

TCEQ DOCKET NO. 2006-0056-MIS

2006 FEB 22 PM 2:32

Gem Seal of Texas, Inc.,

Petitioner,

v.

City of Austin

Respondent.

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BEFORE THE TEXAS

COMMISSION ON

ENVIRONMENTAL QUALITY

CHIEF CLERK'S OFFICE

**GEM SEAL'S RESPONSE TO
CITY OF AUSTIN'S OBJECTION TO JURISDICTION**

TO: THE HONORABLE COMMISSIONERS OF THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Petitioner Gem Seal of Texas, Inc. ("Gem Seal") files this Response to the objection to jurisdiction raised in Section I of the Respondent City of Austin's ("City's") Original Answer, as follows:

1. The City's objection to the Commission's jurisdiction over this appeal is a flimsy, form-over-substance argument. The City asserts that the Commission should dismiss this appeal because the copy of the Ordinance attached by Gem Seal to its Petition for Review was not signed and dated. By referring to this copy as a "draft," the City implies that there was something substantively different between that document and the signed version attached to the City's Answer. That simply is not the case. One need only compare the documents to see that the wording of the Ordinance is *exactly* the same in both documents. In fact, the only difference between the two documents is that the one attached to the City's Answer has an enactment date

and is signed. However, for that matter, the enactment reflected on the City's copy is not even the correct one.¹ That date was amended by a later action of the City Council.

2. 30 T.A.C. § 86.55 states that an appeal must contain "a copy" of the applicable Ordinance. Gem Seal has done that; attached to Gem Seal's Petition is a copy of the Ordinance that contains the exact wording of the Ordinance passed by the City and references the proper Title and Chapter of the City Code where the codified Ordinance is found. There is no difference in the language of this copy and the signed version attached to the City's Answer. Moreover, the Ordinance is specifically identified in the body of Gem Seal's Petition. Thus, the Commission and the City were provided with adequate notice of the Ordinance being appealed and the specific language of that Ordinance. Nothing more was required. *Compare Goode v. Avis Rent-a-Car, Inc.*; 832 S.W.2d 202, 204 (Tex. App. – Houston [1st Dist.] 1992, writ denied) (holding that receipt of an unsigned order was sufficient to provide notice of a hearing, and observing that the appellant had cited no authority requiring the notice to be signed); *West v. Maintenance Tool & Supply Co.*; 89 S.W.2d 96, 102 (Tex. App. – Corpus Christi 2002, no writ) (finding that an undated and unsigned notice from the court was sufficient to provide notice to the parties of upcoming action). Indeed, it would be hard to imagine what possible prejudice the City or the Commission could have suffered as a result of an unsigned copy of the Ordinance having been presented with the Petition for Review.

3. Accordingly, Gem Seal respectfully requests that the City's objection to the Commission's jurisdiction over this appeal be overruled and that the Commission entertain such appeal.

¹ Under the City's view, not even its own version is sufficient for appeal purposes because it doesn't have the correct enactment date. In fact, no appeal at all could be had under the City's argument because there exists no signed version of the Ordinance with the correct enactment date.

Respectfully submitted,

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ATTORNEYS FOR GEM SEAL OF TEXAS, INC.

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of *Petitioner's Response to City of Austin's Objection to Jurisdiction* was served on the following on this 17th day of February, 2006, via fax and certified mail.

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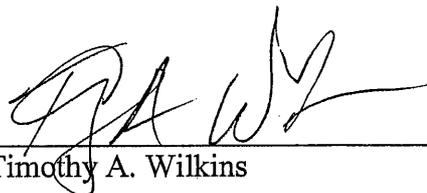
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