

Kathleen Hartnett White, *Chairman*  
Larry R. Soward, *Commissioner*  
Martin A. Hubert, *Commissioner*



Blas J. Coy, Jr., *Public Interest Counsel*

## TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

*Protecting Texas by Reducing and Preventing Pollution*

February 12, 2007

LaDonna Castañuela, Chief Clerk  
Texas Commission on Environmental Quality  
Office of the Chief Clerk (MC-105)  
P.O. Box 13087  
Austin, Texas 78711-3087

**RE: RANCHO DEL LAGO, INC.**  
**TCEQ DOCKET NO. 2006-1889-MWD**

Dear Ms. Castañuela:

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

Sincerely,

A handwritten signature in cursive script that reads "Emily A. Collins".

Emily A. Collins, Attorney  
Public Interest Counsel

cc: Mailing List

Enclosure

REPLY TO: PUBLIC INTEREST COUNSEL, MC 103 • P.O. BOX 13087 • AUSTIN, TEXAS 78711-3087 • 512/239-6363

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a Water Quality Permit on July 27, 2005, in the *Blanco County News*, and a Notice of Application and Preliminary Decision on February 1, 2006, in the *Blanco County News*. The public comment period ended March 3, 2006. The ED issued a Response to Public Comment on September 25, 2006. TCEQ received a timely hearing request from Ms. Sarah Baker on behalf of Ms. Shirley Beck and Mr. Ron Harris on March 3, 2006. TCEQ subsequently received a withdrawal letter from Ms. Beck on September 21, 2006, and a withdrawal of counsel letter for both hearing requestors from Ms. Sarah Baker on February 6, 2007. Mr. Harris' contested case hearing request, however, remains.

Based on the information submitted in the request and a review of the information available in the Chief Clerk's file on this application, OPIC recommends granting the hearing request of Mr. Ron Harris.

## II. APPLICABLE LAW

The Executive Director declared this application administratively complete on June 27, 2005. As the application was declared administratively complete after September 1, 1999, a person may request a contested case hearing on the application pursuant to the requirements of Texas Water Code section 5.556, added by Act 1999, 76<sup>th</sup> Leg., ch. 1350 (commonly known as "House Bill 801"). Under the applicable statutory and regulatory requirements, a hearing request must substantially comply with the following: give the name, address, daytime telephone number, and, where possible, fax number of the person who files the request; identify the requestor's personal justiciable interest affected by the application showing why the requestor is an "affected person" who may be adversely affected by the proposed facility or activity in a manner not common to members of the general public; request a contested case hearing; list all relevant and material disputed issues of fact that were raised during the comment period that are

the basis of the hearing request; and provide any other information specified in the public notice of the application. 30 TEXAS ADMIN. CODE ("TAC") § 55.201(d).

Under 30 TAC section 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." This justiciable interest does not include an interest common to the general public. *Id.* Relevant factors that will 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, safety, and use of property of the person;
- (5) likely impact of the regulated activity on use of the impacted natural resource by the person; and
- (6) for governmental entities, their statutory authority over or interest in the issues relevant to the application.

30 TAC § 55.203(c).

The Commission shall grant an affected person's timely filed hearing request if: (1) the request is made pursuant to a right to hearing authorized by law; and (2) the request raises disputed issues of fact that were raised during the comment period and that are relevant and material to the Commission's decision on the application. 30 TAC § 55.211(c).

Accordingly, responses to hearing requests must specifically address:

- (1) whether the requestor is an affected person;
- (2) which issues raised in the hearing request are disputed;
- (3) whether the dispute involves questions of fact or 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 to Comment;
- (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 TAC § 55.209(e).

