

**SOAH DOCKET NO. 582-12-6347
TCEQ DOCKET NO. 2012-0971-AIR**

EOG RESOURCES, INC.	§	BEFORE THE STATE OFFICE
	§	
APPLICATION FOR AIR QUALITY	§	OF
	§	
PERMIT NO. 95412	§	ADMINISTRATIVE HEARINGS

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

TO THE HONORABLE ADMINISTRATIVE LAW JUDGES:

Applicant EOG Resources, Inc. (“Applicant”) files this its Exceptions to and Brief in Support of the Administrative Law Judges’ Proposal for Decision and Order (“PFD”) issued on October 18, 2013, and respectfully states as follows:

Introduction

After considering all of the evidence presented in and the law applicable to this contested case, Administrative Law Judges Penny A. Wilkov and Travis Vickery recommend in the PFD that the Texas Commission on Environmental Quality (the “Commission”) grant Applicant’s air quality permit application to construct and operate an industrial sand processing plant in Cooke County. Applicant supports the ALJs’ analysis, recitation of the facts and recommendations in the PFD, including the proposed findings of fact and conclusions of law. Applicant proposes a few corrections and clarifications to the proposed findings of fact and conclusions of law, and respectfully requests that the exceptions requested below be granted, and that the Commission adopt the PFD as amended by such exceptions and grant Applicant’s permit application as recommended by the ALJs.

Exceptions to PFD

Applicant requests that the following corrections and clarifications be made to the findings of fact set forth in the proposed order granting Applicant's permit set forth in the PFD:

1. Applicant requests that proposed findings of fact No. 1 and 18 be revised to state that the location of the facilities will be in "northwest" Cooke County instead of "southwest," to reflect the actual location of the facilities.

2. Applicant requests that proposed finding of fact No. 21 be revised to state that material will be returned to the sand quarry by trucks over "a paved road" instead of "paved roads," given that there will be only one paved road from the processing facility back to the quarry.

3. Applicant requests that proposed finding of fact No. 22 be amended to eliminate ozone and lead as emissions authorized by the Draft Permit (as those air contaminants will not be emitted from the facilities) and to change "nitrogen dioxide" to "nitrogen oxides" and add organic compounds (VOCs), to comport with the requirements of the Draft Permit. Applicant proposes that Finding of Fact No. 22 should read as follows:

"The Draft Permit authorizes the emission of particulate matter (PM), particulate matter equal to or less than 10 micrometers in diameter (PM₁₀), and particulate matter equal to or less than 2.5 micrometers in diameter (PM_{2.5}), as well as sulfur dioxide (SO₂), carbon monoxide (CO), nitrogen oxides (NO_x) and organic compounds (VOCs)."

4. Applicant requests that proposed finding of fact No. 28(i) be amended by changing the term "on-property roads" to "in-plant roads," to maintain consistency with the requirements of the Draft Permit and to conform to the evidence presented by Applicant at the hearing regarding paving of in-plant roads.

5. Applicant requests that proposed finding of fact No. 35 be revised by adding the term “baghouse” after dryer in the first sentence, to accurately reflect the information submitted with the Application.

6. Applicant requests that proposed finding of fact No. 68 be revised by adding the term “baghouse” after dryer, to accurately reflect the testimony provided at the hearing by TCEQ permit engineer Larry Buller.

7. Applicant requests that proposed finding of fact No. 74 be amended for clarification purposes to read as follows:

“TCEQ guidance properly calls for evaluation of long-term exposure to silica under the agency’s ESL listing.”

8. Applicant requests that proposed finding of fact No. 75 be revised by striking the word “respirable”, to have the finding accurately conform to the evidence admitted at the hearing.

9. Applicant requests that proposed finding of fact No. 76 be revised by striking the words “PM₁₀ and”, to have the finding accurately conform to the evidence admitted at the hearing.

