

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

July 25, 2011

TO: Persons on the attached mailing list.

RE: J.R. Thompson, Inc.
Permit No. 92504L001

Decision of the Executive Director.

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any action is taken on this application unless all requests for contested case hearing or reconsideration have been withdrawn before that meeting.

Enclosed with this letter is a copy of the Executive Director's Response to Comments. A copy of the complete application, draft permit and related documents, including public comments, is available for review at the TCEQ Central office. A copy of the complete application, the draft permit, and executive director's preliminary decision are available for viewing and copying at the TCEQ central office, the TCEQ Dallas/Fort Worth regional office, and at the Cooke County Clerk, 216 West Pecan Street, Gainesville, Cooke 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:

Melissa Chao, Acting Chief Clerk
TCEQ, MC-105
P.O. Box 13087
Austin, Texas 78711-3087

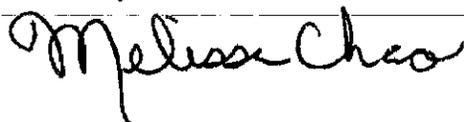
Processing of Requests.

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,



Melissa Chao
Acting Chief Clerk

MC/lg

Enclosure

MAILING LIST
for
J.R. Thompson, Inc.
Permit No. 92504L001

FOR THE APPLICANT:

J.R. Thompson, President
J.R. Thompson, Inc.
3500 North Grand Avenue
Gainesville, Texas 76240

Melisa Fitts, Environmental Specialist
Westward Environmental, Inc.
P.O. Box 2205
Boerne, Texas 78006

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

Mike 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:

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

BIERSCHENK, KENNETH
8357 CR 341
MUNSTER TX 76252-5102

BIERSCHENK, KENNETH & MARILYNN
8357 CR 341
MUNSTER TX 76252

FELDERHOFF, JANET
MUNSTER ENTERPRISE
PO BOX 190
MUNSTER TX 76252

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

GOOCH, IMOGENE & JEWELL A
7599 CR 201
MCKINNEY TX 75071

HAMILTON, CLA & PATTI
767 CR 343
FORESTBURG TX 76239

HERMES, BRIAN & JESSAMY
990 CR 343
FORESTBURG TX 76239

KEESE, LEONARD
769 CR 343
FORESTBURG TX 76239

KILPATRICK, KEITH & ROMA
517 NORTH PARK DR
FORT WORTH TX 76179-1039

KILPATRICK, ROMA
517 NORTH PARK DR
FORT WORTH TX 79179

KUROSKY, CLAIRICE & JERRY
2011 LAYTON AVE
HALTOM CITY TX 76117

KUROSKY, JERRY
2011 LAYTON AVE
HALTOM CITY TX 76117-4918

LEE, KATHARINE
708 CR 343
FORESTBURG TX 76239

LEWIS, MICHAEL
500 FM 1198
MUNSTER TX 76252

LUTTMER, CAROL & WAYNE
9190 CR 341
MUNSTER TX 76252-5127

LUTTMER, CATHY & WAYNE
9190 CR 341
MUNSTER TX 76252

MONDAY, JANE & ROY
PO BOX 98
MUNSTER TX 76252-0098

MONDAY, JANE
PO BOX 98
MUNSTER TX 76252

ROANE, JOHN
COOKE COUNTY JUDGE
STE 216
100 E CALIFORNIA ST
GAINESVILLE TX 76240-4002

ROANE, JOHN
PO BOX 115
VALLEY VIEW TX 76272-0115

SANDMANN, MICHELLE & RICK
PO BOX 464
MUNSTER TX 76252

SANDMANN, MICHELLE
PO BOX 464
MUNSTER TX 76252-0464

SICKING, HERBIE
16185 FM 1630
MUNSTER TX 76252

SICKING, LOUIS
7627 CR 341
MUNSTER TX 76252

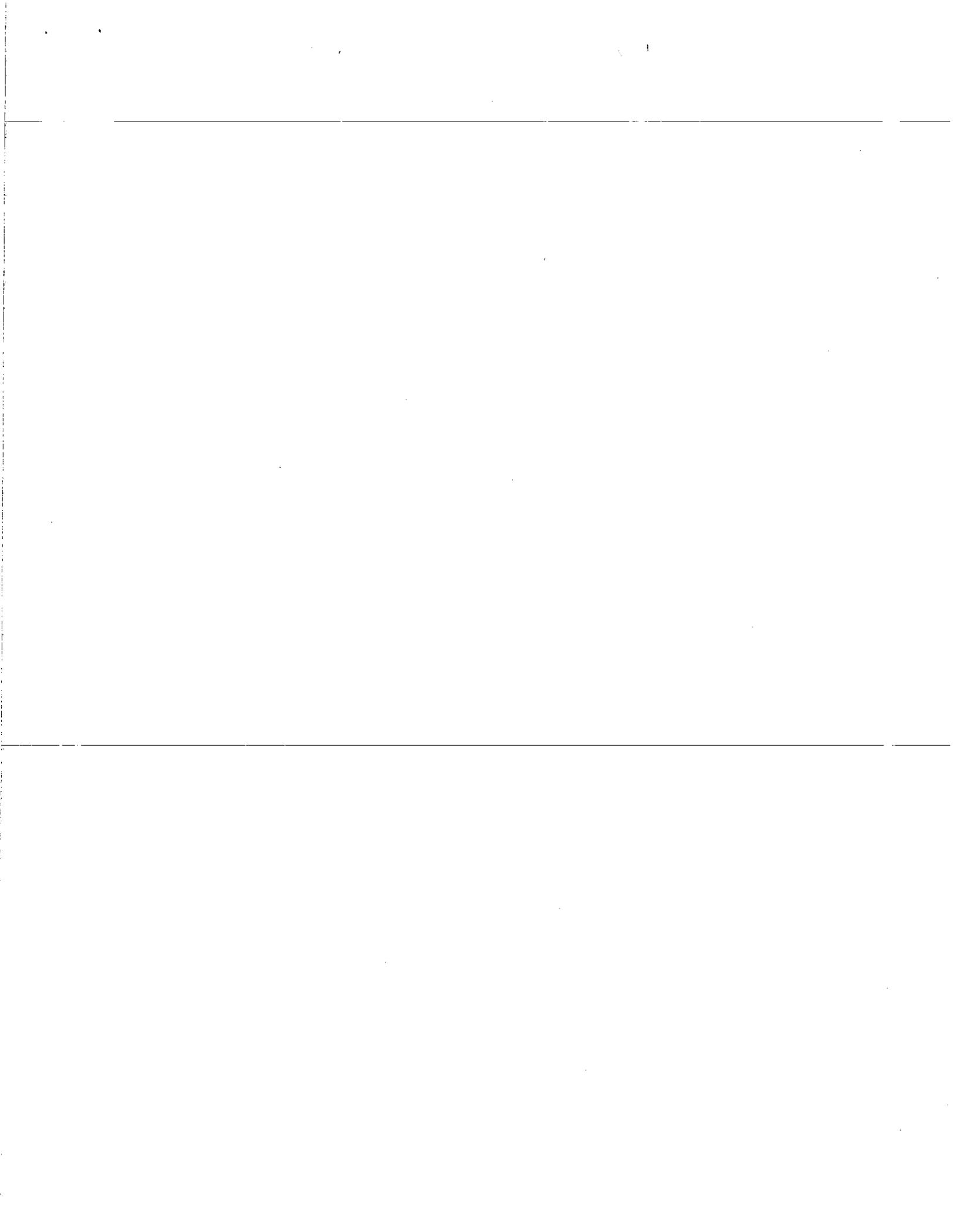
SICKING, MOLLY & WESLEY
15229 FM 1630
MUNSTER TX 76252

SICKING, RONDA & WELDON
7625 CR 341
MUNSTER TX 76252

SMITH, ALAN
COOKE COUNTY COMMISSIONER
206 W MAIN ST
GAINESVILLE TX 76240-4739

SPORTSMAN-KEESE, LEONARD & SUSAN
769 CR 343
FORESTBURG TX 76239

SPRINGBR, LYDIA K
PO BOX 6
MUNSTER TX 76252



TCEQ AIR QUALITY PERMIT NUMBER 92504L001

2007 JUL 21 PM 4: 23

APPLICATION BY	§	BEFORE THE
	§	CHIEF CLERK'S OFFICE
J.R. THOMPSON, INC.	§	TEXAS COMMISSION ON
ROCK CRUSHING PLANT	§	
MUENSTER, COOKE COUNTY	§	ENVIRONMENTAL QUALITY

EXECUTIVE DIRECTOR'S RESPONSE TO PUBLIC COMMENT

The Executive Director of the Texas Commission on Environmental Quality (the commission or TCEQ) files this Response to Public Comment (Response) on the New Source Review (NSR) Authorization application and Executive Director's preliminary decision.

As required by Title 30 Texas Administrative Code (30 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 comments from the following persons: Eric Allmon signing for David Frederick, Kenneth Bierschenk and Lydia Springer on behalf of Kenneth Bierschenk, Roma Kilpatrick, Jerry Kurosky, Michael Lewis, Cathy Luttmmer, Wayne Luttmmer, Jane Monday, and Michelle Sandmann on behalf of herself and on behalf of "Concerned Neighbors of Proposed Rock Crusher" (which include: Kenneth and Marilynn Bierschenk, Wayne and Carol Luttmmer, Jerry and Clairice Kurosky, Keith and Roma Kilpatrick, Louis Sicking, Weldon and Ronda Sicking, Michael Lewis, Wesley and Molly Sicking, Cla and Patti Hamilton, Leonard and Susan Sportsman-Keese, Rick Sandmann, Jewell and Imogene Gooch, Brian and Jessamay Hermes, Katherine Lee, Roy and Jane Monday, and Herbie Sicking). County Commissioner Al Smith and Judge John Roane requested a public meeting. 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.texas.gov.

BACKGROUND

Description of Facility

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 will authorize the construction of a new facility that may emit air contaminants.

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

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 92504L001.

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.

COMMENTS AND RESPONSES

COMMENT 1: Kenneth Bierschenk, Michelle Sandmann, and Lydia Springer questioned the address of the proposed rock crushing plant asking whether the facility would be located off County Road 343 as stated in the public notice and in the application, or whether the entrance to the facility would be off County Road 341, as indicated by conversations with an employee of Applicant.

Additionally, if access to the facility is through neighboring private property, Kenneth Bierschenk, Cathy Luttmer, and Wayne Luttmer asked whether the property owners bear the same responsibility as the crusher operators.

