

TCEQ DOCKET NO. 2007-1039-AIR

APPLICATION BY BORDER STEEL,) BEFORE THE TEXAS COMMISSION
INC., VINTON STEEL MILL PLANT)
FOR RENEWAL OF AIR PERMIT)
NO. 19933) ON ENVIRONMENTAL QUALITY
)
)

TEXAS
COMMISSION
ON ENVIRONMENTAL
QUALITY
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CHIEF CLERKS OFFICE

BORDER STEEL, INC.'S
RESPONSE TO HEARING REQUESTS

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

COMES NOW, Border Steel, Inc. ("Border Steel" or "the Applicant"), pursuant to 30 T.A.C. § 55.209 and requests the Texas Commission on Environmental Quality ("TCEQ" or "the Commission") deny all the hearing requests on the above-referenced application for renewal ("Renewal Application") of Air Quality Permit No. 19933 ("Permit No. 19933") in TCEQ Docketed Item No. 2007-1039-AIR, because (1) Section 382.056(g) of the Health and Safety Code provides that the Commission may not grant a public hearing request under the circumstances which apply to Border Steel's Renewal Application, (2) hearing requests were not timely filed on the permit to be renewed, and (3) the hearing requests do not meet the regulatory criteria for granting a hearing.

I. INTRODUCTION AND BACKGROUND

Border Steel owns and operates the Vinton Steel Mill Plant ("the Plant") which manufactures steel reinforcing bar (a/k/a "rebar") and other steel products. The Plant is located

on the south side of Interstate 10, west of El Paso in an industrial area. Persons requesting a hearing (“Requestors”) live across Interstate 10 from the Plant.

On September 20, 2005, Border Steel timely filed its Renewal Application with the TCEQ for renewal of Permit No. 19933. The permit authorizes certain facilities, but not all, at the Plant. The balance of the facilities are authorized under an Existing Facility Permit, Air Quality Permit No. 73387 which was issued to permit grandfathered facilities at the Plant. The Renewal Application was declared administratively complete on October 12, 2005. Border Steel published a Notice of Receipt of Application and Intent to Obtain an Air Permit Renewal (“Initial Public Notice”) in the *El Paso Times* on October 28, 2005, and in *El Paso y Más* on October 29, 2005. TCEQ received 36 requests for a contested case hearing in response to the Initial Public Notice.

After the Initial Public Notice, but prior to finalizing review of the Renewal Application, TCEQ required and issued an amendment to Permit 19933 (“Amendment”) to administratively combine and incorporate the terms of the recently issued Existing Facility Permit and to require, among other things, site-wide air dispersion modeling for NAAQS and other air contaminants. During this permit action, TCEQ also updated Permit No. 19933 pursuant to TCEQ Air Permits Division policy dated March 10, 1997 (“Renewal Policy”). See, <http://www.tceq.state.tx.us/assets/public/permitting/air/memos/rnew1125.txt>.¹ Last accessed November 14, 2007. The Renewal Policy requires TCEQ to update permits at renewal to ensure all authorized facilities are clearly identified in the permit, have maximum allowable emission rates, and use current emissions factors for their emission calculations. No new sources of emissions, no increases in

¹ Attached.

emissions, and no changes in the nature of the air contaminants emitted were approved in the Amendment.

After the issuing the Amendment, TCEQ staff requested that Border Steel re-publish notice of the Renewal Application to address recent concerns expressed by the Commission on public notice for renewals where the permit terms change after the public notice. Accordingly, Border Steel published an Amended Initial Public Notice and a Notice of Public Meeting in the *El Paso Times* and in *El Paso y Más* on November 30, 2006 and again in the *El Paso Times* on December 7, 2006 due to a printer's error. No requests for a contested case or other comments were filed during this amended comment period. A public meeting was held by TCEQ and Border Steel in Vinton on December 14, 2006. No requests for a contested case hearing were made at that time either.

Subsequently, TCEQ Legal Staff determined that TCEQ had not included certain notice language in the Amended Initial Public Notice. At TCEQ's request, Border Steel published a Second Amended Initial Public Notice. The notice was made in the *El Paso Times* and in *El Paso y Más* on January 11, 2007. No requests for a contested case or other public comments were filed during this Second Amended Public Notice period.

