

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

December 2, 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 Caprock Precast, LLC, AIR Permit No. 17658; TCEQ Docket No. 2024-1820-AIR

Dear Laurie 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 Contessa.Gay@tceq.texas.gov or (512) 239-5938 if you have any questions. Thank you for your attention to this matter.

Respectfully submitted,

A handwritten signature in blue ink that reads "Contessa N. Gay".

Contessa Gay
Staff Attorney
Environmental Law Division

Enclosure

cc: Mailing List

**TCEQ AIR QUALITY STANDARD PERMIT FOR CONCRETE BATCH PLANTS
REGISTRATION NO. 175658
TCEQ DOCKET NUMBER 2024-1820-AIR**

APPLICATION BY	§	BEFORE THE TEXAS
CAPROCK PRECAST, LLC	§	COMMISSION ON
CONCRETE BATCH PLANT	§	ENVIRONMENTAL QUALITY
WHITEWRIGHT, GRAYSON COUNTY	§	

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 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 TEX. ADMIN. CODE (TAC) Chapter 55, Subchapter F.

A map showing the location of the proposed plant is included with this Response and has been provided to all hearing requesters listed on the mailing list for this application. In addition, the Amendments to the Air Quality Standard Permit for Concrete Batch Plants, the Concrete Batch Plant Standard Permit Source Analysis & Technical Review, and the Compliance History Report of Caprock Precast, LLC 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

Caprock Precast, LLC (Applicant) has applied to the TCEQ for a Standard Permit for Concrete Batch Plants under 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 1 State Highway 160, Whitewright, Grayson County, Texas 75495. Contaminants authorized under this permit include particulate matter including particulate matter with diameters of 10 microns or less and 2.5 microns or less, road dust, aggregate, and cement.

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 Standard Permit for Concrete Batch Plants Registration No. 175658.

The permit application was received on March 13, 2024, and declared administratively complete on March 14, 2024. The Consolidated Public Notice of Receipt and Intent to Obtain an Air Quality Permit and Notice of Application and Preliminary Decision for this permit application was published in English on April 25, 2024, in *The Whitewright Sun*. The public comment period ended on May 28, 2024. 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 Sarah Beth Owens, Mayor of Whitewright, and Kurt and Amber Warford. The TCEQ did not receive any requests for reconsiderations during the comment period.

The Executive Director's RTC was filed with the Chief Clerk's Office on September 12, 2024 and mailed to all interested persons on September 19, 2024, 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 October 21, 2024. During this 30-day period, the TCEQ did not receive any other requests for a contested case hearing or 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 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).

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.

A. Individual Hearing Requestors

1. Sarah Beth Owens

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 Sarah Beth Owens, Mayor of Whitewright, is not an affected person.

Mayor Owens submitted a timely hearing request during the comment period. The hearing request was in writing, but did not provide the required contact information. In her hearing request, Mayor Owens provided a P.O. Box address rather than a residential mailing address. Without a mailing address provided, the Executive Director was unable to determine Mayor Owen's location in relation to the proposed location of the plant.

2. Kurt and Amber Warford

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 Kurt and Amber Warford are not affected persons.

The Warfords submitted a timely hearing request during the comment period. The hearing request was in writing and provided the required contact information. However, based on the address provided, the Executive Director determined that the Warfords do not reside within 440 yards from the proposed location of the plant.

B. Whether the those who requested a contested case hearing are affected persons?

For a registration under the Standard Permit for Concrete Batch Plants, TCAA § 382.058(c) 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.” As shown on the map, none of the hearing requestors reside within 440 yards of the of the proposed plant. Therefore, the commission cannot consider them to be affected persons.

VI. CONCLUSION

The Executive Director respectfully recommends the commission:

1. Find all hearing requests in this matter were timely filed; and
2. Find that all hearing requestors are not affected persons as a matter of law and deny their hearing requests.

