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Garrett T. Arthur, *Public Interest Counsel*

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

June 30, 2025

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 TAMKO BUILDING
PRODUCTS LLC ASPHALT ROOFING MANUFACTURING PLANT
DALLAS, DALLAS COUNTY
TCEQ DOCKET NO. 2025-0791-AIR**

Dear Ms. Gharis:

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

Sincerely,

A handwritten signature in cursive script that reads "Pranjal".

Pranjal M. Mehta, Attorney
Assistant Public Interest Counsel

cc: Mailing List

DOCKET NO. 2025-0791-AIR

APPLICATION BY TAMKO	§	BEFORE THE
BUILDING PRODUCTS LLC	§	
ASPHALT ROOFING	§	TEXAS COMMISSION ON
MANUFACTURING PLANT	§	
DALLAS, DALLAS COUNTY	§	ENVIRONMENTAL QUALITY

**THE OFFICE OF PUBLIC INTEREST COUNSEL'S RESPONSE
TO REQUESTS FOR HEARING AND REQUEST FOR RECONSIDERATION**

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 Requests for Hearing and Request for Reconsideration on the application in the above-captioned matter and respectfully submits the following.

I. INTRODUCTION

A. Summary of Position

Before the Commission is an application by TAMKO Building Products LLC (TAMKO or Applicant) for a New Source Review (NSR) Authorization under Texas Clean Air Act (TCAA) § 382.0518, which would authorize the continued operation of an existing facility that may emit air contaminants. The Commission received timely hearing requests on behalf of Joppa Freedman Town Association (JFTA) and Downwinders at Risk. For the reasons stated herein, OPIC respectfully recommends the Commission find there is no right to a contested case hearing in this matter.

B. Description of Application and Facility

If issued, this renewal would authorize the Applicant to continue operation of an Asphalt Roofing Manufacturing Plant (the Asphalt Plant). The facility is located at 7910 South Central Expressway, Dallas, Dallas County 75216. Contaminants authorized under this permit include carbon monoxide, hazardous air pollutants, hydrogen chloride, 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.

C. Procedural Background

TAMKO's application was received on November 26, 2024 and declared administratively complete on December 16, 2024. The Notice of Receipt of Application and Intent to Obtain Air Permit Renewal for this application was published in English on January 7, 2025, in the *Lone Star TX Newspaper* and in Spanish on January 9, 2025, in *La Prensa*. The public comment period ended on January 24, 2025. The Executive Director (ED) mailed a Response to Comments (RTC) on March 24, 2025, and the deadline to request a contested case hearing was April 23, 2025.

II. APPLICABLE LAW

A. Hearing Requests

The Application was filed after September 1, 2015, and is therefore subject to the procedural rules adopted pursuant to Senate Bill 709. Tex. S.B. 709, 84th Leg., R.S. (2015). Under 30 Texas Administrative Code (TAC) § 55.21(c), a hearing request by an affected person must be in writing, must be timely filed, may not

be based on an issue raised solely in a public comment which has been withdrawn, and, for applications filed on or after September 1, 2015, must be based only on the affected person's timely comments.

Section 55.201(d) states that a hearing request must substantially comply with the following:

- (1) give the name, address, daytime telephone number, and, where possible, fax number of the person who files the request;
- (2) identify the requestor'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 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 ED's responses to the requestor's comments that the requestor disputes, 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 TAC § 55.201(d).

Under 30 TAC § 55.203(a), 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. Relevant factors to be considered in determining whether a person is affected include:

- (1) whether the interest claimed is one protected by the law under which the application will be considered;
- (2) distance restrictions or other limitations imposed by law on the affected interest;
- (3) whether a reasonable relationship exists between the interest claimed and the activity regulated;
- (4) likely impact of the regulated activity on the health and safety of the person, and on the use of property of the person;
- (5) likely impact of the regulated activity on use of the impacted natural resource by the person;
- (6) for a hearing request on an application filed on or after September 1, 2015, whether the requestor timely submitted comments on the application that were not withdrawn; and
- (7) for governmental entities, their statutory authority over or interest in the issues relevant to the application.

30 TAC § 55.203(c).

Under § 55.203(d), to determine whether a person is an affected person for the purpose of granting a hearing request for an application filed on or after September 1, 2015, the Commission may also consider the following:

- (1) the merits of the underlying application and supporting documentation in the administrative record, including whether the application meets the requirements for permit issuance;
- (2) the analysis and opinions of the executive director; and
- (3) any other expert reports, affidavits, opinions, or data submitted by the executive director, the applicant, or hearing requestor.

