

TCEQ DOCKET NO. 2008-0625-MWD

APPLICATION BY
AUC GROUP, L.P.
FOR TPDES PERMIT NO.
WQ0014724-002

§ TEXAS COMMISSION
§ ON
§ ENVIRONMENTAL QUALITY

CHIEF CLERK'S OFFICE
2008 AUG 15 PM 3:04
TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

APPLICANT'S RESPONSE TO HEARING REQUESTS

TO THE HONORABLE COMMISSIONERS:

AUC Group, L.P. ("Applicant"), pursuant to 30 Texas Administrative Code (TAC) § 55.209(d), files this Response to the hearing request of Lonah Lonis. Ms. Lonis's request for a "public hearing" should be denied because (1) the request fails to substantially comply with the requirements of 30 TAC § 55.201(d), and (2) the request does not raise any issues of disputed fact.

1. Ms. Lonis's request fails to substantially comply with the requirements of 30 TAC § 55.201(d).

Section 55.201(d) requires hearing requests to contain a minimum amount of information so that the Commission may be able to determine if a contested case hearing should be granted based on the requirements of the law. Specifically, section 55.201(d) requires that the person identify his or her personal justiciable interest affected by the application, including providing information about the requestor's location and distance relative to the facility. Additionally, the request must list all relevant and material disputed issues of fact that were raised during the comment period and that are the basis of the hearing request. 30 TAC § 55.201(d)(4). Ms. Lonis' request fails to do this.

Ms. Lonis did not request a "contested case hearing" as required by rule. 30 TAC § 55.201(d)(3). Ms. Carter requested a "public hearing" because of the "need to know everything about these permits and their effect on everyone." Ms. Carter's request was sent to the Commission in April 2007 shortly after the Receipt of Application and Intent to Obtain a

Water Quality Permit Proposed Permit No. WQ0014724002 was published. Had Ms. Lonis intended to request a contested case hearing, rather than a public meeting, she could have submitted such a request as provided for by the second notice and the Executive Director's response to comments. However, no other additional correspondence was received by the TCEQ after her initial letter. Moreover, the purpose of a contested case hearing is to address "all relevant and material disputed issues of fact," not to address "everything about these permits." Her request should be construed as a request for a public meeting, not as a trial-like contested case hearing.

2. Ms. Lonis's request does not raise any issues of disputed fact that are relevant and material to the decision on the application.

Even if Ms. Lonis's request for public hearing can be construed as a contested case hearing under the Commission's rules, Ms. Lonis has failed to raise any issues that are relevant and material to the Commission's decision on the application. A hearing request may only be granted if it raises disputed issues of fact that are relevant and material to the Commission's decision on the application. *See* 30 TAC § 55.211. Ms. Lonis's request simply raises concerns about the discharge causing flooding on Chocolate Bayou.¹ Flooding is not an issue that can be addressed by the requirements of Chapter 26 of the Texas Water Code, or Chapters 305 or 309 of Title 30 the Texas Administrative Code. It is not relevant and material to the Commission's decision on the application. Other than flooding, Ms. Lonis has not identified anything in the application, in the draft permit, or in the Executive Director's response to comments which she disputes or which she believes fails to comply with the requirements of Chapter 26 of the Texas

¹ Ms. Lonis, along with Mr. and Mrs. Dillard, express concerns about the cumulative affect the discharges from the proposed facilities on Chocolate Bayou and three other facilities on the West Fork Chocolate Bayou will have on flooding of their properties. There will be no effect because the West Fork of Chocolate Bayou joins Chocolate Bayou downstream of Ms. Lonis' and Mr. and Mrs. Dillard's properties.

Water Code, and the TCEQ regulations. Because Ms. Lonis has raised no issue of disputed fact that is relevant and material to the Commission's decision on the application, her request for a hearing should be denied.

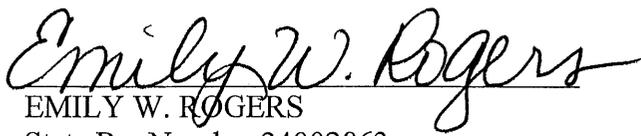
3. Conclusion.

Ms. Lonis's request fails to substantially comply with the TCEQ rules regarding contested case hearing requests. Moreover, Ms. Lonis has not raised any disputed issues that are relevant and material to the Commission's decision on the application. For these reasons, the Applicant respectfully requests that Ms. Lonis's hearing request be denied, and the Commission issue proposed TPDES Permit No. WQ0014724-002 to AUC Group, L.P.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify, by my signature below, that a true and correct copy of the above and foregoing was forwarded via First Class Mail, hand delivery or facsimile on August 28, 2008 to the parties on the attached Mailing List.

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