

Jon Niermann, *Chairman*
Emily Lindley, *Commissioner*
Bobby Janecka, *Commissioner*
Erin E. Chancellor, *Interim Executive Director*



TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

July 17, 2020

Laurie Gharis, 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 and Requests for
Reconsideration for Holcim – SOR, Inc.
Air Quality Registration No. 161637L003
Docket No. 2023-0441-AIR**

Dear Ms. Gharis:

Enclosed please find a copy of the Executive Director's Response to Hearing Requests and Requests for Reconsideration for the above-referenced item. If you have any questions, please do not hesitate to call me at extension 5938.

Sincerely,

A handwritten signature in blue ink that reads "Contessa N. Gay".

Contessa N. Gay
Staff Attorney
Environmental Law Division

Division Enclosures

cc: Service List

**TCEQ AIR QUALITY STANDARD PERMIT FOR CONCRETE BATCH PLANTS
REGISTRATION NUMBER 161637L003
TCEQ DOCKET NUMBER 2023-0441-AIR**

APPLICATION BY	§	BEFORE THE TEXAS
HOLCIM – SOR, INC.	§	COMMISSION ON
CONCRETE BATCH PLANT	§	ENVIRONMENTAL QUALITY
FORNEY, KAUFMAN COUNTY	§	

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

I. INTRODUCTION

The Executive Director of the Texas Commission on Environmental Quality (commission or TCEQ) files this response (Response) to the requests for a contested case hearing by persons listed herein regarding the above-referenced matter. The Texas Clean Air Act (TCAA), Texas Health & Safety Code (THSC) § 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 TEX. ADMIN. CODE (TAC) Chapter 55, Subchapter F.

A map showing the location of the proposed plant is included with this Response and have been provided to all hearing requesters listed on the mailing list for this application. In addition, the Amendments to the Air Quality Standard Permit for Concrete Batch Plants, the Concrete Batch Plant Standard Permit Source Analysis & Technical Review, and the Compliance History Report of Holcim – SOR, Inc. prepared by the Executive Director’s staff have been filed as backup material for the Commissioners’ Agenda. The Executive Director’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.

II. PLANT DESCRIPTION

Holcim – SOR, Inc. (Holcim or Applicant) has applied to the TCEQ for a Standard Permit for Concrete Batch Plants under TCAA § 382.05195. This will authorize the construction of a new facility that may emit air contaminants.

This permit will authorize the Applicant to construct a temporary Concrete Batch Plant. The facility is located 0.5 mile south of U.S. Highway 80 on Helms Trail, Forney, Kaufman County, Texas 75126. Contaminants authorized under this permit include particulate matter including (but not limited to) aggregate, cement, road dust, and particulate matter with diameters of 10 microns or less and 2.5 microns or less.

¹ Statutes cited in this response may be viewed online at www.statutes.legis.state.tx.us. Relevant statutes are found primarily in the thsc and the twc. The rules in the TAC may be viewed online at www.sos.state.tx.us/tac/index.shtml, or follow the “Rules” link on the TCEQ website at www.tceq.texas.gov.

III. PROCEDURAL BACKGROUND

Before work is begun on the construction of a new facility that may emit air contaminants, the person planning the construction must obtain an authorization from the commission. This permit application is for an initial issuance of Air Quality Permit Number 161637L003.

The permit application was received on October 10, 2022 and declared administratively complete on October 12, 2022. The Consolidated Notice of Receipt of Application and Intent to Obtain Permit and Notice of Application and Preliminary Decision (public notice) for this permit application was published in English on October 27, 2022, in the *Forney Messenger* and in Spanish on October 25, 2022 in *La Prensa Comunidad*. Because this application was received after September 1, 2015, it is subject to the procedural requirements of and rules implementing Senate Bill 709 (84th Legislature, 2015).