30 TAC § 55.203(d).

Under 30 TAC § 55.205(b), a hearing request by a group or association may not be granted unless all of the following requirements are met:

- (1) comments on the application are timely submitted by the group or association;
- (2) the request identifies, by name and physical address, one or more members of the group or association that would otherwise have standing to request a hearing in their own right;
- (3) the interests the group or association seeks to protect are germane to the organization's purpose; and
- (4) neither the claim asserted nor the relief requested requires the participation of the individual members in the case.

Under 30 TAC § 55.211(c)(2)(A)(ii), for an application filed on or after September 1, 2015, the Commission must grant a hearing request made by an affected person if the request raises disputed issues of fact that were raised by the affected person during the comment period, that were not withdrawn by filing a withdrawal letter with the Chief Clerk prior to the filing of the ED's RTC, and that are relevant and material to the Commission's decision on the application.

Under § 55.211(c)(2)(B)–(D), the hearing request, to be granted, must also be timely filed with the Chief Clerk, pursuant to a right to hearing authorized by law, and comply with the requirements of § 55.201.

B. Request for Reconsideration

Any person may file a request for reconsideration of the ED's decision under Title 30, Texas Administrative Code (TAC) § 55.201(e). The request must be in writing and filed with the Chief Clerk no later than 30 days after the Chief

Clerk mails the ED's decision and RTC. The request must expressly state that the person is requesting reconsideration of the ED's decision and give reasons why the decision should be reconsidered.

III. ANALYSIS OF HEARING REQUESTS

A. Right to Hearing

The Commission must first decide whether the right to a hearing exists for this renewal application. Under the TCAA, the Commission may not hold a 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.¹ According to the application, technical review, and proposed permit, Applicant would not be authorized to increase the quantity of allowable air emissions and would not be authorized to emit any air contaminant not previously emitted.

However, the Act further provides that the Commission may hold a hearing on a permit renewal if the Commission determines that the application involves a facility for which the applicant's compliance history is classified as "unsatisfactory" under Texas Water Code (TWC) §§ 5.753 and 5.754 and rules adopted and procedures developed under those sections.² The rules adopted under TWC §§ 5.753 and 5.754 state that the Commission may hold a hearing if the application involves a facility for which the applicant's compliance history

¹ TEX. HEALTH & SAFETY CODE § 382.056(g).

² TEX. HEALTH & SAFETY CODE § 382.056(o).

contains violations that are unresolved and that constitute a recurring pattern of egregious conduct that demonstrates a consistent disregard for the regulatory process, including the failure to make a timely and substantial attempt to correct the violations.³ According to the TCEQ compliance history database, Applicant has a “satisfactory” compliance history rating, and the Asphalt Plant’s compliance history rating is also listed as “satisfactory.” Given that neither the Applicant’s nor the facility’s rating is classified as “unsatisfactory,” OPIC finds that Applicant’s compliance history does not trigger the compliance history exception and thereby create the opportunity for a hearing in this matter.

Based on OPIC’s review of the available record, we first find that Applicant’s renewal would not result in an increase in allowable emissions and would not result in the emission of an air contaminant not previously emitted. Second, we find that Applicant’s compliance history does not trigger an exception to the hearing prohibition. Therefore, OPIC must conclude under TCAA §382.056(g) that no right to a hearing exists in this matter. For this reason, OPIC respectfully recommends the Commission deny the hearing requests. However, if the Commission decides to consider whether the requestors are affected persons who have raised relevant and material issues, OPIC offers the following additional analysis.

³ See 30 TAC §§ 55.201(i)(3)(D), 55.211(d)(2).

B. Whether the requestors are affected persons

JFTA

Legal Aid of Northwest Texas submitted timely comments and hearing requests on behalf of JFTA. JFTA is a small nonprofit membership organization dedicated to enhancing the livability of its members and others located in the Joppa area.

As required for group standing under 30 TAC § 55.205(b), JFTA timely submitted comments; the interests JFTA seeks to protect are germane to its purpose; neither the claim asserted nor the relief requested requires the participation of individual JFTA members; and JFTA's hearing request identifies, by name and address, members who would otherwise have standing to request a hearing in their own right. The hearing request names Temeckia Derrough and her family as group members and explains that they are located less than 0.5 miles from Applicant's facility. The family is concerned that emissions from the Applicant's plant may adversely impact their health and their ability to enjoy outdoor activities on their property and in nearby parks. These concerns are interests that are protected by the law under which the application is considered, and a reasonable relationship exists between those interests and regulation of the facility. The family's proximity to the Applicant's facility increases the likelihood of impacts on their health, safety, and use of property.⁴ Based on the family's concerns and proximity to the facility, Temeckia Derrough and her

⁴ OPIC conducted an independent review using Google Maps to assess the proximity of the family's residence to the Applicant's facility.

family have a personal justiciable interest in this matter which is not common to members of the general public. Because JFTA members would qualify as affected persons, OPIC finds that JFTA meets the requirements for group standing under 30 TAC § 55.205(b).

