

**TCEQ AIR QUALITY PERMIT REGISTRATION NO. 8996 & PSDTX454M4
TCEQ DOCKET NUMBER 2015-0460-AIR**

APPLICATION BY	§	BEFORE THE
HOLCIM (TEXAS) LIMITED	§	
PARTNERSHIP	§	TEXAS COMMISSION ON
PORTLAND CEMENT PLANT	§	
MIDLOTHIAN, ELLIS COUNTY	§	ENVIRONMENTAL QUALITY

EXECUTIVE DIRECTOR'S RESPONSE TO HEARING REQUESTS

The Executive Director (ED) of the Texas Commission on Environmental Quality (Commission or TCEQ) files this response (Response) to the requests for a contested case hearing submitted by persons listed herein. The Texas Clean Air Act (TCAA) § 382.056(n) requires the commission to consider hearing requests in accordance with the procedures provided in Tex. Water Code (TWC) § 5.556.¹ This statute is implemented through the rules in 30 Texas Administrative Code (TAC) Chapter 55, Subchapter F.

A map showing the location of the site for the proposed facility is included with this response and has been provided to all persons on the attached mailing list. In addition, a current compliance history report, technical review summary, modeling audit memorandum, and draft permit 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

Holcim (Texas) Limited Partnership (Holcim) has applied to the TCEQ for a NSR Authorization under Texas Clean Air Act (TCAA), Texas Health and Safety Code, §382.0518. This will authorize the modification of an existing facility that may emit air contaminants.

This permit will authorize the applicant to modify an existing Portland Cement plant. The plant is located at 1800 Dove Lane, Midlothian, Ellis County. Contaminants authorized under this permit include particulate matter including particulate matter with diameters of 10 micrometers or less (PM₁₀) and 2.5 micrometers or less (PM_{2.5}), sulfuric acid (H₂SO₄), organic compounds, nitrogen oxides (NO_x), sulfur dioxide (SO₂), carbon monoxide (CO), total reduced sulfur, hazardous air pollutants, and other speciated compounds. 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.

The permit application was received on June 2, 2014, and declared administratively complete on June 4, 2014. The Notice of Receipt and Intent to Obtain an Air Quality Permit (public notice) for this permit application was published in English on June 11, 2014, in the *Midlothian Mirror* and in Spanish on June 30, 2014, in *La Prensa Comunidad*. Republication in English was made

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

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on July 2, 2014 in the *Midlothian Mirror* to correct formatting errors in the initial publication. The Notice of Application and Preliminary Decision for an Air Quality Permit was published on October 22, 2014, in English in the *Midlothian Mirror* and in Spanish on October 30, 2014, in *La Prensa Comunidad*. A public meeting was held on November 3, 2014 in Midlothian. The notice of public meeting was published in English on October 22, 2014 in the *Midlothian Mirror* and in Spanish on October 30, 2014 in *La Prensa Comunidad*. The public comment period ended on December 1, 2014. The ED's RTC was mailed on February 19, 2015 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.² The letter also explained hearing requesters should specify any of the ED's responses to comments they dispute and the factual basis of the dispute, in addition to listing any disputed issues of law or policy.

The time for requests for reconsideration and hearing requests ended on March 23, 2015. The TCEQ received timely hearing requests during the public comment period that were not withdrawn from Sue Pope. The TCEQ also received timely hearing requests from Patricia Brown on her own behalf, from Grace Darling and Jim Schermbeck on behalf of Downwinders at Risk Education Fund, and from Grace Darling on behalf of Green Arlington and the Arlington Conservation Council. These requests were withdrawn by Patricia Brown and Grace Darling.

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. 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

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

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- subject of the application and how and why the requester believes he or she will be adversely affected by the proposed facility or activity in a manner not common to members of the general public;
- (3) request a contested case hearing;
 - (4) list all relevant and material disputed issues of fact that were raised during the public comment period and that are the basis of the hearing request. To facilitate the commission's determination of the number and scope of issues to be referred to hearing, the requester should, to the extent possible, specify any of the executive director's responses to comments that the requester disputes and the factual basis of the dispute and list any disputed issues of law or policy; and
 - (5) provide any other information specified in the public notice of application.

