

Buddy Garcia, *Chairman*
Larry R. Soward, *Commissioner*
Bryan W. Shaw, Ph.D., *Commissioner*
Glenn Shankle, *Executive Director*



TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

May 9, 2008

TO: Persons on the Attached Mailing List

**RE: Docket No. 2008-0261-IWD
US Department of Energy and BWXT Pantex, L.L.C.
Request(s) filed on Permit No. WQ0002296000**

The above-referenced application and all timely filed hearing requests/requests for reconsideration on the above-referenced application will be considered by the commissioners of the Texas Commission on Environmental Quality (TCEQ) during the public meeting on **June 18, 2008**. The meeting will begin at 9:30 a.m. in Room 201S of Building E, at the commission's offices located at 12100 Park 35 Circle in Austin, Texas.

In accordance with commission rules, copies of the timely hearing requests/requests for reconsideration have been forwarded to the applicant, the Executive Director of the TCEQ, and the Public Interest Counsel of the TCEQ. Each of these persons is entitled to file a formal written response to the hearing requests/requests for reconsideration on or before 5:00 p.m. on **May 23, 2008**. Persons who have filed timely hearing requests/requests for reconsideration may file a formal written reply to these responses on or before 5:00 p.m. on **June 9, 2008**.

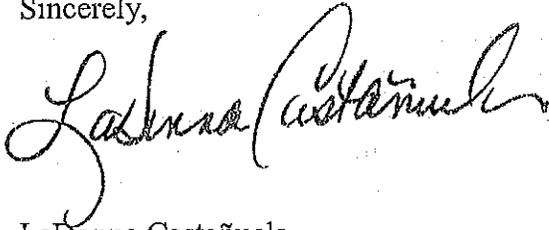
An original and 11 copies of any response or reply must be filed with the Chief Clerk of the TCEQ. The address of the Chief Clerk is: Office of Chief Clerk, ATTN: Agenda Docket Clerk, Mail Code 105, TCEQ, P. O. Box 13087, Austin, Texas 78711-3087 [Fax number (512) 239-3311]. On the same day any response is transmitted to the Chief Clerk, a copy must also be sent to the Executive Director, the Public Interest Counsel, the Director of the Office of Public Assistance, the Applicant and the requesters at their addresses listed on the attached mailing list. On the same day any reply is transmitted to the Chief Clerk, a copy must also be sent to the Executive Director, the Public Interest Counsel, the Director of the Office of Public Assistance, and other requesters and the applicant at their addresses listed on the attached mailing list.

The procedures for evaluating hearing requests/requests for reconsideration are located in 30 Texas Administrative Code (TAC) Chapter 55, Subchapter F (§§55.200-211) of the commission's rules. The procedures for the filing of responses and replies are located in 30 TAC Chapters 1 (§§1.10-11) and 55 (§55.209) of the commission's rules. Copies of these rules may be obtained by calling the Office of Public Assistance toll free at 1-800-687-4040.

The commissioners will not take oral argument or additional comment on this matter at the public meeting. Therefore, it is important to address the sufficiency of the requests in timely filed written responses and requesters' replies. At the public meeting, the commissioners may ask questions of the applicant, requesters, or TCEQ staff. The commissioners will make a decision on the request(s) during the meeting and will base that decision on the timely written requests, public comments, any written responses and replies, any responses to questions during the meeting, and applicable statutes and rules. Copies of all timely public comments and requests have been forwarded to the Office of Alternative Dispute Resolution to determine if informal, voluntary mediation might help resolve any dispute.

The attachment to this letter is intended to help you better understand how the TCEQ processes and evaluates hearing requests and requests for reconsideration. To obtain additional information, or to ask questions about anything in this letter, please call the TCEQ's Office of Public Assistance toll-free at 1-800-687-4040.

Sincerely,

A handwritten signature in black ink, appearing to read "LaDonna Castañuela". The signature is fluid and cursive, written over a faint, illegible typed name.

LaDonna Castañuela
Chief Clerk

Enclosures: Copies of protestant correspondence to Applicant, Executive Director, Office of Public Interest Counsel, Office of Public Assistance and Alternative Dispute Resolution.

