

**TCEQ AIR QUALITY PERMIT NUMBERS 100114, PSDTX1282, AND N150
TCEQ DOCKET NUMBER 2014-0691-AIR**

APPLICATION BY	§	BEFORE THE
FREERPORT LNG DEVELOPMENT,	§	
L.P.	§	TEXAS COMMISSION ON
LIQUEFACTION PLANT	§	
FREERPORT, BRAZORIA COUNTY	§	ENVIRONMENTAL QUALITY

EXECUTIVE DIRECTOR’S RESPONSE TO HEARING REQUESTS

The Executive Director (ED) of the Texas Commission on Environmental Quality (commission or TCEQ) files this response (Response) to the requests for a contested case hearing submitted by persons listed herein regarding the above-referenced matter. The Texas Clean Air Act (TCAA), Texas Health & Safety Code (THSC) §382.056(n), requires the commission to consider hearing requests in accordance with the procedures provided in Tex. Water Code (TWC) §5.556.1 This statute is implemented through the rules in 30 Texas Administrative Code (TAC) Chapter 55, Subchapter F.

A map showing the location of the site for the proposed plant is included with this response and has been provided to all persons on the attached mailing list. In addition, a current compliance history report, technical review summary, modeling audit, and draft permit prepared by the ED’s staff have been filed as backup material for the commissioners’ agenda. The ED’s RTC, which was mailed by the chief clerk to all persons on the mailing list, is on file with the chief clerk for the commission’s consideration.

I. Application Request and Background Information

Freeport LNG Development, L.P. (Freeport or applicant) has applied to the TCEQ for two New Source Review Authorizations under THSC § 382.0518. These permits will authorize the construction of new facilities that may emit air contaminants. For this project, Freeport LNG submitted applications for a pretreatment facility, permit number 104840, and a liquefaction plant, permit number 100114, at the same time. The TCEQ treated the applications for Permit Numbers 100114 and 104840 as a single application for purposes of air dispersion modeling analysis. The Notices of Application and Preliminary Decision for an Air Quality Permit (NAPDs) were jointly published for the two permits, a public meeting was held for both permits together, and the RTC addressed the concerns of comments submitted for both permit applications. This Response to Hearing Request brief, however, specifically addresses the requests for contested case hearing that were received for the liquefaction facility, draft permit number 100114.

¹ Statutes cited in this response may be viewed online at www.statutes.legis.state.tx.us. Relevant statutes are found primarily in the THSC and the TWC. The rules in the TAC may be viewed online at www.sos.state.tx.us/tac/index.shtml, or follow the “Rules” link on the TCEQ website at www.tceq.texas.gov.

The permit for the proposed liquefaction plant will authorize the applicant to construct a liquefaction plant to produce liquefied natural gas. The liquefaction plant will be located at 1500 Lamar Street, Quintana, Brazoria County, Texas 77541. Contaminants authorized under this permit include nitrogen oxides (NO_x), sulfur dioxide (SO₂), carbon monoxide (CO), sulfuric acid (H₂SO₄), ammonia (NH₃), particulate matter (PM), including PM with diameters of 10 micrometers or less (PM₁₀) and 2.5 micrometers or less (PM_{2.5}), volatile organic compounds (VOCs), and hazardous air pollutants, including, but not limited to, hydrogen sulfide (H₂S). The Applicant is not delinquent on any administrative penalty payments to the TCEQ. The TCEQ Enforcement Database was searched and no enforcement activities were found that are inconsistent with the compliance history.

Before work begins on the construction of a new facility that may emit air contaminants, the person planning the construction must obtain authorization from the commission. This permit application is for initial issuance of Air Quality Permit Numbers 100114, PSDTX1282, and N150.

The application for Air Quality Permit Numbers 100114, PSDTX1282, and N150 was received on December 20, 2011, and declared administratively complete on December 22, 2011. The Notice of Receipt and Intent to Obtain an Air Quality Permit (public notice) for this permit application was published in English on January 16, 2012, in *The Facts*.² The NAPD was published on February 10, 2014, in English in *The Facts*, and in Spanish on February 11, 2014, in *La Voz*.

