

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

August 15, 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: GEORGIA-PACIFIC GYPSUM, LLC
TCEQ DOCKET NO. 2016-0923-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. 2016-0923-AIR

| | | |
|-------------------------------------|----------|------------------------------|
| IN THE MATTER | § | BEFORE THE |
| OF THE APPLICATION OF | § | |
| GEORGIA-PACIFIC GYPSUM | § | |
| LLC | § | TEXAS COMMISSION ON |
| COMPANY, LLC | § | |
| GYPSUMWALLBOARD | § | |
| MANUFACTURING PLANT, TCEQ | § | ENVIRONMENTAL QUALITY |
| AIR QUALITY PERMIT NO. 20851 | § | |

**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

Georgia-Pacific Gypsum LLC (Georgia-Pacific or Applicant) has applied to the TCEQ for a New Source Review Authorization under Texas Clean Air Act (TCAA), § 382.0518. If issued, this permit would authorize the modification of a wallboard manufacturing facility that may emit air contaminants. The facility is located at 4164 Highway 285, Quanah, Hardeman County. Contaminants authorized under this permit include: particulate matter (PM) including particulate matter with diameters of 10 microns or less (PM10) and 2.5 microns or less (PM2.5), nitrogen oxides (NOX), sulfur dioxide (SO2), carbon monoxide (CO), ammonia (NH3), organic compounds (VOC), and hazardous air pollutants (HAPs) including, but not limited to, formaldehyde (HCOH), quinolone (C9H7N), and methanol (MeOH).

B. Procedural Background

The permit application was received on December 21, 2011, and declared administratively complete on January 9, 2012. The Notice of Receipt and Intent to Obtain an Air Quality Permit (NORI or first public notice) for this permit application was published on February 3, 2012, in the *Quanah Tribune Chief*. The Notice of Application and Preliminary Decision for an Air Quality Permit (NAPD or second public notice) was published on August 14, 2015, in the *Quanah Tribune Chief*. The Response to Comment was filed on April 27, 2016, by the Executive Director. The period to request a contested case hearing ended on June 6, 2016. The TCEQ received timely hearing requests from Don Patrick Drake and Charles Drake. However, Don Patrick Drake withdrew his hearing request on June 2, 2015.

II. APPLICABLE LAW

Hearing Request

This application was declared administratively complete after September 1, 1999, and is subject to the requirements of Texas Water Code (TWC) § 5.556 added by Acts 1999, 76th Leg., Ch. 1350 (commonly known as "House Bill 801"). 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 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. Section 55.203(c) provides relevant factors to be considered in determining whether a person is affected. These factors 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, safety, and use of property of the person; and
- (5) likely impact of the regulated activity on use of the impacted natural resource by the person.

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).

Accordingly, pursuant to 30 TAC § 55.209(e), 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 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.

III. ANALYSIS OF HEARING REQUESTS

A. Determination of Affected Person Status

Charles Drake

A hearing request was timely received on February 15, 2012, from Charles Drake. According to the address provided in his hearing request, Mr. Drake lives in Lubbock, Texas, approximately 160 miles from the facility. In his request, Mr. Drake raises air quality, health effects, and environmental effects including effects on flora and fauna as issues which he 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. In his hearing request, Mr. Drake states he is an adjoining land owner to the facility, however, he does not appear on any adjoining land owner list nor on the county tax appraisal list as a land owner. Don Patrick Drake does appear as an adjoining land owner and had previously submitted a hearing request, but Don Patrick Drake has since withdrawn that request. WHILE

Don Patrick Drake is shown as an adjacent landowner, Charles Drake is not. Should Mr. Drake wish to provide proof of his interest in any land adjoining the facility, he could submit such proof in a timely filed reply to this Response to Hearing Request. Currently, however, given his distance from the facility OPIC cannot find that Mr. Charles Drake has a personal justiciable interest that differs from the interests of the general public.

