

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



March 23, 2015

Bridget Bohac, Chief Clerk  
Texas Commission on Environmental Quality  
P.O. Box 13087, MC 105  
Austin, Texas 78711-3087

Re: Executive Director's Response to Requests for Reconsideration and Hearing  
Requests Brief for Bartoo Ready Mix, LLC, Concrete Batch Plant Standard Permit  
Registration No. 120783  
TCEQ Docket No. 2015-0041-AIR

Dear Ms. Bohac:

Enclosed please find a copy of the Executive Director's Response to Requests for Reconsideration and Hearing Requests brief for the above referenced item. If you have any questions, please do not hesitate to call me at extension 1088.

Sincerely,

A handwritten signature in black ink that reads "PN Petty".

Becky Nash Petty  
Staff Attorney  
Environmental Law Division

Enclosure

**TCEQ AIR QUALITY STANDARD PERMIT REGISTRATION NO. 120783**  
**TCEQ DOCKET NUMBER 2015-0041-AIR**

<b>APPLICATION BY</b>	<b>§</b>	<b>BEFORE THE</b>
	<b>§</b>	
<b>BARTOO READY MIX, LLC</b>	<b>§</b>	<b>TEXAS COMMISSION ON</b>
<b>CONCRETE BATCH PLANT</b>	<b>§</b>	
<b>MELISSA, COLLIN COUNTY</b>	<b>§</b>	<b>ENVIRONMENTAL QUALITY</b>

**EXECUTIVE DIRECTOR’S RESPONSE TO REQUESTS FOR RECONSIDERATION  
AND 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.

Maps showing the location of the site for the proposed facility are included with this response and have 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 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**

Bartoo Ready Mix, LLC has applied to the TCEQ for a Standard Permit under TCAA § 382.05195. This permit will authorize the Applicant to construct and operate a permanent concrete batch plant. The plant is proposed to be located at 550 County Road 364, Melissa, Collin County. Contaminants authorized under this permit include dust, aggregate, cement, and particulate matter (PM), including particulate matter with aerodynamic diameters of 10 micrometers or less (PM10) and 2.5 micrometers or less (PM2.5). The Applicant is not delinquent on any administrative penalty payments to the TCEQ. The TCEQ Enforcement Database was searched and no enforcement activities were found that are inconsistent with the compliance history.

This permit application is for a new issuance of Registration 120783 for a standard permit for a concrete batch plant. The permit application was received on June 16, 2014, and it was declared administratively complete on June 23, 2014. The Notice of Receipt and Intent to Obtain an Air Quality Permit (public notice) for this permit application was published on July 17, 2014, in the Anna-Melissa Tribune. The Notice of Application and Preliminary Decision for an Air Quality Permit was published on September 4, 2014, in the Anna-Melissa Tribune. The notice of public meeting was mailed out to interested

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<sup>1</sup> Statutes cited in this response may be viewed online at [www.capitol.state.tx.us/statutes/statutes.html](http://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](http://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](http://www.tceq.state.tx.us).

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persons on September 23, 2014. A public meeting was held on October 9, 2014 in McKinney. The public comment period ended on October 9, 2014 at the close of the public meeting. The ED's RTC was mailed on December 10, 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 a contested case hearing. The cover letter attached to the RTC included information about making requests for a contested case hearing or for reconsideration of the ED's decision.<sup>2</sup> 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 time for requests for reconsideration and hearing requests ended on January 9, 2015. The TCEQ received timely requests for reconsideration from the following persons: Vijay Borra, Deborah and Nick Georges, Lisa Gay Hall, Deborah and Robert Norris, Troy Walter, and Brian Zumbar. The TCEQ received timely hearing requests that were not withdrawn from the following persons: Vijay K. Borra, Doris Ann Brown, Jason Broyles, Amy Burchett, John Burchett, Todd Carrico, Cynthia Lee Davis, Garry Davis, Bobbye Fisher, Deborah Georges, Nick Georges, Lisa Gay Hall, Jackie Lowrey, Lisa J. Miller, Matthew E. Nolan, Deborah Norris, Robert Norris, Joanne G. Smith, Anahi Villarreal, Troy Walter, Michael Wyatt, and Bryan Zumbar.

## **II. APPLICABLE LAW FOR REQUESTS FOR RECONSIDERATION**

The commission must assess the timeliness and form of the requests for reconsideration, as discussed in Section I above. The form requirements are set forth in 30 TAC § 55.209(f) which states: "Responses to requests for reconsideration should address the issues raised in the request."

## **III. RESPONSE TO REQUESTS FOR RECONSIDERATION**

The requests for reconsideration address responses in the ED's RTC filed on December 4, 2014. The requesters stated that the ED's RTC responses 1 – 3, 5 – 6, and 9 – 11 provided incorrect information, failed to answer the original question, or did not provide an answer that substantiates that the permit application meets the requirements of the applicable law. The ED provides the following responses to the requests for reconsideration.

**Request for Reconsideration of Response 1:** Requesters asked TCEQ to reconsider Response 1 because the requesters disagree that the proposed permit will require the applicant to comply with the requirements all provisions of the Standard Permit. Specifically, the requesters comment that the authorization requires the central baghouse to be more than 440 yards from residences if it is in an area that is not subject

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

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to municipal zoning. The requesters point out that there is no municipal zoning in their area and that there are residences within 440 yards of the proposed plant.

A requester questioned TCEQ's statement in Response 1 that the amount of Particulate Matter (PM) that will be emitted by the plant complies with federal protectiveness standards. The requester cited an article on the EPA's website regarding PM. The requester also commented that the Response to Comments stated that the proposed facility will emit air contaminants and questions how the permit can be protective if it allows any emissions.

Another requester asked the TCEQ to reconsider the portion of Response 1 that explains that citizens may assist in the TCEQ enforcement process. The requester questions this response since she does not have the equipment necessary to test the air quality and does not have an original air quality test.

**TCEQ Response:** In their Requests for Reconsideration, the requesters refer to the requirement in the Standard Permit for Concrete Batch Plants with Enhanced Controls that the central baghouse be more than 440 yards from residences if the plant will be located in an area that is not subject to municipal zoning. The provision the requesters reference is from TCAA § 382.05198(19). However, Bartoo has not applied for this particular authorization (Concrete Batch Plants with Enhanced Controls). Rather, they have applied for the Air Quality Permit for Concrete Batch Plants under TCAA § 382.05195, which has no such requirement.

With regard to Particulate Matter, although the EPA expresses concern about PM on the webpage cited by one of the requesters, the emissions from the proposed plant will meet the federal standards in the National Ambient Air Quality Standards (NAAQS) for PM. Particulate Matter NAAQS are created by the EPA and are set to protect sensitive members of the population such as children, the elderly, and individuals with existing respiratory conditions. The standards are set for criteria pollutants such as respirable PM, which includes PM<sub>10</sub> and PM<sub>2.5</sub>. The Standard Permit for concrete batch plants is designed so that the facilities it authorizes will be in compliance with the EPA standards.

The primary contaminants that have the potential to be emitted from the proposed facility are dust particles that come from vehicle traffic and material handling (specifically aggregate and cement) and have particle sizes less than or equal to 10 and 2.5 micrometers in aerodynamic diameter (PM<sub>10</sub> and PM<sub>2.5</sub>, respectively). All of the potential dust concentrations have been evaluated using reasonable worst case operating parameters and compared to the federal criteria mentioned above. When a company operates in compliance with the Standard Permit, there should be no deterioration of air quality or generation of dust such that it impacts visibility. The Standard Permit requires substantial dust control processes to minimize dust issues, including paving in-plant roads and work areas, using water sprays on stockpiles, and using a suction shroud and three sided curtain to prevent fly away dust.

For citizen-assisted enforcement, please see the TCEQ publication, "Do You Want to Make an Environmental Complaint? Do You Have Information or Evidence?" This

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booklet is available in English and Spanish from the TCEQ Publications office at 512-239-0028, and may be downloaded from the agency website at [www.tceq.texas.gov](http://www.tceq.texas.gov) (under Publications, search for Publication Number 278). With regard to the comment on equipment necessary to test air quality for nuisance or excessive dust, no special equipment, other than a camera, is necessary to document the presence of excessive dust.

