

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

APPLICATION BY ASPHALT INC., LLC ROCK CRUSHING PLANT BURNET, BURNET COUNTY	§ § § §	BEFORE THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY
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REPRESENTATIVE ELLEN TROXCLAIR’S MOTION TO OVERTURN

TO THE HONORABLE TCEQ COMMISSIONERS:

COMES NOW State Representative for District 19, Ellen Troxclair (“Rep. Troxclair”) and files this Motion to Overturn the Executive Director’s granting of Air Quality Standard Permit, Registration No. 176835 (the “Permit”) signed on February 14, 2025,¹ and would respectfully show as follows.

I. INTRODUCTION

This matter relates to initial approval of an application by Asphalt Inc., LLC (“Applicant”) that would authorize construction of a permanent rock and concrete crushing facility in Burnet County, Texas, as described in the public notice of this application. This location will also include a quarry/mine, for which other permits are required. Applicant is owned by a national, Alabama-based conglomerate whose affiliates appear to operate nearly 50 Texas Commission on Environmental Quality (“TCEQ”) permits, generally around Central Texas, including other rock-crushing locations.² This application was submitted to the TCEQ on July 3, 2024.

Because of the unique situation of this particular proposed facility in very close proximity to multiple state parks and waterways, a large children’s camp, and endangered species habitat,

¹ Permit available for download through https://records.tceq.texas.gov/cs/idcplg?IdcService=TCEQ_EXTERNAL_SEARCH_GET_FILE&dID=8663231&Rendition=Web.

² See <https://www.kxan.com/news/business/austin-paving-company-to-be-acquired-in-deal-valued-at-950m/>; https://www.15.tceq.texas.gov/crpub/index.cfm?fuseaction=cust.viewHistAffil&getall=yes&affilsort=geo.loc_cnty_name&princ_id=428310402014365&re_name_txt=&denormalized_id=428310402014365&name_typ=PRINCIPAL

coupled with TCEQ's inability to monitor or enforce compliance with applicable air quality regulations, the sufficiency of the application and subsequent compliance of this facility are very much in doubt. Rep. Troxclair moves to overturn the Permit's approval. Pursuant to 30 Texas Administrative Code ("TAC") § 50.139, this Motion to Overturn is timely filed on or before March 10, 2025, or within 23 days of notice being mailed.

II. DISCUSSION

In July 2024, Applicant applied for a Standard Permit for Permanent Rock Crushers for a site located in Burnet County. Nearly 5,000 comments were submitted to TCEQ, including from the Texas Parks and Wildlife Department ("TPWD").³ The City Council of Burnet, Texas, adopted Resolution No. R2024-68 opposing the issuance of this permit on August 20, 2024. Together these public comments raised serious concerns as to public health, environmental protection, and application sufficiency. Despite these deficiencies, the Permit was approved by the Executive Director on February 14, 2025.

A. Public Health and Welfare

Applicant incompletely considers and characterizes the potential public health and environmental harms associated with the proposed facility. There is a wealth of evidence suggesting that the operation of the facility as proposed will violate 30 TAC §§ 101.4⁴ and

³ See Executive Director's Response to Public Comment ("ED Response"), Attachment A, for a list of timely commentors, including myself, available at https://www.saveburnet.com/uploads/1/5/0/6/150682129/tceq_response_to_air_permit_rtc_176835.pdf.

⁴ "No 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."

116.615(1)⁵ relating to the protection of public health and welfare and the normal use and enjoyment of animal life, vegetation, and property.

The proposed facility is located in the Texas Hill Country, uniquely situated in close proximity to two well-visited, 80+ year old state parks, a National Natural Landmark, known habitat for endangered species, and an adjacent children's summer camp. Specifically, both Inks Lake State Park and Longhorn Cavern State Park have main entrances approximately three miles from the proposed rock crushing plant and are visited by over 300,000 people each year, including by many children. Camp Longhorn Indian Springs, a summer camp facility where 500-700 children sleep in open-air cabins and play outside for weeks every summer, is also situated adjacent to the proposed facility. There are few, if any, places in Texas where so many public, outdoor attractions with sensitive habitat are located in such close proximity to each other. Locating a rock crushing facility in this unique location poses a greater threat to the health and property of the public than was considered by the standard permit's protectiveness review.

The particulate matter emitted by rock crushing operations can significantly impact human health by causing respiratory problems such as bronchitis and asthma, which children, such as the hundreds staying at the neighboring Camp Longhorn, are particularly susceptible to. Yet the application fails to consider whether inhalable crystalline silica will be produced at the facility, despite the particle's ability to cause irreversible lung damage when inhaled⁶ and carcinogenic nature.⁷ Increased industrial road traffic and associated emissions also pose an increased threat

⁵ "The 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."

⁶ OSHA Fact Sheet, Crushing Machines, <https://www.osha.gov/sites/default/files/publications/OSHA3935.pdf>.

⁷ National Cancer Institute, Crystalline Silica, <https://www.cancer.gov/about-cancer/causes-prevention/risk/substances/crystalline-silica>.

to human health in the immediate area, which is frequented by hundreds of thousands of individuals each year.

TPWD has also raised concerns regarding the proposed facility's adverse impacts on fish, wildlife, and environmental quality. The state parks neighboring the proposed facility are particularly sensitive to particulate matter, as well as to the noise, vibration, light pollution, and traffic that would be associated with the facility. In particular, the state parks contain habitat for many native plant and animal species, including the federally endangered Golden-cheeked Warbler and Tricolored Bat, which is proposed for listing as federally endangered.

