

haynesboone

February 13, 2012

Direct Phone Number: 512.867.8462
Direct Fax Number: 512.867.8692
james.braddock@haynesboone.com

VIA HAND-DELIVERY

Ms. Bridget C. Bohac, Chief Clerk
Texas Commission on Environmental Quality
12100 Park 35 Circle, Bldg. F, Room 1101
Austin, TX 78753

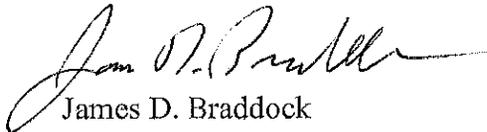
Re: TCEQ Docket No. 2011-1215-AIR; *Application of Sherwin Alumina LP for Renewal of Air Quality Permit 46868*

Dear Ms. Bohac:

Enclosed for filing in the above-referenced matter is *Applicant Sherwin Alumina L.P.'s Response to Requests for Hearing* together with seven copies.

A copy of the filing is being served on the persons identified in the mailing list at the end of the Response.

Sincerely,



James D. Braddock

Enclosure

c: Attached Service List

TEXAS
COMMISSION
ON ENVIRONMENTAL
QUALITY
2012 FEB 13 PM 3:29
CHIEF CLERKS OFFICE

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Haynes and Boone, LLP
Attorneys and Counselors
600 Congress Ave., Suite 1300
Austin, Texas 78701-3285
Phone: 512.867.8400
Fax: 512.867.8470
www.haynesboone.com

DOCKET NO. 2011-1215-AIR

APPLICATION OF § BEFORE THE
SHERWIN ALUMINA, LP § TEXAS COMMISSION ON
FOR TCEQ AIR QUALITY § ENVIRONMENTAL QUALITY
PERMIT RENEWAL No. 46868 §

APPLICANT SHERWIN ALUMINA, LP'S RESPONSE
TO REQUESTS FOR HEARING RECEIVED BY TCEQ REGARDING APPLICATION FOR
AIR QUALITY PERMIT RENEWAL NO. 46868

TO THE COMMISSIONERS OF THE TCEQ:

SHERWIN ALUMINA, LP ("Sherwin Alumina") requests that the Texas Commission on Environmental Quality ("TCEQ") issue the referenced permit renewal without a contested case hearing because, as discussed more fully below, (1) the application satisfies all requirements for issuance of the permit renewal; (2) the TCEQ is statutorily directed not to hold a hearing on an application for permit renewal, where, as is the case with this permit renewal, there will be no increase in allowable emissions or new air contaminant emitted; (3) the only hearing requests, which were filed by Kenneth and Brenda Berry, Debbie Breaux on behalf of The Berry Company, and Rachel Ramos on behalf of Channel Investments LLC, did not comply with applicable TCEQ regulations; and (4) the hearing requests did not identify any relevant and material disputed issues of fact or law raised during the public comment period and did not demonstrate that the hearing requestors are affected persons under TCEQ rules.

In this response, Sherwin Alumina provides the procedural background for this matter, summarizes its position, and then discusses it. In that discussion, Sherwin Alumina describes the facilities authorized in the permit and their emissions, identifies and evaluates the requests for hearing, and provides its response to those requests.

TEXAS
COMMISSION
ON ENVIRONMENTAL
QUALITY
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CHIEF CLERKS OFFICE

I. PROCEDURAL BACKGROUND

On December 6, 2010, Sherwin Alumina filed an application with the Texas Commission on Environmental Quality ("TCEQ") for the renewal of Air Quality Permit No. 46868. The permit authorizes facilities for the reclamation of scale at an alumina plant located at 4633 Highway 361 East, approximately 1.5 miles east of the intersection of Highway 35 and Highway 361, Gregory, San Patricio County, Texas. The Executive Director declared the application administratively complete on December 13, 2010. Sherwin Alumina published its Notice of Receipt of Application and Intent to Obtain Permit Renewal on January 7, 2011 in the Corpus Christi Caller-Times, a newspaper of general circulation in the City of Gregory and San Patricio County. On January 24, 2011, the TCEQ received three virtually identical requests for a contested case hearing. The requests were filed by Kenneth and Brenda Berry, Debbie Breaux on behalf of The Berry Company, and Rachel Ramos on behalf of Channel Investments LLC

Pursuant to the directions of the TCEQ's Executive Director, Sherwin Alumina published Notice of Application and Preliminary Decision on April 2, 2011 in the Corpus Christi Caller-Times. No requests for hearing were filed in response to the Notice of Preliminary Decision.

