

**TCEQ AIR QUALITY PERMIT NO. 20851
TCEQ DOCKET NO. 2016-0923-AIR**

APPLICATION BY	§	BEFORE THE TEXAS
GEORGIA-PACIFIC GYPSUM LLC	§	
COMPANY, LLC	§	
GYPSUMWALLBOARD	§	COMMISSION ON
MANUFACTURING PLANT	§	
QUANAH, HARDEMAN COUNTY	§	ENVIRONMENTAL QUALITY

EXECUTIVE DIRECTOR’S RESPONSE TO HEARING REQUESTS

The Executive Director (ED) of the Texas Commission on Environmental Quality (Commission or TCEQ) files this response (Response) to the requests for a contested case hearing submitted by persons listed herein. The Texas Clean Air Act (TCAA) § 382.056(n) requires the Commission to consider hearing requests in accordance with the procedures provided in Texas Water Code § 5.556.¹ This statute is implemented through the rules in 30 Texas Administrative Code (TAC) Chapter 55, Subchapter F.

A map showing the location of the site for the proposed facility is included with this response and has been provided to all persons on the attached mailing list. A current compliance history report, technical review summary, and draft permit prepared by the Executive Director’s staff are being filed concurrently with the TCEQ’s Office of Chief Clerk for the Commission’s consideration. In addition, the Executive Director’s Response to Public Comments (RTC), which was mailed by the chief clerk to all persons on the mailing list, is on file with the Chief Clerk for the Commission’s consideration.

I. Application Request and Background Information

Georgia-Pacific Gypsum LLC (Georgia-Pacific or Applicant) has applied to the TCEQ for a New Source Review Authorization under Texas Clean Air Act (TCAA), § 382.0518. If issued, this permit would authorize the modification of a wallboard manufacturing plant that may emit air contaminants. The plant is located at 4164 Highway 285, Quanah, Hardeman County. Contaminants authorized under this permit include: particulate matter (PM) including particulate matter with diameters of 10 microns or less (PM₁₀) and 2.5 microns or less (PM_{2.5}), nitrogen oxides (NO_x), sulfur dioxide (SO₂), carbon monoxide (CO), ammonia (NH₃), organic compounds (VOC), and hazardous air pollutants (HAPs) including, but not limited to, formaldehyde (HCHO), quinolone (C₉H₇N), and methanol (MeOH).

The permit application was received on December 21, 2011, and declared administratively complete on January 9, 2012. The Notice of Receipt and Intent to Obtain an Air Quality Permit (NORI or first public notice) for this permit application was published on February 3, 2012, in the *Quanah Tribune Chief*. The Notice of Application

¹ Statutes cited in this response may be viewed online at www.capitol.state.tx.us/statutes/statutes.html. Relevant statutes are found primarily in the Texas Health and Safety Code and the Texas Water Code. The rules in the Texas Administrative Code may be viewed online at www.sos.state.tx.us/tac/index.shtml, or follow the “Rules, Policy & Legislation” link on the TCEQ website at www.tceq.state.tx.us.

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and Preliminary Decision for an Air Quality Permit (NAPD or second public notice) was published on August 14, 2015, in the *Quanah Tribune Chief*. The RTC was filed on April 27, 2016, and mailed out along with the letter to all interested persons, including those who asked to be placed on the mailing list for this application and those who submitted comment or requests for contested case hearing. The cover letter attached to the RTC included information on making requests for a contested case hearing or for reconsideration of the ED's decision.² The letter also explained hearing requesters should specify any of the ED's responses to comments they dispute and the factual basis of the dispute, in addition to listing any disputed issues of law or policy.

The TCEQ Enforcement Database was searched and no pending enforcement activities were found.

The TCEQ received timely hearing requests during the public comment period from the following persons: Don Patrick Drake and Charles Drake. However, Don Patrick Drake withdrew his hearing request on June 2, 2015. The TCEQ did not receive any requests for reconsideration.