The next necessary determination is whether the requests were filed by "affected persons" as defined by TWC § 5.115, implemented in commission rule 30 TAC § 55.203. Under 30 TAC § 55.203, an affected person is one who has a personal justiciable interest related to a legal right, duty, privilege, power or economic interest affected by the application. An interest common to members of the general public does not qualify as a personal justiciable interest. Local governments with authority under state law over issues raised by the application receive affected person status under 30 TAC § 55.203(b).

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

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

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

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

³ 30 TAC § 55.205(a)

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If the commission determines a hearing request is timely and fulfills the requirements for proper form and the hearing requester is an affected person, the commission must apply a three-part test to the issues raised in the request to determine if any of the issues should be referred to the State Office of Administrative Hearings (SOAH) for a contested case hearing. The three-part test in 30 TAC § 50.115(c) is as follows:

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

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

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: Sue Pope. All other timely submitted hearing requests were withdrawn. The address provided by Sue Pope indicates that she is approximately three miles from the Holcim plant (see attached map). The hearing request was submitted during the public comment period or during the period for requesting a contested case hearing after the filing of the ED's RTC. Furthermore, the ED has determined the hearing request substantially complies with all of the requirements for form in 30 TAC § 55.201(d).

The ED addressed all public comments in this matter by providing responses in the RTC. The cover letter from the Office of the Chief Clerk attached to the RTC states that requesters should, to the extent possible, specify any of the ED's responses in the RTC that the requesters dispute and the factual basis of the dispute, and list any disputed issues of law or policy.⁸

⁴ TEXAS HEALTH & SAFETY CODE § 382.0518

⁵ TEXAS HEALTH & SAFETY CODE § 382.0513

⁶ TEXAS HEALTH & SAFETY CODE § 382.085

⁷ TEXAS HEALTH & SAFETY CODE § 382.0513

⁸ See 30 TAC § 55.201(d)(4).

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

The threshold test of affected person status, as defined in 30 TAC § 55.203, is whether the requestor has a personal justiciable interest affected by the application, and this interest is different from that of the general public.⁹ The primary concern of the hearing requestor was that Holcim install control equipment, specifically Selective Catalytic Reduction (SCR). The proposed permit does require an SCR on one of Holcim's kilns and a Regenerative Thermal Oxidizer, another type of control device, on the other kiln. Ms. Pope also did not specify any particularized interest not common to the general public other than that she lives less than one mile from Holcim's property. The attached map demonstrates that the address provided is approximately three miles from the Holcim plant where the proposed facilities will be located. As she resides approximately three miles from the proposed facility, Ms. Pope is not likely to be impacted differently than any other member of the general public. Therefore, Ms. Pope is not an affected person as defined in 30 TAC § 55.203.

C. Do those groups who requested a hearing meet the group or associational standing requirements?

Three groups originally requested a hearing on this permit application, Green Arlington, the Arlington Conservation Council, and Downwinders at Risk Education Fund (Downwinders). These requests have been withdrawn by Grace Darling, and no other organizations have requested a hearing on this application.

Although the hearing request submitted by Downwinders was withdrawn by Grace Darling, the signature block on the letter also included Jim Schermbeck, who has not independently submitted a request to withdraw the hearing request. Therefore, the ED has analyzed the request of Downwinders, and found that the group lacks the required associational standing to request a hearing on this application. The only one of these three groups that identified a specific member of the group who might be an affected person was Downwinders, which identified Sue Pope as a member. As previously discussed, Sue Pope does not meet the requirements to be an affected person as defined in 30 TAC §55.203. Without a specific identified member who is an affected person, none of the identified groups can meet the requirement of §55.205(a)(1), and therefore none of these groups, including Downwinders, would have the associational status necessary to request a contested case hearing on this application.

V. Executive Director's Recommendation

The Executive Director respectfully recommends the commission:

- A. Find all hearing requests in this matter were timely filed.
- B. Find no hearing requesters are affected persons in this matter.

