

TCEQ STANDARD PERMIT REGISTRATION NO. 76688L001
DOCKET NO. 2006-1746-AIR

APPLICATION BY § BEFORE THE
LONESTAR PRESTRESS MFG, INC. § TEXAS COMMISSION ON
HOUSTON, HARRIS COUNTY, TEXAS § ENVIRONMENTAL QUALITY

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QUALITY

**EXECUTIVE DIRECTOR'S RESPONSE TO HEARING REQUESTS
AND REQUESTS FOR RECONSIDERATION**

The Executive Director (ED) of the Texas Commission on Environmental Quality (Commission or TCEQ) files this response (Response) to the requests for a contested case hearing and requests for reconsideration submitted by persons listed herein. The Texas Clean Air Act (TCAA) § 382.056(n) requires the commission to consider hearing requests in accordance with the procedures provided in Tex. Water Code § 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 site for the proposed facility is included with this response and has been provided to all persons on Office of the Chief Clerks mailing list. In addition, a current compliance history report, technical review summary, and the Air Quality Standard Permit for Concrete Batch Plants have been filed with the TCEQ's Office of Chief Clerk for the commission's consideration. Finally, the ED's Response to Public Comments (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.

EXECUTIVE DIRECTOR'S RESPONSE TO HEARING REQUESTS

I. Application Request and Background Information

Lonestar Prestress Mfg., Inc. (Lonestar or Applicant) applied to the TCEQ for an Air Quality Standard Permit Registration No. 76688L001, which would authorize the operation of an existing specialty concrete batch plant ("CBP") located at 9316 Reid Lake Drive, Houston, Harris County. The Applicant is not delinquent on any administrative penalty payments to the TCEQ.

The application was declared administratively complete on September 26, 2005. The Notice of Receipt and Intent to Obtain an Air Quality Permit was published on October 27, 2005, in the *Houston Chronicle* and the Alternative Language Notice was published on October 26,

¹ Statutes cited in this response may be viewed online at www.capitol.state.tx.us/statutes/statutes.html. Relevant statutes are found primarily in the Texas Health and Safety Code and the Texas Water Code. The rules in the Texas Administrative Code may be viewed online at www.sos.state.tx.us/tac/index.shtml, or follow the "Rules, Policy & Legislation" link on the TCEQ website at www.tceq.state.tx.us.

2005, in the *La Voz de Houston*. The technical review was completed on November 21, 2005, and the Notice of Application and Preliminary Decision was published on February 2, 2006, in the *Houston Chronicle* and the Alternative Language Notice was published on February 1, 2006, in the *La Voz de Houston*. The public comment period ended on March 6, 2006. The Response to Public Comment (RTC) was filed with TCEQ's Office of Chief Clerk on August 18, 2006. An amended RTC was filed with the Office of Chief Clerk on November 2, 2006. Since this application was administratively complete after September 1, 1999, this action is subject to the procedural requirements adopted pursuant to House Bill 801.

The ED's amended RTC was mailed on November 7, 2006, to all interested persons, including those who asked to be placed on the mailing list for this application and those who submitted comment or requests for contested case hearing. The cover letter attached to the RTCs included information about making requests for contested case hearing or for reconsideration of the ED's decision.² The letter also explained hearing requesters should specify any of the ED'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 TCEQ received timely hearing requests during the public comment period and during the thirty-day period after the RTC was mailed from the following persons: Kenneth Benge, Paul and Annisa Blanchard, Maurice and Ann Bonefas, Zoe Bradstreet, Octavio Cabrera, Marciela Cano, Henry and Dolores Castillo, Johnnie and Gladys Chaloupka, Gilbert Charros, James and Dorris Chesser, Zsuzsanna Cohen, Jay Conlin, Mary Craft, Dennis Culberson, William and Sharmon Deas, Pedro Deleon, Rajinder Dhillon, Steve Donn, Robert Elliot, Dennis and Barbara Farley, Glen Fornerette, Elena Gomez, Rod Jackson, Angel Juarez, Melba La Mountain, Alyssa Mireca, and Patricia Lengyel, Johnny Lott, Billie Jo Malone, Gerald Malone, Michael Malone, Tommy and Jeanette Malone, Ken Mathews, J. Meyer, Angelina Mireles, Mary Moral, Graciela Mosqueda, Leticia Mosqueda, James Murray, Gertrude Nowak, Gail Prasek, Juan and Maria, Razo, Elsie Rhea, Cipriano Ruvalcaba, Kathi Schatz, Tommy Shelton, Donna Stanley, Ted and Karon Tank, Floyd Telschow, Calvin and Nguyen Vu, Ernest Wallingford, Art Weathers, Mark Wilde, Sukudev Cheema, Robert Ellis, Chris and Kim Murray, Melba Jo Murray, Harvey Prasek, Susana Puga, Tim Tipton, Hans Boone, Donald and Judy Christian, Jim and Glenda Deveau, Pablo and Flore Garza, Wray Lilly, Kenneth and Alma Mongonia, Sara Nugent, Carlos and Maria Reyes, Tim Sandusky, Rhjinder Singh, Asa Weathers, Rita Ashby, and Richard Ashby (representing Reid Estates Civic Club and himself).

