

Buddy Garcia, *Chairman*
Larry R. Soward, *Commissioner*
Bryan W. Shaw, Ph.D., *Commissioner*



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

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

April 14, 2008

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

2008 APR 14 PM 2:09
CHIEF CLERKS OFFICE
TEXAS
COMMISSION
ON ENVIRONMENTAL
QUALITY

**RE: HUNTSMAN PETROCHEMICAL CORPORATION
TCEQ DOCKET NO. 2008-0292-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 cursive script that reads "Christina Mann".

Christina Mann, Attorney
Assistant Public Interest Counsel

Handwritten initials in cursive script, appearing to be "bjc".

cc: Mailing List

Enclosure

REPLY TO: PUBLIC INTEREST COUNSEL, MC 103 • P.O. BOX 13087 • AUSTIN, TEXAS 78711-3087 • 512-239-6363

P.O. Box 13087 • Austin, Texas 78711-3087 • 512-239-1000 • Internet address: www.tceq.state.tx.us

TCEQ DOCKET NO. 2008-0292-AIR

IN THE MATTER OF
THE APPLICATION OF
HUNTSMAN
PETROCHEMICAL
CORPORATION FOR
AMENDMENT AND
RENEWAL OF AIR
QUALITY PERMIT NO.
20160

§
§
§
§
§
§
§
§

BEFORE THE TEXAS
COMMISSION ON
ENVIRONMENTAL
QUALITY

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

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

COMES NOW, the Office of Public Interest Counsel (OPIC) of the Texas
Commission on Environmental Quality (the Commission or TCEQ) and files this
response to request for hearing in the above-referenced matter.

I. PROCEDURAL HISTORY

Huntsman Petrochemical Corporation (Applicant) applied to the TCEQ for
amendment and renewal of air quality permit no. 20160 on July 27, 2006. The Executive
Director declared the application administratively complete August 3, 2006. The Notice
of Receipt and Intent to Obtain an Air Quality Permit (NORI) was published on August
25, 2006 in the *Beaumont Enterprise*. TCEQ mailed the Executive Director's Preliminary
Decision on November 1, 2007. Applicant published the Notice of Application and
Preliminary Decision (NAPD) on November 26, 2007 in the *Beaumont Enterprise*. The
Chief Clerk mailed the Executive Director's Response to Public Comment and the Final
Decision on January 16, 2008.

Applicant is seeking to renew and amend its permit which would authorize modifications to and continued operation of the Propylene Oxide/Methyl Tertiary Butyl Ether Plant. The Plant is located in Port Neches, Jefferson County. According to the published NAPD, the facility will emit the following air contaminants: organic compounds, nitrogen oxides, sulfur dioxide, carbon monoxide, ammonia and particulate matter less than 10 microns in diameter.

TCEQ received one request for a contested case hearing from Adam Martin by letter dated August 30, 2006. OPIC cannot recommend granting Mr. Martin's hearing requests for the reasons stated below.

II. APPLICABLE LAW

Under the applicable statutory and regulatory requirements, a person requesting a hearing must file the request in writing with the chief clerk "no later than" 30 days after the chief clerk's transmittal of the executive director's decision and response to comments. 30 TAC §55.201(a) and (c). For air authorizations, a hearing request must be filed during the first comment period in order for the authorization to be subject to further notice and public participation opportunities. TEXAS HEALTH & SAFETY CODE §382.056(g). Therefore, timely requests for air authorizations include all requests filed in response to the Notice of Intent to Obtain Permit, as well as any additional requests subsequently filed during the comment period and the 30-day period following the transmittal of the response to comments.

The request must substantially comply with the following: give the name, address, daytime telephone number, and, where possible, fax number of the person who files the request; identify the requestor's personal justiciable interest affected by the application

showing why the requestor is an “affected person” who may be adversely affected by the proposed facility of activity in a manner not common to members of the general public; 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. 30 TAC §55.201(d).

Under 30 TAC §55.203(a), 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.” This justiciable interest does not include an interest common to the general public. 30 TAC §55.203(c) sets forth relevant factors that will be considered in determining whether a person is affected. These factors include:

- a. whether the interest claimed is one protected by the law under which the application will be considered;
- b. distance restrictions or other limitations imposed by law on the affected interest;
- c. whether a reasonable relationship exists between the interest claimed and the activity regulated;
- d. likely impact of the regulated activity on the health, safety, and use of property of the person;
- e. likely impact of the regulated activity on use of the impacted natural resource by the person; and
- f. 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 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. 30 TAC

55.211(c).¹

Accordingly, pursuant to 30 TAC §55.209(e), responses to hearing requests must specifically address:

- (1) whether the requestor is an affected person;
- (2) which issues raised in the hearing request are disputed;
- (3) whether the dispute involves questions of fact or law;
- (4) whether the issues were raised during the public comment period;
- (5) whether the hearing request is based on issues raised solely in a public comment withdrawn by the commenter in writing by filing a withdrawal letter with the chief clerk prior to the filing of the Executive Director's Response to Comment;
- (6) whether the issues are relevant and material to the decision on the application; and
- (7) a maximum expected duration for the contested case hearing.

