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TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

September 15, 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 VERTI-CRETE
HOUSTON, LLC FOR CONCRETE BATCH PLANT REGISTRATION
NO. 176289
TCEQ DOCKET NO. 2025-1292-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 cursive script that reads "Pranjal".

Pranjal M. Mehta, Attorney
Assistant Public Interest Counsel

cc: Mailing List

DOCKET NO. 2025-1292-AIR

APPLICATION BY	§	BEFORE THE
VERTI-CRETE HOUSTON, LLC	§	
CONCRETE BATCH PLANT	§	TEXAS COMMISSION ON
MISSOURI CITY, FORT BEND	§	
COUNTY	§	ENVIRONMENTAL QUALITY

**THE 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) files this Response to Requests for Hearing and Requests for Reconsideration on the application in the above-captioned matter and respectfully submits the following.

I. INTRODUCTION

A. Summary of Position

Before the Commission is an application by Verti-Crete Houston, LLC (Applicant) for a Standard Permit under Texas Health and Code § 382.05195, which would authorize the construction of a new facility that may emit air contaminants. OPIC respectfully recommends the Commission find that Air Alliance Houston (AAH), Allison Sullivan, Karen Sullivan, and Michael Sullivan qualify as affected persons and grant their hearing requests. OPIC also respectfully recommends denial of the requests for reconsideration.

B. Description of Application and Facility

Applicant seeks Registration No. 176289 to authorize construction of a new Concrete Batch Plant. The facility would be located at 953 Pheasant Valley

Drive, Missouri City, Fort Bend County. Contaminants authorized under this permit include aggregate, cement, road dust, and particulate matter including particulate matter with diameters of 10 microns (PM₁₀) or less and 2.5 microns (PM_{2.5}) or less.

C. Procedural Background

The application was received on May 8, 2024, and declared administratively complete on June 5, 2024. 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 in English on June 19, 2024, in the *Fort Bend Star*, and in Spanish on June 23, 2024, in *La Prensa de Houston*. A public meeting was held on December 12, 2024, at Houston Community College, Missouri City Campus, 1600 Texas Parkway, Missouri City, Fort Bend County 77489. The notice of public meeting was published in English and Spanish to the TCEQ Website – Public Meetings Calendar and mailed to individuals on the mailing list on November 8, 2024. The public comment period ended on December 16, 2024. The Executive Director (ED) mailed a Response to Comments on May 8, 2025, and the deadline to submit a hearing request or request for reconsideration of the ED's decision on this application was June 9, 2025. The Commission received timely comments and hearing requests from Missouri City, Air Alliance Houston, Stephanie Bush, Janai Buxton, Allison Sullivan, Karen Sullivan, Michael Sullivan, Tynisha Wright, and Xavier Wright.

II. APPLICABLE LAW

A. Hearing Requests

The Application was filed 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 30 Texas Administrative Code (TAC) § 55.21(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 requestor'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.

30 TAC § 55.201(d).

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. As provided by § 55.203(b), governmental entities, including local governments and public agencies, with authority under state law over issues raised by the application may be considered affected persons. An interest common to members of the general public does not qualify as a personal justiciable interest. Relevant factors to be considered in determining whether a person is affected 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 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 that 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(c).

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 executive director; and
- (3) any other expert reports, affidavits, opinions, or data submitted by the executive director, the applicant, or hearing requestor.

30 TAC § 55.203(d).

Under 30 TAC § 55.205(b), a hearing request by a group or association may not be granted unless all of the following requirements are met:

- (1) comments on the application are timely submitted by the group or association;
- (2) the request identifies, by name and physical address, one or more members of the group or association that would otherwise have standing to request a hearing in their own right;
- (3) the interests the group or association seeks to protect are germane to the organization's purpose; and
- (4) neither the claim asserted nor the relief requested requires the participation of the individual members in the case.

Under 30 TAC § 55.211(c)(2)(A)(ii), for an application filed on or after September 1, 2015, the Commission must grant a hearing request made by an affected person 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. Request 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 requestors are affected persons

Texas Health and Safety Code (THSC) 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.

