



welfare, and physical property.<sup>2</sup>

2. On April 22, 2024, the Defendants approved Dry Creek's flawed Application without: (a) demonstrating that the Proposed Crusher's air emissions will not exceed air quality standards that were established to protect nearby citizens; or (b) considering Dry Creek's troubling compliance history of routine TCEQ violations.

3. The Defendants' action violated its statutory duty and obligation to protect the Plaintiffs' health and safety from the Proposed Crusher.

4. The issue when appealing an action by the TCEQ Executive Director is whether the action is invalid, arbitrary, or unreasonable. Tex. Health & Safety Code § 382.032(e).

5. By this lawsuit, Plaintiffs seek reversal of the Defendants' invalid, arbitrary, and unreasonable Order approving the Application.

## II. PARTIES

6. Plaintiffs Dan and Lisa Washington live and own property immediately adjacent to Dry Creek's Proposed Crusher in Hunt County, Texas.

7. Plaintiff Friends of Union Valley is an organization that was created to protect air quality in Hunt County and is supported by hundreds of Hunt County landowners, residents, elected officials, and the Union Valley Ranch Homeowner's Association.

8. Defendant Texas Commission on Environmental Quality is the administrative agency for the state of Texas responsible for protecting the State's air quality. TCEQ may be served with process on its Executive Director, Ms. Kelly Keel, at TCEQ's offices located at 12100 Park 35 Circle, Building F, MC-109, Austin, Texas 78753.

9. Defendant Kelly Keel is sued in her official capacity as Executive Director of TCEQ. Service of process upon Ms. Keel may be accomplished by personal delivery of citation

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<sup>2</sup> TEX. HEALTH & SAFETY CODE § 382.002.

to Ms. Keel at 12100 Park 35 Circle, Building F, MC-109, Austin, Texas 78753.

10. Plaintiffs are serving Dry Creek Materials, LLC with a copy of this Petition for Judicial Review. Dry Creek may be served through its registered agent, Tony McLarry, at 5221 Interstate 30 W, Caddo Mills, Texas 75135.

### **III. DISCOVERY CONTROL PLAN**

11. This case is an appeal of an action taken by a governmental agency. If discovery becomes necessary, it should be controlled by a Level 3 discovery plan. TEX. R. CIV. P. §190.4.

### **IV. JURISDICTION AND VENUE**

12. This Court has jurisdiction over this action pursuant to TEX. HEALTH & SAFETY CODE § 382.032 and TEX. WATER CODE § 5.351. Venue is mandatory in Travis County pursuant to TEX. HEALTH & SAFETY CODE §382.032(a) and Tex. Water Code § 5.354.

### **V. FACTUAL BACKGROUND**

13. On October 20, 2023, Dry Creek applied for authorization to construct and operate the Proposed Crusher under the TCEQ's standard permit for permanent rock and concrete crushers.

14. A "standard" permit is industry-specific and allows businesses within that industry to register under the standard permit instead of applying for a permit specific to its facility so long as the applicant adheres to the conditions required by the standard permit. TCEQ created its standard permit for rock and concrete crushing facilities back in 2008 ("Crusher Standard Permit").

15. Plaintiffs submitted extensive written comments regarding the Application on February 15, 2024.

16. Plaintiffs' comments specifically asserted the following:

- a. the Application did not prove that human health of nearby citizens was protected from the Proposed Crusher's air emissions;
- b. TCEQ's determination that the Proposed Crusher is protective of public health was flawed because it was premised on an outdated Protectiveness Review from 2008 that TCEQ never updated to comply with the significant lowering of the National Ambient Air Quality Standards ("NAAQS") and the TCEQ long-term effects screening level ("ESL") for quartz silica;
- c. the Proposed Crusher's projected emissions of particulate matter with a diameter less than 2.5 microns ("PM<sub>2.5</sub>") will potentially exceed the 2012 and 2024 annual NAAQS for PM<sub>2.5</sub> established to protect public health;
- d. the Proposed Crusher's projected emissions of particulate matter with a diameter less than 10 microns ("PM<sub>10</sub>") will potentially exceed the NAAQS for annual PM<sub>10</sub> established to protect public health;
- e. the Proposed Crusher's projected silica emissions will exceed the TCEQ long-term ESL established to protect public health; and
- f. Dry Creek has a history of TCEQ rule violations that TCEQ never considered before approving the Application.

17. The public comment period ended on March 21, 2024, with the TCEQ receiving more than 1,200 written comments.

18. Virtually all written comments, including those submitted by Senator Paxton, Representative Dutton, Hunt County Commissioners Court, City of Quinlan, City of Union Valley, and Town of Poetry, opposed the Application.

19. TCEQ held an informational meeting on the Application on March 21, 2024. Approximately 600 members of the local community, State Senator Angela Paxton, State Representative Jill Dutton and numerous other local elected officials attended and have expressed opposition to the proposed Application.<sup>3</sup>

20. Despite the overwhelming opposition and TCEQ's failure to prove that the

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<sup>3</sup> Exhibit 2, Letters to TCEQ from Sen. Paxton, Rep. Dutton, and Hunt County Commissioners, and Resolutions opposing the application by City of Quinlan, Texas, City of Union Valley, Texas, and Town of Poetry.

Proposed Crusher’s air emissions will meet applicable air quality standards specifically adopted to ensure protection of public health, the Executive Director approved the Application on April 22, 2024.

21. Plaintiffs timely filed a Motion to Overturn the Executive Director’s approval of the Application on May 15, 2024, which the TCEQ did not consider despite the written request from Senator Paxton, Hunt County Commissioners Court and the City of Union Valley to pause any action on the permit,<sup>4</sup> and, therefore, was denied by operation of law.

## VI. CAUSE OF ACTION

Plaintiffs allege the following causes of action or points of error:

**Error No. 1: The Defendants erred by approving Dry Creek’s Proposed Crusher without a demonstration it was protective of Plaintiffs’ health.**

22. Plaintiffs incorporate by reference paragraphs 1-21 above.

23. The Federal Clean Air Act (“FCAA”) requires the U.S. Environmental Protection Agency (“EPA”) to set National Ambient Air Quality Standards or NAAQS.<sup>5</sup> The purpose of these standards is to “protect the public health” with “an adequate margin of safety.”<sup>6</sup>

24. Consistent with this, the purpose of the TCAA is “to safeguard the state's air resources from pollution by controlling or abating air pollution and emissions of air contaminants, consistent with the protection of public health, general welfare, and physical property, including the esthetic enjoyment of air resources by the public and the maintenance of adequate visibility.”<sup>7</sup> The TCAA provides that, unless authorized by TCEQ, no person may

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<sup>4</sup> Exhibit 3, Sen. Paxton letter to TCEQ (June 5, 2024); Hunt County letter to TCEQ (June 4, 2024); Union Valley City Attorney letter to TCEQ (June 5, 2024); and Union Valley Mayor letter to TCEQ (June 4, 2024).

<sup>5</sup> 42 U.S.C. §§ 7408, 7409.

<sup>6</sup> 42 U.S.C. § 7409(b)(1).

<sup>7</sup> TEX. HEALTH & SAFETY CODE § 382.002(a).

“cause, suffer, allow, or permit the emission of any air contaminant or the performance of any activity that causes or contributes to, or that will cause or contribute to, air pollution.”<sup>8</sup>

25. The FCAA requires that the EPA identify air pollutants that may reasonably be anticipated to endanger public health and welfare. These pollutants are referred to as “criteria pollutants.” For each criteria pollutant, EPA must set NAAQS to protect public health and welfare.<sup>9</sup> Criteria pollutants with established NAAQS include PM<sub>2.5</sub>, PM<sub>10</sub>, SO<sub>2</sub>, CO, O<sub>3</sub>, and NO<sub>2</sub>.<sup>10</sup> No less than every five years, EPA is required to review scientific evidence and adjust the NAAQS as necessary to protect public health and the environment.<sup>11</sup>

26. While the EPA sets the standards for criteria pollutants, the states determine how those standards are to be met. To implement the NAAQS, states create State Implementation Plans (“SIPs”) that demonstrate to the EPA how federal standards will be achieved.<sup>12</sup>

27. An important part of how Texas’ SIP satisfies (or attempts to satisfy) the NAAQS is by the implementation of Texas’ standard permit program that is responsible for authorizing numerous facilities each year.

28. The Texas legislature added standard permits under a 1999 amendment to the TCAA.<sup>13</sup> The amendment authorized TCEQ’s predecessor agency, Texas Natural Resource Conservation Commission, to identify similar categories of air-contaminant emitting facilities and issue a standard permit for the entire category of facilities.<sup>14</sup>

29. The authority to issue standard permits, such as this rock and concrete crusher

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<sup>8</sup> TEX. HEALTH & SAFETY CODE § 382.085(a).

<sup>9</sup> 42 U.S.C. §§ 7408(a), 7409(a).

<sup>10</sup> 40 C.F.R. §§ 50.4 - 50.19.

<sup>11</sup> 42 U.S.C. § 7409(d).

<sup>12</sup> 42 U.S.C. § 7407(a).

<sup>13</sup> Approval and Promulgation of Implementation Plans, Texas, 68 Fed. Reg. 64543 (Nov. 14, 2003).

<sup>14</sup> TEX. HEALTH & SAFETY CODE § 382.05195(a).

standard permit, is included in Texas' SIP and approved by the EPA.<sup>15</sup> When a standard permit is promulgated, the TCEQ performs a protectiveness review. The purpose of the protectiveness review is to analyze emission sources and various emissions control measures to determine what controls can be uniformly applied to an industry such that all registrants under the standard permit will not exceed the NAAQS. As such, standard permits should contain uniform terms and emissions control technologies that have proven to keep authorized facilities compliant with NAAQS and state public health standards.<sup>16</sup>

30. TCEQ standard permits are required to comply with the TCAA's purpose of protecting the health and property of the public.<sup>17</sup>

**A. The TCEQ failed to require the Proposed Crusher to comply with PM<sub>10</sub> and PM<sub>2.5</sub> NAAQS.**

31. TCEQ's Crusher Standard Permit became effective on July 31, 2008. As evidence that rock and concrete crushers authorized under the Crusher Standard Permit are protective of public health, the TCEQ relies on a protectiveness review with air dispersion modeling conducted back in March 2006 and finalized in 2008 (the "2008 Protectiveness Review").<sup>18</sup> Since 2008, the EPA has lowered the NAAQS for PM<sub>2.5</sub> on two separate occasions. In 2012, the annual NAAQS for PM<sub>2.5</sub> was reduced from 15 micrograms per cubic meter ( $\mu\text{g}/\text{m}^3$ ) down to 12  $\mu\text{g}/\text{m}^3$ .<sup>19</sup> In 2024, EPA further reduced the annual PM<sub>2.5</sub> NAAQS from 12  $\mu\text{g}/\text{m}^3$  down to 9  $\mu\text{g}/\text{m}^3$ .<sup>20</sup>

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<sup>15</sup> TEX. HEALTH & SAFETY CODE § 382.05195(a)(3).

