

**TCEQ DOCKET NO. 2010-0843-AIR**

<b>APPLICATION BY</b>	<b>§</b>	<b>BEFORE THE</b>
<b>REGENCY FIELD</b>	<b>§</b>	<b>TEXAS COMMISSION ON</b>
<b>SERVICES LLC</b>	<b>§</b>	<b>ENVIRONMENTAL QUALITY</b>
<b>HENDERSON COUNTY, TEXAS</b>	<b>§</b>	

**APPLICANT'S RESPONSE TO REQUESTS FOR CONTESTED CASE HEARING**

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

Before the Texas Commission on Environmental Quality is Regency Field Services LLC's application to renew Air Quality Permit No. 6051, which authorizes the continuing operation of the Eustace Gas Processing Plant in Henderson County, Texas. While this permit renewal has a long history, the present state of affairs is simple: This renewal does not involve any emissions increase or emission of an air contaminant not previously emitted. Accordingly, there is no right to a contested case hearing, the longstanding hearing requests should be denied, and the permit renewed under exactly the same terms as the current permit. TEXAS HEALTH AND SAFETY CODE § 382.056(d) (West 1997) and 30 TEX. ADMIN. CODE § 55.31(b) (1998).

**I. BACKGROUND**

**A. Ownership History**

On January 20, 1998, the Eustace Plant's then-current owner, Dynegy Midstream, Inc., submitted an application to renew Permit No. 6051. TCEQ's predecessor agency declared the application administratively complete on March 3, 1998. Eustace Plant ownership changed three times after that: From Dynegy Midstream, Inc. to Sulfur River Gathering, L.P., in January of 2000; then to Enbridge Pipeline (NE Texas), L.P., in December of 2005; and then to Texstar FS, L.P., in July of 2006. Texstar FS, L.P. subsequently changed its name to Regency. For

simplicity's sake, we refer below to the applicant as Regency and the agency as TCEQ, even though each has had other names in the relevant past.

### **B. Early History of the Renewal Application**

On July 13 and 14, 1998, Regency published notice of the renewal application in *The Athens Daily Review*. The now-pending requests for a contested case hearing were filed with TCEQ in immediate response to that 1998 public notice. The predominant issue raised in the letters pertained to hydrogen sulfide (H<sub>2</sub>S) emissions from the Plant, specifically from the flares.

In order to reduce H<sub>2</sub>S emissions, and the attendant odor issues, Regency volunteered to convert the flares at the site from unassisted to steam-assisted design. Steam emitted from jets located at the flare tip promotes mixing of the waste gas to achieve better combustion of the waste gases. TCEQ authorized the flare tip changes by Standard Permit Registration No. 41832, which were completed in summer of 1999.

From 2000 to 2006, the combination of Plant ownership changes and TCEQ turnover impeded completion of the permit renewal. In August 2006, TCEQ sent a request for additional information to Regency, the new owner of the Plant, asking questions about the sources of emissions represented in the original air permit application but for which no emission limits had been established.

### **C. Amendment to Permit No. 6051**

To fully address TCEQ's questions, Regency submitted an amendment application for Permit No. 6051 in November 2006 (the "Amendment"). The Amendment incorporated representations about emission rates and operations made in previous permitting actions into appropriate special conditions and a maximum allowable emission rate table. In addition, Regency asked to consolidate the sources and activities authorized by three permits (Permit No.

6052, Standard Permit No. 41832, and Prevention of Significant Deterioration Permit No. PSD-TX-55M3) into Permit No. 6051.

Regency published notice of the Amendment application on March 1, 2007, in the *Athens Daily Review*. The notice clearly stated that “[u]nless a written request for a contested case hearing is filed within 30 days from this notice, the executive director may approve this application.” TCEQ received no requests for a contested case hearing or for a public meeting. On March 30, 2009, the Executive Director approved the Amendment to Permit No. 6051 and voided Permit No. 6052 and Standard Permit No. 41832, because their requirements were incorporated into Permit No. 6051.