RESPONSE 1: The area map included in the application indicates that the land leased for this plant is in closer proximity to County Road 343 than it is to County Road 341, and the use of County Road 343 as the address designation is geographically correct. Applicant represented, at the time the application was submitted, that it would use County Road 343 for access to the property but not to the exclusion of County Road 341. Subsequent communication with Applicant indicates that an easement for access to

County Road 343 could not be finalized, so Applicant has represented it will need to use County Road 341 to Double O Ranch Lane to the east, instead. However, entry or exit access into and out of a property is not regulated by the TCEQ and would not be a required representation in the permit application.

COMMENT 2: Kenneth Bierschenk, Michelle Sandmann, and Lydia Springer stated that the signs notifying the public of the pending operation were not posted for the required time and were not properly located. Kenneth Bierschenk and Lydia Springer are also concerned that the signs were placed on a neighboring property with no visible signs on Applicant's property.

RESPONSE 2: In accordance with 30 TAC § 39.604(b), the signs must be in place by the date of the publication of the Notice of Receipt of Application and Intent to Obtain Permit and remain in place and legible throughout that public comment period. The same rule states that an applicant is to provide verification that the sign posting was conducted according to this section. In 30 TAC § 36.604(c), it further states that signs must be located within ten feet of every property line paralleling a public highway, street, or road.

In the application, Applicant represented it leased a portion of land within a larger area of undeveloped land. As shown in the representations included in the application, the leased portion does not parallel nor connect to either County Road 343 or County Road 341. Thus, the sign postings would not be required on Applicant's property.

Applicant submitted an affidavit signed on July 12, 2010, indicating that the required signs were posted in accordance with the regulations and instructions of the TCEQ. In subsequent communication, Applicant explained that signs were placed at the west corner of the property, which is the closest location of the property towards CR 343. Another sign was posted at the end of Double O Ranch Lane, which is the closest public access location on the east side of the property. Given the representations in the application, this sign placement was the most applicable location for public viewing.

COMMENT 3: Commenters are generally concerned about the impacts Applicant's proposed facility will have on human health and welfare. David Frederick questioned whether the sources of emissions would cause or contribute to a violation of the National Ambient Air Quality Standards (NAAQS). Kenneth Bierschenk, Cathy Luttmer, Wayne Luttmer, and Jane Monday expressed concern about the health risk associated with air contaminated by particulate matter emitted from the proposed facility and asked what the acceptable limits for air quality would be in parts per million. Kenneth Bierschenk and Lydia Springer expressed further concerns regarding the health of the elderly, people with preexisting respiratory conditions, and people with compromised immune systems.

David Frederick also questioned whether the air dispersion modeling submitted by Applicant was performed properly.

RESPONSE 3: In an NSR case-by-case evaluation, for many permits, potential impacts to human health and welfare and the environment are determined by comparing predicted emission concentrations from the proposed facility to appropriate state and federal standards and effects screening levels.^{1, 2, 3} The specific health-based standards or guidance levels employed in evaluating the potential emissions include the NAAQS; TCEQ standards contained in 30 TAC; and TCEQ Effects Screening Levels (ESLs).²

The NAAQS, as created by the EPA, are defined in the Title 40 Code of Federal Regulations (40 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 the public health, including sensitive members of the population such as children, the elderly, and individuals with existing lung or cardiovascular conditions. Secondary NAAQS are those that the Administrator determines are necessary to protect the public welfare and the environment, including animals, crops, vegetation, and buildings, from any known or anticipated adverse effects associated with the presence of an air contaminant in the ambient air. If the proposed facility is operated as required, there should be no adverse health effects.

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. In this case, Applicant used the EPA-approved SCREEN3 (Version 96043) air modeling program to provide a conservative reasonable worst case representation of potential impacts from the proposed facility on the area surrounding Applicant's operations. The evaluation included operation 18 hours per day, seven days per week, 52 weeks per year for a total operation not to exceed 4,380 hours per year. The evaluation reflected the emissions for emission points authorized at the facility and the throughput associated with each point as defined in the permit application. The likelihood of whether adverse health effects caused by emissions from Applicant's proposed facility could occur in members of the general public, including sensitive subgroups such as children, the elderly, or people with existing respiratory conditions, was determined by comparing the facility's predicted air dispersion computer modeling concentrations to the relevant federal standards and ESLs. However, emissions from certain industries on the toxicology section "screening list"³ do not require a toxicology impacts review. Emissions of PM from facilities like rock crushers, concrete batch plants, and soil-stabilization plants do not require further evaluation due to the Toxicology Section's review of the constituents of the PM emissions that were determined to not have adverse impacts so long as PM emissions meet the federal requirements stated in the NAAQS.

¹ Documents referenced in this response 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.

² To view the ESL list or obtain more information on ESLs, visit the TCEQ website at http://www.tceq.state.tx.us/implementation/tox/esl/list_main.html.

³ The TCEQ Toxicology and Risk Assessment Section have also compiled a list of facilities which do not require a health effects review (commonly referred to as the "Toxicology Emissions Screening List").