**Request for Reconsideration of Response 2:** Requesters asked TCEQ to reconsider Response 2 because it does not explain why TCEQ does not require continuous air monitoring. Based on personal experience, the requester does not think the TCEQ will respond adequately to citizen complaints. The requester also wants assurances that no asphalt manufacturing or recycling will be permitted at the site.

**TCEQ Response:** The TCEQ does not require continuous air monitoring for minor source air permits unless conditions are exacerbated by such things as significant documented and justified complaints, unsatisfactory performance, or enforcement actions. If Bartoo operates in accordance with the terms of the Standard Permit, adverse impacts to the public health or welfare are not expected. No asphalt manufacturing or recycling is authorized by this permit.

In addition, as mentioned above, individuals are encouraged to report any concerns about nuisance issues or suspected noncompliance with terms of any permit or other environmental regulation by contacting the TCEQ Dallas/Fort Worth Regional Office at 817-588-5800 or by calling the 24-hour toll-free Environmental Complaints Hotline at 1-888-777-3186. The TCEQ takes complaints seriously and responds to all complaints.

**Request for Reconsideration of Response 3:** The requesters asked the commission to reconsider Response 3 because the requesters believe that Bartoo did not clearly post signs regarding the proposed plant.

**TCEQ Response:** The applicant provided verification to the commission that the sign posting was conducted in accordance with the TCEQ rules regarding public notice found in 30 TAC § 39.604, Sign-Posting. In addition, the TCEQ DFW Regional Office performed a site visit on September 11, 2014 to verify compliance with the sign-posting rules. The recommendation from the regional investigator was to proceed with the permit review since the signs were posted in compliance with the rule.

The purpose of the public notice is to inform the public of its right to ask questions, make comments, and request a public meeting and/or contested case hearing. Sign-posting is one aspect of public notice. In addition to the applicant's verification that it posted the signs according to TCEQ rules and the TCEQ site visit, the TCEQ received questions, comments, and requests for a public meeting and a contested case hearing, indicating that the public notice was effective.

**Request for Reconsideration of Response 5:** The requesters disagreed with TCEQ's Response 5. The requesters did not think that the applicant should have been allowed to correct

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an error in its permit application. The requesters suggested that the error in the application constituted a criminal offense meriting the denial of the application.

**TCEQ Response:** The TCEQ reviewed the application in light of the comments received and found that only one of the items commented on by the requesters was an error. Bartoo erred in stating that the proposed plant is not in the Extra-Territorial Jurisdiction of the city of Melissa. The applicant was made aware of the error and updated the application and provided notification of the correction. The TCEQ disagrees that this error constitutes a criminal offense and is satisfied with the action the applicant took to make corrections.

**Request for Reconsideration of Response 6:** The requesters asked the commission to reconsider Response 6 because they disagree that the TCEQ does not have the authority to “do the right thing” and deny the permit. The original comment stated that TCEQ’s Mission Statement allows the TCEQ to “do the right thing” and deny the permit.

**TCEQ Response:** The TCEQ has considered this request for reconsideration and reaffirms its response from the RTC.

**Request for Reconsideration of Response 9:** The requesters asked the commission to reconsider Response 9 regarding negative economic impact and use and enjoyment of property. The Requesters questioned the TCEQ’s assertion that the TCEQ is limited by jurisdiction in considering property values when evaluating an application. The requesters ask about this assertion considering that one of the criteria for being an affected person who can request a contested case hearing is the adverse economic interest affected by the application.

**TCEQ Response:** The TCEQ can only act within its authority as delegated by the Texas legislature. The TCEQ’s jurisdiction is established by the Legislature and is limited to the issues set forth in statute. Accordingly, the TCEQ does not have jurisdiction to consider potential effects on property values when determining whether to approve or deny a permit application. However, 30 TAC § 101.4 prohibits a person from creating or maintaining a condition of nuisance that interferes with a landowner’s use and enjoyment of his property.

**Request for Reconsideration of Response 10:** Requesters comment that the TCEQ’s response to comments regarding water quality and quantity is inadequate and fails to address the question.

**TCEQ Response:** While the TCEQ is responsible for the environmental protection of all media (including water), the TCAA specifically addresses air-related issues. This permit, if issued, will regulate the control and abatement of air emissions only, and therefore issues regarding water use are not within the scope of this permit review. Accordingly, this air quality permit application review did not include a specific water assessment or consideration of issues involving water quality or quantity.

This permit does not authorize the discharge of pollution into a body of water. Individuals are encouraged to report environmental concerns, including water quality issues, or suspected noncompliance with the terms of any permit or other environmental regulation by contacting the TCEQ Dallas/Fort Worth Regional Office at 817-588-5800

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or by calling the 24-hour toll-free Environmental Complaints Hotline at 1-888-777-3186. The TCEQ investigates all complaints received. If the facility is found to be out of compliance with the terms and conditions of its permit, it may be subject to enforcement action.

**Request for Reconsideration of Response 11:** Requesters asked the commission to reconsider Response 11. The Requesters were dissatisfied with the TCEQ's lack of jurisdiction over trucks, traffic hazards, roads, noise, and light.

**TCEQ Response:** The TCEQ has considered this request for reconsideration and reaffirms its response from the RTC.

### **III. 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:

- (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 and 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).

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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.

Additionally, this application is for registration for the Standard Permit for Concrete Batch Plants. Hearing requests on a concrete batch plant standard permit are subject to the requirements in TCAA § 382.058(c), which states that “only those persons actually residing in a permanent residence within 440 yards of the proposed plant may request a hearing ... as a person who may be affected.”

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.<sup>3</sup> 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.<sup>4</sup> 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.<sup>5</sup> 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.<sup>6</sup> The materials accompanying this response list and reference permit conditions and

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<sup>3</sup> TEXAS HEALTH & SAFETY CODE § 382.0518

<sup>4</sup> TEXAS HEALTH & SAFETY CODE § 382.0513

<sup>5</sup> TEXAS HEALTH & SAFETY CODE § 382.085

<sup>6</sup> TEXAS HEALTH & SAFETY CODE § 382.0513

operational requirements and limitations applicable to this proposed facility.

#### **IV. 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: Vijay K. Borra, Doris Ann Brown, Jason Broyles, Amy Burchett, John Burchett, Todd Carrico, Cynthia Lee Davis, Garry Davis, Bobbye Fisher, Deborah Georges, Nick Georges, Lisa Gay Hall, Jackie Lowrey, Lisa J. Miller, Matthew E. Nolan, Deborah Norris, Robert Norris, Joanne G. Smith, Anahi Villarreal, Troy Walter, Michael Wyatt, and Bryan Zumbar.

**Vijay K. Borra:** Vijay K. Borra submitted requests for a contested case hearing in comments on July 9, 2014 and July 23, 2014, and in a request for reconsideration of the Executive Director's Response to Comments on January 6, 2015. His first two requests were made in a comment he timely submitted to the agency during the relevant public comment period. He filed the third request in a request for reconsideration of the Executive Director's Response to Comments. Mr. Borra gave his name and residential address in his requests and gave his proximity to the proposed plant while also stating that he believes he will be adversely affected by the application in the following ways:

- The facility's proposed location would be in close proximity to his residence.
- The cement dust from the proposed plant could be harmful to Mr. Borra's daughter since she has asthma.
- Mr. Borra would lose rental income because of the plant.

Based on the address provided by Mr. Borra, the ED's staff was able to confirm that his residence is within 440 yards of the plant. In addition, the ED finds that, of the issues raised in his requests, some may be considered personal justiciable interests that are also relevant and material disputed issues of fact.

Based on the foregoing, the ED finds that Mr. Borra 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 this person's interests, which will be discussed in detail in subsection B below.

**Doris Ann Brown:** Doris Ann Brown submitted requests for a contested case hearing on July 18, 2014 and July 25, 2014. Her requests were made in comments she timely submitted to the agency during the relevant comment period. She provided her name and residential address in her request and gave her proximity to the proposed plant while also stating that she believes she will be adversely affected by the application in the following ways:

- The facility's proposed location would be directly across a private road from her home.

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- The air contaminants from this proposed plant would exacerbate her existing breathing problems.

