

State Office of Administrative Hearings



Cathleen Parsley
Chief Administrative Law Judge

June 24, 2015

Tucker Royall, General Counsel
Texas Commission on Environmental Quality
P.O. Box 13087
Austin Texas 78711-3087

Re: **SOAH Docket No. 582-15-3591; TCEQ Docket No. 2015-0556-AIR;
APPLICATION OF MORGAN TRUCK BODY, LLC FOR RENEWAL OF
AIR QUALITY STANDARD PERMIT NO. 55089 IN NAVARRO COUNTY**

Dear Mr. Royall:

The above-referenced matter will be considered by the Texas Commission on Environmental Quality on a date and time to be determined by the Chief Clerk's Office in Room 201S of Building E, 12118 N. Interstate 35, Austin, Texas.

Enclosed are copies of the Proposal for Decision and Order that have been recommended to the Commission for approval. Any party may file exceptions or briefs by filing the documents with the Chief Clerk of the Texas Commission on Environmental Quality no later than July 14, 2015. Any replies to exceptions or briefs must be filed in the same manner no later than July 24, 2015.

This matter has been designated **TCEQ Docket No. 2015-0556-AIR; SOAH Docket No. 582-15-3591**. All documents to be filed must clearly reference these assigned docket numbers. All exceptions, briefs and replies along with certification of service to the above parties shall be filed with the Chief Clerk of the TCEQ electronically at <http://www10.tceq.state.tx.us/epic/efilings/> or by filing an original and seven copies with the Chief Clerk of the TCEQ. Failure to provide copies may be grounds for withholding consideration of the pleadings.

Sincerely,

A handwritten signature in black ink, appearing to read "Kerrie Jo Qualtrough".

Kerrie Jo Qualtrough
Administrative Law Judge

Enclosures
cc: Mailing List

**SOAH DOCKET NO. 582-15-3591
TCEQ DOCKET NO. 2015-0556-AIR**

APPLICATION OF MORGAN TRUCK	§	BEFORE THE STATE OFFICE
BODY LLC FOR RENEWAL OF AIR	§	
QUALITY STANDARD	§	OF
PERMIT NO. 55089 IN NAVARRO	§	
COUNTY	§	ADMINISTRATIVE HEARINGS

PROPOSAL FOR DECISION

I. INTRODUCTION

The Executive Director (ED) of the Texas Commission on Environmental Quality (TCEQ or Commission) referred this case to the State Office of Administrative Hearings (SOAH) to give the Applicant, Morgan Truck Body LLC, the opportunity to show cause why its air quality permit should not expire immediately due to deficiencies in its renewal application. The Applicant failed to appear at the evidentiary hearing despite receiving proper notice of the hearing. Based on the undisputed evidence in the record, the Administrative Law Judge (ALJ) recommends that the Commission deny the application to renew Applicant's air quality permit and that the Applicant's permit expire immediately.

II. JURISDICTION, NOTICE, AND PROCEDURAL HISTORY

On May 4, 2015, the Commission issued a notice of hearing to the Applicant by certified mail, return receipt requested, and by first class mail, to the address provided on its renewal application.¹ The notice of hearing included the time, date, place, and nature of the hearing and cited the applicable rules and statutes.² The notice also contained bold-faced language notifying the Applicant that a default order could be entered resulting in the immediate expiration of its permit if it failed to appear or be represented at the hearing.³

¹ ED Exs. A, B.

² ED Ex. A at 3-4.

³ ED Ex. A at 4.

On June 10, 2015, ALJ Kerrie Jo Qualtrough convened the contested case hearing to allow the Applicant to show cause why its permit should not immediately expire. The ED appeared and was represented by staff attorney Nick Park. The Office of Public Interest Counsel appeared and was represented by attorney Rudy Calderon. The Applicant did not appear and was not represented at the hearing.

The ED offered, and the ALJ admitted, ED Exhibits A through L. At the hearing, jurisdiction and proper notice were confirmed, and the ED moved for a default because of the Applicant's failure to appear at the June 10, 2015 evidentiary hearing.

III. UNDISPUTED EVIDENCE

On June 24, 2013, the TCEQ received the Applicant's application for renewal of Air Quality Standard Permit No. 55089.⁴ On January 21, March 17, and September 11, 2014, the ED sent letters to the Applicant detailing the deficiencies in the renewal application and providing deadlines for the Applicant to submit the necessary information.⁵ Specifically, the ED noted the following deficiencies:

- The Applicant did not demonstrate compliance with Special Condition No. 3 in Air Permit No. 55089 through the submission of all Material Substitution records for review.
- The Applicant needed to submit an amendment application that addressed the use of new surface coatings at the facility because some of the surface coatings used at the Facility did not satisfy the criteria specified in the flexibility condition in Permit No. 55089 (Special Condition No. 3).⁶

⁴ ED Ex. B.

