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

March 23, 2010

TO: Persons on the attached mailing list.

RE: Davis Tommy dba Slick Machines Rock Crusher No. 1
Permit No. 82199L002

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any action is taken on this application unless all requests for contested case hearing or reconsideration have been withdrawn before that meeting.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 Fort Worth Regional Office, and at the Somervell County Library, 108 Allen Drive, Glen Rose, Somervell County, Texas. The facility's compliance file, if any exists, is available for public review at the Texas Commission on Environmental Quality Dallas/Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, 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:

LaDonna Castañuela, 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,

LaDonna Castañuela
Chief Clerk

LDC/er

Enclosures

MAILING LIST
for
Davis Tommy dba Slick Machines Rock Crusher No. 1
Permit No. 82199L002

FOR THE APPLICANT:

Tommy Davis, Owner
Slick Machines
762 Spillway Road
Brownwood, Texas 76801

INTERESTED PERSONS:

See attached list.

FOR THE EXECUTIVE DIRECTOR
via electronic mail:

Erin Selvera, Staff Attorney
Texas Commission on Environmental Quality
Environmental Law Division MC-173
P.O. Box 13087
Austin, Texas 78711-3087

Michael Gould, Technical Staff
Texas Commission on Environmental Quality
Air Permits Division MC-163
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FOR OFFICE OF PUBLIC ASSISTANCE
via electronic mail:

Bridget Bohac, Director
Texas Commission on Environmental Quality
Office of Public Assistance MC-108
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FOR PUBLIC INTEREST COUNSEL
via electronic mail:

Blas J. Coy, Jr., Attorney
Texas Commission on Environmental Quality
Public Interest Counsel MC-103
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FOR THE CHIEF CLERK
via electronic mail:

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Texas Commission on Environmental Quality
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ADAMS , SHARON
3327 FM 202
GLEN ROSE TX 76043-6240

ALLEN , STEVE
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GRANBURY TX 76049-5241

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HICO TX 76457-2677

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BARNABY , KRISTEN
303 ABLES ST
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BARNARD , SAMMIE
1013 COUNTY ROAD 416
NEMO TX 76070-2045

BARR , PAULETTE
1130 FM 205
GLEN ROSE TX 76043-5639

BARROW , FRANK & PAT
1229 COUNTY ROAD 2021
GLEN ROSE TX 76043-5974

BEAUREGARD , MARK & PATRICIA
2253 COUNTY ROAD 1006
WALNUT SPRINGS TX 76690-3036

BEAUREGARD , MARK
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WALNUT SPRINGS TX 76690-3036

BECK , CAREN
2303 AVALON CT
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BEST , GEORGE & MARY
PO BOX 2809
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BEST , GEORGE D
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GLEN ROSE TX 76043-2809

BEST , GEORGE DARRELL
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GLEN ROSE TX 76043-2809

BEST , MARY
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GLEN ROSE TX 76043-2809

BIENKO , HEATHER
14038 BROOKCREST DR
DALLAS TX 75240-2708

BINGHAM , RICKIE
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GLEN ROSE TX 76043-7359

BINGHAM , ROXANN
1112 COUNTY ROAD 411A
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BLOCH , REBECCA
1504 CLOVER LN
GRANBURY TX 76048-2701

BOCCAFOGLI , DEIRDRE & PAUL
9828A W HWY 67
WALNUT SPRINGS TX 76690-3088

BOCCAFOGLI , DEIRDRE
9828A W HWY 67
WALNUT SPRINGS TX 76690-3088

BOCCAFOGLI , PAUL
9828A W HWY 67
WALNUT SPRINGS TX 76690-3088

BODENHAMER , DON
9049 W HWY 67
GLEN ROSE TX 76043

BODENHAMER , SANDRA
9049 W HWY 67
GLEN ROSE TX 76043

BOWMAN , BONNIE
PO BOX 14477
ARLINGTON TX 76094-1477

BRIDGES III , J
SAVE CHALK MOUNTAIN
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BRITTAIN , GRADY & LERA
1539 BLACK HAWK TRL
NEMO TX 76070-2070

BRODE , COQUERE & EUGENE
404 PALUXY ST
GLEN ROSE TX 76043-5123

BRODE , EUGENE
404 PALUXY ST
GLEN ROSE TX 76043-5123

BROSSEAU , GLORIA L
1083 COUNTY ROAD 2022
GLEN ROSE TX 76043-6190

BROSSEAU , TOOTIE
1083 COUNTY ROAD 2022
GLEN ROSE TX 76043-6190

BROWN , CHARLES
4904 OVERTON AVE
FORT WORTH TX 76133-1328

BROWN , CHARLES S
133 STARWOOD LN
HOLLY SPRINGS NC 27540-8345

BROWN , CHARLES & CYD F
133 STARWOOD LN
HOLLY SPRINGS NC 27540-8345

BROWN , CYD & FLORENCE
4904 OVERTON AVE
FORT WORTH TX 76133-1328

BROWN , CYD F
133 STARWOOD LN
HOLLY SPRINGS NC 27540-8345

BROWN , FLORENCE R
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FORT WORTH TX 76133-1328

BROWN , FLORENCE R
133 STARWOOD LN
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BROWN , SCARLETT
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DALLAS TX 75229-4506

BROWN , YVONNA
2514 COUNTY ROAD 2021
GLEN ROSE TX 76043-6167

BROYLES , DAN
PO BOX 3209
GLEN ROSE TX 76043-3209

BROYLES , IRIS
PO BOX 3209
GLEN ROSE TX 76043-3209

BROYLES , KERMIT D
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GLEN ROSE TX 76043-3209

BULLARD , BOB & GAIL
1245 WHISPER LN
GLEN ROSE TX 76043-4015

CARLSON , LAVONE M
1183 COUNTY ROAD 2022
GLEN ROSE TX 76043-6175

CARTER , LILA
304 SW BARNARD ST
GLEN ROSE TX 76043-4603

CASBEER , ERNIE
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OGLESBY TX 76561-1507

CHOUN , JANE
818 CLOVER PARK DR
ARLINGTON TX 76013-1433

CLAUSER , BEVERLY & LEE
818 COUNTY ROAD 104
BLUFF DALE TX 76433-4927

CLAUSER , LEE
818 COUNTY ROAD 104
BLUFF DALE TX 76433-4927

CLOUD JR , THOMAS J FIELD SUPERVISOR
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COCKERHAM , BRANNAN
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COCKERHAM , DEIDRA
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COCKERHAM , MICHAEL
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IREDELL TX 76649-3523

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1267 PR 1263
IREDELL TX 76649-3515

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DALLAS TX 75229-4506

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101 E ELM ST
GLEN ROSE TX 76043-4829

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WALNUT SPRINGS TX 76690-3106

CONCERNED CITIZEN ,
1135 COUNTY ROAD 326
CLEBURNE TX 76033-9515

CONCERNED CITIZEN ,
10135 COUNTY ROAD 229
HICO TX 76457-3554

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110 HERITAGE PL
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CONCERNED CITIZEN ,
101 SUMMIT VW
GLEN ROSE TX 76043-5336

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CONDY , PATRICK R
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GLEN ROSE TX 76043-6117

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CADDO MILLS TX 75135-8249

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2106 COOLIDGE DR
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CRANE , JOHNETTA
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D'AMICO , JUDITH A
1322 FM 205
GLEN ROSE TX 76043-5637

D'AMICO , THOMAS X
1322 FM 205
GLEN ROSE TX 76043-5637

DALTON , SYLVIA
321 WREN DR
GRANBURY TX 76049-1254

DEBILL , WALT
9102 SAN DIEGO RD
AUSTIN TX 78737-1261

DECKER , CURT
2155 COUNTY ROAD 2008
GLEN ROSE TX 76043-6117

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DRAKE , MARGARET
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GLEN ROSE TX 76043-6117

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DALLAS TX 75287-6390

DUMAN , JO ANN
4109 SHAMROCK DR
ARLINGTON TX 76016-4430

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BLUFF DALE TX 76433-6510

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BLUFF DALE TX 76433-6510

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1306 COUNTY ROAD 1004
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BLUFF DALE TX 76433-6510

ELDRIDGE , KELLY
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DALLAS TX 75229-4506

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ESPINO , CRUZ
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GLEN ROSE TX 76043-1904

EVANS , JO
4216 COUNTY ROAD 1007
GLEN ROSE TX 76043-5572

FAGER , AMBER & PATRICK
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FORT WORTH TX 76119-5043

FELCH , MARY LOU
3928 COUNTRY MEADOWS RD
GRANBURY TX 76049-8007

FERGUSON , TRISH INTERN
2155 COUNTY ROAD 2008
GLEN ROSE TX 76043-6117

FIDLER , SUSAN A
102 CAMELOT ST
GLEN ROSE TX 76043-4331

FISHER , DAVID
PO BOX 745
GLEN ROSE TX 76043-0745

FISHER , HUNTER C
PO BOX 745
GLEN ROSE TX 76043-0745

FISHER , MICHELLE
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FISHER , TIFFANY
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GLEN ROSE TX 76043-0745

FITE , MODENIA
3142 COUNTY ROAD 304
RAINBOW TX 76077-2106

FOREMAN , LESLIE RODEN
3765 W BAY CIR
DALLAS TX 75214-2924

FOSSLER , GLORIA & KEN
12016 CARMEL PARK LN
AUSTIN TX 78727-5916

FRANCIS , MICHAEL
508 CANDLEWOOD RD
FORT WORTH TX 76103-1146

FRAZEE , NELDA
PO BOX 846
GLEN ROSE TX 76043-0846

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

FREEMAN , KELLY
1521 SUNFLOWER LN
GRANBURY TX 76048-2711

FRENCH , TAMARA
2155 COUNTY ROAD 2008
GLEN ROSE TX 76043-6117

GATTIS , LISE WESTELL
PO BOX 1889
GLEN ROSE TX 76043-1889

GATTIS , STEPHEN
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GLEN ROSE TX 76043-1889

GAYNES , DHARMA
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GECHTER , SUSAN
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BEDFORD TX 76021-2742

GERARD , PATRICIA
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FORT WORTH TX 76103-1052

GERHART , CHRISTAL
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GLEN ROSE TX 76043-2368

GIBBS JR , G C
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GLEN ROSE TX 76043-1919

GOFF , BARBARA & MARVIN
8309 WINTER FALLS TRL
HURST TX 76053-7452

GOLSON , MOLLY
207 GRACE ST
GLEN ROSE TX 76043-4840

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GLEN ROSE TX 76043-0667

GREEN , SHAY
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GREER , DAVID
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GREER , DAVID & LYNDA
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GREER , LYNDA
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GRESKY , ROBERT
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REDMOND WA 98052-2746

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2009 SHUMARD LN
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GRIFFITH , SHERMAN
5575 COUNTY ROAD 2015
WALNUT SPRINGS TX 76690-3108

GRIMWOOD , KARLA
8104 SLIDE ROCK RD
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GRUBER , DIANNE & PETE
105 SUMMIT VW
GLEN ROSE TX 76043-5336

GUSTAFSON , LINDA
1348 COUNTY ROAD 2013
WALNUT SPRINGS TX 76690-3080

GUSTAFSON , LINDA
2155 COUNTY ROAD 2008
GLEN ROSE TX 76043-6117

GUTHRIE , LYNN
2155 COUNTY ROAD 2008
GLEN ROSE TX 76043-6117

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HALLIGAN , ANN
3301 ELKHART CT
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HANEY , RANDY
4128 COUNTY ROAD 2009
WALNUT SPRINGS TX 76690-3027

HANKE , EVA
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1096 SUNSET TRL
GLEN ROSE TX 76043-4020

HAWROCKI , MELISSA
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4690 COUNTY ROAD 2011 # A
WALNUT SPRINGS TX 76690-3030

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5305 VILLAGE CREEK DR
PLANO TX 75093-4810

HILL , TANNER
1604 COUNTY ROAD 200
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HOODENPYLE , BRENT & KELLY
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HOOVER , ANN & JOHN
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HOOVER , ANN
2801 HITSON LN
FORT WORTH TX 76112-6015

HOOVER , DOROTHY
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FORT WORTH TX 76112-6015

HUBER , LAURA K
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GLEN ROSE TX 76043-6124

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STEPHENVILLE TX 76401-0007

ICE , BECKY
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GLEN ROSE TX 76043-0504

JACKSON , DWAYNE
2043 COUNTY ROAD 2014
WALNUT SPRINGS TX 76690-3006

JACKSON , JARED
2043 COUNTY ROAD 2014
WALNUT SPRINGS TX 76690-3006

JASONOCHA, BARBARA & LEWIS,JULIA
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JENKINS , GUSTEEN
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1731 COUNTY ROAD 1001
GLEN ROSE TX 76043-5818

LACEY , JANELLE M
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GLEN ROSE TX 76043-0730

LACEY , KENT S
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GLEN ROSE TX 76043-0730

LACEY , SHELBY M
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GLEN ROSE TX 76043-0730

LAGRONE , DAVID
PO BOX 2339
GLEN ROSE TX 76043-2339

LAMBERT , JEAN
PO BOX 2896
GLEN ROSE TX 76043-2896

LAMBERT , JEAN
UNIT A
1112 COUNTY ROAD 411A
GLEN ROSE TX 76043-6363

LANCASTER , BARBARA & BOB
2808 COUNTY ROAD 2021
GLEN ROSE TX 76043-6183

LANDER , LINDA
302 SUMMIT RIDGE DR
GLEN ROSE TX 76043-5331

LANE , DOROTHY JEAN
APT 10F
3131 MAPLE AVE
DALLAS TX 75201-1263

LANE , JEAN
APT 10F
3131 MAPLE AVE
DALLAS TX 75201-1263

LANE , TROY
5604 OAK TOP DR
COLLEYVILLE TX 76034-3239

LANGFORD , ALTON
102 CAMELOT ST
GLEN ROSE TX 76043-4331

LAWRENCE , GARY
2707 OLYMPIA DR
ARLINGTON TX 76013-1237

LAWSON , DONNA & WALTER
2792 COUNTY ROAD 312
GLEN ROSE TX 76043-6061

LEE , CAROL F
4585 CR 2013
GLEN ROSE TX 76043

LEMONS , DONNA & LARRY
256 HILLCREST DR
NOCONA TX 76255-3011

LENIFER , DAVID E
6719 FIRE HILL DR
FORT WORTH TX 76137-2384

LEWIS , JANICE
2920 COUNTY ROAD 413
GLEN ROSE TX 76043-6054

LILLY , MARY LEE
PO BOX 7
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LONG , EDITH
3142 COUNTY ROAD 304
RAINBOW TX 76077-2106

LUTES , DENNIS L
STE 635
5956 SHERRY LN
DALLAS TX 75225-6519

LUTTRELL , SARAH
1488 COUNTY ROAD 410
NEMO TX 76070-2034

MABRY , JAMES A
8732 ARBOR PARK CT
DALLAS TX 75243-8023

MAKARA , ARNOLD
7369 COUNTY ROAD 196
BLUFF DALE TX 76433-4930

MANN , DARWIN
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AUSTIN TX 78731-4619

MARSH , GREG
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MATTHEWS , PAT
1106 ADAMS PT
GLEN ROSE TX 76043-8218

MATTHEWS , RAY D
1106 ADAMS PT
GLEN ROSE TX 76043-8218

MATTINGLY , MARTIN
607 W COUNTY ROAD 714
BURLESON TX 76028-6755

MAYFIELD , OLLA MAE
202 AUSTIN RD
GLEN ROSE TX 76043-5101

MAYNARD , WALTER COUNTY JUDGE
SOMERVELL COUNTY
PO BOX 851
GLEN ROSE TX 76043-0851

MCCARTY , CONRAD
1709 WOODLAWN PKWY
MESQUITE TX 75149-1832

MCCLEMENTS , ROY
676 HUFFMAN DR
GLEN ROSE TX 76043

MCGLOTHLEN , TOMMIE
4168 N FM 199 UNIT B
CLEBURNE TX 76033-9460

MCKETHAN , BETTY & WAYNE
9903 US HWY 67
WALNUT SPRINGS TX 76043

MCKETHAN , WAYNE
9703 NOTTAWAY CT
GRANBURY TX 76049-4604

MCKINNEY , ANN
131 N 2ND ST
WALNUT SPRINGS TX 76690-4711

MCLAY , CHANDLER
PO BOX 1796
GLEN ROSE TX 76043-1796

MCVEAN , CYNTHIA & MIKE
2875 COUNTY ROAD 2021
GLEN ROSE TX 76043-6161

MIDGLEY , MARION
1209 SPRINGWOOD CT
EULESS TX 76040-5959

MILLER , CARRIE B
3926 COUNTY ROAD 2008
GLEN ROSE TX 76043-5977

MILLER , JENNIFER GEARHART
305 HILL TOP RD
GLEN ROSE TX 76043-4102

MILLER , MARCIA
4168 FM 51
BLUFF DALE TX 76433-6506

MILLER , RUSS
4168 FM 51
BLUFF DALE TX 76433-6506

MILLER , THE HONORABLE SID
TEXAS HOUSE OF REPRESENTATIVES
PO BOX 2910
AUSTIN TX 78768-2910

MILLER , WARD
3926 COUNTY ROAD 2008
GLEN ROSE TX 76043-5977

MILLER , WR CONNALLY
305 HILL TOP RD
GLEN ROSE TX 76043-4102

MILLS , BRANDON
106 DOUBLEHORN ST
STEPHENVILLE TX 76401-2172

MIZE , IVORY
406 COUNTY ROAD 105
WALNUT SPRINGS TX 76690-3057

MOORE , FRED
PO BOX 3236
GLEN ROSE TX 76043-3236

MOORE , JOYCE
110 VALLEY VW
GLEN ROSE TX 76043-4320

MORRIS , GAIL
APT 1217
6084 ALTA MIRA CIR
FORT WORTH TX 76132-5432

MOSS , KATHY
PO BOX 1906
GLEN ROSE TX 76043-1906

MYERS , KAY
3142 COUNTY ROAD 304
RAINBOW TX 76077-2106

MYERS , STAN
3142 COUNTY ROAD 304
RAINBOW TX 76077-2106

O'NEIL , LYNN & MIKE
STE 1000
5956 SHERRY LN
DALLAS TX 75225-6519

OLIVER , MICHAEL
APT 10F
3131 MAPLE AVE
DALLAS TX 75201-1263

OLSEN , GLENN
14730 FOREST TRAILS DR
HOUSTON TX 77095-2952

OSBORN , DOROTHY JO
PO BOX 925
GLEN ROSE TX 76043-0925

OSBORN , VIOLA
317 OLD MILL CREEK DR
WACO TX 76712-6448

OWNBEY , TESSA
1615 MCANEAR ST
CLEBURNE TX 76033-7672

PAUL , OTELA
PO BOX 2400
GLEN ROSE TX 76043-2400

PAYNE , BARRY & CLAIRE
3218 COUNTY ROAD 2013
WALNUT SPRINGS TX 76690-3073

PETERSON , CASSANDRA
604C STADIUM DR
GLEN ROSE TX 76043-4432

PIEPHO , KATHRYN
APT 105
1200 CRAWFORD CT
GRANBURY TX 76048-2267

PORCHER , CAL & HOBBY
4844 OVERTON AVE
FORT WORTH TX 76133-1326

PORTMAN , PEGGY
2209 SHADYWOOD CT
ARLINGTON TX 76012-2940

PORTMAN JR , ROBERT K
2209 SHADYWOOD CT
ARLINGTON TX 76012-2940

PRIKRYL , KEN
902 NE BARNARD ST
GLEN ROSE TX 76043-4902

RAMSAY , SANDRA B
PO BOX 1536
GLEN ROSE TX 76043-1536

REINKE , ERNEST & SHIRLEY
PO BOX 1049
GLEN ROSE TX 76043-1049

REINKE , ERNEST
PO BOX 1049
GLEN ROSE TX 76043-1049

REINKE , SHIRLEY
PO BOX 1049
GLEN ROSE TX 76043-1049

RENFRO , LINDSEY REGULATORY PERMITTING MANAGER
HILL COUNTRY ENVIRONMENTAL INC
STE 201
1613 S CAPITAL OF TEXAS HWY
AUSTIN TX 78746-6563

RICE , DAVID L
110 HERITAGE PL
GLEN ROSE TX 76043-5326

RICHARDSON , KAREN
PO BOX 239
GLEN ROSE TX 76043-0239

RIGGS , MEREDITH
606 LOVING CT
SOUTHLAKE TX 76092-6000

ROBERTS , DALE
5868 LANCE CT
HALTOM CITY TX 76148-3723

ROBERTS , JARED
2621 HEREFORD RD
DENTON TX 76210-0329

ROBINSON , GARY
400 W MCLAIN
IREDELL TX 76649-4725

RODEN , DANATH
1403 MONTAGUE ST NW
WASHINGTON DC 20011-2852

ROEBUCK , NELL
PO BOX 486
GLEN ROSE TX 76043-0486

RUDD , JOHN D
2008 COUNTY ROAD 1006
WALNUT SPRINGS TX 76690-3085

SALLEE , LAWRENCE W
103 TANGLEWOOD DR
ALEDO TX 76008-3968

SAWYER , GUY S
121 MEANDERING LN
BURLESON TX 76028-3314

SCHARFF , DAVIS LADD
6398 FM 203
WALNUT SPRINGS TX 76690-3072

SCHULLE , POLLY
2805 N BRITAIN RD
IRVING TX 75062-8936

SCOTT , ROBERT O
1101 CIRCLE LN
BEDFORD TX 76022-7413

SELBY , JOYCE
1122 COUNTY ROAD 311
GLEN ROSE TX 76043-5731

SHENK , TRENA
302 MISSION ST
GLEN ROSE TX 76043-4618

SHOEMAKER , B J
APT 10203
101 N ROARING SPRINGS RD
FORT WORTH TX 77642

SIFFORD , SHARLIN
PO BOX 1226
GLEN ROSE TX 76043-1226

SINGLETERRY , FRANCINE & RON
1202 FM 51
WALNUT SPRINGS TX 76690-3065

SMITH , KEITH & MARGARET ANN
6008 WONDER DR
FORT WORTH TX 76133-3623

SMITH , SHIRLEY D
2743 GREEN MEADOWS DR
GLEN ROSE TX 76043-6252

SNAPLES JR , LEE
5799 WOODVINE CT
FORT WORTH TX 76140-9533

SNAPLES , LEE
5795 WOODVINE CT
FORT WORTH TX 76140-9533

SOUTHWARD , CAROLYN
1215 COUNTY ROAD 426
NEMO TX 76070-2041

SPURGIN , EDDY
1197 COUNTY ROAD 2008
GLEN ROSE TX 76043-6112

SPURGIN , LYNN E
1197 COUNTY ROAD 2008
GLEN ROSE TX 76043-6112

STEADHAM , JUDY
902 NE BARNARD ST
GLEN ROSE TX 76043-4902

STEAKLEY , D
2155 COUNTY ROAD 2008
GLEN ROSE TX 76043-6117

STEARNS , MARY JO
3915 COUNTY ROAD 2008
GLEN ROSE TX 76043-6186

STEIN , MR & MRS GERALD
2884 COUNTY ROAD 2021
GLEN ROSE TX 76043-6183

STEINBERGER , LINDA
5583 COUNTY ROAD 2015
WALNUT SPRINGS TX 76690-3108

STEPHENS , STANLEY J
819 COUNTY ROAD 198
WALNUT SPRINGS TX 76690-3070

STEPP , KAREN & RON
1436 CR 1006
GLEN ROSE TX 76043

STEPP , RONALD J
PO BOX 3055
GLEN ROSE TX 76043-3055

STEWART JR , CLARK H
1425 MOODY LN
GLEN ROSE TX 76043-6125

STEWART , GRACE HOLLEY
1425 MOODY LN
GLEN ROSE TX 76043-6125

STOKES , EVERETT
PO BOX 2677
CLEBURNE TX 76033-2677

STRICKLIN , CAROLE A
PO BOX 808
GLEN ROSE TX 76043-0808

STRINGER , SANDRA
1909 COUNTY ROAD 2021
GLEN ROSE TX 76043-5987

SUMMERS , ALLEN
PO BOX 1795
GLEN ROSE TX 76043-1795

SUMNERS , ALLEN & JIMMIE
10200 W HWY 67
WALNUT SPRINGS TX 76690-3101

SUMNERS , ALLEN
10200 W HWY 67
WALNUT SPRINGS TX 76690-3101

SUMNERS , JIMMMIE
10200 W HWY 67
WALNUT SPRINGS TX 76690-3101

SUNDBY , LEROY A
1183 COUNTY ROAD 2022
GLEN ROSE TX 76043-6175

SUNDBY , SHARON E
1183 COUNTY ROAD 2022
GLEN ROSE TX 76043-6175

SYKES , VICTORIA
US REP CHET EDWARDS
STE 202
115 S MAIN ST
CLEBURNE TX 76033-5501

TALBERT , ELAINE
2928 5TH AVE
FORT WORTH TX 76110-3427

TALLEY , JAMES E
PO BOX 2400
GLEN ROSE TX 76043-2400

TAYLOR , BOB & JOAN
111 SUMMIT VW
GLEN ROSE TX 76043-5336

TAYLOR , JOAN
PO BOX 1218
GLEN ROSE TX 76043-1218

TAYLOR , MARY & ROBERT J
104 SUMMIT EDGE CT
GLEN ROSE TX 76043-5341

TAYLOR , MELINDA
NT ENVIR LAW CLINIC
727 E DEAN KEETON ST
AUSTIN TX 78705-3224

TEAFF , SAM
PO BOX 968
NEMO TX 76070-0968

TEAFF , TERI
PO BOX 968
NEMO TX 76070-0968

THOMAS , CHARLEY
PO BOX 58
RAINBOW TX 76077-0058

THOMAS , FRAN
PO BOX 58
RAINBOW TX 76077-0058

THOMPSON , ANGELA JEAN
APT 266
1278 GLENNEYRE ST
LAGUNA BEACH CA 92651-3103

THOMPSON , GERARD & JENNIFER
PO BOX 2400
GLEN ROSE TX 76043-2400

THOMPSON , LEE C
10122 CROMWELL DR
DALLAS TX 75229-5920

THOMPSON , MICHELLE & S
605 CROCKETT ST
GLEN ROSE TX 76043-5219

THOMPSON , SUSAN
10122 CROMWELL DR
DALLAS TX 75229-5920

THROWER , SUSAN
2805 N BRITAIN RD
IRVING TX 75062-8936

TRENTON , ANN
4008 BROOKMOOR DR
ARLINGTON TX 76016-1409

TRIMBLE , GUSTEEN & JOHN
PO BOX 120
GLEN ROSE TX 76043-0120

TRIMBLE , JOHN
PO BOX 120
GLEN ROSE TX 76043-0120

TURNER , FREDERICK
1275 WATERS EDGE LN
GLEN ROSE TX 76043-6715

VARDEMAN , STEVE
PO BOX 100519
FORT WORTH TX 76185-0519

VAUGHN , EUGENIE
106 SUMMIT EDGE CT
GLEN ROSE TX 76043-5341

VAUGHN , LONNIE D
106 SUMMIT EDGE CT
GLEN ROSE TX 76043-5341

VILLA , RICARDO
400 NANCY DR
GLEN ROSE TX 76043-9777

WAGNER , MARK H
1403 MONTAGUE ST NW
WASHINGTON DC 20011-2852

WALTON , GREG
1056 QUAIL RIDGE CT
GLEN ROSE TX 76043-6295

WASILCHAK , LESLIE
PO BOX 792
GLEN ROSE TX 76043-0792

WATSON , RUDY L
PO BOX 1710
GLEN ROSE TX 76043-1710

WEBB , PATTI
1052 COUNTY ROAD 2022
GLEN ROSE TX 76043-5946

WEINERT , TINA
963 S RUSTIC CIR
DALLAS TX 75218-2940

WEKER , MR & MRS CHUCK
197 E NORWAY ST
WALNUT SPRINGS TX 76690-4586

WENZEL , BETTY & JOHN W
1516 ROSEWOOD DR
KELLER TX 76248-5403

WHITE , NANCY RAY
6947 MEADOWCREEK DR
DALLAS TX 75254-2758

WHITE-ASHLEY , WHITNEY
1060 N NEBLETT ST
STEPHENVILLE TX 76401-2943

WHITSITT , DAVID
1014 COUNTY ROAD 2013
WALNUT SPRINGS TX 76690-3079

WIEDERKEHR , RUTH
APT 2C
3131 MAPLE AVE
DALLAS TX 75201-1263

WILLIAMS , SARAH
CHAMBER OF COMMERCE
1922 COUNTY ROAD 2021
GLEN ROSE TX 76043-5945

WILLIS , CHARLOTTE ANN
PO BOX 1253
GLEN ROSE TX 76043-1253

WILLIS , L G
PO BOX 1253
GLEN ROSE TX 76043-1253

WINDHAM , PAT
PO BOX 1240
GLEN ROSE TX 76043-1240

WINGATE , CINDY
PO BOX 7341
GLEN ROSE TX 76043-7341

WOOLLEY , THE HONORABLE BEVERLY
TEXAS HOUSE OF REPRESENTATIVES
PO BOX 2910
AUSTIN TX 78768-2910

WRIGHT , CHARLSIE
1099 COUNTY ROAD 334
RAINBOW TX 76077-2509

YOCHAN , LETA
PO BOX 7267
GLEN ROSE TX 76043-7267

ZAUF , DANA R
2761 COUNTY ROAD 2021
GLEN ROSE TX 76043-6195

ZAUF III , GEORGE
2761 COUNTY ROAD 2021
GLEN ROSE TX 76043-6195

TEXAS
COMMISSION
ON ENVIRONMENTAL
QUALITY

TCEQ AIR QUALITY PERMIT NUMBER 82199L002

2010 MAR 15 PM 4:17

APPLICATION BY	§	**BEFORE THE** CHIEF CLERKS OFFICE
DAVIS TOMMY DBA	§	
SLICK MACHINES	§	**TEXAS COMMISSION ON**
ROCK CRUSHER NO 1	§	
GLEN ROSE, SOMERVELL 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 Authorization application and Executive Director's preliminary decision. As required by Title 30 Texas Administrative Code (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 comment letters from the following elected officials: Kip Averitt (Texas State Senator, Senate Committee on Natural Resources), Chet Edwards (Congress of the United States, House of Representatives), Sid Miller (Texas State Representative), Beverly Woolley (Texas State Representative) and Zach Cummings, Mike Ford, Lloyd Wirt and James Barnard (Commissioners, County of Somervell).

