

TCEQ DOCKET NO. 2024-1820-AIR

APPLICATION BY CAPROCK	§	BEFORE THE TEXAS
PRECAST, LLC TO USE	§	
STANDARD PERMIT FOR	§	COMMISSION ON
CONCRETE BATCH PLANT	§	
	§	ENVIRONMENTAL QUALITY

**REQUESTORS KURT AND AMBER WARFORD’S
REPLY TO CAPROCK PRECAST, LLC’S
RESPONSE TO REQUESTS FOR CONTESTED CASE HEARING**

Kurt and Amber Warford (the “Warfords”) file this Reply (the “Reply”) to Caprock Precast, LLC’s (“Caprock”) Response (the “Response”) and would respectfully show the Texas Commission on Environmental Quality (“TCEQ”) the following:

INTRODUCTION

Caprock filed an application for a Standard Permit under the Tex. Health & Safety Code § 382.05195, TCEQ Registration No. 175658 (the “Application”), on March 13, 2024. This Application seeks approval for construction of a proposed concrete batch plant in Whitewright, Texas (the “Proposed Plant”). Upon receipt of notice of this Application, the Warfords filed a timely request for a contested case hearing on May 10, 2024. The Warfords are affected persons entitled to a contested case hearing and asks that the TCEQ grant their request or, alternatively, adopt the recommendation of the Office of Public Interest Counsel (“OPIC”) and refer this Application to SOAH for an Administrative Law Judge (“ALJ”) to consider a complete evidentiary record of the unclear location of the Proposed Plant relative to the Warfords’ property and residences, including their home and Mr. Warford’s mother’s home.

ARGUMENT

a. 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 their residence and the residence of Mr. Warford's elderly mother to the Proposed Plant. *See* 30 Tex. Admin. Code § 55.203. The Proposed Plant will emit pollutants, including PM_{2.5} and crystalline silica, that are known to cause serious health effects. The Warfords run cattle and operate a robust landscaping business on their property. Due to these pollutants, the Warfords are genuinely concerned for their health, the health of their children, and the health of Mr. Warford's mother. The Warfords are also very concerned for the health of their cattle and vegetation, and the Proposed Plant's overall interference with normal use and enjoyment of their property and animal life.

b. The Warfords' residences are potentially within 440 yards of the Proposed Plant.

The Texas Clean Air Act's stated purpose is to protect public health, general welfare, and physical property.¹ This principle is the foundation for whether an affected person is entitled to a contested case hearing on a potentially harmful concrete batch plant. Section 382.058(c) of the Texas Health & Safety Code states that only those persons residing within the arbitrary distance of 440 yards from the proposed concrete batch "plant" are entitled to a hearing. Importantly, 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.

To implement the Texas Clean Air Act's fundamental purpose of protecting public health, TCEQ must measure from the nearest potential emission source to 440 yards towards the hearing requestor's residence, especially in instances where residences, like the Warfords', are extremely

¹ TEX. HEALTH & SAFETY CODE § 382.002(a).

close to the property boundary. This ensures that the TCEQ considers all sources of air emissions from the “plant” when determining whether public health is protected from a concrete batch plant.

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 a discrete or identifiable structure, device, item, equipment, or enclosure that constitutes or contains a stationary source²—indicates the intention was to provide hearings to those potentially impacted by any source of air emissions. It is entirely unreasonable to deny adjacent residents their opportunity to protect their health and property at a contested hearing simply because the TCEQ measured the distance from their residence to a very general location somewhere within the applicant’s property when the application does not identify the exact locations of all emission points and there are no restrictions to prevent the applicant from locating emission points (with the accompanying dangerous air emissions) extremely close to its property line.³

This position is further supported by TCEQ and SOAH precedent. Both *Block Creek Concrete Products* (“*Block Creek*”)⁴ and *East Texas Precast* (“*Precast*”)⁵ establish that the 440 yards should be measured from a concrete batch plant’s “*emission points*” to the closest portion of the protesting party’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*.”⁶ In *Precast*, the TCEQ adopted the ALJ’s holding that “proposed plant” means, for

² TEX. HEALTH & SAFETY CODE § 382.003(6).

³ 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).

⁴ 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).

⁵ 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).

