

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

February 2, 2011

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

Re: SOAH Docket No. 582-10-2489; TCEQ Docket No. 2009-1842-AIR
Contested Case Hearing for Application by Aggregate Industries-WCR., Inc. for Air
Quality Permit No. 83755
Executive Director's Proposed Revisions to the ALJ's Proposal for Decision

Dear Ms. Castañuela:

Enclosed please find the original and eight copies of the Executive Director's Proposed Revisions to the ALJ's Proposal for Decision for the above-referenced matter. Please return one file-stamped copy to my assistant.

If you have any questions, please call me at 239- 0891.

Sincerely,

A handwritten signature in cursive script, appearing to read "Amy L. Browning".

Amy L. Browning
Staff Attorney
Environmental Law Division

Enclosures

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

February 2, 2011

Hon. Penny Wilkov
State Office of Administrative Hearings
301 West 15th Street, Suite 400
Austin, Texas 78701

RE: SOAH Docket No. 582-10-2489; TCEQ Docket No. 2009-1842-AIR
Contested Case Hearing for Application by Aggregate Industries-WCR., Inc. for Air
Quality Permit No. 83755
Executive Director's Proposed Revisions to the ALJ's Proposal for Decision

Dear Judge Wilkov:

On January 14, 2011, the Executive Director (ED) received your Proposal for Decision (PFD) regarding the air quality permit for Aggregate Industries. The ED has reviewed the PFD and proposed Order and is submitting the enclosed proposed revisions.

Thank you for your consideration in this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Amy L. Browning".

Amy L. Browning
Staff Attorney
Environmental Law Division

Enclosure

cc: Service List

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

APPLICATION BY	§	BEFORE THE STATE OFFICE
AGGREGATE	§	
INDUSTRIES – WCR, INC. FOR	§	OF
PROPOSED AIR	§	
QUALITY PERMIT NO. 83755	§	ADMINISTRATIVE HEARINGS

**EXECUTIVE DIRECTOR’S PROPOSED REVISIONS TO THE
ADMINISTRATIVE LAW JUDGE’S PROPOSAL FOR DECISION AND ORDER**

TO THE HONORABLE ADMINISTRATIVE LAW JUDGE PENNY WILKOV:

COMES NOW, the Executive Director (ED) of the Texas Commission on Environmental Quality (Commission or TCEQ) and files the Executive Director’s Proposed Revisions to the Administrative Law Judge’s (ALJ) Proposal for Decision and Order, and in support thereof shows the following:

I. INTRODUCTION/BACKGROUND

On December 28, 2007 Aggregate Industries-WCR, Inc (Aggregate or Applicant) applied to the TCEQ for a New Source Review Authorization under Texas Clean Air Act (TCAA) §382.0518 to authorize construction of a new facility that may emit air contaminants. The permit would authorize the Applicant to construct a rock crushing plant consisting of three feed hoppers, seven crushers, 16 screens, associated conveyor belts, 30 acres of stockpiles, and two 10,000 gallon tanks of diesel fuel for onsite vehicle use. The facility is located at 5900 FM 482 New Braunfels, Comal County.

TCEQ received hearing requests for Aggregate’s permit application which the commission considered at the January 13, 2010 Agenda. The commission referred the permit application and a list of issues to the State Office of Administrative Hearings (SOAH), and on January 25, 2010 issued the interim order referring the permit

application to SOAH to consider those issues.¹ The preliminary hearing on the permit application was held on in New Braunfels on April 20, 2010 and the hearing on the merits was held in Austin, TX on October 11-13, 2010. The ALJ issued a Proposal for Decision (PFD) and Proposed Order on January 13, 2011. The ALJ's PFD recommends granting the draft permit, and the executive director agrees with that recommendation.

II. Proposed Corrections and Additions.

Upon reviewing the proposed order, the Executive Director does not believe that exceptions to the proposed order are necessary. Although the executive director agrees with the substance of the ALJ's Findings of Fact and Conclusions of Law, the Executive Director respectfully believes that some administrative matters are worthy of attention. Therefore, the executive director recommends that the commission replace the ALJ's recommendations with the following:

1. In Finding of Fact number 16, in the title for Daniel Menendez the word "Special" should be replaced with "Specialist".
2. In Finding of Fact number 30, add the word "modeled" to be the second word of the first sentence, and the words "expected if the facility is operated in accordance with the permit" to the end of the first sentence so that it reads: "If modeled emissions are less than the NAAQS, there are no adverse effects expected if the facility is operated in accordance with the permit."

Additionally, remove the words "are 50 µg/m³ for the annual standard and"

¹ Texas Commission on Environmental Quality, *An Interim Order concerning the application of Aggregate Industries-WCR, Inc., for New Source Review Authorization No. 83755; TCEQ Docket No. 2009-1842-AIR.*, January 25, 2010.

from the final sentence. The sentence should therefore read:

“The existing NAAQS for PM₁₀ (both primary and secondary) is 150 µg/m³ for the 24-hour standard.” The annual standard for the PM₁₀ NAAQS was repealed by the EPA in 2006.² Despite the fact that that the annual standard was not in effect at the time that Aggregate’s application was reviewed by TCEQ, Aggregate modeled and demonstrated that the facility would comply with the repealed standard.³ Therefore, there was discussion throughout the hearing about the facility meeting the annual standard for PM₁₀. Nonetheless, there is no longer an existing annual standard for PM₁₀, and therefore this reference should be removed. Finally, the correct number for the PM_{2.5} annual standard is 35 µg/m³, therefore, the number 65 µg/m³ should be replaced with 35 µg/m³.⁴

3. In Finding of Fact number 42, the last four words of the sentence, “and screening background concentrations” should be deleted. These words are redundant, as a screening background concentration is a background concentration, as opposed to a measurement that is used to determine a background concentration.⁵
4. In Finding of Fact number 44, the words “such as the monitor” should be added to the sentence so that it reads: “As for screening background concentrations, for counties that do not have an air monitor, like Comal

² See Exhibit ED-25, 73 *Federal Register* 28321, at 28324 (May 16, 2008) (000388).