II. Applicable Law for Hearing Requests

The commission must assess the timeliness and form of the hearing requests, as discussed in Section I above. The form requirements are set forth in 30 TAC § 55.201(d):

(d) A hearing request must substantially comply with the following:

- (1) give the name, address, daytime telephone number, and, where possible, fax number of the person who files the request. If the request is made by a group or association, the request must identify one person by name, address, daytime telephone number, and, where possible, fax number, who shall be responsible for receiving all official communications and documents for the group;
- (2) identify the person's personal justiciable interest affected by the application, including a brief, but specific, written statement explaining in plain language the requester's location and distance relative to the proposed facility or activity that is the subject of the application and how and why the requester believes he or she will be adversely affected by the proposed facility or activity in a manner not common to members of the general public;
- (3) request a contested case hearing;
- (4) list all relevant and material disputed issues of fact that were raised during the public comment period and that are the basis of the hearing request. To facilitate the commission's determination of the number and scope of issues to

² See TCEQ rules at Chapter 55, Subchapter F of Title 30 of the Texas Administrative Code. Procedural rules for public input to the permit process are found primarily in Chapters 39, 50, 55 and 80 of Title 30 of the Code.

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be referred to hearing, the requester should, to the extent possible, specify any of the executive director's responses to comments that the requester disputes and the factual basis of the dispute and list any disputed issues of law or policy; and

(5) provide any other information specified in the public notice of application.

The next necessary determination is whether the requests were filed by "affected persons" as defined by TWC § 5.115, implemented in commission rule 30 TAC § 55.203. Under 30 TAC § 55.203, an affected person is one who has a personal justiciable interest related to a legal right, duty, privilege, power or economic interest affected by the application. An interest common to members of the general public does not qualify as a personal justiciable interest. Local governments with authority under state law over issues raised by the application receive affected person status under 30 TAC § 55.203(b).

In determining whether a person is affected, 30 TAC § 55.203(c) requires all factors be considered, including, but not limited to, the following:

- (1) whether the interest claimed is one protected by the law under which the application will be considered;
- (2) distance restrictions or other limitations imposed by law on the affected interest;
- (3) whether a reasonable relationship exists between the interest claimed and the activity regulated;
- (4) likely impact of the regulated activity on the health and safety of the person, and on the use of property of the person;
- (5) likely impact of the regulated activity on use of the impacted natural resource by the person; and
- (6) for governmental entities, their statutory authority over or interest in the issues relevant to the application.

In addition to the requirements noted above regarding affected person status, in accordance with 30 TAC § 55.205(a), a group or association may request a contested case hearing only if the group or association meets all of the following requirements:

- (1) one or more members of the group or association would otherwise have standing to request a hearing in their own right;
- (2) the interests the group or association seeks to protect are germane to the organization's purpose; and
- (3) neither the claim asserted nor the relief requested requires the participation

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of the individual members in the case.³

If the commission determines a hearing request is timely and fulfills the requirements for proper form and the hearing requester is an affected person, the commission must apply a three-part test to the issues raised in the request to determine if any of the issues should be referred to the State Office of Administrative Hearings (SOAH) for a contested case hearing. The three-part test in 30 TAC § 50.115(c) is as follows:

- (1) The issue must involve a disputed question of fact;
- (2) The issue must have been raised during the public comment period; and
- (3) The issue must be relevant and material to the decision on the application.

The law applicable to the proposed facility may generally be summarized as follows. A person who owns or operates a facility or facilities that will emit air contaminants is required to obtain authorization from the commission prior to the construction and operation of the facility or facilities.⁴ Thus, the location and operation of the proposed facility requires authorization under the TCAA. Permit conditions of general applicability must be in rules adopted by the commission.⁵ Those rules are found in 30 TAC Chapter 116. In addition, a person is prohibited from emitting air contaminants or performing any activity that violates the TCAA or any commission rule or order, or that causes or contributes to air pollution.⁶ The relevant rules regarding air emissions are found in 30 TAC Chapters 101 and 111-118. In addition, the commission has the authority to establish and enforce permit conditions consistent with this chapter.⁷ The materials accompanying this response list and reference permit conditions and operational requirements and limitations applicable to this proposed facility.

