

Kathleen Hartnett White, *Chairman*
Larry R. Soward, *Commissioner*
Glenn Shankle, *Executive Director*



TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

March 19, 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: AMERICAN WATER SERVICES RESIDUALS MANAGEMENT, INC.
TCEQ DOCKET NOS. 2006-1946-SLG & 2006-1992-SLG**

Dear Ms. Castañuela:

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

Sincerely,


Mary Alice C. McKaughan
Public Interest Counsel

cc: Mailing List

Enclosure

TEXAS
COMMISSION
ON ENVIRONMENTAL
QUALITY
2007 MAR 19 PM 3:21
CHIEF CLERKS OFFICE

MEMORANDUM FOR THE RECORD

DATE: 10/10/2013

TO: Mr. [Name]

FROM: Mr. [Name]

SUBJECT: [Topic]

1. On 10/10/2013, [Name] advised that [Topic] is currently being reviewed by the [Department].

2. [Name] stated that [Topic] is being reviewed by the [Department] and that [Name] is currently reviewing the [Topic].

3. [Name] stated that [Topic] is being reviewed by the [Department] and that [Name] is currently reviewing the [Topic].

4. [Name] stated that [Topic] is being reviewed by the [Department] and that [Name] is currently reviewing the [Topic].

5. [Name] stated that [Topic] is being reviewed by the [Department] and that [Name] is currently reviewing the [Topic].

6. [Name] stated that [Topic] is being reviewed by the [Department] and that [Name] is currently reviewing the [Topic].

7. [Name] stated that [Topic] is being reviewed by the [Department] and that [Name] is currently reviewing the [Topic].

8. [Name] stated that [Topic] is being reviewed by the [Department] and that [Name] is currently reviewing the [Topic].

9. [Name] stated that [Topic] is being reviewed by the [Department] and that [Name] is currently reviewing the [Topic].

10. [Name] stated that [Topic] is being reviewed by the [Department] and that [Name] is currently reviewing the [Topic].

11. [Name] stated that [Topic] is being reviewed by the [Department] and that [Name] is currently reviewing the [Topic].

12. [Name] stated that [Topic] is being reviewed by the [Department] and that [Name] is currently reviewing the [Topic].

13. [Name] stated that [Topic] is being reviewed by the [Department] and that [Name] is currently reviewing the [Topic].

TCEQ DOCKET NO. 2006-1946-SLG & 2006-1992-SLG

2007 MAR 19 PM 3: 21

**APPLICATION BY AMERICAN § BEFORE THE TEXAS COMMISSION
WATER SERVICES RESIDUAL § ON
MANAGEMENT, INC., FOR § ENVIRONMENTAL QUALITY
TCEQ PERMIT NO. WQ0004745000 §
& WQ0004746000**

CHIEF CLERKS OFFICE

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

The Office of Public Interest Counsel ("OPIC") of the Texas Commission on Environmental Quality ("the Commission" or "TCEQ") hereby files its response to Cullen Johnson's request for reconsideration and Hope Ging and Tony Buzan's request for a contested case hearing on American Water Services Residuals Management, Inc.'s ("AWSRM" or "Applicant") application to the TCEQ for a new permit. OPIC recommends that the Commission grant Ms. Ging's hearing request and deny Tony Buzan's request for contested case hearing and Cullen Johnson's request for reconsideration. In support of its recommendation OPIC respectfully submits the following:

I. INTRODUCTION

On July 7, 2004, Applicant applied to the TCEQ for two permits for the beneficial land application of Class B sludge on two nearby sites. Proposed Permit No. WQ4745000 is for the beneficial application of class B sludge to agricultural land at an annual rate not to exceed 7.2 dry tons per acre per year on 232.62 acres of agricultural land with a site of approximately 409.52 acres. The facility will be located approximately one mile east of the City of Thrall and northeast of the intersection of U.S. Highway 79 and Farm-to-Market Road 1063 in Williamson County, Texas.

Proposed Permit No. WQ4746000 would authorize the beneficial application of class B sludge to agricultural land at an annual rate not to exceed 7.4 dry tons per acre per year on 285.41 acres of agricultural land with a site of approximately 361.93 acres. The facility will be located approximately two miles northeast of Thrall, 1.5 miles north of the intersection of U.S. Highway 79 and Farm-to-Market Road 1063, ½ mile east of the intersection of County Road 430 and Farm-to-Market Road 1063 in Williamson County, Texas. The types of sludge to be applied at both sites include wastewater treatment sludge and drinking water treatment sludge from the City of Austin Hornsby Bend Wastewater Treatment Plant and the City of Houston Southeast Water Treatment Plant. The Draft Permits would not authorize any discharge of pollutants into or adjacent to water in the state.

