

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



Vic McWherter, Public Interest Counsel

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

October 9, 2015

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

**RE: CABOT NORIT AMERICAS, INC.
TCEQ DOCKET NO. 2015-1150-AIR**

Dear Ms. Bohac:

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

Sincerely,

A handwritten signature in black ink, appearing to read "Rudy Calderon".

Rudy Calderon, Attorney
Assistant Public Interest Counsel

cc: Mailing List

Enclosure

TCEQ DOCKET NO. 2015-1150-AIR

**IN THE MATTER
OF THE APPLICATION OF
CABOT NORIT AMERICAS, INC.,
ACTIVATED CARBON
PRODUCTION FACILITY
MARSHALL, PERMIT NO. 56552**

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**BEFORE THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY**

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

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

The Office of Public Interest Counsel (OPIC) of the Texas Commission on Environmental Quality (Commission or TCEQ) files this Response to Request for Hearing in the above-referenced matter and respectfully shows the following.

I. INTRODUCTION

A. Background of Facility

Cabot Norit Americas, Inc. (Cabot or Applicant) has applied to the TCEQ for a New Source Review (NSR) Authorization under Texas Clean Air Act (TCAA), §382.055 for a renewal of Air Quality Permit Number 56552. This will authorize the continued operation of an existing plant, Activated Carbon Production Facility Marshall (facility), that may emit air contaminants. If renewed, this permit will authorize the applicant to continue operation of an existing permitted facility, which includes three kilns that produce activated carbon from lignite. 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 facility is located at 3200 University Avenue, Marshall, Harrison County. Contaminants authorized under this permit include volatile organic compounds (VOC), nitrogen oxides (NO_x), 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}).

B. Procedural Background

TCEQ received this application on May 27, 2014. On June 9, 2014, the Executive Director of the TCEQ (ED) declared the application administratively complete. The Applicant published the Notice of Receipt and Intent to Obtain an Air Quality Permit (NORI) in Harrison County, Texas on June 25, 2014, in English in the *Marshall News Messenger* and in Spanish in *La Opinion*. The ED completed the technical review of the application, and prepared a draft permit. The application submitted is for a renewal of Permit No. 56552 with no increase in allowable emissions rates and no emission of any new contaminants. The Applicant does not have a “poor performer” compliance history classification, therefore, pursuant to 30 TAC §39.419(e), a public Notice of Application and Preliminary Decision (NAPD) was not required. The public comment period ended on July 10, 2014. The deadline to request a contested case hearing was July 10, 2014. On July 9, 2015, the Chief Clerk mailed the ED’s Response to Comment (RTC).

TCEQ received timely comments and a request for a contested case hearing from Frankie Baxter (Protestant). OPIC recommends denying this hearing request.

II. APPLICABLE LAW

“No Increase Renewals”

There is no right to a contested case hearing on a renewal application under Chapter 382 of the Texas Health and Safety Code (THSC), if the application would not result in an increase in allowable emissions and would not result in the emission of an air contaminant not previously emitted.¹

However, notwithstanding THSC § 382.056(g), the Commission may hold a hearing on a permit renewal “if the commission determines that the application involves a facility for which the applicant’s compliance history is in the lowest classification under §5.753 and 5.754 of the Texas Water Code, and rules adopted and procedures developed under those sections.”² TCEQ rules also allow the Commission to hold a contested case 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.”³

III. ANALYSIS OF HEARING REQUEST

The Commission must determine whether a right to a contested case hearing exists on this application. According to the technical review of this application, there would be no increase in emissions because no new sources have been constructed and controls will remain the same. Based on this technical review, OPIC cannot find that this permit renewal would result in increased allowable emissions or the emission of an air contaminant not previously emitted.

¹ THSC § 382.056(g); 30 TAC §§ 55.201(i)(3)(C); 55.211(d)(2).

² THSC § 382.056(o).

³ 30 TAC § 55.201(i)(3)(D); *see also* 30 TAC § 55.211(d)(2).