Based on the address provided by Ms. Brown, the ED's staff was able to confirm that her residence is within 440 yards of the plant. In addition, the ED finds that, of the issues raised in her requests, some may be considered personal justiciable interests that are also relevant and material disputed issues of fact.

Based on the foregoing, the ED finds that Debra Ann Brown 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 this person's interests, which will be discussed in detail in subsection B below.

**Jason Broyles:** Jason Broyles submitted requests for a contested case hearing on July 31, 2014. His request was made in a comment he timely submitted to the agency during the relevant comment period and included his name and residential address. Mr. Broyles requested a contested case hearing in the first sentence of his comment. Mr. Broyles gave his proximity to the proposed plant while also stating that he believes he will be adversely affected by the application in the following ways:

- The facility's proposed location would be next door to his home.
- The air contaminants from this proposed plant would exacerbate his son's severe allergies and chronic asthma.
- The plant would harm the wellbeing of his chickens and horses.

Based on the address provided by Mr. Broyles, the ED's staff was able to confirm that his residence is within 440 yards of the plant. In addition, 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.

Based on the foregoing, the ED finds that Mr. Broyles 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 this person's interests, which will be discussed in detail in subsection B below.

**Amy Burchett and John Burchett:** Amy Burchett and John Burchett submitted a request for a contested case hearing on July 31, 2014. Amy and John Burchett's request was made in a comment they timely submitted to the agency during the relevant public comment period. They provided their names and a residential address. However, as indicated by the enclosed maps, Amy Burchett and John Burchett do not reside within the 440 yards of the proposed plant. The distance is measured from the footprint of the plant to the residence.

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For a concrete batch plant standard permit, TCAA § 382.058(c) requires that a person reside within 440 yards of the proposed plant in order to request a hearing as an affected person. The ED has determined that Amy Burchett and John Burchett reside more than 440 yards from the proposed plant, and therefore, by statute, the Burchetts are precluded from requesting a hearing as an affected person.

**Todd Carrico:** Todd Carrico submitted a request for a contested case hearing on August 7, 2014. His request was made in a comment he timely submitted to the agency during the relevant public comment period. He provided his name and a residential address. As indicated by the enclosed maps, he does not reside within the 440 yards of the proposed plant. The distance is measured from the footprint of the plant to the residence.

For a concrete batch plant standard permit, TCAA § 382.058(c) requires that a person reside within 440 yards of the proposed plant in order to request a hearing as an affected person. The ED has determined that Todd Carrico resides more than 440 yards from the proposed plant, and therefore, by statute, Mr. Carrico is precluded from requesting a hearing as an affected person.

**Cynthia Lee Davis and Garry Davis:** Cynthia Lee Davis and Garry Davis submitted requests for a contested case hearing on July 28, 2014 and on January 8, 2015. Their requests were made in comments they timely submitted to the agency during the relevant public comment periods. Cynthia Lee Davis and Garry Davis provided their names, telephone number, and residential address. In addition, the Davises gave their proximity to the proposed plant while also stating that they believe they will be adversely affected by the application in the following ways:

- The facility's proposed location would be in close proximity to their home.
- The air contaminants from this proposed plant would prevent the use and enjoyment of their property.
- The air contaminants from this proposed plant would exacerbate their existing health conditions.

Based on the address provided by the Davises, the ED's staff was able to confirm that their residence is within 440 yards of the plant. In addition, the ED finds that, of the issues raised in their requests, some may be considered personal justiciable interests that are also relevant and material disputed issues of fact.

Based on the foregoing, the ED finds Cynthia Lee Davis and Garry Davis 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 this person's interests, which will be discussed in detail in subsection B below.

**Bobbie Fisher:** Bobbie Fisher submitted a request for a contested case hearing on July 28, 2014. Her request was made in a comment she timely submitted to the agency during the

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relevant public comment period. She provided her name and residential address in her request. However, as indicated by the enclosed maps, Bobbye Fisher's residence is not within the 440 yards of the proposed plant. The distance is measured from the footprint of the plant to the residence.

For a concrete batch plant standard permit, TCAA § 382.058(c) requires that a person reside within 440 yards of the proposed plant in order to request a hearing as an affected person. The ED has determined that Bobbye Fisher resides more than 440 yards from the proposed plant, and therefore, by statute, Ms. Fisher is precluded from requesting a hearing as an affected person.

**Deborah Georges and Nick Georges:** Deborah Georges and Nick Georges submitted requests for a contested case hearing in comments on July 26, 2014 and July 30, 2014, and in requests for reconsideration on December 26, 2014 and January 9, 2015. Their requests were timely submitted to the agency during the relevant time periods. The requests contained their names and residential address. In addition, the Georgeses gave their proximity to the proposed plant while also stating that they believe they will be adversely affected by the application in the following ways:

- The facility's proposed location would be in close proximity to their home.
- The air contaminants from this proposed plant would prevent the use and enjoyment of their property.
- The air contaminants from this proposed plant would exacerbate their existing health conditions.
- The air contaminants from the facility would harm their llamas, cats, and goat.

Based on the address provided by Deborah Georges and Nick Georges, the ED's staff was able to confirm that their residence is within 440 yards of the plant. In addition, the ED finds that, of the issues raised in their requests, some may be considered personal justiciable interests that are also relevant and material disputed issues of fact

Based on the foregoing, the ED finds the Deborah Georges and Nick Georges 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 this person's interests, which will be discussed in detail in subsection B below.

**Lisa Gay Hall:** Lisa Gay Hall submitted requests for a contested case hearing in comments on July 8, 2014 and July 22, 2014, and in a request for reconsideration of the RTC on January 9, 2015. Lisa Gay Hall's requests were timely submitted to the agency during the relevant time periods. She provided her name and residential address in her request and gave her proximity to the proposed plant while also stating that she believes she will be adversely affected by the application in the following ways:

- The facility's proposed location is in close proximity to her home.

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- The air contaminants and dust from this proposed plant would adversely affect her health.
- Trucks from the facility will harm the road.
- The presence of the facility will harm property values.

Based on the address provided by Ms. Hall, the ED's staff was able to confirm that her residence is within 440 yards of the plant. In addition, the ED finds that, of the issues raised in her requests, some may be considered personal justiciable interests that are also relevant and material disputed issues of fact.

Based on the foregoing, the ED finds that Lisa Gay Hall 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 this person's interests, which will be discussed in detail in subsection B below.

**Jackie Lowrey:** Jackie Lowrey submitted requests for a contested case hearing in comments on July 30, 2014 and January 8, 2015. Jackie Lowrey's requests were timely submitted to the agency during the relevant time periods. She provided her name, phone number, and a residential address in her requests and gave her proximity to the proposed plant while also stating that she believes she will be adversely affected by the application in the following ways:

- The facility's proposed location is in close proximity to her home.
- The air contaminants from this proposed plant would exacerbate her existing health conditions.

Based on the address provided by Ms. Lowrey, the ED's staff was able to confirm that her residence is within 440 yards of the plant. In addition, the ED finds that, of the issues raised in her requests, some may be considered personal justiciable interests that are also relevant and material disputed issues of fact.

Based on the foregoing, the ED finds that Jackie Lowrey 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 this person's interests, which will be discussed in detail in subsection B below.

**Diane Miller:** Diane Miller submitted a request for a contested case hearing on July 30, 2014. However, she did provide a residential address, a telephone number, or her proximity to the proposed site in her request.

For a concrete batch plant standard permit, TCAA § 382.058(c) requires that a person reside within 440 yards of the proposed plant in order to request a hearing as an affected

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person. Because the ED is unable to determine whether Diane Miller resides more than 440 yards from the proposed plant, the ED finds that she is not an "affected person" and does not meet the requirements of a person able to request a contested case hearing according to 30 TAC § 55.201.

**Lisa J. Miller and Matthew E. Nolan:** Lisa J. Miller and Matthew E. Nolan submitted requests for a contested case hearing on July 25, 2014. Their requests were made in comments they timely submitted to the agency during the relevant public comment period. They provided their names and residential address in their requests. In addition, Lisa J. Miller and Matthew E. Nolan gave their proximity to the proposed plant while also stating that they believe they will be adversely affected by the application in the following ways:

- The facility's proposed location would be in close proximity to their home.
- The air contaminants from this proposed plant would exacerbate their existing health conditions.
- The facility would harm the health of their animals.