III. ANALYSIS OF REQUEST

The Request Does Not Substantially Comply with 30 TAC §55.201(d)

Adam Martin submitted a timely filed hearing request in response to the publication of the NORI. TCEQ did not receive additional hearing requests or comments related to this application. Although Mr. Martin provides a mailing address at a P.O. Box in Beaumont, Texas,¹ he does not provide a physical address or any additional personal information. Such information would be required to assist in the identification of the requestor's personal justiciable interest affected by the application. Therefore, Mr. Martin's request does not substantially comply with the requirements of 30 TAC §55.201(d).

¹ A hearing request can not be based on an issue raised solely in comments that have been withdrawn by written letter filed with the chief clerk prior to the filing of the executive director's response to comments. 30 TAC §55.211(c)(2)(A).

¹ See Hearing Request of Adam Martin, Page 2,

The Request Does Not Identify Issues Which are not Common to Members of the General Public

Mr. Martin's request describes concerns related to the need for an environmental impact study to address the potential impacts on wildlife residing in and around the Gulf of Mexico and the "Eastern District of Texas."² He states that he is contesting the permit application because "Huntsman does not have a current...environmental impacts study" for much of the wildlife in the area.³ He suggests that the proposed activities will threaten migratory birds and the Bald Eagle, and potentially harm all aquatic life in the Gulf of Mexico.⁴ While OPIC is sympathetic to Mr. Martin's broad environmental concerns, he has not provided information about how these issues affect him in a manner not common to members of the general public. Because Mr. Martin has not identified any way in which he *personally* could be adversely affected by the proposed facility or activity in a manner not common to members of the general public, OPIC cannot recommend the Commission find Adam Martin to be an "affected person."

² *Id.*

³ *Id.* 1.

⁴ *Id.*

IV. CONCLUSION

OPIC recommends denying Adam Martin's hearing request because he has not demonstrated that he is an "affected person." Further, Mr. Martin does not raise any issue which is not common to members of the general public.

Respectfully submitted,

Blas J. Coy, Jr.
Public Interest Counsel

By 
Christina Mann
Assistant Public Interest Counsel
State Bar No. 24041388
(512)239.6363 PHONE
(512)239.6377 FAX

CERTIFICATE OF SERVICE

I hereby certify that on April 14, 2008 the original and eleven true and correct copies of the Office of the Public Interest Counsel's Response to Request for Hearing 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


Christina Mann

MAILING LIST
HUNTSMAN PETROCHEMICAL CORPORATION
TCEQ DOCKET NO. 2008-0292-AIR

FOR THE APPLICANT:

Steve M. Barre, Site Manager
Michael C. Miller, Environmental Manager
Huntsman Petrochemical Corporation
P.O. Box 847
Port Neches, Texas 77651
Tel: (409) 724-4460
Fax: (409) 724-3499

FOR THE EXECUTIVE DIRECTOR:

Shawn Slack, Staff Attorney
Texas Commission on Environmental Quality
Environmental Law Division, MC-175
P.O. Box 13087
Austin, Texas 78711-3087
Tel: (512) 239-0600
Fax: (512) 239-0606

Juan Barrientez, Technical Staff
Texas Commission on Environmental Quality
Air Permits Division, MC-163
P.O. Box 13087
Austin, Texas 78711-3087
Tel: (512) 239-4789
Fax: (512) 239-1300

Beecher Cameron
Texas Commission on Environmental Quality
Air Permits Division, MC-163
P.O. Box 13087
Austin, Texas 78711-3087
Tel: (512) 239-1495
Fax: (512) 239-1300

FOR OFFICE OF PUBLIC ASSISTANCE:

Bridget Bohac, Director
Texas Commission on Environmental Quality
Office of Public Assistance, MC-108
P.O. Box 13087
Austin, Texas 78711-3087
Tel: (512) 239-4000
Fax: (512) 239-4007

FOR ALTERNATIVE DISPUTE

RESOLUTION:

Kyle Lucas
Texas Commission on Environmental Quality
Alternative Dispute Resolution, MC-222
P.O. Box 13087
Austin, Texas 78711-3087
Tel: (512) 239-4010
Fax: (512) 239-4015

FOR THE CHIEF CLERK:

LaDonna Castañuela
Texas Commission on Environmental Quality
Office of Chief Clerk, MC-105
P.O. Box 13087
Austin, Texas 78711-3087
Tel: (512) 239-3300
Fax: (512) 239-3311

REQUESTER:

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