

Bryan W. Shaw, Ph.D., P.E., *Chairman*  
Toby Baker, *Commissioner*  
Zak Covar, *Commissioner*  
Richard A. Hyde, P.E., *Executive Director*



## TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

*Protecting Texas by Reducing and Preventing Pollution*

May 11, 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 Hearing Requests Brief for CEMEX Construction  
Materials South, LLC, Concrete Batch Plant Standard Permit Registration No. 123329  
TCEQ Docket No. 2015-0407-AIR

Dear Ms. Bohac:

Enclosed please find a copy of the Executive Director's Response to Hearing Requests brief for the above referenced item. If you have any questions, please do not hesitate to call me at extension 1320.

Sincerely,

A handwritten signature in blue ink that reads "Nicolas Parke".

Nicolas Parke  
Staff Attorney  
Environmental Law Division

Enclosure

---

P.O. Box 13087 • Austin, Texas 78711-3087 • 512-239-1000 • [tceq.texas.gov](http://tceq.texas.gov)

How is our customer service? [tceq.texas.gov/customersurvey](http://tceq.texas.gov/customersurvey)

printed on recycled paper

**TCEQ AIR QUALITY STANDARD PERMIT REGISTRATION NO. 123329**  
**TCEQ DOCKET NUMBER 2015-0407-AIR**

|                               |          |                              |
|-------------------------------|----------|------------------------------|
| <b>APPLICATION BY</b>         | <b>§</b> | <b>BEFORE THE</b>            |
| <b>CEMEX CONSTRUCTION</b>     | <b>§</b> |                              |
| <b>MATERIALS SOUTH, LLC</b>   | <b>§</b> | <b>TEXAS COMMISSION ON</b>   |
| <b>CONCRETE BATCH PLANT</b>   | <b>§</b> |                              |
| <b>HOUSTON, HARRIS COUNTY</b> | <b>§</b> | <b>ENVIRONMENTAL QUALITY</b> |

**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 request for a contested case hearing submitted by the 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.<sup>1</sup> 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 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**

CEMEX Construction Materials South, LLC (CEMEX) applied to the TCEQ for a Standard Permit under Texas Clean Air Act (TCAA), § 382.05195. This permit will authorize the Applicant to construct and operate a permanent concrete batch plant. The plant will be located at 202 Holmes Road, Houston, Harris County. Contaminants authorized under this permit include road dust, aggregate, cement, and particulate matter (PM), including PM with aerodynamic diameters of 10 micrometers or less (PM<sub>10</sub>) and 2.5 micrometers or less (PM<sub>2.5</sub>). 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.

Before work begins on the construction of a new facility or a modification of an existing facility that may emit air contaminants, the person planning the construction or modification must obtain an authorization from the commission. This permit application is for issuance of Registration 123329. The permit application was received on September 9, 2014, and declared administratively complete on September 12, 2014. The Notice of Receipt and Intent to Obtain an Air Quality Permit (first public notice) for this permit application was published on October 3, 2014, in English in the *Houston Chronicle* and in Spanish in the *El Observador News*. The Notice of Application and Preliminary Decision for an Air Quality Permit (second public notice) was published on

---

<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).

**EXECUTIVE DIRECTOR'S RESPONSE TO HEARING REQUESTS**  
**CEMEX Construction Materials South, LLC, Standard Permit No. 123329**  
**Page 2 of 6**

November 14, 2014, in English in the *Houston Chronicle* and in Spanish in the *El Observador News*.

The public comment period ended on December 15, 2014. The executive director's Response to Comment was filed on January 22, 2015. The Chief Clerk's Office mailed the ED's RTC on January 28, 2015, to all interested persons, including those who submitted a comment or requested 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 that 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 February 27, 2015. The TCEQ did not receive any requests for reconsideration. The TCEQ received six timely hearing requests during the public comment period; however, three requests were later withdrawn. The following persons submitted hearing requests that were not withdrawn: Suzette Lartigue, Robert Jeffery Brown, and Danye Roland.

## **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:

- (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.

---

<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.

**EXECUTIVE DIRECTOR'S RESPONSE TO HEARING REQUESTS**  
**CEMEX Construction Materials South, LLC, Standard Permit No. 123329**  
**Page 3 of 6**

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.<sup>3</sup>

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:

---

<sup>3</sup> 30 TAC § 55.205(a)

- (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>4</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>5</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>6</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>7</sup> The materials accompanying this Response list and reference permit conditions and operational requirements and limitations applicable to this proposed facility.