The Office of Chief Clerk also received timely comment letters from the following individuals representing the organizations indicated: Bonnie Bowman (President, Tarrant Coalition for Environmental Awareness), Thomas J. Cloud, Jr. (Field Supervisor, United States Department of Interior, Fish and Wildlife Service), Patrick R. Condy (Executive Director, Fossil Rim Wildlife Center), Gail I. Morris (President, Fort Worth Audubon Society), and Melinda Taylor (University of Texas Environmental Law Clinic; students Craig P.F. Johnson, Chelsey Luo, and Meredith Riggs).

The Office of Chief Clerk timely received comment letters from the following persons: Margaret A. Adams, Mary Adams, Steve Allen, Mark and Patricia Beauregard, George D. Best, G. Darrell Best, George and Mary Best, Don Bodenhamer, Eugene Brode, Charles S. Brown, Cyd F. Brown, Florence R. Brown, Iris Broyles, Lila Carter, Lee and Beverly Clauser, Norm and Alveeta Corbitt, Ken and Gloria Fossler, David Frederick, John Graves, Lynda Greer, Sherman Grifith, Linda Gustafson, Douglas Hickok, Brent and Kelly Hoodenpyle, Dorothy E. Hoover, Sylvia Huckabee, Tommie Huckabee, Rhett H. Johnson, Glenda Keilstrup, Linda Lander, Dorothy Jean Lane, Jean Lane, Anton Langford, Mary Lee Lilly, Dennis L. Lutes, Pat Matthews, Ray D. Matthews, Wayne and Betty McKethan, Jennifer Gearhart Miller, Marcia Miller, Lynn O'Neil, Mike O'Neil, Barry Payne, Claire Payne, Cal Porcher, Peggy Portman, Robert K. Portman, Jr., David L. Rice, Daren Richardson, Francine Singleterry, Ron Singleterry, Linda Steinberger, Sandra Stringer, Stanley J. Stephens, Allen Sumners, Jimmie Sumners, Joan Echols Taylor, Mary O. Taylor, Robert J. Taylor, Tina Weinert, Nancy Ray White, David Whitsitt and one letter with an unreadable signature from 1216 CR 318, Somervell County, and two letters

with non-existent signatures. Similar letters were received from the following commenters designated as **Group A**: Ernest Adams, Sharon Adams, Kristen Barnaby, Sammie Barnard, Coquere Brode, Eugene Brode, Iris Broyles, Kermit D. Broyles, Deidra Cockerham, Sylvia Dalton, Judith A. D'Amico, Thomas X. D'Almico, Paul C. Decker, Joyce Doss, Margaret Crake, Scot Draper, Cruz Espino, Mary Lou Felch, Jamara French, Catherine Foust, James & Jenny Gearhart, Lynda Greer, Linda Gustafson, Lynn Guthrie, Eva Hanke, Jeanette Hawkins, Peggy E. Heidman, Dorothy Jean Lane, Sarah Luttrell, James A. Mahny, Pat Matthews, Russ Miller, UR Connally Miller, Joyce Moore, Gail Morris, Kathy Moss, Tessa Ownbey, Cassandra Peterson, Ken Prikryl, Maria Pwea, Sandra B. Ramsay, David L. Rice, Karen Rieharder, Joyce Selby, Storie Sharp, Carolyn Southward, Judy Steadham, Carole A Stricklin, Fran Thomas, Charley Thomas, Lee C. Thompson, Susan Thompson, Gary Robinson, D. Steakley, Mary Jo Stearns, Ricardo Villa, Mr. & Mrs. Chuck Weker, Greg Walton, Dana Zauf, George Zauf, III, concerned citizens (unreadable signatures) at 1135 CR 326, Cleburne Tx,, 101 Summit Ct., Glen Rose, Tx., 10135 County Road 229, Hico, Tx., 2206 Nicole Ln, Cleburn, Tx., P.O. Box 54, Glen Rose Tx., P.O. Box 145, Rainbow, Tx., and 3 unreadable signatures with no address provided. Similar letters were received from the following commenters designated as **Group B**: Charley Amos, Lynn E. Barber, Gregory Cook, Jane Choun, John A. Eastman, Amber Fager, Patrick Fager, Michael K. Francis, Patricia Gerard, Karla Grimwood, Barbara Goff, Marvin Goff, Melissa Hawrucki, Ann Hoover, James A. Jones, Glenda Keilstrup, Gary Lawrence, David E. Lenifer, Martin L. Mattingly, Marion Midgley, Glen Olsen, Dale Roberts, Lawrence W. Sallee, Guy S. Sawyer, Polly Schulle, Robert O. Scott, B. Shoemaker, Keith Smith, Margaret Ann Smith, Lee Snaples, Elaine Talbert and Susan Thrower. Similar letters were received from the following commenters designated as **Group C**: Lynda Greer, Dorothy J. Lane, Russ Miller, Allen and Jimmie Sumners, Susan Thompson and Sarah Murski Williams. Similar letters were received from the following commenters designated as **Group D**: Rex Bath, Don Bodenhamer, Sandra Bodenhamer, Lera and Grady Brittain, Gloria J. Brosseau, Yvonna Brown, Dan Broyles, Iris Broyles, Lavone M. Carlson, Joyce Doss, Susan A. Fidler, David Fisher, Hunter Fisher, Michelle Fisher, Tiffany Fisher, Nelda Frazee, Molly Golson, Shay Green, Holly J. Haefele, Janelle M. Lacey, Kent S. Lacey, Shelby M. Lacey, Alton Langford, Jean Lambert, Donna & Walter Lawson, Olla Mae Mayfield, Tommie McGlothlen, Carrie B. Miller, Shirley Reinke, John D. Rudd, Eddy Seurgin, Lynn E. Seurgin, Clark H. Stewart, Jr., Grace Holley Stewart, LeRoy A. Sundby, Sharon E. Sundby, Sam Teaff, Teri Teaff, Gusteeen Jenkins Trimble, John Trimble, Fredrick Turner, Steve Vardeman, Eugenie Vaughn, Lonnie D. Vaughn, Leslie Wasilchak, Rudy L. Watson, Charlotte Ann Willis, L.G. Willis, Pat Windham, Leta Yocham, Dana R. Zauf, and concerned citizens (unreadable signature) at 9903 W. Hwy 67, Somervell County and 2884 CR 2021, Glen Rose, Tx. Similar letters were received from the following commenters designated as **Group E**: Brenda S. Alvarez, Frank Barrow, Pat Barrow, Paul & Deidre Boccafogli, Lewis Duff, B. Edwards, Donna Edwards, Jo Evans, Robert Logan Haynes, Dawn M. Klipfel, Larry and Donna Lemons, Julie Matthews, Ivory Mize, Otela Paul, Kathryn Piepho, Bradley D. Smyth, JoAnn Smyth, James E. Talley, Gerald & Jennifer Thompson, Charlsie Wright, Ruth W. Wunderkehr, concerned citizens (unreadable signature) at 1267 PR 1263, Iredell, Tx. and three unreadable signatures with no address provided. Similar letters were received from the following commenters designated as **Group F**: C. Beck, Robert S. Burnhamm, Mary E. Cato, Jane Choun, Greg Cook, Nick F. Cooney, Carol Culin, Judith A. D'Amico, Thomas X. D'Amico, Jo Ann Duman, Lyn E. Edwards, Michael Francis, Kelly

Freeman, Susan Gechter, Laura C. Groome, Linda Gustafson, Linda Heideman, Ann and John Hoover, Dorothy Hoover, Laura K. Huber, Mary L. Johnson, James A. Jones, Glenda Keilstrup, Darwin Mann, Martin Mattingly, Mike & Cynthia McVean, Marion Midgley, Gail I. Morris (President, Fort Worth Audubon Society), Kathy Moss, Mike and Lynn O'Neil, Viola Osborn, C.K. Wiese-Pericho, Ernest Reinke, Janet Roberts, Danath Roden, Guy S. Sawyer, Robert O. Scott, Lee Snaples, Sam Teaff, Teri Teaff, Angela Jean Thompson, Ann Trenton, Mark H. Wagner, Craig Wasilchak, Betty L. Wenzel, John W. Wenzel and two unreadable signatures with no address provided. Similar letters were received from the following commenters designated as **Group G:** Modenia Fite, Edith Long, Kay Myers, Stan Myers and Cindy Wingate. Similar letters were received from the following commenters designated as **Group H**: Heather Bienko, Scarlett Brown, Alexandra Cockerham, Brannan Cockerham, Kelly Eldridge, Nathan Eldridge, Tanner Hill and one unreadable signature with no address provided. Similar letters were received from the following commenters designated as **Group I**: Patricia K. Edwards, William A. Edwards, Linda J. Gustafson, Ernest Reinke, Shirley Reinke, Ron & Karen Stepp and Dana Zauf. Similar letters were received from the following commenters designated as **Group J:** Deidra Cockerham, Michael Cockerham, Michael Oliver, and one unreadable signature with no address provided.

Individuals providing verbal and/or written comment at the public meeting held October 23, 2008 include Mark Beauregard, G. Darrell Best, Mary Best, Roxann Binghamn Charles S. Brown, Dan Broyles, Lee Clausen, Aaron Cranford, Curt Decker, Bill Edwards, David Fisher, Hunter Fisher, Michelle Fisher, Tiffany Fisher, Sherman Griffith, Lynda Greer, Dwayne Jackson, Barbara Jaswocha, Rhett H. Johnson, Jean Lambert, Jean Lane, Julia Lewis, Greg Marsh, Jennifer Gearhart Miller, Russ Miller, Gail I. Morris (President, Fort Worth Audubon Society), Peggy Portman, Robert Portman, Robert O. Scott, Allen Sumners, Jimmie Sumners, and Joan Taylor.

Individuals providing verbal and/or written comment at the public meeting held March 31, 2009 include Darrell Best, Charles Brown, Patrick Condy (Executive Director, Fossil Rim Wildlife Center), Cal Forture, Laura Huber, Clay Johnson, Jim Johnson, Russ Miller, Chris Nettles, Peggy Portman, Robert Portman, Meredith Riggs, Allen Sumners and students from the UT Environmental Law Clinic including Craig P.F. Johnson, Chelsey Luo and Meredith Riggs.

Individuals providing verbal and/or written comment at the public meeting held September 3, 2009 include Mary Adams, Darrell Best, Charles S. Brown, Iris Broyles, R. Lee Clauser, Patrick Condy (Executive Director, Fossil Rim Wildlife Center), David Greer, Linda Greer, Linda Gustafson, Conrad McCarty, Chandler McLay, Allen Sumners and Joan Echols Taylor.

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.state.tx.us.

BACKGROUND

Description of Facility

Davis Tommy dba Slick Machines (Applicant or Slick Machines) has applied to the TCEQ for a New Source Review Authorization under Texas Clean Air Act (TCAA) §382.0518. This will authorize the Change of Location of a facility that may emit air contaminants.

This permit will authorize the applicant to change the location of a previously permitted rock crushing facility to a location 200 yards east of 11209 US Highway 67 in Glen Rose, Somervell County. The facility will consist of one crusher, one screen, associated conveyors and stockpiles and will be authorized to operate 5 hours per day, 5 days per week and 30 weeks per year for a total of 750 hours per year. Contaminants authorized under this permit consist of 0.56 tons per year of particulate matter (PM) which includes 0.28 tons per year of particulate matter less than 10 microns in diameter (PM_{10}).

Procedural Background

Before work is begun on the change of location of an existing facility that may emit air contaminants, the person planning the change of location must obtain a permit from the commission. This permit application is for the issuance of Air Quality Permit Number 82199L002 for a change of location of a portable facility.

The permit application was received on July 25, 2008, and declared administratively complete on August 8, 2008. The Notice of Receipt and Intent to Obtain an Air Quality Permit (public notice) for this permit application was published on August 14, 2008, in the *Glen Rose Reporter*. A public meeting was held on October 23, 2008 in Glen Rose, Texas. The notice of public meeting was mailed to the interested parties on the Chief Clerk's mailing list on October 7, 2008.

The Notice of Application and Preliminary Decision for an Air Quality Permit was published January 15, 2009 in the *Glen Rose Reporter*. Due to legislative interest, a second public meeting was held on March 31, 2009 in Glen Rose, Texas. The notice of public meeting was mailed to the interested parties on the Chief Clerk's mailing list on March 16, 2009. The continued legislative interest resulted in a third public meeting held on September 3, 2009 in Glen Rose, Texas. The notice of public meeting was mailed to the interested parties on the Chief Clerk's mailing list on August 7, 2009. The public comment period ended on September 3, 2009 at the end of the third public meeting. Since this application was administratively complete after September 1, 1999, this action is subject to the procedural requirements adopted in accordance with House Bill 801, 76th Legislature, 1999.

Due to the large number of comments covering a wide assortment of topics, the responses have been categorized into the sections shown below. Many comments could be placed in several categories but have been responded to in the category that was judged to be most applicable.

The categories shown below have been listed in what was concluded to be the major order of importance as determined through the public meetings and a review of the comments received.

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COMMENTS AND RESPONSES

A. PUBLIC NOTIFICATION and PARTICIPATION

COMMENT A1: Several commenters expressed concern that there were hundreds of questions asked and submitted at the first public meeting and during the public comment period that had not been answered. (G. Darrel Best, George and Mary Best, Charles S. Brown, Cyd F. Brown, Florence R. Brown, Iris Broyles, Dorothy Jean Lane, Francine Singleterry, Ron Singleterry, UT Environmental Law Clinic and commenters listed in Group A).

Lee and Beverly Clauser stated that they expected to receive answers prior to any decisions being made.

G. Darrell Best requested that the permit not be approved, or that the permit not move forward in the process until such time that all issues addressed at the public meetings had been resolved. At the second public meeting held on March 31, 2009, the commenter asked why the protestants should expect the future to be different or for the protestants questions to be answered in a timely manner, or to be considered as part of the application review process. At the third public meeting the commenter also asked how the Executive Director could make any decision based on the fact that the community has demonstrated that the application was incomplete and flawed.

George and Mary Best wrote that during the second phase of the review process the permit reviewer told them he had not yet reviewed the comments.

RESPONSE A1: The protocol used in the public meetings was explained to the assembled audience in the preliminary remarks prior to each of the three public meetings that were held. To review, the audience was told that the meeting would consist of two parts; the first part was an informal discussion to ask and answer any questions while the second part was a formal discussion in which the audience could ask questions that would be recorded for the official record and responded to in writing. This information is also stated in the meeting notification that was mailed to everyone on the Chief Clerk's mailing list prior to each public meeting.

At all three public meetings the informal part of the meeting continued until the audience deemed it appropriate to move to the formal portion of the meeting. The purpose of this document is to answer the comments and questions asked during the formal portion of the public meetings and the accumulated comments and questions submitted in writing during the public comment period. All letters were reviewed, and if appropriate, facts were checked and verified as described below.

This document is the formal response to those concerns and questions, and is being submitted with the recommendation of the Executive Director for consideration by the TCEQ Commissioners who will make the final decision at a regularly scheduled Agenda meeting.

COMMENT A2: Linda Greer asked that a public meeting be allowed with additional time to organize the meeting. G. Darrell Best also submitted the following comments both verbally and in writing during the second public meeting held March 31, 2009. He stated that the meeting that night was an example of the problems the citizens are having since the first notice went into the paper in August of 2008. The comments continued as:

1.) Reservations were made for a meeting at the Senior High School on March 5, 2009, yet the citizens were not notified of the meeting until March 18. Commenter is concerned why it took 13 days to notify the persons on the chief clerk's mailing list when it only took two days to notify them when the location of the meeting was changed. The 13 day lag caused the persons on the chief clerk's mailing list to have only one opportunity to raise awareness in the community through the local newspapers. The 13 day lag caused the persons on the chief clerk's mailing list to be notified during spring break, at the busiest time of the year and when a great number of these people were on vacation.

2.) The persons on the chief clerk's mailing list were notified of the change of location to the Junior High the day after the papers came out with the notice that the meeting was going to be held at the Senior High. The persons on the chief clerk's mailing list questioned why there is a rush to have a meeting. They asked why the meeting wasn't held off a couple more weeks when everyone could have proper notice and when a more suitable location could have been booked. The commenter asked why the high school was selected in the first place when the first public meeting was held at the Citizen's Center where the protestants always meet, where there is adequate parking, and is easy to locate for out of town protestants. The commenter asked why the location was changed to the junior high when the Citizen's Center was available that evening and the junior high building is difficult to locate.

3.) The commenter stated that a casual observer might conclude that the Agency is only going through the motions of granting a public meeting rather than soliciting real public discourse concerning the permit application.

4.) The commenter reiterated that the TCEQ's procedures and purposes for holding a public meeting were intended to allow the public to learn about the application and ask questions of the Applicant and the TCEQ staff, and offer formal comments. The comment states that the TCEQ's stated purpose for these meetings is to allow TCEQ staff to hear firsthand the concerns and objections of the community and gather input for use in the Agency's consideration of the application.

G. Darrell Best requested that a third public meeting tentatively scheduled for July 16, 2009 be postponed until September or October to be more convenient to the citizens of Somervell County.

Sid Miller (Texas State Representative) requested that a third public meeting be held at a time when all documents related to the application were placed in the county library.

RESPONSE A2: Pursuant to Title 30 Texas Administrative Code Chapter 116 paragraph 130 (30 TAC § 116.130) the applicant must provide public notification as required by the executive director. Stated in the notification are instructions on requesting a public meeting. The Agency is required to hold a public meeting if one is requested by a member of the legislature or if there is significant public interest in an application based on comments in response to the public notice.

Public meetings are coordinated between the availability of the Applicant, Agency Staff, meeting room size and availability, and any legislative representation. The ED schedules public meeting dates so as to not interfere with federal or state holidays.

The first public meeting was held on October 23, 2008 due to significant public involvement and legislative interest. The Notice of Public Meeting was mailed to individuals on the Chief Clerk's mailing list on October 7, 2009

A second public meeting was held on March 31, 2009 in response to public interest generated by the second public notification period and the Executive Director's (ED) Notice of Application and Preliminary Decision for an Air Quality Permit published on January 15, 2009. It was decided by the ED that, due to the public interest generated by this application, the meeting should be held in an auditorium that would provide seating for more people than was available at the Citizen's Center. The initial Notice of Public Meeting was sent to the individuals on the Chief Clerk's mailing list on March 16, 2009. A Revised Notice of Public Meeting was sent on March 16, 2009, which corrected an error in the public comment web address. This meeting, initially to be held at the Glen Rose high school auditorium, was moved to the Glen Rose Junior High School when the High School personnel informed TCEQ that there was another event at that evening. A Second Revised Notice of Public Meeting was sent to the individuals on the Chief Clerk's mailing list on March 25, 2009 to notify individuals of the change in location. TCEQ also stationed additional staff at the high school to redirect citizens to the junior high

school with maps and information regarding the change in location. This information was provided to anyone who appeared at the high school for the meeting. There is no indication that anyone who wanted to attend the meeting was not able to do so as a result of this change in location. Furthermore, the start time for the meeting was delayed to allow anyone who may have gone to the high school the opportunity to get to the junior high.

Due to legislative request, a third public meeting was held on September 3, 2009. The date was predicated on the legislator's availability and desire to attend the meeting. The Notice of Public Meeting was mailed to individuals on the Chief Clerk's mailing list on August 7, 2009.

When problems with information or location have arisen, the ED has acted expeditiously to inform the public of the revisions, and has taken steps to insure that the public is aware of revisions.

All timely comments received, either written or formal verbal comments from the public meetings are taken into consideration prior to determining whether the Applicant meets all requirements that the TCEQ has been delegated authority by legislation to implement.

COMMENT A3: Commenters questioned the availability of the permit application at the Somervell County Library throughout this notification process. The commenters stated that supporting documentation was not available and that there were over 20 errors in the application information. Commenters stated that the public has not been provided with appropriate information from which to make decisions and that the information was published incorrectly in the newspaper. (G. Darrell Best, George and Mary Best, Charles S. Brown, Cyd F. Brown, Florence R. Brown, David Frederick, Jennifer Gearhart Miller, Robert Portman and commenters listed in Group A)

Two commenters stated that a portion of the land for this operation was located in Erath County and questioned why notification was not placed in the public library in Stephenville. (Dwayne Jackson, Peggy Portman)

It was also stated that neither the Executive Director's decision nor the Draft Permit have been placed at the library nor filed in accordance with the requirements of the Second Notice. (George and Mary Best, G. Darrell Best and commenters listed in Group A)

Commenter was concerned that, once the TCEQ was notified of these discrepancies, that the Agency not ensure that documents sufficient for the protestants to make informed decisions of the impact of the Applicant's intended process, were made available for review? The commenter also questioned whether TCEQ has taken any sanctions regarding the Applicant's application in view of this lack of public information. (G. Darrell Best)

RESPONSE A3: Pursuant to 30 TAC § 116.132(a) the Applicant shall publish the notice of intent to obtain a permit in the public notice section of a newspaper of general circulation in the municipality in which the facility is located or is proposed to be located, or in the municipality nearest to the location or proposed location of the facility. In 30 TAC § 116.132(a)(7) the

applicant must also provide information regarding the location and availability of copies of the completed permit application and the Executive Director's preliminary decision. Thus, the Applicant was correct in publishing intent in the *Glen Rose Reporter* and providing the application for review in the Somervell County Library.

In a TCEQ memo by Richard A. Hyde, P.E., then the Director of Air Permits Division(APD), dated September 10, 2008, states that "[a change of location] CLOC application requires the submittal of a Form PI-1 and the applicable documents required by the PI-1". The PI-1 instructions indicates that "[i]n a general change of location reviews are performed when a facility is moving to a new site, but all other technical and operational conditions listed in the permit can still be met *[sic]*. If other changes are requested, a permit amendment may be required. Additional instructions for change of location applications: ... Technical Information and Table 1(a) is not required since only the site of the facility should be changing through a change of location application. If a process flow diagram, process description or material balance is modified, a permit amendment review will be required." As stated previously in this document, the purpose of this permitting action is a change of location with no deviations from the current permit to require an amendment review.

The ED received the Public Notice Verification Form on September 29, 2008 stating that a complete application was available at the Somervell County Library and would be available throughout the duration of the public comment period. After the ED completed the technical review and prepared a preliminary decision technical review, and draft permit, the Applicant provided the Public Notice Verification Form affirming that the complete air quality application, draft permit and any revisions were available at the Somervell County Library. This affidavit was received by the ED on February 2, 2009.

A letter from George and Mary Best, dated February 11, 2009 and received by the TCEQ on February 13, 2009 stated that neither the complete application, revisions to the application, the Executive Director's decision nor the draft permit were available to the public. On February 17, 2009 the permit reviewer requested that the Applicant's consultant go to the library to verify which documents that library had received. The consultant indicated that it took the librarian a while to find the information, but that the entire publication package was there.

During the March 31, 2009 public meeting, George Best stated that not all of the information that was needed to make an informed decision was available at the Somervell Public Library. Upon inquiry by the ED, Mr. Best did not specify what information was still required or not in the application packet. Thus, the ED required the Applicant to submit a third public notice application package and have it available to the public for a continued 30 day review period. The Applicant assembled a complete public notification package which was received by personnel at the Somervell County Library on June 5, 2009. A letter was sent on June 15, 2009 informing the persons on the Chief Clerk's mailing list that a complete copy of the application was available at the library and at the TCEQ Regional Office. The name of a contact person for further information was also included.

The contention that over 20 errors were found in the application will be discussed later in Section F of this document.

COMMENT A4: At the third public meeting, Darrell Best asked why the Applicant was provided a "do over" on the application when it was not correct at the beginning and commented on why the application was not voided and the Applicant made to start the process over again. Additionally, the commenter expressed his concern that the permit reviewer was completing and correcting the application for the Applicant. The commenter claimed that the TCEQ was working with the Applicant to get the permit issued and questioned who the publics' advocate was in this issue.

