

TCEQ DOCKET NO. 2025-0338-AIR

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| IN THE MATTER OF THE MOTIONS | § | BEFORE THE TEXAS |
| TO OVERTURN THE EXECUTIVE | § | |
| DIRECTOR'S APPROVAL OF STANDARD | § | COMMISSION ON |
| PERMIT REGISTRATION NO. 176835 | § | |
| TO ASPHALT INC., LLC | § | ENVIRONMENTAL QUALITY |

PRINTZ, MANNING, SAVEBURNET.COM RESPONSE TO THE BRIEFS OF THE EXECUTIVE DIRECTOR AND ASPHALT INC.

TO THE HONORABLE COMMISSIONERS OF THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY:

RANDY PRINTZ, NAN MANNING AND SAVEBURNET.COM file this their response to the briefs of the Executive Director, (hereinafter ED) and Asphalt Inc. (hereinafter AI) and would show the Commission as follows:

Needless to say that my clients Randy Printz, Nan Manning and SaveBurnet.com and the Burnet community at large support the careful analysis and position of the Public Interest Counsel. It has actually addressed the technical issues with as much vigor as the ED's counsel tried to avoid them. Reading the ED's brief is like witnessing two ships passing in the night unaware of the existence of the other. It seems like the authors cut and pasted the old arguments together then read the MTOs so there could provide a passing reference to them. At some point the Commission needs to force the ED to address the contrary technical opinions it seeks repeated to avoid. For example ED's brief mentions "child" or "children" only once.

It is a startling admission that the ED does not mention the report of Dr. Mitchell except in passing. There is no technical criticism or contrary technical analysis. It seems that no one with a technical degree or background has ever read the report even when repeatedly invited

to do so by the MTOs. It is mystifying that the ED refuses to identify the subject matter experts it touts as guiding the agency. One can only conclude that it is likely because they agree with Dr. Mitchell and don't want their name and reputation sullied with the ED's position. Why not step up and at least attempt a technical response. Apparently, these subject matter experts choose to stay in the shadows

The ED does not contest the analysis that the location of the proposed rock crusher is the equivalent of being between two elementary schools, she just says that she does not care. The technical report relied upon by the ED does not contain even once mention the word "child" or "children." It is beyond logic that the ED treats even the mention of a child's health to be toxic in itself.

The Danger of Silica Exposure

The Director's response gives cursory and dismissive treatment of the very real risks the surrounding area faces from the crystalline silica plumes that come from normal operations of these rock crushers. It is well understood that silica exposure causes circulatory and heart problems. Stachyra 2022, Ecotox & Environ Safety Vol 23015Jan2022.

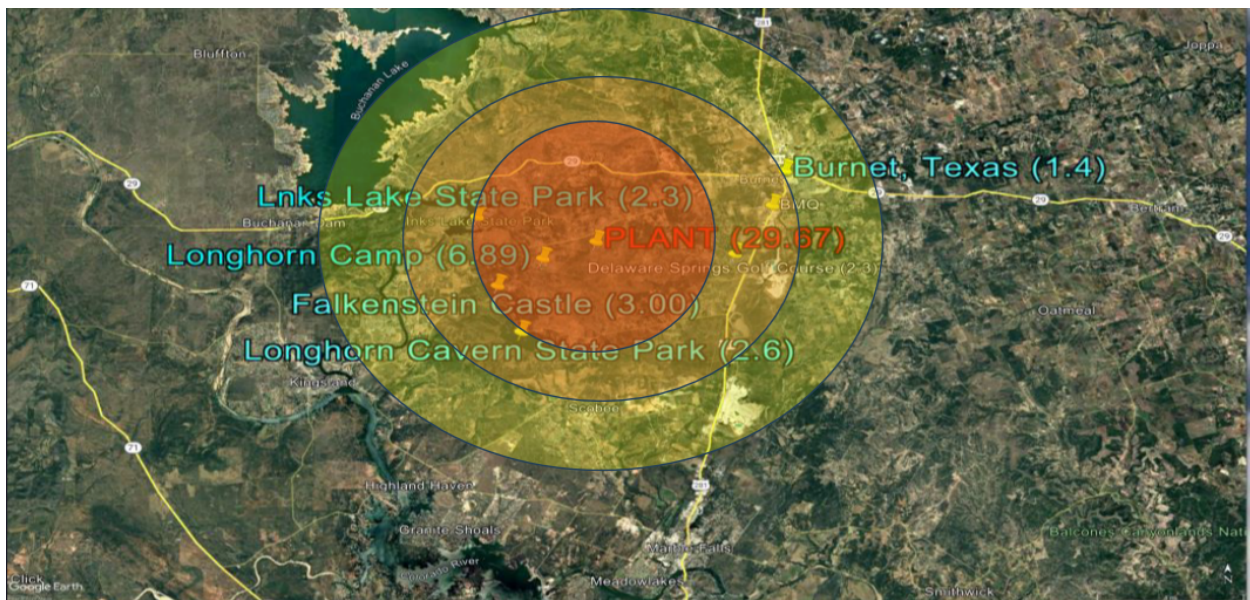
<https://www.sciencedirect.com/science/article/pii/S0147651321012240>

The American Cancer Society is of the opinion that you can have silica induced lung cancer without underlying silicosis.

