

January 31, 2022

Robert Romig, Senior Policy Analyst Texas Sunset Advisory Commission  
PO Box 13066  
Austin, Texas 78711

Re: Preserve our Hill Country Environment (PHCE) recommendations for Sunset Advisory Committee  
Review of TCEQ

Dear Mr. Romig:

Thank you and your staff for the attention and resources devoted to the Sunset Advisory Committee  
Review of the Texas Commission on Environmental Quality.

Preserve Our Hill Country Environment is a nonprofit organization formed to preserve, protect, and restore the land, water, air, wildlife, unique features, and quality of life in the Texas Hill Country from the insufficiently regulated aggregate industry. Specifically, our grassroots, volunteer-driven Stop 3009 Vulcan Quarry campaign is opposed to the 1500-acre open-pit limestone quarry proposed by Vulcan Materials in a residential area of central Comal County, between Bulverde and New Braunfels.

To put it bluntly, TCEQ is in bed with the aggregate industry. They have worked with industry lobbyists to tilt the playing field in favor of huge (and often out-of-state) industrial corporations at the expense of Texas citizens. TCEQ has repeatedly failed to—even actively obstructed—efforts to forge a reasonable balance between APO profit margins, our state's growing demands for aggregate materials, and, most importantly, citizens' rights to habitable air, water, and land for future generations.

PHCE has spent the last five years in a battle over the Vulcan air quality permit issued by the TCEQ:

- 2017, Vulcan applied for an air quality permit with TCEQ. Area residents banded together to create an all-volunteer grassroots organization to contest the scientific and factual validity of the permit and the modeling data supplied by the applicant.
- February 2018, TCEQ held a public meeting at the New Braunfels Civic/Convention Center. Over 500 residents, local and state leadership, and media showed up to support our efforts, voice their concerns, and submit public comments for the record.
- December 2018, TCEQ granted our requests for a Contested Case Hearing (CCH) with the State Office of Administrative Hearings (SOAH).
- March 6, 2019, SOAH Preliminary Hearing. There was standing room only in the Comal County Courthouse when the Administrative Law Judge (ALJ) extended the affected party boundary from one to five miles and granted AP status to all who had requested it.
- June 2019, the two-day contested case hearing, similar to a civil trial, was held in Austin. Following the hearing, ignoring the concerns of hundreds of citizens, the ALJ recommended that TCEQ grant the air permit for Vulcan's quarry.
- November 2019, TCEQ commissioners granted the air permit. We filed a motion for rehearing on the permit, citing the judge's lack of consideration of the negative impact that the quarry would have on air pollution. We also opposed the "trade secret" excuse claimed by Vulcan and allowed by the ALJ related to Vulcan's composite core sample used to determine silica content of the mining materials. The rehearing was not granted.
- February 2020, we sued TCEQ in Travis County District Court. We asked the state to reevaluate the permit, noting that the agency ignored important environmental data and made legal errors when it granted the air permit.

- March 2021, citizens groups won an unprecedented victory when Judge Gamble struck down Vulcan's air permit, reversing and vacating it. Unsurprisingly, TCEQ and Vulcan then appealed that reversal to the Third Court of Appeals.

Long story short, we followed the arcane "set to fail" process set forth by TCEQ and now the property's future is in the hands of Texas courts. TCEQ sided with industry over citizens and issued the permit without adequately considering the impacts on the environment, our natural resources, and the health of the community, as required by state law.

Importantly, TCEQ's attention to industry interests and failure to consider the resulting damage to neighbors and the state as a whole demands a significant change in TCEQ's organization, duties, and focus. The time and cost to citizens to protect their quality of life is more than they should have to shoulder. To date, the affected parties (citizens of Comal County) have spent well in excess of \$200,000 fighting TCEQ, Vulcan and their industry lobbyists in hopes of defending our health and property, as well as protecting our natural resources.

TCEQ should adhere to the totality of their mission statement and not pander to the sustainable economic development of the aggregate industry in Texas. Included is a sampling of PHCEs issues and recommendations for sunset staff review of the TCEQ.

Respectfully submitted,

**David A. Drewa**

Director of Communications

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## TCEQ Mission Statement:

*The Texas Commission on Environmental Quality strives to protect our state's public health and natural resources consistent with sustainable economic development. Our goal is clean air, clean water, and the safe management of waste.*

## Issue:

TCEQ is not adhering to the totality of their mission statement, but they and most legislators think that they are. PHCE's position is that TCEQ has become too skewed to this one verse in their mission statement – “consistent with sustainable economic development.” And the adjective “sustainable” is highly questionable. TCEQ has become a de facto business partner to the APO industry, focused primarily on achieving economic development.

No one can question that the APOs are doing very well and producing ample product for the growth in Texas and profits for their shareholders. They have attained “consistent and sustainable economic development.” However, the pendulum has swung too far in the direction of economic development at the expense of “our state's public health and natural resources.” TCEQ needs to redirect their focus to the protection of clear air, clean water, and the safe management of waste. Texas communities and their citizenry, as well as our natural resources, are being irreversibly impaired.

Is TCEQ achieving its stated mission and philosophy with respect to Texas residents whose very lives depend on environmental resources such as water quality and quantity and clean air or do their decisions overwhelmingly favor the economic interests of corporations (most of which are non-Texas based)? The answer is a straight out NO – a simple review of TCEQ decisions regarding the APO industry bear this out.

## Solution:

Sustainable economic development must not be at the expense of environmental degradation. Any significant environmental impacts associated with proposed economic development must and should be mitigated to the fullest extent possible and consistent with the latest or most current scientific practices available.

