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2009 JAN 30 PM 1:56

CHIEF CLERKS OFFICE

January 30, 2009

Via Hand Delivery

Ms. LaDonna Castañuela, Chief Clerk
Office of the Chief Clerk
ATTN: Agenda Docket Clerk
Texas Commission on Environmental Quality
12100 Park 35 Circle, Building F, Room 110
Austin, Texas 78753

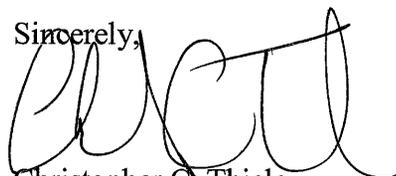
Re: TCEQ Docket No. 2006-0031-AIR
Application by INVISTA S.a r.l., Victoria County, Texas
Permit No. 20011

Dear Ms. Castañuela:

Enclosed for filing in the above referenced matter, please find an original and 7 copies of Applicant's Response to Request for Contested Case Hearing. Also enclosed is an additional copy to be date stamped and returned to the awaiting courier.

Thank you.

Sincerely,



Christopher C. Thiele

Enclosure
Austin 1051128v1

**TCEQ DOCKET NO. 2006-0031-AIR
PERMIT NO. 20011**

2009 JAN 30 PM 1:56

APPLICATION BY	§	BEFORE THE	CHIEF CLERKS OFFICE
INVISTA S.A R.L.	§	TEXAS COMMISSION ON	
VICTORIA, VICTORIA COUNTY, TEXAS	§	ENVIRONMENTAL QUALITY	

APPLICANT'S RESPONSE TO REQUESTS FOR CONTESTED CASE HEARING

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

COMES NOW Applicant INVISTA S.a r.l. ("*INVISTA*" or "*Applicant*") and, pursuant to 30 Tex. Admin. Code § 55.209(d), files this response to the requests for contested case hearing submitted to the Texas Commission on Environmental Quality ("*TCEQ*" or "*Commission*") by Sharon Harper and Steve Stevenson (collectively, "*Requestors*") concerning INVISTA's application to renew Air Quality Permit No. 20011 (the "*Application*") and thereby authorize the continued operation of the C-12 Intermediates Unit at INVISTA's Victoria Site. The hearing requests should be denied for three reasons. First, the Application seeks to renew an existing air permit with no associated increase or change in allowable emissions, for which there exists no opportunity for a contested case hearing under the Texas Clean Air Act.¹ Second, Requestors are not affected persons because there is no reasonable relationship between Requestors' stated interests and the activity authorized by the Permit.² Third, the requests do not raise issues that are relevant to the Commission's decision on the Application and thus do not meet the minimum regulatory requirements for referral to the State Office of Administrative Hearings ("*SOAH*").³

¹ See TEX. HEALTH & SAFETY CODE § 382.056(g).

² See 30 TEX. ADMIN. CODE § 55.203(c)(3).

³ See 30 TEX. ADMIN. CODE § 50.115(c).

I.
BACKGROUND

On March 15, 2005, INVISTA filed the Application with TCEQ to renew Air Quality Permit No. 20011 (the “*Permit*”) and thereby authorize the continued operation of the C-12 Intermediates Unit located at its Victoria Site in Victoria County, Texas. TCEQ declared the Application to be administratively complete on April 15, 2005, and INVISTA published Notice of Receipt of Application and Intent to Obtain Air Permit Renewal in the *Victoria Advocate* on May 24, 2005. The Spanish language version of the notice was published in *Revista de Victoria* on June 2, 2005. Following this first public notice, Requestors submitted letters to TCEQ dated June 9, 2005 requesting a contested case hearing.

On May 1, 2006, INVISTA filed an application with TCEQ to amend the Permit. TCEQ declared the amendment application to be administratively complete on May 25, 2006, and INVISTA published Notice of Receipt of Application and Intent to Obtain Permit in the *Victoria Advocate* on June 9, 2006. The Spanish language version of the notice was published in *Revista de Victoria* on June 8, 2006. No comments or hearing requests were submitted to TCEQ regarding the amendment application, and the amendment was issued by TCEQ on May 21, 2008.