⁶ 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

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.”⁷

Caprock’s plan for the Proposed Plant merely 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 concedes in its Response that it owns multiple contiguous tracts and, from its attached map, clearly shows a portion of its property is within 440 yards of the Warfords’ residences.⁸ OPIC correctly points out that Caprock could substantially change its (already uncertain) plot plan as long as it is consistent with these minimum buffer requirements, which would put both of the Warfords’ permanent residences well within 440 yards of the Proposed Plant, exposing them to potentially dangerous concentrations of particulate matter and crystalline silica emissions.⁹ Thus, the Warfords are affected persons entitled to a contested hearing. *See* TEX. HEALTH & SAFETY CODE § 382.058(c).

CONCLUSION

Based on the foregoing, the Warfords ask that the TCEQ grant their contested case hearing request or, alternatively, refer this matter to SOAH to fully develop necessary evidence on the location of the Proposed Plant and determine whether they are affected persons instead of denying them their right to protect their health and property based solely on the Application’s representation that is subject to change. The Warfords further respectfully request that TCEQ refer to SOAH the following issues of fact and/or mixed questions of fact and law that are relevant and material to the Application:

(January 9, 2009)) (emphasis added).

⁷ 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).

⁸ Exhibit 1 to Caprock’s Response.

⁹ *See* OPIC’s Response to Requests for Hearing at p. 6.

- (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.

Sincerely,

/s/ Adam Friedman

Adam M. Friedman

State Bar No. 24059783

afriedman@msmtx.com

Hailey Culhane

State Bar No. 24127440

hculhane@msmtx.com

MC ELROY, SULLIVAN, MILLER & WEBER,
LLP

500 W 5th Street, Suite 1375

Austin, TX 78701

**ATTORNEYS FOR KURT AND AMBER
WARFORD**

CERTIFICATE OF SERVICE

I hereby certify that on December 16, 2024, the original and true and correct copy of Requestors Kurt and Amber Warford's Reply to Caprock Precast, LLC's Response to Requests for Contested Case Hearing was filed with the Chief Clerk of the TCEQ and a copy was served on all persons listed on the attached mailing list via electronic mail and first-class US mail.

/s/ Adam Friedman
Adam M. Friedman

Mailing List
Caprock Precast, LLC
TCEQ Docket No. 2024-1820-AIR

FOR THE APPLICANT

VIA EMAIL

Paul Black, Vice President
Caprock Precast, LLC
11201 State Highway 205
Lavon, Texas 75166
paul@beelineservices.com

FOR THE EXECUTIVE DIRECTOR

VIA EMAIL

Contessa Gay, Staff Attorney
Texas Commission on Environmental
Quality
Environmental Law Division MC-173
P.O. Box 13087
Austin, Texas 78711-3087
Tel: (512) 239-0600
Fax: (512) 239-0606
Contessa.gay@tceq.texas.gov

Ava Enriquez, Technical Staff
Texas Commission on Environmental
Quality
Air Permits Division MC-163
P.O. Box 13087
Austin, Texas 78711-3087
Tel: (512) 239-0894
Fax: (512) 239-1400
Ava.enriquez@tceq.texas.gov

Ryan Vise, Director
Texas Commission on Environmental
Quality
External Relations Division
Public Education Program MC-108
P.O. Box 13087
Austin, Texas 78711-3087
Tel: (512) 239-4000
Fax: (512) 239-5678
pep@tceq.texas.gov

**FOR ALTERNATIVE DISPUTE
RESOLUTION**

VIA EMAIL

Kyle Lucas, Attorney
Texas Commission on Environmental
Quality
Alternative Dispute Resolution MC-222
P.O. Box 12087
Austin, Texas 78711-3087
Tel: (512) 239-0687
Fax: (512) 239-4015
Kyle.lucas@tceq.texas.gov

FOR THE CHIEF CLERK

VIA E-FILING

Docket Clerk
Texas Commission on Environmental
Quality
Office of Chief Clerk MC-105
P.O. Box 13087
Austin, Texas 78711-3087
Tel: (512) 239-3300
Fax: (512) 239-3311
<https://www14.tceq.texas.gov/epic/eFiling/>

FOR REQUESTOR

VIA FIRST CLASS MAIL

Sarah Beth Owen
City of Whitewright
P.O. Box 966
Whitewright, Texas 75491-0966