<sup>16</sup> Approval and Promulgation of Implementation Plans, Texas, 68 Fed. Reg. 64543 (Nov. 14, 2003); TEX. HEALTH & SAFETY CODE § 382.0518(b)(1), (b)(2).

<sup>17</sup> 16 TEX. ADMIN. CODE §116.615(1).

<sup>18</sup> TCEQ, Memo from Keith Zimmerman, P.E. to Larry Buller, P.E., Modeling Report – Rock Crusher Standard Permit (Jan. 2, 2006); TCEQ, Memo from Keith Zimmerman, P.E. to Larry Buller, P.E., Modeling Report – Rock Crusher Standard Permit (Mar. 27, 2006).

<sup>19</sup> See 78 Fed. Reg. 3086 (January 15, 2013) (previously codified at 40 C.F.R. pts. 50, 51, 52, 53, and 58).

<sup>20</sup> See 89 Fed. Reg. 16202 (May 06, 2024) (codified at 40 C.F.R. pts. 50, 53, and 58).

*Table 1: Timeline of EPA Changes to Annual NAAQS for PM<sub>2.5</sub>*

PM <sub>2.5</sub> NAAQS REVISIONS	TCEQ PROTECTIVENESS REVIEW
2006: EPA set the primary and secondary Annual NAAQS for PM <sub>2.5</sub> at 15 µg/m <sup>3</sup> .	2006 - 2008
2012: EPA <i>lowered</i> the Annual NAAQS for PM <sub>2.5</sub> from 15 µg/m <sup>3</sup> to 12 µg/m <sup>3</sup> .	
2020: EPA maintained the Annual NAAQS for PM <sub>2.5</sub> at 12 µg/m <sup>3</sup> .	
2024: EPA <i>lowered</i> the NAAQS for PM <sub>2.5</sub> µg/m <sup>3</sup> to 9µg/m <sup>3</sup>	

32. TCEQ has never updated its 2008 Protectiveness Review which is the entire basis for authorized crushers being deemed safe and, therefore, the TCEQ approved Dry Creek’s Proposed Crusher without ever determining whether the Proposed Crusher will exceed NAAQS and emit dangerous levels of PM<sub>2.5</sub>.

33. The Defendants’ action approving the Application is counter to Texas law, and the Court should reverse Defendants’ action as invalid, arbitrary, and unreasonable.<sup>21</sup>

**B. TCEQ failed to account for PM<sub>2.5</sub> background concentrations in Hunt County.**

34. When evaluating a new source of criteria pollutant emissions, TCEQ requires applicants to demonstrate that either (1) the proposed source’s impacts from its air emissions will be insignificant/de minimis or (2) the *combined* impact from the proposed source and the existing background air quality is below the NAAQS.<sup>22</sup> The 2008 Protectiveness Review’s air

<sup>21</sup> TEX. HEALTH & SAFETY CODE §§382.032(a) and (e).

<sup>22</sup> See "Minor NAAQS Analysis" at page 17 and Appendix E, Air Quality Modeling Guidelines – APDG



dispersion modeling estimated the PM<sub>2.5</sub> maximum ground level concentration to be 1.7 µg/m<sup>3</sup> (even when excluding non-engine sources), which exceeds the 0.3 µg/m<sup>3</sup> annual PM<sub>2.5</sub> Significant Impact Level. TCEQ's own modeling, therefore, demonstrates the projected emissions are not de minimis and PM<sub>2.5</sub> background concentrations must be considered, but TCEQ never did.<sup>23</sup> Tellingly, the 2008 Protectiveness Review did consider background concentrations for other pollutants emitted from rock and concrete crushers but not PM<sub>2.5</sub>.<sup>24</sup>

35. There are currently six regulatory PM<sub>2.5</sub> monitors in the Dallas-Fort Worth area with valid data for annual PM<sub>2.5</sub> concentrations.<sup>25</sup> The most conservative of those nearby area monitors, located in Denton, Texas, yields a background PM<sub>2.5</sub> concentration of 7.5 µg/m<sup>3</sup>.<sup>26</sup> Adding this background to TCEQ's own predicted modeling from the 2008 Protectiveness Review (that excluded engine sources), the Proposed Concrete Crusher exceeds the current NAAQS for PM<sub>2.5</sub> of 9 µg/m<sup>3</sup>.<sup>27</sup>

36. Additionally, there are numerous sand pits near the proposed crusher that also emit the same air pollutants, and there is an aggregate operation on the same property as the Proposed Crusher authorized by a permit by rule. There is no evidence that Dry Creek or the TCEQ considered emissions from those operations when evaluating the emissions from the proposed crusher.

37. Unless and until TCEQ demonstrates that the Proposed Crusher will not emit dangerous levels of PM<sub>2.5</sub>, including engine exhaust emissions, background concentrations and additional nearby sources, the TCEQ's decision to authorize a potentially dangerous crusher

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6232, Air Permits Division, TCEQ (November 2019).

<sup>23</sup> February Comments, Ex. H.

<sup>24</sup> February Comments, Ex. I.

<sup>25</sup> February Comments, Ex. K at ¶ 19.

<sup>26</sup> *Id.*

<sup>27</sup> *Id.*

was invalid, arbitrary, and unreasonable, and must be overturned.

**C. The Proposed Crusher violates TCEQ's standard for Quartz Silica.**

38. Dry Creek's proposed facility will also emit quartz silica. TCEQ's air dispersion modeling as part of its 2008 Protectiveness Review projected a maximum concentration at ground level for quartz silica of  $0.3 \mu\text{g}/\text{m}^3$ .<sup>28</sup> The TCEQ's 2008 Protectiveness Review deemed silica impacts at that concentration to be acceptable because it was below the TCEQ's Long-Term Effects Screening Level, which *at the time* was  $1.0 \mu\text{g}/\text{m}^3$ .<sup>29</sup>

39. TCEQ, however, lowered that standard after 2008. The TCEQ Long-Term Effects Screening Level is now  $0.27 \mu\text{g}/\text{m}^3$ . The TCEQ's own projected quartz silica emissions with a maximum concentration of  $0.3 \mu\text{g}/\text{m}^3$  establishes that the Proposed Crusher will exceed the TCEQ Long-Term Effects Screening Level by 10%.

40. Unless and until TCEQ demonstrates with scientific support that the Proposed Crusher will not emit dangerous levels of quartz silica, the TCEQ's decision to authorize a potentially dangerous crusher was invalid, arbitrary, and unreasonable, and must be overturned.

**D. Dry Creek's Proposed Crusher will emit more PM<sub>10</sub> than TCEQ considered in its 2008 Protectiveness Review.**

41. According to the Application, the Proposed Crusher will maintain exceptionally large concrete and aggregate stockpiles covering *six acres*<sup>30</sup> that are projected to emit 2.17 tons of PM<sub>10</sub> per year.<sup>31</sup> The Application projects the Proposed Crusher will emit an additional 0.2888 tons of PM<sub>10</sub> from other fugitive emission sources as follows:

- 0.0264 tons per year – Crusher #1
- 0.1954 tons per year – Screen #1
- 0.0306 tons per year – Total Loading/Unloading

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<sup>28</sup> Summary Document for Air Quality Standard Permanent Rock and Concrete Crushers at 8.

<sup>29</sup> *Id.*

<sup>30</sup> February Comments, Ex. B at page 17.

<sup>31</sup> *Id.*

- 0.0364 tons per year – Total Drop & Transfer Point Emissions<sup>32</sup>

42. The Proposed Crusher’s total projected PM<sub>10</sub> emissions from fugitive sources and stockpiles is 2.46 tons per year, but TCEQ’s 2008 Protectiveness Review modeled much smaller stockpiles with lower PM<sub>10</sub> emissions.

43. The 2008 Protectiveness Review only considered PM<sub>10</sub> emissions from fugitive sources at a rate of 0.99 tons per year compared to the Proposed Crusher’s 2.46 tons per year of PM<sub>10</sub>—approximately 250% more than the generic crusher evaluated by TCEQ.

44. The TCEQ’s action to approve the Application ignores that the Proposed Crusher will emit more PM<sub>10</sub> than the 2008 Protectiveness Review considered. Unless and until TCEQ evaluates the Proposed Crusher’s projected PM<sub>10</sub> emissions, the TCEQ cannot know whether the Proposed Crusher satisfies the PM<sub>10</sub> NAAQS. Therefore, the TCEQ’s decision to approve a potentially dangerous crusher was invalid, arbitrary, and unreasonable, and must be overturned.

**Error No. 2: Defendants erred by failing to consider Dry Creek’s troubling history of numerous TCEQ rule violations.**

45. TCEQ is required to consider compliance history when deciding whether to grant a permit application.<sup>33</sup> The compliance history shall include “*compliance-related information about a person, specific to the site which is under review, as well as other sites which are owned or operated by the same person.*”<sup>34</sup>

46. Tony McLarry signed the TCEQ Core Data Form on behalf of Dry Creek that was included with the Application. The Form PI-1S included in the Application identifies Tony McLarry is Dry Creek’s Managing Member. Finally, Mr. McLarry signed the Form PI-1S

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<sup>32</sup> *Id.* at pages 15-17.

<sup>33</sup> 30 Tex. Admin. Code § 60.1(a)(1)(A).

<sup>34</sup> 30 Tex. Admin. Code § 60.1(c) (emphasis added).

telling the TCEQ the crusher will not violate any provisions of the applicable laws and regulations. Mr. McLarry and Dry Creek are inextricable, but the TCEQ compliance history review failed to consider Mr. McLarry's numerous TCEQ violations at his other aggregate sites. With a cursory due diligence, Plaintiffs confirmed that Dry Creek and/or its Managing Member, Tony McLarry, have been subject to at least *fifteen TCEQ violations* within the past two years.

47. It is inexcusable that TCEQ claimed there have been *no* compliance/enforcement actions against Dry Creek in the last five years.<sup>35</sup> All fifteen violations occurred within the last two years, including 13 violations accrued over the year leading up to approval of the Application on April 22, 2024. The compliance history period may be extended beyond the date the application for the permit is received by the executive director, up through completion of review of the application.<sup>36</sup>

48. Until TCEQ considers this troubling history of routine TCEQ rule violations, the TCEQ's decision to approve the Application without satisfying its own rule to consider the applicant's compliance history, was invalid, arbitrary, and unreasonable, and must be overturned.

## VII. PRAYER

**WHEREFORE**, Plaintiffs respectfully pray that this Court enter an order reversing the TCEQ's and Executive Director's invalid, arbitrary, and unreasonable action of approving Dry Creek's Application for a permanent rock and concrete crusher that will potentially emit dangerous levels of air pollutants. Plaintiffs further pray for all other relief in law or equity to which Plaintiffs may be justly entitled.

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<sup>35</sup> ED RTC at Response to Comment No. 17.