⁵ ED Exs. E, F, G.

⁶ ED Ex. E at 82; ED Ex. F at 86; ED Ex. G at 90.

On September 11, 2014, the ED informed the Applicant that the existing permit could not be renewed because the Applicant had not shown that it was in compliance with its existing permit.⁷

On March 5, May 15, June 4, and August 12, 2014, representatives for the Applicant corresponded with the ED regarding the deficiencies.⁸ On June 4, 2014, the Applicant stated it would submit an application to amend its permit on or before July 17, 2014.⁹ However, there is no evidence that the Applicant resolved the deficiencies or actually submitted another application.

On April 15, 2015, the ED sent a fourth letter to the Applicant and stated that the permit could not be renewed because the Applicant had failed to adequately respond to the previous deficiency letters.¹⁰ The ED informed the Applicant that pursuant to Texas Health and Safety Code § 382.055(g) and 30 Texas Administrative Code § 116.314, the Applicant would need to show cause at a contested case hearing why the permit should not expire immediately.

IV. APPLICABLE LAW AND ANALYSIS

Under the Texas Health and Safety Code, the Commission must renew a permit on or before the 180th day after the date a renewal application is filed unless the Commission determines that the facility will not meet the requirements for renewal.¹¹ To renew an air permit, an applicant must demonstrate that it is in compliance with the terms of its existing permit.¹² In case of a deficiency in the renewal application, the Commission must notify an applicant of the basis for denial and establish a schedule and deadline by which an applicant must meet the requirements for renewal.¹³ If the applicant does not meet the Commission's requirements in accordance with the schedule, the

⁷ ED Ex. G at 90.

⁸ ED Ex. L.

⁹ ED Ex. L at 109.

¹⁰ ED Ex. H.

¹¹ Tex. Health and Safety Code § 382.055(f).

¹² 30 Tex. Admin. Code § 116.311(a)(2).

¹³ Tex. Health and Safety Code § 382.055(f).

applicant must show, in a contested case proceeding, why the permit should not expire immediately.¹⁴

The preponderance of the evidence presented in this case establishes that the Applicant failed to meet the Commission's requirements for permit renewal because the Applicant did not demonstrate that it was in compliance with its existing permit. Additionally, despite being provided proper notice of the hearing, the Applicant failed to appear at the contested case hearing to show cause why its permit should not expire immediately. Therefore, the ALJ finds that the Applicant failed to meet its burden of proof. Accordingly, the ALJ recommends that the Commission find that the Applicant's renewal application is deficient and should be denied and that Air Quality Standard Permit No. 55089 should expire immediately. In support of these recommendations, the ALJ has prepared findings of fact and conclusions of law in the attached proposed order.

SIGNED June 24, 2015.



**KERRIE JO QUALTROUGH
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS**

¹⁴ Tex. Health and Safety Code § 382.055(g); 30 Tex. Admin. Code § 116.314.

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



**AN ORDER Denying Renewal and Ordering the Immediate Expiration of
Air Quality Standard Permit No. 55089 issued to Morgan Truck Body LLC;
TCEQ Docket No. 2015-0556-AIR
SOAH Docket No. 582-15-3591**

On _____, the Texas Commission on Environmental Quality (TCEQ or Commission) considered the Proposal for Decision (PFD) presented by Kerrie Jo Qualtrough, an Administrative Law Judge (ALJ) with the State Office of Administrative Hearings (SOAH), who conducted a contested case hearing in this matter on June 10, 2015, in Austin, Texas. The Executive Director (ED), represented by attorney Nick Park, and the Office of Public Interest Counsel, represented by attorney Rudy Calderon, appeared at the hearing. Morgan Body Truck LLC (Applicant) was not present at the hearing and was not represented by counsel. Based on the evidence presented and the Applicant's failure to appear at the hearing, the ALJ issued a PFD recommending that the Commission deny the Applicant's permit renewal application and that the Applicant's permit expire immediately.

After considering the ALJ's PFD, the Commission adopts the following findings of fact and conclusions of law:

I. FINDINGS OF FACT

1. The Applicant holds Air Quality Standard Permit No. 55089 for the operation of spray painting facilities at 8051 Morgan Circle, Corsicana, Navarro County, Texas (Facility).
2. On June 24, 2013, the Commission received the Applicant's application to renew Air Quality Standard Permit No. 55089.

