

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

May 2, 2016

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: KLOECKNER METALS CORPORATION
TCEQ DOCKET NO. 2016-0145-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 cursive script that reads "Pranjal".

Pranjal M. Mehta, Attorney
Assistant Public Interest Counsel

cc: Mailing List

Enclosure

TCEQ DOCKET NO. 2016-0145-AIR

APPLICATION BY	§	BEFORE THE
KLOECKNER METALS	§	
CORPORATION	§	TEXAS COMMISSION ON
FOR AIR QUALITY PERMIT NO.	§	
131681	§	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 (TCEQ or "Commission") files this Response to Request for Hearing in the above-referenced matter and respectfully submits the following.

I. INTRODUCTION

A. Background of Facility

Kloeckner Metals Corporation (Applicant) 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. The 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 TEX. ADMIN. CODE (TAC) § 116.119.

B. Procedural Background

The TCEQ received this application on April 6, 2015. On April 13, 2015, the Executive Director of TCEQ (ED) declared the application administratively complete. The Notice of Receipt and Intent to Obtain an Air Quality Permit (NORI) 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 (NAPD) was published on July 23, 2015 in English in the *Houston Chronicle* and on July 26, 2015 in Spanish in the *La Voz De Houston*. The public comment period ended on August 25, 2015. The Response to Comments was filed on December 21, 2015. The Chief Clerk mailed the ED's Decision on December 23, 2015. The deadline to request a contested case hearing was January 22, 2016.

The Commission received timely requests for a contested case hearing on May 24, 2015 from Ms. Toni Andrea Bright and on May 26, 2015 from Ms. Suzette Lartigue. The hearing request from Ms. Lartigue was withdrawn on July 17, 2015. As more fully discussed below, OPIC recommends denying the hearing request of Ms. Bright (Requester).

II. APPLICABLE LAW

This application was declared administratively complete on April 13, 2015. Because this application was declared administratively complete after September 1, 1999, it is subject to the procedural requirements adopted pursuant to House Bill 801 (76th Leg., 1999). Under the applicable statutory and regulatory requirements, a hearing request must substantially comply with the following: give the name, address, daytime telephone number, and, where possible, fax number of the person who files the request; identify the requestor's personal justiciable interest affected by the application showing why the requestor is an "affected person" who may be adversely affected by the proposed facility or activity in a manner not common to members of

the general public; request a contested case hearing; list all relevant and material disputed issues of fact that were raised during the comment period that are the basis of the hearing request; and provide any other information specified in the public notice of the application. 30 TAC § 55.201(d).

Under 30 TAC § 55.203(a), 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.” This justiciable interest does not include an interest common to the general public.

Under 30 TAC § 55.203(c), relevant factors considered in determining whether a person is affected include:

- (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.

Under 30 TAC § 101.4, no person shall discharge from any source whatsoever one or more air contaminants or combinations thereof, in such concentration and of such duration as are or may tend to be injurious to or to adversely affect human health or welfare, animal life, vegetation, or property, or as to interfere with the normal use and enjoyment of animal life, vegetation, or property.

The Commission shall grant an affected person’s timely filed hearing request if: (1) the request is made pursuant to a right to hearing authorized by law; and (2) the request raises disputed issues of fact that were raised during the comment period and that are relevant and

material to the Commission's decision on the application. 30 TAC § 55.211(c). Texas Clean Air Act (TCAA) § 382.003(2) defines "Air contaminant" to include "particulate matter, radioactive material, dust, fumes, gas, mist, smoke, vapor, or odor."

Accordingly, responses to hearing requests must specifically address:

- (1) whether the requestor is an affected person;
- (2) which issues raised in the hearing request are disputed;
- (3) whether the dispute involves questions of fact or of law;
- (4) whether the issues were raised during the public comment period;
- (5) whether the hearing request is based on issues raised solely in a public comment withdrawn by the commenter in writing by filing a withdrawal letter with the Chief Clerk prior to the filing of the Executive Director's Response to Comment;
- (6) whether the issues are relevant and material to the decision on the application; and
- (7) a maximum expected duration for the contested case hearing.

30 TAC § 55.209(e).

III. DISCUSSION

A. Determination of Affected Person Status

The hearing request filed by the Requester expresses concerns about nuisance odor. The hearing request states that the Applicant's premises already give off such toxic odor that one cannot breathe. According to the hearing request, the Requester lives less than five minutes from the facility. The map prepared by the ED shows that the Requester lives approximately 2.5 miles away from the Applicant's facility. Considering her distance from Applicant's facility, OPIC cannot find that a reasonable relationship exists between the interests claimed and the activity regulated. 30 TAC § 55.203(c)(3). Therefore, OPIC recommends that the Commission find that the Requester is not an affected person in this matter.

While OPIC cannot recommend that a hearing be granted on this application on the basis of alleged nuisance conditions, OPIC encourages the reporting of any experienced nuisance

conditions to the TCEQ for further investigation. As discussed in the Response to Comments filed by the ED, any complaints about current or future nuisance odors from this facility may be made by contacting the TCEQ Houston Regional Office at 713-767-3500, or by calling the 24 hour toll-free Environmental Complaints Hotline at 1-888-777-3186.

IV. CONCLUSION

For the reasons stated above, OPIC recommends denying the hearing request of the Requester.

Respectfully submitted,

Vic McWherter
Public Interest Counsel

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CERTIFICATE OF SERVICE

I hereby certify that on May 2, 2016 the original and seven true and correct copies of the Office of Public Interest Counsel's Response to Request for Hearing were 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.

Pranjal
Pranjal M. Mehta

MAILING LIST
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TCEQ DOCKET NO. 2016-0145-AIR

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