

**TCEQ AIR QUALITY PERMIT NUMBER 171356
TCEQ DOCKET NO. 2023-0849-AIR**

APPLICATION BY	§	BEFORE THE
ON-SITE CONCRETE SOLUTIONS, LLC	§	
CONCRETE BATCH PLANT	§	TEXAS COMMISSION ON
FREEPORT, BRAZORIA COUNTY	§	
	§	
	§	ENVIRONMENTAL QUALITY

EXECUTIVE DIRECTOR’S RESPONSE TO HEARING REQUESTS

I. INTRODUCTION

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 Tex. Water Code (TWC) § 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. In addition, a current compliance history report, technical review summary, modeling audit memorandum, and draft permit prepared by the ED’s staff have been filed with the TCEQ’s Office of Chief Clerk for the commission’s consideration. Finally, the ED’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.

II. PLANT DESCRIPTION

On-Site Concrete Solutions, LLC (Applicant) has applied to the TCEQ for a Standard Permit under Texas Clean Air Act (TCAA) § 382.05195. This will authorize the construction of a new facility that may emit air contaminants. This permit will authorize the Applicant to construct a permanent Concrete Batch Plant. The facility is to be located 0.2 miles east of the intersection between County Road 217 and US Highway 36 on County Road 217, Freeport, Brazoria County. Contaminants to be authorized under this permit include particulate matter (PM), including (but not limited to) aggregate, cement, road dust, and PM with diameters of 10 microns or less (PM₁₀) and 2.5 microns or less (PM_{2.5}).

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.

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 171356.

The permit application was received on December 27, 2022 and declared administratively complete on December 28, 2022. The Consolidated Notice of Receipt of Application and Intent to Obtain Permit and Notice of Application and Preliminary Decision (public notice) for this permit application was published in English on February 2, 2023, in the *The Facts* and in Spanish on February 2, 2023 in *El Perico*. The public comment period ended on March 6, 2023. 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 Valerie Jansky.

The Executive Director's RTC was filed with the Chief Clerk's Office on April 27, 2023 and mailed to all interested persons on May 3, 2023, 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 June 2, 2023. The TCEQ received one timely hearing request during the public comment period that was not withdrawn from Valerie Jansky.

IV. 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 request. 30 TAC § 55.209(d).

Responses to a hearing request 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 on 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 for 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).

V. ANALYSIS OF THE HEARING REQUESTS

The Executive Director has analyzed the hearing request to determine whether it complies with Commission rules, if the requestor qualifies as an affected person, what issues may be referred for a contested case hearing, and what is the appropriate length of the hearing.

The following person submitted a timely hearing request that was not withdrawn: Valerie Jansky. The hearing request was submitted during the public comment period. Furthermore, the ED has determined the hearing request substantially complied with all of the requirements for form in 30 TAC § 55.201(d).

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 Valerie Jansky is not an affected person.

Ms. Jansky submitted a timely hearing request during the comment period. The hearing request was in writing and provided the required contact information. In her hearing request, Ms. Jansky stated that she is concerned about air quality, adverse

health effects to herself and wildlife, dust, and impacts on property rights of surrounding landowners. Based on the representations provided by the applicant and the map generated by the ED, the residence of the requestor is outside of the 440 yards. Because Ms. Jansky is outside of the 440 yards to request a hearing as a person who may be affected pursuant to THSC § 382.058(c), the ED recommends denying her request.

In her hearing request, Ms. Jansky raised the following issues:

1. Whether the proposed plant will negatively affect air quality.
2. Whether the proposed plant will have an adverse effect on the requester's health.
3. Whether the proposed plant will negatively affect welfare, including plants, animals, and the environment.
4. Whether the proposed plant will create nuisance dust.
5. Whether the proposed plant will negatively impact the property rights of surrounding landowners and interfere with residents' use and enjoyment of the property.
6. Whether the Applicant demonstrates compliance with all applicable rules and regulations.

VI. CONCLUSION

The Executive Director respectfully recommends the commission:

1. Find the hearing request in this matter was timely filed.
2. Find the hearing requester is not an affected person.

Respectfully submitted,

Texas Commission on Environmental Quality

Kelly Keel, Interim Executive Director

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Office of Legal Services

Charmaine Backens, Deputy Director
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REPRESENTING THE
EXECUTIVE DIRECTOR OF THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY

CERTIFICATE OF SERVICE

On the 18th day of September 2023, a true and correct copy of the foregoing instrument was filed with the Office of the Chief Clerk and served on all persons on the mailing list by the undersigned via deposit into the U.S. Mail, inter-agency mail, facsimile, electronic mail, or hand delivery.



