

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*

April 28, 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 GONZALEZ  
BROTHERS BATCH PLANT, LP FOR CONCRETE BATCH PLANT  
REGISTRATION NO. 174578  
TCEQ DOCKET NO. 2025-0469-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 black ink that reads "Josiah Mercer".

Josiah T. Mercer, Attorney  
Assistant Public Interest Counsel

cc: Mailing List

**TCEQ DOCKET NO. 2025-0469-AIR**

<b>APPLICATION BY GONZALEZ</b>	<b>§</b>	<b>BEFORE THE</b>
<b>BROTHERS BATCH PLANT, LP FOR</b>	<b>§</b>	<b>TEXAS COMMISSION ON</b>
<b>CONCRETE BATCH PLANT PERMIT</b>	<b>§</b>	<b>ENVIRONMENTAL QUALITY</b>
<b>NO. 174578 IN GRAYSON COUNTY</b>	<b>§</b>	

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

**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 the hearing requests in the above-captioned matter.

**I. Introduction**

**A. Summary of Position**

Before the Commission is the application of Gonzalez Brothers Batch Plant, LP (Applicant) for Standard Permit registration under the Texas Clean Air Act, Texas Health & Safety Code (THSC) § 382.05195. For the reasons stated herein, OPIC respectfully recommends that the Commission grant the hearing requests of Cassie and Patrick Coburn and refer this application for a 180-day hearing at the State Office of Administrative Hearings (SOAH) on Issue nos. 1-3 contained in §III.B. Alternatively, OPIC would recommend that the Commission refer the Coburns' requests to SOAH for an affectedness determination.

## **B. Description of Application and Facility**

Applicant seeks to authorize construction of a new facility that may emit air contaminants—permit number 174578. The proposed facility would be located approximately 0.2 miles south of the intersection of Hodgins Road and Central Expressway Service Road in Grayson County. Contaminants authorized under this permit would include aggregate, cement, road dust, and particulate matter with diameters of 10 microns or less and 2.5 microns or less.

## **C. Procedural Background**

TCEQ received the application on November 9, 2023, and declared it administratively complete on November 10, 2023. 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 on December 27, 2023, in the *Herald Democrat*. A Public Meeting was originally scheduled for May 2, 2024, at Kidd-Key Auditorium in Sherman—but was cancelled on April 30, 2024, due to the venue being unavailable. The notice for the rescheduled public meeting was posted on July 01, 2024, to the TCEQ Homepage - Public Meeting Calendar. The rescheduled Public Meeting was held on August 06, 2024, at Kidd-Key Auditorium and the public comment period ended the same day. The Executive Director's (ED) Response to Comment was mailed on February 11, 2025, and the deadline to submit a hearing request or request for reconsideration of the ED's decision on this application was March 13, 2025.

## **II. Applicable Law**

This application was filed on or after September 1, 2015, and is therefore subject to the procedural rules adopted pursuant to Senate Bill 709.<sup>1</sup> 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.<sup>2</sup>

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<sup>1</sup> Tex. S.B. 709, 84th Leg., R.S. (2015).

<sup>2</sup> 30 TAC § 55.201(d).

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.<sup>3</sup>

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;

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<sup>3</sup> 30 TAC § 55.203(c).

- (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.<sup>4</sup>

For an application filed on or after September 1, 2015, Section 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 Section 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. Whether the Requestors are Affected Persons**

Under THSC Section 382.058(c), affected person status is limited 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.

The Commission received timely hearing requests and comments from Cassie and Patrick Coburn. According to their requests, the Coburns both reside in a home located less than 850 feet from the center of Applicant's property.

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<sup>4</sup> 30 TAC § 55.203(d).

According to the map prepared by ED staff, one of the two structures on the Coburns' property is within 440 yards of the center of the proposed facility. Although the radii represented by this map are measured from the center of the proposed facility, the map also claims that the Coburns are greater than 440 yards from the facility boundary.<sup>5</sup> However, OPIC's review of the TCEQ Boundary Mapper tool clearly shows that both of the structures on the Coburns' property are within 440 yards of the southeast corner of the proposed facility, as represented in the ED's map.

The map provided in the application claims that the shape of the facility footprint won't actually be a square—as represented in the ED's map—but a trapezoid. The Applicant's map shows that the proposed facility will not include the southeast corner of the square, paved portion of their property—and Applicant claims that their diagonal border is almost exactly 440 yards from the Coburns' residence—which the Applicant represents as being the farther of the two structures on the Coburns' property. Even if these measurements were confirmed by the Boundary Mapper tool, which they are not, the Applicant's map still shows that one structure on the Coburns' property is within 440 yards of the proposed facility, and the other structure is almost exactly 440 yards.