II. Applicable Law

The commission must assess the timeliness and form of the hearing requests, as discussed below. The form requirements are set forth in 30 TAC § 55.201(d):

(d) 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. If the request is made by a group or

² See TCEQ rules at Chapter 55, Subchapter F of Title 30 of the Texas Administrative Code. Procedural rules for public input to the permit process are found primarily in Chapters 39, 50, 55 and 80 of Title 30 of the Code.

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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 requester's location and distance relative to the proposed facility or activity that is the subject of the application and how and why the requester 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 requester should, to the extent possible, specify any of the executive director's responses to comments the requester disputes and the factual basis of the dispute and list any disputed issues of law or policy; and

(5) provide any other information specified in the public notice of application.

The next necessary determination is whether the requests were filed by "affected persons" as defined by Tex. Water Code § 5.115, implemented in commission rule 30 TAC § 55.203. Under 30 TAC § 55.203, 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. Local governments with authority under state law over issues raised by the application receive affected person status under 30 TAC § 55.203(b).

However, hearing requests on a concrete batch plant standard permit are considered under § 382.058(c) of the Texas Clean Air Act (TCAA).³ The statute states "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." A requester who resides within 440 yards of the proposed facility has standing to request a hearing as an affected person. Therefore, it is not necessary to consider the factors listed in 30 TAC § 55.203(c) to determine affected party status. A requester's failure to meet the distance requirement of § 382.058(c) of the TCAA is an absolute bar to affected party status.

If the commission determines a hearing request is timely and fulfills the requirements for proper form, and the hearing requester is an affected person, the commission must apply a three-part test to the issues raised in the matter to determine if any of the issues should be referred to the State Office of Administrative Hearings (SOAH) for a contested case hearing. The three-part test in 30 TAC § 50.211 is as follows:

³ TEX. HEALTH AND SAFETY CODE, Chapter 382

- (1) The issue must involve a disputed question of fact;
- (2) The issue must have been raised during the public comment period; and
- (3) The issue must be relevant and material to the decision on the application.

The law applicable to the proposed facility may generally be summarized as follows. A person who owns or operates a facility or facilities that will emit air contaminants is required to obtain authorization from the commission prior to the construction and operation of the facility or facilities.⁴ Thus, the location and operation of the proposed facility requires authorization under the TCAA. Permit conditions of general applicability must be in rules adopted by the commission.⁵ Those rules are found in 30 TAC Chapter 116. In addition, a person is prohibited from emitting air contaminants or performing any activity that violates the TCAA or any commission rule or order, or that causes or contributes to air pollution.⁶ The relevant rules regarding air emissions are found in 30 TAC Chapters 101 and 111-118. In addition, the commission has the authority to establish and enforce permit conditions consistent with this chapter.⁷ The materials accompanying this response list and reference permit conditions and operational requirements and limitations applicable to this proposed facility.

III. Analysis of Hearing Requests

A. Were the requests for a contested case hearing in this matter timely and in proper form?

All hearing requests were submitted during the public comment period or during the period for requesting a contested case hearing after the close of the comment period. Furthermore, the ED has determined that all hearing requests substantially comply with all of the requirements for form in 30 TAC § 55.201(d).

The ED addressed all public comments in this matter by providing responses in the RTC. The cover letter from the Office of the Chief Clerk that was attached to the RTC states requesters should, to the extent possible, specify any of the ED's responses in the RTC the requesters dispute and the factual basis of the dispute, and list any disputed issues of law or policy.⁸ Tommy Shelton, Jr., Rita Ashby (accompanied by fifteen petition signatures), and Barbara Farley (accompanied by sixteen petition signatures) filed responses to the ED's RTC, stating a number of issues remain in dispute. Some of the issues raised in the responses were not previously raised during the comment period. In the absence of a response from the remaining hearing requesters or their representatives within the thirty-day period after the RTC was mailed, the ED cannot determine or speculate whether the hearing requesters continue to dispute issues of fact, or whether there are any outstanding issues of law or policy. The ED nevertheless has evaluated the merits of the requests before action is taken regarding this application.

⁴ TEX. HEALTH AND SAFETY CODE § 382.0518

⁵ TEX. HEALTH AND SAFETY CODE § 382.0513

⁶ TEX. HEALTH AND SAFETY CODE § 382.085

⁷ TEX. HEALTH AND SAFETY CODE § 382.0513

⁸ 30 TAC § 55.201(d)(4)

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B. Are those who requested a contested case hearing in this matter affected persons?