Caleb Roberts on behalf of Downwinders at Risk

Caleb Roberts, Executive Director of Downwinders at Risk, submitted a timely hearing request opposing the renewal of TAMKO's air permit, explaining community-wide health concerns in Joppa, including high asthma rates, low life expectancy, and pollution impacts documented by the Joppa Environmental Health Project and Environmental Protection Agency. He mentioned TAMKO's pollution history and the City of Dallas' efforts to downzone industry in the area.

While OPIC acknowledges the concerns raised, the hearing request does not include the information required under 30 TAC § 55.205(b) to evaluate whether Downwinders at Risk qualifies for group standing. The request does not identify, by name and physical address, a member of the group that would have standing in their own right, as required by § 55.205(b)(2). Even if OPIC assumes that Caleb Roberts is the group's representative member, Mr. Roberts does not indicate if he lives near the facility, owns property nearby, or demonstrate a personal justiciable interest. Accordingly, OPIC cannot find that Downwinders at Risk qualifies as an affected person.

C. Which issues raised in the hearing requests are disputed

JFTA raised the following disputed issues:

1. Whether Applicant failed to comply with federal and state public

notice requirements.

2. Whether the information provided by the Applicant in the application is factually accurate.
3. Whether the draft permit fails to protect the public health, welfare, property, and the environment, including due to the cumulative impacts of the other surrounding emissions along with the emissions from Applicant's facility.
4. Whether the draft permit fails to include the requisite information necessary to determine compliance with applicable federal and state air control statutes, regulations, and policies.
5. Whether the proposed activity will cause nuisance conditions in violation of 30 TAC § 101.4.
6. Whether the proposed facility will utilize Best Available Control Technology (BACT).
7. Whether there are sufficient air monitoring requirements in the draft permit.
8. Whether the draft permit fails to account for other potential air contaminants resulting from the proposed activity.
9. Whether the draft permit conditions are adequate to protect environmental justice concerns.

D. Whether the dispute involves questions of fact or of law

If the Commission considers an issue to be one of fact, rather than one of law or policy, it is appropriate for referral to hearing if it meets all other applicable requirements. The issues raised in the request are issues of fact.

D. Whether the issues were raised during the public comment period

Issues listed in Section III.C. were specifically raised by JFTA during the public comment period.

E. Whether the hearing request is based on issues raised solely in a withdrawn public comment

No public comments were withdrawn in this matter. Therefore, the hearing request is not based on issues raised in withdrawn public comments.

F. Whether the issues are relevant and material to the decision on the application

The hearing requests raise issues that are relevant and material to the Commission's decision under the requirements of 30 TAC §§ 55.201(d)(4)(B) and 55.211(c)(2)(A)(ii). To refer an issue to the State Office of Administrative Hearings (SOAH), the Commission must find that the issue is relevant and material to the Commission's decision to issue or deny the permit. Relevant and material issues are those governed by the substantive law under which the permit is to be issued. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248-51 (1986).

Compliance and Human Health and Safety

Under the Texas Clean Air Act, the Commission may issue this permit only if it finds no indication that the emissions from the facility will contravene the intent of the Texas Clean Air Act, including protection of the public's health and physical property.⁵ Because concerns about noncompliance, effects on the environment, and effects on health and safety could contravene the intent of the TCAA, Issue Nos. 3 and 4 are relevant and material. Further, the purpose of the Texas Clean Air Act is to safeguard the state's air resources from pollution by controlling or abating air pollution and emissions of air contaminants, consistent

⁵ TEX. HEALTH & SAFETY CODE § 382.0518(b)(2).

with the protection of public health, general welfare, and physical property.⁶ Therefore, Issue Nos. 2, 5, 7 and 8 are relevant and material.

Public Notice

TCAA § 382.056 requires the applicant to publish notice in a newspaper of general circulation within the municipality where the proposed facility is located or will be located. TCEQ implemented this public notice requirement through its rules in 30 TAC § 39.603, Public Notice of Air Quality Applications, Newspaper Notice. Therefore, Issue No. 1 regarding public notice is relevant and material.

BACT

Under the Texas Clean Air Act, Applicant is required to use BACT.⁷ Therefore, Issue No. 6 regarding the use of BACT is relevant and material to the Commission's decision on this application.

