

Bryan W. Shaw, Ph.D., *Chairman*  
Carlos Rubinstein, *Commissioner*  
Toby Baker, *Commissioner*  
Zak Covar, *Executive Director*



## TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

*Protecting Texas by Reducing and Preventing Pollution*

November 7, 2013

The Honorable Administrative Law Judges  
Penny A. Wilkov and Travis Vickery  
State Office of Administrative Hearings  
300 West 15<sup>th</sup> Street, Suite 502  
P.O. Box 13025  
Austin, TX 78711-0325

Re: SOAH Docket No. 582-12-6347; TCEQ Docket No. 2012-0971-AIR  
Contested Case Hearing for Application by EOG Resources, Inc. for Air Quality Permit  
No. 95412  
Executive Director's Proposed Revisions to the Administrative Law Judges' Proposal for  
Decision and Order

Dear Judge Wilkov and Judge Vickery:

Enclosed please find the Executive Director's Proposed Revisions to the Administrative Law Judges' Proposal for Decision and Order for the contested case hearing listed above. If you have any questions, please do not hesitate to call me at (512) 239-2253.

Sincerely,

A handwritten signature in cursive script that reads "Douglas Brown".

Douglas Brown,  
Staff Attorney  
Environmental Law Division

Enclosures

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

<b>APPLICATION BY</b>	<b>§</b>	<b>BEFORE THE STATE OFFICE</b>
<b>EOG RESOURCES, INC.</b>	<b>§</b>	
<b>PROPOSED AIR</b>	<b>§</b>	<b>OF</b>
<b>QUALITY PERMIT NO. 95412</b>	<b>§</b>	
	<b>§</b>	<b>ADMINISTRATIVE HEARINGS</b>

**EXECUTIVE DIRECTOR'S PROPOSED REVISIONS TO THE  
ADMINISTRATIVE LAW JUDGES' PROPOSAL FOR DECISION AND ORDER**

TO THE HONORABLE ADMINISTRATIVE LAW JUDGES PENNY WILKOV AND  
TRAVIS VICKERY:

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

**I. Introduction and Background**

On March 25, 2011, EOG Resources, Inc. (EOG or Applicant) applied to the TCEQ for a New Source Review Authorization under Texas Clean Air Act (TCAA) §382.0518 to authorize construction of a new facility that may emit air contaminants. The permit would authorize Applicant to construct a sand processing plant consisting of hoppers, belt conveyors, bucket elevators, screens, stockpiles, a dryer with a baghouse and truck-load out bins, which will be used to supply sand for oil and gas well operations. The plant will be located at 14596 N. FM 373 in northwest Cooke County.

TCEQ received hearing requests for EOG's permit application, and on January 18, 2012, EOG requested that the TCEQ Chief Clerk direct refer the permit application to the State Office of Administrative Hearings (SOAH) for a hearing. The preliminary

hearing on the permit application was held in Gainesville, Texas on July 12, 2012. The hearing on the merits was held in Austin, Texas April 15-17, 2013, in Gainesville, Texas April 22-23, 2013, and back in Austin, Texas on April 25, 2013. The ALJs issued a Proposal for Decision (PFD) and Proposed Order on October 18, 2013. The ALJs' PFD recommends granting the draft permit, and the TCEQ's Executive Director (ED) agrees with that recommendation.

## **II. Proposed Exceptions, Corrections and Additions**

Upon reviewing the proposed order, the ED believes some limited and potentially uncontroversial exceptions to the PFD and Proposed Order are necessary. Additionally, the ED respectfully believes that some administrative matters are worthy of attention. Therefore, the ED recommends that portions of the PFD and the Findings of Fact and Conclusions of Law be adjusted as follows:

### Proposed Exceptions

1. In the PFD on page 29 on the second and third lines of the first paragraph, delete the words "and, as a result, modeling would have taken background concentrations into account twice." ESLs are set conservatively to account for potential background sources, and modeling results are compared to the ESLs for the purposes of a health effects review. However, as opposed to a NAAQS review, the modeling itself does not account for background sources when a health effects review is conducted.
2. In the Proposed Order on page 3, Finding of Fact 22, delete the words "as well as ozone (O<sub>3</sub>)" and "and lead (Pb)" from the end of the sentence and add the word "and"

before “nitrogen dioxide.” Emissions of lead and ozone are not authorized by the Draft Permit.<sup>1</sup> Also, replace “NO<sub>2</sub>” with “NO<sub>x</sub>.” The draft permit does authorize nitrogen dioxide, but nitrogen dioxide (NO<sub>2</sub>) is a subset nitrogen oxide (NO<sub>x</sub>).