### **III. Analysis of Hearing Request**

#### **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: Suzette Lartigue, Robert Jeffery Brown, and Danye Roland.

##### **1. Suzette Lartigue**

Suzette Lartigue submitted a request for a contested case hearing on October 10, 2014. She timely submitted her hearing request to the agency during the relevant comment period. Ms. Lartigue's request contained her name and residential address, but she did not provide her telephone number. As indicated by the enclosed map, however, Ms. Lartigue 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 Ms. Lartigue resides more than 440 yards from the proposed plant, and therefore, by statute, she is precluded from requesting a hearing as an affected person.

Additionally, Ms. Lartigue did not identify a personal justiciable interest affected by the application. Specifically, her request merely requested a contested case hearing but did not provide any facts or material issues to demonstrate how she would be adversely affected by the proposed plant in a manner not common to members of the general public.

---

<sup>4</sup> TEXAS HEALTH & SAFETY CODE § 382.0518

<sup>5</sup> TEXAS HEALTH & SAFETY CODE § 382.0513

<sup>6</sup> TEXAS HEALTH & SAFETY CODE § 382.085

<sup>7</sup> TEXAS HEALTH & SAFETY CODE § 382.0513

2. Robert Jeffery Brown

Robert Jeffery Brown submitted a request for a contested case hearing on October 10, 2014. He timely submitted his hearing request to the agency during the relevant comment period. Mr. Brown's request contained his name and residential address, but he did not provide his telephone number. As indicated by the enclosed map, however, Mr. Brown 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 Mr. Brown resides more than 440 yards from the proposed plant, and therefore, by statute, he is precluded from requesting a hearing as an affected person.

Additionally, Mr. Brown did not identify a personal justiciable interest affected by the application. Specifically, his request stated, "Community oppose permit application. Request public hearing." Mr. Brown's request did not provide any facts or material issues to demonstrate how he would be adversely affected by the proposed plant in a manner not common to members of the general public. Further, community opposition does not qualify as a personal justiciable interest because it is an interest common to members of the general public.

3. Danye Roland

Danye Roland submitted a request for a contested case hearing on October 18, 2014. He timely submitted his hearing request to the agency during the relevant comment period; however, Mr. Roland's request failed to provide his residential address, telephone number, or his proximity to the proposed plant. Therefore, Mr. Roland's hearing request does not meet the form requirements for a hearing request as set forth in 30 TAC § 55.201(d).

Furthermore, Mr. Roland did not identify a personal justiciable interest affected by the application. Specifically, his request merely requested a contested case hearing, but he did not provide any facts or material issues to demonstrate how he would be adversely affected by the proposed plant in a manner not common to members of the general public.

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

The law applicable to this permit application is outlined above in Section II. Ms. Lartigue and Mr. Brown reside more than 440 yards from the proposed plant, and therefore, pursuant to TCAA § 382.058(c), are not affected persons. Mr. Roland failed to comply with the form requirements as set forth in 30 TAC § 55.201(d). In addition, none of the hearing requesters identified a personal justiciable interest affected by the application as required by 30 TAC § 55.201(d).

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

If the Commission determines that any of the hearing requests in this matter are timely and in proper form, and satisfies the requirements to be an affected person, the Commission must

**EXECUTIVE DIRECTOR'S RESPONSE TO HEARING REQUESTS**  
**CEMEX Construction Materials South, LLC, Standard Permit No. 123329**  
**Page 6 of 6**

apply the three-part test discussed in Section II to the issue raised in this matter to determine if the issue should be referred to SOAH for a contested case hearing. The three-part test asks whether the issue involves disputed questions of fact, whether the issue was raised during the public comment period, and whether the issue is relevant and material to the decision on the permit application, in order to refer it to SOAH. However, because none of the individuals identified in this Response meet requirements for an affected person, their interests are not likely to be impacted in a manner different from the general public.

**IV. Executive Director's Recommendation**

The Executive Director respectfully recommends that the Commission deny all requests for a contested case hearing in this matter.

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



---

Mr. Nicolas Parke, Staff Attorney  
Environmental Law Division  
State Bar Number 24088184  
(512) 239-1320  
PO Box 13087, MC 173  
Austin, Texas 78711-3087

REPRESENTING THE  
EXECUTIVE DIRECTOR OF THE  
TEXAS COMMISSION ON  
ENVIRONMENTAL QUALITY

**CERTIFICATE OF SERVICE**

On the 11<sup>th</sup> day of May, 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 blue ink that reads "Nicolas Parke". The signature is written in a cursive style and is positioned above a horizontal line.

