

TCEQ DOCKET NO. 2025-0338-AIR

**TCEQ AIR QUALITY STANDARD PERMIT NUMBER PERMANENT ROCK AND
CONCRETE CRUSHER REGISTRATION 176835**

APPLICATION BY	§	
ASPHALT INC., LLC	§	BEFORE THE TEXAS
ROCK CRUSHING	§	COMMISSION ON
PLANT	§	ENVIRONMENTAL
BURNET, BURNET	§	QUALITY
COUNTY	§	

ASPHALT INC., LLC'S RESPONSE TO MOTIONS TO OVERTURN

TO THE HONORABLE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY
CHAIRWOMAN PAUP, AND COMMISSIONERS JANEKA AND GONZALES:

COMES NOW Asphalt Inc., LLC (“Asphalt Inc.” or “Applicant”) and files this Response in Opposition to the Motions to Overturn (“MTO”) the Executive Director’s (“ED”) decision filed by the Honorable Ellen Troxclair (“Rep. Troxclair”), SaveBurnet.com (“Save Burnet”), and Ms. Myra Allen Habbit¹ in connection with the above-captioned permitting matter and would respectfully show the Texas Commission on Environmental Quality (the “Commission” or “TCEQ”) the following:

I. SUMMARY OF ARGUMENT

TCEQ should uphold the ED’s approval of Asphalt Inc.’s air quality permit because Asphalt Inc.’s operations at the proposed facility will be protective of human health and the environment. In approving Asphalt Inc.’s permit application, the ED conducted an extensive protectiveness review of all potential dust concentrations and emissions using reasonable worst-case operating parameters. Through this review, the ED determined that Asphalt Inc.’s operations would comply with TCEQ’s Standard Permit, including state and federal standards and guidelines and would

¹ Rep. Troxclair, Save Burnet, and Myra Allen Habbit will be referred to as the “Movants.”

protect human health and the environment. None of the three MTOs submit any evidence to contradict that finding. Instead, they make unsupported accusations that mostly fall outside the scope of TCEQ's review and beyond its jurisdiction. As such, Asphalt Inc. respectfully requests that the TCEQ uphold the ED's decision and deny the three MTOs.

II. BACKGROUND

Asphalt Inc. applied for a Standard Permit under Texas Health and Safety Code Section 382.05195. This permit application is for an initial issuance of Air Quality Permit, No. 176835 ("Permit"). The Permit will authorize the construction and operation of a new rock crushing facility. The facility is located at 3221 Farm to Market Road 3509, Burnet, Burnet County, Texas ("Facility").

The Permit application was received on July 3, 2024, and declared administratively complete on August 20, 2024. The Notice of Application for an Air Quality Standard Permit for Permanent Rock and Concrete Crushers ("Notice") was originally published in English on August 28, 2024, in the *Burnet Bulletin*. The Notice was also published in Spanish on August 29, 2024, in *El Mundo*. These notices started the public comment period, which ended on December 10, 2024.

During the public comment period, Asphalt Inc. met with Rep. Troxclair's and Senator Pete Flores' offices. The meeting was held on September 12, 2024, and was attended by Ms. Katherine Van Arnam from Rep. Troxclair's office and Mr. William Howe from Sen. Flores' office. In addition to a meeting with the relevant legislators, Asphalt Inc. also met with the Texas Parks and Wildlife Department ("TPWD") on September 25, 2024, the same day that TPWD filed its public comment letter on Asphalt Inc.'s permit application.

A public meeting was held on December 10, 2024, at the Hill Country Fellowship, 200 Houston Clinton Drive, Burnet, Texas. The notice of public meeting was mailed on November 8,

2024. On February 14, 2025, the ED filed a Response to Comments (“RTC”) for all timely comments made during the public comment period. On the same day, Samuel Short, Deputy Director of the TCEQ Air Permits Division, notified all persons on the mailing list of the ED’s approval of the application and provided details regarding the RTC and the deadline to file an MTO.

III. AUTHORITY AND ARGUMENT

An MTO is the TCEQ’s procedural mechanism for appealing a decision of the ED to the Commissioners. 30 Tex. Admin Code § 50.139. The deadline for filing an MTO was March 10, 2025, or 23 days after the TCEQ mailed notice of the signed permit, approval, or other action of the ED. *Id.* There were three timely-filed MTOs regarding the ED’s decision to issue the authorization to Asphalt Inc. for a Standard Air Quality Permit, No. 176835.