Although not specifically required by TCEQ’s public notice rules, INVISTA published an Amended Notice of Receipt of Application and Intent to Obtain Air Permit Renewal in the *Victoria Advocate* on July 22, 2008.⁴ The amended notice explained that the permit amendment had previously been issued by TCEQ and that the Application, in addition to renewing the

⁴ Although the prior notices were published in both English and Spanish, alternate language newspaper notice was not required pursuant to 30 TEX. ADMIN. CODE § 39.405(h). Accordingly, the amended renewal notice was published in English only.

permit, would incorporate the permit amendment. No comments or hearing requests were submitted to TCEQ following publication of the amended renewal notice.

II. **ARGUMENT**

A. THE APPLICATION IS FOR A NO-INCREASE RENEWAL.

INVISTA seeks no authority to construct or modify the C-12 Intermediates Unit through the Application. As a result, the Application is for a straightforward renewal of the Permit, with no associated increase or change in emissions compared to the Permit as amended on May 21, 2006.⁵ The Texas Clean Air Act prohibits the Commission from holding a contested case hearing on permit renewals such as this one where there will be no increase in allowable emissions or emissions of new air contaminants,⁶ except where “the [C]ommission determines that the application involves a facility for which the applicant’s compliance history is in the lowest classification.”⁷ That lone exemption does not apply here because the compliance classifications for both INVISTA and the INVISTA Victoria Plant are average.⁸ Accordingly, pursuant to the Texas Clean Air Act, the requests for a contested case hearing should be denied.

B. REQUESTORS ARE NOT AFFECTED PERSONS BECAUSE THERE IS NO REASONABLE RELATIONSHIP BETWEEN REQUESTORS’ STATED INTERESTS AND THE SCOPE OF THE APPLICATION.

TCEQ’s contested case hearing rules specify that, in determining whether a person qualifies as an affected person, the question of “whether a reasonable relationship exists between

⁵ As discussed in Section I of this response, prior to TCEQ’s issuance of the May 21, 2006 permit amendment, INVISTA published notice of the permit amendment application. Although that notice included instructions for submitting public comments and requesting a contested case hearing on the permit amendment application, no public comments or hearing requests were submitted to TCEQ.

⁶ See TEX. HEALTH & SAFETY CODE § 382.056(g) (“The [C]ommission may not . . . hold a public hearing . . . in response to a request for 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.”).

⁷ TEX. HEALTH & SAFETY CODE § 382.056(o).

⁸ The compliance history rating for INVISTA is 3.62 (rated September 1, 2008). The compliance history rating for the INVISTA Victoria Site is 0.98 (rated September 1, 2008).

the interest claimed and the activity regulated” must be considered.⁹ It is clear from Requestors’ June 9, 2005 hearing request letter that the interest they claim and the activity authorized by the Permit, the operation of the C-12 Intermediates Unit, are not related. Specifically, Requestors state: “We feel that it would be a gross act of negligence to issue Invista an air permit without documentation that it has changed DuPont’s *disposal practices* and there is no more *heavy metal contamination* occurring on our property.”¹⁰ As explained by the Executive Director in his Response to Public Comment, neither “disposal practices” (*i.e.*, burning hazardous wastes) nor heavy metal emissions are authorized by the Permit.¹¹ Accordingly, the “reasonable relationship” contemplated by 30 Tex. Admin. Code § 55.203(c)(3) does not exist.

C. THE REQUESTS DO NOT RAISE ISSUES THAT ARE RELEVANT TO THE COMMISSION’S DECISION ON THE APPLICATION.

Even if there were some increase or change in emissions associated with the Application (there is not) and Requestors were affected persons (they are not), only relevant and material disputed issues of fact can be referred to SOAH for a contested case hearing.¹² As set forth below, none of the “facts” upon which Requestors’ hearing requests are based meet this criterion.