RESPONSE A4: The application that was submitted was not a "do over" as claimed by the commenter, but was re-submitted solely at the request of the commenter. The application was submitted to the Somervell County Library in a manner that insured receipt of all information that the commenter declared was missing from the two previous submissions. With this document, the TCEQ was attempting to provide the information that the commenter declared was missing from the library and necessary for the protestants to be informed as to the extent of the potential rock crushing activities.

The Applicant's consultants were "given instructions ... to correct the Form PI-1 and the Core Data Form ... and make the forms/attachments available to the public ..." to provide the commenters with the information they claimed was not available during the previous two public meetings. The permit reviewer did not assist in completing the application.

The TCEQ is not an advocate for any applicant, but works to ensure that all air quality permit applications comply with all of the applicable state and federal laws and statutes. The TCEQ works with applicants to insure that the limitations are understood and met. The TCEQ also works with the public through the public comment, meeting and hearing process to inform the public as to the intent and purpose of a pending air quality permit and allow them to voice pertinent concerns. All of this information, including the public concerns, is provided to the Commissioners who will make a final decision at a regularly scheduled Agenda meeting.

COMMENT A5: One commenter, who has held an irrigation license for 16 years, claimed that he has never had anyone help fill out any paperwork and that it has been up to him to complete the proper testing, complete the proper paperwork, and fill out the forms correctly in order to keep his license. The commenter asserted that if he had not completed these tasks himself, the TCEQ would not have renewed his license. The commenter expressed concern that the TCEQ worked with the Applicant to complete forms stating that this was a double standard and that he would not be afforded the same level of assistance. (David Greer)

RESPONSE A5: The occupational licensing section that regulates irrigation licenses will send a deficiency letter that explains errors in the licensing application and allow 120 days to provide a correction. In many instances the licensing section of the Agency will call an applicant to ensure the correctness of the application to determine the meaning and completeness of the information provided. The occupational licensing section works to assist in every way possible

by sending deficiency letters to tell applicants what needs to be corrected and providing adequate time for the applicant to submit the correct information.

COMMENT A6: G. Darrell Best asked why a complete set of documentation was not available in Austin when the protestants filed a "Public Records Request."

RESPONSE A6: The TCEQ has no record of receiving an Open Records Request regarding this project. When questioned at the public meeting on March 31, 2009, the commenter stated that they had only requested documents from Region 3 and Region 4 and had not asked for documents to be provided from Austin. When the UT Environmental Law Clinic requested copies of the documents, all working files for the Applicant's initial air permit number. 76402, the amended air permit no. 82199L001 and the current air permit no. 82199L001 were made available for copying. These copies were made on March 12, 2009.

COMMENT A7: At the October 23, 2008 public meeting, Russ Miller provided photographs of the Applicant's signs that were posted on the property boundaries indicating that the phone number of the appropriate commission office and the words "TEXAS COMMISSION ON ENVIRONMENTAL QUALITY" and "APPLICATION NO. 82199002" consisted of bold face lettering only 1.375 inches in height.

RESPONSE A7: Pursuant to 30 TAC §116.133(a)(3) and 30 TAC §116.133(a)(5) the lettering on the signs for "APPLICATION NO. 82199L002" and "TEXAS COMMISSION ON ENVIRONEMENTAL QUALITY" need only be no less than one-inch in height. Therefore, these portions of the signs were printed correctly. However, in accordance with 30 TAC §116.133(a)(6) the phone number of the appropriate commission office should be no less than two-inch bold face numbers.

Since the phone number of the Regional Office was not printed in the correct font height, the ED instructed the Applicant to correct the signs and keep them posted for the duration of the public notice period.

COMMENT A8: A written comment from the October 23, 2008 meeting indicated that the only documentation found at the library was with respect to permit 82199L001 which was not the permit that was the concern of the citizens. (Jimmie Sumners)

RESPONSE A8: The application is for a Change of Location for this permit which would change the air quality permit number from 82199L001 to 82199L002. Since the application is still under review, the permit number 82199L002 has not been authorized at this time. However, according to our records, the package of documents including the public notices for this application, draft permit, and Maximum Allowable Emissions Rate Table (MAERT) sent to the Somervell County Library on June 1, 2009, all refer to permit number 82199L002. Accordingly, the relevant permit documentation was made available to the public.

COMMENT A9: Several commenters stated that the public had not been provided the exact size and scope of the project including the acreage to be mined, the duration of the permit, and a map of the area to be licensed. (Charles S. Brown, Cyd F. Brown)

RESPONSE A9: An address of the proposed location was included in the initial application but a specific, detailed map was not included at that time. A map was made available at the first public meeting held October 23, 2009 which showed the location of the leased area including the property lines and the proposed location of the crushing facilities. A copy of the map was available prior to the application being determined to be technically complete, and was available at the Somervell County Library for all subsequent public meetings and throughout the remainder of the public comment period.

Pursuant to 30 TAC §116.315(d)(2) the permit shall be reviewed every ten years after the date of issuance.

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 regulate mining nor the amount of acreage that is to be mined.

COMMENT A10: G. Darrell Best reiterated the Agency guidelines on publication that state the original newspaper clippings or tear sheets of each published notice by sent to the Agency within 10 business days, that the Public Notice Verification Form be sent to the TCEQ Office of the Chief Clerk within 10 business days, and that failure to do so within the allotted time may suspend the application from further processing. The commenter wanted to know what actions the TCEQ took with regard to this application.

RESPONSE A10: The application was processed using the same permitting guidelines and procedures as all other applications of this type. The ED's staff verified that all necessary public notice verification forms have been timely received by the Chief Clerk thus no delays or suspension of processing for this application is warranted.

COMMENT A11: It was stated by several commenters that the Applicant took 44 days to publish the Notice of Application and Preliminary Decision for an Air Quality Permit when the guidelines specifically state that the publication should be completed in 33 days. It was also stated that the bolding required by the notice instructions was not accomplished correctly. Thus, the application should be denied. (G. Darrell Best, George and Mary Best, Charles S. Brown, Cyd F. Brown, Florence R. Brown, Dorothy Jean Lane)

G. Darrell Best asked what sanctions the TCEQ provided for the Applicant not complying with this regulation.

Sid Miller (Texas State Representative) requested that, due to the lack of publication within the prescribed 33 day time period, the Applicant be required to re-notice the community of the TCEQ's decision to issue a draft permit and that all documents be placed in the library from the first day that notice is placed in the paper.

RESPONSE A11: The specific time required to publish the Notice of Application and Preliminary Decision for an Air Quality Permit is provided as a guide and is not legislated in 30 TAC § 116 Subchapter B: New Source Review Permits, Division 3: Public Notification and Comment Procedures. Generally, an applicant will comply with the 33 day publication requirement in order to continue the process of the permit application. The Air Permits Division of the TCEQ has the option, if necessary, to send a 30-day void notification to those applicants who do not comply with stated guidelines. In general, APD has extended the 30-day deadline as long as the applicant has shown progress in good faith.

The Text of Public Notice documented in 30 TAC § 39.411(c)(2) states that the public comment procedures must be printed in a font style or size that clearly provides emphasis and distinguishes it from the remainder of the notice. A review of the tear sheets provided with the affidavit of publication indicates that the bold font incorported into both the first and second public notification notices was completed within the requirements of the notice guidelines.

COMMENT A12: Several commenters indicated that a bilingual notification should have been published due to the high number of Hispanic individuals that reside in the area and that the Applicant should start the public notice process over again prior to the issuance of any air quality permit. (Charles S. Brown, Cyd F. Brown and Gail I. Morris (President, Fort Worth Audubon Society))

RESPONSE A12: In 30 TAC §116.132(c) it states that an alternate language public notice must be published whenever either the elementary school or the middle school located nearest to the facility or proposed facility provides a bilingual education program as required by the Education Code, Chapter 29, Subchapter B, and 19 TAC §89.1205(a). Affidavits received from the Applicant on September 29, 2008 and on February 2, 2009 state that the school district was contacted and that a bilingual education program is not required by the Texas Education Code in the district.

Due to the questions raised by the commenters, the ED called the Glen Rose Administrative Office on February 12, 2009 and confirmed with the Director of Curriculum and Instruction that at the time of the application, and at the time of the ED's phone call, there was not a bilingual program in the school district nor did the school waive out of the program. Therefore, publication in an alternative language is not required by TCEQ rules.

COMMENT A13: Commenters questioned the accuracy of the statement in the TCEQ Notice of Application and Preliminary Decision for an Air Quality Permit that "[t]he Executive Director has made a preliminary decision to issue the permit because it meets all rules and regulations." The contention is that the statement is inaccurate and the preliminary decision to issue the permit should never have been made. (Charles S. Brown, Cyd F. Brown, Florence R. Brown)

RESPONSE A13: After a review of the information provided by the Applicant in regard to the change of location request, the affidavits of publication that were provided and the site reviews

conducted by the regional office, the ED made the preliminary decision that all of the rules and regulations set forth by the legislature had been met.

COMMENT A14: One commenter had concerns regarding the permit's failure to clearly require meaningful public notice of the crusher relocation. (David Frederick)

RESPONSE A14: The Notice of Receipt and Intent to Obtain an Air Quality Permit (first public notice) for the change of location request was published on August 14, 2008 in the *Glen Rose Reporter*. The Notice of Application and Preliminary Decision for an Air Quality Permit (second public notice) was published January 15, 2009 in the *Glen Rose Reporter*. These publications meet the requirements established in 30 TAC § 39.603 regarding Newspaper Notification. In addition, signs declaring the filing of an application for a permit and stating the manner in which the commission may be contacted for further information were posted in accordance with 30 TAC §39.604.

Notice of public meetings were also sent to all concerned citizens who had submitted comments, requested a public meeting, requested a hearing, or asked to be placed on the mailing list, in sum, all individuals on the Chief Clerk's mailing list. Public meetings were held on October 23, 2008, March 31, 2009 and September 3, 2009. The ED has determined this application has undergone all applicable required public notice.

COMMENT A15: Several commenters asked if a contested case hearing was available for affected neighbors and, if not, what rule or statute took that right away. If a hearing was available, the commenter wanted to know what the deadline was for making the request. (G. Darrell Best, Chandler McClay, Robert Portman)

RESPONSE A15: The Notice of Receipt of Application and Intent to Obtain Air Permit for Air Quality Permit Number 82199L002 was published in the *Glen Rose Reporter* on August 14, 2008. The notice included instructions on how to request a contested case hearing; as of this date, the TCEQ has received 185 requests for a hearing with respect to this application. The same paragraph states that a hearing request must be received within 30 days of the date of the newspaper notification.

COMMENT A16: Two commenters asked about the likely duration of the agency's decision making process regarding this Change of Location request. (G. Darrell Best, Robert Portman)

RESPONSE A16: The time table for this decision is based on the end of the public comment period which, in this case, was September 3, 2009. After this time, a formal Response to Comments is to be written, usually within 60 days, filed with the Chief Clerk's Office and mailed to all people on the interested person's mailing list. This time may go longer depending on the number and scope of comments received on the application. The matter is then processed in accordance with TCEQ rules requiring the Chief Clerk to schedule the hearing request for a commission meeting where the three member Commission will decide whether to issue the permit or to grant one or more of the hearing requests, and if so, to refer the matter to Alternative

Dispute Resolution and/or to the State Office of Administrative Hearings (SOAH) for a hearing on the merits of the application.

COMMENT A17: During the first public meeting on October 23, 2009, one commenter asked if this application was for the issuance of a new permit or a modification to an existing permit. (G. Darrell Best)

Other commenters asked if there was any indication whether the Applicant will apply, or has applied, for an individual permit for a rock crushing operation at the site (G. Darrell Best, Robert Portman)

RESPONSE A17: The Applicant has applied only for a change of location authorization. The permitting action would authorize the change of location of the rock crushing facility, i.e., the authorization would not be for a new permit as the permit already exists. The current application is not a modification and no changes are allowed to the conditions or emissions.

At the current time, the Applicant has not applied for any other authorization with regard to rock crushing facilities to be located at this site. The predicted does not speculate on whether the Applicant will apply for any additional authorizations in the future.

COMMENT A18: G. Darrell Best states that strong letters of opposition have been received from Representative Miller of District 59, what Mr. Best refers to as the largest tourist attraction in Somervell County that has worked with endangered species through the US Fish and Wildlife Service and Texas Parks and Wildlife, the Somervell County Commissioners, various State Representatives from as far away as Houston, and the Chalk Mountain Wildlife Management Association. The commenter states that the Texas Parks and Wildlife, Prairie and Piney Woods Trail, Location 53 sign is within sight of the proposed location, and that a Texas Roadside Park that has been frequented by road travelers on Highway 68 for over 50 years is within a half mile of the site and would be affected by the dust emanating from the plant's operation. The commenter questions why, in the face of this opposition, the public opposition, and the affect on the endangered species, is the TCEQ continuing with the progress of this application with no concern for the public health.

RESPONSE A18: Letters have been received from the following elected officials:

Rep. Chet Edwards, US Congress, requesting that a public meeting be held;
Sen. Kip Averitt, Texas Legislature, requesting a public meeting and hearing;
Rep. Beverly Woolley, Texas Legislature, opposing the issuance of the permit;
Rep. Sid Miller, Texas Legislature, requested a total of three public meetings to be held;
Rep. Sid Miller, Texas Legislature, opposing the issuance of the permit;
Zach Cummings, Commissioner, Precinct 1, Somervell County, expressing concerns; and
Somervell County Commissioners resolution to retain the pristine beauty of the area.

Comment letters were also received from the following individuals as representative of the respective organizations:

Thomas J. Cloud, US Dept. of Interior, Fish and Wildlife Service;

Bonnie Bowman, President, Tarrant Coalition for Environmental Awareness;
Patrick R. Condy, Executive Director, Fossil Rim Wildlife Center; and
Gail I. Morris (President, Fort Worth Audubon Society), President, Fort Worth Audubon Society.

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 prohibit owners and operators from seeking authorization to emit air contaminants; nor can the TCEQ prohibit owners and operators from receiving authorization to emit air contaminants if they comply with all statutory and regulatory requirements.

As will be discussed in more detail in a Section E, air dispersion modeling reflecting the facility's operation indicates that the maximum ground level concentration (GLCmax) of PM_{10} emissions will meet the primary standards that the Administrator of the EPA determined is 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. The evaluation also determined that the facilities meet the secondary National Ambient Air Quality Standards (NAAQS) which are those that the Administrator deemed necessary to protect the public welfare and the environment, including animals, crops, vegetation, and buildings, from any known or anticipated adverse affects associated with the presence of an air contaminant in the ambient air. Thus, the plant operation as described in the permit application will be protective with regard to public health.

All requests for public meetings to disseminate information to the elected official constituents have been granted. It is the purpose of this document to address the comments received during the formal portion of those public meetings as well as those comments received throughout the public comment period. As part of the process, the public comments and concerns are assimilated with the regulations established by the Legislature. A final decision regarding the application will be made when the entire package is assembled and presented to the TCEQ Commissioner's for consideration and final decision.

COMMENT A19: One commenter stated that there is still erroneous and misleading information on the application but will refrain from informing the TCEQ about the erroneous and misleading information until the Administrative Hearing. (Darrell Best)

RESPONSE A19: The TCEQ encourages public participation throughout each phase of the application and permitting process. Any comments received on the application detailing specific issues were reviewed and when necessary adressed. Not withstanding, the cover letter accompanying this Response to Comments provides information and instructions to follow for those who disagree with the Executive Director's decision, and believe they are an "affected person" as defined in the cover letter. In addition, anyone may request reconsideration of the Executive's Director's decision. The cover letter will provide the information and procedure necessary to request a contested case hearing or request reconsideration of the Executive Director's decision.

B. ENDANGERED SPECIES and WILDLIFE

COMMENT B1: Some commenters contend that the particulate matter emissions less than 10 microns in diameter (PM_{10}) will be harmful to the federally endangered Golden-cheeked Warbler and Black-capped Vireo. (Thomas J. Cloud, Jr. (Field Supervisor, United States Department of the Interior, Fish and Wildlife Service), Charles S. Brown, Cyd F. Brown, Florence R. Brown, Lee and Beverly Clauser Sherman Griffith, Rhett H. Johnson, Robert O. Scott)

Other commenters expressed concern about the loss of habitat for wildlife and the effect of the PM_{10} emissions on all crops, plants, wildlife, livestock and farming. (Zach Cummings (for Commissioners, County of Somervell), Barbara Bowman (President, Tarrant Coalition for Environmental Awareness), Cyd F. Brown, Lee and Beverly Clauser, Linda Gustafson, Douglas Hickok, Brent and Kelly Hoodenpyle, Sylvia Huckabee, Tommie Huckabee, Glenda Keilstrip, Linda Lander, Jean Lane, Alton Langford, Dennis L. Lutes, Lynn O'Neil, Mike O'Neil, Barry and Claire Payne, Robert K. Portman, Jr., Robert O. Scott, Allen Sumners, Jimmie Sumners, Joan Echols Taylor, Nancy Ray White, David Whitsitt, and commenters listed in Groups B, D, E, F and J)

Patrick Condie, speaking on behalf of the Fossil Rim Wildlife Center, spoke and wrote regarding the center's work at preserving the Attwater Prairie Chicken, which he states is Texas' most threatened bird species and one of the USA's most threatened. The Fossil Rim Wildlife Center occupies approximately 5 acres of land that is 4.9 miles from the location of the proposed rock crushing facility and is a breeding center for this endangered species. The commenter states that the Attwater Prairie Chicken is a very sensitive, fragile bird, very easily stressed and prone to many kinds of illnesses and infections brought about by disease agents, environmental pollutants and nutritional factors. By the submission of this information, the commenter wanted to place on record that the TCEQ has been fully informed of the Attwater Prairie Chicken's critical predicament, its presence at the Fossil Rim Wildlife Center's Breeding Center, and the proximity of this center to the site under consideration for the rock crushing facilities.

RESPONSE B1: For many permits, potential impacts to human health and welfare or the environment are determined by comparing predicted emission concentrations from the proposed facility to appropriate state and federal standards and effects screening levels. The specific health-based standards or guidance levels employed in evaluating the potential emissions include the National Ambient Air Quality Standards (NAAQS) [1] and TCEQ rules contained in title 30 of the Texas Administrative Code (TAC).

NAAQS are created by the United States Environmental Protection Agency (EPA), and as defined in Title 40 Code of Federal Regulations paragraph 50.2 (40 C.F.R. § 50.2), include both primary and secondary standards. The primary standards are those which the Administrator of the EPA determines are necessary, with an adequate margin of safety, to protect the public

[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.

health, including sensitive members of the population such as children, the elderly, and individuals with existing lung or cardiovascular conditions. The primary standards will be discussed in more detail later in this document with regard to the overall protectiveness of the facility. Secondary NAAQS standards are those which 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 affects associated with the presence of an air contaminant in the ambient air. "Criteria pollutants" are those pollutants for which NAAQS have been established, including ozone, lead, carbon monoxide, sulfur dioxide, nitrogen dioxide, and particulate matter (PM).

Section 302(h) of the Federal Clean Air Act (FCAA) 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. As will be discussed later in this document, the ED has determined that emissions from this facility should not cause an exceedance of the NAAQS. Thus, no impact due to emissions from this facility to land, livestock, crops, or visibility is expected, nor should emissions interfere with the use and enjoyment of surrounding land. The Secondary NAAQS are set below levels which would be expected to cause nuisance conditions (dust accumulation, decreased visibility) or eye and throat irritation, and, therefore, should not impact the quality of life of those living near the proposed facility.

Furthermore, all facilities must comply with the TCAA and all TCEQ rules and regulations, including 30 TAC § 101.4, which prohibits a person from causing or maintaining a nuisance. 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." Based on the commission's experience regulating these types of facilities, rock crushers can be operated without causing a nuisance problem, provided the facilities are operated in compliance with the terms and conditions of the permit.

The TCEQ recognizes and appreciates the work organizations are doing to protect and repopulate the species of animals that are most endangered. However, the TCEQ's jurisdiction is established by the Legislature and is limited to the issues set forth in statute. Accordingly, the TCEQ responsibilities and the resultant draft permit regulate the control and abatement of air emissions only. The TCEQ does not have jurisdiction to prohibit owners and operators from seeking authorization to emit air contaminants; nor can the TCEQ prohibit owners and operators from receiving authorization to emit air contaminants if they comply with all statutory and regulatory requirements. The statutory and regulatory requirements that the applicant must comply with are described in detail in the response to comments listed in Sections D and E below. Furthermore, if operated in accordance with the requirements of the permit, adverse effects on humans or wildlife are not expected.

COMMENT B2: Several commenters expressed concern that the noise generated by the rock crushing facility would be detrimental to the nesting behavior of the federally endangered Golden-cheeked Warbler and Black-capped Vireo. (Ken & Gloria Fossler, Sherman Griffith, Gail I. Morris (President, Fort Worth Audubon Society), Lynn O'Neil, Mike O'Neil, Allen Sumners, Jimmie Sumners and Tina Weinert)

Other commenters were concerned that the ground vibrations would also disrupt the wildlife behavior. (Charles Brown, Cyd F. Brown)

RESPONSE B2: As noted above, 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 or ground vibrations from a facility when determining whether to approve an application for an air quality permit. Noise ordinances are normally enacted by cities or counties and enforced by local law enforcement authorities. Commenters should contact their local authorities with questions or complaints about noise pollution.

COMMENT B3: The majority of comments received, and a majority of the comments expressed during the public meetings, concerned the potential for destruction of the habitat of the Golden-cheeked Warbler and Black-capped Vireo. Most commenters state, or infer, that these birds are known to nest in the surrounding area of the proposed rock crushing facility. (Beverly Woolley (Texas State Representative), Sid Miller (Texas State Representative), Thomas J. Cloud, Jr. (Field Supervisor, United States Department of the Interior, Fish and Wildlife Service), Zach Cummings (for Commissioners, County of Somervell), Barbara Bowman (President, Tarrant Coalition for Environmental Awareness), Margaret A. Adams, Steve Allen, G. Darrell Best, George D. Best, George and Mary Best, Charles S. Brown, Cyd Brown, Florence R. Brown, Iris Broyles, Lila Carter, Lee and Beverly Clauser, Patrick R. Condy (Executive Director, Fossil Rim Wildlife Center), Bill Edwards, Greg Marsh, Gail D. Morris, Norm and Alveeta Corbitt, Ken & Gloria Fossler, David Frederick, John Graves, Lynda Greer, Sherman Griffith, Linda Gustafson, Brent and Kelly Hoodenpyle, Rhett H. Johnson, Glenda Keilstrup, Linda Lander, Dorothy Jean Lane, Mary Lee Lilly, Pat Matthews, Ray D. Matthews, Wayne and Betty McKethan, Brandon Mills, Lynn O'Neil, Mike O'Neil, Robert K. Portman, Jr., David L. Rice, Robert O. Scott, Linda Steinberger, Stanley J. Stephens, Allen Sumners, Jimmie Sumners, Joan Echols Taylor, Mary O. Taylor, Robert J. Taylor, Tina Weinert, Nancy Ray White, unreadable signature, UT Environmental Law Clinic and commenters listed in Groups A, B, C, D, E, F, G, H and J).

A formal request was sent to the TCEQ on August 8, 2008 asking that biologists from the Texas Parks and Wildlife Department and the U.S. Fish and Wildlife Service be consulted on this permit application. (Charles S. Brown, Cyd F. Brown).

It was requested that the TCEQ not issue an air quality permit for this property until a bird survey is conducted to determine the presence or absence of these birds on the property. (G. Darrell Best, Charles S. Brown, Cyd Brown and Gail D. Morris)

Other commenters noted that it was illegal, under the terms of the Endangered Species Act (ESA), to interfere with ESA-listed species including the destruction of the specific habitat they require for the breeding cycle and questioned whether an incidental take permit would be required. (Thomas J. Cloud, Jr., (Field Supervisor, United States Department of the Interior, Fish and Wildlife Service), Cyd F. Brown, Lee Clauser, Patrick R. Condy (Executive Director, Fossil Rim Wildlife Center), Ken & Gloria Fossler, Rhett H. Johnson, Lynn O'Neil, Mike O'Neil, Tina Weinert and the UT Environmental Law Clinic)

Two adjacent landowners provided the TCEQ with a map prepared by the Texas Parks and Wildlife Department showing the high quality Golden-cheeked Warbler habitat in the area the Applicant has designated for the rock crushing operations. The commenters ask what responsibility the TCEQ has to preserve the environmental quality of sensitive habitat for Federally listed endangered species and what action the TCEQ will take to ensure that this habitat destruction does not occur. (Thomas J. Cloud, Jr. (Field Supervisor, United States Department of the Interior, Fish and Wildlife Service), Charles S. Brown, Cyd F. Brown)

Lee Clauser explained that he had taken Audubon people, certified by the US Fish and Wildlife Service, to survey the extent of the Golden-cheeked Warblers and Black-capped Vireo population on adjacent land resulting in sightings of the endangered species on the adjacent land as well as the land leased by the Applicant. Charles S. Brown and Cyd Brown asked how the TCEQ, as a State Agency, could knowingly facilitate violation of Federal and State law by allowing this application to proceed when it is considered official record now that this land is a habitat for the endangered species.

Many citizens in the area have federal grants awarded for habitat restoration and official wildlife management plans for their properties filed with the tax offices of both Erath and Somervell counties and belong to the Chalk Mountain Wildlife Management Association. The commenters are concerned that permitting the removal of limestone from the property will permanently destroy the wildlife habitat that currently exists there and impact the wildlife and endangered species on adjacent properties. (Beverly Woolley (Texas State Representative), Thomas J. Cloud, Jr. (Field Supervisor, United States Department of the Interior, Fish and Wildlife Service), Zach Cummings (for Commissioners, County of Somervell), Charles S. Brown, Cyd F. Brown, Florence R. Brown, Rhett Johnson, Linda Steinberger and commenters in Group F)

RESPONSE B3: The TCEQ appreciates the work that people in the community do to maintain the environment and enhance the habitat of wildlife and endangered species. The TCEQ's jurisdiction is established by the Legislature and is limited to the issues set forth in statute. TCEQ does not have jurisdiction to prohibit owners and operators from seeking authorization to emit air contaminants; nor can the TCEQ prohibit owners and operators from receiving authorization to emit air contaminants if they comply with all statutory and regulatory requirements. The statutory and regulatory requirements that the applicant must comply with are described in detail in the response to comments listed in Sections D and E below.

Accordingly, the TCEQ does not have jurisdiction to enforce provisions of the Endangered Species Act (ESA). Issuance of an air permit does not trump or relieve the applicant from

compliance with any other state or federal laws such as the ESA. Compliance with rules and regulations regarding endangered species is handled at the state level by Texas Parks and Wildlife and at the federal level by US Fish and Wildlife. It is incumbent upon the applicant to request and acquire any additional authorizations that may be needed under local or federal law.

COMMENT B4: Commenters asked that the Applicant and the Applicant's consulting company ensure that all regulations of the Federal Endangered Species Act are followed. (Thomas J. Cloud, Jr. (Field Supervisor, United States Department of the Interior, Fish and Wildlife Services), Sid Miller (Texas State Representative), Darrell Best, Charles Brown, Cyd Brown)

Thomas J. Cloud, Jr. (Field Supervisor, United States Department of the Interior, Fish and Wildlife Services) recommends that a presence/absence survey be conducted by a federally permitted biologist and the results submitted to the United States Department of the Interior, Fish and Wildlife Services for evaluation.

