

**TCEQ DOCKET NO. 2024-1224-AIR**

**APPLICATION BY  
ARGOS USA LLC, FOR  
RENEWAL TO STATE  
AIR QUALITY PERMIT  
NO. 105998**

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**BEFORE THE TEXAS  
COMMISSION ON  
ENVIRONMENTAL  
QUALITY**

**ARGOS USA LLC’S RESPONSE TO REQUESTS FOR CONTESTED CASE HEARING**

Argos USA LLC<sup>1</sup> (“Argos” or “Applicant”) files this Response to the Requests for Contested Case Hearing submitted in connection with the above-captioned permitting matter and would respectfully show the Texas Commission on Environmental Quality (the “Commission” or “TCEQ”) the following:

**I. INTRODUCTION**

On December 12, 2022, Argos filed a timely application to renew Air Quality Permit No. 105998 (the “Permit”), which will authorize the continued operation of its existing concrete batch plant located at 302 Bennington Street, Houston, Harris County, Texas 77022 (the “Facility”). Argos’s application seeks to renew the Permit as is, with no changes to any permit condition or limit, and is therefore considered a “no increase” renewal. The Notice of Receipt and Intent to Obtain an Air Quality Permit for this permit application was published in English on January 11, 2023, in the *Houston Chronicle* and in Spanish on January 12, 2023, in *El Perico*. A public meeting was held on May 2, 2023, in Houston, Texas. TCEQ received over thirty comments and at least two requests for a contested case hearing on the permit renewal. Because Argo’s renewal application does not seek authorization for and will not result in any new air contaminants or an increase in allowable emissions, there is no right to a contested case hearing on Argo’s renewal application. For the reasons set forth below, Argos respectfully urges the Commission to deny the

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<sup>1</sup> Argos USA LLC was acquired by Alleyton Resource Company, LLC during the drafting of the Response to Comments. The new owner has filed a change of ownership form with TCEQ.

hearing requests, adopt the Executive Director's Response to Public Comment, approve the Applicant's renewal application and renew the Permit.

## **II. THE EVALUATION PROCESS FOR HEARING REQUESTS**

The evaluation process for hearing requests is as follows:

### **A. Response to Requests**

The Executive Director, the Public Interest Counsel, and the Applicant may each submit written responses to a hearing request. 30 Tex. Admin. Code § 55.209(d). Responses to a hearing request must specifically address:

- 1) whether the requester is an affected person;
- 2) whether issues raised in the hearing request are disputed;
- 3) whether the dispute involves questions of fact or of law;
- 4) whether the issues were raised during the public comment period;
- 5) whether the hearing request is based on issues raised solely in a public comment withdrawn by the commenter in writing by filing a withdrawal letter with the chief clerk prior to the filing of the Executive Director's response;
- 6) whether the issues are relevant and material to the decision on the application; and
- 7) a maximum expected duration for the contested case hearing.

30 Tex. Admin. Code § 55.209(e).

### **B. Hearing Request Requirements**

In order for the Commission to consider a hearing request, the Commission must first determine whether the request meets certain requirements. Affected persons may request a contested case hearing. The request must be made in writing and timely filed with the chief clerk. The request must be based only on the requestor's timely comments and may not be based on an issue that was raised solely in a public comment that was withdrawn by the requester prior to the filing of the Executive Director's Response to Public Comment. 30 Tex. Admin. Code § 55.201(c).

A hearing request must substantially comply with the following:

- 1) give the time, address, daytime telephone number, and where possible, fax number of the person who files the request. If the request is made by a group or association, the request

must identify one person by name, address, daytime telephone number, and where possible, fax number, who shall be responsible for receiving all official communications and documents for the group;

2) 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;

3) request a contested case hearing;

4) list all relevant and material disputed issues of fact that were raised 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 executive director's responses to comments that the requestor disputes and the factual basis of the dispute and list any disputed issues of law; and

5) provide any other information specified in the public notice of application.

30 Tex. Admin. Code § 55.201(d).

### **C. Requirement that Requestor be an Affected Person/ "Affected Person" Status**

In order to grant a contested case hearing, the Commission must determine that a requestor is an "affected" person. 30 Tex. Admin. Code § 55.203 sets out who may be considered an affected person.

1) For any application, an affected person is one who has a personal justiciable interest related to a legal right, duty, privilege, power, or economic interest affected by the application. An interest common to members of the general public does not qualify as a personal justiciable interest.

2) Except as provided by 30 Tex. Admin. Code § 55.103, governmental entities, including local governments and public agencies with authority under state law over issues raised by the application may be considered affected persons.

3) In determining whether a person is an affected person, all factors shall be considered, including, but not limited to, the following:

a) whether the interest claimed is one protected by the law under which the application will be considered;

b) distance restrictions or other limitations imposed by law on the affected interest;

c) whether a reasonable relationship exists between the interest claimed and the activity regulated;

d) likely impact of the regulated activity on the health and safety of the person, and on the use of property of the person;

e) likely impact of the regulated activity on use of the impacted natural resource by the person;

- f) whether the requestor timely submitted comments on the application which were not withdrawn; and
  - g) for governmental entities, their statutory authority over or interest in the issues relevant to the application.
- 4) In making affected person determinations, the Commission may also consider, to the extent consistent with case law:
- a) the merits of the underlying application and supporting documentation in the Commission's administrative record, including whether the application meets the requirements for permit issuance;
  - b) the analysis and opinions of the executive director; and
  - c) any other expert reports, affidavits, opinions, or data submitted by the executive director, the applicant, or hearing requestor.

