

LARRY G. BLACK

ATTORNEY AT LAW

1718 RANCH ROAD 2233
LLANO, TEXAS 78643

TELEPHONE: 512/658-7801
FAX: 512/857-0556

lblack@larryblacklaw.com

March 3, 2025

Commissioners
Texas Commission on Environmental Quality
Austin, Texas
VIA Email: Chiefclerk@TCEQ.Texas.gov

Reference: Motion to Overturn; Permit Application 176835 Asphalt Inc. LLC, Burnet County, Texas

Dear Gentlemen and Ladies,

I write on behalf of Randy Printz and Nan Manning of Camp Longhorn (established 1939) both “affected neighbors” as well as the other 4,200 Texas citizens working together as SaveBurnet.com, a Texas non-profit corporation. The Executive Director (hereinafter ED) and the applicant Asphalt Inc. (hereinafter AI) have failed to properly analyze the substantial health risk that is presented by a rock crusher on the proposed site.

IT’S THE CHILDREN AT RISK!

The proposed site of the rock quarry is extremely unique. It is adjacent to a large children’s summer camp and two state parks frequented year-round by hordes of children and their families. TCEQ staff has treated it as a routine matter largely using boiler plate to respond to the comments filed by over 4,200 citizens opposing the permit. At issue here is the long-term health of our next generation of Texans. It is undisputed that silica dust is harmful to the developing lungs of children. The question is how much and for how long. It is well known that silica lung disease takes years to manifest itself. The ED is apparently willing to expose children knowing that by the time disease takes over it may be too late protect those citizens or to attach blame.

Attachment A presents a simple comparison of the exposure of children during a summer session at Camp Longhorn to that of a similar number of children during one year of elementary school. The startling result is that the exposure is double at Camp Longhorn than at a school. Of course, schools have HVAC systems with filtration and the children are generally indoors most of the day. Here, Camp Longhorn has open air cabins and no HVAC or filtering systems. Children will be sleeping night after night exposed to the dust. None of the standards cited by TCEQ staff in their response to the numerous comments address 24 hour exposure to children, weeks at a time.

Repeatedly, TCEQ personnel used the excuse that their hands were tied. This commission needs to recognize that the placement of this facility is no different than placing it immediately adjacent to an

elementary school or two. With two state parks on adjacent sides of the facility the calculations of exposure illustrate that the placement of the proposed plant is the functional equivalent to an additional elementary schools of vulnerable children. (See Attachment B) Certainly, the law provides a minimum standard, however the Commission needs to recognize the unique nature of this area and, at minimum, require that additional testing and analysis be done.

There is no evidence that any member of staff ever took the short, one hour drive, to Burnet to look over the area in question. Had they contacted Camp Longhorn and asked for a tour it would have been graciously offered. To remain in the office in Austin or work remotely and make no effort to perform a simple survey of the area is unconscionable particularly when the health of children is at issue. Camp Longhorn openly invites staff, commissioners, subject matter experts and anyone else involved to tour their facilities.

Our research has revealed only two other occasions when an attempt was made to secure TCEQ approval for a rock crusher next to an elementary school. Both were in Boerne Texas permit #147392L001. The applicant, Vulcan, finally decided to make a responsible decision and withdraw its application. We cannot expect AI to act so responsibly. Also, AI attempted to secure a permit for a rock crusher next to the Baylor Scott and White hospital Marble Falls that treated patients with severe lung illnesses in permit #148112. When there was significant community opposition, particularly by a well-funded hospital association, AI withdrew its application. It needs to do so here as well.

Construction Partners Inc. (hereinafter CPI) of Dothan Alabama purchased AI in January 2025 for \$634,000,000 plus 3,000,000 newly issued shares of class A stock in CPI. In its public filing CPI describes a carve out from the asset purchase of a "Central Texas" property for \$30,000,000 "upon receipt of necessary governmental entitlements." e.g. permits for operation of the plant in issue here. Public records indicate that the property identified in the application was purchased in mid 2024 for \$14,000,000 which nets to a \$16,000,000 windfall just for obtaining the permits, one of which is from TCEQ. Obviously, the financial incentive is great. By approving this permit TCEQ endorses the sale of Texas Hill Country for vast sums of mone, at the same time ignoring the disease it inflicts on Texas children.

