

FULBRIGHT & JAWORSKI L.L.P.

A REGISTERED LIMITED LIABILITY PARTNERSHIP

FULBRIGHT TOWER

1301 MCKINNEY, SUITE 5100

HOUSTON, TEXAS 77010-3095

WWW.FULBRIGHT.COM

ELEWIS@FULBRIGHT.COM

DIRECT DIAL: (713) 651-3780

TELEPHONE:

(713) 651-5151

FACSIMILE:

(713) 651-6246

December 22, 2008

BY FACSIMILE AND FEDERAL EXPRESS

Ms. LaDonna Castañuela, Chief Clerk
Texas Commission on Environmental Quality
Office of the Chief Clerk, MC-105
Attn: Agenda Docket Clerk
12100 Park 35 Circle
Building F, Room 1101
Austin, Texas 78753
[Facsimile 512-239-3311]

CHIEF CLERKS OFFICE

2008 DEC 22 PM 4: 30

TEXAS
COMMISSION
ON ENVIRONMENTAL
QUALITY

Re: TCEQ Docket No. 2008-0779-AIR
CITGO Refining and Chemicals Company L.P. Permit 46637
Response to Public Comment and Hearing Request, CITGO Dock 7 and Marine
Emission Control System, Corpus Christi, Nueces County
Account ID No. NE-0027-V
CN600127922; RN102555166

Dear Ms. Castañuela:

CITGO Refining and Chemicals Company L.P. ("CITGO" or "Applicant") submits these responses to public comments and a hearing request submitted by Citizens for Environmental Justice ("CFEJ"), Refinery Reform Campaign ("RRC"), and South Texas Colonias ("STC") (collectively, "citizen groups") concerning CITGO's Application to Amend TCEQ Permit No. 46637. For the reasons set forth in this letter, CITGO respectfully requests that the hearing request be denied because (1) the citizen groups have not established standing for such a hearing and (2) the citizen groups have not demonstrated any factual disputes that could form the basis of a contested case hearing under the regulations of the Texas Commission on Environmental Quality ("TCEQ").

By way of background, CITGO owns and operates the Corpus Christi Refinery, East Plant, located in Nueces County. CITGO's Application to Amend TCEQ Permit No. 46637 concerns only a discrete operation at the site: the product loading operations at Dock 7. Heavy oils are the only product currently authorized to be loaded at Dock 7; however, CITGO's application proposes to authorize loading of gasoline and gasoline blend components, which are currently loaded at Dock 2. The proposed project calls for gasoline loading emissions to be

Office of the Chief Clerk
December 22, 2008
Page 2

routed to a marine emission control ("MEC"), which would result in an increase in products of combustion. Additionally, CITGO proposes to establish an overall emissions limitation for loading of gasoline/gasoline blend components and heavy oils at Dock 7. Consistent with TCEQ policy at the time Permit 46637 was issued, there is currently no emissions limitation for loading of heavy oils at Dock 7. Thus, the emissions limitation is an additional benefit, while providing CITGO the flexibility of loading at either Dock 7 or Dock 2.

1. Standing of the Citizen Groups to Request a Contested Case Hearing

The citizen groups seeking a contested hearing regarding CITGO's permit application do not have standing to request such a hearing because they have not shown that any of their members is an affected person, as required by the Commission's regulations. When asked by the TCEQ to explain how their members are affected persons, the groups identified only one individual who lives eight miles away from the CITGO refinery. This individual was not identified in the original hearing request and thus cannot serve to support a timely hearing request. Regardless of the untimely nature of the identification of this individual, he is not an affected person. Based on failure of the citizen groups to identify a member who is an affected person, the Commission should deny the request for a contested hearing.

Under the Commission's regulations, a group or association may request a contested hearing if one of the group's members has standing to request a hearing, 30 TEX. ADMIN. CODE § 55.205(a)(1), and an individual may only request a hearing if he or she is an "affected person," *id.* § 55.201(b). An individual is an affected person if they have "a personal justiciable interest related to a legal right, duty, privilege, power or economic interest affected by the application" that is distinct from "an interest common to members of the general public." *Id.* § 55.203. In determining whether an individual is an affected person, the Commission considers all factors, including:

- (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.

