



Date: September 17, 2024

To: Chairman Brian Birdwell and the Members of the Senate Committee on Natural Resources & Economic Development

CC: Sen. Judith Zaffirini, Sen. Carol Alvarado, Sen. César Blanco, Sen. Kelly Hancock, Sen. Bryan Hughes, Sen. Lois W. Kolkhorst, Sen. Borris L. Miles, Sen. Kevin Sparks

Via hand delivery and by email.

From: Adrian Shelley, Public Citizen, ashelley@citizen.org, 512-477-1155

Re: Cement Production Plants, Public Citizen testimony

Dear Chairman Birdwell and Members of the Committee:

Public Citizen appreciates the opportunity to offer this testimony. There are significant community concerns about the BM Dorchester LLC Dorchester Cement Production Plant in Grayson County. We agree with these concerns and are, as always, sympathetic to the impacted community. We also recognize that the problems identified in this proposal and within this industry are not unique to either—they are common across Texas Commission on Environmental Quality (TCEQ).

We urge this committee to view this issue in the larger context of a state environmental permitting system that does not protect public health or the environment. A solution that addresses TCEQ's systemic failures will help Grayson County and countless other communities across Texas.

There are significant community concerns with the Dorchester Cement Production Plant proposal in Grayson County.

The concerns raised by the community impacted by the Dorchester Cement Production Plant are well articulated in EPA's comments to TCEQ on the permit application:¹

EPA is aware of numerous community concerns regarding the proposed project. Many of these concerns focus on the anticipated impact of plant operations on the surrounding community, such as air quality degradation, increased traffic, and the potential for nuisance conditions. The roads in this area are narrow and unpaved and the proposed source's fenceline is adjacent to a place of worship and residential areas. EPA is concerned by the potential for heavy vehicle traffic, both on and off-property, to generate particulate matter emissions that could migrate beyond the property line. The facility may also be a source of noise and light pollution. When present, these potential nuisance conditions could impact residents' quality of life and may interfere with the normal use and enjoyment of their property, nearby parks, schools, and other outdoor public spaces. As TCEQ is aware, 30

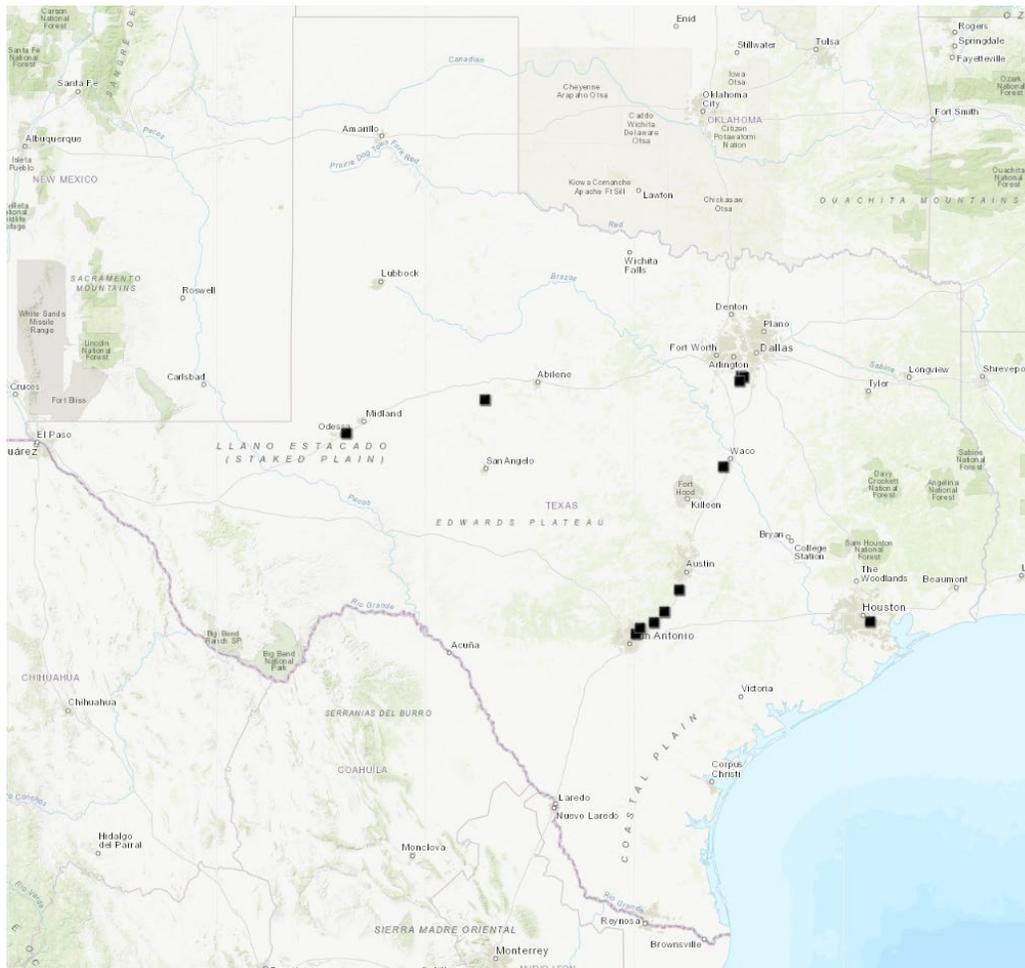
¹ Letter from Cynthia J. Kaleri Air Permits Section Manager to Ms. Laurie Gharis, Chief Clerk, TCEQ "Re: Clean Air Act (CAA) New Source Review (NSR) Permits for the BM Dorchester LLC, Dorchester Cement Production Plant (Dorchester Plant), located in Grayson County, Texas - RN111368437 - Initial Permit Nos. 167047, PSDTX1602, and GHGPSDTX212" (25 Mar. 2024).