### III. DISCUSSION

#### A. Affected Person Analysis

Mr. Harris has a personal justiciable interest related to a legal right affected by this application. Mr. Harris' interests regarding the odors and surface water quality combined with the proximity of his property to the proposed facility support a finding that he is an "affected person."<sup>1</sup> Mr. Harris states that his ranch is located adjacent to the proposed treatment plant and holding pond.<sup>2</sup> The landowner's map submitted with the application confirms that Mr. Harris' property is located adjacent to the proposed site. Mr. Harris states concerns protected by the law under which the application will be considered,<sup>3</sup> including odors<sup>4</sup> and surface and groundwater quality.<sup>5</sup> Mr. Harris' interests reasonably relate to the potential effects of sewage treatment and irrigation disposal activities.<sup>6</sup> In addition, Mr. Harris' property is adjacent to the facility, which also shows a reasonable relationship between the interests stated and the activity regulated.<sup>7</sup>

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<sup>1</sup> 30 TAC § 55.203(c).

<sup>2</sup> Hearing Request of Shirley Beck and Ron Harris, dated March 6, 2006.

<sup>3</sup> 30 TAC § 55.203(c)(1).

<sup>4</sup> 30 TAC § 309.13(e), (g).

<sup>5</sup> 30 TAC §§ 309.13(c); 309.20(a), (b).

<sup>6</sup> 30 TAC § 55.203(c)(3).

<sup>7</sup> *Id.*

Furthermore, nuisance odors may affect Mr. Harris' health and his use of his property,<sup>8</sup> and surface water contamination may adversely affect his use of any impacted natural resource.<sup>9</sup> Therefore, OPIC recommends that the Commission find that Mr. Ron Harris is an affected person.

## B. Issues Analysis

Mr. Harris' hearing request raises the following issues:

- 1) Is the proposed plant of adequate size to treat all of the wastewater that will be collected within the subdivision?
- 2) Will the Applicant install irrigation fields in a location other than what was identified in the application?
- 3) Will the Applicant irrigate within 500 feet of the spring located on Ms. Beck's property?
- 4) Will the application of irrigation contaminate the spring located on Ms. Beck's property?
- 5) Will the application of irrigation harm the habitat of endangered species?
- 6) Will the proposed facility cause nuisance odors, light and noise?
- 7) Will the application of effluent via surface irrigation to the proposed golf course increase the risk of groundwater and surface water contamination?
- 8) Whether the proposed application rate is adequately protective considering the possible uneven uptake of water because of variables such as slope, exposure to sunlight, depth and makeup of soils, temperature, and other factors?
- 9) Does the draft permit adequately consider any needed protective measures of irrigation equipment?

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<sup>8</sup> 30 TAC § 55.203(c)(4).

<sup>9</sup> 30 TAC § 55.203(c)(5).

- 10) Whether the draft permit provides adequate provisions to monitor soil moisture in the irrigation application areas for soil saturation?
- 11) Whether the draft permit should be modified to incorporate alarms and automatic notification for high water levels in the effluent storage tank or pump disablement?
- 12) Will truck transportation of the sludge from the facility to the disposal location negatively impact neighboring landowners and present risks to their health and safety?
- 13) Whether the buffer zones required by the draft permit provide adequate space, soil, vegetation, and other natural features between the proposed irrigation site and the Kentucky Branch Creek to allow for proper attenuation of effluent to protect the creek from pollution?
- 14) Does the application and draft permit adequately ensure that no discharge of effluent will occur?
- 15) Did the Applicant demonstrate that it possesses the technical or management expertise to execute the activities necessary to meet the draft permit's requirements?
- 16) Did the Applicant demonstrate that it has established a revenue stream and/or has dedicated funds to assure fiscal capability to carry out the requirements of the draft permit?
- 17) Whether the nature and depth of the soils in the proposed irrigation area show that the soils are suitable for wastewater irrigation?
- 18) Does the Applicant have an adequate irrigation dispersal area for the irrigation field?
- 19) Will the Applicant adequately improve the soils in the irrigation field to support the proposed cover crop?
- 20) Will the proposed treatment plant be able to reduce the amount of nitrogen in its influent to comply with the proposed effluent disposal limit for total nitrogen?
- 21) Will the effluent and nitrogen concentration in the effluent applied in the winter leach into the soil, or pond and runoff based on the nitrogen balance?
- 22) Will the cover crop adequately absorb the concentration of nitrogen in the irrigated effluent?
- 23) Will nitrogen leach from the irrigation disposal area to degrade the water quality of a nearby major spring?
- 24) Does the monthly water balance provided with the application adequately account for the contribution of rainfall to the storage reservoir?