Rep. Troxclair filed an MTO on February 27, 2025. Rep. Troxclair is the State Representative for House District 19, which encompasses Burnet County. She bases her MTO on the following assertions: (1) the Applicant incompletely considered and characterized the potential public health and environmental harms associated with the Plant; and (2) the Applicant’s application was deficient. Larry Black, representing Nan Manning, Randy Printz, and Save Burnet, a Texas non-profit corporation, filed an MTO on March 3, 2025. While many of Save Burnet’s arguments contemplate issues that are outside the jurisdiction of TCEQ, they do allege that TCEQ and Asphalt Inc. failed to properly analyze the “substantial health risk” that is associated with a rock crusher at the proposed location. Finally, Ms. Myra Allen Habbit submitted an MTO on March 7, 2025. In her MTO, she alleges that Asphalt Inc. will cause unnecessary, harmful pollution. As discussed below, none of the assertions detailed in the MTOs support the Commission granting any of the MTOs.

A. Movant's assertion that the Applicant did not comply with the relevant requirements in 30 Tex. Admin. Code § 116.615 is not supported by the MTOs and does not support the Commission granting the MTOs.

The Air Quality Standard Permit for Permanent Rock and Concrete Crushers is authorized under Section 382.05195 of the Texas Health and Safety Code. Asphalt Inc. will only be crushing rock at the Facility, as evidenced in Asphalt Inc.'s application submitted on July 3, 2024. Asphalt Inc. Air Quality Standard Permit Application at 17. In addition to compliance with the Standard Permit, Asphalt Inc. must comply with the general conditions in 30 Tex. Admin. Code § 116.615(a), which states that “emissions from the facility . . . must comply with all applicable rules and regulations of the commission adopted under Texas Health and Safety Code, Chapter 382, and with the intent of the Texas Clean Air Act (TCAA), including protection of health and property of the public.”

The ED determined that the emissions authorized by the Standard Permit are protective of human health and the environment. *See* RTC at 2. During the development of Asphalt Inc.'s Standard Permit, the ED conducted an extensive protectiveness review to ensure protectiveness of human health and the environment. The ED's determination is based on federal and state standards and guidelines. To support her allegation that the proposed Facility will not comply with Section 116.615(a), Rep. Troxclair claims that the particulate matter emissions resulting from the rock crushing operation will significantly impact human health by causing respiratory problems, specifically for children at the nearby children's camp (“Camp Longhorn”). Troxclair MTO at 3. Ms. Habbit alleges that the Applicant will be the cause of unnecessary, harmful pollution. Habbit MTO at 2. However, these allegations are unsupported by TCEQ's review of the application and the Applicant's representations.

The Environmental Protection Agency sets National Ambient Air Quality Standards (“NAAQS”). RTC at 2. Primary NAAQS protect public health, including sensitive members of the population like children and the elderly, and secondary NAAQS protect public welfare and the environment. *Id.* at 2-3. The proposed Facility has the potential to emit dust particles, and TCEQ has evaluated all potential dust concentrations, as well as emissions from combustion sources, using reasonable worst-case operating parameters and compared them to the federal NAAQS criteria. *Id.* at 3. Although the proposed Facility has been determined to be protective of human health and the environment, two MTOs further allege that the emissions calculations contemplated by Asphalt Inc. are lower than those considered by TCEQ’s protectiveness review. Troxclair MTO at 5 and Save Burnet MTO at 4.

TCEQ reviewed ambient air crystalline silica levels measured near aggregate production operations similar to this proposed Facility across the United States and determined that no adverse health effects from crystalline silica are expected. RTC at 3. Asphalt Inc. is required to control dust emissions from in-plant roads and active work areas associated with the operation of the crusher, associated facilities, and associated sources at all times by abiding by the method(s) stated in the Air Quality Standard Permit for Permanent Rock and Concrete Crushers Section (3)(M)(i)-(iv). These methods are general requirements required to operate a rock crusher under a Standard Permit.

