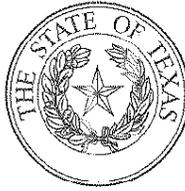


# State Office of Administrative Hearings



Cathleen Parsley  
Chief Administrative Law Judge

March 9, 2011

Les Trobman, General Counsel  
Texas Commission on Environmental Quality  
P.O. Box 13087  
Austin Texas 78711-3087

**VIA FACSIMILE NO. 512/239-5533**

Re: SOAH Docket No. 582-10-2489; TCEQ Docket No. 2009-1842-AIR; Application of Aggregate Industries--WCR, Inc., for Air Quality Permit Number 83755 in Comal County, Texas

Dear Mr. Trobman:

On February 2, 2011, the parties to this proceeding filed exceptions to the January 14, 2011 Proposal for Decision (PFD). On February 10, 2011, the parties filed their responses to these exceptions. The Administrative Law Judge (ALJ) files this reply to the points raised in the exceptions.

## **A. The Applicant's Exceptions**

The Applicant requested various clarifications and corrections to the Findings of Fact (FOFs) and Conclusions of Law (COLs). The ALJ recommends that the Commission adopt those changes, which would result in changes to FOFs 30 and 44 and COLs 17. The Applicant also requests that a typographical error on page 53, Section VIII.E., line 1 of the PFD be corrected. Although the ALJ notes that the Commission adopts only proposed orders, the ALJ agrees with the correction.

## **B. The Executive Director**

The ED filed exceptions to clarify, remove redundancy, and correct the FOFs and COLs. The ALJ recommends that the Commission adopt those changes, which would result in changes to FOFs 16, 30, 42, 44, 49, 56, and 62, along with COLs 17, 18, and 19.

### **C. The Protestants**

The ALJ does not recommend any changes to the PFD or proposed order based on Protestants' exceptions, many of which are arguments already set forth in post-hearing briefing and analyzed in the PFD. Specifically, Protestants argue the following issues which were discussed in the PFD:

- (1) The air dispersion modeling was inadequate because EPA guidance document AP-42 emission factors were applied to quantify the contribution of anticipated emissions. Protestants argue that source-specific data is the best resource to produce accurate emission factors and further, that the AP-42 factors were unrepresentative of the proposed facility, *i.e.* granite was used instead of limestone;
- (2) The air dispersion modeling was inadequate because outdated background concentrations for Comal County were used from a TCEQ guidance document dated September 24, 1998, which did not accurately reflect population growth;
- (3) The proposed facility will adversely impact health; and
- (4) The proposed facility will contribute to nuisance conditions when emissions from the roads are factored into the projected emission concentrations.

As discussed in the PFD, the ALJ analyzed the evidence in accordance with statutory provisions, applicable court decisions, and the Commission's presently-existing policies, written guidance, and interpretation of its own rules. Accordingly, the ALJ does not recommend any changes to the PFD or proposed order based on Protestants' exceptions.

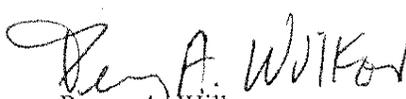
### **D. Office of Public Interest Counsel (OPIC)**

The ALJ does not recommend any changes to the PFD or proposed order based on OPIC's exceptions, which generally concur with Protestants' arguments. In particular, OPIC excepts to the ALJ's reliance on screening backgrounds that the Commission determined were representative of conditions that existed in Comal County in 1998. Based on the Commission's presently-existing guidance and policy, however, the ALJ remains persuaded that Applicant met its burden of proof in this regard.

**E. Conclusion**

The ALJ recommends that the Commission adopt changes to FOFs 16, 30, 42, 44, 49, 56, and 62 and COLs 17, 18, and 19. As Protestants and OPIC reurge arguments considered in the PFD, the ALJ recommends that the Commission overrule those exceptions.

Sincerely,

  
Penny A. Wilkov  
Administrative Law Judge

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cc: Mailing List



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