On July 18, 2011 the Executive Director filed his Response to Public Comments. On February 1, 2012, the TCEQ Chief Clerk issued notice that the Commissioners of the TCEQ would consider the application and any timely filed hearing requests at their March 7, 2012 meeting.

II. SUMMARY OF POSITION

A. Based on the law, the TCEQ may not call a hearing on the application because there will not be an increase in allowable emissions or the emission of a new air contaminant in the renewed permit.

Section 382.056, Health and Safety Code establishes the right to a contested case hearing on new source review air quality permits, including permit renewals. Subsection (g) provides:

The commission may not . . . hold a public hearing under the procedures provided by Subsections (i)-(n) in response to a request for a public hearing on 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.

The present application falls squarely within the purview of Section 382.056(g). The draft permit prepared by the Executive Director does not authorize either an increase in allowable emissions or the emission of a new air contaminant compared to the existing permit. In fact, the draft permit calls for a decrease in allowable emissions as Sherwin Alumina has removed a scale crusher from the site and that crusher is not a part of the draft permit renewal.

Section 382.056 does provide one exception to the requirement that the TCEQ not call a hearing on a no increase, no new air contaminant application for permit renewal. Subsection (o) provides that: “the commission may hold a hearing . . . on a permit amendment, modification, or renewal if the commission determines that the application involves a facility for which the applicant’s compliance history is classified as unsatisfactory . . . “

Sherwin Alumina’s customer (company wide) compliance history rating is 4.49 which is classified as average and well below the 45.0 rating that would bump it up to the poor performing classification. Poor performing is the lowest classification under the existing compliance history rules which predate the 2011 statutory changes which create the new term “unsatisfactory.” Sherwin Alumina’s scale reclamation facility is under TCEQ Account No. SD-0037-N which has a rating of 0, classifying it as a high performer for compliance history. There

are numerous compliance history classifications for the other Sherwin Alumina operations at the site, but all classifications are average or high performer.

In addition to establishing that no hearing should be called, Sherwin Alumina's compliance history classifications also refute any possible inference from the hearing requests that its operations do not comply with TCEQ requirements.

B. Based on the facts, none of the hearing requestors are affected persons entitled to a hearing.

1. The three hearing requests appear to be a single "form" letter. It is Sherwin Alumina's understanding that Debbie Breaux and Rachel Ramos work for Kenneth Berry, the third hearing requestor. The properties identified in each hearing request are far from the Sherwin Alumina scale reclamation plant with the closest property, Channel Investments LLC, being approximately 3.2 miles from the plant.

2. Given the substantial distances from the plant, exposures to persons at all three properties would be essentially the same as the exposures to other members of the general public. For a period of time, including 2010-2011, Sherwin Alumina performed continuous monitoring of particulate matter (the type of air contaminants identified in the hearing requests) at points much closer to the plant than the properties identified in the hearing requests. The monitoring demonstrated compliance with all applicable standards. The concentrations detected at the monitoring points should be substantially higher than the concentrations at the distant properties identified in the hearing requests.

C. Based on the law, none of the hearing requestors are entitled to a hearing. The hearing requests did not comply with TCEQ rules and the requirements that were clearly explained in the public notices. None of the three requests provided a description of how the

requestors would be adversely affected by the application and the emissions in a way not common to the general public. Further, all three requests did not identify any specific factual issues that are relevant and material to the decision on the application. Additionally, neither Ms. Breaux nor Ms. Ramos provided any information demonstrating that they were authorized to act on behalf of the entities they identified as the hearing requestors. Since Ms. Breaux and Ms. Ramos did not request the hearing as individuals, neither of their hearing requests should be considered.