B. Issues Raised in the Hearing Request

The following issues have been raised in the hearing request:

- (1) Whether the facility will negatively impact air quality.
- (2) Whether the facility will negatively impact human health.
- (3) Whether the facility will negatively impact the environment including flora and fauna.

C. Disputed Issues

There is no agreement between the hearing requester and the ED on the issues raised in the hearing request.

D. Issues of Fact

If the Commission considers an issue to be one of fact, rather than one of law or policy, it is appropriate for referral to hearing if it meets all other applicable requirements. *30 TAC § 55.211(c)(2)(A)*. All of the issues presented are issues of fact appropriate for referral to SOAH.

E. Issues Raised During Public Comment Period

All of the issues raised in the hearing request were raised in the comment period and have not been withdrawn. *30 TAC §§ 55.201(c) and (d)(4), 55.211(c)(2)(A)*.

F. 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.

G. Relevant and Material Issues

The hearing request raises issues relevant and material to the Commission's decision under the requirements of 30 TAC §§ 55.201(d)(4) and 55.211(c)(2)(A). In order to refer an issue to SOAH, the Commission must find that the issue is relevant and material to the Commission's decision to issue or deny this permit. *See Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248–51 (1986) (in discussing the standards applicable to reviewing motions for summary judgment the Court stated “[a]s to materiality, the substantive law will identify which facts are material . . . it is the substantive law's identification of which facts are critical and which facts are irrelevant that governs”). Relevant and material issues are those governed by the substantive law under which this permit is to be issued. *Id.*

Mr. Drake's hearing request raises the following issues:

Air Quality

Mr. Drake 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

Mr. Drake 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

Mr. Drake has raised the issue of environmental effects, including effects on flora and fauna. 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.

H. Issues Recommended for Referral

Should the Commission determine Mr. Drake is an affected person, OPIC recommends that the following disputed issues of fact be referred to SOAH for a contested case hearing:

- (1) Whether the facility will negatively impact air quality.
- (2) Whether the facility will negatively impact human health.
- (3) Whether the facility will negatively impact the environment including flora and fauna.

I. Maximum Expected Duration of Hearing

Commission Rule 30 TAC § 50.115(d) requires that any Commission order referring a case to SOAH specify the maximum expected duration of the hearing by stating a date by which the judge is expected to issue a proposal for decision. The rule further provides that no hearing shall be longer than one year from the first day of the preliminary hearing to the date the proposal for decision is issued. Should the Commission find that Mr. Drake has a right to a hearing and is an affected person, OPIC estimates that the maximum expected duration of a

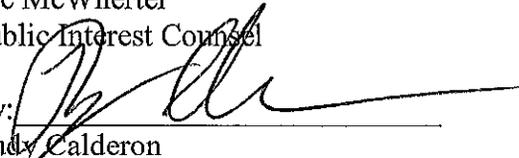
hearing on this application would be six months from the first date of the preliminary hearing until the proposal for decision is issued.

IV. CONCLUSION

For the reasons set forth above, unless Mr. Drake submits a timely reply briefing demonstrating that he is an affected person, OPIC respectfully recommends that the Commission deny the hearing request submitted by Charles Drake. 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.H. above and recommends a hearing duration of six months.

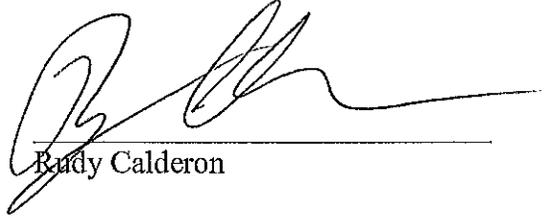
Respectfully submitted,

Vic McWherter
Public Interest Counsel

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CERTIFICATE OF SERVICE

I hereby certify that on August 15, 2016, 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
GEORGIA-PACIFIC GYPSUM, LLC
TCEQ DOCKET NO. 2016-0923-AIR

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RESOLUTION:

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REQUESTER:

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