

**TCEQ AIR QUALITY STANDARD PERMIT FOR CONCRETE BATCH PLANTS
REGISTRATION NUMBER 164838
TCEQ DOCKET NUMBER 2022-0092-AIR**

APPLICATION BY	§	BEFORE THE TEXAS
METROPLEX GUNITE, L.P.	§	COMMISSION ON
CONCRETE BATCH PLANT	§	ENVIRONMENTAL QUALITY
GUNTER, GRAYSON COUNTY	§	

**EXECUTIVE DIRECTOR’S RESPONSE TO HEARING REQUESTS AND REQUESTS FOR
RECONSIDERATION**

I. INTRODUCTION

The Executive Director of the Texas Commission on Environmental Quality (commission or TCEQ) files this response (Response) to the requests for a contested case hearing and requests for reconsideration submitted by persons listed herein regarding the above-referenced matter. The Texas Clean Air Act (TCAA), Texas Health & Safety Code (THSC) § 382.056(n), requires the Commission to consider hearing requests in accordance with the procedures provided in TEX. WATER CODE (TWC) § 5.556.¹ This statute is implemented through the rules in 30 TEX. ADMIN. CODE (TAC) Chapter 55, Subchapter F.

Maps showing the location of the proposed plant are included with this Response and have been provided to all hearing requesters listed on the mailing list for this application. In addition, the technical review summary, which includes a compliance summary, and a copy of the Standard Permit for Concrete Batch Plants prepared by the Executive Director’s staff have been filed as backup material for the commissioners’ agenda. The Executive Director’s Response to Public Comment (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.

II. PLANT DESCRIPTION

Metroplex Gunitite, L.P. (Metroplex Gunitite or Applicant) has applied to the TCEQ for a Standard Permit for Concrete Batch Plants under TCAA § 382.05195. This will authorize the construction of a new facility that may emit air contaminants.

This permit, if issued, will authorize the Applicant to construct a permanent Concrete Batch Plant. The plant is proposed to be located at 873 Wall Street Road, Gunter, Grayson County, Texas, 78058. Contaminants authorized under this permit include particulate matter including (but not limited to) aggregate, cement, road dust, and particulate matter with diameters of 10 microns or less and 2.5 microns or less (PM₁₀ and PM_{2.5} respectively).

¹ Statutes cited in this response may be viewed online at www.statutes.legis.state.tx.us. Relevant statutes are found primarily in the THSC and the TWC. The rules in the TAC may be viewed online at www.sos.state.tx.us/tac/index.shtml, or follow the “Rules” link on the TCEQ website at www.tceq.texas.gov.

III. PROCEDURAL BACKGROUND

Before work is begun on the construction of a new facility that may emit air contaminants, the person planning the construction must obtain an authorization from the commission. This permit application is for an initial issuance of Air Quality Permit Number 164838.

The permit application was received on April 16, 2021 and declared administratively complete on April 19, 2021. An Amended Consolidated Notice of Receipt of Application and Intent to Obtain Permit and Notice of Application and Preliminary Decision (amended public notice) for this permit application was published on June 25, 2021 in the *Herald Democrat*. A public meeting was held on September 27, 2021 utilizing the GoToMeeting platform. The notice of public meeting was mailed out to all on the mailing list for this application on August 31, 2021. The public comment period ended on *September 27, 2021*. Because this application was received after September 1, 2015, it is subject to the procedural requirements of and rules implementing Senate Bill 709 (84th Legislature, 2015).

The TCEQ received timely hearing requests that were not withdrawn during the comment period from David Boring, Corey Crawford, Deirdre Diamond, Colin Drew Hunter, Don and Linda K. Hunter, Fermin Ortiz, Christina Peyton, Michael Spano, Amber M. Weber, and Jennifer Woodwell.

The Executive Director's RTC was filed with the Chief Clerk's Office on December 10, 2021 and mailed to all interested persons on December 14, 2021, including to those who asked to be placed on the mailing list for this application and those who submitted comments or requests for a contested case hearing. The cover letter attached to the RTC included information about making requests for a contested case hearing or for reconsideration of the Executive Director's decision. The letter also explained that hearing requestors should specify any of the Executive Director'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 time for requests for reconsideration and hearing requests ended on January 13, 2022. During this 30-day period, the TCEQ received requests for reconsideration from Diedre Diamond, Brian Holtum, Colin Drew Hunter, and Linda K. Hunter.

IV. APPLICABLE LAW FOR REQUESTS FOR RECONSIDERATION

Any person may file a request for reconsideration of the Executive Director's decision. However, for the commission to consider the request, it must substantially comply with the following requirements set forth in 30 TAC § 55.201(e): give the name, address, daytime telephone number and, when possible, fax number of the person who files the request; expressly state that the person is requesting reconsideration of the Executive Director's decision; and give reasons why the decision should be reconsidered.

V. RESPONSE TO REQUESTS FOR RECONSIDERATION

The TCEQ received timely requests for reconsideration from Deirdre Diamond, Brian Holtum, Colin Drew Hunter, and Linda K. Hunter. Although the Executive Director determined that the permit application meets the applicable rules and requirements, a

final decision to approve the proposed registration has not been made. The application must be considered by the commissioners of the TCEQ at a regularly scheduled public meeting before any final action can be taken on the application.

The requests for reconsideration did not state any of the Executive Director's responses in the RTC that they are specifically requesting to be reconsidered. Because some of the requests for reconsideration raise concerns about several RTC responses, where possible, the Executive Director is interpreting statements in the requests for reconsideration as they correspond to the appropriate response in the RTC. The Executive Director provides the following responses to the requests for reconsideration.

REQUEST FOR RECONSIDERATION OF RESPONSE 1 and 5

Diedre Diamond, Colin Drew Hunter, and Linda K. Hunter requested reconsideration because a local group, Gunter Clean Air, is in the process of conducting air dispersion modeling for the site. The requestors stated that the commission should delay processing this application until Gunter Clean Air has completed its modeling demonstration. The requestors stated that Gunter Clean Air's preliminary modeling shows that the community of Gunter is at risk. In addition, the requestors stated that Gunter Clean Air's modeling demonstrated emissions are leaving the property and that therefore, the protectiveness review cannot be applied when emissions leave the property and create a negative impact on the environment. Diedre Diamond subsequently supplemented her hearing requests to include reference to the completed air dispersion modeling which, Ms. Diamond states, demonstrates that the addition of this plant will exceed the NAAQS.

