

Jon Niermann, *Chairman*
Emily Lindley, *Commissioner*
Bobby Janecka, *Commissioner*
Toby Baker, *Executive Director*



Garrett T. Arthur, *Public Interest Counsel*

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

October 7, 2022

Laurie Gharis, Chief Clerk
Texas Commission on Environmental Quality
Office of the Chief Clerk (MC-105)
P.O. Box 13087
Austin, Texas 78711-3087

RE: **IN THE MATTER OF THE APPLICATION BY WESTERN REFINING
TERMINALS, LLC FOR PERMIT NO. 93546
TCEQ DOCKET NO. 2022-1156-AIR**

Dear Ms. Gharis:

Enclosed for filing is the Office of Public Interest Counsel's Response to Requests for Hearing in the above-entitled matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Sheldon P. Wayne".

Sheldon P. Wayne, Attorney
Assistant Public Interest Counsel

cc: Mailing List

DOCKET NO. 2022-1156-AIR

APPLICATION BY	§	BEFORE THE
WESTERN REFINING TERMINALS, LLC	§	
MARATHON EL PASO REFINERY	§	TEXAS COMMISSION ON
EL PASO, EL PASO COUNTY	§	
PERMIT NO. 93546	§	ENVIRONMENTAL QUALITY

**OFFICE OF PUBLIC INTEREST COUNSEL'S
RESPONSE TO HEARING REQUESTS**

To the Members of the Texas Commission on Environmental Quality:

The Office of Public Interest Counsel (OPIC) at the Texas Commission on Environmental Quality (TCEQ) files this response to the hearing requests in the above-captioned matter.

I. INTRODUCTION

A. Summary of Position

OPIC notes that the TCEQ Chief Clerk's office received requests for a contested case hearing in this matter from ten individuals. Under the Texas Clean Air Act, the Commission may not hold a hearing on a permit renewal application that would not result in an increase in allowable emissions and would not result in the emission of an air contaminant not previously emitted. OPIC finds that this statutory prohibition applies, and there is no right to a contested case hearing for this application. Therefore, OPIC respectfully recommends the Commission deny the pending hearing requests.

B. Background of Facility

Western Refining Terminals, LLC (Applicant) has applied to the TCEQ for renewal of its New Source Review Air Quality Permit No. 93546 (the draft Permit) under the Texas Clean Air Act (TCAA), codified as Chapter 382 of the Texas Health and Safety Code (THSC). This Permit would authorize the continued operation of existing sources (collectively, the Facility) that support the Marathon El Paso Refinery, including storage tanks that comprise the site's storage terminal.

Other actions involved in this renewal include incorporating by reference and incorporating by consolidation several Permits by Rule and a Standard Permit in accordance with 30 TAC § 116.116(d)(2) and 30 TAC § 116.615(3), respectively, and utilizing updated tank emission calculation methodologies based on the current EPA guidance.

Contaminants authorized to be emitted under this Permit include carbon monoxide, hazardous air pollutants, hydrogen sulfide, nitrogen oxides, organic compounds, particulate matter, including particulate matter with diameters of 10 microns or less and 2.5 microns or less, and sulfur dioxide. The Facility is located at 6501 Trowbridge Drive, El Paso, El Paso County.

C. Procedural background.

The TCEQ received this application on December 10, 2020. On December 18, 2020, the Executive Director (ED) declared the application administratively complete. The Notice of Receipt of Application and Intent to Obtain Air Quality Permit 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*. The hearing request period ended January 30, 2021. A public meeting was held May 24, 2022, and the public comment period ended on that same date at the close of the public meeting. The Chief Clerk mailed the ED's Response to Public Comment September 20, 2022. The Commission received hearing requests from the following individuals: Torri Jennifer Ainsa, Gregory Beam, Stephanie Block, Veronica Carbajal, Andrea Cote Botero, Kate Feuille, Jaclyn M. Fike-Taveras, Kimberly McKean, Tiffany Maria Somers, and Dr. April Thomas.

II. APPLICABLE LAW

The Commission may not hold a hearing in response to a request for 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. THSC § 382.056(g). This type of application is commonly referred to as a "no increase renewal."

Notwithstanding this general prohibition on hearings for no increase renewals, pursuant to THSC § 382.056(o), the Commission may hold a hearing if the Applicant's compliance history is classified as unsatisfactory according to the standards in Sections 5.753 and 5.754 of the Texas Water Code (TWC). Additionally, TWC § 5.754(i) states more particularly that the Commission, after an opportunity for a hearing, shall deny an application if a regulated entity's compliance history is unacceptable based on violations constituting a recurring pattern of conduct that demonstrates a consistent disregard for the regulatory process, including a failure to make a timely and substantial attempt to correct the violations.

III. DISCUSSION

OPIC finds that THSC § 382.056(g) prohibits the Commission from holding a hearing on this no increase permit renewal. According to the application, technical review, and proposed permit, the Applicant is not seeking to increase emissions allowed under the existing permit or to emit new contaminants, and therefore, if the draft Permit is issued, the Applicant would not be authorized to increase the quantity of allowable air emissions, nor would it be authorized to emit any air contaminant not previously emitted.

