

**TCEQ AIR QUALITY PERMIT NUMBER 56414**

<b>APPLICATION BY</b>	<b>§</b>	<b>BEFORE THE</b>
	<b>§</b>	
<b>GULF SOUTH PIPELINE</b>	<b>§</b>	<b>TEXAS COMMISSION ON</b>
<b>COMPANY, LP</b>	<b>§</b>	
<b>COMPRESSOR STATION</b>	<b>§</b>	<b>ENVIRONMENTAL QUALITY</b>
<b>GOODRICH, POLK COUNTY</b>	<b>§</b>	

**APPLICANT’S RESPONSE TO REQUEST FOR HEARING**

Gulf South Pipeline Company, LP (the “Applicant”) files this Response to Request for Hearing and asks the Commission to dismiss the request for contested case hearing filed by Dee M. Knipe (“Requestor”), and approve the granting of the application renewal of its Permit Number 56414. For the reasons stated below, the Requestor is not entitled to, and the Commission may not conduct, a hearing on the Applicant’s application for renewal of its air emissions permit.

**BACKGROUND**

Applicant filed an application for renewal of its air emissions Permit Number 56414 that was received by the TCEQ on April 10, 2014. The permit covers the Applicant’s compressor station operations located at 228 East FM 1988, Goodrich, Polk County, Texas. The Applicant did not request an increase in its allowable emissions or to emit an air contaminant not previously permitted. The emissions permitted from the facility include organic compounds, nitrogen oxides (“NOX”), carbon monoxide (“CO”), and particulate matter. The facility was originally constructed in 1952. The sources were grandfathered and not regulated under the Texas Clean Air Act (the “Act” or “Texas CAA”). In 2004, Applicant filed for an air emissions permit pursuant to a grandfathered permitting bill passed by the Texas Legislature. As a result of the permitting process, the facility’s emissions were significantly reduced and the facility became subject to Permit Number 56414. During the permit evaluation, the TCEQ conducted a review of Best Available Control Technology (“BACT”) under the Texas CAA and TCEQ regulations, and required that the facility install BACT, resulting in the emissions reductions from the facility.

**PROCEDURAL BACKGROUND**

The Applicant properly and timely filed its permit renewal application, and filed the public notice documents for publication in the local paper. Executive Director’s Response to Public Comment (“Response to Public Comment”), at 1-2.

Requestor submitted a comment and request for contested case hearing on June 6, 2014 (the “Request”). Requestor alleged she is “highly sensitive” to airborne chemicals, and various health effects from such alleged exposure. She claims that air contaminants are affecting her and children in the area. She makes a statement that although a renewal application has been filed, “more contaminants may be approved,” and “consideration must be given to this amount of contaminants and in addition all the extra contaminants which will be added to the same area from I69.” She added that, “No where [sic] in the

notice I read did it mention the company working on improvements to their facility and procedures. Even a little percentage is going to be dangerous.” Request.

## ARGUMENT

### *A. No Hearing Is Permitted in This Case under the Texas CAA for a Renewal Application*

As stated above, and confirmed in the Executive Director's Response to Comments, Applicant has not requested an increase in emissions from its facility. The Texas CAA does not allow a contested case hearing where an application for a permit renewal does not request an increase in emissions from the permitted facility. Response to Public Comment, at 3.

The commission may not seek further public comment or 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.

Tex. Health & Safety Code § 382.056(g).

However, the Act provides an exception to this prohibition.

Notwithstanding other provisions of this chapter, 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* according to commission standards under Sections 5.753 and 5.754, Water Code, and rules adopted and procedures developed under those sections.

Id. § 382.056 (o) (emphasis added).

The TCEQ regulations have implemented this section of the Act, and the Commission may allow a hearing if the facility or company is classified as a “poor performer”.

30 Tex. Admin. Code § 60.3(a)(3)(B)(iii).

As stated by the Executive Director in its Response to Public Comment,

This site has a rating of 0.0 and a compliance history of “High”. The company rating and classification, which is the average of the ratings for all sites the company owns, is 1.81 and a classification of “Satisfactory”.

Response to Public Comment, at 2.

As the Executive Director concluded, the applicable statute and regulations do not permit a hearing for a renewal where the company's compliance history does not fall into the classification of a “poor performer”, and the application does not seek to change the emissions from the facility. Therefore, in this case, applicable law does not allow a hearing on the Applicant's permit renewal application.

On this basis, the Commission should deny the request for a contested case hearing, and approve the issuance of the renewal permit.

*B. Alternatively, Requestor Is Not or Has Not Sufficiently Stated How She Is an Affected Person under the Texas Clean Air Act, and Is Not Entitled to a Contested Case Hearing*

Requestor alleges very general allergic symptoms and seeks a contested case hearing with respect to the Applicant's renewal application. As stated above, the Texas CAA and the TCEQ regulations do not permit a hearing on the Applicant's permit renewal application. However, in the alternative, Applicant argues that Requestor is not an "affected person" under the Texas CAA and TCEQ regulations or has failed to plead or assert how she is an affected person, and, therefore, is not entitled to a contested case hearing.

In order to request a contested case hearing, a party must be an "affected person." Under the Texas CAA and the TCEQ procedural regulations, the person must show it is an affected person and meet the following standard in requesting a contested case hearing:

*[I]dentify the person's personal justiciable interest affected by the application, including a brief, but specific, written statement explaining in plain language the requestor's location and distance relative to the proposed facility or activity that is the subject of the application and how and why the requestor 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.*

30 Tex. Admin. Code § 55.201(d)(2) (emphasis added).

In evaluating whether a party is or has sufficiently asserted how it is an affected party, the Texas CAA and the TCEQ regulations require specific allegations as to how he or she will be adversely affected by the permitting facility.

