

Buddy Garcia, *Chairman*
Larry R. Soward, *Commissioner*
Bryan W. Shaw, Ph.D., *Commissioner*



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

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

January 18, 2008

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

TEXAS
COMMISSION
ON ENVIRONMENTAL
QUALITY
2008 JAN 18 PM 4:27
CHIEF CLERKS OFFICE

Re: **TRI-B INDUSTRIAL PARTNERS, L.P.**
TCEQ DOCKET NO. 2007-1522-IWD

Dear Ms. Castañuela:

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

Sincerely,

A handwritten signature in cursive script, appearing to read "Garrett Arthur".

Garrett Arthur, Attorney
Assistant Public Interest Counsel

cc: Mailing List

Enclosure

TCEQ DOCKET NO. 2007-1522-IWD

TRI-B INDUSTRIAL PARTNERS, L.P.	§	BEFORE THE
PERMIT NO. WQ000480000	§	TEXAS COMMISSION ON
EL PASO COUNTY	§	ENVIRONMENTAL QUALITY

OFFICE OF PUBLIC INTEREST COUNSEL'S
RESPONSE TO HEARING REQUESTS

To the members of the Texas Commission on Environmental Quality:

The Office of Public Interest Counsel (OPIC) of the Texas Commission on Environmental Quality (TCEQ or the "Commission") files this response to hearing requests.

I. Introduction

On July 11, 2006, Tri-B Industrial Partners, L.P. ("Tri-B" or the "Applicant") applied to the TCEQ for a new Texas Land Application Permit (TLAP). This permit would authorize the disposal of truck wash water in an evaporation pond. Tri-B's truck wash facility includes an existing impoundment, but this impoundment, as currently constructed, is not approved for wastewater disposal under TCEQ rules. The Applicant's facility is located adjacent to I-10, near the Cities of Socorro and Clint, in El Paso County. The application was declared administratively complete September 27, 2006. Tri-B published the first notice on October 26, 2006 in the *El Paso Times*, and on November 2, 2006 in *El Paso y Mas*. The second newspaper notice was published in the same newspapers on April 18, 2007 and April 21, 2007, respectively. The Executive Director's (ED) Response to Comments (RTC) was filed August 10, 2007. The RTC was mailed out on August 20, 2007, and the hearing request period closed on September 19, 2007.

The agency received timely hearing requests from Nikki Boutwell, Ed Chavez, Don Peterson, Todd Peterson, Debbie Stowell, Ira Sullivan, and Lee Thompson, Jr.

II. Applicable Law

This application was declared administratively complete after September 1, 1999, and is therefore subject to the procedural requirements adopted pursuant to House Bill 801 (76th Leg., 1999).

Under Title 30, Texas Administrative Code (TAC) § 55.201(d), 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 person'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 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 executive director's responses to comments that the requestor disputes and the factual basis of the dispute and list any disputed issues of law or policy; and
- (5) provide any other information specified in the public notice of application.

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. Section 55.203(c) provides relevant factors to 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 restriction 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.

Under 30 TAC § 55.211(c)(2), a hearing request made by an affected person shall be granted if the request:

- (A) raises disputed issues of fact that were raised during the comment period, that were not withdrawn by the commenter by filing a withdrawal letter with the chief clerk prior to the filing of the executive director's response to comment, and that are relevant and material to the commission's decision on the application;
- (B) is timely filed with the chief clerk;
- (C) is pursuant to a right to hearing authorized by law; and
- (D) complies with the requirements of § 55.201.

III. Analysis

A. Hearing Requests

The seven hearing requests were submitted using a single letter which includes the names of all seven requestors. Therefore, this analysis applies to each of the seven requestors.

