

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

February 1, 2012

TO: Persons on the Attached Mailing List

RE: Docket No. 2011-1215-AIR

Sherwin Alumina, L.P.

Request(s) filed on Permit No. 46868, Account No. SD0037N

The above-referenced application and all timely filed hearing requests/requests for reconsideration on the above-referenced application will be considered by the commissioners of the Texas Commission on Environmental Quality (TCEQ) during the public meeting on **March 7, 2012**. The meeting will begin at 9:30 a.m. in Room 201S of Building E, at the commission's offices located at 12100 Park 35 Circle in Austin, Texas.

In accordance with commission rules, copies of the timely hearing requests/requests for reconsideration have been forwarded to the applicant, the Executive Director of the TCEQ, and the Public Interest Counsel of the TCEQ. Each of these persons is entitled to file a formal written response to the hearing requests/requests for reconsideration on or before 5:00 p.m. on **February 13, 2012**. Persons who have filed timely hearing requests/requests for reconsideration may file a formal written reply to these responses on or before 5:00 p.m. on **February 27, 2012**.

All responses and replies must be filed with the Chief Clerk of the TCEQ. Responses and replies may be filed with the Chief Clerk electronically at <http://www10.tceq.state.tx.us/epic/efilings/> or by filing an original and 7 copies with the Chief Clerk of the TCEQ. The mailing address of the Chief Clerk is: Office of Chief Clerk, ATTN: Agenda Docket Clerk, Mail Code 105, TCEQ, P. O. Box 13087, Austin, Texas 78711-3087 [Fax number (512) 239-3311]. On the same day any response is transmitted to the Chief Clerk, a copy must also be sent to the Executive Director, the Public Interest Counsel, the Applicant and the requesters at their addresses listed on the attached mailing list. On the same day any reply is transmitted to the Chief Clerk, a copy must also be sent to the Executive Director, the Public Interest Counsel, and other requesters and the applicant at their addresses listed on the attached mailing list.

The procedures for evaluating hearing requests/requests for reconsideration are located in 30 Texas Administrative Code (TAC) Chapter 55, Subchapter F (§§55.200-211) of the commission's rules. The procedures for filing and serving responses and replies are located in 30 TAC Chapters 1 (§§1.10-11) and 55 (§55.209) of the commission's rules.

The hardcopy filing requirement is waived by the General Counsel pursuant to 30 TAC §1.10(h). Copies of these rules may be obtained by calling the Public Education Program toll free at 1-800-687-4040.

The commissioners will not take oral argument or additional comment on this matter at the public meeting. Therefore, it is important to address the sufficiency of the requests in timely filed written responses and requesters' replies. At the public meeting, the commissioners may ask questions of the applicant, requesters, or TCEQ staff. The commissioners will make a decision on the request(s) during the meeting and will base that decision on the timely written requests, public comments, any written responses and replies, any responses to questions during the meeting, and applicable statutes and rules. Copies of all timely public comments and requests have been forwarded to the Office of Alternative Dispute Resolution to determine if informal, voluntary mediation might help resolve any dispute.

The attachment to this letter is intended to help you better understand how the TCEQ processes and evaluates hearing requests and requests for reconsideration. To obtain additional information, or to ask questions about anything in this letter, please call the Public Education Program toll free at 1-800-687-4040.

Sincerely,

A handwritten signature in black ink that reads "Bridget C. Bohac". The signature is written in a cursive, flowing style.

Bridget C. Bohac
Chief Clerk

Enclosures: Copies of the Executive Director's Response to Comments and protestant correspondence to Applicant, Executive Director, Office of Public Interest Counsel, and Alternative Dispute Resolution.

ATTACHMENT

Procedures Concerning Requests for Reconsideration and Requests for Contested Case Hearing

The purpose of this document is to describe commission procedures for evaluating requests for reconsideration and requests for contested case hearing. This document is not intended to be a comprehensive guide to public participation at the TCEQ.

