Bryan W. Shaw, Ph.D., *Chairman*
Buddy Garcia, *Commissioner*
Carlos Rubinstein, *Commissioner*
Mark R. Vickery, P.G., *Executive Director*

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

June 7, 2010

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

Re: CITGO Refining and Chemical Company, Permit Nos. 9604A and PSD-TX-653M1
TCEQ Docket No. 2010-0556-AIR

Dear Ms. Castañuela:

Enclosed please find an original plus seven copies of the Executive Director's Response to Hearing Request brief for the above permit.

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

Sincerely,

Amy L. Browning
Staff Attorney
Environmental Law Division

Enclosure

TCEQ AIR QUALITY PERMIT NO. 9604A
PSD AIR QUALITY PERMIT NO. PSD-TX-653M1
TCEQ DOCKET NO. 2010-0556-AIR

APPLICATION BY	§	**BEFORE THE**
	§	
CITGO REFINING AND CHEMICAL COMPANY, LP	§	**TEXAS COMMISSION ON**
	§	
	§	
NUECES COUNTY, TEXAS	§	**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 requests 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. There was one hearing request for this application submitted by Enrique Valdivia on behalf of Citizens for Environmental Justice, Refinery Reform Campaign, and South Texas Colonias Initiative.

A map showing the location of the site for the proposed facility is included with this response and has been provided to all persons on the attached mailing list. In addition, the current compliance history report, technical review summary, modeling audit memorandum, preliminary determination summary, 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

CITGO Refining and Chemical Company, LP (CITGO, Applicant) has applied to the TCEQ for a New Source Review Authorization under Texas Clean Air Act (TCAA) §382.0518. This will authorize the modification of an existing facility that may emit air contaminants. This permit will authorize modification to the No. 2 Fluid Catalytic Cracking Unit (FCCU) at the applicant's East Plant by installation of additional air blowers, testing of the FCCU unit for 12 months at a higher throughput, and, if the test results are satisfactory, the authorization of the modified FCCU unit at higher throughput level after the test period. The facility is located at 1801 Nueces Bay Boulevard (the "East Plant"), at 7350 Interstate Highway 37, Corpus Christi, Nueces County, Texas. Contaminants authorized under this permit include nitrogen oxides (NO_X), carbon

[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.

monoxide (CO), volatile organic compounds (VOC), particulate matter, including particulate matter less than 10 microns (PM/PM_{10}), sulfur dioxide (SO_2), and sulfuric acid (H_2SO_4).

The permit amendment application was received on June 14, 2007 and declared administratively complete on June 28, 2007. The Notice of Receipt and Intent to Obtain an Air Quality Permit amendment for this application was published on July 25, 2007, in the *Corpus Christi Caller Times*. Notice of Application and Preliminary Decision for an Air Quality Permit (NAPD) was published on November 3, 2009 in the *Corpus Christi Caller Times*. The comment period for this application was closed on December 3, 2009. Since this application was administratively complete after September 1, 1999, this action is subject to the procedural requirements adopted in accordance with House Bill 801, 76th Legislature, 1999.

The commission received one hearing request for this application, submitted by Enrique Valdivia on behalf of Citizens for Environmental Justice, Refinery Reform Campaign, and South Texas Colonias Initiative.

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 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, and 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.

In addition to the requirements noted above regarding affected person status, in accordance with 30 TAC § 55.205(a), a group or association may request a contested case hearing only if the group or association meets all of the following requirements:

> (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.[2]

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:

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[2] 30 TAC § 55.205(a)

(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 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 single hearing request for this application was submitted during the comment period; therefore it is a timely request. The hearing request was file in behalf of three groups, Citizens for Environmental Justice, Refinery Reform Campaign, and South Texas Colonias Initiative. The ED has determined the hearing request does substantially comply with all of the requirements of form in 30 TAC § 55.201(d).

