

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



Vic McWherter, Public Interest Counsel

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

May 8, 2015

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

RE: **CEMEX CONSTRUCTION MATERIALS SOUTH, LLC**
TCEQ DOCKET NO. 2015-0407-AIR

Dear Ms. Bohac:

Enclosed for filing is the Office of Public Interest Counsel's Response to Requests for Hearing in the above-entitled matter.

Sincerely,

A handwritten signature in black ink that reads "Pranjal".

Pranjal M. Mehta, Attorney
Assistant Public Interest Counsel

cc: Mailing List

Enclosure

TCEQ DOCKET NO. 2015-0407-AIR

**IN THE MATTER
OF THE APPLICATION OF
CEMEX CONSTRUCTION
MATERIALS SOUTH, LLC FOR
STANDARD PERMIT
REGISTRATION
NO. 123329**

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**BEFORE THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY**

**THE OFFICE OF PUBLIC INTEREST COUNSEL'S RESPONSE
TO REQUESTS FOR HEARING**

TO THE HONORABLE MEMBERS OF THE TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY:

The Office of Public Interest Counsel (OPIC) of the Texas Commission on Environmental Quality (Commission or TCEQ) files this Response to Requests for Hearing in the above-referenced matter and respectfully shows the following.

I. INTRODUCTION

A. Background of Facility

CEMEX Construction Materials South, LLC (Applicant) has applied to the TCEQ for a Standard Permit registration under Texas Clean Air Act (TCAA) § 382.05195. This registration would authorize the Applicant to construct and operate a permanent concrete batch plant (Facility). The Facility would 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 (PM₁₀) and 2.5 micrometers or less (PM_{2.5}).

B. Procedural Background

The TCEQ received this application on September 9, 2014. On September 12, 2014, the Executive Director of TCEQ (ED) declared the application administratively complete. The

Notice of Receipt and Intent to Obtain an Air Quality Permit (NORI) was published on October 3, 2014, in English in the *Houston Chronicle* and in Spanish in the *El Observador News*. The ED completed the technical review of the application, and found that the requirements for the registration had been satisfied. The Notice of Application and Preliminary Decision for an Air Quality Permit (NAPD) was published on 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 Chief Clerk mailed the Response to Comments and ED's Decision on January 28, 2015. The deadline to request a contested case hearing was February 27, 2015.

The Commission received timely comments and a request for a contested case hearing from Mr. Robert Jeffery Brown I, Ms. Suzette Lartigue, Mr. Danye Roland, Ms. Edna N. Deauvearo, Mrs. Vivian Harris, Mrs. Cecilia M. Marks, Ms. Carla C. Marshall and Mr. John Nash. The hearing requests from Ms. Edna N. Deauvearo, Mrs. Vivian Harris, Mrs. Cecilia M. Marks, Ms. Carla C. Marshall and Mr. John Nash have been withdrawn. The map provided by the ED staff shows that Mr. Robert Jeffery Brown I and Ms. Suzette Lartigue are not within 440 yards of the Facility. The residential address of Mr. Danye Roland is not available on record. As more fully discussed below, OPIC recommends denying the hearing requests of Mr. Robert Jeffery Brown I, Ms. Suzette Lartigue and Mr. Danye Roland.

II. APPLICABLE LAW

This application was declared administratively complete on September 12, 2014. Because this application was declared administratively complete after September 1, 1999, it is subject to the procedural requirements adopted pursuant to House Bill 801 (76th Leg., 1999). Under the applicable statutory and regulatory requirements, a hearing request must substantially comply with the following: give the name, address, daytime telephone number, and, where

possible, fax number of the person who files the request; identify the requestor's personal justiciable interest affected by the application showing why the requestor is an "affected person" who may be adversely affected by the proposed facility or activity in a manner not common to members of the general public; request a contested case hearing; list all relevant and material disputed issues of fact that were raised during the comment period that are the basis of the hearing request; and provide any other information specified in the public notice of the application. 30 TEX. ADMIN. CODE (TAC) § 55.201(d).

Under 30 TAC § 55.203(a), an "affected person" is "one who has a personal justiciable interest related to a legal right, duty, privilege, power, or economic interest affected by the application." This justiciable interest does not include an interest common to the general public.