Missouri City

Missouri City, through its mayor, submitted timely comments and a hearing request. The City asserts affected person status under the Texas Health and Safety Code citing a lack of required notice under THSC § 382.0516(b)(2) and

raised concerns that the proposed concrete batch plant would be located immediately adjacent to residentially zoned property, schools, parks, and other community facilities. The hearing request states that the application fails to demonstrate that emissions will not adversely affect air quality, health, safety, or the use and enjoyment of nearby property. The hearing request further contends that the plant's location poses potential nuisance conditions, infrastructure costs for road repairs, and negative economic impacts.

Again, THSC 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 finds that Missouri City does not qualify as an affected person in this matter.

Air Alliance Houston

AAH submitted timely comments and a hearing request. The hearing request stated that the legal mission of AAH is to protect the public from air pollution, including the air pollution that will be emitted by the permit applicant into the residence of the affected persons.

As required for group standing under 30 TAC § 55.205(b), AAH timely submitted comments; the interests AAH seeks to protect are germane to its purpose; neither the claim asserted nor the relief requested requires the

participation of individual AAH members; and AAH's hearing request identifies, by name and address, members who would otherwise have standing to request a hearing in their own right.

The hearing request names Allison, Karen, and Michael Sullivan as group members and explains that they reside less than 440 yards from the proposed facility. The Sullivans are concerned that emissions from the Applicant's plant may adversely impact their health and their ability to enjoy outdoor activities on their property. They are also concerned about the potential adverse impact on the air quality and the environment. These concerns are interests that are protected by the law under which the application is considered, and a reasonable relationship exists between those interests and regulation of the facility. 30 TAC § 55.203(c)(1) and (3). According to the map prepared by the ED's staff, the Sullivans are located within 440 yards from the proposed facility. This satisfies THSC Section 382.058(c) as their home is within 440 yards of the proposed plant. The Sullivans' proximity to the Applicant's facility increases the likelihood of impacts on their health, safety, and use of property. *See* 30 TAC § 55.203(c)(4). Based on the Sullivans' concerns and proximity to the facility, the Sullivans have a personal justiciable interest in this matter which is not common to members of the general public. Because AAH members would qualify as affected persons, OPIC finds that AAH meets the requirements for group standing under 30 TAC § 55.205(b) and qualifies as an affected person.

Allison, Karen, and Michael Sullivan,

The Sullivans submitted timely comments and individual hearing requests emphasizing their proximity to the proposed facility, including that they share a property line with the site and live there full-time. They expressed concerns that emissions of dust, silica, calcium oxide, and metals would worsen existing health conditions such as allergies and migraines; increase the risks of heart disease and cancer; and force the residents to limit outdoor activity or wear protective gear. They further stated that the facility's location next to homes, schools, parks, and historic neighborhoods would create nuisance conditions, infrastructure burdens, and threaten community character. As discussed earlier, OPIC finds that the Sullivans have a personal justiciable interest in this matter which is not common to members of the general public, and therefore, they are affected persons under 30 TAC § 55.203.

Requestors Who Did Not Demonstrate Personal Justiciable Interest

The Commission received timely comments and hearing requests from Stephanie Bush, Janai Buxton, Tynisha Wright, and Xavier Wright. They filed hearing requests that asked for a contested case hearing but does not explain how their interest differs from that of the general public, as required by 30 TAC § 55.201(d)(2). Ms. Bush's hearing request states that, as a resident on Pine Meadow Dr. in Missouri City, she is registering her opinion against the building of a concrete batch plant in her area, and she is requesting a public hearing. The hearing requests from Ms. Buxton, Ms. Wright, and Mr. Wright each state that they contest this permit from moving forward and request to file a contested

case hearing. According to the map prepared by the ED's staff, each of these requestors is located within 440 yards from the proposed facility, and therefore, their hearing requests satisfy THSC Section 382.058(c) as their homes are within 440 yards of the proposed plant. However, these requestors do not raise any personal justiciable interest protected by the law under which this application will be considered, and therefore, OPIC finds that they do not qualify as affected persons.¹

B. Which issues raised in the hearing requests are disputed

AAH and the Sullivans raised the following issues:

1. Whether the proposed facility would be adequately protective of air quality and human health.
2. Whether the emissions from the proposed facility would negatively impact wildlife and the surrounding environment, including due to the cumulative impacts of the other surrounding emissions.
3. Whether the proposed activity would create nuisance conditions that adversely affect the use and enjoyment of property.
4. Whether the Applicant complied with applicable public notice requirements.
5. Whether the proposed facility would negatively affect property values.