A public meeting was held on March 4, 2014 in Lake Jackson. The notice of public meeting was mailed to interested parties on February 19, 2014. The public comment period ended on March 13, 2014 for Air Quality Permit Numbers 100114, PSDTX1282, and N150. The ED's RTC was mailed on April 11, 2014 to all interested persons, including those who asked to be placed on the mailing list for this application and those who submitted comments or requests for a contested case hearing. The cover letter attached to the RTC included information about making requests for a contested case hearing or for reconsideration of the ED's decision.³ The letter also explained that hearing requesters should specify any of the ED's responses to comments they dispute and the factual basis of the dispute, in addition to listing any disputed issues of law or policy.

² The Applicant was unable to publish a Spanish language version of the notice for these permits because of a lack of suitable Spanish language newspapers distributed in Brazoria County at the time the permits went to first notice. The Applicant submitted the required affidavit to the commission to verify this lack of a suitable venue for publication of a separate Spanish language notice at the time. The Applicant did, however, publish a Spanish language version of the required notice in the same paper in which it published the English language notice.

³ See TCEQ rules at 30 TAC Ch. 55, subch. F. Procedural rules for public input to the permit process are found primarily in chapters 39, 50, 55, and 80 of Title 30 of the TAC.

The time for requests for reconsideration and hearing requests ended on May 12, 2014. The TCEQ did not receive any requests for reconsideration for this permit application. The TCEQ received timely hearing requests during the public comment period that were not withdrawn from the following persons: Dan Callahan, Kathy Davis, Harold Doty, Christopher Kall, James Kall, Laura Jones, Melanie Oldham, Robin Rio, Diana Stokes, and Anthony Zuma. The TCEQ received timely hearing requests from the organization, Save Our Subdivision (SOS), and the local governmental entity, Commodore Cove Improvement District (CCID).

II. Applicable Law

The commission must assess the timeliness and form of the hearing requests, as discussed in Section I above. The form requirements are set forth in 30 TAC § 55.201(d):

- (d) A hearing request must substantially comply with the following:
- (1) give the name, address, daytime telephone number, and, where possible, fax 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 requester's location and distance relative to the proposed facility or activity that is the subject of the application and how and why the requester believes he or she will be adversely affected by the proposed facility or activity in a manner not common to members of the general public;
 - (3) request a contested case hearing;
 - (4) list all relevant and material disputed issues of fact that were raised during the public comment period and that are the basis of the hearing request. To facilitate the commission's determination of the number and scope of issues to be referred to hearing, the requester should, to the extent possible, specify any of the executive director's responses to comments that the requester disputes and the factual basis of the dispute and list any disputed issues of law or policy; and
 - (5) provide any other information specified in the public notice of application.

The next necessary determination is whether the requests were filed by "affected persons" as defined by TWC § 5.115, and implemented in commission rule 30 TAC § 55.203. Under 30 TAC § 55.203, an affected person is one who has a personal

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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. Local governments with authority under state law over issues raised by the application can receive affected person status under 30 TAC § 55.203(b).

In determining whether a person is affected, 30 TAC § 55.203(c) requires all factors 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 and safety of the person, and on the 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.

In addition to the requirements noted above regarding affected person status, in accordance with 30 TAC § 55.205(a), 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.

If the commission determines a hearing request is timely and fulfills the requirements for proper form, and the hearing requester is an affected person, the commission must apply a three-part test to the issues raised in the matter to determine if any of the issues should be referred to the State Office of Administrative Hearings (SOAH) for a contested case hearing. The three-part test in 30 TAC § 50.115(c) is as follows:

- (1) The issue must involve a disputed question of fact;
- (2) The issue must have been raised during the public comment period;
and
- (3) The issue must be relevant and material to the decision on the application.

