

Brooke T. Paup, *Chairwoman*
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

March 24, 2025

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 GCC SUN CITY
MATERIALS, LLC FOR AIR QUALITY STANDARD PERMIT
REGISTRATION NO. 173973L002
TCEQ DOCKET NO. 2025-0118-AIR**

Dear Ms. Gharis:

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

Sincerely,

A handwritten signature in black ink, appearing to read "Sheldon P. Wayne".

Sheldon P. Wayne, Attorney
Assistant Public Interest Counsel

cc: Mailing List

TCEQ DOCKET NO. 2025-0118-AIR

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|------------------------------------|----------|------------------------------|
| APPLICATION BY | § | BEFORE THE |
| GCC SUN CITY MATERIALS, LLC | § | |
| FOR AIR QUALITY STANDARD | § | TEXAS COMMISSION ON |
| PERMIT REGISTRATION | § | |
| NO. 173973L002 | § | ENVIRONMENTAL QUALITY |

**OFFICE OF PUBLIC INTEREST COUNSEL’S RESPONSE
TO REQUESTS FOR HEARING AND REQUESTS 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 or Commission) files this Response to Requests for Hearing and Requests for Reconsideration in the above-captioned matter and respectfully submits the following.

I. INTRODUCTION

A. Summary of Position

Before the Commission is an application by GCC Sun City Materials, LLC (Applicant) for a Standard Permit, Registration No. 173973L002, to authorize the Applicant to construct a temporary Concrete Batch Plant. The Commission received requests for a contested case hearing from Judy K. Brown, Zola Loyd George, Coy David Leonard, and Michael James Rudd. The Commission also received requests for reconsideration of the Executive Director’s (ED) decision from Stephen Wesley Dempsey, Zola Loyd George, and Michael James Rudd. After evaluation, OPIC respectfully recommends the Commission find that none of the requestors qualify as affected persons in this matter. Additionally, OPIC recommends denial of all requests for reconsideration.

B. Background of Facility

GCC Sun City Materials, LLC applied to TCEQ for Standard Permit Registration No. 173973L002 under the Texas Clean Air Act (TCAA), Texas Health & Safety Code (THSC) § 382.05195. This permit would authorize the Applicant to construct a temporary Concrete Batch Plant, consisting of two portable concrete batch plants, located using the following driving directions: from the intersection of US Highway 180 East and Farm-to-Market Road 717, travel South on Farm-to-Market Road 717 for approximately 7.7 miles; stay left at the fork and travel on County Road 128 for approximately 0.62 miles to find the facility site on the left, Breckenridge, Stephens County. Contaminants authorized under this permit include particulate matter (PM) including (but not limited to) aggregate, cement, road dust, and PM with diameters of 10 microns or less and 2.5 microns or less.

C. Procedural Background

TCEQ received the application on April 18, 2024. On April 22, 2024, the ED declared the application administratively complete. The Consolidated Notice of Receipt of Application and Intent to Obtain Permit and Notice of Application and Preliminary Decision (public notice) for this permit application was published on May 22, 2024, in the *Breckenridge American*. Notice of a public meeting was mailed on August 13, 2024. The public meeting was held on September 17, 2024, at the Breckenridge Woman's Forum in Breckenridge. The public comment period ended on September 19, 2024. The Chief Clerk mailed the ED's Decision and Response to Comments (RTC) on December 12, 2024. The deadline for filing

requests for a contested case hearing and requests for reconsideration of the ED's decision was January 13, 2025.¹

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

¹ OPIC notes that in accordance with, and pursuant to, Condition no. 4 of the Air Quality Standard Permit for Concrete Batch Plant (eff. Jan. 24, 2024) and 30 TAC § 39.411(e)(11)(A)(iv), because at least one hearing request was received within 30 days of the publication of public notice in this matter, the period to request a contested case hearing was extended to 30 days following the mailing of the ED's RTC.

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.

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. Requests for Reconsideration

Any person may file a request for reconsideration of the ED's decision under Title 30, Texas Administrative Code (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 the requestor is an affected person

Judy K. Brown

Judy K. Brown submitted a timely hearing request during the public comment period. As a threshold issue, a hearing request must first be analyzed to determine if the requestor resides in a permanent residence that is located within 440 yards of the proposed Facility as required by the distance restrictions for affected persons contained in THSC § 382.058(c). According to the map prepared by the ED's staff, Ms. Brown is not located within 440 yards from the proposed Facility. Therefore, under the 440-yard distance restriction, Judy K. Brown does not qualify as an affected person.

Zola Loyd George

Zola Loyd George submitted a timely hearing request that was based on timely comments he made during the public comment period. As explained above, a hearing request must first be analyzed to determine if the requestor resides in a permanent residence that is located within 440 yards of the proposed Facility as required by the distance restrictions for affected persons contained in THSC § 382.058(c). According to the map prepared by the ED's staff, Mr. George is not located within 440 yards from the proposed Facility. Therefore, under the

440-yard distance restriction, Zola Loyd George does not qualify as an affected person.

