

TCEQ AIR QUALITY STANDARD PERMIT FOR CONCRETE BATCH PLANTS
REGISTRATION NUMBER 178130
TCEQ DOCKET NUMBER 2025-0554-AIR

APPLICATION BY	§	BEFORE THE TEXAS
AUSTIN READY-MIX, LLC	§	COMMISSION ON
CONCRETE BATCH PLANT	§	ENVIRONMENTAL QUALITY
COMFORT, KENDALL COUNTY	§	

EXECUTIVE DIRECTOR'S AMENDED RESPONSE TO HEARING REQUESTS

I. INTRODUCTION

The Executive Director of the Texas Commission on Environmental Quality (commission or TCEQ) files this response (Response) to the requests for a contested case hearing submitted by persons listed herein regarding the above-referenced matter. The Texas Clean Air Act (TCAA), Texas Health & Safety Code (THSC) § 382.056(n), requires the Commission to consider hearing requests in accordance with the procedures provided in TEX. WATER CODE (TWC) § 5.556.¹ This statute is implemented through the rules in 30 Texas Administrative Code (TAC) Chapter 55, Subchapter F.

A map showing the location of the proposed plant is included with this Response and has been provided to all hearing requesters listed on the mailing list for this application. In addition, the technical review summary, which includes a compliance summary, and a copy of the Standard Permit for Concrete Batch Plants prepared by the Executive Director's staff have been filed as backup material for the commissioners' agenda. The Executive Director's Response to Public Comment (RTC), which was mailed by the chief clerk to all persons on the mailing list, is on file with the chief clerk for the commission's consideration.

II. PLANT DESCRIPTION

Austin Ready-Mix, LLC (Applicant) has applied to TCEQ for a Standard Permit under Texas Clean Air Act (TCAA) § 382.05195. This will authorize the construction of a new facility that may emit air contaminants. This permit will authorize the Applicant to construct a permanent Concrete Batch Plant. The facility is located at the following driving directions: from the intersection of Farm to Market Road 289 and Old Comfort Road, travel 0.45 miles south on Farm to Market Road 289 to the site on the west side, Comfort, Kendall County, Texas. 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 (PM₁₀ and PM_{2.5}, respectively).

¹ Statutes cited in this response may be viewed online at www.statutes.legis.state.tx.us. Relevant statutes are found primarily in the THSC and the TWC. The rules in the TAC may be viewed online at www.sos.state.tx.us/tac/index.shtml or follow the "Rules" link on the TCEQ website at www.tceq.texas.gov

III. PROCEDURAL BACKGROUND

Before work begins on the construction of a new facility that may emit air contaminants, the person planning the construction must obtain an authorization from the commission. This permit application is for an initial issuance of Air Quality Permit Number 178130.

The permit application was received on November 4, 2024, and declared administratively complete on November 7, 2024. The Consolidated Notice of Receipt of Application and Intent to Obtain Permit and Notice of Application and Preliminary Decision (public notice) for this registration application was published in English on December 1, 2024, in the *Boerne Star*. The comment period closed December 31, 2024. Because this application was received after September 1, 2015, it is subject to the procedural requirements of and rules implementing Senate Bill 709 (84th Legislature, 2015).

TCEQ received timely hearing requests that were not withdrawn during the comment period from Bradley J. Adair and Kendall A. Bergmann.

The Executive Director's RTC was filed with the Chief Clerk's Office on February 20, 2025, and mailed to all interested persons on February 27, 2025, including persons who asked to be placed on the mailing list for this application and those who submitted comments or requests for a contested case hearing. The cover letter attached to the RTC included information about making requests for a contested case hearing or requests for reconsideration of the Executive Director's decision. The letter also explained that hearing requestors should specify any of the Executive Director's responses to comments they dispute and the factual basis of the dispute, in addition to listing any disputed issues of law or policy. The time for requests for reconsideration and hearing requests ended on March 31, 2025. Although the Executive Director's RTC identified the plant as a temporary concrete batch plant, the notice and technical documents correctly identify as a permanent concrete batch plant.

IV. THE EVALUATION PROCESS FOR HEARING REQUESTS

House Bill 801 established statutory procedures for public participation in certain environmental permitting proceedings, specifically regarding public notice and public comment and the Commission's consideration of hearing requests. Senate Bill 709 revised the requirements for submitting public comment and the Commission's consideration of hearing requests. The evaluation process for hearing requests is as follows:

A. Response to Requests

The Executive Director, the Public Interest Counsel, and the Applicant may each submit written responses to hearing requests. 30 TAC § 55.209(d).

