



MAYA GUERRA GAMBLE
Judge, 459th District Court
Heman Marion Sweatt Travis County Courthouse
P.O. Box 1748
Austin, Texas 78767
512-854-9384

March 5, 2021

Keith Alan Courtney
McGinnis Lochridge
Counsel for: Vulcan Construction Materials,
Intervenor
600 Congress Ave. STE 2100
Austin, TX, 78701
Via Email: Kcourtney@mgginnislaw.com

Mark Steinbach
Office of the Texas Attorney General
Counsel for: Texas Commission on
Environmental Quality
PO Box 12548
Austin, TX 78711
Via Email: Kcourtney@mgginnislaw.com

David O'Brien Frederick
Erik Allmon
Frederick, Perales, Allmon & Rockwell, PC
Counsel for: Friends of Dry Comal Creek and
Stop 3009 Vulcan Quarry
1206 San Antonio St.
Austin, TX 78701
Via Email: Info@LF-Lawfirm.com

James Bradbury
James D. Bradbury, PLLC
Counsel for: Jeffrey Reeh, Mike Olson and
Comal Independent School District
9111 Old Jollyville Rd. STE 220
Austin, TX 78759
Via Email: Jim@bradburycounsel.com

**Re: Cause No. D-1-GN-20-000941; *Friends of Dry Comal Creek and STOP 3009
Vulcan Quarry, Jeffrey Reeh, Terry Olson, Mike Olson, and Comal Independent School
District v. Texas Commission on Environmental Quality v. Vulcan Construction
Materials, LLC***

Dear Counsel,

This Court heard your administrative appeal on December 8, 2020. After careful consideration of the pleadings, evidence, and arguments of counsel, I have decided that TCEQ's final order in this case should be reversed and vacated.

I have attempted to consolidate the issues presented by both Plaintiffs and both Defendants. I believe that my rulings are responsive to all parties and to all relief requested. However, please let me know if there are any unresolved issues or if the parties have any additional questions or comments. Otherwise, Messieurs Frederick and Allmon, please draft an

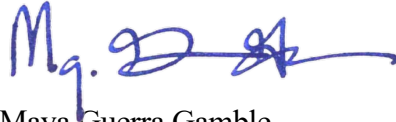
order that captures the below guidance, circulate to counsel to sign “approved as to form,” and return to this Court as soon as possible. The Court will set a 9am motion to enter hearing on Friday, April 2nd, in case the parties are unable to agree on the final form of the order. The hearing will be cancelled if the Court receives the signed order prior to that date. Should the hearing be needed, please do not forget to announce per guidance in Travis County Civil District Court Local Rules and Travis County Civil District Court’s current Emergency Order.

My rulings are as follows:

1. TCEQ’s determination that the Plant’s crystalline silica emissions will not negatively affect human health or welfare was not supported by substantial evidence.
2. Vulcan’s silica emissions calculations are not representative of the site and are not supported by substantial evidence.
3. TCEQ’s determination that Vulcan properly conducted its Air Quality Analyses (“AQAs”) was not supported by substantial evidence and was arbitrary or capricious.
 - i. Vulcan’s air dispersion modeling fails to adequately account for or address cumulative impacts, and quarry and road emissions were not adequately considered.
 - ii. Vulcan’s choice of the relevant background concentrations it used in its voluntary Full Minor National Ambient Air Quality Standard (“NAAQS”) Analyses was not supported by substantial evidence and was arbitrary or capricious.
4. TCEQ’s determination that the Best Available Control Technology (“BACT”) reviews for Vulcan’s Application were properly conducted was supported by substantial evidence and was not arbitrary, capricious, or unlawful.
5. TCEQ’s rejections of Reeh Plaintiffs’ assertions regarding ways the Permit allegedly is not sufficiently protective of public health or property are not supported by substantial evidence and are arbitrary or capricious.
6. The Administrative Law Judge erred 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.
7. 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 PM2.5, and Annual PM2.5.

Very Truly Yours,

A handwritten signature in blue ink, appearing to read 'Mg. Guerra Gamble', with a long horizontal flourish extending to the right.

Maya Guerra Gamble
Judge, 459th District Court

cc: Ms. Velva L. Price, Travis County District Clerk