

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



May 2, 2016

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

Re: Executive Director's Response to Hearing Requests Brief for
Kloeckner Metals Corporation, Permit No. 131681
TCEQ Docket No. 2016-0145-AIR

Dear Ms. Bohac:

Enclosed please find a copy of the Executive Director's Response to Hearing Requests brief for the above referenced item. If you have any questions, please do not hesitate to call me at extension 1088.

Sincerely,

A handwritten signature in cursive script that reads "PN Petty".

Becky Nash Petty
Staff Attorney
Environmental Law Division

Enclosure

TCEQ AIR QUALITY STANDARD PERMIT NO. 131681
TCEQ DOCKET NUMBER 2016-0145-AIR

APPLICATION BY	§	BEFORE THE
KLOECKNER METALS	§	
CORPORATION	§	TEXAS COMMISSION ON
METAL PRESERVATION LINE	§	
HOUSTON, HARRIS 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 request for a contested case hearing submitted by the 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 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 facility 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, and a copy of the standard permit for concrete batch plants prepared by the ED’s staff have been filed with the TCEQ’s Office of Chief Clerk for the commission’s consideration. Finally, the ED’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

Kloeckner Metals Corporation (Kloeckner Metals) has applied for a permit to authorize an automated surface coating line, a paint mixing room (paint kitchen), a distillation room (solvent recycling room), and a regenerative thermal oxidizer. These sources will be located at 14200 Almeda Road, Houston, Harris County. This site will use these sources as well as other facilities authorized by permit-by-rule (PBR) to cut, weld, abrasively blast, and surface coat steel plates and structural steel. The facilities authorized by PBR include, but are not limited to, welding equipment, a natural gas-fired convection oven, an abrasive blasting booth, and manually operated equipment used for cutting steel. Various other facilities at the site are considered to be de minimis sources under 30 TAC § 116.119. The Applicant is not delinquent on any administrative penalty payments to the TCEQ. The TCEQ Enforcement Database was searched and no enforcement activities were found that are inconsistent with the compliance history.

The permit application for Air Quality Permit Number 131681 was received on April 6, 2015 and declared administratively complete on April 13, 2015. The Notice of Receipt and Intent to Obtain an Air Quality Permit (public notice) for this permit application was published in English on April 30, 2015 in the *Houston Chronicle* and in Spanish on May 3, 2015 in the *La Voz De Houston*. The Notice of Application and Preliminary Decision for an Air Quality Permit was published on July 23, 2015 in English in the *Houston*

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.

Chronicle and on July 26, 2015 in Spanish in the *La Voz De Houston*. The ED's RTC was mailed on December 23, 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 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 January 22, 2016. The TCEQ received one timely hearing request that was not withdrawn from Ms. Toni Andrea Bright.

II. 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;
- (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

² See TCEQ rules at Chapter 55, Subchapter F of Title 30 of the Texas Administrative Code. Procedural rules for public input to the permit process are found primarily in Chapters 39, 50, 55 and 80 of Title 30 of the Code.

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governments with authority under state law over issues raised by the application may 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 request to determine if any of the issues should be 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.³ Permit conditions of general applicability must be in rules adopted by the commission.⁴ 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 air pollution.⁵ The relevant rules regarding air emissions are found in 30 TAC Chapters 101 and 111-118. In addition, the

³ TEXAS HEALTH & SAFETY CODE § 382.0518

⁴ TEXAS HEALTH & SAFETY CODE § 382.0513

⁵ TEXAS HEALTH & SAFETY CODE § 382.085

commission has the authority to establish and enforce permit conditions consistent with this chapter.⁶ The materials accompanying this response list and reference permit conditions and operational requirements and limitations applicable to this proposed facility.

III. ANALYSIS OF HEARING REQUEST

A. Was the request for a contested case hearing in this matter timely and in proper form?

Ms. Toni Andrea Bright submitted a timely hearing request that was not withdrawn on May 24, 2015. The request was made in a comments submitted to the commission during the relevant comment period. Ms. Bright provided her phone number and address in the hearing request. Ms. Bright also stated that she will be adversely affected by the application since she believes it will cause nuisance odors. On the cover page of the TCEQ online comment form, Ms. Bright filled in the "Company" blank with Townwood Civic Club. An analysis of whether the club meets the requirements for group or associational standing is analyzed in Paragraph C, below.

Based on the address provided by Ms. Bright, as shown on the attached map, the ED's staff confirmed that Ms. Bright's residence is approximately 1.75 miles from the location of the proposed plant. However, due to the distance of approximately 1.75 miles between the proposed plant and Ms. Bright's residence, the ED finds that Ms. Bright does not have a personal judicial interest different from that of members of the general public. Therefore, Ms. Bright's hearing request does not meet the form requirements under 30 TAC § 55.201(d).

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 attached to the RTC states that requesters should, to the extent possible, specify any of the ED's responses in the RTC that the requesters dispute and the factual basis of the dispute, and list any disputed issues of law or policy.⁷ Ms. Bright did not submit a response to the ED's RTC.