Responses to hearing requests must specifically address:

- 1) whether the requestor is an affected person;
- 2) which issues raised in the hearing request are disputed;
- 3) whether the dispute involves questions of fact or of law;
- 4) whether the issues were raised during the public comment period;

- 5) whether the hearing request is based on issues raised solely in a public comment withdrawn by the commenter in writing by filing a withdrawal letter with the chief clerk prior to the filing of the Executive Director's Response to Comment;
- 6) whether the issues are relevant and material to the decision on the application; and
- 7) a maximum expected duration for the contested case hearing.

30 TAC § 55.209(e).

B. Hearing Request Requirements

In order for the Commission to consider a hearing request, the Commission must first determine whether the request meets certain requirements:

Affected persons may request a contested case hearing. The request must be made in writing and timely filed with the chief clerk. The request must be based only on the requestor's timely comments and may not be based on an issue that was raised solely in a public comment that was withdrawn by the requestor prior to the filing of the Executive Director's Response to Comment.

30 TAC § 55.201(c).

A hearing request must substantially comply with the following:

- 1) give the time, address, daytime telephone number, and where possible, fax number of the person who files the request. If the request is made by a group or association, the request must identify one person by name, address, daytime telephone number, and where possible, fax number, who shall be responsible for receiving all official communications and documents for the group;
- 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 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 Executive Director's responses to comments that the requestor disputes and 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.

30 TAC § 55.201(d).

C. Requirement that Requestor be an Affected Person/"Affected Person" Status

In order to grant a contested case hearing, the Commission must determine that a requestor is an "affected" person. Section 55.203 sets out who may be considered an affected person.

- a) For any application, 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.
- b) Except as provided by 30 TAC § 55.103, governmental entities, including local governments and public agencies with authority under state law over issues raised by the application may be considered affected persons.
- c) In determining whether a person is an affected person, all factors shall be considered, including, but not limited to, the following:
 - 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 and safety of the person, and on the 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 which were not withdrawn; and
 - 7) for governmental entities, their statutory authority over or interest in the issues relevant to the application.

30 TAC § 55.203.

In regard specifically to air quality permits, the activity the commission regulates is the emissions of air contaminants into the atmosphere. Any person who plans to construct or modify a facility that may emit air contaminants must receive authorization from the commission. Commission rules also include a general prohibition against causing a nuisance. Further, for air quality permits, distance from the proposed facility is particularly relevant to the issue of whether there is a likely impact of the regulated activity on a person's interests because of the dispersion and effects of individual air contaminants emitted from a facility.

Additionally, this application is for registration for the Standard Permit for Concrete Batch Plants. Hearing requests on a concrete batch plant standard permit are subject to the requirements in TCAA § 382.058(c), which states that "only those persons actually residing in a permanent residence within 440 yards of the proposed plant may request a hearing...as a person who may be affected."

For applications filed on or after September 1, 2015, 30 TAC § 55.201(d) allows the commission to consider, to the extent consistent with case law:

1. the merits of the underlying application and supporting documentation in the commission's administrative record, including whether the application meets the requirements for permit issuance;
2. the analysis and opinions of the Executive Director; and
3. any other expert reports, affidavits, opinions, or data submitted by the Executive Director, the applicant, or hearing requestor.

D. Referral to the State Office of Administrative Hearings

"When the commission grants a request for a contested case hearing, the commission shall issue an order specifying the number and scope of the issues to be referred to SOAH for a hearing." 30 TAC § 50.115(b). The commission may not refer an issue to SOAH for a contested case hearing unless the commission determines that the issue:

- 1) involves a disputed question of fact or a mixed question of law and fact;
- 2) was raised during the public comment period by an affected person whose hearing request is granted; and
- 3) is relevant and material to the decision on the application.

30 TAC § 50.115(c).

V. ANALYSIS OF THE HEARING REQUESTS

The Executive Director has analyzed the hearing requests to determine whether they comply with Commission rules, if the requestors qualify as affected persons, what issues may be referred for a contested case hearing, and what is the appropriate length of the hearing.

