

Bryan W. Shaw, Ph.D., *Chairman*  
Buddy Garcia, *Commissioner*  
Carlos Rubinstein, *Commissioner*



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

**TEXAS COMMISSION ON ENVIRONMENTAL QUALITY**  
*Protecting Texas by Reducing and Preventing Pollution*

March 22, 2010

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

**RE: TPCO AMERICA CORPORATION**  
**TCEQ DOCKET NO. 2010-0280-AIR**

Dear Ms. Castañuela:

Enclosed for filing is the Public Interest Counsel's Response to Requests for Hearing in the above-entitled matter.

Sincerely,

A handwritten signature in cursive script that reads "Vic McWherter".

Vic McWherter, Senior Attorney  
Public Interest Counsel

cc: Mailing List

Enclosure

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

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

**IN THE MATTER OF THE  
APPLICATION BY TPCO AMERICA  
CORPORATION FOR  
PERMIT NOS. 8680 AND PSDTX1188**

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**BEFORE THE TEXAS  
COMMISSION ON  
ENVIRONMENTAL QUALITY**

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

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 Hearing Requests in the above-referenced matter, and would respectfully recommend denying the hearing requests.

**I. INTRODUCTION**

TPCO America Corporation has applied for authorization to construct a pipe manufacturing facility to be located in San Patricio County, Texas. The facility would emit carbon monoxide, nitrogen oxides, sulfur dioxide, volatile organic compounds, particulate matter and lead. The facility would also emit cadmium, chromium, mercury, manganese, nickel, silicon and zinc. The applications were filed on November 17, 2008 and declared administratively complete on December 3, 2008. The Notice of Intent to Obtain Air Permit was published on January 1, 2009 and January 8, 2009 in *The Portland News*. The Amended Notice of Application and Preliminary Decision was published on October 29, 2009 in the same newspaper. Following the conclusion of the comment period and the executive director's technical review, the Chief Clerk mailed the executive director's response to comments on January 21, 2010. The TCEQ has received timely filed requests for contested case hearing from Carolyn Moon, J.M. Mickey Breaux in his capacity as a district Director of the United

Steelworkers Union, and from John Williams on behalf of concerned citizens. Based on the information submitted in the request and a review of the information available in the Chief Clerk's file on this application, OPIC finds that none of the hearing requestors have demonstrated that they are affected persons. Therefore, OPIC recommends that the Commission deny the hearing requests.

## II. APPLICABLE LAW

The Executive Director declared this application administratively complete on December 3, 2008. As the application was declared administratively complete after September 1, 1999, a person may request a contested case hearing on the application pursuant to the requirements of Texas Health & Safety Code ("THSC") section 382.056 and Texas Water Code ("TWC") Chapter 5, Subchapter M, Environmental Permitting Procedures, section 5.556 added by Acts 1999, 76<sup>th</sup> Leg., ch. 1350 (commonly known as "House Bill 801").

Under the applicable statutory and regulatory requirements, a hearing 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 or 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 the application. 30 TEXAS ADMIN. CODE ("TAC") § 55.201(d). Hearing requests must be submitted to the Chief Clerk's Office in writing no later than 30 days after the Chief Clerk's transmittal of the Executive Director's Response to Comments. 30 TAC § 55.201(c).

Under 30 TAC section 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. *Id.* Relevant factors that will be considered in determining whether a person is affected include:

- (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, safety, and 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.

30 TAC § 55.203(c).

Also, 30 TAC §55.205(a) requires that any hearing request from a group or association identify one or more members who would otherwise have standing to request a hearing in their own right.

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).

Accordingly, 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.

30 TAC § 55.209(e).

### III. DISCUSSION

Mr. J.M. "Mickey" Breaux, filed a request for hearing on behalf of the United Steelworkers, District 13, (USW). The request states that the "USW members in the state of Texas are very concerned with the economic and environmental impact of the proposed TPCO facility." The letter also states that the purpose of the USW include an interest in protecting the members' jobs and maintaining a healthy environment for their members and families. He also notes that the USW membership work and live in the "geographic location at issue in the subject proposed permit." Mr. Breaux identifies himself as the person with standing to represent the group. However, Mr. Breaux does not provide any information that shows how he is affected by this application in a way that is different from an interest common to members of the general public.

Carolyn Moon also filed a request for a public hearing to "find out what this [facility] will do to the air in the coastal bend." Ms. Moon's request is time but other than the above statement, a street address and telephone contact number, no other information is provided. Ms. Moon does not provide any information that would show how she would be personally affected by the operation of the proposed plant.

A third timely hearing request was submitted by Mr. John Williams on behalf of the "Concerned Citizens." Mr. Williams identifies himself as an environmental researcher working for "Concerned Citizens" and states that Concerned Citizens have members that live and work in

the vicinity of the proposed TPCO Steel Mill. He notes that a contested case hearing has been requested for this application and that the Concerned Citizens "join in and support that request for a contested case." However, Mr. Williams has not provided any information that would allow OPIC to conclude that he would be affected by the facility's operation, nor did the request identify any other member of the group with a justiciable interest who would have standing in his own right.

In summary, neither the group hearing requests nor the individual hearing requests filed on these applications have shown that any requestor is an affected person. None of the requesters state the location of their residence in relation to the facility. Furthermore, the request from Mr. Williams fails to identify individual members of the group he represents. The request from Mr. Breaux fails to show any United Steelworkers Union member's location in relation to the facility. For these reasons, OPIC cannot determine any likely impact on any of the requesters. Based on the requirements of 30 TAC §55.203 and §55.205(a), OPIC must recommend that the Commission deny the hearing requests filed by Carolyn Moon, John Williams and Mickey Breaux, on behalf of the United Steelworkers Union.

#### IV. CONCLUSION

For the reasons set forth above, the Office of Public Interest Counsel respectfully recommends that the Commission deny the pending hearing requests.

Respectfully submitted,

Blas J. Coy, Jr.  
Public Interest Counsel

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#### CERTIFICATE OF SERVICE

I hereby certify that on March 22, 2010, the original and seven true and correct copies of the Office of 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.

*Vic McWherter*

Vic McWherter

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

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