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Monica Reyes, Section Manager
Edwards Aquifer Protection Program
Texas Commission on Environmental Quality
Region 13 Office – San Antonio
14250 Judson Road
San Antonio, Texas 78233-4480

Via Email: eapp@tceq.texas.gov

Re: Comments Regarding the Application of Vulcan Construction Materials LLC for Edwards Aquifer Permit No. 13002207.

Dear Ms. Reyes:

We are submitting the following comments on behalf of Preserve Our Hill Country Environment and its sister organization, Preserve Our Hill Country Environment Foundation (together, "PHCE"), regarding the Application of Vulcan Construction Materials LLC ("Vulcan") for Edwards Aquifer Permit No. 13002207 (the "Application"). The Application seeks to authorize the construction of turn lane improvements which would include the construction of 13.81 acres of impermeable cover (the "Project").

These comments are in addition to, and do not replace, any other comments submitted on behalf of PHCE.

Preserve Our Hill Country Environment is a 501(c)(4) organization whose mission is to preserve, protect, and restore the land, water, air, wildlife, unique features, and quality of life in the Texas Hill Country from the aggressive and insufficiently regulated expansion of the aggregate industry. Preserve Our Hill Country Environment Foundation is a Texas 501(c)(3) nonprofit which conducts research on environmental hazards in the surrounding areas; educates communities on the preservation of natural resources; and advocates for the development of environmental protection legislation and regulations.

I. Procedural History and Relevant Background

According to TCEQ's Central Registry, the Application was received on November 25, 2025. TCEQ's Edwards Aquifer Protection Plan Applications webpage indicates that

the 30-day comment period concludes on Sunday, January 11, 2026. At 30 Tex. Admin. Code § 1.7, the TCEQ rules provide that when the period of time allowed under the TCEQ rules falls on a Saturday, Sunday, or legal holiday on which the Office of the Chief Clerk is closed, then the period runs until the end of the next day that is not a Saturday, Sunday or legal holiday on which the Office of the Chief Clerk is closed. Accordingly, the comment deadline in this matter is Monday, January 12, 2026. Thus, these comments are timely.

Relevant to the current Application, it is worth noting that Vulcan holds an existing Edwards Aquifer Permit—Edwards Aquifer Protection Program ID No. 13001906. This permit was granted by letter dated July 8, 2024, approving a Water Pollution Abatement Plan for the Vulcan Comal Quarry (hereinafter, the "2024 WPAP").

II. TCEQ's consideration of the Application either lacks definitive standards, in which case PHCE's due process rights are violated by the impairment of its ability to be meaningfully heard, or, if the Executive Director is applying definitive standards, then the TCEQ has engaged in adjudicatory rulemaking in violation of the Texas APA and the limitations on TCEQ's authority set forth in the Texas Water Code.

TCEQ Rule 213.9(a) provides that the executive director may grant an exception to any substantive provision of Chapter 213, "if the requestor can demonstrate equivalent water quality protection for the Edwards Aquifer." No substantive standard is provided by the TCEQ rules as to what would constitute "equivalent water quality protection for the Edwards Aquifer." 30 Tex. Admin. Code § 213.9(a).

A. To the degree that the Executive Director's determination is not guided by definitive standards, PHCE's due process rights have been violated.

Members of PHCE own property that will potentially be impacted by the lack of adequate pollution controls that will result from issuance of the requested exception. To protect these property rights, it is necessary that the applicable rules meet the minimum requirements of due process.

An administrative rule violates due process when it is arbitrary and capricious. *LMV-AL Ventures, LLC v. Tex. Dep't of Aging and Disability Services,* 520 S.W.3d 113, 127 (Tex. App.—Austin 2017, pet. denied). Due process at a minimum requires notice and an opportunity to be heard at a meaningful time and in a meaningful manner. *Mosley v. Tex. Health & Human Services Comm'n*, 593 S.W.3d 250, 265 (Tex. 2019).

The lack of any substantive standard in the TCEQ rules for what constitutes "equivalent water quality protection" would render these rules, and TCEQ's consideration of the Application, a violation of due process. As set forth below, the available information indicates that the proposed activity does not provide equivalent protection for the Edwards Aquifer. However, to the degree that TCEQ lacks any binding standards for whether to

grant such a request, the lack of any binding substantive standard for this determination prevents PHCE from being meaningfully heard on the issues raised by the Application, thereby violating the due process rights of PHCE and PHCE's members.

