

From: [Jonathan Walling](#)
To: [REDACTED]
Cc: [REDACTED] [OCE](#)
Subject: Request for Enforcement Discretion - Western International Gas & Cylinders, Inc., Bellville, TX
Date: Thursday, April 30, 2020 8:49:03 AM
Attachments: [042820 Western International Enforcement Discretion Request.pdf](#)

Good morning, Mr. Eisen:

The TCEQ has evaluated your request for enforcement discretion at Western International Gas & Cylinders' (Western) Bellville, Texas facility regarding the requirement to obtain authorization prior to construction per Texas Health & Safety Code (THSC) § 382.0518(a). The TCEQ is unable to approve this request. THSC § 382.004 allows for commencement of construction at the applicant's own risk upon issuance of the draft permit; however, THSC § 382.004 applies only to amendments to currently issued permits and accordingly it is not applicable to the current application.

This denial does not prohibit Western from staging materials or making other preparations in anticipation of commencing construction.

Regards,

Jonathan Walling, Area Director
Coastal & East Texas Area
Texas Commission on Environmental Quality

From: Paul Eisen <[REDACTED]>
Sent: Tuesday, April 28, 2020 8:59 AM
To: Ramiro Garcia <ramiro.garcia@tceq.texas.gov>; OCE <OCE@tceq.texas.gov>
Cc: Brian Schumann <[REDACTED]> Ricky Abernathy
<[REDACTED]> Amy Messick <amy.messick@tceq.texas.gov>
Subject: Request for Enforcement Discretion - Western International Gas & Cylinders, Inc., Bellville, TX

Mr. Garcia,

On behalf of Western International Gas & Cylinders, Inc., I am pleased to submit the attached request for enforcement discretion in accordance with recently issued guidance from TCEQ for regulated entities. This request updates Western's request dated April 13, 2020 with additional relevant information that more fully explains the basis for the request.

We greatly appreciate your prompt consideration of this matter.

Sincerely,

Paul Eisen

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Paul Eisen

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April 28, 2020

Mr. Ramiro Garcia, Jr., Deputy Director
Texas Commission on Environmental Quality
Office of Compliance and Enforcement
P.O. Box 13087 Austin, TX 78711-3087
RE: Request for Enforcement Discretion

Dear Mr. Garcia,

Western International Gas & Cylinders, Inc. ("Western") is submitting a renewed request for enforcement discretion regarding its Bellville, Texas facility. This request updates Western's request dated April 13, 2020 with additional information that more fully explains the basis for the request and addresses TCEQ's April 16, 2020 denial of Western's initial request. Western requests this enforcement discretion to allow it to initiate a project, at its own risk and with no environmental consequences, aimed at ensuring the reliability of our essential business so that we can meet our critical infrastructure customers' needs during the COVID-19 pandemic.

1. Western's Bellville, TX Facility

Western is a wholesale manufacturer and distributor of industrial gases, primarily acetylene. Western fills 100% of the acetylene cylinders used throughout the state of Texas. Western is an "essential business" as defined by the "Guidance on the Essential Critical Infrastructure Workforce: Ensuring Community and National Resilience in COVID-19 Response" published by the Department of Homeland Security. Western supports 5 categories of critical infrastructure:

- **Food and Agriculture** (Suppliers to food and beverage manufacturing and distribution as well as to those maintaining equipment and other infrastructure necessary for agriculture production and distribution.
- **Chemical** (Chemical and industrial gas supply chains; chemical synthesis for pharmaceuticals)
- **Energy** (Suppliers to petroleum processors and refiners)
- **Public Works** (Suppliers to workers maintaining safety, sanitation and other essential operations.
- **Critical Manufacturing** (Gases supplied to support and repair critical infrastructure)

Therefore, it is critically important that Western continuously and reliably meet its customers' needs during the pandemic.

In July 2018, a major fire destroyed approximately 2/3 of Western's acetylene filling capabilities at its Bellville facility. Western immediately shifted volume to Western's other acetylene production facilities around the U.S. to meet the needs of our Texas customers. In late 2018 and 2019 Western designed a replacement facility with a very similar design and the same capacity as that destroyed in the fire. Incorporated into the design were several changes to make the process both safer and more efficient.

On September 25, 2019 Western submitted an Air Permit Application to TCEQ to allow the rebuilding of the facility (and since that time has paid \$13,000 in additional fees to TCEQ to expedite review of the application). The facility's RN Number is: RN104892633. The Permit Application Number is: 158579. The NSR Project Number is: 307205.

