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March 23, 2011

The Honorable Judge Craig Bennett
Administrative Law Judge
State Office of Administrative Hearings
P.O. Box 13025
Austin, Texas 78711-3025

via facsimile: (512) 322-2061

Re: *In the Matter of the Application of Tommy Davis DBA Slick Machines for TCEQ Air Permit No. 82199L002; SOAH Docket No. 582-10-5281; TCEQ Docket No. 2010-0660-AIR.*

Dear Judge Bennett:

Protestants Chalk Mountain's Exceptions to the Proposal for Decision is enclosed for filing.

Thank you for your consideration of this matter. Should you have any questions, please feel free to contact me.

Sincerely,



David O. Frederick

cc: Certificate of Service

CERTIFICATE OF SERVICE

By my signature below, I certify that on this 23rd day of March, 2011, a copy of the foregoing document was served upon the parties identified below via facsimile transmission, electronic mail, hand delivery and/or U.S. Postal Mail.


David O. Frederick

FOR THE APPLICANT:

Mr. Tommy Davis
Slick Machines
762 Spillway Rd.
Brownwood, Texas 76801-0940
325-784-8030

FOR THE CHIEF CLERK:

Ms. La Donna Castañuela
Texas Commission on Environmental
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Chief Clerk, MC-105
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FOR THE EXECUTIVE DIRECTOR:

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FOR THE OFFICE OF PUBLIC

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**SOAH DOCKET NO. 582-10-5281
TCEQ DOCKET NO. 2010-0660-AIR**

APPLICATION BY TOMMY	§	BEFORE THE STATE OFFICE
DAVIS DBA SLICK MACHINES	§	OF
FOR TCEQ AIR PERMIT NO.	§	ADMINISTRATIVE
82199L002	§	HEARINGS

PROTESTANTS' EXCEPTIONS TO THE PROPOSAL FOR DECISION

Hon. Craig Bennett, Administrative Law Judge:

This motion is only in the most technical sense one that “excepts” to the PFD. Chalk Mountain Foundation, Inc., Charles Brown and Darrell Best (“Protestants”) present, here, an item for inclusion in the proposed Order. Thus, the Protestants would add to the proposed Order a paragraph not recommended in the proposed Order that accompanies the PFD.

Protestants request they be given notice of and an opportunity to contest any application filed in the next year for authorization to operate a rock crusher on the Parham tract under a standard permit. As the Commission’s records reflect, on April 27, 2010, the ED approved operation by John Yearwood of a rock crusher under a standard permit on the tract of land (the Underwood tract) adjoining a tract (the Parham tract) for which an individual permit was sought in this docket. That is, the Parham tract was the locus of the application of Tommy Davis, dba Slick Machines, Inc., for Air Quality Permit No. 82199L002; TCEQ Docket No. 2010-0660-AIR. The Yearwood application became the subject of a separate TCEQ docket: No. 2010-0752-AIR.

Tommy Davis had previously, March 17, 2010, submitted a relocation application

for a Tier II Temporary Rock Crusher on the Underwood property. The agency's staff denied this approval, inasmuch as the Underwood and Parham tracts adjoin one another and are under common control, and Mr. Davis had pending the individual permit application on the Parham property for which the PDF in this docket recommends denial. (The agency's records also reflect that Tommy Davis holds the Storm Water permit for the Underwood property (Stormwater Permit Number TXR05Z232)).

Ultimately, the agency denied Protestants' motion to overturn the standard permit coverage granted April 27, 2010, to John Yearwood, presumably, because the agency rejected the Protestants' argument that these two men had such a relationship that Mr. Davis had *de facto* control of operations on the Underwood property.

Since the time of the dispute about the operation of the rock crusher on the Underwood property, Mr. Davis has filed a pleading in this docket (No. 2010-0660-AIR, the docket in which the PFD is pending) citing his history of successful mine site operation. That pleading claims: "I have successfully operated mine sites in:and Glen Rose, Tx – Underwood Lease." Following this itemization of his experience, he explained: "This lease is directly across the highway from the permit in question. While operating the Underwood Lease, there were three TCEQ inspections with no citations issued." So, we have an admission by Mr. Davis that, though Mr. Yearwood had the authorization, Mr. Davis operated the rock crusher on the Underwood site. (Mr. Davis's pleading is attached to these Exceptions.)