The law applicable to the proposed facility may generally be summarized as follows. A person who owns or operates a facility or facilities that will emit air contaminants is required to obtain authorization from the commission prior to the construction and operation of the facility or facilities.⁴ Permit conditions of general applicability must be in rules adopted by the commission.⁵ Those rules are found in 30 TAC Chapter 116. In addition, a person is prohibited from emitting air contaminants or performing any activity that violates the TCAA or any commission rule or order, or that causes or contributes to air pollution.⁶ The relevant rules regarding air emissions are found in 30 TAC Chapters 101 and 111-118. In addition, the commission has the authority to establish and enforce permit conditions consistent with this chapter.⁷ The materials accompanying this response list and reference permit conditions and operational requirements and limitations applicable to this proposed facility.

III. Analysis of Hearing Requests

A. Were the requests for a contested case hearing in this matter timely and in proper form?

The following persons submitted timely hearing requests that were not withdrawn: Dan Callahan, Kathy Davis, Harold Doty, Christopher Kall, James Kall, Laura Jones, Melanie Oldham, Robin Rio, Diana Stokes, and Anthony Zuma. Timely hearing requests were also submitted by Laura Jones, as a representative of the organization, SOS, and Floyd Winkler, serving in a representative capacity as the secretary and treasurer of the CCID. There was an earlier application submitted for the pretreatment plant at a different location. The Applicant later withdrew that application and submitted a new application for the pretreatment plant at a different location. Several of the commenters who submitted comments on the first application also submitted comments on this application with the revised location for the plant. Some of these interested parties did not resubmit comments; however, the original comments are still a part of the record for the proposed liquefaction plant because comments submitted for either of the two facilities were entered into the record for both applications. TCEQ received the submissions by Dan Callahan, Kathy Davis, Robin Rio, Floyd Winkler on behalf of CCID, and Anthony Zuma prior to the relocation of the pretreatment facility and therefore these are not be proper requests at this time.

1. Dan Callahan

Dan Callahan timely submitted a request for a contested case hearing on January 17, 2012 in a comment he made to the agency during the relevant comment

⁴ THSC § 382.0518

⁵ THSC § 382.0513

⁶ THSC § 382.085

⁷ THSC § 382.0513

period. He provided his name and residential address but did not provide a telephone number. He did not indicate the proximity of his residence to the proposed plant. He believes he will be adversely affected by the application because the prevailing winds will spread the emissions directly across the homes of nearby residents and subject residents to unhealthy contamination of sulfur, CO₂, mercury, and other known carcinogens.

Based on the address provided by Mr. Callahan and the plot plan submitted by the Applicant, the ED's staff determined that his residence is more than two miles from the proposed plant location.

He requested a "full public hearing be held in the community and affected residents and Environmental Professionals be allowed to present evidence to prove this facility will cause detrimental health issues to local residents." The ED considers this request to be a request for a contested case hearing. The manner in which Mr. Callahan believes he will be adversely affected by the application is common to members of the general public; therefore, it is not a personal justiciable interest.

Based on the foregoing, the ED finds that Mr. Callahan did not substantially comply with all of the requirements to request a contested case hearing required by 30 TAC § 55.201(d) because he failed to identify a personal justiciable interest.

2. Kathy Davis

Kathy Davis timely submitted a request for a contested case hearing on February 19, 2012 in a comment she made to the agency during the relevant comment period. She provided her name and a residential address in Paducah, Kentucky. In a separate comment dated March 1, 2012, she identified an address in Freeport, Texas, but did not claim that she or any other person lives at that address. She did not indicate the proximity of the Freeport address to the proposed plant location. She expressed concern regarding residential emergency planning, air quality standards, health endangerment to homeowners, contamination to Brazoria National Wildlife Refuge, and destruction of recreational boating, fishing, and hunting areas.

Based on the address provided in the separate comment and the plot plan submitted by the Applicant, the ED's staff determined that her property is more than two miles from the proposed plant location.

She requested a contested case hearing in the first sentence of her comment dated February 19, 2012. However, she failed to identify a residence in the area of the proposed plant location. The manner in which Ms. Davis believes she will be adversely affected by the application is common to members of the general public; therefore, it is not a personal justiciable interest.

