

Jon Niermann, *Chairman*
Emily Lindley, *Commissioner*
Toby Baker, *Executive Director*



Vic McWherter, Public Interest Counsel

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

November 19, 2018

Bridget Bohac, Chief Clerk
Texas Commission on Environmental Quality
Office of the Chief Clerk (MC-105)
P.O. Box 13087
Austin, Texas 78711-3087

RE: **VULCAN CONSTRUCTION MATERIALS, LLC**
TCEQ DOCKET NO. 2018-1303-AIR

Dear Ms. Bohac:

Enclosed for filing is the Office of Public Interest Counsel's Response to Requests for Hearing and Request for Reconsideration in the above-entitled matter.

Sincerely,

A handwritten signature in cursive script that reads "Pranjal".

Pranjal M. Mehta, Attorney
Assistant Public Interest Counsel

cc: Mailing List

TCEQ DOCKET NO. 2018-1303-AIR

IN THE MATTER	§	BEFORE THE
OF THE APPLICATION OF	§	
VULCAN CONSTRUCTION	§	TEXAS COMMISSION ON
MATERIALS, LLC FOR AIR	§	
QUALITY PERMIT NO.	§	ENVIRONMENTAL QUALITY
147392L001		

**THE OFFICE OF PUBLIC INTEREST COUNSEL'S RESPONSE
TO REQUESTS FOR HEARING AND REQUEST FOR RECONSIDERATION**

TO THE HONORABLE MEMBERS OF THE TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY:

The Office of Public Interest Counsel (OPIC) of the Texas Commission on Environmental Quality (Commission or TCEQ) files this Response to Requests for Hearing and Request for Reconsideration in the above-referenced matter and respectfully shows the following.

I. INTRODUCTION

A. Background of Facility

Vulcan Construction Materials, LLC (Vulcan or Applicant) has applied to the TCEQ for a New Source Review Authorization under Texas Clean Air Act (TCAA) § 382.0518. This permit will authorize the Applicant to construct a rock crushing plant that may emit air contaminants. The plant will be located on property whose northeast corner is the southwest corner of the intersection of Highway 46 and Farm-to-Market Road 3009, Bulverde, Comal County, Texas. The Applicant has represented that the plant will be located on the property at the following coordinates: Latitude 29.768401, Longitude -98.308153. Contaminants authorized under this permit include particulate matter (PM₁₀) and 2.5 microns or less (PM_{2.5}), carbon monoxide, nitrogen oxides (NO_x), organic compounds, and sulfur dioxide (SO₂).

B. Procedural Background

The TCEQ received this application on June 27, 2017. On July 5, 2017, the Executive Director (ED) of TCEQ declared the application administratively complete. The Notice of Receipt and Intent to Obtain an Air Quality Permit (NORI) was published in English on July 31, 2017, in the *San Antonio Express-News* and in Spanish on July 28, 2017, in *La Prensa Comunidad del Valle*. A combined Notice of Application and Preliminary Decision for an Air Quality Permit and notice of public meeting was published in English on January 26, 2018, in the *San Antonio Express-News* and in Spanish on January 26, 2018, in *La Prensa Comunidad del Valle*. A public meeting was held on February 27, 2018 in New Braunfels, Texas. The public comment period ended on February 27, 2018. The Chief Clerk mailed the ED's Decision and Response to Comments (RTC) on September 14, 2018. The deadline to request a contested case hearing was October 14, 2018.

II. APPLICABLE LAW

This application was filed on or after September 1, 2015, and is therefore subject to the procedural rules adopted pursuant to Senate Bill 709. Tex. S.B. 709, 84th Leg., R.S. (2015). For SB 709 applications, Texas Water Code (TWC) Section 5.115(a)(a-1)(2)(B) provides the Commission may not find that a hearing requestor is an affected person unless the hearing requestor timely submitted comments on the application. Texas Government Code Section 2003.047(e -1) further provides that each issue referred by the Commission must have been raised by an affected person in a timely comment filed by that affected person. The Commission's Chapter 55 rules implement these statutory requirements and other provisions of SB 709.

Under Title 30, Texas Administrative Code (TAC) § 55.201(c), a hearing request by an affected person must be in writing, must be timely filed, may not be based on an issue raised solely in a public comment which has been withdrawn, and, for applications filed on or after September 1, 2015, must be based only on the affected person's timely comments.

Section 55.201(d) states that a hearing request must substantially comply with the following:

- (1) give the name, address, daytime telephone number, and, where possible, fax number of the person who files the request;
- (2) identify the person's personal justiciable interest affected by the application, including a brief, but specific, written statement explaining in plain language the requestor's location and distance relative to the proposed facility or activity that is the subject of the application and how and why the requestor believes he or she will be adversely affected by the proposed facility or activity in a manner not common to members of the general public;
- (3) request a contested case hearing;
- (4) list all relevant and material disputed issues of fact that were raised by the requestor during the public comment period and that are the basis of the hearing request. To facilitate the Commission's determination of the number and scope of issues to be referred to hearing, the requestor should, to the extent possible, specify any of the ED's responses to the requestor's comments that the requestor disputes, the factual basis of the dispute, and list any disputed issues of law; and
- (5) provide any other information specified in the public notice of application.

Under 30 TAC § 55.203(a), an "affected person" is one who has a personal justiciable interest related to a legal right, duty, privilege, power, or economic interest affected by the application. An interest common to members of the general public does not qualify as a personal justiciable interest. Section 55.203(c) provides relevant factors to be considered in determining whether a person is affected. These factors include:

- (1) whether the interest claimed is one protected by the law under which the application will be considered;

- (2) distance restrictions or other limitations imposed by law on the affected interest;
- (3) whether a reasonable relationship exists between the interest claimed and the activity regulated;
- (4) likely impact of the regulated activity on the health, safety, and use of property of the person;
- (5) likely impact of the regulated activity on use of the impacted natural resource by the person;
- (6) for a hearing request on an application filed on or after September 1, 2015, whether the requestor timely submitted comments on the application that were not withdrawn; and
- (7) for governmental entities, their statutory authority over or interest in the issues relevant to the application.

