

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

February 13, 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 CON-METAL
CONCRETE, LLC FOR CONCRETE BATCH PLANT REGISTRATION
NO. 178619
TCEQ DOCKET NO. 2026-0039-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 black ink, appearing to read "Michael McCarthy".

Michael McCarthy, Attorney
Assistant Public Interest Counsel

cc: Mailing List

TCEQ DOCKET NO. 2026-0039-AIR

APPLICATION BY CON-METAL	§	BEFORE THE
CONCRETE, LLC FOR	§	
CONCRETE BATCH PLANT	§	TEXAS COMMISSION ON
REGISTRATION NO. 178619	§	
	§	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 Con-Metal Concrete, 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. For the reasons stated herein, OPIC respectfully recommends the Commission deny all hearing requests. However, OPIC may reassess its recommendation if requestor Elston Thomas Jr. provides a timely reply demonstrating that his residence is located within 440 yards of the proposed facility as required by Tex. Health & Safety Code (THSC) § 382.058(c). OPIC further recommends denial of all requests for reconsideration.

B. Description of Application and Facility

Con-Metal Concrete, 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 15753 US Highway 77 North, Victoria, Victoria County. Contaminants authorized under this permit include carbon monoxide, nitrogen oxides, organic compounds, particulate matter including particulate matter with diameters of 10 microns or less (PM10) and 2.5 microns or less (PM2.5), and sulfur dioxide (SO2).

C. Procedural Background

Before work begins on the construction of a new facility that may emit air contaminants, the applicant must obtain an authorization from the Commission. This permit application is for an initial issuance of Air Quality Registration Number 178619.

The permit application was received on December 18, 2024, and declared administratively complete on December 19, 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 in English on February 27, 2025, in the *Lone Star TX Newspaper* and published in Spanish on February 27, 2025, in *El Perico Spanish Newspaper*. The public comment period ended on March 31, 2025. The Executive Director's (ED) Response to Comments (RTC) was mailed on September 30, 2025. The deadline for filing requests for a contested case hearing and requests for reconsideration of the ED's decision was October 30, 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, 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.

B. Requests 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. Determination of affected person status

Elston Thomas Jr.

Elston Thomas Jr. filed timely comments and multiple hearing requests. In his requests, Mr. Thomas Jr. raises concerns regarding air quality, human health, public welfare, and physical property. Some of these interests are protected by the law under which this application will be considered. *See* 30 TAC § 55.203(c)(1).

Although Mr. Thomas Jr. asserts that he lives within 440 yards of the proposed facility, he did not provide an address and was therefore omitted from the map prepared by ED staff. 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). Without record of an address for Mr. Thomas Jr. to evaluate under this requirement, OPIC is unable to find that Mr. Thomas Jr. is an affected person. OPIC therefore recommends denial of his requests for a contested case hearing, but may reconsider its position if an address is provided that fulfills the distance requirement of THSC § 382.058(c).

In the event the Commission finds that Mr. Thomas Jr. is an affected person, OPIC provides analysis of the issues raised in his requests below.

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 human health.
2. Whether the proposed facility may have adverse effects on public welfare.
3. Whether the proposed facility may have adverse effects on air quality.
4. Whether the proposed facility may have adverse effects on physical property.

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. 1-4 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, Public Welfare, Physical Property

Mr. Thomas Jr. raised concerns about the proposed facility's potential to affect air quality, human health, public welfare, and his physical property, including his equine rehabilitation facility. 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 TCAA, 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. 1-4 are relevant and material to the Commission's decision on the 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. REQUESTS FOR RECONSIDERATION


The Commission received requests for reconsideration from Mr. Thomas Jr. and Mary Beth Matula. The requests raise concerns regarding environmental impact, public health risks, negative effects on businesses and property values, as well as quality of life concerns. Although OPIC finds many of these issues are within the Commission's jurisdiction, OPIC cannot recommend reversal of the ED's decision or remand of the application to the ED on these issues without the development of an evidentiary record. For this reason, OPIC must recommend denial of the requests for reconsideration received in this matter.

V. CONCLUSION

OPIC respectfully recommends the Commission find no affected person has filed a request for a contested case hearing in this matter and therefore deny all hearing requests. However, if requestor Elston Thomas Jr. provides a timely reply demonstrating that his residence is located within 440 yards of the proposed facility as required by Tex. Health & Safety Code (THSC) § 382.058(c), OPIC may reassess its recommendation. OPIC further recommends the Commission deny the pending requests for reconsideration.

Respectfully submitted,

Garrett T. Arthur
Public Interest Counsel

By:  _____

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CERTIFICATE OF SERVICE

I hereby certify that on February 13, 2026, 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.



Michael McCarthy

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TCEQ DOCKET NO. 2026-0039-AIR

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