The following persons submitted timely hearing requests that were not withdrawn: Bradley J. Adair and Kendall A. Bergmann. The hearing requests were submitted during the public comment period. Furthermore, the ED has determined the hearing requests substantially complied with all of the requirements for form in 30 TAC § 55.201(d).

Bradley J. Adair

The Executive Director reviewed the factors found in 30 TAC § 55.201(c) and (d), and § 55.203 for determining whether a requestor is an affected person, and recommends the commission find that Bradley J. Adair is not an affected person.

Bradley J. Adair submitted a timely hearing request during the comment period. The hearing request was in writing and provided the required contact information. In his hearing request, Mr. Adair stated that he is concerned about health effects, air quality, noise and light pollution, truck traffic, use and enjoyment of property, and air quality modeling. Based on the representations provided by the applicant and the physical address of Mr. Adair provided in his hearing request, the residence of the requestor is 625.12 yards from the nearest emission point as determined by the ED's measurements. Because Mr. Adair is outside of the 440 yards, the ED recommends denying his request as he is beyond the statutorily set distance limitation.

In his request Mr. Adair raised the following issues:

Issue 1: Whether the proposed plant will negatively affect air quality and human health, including sensitive subgroups.

Issue 2: Whether the plant will increase truck traffic.

Issue 3: Whether the proposed plant will negatively impact use and enjoyment of property.

Issue 4: Whether the air quality modeling provided in the application adequately accounts for cumulative emissions impacts in the area.

Issue 5: Whether the proposed plant will contribute to noise and light pollution.

Kendall A. Bergmann

The Executive Director reviewed the factors found in 30 TAC § 55.201(c) and (d), and § 55.203 for determining whether a requestor is an affected person, and recommends the commission find that Kendall A. Bergmann is not an affected person.

Kendall A. Bergmann submitted a timely hearing request during the comment period. The hearing request was in writing and provided the required contact information. In his hearing request, Mr. Bergmann stated that he is concerned about air quality impacts, air quality modeling, noise pollution, water usage, and traffic and safety concerns. Based on the representations provided by the applicant and physical address provided by Mr. Bergmann in his hearing request, the residence of the requestor is 465.50 yards from the nearest emission point as determined by the ED's measurements. Because Mr. Bergmann is outside of the 440 yards, the ED recommends denying his request as he is beyond the statutorily set distance limitation.

In his request Mr. Bergmann raised the following issues:

Issue 1: Whether the proposed plant will negatively affect air quality and human health, including sensitive subgroups.

Issue 2: Whether the plant will increase truck traffic.

Issue 3: Whether the proposed plant will negatively impact use and enjoyment of property.

Issue 4: Whether the air quality modeling provided in the application adequately accounts for cumulative emissions impacts in the area.

Issue 5: Whether the proposed plant will contribute to noise and light pollution.

Issue 6: Whether water availability will be negatively impacted.

VIII. WHETHER ISSUES RAISED ARE REFERABLE TO SOAH FOR A CONTESTED CASE HEARING

The Executive Director has analyzed issues raised in accordance with the regulatory criteria. The issues discussed were raised during the public comment period and addressed in the RTC. None of the issues were withdrawn. For applications submitted on or after September 1, 2015, only those issues raised in a timely comment by a

requestor whose request is granted may be referred.² The Executive Director does not recommend referral of any issues, because there are no affected persons in this matter.

IX. CONCLUSION

The Executive Director respectfully recommends the Commission:

1. Find the hearing requests in this matter were timely filed;
2. Find that no persons were affected; and
3. Deny the hearing requests of Bradley J. Adair and Kendall A. Bergmann

Respectfully submitted,

Texas Commission on Environmental Quality

Kelly Keel, Executive Director

Phillip Ledbetter, Director
Office of Legal Services

Charmaine K. Backens, Deputy Director
Environmental Law Division



Elizabeth Black, Staff Attorney
Environmental Law Division
State Bar Number 24142684
MC-173, P.O. Box 13087
Austin, Texas 78711-3087
Phone: (512) 239-2496
Fax: (512) 239-0606

REPRESENTING THE
EXECUTIVE DIRECTOR OF THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY

² TEX. GOVT. CODE § 2003.047(e-1); 30 TAC § 55.211 (c)(2)(A)(ii).

