

TCEQ AIR QUALITY STANDARD PERMIT FOR CONCRETE BATCH PLANTS
REGISTRATION NUMBER 171631
TCEQ DOCKET NUMBER 2023-1561-AIR

APPLICATION BY	§	BEFORE THE TEXAS
R&L CONCRETE LLC	§	COMMISSION ON
CONCRETE BATCH PLANT	§	ENVIRONMENTAL QUALITY
KAUFMAN, KAUFMAN 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 Texas Administrative 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

R&L Concrete 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 Concrete Batch Plant. The plant is proposed to be located at the following driving directions: from the intersection of Jiba Road 147 and US Highway 175, drive 0.4 miles South on US Highway 175 and the site entrance is on the left side, Kaufman, Kaufman County. Contaminants authorized under this permit include aggregate, cement, particulate matter including particulate matter with diameters of 10 microns or less and 2.5 microns or less and road dust.

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 171631.

The permit application was received on January 30, 2023 and declared administratively complete on February 06, 2023. The Consolidated Notice of Receipt and Intent to Obtain an Air Quality Permit and Notice of Application and Preliminary Decision (public notice) for this permit application was published in English on March 30, 2023, in *The Kaufman Herald* and published in Spanish on March 28, 2023, in *La Prensa Comunidad*. The comment period ended on May 1, 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 a timely hearing request that was not withdrawn during the comment period from Carol Bourquin and a request for reconsideration from Cesley Ray Gordon.

The Executive Director's RTC was filed with the Chief Clerk's Office on August 15, 2023 and mailed to all interested persons on August 21, 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 September 20, 2023.

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 a timely request for reconsideration from Cesley Ray Gordon. 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 request for reconsideration did not state any of the Executive Director's responses in the RTC that they are specifically requesting to be reconsidered. Because the request for reconsideration raises concerns about several RTC responses, where possible, the Executive Director is interpreting statements in the request for reconsideration as they correspond to the appropriate response in the RTC. The Executive Director provides the following responses to the request for reconsideration.

REQUEST FOR RECONSIDERATION OF RESPONSE 2

Cesley Rae Gordon requested reconsideration of the application given concerns about dust generated at the proposed plant.

TCEQ RESPONSE: The Standard Permit requires control processes to minimize dust including paving all entry and exit roads and main traffic routes associated with the operation of the concrete batch plant (including batch truck and material delivery truck roads) with a cohesive hard surface that can be maintained intact and cleaned. The Standard Permit also dictates that water sprays shall be used on the stockpiles to minimize dust emissions, and a three-sided curtain and suction shroud shall be installed at the truck drop point to minimize fly away dust. When a company operates in compliance with the Standard Permit requirements there should be no deterioration of air quality or the generation of dust such that it impacts visibility. All of the potential dust concentrations from the permitted sources have been evaluated based on operating parameters represented in the application and compared to the impacts criteria described in Response 1 of the Response to Comments.

REQUEST FOR RECONSIDERATION OF RESPONSE 3

Cesley Rae Gordon requested reconsideration due to concerns regarding the location of the plant as it relates to proximity to residential and public areas.

TCEQ RESPONSE: These issues were addressed in the RTC in Response 3. 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 plant location 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.

The following person submitted a timely hearing request that was not withdrawn: Carol Bourquin. 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 Carol Bourquin is an affected person.

Ms. Bourquin 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. Bourquin stated that she is concerned about air quality, adverse health effects to herself and wildlife, water quality, air traffic, 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 inside of the 440 yards. Because Ms. Bourquin is inside of the 440 yards to request a hearing as a person who may be affected pursuant to THSC § 382.058(c), and she has a personal justiciable interest, the ED recommends granting her request.

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

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

Issue 2: Whether the proposed plant will have an adverse effect on the requester's health.

Issue 3: Whether the proposed plant will negatively affect welfare, including plants, livestock, and the environment.

Issue 4: Whether the proposed plant will negatively affect water quality.

Issue 5: Whether the proposed plant will negatively impact the property rights of surrounding landowners and interfere with residents' use and enjoyment of the property.

Issue 6: Whether emissions from the plant will negatively affect air traffic related to the nearby airport.