The TCEQ received timely hearing requests that were not withdrawn during the comment period from Russell J Boisvert, Tonia Goodwin, Larry Todd Keith, Crystal L Staggs, Leasa C Travis, Travis Troutt, and Kaleb Willis. The TCEQ received a timely request for reconsideration that was not withdrawn during the comment period from Harrison Odell Travis.

The Executive Director's RTC was filed with the Chief Clerk's Office on January 27, 2023 and mailed to all interested persons on February 6, 2023, including to 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 Executive Director's decision. The letter also explained that hearing requestors should specify any of the Executive Director'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 8, 2023. During this 30-day period, the TCEQ did not receive any other requests for a contested case hearing or requests for reconsideration.

IV. APPLICABLE LAW FOR REQUESTS FOR RECONSIDERATION

Any person may file a request for reconsideration of the Executive Director's decision. However, for the commission to consider the request, it must substantially comply with the following requirements set forth in 30 TAC § 55.201(e): give the name, address, daytime telephone number and, when possible, fax number of the person who files the request; expressly state that the person is requesting reconsideration of the Executive Director's decision; and give reasons why the decision should be reconsidered.

V. RESPONSE TO REQUESTS FOR RECONSIDERATION

The TCEQ received a timely request for reconsideration from Harrison Odell Travis. Although the Executive Director determined that the permit application meets the applicable rules and requirements, a final decision to approve the proposed registration has not been made. The application must be considered by the commissioners of the TCEQ at a regularly scheduled public meeting before any final action can be taken on the application.

The request for reconsideration did not state any of the Executive Director's responses in the RTC that they are specifically requesting to be reconsidered. Because the request for reconsideration raised concern about several RTC responses, where possible, the Executive Director is interpreting statements in the requests for reconsideration as they correspond to the appropriate response in the RTC. The Executive Director provides the following responses to the requests for reconsideration.

REQUEST FOR RECONSIDERATION OF RESPONSE 1

Harrison Odell Travis requested reconsideration because he has concerns regarding the effects on the air quality the proposed plant may cause.

TCEQ RESPONSE: The Standard Permit for Concrete Batch Plants prohibits fugitive emissions from leaving the property and contains control requirements that address fugitive emissions. The Executive Director explained, in Response 1, that a protectiveness review was conducted during the development of the Standard Permit for Concrete Batch Plants to ensure the emissions authorized by the Standard Permit are protective of human health and the environment. No adverse effects are expected to occur from facilities that meet all requirements of the Air Quality Standard Permit for Concrete Batch Plants. In Response 1, the Executive Director also explained that because standard permits are authorizations for specific, well-characterized classes of facilities which have been developed by the commission to ensure that operations authorized by any standard permit are protective, an applicant seeking to obtain authorization under a standard permit is not required to submit site-specific emission calculations or air dispersion modeling.

REQUEST FOR RECONSIDERATION OF RESPONSE 3

Harrison Odell Travis requested reconsideration because he has concerns regarding the location of the proposed plant, specifically the proximity to residential areas, truck traffic and the roads, and the noise pollution from the proposed project.

TCEQ RESPONSE: In Response 3, the Executive Director responded to comments concerning location of the plant, truck traffic and road repairs, and noise.

In this response the Executive Director explained that 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 plant location (unless a statute or rule imposes specific distance limitation that are enforceable by the TCEQ), traffic, road safety, or road repair costs, and noise or light from a plant.

VI. THE EVALUATION PROCESS FOR HEARING REQUESTS

House Bill 801 established statutory procedures for public participation in certain environmental permitting proceedings, specifically regarding public notice and public comment and the Commission's consideration of hearing requests. Senate Bill 709 revised the requirements for submitting public comment and the Commission's consideration of hearing requests. The evaluation process for hearing requests is as follows:

A. Response to Requests

The Executive Director, the Public Interest Counsel, and the Applicant may each submit written responses to a hearing request. 30 TAC § 55.209(d).

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).