Office of the Chief Clerk
December 22, 2008
Page 3

Id. § 55.203(c).

In the citizen groups' initial correspondence, they stated generally, with no specific information, that "[m]embers of Citizens for Environmental Justice live and work near, and are directly affected by CITGO's facility." Letter from Enrique Valdivia to TCEQ Chief Clerk, May 9, 2007 ("May 9, 2007 Valdivia letter"). When asked by TCEQ representatives to identify members that met the specific standing criteria required by the TCEQ regulations, the groups designated only one individual, Mr. Jim Miller of 1906 Tuloso Road, Corpus Christi, as an allegedly affected person. Letter from Enrique Valdivia to Dede Sigman, December 1, 2008 ("December 1, 2008 Valdivia letter"). In his second letter, Mr. Valdivia explained that Mr. Miller lives eight miles west of CITGO's facility and "frequently fishes in Nueces Bay within a mile" of the refinery. *Id.* Mr. Miller is not even alleged to fish on the same water body that Dock 7 is located—the Corpus Christi Ship Channel. It is not possible for Mr. Miller to fish next to Dock 7, because Corpus Christi Port Security does not allow fishing along this waterway.

These facts are not sufficient to qualify Mr. Miller as an affected person, and thus do not support the groups' claim to have standing to request a contested hearing. Although Mr. Miller provided information indicating he lives 8 miles from Dock 7, it appears that he may live slightly closer at 5.7 miles. Either an eight-mile radius or 5.7-mile radius of the CITGO facility includes most of incorporated Corpus Christi—a city with a population of over 285,000—as well as parts of San Patricio County. See Attached Maps of City of Corpus Christi. Mr. Miller's residence thus cannot qualify him as an affected person, because his interest is no different from members of the general public in this regard.

Nor does the claim that he fishes within one mile of the facility qualify Mr. Miller as an affected person. In their letter, the citizen groups do not explain how CITGO's permit application could interfere with Mr. Miller's fishing trips. See 30 TEX. ADMIN. CODE § 55.203(c)(3). Further, they do not show how granting this permit would affect Mr. Miller's health and safety during his fishing trips. See *id.* § 55.203(c)(4). Lacking any specific claims regarding the impact on Mr. Miller's health or activities, the groups only generally assert that he would be exposed to "risks of harmful exposure to emissions." December 1, 2008 Valdivia letter at 2. Moreover, the citizens groups do not even attempt to show how Mr. Miller's fishing activities put him in a different situation than the many thousands of other people that find themselves within one mile of the product loading area. Simply put, even a zone within a one-mile radius is not enough to differentiate Mr. Miller's interests from those of the general public.

To qualify as an affected person, an individual must demonstrate more than a bald assertion of potential harm. See *Collins v. Tex. Natural Res. Conservation Comm'n*, 94 S.W.3d 876, 883 (Tex. App.—Austin 2002, no pet.) In *Collins*, the courts affirmed the Commission's denial of the plaintiff's request for a contested hearing regarding a waste disposal permit for a poultry farm near the plaintiff's organic farm. In this case, the plaintiff's 209-acre property was 590 feet away from the applicant's property at its closest point and the plaintiff's residence was

Office of the Chief Clerk
December 22, 2008
Page 4

1.3 miles away. The court rejected Collins' appeal because his allegations of noxious odors and groundwater contamination would only occur if the applicant violated the permit it was seeking.

By contrast, an individual qualifies as an affected person where he lives less than two blocks away from the applicant's facility and has suffered breathing problems caused by odors emanating from the facility. *Heat Energy Advanced Tech., Inc. v. West Dallas Coalition for Env'tl. Justice*, 962 S.W.2d 288, 295 (Tex. App.—Austin 1998, pet. denied). In this case, the courts reversed the Commission's denial of the coalition's request for a contested hearing, finding that one of the coalition's members, Jose Acosta, was an affected person. In particular, the court pointed to Mr. Acosta's testimony that he could smell odors coming from the plant at his residence and that the odors caused him to have breathing problems and throat irritation that required medical attention.

