

TCEQ AIR QUALITY PERMIT NO. 46534
PSD AIR QUALITY PERMIT NO. PSD-TX-992M1

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APPLICATION BY)
EXXONMOBIL OIL CORPORATION) BEFORE THE
FOR FLUIDIZED CATALYTIC) CHIEF CLERKS OFFICE
CRACKER UNIT SCR) TEXAS COMMISSION ON
BEAUMONT, JEFFERSON COUNTY) ENVIRONMENTAL QUALITY

EXXONMOBIL OIL CORPORATION'S RESPONSE
TO REQUEST FOR CONTESTED CASE HEARING

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

COMES NOW APPLICANT EXXONMOBIL OIL CORPORATION and files
this its Response to Request for Contested Case Hearing, and in support thereof,
would respectfully show the following:

I. INTRODUCTION

On January 4, 2007, ExxonMobil Oil Corporation ("Applicant" or "ExxonMobil") filed the above-referenced application to permit construction of facilities for a Selective Catalytic Reduction Unit ("SCR") on the Fluid Catalytic Cracking Unit ("FCCU") at its Beaumont, Texas refining facility (the "Refinery") and modify the operation of the FCCU. This important project satisfies an agreement between ExxonMobil and the United States Environmental Protection Agency ("EPA"), and provides for the installation of state-of-the-art control equipment that will result in a significant reduction in nitrogen oxides ("NOx") emitted from the FCCU. The SCR project is not associated with any additional production or facility expansion; this project serves only to bring additional environmental benefits to the area.

Public notice of ExxonMobil's application and the opportunity for an affected person to request a contested case hearing thereon was published in the Beaumont Enterprise and La Voz on February 1 and 5, 2007, respectively, and again on May 27 and 24, 2007, respectively.

In response to the public notice, one hearing request was submitted -- that of the Reverend Roy L. Malveaux who lives and works at a distance of approximately 1.5-1.3 miles from the FCCU. For the reasons set forth below, ExxonMobil respectfully requests that the Commission deny the hearing request and approve ExxonMobil's permit application so that the substantial environmental benefits associated with this project may be pursued without further delay.

II. BACKGROUND

The Refinery, originally built in 1903, is located at the end of Burt Street in Beaumont, Jefferson County, Texas. The permitting process for the SCR necessarily included a thorough Best Available Control Technology ("BACT") analysis and health effects review.

The SCR project will result in significant reductions in NOx. Allowable NOx emissions from the FCCU will decrease by more than 350 pounds per hour (1600 tons per year).

In order to attain these benefits, there will necessarily be very small increases in other pollutants generated by the process. The application estimates that emissions of sulfuric acid mist may increase as a small fraction of the sulfur dioxide present in the exhaust is oxidized on the SCR catalyst and reacts with the water present to form sulfuric acid. Since sulfuric acid mist is considered condensable particulate matter, the particulate matter emission rate will also be slightly increased. SCR operation requires the injection of a small amount of ammonia so there will be some de minimis amount of ammonia emissions. Emissions of ammonia and particulates are minimized by requirements made a part of the permit to ensure that emission control is BACT. Total increases in allowable emissions attributable to the SCR will be limited to less than 70 pounds per hour (only 120 tons per year). These limits were evaluated using an approved air dispersion model and were predicted to be insignificant for particulate matter, and within state requirements for sulfuric acid

mist and ammonia. These small increases are more than offset by the huge NOx decreases.

This area of Southeast Texas is in non-attainment for ozone, and the NOx reductions from the SCR will be of tremendous assistance in reaching attainment status. In addition, EPA evaluated the de minimis emissions increases against the value of the NOx reductions and, having done so, endorsed SCR as a control measure for the Beaumont Refinery based on the very large net environmental benefits that will be achieved. Against this backdrop, it is difficult to imagine how someone could realistically assert that he might be adversely affected by approval of ExxonMobil's application.

ExxonMobil is under severe time constraints to start this project. ExxonMobil needs to make FCCU tie-ins during a major turnaround scheduled to begin in 1Q2008. If this work cannot be done at that time, the project could be delayed until the next turnaround opportunity, which will not likely take place for at least four years. Turnarounds require enormous resources and significant planning efforts for many months. They cannot be easily moved once schedules are fixed. The considerable environmental benefits associated with the NOx reductions would, therefore, be delayed for the Beaumont area, and Southeast Texas as a whole, if the hearing request is granted.

III. MINIMUM REQUIREMENTS FOR A CONTESTED CASE HEARING

The Texas Clean Air Act allows an "affected person" the opportunity to request a hearing on certain air permit applications. See Tex. Health & Safety Code Ann. Sec. 382.056; Tex. Water Code Sec. 5.556; 5.115. The Texas Legislature, however, has narrowly defined the universe of "affected persons" who may legitimately demand that a contested case hearing be held by or on behalf of the Commission. Only those persons who have "a personal justiciable interest related to a legal right, duty, privilege, power, or economic interest affected by the administrative hearing" may require that a hearing be held. Tex.