II. ALL HEARING REQUESTS MUST BE DENIED AS A MATTER OF LAW

Border Steel's application to renew Permit No. 19933 will result in no increase in allowable emissions from its existing permitted operation and will not result in the emission of an air contaminant not previously emitted. Because Permit No. 19933 is a minor new source review permit originally issued under Health and Safety Code Section 382.0518 (pertaining to preconstruction permits), Border Steel's application to renew Permit No. 19933 is subject to

Section 382.056 of the Health and Safety Code. Subsection 382.056(g) of the Health and Safety Code states, in relevant part:

The commission may not seek further public comment or hold a public hearing under the procedures provided by Subsections (i)-(n) in response to a request for a public hearing on an amendment, modification, or 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.

Since the renewal of Permit No. 19933 will neither result in an emissions increase nor the emission of a contaminant not previously emitted, under Section 382.056(g), the Commission must deny the hearing requests.

Subsection (o) of Section 382.056 provides one exception to subsection (g):

Notwithstanding other provisions of this chapter, the commission may hold a hearing on a permit amendment, modification, or renewal if the commission determines that the application involves a facility for which the applicant's compliance history is in the lowest classification under Sections 5.753 and 5.754, Water Code, and rules adopted and procedures developed under those sections.

Border Steel's compliance history for the site and for the company has been, and is, classified as average which is not in the lowest classification under Sections 5.753 and 5.754 of the Water Code. Therefore, subsection (o) does not apply to Border Steel's Renewal Application and cannot serve as the basis for the Commission granting a contested case hearing on Permit No. 19933.

There is one additional exception in which a no-emissions increase application may be subject to a contested case hearing. Title 30 T.A.C. § 55.101(e) of the Commission's rules states:

Subchapters D - F of this chapter apply to applications for amendment, modification, or renewal of air quality permits that would not result in an increase in allowable emissions and would not result in the emission of an air contaminant not previously emitted. The commission may not seek further public comment or hold a public hearing under the procedures provided by §39.419 of this title (relating to Notice of Application and Preliminary Decision), §55.156 of this title (relating to Public Comment Processing), and Subchapter F of this chapter for such applications. The commission may hold a contested case hearing 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 regulatory process, including the failure to make a timely and substantial attempt to correct the violations.

Border Steel's Vinton Steel Mill facility's compliance history does not contain any unresolved violations, nor does it contain any recurring pattern of the aforementioned conduct. Therefore, the renewal of Permit No. 19933 is not subject to a contested case hearing under the last sentence of 30 T.A.C. § 55.101(e).

In summary, under Section 382.056(g) of the Health and Safety Code, the Commission may not hold a contested case hearing in response to a request for hearing on the Renewal Application for Permit No. 19933. Two exceptions, under which a no-increase renewal permit application may be subject to a contested case hearing, are set out in Health and Safety Code, Section 382.056(o) and the Commission's rules at 30 T.A.C. § 55.101(e). Neither of these exceptions apply to Border Steel's Vinton facility because the facility's compliance history is not in the lowest classification and does not contain any unresolved violations. Therefore, under the applicable law and administrative rules, the Commission should not grant nor hold a contested case hearing on Border Steel's application

III. HEARING REQUESTS ARE NOT TIMELY

The recitation of the litany of public notices highlights that no timely hearing requests were received during either of the amended notice periods. These notices referred to the updated permit which is actually under consideration for renewal. These are the relevant public comment period(s). TCEQ received no timely requests for a contested case hearing during those time periods nor any public comments. TCEQ also did not receive requests for a contested case hearing at the public meeting.

In order for the hearing requests to be timely, the Requestors must have made those requests in writing in accordance with TCEQ rules during the relevant notice period. Otherwise, the hearing requests are deemed untimely, and shall not be considered.

Border Steel does not assert that a permit renewal applicant may repeatedly republish notice until no hearing requests are received. However, where the permit has been amended in the interim, and TCEQ requires an applicant to publish an amended notice, and the notice is actually published on the revised permit to be renewed, concerned citizens must file their requests for contested case hearings during the amended notice period to be timely.