In their requests for reconsideration, Colin Drew Hunter and Linda K. Hunter stated that existing plants operating in the area have impacted their health. Mr. Hunter stated that its TCEQ's job to protect the health of Texans and that the commission should not turn its back on farmers and ranchers.

TCEQ RESPONSE: The Standard Permit for Concrete Batch Plants prohibits fugitive emissions from leaving the property and contains control requirements that address fugitive emissions. The Executive Director explained, in Response 1, that a protectiveness review was conducted during the development of the Standard Permit for Concrete Batch Plants to ensure the emissions authorized by the Standard Permit are protective of human health and the environment. No adverse effects are expected to occur from facilities that meet all requirements of the Air Quality Standard Permit for Concrete Batch Plants. In Response 1, the Executive Director also explained that because standard permits are authorizations for specific, well-characterized classes of facilities which have been developed by the commission to ensure that operations authorized by any standard permit are protective, an applicant seeking to obtain authorization under a standard permit is not required to submit site-specific emission calculations or air dispersion modeling.

In addition, in Response 5, the Executive Director explained how cumulative and aggregate effects from multiple plants were considered during the development of the Standard Permit. Based on the results of the protectiveness review, the commission determined that a review of other off-site sources is not necessary when evaluating approval of any particular standard permit application. In addition, based on the results of the protectiveness review, no adverse impacts are expected as a result of

operations of multiple similar facilities, such as concrete batch plants, rock crushing plants, or hot-mix asphalt plants.

REQUEST FOR RECONSIDERATION OF RESPONSES 2, 5, and 10

Diedre Diamond, Colin Drew Hunter, and Linda K. Hunter requested reconsideration on the basis that the site on which the plant is proposed to be located has four other existing batch plants in operation. The requestors stated that the different plants are contiguous and adjacent to each other and that the coordinates of some of the plants overlap each other. The requestors also stated that because there is a common owner who has leased portions of the property to the different operators, there is common control such that the various plants should be aggregated for permitting purposes. In addition, the requestors stated that all the plants at this site are connected by one road, which the requestors stated also demonstrates common control of the plants. The requestors also stated that the shared road has not been properly maintained and has created nuisance conditions for nearby properties. The requestors also expressed concern that the Applicant is circumventing the requirements of the Standard Permit by authorizing several plants at the same site.

The requestors stated that the Executive Director has not evaluated the distance between the existing batch plants on site and expressed concern about the potential for cumulative and aggregate effects from the multiple plants. The requestors referred to a response in an RTC for a different application, Registration No. 164827, for a Standard Permit for Concrete Batch Plants, in which the Executive Director stated that if multiple plants are located greater than 550 feet apart, no adverse impact are expected as a result of all the operations. The requestors concluded that because the plants on this site are not 550 feet apart, the community is at risk.

TCEQ RESPONSE: In Response 2, the Executive Director responded to comments concerning potential dust and nuisance conditions from in-plant roads and concerns that the shared road has not been maintained or properly watered. In this response the Executive Director explained that the Standard Permit for Concrete Batch Plants requires control processes to minimize dust and fugitive emissions. Specifically, for permanent concrete batch plants authorized under the Standard Permit, the owner or operator is required to pave all in-plant entry and exit roads and main traffic routes associated with the operation of the concrete batch plant, including any that may be used by batch trucks or material delivery trucks. All batch trucks and material delivery trucks are required to remain on the paved surfaces. In addition, the Standard Permit also requires these paved surfaces to remain intact and be cleaned. This Response also explained how citizens could make complaints regarding dust or nuisance conditions. However, that the road referenced by the requestors is off-site from each of the plants. In Response 10, the Executive Director explained that while the Standard Permit requires Best Management Practices to prevent nuisance dust from in-plant roads, the TCEQ does not have jurisdiction to regulate traffic or roads. Moreover, the TCEQ is prohibited from regulating roads per TCAA § 382.003(6), which excludes roads from the definition of "facility." Although the TCEQ is prohibited from regulating roads or trucks, the TCEQ rules prohibit anyone from causing a traffic hazard. Specifically, 30 TAC § 101.5 states, "No person shall discharge from any source whatsoever such quantities of air contaminants, uncombined water, or other materials which cause or have a tendency to cause a traffic hazard or an interference with normal road use."

While the responses cited by the requestors in the RTC for Registration No. 164827 concern a facility also registering under the Standard Permit for Concrete Batch Plants, that RTC responded to comments concerning that application. The portion of the response quoted by the requestors concerned the distance requirements to the nearest rock crusher, concrete crusher, or hot mix asphalt plant that are contained in the Standard Permit.² However, in Response 5 of the RTC, for this application, the Executive Director explained how the commission considered the potential for cumulative and aggregate effects during the protectiveness review. Based on the results of the protectiveness review, the commission determined that a review of other off-site sources is not necessary when evaluating approval of any particular Standard Permit application. In addition, based on the results of the protectiveness review, no adverse impacts are expected as a result of operations of multiple similar facilities, such as concrete batch plants, rock crushing plants, or hot-mix asphalt plants.

In Response 5, the Executive Director also responded to comments in which Diedre Diamond expressed concern that coordinates for the proposed plant overlapped with other existing plants and that the sites share common use of local resources. The Executive Director explained that with respect to the Standard Permit for Concrete Batch Plants, the definition of "site" is "[t]he total of all stationary sources located on one or more contiguous or adjacent properties, which are under common control of the same person (or persons under common control)."³ Response 5 went on to explain the things permit reviewers evaluate during a review of an application to register under the Standard Permit. The Executive Director explained that this review determined that the individual concrete batch plant operators on the larger site are not under common control and that each facility is operated by a different entity. The Executive Director determined that the site on which the Applicant proposed to locate this plant is wholly separate from other facilities in the area and does not share any on-site facilities. In determining whether stationary sources should be considered part of a single site, the Executive Director must evaluate whether all sources are under common control of the same person or persons under common control. Although the sites may share a common lessor, there is no evidence that the lessor has the ability to control the operations for any facility or source or that the lessor may direct the business operations of any of the various companies. Accordingly, the Executive Director has no basis on which to aggregate the emissions from the different operators. However, as described above, the commission evaluated the potential for cumulative and aggregate effects during the development of the Standard Permit and determined that no adverse impacts are expected as a result of multiple plant operations.

