| | | |
|---|---|---|
| **Application by North Texas Natural Select Materials LLC for Air Quality Standard Permit, Registration No. 175198, Docket No. 2024-1583-AIR** | § § § § § | **Before the Texas Commission on Environmental Quality** |



**John Huckle's Motion to Overturn**

John Huckle files this Motion to Overturn and requests that the Commissioners of the Texas Commission on Environmental Quality ("Commission" or "TCEQ") overturn the September 4, 2024, decision of the Executive Director ("ED") approving North Texas Natural Select Materials LLC's ("NTNSM") application to operate a rock crushing facility (TCEQ Registration No. 175198) under the Standard Permit for Permanent Rock and Concrete Crushers ("Rock Crusher Standard Permit" or "Standard Permit").

**Background**

On January 25, 2024, NTNSM applied for authorization to construct and operate a new permanent rock and concrete crushing facility (the "Application") under the Rock Crusher Standard Permit. The site of the proposed crusher is located off Fannin Road in the extraterritorial jurisdiction of Denison, Texas.

The final public comment period on the Application closed on August 1, 2024, and a public meeting on the Application was also held on that same date.[1] The Commission received over 700 comments on the Application. In written comments and at the public meeting, residents and business owners in the area pointed out the inaccuracy of NTNSM's information regarding the proximity of the proposed crusher to residences on adjacent and nearby tracts of land and identified at least one residence within 440 yards of the proposed crusher. The residents and business owners also expressed their concerns regarding the proposed crusher's impact on public health.

[1] An earlier public comment period on the Application closed on May 9, 2024, with a public meeting on May 7, 2024.

Despite the proposed crusher's location within 440 yards of at least one residence and the Standard Permit's lack of compliance with air quality standards, the ED approved the Application on September 4, 2024.

## Movant

John Huckle lives across the street from the location of the proposed crusher. His address is 4792 Fannin Road. He is also the owner of 4778 Fannin Road, where his nephew lives. The residence at 4778 Fannin Road is located within 440 yards of the proposed crusher. Mr. Huckle owns and operates a honeybee farm on his property.

During the public comment periods, Mr. Huckle submitted comments opposing the Application and testified at the public meeting on August 1, 2024. He raised concerns with the proximity of the proposed crusher to his and his nephew's residence as well as with the impact of the proposed crusher on the health of his family and nearby residents.

## Argument

### I. The Commissioners should overturn the ED's decision because NTNSM's proposed crusher is located within 440 yards of at least one residence.

The Texas Clean Air Act prohibits "the operation of a concrete crushing facility within 440 yards of a building in use as a single family or multifamily residence . . . at the time the application for a permit to operate the facility . . . is filed with the commission."[2] This measurement is "taken from the point on the concrete crushing facility that is nearest to the residence . . . toward the point on the residence . . . that is nearest the concrete crushing facility."[3]

A "facility" is defined as "a discrete or identifiable structure, device, item, equipment,

---

[2] Tex. Health & Safety Code § 382.065(a). The Rock Crusher Standard Permit similarly provides, at General Requirement (1)(B), that a crusher "shall be operated at least 440 yards from any building which was in use as a single or multi-family residence . . . at the time an application was filed."

[3] Tex. Health & Safety Code § 382.065(a).

or enclosure that constitutes or contains a stationary source, including appurtenances other than emission control equipment."[4] The Rock Crusher Standard Permit clarifies that "[s]creens, belt conveyors, generator sets, and material storage or feed bins are considered to be facilities."[5] A "residence" is defined as "a structure primarily used as a permanent dwelling."[6]

In his written comments on the Application, Mr. Huckle informed the Commission that his "family lives within feet of the entrance of this facility, making us the closest residential property and family farm adversely affected."[7] He also noted the "[h]ealth impact on our small children and older age adults who reside within 440 yards of the operation."[8] The residence located at 4778 Fannin Road has been occupied continuously since before October 2023 when Mr. Huckle purchased it and is currently occupied by Mr. Huckle's nephew.[9]