Based on the foregoing, the ED finds Lisa J. Miller and Matthew E. Nolan substantially complied with all of the requirements to request a contested case hearing under 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 this person's interests, which will be discussed in detail in subsection B below.

**Deborah Norris and Robert Norris:** Deborah Norris and Robert Norris submitted requests for a contested case hearing in comments on July 18, 25, and 28, 2014, and in requests for reconsideration on December 23, 2014. Their requests were made in comments they timely submitted to the agency during the relevant public comment periods. They provided their names and their residential address in their requests. In addition, the Norrises gave their proximity to the proposed plant while also stating that they believe they will be adversely affected by the application in the following ways:

- 
- The facility's proposed location would be in close proximity to their home.
- The air contaminants from this proposed plant would harm their crops.
- The air contaminants from this proposed plant would exacerbate their existing health conditions.

Based on the address provided by the Norrises, the ED's staff was able to confirm that their residence is within 440 yards of the plant. In addition, the ED finds that, of the issues raised in their requests, some may be considered personal justiciable interests that are also relevant and material disputed issues of fact.

Based on the foregoing, the ED finds Deborah Norris and Robert Norris 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

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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 this person's interests, which will be discussed in detail in subsection B below.

**Joanne G. Smith:** Joanne G. Smith submitted requests for a contested case hearing on July 8, 2014. Her request was made in a comment she timely submitted to the agency during the relevant comment period. Joanne G. Smith provided her name and residential address in her request and gave her proximity to the proposed plant while also stating that she believes she will be adversely affected by the application in the following ways:

- 
- The facility's proposed location would be in close proximity to her home.
- The air contaminants from this proposed plant would prevent the use and enjoyment of her property.
- The air contaminants from this proposed plant would exacerbate her existing health conditions.

Based on the address provided by Ms. Smith, the ED's staff was able to confirm that her residence is within 440 yards of the plant. In addition, the ED finds that, of the issues raised in her requests, some may be considered personal justiciable interests that are also relevant and material disputed issues of fact.

Based on the foregoing, the ED finds that Joanne G. Smith 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 this person's interests, which will be discussed in detail in subsection B below.

**Anahi Villarreal:** Anahi Villarreal submitted requests for a contested case hearing on July 8 and 9, 2014. Her requests were made in comments she timely submitted to the agency during the relevant comment period. Anahi Villarreal provided her name and residential address in her request and gave her proximity to the proposed plant while also stating that she believes she will be adversely affected by the application in the following ways:

- The facility's proposed location would be in close proximity to her home.
- The air contaminants from this proposed plant would prevent the use and enjoyment of their property.
- The air contaminants from this proposed plant would be harmful to her health and the health of her family.
- The facility will cause nuisance conditions.

Based on the address provided by Ms. Villarreal, the ED's staff was able to confirm that her residence is within 440 yards of the plant. In addition, the ED finds that, of the

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issues raised in her requests, some may be considered personal justiciable interests that are also relevant and material disputed issues of fact.

Based on the foregoing, the ED finds that Anahi Villarreal 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 this person's interests, which will be discussed in detail in subsection B below.

**Troy Walter:** Troy Walter submitted a request for a contested case hearing in a comment on July 24, 2014 and in a request for reconsideration on January 5, 2015. His request was made in a comment he timely submitted to the agency during the relevant public comment period. . He provided his name and residential address in his request and gave his proximity to the proposed plant while also stating that he believes he will be adversely affected by the application in the following ways:

- The facility's proposed location would be in close proximity to his home.
- The air contaminants from this proposed plant would prevent the use and enjoyment of his property.
- The air contaminants from this proposed plant would be harmful to his health and exacerbate his wife's existing health conditions.
- The facility would be harmful to the health of his plants and animals.

Based on the address provided by Mr. Walter, the ED's staff was able to confirm that his residence is within 440 yards of the plant. In addition, the ED finds that, of the issues raised in his requests, some may be considered personal justiciable interests that are also relevant and material disputed issues of fact.

Based on the foregoing, the ED finds that Mr. Walter 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 this person's interests, which will be discussed in detail in subsection B below.

**Michael Wyatt:** Michael Wyatt submitted a request for a contested case hearing on June 3, 2013, Michael Wyatt's request was made in a comment he timely submitted to the agency during the relevant comment period. He provided his name and residential address. As indicated by the enclosed maps, Michael Wyatt does not reside within the 440 yards of the proposed plant. The distance is measured from the footprint of the plant to the residence.

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For a concrete batch plant standard permit, TCAA § 382.058(c) requires that a person reside within 440 yards of the proposed plant in order to request a hearing as an affected person. The ED has determined that Michael Wyatt resides more than 440 yards from the proposed plant, and therefore, by statute, Mr. Wyatt is precluded from requesting a hearing as an affected person.

**Bryan Zumbar:** Bryan Zumbar submitted requests for a contested case hearing on June 10, 2013 in a comment and on January 3, 2015 in a request for reconsideration. Bryan Zumbar's requests were timely made during the relevant public comment period. He provided his name and residential address in his request and gave his proximity to the proposed plant while also stating that he believes he will be adversely affected by the application in the following ways:

- The facility's proposed location would be in close proximity to his home.
- The air contaminants from this proposed plant would be harmful to his health.
- The facility would be harmful to the health of his plants and bees.

Based on the address provided by Mr. Zumbar, the ED's staff was able to confirm that his residence is within 440 yards of the plant. In addition, the ED finds that, of the issues raised in his requests, some may be considered personal justiciable interests that are also relevant and material disputed issues of fact.

Based on the foregoing, the ED finds that Mr. Zumbar 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 this person's interests, which will be discussed in detail in subsection B below.

**B. Are those who requested a contested case hearing affected persons?**

The law applicable to this permit application is outlined above in Section IV. The following hearing requesters reside more than 440 yards from the proposed facility, and therefore pursuant to TCAA § 382.058(c) are not affected persons: Amy and John Burchett, Todd Carrico, Bobbye Fisher, Diane Miller, and Michael Wyatt.

Vijay Borra, Doris Ann Brown, Jason Broyles, Cynthia Lee and Garry Davis, Deborah and Nick Georges, Lisa Gay Hall, Jackie Lowrey, Lisa J. Miller, Matthew E. Nolan, Deborah and Robert Norris, Joanne G. Smith, Anahi Villarreal, Troy Walter, and Brian Zumbar reside within 440 yards of the proposed facility and, therefore, satisfy the requirement of TCAA § 382.058(c). Since they have also 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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1. Vijay Borra

The interests Vijay Borra claims are:

- The facility's proposed location would be in close proximity to his residence.
- The cement dust from the proposed plant could be harmful to Mr. Borra's daughter since she has asthma.
- Mr. Borra would lose rental income because of the plant.

The ED has concluded that the following personal justiciable interest may be considered in evaluating whether a person is an affected person:

- That the cement dust from this proposed plant could be harmful to his daughter's existing health conditions.

2. Doris Ann Brown

The interests Doris Ann Brown claims are:

- The facility's proposed location would be directly across a private road from her home.
- The air contaminants from this proposed plant would exacerbate her existing breathing problems

The ED has concluded that the following personal justiciable interest may be considered in evaluating whether a person is an affected person:

- The air contaminants from this proposed plant would exacerbate her existing breathing problems.

3. Jason Broyles

The interests Jason Broyles claims are:

- The facility's proposed location would be next door to his home.
- The air contaminants from this proposed plant would exacerbate his son's severe allergies and chronic asthma.
- The plant would harm the wellbeing of his chickens and horses.

The ED has concluded that the following personal justiciable interests may be considered in evaluating whether a person is an affected person:

- That the air contaminants from this proposed plant would exacerbate his son's severe allergies and chronic asthma.
- That the plant would harm the health of his chickens and horses.

4. Cynthia Lee Davis and Garry Davis

The interests Cynthia Lee Davis and Garry Davis claim are:

- The facility's proposed location would be in close proximity to their home.
- The air contaminants from this proposed plant would prevent the use and enjoyment of their property.
- The air contaminants from this proposed plant would exacerbate their existing health conditions.