Under § 55.203(d), to determine whether a person is an affected person for the purpose of granting a hearing request for an application filed on or after September 1, 2015, the Commission may also consider the following:

- (1) the merits of the underlying application and supporting documentation in the administrative record, including whether the application meets the requirements for permit issuance;
- (2) the analysis and opinions of the ED; and
- (3) any other expert reports, affidavits, opinions, or data submitted by the ED, the applicant, or hearing requestor.

For applications filed on or after September 1, 2015, 30 TAC § 55.205(b) states that a hearing request by a group or association may not be granted unless all of the following requirements are met:

- (1) comments on the application are timely submitted by the group or association;
- (2) the request identifies, by name and physical address, one or more members of the group or association that would otherwise have standing to request a hearing in their own right;
- (3) the interests the group or association seeks to protect are germane to the organization's purpose; and

- (4) neither the claim asserted nor the relief requested requires the participation of the individual members in this case.

For an application filed on or after September 1, 2015, § 55.211(c)(2)(A)(ii) provides that a hearing request made by an affected person shall be granted if the request raises disputed issues of fact that were raised by the affected person during the comment period, that were not withdrawn by filing a withdrawal letter with the Chief Clerk prior to the filing of the ED's RTC, and that are relevant and material to the Commission's decision on the application. Under § 55.211(c)(2)(B)-(D), the hearing request, to be granted, must also be timely filed with the Chief Clerk, pursuant to a right to hearing authorized by law, and comply with the requirements of § 55.201.

Any person may file a request for reconsideration of the ED's decision under 30 TAC § 55.201(e). The request must be in writing and filed with the Chief Clerk no later than 30 days after the Chief Clerk mails the ED's decision and RTC. The request must expressly state that the person is requesting reconsideration of the ED's decision and give reasons why the decision should be considered.

III. DISCUSSION

A. Request for Reconsideration

On October 14, 2018, Kyra N. Faught filed a timely request for reconsideration of the ED's decision regarding the proposed permit. The request for reconsideration states issues and concerns about potential adverse health effects on her 3-year-old son. The request for reconsideration further states concerns about the compliance history of the Applicant. These issues and concerns are within the Commission's jurisdiction. As discussed further below, OPIC recommends that issues concerning potential adverse health effects and compliance history be referred to the State Office of Administrative Hearings (SOAH) for a contested case hearing.

However, at this point in the process prior to further development of an evidentiary record through a contested case hearing, OPIC cannot conclude whether the application should be granted or denied in light of the concerns raised in the request for reconsideration. Therefore, OPIC must recommend denial of the request for reconsideration. OPIC further discusses the hearing requests below.

B. Determination of Affected Person Status

Hearing Requestors with no timely filed comments

Comal Independent School District

Comal Independent School District Board of Trustees (District) filed a request for contested case hearing and affected person status on October 15, 2018. The hearing request states that the District currently has two existing school sites within five miles of the proposed facility as well as a potential future elementary school site within three miles of the proposed facility. The hearing request raises concerns about long and short term adverse health effects on the children attending these schools. The Texas Education Code vests the trustees of an independent school district with authority to sue and be sued, as well as authority to "...adopt rules for the safety and welfare of students, employees, and property..." Tex. Educ. Code §§ 11.151(a) & 37.102(a). However, to be considered as an affected person, the hearing requestor must have timely submitted comments on the application. TWC § 5.115(a)(a-1)(2)(B), 30 TAC § 55.201(c). The record indicates that the District did not file comments during the public comment period for this application. Therefore, OPIC cannot recommend that the District is an affected person in this case.

Individual Hearing Requestors with no timely filed comments

The Commission received timely hearing requests from Adrah Lea Anzalotta, Thomas Martin Chaney, Brigitte Deyle, Ora Lee Frisch, Bruce R. Glover, Mrs. Carol Glover, Kendall Jaroszewski, Kevin MacDonald, Dr. Meredith Anne McGuire, Connie Reyes, Edrick Reyes, Eugene Reyes, Dennis W. Seay, Julie M. Seay, Travis J. Seay, Rick Shimon, James V. Spickard, Laura Terrell, and Stephen Terrell. The record indicates that these hearing requestors did not file comments during the public comment period for this application. As discussed above, to be considered as an affected person, the hearing requestor must have timely submitted comments on the application. TWC § 5.115(a)(a-1)(2)(B), 30 TAC § 55.201(c). Therefore, OPIC cannot recommend that these individual hearing requestors are affected persons in this case.

Comal County

On August 15, 2017, Comal County (County) filed a request for contested case hearing raising concerns about air quality and environmental impact on the County's citizens. The governing body of a municipality or the commissioners court of a county may enforce any law that is reasonably necessary to protect the public health. Texas Health and Safety Code (THSC) § 121.003(a). In light of THSC § 121.003(a), OPIC finds that the County has statutory authority over or interest in issues relevant and material to this application. 30 TAC §55.203(c)(7). The County's statutory interest in protecting public health includes concerns about air quality and the environmental impact on the County's citizens. Therefore, OPIC recommends the Commission find the County is an affected person under 30 TAC § 55.203(c)(7).

City of Bulverde

The City of Bulverde filed a request for contested case hearing dated October 12, 2018. The hearing request included a map showing the Bulverde city limits and extraterritorial

jurisdiction (ETJ), as well as Resolution no. 305 expressing opposition to the facility based on the City's interests in air quality and public health. During the public comment period, on January 12, 2018, the city submitted Resolution no. 300 which expressed similar concerns about the negative impacts to the citizens of Bulverde.

The hearing request relies on the map to show that a portion of the plant site lies within Bulverde's ETJ. The hearing request states that Bulverde is an affected person because the city has the statutory right and obligation to promote the health, safety, and general welfare of its inhabitants and of those who reside in the ETJ. The hearing request cites to statutory authority in support of Bulverde's arguments for affected person status. (Tex. Loc. Gov't Code §§ 42.001, 211.001, 271.042(a), 551.002(c) and THSC §§ 121.003(a), 382.113). OPIC agrees that Bulverde has statutory authority over or interest in issues related to the health, safety and welfare of its citizens that are relevant and material to this application. Therefore, OPIC recommends that the Commission find the City of Bulverde is an affected person under 30 TAC § 55.203(c)(7).