The proposed land application sites are located in the drainage area of Brushy Creek in Segment No. 1244 of the Brazos River Basin on top of a shallow aquifer. Area residences rely on the shallow groundwater for drinking water. There is a hand dug well on the property. A spring named Spring Branch runs through the application areas.

On September 7, 2004, Applicant published the Notice of Receipt and Intent to Obtain a Beneficial Land Use Permit in the *Taylor Daily Press*. On August 2, 2005, Notice of the Application and Preliminary Decision was published in the *Taylor Daily Press*. A public meeting on the Application was held on September 1, 2005, in Thrall, Texas. The public comment period ended at the close of the public meeting. Numerous comments were filed on the Application. The TCEQ Executive Director's ("ED") Response To Comments was mailed by the TCEQ Chief Clerk on October 10, 2006. The deadline for the filing of hearing requests was Thursday, November 10, 2006.

In response to the notices and the ED's Response to Comments, the TCEQ received two requests for a contested case hearing and one request for reconsideration. OPIC recommends granting the hearing request filed by Ms. Ging and denying the hearing request filed by Mr. Tony Buzan. OPIC recommends denying Cullen Johnson's request for reconsideration.

II. REQUIREMENTS OF APPLICABLE LAW

The applications were declared administratively complete after September 1, 1999, therefore, it is subject to the requirements of Texas Water Code Chapter 5, Subchapter M, Environmental Permitting Procedures, §§ 5.551 to 5.556, added by Acts 1999, 76th Leg., Ch. 1350 (commonly known as House Bill 801) as well as the TCEQ procedural rules that implement House Bill 801. The public participation procedures available under House Bill 801 include opportunities for filing requests for reconsideration of the executive director's decision and requests for contested case hearing.

Under the applicable statutory and regulatory requirements, a person requesting a hearing must file the request in writing with the Chief Clerk no later than 30 days after the Chief Clerk's transmittal of the ED's response to comments. 30 TAC § 55.201(c). The request must also 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 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.” This justiciable interest does not include an interest common to the general public.

30 TAC § 55.203(c) also provides relevant factors that will be considered in determining whether a person is affected. These factors 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.

Accordingly, pursuant to 30 TAC § 55.209(e), 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.

House Bill 801 created the request for reconsideration – a procedural mechanism that

allows for the Commission's review of the Executive Director's decision on an application. A person may file a request for reconsideration or a request for contested case hearing or both no later than 30 days after the Chief Clerk's transmittal of the Executive Director's decision and response to comments. Tex. Water Code § 5.556; 30 TAC § 55.201(e). Responses to requests for reconsideration should address the issues raised in the request. 30 TAC § 55.209(f).

III. DISCUSSION

A. Determination of Affected Person Status

1. Ms. Hope Ging

Ms. Ging's request for a contested case hearing was timely filed with the TCEQ on November 10, 2006. Ms. Ging lives at 800 Country Road 430 in Thrall, Texas 76578. Ms. Ging claims in her hearing request that she resides between the two proposed sludge application sites. This is confirmed by the map submitted by the Executive Director. Ms. Ging's hearing request asks that the TCEQ deny these permit applications because sludge application on nearby fields will: (1) adversely affect the health of her son and parents; (2) unreasonably interfere with her use and enjoyment of her property and residence; (3) adversely impact her property value; (4) expose her and her family, as "highly effected individuals ("HEI")" to carcinogens; and, (5) adversely impact the marketability of the hay and cattle raised on her land. Based on this information, OPIC concludes that Ms. Ging has a personal justiciable interest related to a health, property and an economic interest affected by the applications that are not common to the general public.¹ OPIC also finds that the interests Ms. Ging seeks to protect are relevant to the applications

¹30 TAC § 55.203(a) & (b)

because they are material to the Commission's decision on the applications and are addressed under the law applicable to this permit including THSC § 361.089² and 30 TAC Section 312.44.³ Accordingly, OPIC recommends that Ms. Ging be found to be an affected person.

2. Mr. Tony Buzan.

On October 11, 2004, Mr. Buzan filed a timely request for a contested case hearing on the Applications. Though Mr. Buzan discusses several concerns and issues in the comments he filed with the TCEQ on October 4, 2004, Mr. Buzan's hearing request does not raise any substantive issues nor has he expressed any personal concerns regarding the Application. Without more information regarding the requester's concerns, OPIC is unable to determine whether the interest claimed by the requester is one protected by the law under which the Applications will be considered.⁴ For this reason, OPIC respectfully recommends that the Commission find that Mr. Buzan is not an affected person. OPIC may reconsider its recommendation if Mr. Buzan files a timely Reply with the Commission that sets forth a personal justiciable interest that Mr. Buzan may have in the Applications.

