

Jon Niermann, *Chairman*
Bobby Janecka, *Commissioner*
Catarina R. Gonzales, *Commissioner*
Kelly Keel, *Executive Director*



TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

August 30, 2024

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

**Re: Application by Thomas Howard Watson, II, Air Quality Permit No. 106325
TCEQ Docket No. 2024-0678-AIR**

Dear Ms. Gharis:

Enclosed for filing with the Texas Commission on Environmental Quality (Commission) is the Executive Director's Response to Hearing Requests.

Please do not hesitate to contact me at Katherine.Keithley@tceq.texas.gov or (512) 239-0620, if you have any questions. Thank you for your attention to this matter.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Katherine Keithley".

Katherine Keithley
Staff Attorney
Environmental Law Division

cc: Mailing List

**TCEQ AIR QUALITY PERMIT NO. 106325
TCEQ DOCKET NO. 2024-0678-AIR**

APPLICATION BY	§	BEFORE THE
THOMAS HOWARD WATSON, II	§	TEXAS COMMISSION ON
CONCRETE BATCH PLANT	§	ENVIRONMENTAL QUALITY
CUERO, DEWITT COUNTY	§	

EXECUTIVE DIRECTOR’S RESPONSE TO HEARING REQUEST

The Executive Director of the Texas Commission on Environmental Quality (commission or TCEQ) files this response (Response) to the request 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 TEXAS WATER CODE § 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 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.

I. Application Request and Background Information

Thomas Howard Watson, II (Applicant) has applied to the TCEQ for a Standard Permit under TEXAS CLEAN AIR ACT (TCAA) § 382.05195. This will authorize the continued operation of an existing facility that may emit air contaminants.

This permit will authorize the Applicant to continue operation of a Concrete Batch Plant. The facility is located at 31 Rainbow Road, Cuero, Dewitt County. 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 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.texas.gov.

To continue operating an existing permitted facility that may emit air contaminants, the person planning the continued operation must obtain a permit renewal from the commission. This permit application is for a permit renewal of Air Quality Permit Number 106325.

The permit application was received on June 2, 2023, and declared administratively complete on June 23, 2023. The Notice of Receipt and Intent to Obtain an Air Quality Permit (first public notice) for this permit application was published in English on July 19, 2023, in the *Cuero Record*. The public comment period ended on August 3, 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).²

The Executive Director's RTC was filed on January 16, 2024, and mailed out August 16, 2024, along with the letter setting the matter on the Commissioner's Agenda, to all interested persons, 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 Applicant is not delinquent on any administrative penalty payments or fees to the TCEQ. The TCEQ Enforcement Database was searched, and two pending enforcement activities were found. These pending enforcement activities were screened by Enforcement after the permit application was received.

TCEQ received a single timely hearing request during the public comment period from Thelma Lucas Rogers.

II. Analysis of Hearing Requests

The Applicant is seeking a renewal that would not result in an increase in allowable emissions and would not result in an emission of an air contaminant not previously emitted. The TCAA, § 382.056(g) states: "The commission may not seek further comment or hold a public hearing...in response to a request for a public hearing on an amendment, modification, or renewal that would not result in an increase in allowable emissions and would not result in the emission of an air contaminant not previously emitted."³ Therefore, the commission should deny the hearing request as a matter of law and approve the renewal of Applicant's Permit No. 106325.

² Tex. S.B. 709, 84th Leg., R.S. (2015).

³ See also 30 TAC § 55.201(i)(3)(D) (Renewals of air applications that "would not result in an increase in allowable emissions and would not result in the emission of an air contaminant not previously emitted" are applications for which there is no right to a contested case hearing).

Although this renewal application will not result in an increase in allowable emissions and will not result in an emission of an air contaminant not previously emitted, TCAA § 382.056(o) states: "Notwithstanding other provisions of this chapter, the commission may hold a hearing on a permit amendment, modification, or renewal if the commission determines that the application involves a facility for which the applicant's compliance history is in the lowest classification under §§ 5.753 and 5.754, Water Code, and rules adopted and procedures developed under those sections."⁴ The Commission adopted 30 TAC, Chapter 60 to evaluate compliance history. The lowest classification under the TEXAS WATER CODE §§ 5.753 and 5.754 and 30 TAC § 60.2 is an "unsatisfactory performer." Under 30 TAC § 60.3(a)(3)(B), the TCEQ may hold a hearing on an air permit renewal if the site is classified as an unsatisfactory performer. The compliance history for the company and the site is typically reviewed for the five-year period prior to the date the permit application was received by the Executive Director. When the compliance history summary report was rated, the site had a rating of 73.75, and was classified as unsatisfactory, and the company had a rating of 82.87, and was classified as unsatisfactory. There was a change of site ownership during the compliance period. The renewal permit has a shortened duration of 5 years to address compliance concerns and so that the next renewal can better assess the site compliance under the new owner. A hearing should not be granted under TCAA § 382.056(o) based on the compliance history of the Applicant.

III. Executive Director's Recommendation

The renewal of this permit would not result in an increase in allowable emissions and would not result in the emission of an air contaminant not previously emitted. Under these circumstances, TCAA § 382.056(g) directs the Commission to "not seek further comment or hold a public hearing." Because consideration of hearing requests on a "no increase" renewal application is governed by TCAA § 382.056(g) and (o), this Response does not include an analysis of the individual hearing requests. Accordingly, the Executive Director respectfully recommends the Commission deny the hearing request as a matter of law and approve the renewal of Applicant's Permit No. 106325.

⁴ See also 30 TAC § 55.201(i)(3)(D) (stating the commission may hold a hearing if the application "involves a facility for which the applicant's compliance history contains violations which are unresolved and which constitute a recurring pattern of egregious conduct which demonstrates a consistent disregard for the regulatory process, including the failure to make a timely and substantial attempt to correct the violations").

Respectfully submitted,

Texas Commission on Environmental Quality

Kelly Keel, Executive Director

Charmaine Backens, Interim Director
Office of Legal Services

Charmaine Backens, Deputy Director
Environmental Law Division

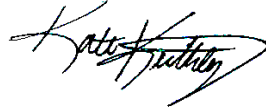


Katherine Keithley, Staff Attorney
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REPRESENTING THE
EXECUTIVE DIRECTOR OF THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY

CERTIFICATE OF SERVICE

On August 30th, 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.

A handwritten signature in black ink, appearing to read "Katherine Keithley", written over a horizontal line.

Katherine Keithley

MAILING LIST
Thomas Howard Watson, II
TCEQ Docket No. 2024-0678-AIR; Permit No. 106325

FOR THE CHIEF CLERK

via eFilings:

Docket Clerk
Texas Commission on Environmental
Quality
Office of Chief Clerk, MC-105
P.O. Box 13087
Austin, Texas 78711
<https://www.tceq.texas.gov/goto/efilings>

FOR THE APPLICANT

via first-class mail

Thomas Watson II
Thomas Watson Company LLC
Po Box 786
Cuero, Texas 77954

FOR PUBLIC INTEREST COUNSEL

via electronic mail

Jessica Anderson, Attorney
Texas Commission on Environmental
Quality
Public Interest Counsel, MC-103
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REQUESTER(S)

via first class mail

Thelma Lucas Rogers
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FOR THE EXECUTIVE DIRECTOR

via electronic mail

Kate Keithley, Staff Attorney
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Alexander Hilla, Permit Reviewer
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Austin, Texas 78711

**FOR ALTERNATIVE DISPUTE
RESOLUTION**

via electronic mail

Kyle Lucas
Texas Commission on Environmental
Quality
Alternative Dispute Resolution, MC-222
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Austin, Texas 78711