

**TCEQ AIR QUALITY STANDARD PERMIT REGISTRATION NO. 123775  
TCEQ DOCKET NUMBER 2015-1263-AIR**

<b>APPLICATION BY</b>	<b>§</b>	<b>BEFORE THE</b>
	<b>§</b>	
<b>COASTAL READY MIX, INC.</b>	<b>§</b>	
	<b>§</b>	<b>TEXAS COMMISSION ON</b>
<b>CONCRETE BATCH PLANT</b>	<b>§</b>	
	<b>§</b>	
<b>KOUNTZE, HARDIN 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 requests for a contested case hearing submitted by persons listed herein regarding the above-referenced matter. 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 plant 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 as backup material for the commissioners' agenda. The ED's Response to Public Comment (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**

Coastal Ready Mix, Inc. (Coastal Ready Mix or Applicant) 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 will be located near Kountze, Hardin County. The following driving directions were provided by the Applicant: from the intersection at Wheeler Road and Highway 69, travel north 4.4 miles; the property is on the east side of Highway 69. Contaminants authorized under this permit include particulate matter (PM), including PM with diameters of 10 micrometers or less (PM<sub>10</sub>) and 2.5 micrometers or less (PM<sub>2.5</sub>), aggregate, cement, and road dust. 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 that may emit air contaminants, the person planning the construction must obtain a permit from the commission. This permit application is for an initial issuance of Registration No. 123775.

The permit application was received on September 17, 2014 and declared administratively complete on October 6, 2014. The Notice of Receipt and Intent to Obtain an Air Quality Permit (first public notice) for this permit application was published in English on October 15, 2014 in

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<sup>1</sup> Statutes cited in this response may be viewed online at [www.statutes.legis.state.tx.us](http://www.statutes.legis.state.tx.us). Relevant statutes are found primarily in the THSC and the TWC. 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" link on the TCEQ website at [www.tceq.texas.gov](http://www.tceq.texas.gov).

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the *Hardin County News* and in Spanish on October 12, 2014 in *El Perico*. The Notice of Application and Preliminary Decision for an Air Quality Permit (second public notice) was published on December 17, 2014 in English in the *Hardin County News* and in Spanish on December 14, 2014 in *El Perico*. A public meeting was held on March 26, 2015 in Lumberton, Texas. The notice of public meeting was mailed to interested persons on March 2, 2015. The public comment period ended at the close of the public meeting on March 26, 2015. The ED's RTC was mailed on July 6, 2015 to all interested persons, including those who asked to be placed on the mailing list for this application and those who submitted comments 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 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 August 5, 2015. The TCEQ received timely hearing requests during the public comment period that were not withdrawn from the following persons: Quinton Sheffield, Henry Stephenson, Mike Greene, and Jerry Richardson.

## **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.

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<sup>2</sup> See TCEQ rules at 30 TAC Ch. 55, subch. F. Procedural rules for public input to the permit process are found primarily in chapters 39, 50, 55, and 80 of Title 30 of the TAC.

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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).

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.

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 matter 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 a condition of 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 operational requirements and limitations applicable to this proposed facility.

### **III. Analysis of Hearing Requests**

#### **A. Were the requests for a contested case hearing in this matter timely and in proper form?**

The following persons submitted timely hearing requests that were not withdrawn: Quinton Sheffield, Henry Stephenson, Mike Greene, and Jerry Richardson.

##### **1. Quinton Sheffield**

Quinton Sheffield timely submitted a request for a contested case hearing on October 17, 2014. He provided his name, telephone number, and residential address. He believes that he will be adversely affected by the application because he has a long history of asthma and chronic sinusitis that are directly related to dust and airborne environmental pollutants. In addition, he is concerned about the health of his family, including two young children, and the surrounding neighbors. He is particularly concerned about airborne pollutants, including cement, clinker, and fly ash, which will aggravate his condition and affect his children's long-term health. He stated that the predominant winds are from the south, and the plant is directly located to the south; therefore, it is reasonable that airborne particles will travel to his residence. He is also concerned about groundwater contamination. He stated that his residence is within 440 yards of the proposed plant, and based on the address provided by Mr. Sheffield, the ED confirmed that he resides within 440 yards of the footprint of the proposed plant.