Water Code Ann. Sec. 5.115(a). "An interest common to members of the general public does not qualify as a personal justiciable interest." *Id.*

Pursuant to the express requirements of Section 5.115 of the Texas Water Code, the TCEQ has adopted rules specifying the factors which must be considered in determining whether a person is an affected person. Those factors are as follows: (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) the likely impact of the regulated activity on the health and safety of the person, and on the use of the property of the person; and (5) the likely impact of the regulated activity on the use of the impacted natural resource by the person. 30 Tex. Admin. Code Sec. 55.203.

For a hearing request to be granted to an "affected person", it must also be based on relevant and material disputed issues of fact raised during the comment period. Tex. Health & Safety Code Sec. 382.056; Tex. Water Code Sec. 5.556; see also 30 Tex. Admin. Code Sec. 55.156(d)(3); 55.201(d)(2). Generalized concerns that do not directly bear on the applicable permitting criteria are not proper for referral to a contested case hearing.

In order for the Commission to assess the legitimacy of a hearing request, the request must include certain information required by TCEQ rules. Pursuant to Section 55.201, a proper hearing request must include: (1) a discussion of how the requester will be adversely affected in a manner not common to the general public; (2) a description of the requester's use of the property which may be affected by the proposed facility; and (3) a list of all relevant and material disputed issues of fact that were raised during the comment period and that form the basis of the hearing request. 30 Tex. Admin. Code Sec. 55.201. The burden is on the requestor to satisfy these requirements. If the hearing request is deficient in any of these respects, it should be denied.

IV. THE HEARING REQUEST SHOULD BE DENIED

A. The Hearing Request Fails to Demonstrate that Reverend Malveaux is an Affected Person or the Church is an Affected Association

Whether Reverend Malveaux's hearing request is viewed as being made in his individual capacity or on behalf of the congregation of the Shining Star Missionary Baptist Church, his request has failed to demonstrate affected person status, and therefore, the hearing request should be denied.

1. Reverend Malveaux is not an "Affected Person"

The factors that TCEQ considers in determining "affected person" status weigh heavily in favor of a finding that Reverend Malveaux is not an "affected person." First, Reverend Malveaux has not identified how he will be individually affected by ExxonMobil's project. The Reverend's sole basis for the requested hearing is that he lives "less than a mile and a half" from the "Exxon Mobil facility."

Reverend Malveaux states that his residence is located at 605 Elgie Street, Beaumont, Texas, which is a distance of approximately 1.5 miles from the FCCU, the subject of this permitting action. The only distance limitation potentially applicable is found at Section 116.111(a)(2)(A)(ii) of the TCEQ's air quality regulations. That section imposes a 3000 foot distance restriction from certain schools. Reverend Malveaux does not allege that his residence constitutes a school, and even if it did, it is well beyond the 3000 foot minimum distance.¹

Reverend Malveaux's place of work, the Shining Star Baptist Church, is not relevant for purposes of determining his status as an "affected person."

¹ Although not referenced in the request, there is an elementary school located in the neighborhood adjoining the Refinery, but it is also well beyond the 3000 foot distance restriction.

However, even if the location of the Church is considered, it, too, is located a considerable distance (1.3 miles) from the FCCU. In addition, as stated above, air dispersion modeling results indicate that maximum off-site ground level concentrations for all criteria and non-criteria contaminants will be considerably below the primary and secondary NAAQS and applicable ESLs.

In short, the Reverend's failure to articulate any "personal justiciable interest" not common to the general public, the large net environmental benefits to be gained through ExxonMobil's application, the endorsement of and support for the project by EPA, and the determination by the TCEQ that the very minor increases in pollutants associated with generating those large net benefits are within State limits, should all effectively preclude a finding that Reverend Malveaux is an "affected person."

Reverend Malveaux made an unsuccessful challenge to the permit for another ExxonMobil pollution control project – the Wet Gas Scrubber – in 2002. That project also involved the FCCU. As in this instance, Reverend Malveaux requested a contested case hearing and then failed to participate any further in the process. The Commissioners considered his request and held that he had no standing as an affected party. There has been no change in facts that would support a different conclusion today.

