



JACKSON WALKER L.L.P.  
ATTORNEYS & COUNSELORS

Chris B. Pepper  
(512) 236-2236 (Direct Dial)  
(512) 391-2196 (Direct Fax)  
cpepper@jw.com

March 22, 2009

**Via e filing and Hand Delivery**

Ms. LaDonna Castañuela (MC-105)  
Chief Clerk  
Texas Commission on Environmental Quality  
12100 Park 35 Circle, Building F  
Austin, Texas 78711-3087

RE: TCEQ Docket No. 2010-0280-AIR; TPCO America Corporation  
PSD Air Quality Permit 86860 and PSDTX1188  
CN603427220; RN105655823

Dear Ms. Castañuela:

Enclosed please find an original and seven (7) copies of Applicant's Response to Hearing Requests to be filed in connection with the above-referenced docket. Please file mark a copy and return it to me via our courier delivering same.

Thank you for your assistance in this matter.

Yours truly,

  
Chris B. Pepper

CBP  
Enclosures

cc: Mailing List

**TCEQ DOCKET NO. 2010-0280-AIR**

APPLICATION BY	§	BEFORE THE TEXAS
TPCO AMERICA CORPORATION,	§	
A TEXAS CORPORATION,	§	COMMISSION ON
SAN PATRICIO COUNTY, TEXAS	§	
FOR AIR NSR PERMIT NO.	§	ENVIRONMENTAL QUALITY
86860, PSD-TX-1188	§	

**APPLICANT’S RESPONSE TO HEARING REQUESTS**

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

TPCO America Corporation (Applicant or TPCO), the applicant herein, files this response (Response) to the requests for a contested case hearing submitted by the two associations and one individual listed herein. Applicant is a wholly owned subsidiary of Tianjin Pipe (Group) Corporation, a Chinese seamless steel pipe manufacturer. This permit application is for a new steel minimill near Gregory, Texas. Because all hearing requests were filed by persons and associations that are not “affected persons” under the Texas Water Code and the Texas Administrative Code and for the other reasons set forth below, Applicant respectfully requests that the Texas Commission on Environmental Quality (Commission or TCEQ) deny the three hearing requests and issue Air NSR Permit No. 86860/PSD-TX-1188 to the Applicant.

**I. BACKGROUND AND PROCEDURAL INFORMATION**

On November 17, 2008, Applicant filed an application for an air quality permit, or New Source Review Authorization under the Texas Clean Air Act (TCAA) § 382.0518, to the TCEQ (Application). Applicant proposes to operate a new steel minimill east of Gregory, Texas, between State Highway 35 and State Highway 361, on a 250-acre site. This minimill will recycle scrap steel using an electric arc furnace (EAF) to manufacture seamless steel pipe, which

is used primarily in the oil and gas industry. Applicant's products may also be used in other applications; Tianjin Pipe (Group) Corporation's seamless steel pipe was used in the construction of the Bird's Nest, featured in the 2008 Summer Olympics in Beijing, China.

The TCEQ declared the Application administratively complete on December 3, 2008. TPCO published the first notice, or Notice of Receipt and Intent to Obtain an Air Quality Permit, in the *Corpus Christi Caller-Times* on December 30, 2008, *The Portland News* on January 1, 2009, and again in *The Portland News* on January 8, 2009. After receiving the draft permit, TPCO published its second notice, or Notice of Application and Preliminary Decision, in *The Portland News* and *Corpus Christi Caller-Times* on October 29, 2009.

The public has had opportunities for both formal and informal comment and discussion with the Applicant's project team, whether through the TCEQ's formal public participation process or through public meetings and forums voluntarily held by the Applicant. In particular, TPCO voluntarily held a public outreach meeting in Corpus Christi on January 9, 2009. Over 300 members of the community attended the meeting, which showcased Applicant's project, its benefits for the community, and the support of local leaders. TPCO's representatives and project leaders attended the meeting to answer questions about the project and discuss the details of the project with the community. No adverse comments or concerns with the project were expressed at this meeting.

The public comment period ended on November 30, 2009, thirty days after publication of second notice. Following close of the public comment period, the Executive Director prepared a Response to Comments (RTC) which was sent to the TCEQ mailing list along with a decision letter on January 21, 2010. The mailing of the RTC document on January 21, 2010 triggered a 30-day hearing request period, as stated in the TCEQ RTC transmittal letter. This additional 30-

day hearing request period ended on February 22, 2010. No additional hearing requests were received during this 30-day hearing request period.

