

**TCEQ AIR QUALITY PERMIT NO. 93546  
TCEQ DOCKET NUMBER 2022-1156-AIR**

<b>APPLICATION BY</b>	<b>§</b>	<b>BEFORE THE</b>
<b>WESTERN REFINING TERMINALS, LLC</b>	<b>§</b>	<b>TEXAS COMMISSION ON</b>
<b>MARATHON EL PASO REFINERY</b>	<b>§</b>	<b>ENVIRONMENTAL QUALITY</b>
<b>EL PASO, EL PASO COUNTY</b>	<b>§</b>	

**EXECUTIVE DIRECTOR’S RESPONSE TO HEARING REQUESTS**

The Executive Director of the Texas Commission on Environmental Quality (Commission or TCEQ) files this response (Response) to the requests 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 Texas Water Code (TWC) § 5.556.<sup>1</sup> This statute is implemented through the rules in 30 Texas Administrative Code (TAC) Chapter 55, Subchapter F.

A compliance history report, technical review summary, and draft permit prepared by the Executive Director’s staff have been filed with the TCEQ’s Office of the Chief Clerk as backup material for the Commissioners’ agenda. In addition, the Executive Director’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**

Western Refining Terminals, LLC (Western Refining or Applicant) has applied to the TCEQ for a renewal of its New Source Review Authorization under Texas Clean Air Act (TCAA) § 382.0518. This will authorize the continued operation of an existing facility that may emit air contaminants. Other actions included with this renewal include incorporating by reference and incorporating by consolidation several existing Permits by Rule (PBRs) and a Standard Permit (SP) in accordance with 30 TAC § 116.116(d)(2) and 30 TAC § 116.615(3), respectively, and including updated tank emission calculation methodologies based on the current EPA guidance.<sup>2</sup>

This permit will authorize the Applicant to continue operation of facilities that support the Marathon El Paso Refinery, including storage tanks that comprise the site’s storage terminal (collectively the “terminal”). The terminal is located at 6501 Trowbridge Dr., El Paso, El Paso County. Contaminants authorized under this permit include carbon monoxide, hazardous air pollutants, hydrogen sulfide, nitrogen oxides, organic compounds, particulate matter including

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<sup>1</sup> Statutes cited in this response may be viewed online at [www.statutes.legis.state.tx.us](http://www.statutes.legis.state.tx.us). 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 <http://texreg.sos.state.tx.us>, or follow the “Rules” link on the TCEQ website at [www.tceq.texas.gov](http://www.tceq.texas.gov).

<sup>2</sup> These emissions were required to be recalculated based on the most recent EPA guidance; however, this recalculation does not represent an increase in actual emissions.

particulate matter with diameters of 10 microns or less ( $PM_{10}$ ) and 2.5 microns or less ( $PM_{2.5}$ ), and sulfur dioxide. 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 was received on December 10, 2020 and declared administratively complete on December 18, 2020. The Notice of Receipt and Intent to Obtain an Air Quality Permit (public notice) for this permit application was published in English, on January 15, 2021, in the *El Paso Times* and in Spanish, on January 15, 2021, in *El Diario de El Paso*. A public meeting was held on May 24, 2022, in El Paso, Texas. The public comment period ended on May 24, 2022. Because this application was received after September 1, 2015, it is subject to the procedural requirements of House Bill (HB) 801, 76<sup>th</sup> Legislature (1999), and Senate Bill (SB) 709, 84<sup>th</sup> Legislature (2015), both implemented by the Commission in its rules in 30 TAC Chapters 39, 50, and 55.

The RTC was filed on September 20, 2022 and mailed out, on September 23, 2022, along with a letter setting the matter on the Commissioner's Agenda to all interested persons, including those who asked to be placed on the mailing list for this application and those who submitted comment or requests for a contested case hearing. The Applicant is not delinquent on any administrative penalty payments or fees to the TCEQ. The TCEQ Enforcement Database was searched, and no pending enforcement activities were found.

During the comment period, TCEQ received timely hearing requests that were not withdrawn from the following persons: Torri Jennifer Ainsa, Gregory Beam, Stefanie I. Block, Veronica Carbajal, Andrea Cote Botero, Kate Feuille, Jaclyn M. Fike-Taveras, Kimberly McKean, Tiffany Maria Somers, and April Thomas. The issues raised in the hearing requests were responded to in the Executive Director's RTC.

## II. ANALYSIS OF HEARING REQUESTS

The Applicant is seeking a renewal that would not result in an increase in actual allowable emissions and would not result in an emission of an air contaminant not previously emitted. The TCAA, Section 382.056(g) states: "The commission may not seek further comment or hold a public hearing...in response to a request for a public hearing on an amendment, modification, or renewal that would not result in an increase in allowable emissions and would not result in the emission of an air contaminant not previously emitted."<sup>3</sup> Therefore, the Commission should deny the hearing request as a matter of law and approve the renewal of Permit No. 93546.

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<sup>3</sup> See also 30 TAC § 55.201(i)(3)(D) (Renewals of air applications that "would not result in an increase in allowable emissions and would not result in the emission of an air contaminant not previously emitted" are applications for which there is no right to a contested case hearing).

Although this renewal application will not result in an increase in allowable emissions and will not result in an emission of an air contaminant not previously emitted, TCAA Section 382.056(o) states: "Notwithstanding other provisions of this chapter, the commission may hold a hearing on a permit amendment, modification, or renewal if the commission determines that the application involves a facility for which the applicant's compliance history is in the lowest classification under Sections 5.753 and 5.754, of the Water Code, and rules adopted and procedures developed under those sections." The Commission adopted 30 TAC Chapter 60 to evaluate compliance history. The lowest classification under the TEX. WATER CODE §§ 5.753 and 5.754 and 30 TAC § 60.2 is an "unsatisfactory performer." Under 30 TAC § 60.3(a)(3)(B), the TCEQ may hold a hearing on an air permit renewal if the site is classified as an unsatisfactory performer. The compliance history for the company and the site is typically reviewed for the five-year period prior to the date the permit application was received by the Executive Director. As of the date the application was received, the site's compliance history was rated as 0.00 and classified as Satisfactory. The company also has a rating of 0.00 and a classification of Satisfactory. Therefore, a hearing should not be granted under TCAA § 382.056(o) based on the compliance history of the Applicant.

### **III. EXECUTIVE DIRECTOR'S RECOMMENDATION**

The renewal of this permit would not result in an increase in allowable emissions and would not result in the emission of an air contaminant not previously emitted. Under these circumstances, TCAA § 382.056(g) directs the Commission to "not seek further comment or hold a public hearing." Because TCAA § 382.056(g) and (o) apply to the consideration of hearing requests on a "no increase" renewal application, this Response does not include an analysis of the individual hearing requests. Accordingly, the Executive Director respectfully recommends the Commission deny the hearing request as a matter of law and approve the renewal of Permit No. 93546.

Respectfully submitted,

Texas Commission on Environmental Quality

Toby Baker, Executive Director

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REPRESENTING THE  
EXECUTIVE DIRECTOR OF THE  
TEXAS COMMISSION ON  
ENVIRONMENTAL QUALITY

## CERTIFICATE OF SERVICE

On this 7th day of October 2022, a true and correct copy of the foregoing instrument was filed with the TCEQ's Office of the Chief Clerk, and a copy 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.



Betsy Peticolas

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