² See Amendment to the Concrete Batch Plants Air Quality Standard Permit effective December 21, 2012 which added a distance limitation to the nearest rock crusher, concrete crusher, or hot mix asphalt plant to reduce the potential for cumulative effects and help to maintain consistency with other standard permits. Available at <https://www.tceq.texas.gov/assets/public/permitting/air/NewSourceReview/Mechanical/cbpsp-finalpreamble.pdf>.

³ Texas Commission on Environmental Quality, *Amendments to the Air Quality Standard Permit for Concrete Batch Plants*, p. 2, available at <https://www.tceq.texas.gov/assets/public/permitting/air/NewSourceReview/Mechanical/cbpsp-92221.pdf> (Sep. 22, 2021).

REQUEST FOR RECONSIDERATION OF RESPONSE 1 and 9

Brian Holtum requested reconsideration of the Executive Director's decision "for the concrete plant to be built in Dorchester, TX." Mr. Holtum expressed concern about air quality and potential impacts to sensitive populations, such as the elderly. In addition, Mr. Holtum stated that many people in the area spend time outdoors where they could be exposed to harmful emissions from the proposed plant. Mr. Holtum stated that because the wind may blow in any direction, the entirety of Grayson County has a chance of being impacted by the proposed plant.

Mr. Holtum also stated that the city of Sherman is experiencing record growth and expressed concern that future residents may decline to live in Sherman if air quality is deteriorated.

TCEQ RESPONSE: This application is an application to register under the Standard Permit for Concrete Batch Plants. The plant is proposed to be located at 873 Wall Street Road, Gunter, Grayson County, Texas, 78058. Mr. Holtum did not raise these concerns during the comment period. However, the Executive Director responded to similar concerns that were raised during the comment period in Responses 1 and 9. In Response 1, the Executive Director explained that a protectiveness review was conducted during the development of the Standard Permit for Concrete Batch Plants to ensure the emissions authorized by the Standard Permit are protective of human health and the environment. Response 1 explained that the Standard Permit is designed to be in compliance with the National Ambient Air Quality Standards (NAAQS) which are set by the U.S. Environmental Protection Agency (EPA) to protect public health, including sensitive members of the population such as children, the elderly, and those individuals with preexisting health conditions. The Executive Director explained in Response 9 that the TCEQ does not have jurisdiction to consider facility location or land use issues when determining whether to approve or deny a permit. However, no adverse effects are expected to occur from facilities that meet all requirements of the Air Quality Standard Permit for Concrete Batch Plants.

GENERAL REQUEST FOR RECONSIDERATION - POTENTIAL ECONOMIC IMPACTS

Brian Holtum also requested reconsideration due to concerns that air quality impacts may deter people from going out, which could have a negative impact on the local economy.

TCEQ RESPONSE: This issue was not addressed in the RTC because the concerns were not raised during the comment period. The TCEQ's jurisdiction is established by the Legislature and is limited to the issues set forth in statute. Accordingly, the TCEQ does not have jurisdiction to consider potential economic impacts when determining whether to approve or deny a permit application.

VI. THE EVALUATION PROCESS FOR HEARING REQUESTS

House Bill 801 established statutory procedures for public participation in certain environmental permitting proceedings, specifically regarding public notice and public comment and the Commission's consideration of hearing requests. Senate Bill 709 revised the requirements for submitting public comment and the Commission's consideration of hearing requests. The evaluation process for hearing requests is as follows:

A. Response to Requests

The Executive Director, the Public Interest Counsel, and the Applicant may each submit written responses to a hearing requests. 30 TAC § 55.209(d).

Responses to hearing requests must specifically address:

- 1) whether the requestor is an affected person;
- 2) which issues raised in the hearing request are disputed;
- 3) whether the dispute involves questions of fact or of law;
- 4) whether the issues were raised during the public comment period;
- 5) whether the hearing request is based on issues raised solely in a public comment withdrawn by the commenter in writing by filing a withdrawal letter with the chief clerk prior to the filing of the Executive Director's Response to Comment;
- 6) whether the issues are relevant and material to the decision on the application; and
- 7) a maximum expected duration for the contested case hearing.

30 TAC § 55.209(e).

B. Hearing Request Requirements

In order for the Commission to consider a hearing request, the Commission must first determine whether the request meets certain requirements:

Affected persons may request a contested case hearing. The request must be made in writing and timely filed with the chief clerk. The request must be based only on the requestor's timely comments and may not be based on an issue that was raised solely in a public comment that was withdrawn by the requestor prior to the filing of the Executive Director's Response to Comment.

30 TAC § 55.201(c).

A hearing request must substantially comply with the following:

- 1) give the time, 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 requestor's location and distance relative to the proposed facility or activity that is the subject of the application and how and why the requestor 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 be referred to hearing, the requestor should, to the extent possible, specify any of the Executive Director's responses to comments that the requestor disputes and the factual basis of the dispute and list any disputed issues of law; and
- 5) provide any other information specified in the public notice of application.

30 TAC § 55.201(d).

C. Requirement that Requestor be an Affected Person/"Affected Person" Status

In order to grant a contested case hearing, the Commission must determine that a requestor is an "affected" person. Section 55.203 sets out who may be considered an affected person.

- a) For any application, 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.
- b) Except as provided by 30 TAC § 55.103, governmental entities, including local governments and public agencies with authority under state law over issues raised by the application may be considered affected persons.
- c) In determining whether a person is an affected person, all factors shall 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;
 - 6) for a hearing request on an application filed on or after September 1, 2015, whether the requestor timely submitted comments on the application which were not withdrawn; and
 - 7) for governmental entities, their statutory authority over or interest in the issues relevant to the application.

30 TAC § 55.203

In regard specifically to air quality permits, the activity the commission regulates is the emissions of air contaminants into the atmosphere. Any person who plans to construct or modify a facility that may emit air contaminants must receive authorization from the commission. Commission rules also include a general prohibition against causing a nuisance. Further, for air quality permits, 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 emitted from a facility.

Additionally, this application is for registration for the Standard Permit for Concrete Batch Plants. Hearing requests on a concrete batch plant standard permit are subject to the requirements in TCAA § 382.058(c), which states that "only those persons actually residing in a permanent residence within 440 yards of the proposed plant may request a hearing...as a person who may be affected."