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The ED has concluded that the following personal justiciable interests may be considered in evaluating whether a person is an affected person:

- The air contaminants from this proposed plant would prevent the use and enjoyment of their property.
- The air contaminants from this proposed plant would exacerbate their existing health conditions.

5. Deborah Georges and Nick Georges

The interests Deborah Georges and Nick Georges claim are:

- The facility's proposed location would be in close proximity to their home.
- The air contaminants from this proposed plant would prevent the use and enjoyment of their property.
- The air contaminants from this proposed plant would exacerbate their existing health conditions.
- The air contaminants from the facility would harm their llamas, cats, and goat.

The ED has concluded that the following personal justiciable interests may be considered in evaluating whether a person is an affected person:

- The air contaminants from this proposed plant would prevent the use and enjoyment of their property.
- The air contaminants from this proposed plant would exacerbate their existing health conditions.
- The air contaminants from the facility would harm their llamas, cats, and goat.

6. Lisa Gay Hall

The interests Lisa Gay Hall claims are:

- The facility's proposed location is in close proximity to her home.
- The air contaminants and dust from this proposed plant would adversely affect her health.
- Trucks from the facility will harm the road.
- The presence of the facility will harm property values.

The ED has concluded that the following personal justiciable interest may be considered in evaluating whether a person is an affected person:

- The air contaminants and dust from this proposed plant would affect her health.

7. Jackie Lowrey

The interests Jackie Lowrey claims are:

- The facility's proposed location is in close proximity to her home.
- The air contaminants from this proposed plant would exacerbate her existing health conditions.

The ED has concluded that the following personal justiciable interest may be considered in evaluating whether a person is an affected person:

- The air contaminants from this proposed plant would exacerbate her existing health conditions.

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8. Lisa J. Miller and Matthew E. Nolan

The interests Lisa J. Miller and Matthew E. Nolan claim are:

- The facility's proposed location would be in close proximity to their home.
- The air contaminants from this proposed plant would exacerbate their existing health conditions.
- The facility would harm the health of their animals.

The ED has concluded that the following personal justiciable interests may be considered in evaluating whether a person is an affected person:

- The air contaminants from this proposed plant would exacerbate their existing health conditions.
- The facility would harm the health of their animals.

9. Deborah Norris and Robert Norris

The interests Deborah Norris and Robert Norris claim are:

- The facility's proposed location would be in close proximity to their home.
- The air contaminants from this proposed plant would harm their crops.
- The air contaminants from this proposed plant would exacerbate their existing health conditions.

The ED has concluded that the following personal justiciable interests may be considered in evaluating whether a person is an affected person:

- The air contaminants from this proposed plant would harm their crops.
- The air contaminants from this proposed plant would exacerbate their existing health conditions.

10. Joanne G. Smith

The interests claimed by Joanne G. Smith are:

- The facility's proposed location would be in close proximity to her home.
- The air contaminants from this proposed plant would prevent the use and enjoyment of her property.
- The air contaminants from this proposed plant would exacerbate her existing health conditions.

The ED has concluded that the following personal justiciable interests may be considered in evaluating whether a person is an affected person:

- The air contaminants from this proposed plant would prevent the use and enjoyment of her property.
- The air contaminants from this proposed plant would exacerbate her existing health conditions.

11. Anahi Villarreal

The interests claimed by Anahi Villarreal are:

- The facility's proposed location would be in close proximity to her home.

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- The air contaminants from this proposed plant would prevent the use and enjoyment of their property.
- The air contaminants from this proposed plant would be harmful to her health and the health of her family.
- The facility will cause nuisance conditions.

The ED has concluded that the following personal justiciable interests may be considered in evaluating whether a person is an affected person:

- The air contaminants from this proposed plant would prevent the use and enjoyment of their property.
- The air contaminants from this proposed plant would be harmful to her health and the health of her family.
- The facility will cause nuisance conditions.

12. Troy Walter

The interests claimed by Troy Walter are:

- The facility's proposed location would be in close proximity to his home.
- The air contaminants from this proposed plant would prevent the use and enjoyment of his property.
- The air contaminants from this proposed plant would be harmful to his health and exacerbate his wife's existing health conditions.
- The facility would be harmful to the health of his plants and animals.

The ED has concluded that the following personal justiciable interests may be considered in evaluating whether a person is an affected person:

- The air contaminants from this proposed plant would prevent the use and enjoyment of his property.
- The air contaminants from this proposed plant would be harmful to his health and exacerbate his wife's existing health conditions.
- The facility would be harmful to the health of his plants and animals

13. Brian Zumbar

The interests claimed by Brian Zumbar are:

- The facility's proposed location would be in close proximity to his home.
- The air contaminants from this proposed plant would be harmful to his health.
- The facility would be harmful to the health of his plants and bees.
- 
- The ED has concluded that the following personal justiciable interests may be considered in evaluating whether a person is an affected person:
- The air contaminants from this proposed plant would be harmful to his health.
- The facility would be harmful to the health of his plants and bees.

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

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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 Vijay Borra, Doris Ann Brown, Jason Broyles, Cynthia Lee and Garry Davis, Deborah and Nick Georges, Lisa Gay Hall, Jackie Lowrey, Lisa J. Miller, Matthew E. Nolan, Deborah and Robert Norris, Joanne G. Smith, Anahi Villarreal, Troy Walter, and Brian Zumbar claim are within the scope of an air quality Standard Permit authorization and focus on the potential adverse effects of potential air contaminants from the facility, and the ED finds that a reasonable relationship exists between the interest 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. As discussed above, the ED agrees that Vijay Borra, Doris Ann Brown, Jason Broyles, Cynthia Lee and Garry Davis, Deborah and Nick Georges, Lisa Gay Hall, Jackie Lowrey, Lisa J. Miller, Matthew E. Nolan, Deborah and Robert Norris, Joanne G. Smith, Anahi Villarreal, Troy Walter, and Brian Zumbar reside in close proximity of the footprint of the plant that is the subject of this permit authorization and notes that their comments reveal concern for the health and welfare of residents in their homes, as well as the health and welfare of the vegetation and animal life on their properties. The natural resource that is the subject of this permit is the ambient air that the requesters breathe, and they have indicated several ways in which emissions from the plant could impact it. The ED finds that Vijay Borra, Doris Ann Brown, Jason Broyles, Cynthia Lee and Garry Davis, Deborah and Nick Georges, Lisa Gay Hall, Jackie Lowrey, Lisa J. Miller, Matthew E. Nolan, Deborah and Robert Norris, Joanne G. Smith, Anahi Villarreal, Troy Walter, and Brian Zumbar have a personal justiciable interest within the meaning of TWC § 5.115 and TAC § 55.203(a) affected by this permit application.

Because Vijay Borra, Doris Ann Brown, Jason Broyles, Cynthia Lee and Garry Davis, Deborah and Nick Georges, Lisa Gay Hall, Jackie Lowrey, Lisa J. Miller, Matthew E. Nolan, Deborah and Robert Norris, Joanne G. Smith, Anahi Villarreal, Troy Walter, and Brian Zumbar reside within 440 yards of the proposed facility and have also articulated a personal justiciable interest in the proposed facility that is not common to the general public, they are affected persons entitled to a contested case hearing, under the requirements of TCAA § 382.058(c).

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

If the commission determines any of the hearing requests in this matter are timely and in proper form, and some or all of the hearing requesters are affected persons, the commission must apply the three-part test discussed in Section IV to the issues raised in this matter to determine if any of the issues should be referred to SOAH for a contested

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case hearing. The three-part test asks whether the issues involve disputed questions of fact, whether the issues were raised during the public comment period, and whether the issues are relevant and material to the decision on the permit application, in order to refer them to SOAH.

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

**1. What issues are questions of fact?**

Vijay Borra, Doris Ann Brown, Jason Broyles, Cynthia Lee and Garry Davis, Deborah and Nick Georges, Lisa Gay Hall, Jackie Lowrey, Lisa J. Miller, Matthew E. Nolan, Deborah and Robert Norris, Joanne G. Smith, Anahi Villarreal, Troy Walter, and Brian Zumbar raised the following questions of fact for this application during the public comment period:

- Whether the facility will have any adverse effects on air quality;
- Whether adverse health impacts are expected, including impacts on sensitive subgroups such as individuals with pre-existing health conditions;
- Whether there will be an adverse impact on the animal life or vegetation;
- Whether the concrete batch plant will cause or contribute to a dust nuisance condition.

