

**TCEQ AIR QUALITY STANDARD PERMIT FOR CONCRETE BATCH
PLANTS REGISTRATION NUMBER 176138
TCEQ DOCKET NUMBER 2025-0287-AIR**

APPLICATION BY	§	BEFORE THE TEXAS
BARTOO READY MIX, LLC	§	COMMISSION ON
CONCRETE BATCH PLANT NEVADA	§	ENVIRONMENTAL QUALITY
COLLIN COUNTY	§	

**BARTOO READY MIX, LLC'S RESPONSE TO EXECUTIVE DIRECTOR'S
RESPONSE TO HEARING REQUESTS AND REQUESTS FOR
RECONSIDERATION**

March 24, 2025

Laurie Gharis
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 BARTOO READY MIX, LLC FOR
CONCRETE BATCH PLANT REGISTRATION NO. 176138 TCEQ
DOCKET NO. 2025-0287-AIR**

Dear Ms. Gharis:

Enclosed for filing is the Applicant's Response to the Executive Director's Response to Hearing Requests and Requests for Reconsideration in the above-entitled matter.

Sincerely,



Chapman A. Bauerlein
Attorney for Applicant

cc: Mailing List

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RECONSIDERATION**

**TO THE HONORABLE MEMBERS OF THE TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY:**

Bartoo Ready Mix, LLC (“Bartoo Ready Mix”) files this Response to the Executive Director’s Response to Hearing Requests and Requests for Reconsideration and respectfully shows the following:

I. INTRODUCTION

A. Summary of Position

Before the Commission is the application of Bartoo Ready Mix, LLC (“Bartoo” or “Applicant”) for a new Standard Permit registration under the Texas Clean Air Act (TCAA), Texas Health & Safety Code (THSC) § 382.05195. Applicant respectfully requests the Commission find that Laura Vargas does not qualify as an affected person and denies her pending hearing request.

B. Background

Applicant seeks Registration No. 176138 to authorize the construction of a new concrete batch plant that may emit air contaminants. The proposed facility would be located at 8929 County Road 591, Nevada, Collin County. Contaminants authorized under this permit include particulate matter, including (but not limited to) aggregate, cement, road dust, and particulate matter with diameters of 10 microns or less and 2.5 microns or less.

C. Procedural History

TCEQ received the application on April 20, 2024, and declared it administratively complete on April 23, 2024. 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 in English on June 5, 2024, in *Wylie News*, and in Spanish on June 4, 2024, in *La Prensa Comunidad*. A public meeting was held on September 12, 2024, in Nevada, Texas. The public comment period ended on September 16, 2024. The Executive Director's (ED) Response to Comment (RTC) was mailed on December 11, 2023, and the deadline to submit a hearing request or request for reconsideration of the ED's decision on this application was January 10, 2025. The ED issued its Response to Hearing Requests and Requests for Reconsideration on March 10, 2025.

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).

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.

For concrete batch plant registrations under the Standard Permit, 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 any
- (3) 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.

III. ANALYSIS OF HEARING REQUESTS

A. Laura Vargas is Not an Affected Person

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, the analysis is restricted by the distance limitation imposed by statute.

The ED and Office of Public Interest Counsel (OPIC) both found that Laura Vargas is an affected person pursuant to THSC § 382.058(c). However, their analysis measured the distance starting from the plant’s perimeter, and not from *emission points* that make up the concrete batch plant, which is the correct measurement as established in *Block Creek Concrete Products, LLC*.¹ When properly measured from the emission points, Ms. Vargas’ property falls outside of the 440-yard requirement in TCAA § 382.058(c), and she is thus not an affected person.

B. The 440-yard Distance Limitation Should be Measured from the Proposed Plant.

The Commission has precedent dating back to 2009 concerning its interpretation of “proposed plant” in the context of section 382.058(c) and specifically that the 440-yard limitation must be measured from the location of

¹ See Tex. Comm’n. Envtl. Quality, Application by Block Creek Concrete Products, LLC For Issuance of Air Quality Registration No. 83958, SOAH Docket No. 582-08-4460; TCEQ Docket No. 2008-1009-AIR (March 27, 2009).

the proposed plant, as it is represented in the application.² TCAA § 382.058(c) does not provide a definition of the term “proposed plant” or provide instructions on from where that measurement should be taken.

In *Block Creek Concrete Products*, SOAH considered what the Legislature meant when a 440-yard distance should be measured. SOAH specifically dismissed the notion that the term “plant” must include the applicant’s entire property.³ Specifically, SOAH held that because the emission points are the subject of environmental concern, it follows that the distance should be measured from these points.⁴ The Commission subsequently adopted the Proposal for Decision (PFD), holding that a hearing requestor was not an affected person within the meaning TCAA § 382.058(c) when “the structures on [the requestor’s] property that serve as living quarters are more significant than 440 yards from the plant (**emission points**) in the Registration.”⁵ The TCEQ addressed this issue again as recently as 2021 in an application by Ameritex Pipe & Products, LLC. In that matter, the Executive Director denied a Request for Reconsideration because the requestor was not an affected person under the statute because his

² See Tex. Comm’n. Env’tl. Quality, Application by Block Creek Concrete Products, LLC For Issuance of Air Quality Registration No. 83958, SOAH Docket No. 582-08-4460; TCEQ Docket No. 2008-1009-AIR (March 27, 2009).