City of New Braunfels

The City of New Braunfels filed a request for contested case hearing on February 15, 2018. The hearing request raises concerns about air quality and environmental impact on the Comal County residents in the area of the proposed facility. However, the hearing request does not show the plant site is within the City of New Braunfels' city limits and/or extraterritorial jurisdiction, does not state that Comal County residents potentially affected by the facility reside within the city limits or ETJ of New Braunfels, and does not otherwise assert that use of city facilities or programs would be affected. Therefore, in the absence of any additional information that may be included in a timely filed reply, OPIC cannot find that City of New Braunfels is an affected person.

Friends of Dry Comal Creek and Stop 3009 Vulcan Quarry

A combined hearing request has been submitted by two different groups, Friends of Dry Comal Creek and Stop 3009 Vulcan Quarry. To gain standing as a group, Friends of Dry Comal Creek and Stop 3009 Vulcan Quarry (referred collectively as 'Groups') must present at least one member of each group who would individually qualify as affected persons. 30 TAC § 55.205(a)(1). The Groups named Milann & Pru Guckian and Liz M. James as members of each organization who would have standing to request a hearing on their own. The hearing request raises concerns about adverse effects on the members' health and use and enjoyment of their property. The request states the identified members live immediately to the east of and across the street from the plant site. The map prepared by ED confirms their location. Their proximity to the proposed facility and stated concerns show that they could be affected in a manner not common to the general public and distinguishes their interests from interests common to the general public.

The second requirement for group standing is the interests the group seeks to protect must be germane to the organization's purpose. 30 TAC § 55.205(a)(2). The hearing request states that each group exists to promote and safeguard a desirable natural environment for its members. OPIC finds that the interests these groups seek to protect are germane to the groups' purpose and the groups have satisfied the second requirement for group standing.

Finally, as required by 30 TAC § 55.205(a)(3), neither the claim asserted by the Groups nor the relief requested by the Groups requires that participation of individual members. The Groups have satisfied the § 55.205 requirements for group standing, and therefore, OPIC recommends that the Commission find that both Friends of Dry Comal Creek and Stop 3009 Vulcan Quarry are affected persons in this matter.

Smithson Valley Heritage Oaks Property Owners Association

The Commission received a timely hearing request from Smithson Valley Heritage Oaks Property Owners Association (Association). The hearing request states the location of the requestors' property is within 215 feet of the proposed rock crushing plant. The hearing request raises concerns about air quality and adverse health effects on Association members and their livestock. The hearing request is filed by Elizabeth Luker Martin. As discussed below in analyzing the affected person status for Group A requestors, Elizabeth Luker Martin would individually qualify as an affected person. Therefore, the Association meets the requirement of presenting at least one member who would individually qualify as affected persons. 30 TAC § 55.205(a)(1). OPIC finds that the interests raised by the Association are germane to the Association' purpose and the Association has satisfied the second requirement for group standing. Also, as required by 30 TAC § 55.205(a)(3), neither the claim asserted by the Association nor the relief requested by the Association requires that participation of individual members. Therefore, OPIC finds that the Association has satisfied the § 55.205 requirements for group standing and recommends that the Commission find the Association is an affected person in this matter.

Group A requestors (individuals within close proximity and with stated personal justiciable interests)

The Commission received timely hearing requests from Kathleen Banse, Davin Bell, Michael Bell, Ron & Elaine Bigbee, Troy Calvin Brand, Billy Wayne Burton, Windell Cannon, William B. Cobb, Herbert A. Coley, Becky L. Cox, Donna H. Gibson Dell, James Kevin & Michele M Drake, Robin Ecks, Linda Everingham, Deborah Farrar, Deborah Foster, Charles David & Shirley Yvonne Gerdes, Edward A & Debbie Sabins Grun, Milann & Pru

Guckian, Alan & Kathryn Hammack, Douglas Harrison, Ruby Hartmann, Prentisotis Hibler, Kenneth & Diane Higby, Cobby Herb, Chris Hopmann, Liz James, Craig Johnson, Melissa & Paul Laster, Elizabeth & Ted Martin, Ellen McClellan, Debra & Robert McSweeney, Mary Jean Nebergall, Robert Francis Nebergall, Kira Olson, Nathan, Karis, Kennedy Olson, Terry, Michael & Peri Olson, Laura Allen Quisenberry, Jakki M. Saul, Robbi E. Shipley, Gregory Snider, Sylvia Walker, Renee Wilson, Deborah & Michael J, Doug Wayne & Sandra Dee Zimmerman and Steve Wayne & Sandra Zimmerman. OPIC refers to these requestors collectively as Group A requestors. Group A requestors raise concerns regarding air quality, health effects, noise, compliance history of the applicant and adverse health effect on livestock. The map prepared by the ED shows Group A requestors located within a proximity of less than two miles from the proposed facility.

Group A requestors' close proximity to the proposed plant, combined with their concerns regarding air quality and health effects, demonstrates they have a personal justiciable interest in this matter. Their concerns about air quality and health effects are interests protected by the law under which this application will be considered. A reasonable relationship exists between these interests and the regulation of air contaminants. Therefore, OPIC finds that Group A requestors qualify as affected persons in this matter.

Group B requestors (individuals within close proximity but with no stated personal justiciable interest)

The Commission received timely hearing requests from Gary B. Armstrong and Daniel J. Laroe. OPIC refers to these requestors collectively as Group B requestors. The map prepared by the ED shows Group B requestors located within close proximity of the proposed facility. Proximity to the facility may distinguish a requestor's interest from interests of the general

public. 30 TAC § 55.203(a). However, an interest must be stated in a hearing request that relates to a legal right, duty, privilege, power or economic interest affected by the application. 30 TAC §§ 55.201(d)(2), 55.203(a). Group B requestors do not state an interest that may be affected by the application. For these reasons, their hearing requests fail to comply with the requirements of 30 TAC § 55.201(d). Therefore, OPIC recommends that the Commission find that the Group B requestors do not qualify as affected persons.

