

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*

April 4, 2016

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

Re: Docket No. 2016-0037-WR  
BP Amoco Chemical Company  
Hearing Requests filed on Water Rights Permit No. 13158

Dear Ms. Bohac:

Attached for filing please find an original and seven copies of the Executive Director's Response to Hearing Requests in the above referenced matter. Please feel free to contact me at [dinniah.tadema@tceq.texas.gov](mailto:dinniah.tadema@tceq.texas.gov) or (512) 239-0617 if you have any questions.

Sincerely,

A handwritten signature in black ink, appearing to read "Dinniah C. Tadema".

Dinniah C. Tadema  
Staff Attorney  
Environmental Law Division

Enclosure

cc: Mailing List

**TCEQ DOCKET NO. 2016-0037-WR**

**APPLICATION BY BP AMOCO  
CHEMICAL COMPANY PERMIT  
NO. 13158**

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**BEFORE THE  
TEXAS COMMISSION ON  
ENVIRONMENTAL QUALITY**

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**EXECUTIVE DIRECTOR'S RESPONSE TO HEARING REQUESTS**

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The Executive Director of the Texas Commission on Environmental Quality (TCEQ or Commission) respectfully submits this response to hearing requests filed in the application by BP Amoco Chemical Company (BP) for new Water Use Permit No. 13158. One hearing request was filed by the City of Houston (City).

The Executive Director respectfully recommends that the Commission deny the City's hearing request.

Staff has prepared a map showing the location of the City's authorized diversions. Staff's map is attached as Attachment A.

**I. BACKGROUND**

BP Amoco Chemical Company (BP) filed an application for Water Use Permit No. 13158 to divert and use 100 acre-feet (AF) of water per year from three points on the Texas City Ship Channel, San Jacinto-Brazos Coastal Basin, approximately 8 miles northeasterly of the nearby city of Galveston, at a maximum combined diversion rate of 5.35 cubic feet per second for industrial purposes (hydrostatic testing), with all water not consumed returned to the Texas Ship Channel in Galveston County.

**II. PROCEDURAL HISTORY**

The Commission received this application on August 28, 2014. The application was declared administratively complete on May 20, 2015. Notice of the application was mailed by the Commission's Chief Clerk on August 28, 2015 to water right holders of record in the San Jacinto-Brazos Coastal Basin. The notice for this application was published in the Galveston County Daily News on September 17, 2015.

The hearing request period for this application closed on October 19, 2015. One hearing request for a contested case hearing was timely received.

**III. LEGAL AUTHORITY**

Pursuant to 30 Texas Administrative Code Section 55.251(b), the following may request a contested case hearing on water rights applications: 1) the Commission; 2) the Executive Director; 3) the applicant; and 4) affected persons when authorized by law. Affected persons are authorized to submit hearing requests for water rights applications under Texas Water Code Section 11.132(a). The Commission, on the request of any

affected person shall hold a hearing on a water rights application. The procedures for determining whether a hearing requestor is an affected person and whether the hearing request is valid are set forth in 30 Texas Administrative Code Sections 55.250-55.256, which apply to water rights applications such as this one that were declared administratively complete after September 1, 1999.

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.” 30 Tex. Admin. Code § 55.256(a). An interest “common to members of the general public does not qualify as a personal justiciable interest.” 30 Tex. Admin. Code § 55.256(a).

Governmental entities with authority under state law over issues contemplated by the application may be considered affected persons. 30 Tex. Admin. Code § 55.256(b).

To determine whether a hearing requestor is an affected person, all relevant factors must be considered. 30 Tex. Admin. Code § 55.256(c). These factors include but are 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) the likely impact of the regulated activity on the health, safety, and use of property of the person;
- 5) the likely impact of the regulated activity on the 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.

30 Tex. Admin. Code § 55.256(c).

In addition, the hearing request must substantially comply with the four requirements set forth in 30 Texas Administrative Code Section 55.251(c):

- 1) Give the name, address, and daytime telephone 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 requestor’s location and distance relative to the activity that is the subject of the application and how and why the requestor believes he or she will be affected by the activity in a manner not common to members of the general public;
- 3) Request a contested case hearing; and
- 4) Provide any other information specified in the public notice of application.

The request for a contested case hearing must be filed with the Commission's Chief Clerk during the public comment period. 30 Tex. Admin. Code § 55.251(d).

The Commission must grant a request for a contested case hearing made by an affected person if the request complies with the requirements of 30 Texas Administrative Code Section 55.251; is timely filed with the Chief Clerk; and is pursuant to a right to hearing authorized by law. 30 Tex. Admin. Code § 55.255(b)(2).

#### **IV. HEARING REQUEST AND RECOMMENDATION**

One hearing request was timely filed by the City. The City substantially complied with the procedural requirements of Section 55.251. However, the City did not show that it was an affected person.

The City requested a hearing on the basis that it relies upon the Coastal Basin and associated river basins for its municipal water supplies to provide water to Houston and its environs. The City is the owner and has contracts for multiple water rights in the San Jacinto and Brazos Basins. The City alleges that the Coastal Basin provides freshwater inflows to Galveston Bay and its estuaries, which contribute to the economic well-being and quality of life of the City of Houston and its citizens. Therefore, the City has a direct health and safety, as well as water rights and pecuniary interests associated with the condition and well-being of the Coastal Basin.