The general statements advanced by the groups to support Mr. Miller's status as an affected person fall short of the showing in *Heat Energy* and more closely resemble the rejected arguments in *Collins*. For example, neither Mr. Miller's residence nor his fishing trips bring him within two blocks of CITGO's facility, and there is no allegation that emissions from the refinery have had any impact on Mr. Miller's health. There is also no allegation that Mr. Miller has detected any odors from the CITGO refinery at any time or that emissions associated with the proposed dock expansion will have any impact on Mr. Miller. Instead, the groups assert generally that Mr. Miller's relative proximity to the facility places him at risk of harmful exposure. This is very similar to the arguments rejected by the Commission and courts in *Collins*, and is similarly insufficient to qualify Mr. Miller as an affected person in this matter. Moreover, because the groups have not identified any affected persons among their members, they do not have standing to request a contested hearing.

2. Responses to Public Comments

This section provides a brief response to certain aspects of the public comments submitted by Citizens for Environmental Justice ("CFEJ"), Refinery Reform Campaign ("RRC"), and South Texas Colonias ("STC") concerning CITGO's Application to Amend Permit No. 46637. The responses are made without consideration of whether any particular comment is "relevant, material or significant" to the application for permit amendment within the meaning of 30 TEX. ADMIN. CODE § 55.156. On May 20, 2008, the Executive Director of the TCEQ completed its Amended Response to Public Comment, which addressed these public comments. Even after careful consideration and reconsideration of the public comments, the Executive Director did not make any changes to the draft amended permit.

Comment No. 1: Health Effect Concerns Related to People in the Hillcrest community.

Response No. 1:

The citizen groups have identified no one who lives within the Hillcrest community. Thus, the citizens groups cannot support a hearing request based on their allegations concerning

Office of the Chief Clerk
December 22, 2008
Page 5

Hillcrest. Nonetheless, CITGO notes that, pursuant to 30 TEX. ADMIN. CODE § 116.111(a)(1)(A), the CITGO provided information related to the protection of public health and welfare. The Executive Director has reviewed this information and determined that it demonstrates that public health and welfare is protected. The information submitted by the applicant included an air dispersion modeling report showing modeled off-site concentrations of volatile organic compounds (VOC), nitrogen oxides (NO_x), carbon monoxide (CO), and sulfur dioxide (SO₂) resulting from the proposed project.

The applicant's modeling report was reviewed by the TCEQ's Air Dispersion Modeling Team and determined to have been prepared consistent with TCEQ guidelines. The modeling report demonstrated that the off-site concentrations of NO_x, CO, and SO₂ will not result in any exceedance of the National Ambient Air Quality Standards or the TCEQ SO₂ property line standard. This indicates that no adverse health effects are expected to occur among the general public from exposure to the emissions subject to this permit amendment.

With respect to VOC emissions, the modeling report included an analysis of impacts of site-wide emissions of gasoline and benzene. Impacts from site-wide emissions of gasoline and benzene were reviewed by TCEQ's Toxicology Section and determined to be acceptable.

Moreover, CITGO's proposed project will not permit additional volumes of gasoline to be produced by the refinery; it simply authorizes gasoline to be loaded at Dock No. 7. As a practical matter, this means that volumes of gasoline loaded at Dock No. 7 will not be loaded at Dock No. 1 and No.2 or the truck rack, and, therefore, will be a corresponding decrease in emissions from these locations. Even though the total marine and truck gasoline loading at the refinery will not increase, CITGO has nonetheless committed to offset the increased marine loading benzene annual emissions at Dock No. 7 by installing additional controls on an existing storage tank.

In summary, based on the potential emissions, it is not expected that there will be adverse health effects in the general public, sensitive subgroups, or animal life as long as the facility operates in compliance with the permit.

