

APPLICATION BY	§	BEFORE THE
WEST GIN, LLC FOR RENEWAL OF	§	TEXAS COMMISSION ON
AIR QUALITY PERMIT 21589	§	ENVIRONMENTAL QUALITY

WEST GIN, LLC’S RESPONSE TO PUBLIC COMMENT
AND RESPONSE TO REQUEST FOR HEARING

West Gin, LLC (“West Gin”) submits this Response to Public Comment and Response to Request for Hearing regarding its application for a renewal (“Renewal Application”) of Air Quality Permit No. 21589 (“Permit”) in Terry County, Texas, submitted with the Texas Commission on Environmental Quality (“TCEQ” or “Commission”) on May 3, 2022. As discussed below, there is no basis for a contested case hearing on West Gin’s Renewal Application, because the Renewal Application will not result in any change in actual emission rates, and because the public comments submitted in this matter do not satisfy the TCEQ’s requirements for hearing requests. West Gin requests that the Commission decline to grant a contested case hearing in this matter and approve the Renewal Application administratively.

I. BACKGROUND

a. The Renewal Application does not seek to modify actual emission rates under the Permit.

In the Renewal Application, West Gin is seeking an authorization that will allow for the continued operation of its cotton gin facility in Terry County, Texas. West Gin is *not* proposing any change in its operations or in its actual emissions rates in the Renewal Application, but rather, operations under the Renewal Application would be identical to operations under the existing Permit. Approval of the Renewal Application would thus maintain the status quo. As the TCEQ Executive Director (“ED”) stated in the Response to Public Comment: “Because the Applicant

represented that for this renewal application there will be *no change in emission rates, no change in the character of emissions, and no new air contaminants*, further review was not necessary.”¹

b. Procedural Background

The Renewal Application was received by the Commission on May 3, 2022 and declared administratively complete on May 12, 2022. The Notice of Receipt and Intent to Obtain an Air Quality Permit for this Renewal Application was published on June 2, 2022. The public comment period ended on June 17, 2022. Three comments on the Renewal Application were submitted to the TCEQ.

On November 2, 2023, the ED filed a Response to Public Comment (“RTC”), which addressed each of the comments received, and recommended *no changes* to the draft permit in response to public comment. West Gin agrees with the ED.

II. LEGAL REQUIREMENTS FOR HEARING REQUESTS

TCEQ’s rules contain numerous requirements regarding hearings requests, including that hearing requests must:

- identify the person's personal justiciable interest affected by the application, including a brief, but specific, written statement explaining in plain language the requestor's location and distance relative to the proposed facility or activity that is the subject of the application and how and why the requestor believes he or she will be adversely affected by the proposed facility or activity in a manner not common to members of the general public;²
- request a contested case hearing;³ and
- list all relevant and material disputed issues of fact that were raised by the requestor during the public comment period and that are the basis of the hearing request. To facilitate the commission's determination of the number and scope of issues to be referred to hearing, the requestor should, to the extent possible, specify any of the

¹ Executive Director’s Response to Public Comment, p.2 (emphasis added).

² 30 Tex. Admin. Code § 55.201(d)(2).

³ 30 Tex. Admin. Code § 55.201(d)(3).

executive director's responses to the requestor's comments that the requestor disputes, the factual basis of the dispute, and list any disputed issues of law.⁴

None of the comments satisfy the applicable rules outlined above and thus fail to satisfy the minimum requirements necessary to be granted a contested case hearing. Indeed, in the case of the Renewal Application, which will not result in any emissions increase, it is difficult to envision how *anyone* could demonstrate either that they “will be adversely affected” or that there are relevant and material disputed issues of fact that necessitate a hearing.

The Commission should decline to grant a contested case hearing, and the Renewal Application should be processed administratively.

III. RESPONSE TO PUBLIC COMMENT AND REQUEST FOR HEARING

a. Joshua Wayne O’Briant and Tiffany S. O’Briant did not request a hearing.

Under the Commission’s rules, a threshold requirement for a hearing request is that it must actually “request a contested case hearing.”⁵ Joshua Wayne O'Briant, and Tiffany S. O’Briant did not request a contested case hearing, and their comments cannot trigger a hearing requirement.

b. Mary Suzanne Davis did not raise any disputed issues of fact that are relevant and material to the TCEQ’s decision on the Renewal Application.

Mrs. Davis’s comments do not raise any disputed issues of fact that are relevant and material to the Commission's decision on the application.⁶ As discussed in more detail below, all comments raised have been appropriately addressed by the ED. There are no disputed fact issues, and certainly no “relevant and material” disputed issues of fact that have been raised during the comment period. The Renewal Application should be approved administratively.

⁴ 30 Tex. Admin. Code § 55.201(d)(4)(B).