CERTIFICATE OF SERVICE

I certify that on this 9th day of June 2025, a true and correct copy of the "Executive Director's Amended Response to Hearing Requests" for Air Quality Permit No. 178130 was served on all persons on the service list by the undersigned via electronic filing, electronic mail, facsimile transmission, inter-agency mail, electronic submittal, or by deposit in the U.S. Mail.



Elizabeth Black, Staff Attorney
Environmental Law Division

MAILING LIST
Austin Ready-Mix, LLC
TCEQ Docket No. 2025-0554-AIR

FOR THE CHIEF CLERK

via eFilings:

Docket Clerk
Texas Commission on Environmental
Quality Office of Chief Clerk, MC-105
P.O. Box 13087
Austin, Texas 78711
<https://www.tceq.texas.gov/goto/efilings>

FOR THE APPLICANT

via electronic mail

Ana Rodriguez, President
Austin Ready-Mix, LLC
P.O. Box 579
Del Valle, Texas 78617
ana@armtexas.com

Katy Sipe, Environmental Specialist
Westward Environmental Inc.
P.O. Box 2205
Boerne, Texas 78006
ksipe@westwardenv.com

FOR THE EXECUTIVE DIRECTOR

via electronic mail

Amy Browning, Senior Attorney
Texas Commission on Environmental
Quality
Environmental Law Division, MC-173
P.O. Box 13087
Austin, Texas 78711

Kristyn A. Jacher, Technical Staff
Texas Commission on Environmental
Quality
Air Permits Division, MC-163
P.O. Box 13087
Austin, Texas 78711

Ryan Vise, Deputy Director
Texas Commission on Environmental
Quality
External Relations Division
Public Education Program, MC-108
P.O. Box 13087
Austin, Texas 78711

FOR PUBLIC INTEREST COUNSEL

via electronic mail

Garrett T. Arthur, Attorney
Texas Commission on Environmental
Quality
Public Interest Counsel, MC-103
P.O. Box 13087
Austin, Texas 78711

**FOR ALTERNATIVE DISPUTE
RESOLUTION**

via electronic mail

Kyle Lucas
Texas Commission on Environmental
Quality
Alternative Dispute Resolution, MC-222
P.O. Box 13087
Austin, Texas 78711

REQUESTERS

via electronic mail

Mr. Kendall A. Bergmann
48 Old Comfort Road
Comfort, Texas 78013
kendallbergmann1027@gmail.com

Bradley J. Adair
23 Old Comfort Road
Comfort, Texas 78013
Bradleyjadair@gmail.com

INTERESTED PERSONS

via electronic mail

Matthew Grove
Kendall County
201 East San Antonio Avenue, Suite 126
Boerne, Texas 78006
matthew.grove@co.kendall.tx.us

Christine Jacobs
127 Adler Street
Boerne, Texas 78006
Chrskn@gvtc.com

Lance G Johnstone
226 Fm 289
Comfort, Texas 78013
kendall@mathislawLLP.com

Sunita White
527 Lamont Avenue
San Antonio, Texas 78209
smw@caminoblancoranch.com

Austin Ready-Mix, LLC

178130

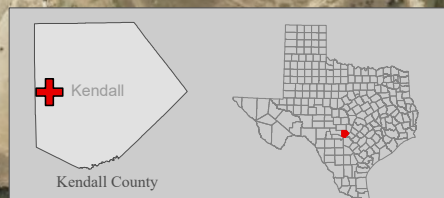
Map Requested by TCEQ Office of Legal Services
for Commissioners' Agenda



*Protecting Texas by
Reducing and
Preventing Pollution*

Texas Commission on Environmental Quality
GIS Team (Mail Code 197)
P.O. Box 13087
Austin, Texas 78711-3087
Date: 5/29/2025
CRF 0118791
Cartographer: RKukushk

-  EPN Nearest to Residence
-  440 Yards
-  Requestors
-  Interstate



The facility is located in Kendall County. The Circle (green) in the left inset map represents the approximate location of the facility. The inset map on the right represents the location of Kendall County (red) in the state of Texas.

Source: The location of the facility was provided by the TCEQ Office of Legal Services (OLS). OLS obtained the site location information from the applicant and the requestor information from the requestor.

This map was generated by the Information Resources Division of the Texas Commission on Environmental Quality. 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. For more information concerning this map, contact the Information Resource Division at (512) 239-0800.

