

TCEQ AIR QUALITY PERMIT NUMBER 106009
TCEQ DOCKET NUMBER 2015-0987-AIR

APPLICATION BY	§	BEFORE THE
COLUMBIA PACKING CO., INC.	§	TEXAS COMMISSION ON
SMOKEHOUSE	§	ENVIRONMENTAL QUALITY
DALLAS, DALLAS COUNTY	§	

**EXECUTIVE DIRECTOR'S RESPONSE TO REQUESTS FOR RECONSIDERATION
AND HEARING REQUESTS**

The Executive Director (ED) of the Texas Commission on Environmental Quality (commission or TCEQ) files this response (Response) to the requests for reconsideration and 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 Response to Public Comment (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

Columbia Packing Co., Inc. (Columbia or Applicant) has applied to the TCEQ for a New Source Review Authorization under THSC § 382.0518. This permit will authorize the Applicant to operate an existing smokehouse and meat packing plant consisting of two boilers and two smokehouses. Each smokehouse is limited to a maximum hourly usage rate of 8.58 pounds of sawdust per hour and a maximum annual usage rate of 75,160.80 pounds of sawdust per year. The plant is located at 2807 E. 11th St., Dallas, Dallas County. Contaminants authorized under this permit include particulate matter (PM), including PM with diameters of 10 microns or less (PM₁₀) and 2.5 microns or less (PM_{2.5}), carbon monoxide (CO), nitrogen oxides (NO_x, as defined as the sum of NO and NO₂, collectively expressed as NO₂), sulfur dioxide (SO₂), organic compounds, and hazardous air pollutants. The Applicant is not delinquent on any administrative penalty payments to the TCEQ. The compliance history rating for an applicant includes: enforcement orders, consent decrees, court judgments, criminal convictions, chronic excessive emission events, investigations, Notices of Violation, audits and violations disclosed under the Audit Act, environmental management systems, voluntary on-site compliance assessments, voluntary pollution reduction programs, and early compliance. The compliance history rating for Columbia is 27.78, Satisfactory. The compliance history for this Applicant includes a criminal conviction for an unauthorized discharge under Texas Water Code § 7.147.

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 Texas Administrative Code 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.

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The Applicant's compliance history rating referenced in this response is subject to any reply filed pursuant to 30 TAC § 55.209(g). 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 a permit from the commission. This permit application is for an initial issuance of Air Quality Permit Number 106009.

The permit application was received on January 23, 2014 and declared administratively complete on February 5, 2014. The Notice of Receipt and Intent to Obtain an Air Quality Permit (NORI or first public notice) for this permit application was published in English on February 12, 2014 in *The Dallas Morning News* and in Spanish on February 15, 2014 in *Al Dia*. The Notice of Application and Preliminary Decision for an Air Quality Permit (NAPD or second public notice) was published on October 11, 2014 in English in *The Dallas Morning News* and in Spanish on October 12, 2014 in *Al Dia*. A public meeting was held on November 13, 2014 in Dallas. The notice of public meeting was mailed to the interested parties on the chief clerk's mailing list on October 20, 2014. The public comment period ended at the close of the public meeting on November 13, 2014. The ED's Response to Public Comment (RTC) was mailed on May 6, 2015 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.² 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.

The time for requests for reconsideration and hearing requests ended on June 5, 2015.³ The TCEQ received timely hearing requests during the public comment period that were not withdrawn from the following persons: Senator Royce West, City of Dallas Councilmember Dwayne Caraway, LaJuana Barton, Myrtis Evans-Griffin, Phillip Gipson, Libbie Terrell Lee, Janet Long, and Linda Preston. The TCEQ received timely hearing requests from the Cedar Crest Neighborhood Association.

II. Applicable Law for Requests for Reconsideration

The commission must assess the timeliness and form of the requests for reconsideration, as discussed in Section I above. The form requirements are set forth in 30 TAC § 55.209(f), which states, "Responses to requests for reconsideration should address the issues raised in the request."

² 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.

³ See, Section III.D.2, *infra*.

III. Response to Requests for Reconsideration

Each of the requests for reconsideration address responses in the ED's RTC filed on May 4, 2015. Ms. Janet Long stated that the ED's RTC responses 1, 2, and 4 cited modeling studies that were not accurate representations of the area around Columbia.