<sup>36</sup> 30 Tex. Admin. Code § 60.1(b).

Respectfully submitted,

By: /s/ Adam M. Friedman

Adam M. Friedman

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**ATTORNEYS FOR THE PLAINTIFFS**

**CERTIFICATE OF SERVICE**

I hereby certify that on the 26<sup>th</sup> day of July, 2024, a true and correct copy of the foregoing was served on the following counsel of record via e-service:

Ian Lancaster

[Ian.lancaster@oag.texas.gov](mailto:Ian.lancaster@oag.texas.gov)

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**ATTORNEYS FOR THE STATE OF TEXAS**

*/s/ Adam Friedman*

Adam M. Friedman

# **EXHIBIT 1**

Jon Niermann, *Chairman*  
Bobby Janecka, *Commissioner*  
Catarina R. Gonzales, *Commissioner*  
Kelly Keel, *Executive Director*



## TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

*Protecting Texas by Reducing and Preventing Pollution*

April 22, 2024

MR. TONY MCLARRY  
MANAGING MEMBER  
DRY CREEK MATERIALS LLC  
5221 INTERSTATE 30 W  
CADDO MILLS TX 75135-7641

Re: Air Quality Standard Permit for Permanent Rock and Concrete Crushers  
(As effective July 31, 2008)  
Standard Permit Registration Number: 174388  
Standard Permit Expiration Date: April 22, 2034  
Dry Creek Materials LLC  
Rock Crushing Plant  
Quinlan, Hunt County  
Regulated Entity Number: RN111831277  
Customer Reference Number: CN606193589

Dear Mr. McLarry:

Dry Creek Materials LLC submitted an application on October 20, 2023 to register construction of a permanent rock and concrete crushing plant to be located at 4310 Highway 276 W, near Quinlan, Hunt County.

The Texas Commission on Environmental Quality (TCEQ) has determined that your proposed construction is authorized under Title 30 Texas Administrative Code § 116.611 and Texas Health and Safety Code § 382.05195, if constructed and operated as described in your registration. The standard permit for permanent rock and concrete crushers became effective July 31, 2008.

Copies of the standard permit general conditions and air quality standard permit for permanent rock and concrete crushers are enclosed. You must begin construction or modification of these facilities in accordance with the standard permit no later than 18 months after the date of this letter. After completion of construction or modification, the appropriate TCEQ Regional Office must be notified prior to commencing operation and the facility shall be operated in compliance with all applicable conditions of the claimed standard permit (enclosed).

If you need further information or have any questions, please contact Ms. Ava Enriquez at (512) 239-0894 or write to the Texas Commission on Environmental Quality, Office of Air, Air Permits Division, MC-163, P.O. Box 13087, Austin, Texas 78711-3087.

Sincerely,

A handwritten signature in black ink, appearing to be "David P.", with a long horizontal line extending to the right.



Mr. Tony McLarry  
Page 2  
April 22, 2024

Re: Standard Permit Registration Number 174388

Samuel Short, Deputy Director  
Air Permits Division  
Office of Air  
Texas Commission on Environmental Quality

Enclosure

cc: Air Section Manager, Region 4 - Dallas/Fort Worth

Project Number: 365519

## Standard Permit General Conditions

The following general conditions are applicable to holders of standard permits, but will not necessarily be specifically stated within the standard permit document.

1. Protection of public health and welfare. The emissions from the facility must comply with all applicable rules and regulations of the commission adopted under the Texas Health and Safety Code, Chapter 382, and with intent of the TCAA, including protection of health and property of the public.
2. Standard permit representations. All representations with regard to construction plans, operating procedures, and maximum emission rates in any registration for a standard permit become conditions upon which the facility or changes thereto, must be constructed and operated. It is unlawful for any person to vary from such representations if the change will affect that person's right to claim a standard permit under this section. Any change in condition such that a person is no longer eligible to claim a standard permit under this section requires proper authorization under Title 30 Texas Administrative Code § 116.110 (30 TAC § 116.110) (relating to Applicability). Any changes in representations are subject to the following requirements:
  - (A) For the addition of a new facility, the owner or operator shall submit a new registration incorporating existing facilities with a fee, in accordance with §116.611 and §116.614 (relating to Registration to use a Standard Permit and Standard Permit Fees) prior to commencing construction. If the applicable standard permit requires public notice, construction of the new facility or facilities may not commence until the new registration has been issued by the executive director.
  - (B) For any change in the method of control of emissions, a change in the character of the emissions, or an increase in the discharge of the various emissions, the owner or operator shall submit written notification to the executive director describing the change(s), along with the designated fee, no later than 30 days after the change.
  - (C) For any other change to the representations, the owner or operator shall submit written notification to the executive director describing the change(s) no later than 30 days after the change.
  - (D) Any facility registered under a standard permit which contains conditions or procedures for addressing changes to the registered facility which differ from subparagraphs (A) - (C) of this paragraph shall comply with the applicable requirements of the standard permit in place of subparagraphs (A) - (C) of this paragraph.
3. Standard permit in lieu of permit amendment. All changes authorized by standard permit to a facility previously permitted under 30 TAC § 116.110 shall be administratively incorporated into that facility's permit at such time as the permit is amended or renewed.
4. Construction progress. Start of construction, construction interruptions exceeding 45 days, and completion of construction shall be reported to the appropriate regional office not later than 15 working days after occurrence of the event, except where a different time period is specified for a particular standard permit.
5. Start-up notification. The appropriate air program regional office of the commission and any other air pollution control program having jurisdiction shall be notified prior to the commencement of operations of the facilities authorized by the standard permit in such a manner that a representative of the executive director may be present. For phased construction, which may involve a series of units commencing operations at different times, the owner or operator of the facility shall provide separate notification for the commencement of operations for each unit. A particular standard permit may modify start-up notification requirements.
6. Sampling requirements. If sampling of stacks or process vents is required, the standard permit holder shall contact the Office of Air and any other air pollution control program having jurisdiction prior to sampling to obtain the proper data forms and procedures. All sampling and testing procedures must be approved by the executive director and coordinated with the regional representatives of the commission. The standard permit holder is also responsible for providing sampling facilities and conducting the sampling operations or contracting with an independent sampling consultant.
7. Equivalency of methods. The standard permit holder shall demonstrate or otherwise justify the equivalency of emission control methods, sampling or other emission testing methods, and monitoring methods proposed as

alternatives to methods indicated in the conditions of the standard permit. Alternative methods must be applied for in writing and must be reviewed and approved by the executive director prior to their use in fulfilling any requirements of the standard permit.

8. Recordkeeping. A copy of the standard permit along with information and data sufficient to demonstrate applicability of and compliance with the standard permit shall be maintained in a file at the plant site and made available at the request of representatives of the executive director, the U.S. Environmental Protection Agency, or any air pollution control program having jurisdiction. For facilities that normally operate unattended, this information shall be maintained at the nearest staffed location within Texas specified by the standard permit holder in the standard permit registration. This information must include (but is not limited to) production records and operating hours. Additional recordkeeping requirements may be specified in the conditions of the standard permit. Information and data sufficient to demonstrate applicability of and compliance with the standard permit must be retained for at least two years following the date that the information or data is obtained. The copy of the standard permit must be maintained as a permanent record.
9. Maintenance of emission control. The facilities covered by the standard permit may not be operated unless all air pollution emission capture and abatement equipment is maintained in good working order and operating properly during normal facility operations. Notification for upsets and maintenance shall be made in accordance with 30 TAC §§ 101.201 and 101.211 (relating to Emissions Event Reporting and Recordkeeping Requirements, Scheduled Maintenance, Startup, and Shutdown Reporting and Recordkeeping Requirements, Recordkeeping; and Operational Requirements).
10. Compliance with rules. Registration of a standard permit by a standard permit applicant constitutes an acknowledgment and agreement that the holder will comply with all rules, regulations, and orders of the commission issued in conformity with the TCAA and the conditions precedent to the claiming of the standard permit. If more than one state or federal rule or regulation or permit condition is applicable, the most stringent limit or condition shall govern. Acceptance includes consent to the entrance of commission employees and designated representatives of any air pollution control program having jurisdiction into the permitted premises at reasonable times to investigate conditions relating to the emission or concentration of air contaminants, including compliance with the standard permit.
11. Distance Limitations. Distance limitations, setbacks, and buffer zones. Notwithstanding any requirement in any standard permit, if a standard permit for a facility requires a distance, setback, or buffer from other property or structures as a condition of the permit, the determination of whether the distance, setback, or buffer is satisfied shall be made on the basis of conditions existing at the earlier of:
  - (A) The date new construction, expansion, or modification of a facility begins; or
  - (B) The date any application or notice of intent is first filed with the commission to obtain approval for the construction or operation of the facility.

**Air Quality Standard Permit for Permanent Rock and Concrete Crushers**  
**Effective Date July 31, 2008**

This air quality standard permit authorizes rock and concrete crushing facilities that meet all of the conditions listed in sections (1), (2), and (3) of this standard permit. It is the permit holder's responsibility to demonstrate compliance with all conditions of this permit upon request by the executive director or any air pollution control agency having jurisdiction.

(1) General Requirements:

(A) For the purposes of this standard permit, the following definitions apply.

- (i) A site is one or more contiguous or adjacent properties which are under common control of the same person (or persons under common control).
- (ii) Associated sources are sources of air emissions that are related to the rock or concrete crushing operation, that are not "facilities" as defined under Title 30 Texas Administrative Code (30 TAC) § 116.10, General Definitions. Associated sources include, but are not limited to, stockpiles and outdoor work areas. Screens, belt conveyors, generator sets, and material storage or feed bins are considered to be facilities and are not associated sources.
- (iii) A residence is a structure primarily used as a permanent dwelling.

(B) Except as provided in subsections (C) and (D) of this section, when crushing concrete, the concrete crushing facility shall be operated at least 440 yards from any building which was in use as a single or multi-family residence, school, or place of worship at the time an application was filed. The measurement of distance shall be taken from the point on the concrete crushing facility that is nearest to the residence, school, or place of worship toward the point on the building in use as a residence, school, or place of worship that is nearest the concrete crushing facility.

(C) Subsection (B) does not apply to:

- (i) a concrete crushing facility at a location for which the distance requirements of subsection (B) were satisfied at the time an application was filed with the commission, provided that the authorization was granted and maintained, regardless of whether a single or multi-family residence, school, or place of worship is subsequently built or put to use within 440 yards of the facility; or
- (ii) structures occupied or used solely by the owner of the facility or the owner of the property upon which the facility is located.

(D) Subsection (B) does not apply to a concrete crushing facility that:

- (i) is engaged in crushing concrete and other materials resulting from the demolition of a structure on that site and the concrete and other materials are being crushed primarily for use at that site;
- (ii) operates at that site during one period of no more than 180 calendar days;
- (iii) complies with all applicable conditions stated in commission rules, including operating conditions; and
- (iv) is not located in a county with a population of 2.4 million or more persons, or in a county adjacent to such a county.