Based on the foregoing, the ED finds that the request submitted by Ms. Bright does not substantially comply with all of the requirements to request a contested case hearing under 30 TAC § 55.201(d). Due to the distance of approximately 1.75 miles between her residence and the proposed plant, she will not be adversely affected in a manner not common to members of the general public.

B. Is Ms. Bright an affected person?

The law applicable to whether Ms. Bright is considered an "affected person" eligible to request a contested case hearing on this permit application is outlined above in Section II. Ms. Bright's request claims that she will be adversely affected by the facility because it may cause an odor nuisance. Protection from odor nuisance is an interest protected by the law under which the application will be considered. Further, there are no distance restrictions or other limitations imposed by law on an odor nuisance interest for this type of permit. Also, a reasonable relationship exists between odor nuisance and the activity regulated by the draft permit, as required under the relevant statutes and rules. However, there is little or no likely impact of the regulated activity on the health and safety of Ms. Bright or on the use of her property given the

⁶ TEXAS HEALTH & SAFETY CODE § 382.0513

⁷ See 30 TAC § 55.201(d)(4).

distance of Ms. Bright's residence from the proposed plant. Another consideration is whether the regulated activity will impact the use of natural resources by Ms. Bright. The ED finds there is little to no likely impact to Ms. Bright's use of natural resources from the regulated activity due to her distance from the plant. There are no governmental entities with statutory authority over or interest in the issues relevant to the application. Therefore, in addition to the fact that the request does not satisfy the requirements for form, for the above reasons Ms. Bright would not be considered an "affected person" entitled to a contested case hearing, under the requirements of TCAA § 382.058(c).

C. Does Townwood Civic Club meet group or associational standing requirements?

Although it is unclear that Ms. Bright is making her request on behalf of Townwood Civic Club in addition to herself, the ED's staff analyzed whether the club would have standing to request a contested case hearing in the event Ms. Bright is deemed to have requested a hearing on its behalf. In the analysis, ED staff considered whether the club meets the requirements for associational standing found in 30 TAC § 55.205(a), discussed above in Section II.

On the cover page of the TCEQ online comment form, Ms. Bright filled in the "Company" blank with Townwood Civic Club. However, Ms. Bright did not identify any other members of the club besides herself or identify a representative for the club. Nor did she state the purpose of the club in the request. In fact, Ms. Bright does not refer to the club in any way, other than listing it on the cover sheet, in her hearing request. Although Ms. Bright used the pronoun "we" in parts of her comment, whether her request is on behalf of the club remains unclear. Even if the hearing request were to be interpreted as being on behalf of the club, it fails to meet the requirements of 30 TAC § 55.205(a). This section of the TCEQ rules requires that at least one member of the group or association qualify as an "affected person." Since Ms. Bright is the only person identified in the hearing request, and the ED has determined, as described in Paragraph C, above, that she does not qualify as an "affected person," there is no representative of the club who is an affected person. Therefore, since Ms. Bright's request did not identify one or more members that would have standing to request a hearing in their own right as an affected person, Townwood Civic Club does not meet the requirements for group or associational standing found in 30 TAC § 55.205(a).

D. Which issues in this matter should be referred to SOAH for hearing?

Because the hearing requests do not satisfy TCAA § 382.056, the ED does not recommend referral of any issues. Should the commission decide to refer this matter for a hearing at the State Office of Administrative Hearings, the ED recommends the referral of the issue of whether the proposed plant will cause an odor nuisance.

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 Executive Director respectfully recommends the commission:

A. Find the request for a hearing requests in this matter was timely filed.

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B. Deny the request of Ms. Bright because it fails to satisfy the requirements for form under 30 TAC § 55.201(d), and she is not an affected person under 30 TAC § 55.203:

C. Deny that Townwood Civic Club meets the requirements for standing as an association or group under 30 TAC § 55.205(a).

D. If the commission determines the requester is an affected person, refer the following issue to SOAH:

- Whether the plant will cause or contribute to an odor nuisance condition.

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 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

CERTIFICATE OF SERVICE

On the 2nd day of May, 2016, a true and correct copy of the foregoing instrument was served on all persons on the mailing list by the undersigned via deposit into the U.S. Mail, inter-agency mail, facsimile, electronic mail, or hand delivery.