REQUEST FOR RECONSIDERATION OF RESPONSES 1, 2, AND 4:

Ms. Janet Long stated that the modeling studies evaluated background concentrations for PM_{2.5} using 2011-2013 data collected at EPA AIRS monitor 481130050, located near the Kay Bailey Hutchinson Convention Center at 717 South Akard in Dallas, TX and for NO₂ using 2011-2013 data collected at EPA AIRS monitor 481130069 at 1415 Hinton Street, Dallas, TX. She stated that using monitors closer to Columbia's plant site and data from a more recent time period would provide a more accurate evaluation of the background emissions for this area.

TCEQ RESPONSE:

As stated in the RTC, the use of these monitors is reasonable based on the Applicant's quantitative review of emissions sources in the surrounding area of the monitor site relative to the project site, and the modeling included an inventory of off-property sources. The Applicant modeled all relevant nearby sources of PM_{2.5} emissions. The Applicant chose a representative monitor to include any other potential emissions not being captured by the modeled sources. Therefore, the use of the Convention Center monitor is reasonable given the conservatism of including the nearby sources and a representative monitor. The Applicant also modeled all relevant nearby sources of NO₂ emissions. The Applicant chose a representative monitor to include any other potential emissions not being captured by the modeled sources. Therefore, the use of the Hinton monitor was reasonable given the conservatism of including the nearby sources and a representative monitor.

IV. Applicable Law for Hearing Requests

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;

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- (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 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 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

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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 Thus, the location and operation of the proposed facility requires authorization under the TCAA. 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 a condition of 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.

V. 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: Senator Royce West, City of Dallas Councilmember Dwayne Caraway, LaJuana Barton, Myrtis Evans-Griffin, Phillip Gipson, Libbie Terrell Lee, Janet Long, and Linda Preston. A timely hearing request was also submitted by Phillip Gipson, as a representative of the Cedar Crest Neighborhood Association.

1. Senator Royce West

Senator Royce West timely submitted two hearing requests on August 27, 2013 and March 13, 2014. The hearing requests are identical. He provided his name, phone number, and office address. He requested a contested case hearing in his official capacity as state senator. He stated that he “would like to formally contest this application” and “to request that a public meeting be held in Dallas Texas.” Additionally, his request states, “This public hearing would allow the citizenry of Senate District 23 an opportunity to formally comment on how this application would impact them and the surrounding communities.” A public meeting was held on November 13, 2014 per the senator’s request. The public meeting included an informal question and answer period where attendees were able to ask questions of the Applicant and TCEQ staff, and a formal comment period where comments from the public were audio recorded. Those

⁴ THSC § 382.0518

⁵ THSC § 382.0513

⁶ THSC § 382.085

⁷ THSC § 382.0513

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comments were transcribed and included in the ED's formal Response to Comments.

The request submitted by Senator West expressed concern for the constituency of Senate District 23. However, the request did not identify at least one person who would have standing to request a hearing in their own right, i.e., identify a personal justiciable interest, as required by 30 TAC §§ 55.201(d) and 55.205(a)(1). Additionally, while the request included the Senator's name, phone number, and office address, the request did not identify a 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 as required by 30 TAC § 55.201(d).

Based on the foregoing, the ED finds that the request did not substantially comply with all of the requirements to request a contested case hearing required by 30 TAC § 55.201(d). Therefore, the ED cannot determine whether it is likely that Senator West, as an individual, will be impacted differently than any other member of the general public or if the regulated activity will likely impact his interest. Nor can the ED determine whether any group or association will meet the requirements for group or associational standing.

2. City of Dallas Councilmember Dwayne Caraway

Councilmember Dwayne Caraway timely submitted two hearing requests on August 27, 2013 and May 20, 2015. He provided his name, a phone number, and his office address. He requested a contested case hearing in his official capacity as councilmember. His request on August 27, 2013 stated, "I want to express my total opposition for the authorization of a permit for Columbia Meat Packing for their existing batch smokehouse. I am requesting a hearing for the mentioned permit." His May 20, 2015 request stated that he requested a contested case hearing. He stated that he was

"making this request to preserve and protect the health of the neighborhoods in the area. The air emissions from the facility plant will negatively affect their health and that of nearby residents in a manner not common to the general public. They will be exposed to emissions including coarse and fine particulate matter (PM10 and PM2.5), carbon monoxide (CO), nitrogen oxides (NO-x), sulfur dioxide (SO2), organic compounds, and hazardous air pollutants. These pollutants have well established impacts on human health and welfare including respiratory symptoms, exacerbation of asthma and other respiratory illnesses, cancer, exacerbation of heart disease, and premature death."

