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Garrett T. Arthur, *Public Interest Counsel*

## TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

*Protecting Texas by Reducing and Preventing Pollution*

January 16, 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 TRIPLE C CONCRETE  
OF LUBBOCK, LTD FOR CONCRETE BATCH PLANT  
REGISTRATION NO. 176227  
TCEQ DOCKET NO. 2025-1841-AIR**

Dear Ms. Gharis:

Enclosed for filing is the Office of Public Interest Counsel's Response to Request for Hearing and Request for Reconsideration in the above-entitled matter.

Sincerely,

A handwritten signature in cursive script that reads "Jessica M. Anderson".

Jessica M. Anderson, Attorney  
Assistant Public Interest Counsel

A handwritten signature in cursive script that reads "Michael McCarthy".

Michael McCarthy, Attorney  
Assistant Public Interest Counsel

cc: Mailing List

DOCKET NO. 2025-1841-AIR

APPLICATION BY	§	BEFORE THE
TRIPLE C CONCRETE OF	§	
LUBBOCK, LTD	§	TEXAS COMMISSION ON
CONCRETE BATCH PLANT	§	
LUBBOCK, LUBBOCK COUNTY	§	ENVIRONMENTAL QUALITY

**THE OFFICE OF PUBLIC INTEREST COUNSEL’S RESPONSE  
TO REQUEST FOR HEARING AND REQUEST 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 Request for Hearing and Request 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 Triple C Concrete of Lubbock, Ltd (Applicant) for a Concrete Batch Plant Standard Permit under Texas Clean Air Act (TCAA) § 382.05195, which would authorize the use of an existing facility that may emit air contaminants. The Commission received a hearing request and a request for reconsideration from Legal Aid of NorthWest Texas (LANWT) on behalf of North and East Lubbock Coalition (NELC). For the reasons stated herein, OPIC respectfully recommends the Commission find that NELC is not an affected person. However, OPIC also recommends granting the request for reconsideration.

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

Triple C Concrete of Lubbock, Ltd applied to the TCEQ for a Standard Permit under TCAA § 382.05195, which would authorize the use of an existing facility that may emit air contaminants. The facility was previously authorized under Permit Number 71025 which expired on March 15, 2024. This permit, if issued, would authorize the Applicant to resume operations of a concrete batch plant. The facility is located at 1521 Erskine Street, Lubbock, Lubbock 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**

Before work operations may resume at the concrete batch plant Applicant must obtain an authorization from the Commission. This permit application is for an initial issuance of Air Quality Registration Number 176227.

The permit application was received on April 30, 2024, and declared administratively complete on June 19, 2024. The Consolidated Notice of Receipt of Application and Intent to Obtain Permit and Notice of Application and Preliminary Decision for this permit application was published in English on July 1, 2024, in the *Lubbock Avalanche - Journal*, and in Spanish on July 2, 2024, in *El Editor Newspaper*. Following a clerical error of the proposed registration number for the pending application, the Applicant was required to publish an Amended Consolidated Notice of Receipt of Application and Intent to Obtain Permit and Notice of Application and Preliminary Decision. The amended notice

was published in English on October 2, 2024, in the *Lubbock Avalanche - Journal*, and in Spanish on October 8, 2024, in *El Editor Newspaper*. A public meeting was held on October 28, 2024 in Lubbock. The notice of public meeting was posted in English and in Spanish on October 9, 2024, to TCEQ's Homepage - Meetings Calander and mailed to the mailing list. The public comment period ended on November 4, 2024. The Executive Director's (ED) Response to Comments (RTC) was mailed on September 9, 2025. The deadline for filing requests for a contested case hearing and requests for reconsideration of the ED's decision was October 9, 2025.