B. To the degree that the Executive Director is applying binding substantive standards not found in Chapter 213, TCEQ's use of those standards violates the requirement that TCEQ only adopt general statements of agency policy through a formal APA Rulemaking process.

To whatever degree the Executive Director has adopted and is applying general policies for the consideration of exception requests pursuant to 30 Tex. Admin. Code § 213.9(a), the ED is improperly applying an invalid rule. TCEQ is only statutorily authorized to adopt any statement of general applicability only by rulemaking that complies with the rulemaking requirements of the Texas Administrative Procedures Act. Tex. Water Code § 5.103(c). By creating an open-ended provision for the Executive Director to override the remainder of Chapter 213 by separately formulating general policies not contained within Chapter 213, the approval process in this matter violates Texas Water Code § 5.103(c).

III. Greater opportunities for public input, including a public meeting, should be provided.

Vulcan's proposed project sits atop the Edwards Aquifer recharge zone, and runoff from the project area will drain into Dry Comal Creek, and thence into the Comal River. Numerous properties will be potentially impacted by such contamination. The Edwards Aquifer serves as an important but sensitive groundwater source for many people, and many enjoy Dry Comal Creek. Considering this breadth of persons potentially impacted by the proposed Project, TCEQ should hold a public meeting on the Application in the local area to facilitate meaningful public input to inform TCEQ's decision-making process, and to ensure that the concerns of the public are fully considered.

IV. The measures proposed fail to provide equivalent protection for the Edwards Aquifer.

A. The geologic information contained in the Exception Application fails to demonstrate equivalent protection of water quality in the Edwards Aquifer.

The location of the Project within the Edwards Aquifer Recharge Zone warrants special attention to ensure the protection of this Aquifer. If this project was not exempted from the requirements of Chapter 213, then a geologic assessment identifying all potential pathways for contaminant movement to the Edwards Aquifer would be required. 30 Tex. Admin. Code § 213.5(b)(3). No such identification is contained within the Application. Without identification of the potential pathways for contaminant movement to the Edwards

Aquifer, it is impossible to conclude that the Project as proposed provides equivalent protection for water quality as would be the case if the Project was subjected to the full requirements of Chapter 213.

B. The proposed Project fails to include BMPs that achieve an equivalent mitigation of increased total suspended solids discharge as would be required if the Project was not excepted from Chapter 213.

The Project encompasses a 13.22-acre area and the additional turn lanes will increase impervious cover by approximately 1.5 acres. TCEQ's guidance for Permanent Structural Best Management Practices ("BMPs") in implementing the Edwards Aquifer Rules sets forth that the selected BMP, or combination of BMPs, must reduce the increase in total suspended solids (TSS) load associated with the development by at least 80 percent. Vulcan's 2024 WPAP solely addressed the impermeable cover proposed at that time, and did not address the specific extent of impermeable cover that would be associated with the turn lane project now proposed. While the 2024 WPAP stated that "additional compensatory treatment is available for turn lane improvement to be submitted under a future separate plan," no specific analysis was provided at that time of the relationship of the BMPs proposed in light of the details of the turn lanes now proposed, and the current Application itself only generally says that "equivalent protection is provided by the onsite PBMPs from the approved Comal Quarry."[1]

This statement is not true, as reflected in the Treatment Summary by Watershed contained within the Application. The turn lanes watershed (the watershed for this Project) consists of 1.469 acres, with a TSS removal of 1,319 pounds required to be achieved annually.[2] Yet, according to the Application itself, no TSS is removed annually for runoff from this watershed as a result of the permanent BMPs that have been proposed. No permanent sediment control best management practices are proposed which are directed to specifically address the turn lanes to be constructed.

Considering this lack of effective removal of TSS from the proposed Project, in comparison to that which would be required if the Project was subjected to Chapter 213, Vulcan has failed to demonstrate that the Project as proposed provides equivalent water quality protection for the Edwards Aquifer. In fact, the discharge of TSS from the Project in quantities in excess of what would be allowed for this Project if separately authorized under Chapter 213 demonstrates that the Project provides less water quality protection for the Edwards Aquifer that it would if subjected to the requirements of Chapter 213.

