Brooke T. Paup, *Chairwoman*
Catarina R. Gonzales, *Commissioner*
Tonya R. Miller, *Commissioner*
Kelly Keel, *Executive Director*

Garrett T. Arthur, Public Interest Counsel

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

January 26, 2026

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 FLORES CONCRETE LBK LLC FOR CONCRETE BATCH PLANT REGISTRATION NO. 178101**
TCEQ DOCKET NO. 2025-1453-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,

Michael McCarthy, Attorney
Assistant Public Interest Counsel

cc: Mailing List

DOCKET NO. 2025-1453-AIR

APPLICATION BY FLORES CONCRETE LBK LLC CONCRETE BATCH PLANT LUBBOCK, LUBBOCK COUNTY REGISTRATION NO. 178101	**§ § § § §**	**BEFORE THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY**

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) files this Response to Requests for Hearing 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 Flores Concrete LBK, LLC (Applicant) for a Concrete Batch Plant Standard Permit under Texas Clean Air Act (TCAA) § 382.05195, which would authorize the construction of a new facility that may emit air contaminants. The Commission received timely comments and hearing requests from Donnie Baldridge and Shiela B. Hall. For the reasons stated herein, OPIC respectfully recommends the Commission find that Donnie Baldridge is an affected person and further recommends that the Commission grant his hearing request.

B. Description of Application and Facility

Flores Concrete LBK, LLC, applied to the TCEQ for a Standard Permit under TCAA § 382.05195, which would authorize the construction of a permanent concrete batch plant. The proposed plant would be located at 4514 County Road 6300 Lubbock, Lubbock County, 79415. Contaminants authorized under this permit include particulate matter, aggregate, cement, road dust, and particulate matter with diameters of 10 microns or less and 2.5 microns or less (PM10 and PM2.5, respectively).

C. Procedural Background

Before work begins on the construction of a new facility that may emit air contaminants, Applicant must obtain an authorization from the Commission. This permit application is for an initial issuance of Air Quality Registration Number 178101.

The permit application was received on October 31, 2024, and declared administratively complete on November 6, 2024. The Consolidated Notice of Receipt of Application and Intent to Obtain Permit and Notice of Application and Preliminary Decision for this registration application was published on December 10, 2024, in the *Lubbock Avalanche-Journal*. The Applicant received two deficiency letters, notifying them that they are required to publish notice in Spanish, and requiring the Applicant to post the permit application materials in a public place in the county in which the facility is proposed to be located. On March 14, 2025, TCEQ was notified that the Applicant had placed the permitat the Lubbock County Library, 1306 9th Street, Lubbock, Lubbock County. On

March 20, 2025, the Applicant published notice in Spanish in *El Editor*. The public comment period ended on April 21, 2025. The Executive Director's (ED) Response to Comments (RTC) was mailed on August 1, 2025. The deadline for filing requests for a contested case hearing and requests for reconsideration of the ED's decision was September 8, 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. 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 by 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.

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.

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.

30 TAC § 55.203(d)

For an application filed on or after September 1, 2015, § 55.211(c)(2)(A)(ii) provides that a hearing request made by an affected person shall be granted if the request raises disputed issues of fact that were raised by the affected person during the comment period, that were not withdrawn by filing a withdrawal letter with the Chief Clerk prior to the filing of the ED's RTC, and that are relevant and material to the Commission's decision on the application.

Under § 55.211(c)(2)(B)-(D), the hearing request, to be granted, must also be timely filed with the Chief Clerk, pursuant to a right to hearing authorized by law, and comply with the requirements of § 55.201.

III. ANALYSIS OF HEARING REQUESTS

A. Whether the requestor is an affected person

Donnie Baldridge

Donnie Baldridge filed timely comments and a hearing request. Mr. Baldridge resides at 4605 County Road 6300 in Lubbock. According to the map prepared by ED staff, Mr. Baldridge resides 133.93 yards from the proposed facility. As a threshold consideration, 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. TCAA § 382.058(c). At 133.93 yards, Mr. Baldridge resides within this statutory distance restriction.