III. Analysis of Hearing Requests

A. Was Charles Drake's request for a contested case hearing in this matter timely and in proper form?

The following person submitted timely a hearing request that was not withdrawn: Charles Drake. Charles Drake submitted a request for a contested case hearing on February 2, 2012. The request was made in a comment he timely submitted to the agency during the relevant public comment period. Charles Drake states that he believes he will be adversely affected by the application in the following ways:

- The emissions from the plant will be hazardous, caustic and potentially cancer-producing materials into the air, and the full extent of the effect of the release of the emissions is unknown.

³ 30 TAC § 55.205(a)

⁴ TEXAS HEALTH & SAFETY CODE § 382.0518

⁵ TEXAS HEALTH & SAFETY CODE § 382.0513

⁶ TEXAS HEALTH & SAFETY CODE § 382.085

⁷ TEXAS HEALTH & SAFETY CODE § 382.0513

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- Requiring the plant to have a permit to emit constituents evinces a potential risk to the public, especially those closest to the plant.
- The emissions from the plant will affect his family.
- The emissions and runoff from the plant could contaminate air quality and water sources on his property.
- The emissions and runoff from the plant could harm the vegetation and animal life on his property.

Charles Drake's comment states that he owns property adjoining the property on which the Applicant's plant is located. However, the address he provided the Office of the Chief Clerk was an address in Lubbock, which is over 150 miles from the Applicant's plant. His comment does not state whether he actually resides on the land near the Applicant's plant nor how often Charles Drake may visit the property. The comment also fails to provide any information from which the ED can verify the location of Charles Drake's property in relation to the Applicant's plant.

Charles Drake requested a contested case hearing in the first sentence of his comment. In addition, the ED finds that, of the issues raised in his request, some may be considered personal justiciable interests that are also relevant and material disputed issues of fact. The ED addressed all public comments in this matter by providing responses in the RTC. The cover letter from the Office of the Chief Clerk attached to the RTC states that requesters should, to the extent possible, specify any of the ED's responses in the RTC that the requesters dispute and the factual basis of the dispute, and list any disputed issues of law or policy.⁸

Based on the foregoing, the ED finds that Charles Drake substantially complied with all of the requirements to request a contested case hearing required by 30 TAC 55.201(d). Because the requester provided information that is in compliance with 30 TAC 55.201(d), the ED can determine whether it is likely that this requester will be impacted differently than any other members of the general public or if there is a likely impact of the regulated activity on this person's interests, discussed in subsection B below.

B. Is Charles Drake an affected person?

The law applicable to this permit application is outlined above in Section IV. Because Charles Drake satisfies the requirement of TCAA § 382.058(c) and has stated personal justiciable interests, the commission must next consider the non-exhaustive list of factors for determining whether a person is an affected person contained in 30 TAC § 55.203(c).

First, the commission must consider whether the interest claimed is one protected by the law under which the application will be considered.

⁸ See 30 TAC § 55.201(d)(4).

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The interests Charles Drake claims are:

- The emissions from the plant will be hazardous, caustic and potentially cancer-producing materials into the air, and the full extent of the effect of the release of the emissions is unknown.
- Requiring the plant to have a permit to emit constituents evinces a potential risk to the public, especially those closest to the plant.
- The emissions from the plant will affect his family.
- The emissions and runoff from the plant could contaminate air quality and water sources on his property.
- The emissions and runoff from the plant could harm the vegetation and animal life on his property.

Of the interests claimed by Charles Drake, the ones which are protected by the law under which the application will be issued are:

- Whether the emissions from the plant will be hazardous, caustic and potentially cancer-producing materials into the air, and the full extent of the effect of the release of the emissions is unknown.
- Whether requiring the plant to have a permit to emit constituents evinces a potential risk to the public, especially those closest to the plant.
- Whether the emissions from the plant will affect his family.
- Whether the emissions from the plant could contaminate air quality on his property.
- Whether the emissions and runoff from the plant could harm the vegetation and animal life on his property.

The commission must consider whether a reasonable relationship exists between the interest claimed and the activity regulated. The activity the commission regulates is the authorized emissions into the air of contaminants by a person who owns or operates a facility or facilities. Those persons who own or operate a facility or facilities are prohibited from emitting air contaminants or performing any activities that contravene the TCAA or any other commission rule or order, or that causes or contributes to air pollution. The interests Charles Drake claims are within the scope of an air quality Standard Permit authorization, focus on the potential adverse effects of potential air contaminants from the facility, and the ED finds that a reasonable relationship exists between the interest claimed and the activity the commission regulates.