Group C requestors (individuals who are not within close proximity)

The Commission also received timely hearing requests from Karen Albright, Melissa Alonzo, Hector & Sabrina Amaya, Rick D Aristeguieta, Lauri Sue Azzaro, Sean Vincent Azzaro, Gary Baker, Clifford G. Barr, Ali Baugh, Katherine Beshore, Larry & Nanncy Ann Beward, Kathryn A Black, Dawson Bremer, Harold Broth, Kelly Brown, Ginger Browning, Barbara Brunson, Katy Bryant, Alyssa D Brysch, Kristine Brzozowski, David Bullock, Julie Burbank, Teri Callihan, Robert Carrillo, Hugo Carvajal, Russell Cason, Barron Casteel, Mason Cawley, Lynn Chapman, Yvonne L Chapman, James Albert Chew, Wes Clark, Shirley Corkill, Ayden Shane & Belinda Correa, Catherine Croom, Joel Cunningham, Rocco Defelice, Teresa Dophied, David & Tiffany Drewa, Susan L Dunlap, Donna Eccleston, D. Lee Edwards, Dillon Ellis, Thomas Banon & Kim Ellison, David Fletcher, Nicole M. Geiger, Alan & Kathy Gibbs, Cheryl A. Gilpin, Cece Given, Andrea M. Gonzalez, Terry L. Graham, David Lee & Debbie Granato, Thomas Greneaux, Scott Haag, Duane R. Hall, Jacey Hall, Jaclyn Hall, McKenna Hall, Nathanael Hall, Terri Lynn Hall, Susan Halsell, Grace Hannemann, Rhonda Harris, Matthew Harrison, Sally Harvey, Veronica Hawk, Lynda L Heikes, Eric Hermann, Sabrina Houser-Amaya, Jeanne Howe, Sarah Kassis Izzat, Steven Izzat, Mary Lou Jenkins, Kendra Johnson, Richard Keady, Kilian Kean, Mike Krup, Clint Laubach, Byron L Leonard, Roger Phelps

Mabee, Madeleine Maciula, Christine M. Magers, Maureen A. Martinez, Brian Mather, Terressa Mathews, Michael L. & Rose Maurer, Carrie Mauthe, Rachel Mayfield, William Mayfield, Sheryl Lynn Mays, Hilary McVicker, Dawn Medeiros, Daniel Meneilly, Steve Middlecamp, Balous Miller, Linda Holley Mohr, Gloria Morse, Bruce & Grace Murphy, Butch Newman, Linda Sue Newman, Wendy Norris, Sandy & Teresa Nott, Deborah K. Ohlrich, Jack Olivier, Corissa Owens, Cole Paveglio, Annalisa Peace, Patrick E Pence, David Perelstein, Wayne Peters, Stephen Petty, Paul Petrino, Debra Phelps, Shawna Poor, Johanna Posey, William Kyle Pringle, Phelon Tyler Rammell, Deborah Reid, Robert Remey, Teresa Rogers, Lindsey Saathoff, Vallye Sawyer, Arthur Seago, Elias & Grace Shaer, Howard Shipman, Mike B. Stemig, Margie E. Spaeth, Wilbert D. Spaeth, Nova Stephenson, Trudy Striegel, Connie Terao, Jeff R. Thomas, Carl Thompson, Mary & R. Trujillo, Amanda Trussell, Tina Tsui, Dragos & Mariana Ungurean, Meiling “Millie” Vonstultz, Francesca W. Watson, and Benton & Kathryn Zwart. OPIC refers to these requestors collectively as Group C requestors. The map prepared by the ED appears to locate Group C requestors at distances of approximately two miles or greater from the proposed facility. OPIC notes that there are no specific distance limitations applicable to who may be considered an affected person for purposes of this application; however, given the nature and volume of emissions to be permitted and considering Group C’s distance from the facility, OPIC cannot find Group C requestors are affected persons.

In summary, OPIC finds that the following requestors are affected persons: Comal County; City of Bulverde; Friends of Dry Comal Creek; Stop 3009 Vulcan Quarry; Smithson Valley Heritage Oaks Property Owners’ Association; and Group A Requestors.

C. Issues Raised by the Affected Persons

The following issues were raised by one or more affected persons in timely filed hearing requests:

1. Whether the proposed facility will adversely affect the health and safety of requestors, their family, animals and livestock?
2. Whether the proposed facility will adversely affect the use and enjoyment of requestors' property?
3. Whether the proposed facility will adversely affect wildlife, vegetation, flora and fauna?
4. Whether the proposed facility will adversely affect air quality?
5. Whether the proposed facility will adversely affect water quality?
6. Whether the proposed facility will generate noise pollution?
7. Whether the proposed facility will create traffic problems for the requestors?
8. Whether the proposed facility will decrease property values?
9. Whether the Applicant's compliance history precludes issuance of the draft permit?
10. Whether the draft permit includes emissions from maintenance, startup, and shutdown activities?

D. Issues Raised in the Comment Period

Issues Nos. 1 to 10 raised in the hearing requests were raised in the comment period by the requestors and have not been withdrawn. 30 TAC §§ 55.201(c) & (d)(4)(B), 55.211(c)(2)(A).

E. Disputed Issues

There is no agreement between the hearing requestors and the ED on the issues raised in the hearing requests, thus, the issues remain disputed.

F. Issues of Fact

If the Commission considers an issue to be one of fact, rather than one of law or policy, it is appropriate for referral to hearing if it meets all other applicable requirements. 30 TAC § 55.211(c)(2)(A). All the issues raised by the requestors are issues of fact.

G. Relevant and Material Issues

The hearing requests raise issues that are relevant and material to the Commission's decision under the requirements of 30 TAC §§ 55.201(d)(4)(B) and 55.211(c)(2)(A)(ii). To refer an issue to SOAH, the Commission must find that the issue is relevant and material to the Commission's decision to issue or deny this permit. Relevant and material issues are those governed by the substantive law under which this permit is to be issued. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248–51 (1986).

The TCEQ is responsible for the protection of air quality under the TCAA and accompanying administrative rules. The purpose of the TCAA is “to safeguard the state’s air resources from pollution by controlling or abating air pollution and emission of air contaminants, consistent with the protection of public health, general welfare, and physical property, including the esthetic enjoyment of air resources by the public and the maintenance of adequate visibility.” THSC § 382.002. In addition, “[n]o person shall discharge from any source whatsoever one or more air contaminants or combinations thereof, in such concentration and of such duration as are or may tend to be injurious to or to adversely affect human health or welfare, animal life, vegetation, or property, or as to interfere with the normal use and enjoyment of animal life, vegetation, or property.” 30 TAC § 101.4.