IV. HEARING REQUESTS ARE DEFICIENT

In an abundance of caution, Border Steel now addresses the merits of the hearing requests. In so doing, Border Steel does not wish to diminish the concerns of its neighbors. In fact, Border Steel has met with leaders of the concerned citizens and had invited members of the public to the Plant prior to the public meeting in December 2006. In recent memory, no one has called or written to Border Steel to complain of air emissions issues nor any other environmental issues. To Border Steel's knowledge, no one has filed complaints in recent years to TCEQ about specific instances of air emission problems. Border Steel promises to continue to engage its neighbors in order to identify and address their concerns and to continue to be a good neighbor and responsible employer in the Vinton area.

With that background, none of the hearing requests meet the criteria set out in statute and TCEQ administrative rules for a valid hearing request, and Border Steel asserts a contested case hearing will not result in any additional legally required terms or conditions in its permit. In fact, delay of the issuance of the permit renewal will delay new, more stringent monitoring conditions.

None of the Requestors raise concerns which rise to the level of personal justiciable interests under the law. According to 30 T.A.C. § 55.203,

[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.

The rule goes on to state that "an interest common to members of the general public does not qualify as a personal justiciable interest." *Id.* In determining whether a person is an "affected person," all factors are required to be considered, including, but not limited to, the following: (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 and safety of the person, and on the use of property of the person and; (5) likely impact of the regulated activity on use of the impacted natural resource by the person. 30 T.A.C. § 55.203(c).

The Requestors raise concerns common to the general public and are, therefore, not personal justiciable interests. Further, many of the Requestors express concerns about noise, vibrations and water contamination which are not justiciable in the context of TCEQ's air permitting program. More importantly, none of the Requestors raise any deficiency in the proposed permit itself despite three separate notice periods and a public meeting. None of the Requestors dispute the air dispersion model, its inputs, the results, or the TCEQ toxicological evaluation. None of the Requestors cite a deficiency in the proposed permit language. None of the Requestors dispute or question the choice of control equipment and monitoring requirements. None of the Requestors cite any alleged violation of TCEQ or EPA regulations, unresolved or otherwise, nor do they cite any pattern of egregious conduct concerning those regulations. The

Requestors' concerns essentially rise to concerns about air pollution in general and the effects on peoples' general health.

At the root of all environmental concerns and regulations is whether a particular applicant's operations are "safe." As noted above, Border Steel submitted updated, current air dispersion modeling for site-wide facility emissions. The results of the modeling and TCEQ's evaluation show there is no concern about adverse impact on human health or the environment from the Plant emissions at the property boundary and no concern across Interstate 10. The Border Steel Plant is, in fact, "safe."

V. PRAYER

WHEREFORE, PREMISES CONSIDERED, Applicant respectfully requests that the Commission deny Requestors' hearing requests based on a determination that the requests are barred by applicable law, were not timely filed, and do not meet the minimum criteria for granting a contested case hearing. Applicant further requests the Commission issue the pending renewal of Permit No. 19933 as proposed. .

Respectfully submitted

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CERTIFICATE OF SERVICE

I hereby certify that on this the 15th day of November, 2007, Border Steel, Inc.'s Response to Hearing Requests was filed with the Chief Clerk, Texas Commission on Environmental Quality, Austin, Texas.

I further certify that on this day a true and correct copy of the foregoing Response to Hearing Requests was sent by regular mail to the persons on the attached mailing list.

