

Elisa Guerra

From: PUBCOMMENT-OCC
Sent: Wednesday, April 28, 2021 5:18 PM
To: PUBCOMMENT-OCC2; PUBCOMMENT-OPIC; PUBCOMMENT-ELD; PUBCOMMENT-APD
Subject: FW: Public comment on Permit Number 164317

WH

From: cohaganc@gmail.com <cohaganc@gmail.com>
Sent: Wednesday, April 28, 2021 3:48 PM
To: PUBCOMMENT-OCC <PUBCOMMENT-OCC@tceq.texas.gov>
Subject: Public comment on Permit Number 164317

REGULATED ENTY NAME AMERITEX DALLAS PRECAST

RN NUMBER: RN111213443

PERMIT NUMBER: 164317

DOCKET NUMBER:

COUNTY: GRAYSON

PRINCIPAL NAME: AMERITEX PIPE & PRODUCTS LLC

CN NUMBER: CN604263251

FROM

NAME: Cheyrl Cohagan

E-MAIL: cohaganc@gmail.com

COMPANY:

ADDRESS: 1128 STONEBRIDGE PASS
GUNTER TX 75058-4235

PHONE: 9038212620

FAX:

COMMENTS: Please rescind my previous request today for a public hearing. I'm sorry.

Elisa Guerra

From: PUBCOMMENT-OCC
Sent: Wednesday, April 28, 2021 2:36 PM
To: PUBCOMMENT-OCC2; PUBCOMMENT-OPIC; PUBCOMMENT-ELD; PUBCOMMENT-APD
Subject: FW: Public comment on Permit Number 164317

H

From: cohaganc@gmail.com <cohaganc@gmail.com>
Sent: Wednesday, April 28, 2021 12:47 PM
To: PUBCOMMENT-OCC <PUBCOMMENT-OCC@tceq.texas.gov>
Subject: Public comment on Permit Number 164317

REGULATED ENTY NAME AMERITEX DALLAS PRECAST

RN NUMBER: RN111213443

PERMIT NUMBER: 164317

DOCKET NUMBER:

COUNTY: GRAYSON

PRINCIPAL NAME: AMERITEX PIPE & PRODUCTS LLC

CN NUMBER: CN604263251

FROM

NAME: Cheyrl Cohagan

E-MAIL: cohaganc@gmail.com

COMPANY:

ADDRESS: 1128 STONEBRIDGE PASS
GUNTER TX 75058-4235

PHONE: 9038212620

FAX:

COMMENTS: Request public hearing

Melissa Schmidt

From: PUBCOMMENT-OCC
Sent: Thursday, May 13, 2021 8:02 AM
To: PUBCOMMENT-OCC2; PUBCOMMENT-OPIC; PUBCOMMENT-ELD; PUBCOMMENT-APD
Cc: Mehgan Taack
Subject: FW: Public comment on Permit Number 164317
Attachments: 2021-05-12_Withdrawal of Hearing Request and Comments (Registration No. 164317).pdf

eComment = WH, WC
Attachment = WH

From: afriedman@msmtx.com <afriedman@msmtx.com>
Sent: Wednesday, May 12, 2021 4:31 PM
To: PUBCOMMENT-OCC <PUBCOMMENT-OCC@tceq.texas.gov>
Subject: Public comment on Permit Number 164317

REGULATED ENTY NAME: AMERITEX DALLAS PRECAST

RN NUMBER: RN111213443

PERMIT NUMBER: 164317

DOCKET NUMBER:

COUNTY: GRAYSON

PRINCIPAL NAME: AMERITEX PIPE & PRODUCTS LLC

CN NUMBER: CN604263251

FROM

NAME: Adam Friedman

E-MAIL: afriedman@msmtx.com

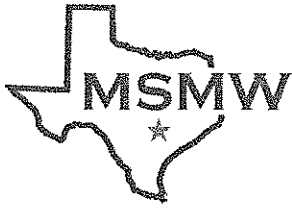
COMPANY: McElroy, Sullivan, Miller & Weber, L.L.P.

