

Buddy Garcia, *Chairman*  
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Blas J. Coy, Jr., *Public Interest Counsel*

## TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

*Protecting Texas by Reducing and Preventing Pollution*

May 23, 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 MAY 23 PM 3:39  
CHIEF CLERKS OFFICE

Re: **US DEPARTMENT OF ENERGY**  
**TCEQ DOCKET NO. 2008-0261-IWD**

Dear Ms. Castañuela:

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

Sincerely,

A handwritten signature in black ink, appearing to read "Garrett Arthur", written over a horizontal line.

Garrett Arthur, Attorney  
Assistant 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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TCEQ DOCKET NO. 2008-0261-IWD

2008 MAY 23 PM 3: 39

APPLICATION BY UNITED STATES  
DEPARTMENT OF ENERGY AND  
BWXT PANTEX, L.L.C. TO AMEND  
INDUSTRIAL WASTEWATER  
PERMIT NO. WQ0002296000

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BEFORE THE  
TEXAS COMMISSION ON  
ENVIRONMENTAL QUALITY

CHIEF CLERKS OFFICE

**OFFICE OF PUBLIC INTEREST COUNSEL'S  
RESPONSE TO REQUESTS FOR RECONSIDERATION**

**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 requests for reconsideration.

**I. Introduction**

The United States Department of Energy and BWXT Pantex, L.L.C. ("Pantex" or the "Applicant") have applied to the TCEQ for a major amendment of Industrial Wastewater Permit No. WQ0002296000. The amendment would make the following changes: remove effluent limitations for ammonia, cyanide, high explosives, oil and grease, and total suspended solids from Outfall 001; increase effluent limitations for total arsenic, total chromium, total copper, total lead, total manganese, total mercury, total nickel, and total zinc at Outfall 001; and authorize the disposal of treated domestic effluent and industrial effluent via subsurface irrigation of 300 acres of land at a daily average flow not to exceed 560,000 gallons per day. The Pantex facility is located approximately 17 miles northeast of the City of Amarillo and 10 miles west of the City of Panhandle in Carson County. The effluent is discharged to a playa lake, located adjacent to the watershed of McClellan Creek, which flows into the North Fork Red

River, in Segment No. 0224 of the Red River Basin. The designated uses for Segment No. 0224 are high aquatic life use and contact recreation.

The agency received this amendment application on March 8, 2005, and the application was declared administratively complete on June 1, 2005. The first notice was published June 23, 2005 in the *Amarillo Globe News* and the *Panhandle Herald*. On September 7, 2006, the second notice was published in the same newspapers. A public meeting was held April 12, 2007 in Panhandle. The Executive Director's (ED) Response to Comments (RTC) was filed January 4, 2008, and the request for reconsideration period closed February 11, 2008.

The agency received timely requests for reconsideration from the following people: Mavis Belisle, Bernice and Danny Detten, Jeff Detten, May Hochstein, Dana Koetting, Dale Livingston, Jim Murphy, and Cletus Stein. The only hearing request in this matter has been withdrawn, leaving no pending hearing requests.

## **II. Applicable Law**

Section 55.201(e) of the TCEQ procedural rules states that any person may file a request for reconsideration of the executive director's decision, and the request must expressly state that the person is requesting reconsideration of the executive director's decision and give reasons why the decision should be reconsidered. 30 Tex. Admin. Code § 55.201(e).

## **III. Requests for Reconsideration**

All of the requesters used similar letters to request reconsideration of the ED's decision. A majority of the requesters are associated with the Peace Farm, which is described as a non-profit organization that owns property immediately south of Pantex. All of the requesters raise the issue of proximity to the facility, either for themselves or the Peace Farm. The requesters

also state that Pantex has acknowledged discharges to Outfall 001 have caused contamination of a perched aquifer, and the requesters believe this poses a risk of contamination to the deeper Ogallala Aquifer. Additionally, the requesters are concerned that the amendment would allow increased discharges containing more contamination. Finally, the requesters are concerned about increased risks to health and property, specifically the value of their property and their ability to use it.

For the following reasons, OPIC cannot support the issues raised by the requesters as the basis for reconsideration of the ED's decision. According to the ED's RTC, Pantex has been conducting remedial activities on the perched aquifer since 1995 and is required to remediate the perched aquifer to the satisfaction of the TCEQ and the EPA. This remediation is ongoing and is being conducted pursuant to TCEQ Compliance Plan No. 50284. The RTC also states that no constituents have impacted the Ogallala Aquifer in recognizable or definitive patterns, and the continued remediation of the perched aquifer and the long-term monitoring of the Ogallala Aquifer are expected to help prevent any adverse impact to the Ogallala Aquifer. Regarding the facility's discharge, the RTC states there will be no increase to the authorized quantity of wastewater that can be discharged via Outfall 001 into the playa, and the constituents for which effluent limitations have been removed have not been detected in the effluent, as indicated by historical self-reporting data. Regarding property values, the Texas Legislature has not given the Commission the authority or jurisdiction to address this issue in permitting matters. Furthermore, an evidentiary record would be necessary for this office to make a recommendation to the Commission as to whether the permit amendment should be denied based on these issues.

#### IV. Conclusion

As stated previously, the requesters in this matter requested only reconsideration, not a contested case hearing. While the issues raised by the requesters might warrant further examination through the contested case hearing process, OPIC's consideration of this matter is limited to the question of whether the ED's decision should be reconsidered. Without the benefit of an evidentiary record developed through the hearing process, OPIC cannot recommend that the ED's decision be reconsidered. Therefore, OPIC respectfully recommends that all requests for reconsideration be denied.

Respectfully submitted,

Blas J. Coy, Jr.  
Public Interest Counsel

By   
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**CERTIFICATE OF SERVICE**

I hereby certify that on May 23, 2008 the foregoing document was 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

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COMMISSION  
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2008 MAY 23 PM 3:39  
CHIEF CLERKS OFFICE

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**TCEQ DOCKET NO. 2008-0261-IWD**

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