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Toby Baker, *Commissioner*  
Zak Covar, *Commissioner*  
Richard A. Hyde, P.E., *Executive Director*



Blas J. Coy, Jr., *Public Interest Counsel*

## TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

*Protecting Texas by Reducing and Preventing Pollution*

March 17, 2014

Bridget Bohac, Chief Clerk  
Texas Commission on Environmental Quality  
Office of the Chief Clerk (MC-105)  
P.O. Box 13087  
Austin, Texas 78711-3087

RE: **CITGO REFINING AND CHEMICALS COMPANY, LP**  
**TCEQ DOCKET NO. 2013-2078-AIR**

Dear Ms. Bohac:

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

Sincerely,

A handwritten signature in cursive script that reads "Eli Martinez".

Eli Martinez, Attorney  
Assistant Public Interest Counsel

cc: Mailing List

Enclosure

**TCEQ DOCKET NO. 2013-2078-AIR**

**IN THE MATTER OF  
THE APPLICATION OF  
CITGO REFINING AND  
CHEMICALS  
COMPANY, LP FOR AIR  
PERMIT NO. 80693**

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**BEFORE THE TEXAS  
COMMISSION ON  
ENVIRONMENTAL  
QUALITY**

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

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

COMES NOW, the Office of Public Interest Counsel (OPIC) of the Texas Commission on Environmental Quality (the Commission or TCEQ) with a Response to Hearing Request in the above-referenced matter.

**I. INTRODUCTION**

CITGO Refining and Chemicals Company L.P. (CITGO or Applicant) has applied to the TCEQ for a New Source Review Authorization under Texas Clean Air Act (TCAA) §382.0518.

This permit will authorize routine and maintenance, startup, and shutdown (MSS) emissions from 117 existing storage tanks associated with the CITGO Corpus Christi Refinery East Plant. These tanks are currently authorized under 11 different permits (Permit Nos. 2695A, 2697A, 3119A, 3857A, 5418A, 6722A, 8653A, 9604A and PSD-TX-653, 20156, 46640, and 46641); PBR Registration Nos. 76880, 77050, 77680, 78195, and 78851; and several unregistered PBRs. The facility is located at 1801 Nueces Bay Blvd, Corpus Christi, Nueces County. Contaminants authorized under this permit

include organic compounds (VOC), hydrogen sulfide (H<sub>2</sub>S), ammonia (NH<sub>3</sub>), nitrogen oxides (NO<sub>x</sub>), carbon monoxide (CO), and sulfur dioxide (SO<sub>2</sub>).

The TCEQ received this application on December 22, 2006. On February 12, 2007, the Executive Director (ED) declared the application administratively complete. The Notice of Receipt and Intent to Obtain an Air Quality Permit (NORI) for this amendment application was published in the *Corpus Christi Caller Times* on March 12, 20. The initial notice was for a flexible permit application with a concurrent Federal Prevention of Significant Deterioration (PSD) application. Subsequently, the applicant decided to pursue the project as a conventional Subchapter B construction permit instead of a flexible permit. Also, during the technical review it was determined that a PSD review was not required. On July 30, 2009, an amended Notice of Receipt and Intent to Obtain an Air Quality Permit (public notice) was published in the *Corpus Christi Caller Times*. The Notice of Application and Preliminary Decision for an Air Quality Permit was published on May 9, 2013, in the *Corpus Christi Caller Times*. The comment period ended June 10, 2013. The ED prepared a response to comments, which was mailed on September 26, 2013. The period to request a contested case hearing ended on October 28, 2013.

TCEQ received requests for a contested case hearing from Enrique Valdivia on behalf of Citizens for Environmental Justice, Refinery Reform Campaign and South Texas Colonias Initiative (collectively, CEJ or Requestor) on April 11, 2007 and May 14, 2007. OPIC recommends that the Commission deny the hearing request of CEJ because an affected member of the organization was not identified. If CEJ files a timely reply identifying an affected party and their relationship to the permitted activity, or if the Commission otherwise finds that CEJ is an affected person under the Texas

Administrative Code, OPIC recommends referring the matter to the State Office of Administrative Hearings (SOAH) on the issues outlined below.