For applications filed on or after September 1, 2015, 30 TAC § 55.201(d) allows the commission to consider, to the extent consistent with case law:

1. the merits of the underlying application and supporting documentation in the commission's administrative record, including whether the application meets the requirements for permit issuance;
2. the analysis and opinions of the Executive Director; and
3. any other expert reports, affidavits, opinions, or data submitted by the Executive Director, the applicant, or hearing requestor.

D. Referral to the State Office of Administrative Hearings

"When the commission grants a request for a contested case hearing, the commission shall issue an order specifying the number and scope of the issues to be referred to SOAH for a hearing." 30 TAC § 50.115(b). The commission may not refer an issue to SOAH for a contested case hearing unless the commission determines that the issue:

- 1) involves a disputed question of fact or a mixed question of law and fact;
- 2) was raised during the public comment period by an affected person whose hearing request is granted; and
- 3) is relevant and material to the decision on the application.

30 TAC § 50.115(c).

VII. ANALYSIS OF THE HEARING REQUESTS

The Executive Director has analyzed the hearing requests to determine whether they comply with Commission rules, if the requestors qualify as affected persons, what issues may be referred for a contested case hearing, and what is the appropriate length of the hearing.

A. Individual Hearing Requestors

1. David Boring

The Executive Director reviewed the factors found in 30 TAC § 55.201(c) and (d), and § 55.203 for determining whether a requestor is an affected person, and recommends the commission find that David Boring is not an affected person.

Mr. Boring submitted a timely hearing request during the comment period. The hearing request was in writing and provided the required contact information. In his hearing request, Mr. Boring stated that many citizens in Gunter are concerned about air quality, adverse health effects, and damage to land. However, Mr. Boring did not state how he may be affected in a manner different from the general public. Therefore, Mr. Boring did not raise a personal justiciable interest. Based on the address provided, the Executive Director determined that Mr. Boring resides approximately 4.8 miles from the proposed location of the plant.

In his hearing request, Mr. Boring raised the following issues:

Issue 1: Whether the proposed plant will negatively affect air quality

Issue 2: Whether the proposed plant will affect human health, including sensitive subgroups

2. Corey Crawford

The Executive Director reviewed the factors found in 30 TAC § 55.201(c) and (d), and § 55.203 for determining whether a requestor is an affected person, and recommends the commission find that Corey Crawford is not an affected person.

Mr. Crawford submitted a hearing request during the comment period. The hearing request was in writing and provided the required contact information. In his request, Mr. Crawford only stated "request public hearing." Mr. Crawford did not raise any other issues or otherwise state how he may be affected in a manner different from the general public. Therefore, Mr. Crawford did not raise a personal justiciable interest. Based on the address provided, the Executive Director determined that Mr. Crawford resides approximately 5 miles from the proposed location of the plant.

3. Deirdre Diamond

The Executive Director reviewed the factors found in 30 TAC § 55.201(c) and (d), and § 55.203 for determining whether a requestor is an affected person, and recommends the commission find that Deirdre Diamond is not an affected person.

Diedre Diamond submitted three hearing requests during the comment period and three hearing requests during the 30-day period after the RTC was filed. She also filed two requests for reconsideration after the RTC was filed to which the Executive Director responded above. The hearing requests were in writing, provided the required contact information, and included issues that are the basis of her hearing requests.

In her hearing requests, Ms. Diamond expressed concern about the potential for cumulative and aggregate effects from multiple plants. She stated that multiple batch plants under common control are operating at the proposed site and thus the different operations should be aggregated and considered a major source of air pollutants. In

another hearing request, Ms. Diamond provided images and coordinates demonstrating where she believed the various operators to be located on site. Ms. Diamond requested the Executive Director delay processing the application until the Executive Director had determined whether the various operations should be evaluated as a single site. Ms. Diamond expressed concern about the amount of concrete production in the area and stated that the different operators should all be subject to the production limitations in the Standard Permit.

Although she did not specifically state how she may be affected in a manner different than the general public, Ms. Diamond stated that she has "an invested (sic) interest in this permit being denied" and expressed general concern about pollution and exposure to emissions, particularly at area schools. Ms. Diamond expressed concern that authorization of this plant would negatively impact human health and the environment and stated that no science shows that having this many concrete batch plants near each other is protective. In addition, Ms. Diamond stated that community air monitoring shows an increase in PM_{2.5} emissions since the other plants in the area have been in operation.

In her hearing requests, Ms. Diamond stated that she owns a home located five miles from the proposed plant that will be her permanent residence. Ms. Diamond stated that the 440-yard distance limitation should not apply to this application because modeling conducted by the Gunter Clean Air group demonstrated that emissions from this site are leaving the property and because the proposed plant will be part of a major source. Ms. Diamond stated that the protectiveness of the Standard Permit cannot be applied when the emissions leave the property and therefore her contested case hearing request should be granted.

As the Executive Director explained in the Response to requests for reconsideration above, the review of the application determined that the individual concrete batch plant operators in the area are not under common control and that each plant is operated by a different entity. The Executive Director determined that the site, on which the Applicant proposed to locate the plant, is wholly separate from other facilities and does not share any on-site facilities. In addition, as discussed in Response 5 of the RTC, the proposed plant is not a major source of emissions.

The TCEQ rules set out who may be considered an affected person. *See* 30 TAC § 55.203. In addition to the requirements in section 55.203, the Legislature limited who is entitled to a contested case hearing concerning applications to register a Standard Permit for Concrete Batch Plants to requestors living within 440 yards of the proposed plant. Specifically, TCAA § 382.058(c) states that "[f]or purposes of this section, only those persons actually residing in a permanent residence within 440 yards of the proposed plant may request a hearing under Section 382.056 as a person who may be affected." Section 382.058 does not provide an exemption to its applicability. Therefore, the commission must apply the plain and unambiguous language limiting who may request a hearing as an affected person on applications to register a Standard Permit for Concrete Batch Plants. *See Paxton v. City of Dallas*, 509 S.W.3d 247, 257 (Tex. 2017) ("... a statute's unambiguous language controls the outcome.").