Texas Health & Safety Code § 382.058(c) provides only those persons actually residing within 440 yards of the proposed facility may request a hearing as an affected party. Kenneth Bengle, Paul and Annisa Blanchard, Maurice and Ann Bonefas, Zoe Bradstreet, Octavio Cabrera, Marciela Cano, Henry and Dolores Castillo, Johnnie and Gladys Chaloupka, Gilbert Charros, James and Dorris Chesser, Zsuzsanna Cohen, Jay Conlin, Mary Craft, Dennis Culberson, William and Sharmon Deas, Pedro Deleon, Rajinder Dhillon, Steve Donn, Robert Elliot, Dennis and Barbara Harley, Glen Fornerette, Elena Gomez, Rod Jackson, Angel Juarez, Melba La Mountain, Alyssa, Mireca, and Patricia Lengyel, Johnny Lott, Billie Jo Malone, Gerald Malone, Michael Malone, Tommy and Jeanette Malone, Ken Mathews, J. Meyer, Angelina Mireles, Mary Moral, Graciela Mosqueda, Leticia Mosqueda, James Murray, Gertrude Nowak, Gail Prasek, Juan and Maria, Razo, Elsie Rhea, Cipriano Ruvalcaba, Kathi Schatz, Tommy Shelton, Jr., Donna Stanley, Ted and Karon Tank, Floyd Telschow, Calvin and Nguyen Vu, Ernest Wallingford, Art Weathers, Mark Wilde, Sukudev Cheema, Robert Ellis, Chris and Kim Murray, Glen Fornerette, Melba Jo Murray, Harvey Prasek, Susana Puga, and Tim Tipton reside within 440 yards of the proposed CBP.⁹ Because they do actually reside in a permanent residence within 440 yards of the proposed plant, they do have standing to request a hearing as an affected person.

Hans Boone, Donald and Judy Christian, Jim and Glenda Deveau, Pablo and Flore Garza, Wray Lilly, Kenneth and Alma Mongonia, Sara Nugent, Carlos and Maria Reyes, Tim Sandusky, Rhjinder Singh, Asa Weathers, and Rick and Rita Ashby do not reside within 440 yards of the proposed CBP.¹⁰ Because they do not actually reside in a permanent residence within 440 yards of the proposed facility, they do not have standing to request a hearing as an affected person.

C. Which issues in this matter should be referred to SOAH for hearing?

If the commission determines any of the hearing requests in this matter are timely and in proper form, and some or all of the hearing requesters are affected persons, the commission must apply the three-part test discussed in Section II to the issues raised in this matter to determine if any of the issues should be referred to SOAH for a contested case hearing. The three-part test asks whether the issues involve disputed questions of fact, whether the issues were raised during the public comment period, and whether the issues are relevant and material to the decision on the permit application, in order to refer them to SOAH.

The ED addressed all public comments in this matter by providing responses in the Amended RTC. The cover letter from the Office of the Chief Clerk transmitting the RTC cites 30 TAC § 55.201(d)(4), which states requesters should, to the extent possible, specify any of the ED's responses in the RTC the requesters dispute and the factual basis of the dispute, and list any

⁹ See attached map.

¹⁰ See attached map.

disputed issues of law or policy. Tommy Shelton, Jr., Rita Ashby (accompanied by fifteen petition signatures), and Barbara Farley (accompanied by sixteen petition signatures) filed responses to the ED's RTC, stating a number of issues remain in dispute. Some of the issues raised in the responses were not previously raised during the comment period. In the absence of a response from any of the other hearing requesters within the thirty-day period after the RTC was mailed, the ED cannot determine or speculate whether the remaining issues of fact continue to be disputed by the hearing requesters, or any alleged outstanding issues of law or policy. However, the ED acknowledges the hearing requesters have one more opportunity to identify disputed issues of fact in their replies to the positions of the ED, Office of Public Interest Counsel and the Applicant regarding the hearing requests. Therefore, to facilitate the commission's consideration of this matter, the ED has analyzed the remaining two parts of the test, assuming the issues raised in the comments in this matter remain disputed. The disputed issues identified by Tommy Shelton, Jr., Rita Ashby, and Barbara Farley are included in the issues of fact listed below.

