

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



Garrett T. Arthur, *Public Interest Counsel*

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

September 27, 2024

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

RE: **IN THE MATTER OF THE APPLICATION BY TEXAS STAR READY
MIX, LLC FOR CONCRETE BATCH PLANT REGISTRATION NO.
171636
TCEQ DOCKET NO. 2024-1455-AIR**

Dear Ms. Gharis:

Enclosed for filing is the Office of Public Interest Counsel's Response to Requests for Hearing and Request for Reconsideration in the above-entitled matter.

Sincerely,

A handwritten signature in cursive script that reads "Jennifer Jamison".

Jennifer Jamison, Attorney
Assistant Public Interest Counsel

cc: Mailing List

DOCKET NO. 2024-1455-AIR

APPLICATION BY TEXAS STAR	§	BEFORE THE
READY MIX, LLC	§	
CONCRETE BATCH PLANT	§	TEXAS COMMISSION ON
DALLAS, DALLAS COUNTY	§	
	§	ENVIRONMENTAL QUALITY

**THE OFFICE OF PUBLIC INTEREST COUNSEL’S RESPONSE
TO REQUESTS FOR HEARING AND REQUEST FOR RECONSIDERATION**

To the Members of the Texas Commission on Environmental Quality:

The Office of Public Interest Counsel (OPIC) at the Texas Commission on Environmental Quality (TCEQ) files this Response to Requests for Hearing and Request for Reconsideration on the application in the above-captioned matter and respectfully submits the following.

I. INTRODUCTION

A. Summary of Position

Before the Commission is an application by Texas Star Ready Mix, LLC (Applicant) for a Standard Permit under Texas Clean Air Act (TCAA) § 382.05195, which would authorize the construction of a new facility that may emit air contaminants. The Commission received timely hearing requests from Alicia Kendrick, Pauline Logan, Emmanuel Davis, Temeckia Derrough, Folashade Afolabi, and Katherine Bazan, in addition to Joppa Freedmans Town Association (JFTA) through their counsel, Legal Aid of Northwest Texas. Further, the Commission received a request for reconsideration of the Executive Director’s decision on this application from JFTA through Legal Aid of Northwest Texas. For the reasons stated herein, OPIC respectfully recommends the Commission

find that no requestors qualify as affected persons, and that the Commission deny all pending hearing requests. However, OPIC respectfully recommends the Commission grant JFTA's pending request for reconsideration, or in the alternative, grant a hearing in the public interest pursuant to Texas Water Code § 5.556(f).

B. Description of Application and Facility

Texas Star Ready Mix applied to the TCEQ for a Standard Permit under TCAA § 382.05195 which would authorize a permanent Concrete Batch Plant. The existing plant is located at 4500 Great Trinity Forest Way, Dallas, Dallas County. Contaminants authorized under this permit include aggregate, cement, road dust, and particulate matter including particulate matter with diameters of 10 microns or less and 2.5 microns or less.

C. Procedural Background

This permit application is for an initial issuance of Air Quality Registration Number 171636. Here, the permit application was received on January 30, 2023, and declared administratively complete on February 1, 2023. The Consolidated Notice of Receipt of Application and Intent to Obtain Permit and Notice of Application and Preliminary Decision for this permit application was published on March 15, 2023 in *Daily Commercial Record*, and in Spanish on March 17, 2023, in *Buena Suerte Newspaper*. A public meeting was held on August 17, 2023, in Dallas. Finally, the public comment period for this application ended on March 6, 2024. The Executive Director's (ED) Response to Comments (RTC) was mailed

on July 11, 2024. The deadline for filing requests for a contested cases hearing and requests for reconsideration of the ED's decision was August 12, 2024.

II. APPLICABLE LAW

A. Hearing Requests

This application was filed on or after September 1, 2015, and is therefore subject to the procedural rules adopted pursuant to Senate Bill 709. Tex. S.B. 709, 84th Leg., R.S. (2015). Under Title 30, Texas Administrative Code (TAC) § 55.201(c), a hearing request by an affected person must be in writing, must be timely filed, may not be based on an issue raised solely in a public comment which has been withdrawn, and—for applications filed on or after September 1, 2015—must be based only on the affected person's timely comments. Section 55.201(d) states that a hearing request must substantially comply with the following:

- (1) give the name, address, daytime telephone number, and, where possible, fax number of the person who files the request;
- (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 by the requestor 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 the requestor's comments that the requestor disputes, 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.