TCAA § 382.058(c) requires a person seeking party status and a contested case hearing on an application for a standard permit for a concrete batch plant to show that he or she permanently resides within 440 yards of a proposed plant. Ms. Diamond stated

that the address she provided will be her permanent residence but did not specifically state that she is actually residing at that address. However, based on the address provided, the Executive Director determined that the residence is approximately 5 miles from the proposed location of the plant. Therefore, even if Ms. Diamond is residing at the Gunter address, it is not within 440 yards of the proposed location of the plant.

In her hearing requests, Deirdre Diamond raised the following issues:

Issue 1: Whether the proposed plant will negatively affect air quality

Issue 2: Whether the proposed plant will affect human health, including sensitive subgroups

Issue 3: Whether the proposed plant will create a nuisance

Issue 4: Whether cumulative and additive impacts of nearby operations were adequately considered

Issue 5: Whether the application complies with the Standard Permit for Concrete Batch Plants

Issue 6: Whether the proposed site is under common control with other facilities

Issue 7: Whether Best Management Practices will be applied to on-site roads

Issue 8: Whether emissions from the plant will be adequately monitored

Issue 9: Whether noise and light pollution will negatively impact the nearby community

Issue 10: Whether the plant will increase truck traffic

Issue 11: Whether water quality or water availability will be negatively impacted

Issue 12: Whether water runoff from the site will negatively impact nearby properties

Issue 13: Whether there is adequate monitoring of air quality in and around Gunter, Texas

Issue 14: Whether TCEQ should delay issuance of the permit until it considers air quality monitoring data submitted by the hearing requestors

Issue 15: Whether the air dispersion modeling conducted by the requestors should override the distance limitations in TCAA § 382.058(c)

4. Colin Drew Hunter/ Don and Linda K. Hunter

The Executive Director reviewed the factors found in 30 TAC § 55.201(c) and (d), and § 55.203 for determining whether a requestor is an affected person, and recommends the commission find that Colin Drew, Don, and Linda K. Hunter are not affected persons.

Colin Drew Hunter submitted a timely hearing request during the comment period and five hearing requests during the 30-day period after the RTC was filed. Don Hunter submitted two timely hearing requests during the comment period. Linda K. Hunter submitted three timely hearing requests during the comment period and two hearing requests during the 30-day period after the RTC was filed. The hearing requests were in writing, provided the required contact information, and included issues that are the basis of their hearing requests.

In his hearing request, Colin Hunter stated that existing plants in the area have impacted his health and that, after spending time outdoors, his lungs become inflamed. Mr. Hunter stated that his farm, where he raises cattle, is within 440 yards of the plant. He stated his daughter spends sixty percent of her time outdoors and expressed concern that his family cannot endure another batch plant.

Don Hunter and Linda K. Hunter each expressed concern that existing plants in the area are deteriorating air quality. Mrs. Hunter stated that she suffers from asthma and her husband has multiple sclerosis. Mrs. Hunter also stated that their farm is within 440 yards and expressed concern that the proposed plant puts their farm at risk. The Hunters all expressed concern that the plant would impact human health and the environment.

Colin and Linda K. Hunter stated that the 440-yard distance limitation should not be applied in this case because emissions from existing plants are leaving the property. However, as discussed above, TCAA § 382.058(c) requires a person seeking party status and a contested case hearing on an application for a standard permit for a concrete batch plant to show that he or she permanently resides within 440 yards of a proposed plant and does not provide an exception to the applicability of the law. Based on the address provided, the Executive Director determined that the Hunters reside approximately 563 yards from the proposed location of the plant.

In their hearing requests, the Hunters raised the following issues:

Issue 1: Whether the proposed plant will negatively affect air quality (Colin and Don Hunter)

Issue 2: Whether the proposed plant will affect human health, including sensitive subgroups (Colin, Don, Linda K. Hunter)

Issue 3: Whether the proposed plant will create a nuisance (Colin, Don, Linda K. Hunter)

Issue 4: Whether cumulative and additive impacts of nearby operations were adequately considered (Colin, Don, Linda K. Hunter)

Issue 5: Whether the application complies with the Standard Permit for Concrete Batch Plants (Colin, Don, Linda K. Hunter)

Issue 6: Whether the proposed site is under common control with other facilities (Colin, Don, Linda K. Hunter)

Issue 7: Whether Best Management Practices will be applied to on-site roads (Colin, Don, Linda K. Hunter)

Issue 8: Whether emissions from the plant will be adequately monitored (Collin Hunter)

Issue 9: Whether noise and light pollution will negatively impact the nearby community (Colin, Don, Linda K. Hunter)

Issue 10: Whether the plant will increase truck traffic (Colin and Linda K. Hunter)

Issue 11: Whether water quality or water availability will be negatively impacted (Colin and Linda K. Hunter)

Issue 12: Whether water runoff from the site will negatively impact nearby properties (Colin, Don, Linda K. Hunter)

Issue 13: Whether there is adequate monitoring of air quality in and around Gunter, Texas (Colin, Don, Linda K. Hunter)

Issue 14: Whether TCEQ should delay issuance of the permit until it considers air quality monitoring data submitted by the hearing requestors (Colin and Linda K. Hunter)

Issue 15: Whether the air dispersion modeling conducted by the requestors should override the distance limitations in TCAA § 382.058(c) (Colin and Linda K. Hunter)

5. Fermin Ortiz

The Executive Director reviewed the factors found in 30 TAC § 55.201(c) and (d), and § 55.203 for determining whether a requestor is an affected person, and recommends the commission find that Fermin Ortiz is not an affected person.

Mr. Ortiz submitted a timely hearing request during the comment period. The hearing request was in writing and included issues that are the basis of his request. In his hearing request, Mr. Ortiz expressed concern that the Applicant was attempting to circumvent the limits of the Standard Permit by immorally fudging the figures in the application. However, Mr. Ortiz did not state how he may be affected in a manner different from the general public. Therefore, Mr. Ortiz did not raise a personal justiciable interest.

In his hearing request, Mr. Ortiz provided a P.O. Box mailing address but did not indicate the distance of his residence to the proposed plant or provide his residential address. Therefore, the Executive Director was unable to determine whether Mr. Ortiz resides within 440 yards of the proposed location of the plant.

In his hearing request, Mr. Ortiz raised the following issue:

Issue 5: Whether the application complies with the Standard Permit for Concrete Batch Plants

6. Christina Peyton

The Executive Director reviewed the factors found in 30 TAC § 55.201(c) and (d), and § 55.203 for determining whether a requestor is an affected person, and recommends the commission find that Christina Peyton is not an affected person.