Mr. Sheffield requested a contested case hearing in the second to last paragraph of his request. Based on the foregoing, the ED finds that Quinton Sheffield substantially complied with all of the requirements to request a contested case hearing required by 30 TAC § 55.201(d). Therefore, the ED can determine whether it is likely that the requester

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<sup>3</sup> THSC § 382.0518

<sup>4</sup> THSC § 382.0513

<sup>5</sup> THSC § 382.085

<sup>6</sup> THSC § 382.0513

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will be impacted differently than any other member of the general public or if the regulated activity will likely impact his interest, which will be discussed in detail in subsection B below.

2. Henry Stephenson

Henry Stephenson timely submitted a request for a contested case hearing on December 29, 2014. He provided his name, telephone number, and residential address. He believes that he will be adversely affected by the application because he has developed severe allergies related to dust and pollen. He stated that he had to remove all of the carpet from his house and install a new air conditioning system that requires a HEPA filter and a UV light system to kill any living airborne particles. He believes it is reasonable to project that the air, water, and general health will be substantially impacted. He stated that his residence is within 400 feet of the rear property line, and based on the address provided by Mr. Stephenson, the ED finds that he resides within 440 yards of the footprint of the proposed plant.

Mr. Stephenson requested a contested case hearing in the last paragraph of his request. Based on the foregoing, the ED finds that Henry Stephenson substantially complied with all of the requirements to request a contested case hearing required by 30 TAC § 55.201(d). Therefore, the ED can determine whether it is likely that the requester will be impacted differently than any other member of the general public or if the regulated activity will likely impact his interest, which will be discussed in detail in subsection B below.

3. Mike Greene

Mike Greene timely submitted a request for a contested case hearing on December 30, 2014. He provided his name, telephone number, and residential address. He believes that he would be personally affected by the proposed plant because it will impact the quiet, peaceful environment of his property, and complicate and compound his health problems, which include heart conditions related to a heart attack, high blood pressure, exposure to asbestos, and arterial blockage. He is also concerned about the possible expansion of the proposed plant. He did not provide the distance of his residence to the footprint of the plant; however, based on the address he provided, the ED finds that he resides within 440 yards of the footprint of the proposed plant.

Mr. Greene requested a contested case hearing in the last paragraph of his request. Based on the foregoing, the ED finds that Mike Greene substantially complied with all of the requirements to request a contested case hearing required by 30 TAC § 55.201(d). Therefore, the ED can determine whether it is likely that the requester will be impacted differently than any other member of the general public or if the regulated activity will likely impact his interest, which will be discussed in detail in subsection B below.

4. Jerry Richardson

Jerry Richardson timely submitted a request for a contested case hearing on January 9, 2015. He provided his name, phone number, and a residential address. He believes that the application will adversely affect his enjoyment of the outdoors and the health of his wife and two young children. He stated that his wife has environmental allergies, which are so severe that she had to have two injections every other day for a year. He is also

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concerned the proposed plant will also affect his allergies. He stated that he is well within 440 yards of the proposed plant, and based on the address provided by Mr. Richardson, the ED confirmed that he resides within 440 yards of the footprint of the proposed plant.

Mr. Richardson requested a contested case hearing in the third to last sentence of his request. Based on the foregoing, the ED finds that Jerry Richardson substantially complied with all of the requirements to request a contested case hearing required by 30 TAC § 55.201(d). Therefore, the ED can determine whether it is likely that the requester will be impacted differently than any other member of the general public or if the regulated activity will likely impact his interest, which will be discussed in detail in subsection B below.

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

The law applicable to this permit application is outlined above in Section II. Quinton Sheffield, Henry Stephenson, Mike Greene, and Jerry Richardson reside within 440 yards of the proposed plant, and therefore, satisfy the requirement of TCAA §382.058(c). Because they have also stated personal justiciable interests, the commission must next consider the non-exhaustive list of factors found in 30 TAC § 55.203(c) for determining whether a person is an affected person.

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

**1. Quinton Sheffield**

The request submitted by Quinton Sheffield stated the following concerns:

- His health, because he has a long history of asthma and chronic sinusitis directly related to dust and airborne environmental pollutants;
- The health of his family, including two young children;
- The adverse effects of airborne pollutants, including cement, clinker, and fly ash; and
- Groundwater contamination.