1. Fourteen issues involving questions of fact.

The requesters raise the following issues involving questions of fact regarding the proposed operation of the Applicant's facility:

1. Whether the air emissions from the proposed facility will adversely affect the health of the residents, animals, and vegetation in the area.
2. Whether the air emissions from the proposed facility will adversely affect air quality in the area.
3. Whether the air emissions from the proposed facility will adversely affect the environment.
4. Whether the air emissions from the proposed facility will adversely affect the public welfare or damage the public's property.
5. Whether the proposed facility will adversely affect residents who have asthma or other related health problems.
6. Whether the proposed facility will adversely affect the water quality in the area.
7. Whether the proposed facility will increase the amount of truck traffic in the area, and whether the traffic will adversely affect the surrounding neighborhood.
8. Whether noise coming from the proposed facility will adversely affect residents' neighborhood.
9. Whether operation of the proposed facility will create nuisance conditions in the area.
10. Whether the proposed specialty CBP facility will emit toxic chemicals.
11. Whether the proposed facility is currently operating in compliance with the terms of the standard permit for CBPs.
12. Whether the Applicant has employed undocumented workers in the past.
13. Whether the Applicant's compliance history justifies denial of the registration.
14. Whether the proposed facility's location is too near requesters' residences.

2. Were the issues raised during the public comment period?

The public comment period is defined in 30 TAC § 55.152. The public comment period begins with the publication of the Notice of Receipt and Intent to Obtain an Air Quality Permit. The end date of the public comment period depends on the type of permit. In this case, the public comment period began on October 26, 2006 and ended on March 6, 2006. All issues except traffic, toxic chemicals, and undocumented workers were raised during the comment period. All issues except these three may be considered by the commission.

3. Whether the issues are relevant and material to the decision on the application.

In this case, the permit would be issued under the commission's authority in Tex. Water Code § 5.013(11) (assigning the responsibilities in Chapter 382 of the Tex. Health & Safety Code) and the TCAA. The relevant sections of the TCAA are found in Subchapter C, Permits. Subchapter C requires the commission to grant a permit to construct or modify a facility if the commission finds the proposed facility will use at least BACT and the emissions from the facility will not contravene the intent of the TCAA, including the protection of the public's health and physical property. In making this permitting decision, the commission may consider the applicant's compliance history. The commission by rule has also specified certain requirements for permitting. Therefore, in making the determination of relevance in this case, the commission should review each issue to see if it is relevant to these statutory and regulatory requirements that must be satisfied by this permit application.

1. Whether the air emissions from the proposed facility will adversely affect the health of the residents, animals, and vegetation in the area.

The requesters identified the issue of health impacts to humans, animals, and vegetation in their hearing requests. Whether the proposed facility will be protective of human health, animals, and vegetation is a factual issue that is relevant and material to the commission's decision on this application. This issue should be referred to SOAH.

2. Whether the air emissions from the proposed facility will adversely affect air quality in the area.

The requesters identified the issue of air quality in their hearing requests. Whether the proposed facility will be protective of ambient air quality is a factual issue that is relevant and material to the commission's decision on this application. This issue should be referred to SOAH.

3. Whether the air emissions from the proposed facility will adversely affect the environment.

The requesters identified the issue of the effect on the environment in their hearing requests. Whether the proposed facility will be protective of the environment is a factual issue that is

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relevant and material to the commission's decision on this application. This issue should be referred to SOAH.

4. Whether the air emissions from the proposed facility will adversely affect the public welfare or damage the public's property.

The requesters identified the issue of impact to the public welfare and the public's property. Whether the air emissions from the proposed facility will adversely affect the public welfare or damage the public's property is a factual issue that is relevant and material to the commission's decision on this application. This issue should be referred to SOAH.

5. Whether the proposed facility will adversely affect residents who have asthma or other related health problems.

The requesters identified the issue of effects on asthmatics and residents with other related health problems. Whether air emissions from the proposed facility will adversely affect residents who have asthma or other related health problems is a factual issue that is relevant and material to the commission's decision on this application. This issue should be referred to SOAH.

6. Whether the air emissions from the proposed facility will adversely affect water quality in the area.

The requesters identified the issue of water quality in their hearing requests. While the TCEQ is responsible for the environmental protection of all media (including water), the law governing air permits deals specifically with air-related issues. The scope of this air quality permit application review does not include water assessment or consideration of issues involving water quality. However, the Applicant's waste and water usage and management practices may require other authorizations from those respective agency programs. Whether the air emissions from the proposed facility will adversely affect water quality in the area is not relevant and material to the commission's decision on this application for an air permit. This issue should not be referred to SOAH.

7. Whether the proposed facility will increase the amount of truck traffic in the area, and whether the traffic will adversely affect the surrounding neighborhood.

The requesters identified the issue of traffic and emissions from traffic in their hearing requests. The TCEQ's jurisdiction is established by the TCAA and is limited to the issues set forth in that statute. Therefore, the TCEQ does not have jurisdiction over traffic or road safety. Further, the TCEQ may regulate stationary sources of air contaminants, but has no authority to regulate mobile sources in a permitting action. Accordingly, the TCEQ does not have jurisdiction to consider impacts of emissions from motor vehicles when determining whether to approve a permit application. Whether this facility will increase vehicle traffic and whether the traffic will

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adversely affect the surrounding neighborhood is not relevant and material to the commission's decision on this application. This issue should not be referred to SOAH.