Ms. Peyton submitted a timely hearing request during the comment period. The hearing request was in writing, provided the required contact information, and included issues that are the basis of her hearing request. In her hearing request, Ms.

Peyton stated that she was requesting a public hearing about the permit and would like to see the permit denied. However, Ms. Peyton did not otherwise express concern or state how she may be affected in a manner different from the general public. Therefore, Ms. Peyton did not raise a personal justiciable interest.

Based on the address provided, the Executive Director determined that Ms. Peyton resides approximately 5 miles from the proposed location of the plant.

7. Michael Spano

The Executive Director reviewed the factors found in 30 TAC § 55.201(c) and (d), and § 55.203 for determining whether a requestor is an affected person, and recommends the commission find that Michael Spano is not an affected person.

Mr. Spano submitted a hearing request during the comment period. The hearing request was in writing, provided the required contact information, and included issues that are the basis of his request. In his hearing request, Mr. Spano stated he requested a public hearing and expressed concern that the Applicant is using different company names to authorize multiple concrete batch plants on the same site. However, Mr. Spano did not otherwise express concern or state how he may be affected in a manner different from the general public. Therefore, Mr. Spano did not raise a personal justiciable interest. Based on the address provided, the Executive Director determined that Mr. Spano resides approximately 196 miles from the proposed location of the plant.

In his hearing request, Mr. Spano raised the following issue:

Issue 5: Whether the application complies with the Standard Permit for Concrete Batch Plants

8. Amber M. Weber

The Executive Director reviewed the factors found in 30 TAC § 55.201(c) and (d), and § 55.203 for determining whether a requestor is an affected person, and recommends the commission find that Amber M. Weber is not an affected person.

Ms. Weber submitted a timely hearing request during the comment period. The hearing request was in writing, provided the required contact information, and included issues that are the basis of her request. In her hearing request, Ms. Weber stated that she requested a public hearing and that this is ridiculous. Ms. Weber expressed general concern about health but did not otherwise state how she may be affected in a manner different from the general public. Therefore, Ms. Weber did not raise a personal justiciable interest. Based on the address provided, the Executive Director determined that Ms. Weber resides approximately 4.9 miles from the proposed location of the plant.

In her hearing request, Ms. Weber raised the following issue:

Issue 2: Whether the proposed plant will affect human health, including sensitive subgroups

9. Jennifer Woodwell

The Executive Director reviewed the factors found in 30 TAC § 55.201(c) and (d), and § 55.203 for determining whether a requestor is an affected person, and recommends the commission find that Jennifer Woodwell is not an affected person.

Ms. Woodwell submitted a timely hearing request during the comment period. The hearing request was in writing, provided the required contact information, and included issues that are the basis of her request. In her hearing request, Ms. Woodwell stated that she is concerned about the number of plants in the area and that existing plants had increased dust. Ms. Woodwell expressed general concern about health but did not otherwise state how she may be affected in a manner different from the general public. Therefore, Ms. Weber did not raise a personal justiciable interest. Based on the address provided, the Executive Director determined that Ms. Woodwell resides approximately 1.9 miles from the proposed location of the plant.

In her hearing request, Jennifer Woodwell raised the following issue:

Issue 4: Whether cumulative and additive impacts of nearby operations were adequately considered.

B. Groups and Associations

In addition to the requirements in 30 TAC § 55.201 and 30 TAC § 55.203, requests for a contested case hearing by a group or association, on an application filed on or after September 1, 2015, must meet the requirements in 30 TAC § 55.205(b). Specifically: (1) the group or association must have submitted timely comments on the application; (2) the request must identify, by name and physical address, one or more members of the group or association that would otherwise have standing to request a hearing in their own right; (3) the interests the group or association seeks to protect must be germane to the organization's purpose; and (4) the claim asserted or the relief requested may not require the participation of the individual members in the case.

1. Gunter Clean Air

(1) Whether the group or association submitted timely comments on the application.

Deirdre Diamond submitted a hearing request on behalf of Gunter Clean Air during the comment period. The issues raised in Gunter Clean Air's hearing request were raised in the group's timely comments. The Executive Director recommends that the Commission find that Gunter Clean Air has met this requirement for associational standing.

(2) Whether one or more members of the group or association would otherwise have standing to request a hearing in their own right.

Gunter Clean Air's hearing request states members of the group range from individuals that border the property line of the proposed plant all the way to the end of the Gunter city limits. In the hearing request, Ms. Diamond stated that communications should be directed to her address. However, Gunter Clean Air did not name a member who would have standing to request a contested case hearing in their own right. Accordingly, the Executive Director recommends that the Commission find that Gunter Clean Air has not met this requirement for associational standing.

(3) Whether the interests the group or association seeks to protect are germane to the organization's purpose.

The hearing request submitted by Gunter Clean Air stated that the group's concerns have no boundaries and includes all areas of Gunter. However, the request did not specifically state the organization's purpose other than stating that the group is prepared to engage in a contested case hearing regarding this application. Therefore, the Executive Director recommends that the Commission find that Gunter Clean Air has not met this requirement for associational standing.

(4) Whether the claim asserted or the relief requested requires the participation of the individual members in the case.

The relief requested by Gunter Clean Air does not require the participation of any individual member of Gunter Clean Air. Thus, the Executive Director has determined that Gunter Clean Air has met this requirement for associational standing.

Because Gunter Clean Air did not meet all four requirements for associational standing, the Executive Director recommends the Commission find that Gunter Clean Air is not an affected person.

In Gunter Clean Air's hearing request, it raised the following issues:

Issue 1: Whether the proposed plant will negatively affect air quality

Issue 3: Whether the proposed plant will create a nuisance

Issue 4: Whether cumulative and additive impacts of nearby operations were adequately considered

Issue 5: Whether the application complies with the Standard Permit for Concrete Batch Plants

Issue 6: Whether the proposed site is under common control with other facilities

Issue 7: Whether Best Management Practices will be applied to on-site roads

Issue 10: Whether the plant will increase truck traffic

Issue 11: Whether water quality or water availability will be negatively impacted

Issue 12: Whether water runoff from the site will negatively impact nearby properties

Issue 13: Whether there is adequate monitoring of air quality in and around Gunter, Texas

Issue 14: Whether TCEQ should delay issuance of the permit until it considers air quality monitoring data submitted by the hearing requestors

Issue 15: Whether the air dispersion modeling conducted by the requestors should override the distance limitations in TCAA § 382.058(c)

C. Whether the those who requested a contested case hearing are affected persons?

For a registration under the Standard Permit for Concrete Batch Plants, TCAA § 382.058(c) states that “only those persons actually residing in a permanent residence within 440 yards of the proposed plant may request a hearing...as a person who may be affected.” As shown on the maps, none of the hearing requestors reside within 440 yards of the of the proposed plant. Therefore, the Commission cannot consider them to be affected persons.