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 from any of the hearing requesters considered to be affected persons or their representatives within the thirty-day period after the RTC was mailed, the ED cannot determine or speculate whether the hearing requesters continue to dispute issues of fact, or whether there are any outstanding issues of law or policy. The ED nevertheless has included all of the issues raised by hearing requesters regarding this application as listed below.

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[3] TEXAS HEALTH & SAFETY CODE § 382.0518
[4] TEXAS HEALTH & SAFETY CODE § 382.0513
[5] TEXAS HEALTH & SAFETY CODE § 382.085 (a) and (b).
[6] TEXAS HEALTH & SAFETY CODE § 382.0513
[7] *See* 30 TAC § 55.201(d)(4).

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

There were no individuals who requested a hearing on this application.

C. Do those groups who requested a hearing meet the group or associational standing requirements?

There were three associations that jointly requested a contested case hearing on this application: Citizens for Environmental Justice, Refinery Reform Campaign, and South Texas Colonias Initiative. For a group or association to be considered as affected person, the requirements of 30 TAC §55.205(a) must be met.[8] The hearing request fails to satisfy §55.205(a)(1), which requires that one or more members of the group or association would otherwise have standing to request a hearing in their own right. The Refinery Reform Campaign does not identify any members other than its director, Denny Larson, who it does not identify as being a Corpus Christi resident. Although Citizens for Environmental Justice and South Texas Colonias Initiative identify their directors, Suzie Canales and Lionel Lopez, respectively, as being Corpus Christi residents, the organizations have not demonstrated that either of the members are 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 this interest is different from that of the general public.[9] The hearing request did not provide an address for any of the persons identified. Without an address, the executive director can not evaluate how far the identified persons are from the proposed facility, or if they would potentially be affected differently from the general public. The requests also states that Citizens for Environmental Justice members live and work near CITGO's facility, and that members are part of the "fence-line community of Hillcrest," however, the request fails to identify specific members who live within the Hillcrest community, and it does not provide a physical location for the community other than the designation of "fence-line." Therefore, because the request does not demonstrate that the associations have specific individual members who would be affected persons within their own right as required by §55.205(a)(1), none of the three associations that requested the hearing have demonstrated that they can meet the associational requirements to be an affected person.

D. 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. The three-part test asks whether the issues involve disputed questions of fact, whether the issues were raised during the public comment period, and whether the issues are relevant and material to the decision on the permit application, in order to refer them to SOAH.

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[8] 30 TAC §55.205(a).
[9] *United Copper Industries and TNRCC v. Joe Grissom*, 17 S.W.3d 797 (Tex. App.-Austin, 2000)

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 transmitting the RTC cites 30 TAC § 55.201(d)(4), which states that requesters should, to the extent possible, specify any of the ED's responses in the RTC the requesters dispute and the factual basis of the dispute, and list any disputed issues of law or policy. The hearing request was submitted on September 10, 2007, during the comment period. To facilitate the commission's consideration of this matter, the ED has analyzed the remaining two parts of the test as applied to those issues.

1. Issues involving questions of fact.

The requester raises the following issues involving questions of fact regarding the proposed operation of the Applicant's facility:

1. Environmental justice concerns – historical racial zoning restrictions has resulted in communities along refinery row that are "predominately low-income, communities of color."

2. CITGO has been criminally convicted by a federal jury of violating the federal Clean Air Act by knowingly operating two tanks without proper pollution control devices.

3. A preliminary soil sample study in the Hillcrest community showed elevated levels of polyaromatic hydrocarbons that are six to ten times the EPA residential soil limit, and house dust samples were comparable to dust samples collected in the former Soviet Union.

4. The permit, if granted, will result in an additional burden of VOCs and PM/PM10 on a community already adversely affected by the applicant.

2. Were the issues raised during the public comment period?

The public comment period is defined in 30 TAC § 55.152. The public comment period begins with the publication of the Notice of Receipt and Intent to Obtain an Air Quality Permit. The end date of the public comment period depends on the type of permit. In this case, the public comment period began on July 25, 2007 and ended December 3, 2009. All of the issues listed above upon which the hearing request in this matter is based were raised during the public comment period.