- 25) Whether the amount of proposed irrigation acreage is available for effluent application?
- 26) Will irrigation areas with a significant amount of slope produce runoff?
- 27) What is the specific hardware that would be used to execute the irrigation process?
- 28) How will the irrigation system be designed and controlled to provide uniform coverage and uniform daily distribution over the entire dispersal area at the proper application rates?
- 29) How will the application rates be determined so that runoff or pooling will be precluded?
- 30) Will the need to increase or decrease the application rate seasonally cause runoff or pooling of effluent?
- 31) Will sludge management at the proposed facility cause nuisance odors?
- 32) Will the collection system and operation minimize or eliminate collection main leaks, manhole overflow, and lift station features?
- 33) Will alternative wastewater treatment systems more effectively conserve natural resources?
- 34) Will the proposed treatment process operate to produce consistent and reliable effluent quality?
- 35) Is the permit application moot because the Applicant does not have a wastewater CCN?

1. The hearing requestor raises issues disputed by the parties.

No agreement exists between the parties on the issues enumerated above, except issue number 35. In the Executive Director's Response to Comment, dated September 25, 2006, the Executive Director contends that the draft permit adequately considers each of Mr. Harris' concerns and states that TCEQ does not consider light, noise, and fiscal responsibility in its assessment of wastewater applications. However, issue number 35 is not disputed in this water quality permitting matter. Issue 35 pertains to the Applicant's CCN application, which is not the

subject of the water quality permit at issue in this case and has been resolved. Therefore, the issues numbered 1-34, set forth above, are disputed.<sup>10</sup>

2. The hearing requestor raises issues of fact and two issues of law or policy.

Mr. Harris raises specific factual issues in its hearing request about storage capacity, buffer zones, nutrients, the irrigation area size, soil moisture monitors, odors, and groundwater and surface water quality, among other issues. As these are issues of fact, rather than issues of law or policy, these issues are appropriate for referral to hearing.<sup>11</sup>

The issues proposed regarding the specific equipment that will be used for irrigation and the design of that system (issues 27 and 28, above), however, involve questions of law and policy that may not be appropriate for referral to SOAH. Commission rules require submission of a preliminary engineering report "to resolve any potential disagreements between the design engineer and the commission regarding the essential planning information, design data, population projections, and other requirements of the commission."<sup>12</sup> "Projects" involving land disposal of sewage effluent "shall be accompanied by a preliminary engineering report outlining the design of the wastewater disposal system."<sup>13</sup> TCEQ rules also require a "final engineering design report" to be submitted "with the final plans and technical specifications."<sup>14</sup> The final engineering report must describe changes made since the preliminary engineering report was

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<sup>10</sup> See 30 TAC § 50.115(c)(1); 30 TAC §§ 55.201(d)(4), 55.209(e)(2), and 55.211(c)(2)(A).

<sup>11</sup> 30 TAC § 55.211(b)(3)(A), (B).

<sup>12</sup> 30 TAC § 317.1(b)(1)(B).

<sup>13</sup> 30 TAC § 309.20(a).