TPWD has also pointed out that while negative impacts on air quality are expected, the dispersion impacts of the proposed facility are not yet known. The agency has requested that Applicant be required to conduct air dispersion modeling that considers impacts to the nearby state parks. Such modeling is particularly important and reasonable given the sensitive nature of the immediate surround and absence of any TCEQ air quality monitoring stations in the county, discussed further below.

Lastly, TCEQ's protectiveness review used meteorological data for a single location in lieu of evaluating regional meteorological data sets.⁸ Thus, the unique topology and wind patterns of the area, such as whether the state parks or children's camp are directly downwind of the facility, have not been considered or accounted for.

B. Air Quality

Applicant admits the facility will emit up to 9.76 tons per year (“TPY”) of particulate matter (“PM”),⁹ including 4.5 TPY of inhalable PM₁₀,¹⁰ and 0.70 TPY of fine inhalable PM_{2.5}.¹¹ However, Applicant’s emissions calculations use significantly lower emission rates than those considered by TCEQ’s protectiveness review for the standard permit without adequate explanation of the emission factors and rates used.¹² Because the application assumes lower emission rates, the TPY estimates given may suggest artificially low emissions.

Further, Applicant does not specify all the types of rock it will crush, meaning that all air pollutants that will be emitted may not have been considered. The regulated entity is classified as “crushed and broken limestone” and “crushed and broken limestone mining and quarrying,” the notice said “rock and concrete” would be crushed here, and the application checked only “rock crusher” and not “concrete crusher.” Different types of particulate matter can pose different impacts to air quality. For example, crushing limestone or quartz emits respirable crystalline silica, which is considered and modeled in TCEQ’s protectiveness review but not mentioned in the application. Without the application specifying what will be crushed in more detail, it is impossible to evaluate all classes of potentially harmful emissions and the application’s compliance with applicable standards. And the Executive Director’s conclusory, non-specific assurances – such as that “*most* of the particles emitted during the crushing process are too large to be inhaled and are not, therefore, directly harmful”¹³—fall well short of actually ensuring no

⁹ “Particulate matter contains microscopic solids or liquid droplets that are so small that they can be inhaled and cause serious health problems. . . .” See <https://www.epa.gov/pm-pollution/particulate-matter-pm-basics#effects>.

¹⁰ “Some particles less than 10 micrometers in diameter can get deep into your lungs and some may even get into your bloodstream. . . .” See *id.*

¹¹ “. . . Of these, particles less than 2.5 micrometers in diameter, also known as fine particles or PM_{2.5}, pose the greatest risk to health.” See *id.*

¹² See Modeling Report – Rock Crusher Standard Permit, by Larry Buller, P.E., January 2, 2006.

¹³ ED Response at 3 (emphasis added).

harm to the public. A promise that “most” of the largely unidentified particles that will be emitted by this facility will not be directly harmful to human health is simply not good enough.

C. Emissions Controls

Applicant states that it will use Best Available Control Technology (“BACT”), but does not sufficiently specify what control technology will be used, much less whether it will meet BACT standards. For example, Applicant does not disclose the pressure differential range of its emissions control devices or device efficiency, which are commonly-requested data points in rock crusher permit applications to evaluate BACT.¹⁴

Applicant additionally makes vague representations, including that it will use spray bars “as necessary to maintain compliance with TCEQ rules and regulations,” that stockpiles will be sprinkled with water “as necessary” to minimize emissions, and that dust emissions will be “minimized” by watering. However, the application is silent as to any quantification of terms such as “necessary” or “minimize.” There is no bar against which to measure Applicant’s performance and ensure standards are enforced for the wellbeing of the surrounding communities.

Further, there is no indication of how such compliance will be monitored even if there were sufficient specificity to measure it. Of great concern, TCEQ has not historically had a single air quality monitoring station anywhere in Burnet County, nor within about fifty-five miles of the site; public maps indicate that currently the closest air monitoring station that measures particulates is in North Austin, more than an hour away.¹⁵ The lack of sufficient air quality monitoring in this area historically precludes any ability TCEQ may have to measure any baseline air quality so it can determine whether this facility worsens air quality in the future. The lack of sufficient air

¹⁴ See, e.g., Oklahoma Department of Environmental Quality Rock Crushing Plant Applications Advice, https://www.deq.ok.gov/wp-content/uploads/air-division/PG_Rock_Crusher_Advice.pdf.


¹⁵ See TCEQ air monitoring station map search feature available at <https://tceq.maps.arcgis.com/apps/webappviewer/index.html?id=ab6f85198bda483a997a6956a8486539>.

quality monitoring in this area going forward renders it impossible for TCEQ to ensure this site's compliance with TCEQ rules and regulations once operational. The Executive Director even admits "monitors are not typically placed to measure the impacts from specific industrial facilities," with no indication as to how the impacts from this specific industrial facility will otherwise be monitored.¹⁶

Lastly, Applicant represents that the opacity and visibility of emissions meet TCEQ restrictions, but provides no evidence. The application's supporting documentation is insufficient to satisfy the applicable requirements of the Standard Permit for Permanent Rock Crushers, rendering the grant of such a permit arbitrary and capricious.

III. CONCLUSION AND PRAYER

WHEREFORE, for the foregoing reasons, Rep. Troxclair respectfully requests the Commission overturn the Executive Director's action of issuing the permit and remand the application to the Executive Director, and to grant such other and further relief as to which it may show itself justly entitled.



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¹⁶ ED Response at 7.