Comment No. 2: Health Effect Concerns Related to People of Color and Low Income.

Response No. 2:

As detailed in Response No. 1, CITGO and TCEQ personnel have evaluated the health effects associated with CITGO's proposed application and have determined that public health and welfare will not be adversely affected by the amendment authorizing this project. As a matter of policy, such determinations are made and air quality permits are evaluated without reference to the socioeconomic or racial status of the surrounding communities. Nonetheless, TCEQ has made a strong commitment to address environmental equity concerns by creating an environmental equity program within the Office of Public Assistance, which works with citizens

Office of the Chief Clerk
December 22, 2008
Page 6

and neighborhood groups to help them participate in the regulatory process to ensure that all citizens' concerns are thoroughly considered and handled in a fair manner.

Comment No. 3: Allegation that the Fence-line Community of Hillcrest Has Been Impacted by Emissions from Tank Nos. 116 and 117, which Have Been the Subject of Enforcement Actions.

Response No. 3:

The application to amend permit no. 46637 only authorizes emissions associated with loading at Dock No. 7 and does not involve emissions from Tank Nos. 116 and 117 that are the subject of the enforcement action referred to by the citizen groups. Further, there has been no final resolution of the enforcement action.

Comment No. 4: Questions About Consistency of Emission Rate Figures

Response No. 4:

The short-term (hourly) emission rate limits are established based upon loading the product with the highest vapor pressure (gasoline) at the maximum loading rate (see Application Appendix A-Table 1). This represents the "highest level" short-term emissions authorized by the permit. Because the maximum short-term rate represents "highest level" emissions, these do not represent an average emissions rate and should not be used to calculate the annual emission rate.

The annual emission rate is established based on the loading of various gasoline and heavy oil products (see Application Appendix A-Table 2) which vary significantly with respect to vapor pressure. The expected annual quantity of each product being loaded is used to calculate the resulting annual emission rate. The emission rates for the products are combined to establish the annual emission limit.

Short-term and annual emission rates for NO_x, CO, and SO₂ from the marine emission control ("MEC") are based on the quantity of VOC routed to the control device and the amount of assist gas used. The short-term rates are based on the maximum hourly VOC emissions routed to the MEC. The annual rate is based upon the total annual quantity of VOC routed to the MEC.

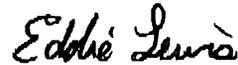
The loading operations at issue here are intermittent and occur for only a limited number of hours per year—not at a continuous, 24-hour per day rate. Moreover, products will not always be loaded at the throughput maximum rate; therefore, a limitation on operating hours based on the maximum hourly emission rate would not be representative of the actual operation. The permit requires CITGO to maintain records to demonstrate compliance with the annual emission rate based on the quantity of each product being loaded using the loading loss formula from AP-42, which will provide a more detailed account of the annual emissions than tracking hours of operation.

Office of the Chief Clerk
December 22, 2008
Page 7

3. Conclusion

For the reasons set forth in this letter, CITGO respectfully requests that the TCEQ deny the citizens groups request for hearing. Please contact me at (713) 651-3760 if you have any questions or comments.

Very truly yours,



Edward Lewis

ECL/jb

Office of the Chief Clerk

December 22, 2008

Page 8

cc: Eric Bigelow
Sr. Env. Advisor
CITGO Refining & Chemicals Company L.P.
P. O. Box 9176
Corpus Christi, Texas 78469-9176

Deanna Sigman
Staff Attorney
Texas Commission on Environmental Quality
Environmental Law Division, MC-173
P. O. Box 13087
Austin, Texas 78711-3087
Facsimile: 512-239-0606

Beecher Cameron
Technical Staff
Texas Commission on Environmental Quality
Air Permits Division, MC-163
P. O. Box 13087
Austin, Texas 78711-3087

Juan M. Barrientez
Technical Staff
Texas Commission on Environmental Quality
Air Permits Division, MC-163
P. O. Box 13087
Austin, Texas 78711-3087

