



Dear GEAA members and friends,

During the past several legislative sessions, Governor Greg Abbott has championed legislation to take away local control from municipalities. You may recall [Legislative Alerts](#) sent from GEAA requesting that you contact your legislators about bills to torpedo [municipal tree preservation](#) and [water quality](#) ordinances.

With Texas as among the fastest growing states in the nation, it appears that measures to protect quality of life for Texans earn no respect while further assaults on our health and safety continue unabated and, presumably, with the approval of the State's administration.

And, it is getting worse...this just in...

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

May 11, 2018 Texas Municipal League

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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So far this year, I have attended three Texas Commission for Environmental Quality (TCEQ) public meetings for Air Quality permit applications for aggregate operations in the Texas Hill Country. I was there to support the efforts of local citizens to determine the health, safety, and quality of life in their community. At each meeting hundreds of Texans gathered to plead with TCEQ to deny a permit.

GEAA has been fighting with aggregate producers since 2004. I have attended far too many similar hearings, where hundreds of people have gathered to protest the negative impacts that aggregate operations will have on their communities. And, since 2004 GEAA has been advocating the need for better regulation and, for the State to assess all environmental impacts of aggregate industry permitting process to insure that they are in compliance with the Clean Air *and* the Clean Water acts. Those in attendance to protest these permits were correct in assuming that TCEQ does not have their best interests at heart. And, according to this ruling just released by our State's Attorney General, neither does this administration.

State reform of permitting aggregate operations, however, is not alone sufficient to solve the problems facing the citizens of the Texas Hill Country who wish to protect their property rights and quality of the lives they have built here. If the folks who were protesting these permits lived in most other states, they would have been able to go to their County Commissioners to ask them to deny permission for to build an industrial operation next to their homes, hospitals, and their children's school. But Texas denies counties the authority to govern land use within their jurisdictions. This might have been ok fifty years ago but, it is not serving today's Texans well. With four Hill Country

counties recognized as among the top ten fastest growing counties in the nation, unmanaged growth is no longer acceptable. GEAA will be going to the legislature in 2019 to request that nine counties in the Hill Country be granted limited land use authority, including the authority to prohibit incompatible land uses such as this one.

Today it might be the dust and noise from an industrial operation on your fence line. Tomorrow – a permit to discharge sewage effluent from a high density subdivision into the stream that runs through your property or a big box store down the street. Unless changes are made at the State level, those of you who live in unincorporated areas can pretty much count on your peace and property values being threatened by something you don't want to live next door to.

We ask all GEAA members to join us in our efforts to introduce and pass legislation that will grant local control at the county level to the citizens of the Texas Hill Country. We need more, not less, local control to protect our rights as Texans.

We also ask that you write to [Governor Greg Abbott](#) and [Attorney General Ken Paxton](#) to express your displeasure with this ruling.

We invite you to attend a Forum to Discuss Local Options for Hill Country Counties on Tuesday, June 5, 2018 - 6:30 – 8:30 pm at the GVTC Auditorium, 36101 FM 3159, New Braunfels, Texas (see more [here](#).)

When you go to the polls next week, please seriously consider whether the candidates on the ballot represent your best interests. Before you vote, find out where the candidates stand on these issues and whether they are willing to stand up to protect your property rights.

Stay tuned for more and have a great weekend!

Annalisa Peace

Executive Director
[Greater Edwards Aquifer Alliance](#)

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