

Buddy Garcia, *Chairman*
Larry R. Soward, *Commissioner*
Bryan W. Shaw, Ph.D., *Commissioner*
Glenn Shankle, *Executive Director*



TEXAS
COMMISSION
ON ENVIRONMENTAL
QUALITY

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TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

CHIEF CLERKS OFFICE

Protecting Texas by Reducing and Preventing Pollution

April 14, 2008

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

Re: Huntsman Petrochemical Corporation
Application for Amendment and Renewal of Air Quality Permit No. 420160
TCEQ Docket No. 2008-0292-AIR

Dear Ms. Castañuela:

Enclosed for filing is the ED's Response to Hearing Request in the above entitled matter.

If you have any questions, please do not hesitate to call me at extension 0891.

Sincerely,

A handwritten signature in cursive script that reads "Amy L. Browning".

Amy L. Browning
Staff Attorney
Environmental Law Division

Cc: mailing list

Enclosure

MAILING LIST
HUNTSMAN PETROCHEMICAL CORPORATION
DOCKET NO. 2008-0292-AIR; PERMIT NO. 20160

FOR THE APPLICANT:

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FOR ALTERNATIVE DISPUTE
RESOLUTION:

Mr. Kyle Lucas
Texas Commission on Environmental Quality
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FOR THE CHIEF CLERK:

Ms. LaDonna Castañuela
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REQUESTER:

Adam Martin
P.O. Box 26030
Beaumont, Texas 77720-6030

TCEQ AIR QUALITY PERMIT NO. 420160

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CHIEF CLERKS OFFICE

APPLICATION BY	§	BEFORE THE
	§	
HUNTSMAN PETROCHEMICAL	§	
CORPORATION PROPYLENE	§	TEXAS COMMISSION ON
OXIDE/METHYL TERTIARY BUTYL	§	
ETHER (PO/MTBE) PRODUCTION UNIT	§	
PORT NECHES, JEFFERSON COUNTY	§	ENVIRONMENTAL QUALITY

EXECUTIVE DIRECTOR'S RESPONSE TO HEARING REQUESTS

The Executive Director (ED) of the Texas Commission on Environmental Quality (Commission or TCEQ) files this response (Response) to the request for a contested case hearing submitted by persons listed herein. The Texas Clean Air Act (TCAA) §382.056(n) requires the commission to consider hearing requests in accordance with the procedures provided in Tex. Water Code §5.556.¹ This statute is implemented through the rules in 30 Texas Administrative Code (TAC) Chapter 55, Subchapter F.

In addition, a current compliance history report, technical review summary, modeling audit, toxicology report, and draft permit prepared by the ED's staff have been filed with the TCEQ's Office of Chief Clerk for the commission's consideration. Finally, the ED's Response to Public Comments (RTC), which was mailed by the chief clerk to all persons on the mailing list, is on file with the chief clerk for the commission's consideration.

I. Application Request and Background Information

Huntsman Petrochemical Corporation has applied to the TCEQ for an air quality permit amendment and renewal that would authorize continued operation of the Propylene Oxide/Methyl Tertiary Butyl Ether (PO/MTBE) Production Unit located at 6001 Highway 366, Port Neches, Jefferson County, Texas (the plant). This permit modification and renewal, if approved, will authorize the applicant to modify the permit to incorporate various Permits by Rules and a Standard Permit from previous authorizations, and to change representations relating to emissions to the Ground Flare, Dock Flare, and the Catalyst Prep Scrubber. The facilities in this permit are segments in the propylene oxide (PO) and methyl tertiary butyl ether (MTBE) manufacturing process. Contaminants authorized under this permit include: nitrogen oxides (NOx), sulfur dioxide (SO₂), carbon monoxide (CO), ammonia (NH₃), and particulate matter 10 microns or less (PM₁₀). The TCEQ Enforcement Database was

¹ Statutes cited in this response may be viewed online at www.capitol.state.tx.us/statutes/statutes.html. Relevant statutes are found primarily in the Texas Health and Safety Code and the Texas Water Code. The rules in the Texas Administrative Code may be viewed online at www.sos.state.tx.us/tac/index.shtml, or follow the "Rules, Policy & Legislation" link on the TCEQ website at www.tceq.state.tx.us.

searched and no enforcement activities were found that are inconsistent with the compliance history.

The permit application was received on June 27, 2006, and declared administratively complete on August 3, 2006. The Notice of Receipt and Intent to Obtain an Air Quality Permit (public notice) for this permit application was published on August 25, 2006, in the *Beaumont Enterprise*. The Notice of Application and Preliminary Decision (second public notice) for this permit application was published on November 26, 2007, in the *Beaumont Enterprise*. The ED's RTC was mailed on January 16, 2008 to all interested persons, including those who asked to be placed on the mailing list for this application and those who submitted comment or requests for contested case hearing. The cover letter attached to the RTC included information about making requests for contested case hearing or for reconsideration of the ED's decision.² The letter also explained hearing requesters should specify any of the ED's responses to comments they dispute and the factual basis of the dispute, in addition to listing any disputed issues of law or policy.