While the request submitted by Councilmember Caraway expressed concern for the health of the neighborhoods in the area, the request did not identify at least one person who would have standing to request a hearing in their own right, i.e., identify a personal justiciable interest, as required by 30 TAC §§ 55.201(d) and 55.205(a)(1). Additionally, while the request included the Councilmember's name, phone number, and office

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address, the request did not identify a 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 as required by 30 TAC § 55.201(d).

Based on the foregoing, the ED finds that the request did not substantially comply with all of the requirements to request a contested case hearing required by 30 TAC § 55.201(d). Therefore, the ED cannot determine whether it is likely that Councilmember Caraway, as an individual, will be impacted differently than any other member of the general public or if the regulated activity will likely impact his interest. Nor can the ED determine whether any group or association will meet the requirements for group or associational standing.

Councilmember Caraway did not seek re-election in the May 9, 2015 general election. The current councilmember for District 4 is Carolyn King Arnold.

3. LaJuana Barton

LaJuana Barton timely submitted a request for a contested case hearing on August 25, 2013. She provided her name and address but not her telephone number. Ms. Barton stated that she lived in DeSoto, Texas. In her request, she stated that she grew up in the Oak Cliff neighborhood and that she remembers the horrible odor that would blanket the entire community. She also works in the area and stated, "this permit is counterproductive to the hopes of this neighborhood."

Based on the address provided by Ms. Barton 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. Barton did not state that she requested a contested case hearing; rather, she stated that she was "protesting the permit and asking that it not be approved;" that she "can't in good conscious [sic] let this permit go forth without formally opposing it;" and asked for a hearing in the community.

As noted, a public meeting was held on November 13, 2014. The public meeting included an informal question and answer period where attendees were able to ask questions of the Applicant and TCEQ staff, and a formal comment period where comments from the public were audio recorded. Those comments were transcribed and included in the ED's formal Response to Comments.

Based on the foregoing, the ED finds that Ms. Barton 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 application. Therefore, the ED cannot determine whether it is likely that this requester will be impacted differently from any other members of the general public or whether the regulated activity will have an impact on her interest.

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4. Myrtis Evans-Griffin

Myrtis Evans-Griffin timely submitted a request for a contested case hearing on August 26, 2013. She provided her name and address but not a telephone number. She stated that she lives approximately five miles from the plant, and in the past, they “had to cover [their] noses because of the stinch [sic] that came from similar types of businesses and maybe even Columbia because it has been in the community for a long time.” She added that Columbia has mistreated the community, and her kids “grew up holding their noses and being reminded that they were almost home by the decaying odor that fell all around the area.”

Based on the address provided by Ms. Evans-Griffin 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. Evans-Griffin did not state that she requested a contested case hearing; rather, she stated that she was “protesting the application;” “taking time to speak out against this permit;” and requested “a hearing on the permit in the community.” As noted, a public meeting was held on November 13, 2014. The public meeting included an informal question and answer period where attendees were able to ask questions of the Applicant and TCEQ staff, and a formal comment period where comments from the public were audio recorded. Those comments were transcribed and included in the ED's formal Response to Comments.

Based on the foregoing, the ED finds that Ms. Evans-Griffin 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 application. Therefore, the ED cannot determine whether it is likely that this requester will be impacted differently from any other members of the general public or whether the regulated activity will have an impact on her interest.

5. Phillip Gipson

Phillip Gipson timely submitted two requests for a contested case hearing on August 26, 2013 and on June 2, 2015. He provided his name, telephone number, and a residential address. He indicated that he lives less than one mile from the plant. He requested a contested case hearing on behalf of himself and as president of the Cedar Crest Neighborhood Association, which will be discussed in part C below. He believes that he and the community will be adversely affected by the application because the smokehouse would be “detrimental to the future health and development of the neighborhood.” He also indicated that his family and relatives have owned and lived in the Cedar Crest area since 1962. He stated that the community has suffered physically, mentally, and financially because of bad air quality, which has come from industrial facilities located within a 2-3 mile radius of their homes. He added that Columbia Packing “has a questionable history when it comes to adhering to laws and rules” and that the “air quality in our community is not consistent with prosperous communities throughout the city.” He stated that all citizens in the area have experienced poor air quality and offensive odors that cuts through the core of the quality of life in Oak Cliff and South

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Dallas. He also believes that approving the permit would be “detrimental to the future growth, health, well being of its citizens, and the overall success of our community.”