First, Requestors primarily base their hearing requests on alleged “facts” regarding heavy metal emissions. As explained in Section II.B of this response, the C-12 Intermediates Unit does not emit, nor does the Permit authorize emissions of, heavy metals. Accordingly, the “facts”

⁹ 30 TEX. ADMIN. CODE § 55.203(c)(3).

¹⁰ June 9, 2005 Hearing Request Letter from Sharon Harper and Steve Stevenson (emphasis added).

¹¹ See Executive Director’s Response to Public Comment at 3, Executive Director’s Amended Response to Public Comment at 3-4 (“The C-12 Intermediates Unit authorized under Air Quality Permit 20011 utilizes materials in a reactor process which do not contain heavy metals. Emissions associated with this process include carbon monoxide, nitrogen oxides, ammonia, sulfur dioxide, particulate matter, nitric acid, and various volatile organic compounds. *There are no heavy metals included in these emissions. . . . The C-12 Intermediates Unit authorized under Air Permit 20011 is not authorized to burn hazardous wastes, and the Applicant is not requesting to burn hazardous wastes under this permit . . .*”) (emphasis added).

¹² See 30 TEX. ADMIN. CODE § 50.115(c) (“The commission may not refer an issue to SOAH for a contested case hearing unless the commission determines that the issue: (1) involves a disputed question of fact; (2) was raised during the public comment period; and (3) is relevant and material to the decision on the application.”).

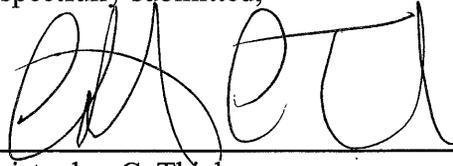
regarding heavy metal emissions relied upon by Requestors are in no way relevant to the Commission's decision on the Application.

Second, Requestors also base their hearing requests on alleged "facts" regarding DuPont's emissions "between 1988 and 1999." INVISTA acquired the C-12 Intermediates Unit from DuPont and the Permit was transferred to INVISTA well before INVISTA submitted the Application to TCEQ. Therefore, DuPont's historic emissions are simply not relevant to the Commission's decision on the Application.

III. CONCLUSION

As set forth above, the hearing requests should be denied because the Application seeks to renew an existing air permit with no associated increase or change in allowable emissions, for which there exists no opportunity for a contested case hearing under the Texas Clean Air Act. Additionally, Requestors are not affected persons because there is no reasonable relationship between Requestors' stated interests and the activity authorized by the Permit. Finally, the requests do not raise issues that are relevant to the Commission's decision on the Application and thus do not meet the minimum regulatory requirements for referral to SOAH. For these reasons, INVISTA respectfully requests that the Commission deny the requests for contested case hearing and renew the Permit in accordance with the Executive Director's recommendation.

Respectfully submitted,

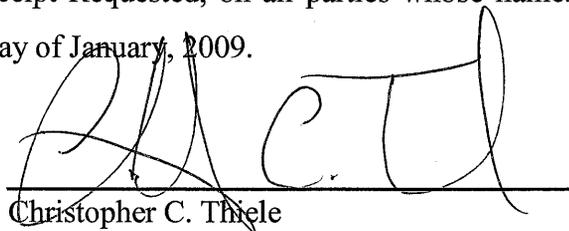
A handwritten signature in black ink, appearing to read 'C. Thiele', written over a horizontal line.

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the Applicant's Response to Request for Contested Case Hearing has been served via hand delivery, facsimile, electronic mail, overnight mail, U.S. Mail, and/or Certified Mail, Return Receipt Requested, on all parties whose names appear on the attached mailing list on this the 30th day of January, 2009.



Christopher C. Thiele

TEXAS
COMMISSION
ON ENVIRONMENTAL
QUALITY
2009 JAN 30 PM 1:56
CHIEF CLERKS OFFICE

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DOCKET NO. 2006-0031-AIR; PERMIT NO. 20011

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