

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

October 18, 2024

Laurie Gharis, Chief Clerk
Texas Commission on Environmental Quality
P.O. Box 103087, MC 105
Austin, Texas 78711-3087

Re: Executive Director's Response Brief to the Motion to Overturn
North Texas Natural Select Materials, LLC
Air Quality Permit No. 175198 TCEQ Docket 2024-1583-AIR

Dear Ms. Gharis:

Enclosed for filing is the Executive Director's Response Brief to the Motion to Overturn in the above-entitled matter.

If you have any questions, please do not hesitate to call me at extension 5423.

Sincerely,

A handwritten signature in blue ink that reads "Elizabeth Black".

Elizabeth Black
Staff Attorney
Environmental Law Division

**TCEQ AIR QUALITY STANDARD PERMIT FOR A PERMANENT ROCK AND
CONCRETE CRUSHER REGISTRATION NUMBER 175198**

APPLICATION BY	§	BEFORE THE
NORTH TEXAS NATURAL SELECT	§	
MATERIALS LLC; PERMANENT ROCK	§	TEXAS COMMISSION ON
AND CONCRETE CRUSHER	§	
DENISON, GRAYSON COUNTY	§	ENVIRONMENTAL QUALITY

EXECUTIVE DIRECTOR'S RESPONSE TO THE MOTIONS TO OVERTURN

TO THE HONORABLE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY CHAIRMAN
NIERMANN, AND COMMISSIONERS JANECKA AND GONZALES:

COMES NOW the Executive Director of the Texas Commission on Environmental
Quality (TCEQ or Commission) and files this Brief in Response to the Motions to Overturn
(MTO) the decision by the Executive Director to approve North Texas Natural Select
Materials LLC's initial issuance of Air Quality Standard Permit Registration No. 175198
for a Permanent Rock and Concrete Crusher and in support thereof shows the following:

I. Introduction

North Texas Natural Select Materials, LLC (Applicant or NTNSM) has applied to
TCEQ for an Air Quality Standard Permit for Permanent Rock and Concrete Crushers
(Standard Permit) under Texas Clean Air Act (TCAA) § 382.05195. This permit will
authorize the Applicant to construct a Permanent Rock and Concrete Crusher, a new
facility that may emit air contaminants. The proposed plant location is found using the
following driving directions: from the intersection of Cleve Cole Road and Fannin
Avenue, travel 0.42 miles north along Fannin Avenue, and the site entrance will be to the
west, Denison, Grayson County, Texas 75021. Contaminants authorized under this
permit include particulate matter, including particulate matter with diameters of 10
microns or less (PM₁₀), and 2.5 microns or less (PM_{2.5}).

The permit application was received by TCEQ on January 29, 2024, and technical review was completed on April 5, 2024. The Notice of Application for an Air Quality Standard Permit for a Permanent Rock and Concrete Crusher (public notice) for this permit application was published in English on April 9, 2024, in the *Herald Democrat* and in Spanish on April 9, 2024, in *La Prensa Comunidad*. The notice of public meeting was mailed on June 27, 2024, and a public meeting was held on August 1, 2024, at the Kidd-Key Auditorium, 400 North Elm Street, Sherman, Texas 75090. The public comment period ended on August 1, 2024, at the close of the public meeting. On September 4, 2024, the TCEQ executive director issued the application in accordance with 30 TAC § 50.135. On October 11, 2024, the Executive Director filed a response to comments (RTC) for all timely comments made during the public comment period.

II. Reply to Motion for Rehearing

An MTO is a remedy provided by 30 TAC § 50.139. There were four timely filed MTOs regarding the Executive Director's decision to issue the authorization to NTNSM for a Permanent Rock and Concrete Crusher, Registration No. 175198.

III. Location in relation to residences at 4778 S. Fannin Road and Montes Lane

John Huckle's MTO contends that his family's residence at 4778 S. Fannin Road is within 440 yards of the proposed rock crusher. Anna Wylie's MTO contends that TCEQ did not consider the residence at 4778 S. Fannin Road, nor the six other residences along Montes Lane. Edna Spillers' MTO, filed on behalf of Mary and Andy Spillers, contends that their residence is across the street of the facility, within 440 yards of the proposed rock crusher.