Based on the foregoing, the ED finds that Ms. Davis did not substantially comply with all of the requirements to request a contested case hearing required by 30 TAC § 55.201(d) because she failed to identify a personal justiciable interest or how she will be adversely affected by the liquefaction plant application.

3. Harold Doty

Harold Doty timely submitted a request for a contested case hearing on March 4, 2014 in a written comment he submitted to the agency during the public meeting held on March 4, 2014. He provided his name, telephone number, and a residential address. Mr. Doty stated that his house is located less than a half mile from the center point of the proposed liquefaction plant. He believes he will be adversely affected by the application because his residence is downwind of the proposed liquefaction plant during the winter when the prevailing winds are from the north. Therefore, he believes that he will be breathing pollutants or other releases during this time period. Mr. Doty is also concerned about potential safety issues with the plant.

Based on the address provided by Mr. Doty and the plot plan submitted by the Applicant, the ED's staff determined that his residence is within one mile of the proposed plant location.

Mr. Doty requested a contested case hearing in the subject line of his comment. Based on the foregoing, the ED finds that Harold Doty substantially complied with all of the requirements to request a contested case hearing required by 30 TAC § 55.201(d). Therefore, the ED can determine whether it is likely that the requester will be impacted differently than any other member of the general public or if the regulated activity will likely impact his interest, which will be discussed in detail in subsection B below.

4. Laura Jones

Laura Jones timely submitted three requests for a contested case hearing in comments she submitted to the agency during the relevant comment period. She submitted requests on March 12, 2014, March 13, 2014, and March 18, 2014; the requests are identical documents and reference the applications for the Liquefaction Plant and the Pretreatment Facility. She provided her name, telephone number, and a residential address. She stated that she will be adversely affected by the pretreatment facility application in the following ways:

- Her residence is in the "fall out zone" of the facility;
- The emissions will exacerbate her respiratory and auto-immune issues;
- She has a family history of heart disease and heart attacks, and the emissions will increase the likelihood she will develop the same issues;

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- The prevailing winds will carry toxins, impurities, contaminants, and particulates directly to her residence;
- Air quality monitors need to be installed;
- The emissions will adversely affect visitors because the location of the plant will be adjacent to visitors to the area;
- Construction activities will create dust and traffic;
- The emissions, especially PM, will exacerbate the respiratory issues and illnesses of the retired community members;
- The emissions will affect her ability to enjoy wildlife and will adversely impact the wildlife – birds, fish, animals of all kinds, vegetation and water;
- The emissions will threaten the ground water;
- The facility will cause light pollution;
- The facility will cause noise pollution;
- An incident at the facility could potentially prevent rescue or escape of residents because there is only one way into and out of the subdivisions; and
- Some residents will not be able to move or sell their houses because they are on limited incomes and are below the poverty line.

Ms. Jones requested a contested case hearing in the first sentence of her comment.

Based on the address provided by Ms. Jones and the plot plan submitted by the Applicant, the ED's staff determined that her residence is more than two miles from the proposed plant location. In addition, the ED finds that the issues raised by Ms. Jones apply only to the application for the proposed pretreatment facility and do not apply to the application for the proposed liquefaction facility.

Based on the foregoing, the ED finds that Ms. Jones did not substantially comply with all of the requirements to request a contested case hearing required by 30 TAC § 55.201(d) regarding the application for the liquefaction plant because she failed to identify a personal justiciable interest or how she will be adversely affected by the liquefaction plant application.

5. Christopher Kall

Christopher Kall timely submitted a request for a contested case hearing on March 10, 2014 in a comment he submitted to the agency during the relevant comment period. He provided his name, telephone number, and a residential address. He believes he will be adversely affected by the application because his residence is closely downwind of the proposed liquefaction plant during the winter when the prevailing winds are from the north. Therefore, he believes that he will be breathing pollutants or other releases during this time period. Mr. Kall is also concerned about potential safety issues with the plant.

Based on the address provided by Mr. Kall and the plot plan submitted by the Applicant, the ED's staff determined that his residence is within one mile from the proposed plant location.