Several commenters asked why the Applicant and the Applicant's consulting company did not conduct an endangered species habitat survey and subsequently cancelled a scheduled meeting with the Parks and Wildlife Department regarding the endangered species that may inhabit the proposed property. (Darrell Best, Charles Brown, Cyd Brown)

RESPONSE B4: As noted above, TCEQ does not have jurisdiction enforce provisions of the ESA. Issuance of an air permit does not trump or relieve the applicant from compliance with any other state or federal laws such as the ESA. Compliance with rules and regulations regarding endangered species is handled at the state level by Texas Parks and Wildlife and at the federal level by US Fish and Wildlife. It is incumbent upon the applicant to request and acquire any additional authorizations that may be needed under local or federal law.

Concerns regarding the recommendation to conduct a habitat survey and the purported cancellation of a meeting between the Applicant and the applicant consulting company with the Parks and Wildlife Department were addressed to the Applicant.

C. PLANT OPERATION

COMMENT C1: G. Darrell Best stated that nothing is known regarding the rock crusher itself including:

The make and model;
When it was manufactured and by what company;
The operating specifications;
Where it is located today;
The last performance evaluation;
The last inspection;
The last revision date to attest that it's still in compliance;
The current location;
When the last time the rock crusher operated;

The state of BACT with regard to the rock crusher; and
The last time the rock crusher was brought up to standards.

RESPONSE C1: There are four ways to authorize the movement of a rock crushing plant of this size within the state of Texas. The methods of authorization are the following: 1. Tier I registration, 2. Tier II registration, 3. Relocation request, or 4. Change of Location application. The first three methods are addressed by the TCEQ regional office where the rock crushing plant is proposing to relocate. The fourth method is accomplished through the New Source Review (NSR) responsibilities of the TCEQ central office in Austin.

Since this current application is for a Change of Location to a new location in the state of Texas, the previous location of the rock crushing plant, whether it was operating or was in storage, is not germane to the current review. The new source review insures the applicability of the rock crushing facilities with regard to the rules and regulations of the TCEQ that are pertinent to the rock crushing plant at the new location. These rules and regulations state that the operation of the rock crushing plant shall meet the requirements as set forth by statute. The permit conditions designate how the BACT shall be achieved as well as document the operational characteristics of the facilities, i.e., the throughput limitations, the hours of operation, the best management practices, etc. It is up to the Applicant to ensure these parameters can be, and are, met.

COMMENT C2: One commenter asked whether there was a picture of the actual rock crusher facility for general view. The commenter also asked about the age of the crusher and whether it had been properly maintained. (UT Environmental Law Clinic)

Other commenters asked if the permit was for a particular crusher of if the Applicant can exchange crushers without changing the permit. (Peggy Portman and commenters in Group J)

RESPONSE C2: The EPA does not specify emissions based on the crusher manufacturer, thus pictures and representations of the crusher itself are not required. The emission rates evaluated by the TCEQ are based on data and information supplied by the EPA which has developed emission factors based on test data of generic crushers. Due to modes of operation, delineation is made between generic jaw crushers and other crushers and whether the crusher is a primary, secondary, or tertiary crusher. There is no statutory requirement to supply pictures of the crusher.

The manufactured (or reconstructed) date of the crusher, as well as the crushing capacity, are important to establish federal applicability under Title 40 Code of Federal Regulations, Part 60 (40 CFR 60) Subparts A and OOO. Due to the total crushing capacity of this facility (250 tons per hour) Subpart OOO includes this facility in the federal regulation. Maintenance of the crusher is the responsibility of the owner/operator. It would be incumbent on the owner/operator of a facility to maintain the equipment to optimize the performance. All equipment, and emission control devices, must be maintained so as to meet the opacity regulations and emission limitations as has been specified in the air quality permit in conjunction with Subpart OOO.

The applicant cannot exchange the permitted crusher for another without authorization. A like-for-like exchange of crushers can be achieved with notification. An upgrade to the crusher (if permitted) would require submission of an amendment application and would require review by the TCEQ.

COMMENT C3: One commenter asked whether the crusher was intended to remain permanently in one place or whether it would move about the site, and if it were to move, would it move under its own power. (UT Environmental Law Clinic)

RESPONSE C3: The crusher is a stationary source of emissions as defined in 30 TAC § 116.10. Although a stationary source of emissions, the physical location of the crusher can be moved so as to be located near the source of rock to be crushed. The air quality permit defines limitations on the movement of the crusher within the property boundaries, restricting it to be at least 200 feet from any property boundary. The ability to move the crusher limits the potential for emissions from mobile sources that would be required to bring the rock to the crusher and are not regulated by the jurisdiction provided by the legislature to the TCEQ. As a stationary source, the crusher is not be capable of moving under its own power.

COMMENT C4: Several commenters asked about the maximum capacity of the crusher and whether the crusher would run at the stated maximum capacity. (UT Environmental Law Clinic and commenters in Group J)

RESPONSE C4: The maximum capacity of the crusher is given by the manufacturer as 250 tons per hour which subjects the crusher to the federal regulations in 40 CFR part 60 Subpart OOO. However, the air quality permit limits the crusher throughput to the value represented in the application. The represented throughput is a part of the permit documentation and is used to evaluate the emissions from the facility and, concurrently, the protectiveness of the permit. In the current application, the owner/operator represents that the crusher will operate with a throughput limited to 100 tons per hour. The record keeping provisions in the permit, require the permit owner to provide documentation that this throughput limit is not exceeded, independent of the maximum capacity of the crusher.

The TCEQ regional offices audit facilities as time and resources allow. If exceedances of the material throughput are noted, they use criteria to determine the level of the violation based on its potential to impact health and the environment. If a violation is referred for enforcement action, it may result in penalties and technical requirements to correct the violation. For violations that are not referred for enforcement action, the company is given the opportunity to correct the violation.

COMMENT C5: Several commenters commented on the emissions from the diesel engine that would power this site. (Joan Echols Taylor, Mary O. Taylor, Robert J. Taylor and commenters in Group J)

Another commenter asked whether the crusher was powered electrically or by an internal combustion engine, and if by an internal combustion engine, the type of engine and the emission

limitations of the engine. In addition, the commenter asked if there would be any fuel kept on site. (UT Environmental Law Clinic)

RESPONSE C5: There is no internal combustion engine authorized by this permit and no fuel storage tanks are associated with this permit authorization.

COMMENT C6: One commenter was concerned about the noise from the crusher and whether it could be heard on a clear morning. The commenter asked what steps were being taken to mitigate the noise and if there was a possibility of enclosing the crusher to reduce noise emissions. The commenter also asked whether the TCEQ would do any noise modeling on the crusher at this site. (UT Environmental Law Clinic)

RESPONSE C6: This application and the review thereof is solely for authorization of an air quality permit. As such, issues related to noise are beyond the TCEQ's jurisdiction as established by the Legislature. Noise ordinances are normally enacted by cities or counties and enforced by local law enforcement authorities. Commenters should contact their local authorities with questions or complaints about noise pollution.

COMMENT C7: One commenter asked about the number of crushers that would be allowed at this site. (Dwayne Jackson)

Another commenter asked about the number of screens that are intended for use at this site, how loud they are, what steps have been taken to mitigate the noise, and whether this was the Best Available Control Technology. (UT Environmental Law Clinic)

RESPONSE C7: In accordance with the permit application, the permit special conditions, and the Maximum Allowable Emission Rates Table (MAERT), the site will utilize one crusher and one screen. See response C6 above regarding noise. The criteria of Best Available Control Technology (BACT) will be discussed in Section D below.

COMMENT C8: One commenter asked questions regarding the conveyor belts. Concerns addressed the number of belts required to move the aggregate from facility to facility, what the belts are made of, whether this is the best material for noise mitigation and whether an investigation has been completed of alternative materials. The commenter also questioned the length of the conveyor belts, how they are powered and whether or not they require separate air permits or if they are covered by the rock crushing air permit. (UT Environmental Law Clinic)

RESPONSE C8: The emissions for rock crushing plants in the State of Texas are evaluated based on the TCEQ's jurisdiction as established by the Legislature to evaluate stationary sources of emissions. In this case, the stationary sources include the operations consisting of the crushing, screening, conveying, stockpiling, and loading/unloading of material. A total of four conveyors have been represented in the application and are accounted for in the material handling emissions. They do not require their own specific air authorization. Power supplied to the conveyors is expected to be from the same source that is powering the crusher and the screen.

Conveyor belts are made of similar material throughout the material handling industry. It is not known at this time whether an investigation or a study has been completed of alternative materials which would mitigate noise generation. The TCEQ has not been delegated the authority to regulate noise, thus this issue is not within the purview of an air quality application review.

It has been the established procedure that the TCEQ does not evaluate potential air emissions from a conveyor belt less than 300 feet long since past experience has shown that fugitive emissions are vey low for shorter distances. No representation in the permit application was provided that indicated any of the conveyor belts would exceed this length.

COMMENT C9: One commenter wanted to know how the crushed rock got from the crusher to the screen and conveyor belts, and whether the pieces of equipment were integral to each other or whether the material was to be transported from crusher to screens and from screens to conveyors. The commenter asked whether the screening/conveyance/stock piling operation always took place while the rock crusher was in operation. (UT Environmental Law Clinic)

RESPONSE C9: Aggregate material that has gone through the rock crusher is dropped onto a conveyor belt that transports the material to a screen. The screen separates the crushed rock into different sizes of aggregate that can be used for various purposes. The separated aggregate is dropped onto conveyors that transport the sized aggregate to various stock piles to await load out to transport trucks. Since the facilities operate as an integral unit, the screening, conveyance mechanisms and stock piling activities will generally always operate when the crusher is operating.

COMMENT C10: One commenter asked for a definition of the term "drop points" which are listed as a source of emissions in other rock crushing permits but is not used in the current draft permit. (UT Environmental Law Clinic)

RESPONSE C10: A drop point generally refers to the location where aggregate material is either dropped from the crusher to a conveyor belt, dropped from the conveyor to a screen, dropped from a screen to a conveyor, dropped from one conveyor to another conveyor, or dropped from a conveyor to a stockpile, etc. In the current Maximum Allowable Emission Rates Table (MAERT) the drop point emissions are either associated with the specific facility, i.e., crusher or screen, or summed into the general category of Material Handling Fugitives.

COMMENT C11: One commenter asked whether the site will stockpile material as it comes off the conveyor or whether it would be loaded directly onto trucks. If stockpiles are to be used, the commenter asked about the number of stockpiles on site at any one time. (UT Environmental Law Clinic)

RESPONSE C11: The permit special conditions and the Maximum Allowable Emission Rates Table (MAERT) specify and regulate emissions from stockpiles. In accordance with Table 17 submitted with the application, the Applicant has represented that there will be a maximum of one acre of stockpiled material at this site.

COMMENT C12: Two commenters requested to know the extent that emissions from haul roads and blasting were considered in addition to the emissions from the rock crushing operation. (G. Darrell Best, David Frederick)

RESPONSE C12: The general definitions in 30 TAC § 116.10(6) state that "[a] mine, quarry, well test, or road is not a facility." Therefore, TCEQ does not have delegated authority to evaluate the emissions from these potential sources. However, the draft permit does state that " No visible fugitive emissions from the crusher, screen, transfer points on belt conveyors, stockpiles, feed bins or *internal roads* and work areas shall leave the property." (emphasis added) In addition, blasting is considered a quarrying operation and, in accordance with the definition stated, the TCEQ has not been delegated authority by legislation to regulate any potential emissions from this source.

COMMENT C13: Several commenters asked about the extent that the entire operation (i.e., quarrying, hauling, crushing, stockpiling, customer pick-up and loading) affect the property line impacts evaluation. (G. Darrell Best, UT Environmental Law Clinic)

RESPONSE C13: The emissions for rock crushing plants in the State of Texas are evaluated based on the TCEQ's jurisdiction as established by the Legislature to evaluate stationary sources of emissions. In this case, the stationary sources include the crushing, screening, conveying, stockpiling, and loading/unloading of material. The impacts analysis encompasses these emissions and is considered in establishing the setback distance from the property line for protectiveness purposes.

COMMENT C14: Several commenters asked about the hours of operation of the facilities, how these hours are monitored, how to insure that the measurement techniques are not circumvented and the action taken by the TCEQ if the hours of operation are exceeded. (G. Darrell Best, Charles S. Brown, Cyd F. Brown, Lynda Greer, Lynn O'Neil, Mike O'Neil, UT Environmental Law Clinic and commenters in Group J)

A question was also posed as to whether the hours of operation could be limited to a certain time during the day. (UT Environmental Law Clinic)

RESPONSE C14: The facilities are authorized to operate five hours per day, five days per week and 30 weeks per year for a total of 750 hours per year in any rolling 12-month period. At this time there is no requirement as to when the five hours per day should be scheduled. It is required by the permit special condition for record keeping as well as 30 TAC §116.115(b)(2)(E) and Tex. Health & Safety Code § 382.016 that records of all operating hours be kept and maintained on site and that the records be made available during regular business hours to personnel from the TCEQ or any air pollution control program having jurisdiction. The statute also states that records be maintained for at least two years.

The TCEQ regional offices audit facilities as time and resources allow. If exceedances of the material throughput are noted, they use criteria to determine the level of the violation based on

its potential to impact health and the environment. If a violation is referred for enforcement action, it may result in penalties and technical requirements to correct the violation. For violations that are not referred for enforcement action, the company is given the opportunity to correct the violation.

COMMENT C15: One commenter asked about the record keeping requirements of the permit limitation on throughput which has been established at 100 tons per hour and 75,000 tons per year. The commenter notes that belt scales on conveyors have been used at some locations while weight bridges have been installed at others. (UT Environmental Law Clinic)

Other commenters asked how the various production weights and how the amount of material removed would be measured and recorded. (G. Darrell Best, Charles S. Brown, Cyd F. Brown, David Frederick, Robert Portman)

RESPONSE C15: As one of the commenters point out, there are several ways in which the Applicant can provide records of the throughput and weight measurements of the facility. The TCEQ does not establish the methodology that must be followed by the applicant, but states in the permit record keeping special condition as well as 30 TAC §116.115(b)(2)(E) that records of the throughput be kept and maintained on site and that the records be made available to personnel from the TCEQ or any air pollution control program having jurisdiction. The statute, and the permit, also state that records be maintained for at least two years.

The TCEQ regional offices audit facilities as time and resources allow. If exceedances of the material throughput are noted, they use criteria to determine the level of the violation based on its potential to impact health and the environment. If a violation is referred for enforcement action, it may result in penalties and technical requirements to correct the violation. For violations that are not referred for enforcement action, the company is given the opportunity to correct the violation. Failure to correct the violation may result in additional enforcement proceedings.

COMMENT C16: One commenter notes that the draft permit allows for aggregate throughput of 100 tons per day and asks how many truck loads this would be. The commenter also asks how many trucks the operator envisions loading and whether the loading would be done while the crusher is in operation or at some other time. In a related concern, the commenter asked whether haul trucks would be weighed prior to leaving the facility to preclude overloaded trucks on the highway, whether there were restrictions on when the trucks could have access to the site to reduce potential interaction with high volume traffic times on the highways, and whether the trucks will be required to be covered with tarps prior to leaving the facility. (UT Environmental Law Clinic)

REPSONSE C16: The draft permit allows for throughput of 100 tons per hour and operation five hours per day resulting in a throughput of 500 tons per day. It is generally recognized that standard short body aggregate dump trucks carry approximately 16-20 tons of aggregate while a tractor/trailer truck carries approximately 40 tons of aggregate. The number of trucks to be loaded would be determined by the combination of short body dump trucks and tractor/trailer

trucks that would be required to transport the necessary material to the various destinations, and whether each truck was to be fully loaded.

The TCEQ does not have jurisdiction over public roads and therefore cannot require an applicant to limit the time frame in which haul trucks can enter or exit the facility. Jurisdiction over public safety including load limits, covering and tarping loads, and public roadway issues in general is held by the Texas Departments of Public Safety and Transportation as well as local law enforcement authorities. Questions or concerns about traffic or public road issues should be directed to these authorities.

COMMENT C17: Two commenters wrote asking whether the facility would only be mining and crushing rock. Apart from the rock crusher, the commenters asked what other operations and what other machinery was intended to be operated and on what frequency. (Darrell Best, UT Environmental Law Clinic)

RESPONSE C17: The permit authorization is for the crushing, screening, handling, etc. of crushed rock. The permit does not authorize any other type of operations or any other machinery than what is found at a typical rock crushing plant. The frequency of operation is listed in the permit as 5 hours per day, 5 days per week and 30 weeks per year.

COMMENT C18: The same commenter asked how the daily limits on operation are monitored and enforced. (UT Environmental Law Clinic)

RESPONSE C18: The question regarding adherence to the operation schedule was addressed to the Applicant and was not addressed to the TCEQ. The TCEQ cannot speak for the Applicant. However, as part of the record keeping requirements in Special Condition 9 of the draft permit, it is the permit owner's responsibility to document the operating hours of the facility to ensure compliance with permit conditions. Furthermore, 30 TAC §116.115(b)(2)(E) and Tex. Health & Safety Code § 382.016 that records of all operating hours be kept and maintained on site and that the records be made available during regular business hours to personnel from the TCEQ or any air pollution control program having jurisdiction.

In addition, individuals are encouraged to report any concerns 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. 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. The status of complaints to the TCEQ may be tracked at the following website http://www.tceq.state.tx.us/compliance/complaints/waci.html

COMMENT C19: One commenter wrote asking how the rock quarrying operation would be conducted and whether the Applicant could show, using an aerial photo or a site map, where the rock will be quarried, where the crusher would be located, how far from the property boundary it would be located, where the piles would be situated, where the trucks would be routed, where the conveyer belts will be located, how often the stock piles would be sprayed, etc.

The same commenter wrote stating that there was no indication in the draft permit regarding any detailed information about that type and size of the machinery that would be operated at the site. The commenter asked if the Applicant would provide information regarding the specific equipment, the capacity for crushing rock, whether it was currently in operation, and how many acres would be mined and whether the Applicant would confirm that the permit would be in operation for 10 years. (UT Environmental Law Clinic)

RESPONSE C19: The questions listed above were addressed to the Applicant and were not addressed to the TCEQ. The TCEQ cannot speak for the Applicant. However, see responses A9 above for information regarding availability of the map; C4 regarding the maximum capacity of the crusher; C2 regarding necessary steps to use a different crusher; and E1 below regarding the 200 foot setback distance from the property line.

Any issues related to quarrying and mining are beyond TCEQ jurisdiction and thus are not addressed.

D. EMISSIONS. CONTROLS and BEST AVAILABLE CONTROL TECHNOLOGY (BACT)

COMMENT D1: One commenter asked what factors the TCEQ considers in reviewing a permit application and what are the determining factors. (Lee Clauser) Another commenter read the TCEQ philosophy from the letterhead as "Protecting Texas by reducing and preventing pollution" and asked what methods are used to reduce and prevent fouling of the community's air and landscape. (Peggy Portman)

RESPONSE D1: The TCEQ considers many factors in an air quality review. One of the major factors to reduce and prevent pollution is the TCEQ's BACT requirement which requires these types of facilities to obtain a minimum of 70 percent control. In accordance with that requirement, the Applicant represented that BACT and best management practices will be implemented through specific control methodologies, such as the use of water sprays and unpaved roads sprayed with water as necessary. The TCEQ requires that permanently mounted water spray bars be mounted at the inlet and outlet of the crusher, at the screen and at all drop points. Best Management Practices state that roads, active work areas and stockpiles shall also be watered to insure emission controls meet all TCEQ rules and regulations.

Based on the controls proposed by the Applicant the proposed facilities meet the NAAQS requirements for protectiveness. In addition, the permit holder must operate within the limits of the permit, including the emission limits as provided by the MAERT. The total emissions of air contaminants from any of the sources of emission must not exceed the values stated on the MAERT attached to the permit entitled "Emission Sources - Maximum Allowable Emission Rates" (30 TAC 116.115(b)(2)(F)).

Emission calculations were based on a level (percent control efficiency) afforded by the specific control method defined in the Applicant's application. If the specific control methods represented are employed, then that level of control is expected. Furthermore, if the Applicant adheres to the

throughput rates during operation of the plant, and the testing required by NSPS (New Source Performance Standards as defined in 40 CFR 60) demonstrates compliance, then emissions rates and emission control effectiveness are expected to be in compliance. The foregoing methods are commonly used and accepted by TCEQ and EPA, and are adequate to demonstrate compliance with applicable law and are acceptable for reducing and preventing air pollution.

COMMENT D2: Commenters asked how emission factors for the air contaminants were determined. Specifically, the commenter asked whether manufacturer's test data or the Environmental Protection Agency's (EPA) AP-42 factors were used. The commenters also asked whether volatile organic compounds (VOCs) from haul trucks and on-site diesel engines were considered. (G. Darrell Best, David Frederick, Robert Portman)

Robert Portman also asked whether particulate emissions from haul roads were included in the evaluation.

Another commenter stated that the quantity of emissions generated would depend not only on the volume of bulk material processed, but also on the age and moisture content of the material as well as the proportion of aggregate fines. As such, each location would then be expected to require different types of water spray solutions. (UT Environmental Law Clinic)

RESPONSE D2: As with all of the rock crushing facilities in the State of Texas, the emission factors used to evaluate this plant were taken from the EPA's Compilation of Air Pollution Emission Factors (AP-42). The use of AP-42 emission factors to establish permit limits is quite common and is an accepted practice by EPA, TCEQ, and regulatory agencies in other states. When test data and or site specific data are available, TCEQ will use that data in permit development, but when no such date is available, AP-42 emission factors are routinely used. This longstanding practice has been in use by the TCEQ and predecessor organizations for more than 30 years. In fact, AP-42 states, "emission factors are frequently the best or only method available for estimating emissions, in spite of their limitations."

In summary, the use of AP-42 emission factors to calculate emissions is considered by the TCEQ to be acceptable. The Air Permits Division at the TCEQ attempts to acquire and use the latest information on emission factors from a variety of sources such as EPA, industry organizations, or testing from similar activities known to the TCEQ.

The TCEQ's jurisdiction is established by the Legislature and is limited to the issues set forth in statute. Accordingly, the TCEQ is granted authority to determine emissions from facilities defined in 30 TAC § 116.10 as "[a] discreet or identifiable structure, device, item equipment, or enclosure that constitutes or contains a stationary source, including appurtenances other than emission control equipment. A mine, quarry, well test, or road is not a facility." Since haul trucks are not stationary sources, the TCEQ does not have the delegated authority to evaluate the VOC emissions from these vehicles. There are no on-site diesel engines authorized by this permit.

COMMENT D3: G. Darrell Best asserts that the Review Analysis and Technical Review states the emission controls will be measured by calculation. The commenter expressed concern that the calculations based on throughput records and are not accurate and makes the measurements suspect. The commenter asks what steps the TCEQ will take to ensure that the calculation of emissions is accurate.

RESPONSE D3: The TCEQ requires that the Applicant maintain records of the daily, monthly and annual throughput of the facility along with the hours of operation. These parameters can be used with EPA approved emission factors to determine the rate of emissions from the facilities. The TCEQ regional offices will audit the facility as time and resources allow. If exceedances of the operating parameters are noted, they use criteria to determine the level of the violation based on its potential to impact health and the environment. If a violation is referred for enforcement action, it may result in penalties and technical requirements to correct the violation. For violations that are not referred for enforcement action, the company is given the opportunity to correct the violation. Failure to correct the violation may result in additional enforcement proceedings.

COMMENT D4: Several commenters asked if water would be used to control emissions, how the water would be supplied and how the excess water would be contained. (Jean Lane, UT Environmental Law Clinic and commenters in Groups I and J)

RESPONSE D4: It is the Applicant's responsibility to supply sufficient water or environmentally sensitive chemical suppressant to meet the requirements stated in the permit conditions. If these conditions cannot be met the Applicant cannot operate the facilities. Control of the run-off of excess and/or used water is regulated through other permitting actions.

COMMENT D5: Several commenters requested information on how the BACT levels of emissions were determined and the percentage control that is considered BACT for VOCs and particulate matter emissions. (G. Darrell Best, Charles Brown, Cyd Brown, David Frederick, Robert Portman and commenters in Group J)

RESPONSE D5:
For particulate matter emissions, the EPA's most recent emission factors indicate the use of wet suppression through water sprays, etc., can achieve over 90 percent control, and some sprays could be as effective as an enclosure. To be conservative and protective, the protocol adopted by the TCEQ has been to associate a 70 percent control with regard to water spray and to insure that the facility is protective, with an adequate margin of safety, of public health, including sensitive members of the population such as children, the elderly, and individuals with existing lung or cardiovascular conditions. The evaluation also determined that the facilities meet the secondary NAAQS which are those that the Administrator deemed necessary to protect the public welfare and the environment, including animals, crops, vegetation, and buildings, from any known or anticipated adverse affects associated with the presence of an air contaminant in the ambient air.

The Applicant represented that BACT and best management practices will be implemented through specific control methodologies, such as the use of water sprays and unpaved roads

sprayed with water as necessary. The TCEQ requires that permanently mounted water spray bars be mounted at the inlet and outlet of the crusher, at the screen, and at all drop points. Best Management Practices require that roads, active work areas and stockpiles shall also be watered to insure emission controls meet all TCEQ rules and regulations.

Emission calculations were based on a level (percent control efficiency) afforded by the specific control method defined in the Applicant's application. If the specific control methods represented are employed, then that level of control is expected.

There are no VOC emissions associated with this permit authorization so discussion of BACT requirements for VOCs is not pertinent to this review.

COMMENT D6: One commenter asked whether the permit would ensure that no more than BACT level emissions would be expected. (David Frederick)

RESPONSE D6: If the facility is operated in accordance with all permit conditions, limits and applicable TCEQ rules, compliance with BACT is expected. The emission limits established in the MAERT are considered to be BACT level emissions. The total emissions of air contaminants from any of the sources of emission must not exceed the values stated on the MAERT attached to the permit entitled "Emission Sources - Maximum Allowable Emission Rates" (30 TAC 116.115(b)(2)(F)).

In addition, if necessary, the TCEQ Regional Director may request that the permit holder conduct ambient air monitoring or testing for compliance determination. Specifically, Special Condition 8 states: "...the holder of this permit shall perform ambient air monitoring, or other testing as required to establish the actual pattern and quantities of air contaminants being emitted into the atmosphere. The tests shall be performed during normal operation of the facilities and shall be performed in accordance with accepted TCEQ practices and procedures."

COMMENT D7: One commenter who is a licensed irrigator expressed concern regarding the perceived double standard existing that does not allow him to overspray water onto masonry or concrete surfaces but, yet, allows the Applicant to use water to control particulate emissions. (David Greer)

RESPONSE D7: This application is subject to state and federal air emission control regulations that allow the use of water or chemical suppressant. For rock crushing facilities, the EPA's most recent emission factors indicate the use of wet suppression through water sprays to control particulate matter emissions. The beneficial use of water for particulate control is not comparable to irrigation overspray which may be considered waste and inconsistent with water conservation requirements under landscape irrigation rules.