The hearing requestors are concerned that stormwater runoff from the Applicant's dirt lot above the evaporation pond could cause an overflow of the pond into the arroyo. They are also concerned that any accidental runoff from the evaporation pond will contaminate the arroyo and

the properties below. The hearing requestors state that natural erosion will cause the arroyo to move closer to the evaporation pond, thus increasing the risk that wastewater will run into the arroyo. The requestors also believe that due to the depth of the stormwater runoff in the arroyo, a berm around the evaporation pond would be useless. Additionally, the requestors state that they all own property downstream from the proposed evaporation pond, and they are concerned that runoff water from the pond would be hazardous and detrimental to crops, livestock, and personal property. In conclusion, the hearing requestors state that other locations on the Tri-B property would have less chance of causing damage to the properties located below, and they ask that a new site be considered.

B. Affected Person

An affected person is defined as one who has a personal justiciable interest related to a legal right, duty, privilege, power, or economic interest affected by the application. 30 TAC § 55.203(a). The requestors assert that they all own property downstream from the proposed evaporation pond. According to a map (attached hereto) prepared by the ED's staff, the requestors' properties are within one mile of the evaporation pond. OPIC recognizes that the proposed permit does not authorize a discharge of pollutants. However, the requestors are concerned that any accidental runoff from the pond will travel down the arroyo running through or adjacent to their properties and negatively impact their properties.

Using the 30 TAC § 55.203(c) factors to be considered in determining whether a person is affected, OPIC finds that the hearing requestors' stated interest in the impact of water quality on their properties is an interest protected by the laws under which this application is being considered. Given the requestors' proximity to the evaporation pond, OPIC also finds that a reasonable relationship exists between the requestors' claimed interest and the regulation of the

evaporation pond. Therefore, OPIC finds that all seven hearing requestors qualify as affected persons.

C. Relevant and Material Issues

To be granted, a hearing request must be timely filed, made by an affected person, and raise disputed issues of fact which are relevant and material to the Commission's decision on an application. 30 TAC § 55.211(c). The hearing requestors dispute the following issues, which were raised during the public comment period and have not been withdrawn:

- (1) Tri-B has failed to maintain its property for proper runoff in the past. This issue concerns the Applicant's compliance history, and under Texas Water Code §5.754, the Commission must consider the compliance history of a regulated entity when determining whether to grant the regulated entity's application for a permit. Therefore, this issue is relevant and material to the Commission's decision on the application.
- (2) The evaporation pond is located too close to the arroyo, creating the potential for wastewater to flow into the arroyo, and other locations for the pond would have less chance of causing damage to the properties located downstream. The siting of the evaporation pond is regulated using 30 TAC § 309.13. This issue is therefore relevant and material to the Commission's decision on the application.
- (3) The berm around the evaporation pond will not prevent floodwater from entering the evaporation pond. The construction of the evaporation pond and the associated berm involves design criteria found in 30 TAC Chapter 317. This issue is therefore relevant and material to the Commission's decision on the application.

IV. Conclusion

Having found that all seven hearing requestors qualify as affected persons who have raised relevant and material issues, OPIC respectfully recommends that the Commission grant the hearing requests of Nikki Boutwell, Ed Chavez, Don Peterson, Todd Peterson, Debbie Stowell, Ira Sullivan, and Lee Thompson, Jr.

OPIC further recommends that the following issues be referred to the State Office of Administrative Hearings for a contested case hearing:

- (1) Does the Applicant's compliance history warrant denial of the permit?
- (2) Will the location of the evaporation pond be protective of water quality and downstream property?
- (3) Will the berm around the evaporation pond prevent floodwater from entering the evaporation pond?

OPIC recommends a duration of nine months for the contested case hearing.

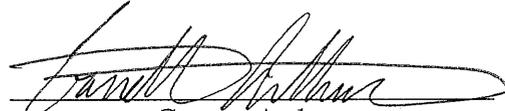
Respectfully submitted,

Blas J. Coy, Jr.
Public Interest Counsel

By 
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Assistant Public Interest Counsel
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CERTIFICATE OF SERVICE

I hereby certify that on January 18, 2008, the original and eleven true and correct copies of the foregoing document were filed with the TCEQ Chief Clerk, and copies were served to all parties listed on the attached mailing list via hand delivery, facsimile transmission, inter-agency mail, or by deposit in the U.S. Mail.



