

Request for Contested Case Hearing and “Reply Brief” for Affected Person Status

Requestor’s Name: *(recommend that each adult in household complete their own request and cite different issues)*

Address, City, State, Zip of property:

Daytime phone number:

Applicant’s Name and Permit Number:

Vulcan Construction Materials LLC

Permit Number 147392L001

Docket #: 2018-3013-AIR

I, _____ *<insert name>* _____, hereby request a contested case hearing regarding the Vulcan Construction Materials LLC air permit No. 147392L001 and henceforth offer a ‘reply brief’ to be recommended as an Affected Person by those parties for which I was not recommended for Affected Party status. (e.g. TCEQ, the Applicant and/or OPIC. Henceforth named ‘parties’).

According to (30 TAC 55.203), I meet all the conditions to be named an Affected Person as I have personal justiciable interest and a reasonable relationship with the application and should be afforded the protections by law under which the application is considered. My interests are not common to members of the general public such that the location of my property, my health & safety, impact on my natural resources, and use and an enjoyment of the property will be adversely affected by the proposed facility and its related activities.

Issues of ‘Reply Brief’:

1. **Proximity: Location of the Requestor’s Affected Property (i.e. home, business, or property)** *(Use the map below and be sure to address the distance of your property from the crusher and nearest fence line.)*

<Insert Map, if you wish>

Show your location, via distance markers, to the crusher and fence line. See attached instructions <https://www.stop3009vulcanquarry.com/wp-content/uploads/2018/08/measuring-distance.pdf>

Statement of Fact based on Parties’ Responses:

Statement 1:

It appears that TCEQ and the Applicant arbitrarily selected a 1-mile radius from the crusher to determine who should be recommended for Affected Person status. OPIC graciously gave a 2-mile radius. However, in all these parties’ responses, nowhere is the radius selection defined nor defended by law, code, enactment, or scientific data.

For any party to assume a radius limitation based on “agency history or as a matter of custom” does not meet the requirements as set forth by 30 TAC 55.203 (c) (2) which indicates that restrictions or limitations must be imposed by law.

In fact, each party’s response documents cite 30 TAC 55.203 (a, c), and more specifically, “(2) distance restrictions or other limitations imposed by law on the affected interest”, thus highlighting the fact that they are clear of the requirements.

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Furthermore each party either sidesteps the TAC distance rule as written and intended for interpretation or openly state that they are aware that no law exists, yet all parties applied an arbitrary radius limitation.

- TCEQ’s response, page 20, “For air authorizations, distance from the proposed plant is particularly *relevant* to the issue of whether there is a likely impact of regulated activity on a person’s interests because of the dispersion and effects of individual air contaminants emitted from the facility.”

Relevance is defined as “the quality or state of being closely connected or appropriate”. Relevance is NOT a ‘law’. I demand that TCEQ provide the substance for such a statement which apparently is the ‘dart throw’ process used in determining a 1-mile radius. It is clear from 30 TAC 55.203 (c) 2 that a distance law is required to apply such distance limitation.

- The Applicant’s response, page 11, cites that there are ‘no distance restrictions or other limitations by law.’”

Since this is cited by the Applicant, I demand to know the basis for a 1-mile radius determination? It appears from 30 TAC 55.203 (c) 2 that a distance law is required to apply such distance limitation.

- OPIC’s response, page 13, “OPIC notes that there are no specific distance limitations applicable to who may be considered and affected person for purposes of this application”

Since this is cited by OPIC, I demand to know the basis for a 2-mile radius determination? It appears from 30 TAC 55.203 (c) 2 that a distance law is required to apply such distance limitation.

How is it that as a hearing requestor whose health, safety, and enjoyment of my property are being taken hostage by the Applicant’s facility emissions and must endure downstream cascading disastrous events for the next 80 years, is required to ‘prove’ that my location will not be affected? Neither the TCEQ, who is tasked with protecting the citizens, nor the Applicant, nor OPIC have provided the necessary evidence to make such arbitrary radius determinations to rule-in or rule-out a person from being recommended for Affected Party status.