Mr. Kall requested a contested case hearing in the subject line of his comment. Based on the foregoing, the ED finds that Mr. Kall substantially complied with all of the requirements to request a contested case hearing required by 30 TAC § 55.201(d). Therefore, the ED can determine whether it is likely that the requester will be impacted differently than any other member of the general public or if the regulated activity will likely impact his interest, which will be discussed in detail in subsection B below.

6. James Kall

James Kall timely submitted a request for a contested case hearing on March 3, 2014 in a comment he submitted to the agency during the relevant comment period. He provided his name, telephone number, and a residential address. He stated in his comment that he lives at the provided address on weekends and holidays. He believes he will be adversely affected by the application because the house is located approximately one mile from the center of the proposed facility and is downwind of the proposed liquefaction plant during the winter when the prevailing winds are from the north. Therefore, he believes he will be breathing in pollutants or other releases from the facility during that time period. Mr. Kall is also concerned about potential safety issues with the plant.

Based on the address provided by Mr. Kall and the plot plan submitted by the Applicant, the ED's staff determined that his residence is within one mile of the proposed plant location.

Mr. Kall requested a contested case hearing in the subject line of his comment. Based on the foregoing, the ED finds that Mr. Kall substantially complied with all of the requirements to request a contested case hearing required by 30 TAC § 55.201(d). Therefore, the ED can determine whether it is likely that the requester will be impacted differently than any other member of the general public or if the regulated activity will likely impact his interest, which will be discussed in detail in subsection B below.

7. Melanie Oldham

Melanie Oldham timely submitted requests for a contested case hearing on March 12, 2014 and March 17, 2014. The requests are identical. She provided her name, telephone number, and residential address. She did not indicate the proximity of her residence to the proposed liquefaction plant. She did not state how she will be adversely affected by the liquefaction plant application. Rather,

she stated how she will be adversely affected by the pretreatment facility only, which is not the subject of this Response.

Based on the address provided by Ms. Oldham and the plot plan submitted by the Applicant, the ED's staff determined that her residence is within two miles of the proposed plant location.

Ms. Oldham requested a contested case hearing in the first sentence of her comment. Based on the foregoing, the ED finds that Ms. Oldham did not substantially comply with all of the requirements to request a contested case hearing required by 30 TAC § 55.201(d) because she failed to identify a personal justiciable interest or how she will be adversely affected by the liquefaction plant application.

8. Robin Rio

Robin Rio timely submitted a request for a contested case hearing on March 28, 2012 in a comment she made to the agency during the relevant comment period. She provided her name and a residential address. She included her telephone number in a separate comment that did not request a contested case hearing. She stated that her residence, as well as other residences, is located in close proximity to the pretreatment facility. She did not state how or why she specifically will be adversely affected by the proposed liquefaction plant in a manner not common to the members of the general public.

Based on the address provided by Ms. Rio and the plot plan submitted by the Applicant, the ED's staff determined that her residence is more than two miles from the proposed plant location.

Ms. Rio requested a contested case hearing in the final sentence of her comment. Based on the foregoing, the ED finds that Ms. Rio did not substantially comply with all of the requirements to request a contested case hearing required by 30 TAC § 55.201(d) because she failed to identify a personal justiciable interest or how she will be adversely affected by the liquefaction plant application.

9. Diana Stokes

Diana Stokes timely submitted a request for a contested case hearing on February 14, 2012 in a comment she made to the agency during the relevant comment period. She provided her name but did not provide a telephone number or a residential address. She provided a post office box in Freeport. She did not indicate her residence's proximity to the proposed plant. She believes that the CO₂ emissions will detrimentally affect the air quality and health of area residents. Therefore, residents will inhale a greater abundance of deleterious chemicals due to carbon dioxide, and the plant emissions will exacerbate air pollution related health problems.

The ED's staff identified a property record with Ms. Stokes as the listed owner on the Brazoria County Appraisal District website. Based on this address and the plot plan submitted by the Applicant, the ED's staff determined that her property is more than two miles from the proposed plant location.