Next, the commission must consider distance restrictions or other limitations imposed by law on the affected interest, the likely impact of the regulated activity on the health and safety of the person, and on the use of the property of the person, and the likely impact of the regulated activity on the use or the impact on the natural resource by the person. For air authorizations, distance from the proposed facility is particularly relevant to the issue of whether there is a likely impact of the regulated activity on a person's interests because of the dispersion and effects of individual air contaminants

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emitted from a facility. The ED was unable to accurately determine that Charles Drake owns and frequents property near the plant because Mr. Drake did not provide details which would identify the land he allegedly owns near the plant; the only address Charles Drake provided is located more than 150 miles away from the plant. Although Charles Drake articulated a personal justiciable interest not common to the general public in the plant, his only known address is 150 miles away from the plant. Therefore, he is not an affected person entitled to a contested case hearing, under the requirements of TCAA § 382.058(c).

D. Which issues in this matter should be referred to SOAH for hearing?

If the commission determines any of the hearing requests in this matter are timely and in proper form, and the hearing requester is an affected person, the commission must apply the three-part test discussed in Section IV to the issues raised in this matter to determine if any of the issues should be referred to SOAH for a contested case hearing. The three-part test asks whether the issues involve disputed questions of fact, whether the issues were raised during the public comment period, and whether the issues are relevant and material to the decision on the permit application, in order to refer them to SOAH.

The ED addressed all public comments in this matter by providing responses in the RTC. The cover letter from the Office of the Chief Clerk transmitting the RTC cites 30 TAC § 55.201(d)(4), which states that requesters should, to the extent possible, specify any of the ED's responses in the RTC the requesters dispute and the factual basis of the dispute, and list any disputed issues of law or policy.

1. What issues are questions of fact?

Charles Drake raised the following questions of fact for this application during the public comment period:

- Whether the emissions from the plant will be hazardous, caustic and potentially cancer-producing materials into the air, and the full extent of the effect of the release of the emissions is unknown.
- Whether requiring the plant to have a permit to emit constituents evinces a potential risk to the public, especially those closest to the plant.
- Whether the emissions from the plant will affect his family.
- Whether the emissions and runoff from the plant could contaminate air quality and water sources on his property.
- Whether the emissions and runoff from the plant could harm the vegetation and animal life on his property.

2. Were the issues raised during the public comment period?

The public comment period is defined in 30 TAC § 55.152. The public comment period begins with the publication of the Notice of Receipt and Intent to Obtain an Air Quality

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Permit. The end date of the public comment period depends on the type of permit. In this case, the public comment period began on February 3, 2012, and ended on September 14, 2015. All of the issues listed above upon which the hearing requests in this matter are based were raised in comments received during the public comment period.

3. Whether the issues are relevant and material to the decision on the application.

In this case, the permit would be issued under the commission's authority in Tex. Water Code § 5.013(11) (assigning the responsibilities in Chapter 382 of the Tex. Health and Safety Code), and the TCAA. The TCEQ has general authority to authorize a New Source Review Authorization under the TCAA, § 382.0518. In making this permitting decision, the commission may consider the Applicant's compliance history. The commission by rule has also specified certain requirements for permitting. Therefore, in making the determination of relevance in this case, the commission should review each issue to see if it is relevant to these statutory and regulatory requirements that must be satisfied by this permit application.

The ED finds the following issues relevant and material to the decision on the application:

- Whether the emissions from the plant will be hazardous, caustic and potentially cancer-producing materials into the air, and the full extent of the effect of the release of the emissions is unknown.
- Whether requiring the plant to have a permit to emit constituents evinces a potential risk to the public, especially those closest to the plant.
- Whether the emissions from the plant will affect his family.
- Whether the emissions from the plant could contaminate air quality on his property.
- Whether the emissions and runoff from the plant could harm the vegetation and animal life on his property.

The ED does not find any issues which are beyond the jurisdiction of TCEQ and thus not material to the decision on the application.