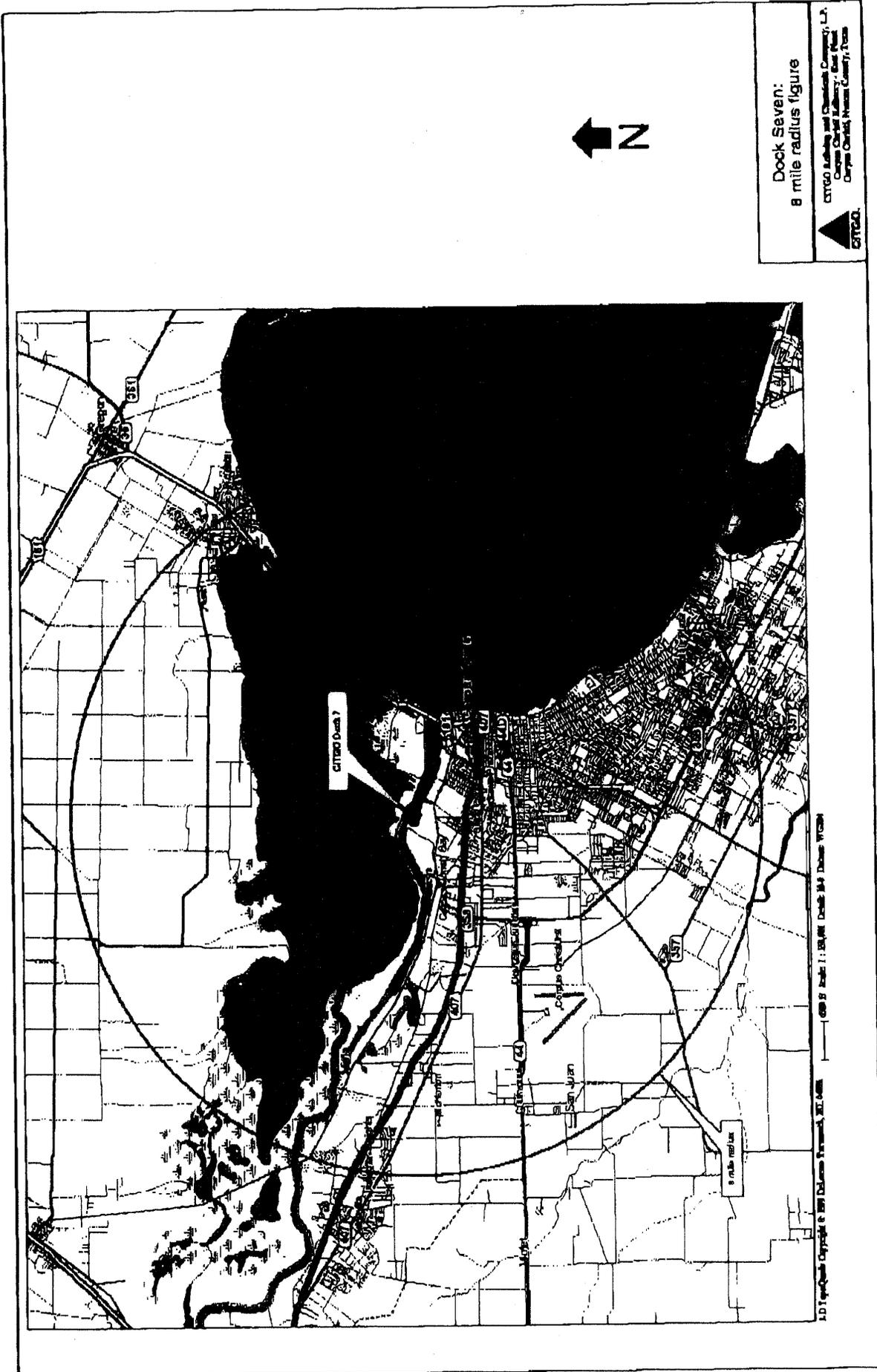
Mr. Blas J. Coy, Jr.
Attorney
Texas Commission on Environmental Quality
Public Interest Counsel, MC-103
P. O. Box 13087
Austin, Texas 78711-3087
Facsimile: 512-239-6377

