

Buddy Garcia, *Chairman*  
Larry R. Soward, *Commissioner*  
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Blas J. Coy, Jr., *Public Interest Counsel*

## TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

*Protecting Texas by Reducing and Preventing Pollution*

September 29, 2008

TEXAS  
COMMISSION  
ON ENVIRONMENTAL  
QUALITY  
2008 SEP 29 PM 3:06  
CHIEF CLERKS OFFICE

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

Re: **LONE STAR STEEL COMPANY**  
**TCEQ DOCKET NO. 2005-0272-AIR**

Dear Ms. Castañuela:

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

Sincerely,

A handwritten signature in cursive script that reads "Amy Swanholm".

Amy Swanholm, Attorney  
Assistant Public Interest Counsel

cc: Mailing List

Enclosure

REPLY TO: PUBLIC INTEREST COUNSEL, MC 103 • P.O. BOX 13087 • AUSTIN, TEXAS 78711-3087 • 512-239-6363

P.O. Box 13087 • Austin, Texas 78711-3087 • 512-239-1000 • Internet address: [www.tceq.state.tx.us](http://www.tceq.state.tx.us)

**TCEQ DOCKET NO. 2005-0272-AIR**

2008 SEP 29 PM 3: 06

<b>APPLICATION BY</b>	§	<b>BEFORE THE</b>
<b>LONE STAR STEEL CO.</b>	§	<b>TEXAS COMMISSION ON</b>
<b>FOR RENEWAL OF AIR QUALITY</b>	§	<b>CHIEF CLERKS OFFICE</b>
<b>PERMIT NO. 3342</b>	§	<b>ENVIRONMENTAL QUALITY</b>

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

COMES NOW, the Office of Public Interest Counsel ("OPIC") of the Texas Commission on Environmental Quality (the "Commission" or "TCEQ") and files this Response to Hearing Request in the above-referenced matter, and would respectfully recommend that the Commission find that no right to a hearing exists on this application for renewal of an air permit that does not authorize an increase in allowable emissions or the emission of a new contaminant.

**I. INTRODUCTION**

U.S. Steel Tubular Products, Inc., formerly known as Lone Star Steel Co. (hereinafter "Lone Star" or "Applicant") submitted an application to TCEQ for renewal of Air Quality Permit No. 3342 and PSD-TX-838 on November 10, 2003.<sup>1</sup> The renewal would authorize continued operation of the Electric Air Furnaces and Specialty Tubing Facility located at 6866 Highway 259 South, in the town of Lone Star within Morris County, Texas. The facility is currently authorized to emit the following air contaminants; nitrogen oxides (NOx), carbon monoxide (CO), volatile organic compounds (VOC), sulfur oxides (SOx), lead, sulfuric acid, nitric acid, sodium hydroxide, zinc nitrate, zinc phosphate, sodium nitrate, sodium stearate, manganese, and particulate matter (including particulate matter less than 10 microns in diameter).

The Executive Director (hereinafter "ED") declared the application administratively complete on December 11, 2003. On December 31, 2003, the Notice of Receipt and Intent to

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<sup>1</sup> Lone Star Steel Co. L.P. changed its name to U.S. Steel Tubular Products, Inc., effective January 1, 2008.

Obtain (hereinafter "NORI") an Air Quality Permit was published in *The Daingerfield Bee*. But on January 7, 2003, the NORI was republished, due to a problem with the location of the notice in the newspaper. Alternative language notice was not required. TCEQ received one request for a contested case hearing in response to the first publication.

After the NORI was issued, TCEQ staff determined that the permit could not be renewed until it had been amended. The initial renewal sought to reconnect one of the two furnaces to a wet scrubber so that Lone Star could run both furnaces simultaneously. Upon examining the permit application, staff discovered the two furnaces would emit nitrogen oxides, volatile organic chemicals, sulfur dioxide and other pollutants in quantities not reflective of the current MAERT. In addition, actual carbon monoxide emissions would increase when the hydro scrubber pollution control device was reconnected to the second electric arc furnace. This increase would necessitate a Prevention of Significant Deterioration (PSD) review. After a "lengthy, complex and controversial" process, the Applicant applied for a permit amendment.<sup>2</sup>

The amendment application was submitted on June 9, 2006, and the NORI was published in the *The Daingerfield Bee* on July 5, 2006. Alternative language notice was not required. The notice stated that the purpose of the amendment was to add historically emitted pollutants and that plant operations would not change. TCEQ received no public comments or requests for a contested case hearing, and on May 31, 2007, TCEQ issued the amended permit.

