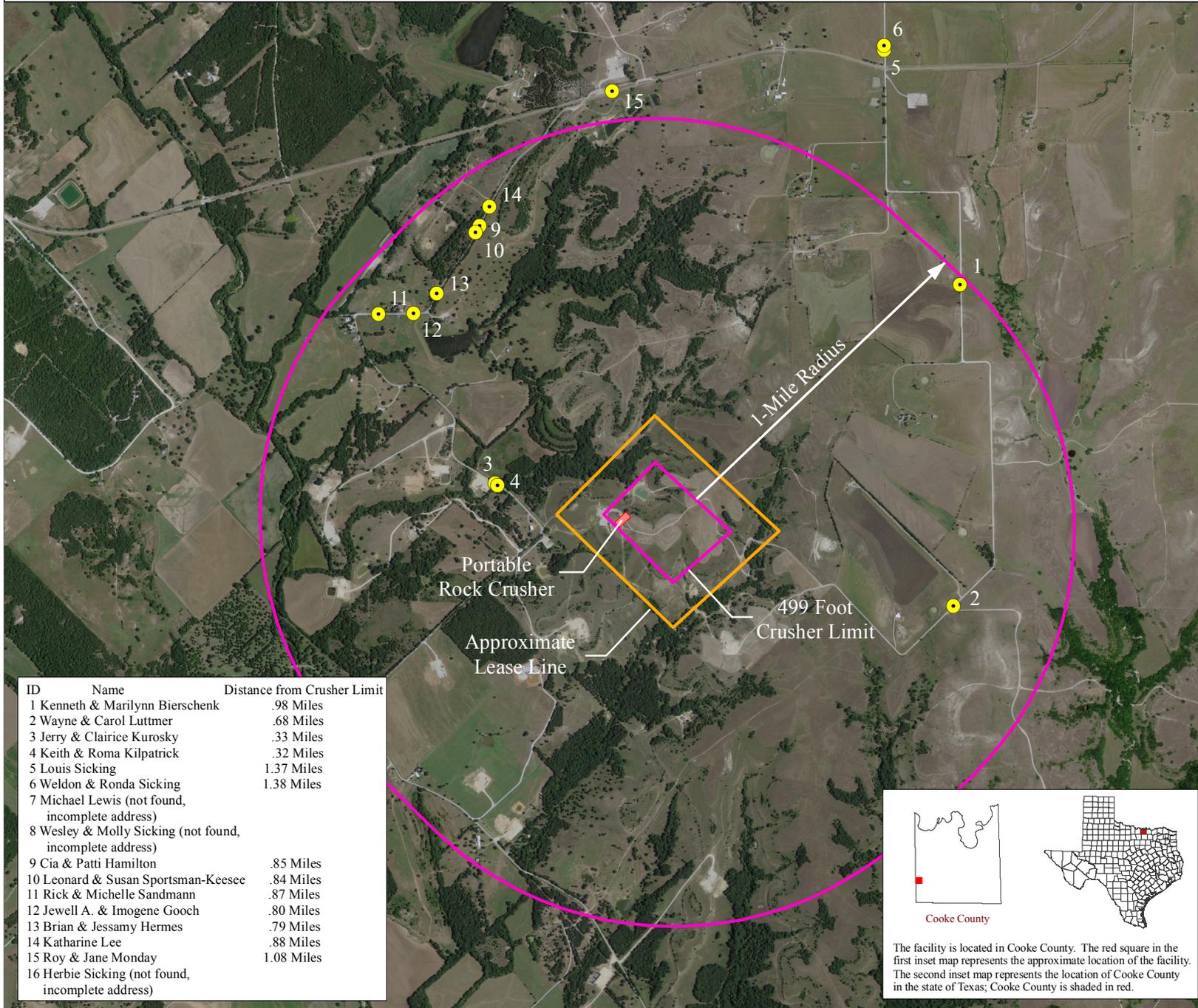
**Legend**

- Approximate Lease Line
- Portable Rock Crusher
- Rock Crusher Limit
- Approximate Locations of Requestors

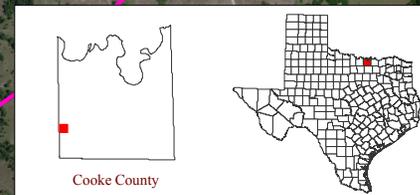
Source: The location of the facility was provided by the TCEQ Office of Legal Services (OLS). OLS obtained the site location information from the applicant and the requestor information from the requestor. The vector data are U.S. Census Bureau 1992 TIGER/Line Data (1:100,000). The background of this map is a one-half meter photograph from the 2008 Texas Orthoimagery Project.

**This map depicts the following:**

- (1) The approximate location of the lease line. This is labeled "Approximate Lease Line".
- (2) The approximate location of the portable rock crusher. This is labeled "Portable Rock Crusher".
- (3) The approximate 499 foot boundary of the portable rock crusher limit. This is labeled "499 Foot Crusher Limit".
- (4) Circle and arrow depicting 1-mile radius. This is labeled "1-Mile Radius".



ID	Name	Distance from Crusher Limit
1	Kenneth & Marilynn Bierschenk	.98 Miles
2	Wayne & Carol Luttmr	.68 Miles
3	Jerry & Clairice Kurosky	.33 Miles
4	Keith & Roma Kilpatrick	.32 Miles
5	Louis Sicking	1.37 Miles
6	Weldon & Ronda Sicking	1.38 Miles
7	Michael Lewis (not found, incomplete address)	
8	Wesley & Molly Sicking (not found, incomplete address)	
9	Cia & Patti Hamilton	.85 Miles
10	Leonard & Susan Sportsman-Keese	.84 Miles
11	Rick & Michelle Sandmann	.87 Miles
12	Jewell A. & Imogene Gooch	.80 Miles
13	Brian & Jessamy Hermes	.79 Miles
14	Katharine Lee	.88 Miles
15	Roy & Jane Monday	1.08 Miles
16	Herbie Sicking (not found, incomplete address)	



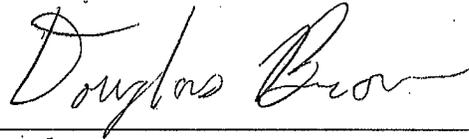
The facility is located in Cooke County. The red square in the first inset map represents the approximate location of the facility. The second inset map represents the location of Cooke County in the state of Texas; Cooke County is shaded in red.



This map was generated by the Information Resources Division of the Texas Commission on Environmental Quality. This product is for informational purposes and may not have been prepared for or be suitable for legal, engineering, or surveying purposes. It does not represent an on-the-ground survey and represents only the approximate relative location of property boundaries. For more information concerning this map, contact the Information Resource Division at (512) 239-0800.

**CERTIFICATE OF SERVICE**

On the 12 day of September 2011, a true and correct copy of the foregoing instrument was served on all persons on the attached mailing list by the undersigned via deposit into the U.S. Mail, inter-agency mail, facsimile, electronic mail, or hand delivery.

A handwritten signature in cursive script that reads "Douglas Brown". The signature is written in black ink and is positioned above a horizontal line.

Douglas M. Brown

**MAILING LIST**  
**J.R. THOMPSON, INC.**  
**DOCKET NO. 2011-1524-AIR; PERMIT NO. 92504L001**

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***See attached list of  
Requesters/Interested Persons.***

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