The TCEQ received a timely hearing request during the public comment period from the following person: Adam Martin.

II. Applicable Law

The commission must assess the timeliness and form of the hearing requests, as discussed above. The form requirements are set forth in 30 TAC § 55.201(d):

- (d) A hearing request must substantially comply with the following:
- (1) give the name, address, daytime telephone number, and, where possible, fax number of the person who files the request. If the request is made by a group or association, the request must identify one person by name, address, daytime telephone number, and, where possible, fax number, who shall be responsible for receiving all official communications and documents for the group;
 - (2) identify the person's personal justiciable interest affected by the application, including a brief, but specific, written statement explaining in plain language the requester's location and distance relative to the proposed facility or activity that is the subject of the application and how and why the requester believes he or she will be adversely affected by the proposed facility or activity in a manner not common to members of the general public;
 - (3) request a contested case hearing;
 - (4) list all relevant and material disputed issues of fact that were raised during the public comment period and that are the basis of the hearing request. To facilitate the commission's determination of the number and scope of issues to be referred to hearing, the requester should, to the extent possible, specify any of the executive

² See TCEQ rules at Chapter 55, Subchapter F of Title 30 of the Texas Administrative Code. Procedural rules for public input to the permit process are found primarily in Chapters 39, 50, 55 and 80 of Title 30 of the Code.

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director's responses to comments that the requester disputes and the factual basis of the dispute and list any disputed issues of law or policy; and
(5) provide any other information specified in the public notice of application.

The next necessary determination is whether the requests were filed by "affected persons" as defined by Tex. Water Code § 5.115, implemented in commission rule 30 TAC § 55.203. Under 30 TAC § 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. An interest common to members of the general public does not qualify as a personal justiciable interest. Local governments with authority under state law over issues raised by the application receive affected person status under 30 TAC § 55.203(b).

In determining whether a person is affected, 30 TAC § 55.203(c) requires all factors 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;
- (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.

If the commission determines a hearing request is timely and fulfills the requirements for proper form and the hearing requester is an affected person, the commission must apply a three-part test to the issues raised in the matter to determine if any of the issues should be referred to the State Office of Administrative Hearings (SOAH) for a contested case hearing. The three-part test in 30 TAC § 50.115(c) is as follows:

- (1) The issue must involve a disputed question of fact;
- (2) The issue must have been raised during the public comment period; and
- (3) The issue must be relevant and material to the decision on the application.

The law applicable to the proposed facility may generally be summarized as follows. A person who owns or operates a facility or facilities that will emit air contaminants is required to obtain authorization from the commission prior to the construction and operation of the facility or

facilities.³ Thus, the location and operation of the proposed facility requires authorization under the TCAA. Permit conditions of general applicability must be in rules adopted by the commission.⁴ Those rules are found in 30 TAC Chapter 116. In addition, a person is prohibited from emitting air contaminants or performing any activity that violates the TCAA or any commission rule or order, or that causes or contributes to a condition of air pollution.⁵ The relevant rules regarding air emissions are found in 30 TAC Chapters 101 and 111-118. In addition, the commission has the authority to establish and enforce permit conditions consistent with this chapter.⁶ The materials accompanying this response list and reference permit conditions and operational requirements and limitations applicable to this proposed facility.

III. Analysis of Hearing Requests

A. Were the requests for a contested case hearing in this matter timely and in proper form?

The hearing request was submitted during the public comment period. However, the ED has determined that the hearing request submitted by Adam Martin does not comply with all of the requirements for form in 30 TAC § 55.201(d).

Adam Martin did not provide a residential address. Therefore, with available information, it is impossible for the ED to determine the proximity of the requester relative to the proposed facility and it is difficult to determine whether air emissions from the proposed facility will impact the requester in way not common to the general public. The requestor also failed to state a personal justiciable interest, and how he believes that he would be adversely affected by the proposed facility in a manner not common to members of the general public.

The ED addressed all public comments in this matter by providing responses in the RTC. The cover letter from the Office of the Chief Clerk attached to the RTC states that requesters should, to the extent possible, specify any of the ED's responses in the RTC that the requesters dispute and the factual basis of the dispute, and list any disputed issues of law or policy.⁷ In the absence of a response by the hearing requester or his representative within the thirty-day period after the RTC was mailed, the ED cannot determine or speculate whether the hearing requester continues to dispute issues of fact, or whether there are any outstanding issues of law or policy. The ED nevertheless has evaluated the merits of the request before action is taken regarding this application.

