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Blas J. Coy, Jr., *Public Interest Counsel*

## TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

*Protecting Texas by Reducing and Preventing Pollution*

January 30, 2009

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

TEXAS  
COMMISSION  
ON ENVIRONMENTAL  
QUALITY  
2009 JAN 30 PM 4:05  
CHIEF CLERKS OFFICE

**RE: INVISTA S.A.R.L.**  
**TCEQ DOCKET NO. 2006-0031-AIR**

Dear Ms. Castañuela:

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

Sincerely,

A handwritten signature in black ink, appearing to read "Scott A. Humphrey".

Scott A. Humphrey, 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

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TCEQ DOCKET NO. 2006-0031-AIR

2009 JAN 30 PM 4:05

APPLICATION BY INVISTA S.A.R.L.  
FOR RENEWAL OF  
AIR QUALITY PERMIT NO. 20011  
IN VICTORIA COUNTY, TEXAS

§  
§  
§  
§

BEFORE THE TEXAS  
COMMISSION ON  
ENVIRONMENTAL  
QUALITY

CHIEF CLERKS OFFICE

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

TO THE MEMBERS OF THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY:

The Office of Public Interest Counsel (OPIC) of the Texas Commission on Environmental Quality (the Commission or TCEQ) files the following Response to Hearing Request in the above-referenced matter. OPIC recommends that the hearing request be denied. There is no right to a hearing on this renewal application because it does not authorize an increase in allowable emissions or the emission of a new contaminant.<sup>1</sup>

**I. INTRODUCTION**

On March 15, 2005, Invista S.A.R.L. (Invista or Applicant) applied to the TCEQ for renewal of Air Quality Permit No. 20011, which would authorize the continued operation of the C-12 Intermediates Unit located at 2695 Old Bloomington Road North, Victoria, Victoria County, Texas. The existing facility is authorized to emit the following air contaminants: carbon monoxide; nitrogen oxides; ammonia; sulfur dioxide; particulate matter; nitric acid; organic acids; and volatile organic compounds including benzene, 1,3-butadiene, butane, cyclododecanone, cyclooctadiene, cyclododecatriene, cyclododecanol, cyclohexane, cyclohexanol, cyclohexanone, urea and vinylcyclohexane.

The Executive Director (ED) of the TCEQ declared the application administratively

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<sup>1</sup>TEX. HEALTH & SAFETY CODE ANN. §382.056(g) (West 2001)

complete on April 15, 2005. Invista published Notice of Receipt of Application and Intent to Obtain an Air Quality permit Renewal (NORI) on May 24, 2005 in the *Victoria Advocate*, and the Alternative Language Notice was published on June 2, 2005 in the *Revista de Victoria*. In response to these notices, the TCEQ received a request for a contested case hearing from Sharon Harper and Steve Stevenson.

An amendment application was received May 1, 2006, and the ED declared that application administratively complete on May 25, 2006. The amendment was needed to reflect more accurately the actual emissions from the existing operation. The amendment application requested to roll in several existing permit-by-rule authorizations, remove sources no longer in service and add certain other existing emissions from permitted operations. Invista published Notice of Receipt of Application and Intent to Obtain an Air Quality Permit Amendment on June 9, 2006 in the *Victoria Advocate*, and the Alternative Language Notice was published on June 8, 2006 in the *Revista de Victoria*. No hearing requests were received in response to the amendment application. Invista then noticed the proposed renewal of the permit, as amended, on July 22, 2008 in the *Victoria Advocate*, and no additional hearing requests were filed in response to this notice.

## II. REQUIREMENTS OF APPLICABLE LAW

This application was declared administratively complete after September 1, 1999; therefore, it is subject to the requirements of both §382.056 of the Texas Health and Safety Code and §5.556 of the Texas Water Code, Chapter 5, Subchapter M, Environmental Permitting Procedures, added by Acts 1999, 76th 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: provide the name, address, daytime telephone number, and if possible, fax number of the person submitting the request; identify the requestor's personal justiciable interest affected by the application and explain how the requestor is an "affected person" who may be adversely impacted by the proposed facility or activity in a manner not common to members of the general public; specifically request a contested case hearing; list all relevant and material disputed issues of fact that were raised during the comment period that are the basis of the hearing request; and provide any other information specified in the public notice of application.<sup>2</sup>

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."<sup>3</sup> This justiciable interest does not include an interest common to the general public. 30 TAC Section 55.203(c) provides relevant factors that will be considered in determining whether a person is affected.