Mr. Gipson stated that his residence is less than one mile from the plant. However, based on the address submitted by Mr. Gipson and the plot plan submitted by the Applicant, the ED's staff determined that his residence appears to be 1.5 miles from the proposed plant location.

Mr. Gipson requested a contested case hearing in the last sentence of his August 26, 2013 request and the first sentence of his request made on June 2, 2015. Based on the foregoing, the ED finds that Phillip Gipson 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. Libbie Terrell Lee

Libbie Terrell Lee timely submitted a request for a contested case hearing on August 26, 2013. She provided her name and address, but not a telephone number. The address she provided is located in DeSoto, Texas. She believes that she will be adversely affected by the application because an increase in contaminants will be released in the community that is already challenged with environmental hazards. She stated that the smokehouse would release environmental hazards into the air, which would cause the air to smell. She does not state how she, as an individual, will be impacted differently than any other member of the general public.

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

Ms. Lee did not state that she requested a contested case hearing; rather, she stated that she was “contesting the awarding of this company's request,” and she requested that “a public hearing be convened so that other persons, who also oppose this, have opportunity to speak further to the damage this award poses.”

As noted, a public meeting was held on November 13, 2014. The public meeting included an informal question and answer period where attendees were able to ask questions of the Applicant and TCEQ staff, and a formal comment period where comments from the public were audio recorded. Those comments were transcribed and included in the ED's formal Response to Comments.

Based on the foregoing, the ED finds that Ms. Lee 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. Therefore, the ED cannot 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 her interest.

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7. Janet Long

Janet Long timely submitted two requests for a contested case hearing: on June 2, 2015 and on April 21, 2014. She provided her name and address but not her telephone number. She indicated that she lives approximately 1.6 miles from the proposed plant in a home that her family has owned and lived in since 1960. She believes that she will be adversely affected by this application because she owns and resides in a single family home near the proposed plant. Below are her concerns:

- She stated that she and her neighbors need a more thorough presentation and challenge of the methods used to justify the ED's decision that Columbia's application meets the requirements of applicable law.
- She believes that the emissions from Columbia Packing and other industrial neighbors will produce a considerable amount of industrial strength air contaminants.
- She also stated that the TCEQ does not have adequate documentation of neighborhood complaints and that she was unaware of the complaint processes in the ED's Responses Nos. 8 and 17.
- She stated that most of the air problems occur in the evening and overnight hours.
- She also disagreed with the air emissions modeling studies in the ED's Responses Nos. 1, 2, and 4.
- She believes that the authorization for very tall smokestacks suggests that current air conditions at lower levels could not safely accommodate the increased volume of controlled and hazardous air contaminants generated by the smokehouse operations.
- She has experienced poor air quality, offensive odors, and occasionally airborne particulate matter that cause throat and nose irritation.
- The enjoyment of the outdoors is limited by the odors and pollutants, which include three known precursors to ozone, which are nitrogen oxide, volatile organic compounds, and carbon monoxide.
- The vitality of the Cedar Crest neighborhoods has suffered, leading to reduced new investment by residents and others.
- A contested case hearing will allow Columbia to make its case that it will operate in accordance with all city, state, and federal regulations despite prior missteps.
- She is exposed to emissions when she crosses the Cedar Crest Bridge.

Ms. Long indicated that her residence is approximately 1.6 miles from the smokehouse; however, based on the address provided by Ms. Long and the plot plan submitted by the Applicant, the ED's staff determined that her residence is 1.4 miles from the proposed smokehouse location.

Ms. Long requested a contested case hearing in the first sentence of her requests. Based on the foregoing, the ED finds that Janet Long 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

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likely impact her interest, which will be discussed in detail in subsection B below.

8. Linda Preston

Linda Preston timely submitted a request for a contested case hearing on August 26, 2013. She provided her name and address but not a telephone number. She stated that her residence, as well as other residences, is located in close proximity to the facility. She did not state how or why she specifically will be adversely affected by the proposed facility in a manner not common to the members of the general public.