2. The Congregation of the Shining Star Baptist Church is not an Affected Association.

A hearing request filed on behalf of an association is subject to increased scrutiny. In addition to the minimum requirements applicable to all hearing requests, an association must show that it is an "affected association" as that term is defined by the Commission. 30 Tex. Admin. Code Sec. 55.205. To make such a showing, Section 55.205 of the Commission's rules requires a group or association to show that: (1) one or more of the members of the group or association would otherwise have standing to request a hearing in their own right; (2) the interests the group or association seeks to protect are germane to

the organization's purpose; and (3) neither the claim asserted nor the relief requested requires the participation of the individual members in the case. These requirements serve to ensure that a professional litigant does not successfully intervene in a proceeding "by manufacturing allegations of standing lacking any real foundation."²

As a preliminary matter, the public records at the Texas Secretary of State's office do not identify any corporation, partnership, or other legal entity by the name of the "Shining Star Baptist Church" or the "Shining Star Missionary Baptist Church," the names Reverend Malveaux uses for the Church. Accordingly, the Church is not a legal entity that could seek a hearing request in its own name as an incorporated business or association could. Rather, it must satisfy the strict requirements for associational standing pursuant to TCEQ rules and state law applicable to unincorporated associations.³

The hearing request ostensibly made on behalf of the Church clearly fails the test for associational standing. First, as discussed in detail above, Reverend Malveaux, the only member of the group identified in the hearing request, does not have standing to request a hearing in his own right. His hearing request wholly fails to demonstrate that he is individually affected. Since his hearing request is insufficient to support his request in his individual capacity, it cannot support the Church's request. The Church, given its distant location from the FCCU and the significant environmental benefits associated with this project, is simply not impacted in any way not common to members of the general public. Second, the group's purpose -- assumed to be worship as the hearing request does not detail any other purpose -- is not germane to the interests it seeks to protect. Assuming the Church had valid claims, Reverend Malveaux's

² Texas Association of Business v. Texas Air Control Board, 852 S.W. 2d 440, 447 (Tex. 1993) (commenting on the need to strictly review an association's standing to bring a judicial action in order to weed out plaintiffs who try to bring cases which could otherwise not be brought.)

³ Standing requirements are also imposed in the Texas Uniform Unincorporated Nonprofit Association Act. Tex. Rev. Civ. Stat. Ann. Art. 1396-70.01, Sec. 8(b). Section 8(b) of that act states that a "nonprofit association may assert a claim in its name on behalf of its members if one or more members of the nonprofit association have standing to assert a claim in their own right, the interests the nonprofit association seeks to protect are germane to its purposes, and neither the claim asserted nor the relief requested requires the participation of a member."

participation in the case would clearly be required as he is the only person associated with the Church that has been identified. And, as has been demonstrated, Reverend Malveaux has no standing in his own right. As a result, the Church lacks associational standing, and Reverend Malveaux's hearing request, to the extent it is made on behalf of the Shining Star Baptist Church, should be denied.

B. ExxonMobil's Response to Issues Raised by Reverend Malveaux

In addition to failing to demonstrate either "affected person" or "affected association" status, Reverend Malveaux's hearing request, whether made in his individual capacity or on behalf of his congregation, is insufficient to qualify as a valid hearing request. As discussed above, Reverend Malveaux's only claim is that he and the Church are in close proximity to ExxonMobil so they will be impacted by contaminants. This allegation fails to raise any disputed issue of fact that is relevant or material to the issuance of ExxonMobil's application. Moreover, this very generalized concern was not reurged in response to the Executive Director's Response to Public Comments. The failure of Reverend Malveaux to reurge his concerns, and provide some further explanation or detail, points to the inevitable conclusion that any concerns he might have had have been satisfactorily resolved or are no longer disputed.

It is undisputed that the application of BACT to the SCR project at the FCCU will result in a substantial net emissions reduction which benefits the entire Southeast Texas region. Second, the project is the subject of an agreement between ExxonMobil and the EPA. Finally, Reverend Malveaux, whether in his individual capacity or on behalf of his congregation, has failed to raise sufficient issues that would support the granting of a hearing even if he were able to demonstrate his "affected person" status.

V. CONCLUSION

It is apparent from the pleadings before the Commissioners that the Reverend has not demonstrated that he is entitled to a contested case hearing on ExxonMobil's application. Granting the application will result in a considerable overall net allowable emissions decrease, the application of BACT to a pollution control device, and according to the application and the Executive Director's Response to Public Comment, will have no adverse impacts. ExxonMobil asks that the request for hearing be denied, that the Executive Director's Response to Public Comment be adopted, and that its application be approved without further delay.

Respectfully Submitted,

ExxonMobil Oil Corporation

By: 
Patricia F. Shenefelt
Refinery Attorney
Exxon Mobil Corporation
On behalf of ExxonMobil Oil Corporation
State Bar No. 08687500
1795 Burt Street
Beaumont, Texas 77704
(409)757-1664 (telephone)
(409)757-3379 (FAX)