In his request, Mr. Baldridge raises concerns regarding human health, air quality, notice, dust control, compliance history, application accuracy, quality of life, and property value. Some of these interests are protected by the law under which this application will be considered. *See* 30 TAC § 55.203(c)(1). Further, considering Mr. Baldridge's proximity to the facility, a reasonable relationship exists between those interests and the Applicant's regulated activity – a relevant factor under 30 TAC § 55.203(c)(3). Mr. Baldridge's proximity to the facility, combined with his articulated concerns, demonstrates that he is likely to be affected in a way that is not common to members of the general public, and thus possesses a personal justiciable interest in this matter. *See* 30 TAC § 55.203(a). Given this requestor's location within 440 yards of the proposed facility, the fact that many of his concerns are specific and protected by the law under which this

application is considered, and a reasonable relationship exists between the concerns and the regulation of the facility, OPIC finds that Mr. Baldridge has a personal justiciable interest in this matter and qualifies as an affected person.

Shiela B. Hall

Shiela B. Hall filed timely comments and a hearing request. Ms. Hall resides at 4502 17th Street in Lubbock, which, according to the map prepared by ED staff falls 6758.41 yards from the proposed facility. For a concrete batch plant standard permit, a hearing request must first be analyzed to determine if the requestor resides in a permanent residence that is located within 440 yards of the proposed facility as required by the distance restriction for affected persons contained in TCAA § 382.058(c). According to the map created by ED staff, Ms. Hall's residence is not located within 440 yards of the proposed facility. The ED measured the distance to Mr. Adair's residence at 6758.41 yards (3.84 miles). Therefore, under the 440-yard distance restriction, Shiela B. Hall cannot qualify as an affected person.

B. Which issues raised in the hearing requests are disputed

The affected requestor raised the following disputed issues:

1. Whether the proposed facility may have adverse effects on air quality.
2. Whether the proposed facility may have adverse effects on human health
3. Whether the proposed facility may have adverse effects on physical property.
4. Whether there was adequate notice.

5. Whether the Applicant's compliance history was adequately considered.

6. Whether the draft permit is adequately protective against nuisance conditions.

7. Whether the draft permit contains adequate dust control measures.

8. Whether the application was complete and accurate

9. Whether the proposed facility may create negative impacts on nearby residents' quality of life.

10. Whether the proposed facility is in a suitable location.

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 here are issues of fact.

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

Issues No. 1-10 in Section III.B. were specifically raised by the affected requestor during the public comment period.

E. Whether the hearing requests are 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).

Air Quality, Human Health, and Physical Property

Mr. Baldridge raised concerns about the proposed facility's potential to affect air quality, human health, and his and his wife's physical property. 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. *See* TCAA § 382.0518(b)(2). 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[.]" *See* TCAA § 382.002(a). Therefore, Issues No. 1-3 are relevant and material to the Commission's decision on the Application.

Notice

Mr. Baldridge raised concerns about notice, including sign posting. Section 39.604 requires that signs be placed at the site of the proposed facility. The signs must state that an application for a standard permit has been filed and the manner in which the Commission may be contacted for further information.

Given that this notice requirement applies to Applicant's action in this matter, Issue No. 4 is relevant and material to the Commission's decision on this application.

Compliance History

Mr. Baldridge shared concerns regarding the Applicant's previous history of possible noncompliance with environmental regulations. When deciding on the issuance of a permit, the Commission is required to consider an entity's past compliance with applicable environmental rules and statutes through an evaluation of that entity's compliance history. 30 TAC § 60.1(a)(1)(A); 30 TAC § 60.3(a)(1)(A). Additionally, to address concerns with compliance history, the TCEQ may impose certain permit conditions or provisions. 30 TAC § 60.3(a)(2). Because compliance history must be considered in the decision to issue a permit, Issue No. 5 is relevant and material to the Commission's decision regarding this Application.

Nuisance Conditions and Dust Control

Mr. Baldridge raised concerns about whether the proposed emissions will cause nuisance conditions, including whether the draft permit contained adequate dust control measures. The Applicant must comply with 30 TAC § 101.4, which prohibits discharge of air contaminants in such concentration or duration as may be injurious to or to adversely affect human health or welfare, animal life, vegetation, or property, or as to interfere with the normal use and

enjoyment of animal life, vegetation, or property. Therefore Issues No. 6-7 are relevant and material.