Relevant factors considered in determining whether a person is affected include:

- (1) whether the interest claimed is one protected by the law under which the application will be considered;
- (2) distance restrictions or other limitations imposed by law on the affected interest;
- (3) whether a reasonable relationship exists between the interest claimed and the activity regulated;
- (4) likely impact of the regulated activity on the health 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.

The TCAA provides that for a concrete plant registered under a Standard Permit "only those persons actually residing in a permanent residence within 440 yards [$\frac{1}{4}$ mile] of the proposed plant may request a hearing under [TEX. HEALTH & SAFETY CODE (THSC)] § 382.056 as a person who may be affected." THSC § 382.058(c).

The Commission shall grant an affected person's timely filed hearing request if: (1) the request is made pursuant to a right to hearing authorized by law; and (2) the request raises

disputed issues of fact that were raised during the comment period and that are relevant and material to the Commission's decision on the application. 30 TAC § 55.211(c).

Accordingly, responses to hearing requests must specifically address:

- (1) whether the requestor is an affected person;
- (2) which issues raised in the hearing request are disputed;
- (3) whether the dispute involves questions of fact or of law;
- (4) whether the issues were raised during the public comment period;
- (5) whether the hearing request is based on issues raised solely in a public comment withdrawn by the commenter in writing by filing a withdrawal letter with the Chief Clerk prior to the filing of the Executive Director's Response to Comment;
- (6) whether the issues are relevant and material to the decision on the application; and
- (7) a maximum expected duration for the contested case hearing.

30 TAC § 55.209(e).

III. DISCUSSION

A. Determination of Affected Person Status

Section 382.058(c) of the Texas Health and Safety Code limits the affected person status to only those individuals actually residing within 440 yards of the proposed facility. In addition to the other reasons discussed below, OPIC finds that Mr. Robert Jeffery Brown I and Ms. Suzette Lartigue are not affected persons because they are not within 440 yards of the Facility. The residential address for Mr. Danye Roland is not available on record.

Robert Jeffery Brown

Mr. Brown states in his hearing request that the community opposes permit application and he requests public hearing. His request does not discuss any issues or concerns regarding his health, safety and use of his property. Also, as discussed above, he is not within 440 yards of the Facility. Therefore OPIC finds that Mr. Brown is not an affected person.

Suzette Lartigue

Ms. Lartigue's hearing request states that she is requesting a public hearing/meeting on this registration. Her request does not discuss how the Facility might affect her health, safety or use of her property. She is not within 440 yards of the Facility. Therefore OPIC finds that Ms. Lartigue is not an affected person.

Danye Roland

Mr. Roland states in his hearing request that he is requesting a public hearing/meeting. His request does not provide his residential address. His request also does not express concerns about the facility's effect on his health, safety or use of the property. In the absence of such information, OPIC finds that Mr. Roland has failed to meet the requirements of affected person status.

B. Issues Raised in the Hearing Requests

As discussed above, there have been no issues raised in the hearing requests.

C. Issues Raised in the Comment Period

As discussed above, no issues have been raised in the comment period through any of these three hearing requests.

G. Issues Recommended for Referral

Because OPIC finds that the requesters have not shown they are affected persons and because their requests raise no issues, no issues are recommended for referral.

IV. CONCLUSION

For the reasons stated above, OPIC recommends denying the hearing requests of Mr. Robert Jeffery Brown I, Ms. Suzette Lartigue and Mr. Danye Roland.

Respectfully submitted,

Vic McWherter
Public Interest Counsel

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CERTIFICATE OF SERVICE

I hereby certify that on May 8, 2015 the original and seven true and correct copies of the Office of Public Interest Counsel's Response to Requests for Hearing was filed with the Chief Clerk of the TCEQ and a copy was served to all persons listed on the attached mailing list via hand delivery, facsimile transmission, Inter-Agency Mail, electronic mail, or by deposit in the U.S. Mail.

Pranjal
Pranjal M. Mehta

MAILING LIST
CEMEX CONSTRUCTION MATERIALS SOUTH, LLC
TCEQ DOCKET NO. 2015-0407-AIR

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FOR ALTERNATIVE DISPUTE

RESOLUTION

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