The modeling was audited by the TCEQ Air Dispersion Modeling Team to ensure that the model analysis methodology was complete and correct with respect to the regulations and guidelines established by the EPA. The NAAQS for PM₁₀ is based on a 24-hour time period. The measurement for predicted concentrations of air contaminants in modeling exercises is not expressed in parts per million, but rather in terms of micrograms per cubic meter ($\mu\text{g}/\text{m}^3$). 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 $\mu\text{g}/\text{m}^3$ are not expected to exacerbate existing conditions or cause adverse health effects. Modeling for this facility resulted in predicted PM₁₀ concentrations, at the facility's property line, of 103 $\mu\text{g}/\text{m}^3$. This value includes a screening background concentration of 60 $\mu\text{g}/\text{m}^3$ which is indicative of PM₁₀ emission background concentrations found in TCEQ Region 4 counties. Monitored values for PM₁₀ background concentrations were reviewed from Kaufman County, Tarrant County, and Harrison County to verify that the screening background concentration from TCEQ Region 4 was conservative. All counties mentioned above have a greater population and more emissions than Cooke County, and the monitoring values are less than the screening background concentration used in this analysis. Therefore, based on the potential concentrations reviewed by the Executive Director's staff, it is not expected that existing health conditions will worsen, or that adverse health effects in the general public, sensitive subgroups, or animal life will occur as a result of exposure to the expected levels of PM₁₀ emissions.

For PM_{2.5} the EPA has determined that predicted air concentrations occurring below the 24-hour NAAQS of 35 $\mu\text{g}/\text{m}^3$ and an annual concentration of 15 $\mu\text{g}/\text{m}^3$ are not expected to exacerbate existing conditions or cause adverse health effects. Modeling for this facility resulted in predicted PM_{2.5} concentrations, at the facility's property line, of 32 $\mu\text{g}/\text{m}^3$ (24-hour) and 11.7 $\mu\text{g}/\text{m}^3$ (annual), which are below the required NAAQS limitations. This value includes a 24-hour screening background concentration of 20 $\mu\text{g}/\text{m}^3$ and an annual screening background concentration of 9.3 $\mu\text{g}/\text{m}^3$ obtained from the EPA AIRS monitor 481210034 located at 5000 Airport Rd, Denton, Denton County. The use of this monitor is reasonable because Denton County has higher PM_{2.5} emissions from 2005 than Cooke County and Denton County has a greater population than Cooke County. Therefore, based on the potential concentrations reviewed by the Executive Director's staff, it is not expected that existing health conditions will worsen, or that adverse health effects in the general public, sensitive subgroups, or animal life will occur as a result of exposure to the expected levels of PM_{2.5} emissions from this facility.

The PM emissions from the on-site diesel engines were included in the total PM evaluation just described. The following discussion demonstrates the protectiveness with respect to the NAAQS of the remaining products of combustion.

For CO the EPA has provided a 1-hour de minimis value of 2,000 $\mu\text{g}/\text{m}^3$ and an 8-hour de minimis value of 500 $\mu\text{g}/\text{m}^3$. For the engines being evaluated at this site, the CO emission concentrations were determined to be 116 $\mu\text{g}/\text{m}^3$ and 81 $\mu\text{g}/\text{m}^3$ for the 1-hour

and 8-hour averaging time respectively. Thus, no further evaluation was conducted because it was determined that the predicted air concentrations of CO would not be expected to exacerbate existing conditions or cause adverse health effects.

In accordance with the NAAQS, the emission concentrations of SO₂ must meet a 1-hour, a 3-hour, a 24-hour, and an annual regulated limitation. Air dispersion modeling of the engines to be used at this site, including the appropriate background concentration, indicate that the concentration of SO₂ at the 1-hour time averaging period is 160 µg/m³, which is below the NAAQS requirement of 196 µg/m³. The concentration of SO₂ at a 3-hour time averaged value of 184 µg/m³, which is below the NAAQS requirement of 1300 µg/m³. The SO₂ concentration at a 24-hour time averaged concentration of 60 µg/m³, which is below the NAAQS requirement of 365 µg/m³. The annual time averaged concentration was 13 µg/m³, which is below the NAAQS requirement of 80 µg/m³.

The background concentration for the 1-hr time averaged evaluation of SO₂ was obtained from the EPA AIRS monitor 48257005 located at 3790 South Houston Street, Kaufman County. The use of this monitor was determined to be reasonable because Kaufman County has similar SO₂ emissions as Cooke County and Kaufman County has a greater population than Cooke County. The 3-hour, 24-hour, and annual SO₂ background concentrations were evaluated in a similar manner as already described for the PM₁₀ emission concentration background determination. As determined from this evaluation and based on the potential concentrations reviewed by the Executive Director's staff, it is not expected that existing health conditions will worsen or that adverse health effects in the general public, sensitive subgroups, or animal life will occur as a result the expected levels of SO₂ emissions from Applicant's proposed facility.

For NO_x emissions, the EPA has set NAAQS standards for the portion of NO_x that is in the form of nitrogen dioxide (NO₂). Although the EPA has developed a relationship to determine the percent NO₂ within the total NO_x concentration for ambient monitoring conditions, it has not yet developed a corresponding algorithm for source specific emissions. Thus, for diesel fired combustion engines, the TCEQ continues to use the adopted 1979 test results on gas fired compressors published by Chevron which determined that the contribution of NO₂ is 14% of the total NO_x emission.