B. Hearing Request Requirements

In order for the Commission to consider a hearing request, the Commission must first determine whether the request meets certain requirements:

Affected persons may request a contested case hearing. The request must be made in writing and timely filed with the chief clerk. The request must be based only on the requestor's timely comments and may not be based on an issue that was raised solely in a public comment that was withdrawn by the requestor prior to the filing of the Executive Director's Response to Comment.

30 TAC § 55.201(c).

A hearing request must substantially comply with the following:

- 1) give the time, 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 requestor's location and distance relative to the proposed facility or activity that is the subject of the application and how and why the requestor 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 requestor should, to the extent possible, specify any of the Executive Director's responses to comments that the requestor disputes and the factual basis of the dispute and list any disputed issues of law; and
- 5) provide any other information specified in the public notice of application.

30 TAC § 55.201(d).

C. Requirement that Requestor be an Affected Person/"Affected Person" Status

In order to grant a contested case hearing, the Commission must determine that a requestor is an "affected" person. Section 55.203 sets out who may be considered an affected person.

- a) For any application, 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.
- b) Except as provided by 30 TAC § 55.103, governmental entities, including local governments and public agencies with authority under state law over issues raised by the application may be considered affected persons.
- c) In determining whether a person is an affected person, all factors shall 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;
- 6) for a hearing request on an application filed on or after September 1, 2015, whether the requestor timely submitted comments on the application which were not withdrawn; and
- 7) for governmental entities, their statutory authority over or interest in the issues relevant to the application.

30 TAC § 55.203

In regard specifically to air quality permits, the activity the commission regulates is the emissions of air contaminants into the atmosphere. Any person who plans to construct or modify a facility that may emit air contaminants must receive authorization from the commission. Commission rules also include a general prohibition against causing a nuisance. Further, for air quality permits, 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.

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."

For applications filed on or after September 1, 2015, 30 TAC § 55.201(d) allows the commission to consider, to the extent consistent with case law:

1. the merits of the underlying application and supporting documentation in the commission's administrative record, including whether the application meets the requirements for permit issuance;
2. the analysis and opinions of the Executive Director; and
3. any other expert reports, affidavits, opinions, or data submitted by the Executive Director, the applicant, or hearing requestor.

D. Referral to the State Office of Administrative Hearings

"When the commission grants a request for a contested case hearing, the commission shall issue an order specifying the number and scope of the issues to be referred to SOAH for a hearing." 30 TAC § 50.115(b). The commission may not refer an issue to SOAH for a contested case hearing unless the commission determines that the issue:

- 1) involves a disputed question of fact or a mixed question of law and fact;
- 2) was raised during the public comment period by an affected person whose hearing request is granted; and
- 3) is relevant and material to the decision on the application.

30 TAC § 50.115(c).

VII. ANALYSIS OF THE HEARING REQUESTS

The Executive Director has analyzed the hearing requests to determine whether they comply with Commission rules, if the requestors qualify as affected persons, what issues may be referred for a contested case hearing, and what is the appropriate length of the hearing.

A. Individual Hearing Requestors

1. Russell J Boisvert

The Executive Director reviewed the factors found in 30 TAC § 55.201(c) and (d), and § 55.203 for determining whether a requestor is an affected person, and recommends the commission find that Russell J Boisvert is not an affected person.

Mr. Boisvert submitted a timely hearing request during the comment period. The hearing request was in writing and provided the required contact information. In his hearing request, Mr. Boisvert stated that he is concerned about the location, health effects, air quality, and the effect on quality of life. However, Mr. Boisvert did not state how he may be affected in a manner different from the general public. Therefore, Mr. Boisvert did not raise a personal justiciable interest. Based on the address provided, the Executive Director determined that Mr. Boisvert does not reside within 440 yards from the proposed location of the plant.

2. Tonia Goodwin

The Executive Director reviewed the factors found in 30 TAC § 55.201(c) and (d), and § 55.203 for determining whether a requestor is an affected person, and recommends the commission find that Tonia Goodwin is not an affected person.