3. Whether the issues are relevant and material to the decision on the application.

In this case, the permit would be issued under the commission's authority in Tex. Water Code § 5.013(11) (assigning the responsibilities in Chapter 382 of the Tex. Health and Safety Code) and the TCAA. The relevant sections of the TCAA are found in Subchapter C (Permits). Subchapter C requires the commission to grant a permit to construct or modify a facility if the commission finds the proposed facility will use at least the best available control technology (BACT) and the emissions from the facility will not contravene the intent of the TCAA, including the protection of the public's health and physical property. In making this permitting decision, the commission may consider the Applicant's compliance history. The commission by rule has also specified

certain requirements for permitting. Therefore, in making the determination of relevance in this case, the commission should review each issue to see if it is relevant to these statutory and regulatory requirements that must be satisfied by this permit application.

The ED finds the following issues relevant and material to the decision on the application:

1. CITGO has been criminally convicted by a federal jury of violating the federal Clean Air Act by knowingly operating two tanks without proper pollution control devices.

The hearing request identified a potential compliance history issue by noting that the applicant had been criminally convicted of violating the federal Clean Air Act by a federal jury.[10] Compliance history is one of the factors that the executive director considers when evaluating a permit application. Therefore, whether the applicant has an acceptable compliance history for issuance of a permit is referable issue. The executive director recommends that this issue be referred as: "Whether the applicant has an acceptable compliance history in Texas?"

2. A preliminary soil sample study in the Hillcrest community showed elevated levels of PAHs (polycyclic aromatic hydrocarbons) that are six to ten times the EPA residential soil limit, and house dust samples were comparable to dust samples collected in the former Soviet Union.

The hearing request identified elevated levels of polycyclic aromatic hydrocarbons in the soil around the plant.[11] Whether emissions from the plant will contribute to increasing these levels is a fact question, therefore this is a referable issue. The executive director recommends that this issue be referred as: "Will emissions from the facility contribute to increasing the amounts of polycyclic aromatic hydrocarbons in the soil of neighborhoods surrounding the plant?"

3. The permit, if granted, will result in an additional burden of VOCs and PM/PM10 on a community already adversely affected by the applicant.

The hearing request states that the permit, if issued, will result in additional emissions of VOCs and PM/PM10 that will adversely affect residents near the facility.[12] Whether emissions from the facility will result in adverse affects on the health and welfare of nearby residents is a fact question, therefore this is a referable issue. The executive director recommends that this issue be referred as: "Will the VOC or PM/PM_{10} emissions from the facility adversely affect the health of nearby residents?"

The ED finds the following issue is not applicable to the consideration of the application for an air quality permit, and is thus not relevant and material to the decision on the application:

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[10] This issue was addressed in the ED's RTC in Response 2.
[11] This issue was addressed in the ED's RTC in Responses 2 and 3.
[12] This issue was addressed in the ED's RTC in Response 2.

Environmental justice concerns – historical racial zoning restrictions has resulted in communities along refinery row that are "predominately low-income, communities of color."

The hearing request identified historic zoning restrictions and environmental justice concerns concerning the facility and the proposed permit amendment.[13] Air quality permits are evaluated by the agency without reference to the socioeconomic or racial status of the surrounding community. The TCEQ has made a strong policy commitment to address environmental equity by creating an environmental equity program within the Office of Public Assistance, which works to help citizens and neighborhood groups participate in the regulatory process and to make sure that citizens' concerns are considered thoroughly and are handled in a way that is equitable to all. The executive director does not, however, have jurisdiction over local or historical zoning restrictions. Absent certain specific statutory requirements, which are not applicable, the executive director has no jurisdiction over the location of a proposed facility. Therefore this issue is not relevant and material to the decision on the application.