ATTACHMENT

Procedures Concerning Requests for Reconsideration and Requests for Contested Case Hearing

The purpose of this document is to describe commission procedures for evaluating requests for reconsideration and requests for contested case hearing. This document is not intended to be a comprehensive guide to public participation at the TCEQ.

The three commissioners determine the validity of requests for reconsideration and requests for contested case hearing and vote to grant or deny the requests during a public meeting. These public meetings are usually held every other Wednesday in Austin. Prior to the meeting, the following occurs:

- 1) the written requests are distributed to the executive director, the public interest counsel, and the applicant. These persons may file a response at least 23 days before the meeting;
- 2) the requester may then file a reply to the responses at least 9 days before the meeting. This is the requester's opportunity to address any deficiencies in the request that have been identified by TCEQ staff or the applicant. The requester must submit any information he or she wishes the commissioners to consider (ex: maps or diagrams showing requester's location relative to the applicant's proposed activities) by this deadline; and
- 3) the commissioners read the requests, the responses to requests, and the replies, before the public meeting. Then, during the public meeting, the commissioners vote to grant or deny the requests.

Requests for Reconsideration

A request for reconsideration must expressly state that the person is requesting that the commission reconsider the executive director's decision and state the reasons why the commission should reconsider the executive director's decision. The commission will consider a request for reconsideration at a scheduled public meeting and grant or deny the request.

Requests for Contested Case Hearing

A contested case hearing is an evidentiary proceeding, similar to a hearing in civil court. The law allows for holding a contested case hearing on certain types of applications.

A valid request for a contested case hearing must:

- 1) demonstrate that the requester is an "affected person" with a "personal justiciable interest" related to a legal right, duty, privilege, power or economic interest which would be affected by the application in a manner not common to the general public;
- 2) if the request is made by a group or association, identify one or more members who have standing to request a hearing, and the interests the group or association seeks to

- protect;
- 3) expressly request a contested case hearing;
 - 4) raise disputed issues of fact that are relevant and material to the commission's decision on the application which were raised during the comment period and not withdrawn prior to the filing of the Executive Director's Response to Comment; and
 - 5) include any other information as specified in public notices.

The commission is authorized to protect human health and safety, and natural resources. The commission cannot address other matters outside the commission's authority, such as the effect of the existence of a proposed facility on nearby property values.

When the commissioners deny hearing requests, they often proceed to vote on approval or denial of the application. Alternatively, they may remand the application to the executive director for final action. If a hearing request is granted and the application is referred to the State Office of Administrative Hearings (SOAH), the commissioners will specify a list of issues which will be the subject of the hearing and an expected date for the SOAH judge's proposal for decision. The SOAH judge will conduct the hearing and submit a proposal to the commission to approve or deny the application.

The Alternative Dispute Resolution Office may contact requesters to determine their interest in informal discussions with the permit applicant and a mediator.

By necessity this document gives a very general description of commission procedures. If you have any questions, please call OPA toll-free at 1-800-687-4040.

MAILING LIST
US DEPARTMENT OF ENERGY
DOCKET NO. 2008-0261-IWD; PERMIT NO. WQ0002296000

FOR THE APPLICANT:

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Jerry S. Johnson
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R.H. Pankratz
BWXT Pantex, LLC
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Tel: (806) 477-5484
Fax: (806) 477-6674

FOR THE EXECUTIVE DIRECTOR:

Marc Friberg, Staff Attorney
Texas Commission on Environmental Quality
Environmental Law Division, MC-173
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FOR PUBLIC INTEREST COUNSEL:

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Fax: (512) 239-6377

FOR OFFICE OF PUBLIC ASSISTANCE:

Ms. Bridget Bohac, 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:

Mr. 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:

Ms. 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

*Please see attached for the complete
mailing list.*

REQUESTER(S)

MAVIS BELISLE
DIRECTOR, THE PEACE FARM
188 US HIGHWAY 60
PANHANDLE TX 79068-7200

DON HANCOCK
PEACE FARM
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ALBUQUERQUE NM 87196-4524

