

**TCEQ AIR QUALITY STANDARD PERMIT FOR CONCRETE BATCH PLANTS  
REGISTRATION NUMBER 169683  
TCEQ DOCKET NUMBER 2024-0129-AIR**

<b>APPLICATION BY</b>	<b>§</b>	<b>BEFORE THE</b>
<b>MINE SERVICE, INC.</b>	<b>§</b>	
<b>ROCK CRUSHING AND SCREENING</b>	<b>§</b>	<b>TEXAS COMMISSION ON</b>
<b>PLANT</b>	<b>§</b>	
<b>WACO, MCLENNAN COUNTY</b>	<b>§</b>	<b>ENVIRONMENTAL QUALITY</b>

**EXECUTIVE DIRECTOR’S RESPONSE TO HEARING REQUESTS**

**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 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.<sup>1</sup> 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, a current compliance history report, technical review summary, and a copy of the draft permit 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**

Mine Service, Inc. (Applicant) has applied to the TCEQ for a New Source Review Authorization under Texas Clean Air Act (TCAA) §382.0518. This will authorize the construction of a new facility that may emit air contaminants.

This permit will authorize the Applicant to construct a Rock Crushing and Screening Plant. The plant is proposed to be located at 1953 Tom Ledbetter, Waco, McLennan County. Contaminants authorized under this permit include carbon monoxide, nitrogen oxides, organic compounds, particulate matter including particulate matter with diameters of 10 microns or less and 2.5 microns or less, and sulfur dioxide.

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<sup>1</sup> Statutes cited in this response may be viewed online at [www.statutes.legis.state.tx.us](http://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](http://www.sos.state.tx.us/tac/index.shtml), or follow the “Rules” link on the TCEQ website at [www.tceq.texas.gov](http://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 a permit from the commission. This permit application is for an initial issuance of Air Quality Permit Number 169683.

The permit application was received on July 15, 2022, and declared administratively complete on July 21, 2022. The Notice of Receipt and Intent to Obtain an Air Quality Permit (first public notice) for this permit application was published in English on August 5, 2022, in the *Waco Tribune Herald*. The Notice of Application and Preliminary Decision for an Air Quality Permit (second public notice) was published on April 4, 2023, in English in the *Waco Tribune Herald*. The comment period closed on May 4, 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 Executive Director's RTC was filed with the Chief Clerk's Office on December 14, 2023, and mailed to all interested persons on December 20, 2023, including 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 19, 2024. The TCEQ did not receive any timely requests for reconsideration.

### **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 hearing requests. 30 TAC § 55.209(d).

Responses to hearing requests must specifically address:

- A. whether the requestor is an affected person;
- B. which issues raised in the hearing request are disputed;
- C. whether the dispute involves questions of fact or of law;
- D. whether the issues were raised during the public comment period;

- E. 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 ED's Response to Comment;
- F. whether the issues are relevant and material to the decision on the application; and
- G. 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:

- A. 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;
- B. 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;
- C. request a contested case hearing;
- D. 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 ED's responses to comments that the requestor disputes and the factual basis of the dispute and list any disputed issues of law; and
- E. 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.

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:

- A. 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;

- B. the analysis and opinions of the ED; and
- C. any other expert reports, affidavits, opinions, or data submitted by the ED, 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:

- A. involves a disputed question of fact or a mixed question of law and fact;
- B. was raised during the public comment period by an affected person whose hearing request is granted; and
- C. 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 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.

#### **1. Dave Luedtke**

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 Dave Luedtke is an affected person.

Mr. Luedtke 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. Luedtke stated he is concerned about air quality and how the emissions will affect human health, including sensitive subgroups. Mr. Luedtke stated he is concerned about the quality of air that his family will breathe daily and that his wife, son-in-law, and grandson are all asthmatics. Mr. Luedtke also stated he does not want any trucks exiting the plant onto McLennan Crossing Road because it is a narrow road, and that he is concerned for the dust that will affect his air conditioning unit and contribute additional dirt to his pool.

Therefore, Mr. Luedtke did raise a personal justiciable interest. Using the address provided, the Executive Director determined that Mr. Luedtke resides approximately .45 miles from the nearest emission point for the facility. The Executive Director recommends that the commission find that Dave Luedtke is an affected person based on the criteria set out in 30 TAC § 55.203 and that their hearing request be granted.

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

**Issue 1:** Whether the proposed plant will affect air quality and human health.

**Issue 2:** Whether the proposed plant will create unsafe traffic conditions.

**Issue 3:** Wheater dust will create nuisance conditions and affect the use and enjoyment of his property.

## **2. Cindy Luedtke**

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 Cindy Luedtke is not an affected person.