B. Issues Raised in the Hearing Requests

The hearing requests filed raise the following issues:

- (1) Will the land application of sludge adversely affect Ms. Ging's families' health?;

²THSC §361.089 gives the Commission discretion to consider whether the proposed permitted facility is compatible with the surrounding land use.

³This section sets forth the required management practices for beneficial land application permits and the technical requirements for beneficial land sites.

⁴ 30 TAC Section 55.203(c)(1).

(2) Will the land application of sludge cause a nuisance and thereby unreasonably interfere with Ms. Ging's use and enjoyment of her property and residence?;

(3) Will the land application of sludge adversely impact Ms. Ging's property value?; and,

(4) Is land application of sludge incompatible with the surrounding land use because it would adversely impact the marketability of the hay and cattle raised on Ms. Ging's land?

1. Relevant and Material Issues

Concerns raised by Ms. Ging regarding whether the application of sludge will adversely affect her property value is not relevant and material to the Commission's decision under the requirements of 30 TAC §§55.201(d)(4) and 55.211(c)(2)(A). Concerns regarding potential nuisance conditions, incompatibility with current land use and health impacts of the permitted facility are all relevant and material to the Commission's decision on the applications because they are addressed by the substantive law governing these applications, are within the jurisdiction of the TCEQ and can be addressed in a hearing on the pending applications. These issues relate to whether the applicant will meet the requirements of applicable substantive law.⁵

2. Issues Of Fact

All the issues stated above involve questions of fact and, therefore, they are appropriate for referral to hearing.⁶

⁵ 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.").

⁶ 30 TAC § 55.211(b)(3)(A) and (B).

3. Issues Disputed

No agreement exists on the relevant and material issues of fact raised by the hearing requesters. The requesters have not withdrawn their requests and the issues set forth above remain disputed.

4. Issues Raised During the Comment Period

All of the above issues were raised in timely filed comments that have not been withdrawn.

5. Issues Recommended for Referral To Hearing:

OPIC recommends that the following issues be referred to SOAH for a contested case hearing:

- (1) Will the proposed permit create, or perpetuate, a nuisance condition?;
- (2) Will the application of sludge adversely affect the health and safety of the surrounding residents?; and,
- (3) Will continued application of sludge at the proposed site be incompatible with surrounding land uses?

C. Recommended Expected Duration of Hearing

Section 50.115(d) of the TCEQ's rules requires the Commission to specify the maximum expected duration of the hearing in its order when referring a matter to the State Office of Administrative Hearings. The rules specify that the Commission must state the duration of the hearing from the preliminary hearing to the Administrative Law Judge's issuance of the Proposal for Decision (PFD). OPIC estimates that the maximum expected duration of a hearing on this matter would be nine (9) months from the date of the preliminary hearing until the issuance of

the PFD.

IV. REQUEST FOR RECONSIDERATION

The request for reconsideration filed by Mr. Cullen Johnson on November 10, 2006, raises both a notice issue and water quality issues. Mr. Johnson claims that he did not receive mailed notice of the Applications. As an adjacent landowner who resides within a quarter mile of one of the proposed sludge application sites, Mr. Johnson was entitled to mailed notice of that application.⁷ OPIC cannot find any evidence in the file that Mr. Johnson did not receive mailed notice. Mr. Johnson was identified as an adjacent landowner on the “Neighboring Landowners List” submitted by Applicant as part of its Application on June 7, 2004. The address submitted by Applicant for Mr. Johnson on its “Neighboring Landowner’s List” matches the address given by Mr. Johnson on the comments he submitted on July 14, 2005. An evidentiary record would be necessary for OPIC to make a recommendation to the Commission as to whether the permit should be denied or modified based on Mr. Johnson’s notice and water quality concerns. Therefore, OPIC cannot recommend that the Commission grant the request for reconsideration.

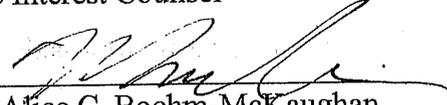
V. CONCLUSION

OPIC respectfully recommends that the Commission grant Ms. Ging’s hearing request and refer to SOAH for hearing the issues discussed above. OPIC also recommends denial of Mr. Johnson’s request for reconsideration and Mr. Buzan’s hearing request. However, OPIC would reconsider this recommendation in the event Mr. Buzan files a timely Reply demonstrating a justiciable interest in the pending permit applications.

⁷30 TAC Section 312.13(b)(3).