⁵ 30 Tex. Admin. Code § 55.201(d)(3).

⁶ See 30 Tex. Admin. Code §§ 55.201(d)(4)(B); 55.211(c)(2)(A)(ii).

c. The comments submitted during the public comment period do not raise relevant and material disputed issues of fact.

As discussed above, Mrs. Davis's hearing request cannot be granted unless it is determined that she satisfied all requirements relating to hearing requests, including that relevant and material disputed issues of fact were raised by the requestor during the public comment period.⁷ None of the public comments, however, raised any relevant and material disputed issues of fact. While the comments raise general concerns regarding air quality, dust, and related issues, the ED addresses such concerns in the RTC, stating that the Renewal Application satisfies all applicable legal requirements relating to such issues. Further, Mrs. Davis failed to "specify any of the executive director's responses to the requestor's comments that the requestor disputes, the factual basis of the dispute, and list any disputed issues of law."⁸

As outlined below, ED has adequately addressed all comments raised during the public comment period in the RTC, and there is no basis for a hearing in this matter.

i. Health Effects and Air Quality (raised by Mary Suzanne Davis, Joshua Wayne O'Briant, and Tiffany S. O'Briant)

General concerns related to health effects and air quality were raised in the public comments, including Mrs. Davis's broad allegation that "the air quality is poor."⁹ The ED, however, concluded as follows:

Because the Applicant represented that for this renewal application there will be no change in emission rates, no change in the character of emissions, and no new air contaminants, further review was not necessary. Accordingly, the emissions for this facility are still considered to be protective of human health and welfare at the property line of this plant site.¹⁰

⁷ See 30 Tex. Admin. Code § 55.201(d)(4)(B).

⁸ See *id.*

⁹ See Public Comment of Mrs. Mary Suzanne Davis.

¹⁰ Executive Director's Response to Public Comment, p.2.

Moreover, given that a cotton gin only operates a few months per year, “ [o]n an annual basis, the estimated emissions and resulting health effects from the cotton gin are expected to *much less than a comparable size source that operates year-round*.¹¹ The ED thus properly concluded that “it is not expected that existing health conditions will worsen, or that there will be adverse health effects on the general public, sensitive subgroups, or the public welfare and the environment as a result of proposed emission rates associated with this project.”

ii. Dust Control (raised by Mary Suzanne Davis and Joshua Wayne O'Briant)

Similar to opinions raised in the comments regarding health effects and air quality, very general allegations regarding dust in the area were raised in public comment. As the ED stated in the RTC, “proposed permit contains the required control processes to minimize dust,” and the permit should protect against any deterioration of air quality or dust generation.¹²

iii. Quality of Life, Aesthetics, Property Value (raised by Mary Suzanne Davis, Joshua Wayne O'Briant, and Tiffany S. O'Briant)

Concerns regarding the effect of the proposed project on quality of life, aesthetics of the area, and property values were also raised in public comment. Such concerns, however, are outside the scope of review of the Renewal Application and are not properly considered in this matter, as properly concluded by the ED.¹³ Such comments cannot support a claim for a contested case hearing.

iv. Local Economy (raised by Tiffany S. O'Briant)

Tiffany S. O'Briant raised issues related to the local economy in her comment. Like concerns regarding quality of life, aesthetics, and property values, however, issues relating to the

¹¹ Executive Director's Response to Public Comment, p.3 (emphasis added).

¹² Executive Director's Response to Public Comment, p.4.

¹³ *Id.*

local economy are outside the scope of review of the Renewal Application and are not properly considered in this matter.¹⁴

- v. Emergency/Evacuation (raised by Mary Suzanne Davis, Joshua Wayne O'Briant, and Tiffany S. O'Briant)

The comments raised concerns about previous fires at the facility. In response to concerns about the safety of the facility, the ED noted that the proposed permit meets all federal and state regulatory requirements and is protective of human health and the environment.¹⁵ Also of note, West Gin's compliance history as of September 2023 is "High," which is the highest rating available and indicates that West Gin has an above-satisfactory compliance record.

IV. CONCLUSION

West Gin is not seeking any change in its operations or in its actual emissions rates in the Renewal Application, and no hearing is warranted under the circumstances. Moreover, none of the comments submitted on the Renewal Application have satisfied the applicable requirements under the TCEQ's rules to trigger a hearing. Two of the three did not request a hearing, and none of the three have raised any relevant and material disputed issues of fact. West Gin adopts the ED's RTC and requests that the TCEQ decline to grant a contested case hearing in this matter, and that the Renewal Application is approved administratively.

¹⁴ *Id.*

¹⁵ *Id.* at 5.

Respectfully submitted,

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ATTORNEYS FOR WEST GIN, LLC

CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the foregoing document has been forwarded to the following on the 8th day of December, 2023:

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