<sup>14</sup> 30 TAC § 317.1(c).

submitted and any "calculations and other engineering information pertaining to the plant design as may be necessary in the review of the plans and specifications by the commission."<sup>15</sup> The rules do not clearly state a date or time upon which the Applicant (or permittee) must submit a final engineering report. The Executive Director, however, generally includes a time period for submission of final design information in the special provisions portion of the permit, and has done so in the draft permit at issue in Special Provisions 4 and 22.<sup>16</sup> The issue of whether the Applicant should be required to submit information regarding the final irrigation system design and equipment is a matter of policy that the Commission may decide without the fact-finding assistance of SOAH.

OPIC notes that several of the issues raised by Mr. Harris similarly question design and equipment aspects of the application and permit as they relate to groundwater and surface water contamination.<sup>17</sup> While OPIC finds the issue of whether design and equipment details should be submitted prior to permit issuance an issue of policy, OPIC also finds that the contested case hearing process may produce findings of fact related to water quality or site characteristics that would help determine the specific information needed by the TCEQ in the design approval stage. For example, if evidence at the hearing shows that ground saturation occurs at a point that is not necessarily detectable to the human eye over the 100-acre irrigation application site, it may be necessary for the Applicant to submit information to the Executive Director during the final design approval stage regarding specifications for soil moisture monitoring over the irrigation

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<sup>15</sup> *Id.*

<sup>16</sup> Rancho Del Lago, Inc., Draft Permit No. WQ0014615001, page 22 (requiring the final engineering design report prior to construction and requiring submission of a crop management plan within 90 days of permit issuance).

<sup>17</sup> See issues 3 (buffer zones), 9 (irrigation equipment protective measures), 10 (soil moisture monitoring), 11 (alarms and automatic notification for high levels in effluent storage tank), 32 (minimization of leaks and overflows).

site. In addition, the Executive Director regularly includes permit provisions in wastewater irrigation permits that direct the permittee to analyze the irrigation site more closely to determine if certain protective measures are needed,<sup>18</sup> or to adopt certain design features.<sup>19</sup> However, the specific issue of whether the Commission should require the final engineering design report or final crop management plan (issues 27 and 28) as a prerequisite to permit issuance is an issue of policy not appropriate for referral to SOAH.

3. The hearing request raises issues also raised in comments on the application.

Mr. Harris filed his hearing request during the public comment period. The Executive Director appears to have based his Response to Comments on the issues raised in Mr. Harris' hearing request. The issues that were raised during the comment period have not been withdrawn by Mr. Harris. Therefore, the issues raised in Mr. Harris' hearing request were also raised during the public comment period.<sup>20</sup>

4. The issues raised regarding groundwater and surface water quality and odors are relevant and material to the Commission's decision on this application.

Mr. Harris' hearing request raises many issues which are relevant and material to the Commission's decision on this application, and a number that are not relevant and material under the requirements of 30 TAC sections 55.201(d)(4) and 55.211(c)(2)(A). TCEQ is not authorized

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<sup>18</sup> See, i.e., Draft Permit, Special Provision 8 (stating that "[t]ailwater control facilities shall be provided as necessary to prevent the discharge of any wastewater from the irrigated land.").

<sup>19</sup> See, i.e., Draft Permit, Special Provision 11 (stating that "[s]pray fixtures for the irrigation system shall be of such design that they cannot be operated by unauthorized personnel.").

<sup>20</sup> 30 TAC §§ 55.201(c), (d)(4); 55.211(c)(2)(A).

to consider light and noise (issue 6, in part) in its wastewater permitting decisions and is not required to consider financial responsibility (issue 16) in wastewater permitting actions.

The issue of whether the Applicant will install irrigation fields in a location other than what was identified in the application (issue 2) is also not relevant and material to the Commission's decision on this application. The draft permit only authorizes irrigation of the disposal site located approximately 3.2 miles southeast of the intersection of State Highway 281 and Farm-to-Market Road 32 in Blanco County, Texas, as shown on the map attached to the draft permit. If the Applicant wishes to change the location of the disposal site, it must submit an amended application subject to new public notice.