³ See APP-G, Executive Director’s Response to Comments, Response, Footnote 5, p. 7.

⁴ See Exhibit ED-25, 73 *Federal Register* 28321, at 28324 (May 16, 2008) (000388).

⁵ See Exhibit ED-15, TCEQ Air Modeling Guidelines (RG-25), at pp. 9-10 (000220-221).

- County, TCEQ sets screening background concentration, which are based on nearby monitor data, such as the monitor located in Selma, Bexar County, Texas (Selma monitor).”
5. In Finding of Fact number 49, the words “exceeded what” should be deleted so that the sentence reads: “The cumulative effects analysis, consisting of off-site emission sources and background concentrations, conducted by Applicant was accurate, appropriate, and was conservative and was required by TCEQ.” The cumulative analysis submitted by the applicant was what was expected by TCEQ, but did not exceed what was required.
 6. In Finding of Fact number 56, the final ten words of the sentence, “and the AERSURFACE component of AERMOD which calculates certain parameters” should be deleted. Aggregate did not submit AERMOD modeling to the TCEQ as part of its application, therefore, TCEQ staff did not review AERMOD data as part of the audit of the modeling report.
 7. In Finding of Fact number 62, the words “for PM_{2.5} as of the time of the hearing” should be added to the end of the final sentence so that it reads: “TCEQ has not yet promulgated procedures for modeling secondary, indirectly formed PM_{2.5} and has not set significant impact levels for PM_{2.5} as of the time of the hearing.” After the close of the record for this hearing the TCEQ set significant impact levels for PM_{2.5}, using the levels set by EPA.

8. In Conclusion of Law number 17, "30 TAC § 116.111(J)" should be removed as an incorrect citation. The TCEQ rules do not list out the federal NAAQS.⁶ Also, the requirement for an annual emissions limit for PM₁₀ should be removed from the table because this is no longer an applicable requirement under state or federal law.⁷ Finally, the correct number for the PM_{2.5} annual standard is 35 µg/m³, therefore, the number 65 µg/m³ in the table should be replaced with 35 µg/m³.⁸
9. In Conclusion of Law number 18, "30 TAC § 116.111(J)" should be replaced with "30 TAC § 116.111(a)(2)(J)".
10. In Conclusion of Law number 19, "30 TAC § 116.10(3)" is an incorrect citation. However, in a recent rule-making effective October 7, 2010 the commission updated the definition of BACT and renumbered § 116.10(3) to 30 TAC § 116.10(1). Therefore, this rule citation should either be corrected, or should be footnoted to indicate the definition is now found at 30 TAC § 116.10(1).

III. Conclusion.

Based on evidence admitted and disputed issues identified in the record, the Executive Director contends that all procedures and analysis required for an air quality permit review were followed in accordance with applicable rules and guidance established by the TCEQ. Therefore the TCEQ Executive Director respectfully requests

⁶ See Exhibit ED-25, 73 *Federal Register* 28321, at 28324 (May 16, 2008) (000388). The NAAQS for PM₁₀ and PM_{2.5} can be found at 40 C.F.R. §§50.6 (PM₁₀) and 50.13 (PM_{2.5}).

⁷ See Exhibit ED-25, 73 *Federal Register* 28321, at 28324 (May 16, 2008) (000388). See also, APP-G, Executive Director's Response to Comments, Footnote 5, p. 7.

⁸ See Exhibit ED-25, 73 *Federal Register* 28321, at 28324 (May 16, 2008) (000388).

**AGGREGATE INDUSTRIES-WCR, INC.
APPLICATION FOR AIR QUALITY PERMIT NO. 83755
SOAH DOCKET NO. 582-10-2489; TCEQ DOCKET NO. 2009-1842-AIR
THE EXECUTIVE DIRECTOR'S PROPOSED REVISIONS TO THE ADMINISTRATIVE LAW
JUDGE'S PROPOSAL FOR DECISION AND ORDER
Page 6 of 6**

that the Commission include the revisions to the Findings of Fact and Conclusions of Law and issue the proposed order.

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

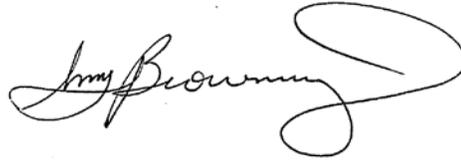


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REPRESENTING THE
EXECUTIVE DIRECTOR OF THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing **Executive Director's Proposed Revisions to the ALJ's Proposal for Decision** has been served via hand delivery, facsimile, electronic mail, first class mail, interagency mail, and/or overnight mail on this 2nd day of February, 2011, on the attached service list.

A handwritten signature in cursive script, appearing to read "Amy Browning". The signature is written in black ink and is positioned above a horizontal line.

Amy Browning
Staff Attorney, Environmental Law Division

SERVICE LIST
SOAH DOCKET NO. 582-10-2489
TCEQ DOCKET NO. 2009-1842-AIR
AGGREGATE INDUSTRIES-WCR, INC. CONTESTED CASE HEARING

FOR SOAH

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