3. The Applicant's renewal application had the following deficiencies:
 - The Applicant did not demonstrate compliance with Special Condition No. 3 of Air Permit No. 55089 through the submission of all Material Substitution records for review.
 - The Applicant needed to submit an amendment application that addressed the use of new surface coatings at the facility because some of the surface coatings used at the Facility did not satisfy the criteria specified in the flexibility condition in Permit No. 55089 (Special Condition No. 3).
4. On January 21, March 17, and September 11, 2014, the ED sent letters of deficiency to the Applicant detailing the deficiencies in the Applicant's renewal application and setting deadlines for the Applicant to provide the necessary information.
5. On April 15, 2015, the ED informed the Applicant in writing that the ED had not received the necessary information to remedy the deficiencies. The ED notified the Applicant that a show cause hearing regarding the immediate expiration of the Applicant's permit would be scheduled.
6. The Applicant's application to renew Air Quality Standard Permit No. 55089 did not demonstrate compliance with its existing permit.
7. The Applicant failed to resolve the deficiencies in its application to renew Air Quality Standard Permit No. 55089 by the deadlines specified in the Executive Director's letters of deficiency.
8. On May 4, 2015, the Commission's Chief Clerk issued a notice of hearing and sent the notice to the Applicant by certified mail, return receipt requested, and by first class mail, to the address provided on the renewal application.
9. The notice of hearing indicated the time, date, place, and nature of the hearing; stated the legal authority and jurisdiction for the hearing; indicated the deficiencies in the renewal application as alleged by the ED; and advised the Applicant, in at least twelve-point bold-faced type, that failure to appear at the contested case show cause hearing in person or by representative could result in the factual allegations contained in the notice being deemed as true and the permit being subject to immediate expiration by default.
10. On June 10, 2015, ALJ Kerrie Jo Qualtrough convened the evidentiary hearing at SOAH in Austin, Texas. Attorney Nick Park represented the Executive Director, and attorney Rudy Calderon represented the Office of Public Interest Counsel.
11. The Applicant did not appear and was not represented at the June 10, 2015 evidentiary hearing.

II. CONCLUSIONS OF LAW

1. The Commission has jurisdiction over this matter pursuant to Texas Health and Safety Code § 382.011.
2. SOAH has jurisdiction over matters related to the hearing in this case, including the authority to issue a proposal for decision with findings of fact and conclusions of law, pursuant to Texas Government Code, chapter 2003.
3. An applicant seeking to renew an existing air quality permit must submit certain information in support of renewal. 30 Tex. Admin. Code § 116.311.
4. To renew an air quality permit, the applicant must demonstrate compliance with its existing permit. 30 Tex. Admin. Code § 116.311(a)(2).
5. If an applicant fails to meet the Commission's requirements for renewal of its permit in accordance with the schedule established, then the applicant must show cause in a contested case proceeding why the permit should not expire immediately. Tex. Health and Safety Code § 382.055(g); 30 Tex. Admin. Code § 116.314(c).
6. Prior to the denial of an application to renew an air quality permit, the Executive Director must provide notice to the applicant that describes the basis for denial and a schedule for compliance with the renewal requirements if the denial is based on failure to meet the Commission's requirements. 30 Tex. Admin. Code § 116.314(b).
7. An existing permit shall remain in effect until a date specified in any Commission order entered following a contested case hearing. 30 Tex. Admin. Code § 116.314(d)(4).
8. The Applicant received proper notice of the June 10, 2015 contested case hearing. Tex. Gov't Code §§ 2001.051-.052.
9. The Applicant's application to renew Air Quality Standard Permit No. 55089 did not meet the requirements of 30 Texas Administrative Code § 116.311(a)(2).
10. The Applicant failed to show cause why its permit should not expire. Tex. Health and Safety Code § 382.055(g); 30 Tex. Admin. Code § 116.314(c).
11. The Applicant's application to renew Air Quality Standard Permit No. 55089 should be denied, and the permit should expire immediately.

III. ORDERING PROVISIONS

NOW, THEREFORE, BE IT ORDERED BY THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY, IN ACCORDANCE WITH THESE FINDINGS OF FACT AND CONCLUSIONS OF LAW, THAT:

1. The application to renew Air Quality Standard Permit No. 55089, filed by Morgan Truck Body LLC, is denied, and Air Quality Standard Permit No. 55089 expires immediately on the issue date of this Order.
2. All other motions, requests for entry of specific findings of fact or conclusions of law, and any other requests for general or specific relief, if not expressly granted herein, are hereby denied.
3. The effective date of this Order is the date the Order is final, as provided by Texas Government Code § 2001.144 and 30 Texas Administrative Code § 80.273.
4. If any provision, sentence, clause, or phrase of this Order is for any reason held to be invalid, the invalidity of any provision shall not affect the validity of the remaining portions of this Order.

ISSUED:

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

**Bryan W. Shaw, Ph.D., P.E., Chairman
For the Commission**

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STYLE/CASE: MORGAN TRUCK BODY LLC

SOAH DOCKET NUMBER: 582-15-3591

REFERRING AGENCY CASE: 2015-0556-AIR

**STATE OFFICE OF ADMINISTRATIVE
HEARINGS**

**ADMINISTRATIVE LAW JUDGE
ALJ KERRIE QUALTROUGH**

REPRESENTATIVE / ADDRESS

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