As of April 23, 2020, the Application has gone through its initial public comment period, regulatory and associated technical review, and air quality impact modeling. It is now under toxicological review. We

expect to receive technical approval and authorization for the final 30-day public notice period within approximately one week and continue to work closely with TCEQ to address any questions that may arise.

2. Western's April 13, 2020 Request for Enforcement Discretion

Western sought enforcement discretion from TCEQ on April 13, 2020 to allow it to begin construction at the Bellville facility before the final air permit was issued. TCEQ denied this request via an email dated April 16, 2020 from Western from Jonathan Walling, TCEQ Area Director Coastal & East Texas Area, TCEQ. While acknowledging the advanced status of the technical reviews of the permit application, Mr. Walling concluded that "... the opportunity for public comment cannot be waived."

3. Western's Renewed Request for Enforcement Discretion

At the outset, Western wants to clarify that it did not ask that the opportunity for public comment be waived in its April 13 request for enforcement discretion. We are seeking discretion to be allowed to initiate construction of the new building at the Bellville facility, at our own risk, while the permitting process proceeds, including full compliance with the public participation process. Western is not seeking relief from any portion of the permit review or public participation processes.

This enforcement discretion is sought solely to initiate construction of the building itself. Installation, connection (electrical, mechanical, etc.), or operation of the emission generating equipment to be housed in the building will not begin until after the requested permit is final and formally issued by TCEQ. TCEQ's exercise of enforcement discretion will not have any environmental consequences.

Western requests this enforcement discretion to allow us to ensure the reliability of our essential business that is supporting critical infrastructure so that we can meet our customers' needs during the COVID-19 pandemic. For example, several of Western's customers use the acetylene produced at this facility for pharmaceutical applications. We have recently been notified that they will be increasing their demand for the acetylene due to the COVID outbreak. While we continue to supply our customers' current needs, we need to enhance the resilience and reliability of that capability as our customers' demand in COVID-19-sensitive applications increases. In addition, if there is a COVID-19 outbreak (or some other business interruption) at one of our facilities across the country, such as in the hard-hit Northeast, that might create supply disruptions for our critical infrastructure customers. That is why Western needs to initiate this project now, and not wait until there is a supply crisis for critical infrastructure customers.

An additional impact of the COVID-19 pandemic and the related public health restrictions on economic activity, is the availability of "essential" qualified contractors for initiating construction. Western currently has both a civil and concrete contractor on site performing work that is not associated with the pending air permit. Due to the dislocations associated with the COVID-19 related economic restrictions, these key contractors will soon become unavailable if we are unable to begin work on the new building's foundations. The economic uncertainties associated with the process of "re-opening the economy," make it quite possible that it would be months before these contractors would be able to return to our site once they leave. This means that there is a small window of opportunity for Western to initiate the work necessary to enhance the reliability and resilience of the company's acetylene manufacturing operations that are essential to critical infrastructure.

4. Anticipated duration of need for enforcement discretion:

We anticipate that the duration of the period of enforcement discretion will be 1-3 months, ending when the final permit is issued.

5. Citation of rule / permit provision for which enforcement discretion is requested:

We are seeking enforcement discretion with respect to **Section 382.0518(a) of the Texas Clean Air Act** (relating to pre-construction authorization), which states: "Before work is begun on the construction of a



new facility or a modification of an existing facility that may emit air contaminants, the person planning the construction or modification must obtain a permit from the commission."

Western emphasizes that it would be initiating this construction at its own risk and that it will not be operating any emissions-generating equipment in the new building until it has received its final permit. Accordingly, there will be no adverse environmental consequences associated with granting this request.

Western understands that regulated entities must maintain records adequate to document activities related to the noncompliance under enforcement discretion, including details of the regulated entity's best efforts to comply.

6. Conclusion

Western respectfully requests TCEQ to grant this enforcement discretion that will allow us to enhance the reliability and resilience of our essential acetylene manufacturing operations that support critical infrastructure during the COVID-19 pandemic. Western will be proceeding at its own risk, is not requesting any change to the permitting process and will comply with all public participation requirements, and there are no adverse environmental consequences associated with this request.

If you have any questions, please do not hesitate to contact me at 979-413-2109.

Thank you very much for considering this request for enforcement discretion.

Regards,

Brian Schumann

EVP & CTO