Becky Nash Petty

MAILING LIST
KLOECKNER METALS CORPORATION
DOCKET NO. 2016-0145-AIR; PERMIT NO. 131681

FOR THE APPLICANT:

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REQUESTER(S):

Ms. Toni Andrea Bright
Townwood Civic Club
3534 Prudence Drive
Houston, Texas 77045-571

WITHDRAWAL OF REQUEST(S):

Ms. Suzette Lartigue
Westbrook Civic Club
4706 Oakside Drive
Houston, Texas 77053-1218

INTERESTED PERSON(S):

Ms. Suzette Lartigue
Westbrook Civic Club
4706 Oakside Drive
Houston, Texas 77053-1218

Ms. Linda Scurlock
South Houston Concerned Citizens' Coalition
P.O. Box 451394
Houston, Texas 77245-1394

Kloeckner Metals Corporation

Map Requested by TCEQ Office of Legal Services
for Commissioners' Agenda

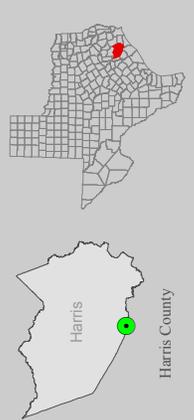
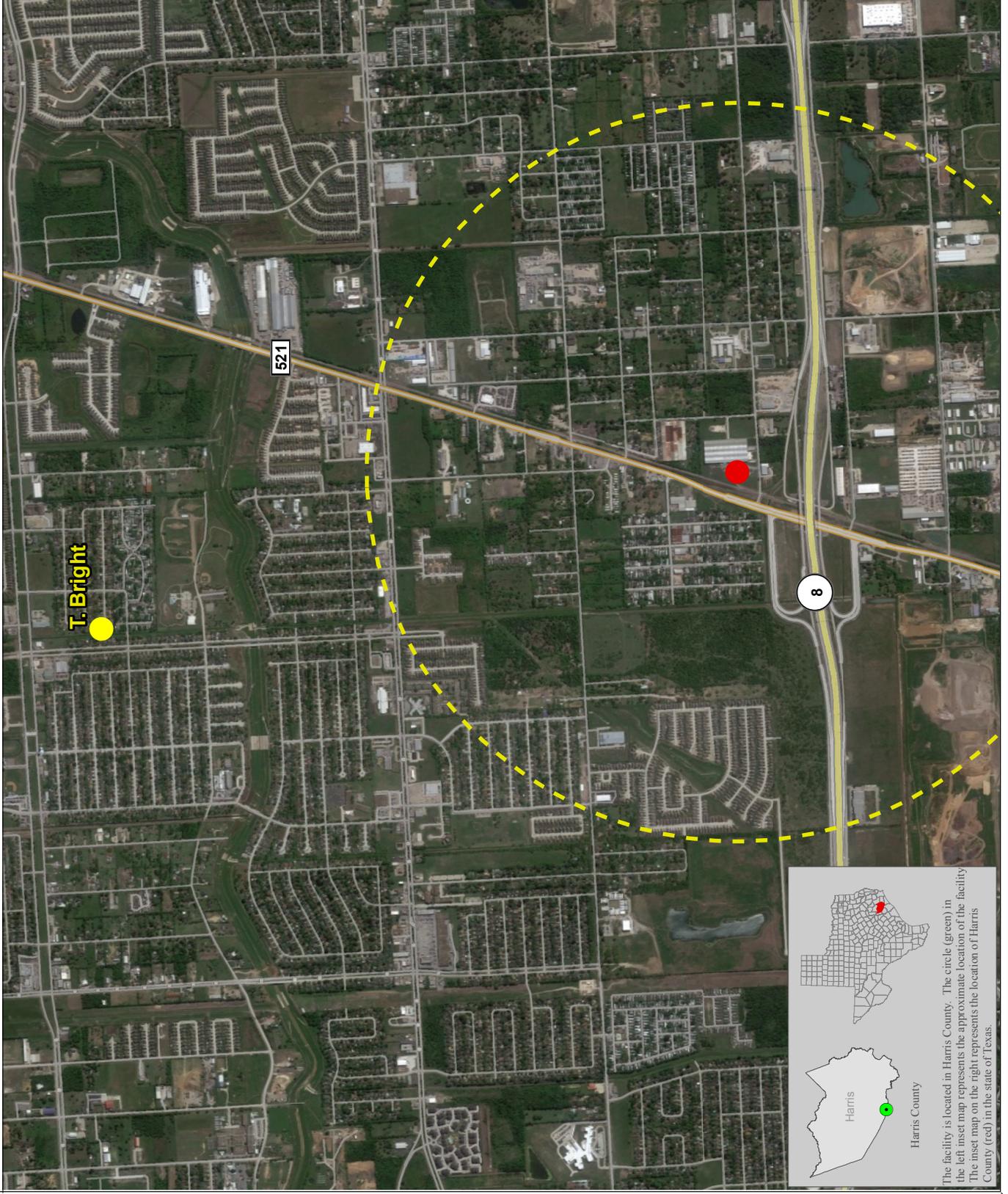
Protecting Texas by
Reducing and
Preventing Pollution



Texas Commission on Environmental Quality
GIS Team (Mail Code 197)
P.O. Box 13087
Austin, Texas 78711-3087
Date: 4/22/2016



- Facility
- Requester
- 1 mi radial distance from facility
- Toll Roads
- Intermediate Roads
- Ramp
- Minor Roads



The facility is located in Harris 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 Harris County (red) in the state of Texas.

Source: The location of the facility was provided by the TCEQ Office of Legal Services (OLS). The 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.