COMMENT D8: One commenter asked whether conveyors would be kept constantly wet to avoid fugitive emissions. Another commenter stated that the requirement for use of emission controls at the inlet and outlet of the crusher, at the shaker screen and at all material transfer points is required only upon detection of visible emissions and to comply with all TCEQ rules

and regulations. The commenter asked if, as in other permits, it would be more appropriate to state that material processed beyond the crusher and screen be "saturated with water" to give a clearer indication of what is required. (UT Environmental Law Clinic)

RESPONSE D8: Conveyors will not be kept constantly wet since conveyors are not considered a major source of emissions in these facilities. The applicant has represented that spray bars will be located and maintained at the inlet and outlet of the crusher, at the screen and at all aggregate drop points. The sprays will be utilized as necessary to insure that the rules and regulations of the TCEQ are met including opacity limitations and visible emission requirements. The spray bars are not required to be used during times of rain, or if the material has sufficiently high moisture content that would preclude generating emissions, as this would be a waste of resources.

Depending on the nature of product being produced, some facilities of this nature require that the process beyond a certain point be saturated with water. These processes are usually associated with plants making sand or a fine aggregate product. The EPA has established that spray bars, used at the points defined above, are adequate to reduce the emissions by as much as 90 percent. To require a process to remain saturated with water when it is not required for the final product is a waste of resources.

COMMENT D9: One group of commenters asked what the opacity limits were for the crushing operations, transfer points, conveyors, screens, feed bins and stockpiles. (Group J)

RESPONSE D9: As noted above, water sprays will be utilized as necessary to insure that the rules and regulations of the TCEQ are met including opacity limitations and visible emission requirements. In accordance with draft permit Special Condition 4, "Opacity of emissions from any transfer point on belt conveyors or the screen shall not exceed 10 percent and from any crusher shall not exceed 15 percent, averaged over a six-minute period as determined by EPA Test Method (TM) 9 or equivalent." In addition, Special Condition 5 states that "[n]o visible fugitive emissions from the crusher, screen, transfer points on belt conveyors, stockpiles, feed bins or internal roads and work areas shall leave the property. Visible emissions are defined as the observation of emissions that exceed a cumulative 30 seconds in duration in any six-minute period as determined using EPA TM 22 or equivalent. If this condition is violated, additional controls or process changes may be required to limit visible particulate matter (PM) emissions."

COMMENT D10: With regard to stock piles, the commenter asked about the mitigating steps taken to minimize emissions, e.g., building wind breaks, keeping the piles wet, covering them with tarpaulins, etc. and whether the relevant stockpiles will be sprayed before loading or if spray points will be attached to the front end loader similar to drop points on conveyors. (UT Environmental Law Clinic)

RESPONSE D10: Draft permit Special Condition 5B requires Area-type water sprays be installed at all stockpiles and active work areas. Special Condition 5C, states that stockpiles will be sprayed with water and/or environmentally sensitive chemicals to minimize particulate emissions. This condition can be met with area type water sprays or a water truck. It is the

Applicant's responsibility to insure that the stockpiles are kept sufficiently wet as to minimize emissions and meet the requirements of the TCEQ rules and regulations concerning opacity and visible emission limitations. Also, Special Condition 5D states that stockpile heights shall not exceed 45 feet unless approved by the TCEQ Regional Office and/or any appropriate local air programs with delegation.

Because this application is for a change of location, Special Condition 7E(3) applies which states the following: "Stockpiles and vehicle traffic areas (except for entrance and exit to the site) shall be located at least 25 feet from any property line. In lieu of meeting the distance requirements for roads and stockpiles, the following must occur: a. Roads and other traffic areas within the buffer distance must be bordered by dust suppressing fencing or other dust suppressing barrier along all traffic routes or work areas. These borders shall be constructed to a height of at least twelve feet; and b. Stockpiles within this buffer distance must be contained within a three-walled bunker which extends at least two feet above the top of the stockpile.

COMMENT D11: The commenters also asked if there could be a spraying schedule for roads, work areas and stock piles stating that the phrase "as necessary to maintain compliance" as used in the permit special conditions is too vague. They contend that a spraying schedule such as stipulated in other permits would be beneficial to maintain compliance. (UT Environmental Law Clinic)

RESPONSE D11: New Source Review (NSR) air permits may have stipulations and conditions which are germane to the facility being permitted, the community in which it operates, the proximity to sensitive receptors, etc. The requirement to spray roads, work areas and stock piles on a given schedule may have arisen from any number of special requirements. In most cases and for most of the rock crushing facilities in the State of Texas, however, the requirement to spray the roads, work areas, and stock piles as necessary to maintain compliance with all state and federal rules and regulations is sufficient to insure that emissions are kept at a minimum.

COMMENT D12: One commenter stated that other Texas air permits require that the crusher and screen be partially enclosed, that rubber lining be used to minimize noise, that screens and conveyors are covered when possible, and that chutes are used to control emissions from free fall material. The commenter questioned why structures such as these could not be incorporated into the present configuration. (UT Environmental Law Clinic)

RESPONSE D12: As stated earlier in this section, the TCEQ requires that facilities of this nature meet BACT which is defined as a minimum of 70 percent control of emissions. The EPA has determined that water sprays are sufficient to meet this criterion.

Other facilities, to which the commenter alludes, may use other methods of emission control to reduce emissions further. This is usually done for facilities with much higher throughput, thus higher emissions, and located in areas where they may be required to be close to a property line or sensitive receptor. For this facility, the property line set back distance established for the Applicant's plant, is protective and thus other emission controls are not required to comply with emission limitations as established by the NAAQS.

COMMENT D13: The commenter questioned whether there were plans to pave the roads to mitigate noise and emissions. If roads are not paved, the commenter asked how the fugitive visible emissions could be prevented. Additionally, if the permit assumes that the roads will not be paved, the commenter asked how the emissions would be factored into the Maximum Allowable Emission Rates Table (MAERT) which does take into account the loading/unloading emissions and material handling. (UT Environmental Law Clinic)

RESPONSE D13: Special Condition 3 states: "No visible fugitive emissions from the crusher, screen, transfer points on belt conveyors, stockpiles, feed bins or internal roads and work areas shall leave the property...." Special Condition 5 requires all in-plant roads and traffic areas, active work areas and aggregate stockpiles be sprayed with water and/or environmentally sensitive chemicals upon detection of visible particulate emissions to maintain compliance with all TCEQ rules and regulations. In addition, Special Condition 9D requires recordkeeping of daily application of road dust control .

Furthermore, as discussed previously, applicants must also comply with 30 TAC §101.4, which prohibits nuisance conditions. As long as the facility is operated in compliance with the terms of the permit, nuisance conditions, or air pollution are not expected.

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, whether from a facility or a road, when determining whether to approve an application for an air quality permit. See also response B4 above for additional information regarding noise.

COMMENT D14: One commenter pointed out that permits for other nonmetallic mineral processing plants require that a plant's roads, including the entrance road, be paved with a cohesive hard surface which could be cleaned by sweeping or washing. The commenters also asked what BACT would be used to ensure that the trucks leaving the facility are not overloaded. (UT Environmental Law Clinic)

RESPONSE D14: The commenter is correct in that some nonmetallic mineral processing plants require that the plant's entrance roads be paved and cleaned. Each New Source Review (NSR) permit is handled separately and specific conditions may apply to some which do not apply to others. These case-by-case reviews depend on several variables, such as, whether the plant is permanent or temporary, the size of the manufacturing process, the applicant's compliance history, and consideration of regional office concerns.

The overloading of trucks is not a BACT issue and is not relevant to the issues pertaining to an air quality permit. Overloading of trucks and enforcement of trucking issues is consistent with public roadway issues in general and is under the jurisdiction of the Texas Departments of Public Safety and Transportation as well as local law enforcement authorities. Questions or concerns about traffic or public road issues should be directed to these authorities. See also Response G11 below.

COMMENT D15: One commenter asks if the Applicant will be keeping any form of hazardous materials on site and what precautions are taken to maximize safety with respect to these materials. (UT Environmental Law Clinic)

REPSONSE D15: The permit does not authorize any hazardous materials at this site.

COMMENT D16: One commenter states that the permit requires spray points on the conveyor and asks the Applicant how these spray points are maintained and by whom. (UT Environmental Law Clinic)

RESPONSE D16: The concerns regarding spray bar maintenance is addressed to the Applicant and is not addressed to the TCEQ. The TCEQ requires that operating spray bars be placed on all material transfer points. However, it is the responsibility of the owner/operator to insure that the spray bars are operating in a manner that minimizes the emissions from the conveyor drop points, and to establish a methodology to insure the maintenance of the spray bars. Special Condition 9D requires the applicant keep records of all repairs and maintenance of abatement systems which includes the spray bars.

COMMENT D17: One commenter stated there were apparent errors in the determination of the annual emission rates for the facility. (David Frederick)

RESPONSE D17: The permit reviewer does not know of any errors that were made with respect to the evaluation of the annual emission rates and would need more detail to determine the commenter's concerns to address this comment.

COMMENT D18: One commenter asked whether pure water or a chemical compound would be used to minimize dust emissions and asked what steps would be taken to insure the chemicals would not contaminate the water runoff and affect local residents with regard to wells or streams. (UT Environmental Law Clinic)

RESPONSE D18: As stated in the permit conditions, emissions are to be minimized either by water sprays and/or environmentally sensitive chemicals. The containment of the runoff, the requirements for authorization, and the integration of controls with the air permit will be discussed below in Section J.

E. PROTECTIVENESS and HEALTH EFFECTS

COMMENT E1: Many commenters expressed concerns over effects on air quality in general, noting specific concerns regarding the quality of life, use and enjoyment of their property, and the impact to the environment, including breathing the air for both younger and older populations and the effects on all life. Commenters were especially concerned with the effects on existing health conditions especially with children and adult residents who have preexisting respiratory conditions such as asthma, respiratory diseases and sinus complications. (Sid Miller (Texas State Representative), Zach Cummings (for Commissioners, County of Somervell), Barbara Bowman (President, Tarrant Coalition for Environmental Awareness), Margaret A. Adams, Steve Allen,

Mark and Patricia Beauregard, George D. Best, George and Mary Best, Charles S. Brown, Cyd F. Brown, Florence R. Brown, Lila Carter, Lee and Beverly Clauser, Patrick R. Condy (Executive Director, Fossil Rim Wildlife Center), Curt Decker, John Graves, Lynda Greer, Sherman Griffith, Linda Gustafson, Douglas Hickok, Kelly Hoodenpyle, Sylvia Huckabee, Tommie Huckabee, Rhett H. Johnson, Jean Lambert, Linda Lander, Dorothy Jean Lane, Jean Lane, Mary Lee Lilly, Dennis L. Lutes, Pat Matthews, Wayne McKethan, Marcia Miller, Barry Payne, Claire Payne, Robert K. Portman, Jr., Francine Singleterry, Ron Singleterry, Linda Steinberger, Sandra Stringer, Stanley J. Stephens, Allen Sumners, Jimmie Sumners, Joan Echols Taylor, Mary O. Taylor, Robert J. Taylor, David Whitsitt, concerned citizen (illegible signature) and commenters listed in Groups A, B, C, E, H, and I)

RESPONSE E1: For many permits, potential impacts to human health and welfare or the environment are determined by comparing predicted emission concentrations from the proposed facility to appropriate state and federal standards and effects screening levels.[2] The specific health-based standards or guidance levels employed in evaluating the potential emissions include the National Ambient Air Quality Standards (NAAQS) and TCEQ standards contained in title 30 of the Texas Administrative Code (30 TAC).

National Ambient Air Quality Standards (NAAQS), as created by the United States Environmental Protection Agency (EPA), are defined in the federal regulations (40 C.F.R. § 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 affects associated with the presence of an air contaminant in the ambient air. If the proposed facility is operated as required, no adverse health effects are expected.

For most permit applications, an air quality analysis, which may include air dispersion modeling, is performed to predict the impacts of emissions outside the plant property. After a permit application's modeling review is complete, in most instances, the modeling results are then sent to the TCEQ's Toxicology Section to evaluate whether emissions from the proposed facility are expected to cause health or nuisance problems. The Toxicology Section reviews the results from air dispersion modeling and compares these to the TCEQ Effects Screening Levels (ESLs). However, emissions from certain industries on the toxicology section "screening list"[3] do not require a toxicology impacts review. Emissions of particulate matter from facilities like rock crushers, concrete batch plants, and soil-stabilization plants are included on the screening list

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[2] See the document "Air Quality Modeling Guidelines" for details on air modeling at the TCEQ website at http://www.tceq.state.tx.us/assets/public/permitting/air/Guidance/NewSourceReview/rg25.pdf. Also visit the agency air modeling page at http://www.tceq.state.tx.us/permitting/air/nav/modeling_ index.html.

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

because the PM emissions are not expected to have adverse impacts. Therefore, if expected emissions are within federal limits, the permit is considered protective.

During the review of the initial air permit (air permit no. 82199L001) the permit reviewer used existing modeling results to verify that predicted ground level concentrations from the proposed facility are not likely to adversely impact off-property receptors. Ambient air is defined as "that portion of the atmosphere, external to buildings, to which the general public has access" (40 CFR § 50.1(e)). Furthermore, 30 TAC § 101.4 states that air contaminants shall not be discharged in such concentrations 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." Since a receptor is defined as an off-property location that is protected with respect to the NAAQS, within the boundaries of a company's property there may be emission levels over the NAAQS that are not considered to be exceedances.

For this specific permit application, the air dispersion modeling evaluation was extrapolated from the protectiveness evaluation completed for the Tier I and Tier II rock crusher standard permit. Information on the Tier I and Tier II parameters can be found in the July 2005 TCEQ document entitled, "Amended Air Quality Standard Permit for Temporary Rock Crushers and Temporary Concrete Crushers". The Tier I facilities are limited to one primary crusher, two conveyors and two screens with a throughput limitation of 125 tons per hour and a required protectiveness setback of 200 feet from the nearest property line. The Tier II facilities are limited to one primary crusher, one secondary crusher, two screens and any associated conveyors with a throughput limitation of 250 tons per hour and a required protectiveness setback of 300 feet from the nearest property line. The current application is for one crusher, one screen and a throughput limitation of 100 tons per hour which is less equipment and a lower throughput than specified for a Tier I rock crushing facility. Thus, the 200 feet setback for these facilities is expected to be adequate and protective.

The protectiveness review that resulted in the off-set distance requirements of these facilities was evaluated using the conservative SCREEN modeling methodology. In addition to the use of a conservative SCREEN modeling approach, the protectiveness distances were evaluated based on the more restrictive state 1-hour and 3-hour particulate matter (PM) specifications of 200 $\mu g/m^3$ and 400 $\mu g/m^3$ respectively.4 The rule specifying the state particulate matter standard was repealed in 2006. Currently, the federal NAAQS levels for particulate matter are the sole basis for protection of public health and welfare.

To determine the federal NAAQS levels for protectiveness with regard to PM_{10} particulate matter, air dispersion modeling was adapted from the Air Quality Standard Permit for Permanent Rock and Concrete Crusher which was effective July 31, 2009. The model used the EPA-approved Industrial Source Complex Model Short Term (ISCST) Version 02035 air modeling program to provide a reasonable worst case representation of potential impacts from the proposed facilities on the area surrounding an applicant's operations. The likelihood of whether

[4] 31 TEX. REG. 4651(2006).

adverse health effects caused by emissions from the facilities 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 effects screening levels.

To capture the effects of the location, the model used EPA-approved algorithms providing rural and urban dispersion coefficients and flat terrain. The analysis also incorporated five years of National Weather Service meteorological data to insure that all wind speeds and wind directions would be taken into account. The NAAQS for PM_{10} is based on a 24-hour time period. The measurement for predicted concentrations of air contaminants in modeling exercises is expressed in terms of micrograms per cubic meter ($\mu g/m^3$). 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 $\mu g/m^3$ are not expected to exacerbate existing conditions or cause adverse health effects. Modeling for the Standard Permit facilities used a generic state-wide background emission concentration of 60$\mu g/m^3$ for the 24-hour averaging time and 20$\mu g/m^3$ for the annual averaging time and resulted in predicted PM_{10} concentrations, at the facility's property line, of 146 $\mu g/m^3$ (24-hour) and 43 $\mu g/m^3$ (annual), which are below the NAAQS.[5] Therefore, based on the potential concentrations of the facilities defined in the Standard Permit for rock and concrete crushers, as reviewed by the Executive Director's staff, it is not expected that existing health conditions would worsen, or that adverse health effects in the general public, sensitive subgroups, or animal life would occur as a result of exposure to the expected levels of PM_{10}.

The particulate matter concentrations described above were based on an overall emission rate of 0.61 lb/hr of particulate matter less than 10 microns in diameter, i.e., PM_{10}. As shown in the draft MAERT for this permit, the Applicant's emission rates have been evaluated to be 0.22 lb/hr. These emissions are 36% or just over 1/3 of the emissions associated with the Standard Permit facilities. Therefore, in comparison to the TCEQ standard permit that authorizes emissions nearly two-thirds greater than those listed in this permit, predicted emissions from the pending application are considerably less.

For an initial evaluation of the Applicant's facilities, it can be assumed that particulate matter emissions and the concentration levels are directly proportional so that the concentration levels associated with the Standard Permit can be reduced to the same 36% level and be reflective of the Applicant's operation. If the generic background concentrations are subtracted from the 24-hour and annual PM_{10} concentrations found for the Standard Permit, the facility only concentration would be (146 $\mu g/m^3$ - 60 $\mu g/m^3$) = 86 $\mu g/m^3$ and the annual time averaged concentration would be (43 $\mu g/m^3$ - 20 $\mu g/m^3$) = 23 $\mu g/m^3$. The 36% value of the facility only emission concentrations would result in a 24 hour averaged concentration of 31 $\mu g/m^3$ with an

[5] EPA repealed the annual time period standard, which had been set at 50 $\mu g/m^3$. Despite the repeal, annual time period modeling was conducted. It was found that this facility would meet the repealed standard. The annual standard was revoked in 2006 due to a lack of evidence linking health problems to long-term exposure to coarse particle pollution. (effective December 17, 2006.)

annual time averaged concentration of 8.3 $\mu g/m^3$. If these facility specific emission concentrations are added to the background concentration associated with Somervell or Erath Counties of 60 $\mu g/m^3$ for the 24 hour averaging period and 20 $\mu g/m^3$ for the annual averaging period, the maximum ground level concentration (GLCmax) would be (31 $\mu g/m^3$ + 60 $\mu g/m^3$) or 91 $\mu g/m^3$ for the 24 hour averaging period and (8.3 $\mu g/m^3$ + 20 $\mu g/m^3$) or 28.3 $\mu g/m^3$ for the annual averaging time frame.[6] These numbers are 61 % of the EPA NAAQS limitations of 150 $\mu g/m^3$ for the 24 hour averaging period and 57% of the EPA NAAQS limitation of 50 $\mu g/m^3$ for the annual averaging period.

This air dispersion modeling evaluation process provides a conservative prediction that is protective of the public. The modeling predictions for the Standard Permit that these numbers are based on were developed by the TCEQ Air Permits Division and the modeling analysis was determined to be acceptable.

In summary, the fact that the GLCmax concentrations are below the NAAQS requirements at all locations indicates that there is no violation of the EPA NAAQS at any place on adjoining properties or beyond, due to the operation of the facilities authorized by this application. This is also an indication that, for a rock crushing facility of this size, there would be no requirement to dictate a set back distance from the property line. Thus, it is an additional protective measure to maintain the 200 foot set back requirement established by the original permit and unchangeable during a Change of Location request

The Executive Director has reviewed the application in accordance with the relevant law, policy and procedures, and the Agency's mission to protect the state's human and natural resources consistent with sustainable economic development. As long as the facility is operated as specified in the permit 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.

In addition to complying with the federal and state standards and guidelines mentioned above, and as noted previously in this response, applicants 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 of 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 facility is operated in compliance with the terms of the permit, nuisance conditions, or conditions of air pollution are not expected. According to the facility's maximum allowable emission rates table in the draft permit, the facility will emit approximately 0.56 tons per year (tpy) of PM and 0.28 tpy of PM_{10}. These emissions are not expected to create nuisance conditions.

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

[6] REFERENCE: Screening Background Concentrations, Dom Ruggeri, September 4, 1998

Complaints Hotline at 1-888-777-3186. 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. The TCEQ has long had procedures in place for accepting environmental complaints from the general public but now has a new tool for bringing potential environmental problems to light. 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.state.tx.us (under Publications, search for document no. 278).

COMMENT E2: One commenter stated that it appeared no modeling had been accomplished for a rock crushing facility at this location (i.e., in Somervell County) concluding that this falls short of meeting the regulatory requirements. (UT Environmental Law Clinic)

RESPONSE E2: In many instances a model of similar facilities can be adapted to provide protectiveness information. In this case the protectiveness distance was determined using the similar system based on the permanent rock crushing standard permit documented in the July 31, 2008 report entitled "Air Quality Standard Permit for Permanent Rock and Concrete Crushers." The standard permit facilities allow two crushers, two screens and associated conveyors with a throughput limitation of 200 tons per hour and an operating schedule of 2,640 hours per year.

The current application is for a facility that is half this size, i.e., one crusher, one screen with associated conveyors and a throughput limitation of 100 tons per hour and an operating schedule limited to 750 hours per year. Thus, since it is a similar operation, it can be expected that the PM_{10} concentrations would be similar to the Standard Permit concentrations and could be evaluated based on past modeling. This methodology has been defined in detail in the response to the previous comment. And, as stated in the previous response, when these concentrations are combined with the background particulate matter concentrations for Somervell or Erath counties the results are indicative of a small rock crushing facility in the specific area. This evaluation meets the regulatory requirements.

COMMENT E3: One commenter asked how high the dust would go. (Rhett Johnson)

RESPONSE E3: The evaluation of the air dispersion modeling described in the prior responses takes into account the complete range of meteorological effects in Texas. Thus, the effects of the height of the dust plume with regard to the effects created on the general population, has been taken into account through the meteorological data that is incorporated into the modeling results. The worst case scenario is not how high a dust plume will go, but rather a consideration of a high concentration, low level terrain following fugitive dust plume. It is this terrain following plume that was considered in the air dispersion modeling and the basis of the protectiveness review.

COMMENT E4: Several commenters questioned the potential health effects of people working at the site since the air quality permit only regulates the quality of air that leaves the permitted premises. (Charles S. Brown, Cyd F. Brown and Florence R. Brown)

RESPONSE E4: On-site health effects regarding employees for this operation are regulated by the Occupational Health and Safety Administration or OSHA. On-site health effects regarding employees at quarries, mines, and pits are regulated by the Mine Safety and Health Administration under the Department of Labor of the Federal government.

In addition , as detailed in the first response of this section, the air dispersion modeling reflecting the facilities' operation indicates that the maximum ground level concentration (GLCmax) of PM_{10} emissions meets the primary standards that the Administrator of the EPA determine 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. The evaluation also indicates the facilities meet the secondary NAAQS which 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 affects associated with the presence of an air contaminant in the ambient air.

COMMENT E5: One commenter asked if it were sufficient to have the specified 200 ft. setback requirement for the rock crushing facilities and the 25 ft. setback requirement for stock piles. The commenter stated that other permits had far greater distances and asked if that were feasible in this case. The commenter also questioned whether the special condition of no visible emission leaving the property line could be accomplished with the specified 200 ft. setback requirement. (UT Environmental Law Clinic)

RESPONSE E5: As was discussed in the response E1 above, the 200 ft. setback requirement is based on rescinded state requirements. As stated in that response, air dispersion modeling based on the level of PM_{10} emissions from this facility (0.28 tons/year) indicates that the federal requirement dictated by the EPA would not require any distance setback to meet the NAAQS concentrations. Thus, it is expected that the setback distance required by the permit's special conditions for both the facilities and the stock piles will be more than adequate for meeting the health and protectiveness requirements specified by the EPA.

The commenter is correct in stating that there are other permits that require greater setback distances for the permitted facilities. As has been discussed, the setback requirements are based on the expected emission concentrations at the property line calculated through the EPA's air dispersion modeling programs compared to the applicable NAAQS standards. The modeling evaluation accounts for a wide variety of different parameters (e.g., emissions, hours of operation, surrounding terrain, etc.) that result in unique distance requirements for each specific case. Although it may be feasible to require a greater protectiveness distance, there is no specified algorithm to justify a different distance.

If the facilities are operated as required by the conditions of the permit, compliance with the special condition stating that no visible emissions shall leave the property line as evaluated using the EPA's Test Method 22 or equivalent should be achieved.

COMMENT E6: Two commenters, who own adjacent land, asked how close to the fence line the Applicant could extract rock and other materials. (Charles S. Brown, Cyd F. Brown)

RESPONSE E6: The protectiveness review described above requires the crushing operation to be at a distance greater than or equal to 200 feet from the property line. The TCEQ does not have authority delegated by legislation to regulate the quarrying of rock to be used in the crushing operation. Thus, there is no distance limitation within this permit addressing the quarrying operations.

COMMENT E7: Several commenters asked if the emission limitations in the permit reflect the actual conditions of quarrying in the Glen Rose area specifically whether the move to the new location reflected the background emissions of Somervell County, the type of rock in the area, the wind conditions and other unique geological factors that may need to be considered in the permitting process. (David Frederick, UT Environmental Law Clinic)

RESPONSE E7: The modeling evaluation which resulted in the PM_{10} emission concentrations stated in the response E1 above was based on five years of meteorological data for the state of Texas and included rural conditions that reflect conditions similar to those found in the Glen Rose area. As stated in an earlier response, the resultant concentration estimates were further individualized by adjusting the background concentrations of particulate matter emissions to reflect those values associated with both Somervell and Erath Counties. The type of rock was accounted for in the analysis through the use of the generic EPA emission factors for nonmetallic mineral processing plants. It has been determined by the EPA that the emission factors published are adequate and sufficient to reflect a wide variety of materials including limestone.

COMMENT E8: Many commenters asked whether the effects of silica had been considered with respect to the limestone crushing operation. (G. Darrell Best, George and Mary Best, Charles S. Brown, Cyd F. Brown, David Frederick, Robert Portman and commenters in Groups A and J)

Other commenters were concerned with other pollutants such as nitrogen oxides, sulfur oxides, carbon monoxide, total organic compounds, total suspended particulate matter (uncontrolled), total suspended particulate matter (controlled), radon, and hazardous air pollutants including but not limited to any potential heavy metal composition of the rock or any known carcinogens. (G. Darrell Best, George and Mary Best, Jean Lane, Robert Portman, Allen Sumners, Jimmie Sumners and commenters in Groups A and J)

RESPONSE E8: The permit application being reviewed is for the crushing of limestone and the control of resultant particulate matter emissions. Limestone can, potentially, be broken down into its speciated components of which silica or trace metals are a possible contaminant. However,

the other contaminants enumerated by the commenters are not associated with the crushing of limestone.