E. Sherwin Alumina's application for permit satisfies all requirements for approval. The Executive Director's preliminary decision and response to comments demonstrate that the application for renewal more than satisfies all requirements for issuance.

III. DISCUSSION

A. The Permitted Facilities and Emissions

The red scale handling facilities and stockpiles involved in the permit renewal are part of Sherwin Alumina's alumina production plant. Permit No. 46868 allows for the efficient disposal of red scale formed in the alumina production process. During the processing of bauxite to alumina, a significant amount of red mud scale forms inside numerous settlers, washers, and other process vessels and lines. These vessels and lines are routinely cleaned and the accumulated scale removed. Formerly, the scale was disposed of by trucking it to the registered disposal area which is about 10 miles distant.

The red mud scale is the same material as the registered red mud tailings waste stream. The reclamation facility re-processes the scale and the waste is returned to the red mud tailings stream. The red mud tailings stream is piped to the Copano facility for disposal. The reclamation facility enables the red mud scale to be transported to the registered disposal facility

via pipeline versus trucking. It is a safer and more environmentally friendly mode of transport.

As set forth in the application and as confirmed by the review of the TCEQ's executive director, emissions from the plant will continue to comply with all applicable rules and regulations. Allowable emissions actually will be reduced as Sherwin Alumina no longer uses the red scale crusher authorized in the current permit and the crusher will not be a part of the renewed permit. Previously conducted monitoring has demonstrated that off-property concentrations of particulate matter emitted from the red scale reclamation process (as well as other processes in the entire plant) comply with applicable requirements and are protective of human health and welfare.

B. THE REQUESTS FOR HEARING

Three hearing requests were filed on January 24, 2011. As noted, they were filed by Kenneth and Brenda Berry, Debbie Breaux on behalf of The Berry Company, and Rachel Ramos on behalf of Channel Investments LLC. No other requests for hearing were filed.

C. RESPONSE TO THE HEARING REQUESTS

1. Standards for Valid Contested Case Hearing Requests

TCEQ Rules, 30 TAC Chapter 55, Subchapter F, provide the standards for contested case hearing requests. Those rules direct that the hearing request 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 application.¹

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.”² An interest common to the general public is not a personal justiciable interest.³ The relevant factors in determining whether a person is affected include:⁴

- (1) whether the interest claimed is one protected by the law under which the application will be considered;
- (2) distance restriction 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.

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.⁵

2. Standards for Responses to Hearing Requests

Section 55.209(e) of 30 TAC, directs that responses to hearing requests address:

1 30 TAC §55.201(d).

2 30 TAC §55.203(a).

3 *Id.*

4 30 TAC §55.203(c).

5 30 TAC § 55.211(c).

- (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.

3. Analysis of the Hearing Requests

a. None of the requestors are affected persons

All three Requestors failed to satisfy the requirements of TCEQ rules, restated in the public notices which prompted their requests, to provide a specific, written statement on "how and why the requestor believes he or she will be adversely affected by the proposed facility in a manner not common to members of the general public." All three letters merely state that "Sherwin has release (sic) caustic, alumini (sic) and bauxite materials" onto their respective properties.

The personal justiciable interest standard is part of the definition of "affected person," and the burden is on hearing requestors to demonstrate that they are affected persons. To have a personal justiciable interest, the hearing requestors also must demonstrate that their interest is not common to the members of the general public, that a reasonable relationship exists between the interests claimed and the activity regulated, the likely impact of the regulated activity on their health and safety, and the likely impact of the regulated activity on use of the impacted natural resource. There is no information in any of the three letters that addresses these personal justiciable interest factors.

Attachment A is a map that identifies the Sherwin Alumina reclamation facilities and the properties identified in the three letters, and the approximate distances between the reclamation facilities and each of the three identified properties.⁶ Ms. Ramos provided only a general description (Highway 1069, Jewel Fulton Ship Channel) for the Channel Investments property, so that location had to be approximated on the Attachment. The Channel Investments property is the closest to Sherwin Alumina, but is approximately 3.2 miles from the facilities. All three properties are generally southwest to southeast of Sherwin Alumina; therefore, emissions from Sherwin Alumina will be directed away from the properties the vast majority of the time as the prevailing winds come from the southern to eastern quadrant. Attachment B is wind direction and velocity information prepared by Sherwin Alumina, based upon 2010 monitored data taken at their plant, that confirms that the prevailing winds blow away from the three properties at issue. None of the hearing requests even assert, let alone demonstrate, that they would be “adversely affected” or impacted in a manner not common to the members of the general public, or that their health, safety or use of property would be adversely affected.