Ms. Stokes requested a hearing in the first sentence of her comment. Based on the foregoing, the ED finds that Ms. Stokes did not substantially comply with all of the requirements to request a contested case hearing required by 30 TAC § 55.201(d) because she failed to provide a residential address and failed to identify a personal justiciable interest or how she will be adversely affected by the liquefaction plant application.

10. Anthony Zuma

Anthony Zuma timely submitted a request for a contested case hearing on February 24, 2012. He provided his name and a residential address but did not include a telephone number. He did not indicate his residence's proximity to the proposed plant. He did not state how or why he specifically will be adversely affected by the proposed plant in a manner not common to the members of the general public. He listed the following as serious concerns:

- Air quality;
- Water quality;
- Noise and traffic control;
- Safety; and
- Home values

Based on the address provided by Mr. Zuma and the plot plan submitted by the Applicant, the ED's staff determined that his residence is more than two miles from the proposed plant location.

Mr. Zuma requested a hearing in the first line of his comment. Based on the foregoing, the ED finds that Mr. Zuma did not substantially comply with all of the requirements to request a contested case hearing required by 30 TAC § 55.201(d) because he failed to identify a personal justiciable interest or how he will be adversely affected by the liquefaction plant application.

B. Are those who requested a contested case hearing in this matter affected persons?

The law applicable to this permit application is outlined above in Section II. The following hearing requesters failed to provide a residential address, reside more than two miles from the proposed facility, and/or failed to identify any personal justiciable interest or why the requestor believes he or she will be adversely affected by the proposed liquefaction plant in a manner not common to members of the general public

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as required by 30 TAC § 55.201(d)(2): Dan Callahan, Laura Jones, Kathy Davis, Melanie Oldham, Robin Rio, Diana Stokes, and Anthony Zuma.

Because Harold Doty, Christopher Kall, and James Kall reside within one mile of the proposed liquefaction plant and have stated personal justiciable interests, the commission must next consider the non-exhaustive list of factors found in 30 TAC § 55.203(c) for determining whether a person is an affected person.

First, the commission must consider whether the interest claimed is one protected by the law under which the application will be considered.

The requests submitted by Harold Doty, Christopher Kall, and James Kall are identical, except for the personal information, i.e., address, phone number, etc. They identified the same interest, which is that their residences are closely downwind of the proposed liquefaction plant during the winter when the prevailing winds are from the north. Therefore, they believe they will be breathing pollutants or other releases during this time period. These interests are protected by the law under which the application will be issued.

The commission must consider whether a reasonable relationship exists between the interest claimed and the activity regulated. The activity the commission regulates is the authorized emissions into the air of contaminants by a person who owns or operates a facility or facilities.

Those persons who own or operate a facility or facilities are prohibited from emitting air contaminants or performing any activities that contravene the TCAA or any other commission rule or order, or that causes or contributes to air pollution. The interest Harold Doty, Christopher Kall, and James Kall claim is within the scope of an air quality authorization because it focuses on the potential adverse effects of potential air contaminants from the facility, and the ED finds that a reasonable relationship exists between the interest claimed and the activity the commission regulates.

Next, the commission must consider distance restrictions or other limitations imposed by law on the affected interest, the likely impact of the regulated activity on the health and safety of the person, and on the use of the property of the person, and the likely impact of the regulated activity on the use or the impact on the natural resource by the person. For air authorizations, distance from the proposed facility is particularly relevant to the issue of whether there is a likely impact of the regulated activity on a person's interests because of the dispersion and effects of individual air contaminants emitted from a facility. As discussed above, the ED agrees that Harold Doty, Christopher Kall, and James Kall reside in close proximity of the footprint of the plant which is the subject of this permit application and notes that their comments reveal concern for the health and welfare of residents in their homes. The natural resource that is the subject of this permit is the ambient air that they breathe, and they have indicated a manner in

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which emissions from the plant could impact it. The ED finds that these requesters have a personal justiciable interest within the meaning of TWC § 5.115 and TAC § 55.203(a) affected by this permit application.

Because Harold Doty, Christopher Kall, and James Kall reside within one mile of the proposed facility and have also articulated a personal justiciable interest in the proposed facility that is not common to the general public, their requests satisfy the requirements for form under 30 TAC § 55.201(d), and they are affected persons under 30 TAC § 55.203.