(E) For any owner or operator with a facility authorized by this standard permit, the TCEQ will not accept an application for authorization of a crushing facility under Texas Health and Safety Code (THSC) § 382.0518, Preconstruction Permit, located at the same site for a period of 12 months from the date of authorization.

- (F) An applicant for authorization of a rock crusher under THSC § 382.0518, is not eligible for this standard permit at the same site until 12 months after the application for authorization under § 382.0518 is withdrawn. Facilities already authorized by a permit under § 382.0518 are not eligible for this standard permit.
- (G) Applications for this standard permit shall be registered in accordance with 30 TAC § 116.611, Registration to Use a Standard Permit (including a current Form PI-1S, Crushing Plant Standard Permit Checklist and Table 17). A compliance history review shall be performed by the executive director in accordance with 30 TAC Chapter 60, Compliance History. If a facility is determined to be a poor performer, as defined in 30 TAC Chapter 60, a standard permit registration shall not be issued.
- (H) No owner or operator of a crushing facility shall begin construction and/or operation without obtaining written approval from the executive director (except for crushers in non operational storage for which construction has not commenced as considered under the Texas Clean Air Act). Start of construction of any facility registered under this standard permit shall be no later than 18 months from the date of authorization. Construction progress and startup notification shall be made in accordance with 30 TAC § 116.115(b)(2), General and Special Conditions.
- (I) Applications for registration under this standard permit shall comply with 30 TAC § 116.614, Standard Permit Fees.
- (J) All affected facilities authorized by this standard permit must meet all applicable conditions of Title 40 Code of Federal Regulations (40 CFR) Part 60, Subpart A, General Provisions, and OOO, Standards of Performance for Nonmetallic Mineral Processing Plants.
- (K) Only crushing facilities that are processing nonmetallic minerals or a combination of nonmetallic minerals that are described in 40 (CFR) Part 60, Subpart OOO, shall be authorized by this standard permit.
- (L) This standard permit does not supersede the requirements of any other commission rule, including 30 TAC Chapter 101, Subchapter H, Division 3, Mass Emissions Cap and Trade Program; and 30 TAC Chapter 117, Control of Air Pollution from Nitrogen Compounds.
- (M) Written records shall be kept for a rolling 24-month period and shall always remain on site. These records shall be made available at the request of any personnel from the TCEQ or any air pollution control program having jurisdiction. These written records shall contain the following:
  - (i) daily hours of operation;
  - (ii) the throughput per hour;
  - (iii) road and work area cleaning and dust suppression logs; and
  - (iv) stockpile dust suppression logs.
- (N) Crushing operations and related activities shall comply with applicable requirements of 30 TAC Chapter 101, Subchapter F, Emission Events and Scheduled Maintenance, Startup, and Shutdown Activities.
- (O) Facilities which meet the conditions of this standard permit do not have to meet the emissions and distance limitations listed in 30 TAC § 116.610(a)(1), Applicability.
- (P) Maintenance emissions are not included in this permit and must be approved under separate authorization. Startup and shutdown emissions that exceed those expected during production operations must be approved under separate authorization.
- (Q) Owners or operators of facilities authorized by this standard permit are not eligible for any authorization in 30 TAC Chapter 106, Subchapter E, Aggregate and Pavement or 30 TAC § 106.512, Stationary Engines and Turbines, for a facility located at the same site as a rock crusher authorized by this standard permit.

(R) Upon issuance of this standard permit, the TCEQ will no longer accept a registration for § 106.142, Rock Crushers.

(2) Public Notice Requirements:

(A) An application for authorization to construct and operate a rock crusher under this standard permit is not subject to the public notice requirements in 30 TAC Chapter 39 Subchapter H, Applicability and General Provisions, and Subchapter K, Public Notice of Air Quality Applications.

(B) For authorization to use this standard permit, an applicant must publish notice under this section not later than the earlier of:

(i) the 30th day after the date the applicant receives written notice from the executive director that the application is technically complete; or

(ii) the 75th day after the date the executive director receives the application.

(C) The applicant must publish notice at least once in a newspaper of general circulation in the municipality in which the plant is proposed to be located or in the municipality nearest to the proposed location of the crusher. If the elementary or middle school nearest to the proposed plant provides a bilingual education program as required by Subchapter B, Chapter 29, Texas Education Code, the applicant must also publish the notice at least once in an additional publication of general circulation in the municipality or county in which the plant is proposed to be located that is published in the language taught in the bilingual education program. This requirement is waived if such a publication does not exist or if the publisher refuses to publish the notice.

(D) The notice must include:

(i) a brief description of the proposed location and nature of the proposed crusher;

(ii) a description, including a telephone number, of the manner in which the executive director may be contacted for further information;

(iii) a description, including a telephone number, of the manner in which the applicant may be contacted for further information;

(iv) the location and hours of operation of the commission's regional office at which a copy of the application is available for review and copying; and

(v) a brief description of the public comment process, including the mailing address and deadline for filing written comments.

(E) At the applicant's expense, a sign or signs shall be placed at the site of the proposed facility declaring the filing of an application for a permit and stating the manner in which the commission may be contacted for further information. Such signs shall be provided by the applicant and shall meet the following requirements:

(i) signs shall consist of dark lettering on a white background and shall be no smaller than 18 inches by 28 inches;

(ii) signs shall be headed by the words "PROPOSED AIR QUALITY PERMIT" in no less than two-inch boldface block-printed capital lettering;

(iii) signs shall include the words "APPLICATION NUMBER" and the number of the permit application in no less than one-inch boldface block-printed capital lettering (more than one number may be included on the signs if the respective public comment periods coincide);

(iv) signs shall include the words "for further information contact" in no less than 1/2-inch lettering;

- (v) signs shall include the words "Texas Commission on Environmental Quality," and the address of the appropriate commission regional office in no less than one-inch boldface capital lettering and 3/4-inch boldface lower case lettering; and
  - (vi) signs shall include the phone number of the appropriate commission office in no less than two-inch boldface numbers.
- (F) The sign or signs must be in place by the date of publication of the newspaper notice required by subsection (2)(C) of this section and must remain in place and legible throughout the period of public comment provided for in subsection (2)(I) of this section.
- (G) Each sign placed at the site must be located within ten feet (ft.) of each (every) property line paralleling a street or other public thoroughfare. Signs must be completely visible from the street and spaced at not more than 1,500-ft. intervals. A minimum of one sign, but no more than three signs shall be required along any property line paralleling a public thoroughfare. The commission may approve variations from these requirements if it is determined that alternative sign posting plans proposed by the applicant are more effective in providing notice to the public.
- (H) The alternate language sign posting requirements of this subsection are applicable whenever either the elementary school or the middle school located nearest to the facility or proposed facility provides a bilingual education program as required by Texas Education Code, Chapter 29, Subchapter B, and 19 TAC § 89.1205(a) or if either school has waived out of such a required bilingual education program under the provisions of 19 TAC § 89.1205(g). Schools not governed by the provisions of 19 TAC § 89.1205(a) shall not be considered in determining applicability of the requirements of this subsection. Each affected facility shall meet the following requirements.
- (i) The applicant shall post an additional sign in each alternate language in which the bilingual education program is taught. If the nearest elementary or middle school has waived out of the requirements of 19 TAC § 89.1205(a) under 19 TAC § 89.1205(g), the alternate language signs shall be published in the alternate languages in which the bilingual education program would have been taught had the school not waived out of the bilingual education program.
  - (ii) The alternate language signs shall be posted adjacent to each English language sign required in this section.
  - (iii) The alternate language sign posting requirements of this subsection shall be satisfied without regard to whether alternate language notice is required under subsection (C) of this section.
  - (iv) The alternate language signs shall meet all other requirements of this section.
- (I) The public comment period begins on the first date notice is published under subsection (2)(B) and extends no less than 30 days from the publication date.
- (J) Not later than the 30th day after the end of the public comment period, the executive director will approve or deny the application for authorization to use the standard permit. The executive director must base the decision on whether the application meets the requirements of this standard permit. The executive director must consider all comments received during the public comment period in determining whether to approve the application. If the executive director denies the application, the executive director must state the reasons for the denial and any modifications to the application necessary for the proposed plant to qualify for the authorization.
- (K) The executive director will issue a written response to any public comments received related to the issuance of an authorization to use the standard permit at the same time as or as soon as practicable after the executive director grants or denies the application. Issuance of the response after the granting or denial of the application does not affect the validity of the executive director's decision to grant or deny the application. The executive director will:
- (i) mail the response to each person who filed a comment; and

(ii) make the response available to the public.

(3) Operational Requirements:

- (A) The primary crusher throughput shall not exceed 200 tons per hour.
- (B) The crusher and all associated facilities, including engines and/or generator sets, but not including associated sources, shall be located no less than 200 ft. from the nearest property line, as measured from the point on the facility nearest the property line.
- (C) The crusher and all associated facilities, including engines and/or generator sets, but not including associated sources, shall be located no less than 440 yards from any building which was in use as a single or multi-family residence, school, or place of worship, at the time an application was filed, as measured from the point on the facility nearest the residence, school, or place of worship to the point on the residence, school, or place of worship nearest the facility.
- (D) The crushing facilities (not including associated sources) operating under this standard permit shall be located at least 550 ft. from any other rock crusher, concrete crusher, concrete batch plant, or hot mix asphalt plant. If this distance cannot be met, then the crusher shall not operate at the same time as the other rock crusher, concrete crusher, concrete batch plant, or hot mix asphalt plant. Measurement shall be from the closest point on the rock crushing facility to the closest point on any other facility.
- (E) All associated sources, including but not limited to, roads (except for incidental traffic and the entrance and exit to the site), work areas, and stockpiles, shall be located at least 100 ft. from the property line.
- (F) The facilities (as defined in 30 TAC § 116.10(4)) authorized under this standard permit shall be limited to one primary crusher, one secondary crusher, one vibrating grizzly, two screens, any conveyors, and one internal combustion engine (or combination of engines) of no more than 1,000 total horsepower. Equipment that is not a source of emissions does not require authorization.
- (G) All crushers, associated facilities, and associated sources (excluding stockpiles) shall not operate for more than an aggregate of 2,640 hours at the authorized site in any rolling 12 month period. Once the operating hours (2,640 hours) for the site have been exhausted, the owner or operator shall not use a standard permit to operate another rock crusher on the site.
- (H) The rock crusher and associated facilities shall not operate from one hour after official sunset to one hour before official sunrise.
- (I) Each crusher shall be equipped with a runtime meter, which will be operating during crushing operations.
- (J) Permanently mounted spray bars shall be installed at the inlet and outlet of all crushers, at all shaker screens, and at all material transfer points and used as necessary to maintain compliance with all TCEQ rules and regulations.
- (K) Opacity of emissions from any transfer point on belt conveyors or any screen shall not exceed 10 percent and from any crusher shall not exceed 15 percent, averaged over a six-minute period, and according to U.S. Environmental Protection Agency (EPA) Test Method (TM) 9.
- (L) Visible emissions from the crusher, associated facilities, associated sources, and in-plant roads associated with the plant shall not leave the property for a period exceeding 30 seconds in duration in any six-minute period as determined using EPA TM 22.
- (M) Dust emissions from all in-plant roads and active work areas that are associated with the operation of the crusher, associated facilities, and associated sources shall be minimized at all times by at least one of the following methods:
  - (i) covered with a material such as, but not limited to, roofing shingles or tire chips (when used in combination with (ii) or (iii) of this subsection);



- (ii) treated with dust-suppressant chemicals;
  - (iii) watered; or
  - (iv) paved with a cohesive hard surface that is maintained intact and cleaned.
- (N) All stockpiles shall be sprinkled with water, dust-suppressant chemicals, or covered, as necessary, to minimize dust emissions.
- (O) Raw material and product stockpile heights shall not exceed 45 ft.
- (P) The crusher shall be equipped with a weigh hopper or scale belt to accurately determine the mass of material being crushed.
- (Q) The crusher may relocate on the site for which it has been authorized without reauthorization as long as it remains at least 440 yards from any residence, school, or place of worship that was in existence at the time of the move.

