

calculations are not based on representative site conditions, and TCEQ's determination that Vulcan's silica emissions calculations are representative of those to be expected from the site is not supported by substantial evidence; and iii) TCEQ's rejection of Reeh Plaintiffs' assertions regarding ways the Permit allegedly is not sufficiently protective of public health or property is arbitrary and capricious and not supported by substantial evidence.

2. TCEQ's Conclusion of Law No. 14 (concluding that Vulcan has made all demonstrations required under applicable statutes and regulations, including 30 Texas Administrative Code § 116.111 regarding air permit applications, to be issued an air quality permit with conditions as set forth in the Draft Permit) is reversed because i) TCEQ's determination that Vulcan's air dispersion modeling adequately accounts for or addresses cumulative impacts; ii) TCEQ's determination that quarry and road emissions were adequately considered; and iii) TCEQ's determination that Vulcan's choice of the relevant background concentrations used in its voluntary Full Minor National Ambient Air Quality Standard ("NAAQS") Analyses were appropriate, is arbitrary and capricious, and not supported by substantial evidence.


3. TCEQ's Best Available Control Technology ("BACT") reviews for Vulcan's Application met the standards of Texas Health and Safety Code § 382.0518 and 30 Texas Administrative Code § 116.111(a)(2)(C), were properly conducted, supported by substantial evidence, and not arbitrary, capricious, or unlawful. TCEQ's BACT determination is affirmed.

4. The Administrative Law Judge abused her discretion by ruling that Vulcan could maintain information from its 2016 subsurface investigation at the property where the Plant will be located as confidential under the trade secret privilege.

5. Plaintiffs were denied due process such that their substantial rights were prejudiced by: (1) the Administrative Law Judge's ruling that Vulcan could maintain information from its 2016 subsurface investigation at the property where the Plant will be located as confidential under the trade secret privilege; (2) the Administrative Law Judge's denial of Plaintiffs' discovery and cross-examination of the "privileged" information; and (3) TCEQ's not requiring Vulcan to input emissions from quarries and roads into its modeling for the AQAs for 24-hour PM₁₀, 24-hour PM_{2.5}, and Annual PM_{2.5}.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the Final Order is AFFIRMED IN PART and REVERSED IN PART and REMANDED.

Signed this 1st day of April, 2021



JUDGE MAYA GUERRA GAMBLE
JUDGE, 459TH DISTRICT COURT

Approved as to form only:



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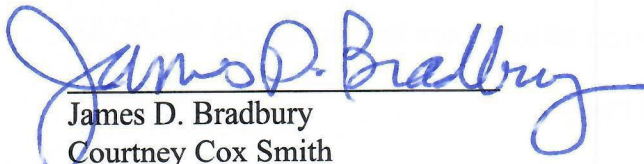
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