1. TCEQ “Best Management Practices” (BMPs) are archaic and do not reflect the latest science and/or technologies. This needs to be immediately rectified.
2. APO air quality permits do not have requirements for reclaiming the quarry land after operations have been completed. What will be the final outcome of these finished open pit quarry mines? Other states have implemented permit standards that require APOs to have a formal reclamation plan submitted to the state for approval. This plan outlines the beneficial use the quarry will have after the production operations are complete. TCEQ permits must include reclamation plans to restore the land to a useful and environmentally safe condition. This can be achieved by implementing comprehensive APO legislation in Texas akin to the Surface Mining Control and Reclamation Act (SMCRA) that governs APO mining in the rest of the US, and coal and lignite mining in Texas.
3. TCEQ's permitting process is strongly skewed toward industrial corporations—many of which are located out-of-state or outside the country. While TCEQ's states a goal of ensuring meaningful public participation, experience suggests that public comment goes largely ignored. Timelines and protocols for public meetings and hearings have been slowly reduced by industry lobbyists and legislators for decades to make it easier for applicants to push their permits through “in a timely fashion,” thereby limiting timeframes on public input. The Texas Aggregate and Concrete Association recently stated: *“TACA is actually proactively making sure that all the right provisions are staying in place, the*

*permitting, everything is staying very, very industry-friendly, so it allows us to stay friendly and make sure that we can continue to do business unobstructed, if you will.”—TACA Talks, July 6, 2021.* TCEQ needs to allow the public more meaningful participation in their decision-making process, not less. And TCEQ needs to stop taking direction from powerful industry lobbyists.

4. The TCEQ registration process should first begin with the TCEQ notifying the Texas Department of Transportation (TXDOT), the Texas Water Development Board (TWDB), and the Texas Department of Health Services (TDSHS). The TCEQ should take the lead and have each agency discuss their individual agency’s perspectives of the APO registration and the cumulative impact of the local APOs on the Texas roads, the quality and availability of ground and surface waters, and the public’s health. Each agency should then provide its approval of the APO after it has reviewed the APOs permit application.
5. TCEQ’s website is abysmal. Information is buried or inaccessible to not only the public but to TCEQ as well. Overhaul the website. It needs to be easily navigable to the public and especially to TCEQ personnel. The website should be a tool to transparency, and it is not.
6. TCEQ needs to increase its monitoring and enforcement efforts to ensure timely enforcement and transparency of permit violations. Too many violations go uncorrected or come with minimal retributions. Once the company says the problem has been fixed, their records are expunged leaving no trail. Repeat offenders are rampant.

## **TCEQ Water Pollution Abatement Plan (WPAP)**

*A Water Pollution Abatement Plan (WPAP) is required for approval of development within the Edwards Aquifer Region. TCEQ requires a Geological Assessment (GA) to be submitted to assist in its review. The GA identifies sensitive Karst features, assigns points per feature and if feature receives 40 or greater points it qualifies for certain protections.*

### **Issue:**

How does TCEQ ensure or guarantee that the technical studies required for submittal as part of their permit application review process are technically correct, comprehensive, unbiased, and reflect the latest science? Their decision to approve, conditionally approve, or deny a permit depends heavily on all of these aspects. The GA rates sensitive features using a point system based on feature type and relative water infiltration rate (RIR). The RIR is critically dependent on a geologist’s “best guess” made during dry periods; not by direct observation during wet periods. This is not an accurate assessment of karst features.

The Geological Assessment required by the TCEQ is prepared by the permit applicant’s chosen geologist consultant. So, it is not surprising that so many karst features receive scores of 39 points or lower, thus disqualifying them from any real protections. Additionally, the sensitive feature system utilizes a flow-chart methodology that incorporates the applicant’s consultant’s subjective determination of the “relative infiltration rate” (RIR) for each feature. Using this methodology is one of the main reasons many karst features receive points below 40, thereby disqualifying them for any protection. Furthermore, the protections employed by TCEQ (if any) are based on Best Management Practices (BMPs) which are currently out of date.

### **Solution:**

1. First, site locations for APOs should be more thoroughly evaluated. For example, APOs located over the Edwards Aquifer Recharge Zone (EARZ), an environmentally sensitive area, needs to be protected from possibility of contamination and pollution. A more robust Geological Assessment must be performed to assure that the APO will not negatively impact the Edwards Aquifer. In the EARZ, the TCEQ should

consult with the Edwards Aquifer Authority (EAA) to identify the areas that are most sensitive to surface pollution.

2. The most direct method for testing the sensitivity of an area to groundwater pollution is through a method of injecting dyes and tracing the pathways of groundwater flow. More such studies are needed in the EARZ to precisely model groundwater flow paths, measure flow velocities and map the hydrostratigraphy.
3. Technical studies like the Geological Assessment must be prepared by an independent, qualified consultant, hired by TCEQ, and funded by the applicant through an escrow account. The applicant must have no control over the consultant. (NOTE: there are many states and local jurisdictions that employ this type of requirement and can provide specific details and modeling for TCEQ).
4. Establish numerical criteria for Relative Infiltration Rates (RIRs) and require objective measurements be utilized for each karst feature.
5. Establish a temporary moratorium on the issuance of permits until TCEQ officially adopts updated and revised Best Management Practices. BMPs should be reviewed and updated at least every five years and all permits should be reviewed at the same interval and be reconditioned to reflect any changes to BMPs. All BMPs should require mandatory enforcement, not the current suggested standard or methods which are unenforceable.