Ms. Goodwin submitted a timely hearing request during the comment period. The hearing request was in writing and provided the required contact information. In her hearing request, Ms. Goodwin stated that she is concerned about the location, health effects, air quality, noise, trucks, and the effect on quality of life. However, Ms. Goodwin did not state how she may be affected in a manner different from the general public. Therefore, Ms. Goodwin did not raise a personal justiciable interest. Based on the address provided, the Executive Director determined that Ms. Goodwin does not reside within 440 yards from the proposed location of the plant.

3. Larry Todd Keith

The Executive Director reviewed the factors found in 30 TAC § 55.201(c) and (d), and § 55.203 for determining whether a requestor is an affected person, and recommends the commission find that Larry Todd Keith is not an affected person.

Mr. Keith submitted a timely hearing request during the comment period. The hearing request was in writing and provided the required contact information. In his hearing request, Mr. Keith stated that he is concerned about the location, health effects, air quality, and the effect on quality of life. However, Mr. Boisvert did not state how he may be affected in a manner different from the general public. Therefore, Mr. Boisvert did not raise a personal justiciable interest. Based on the address provided, the Executive Director determined that Mr. Boisvert does not reside within 440 yards from the proposed location of the plant.

4. Crystal L Staggs

The Executive Director reviewed the factors found in 30 TAC § 55.201(c) and (d), and § 55.203 for determining whether a requestor is an affected person, and recommends the commission find that Crystal L Staggs is not an affected person.

Ms. Staggs submitted a timely hearing request during the comment period. The hearing request was in writing and provided the required contact information. In her hearing request, Ms. Staggs stated that she is concerned about the location, health effects, air quality, and the effect on quality of life. However, Ms. Staggs did not state how she may be affected in a manner different from the general public. Therefore, Ms. Staggs did not raise a personal justiciable interest. Based on the address provided, the Executive Director determined that Ms. Staggs does not reside within 440 yards from the proposed location of the plant.

5. Leasa C Travis

The Executive Director reviewed the factors found in 30 TAC § 55.201(c) and (d), and § 55.203 for determining whether a requestor is an affected person, and recommends the commission find that Leasa C Travis is not an affected person.

Ms. Travis submitted a timely hearing request during the comment period. The hearing request was in writing and provided the required contact information. In her hearing request, Ms. Travis stated that she is concerned about the location, health effects, air quality, trucks, road repairs, and the effect on quality of life. However, Ms. Travis did not state how she may be affected in a manner different from the general public. Therefore, Ms. Travis did not raise a personal justiciable interest. Based on the address provided, the Executive Director determined that Ms. Travis does not reside within 440 yards from the proposed location of the plant.

6. Travis Troutt

The Executive Director reviewed the factors found in 30 TAC § 55.201(c) and (d), and § 55.203 for determining whether a requestor is an affected person, and recommends the commission find that Travis Troutt is not an affected person.

Mr. Troutt submitted a timely hearing request during the comment period. The hearing request was in writing and provided the required contact information. In his hearing request, Mr. Troutt stated that he is concerned about the location, health effects, air quality, and the effect on quality of life. Specifically, Mr. Troutt stated he will be affected in a manner different from the general public because of his asthma. Mr. Troutt raised a personal justiciable interest. However, based on the address provided, the Executive Director determined that Mr. Boisvert does not reside within 440 yards from the proposed location of the plant.

7. Kaleb Willis

The Executive Director reviewed the factors found in 30 TAC § 55.201(c) and (d), and § 55.203 for determining whether a requestor is an affected person, and recommends the commission find that Kaleb Willis is not an affected person.

Mr. Willis submitted a timely hearing request during the comment period. The hearing request was in writing and provided the required contact information. In his hearing request, Mr. Willis stated that he is concerned about the location, health effects, air quality, and the effect on quality of life. However, Mr. Willis did not state how he may be affected in a manner different from the general public. Therefore, Mr. Willis did not raise a personal justiciable interest. Based on the address provided, the Executive Director determined that Mr. Willis does not reside within 440 yards from the proposed location of the plant.