Rodman Johnson by Cynthia Ta
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Attachment

Texas Natural Resource Conservation Commission
Interoffice Memorandum

To: Permit Engineers
Date: March 10, 1997
From: Victoria Hsu, P.E., Director, New Source Review Permitting Division
Subject: Permit Renewal Requirements

Senate Bill 1125, which was passed in the 74th legislative session, states that the commission may not impose conditions more stringent than the existing permit unless the commission determines more stringent conditions are necessary to avoid a condition of air pollution or to ensure compliance with other state and federal air quality control requirements. This legislation also addressed when the commission may consider a request for a hearing on a renewal or amendment reasonable; however, this aspect of the legislation is not specifically addressed in this memo. Any requests for a hearing on a renewal should be deferred to the Legal Division for consideration of the "reasonableness of the request" in accordance with the procedural rules (30TAC §263). Regulation VI, 30 TAC Chapter 116, has been amended to incorporate changes in the renewal requirements per SB 1125. The corresponding guidance document, "Technical Guidance Package for Permit Renewals," has also been revised. The purpose of this memo is to clarify the legislative intent as it applies to renewals and to address issues that were not specifically considered in the guidance document.

For a facility to be granted a permit, the owner or operator must demonstrate that the facility will comply with the rules and regulations and the intent of the TCAA. Once the permit is granted, it is assumed that the original demonstration is valid unless the commission concludes a condition of air pollution exists due to the operation of the facility under consideration of renewal. Therefore the language contained in §116.310 was specifically written to refocus the permit renewal requirement on compliance with the facility's permit or any applicable regulatory requirements to which the facility may be subject. For a facility which is operating in substantial compliance with its permit and for which there are no complaints from the surrounding community, the permit should be renewed without requiring additional controls or permit conditions. This also means the traditional demonstration of impacts through modeling is not a requirement for obtaining a permit renewal unless there are specific violations or a history of complaints associated with the operation of the facility. Compliance problems and/or complaints should be brought to the attention of the team leader/section manager to determine if additional conditions or controls are warranted pursuant to SB 1125.

The renewal review is intended to continue the operation for which a permit was originally sought. It is not intended to authorize changes in operation, physical modifications or construction of new facilities. The permit engineer should do a thorough evaluation of the file to ascertain that the original design and operation of the facility is not being modified with the renewal submittal. Such changes would require alternative authorization through standard permit, standard exemption or permit amendment. This alternative authorization does not include authorizing changes made prior to May 19, 1995 with the claim they would not today be considered a modification pursuant SB 1126.

During permit renewal reviews there are occasions in which there is no established allowable table or air contaminants and/ or sources are missing.

For permits that were issued without a Maximum Allowable Emission Rate Table (MAERT), the emissions from the facility undergoing renewal should be quantified and a MAERT created to accurately reflect the facility's operation. If a permit was issued with a MAERT but a facility or air contaminant was omitted, the associated emissions should be quantified based on the original design criteria using current calculation methodologies and good engineering judgement and added to the MAERT. The MAERT should also be updated to reflect current calculation methods and to roll in any standard exemption authorizations or standard permits that may apply.

The inclusion of omitted facilities, increased emission levels or new air contaminants on the MAERT may require additional evaluation to ensure that the permit is being protective as well as to determine the applicability of any federal permitting programs. The reviewing engineer should make an initial determination on whether additional analysis is needed for the increase in potential to emit. Generally, if the net emission increases are below the 25/250 tpy limit they will not be considered significant. Standard exemptions and standard permits should not be included in the assessment of the significance limit, but rather rolled into the permit without review. The standard exemption, "cumulative effects" focus group will be examining this practice and may recommend changes to this policy in the future.

If the net emission increases are above the significance level, the engineer should evaluate best available control technology, the associated off property impact and any federal implications, consistent with the review that would have been conducted when the permit was originally sought.

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DOCKET NO. 2007-1039-AIR; PERMIT NOS. 19933 & EE0011P

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*See attached for a complete list of all
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1033 UPSON DR APT #1
EL PASO TX 79902

MARIA ELENA TORRES
1422 WESTWAY BLVD
CANUTILLO TX 79835

JOSE & VELIA TRIAN
1218 SOUTHWOOD RD
CANUTILLO TX 79835-8925

ROSA VELASQUEZ
8906 ELECTRA ST
CANUTILLO TX 79835-9505

AMALIA DE VILLARREAL
8802 N DESERT BLVD
CANUTILLO TX 79835-8507

EMETERIO VILLARREAL
8802 N DESERT BLVD
CANUTILLO TX 79835-8507

ENRIQUE & MARIA ZAAVEDRA
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