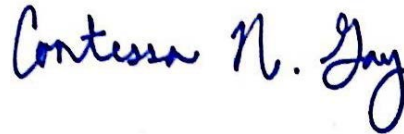
Respectfully submitted,

Texas Commission on Environmental Quality

Kelly Keel, Executive Director

Phillip Ledbetter, Director
Office of Legal Services

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REPRESENTING THE
EXECUTIVE DIRECTOR OF THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY

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TCEQ DOCKET NO. 2024-1820-AIR**

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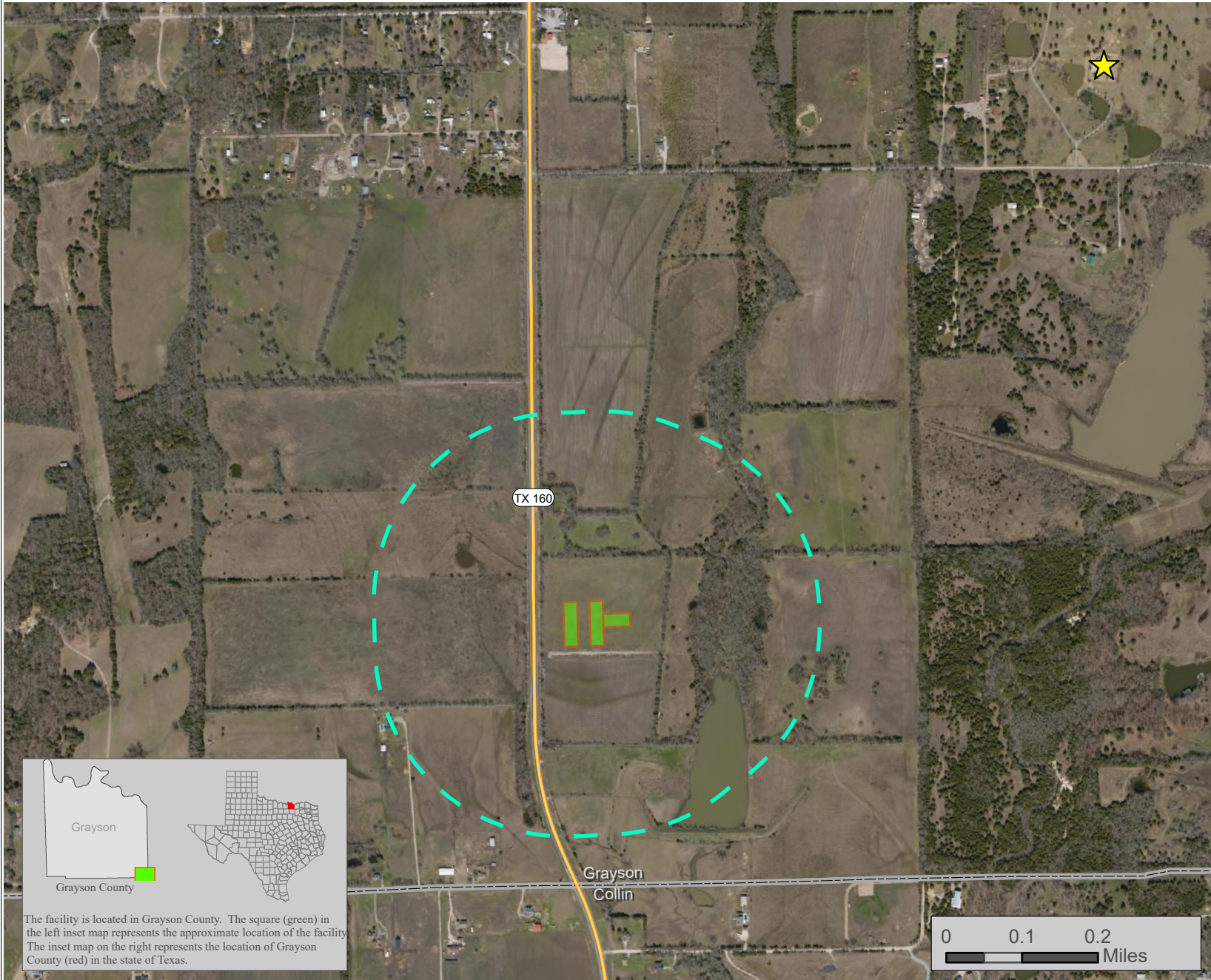
Caprock Precast, LLC (175658) Map

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: 11/25/2024
CRF 0114611
Cartographer: RKukushk

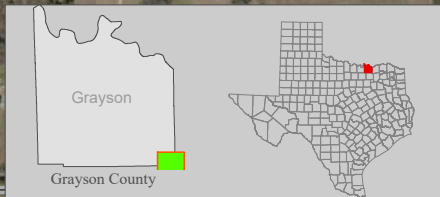


- Kurt & Amber Warford
- EPNs
- 440 yards from EPNs
- Highway
- County Boundary

Kurt and Amber Warford are
1682.68 yards (0.956 miles)
from the nearest EPN.

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 Grayson County. The square (green) in the left inset map represents the approximate location of the facility. The inset map on the right represents the location of Grayson County (red) in the state of Texas.