Applicant maintains that none of these hearing requests filed during the initial comment period were filed by “affected persons.” Accordingly, this matter should not be referred to the State Office of Administrative Hearings (SOAH).

## **II. APPLICABLE LAW**

The Commission must assess the timeliness and form of any hearing requests as set forth in 30 Texas Administrative Code § 55.201(c) and (d). To ensure that individuals requesting a hearing have legal standing to contest this air permit Application, the Commission must also determine whether the requests were filed by “affected persons” as defined by Texas Water Code § 5.115 and implemented by 30 Texas Administrative Code § 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.<sup>1</sup> An interest common to members of the general public does not qualify as a personal justiciable interest.<sup>2</sup> To have a legally sufficient hearing request, groups or associations must also meet the following requirements under 30 Texas Administrative Code § 55.205(a):

1. one or more 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.

If the Commission determines that the hearing requests meet the requirements in 30 Texas Administrative Code §§ 55.201, 55.203, and 55.205, the Commission will refer only those

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<sup>1</sup> TEX. WATER CODE § 5.115(a); 30 TEX. ADMIN. CODE § 55.203(a).

<sup>2</sup> *Id.*

issues that meet the requirements in 30 Texas Administrative Code § 50.115(c). In order to be referable to SOAH, an issue must:

1. involve a disputed question of fact;
2. be raised during the public comment period; and
3. be relevant and material to the decision on the application.<sup>3</sup>

Applicant will demonstrate below that, under these legal requirements, no hearing requests were filed by affected persons, and therefore, this matter should not be referred to SOAH.

### III. ANALYSIS OF HEARING REQUESTS

#### A. **The Commission should find that all hearing requests were filed by individuals and associations that are not “affected persons,” and all hearing requests should be denied.**

1. The Commission should find that Carolyn Moon is not an affected person and deny her hearing request.

The hearing request filed by Carolyn Moon should be denied because she does not have a personal justiciable interest in this matter. On Ms. Moon’s hearing request, she lists her address as 4902 Calvin Drive, Corpus Christi, Nueces County, Texas 78411. Corpus Christi is located south of Gregory and in a different county than the TPCO Texas Mill, and this address is more than fourteen miles from the site of the TPCO Texas Mill. Further, Ms. Moon does not, in her hearing request, identify any personal justiciable interest in this application beyond an “interest common to members of the general public.”<sup>4</sup> The Commission should find Ms. Moon is not an affected person, and Ms. Moon’s hearing request should be denied.

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<sup>3</sup> TEX. WATER CODE § 5.556(d); 30 TEX. ADMIN. CODE § 50.115(c).

<sup>4</sup> TEX. WATER CODE § 5.115(a); 30 TEX. ADMIN. CODE § 55.203(a).

2. The Commission should find that Concerned Citizens does not meet the requirements for associational standing and deny its hearing request.

The hearing request filed by John Williams on behalf of Concerned Citizens should be denied. This hearing request identifies only John Williams as a member with a justiciable interest in TPCO's Application; no other members of the association are identified. Mr. Williams' address is listed as 19815 NW Nestucca Drive, Portland, Oregon, 97229, more than 1800 miles from the proposed facility. Mr. Williams has identified no personal, particular interest in this Application. Therefore, Mr. Williams' interest in this Application is merely an "interest common to members of the general public."<sup>5</sup>

The hearing filed on behalf of Concerned Citizens should be denied for three reasons. First, the hearing request does not meet the requirements for associational standing as provided in 30 Texas Administrative Code § 55.205 because it does not identify a specific member of the group or association that would have standing to request a hearing in his or her own right.<sup>6</sup> Should Concerned Citizens identify a member at a later time, the hearing request should nevertheless be denied by the Commission, as the member was not properly identified during the public comment period.<sup>7</sup> Second, the hearing request does not describe how the interests the group or association seeks to protect are germane to the organization's purpose.<sup>8</sup> Third, the hearing request identifies no disputed issues of fact that may be referred to SOAH.<sup>9</sup> Therefore, the Commission should find that Concerned Citizens is not an affected person, and its hearing request should be denied.

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<sup>5</sup> TEX. WATER CODE § 5.115(a); 30 TEX. ADMIN. CODE § 55.203(a).

<sup>6</sup> 30 TEX. ADMIN. CODE § 55.205(a)(1).

<sup>7</sup> See 30 TEX. ADMIN. CODE § 55.201(g)(1) (providing that late-filed hearing requests shall not be processed by the Chief Clerk).

<sup>8</sup> 30 TEX. ADMIN. CODE § 55.205(a)(2).

<sup>9</sup> See 30 TEX. ADMIN. CODE § 55.201(d)(4).

