

Request for Affected Person Status (Sample Template)

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

I, _____ <insert name> _____, hereby present evidence not common to the general public regarding the Vulcan Construction Materials LLC air permit No. 147392L001 and henceforth request to be named an Affected Person by the Administrative Law Judge (ALJ).

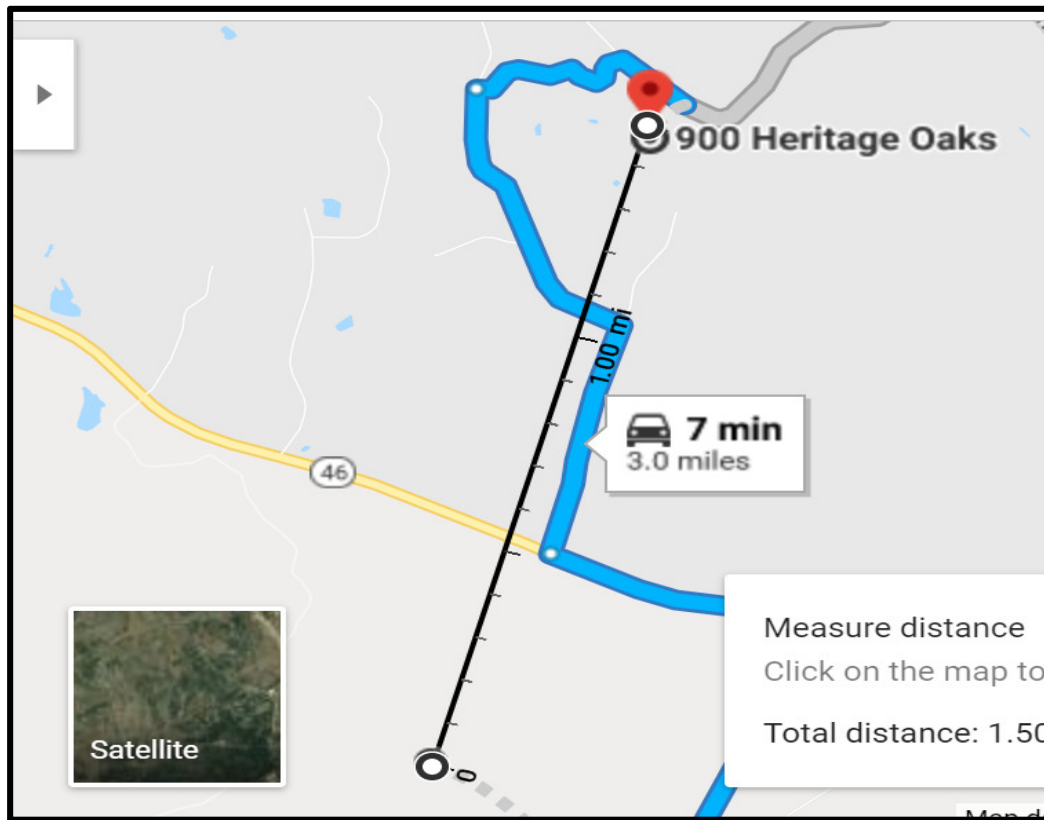
According to (30 TAC 55.203), I meet all the conditions to be named an Affected Person as I have personal justiciable interest and a reasonable relationship with the application and should be afforded the protections by law under which the application is considered. My interests are not common to members 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 which deem me an 'affected party':

- 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>



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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.

Furthermore, each party either sidesteps the TAC distance rule as written and intended for interpretation or openly state that they were 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 SOAH ALJ 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.