Moreover, based on OPIC's review of all provided maps and the Boundary Mapper tool, OPIC finds that it is more likely than not that the Coburns reside

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<sup>5</sup> The map includes the following disclaimer: "This product is for informational purposes and may not have been prepared for or be suitable for legal, engineering, or surveying purposes. It does not represent an on-the-ground survey and represents only the approximate relative location of property boundaries."

within 440 yards of the proposed facility. Applicant's claim that their proposed facility is farther than 440 yards from the Coburns' residence relies on the assumptions that nobody resides in the closer structure and no emission sources will exist southeast of the diagonal line drawn on the Applicant's map. Even if we take these assumptions as true, the closer structure on the Coburns' property is still within 440 yards, and the farther structure is only several yards outside of 440 yards away. For a concrete batch plant registration, it must be emphasized that the 440-yard statutory distance limitation on persons who may be affected is a prescriptive and precise legal standard, and the ED's map itself states that the map may not be suitable for legal purposes.<sup>6</sup>

In their comments and hearing requests, the Coburns raise concerns regarding potential impacts to their property and well-being. These concerns include those related to air quality and human health. These interests are protected by the law under which the application will be considered.<sup>7</sup> There is a reasonable relationship between these concerns and the activity regulated under the permit.<sup>8</sup> Moreover, given the proximity of their residence, business, and

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<sup>6</sup> OPIC acknowledges that the maps provided by ED staff are very useful in most hearing request matters where a general idea of a requestor's location relative to a regulated activity is a factor to consider in determining affected person status. These maps are also very helpful in concrete batch plant matters where requestors are located at distances that are obviously far beyond the statutory distance limitation. However, for a batch plant where requestors are indisputably very close, such as the present case, requestors should not be excluded without absolute certainty that they reside beyond 440 yards from where emission sources may be located.

<sup>7</sup> See 30 TAC § 55.203(c)(1).

<sup>8</sup> See 30 TAC § 55.203(c)(3).



property to the proposed facility—it is likely that the regulated activity could impact the Coburns’ health, safety, and use of property.<sup>9</sup>

OPIC finds that the Coburns do qualify as affected persons in this matter and would respectfully recommend that the Commission grant their hearing requests and refer this matter to SOAH for a contested case hearing. If the Commission does not grant their hearing requests, OPIC would recommend that the matter be referred to SOAH for an affectedness determination.

**B. Which Issues Raised in the Hearing Requests Are Disputed**

The Requestors raised the following disputed issues in both hearing requests and timely public comment:

1. Whether the draft permit is adequately protective of air quality.
2. Whether the draft permit is adequately protective of 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.<sup>10</sup> The issues listed above are issues of fact.

**D. Whether the Issues Were Raised During the Public Comment Period**

All issues were specifically raised by requestors who qualify as affected persons during the public comment period.

**E. Whether the Hearing Requests are Based on Issues Raised Solely in a Withdrawn Public Comment**

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<sup>9</sup> See 30 TAC § 55.203(c)(4).

<sup>10</sup> 30 TAC § 55.211(c)(2)(A).

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

**F. Whether the Issues are Relevant and Material to the Decision on the Application**

The Requestors raise issues that are relevant and material to the Commission's decision under the requirements of 30 TAC §§ 55.201(d)(4) and 55.211(c)(2)(A). To refer an issue to SOAH, the Commission must find that the issue is relevant and material to the Commission's decision to issue or deny this permit. The Commission can only consider issues within its jurisdiction. Therefore, relevant and material issues include those governed by the substantive law of the permit at issue.

Air Quality-and Human Health

The affected persons in this matter both raised concerns about the proposed facility's potential to affect air quality and human health. 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.<sup>11</sup> Further, the purpose of the Texas Clean Air Act is partly 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[.]"<sup>12</sup> Therefore, issue nos. 1 and 2 are relevant and material to the Commission's decision on the Application.

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<sup>11</sup> See THSC § 382.0518(b)(2).

<sup>12</sup> See THSC § 382.002(a).

#### **G. Maximum Expected Duration for the Contested Case Hearing**

Commission rule 30 TAC § 50.115(d) requires that any Commission order referring a case to SOAH specify the maximum expected duration of the hearing by stating a date by which the judge is expected to issue a proposal for decision. The rule further provides that, for applications filed on or after September 1, 2015, the administrative law judge must conclude the hearing and provide a proposal for decision by the 180th day after the first day of the preliminary hearing, or a date specified by the Commission, whichever is earlier.<sup>13</sup> To assist the Commission in setting a date by which the judge is expected to issue a proposal for decision, and as required by 30 TAC § 55.209(e)(7), OPIC estimates that the maximum expected duration of a hearing on the Application would be 180 days from the first date of the preliminary hearing until the proposal for decision is issued.

#### **IV. Conclusion**

OPIC respectfully recommends the Commission grant the Coburns' hearing requests and refer this matter to SOAH for a contested case hearing with a maximum duration of 180 days. Alternatively, OPIC recommends that the Coburns be referred to SOAH for an affectedness determination.

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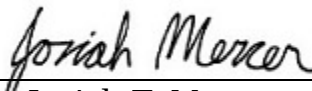
<sup>13</sup> 30 TAC § 50.115(d)(2).

Respectfully submitted,  
Garrett T. Arthur  
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By:   
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**CERTIFICATE OF SERVICE**

I hereby certify that on April 28, 2025 the original and true and correct copies of the Office of Public Interest Counsel's Response to Request for Reconsideration and 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.

  
Josiah T. Mercer

**MAILING LIST**  
**GONZALEZ BROTHERS BATCH PLANT, LP**  
**TCEQ DOCKET NO. 2025-0469-AIR**

**FOR THE APPLICANT**

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**FOR ALTERNATIVE DISPUTE**

**RESOLUTION**

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