3. The Commission should find that United Steelworkers does not meet the requirements for associational standing and deny its hearing request.

The hearing request filed by J.M. “Mickey” Breaux on behalf of the United Steelworkers (USW) should be denied. This hearing request identifies only J.M. “Mickey” Breaux as a member with an interest in TPCO’s Application; no other members of the association are identified. Mr. Breaux’s address is listed as 1300 Rollingbrook Drive, Suite #504, Baytown, Texas, 77521, more than 180 miles from the proposed facility. Mr. Breaux has identified no personal, particular interest in this Application. Therefore, Mr. Breaux’s interest in this Application is not personal and justiciable because it is merely an “interest common to members of the general public.”<sup>10</sup>

The hearing request filed on behalf of USW should be denied for two reasons. First, the hearing request does not meet the requirements for associational standing as provided in 30 Texas Administrative Code § 55.205 because it does not identify a specific member of the group or association that would have standing to request a hearing in his or her own right and that is willing to participate in this proceeding.<sup>11</sup> Should USW identify a member at a later time, the hearing request should nevertheless be denied by the Commission, as the member was not properly identified during the public comment period.<sup>12</sup> Mr. Breaux does not identify any particular interest or injury that would distinguish his interest in this Application from the interests of the general public. Further, the hearing request includes no allegation that another member of the organization would have standing to protest this application. Second, USW’s hearing request does not demonstrate that the environmental interests it alleges it seeks to protect

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<sup>10</sup> TEX. WATER CODE § 5.115(a); 30 TEX. ADMIN. CODE § 55.203(a).

<sup>11</sup> 30 TEX. ADMIN. CODE § 55.205(a)(1).

<sup>12</sup> See 30 TEX. ADMIN. CODE § 55.201(g)(1) (providing that late-filed hearing requests shall not be processed by the Chief Clerk).

are germane to the organization's purpose.<sup>13</sup> Therefore, the Commission should find that USW is not an affected person, and its hearing request should be denied.

**B. Should a referral occur, the Commission should only refer Issue 1 to SOAH.**

The Applicant has shown that this matter should not be referred to SOAH. No hearing requests have been submitted by or on behalf of individuals or associations that are affected persons under the Texas Water Code and the Commission's regulations. However, should the Commission find that one or more of the hearing requests were filed by or on behalf of an affected person, only one issue should be referred to SOAH: whether the proposed facility will have adverse effects on air quality in the area around the proposed facility.

Two issues were raised by hearing requesters during the public comment period. These two issues are as follows:

1. Whether the proposed facility will have adverse effects on air quality in the area around the proposed facility.
2. Whether the proposed facility will have an adverse economic impact on the United Steelworkers' members.

Should a referral to SOAH occur, only Issue 1 should be considered material, relevant, and a question of fact. With respect to that one issue, Applicant argues that the evidence already in the record for the proposed facility is clear and supports that the operations will not have adverse effects on air quality in the area around the proposed facility. Therefore, although Applicant does not believe that this matter should be referred to SOAH, if the Commission decides that referral is appropriate, only Issue 1 should be referred.

Issue 2 should not be referred to SOAH because it concerns issues beyond the jurisdiction of the Commission. The Commission was established by the Texas Legislature to regulate

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<sup>13</sup> 30 TEX. ADMIN. CODE § 55.205(a)(2).

environmental issues; the Commission is not authorized to consider a proposed facility's economic impacts in any form. Therefore, Issue 2 should not be referred to SOAH.

#### **IV. MAXIMUM DURATION OF THE CONTESTED CASE HEARING**

If the Commission refers this application to SOAH, the Applicant recommends that the contested case hearing last no longer than four months from the preliminary hearing to the proposal for decision, since only one issue has been raised and a very limited number of individuals have filed hearing requests.

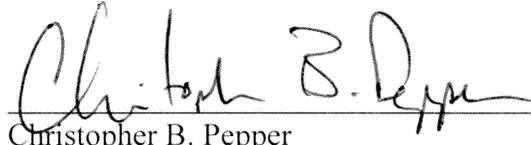
#### **V. APPLICANT'S RECOMMENDATION**

The Applicant respectfully recommends that the Commission:

1. Find that Carolyn Moon, John Williams, and J.M. "Mickey" Breaux, Concerned Citizens, and the United Steelworkers are not "affected persons" and deny all hearing requests. Find the hearing requests to be timely, not withdrawn, and in proper form.
2. Find that this Application should not be referred to SOAH.
3. Should a referral occur, find that only Issue 1 is properly referable to SOAH as set out by TPCO in this Response.
4. Affirmatively approve and issue Applicant's air quality permit.

