

**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 REPLY TO ALL PARTIES’
EXCEPTIONS TO PROPOSAL FOR DECISION AND ORDER**

COMES NOW, Applicant EOG Resources, Inc. (“Applicant” or “EOG”), files this its Reply to the Exceptions to the Administrative Law Judges’ (“ALJs”) Proposal for Decision and Proposed Order (PFD) filed by Protestants, the Executive Director (“ED”) and the Office of Public Interest Counsel (“OPIC”), and respectfully shows as follows:

Introduction

Applicant primarily replies to the exceptions filed by Protestants Holly Harris-Bayer, Rebecca Harris and Red River Motorcycle Trails, Inc. Protestants’ exceptions merely rehash the same arguments and positions they took at the hearing and in their post-hearing briefing, without offering any new authority or evidence to compel the ALJs to alter the findings made in the PFD. Therefore, Protestants’ exceptions should be denied. OPIC’s exceptions again mirror the arguments it made in post-hearing briefing; in fact, OPIC merely summarized its previous points and attached its closing argument to its exceptions as an exhibit. For the same reasons, OPIC’s exceptions should be denied.

Reply to Protestants’ and OPIC’s Exceptions

A. Nuisance

Protestants again complain that the potential emissions from the roads and the quarry were not considered in determining whether a nuisance will be created by the construction and

operation of the proposed facilities. The required demonstrations for a new source review permit are limited to the proposed “facility,” which is statutorily defined to exclude roads and quarries. Protestants’ insistence that those excluded sources be evaluated necessarily contravenes that statutory exclusion. Further, the statutory exclusion itself is grounded in long agency experience with the effective application of Best Management Practices. Obviously, if actual operations from any emission source result in nuisance conditions, enforcement action can be taken against the operator and corrective measures required. However, that enforcement authority does not alter the exclusion of roads and quarries from preconstruction review.

Moreover, the greater weight of the evidence presented at the hearing showed that taking into consideration the potential emissions from the quarry and the roads, along with the application of Best Management Practices (BMPs) and the results of Applicant’s air dispersion modeling analysis of the proposed facilities, the proposed plant is not expected to create nuisance conditions. Further, nuisance conditions are short-term conditions, not long-term annual average conditions. TCEQ guidance clearly states that roads should not be modeled for short-term conditions, and therefore roads are not evaluated for nuisance conditions through modeling.

Protestants continue to make unsubstantiated arguments regarding the potential for nuisance conditions resulting from operations at the proposed plant, and contend that road and quarry emissions were ignored by Applicant, the TCEQ and the ALJs. In reality, Protestants have no evidence to rebut the testimony offered by Ms. Hoover and Mr. Buller that, even considering the potential emissions from the roads and the quarry, the proposed operation under the Draft Permit will not result in nuisance conditions.

B. Roads and Quarries

In keeping with their themes, Protestants except to the ALJs' finding, which is consistent with the applicable law, that roads and quarries are not facilities and thus not part of the preconstruction permit application review process. Protestants thus complain that Applicant did not quantify these emissions via air dispersion modeling analyses. Modeling of sources that are not facilities is not required by the preconstruction review requirements applicable to this proceeding. It is important that Protestants' position to the contrary, though nominally addressed to the present case, would necessarily require a fundamental change in agency policy and practice affecting its review of future permit applications for a wide variety of operations.

C. Background Levels

Protestant except to the ALJs' finding that there was an analysis of potential background sources of silica in the area surrounding the proposed facility as part of the health effects review analysis. However, the testimony from the ED's toxicologist proved that significant background sources were considered, and she determined that there were none. Protestants' witness Mr. Tarr agreed with this assessment. Further, Applicant's evidence showed that the ESL for silica is set at 30% of the actual health-protective level to account for potential aggregate and cumulative risk. Protestant offered no other evidence to the contrary.

D. Modeling Analysis

Protestants repeat their same post-hearing arguments in excepting to the ALJs' findings concerning Applicant's air dispersion modeling analysis. They take issue with the ALJs' determination that Applicant used appropriate worst-case meteorological conditions in conducting its analysis, despite overwhelming evidence to support it, and again object that the ALJs and the ED did not require a worse worst-case scenario. Regardless, a reasonable worst-

case situation was incorporated into the modeling, with numerous conservative estimates and inputs, and the opinions of the majority of the qualified witnesses at the hearing agreed.

Protestants again assert a misreading of TCEQ guidance in excepting to the ALJs' finding that Applicant's use of 1988 meteorological data in its modeling analysis was appropriate. The ALJs correctly found that the guidance that Protestants argue required five years of analysis has not been revised since 1999. At that point in time, AERMOD, the TCEQ and EPA-approved computer modeling tool used by Applicant for its analysis, was not yet the preferred modeling tool. The TCEQ guidance referred to by Protestants was drafted for the use of a now-obsolete model which is no longer approved by TCEQ, and the testimony at the hearing was clear that TCEQ practice for many years has been to use AERMOD with one year of meteorological data for minor sources such as that at issue here, which is how Applicant conducted its modeling.

Regarding Protestants' exception to Applicant's decision to use the meteorological data set recommended by the TCEQ, instead of the unfinished data set which is still being developed and tested by the Commission, it was shown through evidence at the hearing that the new data does not give reliable results under the current version of the model. The data set used by Applicant was the most reliable at the time, and the preponderance of the evidence admitted proves that it was reasonable, appropriate and acceptable.

E. Circumvention

Finally, Protestants except to the ALJs' finding that there was no circumvention under 30 TAC § 101.3, again arguing that Applicant's decision to use a road to transport material from the processing facility back to the quarry was to avoid using a conveyor, which would have been a facility and from which emissions would have to have been modeled. Protestants misunderstand

the applicability of this rule. The evidence was undisputed that Applicant could have used roads or conveyors for this purpose. Most importantly, the ED did not determine that Applicant's use of the road for this purpose was an attempt to conceal or minimize the effects of an emission that would otherwise violate the TCAA or applicable rules. Such a determination is mandatory to show violation of the circumvention rule, and the evidence is clear and undisputed that the ED made no such determination.

Reply to ED's Exceptions

The ED indicated in its proposed revisions to the PFD that he continues to be in agreement that the draft permit should be issued to Applicant and that the ALJs made the appropriate recommendation in that regard. However, there were some minor exceptions, corrections and additions that were suggested by the ED. Applicant made several of the same exceptions in its own filing. Applicant agrees with the majority of the suggested revisions to the Findings of Fact in the Proposed Order, but takes no position on whether the Proposal for Decision itself should be amended as proposed.

Applicant replies to the ED's exception to Findings of Fact No. 25 in the Proposed Order as follows:

The ED's exception could create confusion, because while the draft permit authorizes emissions of NO_x, Applicant only calculated the emission rate for NO₂ because the NAAQS to which Applicant was comparing those emissions is for NO₂, and there is no NAAQS for NO_x.

Conclusion

The Protestants and OPIC have not raised any issues in their exceptions that have not already been thoroughly analyzed and considered by the ALJs in this case. After considering the

evidence admitted at hearing and applying it to the applicable law, the ALJs properly recommended that the draft permit be issued. Applicant respectfully requests that the exceptions filed by Protestants and OPIC be denied, and that the Commission enter an order issuing the permit sought by Applicant.

Respectfully submitted,

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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 18th day of November, 2013 via certified mail, email and/or fax:

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