TPWD REQUESTED STUDIES

The ED refused to address the request by Texas Parks and Wildlife to perform additional modeling. A TCEQ subject matter expert stated at a recess in the public meeting that he knew of the TPW letter, that in fact all of the TCEQ personnel that were involved knew of the request but had done nothing. Their only response was that it would be addressed only after the public meeting in response to the comment by TPW. The ED's response provides no detailed technical reply to the request of the TPW. Such a response to a request from a state agency should contain a detailed technical analysis of the basis for the denial. There is none. AI, at the public meeting, stated they would not do so because it was not required by TCEQ.

The commission at a minimum must send this application back to its subject matter experts to conduct the study requested by TPW and publish it to all those that have commented. Thereafter, a second public meeting should be conducted where these models are presented and analyzed.

AIR QUALITY MONITORING

The responses of the ED rely heavily on an assertion that air quality monitoring will reveal if the applicant is violating its permit during operation. The closest TCEQ air monitoring station is 43 miles away. It is folly to expect that device to detect violations of the permit. SaveBurnet.com has purchased air monitoring devices and is beginning to place them around the subject property to secure a base line for dust levels before any work is done at the location. That will prevent the applicant from claiming at a later time that it is background dust that is causing the high readings not its own operations. Also, since TCEQ does no air monitoring of specific sites, property owners adjacent to existing AI permitted sites are allowing SaveBurnet.com to place air quality monitors on their property to determine if AI is following its existing permits. Still TCEQ enforcement efforts have historically been weak to non-existent.

It seems counterintuitive for TCEQ to refuse to install air quality monitors in and around the Burnet County area while time and again permitting more and more aggregate mining. It simply does not want to know how much particulate material there is in the environment. It is simple to continue to “check the box” on permits and do nothing more. Texas citizens deserve better.

WHERE IS THE WATER?

Mr. Legget, the COO of AI at the Q&A of the Public Meeting was asked about the amount of water necessary to operate the proposed rock crusher. He said he had no idea of the amount of water needed. This is, at best, disingenuous since AI operates 2 other rock crushers in Texas. TCEQ should require at least a *prima fascia* showing that the amount of water needed to suppress the dust is readily available to give some kind of creditability to its calculations.

The application states that the minimum amount of water needed is 648,000 gallons per month with a maximum of 9,720,000 gallons. That is the best estimate a well-paid group of “environmental engineers” could do; a ten-fold difference? Those numbers should be rejected on their face. However, staff accepted same and responded with boiler plate language found in responses over 8 years old. There also has been no effort to make AI prove that it has access to such quantities of water. If, indeed, the numbers proffered by AI as to the amount of dust in the environment are to be believed and water is the primary means of dust control it seems axiomatic that there must be proof of the availability of such amount of water.

BLASTING

The application mentions blasting only once to do site development. However, it is well known and was admitted by the applicant at the public meeting, that blasting will be used to break up rock to be crushed later into smaller aggregate. Attached are three videos of representative rock crushing sites in Texas where such blasting has occurred (Attachments C,D,E.) One can see the huge cloud of particulate matter that is produced.

The ED fails to address the blasting or the particulates produced in any meaningful manner. In fact, she attempts to pass off that responsibility to a Federal agency that has nothing to do with air quality.

DR. DAVID MITCHELL'S ANALYSIS

Dr. David Mitchell's 18 page report which contains both analysis and criticism of the methodology of both TCEQ and AI has not been addressed in any way(Attachment E.) During the Public Meeting (at time 7:05) Justin Shrader spoke about the severe health consequences for children exposed at Camp Longhorn. He explains that he has commissioned a study by Dr. Mitchell of the health effects on children of the dust from the proposed rock crusher. Deanna Avalos directs him to "...hand it off to me and it will be a part of the record." She accepts it as a part of the official record (at time 9:21.) (Times are from TCEQ's official audio recording of the public meeting.) Thereafter, the report tendered to TCEQ has disappeared. An Open Records request to TCEQ resulted in a response that there was no record of the document. (Attachment F.)

Attached is a copy of Dr. Mitchell's report tendered to TCEQ four months ago. There is no other evidence that TCEQ clerical or technical have even read it. This behavior or lack of interest makes the submission of such expert work meaningless; all the while staff says it considers and responds to all comments and technical issues. TCEQ talks a lot about its efforts to consider the opinions of the affected public but in practice apparently does very little. The document tendered to TCEQ in December is gone from its official record.

Dr. Mitchell, a well-qualified expert, opines on three different technical issues. First, the silica concentrations likely experienced by those in close proximity to the rock crusher; second the modeling done by TCEQ and the applicant to determine the drift of the silica; and third the possibility that at some time the applicant may seek to crush and recycle concrete. Certainly, only the first two analyses bear discussion here.