Austin Ready-Mix, LLC - Appendix

NUMBER	NAME	ADDRESS	CITY	STATE	Latitude	Longitude	Distance (yards)
1	Bradley J. Adair	23 Old Comfort Road	COMFORT	TX	29.940074	-98.878294	625.12
2	Kendall A. Bergmann	48 Old Comfort Road	COMFORT	TX	29.936220	-98.871873	465.5

TCEQ AIR QUALITY STANDARD PERMIT FOR CONCRETE BATCH PLANTS
REGISTRATION NUMBER 178130
TCEQ DOCKET NUMBER 2025-0554-AIR

APPLICATION BY	§	BEFORE THE TEXAS
AUSTIN READY-MIX, LLC	§	COMMISSION ON
CONCRETE BATCH PLANT	§	ENVIRONMENTAL QUALITY
COMFORT, KENDALL COUNTY	§	

EXECUTIVE DIRECTOR'S RESPONSE TO HEARING REQUESTS

I. INTRODUCTION

The Executive Director of the Texas Commission on Environmental Quality (commission or TCEQ) files this response (Response) to the requests for a contested case hearing submitted by persons listed herein regarding the above-referenced matter. The Texas Clean Air Act (TCAA), Texas Health & Safety Code (THSC) § 382.056(n), requires the Commission to consider hearing requests in accordance with the procedures provided in Tex. Water Code (TWC) § 5.556.¹ This statute is implemented through the rules in 30 Texas Administrative Code (TAC) Chapter 55, Subchapter F.

A map showing the location of the proposed plant is included with this Response and has been provided to all hearing requesters listed on the mailing list for this application. In addition, the technical review summary, which includes a compliance summary, and a copy of the Standard Permit for Concrete Batch Plants prepared by the Executive Director's staff have been filed as backup material for the commissioners' agenda. The Executive Director's Response to Public Comment (RTC), which was mailed by the chief clerk to all persons on the mailing list, is on file with the chief clerk for the commission's consideration.

II. PLANT DESCRIPTION

Austin Ready-Mix, LLC (Applicant) has applied to TCEQ for a Standard Permit under Texas Clean Air Act (TCAA) § 382.05195. This will authorize the construction of a new facility that may emit air contaminants. This permit will authorize the Applicant to construct a temporary Concrete Batch Plant. The facility is located at the following driving directions: from the intersection of Farm to Market Road 289 and Old Comfort Road, travel 0.45 miles south on Farm to Market Road 289 to the site on the west side, Comfort, Kendall County, Texas. 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 (PM₁₀ and PM_{2.5}, respectively).

¹ Statutes cited in this response may be viewed online at www.statutes.legis.state.tx.us. Relevant statutes are found primarily in the THSC and the TWC. The rules in the TAC may be viewed online at www.sos.state.tx.us/tac/index.shtml or follow the "Rules" link on the TCEQ website at www.tceq.texas.gov

III. PROCEDURAL BACKGROUND

Before work begins on the construction of a new facility that may emit air contaminants, the person planning the construction must obtain an authorization from the commission. This permit application is for an initial issuance of Air Quality Permit Number 178130.

The permit application was received on November 4, 2024, and declared administratively complete on November 7, 2024. The Consolidated Notice of Receipt of Application and Intent to Obtain Permit and Notice of Application and Preliminary Decision (public notice) for this registration application was published in English on December 1, 2024, in the *Boerne Star*. The comment period closed December 31, 2024. Because this application was received after September 1, 2015, it is subject to the procedural requirements of and rules implementing Senate Bill 709 (84th Legislature, 2015).

TCEQ received timely hearing requests that were not withdrawn during the comment period from Bradley J. Adair and Kendall A. Bergmann.

The Executive Director's RTC was filed with the Chief Clerk's Office on February 20, 2025, and mailed to all interested persons on February 27, 2025, including persons who asked to be placed on the mailing list for this application and those who submitted comments or requests for a contested case hearing. The cover letter attached to the RTC included information about making requests for a contested case hearing or requests for reconsideration of the Executive Director's decision. The letter also explained that hearing requestors should specify any of the Executive Director's responses to comments they dispute and the factual basis of the dispute, in addition to listing any disputed issues of law or policy. The time for requests for reconsideration and hearing requests ended on March 31, 2025.