ADDRESS: 1201 SPYGLASS DR Suite 200
AUSTIN TX 78746-6925

PHONE: 5123278111

FAX:

COMMENTS: Attached is Paul Gabriel's Withdrawal of Hearing Request and Comments (Registration No. 164317).



MCELROY,
SULLIVAN,
MILLER &
WEBER, LLP

1201 Spyglass Drive, Suite 200, Austin, TX 78746 | www.msmtx.com

MAILING ADDRESS: P.O. Box 12127, Austin, TX 78711 | T. 512.327.8111 F. 512.327.6566

May 12, 2021

VIA TCEQ ELECTRONIC FILING:

Laurie Gharis, MC-105
Office of the Chief Clerk, Chief Clerk
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, TX 78711-3087

**Re: Air Quality Standard Permit for Concrete Batch Plants Proposed
Registration No. 164317**

Dear Ms. Gharis:

Mr. Gabriel hereby unconditionally and irrevocably withdraws his hearing request regarding the above referenced matter.

All parties are being served with an electronic copy of this letter.

Sincerely,

Adam M. Friedman

Adam M. Friedman

MCELROY, SULLIVAN, MILLER & WEBER

ATTORNEY FOR PAUL GABRIEL

Elisa Guerra

From: PUBCOMMENT-OCC
Sent: Friday, April 16, 2021 2:59 PM
To: PUBCOMMENT-OCC2; PUBCOMMENT-OPIC; PUBCOMMENT-ELD; PUBCOMMENT-APD
Subject: FW: Public comment on Permit Number 164317
Attachments: 2021-04-16 Mr. Gabriel Comments and Hearing Request (Permit No. 164317).pdf

H

From: lbanse@msmtx.com <lbanse@msmtx.com>
Sent: Friday, April 16, 2021 2:48 PM
To: PUBCOMMENT-OCC <PUBCOMMENT-OCC@tceq.texas.gov>
Subject: Public comment on Permit Number 164317

REGULATED ENTY NAME AMERITEX DALLAS PRECAST

RN NUMBER: RN111213443

PERMIT NUMBER: 164317

DOCKET NUMBER:

COUNTY: GRAYSON

PRINCIPAL NAME: AMERITEX PIPE & PRODUCTS LLC

CN NUMBER: CN604263251

FROM

NAME: Lee Banse

E-MAIL: lbanse@msmtx.com

COMPANY: McElroy Sullivan

ADDRESS: 1201 SPYGLASS DR Ste. 200
AUSTIN TX 78746-6925

PHONE: 5213278111

FAX:

COMMENTS: Please see the attached comment letter and request for contested case hearing for Mr. Paul Gabriel.



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1201 Spyglass Drive, Suite 200, Austin, TX 78746 | www.msmtx.com

MAILING ADDRESS: P.O. Box 12127, Austin, TX 78711 | T. 512.327.8111 F. 512.327.6566

April 16, 2021

VIA ELECTRONIC COMMENT:

Laurie Gharis, MC-105
Office of the Chief Clerk, Chief Clerk
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, TX 78711-3087
<https://www14.tceq.texas.gov/epic/eComment/>

**Re: Air Quality Standard Permit for Concrete Batch Plants
Proposed Registration No. 164317**

Dear Ms. Gharis:

I represent Paul Gabriel regarding AmeriTex Pipe & Products, LLC's ("AmeriTex") pending application (the "Application") for Air Quality Standard Permit, Registration No. 164317, to authorize construction of two additional, for a total of four, concrete batch plants (the "Plants")¹ in Grayson County. The Consolidated Notice of Receipt of Application and Intent to Obtain Permit and Notice of Receipt of Application and Preliminary Decision was published on March 23, 2021. By this letter, Mr. Gabriel submits comments to the Application and requests a contested case hearing. Mr. Gabriel can be reached by calling my office at 512-327-8111, and his address is 632 Bounds Ranch Rd., Gunter, TX 75058.

I. Mr. Gabriel is an affected person entitled to a contested case hearing

Under 30 TEX. ADMIN. CODE § 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. Mr. Gabriel has justiciable interests in his health and property that will be directly affected by the Application.