Issues No. 1, 2, 3, 4 and 10 in § IV.C are relevant and material issues because they relate to the effects of air quality on human health, vegetation, and the use and enjoyment of property.

Issue No. 5 is not relevant and material because water quality is outside the scope of the TCAA. Issues No. 6, 7 and 8 are not relevant and material because noise, traffic and property values are outside the Commission's jurisdiction. Finally, Issue No. 9 is relevant and material because Texas Health & Safety Code § 382.0518 provides that the Commission may consider the applicant's compliance history.

H. Issues Recommended for Referral

OPIC recommends that the following disputed issues of fact be referred to SOAH for a contested case hearing:

1. Whether the proposed facility will adversely affect the health and safety of requestors, their family, animals and livestock?
2. Whether the proposed facility will adversely affect the use and enjoyment of requestors' property?
3. Whether the proposed facility will adversely affect wildlife, vegetation, flora and fauna?
4. Whether the proposed facility will adversely affect air quality?
5. Whether the Applicant's compliance history precludes issuance of the draft permit?
6. Whether the draft permit includes emissions from maintenance, startup, and shutdown activities?

I. Maximum Expected Duration of Hearing

Commission Rule 30 TAC § 80.6(b)(5) requires that any Commission order referring a case to SOAH specify the maximum expected duration of the hearing by stating a date by which the judge is expected to issue a proposal for decision. The rule further provides that no hearing shall be longer than 180 days from the first day of the preliminary hearing to the date the proposal for decision is issued. To assist the Commission in stating a date by which the judge is expected to issue a proposal for decision, and as required by 30 TAC § 55.209(d)(7), OPIC

estimates that the maximum expected duration of a hearing on this application would be 180 days from the first date of the preliminary hearing until the proposal for decision is issued.

IV. CONCLUSION

OPIC recommends granting the hearing requests from the Comal County, City of Bulverde, Friends of Dry Comal Creek, Stop 3009 Vulcan Quarry, Smithson Valley Heritage Oaks Property Owners' Association, and the individual hearing requestors listed under the Group A heading in Section III. B above. Further, OPIC recommends referring to SOAH the issues listed in § IV. H for a contested case hearing with a duration of 180 days.

Respectfully submitted,


Vic McWherter
Public Interest Counsel

By: 

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CERTIFICATE OF SERVICE

I hereby certify that on November 19, 2018 the original and seven true and correct copies of the Office of Public Interest Counsel's Response to Requests for Hearing and Request for Reconsideration was filed with the Chief Clerk of the TCEQ and a copy was served to all persons listed on the attached mailing list via hand delivery, facsimile transmission, Inter-Agency Mail, electronic mail, or by deposit in the U.S. Mail.



Pranjal M. Mehta

MAILING LIST
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TCEQ DOCKET NO. 2018-1303-AIR

FOR THE APPLICANT:

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**FOR ALTERNATIVE DISPUTE
RESOLUTION:**

Kyle Lucas
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REQUESTERS:

See attached.

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NEW BRAUNFELS TX 78132-3948

ALONZO MELISSA
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CANYON LAKE TX 78133-23