8. Whether noise coming from the proposed facility will adversely affect residents' neighborhood.

The requesters identified the issue of noise in their hearing requests. The TCEQ's jurisdiction is established by the TCAA and is limited to the issues set forth in that statute. Therefore, the TCEQ does not have jurisdiction over noise. Accordingly, the TCEQ does not have jurisdiction to consider impacts of noise on residents' neighborhood. Whether this noise from the proposed facility will adversely affect the residents' neighborhood is not relevant and material to the commission's decision on this application. This issue should not be referred to SOAH.

9. Whether operation the proposed facility will create nuisance conditions in the area.

The requesters identified the issue of nuisance conditions. Whether the operation of the proposed facility will create nuisance conditions in the area is relevant and material to the commission's decision on this application. This issue should be referred to SOAH.

10. Whether the proposed specialty CBP will emit toxic chemicals.

The requesters identified the issue of toxic emissions. Whether the proposed specialty CBP will emit toxic chemicals was not raised during the comment period. However, if the proposed facility is allowed to register under the standard permit for CBPs and the proposed facility operates in compliance with the terms of the standard permit, emissions of toxics should not occur. This issue should not be referred to SOAH.

11. Whether the proposed facility is currently operating in compliance with the terms of the standard permit for CBPs.

The requesters identified the issue of compliance with the standard permit. The Applicant submitted an application for registration under the standard permit for CBPs. Before submitting this application for registration, the Applicant was operating a CBP. In response to complaints from the public, the Applicant was investigated by the Pollution Control Department of the Harris County Public Health & Environmental Services Office, and the TCEQ *Houston* Regional Office. At the time of the investigations, the Applicant closed the concrete batching portion of their facility. The CBP remains closed while the Applicant awaits the commission's decision to grant or deny registration of the CBP under the standard permit. Therefore, whether the proposed facility is currently operating in compliance with the terms of the standard permit for CBPs is not relevant and material to the commission's decision on this application. This issue should not be referred to SOAH.

12. Whether the Applicant has employed undocumented workers in the past.

The requesters identified the issue of undocumented workers in their hearing requests. The TCEQ's jurisdiction is established by the TCAA and is limited to the issues set forth in that statute. Accordingly, the TCEQ does not have jurisdiction to consider undocumented workers when determining whether to approve a permit application. Whether the Applicant has employed undocumented workers in the past is not relevant and material to the commission's decision on this application. This issue should not be referred to SOAH.

13. Whether the Applicant's compliance history justifies denial of the registration.

The requesters identified the issue of compliance history in their hearing requests. Whether the Applicant's compliance history justifies denial of the application is a factual issue that is relevant and material to the commission's decision on this application. This issue should be referred to SOAH.

14. Whether the proposed facility's location is too near requestors' residences.

The requesters identified the issue of proximity in their hearing requests. The TCEQ's jurisdiction is established by the TCAA and is limited to the issues set forth in that statute. Accordingly, the TCEQ does not have jurisdiction to consider zoning when determining whether to approve a permit application. The location of the proposed facility is not relevant and material to the commission's decision on this application. This issue should not be referred to SOAH.

IV. Maximum Expected Duration of the Contested Case Hearing

The ED recommends the contested case hearing, if held, should last no longer than four months from the preliminary hearing to the proposal for decision.

V. Executive Director's Recommendation

The Executive Director respectfully recommends the commission:

- A. Find all hearing requests in this matter were timely filed.
- B. Find the hearing requests of all the hearing requesters satisfy the requirements for form under 30 TAC § 55.201(d).
- C. Find that Kenneth Bengle, Paul and Annisa Blanchard, Maurice and Ann Bonefas, Zoe Bradstreet, Octavio Cabrera, Marciela Cano, Henry and Dolores Castillo, Johnnie and Gladys Chaloupka, Gilbert Charros, James and Dorris Chesser, Zsuzsanna Cohen, Jay Conlin, Mary Craft, Dennis Culberson, William and Sharmon Deas, Pedro Deleon, Rajinder Dhillon, Steve Donn, Robert Elliot, Dennis and Barbara Farley, Glen Fornerette, Elena Gomez, Rod Jackson, Angel Juarez, Melba La Mountain, Alyssa, Miréca, and Patricia Lengyel, Johnny Lott, Billie Jo

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Malone, Gerald Malone, Michael Malone, Tommy and Jeanette Malone, Ken Mathews, J. Meyer, Angelina Mireles, Mary Moral, Graciela Mosqueda, Leticia Mosqueda, James Murray, Gertrude Nowak, Juan and Maria, Razo, Elsie Rhea, Cipriano Ruvalcaba, Kathi Schatz, Tommy Shelton, Donna Stanley, Ted and Karon Tank, Floyd Telschow, Calvin and Nguyen Vu, Ernest Wallingford, Art Weathers, Mark Wilde, Sukudev Cheema, Robert Ellis, Chris and Kim Murray, Melba Jo Murray, Harvey Prasek, Susana Puga, Tim Tipton, and Gail Prasek are affected persons in this matter.

