

Bryan W. Shaw, Ph.D., P.E., *Chairman*
Toby Baker, *Commissioner*
Jon Niermann, *Commissioner*
Richard A. Hyde, P.E., *Executive Director*



TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

October 8, 2015

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

Re: Backup Material for Executive Director's Response to Hearing Request Brief for Cabot Norit Americas, Inc., Air Quality Permit No. 56552
TCEQ Docket No. 2015-1150-AIR

Dear Ms. Bohac:

Enclosed please find a copy of the Executive Director's Response to Hearing Request brief for the above referenced item. If you have any questions, please do not hesitate to call me at extension 1320.

Sincerely,

A handwritten signature in cursive script that reads "Nicolas Parke".

Nicolas Parke
Staff Attorney
Environmental Law Division

Enclosure

TCEQ AIR QUALITY PERMIT NO. 56552
TCEQ DOCKET NO. 2015-1150-AIR

APPLICATION BY	§	BEFORE THE
CABOT NORIT AMERICAS, INC.	§	
ACTIVATED CARBON	§	TEXAS COMMISSION ON
PRODUCTION FACILITY	§	
MARSHALL, HARRISON COUNTY	§	ENVIRONMENTAL QUALITY

EXECUTIVE DIRECTOR'S RESPONSE TO HEARING REQUEST

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. The Texas Clean Air Act (TCAA) § 382.056(n) requires the Commission to consider hearing requests in accordance with the procedures provided in Texas Water Code § 5.556.¹ This statute is implemented through the rules in 30 Texas Administrative Code (TAC) Chapter 55, Subchapter F.

A current compliance history report, technical review summary, maximum allowable emission rates table (MAERT), and draft permit, prepared by the Executive Director's staff, are being filed concurrently with the TCEQ's Office of Chief Clerk for the Commission's consideration. In addition, the Executive Director's Response to Public Comments (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

Cabot Norit Americas, Inc. (Applicant) applied to the TCEQ for the renewal of a New Source Review Authorization under TCAA § 382.055. This renewal will authorize the continued operation of an existing plant that may emit air contaminants.

This permit will authorize the Applicant to continue operation of an existing permitted facility in which three kilns produce activated carbon from lignite. The kilns were previously grandfathered and came into the NSR program with the issuance of the permit in November 2004. Ancillary sources and equipment also authorized via this permit are: an ash pit, refractory pit, conveyors, dust collectors, storage tanks, control equipment, fugitives, and associated maintenance, startup, and shutdown (MSS) emissions. The plant is located at 3200 University Avenue, Marshall, Harrison County. Contaminants authorized under this permit include volatile organic compounds (VOC), nitrogen oxides (NOx), carbon monoxide (CO), sulfur dioxide (SO₂), hydrogen sulfide (H₂S), and particulate matter (PM) including particulate matter with diameters of 10 microns or less (PM₁₀) and 2.5 microns or less (PM_{2.5}).

The permit application was received on May 27, 2014, and declared administratively complete on June 9, 2014. The Notice of Receipt and Intent to Obtain an Air Quality Permit (public notice) for this permit application was published in English on June 25, 2014, in the Marshall News Messenger and in Spanish on June 25, 2014, in La Opinion.

¹ Statutes cited in this response may be viewed online at www.capitol.state.tx.us/statutes/statutes.html. Relevant statutes are found primarily in the Texas Health and Safety Code and the Texas Water Code. The rules in the Texas Administrative Code may be viewed online at www.sos.state.tx.us/tac/index.shtml, or follow the "Rules, Policy & Legislation" link on the TCEQ website at www.tceq.state.tx.us.

The RTC was filed on July 9, 2015, and mailed out along with the letter setting the matter on the Commissioner's Agenda to all interested persons, including those who asked to be placed on the mailing list for this application and those who submitted comment or requests for a contested case hearing.

The TCEQ received a timely hearing request during the public comment period from the following person: Frankie Baxter.

II. Analysis of Hearing Request

The Applicant is seeking a renewal that would not result in an increase in allowable emissions and would not result in an emission of an air contaminant not previously emitted. TCAA § 382.056(g) states, "The commission may not seek further comment or hold a public hearing...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."² Therefore, the Commission should deny the hearing requests as a matter of law and approve the renewal of Applicant's Permit No. 56552.

Although this renewal application will not result in an increase in allowable emissions and will not result in an emission of an air contaminant not previously emitted, TCAA § 382.056(o) states: "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 in the lowest classification under Sections 5.753 and 5.754, Water Code, and rules adopted and procedures developed under those sections."³ The Commission adopted 30 TAC Chapter 60 to evaluate compliance history. The lowest classification under the Texas Water Code §§ 5.753 and 5.754 and 30 TAC § 60.2 is an "unsatisfactory performer." Under 30 TAC § 60.3(a)(3)(B), the TCEQ may hold a hearing on an air permit renewal if the site is classified as an unsatisfactory performer. The compliance history for the company and the site is reviewed for the five-year period prior to the date the permit application was received by the ED. The company and this site have a rating of 7.94 and 6.84 respectively, and have been classified as "satisfactory" performers according to 30 TAC Chapter 60. Therefore, a hearing should not be granted under TCAA § 382.056(o) based on the compliance history of the Applicant.

III. Executive Director's Recommendation

The renewal of this permit would not result in an increase in allowable emissions and would not result in the emission of an air contaminant not previously emitted. Under these circumstances, TCAA § 382.056(g) directs the Commission to "not seek further comment or hold a public

² See also 30 TAC § 55.201(i)(3)(C) (Renewals of air applications that "would not result in an increase in allowable emissions and would not result in the emission of an air contaminant not previously emitted" are applications for which there is no right to a contested case hearing).

³ See also 30 TAC § 55.201(i)(3)(C) (stating the commission may hold a hearing if the application "involves a facility for which the applicant's compliance history contains violations which are unresolved and which constitute a recurring pattern of egregious conduct which demonstrates a consistent disregard for the regulatory process, including the failure to make a timely and substantial attempt to correct the violations").

hearing." Because consideration of hearing requests on a "no increase" renewal application is governed by TCAA § 382.056(g) and (o), this Response does not include an analysis of the individual hearing requests. Accordingly, the ED respectfully recommends the Commission deny the hearing request as a matter of law and approve the renewal of Applicant's Permit No. 56552.

Respectfully submitted,

Texas Commission on Environmental
Quality

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

Caroline Sweeney, Deputy Director
Office of Legal Services

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REPRESENTING THE
EXECUTIVE DIRECTOR OF THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY

CERTIFICATE OF SERVICE

On October 8, 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 transmission or hand delivery.



Nicolas Parke

MAILING LIST
CABOT NORIT AMERICAS, INC.
DOCKET NO. 2015-1150-AIR; PERMIT NO. 56552

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