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February 2, 2010

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Via Electronic Filing and Hand Delivery

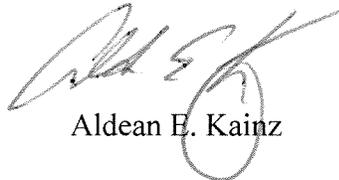
RE: **SOAH Docket No. 582-10-2489**; TCEQ Docket No. 2009-1842-AIR;
Application of Aggregate Industries – WCR, Inc. for Air Quality Permit
No. 83755 in Comal County, Texas

Dear Ms. Castañuela:

In accordance with Judge Wilkov's letter dated January 13, 2011, enclosed please find Applicant's Exceptions to and Brief in Support of the Proposal for Decision for filing in the above-referenced matter. We are providing an original and seven copies of the brief in accordance with 30 TAC §1.10(d).

Please let us know if you have any questions.

Sincerely,



Aldean E. Kainz

cc: Hon. Penny Wilkov
Administrative Law Judges
State Office of Administrative Hearings
300 West 15th Street, Suite 502
Austin, Texas 78701

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**TCEQ DOCKET NO. 2009-1842-AIR
SOAH DOCKET NO. 582-10-2489**

APPLICATION OF AGGREGATE	§	BEFORE THE
	§	
INDUSTRIES-WCR, INC. FOR	§	
	§	TEXAS COMMISSION ON
AIR QUALITY PERMIT NO. 83755	§	
	§	
IN COMAL COUNTY, TEXAS	§	ENVIRONMENTAL QUALITY

**APPLICANT'S EXCEPTIONS TO AND BRIEF IN SUPPORT
OF THE PROPOSAL FOR DECISION**

TO THE HONORABLE COMMISSIONERS OF THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY:

Applicant Aggregate Industries-WCR, Inc. ("Applicant") files their Exceptions to and Brief in Support of the Administrative Law Judge's Proposal for Decision ("PFD") rendered on January 13, 2011, and respectfully states as follows:

**I.
INTRODUCTION**

After considering all of the evidence and law presented in this case, Administrative Law Judge Penny A. Wilkov correctly recommends in her Proposal for Decision (PFD) that the Applicant's air quality permit application should be granted. Applicant supports the ALJ's analysis, recitation of the facts and recommendations in the PFD as well as the proposed Findings of Fact and Conclusions of Law. Applicant proposes, however, a few corrections and clarifications to the proposed Findings of Fact and Conclusions of Law and respectfully requests that the Commission grant Applicant's exceptions, adopt the PFD and Findings of Fact and Conclusions of Law as amended by Applicant's exceptions, and grant Applicant's permit application.

II.
EXCEPTIONS TO PFD

The Applicant requests that the following corrections and clarifications be made to the proposed Findings of Fact and Conclusions of Law:

1. The Applicant requests that Finding of Fact No. 30 and Conclusion of Law No. 17 be revised to state that the existing NAAQS (both primary and secondary) for PM_{2.5} is 35 µg/m³ for the 24-hour standard¹ and to correct typographical errors, as follows:

*Finding of Fact #30. If emissions are less than the NAAQS, there are no adverse effects. The existing NAAQS for PM_{2.5} (both primary and secondary) are 15 **micrograms** per cubic meter (µg/m³) for the annual standard and ~~65~~**35** µg/m³ for the **24-hour** standard. The existing NAAQS for PM₁₀ (both primary and secondary) are 50 µg/m³ for the annual standard and 150 µg/m³ for the **24-hour** standard.*

*Conclusion of Law #17. The NAAQS for PM₁₀ and PM_{2.5} are listed below, as found in ~~30 TAC § 116.111(J)~~ **40 C.F.R. §§ 50.6, 50.13.***

<i>Pollutant</i>	<i>Averaging Time</i>	<i>Primary and Secondary Standard (micrograms per cubic meter (µg/m³))</i>
<i>PM₁₀</i>	<i>Annual (Arithmetic Mean)</i>	<i>50 µg/m³</i>
	<i>24-hour</i>	<i>150 µg/m³</i>
<i>PM_{2.5}</i>	<i>Annual (Arithmetic Mean)</i>	<i>15 µg/m³</i>
	<i>24-hour</i>	<i>6535 µg/m³</i>

2. Applicant requests that Finding of Fact No. 44 be revised to clarify the use of screening background concentrations, as follows:

*Finding of Fact #44. As for screening background concentrations, for counties that do not have an air monitor, like Comal County, TCEQ sets screening background concentrations, which are based on ~~the nearby monitor data~~, **which for Comal County is derived from the monitor** located in Selma, Bexar County, Texas (Selma monitor).*

¹ 40 C.F.R. § 50.13(a). The 24-hour standard for PM_{2.5} was revised effective December 18, 2006 from 65 µg/m³ to 35 µg/m³. 71 Fed. Reg. 61224 (Oct. 17, 2006). This revision occurred before the Applicant filed its application, so the lower standard applies in this case.

3. Applicant requests that a typographical error on page 53, Section VIII.E., line 1 of the PFD be corrected, as follows:

*Applicant asserts that emissions from the facility will **not** adversely affect the health of requestors' children or grandchildren when they are attending Comal Elementary School.*

III. CONCLUSION

The evidence overwhelmingly supports issuance of the Draft Permit. The ALJ's PFD properly recommends that the Applicant's permit application be granted. The Draft Permit is consistent with applicable law. It will not create a nuisance, does not present a risk of adverse health effects, will not have an adverse effect on air quality, and should be issued. Accordingly, the Applicant respectfully requests that the Commissioners of the TCEQ grant the Applicant's exceptions, adopt the ALJ's Proposal for Decision and Findings of Fact and Conclusions of Law as amended by the Applicant's exceptions and grant the Applicant's permit application.

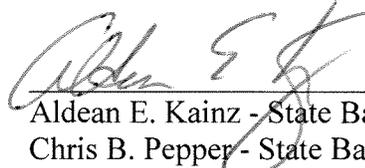
IV. PRAYER

WHEREFORE, PREMISES CONSIDERED, Applicant Aggregate Industries-WCR, Inc. respectfully prays that the Commissioners of the TCEQ:

1. Grant the Applicant's permit application as recommended in the Administrative Law Judge's Proposal for Decision;
2. Revise Findings of Fact Nos. 30 and 44; Conclusion of Law No. 17; and page 53, Section VIII.E., line 1 of the PFD as indicated herein; and
3. Award such other and further relief to which the Applicant may be justly entitled.

Respectfully submitted,

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Chris B. Pepper - State Bar No. 24034622
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ATTORNEYS FOR AGGREGATE
INDUSTRIES-WCR, INC.

CERTIFICATE OF SERVICE

This is to certify that on this 2nd day of February, 2011, a true and correct copy of the foregoing document was served on the following parties as indicated below:

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