

From: [Jonathan Walling](#)
To: [REDACTED]
Cc: [REDACTED] [OCE](#)
Subject: Request for Enforcement Discretion - Western International Gas & Cylinders, Inc., Bellville, TX
Date: Thursday, April 16, 2020 3:12:44 PM
Attachments: [TCEQ Enforcement Discretion Request - Western International Gas.pdf](#)

Good afternoon, Mr. Eisen:

The TCEQ has evaluated your request for enforcement discretion relating to permit application 158579. This application is under review and once sufficient modeling is received, it will take an additional two weeks to provide you the second notice for publishing. All permits must go through the public participation process in accordance with Texas Health & Safety Code Section 382.056. The TCEQ is unable to provide enforcement discretion for advance construction, as requested. Please continue to work through the process.

The TCEQ is committed to working cooperatively and reasonably with the regulated community during the COVID-19 pandemic, as appropriate. The decision to disapprove this request will not reflect on any future request Western International Gas & Cylinders may make. Each enforcement discretion request is evaluated based on its own merits. In this case, the opportunity for public comment cannot be waived.

Regards,

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

From: Paul Eisen <[REDACTED]>
Sent: Monday, April 13, 2020 1:51 PM
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.

We greatly appreciate your prompt consideration of this matter.

Sincerely,
Paul Eisen

--

Paul Eisen

Proactive Environmental Solutions, LLC



96 Lynton Road

Albertson, NY 11507

(516) 510-2878

www.pro-enviro.com

NOTICE: This electronic communication, including any authorized attachments, contains information that may be legally privileged, protected, confidential and/or exempt from disclosure or certain types of use under applicable law. This information is for the sole use of the intended recipient(s). If you are not the intended recipient(s) or the employee or agent responsible for delivery of this message to the intended recipient(s), you are hereby notified that any review, use, disclosure, copying, distribution or the taking of any action in reliance on the contents of this e-mail or any attachments is strictly prohibited. You are further advised that review by an individual other than the intended recipient(s) shall not constitute a waiver of any attorney-client privilege which may apply to this communication. If you have received this communication in error, please notify the sender immediately by return e-mail, permanently delete this e-mail and any attachments from all computers on which they may be stored and destroy any print-outs of this email and any attachments.



April 13, 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,

As per the current guidance on how to request enforcement discretion for COVID-19 (coronavirus) related issues (see below for referenced guidance), Western International Gas & Cylinders, Inc. of Bellville, Texas submits the following information seeking such discretion:

Referenced Guidance:

“With the onset of COVID-19 (coronavirus) and the Governor’s Proclamation of a state of disaster in Texas, the TCEQ is aware that regulated entities may be experiencing an impact from a reduced workforce necessary to maintain normal operations at some facilities.

Regulated entities should email both OCE@tceq.texas.gov and Ramiro.Garcia@tceq.texas.gov with specific information related to enforcement discretion requests. The TCEQ’s goal is to provide a response to the regulated entity’s request within 24 to 48 hours.

The email should at a minimum include the following:

- *Concise statement supporting request for enforcement discretion*
- *Anticipated duration of need for enforcement discretion*
- *Citation of rule / permit provision for which enforcement discretion is requested”*

Western’s Submission:

- Concise statement supporting request for enforcement discretion

Western International Gas & Cylinders, Inc. is a wholesale manufacturer and distributor of industrial gases. Its primary product is acetylene, and Western fills 100% of the acetylene cylinders used throughout the state of Texas. In July 2018, Western International Gas & Cylinders, Inc. experienced a major fire that destroyed approximately 2/3 of its acetylene filling capabilities. Western immediately shifted volume to Western’s other acetylene production facilities around the U.S. to be able to meet the needs of our customers. In late 2018 and 2019 Western designed the replacement facility. The new plant is a very similar design as that destroyed in the fire and does not have an increase in the capacity. 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 allow the rebuilding of the facility (and since that time has paid \$13,000 in additional expedite fees to the TCEQ). The facility's RN Number is: RN104892633. The Permit Application Number is: 158579. The NSR Project Number is: 307205.

As of April 13, 2020, the Application has completed the initial public comment period (no public comments received), and is in the final stages of technical review. We expect to receive technical approval and authorization for the final 30-day public notice period within two weeks.

Western requests enforcement discretion regarding the start of the rebuild of the acetylene filling building, which is a critically needed project for our manufacturing and distribution operations. Western has been identified as an essential business during the COVID-19 pandemic. Per the "Guidance on the Essential Critical Infrastructure Workforce: Ensuring Community and National Resilience in COVID-19 Response" as published by the Department of Homeland Security, Western operates under 5 categories of critical infrastructure as listed below:

- **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)

As such, it is critically important for Western to be able to continuously and reliably supply its products during the current pandemic. Western understands that these construction activities will be at its risk.

- Anticipated duration of need for enforcement discretion- 1-3 months until final permit is issued
- 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 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.

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

Regards,

Brian Schumann
EVP & CTO