BESHORE KATHERINE
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27115 PARK LOOP RD
NEW BRAUNFELS TX 78132-2650

BLACK KATHRYN A
ROCKWALL RANCH
26530 FOREST LINK
NEW BRAUNFELS TX 78132-4663

BURTON BILLY WAYNE
297 KIRK LN
BULVERDE TX 78163-3914

ARMSTRONG GARY B
30474 CLOUD VIEW DR
BULVERDE TX 78163-4006

BRAND TROY CALVIN
SSA MARKETING
1980 S CRANES MILL RD
NEW BRAUNFELS TX 78132-1630

CALLIHAN TERI
516 SOLMS FRST
NEW BRAUNFELS TX 78132-3424

AZZARO LAURI & SEAN
1692 REBECCA RANCH RD
CANYON LAKE TX 78133-6092

BREMER DAWSON
BREMER RANCH LTD
485 BREMER
NEW BRAUNFELS TX 78132-1602

CARRILLO ROBERT
111 MARLENA DR
SAN ANTONIO TX 78213-2856

BAKER GARY
TEXAS WATER AND LANDSCAPE LLC
3223 SINGLE PEAK
SAN ANTONIO TX 78261-1818

BROTH HAROLD
5820 KELLER RDG
NEW BRAUNFELS TX 78132-3902

CARVAJAL HUGO
2471 JOHN CHARLES RD
BULVERDE TX 78163-1897

BANSE KATHLEEN
1251 RIDGE CREEK LN
BULVERDE TX 78163-2924

BROWNING GINGER
28743 SIERRA DR
NEW BRAUNFELS TX 78132-2627

CASTEEL BARRON MAYOR
CITY OF NEW BRAUNFELS
550 LANDA ST
NEW BRAUNFELS TX 78130-6110

BARR CLIFFORD G
2025 APPELLATION
NEW BRAUNFELS TX 78132-2772

BRUNSON BARBARA
1515 IMBUTO
NEW BRAUNFELS TX 78132-2696

CAWLEY MASON
3552 COMAL SPGS
CANYON LAKE TX 78133-6059

BAUGH ALI
5212 HONEYSUCKLE BR
BULVERDE TX 78163-2274

BRYANT KATY
8701 PERRIN BEITEL RD
SAN ANTONIO TX 78217-4820

CHAPMAN LYNN
225 CROWN RDG
NEW BRAUNFELS TX 78132-3807

CHAPMAN YVONNE L
30809 SUNLIGHT DR
BULVERDE TX 78163-2772

DEFELICE ROCCO
1456 DECANter DR
NEW BRAUNFELS TX 78132-2690

EVERINGHAM DON & LINDA
ENCHANTED OAKS RANCH
601 PFEIFFER RD
BULVERDE TX 78163-4022

CHEW JAMES ALBERT
1022 BLEND WAY
NEW BRAUNFELS TX 78132-2698

DOPHIED TERESA
1265 PALADIN TRL
SPRING BRANCH TX 78070-4977

FARRAR DEBORAH
29924 FM 3009
NEW BRAUNFELS TX 78132-2637

CLARK WES
4444 W STATE HIGHWAY 46
NEW BRAUNFELS TX 78132-3751

DRAKE JAMES KEVIN & MICHELLE
30380 FM 3009
NEW BRAUNFELS TX 78132-2630

FOSTER DEBORAH
600 SHEARER RD
BULVERDE TX 78163-2824

COBB WILLIAM B
909 HOMESTEAD RDG
NEW BRAUNFELS TX 78132-1637

DREWA DAVID A & TIFFANY
21406 ENCINO LOOKOUT
SAN ANTONIO TX 78259-2656

GEIGER NICOLE M
2631 MELBOURNE AVE
NEW BRAUNFELS TX 78132-4458

COLEY HERBERT A
CEDAR ROCK RANCH
29800 FM 3009
NEW BRAUNFELS TX 78132-2639

DUNLAP SUSAN L
SOUTHWEST ENGLISH SETTER
RESCUE
462 SAN MARCOS TRL
NEW BRAUNFELS TX 78132-1653

GERDES CHARLES DAVID &
SHIRLEY
30422 FM 3009
NEW BRAUNFELS TX 78132-2630

CORKILL SHIRLEY
1436 PALERMO
NEW BRAUNFELS TX 78132

ECCLESTON DONNA
COMMISSIONER, PRECINCT 1
COMAL COUNTY
150 N SEGUIN AVE
NEW BRAUNFELS TX 78130-5146

GILPIN CHERYL
964 STONEWALL ST
NEW BRAUNFELS TX 78130-5840

CORREA AYDEN SHANE & BELINDA
1317 BORDEAUX LN APT 2005
NEW BRAUNFELS TX 78132-2681

ECKS ROBIN
1194 MAGNUM
NEW BRAUNFELS TX 78132-2925

GIVEN CECE
12526 ELM MANOR ST
SAN ANTONIO TX 78230-2757

COX BECKY
38038 FM 3009
NEW BRAUNFELS TX 78132

EDWARDS D LEE
311 HUNTERS CREEK DR
NEW BRAUNFELS TX 78132-4704

GONZALEZ ANDREA M
2736 HEYNIS N
NEW BRAUNFELS TX 78130-6407

CROOM CATHERINE
30412 HEIMER CV
BULVERDE TX 78163-4594

ELLIS DILLON
NATURAL BRIDGE CAVERNS
26495 NATURAL BRIDGE CAVERNS RD
SAN ANTONIO TX 78266-2671

GRAHAM TERRY L
714 LOMA DOBLE
SPRING BRANCH TX 78070-6065

CUNNINGHAM JOEL
6408 CIRCLE OAK DR
BULVERDE TX 78163-2332

ELLISON THOMAS BANON & KIM
2559 COMAL SPGS
CANYON LAKE TX 78133-6081

GRANATO DAVID LEE & DEBBIE
2141 APPELLATION
NEW BRAUNFELS TX 78132-2773

GRENEAUX THOMAS P
462 SAN MARCOS TRL
NEW BRAUNFELS TX 78132-1653

HARRISON MATTHEW
2371 OAK PEBBLE
NEW BRAUNFELS TX 78132-3817

JAMES LIZ M
30838 FM 3009
NEW BRAUNFELS TX 78132-2649

GRUN EDWARD A & DEBBIE SABINS
1041 HOMESTEAD RDG
NEW BRAUNFELS TX 78132-1652

HARTMANN RUBY
30838 FM 3009
NEW BRAUNFELS TX 78132-2649

JENKINS MARY LOU
795 PERSIMMON HL
BULVERDE TX 78163-5006

GUCKIAN MILANN & PRU
30954 FM 3009
NEW BRAUNFELS TX 78132-2931

HARVEY SALLY C
2243 MERITAGE
NEW BRAUNFELS TX 78132-3943

JOHNSON CRAIG
31450 FM 3009
NEW BRAUNFELS TX 78132-2648

HAAG SCOTT
COMAL COUNTY COMMISSIONERS
COURT
150 N SEGUIN AVE
NEW BRAUNFELS TX 78130-5146

HEIKES LYNDA L
5505 SH 46W
NEW BRAUNFELS TX 78132

JOHNSON , KENDRA