C. Does the organization, Save Our Subdivision (SOS), meet the group or associational standing requirements?

The hearing request filed on behalf of SOS identifies Laura Jones as a member of the group. As previously discussed, she lives more than two miles from the proposed facility. The hearing request from Laura Jones does not meet the requirements for form, nor does it raise a personal justiciable interest. Therefore, she is not an affected person and does not have standing in her own right to request a contested case hearing. Additionally, the hearing request does not raise issues pertinent to the application for the liquefaction plant. For these reasons, SOS does not qualify for associational standing.

D. Does the governmental entity, Commodore Cove Improvement District (CCID) meet the standing requirements for a local government with authority under state law over issues raised by the application?

The hearing request filed by Floyd Winkler on behalf of CCID does not meet the requirements for affected party status. The ED considers the governmental entity's statutory authority over or interest in the issues relevant to the application. CCID is a State of Texas regulated water district serving Hide-A-Way on the Gulf subdivision. CCID expressed concerns regarding the water demands of the proposed plant and its effect on the available water supply to the subdivision. Additionally, CCID expressed concern regarding the use of a flare to burn off contaminants and the contamination of the water supply by the contaminants that are not burned off by the flare. These issues are outside of the scope of the permit application for the proposed plant. Further, CCID does not have authority under state law over issues raised by this application. Therefore, CCID does not meet the requirements for affected party status under 30 TAC § 55.203(b).

E. Which issues in this matter should be referred to SOAH for a contested case hearing?

If the commission determines any of the hearing requests in this matter are timely and in proper form, and some or all of the hearing requesters are affected persons, the commission must apply the three-part test discussed in Section II to the issues raised in

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this matter to determine if any of the issues should be referred to SOAH for a contested case hearing. The three-part test asks whether the issues involve disputed questions of fact, whether the issues were raised during the public comment period, and whether the issues are relevant and material to the decision on the permit application, in order to refer them to SOAH.

The ED addressed all public comments in this matter by providing responses in the RTC. The cover letter from the Office of the Chief Clerk transmitting the RTC cites 30 TAC § 55.201(d)(4), which states that requesters should, to the extent possible, specify any of the ED's responses in the RTC the requesters dispute and the factual basis of the dispute, and list any disputed issues of law or policy.

1. What issues are questions of fact?
 - Whether the liquefaction plant will have any adverse effects on air quality;
 - Whether adverse health impacts are expected on those living nearby;
 - Whether there are potential safety issues because of the plant that may impact local residents.
2. Were the issues raised during the public comment period?

The public comment period is defined in 30 TAC § 55.152. The public comment period begins with the publication of the Notice of Receipt and Intent to Obtain an Air Quality Permit. The end date of the public comment period depends on the type of permit. In this case, the public comment period began on January 16, 2012 and ended on March 3, 2014. All of the issues listed above upon which the hearing requests in this matter are based were raised in comments received during the public comment period.
3. Are the issues relevant and material to the decision on the application?

In this case, the permit would be issued under the commission's authority in TWC § 5.013(11) (assigning the responsibilities in THSC Chapter 382), and the TCAA. The relevant sections of the TCAA are found in Subchapter C (Permits). Subchapter C requires the commission to grant a permit to construct or modify a facility if the commission finds the proposed facility will use at least the best available control technology (BACT), and the emissions from the facility will not contravene the intent of the TCAA, including the protection of the public's health and physical property. In making this permitting decision, the commission may consider the Applicant's compliance history. The commission by rule has also specified certain requirements for permitting. Therefore, in making the determination of relevance in this case, the commission should review each issue to see if it is relevant to these statutory and regulatory requirements that must be satisfied by this permit application.

In the absence of identification by hearing requesters of disputed issues in the RTC, the ED cannot determine which issues remain disputed. However, if the assumption is made that the issues raised in the public comments continue to be disputed, the following is the ED's position on those issues.

The ED finds the following issues relevant and material to the decision on the application:

1. Whether the facility will have an adverse effect on air quality; and
2. Whether adverse health impacts are expected on those living nearby.