VIII. CONCLUSION

The Executive Director respectfully recommends the Commission:

1. Find all hearing requests in this matter were timely filed;
2. Find that all hearing requestors are not affected persons as a matter of law and deny their hearing requests; and
3. Deny the requests for reconsideration filed by Diedre Diamond, Brian Holtum, Colin Drew Hunter, and Linda K. Hunter.

Respectfully submitted,

Texas Commission on Environmental Quality

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Erin E. Chancellor, Director
Office of Legal Services

Guy Henry, Acting Deputy Director
Environmental Law Division



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REPRESENTING THE
EXECUTIVE DIRECTOR OF THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY

CERTIFICATE OF SERVICE

On this 31st day of January 2022, a true and correct copy of the foregoing instrument was served on all persons on the service list by the undersigned via deposit into the U.S. Mail, inter-agency mail, facsimile, electronic mail, or hand delivery.



Betsy Peticolas, Staff Attorney
Environmental Law Division

SERVICE LIST
METROPLEX GUINTE, L.P.
TCEQ DOCKET NO. 2022-0092-AIR; PERMIT NO. 164838

FOR THE CHIEF CLERK:

via electronic filing
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Texas Commission on Environmental
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Jennifer Woodwell
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Metroplex Gunitite, L.P.

Standard Permit for Concrete Batch Plants Registration No. 164838

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

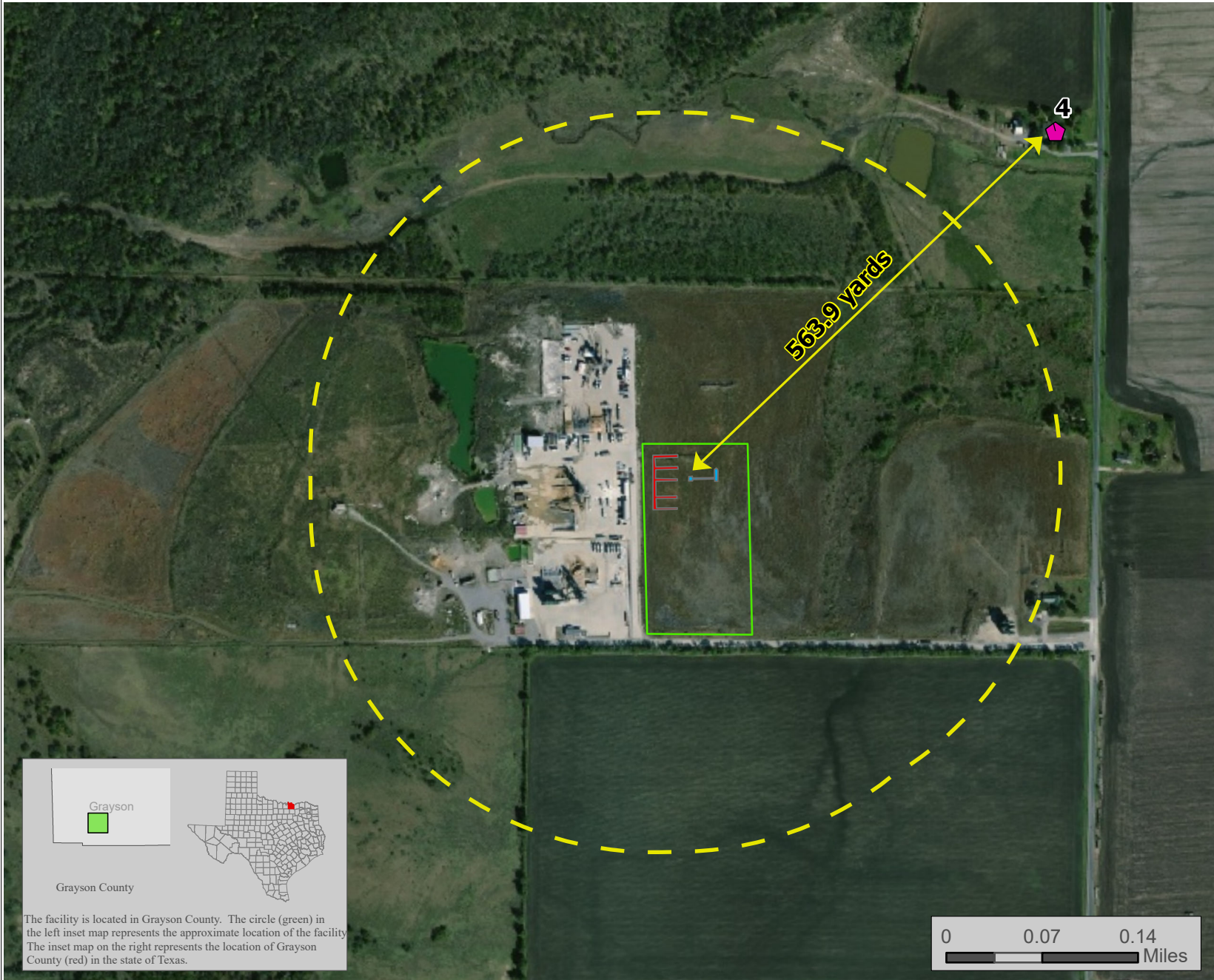


Protecting Texas by
Reducing and
Preventing Pollution

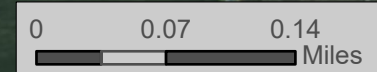
Texas Commission on Environmental Quality
GIS Team (Mail Code 197)
P.O. Box 13087
Austin, Texas 78711-3087
Date: 1/26/2022
CRF 0065245
Cartographer: CHoddePi



- Requestors
- 440 Yard Radius
- CBP Facility
- Stockpile Location
- Plant Property Line



The facility is located in Grayson 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 Grayson County (red) in the state of Texas.