Application Accuracy

Mr. Baldridge articulated concerns about the accuracy of the application, including discrepancies between the permitted location of the facility and the actual location of the facility. TCEQ rules require that if an applicant becomes aware that it failed to submit relevant facts or submitted incorrect information in a permit application, the applicant is required to promptly submit such facts and information. Additionally, the applicant is required to submit all plans and specifications necessary to determine if the facility or source will comply with applicable federal and state air control statutes, rules, and regulations, as well as the intent of the TCAA. TCAA § 382.0515(2). Therefore, Issue No. 8 is relevant and material to the Commission's decision regarding this application and is appropriate for referral to SOAH.

Location and Quality of Life

Mr. Baldridge articulated concerns related to the location of the proposed facility and the impact it could have on his quality of life. The Texas Legislature, which establishes the jurisdiction of TCEQ, has not given the Commission the authority to consider these types of concerns when deciding whether to issue an air permit. Given that these concerns fall outside of TCEQ's jurisdiction when determining whether to grant an air permit application, Issues No. 9-10 are not relevant and material to the Commission's decision regarding this application.

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. 30 TAC § 50.115(d)(2). 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 would be 180 days from the first date of the preliminary hearing until the proposal for decision is issued.

IV. CONCLUSION

Having found that Donnie Baldridge qualifies as an affected person in this matter, OPIC respectfully recommends the Commission grant his hearing request and refer Issue Nos. 1-8 specified in Section III.B. for a contested case hearing at SOAH with a maximum duration of 180 days.

Respectfully submitted,

Garrett T. Arthur
Public Interest Counsel

By:

Michael McCarthy
Assistant Public Interest Counsel
State Bar No. 24150477
P.O. Box 13087, MC 103
Austin, Texas 78711-3087
(512) 239-4014

CERTIFICATE OF SERVICE

I hereby certify that on January 26, 2026, the original 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 Inter-Agency Mail, electronic mail, or by deposit in the U.S. Mail.

Michael McCarthy

MAILING LIST
FLORES CONCRETE LBK LLC
TCEQ DOCKET NO. 2025-1453-AIR

FOR THE APPLICANT
via electronic mail:

Kevin Flores
Flores Concrete LBK LLC
101 East Brady Avenue
Clovis, New Mexico 88101
floresconcretelbk@gmail.com

Blanca Flores
Flores Concrete LBK LLC
101 East Brady Avenue
Clovis, New Mexico 88101
floresconcretelbk@gmail.com

FOR THE EXECUTIVE DIRECTOR
via electronic mail:

Elizabeth Black, Staff Attorney
Texas Commission on Environmental Quality
Environmental Law Division MC-173
P.O. Box 13087
Austin, Texas 78711-3087
Tel: 512/239-0600 Fax: 512/239-0606
elizabeth.black@tceq.texas.gov

Aine Carroll, Technical Staff
Texas Commission on Environmental Quality
Air Permits Division MC-163
P.O. Box 13087
Austin, Texas 78711-3087
Tel: 512/239-1362 Fax: 512/239-1400
aine.carroll@tceq.texas.gov

Ryan Vise, Director
Texas Commission on Environmental Quality
External Relations Division
Public Education Program MC-108
P.O. Box 13087
Austin, Texas 78711-3087
Tel: 512/239-4000 Fax: 512/239-5678
pep@tceq.texas.gov

FOR ALTERNATIVE DISPUTE RESOLUTION
via electronic mail:

Kyle Lucas, Attorney
Texas Commission on Environmental Quality
Alternative Dispute Resolution MC-222
P.O. Box 13087
Austin, Texas 78711-3087
Tel: 512/239-0687 Fax: 512/239-4015
kyle.lucas@tceq.texas.gov

FOR THE CHIEF CLERK
via eFiling:

Docket Clerk
Texas Commission on Environmental Quality
Office of Chief Clerk MC-105
P.O. Box 13087
Austin, Texas 78711-3087
Tel: 512/239-3300 Fax: 512/239-3311
https://www14.tceq.texas.gov/epic/eFiling/

REQUESTER(S)
via electronic mail:

Donnie Baldridge
4605 County Road 6300
Lubbock, Texas 79415
zandylulu@gmail.com

Shiela B. Hall
4502 17th Street
Lubbock, Texas 79416
sbhster1@gmail.com

Jackie Patterson
4818 County Road 6300
Lubbock, Texas 79415
jackie@randrditching.com