Ms. Bridget Bohae
Director
Texas Commission on Environmental Quality
Office of Public Assistance, MC-108
P. O. Box 13087
Austin, Texas 78711-3087

Office of the Chief Clerk
December 22, 2008
Page 9

Mr. Kyle Lucas
Texas Commission on Environmental Quality
Alternative Dispute Resolution, MC-222
P. O. Box 13087
Austin, Texas 78711-3087

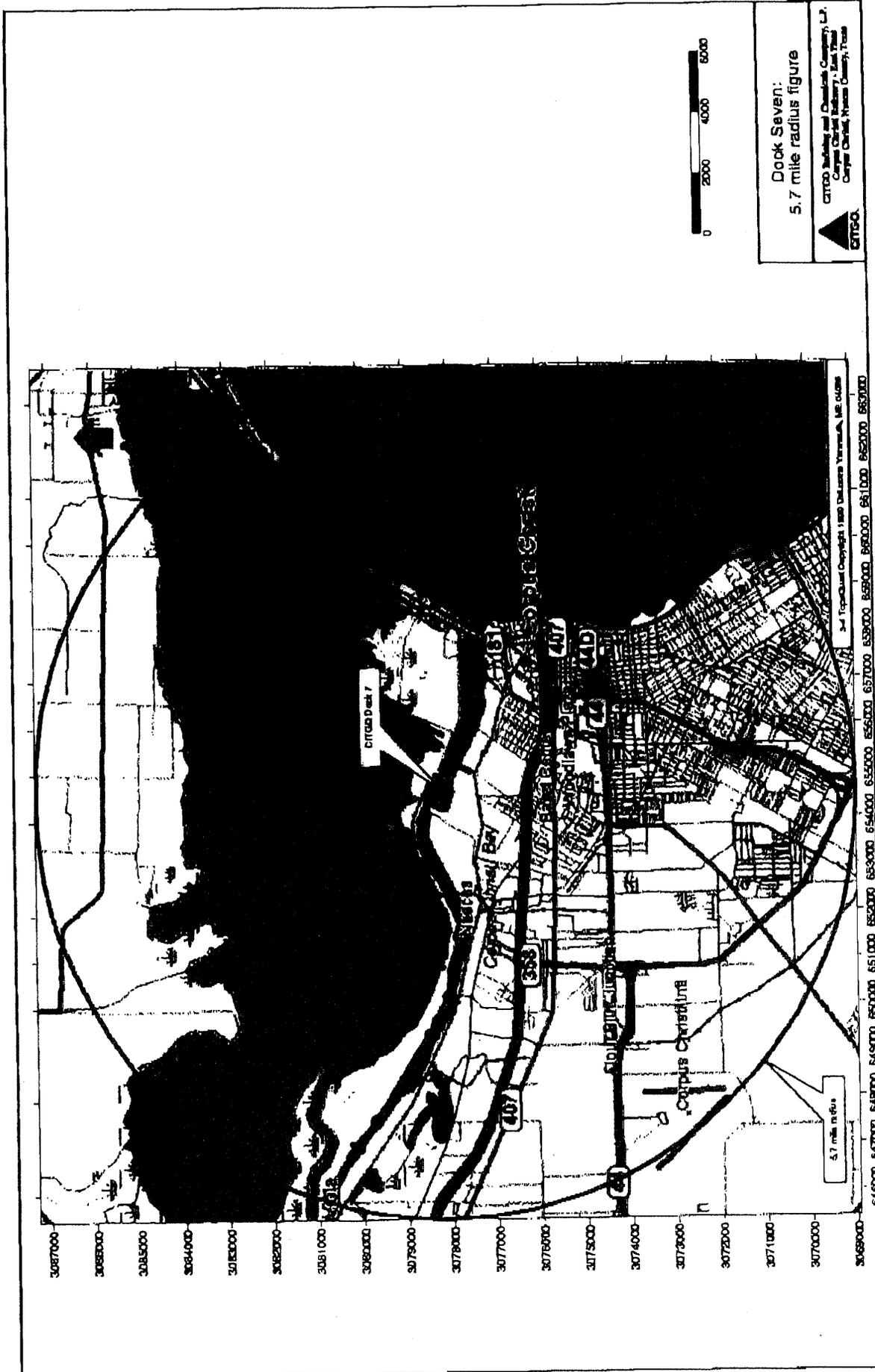
Enrique Valdivia
Counsel
Texas Rio Grande Legal Aid
1111 N. Main Ave
San Antonio, Texas 78212-4713
Facsimile: 210-212-3772