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

¹ While OPIC is unable to find that these requestors qualify as affected persons based on the information provided in their requests, we do note that pursuant to 30 TAC § 55.211(e), if any requests for contested case hearing are granted in this matter, and a preliminary hearing is convened at SOAH, any person whose request is denied may attend and seek to be admitted as a party.

law or policy, it is appropriate for referral to hearing if it meets all other applicable requirements. The issues raised in the requests are issues of fact.

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

Issues listed in Section III.C. were specifically raised 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 requests are 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 requests raise 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

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. THSC § 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. THSC § 382.002(a). Therefore, Issue Nos. 1, 2, and 3 are relevant and material.

Public Notice

The THSC § 382.056 requires the applicant to publish notice in a newspaper of general circulation within the municipality where the proposed facility is located or will be located. TCEQ implemented this public notice requirement through its rules in 30 TAC § 39.603, Public Notice of Air Quality Applications, Newspaper Notice. Therefore, Issue No. 4 regarding public notice is relevant and material.

Property Values

TCEQ does not have jurisdiction to consider whether the proposed activity would impact property values when determining whether to approve or deny an air permit application. Therefore, Issue No. 5 is not relevant and material.

G. Issues Recommended for Referral

For the reasons stated above, OPIC recommends referral of the following issues:

1. Whether the proposed facility would be adequately protective of air quality and human health.
2. Whether the emissions from the proposed facility would negatively impact wildlife and the surrounding environment, including due to the cumulative impacts of the other surrounding emissions.
3. Whether the proposed activity would create nuisance conditions that adversely affect the use and enjoyment of property.
4. Whether the Applicant complied with applicable public notice requirements.

H. 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. 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 this application should be 180 days from the first day of the preliminary hearing until the proposal for decision is issued.

IV. REQUESTS FOR RECONSIDERATION

The Commission received timely requests for reconsideration from Missouri City, Fort Bend County, Air Alliance Houston, Bryan Crowder, Robin Elackatt, Amber Johnson, Pete Lewis, Oralia Moreno, and Martha Noyola. They raised concerns regarding environmental impact; health and safety concerns; the plant's proximity to the park and school; traffic and infrastructure strain; impact on property values; and impact on the aesthetics of the area. Fort Bend County seeks reconsideration based on lack of local and online public access to the application in violation of 30 TAC §39.405 and related public-participation rules;

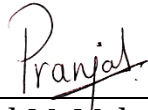
improper expedited review without a demonstrated economic benefit under 30 TAC §101.600; procedural unfairness from a four-month delay in the ED's response to comments; deficiencies in air quality analysis due to outdated and non-representative meteorology; lack of analysis under the revised PM_{2.5} National Ambient Air Quality Standard; failure to consider cumulative impacts of nearby plants; and the facility's proximity to sensitive receptors. While OPIC notes that most of these concerns 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 a request for reconsideration be granted. At this time, OPIC is recommending a contested case hearing on the issues as discussed in Section III.G., but prior to development of an evidentiary record, OPIC cannot recommend reversal of the ED's decision. Therefore, OPIC respectfully recommends denial of all pending requests for reconsideration.

V. CONCLUSION

For the reasons discussed above, OPIC respectfully recommends the Commission find Air Alliance Houston, Allison Sullivan, Karen Sullivan, and Michael Sullivan are affected persons in this matter. OPIC further recommends the Commission refer the issues listed in section III.G. For a contested case hearing at SOAH with a maximum duration of 180 days. Finally, OPIC respectfully recommends denial of all pending requests for reconsideration.

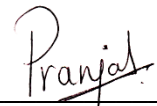
Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on September 15, 2025, the original of the Office of Public Interest Counsel's Response to Requests for Hearing and Requests for Reconsideration was filed with the Chief Clerk of the 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.


Pranjal M. Mehta

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TCEQ DOCKET NO. 2025-1292-AIR

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