<https://acsjournals.onlinelibrary.wiley.com/doi/full/10.3322/caac.21214#:~:text=First%2C%20recent%20epidemiologic%20studies%20have%3A64%3E2%80%9369.&text=2013%20American%20Cancer%20Society%2C%20Inc.>, see also *Is Silicosis required*

for silica-associated lung cancer? Checkoway, Am J Ind Med. 2000 Mar 37(3).

Humans begin to have a higher risk of silica induced lung cancer at $4.5 \mu\text{g}/\text{m}^3$ years. <https://pubmed.ncbi.nlm.nih.gov/11714104/> As the commission is aware you calculate mg/m^3 years by multiplying the average exposure level times the number of years the person is exposed. According to *AI's own data*, people who live at Camp Longhorn Indian Springs full time may exceed this level before the end of the first full year the crusher is in operation. Their risk of lung cancer will continue to rise each year, as the risk is cumulative. The healthy residents of Burnet will have their lung cancer risks rise after the third year of operation. Children, senior adults, and adults with pre-existing health conditions will be at risk much earlier. The only evidence before the Commission regarding exposure to the outlying community is the exposure impacts from Dr. Mitchell's report. Since we do not have access to the raw data used to calculate the exposure estimates used by AI to acquire the permit (although we asked for it during the meeting and were told they would get access to this data), Dr. Mitchell had to use AI's estimates. The resulting visual in his report shows a wide dispersal of particulates:



Instead of questioning any of Dr. Mitchell's serious conclusions, the ED instead pivots to another study it has done in other parts of the state using different machinery, geography, operations, and wind patterns (see ED's Response p. 4). Putting aside the acute and serious differences in these studies from the present situation and the rationale behind dropping the data from the actual permit application like a hot rock, there are other alarming reasons why this 2024 study should not be persuasive.

First, the data from TCEQ's 2024 study **proves** there will be health hazards to Burnet County residents on a continuing basis from the small silica particles that will get lodged in the resident's lungs. Even the rosier picture painted by the TCEQ still shows that people living in the surrounding communities will be exposed to and breathe 0.3 to 1.01 $\mu\text{g}/\text{m}^3$ **every day**. ("The long-term averages of PM_{10} crystalline silica concentrations at the four sampling sites ranged from 0.3-1 $\mu\text{g}/\text{m}^3$). These levels are higher than necessary to induce silicosis, lung cancer, arteriosclerosis, and scleroderma on a cumulative basis. Recent scientific evidence shows that long term levels of silica exposure as low as 0.10 $\mu\text{g}/\text{m}^3$ can cause lung silicosis. <https://pubmed.ncbi.nlm.nih.gov/38791822/> It is important to put the TCEQ levels in perspective. The lower level of the TCEQ's estimate of 0.3 $\mu\text{g}/\text{m}^3$ in APOs is **six times higher** than the recommended exposure limit prescribed by the National Institute for Occupational Safety and Health. <https://www.cdc.gov/niosh/idlh/14808607.html> The 0.3 level is **twelve times higher** than that prescribed by the American Conference of Industrial Hygienists. <https://www.acgih.org/silica-crystalline-a-quartz-and-cristobalite/> These values are levels normally seen in **occupational** settings, where workers have access to respiratory protection and regular medical screenings, not in residential and

farm/ranch communities with children, senior citizens, and people with pre-existing medical conditions.

Second, the sites in the 2024 TCEQ study were for some reason analyzed with NAAQS values from years past to give these quarries a passing grade. When the authors instead used the 2024 NAAQS values every site sampled approached the NAAQS limit and three out of four actually exceeded it (2024 APO Study page 20, Table 5).