Garrett Arthur

TRI-B INDUSTRIAL PARTNERS, L.P.
TCEQ DOCKET NO. 2007-1522-IWD

FOR THE APPLICANT:

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FOR ALTERNATIVE DISPUTE

RESOLUTION:

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Texas Commission on Environmental Quality
Alternative Dispute Resolution, MC-222
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REQUESTERS:

Nikki Boutwell
12308 Mankato Rd.
Clint, Texas 79836-4811

Ed Chavez
12317 Mankato Rd.
Clint, Texas 79836

Don Peterson
12284 Mankato Rd.
Clint, Texas 79836-4800

Todd Peterson
12284 Mankato Rd.
Clint, Texas 79836-4800

Debbie Stowell
12308 Mankato Rd.
Clint, Texas 79836-4811

Ira J. Sullivan
12324 Mankato Rd.
Clint, Texas 79836

Lee Thompson, Jr.
12255 Mankato Rd.
Clint, Texas 79836-4800

Tri-B Industrial Partners, L.P.
TCEQ Permit No. WQ0004800000



Texas Commission on Environmental Quality
 GIS Team (Mail Code 197)
 P.O. Box 13087
 Austin, Texas 78711-3087

October 25, 2007

0 0.05 0.1 0.2 0.3 0.4 Miles

Projection: Texas Statewide Mapping System (TSMS)

Scale 1:18,392

Source: This map was requested by TCEQ's Office of Legal Services (OLS). The location of the facility was provided by OLS. The property boundaries depicted were manually digitized and approximated (survey data not available) using paper maps provided by OLS. OLS obtained the site location information and the requestor information from the applicant. Hearing Requestor addresses were geocoded using GDT Streets 2006-2007 geodatabase technology.