Texas Administrative Code § 101.4 prohibits nuisance conditions, and therefore TCEQ is able to address community concerns as they arise.

The nearby town of Dorchester is home to around 100 people. There is a neighborhood platted nearby for thousands of new homes. There is a church near the proposed facility that is more than 100 years old. There is a nearby airport. Concerns have also been raised about a semiconductor manufacturer located some six miles away. This manufacturer is concerned about air pollution and seismic effects from blasting. It is our understanding that the permit application has decided not to proceed with the blasting operation at the facility.

There are cement production plants throughout Texas.

This map by Air Alliance Houston shows each of the twelve cement kilns in Texas.² There are three south of Dallas, five between San Antonio and Austin, and one each in Houston, Waco, Odessa, and Maryneal.



² See

<https://www.arcgis.com/home/webmap/viewer.html?webmap=62ceba9778ed44a599bea4e3d50807c&...>



Texas has a difficult history with cement production plants that continues to this day.

The history of cement plant permitting in Texas shows that these facilities can be significant health hazards for their neighbors. Rita Beving, our organizer in Dallas, participated in an extended fight against the TXI facility between 1995 and 2000.³ Her account of this issue follows:

“Midlothian, TX, a half hour southwest of Dallas, is considered the cement capital of Texas. In the 90s, it was home to three cement kilns which burned hazardous waste to make cement – TXI, Holcim, and North Texas Cement.

“During this time, if the kiln burned hazardous waste, a company was paid to take hazardous waste from companies such as auto body shops or dry cleaners. Hazardous waste was imported from all over the country and as far as Puerto Rico. At one time, TXI even considered burning napalm for the military.

“Because they were considered “recyclers,” these plants were not required to have scrubbers on their stacks unlike government incinerators.

“They were not required to deposit the ashes from the process into lined, manifested landfills like other more regulated entities. Instead, ashes were often dumped on site. In TXI’s case, ashes blew into Cottonwood Creek and flowed into Joe Poole Lake.

