

TRANSCRIPT OF PROCEEDINGS
BEFORE THE
TEXAS COMMISSION ON ENVIRONMENTAL QUALITY
AUSTIN, TEXAS

IN THE MATTER OF:) TCEQ RULE
PROPOSED ADDITIONS TO) PROJECT NO.
30 TAC CHAPTER 101) 2009-009-101-EN

PUBLIC HEARING
TUESDAY, JANUARY 5, 2010

BE IT REMEMBERED THAT AT approximately 2:00 p.m., on Tuesday, the 5th day of January 2010, the above-entitled matter came on for hearing at the Texas Commission on Environmental Quality, 12100 Park 35 Circle, Building E, Room 201S, Austin, Texas; and the following proceedings were reported by Lou Ray, a Certified Shorthand Reporter of:

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ORIGINAL

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1 P R O C E E D I N G S

2 TUESDAY, JANUARY 5, 2010

3 (10:00 a.m.)

4 MS. DURON: Good morning. I would like
5 to welcome everyone to this public hearing being
6 conducted by the Texas Commission on Environmental
7 Quality. My name is Patricia Duron, and I'm with the
8 Environment -- I'm sorry, General Law Division.

9 I'd also like to introduce Ron Ellis
10 with the Water Supply Division, and Ross Henderson
11 with our Environmental Law Division.

12 We are here this morning to receive oral
13 and/or written comments on the proposed revisions for
14 Chapter 295 and 297 concerning House Bill 4231
15 Imported Water, TCEQ Rule Project No. 2009-040-295-OW.

16 If you intend to present oral testimony
17 and haven't already signed in at our registration
18 table, please do that now. If you are not familiar
19 with the proposed changes, copies of the proposal from
20 issue of the *Texas Register* are available at the
21 registration table. We also have copies of the
22 hearing notice, so if anyone is planning to submit
23 written comments, you can quickly find information on
24 where to fax or mail those in, or submit via
25 e-Comments.

1 issue of the *Texas Register* are available at the
2 registration table. We also have copies of the
3 hearing notice so that if anyone is planning to send
4 written comments or submit comments via the e-Comment
5 system, you can quickly find the information on how to
6 submit your comments. We will continue to accept
7 written comments on this proposal until Monday,
8 January 11th.

9 This hearing is structured strictly for
10 the receipt of oral or written comments. Open
11 discussion during the hearing is not allowed.
12 However, if anyone has additional questions or
13 comments regarding the proposal, there will be another
14 opportunity after the hearing to have your questions
15 answered.

16 We will now begin receiving comments in
17 the order in which you have registered. Once I or
18 Devon call your name, if you will please come up to
19 the podium, state your name and who you represent, and
20 begin your comments. Thank you.

21 Bruce Heine, please.

22 COMMENTS BY BRUCE HEINE

23 MR. HEINE: Thank you very much. My
24 name is Bruce Heine. I'm with Magellan Midstream
25 Partners. We are a terminal and pipeline company.

1 We're not affiliated with a refiner or refinery.

2 We're a common carrier pipeline and service provider.

3 UNIDENTIFIED SPEAKER: Excuse me. Sorry
4 about that.

5 MR. HEINE: Would you like me to start
6 over?

7 MS. PENDLETON: No, she got you. You're
8 okay. We got you.

9 MR. HEINE: Okay. We appreciate the
10 opportunity to speak before you today to address some
11 issues that are very important as it relates to
12 emissions here in the great state of Texas. Magellan
13 has petroleum distribution terminals in Galena Park in
14 the Houston Ship Channel area, also in East Houston
15 and Dallas and South Lake, West Fort Worth, Odessa,
16 El Paso, and Mount Pleasant, Texas. So we have a wide
17 footprint throughout the state.

18 Two primary issues I'd like to bring to
19 your attention today -- and again, appreciate the
20 opportunity to visit with staff. One is in regards to
21 roof landing issues, and we believe they should be
22 included -- those emissions should be included in the
23 baselines, and two suggested revisions to the proposed
24 rule.