Specific factors have been promulgated in the TCEQ regulations in evaluating whether a party is an affected person. In this case, the most relevant are as follows:

whether a reasonable relationship exists between the interest claimed and the activity regulated; and

likely impact of the regulated activity on the health and safety of the person and the use of property of the person.

Id. § 55.203(c)(3), (4).

The Request in this case only states that the Requestor has allergies and had them before moving to her current location. She does not specifically state how the emissions from the Applicant's facility could affect her, or whether, in fact, those emissions would affect her. She only states that there are emissions from the permitted facility seeking renewal and she has allergies. She readily admits her residence is miles from the permitted facility—making any alleged effect

appear speculative at best. She does not specify how the Applicant's emissions are affecting her as opposed to other man-made emissions from sources other than Applicant's facility, or natural causes like pollen, mold, dust, or other allergens. No assertion is made that, in fact, the types of emissions, such as particulates or NOX, from the permitted facility actually cause her allergic reactions.

Clearly, the Requestor is speculating, at best, as to whether there is any impact; and, at worst, not even asserting there is necessarily a causal connection between the facility emissions and her alleged ailments. It is not clear that if the permit were not issued, and the facility's emissions ceased, whether the allergies she is alleging would be improved or affected at all, and she does not appear to specifically claim that the facility's emissions are harming her.

Thus, she is not asserting a remedy under this process that would address her alleged injury. Therefore, she lacks, or has failed to state, a basis for standing to even assert a claim for a contested case hearing, or to appeal the denial of such a hearing.

She states her conditions are worse than they were in 2001. But this facility was in operation before 2001. Moreover, the facility has actually reduced its emissions since 2001 following a permitting process in 2004. Response to Public Comment, 4-5. Thus, it cannot be the cause of her alleged illness.

The Texas Supreme Court has concluded that assertions of being an affected person in permitting proceedings must be "concrete and particularized," not "conjectural or hypothetical." *Texas Comm'n on Env'tl Quality v. City of Waco*, 413 S.W. 3d 409 (Tex. 2013); *Texas Comm'n on Env'tl Quality v. Bosque River Coalition*, 413 S.W. 3d 403 (Tex. 2013). Clearly, the Requestor is asserting no more than a "conjectural or hypothetical" basis for her concerns--that the facility emits air pollutants and she has allergies. If there is not some threshold beyond mere conjecture or hypothetical effect, any person can make any assertion about environmental emissions without any specificity of the alleged harm and causal basis, thereby dragging a regulated party through a contested case hearing process, imposing significant costs and delays. To preserve the integrity of the process, as in this case, a statement of some basis of the causal relationship between the applicant's activities and the person's alleged injury must be stated. Here, none is provided.

In contrast to her statements, the TCEQ has previously conducted its own analysis of the impact on human health and the environment in the prior permitting proceedings for the Applicant, and concluded that the facility meets all of the requirements for operations and protection of human health and the environment, and concluded that "no adverse health effects were expected." See Response to Public Comment, at 2-3. The Requestor has not stated that the TCEQ's prior health review before issuance of the permit was flawed in any way.

The speculative assertions by the Requestor do not rise to the level of pleading or stating a request that meets the requirements of the Texas CAA or the TCEQ procedural regulations. As a result, the Commission should deny the request for a contested case hearing, and approve the issuance of the Applicant's permit renewal.

### *C. Additional Responses*

1. Affected Person

As stated above, Requestor is not an affected person.

2. Disputed Issues

If the Commission were to conclude a hearing should be granted and the Requestor is an affected party, which Applicant disputes, then the disputed issues would be as follows: whether Requestor is an affected person; whether the Requestor has adequately stated a basis for asserting it is an affected person; whether Requestor has standing to assert claims or request a hearing; and whether the emissions from Applicant's facility are adversely affecting the Requestor. In the alternative, since the TCEQ Executive Director has approved the permit renewal, and the BACT and health effects have been addressed in a prior proceeding which this party did not contest or seek a contested case hearing, Applicant would assert that the Requestor has failed to exhaust its administrative remedies; these issues are res judicata; and Requestor is barred from asserting these issues in this proceeding for a renewal of that same permit.

3. Raising of Issues in Appropriate Time Period

At this time, Applicant is not asserting the request for hearing was timely filed. Applicant reserves the right to assert it was untimely filed on discovery of other relevant facts.

4. MACT

No issue regarding the Applicant's ability to meet BACT or MACT for this facility are at issue, as the Requestor has not asserted any challenge to these issues, and these issues should be assumed to be resolved in favor of the Applicant during any hearing granted by the Commission.

**CONCLUSION**

The Texas Clean Air Act and the TCEQ regulations do not allow a contested case hearing where the emissions are not changing pursuant to an application for a renewal of an air emissions permit, and the compliance history is not classified as a poor performer. The Requestor is not, and has not, adequately pled or stated how she is an affected person—only general and vague assertions are made without a stated basis as to the adverse effect on the Requestor or how a denial of the permit would, in fact, address her allergies. For these and other reasons stated in the Response, the Commission should deny the request for a contested case hearing or any other further hearing, and approve the issuance of the Applicant's permit renewal.

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Respectfully submitted,



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REPRESENTING  
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**CERTIFICATE OF SERVICE**

I hereby certify that an electronic copy of this filing was filed with the Chief Clerk's Office of the Texas Commission on Environmental Quality, and that a copy was mailed by First Class Mail or emailed to the parties as noted on the attached Mailing List.



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Scott D. Deatherage

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