30 Tex. Admin. Code § 55.203.

### III. THE HEARING REQUESTS SHOULD BE DENIED

#### A. There is no Opportunity to Request a Contested Case Hearing on a “No Increase” Renewal Application.

The opportunity to request a contested case hearing on an air permit application that will not result in an increase in allowable emissions is strictly limited. Section 382.056(g) of the Texas Clean Air Act ("TCAA") provides as follows:

The commission may not seek further public comment or hold a public hearing . . . in response to a request for a public hearing on . . . [a] 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.

Tex. Health & Safety Code § 382.056(g). The Commission's own rules codify this statutory restriction<sup>2</sup> and expressly provide that there is no right to a contested case hearing for a “no increase” permit renewal.

The hearing request should be denied because Argos's application seeks no changes to Permit No. 105998 nor the Facility authorized by the Permit. Argos's National Ambient Air Quality Standards (“NAAQS”) results are below the standard for each pollutant at issue, should not cause or contribute to violation of the NAAQS, and are, therefore, protective of human health and the

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<sup>2</sup> 30 Tex. Admin. Code § 55.201(i)(3)(D).

environment.<sup>3</sup> Based on the Executive Director’s staff review, 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.<sup>4</sup> The emission limits sought by the renewal application and reflected in the draft renewed permit are the same limits currently authorized by the Permit.

**B. The Compliance History Exception Does Not Apply: Argos Maintains a Compliance History on the “High” Side of Satisfactory.”**

Applicable law does provide a compliance history exception to the limitation on the right to a hearing. Tex. Health & Safety Code § 382.056(o) states that a right to a hearing may exist where the applicant’s compliance history “is classified as unsatisfactory according to commission standards.”

The TCEQ has fully evaluated Argos’s history of compliance with environmental regulations. That review, conducted under Chapter 60 of the Commission’s rules, shows that Argos is not classified as “unsatisfactory.”<sup>5</sup> Accordingly, Tex. Health & Safety Code § 382.056(o) does not create a right to a contested case hearing on Argos’s application for a “no increase” renewal of the Permit. In fact, for the five-year compliance period prior to the date the application was submitted, Argos’s concrete batch plant had a compliance history rated as a rating of 0.02, and Argos itself was rated at 0.00.<sup>6</sup> To be classified as “unsatisfactory,” a compliance history rating would have to exceed a rating of 55.00. Argos’s compliance history rating of 0.00 is High, which is the category reserved for a regulated person or site that “has an above-satisfactory record” under 30 Tex. Admin. Code § 60.2.

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<sup>3</sup> See Executive Directors’ Response to Public Comment at 4.

<sup>4</sup> See *id.*

<sup>5</sup> See Executive Directors’ Response to Public Comment at 11.

<sup>6</sup> See *id.*

**C. Even if There Were an Opportunity for a Hearing, The Requestors are Not Affected Persons.**

Even if there were a right to a hearing on “no increase” renewal applications, only "affected persons," as defined by Texas law, are entitled to request a hearing. The Texas Legislature has narrowly defined the universe of "affected persons" who may, as a matter of right, be granted a contested case hearing.<sup>7</sup> Only those persons who have a "personal justiciable interest related to a legal right, duty, privilege, power, or economic interest affected by the administrative hearing may require that a hearing be held."<sup>8</sup> In the case of a renewal application that will not result in any emissions increase, it is difficult to envision how someone could demonstrate they are “affected” by the renewal of previously authorized emissions.

Because Argos is not seeking authorization for any increase in allowable emissions or the emission of an air contaminant not previously emitted, no person can show that it is likely to be adversely affected by Argos’s renewal application. The relevant standard for evaluating a requestor’s "affected person" status expressly provides that the Commission shall consider the "likely impact of the regulated activity" on the requestor.<sup>9</sup> The activity to be regulated in this case—renewal of Argos’s Permit No. 105998—will have no different impact on the requestors because it will not result in an allowable emissions increase. Moreover, all available data show the draft renewal permit is protective of human health and the environment.<sup>10</sup>

**IV. CONCLUSION**

The Applicant respectfully urges the Commission to deny the hearing requests, adopt the Executive Director’s Response to Public Comment, approve the Applicant’s renewal application

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<sup>7</sup> Tex. Water Code § 5.115(a); 30 Tex. Admin. Code § 55.203(a).

<sup>8</sup> Tex. Water Code § 5.115(a).

<sup>9</sup> 30 Tex. Admin. Code § 55.203(c)(3) and (4).

<sup>10</sup> See Executive Directors’ Response to Public Comment at 4.

that is the subject of this proceeding, and renew Permit No. 105998. There is no right to a contested case hearing on Applicant's renewal application because it will not result in an increase in allowable emissions or the emission of an air contaminant not previously emitted.

Respectfully submitted,

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COUNSEL FOR ARGOS USA LLC

## CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of Argos USA LLC's foregoing Response to Requests for Contested Case Hearing has been forwarded via electronic mail to the persons on the service list below on August 16, 2024.

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