Environmental Equity Concerns

Because the TCEQ receives federal funding, it must comply with a suite of federal guidance and laws ensuring its actions are not intentionally discriminatory and will not have discriminatory effects.⁸ For instance, Title VI of the Civil Rights Act of 1964 prohibits discrimination on the basis of race, color, or national origin.⁹ Executive Order 12898 addresses the environmental and human health conditions of minority communities and low-income communities and calls on agencies to identify and address any disproportionately high and

⁶ TEX. HEALTH & SAFETY CODE § 382.002(a).

⁷ TEX. HEALTH & SAFETY CODE § 382.0518(b)(1).

⁸ See 40 CFR §7.35(b). <https://www.ecfr.gov/current/title-40/chapter-I/subchapter-A/part-7>

⁹ <https://www.justice.gov/crt/fcs/TitleVI>

adverse human health or environmental effects of their programs.¹⁰ Executive Order 13166 requires federal agencies—and recipients of federal financial assistance—to examine the services they provide, identify any need for services to those with limited English proficiency, and develop and implement a system to provide those services so limited English proficiency persons can have meaningful access to them.¹¹

TCEQ has made a commitment to preventing discriminatory actions or effects through its Title VI Compliance efforts, which are intended to ensure reasonable access to its decision-making processes. Towards this end, efforts have been made to develop and implement a Disability Nondiscrimination Plan, Public Participation Plan, and Language Access Plan.¹² Together, these efforts are intended to provide equal access to Commission programs and activities.

However, the specific concerns regarding the environmental equity implications of this project are not currently addressed by concrete guidance or permitting rules. Without specific requirements relating to these concerns, this issue is not relevant and material to the Commission's decision on this application.

H. Maximum expected duration for the contested case hearing

Commission rule 30 TAC § 50.115(d) requires that any Commission order referring a case to SOAH specify the maximum expected duration of the hearing

¹⁰ <https://www.archives.gov/files/federal-register/executive-orders/pdf/12898.pdf>

¹¹ <https://www.govinfo.gov/content/pkg/FR-2000-08-16/pdf/00-20938.pdf>

¹² More information on TCEQ's Title VI Compliance efforts can be found at: <https://www.tceq.texas.gov/agency/decisions/participation/title-vi-compliance>

by stating a date by which the judge is expected to issue a proposal for decision. The rule further provides that, for applications filed on or after September 1, 2015, the administrative law judge must conclude the hearing and provide a proposal for decision by the 180th day after the first day of the preliminary hearing, or a date specified by the Commission, whichever is earlier. OPIC is not recommending a hearing in this matter. However, to assist the Commission in setting a date by which the judge is expected to issue a proposal for decision, and as required by 30 TAC § 55.209(e)(7), OPIC estimates that the maximum expected duration of a hearing on this application should be 180 days from the first day of the preliminary hearing until the proposal for decision is issued.

IV. REQUEST FOR RECONSIDERATION

The Commission received a timely request for reconsideration from JFTA. JFTA argued that the Applicant and TCEQ failed to meet public notice requirements and provided inaccurate or ineffective contact information that prevented the public from determining key deadlines, effectively limiting meaningful participation. JFTA also stated that the notice was misleading regarding the timing of publication and failed to provide access to the compliance history and technical review during the public comment period. Additionally, JFTA challenges the ED's reliance on conclusory statements in the RTC alleging that the ED improperly dismissed considerations related to cumulative impacts and the statutory requirement to assess the reasonableness of emissions under Texas Health and Safety Code § 382.024. OPIC notes that a record establishing the evidentiary basis for reconsidering the ED's decision

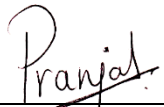
based on these issues would be needed to recommend that the request for reconsideration be granted. As no such record exists, OPIC cannot recommend the request be granted.

V. CONCLUSION

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.¹³ Based on OPIC's review of the available record, we find that TAMCO's application meets these criteria, and no hearing right exists in this case. However, if the Commission decides to consider affected persons and referable issues, we find that JFTA would qualify as an affected person and the Issue Nos. 1-8 listed in section III.C could be referred to SOAH for a contested case hearing. Finally, OPIC respectfully recommends denial of the requests for reconsideration.

Respectfully submitted,

Garrett T. Arthur
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By: 
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¹³ TEX. HEALTH & SAFETY CODE § 382.056(g).

CERTIFICATE OF SERVICE

I hereby certify that on June 30, 2025, the original of the Office of Public Interest Counsel's Response to Requests for Hearing and Requests for Reconsideration was filed with the Chief Clerk of the TCEQ and a copy was served to all persons listed on the attached mailing list via Inter-Agency Mail, electronic mail, or by deposit in the U.S. Mail.

A handwritten signature in black ink, reading "Pranjal", is written over a horizontal line.

Pranjal M. Mehta

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TCEQ DOCKET NO. 2025-0791-AIR

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