IV. THE EVALUATION PROCESS FOR HEARING REQUESTS

House Bill 801 established statutory procedures for public participation in certain environmental permitting proceedings, specifically regarding public notice and public comment and the Commission's consideration of hearing requests. Senate Bill 709 revised the requirements for submitting public comment and the Commission's consideration of hearing requests. The evaluation process for hearing requests is as follows:

A. Response to Requests

The Executive Director, the Public Interest Counsel, and the Applicant may each submit written responses to hearing requests. 30 TAC § 55.209(d).

Responses to hearing requests must specifically address:

- 1) whether the requestor is an affected person;
- 2) which issues raised in the hearing request are disputed;
- 3) whether the dispute involves questions of fact or of law;
- 4) whether the issues were raised during the public comment period;

- 5) whether the hearing request is based on issues raised solely in a public comment withdrawn by the commenter in writing by filing a withdrawal letter with the chief clerk prior to the filing of the Executive Director's Response to Comment;
- 6) whether the issues are relevant and material to the decision on the application; and
- 7) a maximum expected duration for the contested case hearing.

30 TAC § 55.209(e).

B. Hearing Request Requirements

In order for the Commission to consider a hearing request, the Commission must first determine whether the request meets certain requirements:

Affected persons may request a contested case hearing. The request must be made in writing and timely filed with the chief clerk. The request must be based only on the requestor's timely comments and may not be based on an issue that was raised solely in a public comment that was withdrawn by the requestor prior to the filing of the Executive Director's Response to Comment.

30 TAC § 55.201(c).

A hearing request must substantially comply with the following:

- 1) give the time, address, daytime telephone number, and where possible, fax number of the person who files the request. If the request is made by a group or association, the request must identify one person by name, address, daytime telephone number, and where possible, fax number, who shall be responsible for receiving all official communications and documents for the group;
- 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 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 Executive Director's responses to comments that the requestor disputes and 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.

30 TAC § 55.201(d).

C. Requirement that Requestor be an Affected Person/"Affected Person" Status

In order to grant a contested case hearing, the Commission must determine that a requestor is an "affected" person. Section 55.203 sets out who may be considered an affected person.

- a) For any application, 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.
- b) Except as provided by 30 TAC § 55.103, governmental entities, including local governments and public agencies with authority under state law over issues raised by the application may be considered affected persons.
- c) In determining whether a person is an affected person, all factors shall be considered, including, but not limited to, the following:
 - 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 and safety of the person, and on the 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 which were not withdrawn; and
 - 7) for governmental entities, their statutory authority over or interest in the issues relevant to the application.

30 TAC § 55.203

In regard specifically to air quality permits, the activity the commission regulates is the emissions of air contaminants into the atmosphere. Any person who plans to construct or modify a facility that may emit air contaminants must receive authorization from the commission. Commission rules also include a general prohibition against causing a nuisance. Further, for air quality permits, distance from the proposed facility is particularly relevant to the issue of whether there is a likely impact of the regulated activity on a person's interests because of the dispersion and effects of individual air contaminants emitted from a facility.

Additionally, this application is for registration for the Standard Permit for Concrete Batch Plants. Hearing requests on a concrete batch plant standard permit are subject to the requirements in TCAA § 382.058(c), which states that “only those persons actually residing in a permanent residence within 440 yards of the proposed plant may request a hearing...as a person who may be affected.”

For applications filed on or after September 1, 2015, 30 TAC § 55.201(d) allows the commission to consider, to the extent consistent with case law:

1. the merits of the underlying application and supporting documentation in the commission's administrative record, including whether the application meets the requirements for permit issuance;
2. the analysis and opinions of the Executive Director; and
3. any other expert reports, affidavits, opinions, or data submitted by the Executive Director, the applicant, or hearing requestor.

D. Referral to the State Office of Administrative Hearings

“When the commission grants a request for a contested case hearing, the commission shall issue an order specifying the number and scope of the issues to be referred to SOAH for a hearing.” 30 TAC § 50.115(b). The commission may not refer an issue to SOAH for a contested case hearing unless the commission determines that the issue:

- 1) involves a disputed question of fact or a mixed question of law and fact;
- 2) was raised during the public comment period by an affected person whose hearing request is granted; and
- 3) is relevant and material to the decision on the application.

30 TAC § 50.115(c).

V. ANALYSIS OF THE HEARING REQUESTS

The Executive Director has analyzed the hearing requests to determine whether they comply with Commission rules, if the requestors qualify as affected persons, what issues may be referred for a contested case hearing, and what is the appropriate length of the hearing.