Third, the values the ED claims are protective of human health come from a place that makes no similar claim. The Director is using NAAQS values from the EPA that were made and are often modified to comply with the Federal Clean Air Act. These are simply worst case, thou shall not breach levels, prescribed by federal law. Compliance with these regulations only means the State of Texas does not get subjected to a lawsuit from the EPA, it does not mean that the regime is particularly protective of human health, just not illegal. More puzzling still is why TCEQ utilizes a silica NAAQS or AMCV value of its own making. To be clear, there is no Federal NAAQS value for silica. The NAAQS simply regulates 'particulate matter' and doesn't distinguish cotton candy from silica or asbestos. The TCEQ claims in its brief and attendant study that they came up with their own special NAAQS/AMCV of silica at 24 $\mu\text{g}/\text{m}^3$. The ED claims this level is protective of human health without citing a single study, scientific journal, nationally recognized medical society, or expert in this area. It is claimed to be true, simply because the ED says so. Surely these *ipse dixit* statements ought to be more carefully examined by the Commissioners before we expose the people of Burnet County to silica dust and asbestos.

Fourth, the TCEQ's reliance on the 2024 study fails because it measured different

operations with different machinery, topography, operations, and wind patterns. A final important difference between the AI rock crusher and the places TCEQ sampled in 2024 is that the latter were ongoing operations. There were no explosives being used while these values were being taken. AI has already publicly admitted that they will perform ongoing blasting operations on site. The levels of exposure portend to be much higher than those proposed by the ED if the Commissioners were to allow this half baked permit to go forward.

Finally, the ED suggestion that 0.3 to 1.01 $\mu\text{g}/\text{m}^3$ levels of exposure to crystalline silica would be safe for the citizens Burnet County runs against the TCEQ's own analysis and findings. In 2009 the TCEQ issued its guidance document on silica exposure entitled "Silica, Crystalline Forms". The effect screening levels (ESLs) for chronic exposures would be exceeded by the values the TCEQ now claims are safe. Page one of the document contains the following table (red boxes added):

Chapter 1 Summary Tables

A summary of health- and welfare-based values from an evaluation of the acute and chronic toxicity of crystalline silica can be found in Table 1. Summary information on the physical/chemical parameters of crystalline silica can be found in Table 2.

Table 1 Health- and Welfare-Based Values

| Short-Term Values | Concentrations | Notes |
|---|---|--|
| ^{acute} ESL[1 h] (HQ = 0.3) | 14 $\mu\text{g}/\text{m}^3$ ^a Short-Term ESL for Air Permit Reviews | Critical Effects: respiratory inflammation—increased neutrophils and lactate dehydrogenase in bronchoalveolar lavage fluid in Crl:CD BR rats (male) |
| Acute ReV (HQ = 1.0) | 47 $\mu\text{g}/\text{m}^3$ | Critical Effects: Same as above |
| ^{acute} ESL _{odor} | --- | There are no odors associated with silica. |
| ^{acute} ESL _{veg} | --- | No negative impacts of silica were identified in plants. |
| Long-Term Values | Concentrations | Notes |
| ^{chronic} ESL _{nonlinear(nc)} (HQ = 0.3) | 0.60 $\mu\text{g}/\text{m}^3$ ^b | Critical Effect: silicosis in miners |
| Chronic ReV (HQ = 1.0) | 2.0 $\mu\text{g}/\text{m}^3$ ^b | Critical Effects: Same as above |
| ^{chronic} ESL _{linear(c)} | 0.27 $\mu\text{g}/\text{m}^3$ ^{b,c} Long-Term ESL for Air Permit Reviews | Cancer Endpoint: lung cancer mortality in silica-exposed workers |
| ^{chronic} ESL _{veg} | --- | No negative impacts of silica were identified in plants. |

The table makes clear, the ED would now permit AI to expose the children at Camp Longhorn, the people enjoying Inks Lake State Park, and the townspeople of Burnet to **industrial levels** of silica on a daily basis. Moreover, as shown previously, the scientific consensus continues to move in the direction of lower exposure levels even than the above to be protective of human health. Although the TCEQ levels in this chart are higher than what is considered protective today this may be because the last TCEQ review of silica exposure and the underlying medical literature last occurred in 2009. The “Standard Permit” to which the Director refers was created based in 2008. In the intervening eighteen years many things have changed. A simple PubMed search reveals that 2,817 articles have been

published since 2008 under the search terms “silica exposure health effects”. (pubmed.ncbi.nlm.nih.gov; accessed April 3, 2025). The International Agency for Research on Cancer and the National Institute of Health have both updated their guidance on silica.

