

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

July 8, 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: **REGENCY FIELD SERVICES, L.L.C.**
TCEQ DOCKET NO. 2010-0843-AIR

Dear Ms. Castañuela:

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

Sincerely,

A handwritten signature in black ink, appearing to read "Garrett Arthur", written over a horizontal line.

Garrett Arthur, Attorney
Assistant Public Interest Counsel

cc: Mailing List

Enclosure

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DOCKET NO. 2010-0843-AIR

APPLICATION BY § **BEFORE THE**
REGENCY FIELD SERVICES, L.L.C. § **TEXAS COMMISSION ON**
AIR PERMIT NOS. 6051 and PSDTX55M3 § **ENVIRONMENTAL QUALITY**

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

To the Members of the Texas Commission on Environmental Quality:

The Office of Public Interest Counsel (OPIC) at the Texas Commission on Environmental Quality (TCEQ) files this response to hearing requests in the above-referenced matter.

I. Introduction

On January 20, 1998, Dynegy Midstream, Inc. submitted a renewal application for the Eustace Gas Processing Plant in Eustace, Henderson County. The application was declared administratively complete on January 21, 1998. Notices of the renewal application were published July 13 and 14, 1998 in the *Athens Daily Review*. On October 8, 1998, a public meeting was held in Payne Springs.

The TCEQ received timely hearing requests from the following people:

Timothy Allison	Terry Nesbitt
John and Millie Ballard	L.W. Nowlin
James and Mary Black	Carol and Dale Price
Debbie and Lewis Burrows	Ashley Renee Roberts
Mae Busby	John Roberts
Richard Busby	Sandy Roberts
Dawna and Thomas Carlson	Dian Sanders
Dolores Deller	Lela and Richard Smithey
Debra Flake	Denis and James Stotts
Harmon and Louise Guthrie	Bruce Temple
Tami Longacre	Chris Temple
Helen Luger	Kim Temple
Paula Martin	Lisa Yates

Regency Field Services, L.L.C. (“Regency” or the “Applicant”) acquired the plant in 2006 and is the current permit holder. In October 2006, Regency submitted an amendment application. Notice of the amendment application was published March 1, 2007 in the *Athens Daily Review*. No hearing requests were received regarding this amendment application.

As the current permit holder, Regency is now responsible for the renewal of air permit numbers 6051 and PSDTX55M3. On July 16, 2009, Regency republished notice of the renewal application in *The Monitor*. The TCEQ received no additional hearing requests on the renewal application.

For the reasons stated herein, OPIC cannot support these hearing requests. We recommend the Commission deny all of the pending hearing requests.

II. Applicable Law

Regency’s application was declared administratively complete prior to September 1, 1999. Therefore, the procedural rules in place prior to the enactment of House Bill 801 (76th Leg., 1999) apply to this application.

Under 30 Texas Administrative Code (TAC) § 55.21(d), a hearing request must substantially comply with the following requirements:

- (1) give the name, address, and daytime telephone 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 requestor's location and distance relative to the activity that is the subject of the application and how and why the requestor believes he or she will be affected by the activity in a manner not common to members of the general public;

- (3) request a contested case hearing; and
- (4) provide any other information specified in the public notice of application.

As defined in 30 TAC § 55.3, an “affected person” is a person 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.

As stated in 30 TAC § 55.27(b)(2), a hearing request made by an affected person shall be granted if the request:

- (A) is reasonable;
- (B) is supported by competent evidence;
- (C) complies with the requirements of § 55.21;
- (D) is timely filed with the TCEQ Chief Clerk; and
- (E) is pursuant to a right to hearing authorized by law.

The determination of whether a person is affected is governed by 30 TAC § 55.29.

Section 55.29(c) provides that 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; and
- (5) likely impact of the regulated activity on use of the impacted natural resource by the person.

Under 30 TAC § 55.31(a), the reasonableness of a hearing request is based on all relevant factors including the following:

- (1) whether the request is based solely on concerns outside of the jurisdiction of the commission;
- (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 noncompliance 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 TCEQ 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.

Section 55.31(b) states that the Commission must 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.

III. Analysis of Hearing Requests

Regency is not seeking to increase the plant's allowable emissions nor emit an air contaminant not previously emitted. This means that Regency's renewal application is considered a "no increase" renewal. Even if a hearing request is made by an affected person, such hearing request must still be reasonable, as required by 30 TAC § 55.27(b)(2)(A). For air quality applications, the reasonableness of a hearing request must be evaluated using 30 TAC § 55.31(b). Section 55.31(b)(1) states that a hearing request concerning a 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. Pursuant to § 55.31(b)(1), all hearing requests on this no increase renewal of an air permit are unreasonable as a matter of law and cannot be granted.

The reasonableness standard articulated in § 55.31(b)(1) is subject to a compliance history exception. Section 55.31(b)(2) states that a hearing 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. Under the TCEQ's current compliance history classification system, the Eustace plant's compliance history is classified as high. As a whole, Regency's compliance history is classified as average. Given these compliance history classifications, OPIC finds that the compliance history exception provided in § 55.31(b)(2) does not apply to this matter.

IV. Conclusion

Regency's renewal application is a no increase renewal, and the application was administratively complete on January 21, 1998. Under the procedural rules which apply to this application, only hearing requests which are reasonable may be granted, and hearing requests on a no increase renewal must be considered unreasonable as a matter of law. Therefore, OPIC cannot support the hearing requests in this matter and must respectfully recommend that the Commission deny all of the pending hearing requests.

Respectfully submitted,

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By 
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CERTIFICATE OF SERVICE

I hereby certify that on July 8, 2010, the foregoing document was filed with the TCEQ Chief Clerk, and copies were served to all parties listed below via hand delivery, facsimile transmission, electronic mail, inter-agency mail, or by deposit in the U.S. Mail.



Garrett Arthur

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