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Alamo Group of the Sierra Club  
Aquifer Guardians in Urban Areas  
Austin Regional Sierra Club  
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Committees of the Episcopal  
Church of Reconciliation &  
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Helotes Heritage Association  
Hill Country Planning Association  
Guardians of Lick Creek  
Kendall County Well Owners  
Association  
Kinney County Ground Zero  
Medina County Environmental  
Action Association  
Northwest Interstate Coalition of  
Neighborhoods  
Preserve Our Water-Blanco  
County  
San Antonio Conservation Society  
San Geronimo Valley Alliance  
San Geronimo Watershed Alliance  
San Marcos Greenbelt Alliance  
San Marcos River Foundation  
Santuario Sisterfarm  
Save Barton Creek Association  
Save Our Springs Alliance  
Scenic Loop/Boerne Stage Alliance  
Sisters of the Divine Providence  
Smart Growth San Antonio  
SEED Coalition  
Texas Water Alliance  
Travis County Green Party  
West Texas Springs Alliance  
Wimberley Valley Watershed  
Association

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May 24, 2007

Blake Stewart  
Texas Commission on Environmental Quality  
P.O. Box 13087  
Austin, TX 78711-3087  
Email: [bstewart@tceq.state.tx.us](mailto:bstewart@tceq.state.tx.us)

Re: Comments on TCEQ Proposed Rules for Air Quality Standard Permits  
for Temporary and Permanent Rock Crushers and Concrete Crushers

Dear Mr. Stewart,

Please accept these comments on behalf of the Greater Edwards Aquifer Alliance (GEAA). GEAA is a non-profit coalition of grassroots organizations across the Edwards Aquifer united to preserve the water, wildlife, scenic beauty, and cultural heritage of the Edwards Aquifer and the Texas hill country. We appreciate the efforts of the Texas Commission on Environmental Quality (TCEQ) in working with stakeholders to implement better environmental safeguards through these standard air permits than what has existed under the PBR system.

Rock crushers have an enormous impact on the human and natural environment, not only through the effects of particulate matter (PM) on air quality and surrounding communities, but also to the health of the Edwards Aquifer and the water quality of Texas's groundwater and surface water resources. Millions of users depend on the Edwards Aquifer (a sole source aquifer) for drinking water and recreation, and several endangered species exist only in the aquifer. Any pollution caused by the aggregate industry will negatively affect downstream users and the endangered species. Unregulated mining of aquifer limestone, pollution and pumping of groundwater, effects on the wells of adjacent landowners, and added dust and traffic impacts from infrastructure and vehicles, are issues that go largely unaddressed under the current regulatory scheme, which only provides for storm water discharge permits and air quality permits.

TCEQ urgently needs to address these cumulative effects in order to protect human health and preserve the State's ground and surface waters for future generations. Thus, we view these comments as an opportunity for TCEQ to strengthen specific measures in the proposed standard air permits as well as to consider ways in which the permit process could be further improved to provide for more comprehensive environmental review.

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1) **The Standard Permits Should Require Submittal of a Site Plan that Details Rock Crushing Phases, Groundwater Usage and Effects, and Other Essential Information about the Proposed Site**

TCEQ has identified the Edwards Aquifer as one of the most sensitive aquifers in Texas, especially with respect to groundwater contamination. While GEAA recognizes that these standard permits for rock crushers are designed to protect air quality, we do not believe that this means that geological or hydrological impacts should be disregarded. In fact, a good starting point toward identifying the critical consequences that rock crushers have on the environment as a whole, would be to require the air quality permit to include a site plan. In this way, TCEQ and the public would have more information about both the air quality and water quality issues that are likely to result from a particular quarry site. The site plan should include:

- A site map detailing the area where the rock crusher would be located; affected and unaffected areas; locations and distances from streams, county roads, and intersections; entrances and exits of the site; the phases and depths in which the quarry will be mined; and proposed reclamation plans.
- An independent hydrologist's report on effects to any groundwater, wells, or surface waters in the area, requiring adoption of measures to prevent negative effects to those waters.

These were recommendations of Gov. Perry's Advisory Committee on Rock Crushers and Quarries, a group established during the 78<sup>th</sup> Legislature. While the Committee envisioned a more comprehensive quarry permit, of which the site plan would be a component, there is no reason why the air quality permit, as the lynchpin of the environmental review of rock crushing sites, could not also incorporate a site plan.

In addition to soliciting information through site plans, **TCEQ SHOULD PROHIBIT THE USE OF STANDARD PERMITS FOR ROCK CRUSHERS SEEKING TO LOCATE IN THE EDWARDS AQUIFER RECHARGE ZONE.** TCEQ should in no way sanction a streamlined process that allows for mining of aquifer limestone, alteration of critical environmental features, and discharge of polluted runoff into the aquifer; these rock crusher practices have devastating effects on the aquifer. Edwards Aquifer Recharge Zone Status should automatically trigger a new source review, where these matters would be better addressed and the public would be afforded the opportunity of a contested case hearing.