B. Are those who requested a contested case hearing in this matter affected persons?

The requester listed herein submitted a letter identifying general concerns about migratory birds, bald

³ TEXAS HEALTH & SAFETY CODE § 382.0518

⁴ TEXAS HEALTH & SAFETY CODE § 382.0513

⁵ TEXAS HEALTH & SAFETY CODE § 382.085

⁶ TEXAS HEALTH & SAFETY CODE § 382.0513

⁷ See 30 TAC § 55.201(d)(4).

EXECUTIVE DIRECTOR'S RESPONSE TO HEARING REQUESTS

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eagles, migratory insects, and aquatic animals/mammals found in the Gulf of Mexico. The letter also requested a hearing. This requester has not, however, demonstrated that he is an "affected person" as defined in 30 TAC § 55.203. The threshold test of affected person status is whether the requestor has a personal justiciable interest affected by the application, and that this interest is different from that of the general public.⁸ The above named hearing requester did not include a residential address; therefore it is difficult to determine whether air emissions from the proposed facility will impact this requester in a way not common to the general public. Furthermore, the requestor did not identify any issues within his request for a hearing that would not be common to the general public. Thus, the requestor has not identified a personal justiciable interest in this matter. In the absence of a personal justiciable interest, the requestor is not considered to be an affected person as defined by 30 TAC § 55.203, and therefore does not meet the requirements of a person able to request a contested case hearing according to 30 TAC § 55.201.

C. Which issues in this matter should be referred to SOAH for hearing?

If the commission determines any of the hearing requests in this matter are timely and in proper form, and some or all of the hearing requesters are affected persons, the commission must apply the three-part test discussed in Section II to the issues raised in this matter to determine if any of the issues should be referred to SOAH for a contested case hearing. However, the single hearing requester, Adam Martin, failed to articulate a personal justiciable interest and therefore does not meet the requirements of an affected person. Thus, there are no hearing requests that meet the necessary requirements for the commission to consider for referral to SOAH.

IV. Executive Director's Recommendation

The Executive Director respectfully recommends that the commission deny the request for a contested case hearing.

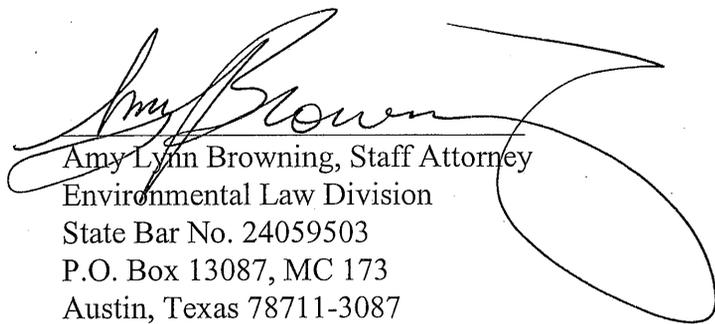
Respectfully submitted,

Texas Commission on Environmental Quality
Glenn Shankle, Executive Director

Stephanie Bergeron Perdue, Deputy Director
Office of Legal Services

Robert Martinez, Director
Environmental Law Division

⁸ *United Copper Industries and TNRCC v. Joe Grissom*, 17 S.W.3d 797 (Tex. App.-Austin, 2000)

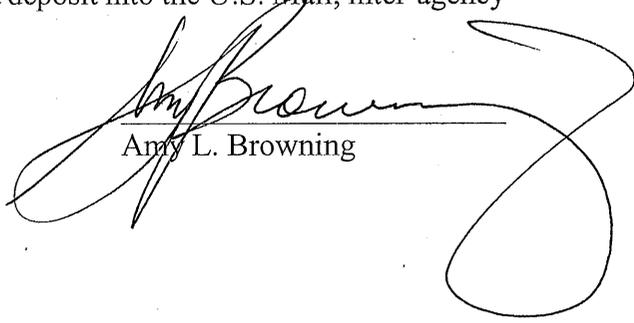
A handwritten signature in black ink, appearing to read "Amy Lynn Browning", with a large, sweeping flourish extending to the right.

Amy Lynn Browning, Staff Attorney
Environmental Law Division
State Bar No. 24059503
P.O. Box 13087, MC 173
Austin, Texas 78711-3087
(512) 239-0891

Representing the Executive Director of the
Texas Commission on Environmental Quality

CERTIFICATE OF SERVICE

On the 14th day of April, 2008, a true and correct copy of the foregoing instrument was served on all persons on the attached mailing list by the undersigned via deposit into the U.S. Mail, inter-agency mail, facsimile, or hand delivery.



A large, stylized handwritten signature in black ink, appearing to read 'Amy L. Browning', is written over a horizontal line.

Amy L. Browning

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