Please see Appendix A for a list of requestors and distances from the facility

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.

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.

Metroplex Gunitite, L.P.

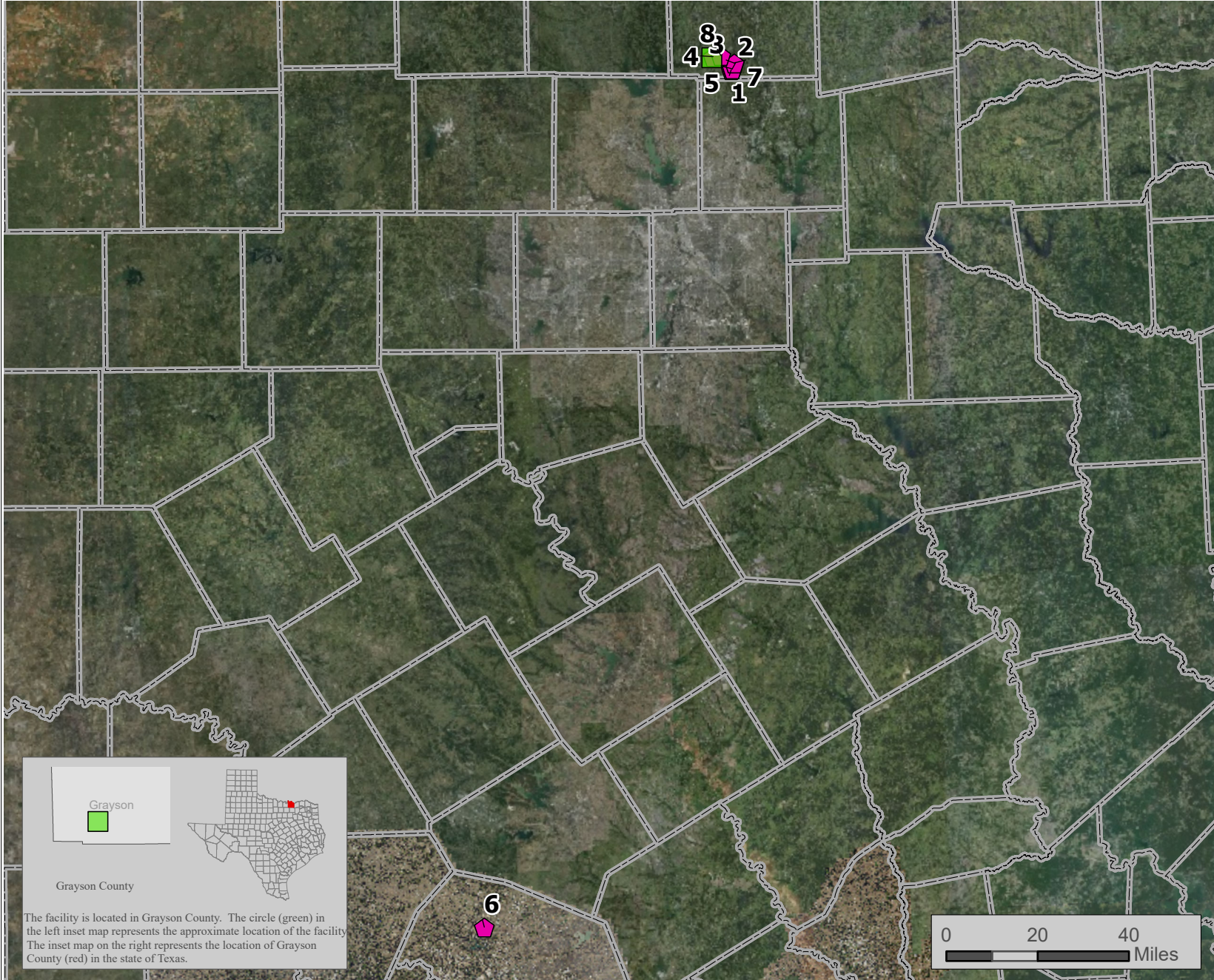
Standard Permit for Concrete Batch Plants Registration No. 164838

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



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Reducing and
Preventing Pollution*

Texas Commission on Environmental Quality
GIS Team (Mail Code 197)
P.O. Box 13087
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Date: 1/26/2022
CRF 0065245
Cartographer: CHoddePi



- Plant
- Requestors
- 440 Yard Radius

Please see Appendix A for a list of requestors and distances from the facility

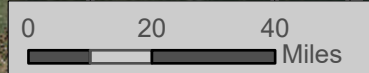
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Grayson

Grayson County

The facility is located in Grayson 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 Grayson County (red) in the state of Texas.



Metroplex Gunite, L.P.

Standard Permit for Concrete Batch Plants Registration No. 164838






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



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Preventing Pollution*

Texas Commission on Environmental Quality
GIS Team (Mail Code 197)
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Cartographer: CHoddePi

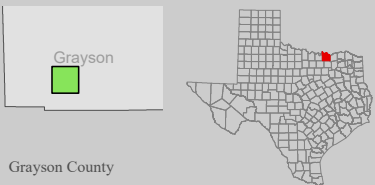


-  Requestors
-  440 Yard Radius
-  CBP Facility
-  Stockpile Location
-  Plant Property Line

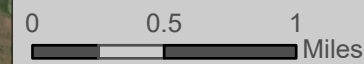
Please see Appendix A for a list of requestors and distances from the facility

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.

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The facility is located in Grayson 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 Grayson County (red) in the state of Texas.



Appendix A

Label	Name	Address	Miles From Facility
1	David Boring	1806 Turtle Creek Ln Gunter, TX 75058-4230	4.88
2	Corey Crawford	2021 Fox Bend Trce Gunter, TX 75058-4206	5.00
3	Deirdre Diamond	2105 Bledsoe Rd Gunter, TX 75058-3015	5.02
4	Don, Linda, and Colin Drew Hunter	1273 Wall Street Rd Gunter, TX 75058-2041	0.32
5	Christina Peyton	2025 Fox Bend Trce Gunter, TX 75058-4206	5.02
6	Michael Spano	152 Silverado Dr Georgetown, TX 78633-5640	196.31
7	Amber M. Weber	2115 Bledsoe Rd Gunter, TX 75058-3015	4.988
8	Jennifer Woodwell	744 Reed Ln Gunter, TX 75058-2156	1.96