2) **The Operational Requirements in the Standard Permits Should Require Enclosures on Background Sources of PM and Comprehensive Consideration of Impacts on Public and Private Infrastructure**

Both Standard Permits include provisions to minimize dust emissions from in-plant roads and active work areas. While these provisions are a good start toward

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containing background sources of particulate matter, the operational requirements should be strengthened and refined to implement better practices and greater consideration of infrastructure, both inside and outside of rock crusher sites. Otherwise, the modeling behind the permits will be exceeded by rock crusher permittees, causing pollution, adverse health effects, impacts on public and private supply wells, and enforcement problems.

Incorporating best practices: enclosures and covering should be favored over any other method of dust control. Enclosures are the most effective way of containing dust. The water-suppressant and chemical-suppressant methods will only achieve the air quality levels set in the modeling when there is a perfect harmony of several physical variables and the frequency of application, and meanwhile groundwater will be wasted and contaminated by the use of such methods. The standard permits need to incorporate better practices and more stringent standards to address the problem of fugitive dust.

- Enclosures at inlets and outlets of crushers should be required instead of spray bars. 3(J) of Permanent Standard Permit and 1(H) of Temporary Standard Permit should be changed.
- Stockpiles should be covered, not watered or treated with chemicals. 3(N) of Permanent Standard Permit and 1(J) of Temporary Standard Permit should remove these options.
- Hauling trucks should be adequately tarped at all times. A provision should be added to both Standard Permits. This was one of the recommendations of Gov. Perry's Advisory Committee on Rock Crushers and Quarries that was submitted by the Texas Aggregates and Concrete Association.
- A speed limit of 15 mph should be set for in-plant roads. This will help control fugitive dust on roads when other measures have not been adequately applied.
- The buffer for in-plant roads and stockpiles of 25 ft from any property lines in the Permanent Standard Permit 3(E) should be added to the Temporary Standard Permit.

Greater consideration of infrastructure: the permits should address all relevant infrastructure impacts, not just in-plant effects. Quarry operations add unplanned and often undesired volumes of traffic to public infrastructure. County roads that were not designed for such operations are overloaded, with residents put at risk and forced to bear the cost. Combined impacts such as fugitive dust and carbon monoxide emissions on public roads are not adequately addressed in permit modeling or the current permitting process. The following requirements should be built into the standard permit application:

- Traffic impact study. For the periods for which the Standard Permits are contemplated, operators should be required to complete a traffic impact study. TCEQ should solicit an opinion from TxDOT as to whether existing infrastructure could safely accommodate the increased quarry traffic.

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- Pay for road upgrades. Where needed for safety reasons, operators and owners of rock crushers should be required to pay for road upgrades.

**3) In Light of the Many Background Sources of PM, Emissions Should Be Monitored at the Property Lines and Publicly Reported, and the Standard Permits Should Forbid Multiple Stand-Alone Rock Crushers on One Site**

The standard permits provide for opacity monitoring and overall compliance with PM-10 standards. However, it is unclear whether emissions at the property lines of rock crusher sites will ever be monitored, yet this is the point at which communities are impacted by rock crusher activity. To alleviate the negative impacts to communities and owners of contiguous lands, and the controversies that rock crusher sites create, TCEQ needs to provide for some consideration of the immediate and short-term air quality impacts in the vicinity of the sites, rather than always endorsing the bare minimum of compliance with ambient air quality standards. Even if the monitoring only provided more information to the public, rather than implementing an enforcement mechanism, such a measure would have beneficial effects on the communities surrounding the sites.

The Standard Permit for Permanent Rock Crushers allows multiple stand-alone rock crushers under 3(D) if there is a 550 ft. buffer between crushers. It is unclear why the TCEQ has removed 1(E), which had prohibited more than one crusher under each permit. Even though all crushers would be limited by the amount of hours allotted to a site in 3(G), the modeling is likely to become meaningless as traffic between the crushers kicks up more dust. In order to prevent these cumulative effects, the Standard Permit for Permanent Rock Crushers should be limited to one rock crusher per site. Failing that, the buffer should be extended.

**4) Uniform 12 Month Waiting Periods for Switching Between Types of Permits Must Be Retained and Incorporated to Prevent Gaming of the Permit System, and Name Changes Should Be Monitored in Central Registry**

With the standard permits being added and PBR's being removed there will now be three types of air quality permits: 1) Standard Permit for Temporary Rock Crushers and Concrete Crushers, 2) Standard Permit for Permanent Rock Crushers and Concrete Crushers, 3) NSR permits under Chapter 382 of the Health and Safety Code. For operators changing from one permit to another, uniform waiting periods and public notice provisions are essential to prevent gaming of the system. Otherwise, operators will exploit regulatory loopholes to stack permits, get their quarry's "foot in the door" without public input, or circumvent the permitting process in other ways. Thus, there should be a uniform 12 month waiting period from authorization for switching between standard permits, and a 12 month waiting period from withdrawal of standard permit application before an operator may apply for an NSR permit:

- Changing from a Standard Temporary Permit to a Standard Permanent Permit: 1(U) of the Standard Temporary Permits should be changed to

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require an Operator to wait 12 months from the date the Temporary Permit is authorized before applying for a Permanent Permit.