The ED finds the following issue is not relevant and material to the decision to issue an air quality permit:

1. Whether there are potential safety issues because of the plant that may impact local residents.

IV. Maximum Expected Duration of the Contested Case Hearing

The ED recommends the contested case hearing, if held, should last no longer than nine months from the preliminary hearing to the proposal for decision.

V. Executive Director's Recommendation

The ED respectfully recommends the commission:

A. Find all hearing requests in this matter were timely filed;

B. Find that the requests of the following persons satisfy the requirements for form under 30 TAC § 55.201(d) and are affected persons under 30 TAC § 55.203:

1. Harold Doty
2. Christopher Kall
3. James Kall

C. Find all other hearing requesters are not affected persons in this matter;

D. If the commission determines any requester is an affected person, refer the following issues to SOAH:

1. Whether the facility will have an adverse effects on air quality; and
2. Whether adverse health impacts are expected on those living nearby.

E. Find the maximum expected duration of the contested case hearing, if held, would be nine months.

EXECUTIVE DIRECTOR'S RESPONSE TO HEARING REQUESTS
Freeport LNG, Permit Nos. 100114, PSDTX1282, and N150
Page 16 of 17

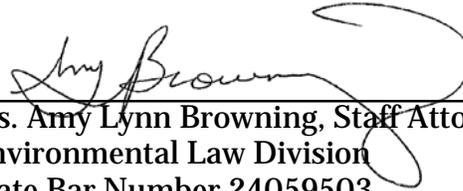
Respectfully submitted,

Texas Commission on Environmental Quality

Richard A. Hyde, P.E., Executive Director

Caroline Sweeney, Deputy Director
Office of Legal Services

Robert Martinez, Division Director
Environmental Law Division



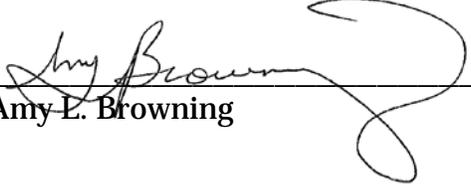
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REPRESENTING THE
EXECUTIVE DIRECTOR OF THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY

CERTIFICATE OF SERVICE

On the 9th day of June 2014, a true and correct copy of the foregoing instrument was served on all persons on the attached mailing list by the undersigned via deposit into the U.S. Mail, inter-agency mail, facsimile, electronic mail, or hand delivery.



Amy L. Browning

Response to Requests for Contested Case Hearing

Freeport LNG Development, L.P. Liquefaction Plant

Map Requested by TCEQ Office of Legal Services
for Commissioners' Agenda



Texas Commission on Environmental Quality
GIS Team (Mail Code 197)
P.O. Box 13087
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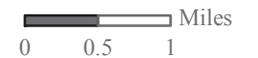
May 19, 2014

Projection: Texas Centric Mapping System
Albers (meters)
Scale 1:83,000



-  Facility Boundary
-  Requestors

No	Name
1	H.Doty
2	L.Jones
3	J.Kall
4	D.Stokes
5	A.Zuma
6	R.Rio
7	D.Callahan
8	M.Oldham
9	K.Davis
10	C.Kall



Source: The location of the facility was provided by the TCEQ Office of Legal Services (OLS). OLS obtained the site location information from the applicant and the requestor information from the requestor. The background imagery of this map is from the current Environmental Systems Research Institute (ESRI) map service, as of the date of this map.

This map was generated by the Information Resources Division of the Texas Commission on Environmental Quality. This product is for informational purposes and may not have been prepared for or be suitable for legal, engineering, or surveying purposes. It does not represent an on-the-ground survey and represents only the approximate relative location of property boundaries. For more information concerning this map, contact the Information Resource Division at (512) 239-0800.



The facility is located in Brazoria County. The circle (green) in the left inset map represents the approximate location of the facility. The inset map on the right represents the location of Brazoria County (red) in the state of Texas;

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DOCKET NO. 2014-0691-AIR; PERMIT NO. 100114

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