Abigail Adkins

**MAILING LIST / LISTA DE CORREO
FOR/ PARA
ON-SITE CONCRETE SOLUTIONS, LLC
AIR QUALITY STANDARD PERMIT NO. 171356 / PERMISO ESTÁNDAR DE CALIDAD
DEL AIRE NO. 171356**

**FOR THE CHIEF CLERK/PARA EL
OFICINA DEL SECRETARIO OFICIAL:**

via electronic filing

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

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On-Site Concrete Solutions LLC Standard Permit for Concrete Batch Plants Registration No. 171356

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

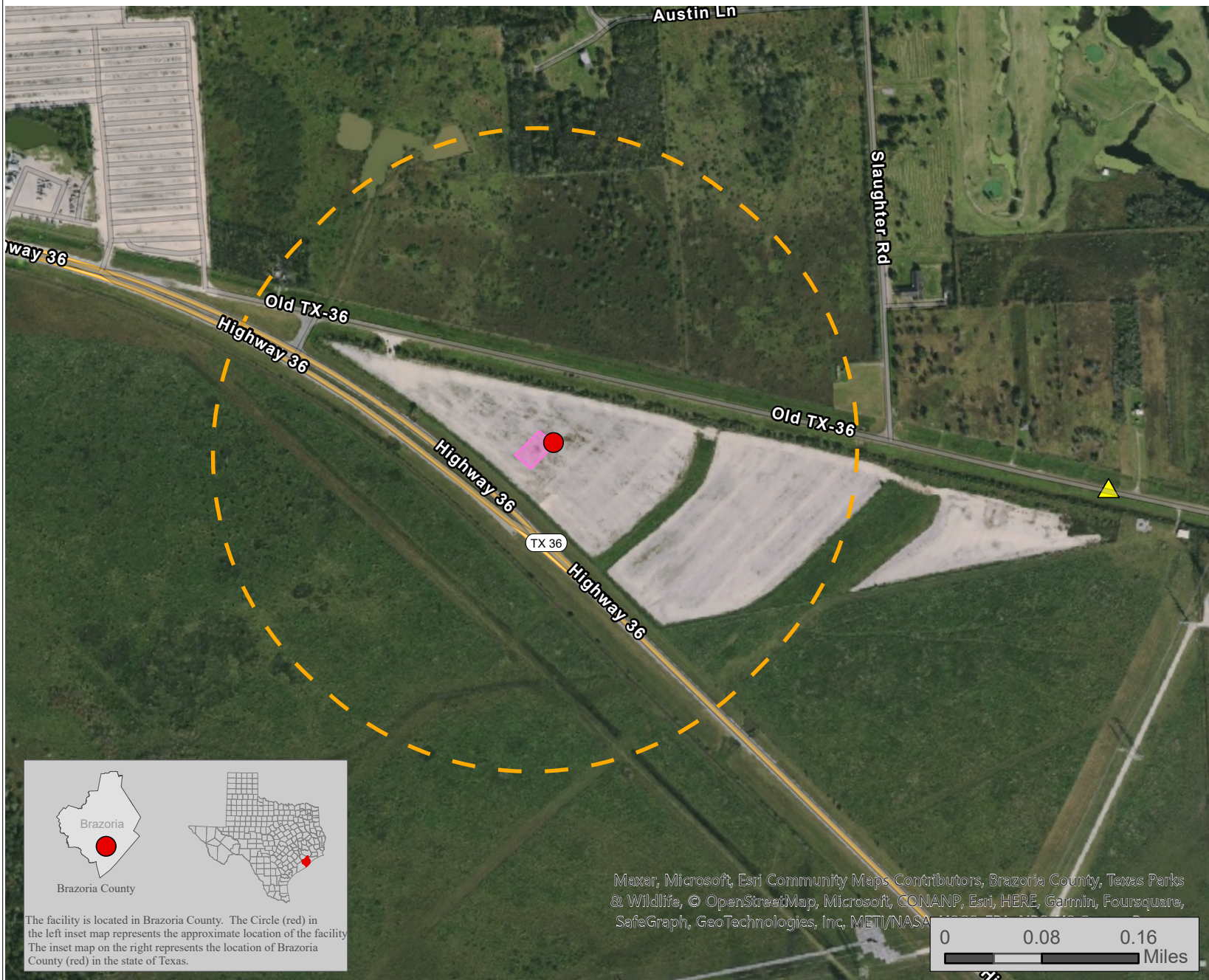


*Protecting Texas by
Reducing and
Preventing Pollution*

Texas Commission on Environmental Quality
GIS Team (Mail Code 197)
P.O. Box 13087
Austin, Texas 78711-3087
Date: 6/2/2023
CRF 0089804
Cartographer: AlOrtiz



- Valerie Janksy
- Proposed Facility
- 440 Yds from Stockpile and Facility
- Stockpile
- Highway
- County Boundary



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.

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0 0.08 0.16
Miles



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