Nicolas Parke

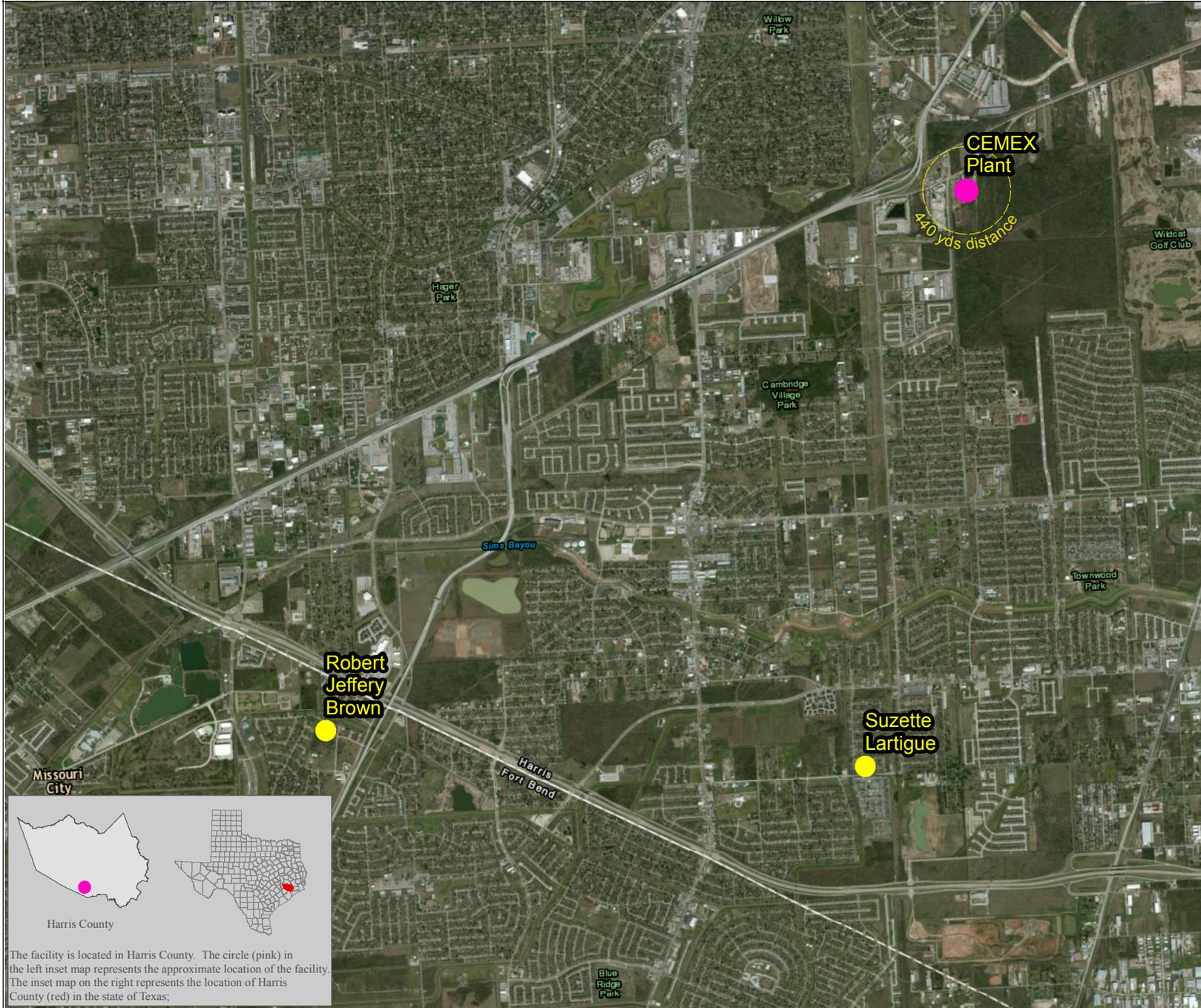
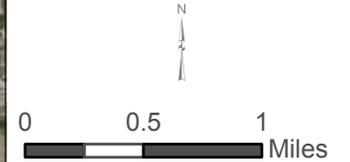
# Agenda Meeting for Permit # 123329 CEMEX CONSTRUCTION MATERIALS SOUTH LLC

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

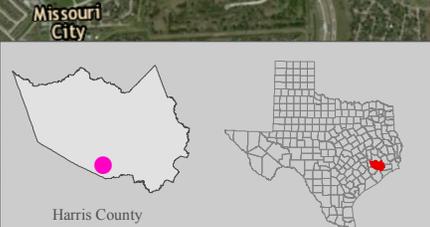


Texas Commission on Environmental Quality  
GIS Team (Mail Code 197)  
P.O. Box 13087  
Austin, Texas 78711-3087

Date: 3/6/2015



- CEMEX Plant
- Requestor
- 440 yd radial distance



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

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.

**MAILING LIST**  
**CEMEX CONSTRUCTION MATERIALS SOUTH, LLC**  
**DOCKET NO. 2015-0407-AIR; PERMIT NOS. 123329 / 960357A**

**FOR THE APPLICANT:**

Daniel Escobar  
Cemex Construction Materials South, LLC  
2901 West Sam Houston Parkway North  
Suite E300  
Houston, Texas 77043-1624  
Tel: (281) 405-7737  
Fax: (281) 405-7749

Brian Christian, Director  
Texas Commission on Environmental  
Quality  
Environmental Assistance Division  
Public Education Program, MC-108  
P.O. Box 13087  
Austin, Texas 78711-3087  
Tel: (512) 239-4000  
Fax: (512) 239-5678

**FOR THE EXECUTIVE DIRECTOR**

via electronic mail:

Nicolas Parke, Staff Attorney  
Texas Commission on Environmental  
Quality  
Environmental Law Division, MC-173  
P.O. Box 13087  
Austin, Texas 78711-3087  
Tel: (512) 239-0600  
Fax: (512) 239-0606

**FOR PUBLIC INTEREST COUNSEL**  
via electronic mail:

Vic Mcwherter, Public Interest Counsel  
Texas Commission on Environmental  
Quality  
Public Interest Counsel, MC-103  
P.O. Box 13087  
Austin, Texas 78711-3087  
Tel: (512) 239-6363  
Fax: (512) 239-6377

Bonnie Evridge, Technical Staff  
Texas Commission on Environmental  
Quality  
Air Permits Division, MC-163  
P.O. Box 13087  
Austin, Texas 78711-3087  
Tel: (512) 239-5222  
Fax: (512) 239-7815

**FOR ALTERNATIVE DISPUTE  
RESOLUTION**

via electronic mail:

Kyle Lucas  
Texas Commission on Environmental  
Quality  
Alternative Dispute Resolution, MC-222  
P.O. Box 13087  
Austin, Texas 78711-3087  
Tel: (512) 239-4010  
Fax: (512) 239-4015

Donald Dale Nelon, Technical Staff  
Texas Commission on Environmental  
Quality  
Air Permits Division, MC-163  
P.O. Box 13087  
Austin, Texas 78711-3087  
Tel: (512) 239-0894  
Fax: (512) 239-7815

**FOR THE CHIEF CLERK:**

Bridget C. Bohac

Texas Commission on Environmental  
Quality

Office of Chief Clerk, MC-105

P.O. Box 13087

Austin, Texas 78711-3087

Tel: (512) 239-3300

Fax: (512) 239-3311

**REQUESTER(S) / INTERESTED**

**PERSON(S):**

See attached list.

**REQUESTER(S)**

MR ROBERT JEFFERY BROWN, I  
HOUSTON CONCERNED CITIZENS  
14514 LAZY WILLOW LN  
MISSOURI CITY TX 77489-1872

MS SUZETTE LARTIGUE  
4706 OAKSIDE DR  
HOUSTON TX 77053-1218

DANYE ROLAND  
PO BOX 330903  
HOUSTON TX 77233-0903

**WITHDRAW OF REQUEST(S)**

EDNA N DEAUVEARO  
3731 TIFFANY DR  
HOUSTON TX 77045-6418

VIVIAN HARRIS  
13906 REGG DR  
HOUSTON TX 77045-5410

CECILIA M MARKS  
14219 CANDLESHADE LN  
HOUSTON TX 77045-5210

CARLA C MARSHALL  
SAN PABLO  
5155 CANYON BLANCO DR  
HOUSTON TX 77045-5240

MR JOHN NASH  
13506 TUTSON PL  
HOUSTON TX 77085-1404

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

THE HONORABLE ALMA A ALLEN  
TEXAS HOUSE OF REPRESENTATIVES - DISTRICT 131  
PO BOX 2910  
AUSTIN TX 78768-2910

**INTERESTED PERSON(S)**

MONICA BASS  
4242 BRENTWOOD PARK DR  
HOUSTON TX 77045-1718

MS ERNESTINE H EDWIN  
CEMEX HOLMES ROAD PLANT  
3823 HEATHERBLOOM DR  
HOUSTON TX 77045-5605

MS LINDA SCURLOCK  
4747 KNOTTY OAKS TRL  
HOUSTON TX 77045-4126