D. Find that Hans Boone, Donald and Judy Christian, Jim and Glenda Deveau, Pablo and Flore Garza, Wray Lilly, Kenneth and Alma Mongonia, Sara Nugent, Carlos and Maria Reyes, Tim Sandusky, Rhjinder Singh, Asa Weathers, and Rick and Rita Ashby are not affected persons in this matter.

E. If the commission finds some or all of the requesters are affected persons, refer the following issues to the State Office of Administrative Hearings:

1. Whether the air emissions from the proposed facility will adversely affect the health of the residents, animals, and vegetation in the area.
2. Whether the air emissions from the proposed facility will adversely affect air quality in the area.
3. Whether the air emissions from the proposed facility will adversely affect the environment.
4. Whether the air emissions from the proposed facility will adversely affect the public welfare or damage the public's property.
5. Whether the proposed facility will adversely affect residents who have asthma or other related health problems.
9. Whether operation the proposed facility will create nuisance conditions in the area.
13. Whether the Applicant's compliance history justifies denial of the registration.

F. Find the issues regarding water quality, traffic, current compliance of proposed CBP, undocumented workers, noise pollution, and location are not relevant and material to the decision on this air permit application.

G. Find that the issue regarding whether a specialty CBP releases more toxic chemicals than other CBPs and the issue regarding undocumented workers were not timely raised during the comment period.

H. Find the maximum expected duration of the contested case hearing, if held, would be four months.

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30 TAC § 55.201(e) states "Any person may file a request for reconsideration of the executive director's decision. The request must be in writing and be filed by United States mail, facsimile, or hand delivery with the chief clerk within the time provided by subsection (a) of this section." This section also requires, "The request for reconsideration must expressly state that the person is requesting reconsideration of the executive director's decision, and give reasons why the decision should be reconsidered."

Requestors Rita Ashby (accompanied by fifteen petition signatures) and Barbara Farley (accompanied by sixteen petition signatures) filed a Motion for Reconsideration of the Executive Director's Preliminary Decision. The requesters raised a number of issues similar to issues raised in prior comments.

1. Requesters state that dust emitted from the proposed facility will compromise the air quality in the area.

The issue is addressed in the ED's RTC in Response 1. When creating policies, setting emission rates, and issuing permits to protect the state's air, the TCEQ must comply with the National Ambient Air Quality Standards ("NAAQS") developed by the United States Environmental Protection Agency ("EPA"). NAAQS are standards set for certain primary pollutants considered harmful to human health and the environment. The EPA has set both Primary and Secondary NAAQS, including a NAAQS for particulate matter (PM).. While Primary NAAQS are designed to protect public health with an adequate margin of safety, Secondary NAAQS are those which the Administrator of the EPA determines are necessary to protect the public welfare and the environment, including animals, crops, vegetation, and buildings, from any known or anticipated adverse affects associated with the presence of an air contaminant in the ambient air. Since the TCEQ observes both Primary and Secondary NAAQS, it must issue permits which are protective of humans, homes, plants, and animals. If the Applicant is allowed to register under the standard permit for CBPs and the Applicant fully complies with the permit, there is no reason to expect that the welfare of people, property, plants, or animals will be harmed by the Applicant's permitted emissions.

2. Requesters claim that operation of the proposed facility will be to the detriment of their health and wellbeing.

The issue is addressed in ED's RTC in Response 1. When creating policies, setting emission rates, and issuing permits to protect the state's air, the TCEQ must comply with the NAAQS developed by the EPA. NAAQS are standards set for certain primary pollutants considered harmful to human health and the environment. The EPA has set both Primary and Secondary NAAQS. While Primary NAAQS are designed to protect public health with an adequate margin of safety, Secondary NAAQS are those which the Administrator of the EPA determines are necessary to protect the public welfare and the environment, including animals, crops, vegetation, and buildings, from any known or anticipated adverse affects associated with the presence of an air contaminant in the ambient air. Since the TCEQ observes both Primary and Secondary NAAQS, it must issue permits which are protective of humans, homes,

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plants, and animals. If the Applicant is allowed to register under the standard permit for CBPs and the Applicant fully complies with the permit, there is no reason to expect that the welfare of people, property, plants, or animals will be harmed by the Applicant's permitted emissions.