Mr. Gabriel is in his 70s, making him particularly susceptible to adverse impacts from the air contaminants emitted from the proposed Plants. Mr. Gabriel is frequently outside using his property for recreation and breeding horses and goats. Mr. Gabriel's property is directly adjacent to AmeriTex's property where AmeriTex seeks to construct the Plants, and Mr. Gabriel's residence is **approximately 10-20 feet** from the shared border. The Application states that AmeriTex will have sand delivered to the facility and stockpiled, and then the sand will eventually be relocated

¹ TCEQ has previously approved an AmeriTex permit for two concrete batch plants on this property in TCEQ Docket No. 2021-0056-AIR: TCEQ Air Quality Standard Permit for Concrete Batch Plants Registration Number 159336. Mr. Gabriel has a pending motion for rehearing in that docket for the Commission to reconsider his request for a contested case hearing.

from the stockpiles to the feed hoppers. The Application indicates that the stockpiles and material handling process at both Plants will emit sand—which will include crystalline silica—from more than a dozen separate emission points. The TCEQ has formally recognized that crystalline silica has been shown to **cause silicosis and lung cancer** when inhaled over a long period of time.² The Application does not demonstrate that human health is protected from the anticipated crystalline silica emissions and TCEQ never conducted any evaluation of the emissions of crystalline silica during its technical review of the Application. The Plants' air emissions pose a potentially significant health risk to Mr. Gabriel and adversely impacts the use of his property.

For AmeriTex's prior application for Standard Batch Plant Registration No. 159336, the Executive Director adopted the position that if an application meets all requirements of a concrete batch plant standard permit then a facility should operate in compliance with state rules and not cause or contribute to any negative impact on health, safety, or property.³ But, this conclusion does not reflect the reality of the AmeriTex Application. First, Mr. Gabriel believes that the AmeriTex Application fails to meet one of the standard permit conditions, the crystalline silica emission limit, which is zero. Second, TCEQ, when amending the concrete batch plant standard permit, did **not** consider the health impacts of crystalline silica. Therefore, the Application is not protective of human health, safety, or property.

This failure to ensure human health and safety is critical because the exact locations of the stockpiles and equipment that will emit crystalline silica are unknown. The Plot Plan in the Application only reflects **proposed** locations for the Plants, process building and stockpile area. The Concrete Batch Plant Standard Permit only requires that stationary equipment, stockpiles and vehicles not be located within 50 feet from the property line,⁴ which means crystalline silica emissions may be a mere 60-70 feet from Mr. Gabriel's residence. AmeriTex's Plot Plan also indicates that the central dust collector—another source of emissions—could be located anywhere on their property as long as AmeriTex maintains a minimal 100 feet buffer from Mr. Gabriel's property. Representations made in the Application do not prevent AmeriTex from relocating and operating its Plants and emissions sources much closer to Mr. Gabriel's residence **after** TCEQ approves the permit.

Mr. Don Nelon, TCEQ's staff responsible for reviewing applications for concrete batch plant standard permits, confirmed the significant flexibility afforded to an applicant to relocate its emission sources from those in the "proposed" plot plan submitted with the Application. Mr. Nelon previously testified on this topic as follows:⁵

² TCEQ Response to Comments at p. 5 (March 25, 2019), Application by Bosque Solutions LLC for Concrete Batch Plant Standard Permit, TCEQ Docket No. 2019-0665-AIR.

³ Executive Director's Response to Hearing Requests and Requests for Consideration, Application by AmeriTex Pipe & Products, LLC Concrete Batch Plant, Gunter, Grayson County; TCEQ Docket No. 2021-0056-AIR, pp. 15-16

⁴ Amendments to the Air Quality Standard Permit for Concrete Batch Plants, Effective Date December 21, 2012 at Section (9)(D)(ii).

⁵ Nelon Depo. at 34:2-35:7 (Nov. 19, 2019), Application by Bosque Solutions LLC for Concrete Batch Plant Standard Permit, TCEQ Docket No. 2019-0665-AIR (emphasis added).