As such, I demand that the radius restriction be lifted and that I be recommended for Affected Person status regardless of distance from the crusher.

Statement 2:

The parties have failed to provide scientific data and assurances that fugitive dust coming from the crusher will NOT exceed the permitted limits for respirable, non-visible crystalline silica of PM 2.5 or smaller, nor that this fugitive dust will NOT transcend the 1 or 2-mile radius. It is NOT enough that the Applicant promises to abide by permitting rules. Without on-site real-time monitoring by a third-party there are no assurances.

Since there is NO pit monitoring or fence line monitoring, these arbitrary radius’ whereby those persons outside of the radius will not be affected is basically saying that all the crystalline fugitive crystalline dust will settle within 400-yards of the crusher and that no wind will pick it up and travel with it beyond 1 or 2 miles. Both are ludicrous assumptions made by all parties and is downright contrary to what Comal County witnesses almost every summer and what is scientifically shown.

In 2017 and 2018, “*the desert sent a portion of its ecosystem across the ocean for local residents to experience starting Thursday, a spokesman with the National Weather Service said.*”

http://herald-zeitung.com/news/article_0442e618-7b1e-11e8-8616-fff0e0fd6286.html

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It is scientifically well documented by NOAA, NASA, USGS and others that dust particles can travel up to 5,000 miles. The dust clouds also bring pollen, microbes, insects and chemicals, all of which could potentially have a negative impact on human health.

In fact, TCEQ itself highlights that this dust is travelling “*By Saturday, "African dust is forecast to build and spread further inland," the TCEQ said in its Wednesday air quality forecast.*” <https://weather.com/news/news/2018-06-27-saharan-dust-africa-caribbean-texas>

With all this scientific evidence, TCEQ, the Applicant, nor OPIC have provided assurances nor scientifically backed data that ensures that any person outside the arbitrary 1 – 2 -mile radius is NOT an affected party.

Again I demand that unless the parties prove that that fugitive dust coming from the crusher will NOT exceed the permitted limits of respirable, non-visible crystalline silica of PM 2.5 or smaller, nor that this fugitive dust will NOT transcend the 1 or 2-mile radius, that the radius restrictions be lifted and that I be considered and Affected person regardless of my distance from the crusher.

2. Personal Justifiable Interests

Review the ‘issues’ which TCEQ associated with you personally in this TCEQ document

List each issue individually and bolster and strengthen your claims for each issue based on more personal data/experience, legal support, scientific data, etc.

NOTE: A CCH/AP commenter cannot introduce any NEW topic in their appeal. Addressing the arbitrary radius is not deemed a 'new' issue because you didn't know that the arbitrary radius was going to be applied, however you can only 'bolster' the issues you originally raised and NOT add another issue in attempt to strengthen your case

For example, John Q. Public addressed Issues 1,2,3,11,12,15, 90 as noted in the TCEQ documents. These are the only issues that he can bolster in his appeal. He cannot add additional issues that TCEQ is referring to SOAH because he did not originally address such as Issues 6, 9,18,19,22,31,33,47,49,50,51,55,57,68,61,69 (a complete list of all the SOAH referral issues can be found on page 217)

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(DO NOT INCLUDE THIS PAGE IN YOUR PRESENTATION)

Instructions for Completing Contested Case Hearing and Affected Party Status Template

NOTES:

We have provided the above template for citizens to ensure that all necessary requirements by the TCEQ are included and ensure your best opportunity to be granted a Contested Case Hearing and to be named an Affected Party*.

We strongly recommend that you follow this template exactly as written, and everything in **BOLD** be maintained and ‘no changes’ be made.

Prior to sending in your CCH/AP appeal, those items in in “*Italics*” you can remove. These are ‘notes’ to assist you.

*NOTE: The TCEQ Commissioners and/or SOAH judge are the final decision makers as to who will be named an ‘affected party’. If the Commissioners do not name you an affected party, you will have the opportunity to request ‘affected party’ status at the SOAH Preliminary hearing sometime in mid-January 2019. You must attend the SOAH preliminary hearing ‘in person’ to request of SOAH to be named an ‘affected party’.