As noted in Response E1, an air quality analysis, which included air dispersion modeling, was performed in order to predict the impacts of emissions outside the plant property. In most instances, the modeling results are then sent to the TCEQ's Toxicology Section to evaluate whether emissions from the proposed facility are expected to cause health or nuisance problems. The Toxicology Section reviews the results from air dispersion modeling by comparing those results to the TCEQ Effects Screening Levels (ESLs). However, emissions from certain industries on the toxicology section "screening list" do not require a toxicology impacts review. Emissions of particulate matter from facilities like rock crushers, concrete batch plants, and soil-stabilization plants are included on the screening list because the PM emissions have established NAAQS levels as previously mentioned and do not require evaluation by toxicology.[7]

The EPA does not provide emission factors for silica nor do they have silica standards. Silica is not considered a hazardous air pollutant by EPA. However, silica is a consideration for workers and employees that work around equipment that could generate silica dust. Therefore, there are specified limitations on silica concentrations for employee safety. These concentrations and employee health considerations are overseen by the Mine Safety and Health Association under the Department of Labor and not EPA, or the TCEQ. Off property particulate matter emissions are a consideration of EPA and the TCEQ which include particle sizes equal to and less than 10 microns in aerodynamic diameter (PM_{10}) as discussed above.

COMMENT E9: Two commenters expressed concerns regarding the absence of emissions quantified as particulate matter equal to or less than 2.5 micrometers in diameter ($PM_{2.5}$). (G. Darrell Best, David Frederick)

RESPONSE E9: As stated in the response to the first comment in this section, the modeling results demonstrate that the site, with the facilities and operation as defined in the permit Change of Location application, will be conservatively protective with respect to the PM_{10} NAAQS. Although the EPA published a final rule package governing the implementation of the New Source Review (NSR) program for $PM_{2.5}$, it gave states with EPA approved Prevention of Significant Deterioration (PSD) programs (like Texas) up to three years from the publication date to submit revised State Implementation Plans (SIPs) that incorporate these NSR requirements.[8] Until that incorporation is defined, applicants are expected to conduct the air

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[7] The study used to make this determination can be found at:
www.tceq.state.tx.us/assets/public/permitting/air/Guidance/NewSourceReview/mera.pdf.

8 Notice of adoption of the PM 2.5 rule was published on May 16, 2008. The rule became effective on July 15, 2008. On October 23, 1997, EPA issued a memorandum providing for PM_{10} to be used as a surrogate for $PM_{2.5}$. (U.S. EPA Memorandum from John S. Seitz, Director of Office of Air Quality Planning and Standards, *Interim Implementation of New Source Review Requirements for PM2.5*, October 23, 1997.) EPA reaffirmed that conclusion in a memorandum dated April 5, 2005. (U.S. EPA Memorandum from Stephen D. Page, Director, *Implementation of New Source Review Requirements in PM-2.5 Nonattainment Areas*, April 5, 2005.) EPA continued to recognize the issue and outstanding difficulties implementing $PM_{2.5}$ in its *Proposed Rule to Implement the Fine Particle National Ambient Air Quality Standards*. (70 Fed. Reg. 65984, 66043, November 1, 2005) EPA also noted in the Final Rule that it did not include final $PM_{2.5}$ requirements and that they would be issued in a later rule. With respect

dispersion modeling necessary to show that PM_{10} emissions will not cause a violation of the PM_{10} NAAQS as a surrogate for demonstrating compliance with the $PM_{2.5}$ NAAQS.

While EPA recently stated the intent to issue a separate Federal Register notice soliciting comments on the issue of ending the PM_{10} Surrogate Policy in states with EPA-approved PSD programs in their SIP, the EPA has not acted to stay the transitional guidance for SIP-approved states.[9] Therefore, PM_{10} controls and emissions were modeled and predicted PM_{10} concentrations were compared to the PM_{10} NAAQS, and compliance with the PM_{10} NAAQS was used as the surrogate for compliance with the $PM_{2.5}$ NAAQS. EPA has also recently stated that, on a case-by-case basis, applicants must demonstrate that using PM_{10} as a surrogate for $PM_{2.5}$ is appropriate. In this instance, the application is for a change of location which does not authorize any changes from the current permit requiring additional review, as would an amendment. See also response D2 above regarding the use of emission factors for determining emission limits and Responses F17, and F9 below regarding the application type and review.

COMMENT E10: Commenters stated that this action would have a negative impact on the regions ability to meet the NAAQS for PM_{10} since Somervell County is part of a voluntary regional planning entity made up of 16 North Central Texas counties tasked with meeting federal clean air standards for the region. (Beverly Woolley (Texas State Representative), George and Mary Best, Charles S. Brown, Cyd F. Brown, Patrick R. Condy (Executive Director, Fossil Rim Wildlife Center), Sherman Griffith, Glenda Keilstrup, Gail I. Morris (President, Fort Worth Audubon Society), and commenters listed in Groups A, B, C, D, F, and J)

Several commenters asked if the TCEQ had contacted the Somervell County Judge and County Commissioners to get their input on this issue. (Charles S. Brown and Cyd F. Brown, Robert Portman)

RESPONSE E10: None of the commenters stated which counties are included in the 16 North Central Texas counties that they refer to in this comment. It is assumed that the reference is to the 16 county North Central Texas Council of Governments (NCTCOG, www.nctcog.org) of which Somervell and Erath Counties are members. The TCEQ does work in conjunction with the federal EPA programs and all appropriate local air programs with delegation. As documented in the Federal New Source Review Permits (FNSR Permits) Applicability Determination reference guide, there are nine counties that would make up what could be considered a north central Texas area for pollution control. The federal government lists these as the Dallas/Fort Worth (DFW) Area and Counties which is composed of Collin, Dallas, Denton, Tarrant, Ellis, Johnson, Parker, Kaufman and Rockwell. The counties of Somervell and Erath are not a part of this classification.

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to the transition to the $PM_{2.5}$ standard, EPA established different requirements for delegated states and SIP-approved states. For SIP-approved programs, the EPA will allow the state to "continue to implement a PM_{10} program as a surrogate to meet the PSD program requirements pursuant to the 1997 guidance ..." (73 Fed. Reg. 28321, 28341, May 16, 2008)

[9] Implementation of the New Source Review (NSR) program for Particulate Matter Less that 2.5 micrometers ($PM_{2.5}$); Final Rule To Stay the Grandfathering Provision for $PM_{2.5}$, September 22, 2009, (74 Federal Register 48154).

The Dallas/Fort Worth area, including the counties associated with the area as listed above, have been designated as an 8-hour ozone nonattainment area. The emissions from the Applicant's facilities will include particulate matter only and will not contain any contaminants that would contribute to the ozone nonattainment problems of the counties in the Dallas/Fort Worth area and adjacent counties. As explained earlier in this section, the emissions from the proposed facility will be significantly less than the limitation established by the NAAQS and is not expected to affect the overall air quality in Somervell or Erath Counties.

COMMENT E11: One commenter wrote asking about the best way for the community who had concerns to communicate those concerns when the facility was operational; whether there would be a phone number to call to register concerns/complaints/questions with the plant manager. (UT Environmental Law Clinic)

RESPONSE E11: 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.

F. APPLICATION

COMMENT F1: One commenter reviewed the application in detail and presented a list of perceived errors, omissions, and contradictions. (Gail I. Morris (President, Fort Worth Audubon Society)). The list of errors appear as individual comments in this section.

Other commenters referred to this body of work as evidence that the application should be considered void and resubmitted correctly. The commenters asked how the permit could be found to be compliant with TCEQ rules and regulations when these errors existed in the application. These commenters claimed that the application should be considered void and the Applicant made to reinitiate the process. (G. Darrell Best, George and Mary Best, Charles S. Brown, Cyd F. Brown, Florence R. Brown, Iris Broyles, Jennifer Gearhart Miller and Robert K. Portman, Jr. and commenters in Group A)

RESPONSE F1: As stated specifically during the public meeting held on September 3, 2009, the Air Permits Division of the TCEQ receives many permit applications from both large and small companies as well as from consultants that have errors and conflicting information contained on the forms and documentation. It is the protocol and procedure of the Air Permits Division of the TCEQ to work with applicants to insure that the information is correct. In this way, the Applicant understands what is allowed under both the federal and state rules and regulations for a given permit authorization (e.g., Change of Location) and also determines whether the Applicant's request would require another form of authorization (e.g., Amendment). This interactive methodology corrects any errors that may have been made during the initial application process and insures that the applicant receives the type of authorization that complies with current state and federal rules.

It is during the Public Meeting, Notice of Application and Preliminary Decision, and Response to Comment processes that the TCEQ informs concerned citizens of the changes and corrections in the application which would affect the pending authorization. The comments provided in the remainder of this section were presented to the TCEQ during the formal portion of the first public meeting on October 23, 2008.

COMMENT F2: The commenter wrote that Mr. Thomas M. Davis of Slick Machines was issued air permit number 76402 on October 7, 2005 for a permanent rock crushing operation to be located near Valera in Coleman County. The permit referenced the Registration Number (RN) of 104458187 and a Customer Number (CN) of 602877276 and was authorized to operate 5 hours per day, 5 days per week and 30 weeks per year for a total of 750 hours per year. Although the commenter spoke to an investigator in Region 3 who told her that the permit was for a permanent facility, the commenter makes the claim that the permit was actually issued as a standard permit for a temporary facility.

RESPONSE F2: Even though the size, operating schedule and throughput of the rock crushing facilities authorized in air permit no. 76402 could qualify as a standard permit for a temporary facility, the applicant chose to apply for a New Source Review (NSR) permit. The facilities were thus permitted as a permanent rock crushing facility.

COMMENT F3: The commenter states that on August 24, 2007 the Applicant was issued an authorization to relocate the facilities to Desdemona, Eastland County under air permit number 82199L001. The commenter spoke with the Region 3 investigator who informed her that this was a portable air permit and that, upon relocation at the Desdemona site, the original air permit no. 76402 would be void. The commenter concludes that since the original air permit no. 76402 was for a permanent site and the new air permit no. 82199L001 was for a portable facility, the authorization should have been under an Amendment action rather than a simple request for location change.

RESPONSE F3: Since the request to move the facilities did not include an increase in emissions, a change in the character of emissions, nor a change in the method of control of emissions, there was no requirement to process this request as an Amendment to the current permit. The relocation of facilities occurs quite often in this type of industry and can be accomplished through regulations established by legislation. An air permit for a permanent facility can be modified to include the requirements for Movement of a Portable Facility when no other changes or modifications are requested. In this case, the requirements for moving a portable facility were incorporated into the permit and the permit was provided a permit number which designated it as a portable facility.

The requirements inserted into the permit that allow the facilities to be moved to different locations incorporate legislative mandates and provide current instructions for the regions who, under certain circumstances, move these facilities without notifying the TCEQ Austin APD.

COMMENT F4: The commenter noted that in Section I.H of the application, the RN is given as 105244461 while in a previous permit the RN was given as 104458187 and asked which one was correct.

RESPONSE F4: The correct RN is the one provided in the application as 105244461. The previous RN104458187 was associated with the permanent air permit no. 76402. A permanent facility will be given a permanent RN to which is assigned all other permits (storm water, waste, etc.). When the permit is changed to a portable authorization, the facilities are assigned a RN that follows the equipment. Thus, when the permanent air permit no. 76402 was void upon relocation to Desdemona, Eastland County, the associated RN was also void. The current RN 105244461 is the appropriate number used to track the facilities associated with the 82199L air permit number.

COMMENT F5: The commenter further noted that in Section II.C the applicant states that the jobs provided by the facility will be permanent but in Section III.B states that the operation is portable implying that the facilities will be at the location temporarily rather than permanent. The commenter asks if this permit application is for a temporary or a permanent facility.

RESPONSE F5: The application is for a portable facility that can stay at a location as long as the owner/operator deems it to be necessary.

COMMENT F6: In Section IV.A, the permit number is listed as 82199L001 and the commenter asks why this is listed as 82199L002.

RESPONSE F6: The question in Section IV.A. requests the permit number (if existing). The existing air permit number is correctly stated as 82199L001 since air permit number 82199L002 has not been authorized. Upon authorization of air permit number 82199L002 and relocation to the Glen Rose, Somervell County location, the air permit number 82199L001 will be void.

COMMENT F7: The commenter indicates that in Section IV.C. the Applicant states that this request is for an Amendment. The commenter lists the requirements for an Amendment as stated in the instructions for completing the PI-1 form as a change in the method of control of emissions, a change in the character of emissions, or any increase in emission rate. The commenter requested information on the permitted changes regarding the three criteria associated with an Amendment.

RESPONSE F7: As has been stated previously, the application request was for a Change of Location which does not allow for any changes in the character of emissions, control of emissions or magnitude of emissions. Since there were no change requests for any of the three criteria requiring an Amendment, the application continued to be processed as a Change of Location. The Applicant was informed of the error and the continued Change of Location direction of the review.

COMMENT F8: The commenter states that in Section IV.E.1 the current location is listed as Valera, Texas and the facility is no longer permitted to operate there. The commenter asks whether the current location should be listed at Desdemona, Texas.

RESPONSE F8: The current permit, air permit no. 82799L001, was authorized for a move from Valera, Texas to Desdemona, Texas. The facilities could have moved back to the Valera, Texas location under a Relocation authorization completed by the region, based upon the relocation criteria and the movement of portable facility instructions listed in the permit.

COMMENT F9: The commenter points out that, when the application asked if this application were for a permit amendment in Section VI.C. the Applicant responded "No" which should have been a "Yes" based on the answer given previously in Section VI.C of the application.

RESPONSE F9: As was written with regard to response F6, the Applicant was in error by indicating the authorization was for an Amendment when, in actuality, the Applicant did not meet any of the criteria for an Amendment as the commenter also pointed out in Comment F6.

COMMENT F10: The commenter correctly notes that the previous two permits (number 76402 and number 82199L001) were based on an operating schedule of 5 hours per day, 5 days per week and 30 weeks per year for a total of 750 hours per year. The commenter also correctly notes that Section IX.D of the application lists the requested operating schedule as 8 hours per day, 5 days per week and 30 weeks per year for a total of 1,200 hours per year. The commenter asks why the increase in operating hours would not be reflected as an increase in emissions and require the Applicant to complete Sections IX.E(1) through IX.E(3).

RESPONSE F10: As has been stated previously, the application was submitted as a Change of Location which does not allow for any changes in the amount of emissions. This was pointed out to the Applicant and the necessary corrections adapted. The draft permit for the Change of Location air permit number 82199L002 which reiterates the original 5 hours per day, 5 days per week and 30 weeks per year operating schedule in the MAERT.

COMMENT F11: The commenter stated that the entire Section VII regarding Public Notice Information was left blank. Since this was left blank, the commenter claims the public was not informed as to where the permit application and associated documents could be viewed.

RESPONSE F11: The Notice of Receipt and Intent to Obtain an Air Quality Permit (public notice) for this permit application was published on August 14, 2008, in the *Glen Rose Reporter*. This notice informed the public of the location where the application and associated documents could be viewed

COMMENT F12: The commenter continues by stating that a bilingual publication should have been required and that only an English publication in the local newspaper was provided.

RESPONSE F12: Please see response A12 above.

COMMENT F13: The commenter states that a plot plan of the plant property was not attached as required in Section IX.B and could not be found at either the TCEQ Region 3 or TCEQ Region 4 offices.

RESPONSE F13: A plot plan was not available with the initial submission of the application. This omission was addressed by the permit reviewer and a plot plan was made available to the public for viewing during the first public meeting on October 23, 2008. The plot plan was included in the application file before the application was determined to be technically complete.

COMMENT F14: The commenter states that Section IX.C of the application indicates that a process flow diagram was attached, that Section IX.E indicates that the worst-case emission data and calculations were attached, and that Section X.A indicates that information on how the emissions will comply with all rules and regulations of the TCEQ are attached but that none of this information could be located at either the TCEQ Region 4 or Region 3 offices.

The commenter further states that Section X.B indicates information on how the facility will measure emissions of significant air contaminants is attached, that Section X.C. states that a demonstration of BACT is attached and that Section X.D says that information regarding how the facility will achieve the performance of the permit application and compliance demonstration and record keeping is attached. In all instances, the commenter again claims that none of the information is available, nor could it be obtained from the TCEQ Region 4 or Region 3 offices.

It was also stated during the various public meetings that this information was required for the public to make their own decisions regarding the emissions and protectiveness of this application.

RESPONSE F14: The commenter is correct that the statements on the application indicated that the information was attached and that it was not attached. Although the commenter states that the regional offices were contacted, neither the commenter nor any of the persons referring to the need for this information contacted the TCEQ Air Permits Division in Austin where the working file was being reviewed and where all previous application files were maintained.

In Section IV.E of the instructions that accompany the PI-1 application, it states that "Technical Information and Table 1(a) is not required since only the site of the facility should be changing through a change of location application." Thus, the applicant was in error only in answering the question wrong, not in the lack of information submitted.

The information requested, although not available at the Region 4 or Region 3 offices, was available at the Austin APD offices as part of the original submission for the current air permit number 82199L001. This information was requested by the UT Environmental Law Clinic and was made available for copying along with the working files for all air permits associated with this Applicant. The same services would have been provided to the commenter, and anyone referring to these comments.

COMMENT F15: The commenter asks why Section X.G.2 was marked as if the site was subject to 30 TAC 101, Subchapter H, Division 3 (Mass Emissions Cap and Trade).

RESPONSE F15: This was an error in a section of the permit application that does not actually pertain to facilities of this type, and especially not for this Change of Location application. The PI-1 form is a generic form that is used across a wide range of regulated industries. The portions of the form that are germane to the application are checked during the permit review.

COMMENT F16: The commenter also asked why the Core Data Form, the Form PI-1, and all attachments were not sent to the appropriate TCEQ regional office as required by Section XII.C of the application. The commenter stated that these forms could not be found in either of the TCEQ Region 4 or Region 3 offices.

RESPONSE F16: The Region 4 office received the forms and information required for a Change of Location request prior to conducting the site visit on August 21, 2008; the Region 3 office should not have received these forms.

G. LOCATION, TRAFFIC, NOISE and LIGHT

COMMENT G1: One commenter expressed concern regarding the standard used by the regional investigator on August 22, 2008 that determined the location would not be sensitive with respect to nuisance conditions. (G. Darrell Best) The commenter continued to ask if the regional investigator had considered the 75 families that live within two miles of the proposed location and if any neighbors were interviewed. (G. Darrell Best) The commenter also asked whether the endangered species or the habitat on the property of the proposed location were taken into account during the site review. (G. Darrell Best) Another commenter questioned how many homes there were within a mile or two of the proposed facility. (Rhett Johnson)

RESPONSE G1: The site review conducted by a regional investigator on August 22, 2008 indicated that the nuisance potential at this location was low. During the site inspection, it was noted that no sensitive receptors (e.g., residence, school, place of worship) were located within 440 yards of the proposed crusher's location. The closest residence, owned and leased out by the property owner, was located 1,450 feet from the proposed crusher location. The closest off-property receptor (a residence) was located 2,450 feet from the proposed location. In addition, the proposed location was at least 800 feet from the property line. During the site review, it was determined that a nuisance potential may exist. However, for a crusher operating under the proposed permit conditions, the potential that the air emissions (particulate matter) from the crusher's operation leaving the property at a concentration and duration that will cause adverse effects to humans, livestock or plants is low. The nuisance potential will also be low at distances farther from the proposed location.

Any neighbors who have concerns with respect to the potential location of a facility requesting an air quality permit are notified of the application through sign postings and public notification in the local newspaper. The notifications instructed the neighbors how to receive additional information and how to submit comments, request a public meeting for additional information or

file a request for a hearing. The timely comments and hearing requests received, and information provided by the ED through the public comment process is provided to the Commissioners for consideration when making the final decision regarding the application.

It is not within the delegated jurisdiction of the TCEQ to consider the requirements of the Endangered Species Act when authorizing an air quality permit. However, holding a state air permit does not exempt the owner/operator from complying with any federal or other state and local rules and regulations. Moreover, adverse effects to air quality, public health and welfare including, animal life, vegetation or property beyond the propertyline were considered. As noted above, if the facility is operated in accordance with all applicable rules and permit conditions, adverse effects are not expected.

COMMENT G4: The commenter was concerned that the use of dynamite to break loose the rock formation should be considered a nuisance when the location is within 0.25 miles of a major highway. (G. Darrell Best)

RESPONSE G4: TCEQ's rule 30 TAC § 101.4, regarding nuisances focuses on adverse affects on human health or welfare, animal life, vegetation, or property. If the air contaminants from the crushing operation create or cause a traffic hazard, the impact is regulated in accordance with the TCEQ General Rules addressing traffic hazardsfound at 30 TAC §101.5. As has been stated, holding a state air permit does not exempt the operator from complying with federal or other state and local rules and regulations, e.g., Mining Safety and Health Administration, Department of Public Safety, etc.

COMMENT G5: Several commenters expressed concern about the underground pipeline in the area and asked whether the regional investigator took this pipeline into consideration when making the assessment. (G. Darrell Best, Dorothy Jean Lane, Jean Lane, Stanley J. Stephens, and commenters listed in Group I)

RESPONSE G5: The TCEQ has been delegated the authority to insure that the contaminants emanating into the air from a regulated facility do not violate any state or federal regulations. It is not within the jurisdiction of the TCEQ to evaluate structures underground as described for air quality applications. Safety measures necessary for the quarry operation are beyond the authority of the TCEQ. This does not exempt the owner/operator from complying with federal or other state and local rules and regulations.

COMMENT G6: One commenter asked if the site review included the potential water run off into the headlands of Rough Creek that leads to the Bosque River and Lake Waco. (G. Darrell Best)

RESPONSE G6: The purpose of this review is to conduct an air quality evaluation of the proposed rock crusher operation and location. It is the responsibility of the owner/operator to obtain the proper authorization with regard to the storm water rules and regulations.

COMMENT G7: One commenter noted that there wasn't a well at the site. The commenter stated that dust control on the rock crusher, roads, stockpiles, etc. could not occur without causing a nuisance to adjacent homeowners when a commercial well is drilled to supply water for the crushing operation. (G. Darrell Best)

RESPONSE G7: The site review conducted, and reported, by regional investigators do not determine whether or not a well is located at a particular site. The permit conditions under which the facilities must operate do not specify what water sources are to be used to control dust, or whether a well is required at the site to supply water. It is the owner/operator's responsibility to control the potential dust emanating from the facilities in a means that does not create a nuisance and does not violate the opacity and visible emissions requirements of the permit. It is the owner/operator's responsibility to find the means to accomplish this control.

COMMENT G8: Several commenters stated that the authorization of this application could potentially bring statewide, national and even international negative attention to the location and to the state due to the impact it would have on the Fossil Rim Wildlife Center which has worked in close partnership with the federal Fish & Wildlife Service (USFWS) and the Texas Parks and Wildlife Department (TPWD) in the endangered species recovery programs such as the Golden-cheeked Warbler and the Black-capped Vireo, and the relocation of endangered species such as the cheetah, Addax antelope. and Scimitar-horned oryx from Africa. (Patrick R. Condy (Executive Director, Fossil Rim Wildlife Center), Mary O. Taylor, Robert J. Taylor)

RESPONSE G8: As was discussed in Section B, the protectiveness review that was undertaken for the original permitting authorization is conservative with respect to the US EPA's limitations for both the primary and secondary NAAQS requirements. Therefore it is not anticipated that any negative effects would result for the Fossil Rim Wildlife Center, due to the location and operation of this rock crushing facility.

COMMENT G9: Many commenters state that Somervell County is a destination location for many vacationers as well as by many biologists and naturalists from all over the world. The commenters indicate that the area relies upon the resources from the tourism industry and that the location of the Applicant's rock crushing facilities would have a devastating impact on the surrounding area. (Kip Averitt (Texas State Senator, Senate Committee on Natural Resources), Sid Miller (Texas State Representative), Margaret A. Adams, Mary Adams, George and Mary Best, Don Brodenhamer, Eugene E. Brode, Lila Carter, Patrick R. Condy (Executive Director, Fossil Rim Wildlife Center), Norm and Alveeta Corbitt, Curt Decker, Lynda Greer, Douglas Hickok, Sylvia Huckabee, Tommie Huckabee, Rhett H. Johnson, Linda Lander, Mary Lee Lilly, Jean Lane, Dennis L. Lutes, Pat Matthews, Ray D. Matthews, David L. Rice, Karen Richardson, Robert O. Scott, Sandra Stringer, Joan Echols Taylor, UT Environmental Law Clinic and commenters listed in Groups A, B, C, D, E, G and H)

Commenters also expressed concern regarding the perceived loss in property value resulting from the location of the rock crushing facilities. (Steve Allen, George and Mary Best, Charles S. Brown, Cyd F. Brown, Patrick R. Condy (Executive Director, Fossil Rim Wildlife Center), Lynda Greer, Rhett H. Johnson, Jean Lane, Conrad McCarty, Brandon Mills, Stanley J.

Stephens, Allen Sumners, Jimmie Sumners, Joan Echols Taylor and commenters in Groups A, C, E and H)

RESPONSE G9: The TCEQ's jurisdiction is established by the Legislature and is limited to the issues set forth in statute. The TCEQ does not have zoning authority with regard to where a facility is located. Zoning ordinances are normally enacted by cities or counties and enforced by local law enforcement authorities.

Similarly, the TCEQ does not have authority to consider any possible effect on income, property value, tax base, the appeal of an area to attract business and people, effects on tourism, or to regulate whether a business can locate in a particular area as a result of actions taken by this agency with regard to the review of an air quality permit.

COMMENT G10: Several commenters wrote asking the Applicant to explain why he chose to move to the Chalk Mountain area when he has never operated there before and where the rock may not be of the quality required by TxDot. (Lee Clauser, Roxann Bingham, Sherman Griffith, UT Environmental Law Clinic)

RESPONSE G10: The questions were addressed to the Applicant and were not addressed to the TCEQ. The TCEQ cannot speak for the Applicant with regard to business decisions such as choice of location.

COMMENT G11: Many commenters expressed concern about the truck traffic that would be generated from the operations at this site and the effect the traffic would have on the already crowded Highway 67 including safety, the destruction of the local roads, and the effects this traffic would have on the visitors to the area. Several commenters asked who would be responsible for the development and cost of the safety modifications that would be required. (Thomas J. Cloud, Jr. (Field Supervisor, United States Department of the Interior, Fish and Wildlife Service), Zach Cummings (for Commissioners, County of Somervell), Margaret A. Adams, Steve Allen, Mark and Patricia Beauregard, Roxann Bingham, Charles S. Brown, Cyd F. Brown, George and Mary Best, Lila Carter, Patrick R. Condy (Executive Director, Fossil Rim Wildlife Center), Aaron Cranford, Lynda Greer, Douglas Hickok, Sylvia Huckabee, Tommie Huckabee, Rhett H. Johnson, Glenda Keilstrup, Jean Lambert, Linda Lander, Dorothy Jean Lane, Jean Lane, Dennis L. Lutes, Wayne and Betty McKethan, Robert K. Portman, Jr., David L. Rice, Francine Singleterry, Ron Singleterry, Sandra Stringer, Stanley J. Stephens, Allen Sumners, Jimmie Sumners, Joan Echols Taylor, Mary O Taylor, Robert J. Taylor and commenters in Groups A, C, D, E, F, G, H and I)

Several commenters are concerned that the rock crushing facility, if permitted, would create additional truck traffic through Glen Rose and cause increased pedestrian accidents and create vibrations which would damage the streets and buildings in the Historic Downtown District. (Joan Echols Taylor, Mary O. Taylor, Robert J. Taylor, Nancy Ray White, unreadable signature)

RESPONSE G11: The TCEQ's jurisdiction is established by the Legislature and is limited to the issues set forth in statute. The TCEQ does not have jurisdiction over public roads and

therefore cannot require an applicant to maintain and/or repair public roads or limit the amount of vehicles entering the public roadways from their facilities. Jurisdiction over public safety including access, enforced speed limits and public roadway issues in general is held by the Texas Departments of Public Safety and Transportation, as well as local law enforcement authorities. Questions or concerns about traffic or public road issues should be directed to these authorities.