Asphalt Inc.’s application has met the requirements for permit issuance, as determined by TCEQ. RTC at 31. All representations made in the permit application must be “constructed and operated.” 30 Tex. Admin. Code § 116.615(2). A person cannot vary from those representations if it affects their right to claim the permit. *Id.* Rep. Troxclair alleges that the Applicant has made vague representations regarding how it will employ Best Available Control Technologies

("BACT"). Troxclair MTO at 6. However, in its application, Asphalt Inc. states that it will utilize BACT with "permanently mounted spray bars installed at the inlet/outlet of all crushers, at all shaker screens, and at all material transfer points *and* used as necessary to maintain compliance with TCEQ rules and regulations." Asphalt Inc. Air Quality Standard Permit Application at 10 (emphasis added); *see* Air Quality Standard Permit for Permanent Rock and Concrete Crushers Effective Date July 31, 2008 § (3)(M),(N). The Applicant also represented that "in-plant roads and stockpiles will also be sprayed with water to minimize emissions[,] " which was acknowledged by the ED in the RTC. RTC at 5; *see also* Asphalt Inc. Air Quality Standard Permit Application at 10. TCEQ has determined that the Permit will use at least the BACT, as required by state law. Tex. Health & Safety Code § 382.0518(b)(1). There is no indication that the Facility's emissions will contravene the intent of the Texas Clean Air Act. RTC at 13.

B. The Movants set forth claims that are outside TCEQ's scope of review or exceed its jurisdiction.

TCEQ does not have jurisdiction to consider facility location choices made by an applicant, unless there is a specific rule or statute directing it to consider some aspect of the location. *See* RTC at 11. Movants note that the chosen location is located near multiple state parks, Camp Longhorn, and an endangered species habitat. TPWD also expressed concerns about the potential adverse impacts on the outdoor environment and park visitors. TPWD Public Comment Letter at 1. The Applicant recognizes that the surrounding community does not appreciate the proposed location, but Asphalt Inc. will operate in accordance with the Permit and in a manner that is protective of human health and the environment. Currently, Asphalt Inc. operates a rock crushing operation in Comal County, approximately six miles from Natural Bridge Caverns, and it has never received a complaint regarding its operating techniques or any other emissions events.

RN109838631; TCEQ Central Registry and Compliance History, **Attachment A**. Asphalt Inc. will comply with state and federal rules and regulations to ensure that its operations are protective of human health and the environment.

Rep. Troxclair relies on TPWD's public comment to bolster her argument that the proposed Facility will not be protective of the environment. TPWD submitted a public comment to TCEQ on September 25, 2024, detailing its concerns about "impacts from the noise, vibration, light pollution, and traffic associated with resource mining and processing plants." TPWD Public Comment Letter dated September 25, 2024. However, TCEQ cannot legally consider noise, vibration, light pollution, or increased traffic associated with operations at the proposed Facility because the Texas Legislature has never delegated power to TCEQ to address or consider these topics. RTC at 11-12. Nevertheless, in consideration of its concerns, TPWD requested that the Applicant be required to initiate coordination with the TPWD's Ecological and Environmental Planning Program's Environmental Review Team. TPWD also requested that the Applicant be required to conduct air dispersion monitoring to better understand and respond to impacts related to air quality on Longhorn Cavern and Inks Lake State Parks. TPWD Public Comment Letter at 2.

TPWD makes these requests based on concerns that are outside the jurisdiction of TCEQ. The ED noted in the RTC that endangered species are handled at the state level by TPWD, and if the Applicant later determines that it needs additional authorizations that are required under federal or state law, Asphalt Inc. will coordinate with the relevant agency. RTC at 4. While the Applicant understands and appreciates these requests, they are not part of TCEQ's review process and do not support the Commissioners overturning the ED's action.

In addition to general location concerns related to the environment and endangered species, all Movants express concerns that Asphalt Inc.'s operations will negatively impact nearby children.

