

## Marielle Bascon

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**From:** PUBCOMMENT-OCC  
**Sent:** Friday, May 10, 2024 3:18 PM  
**To:** PUBCOMMENT-OCC2; PUBCOMMENT-OPIC; PUBCOMMENT-ELD; PUBCOMMENT-APD  
**Subject:** FW: Public comment on Permit Number 175658  
**Attachments:** 2024-05-10\_Warfords' RFH and Written Comments to TCEQ.pdf

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Jesús Bárcena  
Office of the Chief Clerk  
Texas Commission on Environmental Quality  
Office Phone: 512-239-3319

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**From:** afriedman@msmtx.com <afriedman@msmtx.com>  
**Sent:** Friday, May 10, 2024 1:01 PM  
**To:** PUBCOMMENT-OCC <PUBCOMMENT-OCC@tceq.texas.gov>  
**Subject:** Public comment on Permit Number 175658

**REGULATED ENTY NAME** WHITEWRIGHT BATCH PLANT

**RN NUMBER:** RN111937397

**PERMIT NUMBER:** 175658

**DOCKET NUMBER:**

**COUNTY:** GRAYSON

**PRINCIPAL NAME:** CAPROCK PRECAST LLC

**CN NUMBER:** CN605327485

**NAME:** MR Adam M. Friedman

**EMAIL:** [afriedman@msmtx.com](mailto:afriedman@msmtx.com)

**COMPANY:** McElroy, Sullivan, Miller & We

**ADDRESS:** PO BOX 12127  
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**FAX:**

**COMMENTS:** Please see the uploaded request for hearing and written comments submitted on behalf of Kurt and Amber Warford.



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May 10, 2024

***VIA ELECTRONIC COMMENT:***

Laurie Gharis, MC-105  
Office of the Chief Clerk, Chief Clerk  
Texas Commission on Environmental Quality  
PO Box 13087  
Austin, TX 78711-2087

**RE: Air Quality Standard Permit for Concrete Batch Plant Proposed  
Registration No. 175658**

Dear Ms. Gharis:

We represent Kurt and Amber Warford (the “Warfords”), regarding Caprock Precast, LLC’s (“Caprock”) pending application (the “Application”) for Air Quality Standard Permit, Registration No. 175658 to authorize construction of a concrete batch plant (the “Proposed Plant”) in Grayson County. Ms. Warford can be reached by calling our office at 512-327-811 and her address is 797 Desert Lake, Whitewright, Grayson County, Texas.

**I. The Warfords are affected persons entitled to a contested case hearing.**

The Warfords are affected persons with a personal justiciable interest related to a legal right, duty, privilege, power, or economic interest affected by the Application due to the close proximity of the Warfords residence to the Proposed Plant. *See* 30 Tex. Admin. Code § 55.203. The Proposed Plant will emit pollutants, including PM<sub>2.5</sub> and crystalline silica, that are known to cause serious health effects. The Warfords run cattle and run a robust landscaping business on their property. Due to these pollutants, the Warfords are concerned for their health and the health of their children, Savannah and Clayton, and the health of Mr. Warford’s mother who lives in a house on the Warfords’ property. The Warfords are also very concerned for the health of their cattle and vegetation, and the Proposed Plant’s interference with normal use and enjoyment of animal life.

**II. The Warfords’ residence and Mr. Warford’s mother’s residence are within 440 yards of the Proposed Plant**

Section 382.058(c) of the Texas Health & Safety Code states establishes that only those persons residing within 440 yards of the proposed plant are entitled to a hearing as an affected person. Neither the Texas Health & Safety Code nor TCEQ rules define “plant,” and neither provide the location at the plant from which TCEQ is to start measuring 440 yards. The Texas Clean Air Act’s stated purpose is to protect public health, general welfare, and physical property.<sup>1</sup>

<sup>1</sup> TEX. HEALTH & SAFETY CODE § 382.002(a).