The TCEQ does not have jurisdiction to consider plant location choice by an applicant when determining whether to approve or deny a permit unless a statute or rule imposes specific distance requirements enforceable by TCEQ. With respect to Permanent Rock and Concrete Crushers, Texas Clean Air Act (TCAA) § 382.065(a) prohibits the operation of a concrete crushing facility within 440 yards of a building in use as a single family or multi-family residence, school, or place of worship, at the time the application for a permit to operate the facility is filed with the commission. Additionally, the Air Quality Standard Permit for Permanent Rock and Concrete Crushers §§ 1(B) and 3(C) require that the crusher and all associated facilities shall be located no less than 440 yards from any building in use as a single or multi-family residence, school, or place of worship. Pursuant to TCAA § 382.065(a), the distance is measured from the point on the facility nearest to the residence, school, or place of worship to the point on the residence, school, or place of worship nearest to the facility.

On January 29, 2024, NTNSM represented in their permit application that they would meet the appropriate distance requirements of the Standard Permit. On July 30, 2024, the Dallas/Fort Worth Regional Office conducted a site review and measured the residence of John Huckle at 4778 S. Fannin Road as being within 440 yards of the proposed facility. During the public comment period, the public also made formal comments about the location of the Huckle residence relative to the proposed location of NTNSM's facility. NTNSM was made aware of the noncompliance and subsequently submitted updated representations of the proposed location of the facility. On August 7, 2024, the Dallas/Fort Worth Regional Office conducted another site visit to verify the updated representations submitted by NTNSM. With the updated representations, the residence of 4778 S. Fannin Road was no longer within the 440-yard distance, nor was

any other residence, school, or place of worship. Therefore, NTNSM complies with the setback requirements of their Standard Permit and TCAA § 382.065.

IV. The Standard Permit regarding PM_{2.5} is protective of human health and the environment.

John Huckle's MTO contends that NTNSM's Standard Permit does not reflect current NAAQS for PM_{2.5} and therefore poses a risk to public health.

During the development of the Standard Permit, the Executive Director conducted an extensive protectiveness review to ensure protectiveness of human health and the environment. The protectiveness review determined potential impacts to human health and welfare and the environment by comparing emissions allowed by the Standard Permit to appropriate state and federal standards and guidelines. These standards and guidelines include the National Ambient Air Quality Standards (NAAQS) and TCEQ rules. The U.S. Environmental Protection Agency (EPA) created and continues to evaluate the NAAQS, which include both primary and secondary standards, for pollutants considered harmful to public health and the environment. The Standard Permit is designed to comply with the NAAQS in place at the time the Standard Permit was issued, on July 30, 2008. The Executive Director determined that the emissions authorized by the Standard Permit are protective of both human health and welfare and the environment.

On May 6, 2024, the EPA's update of the annual NAAQS for PM_{2.5} went into effect. NTNSM applied for a Standard Permit registration on January 29, 2024, prior to the updated NAAQS for PM_{2.5} going into effect. The primary contaminants that have the potential to be emitted from this plant are particulate matter, including PM₁₀ and PM_{2.5}. Under the Standard Permit, NTNSM is required to implement substantial dust control processes to minimize their emissions. These control processes ensure that operation

of the plant will not cause or contribute to a violation of the NAAQS in place at the time the Standard Permit was issued, and operation of the plant is protective of human health and the environment.¹ Therefore, the NAAQS in place at the time of issuance for PM_{2.5} are applicable to this registration, and operation of the plant will not cause or contribute to a violation of the NAAQS for PM_{2.5}.

V. The Standard Permit regarding silica emission is protective of human health and the environment.

John Huckle and Russel Petre's MTOs contend that TCEQ's protectiveness review for silica emissions is insufficient and such emissions will be a threat to their health. Edna Spillers' MTO, filed on behalf of Mary and Andy Spillers, contends that the silica emissions will be a threat to the health of her family, with the potential to cause Silicosis.