Another commenter filed a letter from the Texoma Residents Against the Crusher with maps attached showing the 440-yard radii surrounding nearby residences including the residence at 4778 Fannin Road, where Mr. Huckle's nephew lives.[10] The maps show the proposed location of the crusher being within the 440-yard radius of the residence at 4778 Fannin Road.[11] The letter cites "significant concerns regarding the accuracy of the Plot Plans submitted by NTNSM" and "the omission of occupied homes on the Plot Plans dated November 21, 2023 and May 2, 2024."[12]

The ED has yet to send out her Response to Comments ("RTC") informing Mr. Huckle

---

[4] 30 Tex. Admin. Code § 116.10(4).
[5] Rock Crusher Standard Permit, General Requirement (1)(A)(ii)
[6] Rock Crusher Standard Permit, General Requirements (1)(A)(iii).
[7] Public Comment, NSR 175198, April 21, 2024.
[8] *Id.*
[9] Public Comment, NSR 175198, April 21, 2024; Public Comment, August 1, 2024; *see also* Exhibit 1.
[10] Public Comment, NSR 175198, August 1, 2024; *see also* Exhibit 1.
[11] Public Comment, NSR 175198, August 1, 2024; *see also* Exhibit 1.
[12] Public Comment, NSR 175198, August 1, 2024.

and the other commenters of the ED's reasons for approving the Application. As such, Mr. Huckle is unable to determine whether the ED considered the evidence of a residence within 440 yards of the proposed crusher or the ED's reasons for rejecting that evidence. However, because the public comments included uncontradicted evidence of a residence within 440 yards of the proposed crusher, the ED acted arbitrarily and capriciously in approving the Application.

Furthermore, the Application's representations regarding the distance from the proposed crusher to nearby residences are not of sufficient accuracy and precision to prove that the proposed crusher is compliant with the Texas Clean Air Act and the Rock Crusher Standard Permit. The Application omits nearby residences, including the residence at 4778 Fannin Road and does not include a survey to verify that there are no residences within 440 yards of the proposed crusher. As such, the ED should have denied the Application and acted arbitrarily and capriciously in granting it.

## II. The Commissioners should overturn the ED's decision because the Rock Crusher Standard Permit does not ensure that NTNSM's proposed crusher will comply with the NAAQS.

The Federal Clean Air Act ("FCAA") requires the Environmental Protection Agency ("EPA") to 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 National Ambient Air Quality Standards ("NAAQS") for the protection of public health and welfare.[13] Criteria pollutants with established NAAQS include $PM_{2.5}$, $PM_{10}$, $SO_2$, CO, $O_3$, and $NO_2$.[14] Not less than every five years, EPA is required to review scientific evidence and adjust the NAAQS as necessary to protect public health and

[13] 42 U.S.C. §§ 7408(a), 7409(a).
[14] 40 C.F.R. §§ 50.4–50.19.

the environment.[15]

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. As long as federal standards are met, the state may select any mix of control devices that it desires.

An important part of how Texas's SIP attempts to satisfy the NAAQS is by the implementation of Texas' standard permit program. Each standard permit is industry specific and allows businesses within that industry to register under the permit so long as they adhere to the general and specific conditions required by the permit.

When a standard permit is promulgated, the TCEQ performs a protectiveness review. The purpose of the protectiveness review is to analyze different 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. These control measures can take various forms such as distance limitations placed on the facility (for example, the facility cannot operate within a certain distance of a residence), emissions control technologies (such as requiring all emissions to be funneled through a special filter), and mandatory best practices (like paving all the main traffic areas of a facility as a way of controlling dust).

Mr. Huckle alleges multiple issues with the underlying protectiveness review that was performed for the Rock Crusher Standard Permit nearly two decades ago. Specifically, the protectiveness review has never been updated to demonstrate compliance with EPA's reductions to the $PM_{2.5}$ NAAQS and the quartz silica ESL.

[15] 42 U.S.C. § 7409(d).

### a. TCEQ has not updated the Rock Crusher Standard Permit Protectiveness Review since EPA lowered the $PM_{2.5}$ NAAQS.

In 2008—***over 15 years ago***—TCEQ conducted a protectiveness review ("2008 Protectiveness Review") to generally determine whether rock and concrete crushers are safe when operating under certain conditions.[16] The 2008 Protectiveness Review relied on interim guidance from the EPA stating that a satisfactory demonstration of $PM_{10}$ impacts serves as a surrogate for demonstrating the acceptability of $PM_{2.5}$.[17] The EPA ended the surrogacy policy in 2011, requiring instead that $PM_{2.5}$ impacts be reviewed independently from those of $PM_{10}$.[18] Since the end of the EPA's surrogacy policy, the NAAQS for the annual average $PM_{2.5}$ concentration has been lowered to be safer. In 2013, the annual NAAQS for $PM_{2.5}$ was reduced from 15 micrograms per cubic meter ($\mu g/m^3$) down to 12 $\mu g/m^3$.[19] Then, recently, in 2024, EPA reduced the annual $PM_{2.5}$ NAAQS again, this time from 12 $\mu g/m^3$ down to 9 $\mu g/m^3$.[20] TCEQ has never updated its Protectiveness Review to reflect the new NAAQS and, as such, the TCEQ cannot ensure that $PM_{2.5}$ emissions from rock and concrete crushers do not pose a dangerous threat to public health.

In his comments, Mr. Huckle noted the "[h]ealth impact on our small children and older age adults who reside within 440 yards of the operation."[21] Mr. Huckle's comments also identified the threat of "airborne particulate matter (PM) whose exposure is ubiquitous and linked with several adverse health effects mainly due to its size and chemical composition."[22]

Until the Commission properly considers whether NTNSM's proposed crusher complies with the NAAQS for $PM_{2.5}$, the ED cannot approve NTNSM's application. The

---

[16] Summary Document for Air Quality Standard Permit for Permanent Rock and Concrete Crushers at 8.
[17] *Id.* at 12.
[18] 76 Fed. Reg. 28646, May 18, 2011.
[19] 78 Fed. Reg. 3086, Jan. 15, 2013.
[20] 89 Fed. Reg. 16202, Mar. 6, 2024.
[21] Public Comment, NSR 175198, April 21, 2024.
[22] *Id.*

Commissioners must overturn the ED's decision because it was invalid, arbitrary, and unreasonable.

**b. NTNSM failed to prove that its proposed crusher will not emit dangerous levels of silica.**

TCEQ's 2008 Protectiveness Review modeled a maximum annual ground level concentration for quartz silica of 0.3 $\mu g/m^3$.[23] TCEQ deemed silica impacts at that level to be protective because the modeled concentration was below the TCEQ Long-Term Effects Screening Level, which at the time was 1.0 $\mu g/m^3$.[24] However, the current TCEQ Long-Term Effects Screening Level is 0.27 $\mu g/m^3$.[25] TCEQ's 2008 Protectiveness Review, which projects maximum concentrations of quartz silica at 0.3 $\mu g/m^3$, now exceeds TCEQ's Long-Term Effects Screening Level by 10%.

As described above, Mr. Huckle's comments noted the proposed crusher's threat to his family's health due to the emissions from the facility.[26] Until NTNSM proves that its proposed crusher will not emit dangerous levels of quartz silica, the ED's decision is invalid, arbitrary, and unreasonable, and must be overturned.

**c. NTNSM's proposed crusher will emit more $PM_{10}$ than TCEQ has evaluated for safety.**

NTNSM's proposed facility will maintain exceptionally large concrete and aggregate stockpiles covering six acres of land. NTNSM's Application projects that its stockpiles will emit 2.17 tons of $PM_{10}$ per year plus an additional 0.42 tons of $PM_{10}$ per year from other fugitive emission sources. NTNSM's total proposed $PM_{10}$ emissions from fugitive sources is therefore 2.59 tons per year. TCEQ has never modeled this amount of stockpiles or total

[23] Summary Document for Air Quality Standard Permit for Permanent Rock and Concrete Crushers at 8.
[24] *Id.*
[25] *See* Texas Air Monitoring Information System (TAMIS) database (online at https://www.tceq.texas.gov/downloads/toxicology/publications/community-health-impacts-as-202.pdf).
[26] Public Comment, NSR 175198, April 21, 2024.

amount of projected $PM_{10}$ emissions. NTNSM has not proven, therefore, that its proposed crusher will not emit dangerous levels of $PM_{10}$ beyond the NAAQS.

The 2008 Protectiveness Review only considered $PM_{10}$ emissions from fugitive sources at a rate of 0.99 tons per year. NTNSM projects that its crusher facility will emit 2.59 tons per year of $PM_{10}$—more than 250% more fugitive emissions of $PM_{10}$ than the generic concrete crusher evaluated by TCEQ.

In his comments, Mr. Huckle raised the issue of the threat of particulate matter to public health.[27] The ED's decision to approve the Application seemingly ignores this important issue, and, therefore, the decision is invalid, arbitrary, and unreasonable, and must be overturned.

**Prayer**

NTNSM's proposed crusher is located within 440 yards of at least one residence, and NTNSM has never demonstrated that its proposed crusher is protective of public health. The proposed crusher will potentially emit dangerous levels of $PM_{2.5}$, $PM_{10}$, and quartz silica. For these reasons, the ED's decision to approve the Application was invalid, arbitrary, and unreasonable, and Mr. Huckle respectfully requests that the ED's decision to approve NTNSM's Application be overturned.

[27] *Id.*

Respectfully submitted,

**MCELROY, SULLIVAN, MILLER & WEBER, L.L.P.**

By: */s/ Thales Smith*

Adam M. Friedman
Texas State Bar No. 24059783
*afriedman@msmtx.com*
Thales Smith
Texas State Bar No. 24117065
*tsmith@msmtx.com*
P.O. Box 12127
Austin, Texas 78711
Tel: (512) 327-8111

**ATTORNEYS FOR JOHN HUCKLE**

## CERTIFICATE OF SERVICE

I certify that on September 25, 2024, a true and correct copy of the foregoing was served upon all persons listed below via the methods listed.

**FOR THE APPLICANT:**
*Via Email*
*Via CMRRR: 9589 0710 5270 0900 5245 35*
Kevin Bernard
Vice President Operations
North Texas Natural Select Materials LLC
6500 Meyer Way
McKinney, Texas 75070-1997
kevin@ntnsmllc.com

**FOR THE EXECUTIVE DIRECTOR:**
*Via Hand-Delivery*
Elizabeth Black
Texas Commission on Environmental Quality
Environmental Law Division, MC-173
P.O. Box 13087
Austin, Texas 78711-3087

**and**

*Via Hand-Delivery*
Ms. Kristyn Jacher
Texas Commission on Environmental Quality
Air Permits Division, MC-163
P.O. Box 13087
Austin, Texas 78711-3087