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1 batch plant, yes, at the facility.
 2 Q. Is there any flexibility once they get the
 3 authorization to, say, move it 10 feet to the east?
 4 A. Yes, sir, there is.
 5 Q. Okay. At what point would the relocation be
 6 outside the authorized flexibility of moving a stockpile
 7 or moving the baghouse?
 8 A. If they can no longer meet the requirements of
 9 the standard permit.
 10 Q. So it really -- it's related to where the
 11 property boundary would be?
 12 A. Yes, sir.
 13 Q. So as long as they maintain that requirement,
 14 they can move the stockpiles wherever they deemed
 15 appropriate on the property that they own?
 16 A. That's correct.
 17 Q. Okay. And that's true for the baghouse, too,
 18 right?
 19 A. Correct. But when you get into a point of
 20 moving the plant, there's a different question because
 21 it -- state law says if you construct and operate a
 22 concrete batch plant and then if you want to move it,
 23 that's a new construction. So you have to go through
 24 the permitting process again. But the filters
 25 themselves, the baghouse, the stockpiles, yes, sir.

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1 That can all be moved.
 2 Q. I mean, if they haven't constructed it yet --
 3 let's say they make that decision before they start
 4 construction. It wouldn't trigger the state rule
 5 involved that you were talking about?
 6 A. That's correct. If they haven't started
 7 construction, they can make changes all they want.

AmeriTex can effectively relocate the Plants' emission points anywhere on their property—and much closer to Mr. Gabriel—as long as AmeriTex complies with the minimum buffer requirements. Mr. Gabriel has previously raised concerns related to AmeriTex's potential relocation of emission points. TCEQ responded that “it is unlawful for any person to vary from such representations [in the application] *if the change will affect that person's right to claim a standard permit.*”⁶ The TCEQ's comment does not alleviate Mr. Gabriel's concern because AmeriTex could relocate emission sources within 440 yards of Mr. Gabriel's residence without affecting its right to claim a standard permit. AmeriTex would only need to submit written notification the executive director describing the changed locations for its equipment and stockpiles.⁷

Each emission point endangers Mr. Gabriel's health and threatens to interfere with the normal use and enjoyment of his property. Mr. Gabriel is an affected person because he has a personal justiciable interest that will be directly affected by the Application, and he is entitled to a contested case hearing to ensure his health and property are protected from the anticipated air emissions.

⁶ TCEQ Response to Comments at p. 46-47, Response 32 (December 2, 2020) (emphasis added).

⁷ 30 TEX. ADMIN. CODE § 116.615(2)(B).

II. Mr. Gabriel's residence is within 440 yards of the proposed plant

Section 382.058(c) of the Texas Health & Safety Code states establishes that only those persons residing within 440 yards of the proposed plant may request a hearing as an affected person. Neither the Texas Health & Safety Code nor TCEQ rules define “plant,” and neither provide the location at the plant from which TCEQ is to start measuring 440 yards. The Texas Clean Air Act’s stated purpose is to protect public health, general welfare, and physical property.⁸ Implementation of the Texas Clean Air Act consistent with its purpose requires measuring the 440 yards from the hearing requestor’s residence to the nearest potential emission source of the proposed plant, especially in instances where residences, like Mr. Gabriel’s, are extremely close to the property boundary. This ensures that the term “plant” includes all sources of air emissions.⁹ The Legislature’s requirement that a hearing requestor reside within 440 yards of the proposed *plant*, as opposed to the *facility*—more narrowly defined as discrete or identifiable structure, device, item, equipment, or enclosure that constitutes or contains a stationary source¹⁰—indicates the intention was to provide hearings to those potentially impacted by any source of air emissions. It would be entirely unreasonable to deny an adjacent resident his opportunity to protect his health and property at a contested hearing simply because the TCEQ measured the distance from his residence to an arbitrary location somewhere within the applicant’s property when no restrictions exist to keep the applicant from locating the plant and the associated dangerous air emissions extremely close to the property line.

