TCEQ AIR QUALITY PERMIT NO. 97199
TCEQ DOCKET NUMBER 2014-0526-AIR

APPLICATION BY	§	**BEFORE THE**
	§	
FML SAND, LLC	§	**TEXAS COMMISSION ON**
INDUSTRIAL SAND PLANT	§	
KATEMCY, MASON COUNTY	§	**ENVIRONMENTAL QUALITY**

EXECUTIVE DIRECTOR'S RESPONSE TO HEARING REQUESTS

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 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 (TWC) § 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 the attached mailing list. In addition, a current compliance history report, technical review summary, and a copy of the standard permit for concrete batch plants prepared by the ED's staff have been filed separately 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.

I. Application Request and Background Information

FML Sand, LLC (FML or Applicant) has applied to the TCEQ for a New Source Review Authorization under Texas Clean Air Act (TCAA), § 382.0518. This permit will authorize the Applicant to construct an industrial sand processing plant consisting of material loading operations, screens, conveyance systems, a dryer, stockpiles, and truck loading operations. The facilities will be authorized to operate 8,760 hours per year, and the throughput of the plant will be limited to a maximum of 500 tons per hour and 3,000,000 tons per year of sand. The plant is proposed to be located at the following driving directions: from Brady, head south on Highway 87 approximately 17.0 miles to RR 1222, take RR 1222 east approximately 3/4 of a mile. The plant is on the north side of RR 1222, Katemcy, Mason County. Contaminants authorized under this permit include organic compounds (VOCs), nitrogen oxides (NO_x), sulfur dioxide (SO_2), carbon monoxide (CO), and particulate matter (PM), including PM with diameters of 10 micrometers or less (PM_{10}) and 2.5 micrometers or less ($PM_{2.5}$). The TCEQ Enforcement Database was searched and no enforcement activities were found that are inconsistent with the compliance history.

The permit application was received on July 19, 2011, and declared administratively complete on August 1, 2011. The Notice of Receipt and Intent to Obtain an Air Quality Permit (NORI or first public notice) for this permit application was published on August 17, 2011, in the *Mason*

[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.

County News. The Notice of Application and Preliminary Decision for an Air Quality Permit (NAPD or second public notice) was published on March 13, 2013, in the *Mason County News*.

The ED's RTC was mailed on March 11, 2014 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 RTC 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 from Gail Baker, Robert J. and Joyce Beaulieu, James Bode, David Frederick (as counsel for the Mason County Rural Preservation Society), Karol and Wilford Gary Evans, Gerald Gamel, Merlina and Steven Gamel, Cheryl A. Glass, James R. and Lisa K. Heath, Lydia G. Nesloney, Tifnee G. Nesloney, Trey Nesloney, Jeanne M. Nixon, Connie Stockbridge, Janis Kay and Weldon B. Strickland, Wesley B. Strickland, Danny Keith Thomason, Sharon Lynn Thomason, Brenda L. Wiggs, Walter Guy Wiggs, and David A. Young (as counsel for Del Roy Reichenau and Walt Reichenau).

The following individuals stated that they are a part of the informally organized group Katemcy-Camp Air Residents' Association (Association): Karol and Wilford Gary Evans, Gerald L. Gamel, Merlina and Steven Gamel, Lydia G. Nesloney, Gayle Smart, and Connie Stockbridge. Karol and Wilford Gary Evans, Gerald Gamel, Merlina and Steven Gamel, Lydia G. Nesloney, and Connie Stockbridge requested a contested case hearing individually and on behalf of the group.

David Frederick, counsel for the Mason County Rural Preservation Society (Society), requested a contested case hearing on behalf of its members. The members are identified as Gail Baker, James Bode, Gerald Gamel, Steven and Merlina Gamel, James R. and Lisa K. Heath, Lydia Nesloney, Tifnee Nesloney, Trey Nesloney, Jeanne Nixon, Connie Stockbridge, Weldon Strickland, Wesley Strickland, Danny and Sharon Thomason, Brenda Wiggs, and Walter Guy Wiggs.

The hearing requests from Karol and Wilford Gary Evans on September 13, 2011, were withdrawn on October 31, 2011.

The hearing requests submitted by David A. Young on behalf of Del Roy and Walt Reichenau on September 12, 2011, were withdrawn on June 27, 2012.

II. Applicable Law for Hearing Requests

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

> (d) A hearing request must substantially comply with the following:

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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.

> (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 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 that 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 TWC § 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).

In determining whether a person is affected, 30 TAC § 55.203(c) requires all factors be considered, including, but not limited to, the following:

> (1) whether the interest claimed is one protected by the law under which the application will be considered;
> (2) distance restrictions or other limitations imposed by law on the affected interest;
> (3) whether a reasonable relationship exists between the interest claimed and the activity regulated;
> (4) likely impact of the regulated activity on the health and safety of the person, and on the use of property of the person;
> (5) likely impact of the regulated activity on use of the impacted natural resource by the person; and
> (6) for governmental entities, their statutory authority over or interest in the issues relevant to the application.

In addition to the requirements noted above regarding affected person status, in accordance with 30 TAC § 55.205(a), a group or association may request a contested case hearing only if the group or association meets all of the following requirements:

> (1) one or more members of the group or association would otherwise have standing to request a hearing in their own right;
> (2) the interests the group or association seeks to protect are germane to the organization's purpose; and
> (3) neither the claim asserted nor the relief requested requires the participation of the individual members in the case.[3]

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 request 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 § 50.115(c) is as follows:

> (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?

The following persons submitted timely hearing requests that were not withdrawn: Gail Baker, Robert J. and Joyce Beaulieu, James Bode, Gerald L. (Gerry) Gamel, Merlina and Steven Gamel, Cheryl A. Glass, James R. and Lisa K. Heath, Lydia G. Nesloney, Tifnee G. Nesloney, Trey Nesloney, Jeanne M. Nixon, Connie Stockbridge, Janis Kay and Weldon B. Strickland, Wesley B. Strickland, Danny Keith Thomason, Sharon Lynn Thomason, Brenda L. Wiggs, Walter Guy Wiggs. A timely hearing request was also submitted by the organization the Mason County Rural Preservation Society.

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[3] 30 TAC § 55.205(a)
[4] Texas Health & Safety Code § 382.0518
[5] Texas Health & Safety Code § 382.0513
[6] Texas Health & Safety Code § 382.085
[7] Texas Health & Safety Code § 382.0513

The following individuals stated that they are a part of the informally organized group Katemcy-Camp Air Residents' Association: Karol and Wilford Gary Evans, Gerald L. Gamel, Merlina and Steven Gamel, Lydia G. Nesloney, Gayle Smart, and Connie Stockbridge. Karol and Wilford Gary Evans, Gerald Gamel, Merlina and Steven Gamel, Lydia G. Nesloney, and Connie Stockbridge requested a contested case hearing individually and on behalf of the group.

1. Gail Baker

   Gail Baker submitted a request for a contested case hearing dated September 16, 2011. Her request was made in the last paragraph of a comment she timely submitted to the agency during the relevant public comment period. She provided her name and residential address in her request. Based on the address provided by Ms. Baker and the site plan submitted by the Applicant, the ED's staff determined that her residence is approximately 4.5 miles from the applicant's proposed facility. The location of the emissions point at the site was determined using its longitude and latitude, provided by the applicant. The emissions point, not the property boundary of the site, was used to determine the distance from the facility to the residence.

   Ms. Baker stated she will be adversely affected by the application in the following ways:

   - The emissions from the proposed facility would be harmful to the health of Ms. Baker's children, husband, and elderly in-laws by aggravating their allergies, asthma, sinusitis, and headaches.
   - The emissions from the facility would contain contaminants, including silica, which would be harmful to her family.
   - The dust from the proposed facility would harm and contaminate the vegetation and animal life on her property.
   - The timing of the public notice for the proposed facility did not allow for adequate time to research the health impacts of the proposed facility.

   In addition, Ms. Baker was identified as a member of the organization Mason County Rural Preservation Society in a comment and hearing request filed on behalf of that organization. The analysis for the organization's request follows in subsection C below.

   The ED finds that, of the issues raised in her request, some may be considered personal justiciable interests that are also relevant and material disputed issues of fact. 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 attached to the RTC states that requesters should, to the extent possible, specify any of the ED's responses in the RTC that the requesters dispute and the factual basis of the dispute, and list any disputed issues of law or policy.[8] Ms. Baker did not submit a response to the ED's RTC.

   Based on the foregoing, the ED finds that Gail Baker substantially complied with all of the requirements to request a contested case hearing required by 30 TAC § 55.201(d). Because the requester provided information that is in compliance with 30 TAC § 55.201(d), the ED can determine whether it is likely that the requester will be impacted differently than any

[8] *See* 30 TAC § 55.201(d)(4).

other members of the general public or if there is a likely impact of the regulated activity on these persons' interests, which will be discussed in detail in subsection B below.

2. Robert J. Beaulieu

Robert J. Beaulieu submitted requests for a contested case hearing on behalf of himself and his wife on September 16, 2011. His requests were made in comments he timely submitted to the agency during the relevant comment period. He provided his name, telephone number, and mailing address in the request. Mr. Beaulieu did not provide a residential address, but stated that he lives approximately 2 miles SSE of the proposed facility.

Although Mr. Beaulieu did not provide a residential address, the ED's staff identified a property record with Mr. Beaulieu as the listed owner on the Mason County Appraisal District website. Based on the address from the property records, the site plan submitted by the applicant, and satellite images, the ED's staff determined that Mr. Beaulieu's residence is approximately 2.75 miles from the proposed facility. The location of the emissions point at the site was determined using the longitude and latitude provided by the applicant. The emissions point, not the property boundary of the site, was used to determine the distance from the facility to the residence.

Mr. Beaulieu stated he and his wife will be adversely affected by the application in the following ways:

- The particulate matter (PM2.5) emitted from the proposed facility could be harmful to the health of Mr. Beaulieu's wife by aggravating her allergies.
- The particulate matter (PM2.5) emitted from the proposed facility would cause silicosis.
- The permit application may have errors and inaccuracies in it.

The ED finds that, of the issues raised in his request, some may be considered personal justiciable interests that are also relevant and material disputed issues of fact. 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 attached to the RTC states that requesters should, to the extent possible, specify any of the ED's responses in the RTC that the requesters dispute and the factual basis of the dispute, and list any disputed issues of law or policy.[9] Mr. Beaulieu did not submit a response to the ED's RTC.

Based on the foregoing, the ED finds that Mr. Beaulieu did not substantially comply with all of the requirements to request a contested case hearing required by 30 TAC § 55.201(d) because he failed to identify an address. However, if the property record identified by the ED's staff is the residence of Mr. Beaulieu, his residence is approximately 2.75 miles from the facility. He also identified a personal justiciable interest. Therefore, the ED can determine whether it is likely that the requester will be impacted differently than any other member of the general public or if the regulated activity will likely impact her interest, which will be discussed in detail in subsection B below.

3. James Bode

[9] *See* 30 TAC § 55.201(d)(4).

James Bode submitted a request for a contested case hearing on September 14, 2011. His request was made in the first sentence of comments he timely submitted to the agency during the relevant comment period. He provided an address in San Angelo, Texas and a phone number in his request. His request did not provide a local residential address, although he stated that he and his wife have a farm with a house in the Katemcy area. A search of the Mason County Appraisal District website by the ED's staff failed to identify a property record with Mr. Bode, or anyone with the last name Bode, as the listed owner. Therefore, no local address could be found for him.

Mr. Bode stated he and his wife will be adversely affected by the application in the following ways:

- The emissions from the proposed facility would be harmful to the health of Mr. Bode's wife who is a cancer survivor with ongoing health problems.
- The emissions from the proposed facility would harm and contaminate the vegetation and animal life on his wife's property and on other land in Mason County.
- The topography of the region makes it more susceptible to harm from the facility's emissions.
- The facility could contaminate water sources in the area.
- The facility could cause or contribute to road damage in the area.
- The facility's water usage could deplete water sources in the area.
- The facility could cause or contribute to noise nuisance conditions and road damage.
- The emissions from the facility would contain contaminants, including silica, which would be harmful to health.
- Since silica matter is too small to be properly monitored, the silica would harm human health before it could be detected.

Also, Mr. Bode was identified as a member of the organization Mason County Rural Preservation Society in a comment and hearing request filed on behalf of that organization. The analysis for the organization's request follows in subsection C below.

The ED finds that, of the issues raised in his request, some may be considered personal justiciable interests that are also relevant and material disputed issues of fact. 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 attached to the RTC states that requesters should, to the extent possible, specify any of the ED's responses in the RTC that the requesters dispute and the factual basis of the dispute, and list any disputed issues of law or policy.[10] Mr. Bode did not submit a response to the ED's RTC.

Based on the foregoing, the ED finds that James Bode substantially complied with all of the requirements to request a contested case hearing required by 30 TAC § 55.201(d). Because the requester provided information that is in compliance with 30 TAC § 55.201(d), the ED can determine whether it is likely that the requester will be impacted differently than any other members of the general public or if there is a likely impact of the regulated activity on these persons' interests, which will be discussed in detail in subsection B below.

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[10] *See* 30 TAC § 55.201(d)(4).

4. Gerald L. Gamel

Gerald L. Gamel submitted a request for a contested case hearing dated September 15, 2011. His request was made in the second to last paragraph in a comment he timely submitted to the agency during the relevant comment period. He provided his name, telephone number, and residential address in his request. Based on the address provided by Mr. Gamel, the site plan submitted by the Applicant, and satellite images, the ED's staff determined that his residence is approximately 1.5 miles from the applicant's proposed facility. The location of the emissions point at the site was determined using its longitude and latitude, provided by the applicant. The emissions point, not the property boundary of the site, was used to determine the distance from the facility to the residence.

Mr. Gamel stated will be adversely affected by the application in the following ways:

- The facility could cause or contribute to the following nuisance conditions: dust, silica dust, and traffic.
- The proposed facility is in close proximity to his residence.
- The proposed facility's emissions could adversely affect his health since he already suffers from sinusitis.
- The silica emissions from the facility could adversely affect human health and welfare.
- The facility could adversely impact animal life and vegetation in the area.
- The proposed facility will be located in area with other similar facilities, causing a cumulative emissions effect.
- The chemicals that the facility will use have not been sufficiently identified.
- The TCEQ does not have the resources to monitor and enforce against the proposed facility.
- The timing of the public notice for the proposed facility did not allow for adequate time to research the health impacts of the proposed facility.

In addition, Mr. Gamel was identified as a member of the organization Mason County Rural Preservation Society in a comment and hearing request filed on behalf of that organization. He also identified himself as a member of the informally organized group Katemcy-Camp Air Residents' Association and requested a contested case hearing individually and on behalf of the group in the second to last paragraph of his comment. The analysis for the organizations' requests follows in subsections C and D below.

The ED finds that, of the issues raised in Mr. Gamel's request, some may be considered personal justiciable interests that are also relevant and material disputed issues of fact. 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 attached to the RTC states that requesters should, to the extent possible, specify any of the ED's responses in the RTC that the requesters dispute and the factual basis of the dispute, and list any disputed issues of law or policy.[11] Mr. Gamel did not submit a response to the ED's RTC.

[11] *See* 30 TAC § 55.201(d)(4).

Based on the foregoing, the ED finds that Gerald Gamel substantially complied with all of the requirements to request a contested case hearing required by 30 TAC § 55.201(d). Because the requester provided information that is in compliance with 30 TAC § 55.201(d), the ED can determine whether it is likely that the requester will be impacted differently than any other members of the general public or if there is a likely impact of the regulated activity on these persons' interests, which will be discussed in detail in subsection B below.

5. Steven and Merlina Gamel

Steven and Merlina Gamel submitted a request for a contested case hearing dated September 13, 2011. Their request was made in the last paragraph of a comment they timely submitted to the agency during the relevant comment period. They provided their names, telephone number, and residential address in the request. Based on the address provided by the Gamels, satellite images, and the site plan submitted by the Applicant, the ED's staff determined that their residence is approximately 1.5 miles from the applicant's proposed facility. The location of the emissions point at the site was determined using its longitude and latitude, provided by the applicant. The emissions point, not the property boundary of the site, was used to determine the distance from the facility to the residence.

The Gamels stated they will be adversely affected by the application in the following ways:

- The facility could cause or contribute to the following nuisance conditions: dust, silica dust, and traffic.
- The proposed facility is in close proximity to their residence.
- Silica emissions from the proposed facility could adversely affect human health and welfare.
- The facility could adversely impact animal life and vegetation in the area.
- The proposed facility will be located in area with other similar facilities, causing a cumulative emissions effect.
- The chemicals that the facility will use have not been sufficiently identified.
- The TCEQ does not have the resources to monitor and enforce against the proposed facility.

In addition, the Gamels were identified as members of the organization Mason County Rural Preservation Society in a comment and hearing request filed on behalf of that organization. They also identified themselves as members of the informally organized group Katemcy-Camp Air Residents' Association and requested contested case hearings in the last paragraph of their comment individually and on behalf of the group. The analysis for the organizations' requests follows in subsections C and D below.

The ED finds that, of the issues raised in Steven and Merlina Gamel's request, some may be considered personal justiciable interests that are also relevant and material disputed issues of fact. 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 attached to the RTC states that requesters should, to the extent possible, specify any of the ED's responses in the RTC that

the requesters dispute and the factual basis of the dispute, and list any disputed issues of law or policy.[12] The Gamels did not submit a response to the ED's RTC.

Based on the foregoing, the ED finds that the Gamels substantially complied with all of the requirements to request a contested case hearing required by 30 TAC § 55.201(d). Because the requesters provided information that is in compliance with 30 TAC § 55.201(d), the ED can determine whether it is likely that the requesters will be impacted differently than any other members of the general public or if there is a likely impact of the regulated activity on these persons' interests, which will be discussed in detail in subsection B below.

6. Cheryl Glass

Cheryl Glass submitted a request for a contested case hearing dated September 11, 2011. Her request was made in the first sentence of a comment she timely submitted to the agency during the relevant public comment period. She provided her name, mailing address, and her phone number in her request. Her request did not provide a local residential address, but she stated that she lives 10 miles southwest of the site.

Although Ms. Glass did not provide a residential address, the ED's staff identified a property record with Ms. Glass as the listed owner on the Mason County Appraisal District website. Based on the address from the property records, the site plan submitted by the applicant, and satellite images, the ED's staff determined that Ms. Glass' residence is approximately 10 miles from the proposed facility. The location of the emissions point at the site was determined using the longitude and latitude provided by the applicant. The emissions point, not the property boundary of the site, was used to determine the distance from the facility to the residence.

Ms. Glass stated she will be adversely affected by the application in the following ways:

- The emissions from the proposed facility would be especially harmful to her health since she has a neurological disease.
- The emissions from the facility would contain contaminants, including silica, which would be harmful to her health.
- The proposed facility will be located in area with other similar facilities, causing a cumulative emissions effect.
- The facility could adversely impact animal life and vegetation in the area.
- The increase in particulate matter in the area will adversely affect her personal property.

The ED finds that, of the issues raised in her request, some may be considered personal justiciable interests that are also relevant and material disputed issues of fact. 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 attached to the RTC states that requesters should, to the extent possible, specify any of the ED's responses in the RTC that the requesters dispute and the factual basis of the dispute, and list any disputed issues of law or policy.[13] Ms. Glass did not submit a response to the ED's RTC.

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[12] *See* 30 TAC § 55.201(d)(4).
[13] *See* 30 TAC § 55.201(d)(4).

Based on the foregoing, the ED finds that Ms. Glass did not substantially comply with all of the requirements to request a contested case hearing required by 30 TAC § 55.201(d) because she failed to identify an address. However, if the property record identified by the ED's staff is the residence of Ms. Glass, her residence is approximately 10 miles from the facility. She also identified a personal justiciable interest. Therefore, the ED can determine whether it is likely that the requester will be impacted differently than any other member of the general public or if the regulated activity will likely impact her interest, which will be discussed in detail in subsection B below.

7. James R. and Lisa K. Heath
James R. and Lisa K. Heath submitted a request for a contested case hearing dated September 12, 2011. Their request was made in a comment they timely submitted to the agency during the relevant comment period. They provided their names, telephone number, and residential address in the request. Based on the residential address and satellite images, the Heaths' residence is approximately 1.5 miles from the applicant's proposed facility. The location of the facility was determined using the latitude and longitude provided by the applicant as the location of the emission point. The property lines of the site were not used to determine the distance from the facility to the residence.

The Heaths stated they will be adversely affected by the application in the following ways:

- The proposed facility is in close proximity to their residence and could affect their health and that of their daughter who has Reactive Airway Disease.
- The facility could cause or contribute to the following nuisance conditions: dust, silica dust, and traffic.
- The silica emissions from the facility could adversely affect human health and welfare.
- The facility could adversely impact property, human health, animal life, and vegetation in the area.
- The proposed facility will be located in area with other similar facilities, causing a cumulative emissions effect.
- The emissions from the proposed facility would harm and contaminate the vegetation and animal life their property and on other land in Mason County because the topography of the region makes it more susceptible to harm from these types of emissions.
- The chemicals and processes that the facility will use have not been sufficiently described in the draft permit.
- The draft permit does not require the facility to use Best Available Control Technology.
- The draft permit fails to identify all sources.
- The draft permit does not contain adequate modeling.
- The TCEQ does not have the resources to monitor and enforce against the proposed facility.
- The timing of the public notice for the proposed facility did not allow for adequate time to research the health impacts of the proposed facility.
- The facility would contribute to a violation of the NAAQS.
- The facility's permit would contravene the intent of the TCAA.

In addition, the Heaths were identified as members of the organization Mason County Rural Preservation Society in a comment and hearing request filed on behalf of that organization. They also identify themselves as members of the informally organized group Katemcy-Camp Air Residents' Association. The analysis for the organizations' requests follows in subsections C and D below.

The ED finds that, of the issues raised in the Heaths' request, some may be considered personal justiciable interests that are also relevant and material disputed issues of fact. 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 attached to the RTC states that requesters should, to the extent possible, specify any of the ED's responses in the RTC that the requesters dispute and the factual basis of the dispute, and list any disputed issues of law or policy.[14] The Heaths did not submit a response to the ED's RTC.

Based on the foregoing, the ED finds that the Heaths substantially complied with all of the requirements to request a contested case hearing required by 30 TAC § 55.201(d). Because the requesters provided information that is in compliance with 30 TAC § 55.201(d), the ED can determine whether it is likely that the requesters will be impacted differently than any other members of the general public or if there is a likely impact of the regulated activity on these persons' interests, which will be discussed in detail in subsection B below.

8. <u>Katemcy-Camp Air Residents' Association</u>
The following people identified themselves as members of the informal organization Katemcy-Camp Air Residents' Association: Gerald Gamel, Merlina and Steven Gamel, Lydia G. Nesloney, Gayle Smart, and Connie Stockbridge. Karol and Wilford Gary Evans withdrew their hearing requests. Gerald Gamel, Merlina and Steven Gamel, Lydia G. Nesloney, and Connie Stockbridge requested a contested case hearing individually and on behalf of the group. However, no person was identified to be responsible for receiving all official communications and documents for the group, as required by 30 TAC § 55.201(d)(1).

Analyses of whether each of the members of the Katemcy-Camp Air Residents' Association (Association) who requested a contested case hearing on behalf of the organizations are above. The ED finds that, of the issues raised in the requests of the members of the Katemcy-Camp Air Residents' Association, some may be considered personal justiciable interests that are also relevant and material disputed issues of fact. 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 attached to the RTC states that requesters should, to the extent possible, specify any of the ED's responses in the RTC that the requesters dispute and the factual basis of the dispute, and list any disputed issues of law or policy.[15] The Association did not file a response to the ED's RTC.

Based on the foregoing, the ED finds that the Association substantially complied with all of the requirements to request a contested case hearing required by 30 TAC § 55.205. Because the requesters provided information that is in compliance with 30 TAC § 55.205, the ED can determine whether it is likely that the requesters will be impacted differently than any other

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[14] *See* 30 TAC § 55.201(d)(4).
[15] *See* 30 TAC § 55.201(d)(4).

members of the general public or if there is a likely impact of the regulated activity on these persons' interests, which will be discussed in detail in subsection B below. The analysis for the Association's requests follows in subsections D below.

9. Mason County Rural Preservation Society
David Frederick, counsel for the Mason County Rural Preservation Society, submitted a request for a contested case hearing on behalf of its members on April 12, 2013. The request for the contested case hearing is in the first sentence of his comment. The members of the society are identified as Gail Baker, James Bode, Gerald Gamel, Steven and Merlina Gamel, James R. and Lisa K. Heath, Lydia Nesloney, Tifnee Nesloney, Trey Nesloney, Jeanne Nixon, Connie Stockbridge, Weldon Strickland, Wesley Strickland, Danny and Sharon Thomason, Brenda Wiggs, and Walter Guy Wiggs. The request was made in a comment Mr. Frederick timely submitted to the agency during the relevant comment period. The request provides the names and addresses of Jim and Lisa Heath and Danny Keith and Sharon Thomason as members of the Society who will be adversely affected in ways not common to the general public. The analysis for the organization's request follows in subsection C below.

Mr. Frederick stated that the members of the Society will be adversely affected by the application in the following ways:

- The proximity of the proposed facility to their residences will cause them to be adversely affected in a way not common to the general public.
- The facility could cause or contribute to nuisance and air pollution conditions.
- The silica and particulate emissions from the facility could adversely affect human health and welfare and plant and animal life.
- The proposed facility will be located in area with other similar facilities, causing a cumulative emissions effect.
- The emissions from the proposed facility would harm and contaminate the vegetation and animal life on their property and on other land in Mason County, especially since the topography of the region makes it more susceptible to harm from these types of emissions.
- The chemicals and processes that the facility will use have not been sufficiently described in the draft permit.
- The draft permit does not require the facility to use Best Available Control Technology.
- The draft permit fails to identify all sources.
- The draft permit does not contain adequate modeling.
- The controls and control equipment for the proposed facility may not be capable of meeting the standards in the draft permit.
- The health effects reviews may not have been conducted properly.
- The TCEQ does not have the resources to monitor and enforce against the proposed facility.

The ED finds that, of the issues raised in the Society's request, some may be considered personal justiciable interests that are also relevant and material disputed issues of fact. 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 attached to the RTC states that requesters should, to the extent possible, specify any of the ED's responses in the RTC that the

requesters dispute and the factual basis of the dispute, and list any disputed issues of law or policy.[16] The Society did submit a response to the ED's RTC, but it did not raise any new issues or disputes.

Based on the foregoing, the ED finds that the Society substantially complied with all of the requirements to request a contested case hearing required by 30 TAC § 55.205. Because the requesters provided information that is in compliance with 30 TAC § 55.205, the ED can determine whether it is likely that the requesters will be impacted differently than any other members of the general public or if there is a likely impact of the regulated activity on these persons' interests, which will be discussed in detail in subsection C below.

10. Lydia G. Nesloney

Lydia G. Nesloney submitted a request for a contested case hearing dated September 15, 2011. Her request was made at the end of a comment she timely submitted to the agency during the relevant public comment period. She provided her name, phone number, and residential address in her request. Based on the address provided by Ms. Nesloney and the site plan submitted by the Applicant, the ED's staff determined that her residence is approximately 1.25 miles from the applicant's proposed facility. The location of the emissions point at the site was determined using its longitude and latitude, provided by the applicant. The emissions point, not the property boundary of the site, was used to determine the distance from the facility to the residence.

Ms. Nesloney stated she will be adversely affected by the application in the following ways:

- The proposed facility is in close proximity to her residence.
- The facility's emissions could adversely affect her health and the health of her family, pets, and livestock.
- The facility would destroy a fragile environmental system by causing air pollution.
- The draft permit does not contain adequate modeling.
- The TCEQ does not have the resources to monitor and enforce against the proposed facility.
- The draft permit does not require the facility to monitor all sizes of particulate matter.
- The TCEQ might not have the technology and equipment to monitor crystalline silica.
- The research on silicosis used for the draft permit is not current.
- The facility could cause or contribute to the following nuisance conditions: dust, silica dust, and traffic.
- The silica emissions from the facility could adversely affect human health and welfare.
- The facility could adversely impact property, human health, animal life, and vegetation in the area.
- The proposed facility will be located in area with other similar facilities, causing a cumulative emissions effect.
- The emissions from the proposed facility would harm and contaminate the vegetation and animal life on her property and on other land in Mason County because the topography of the region makes it more susceptible to harm from these types of emissions.

[16] *See* 30 TAC § 55.201(d)(4).

In addition, Ms. Nesloney was identified as a member of the organization Mason County Rural Preservation Society in a comment and hearing request filed on behalf of that organization. She also identified herself as a member of the informally organized group Katemcy-Camp Air Residents' Association and requested a contested case hearing in the last paragraph of her comment individually and on behalf of the group. The analysis for the organizations' requests follows in subsections C and D below.

The ED finds that, of the issues raised in her request, some may be considered personal justiciable interests that are also relevant and material disputed issues of fact. 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 attached to the RTC states that requesters should, to the extent possible, specify any of the ED's responses in the RTC that the requesters dispute and the factual basis of the dispute, and list any disputed issues of law or policy.[17] Ms. Nesloney submitted a response to the ED's RTC on April 10, 2014. The response reiterated her request for a contested case hearing, but did not request a reconsideration of the ED's RTC.

Based on the foregoing, the ED finds that Lydia Nesloney substantially complied with all of the requirements to request a contested case hearing required by 30 TAC § 55.201(d). Because the requester provided information that is in compliance with 30 TAC § 55.201(d), the ED can determine whether it is likely that the requester will be impacted differently than any other members of the general public or if there is a likely impact of the regulated activity on these persons' interests, which will be discussed in detail in subsection B below.

11. <u>Tifnee Nesloney</u>
Tifnee Nesloney submitted a request for a contested case hearing dated September 16, 2011. Her request was made at the end of a comment she timely submitted to the agency during the relevant public comment period. She provided her name, phone number, and residential address in her request. Although the address Ms. Nesloney provided is in Austin, Texas, she stated she is a landowner in the Katemcy Camp Air community.

Ms. Nesloney stated she will be adversely affected by the application in the following ways:

- The facility's emissions would be a threat to her health, especially since she suffers from bronchitis, and the health of her family, friends, and livestock.
- The facility would have an adverse effect on local agriculture from which her family derives most of its income.
- The silica emissions from the facility could adversely affect plant and animal growth.

In addition, Ms. Nesloney was identified as a member of the organization Mason County Rural Preservation Society in a comment and hearing request filed on behalf of that organization. The analysis for the organization's requests follows in subsection C below.

The ED finds that, of the issues raised in her request, some may be considered personal justiciable interests that are also relevant and material disputed issues of fact. The ED

[17] *See* 30 TAC § 55.201(d)(4).

addressed all public comments in this matter by providing responses in the RTC. The cover letter from the Office of the Chief Clerk attached to the RTC states that requesters should, to the extent possible, specify any of the ED's responses in the RTC that the requesters dispute and the factual basis of the dispute, and list any disputed issues of law or policy.[18] Ms. Nesloney did not submit a response to the ED's RTC.

Based on the foregoing, the ED finds that Tifnee Nesloney substantially complied with all of the requirements to request a contested case hearing required by 30 TAC § 55.201(d). Because the requester provided information that is in compliance with 30 TAC § 55.201(d), the ED can determine whether it is likely that the requester will be impacted differently than any other members of the general public or if there is a likely impact of the regulated activity on these persons' interests, which will be discussed in detail in subsection B below.

12. Trey Nesloney

Trey Nesloney submitted requests for a contested case hearing dated September 16, 2011 and April 10, 2014. The requests were made in comment letters he timely submitted to the agency during the relevant public comment period. He provided his name, phone number, and residential address in his request. Although the address Mr. Nesloney provided is in Austin, Texas, he stated he is a landowner of property that is less than a quarter mile away from the proposed facility. However, Mr. Nesloney failed to provide an address for this property.

Mr. Nesloney stated he will be adversely affected by the application in the following ways:

- The facility's emissions would be a threat to his health, especially since he suffers from allergies, and the health of his family, friends, and livestock.
- The facility would have an adverse effect on local agriculture from which his family derives most of its income.
- The proposed facility is in close proximity to his property.
- The silica, particulate emissions, and other contaminants from the facility could adversely affect human health and welfare, and plant and animal life.
- The proposed facility will be located in area with other similar facilities, causing a cumulative emissions effect.
- The topography of the region makes it more susceptible to harm from these types of emissions.
- The draft permit does not contain adequate modeling.
- The draft permit fails to require on-site monitoring.
- The health effects review was inadequate.
- Also, since silica matter is too small to be properly monitored, the silica would harm human health before it could be detected.

In addition, Mr. Nesloney was identified as a member of the organization Mason County Rural Preservation Society in a comment and hearing request filed on behalf of that organization. The analysis for the organization's requests follows in subsection C below.

[18] *See* 30 TAC § 55.201(d)(4).

The ED finds that, of the issues raised in his request, some may be considered personal justiciable interests that are also relevant and material disputed issues of fact. 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 attached to the RTC states that requesters should, to the extent possible, specify any of the ED's responses in the RTC that the requesters dispute and the factual basis of the dispute, and list any disputed issues of law or policy.[19] Mr. Nesloney submitted an additional request for a contested case hearing on April 10, 2014, but it did not request the reconsideration of any issues in the ED's RTC.

Based on the foregoing, the ED finds that Trey Nesloney substantially complied with all of the requirements to request a contested case hearing required by 30 TAC § 55.201(d). Because the requester provided information that is in compliance with 30 TAC § 55.201(d), the ED can determine whether it is likely that the requester will be impacted differently than any other members of the general public or if there is a likely impact of the regulated activity on these persons' interests, which will be discussed in detail in subsection B below.

13. <u>Jeanne Nixon</u>

Jeanne Nixon submitted a request for a contested case hearing dated September 12, 2011. Her request was made in the last sentence of a comment she timely submitted to the agency during the relevant public comment period. She provided her name and mailing address in her request. Her request did not provide a telephone number or a residential address.

Although Ms. Nixon did not provide a residential address, the ED's staff identified a property record with Ms. Nixon as the listed owner on the Mason County Appraisal District website. Based on the address from the property records, the site plan submitted by the applicant, and satellite images, the ED's staff determined that Ms. Nixon's residence is approximately 18 miles from the proposed facility. The location of the emissions point at the site was determined using the longitude and latitude provided by the applicant. The emissions point, not the property boundary of the site, was used to determine the distance from the facility to the residence.

Ms. Nixon stated she will be adversely affected by the application in the following ways:

- The timing of the public notice for the proposed facility did not allow for adequate time to research the health impacts of the proposed facility.
- The facility could adversely impact livestock, crops, and plants in the area.
- The facility could cause an increase in area traffic and wear on the roads.
- The proposed facility could affect human health, especially that of sensitive members of the population.

In addition, Ms. Nixon was identified as a member of the organization Mason County Rural Preservation Society in a comment and hearing request filed on behalf of that organization. The analysis for the organization's requests follows in subsection C below.

The ED finds that, of the issues raised in her request, some may be considered personal justiciable interests that are also relevant and material disputed issues of fact. The ED

[19] *See* 30 TAC § 55.201(d)(4).

addressed all public comments in this matter by providing responses in the RTC. The cover letter from the Office of the Chief Clerk attached to the RTC states that requesters should, to the extent possible, specify any of the ED's responses in the RTC that the requesters dispute and the factual basis of the dispute, and list any disputed issues of law or policy.[20] Ms. Nixon did not submit a response to the ED's RTC.

Based on the foregoing, the ED finds that Ms. Nixon did not substantially comply with all of the requirements to request a contested case hearing required by 30 TAC § 55.201(d) because she failed to identify an address. However, if the property record identified by the ED's staff is the residence of Ms. Nixon, her residence is approximately 18 miles from the facility. She also identified a personal justiciable interest. Therefore, the ED can determine whether it is likely that the requester will be impacted differently than any other member of the general public or if the regulated activity will likely impact her interest, which will be discussed in detail in subsection B below.

14. <u>Connie Stockbridge</u>
Connie Stockbridge submitted a request for a contested case hearing dated September 14, 2011. Her request was made in the second to last paragraph of a comment she timely submitted to the agency during the relevant comment period. She provided her name, telephone number, and mailing address in the request. Ms. Stockbridge did not provide a residential address, but stated that she lives less than one mile north of the proposed facility.

Although Ms. Stockbridge did not provide a residential address, the ED's staff identified a property record with Ms. Stockbridge as the listed owner on the Mason County Appraisal District website. Based on the address from the property records, the site plan submitted by the applicant, and satellite images, the ED's staff determined that Ms. Stockbridge's residence is approximately 1.5 miles from the proposed facility. The location of the emissions point at the site was determined using the longitude and latitude provided by the applicant. The emissions point, not the property boundary of the site, was used to determine the distance from the facility to the residence.

Ms. Stockbridge stated she will be adversely affected by the application in the following ways:

- The facility could cause or contribute to the following nuisance conditions: dust, silica dust, and traffic.
- The proposed facility is in close proximity to her residence.
- The silica emissions from the facility could adversely affect human health and welfare.
- The facility could adversely impact animal life and vegetation in the area.
- The proposed facility will be located in area with other similar facilities, causing a cumulative emissions effect.
- The chemicals that the facility will use have not been sufficiently identified.
- The TCEQ does not have the resources to monitor and enforce against the proposed facility.

[20] *See* 30 TAC § 55.201(d)(4).

- The timing of the public notice for the proposed facility did not allow for adequate time to research the health impacts of the proposed facility.

In addition, Ms. Stockbridge was identified as a member of the organization Mason County Rural Preservation Society in a comment and hearing request filed on behalf of that organization. She also identified herself as a member of the informally organized group Katemcy-Camp Air Residents' Association and requested a contested case hearing in the last paragraph of her comment individually and on behalf of the group. The analysis for the organizations' requests follows in subsections C and D below.

The ED finds that, of the issues raised in her request, some may be considered personal justiciable interests that are also relevant and material disputed issues of fact. 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 attached to the RTC states that requesters should, to the extent possible, specify any of the ED's responses in the RTC that the requesters dispute and the factual basis of the dispute, and list any disputed issues of law or policy.[21] Ms. Stockbridge did not submit a response to the ED's RTC.

Based on the foregoing, the ED finds that Ms. Stockbridge did not substantially comply with all of the requirements to request a contested case hearing required by 30 TAC § 55.201(d) because she failed to identify an address. However, if the property record identified by the ED's staff is the residence of Ms. Stockbridge, her residence is approximately 1.5 miles from the facility. She also identified a personal justiciable interest. Therefore, the ED can determine whether it is likely that the requester will be impacted differently than any other member of the general public or if the regulated activity will likely impact her interest, which will be discussed in detail in subsection B below.

15. <u>Weldon B. and Janis Kay Strickland</u>
Weldon B. and Janis Kay Strickland submitted requests for a contested case hearing dated September 6, 2011, February 27, 2013, and April 6, 2014. Their requests were made in the last sentence of comments they timely submitted to the agency during the relevant comment periods. They provided their names, telephone number, and residential address in the requests. Based on this residential address, a site plan provided by the applicant, and satellite images, as well as a statement in their comments, the Stricklands' residence is approximately 11.5 miles from the applicant's proposed facility. The location of the facility was determined using the latitude and longitude provided by the applicant as the location of the emission point. The property lines of the site were not used to determine the distance from the facility to the residence.

The Stricklands stated they will be adversely affected by the application in the following ways:

- The proposed facility is in close proximity to the residences of members of their family and friends.

[21] *See* 30 TAC § 55.201(d)(4).

- The proposed facility could affect their health, especially that of Mr. Strickland, who has Adult Respiratory Disease Syndrome, and other sensitive members of the population.
- The facility could cause or contribute to air pollution, which would create a nuisance and threaten the safety of nearby persons and property.
- The facility could cause an increase in area traffic.
- The draft permit lacks impact studies.
- The facility could contaminate water sources in the area.
- The facility's water usage could deplete water sources in the area.

In addition, the Stricklands were identified as members of the organization Mason County Rural Preservation Society in a comment and hearing request filed on behalf of that organization. The analysis for the organization's requests follows in subsections C below.

The ED finds that, of the issues raised in the Stricklands' request, some may be considered personal justiciable interests that are also relevant and material disputed issues of fact. 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 attached to the RTC states that requesters should, to the extent possible, specify any of the ED's responses in the RTC that the requesters dispute and the factual basis of the dispute, and list any disputed issues of law or policy.[22] The Stricklands did submit a response to the ED's RTC on April 6, 2014, but it was the same as their previous comments.

Based on the foregoing, the ED finds that the Stricklands substantially complied with all of the requirements to request a contested case hearing required by 30 TAC § 55.201(d). Because the requesters provided information that is in compliance with 30 TAC § 55.201(d), the ED can determine whether it is likely that the requesters will be impacted differently than any other members of the general public or if there is a likely impact of the regulated activity on these persons' interests, which will be discussed in detail in subsection B below.

16. <u>Wesley B. Strickland</u>
Wesley B. Strickland submitted requests for a contested case hearing dated September 6, 2011, February 27, 2013, and April 6, 2014. Their requests were made in the last sentence of comments he timely submitted to the agency during the relevant comment periods. He provided his name, telephone number, and residential address in the requests. Based on this residential address, a site plan provided by the applicant, and satellite images, as well as a statement in their comments, Mr. Strickland's residence is approximately 11.5 miles from the applicant's proposed facility. The location of the facility was determined using the latitude and longitude provided by the applicant as the location of the emission point. The property lines of the site were not used to determine the distance from the facility to the residence.

Mr. Strickland stated he will be adversely affected by the application in the following ways:

[22] *See* 30 TAC § 55.201(d)(4).

- The proposed facility is in close proximity to the residences of members of his family and friends.
- The proposed facility could affect the health of his father, who has Adult Respiratory Disease Syndrome, and other sensitive members of the population.
- The facility could cause or contribute to air pollution, which would create a nuisance and threaten the safety of nearby persons and property.
- The facility could cause an increase in area traffic.
- The draft permit lacks impact studies.
- The facility could contaminate water sources in the area.
- The facility's water usage could deplete water sources in the area.

In addition, Mr. Strickland was identified as a member of the organization Mason County Rural Preservation Society in a comment and hearing request filed on behalf of that organization. The analysis for the organization's requests follows in subsections C below.

The ED finds that, of the issues raised in Mr. Strickland's request, some may be considered personal justiciable interests that are also relevant and material disputed issues of fact. 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 attached to the RTC states that requesters should, to the extent possible, specify any of the ED's responses in the RTC that the requesters dispute and the factual basis of the dispute, and list any disputed issues of law or policy.[23] Mr. Strickland did submit a response to the ED's RTC on April 6, 2014, but it was the same as their previous comments.

Based on the foregoing, the ED finds that Mr. Strickland substantially complied with all of the requirements to request a contested case hearing required by 30 TAC § 55.201(d). Because the requester provided information that is in compliance with 30 TAC § 55.201(d), the ED can determine whether it is likely that the requester will be impacted differently than any other members of the general public or if there is a likely impact of the regulated activity on these persons' interests, which will be discussed in detail in subsection B below.

17. <u>Danny Keith Thomason</u>
Danny Keith Thomason submitted requests for a contested case hearing dated September 10, 2011 and April 15, 2013. His requests were made in the last paragraph of comments he timely submitted to the agency during the relevant comment periods. He provided his name, telephone number, and residential address in the requests. Based on this residential address, a site plan provided by the applicant, and satellite images, as well as a statement in their comments, Mr. Thomason's residence is approximately 1.25 miles from the applicant's proposed facility. The location of the facility was determined using the latitude and longitude provided by the applicant as the location of the emission point. The property lines of the site were not used to determine the distance from the facility to the residence.

Mr. Thomason stated he will be adversely affected by the application in the following ways:

- The proposed facility is in close proximity to his residence.

[23] *See* 30 TAC § 55.201(d)(4).

- The silica emissions from proposed facility could be harmful to human health, especially to sensitive members of the population.
- The draft permit lacks impact studies.
- The facility could contaminate water sources in the area.
- The draft permit does not contain adequate modeling.
- The TCEQ does not have the resources to monitor and enforce against the proposed facility.
- The draft permit does not require the facility to monitor all sizes of particulate matter.
- The TCEQ might not have the technology and equipment to monitor crystalline silica.
- The research on silicosis used for the draft permit is not current.
- The facility could cause or contribute to the following nuisance conditions: dust, silica dust, explosions, and traffic.
- The facility could adversely impact property, human health, animal life, and vegetation in the area.
- The emissions from the proposed facility would harm and contaminate the vegetation and animal life on his property and on other land in Mason County because the topography of the region makes it more susceptible to harm from these types of emissions.
- The draft permit fails to require adequate monitoring.
- No studies on the environmental impact of this type of facility have been done.

In addition, Mr. Thomason was identified as a member of the organization Mason County Rural Preservation Society in a comment and hearing request filed on behalf of that organization. The analysis for the organization's requests follows in subsections C below.

The ED finds that, of the issues raised in Mr. Thomason's request, some may be considered personal justiciable interests that are also relevant and material disputed issues of fact. 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 attached to the RTC states that requesters should, to the extent possible, specify any of the ED's responses in the RTC that the requesters dispute and the factual basis of the dispute, and list any disputed issues of law or policy.[24] Mr. Thomason did not submit a response to the ED's RTC.

Based on the foregoing, the ED finds that Mr. Thomason substantially complied with all of the requirements to request a contested case hearing required by 30 TAC § 55.201(d). Because the requester provided information that is in compliance with 30 TAC § 55.201(d), the ED can determine whether it is likely that the requester will be impacted differently than any other members of the general public or if there is a likely impact of the regulated activity on these persons' interests, which will be discussed in detail in subsection B below.

18. <u>Sharon Lynn Thomason</u>
Sharon Lynn Thomason submitted requests for a contested case hearing dated September 10, 2011, September 15, 2011, and April 13, 2014. Her requests were made in the comments she timely submitted to the agency during the relevant comment periods. She provided her name, telephone number, and residential address in the requests. Based on this residential

[24] *See* 30 TAC § 55.201(d)(4).

address, a site plan provided by the applicant, and satellite images, as well as a statement in their comments, Ms. Thomason's residence is approximately 1.25 miles from the applicant's proposed facility. The location of the facility was determined using the latitude and longitude provided by the applicant as the location of the emission point. The property lines of the site were not used to determine the distance from the facility to the residence

Ms. Thomason stated she will be adversely affected by the application in the following ways:

- The proposed facility is in close proximity to her residence.
- The silica emissions from proposed facility could be harmful to human health, especially to sensitive members of the population.
- The draft permit lacks impact studies.
- The facility could contaminate water sources in the area.
- The draft permit does not contain adequate modeling.
- The TCEQ does not have the resources to monitor and enforce against the proposed facility.
- The draft permit does not require the facility to monitor all sizes of particulate matter.
- The TCEQ might not have the technology and equipment to monitor crystalline silica.
- The research on silicosis is not current.
- The facility could cause or contribute to the following nuisance conditions: dust, silica dust, and traffic.
- The facility could adversely impact property, human health, animal life, and vegetation in the area.
- The emissions from the proposed facility would harm and contaminate the vegetation and animal life on her property and on other land in Mason County because the topography of the region makes it more susceptible to harm from these types of emissions.
- The draft permit fails to require adequate monitoring.
- No studies on the environmental impact of this type of facility have been done.

In addition, Ms. Thomason was identified as a member of the organization Mason County Rural Preservation Society in a comment and hearing request filed on behalf of that organization. The analysis for the organization's requests follows in subsections C below.

The ED finds that, of the issues raised in Ms. Thomason's request, some may be considered personal justiciable interests that are also relevant and material disputed issues of fact. 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 attached to the RTC states that requesters should, to the extent possible, specify any of the ED's responses in the RTC that the requesters dispute and the factual basis of the dispute, and list any disputed issues of law or policy.[25] Ms. Thomason submitted a response to the ED's RTC on April 13, 2014. The response reiterated her request for a contested case hearing, but did not request a reconsideration of the ED's RTC.

[25] *See* 30 TAC § 55.201(d)(4).

Based on the foregoing, the ED finds that Ms. Thomason substantially complied with all of the requirements to request a contested case hearing required by 30 TAC § 55.201(d). Because the requester provided information that is in compliance with 30 TAC § 55.201(d), the ED can determine whether it is likely that the requester will be impacted differently than any other members of the general public or if there is a likely impact of the regulated activity on these persons' interests, which will be discussed in detail in subsection B below.

19. Brenda Wiggs

Brenda Wiggs submitted requests for a contested case hearing dated September 11, 2011, April 15, 2013, and April 14, 2014. Her requests were made in the comments she timely submitted to the agency during the relevant comment periods. She provided her name, telephone number, and residential address in the requests. Based on this residential address, a site plan provided by the applicant, and satellite images, as well as a statement in their comments, Ms. Wiggs' residence is approximately 1.25 miles from the applicant's proposed facility. The location of the facility was determined using the latitude and longitude provided by the applicant as the location of the emission point. The property lines of the site were not used to determine the distance from the facility to the residence

Ms. Wiggs stated she will be adversely affected by the application in the following ways:

- The proposed facility is in close proximity to her residence.
- The silica emissions from proposed facility could be harmful to human health, especially to sensitive members of the population like her grandsons.
- The draft permit lacks impact studies.
- The facility could contaminate water sources in the area.
- The draft permit does not contain adequate modeling.
- The TCEQ does not have the resources to monitor and enforce against the proposed facility.
- The draft permit does not require the facility to monitor all sizes of particulate matter.
- The TCEQ might not have the technology and equipment to monitor crystalline silica.
- The research on silicosis is not current.
- The facility could cause or contribute to the following nuisance conditions: dust, silica dust, explosions, and traffic.
- The facility could adversely impact property, human health, animal life, and vegetation in the area.
- The emissions from the proposed facility would harm and contaminate the vegetation and animal life on her property and on other land in Mason County because the topography of the region makes it more susceptible to harm from these types of emissions.
- The draft permit fails to require adequate monitoring.
- No studies on the environmental impact of this type of facility have been done.

In addition, Ms. Wiggs was identified as a member of the organization Mason County Rural Preservation Society in a comment and hearing request filed on behalf of that organization. The analysis for the organization's requests follows in subsections C below.

The ED finds that, of the issues raised in Ms. Wiggs' request, some may be considered personal justiciable interests that are also relevant and material disputed issues of fact. 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 attached to the RTC states that requesters should, to the extent possible, specify any of the ED's responses in the RTC that the requesters dispute and the factual basis of the dispute, and list any disputed issues of law or policy.[26] Ms. Wiggs submitted a response to the ED's RTC on April 14, 2014. The response reiterated her request for a contested case hearing, but did not request a reconsideration of the ED's RTC.

Based on the foregoing, the ED finds that Ms. Wiggs substantially complied with all of the requirements to request a contested case hearing required by 30 TAC § 55.201(d). Because the requester provided information that is in compliance with 30 TAC § 55.201(d), the ED can determine whether it is likely that the requester will be impacted differently than any other members of the general public or if there is a likely impact of the regulated activity on these persons' interests, which will be discussed in detail in subsection B below.

20. Walter Guy Wiggs

Walter Guy Wiggs submitted requests for a contested case hearing dated September 11, 2011 and April 15, 2013. His requests were made in the last paragraph of comments he timely submitted to the agency during the relevant comment periods. He provided his name, telephone number, and residential address in the requests. Based on this residential address, a site plan provided by the applicant, and satellite images, as well as a statement in their comments, Mr. Wiggs' residence is approximately 1.25 miles from the applicant's proposed facility. The location of the facility was determined using the latitude and longitude provided by the applicant as the location of the emission point. The property lines of the site were not used to determine the distance from the facility to the residence.

Mr. Wiggs stated he will be adversely affected by the application in the following ways:

- The proposed facility is in close proximity to his residence.
- The silica emissions from proposed facility could be harmful to human health, especially to sensitive members of the population.
- The draft permit lacks impact studies.
- The facility could contaminate water sources in the area.
- The draft permit does not contain adequate modeling.
- The TCEQ does not have the resources to monitor and enforce against the proposed facility.
- The draft permit does not require the facility to monitor all sizes of particulate matter.
- The TCEQ might not have the technology and equipment to monitor crystalline silica.
- The research on silicosis is not current.
- The facility could cause or contribute to the following nuisance conditions: dust, silica dust, explosions, and traffic.
- The facility could adversely impact property, human health, animal life, and vegetation in the area.

[26] *See* 30 TAC § 55.201(d)(4).

- The emissions from the proposed facility would harm and contaminate the vegetation and animal life on his property and on other land in Mason County because the topography of the region makes it more susceptible to harm from these types of emissions.
- The draft permit fails to require adequate monitoring.
- No studies on the environmental impact of this type of facility have been done.

In addition, Mr. Wiggs was identified as a member of the organization Mason County Rural Preservation Society in a comment and hearing request filed on behalf of that organization. The analysis for the organization's requests follows in subsections C below.

The ED finds that, of the issues raised in Mr. Wiggs' request, some may be considered personal justiciable interests that are also relevant and material disputed issues of fact. 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 attached to the RTC states that requesters should, to the extent possible, specify any of the ED's responses in the RTC that the requesters dispute and the factual basis of the dispute, and list any disputed issues of law or policy.[27] Mr. Wiggs did not submit a response to the ED's RTC.

Based on the foregoing, the ED finds that Mr. Wiggs substantially complied with all of the requirements to request a contested case hearing required by 30 TAC § 55.201(d). Because the requester provided information that is in compliance with 30 TAC § 55.201(d), the ED can determine whether it is likely that the requester will be impacted differently than any other members of the general public or if there is a likely impact of the regulated activity on these persons' interests, which will be discussed in detail in subsection B below.

<u>B. Are those who requested a contested case hearing affected persons?</u>

The law applicable to this permit application is outlined above in Section II. The following hearing requesters identified a personal justiciable interest and why the requestor believes he or she will be adversely affected by the proposed facility in a manner not common to members of the general public as required by 30 TAC § 55.201(d)(2):

Gail Baker, Robert J. and Joyce Beaulieu, James Bode, David Frederick (as counsel for the Mason County Rural Preservation Society), Gerald Gamel, Merlina and Steven Gamel, Cheryl A. Glass, James R. and Lisa K. Heath, Lydia G. Nesloney, Tifnee G. Nesloney, Trey Nesloney, Jeanne M. Nixon, Connie Stockbridge, Janis Kay and Weldon B. Strickland, Wesley B. Strickland, Danny Keith Thomason, Sharon Lynn Thomason, Brenda L. Wiggs, and Walter Guy Wiggs. Because these individuals have stated personal justiciable interests, the commission must next consider the non-exhaustive list of factors for determining whether a person is an affected person contained in 30 TAC § 55.203(c).

First, the commission must consider whether the interest claimed is one protected by the law under which the application will be considered.

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[27] *See* 30 TAC § 55.201(d)(4).

1. Gail Baker

The interests claimed by Gail Baker are:

- The emissions from the proposed facility would be harmful to the health of Ms. Baker's children, husband, and elderly in-laws by aggravating their allergies, asthma, sinusitis, and headaches.
- The emissions from the facility would contain contaminants, including silica, which would be harmful to her family.
- The dust from the proposed facility would harm and contaminate the vegetation and animal life on her property.
- The timing of the public notice for the proposed facility did not allow for adequate time to research the health impacts of the proposed facility.

Of the interests claimed by Ms. Baker, the ones which are protected by the law under which the application will be issued are:

- The emissions from the proposed facility would be harmful to the health of Ms. Baker's children, husband, and elderly in-laws by aggravating their allergies, asthma, sinusitis, and headaches.
- The emissions from the facility would contain contaminants, including silica, which would be harmful to her family.
- The dust from the proposed facility would harm and contaminate the vegetation and animal life on her property.

2. Robert J. Beaulieu

The interests claimed by Robert J. Beaulieu are:

- The particulate matter (PM2.5) emitted from the proposed facility could be harmful to the health of Mr. Beaulieu's wife by aggravating her allergies.
- The particulate matter (PM2.5) emitted from the proposed facility would cause silicosis.
- The permit application may have errors and inaccuracies in it.

Of the interests claimed by Mr. Beaulieu, the ones which are protected by the law under which the application will be issued are:

- The particulate matter (PM2.5) emitted from the proposed facility could be harmful to the health of Mr. Beaulieu's wife by aggravating her allergies.
- The particulate matter (PM2.5) emitted from the proposed facility would cause silicosis.
- The permit application may have errors and inaccuracies in it.

3. James Bode

The interests claimed by James Bode are:

- The emissions from the proposed facility would harm and contaminate the vegetation and animal life on his wife's property and on other land in Mason County.

- The topography of the region makes it more susceptible to harm from the facility's emissions.
- The emissions from the proposed facility would be harmful to the health of Mr. Bode's wife who is a cancer survivor with ongoing health problems.
- The facility could contaminate water sources in the area.
- The facility's water usage could deplete water sources in the area.
- The facility could cause or contribute to road damage in the area.
- The facility could cause or contribute to noise nuisance conditions.
- The emissions from the facility would contain contaminants, including silica, which would be harmful to health.
- Since silica matter is too small to be properly monitored, the silica would harm human health before it could be detected.

Of the interests claimed by Mr. Bode, the ones which are protected by the law under which the application will be issued are:

- The emissions from the proposed facility would harm and contaminate the vegetation and animal life on his wife's property and on other land in Mason County.
- The topography of the region makes it more susceptible to harm from the facility's emissions.
- The emissions from the proposed facility would be harmful to the health of Mr. Bode's wife who is a cancer survivor with ongoing health problems.
- The emissions from the facility would contain contaminants, including silica, which would be harmful to health.
- Since silica matter is too small to be properly monitored, the silica would harm human health before it could be detected.

4. <u>Gerald L. Gamel</u>
The interests claimed by Gerald L. Gamel are:

- The proposed facility is in close proximity to his residence.
- The proposed facility's emissions could adversely affect his health since he already suffers from sinusitis.
- The silica emissions from the facility could adversely affect human health and welfare.
- The facility could adversely impact animal life and vegetation in the area.
- The proposed facility will be located in area with other similar facilities, causing a cumulative emissions effect.
- The chemicals that the facility will use have not been sufficiently identified.
- The TCEQ does not have the resources to monitor and enforce against the proposed facility.
- The facility could cause or contribute to the following nuisance conditions: dust, silica dust, and traffic.
- The timing of the public notice for the proposed facility did not allow for adequate time to research the health impacts of the proposed facility.

Of the interests claimed by Mr. Gamel, the ones which are protected by the law under which the application will be issued are:

- The proposed facility is in close proximity to his residence.
- The proposed facility's emissions could adversely affect his health since he already suffers from sinusitis.
- The silica emissions from the facility could adversely affect human health and welfare.
- The facility could adversely impact animal life and vegetation in the area.
- The proposed facility will be located in area with other similar facilities, causing a cumulative emissions effect.
- The chemicals that the facility will use have not been sufficiently identified.
- The TCEQ does not have the resources to monitor and enforce against the proposed facility.
- The facility could cause or contribute to the following nuisance conditions: dust and silica dust.

5. Steven and Merlina Gamel
The interests claimed by Steven and Merlina Gamel are:

- The facility could cause or contribute to the following nuisance conditions: dust, silica dust, and traffic.
- The proposed facility is in close proximity to their residence.
- Silica emissions from the proposed facility could adversely affect human health and welfare.
- The facility could adversely impact animal life and vegetation in the area.
- The proposed facility will be located in area with other similar facilities, causing a cumulative emissions effect.
- The chemicals that the facility will use have not been sufficiently identified.
- The TCEQ does not have the resources to monitor and enforce against the proposed facility.

Of the interests claimed by the Gamels, the ones which are protected by the law under which the application will be issued are:

- The facility could cause or contribute to the following nuisance conditions: dust and silica dust.
- The proposed facility is in close proximity to their residence.
- Silica emissions from the proposed facility could adversely affect human health and welfare.
- The facility could adversely impact animal life and vegetation in the area.
- The proposed facility will be located in area with other similar facilities, causing a cumulative emissions effect.
- The chemicals that the facility will use have not been sufficiently identified.
- The TCEQ does not have the resources to monitor and enforce against the proposed facility.

6. Cheryl Glass
   The interests claimed by Cheryl Glass are:

   - The emissions from the proposed facility would be especially harmful to her health since she has a neurological disease.
   - The emissions from the facility would contain contaminants, including silica, which would be harmful to her health.
   - The proposed facility will be located in area with other similar facilities, causing a cumulative emissions effect.
   - The facility could adversely impact animal life and vegetation in the area.
   - The increase in particulate matter in the area will adversely affect her personal property.

   Of the interests claimed by Ms. Glass, the ones which are protected by the law under which the application will be issued are:

   - The emissions from the proposed facility would be especially harmful to her health since she has a neurological disease.
   - The emissions from the facility would contain contaminants, including silica, which would be harmful to her health.
   - The proposed facility will be located in area with other similar facilities, causing a cumulative emissions effect.
   - The facility could adversely impact animal life and vegetation in the area.
   - The increase in particulate matter in the area will adversely affect her personal property.

7. James R. and Lisa K. Heath
   The interests claimed by James R. and Lisa K. Heath are:

   - The proposed facility is in close proximity to their residence and could affect their health and that of their daughter who has Reactive Airway Disease.
   - The facility could cause or contribute to the following nuisance conditions: dust, silica dust, and traffic.
   - The silica emissions from the facility could adversely affect human health and welfare.
   - The facility could adversely impact property, human health, animal life, and vegetation in the area.
   - The proposed facility will be located in area with other similar facilities, causing a cumulative emissions effect.
   - The emissions from the proposed facility would harm and contaminate the vegetation and animal life their property and on other land in Mason County because the topography of the region makes it more susceptible to harm from these types of emissions.
   - The chemicals and processes that the facility will use have not been sufficiently described in the draft permit.
   - The draft permit does not require the facility to use Best Available Control Technology.
   - The draft permit fails to identify all sources.

- The draft permit does not contain adequate modeling.
- The TCEQ does not have the resources to monitor and enforce against the proposed facility.
- The timing of the public notice for the proposed facility did not allow for adequate time to research the health impacts of the proposed facility.
- The facility would contribute to a violation of the NAAQS.
- The facility's permit would contravene the intent of the TCAA.

Of the interests claimed by the Heaths, the ones which are protected by the law under which the application will be issued are:

- The proposed facility is in close proximity to their residence and could affect their health and that of their daughter who has Reactive Airway Disease.
- The facility could cause or contribute to the following nuisance conditions: dust and silica dust.
- The silica emissions from the facility could adversely affect human health and welfare.
- The facility could adversely impact animal life and vegetation in the area.
- The proposed facility will be located in area with other similar facilities, causing a cumulative emissions effect.
- The emissions from the proposed facility would harm and contaminate the vegetation and animal life their property and on other land in Mason County because the topography of the region makes it more susceptible to harm from these types of emissions.
- The chemicals and processes that the facility will use have not been sufficiently described in the draft permit.
- The draft permit does not require the facility to use Best Available Control Technology.
- The draft permit fails to identify all sources.
- The draft permit does not contain adequate modeling.
- The TCEQ does not have the resources to monitor and enforce against the proposed facility.
- The facility would contribute to a violation of the NAAQS.
- The facility's permit would contravene the intent of the TCAA.

8. <u>Lydia G. Nesloney</u>
The interests claimed by Lydia G. Nesloney are:

- The proposed facility is in close proximity to her residence.
- The facility's emissions could adversely affect her health and the health of her family, pets, and livestock.
- The facility would destroy a fragile environmental system by causing air pollution.
- The draft permit does not contain adequate modeling.
- The TCEQ does not have the resources to monitor and enforce against the proposed facility.
- The draft permit does not require the facility to monitor all sizes of particulate matter.
- The TCEQ might not have the technology and equipment to monitor crystalline silica.
- The research on silicosis used for the draft permit is not current.

- The facility could cause or contribute to the following nuisance conditions: dust, silica dust, and traffic.
- The silica emissions from the facility could adversely affect human health and welfare.
- The facility could adversely impact property, human health, animal life, and vegetation in the area.
- The proposed facility will be located in area with other similar facilities, causing a cumulative emissions effect.
- The emissions from the proposed facility would harm and contaminate the vegetation and animal life on her property and on other land in Mason County because the topography of the region makes it more susceptible to harm from these types of emissions.

Of the interests claimed by Ms. Nesloney, the ones which are protected by the law under which the application will be issued are:

- The proposed facility is in close proximity to her residence.
- The facility's emissions could adversely affect her health and the health of her family, pets, and livestock.
- The facility would destroy a fragile environmental system by causing air pollution.
- The draft permit does not contain adequate modeling.
- The TCEQ does not have the resources to monitor and enforce against the proposed facility.
- The draft permit does not require the facility to monitor all sizes of particulate matter.
- The TCEQ might not have the technology and equipment to monitor crystalline silica.
- The research on silicosis used for the draft permit is not current.
- The facility could cause or contribute to the following nuisance conditions: dust and silica dust.
- The silica emissions from the facility could adversely affect human health and welfare.
- The facility could adversely impact property, human health, animal life, and vegetation in the area.
- The proposed facility will be located in area with other similar facilities, causing a cumulative emissions effect.
- The emissions from the proposed facility would harm and contaminate the vegetation and animal life on her property and on other land in Mason County because the topography of the region makes it more susceptible to harm from these types of emissions.

9. <u>Tifnee Nesloney</u>
The interests claimed by Tifnee Nesloney are:

- The facility's emissions would be a threat to her health, especially since she suffers from bronchitis, and the health of her family, friends, and livestock.
- The facility would have an adverse effect on local agriculture from which her family derives most of its income.
- The silica emissions from the facility could adversely affect plant and animal growth.

Of the interests claimed by Ms. Nesloney, the ones which are protected by the law under which the application will be issued are:

- The facility's emissions would be a threat to her health, especially since she suffers from bronchitis, and the health of her family, friends, and livestock.
- The facility would have an adverse effect on local agriculture from which her family derives most of its income.
- The silica emissions from the facility could adversely affect plant and animal growth.

10. Trey Nesloney
The interests claimed by Trey Nesloney are:

- The facility's emissions would be a threat to his health, especially since he suffers from allergies, and the health of his family, friends, and livestock.
- The facility would have an adverse effect on local agriculture from which his family derives most of its income.
- The proposed facility is in close proximity to his property.
- The silica and particulate emissions from the facility could adversely affect human health and welfare, and plant and animal life.
- The proposed facility will be located in area with other similar facilities, causing a cumulative emissions effect.
- The topography of the region makes it more susceptible to harm from these types of emissions.
- The draft permit does not contain adequate modeling.
- The draft permit fails to require on-site monitoring.
- The health effects review was inadequate.
- Since silica matter is too small to be properly monitored, the silica would harm human health before it could be detected.

Of the interests claimed by Mr. Nesloney, the ones which are protected by the law under which the application will be issued are:

- The facility's emissions would be a threat to his health, especially since he suffers from allergies, and the health of his family, friends, and livestock.
- The facility would have an adverse effect on local agriculture from which his family derives most of its income.
- The proposed facility is in close proximity to his property.
- The silica, particulate emissions, and other contaminants from the facility could adversely affect human health and welfare, and plant and animal life.
- The proposed facility will be located in area with other similar facilities, causing a cumulative emissions effect.
- The topography of the region makes it more susceptible to harm from these types of emissions.
- The draft permit does not contain adequate modeling.
- The draft permit fails to require on-site monitoring.
- The health effects review was inadequate.

- Since silica matter is too small to be properly monitored, the silica would harm human health before it could be detected.

11. Jeanne Nixon
The interests claimed by Jeanne Nixon are:

- The timing of the public notice for the proposed facility did not allow for adequate time to research the health impacts of the proposed facility.
- The facility could adversely impact livestock, crops, and plants in the area.
- The facility could cause an increase in area traffic and wear on the roads.
- The proposed facility could affect human health, especially that of sensitive members of the population.

Of the interests claimed by Ms. Nixon, the ones which are protected by the law under which the application will be issued are:

- The facility could adversely impact livestock, crops, and plants in the area.
- The proposed facility could affect human health, especially that of sensitive members of the population.

12. Connie Stockbridge
The interests claimed by Connie Stockbridge are:

- The facility could cause or contribute to the following nuisance conditions: dust, silica dust, and traffic.
- The proposed facility is in close proximity to her residence.
- The silica emissions from the facility could adversely affect human health and welfare.
- The facility could adversely impact animal life and vegetation in the area.
- The proposed facility will be located in area with other similar facilities, causing a cumulative emissions effect.
- The chemicals that the facility will use have not been sufficiently identified.
- The TCEQ does not have the resources to monitor and enforce against the proposed facility.
- The timing of the public notice for the proposed facility did not allow for adequate time to research the health impacts of the proposed facility.

Of the interests claimed by Ms. Stockbridge, the ones which are protected by the law under which the application will be issued are:

- The facility could cause or contribute to the following nuisance conditions: dust and silica dust.
- The proposed facility is in close proximity to her residence.
- The silica emissions from the facility could adversely affect human health and welfare.
- The facility could adversely impact animal life and vegetation in the area.
- The proposed facility will be located in area with other similar facilities, causing a cumulative emissions effect.

- The chemicals that the facility will use have not been sufficiently identified.
- The TCEQ does not have the resources to monitor and enforce against the proposed facility.

13. Weldon B. and Janis Kay Strickland
The interests identified by Weldon B. and Janis Kay Strickland are:

- The proposed facility is in close proximity to the residences of members of their family and friends.
- The proposed facility could affect their health, especially that of Mr. Strickland, who has Adult Respiratory Disease Syndrome, and other sensitive members of the population.
- The facility could cause or contribute to air pollution, which would create a nuisance and threaten the safety of nearby persons and property.
- The facility could cause an increase in area traffic.
- The draft permit lacks impact studies.
- The facility could contaminate water sources in the area.
- The facility's water usage could deplete water sources in the area.

Of the interests claimed by the Stricklands, the ones which are protected by the law under which the application will be issued are:

- The proposed facility could affect their health, especially that of Mr. Strickland, who has Adult Respiratory Disease Syndrome, and other sensitive members of the population.
- The facility could cause or contribute to air pollution, which would create a nuisance and threaten the safety of nearby persons and property.
- The draft permit lacks impact studies.

14. Wesley B. Strickland
The interests claimed by Wesley B. Strickland are:

- The proposed facility is in close proximity to the residences of members of his family and friends.
- The proposed facility could affect the health of his father, who has Adult Respiratory Disease Syndrome, and other sensitive members of the population.
- The facility could cause or contribute to air pollution, which would create a nuisance and threaten the safety of nearby persons and property.
- The facility could cause an increase in area traffic.
- The draft permit lacks impact studies.
- The facility could contaminate water sources in the area.
- The facility's water usage could deplete water sources in the area.

Of the interests claimed by Mr. Strickland, the ones which are protected by the law under which the application will be issued are:

- The proposed facility could affect the health of sensitive members of the population.
- The facility could cause or contribute to air pollution, which would create a nuisance and threaten the safety of nearby persons and property.

15. Danny Keith Thomason
The interests claimed by Danny Keith Thomason are:

- The proposed facility is in close proximity to his residence.
- The silica emissions from proposed facility could be harmful to human health, especially to sensitive members of the population.
- The draft permit lacks impact studies.
- The facility could contaminate water sources in the area.
- The draft permit does not contain adequate modeling.
- The TCEQ does not have the resources to monitor and enforce against the proposed facility.
- The draft permit does not require the facility to monitor all sizes of particulate matter.
- The TCEQ might not have the technology and equipment to monitor crystalline silica.
- The research on silicosis used for the draft permit is not current.
- The facility could cause or contribute to the following nuisance conditions: dust, silica dust, explosions, and traffic.
- The facility could adversely impact property, human health, animal life, and vegetation in the area.
- The emissions from the proposed facility would harm and contaminate the vegetation and animal life on his property and on other land in Mason County because the topography of the region makes it more susceptible to harm from these types of emissions.
- The draft permit fails to require adequate monitoring.
- No studies on the environmental impact of this type of facility have been done.

Of the interests claimed by Mr. Thomason, the ones which are protected by the law under which the application will be issued are:

- The proposed facility is in close proximity to his residence.
- The silica emissions from proposed facility could be harmful to human health, especially to sensitive members of the population.
- The draft permit does not contain adequate modeling.
- The TCEQ does not have the resources to monitor and enforce against the proposed facility.
- The draft permit does not require the facility to monitor all sizes of particulate matter.
- The TCEQ might not have the technology and equipment to monitor crystalline silica.
- The research on silicosis used for the draft permit is not current.
- The facility could cause or contribute to the following nuisance conditions: dust and silica dust.
- The facility could adversely impact property, human health, animal life, and vegetation in the area.

- The emissions from the proposed facility would harm and contaminate the vegetation and animal life on his property and on other land in Mason County because the topography of the region makes it more susceptible to harm from these types of emissions.
- The draft permit fails to require adequate monitoring.
- No studies on the environmental impact of this type of facility have been done.

16. Sharon Lynn Thomason
The interests claimed by Sharon Lynn Thomason are:

- The proposed facility is in close proximity to her residence.
- The silica emissions from proposed facility could be harmful to human health, especially to sensitive members of the population.
- The draft permit lacks impact studies.
- The facility could contaminate water sources in the area.
- The draft permit does not contain adequate modeling.
- The TCEQ does not have the resources to monitor and enforce against the proposed facility.
- The draft permit does not require the facility to monitor all sizes of particulate matter.
- The TCEQ might not have the technology and equipment to monitor crystalline silica.
- The research on silicosis is not current.
- The facility could cause or contribute to the following nuisance conditions: dust, silica dust, and traffic.
- The facility could adversely impact property, human health, animal life, and vegetation in the area.
- The emissions from the proposed facility would harm and contaminate the vegetation and animal life on her property and on other land in Mason County because the topography of the region makes it more susceptible to harm from these types of emissions.
- The draft permit fails to require adequate monitoring.

Of the interests claimed by Mr. Thomason, the ones which are protected by the law under which the application will be issued are:

- The proposed facility is in close proximity to her residence.
- The silica emissions from proposed facility could be harmful to human health, especially to sensitive members of the population.
- The draft permit does not contain adequate modeling.
- The TCEQ does not have the resources to monitor and enforce against the proposed facility.
- The draft permit does not require the facility to monitor all sizes of particulate matter.
- The TCEQ might not have the technology and equipment to monitor crystalline silica.
- The research on silicosis is not current.
- The facility could cause or contribute to the following nuisance conditions: dust and silica dust.

- The facility could adversely impact property, human health, animal life, and vegetation in the area.
- The emissions from the proposed facility would harm and contaminate the vegetation and animal life on her property and on other land in Mason County because the topography of the region makes it more susceptible to harm from these types of emissions.
- The draft permit fails to require adequate monitoring.

17. Brenda Wiggs
The interests claimed by Brenda Wiggs are:

- The proposed facility is in close proximity to her residence.
- The silica emissions from proposed facility could be harmful to human health, especially to sensitive members of the population like her grandsons.
- The draft permit lacks impact studies.
- The facility could contaminate water sources in the area.
- The draft permit does not contain adequate modeling.
- The TCEQ does not have the resources to monitor and enforce against the proposed facility.
- The draft permit does not require the facility to monitor all sizes of particulate matter.
- The TCEQ might not have the technology and equipment to monitor crystalline silica.
- The research on silicosis is not current.
- The facility could cause or contribute to the following nuisance conditions: dust, silica dust, explosions, and traffic.
- The facility could adversely impact property, human health, animal life, and vegetation in the area.
- The emissions from the proposed facility would harm and contaminate the vegetation and animal life on her property and on other land in Mason County because the topography of the region makes it more susceptible to harm from these types of emissions.
- The draft permit fails to require adequate monitoring.
- No studies on the environmental impact of this type of facility have been done.

Of the interests claimed by Ms. Wiggs, the ones which are protected by the law under which the application will be issued are:

- The proposed facility is in close proximity to her residence.
- The silica emissions from proposed facility could be harmful to human health, especially to sensitive members of the population like her grandsons.
- The draft permit does not contain adequate modeling.
- The TCEQ does not have the resources to monitor and enforce against the proposed facility.
- The draft permit does not require the facility to monitor all sizes of particulate matter.
- The TCEQ might not have the technology and equipment to monitor crystalline silica.
- The research on silicosis is not current.

- The facility could cause or contribute to the following nuisance conditions: dust and silica dust.
- The facility could adversely impact property, human health, animal life, and vegetation in the area.
- The emissions from the proposed facility would harm and contaminate the vegetation and animal life on her property and on other land in Mason County because the topography of the region makes it more susceptible to harm from these types of emissions.
- The draft permit fails to require adequate monitoring.

18. Walter Guy Wiggs
The interests claimed by Walter Guy Wiggs are:

- The proposed facility is in close proximity to his residence.
- The silica emissions from proposed facility could be harmful to human health, especially to sensitive members of the population.
- The draft permit lacks impact studies.
- The facility could contaminate water sources in the area.
- The draft permit does not contain adequate modeling.
- The TCEQ does not have the resources to monitor and enforce against the proposed facility.
- The draft permit does not require the facility to monitor all sizes of particulate matter.
- The TCEQ might not have the technology and equipment to monitor crystalline silica.
- The research on silicosis is not current.
- The facility could cause or contribute to the following nuisance conditions: dust, silica dust, explosions, and traffic.
- The facility could adversely impact property, human health, animal life, and vegetation in the area.
- The emissions from the proposed facility would harm and contaminate the vegetation and animal life on his property and on other land in Mason County because the topography of the region makes it more susceptible to harm from these types of emissions.
- The draft permit fails to require adequate monitoring.
- No studies on the environmental impact of this type of facility have been done.

Of the interests claimed by Mr. Wiggs, the ones which are protected by the law under which the application will be issued are:

- The proposed facility is in close proximity to his residence.
- The silica emissions from proposed facility could be harmful to human health, especially to sensitive members of the population.
- The draft permit does not contain adequate modeling.
- The TCEQ does not have the resources to monitor and enforce against the proposed facility.
- The draft permit does not require the facility to monitor all sizes of particulate matter.
- The TCEQ might not have the technology and equipment to monitor crystalline silica.

- The research on silicosis is not current.
- The facility could cause or contribute to the following nuisance conditions: dust and silica dust.
- The facility could adversely impact property, human health, animal life, and vegetation in the area.
- The emissions from the proposed facility would harm and contaminate the vegetation and animal life on his property and on other land in Mason County because the topography of the region makes it more susceptible to harm from these types of emissions.
- The draft permit fails to require adequate monitoring.

The commission must consider whether a reasonable relationship exists between the interest claimed and the activity regulated. The activity the commission regulates is the authorized emissions into the air of contaminants by a person who owns or operates a facility or facilities. Those persons who own or operate a facility or facilities are prohibited from emitting air contaminants or performing any activities that contravene the TCAA or any other commission rule or order, or that causes or contributes to air pollution.

The interests of Gail Baker, Robert J. and Joyce Beaulieu, James Bode, Gerald Gamel, Merlina and Steven Gamel, Cheryl A. Glass, James R. and Lisa K. Heath, Lydia G. Nesloney, Tifnee G. Nesloney, Trey Nesloney, Jeanne M. Nixon, Connie Stockbridge, Janis Kay and Weldon B. Strickland, Wesley B. Strickland, Danny Keith Thomason, Sharon Lynn Thomason, Brenda L. Wiggs, and Walter Guy Wiggs claim are within the scope of an air quality authorization because they focus on the potential adverse effects of potential air contaminants from the facility. Therefore, the ED finds that a reasonable relationship exists between the interests claimed and the activity the commission regulates.

Next, the commission must consider distance restrictions or other limitations imposed by law on the affected interest, the likely impact of the regulated activity on the health and safety of the person, and on the use of the property of the person, and the likely impact of the regulated activity on the use or the impact on the natural resource by the person. For air authorizations, distance from the proposed facility is particularly relevant to the issue of whether there is a likely impact of the regulated activity on a person's interests because of the dispersion and effects of individual air contaminants emitted from a facility. Gail Baker, Robert J. and Joyce Beaulieu, James Bode, Gerald Gamel, Merlina and Steven Gamel, Cheryl A. Glass, James R. and Lisa K. Heath, Lydia G. Nesloney, Tifnee G. Nesloney, Trey Nesloney, Jeanne M. Nixon, Connie Stockbridge, Janis Kay and Weldon B. Strickland, Wesley B. Strickland, Danny Keith Thomason, Sharon Lynn Thomason, Brenda L. Wiggs, and Walter Guy Wiggs reside more than one mile from the facility that is the subject of this permit application. The natural resource that is the subject of this permit is the ambient air that they breathe, and they have indicated a manner in which emissions from the plant could impact it. However, because the requesters live more than one mile from the proposed pretreatment facility, the ED finds that it is not likely to impact the health and safety of these requesters or the use of their property in a manner different from the general public. Therefore, they are not affected persons under 30 TAC § 55.203.

<u>C. Does the organization Mason County Rural Preservation Society meet the group or associational standing requirements?</u>

David Frederick filed hearing requests filed on behalf of Mason County Rural Preservation Society (Society). The members of the Society are identified as Gail Baker, James Bode, Gerald Gamel, Steven and Merlina Gamel, James R. and Lisa K. Heath, Lydia Nesloney, Tifnee Nesloney, Trey Nesloney, Jeanne Nixon, Connie Stockbridge, Weldon Strickland, Wesley Strickland, Danny and Sharon Thomason, Brenda Wiggs, and Walter Guy Wiggs. The purpose of the organization is to protect the health of its members, property values, and the aesthetic benefits of their properties. The requests give the names and addresses of James and Lisa Heath, and Danny Keith and Sharon Lynn Thomason. The hearing requests from Mr. Frederick meet the requirements for form but did not meet the requirements for affected person status since, as previously discussed, none of its members lives within a mile of the proposed facility. Therefore, since it has not identified one or more members that would have standing to request a hearing in their own right, the Society did not meet the requirements for associational standing found in 30 TAC § 55.205(a).

D. Does the organization Katemcy-Camp Air Residents' Association meet the group or associational standing requirements?

The following individuals stated that they are a part of the informally organized group Katemcy-Camp Air Residents' Association (Association) and requested a hearing on its behalf in their individual comments: Gerald L. Gamel, Merlina and Steven Gamel, Lydia G. Nesloney, , and Connie Stockbridge. The purpose of the organization was not stated in the request, and no member was identified as a representative member of the group. The hearing requests from the Association did not meet the requirements for form or the requirements for affected person status since, as previously discussed, none of its members lives within a mile of the proposed facility. Therefore, since it has not identified one or more members that would have standing to request a hearing in their own right, the Association did not meet the requirements for associational standing found in 30 TAC § 55.205(a).

E. 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. However, because all of the hearing requesters live more than a mile from the proposed facility, their interests are not likely to be impacted in a manner different from the general public. Thus, these hearing requests should not be referred to SOAH for a contested case hearing. However, if the commission determines that one or more of the hearing requesters are affected parties, then those hearing requests should be referred to SOAH.

IV. Executive Director's Recommendation

The Executive Director respectfully recommends that the commission deny the requests for a contested case hearing and the request for reconsideration.

Respectfully submitted,

Texas Commission on Environmental Quality

Richard Hyde, P.E., Executive Director

Caroline Sweeney, Deputy Director
Office of Legal Services

Robert Martinez, Division Director
Environmental Law Division

Becky Nash Petty, Attorney
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REPRESENTING THE
EXECUTIVE DIRECTOR OF THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY

CERTIFICATE OF SERVICE

On the 14th day of July, 2014, a true and correct copy of the foregoing instrument was served on all persons on the mailing list by the undersigned via deposit into the U.S. Mail, inter-agency mail, facsimile, electronic mail, or hand delivery.

_____
Becky Nash Petty

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FML SAND, LLC (FORMERLY PROPPANT SPECIALISTS, LLC)
DOCKET NO. 2014-0526-AIR; PERMIT NO. 97199

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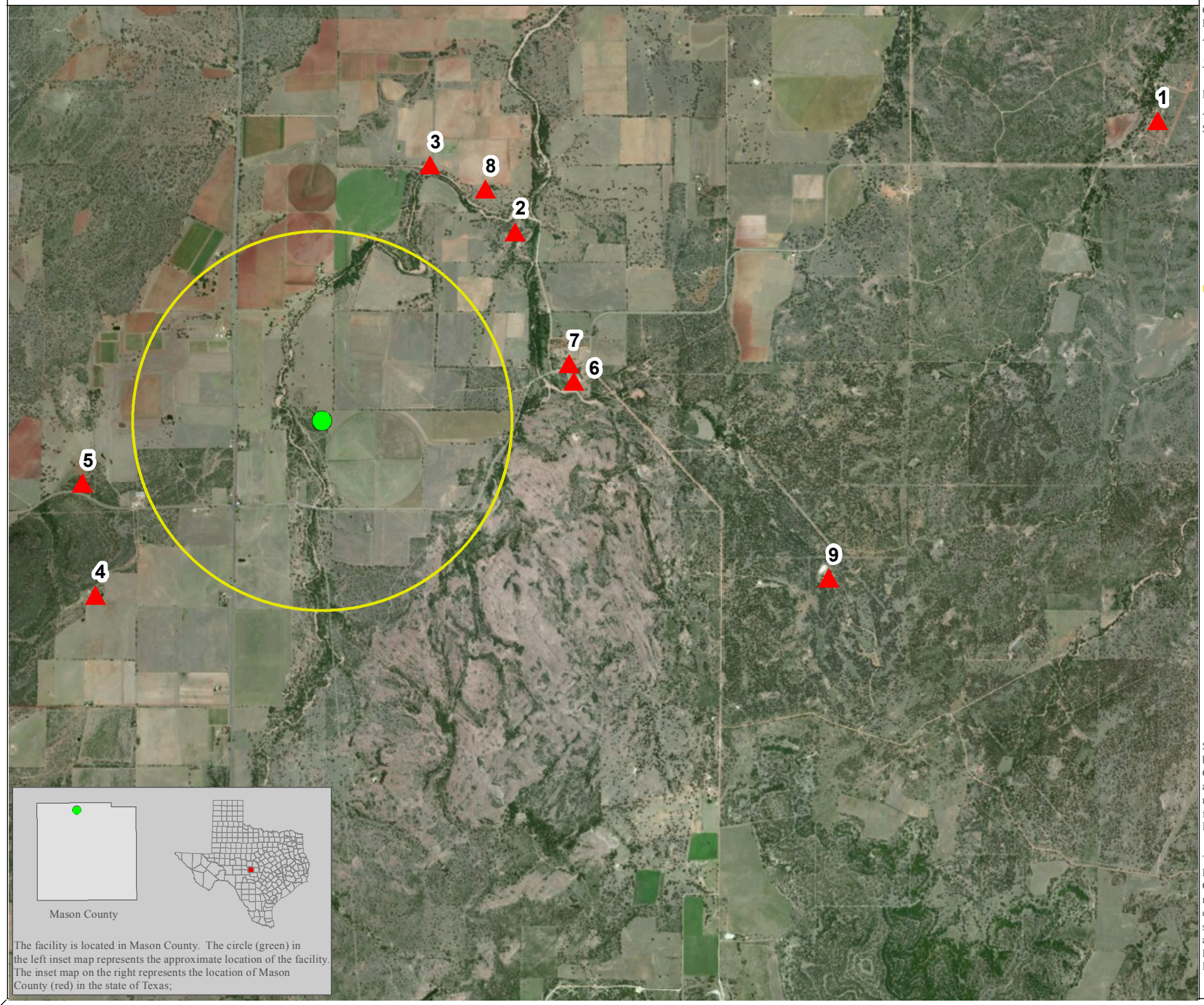
FML Sand - Permit No. 97199

Katemcy

Map Requested by TCEQ Office of Legal Services
for Commissioners' Agenda



The facility is located in Mason County. The circle (green) in the left inset map represents the approximate location of the facility. The inset map on the right represents the location of Mason County (red) in the state of Texas;

Protecting Texas by Reducing and Preventing Pollution

TCEQ

Texas Commission on Environmental Quality
GIS Team (Mail Code 197)
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July 7, 2014

Projection: Texas Centric Mapping System
Albers (TCMS-A), meters
Scale 1:46,671

FML Facility

Requestors

One mile radial buffer

1	Baker
2	G Gamel
3	M & S Gamel
4	Heath
5	Nesloney
6	Thomason
7	Wiggs
8	Stockbridge
9	Beaulieu

Miles
0 0.5 1

Source: The location of the facility was provided by the TCEQ Office of Legal Services (OLS). OLS obtained the site location information from the applicant and the requestor information from the requestor. The background imagery of this map is from the current Environmental Systems Research Institute (ESRI) map service, as of the date of this map.

This map was generated by the Information Resources Division of the Texas Commission on Environmental Quality. This product is for informational purposes and may not have been prepared for or be suitable for legal, engineering, or surveying purposes. It does not represent an on-the-ground survey and represents only the approximate relative location of property boundaries. For more information concerning this map, contact the Information Resource Division at (512) 239-0800.

CRF-42028