⁹ *United Copper Industries and TNRCC v. Joe Grissom*, 17 S.W.3d 797 (Tex. App.-Austin, 2000)

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C. Deny the hearing requests of Sue Pope, Green Arlington, the Arlington Conservation Council, and Downwinders at Risk Education Fund.

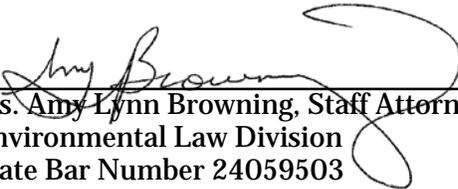
Respectfully submitted,

Texas Commission on Environmental Quality

Richard Hyde, P.E., Executive Director

Caroline Sweeney, Deputy Director
Office of Legal Services

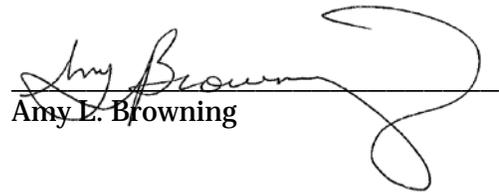
Robert Martinez, Division Director
Environmental Law Division


Ms. Amy Lynn Browning, Staff Attorney
Environmental Law Division
State Bar Number 24059503
(512) 239-0891
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 6th day of April, 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.


Amy L. Browning

Attachment A
Map of hearing requestor

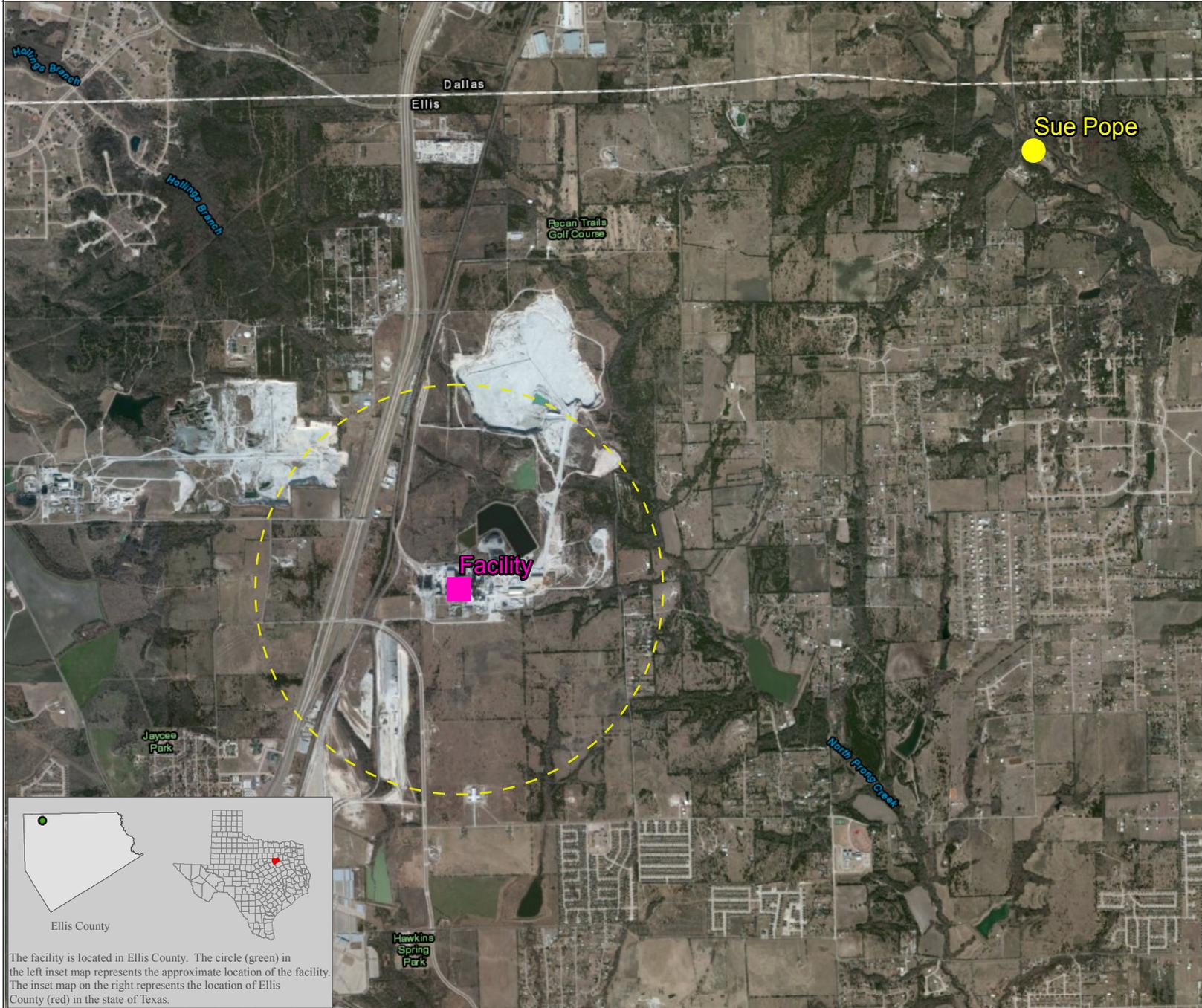
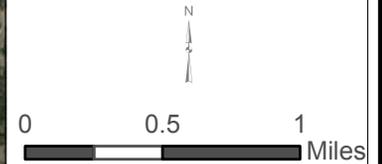
ED's Response to Hearing Request Holcim Ltd Partnership; Permit Nos. 8996 & PSDTX454M4