25 As we submitted comments earlier this

1 year in July, Magellan noted that the baseline amount
2 as currently drafted -- it's not clear if it includes
3 the roof landing emissions from our Galena Park
4 terminal in the Ship Channel in Houston. According to
5 TCEQ as of December 2006, with few exceptions,
6 floating roof landings in our associated air emissions
7 were not considered in the permit review, requested in
8 permit applications, nor considered in the development
9 of permits by rule to authorized storage tanks. This
10 was due in part that there had not been generally
11 accepted methods or an available estimate to the air
12 emissions during the period when a floating roof was
13 landed near -- neither the industry nor TCEQ had
14 formed a consensus on how to deal with such emissions.

15 It wasn't until December of 2006 when
16 TCEQ issued a memo that provided guidance related to
17 the floating roofs and landings that resulted in air
18 emissions to all stakeholders that TCEQ provided
19 direction to the industry as to the manner in which to
20 deal with these emissions sources. It wasn't until
21 that time that it became clear that these emissions
22 should be permitted.

23 As early as August 2003, Magellan had
24 self-disclosed roof landing events and requested
25 guidance from TCEQ on how to manage such

1 previously-unaccounted emissions. The guidance for
2 Magellan ultimately came at the same time that it was
3 provided to other stakeholders in Texas, which was in
4 December of 2006.

5 At that time, Magellan and TCEQ entered
6 into a compliance agreement that had required Magellan
7 to submit an application to amend its permit pursuant
8 to the Administrative Code. Magellan submitted its
9 application on March the 9th, 2007. A letter from
10 TCEQ declared that the application administratively
11 was complete on March the 30th, 2007.

12 Consistent with the Administrative Code,
13 the amendment should have been issued before the end
14 of 2007. Instead, the permit was not issued by TCEQ
15 until two years later on June the 12th, 2009.

16 Roof landing emissions should be
17 included in the baseline. Absent a rule that includes
18 roof landings in the baseline, Magellan will be
19 punished despite the fact that it acted promptly and
20 consistent with TCEQ's guidance to have the roof
21 landings included in our permits. The failure to
22 include these roof landings in the baseline will not
23 only amount to a punishment for Magellan, but it
24 defeats the purpose for establishing a baseline
25 amount.

1 EPA recognized that baseline
2 calculations should be representative of the source's
3 normal operating conditions. To exclude this
4 significant source of emissions would represent the
5 source's normal operating conditions in attainment
6 year -- in an attainment year.

7 The roof landings represented 85.3
8 percent of our total emissions from our Galena Park
9 terminal in 2007. Magellan included the roof landings
10 in its emissions inventory since 2003, and as such
11 roof landings -- roof landing emissions were available
12 to be used in the state implementation plan. They
13 contributed to the pollutants submitted in 2007. They
14 were recognized and acknowledged by TCEQ. They will
15 be used to calculate fees, and they should be included
16 in our baseline amount. The emissions were indeed
17 allowed.

18 In the event that TCEQ concludes that
19 the statutory language only provides for allowable
20 emissions to be included in the baseline amount, there
21 are several ways in which TCEQ can make the
22 determination that roof landing events constitutes
23 allowable emissions. First recognizing that
24 maintenance start-up and shutdown -- or MSS --
25 activities have not been included in the permits

1 across the state, TCEQ includes rules that have set
2 forth a schedule, according to the Administrative
3 Code, that has specified when owners and operators
4 were to file an application to authorize the
5 emissions. This section was effective in January of
6 2006. And based on Magellan's SIC code of 5171 and
7 4226, it is -- it need not have submitted a permit
8 application on its roof landings until January of
9 2013.