The three commissioners determine the validity of requests for reconsideration and requests for contested case hearing and vote to grant or deny the requests during a public meeting. These public meetings are usually held every other Wednesday in Austin. Prior to the meeting, the following occurs:

- (1) the written requests are distributed to the executive director, the public interest counsel, and the applicant. These persons may file a response at least 23 days before the meeting;
- (2) the requester may then file a reply to the responses at least 9 days before the meeting. This is the requester's opportunity to address any deficiencies in the request that have been identified by TCEQ staff or the applicant. The requester must submit any information he or she wishes the commissioners to consider (ex: maps or diagrams showing requester's location relative to the applicant's proposed activities) by this deadline; and
- (3) the commissioners read the requests, the responses to requests, and the replies, before the public meeting. Then, during the public meeting, the commissioners vote to grant or deny the requests.

Requests for Reconsideration

A request for reconsideration must expressly state that the person is requesting that the commission reconsider the executive director's decision and state the reasons why the commission should reconsider the executive director's decision. The commission will consider a request for reconsideration at a scheduled public meeting and grant or deny the request.

Requests for Contested Case Hearing

A contested case hearing is an evidentiary proceeding, similar to a hearing in civil court. The law allows for holding a contested case hearing on certain types of applications.

A valid request for a contested case hearing must:

- (1) demonstrate that the requester is an "affected person" with a "personal justiciable interest" related to a legal right, duty, privilege, power or economic interest which would be affected by the application in a manner not common to the general public;

- (2) if the request is made by a group or association, identify one or more members who have standing to request a hearing, and the interests the group or association seeks to protect;
- (3) expressly request a contested case hearing;
- (4) raise disputed issues of fact that are relevant and material to the commission's decision on the application which were raised during the comment period and not withdrawn prior to the filing of the Executive Director's Response to Comment; and
- (5) include any other information as specified in public notices.

The commission is authorized to protect human health and safety, and natural resources. The commission cannot address other matters outside the commission's authority, such as the effect of the existence of a proposed facility on nearby property values.

When the commissioners deny hearing requests, they often proceed to vote on approval or denial of the application. Alternatively, they may remand the application to the executive director for final action. If a hearing request is granted and the application is referred to the State Office of Administrative Hearings (SOAH), the commissioners will specify a list of issues which will be the subject of the hearing and an expected date for the SOAH judge's proposal for decision. The SOAH judge will conduct the hearing and submit a proposal to the commission to approve or deny the application.

The Alternative Dispute Resolution Office may contact requesters to determine their interest in informal discussions with the permit applicant and a mediator.

By necessity this document gives a very general description of commission procedures. If you have any questions, please call the Public Education Program toll free at 1-800-687-4040.

MAILING LIST
SHERWIN ALUMINA, L.P.
DOCKET NO. 2011-1215-AIR; PERMIT NO. 46868, ACCOUNT NO. SD0037N

FOR THE APPLICANT:

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INTERESTED PERSON(S)

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TCEQ AIR QUALITY PERMIT NUMBER 46868

APPLICATION BY	§	BEFORE THE
	§	
Sherwin Alumina Company, LLC	§	TEXAS COMMISSION ON
Alumina Facility	§	
Gregory, San Patricio County	§	ENVIRONMENTAL QUALITY

EXECUTIVE DIRECTOR'S RESPONSE TO PUBLIC COMMENT

The Executive Director of the Texas Commission on Environmental Quality (the commission or TCEQ) files this Response to Public Comment (Response) on the New Source Review Authorization application and Executive Director's preliminary decision.

As required by Title 30 Texas Administrative Code (TAC) § 55.156, before an application is approved, the Executive Director prepares a response to all timely, relevant and material, or significant comments. The Office of Chief Clerk timely received comment letters from the following persons: Mr. Brian Burke, Ms. Rachel Ramos, Ms. Debbie Breaux, Ms. Brenda Berry, and Mr. Kenneth Berry. This Response addresses all timely public comments received, whether or not withdrawn. If you need more information about this permit application or the permitting process please call the TCEQ Office of Public Assistance at 1-800-687-4040. General information about the TCEQ can be found at our website at www.tceq.texas.gov.

BACKGROUND

Description of Facility

Sherwin Alumina Company, LLC has applied to the TCEQ for a New Source Review Authorization under Texas Clean Air Act (TCAA) § 382.0518. This will authorize the continued operation of an existing facility that may emit air contaminants.