VIII. WHETHER ISSUES RAISED ARE REFERABLE TO SOAH FOR A CONTESTED CASE HEARING

The Executive Director has analyzed issues raised in accordance with the regulatory criteria. The issues discussed were raised during the public comment period and addressed in the RTC. None of the issues were withdrawn. For applications submitted on or after September 1, 2015, only those issues raised in a timely comment by a requestor whose request is granted may be referred.² The issues raised for this application and the Executive Director's analysis and recommendations follow.

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

This issue involves a disputed question of fact, and was not withdrawn, however, the hearing requestor did not identify a personal justiciable interest in the issue. The requestor raised the issue of air quality in a manner that is not different than that of the general public. The requestor did not give any details to how this issue will affect her differently than that of the general public. Because the issue was not personal to the hearing requestor, the Executive Director recommends the Commission not refer this issue to SOAH.

² TEX. GOVT. CODE § 2003.047(e-1); 30 TAC § 55.211 (c)(2)(A)(ii).

Issue 2: Whether the proposed plant will have an adverse effect on the requester's health.

This issue involves a disputed question of fact, and was not withdrawn, and is relevant and material to the issuance of the draft permit. The request identifies a personal justiciable interest and the ED recommends this issue be referred to SOAH.

Issue 3: Whether the proposed plant will negatively affect welfare, including plants, livestock, and the environment.

This issue involves a disputed question of fact, and was not withdrawn, however, the hearing requestor did not identify a personal justiciable interest in the issue. The requestor did not give any details to how this issue will affect her differently than that of the general public. The Executive Director recommends the Commission not refer this issue to SOAH.

Issue 4: Whether the proposed plant will negatively affect water quality.

This issue involves a disputed question of fact, and was not withdrawn, however, it is not relevant and material to the issuance of the draft permit. While the TCEQ is responsible for the environmental protection of all media, including water, the TCAA specifically addresses air-related issues. This permit, if issued, would regulate the control and abatement of air emissions only, and therefore, issues regarding water quality are not within the scope of this permit review. The Executive Director recommends the Commission not refer this issue to SOAH.

Issue 5: Whether the proposed plant will negatively impact the property rights of surrounding landowners and interfere with residents' use and enjoyment of the property.

This issue involves a disputed question of fact, and was not withdrawn, and is relevant and material to the issuance of the draft permit. Ms. Bourquin stated that the proposed plant might interfere with the peaceful use and enjoyment of her property, as well as her ability to sit on her back porch. The request identifies a personal justiciable interest and the ED recommends this issue be referred to SOAH.

The Executive Director recommends referring this issue to SOAH.

Issue 6: Whether emissions from the plant will negatively affect air traffic related to the nearby airport.

This issue involves a disputed question of fact, and was not withdrawn, however, it is not relevant and material to the issuance of the draft permit. The TCAA specifically addresses air-related issues, but air traffic is outside the jurisdiction of the TCEQ. This permit, if issued, would regulate the control and abatement of air emissions only, and therefore, issues regarding air traffic are not within the scope of this permit review. The Executive Director recommends the Commission not refer this issue to SOAH.

IX. CONCLUSION

The Executive Director respectfully recommends the Commission:

1. Find the hearing request in this matter was timely filed;
2. Find that the hearing requestor is an affected persons and grant her hearing request; and
3. Deny the request for reconsideration filed by Cesley Rae Gordon.
4. If referred to SOAH, refer the following issues as raised by an affected person as identified by the Executive Director:

Issue 2: Whether the proposed plant will have an adverse effect on the requester's health.

Issue 5: Whether the proposed plant will negatively impact the property rights of surrounding landowners and interfere with residents' use and enjoyment of the property.

Respectfully submitted,

Texas Commission on Environmental Quality

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REPRESENTING THE
EXECUTIVE DIRECTOR OF THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY

CERTIFICATE OF SERVICE

I certify that on this 8th day of December 2023, a true and correct copy of the "Executive Director's Response to Hearing Requests and Requests for Reconsideration" for Air Quality Permit No. 171631 was served on all persons on the service list by the undersigned via electronic filing, electronic mail, facsimile transmission, inter-agency mail, electronic submittal, or by deposit in the U.S. Mail.