Because the permit had been amended, the Applicant had to renote the proposed permit renewal to request a renewal of the amended permit, as opposed to a renewal of the original permit. On December 5, 2007, TCEQ issued an amended NORI and on December 12, 2007 the Applicant published the NORI in the *The Daingerfield Bee*. Alternative language was not

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<sup>2</sup> Permit Renewal Technical Analysis, Project Overview Section.

required. On December 27, 2007, the last day of the comment period, TCEQ received one request for a contested case hearing.

Based on the information submitted in the request and a review of the information available in the Chief Clerk's file on this application, and the information available on the amended permit in the Central Records office, OPIC recommends denying the hearing request. OPIC bases its recommendation on THSC § 382.056(g) which prohibits TCEQ from holding a public hearing on a "renewal that would not result in an increase in allowable emissions and would not result in the emission of an air contaminant not previously emitted."<sup>3</sup> Alternatively, if the Commission finds that there is a right to a hearing on the renewal application, OPIC recommends denial on the grounds that the hearing requestor is not an affected person.

## II. APPLICABLE LAW

The Executive Director declared this application administratively complete on July 21, 2005. As the application was declared administratively complete after September 1, 1999, a person may request a contested case hearing on the application pursuant to the requirements of Texas Health and Safety Code section 382.056 added by Act 1999, 76<sup>th</sup> Leg., ch. 1350 (commonly known as "House Bill 801"). Under the applicable statutory and regulatory requirements, a hearing request must substantially comply with the following: give the name, address, daytime telephone number, and, where possible, fax number of the person who files the request; identify the requestor's personal justiciable interest affected by the application showing why the requestor is an "affected person" who may be adversely affected by the proposed facility or activity in a manner not common to members of the general public; request a contested case hearing; list all relevant and material disputed issues of fact that were raised during the comment

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<sup>3</sup> Tex. Health and Safety Code § 382.056(g).

period that are the basis of the hearing request; and provide any other information specified in the public notice of the application. 30 TEXAS ADMIN. CODE (hereinafter "TAC") § 55.201(d) (2006). Hearing requests must be submitted to the Chief Clerk's Office in writing no later than 30 days after the Chief Clerk's transmittal of the Executive Director's Response to Comments. 30 TAC § 55.201(c).

Under 30 TAC section 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." This justiciable interest does not include an interest common to the general public. *Id.* Relevant factors that will be considered in determining whether a person is affected 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; and
- (6) for governmental entities, their statutory authority over or interest in the issues relevant to the application.

30 TAC § 55.203(c).

The Commission shall grant an affected person's timely filed hearing request if: (1) the request is made pursuant to a right to hearing authorized by law; and (2) the request raises disputed issues of fact that were raised during the comment period and that are relevant and material to the Commission's decision on the application. 30 TAC § 55.211(c).

Accordingly, 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 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).

### III. DISCUSSION

#### A. A Right to Hearing Does Not Exist on Lone Star's Renewal Application.

As an initial matter, the Commission must determine whether a right to a contested case hearing exists on this application. No right to a contested case hearing exists on a renewal application under Chapter 382 of the Texas Health and Safety Code if the application would not result in an increase in allowable emissions and would not result in the emission of an air contaminant not previously emitted.<sup>4</sup> However, notwithstanding THSC section 382.056(g), the Commission may hold a hearing on a permit renewal "if the commission determines that the application involves a facility for which the applicant's compliance history is in the lowest classification under Section 5.753 and 5.754, Water Code, and rules adopted and procedures developed under those sections."<sup>5</sup> TCEQ rules allow the Commission to hold a contested case hearing in the following circumstance: "if the application involves a facility for which the applicant's compliance history contains violations which are unresolved and which constitute a recurring pattern of egregious conduct which demonstrates a consistent disregard for the

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<sup>4</sup> Tex. Health & Safety Code (hereinafter "THSC") § 382.056(g), (o); 30 TAC §§ 55.201(i)(3)(C); 55.211(d)(2).

<sup>5</sup> THSC § 382.056(o).

regulatory process, including the failure to make a timely and substantial attempt to correct the violations.”<sup>6</sup>

Based on the technical review, the Executive Director's Response to Comments, and the public notice, OPIC concludes that the renewal will not result in increased allowable emissions or the emission of an air contaminant not previously emitted under the amended permit. Compared to the permit renewal originally noticed in 2006, the proposed permit renewal will increase NOx by 62.16 tons per year (hereinafter “TPY”), VOC by 28.89 TPY, hydrogen sulfide by 5.20 TPY, and SOx by 68.00 TPY. But these increases were all approved in the permit amendment, issued on May 31, 2007, so this renewal contains no increase in emissions or change in operations from the amended permit.