The EPA determined that predicted air concentrations of NO₂ occurring below the 1-hour NAAQS of 188 µg/m³ and annual concentration of 100 µg/m³ would not be expected to exacerbate existing conditions or cause adverse health effects. Modeling for this facility, using the NO₂ to NO_x relationship discussed above, resulted in predicted NO₂ concentrations at the facility's property line, of 100 µg/m³ (1-hour) and 22 µg/m³ (annual), which are below the required NAAQS limitations. These values include a 1-hour screening background concentration of 70 µg/m³ and an annual screening background concentration of 20 µg/m³. Therefore, based on the potential concentrations reviewed by the Executive Director's staff, it is not expected that existing health conditions will worsen, or that adverse health effects in the general public, sensitive subgroups, or animal life will occur as a result of NO₂ emissions from Applicant's proposed facility.

The Executive Director reviewed the application in accordance with the relevant law, policies, and procedures. As long as the facility is operated as specified in the draft permit's terms and conditions, the proposed emissions are not expected to adversely impact human health, air quality, or the welfare of persons living in the area.

COMMENT 4: David Frederick expressed concern that silica, as speciated from the particulate matter emissions, would create an unreasonable risk to public health.

RESPONSE 4: After a permit application's modeling review is complete, in most instances, the modeling results are then sent to the TCEQ's Toxicology Division to evaluate whether emissions from the proposed facility are expected to cause health or nuisance conditions. The Toxicology Division reviews the results from air dispersion modeling and compares these to the TCEQ ESLs. However, emissions from certain industries on the toxicology section "screening list"⁴ do not require a toxicology impacts review. Emissions of PM from facilities like rock crushers, concrete batch plants, and soil-stabilization plants do not require further evaluation due to the Toxicology Section's review of the constituents of the PM emissions that were determined to not have adverse impacts so long as PM emissions meet the federal requirements stated in the NAAQS. Thus, there is no requirement to further speciate the limestone emissions to determine the effects of silica.

COMMENT 5: Michelle Sandmann questioned whether all air contaminant emission points at the facility were correctly identified. She also questioned how the emissions for these points were calculated and the accuracy and the manner in which the emissions of air contaminants were determined.

RESPONSE 5: The air contaminants from this facility include the products of combustion from the diesel engines (nitrogen oxides [NO_x], sulfur dioxide [SO₂], carbon monoxide [CO], volatile organic compounds [VOC] and particulate matter [PM]).

Particulate matter from the crushing, screening, and material handling operations, which include PM₁₀ and PM_{2.5}, will also be produced by this facility. The emission points were evaluated based on the proposed operation of the facility, which includes the equipment used, the process flow, and the hours of operation.

The resultant emissions, as tabulated in the draft permit's Maximum Allowable Emission Rates Table (MAERT), are calculated utilizing the latest emission factors published in the guidelines developed by the Emission Factor and Inventory Group (EFIG) associated with the Environmental Protection Agency (EPA). Emission factors (AP-42) are based on EPA testing of specific industries and are representative values to

relate the quantity of a pollutant released to the atmosphere with an activity associated with the release of that pollutant.

⁴The TCEQ Toxicology and Risk Assessment Section have also compiled a list of facilities which do not require a health effects review (commonly referred to as the "Toxicology Emissions Screening List").

Based on these factors, emissions are determined on a short-term basis as a pound of emissions per hour of operation (lb/hr) and on a long-term basis as tons of emissions per year (ton/yr). The facility at Applicant's site has been evaluated based on the most recent AP-42 emission factors as described above with the calculated emissions as listed on the draft permit's MAERT. The emissions for this site will total 2.85 lb/hr and 4.45 ton/yr of PM, of which 1.23 lb/hr and 2.13 ton/yr are PM₁₀, and 0.42 lb/hr and 0.73 ton/yr are PM_{2.5}. Additionally, 5.26 lb/hr and 11.50 ton/yr are NO_x; 1.64 lb/hr and 3.57 ton/yr are SO₂; 3.18 lb/hr and 6.96 ton/yr are CO; and 1.86 lb/hr and 4.06 ton/yr are VOCs.

COMMENT 6: Since the scale weigh area and the truck staging area are on a separate piece of property but are integral to the operation of the rock crushing facilities, Kenneth Bierschenk asked why this area of operation is not a consideration of this permit application. He also asked why the dust from truck traffic in this area and emissions from truck exhausts are not considered when evaluating the permit emission limits.

RESPONSE 6: The TCEQ's jurisdiction is established by the Legislature and is limited to the issues set forth in statute. The TCEQ is delegated the authority to evaluate emissions from facilities. In accordance with the general definitions documented in TEXAS HEALTH AND SAFETY CODE § 382.03(6), "[a] mine, quarry, well test, or road is not considered to be a facility" and, thus, the TCEQ does not have delegated authority to evaluate the emissions from these potential sources.

As defined by the statute cited above, the emissions generated by the truck traveling on a public or private road, passing through a weigh station, or congregating at staging areas are not within the jurisdiction of the TCEQ. However, the loading of aggregate material into trucks is a regulated part of the rock crushing facility and is reflected in the emission totals, and is included in the evaluation of the operational compliance with the TCAA. Additionally, the permit requires Best Management Practices (BMPs) be followed stipulating that all in-plant roads and areas subject to road vehicle traffic and work areas shall be sprinkled with water to maintain compliance with all TCEQ rules and regulations.