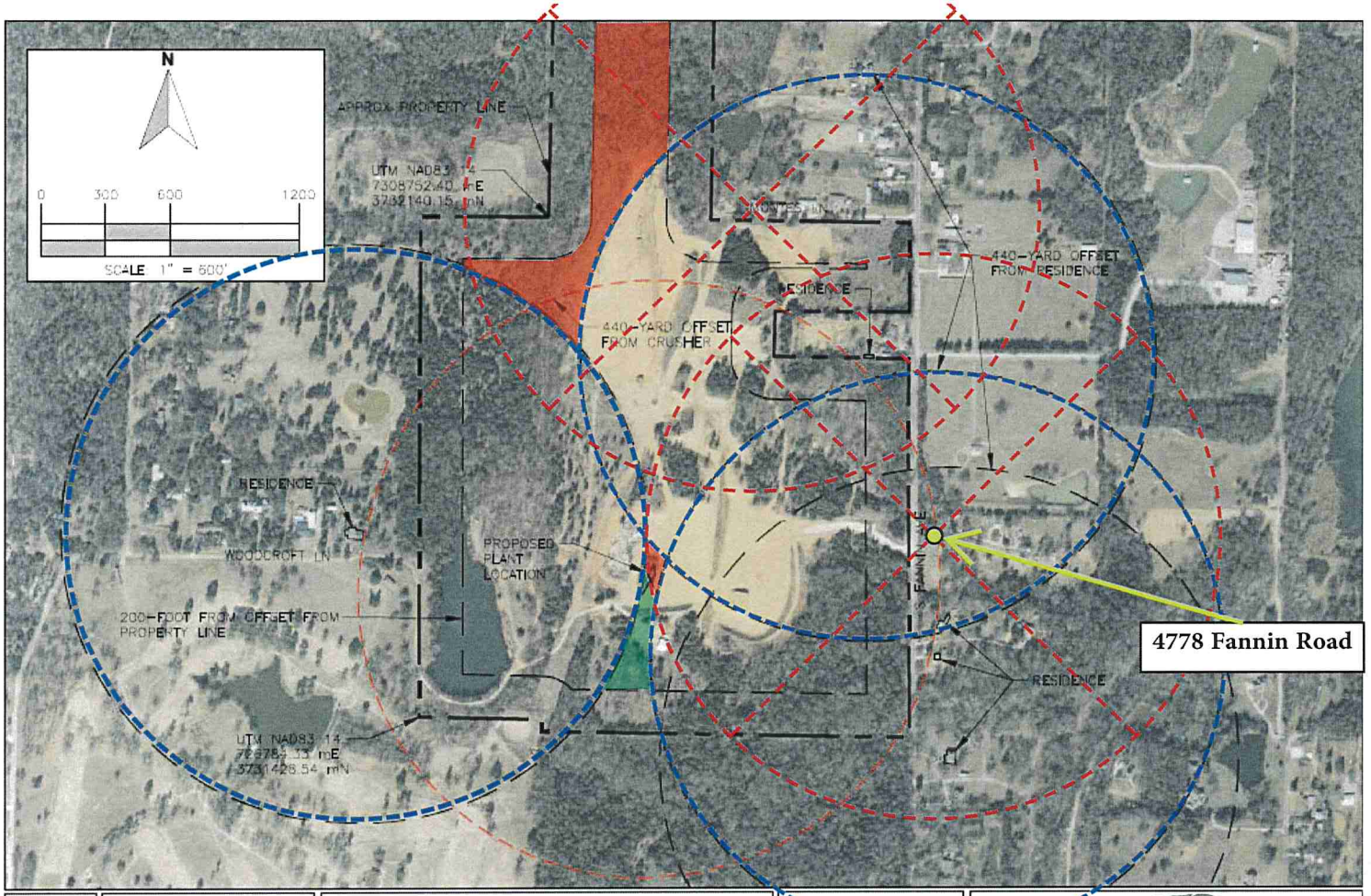
**FOR THE PUBLIC INTEREST COUNSEL:**
*Via Hand-Delivery*
Mr. Garrett Arthur
Texas Commission on Environmental Quality
Public Interest Counsel, MC-103
P.O. Box 13087
Austin, Texas 78711-3087

**FOR THE CHIEF CLERK:**
*Via Hand-Delivery*
*Via E-File*
Ms. Laurie Gharis
Texas Commission on Environmental Quality
Office of Chief Clerk, MC-105
P.O. Box 13087
Austin, Texas 78711-3087

**FOR THE PUBLIC EDUCATION PROGRAM:**
*Via Hand-Delivery*
Mr. David Greer
Texas Commission on Environmental Quality
Environmental Assistance Division
Public Education Program, MC-108
P.O. Box 13087
Austin, Texas 78711-3087

*/s/ Thales Smith*
Thales Smith

# EXHIBIT 1




| SHEET NO.: | IMAGE: BING AERIAL | |
|---|---|---|
| 01 OF 02 | ISSUE DATE: | 05/02/2024 |
| | DRAWN BY: | ES |
| | CHECKED BY: | MF |
| | SCALE: 1" = | 600' |
| | JOB NO.: | 11081-017 |

**PLOT PLAN**
AIR QUALITY PERMANENT SPRC/CC
NORTH TEXAS NATURAL SELECT MATERIALS, LLC
DENISON, GRAYSON COUNTY, TEXAS

| REV. | DESCRIPTION | BY | DATE |
|---|---|---|---|
| | | | |
| | | | |

WESTWARD
Environmental. Engineering. Natural Resources.
P.O. Box 2205 Boerne, Texas 78006
(830) 249-8284 Fax: (830) 249-0221
TBPE REG. NO.: F-4524
TBPG REG. NO.: 50112

**Based on the plot plan in NTNSM's standard permit application (p. 14)**

Residence & offset flagged by NTNSM

Residence & offset missed by NTNSM

Legal area to place the crusher (more than 440 yd from a residence)

Areas suggested as legal in the application but is not because it is within 440 yd of a residence (were missed in application)


Search Google Maps
4407 Fannin Rd
Denison, Texas
Google Street View
Mar 2023
4792
E Fannin Rd
4778 Fannin Road