In order to implement the Texas Clean Air Act consistent with its purpose, measurements must be taken from the nearest potential emission source of the proposed plant to a distance of 440 yards towards the hearing requestor's residence, especially in instances where residences, like the Warfords, are extremely close to the property boundary. This ensures that the term "plant" includes all sources of air emissions. The Legislature's requirement that a hearing requestor reside within 440 yards of the proposed *plant*, as opposed to the *facility*—which is more narrowly defined as discrete or identifiable structure, device, item, equipment, or enclosure that constitutes or contains a stationary source<sup>2</sup>—indicates the intention was to provide hearings to those potentially impacted by any source of air emissions. It would be entirely unreasonable to deny an adjacent resident her opportunity to protect her health and property at a contested hearing simply because the TCEQ measured the distance from her residence to an arbitrary location somewhere within the applicant's property when the application does not identify the location of the emission points and there are no restrictions to prevent the applicant from locating emission points (and the associated dangerous air emissions) extremely close to the property line.<sup>3</sup>

This position is further supported by TCEQ and SOAH precedent. Both *Block Creek Concrete Products* ("*Block Creek*")<sup>4</sup> and *East Texas Precast* ("*Precast*")<sup>5</sup> establish that the 440 yards should be measured from a concrete batch plant's "**emission points**" to the closest portion of Mr. Gabriel's residence. *Block Creek* concluded that "because the **emission points** are the subject of environmental concern, it follows that the distance **should be measured from these points**."<sup>6</sup> In *Precast*, the TCEQ adopted the Administrative Law Judge's holding that "proposed plant" means, for purposes of measuring 440 yards to a residence, "the stationary **point of origin of air contaminants** proposed in the application, not including a mine, quarry, well test, or road."<sup>7</sup>

Caprock's plot plan provides the minimal commitment only to not locate stationary emission points within 70 feet of any property line, or stockpiles within 50 feet of any property line. Caprock could substantially change its plot plan as long as it is consistent with these minimum buffer requirements. The Warford residences are both less than 440 yards from Caprock's property, which means the permanent residences may be extremely close to the Proposed Plant's emission points and thus exposed to dangerous particulate matter and crystalline silica emissions.<sup>8</sup> Thus, the Warfords are affected persons entitled to a contested hearing. See TEX. HEALTH & SAFETY CODE § 382.058(c).

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<sup>2</sup> TEX. HEALTH & SAFETY CODE § 382.003(6).

<sup>3</sup> See e.g. SOAH Order No. 1, Application by Bosque Solutions LLC for Concrete Batch Plant Standard Permit, SOAH Docket No. 582-19-6473; TCEQ Docket No. 2019-0665-AIR (granting contested case hearing for requestor with residence within 440 yards from applicant's property boundary but beyond 440 yards from the initial location selected by TCEQ within the applicant's property).

<sup>4</sup> Proposal for Decision on the Application of Block Creek Concrete Products, LLC for Issuance of Air Quality Standard Permit Registration No. 83958, SOAH Docket No. 582-08-4460, TCEQ Docket No. 2008-1009-AIR (January 9, 2009)) (emphasis added).

<sup>5</sup> Proposal for Decision on the Application by East Texas Precast Co., Ltd. For Registration and Approval to Use the Air Quality Standard Permit for Concrete Batch Plants, Registration No. 86593 at p. 5 (emphasis added).

<sup>6</sup> Proposal for Decision on the Application of Block Creek Concrete Products, LLC for Issuance of Air Quality Standard Permit Registration No. 83958, SOAH Docket No. 582-08-4460, TCEQ Docket No. 2008-1009-AIR (January 9, 2009)) (emphasis added).

<sup>7</sup> Proposal for Decision on the Application by East Texas Precast Co., Ltd. For Registration and Approval to Use the Air Quality Standard Permit for Concrete Batch Plants, Registration No. 86593 at p. 5 (emphasis added).

<sup>8</sup> See Exhibit "A", Map of Warford Property.