The standard rock permit provides, at § (1)(V): "An applicant for authorization of a rock crusher, under Texas Health and Safety Code, § 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.” Mr. Davis, in his enforcement case and in the Underwood property rock crusher dispute, has demonstrated his strong dis-inclination to adhere to the agency’s rules.

Protestants fear that, following the agency’s denial of his § 382.0518 permit to operate on the Parham property, Mr. Davis will simply induce Mr. Yearwood or another business associate to apply for standard permit coverage to operate a rock crusher on the Parham property – a rock crusher that will be, in fact, Mr. Davis’s crusher. To help protect against this risk, *Protestants pray an ordering paragraph be added to the final order in this docket directing agency staff to give Protestants’ counsel notice of and an opportunity to contest any application filed in the next year for authorization to operate a rock crusher on the Parham tract under a standard permit.*

Respectfully submitted,

by: 

David O. Frederick
SBT # 07412300

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COUNSEL FOR CHALK MOUNTAIN
FOUNDATION, INC., CHARLES
BROWN and DARRELL BEST

Attachment A

Slick Machines
Tommy Davis
762 Spillway Road
Brownwood, TX 76801

Response to SOAH Docket #582-10-5281
TCEQ Docket #2010-0660-AIR

February 1, 2011

To the State Office of Administrative Hearings:

Thank you for your concern about my ability to understand the requirements of an air permit. Though your suggestion that I consult an attorney to help obtain this permit is appreciated, it seems quite ironic that someone like an attorney who has absolutely no understanding of the operation of a mine site, or the knowledge of operating a crusher, much less controlling the dust that is emitted from the crusher is able to help obtain this permit. Although it should not be this way, it appears that TCEQ is more concerned with paperwork to obtain the permit than the actual quality of air that is emitted. This observation has become more and more clear to me not only through my own dealings with TCEQ but also with John Yearwood's dealings with TCEQ Region 11's refusal to enforce their own water, air and solid waste regulations and allowing vast areas of land, Texas waters and aquifers to be polluted. Because of TCEQ's refusal, or inability, to enforce the environmental regulations, John Yearwood has had no recourse but to contact the EPA for assistance in remediating. Though these two extreme situations may appear to have nothing in common, the commonality does appear to be the incompetencies of TCEQ. It appears that you are neither protecting the environment nor facilitating business in Texas, which is certainly not your mission statement.

The second suggestion of consulting an expert is one with which I will agree. I consider myself an expert and I assure you that I do consult with myself daily. To ensure this court that I do understand an air permit and all that entails, I have included my qualifications and past mining that has all been in compliance with TCEQ regulations. I have successfully operated mine sites in:

Valera, TX – operating for 8 years

Customers City of Coleman
 Coleman County Precincts 1-4
 City of Ballinger
 Runnels County
 City of Cross Plains

Desdemona, TX – Location 2

Customer Comanche County

Desdemona, TX – Location 1

Customer Cook Canyon Ranch

Galveston, TX – Hurricane Ike clean up – 1 year

Customers Galveston County
 FEMA

Brownwood, TX

Customer City of Brownwood

Hearne, TX

Customer Love's Truck Stop

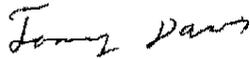
Glen Rose, TX Underwood Lease

This lease is directly across the highway from the permit in question. While operating the Underwood Lease, there were three TCEQ inspections with no citations issued. Surely this successful record could be walked across the highway and be replicated.

Why does TCEQ question me now when this agency has never questioned my mining knowledge in the past? This is unfair, prejudiced politics.

I might suggest that TCEQ consult an attorney, not necessarily one in their employment, to ensure that the 14th Amendment is understood and practiced by their agency.

Sick of TCEQ,



Tommy Davis
Slick Machines

TIME RECEIVED
February 3, 2011 2:58:22 PM CST

REMOTE CSID

DURATION
35

PAGES
3

STATUS
Received

Slick Machines

762 Spillway Rd, Brownwood, TX 76801

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888-442-0244

slickmachines@hughes.net

To:		From:	Tommy Davis
Fax:	(512) 322-2061	Date:	2/3/2011 2:56:06 PM
Phone:		Re:	Response to SOAH Docket#5820-10-5281

Comments

Please see attached Response Letter
SOAH Docket# 582-10-5281
TCEQ Docket# 2010-0660-AIR

facsimile