COMMENT 7: Kenneth Bierschenk, Michelle Sandmann, and Lydia Springer raised concern about particulate emissions from haul roads and the compromised road conditions that would probably exist after this facility was in operation due to the number of trucks utilized for the transporting of materials. Both Jerry Kurosky and Michael Lewis stated that the dust emissions would probably not be from the rock crushing operation alone but also from the truck traffic and roads, which Jerry Kurosky stated are already being destroyed by current truck traffic associated with the well drilling operations in the area. Michael Lewis asked that the owner/operator of the rock crushing plant work with the county commissioners to get the roads paved to reduce dust emissions.

Roma Kilpatrick asked whether the TCEQ had jurisdiction over the county commissioners to get roads paved. Kenneth Bierschenk further requested that the

TCEQ work with the Texas Department of Transportation and the county commissioners to investigate the effect of the added truck traffic on safety issues and the potential destruction of local county roads and state highways.

RESPONSE 7: The TCEQ is delegated the authority to control emissions from facilities. However, as stated in the previous response, the TCEQ's jurisdiction is established by the Legislature and is limited to the issues set forth in statute. In accordance with the definitions in TEXAS HEALTH AND SAFETY CODE § 382.03(6), "[a] mine, quarry, well test, or road is considered to be a facility" and, thus, the TCEQ does not have delegated authority to evaluate the emissions from these potential sources.

The TCEQ also does not have jurisdiction over public roads and therefore cannot evaluate nor require control of the truck traffic and potential compromised road conditions. Jurisdiction over truck traffic on public roads and all public roadway issues in general is held by the Texas Departments of Public Safety and Transportation, as well as local elected officials and law enforcement authorities. Questions or concerns about safety issues, traffic, or public road issues should be directed to these authorities.

COMMENT 8: Kenneth Bierschenk is concerned that the TCEQ does not have jurisdiction over the emissions from trucks.

RESPONSE 8: Since the TCEQ does not have jurisdiction over public roads, it cannot evaluate nor control emissions from the truck traffic. In addition, trucks are considered mobile sources. The TCEQ does not have the authority to consider the impact of motor vehicle emissions when determining whether to approve or deny a case-by-case NSR authorization.

COMMENT 9: Michelle Sandmann asked how the Best Available Control Technology (BACT) was determined and whether the permit conditions would ensure that BACT was utilized.

RESPONSE 9: In an NSR case-by-case evaluation, an applicant proposes a BACT methodology that the TCEQ compares to the emission reduction performance levels that have been accepted as BACT in recent NSR permit reviews for the same process and/or industry. The representations that have been stated in the application and that have been incorporated into the special conditions of this draft permit include Special Condition 9, which requires BACT and states that permanently mounted spray bars shall be installed at the inlet and outlet of all crushers, at the shaker screen, and at all material transfer points. Furthermore, Special Condition 11 requires Best Management Practices (BMPs) and states that all in-plant roads, work areas and stockpiles shall be sprinkled with water and/or an environmentally sensitive chemical (See Response 12) to ensure compliance with all TCEQ rules and regulations.

In addition to the criteria stated above, the permit holder must operate within the limits of the permit, including the emission limits stated in the MAERT. These emission limits are considered to be BACT. The total emissions of air contaminants from any of the

sources of emissions must not exceed the values stated on the MAERT attached to the permit (30 TAC 116.115(b)(2)(F)).

COMMENT 10: Kenneth Bierschenk, Cathy Luttmer, and Wayne Luttmer are concerned about the proximity of their homes to the proposed plant and asked if there is a specific distance from existing structures such as homes, barns, water wells, etc. that the mining and/or crushing operation will maintain. Kenneth Bierschenk and Lydia Springer further asked if there is a location nearer to the neighboring property that the facility can be moved to at a later date.

RESPONSE 10: The air dispersion modeling evaluation that was conducted to demonstrate protectiveness with respect to the NAAQS provides a distance at which the concentration of the specific contaminants is protective. The results of the modeling evaluation show that a distance of 499 feet from the property line is required to ensure that Applicant's proposed facility is protective. Thus, the proposed facility and all its associated sources (screens, transfer points on belt conveyors, material storage, feed bins, and work areas) shall be located within Applicant's site at a minimum of 499 feet from the property line.

Aside from including the 499 distance restriction in the permit as an enforceable condition, TCEQ does not have the authority to dictate where applicants locate their facilities. 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. As set forth in Section 382.052 of the TEXAS HEALTH AND SAFETY CODE, the TCEQ shall consider possible adverse health effects on individuals attending schools which are located within 3,000 feet of a proposed facility. The site review indicated that there was no school within 3,000 feet of Applicant's proposed facility. 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: Kenneth Bierschenk, Cathy Luttmer, Michael Lewis, Wayne Luttmer, Jane Monday, Michelle Sandmann, and Lydia Springer expressed concern regarding the exposure of crops and livestock to dust. They are also concerned about hazardous air quality in general and the impact the proposed facility will have on their welfare. Michelle Sandmann also asked whether the facility could be operated in such a manner as to not create a condition of nuisance.

RESPONSE 11: In addition to protecting health, the secondary NAAQS established by the EPA are also set to address welfare effects. Section 302(h) of the Federal Clean Air Act 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. Because the emissions from this facility should not cause an exceedance of the NAAQS, no negative impacts to human welfare are expected.