#### **D. Renewal of Permit No. 6051**

After the Executive Director approved the Amendment to Permit No. 6051, including the consolidation of the various permits, he asked Regency to publish another Notice of Receipt of Application and Intent to Obtain Air Permit Renewal for the pending renewal of Permit No. 6051, because it had been (far) more than two years since original publication of notice of the renewal, and the original public notice did not reflect the issuance of the Amendment. The notice published on July 16, 2009, in the Payne Springs newspaper, *The Monitor*, expressly stated that:

In addition to the renewal, this permitting action includes the incorporation of the following previously-approved authorizations or changes to authorized facilities related to this permit: (1) An amendment application, notice of which was previously provided, was reviewed and issued March 30, 2009; and (2) Permit No. 6052/PSD-TX-55M3 and Standard Permit Registration No. 41832 were consolidated into Permit No. 6051 with its amendment on March 30, 2009. ... Regency Field Services is seeking renewal of Permit No. 6051 under the same terms as it now exists; accordingly, this permit renewal would not result in an increase in allowable emissions and would not result in the emission of an air contaminant not previously emitted.

And further:

If no hearing request is received within this 15-day period, no further opportunity for hearing will be provided.

TCEQ received no requests for a contested case hearing or comments. Later, in September 2009, TCEQ staff even went so far as to send individual letters to the authors of those long-pending requests, explaining the circumstances and apprising them of their process rights, and yet—to Regency’s knowledge—no one has expressed any concerns with the Eustace Plant’s permit since 1998.

## II. ARGUMENT

Applicable law compels denial of the pending hearing requests. The Commission’s disposition of this matter is governed by the statutes and regulations as they existed when the application was declared administratively complete, *see* GOV’T CODE § 311.022, although the key statutory and regulatory provisions remain substantively unchanged.<sup>1</sup> The governing statute provides as follows:

The commission shall not hold a hearing if the basis of a request by a person who may be affected is determined to be unreasonable. Reasons for which a request for a hearing on a permit amendment, modification, or renewal **shall** be considered to be unreasonable include, but are not limited to, an amendment, modification, or renewal that would not result in an increase in allowable emissions and would not result in the emission of an air contaminant not previously emitted.

TEXAS HEALTH AND SAFETY CODE § 382.056(d) (West 1997)(emphasis added)(copy provided as Attachment 1). Accordingly, and similarly, the applicable implementing rule provided as follows:

The commission shall consider the following additional factors for hearing requests on air quality applications.

- (1) A request concerning an amendment, modification, or renewal that would not result in an increase in allowable emissions and would not

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<sup>1</sup> *See* TEX. HEALTH & SAFETY CODE § 382.056(g) (2010); 30 TEX. ADMIN. CODE § 50.113(d)(1) (2010).

result in the emission of an air contaminant not previously emitted is unreasonable.

30 TEX. ADMIN. CODE § 55.31(b)(1) (1998) (emphasis added)(copy provided as Attachment 2)

No changes to the current version of the permit are being proposed in this pending application to renew Permit No. 6051. The pending renewal merely extends the term of existing Permit 6051 under the exact same terms and conditions that exist today: It does not allow for any increased emissions or emission of a new pollutant.<sup>2</sup> Therefore, applicable law compels denial of the hearing requests.

### III. CONCLUSION

Regency respectfully requests that the Commission deny the vestigial hearing requests from 1998 and renew this permit. Not only is there no authority to grant a contested case hearing under the applicable laws, but whatever objections were filed in 1998 were a result of operations and management that have long since changed. Since 1999, steam-assisted flares have been operated at the Plant to reduce H<sub>2</sub>S emissions. Further, since 1998, the Plant changed hands three times and has been owned and operated by Regency for the last four years. In the last two years, the public has been given not one, but two notices of permit actions at the Eustace Plant, which have drawn no opposing comments.

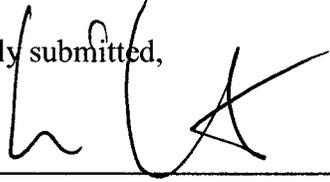
This application has traveled a long and winding road to arrive before you as a simple no-increase renewal. Accordingly, the 1998 hearing requests should be denied and Permit No. 6051 should be renewed with the same terms and conditions in force today.

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<sup>2</sup> The only circumstance under which a contested case hearing request could be authorized (which does not exist here) is when the Commission “determines that the application involves a facility for which the applicant’s compliance history contains violations which are unresolved and which constitute a recurring pattern of egregious conduct which demonstrates a consistent disregard for the regulatory process, including the failure to make a timely and substantial attempt to correct the violations.” Tex. Health & Safety Code § 392.056(e)(West 2007) and 30 TEX. ADMIN CODE § 55.31(b) (1998). That circumstance obviously is not present here. *See* <http://www11.tceq.state.tx.us/oc/ch/index.cfm?fuseaction=main.search&RequestTimeout=90&rename=&principalname=REGENCY%20FIELD%20SERVICES%20LLC&rern=&aid=&progid=&county=&region=&startdate=09/01/2006&enddate=&reid=&principalid=793496652007312>.

