

# TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



**AN INTERIM ORDER** concerning the application by Vulcan Construction Materials, LLC for new Air Quality Permit No. 147392L001; TCEQ Docket No. 2018-1303-AIR.

On December 12, 2018, the Texas Commission on Environmental Quality (Commission) considered during its open meeting numerous requests for hearing concerning the application by Vulcan Construction Materials, LLC (Applicant) for new Air Quality Permit No. 147392L001, which authorizes the construction of a new rock crushing plant in Comal County, Texas. The Commission also considered the timely filed request for reconsideration submitted by Kyra Faught. The requests for hearing and reconsideration were evaluated under the requirements in the applicable statutes and Commission rules, including 30 Texas Administrative Code (TAC) Chapter 55. The Commission also considered the responses to the requests for hearing and reconsideration filed by the Applicant, the Executive Director, and the Office of Public Interest Counsel; the replies; all timely public comment; and the Executive Director's Response to Comment.

After evaluation of all relevant filings, the Commission determined that Becky Cox, Milann & Pru Guckian, Douglas Harrison, Ruby Hartman, Kenneth & Diane Higby, Liz James, Craig Johnson, Pamela Seay, Renee Wilson, Friends of Dry Comal Creek, Stop 3009 Vulcan Quarry, and the Smithson Valley Heritage Oaks Property Owners Association are affected

persons under applicable law and that their hearing requests should be granted. The Commission also determined that the request for reconsideration should be denied.

The Commission next determined whether the requests for hearing raised disputed issues of fact or mixed questions of fact and law that were raised by the affected persons during the comment period, and which are relevant and material to its decision on the application. The Commission determined that the following issues met those requirements and directed that they be referred to the State Office of Administrative Hearings (SOAH): A) Whether the proposed plant will negatively affect human health, including sensitive subgroups, and physical property; B) Whether the conditions in the proposed permit will adequately protect against dust emissions from the proposed plant, including during periods of high winds; C) Whether cumulative impacts of existing sources were properly considered; D) Whether the controls in the proposed permit constitute Best Available Control Technology; E) Whether the proposed facility will adversely affect wildlife, vegetation, flora and fauna; F) Whether the proposed operating hours of the rock crusher ensure that there will be no adverse impacts to human health, welfare, and the environment; G) Whether the air quality modeling conducted as part of this application adequately incorporated the local prevailing winds; H) Whether the Applicant complied with TCEQ's public notice requirements related to sign-posting and newspaper notice; I) Whether the proposed permit contains adequate monitoring and recordkeeping requirements to ensure compliance with all applicable rules and requirements; J) Whether emissions from on-site diesel engines are adequately calculated and adequately controlled; K) Whether an adequate site review was conducted for this application; L) Whether the background concentrations used in the air dispersion modeling are representative of the proposed location of the plant; M) Whether emissions from maintenance, start-up, and shutdown activities are adequately addressed in the

proposed permit; N) Whether chemical dust suppressant is safe to use as a control for emissions from the proposed plant; O) Whether emissions of silica from the proposed plant will negatively impact human health and welfare; P) Whether the proposed permit conditions, including emissions limitations, are enforceable; Q) Whether the permit application, and associated air dispersion modeling, included and properly evaluated all applicable emissions; R) Whether site specific monitoring data should have been used in the air dispersion modeling conducted for this application; and S) Whether the Applicant's compliance history precludes issuance of the draft permit or necessitates additional special conditions in the draft permit.

Finally, pursuant to 30 TAC § 50.115(d)(2), the Commission specified that the maximum duration of the contested case hearing shall be 180 days from the first day of the preliminary hearing to the date the proposal for decision is issued by SOAH.

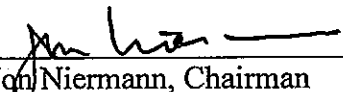
NOW, THEREFORE, BE IT ORDERED BY THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY that:

- (1) The hearing requests filed by Becky Cox, Milann & Pru Guckian, Douglas Harrison, Ruby Hartman, Kenneth & Diane Higby, Liz James, Craig Johnson, Pamela Seay, Renee Wilson, Friends of Dry Comal Creek, Stop 3009 Vulcan Quarry, and the Smithson Valley Heritage Oaks Property Owners Association are hereby GRANTED;
- (2) The remaining hearing requests and all requests for reconsideration are hereby DENIED;
- (3) The following issues are referred to SOAH for a contested case hearing on the application:
  - A) Whether the proposed plant will negatively affect human health, including sensitive subgroups, and physical property;
  - B) Whether the conditions in the proposed permit will adequately protect against dust emissions from the proposed plant, including during periods of high winds;
  - C) Whether cumulative impacts of existing sources were properly considered;

- D) Whether the controls in the proposed permit constitute Best Available Control Technology;
- E) Whether the proposed facility will adversely affect wildlife, vegetation, flora and fauna;
- F) Whether the proposed operating hours of the rock crusher ensure that there will be no adverse impacts to human health, welfare, and the environment;
- G) Whether the air quality modeling conducted as part of this application adequately incorporated the local prevailing winds;
- H) Whether the Applicant complied with TCEQ's public notice requirements related to sign-posting and newspaper notice;
- I) Whether the proposed permit contains adequate monitoring and recordkeeping requirements to ensure compliance with all applicable rules and requirements;
- J) Whether emissions from on-site diesel engines are adequately calculated and adequately controlled;
- K) Whether an adequate site review was conducted for this application;
- L) Whether the background concentrations used in the air dispersion modeling are representative of the proposed location of the plant;
- M) Whether emissions from maintenance, start-up, and shutdown activities are adequately addressed in the proposed permit;
- N) Whether chemical dust suppressant is safe to use as a control for emissions from the proposed plant;
- O) Whether emissions of silica from the proposed plant will negatively impact human health and welfare;
- P) Whether the proposed permit conditions, including emissions limitations, are enforceable;
- Q) Whether the permit application, and associated air dispersion modeling, included and properly evaluated all applicable emissions;
- R) Whether site specific monitoring data should have been used in the air dispersion modeling conducted for this application; and
- S) Whether the Applicant's compliance history precludes issuance of the draft permit or necessitates additional special conditions in the draft permit;

- (5) The maximum duration of the hearing is set at 180 days from the first day of the preliminary hearing to the date the proposal for decision is issued by SOAH; and
- (6) If any provision, sentence, clause or phrase of this Order is for any reason held to be invalid, the invalidity of any portion shall not affect the validity of the remaining portions of the Order.

TEXAS COMMISSION ON  
ENVIRONMENTAL QUALITY

  
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Jon Niermann, Chairman

12/13/18  
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Date Signed