IV. Maximum Expected Duration of the Contested Case Hearing

The ED recommends the contested case hearing, if held, should last no longer than nine months from the preliminary hearing to the proposal for decision.

V. Executive Director's Recommendation

The Executive Director respectfully recommends the commission:

A. Find all hearing requests in this matter were timely filed.

B. Find that the requests of Citizens for Environmental Justice, Refinery Reform Campaign, and South Texas Colonias Initiative satisfy the requirements for form under 30 TAC §55.201(d).

C. Find that the requests of Citizens for Environmental Justice, Refinery Reform Campaign, and South Texas Colonias Initiative do not demonstrate that the requestors are affected persons under 30 TAC § 55.203. Additionally, the requestors do not satisfy the requirements for group or associational affected person status under 30 TAC §55.205.

D. Deny the hearing request of Citizens for Environmental Justice, Refinery Reform Campaign, and South Texas Colonias Initiative.

E. If the commission determines any requester is an affected person, refer the following issues to SOAH:

    1. Whether the applicant has an acceptable compliance history in Texas?

[13] This issue was addressed in the ED's RTC in Response 1.

2. Will emissions from the facility contribute to increasing the amounts of polycyclic aromatic hydrocarbons in the soil of neighborhoods surrounding the plant?

3. Will VOC or PM/PM_{10} emissions from the proposed facility adversely affect the health of nearby residents?

F. Find the maximum expected duration of the contested case hearing, if held, would be nine months.

Respectfully submitted,

Texas Commission on Environmental Quality
Mark R. Vickery, P.G., Executive Director

Stephanie Bergeron Perdue, Deputy Director
Office of Legal Services

Robert Martinez, Director
Environmental Law Division

Amy Lynn Browning, Staff Attorney
Environmental Law Division
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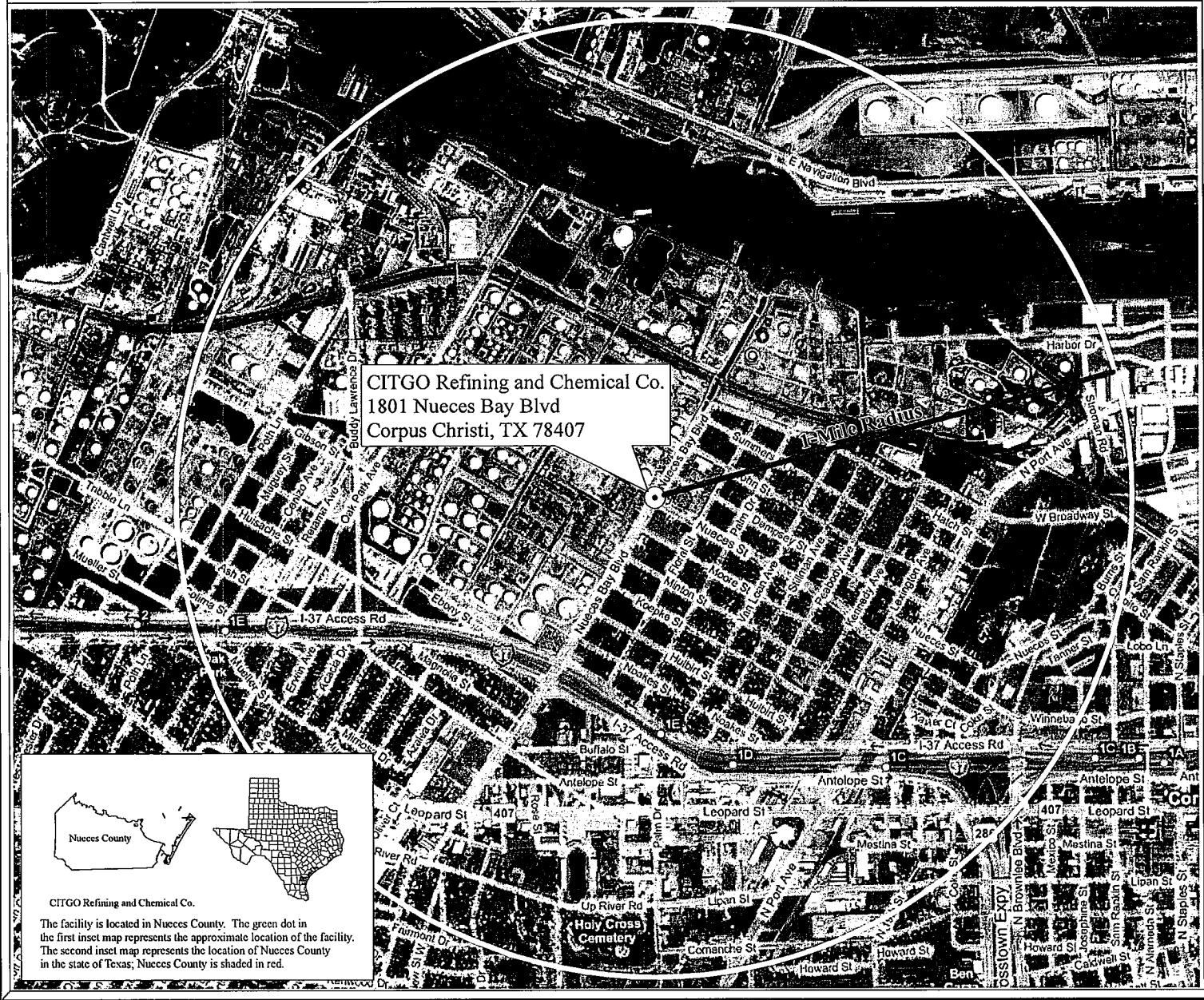
Representing the Executive Director of the
Texas Commission on Environmental Quality