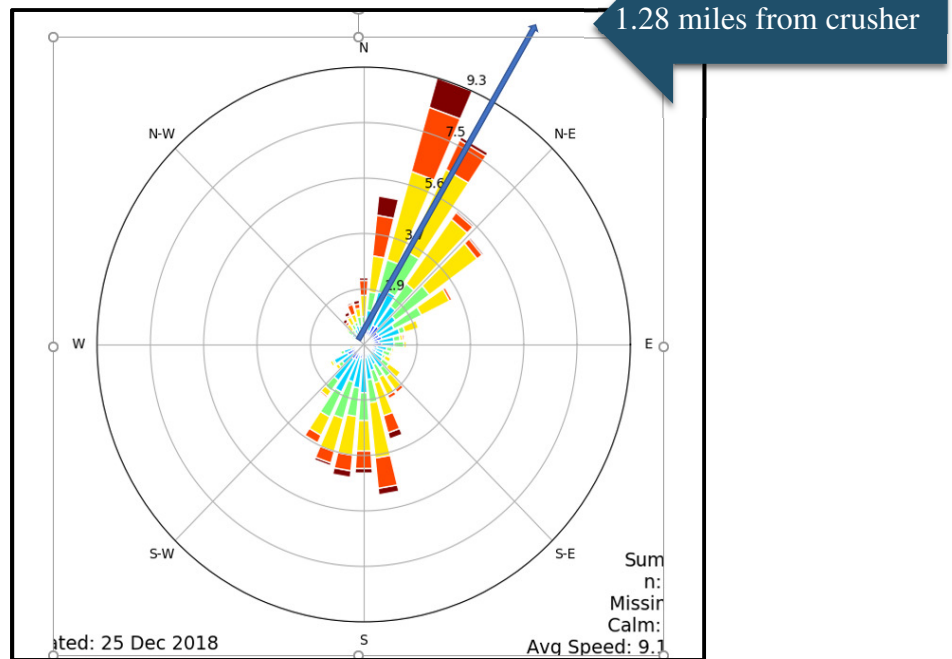
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Statement 2:

The parties have failed to provide scientific data and assurances that is 'site specific' 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.

<Insert , if you wish>

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



As is shown above, my home is 1.28 miles from the crusher and lies in direct line of the prevailing winds from the proposed quarry approximately 11% of the year I am well within a distance that particulate matter can easily travel, not common to the general public for increased exposure to particulates.

It is NOT enough that the Applicant promises to abide by permitting rules, as they have been shown over and over and documented, the Applicant intentionally fails to abide by current requirements at their :

- 1604 plant* (41 TCEQ permit violations – air quality, stormwater & hazardous materials; 1 Mine Safety & Health Administration Violation for Waste Water Spill; 1 SAWS violation for expired sewage permit & numerous EAA violations)

*NOTE: this is the quarry site by which the applicant used to 'model' their air dispersion and supposedly correlate it to the 3009 site.

Without on-site real-time monitoring by a third-party there are no assurances that Vulcan will be the 'good neighbor' as they claim they are going to be. (i.e. fence line monitoring, site visit by 3rd party PRIOR to start up promises made by applicant are indeed install and/or instituted, routine random site visits performed by 3rd party to ensure all permit requirements are being met, etc.)

Since there is NO local air quality monitoring (closest one is Selma and it has been shut down for 1+ year), NO open pit monitoring and NO fence line monitoring using best management practices, these arbitrary radii whereby those persons outside of the arbitrarily applied 1-mile radius will not be affected is basically saying that all the crystalline fugitive crystalline dust will settle within 400 feet of the crusher and that no wind will pick it up and travel with it

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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

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 radii, and 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 :** Provide a detailed description of how you and your family would be adversely affected by the proposed facility or activity in a manner not common to the public. Be sure to describe the impact(s) of this regulated activity and its nuisance factors* will have on the health and safety of the Requestor(s), quality of life, potential economic impact (if applicable), and how the use of property will be affected. (list 2, 3 or as many personal and individualized issues that are not germane to the public from the SOAH referred issues list). Also see this study: <https://pubs.usgs.gov/of/2001/ofr-01-0484/ofr-01-0484so.pdf>)

EXAMPLE 1: RELATED TO BEING EXCLUDED as AN AFFECTED PARTY FOR MISSING 2/27/18 Commenting Deadlines, YET YOU DID NOT LIVE HERE OR THERE IS SOME OTHER DEFENSIBLE REASON.