### **III. Caprock has failed to provide proper notice of the Application**

Caprock has not provided proper notice of the Application as required by the Texas Administrative Code. Caprock has failed to post proper signage as required by 30 Tex. Admin. Code § 39.604. While Caprock has posted a sign at the property, it was posted low to the ground and is obscured by grass along the fence line. Thus, it is not visible to the public from the street and is insufficient to provide notice to the public.

### **IV. Issues to be referred to the State Office of Administrative Hearings**

The Warfords raise the following concerns which are issues of fact and/or mixed questions of fact and law that are relevant and material to the Application:

- (1) whether anticipated air contaminants from the Proposed Plant will be protective of human, general welfare, and physical property, including but not limited to, emissions of particulate matter and crystalline silica;
- (2) whether anticipated air contaminants from the Proposed Plant coupled with dust emissions caused by trucks entering and exiting the property may injure or adversely affect health, welfare, and/or the Warfords' property; and
- (3) whether air contaminants from the Proposed Plant coupled with dust emissions caused by trucks entering and exiting the property will interfere with the normal use and enjoyment of the animal life, vegetation, or the Warfords' property.

### **V. Conclusion**

Based on the foregoing, Kurt and Amber Warford respectfully request a contested case hearing on the identified issues.

Sincerely,

/s/ Adam Friedman

Adam M. Friedman

Texas State Bar No. 24059782

afriedman@msmtx.com

Hailey Culhane

Texas State Bar No. 24127440

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WEBER, LLP

P.O. Box 12127

Austin, Texas 78711

**ATTORNEYS FOR KURT AND AMBER  
WARFORD**

## **EXHIBIT A**

**Distance from Caprock Tract to Mr. Warford's Mother's Residence at 543 Desert Lake Road**



**Note: Parcel Identification Nos. 136489 and 436952 are the tracts upon which Caprock intends to locate the Proposed Plant.**

**Distance from Caprock Tract to Warfords' Residence at 797 Desert Lake Road**





## Jennifer Cox

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**From:** PUBCOMMENT-OCC  
**Sent:** Friday, May 24, 2024 1:59 PM  
**To:** PUBCOMMENT-OCC2; PUBCOMMENT-OPIC; PUBCOMMENT-ELD; PUBCOMMENT-APD  
**Subject:** FW: Public comment on Permit Number 175658

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**From:** mayor@whitewright.com <mayor@whitewright.com>  
**Sent:** Friday, May 24, 2024 7:46 AM  
**To:** PUBCOMMENT-OCC <PUBCOMMENT-OCC@tceq.texas.gov>  
**Subject:** Public comment on Permit Number 175658

**REGULATED ENTY NAME** WHITEWRIGHT BATCH PLANT

**RN NUMBER:** RN111937397

**PERMIT NUMBER:** 175658

**DOCKET NUMBER:**

**COUNTY:** GRAYSON

**PRINCIPAL NAME:** CAPROCK PRECAST LLC

**CN NUMBER:** CN605327485

**NAME:** Sarah Beth Owen

**EMAIL:** [mayor@whitewright.com](mailto:mayor@whitewright.com)

**COMPANY:** City of Whitewright

**ADDRESS:** PO BOX 966  
WHITEWRIGHT TX 75491-0966

**PHONE:** 9034367094

**FAX:**

**COMMENTS:** As the Mayor of the City of Whitewright, I would like to request TCEQ schedule a public hearing regarding the air quality permit #175658 for Caprock Precast LLC. The applicant entity, its owners, and/or other known related entities, are poor performers with a history of documented violations at other existing locations in neighboring counties. The City of Whitewright, its residents, businesses, and local school district campuses are all located to the north of the property of the proposed location for the concrete batch plant. The Whitewright area has a regular wind pattern that blows from the south to north, which will carry any air pollution and/or dust produced by the batch plant into town. My concern as Mayor is the proposed batch plant and its possible production of pollution and/or dust will negatively impact the health and safety of those who live, work, and attend school in the area. Again, I request a public hearing be scheduled and held to allow the public from Whitewright and the surrounding area an opportunity to voice and address their concerns. Respectfully submitted, Sarah Beth Owen Mayor of Whitewright