To the extent that such assertions could somehow be inferred, all three Requestors still fail to demonstrate a justiciable interest because they provide no basis for an assertion that they would be adversely affected. Moreover, the application and the executive director’s review amply demonstrate that there will be no adverse effects to the hearing requestors or anyone else, and ample reason to conclude that any impacts on them generally are the same impacts that would be experienced by the general public. Additionally, the actual downwind fence line

⁶ The four numbered points labeled “TEOM” on the map are the locations where particulate monitoring occurred as described in Section II.B.2 on page four of this response.

monitoring of emissions from Sherwin Alumina demonstrates that the impacts will not adversely affect human health and welfare.

b. There are no Material or Relevant Issues Raised in the Hearing Requests

All three hearing requests also fail to comply with the TCEQ requirement to list relevant and material disputed issues of fact, which were raised during the public comment period, that are the basis of the hearing request. The hearing requestors do not identify any factual disputes they have with the application; they merely state, without providing any basis for their belief, that certain materials are released from Sherwin Alumina onto their property. They do not identify how those concerns are relevant or material. They do not assert that the release of such materials violates any TCEQ requirements. They do not provide any information to counter the executive director and Sherwin Alumina conclusions that the emissions proposed in the renewal application would be in full compliance with the requirements for issuance of the permit.

c. The Disputed Issues If a Hearing Is Called

The hearing requestors have not identified or even alleged that Sherwin Alumina has failed to demonstrate that all of the standards for permit renewal issuance will be met. They have not disputed that the proposed control technology meets TCEQ requirements, that the draft permit accurately represents the emissions that would come from the plant, and that those emissions would comply with all applicable rules and regulations. Accordingly, none of those issues are appropriate for referral for a contested case hearing. Although Sherwin Alumina disagrees that a contested case hearing should be granted, should TCEQ refer the application for hearing, the only possible relevant and material factual issue suggested by the three requests would be whether the projected emissions of air contaminants contained in the application would be injurious to or adversely affect human health or welfare, animal life, vegetation or property or

interfere with the normal use and enjoyment of animal life, vegetation or property at the properties identified in the letters.

d. Duration of Hearing

Given that any possible relevant and material issue of fact raised in the hearing requests is limited in scope, Sherwin Alumina believes that the duration of the hearing should be no more than four months from the date the request for hearing is sent to the State Office of Administrative Hearings (“SOAH”).

IV. CONCLUSION

This renewal application, if issued, will not increase allowable emissions or result in the emission of a new air contaminant. Consequently, Section 382.056(g) requires that the hearing requests be denied and the permit renewal should be issued.

Moreover, Section 55.209(e) of 30 TAC identifies the elements that should be addressed in a response to a hearing request, and, for the reasons set forth in this response, that there are no valid hearing requests in this matter. Assuming, however, for the sake of argument, that there are valid hearing requests, the hearing requests should be denied. In summary and responsive to the subsections of TCEQ Rule 55.209(e) that set forth the requirements for responses to hearing requests:

- (1) None of the hearing requestors are affected persons;
- (2) There has been no showing that Ms. Breaux and Ms. Ramos have the capacity to represent The Berry Company or Channel Investments LLC;
- (3) The hearing requests fail to identify any disputed issues. Sherwin Alumina’s application and monitoring results clearly demonstrate that emissions of all air contaminants would be in full compliance with all requirements of the Texas Clean Air Act, including the

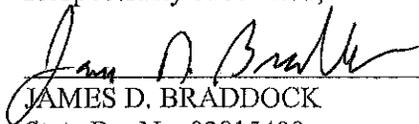
intent of that Act, and the applicable requirements of the TCEQ. The Requestors did not dispute and provided no facts or basis for disputing the conclusions of both Sherwin Alumina and the executive director regarding the standards for permit renewal issuance; therefore, there are no disputed issues;

(4) There have been no comments withdrawn by the commenter in writing;

(5) To the extent that the conclusory statements in the hearing requests could constitute an issue, the only issue that is relevant and material is whether the air contaminants set forth in the application and draft permit would adversely affect the properties identified in the hearing requests.