This permit will authorize the applicant to continue operation of the existing red scale handling and stockpiles at their alumina manufacturing facility. The facility is located at 4633 Highway 361 E, Gregory, San Patricio County. Contaminants authorized under this permit include particulate matter and particulate matter less than 10 microns in diameter (PM₁₀).

Procedural Background

To continue operating an existing permitted facility that may emit air contaminants, the person planning the continued operation must obtain a permit renewal from the commission. This permit application is for the renewal of Air Quality Permit Number 46868.

The permit application was received on December 6, 2010, and declared administratively complete on December 13, 2010. The Notice of Receipt and Intent to Obtain an Air Quality Permit (public notice) for this permit application was published on January 7, 2011, in the *Corpus Christi Caller Times*. The Notice of Application and Preliminary Decision for Renewal of an Air Quality Permit was published on April 2, 2011, also in the *Corpus Christi Caller Times*.

COMMENTS AND RESPONSES

COMMENT 1:

The commenter asked what criteria an aluminum plant must adhere to in order to meet the National Ambient Air Quality Standards (NAAQS).

RESPONSE 1:

The NAAQS are created by the U.S. Environmental Protection Agency (EPA) and as defined in the federal regulations (40 C.F.R. § 50.2), include both primary and secondary standards. The primary standards are those which the Administrator of the U.S. EPA determines are necessary, with an adequate margin of safety, to protect the public health, including sensitive members of the population such as children, the elderly, and individuals with existing lung or cardiovascular conditions. Secondary NAAQS are those which the Administrator determines are necessary to protect the public welfare and the environment, including animals, crops, vegetation, and buildings, from any known or anticipated adverse effects associated with the presence of an air contaminant in the ambient air. The standards are set for criteria pollutants: ozone, lead, carbon monoxide, sulfur dioxide, nitrogen dioxide, and respirable particulate matter (PM). "Criteria pollutants" are those pollutants for which a NAAQS has been established.

PM consists of solid particles and liquid droplets found in the air. Particles less than 10 micrometers (μm) in diameter (PM_{10}) are referred to as "coarse" particles and particles less than 2.5 μm in diameter are referred to as "fine" particles ($\text{PM}_{2.5}$). Sources of coarse particles include wind-blown dust, dust generated by vehicles traveling on unpaved roads, and material handling. Fine particles are usually produced via industrial and residential combustion processes and vehicle exhaust. This specific permit authorizes emissions of PM and PM_{10} .

The primary and secondary NAAQS for PM_{10} are 150 micrograms per cubic meter ($\mu\text{g}/\text{m}^3$) based on a 24-hour time period. One microgram is 1/1,000,000 of a gram, or 2.2/1,000,000,000 of a pound (approximately the weight of a dust mite) of air contaminant per cubic meter of ambient air. The air volume of a cubic meter is

approximately the size of a washing machine. Predicted air concentrations occurring below the NAAQS of $150 \mu\text{g}/\text{m}^3$ are not expected to exacerbate existing conditions or cause adverse health effects. Upon initial issuance of the permit, a health effects review was conducted and the permit was determined to be protective of human health and the environment. The applicant has reduced their allowable emission rates from the facility since the submission of the renewal application. Because this permit renewal will not result in an increase in allowable emissions from the facility, predicted emissions are not expected to exceed the NAAQS. Additionally, Sherwin Alumina has conducted on-site monitoring for PM since 2007 and the data from these monitors have demonstrated emissions from the facility are in compliance with the NAAQS.

COMMENT 2:

The commenter asked whether or not this type of facility has emissions due to start up, shut down, maintenance, and mishaps regulated under the TCEQ permits or if they have a flex permit.

RESPONSE 2:

Maintenance, start up, and shut down (MSS) emissions are not authorized under this permit. Sherwin Alumina does, however, have MSS emissions which are authorized under Permit Nos. 19732 and 48455. Sherwin Alumina does not have any authorizations under a flexible permit.

COMMENT 3:

The commenter asked the difference between Permit No. 45481 and 46868.

RESPONSE 3:

Permit No. 45481 authorizes the Fusion Grade Alumina (FGA) Silo Baghouse and FGA Loading Baghouse at the plant site. The total emissions authorized by Permit No. 45481 are 1.14 tons of PM_{10} annually.