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

The public comment period is defined in 30 TAC § 55.152. The public comment period begins with the publication of the Notice of Receipt and Intent to Obtain an Air Quality Permit. The end date of the public comment period depends on the type of permit. In this case, the public comment period began on July 17, 2014, and ended on January 9, 2015. All of the issues listed above upon which the hearing requests in this matter are based were raised in comments received during the public comment period.

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

In this case, the permit would be issued under the commission's authority in Tex. Water Code § 5.013(11) (assigning the responsibilities in Chapter 382 of the Tex. Health and Safety Code), and the TCAA. The Standard Permit for Concrete Batch Plants was developed under the commission's authority granted by the TCAA, and codified in 30 TAC Chapter 116, Subchapter F, Standard Permits. Additionally, the legislature has imposed certain requirements for Concrete Batch Plant Standard Permits in TCAA § 382.058(c). In making this permitting decision, the commission may consider the Applicant's compliance history. The commission by rule has also specified certain requirements for permitting. Therefore, in making the determination of relevance in this case, the commission should review each issue to see if it is relevant to these statutory and regulatory requirements that must be satisfied by this permit application.

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The ED finds the following issues relevant and material to the decision on the application:

- Whether the facility will have any adverse effects on air quality;
- Whether adverse health impacts are expected, including sensitive subgroups such as individuals with pre-existing health conditions;
- Whether there will be an adverse impact on the animal life or vegetation;
- Whether the concrete batch plant will cause or contribute to a dust nuisance condition.

The ED finds the following issues are beyond the jurisdiction of TCEQ and thus not material to the decision on the application:

- Whether the facility will negatively impact requesters' real property and personal property; and
- Whether the truck traffic from the facility will bring result in harm to the road.

**VI. MAXIMUM EXPECTED DURATION OF THE CONTESTED CASE HEARING**

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

**VII. EXECUTIVE DIRECTOR'S RECOMMENDATION**

The Executive Director respectfully recommends the commission:

A. Find all requests for reconsideration and hearing requests in this matter were timely filed.

B. Find that the requests of the following groups or persons satisfy the requirements for form under 30 TAC§ 55.201(d) and are affected persons under 30 TAC § 55.203:

1. Vijay Borra
2. Doris Ann Brown
3. Jason Broyles
4. Cynthia Lee and George Davis
5. Deborah and Nick Georges
6. Lisa Gay Hall
7. Jackie Lowrey
8. Lisa J. Miller and Matthew E. Nolan
9. Deborah and Robert Norris
10. Joanne G. Smith
11. Anahi Villarreal
12. Troy Walter
13. Brian Zumbar

C. Find all other hearing requesters are not affected persons in this matter;

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D. If the commission determines any requester is an affected person, refer the following issues to SOAH:

- Whether the facility will have any adverse effects on air quality;
- Whether adverse health impacts are expected, including sensitive subgroups such as individuals with pre-existing health conditions;
- Whether there will be an adverse impact on the animal life or vegetation; and
- Whether the concrete batch plant will cause or contribute to a dust nuisance condition.

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

F. Deny the requests for reconsideration of Vijay Borra, Deborah and Nick Georges, Lisa Gay Hall, Deborah and Robert Norris, Troy Walter, and Brian Zumbar.

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



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REPRESENTING THE  
EXECUTIVE DIRECTOR OF THE  
TEXAS COMMISSION ON  
ENVIRONMENTAL QUALITY

**CERTIFICATE OF SERVICE**

On the 23rd day of March, 2015, 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.

A handwritten signature in black ink, appearing to read "PNPetty". The signature is written in a cursive, somewhat stylized font.

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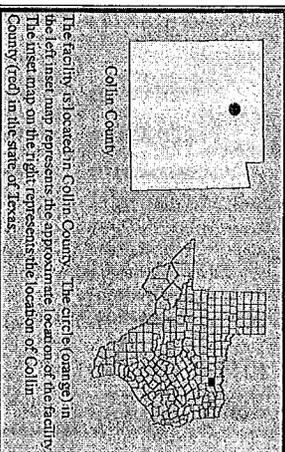
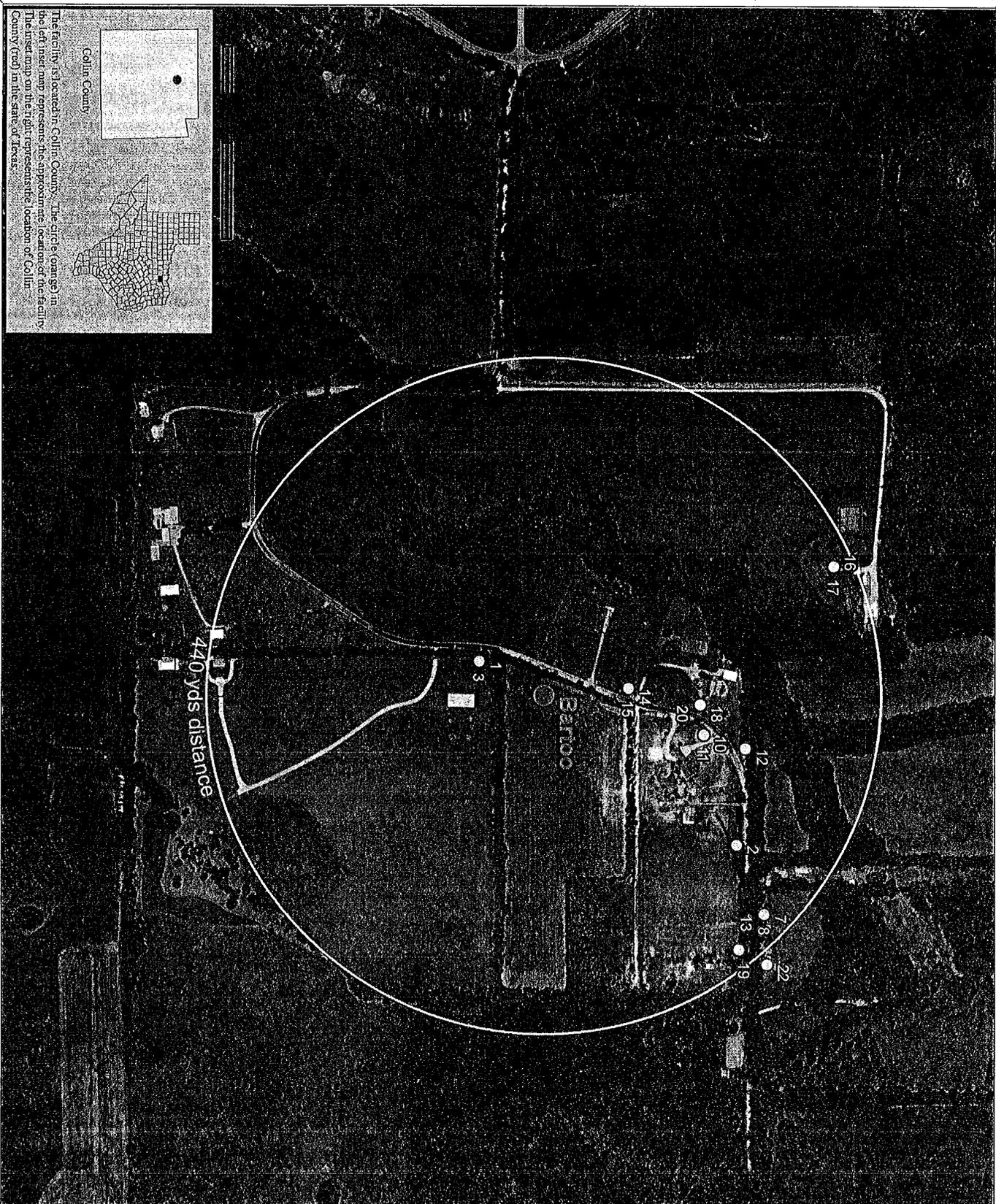
Becky Nash Petty