3. In the Proposed Order on page 4, Finding of Fact 25, replace “NO<sub>2</sub>” with “NO<sub>x</sub>.” The Draft Permit does authorize nitrogen dioxide, but nitrogen dioxide (NO<sub>2</sub>) is a subset nitrogen oxide (NO<sub>x</sub>).
4. In the Proposed Order on page 5, Finding of Fact 34, add “NO<sub>x</sub>” directly after “SO<sub>2</sub>.” The dryer will also meet BACT for NO<sub>x</sub>.
5. With respect to Finding of Fact 46 on page 6 of the Proposed Order, Draft Permit Special Condition 19 says, “All in-plant roads, traffic areas and active work areas shall be cleaned or sprayed with water upon detection of visible particulate matter emissions to maintain compliance with all applicable TCEQ rules and regulations.”<sup>2</sup> It does not speak to paving roads. However, this in no way prohibits any commitment or agreement Applicant has made to pave the roads.
6. In regard to Finding of Fact 47 on page 6 of the Proposed Order, the ED maintains that BMP for roads is cleaning them and spraying them with water, whether paved or not. Mr. Buller expressed uncertainty about whether a paved road would produce fewer emissions than an unpaved road.<sup>3</sup> However, this in no way prohibits any commitment or agreement Applicant has made to pave the roads.

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<sup>1</sup> ED Ex. 20 at 1.

<sup>2</sup> ED Ex. 21 at 4.

<sup>3</sup> Tr. at 422-423.

7. In the Proposed Order on page 10, Finding of Fact 85, delete the words “The ED required Modeling to be completed by EOG and,” and replace them with the words “EOG completed modeling, and it was.” TCEQ requires an air quality analysis from applicants. The analysis is most often demonstrated by air dispersion modeling, but it can sometimes be accomplished by other means.
8. In the Proposed Order on page 10, Finding of Fact 86, delete the words “ADMT also required that Applicant use” and replace them with the words “Applicant used.” TCEQ requires an air quality analysis from applicants. The analysis is most often demonstrated by air dispersion modeling, but it can sometimes be accomplished by other means.
9. In the Proposed Order on page 14, Finding of Fact 122, add the words “and the non-industrial GLC does not exceed the ESL” directly after the “two-fold.”
10. In the Proposed Order on page 14, Finding of Fact 124, “existing levels of the same constituent” should be inserted after “degree of confidence in the toxicity database.” This too is one of the factors of a Tier Three review.<sup>4</sup>
11. In the Proposed Order on page 15, Finding of Fact 130, “GLC<sub>max</sub>” on the first line should be deleted and replaced with “ESL.” On the second line, insert “at the GLC<sub>max</sub>” directly after the word “exceeded.” On the third line, the “GLC<sub>max</sub>” should be deleted and replaced with “GLC<sub>ni</sub>.” The sentence should read: “The magnitudes for the short-term ESL exceedances showed that the ESL was exceeded at the

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<sup>4</sup> ED Ex. 37 at 14.

GLC<sub>max</sub> by 1.17 times (or the ratio of the GLC<sub>max</sub> of 16.4 µg/m<sup>3</sup> to the ESL of 14 µg/m<sup>3</sup>) and exceeded at the GLC<sub>ni</sub> by 1.07 times (or the ratio of the GLC<sub>ni</sub> of 15 µg/m<sup>3</sup> to the ESL of 14 µg/m<sup>3</sup>).”

### Proposed Corrections and Additions

12. In the PFD on the fourth line of the second paragraph on page 29, the word “standard” should be deleted after the word “ESL.” An ESL is a not a standard; it is a guideline.<sup>5</sup>
13. In the PFD On page 37 on the second-to-last line of the first paragraph, the word “human” appearing directly before the word “risk” should be deleted and replaced with the word “short-term.” On the last line of the same paragraph, the word “short-term” should be inserted in between the words “TCEQ” and “ESL.” On the same line, the word “standard” should be deleted and replaced with the word “guideline.” An ESL is a not a standard; it is a guideline. <sup>6</sup>
14. In the PFD on page 44 on the sixth line of the second paragraph, insert the word “part” between “0.4” and “per.”
15. In the PFD on page 44 on the first line of the last paragraph, “Buller” should be replaced with “Cherry.”<sup>7</sup>
16. In the PFD on page 44 in footnote 160, delete “112.4” and replace it with “112.3.”

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<sup>5</sup> ED Ex. 37 at 12.