(6) If the hearing requests are determined to identify an issue, it is an extremely limited one. They have not disputed either the projected types or amounts of air contaminants that would be emitted from the plant. Therefore, the only issue would be whether the projected emissions of air contaminants, as contained in the application and in the executive director's preliminary decision, would adversely affect the health or welfare of people on the subject property. Accordingly, although a contested case hearing is not warranted, should a hearing be called, the duration should be no longer than four months from the date of referral to the State Office of Administrative Hearings.

Respectfully submitted,



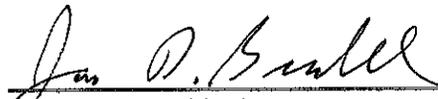
JAMES D. BRADDOCK
State Bar No. 02815400
HAYNES AND BOONE, LLP
600 Congress Avenue, Suite 1300
Austin, Texas 78701
Telephone: (512) 867-8462
Telecopier: (512) 867-8692

JEFF CIVINS
State Bar No. 04256700
600 Congress Avenue, Suite 1300
Austin, Texas 78701
Telephone: (512) 867-8477
Telecopier: (512) 867-8691

**ATTORNEYS FOR APPLICANT SHERWIN ALUMINA,
LP**

CERTIFICATE OF SERVICE

By my signature below, I certify that a copy of this response was served on the following individuals by the method indicated below, on February 13, 2012


James D. Braddock

FOR THE APPLICANT

Sandra J. Bailey, Environmental Manager
Austin Mooney, Technology Director
Sherwin Alumina Company, LLC
P.O. Box 9911
Corpus Christi, TX 78469-9911
Tel.: (361) 777-2204
Fax: (361) 777-2219

Austin, TX 78711-3087
Tel.: (512) 239-1495;
Fax: (512) 239-1300

FOR THE EXECUTIVE DIRECTOR
VIA HAND DELIVERY

Betsy Peticolas, Staff Attorney
Texas Commission on Environmental
Quality
Environmental Law Division, MC-173
P.O. Box 13087
Austin, TX 78711-3087
Tel.: (512) 239-0600
Fax: (512) 239-0606

Brian Christian, Director
Texas Commission on Environmental
Quality
Small Business and Environmental
Assistance Division
Public Education Program, MC-108
P.O. Box 13087
Austin, TX 78711-3087
Tel.: (512) 239-4000
Fax: (512) 239-5678

Bonnie Evridge, Technical Staff
Texas Commission on Environmental
Quality
Air Permits Division, MC-163
P.O. Box 13087
Austin, TX 78711-3087
Tel.: (512) 239-5222
Fax: (512) 239-1300

FOR PUBLIC INTEREST COUNSEL
VIA HAND DELIVERY

Mr. Blas J. Coy, Jr., Attorney
Texas Commission on Environmental
Quality
P.O. Box 13087
Austin, TX 78711-3087
Tel.: (512) 239-6363
Fax: (512) 239-6377

Beecher Cameron, Technical Staff
Texas Commission on Environmental
Quality
Air Permits Division, MC-163
P.O. Box 13087

FOR ALTERNATIVE DISPUTE
RESOLUTION
VIA HAND DELIVERY

Mr. Kyle Lucas
Texas Commission on Environmental
Quality
Alternative Dispute Resolution, MC-222
P.O. Box 13087
Austin, TX 78711-3087
Tel.: (512) 239-4010

Fax: (512) 239-4015

FOR THE CHIEF CLERK
(Original and seven copies)

VIA HAND DELIVERY

Ms. Bridget C. Bohac
Texas Commission on Environmental
Quality
Office of the Chief Clerk, MC-105
12100 Park 35 Circle, Bldg. F, Room 1101
Austin, TX 78753
Tel.: (512) 239-3300
Fax: (512) 239-3311