Under 30 TAC § 55.205(b), a hearing request by a group or association may not be granted unless all of the following requirements are met:

- (1) comments on the application are timely submitted by the group or association;
- (2) the request identifies, 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 are germane to the organization's purpose; and
- (4) neither the claim asserted nor the relief requested requires the participation of the individual members in the case.

For concrete batch plant registrations under the Standard Permit, Texas Health and Safety Code (THSC) § 382.058(c) limits those who may be affected persons to "only those persons actually residing in a permanent residence within 440 yards of the proposed plant." Under 30 TAC § 55.203(a), 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. Section 55.203(c) provides relevant factors to be considered in determining whether a person is affected. These factors include:

- (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, safety, and 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 that were not withdrawn; and
- (7) for governmental entities, their statutory authority over or interest in the issues relevant to the application.

Under § 55.203(d), to determine whether a person is an affected person for the purpose of granting a hearing request for an application filed on or after September 1, 2015, the Commission may also consider the following:

- (1) the merits of the underlying application and supporting documentation in the administrative record, including whether the application meets the requirements for permit issuance;
- (2) the analysis and opinions of the ED; and

- (3) any other expert reports, affidavits, opinions, or data submitted by the ED, the applicant, or hearing requestor.

For an application filed on or after September 1, 2015, § 55.211(c)(2)(A)(ii) provides that a hearing request made by an affected person shall be granted if the request raises disputed issues of fact that were raised by the affected person during the comment period, that were not withdrawn by filing a withdrawal letter with the Chief Clerk prior to the filing of the ED's RTC, and that are relevant and material to the Commission's decision on the application.

Under § 55.211(c)(2)(B)-(D), the hearing request, to be granted, must also be timely filed with the Chief Clerk, pursuant to a right to hearing authorized by law, and comply with the requirements of § 55.201.

B. Request for Reconsideration

Any person may file a request for reconsideration of the ED's decision under 30, (TAC) § 55.201(e). The request must be in writing and filed with the Chief Clerk no later than 30 days after the Chief Clerk mails the ED's decision and RTC. The request must expressly state that the person is requesting reconsideration of the ED's decision and give reasons why the decision should be reconsidered.

III. ANALYSIS OF HEARING REQUESTS

A. Whether requestors are affected persons

The Commission received timely comments and hearing requests from Alicia Kendrick, Pauline Logan, Emmanuel Davis, Temeckia Derrough, Folashade

Afolabi, and Katherine Bazana, and an associational request submitted by Joppa Freedmans Town Association through their counsel, Legal Aid of Northwest Texas. The map prepared by staff for the ED shows that all addresses provided by requestors are within distances from the proposed facility point ranging from 1329 yards to 18149 yards. Requestors raised numerous concerns in their submissions, including issues about notice deficiencies, human health, environmental equity, and air quality.

Texas Health and Safety Code Section 382.058(c) limits affected person status to “only those persons actually residing in a permanent residence within 440 yards of the proposed plant” authorized by a Standard Permit registration under THSC § 382.05195. Accordingly, OPIC’s analysis is directed by this restrictive distance limitation imposed by statute.

Because of the restrictive statutory limitation on affected persons for purposes of requesting a hearing on a registration under the Concrete Batch Plant Standard Permit, OPIC is compelled to find that no requestors qualify as affected persons for the purposes of this application. Consequently, OPIC must respectfully recommend denial of all hearing requests.

IV. REQUEST FOR RECONSIDERATION

JFTA through their counsel, Legal Aid of Northwest Texas, submitted a request for reconsideration that articulated concerns about improper public notice, accuracy and completeness of the application, concerns pertaining to environmental equity, and improper evaluation of applicant’s compliance history

during the permitting process. Upon review of JFTA's request and all supporting evidence, OPIC respectfully recommends the Commission grant the pending request for reconsideration. Specifically, OPIC seeks to ensure that a proper review of applicant's compliance history is conducted prior to permit issuance pursuant to 30 TAC § 60.1 - § 60.3, and that all material issues raised in public comments are addressed in the Executive Director's RTC's required by 30 TAC § 55.156.

With respect to compliance history, 30 TAC § 60.1 (b) requires TCEQ to include the last five years (from the date of application submission) of the facility's compliance history in TCEQ's permitting review. This review includes comprehensive compliance history information such as enforcement orders, the dates of investigations, and all written notices of violation.¹ Further, 30 TAC §60.2(d)(1)(B) describes the classification for "operating without required authorization or using a facility that does not possess required authorization" as a major violation. Finally, 30 TAC § 60.3 mandates that TCEQ review compliance history during permitting review and consider patterns of environmental compliance.