In addition to complying with the federal and state standards and guidelines mentioned above, Applicant must also comply with 30 TAC §101.4, which prohibits nuisance conditions. Specifically the rule states, "No person shall discharge from any source whatsoever one or more air contaminants or combinations thereof, in such concentration and of such duration as are or may tend to be injurious to or 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 proposed facility is operated in compliance with the terms of the draft permit, nuisance conditions, or conditions of air pollution, are not expected.

COMMENT 12: Special conditions within the permit allow Applicant to potentially use an environmentally sensitive chemical to control dust emissions from in-plant roads and areas subject to road vehicle traffic, work areas, and stockpiles. Kenneth Bierschenk and Lydia Springer express concern as to the type of chemicals that could be used and their effects on human health. They request full disclosure of the chemicals to be used.

RESPONSE 12: Applicant's current application does not include any representation that an environmentally sensitive chemical will be used for dust suppression. Furthermore, there is no overall approval for any such environmentally sensitive chemicals to be used for dust suppression. Any chemical that Applicant would use pursuant to the special conditions of the draft permit would require review and approval by the TCEQ's Toxicology Division.

COMMENT 13: Concerns and requests for air quality monitoring were expressed by Kenneth Bierschenk, Cathy Luttmer, and Wayne Luttmer. They asked if the air quality at the site would be monitored before and after the construction of Applicant's proposed facility and how often it will be monitored. The commenters also asked about the nearest and farthest distances that would be used to monitor air quality. Michele Sandmann stated concerns about no monitoring capabilities being established except that which will be carried out by the owner/operator.

RESPONSE 13: At this time, there are no plans to conduct an air quality evaluation at the site prior to the construction of the proposed rock crushing facility. Additionally, there will be no property line monitors, video monitors, or any advanced monitoring devices stipulated for this facility because the TCEQ does not typically require PM monitors, continuous opacity monitoring (COMs), or continuous emissions monitoring (CEMs) for rock crushing facilities. Although there are no plant-specific air monitors contemplated for this facility, mobile monitoring can be implemented by the TCEQ if conditions warrant.

Additionally, 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 817-588-5800, or by calling the 24-hour toll-free Environmental Complaints Hotline at 1-888-777-3186 (See Comment

15). 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. 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.texas.gov (under Publications, search for document no. 278).

COMMENT 14: Michelle Sandmann expressed concern about Applicant's likelihood of compliance with the permit conditions. If there are violations in air quality, Kenneth Bierschenk, Cathy Luttmer, and Wayne Luttmer are concerned about how many violations must take place before any penalties or other actions are taken against the company.

RESPONSE 14: Although the TCEQ cannot predict the likelihood of an applicant complying with the permit conditions, the Agency does review past performance of applicants. The compliance history includes multimedia compliance related components. These components include the following: enforcement orders, consent decrees, court judgments, criminal convictions, chronic excessive emission events, investigations, notices of violations, audits and violations disclosed under the Audit Act, environmental management systems, voluntary on-site compliance assessments, voluntary pollution reduction programs, and early compliance.

In accordance with 30 TAC Chapter 60⁵, a company and site may have one of the following classifications and ratings:

- High: rating less than 0.01 (above average compliance record);
- Average by Default: rating equal to 3.01 (sites which have never been investigated);
- Average: rating greater than 0.01 but less than 45 (generally complies with environmental regulations); and
- Poor: rating greater than 45 (performs below average).

The compliance histories for Applicant's company and site were reviewed for the five-year period prior to the date the permit application was received. The review found that the site is currently not rated since no authorized activity has occurred, and the company is rated at 3.06 and is classified as "Average."

As stated previously, individuals are encouraged to report any concerns about nuisance issues or suspected noncompliance with terms of any permit or other environmental

⁵ These rules may be found at the following website: <http://www.tceq.state.tx.us/rules/index.html>.

regulation by contacting the Regional Office at 817-588-5800, or by calling the 24-hour toll-free Environmental Complaints Hotline at 1-888-777-3186. The TCEQ investigates all complaints received. 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. Additionally, the general public can view the emissions event database on the TCEQ website at <http://www.tceq.state.tx.us/nav/cec>.

COMMENT 15: Michelle Sandmann asked about the probable response time of TCEQ investigations when complaints are made in regard to this operation.

RESPONSE 15: The TCEQ regional offices respond to complaints in a timely manner and will prioritize their response based on the potential for adverse health effects associated with the alleged violation.⁶ For example, a "priority one" case means serious health concerns exist and the case will be investigated immediately. A "priority four" case, on the other hand, means no immediate health concerns exist, thus it will be investigated with the next 30 days. Staff from the TCEQ regional office will respond to all citizen complaints.

COMMENT 16: Kenneth Bierschenk, Jane Monday, and Lydia Springer raised concerns regarding the exposure to the noise from this operation. Kenneth Bierschenk asked if a start up and shut down time could be established to minimize dust and noise during nighttime hours.

RESPONSE 16: 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, including establishment of hours of operation, are normally enacted by cities or counties and enforced by local law enforcement authorities. Please contact local authorities with questions or complaints about noise.

COMMENT 17: Kenneth Bierschenk, Michelle Sandmann, and Lydia Springer questioned inconsistencies in the application itself and specifically questioned the hours of operation. Kenneth Bierschenk, and Lydia Springer stated that tentative schedules have varied from 18 hours per day, 7 days per week, and 52 weeks per year to as much as 24 hours per day, 7 days per week for 52 weeks per year.