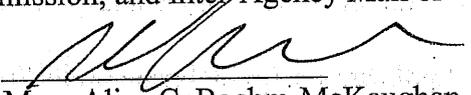
Respectfully submitted,

Blas J. Coy, Jr.
Public Interest Counsel

By 
Mary Alice C. Boehm-McKaughan
Assistant Public Interest Counsel
(512)239-6363 PHONE
(512)239-6377 FAX

CERTIFICATE OF SERVICE

I hereby certify that on March 19, 2007, the original and eleven true and correct copies of the Office of the Public Counsel's Response to Requests for Hearing and Request For Reconsideration were filed with the Chief Clerk of the TCEQ and a copy was served to all persons listed on the attached mailing list via facsimile transmission, and Inter Agency Mail or by deposit in the U.S. Mail.


Mary Alice C. Boehm-McKaughan

MAILING LIST
AMERICAN WATER SERVICES RESIDUALS MANAGEMENT, INC.
TCEQ DOCKET NOS. 2006-1946-SLG & 2006-1992-SLG

FOR THE APPLICANT:

Paul B. Beydler
American Water Services Residuals
Management, Inc.
P.O. Box 73006
Houston, Texas 77273
Tel: (713) 316-5050
Fax: (713) 316-5080

FOR THE EXECUTIVE DIRECTOR:

John Williams, Staff Attorney
Texas Commission on Environmental Quality
Environmental Law Division, MC-173
P.O. Box 13087
Austin, Texas 78711-3087
Tel: (512) 239-0600
Fax: (512) 239-0606

Brian Sierant, Technical Staff
Texas Commission on Environmental Quality
Water Quality Division, MC-148
P.O. Box 13087
Austin, Texas 78711-3087
Tel: (512) 239-1375
Fax: (512) 239-4114

FOR OFFICE OF PUBLIC ASSISTANCE:

Jody Henneke, Director
Texas Commission on Environmental Quality
Office of Public Assistance, MC-108
P.O. Box 13087
Austin, Texas 78711-3087
Tel: (512) 239-4000
Fax: (512) 239-4007

FOR ALTERNATIVE DISPUTE
RESOLUTION:

Kyle Lucas
Texas Commission on Environmental Quality
Alternative Dispute Resolution, MC-222
P.O. Box 13087
Austin, Texas 78711-3087
Tel: (512) 239-4010
Fax: (512) 239-4015

FOR THE CHIEF CLERK:

LaDonna Castañuela
Texas Commission on Environmental Quality
Office of Chief Clerk, MC-105
P.O. Box 13087
Austin, Texas 78711-3087
Tel: (512) 239-3300
Fax: (512) 239-3311

REQUESTERS:

Tony Ray Buzan
1100 CR 430
Thrall, Texas 76578-8517

Hope Ging
800 CR 430
Thrall, Texas 76578-8516

Cullen Johnson
4020 Sable Oaks Dr
Round Rock, Texas 78664-6251

PUBLIC OFFICIAL-INTERESTED PERSON:

The Honorable Mike Krusee
Texas House of Representatives
P.O. Box 2910
Austin, Texas 78768-2910

THE UNIVERSITY OF CHICAGO
DEPARTMENT OF POLITICAL SCIENCE
POLITICAL SCIENCE 301

1. The first part of the course will focus on the theoretical foundations of political science, including the study of power, authority, and the state. We will explore the work of classical political theorists such as Aristotle, Machiavelli, and Hobbes, as well as modern theorists like Weber and Schmitter.

2. The second part of the course will examine the political systems of various countries, with a particular emphasis on the United States and the United Kingdom. We will analyze the structure and function of these systems, as well as the role of the media and public opinion.

3. The final part of the course will deal with contemporary issues in political science, such as globalization, terrorism, and the environment. We will discuss the challenges these issues pose for political theory and practice, and explore possible solutions.

4. The course will also include a series of readings and assignments designed to help students develop their critical thinking and writing skills. Students will be expected to read and discuss the assigned texts, and to write papers and essays on the topics covered in the course.

5. The course is designed to be both challenging and rewarding, and to provide students with a solid foundation in political science. It is a requirement for students pursuing a degree in Political Science, and is also highly recommended for students interested in the study of government and politics.

6. The course will be taught by Professor [Name], who is an expert in the field of political science and has published several books and articles on the subject. He will be joined by a team of teaching assistants who will provide additional support and guidance to students throughout the course.

7. The course will meet on [Days] from [Time] to [Time] in [Room]. The first class will be held on [Date].

8. For more information about the course, please contact the instructor at [Email Address] or [Phone Number].