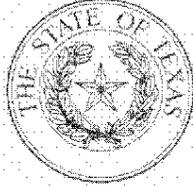


State Office of Administrative Hearings



Cathleen Parsley
Chief Administrative Law Judge

November 24, 2015

Tucker Royall, General Counsel
Texas Commission on Environmental Quality
P.O. Box 13087
Austin Texas 78711-3087

VIA FACSIMILE NO. 512/239-5533

**Re: SOAH Docket No. 582-15-0460; TCEQ Docket No. 2014-1401-AIR;
Application by Southern Crushed Concrete, LLC for Air Quality Standard
Permit No. 119443L001**

Dear Mr. Royall:

On October 2, 2015, the Willow Waterhole Greenspace Conservancy (Protestant) filed exceptions to the Administrative Law Judge's (ALJ) Proposal for Decision (PFD) and proposed order (Order) issued on September 11, 2015. Applicant Southern Crushed Concrete, LLC and the Executive Director (ED) of the Texas Commission on Environmental Quality (TCEQ) filed separate replies to Protestant's exceptions on October 12, 2015.

Protestant first excepts to Findings of Fact Nos. 26 and 65 in the proposed Order, which pertain to the entrance/exit driveways at the site of the proposed plant. The standard permit at issue prohibits location or operation of vehicles used for the operation of the plant within 50 feet from any property line, except for incidental traffic and the entrance and exit to the site. Otherwise, an owner or operator must construct dust suppressing fencing or other barrier as a border around the roads. One of the entrance/exit driveways at the site is within 50 feet of and runs parallel to the western property line for approximately 350 feet (the West Driveway). Protestant contends that the evidence shows that Applicant will not prohibit use of the West Driveway by vehicles used for the operation of the plant. Therefore, Protestant maintains that Applicant must install dust suppressing fencing or other barrier around the West Driveway.

I found that based on Applicant's representation in the Application that it would adhere to the buffer restrictions regarding the use of the roads, and the existence of the other entrance/exit driveway which does not run parallel within 50 feet of any property line, the Applicant will meet the requirements of the standard permit. In reviewing the evidence, neither the Application nor Applicant's witnesses clearly state that the West Driveway will not be used by trucks necessary to the operation of the plant. Further, it is unclear from the standard permit and the evidence whether the exception to the 50-foot buffer rule applies to a road used for entrance and exit that runs parallel to a property line within 50 feet of that line. Applicant took the position that because the West Driveway would only be used for entrance and exit to the plant, it was exempt from the 50-foot setback requirement. Therefore, Applicant represented that it would not install dust suppressing fencing or other barrier around the West Driveway. However, in its briefing, Applicant stated that it will close the West Driveway to traffic during operation of the plant if the Commission finds that trucks using the West Driveway for entrance and exit to the site would violate the standard permit. Regardless, there was sufficient evidence in the record to support both challenged findings on this issue, and so I recommend no changes to the PFD or the Order.

Protestant then excepts to Finding of Fact No. 73, arguing that there is no legal basis for a finding that in the case of inconsistent representations in a permit registration, the most restrictive of such representations is enforceable. Protestant cites 30 Texas Administrative Code 116.615(2), which states that all representations regarding construction plans, operating procedures, and maximum emission rates made in a registration for a standard permit become conditions under which the facility must be operated. This issue was fully briefed and thoroughly considered in the preparation of the PFD. With this argument Protestant attempts to create an issue that does not exist. The inconsistencies as pointed out by Protestant were a matter of form over substance, and were clarified by the testimony elicited at the hearing. Further, there were no representations made in the Application that did not meet the requirements of the Standard Permit at issue. Regardless, Mr. Nelson offered competent testimony that in order to meet all conditions of the standard permit created by representations in the permit registration, Applicant would have to comply with the most restrictive representation. This testimony is logical and rational given the permit and applicable rules. I recommend no changes to this finding.