# Bartoo Ready Mix, LLC, Permit No. 120783 Hearing Requestors

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



Texas Commission on Environmental Quality  
GIS Team (Mail Code 197)  
P.O. Box 13057  
Austin, Texas 78711-3087  
Date: 3/23/2015



● Proposed Facility  
○ Requestors

- Key Name
- 1 VIJAY K BORRA
  - 2 DORIS ANN BROWN
  - 3 JASON BROYLES
  - 4 AMY BURCHETT
  - 5 JOHN BURCHETT
  - 6 TODD CARRICO
  - 7 CYNTHIA LEE DAVIS
  - 8 GARRY DAVIS
  - 9 BOBBIE FISHER
  - 10 DEBORAH GEORGES
  - 11 NICK GEORGES
  - 12 USA GAY HALL
  - 13 JACKIE LOWREY
  - 14 USA J. MILLER
  - 15 MATTHEW E. NOLAN
  - 16 DEBORAH NORRIS
  - 17 ROBERT NORRIS
  - 18 JOANNE G. SMITH
  - 19 ANAHI VILLARREAL
  - 20 TROY WALTER
  - 21 MICHAEL WYATT
  - 22 BRYAN ZUMBAR

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) 253-0800.

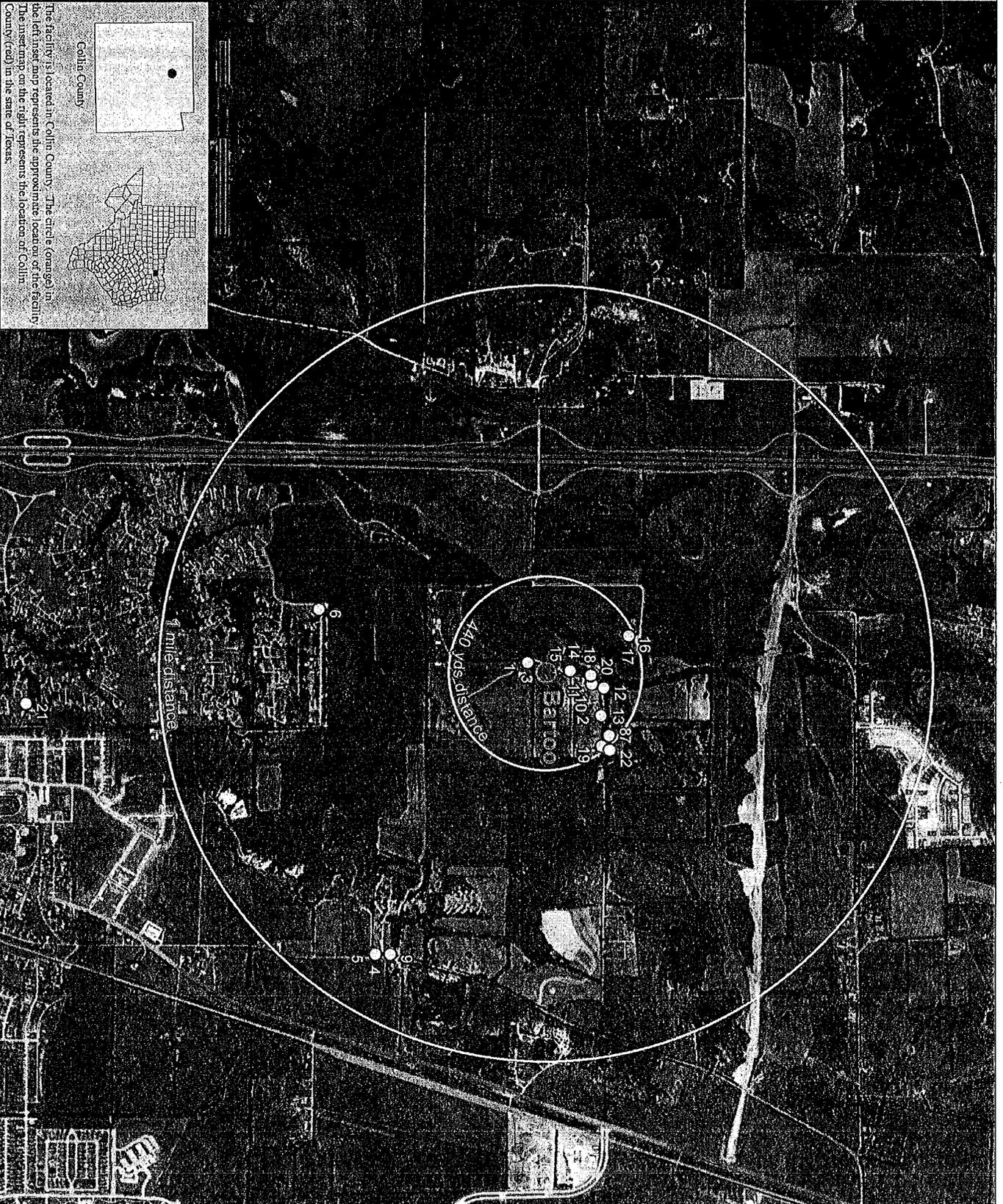
# Bartoo Ready Mix, LLC, Permit No. 120783

## Hearing Requestors

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



Texas Commission on Environmental Quality  
GIS Team (Mail Code 197)  
P.O. Box 13087  
Austin, Texas 78711-3087  
Date: 3/23/2015



- Proposed Facility
- Requestors

Key	Name
1	VILAY K BORRA
2	DORIS ANN BROWN
3	JASON BROYES
4	AMY BURCHETT
5	JOHN BURCHETT
6	TODD CARRICO
7	CYNTHIA LEE DAVIS
8	GARRY DAVIS
9	BOBBYE FISHER
10	DEBORAH GEORGES
11	NICK GEORGES
12	USA GAY HALL
13	JACKIE LOWREY
14	USA J. MILLER
15	MATTHEW E. NOLAN
16	DEBORAH NORRIS
17	ROBERT NORRIS
18	JOANNE G. SMITH
19	ANAHÍ VILLARREAL
20	TROY WALTER
21	MICHAEL WYATT
22	BRYAN ZUMBAR

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**MAILING LIST**  
**BARTOO READY MIX, LLC**  
**DOCKET NO. 2015-0041-AIR; PERMIT NO. 120783**

FOR THE APPLICANT:

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RESOLUTION

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Environmental Quality  
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Quality  
Office of Chief Clerk, MC-105  
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REQUESTER(S) / INTERESTED  
PERSON(S):

See attached list.

**REQUESTER(S)**

VIJAYA K BORRA  
516 COUNTY ROAD 364  
MELISSA TX 75454-2004

MRS DORIS ANN BROWN  
636 COUNTY ROAD 364  
MELISSA TX 75454-2006

MR JASON BROYLES  
516 COUNTY ROAD 364  
MELISSA TX 75454-2004

AMY & JOHN BURCHETT  
40333 HIGHLAND ROAD  
MELISSA TX 75454

TODD CARRICO  
2 SHADYWOOD LN  
MELISSA TX 75454-2121

MRS CYNTHIA LEE DAVIS  
685 COUNTY ROAD 364  
MELISSA TX 75454-2007

GARRY DAVIS  
685 COUNTY ROAD 364  
MELISSA TX 75454-2007

BOBBYE FISHER  
4115 HIGHLAND RD  
MELISSA TX 75454-2225

DEBORAH GEORGES  
588 COUNTY ROAD 364  
MELISSA TX 75454-2004

MRS LISA GAY HALL  
559 COUNTY ROAD 364  
MELISSA TX 75454-2005

LISA HALL  
2600 KENNEDY DR  
MELISSA TX 75454-2497

JACKIE LOWREY  
685 COUNTY ROAD 364  
MELISSA TX 75454-2007

DIANE MILLER  
PO BOX 126  
MELISSA TX 75454-0126

LISA J MILLER  
559 COUNTY ROAD 364  
MELISSA TX 75454-2005

MR MATTHEW E NOLAN  
559 COUNTY ROAD 364  
MELISSA TX 75454-2005

DEBORAH S NORRIS  
PO BOX 381  
MELISSA TX 75454-0381

MR ROBERT A NORRIS  
PO BOX 381  
MELISSA TX 75454-0381

MS JOANNE G SMITH  
571 COUNTY ROAD 364  
MELISSA TX 75454-2005

MRS ANAHI VILLARREAL  
720 COUNTY ROAD 364  
MELISSA TX 75454-2008

MR TROY WALTER  
571 COUNTY ROAD 364  
MELISSA TX 75454-2005

MICHAEL WYATT  
27 MEADOWCREEK DR  
MELISSA TX 75454-8907

BRYAN ZUMBAR  
741 COUNTY ROAD 364  
MELISSA TX 75454-2009

**PUBLIC OFFICIALS - INTERESTED PERSON(S)**

THE HONORABLE SCOTT SANFORD  
STATE REP, TX HOUSE OF REPRESENTATIVES -  
DISTRICT 70  
PO BOX 2910  
AUSTIN TX 78768-2910