The TCEQ reviewed ambient air crystalline silica levels measured near aggregate production operations (APOs) similar to this proposed plant, in various locations throughout the United States where data are available.² The EPA does not monitor for crystalline silica, therefore there is no EPA requirement for TCEQ to monitor for crystalline silica. However, TCEQ conducted an air monitoring project in 2022-2023 near APO facilities to better assess the crystalline silica concentrations near APOs.³ These data indicate that the contribution of crystalline silica from these plants to ambient

¹ Issuance of a standard permit considers the standards in effect at the time of issuance. Individual registrations for authorization under a standard permit must demonstrate compliance with the standard permit. Due to the changes in the annual NAAQS standard for PM_{2.5} becoming effective on May 6, 2024, the TCEQ will evaluate whether updates are necessary to the current standard permit technical requirements.

² See TEX. COMM'N ON ENV'T QUALITY TOXICOLOGY, RISK ASSESSMENT, AND RESEARCH DIVISION, AS-202, CRYSTALLINE SILICA: AMBIENT AIR MONITORING AND EVALUATION OF COMMUNITY HEALTH IMPACTS NEAR AGGREGATE PRODUCTION OPERATIONS (2020).

³ See TEX. COMM'N ON ENV'T QUALITY TOXICOLOGY, RISK ASSESSMENT, AND RESEARCH DIVISION, AMBIENT MONITORING OF PARTICULATES, INCLUDING CRYSTALLINE SILICA, NEAR APO FACILITIES, FINAL REPORT (2024).

levels of PM and respirable crystalline silica is negligible or minimal, and that the levels generally are below the health-based air monitoring comparison values for crystalline silica developed by TCEQ.

Additionally, the Standard Permit protectiveness review evaluated particulate matter, including PM₁₀ and PM_{2.5}, silica, and products of combustions from the engines, including PM₁₀, sulfur dioxide (SO₂), carbon monoxide (CO), and nitrogen dioxide (NO₂). Regarding silica emissions, the protectiveness review evaluated the impact on air quality if the crushed material had up to twenty-percent silica, which is a very conservative assumption. The model predicted that the maximum one-hour and maximum annual concentrations of silica would be half of TCEQ's health-based screening values. Based on TCEQ's conservative modeling analysis, a company operating in compliance with the Standard Permit should not contribute to the deterioration of air quality that would cause health effects to the surrounding community, including residents in the local neighborhoods. In summary, adverse impacts to human health or welfare as a result of silica emissions from the proposed plant are not expected.

VI. NTNSM's other authorizations are outside the scope of this Standard Permit

Russell Petre's MTO contends that NTNSM does not have the necessary permits and verifications to operate and questioned NTNSM's use of water suppression methods to control dust without proper permits.

The Air Quality Standard Permit for Permanent Rock and Concrete Crushers does not authorize the discharge of pollution into a body of water, nor does it authorize effluent. An Applicant may be required to apply for separate authorizations, depending on the nature of the plant operations. NTNSM's other authorizations are outside the scope of the issuance of this Standard Permit.

VII. NTNSM's operational requirements

Edna Spillers' MTO contends that NTNSM can operate for 24 hours a day and operation will cause truck traffic and issues with the roads.

The Standard Permit Operational Requirements § 3(H) prohibits rock crushers and associated facilities from operating between one hour after official sunset and one hour before official sunrise. NTNSM represented in their application for a Standard Permit that they will comply with all operational requirements of the Standard Permit. Additionally, TCEQ does not have the jurisdiction to consider traffic on public roads, and public roadway issues.

VIII. Conclusion

For the foregoing reasons, the Executive Director respectfully requests that the commission deny all Motions to Overturn the Executive Director's Decision on North Texas Natural Select Materials, LLC, Permanent Rock and Concrete Crusher, Registration No. 175198.

Respectfully submitted,

Texas Commission on Environmental Quality

Kelly Keel, Executive Director

Charmaine K. Backens, Interim Director
Office of Legal Services

Charmaine K. Backens, Deputy Director
Environmental Law Division



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REPRESENTING THE
EXECUTIVE DIRECTOR OF THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY

CERTIFICATE OF SERVICE

I hereby certify that true and correct copies of the foregoing Executive Director's Response to the Motions to Overturn the Executive Director's Decision on North Texas Natural Select Materials, LLC Air Quality Standard Permit Registration No. 175198 have been served on the following service list via electronic mail or electronic filing on this 18th day of October 2024.



Elizabeth Black

Mailing List
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TCEQ Docket No. 2024-1583-AIR

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