ATTACHMENT A
Map showing the location of the proposed facility

CITGO Refining and Chemical Company, Permit Nos. 9604A and PSD-TX-653M1

Executive Director's Response to Hearing Request Brief



The facility is located in Nueces County. The green dot in the first inset map represents the approximate location of the facility. The second inset map represents the location of Nueces County in the state of Texas; Nueces County is shaded in red.

Protecting Texas by Reducing and Preventing Pollution

TCEQ

Texas Commission on Environmental Quality
GIS Team (Mail Code 197)
P.O. Box 13087
Austin, Texas 78711-3087

June 1, 2010

0 0.05 0.1 0.2 0.3 0.4 Miles

Projection: Texas Centric Mapping System (TCMS) - Albers
Scale 1:19,596

Legend

- Facility Property (physical street address)
- 1-Mile Radius

Source: This map was requested by TCEQ's Office of Legal Services (OLS). The location of the facility was provided by OLS. The property boundaries (if applicable) depicted were manually digitized and approximated (survey data not available) using paper maps provided by OLS.

Hearing Requestor addresses (if applicable) were provided by OLS and geocoded using Tele Atlas Streets 2009 geodatabase technology.

Measurements provided are estimates and have not been measured with precise ground-based instrumentation.

The DOQQ (Digital Orthophoto Quarter Quadrangle) aerial imagery was obtained using a Bing data service from (c) 2009 Microsoft Corporation and its data suppliers.

This map was generated by the Information Resources Division of the Texas Commission on Environmental Quality. This map was not generated by a licensed surveyor, and is intended for illustrative purposes only. No claims are made to the accuracy or completeness of the data or to its suitability for a particular use. For more information concerning this map, contact the Information Resource Division at (512) 239-0800.

Paul E. Buschow, Ticket No. 325725

CERTIFICATE OF SERVICE

On the 7th day of June, 2010, 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, electronic mail, or hand delivery.

Amy Browning

MAILING LIST
CITGO REFINING AND CHEMICALS COMPANY, LP
DOCKET NO. 2010-0556-AIR; PERMIT NO. 9604a AND PSD-TX-653M1

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