Based on the address provided by Ms. Preston and the plot plan submitted by the Applicant, the ED's staff determined that her residence is approximately 1.2 miles from the proposed facility location.

Ms. Preston did not state that she requested a contested case hearing; rather, she stated that she was "requesting a public hearing" and that she hoped "the application can be discussed in a public hearing forum to give voice to the strong opposition that exists." As noted, a public meeting was held on November 13, 2014. The public meeting included an informal question and answer period where attendees were able to ask questions of the Applicant and TCEQ staff, and a formal comment period where comments from the public were audio recorded. Those comments were transcribed and included in the ED's formal Response to Comments.

Based on the foregoing, the ED finds that Ms. Preston 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 application. Therefore, the ED cannot determine whether it is likely that this requester will be impacted differently from any other members of the general public or whether the regulated activity will have an impact on her interest.

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 identify any personal justiciable interest or why the requester believes he or she will be adversely affected by the proposed facility in a manner not common to members of the general public as required by 30 TAC § 55.201(d)(2). Therefore, pursuant to TCAA § 382.058(c), the following requesters are not affected persons: Senator Royce West, City of Dallas Councilmember Dwayne Caraway, LaJuana Barton, Myrtis Evans-Griffin, Libbie Terrell Lee, and Linda Preston.

Because Phillip Gipson and Janet Long 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.

9. Phillip Gipson

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The requests submitted by Phillip Gipson stated that his health would be adversely affected by the application.

10. Janet Long

The requests submitted by Janet Long stated that emissions from Columbia Packing and other industrial neighbors will produce a considerable amount of industrial strength air contaminants, which will result in bad air quality and possible adverse health effects.

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 interests of Phillip Gipson and Janet Long are 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 Phillip Gipson and Janet Long reside in close proximity of the footprint of the facility, which is the subject of this permit application, and notes that their comments reveal concern for the health and welfare of residents in their home. The natural resource that is the subject of this permit is the ambient air that they breathe, and they have indicated a manner in 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 Phillip Gipson and Janet Long live in close proximity to the proposed facility and have articulated a personal justiciable interest 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 Cedar Crest Neighborhood Association, meet the group or associational standing requirements?

The hearing request filed on behalf of Cedar Crest Neighborhood Association identifies Phillip Gipson as a member and president of the association. The hearing request from Phillip Gipson

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meets the requirements for form and affected person status. Therefore, he may be affected in a manner different from the general public. Additionally, the issue of whether the proposed facility will have an adverse impact on the health of Phillip Gipson and the association's members is pertinent to the application and one of the association's goals of working "for the general welfare of the Cedar Crest area."⁸ Therefore, Cedar Crest Neighborhood Association qualifies as an affected group. Additional information regarding individual members of the association that may be adversely impacted by the proposed facility would be beneficial to the commission's determination as to whether to refer the Neighborhood Association to SOAH as an affected person.

D. 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 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 facility will have any adverse effects on air quality; and
- Whether adverse health impacts are expected on those living nearby.

2. **Were the issues raised during the public comment period?**

The public comment period is defined in 30 TAC § 55.152.⁹ 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 February 12, 2013 and ended on November 13, 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.

⁸ Phillip Gipson's request did not include the stated goals or purpose of the association; however, the ED's staff obtained this information from the association's website found here:

<http://www.cedarcrestneighborhood.org/history.html>.

⁹ 30 TAC § 39.411(e)(11) states: "If any hearing requests are received before the close of the 30-day comment period following the last publication of Notice of Receipt of Application and Intent to Obtain Permit, the opportunity to file a request for a contested case hearing is extended to 30 days after the mailing of the executive director's response to comments..." The RTC in this matter was filed on May 5, 2015; the deadline to file hearing requests ended on June 5, 2015.

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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.

VI. Maximum Expected Duration of the Contested Case Hearing

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

VII. 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 groups or persons satisfy the requirements for form under 30 TAC § 55.201(d) and are affected under 30 TAC § 55.203:

1. Phillip Gipson
2. Janet Long
3. Cedar Crest Neighborhood Association

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.

**EXECUTIVE DIRECTOR'S RESPONSE TO REQUESTS FOR RECONSIDERATION AND
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E. Find the maximum expected duration of the contested case hearing, if held, would be six months.