Respectfully submitted,

By: \_\_\_\_\_

  
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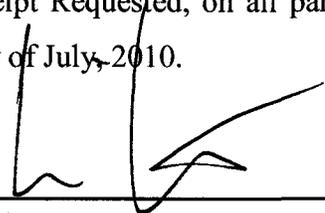
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ATTORNEYS FOR REGENCY FIELD SERVICES LLC

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the Applicant's Response to Requests for Contested Case Hearing has been served via hand delivery, facsimile, electronic mail, overnight mail, U.S. Mail, and/or Certified Mail, Return Receipt Requested, on all parties whose names appear on the attached mailing list on this the 8th day of July, 2010.



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Eric Groten

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**DOCKET NO. 2010-0843-AIR; PERMIT NO. 6051**

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***See attached list of Requesters/Interested Persons***

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## Attachment 1

**VERNON'S TEXAS STATUTES AND CODES ANNOTATED**  
**HEALTH AND SAFETY CODE**  
**TITLE 5. SANITATION AND ENVIRONMENTAL QUALITY**  
**SUBTITLE C. AIR QUALITY**  
**CHAPTER 382. CLEAN AIR ACT**  
**SUBCHAPTER C. PERMITS**

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§ 382.056. Notice of Intent to Obtain Permit or Permit Review, Hearing

(a) An applicant for a permit under Section 382 0518 or 382 054 or a permit renewal review under Section 382 055 shall publish notice of intent to obtain the permit or permit review. The commission by rule may require an applicant for a federal operating permit to publish notice of intent to obtain a permit or permit review consistent with federal requirements and with the requirements of this section. The applicant shall publish the notice at least once in a newspaper of general circulation in the municipality in which the facility or federal source is located or is proposed to be located or in the municipality nearest to the location or proposed location of the facility or federal source. If the elementary or middle school nearest to the facility or proposed facility provides a bilingual education program as required by Subchapter B, Chapter 29, Education Code, the applicant shall also publish the notice at least once in an additional publication of general circulation in the municipality or county in which the facility is located or proposed to be located that is published in the language taught in the bilingual education program. This requirement is waived if such a publication does not exist or if the publisher refuses to publish the notice. The commission by rule shall prescribe when notice must be published and may require publication of additional notice. Notice required to be published under this section shall only be required to be published in the United States.

(b) The notice must include

(1) a description of the location or proposed location of the facility or federal source,

(2) a statement that a person who may be affected by emissions of air contaminants from the facility, proposed facility, or federal source is entitled to request a hearing from the commission,

(3) a description of the manner in which the commission may be contacted for further information, and

(4) any other information the commission by rule requires

(c) At the site of a facility, proposed facility, or federal source for which an applicant is required to publish notice under this section, the applicant shall place a sign declaring the filing of an application for a permit or permit review for a facility at the site and stating the manner in which the commission may be contacted for further information. The commission shall adopt any rule necessary to carry out this subsection.

(d) Except as provided by Section 382 0561 or Subsection (e), the commission or its delegate shall hold a public hearing on the permit application or permit renewal application before granting the permit or renewal if a person who may be affected by the emissions, or a member of the legislature from the general area in which the facility or proposed facility is located, requests a hearing within the period set by commission rule. The commission shall not hold a hearing if the basis of a request by a person who may be affected is determined to be unreasonable. Reasons for which a request for a hearing on a permit amendment, modification, or renewal shall be considered to be unreasonable include, but are not limited to, an amendment, modification, or renewal that would not result in an increase in allowable emissions and would not result in the emission of an air contaminant not previously emitted.