Relying upon a theoretical mitigation in TSS runoff from one area of the quarry, in order to offset TSS increases from the Project, improperly disregards the complexity of the hydrology in the area, and fails to account for the timing of construction. The ultimate

[1] Application Attachment C (PDF p. 21).
[2] Application Pollutant Load and Removal Calculations (PDF p. 88).

theoretical TSS reductions relied upon to offset the TSS increases may occur at some point in the distant future. But, the increased TSS runoff from the turn lane construction will occur imminently with the initiation of the quarry activities. Theoretical future mitigation should not be relied upon to excuse real short-term environmental impacts.

The lack of any permanent sediment control BMPs renders the proposed Project inadequately protective of water quality. The increased impermeable area will increase the quantity of runoff from the area, with a corresponding increase in the potential for sediment contamination originating within the project area. The 2024 WPAP did not include BMPs to specifically address the increased runoff from the area of construction of these turn lanes.

If the Project was subjected to the requirements of Chapter 213, then the increased TSS runoff from the Project would be required to be reduced by 80 percent. By this exception request, Vulcan proposes that it not be required to achieve *any* reduction in the magnitude of the increased TSS runoff from the Project. Needless to say, the implementation of no mitigation does not provide equivalent protection of water quality as would the implementation of mitigation achieving an 80 percent reduction in TSS runoff.

C. The Application relies upon flawed stormwater modeling.

The stormwater runoff modeling contained within the Application solely addresses design storms based upon historical annual averages. This does not account for the impact of the increasingly intense storms in the area, and the trend of increasing rainfall. Furthermore, the calculations improperly fail to account for the significant potential for BMP failure, and fail to require any post-construction validation.

D. The Application fails to account for the karst geologic setting.

No adjustment to the standard approach set forth in the Application has been made in light of the karst geologic setting at the project site. There has been no fracture trace mapping conducted, and no recharge feature inventory has been completed within the full extent of the area potentially impacted by the Project. In a karst setting such as exists here, contaminants can move into the aquifer even in the absence of an apparent discrete recharge feature. This potential has not been adequately addressed.

E. The Application fails to account for traffic-related pollutants.

The nature of the pollutants which could be discharged as a result of the Project differ from the general nature of pollutants which were associated with the 2024 WPAP for the larger quarry. The turn lanes which are planned to be constructed will result in the discharge of oils and greases, and other contaminants associated with the operation of roadway vehicles. No special consideration to the impact of these contaminants is given within the Application. The lack of any specific attention to these contaminants originating from automobiles utilizing the turn lanes renders the analysis presented within the

Application incomplete, and fails to demonstrate that the Project provides equivalent protection for water quality as would the Project if subjected to the full requirements of Chapter 213.

F. The Application fails to contain adequate monitoring and enforcement measures.

While the Application depends upon certain mitigation of runoff in the future as justification for authorization of the Project, no monitoring or recording requirements are included to ensure that these goals are met. Long-term water quality monitoring would be necessary to ensure the claimed protection of water quality. Yet, no such monitoring is required. Likewise, there is no independent oversight provided for the Project, nor is there any means of limiting future activities if the runoff controls prove to be ineffective.

V. Conclusion

The Application should be denied. If the Project were subjected to the requirements of Chapter 213, then the TSS runoff from the Project would need to be reduced by 80 percent. The exception request asks that the Project be allowed to go forward without any mitigation of the increased TSS runoff resulting from the Project. This does not constitute the required demonstration that the allowance of this exception accomplishes equivalent water quality protection as would be accomplished by application of the requirements of Chapter 213 to the Project.

Furthermore, subjecting the Project to all requirements of Chapter 213 would require the identification of all potential pathways for contaminant movement to the Edwards Aquifer – something that has not been done in the exception request. Vulcan's failure to address these pathways also renders the Application insufficient to demonstrate that the Project provides equivalent water quality protection as would subjecting the Project to Chapter 213.

If Vulcan wishes that the impacts of the Project be "offset" by reductions accomplished by the 2024 WPAP for the larger quarry, then Vulcan should submit an application to amend that authorization for the quarry, so that the necessary site-wide evaluation can be performed. The Application is nothing more than an attempt at an end-around this process, and should be rejected.

Respectfully submitted,

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