## **EXHIBIT 2**



**SENATOR ANGELA S. PAXTON**  
DISTRICT 8

February 16, 2024

*Via Email Delivery to Intergovernmental Relations Division*

Mrs. Kelly Keel  
Executive Director, Texas Commission on Environmental Quality  
TCEQ MC 109  
P.O. Box 13087  
Austin, TX 78711-3087

***Re: Air Quality Permit 174388***

Dear Director Keel,

Thank you for your work on reviewing all of the various permits under the Texas Commission on Environmental Quality (TCEQ) purview and ensuring the public comments are reviewed in a timely manner. From my review of TCEQ during the recent Sunset Advisory Commission process, I know each permit is unique, that public comments are valued, and that TCEQ strives to find the balance between economic development and public health.

With regard to a proposed air quality permit for a rock crusher facility near Quinlan, Texas (Air Quality Permit 174388), please accept this letter as my formal opposition to the approval of this air quality standard permit. I, too, try to seek the balance with economic development interests, private property rights, public safety interests, public health interests, and community interests which is frequently difficult in the legislative process. I support my constituents and their community interests which is my reason for opposing the approval of this permit and ask that you take action to deny the permit after the close of the public comment period.

My constituents near Quinlan, Union Valley, and Royse City are overwhelmingly opposed to this air quality permit and have submitted hundreds of comments to TCEQ in opposition, providing many reasons as to why having a rock crushing facility in their neighborhood would impact air quality and the quality of life in the neighborhood. I have been in communication with a number of constituents directly and have heard the common concerns about how the approval of this permit will impact their community interests in a negative way, including:

- Additional heavy truck traffic on State Highway 276 affecting daily road safety.

COMMITTEES: VICE-CHAIR, STATE AFFAIRS • FINANCE • EDUCATION • LOCAL GOVERNMENT • NOMINATIONS

CAPITOL OFFICE:  
P. O. Box 12068 • SUITE 3E.2  
AUSTIN, TEXAS 78711  
(512) 463-0108

COLLIN COUNTY DISTRICT OFFICE:  
604 SOUTH WATERS ROAD, SUITE 100  
ALLEN, TEXAS 75013  
(972) 908-3424  
angela.paxton@senate.texas.gov

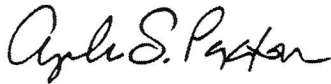
HUNT COUNTY DISTRICT OFFICE:  
2816 Lee Street, Suite A  
Greenville, Texas 75401  
(903) 454-2880

- Significant increase in noise levels affecting quality of life.
- Additional silica dust in the immediate neighborhood which will have an impact on personal health for a number of individuals.

These are just a few of the comments that I have received. I know the noise and traffic are not under the TCEQ review criteria for the air quality standard permit, so I want to especially voice these concerns on behalf of the overall area as I ask you to deny the air quality permit. These concerns have also been raised by the Hunt County Commissioners Court, the Union Valley City Council, and the Quinlan City Council in resolutions opposing this specific air quality permit and those resolutions have been sent to TCEQ as part of the public record.

If you have any questions regarding this letter, please contact my staff. Thank you for addressing this important issue for my constituents and listening to their sincere comments on behalf of southwestern Hunt County.

Blessings,



Angela S. Paxton  
Texas State Senator

Cc: Laurie Gharis, TCEQ Chief Clerk  
TCEQ Commissioners  
TCEQ Intergovernmental Relations Division

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**SENATOR ANGELA S. PAXTON**  
DISTRICT 8

April 22, 2024

Via Email Delivery

Chairman Jon Niermann  
Texas Commission on Environmental Quality  
TCEQ MC 100  
P. O. Box 13087  
Austin, Texas 78711-3087

***Re: Requesting an immediate pause in the permitting processes for permanent rock and concrete crusher standard permit 174388 in Hunt County until the Texas Legislature can provide guidance on the permitting processes and location of new plants.***

Dear Chairman Niermann,

I am in receipt of Lieutenant Governor Patrick's April 16, 2024, letter asking TCEQ to immediately pause the permitting processes for all permanent cement production plants until the Texas Legislature meets in the 89<sup>th</sup> Regular Session to provide guidance on the permitting processes and location of new plants.

The Lieutenant Governor's letter outlined his opposition to the proposed Black Mountain Cement permanent cement kiln in Grayson County. Due to my very similar experience with the pending permit application for Dry Creek Materials' proposed standard permit 174388 for a permanent rock and concrete crusher in Hunt County located in my senate district, I share the Lieutenant Governor's conviction that as elected officials we must look beyond TCEQ's current permitting formulas to the bigger picture of what is best for our communities.

Therefore, I request that TCEQ pause the permitting process for the permanent rock and concrete crusher standard permit 174388 in Hunt County until the 89<sup>th</sup> Regular Legislative Session.

As I stated in my February 16, 2024, letter to Executive Director Keel communicating my formal opposition to approval of this permit, I too seek balance with economic development, private property rights, public safety interests, public health interests, and community interests. I cited as my reason for opposing the permit the overwhelming opposition of my constituents due to the proposed crusher's negative impacts on their community interests.

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HUNT COUNTY DISTRICT OFFICE:  
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[angela.paxton@senate.texas.gov](mailto:angela.paxton@senate.texas.gov)

Union Valley Mayor Waskow has publicly stated that approval of the crusher permit “would be a death sentence to our community and growth and our well-being.” Hunt County Commissioners Court said in its letter to TCEQ opposing the permit that the “County does not promote and will not accept the expansion of business interests at the cost of citizen and taxpayer quality of life especially when it pertains to environmental and air quality concerns.”

Overwhelming citizen opposition has also been shown by more than 1,200 written comments submitted to TCEQ, reportedly a record number regarding a crusher permit and almost all from nearby residents giving health-based and quality of life reasons for opposition. To my knowledge, no comment favored the permit. The large number of communications my office has received also unanimously oppose the permit.

I am very appreciative that at my request, TCEQ conducted a March 21, 2024, informational meeting in Quinlan. This meeting, which I attended in its entirety, drew an estimated 600 attendees. Virtually all wore “Crush the Crusher” opposition stickers. More than 40 speakers, including the environmental attorney for the citizens’ group leading permit opposition, actively engaged in 4 hours of comments, questions and answers with TCEQ representatives that included more than 100 precise technical and procedural questions. Opposition to the permit was overwhelming.

From my previous participation in the Sunset Advisory Commission process, I am well aware of TCEQ’s challenging task to find the balance between economic development and public health. I share these concerns. However, it is clear that plant siting and operating approvals must include not only accurately evaluating and assuring public health protections, but also acknowledging and weighing the many other kinds of risks especially to rural counties and citizens.

I specifically request a pause on the pending permit application for Dry Creek Materials’ standard permit 174388 for a permanent rock and concrete crusher in Hunt County. Because the entire concrete production process has significant potential for harmful pollutant emissions that must be carefully controlled, as well as other significant potential harmful economic and quality of life impacts if located in close proximity to communities, the Texas Legislature should comprehensively evaluate these impacts and provide guidance in the upcoming legislative session.

Blessings,



Angela S. Paxton  
Texas State Senator

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Letter to Chairman Jon Niermann  
April 22, 2024  
Page 3

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Enclosures

cc: Executive Director Kelly Keel, TCEQ, MC 109  
Chief Clerk Laurie Gharis, TCEQ MC 105  
Commissioner Bobby Janecka, TCEQ MC 100  
Commissioner Catarina Gonzales, TCEQ MC 100  
Director of Intergovernmental Relations Katherine Thigpen, TCEQ

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**HUNT COUNTY DISTRICT OFFICE:**  
2816 Lee Street, Suite A  
Greenville, Texas 75401  
(903) 454-2880



State Representative-Elect Jill Dutton, HD2  
411 VZCR 4503, Ben Wheeler, TX 75754  
903-355-8903; Jill@DuttonforTexas.com

February 9, 2024

Office of the Chief Clerk, MC 105  
Texas Commission on Environmental Quality  
PO Box 13087  
Austin, TX 78711-3087

RE: Permit application 174388 -- proposed Hunt County concrete crushing plant

To Whom It May Concern:

As Representative-Elect for Texas House District 2, I would like to provide comments below regarding a permit application for a concrete crushing business on State Highway 276 in Southwest Hunt County. Thank you in advance for acknowledging receipt of this letter and adding me to your list for all communications regarding this permit application.

Private property rights are one of the pillars of Texas' strong economy, legal system, and moral obligations. I am a strong advocate for those rights and Texans' ability to accumulate, hold, delegate, rent, transfer, and sell their property. However, no property exists in isolation. This simple fact has led to thousands of ordinances and statutory law outlining the rights and obligations of property owners whose properties abut and potentially affect a community's ability to grow and flourish. We all share a basic understanding of the underlying right of a property owner to enjoy and use their property within certain "reasonable" limits. The balancing of the reasonable use of property, taking into consideration the rights of their neighbors and overarching community to reasonably use their own property, creates the underlying tension in Texas law, or in this case, the granting of a permit.

Having listened to all affected parties, and having viewed the situation personally on the ground, I strongly oppose granting a permit to allow a concrete rock crushing operation at the applicant's proposed site on State Highway 276 in Southwest Hunt County. I request that TCEQ deny this permit.

It is my understanding that significant evidence of public opposition has been documented by over 700 residents who have individually submitted comments to TCEQ opposing the granting of the permit. In my 25 years in the public arena, I have rarely seen this degree of active citizen opposition and I commend these active citizens for their professionalism, diligence in following due process, and perseverance of the preservation of their community.