RESPONSE 17: Occasionally, throughout the course of the technical review, changes are made to the operating representations for a variety of reasons. With regard to the scheduled hours of operation, the draft permit specifies and the emissions are based on an operating schedule of 18 hours per day, 7 days per week, and 52 weeks per year not to exceed 4,380 hours per year. This operating schedule is stipulated in Special Condition 8 of the draft permit. Applicant is expected to record the hours of operation (Special Condition 16.B.) and maintain the records on the site for a rolling 24-month period.

⁶ For more information about this process can be found at:
<http://www.tceq.state.tx.us/compliance/complaints/index.html>

These records will be made available for review upon request by a TCEQ investigator or a local air pollution control agency having jurisdiction over the site.

COMMENT 18: Kenneth Bierschenk, Michelle Sandmann, and Lydia Springer raised the concern about the evaluation and quantification of particulate emissions from blasting operations used to loosen the limestone rock in the quarry.

RESPONSE 18: As stated in the definition of facility in the response to Comment 6, the TCEQ's jurisdiction is established by the Legislature and is limited to the issues set forth in statute. In accordance with the definitions in TEXAS HEALTH AND SAFETY CODE § 382.03(6), "[a] mine, quarry, well test, or road is not considered to be a facility." Since blasting is considered a quarrying operation, the TCEQ does not have jurisdiction over it.

COMMENT 19: Kenneth Bierschenk, Michelle Sandmann, and Lydia Springer expressed concern about the use of water for control of emissions, specifically the water supply and depletion of area water tables, and the particulate contamination of stored water, area streams, ponds, and surface water.

RESPONSE 19: The draft permit regulates the control and abatement of air emissions only, and therefore, issues regarding ground water, area water tables, and water contamination are not within the purview of this permit review. Thus, evaluation of water quality issues is outside the scope of this air permit review. Applicant may be required to receive additional authorization from another TCEQ program area such as storm water permitting.

However, as previously noted, secondary NAAQS are those that the Administrator determines are necessary to protect the public welfare and the environment, including animals, crops, vegetation, and buildings, from any known or anticipated adverse effects associated with the presence of an air contaminant in the ambient air.⁷ Because the emissions from this facility should not cause an exceedance of the NAAQS, air emissions from this facility are not expected to adversely impact land, livestock, crops, or visibility, nor should emissions interfere with the use and enjoyment of surrounding land or water.

COMMENT 20: Michelle Sandmann asked how the production weights will be measured and how records of these measures are obtained and recorded.

RESPONSE 20: As stated in Special Condition 16.A of the draft permit, the company is required to keep records of the material processed on a daily, monthly, and annual basis summarized in tons per hour, tons per month, and tons per year. Several means for obtaining these measurements are available to the company. The TCEQ does not dictate the specific means for keeping throughput weights. However, the record keeping

⁷ Section 302(h) of the Federal Clean Air Act, 42 U.S.C. § 7602, 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.

of these weights, including the methodology for obtaining these weights, may be the subject of a TCEQ investigation and compared against the amounts represented in the application.

COMMENT 21: Kenneth Bierschenk, Cathy Luttmer, and Wayne Luttmer questioned whether the operators and/or land owners are required to be bonded or have liability insurance.

RESPONSE 21: The requirements for liability insurance or any other insurance protection are beyond the scope of an air permit authorization. The Executive Director will make a decision regarding the authorization of this rock crushing operation based on the specific requirements of this application and the statutory obligation charged to the TCEQ by the Texas legislature in the TCAA.

COMMENT 22: Kenneth Bierschenk, Cathy Luttmer, and Wayne Luttmer asked if air quality officials will keep the local residents informed of any tests that are performed at Applicant's proposed facility.

RESPONSE 22: In as much as Applicant is a privately held company, the TCEQ has no authority to mandate that records or test results obtained by the company are made available for review by the public. Recordkeeping is required by the permit conditions and is to be made available upon request by the TCEQ investigator or a local air pollution control agency having jurisdiction over the site. Pursuant to 30 TAC 116.115(b)(2)(E)(iii), the TCEQ shall make any such records of compliance available to the public in a timely manner. Any records or results of testing that were performed at the request of the TCEQ would be available to the public.

COMMENT 23: Michelle Sandmann categorically stated that the regulations regarding Applicant's rock crushing operation are not strict enough.

RESPONSE 23: The draft permit for this facility was developed pursuant to the requirements of the TCAA and TCEQ rules and is intended to be protective of human health and the environment. Individuals are encouraged to report any concerns regarding suspected non-compliance with terms of any permit or other environmental regulation by contacting the Regional Office at 817-588-5800, or by calling the 24-hour toll-free Environmental Complaints Hotline at 1-888-777-3186.

CHANGES MADE IN RESPONSE TO COMMENT

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

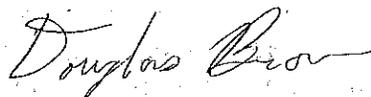
Respectfully submitted,

Texas Commission on Environmental Quality

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

Stephanie Bergeron Perdue, Deputy Director
Office of Legal Services

Robert Martinez, Division Director
Environmental Law Division



Douglas M. Brown, Staff Attorney
Environmental Law Division
PO Box 13087, MC 173
Austin, Texas 78711-3087
(512) 239-2253

Representing the Executive Director
of the Texas Commission on
Environmental Quality