



# Legislative UPDATE

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## **Attorney General Says TCEQ Must Ignore Zoning and Other City Ordinances When Approving Concrete Crushing Facility**

On April 19, the attorney general issued an opinion ([KP-190](#)) concluding not only that the Texas Commission on Environmental Quality (TCEQ) does not have to, but in some cases is not allowed to, consider zoning and other city recommendations when approving permits for concrete crushing facilities. TML and the Texas City Attorneys Association (TCAA) filed comments with the attorney general arguing exactly the opposite. TML and TCAA argued that the TCEQ has a statutory mandate under the Texas Clean Air Act to give the utmost deference to a city's recommendation in relation to any rule, determination, variance, or order that affects an area in the city's jurisdiction, and that TCEQ has clear authority to consider local ordinances when issuing a permit. The TML/TCAA brief is available [here](#).

Perhaps the attorney general's conclusion is no surprise. The primary statute at issue in the opinion (Texas Health and Safety Code Section [382.112](#)) is the subject of pending litigation in a case styled *City of Marble Falls v. Texas Commission on Environmental Quality*. That case involves the issuance of an air quality permit to a rock and concrete crusher, and the attorney general's office is representing TCEQ in that litigation.

Unfortunately, this isn't the first time that a city's attempt to protect its residents from the harmful effects of air pollution has been thwarted. TML [previously reported](#) that, in 2015, the Texas Supreme Court held that the Texas Clean Air Act and its enforcement mechanisms preempted a City of Houston air-quality ordinance in a case styled [BCCA Appeal Group, Inc. v. City of Houston](#). And in the 2013 case [Southern Crushed Concrete, LLC v. City of Houston](#), the

Texas Supreme Court held that a City of Houston ordinance limiting the location of a concrete crushing facility was preempted by the Texas Clean Air Act.

Has the State of Texas lost sight of the fact that localities have an important role to play in safeguarding their residents from pollution problems faced by their communities?

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