“The stacks on these plants are very tall. Without scrubbers, they produced a toxic soup of pollutants including NOx, VOCs, SO2, sulphuric acid, PM10 and PM 2.5. Other pollutants included beryllium, cadmium, chromium, arsenic, lead, and mercury. Because some of these plants burned tires, emitted pollutants could even include chlorine gas and dioxins—one of the most carcinogenic pollutants known.

“Modeling commissioned by opponents of TXI’s permit proved that pollution traveled at least thirteen miles from the plant. The contested case hearing against TXI’s permit eventually included thirty-five litigants.

“The Texas Department of State Health Services confirmed the existence of a cluster of birth defects including Down Syndrome in the area around Midlothian.⁴ DSHS also identified high rates of breast cancer. We learned of horses growing extra muscles, ostrich eggs that would never hatch, dogs born with bent legs. There were adolescent children and adults with rare forms of brain cancer. We found lots of autism. We had mothers testifying that when they were not in Midlothian on vacation or outside the city, that their kids’ asthma improved.

“More than 30 doctors in Cedar Hill, Dallas, DeSoto, and elsewhere opposed the TXI permit and wrote letters about the harm to the community they had already seen in their practices.

³ See generally, <https://www.dallasobserver.com/news/ill-wind-blowing-6402678>.

⁴ See e.g. <https://www.atsdr.cdc.gov/sites/midlothian/docs/Midlothian-Updated-PHRP-May-2012.pdf>, https://www.nrdc.org/sites/default/files/texas_diseaseclusters.pdf.



“The case was one of the longest contested case hearings in Texas history. After years the protestants lost in the Texas Supreme Court where we lost. The permit’s opponents spent more than \$250,000 in the late 90s. Even the cities of Duncanville and DeSoto participated in the TXI permit fight, each contributing \$25,000.

“This case was of keen interest to the Portland Cement Association, as getting selective catalytic reduction (SCR) or selective non-catalytic reduction (SNCR) scrubbers would set a precedent for the nation as far as future kiln regulation from the EPA.

“Of the three facilities still located south of Dallas, Martin Marietta owns TXI,⁵ LaFarge owns Holcim,⁶ and Ash Grove owns the North Texas Cement Company.⁷

“These plants do not burn hazardous waste today, but they still emit NO_x, VOCs, SO₂, PM₁₀ and PM_{2.5}, affecting the health of local residents. Most plants today burn methane gas. Ash Grove modernized its operation in 2016 to still allow the burning of tires, which would produce chlorine and dioxins.⁸ Ash Grove added selective non-catalytic reduction (SNCR) which “reduced NO_x by 60% since 1996.”⁹

“Holcim now burns both tires (15% of fuel base) and PLASTICs (8% of fuel base) according to their 2022 fact sheet.¹⁰

“TXI still burns tires and announced in 2022 that it would increase its fuel supply by adding shredded tires.¹¹ Again, this raises concerns about chlorine and dioxin pollution.”

Permitting concerns in Texas are not limited to the cement production industry.

We must acknowledge that concerns about permitting in Texas are not limited to the cement production industry. Over four decades of operation in Texas, Public Citizen has seen community concerns from industries as diverse as electric generation (including coal, and gas), oil refining, petrochemical manufacture, fertilizer manufacture, metal recycling, cement production, and aggregate production operations including quarries, asphalt plants, rock crushers, and concrete batch plants.

To understand why this problem is with TCEQ itself—not just the cement production industry—it is useful to quote from Lt. Gov. Dan Patrick’s April 16, 2024 letter to TCEQ Chairman Niermann about the Dorchester Cement Production Plant proposal.¹² The first paragraph of Lt. Gov. Patrick’s letter concludes:

⁵ See <https://ir.martinmarietta.com/static-files/8684d9ae-52cc-483d-95b5-7ea933f10024>.

⁶ See https://www.holcim.us/sites/us/files/2022-03/MIDLOTHIAN_Fact_Sheet_March2022_HR.pdf.

⁷ See <https://www.globalcement.com/magazine/articles/981-a-visit-to-ash-grove-s-midlothian-cement-plant>.