Dr. Mitchell's report states that the meteorology of the area (wind speeds and wind direction data for the region) indicate that the open air operations of the rock crushing facility will result in significant and frequent particulate emissions. And "when meteorological condition (sic) are present to produce wind speeds to move the TSP (total suspended particulate) offsite of the Plant, the TSP can be transported for miles into the Burnet County communities surrounding the Plant impacting not only the quality of life, but the respiratory health of the population."

Dr. Mitchell took exception to the modeled concentrations of PM (particulate matter) calculated by Westward of 29.69 micrograms per cubic meter near the Plant fence line. "It is certainly not scientifically realistic that a rock crushing operation of this size and magnitude would produce such low concentration. It is my professional, expert opinion that the emission calculations presented to the TCEQ for the permit application are severely underestimated for this type of facility."

How Dr. Mitchell's report disappeared says a great deal about the process TCEQ uses in evaluating the comments of the public and expert analysis that might conflict with its boilerplate responses. Perhaps, a non-technical clerk compiling the response of the ED came across the report and having no background to understand or evaluate it just destroyed it instead. Perhaps the moderator took a like course. There were several subject matter experts from TCEQ at the public meeting. It would be reasonable for that expert to secure the report at a recess and examine it at that time. If a subject matter expert realized the affect the

retention of the report would have on responsibilities of TCEQ and the effort technical analysis would require might have destroyed it.

Once the ED receives the copy of the report attached hereto, it will be easy for the ED to conclude that although it was “lost” it is not relevant or changes nothing in the ED’s position. That is cowardice. TCEQ should enlist an independent expert with similar background, education and experience to review both Dr. Mitchell’s report and the boilerplate used by the ED. That expert might even favor a colloquy with Dr. Mitchell and TCEQ’s subject matter expert to attempt to come to opinions concerning the particulate distribution and the health affect it might have on the developing lungs of children.

The Executive Director’s response is reliant on largely boiler plate paragraphs previously drafted and frequently used regardless of the uniqueness of any application. These could be assembled by a clerical person with no technical education or formal training. When that person or persons encountered Dr. Mitchell’s report challenging TCEQ’s analyses its response, at minimum, should have pointed out that there was technical disagreement on some or all of the technical issues.

It is an insult to those that take the time to comment and attend the public meetings as well as spend thousands of dollars on expert analysis to completely ignore them. What has been accepted as proper analysis in the past must be reexamined. What better time to do so when the health of many children hangs in the balance.

THE EXPECTATIONS ARGUMENT

All of the ED’s response are grounded in expectations. The word expectation is used six times in the response. It was the expectation of passengers landing on runway 33 at Reagan National Airport on January 29th that the government, both air traffic controllers and military pilots would maintain appropriate separation. Sixty-seven souls were lost because those expectations were not met. Here the same holds true where the failure of expectations could or will lead to disease among children.

The ED states that it is expected that the applicant will comply with the restrictions of the permit but has absolutely no way of detecting the failure to do so. It is folly to expect a profit-making business, knowing that there is no detection mechanism, to forgo revenue to comply. That runs contrary to human nature and the incentives of a capitalist society.

The vast majority of the language in the responses to citizen comments is identical to many other permit applications. See the ED’s response to public comments for permit application number 148112 for an example. The public deserves better than cut and paste responses when it has taken the time to study the issues, submit comments, and attend the Public Meeting.

WHAT WE WANT

A complete denial of the application would communicate to APOs as well as TCEQ staff that where children are involved a more detailed analysis of the site and the possible adverse health effect on children’s lungs are essential to protecting the citizens of Texas. With that knowledge site decisions by APOs will be more responsible. Perhaps TCEQ could paraphrase the TxDOT slogan making it well

known that you “Don’t Mess with Texas’ Children.” Permitting this rock crusher in this location will communicate to APOs that there is no line TCEQ will not cross. If you can operate a rock crusher between two elementary schools you can do so anywhere in Texas. Deny the permit.

Alternatively, we request that the permit be overturned and staff be instructed to do an in depth site analysis perhaps even visiting the children’s camp. Also there must be a real analysis of the report of Dr. Mitchell by someone with equivalent experience and education pointing out where his opinions differ from those of staff and providing a technical rationale for accepting staff conclusions over those of Dr. Mitchell. Finally, the Commission must order that the study requested by TPWD be performed by a qualified independent professional.

Sincerely,

A handwritten signature in black ink, appearing to read "W. J. Blum", written in a cursive style.