Protestant further excepts to Finding of Fact No. 64 and the PFD's analysis regarding the meaning of Special Condition (8)(D)(ii) of the standard permit in question. Again, this issue was fully briefed and carefully analyzed in the preparation of the PFD, and Protestant raises no new arguments in its exception. I recommend no changes to this finding.

Finally, Protestant excepts to Findings of Fact Nos. 38 and 43, contending that the standard permit at issue requires submission of the details of the operation and a drawing of the abatement device referred to in Table 11 submitted with the permit registration. This issue was fully briefed and carefully analyzed in the preparation of the PFD, and Protestant raises no new arguments in its exception. I recommend no changes to this finding.

The PFD is ready for your consideration.

Sincerely,

A handwritten signature in black ink, appearing to read 'Casey A. Bell', with a long horizontal flourish extending to the right.

Casey A. Bell
Administrative Law Judge

CAB/mm
cc: Mailing List

STATE OFFICE OF ADMINISTRATIVE HEARINGS

AUSTIN OFFICE

**300 West 15th Street Suite 502
Austin, Texas 78701
Phone: (512) 475-4993
Fax: (512) 322-2061**

SERVICE LIST

AGENCY: Environmental Quality, Texas Commission on (TCEQ)
STYLE/CASE: SOUTHERN CRUSHED CONCRETE LLC
SOAH DOCKET NUMBER: 582-15-0460
REFERRING AGENCY CASE: 2014-1401-AIR

**STATE OFFICE OF ADMINISTRATIVE
HEARINGS**

**ADMINISTRATIVE LAW JUDGE
ALJ CASEY BELL**

REPRESENTATIVE / ADDRESS

PARTIES

WHITNEY L SWIFT
KATTEN MUCHIN ROSENMAN LLP
111 CONGRESS, SUITE 1000
AUSTIN, TX 78701
(512) 691-4003 (PH)
(512) 519-7629 (FAX)

SOUTHERN CRUSHED CONCRETE, LLC

DANNY WORRELL
KATTEN MUCHIN ROSENMAN LLP
111 CONGRESS, SUITE 1000
AUSTIN, TX 78701
(512) 691-4012 (PH)
(512) 691-4001 (FAX)

SOUTHERN CRUSHED CONCRETE, LLC

BOOKER HARRISON
SENIOR ATTORNEY - AIR
TEXAS COMMISSION ON ENVIRONMENTAL QUALITY
ENVIRONMENTAL LAW DIVISION
MC-173 P.O. BOX 13087
AUSTIN, TX 78711-3087
(512) 239-4113 (PH)
(512) 239-0606 (FAX)
booker.harrison@tceq.texas.gov

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

CHARLES IRVINE
INVINE & CONNER, PLLC
4709 AUSTIN
HOUSTON, TX 77004
(713) 533-1704 (PH)
(713) 524-5165 (FAX)
charles@irvineconner.com

WILLOW WATERHOLE GREENSPACE CONSERVANCY

ELI MARTINEZ
PUBLIC INTEREST COUNSEL
TEXAS COMMISSION ON ENVIRONMENTAL QUALITY
12100 PARK 35 CIRCLE, MC-103, BUILDING F
AUSTIN, TX 78753
(512) 239-3974 (PH)
(512) 239-6377 (FAX)
eli.martinez@tceq.texas.gov

OFFICE OF PUBLIC INTEREST COUNSEL

SIERRA REDDING
TEXAS COMMISSION ON ENVIRONMENTAL QUALITY
ENVIRONMENTAL LAW DIVISION - MC 173
P.O. BOX 13087
AUSTIN, TX 78711

(512) 239-0606 (FAX)

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

TUCKER ROYALL
GENERAL COUNSEL
TEXAS COMMISSION ON ENVIRONMENTAL QUALITY
P.O. BOX 13087
AUSTIN, TX 78711-3087

(512) 239-5533 (FAX)

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY
