

In 'historic' decision, Texas commission votes down plans for Mansfield concrete plant

[BY HALEY SAMSEL](#)

JUNE 10, 2021, 02:01 PM

UPDATED JUNE 10, 2021, 03:04 PM



Several Mansfield neighbors have been fighting for three years to stop a concrete batch plant permit. Texas Commission on Environmental Quality meeting on Wednesday will decide the future of the Bosque Solutions permit.

[BY YFFY YOSSFOR](#)

Three years of [neighborhood opposition](#) to a concrete batch plant just outside of Mansfield culminated with a historic decision on Wednesday, as the Texas Commission on Environmental Quality [voted 2-1 to reject](#) an air quality permit application filed by Bosque Solutions.

The outcome could not have been more surprising to [the Tarrant County residents](#) who have spent more than \$130,000 in legal fees to challenge the permit in court and before the commission, said Jan Hurlbut, who lives less than a mile from the plant's proposed site at 7327 Gibson Cemetery Road.

"We thought for sure they were going to go ahead and approve it, and that's what they had indicated [they were going to do previously](#)," she said. "I do believe that in the last month, they heard public pressure, and they heard it loud and strong. All the efforts that we made led to this moment.

She and her husband, Roger, have [spent years fundraising and organizing](#) legal counsel for nine neighbors who live within 440 yards of the site and qualified for a contested case hearing, which is similar to a civil trial in district court. Residents living in the rural area near Mansfield told the Star-Telegram they are concerned that air pollution from the plant could cause health problems and exacerbate their pre-existing conditions, including chronic obstructive pulmonary disease (COPD).

According to their attorney, Adam Friedman, the group was the first in TCEQ history to win a challenge to a concrete batch plant after [Judge Joanne Summerhays ruled that the agency](#) should deny the permit last November.

Now that two governor-appointed commissioners have voted in favor of accepting the judge's ruling, the case could have far-reaching consequences for communities across Texas opposing the arrival of industrial facilities near their homes.

"I think this is a historic moment for the TCEQ at a concrete batch plant level," Roger Hurlbut said. "I'm not aware of any other protests that have gotten this far and been successful this far in challenging a standard permit."

In her decision issued last year, Summerhays wrote that Bosque Solutions failed to prove the plant would meet emissions limits set out by the TCEQ, particularly when it came to crystalline silica.

People who inhale very small crystalline silica particles are at increased risk of developing diseases like lung cancer, COPD, kidney disease and silicosis, an incurable lung disease, [according to the Occupational Safety and Health Administration](#).

During the contested case hearing last summer, Friedman argued that emissions of crystalline silica — found in sand, a common ingredient at all concrete batch plants — are entirely prohibited by Texas regulations. Previously, concrete batch plant operators were exempt from filling out a section of the application about emissions limits.

But, unbeknownst to Bosque Solutions, that exemption was removed in 2012. Company lawyers said the TCEQ already took into account all possible emissions from a plant when designing their standard permit and therefore determined crystalline silica emissions would not cause health issues.

In explaining her vote on Wednesday, Commissioner Emily Lindley said the case was "extremely challenging," leading her down a "winding path" before she came to agree with the judge's opinion. She was joined by fellow Commissioner Bobby Janecka in accepting the court's ruling.

"Bottom line, I think the applicant, Bosque, failed to demonstrate that its proposed facility is going to comply with crystalline silica emissions established in the rules," Lindley said. "The evidentiary record should have been more fully developed regarding crystalline silica emissions."

Commission Chairman Jon Niermann became the sole vote in favor of granting the permit, arguing that ruling against Bosque Solutions would be akin to "second guessing" how well the TCEQ's current permit protects public health and the environment. The decision will create "considerable regulatory uncertainty" for plant operators since crystalline silica is inherent to producing concrete, Niermann said.

Reading the emissions rules as a complete prohibition of crystalline silica, as Friedman argued, would lead to an "absurd result" and effectively render the agency's standard permit "useless," Niermann said.

"It really threatens to throw the agency's administration of the standard permits into disarray," he said. "I think the commission should exercise its discretion to interpret the rules in a manner that is protective of public health and the environment, and that supports coherent and orderly regulation under this standard permit."

Bosque Solutions, led by Arlington businessman John Sheffield, could choose to appeal the decision to district court through a process known as judicial review. The company could also withdraw its application and refile for either the standard permit or a "permit by rule" specific to the type of facility Bosque wants to build.

The Hurlbuts suspect this will not be the end of the Mansfield group's legal battle with Bosque Solutions, or with the TCEQ. On May 28, the agency [announced its intention](#) to bring back the rule exempting concrete batch plant applicants from explaining how they would address emissions and distance requirements at their facilities. The exemption was "inadvertently removed" in 2012, according to a press release.

"I think that we have a long, hard battle to fight on this," Jan Hurlbut said. "They're wanting to change the rules to never, ever have to show emissions for crystalline silica or probably a lot of other things."

Members of the public have until midnight on June 29 to submit comments on the proposal [using the TCEQ's online portal](#), with all comments referencing Non-Rule Project No. 2021-016-OTH-NR. The TCEQ will also [host a public meeting on June 28](#) starting at 6:30 p.m., when agency staff will begin discussing the exemption via telephone conference.

Participants can listen in by calling 1-877-820-7831 and entering access code 181446#. Those who wish to give official testimony during the meeting can email david.munzenmaier@tceq.texas.gov with their contact information, whom they represent and if they wish to speak.

State Rep. David Cook (R-Mansfield), a former mayor of Mansfield, expressed concern on Wednesday that the TCEQ would apply these changing rules to the Bosque Solutions decision, but Lindley and Janecka stated that the application did not meet current requirements.

The permit has earned sustained opposition from elected officials throughout the Metroplex, including state Rep. Tony Tinderholt (R-Arlington), state Sen. Beverly Powell (D-Fort Worth) and most recently U.S. Rep. Marc Veasey (D-Fort Worth). This week, [Veasey wrote a letter](#) asking the Environmental Protection Agency to work with community members to "review the potential health impacts" of the plant.

Neighbors near Gibson Cemetery Road continue to speak with local officials and hold fundraisers to cover their legal fees, both through yard sales and their [GoFundMe page](#). Roger Hurlbut said he hopes the decision will inspire other community organizers to fight plants "placed in inappropriate places," including residential neighborhoods.

"You can fight, you can win, and you have to be very organized," he said. "You have to be tenacious, you have to have a viable plan, and not give up ... Whatever Mr. Sheffield does, we do not intend to give up this fight."



Larry Smitherman Sr. points to his neighbor's property where a concrete batch plant application was submitted to the TCEQ along Gibson Cemetery Road in Mansfield. His grandchildren often play in the pond adjacent to the site.

BY YFFY YOSSIFOR YYOSSIFOR@STAR-TELEGRAM.COM

[HALEY SAMSEL](#)

[817-390-7112](tel:817-390-7112)

Haley Samsel is a Report for America corps member reporting on environmental issues caused by economic growth for the Fort Worth Star-Telegram. Her position is partly supported by a grant from the Anita Berry Martin Memorial Fund at North Texas Community Foundation. Samsel, a Plano native, graduated from American University in Washington, D.C., where she served as the editor-in-chief of the student newspaper, The Eagle, and interned for news organizations like The Texas Tribune and NPR.