<sup>6</sup> ED Ex. 37 at 12.

<sup>7</sup> ED Ex. 15 at 1.

17. In the PFD on page 51 in the fifth line of the last paragraph, "Mr. Buller" should be deleted and replaced with "Dan Jamieson."<sup>8</sup>
18. In the PFD on page 54 in the 6th line of the first truncated paragraph, the word "team" should be deleted and replaced with the word "project."
19. In the PFD on page 61 in the third line of the first paragraph, the word "she" should be deleted and replaced with the word "Modeling." The prediction being referred to here was a result of Applicant's air dispersion modeling. Also on the fourth line, delete the word "modeled."
20. In the PFD on page 61 in the first line of the second paragraph, the words "Ms. Curry" should be deleted and replaced with the word "Modeling." The prediction being referred to here was a result of Applicant's air dispersion modeling.
21. In the PFD on page 62 in the second line of the third full paragraph, the word "was" should be deleted. On the same line, the words "the ESL" should be inserted immediately after the word "exceeded." The sentence should read: "The magnitudes for the short-term ESL exceedances showed that the  $GLC_{max}$  exceeded the ESL by 1.17 times and exceeded at the  $GLC_{ni}$  by 1.07 times."
22. In the PFD on page 89 in the sixth line of the fourth paragraph, "at the  $GLC_{max}$ " should be inserted directly after " $0.44 \mu\text{g}/\text{m}^3$ ." "At the  $GLC_{max}$ " should also be inserted directly after " $16.4 \mu\text{g}/\text{m}^3$ " in the next line. The lines should read: "The modeling predicted a maximum annual (long-term) average silica concentration of

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<sup>8</sup> Tr. at 205.

0.44  $\mu\text{g}/\text{m}^3$  at the  $\text{GLC}_{\text{max}}$ . The modeling also predicted a maximum 1-hour (short-term) average silica concentration off-site as 16.4  $\mu\text{g}/\text{m}^3$  at the  $\text{GLC}_{\text{max}}$ .”

23. In the Proposed Order on page 1, Finding of Fact 4, the words “of Application”

should be added directly after the word “Receipt,” and the words “an Air Quality”

should be deleted.

24. In the Proposed Order on page 12, Finding of Fact 101(a) on the second line, the

number “24” should be replaced with the number “1.” The short term ESL for silica

is based on one hour.

25. In the Proposed Order on page 12, Finding of Fact 101(b) on the third line, “at the

$\text{GLC}_{\text{max}}$ ” should be inserted directly after “0.44  $\mu\text{g}/\text{m}^3$ .” “At the  $\text{GLC}_{\text{max}}$ ” should also

be inserted directly after “16.4  $\mu\text{g}/\text{m}^3$ ” in the last line.

26. In the Proposed Order on page 16, Conclusion of Law 1, “392.051” should be deleted

and replaced with “382.051.”

27. In the Proposed Order on page 16, Conclusion of Law 3, “2004.052” should be

deleted and replaced with “2001.052.”

28. In the Proposed Order on page 16 Conclusion of Law 12, delete “116.10(3)” and

replace it with “116.10(1).”

29. In the Proposed Order on page 18, Conclusion of Law 14, “382.0578” should be

deleted and replaced with “382.0518.”

30. In the Proposed Order on page 18, Conclusion of Law 24, delete "112.4" and replace it with "112.3." Also, insert the word "part" between "0.4" and "per."

### **III. Conclusion**

Based on evidence admitted and disputed issues identified in the record, the Executive Director contends that all procedures and analysis required for an air quality permit review were followed in accordance with applicable rules and guidance established by the TCEQ. Therefore the TCEQ Executive Director respectfully requests that the Commission include the exceptions and revisions to the PFD and the Findings of Fact and Conclusions of Law and issue the proposed order.

Respectfully submitted,

Texas Commission on Environmental Quality

Zak Covar, P.G., Executive Director

Caroline Sweeney, Deputy Director  
Office of Legal Services

Robert Martinez, Division Director  
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REPRESENTING THE  
EXECUTIVE DIRECTOR OF THE  
TEXAS COMMISSION ON  
ENVIRONMENTAL QUALITY

## CERTIFICATE OF SERVICE

I certify that on this the 7th day of November 2013, a true and correct copy of the foregoing filing has been served upon all parties via electronic filing, electronic mail, fax, or regular mail with the original and seven copies delivered to the Office of the Chief Clerk:

THE HONORABLE ADMINISTRATIVE  
LAW JUDGES:

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