This position is further supported by TCEQ and SOAH precedent. Both *Block Creek Concrete Products* (“*Block Creek*”)¹¹ and *East Texas Precast* (“*Precast*”)¹² establish that the 440 yards should be measured from a concrete batch plant’s “**emission points**” to the closest portion of Mr. Gabriel’s residence. *Block Creek* concluded that “because the **emission points** are the subject of environmental concern, it follows that the distance **should be measured from these points.**”¹³ In *Precast*, the TCEQ adopted the Administrative Law Judge’s holding that “proposed plant” means, for purposes of measuring 440 yards to a residence, “the stationary **point of origin of air contaminants** proposed in the application, not including a mine, quarry, well test, or road.”¹⁴

AmeriTex’s Process Description provides the minimal commitment only to not locate the dust collector exhausts within 100 feet of any property line, or any stationary equipment, stockpiles or vehicles within 50 feet of any property line. AmeriTex could substantially change its Plot Plan

⁸ TEX. HEALTH & SAFETY CODE § 382.002(a).

⁹ See e.g. SOAH Order No. 1, Application by Bosque Solutions LLC for Concrete Batch Plant Standard Permit, SOAH Docket No. 582-19-6473; TCEQ Docket No. 2019-0665-AIR (granting contested case hearing for requestor with residence within 440 yards from applicant’s property boundary but beyond 440 yards from the initial location selected by TCEQ within the applicant’s property).

¹⁰ TEX. HEALTH & SAFETY CODE § 382.003(6).

¹¹ Proposal for Decision on the Application of Block Creek Concrete Products, LLC for Issuance of Air Quality Standard Permit Registration No. 83958, SOAH Docket No. 582-08-4460, TCEQ Docket No. 2008-1009-AIR (January 9, 2009)) (emphasis added).

¹² Proposal for Decision on the Application by East Texas Precast Co., Ltd. For Registration and Approval to Use the Air Quality Standard Permit for Concrete Batch Plants, Registration No. 86593 at p. 5 (emphasis added).

¹³ Proposal for Decision on the Application of Block Creek Concrete Products, LLC for Issuance of Air Quality Standard Permit Registration No. 83958, SOAH Docket No. 582-08-4460, TCEQ Docket No. 2008-1009-AIR (January 9, 2009)) (emphasis added).

¹⁴ Proposal for Decision on the Application by East Texas Precast Co., Ltd. For Registration and Approval to Use the Air Quality Standard Permit for Concrete Batch Plants, Registration No. 86593 at p. 5 (emphasis added).

as long as it is consistent with these minimum buffer requirements. Mr. Gabriel's residence is approximately 10-20 feet from AmeriTex's property, which means Mr. Gabriel's permanent residence is well within 440 yards of the proposed Plants, and he is potentially extremely close to dangerous crystalline silica emissions. Mr. Gabriel is an affected person entitled to a contested hearing.

Further, AmeriTex now plans to operate four concrete batch plants on its property, which only increases the likelihood of a potential emission point being moved to close proximity of Mr. Gabriel's residence. Indeed, on page 27 of the Application, the Plot Plan indicates that AmeriTex plans to place a stockpile area, an emission source of crystalline silica, closer to Mr. Gabriel's property than the representations in the AmeriTex application for Concrete Batch Plants Registration Number 159336.

III. Issues to be referred to State Office of Administrative Hearings

Mr. Gabriel raises the following concerns which are issues of fact and/or mixed questions of fact and law that are relevant and material to the Application:

(1) whether anticipated air contaminants from the proposed Plants will be protective of human health, general welfare and physical property, including, but not limited to, whether the Plants will emit air contaminants in concentrations that exceed limits allowed under the standard permit for concrete batch plants;

(2) whether anticipated air contaminants from the proposed Plants coupled with dust emissions caused by trucks entering and exiting the property so close to his residence may injure or adversely affect health, welfare and/or his property;

(3) whether air contaminants from the proposed Plants coupled with dust emissions caused by trucks entering and exiting the property will interfere with the normal use and enjoyment of property;

(4) whether air contaminants from the proposed Plants coupled with dust emissions caused by trucks entering and exiting the property will adversely affect animal life on his property and interfere with the normal use and enjoyment of animal life.

Thank you,

/s/ Adam Friedman

Adam M. Friedman
MCELROY, SULLIVAN, MILLER & WEBER
1201 Spyglass, Suite 200
Austin, Texas 78746
afriedman@msmtx.com
ATTORNEY FOR PAUL GABRIEL