OPIC also finds the issue of whether alternative wastewater treatment systems will more effectively conserve natural resources (issue 33) as immaterial and irrelevant to the Commission's decision on this application. While TCEQ certainly requires consideration of water conservation in its water rights decisions, TCEQ's land application of wastewater program addresses the effective use and management of wastewater effluent without discharge of that water to a watercourse. The amount of water applied should correspond to the amount of water the cover crop and soils can handle without complete saturation, runoff, or a discharge. As the purpose of the entire land application program is to effectively reuse wastewater effluent for irrigation purposes, the question of alternative wastewater treatment processes to enhance conservation is not relevant and material to these proceedings on this application.

As for the issue regarding negative impacts to the habitat of endangered species (issue 5), TCEQ provided notice to the Texas Parks and Wildlife Department, the state agency that administers Texas' endangered species programs, of the permit application and the ED's preliminary decision and draft permit. TPWD did not provide any comments on the application

or draft permit. While the Water Code requires TCEQ to "maintain the quality of water in the state consistent with ... the propagation and protection of terrestrial and aquatic life,"<sup>21</sup> TPWD assumes specific regulatory authority to administer the State's endangered species program,<sup>22</sup> and, therefore, TCEQ's regulations do not provide any specific means to adjudicate the endangered species issue raised by Mr. Harris at SOAH. Therefore, any endangered species issues are not relevant and material to the Commission's decision on this application.

Similarly, TCEQ regulates transportation of sludge, but does so in a regulatory scheme that is separate from the wastewater permitting process.<sup>23</sup> Therefore, the issue regarding health effects of truck transportation of sludge (issue 12) is not relevant and material to the Commission's decision on the wastewater application at issue. In addition, Mr. Harris' concern about the Applicant's level of expertise to execute the draft permit's requirements (issue 15) is also not relevant and material to the Commission's decision on this application. TCEQ rules require submission of the final plans and technical specifications with a signed and dated seal of a registered professional engineer, and the draft permit requires the Applicant to employ or contract with a licensed wastewater treatment facility operator holding a valid Class C license.<sup>24</sup> Wastewater treatment facility operators must obtain their license or registration in accordance with the regulatory scheme in 30 TAC, Chapter 30, Subchapter J.

TCEQ may consider Mr. Harris' remaining issues in its consideration of this application, including his concerns with groundwater and surface water quality and odors. The factual issues

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<sup>21</sup> TEX. WATER CODE § 26.003 (2006).

<sup>22</sup> See generally TEX. PARKS AND WILDLIFE CODE, Title 5, Subtitle B, Chapter 68; Subtitle E, Chapter 83 (2006).

<sup>23</sup> 30 TAC §§ 312.141-150 (2006).

<sup>24</sup> See Draft Permit, Special Provision 2.

raised by Mr. Harris relate directly to whether the Applicant will meet the requirements of applicable substantive law.<sup>25</sup>

Mr. Harris states numerous relevant and material issues regarding the facility's effect on surface and groundwater quality (issues 4, 7),<sup>26</sup> including concerns about the prevention of effluent migration through the soil (issues 17, 19),<sup>27</sup> buffer zones (issues 3, 13),<sup>28</sup> cover crop nutrient requirements (issue 22),<sup>29</sup> the adequacy of the water balance study (issue 24),<sup>30</sup> the adequacy of the disposal site acreage (issues 18, 25),<sup>31</sup> the sufficiency of measures to protect against runoff or a spill (issues 1, 8, 9, 10, 11, 26, 29, 30, 32),<sup>32</sup> nitrogen degradation (issues 20, 21, 23),<sup>33</sup> the ability of the treatment process to produce consistent effluent quality (issue 34),<sup>34</sup>

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<sup>25</sup> See *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248-251(1986) (in discussing the standards applicable to reviewing motions for summary judgment the Court stated "[a]s to materiality, the substantive law will identify which facts are material. ... it is the substantive law's identification of which facts are critical and which facts are irrelevant that governs.")