Save Burnet goes as far as to say that Camp Longhorn is equivalent to an elementary school. Save Burnet MTO at 1. However, this comparison is inaccurate. Camp Longhorn hosts children at Indian Springs from June 1, 2025, through August 9, 2025, with terms ranging from two to three weeks. *Tuition and Fees*, Camp Longhorn (last accessed Mar. 25, 2025), <https://www.camplonghorn.com/ParentInfo/TuitionAndFees>. The exposure of any possible contaminants has been inflated by Save Burnet, and TCEQ addressed the health effects to the surrounding community in the RTC. *See* RTC at 3. The ED is confident that so long as Asphalt Inc. is operating in conformity with the “Standard Permit [, it] should not contribute to deterioration of air quality that would cause health effects to the surrounding community, including residents in the local neighborhoods and school children. In summary, adverse impacts to human health or welfare as a result of silica emissions from the proposed plant are not expected.” *Id.* Asphalt Inc. understands that Movants are dissatisfied with how it is exercising its property rights, but its concerns related to the location of the facility should be addressed to local authorities rather than TCEQ.

Further, the Movants also raised concerns about truck traffic, road damage, and safety because of rock crushing operations. However, TCEQ does not have jurisdiction over public roadways or traffic safety when considering permit applications. *See* RTC at 11 (“Commenters may contact the Texas Department of Transportation (TxDOT) for any state highway-related concerns. For any concerns related to city- or county-maintained roads, commenters may contact their local, city, or county public works or roads/streets department.”).

While the aforementioned topics are not within the purview of the TCEQ, the Commission and Applicant must still protect public welfare and the environment from air contaminants that exceed federal and state limits. The Applicant “shall [not] 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 Tex. Admin. Code § 101.4. Because emissions from the Facility will not exceed the NAAQS limits, emissions should not interfere with the use and enjoyment of surrounding land and water, including Inks Lake and Longhorn Caverns State Parks. *See* RTC at 4.

For the above stated reasons, the Applicant believes that the Executive Director properly determined that the application meets the requirements for permit authorization.

IV. CONCLUSION AND PRAYER

Asphalt Inc. respectfully requests that the Commission deny the Motions to Overturn filed by the Honorable Ellen Troxclair, SaveBurnet.com, and Ms. Myra Allen Habbit as they fail to present any valid basis for the Commission to overturn the decision of the Executive Director. Therefore, Asphalt Inc. prays that the Commission deny the Motions to Overturn, or in the alternative, allow the MTOs to be overruled by operation of law. Asphalt Inc., LLC further requests any relief to which it may be entitled.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that on March 28, 2025, a true and complete copy of the foregoing Asphalt Inc., LLC's Response to the Motions to Overturn was sent to each of the following parties by email or first-class mail, as is indicated below.

By: *Christopher Pepper*

Christopher Pepper

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ATTACHMENT A

Central Registry

The Customer Name displayed may be different than the Customer Name associated to the Additional IDs related to the customer. This name may be different due to ownership changes, legal name changes, or other administrative changes.

Detail of: **Air New Source Registration 147523**

For: **CRUSHER 1 (RN109838631 ...)**

FROM INTX OLD NACOGDOCHES RD & COYOTE RUN GO 0

Registration Status: **ACTIVE**

Held by: **Asphalt Inc., LLC (CN604722728 ...)** [View 'Issued To' History ...](#)

OWNER OPERATOR Since 07/10/2017 [View Compliance History ...](#)

Mailing Address: 11675 JOLLYVILLE RD STE 150 AUSTIN, TX 78759 -4108

Related Information:

[Commissioners' Actions](#)
[Registration Information](#)

There is no information related to this Registration in the following categories:

Correspondence Tracking
Effective Enforcement Orders
Criminal Convictions
Proposed Enforcement Orders
Complaints
Discharges
Emergency Response Events
Emission Events
Fish Kills
Other Incidents
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TCEQ Compliance History Search

Compliance History - RN109838631

Regulated Entity Information

RN: [?](#) RN109838631
Name: CRUSHER 1
Location: FROM INTX OLD NACOGDOCHES RD & COYOTE RUN GO 0.5 MI N ON COYOTE RUN SITE
 WILL BE TO THE W
County: COMAL
Region: REGION 13 - SAN ANTONIO

Compliance History by Customer

There is 1 customer associated to this site. The Customer's compliance history for the site is displayed below.

1-1 of 1 Records

CN ▲	Customer Name	Related Program IDs ?	Rating	Classification	Date Rated
CN604722728	ASPHALT INC LLC	AIRNSR 147523	---	UNCLASSIFIED	09/01/2024

1-1 of 1 Records

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