

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 10, 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 BY 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 Office of Public Interest Counsel's Response to Requests for Hearing in the above-entitled matter.

Sincerely,

A handwritten signature in cursive script that reads "Jennifer Jamison".

Jennifer Jamison, Attorney
Assistant Public Interest Counsel

cc: Mailing List

TCEQ DOCKET NO. 2025-0287-AIR

**APPLICATION BY
BARTOO READY MIX, LLC
CONCRETE BATCH PLANT
NEVADA, COLLIN COUNTY**

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**BEFORE THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY**

**THE OFFICE OF PUBLIC INTEREST COUNSEL'S RESPONSE
TO REQUESTS FOR HEARING**

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

The Office of Public Interest Counsel (OPIC) of the Texas Commission on Environmental Quality (Commission or TCEQ) files this Response to Requests for Hearing in the above-referenced matter 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. OPIC respectfully recommends the Commission find that Laura Vargas qualifies as an affected person and grant her pending hearing request. OPIC also respectfully recommends denial of the request for reconsideration submitted by Heather Craddock.

B. Background

Applicant seeks Registration No. 176138 to authorize 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 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, 2024, and the deadline to submit a hearing request or request for reconsideration of the ED's decision on this application was January 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).

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 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

- (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 30 (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 requestors are affected persons

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, OPIC's analysis is restricted by the distance limitation imposed by statute.

Laura Vargas

The Commission received timely combined comments and a hearing request from Lara Vargas on June 18, 2024. In her request, Ms. Vargas expresses concern regarding potential health implications that emissions from the facility may have on her and her five children. She also states that her children currently suffer from breathing problems. In addition, Ms. Vargas expresses concern about impacts to the environment. Further, the map provided by ED staff confirms that the address of the permanent residence provided by Ms. Vargas is within 440 yards of Bartoo Ready Mix's proposed facility and associated emission points.

OPIC has reviewed the record and finds that Laura Vargas raised relevant and material issues regarding effects to human health, and concerns related to air quality and the environment. Specifically, the interests claimed by Ms. Vargas pertaining to air quality and human health are protected by the law under which the application will be considered, and represent a reasonable relationship exists between these interests and regulated activity. 30 TAC § 55.203(c)(1) & (3). Further, Ms. Vargas' express concerns about effects on her and her children's health combined with her proximity to the facility demonstrates a likely impact of the regulated activity on the health, safety, and use of property of the person per 30 TAC § 55.203(c)(4). In addition, Ms. Vargas' request satisfies THSC Section 382.058(c) as her home is within 440 yards of the proposed plant. Accordingly,

OPIC finds that Laura Vargas is an affected person in this matter and recommends granting her hearing request.

Alison Greene & Jane Ridgway

Alison Greene and Jane Ridgway each submitted timely combined comments and hearing requests on this application. In their requests, Ms. Greene and Ms. Ridgway expressed concerns pertaining to air quality, traffic, noise, and human health. While concerns regarding air quality and human health are relevant and material to the Commission's decision on this application, issues relating to traffic and noise fall outside the TCEQ's jurisdiction. Finally, the map prepared by ED staff shows that both Ms. Greene and Ms. Ridgway's permanent residence addresses are well outside the 440-yard radius imposed by statute.

Again, 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, OPIC's analysis is directed by this restrictive distance limitation imposed by statute.

Because of the restrictive statutory limitation on affected persons for purposes of requesting a hearing on a registration under the Concrete Batch Plant Standard Permit, OPIC is compelled to find that Alison Greene and Jane Ridgway cannot qualify as affected persons in this matter.

B. Which issues raised in the hearing request are disputed

Laura Vargas raised the following disputed issue:

- Whether the proposed facility would be adequately protective of air quality and human health.

C. Whether the dispute involves questions of fact or of law

If the Commission considers an issue to be one of fact, rather than one of law or policy, it is appropriate for referral to hearing if it meets all other applicable requirements. The issues raised in the request are issues of fact.

D. Whether the issues were raised during the public comment period

The Issue in Section III.B. was specifically raised by the requestor during the public comment period.

E. Whether the hearing request is based on issues raised solely in a withdrawn public comment

No public comments were withdrawn in this matter. Therefore, the hearing request is not based on issues raised in withdrawn public comments.

F. Whether the issues are relevant and material to the decision on the application

The hearing request raises issues that are relevant and material to the Commission's decision under the requirements of 30 TAC §§ 55.201(d)(4)(B) and 55.211(c)(2)(A)(ii). To refer an issue to the State Office of Administrative Hearings (SOAH), the Commission must find that the issue is relevant and material to the Commission's decision to issue or deny the permit. Relevant and material issues are those governed by the substantive law under which the permit is to be issued. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248-51 (1986).

Animal, Human, and Environmental Health and Safety and Use/Enjoyment

Under the Texas Clean Air Act, the Commission may issue this permit only if it finds no indication that the emissions from the facility will contravene the intent of the Texas Clean Air Act, including protection of the public's health and physical property. TEX. HEALTH & SAFETY CODE § 382.0518(b)(2). Further, the purpose of the Texas Clean Air Act is to safeguard the state's air resources from pollution by controlling or abating air pollution and emissions of air contaminants, consistent with the protection of public health, general welfare, and physical property. TEX. HEALTH & SAFETY CODE § 382.002(a). Accordingly, human health and safety and environmental concerns are relevant and material to the Commission's decision on this application.

IV. Request for Reconsideration

Heather Craddock submitted a timely request for reconsideration that articulated concerns about potential effects on human health. While OPIC notes that the concerns expressed are relevant and material to the Commission's decision on this application, a record establishing the evidentiary basis for reconsidering the ED's decision based on these issues would be needed to recommend that the request for reconsideration be granted. As no such record exists yet, OPIC cannot recommend the request be granted at this time.


V. CONCLUSION

OPIC respectfully recommends the Commission find that Laura Vargas qualifies as an affected persona and grant her pending hearing request. OPIC

further recommends the Commission refer the issue specified in section III B. to SOAH for a 180-day contested case hearing. Finally, OPIC recommends that the request for reconsideration be denied.

Respectfully submitted,

Garrett T. Arthur
Public Interest Counsel

By 
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CERTIFICATE OF SERVICE

I hereby certify that on March 10, 2025 the original and true and correct copies of the Office of Public Interest Counsel's Response to Requests for Hearing was filed with the Chief Clerk of the TCEQ and a copy was served to all persons listed on the attached mailing list via hand delivery, facsimile transmission, Inter-Agency Mail, electronic mail, or by deposit in the U.S. Mail.


Jennifer Jamison

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See attached list.

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