3. Requesters state that operation of the proposed facility will have adverse effects to their homes.

The issue is addressed in the ED's RTC in Response 1. When creating policies, setting emission rates, and issuing permits to protect the state's air, the TCEQ must comply with the NAAQS developed by the EPA. NAAQS are standards set for certain primary pollutants considered harmful to human health and the environment. The EPA has set both Primary and Secondary NAAQS. While Primary NAAQS are designed to protect public health with an adequate margin of safety, Secondary NAAQS are those which the Administrator of the EPA determines are necessary to protect the public welfare and the environment, including animals, crops, vegetation, and buildings, from any known or anticipated adverse effects associated with the presence of an air contaminant in the ambient air. Since the TCEQ observes both Primary and Secondary NAAQS, it must issue permits which are protective of humans, homes, plants, and animals. If the Applicant is allowed to register under the standard permit for CBPs and the Applicant fully complies with the permit, there is no reason to expect that the welfare of people, property, plants, or animals will be harmed by the Applicant's permitted emissions.

4. Requesters claim dust and crystalline silica will cause significant adverse effects to those living in the area who suffer from respiratory problems.

The issue is addressed in the ED's RTC in Response 2. The primary NAAQS, which must be observed throughout Texas, are set to protect public health, which includes sensitive members of the population, such as asthmatics, children, and the elderly. Thus, emissions levels established in air quality permits are set within parameters that are protective of those same sensitive subpopulations.

5. Requesters claim that specialty concrete batch plants use many toxic chemicals normally not used in other CBPs.

If the Applicant is allowed to register under the standard permit for CBPs and the proposed facility operates in compliance with the terms of the standard permit, toxic emissions should not occur.

6. Requesters are concerned that operation of the proposed facility will effect the water quality in the area.

The issue is addressed in the ED's RTC in Response 3. The Applicant has applied to TCEQ for Air Quality Standard Permit Registration No. 76688L001, which governs emissions into the air. Depending on the Applicant's operations, it may be required to apply for authorizations

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governing water quality. However, water quality issues are beyond the scope of this particular permitting action.

7. Requesters are concerned that noise resulting from the operation of the proposed facility will destroy the safety and serenity of their neighborhood.

The issue is addressed in the ED's RTC in Response 4. The TCEQ's jurisdiction is established by the Legislature and limited to the issues set forth in statute. Accordingly, the TCEQ does not have jurisdiction to consider noise from a facility when determining whether to approve or deny a permit registration.

8. Requesters are concerned increased truck traffic associated with the operation of the proposed facility will have adverse effects on their neighborhood.

The TCEQ's jurisdiction is established by the Legislature and limited to the issues set forth in statute. Accordingly, the TCEQ does not have jurisdiction to consider traffic from a facility when determining whether to approve or deny a permit registration.

9. Requesters are concerned with the Applicant's compliance history.

The Applicant currently has an average compliance history rating of 1.5.

10. Requesters are concerned that the proposed facility is not currently in compliance with the terms of the standard permit for CBPs.

In response to complaints from the public, Lonestar was investigated by the Pollution Control Department of the Harris County Public Health & Environmental Services Office, and the TCEQ *Houston* Regional Office. At the time of the investigations, Lonestar closed the concrete batching portion of their facility. The CBP remains closed while the Applicant awaits the commission's decision to grant or deny registration under the standard permit.

11. Requesters are concerned about the proposed facility's proximity to neighborhood residences.

The TCEQ's jurisdiction is established by the TCAA and is limited to the issues set forth in that statute. Accordingly, the TCEQ does not have jurisdiction to consider zoning when determining whether to approve a permit application.

12. Requesters state that the Applicant has employed undocumented workers in the past.

The TCEQ's jurisdiction is established by the Legislature and limited to the issues set forth in statute. Accordingly, the TCEQ does not have jurisdiction to consider employment of undocumented workers when determining whether to approve or deny a permit registration.

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In conclusion, some of the above issues were not raised during the comment period. However, some of the issues are addressed in the ED's RTC, and some of the issues are very similar to those addressed in the ED's RTC. Other issues not addressed in the ED's RTC are issues that reach beyond the jurisdiction of the TCEQ. Therefore, the ED respectfully recommends the commission deny all Requests for Reconsideration.

Respectfully submitted,

Texas Commission on Environmental Quality

Glen Shankle
Executive Director

Stephanie Bergeron Perdue, Deputy Director
Office of Legal Services

Robert Martinez, Division Director
Environmental Law Division

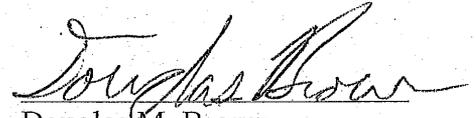

Douglas M. Brown, Staff Attorney
Environmental Law Division

State Bar No. 24048366

Representing the Executive Director of the Texas
Commission on Environmental Quality

CERTIFICATE OF SERVICE

On the 19th day of March, 2007, a true and correct copy of the foregoing instrument was served on all persons on the Office of the Chief Clerk's mailing list by the undersigned via deposit into the U.S. Mail, inter-agency mail, facsimile, or hand delivery.