⁸ *Id.*

⁹ *Id.*

¹⁰ See https://www.holcim.us/sites/us/files/2022-03/MIDLOTHIAN_Fact_Sheet_March2022_HR.pdf.

¹¹ See <https://www.martinmarietta.com/about-us/article?id=pkHffX8mxbK1LhcAmoBY>.

¹² See <https://www.ltgov.texas.gov/2024/04/16/lt-gov-dan-patrick-sends-letter-to-texas-commission-on-environmental-quality-tceq-chairman-jon-niermann/>.



Business leaders, clergy, elected officials, community leaders, and an overwhelming majority of the public have all voiced their objections to the Texas Commission on Environmental Quality (TCEQ) granting a permit to Black Mountain Cement for this project.

This sort of universal opposition to a proposed permit is not common. Most permitted facilities are good actors and good neighbors. But when opposition is this widespread, TCEQ is still unmoved.

Lt. Gov. Patrick's own pursuit of this issue, including through a site visit and a town hall, led him to conclude that:

[I]t is clear to me from my visit that there is more to consider, and to move forward would cause the entire community great damage now and for the foreseeable future.

However, as Lt. Gov. Patrick correctly notes, TCEQ leadership is unable to grant the remedy he requests—that the permit not be granted. This is because, in his words:

I appreciate that TCEQ has a difficult job. *You have a formula, and you follow it.*

Emphasis added. This final point gets to the heart of the issue. The Texas Commission on Environmental Quality has long held the position that it does not have the authority to deny a permit that is otherwise administratively and technically complete.

We believe this is an incorrect interpretation of the Texas Clean Air Act. We raised this issue during TCEQ's Sunset Review last session.¹³ Nevertheless, this is how TCEQ operates. This interpretation of its authority makes TCEQ's public participation process a futile exercise.¹⁴ Why should anyone participate in a permit process when the outcome is foreordained? It is true that sometimes facilities don't get built. The applicant might itself decide not to site in a hostile community. In one rare case, the TCEQ was forced to deny a permit after litigation uncovered an error in the relevant statutes.¹⁵

But what doesn't happen is that the TCEQ decides not to grant a permit because a facility just doesn't belong in a given location. In fact the agency doesn't believe it even has the authority to do so.

The legislature could act to give the Commission explicit authority to do what seems obvious—deny permits that should not be granted due to considerations of health, safety, or justice.

As Lt. Gov. Patrick said in his letter:

[A]s Lt. Governor, I must look at the bigger picture of what is best for our communities.

This just makes sense. Shouldn't TCEQ have the same ability?

¹³ See, e.g., Sec. I.B. of our comments at <https://www.citizen.org/article/our-proposal-to-reform-the-tceq/>.

¹⁴ In our experience, the Contested Case Hearing process can improve the public health and safety protections in a permit, or otherwise improve the relationship between the permit holder and its neighbors. But only a small number of permits ever enter a Contested Case Hearing.

¹⁵ See <https://spectrumlocalnews.com/tx/south-texas-el-paso/news/2021/06/11/mansfield-neighbors-relieved-after-permit-for-concrete-batch-plant-in-their-neighborhood-is-denied>.



Conclusion: these issues will reoccur until the larger problem with TCEQ is addressed.

Finally, we want to acknowledge the many community members from across Texas who made a difficult decision not to come to today's hearing. They felt that it would be useful to this committee to share their own similar challenges with environmental permitting of other types of facilities. Some of those facilities, such as concrete batch plants and rock crushers, are admittedly not cement production plants. But the communities surrounding them face similar issues such as air pollution, truck traffic, and nearby sensitive land uses.

Again, we hope that the members of this committee appreciate that the challenges we are discussing today are not unique to cement production plants. They occur across dozens of industries and thousands of facilities throughout Texas. People across the state have been in the position that the people of Grayson County are in now. Perhaps the people of Grayson County could have learned from their experiences.

But those people were encouraged not to come today. We hope that their opportunity will come sooner rather than later during the 89th legislative session.