Abigail Adkins, Staff Attorney
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**SERVICE LIST
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PERMIT NO. 171631**

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R&L Concrete 171631





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

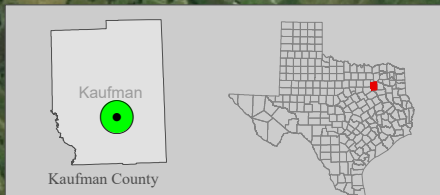
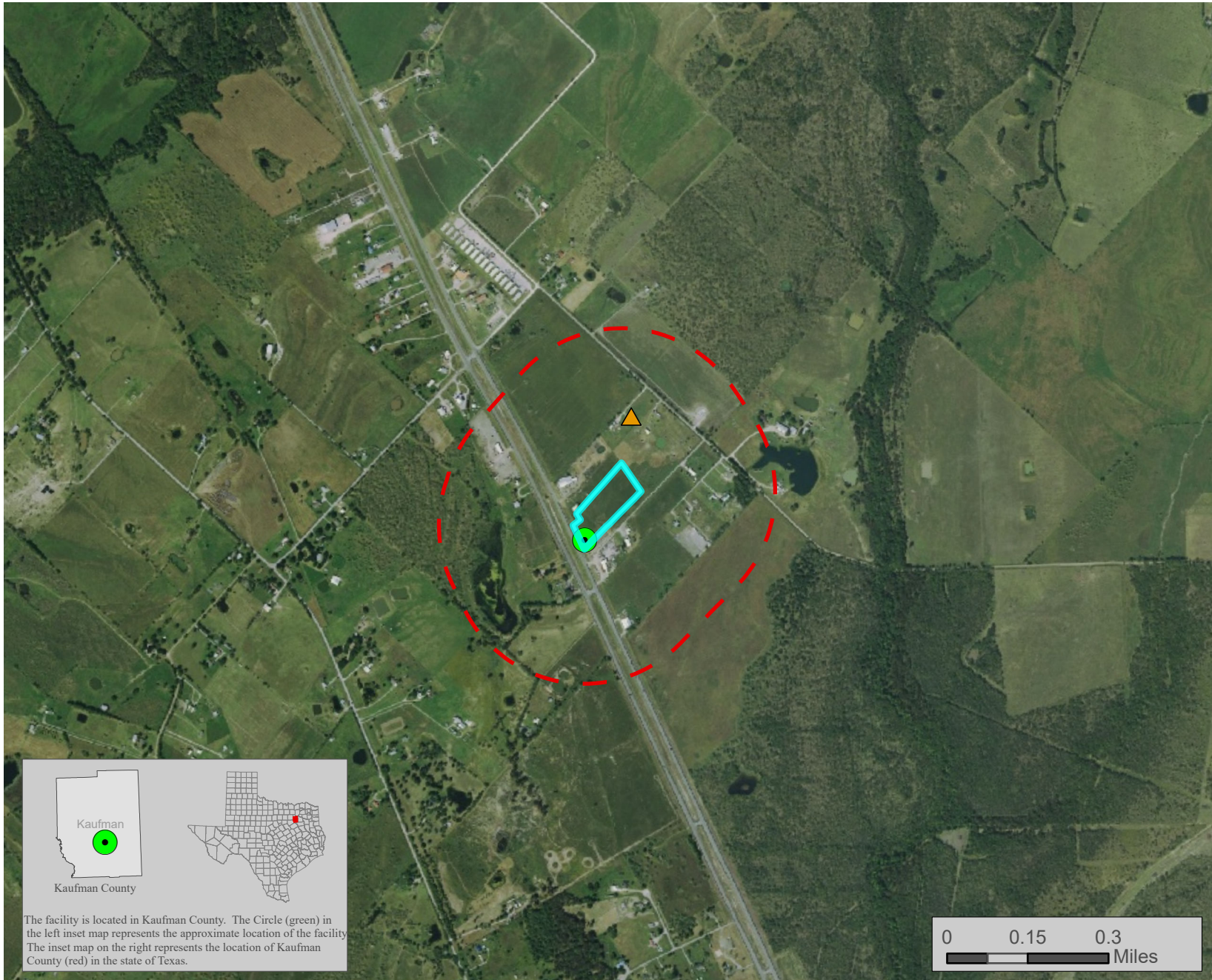


*Protecting Texas by
Reducing and
Preventing Pollution*

Texas Commission on Environmental Quality
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Date: 9/27/2023
CRF 0094909
Cartographer: MATtoh



-  Facility Point
-  Carol Bourquin
-  Plant Footprint
-  440 Yards from the Plant footprint



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

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.