The ED finds the following issues, although within the TCEQ's jurisdiction, not within the scope of this air permit review and thus not material to the decision on the application:

- That the runoff from the plant could contaminate water sources on his property.

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IV. Maximum Expected Duration of the Contested Case Hearing

The ED recommends the contested case hearing, if held, should last no longer than six months from the preliminary hearing to the proposal for decision.

V. Executive Director's Recommendation

The Executive Director respectfully recommends the commission:

- A. Find all hearing requests in this matter were timely filed.
- B. Find that the request of Charles Drake does satisfy the requirements for form under 30 TAC§ 55.201(d) but is not an affected person under 30 TAC § 55.203.
- C. If the commission determines any requester is an affected person, refer the following issues to SOAH:
 - Whether the emissions from the plant will be hazardous, caustic and potentially cancer-producing materials into the air, and the full extent of the effect of the release of the emissions is unknown.
 - Whether requiring the plant to have a permit to emit constituents evinces a potential risk to the public, especially those closest to the plant.
 - Whether the emissions from the plant will affect his family.
 - Whether the emissions from the plant could contaminate air quality on his property.
 - Whether the emissions and runoff from the plant could harm the vegetation and animal life on his property.
- D. Find the maximum expected duration of the contested case hearing, if held, would be six months.

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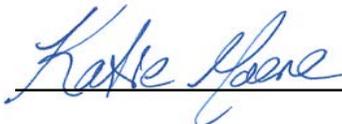
Respectfully submitted,

Texas Commission on Environmental Quality

Richard A. Hyde, P.E., Executive Director

Caroline Sweeney, Deputy Director
Office of Legal Services

Robert Martinez, Division Director
Environmental Law Division

A handwritten signature in blue ink, appearing to read "Katie Moore", is written over a solid black horizontal line.

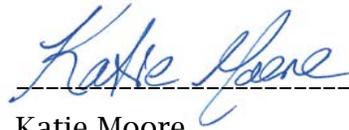
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REPRESENTING THE
EXECUTIVE DIRECTOR OF THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY

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CERTIFICATE OF SERVICE

On August 12, 2016, a true and correct copy of the foregoing instrument was served on all persons on the attached mailing list by the undersigned via deposit into the U.S. Mail, inter-agency mail, facsimile, electronic transmission or hand delivery.



Katie Moore

MAILING LIST
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DOCKET NO. 2016-0923-AIR; PERMIT NOS. 20851/HE0006D

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REQUESTER(S):

Charles Drake
Individual Land Owner
6809 Saratoga Avenue
Lubbock, Texas 79424-0703

WITHDRAW OF REQUEST(S):

Don Patrick Drake
398 Drake Road
Quanah, Texas 79252-7368

INTERESTED PERSON(S):

Joan Baker
P.O. Box 293
Quanah, Texas 79252-0293

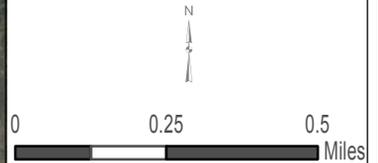
Georgia-Pacific Gypsum LLC Permit No. 20851

Map Requested by TCEQ Office of Legal Services
for Commissioners' Agenda



Texas Commission on Environmental Quality
GIS Team (Mail Code 197)
P.O. Box 13087
Austin, Texas 78711-3087

Date: 8/9/2016



- Georgia-Pacific Gypsum, LLC
- 1 mi. Radial Distance from Facility
- Major Highways
- Highway Ramps
- Minor Roads

Source: The location of the facility was provided by the TCEQ Office of Legal Services (OLS). OLS obtained the site location information from the applicant and the requestor information from the requestor. The background imagery of this map is from the current Environmental Systems Research Institute (ESRI) map service, as of the date of this map.

This map was generated by the Information Resources Division of the Texas Commission on Environmental Quality. This product is for informational purposes and may not have been prepared for or be suitable for legal, engineering, or surveying purposes. It does not represent an on-the-ground survey and represents only the approximate relative location of property boundaries. For more information concerning this map, contact the Information Resource Division at (512) 239-0800.



The facility is located in Hardeman County. The circle (green) in the left inset map represents the approximate location of the facility. The inset map on the right represents the location of Hardeman County (red) in the state of Texas.