## **II. APPLICABLE LAW**

### **A. Hearing Requests**

This application was filed on or after September 1, 2015, and is therefore subject to the procedural rules adopted pursuant to Senate Bill 709. Tex. S.B. 709, 84th Leg., R.S. (2015). Under Title 30, Texas Administrative Code (TAC) § 55.201(c), a hearing request by an affected person must be in writing, must be timely filed, may not be based on an issue raised solely in a public comment which has been withdrawn, and—for applications filed on or after September 1, 2015—must be based only on the affected person's timely comments. Section 55.201(d) states that a hearing request must substantially comply with the following:

- (1) give the name, address, daytime telephone number, and, where possible, fax number of the person who files the request;

- (2) identify the person's personal justiciable interest affected by the application, including a brief, but specific, written statement explaining in plain language the requestor's location and distance relative to the proposed facility or activity that is the subject of the application and how and why the requestor believes he or she will be adversely affected by the proposed facility or activity in a manner not common to members of the general public;
- (3) request a contested case hearing;
- (4) list all relevant and material disputed issues of fact that were raised by the requestor during the public comment period and that are the basis of the hearing request. To facilitate the Commission's determination of the number and scope of issues to be referred to hearing, the requestor should, to the extent possible, specify any of the ED's responses to the requestor's comments that the requestor disputes, the factual basis of the dispute, and list any disputed issues of law; and
- (5) provide any other information specified in the public notice of application.

30 TAC § 55.201(d).

For concrete batch plant registrations under the Standard Permit, TCAA § 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).

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.

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

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

## **B. Requests for Reconsideration**

Any person may file a request for reconsideration of the ED's decision under Title 30, Texas Administrative Code § 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 requestor is an affected person

##### North and East Lubbock Coalition

Legal Aid of NorthWest Texas submitted timely comments and a hearing request on behalf of North and East Lubbock Coalition. NELC is a not-for-profit, community-based membership organization of citizens living in or having strong ties to North and East Lubbock neighborhoods. NELC's purpose is to educate residents living in these areas about environmental and community concerns, and to advocate for the health, safety, and wellbeing of residents. Further, NELC seeks to protect North and East Lubbock neighborhoods and residents from harm to health, property value, economic development, and quality of life caused by pollution and other nuisances from industrial uses. Additionally, according to the request, members of the group reside and recreate in close proximity to the facility. For these reasons, OPIC finds that the stated purpose of NELC is germane to the interests it seeks to protect. *See* 30 TAC § 55.205(b)(3). Additionally, the request states, and OPIC agrees, that neither the claim asserted nor the relief requested requires the participation of the organization's individual members in accordance with 30 TAC § 55.205(b)(4).

In order for an association's hearing request to be granted, the request must identify one or more members, by name and physical address, that would otherwise have standing in their own right. The request identifies Connie Aguilar, Elex Trevino, Jr., Raul Trevino, and Fabian Mata as individuals who would be

affected in a way not common to the general public given their residences, recreation, and family enrollment in the nearby school. Texas Clean Air Act § 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 TCAA § 382.05195. Accordingly, OPIC’s analysis is directed by this restrictive distance limitation imposed by statute. NELC’s request describes the permanent residences of Connie Aguilar and Elex Trevino, Jr. as within 440 yards of the Applicant’s property line, a measurement gleaned from the Lubbock County Central Appraisal District. However, as reflected on the map created by ED staff, the 440-yard boundary is measured from the closest facility point, rather than the property line. According to the map created by ED staff, Connie Aguilar resides 546.12 yards from the closest facility point, and Elex Trevino, Jr. resides 571.28 yards from the closest facility point. While these residences are undeniably close to the Applicant’s plant, they are not within the statutorily mandated 440-yard boundary created by the nearest facility point. Therefore, neither Connie Aguilar nor Elex Trevino, Jr. can qualify as affected persons. Additionally, the request describes Raul Trevino and Fabian Mata’s recreational activities within 440 yards of the facility, but the map created by ED staff indicates that these individuals reside 1,373.79 yards and 692.27 yards from the nearest facility point respectively. Given the restrictions set forth in Section 382.058(c), individuals who do not reside in a permanent residence within 440 yards of a facility cannot qualify as affected persons.

Therefore, neither Raul Trevino nor Fabian Mata would have standing in their own right.

Further, the request articulates NELC's concerns related to application accuracy, particularly as it relates to potential impacts to Carmona-Harrison Elementary School, compliance history, notice, air quality, human health, recreation, nuisance conditions, NAAQS exceedances, use of Best Available Control Technology (BACT), adequacy of modeling data, sufficiency of air monitoring requirements, cumulative impacts, adequacy of dust control, use and enjoyment of property, traffic and road quality, and property value.