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

Columbia Packing Co. 106009 Hearings Requests

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
Austin, Texas 78711-3087

Date: 7/6/2015

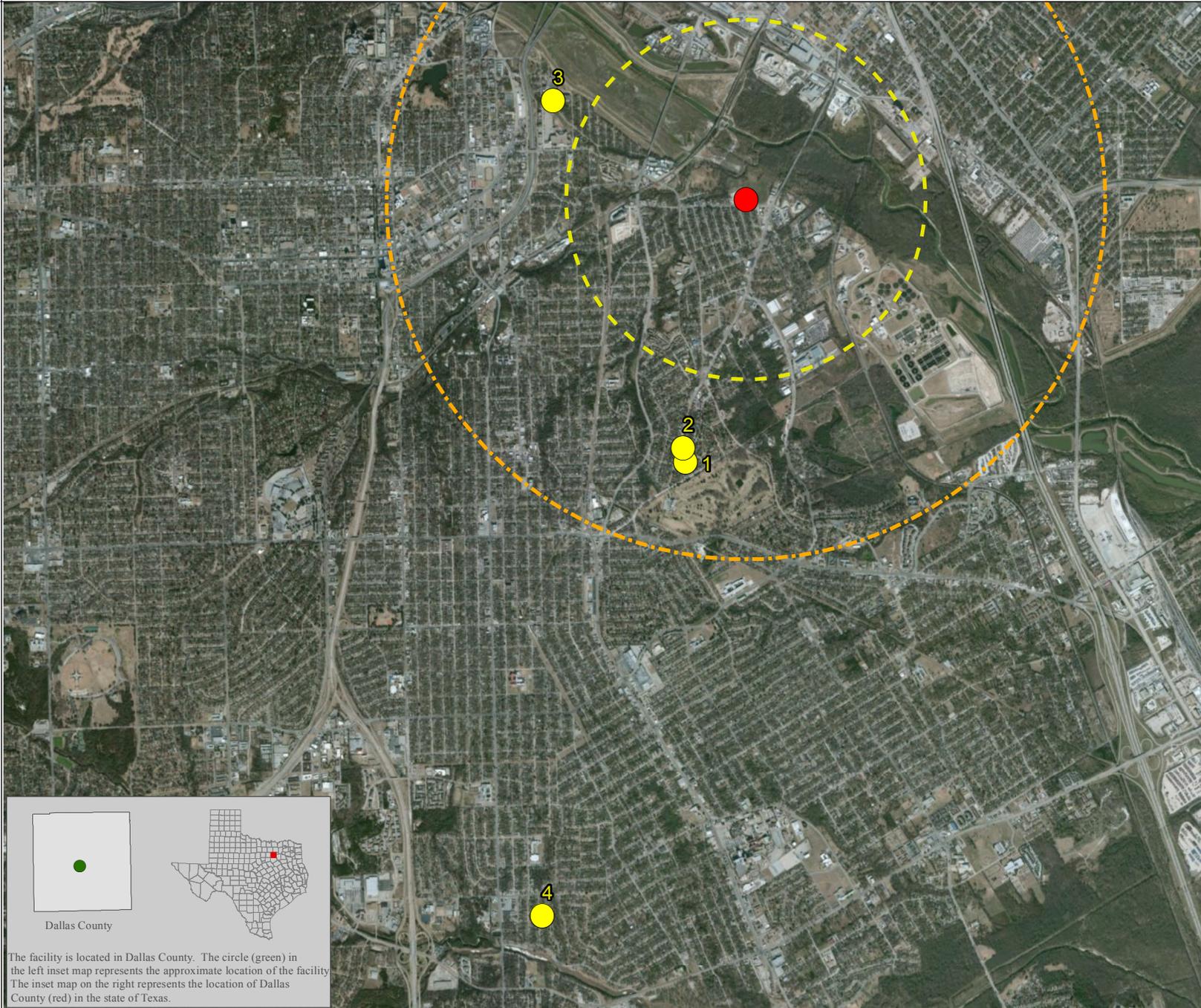


- Facility
- 1 mi radial distance from facility
- 2 mi radial distance from facility
- Approximate Requester Location

ID	Name
1	Gipson
2	Long
3	Preston
4	Evans

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 Dallas 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 Dallas County (red) in the state of Texas.

CERTIFICATE OF SERVICE

On the 27th day of July 2015, 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.



Sierra Redding

MAILING LIST
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DOCKET NO. 2015-0987-AIR; PERMIT NO. 106009

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