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Date: March 26, 2025

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

CC: Sen. Judith Zaffirini, Sen. Carol Alvarado, Sen. César Blanco, Sen. Pete Flores, Sen. Kelly Hancock, Sen. Bryan Hughes, Sen. Tan Parker, Sen. Kevin Sparks
Via hand delivery and by email.

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

Re: SB 1757, rock crushers – Public Citizen testimony in opposition

Dear Chairman Birdwell and Members of the Committee:

On behalf of our approximately 30,000 members in Texas, Public Citizen appreciates the opportunity to testify against SB 1757, relating to the operation of rock crushing facilities. We must oppose this bill because the permit it proposes is not substantially more protective of human health and the environment.

This bill is not an improvement over current law.

As we understand it, the principal purpose of this bill is to create a standard permit option for rock crushers collocated at quarries that is not eligible for a contested case hearing.[1] The contested case hearing is a significant part of the public's rights to participate in permitting. There are only perhaps 10-20 contested case hearings on environmental permits each year in Texas, with only a few of those being for rock crushers collocated at quarries. In our experience, those permits that do go through the contested case hearing process result in a facility with a better relationship with its neighbors and fewer environmental complaints and concerns in the future.

If the public is asked to trade away its right to a contested case hearing, it should get something substantial in return. For example, applicants for a concrete batch plant permit have the option of applying for the so-called "enhanced controls" permit at Health and Safety Code Sec. 382.05198.[2] SB 1757 is not offering anything significant in exchange for eliminating the contested case hearing. Indeed, it is not an especially strong permit at all. For this reason alone we cannot support this bill. There may be some version of a stronger rock crusher permit that would be worth giving up the contested case hearing, but this isn't it. The reminder of our testimony will suggest areas for improvement in the bill, but on balance we cannot support it.

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[1] SB 1757 at P.7, L.18-19. Further citations to the bill are given by page and line number only.
[2] We are actually of the opinion that even the enhanced controls permit is not substantially more protective of human health and the environment than the standard permit for CBPs. But the permit proposed here is far less of an improvement than even the enhanced controls permit.

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We suggest the following improvements to the bill as drafted. We are also generally supportive of suggestions made by the Texans for Responsible Aggregate Mining (TRAM).

SB 1757 would raise the maximum throughput for facilities receiving minor new source review permits from 200 tons per hour to 1,500 tons per hour.[3] We don't believe the volume should be raised and doubt whether a facility of that size would stay below the major source threshold of 100 tons per year of fine particulate matter emissions.

The monitoring requirements are quite weak.[4] We suggest the following improvements:

- Monitoring throughout the life of the facility, not for just one year.
- In the alternative, extension of the time for required monitoring if monitoring shows violations of applicable standards.
- Water quality monitoring for compliance with applicable standards.
- Air monitoring at least for fine particulate matter (PM2.5) or perhaps all criteria pollutants allowed by the permit.
- Air monitoring for compliance with relevant emissions limits, such as the NAAQS and the effects screening levels or air monitoring comparison values, as applicable.
- Upwind and downwind air monitoring.
- Air monitoring at all facilities applying for the permit, not only those with three facilities within 440 yards.
- Monitoring records made available to the public by request, or posted to the TCEQ's website.

The post-extraction land use plan should be supported with a bond required to be posted before the facility begins operation.[5] The "good cause" exception for the post-extraction land use plan is too broad and should be eliminated.[6]

The best management practices[7] should be developed through negotiated rulemaking. Texans for Responsible Aggregate Mining (TRAM) has a comprehensive list of BMPs that it developed with significant input from industry representatives.

The public notice requirement[8] should include sign posting at the physical location of the proposed facility. The waiver[9] should be clearly limited to the bilingual posting requirement only—as drafted it could be read to apply to all public notice.

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[3] P.2, L. 16-17.
[4] P.2, L.23 et. seq.
[5] P.4, L.1.
[6] P.4, L.20-21.
[7] P.4, L.16-17.
[8] P.6, L.2 et. seq.
[9] P.6, L.13-14.

The public notice as written must include the mailing address for filing written comments.[10] This should be expanded to include the URL and email address to which comments may be submitted electronically.

The public comment period should not close immediately after the close of the public hearing.[11] Because there is only one notice given for the permit, this situation is analogous to that described by Health and Safety Code Sec. 382.056(k-2), which reads:

> (k-2) Notwithstanding any other law, if the commission holds a public meeting for a permit application for which consolidated notice was issued under this subchapter, the commission shall hold open the public comment period and the period for which a contested case hearing may be requested for the permit application *for at least 36 hours after the end of the meeting*.

Emphasis added. This provision was added by the TCEQ sunset bill, SB 1397 (88R). We recommend leaving the public comment period open for 36 hours after the end of the meeting.

The applicant should not be allowed to limit the time for oral statements at the public hearing.[12] This is a role for the Texas Commission on Environmental Quality.

The public hearing should be held in the same state House district as the proposed facility.[13] A requirement to hold the hearing in the same county could result in a hearing very far from the proposed facility.

The section describing the basis for the executive director's decision seems contradictory.[14] It reads:

> The executive director shall base the decision on whether the application meets the requirements of Section 382.0651. The executive director shall consider all relevant and material comments received during the public comment period and at the public hearing in determining whether to approve the application.

If the decision is based only on whether the application meets the requirements of Section 382.0651, how is the executive director meant to consider public comments? We recommend that the executive director's decision be based on all applicable statutory requirements and that the executive director be given explicit authority to modify or deny the permit based on comments received.

The executive director's response to comments is required to be issued, "at the same time as or as soon as practicable after the executive director grants or denies the application."[15] The response to comments should be issued *before* the permit is granted.

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[10] P.7, L.2.
[11] P.7, L.4-5.
[12] P.7, L.23-24.
[13] *See, e.g. HB 1412.*
[14] P.8, L.6-10.
[15] P.8, L.17-18.

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Finally, we generally agree with TRAM's recommendations regarding the citizen advisory committee. It should at least exist through the life of the facility.

Conclusion: we cannot support SB 1757 because we do not believe it is more protective of human health and the environment.

If citizens are asked to trade away their right to a contested case hearing, they should get in exchange a permit that is substantially more protective of human health and the environment.

SB 1757 is not substantially more protective and we ask you not to support it.