Douglas M. Brown

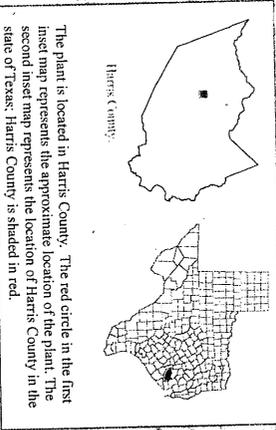
Attachment A – The map referenced in the Executive Director’s
Response to Hearing Requests

Requestors Proximity to Lonestar Prestress MFG, Inc.

Map requested by TCEQ Office of Legal Services
for Commissioners Agenda April 11, 2007

Distance from
Plant (in feet)

Name	Distance from Plant (in feet)
0 Kenneth Bangle	1175
1 Paul & Anissa Blanchard	1133
2 Maurice & Ann Bandras	1427
3 Hans Boone	1343
4 Zan Bradstreet	857
5 Octavio Cabrera	1479
6 Mercedes Camo	1391
8 Henry & Dolores Castillo	1398
9 Johnnie & Gladys Chaloupka	1141
10 Gilbert Charros	1531
11 James & Doris Cresser	1594
12 Donald L. & Judy A. Christian	352
13 Zuzanna Cohen	171
15 Jay Conlin	1427
16 Mary Craft	1531
17 Dennis Culberson	1202
18 William & Shannon Deas	1491
19 Pedro Deleon	1526
20 Jim & Grinda Deveau	886
21 Rajinder Dhillon	1133
22 Steve Dinn	857
23 Robert Elliott	941
24 Dennis & Barbara Farley	430
25 Glen J. Farnette	1521
27 Pablo & Flor Garcia	1479
28 M Elena Gomez	1485
29 Rod Jackson	1022
30 Angel Juarez	1109
31 Melba La Mountain	1199
32 Alyssa, Mireca, & Patricia Lengyel	1862
33 Wray Lilly	101
34 Johnny T. Loft	1088
35 Billie Jo, Gerald, & Michael Malone	1065
37 Tommy & Jeanette Malone	1159
38 Ken Matthews	946
39 J Meyer	743
40 Angelina Merdus	1509
42 Kenneth & Alma Monguaita	943
44 Mary A. Mural	1479
45 Graciela Mesquida	1379
46 Leticia Mesquida	1109
46 James Murray	1057
47 Gertrude Nowak	1471
48 Sera Nunez	1421
49 Gail Prasek	1385
50 Juan & Maria L. Razo	1498
51 Carlie & Maria Reyes	757
52 Elise Riva	1470
53 Christian Ruvalecaba	1522
54 Tim Sandubaz	1175
55 Kahl Sanchez	352
56 Tammy Shelton, Jr	1912
57 Rhonda Singh	430
58 Donald Stanley	1040
59 Ted & Karen Tank	1126
60 Phyllis Tress	733
61 Calvin D. & Peyton W	850
62 Ernest L. Wallingford	814
63 Art E. Weathers	1471
64 Asa Weathers	1547
65 Mark White	1505
66 Rick & Rita J. Ashby	840
67 Sukdev Chisema	1283
68 Robert Ellis	284
69 Glen J. Farnette	886
70 Chris & Kim Murray	1283
71 Melba Jo Murray	973
72 Harvey Prasek	1270
73 Susana Puga	1270
74 Tim Tippon	1270
75 Gail Prasek	1270



The plant is located in Harris County. The red circle in the first inset map represents the approximate location of the plant. The second inset map represents the location of Harris County in the state of Texas. Harris County is shaded in red.

**Protecting Texas by
Reducing and
Preventing Pollution**

TCEQ
Texas Commission on Environmental Quality
GIS Team (Mail Code 197)
P.O. Box 13087
Austin, Texas 78711-3087

February 21, 2006

Projection: Texas Statewide Mapping System (TSM5)
Scale: 1:6,009

- Legend**
- 440 Yard Radius
 - Plant
 - Requestor

Source: The location of the WWTWP site and the property locations were provided by the TCEQ Office of Legal Services (OLS). OLS obtained the site location information from the applicant. The counties are U.S. Census Bureau 1992 TIGER/Line Data (1:100,000). The background of this map is a source photograph from the 2004 U.S. Department of Agriculture Imagery Program. The imagery is one-meter Color-Infrared (CIR). The image classification number is k230_L1.

This map depicts the following:

- (1) The approximate location of Lonestar Prestress MFG, Inc. The plant is located in Harris County. This facility is labeled "Lonestar Prestress MFG, Inc."
- (2) A circle and arrow representing a 440 yard radius from the plant. This is labeled "440 Yards".
- (3) Points depicting the locations of the requestors and numbers which correspond to the addresses in the list.