Coy David Leonard

Coy David Leonard submitted a timely hearing request that was based on timely comments he made during the public comment period. As explained above, a hearing request must first be analyzed to determine if the requestor resides in a permanent residence that is located within 440 yards of the proposed Facility as required by the distance restrictions for affected persons contained in THSC § 382.058(c). According to the map prepared by the ED's staff, Mr. Leonard is not located within 440 yards from the proposed Facility. Therefore, under the 440-yard distance restriction, Coy David Leonard does not qualify as an affected person.

Michael James Rudd

Michael James Rudd submitted a timely hearing request during the public comment period. As explained above, a hearing request must first be analyzed to determine if the requestor resides in a permanent residence that is located within 440 yards of the proposed Facility as required by the distance restrictions for affected persons contained in THSC § 382.058(c). According to the map prepared by the ED's staff, Mr. Rudd is not located within 440 yards from the proposed Facility. Therefore, under the 440-yard distance restriction, Michael James Rudd does not qualify as an affected person.

IV. REQUESTS FOR RECONSIDERATION

The Commission received timely requests for reconsideration of the ED's decision that the permit application meets the requirements of applicable law from Stephen Wesley Dempsey, Zola Loyd George, and Michael James Rudd. These requests raise multiple issues related to the application, proposed Facility, and/or draft permit, including those concerning the health and safety of residents, livestock, and wildlife; the standard permit's protectiveness review; use and enjoyment of property, including impact to the New Hope Baptist Church and nearby hunting leases; risk of noncompliance; the site map; water use and impact to water quality; location of the Facility; traffic; and road suitability. One of the requestors also questions whether the ED's decision authorizes operation of the Facility.

Many of the issues raised in these requests are within the Commission's jurisdiction as it relates to this air permitting matter; however, the requests also raise a number of issues that lie outside the TCEQ's jurisdiction. For those concerns that are within the Commission's jurisdiction, OPIC cannot recommend reversal of the ED's decision or remand of the application to the ED on these issues without the development of an evidentiary record. For this reason, OPIC must recommend denial of the requests for reconsideration received in this matter. OPIC does, however, acknowledge that these issues were addressed by the ED's RTC and reiterates those responses here.

With regard to health and safety of residents, livestock, and wildlife, the ED explains that the standard permit was developed to ensure that it is protective

of human health and welfare and the environment. The Standard Permit was developed utilizing a protectiveness review that compared emissions allowed by the standard permit to appropriate state and federal standards and guidelines, including the National Ambient Air Quality Standards (NAAQS) and TCEQ rules. Regarding the use and enjoyment of property, the ED explains that the Standard Permit includes requirements to control and minimize dust, and that the Facility should not cause nuisance conditions if it is operated in compliance with the Standard Permit.

Also, OPIC cannot recommend that the requests be granted on the basis of issues raised that are outside of the scope of this proceeding or that TCEQ otherwise lacks jurisdiction over. For instance, the risk of future Facility noncompliance raised by requestors is too speculative to serve as a basis for overturning the ED's decision. Likewise, the complaint that a detailed site map has not been provided cannot serve as a basis for overturning the ED's decision because the level of detail argued for is not required for this application. The ED conducted a technical review of the application, including any map(s) submitted by the Applicant, and determined that it meets the requirements of the Standard Permit. Regarding concerns about water use and the impact to water quality, because this registration will regulate air emissions only, issues regarding water quality or use are not within the scope of review. However, depending on the Facility's operation, it may be required to apply for separate water quality or usage authorizations. Additionally, concerns about the location of the Facility, traffic, and suitability of nearby roads are outside the jurisdiction of TCEQ to

consider in the context of an air quality standard permit for concrete batch plants.

Finally, a requestor also questions whether the ED's decision authorizes operation of the Facility. This requestor's confusion is potentially based on the juxtaposition of language included in the ED's decision letter issued on December 12, 2024 with language contained in the ED's RTC. The decision letter explains that the ED has made a decision that the permit application meets the requirements of applicable law—but does not authorize construction or operation of the proposed Facility. In contrast, the ED's RTC states that the permit “will authorize the construction of a new facility that may emit air contaminants.” The succinct explanation as to whether the Facility is now authorized to operate is that the ED's decision has not authorized construction or operation of the Facility, but if the Commission ultimately issues the permit, it will authorize the construction and operation of the proposed Facility.

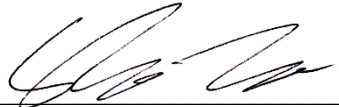
V. CONCLUSION

OPIC respectfully recommends the Commission find that no person who has filed a request for a contested case hearing in this matter has shown that they qualify as an affected person. OPIC further recommends denial of the requests for reconsideration.

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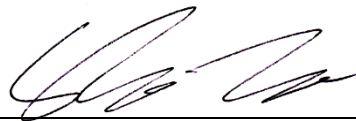
Respectfully submitted,

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By: 
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CERTIFICATE OF SERVICE

I hereby certify that on March 24, 2025, the Office of Public Interest Counsel's Response to Requests for Hearing and Requests for Reconsideration was filed with the Chief Clerk of 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.


Sheldon P. Wayne

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TCEQ DOCKET NO. 2025-0118-AIR

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See attached list.

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