

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



Garrett T. Arthur, *Public Interest Counsel*

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

April 17, 2023

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

RE: **Holcim – SOR, Inc. (Applicant)**
TCEQ Docket No. 2023-0441-AIR

Dear Ms. Gharis:

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

Sincerely,

A handwritten signature in cursive script that reads "Jennifer Jamison".

Jennifer Jamison, Attorney
Assistant Public Interest Counsel

cc: Mailing List

TCEQ DOCKET NO. 2023-0441-AIR

**HOLCIM - SOR, INC.
CONCRETE BATCH PLANT
STANDARD PERMIT
REGISTRATION NO. 161637L003**

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**BEFORE THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY**

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

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 and Request for Reconsideration in the above-referenced matter and respectfully shows the following.

I. INTRODUCTION

A. Summary of Position

Before the Commission is the application of Holcim - SOR, Inc. (Applicant) for a Standard Permit registration under the Texas Clean Air Act (TCAA), Texas Health & Safety Code (THSC) § 382.05195. OPIC recommends the Commission find no affected person has filed a hearing request and therefore deny all hearing requests. OPIC also recommends the Commission deny the request for reconsideration.

B. Background

Applicant seeks Registration No. 161637L003 to authorize construction of a temporary Concrete Batch Plant under the Concrete Batch Plant Standard Permit. The proposed facility would be located 0.5 miles south of U.S. Highway 80 on Helms Trail, Forney, in Kaufman County. Contaminants authorized under this permit include particulate matter consisting of aggregate,

cement, road dust, and particulate matter with diameters of 10 microns or less and 2.5 microns or less.

C. Procedural History

TCEQ received the application on October 10, 2022, and declared it 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*. The public comment period ended on November 28, 2022. The Chief Clerk mailed the Executive Director's (ED) Decision and Response to Comments (RTC) on February 6, 2023, and the deadline to request a contested case hearing or reconsideration of the ED's decision was March 8, 2023.

The Commission received timely requests for hearing from Leasa Travis, Russell Boisvert, Tonia Goodwin, Larry Todd Keith, Crystal Staggs, Travis Troutt, and Kaleb Willis. The Commission also received a timely request for reconsideration from Harrison Odell Travis, III.

II. APPLICABLE LAW

A. Hearing Requests

This application was filed on or after September 1, 2015 and is therefore subject to the procedural rules adopted pursuant to Senate Bill 709. Tex. S.B. 709, 84th Leg., R.S. (2015).

Under Title 30, Texas Administrative Code (TAC) § 55.201(c), a hearing request by an affected person must be in writing, must be timely filed, may not be based on an issue raised solely in a public comment which has been withdrawn, and, for applications filed on or after September 1, 2015, must be based only on the affected person's timely comments.

Section 55.201(d) states that 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;
- (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 by the requestor 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 ED's responses to the requestor's comments that the requestor disputes, 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.

For concrete batch plant registrations under the Standard Permit, THSC § 382.058(c) limits those who may be affected persons to "only those persons actually residing in a permanent residence within 440 yards of the proposed plant." 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. An interest common to members of the general public does not qualify as a personal justiciable interest. Section 55.203(c) provides relevant factors to be considered in determining whether a person is affected. These factors 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, safety, and 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 that were not withdrawn; and
- (7) for governmental entities, their statutory authority over or interest in the issues relevant to the application.

Under § 55.203(d), to determine whether a person is an affected person for the purpose of granting a hearing request for an application filed on or after September 1, 2015, the Commission may also consider the following:

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

For an application filed on or after September 1, 2015, § 55.211(c)(2)(A)(ii) provides that a hearing request made by an affected person shall be granted if the request raises disputed issues of fact that were raised by the affected person during the comment period, that were not withdrawn by filing a withdrawal letter with the Chief Clerk prior to the filing of the ED's RTC, and that are relevant and material to the Commission's decision on the application.

Under § 55.211(c)(2)(B)-(D), the hearing request, to be granted, must also be timely filed with the Chief Clerk, pursuant to a right to hearing authorized by law, and comply with the requirements of § 55.201.

B. Request for Reconsideration

Any person may file a request for reconsideration of the ED's decision under 30 TAC § 55.201(e). The request must be in writing and filed with the Chief Clerk no later than 30 days after the Chief Clerk mails the ED's decision and RTC. The request must expressly state that the person is requesting reconsideration of the ED's decision and give reasons why the decision should be reconsidered.

III. DISCUSSION

A. Affected Person Analysis for Hearing Requests

THSC Section 382.058(c) limits affected person status to "only those persons actually residing in a permanent residence within 440 yards of the proposed plant" authorized by a Standard Permit registration under THSC § 382.05195. Accordingly, OPIC's analysis is restricted by the distance limitation imposed by statute.

According to the map prepared by the ED, the following requestors are located further than 440 yards from the nearest emission point at the proposed facility: Leasa Travis, Russell Boisvert, Tonia Goodwin, Larry Todd Keith, Crystal Staggs, Travis Troutt, and Kaleb Willis. Because of the restrictive statutory limitation on affected persons for purposes of requesting a hearing on a registration under the Concrete Batch Plant Standard Permit, OPIC is compelled to find that none of these requestors qualify as affected persons. Consequently, OPIC must respectfully recommend denial of all hearing requests.

OPIC would like to draw attention to the recently proposed amendment to Section 116.615 of 30 TAC Chapter 116, Control of Air Pollution by Permits for New Construction or Modification. The proposed amendment would require that the owner or operator of concrete batch plants authorized under TCEQ's Air Quality Standard Permit for Concrete Batch Plants comply

with certain public notice and hearing requirements should they opt to move the registered concrete batch plant to a new location on the existing site. As such, moving an existing concrete batch plant within a property boundary would trigger owner and operator compliance with new public notice requirements, including the opportunity to request a contested case hearing for residents within 440 yards of the new location.

B. Request for Reconsideration

Harrison Odell Travis, III submitted a timely request for reconsideration asserting that the proposed plant is too close to existing homes and properties and poses threats to residents stemming from air pollution and noise. While concerns regarding air pollution are relevant and material to the decision on this application, an evidentiary record would be necessary for OPIC to make a recommendation to the Commission as to whether the proposed permit should be denied on these grounds. OPIC cannot recommend reconsideration or remand of the application without the benefit of such a record and must therefore recommend denial of Mr. Travis' request for reconsideration.

IV. CONCLUSION

OPIC respectfully recommends the Commission find no affected person has filed a request for a contested case hearing in this matter and therefore deny all hearing requests. OPIC further recommends denial of the request for reconsideration.

Respectfully submitted,

Garrett T. Arthur
Public Interest Counsel

By: 

Jennifer Jamison

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CERTIFICATE OF SERVICE

I hereby certify that on April 17, 2023 the original and true and correct copies of the Office of Public Interest Counsel's Response to Request for Reconsideration and 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.



Jennifer Jamison

**MAILING LIST
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TCEQ DOCKET NO. 2023-0441-AIR**

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See attached list.

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