Cindy Luedtke submitted a hearing request during the comment period. The hearing request was in writing and provided the required contact information. In her hearing request, Ms. Luedtke expressed concerns about air quality. Ms. Luedtke also expressed concerns that the plant would create new truck traffic and that truck traffic would negatively impact air quality. Finally, Ms. Luedtke requested a public hearing to discuss her concerns. However, Ms. Luedtke did not otherwise express concern or state how she may be affected in a manner different from the general public. Therefore, Ms. Luedtke did not raise a personal justiciable interest.

Using the address provided, the Executive Director determined that Ms. Luedtke resides approximately .45 miles from the nearest emission point for the facility. The Executive Director recommends that the commission find that Cindy Luedtke is not an affected person based on the criteria set out in 30 TAC § 55.203 and that their hearing request be denied.

In her hearing requests, Cindy Luedtke raised the following issues:

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

**Issue 2:** Whether the proposed plant will create unsafe traffic conditions.

**Issue 4:** Whether truck traffic will contribute to negative air quality.

## **VI. 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 requester whose request is granted may be referred.<sup>2</sup> The issues raised for this application and the ED's analysis and recommendations follow.

If the Commissioner's find affected party status, the followings issues involve a disputed question of fact, were not withdrawn, and are relevant and material to the issuance of the permit:

**Issue 1:** Whether the proposed plant will negatively affect air quality and human health. This issue only applies to Mr. Dave Luedtke because he raised a personal justiciable interest not common to the general public. However, this issue does not apply to Ms. Cindy Luedtke who only raised a general concern about air quality.

**Issue 3:** Wheater dust will create nuisance conditions and affect the use and enjoyment of property.

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<sup>2</sup> TX. GOVT. CODE § 2003.047(e-1); 30 TAC § 55.211 (c)(2)(A)(ii).

Additionally, the Requestors raised the following issues that involve disputed questions of fact and were not withdrawn; however, they are not relevant and material to the issuance of the permit. The TCEQ's jurisdiction is limited to the issues set forth in statute:

**Issue 2:** Whether the proposed plant will create unsafe traffic conditions.

**Issue 4:** Whether truck traffic will contribute to negative air quality.

If there is a contested case hearing on this application, the ED recommends that the duration of the hearing be no less than six months from the preliminary hearing to the presentation of a proposal for decision to the Commission.

## VII. CONCLUSION

The ED recommends the following actions by the Commission:

1. The Executive Director recommends that the Commission find that Dave Luedtke is an affected person and grant his hearing request.
2. The Executive Director recommends that the Commission find that Cindy Luedtke is not an affected person and deny her hearing request. We generally included the recommended issues and duration in the recommendation.


Respectfully submitted,

Texas Commission on Environmental Quality

Kelly Keel, Interim Executive Director

Erin E. Chancellor, Director  
Office of Legal Services

Charmaine Backens, Deputy Director  
Environmental Law Division



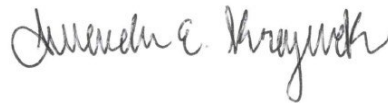
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REPRESENTING THE  
EXECUTIVE DIRECTOR OF THE  
TEXAS COMMISSION ON  
ENVIRONMENTAL QUALITY

**CERTIFICATE OF SERVICE**

On April 29, 2024 a true and correct copy of the foregoing instrument was served on all persons on the attached mailing list by the undersigned via deposit into the U.S. Mail, inter-agency mail, facsimile, electronic transmission, or hand delivery.



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Amanda Kraynok  
Environmental Law Division



**SERVICE LIST**  
**FOR**  
**MINE SERVICE, INC.**  
**AIR QUALITY PERMIT NO. 169683**

**FOR THE CHIEF CLERK:**  
**via e-filing**

Laurie Gharis, Chief Clerk  
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Office of Chief Clerk MC-105  
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**FOR THE APPLICANT:**  
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# Mine Services Inc. - 169683

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: 1/29/2024  
CRF 0099058  
Cartographer: jstalsby




 **Emmision Points**


## Requestors

 **Cindy & Dave Luedtke**

 **0.5 Mile Radius**

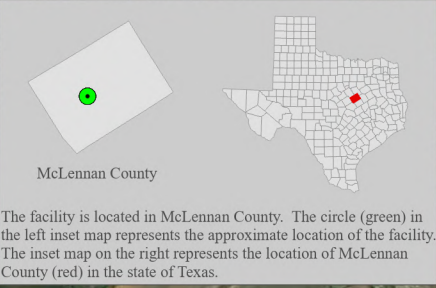
 **1 Mile Radius**

 **1.5 Mile Radius**

0 0.2 0.4 0.6  
 Miles

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.



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