These factors 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.

The Commission shall grant an affected person's timely filed hearing request if: (1) the

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<sup>2</sup>TEX. ADMIN. CODE ("TAC") tit. 30, §55.201(d)

<sup>3</sup>30 TAC §55.203(a).

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.<sup>4</sup> Texas Health & Safety Code §382.056(g) provides that the Commission may not seek further comment or hold a public hearing in response to a request for 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. Notwithstanding that an amendment or renewal may result in no increase in emissions, Texas Health & Safety Code § 382.056(o) provides that the Commission may grant a hearing if the Applicant's compliance history is in the lowest classification determined by agency rules. Furthermore, 30 TAC Section 55.211 allows the Commission to refer an application to SOAH for a contested case hearing if the Commission determines that a hearing on the Application would be in the public interest.

### **III. RESPONSE TO HEARING REQUESTS**

In their hearing request, Ms. Harper and Mr. Stevenson (Requesters) express concern that the Applicant's polluting practices would severely impact the health of everyone and everything living in the area. According to the Requesters: (1) Between 1988 and 1999, the Applicant emitted eleven million pounds of toxic wastes into the air, thereby making the Applicant the single largest polluter in the state; (2) The Applicant's heavy metal emissions come from 8 hazardous waste streams burning in its boilers; (3) the Applicant's own air modeling shows the Applicant and the Requesters are in a maximum pollution impact area; and (4) in federal court,

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<sup>4</sup>30 TAC §55.211(c).

the Applicant was found guilty of trespassing on the Requesters' property through heavy metal contamination.

The Commission must determine whether the Requesters have a right to a hearing on this application. No right to a hearing exists on an application for renewal which does not involve an increase in allowable emissions or the authorization of a new contaminant.<sup>5</sup> A hearing may be granted on a renewal for a facility for which an applicant's compliance history is in the lowest classification.<sup>6</sup> However, the ED has classified Applicant's facility as an average performer; therefore, this exception is not applicable in this case. If the neighbors of the facility experience nuisance conditions from existing operations, these concerns should be addressed through the enforcement process. When nuisance conditions are experienced, OPIC encourages neighbors to call the 24-hour toll-free Environmental Complaints Hotline at 1-888-777-3186 or contact the Corpus Christi Regional Office at 361-825-3100.

While OPIC understands the Requesters' concerns, OPIC cannot support the hearing request because it is not made "pursuant to a right to hearing authorized by law," as required by 30 TAC § 55.211(c). OPIC is satisfied, after viewing the technical documents supporting the application, that actual allowable emissions will not increase as a result of the proposed permit.<sup>7</sup> Therefore, Requesters would not have a right to a contested case hearing on this application, and the hearing request should be denied.

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<sup>5</sup>Texas Health & Safety Code Section 382.056(g)

<sup>6</sup>Texas Health & Safety Code Section 382.056(o)

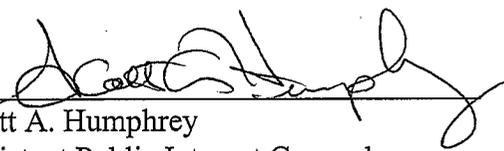
<sup>7</sup>In response to the Requesters' concerns about emissions resulting from the burning of hazardous waste, OPIC notes that according to the Executive Director's Response to Comments, the Applicant is not requesting to burn hazardous waste under this permit.

**IV. CONCLUSION**

For the reasons stated above, OPIC recommends denial of the hearing request filed with regard to the renewal of Permit No.20011.

Respectfully submitted,

Blas J. Coy, Jr.  
Public Interest Counsel

By   
Scott A. Humphrey  
Assistant Public Interest Counsel  
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**CERTIFICATE OF SERVICE**

I hereby certify that on January 30, 2009, the original and seven true and correct copies of the foregoing 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.

  
Scott A. Humphrey

CHIEF CLERKS OFFICE

2009 JAN 30 PM 4:05

TEXAS  
COMMISSION  
ON ENVIRONMENTAL  
QUALITY

**MAILING LIST**  
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**TCEQ DOCKET NO. 2006-0031-AIR**

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