As required for group standing under 30 TAC § 55.205, NELC submitted timely comments; the interests the group seeks to protect are germane to their stated purposes; and neither the claim asserted nor the relief requested requires the participation of the individual members. To satisfy the fourth requirement for group standing, the hearing request seeks to identify a group member who would otherwise have standing in their own right to request a hearing. However, given the intervening distances of more than 440 yards between the identified members' residences and the closest facility point, OPIC must find that none of these individuals would qualify as affected persons in their own right. At distances beyond 440 yards, these requestors, by statute, cannot qualify as

affected persons. *See* TCAA § 382.058(c). Therefore, OPIC must respectfully recommend that the Commission find that NELC is not an affected person.<sup>1</sup>

#### IV. REQUEST FOR RECONSIDERATION

Any person may file a request for reconsideration of the ED's decision under Title 30, Texas Administrative Code § 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.

NELC submitted a request for reconsideration which encapsulates many of the issues raised in its hearing request and contends that the ED failed to respond to all material issues raised in public comments. NELC's request includes concerns that the ED failed to address some issues related to air quality and cumulative effects, air monitoring, compliance history, and access to permit documents.

NELC also contends that the ED failed to address deficiencies and inaccuracies in the application. One such inaccuracy identified by NELC was the application's certification that no schools were within 3,000 feet of the property. This issue is important because TCAA § 382.052 states:

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<sup>1</sup> OPIC also notes that, in the alternative, the Commission could refer NELC's request to the State Office of Administrative Hearings (SOAH) for an affectedness determination if there is any prevailing concern about the distance discrepancy between the map created by ED staff and the map included in NELC's request.

In considering the issuance of a permit to construct or modify a facility within 3,000 feet of an elementary, junior high, or senior high school, the commission shall consider possible adverse short-term or long-term side effects of air contaminants or nuisance odors from the facility on the individuals attending the school facilities.

A later revision to the application available on TCEQ's website provided an update to this certification, acknowledging that there is a school within 3,000 feet of the facility. Though the Applicant has addressed this inaccuracy, it is unclear from the available record, including the RTC, whether the Executive Director has considered possible adverse effects of air contaminants or nuisance odors from the plant on individuals attending the school, as required by Section 382.052. OPIC finds that this issue provides a basis upon which to grant the request for reconsideration.

Further, NELC contends that the application contains inaccuracies that would result in a violation of the Standard Permit. Specifically, the Applicant has represented that it is excepted from the requirement in Section 8(H) that its stockpiles must not be located closer than 50 feet less than the applicable minimum setback distance from any property line because it has a 12-foot border fence surrounding the property pursuant to Section 8(I)(ii) of the Standard Permit. However, included in NELC's request for reconsideration are photographs and an affidavit from Dora Cortez depicting a fence height of less than 12 feet. Given this discrepancy and the possibility that a shorter non-compliant fence could increase off-property emission impacts, OPIC questions whether the plant

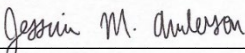
complies with the Standard Permit. We find that this issue provides an additional basis upon which to grant the request for reconsideration.

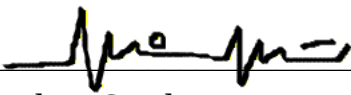
## V. CONCLUSION

Having found that by statute NELC cannot qualify as an affected person in this matter, OPIC must respectfully recommend that the Commission deny their hearing request. However, based on the available record, OPIC further recommends granting NELC's request for reconsideration and remanding this matter to the Executive Director for further review of the identified issues.

Respectfully Submitted,

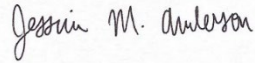
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**CERTIFICATE OF SERVICE**

I hereby certify that on January 16, 2026, the original of the Office of Public Interest Counsel's Response to Request for Hearing and Request 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.



\_\_\_\_\_  
Jessica M. Anderson

**MAILING LIST**  
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**TCEQ DOCKET NO. 2025-1841-AIR**

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