## II. APPLICABLE LAW

This application was declared administratively complete after September 1, 1999, and is subject to the requirements of Texas Water Code (TWC) § 5.556 added by Acts 1999, 76<sup>th</sup> Leg., Ch. 1350 (commonly known as "House Bill 801"). Under the applicable statutory and regulatory requirements, a hearing request must 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. 30 TAC § 55.201(d). Under 30 TAC § 55.203(a), 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." This justiciable interest does not include an interest common to the general public. 30 TAC § 55.203(c) also provides relevant factors that will be considered in determining whether a person is affected. These factors include:

- (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.

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. 30 TAC § 55.211(c).

Accordingly, pursuant to 30 TAC § 55.209(e), responses to hearing requests must specifically address:

- (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.

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.<sup>1</sup>

The executive director, the public interest counsel, or the applicant may request that a group or association provide an explanation of how the group or association meets the requirements of 30 TAC § 55.205(a).

### **III. DISCUSSION**

#### **A. Determination of Affected Person Status**

Enrique Valdivia, counsel for Texas RioGrande Legal Aid, submitted timely hearing requests on behalf of Citizens for Environmental Justice, Refinery Reform Campaign and South Texas Colonias Initiative. The requests state that CEJ is a non-profit community organization which works to achieve environmental justice in Corpus Christi; South Texas Colonias Initiative is a non-profit organization which works to

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<sup>1</sup> 30 TAC § 55.205(a).

improve living conditions for residents of the colonias; and the Refinery Reform Campaign is a national campaign that seeks to clean up refineries. Although the stated purposes of CEJ are germane to the interests they seek to protect in these hearing requests,<sup>2</sup> the requests do not clearly identify a member that would have standing to request a hearing in their own right as required by 30 TAC § 55.205(a)(1). To the extent that identifying the directors of the requesting organizations was intended to fulfill this requirement, there is no information that distinguishes their interests from those of the general public or otherwise supports the finding that a reasonable relationship exists between the interests stated and the activity regulated.<sup>3</sup> For these reasons, OPIC finds that CEJ is not an affected person and their request should be denied. If an affected person is identified in a reply by CEJ, OPIC may reconsider its conclusion.

CEJ raises disputed material and relevant issues of fact relating to the pending application. If the Commission should find that CEJ is an affected person, OPIC recommends that the matter be referred to a contested case hearing at the State Office of Administrative Hearings (SOAH) on the issues identified below.

## **B. Issues Raised in the Hearing Request**

The following issues have been raised in the hearing requests:

1. The proposed activities would create negative health consequences for people of color and low-income families who live in fence line communities near the facility.

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<sup>2</sup> 30 TAC § 55.205(a)(2).

<sup>3</sup> 30 TAC § 55.203(c)(3).

2. The Application and Draft Permit do not demonstrate that annual VOC emission rates were calculated properly.
3. The Application and Draft Permit do not demonstrate that the emissions factors used to calculate emission caps were calculated correctly.
4. BACT for storage tank should not include opening the tanks to the atmosphere during clearing.
5. Applicant's historical operation of operating tanks without proper pollution control devices demonstrates they will continue to negatively impact surrounding communities through their operations.

**D. Issues Raised in the Comment Period**

All of the issues raised in the hearing request were raised in the comment period and have not been withdrawn. 30 TAC §§ 55.201(c) and (d)(4), 55.211(c)(2)(A).

**E. Disputed Issues**

There is no agreement between the hearing requesters and the ED on the issues raised in the hearing requests.

**F. Issues of Fact**

If the Commission considers an issue to be one of fact, rather than one of law or policy, it is appropriate for referral to hearing if it meets all other applicable requirements. 30 TAC § 55.211(c)(2)(A).