Residents who have studied this application note that significant potential negative impacts could include, but are not limited to:

- Exposure to **carcinogenic silica dust** in air and water, with human **health consequences** including incurable silicosis as well as COPD, asthma, lung cancer, cardiovascular effects, and more
- Added **heavy tractor trailer truck traffic** on 4 major local highways and 6 local county/city roads – estimated 52,800 truck trips per year in 15-, 18-, and 25-ton payload in tri-axle and tandem axle trucks – more road repair costs, reduced public safety, greater congestion, longer commute times
- **Reduced property values** in affected areas – threatening residents' life savings, school funding, etc.
- **Significant added noise** from heavy truck traffic as well as the crushing facility itself
- **Lower citizen and taxpayer quality of life**
- **Deterrent to future businesses, retail, and housing**

I wholeheartedly agree with the conclusions and opposition of the elected officeholder entities who have also weighed in on this issue and met with residents. Highlights of their unanimously adopted resolutions in opposition are excerpted below. These elected bodies directly represent over 100,000 Hunt County residents, and since Hwy. 276



is a major thoroughfare through this growing region, many additional residents and businesses of House District 2 and neighboring communities may also be negatively affected.

**HUNT COUNTY COMMISSIONERS COURT (12-27-23):** "has always been a supporter of free market enterprise and the capitalist ideals that have allowed the County to grow and flourish both economically and socially. The County, however, does not promote and will not accept the expansion of business interests at the cost of citizen and taxpayer quality of life especially when it pertains to environmental and air quality concerns.... The current application...creates this type of situation and the County of Hunt, Texas is opposed to the application."

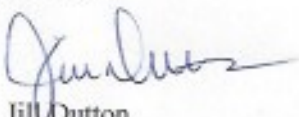
**QUINLAN, TEXAS CITY COUNCIL (12-11-23):** "rock and concrete crushers have significant potential to negatively impact noise and air quality conditions.... Will negatively impact...traffic and roadway conditions with an increase in heavy trucks.... poses a risk to the health, safety and welfare of local residents of the City, its ETJ and the surrounding area.... City Council of the City of Quinlan opposes [the permit application]."

**UNION VALLEY, TEXAS CITY COUNCIL (12-16-23):** "significant potential to overall negatively impact all environmental and natural resources along with noise pollution and air quality conditions...local traffic and roadway conditions.... Poses a risk to the health, safety, and welfare of local residents of the City, its ETJ and the surrounding area."

As a courtesy, please coordinate with me before finalizing details of TCEQ's promised local public meeting on this permit, since I plan to attend. As an officeholder, I am firmly committed to public participation. Therefore, I request you provide at least 60 days' public notice before the meeting, including notices to all individual commenters and recurring newspaper notices to communities along the Rockwall-Royse City-Union Valley-Quinlan corridor that would be affected by this concrete crushing business. It is my understanding that public participation was disadvantaged by the initial comment period's holiday timing and lack of required newspaper and signage notice; therefore, a reasonable 60 days' notice is especially important to the surrounding property owners as well as nearby businesses and communities.

Please provide your summary and documentation of past citizen complaints and TCEQ investigations, violation notices, fines, or enforcement actions of any kind regarding other facilities operated by this applicant, in the name of this company or any affiliated companies with which this applicant might be associated. Since this is the applicant's first attempt to obtain a crusher plant permit, the company's past track record as a sand pit operator may be pertinent. If you approve this permit, I request that that I be notified of all future complaints, investigations, violation notices, fines or enforcement actions regarding this plant or its operator.

Sincerely,



Jill Dutton  
Representative-Elect  
Texas House District 2

Attachments: Resolutions in opposition passed by Hunt County Commissioners Court, Quinlan City Council, Union Valley City Council

cc: Chairman Jon Niermann  
Commissioner Emily Lindley  
Commissioner Bobby Janecka - MC 100, Texas Commission on Environmental Quality, PO Box 13087, Austin, TX 78711



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# TEXAS HOUSE *of* REPRESENTATIVES

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## Jill Dutton

State Representative, District 2

VIA EMAIL  
May 6, 2024

Chairman Jon Niermann  
Texas Commission on Environmental Quality  
TCEQ MC 100  
PO Box 13087  
Austin, TX 78711-3087

RE: Permit Application 174388 – Dry Creek Materials LLC concrete crushing plant

Dear Chairman Niermann,

I am in receipt of TCEQ's Response to Comments and TCEQ's authorization letter to Dry Creek Materials LLC for a concrete crushing plant located at 4310 Hwy. 276 W., Quinlan, TX in Hunt County. Having listened to all affected parties and having viewed the situation personally on the ground earlier this year, I strongly opposed the granting of this permit at the applicant's proposed site in a letter to TCEQ dated February 9, 2024.

Private property rights are one of the pillars of Texas' strong economy, legal system, and moral obligations. I am a strong advocate for those rights and Texans' ability to accumulate, hold, delegate, rent, transfer, and sell their property. However, no property exists in isolation. This simple fact has led to thousands of ordinances and statutory law outlining the rights and obligations of property owners whose properties abut and potentially affect a community's ability to grow and flourish. We all share a basic understanding of the underlying right of a property owner to enjoy and use their property within certain "reasonable" limits. The balancing of the reasonable use of property, taking into consideration the rights of their neighbors and overarching community to reasonably use their own property, creates the underlying tension in Texas law, or in this case, the granting of a permit.

**Via this letter, I am requesting TCEQ Commissioners immediately pause this permit and the applicant's authorization to construct and operate under this permit based on the following additional information, which TCEQ's Executive Director was unable to consider prior to authorizing the above referenced permit application (documents referenced can be provided upon request):**

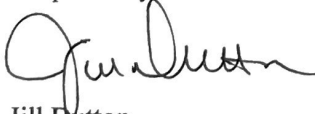
- Lt. Governor Dan Patrick's letter dated April 16, 2024 calling for an immediate pause to the permitting process for all permanent cement production plants until the Texas Legislature meets in the 89<sup>th</sup> Regular Session to provide guidance on the permitting processes and location of new plants. While his call is for production plants, the Lt. Governor clearly finds cause for concern of human

and economic health of our communities as it relates to the concrete industry and the permitting process.

- Senator Angela Paxton's letter dated April 22, 2024 calling for an immediate pause in the permitting processes for permanent rock and concrete crusher standard permit 174388 in Hunt County until the Texas Legislature can provide guidance on the permitting processes and location of new plants.
- Public opposition has been documented by well over 1,200 residents who have individually submitted comments to TCEQ opposing the granting of this permit. In my 25 years in the public arena, I have rarely seen this degree of active citizen opposition.
- A public meeting held on March 21, 2024 drew approximately 600 attendees with almost 80 citizens signed up to speak against the permit approval. Senator Paxton and I both attended this meeting in its entirety, which lasted over 4 hours in length. Citizens spoke respectfully and articulately with thought-provoking as well as heartfelt information and documented reasons for serious concern. It is my hope you take the time to review the public comments and the RTC of record.
- An Approved Investigation with multiple violations (Investigation No. 1974645; Incident No. 418888) regarding Dry Creek Pit 2 (responsible party of Dry Creek Materials LLC; Tony McLarry), which substantiates alleged permit violations that mine dewatering was occurring without controls at the facility and required monitoring had not occurred dating back to December 27, 2022.
- An Approved Investigation with multiple violations (Investigation No. 1974017; Incident No. 417954) regarding Dry Creek Pit 1 (responsible of Dry Creek Materials LLC; Tony McLarry), which substantiates alleged permit violations regarding sediment tracking onto the roadway for violations on March 20, 2024.
- Per a letter dated April 9, 2024, the EPA has requested TCEQ conduct a review of both the air quality standard permit for **concrete crushers AND concrete batch plants** and letter dated April 23, 2024, TCEQ committed to conduct this review. This is not only substantively, materially, and procedurally significant for our request to pause this permit for a concrete crusher in Hunt County, but also clearly indicates that there is a need to pause until the Legislature can weigh in on BOTH concrete crusher permits as well as permanent cement production plants' processes as referenced in the Lt. Governor's and Senator Paxton's requests for pause.

I respectfully ask TCEQ to pause the authorization of the concrete crushing permit until the 89<sup>th</sup> Texas Legislature can meet and discuss during Regular Session.

Respectfully,



Jill Dutton  
State Representative, HD2

cc: Lt. Governor Dan Patrick  
Senator Angela Paxton  
Hunt County Judge Bobby Stovall  
Hunt County Commissioner Pct. 2 David Monroe  
Mayor of Quinlan Jackey Goleman  
Executive Director Kelly Keel, TCEQ, MC 109  
Chief Clerk Laurie Gharis, TCEQ, MC 105  
Commissioner Bobby Janecka, TCEQ, MC 100  
Commissioner Catarina Gonzales, TCEQ, MC 100  
Director of Intergovernmental Relations Clay Kelley, TCEQ



18,543

December 27, 2023

FILED FOR RECORD  
at 1:30 o'clock P M

DEC 27 2023

BECKY LANDRUM  
County Clerk, Hunt County, Tex.  
By

To Whom It May Concern,

Re: Proposed Air Quality Registration Number 174388

**Bobby W. Stovall**  
Hunt County Judge

Jessica R. Sims  
Executive Assistant

903.408.4146  
903.408.4299 Fax

Post Office Box 1097  
Greenville, TX  
75403-1097

Hunt County, Texas has always been a supporter of free market enterprise and the capitalist ideals that have allowed the County to grow and flourish both economically and socially. The County, however, does not promote and will not accept the expansion of business interests at the cost of citizen and taxpayer quality of life especially when it pertains to environmental and air quality concerns.

The current application for permanent rock and concrete crushers at 4916 Hwy 276 W, Quinlan, Hunt County, Texas 75474 submitted by Dry Creek Materials LLC, 5221 Interstate 30 W, Caddo Mills, Texas 75135 creates this type of situation and the County of Hunt, Texas is opposed to the application.

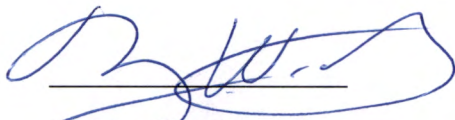
The Application itself is flawed and would not withstand strict legal scrutiny for several reasons. First of which is that the proposed address for the crushers as included on the permit application is incorrect. The location address on the application, 4196 Hwy 276 W, is actually that of the real property parcel directly to the east of the proposed rock and concrete crusher's location. That true address is 4310 Hwy 276 W, Quinlan, TX 75474 which corresponds to the real property parcel directly to the west of 4196 Hwy 276 W. The incorrect permit application address is a material and fundamental flaw in the permit application that prevents the public from accurately determining the location and distance the proposed source of air contaminants and their proximity to private homes, schools, or place of worship.