Dock Seven:
 8 mile radius figure

CITGO
 CITGO Lubricants and Chemicals Company, L.P.
 Cargill Chemical Industry, Gas Plant
 Cargill Chemical, Houston, Texas

1.D. TopoQuest Copyright © 1997 Delorme Publishing, Inc. All rights reserved. | 800-828-6888 | 800-828-6888 | 800-828-6888 | 800-828-6888



Dock Seven:
 5.7 mile radius figure

CITCO
 CITCO Refining and Chemicals Company, L.P.
 Corpus Christi Refinery, East Texas
 Corpus Christi, Texas County, Texas

3087000
 3086000
 3085000
 3084000
 3083000
 3082000
 3081000
 3080000
 3079000
 3078000
 3077000
 3076000
 3075000
 3074000
 3073000
 3072000
 3071000
 3070000
 3069000

646000 647000 648000 649000 650000 651000 652000 653000 654000 655000 656000 657000 658000 659000 660000 661000 662000 663000

FULBRIGHT & JAWORSKI L.L.P.

A REGISTERED LIMITED LIABILITY PARTNERSHIP

FULBRIGHT TOWER

1301 MCKINNEY, SUITE 5100

HOUSTON, TEXAS 77010-3095

WWW.FULBRIGHT.COM

FACSIMILE TRANSMISSION

DATE: December 22, 2008

MATTER NUMBER: 07675 10708576

RECIPIENT(S):	FAX NO.:	PHONE NO.:
Ms. LaDonna Castanuela, Chief Clerk	512-239-3311	

TEXAS
 COMMISSION
 ON ENVIRONMENTAL
 QUALITY
 2008 DEC 22 PM 4:30
 CHIEF CLERKS OFFICE

FROM: Edward C. Lewis

FLOOR: 42

PHONE: (713) 651-3760

FAX: (713) 651-5246

RE: CITGO Docket No. 2008-0779-AIR

NUMBER OF PAGES INCLUDING COVER PAGE: 12

MESSAGE:

CAUTION - CONFIDENTIAL

THE INFORMATION CONTAINED IN THIS FACSIMILE IS CONFIDENTIAL AND MAY ALSO CONTAIN PRIVILEGED ATTORNEY-CLIENT INFORMATION OR WORK PRODUCT. THE INFORMATION IS INTENDED ONLY FOR THE USE OF THE INDIVIDUAL OR ENTITY TO WHOM IT IS ADDRESSED. IF YOU ARE NOT THE INTENDED RECIPIENT, OR THE EMPLOYEE OR AGENT RESPONSIBLE TO DELIVER IT TO THE INTENDED RECIPIENT, YOU ARE HEREBY NOTIFIED THAT ANY USE, DISSEMINATION, DISTRIBUTION OR COPYING OF THIS COMMUNICATION IS STRICTLY PROHIBITED. IF YOU HAVE RECEIVED THE FACSIMILE IN ERROR, PLEASE IMMEDIATELY NOTIFY US BY TELEPHONE, AND RETURN THE ORIGINAL MESSAGE TO US AT THE ADDRESS ABOVE VIA THE U.S. POSTAL SERVICE. THANK YOU.

IF YOU DO NOT RECEIVE ALL OF THE PAGES, PLEASE CALL
 _____ AT _____ AS SOON AS POSSIBLE.