2415 BLACK BEAR DR
NEW BRAUNFELS TX 78132-4332

HALL DUANE R
1206 HIDDEN CAVE DR
NEW BRAUNFELS TX 78132-2148

HERMANN ERIC
249 ROGERS RD
SPRING BRANCH TX 78070-5909

KEAN KILIAN
5676 COPPER CRK
NEW BRAUNFELS TX 78132-3921

HALL JACEY JACLYN MCKENNA
NATHANIEL & TERRI LYNN
5002 CORNWALL DR
SPRING BRANCH TX 78070-7229

HIGBY DR. KENNETH & DIANE
292 HERITAGE OAKS
NEW BRAUNFELS TX 78132-1650

KRUP MIKE
3012 COMAL SPGS
CANYON LAKE TX 78133-6061

HALSELL SUSAN
454 BENTWOOD DR
SPRING BRANCH TX 78070-6039

HOPMANN CHRIS M
30323 FM 3009
NEW BRAUNFELS TX 78132-2633

LAROE DANIEL J
922 HOMESTEAD RDG
NEW BRAUNFELS TX 78132-1644

HANNEMANN GRACE
5323 EAGLE CLAW DR
BULVERDE TX 78163-2241

HOUSER-AMAYA SABRINA A
8 OHIO
NEW BRANUFELS TX 78130

LAUBACH CLINT
639 HERBELIN RD
NEW BRAUNFELS TX 78132-1837

HARRIS EDWARD & DENISE
FRIENDS OF DRY COMAL CREEK
1670 S CRANES MILL RD
NEW BRAUNFELS TX 78132-1651

HOWE JEANNE
30722 ONION CRK
BULVERDE TX 78163-2723

LEONARD BYRON L
110 KEY RD
NEW BRAUNFELS TX 78132-1660

HARRISON DOUGLAS & SUSANNA
1000 HARRISON RD
NEW BRAUNFELS TX 78132-1671

IZZAT SARAH KASSIS & STEVEN
18225 FM 2252
SAN ANTONIO TX 78266-2717

MCCULLAR MICHAEL
COMAL ISD
1404 N IH 35
NEW BRAUNFELS TX 78130-2817

MABEE ROGER PHELPS
518 CANTERA RDG
NEW BRAUNFELS TX 78132-3948

MCCLELLAN ELLEN
2282 S CRANES MILL RD
NEW BRAUNFELS TX 78132-1604

NORRIS WENDY
10411 FELSBLOCK LN
NEW BRAUNFELS TX 78132-4317

MACIULA MADELEINE
2783 RIVER WAY
SPRING BRANCH TX 78070-6013

MCVICKER HILARY
3241 HAWTHORNE
SPRING BRANCH TX 78070-6424

NOTT SANDY L & TERESSA
143 DRY BEAR CRK
NEW BRAUNFELS TX 78132-1665

MAGERS CHRISTINE M
931 CYPRESS PASS RD
SPRING BRANCH TX 78070-5510

MEDEIROS DAWN
2063 ITALIA
NEW BRAUNFELS TX 78132-4446

OHLRICH DEBORAH K
160 ELM CREEK RD
NEW BRAUNFELS TX 78132-3006

MARTIN ELIZABETH & TED
SMITHSON VALLEY HERITAGE OAKS POA
900 HERITAGE OAKS
NEW BRAUNFELS TX 78132-1667

MENEILLY DANIEL
1321 PIEDMONT
NEW BRAUNFELS TX 78132-1861

OLSON KIRA
FALLSPRING
245 SAUR RD
BULVERDE TX 78163-3909

MARTINEZ MAUREEN A
324 IBIS FALLS DR
NEW BRAUNFELS TX 78130-7238

MIDDLECAMP STEVE
5751 HIGH FOREST DR
NEW BRAUNFELS TX 78132-3920

OLSON NATHAN KARIS KENNEDY
245 SAUR RD
BULVERDE TX 78163-3909

MATHER BRIAN
1328 PIEDMONT
NEW BRAUNFELS TX 78132-1861

MILLER BALOUS
430 S SANTA ROSA AVE
SAN ANTONIO TX 78207-4551

OWENS CORISSA N
404 EAGLE ROCK RD
SPRING BRANCH TX 78070-5515

MAURER SR MICHAEL L & ROSE
16129 HIGHWAY 46 W
SPRING BRANCH TX 78070-7080

MORSE GLORIA
292 SAN MARCOS TRL
NEW BRAUNFELS TX 78132-1664

PAVEGLIO COLE
27422 PARKWEG LOOP
NEW BRAUNFELS TX 78132-2643

MAUTHE CARRIE
1443 BRAND RD
BULVERDE TX 78163-3469

MURPHY BRUCE P & GRACE
311 LOOKOUT RDG
NEW BRAUNFELS TX 78132-3894

PEACE ANNALISA
GREATER EDWARDS AQUIFER
ALLIANCE
PO BOX 15618
SAN ANTONIO TX 78212-8818

MAYFIELD RACHEL & WILLIAM
26771 CYNTHIA DR
GARDEN RIDGE TX 78266-2635

NEBERGALL MARY JEAN & ROBERT
30268 FM 3009
NEW BRAUNFELS TX 78132-2630

PENCE LT COL PATRICK E
17 PRESTON WOOD
NEW BRAUNFELS TX 78132-3858

MAYS SHERYL LYNN
1953 PINOTAGE
NEW BRAUNFELS TX 78132-1857

NEWMAN BUTCH & LINDA
1684 REBECCA RANCH RD
CANYON LAKE TX 78133-6092

PERELSTEIN DAVID
1010 BENDEL RANCH RD
CANYON LAKE TX 78133-5931

PETERS WAYNE
550 LANDA ST
NEW BRAUNFELS TX 78130-6110

REMEY ROBERT
1159 SAPLING SPG
NEW BRAUNFELS TX 78132-2676

STEPHENSON NOVA
309 N PLEASANT VALLEY DR
BOERNE TX 78006-5772

PETRINO PAUL
2314 OCCIDENTE
NEW BRAUNFELS TX 78132-1886

ROGERS TERESA
428 REDLAND DR
SPRING BRANCH TX 78070-6047

STRIEGEL TRUDY
6027 KELLER RDG
NEW BRAUNFELS TX 78132-3901

PHELPS DEBRA
5451 MEADOW LARK DR
BULVERDE TX 78163-2317

SAATHOFF LINDSEY
26330 ROCKWALL PKWY
NEW BRAUNFELS TX 78132-2786

TERAO CONNIE
2241 APPELLATION
NEW BRAUNFELS TX 78132-2774

POLASEK DR. LORI
820 HARRISON RD
NEW BRAUNFELS TX 78132-1669

SAUL JAKKI M
251 S FORK
BULVERDE TX 78163-2862

THOMAS JEFF R
1128 PROVENCE PL
NEW BRAUNFELS TX 78132-2770

POOR SHAWNNA
31403 SUNLIGHT DR
BULVERDE TX 78163-2787

SAWYER VALLYE
3704 WHITEFIELD SQ
SCHERTZ TX 78154-2913

THOMPSON CARL
1026 STRADINA
NEW BRAUNFELS TX 78132-2778

POSEY JOHANNA
120 DEVERAUX
CANYON LAKE TX 78133-6205