Furthermore, the applicant has not complied with the notice requirements of the Texas Health and Safety Code Section 382.056 in that they have not published notice in a local newspaper of general circulation (382.056(a)), nor have they placed a physical sign at the location of the facility

notifying the public of the application for an air quality permit nor stating the manner in which the TCEQ may be contacted for further information (382.056(c)). While the applicant has 30 days from the date on which the Commission finds that the application is technically complete to have the newspaper notice published, they have failed to do so as of December 22<sup>nd</sup> and per the Quinlan newspaper of record, the Greenville Herald Banner, no such notice has been provided for publication in the Saturday, December 23, 2023, newspaper either. This failure by the applicant to provide the statutorily required notice to the public concerning the potential threats to the air quality in their community demands that their application be rejected.

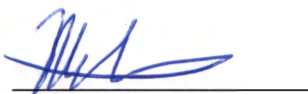
Lastly, the location of the proposed source of air contaminants is within 440 yards of a residence, school or place of worship which is prohibited by the Texas Health and Safety Code Section 382.065(a). The residence located on the property addressed as 4196 Hwy 276 W, Quinlan, TX 75474, which, as stated earlier, is not the correct address for the permit facility, is within this prohibited radius of the proposed location.

Sincerely,

  
\_\_\_\_\_

Bobby W. Stovall

Hunt County Judge

  
\_\_\_\_\_

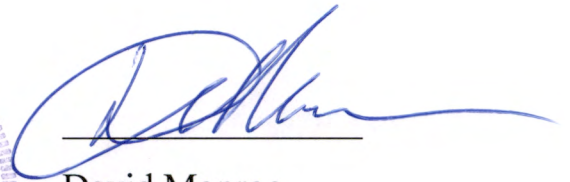
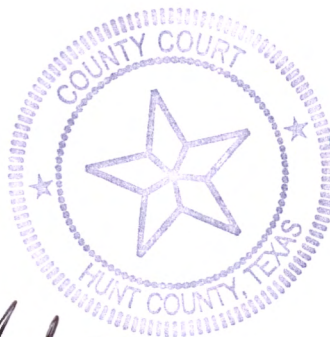
Mark Hutchins

Commissioner Precinct 1

  
\_\_\_\_\_

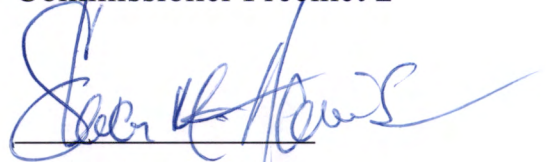
Phillip Martin

Commissioner Precinct 3

  
\_\_\_\_\_

David Monroe

Commissioner Precinct 2

  
\_\_\_\_\_

Steven M. Harrison

Commissioner Precinct 4

**RESOLUTION NO. 2023-12-01**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF QUINLAN, TEXAS,  
OPPOSING AN APPLICATION FOR AN AIR QUALITY PERMIT FOR  
PERMANENT ROCK AND CONCRETE CRUSHERS, SUBMITTED BY DRY CREEK  
MATERIALS; PROPOSED AIR QUALITY REGISTRATION NUMBER 174388.**

**WHEREAS**, an application for an air quality standard permit for permanent rock and concrete crushers has been submitted to the Texas Commission of Environmental Quality proposing to be located near the City of Quinlan, Texas; and

**WHEREAS**, if approved, the rock and concrete crushers have significant potential to negatively impact noise pollution and air quality conditions for nearby residents, including citizens of Quinlan, Texas; and

**WHEREAS**, if approved, the rock and concrete crushing operations will negatively impact local traffic and roadway conditions with an increase in heavy trucks serving this operation; and

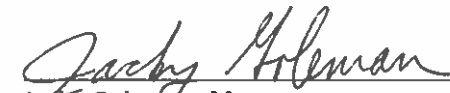
**WHEREAS**, the City Council of the City of Quinlan opposes the Commission's approval of this permit, as it poses a risk to the health, safety and welfare of local residents of the City, it's ETJ and the surrounding area.


**NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF QUINLAN, TEXAS:**

**SECTION 1:**

**THAT**, the City Council of the City of Quinlan opposes the Air Quality Standard Application submitted by Dry Creek Materials, LLC, proposed Air Quality Registration Number 174388; and in recognition whereof, do hereby affix our signatures.

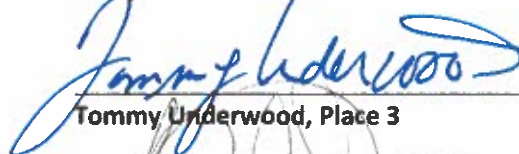
**PASSED AND APPROVED** in a meeting of the City Council of the City of Quinlan, Texas, held on the 11th day of December, 2023

  
\_\_\_\_\_  
Jacky Goleman, Mayor

  
\_\_\_\_\_  
Bill Slaughter, Place 2

  
\_\_\_\_\_  
Michelle Mayberry, Mayor Pro Tem, Place 6

  
\_\_\_\_\_  
Dwayne Bowman, Place 1

  
\_\_\_\_\_  
Tommy Underwood, Place 3

  
\_\_\_\_\_  
Miguel Serrano, Place 5

ATTEST:   
\_\_\_\_\_  
Laura Kennemer, City Secretary

RESOLUTION NO. 2023-001

**A RESOLUTION OF THE CITY COUNCIL, OF THE CITY OF UNION VALLEY, TEXAS OPPOSING AN APPLICATION FOR AN AIR QUALITY PERMIT FOR PERMANENT ROCK AND CONCRETE CRUSHERS, SUBMITTED BY DRY CREEK MATERIALS; PROPOSED AIR QUALITY REGISTRATION NUMBER 174388**

- WHEREAS, an application for an air quality standard permit for permanent rock and concrete crushers has been submitted to the Texas Commission of Environmental Quality proposing to be located near the City of Union Valley, Texas; and
- WHEREAS, if approved, the rock and concrete crushers have significant potential to overall negatively impact all environmental and natural resources along with noise pollution and air quality conditions for nearby residents, including citizens of City of Union Valley, Texas; and
- WHEREAS, if approved, the rock and concrete crushing operations will negatively impact local traffic and roadway conditions with an increase in heavy trucks serving this operation; and
- WHEREAS, the City Council of the City of Union Valley opposes the Commission's approval of this permit, as it poses a risk to the health, safety and welfare of local residents of the City, its ETJ and the surrounding area.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF UNION VALLEY, TEXAS:

THAT, THE City Council of the City of Union Valley opposes the Air Quality Standard Application submitted by Dry Creek Materials, LLC, proposed Air Quality Registration Number 174388, and in recognition whereof, do hereby affix our signatures.

PASSED AND APPROVED in a meeting of the City Council of the City of Union Valley, Texas, held on the 16<sup>th</sup> day of December, 2023.

ATTEST:



Craig Waskow, Mayor

Therasa Curtis, Commission #1

ABSENT

Dianna Clark, Commissioner #2

City Secretary

**RESOLUTION NO. 2024-02-01R**

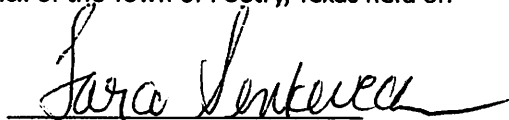
**A RESOLUTION OF THE TOWN COUNCIL, OF THE TOWN OF POETRY, TEXAS OPPOSSING AN APPLICATION FOR AN AIR QUALITY PERMIT FOR PERMANENT ROCK AND CONCRETE CRUSHERS, SUBMITTED BY DRY CREEK MATERIALS; PROPOSED AIR QUALITY REGISTRATION NUMBER 174388.**

- WHEREAS,** an application for an air quality standard permit for permanent rock and concrete crushers has been submitted to the Texas Commission of Environmental Quality proposing to be located within a 2.7 miles to a 9-mile radius Impact zone of Poetry, Texas; and
- WHEREAS,** if approved, the rock and concrete crushers have significant potential to overall negatively impact all environmental and natural resources along with noise pollution and air quality conditions for nearby residents, schools, including the citizens of Town of Poetry, Texas; and
- WHEREAS,** If approved, the rock and concrete crushing operations will negatively impact Local traffic and roadway conditions with an increase in heavy trucks serving this operation; and
- WHEREAS,** The Town Council of the Town of Poetry opposes the Commission's approval of this permit, as it poses a risk to the health, safety, and welfare of local residents of the Town, its ETJ and the surrounding area.

**NOW, THEREFORE, BE IT RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF POETRY, TEXAS:**

THAT, THE Town Council of the Town of Poetry, Texas opposes the Air Quality Standard Application Submitted by Dry Creek Materials, LLC, proposed Air Quality Registration Number 174388, and in recognition whereof, do hereby affix our signature.

PASSED AND APPROVED in a meeting of the Town Council of the Town of Poetry, Texas held on February 15<sup>th</sup>, 2024.



**Tara Senkevech, Mayor**



**Attest: Town Secretary**



## **EXHIBIT 3**



**SENATOR ANGELA S. PAXTON**  
DISTRICT 8

June 5, 2024

*Via Email Delivery to Intergovernmental Relations Division*

Chairman Jon Niermann  
Texas Commission on Environmental Quality  
TCEQ MC 109  
P. O. Box 13087  
Austin, Texas 78711-3087

***Re: Urgent Extension Request regarding Air Quality Permit 174388***

Dear Chairman Niermann,

Thank you for your service on the Texas Commission on Environmental Quality. Your leadership and expertise is invaluable to the State of Texas.

Today, I ardently request you grant a 45-day extension for consideration of the Motion to Overturn the air quality permit 174388 for a rock and concrete crusher facility near Quinlan, Texas, in Hunt County. In February and April, I sent letters in formal opposition of this permit where I outlined concerns such as air quality as it relates to public health, as well as the overall conservation effect not being fully examined.

Granting the 45-day extension provides additional time to provide due consideration to this permit and is timely as TCEQ initiates a review of its Protectiveness Review regulatory scheme that underpins crusher and batch plant Standard Permits spurred by the Lieutenant Governor's request to TCEQ to "immediately pause the permitted processes for all permanent cement production." This permit has an equivalent impact upon my constituents and their community; accordingly, it makes sense to also push pause on this permit.

Thank you for your consideration and attention to this important matter. If you have any questions, please don't hesitate to reach out to me or my staff.

Blessings,

A handwritten signature in black ink that reads "Angela S. Paxton".