Regarding Applicant's compliance history, between November 11, 1998 and November 10, 2003, the site rating was high/0.0 and the company rating and classification was average/0.44. Therefore OPIC cannot recommend that a right to a hearing exists based on the Applicant's compliance history.

Based on a review of the criteria set forth in THSC § 382.056(g) and (o), OPIC concludes that there is no right to a hearing on this renewal application. In the event the Commission disagrees, the OPIC offers the following analysis set forth below.

**B. Donnie O. Turner is not an “Affected Person”.**

Even if the Commission decides that a right to hearing exists on this application, Donnie O. Turner (hereinafter “Turner”) does not have a personal justiciable interest related to a legal right affected by this application. Turner raises concerns regarding the Applicant's previous

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<sup>6</sup> 30 TAC § 55.201(i)(3)(C); *see also* 30 TAC § 55.211(d)(2).

illegal disposal of harmful chemicals and Turner's use of the land for farming, logging and residential purposes. But the location of Turner's property in relation to the proposed facility does not support a finding that Turner is an "affected person."<sup>7</sup>

Turner first requested a hearing on December 28, 2003, after the initial notice of the permit renewal. On December 14, 2008, Turner again requested a hearing, after the permit amendment and updated notice. In his second request, Turner says he owns over 20 acres of land within 6 miles of the facility. He further states that his land is used for recreational and commercial purposes and that several of his family members reside on lands bordering the property. Turner also alleges that until Lone Star admitted to illegally dumping dangerous chemicals on his property, he sold the timber from his land.

Turner raises concerns protected by the law under which the application will be considered. These concerns include health,<sup>8</sup> interference with normal use and enjoyment of property,<sup>9</sup> and compliance history.<sup>10</sup> In addition, Turner uses the land for recreational and commercial purposes and his family uses the area for residential purposes.<sup>11</sup>

However, given his distance from the facility, OPIC cannot find that a reasonable relationship exists between the interests raised by Turner in his hearing request and the proposed renewal of Lone Star Steel Co.'s Air Quality Permit No. 3342 and PSD-TX-838.<sup>12</sup> Also, given his six-mile distance from the facility, OPIC cannot find that the renewed permit would result in a likely impact to Turner's health or the use of his property. Because of Turner's distance from the facility, OPIC finds that he has no personal justicable interest distinguishable from interests

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<sup>7</sup> 30 TAC § 55.203(c).

<sup>8</sup> THSC § 382.0518(b)(2).

<sup>9</sup> 30 TAC § 101.4.

<sup>10</sup> THSC § 382.055(d); 30 TAC § 60.1(a)(1)(A).

<sup>11</sup> THSC § 382.055(d); 30 TAC § 60.1(a)(1)(A).

<sup>12</sup> 30 TAC § 55.203(c)(3).

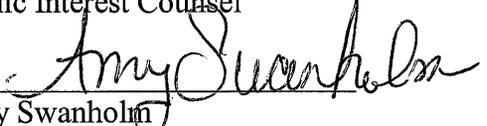
“common to members of the general public”.<sup>13</sup> Therefore, even if the Commission finds a right to hearing exists on this application, OPIC recommends the Commission find Donnie O. Turner not an “affected person”.

#### IV. CONCLUSION

For the reasons set forth above, the Office of Public Interest Counsel respectfully recommends that the Commission find that no right to a hearing exists on this application for renewal of an air permit that does not authorize an increase in allowable emissions or the emission of a new contaminant. Further, should the Commission find that a right to hearing exists on this application, OPIC recommends denying Donnie O. Turner's contested case hearing request because he is not an “affected person”. Therefore, OPIC recommends the Commission *not* refer this matter to the State Office of Administrative Hearings.

Respectfully submitted,

Blas J. Coy, Jr.  
Public Interest Counsel

By   
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<sup>13</sup> 30 TAC §55.203(a).

**CERTIFICATE OF SERVICE**

I hereby certify that on September 29, 2008, the original and eleven true and correct copies of the Office of Public Interest Counsel's Response to Request for Hearing were 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 or by deposit in the U.S. Mail.

  
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Amy Swanholm

TEXAS  
COMMISSION  
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2008 SEP 29 PM 3: 06  
CHIEF CLERKS OFFICE

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**TCEQ DOCKET NO. 2005-0272-AIR**

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