The following persons submitted timely hearing requests that were not withdrawn: Bradley J. Adair and Kendall A. Bergmann. The hearing requests were submitted during the public comment period. Furthermore, the ED has determined the hearing requests substantially complied with all of the requirements for form in 30 TAC § 55.201(d).

Bradley J. Adair

The Executive Director reviewed the factors found in 30 TAC § 55.201(c) and (d), and § 55.203 for determining whether a requestor is an affected person, and recommends the commission find that Bradley J. Adair is not an affected person.

Bradley J. Adair submitted a timely hearing request during the comment period. The hearing request was in writing and provided the required contact information. In his hearing request, Mr. Adair stated that he is concerned about health effects, air quality, noise and light pollution, truck traffic, use and enjoyment of property, and air quality modeling. Based on the representations provided by the applicant and the physical

address of Mr. Adair provided in his hearing request, the residence of the requestor is 625.12 yards from the nearest emission point as determined by the ED's measurements. Because Mr. Adair is outside of the 440 yards, the ED recommends denying his request as he is beyond the statutorily set distance limitation.

In his request Mr. Adair raised the following issues:

Issue 1: Whether the proposed plant will negatively affect air quality and human health, including sensitive subgroups.

Issue 2: Whether the plant will increase truck traffic.

Issue 3: Whether the proposed plant will negatively impact use and enjoyment of property.

Issue 4: Whether the air quality modeling provided in the application adequately accounts for cumulative emissions impacts in the area.

Issue 5: Whether the proposed plant will contribute to noise and light pollution.

Kendall A. Bergmann

The Executive Director reviewed the factors found in 30 TAC § 55.201(c) and (d), and § 55.203 for determining whether a requestor is an affected person, and recommends the commission find that Kendall A. Bergmann is not an affected person.

Kendall A. Bergmann submitted a timely hearing request during the comment period. The hearing request was in writing and provided the required contact information. In his hearing request, Mr. Bergmann stated that he is concerned about air quality impacts, air quality modeling, noise pollution, water usage, and traffic and safety concerns. Based on the representations provided by the applicant and physical address provided by Mr. Bergmann in his hearing request, the residence of the requestor is 465.50 yards from the nearest emission point as determined by the ED's measurements. Because Mr. Bergmann is outside of the 440 yards, the ED recommends denying his request as he is beyond the statutorily set distance limitation.

In his request Mr. Bergmann raised the following issues:

Issue 1: Whether the proposed plant will negatively affect air quality and human health, including sensitive subgroups.

Issue 2: Whether the plant will increase truck traffic.

Issue 3: Whether the proposed plant will negatively impact use and enjoyment of property.

Issue 4: Whether the air quality modeling provided in the application adequately accounts for cumulative emissions impacts in the area.

Issue 5: Whether the proposed plant will contribute to noise and light pollution.

Issue 6: Whether water availability will be negatively impacted.

VI. WHETHER ISSUES RAISED ARE REFERABLE TO SOAH FOR A CONTESTED CASE HEARING

The Executive Director has analyzed issues raised in accordance with the regulatory criteria. The issues discussed were raised during the public comment period and addressed in the RTC. None of the issues were withdrawn. For applications submitted on or after September 1, 2015, only those issues raised in a timely comment by a requestor whose request is granted may be referred.² The Executive Director does not recommend referral of any issues, because there are no affected persons in this matter.

VII. CONCLUSION

The Executive Director respectfully recommends the Commission:

1. Find the hearing requests in this matter were timely filed;
2. Find that no persons were affected; and
3. Deny the hearing requests of Bradley J. Adair and Kendall A. Bergmann

²Tex. Govt. Code § 2003.047(e-1); 30 TAC § 55.211 (c)(2)(A)(ii).

Respectfully submitted,

Texas Commission on Environmental Quality

Kelly Keel, Executive Director

Phillip Ledbetter, Director
Office of Legal Services

Charmaine K. Backens, Deputy Director
Environmental Law Division



Elizabeth Black, Staff Attorney
Environmental Law Division
State Bar Number 24142684
MC-173, P.O. Box 13087
Austin, Texas 78711-3087
Phone: (512) 239-2496
Fax: (512) 239-0606

REPRESENTING THE
EXECUTIVE DIRECTOR OF THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY

CERTIFICATE OF SERVICE

I certify that on this 5th day of June 2025, a true and correct copy of the "Executive Director's Response to Hearing Requests" for Air Quality Permit No. 178130 was served on all persons on the service list by the undersigned via electronic filing, electronic mail, facsimile transmission, inter-agency mail, electronic submittal, or by deposit in the U.S. Mail.