Angela S. Paxton  
Texas State Senator

COMMITTEES: VICE-CHAIR, STATE AFFAIRS • FINANCE • EDUCATION • LOCAL GOVERNMENT • NOMINATIONS

CAPITOL OFFICE:  
P. O. Box 12068 • SUITE 3E.2  
AUSTIN, TEXAS 78711  
(512) 463-0108

COLLIN COUNTY DISTRICT OFFICE:  
604 SOUTH WATTERS ROAD, SUITE 100  
ALLEN, TEXAS 75013  
(972) 908-3424

HUNT COUNTY DISTRICT OFFICE:  
2816 Lee Street, Suite A  
Greenville, Texas 75401  
(903) 454-2880

[angela.paxton@senate.texas.gov](mailto:angela.paxton@senate.texas.gov)

Letter to Chairman Jon Niermann  
June 5, 2024  
Page 2

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cc: Executive Director Kelly Keel  
Chief Clerk Laurie Gharis  
Commissioner Bobby Janecka  
Commissioner Catarina R. Gonzales  
TCEQ Intergovernmental Relations Division

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COMMITTEES: VICE-CHAIR, STATE AFFAIRS • FINANCE • EDUCATION • LOCAL GOVERNMENT • NOMINATIONS

**CAPITOL OFFICE:**  
P. O. Box 12068 • SUITE 3E.2  
AUSTIN, TEXAS 78711  
(512) 463-0108

**COLLIN COUNTY DISTRICT OFFICE:**  
604 SOUTH WATTERS ROAD, SUITE 100  
ALLEN, TEXAS 75013  
(972) 908-3424  
[angela.paxton@senate.texas.gov](mailto:angela.paxton@senate.texas.gov)

**HUNT COUNTY DISTRICT OFFICE:**  
2816 Lee Street, Suite A  
Greenville, Texas 75401  
(903) 454-2880

**From:** [daniel@scottraylaw.com](mailto:daniel@scottraylaw.com) <[daniel@scottraylaw.com](mailto:daniel@scottraylaw.com)>

**Sent:** Tuesday, June 4, 2024 5:13 PM

**To:** [Jon.Niermann@tceq.texas.gov](mailto:Jon.Niermann@tceq.texas.gov); [Bobby.Janecka@tceq.texas.gov](mailto:Bobby.Janecka@tceq.texas.gov); [Catarina.Gonzales@tceq.texas.gov](mailto:Catarina.Gonzales@tceq.texas.gov)

**Cc:** [Jim.Rizk@tceq.texas.gov](mailto:Jim.Rizk@tceq.texas.gov); [Susie.Smith@tceq.texas.gov](mailto:Susie.Smith@tceq.texas.gov); [Krista.Kyle@tceq.texas.gov](mailto:Krista.Kyle@tceq.texas.gov); [Farrah.Court@tceq.texas.gov](mailto:Farrah.Court@tceq.texas.gov); [Jessie.Powell@tceq.texas.gov](mailto:Jessie.Powell@tceq.texas.gov); [Kimberly.Robertson@tceq.texas.gov](mailto:Kimberly.Robertson@tceq.texas.gov); [bstovall@huntcounty.net](mailto:bstovall@huntcounty.net); David Monroe <[dmonroe@huntcounty.net](mailto:dmonroe@huntcounty.net)>

**Subject:** Hunt County Commissioners Court - Extension Request for Permit #174388

Chairman Niermann, Commissioner Janecka & Commissioner Gonzales,

Good afternoon. This office represents the Commissioners Court of Hunt County, Texas. The Hunt County Commissioners Court respectfully requests that the TCEQ grant a 45-day extension before the automatic approval of Permit #174388 to give the Commission appropriate time to review the Motion to Overturn Permit #174388 beyond the current June 5, 2024 deadline.

The Hunt County Commissioners Court rarely becomes involved in individual permitting decisions. However, in light of the attached documents, which were generated by County residents and forwarded to the County, the Court believes this permit merits further review – especially in light of the recent efforts to revise the permitting process related to rock and concrete crushers and concrete batch plant standards.

Based in information received by the Commissioners Court, it appears that there is a high level of involvement within the community surrounding the proposed location – including over 1200 comments opposing the permits, and over 500 citizens attending the Mach 21, 2024, Public Meeting to oppose in person. All affected elected governing bodies not only oppose this permit, but are also in agreement with the concerns of Lt. Gov. Dan Patrick, State Sen. Angela Paxton, and State Representative Jill Dutton – that this permit in particular warrants additional careful review.

The Commissioners Court very much appreciate the Commission’s work keeping all Texas citizens safe, and looks forward to working with you on this permit review should that be requested.

Sincerely,

DANIEL W. RAY



2608 STONEWALL STREET | POST OFFICE BOX 1353  
GREENVILLE, TEXAS 75401-1353  
P. 903.454.0044 | F. 903.454.1514  
E: [DANIEL@SCOTTRAYLAW.COM](mailto:DANIEL@SCOTTRAYLAW.COM)

1400 N. COIT RD., SUITE 406  
MCKINNEY, TEXAS 75071  
P. 972.525.5872 | F. 903.454.1514

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From: [jim@jshepherdlaw.com](mailto:jim@jshepherdlaw.com) <[jim@jshepherdlaw.com](mailto:jim@jshepherdlaw.com)>  
Sent: Wednesday, June 5, 2024 3:51 PM  
To: 'Jon.Niermann@tceq.texas.gov' <[Jon.Niermann@tceq.texas.gov](mailto:Jon.Niermann@tceq.texas.gov)>;  
'Catarina.Gonzales@tceq.texas.gov' <[Catarina.Gonzales@tceq.texas.gov](mailto:Catarina.Gonzales@tceq.texas.gov)>  
Cc: 'Jim.Rizk@tceq.texas.gov' <[Jim.Rizk@tceq.texas.gov](mailto:Jim.Rizk@tceq.texas.gov)>; 'Susie.Smith@tceq.texas.gov'  
<[Susie.Smith@tceq.texas.gov](mailto:Susie.Smith@tceq.texas.gov)>; 'Krista.Kyle@tceq.texas.gov' <[Krista.Kyle@tceq.texas.gov](mailto:Krista.Kyle@tceq.texas.gov)>;  
'Farrah.Court@tceq.texas.gov' <[Farrah.Court@tceq.texas.gov](mailto:Farrah.Court@tceq.texas.gov)>; 'Jessie.Powell@tceq.texas.gov'  
<[Jessie.Powell@tceq.texas.gov](mailto:Jessie.Powell@tceq.texas.gov)>; 'Kimberly.Robertson@tceq.texas.gov'  
<[Kimberly.Robertson@tceq.texas.gov](mailto:Kimberly.Robertson@tceq.texas.gov)>; Craig Waskow <[cwaskow5056@gmail.com](mailto:cwaskow5056@gmail.com)>  
Subject: FW: City of Union Valley - Extension Request for Permit #174388

**Chairman Niermann, Commissioner Janecka & Commissioner Gonzales,**

**Greetings. It is my honor to serve as city attorney for the City of Union Valley Texas. Mayor Craig Waskow and the commissioners of the city request that you grant the extension which has been requested, schedule a public hearing , consider the Motion to Overturn, and give serious consideration of the facts and testimony given by ALL the governing bodies opposing this permit. We believe that the facts presented at the public hearing regarding Dr. Gasparini's findings that were not clearly addressed by the Executive Director. These are health, safety and welfare issues that we believe are well founded, and which are more than sufficient to justify the widespread opposition of experts and laymen alike to this proposed project. Speaking for the City whose extraterritorial jurisdiction is ground zero for this dust bomb, we do sincerely request you take the actions described above.**

**Regards,  
Jim Shepherd  
City Attorney of Union Valley**

**James E. Shepherd**  
**Shepherd Law Firm**  
1901 North Central Expressway, Suite 430  
Richardson, TX 75080  
Phone- 972-234-3117  
Email-- [Jim@JShepherdLaw.com](mailto:Jim@JShepherdLaw.com)



Fellow of the  
**Texas Bar College**  
A Professional Society of Legal Scholars



From: **Craig Waskow** <[uvmayor@gmail.com](mailto:uvmayor@gmail.com)>

Date: Tue, Jun 4, 2024 at 11:18 AM

Subject: Air Quality Standard Permit for Dry Creek Materials, Number 174388,

To: <[Jon.Niermann@tceq.texas.gov](mailto:Jon.Niermann@tceq.texas.gov)>, <[Bobby.Janecka@tceq.texas.gov](mailto:Bobby.Janecka@tceq.texas.gov)>, <[Catarina.Gonzales@tceq.texas.gov](mailto:Catarina.Gonzales@tceq.texas.gov)>

Cc: <[Jim.Rizk@tceq.texas.gov](mailto:Jim.Rizk@tceq.texas.gov)>, <[Susie.Smith@tceq.texas.gov](mailto:Susie.Smith@tceq.texas.gov)>, <[Krista.Kyle@tceq.texas.gov](mailto:Krista.Kyle@tceq.texas.gov)>,

<[Farrah.Court@tceq.texas.gov](mailto:Farrah.Court@tceq.texas.gov)>, <[Jessie.Powell@tceq.texas.gov](mailto:Jessie.Powell@tceq.texas.gov)>, <[Kimberly.Robertson@tceq.texas.gov](mailto:Kimberly.Robertson@tceq.texas.gov)>,

<[Jill.Dutton@house.texas.gov](mailto:Jill.Dutton@house.texas.gov)>

Honorable Commissioners,

I'm writing to you today in regards to the application for an Air Quality Standard Permit for Dry Creek Materials, Number 174388, for a permanent Rock and Concrete Crusher located in Hunt County Texas, in the ETJ for the City of Union Valley, TX.

I oppose this crusher at the location proposed for several reasons, all of them revolve around quality of health for our community and the surrounding areas. I can't express deeply enough the impact it is having and will have well into the future. I know air quality is what this permit addresses but the overall conservation effect has not been fully examined. I believe a moratorium pending legislative action in the next session would be very beneficial.

At the public hearing testimony was provided by three individuals who are conducting small private schools just north of the facility. All of which are now considering relocating not knowing the effects of the air quality for the children. Royse City ISD has recently purchased 121 acres approximately 5 miles from the proposed location. Is this far enough away?

The massive increase in heavy truck traffic is already affecting our city. Recent changes to our highway traffic patterns by TXDOT have increased the traffic and placed more traffic and a heavier burden on the roads surrounding the proposed site. Residents have expressed their fear of leaving their homes to travel for groceries, doctor appointments and any needs they may have. The huge increase in truck traffic is very noticeable not only in the debris left on our roadways but noise and air quality emitted by their engines. The highway debris is turning into dust, also affecting our air quality.

I have had discussions with developers wishing to create new subdivisions. We are a community of 1 acre plus lots in what was a very desirable area. The questionable air quality is leaving them questioning whether to develop or not. While we are not aggressively trying to grow our city, reality is others wish to enjoy this community. The adverse effect of our air quality will limit our growth.

- I'm appealing to you to grant yourselves an allowable 45-day extension for consideration of the Motion to overturn beyond the current June 5 deadline.
- Vote in a public agenda meeting to overturn the permit.
- Pause permit implementation at this time since TCEQ is initiating a review of its Protectiveness Review regulatory scheme that underpins crusher and batch plant Standard Permits.
- Pause further consideration, action or approval on this permit (and on all crushers and batch plant permits as well as cement production facilities) until Legislature provides guidance as suggested by Lt. Gov. Dan Patrick, State Sen. Angela Paxton, and State Rep. Jill Dutton.

I am deeply concerned about our City, Community, and environment. As you can see, there are so many factors to consider. If approved this will be an everlasting detriment to our community.

Thank you for your consideration.

Craig Waskow  
Mayor City of Union Valley, TX