**2. Henry Stephenson**

The request submitted by Henry Stephenson stated the following concerns:

- His health, including severe allergies related to dust and pollen; and
- The substantial impact to the air, water, and general health.

**3. Mike Greene**

The request submitted by Mike Greene stated the following concerns:

- His history of health problems, which includes heart conditions related to a heart attack, high blood pressure, exposure to asbestos, and arterial blockage; and
- His enjoyment of his property.

**4. Jerry Richardson**

The request submitted by Jerry Richardson stated the following concerns:

- His wife's health because she has environmental allergies;

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- The health of his children;
- The worsening of his allergies; and
- His enjoyment of the outdoors.

The commission must consider whether a reasonable relationship exists between the interest claimed and the activity regulated. The activity the commission regulates is the authorized emissions into the air of contaminants by a person who owns or operates a facility or facilities. Those persons who own or operate a facility or facilities are prohibited from emitting air contaminants or performing any activities that contravene the TCAA or any other commission rule or order, or that causes or contributes to air pollution. The interests of Quinton Sheffield, Henry Stephenson, Mike Greene, and Jerry Richardson (with the exception of interests related to water) are within the scope of an air quality authorization because they focus on the potential adverse effects of potential air contaminants from the facility, and the ED finds that a reasonable relationship exists between the interests claimed and the activity the commission regulates.

Next, the commission must consider distance restrictions or other limitations imposed by law on the affected interest, the likely impact of the regulated activity on the health and safety of the person, and on the use of the property of the person, and the likely impact of the regulated activity on the use or the impact on the natural resource by the person. For air authorizations, distance from the proposed facility is particularly relevant to the issue of whether there is a likely impact of the regulated activity on a person's interests because of the dispersion and effects of individual air contaminants emitted from a facility. As discussed above, the ED agrees that Quinton Sheffield, Henry Stephenson, Mike Greene, and Jerry Richardson reside within 440 yards of the footprint of the plant (see TCAA § 382.058(c)), which is the subject of this permit application and notes that their comments reveal concern for the health and welfare of residents in their home. The natural resource that is the subject of this permit is the ambient air that they breathe, and they have indicated a manner in which emissions from the plant could impact it. The ED finds that these requesters have a personal justiciable interest within the meaning of TWC § 5.115 and TAC § 55.203(a) affected by this permit application.

Because Quinton Sheffield, Henry Stephenson, Mike Greene, and Jerry Richardson reside within 440 yards of the proposed plant and have articulated personal justiciable interests that are not common to the general public, they are affected persons entitled to request a contested case hearing, under the requirements of TCAA § 382.058(c).

**D. Which issues in this matter should be referred to SOAH for a contested case hearing?**

If the commission determines any of the hearing requests in this matter are timely and in proper form, and some or all of the hearing requesters are affected persons, the commission must apply the three-part test discussed in Section II to the issues raised in this matter to determine if any of the issues should be referred to SOAH for a contested case hearing. The three-part test asks whether the issues involve disputed questions of fact, whether the issues were raised during the public comment period, and whether the issues are relevant and material to the decision on the permit application, in order to refer them to SOAH.

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),

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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?

Quinton Sheffield, Henry Stephenson, Mike Greene, and Jerry Richardson raised the following questions of fact for this application during the public comment period:

- Whether the plant will adversely impact their health and the health of family members sharing their residences;
- Whether the plant will adversely impact the enjoyment of the hearing requesters' property; and
- Whether the plant will adversely impact the groundwater.

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 October 12, 2014 and ended on March 26, 2015, the date of the public meeting. 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. Are the issues relevant and material to the decision on the application?

In this case, the permit would be issued under the commission's authority in TWC § 5.013(11) (assigning the responsibilities in THSC Chapter 382), 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.

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

- Whether the plant will adversely impact their health and the health of family members sharing their residences; and
- Whether the plant will adversely impact the enjoyment of the hearing requesters' property.

The ED finds the following issue beyond the scope of the present application:

- Whether the plant will adversely impact the groundwater.

