

Quarry opponents await next step from TCEQ

By Keri Heath
The Herald-Zeitung

Comal County residents who attended a Feb. 27 Texas Commission on Environmental Quality meeting are still awaiting responses to submitted comments concerning the proposed Vulcan Materials Company Comal Quarry.

The facility, planned for the corner of Farm-to-Market 3009 and Highway 46, has received public pushback since last summer, when Vulcan's plans for the site were announced.

Now, both Vulcan officials and members of Stop3009Vulcan – previously Friends of the Dry Comal Creek – await TCEQ's response to comments from the February meeting. Prior to this, no permit can be issued and no further action taken.

It has now been over 120 days since the public meeting. It specifically addressed air quality permit 147392L001 for a portable rock crusher, which must be obtained before construction of the quarry can begin.

The Potential Impact

At meetings in both October and December, Stop3009Vulcan raised concerns about the potential environmental impact of the quarry.

The group has been focusing most heavily on potential air impacts, stating dust from crushing activities will emit particulate matter.

"The monitoring that they use for sampling are monitors nowhere close to the quarry," Sabrina Houser-Amaya of Stop3009Vulcan said. "How do you make a comparison that this quarry is only going to produce x, y and z. Particulate matter, mixing with ozone makes it worse."

Vulcan officials said they have many measures in place such as watering down trucks and equipment to prevent dust.

The TCEQ website shows air quality monitors in Comal County at Bulverde Elementary School and the New Braunfels Regional Airport. Both of these check only for ozone. A monitor reading particulate matter is located in Selma, about 17 miles from the proposed quarry site.

Vulcan officials also pointed to their watershed protection plan, saying all mining will take place above the Edward's Aquifer level.

"We will install a water recycling plant at this operation as well," Eddie Saucedo, Vulcan's environmental services manager, said. "This water recycling plant will be able to recycle and conserve 85 percent of that ... water."

However, beyond any environmental concerns, residents say the quarry simply is not compatible with the surrounding residential uses.

Vulcan officials stated that by year six, the company expects about 153 truck trips per day from the Comal quarry.

How They're Regulated

What many residents are concerned with is the regulation standards at the TCEQ.

Since Nov. 25, 2002, the TCEQ's online complaint search database lists 100 complaints against Vulcan Construction Materials facilities within Texas. Leading competitors Martin Marietta and Cemex only logged 41 and 38 complaints respectively in the state during that same time period.

Of the complaints against Vulcan, 28 came from Bexar County, where the facility on 1604 is located.

"I lived that nightmare," Krystal Hanegan, Moms for Clean Air field organizer, said. She used to live near the 1604 site. "There were a lot of violations going on at that quarry that have an impact on public health."

Quarry opponents have brought the TCEQ under fire for the immunity policy in the agency's Audit Privilege Act. This act "provides certain immunities from administrative or civil penalties for violations voluntarily disclosed and corrected within a reasonable amount of time."

If a company elects to complete an environmental self-audit, "certain documents and information ... are privileged from disclosure."

Charles Irvine, an environmental lawyer at Irvine and Conner in Houston, is representing Stop Vulcan Boerne, a group opposing a planned Vulcan concrete batch plant in Kendall County.

"The audit privilege act allows a company to proactively declare to TCEQ that they are going to do an internal investigation to find out whether they are in compliance with all the regulations," Irvine said. "TCEQ can't then turn around and file a notice of violation or fine them for that violation."

A company has to give TCEQ advance notice of this. Irvine said a member of Stop Vulcan Bourne discovered this did not happen during a self-audit at the 1604 plant. "What she discovered and reported to me was it appeared that there were complaints," Irvine said. "The complaints stimulated an inspection by TCEQ and on that very same day, Vulcan declared they were going to do an audit under the privilege act."

TCEQ documents show an investigation at the 1604 plant in October of 2013, which was spurred by multiple complaints related to "dust from the site."

Local Control

Both before and after the Feb. 27 public meeting, members of Stop3009Vulcan rallied local officials to support their concerns.

However, the quarry is located outside city limits and in Texas, counties do not have the ability to regulate land use, as a city can do through zoning ordinances.

"I understand the concerns of those folks who live near where the proposed quarry is located," Comal County Judge Sherman Krause said. "In this case, counties don't have any land use authority and so there's nothing that the county could do to stop the quarry."

Recent local meetings have discussed a desire to grant more controls to counties in areas of high growth, like in Comal County.

"The reality is, we are going to have to fight this at the legislative level and we know that," Houser-Amaya said. "We are not blind to that. Every public meeting, every public hearing we have to at least show up, vocalize our concerns and say this has got to stop."

At the state level, efforts were made in 2005, 2007 and 2009 to introduce more local control, but these proposals failed each time.

“I have been having discussions for well over a year now with constituents, as well as Comal and Kendall County elected officials regarding possible solutions to rapid growth and incompatible land use, including possible legislation to grant counties more authority,” State Representative Kyle Biedermann said.

Next Steps

Vulcan Materials is not the only company with quarry activity in the area. The region’s growth has created a demand for more building and more material.

“Today, market demand is bringing truck traffic up north from the south,” Vulcan officials said. “By locating near SH 46, we will help reduce the total truck miles needed to serve the demand.”

Vulcan said the 1,500-acre property will include 600 acres of buffer zones, leaving 40 percent of the property not mined.

However, members of Stop3009Vulcan have indicated when the response to Feb. 27 comments come, they will issue requests for a contested case hearing. Similar to a civil trial, this hearing allows “affected parties” to request this legal proceeding. The TCEQ executive director will not issue a final approval of the air quality permit until after resolving any contested case hearings.