(e) Notwithstanding other provisions of this chapter, the commission may hold a hearing on a permit amendment, modification, or renewal if the board determines that the application involves a facility for which the applicant's compliance history contains violations which are unresolved and which constitute a recurring pattern of egregious conduct which demonstrates a consistent disregard for the regulatory process, including the failure to make a timely and substantial attempt to correct the violations

CREDIT(S)

1992 Main Volume

Acts 1989, 71st Leg , ch. 678, § 1, eff Sept 1, 1989. Amended by Acts 1991, 72nd Leg , 1st C.S., ch. 3, § 2.12, eff. Sept 1, 1991

1997 Electronic Pocket Part Update

Amended by Acts 1993, 73rd Leg., ch. 485, § 15, eff June 9, 1993, Acts 1995, 74th Leg., ch. 76, § 11.167, eff. Sept 1, 1995; Acts 1995, 74th Leg , ch 149, § 2, eff. May 19, 1995; Acts 1997, 75th Leg , ch 165, § 6.42, eff. Sept. 1, 1997

REVISOR'S NOTE

1992 Main Volume

The revised law omits as unnecessary the source law requirement that notice be given as provided by Section 3 17 That section, revised as Section 382 031, by its own terms applies to all hearings held under this chapter except those specifically excluded

**HISTORICAL AND STATUTORY NOTES**

1992 Main Volume

**Prior Laws:**

Acts 1965, 59th Leg , p 1583, ch 687

Acts 1967, 60th Leg , p 1941, ch 727

Acts 1969, 61st Leg , p 817, ch 273, § 1

Acts 1985, 69th Leg., ch. 637, § 27.

Vernon's Ann Civ St acts 4477-4, 4477-5, § 3.271(a) to (c)

**LAW REVIEW COMMENTARIES**

Environmental permits Land use regulation and policy implementation in Texas. Wm Terry Bray, R Alan Haywood, David S. Caudill and Pamela S. Bacon, 23 St Mary's L J 841 (1992)

V T C A , Health & Safety Code § **382.056**

TX HEALTH & S § **382.056**

END OF DOCUMENT

## Attachment 2

OFFICIAL  
**Texas**  
**Administrative**  
**Code**

**Title 30**  
**Environmental**  
**Quality**

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**1998—Part One**

[Replaces 1997 Pamphlet]

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Amendments effective through  
January 1, 1998



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## 30 TAC § 55.29

## NATURAL RESOURCE CONSERVATION COMMISSION

(b) Governmental entities including local governments and public agencies, with authority under state law over issues contemplated by the application may be considered affected persons.

(c) All relevant factors shall 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, 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.

**Source:** The provisions of this §55.29 adopted to be effective June 6, 1996, 21 TexReg 4742.

**Cross References:** This Section cited in 30 TAC §55.3 (relating to Definitions), 30 TAC §80.104 (relating to Designation of Parties).

### § 55.31. Determination of Reasonableness of Hearing Request

(a) The reasonableness of a hearing request shall be based on all relevant factors including the following:

- (1) whether the request is based solely on concerns outside of the jurisdiction of the commission, and
- (2) whether the request is based on concerns related to other media that cannot be addressed by the pending application, even though within the jurisdiction of the commission;
- (3) whether the project is an emissions, pollutant, or source reduction project or a project to improve the quality of waste to be discharged including:

(A) whether there are no increases in emissions of any contaminants or no increases in discharges of any pollutants;

(B) whether the project is not driven by a non-compliance situation; and

(C) whether the project will have both emission source, or pollutant discharge reductions and incidental increases, where the net effect is an emission, source, or pollutant discharge reduction.

(4) whether the project is mandated by commission rule;

(5) the location of the proposed project;

(6) whether the applicant requests authority to substitute an equivalent or more efficient control device;

(7) whether the hearing request is based solely on something other than concerns about pollution;

(8) the extent to which the person requesting a hearing is likely to be impacted by the emissions discharge, or waste; and

(9) the applicant's compliance history.

(b) The commission shall consider the following additional factors for hearing requests on air quality applications:

(1) A request concerning an amendment, modification or renewal that would not result in an increase in allowable emissions and would not result in the emission of an air contaminant not previously emitted is unreasonable.

(2) Notwithstanding paragraph (1) of this subsection, a request may be determined reasonable if the application involves a facility for which the applicant's compliance history contains violations that are unresolved and that constitute a recurring pattern of egregious conduct that demonstrates a consistent disregard for the regulatory process, including the failure to make a timely and substantial attempt to correct the violations.

**Source:** The provisions of this §55.31 adopted to be effective June 6, 1996, 21 TexReg 4742, amended to be effective May 17, 1997, 22 TexReg 3994.

## CHAPTER 70. ENFORCEMENT

### SUBCHAPTER A. ENFORCEMENT GENERALLY

Section  
70.1 Purpose

Section  
70.2 Definition  
70.3 Enforcement Guidelines  
70.4 Actual Enforcement Reg.

[108]