<sup>26</sup> 30 TAC §§ 309.12; 309.20 (2006).

<sup>27</sup> 30 TAC §§ 309.12; 309.20(a)(3).

<sup>28</sup> 30 TAC §§ 309.13; 317.1(b)(4)(E).

<sup>29</sup> 30 TAC § 309.20(a)(5), (b)(3)(C), (4).

<sup>30</sup> 30 TAC § 309.20(b)(3)(A) (2006).

<sup>31</sup> The application instructions require the Applicant to provide the number of acres for each crop to be irrigated. Presumably, the irrigation acreage number is part of the basic calculation to determine the appropriate irrigation application rate. See Instructions for Domestic Worksheet 3.0 – Land Application of Effluent, 2., available at <http://www.tceq.state.tx.us/assets/public/permitting/waterquality/forms/10053ins.pdf>, page 35 of 65.

<sup>32</sup> The applicant must include in its preliminary engineering report, required by 30 TAC section 309.20(a), a description of "features ... and operational arrangements ... to prevent unauthorized discharges of untreated or partially treated wastewater" pursuant to 30 TAC section 317.1(b)(6); see also 30 TAC § 317.1(b)(3), (4)(D).

<sup>33</sup> 30 TAC § 309.20(a)(5), (b)(3), (4).

<sup>34</sup> 30 TAC § 317.1(b).

and the potential of a discharge (issue 14).<sup>35</sup> Each of these issues relate to groundwater and surface water contamination. 30 TAC section 309.12 does not allow the Commission to issue a permit for a new facility “unless it finds that the proposed site, when evaluated in light of the proposed design, construction or operational features, minimizes possible contamination of surface water and groundwater.” In addition, 30 TAC section 309.20(a) provides that the Applicant must provide a technical report outlining geology, soils and seepage, groundwater quality, and a description of the crop system proposed for the waste disposal operation. 30 TAC section 309.20(b) requires irrigation disposal systems to be designed to “prevent a discharge from entering surface waters, and to prevent recharge of groundwater resources....” Therefore, the issues raised regarding ground and surface water quality are relevant and material to the Commission’s decision on this application.

Mr. Harris also raised issues related to the potential for nuisance odors (issues 6, 31). 30 TAC section 309.10 states that one of the purposes of Chapter 309 is to “minimize the possibility of exposing the public to nuisance conditions.” In addition, the draft permit includes a Special Provision stating that “irrigation practices shall be designed and managed so as to prevent ponding of the effluent or contamination of ground and surface waters and to prevent the occurrence of nuisance conditions in the area.” In accordance with 30 TAC section 309.13(e) and (g), the Applicant must abate and control nuisance odor in one of three alternative methods, and “must carry out the nuisance odor prevention plan at all times.” Therefore, the issues regarding whether the facility will cause nuisance conditions is relevant and material to the Commission’s decision on the application.

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<sup>35</sup> 30 TAC § 309.20(b)(2)(A).

5. OPIC recommends that the Commission refer the issues regarding the groundwater and surface water quality and odors to SOAH.

In light of the requirements of 30 TAC sections 50.115(b) and 55.211(b)(3)(A)(i), OPIC recommends that any referral to the State Office of Administrative Hearings ("SOAH") include the issues listed below.