The Executive Director recommends that the City of Houston's hearing request be denied because the City failed to explain how its water rights may be affected by a diversion of 100 acre-feet downstream of its water rights. In addition, the City's concerns about freshwater inflows into Galveston Bay are common to the general public. Regardless, potential impact to freshwater inflows is minimal when the diversion point is tidally influenced and non-consumed water will be returned via discharge. Therefore, the City's hearing request should be denied.

**V. CONCLUSION**

The Executive Director respectfully recommends that the Commission deny the City of Houston's hearing request.

Respectfully submitted,

TEXAS COMMISSION ON  
ENVIRONMENTAL QUALITY

Richard A. Hyde, P.E.  
Executive Director

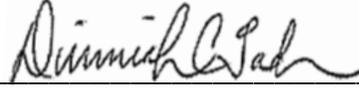
Robert Martinez, Director  
Environmental Law Division

By  \_\_\_\_\_

Dinniah C. Tadema  
Staff Attorney  
Environmental Law Division  
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CERTIFICATE OF SERVICE

I hereby certify that on this 4th day of April, 2016, a true and correct copy of the Executive Director's Response to Hearing Request was filed with the Chief Clerk of the Texas Commission on Environmental Quality and sent to the persons on the attached Mailing List.



Dinniah Tadema  
Dinniah Tadema, Staff Attorney  
Environmental Law Division

**MAILING LIST**  
**BP AMOCO CHEMICAL COMPANY**  
**DOCKET NO 2016-0037-WR; WRPERM 13158**

FOR THE APPLICANT:

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BP Amoco Chemical Company  
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via electronic mail:

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FOR ALTERNATIVE DISPUTE  
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via electronic mail:

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Texas Commission on Environmental Quality  
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FOR THE CHIEF CLERK:

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REQUESTOR(S):

Edmond R. McCarthy, Jr.  
Jackson, Sjoberg, McCarthy & Townsend, L.L.P  
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**ATTACHMENT A**



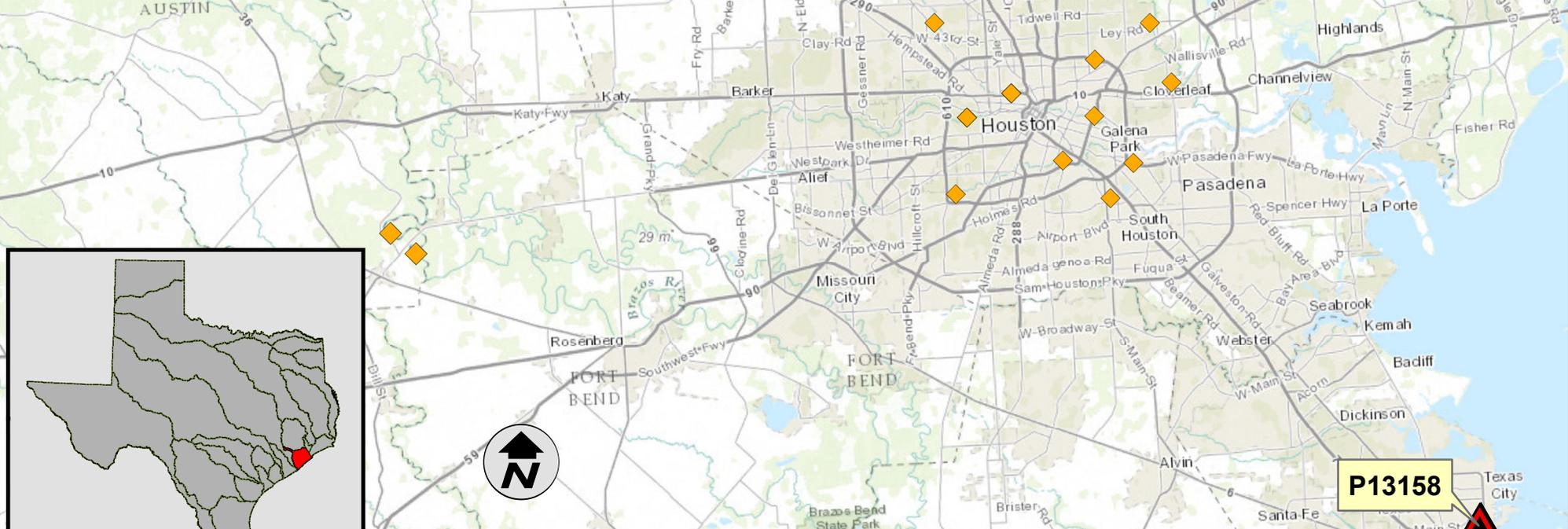
TCEQ IR GIS Team

### BP Amoco Chemical Company

Application No. 13158

#### Protestant - City of Houston

- Diversions Authorized by
- P5807
- P5808
- P5826
- P5827
- P2925
- 10-4965
- 10-4963



San Jacinto-Brazos Coastal Basin



**P13158**