Permit No. 46868 authorizes the Scale Screen and Scale Stockpiles at the plant site. The total emissions authorized by Permit No. 46868 are 20.34 tons of PM and 10.18 tons of PM_{10} annually.

COMMENT 4:

The commenter asked what types of chemicals or PM is emitted on a yearly basis.

RESPONSE 4:

Under this permit, Sherwin Alumina is authorized to emit a total of 20.34 tons of PM and 10.18 tons of PM_{10} annually from their Scale Screen and Scale Stockpiles.

COMMENT 5:

The commenter asked what types of monitoring is available on site or in the area to ensure that the plant emission rates do not exceed the allowable amounts.

RESPONSE 5:

As stated in Response 1, the Applicant has air quality monitors on-site which have demonstrated compliance with the NAAQS.

COMMENT 6:

The commenter asked why the complete application, draft permit, and ED preliminary decision are not available online or via email.

RESPONSE 6:

The TCEQ rules regarding air quality permits require applicants to make their applications available for viewing in a public place within the county where the proposed facility would be located during the public comment period. The application was available for viewing at the TCEQ Corpus Christi regional office. Additionally, Sherwin Alumina has represented that the application was available for viewing at the Portland Public Library, 2400 Memorial Parkway, Portland, San Patricio County. The TCEQ does not have rules which require applications to be available online or via email.

As they become available, the following documents are accessible through the commission's web site at www.tceq.texas.gov/goto/cid; the public notice of the application, the executive director's response to comments, and the final decision on this application. Once you have access to the CID using the above link, enter the permit number for this application which is 46868.

COMMENT 7:

Commenters state that during the past 24 months Sherwin Alumina has released caustic, alumina and bauxite material into the air, water, and onto their respective properties and persons.

RESPONSE 7:

The permit application must meet standards outlined in the Texas Clean Air Act, and applicable state and federal rules and regulations. This includes compliance with TCEQ rule 30 TAC § 101.4, which prohibits nuisance conditions. Specifically the rule states, "[n]o person shall discharge from any source whatsoever one or more air contaminants or combinations thereof, in such concentration and of such duration as are or may tend to be injurious to or to adversely affect human health or welfare, animal life, vegetation, or property, or as to interfere with the normal use and enjoyment of animal life, vegetation, or property." As long as the facility is operated in compliance with the terms of the permit, nuisance conditions are not expected.

Individuals are encouraged to report any concerns about nuisance issues or suspected noncompliance with terms of any permit or other environmental regulation by contacting the Corpus Christi TCEQ Regional Office at 361-825-3100, or by calling the 24-hour toll-free Environmental Complaints Hotline at 1-888-777-3186. If a facility is found to be out of compliance with the terms and conditions of the permit, it will be subject to possible enforcement action. Citizen-collected evidence may be used in such an action. See 30 TAC § 70.4, Enforcement Action Using Information Provided by Private Individual, for details on gathering and reporting such evidence. Under the

citizen-collected evidence program, individuals can provide information on possible violations of environmental law and the information can be used by the TCEQ to pursue enforcement. In this program, citizens can become involved and may eventually testify at a hearing or trial concerning the violation. For additional information, see the TCEQ publication, "Do You Want to Report an Environmental Problem? Do You Have Information or Evidence?" This booklet is available in English and Spanish from the TCEQ Publications office at 512-239-0028, and may be downloaded from the agency website at www.tceq.texas.gov (under Publications, search for document no. 278).

COMMENT 8:

~~Commenters indicate that they oppose or object to the renewal of permit No. 46868.~~

RESPONSE 8:

The TCEQ appreciates the comments and interest from the public in environmental matters before the agency. TCEQ staff evaluates air quality permit applications based on whether the application meets the standards outlined in the TCAA and applicable state and federal rules and regulations. Although the Executive Director recognizes the opposition of the commenters, public opposition alone is not legally sufficient to justify denial of a permit application.

CHANGES MADE IN RESPONSE TO COMMENT

No changes to the draft permit have been made in response to public comment.

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, Division Director
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Representing the
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