REQUESTORS

VIA U.S. CERTIFIED MAIL

Kenneth Berry
3746 Castle River Dr.
Corpus Christi, TX 78410-3614

Debbie Breaux
2802 N. Shoreline Blvd.
Corpus Christi, TX 78402-1006

Rachel Ramos
3801 Castle Knoll Dr.
Corpus Christi, TX 78410-3635

INTERESTED PERSON(S)

Brian Burke
7709 Armstrong Drive
Corpus Christi, TX 78413-6213

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ATTACHMENT A



Data SIO, NOAA, U.S. Navy, NGA, GEBCO
Image © 2012 GeoEye
© 2012 Google
Texas OptimumAery Program
14-R 6672589.45 m E 30033378.78 m N elev -10 ft

Google earth

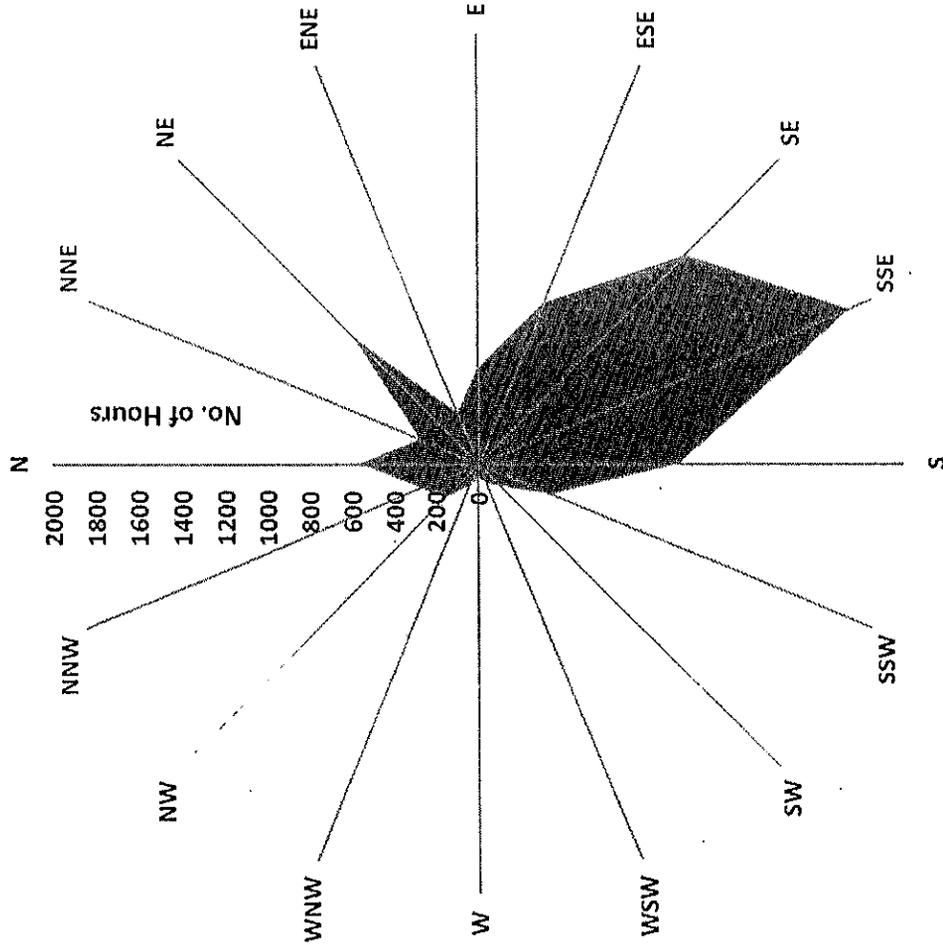
Eye alt: 7.57 mi

ATTACHMENT B



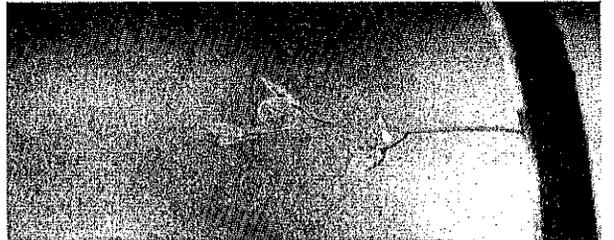
SHERWIN ALUMINA COMPANY

Wind Direction – 2010



- 3% of time from NNW

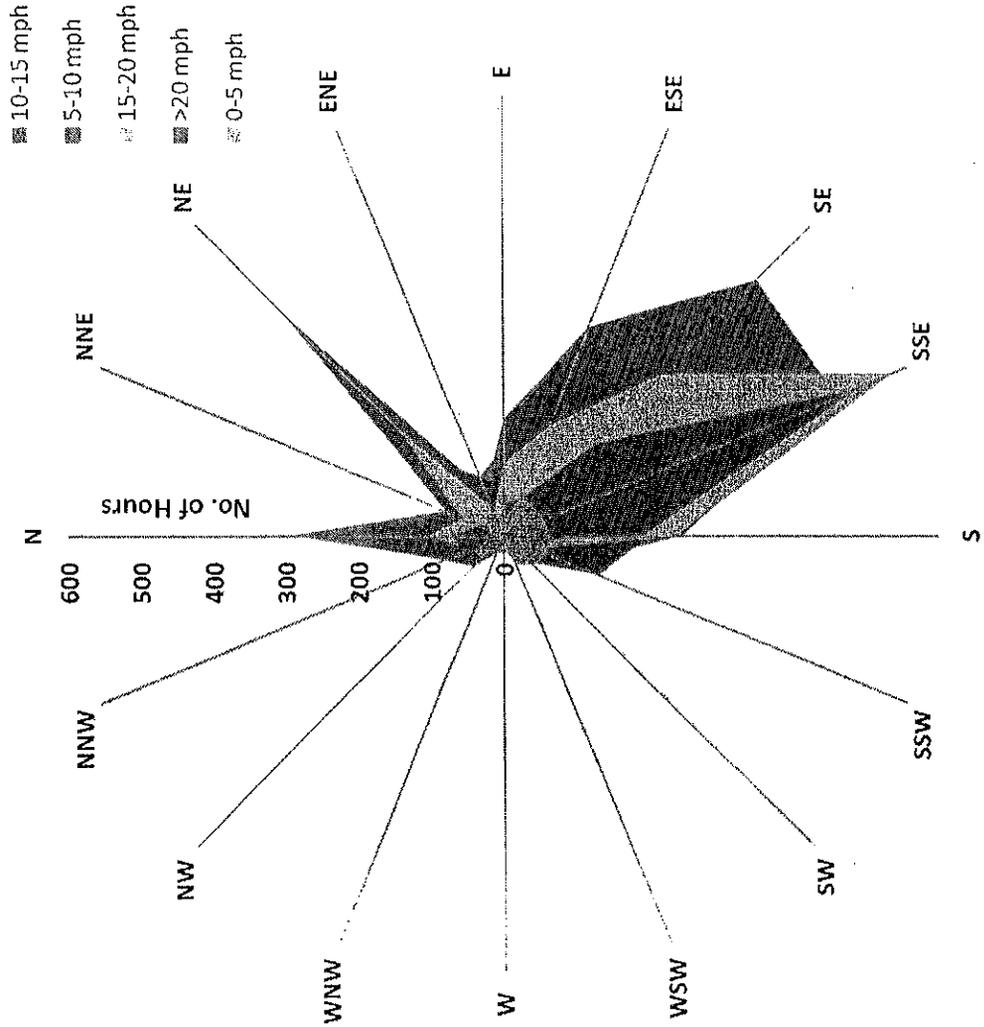
- 22% from N, NNE, NE, and ENE
- 63% from E, ESE, SE, SSE, and S
- 7% from SSW, SW, and WSW
- 8% from W, WNW, NW, and NNW