SCHULE JARRETTE LAURI CADE &
ANDERSON
31215 BECK RD
BULVERDE TX 78163-3915

TRUJILLO MARY & R
5748 PALISADES VW
NEW BRAUNFELS TX 78132-3910

PRINGLE WILLIAM KYLE
1200 CREST HVN
BULVERDE TX 78163-2820

SEAGO ARTHUR
233 COPPER RIM
SPRING BRANCH TX 78070-6022

TRUSSELL AMANDA
539 SOLMS FRST
NEW BRAUNFELS TX 78132-3424

QUISENBERRY LAURA ALLEN
29486 FM 3009
NEW BRAUNFELS TX 78132-2635

SEAY PAMELA
580 SEAY LN
NEW BRAUNFELS TX 78132-2612

TSUI TINA
1273 VIA PRINCIPALE
NEW BRAUNFELS TX 78132-2604

RAMMELL DR. PHELON TYLER
AIR SUPPLY ANESTHESIA
30704 HORSESHOE PATH
BULVERDE TX 78163-2339

SNIDER GREGORY
300 HOMESTEAD RDG
NEW BRAUNFELS TX 78132-1641

WALKER SYLVIA
450 SHEARER RD
BULVERDE TX 78163-2822

REID DEBORAH
GREATER EDWARDS AQUIFER
ALLIANCDE
702 SUMNER DR
SAN ANTONIO TX 78209-4953

SPAETH MARGIE & WILBERT
9510 FM 1863
SAN ANTONIO TX 78266-2663

WATSON FRANCESCA W
7264 CIRCLE OAK DR
BULVERDE TX 78163-2433

WILSON RENEE
160 SEAY LN
NEW BRAUNFELS TX 78132-2612

COLEY HERB
CEDAR ROCK RANCH
29800 FM 3009
NEW BRAUNFELS TX 78132-2639

MATHEWS TERRESSA
1168 PROVENCE PL
NEW BRAUNFELS TX 78132-2770

ZIMMERMAN DEBORAH & MICHAEL
29256 FM 3009
NEW BRAUNFELS TX 78132-2614

DELL DONNA
30618 FM 3009
NEW BRAUNFELS TX 78132

MCSWEENEY DEBRA & ROBERT
29276 FM 3009
NEW BRAUNFELS TX 78132-2614

ZIMMERMAN DOUG WAYNE &
SANDRA DEE
890 SHEARER RD
BULVERDE TX 78163-2932

FLETCHER DAVID N
1847 RUSH CRK
CANYON LAKE TX 78133-5992

MOHR LINDA HOLLEY
6013 CORNWALL DR
SPRING BRANCH TX 78070-7222

ZIMMERMAN STEVE WAYNE &
SANDRA
450 SHEARER RD
BULVERDE TX 78163-2822

GIBBS ALAN & KATHY
2319 ECHOING OAK
NEW BRAUNFELS TX 78132-3660

OLIVIER JACK
1509 CABERNET
NEW BRAUNFELS TX 78132-2768

BELL MICHAEL
1120 IMHOFF LN
NEW BRAUNFELS TX 78132-1681

HAMMACK ALAN & KATHRYN
30700 FM 3009
NEW BRAUNFELS TX 78132-2630

OLSON TERRY MICHAEL & PERI
414 SAUR RD
BULVERDE TX 78163-3913

BIGBEE ELAINE & RON
10900 HIGHWAY 46 W
NEW BRAUNFELS TX 78132-1612

HARRIS RHONDA
1625 ANGOLO
NEW BRAUNFELS TX 78132-2782

PETTY STEPHEN
5737 COMAL VIS
NEW BRAUNFELS TX 78132-4457

BROWN KELLY S
2920 BRIARCROFT ST
SAN ANTONIO TX 78217-3801

HAWK VERONICA
615 SHEPHERDS RNCH
BULVERDE TX 78163-3442

SHAER ELIAS & GRACE
30284 CLOUD VIEW DR
BULVERDE TX 78163-4029

BURBANK JULIE
634 RIVER WAY
SPRING BRANCH TX 78070-5969

HIBLER PRENTIS OTIS
HIBLER RANCH
360 KIRK LN
BULVERDE TX 78163-3919

SHIPLEY ROBBI ELAINE
10502 TANDOM CT
SAN ANTONIO TX 78217-3946

CANNON WINDELL
30045 FM 3009
NEW BRAUNFELS TX 78132-2600

KEADY RICHARD C
1244 MERLOT
NEW BRAUNFELS TX 78132-3941

SHIPMAN HOWARD
8231 FOXCROSS DR
SPRING BRANCH TX 78070-6433

CASON RUSSELL REMBERT
9040 OZARK TER
SAN ANTONIO TX 78266-2656

LASTER MELISSA & PAUL
1121 RIGHT FRK
BULVERDE TX 78163-2815

STEMIG MIKE B
1357 CAPITARE
NEW BRAUNFELS TX 78132-0002

UNGUREAN DRAGOS & MARIANA
1231 PORTO PT
NEW BRAUNFELS TX 78132-2687

FRISCH ORA LEE
414 SAUR RD
BULVERDE TX 78163-3913

VONSTULTZ MILLIE
4224 RICHMOND AVE
SPRING BRANCH TX 78070-6425

GLOVER COL BRUCE R & CAROL
2230 MERITAGE
NEW BRAUNFELS TX 78132-3943

ZWART BENTON & KATHRYN
309 COPPER TRCE
NEW BRAUNFELS TX 78132-3914

JAROSZEWSKI KENDALL
414 SAUR RD
BULVERDE TX 78163-3913

FREDERICK DAVID O
FREDERICK PERALES ALLMON &
ROCKWELL PC
1206 SAN ANTONIO ST
AUSTIN TX 78701-1834

MACDONALD KEVIN
176 DRY BEAR CRK
NEW BRAUNFELS TX 78132-1665

RAMMEL JASON M
STE 108B
17080 HIGHWAY 46 W
SPRING BRANCH TX 78070-7104

MCGUIRE DR. MEREDITH ANNE
30545 BRIDLEGATE DR
BULVERDE TX 78163-4164

FAUGHT KYRA
315 KIRK LN
BULVERDE TX 78163-3919

REYES CONNIE EDRICK & EUGENE
29276 FM 3009
NEW BRAUNFELS TX 78132-2614

MARTIN ELIZABETH
SMITHSON VALLEY HERITAGE OAKS
POA
290 HERITAGE OAKS
NEW BRAUNFELS TX 78132-1650

SEAY DENNIS JULIE & TRAVIS
9602 MONMOUTH CIR
AUSTIN TX 78753-4643

ANZALOTTA ADRAH LEA
130 LITTLE ROUND TOP
BULVERDE TX 78163-3431

SHIMON RICK
PO BOX 17851
SAN ANTONIO TX 78217-0851

CHANEY THOMAS MARTIN
1135 SAPLING SPG
NEW BRAUNFELS TX 78132-2676

SPICKARD , DR. JAMES V
30545 BRIDLEGATE DR
BULVERDE TX 78163-4164

DEYLE BRIGITTE
218 DRY BEAR CRK
NEW BRAUNFELS TX 78132-1633

TERRELL , LAURA & STEPHEN
176 DRY BEAR CRK
NEW BRAUNFELS TX 78132-1665