**IV. 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.

**V. Executive Director's Recommendation**

The ED respectfully recommends the commission:

- A. Find all hearing requests in this matter were timely filed;
- B. Find that the requests of the following persons satisfy the requirements for form under 30 TAC § 55.201(d) and are affected under 30 TAC § 55.203 and TCAA § 382.58(c):
  1. Quinton Sheffield
  2. Henry Stephenson
  3. Mike Greene
  4. Jerry Richardson
- C. If the commission determines any requester is an affected person, refer the following issues to SOAH:
  1. Whether the plant will adversely impact their health and the health of family members sharing their residences; and
  2. Whether the plant will adversely impact the enjoyment of the hearing requesters' property.
- E. Find the maximum expected duration of the contested case hearing, if held, would be six months.

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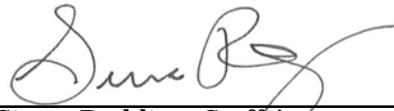
Respectfully submitted,

Texas Commission on Environmental Quality

Richard A. Hyde, P.E., Executive Director

Caroline Sweeney, Deputy Director  
Office of Legal Services

Robert Martinez, Division Director  
Environmental Law Division



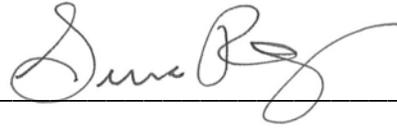
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PO Box 13087, MC 173  
Austin, Texas 78711-3087

REPRESENTING THE  
EXECUTIVE DIRECTOR OF THE  
TEXAS COMMISSION ON  
ENVIRONMENTAL QUALITY

**CERTIFICATE OF SERVICE**

On the 8<sup>th</sup> day of October 2015, a true and correct copy of the foregoing instrument was served on all persons on the attached 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 cursive script, appearing to read "Sierra Redding", is written above a horizontal line.

Sierra Redding

# Coastal Ready Mix Hearings Requesters

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: 9/28/2015

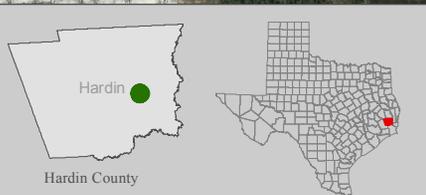
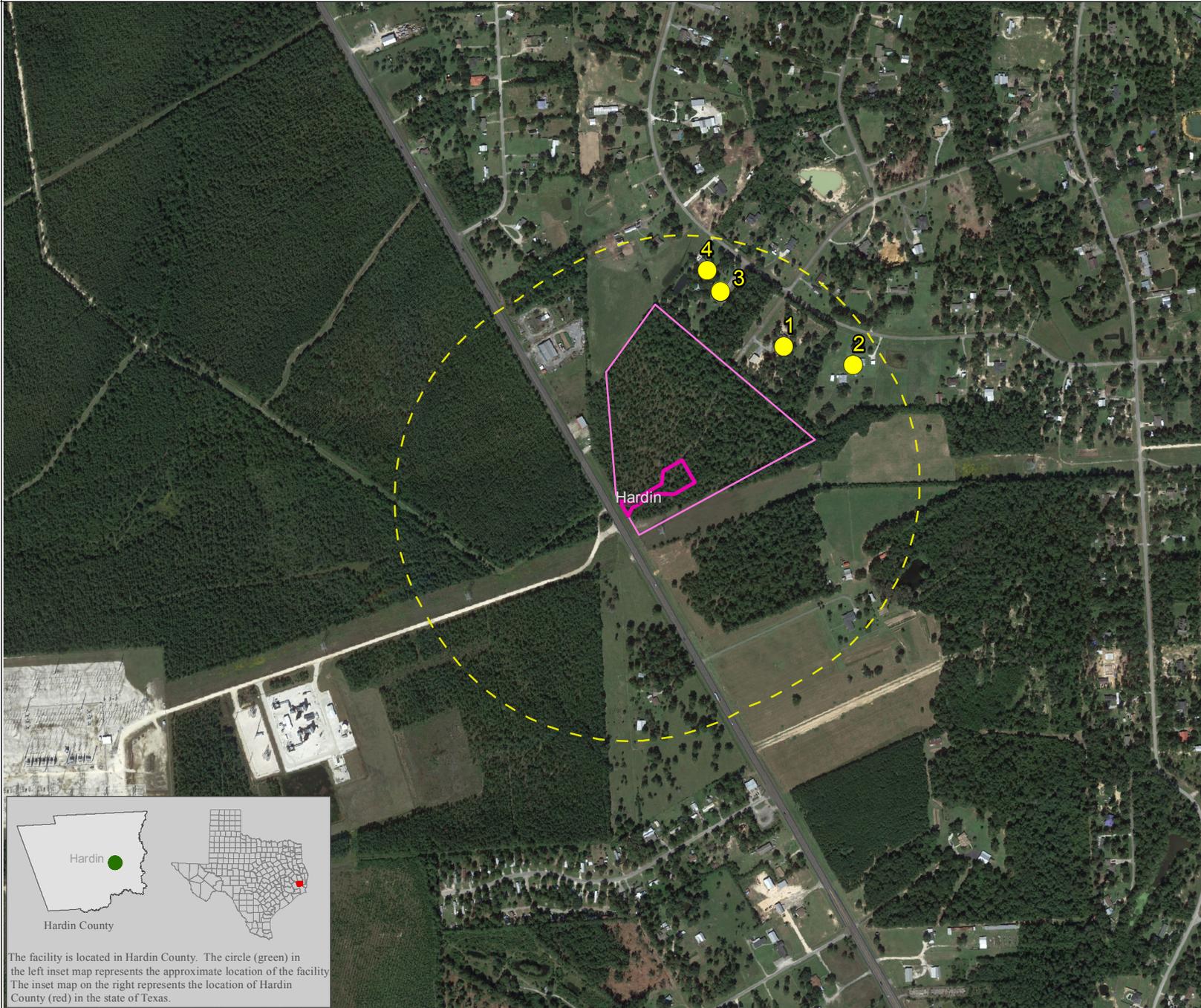