BERNICE & DANNY DETTEN
15600 STATE HIGHWAY 136
PANHANDLE TX 79068-5001

MAY HOCHSTEIN
5113 SW 16TH AVE
AMARILLO TX 79106-4418

JEFF DETTEN
501 FM 1342
PANHANDLE TX 79068-7311

TONYA KLENSKENS
STAND INC
4308 CR E
HEREFORD TX 79045

DALE LIVINGSTON
5817 NE 21ST AVE
AMARILLO TX 79107-7564

DANA KOETTING
909 CR G
PANHANDLE TX 79068

JIM MURPHY
SECRETARY, PEACE FARMS
6711 COLUMBIA LN
AMARILLO TX 79109-6805

RICHARD LOWERRE
LOWERRE & FREDERICK
44 EAST AVE STE 100
AUSTIN TX 78701-4386

CLETUS STEIN
5113 SW 16TH AVE
AMARILLO TX 79106-4418

BILLIE POTEET
857 COUNTY ROAD 14
PANHANDLE TX 79068-7405

WITHDRAW OF REQUEST(S)

JERI OSBORNE
PO BOX 95
PANHANDLE TX 79068-0095

DORIS BERG SMITH
18001 EL RANCHO RD
PANHANDLE TX 79068-5000

PUBLIC OFFICIALS - INTERESTED PERSON(S)

THE HONORABLE ROBERT DUNCAN
STATE SENATOR - DISTRICT 28
1500 BROADWAY STE 902
LUBBOCK TX 79401-3108

DORIS & PHILLIP SMITH
18001 EL RANCHO RD
PANHANDLE TX 79068-5000

INTERESTED PERSON(S)

ADDIS CHARLESS, JR
2100 CR D
PANHANDLE TX 79068

JERRY STEIN
5113 SW 16TH AVE
AMARILLO TX 79106-4418

PENNI CLARK
1800 CLARK RD
MIAMI TX 79059-4608

C E WILLIAMS
DIST MGR, PANHANDLE GROUNDWATER CONSERV DIST
PO BOX 637
WHITE DEER TX 79097-0637

JENNIFER FOSTER
SENATOR ROBERT DUNCAN
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CHILDRESS TX 79201-4513

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2008 MAY 20 PM 4: 20

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

CHIEF CLERKS OFFICE

Protecting Texas by Reducing and Preventing Pollution

May 20, 2008

To: Persons on the attached mailing list (by mail and facsimile as indicated)

Re: Requests for Hearing/Reconsideration on US Department of Energy and BWXT Pantex, L.L.C. Permit WQ0002296000; TCEQ Docket No. 2008-0261-IWD.

The above-reference matter is set to be considered by the commissioners of the Texas Commission on Environmental Quality (TCEQ) during its public meeting on June 18, 2008. The Office of the Chief Clerk was notified on May, 16, 2008 that two individuals on the "Interested Persons" list had each previously filed a Request for Reconsideration, and therefore, should have been on the "Requesters" list so that their requests could be properly addressed. The individuals are Ms. May Hochstein and Ms. Dana Koetting. By this letter, the Office of General Counsel (OGC) is notifying you that they are "Requesters."

None of the deadlines for this matter will alter as a result. The Executive Director, and OPIC will have until **5:00 p.m. on May 23, 2008** to file a formal written response to all hearing requests/requests for reconsideration including those of Ms. Hochstein and Ms. Koetting. Persons who filed timely hearing requests/ requests for reconsideration, including Ms. Hochstein and Ms. Koetting, will have until **5:00 p.m. on June 9, 2008** to file a formal written reply to these responses.

If you have any questions about this matter, please contact Anne Rowland, Assistant General Counsel, at 512/239-6376.

Respectfully,

A handwritten signature in black ink, appearing to read "Les Trobman".

Les Trobman
General Counsel

Mailing List

MAILING LIST
US DEPARTMENT OF ENERGY
DOCKET NO. 2008-0261-IWD; PERMIT NO. WQ0002296000

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