Respectfully submitted,

**JACKSON WALKER L.L.P.**  
100 Congress Avenue, Suite 1100  
Austin, Texas 78701  
Telephone: (512) 236-2000  
Facsimile: (512) 236-2002



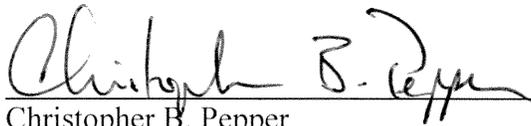
Christopher B. Pepper  
State Bar. No. 24034622

Chesley N. Blevins  
State Bar No. 02487500

**ATTORNEYS FOR TPCO AMERICA CORPORATION**

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of Applicant's Response to Hearing Requests has been filed with the TCEQ and forwarded to the attached mailing list on the 22nd day of March, 2010, by U.S. Mail, facsimile transmission, email and/or hand-delivery.



Christopher B. Pepper

**MAILING LIST**  
**TPCO AMERICA CORPORATION.**  
**DOCKET NO. 2010-0280-AIR; PERMIT NO. 86860, PSDTX1188**

FOR THE APPLICANT:

Chris Pepper, Attorney  
Jackson Walker, LLP  
100 Congress Avenue, Suite 1100  
Austin, Texas 78701-4042  
Tel: (512) 236-2236  
Fax: (512) 791-2196

Wenfeng Zhang, Vice President  
TPCO America Corporation  
10700 Richmond Avenue, Suite 302  
Houston, Texas 77042-4925  
Tel: (713) 266-2699  
Fax: (713) 266-2697

FOR THE EXECUTIVE DIRECTOR:

Booker Harrison, Senior Attorney  
Texas Commission on Environmental Quality  
Environmental Law Division, MC-173  
12100 Park 35 Circle, Building A, 3<sup>rd</sup> Floor  
P.O. Box 13087  
Austin, Texas 78711-3087  
Tel: (512) 239-0600  
Fax: (512) 239-0606

Stephanie Howell, Technical Staff  
Texas Commission on Environmental Quality  
Air Permits Division, MC-136  
12100 Park 35 Circle, Building C, 2nd Floor  
P.O. Box 13087  
Austin, Texas 78711-3087  
Tel: (512) 239-1560  
Fax: (512) 239-1300

Beecher Cameron, Technical Staff  
Texas Commission on Environmental Quality  
Air Permits Division, MC-136  
12100 Park 35 Circle, Building C, 2nd Floor  
P.O. Box 13087  
Austin, Texas 78711-3087  
Tel: (512) 239-1495  
Fax: (512) 239-1300

FOR THE PUBLIC INTEREST COUNSEL:

Mr. Blas J. Coy, Jr., Attorney  
Texas Commission on Environmental Quality  
Public Interest Counsel, MC-103  
12100 Park 35 Circle, Building F, 4th Floor  
P.O. Box 13087  
Austin, Texas 78711-3087  
Tel: (512) 239-6363  
Fax: (512) 239-6377

FOR THE OFFICE OF PUBLIC ASSISTANCE:

Ms. Bridget Bohac, Director  
Texas Commission on Environmental Quality  
Office of Public Assistance, MC-108  
12100 Park 35 Circle, Building F, 4th Floor  
P.O. Box 13087  
Austin, Texas 78711-3087  
Tel: (512) 239-4000  
Fax: (512) 239-4007

FOR ALTERNATIVE DISPUTE RESOLUTION:

Mr. Kyle Lucas  
Texas Commission on Environmental Quality  
Alternative Dispute Resolution, MC-222  
12100 Park 35 Circle, Building F, 4th Floor  
P.O. Box 13087  
Austin, Texas 78711-3087  
Tel: (512) 239-0687  
Fax: (512) 239-4015

FOR THE CHIEF CLERK:

Ms. LaDonna Castañuela  
Texas Commission on Environmental Quality  
Office of Chief Clerk, MC-105  
12100 Park 35 Circle, Building F, 1<sup>st</sup> Floor  
P.O. Box 13087  
Austin, Texas 78711-3087  
Tel: (512) 239-3300  
Fax: (512) 239-3311

REQUESTERS:

J. M. Breaux

1300 Rollingbrook Street, Suite 504

Baytown, Texas 77521-3846

Carolyn Moon

4902 Calvin Drive

Corpus Christi, Texas 78411-3904

John Williams

19815 NW Nestucca Drive

Portland, Oregon 97229-2833