I was adversely excluded as an affected party due to failing to make comments on 2/27/18. This rule (SB 709) implemented by the TCEQ wholly restrains the rights of citizens to protest actions that affect their properties and quality of life is inconsistent with personal-liberty principles. It also fails to allow for unique circumstances by which a party was unable to file a timely comment. In my specific case, our family was not living in the area. We did not move into the area until XXXXX date and I am providing for you a copy of my first (utility bill, closing date on mortgage papers, anything that will have a date of occupancy)

As such, I should NOT be eliminated from being an affected person and demand that I be named as such.

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EXAMPLE 2:

Issue 2: Whether the proposed plant will negatively affect human health, including sensitive subgroups, and physical property.

I am a 100% medically disabled (retired) army officer, and I moved my family to the Texas Hill Country in 1998, seeking solace from air pollutants which were exacerbating my symptoms related to desert-lung disease. Within several years of my return from the Gulf War in 1991 (after 2, 9-month long deployments), I began having shortness of breath and a cough. It wasn't until I couldn't pass my running physical, that I knew that something was wrong. I went thru a cadre of VA doctors, including a psychiatrist to determine if I was 'milking' the system by feigning symptoms because there was no 'obvious' medical reasons that I should be having these problems, especially having successfully passed running physicals to date.

I was diagnosed with desert-lung disease which is a form of silicosis caused by long-term exposure to silica sand dust in desert areas. Without going into the details of the variety of treatments past and present, all of it is only temporary abatement of the symptoms, and my long prognosis is that I will need to be on oxygen as my lungs are becoming calcified, maybe even a lung transplant.

There is no way that being within 1.5 miles of this quarry is NOT going to exacerbate my physical symptoms. I find solace in gardening, playing with my grandkids outside, taking walks around my property, going deer hunting, etc.

For Vulcan and TECQ to make claims that the dust will not exceed the fence line is LUDICROUS if not a downright stupid claim.

For TCEQ to claim that they are protective of citizens health as their primary mission, yet can hide by TAC rules which:

- Preclude open pit air monitoring using Best Management Practices vs opacity testing,
- Preclude fence line monitoring
- Preclude pre-start up audit of all processes and machinery to ensure compliance with operational rules
- Preclude random audits of all processes and machinery to ensure compliance with operational rules
- Allows permittees to terminally hide behind the Audit Act

.....can only be likened to a camel leading the military during Operation Desert Storm.

I recently met Dr. Keith Randolph, a member of Stop 3009 Vulcan Quarry, who authored these two papers related to health conditions from exposure to fugitive carcinogenic PM 2.5. I offer these to you, knowing that they will not be read, but in hopes that the SOAH ALJ hears loud and clear, that the aggressiveness of the aggregate industry in Comal Country which already has over 40 square miles of quarries and/or cement batch plants will only heighten medical problems for people who already have compromised health conditions, and God-forbid, make Comal County ground zero for Quarry Mecca and an increased health hazard for anyone living near a quarry.

- [Health Risks of Quarrying](#)
- [Comal Country Residents at Risk for Air Pollution from Aggregate Industry](#)

3. **List of all relevant and material disputed issues of fact, or questions of fact and law, that were raised during the public comment period and that are the basis of the hearing request.** (*directly identify the 'Issue #' that is cited in the Interim Order that you wish dispute. Whatever regs/laws they state in the Response, look them up, and figure out how to counter them. Here are some links related facts of law,*

- [Texas Health and Safety Code: Texas Clean Air – Chapter 382](#)
 - [Texas Surface Water Quality Standards](#)

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(DO NOT INCLUDE THIS PAGE IN YOUR PRESENTATION) Instructions for Completing 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 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 prating out those items in in "*Italics*" you can remove. These are 'notes' to assist you.

*NOTE: The SOAH ALJ is the final decision maker as to who will be named an 'affected party'. You must attend the SOAH preliminary hearing 'in person' to request of SOAH ALJ to be named an 'affected party'.