COMMENT G12: Several commenters state that statistics show an increased number of vehicle accidents around rock crushing facilities and questions whether the Applicant, the land owner or the TCEQ would be held liable. (Charles S. Brown, Cyd F. Brown, Lynda Greer)

RESPONSE G12: Jurisdiction over public safety including access, enforced speed limits and public roadway issues in general is held by the Texas Departments of Public Safety and Transportation, as well as local law enforcement authorities. Questions or concerns about traffic or public road issues or any liability issues should be directed to these authorities.

COMMENT G13: Charles Brown and Cyd Brown asked if a site plan were available and if not, why not. G. Darrell Best expressed concern as to why the permit application did not contain a site plan addressing the following concerns:

- Does the site plan include a site map detailing the proposed permit area?
- What is the distance to streams and creeks adjacent to the proposed facility?
- What is the nearest direction and distance to a county road, state highway or intersection?
- Does the site plan include a detailed ingress and egress route?
- Does the site plan include a detailed showing where the quarry will be mined?
- Does it include a report from an independent hydrologist on any ground or surface water in the proposed affected area?
- Are there any plans to prevent negative effects on ground and surface water?
- Please describe any plans as to how, if an independent hydrologist report is submitted with the site plan, the company intends to address the recommendations in the hydrologist's report?
- If an independent hydrologist has not been engaged, will the permit application allow an independent hydrologist to perform a survey?
- What is the distance to the nearest egress point to a waterway?
- What methods will the operator deploy to keep dust from leaving the proposed facility during blasting, sorting, loading and transferring materials from or to the facility?
- What methods will the operator undertake to keep any water used in the entire mining and dust prevention operation from seeping back into the well water of surrounding residents?
- What is the distance from the proposed facility to the nearest residence?
- Will the operator or land owner provide a tour for local citizens of the proposed site to audit the proposed plan for the proposed facility? (also posed by the UT Environmental Law Clinic)

RESPONSE G13: The application under consideration is for an air permit and addresses those issues related to air emissions. Concerns with water are addressed in Section J which states, in essence, that the scope of an air quality permit does not cover the water or hydrological issues. Please see response G11 above regarding TCEQ's jurisdiction over traffic or public road issues.

The TCEQ requires that an area map be provided and that the applicable facilities regulated by the TCEQ maintain a distance from the property line which has been determined to be protective with respect to human health and welfare. Also, see Responses A2 and A9 above regarding availability of maps for this project. Other concerns that have been posed are addressed to the Applicant and the Applicant's plan for operation at this site and are not addressed to the TCEQ. The concerns listed have been included for completeness but are outside of the jurisdictional guidelines established by legislation. The TCEQ cannot speak for the Applicant.

COMMENT G14: G. Darrell Best expressed concerns whether the application for an air permit included a transportation plan addressing the following:

- A documented plan for transporting materials to and from the quarry over public roads;
- Whether the TCEQ will solicit a recommendation from TxDOT regarding the adequacy and design capacity of the roadway to safely accommodate the additional volumes of traffic expected to be generated at the proposed facility;
- Whether the operator of the proposed facility will have a plan in place to require all trucks to be completely tarped and if not why not;
- How is the plan to be monitored;
- Does the plan include independent contractor training and certification for the tarping of vehicles;
- Have any of the operator's vehicles or vehicles carrying aggregate from any of the operator's facilities ever been cited for carrying aggregate in an uncovered vehicle;
- Have any of the vehicles been cited for the cause of an accident;
- Does the operator of the proposed facility carry liability insurance for any accident, damage or pollution caused by its vehicles or the subcontractors carrying the materials to and/or from the proposed facility;
- Who is the policy with; and
- How much liability coverage is carried.

Another commenter asked what steps would be taken to minimize emissions from trucks leaving the facility and whether any traffic studies were done to analyze the impact on traffic from the proposed operation with respect to the proximity of State Highway 67. (UT Environmental Law Clinic)

RESPONSE G14: Please see response G11 above regarding TCEQ's jurisdiction over traffic or public road issues.

Other concerns that have been posed are addressed to the Applicant and the Applicant's plan for operation at this site and are not addressed to the TCEQ. The concerns listed have been included for completeness but are outside of the jurisdictional guidelines established by legislation. The TCEQ cannot speak for the Applicant.

COMMENT G15: Many residents of the area feel that the authorization of this facility will create a haze over the city of Glen Rose as well as destroy the scenic view and enjoyment of the picnic area and road side park that was built soon after the great depression for the enjoyment of

the people traveling through the area. Commenters express concern regarding the health effects of the dust generated from the facility as well as the safety and nuisance conditions created by the proposed facility which would prevent visitors from enjoying the state roadside park, the historical Chalk Mountain, and the surrounding bird watching areas. (Sid Miller (Texas State Representative), Zach Cummings (for Commissioners, County of Somervell), Steve Allen, George and Mary Best, Roxann Bingham, Patrick R. Condy (Executive Director, Fossil Rim Wildlife Center), Rhett Johnson, Barbara Jaswocha, Jean Lane, Julia Lewis, Brandon Mills, David L. Rice, Joan Echols Taylor and citizens represented in Groups A, B and C)

RESPONSE G15: As discussed in Response B1 above, the NAAQS, as created by the United States Environmental Protection Agency (EPA) and defined in the federal regulations (40 C.F.R. § 50.2), 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 affects associated with the presence of an air contaminant in the ambient air. It was found, and described in a previous section, that no EPA NAAQS exceedances are expected at any place on adjoining properties or beyond. Since, as Patrick R. Condy indicated, the picnic area is approximately 1/4 mile away from the proposed location, there should be no NAAQS exceedances at the road side park due to the operation of the facilities authorized by this permit.

In addition to complying with the federal and state standards and guidelines mentioned above, and as has been stated previously in this response, applicants 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 of 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." In addition, applicants must also comply with 30 TAC § 101.5 which prohibits traffic hazards. The rule states "No person shall discharge from any source whatsoever such quantities of air contaminants, uncombined water, or other materials which cause or have a tendency to cause a traffic hazard or an interference with normal road use." As long as the facility is operated in compliance with the terms of the permit, nuisance conditions, or traffic hazards are not expected. According to the facility's maximum allowable emission rate table in the draft permit, the facility will emit approximately 0.56 tons per year (tpy) of PM and 0.28 tpy of PM_{10}. These emissions are not expected to create nuisance traffic hazard conditions.

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. 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. The TCEQ has long had procedures in place for accepting environmental complaints from the general public but now has a new tool for bringing potential environmental problems to light. 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.state.tx.us (under Publications, search for document no. 278).

COMMENT G16: Many commenters were concerned with respect to the noise emanating from the facilities. (Beverly Woolley (Texas State Representative), Thomas J. Cloud, Jr. (Field Supervisor, United States Department of the Interior, Fish and Wildlife Service), Zach Cummings (for Commissioners, County of Somervell), Margaret A. Adams, George and Mary Best, Cyd F. Brown, Steve Allen, Lila Carter, Patrick R. Condy (Executive Director, Fossil Rim Wildlife Center), Lynda Greer, Linda Gustafson, Sylvia Huckabee, Tommie Huckabee, Glenda Keilstrup, Dorothy Jean Lane, Dennis L. Lutes, Robert K. Portman, Jr., David L. Rice, Stanley J. Stephens, Allen Sumners, Jimmie Sumners, Nancy Ray White and commenters listed in Groups, AB, C, D, E, F, G, H and I)

RESPONSE G16: Please see responses B2 and C6 above regarding TCEQ's lack of jurisdiction over noise.

COMMENT G17: One commenter was concerned about the effects of light pollution being annoying and potentially impacting deer herds and other wildlife activities. (Stanley J. Stephens)

RESPONSE G17: The TCEQ does not have authority under the TCAA to consider light pollution in an air quality permit review. The operating schedule stated on the permit MAERT is limited to 5 hours per day but does not specify which five hours are applicable.

H. COMPLIANCE, MONITORING and ENFORCEMENT

COMMENT H1: Several commenters asked about the enforcement and complaints that the TCEQ has pursued in regard to the Applicant or any predecessor partner, investor or backer of this facility and asked;

- What were the complaints and what actions, if any, were taken;
- What were the enforcement actions taken, if any;
- Has the operator ever been denied a permit or has a permit ever been cancelled for any facility the operator, partner, investor or backer been involved in;
- Has the operator ever been cited for the operation of a rock crushing facility without the requisite permits for air or water quality; and
- Will a new report be prepared to take into consideration the complaints registered in Somervell County as well as in Galveston. (G. Darrell Best, Charles S. Brown, Cyd F. Brown, Lee

Clauser)

RESPONSE H1: During the technical review, a compliance history review of the company and the site was conducted based on the criteria in 30 TAC Chapter 60. These rules may be found at the following website: http://www.tceq.state.tx.us/rules/index.html. The compliance history for the company and site was reviewed for the five year period prior to the date the permit application was received by the Executive Director. The compliance history includes multimedia compliance related components about the site under review. 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.

The permit application for Davis, Tommy dba Slick Machines was received after September 1, 2002. The company and site have been rated and classified pursuant to 30 TAC Chapter 60. 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).

This site has a rating of 3.01 and a classification of "Average by Default." The company rating and classification, which is the average of the ratings for all sites the company owns, is rated as 2.30 and classified as "Average". There are no records in the compliance history of any multimedia compliance related issues during this five year time period used for review.

Pursuant to the concerns that have been expressed, the TCEQ reviewed the compliance history of the previous air permit number 76402 (RN104458187, CN602729337) which was void on August 24, 2007 when the permit was altered to contain the current Movement of a Portable Facility condition. For the five year period pertinent to the previous permit, the site had a rating of 1.6 and a classification of "Average". The company rating was 2.3 which was also given a classification as "Average". This site had two Notice of Violation (NOV) reports issued. The first, issued on December 20, 2004 in accordance with 30 TAC § 116.115(c)(2)(A)(i) stated that "Slick Machines failed to obtain written approval from the TCEQ Abilene Region Office prior to locating and constructing the Phoenix rock crusher on-site." The second NOV, issued on January 10, 2005 pursuant to 30 TAC § 281.25(a)(4) cited the company for "[f]ailure to obtain authorization to discharge storm water associated with industrial activity to water in the state through an individual permit or the Multi-Sector General Permit (MSGP) TXR050000 issued under the Texas Pollutant Discharge Elimination System (TPDES)." Both NOVs were resolved.

There is no record that the owner/operator of this company has ever been denied a permit nor is there any record that the owner/operator has had a permit cancelled. The TCEQ issues air permit authorizations to a company and, as described above, determines the compliance history based on a compilation of multimedia compliance related components regarding the site under review.

A review of the degree of involvement with partners, investors or backers associated with the company is not required for the authorization.

As stated previously, 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 Regional Office at 817-588-5800, or by calling the twenty-four 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 H2: Commenters asked if the TCEQ would require property line air contaminant monitoring for VOC or particulate matter emissions. They asked how the agency rationalizes that the permit restrictions are enforceable if a continuous PM CEMS monitoring system or automated periodic filter sampling system is not installed and operating. (G. Darrell Best, David Frederick, Allen Sumners, Jimmie Sumners, Robert Portman, UT Environmental Law Clinic).

One commenter asked if the lack of PM CEMS would undermine the credible evidence rule pursuant to paragraph 3 of the permit. (David Frederick)

RESPONSE H2: At the current time, there will not be property line monitors, video monitors, automated periodic filter sampling systems or any advanced monitoring devices stipulated for this facility. The TCEQ does not require particulate monitors, continuous opacity monitoring (COMs), or continuous emissions monitoring (CEMs) for rock crushing facilities.

Special Condition 3 of the permit states that no visible emissions form the crusher, screen, transfer points on belt conveyors, stockpiles, feed bins or internal roads and work areas shall leave the property. PM CEMs is not the only acceptable means of developing credible evidence to demonstrate compliance of the requirements of the permit. The definition of visible emissions is provided in the Special Condition along with the methodology to determine visible emissions, i.e., the use of EPA Test Method (TM) 22.

COMMENT H3: One commenter asked how the TCEQ plans to coordinate the approval of the facility relocation and enforcement issues related to this site with the county. (G. Darrell Best)

RESPONSE H3: This air permitting action of the TCEQ only authorizes an air permit based on the Change of Location criteria established by legislation. All other obligations, including any county zoning ordinances, requirements, or approval from county officials, need to be addressed by the owner/operator with the appropriate authorities prior to the commencement of operations.

COMMENT H4: Several commenters asked about the response time for the TCEQ to investigate complaints received from neighbors or affected persons regarding the proposed rock crushing operation. (G. Darrell Best, David Frederick, Robert Portman).

Other commenters asked what actions the TCEQ would undertake in the event the Applicant did

not appropriately manage the dust that was generated or locate the crusher the appropriate distance from the property line and whether the TCEQ had the resources to send an investigator to the site every other day. (Charles S. Brown, Cyd F. Brown, Dwayne Jackson, Jennifer Gearhart Miller)

One commenter spoke of the efforts and frustrations of trying to get some organization, agency or entity to review the operating processes and procedures of a rock crushing facility authorized by the predecessor agency, Texas Natural Resource Conservation Commission (TNRCC), on a neighboring plot of land in 1995. The concerns not only included problems and conditions associated with the crushing operation but also problems associated with mining operations such as blasting, fly rock, notification of blasting schedules, emissions from blasting, etc. (Linda Gustafson)

RESPONSE H4: The previous discussion in Section E indicates that a conservative air dispersion model of the authorized facilities provided an estimate of particulate matter emissions less than 10 microns in diameter (PM_{10}) that is well within both the 24-hour and annual limitations required by the EPA NAAQS. Thus, exposure to PM_{10} emissions is not considered an imminent threat to public health, safety or the environment. In accordance with the complaint prioritization section of the TCEQ's Complaint Manual, complaints which are not expected to have an adverse effect on public health, but which have a potential to adversely affect the environment, are expected to be investigated within thirty (30) calendar days from the receipt of the complaint.

The TCEQ's jurisdiction is established by the Legislature and is limited to the issues set forth in statute. The TCEQ does not have jurisdiction to regulate blasting or mining. Concerns regarding blasting and mining operations will be discussed in more detail in the following section.

COMMENT H5: One commenter asked how often the applicant would have the records audited and if the public would be able to review the records. (UT Environmental Law Clinic)

RESPONSE H5: Investigations are primarily risk based. Facilities of this type are generally considered to be low risk. If complaints are received, investigations will be conducted which includes checking the record keeping requirements.

Recordkeeping is required by the permit conditions and is to be made available upon request to the TCEQ Regional Director or any 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.

COMMENT H6: Two commenters asked about the number of air quality and waste water management permits that have been held by the Applicant, how many are still current, have any permits held by the Applicant ever been revoked, and where the licensed facilities are. (Charles S. Brown, Cyd F. Brown)

RESPONSE H6: The purpose of this review is to evaluate the Change of Location request of an air quality permit to the Somervell County location. Thus, any waste water management permits that may be held by the Applicant are not pertinent to this review. The number of air quality permits held by the Applicant has been previously discussed in the response to Comment H1. There is no indication that the Applicant has ever had a permit or a permit application revoked and currently holds only one permit, air permit number 82199L001, which is authorized to operate in near Desdemona in Eastland County.

The public may also search for pending and existing authorizations issued by TCEQ on the web at http://www.tceq.state.tx.us/nav/data/permit_data.html

I. BLASTING

COMMENT I1: Many commenters were concerned with the danger from blasting associated with the rock crushing operation and the negative impacts to the air quality and the neighboring structures as a result of the blasting. (Mark Beauregard, George and Mary Best, Charles S. Brown, Cyd F. Brown, Lee Clauser, Patrick R. Condy (Executive Director, Fossil Rim Wildlife Center), David Frederick, Linda Gustafson, Jean Lane, Peggy Portman, Robert Portman, David L. Rice, Stanley J. Stephens, Mary O. Taylor, Robert J. Taylor, UT Environmental Law Clinic and commenters in Groups A, B, C and I)

One commenter asked how far from the property line would the Applicant be allowed to blast. (Robert Portman)

Two commenters asked about the location of the storage facilities for the dynamite, who the blasting operator was, whether the Applicant was required to notify ATF Bureau of Alcohol, Tobacco, Firearms and Explosives) or MSHA (Mine Safety and Health Administration) and what the Applicant considered the "blasting area." (Linda Gustafson, UT Environmental Law Clinic)

The following concerns were expressed by the UT Environmental Law Clinic in regard to the post blasting operations:

- How often will blasting take place at the site and what steps will be taken to minimize the noise from the blasting?
- Would it be correct to say that after the blast, there is a lot of debris and broken rock lying about the site?
- Do you wet down the site at this point and if not, why not?
- If so, what happens to the rock? Is the rock taken straight to the crusher for crushing or is it stock piled first?
- If so, is it loaded by front end loader or by truck?
- What form of control technology do you use to mitigate dust and fugitive emissions whilst transferring the rock from the ground to the crusher?
- Is this the best possible?

RESPONSE I1: 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 blasting or mining in determining whether to approve a permit application for facilities that will emit air contaminants. Blasting operations are associated with quarry operations, and the Texas Clean Air Act, Tex. Health & Safety Code § 382.003(6) provides that quarries are not facilities for purposes of air quality permitting. Therefore, quarry blasting operations are not included as part of the review of an air quality permit application. In addition, the TCEQ has no authority to address property damage claims alleged to result from blasting, nor jurisdiction regarding seismic vibrations, when reviewing an application for an air quality permit. The Mine Safety and Health Administration has oversight of mine and quarry health and safety concerns.

COMMENT I2: The following concerns were expressed by the UT Environmental Law Clinic in regard to the blasting operations.

- Who does the blasting?
- If it is you, do you have the required permit and can it be made available for public review, possibly by a website for the community to review?
- Do you have a blasting schedule and how often do you normally blast?
- What measures have you taken, or will you take, to inform local residents when you will be blasting?
- Have you done any modeling to obtain precise answers to these issues and if not, when do you intend to do so?
- Have you ascertained any possible impact of the blasting on nearby Highway 67?
- How close to the highway will you be blasting?
- Do you carry third party liability insurance in the event that an accident occurs as a direct result of your blasting?
- Approximately how much surface dust and fugitive emission are caused by blasting and where is this covered in the air permit?
- What steps are you taking, or do you take, to mitigate these issues?
- Will you, for example, wet down the whole site first?

One commenter asked if the application for the air permit included a blasting plan, and if not, why not. The commenter raised the following concerns regarding a plan for the blasting operations. (G. Darrell Best)

- Is blasting proposed for this site and if so;
- What is the blasting plan;
- How does the close proximity to Highway 67 figure in to the blasting plan;
- What is the distance of the closest home to the blasting area;
- What is the distance of the gas pipeline to the blasting area;
- What warning signs are you going to place on Highway 67 prior to blasting; and
- Has TxDOT been made aware of the blasting plan?

Does the blasting plan provide for recording and reporting on blasts, including; The exact location, time and date of the detonation; The direction and distance to the nearest building,

church, school, commercial or The weather conditions during the blast; The seismograph reading, including exact location of the seismograph and its distance from the blast; Documentation of who is taking the reading, their training and expertise; Notification of seismographic blast results on a company website; An email notice of all planned blasts with a suitable notice period (24 hours); and Will blasting occur outside of the hours of operation on the Air Quality Permit for the rock crusher?

The steps that will be taken to ensure no damage to the Trinity Aquifer, including; What mechanism will be put in place to monitor the Trinity for damages?; What are the qualifications of the person or company that will be doing the monitoring?; What state certifications are required; and Who monitors that the certifications are complete, current and up to date?

RESPONSE I2: The concerns are posed to the Applicant and the Applicant's method of operation and are not addressed to the TCEQ. The concerns listed have been included for completeness but are outside of the jurisdictional guidelines established by legislation. The TCEQ cannot speak for the Applicant.

J. WATER

COMMENT J1: Several commenters are concerned with respect to the use of water for emission controls. It was stated that all residents in the impacted area utilize water wells drilled at the resident's expense. The commenters inquired as to whether the operator would be drilling a water well or hauling water. (Mark and Patricia Beauregard, George and Mary Best, Patrick R. Condy (Executive Director, Fossil Rim Wildlife Center), Sandra Stringer, Allen Sumners, Jimmie Sumners, Joan Echols Taylor, Mary O. Taylor, Robert J. Taylor and commenters in Groups A, B, C and I)

REPSONSE J1: The air quality permit under review requires the use of water to control fugitive dust emissions. It is the Applicant's responsibility to secure all permits and authorizations necessary to obtain the water needed for their operation. TCEQ rules state that the plant may not be operated if all pollution control equipment is not functioning properly. Acceptance of a permit is an acknowledgement and agreement by the Applicant to be bound by the permit conditions.

The permit special conditions state that the water spray systems shall be operated as necessary to maintain compliance with the TCEQ rules and regulations which include the opacity requirements and visible fugitive emission limitations. If the Applicant begins operation of the rock crusher without a water supply to meet the permit conditions, then the Applicant could be in violation of the permit and subject to enforcement action, including shutdown. If the Applicant has any disruptions in the water supply, operating the plant without functioning water sprays would create the potential to be in violation of the permit conditions and create a cause for enforcement action.

However, the scope of an air quality permit does not cover the source of water for emission control and thus is not relevant to the review of this permit application. If approved, the

Applicant must use water or an environmentally sensitive chemical equivalent to control PM emissions from the crushing operations. If the Applicant uses groundwater or surface water, it may require separate authorization form the TCEQ or another authority.

COMMENT J2: Commenters asked what hazards would be in the drainage from the used water and the effects on wells, creeks and ponds contaminated by downstream water. (Barbara Bowman (President, Tarrant Coalition for Environmental Awareness), Mark and Patricia Beauregard, George D. Best, G. Darrell Best, Charles S. Brown, Cyd F. Brown, Lee Clauser, David Frederick, Gail I. Morris (President, Fort Worth Audubon Society), Robert K. Portman, Jr., David L. Rice, Sandra Stringer, Allen Sumners, Jimmie Sumners, UT Environmental Law Clinic and commenters in Groups A, B, C and I).

Other commenters asked if the failure to apply for a general storm water permit would affect the decision that the TCEQ would make regarding the current Change of Location air permit. (G. Darrell Best, Robert Portman)

Other commenters asked if the Applicant had a waste water management permit required to operate the crushing facilities. If the Applicant had not already applied for a waste water management permit, the commenters asked when the public notification of the plan might be available. (Charles S. Brown, Cyd F. Brown, Lee Clauser)

RESPONSE J2: As explained in other sections of this document, this permit allows emission of particulate matter only. No hazardous emissions or volatile organic compounds (VOCs) are permitted by this authorization and thus, no hazardous material is expected to be in the downstream water due to the operations of these facilities.

Storm water runoff impacts on the surface or groundwater is not within the scope of review for an air quality permit application. A study specifically designed to assess particulate matter and its effects on the surface water solids loading was not completed during this review for this application. Such study would be beyond the scope of review for an air quality permit.

The Applicant is required to have a storm water permit and any water pollution abatement plan that may be required and follow all TCEQ rules and regulations regarding public notification if required. All permit authorizations must be in effect prior to start of operations. It is the responsibility of the applicant to not only obtain and use an adequate water supply, but to also comply with any waste quality or disposal requirements. This responsibility is not relevant in the review of an application for an air quality permit; however, the applicant may be required to receive additional authorization from different media. The failure to apply for, or receive, one permit authorization would have no effect on the decision to grant the current Change of Location air permit authorization.

COMMENT J3: Other commenters asked if the US Army Corps of Engineers had been contacted concerning this rock crushing facility and the impact on the drainage system. (Charles S. Brown, Cyd F. Brown).

RESPONSE J3: In this case it is the Executive Director's understanding that review with the US Army Corps of Engineers is not required. The TCEQ is responsible for conducting Section 401 certification reviews of US Army Corps of Engineers Section 404 permit applications for the discharge of dredge material into waters of the US. To date, the TCEQ has not processed a 401 Certification associated with a rock crusher or quarry, for these operations are located in areas that do not require such certifications.

COMMENT J4: Other comments expressed concern regarding the water table impact. (David L. Rice, Allen Sumners, Jimmie Sumners, Joan Echols Taylor, Mary O. Taylor, Robert J. Taylor)

RESPONSE J4: During the review of the permit, the Air Permits Division of the TCEQ did not specifically consider the impacts on the water table because that issue is beyond the purview of considerations for an air permit application.

COMMENT J5: One commenter asked how much water would be used per day. (UT Environmental Law Clinic)

RESPONSE J5: Specific estimates of the amount of water necessary to adequately control dust emissions were not made because they were beyond the scope of review for this permit application.

COMMENT J6: One commenter asked whether the operator of the facility plans to adhere to the Clear Streams Initiative and what specific plans are in place concerning the run off to the adjoining properties to the north and west of the proposed facility (G. Darrell Best)

RESPONSE J6: As explained in other sections of this document, this permit allows emission of particulate matter only. Storm water runoff impacts on the surface or groundwater is not within the scope of review for an air quality permit application. The Applicant is required to have all permits and authorization that may be required and follow all TCEQ rules and regulations regarding public notification if required. All permit authorizations must be in effect prior to start of operations. This responsibility is not relevant in the review of an application for an air quality permit; however, the applicant may be required to receive additional authorization from different media. The failure to apply, or receive, one permit authorization would have no effect on the decision to grant the current Change of Location air permit authorization.

COMMENT J7: Commenters asked how an air quality permit could continue to be processed when the Applicant was found in violation of a storm water discharge permit and what penalties would be assessed to the Applicant for the apparent storm water discharge violation. (Darrell Best, Laura Huber)

RESPONSE J7: The TCEQ's jurisdiction is established by the Legislature and is limited to the issues set forth in statute. Accordingly, the draft permit regulates the control and abatement of air emissions only, and therefore issues regarding water and/or storm water discharge are not within the purview of this permit review. It is the responsibility of the owner/applicant to have addressed all regulatory concerns and obtained all permitting authorizations from any

organization with jurisdiction prior to the start of construction. The resolution of violations is incumbent on the Applicant with respect to the Enforcement Division of the TCEQ.

K. ARCHEOLOGICAL ARTIFACTS and HISTORICAL SITES

COMMENT K1: Flint arrowheads, tools and artifacts from prehistoric tribes that camped, hunted and fished in the area have been discovered and more than 40,000 of these items have been turned over to the Smithsonian Institute in Washington D.C. and to the Museum of Natural History in New York City. Dinosaur tracks have been found in the Paluxy riverbed. Additional artifacts and skeletal remains of people who have inhabited the hills and crevices of the Somervell County area may still be waiting to be found in the exact location of the proposed quarry and will be destroyed. (Mary Adams, Steve Allen, Eugene Brode, Lila Carter, Karen Richardson, Joan Echols Taylor, Mary O. Taylor, Robert J. Taylor)

Two commenters ask if the Texas Historical Commission had been contacted to determine if there were any ancient burial grounds or other historical sites on the property proposed for the rock crushing facilities. (Charles S. Brown, Cyd F. Brown)

RESPONSE K1: The TCEQ's jurisdiction is established by the Legislature and is limited to the issues set forth in statute. Accordingly, the draft permit regulates the control and abatement of air emissions only, and therefore issues regarding archeological artifacts are not within the purview of this permit review. It is the responsibility of the owner/applicant to have addressed all regulatory concerns and obtained all permitting authorizations from any organization with jurisdiction prior to the start of construction.