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

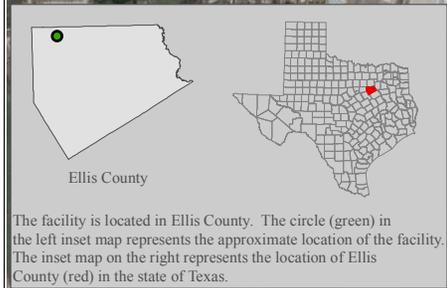


Texas Commission on Environmental Quality
GIS Team (Mail Code 197)
P.O. Box 13087
Austin, Texas 78711-3087

Date: 3/27/2015



- Facility
- Sue Pope (Requester)
- 1 mile radial distance from facility



The facility is located in Ellis County. The circle (green) in the left inset map represents the approximate location of the facility. The inset map on the right represents the location of Ellis 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.

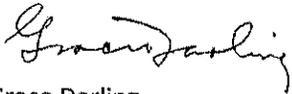
Attachment B
Withdrawals of hearing requests

To Whom It May Concern:

RE: TCEQ permit application #8996

In reference to the above-cited application by HolcimUS for a permit to install SCR technology in one of its Midlothian kilns, the Arlington Conservation Council withdraws its request for a contested hearing.

Because of the uncertainties in the original application and the nature of the permitting process, in order to have any opportunity for further involvement or comment about the terms of the permit our only recourse was to file for a case hearing through TCEQ. Subsequent discussions with cement plant personnel by one of our members have rendered further delays unnecessary, and ACC hereby cancels its request.



Grace Darling

(for) Arlington Conservation Council

TEXAS
COMMISSION
ON ENVIRONMENTAL
QUALITY
2015 APR -2 AM 9:57
CHIEF CLERKS OFFICE

Marisa Weber

From: PUBCOMMENT-OCC
Sent: Monday, December 01, 2014 7:42 AM
To: PUBCOMMENT-OCC2
Subject: FW: Public comment on Permit Number PSDTX454M4

WH

From: [REDACTED]
Sent: Monday, December 01, 2014 12:40 AM
To: donotreply
Subject: Public comment on Permit Number PSDTX454M4

NSR
92487

REGULATED ENTITY NAME HOLCIM TEXAS

RN NUMBER: RN100219286

PERMIT NUMBER: PSDTX454M4

DOCKET NUMBER:

COUNTY: ELLIS

PRINCIPAL NAME: HOLCIM TEXAS LIMITED PARTNERSHIP

CN NUMBER: CN601231459

FROM

NAME: Grace Darling

E-MAIL: [REDACTED]

COMPANY: Green Arlington Foundation and Downwinders at Risk EdFund

ADDRESS: 1316 S PECAN ST
ARLINGTON TX 76010-2535

PHONE: 2147098791

FAX:

COMMENTS: On behalf of Green Arlington Foundation and Downwinders at Risk Education Fund, I write to withdraw our request for a contested hearing re Permit #PSDTX454M4. We wish Holcim much success utilizing SCR technology to reduce CO2 emissions and look forward to seeing early reporting data to that effect. Grace Darling, Chair, DAREF Secretary-treasurer, GAF DAREF

MW

Marisa Weber

From: PUBCOMMENT-OCC
Sent: Thursday, January 15, 2015 8:36 AM
To: PUBCOMMENT-OCC2
Subject: FW: Public comment on Permit Number 8996

*NSR
9/24/07*

WH

From: [REDACTED]
Sent: Thursday, January 15, 2015 5:53 AM
To: DoNot Reply
Subject: Public comment on Permit Number 8996

REGULATED ENTITY NAME HOLCIM TEXAS

RN NUMBER: RN100219286

PERMIT NUMBER: 8996

DOCKET NUMBER:

COUNTY: ELLIS

PRINCIPAL NAME: HOLCIM TEXAS LIMITED PARTNERSHIP

CN NUMBER: CN601231459

FROM

NAME: MS Patricia Brown

E-MAIL: [REDACTED]

COMPANY:

ADDRESS: 5005 PROSPERITY ROW
MIDLOTHIAN TX 76065-8859

PHONE: 2404199520

FAX:

COMMENTS: Please accept my request to withdrawal my former request for a contested case hearing regarding the renew of Holcim's (Midlothian, TX) Air Permit (No. 8996) Thank you, Patricia A. Brown

mu

MAILING LIST
HOLCIM (TEXAS) LIMITED PARTNERSHIP
DOCKET NO. 2015-0460-AIR; PERMIT NOS. 8996 & PSDTX454M4

FOR THE APPLICANT:

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FOR THE CHIEF CLERK:

Bridget C. Bohac

Texas Commission on Environmental
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Fax: (512) 239-3311

REQUESTER(S) / INTERESTED

PERSON(S):

See attached list.

REQUESTER(S)

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DALLAS TX 75376-3844

SUE L POPE
DOWNWINDERS AT RISK
476 HIDDEN VALLEY TRL
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WITHDRAW OF REQUEST(S)

PATRICIA BROWN
5005 PROSPERITY ROW
MIDLOTHIAN TX 76065-8859

MS GRACE DARLING
GREEN ARLINGTON FOUNDATION AND DOWNWINDERS
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1316 S PECAN ST
ARLINGTON TX 76010-2535

PUBLIC OFFICIALS - INTERESTED PERSON(S)

THE HONORABLE JOE BARTON
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ARLINGTON TX 76017-2811

THE HONORABLE BRIAN BIRDWELL
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PO BOX 12068
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THE HONORABLE LON BURNAM
TEXAS HOUSE OF REPRESENTATIVES - DIST 90
PO BOX 2910
AUSTIN TX 78768-2910

THE HONORABLE JIM PITTS
REPRESENTATIVE, TEXAS HOUSE OF
REPRESENTATIVES
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RICHARD BENTON
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MIDLOTHIAN TX 76065-4423

BECKY BORNHORST
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DESOTO TX 75115-3654

REBECCA BORNHORST
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NANCY GARNETT
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MIDLOTHIAN TX 76065-5489

JOHN F HAMAKER
2810 COLDWATER CT
MIDLOTHIAN TX 76065-6607

CAMMY JACKSON
MIDLOTHIAN CHAMBER OF COMMERCE
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MIDLOTHIAN TX 76065-2702

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JENNIFER LYKE
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DALLAS TX 75202-2711

CHERYL MASSEY
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MIDLOTHIAN TX 76065-5811

STEPHEN MINICK
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AUSTIN TX 78701-1719

CODY OLIVERIA
6420 FUSSEN TRL
MIDLOTHIAN TX 76065-4894

DAVID PERKINS
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DENA PETTY
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MIDLOTHIAN TX 76065-3636

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ARLINGTON TX 76012-5303

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