10. Applicant requests that proposed finding of fact No. 87 be amended for clarification purposes, and to accurately reflect the evidence admitted at the hearing, to read as follows:

“The input data used in the modeling was land-use information and surface roughness parameter, topographical elevation data (flat or complex terrain), variable emission rates, building wake effects (downwash), emission point parameters, receptor grid information (receptor locations, elevations and spacing), and meteorological data (standard surface and upper-air observations).

11. Applicant requests that proposed finding of fact No. 101(a) be revised by striking the parenthetical “(24-hour)” and replacing it with “(1-hour)”, to accurately reflect the averaging

time for the short-term ESL for silica.

12. Applicant requests that proposed finding of fact No. 132 be revised by adding the phrase “ESL exceedances” to the end of the finding, for clarification purposes and to be consistent with proposed findings of fact Nos. 130 and 131.

Conclusion and Prayer

The evidence admitted in this case clearly supports the issuance of the Draft Permit, and the ALJs’ PFD properly recommends that Applicant’s permit application be granted. The Draft Permit is consistent with applicable law, and Applicant’s facilities subject to it will not create a nuisance, do not present a risk of adverse health effects, and will not have an adverse effect on air quality. Accordingly, Applicant respectfully requests that the foregoing exceptions to the PFD be granted, and that the Commission adopt the PFD as amended by Applicant’s exceptions and grant the Applicant’s permit application.

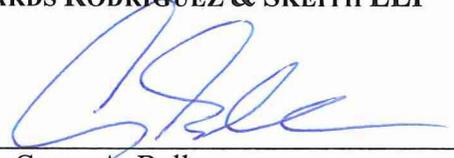
WHEREFORE, PREMISES CONSIDERED, Applicant EOG Resources, Inc. prays that the Commissioners:

- a. Grant the Applicant’s permit application as recommended in the Administrative Law Judges’ Proposal for Decision and Order;
- b. Revise proposed findings of fact Nos. 1, 18, 21, 22, 28(i), 35, 68, 74-76, 87, 101(a) and 132 as indicated herein; and
- c. Award all such further relief to which Applicant may be justly entitled.

Respectfully submitted,

RICHARDS RODRIGUEZ & SKEITH LLP

By: _____



Casey A. Bell
State Bar No. 24012271
Allen E. Bell
State Bar No. 02068500
John Turney
State Bar No. 20342500
816 Congress Avenue, Suite 1200
Austin, Texas 78701
(512) 476-0005
(512) 476-1513 fax
www.rrsfirm.com

ATTORNEYS FOR APPLICANT
EOG RESOURCES, INC.

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document has been served on all party representatives and known counsel of record in accordance with Rule 21 of the Texas Rules of Civil Procedure on this the 7th day of November, 2013 via certified mail, email and/or fax:

Mary Carter
Charles Irvine
Blackburn & Carter, P.C.
4709 Austin Street
Houston, Texas 77004
mcarter@blackburncarter.com
Charles@blackburncarter.com
713-524-5165 - fax

Lawrence G. Dunbar
Dunbar Harder, PLLC
1 Riverway, Ste. 1800
Houston, TX 77056
ldunbar@dunbarharder.com
713-782-5544 Fax

Douglas Brown, Staff
Attorney
Environmental Law Division
P.O. Box 13087, MC 173
Austin, Texas 78711
Douglas.Brown@tceq.texas.gov
ov
512-239-0606 - fax

Amy Swanholm
TCEQ
Office of Public Interest
Counsel
P.O. Box 13087, MC-103
Austin, Texas 78711-3087
Amy.swanholm@tceq.texas.gov
512-239-6377

Kathy Nielsen
12094 Joyce Lane
Roanoke, Texas 76262
freshairinbulcher@gmail.com
kn1277@gmail.com
(no fax)

Mary E. Del Olmo
P.O. Box 676
Muenster, Texas 76252
bartushland@ntin.net
(no fax)

Jeff Mundy
The Mundy Firm, PLLC
8911 Capital of Texas Hwy,
Suite 2105
Austin, TX 78759
jeff@jmundy.com
512-334-4256 Fax



Casey A. Bell