COMMENT K2: One commenter asked whether a geologist or an archeologist had surveyed the proposed facility for items of archeological and/or historical purposes and what is the specific plan to ensure dinosaur bones, fossils, footprints and other remains are not lost in the rock crushing operations and what is the specific plan to insure the remains, relic and burial grounds of the Native Americans are not lost in the rock crushing operation. (G. Darrell Best)

RESPONSE K2: The TCEQ's jurisdiction is established by the Legislature and is limited to the issues set forth in statute. Accordingly, the draft permit regulates the control and abatement of air emissions only. The concerns regarding an archeological plan are posed to the Applicant and the Applicant's method of operation and are not addressed to the TCEQ. The concern listed has been included for completeness but TCEQ's jurisdiction is established by legislation. The TCEQ cannot speak for the Applicant.

COMMENT K3: Commenters decry the use of heavy equipment that will cause the destruction of property including Chalk Mountain, a recognized historical landmark, as well as have a negative effect on the nearby Erwin Ranch land which is being developed for residential subdivisions. (Margaret A. Adams, Iris Broyles, John Graves, Karen Richardson, Stanley J. Stephens, Allen Sumners, Jimmie Sumners, Nancy Ray White and commenters in Groups E and H)

RESPONSE K3: Discussions with the citizens attending the three public meetings held on this application indicate that the area known as Chalk Mountain is not within nor adjacent to the boundaries of the land represented in the application as containing the rock crushing facilities. Thus, no destruction of the area known as Chalk Mountain is expected.

This draft permit regulates the control and abatement of air emissions from the stationary sources represented as the rock crushing facilities and described in the permit application. The use of any mobile machinery designated as heavy equipment is outside the purview of this review. The Texas Departments of Public Safety and Transportation, as well as local law enforcement authorities, together with county governments, maintain jurisdiction over public roadway access, and zoning ordinances. Questions pertaining to these issues should be directed to those authorities.

L. PREAUTHORIZATION ACTIONS and OTHER AUTHORIZATION CONCERNS

COMMENT L1: Commenters ask about the activities that the Applicant can undertake on the property prior to issuance of an air quality permit stating that he has brought in heavy equipment, put a drive way through the right of way without a permit, and has cleared several acres of soil and trees. (Darrell Best, Mary Best, Roxann Bingham, Don Bodenhamer, Charles S. Brown, Cyd F. Brown)

RESPONSE L1: The pre-authorization work that can be done at a site has been defined in a January 1996 memo entitled *TNRCC Regulatory Guidance: Before and After Your Permit is Issued.* The memo states that "[e]quipment may be received at a plant site and stored provided no attempt is made to assemble the equipment or to connect the equipment into any electrical, plumbing, or other utility system. Portable equipment such as hot mix asphalt plants and rock crushers may be placed on the property provided no work is done to assemble or erect the equipment.

"All work such as excavation, form erection, or steel laying pertaining to foundations upon which permit units will rest shall be considered construction. For permit units not requiring a concrete foundation, the erection or construction of associated items like earthen dams, placement of piling, soil stabilization, storage tank fills, or retaining structures shall be considered construction, and will NOT be allowed without prior receipt of the construction permit.

"Land clearing, soil load bearing tests, leveling of the area, sewer and utility lines, roads building, power line installation, fencing, construction shack building, etc., are considered 'site clearance/preparation.' However, once the soil and site are ready for foundations, the first excavation into the readied soil is 'start of construction.'"

COMMENT L2 Two commenters asked about the issuance of a Permit by Rule (PBR) establishing a screening operation to commence operation on the property and asked how the

screen could not be construed as work done in preparation of a rock crusher. (G. Darrell Best, Linda Gustafson)

One commenter asked if the Applicant would continue to screen rock with the PBR registration if he did not get the air quality permit for the rock crushing facilities. (Linda Gustafson)

RESPONSE L2: The Applicant applied for a PBR for a screening operation to be operated at the site prior to the authorization of the rock crushing facility. The screening operation was registered under PBR Registration Number 86429L001. This operation will be conducted independently of the pending rock crushing Change of Location air quality permit number 82199L002. Once permit number 82199L002 has been issued and the rock crushing plant is constructed on-site and the screening unit and associated conveyors become part of the rock crushing plant, or the screening unit is moved off site, PBR 86429L001 will be void.

The concern whether the Applicant would continue to screen rock with the PBR registration if he did not get the air quality permit for the rock crushing facility and the Applicant's plan for future operation were questions posed to the Applicant. The concern listed has been included for completeness. The TCEQ cannot speak for the Applicant, however, the PBR would remain effective allowing the Applicant to continue to screen material at the site if he so chooses.

COMMENT L3: The same commenter asked whether the Applicant would apply for the Air Quality Standard Permit for Permanent Rock and Concrete Crushers if he did not obtain the air quality Change of Location air permit represented in the current application. (Linda Gustafson)

RESPONSE L3: The concern is posed to the Applicant and the Applicant's plan for future operation and is not addressed to the TCEQ. The concern listed has been included for completeness and the TCEQ cannot speak for the Applicant. However, several restrictions apply to the application for the type of standard permit mentioned. Specifically, an applicant for authorization of a rock crusher under THSC § 382.0518, is not eligible for this standard permit at the same site until 12 months after the application for authorization under § 382.0518 is withdrawn. Facilities already authorized by a permit under § 382.0518 are not eligible for this standard permit.

COMMENT L4: Several commenters asked about an asphalt plant on site; whether there would be any asphalt production or material storage on site, or since most crushed rock is purported to be used for road construction, would any mixture with asphalt be accomplished at this site. (G. Darrell Best, Robert Portman, UT Environmental Law Clinic)

RESPONSE L4: The application is for the Change of Location of a rock crushing facility comprised of one crusher, one screen and associated conveyors and stockpiles. The permit does not, and can not, address anything beyond the operation and emissions from these facilities. To include any asphalt operations would require the permit to go through an Amendment due to, among other things, the change in character of emissions.

COMMENT L5: Two commenters asked how the review for an application for the Change of Location of an individual rock crusher permit would be regarded by the TCEQ if there were indication that the application would also include an asphalt plant or material storage facility at the site. (G. Darrell Best, Robert Portman)

RESPONSE L5: The application is for a Change of Location which precludes the inclusion of any type of facilities other than those currently authorized in the permit at the current location. No additional facilities can be added to the permit through a Change of Location request. If the Applicant were considering adding an asphalt plant, or increasing the material storage capabilities of the operation, the TCEQ would require the Applicant to submit a permit amendment request to include any potential change in the character of emissions, change in the amount of emissions or change in the control of the emissions.

M. OWNER/OPERATON ISSUES BEYOND TCEQ JURISDICTION

COMMENT M1: Several commenters asked about the experience, if any, of the Applicant and his principals with respect to rock quarrying and crushing. (G. Darrell Best, David Frederick, and Robert Portman). G. Darrel Best continues this concern addressed to the principals associated with the Applicant by asking: What is the compliance history over the past 10 years of firms in which these individuals were principals; What firms were they principals of, in addition to Slick Machines; What is the parent company of Slick Machines; Who are the principals of the parent company; and What other principals are major and minority partner/investor/backers of Slick Machines.

Lee Clauser asked if there were other partners involved in this facility beside the Applicant and the land owner.

RESPONSE M1: 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 prohibit owners, operators, principals, partners or investors from seeking authorization to emit air contaminants; nor can the TCEQ prohibit these same entities from receiving authorization to emit air contaminants if they comply with all statutory and regulator requirements irrespective of experience or abilities.

Concerns regarding the Applicant's compliance history have been addressed in Section H.

COMMENT M2: Several commenters have asked whether the application for the air quality permit included a reclamation plan or whether the Applicant had a reclamation plan for restoring the site after the rock quarrying operations are complete. (G. Darrell Best, Charles S. Brown, Cyd F. Brown, Jean Lane, Stanley J. Stephens and the UT Environmental Law Clinic). G. Darrell Best continues by asking if the plan returned all of the land to a useful purpose and if so: What is the stated useful purpose; How will the land be returned to its useful purpose; What is the timetable for the mining work to be performed; What is the timetable for the completion of the reclamation process; How long from the end of the mining operation until the reclamation

process is commenced; What is the plan for re-vegetation of the site; and Has a bond been posted for the reclamation work.

RESPONSE M2: 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 require applicants to establish a plan for land reclamation. The concerns that have been posed are addressed to the Applicant and the Applicant's method of operation and are not addressed to the TCEQ. The concerns listed have been included for completeness but are outside of the jurisdictional guidelines established by legislation.

COMMENT M3: One commenter asked if the Applicant had leased the land or the mineral rights, how many acres had been leased, what the terms and conditions of the leasing agreement are, and whether all of the owners of the land had been informed of the terms of the agreement. (G. Darrell Best, Lee Clauser)

RESPONSE M3: The concern was posed to the Applicant and is not addressed to the TCEQ. The concern has been listed for completeness but is outside of the jurisdictional guidelines established by legislation. The Applicant's relationship with the property whether it be through lease, ownership or contractual relationship with the land owner is beyond the scope of an air quality permit review. If granted, the Applicant is responsible for air emissions produced by the authorized rock crushing operation.

COMMENT M4: One commenter asked if the Applicant was considering the mining of dimensional stone at the proposed facility, and if so, what is the plan to protect the water run off to Rough Creek, what is the plan concerning water run off to the north and south of the proposed facility and what specific plans the operator may have to ensure adherence to the Clear Streams Initiative. (G. Darrell Best)

RESPONSE M4: The TCEQ's jurisdiction is established by the Legislature and is limited to the issues set forth in statute. There is no indication the Applicant is considering the mining of dimensional stone; however, it is the responsibility of the owner/applicant to have addressed all regulatory concerns and obtained all permitting authorizations prior to the start of construction.

The TCEQ's Clear Streams Initiative was a concentrated effort by a team of field investigators that examined 316 quarries in 62 counties over a four-week period beginning in April 2004. This effort culminated in legislation that established the John Graves Scenic Riverway and focuses on two counties, Palo Pinto and Parker. Somervell or Erath counties are not affected by the John Graves Scenic Riverway legislation.

As explained in Response J6 to a similar concern expressed by the commenter, this permit allows emission of particulate matter only. Storm water runoff impacts on the surface or groundwater is not within the scope of review for an air quality permit application. All permit authorizations must be in effect prior to the start of operations which may require the applicant to receive additional authorization from different media. The failure to apply, or receive, other required

permit authorizations would have no effect on the decision to grant the current Change of Location air permit authorization.

COMMENT M5: G. Darrell Best asks whether the operator of the proposed facility has any state issued or industry issued or equipment manufacture issued certifications for the management of or operation of mining or rock crushing operations and if so: What certificate are they; What continuing education has been completed; Has any certification ever been denied; Has any previous certification been revoked; Has any previous certification expired; Who manages the certification program for the operator and what training have they received to qualify them for the management of the certification and training program; and What certifications have the TCEQ made concerning this operator. Another commenter asked if the Applicant had a maintenance schedule to ensure that all of the equipment meets the necessary standards. (UT Environmental Law Clinic)

RESPONSE M5: The concerns regarding certification and maintenance are addressed to the Applicant and not the TCEQ. The processing of an air quality change of location application for a rock crusher does not require certification documents for the operator if any such certification exists. Accordingly, issues regarding the certification of owners/operators are not within the purview of this permit review. It is the responsibility of the owner/applicant to have addressed all necessary certification authorizations prior to the start of construction.

COMMENT M6: G. Darrell Best continues asking about the Applicant's safety program asking: Have there ever been any safety violations; What is the operator's safety record; Who administers the operator's safety program; What certifications does the safety administrator possess; Have any of the safety administrators certifications expired; How does the administrator stay current with the latest best practices; What is the date of the last continuing education class and what was the class; Did the administrator receive a certificate from the class and what did the certificate say; How many hours per year does the administrator receive in continuing education.

RESPONSE M6: The concerns regarding safety certification are addressed to the Applicant and not to the TCEQ. Additionally, issues regarding the safety certification of owners/operators are beyond TCEQ's jurisdiction and beyond the scope of an air permit review. It is the responsibility of the owner/applicant to have addressed all potential certification authorizations prior to the start of construction. The TCEQ cannot speak for the Applicant.

COMMENT M7: Two commenters asked whether the quality of the rock had been evaluated for compliance with TxDOT standards and who the customers would be for the material if the product did, or did not, meet the TxDOT standards. (G. Darrell Best, Sherman Griffith)

REPSONSE M7: The concerns regarding the material to be quarried and crushed are addressed to the Applicant and not to the TCEQ. The future use or viability of the material being crushed is beyond the scope of the air permit review.

COMMENT M8: One commenter wanted to know why the Applicant had left a site that had been previously approved and was trying to move to a site that is creating considerable aggravation. (Chandler McLay) G. Darrell Best continued this concern by wanting to know how long the Applicant crushed rock at a previous location near Valera, Coleman County including: How many tons per year were mined; How many acres is the mine site; Why was the air quality permit cancelled; Is the gravel pit still in operation; Why did the egress route go along the county road rather than across the ranch road, and; Why is there ankle deep dust on the county road in the direction that the trucks travel and none in the opposite direction.

RESPONSE M8: The concerns regarding the operation at a previous site are addressed to the Applicant and not to the TCEQ. As stated in Section F, the permit for the Valero, Coleman County location was void upon the Change of Location to a site near Desdemona, Eastland County. Other questions and assertions are not within the purview of this permit review.

COMMENT M9: G. Darrell Best asked the following questions regarding the Desdemona, Eastland County location: Did the applicant receive a permit to crush rock in Desdemona; How much rock was crushed in Desdemona; Is the Applicant still crushing rock in Desdemona; What complaints were received in Desdemona; and Why has the Applicant quit crushing rock in Desdemona and requested a move of the rock crusher to Glen Rose, Somervell County.

RESPONSE M9: The Applicant received a permit to operate a rock crushing facility in Desdemona through a Change of Location permit authorization. Under a Change of Location request, no changes can be made to the amount of rock crushed. Since no change in the permit throughput is alllowed, the amount of rock authorized to be crushed at the Desdemona site is the same as at the Valera site and will be the same at the Glen Rose site. Any complaints received are reflected in the Compliance History described in Section H of this document. Other questions and assertions are not within the purview of this permit review.

COMMENT M10: One commenter asked if the Applicant fully intended to run the equipment to the maximum limits allowed in the permit and, if so, what technologies would be put in place to ensure the limits were not exceeded. (UT Environmental Law Clinic)

RESPONSE M10: The concerns regarding throughput limitations are addressed to the Applicant and not to the TCEQ. If granted, the permit would allow the Applicant to crush rock to the full extent of the permitted limits. It is the responsibility of the Applicant to adhere to the throughput requirements of the permit and the limitations of the equipment. The permit requires recordkeeping to demonstrate that the throughput limits are not exceeded.

COMMENT M11: One commenter asked how the Applicant would minimize emissions from the trucks leaving the facility. The commenter also asked how the Applicant would [1] load trucks and what mitigating steps would be taken to minimize emissions, [2] what technology would be used to measure these loading and unloading emissions from the truck, and [3] whether the results would be available to third party evaluators to determine the accuracy of the measurements. (UT Environmental Law Clinic)

RESPONSE M11: The concerns regarding truck emissions, truck loading methodology and emission minimization are addressed to the Applicant and not to the TCEQ It is the responsibility of the Applicant to address the loading and unloading emission limitation of the permit and the limitations of the equipment and insure that these limitations are met. Please see Response G11 above regarding TCEQ's jurisdiction over trucks and truck traffic.

COMMENT M12: One commenter asked how many employees would be working on the site at any given time. (UT Environmental Law Clinic)

RESPONSE M12: The question regarding employment is addressed to the Applicant and not to the TCEQ. Furthermore, this issue is beyond the scope of the air permit review.

COMMENT M13: The commenter continues with the questions regarding 1. whether OSHA has been contacted to ensure the site is not hazardous to the employees health, 2. whether MSHA has been notified of the intent to start mining operation, 3. whether the facility is compliant with Fed Mine Safety and Health Act 1977 Public Law 91-173 as amended and 4. compliant with TxDOT's Aggregate Quarry and Pit Safety Act, asking if the operator could inform the public of the exact distance of the quarry pit from Highway 67. (UT Environmental Law Clinic)

RESPONSE M13: The concern regarding additional authorizations is addressed to the Applicant and not to the TCEQ. Issues related to mine safety and occupational safety are beyond the TCEQ's jurisdiction and beyond the scope of this air permit review. It is the responsibility of the Applicant to have all required authorizations in place and current prior to the start of operation. See also, Response G11 above.

COMMENT M14: One applicant questioned the future expansion plans. (UT Environmental Law Clinic)

RESPONSE M14: The concern regarding future expansion plans is addressed to the Applicant and not to the TCEQ. At this time, no request to expand the operation has been received from the Applicant.

COMMENT M15: One commenter wrote asking whether the quarry would provide jobs to local residents and if so, how many. The commenter continued the line of questions to include asking what the jobs would be, would all operators be MSHA certified and would operators/employees be trained in best practices and other relevant issues relating to air and water quality and endangered species habitat. (UT Environmental Law Clinic)

RESPONSE M15: The concern regarding employment and training plans is addressed to the Applicant and not to the TCEQ. It is the responsibility of the Applicant to hire and train operators regarding the environmental and safety work practices.

COMMENT M16: One commenter asked why the Applicant had cancelled the sales tax permit in 2005. (Darrell Best)

RESPONSE M16: Issues regarding sales tax permits are beyond the TCEQ's jurisdiction and the scope of this air permit application. It is the responsibility of the Applicant to have all required obligations met prior to the start of operation.

COMMENT M17: One commenter quoted Chapter 1, verse 1 from the book of Genesis of the Holy Bible that "In the beginning God created the Heaven and the Earth" and ended her comment quoting from verse 31 of the same chapter that "... God saw everything He had made and behold it was very good... ". The commenter asked if the Applicant thought God would look at his work on Chalk Mountain and say, "It is good." (Mary Adams)

RESPONSE M17: The comment was addressed to the Applicant and is beyond the scope of the air permit application process.

N. LIABILITY CONCERNS

COMMENT N1: Two commenters asked what actions the TCEQ would take against the Applicant for rock being displaced onto their property as a result of the blasting operations. (Charles S. Brown, Cyd F. Brown)

RESPONSE N1: Blasting operations are beyond the TCEQ's jurisdiction and outside the scope of this air permit application. Issues related to blasting and mine safety should be addressed to the appropriate regulatory authority.

COMMENT N2: Two commenters asked if the TCEQ acknowledges any responsibility to consider the broad public interest of haul truck safety, endangered species, etc. when making its relocation decision. (G. Darrell Best, Robert Portman)

RESPONSE N2: The TCEQ's jurisdiction is established by the Legislature and is limited to the issues set forth in statute. The ED will make a decision regarding the Change of Location request based on the specific requirements of this application and the statutory obligations charged to the TCEQ by the Texas legislature. Included in these statutory obligations is protection of public health and welfare. The welfare protections provided under the Texas Clean Air Act cover concerns such as protection of animal life, vegetation and property. See response G1 above. Also as noted above, the TCEQ does not have authority to enforce the specific requirements of the Endangered Species act. Please also see responses G11 and G13 above regarding TCEQ's statutory authority over truck safety.

COMMENT N3: Other commenters asked how the Applicant would proceed if there were a property line dispute with any of the adjoining neighbors. (Dwayne Jackson, Peggy Portman)

REPSONSE N3: The concern regarding property line disputes is addressed to the Applicant and not to the TCEQ. Property line disputes are beyond the TCEQ's jurisdiction and beyond the scope of air permit application reviews. Furthermore, property line disputes would generally need to be addressed by the property owners.

O. ADDITIONAL QUESTIONS and CONCERNS

COMMENT O1: Commenter asked why the TCEQ is allowing one person to benefit financially at the expense of a city, a county, and future generations and how the TCEQ can support a type of business that does not support Somervell County. (Mary Adams, Iris Broyles)

Other commenters asked how the TCEQ can authorize an action that cannot be revitalized and violates the rights of neighboring landowners. (Iris Broyles, Curt Decker, Patrick R. Condy (Executive Director, Fossil Rim Wildlife Center))

One commenter asked which mountain would be next and how many more can be lost. (Stanley J. Stephens)

Other commenters requested that the TCEQ work as the public's representative in regards to this authorization and not issue a permit that would be an irresponsible use of tax payer money. (Pat Matthews, Jennifer Gearhart Miller)

Another commenter asked how the rock crushing facility would be of advantage to her life or the lives of her children and grandchildren. (Joan Taylor)

RESPONSE O1: 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 prohibit owners and operators from seeking authorization to emit air contaminants; nor can the TCEQ prohibit owners and operators from receiving authorization to emit air contaminants if they comply with all statutory and regulatory requirements. As part of this determination, the TCEQ is not authorized to consider business objectives, financial gains and land value issues in determining whether or not an air quality permit should be issued. The focus on the air permit review is to ensure that permit conditions are protective of human health and the environment. If granted the permit, and operated in accordance with all applicable requirements, no adverse effects are expected from the operation of the rock crusher. See response E1 above for additional discussion on

COMMENT O2: One commenter asked where the rock was going to be used. (Darrell Best) Two commenters believe the material to be quarried under this authorization is not of the quality to be used for TxDOT purposes and proposes that the material be tested prior to the authorization of the permit. (Lee Clauser, Sherman Griffith)

RESPONSE O2: As stated previously, 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 prohibit owners and operators from seeking authorization to emit air contaminants; nor can the TCEQ prohibit owners and operators from receiving authorization to emit air contaminants if they comply with all statutory and regulatory requirements. As part of this determination, the TCEQ is not authorized to consider business issues in determining whether or not an air quality permit should be issued.

COMMENT O3: Several commenters questioned how the TCEQ can authorize an operation that would increase the erosion probabilities of an area. (Beverly Woolley (Texas State Representative), Glenda Keilstrup)

RESPONSE O3: The authorization being sought is for the emission of particulate matter air emissions. Issues related to erosion are beyond the scope of this application review. The Applicant must have all other authorizations in place prior to the start of operation. These additional authorizations may include any water issues that could create a condition of erosion.

COMMENT O4: Based on a possible solution posed by Representative Sid Miller at the first public meeting on October 23, 2008 regarding a potential trade of land, one commenter asked about the value of the rock and the value of the land both as pristine land and the land containing the existing caliche pit. (Lee Clauser)

RESPONSE O4: The Legislature has instructed the TCEQ to grant an air quality preconstruction permit to an Applicant if the TCEQ finds the proposed facility meets BACT requirements and the emissions contemplated will be protective of the public's health and physical property. Consideration of land values is not the TCEQ's statutory authority as granted by the Legislature and is beyond the scope of an air permit review. The Legislature has not delegated the TCEQ the authority to take business considerations into account, including the value of the product, the value of the land being used, or the potential customers for the product. The proposed solution was presented by the Representative as a potential mediation between the community and the Applicant.

COMMENT O5: One commenter addressed written questions to the Applicant questioning the Applicant's statement of the need for additional gravel pit in the area including the statement "that there are no homes in the area." (Lee Clauser)

RESPONSE O5: The written comment was addressed to the Applicant and not to the TCEQ. The TCEQ cannot speak for the Applicant.

COMMENT O6: One commenter asked if the land owner would loose his Ag Property Exemption. (Lee Clauser)

RESPONSE O6: Property tax exemption status is beyond TCEQ's statutory authority and the scope of an air permit review.

COMMENT O7: Two commenters asked about the permit history of the permit reviewer including how many permits were reviewed each year, how many are denied and how many are approved.

The commenters also wanted to know how many applications for rock crusher permits have been submitted in the past 400 days that this application has been in progress, how many have been approved and how many have been either denied or withdrawn. (Darrell Best, Lee Clauser)

RESPONSE O7: The permit reviewer has averaged slightly over 30 permits reviewed each year that he has been associated with the Air Permits Division. These permits include initial construction applications, renewals, amendments, revisions, standard permits and changes of location applications. Almost all have been approved.

From the time that this application has been under review (July 25, 2008) until the end of the comment period established by the third public meeting (September 3, 2009) the Mechanical Section of the Air Permits Division has received approximately 86 applications for rock crushing facilities. These include not only Change of Location applications, but also Initial Constructions, Renewals, Amendments, Standard Permits, etc. Of the 86 applications received, 66 were approved, five were cancelled, withdrawn or considered void, and 15 were pending.

Of the number of those applications received by the Mechanical Section of the Air Permits Division during the time frame from July 25, 2008 to September 3, 2009, the permit reviewer was assigned 20 of the projects for the various permit types listed above. Of these 20 applications, 12 were approved, one was considered cancelled, withdrawn or void, and 7 were still pending.

COMMENT O8: One commenter took offense at wording throughout the TCEQ process asking what rules and regulations can be violated that will be enforced and what rules and regulations are more guidelines than rules. The commenter referred to words in the Special Conditions where it states that the applicant "must" or "shall" do something and if they don't the TCEQ "may" take action. The commenter accuses the TCEQ of saying they "may" and actually mean "they won't". (Darrell Best)

RESPONSE O8: New Source Review (NSR) permits are written as one of a kind permits that instructs the person holding the permit on, among other things, how the process must operate in order to maintain compliance with maximum allowable emission rates, protectiveness review, and be reflective of the process descriptions contained in the application. The TCEQ may take action against any of the Special Conditions that are not met, and may take action in any number of ways including, but not limited to enforcement actions, fines, voidance of operating permit, etc. The word "may" allows the Enforcement Division to determine the penalty and actions to be taken to be commensurate with the violation and account for initial violations, repeat violations or serious violations.

COMMENT O9: One commenter asks why the draft special conditions allow for a greater capacity emission that was allowed by Title 40 Code of Federal Regulations (40 CFR) Subpart OOO and asks which regulation trumps what and how it is enforced. (Darrell Best)

RESPONSE O9: It is unclear at this time which special condition or which part of 40 CFR Subpart OOO is being referred to by the commenter and what is meant by the term "greater capacity emissions". However, a nonmetallic mineral processing plant design, such as the Applicant's, does not have specific limitations on emission rates specified in Subpart OOO. The Subpart does require an initial performance test to evaluate opacity from specific applicable equipment.

COMMENT O10: One commenter asked why the Technical Review that was submitted at the library with the second public notice package was not signed and dated by the reviewer. The commenter asked who the reviewer was, when it was reviewed, and why it wasn't signed. (Darrell Best)

RESPONSE O10: The commenter should note that the permit reviewer's name was listed in the first block of information at the top of the Technical Review as Larry Buller. Mr. Buller also attended each of the three public meetings and introduced himself as the permit reviewer to all those who attended each of the three public meetings.

The Technical Review is a continuously updated document that reflects the current status of the permit process. It was submitted as part of the package that was maintained at the Public Library to provide information as to the status of the review. It was not signed at the time because it is a work in progress and not a finished document. When the Technical Review is complete, is signed.

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

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