

Jon Niermann, *Chairman*
Bobby Janecka, *Commissioner*
Catarina R. Gonzales, *Commissioner*
Kelly Keel, *Executive Director*



TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

August 16, 2024

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

Re: Application by Argos USA LLC, Air Quality Permit No. 105998, TCEQ Docket No. 2024-1224-AIR

Dear Ms. Gharis:

Enclosed for filing with the Texas Commission on Environmental Quality (Commission) is the Executive Director's Response to Hearing Requests.

Please do not hesitate to contact me at Contessa.Gay@tceq.texas.gov or (512) 239-5938 if you have any questions. Thank you for your attention to this matter.

Respectfully submitted,

A handwritten signature in blue ink that reads "Contessa N. Gay".

Contessa N. Gay
Staff Attorney
Environmental Law Division

cc: Mailing List

**TCEQ AIR QUALITY PERMIT NO. 105998
TCEQ DOCKET NO. 2024-1224-AIR**

APPLICATION BY	§	BEFORE THE
ARGOS USA LLC	§	TEXAS COMMISSION ON
CONCRETE BATCH PLANT	§	ENVIRONMENTAL QUALITY
HOUSTON, HARRIS COUNTY	§	

EXECUTIVE DIRECTOR'S RESPONSE TO HEARING REQUEST

The Executive Director of the Texas Commission on Environmental Quality (commission or TCEQ) files this response (Response) to the request for a contested case hearing submitted by 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 § 5.556.¹ This statute is implemented through the rules in 30 TEXAS ADMINISTRATIVE CODE (TAC) Chapter 55, Subchapter F.

The final draft of the permit special conditions, the Emission Sources - Maximum Allowable Emission Rates, the compliance history summary, and the permit renewal source analysis and technical review prepared by the Executive Director's staff are being filed concurrently with TCEQ's Office of the Chief Clerk for the Commission's consideration. 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

Argos USA LLC² (Applicant) has applied to TCEQ for a 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.

This permit will authorize the Applicant to continue operation of a Concrete Batch Plant. The plant is located at 302 Bennington Street, Houston, Harris County, Texas 77022. Contaminants authorized under this permit include particulate matter including particulate matter with diameters of 10 microns or less and 2.5 microns or less (PM₁₀ and PM_{2.5}, respectively).

To continue operating an existing permitted facility that may emit air contaminants, the person planning the continued operation must obtain a permit renewal from the commission. This permit application is for a permit renewal of Air Quality Permit Number 105998.

¹ Statutes cited in this response may be viewed online at 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 www.sos.state.tx.us/tac/index.shtml, or follow the "Rules, Policy & Legislation" link on TCEQ's website at www.tceq.texas.gov.

² 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.

The permit application was received on December 12, 2022, and declared administratively complete on December 16, 2022. The Notice of Receipt and Intent to Obtain Air Permit (NORI) Renewal 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. The notice of public meeting was issued in English on March 29, 2023. The public comment period ended on June 2, 2023. Because this application was received after September 1, 2015, it is subject to the procedural requirements of and rules implementing Senate Bill 709 (84th Legislature, 2015).³

The Executive Director's RTC was filed on March 22, 2024, and mailed out April 16, 2024, along with the 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 comments or requests for a contested case hearing. The Applicant is not delinquent on any administrative penalty payments or fees to TCEQ. TCEQ's Enforcement Database was searched, and no pending enforcement activities were found.

TCEQ received two timely hearing requests during the public comment period that were not withdrawn from James Swanson and Richard Christopher Vara.

II. Analysis of Hearing Requests

The Applicant is seeking a renewal that would not result in an increase in allowable emissions and would not result in an emission of an air contaminant not previously emitted. The TCAA, § 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."⁴ Therefore, the commission should deny the hearing requests as a matter of law and approve the renewal of Applicant's Permit No. 105998.

³ Tex. S.B. 709, 84th Leg., R.S. (2015).

⁴ 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 § 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 §§ 5.753 and 5.754, Water Code, and rules adopted and procedures developed under those sections."⁵ The Commission adopted 30 TAC Chapter 60 to evaluate compliance history. The lowest classification under the Texas Water Code §§ 5.753 and 5.754 and 30 TAC § 60.2 is an "unsatisfactory performer." Under 30 TAC § 60.3(a)(3)(B), 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. When the compliance history summary report was rated, the site had a rating of 0.02, and was classified as High, and the company had a rating of 0.00, and was classified as a High as well. 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 consideration of hearing requests on a "no increase" renewal application is governed by TCAA § 382.056(g) and (o), this Response does not include an analysis of the individual hearing requests. Accordingly, the Executive Director respectfully recommends the Commission deny the hearing requests as a matter of law and approve the renewal of Applicant's Permit No. 105998.

⁵ See also 30 TAC § 55.201(i)(3)(D) (stating the commission may hold a hearing if the application "involves a facility for which the applicant's compliance history contains violations which are unresolved and which constitute a recurring pattern of egregious conduct which demonstrates a consistent disregard for the regulatory process, including the failure to make a timely and substantial attempt to correct the violations").

Respectfully submitted,

Texas Commission on Environmental Quality

Kelly Keel, Executive Director

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REPRESENTING THE
EXECUTIVE DIRECTOR OF THE
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ENVIRONMENTAL QUALITY

CERTIFICATE OF SERVICE

On August 16, 2024, a true and correct copy of the foregoing instrument was served on all persons on the attached mailing list by the undersigned via deposit into the U.S. Mail, inter-agency mail, facsimile, electronic transmission, or hand delivery.



Contessa N. Gay

MAILING LIST
Argos USA LLC
TCEQ DOCKET NO. 2024-1224-AIR
Air Quality Permit No. 105998

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