

The State of Texas
House of Representatives

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OPINION COMMITTEE

Joseph C. Pickett
El Paso • District 79

FILE # ML-48221-17
I.D. # 48221

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RQ-0185-KP

October 10, 2017

The Honorable Ken Paxton
Attorney General of Texas
209 W. 14th Street
Austin, TX 78701

Dear General Paxton:

The Texas Commission on Environmental Quality has issued a Standard Permit under the Texas Clean Air Act, Section 382.05195, Health and Safety Code, for the operation of a concrete crushing plant in Fort Worth. Because the City of Fort Worth, prior to the issuance of the permit, provided TCEQ with a resolution adopted by the city's governing body strongly opposing the issuance of the permit and stating that the operation of the plant would be incompatible with the city's zoning regulations, I respectfully request a formal opinion as to the following questions:

1. To what extent does Section 382.112, Health and Safety Code, require TCEQ to consider a recommendation from a local government to deny a permit for a facility because the facility is incompatible with the local government's zoning or other land use ordinances? Would the TCEQ be authorized to deny the issuance of a permit based on that recommendation? Section 382.112 reads as follows:

Sec. 382.112. RECOMMENDATIONS TO COMMISSION. A local government may make recommendations to the commission concerning a rule, determination, variance, or order of the commission that affects an area in the local government's territorial jurisdiction. The commission shall give maximum consideration to a local government's recommendations.

2. Would the answer to Question 1 differ if the ordinance on which the local government's recommendation was based was adopted in accordance with Section 382.113, Health and Safety Code, which specifically authorizes the adoption and enforcement of municipal ordinances for the control and abatement of air pollution? Section 382.113 reads as follows:

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Sec. 382.113. AUTHORITY OF MUNICIPALITIES.

(a) Subject to Section 381.002, a municipality has the powers and rights as are otherwise vested by law in the municipality to:

- (1) abate a nuisance; and
- (2) enact and enforce an ordinance for the control and abatement of air pollution, or any other ordinance, not inconsistent with this chapter or the commission's rules or orders.

(b) An ordinance enacted by a municipality must be consistent with this chapter and the commission's rules and orders and may not make unlawful a condition or act approved or authorized under this chapter or the commission's rules or orders.

3. Does the Texas Clean Air Act specifically preclude TCEQ from considering a local government's zoning, land use, and other ordinances in determining whether to issue a permit? If not, to what extent may the TCEQ consider those ordinances, including those adopted under Section 382.113, Health and Safety Code, in determining whether to issue a permit?

Thank you in advance for your consideration of this matter. Please do not hesitate to contact me if you need any additional information regarding this request.

Sincerely,

A handwritten signature in black ink that reads "Joe C. Pickett".

Chairman Joe C. Pickett

A handwritten signature in black ink that reads "Nicole Collier".

Representative Nicole Collier