*Surface and Groundwater Quality*

- 1) Is the proposed plant of adequate size to treat all of the wastewater that will be collected within the subdivision? (*Hearing Request of Ron Harris, page 2, paragraph 2, dated March 3, 2006*).
- 2) Will the Applicant irrigate within 500 feet of the spring located on Ms. Beck's property? (*Hearing Request of Ron Harris, page 2, paragraph 4, dated March 3, 2006*).
- 3) Whether the buffer zones required by the draft permit provide adequate space, soil, vegetation, and other natural features between the proposed irrigation site and the Kentucky Branch Creek to allow for proper attenuation of effluent to protect the creek from pollution? (*Hearing Request of Ron Harris, page 3, paragraph 6, dated March 3, 2006*).
- 4) Will the application of irrigation contaminate the spring located on Ms. Beck's property? (*Hearing Request of Ron Harris, page 2, paragraph 4, dated March 3, 2006*).
- 5) Will the application of effluent via surface irrigation to the proposed golf course increase the risk of groundwater and surface water contamination? (*Hearing Request of Ron Harris, page 2, paragraph 6 continuing to page 3, dated March 3, 2006*).
- 6) Whether the proposed application rate is adequately protective considering the possible uneven uptake of water because of variables such as slope, exposure to sunlight, depth and makeup of soils, temperature, and other factors? (*Hearing Request of Ron Harris, page 3, paragraph 1 (1<sup>st</sup> full paragraph), dated March 3, 2006*).
- 7) Will irrigation areas with a significant amount of slope produce runoff? (*Hearing Request of Ron Harris, David Venhuizen, P.E. attachment, page 5, end of paragraph from page 4, dated March 3, 2006*).
- 8) How will the application rates be determined so that runoff or pooling will be precluded? (*Hearing Request of Ron Harris, David Venhuizen, P.E. attachment, page 5, paragraph 1 (1<sup>st</sup> full paragraph), dated March 3, 2006*).

- 9) Will the need to increase or decrease the application rate seasonally cause runoff or pooling of effluent? (*Hearing Request of Ron Harris, David Venhuizen, P.E. attachment, page 5, paragraph 1 (1<sup>st</sup> full paragraph)*, dated March 3, 2006).
- 10) Does the draft permit adequately consider any needed protective measures of irrigation equipment? (*Hearing Request of Ron Harris, page 3, paragraph 2*, dated March 3, 2006).
- 11) Whether the draft permit provides adequate provisions to monitor soil moisture in the irrigation application areas for soil saturation? (*Hearing Request of Ron Harris, page 3, paragraph 3*, dated March 3, 2006).
- 12) Whether the draft permit should be modified to incorporate alarms and automatic notification for high water levels in the effluent storage tank or pump disablement? (*Hearing Request of Ron Harris, page 3, paragraph 4*, dated March 3, 2006).
- 13) Does the application and draft permit adequately ensure that no discharge of effluent will occur? (*Hearing Request of Ron Harris, page 4, paragraph 1*, dated March 3, 2006).
- 14) Whether the nature and depth of the soils in the proposed irrigation area show that the soils are suitable for wastewater irrigation? (*Hearing Request of Ron Harris, David Venhuizen, P.E. attachment, page 2, paragraph 1 (1<sup>st</sup> full paragraph)*, dated March 3, 2006).
- 15) Does the Applicant have an adequate irrigation dispersal area for the irrigation field? (*Hearing Request of Ron Harris, David Venhuizen, P.E. attachment, page 3, end of paragraph from page 2*, dated March 3, 2006).
- 16) Will the proposed treatment plant be able to reduce the amount of nitrogen in its influent to comply with the proposed effluent disposal limit for total nitrogen? (*Hearing Request of Ron Harris, David Venhuizen, P.E. attachment, page 3, paragraph 1 (1<sup>st</sup> full paragraph)*, dated March 3, 2006).
- 17) Will the effluent and nitrogen concentration in the effluent applied in the winter leach into the soil, or pond and runoff based on the nitrogen balance? (*Hearing Request of Ron Harris, David Venhuizen, P.E. attachment, page 3, paragraph 2*, dated March 3, 2006).
- 18) Will the cover crop adequately absorb the concentration of nitrogen in the irrigated effluent? (*Hearing Request of Ron Harris, David Venhuizen, P.E. attachment, page 3, paragraph 3*, dated March 3, 2006).
- 19) Will nitrogen leach from the irrigation disposal area to degrade the water quality of a nearby major spring? (*Hearing Request of Ron Harris, David Venhuizen, P.E. attachment, page 4, paragraph 2*, dated March 3, 2006).