**INTERESTED PERSON(S)**

JIM ADAMS  
43 COUNTRY RIDGE RD  
MELISSA TX 75454-8900

CONNIE ANDREWS  
20 MEADOWCREEK DR  
MELISSA TX 75454-8906

DENNIS ANDREWS  
20 MEADOWCREEK DR  
MELISSA TX 75454-8906

MR HARRY ASTON  
6 SHADY BEND DR  
MELISSA TX 75454-8919

MR MARK A BAKER  
14 COUNTRY RIDGE RD  
MELISSA TX 75454-8916

MRS CLETA M BLESS  
6 TRAILRIDGE DR  
MELISSA TX 75454-8908

KAREN BROOKS  
4 SHADYBROOK CIR  
MELISSA TX 75454-8912

DAVE BRUNNER  
ROCKING B LLAMAS  
380 COUNTY ROAD 364  
MELISSA TX 75454-2000

MR TRUNG BUI  
17 BROOKHOLLOW CIR  
MELISSA TX 75454-8915

AMY & JOHN BURCHETT  
4033 HIGHLAND RD  
MELISSA TX 75454-2222

BRETT CARROLL  
16 MEADOWCREEK DR  
MELISSA TX 75454-8906

SUSAN CHATELAIN  
42 MEADOWCREEK DR  
MELISSA TX 75454-8906

CHERI COLE  
4 BROOKHOLLOW CIR  
MELISSA TX 75454-8915

SUSAN COLLINS  
2 MEADOWBROOK CIR  
MELISSA TX 75454-8911

MONICA COWSERT  
THE BIRD'S NEST  
1 COUNTRY RIDGE RD  
MELISSA TX 75454-8900

MRS CARLENE CURRY  
1801 MCCLURE ST  
IRVING TX 75062-6955

JASON DAVIS  
36 MEADOWCREEK DR  
MELISSA TX 75454-8906

JUAN DIAZ  
1 TRAILRIDGE DR  
MELISSA TX 75454-8909

JENNY DIFLORIA  
31 COUNTRY RIDGE RD  
MELISSA TX 75454-8900

SCOTT DILLASHAW  
15 TRAILRIDGE DR  
MELISSA TX 75454-8909

CYNTHIA DOLAN  
5 WINDY MEADOW CT  
MELISSA TX 75454-8910

GERALD DOLAN  
5 WINDY MEADOW CT  
MELISSA TX 75454-8910

LUCY DYSART  
524 E SUMMIT DR  
WIMBERLEY TX 78676-9403

MR WAYNE MARTIN ELLINGSON  
77 TRAILRIDGE DR  
MELISSA TX 75454-8909

LEWELEN EMPIE  
PO BOX 350  
MELISSA TX 75454-0350

MR ROBERT ERNST  
28 COUNTRY RIDGE RD  
MELISSA TX 75454-8916

BILL & MARGO ESTEP  
3 SHADYBROOK CIR  
MELISSA TX 75454-8912

DEBORAH FAHEY  
8 SHADY BEND DR  
MELISSA TX 75454-8919

MARTHA FALK  
3 TRAILRIDGE DR  
MELISSA TX 75454-8909

STEVE FALK  
3 TRAILRIDGE DR  
MELISSA TX 75454-8909

KRISTIN FOSTER  
18 MEADOWCREEK DR  
MELISSA TX 75454-8906

NICK GEORGES  
588 COUNTY ROAD 364  
MELISSA TX 75454-2004

MARY C GOYKE  
22 COUNTRY RIDGE RD  
MELISSA TX 75454-8916

W PAUL GRIFFIN  
PO BOX 65  
MELISSA TX 75454-0065

JACALYN GRIMMER  
7 BROOKHOLLOW CIR  
MELISSA TX 75454-8915

BARBARA S HIXON  
4722 HIGHLAND RD  
MELISSA TX 75454

MR DONALD R HIXON  
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MELISSA TX 75454-0172

LARRY HOFMANN  
COUNTRY RIDGE PROPERTY OWNERS ASSOCIATION  
2 TRAILRIDGE DR  
MELISSA TX 75454-8908

KENNY HOOD  
12 BROOKHOLLOW CIR  
MELISSA TX 75454-8915

W HORST  
32 COUNTRY RIDGE RD  
MELISSA TX 75454-8916

LAURIE JOHNSON  
7935 ROUNDROCK RD  
DALLAS TX 75248-5341

DAVID L KASSON  
9 TRAILRIDGE DR  
MELISSA TX 75454-8909

JASON LITTLE  
CITY ADMINISTRATOR, CITY OF MELISSA  
3411 BARKER AVE  
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1303 W FOSTER CROSSING RD  
ANNA TX 75409-0025

MRS RHODA LYNN  
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MELISSA TX 75454-8918

JOHN MATTHEWS  
62 TRAILRIDGE DR  
MELISSA TX 75454-8908

MARGARET MATTHEWS  
40 MEADOWCREEK DR  
MELISSA TX 75454-8906

MRS DIANE MCCARTY  
46 TRAILRIDGE DR  
MELISSA TX 75454-8908

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1750 KEVER E  
MELISSA TX 75454-2068

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MELISSA TX 75454-8907

MRS LORI PITTMAN  
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MELISSA TX 75454-8906

KIM PRICE  
10 BROOKHOLLOW CIR  
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6 MEADOWCREEK DR  
MELISSA TX 75454-8906

MR JAIME REYES, II  
65 TRAILRIDGE DR  
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CYNTHIA REYNOLDS  
11 SHADY BEND DR  
MELISSA TX 75454-8918

DANNY REYNOLDS  
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MELISSA TX 75454-8918

L ROANE  
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MELISSA TX 75454-2121

KATHY ROBNETT  
42 COUNTRY RIDGE RD  
MELISSA TX 75454-8916

COL WARREN RANDALL ROBNETT  
42 COUNTRY RIDGE RD  
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MRS LINDA ROGERS  
32 TRAILRIDGE DR  
MELISSA TX 75454-8908

MR ROY ROOKER, JR  
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DENNA SANDOVAL  
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MELISSA TX 75454-8909

CHARLES SCHOBBER  
21 MEADOWCREEK DR  
MELISSA TX 75454-8907

ROB SHERIFF  
1 MEADOWCREEK DR  
MELISSA TX 75454-8907

LAWRENCE SILVER  
12 SHADY BEND DR  
MELISSA TX 75454-8919

CANDACE SIMMONS  
7 SHADYBROOK CIR  
MELISSA TX 75454-8912

COL JOHN W SLEDGE  
33 TRAILRIDGE DR  
MELISSA TX 75454-8909

DON SUTTON  
44 MEADOWCREEK DR  
MELISSA TX 75454-8906

MR GARY DON SUTTON  
44 MEADOWCREEK DR  
MELISSA TX 75454-8906

LISA SUTTON  
44 MEADOWCREEK DR  
MELISSA TX 75454-8906

MRS TERESE SUZANNE TAYLOR  
27 TRAILRIDGE DR  
MELISSA TX 75454-8909

MR TREY TAYLOR  
27 TRAILRIDGE DR  
MELISSA TX 75454-8909

MR CHRIS TYNER  
37 COUNTRY RIDGE RD  
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MR JOSE S VASQUEZ  
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