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

For a registration under the Standard Permit for Concrete Batch Plants, TCAA § 382.058(c) 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." As shown on the map, none of the hearing requestors reside within 440 yards of the of the proposed plant. Therefore, the commission cannot consider them to be affected persons.

VIII. CONCLUSION

The Executive Director respectfully recommends the commission:

1. Find all hearing requests in this matter were timely filed;
2. Find that all hearing requestors are not affected persons as a matter of law and deny their hearing requests; and
3. Deny the request for reconsideration filed by Harrison Odell Travis.

Respectfully submitted,

Texas Commission on Environmental Quality

Erin E. Chancellor, Interim Executive Director

Charmaine Backens, Acting Director
Office of Legal Services

Guy Henry, Acting Deputy Director
Environmental Law Division



Contessa N. Gay, Staff Attorney
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REPRESENTING THE
EXECUTIVE DIRECTOR OF THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY

CERTIFICATE OF SERVICE

On this 17th day of April 2023, a true and correct copy of the foregoing instrument was filed with the TCEQ's Office of the Chief Clerk, and served on all persons on the service list by the undersigned via deposit into the U.S. Mail, inter-agency mail, facsimile, electronic mail, or hand delivery.

Contessa N. Gay

Contessa N. Gay, Staff Attorney
Environmental Law Division

SERVICE LIST
HOLCIM-SOR, INC.
DOCKET NO. 2023-0441-AIR; PERMIT NO. 161637L003

FOR THE CHIEF CLERK:

via electronic filing
Laurie Gharis, Chief Clerk
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Austin, Texas 78711

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Andrea Childers, Environmental
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FOR PUBLIC INTEREST COUNSEL:

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FOR THE EXECUTIVE DIRECTOR

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FOR ALTERNATIVE DISPUTE
RESOLUTION:

via electronic mail
Kyle Lucas
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kyle.lucas@tceq.texas.gov

FOR THE HEARING REQUESTORS:

Russell J. Boisvert
Russ Boisvert
11220 Prairie Lakes Lane
Forney, Texas 75126

Tonia Goodwin
15066 Plantation Ridge
Forney, Texas 75126

Larry Todd Keith
2059 Plantation Ridge
Forney, Texas 75126

Crystal L. Staggs
15000 Plantation Ridge
Forney, Texas 75126

Mr. Harrison Odell Travis III
15088 Plantation Ridge
Forney, Texas 75126

Leasa C. Travis
15088 Plantation Ridge
Forney, Texas 75126

Travis Troutt
10229 Highland Prairie Lane
Forney, Texas 75126

Kaleb Willis
960 High Ridge
Forney, Texas 75126

INTERESTED PERSON(S):

Jill Wilson
15077 Plantation Ridge
Forney, Texas 75126

Holcim - SOR, Inc. (161637L003)

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



*Protecting Texas by
Reducing and
Preventing Pollution*

Texas Commission on Environmental Quality
GIS Team (Mail Code 197)
P.O. Box 13087
Austin, Texas 78711-3087
Date: 4/10/2023
CRF 0086011



Cartographer: ALOrtiz

- ▲ Boisvert, Russell J
- ▲ Goodwin, Tonia
- ▲ Keith, Larry Todd
- ▲ Staggs, Crystal L
- ▲ Travis, Leasa C
- ▲ Troutt, Travis
- ▲ Willis, Kaleb

Property Boundary

Building 1

Building 2

Building 3

Plant & Stockpile Area

440 Yards from Stockpile
440 Yards = 0.25 Mile

Distance from Requestor to
Proposed Concrete Batch Plant
Stockpile:

Boisvert: 0.67 Mile

Goodwin: 0.41 Mile

Keith: 0.69 Mile

Staggs: 0.33 Mile

Travis: 0.43 Mile

Troutt: 1.03 Mile

Willis: 0.76 Mile

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.

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 Kaufman County. The Circle (red) in the left inset map represents the approximate location of the facility. The inset map on the right represents the location of Kaufman County (red) in the state of Texas.