In its request for reconsideration and its initial public comments, JFTA raised concerns regarding the ED's lack of proper consideration of applicant's compliance history during the permitting review process. For instance, JFTA points to audio from the public meeting where applicant's representative admits

¹ 30 TAC§ 60.1(c).

to continuing operations and “filling 10 to 15 trucks per day” without a valid permit. In addition, JFTA asserts that the findings against applicant in TCEQ’s Enforcement Agreed Order from case number 2022-1557-AIR-E were improperly disregarded during the compliance history review for this application. The ED’s RTC provides minimal insight into these concerns, stating only that both the site and the company received a rating of “unclassified,” which is generally attributed to *new* facilities with *no prior history* to rate. Applicant should not be allowed to benefit from a lack of compliance history when that history is missing because Applicant was unlawfully operating without required authorization.² OPIC is inclined to agree with JFTA that in light of these concerns, and those echoed by the EPA³ a more robust evidentiary record is warranted and reconsideration of the ED’s decision on this application is appropriate.

V. Public Interest Hearing

Texas Clean Air Act § 382.056(n) requires hearing requests to be considered under the procedures provided by Texas Water Code §§ 5.556 and 5.557. Texas Water Code § 5.556(c) states the Commission may not grant a request for contested case hearing unless the Commission determines the request was filed by an affected person. However, Texas Water Code § 5.556(f) clarifies that “[t]his section does not preclude the Commission from holding a hearing if it determines the public interest warrants doing so.” If the Commission

² See Agreed Order, Enforcement Action Concerning Texas Star Ready Mix, LLC RN111648234, TCEQ Docket No. 2022-1557-AIR-E.

³ Letter from Cynthia Kaleri, Section Supervisor, Air Permits Section, EPA, to Cory Chism, Director, Office of Air, TCEQ (July 22, 2024) (hereinafter referred to as “EPA Letter”) at p. 2-3.

disagrees with OPIC's analyses above regarding reconsideration of the ED's decision on this application, OPIC recommends in the alternative that the Commission hold a hearing because the public interest warrants doing so.

As stated in the letter submitted by EPA Region 6, the Trinity River corridor near the Texas Star Ready Mix facility is a popular recreation destination for the community of Joppa. Many community members use the extensive walking trails (which connect to the Trinity River Audubon Center) and fish in Little Lemmon Lake and Lemmon Lake that are part of the Joppa Preserve.⁴ Despite the fact that the record indicates one permanent residence exists within 440 yards of the facility, there is ample evidence that many community members may routinely be impacted by recreating in the green spaces that are within that distance of Texas Star Ready Mix's facility. Even if the Commission finds that none of the hearing requestors have standing, the relevant consideration from a public interest perspective is that most of the general public within the Trinity River corridor area could be affected. Routine daily activities, walking, hiking, other work activities, and commuting in and around the Joppa Preserve will require local citizens to be in very close proximity to facility operations. In conjunction with consideration of all public comments and requests, a review of area maps confirms this understanding. An evidentiary record developed through a contested case hearing would allow for a more fully informed Commission decision on this application. Such a record of decision would provide greater

⁴ Letter from Cynthia Kaleri, Section Supervisor, Air Permits Section, EPA, to Cory Chism, Director, Office of Air, TCEQ (July 22, 2024) (hereinafter referred to as "EPA Letter") at p. 2-3.

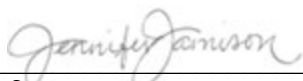
context for the community as it balances views on potential concerns and potential benefits associated with this project.

VI. CONCLUSION

OPIC respectfully recommends the Commission find that none of the hearing requestors may qualify as affected persons because they do not reside within 440 yards of the plant. However, for the reasons stated herein, OPIC further recommends that the Commission grant JFTA's request for reconsideration, or in the alternative, grant a hearing in the public interest.

Respectfully submitted,

Garrett T. Arthur
Public Interest Counsel

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CERTIFICATE OF SERVICE

I hereby certify that on September 27, 2024, the original of the Office of Public Interest Counsel's Response to Request for Hearing was filed with the Chief Clerk of the TCEQ and a copy was served to all persons listed on the attached mailing list via Inter-Agency Mail, electronic mail, or by deposit in the U.S. Mail.



Jennifer A. Jamison

MAILING LIST
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TCEQ DOCKET NO. 2024-1455-AIR

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FOR ALTERNATIVE DISPUTE

RESOLUTION

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REQUESTER(S):

See attached list.

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