R&L Concrete 171631





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

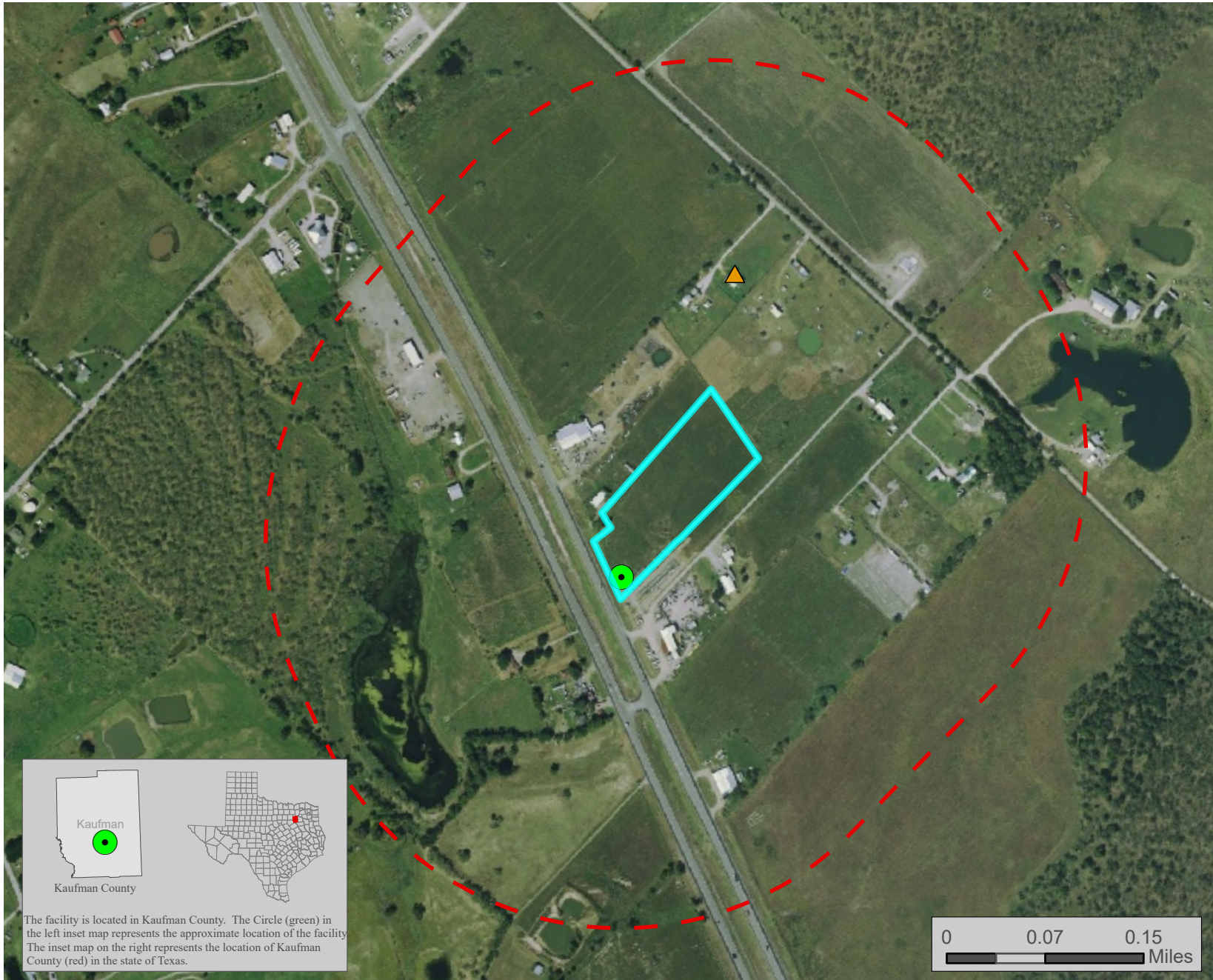


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