

# TCEQ, Vulcan Appeal Judge's Decision To Vacate Air-Quality Permit for Quarry

My Canyon Lake

[Stephanie Johnson](#) May 20, 2021



*Texas Commission on Environmental Quality describes its mission as protecting the state's public health and natural resources consistent with sustainable economic development. Its goal is "clean air, clean water, and the safe management of waste."*

**The Texas Commission on Environmental Quality (TCEQ) and Alabama-based Vulcan Materials are appealing a district court judge's ruling that remands and vacates the air-quality permit Vulcan needs to turn a former ranch in central Comal County into a 1,500-acre open-pit limestone quarry and rock-crushing plant.**

On April 30, TCEQ and Vulcan filed a notice of appeal with the Third District of Texas Court of Appeals. They are contesting a March 5 ruling by 459th District Court Judge Maya Guerra Gamble that overturned an administrative judge's decision to uphold TCEQ's permit, originally granted by TCEQ in November 2019.

Friends of Dry Comal Creek and Stop 3009 Vulcan Quarry, who filed the original lawsuit on Feb. 14, 2020, say they aren't surprised by the appeal.

"While Vulcan's motivations seem transparent, it's disappointing that TCEQ is spending taxpayer dollars and agency resources ostensibly supporting an out-of-state corporation, and in visible opposition to hundreds of Texans they are supposed to protect," the groups said in a joint statement earlier this week.

TCEQ Media Relations Specialist Tiffany Young said the agency could not comment on its appeal. Vulcan did not immediately respond to a request for comment.

Under Texas law, TCEQ can only permit a facility if it finds no indication it will harm the public's health and physical property, according to a statement issued by Friends of Dry Comal Creek and Stop 3009 Vulcan Quarry.

The community activists have fought Vulcan Materials in court since June 2017, when the company submitted an air-quality permit application to the TCEQ.

Eric Allmon, an attorney with Austin-based Perales, Allmon & Ice, a public-interest environmental law firm, said it's not uncommon for TCEQ to align itself with a permit applicant like Vulcan once a permit is granted.

"The permit issuance is on the agency's behalf, not Vulcan's," he said. "The suit is actually against the TCEQ."

Canyon Lake's Texas House Rep. Kyle Biedermann, R-73, has his own concerns about the proposed Vulcan Quarry, which would be located at the intersection of Texas 46 and FM 3009 northwest of New Braunfels.

On March 11, he wrote an opinion piece for MyCanyonLake.com arguing that TCEQ and the Texas Aggregate and Concrete Association (TACA) should conduct a statewide, comprehensive air-quality study of aggregate production operations, also known as APOs, before proceeding with plans to add another quarry in Comal County.

"It is very unfortunate and troubling that the TCEQ leadership did not pursue conducting a study to determine the existing air-quality conditions of APO facilities and in the surrounding neighborhoods," Biedermann said. "I wanted then and now for the TCEQ to state the facts to the public regarding the knowns and uncertainties about the air-quality emissions coming from single rock quarries and in areas where multiple rock quarries are located...the public health of Texans should be foremost in the minds of TCEQ leaders, and I am committed to working closely with them and my fellow legislators to advance the public's trust and credibility in sound science and public health."

Judge Guerra Gamble echoed several of Biedermann's concerns in her March ruling. She said:

- TCEQ's "determination that the plant's crystalline silica emissions will not negatively affect human health or welfare is not supported by substantial evidence."
- Vulcan's silica-emissions calculations "are not based on representative site conditions."
- TCEQ's air-modeling techniques, exclusion of emissions from the quarry and roads, and choice of background pollution data "were arbitrary and capricious, and not supported by substantial evidence."
- State Office of Administrative Hearings (SOAH) administrative law Judge Rebecca Smith "abused her discretion by ruling that Vulcan could maintain information from its 2016 subsurface investigation...as confidential under the trade-secret privilege."

Vulcan's proposed mining operation in the Texas Hill Country would stretch across nearly three miles of the environmentally sensitive Edwards Aquifer Recharge Zone, the primary water supply for over two million people in New Braunfels and San Antonio. The former Eric White Ranch in central Comal County is ringed with subdivisions with populations estimated at 12,000.

Opponents, including Comal ISD, also argue that in addition to serious concerns about carcinogenic dust, the proposed quarry would create nightmare traffic scenarios and tank property values of homes within a five-mile radius.

In March 2018, Vulcan Vice President of Permitting Jimmy Fleming said the company's proposed quarry would produce stone for all sorts of modern construction including homes, bridges, road, commercial, hospitals — "(anything) that uses crushed stone."

Fifty acres of the site would be mined over the first 10 years of its projected 80-year operation, Vulcan said.

According to an article in the Austin-American Statesman headlined "[A World Rocked: Communities Clamor for Regulation as Texas Mining Industry Explodes,](#)" the number of registered rock, sand-and-gravel quarries and aggregate processing plants in the state skyrocketed from 52 in 2012 to 934 through mid-2018.

“Since 2012, the state has issued 334 air permits for rock-crushing equipment that is most often associated with quarries — but may also include concrete plants and portable crushers at construction sites — as the industry has continued to bloom,” according to reporter Tony Plohetski.

Friends of Dry Comal Creek is concerned about who’s making the rules for the burgeoning aggregate industry. On its Facebook page Sept. 1, 2019, it noted that the [Guadalupe-Blanco River Authority \(GBRA\)](#) recently amended its certificate to add mining to its authorized water uses.

[Tommy Mathews](#), a GBRA board member appointed by Texas Gov. Greg Abbott to represent Kendall County, stepped down in March after 10 years of service. He also is president of Westward Environmental, the consulting firm handling Vulcan’s permit. The former Vulcan employee also served as division chair of TACA.

GBRA describes itself as “a regional partner managing watershed resources to protect and support the needs of a growing population, economy and healthy environment.” GBRA’s 10-county statutory district begins near the headwaters of the Guadalupe and Blanco rivers and ends at San Antonio Bay.

Vulcan still must submit a Water Pollution Abatement Plan (WPAP) to TCEQ due to the quarry’s location over the Edwards Aquifer.

Stop 3009 Vulcan Quarry and Friends of Dry Comal Creek say they will oppose this plan if it contains “insufficient protections for our water quality and our water supply.”

#### ABOUT VULCAN MATERIALS

On its website, Alabama-based Vulcan Materials describes itself as the nation’s largest producer of aggregates-based construction materials, including asphalt and ready-mixed concrete. The company has over 360 active aggregates facilities and over 120 facilities that produce asphalt and/or concrete, which also consume aggregates.