- 20) Does the monthly water balance provided with the application adequately account for the contribution of rainfall to the storage reservoir? (*Hearing Request of Ron Harris, David Venhuizen, P.E. attachment, page 4, paragraph 3, dated March 3, 2006*).
- 21) Whether the amount of proposed irrigation acreage is available for effluent application? (*Hearing Request of Ron Harris, David Venhuizen, P.E. attachment, page 4, paragraph 4, dated March 3, 2006*).
- 22) Will the Applicant adequately improve the soils in the irrigation field to support the proposed cover crop? (*Hearing Request of Ron Harris, David Venhuizen, P.E. attachment, page 3, end of paragraph from page 2, dated March 3, 2006*).
- 23) Will the collection system and operation minimize or eliminate collection main leaks, manhole overflow, and lift station features? (*Hearing Request of Ron Harris, David Venhuizen, P.E. attachment, page 5, paragraph 4, dated March 3, 2006*).
- 24) Will the proposed treatment process operate to produce consistent and reliable effluent quality? (*Hearing Request of Ron Harris, David Venhuizen, P.E. attachment, page 6, paragraph 2, dated March 3, 2006*).

*Odors*

- 25) Will the proposed facility cause nuisance odors? (*Hearing Request of Ron Harris, page 2, paragraph 5; Hearing Request of Ron Harris, David Venhuizen, P.E. attachment, page 5, paragraph 3, dated March 3, 2006*).

**6. OPIC Estimates that the Maximum Expected Duration of Hearing will be Nine Months.**

Commission rule 30 TAC section 50.115(d) requires that any Commission order referring a case to SOAH specify the maximum expected duration of the hearing by stating a date by which the judge is expected to issue a proposal for decision. The rule further provides that no hearing shall proceed longer than one year from the first day of the preliminary hearing to the date the proposal for decision is issued. In assisting the Commission to state a date by which the judge is expected to issue a proposal for decision, and as required by 30 TAC section 55.209(e)(7), OPIC estimates that the maximum expected duration of hearing on this application

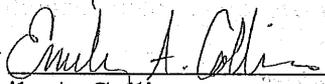
would be nine months from the first date of the preliminary hearing until the proposal for decision is issued.

#### IV. CONCLUSION

For the reasons set forth above, the Office of Public Interest Counsel respectfully recommends that the Commission grant the contested case hearing request of Mr. Harris, and refer this matter to the State Office of Administrative Hearings for a hearing on the issues described above.

Respectfully submitted,

Blas J. Coy, Jr.  
Public Interest Counsel

By   
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**CERTIFICATE OF SERVICE**

I hereby certify that on February 12, 2007, the original and eleven true and correct copies of the Office of Public Interest Counsel's Response to Request for Hearing were filed with the Chief Clerk of the TCEQ and a copy was served to all persons listed on the attached mailing list via hand delivery, facsimile transmission, Inter-Agency Mail or by deposit in the U.S. Mail.

  
\_\_\_\_\_  
Emily A. Collins

MEMORANDUM FOR THE RECORD

On 10/15/54, the following information was received from the [redacted] regarding the [redacted] of the [redacted] in the [redacted] area. The [redacted] is [redacted] and is [redacted] in the [redacted] area. The [redacted] is [redacted] and is [redacted] in the [redacted] area. The [redacted] is [redacted] and is [redacted] in the [redacted] area.

Very truly yours,  
[redacted]



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THE UNIVERSITY OF CHICAGO  
DEPARTMENT OF CHEMISTRY  
RESEARCH REPORT

BY  
J. H. GOLDSTEIN  
AND  
R. F. FIESHER

RECEIVED  
MAY 15 1954

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NO. 100

DEPARTMENT OF CHEMISTRY  
UNIVERSITY OF CHICAGO

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