Elizabeth Black, Staff Attorney
Environmental Law Division

Austin Ready-Mix, LLC

178130

Map Requested by TCEQ Office of Legal Services
for Commissioners' Agenda



*Protecting Texas by
Reducing and
Preventing Pollution*

Texas Commission on Environmental Quality
GIS Team (Mail Code 197)
P.O. Box 13087
Austin, Texas 78711-3087
Date: 5/29/2025
CRF 0118791
Cartographer: RKukushk

- EPN Nearest to Residence
- 440 Yards
- Requestors
- Interstate



Source: The location of the facility was provided by the TCEQ Office of Legal Services (OLS). OLS obtained the site location information from the applicant and the requestor information from the requestor.

This map was generated by the Information Resources Division of the Texas Commission on Environmental Quality. 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. For more information concerning this map, contact the Information Resource Division at (512) 239-0800.

Austin Ready-Mix, LLC - Appendix

NUMBER	NAME	ADDRESS	CITY	STATE	Latitude	Longitude	Distance (yards)
1	Bradley J. Adair	23 Old Comfort Road	COMFORT	TX	29.940074	-98.878294	625.12
2	Kendall A. Bergmann	48 Old Comfort Road	COMFORT	TX	29.936220	-98.871873	465.5

MAILING LIST
Austin Ready-Mix, LLC
TCEQ Docket No. 2025-0554-AIR

FOR THE CHIEF CLERK

via eFilings:

Docket Clerk
Texas Commission on Environmental
Quality Office of Chief Clerk, MC-105
P.O. Box 13087
Austin, Texas 78711
<https://www.tceq.texas.gov/goto/efilings>

FOR THE APPLICANT

via electronic mail

Ana Rodriguez, President
Austin Ready-Mix, LLC
P.O. Box 579
Del Valle, Texas 78617
ana@armtexas.com

Katy Sipe, Environmental Specialist
Westward Environmental Inc.
P.O. Box 2205
Boerne, Texas 78006
ksipe@westwardenv.com

FOR THE EXECUTIVE DIRECTOR

via electronic mail

Amy Browning, Senior Attorney
Texas Commission on Environmental
Quality
Environmental Law Division, MC-173
P.O. Box 13087
Austin, Texas 78711

Kristyn A. Jacher, Technical Staff
Texas Commission on Environmental
Quality
Air Permits Division, MC-163
P.O. Box 13087
Austin, Texas 78711

Ryan Vise, Deputy Director
Texas Commission on Environmental
Quality
External Relations Division
Public Education Program, MC-108
P.O. Box 13087
Austin, Texas 78711

FOR PUBLIC INTEREST COUNSEL

via electronic mail

Garrett T. Arthur, Attorney
Texas Commission on Environmental
Quality
Public Interest Counsel, MC-103
P.O. Box 13087
Austin, Texas 78711

**FOR ALTERNATIVE DISPUTE
RESOLUTION**

via electronic mail

Kyle Lucas
Texas Commission on Environmental
Quality
Alternative Dispute Resolution, MC-222
P.O. Box 13087
Austin, Texas 78711

REQUESTERS

via electronic mail

Mr. Kendall A. Bergmann
48 Old Comfort Road
Comfort, Texas 78013
kendallbergmann1027@gmail.com

Bradley J. Adair
23 Old Comfort Road
Comfort, Texas 78013
Bradleyjadair@gmail.com

INTERESTED PERSONS

via electronic mail

Matthew Grove
Kendall County
201 East San Antonio Avenue, Suite 126
Boerne, Texas 78006
matthew.grove@co.kendall.tx.us

Christine Jacobs
127 Adler Street
Boerne, Texas 78006
Chriskens@gvvc.com

Lance G Johnstone
226 Fm 289
Comfort, Texas 78013
kendall@mathislawLLP.com

Sunita White
527 Lamont Avenue
San Antonio, Texas 78209
smw@caminoblancoranch.com