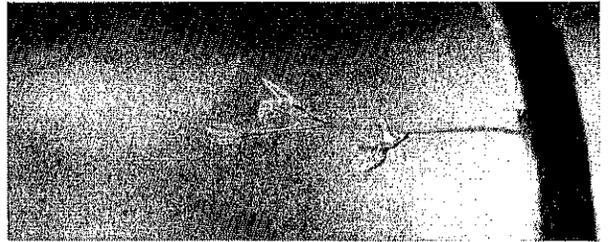


SHERWIN ALUMINA COMPANY

Wind Direction & Velocity – 2010



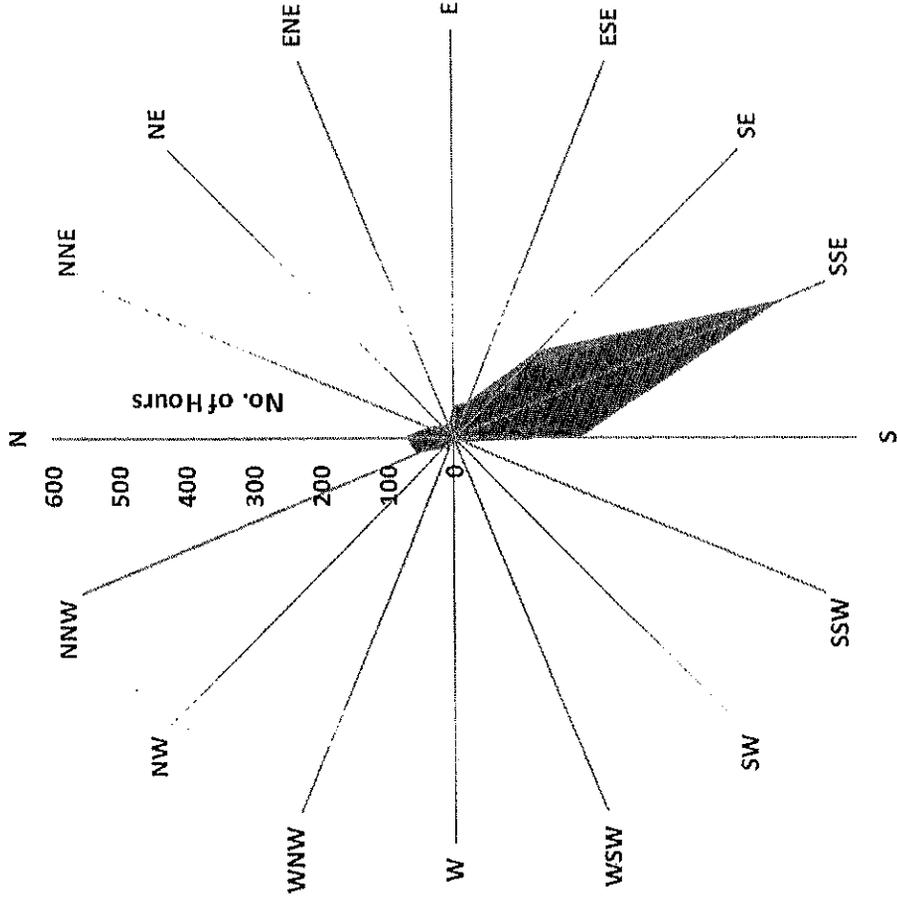
- 15 % of time wind >20 mph
- 0.7 % of time wind >20 mph and from NNW
- 33% at 10-15 miles per hour (mph)
- 22% at 15-20 mph
- 22% at 5-10 mph
- 15 % at >20 mph
- 8% at 0-5 mph



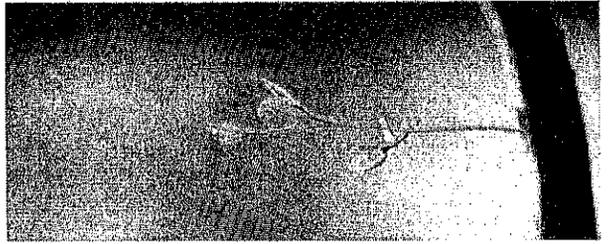


SHERWIN ALUMINA COMPANY

Wind Velocity >20 mph - 2010



- 0.7% from NNW



- Highest number of hours with wind >20 mph was from the SSE
- 12% from ESE, SE, SSE, and S
- 0.3% from NW