³ Proposal for Decision on the Application by 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).

⁴ *Id.* at page 2.

⁵ Tex. Comm’n. Env’tl. Quality, Application by Block Creek Concrete Products, LLC For Issuance of Air Quality Registration No. 83958, TCEQ Docket No. 2008-1009-AIR, SOAH Docket No. 582-08-4460 (March 27, 2009) (final order adopting the PFD and remanding the matter to the ED as uncontested) (emphasis added).

property was outside of the 440-yard requirement when *measured from the emission points*.⁶

C. Laura Vargas's Property is Outside 440-Yards when Measured from the Point of Emissions.

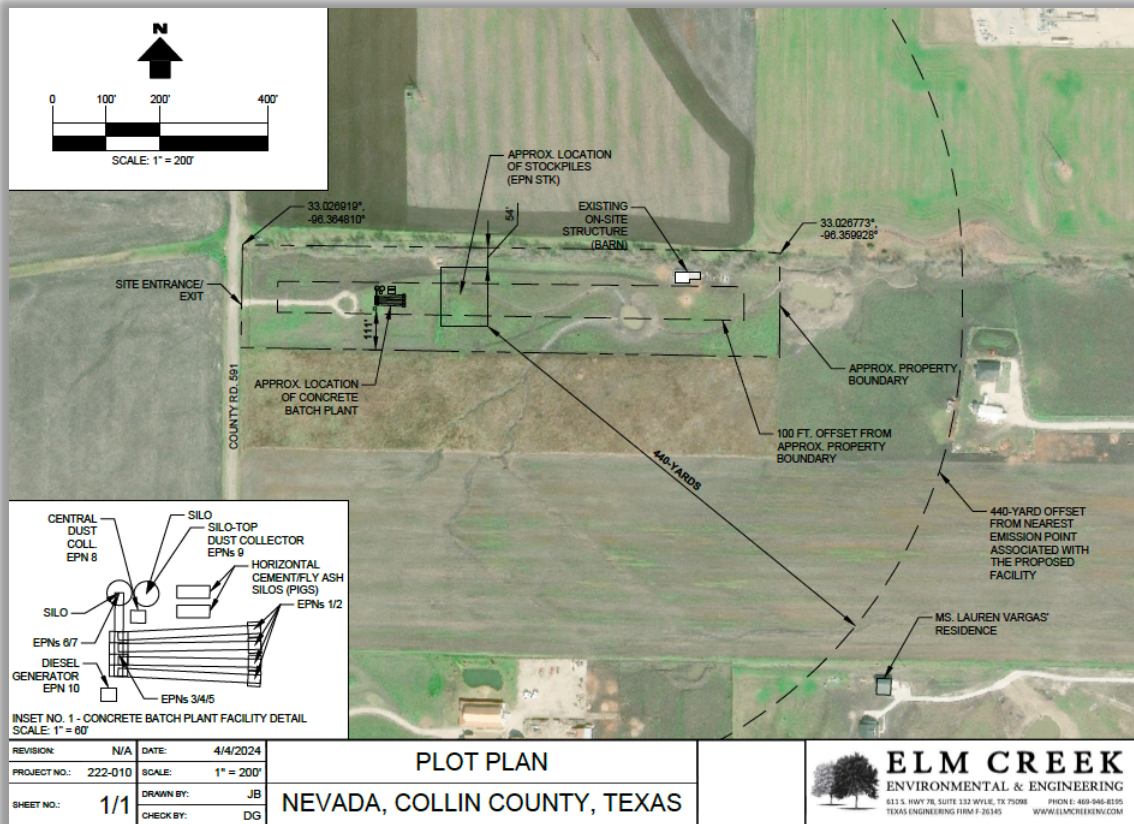
The ED and OPIC relied upon the following map in determining that Laura Vargas was within the 440-yard requirement of THSC § 382.058(c).



This finding does not measure from the emission points as required by previous interpretations of THSC § 382.058(c). When measured correctly, Laura Vargas' property falls outside of the 440-yard affected person requirement in THSC § 382.058(c):

⁶ See Tex. Comm'n. Env'tl. Quality, Application by Ameritex Pipe & Products, LLC for Air Quality Standard Permit Registration No. 159336; TCEQ Docket No. 2021-0056-AIR (February 24, 2021).

⁷ See Executive Director Response to to Hearing Requests and Requests for Reconsideration at page 14.



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Because Ms. Vargas's property is not within the 440-yard requirement, she is not an affected person under the statute, and therefore, a contested case hearing is not appropriate. Because the Executive Director found no other affected persons qualified for a contested case hearing, the Commission should grant Bartoo Ready Mix, LLC's permit.


CONCLUSION

Applicant respectfully requests the Commission find that Laura Vargas does not qualify as an affected person and deny her hearing request.

⁸ CBP 001 SN96163 Plot Plan


Respectfully Submitted,

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CERTIFICATE OF SERVICE

I certify that on this 24th day of March 2025, a true and correct copy of the “Applicant’s Response to the Executive Director’s Response to Hearing requests and requests for Reconsideration” for Air Quality Permit No. 176138 was served on all persons on the service list by the undersigned via electronic filing, facsimile transmission, inter-agency mail, electronic submittal, or by deposit in the U.S. mail.


Chapman A. Bauerlein
Attorney for Applicant

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See attached list.

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