Furthermore, the compliance history exception does not apply to this permit renewal application. According to the ED's Response to Comments, both the Facility and the Applicant have a 0.45 compliance history rating and a classification of "satisfactory." A recent search of the TCEQ's compliance history database shows the Applicant has a rating of 0.00 and a classification of "high" and the Facility has a rating of 0.49 and a classification of "satisfactory."¹ Because neither the Applicant nor the site are classified as "unsatisfactory," the compliance history

¹ This search was performed October 6, 2022 and the ratings were updated on September 1, 2022.

exception is inapplicable to this permit application. Therefore, as required by Texas Health and Safety Code § 382.056(g), OPIC must conclude that no right to a hearing exists in this matter.

IV. CONCLUSION

By statute, the Commission may not hold a hearing on a permit renewal application that would not result in an increase in allowable emissions and would not result in the emission of an air contaminant not previously emitted. Based on the available record, OPIC finds that this statutory prohibition applies to the pending application; therefore, no requestor has a right to a contested case hearing on this permit renewal. Accordingly, OPIC must respectfully recommend denial of the hearing requests received in this matter.

Respectfully submitted,

Garrett T. Arthur
Public Interest Counsel

By: 

Sheldon P. Wayne
Assistant Public Interest Counsel
State Bar No. 24098581
P.O. Box 13087, MC 103
Austin, Texas 78711-3087
(512) 239-3144 Phone
(512) 239-6377 Fax

CERTIFICATE OF SERVICE

I hereby certify that on October 7, 2022, a true and correct copy of the Office of Public Interest Counsel's Response to Hearing Requests was filed with the Chief Clerk of the TCEQ and served on all persons listed on the attached mailing list via hand delivery, facsimile transmission, Inter-Agency Mail, electronic mail, and/or by deposit in the U.S. Mail.



Sheldon P. Wayne

MAILING LIST
WESTERN REFINING TERMINALS, LLC
TCEQ DOCKET NO. 2022-1156-AIR

FOR THE APPLICANT
via electronic mail:

Charalabos Patsatzis
Western Refining Terminals, LLC
212 North Clark Drive
El Paso, Texas 79905
cgpatsatzis@marathonpetroleum.com

Kevin Adams
Western Refining Terminals, LLC
212 North Clark Drive
El Paso, Texas 79905
kmadams@marathonpetroleum.com

FOR THE EXECUTIVE DIRECTOR
via electronic mail:

Betsy Peticolas, Staff Attorney
Texas Commission on Environmental
Quality
Environmental Law Division MC-173
P.O. Box 13087
Austin, Texas 78711-3087
Tel: 512/239-0600 Fax: 512/239-0606
betsy.peticolas@tceq.texas.gov

Miguel Gallegos, Technical Staff
Texas Commission on Environmental
Quality
Air Permits Division MC-163
P.O. Box 13087
Austin, Texas 78711-3087
Tel: 512/239-1185 Fax: 512/239-7815
miguel.gallegos@tceq.texas.gov

Ryan Vise, Director
Texas Commission on Environmental
Quality
External Relations Division
Public Education Program MC-108
P.O. Box 13087
Austin, Texas 78711-3087
Tel: 512/239-4000 Fax: 512/239-5678
pep@tceq.texas.gov

FOR ALTERNATIVE DISPUTE
RESOLUTION

via electronic mail:

Kyle Lucas, Attorney
Texas Commission on Environmental
Quality
Alternative Dispute Resolution MC-222
P.O. Box 13087
Austin, Texas 78711-3087
Tel: 512/239-0687 Fax: 512/239-4015
kyle.lucas@tceq.texas.gov

FOR THE CHIEF CLERK
via eFiling:

Docket Clerk
Texas Commission on Environmental
Quality
Office of Chief Clerk MC-105
P.O. Box 13087
Austin, Texas 78711-3087
Tel: 512/239-3300 Fax: 512/239-3311
<https://www14.tceq.texas.gov/epic/eFiling/>

REQUESTER(S):

See attached list.

REQUESTER(S)

Torri Jennifer Ainsa
6309 Loma De Cristo Dr
El Paso, TX 79912-1848

Gregory Beam
1123 Stockwell Ln
El Paso, TX 79902-2151

Ms Stefanie I Block
804 Corey Creek Dr
El Paso, TX 79912-3419

Veronica Carbajal
3016 Wheeling Ave
El Paso, TX 79930-4320

Andrea Cote Botero
771 Cheltenham Dr
El Paso, TX 79912-1545

Kate Feuille
857 River Oaks Dr
El Paso, TX 79912-3455

Jaclyn M Fike-Taveras
6004 Balcones Ct
El Paso, TX 79912-3319

Kimberly Mckean
1123 Stockwell Ln
El Paso, TX 79902-2151

Tiffany Maria Somers
1037 Broadmoor Dr
El Paso, TX 79912-2003

Dr. April Thomas
5733 Valley Laurel St
El Paso, TX 79932-4306