10 In a guidance document entitled
11 "Responses to Maintenance Start-up and Shutdown,
12 Questions for Advanced Air Permitting Seminar," TCEQ
13 explains that despite the fact that such emissions
14 were recognized as occurring, TCEQ did not want all
15 sources to be permitted immediately. While the
16 adoption of this rule and schedule did not authorize
17 emissions, it did allow such emissions in the sense
18 that TCEQ recognized that the emissions were
19 occurring, and would allow them to continue to occur
20 so long as the schedule was followed and the
21 applicable permit was ultimately amended.

22 If an owner-operator submitted a permit
23 application for an amendment in the attainment year
24 for MSS, TCEQ should consider such emissions to be
25 allowed under the permit for that year under the

1 Administrative Code.

2 Second, even if the permits were not
3 considered allowed pursuant to the Administrative
4 Code, in Magellan's case the emissions should be
5 considered as allowed under the permit pursuant to the
6 compliance agreement that we executed with TCEQ in
7 December of 2006. That compliance agreement ordered
8 Magellan to submit an application -- a permit
9 application, which we did, in that attainment year.

10 Although the compliance agreement did
11 not authorize the emissions, it acknowledged their
12 existence in the attainment year and allowed Magellan
13 to continue operating under specific terms and
14 conditions, all of which Magellan complied with. By
15 entering into a compliance agreement and satisfying
16 the terms of the agreement, which -- within the
17 attainment year, the emissions were indeed allowed.

18 So we have suggestions to the proposed
19 rule. We suggest that the preamble or the rule
20 language be amended to include those emissions. There
21 are several ways in which this could occur, both of
22 which would be acceptable. Two suggestions are as
23 follows: First, interpret the existing language in
24 the Administrative Code that includes -- or that
25 states: Including emissions from maintenance shutdown

1 and start-up activities applicable to the source in
2 the attainment year would include roof landings, which
3 were encountered in the emissions inventory for the
4 facility in the attainment year as MSS activities
5 would be included in activities for which a permit was
6 sought for MSS in that attainment year. This would
7 require no change to the proposed language, but may
8 clarify -- would be a clarification by the TCEQ.

9 The other and final suggestion in
10 regards to the rule would be amend Section
11 101.103(a)(2) to read as follows: Total emissions
12 under the authorized applicable to the source in the
13 attainment year, including emissions from maintenance
14 shutdown and start-up activities and emissions from
15 activities for which emissions were occurring in the
16 attainment year, yet administratively complete the
17 permit amendment was submitted for such emissions in
18 attainment year.

19 In closing, thank you very much. I've
20 been a little bit long-winded, but I appreciate your
21 patience and your attention to listening to our
22 concerns. We are a large stakeholder in the state and
23 we have ambitions to continue to grow. We value our
24 relationship with the staff and want to be forthright
25 and honest in all of our comments, and it's a

1 privilege for us to do business in Texas. Thank you.

2 MS. PENDLETON: Thank you. Is there
3 anyone else who would like to present testimony at
4 this time?

5 Thank you. Once again, the Commission
6 will continue to accept written comments on the
7 proposed revisions to 30 TAC Chapter 101, the Severe
8 Nonattainment Area Failure to Attain Fee, until
9 Monday, January 11th, 2010.

10 If there are no further comments, the
11 hearing is now closed. We appreciate your comments
12 and thank you for coming. And we'll be around for
13 more questions and answers if you have them.

14 Thank you.

15 (Proceedings concluded at 2:12 p.m.)

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C E R T I F I C A T E

STATE OF TEXAS)

COUNTY OF TRAVIS)

I, LOU RAY, a Certified Shorthand Reporter in and for the State of Texas, do hereby certify that the above-mentioned matter occurred as hereinbefore set out.

I FURTHER CERTIFY THAT the proceedings of such were reported by me or under my supervision, later reduced to typewritten form under my supervision and control and that the foregoing pages are a full, true and correct transcription of the original notes.

IN WITNESS WHEREOF, I have hereunto set my hand and seal this 8th day of January 2010.



LOU RAY
Certified Shorthand Reporter
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