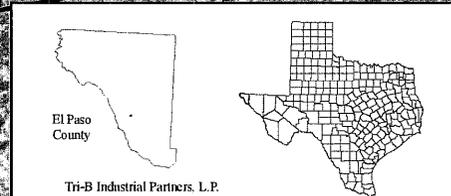
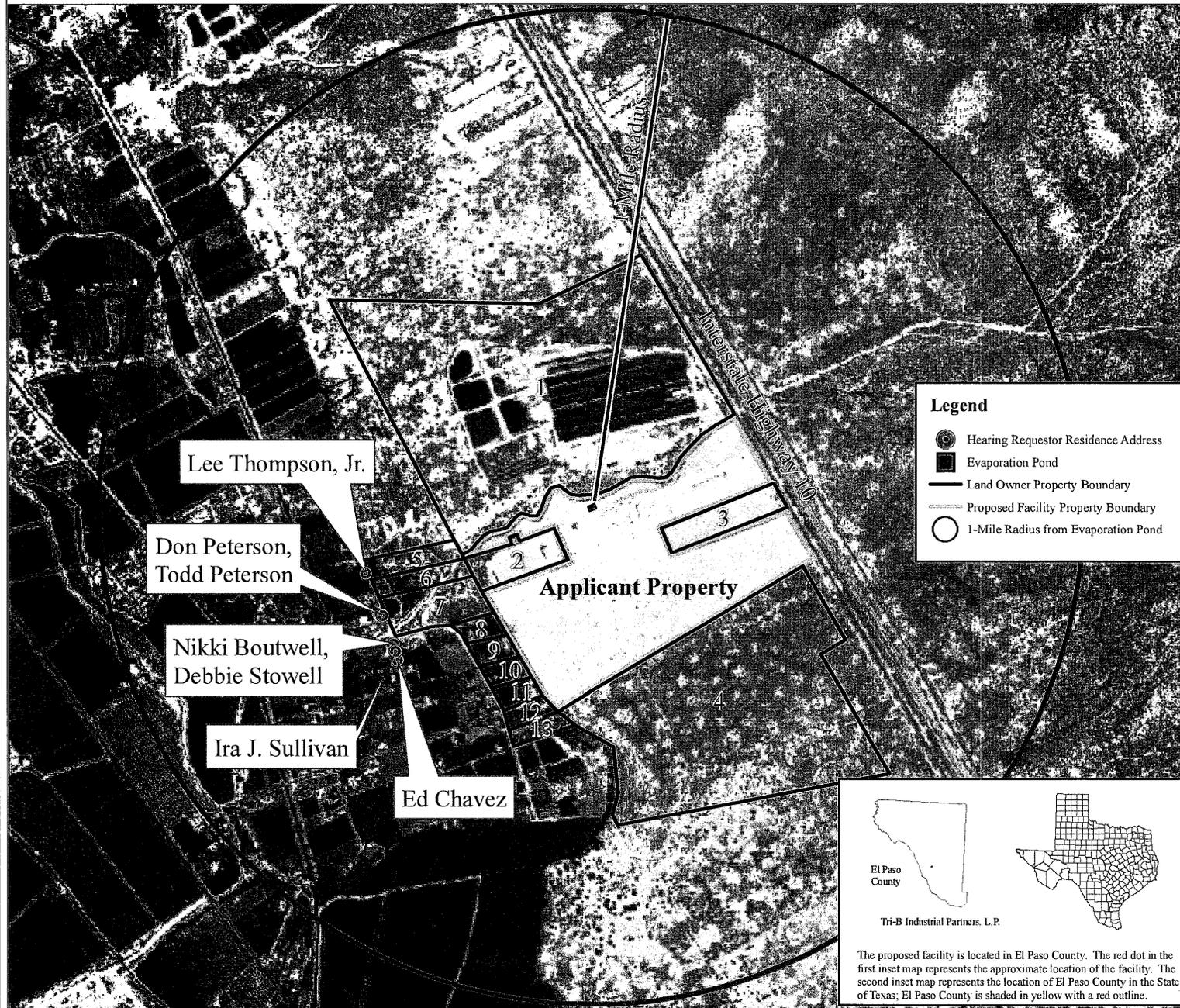
The counties are GDT 2000 Line Data (1:100,000). The imagery in this map are georeferenced aerial photographs called Digital Orthophoto Quarter Quadrangles (DOQQs) which were obtained in 2004 from the National Agricultural Imagery Program (NAIP), U.S. Department of Agriculture. This color-infrared (CIR) imagery has a one-meter pixel resolution. The DOQQs used are Clint and Clint NW.

Legend

- Hearing Requestor Residence Address
- Evaporation Pond
- Land Owner Property Boundary
- Proposed Facility Property Boundary
- 1-Mile Radius from Evaporation Pond

Land Owners Adjacent to Proposed Facility:

- (1) Bos-Bouma Investments, LTD
- (2) Lower Valley Water District
- (3) PRJ Properties
- (4) Lettunich Development
- (5) Teresa Dominguez
- (6) Lee Jr. and Joyce A. Thompson
- (7) Lee Jr. and Joyce A. Thompson
- (8) Daniel G. and Laura D. Lopez
- (9) Gabino S. Valenciano
- (10) Vincent Sanchez
- (11) Gloria Elliot
- (12) Equity Trust Company
- (13) Betty J. Leach



The proposed facility is located in El Paso County. The red dot in the first inset map represents the approximate location of the facility. The second inset map represents the location of El Paso County in the State of Texas; El Paso County is shaded in yellow with a red outline.



This map was generated by the Information Resources Division of the Texas Commission on Environmental Quality. This map was not generated by a licensed surveyor, and is intended for illustrative purposes only. No claims are made to the accuracy or completeness of the data or to its suitability for a particular use. For more information concerning this map, contact the Information Resource Division at (512) 239-0800.