All of the issues raised in the hearing requests are issues of fact.

**G. Relevant and Material Issues**

The hearing requests raise issues relevant and material to the Commission's decision under the requirements of 30 TAC §§ 55.201(d)(4) and 55.211(c)(2)(A). In order to refer an issue to SOAH, the Commission must find that the issue is relevant and material to the Commission's decision to issue or deny this permit. *See Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248–251 (1986) (in discussing the standards applicable to reviewing motions for summary judgment the Court stated “[a]s to materiality, the substantive law will identify which facts are material . . . . it is the substantive law's identification of which facts are critical and which facts are irrelevant that governs”). Relevant and material issues are those governed by the substantive law under which this permit is to be issued. *Id.*

TCEQ is responsible for the protection of air quality under the TCAA and accompanying administrative rules. The purpose of the TCAA is “to safeguard the state's air resources from pollution by controlling or abating air pollution and emission of air contaminants, consistent with the protection of public health, general welfare, and physical property, including the esthetic enjoyment of air resources by the public and the maintenance of adequate visibility.” TEX. HEALTH & SAFETY CODE § 382.002. In addition, “[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.” 30 TAC § 101.4. The issues raised with respect to the public health and the proper calculation of emission factors and VOC rates are relevant and material to CITGO's application.

However, the issue of whether tanks should be opened during cleaning is not material and relevant to this proceeding. It is neither technically feasible nor is it safe to clean a tank without ventilation. Likewise, the issue of historical operation of unauthorized tanks is not material and relevant to this proceeding. The Applicant has a compliance history classification of "satisfactory" and will be required to abide by the terms of the permit or be subject to enforcement by the Commission.

#### **H. Issues Recommended for Referral**

If the Commission determines that CEJ is an affected person, OPIC would recommend that the following disputed issues of fact be referred to SOAH for a contested case hearing:

1. Will discharges from the proposed activities adversely affect human health or welfare?
2. Does the Draft Permit properly calculate annual VOC emission rates?
3. Does the Draft Permit utilize protective and accurate emission caps?

#### **I. Maximum Expected Duration of Hearing**

Commission Rule 30 TEX. ADMIN. CODE § 55.115(d) requires that any Commission order referring a case to SOAH specify the maximum expected duration of the hearing by stating a date by which the judge is expected to issue a proposal for decision. The rule further provides that no hearing shall be longer than one year from the first day of the preliminary hearing to the date the proposal for decision is issued. To assist the Commission in stating a date by which the judge is expected to issue a proposal

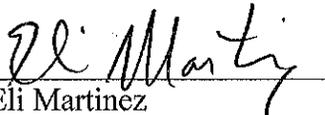
for decision, and as required by 30 TEX. ADMIN. CODE §55.209(d)(7), OPIC estimates that the maximum expected duration of a hearing on this would be nine months from the first date of the preliminary hearing until the proposal for decision is issued.

### III. CONCLUSION

For the reasons discussed above, OPIC recommends that the Commission deny the hearing request of CEJ because they failed to identify a member of the organization with standing to request a hearing in their own right. However, if the Commission should find that CEJ is an affected person, OPIC recommends that the matter be referred to SOAH for a contested case hearing on the issues identified above for a maximum duration of nine months.

Respectfully submitted,

Blas J. Coy, Jr.  
Public Interest Counsel

By:   
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**CERTIFICATE OF SERVICE**

I hereby certify that on March 17, 2014, the original and seven true and correct copies of the Office of the Public Interest Counsel's Response to Hearing Requests were filed with the Chief Clerk of the TCEQ and a copy was served to all persons listed on the attached mailing list via hand delivery, facsimile transmission, Inter-Agency Mail or by deposit in the U.S. Mail.

  
Eli Martinez

**MAILING LIST**  
**CITGO REFINING AND CHEMICALS COMPANY, LP**  
**TCEQ DOCKET NO. 2013-2078-AIR**

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FOR ALTERNATIVE DISPUTE  
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REQUESTER:

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