- Changing from either type of Standard Permit to an NSR Permit: Provisions that should be retained are 1(V) of the Standard Temporary Permit and 1(G) of the Standard Permanent Permit, requiring operators to wait 12 months from the date the Standard Permit Application is withdrawn before applying for an NSR permit.

At the Stakeholders meeting on May 9, 2007, participants associated with the Aggregate Industry complained about the length of time that a 12 month waiting period would add to the permitting process when there is already a period for public comments. This criticism misses this point. The 1) waiting period between applying for types of permits, and 2) the public comments period, serve entirely different regulatory functions and are both essential periods but for different reasons. The public commenting period is a not really a waiting period at all, but a time for essential input and feedback from the community. The waiting period between applying for permits, on the other hand, provides a necessary disincentive to prevent operators from manipulating the permit system. A uniform 12 month waiting period will encourage operators to engage in long-term planning of their quarry operations, weeding out fly-by-night quarries that are opposed to any regulations or responsible planning at all. If a potential quarry operator complains that he or she needs more flexibility over the long-term, then this operator should be applying for an NSR permit to begin with.

Because the standard permits apply restrictions to owners and operators rather than the sites themselves, participants at the Stakeholders meeting recognized another system-gaming method that must be addressed. In order to prevent manipulation of the permit system by switching between corporate aliases that apply to the same entity, a central registry that monitors applicants and their business names should be used in the permit process and incorporated into the standard permits or its accompanying technical documents.

**5) The Criteria for Defining “Residence” in the Standard Permits Should Be Expanded and Refined To Ensure Adequate Protection of Human Health in Rural Areas and Places Where People May Live in Non-Traditional Homes**

The definition in the permits states that “A residence is a structure primarily used as a dwelling.” At the Stakeholders meeting on May 9, 2007, TCEQ representatives proposed a definition of residence that would be based on a “capable of being lived in” standard. Non-exhaustive criteria that would be looked at in determining residence status at the time of filing would include considering whether the structure: 1) Has utilities (e.g. power, plumbing); 2) Is on the tax roll; 3) Is zoned residential. While GEAA certainly does not disagree that a residence should legally and logically be defined as a structure capable of being lived in (without regard to the amount of time spent in the residence), we believe that the criteria should be expanded to provide a larger net for human health and safety in rural areas.

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As it stands, the above criteria only provide for protection of traditional homes in densely populated and incorporated areas. A traditional home in these areas is likely to satisfy the all of the criteria above. However, in rural, unincorporated areas, structures that are certainly lived in, such as cabins or motor homes, are likely to fall outside the purview of these regulations. This discrepancy does not make much sense from a regulatory standpoint, where the purpose is to protect human health across the board, regardless of the area where the rock crusher is locating.

Counties in Texas have limited powers and no zoning authority, so certainly the third criteria would count against structures in those areas. A cabin in a rural area might not have utilities either, so the first criterion would also count against that structure. People residing in cabins or similar structures would thus be fighting an uphill battle from the beginning, despite the fact that their cabins are quite capable of being lived in and are, in fact, their residence or vacation home. The residential zoning criterion should be removed because it would arbitrarily exclude rural homes and structures that are residences but which are located in areas where residential zoning does not exist.

The tax roll criterion also has the potential to produce disparate results. This criterion is ill-advised because it will subject TCEQ to resource-intensive analyses of tax issues that the agency has no authority and expertise over. Under the Texas Tax Code 1.04, transportable structures designed for residential or business purposes are not taxable as improvements, whether affixed to the land or not, if such a structure is not owned by the owner of the land where the structure is located. Moreover, recreational vehicles (RV's) such as travel trailers and park model mobile homes are generally not taxed as manufactured homes under the Texas Tax Code 11.14(a) in the absence of evidence that the RV's are not used as recreational vehicles, as that term is defined under federal law at 24 C.F.R. 3282.8(g). *See Rourk v. Cameron Appraisal Dist.*, 131 S.W.3d 285, 297 (Tex. App.—Corpus Christi, 2004) (*rev'd on other grounds* at 194 S.W.3d 501 (Tex. 2006)). Aside from the matter of the tax appraisal district, leased motor vehicles are not taxable property under Texas Tax Code 11.252 if the vehicles are for personal use and not used for production of income.

Thus, under the Texas tax regulatory scheme and case law, it is hard to discern how leased or mobile RV's would be included in the tax roll. Yet there are many Texans who live and travel in such structures, and their mobile residences should be protected against air pollution from rock crushers just as any other residence should be. Rather than charging itself with a complicated inquiry into the taxed status of such residences, TCEQ should expand its criteria under the rock crusher permits to account for RV's and similar structures. This could be accomplished by simply adding to the regulations and accompanying technical documents the federal law definition of RV's in 24 C.F.R. 3282.8(g).

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Thank you for your consideration.

Sincerely,

A handwritten signature in black ink, appearing to read "Annalisa Peace". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Annalisa Peace  
Executive Director  
Greater Edwards Aquifer Alliance

Andrew Hawkins  
Staff Attorney  
Save Our Springs Alliance