Additionally, Applicant's compliance history between May 28, 2009 and May 27, 2014, was classified as "Satisfactory" for the site and a classification of "Satisfactory" for the company. Therefore, based on a review of the criteria set forth in THSC § 382.056(g) and (o), the Applicant's compliance history does not trigger an opportunity for a hearing on this renewal application.

For these reasons, OPIC concludes that there is no right to a contested case hearing on this renewal application, pursuant to THSC § 382.056(g), 30 TAC § 55.201(i)(3)(D) and 30 TAC § 55.211(d)(2). In the event the Commission disagrees and finds there is a right to hearing, OPIC provides the analysis below of the requestor's affected person status and issues raised in her request.

A. Determination of Affected Person Status

Frankie Baxter

A hearing request was timely received on July 9, 2014, from Frankie Baxter. Ms. Baxter resides more than two miles from the facility. In her request, Ms. Baxter raises air quality, health effects, environmental effects, and the adequacy of the technical review performed by the ED as issues she is concerned about. All the issues raised are within the TCEQ's jurisdiction and could be considered by the Commission when deciding to approve the permit application and grant the permit. However, given her distance from the facility OPIC cannot find that Ms. Baxter has a personal justiciable interest that differs from the interests of the general public.

B. Disputed Issues

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

C. Disputed Questions of Fact or Law

All of the disputed issues involve questions of fact.

D. Issues Raised During Public Comment Period

All of the issues were raised during the public comment period.

E. Hearing Request Based on Withdrawn Public Comment

None of the hearing requests are based on issues raised solely in a public comment which has been withdrawn.

F. Relevant and Material Issues

Air Quality

Ms. Baxter has raised the issue of air quality. The purpose of the Texas Clean Air Act is to safeguard the state's air resources from pollution by controlling or abating air pollution and emissions of air contaminants. Tex. Health & Safety Code § 382.002. The issue of air quality could therefore be relevant and material to the Commission's decision on this application.

Health Effects

Ms. Baxter has raised the issue of impacts to human health resulting from or being exacerbated by the proposed air emissions. The Texas Clean Air Act is intended to protect public health. Tex. Health & Safety Code § 382.002. The issue of health effects could therefore be relevant and material to the Commission's decision on this application.

Environmental Effects

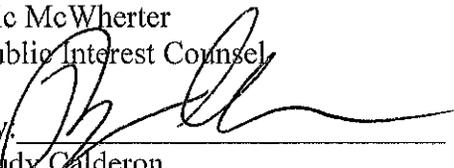
Ms. Baxter has raised the issue of environmental effects, including effects on wildlife. This concern involves the protection of natural resources. One of the purposes of the Texas Clean Air Act is to protect the general welfare of the state's natural resources. Tex. Health & Safety Code § 382.002. The issue of environmental effects could therefore be relevant and material to the Commission's decision on this application.

IV. CONCLUSION

For the reasons set forth above, OPIC respectfully recommends that the Commission find that no right to a hearing exists on this application for renewal of an air quality permit that does not authorize an increase in allowable emissions or the emission of a new contaminant and deny the hearing request submitted by Frankie Baxter. Furthermore, if the Commission were to find that there is a right to hearing, OPIC finds that Ms. Baxter is not an affected person. In the event the Commission disagrees with these findings and refers this application to SOAH, OPIC would recommend a hearing on the issues discussed in Section III.F. above for a duration of six months.

Respectfully submitted,

Vic McWherter
Public Interest Counsel

By: 

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CERTIFICATE OF SERVICE

I hereby certify that on October 9, 2015, the original and seven true and correct copies of the Office of Public Interest Counsel's Response to Request for Hearing was filed with the Chief Clerk of the TCEQ and a copy was served to all persons listed on the attached mailing list via hand delivery, facsimile transmission, Inter-Agency Mail, electronic mail, or by deposit in the U.S. Mail.



Rudy Calderon

MAILING LIST
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TCEQ DOCKET NO. 2015-1150-AIR

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