- Facility Footprint
- Facility Property Boundary
- 440 yd radial distance from footprint
- Requester

- | ID | Name       |
|----|------------|
| 1  | Sheffield  |
| 2  | Stephenson |
| 3  | Greene     |
| 4  | Richardson |

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.



The facility is located in Hardin 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 Hardin County (red) in the state of Texas.

THOMAS B BARCLAY  
4911 BEAUMONT DR  
KOUNTZE TX 77625-7505

DALLAS J BARRINGTON  
1100 S PECAN ST  
KOUNTZE TX 77625-7449

CHUCK BROCATO  
4621 LAKEWOOD DR  
KOUNTZE TX 77625-7531

VICK L GRAY  
4582 ROSEWOOD DR  
KOUNTZE TX 77625-7258

CINDY GREENE  
278 MAGNOLIA TRL  
LUMBERTON TX 77657-9277

JASON GREENE  
278 MAGNOLIA TRL  
LUMBERTON TX 77657-9277

JASON GREENE  
278 MAGNOLIA TRL  
LUMBERTON TX 77657-9277

MIKE GREENE  
3954 LEATHERWOOD DR  
KOUNTZE TX 77625-7113

WANDA GREENE  
3954 LEATHERWOOD DR  
KOUNTZE TX 77625-7113

DAVID JENSEN  
4585 LAKEWOOD DR  
KOUNTZE TX 77625-7533

CHARLES W LAWRENCE  
PO BOX 1450  
KOUNTZE TX 77625-1450

KENNETH PATTILLO  
4332 LEATHERWOOD DR  
KOUNTZE TX 77625-7121

SANDRA PATTILLO  
4332 LEATHERWOOD DR  
KOUNTZE TX 77625-7121

MR JERRY RICHARDSON  
3896 LEATHERWOOD DR  
KOUNTZE TX 77625-7111

JACKIE RILES  
3425 LEATHERWOOD DR  
KOUNTZE TX 77625-7104

MR QUINTON DAVID SHEFFIELD  
4066 LEATHERWOOD DR  
KOUNTZE TX 77625-7115

HENRY STEPHENSON  
4180 LEATHERWOOD DR  
KOUNTZE TX 77625-7117

HENRY & KAY STEPHENSON  
4180 LEATHERWOOD DR  
KOUNTZE TX 77625-7117

BILL STURM  
4169 LEATHERWOOD DR  
KOUNTZE TX 77625-7118

NORA STURM  
4169 LEATHERWOOD DR  
KOUNTZE TX 77625-7118

THE HONORABLE JAMES WHITE  
STATE REPRESENTATIVE  
TEXAS HOUSE OF REPRESENTATIVES  
PO BOX 395  
WOODVILLE TX 75979-0395