The "A" Word

The ED has consistently ignored concerns raised by stakeholders related to the dangers of asbestos from the rock crusher. In a comment made by Justin Shrader on September 27, 2024, it is noted that the geological deposits in and around this area contain asbestos as a natural contaminant according to University of Texas geological surveys. Shrader cites specific surveys in his comment. The mining and dynamiting of the subsurface will release asbestos fibers right next to a camp for children, a well used recreational park, and a growing town full of people. Asbestos is one of the most carcinogenic substances known to man. There is no safe level of exposure to asbestos below which you will not see cancer. Asbestos causes a unique, incurable cancer called mesothelioma which is especially pernicious. (see comment of Justin Shrader). The release of asbestos has never been accounted for in any of the Director's vague responses to date. The word “asbestos” doesn't even appear once in the Director's response to the motion to overturn. It's almost like the Director is ignoring this problem in the TCEQ analysis on purpose. The ED never required mineralogical analysis of the site by the petitioner. The ED never consulted the old University of Texas geological surveys that sit idle 9 miles from their office. No certified industrial hygienists have been hired to assess the danger. To go forward with these hazards in mind without any formal review, analysis, or response from the Director on these important issues is fallacious.

Another word mostly absent from the Director's brief is the word “children”. After innumerable written comments about the safety of children in the surrounding community,

the many concerns raised in person at the public meeting, and the fact that the most directly exposed population from the rock crusher will be the children that attend Camp Longhorn right next door, one might think that the director would engage in more careful analysis. The single use of the word “children” in the Director’s response is the following:

“ Primary [TCEQ and EPA] standards protect the public health, including sensitive members of the populations, such as children, the elderly, and those individuals with preexisting health conditions.” – Directors Response p3

Not only is this conclusory statement not backed by any evidence, it is also scientifically invalid and defies common sense. The health data used by the TCEQ for ‘acceptable’ silica exposure are based on studies done on healthy adult male silica miners and sandblasters, not kids or vulnerable adults. As the California Office of Environmental Health Hazard Assessment (OEHHA) noted, “Exacerbation of asthma, which has a more severe impact on children than on adults, is a known response to some respiratory irritants”. They also stated: “Since children have smaller airways than adults and breathe more air on a body weight basis, penetration and deposition of particles in the airways and alveoli in children is likely greater than that in adults exposed to the same concentration.” Environmental Working Group quoting OEHHA in <https://www.ewg.org/research/danger-air>. Another author warns; “Air pollution is a leading modifiable risk factor for various cardio-respiratory outcomes globally, both for children and for adults. Children are particularly susceptible to the adverse effects of air pollution due to various physiological and behavioural factors. Children are at a higher risk of outcomes such as acute respiratory infections, asthma and decreased lung function due to air pollution exposure...” Aithal 2023 Air quality and respiratory health in children, Breathe, Jun 13;19(2). With these quotes in mind, we urge the Commissioners to

overturn this permit until such time as a health study can be conducted from qualified minerologists, industrial hygienists, and physicians in order to properly assess the risks the crusher poses to children.

When it comes to the kids, the asbestos risks are even worse. Studies have shown that children are more than three times more likely to get mesothelioma than their adult counterparts from the same exposures. UK Committee on Carcinogenicity CC/13/S1. Because children have cells that are still rapidly dividing and their organs are still developing, they are far more susceptible to carcinogens than adults (Carpenter, J of Adolescent Health, May 2013). A thimbleful of inhaled asbestos is enough to increase a person's risk of mesothelioma by 400%. Iwatsubo, Am J Epidem, Vol 148, No. 2 1998. As Dr. Mitchell's report makes clear, although the children at Camp Longhorn face the most immediate risk, these small particles can travel large distances. All of the children in the surrounding community are at risk. The dangers of asbestos exposure in the granting of the instant permit have been totally ignored. The asbestos problem alone is a reason to overturn the Director's decision, but the added knowledge that it is children who are at risk requires it.

Dr. Mitchell has further evaluated the ED and AI's response and his analysis is attached as an exhibit hereto.

We would favorably consider a mediation with the ED and AI if in attendance were subject matter experts (qualified public health and metrological professionals) to discuss and analyze the long term risks to the children of Texas that this decision portends. That together with the precedent for placement of aggregate facilities should alarm anyone with children or grand children. If this permit is approved there are no more restraints on placement of like facilities.

TCEQ comments in response to well-deserved criticism in the Sunset Review process in September 2021 when discussing the public’s concerns in the permitting process states “...the level of sophistication and comment detail, along with a higher degree of technical knowledge of the commenters, requires more TCEQ staff time to compile sufficiently detailed response to address comments.” (Page 671) Although knowing this and seeking the funding to support such, the ED has failed to do so here.

The undersigned acknowledges the exceptional contribution of Justin Shrader, Attorney, in preparing this response.

The Commission needs to take one action here and that is to SAVE THE CHILDREN.

Respectfully submitted:

A handwritten signature in black ink, appearing to read "Larry Black", with a long, sweeping flourish extending to the right.

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