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

## TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

*Protecting Texas by Reducing and Preventing Pollution*

August 14, 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

2008 AUG 14 PM 3:14  
CHIEF CLERKS OFFICE  
TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

**RE: AUC GROUP, L.P.**  
**TCEQ DOCKET NO. 2008-0625-MWD**

Dear Ms. Castañuela:

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

Sincerely,

A handwritten signature in cursive script that reads "Vic McWherter".

Vic McWherter, Senior Attorney  
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. 2008-0625-MWD**

**IN THE MATTER OF THE  
APPLICATION OF AUC GROUP, L.P.  
FOR TPDES PERMIT NO.  
WQ0014724002**

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**BEFORE THE  
TEXAS COMMISSION ON  
ENVIRONMENTAL QUALITY**

2008 AUG 14 PM 3:14

CHIEF CLERKS OFFICE

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

COMES NOW, the Office of Public Interest Counsel ("OPIC") of the Texas Commission on Environmental Quality (the "Commission" or "TCEQ") and files this Response to Request for Hearing in the above-referenced matter. OPIC respectfully recommends denying the hearing request filed by Ms. Lonah Lonis.

**I. INTRODUCTION**

The AUC Group (hereinafter "Applicant" or "AUC") filed an application with TCEQ on February 27, 2007, for a Texas Pollutant Discharge Elimination System ("TPDES") permit to authorize the discharge of treated domestic wastewater at a daily average flow limit of 0.16 million gallons per day ("MGD") in interim I phase, 0.32 MGD in interim II phase, and 0.995 MGD in the final phase. The proposed plant site is located approximately 1,700 feet north-northwest of the intersection of Hanselman Road and County Road 67, on the west side of Chocolate Bayou in Brazoria County, Texas. The facility would discharge effluent directly to Chocolate Bayou Above Tidal in Segment No. 1108 of the San Jacinto-Brazos Coastal Basin. Segment No. 1108 is designated as a water with high aquatic life use and contact recreation.

The Executive Director ("ED") declared the application administratively complete on March 21, 2007. The Applicant published a Notice of Receipt of Application and Intent to Obtain a Water Quality Permit ("NORI") on April 2, 2007; April 26, 2007; and August 23, 2007

in the *Houston Chronicle*. The Applicant also published a NORI in Spanish on April 25, 2007 in *La Voz de Houston*. The Applicant published a revised Notice of Application and Preliminary Decision in English on December 27, 2007 in the *Houston Chronicle* and published another copy in Spanish on December 26, 2007 in the *La Voz de Houston*. The public comment period ended on January 28, 2008. The Chief Clerk of the TCEQ mailed the Executive Director's decision and response to Comments on March 17, 2008.

During the initial comment period, TCEQ received a timely request for hearing from Lonah Lonis. Because this request is based solely on flooding concerns which are outside the jurisdiction of the Commission to address in proceedings on this application, OPIC recommends denying the hearing request.

## II. APPLICABLE LAW

This application was declared administratively complete on March 21, 2007. As the application was declared administratively complete after September 1, 1999, it is subject to the requirements of Texas Water Code, Chapter 5, Subchapter M, Environmental Permitting Procedures, Section 5.551 to 5.556. Under the applicable statutory and regulatory requirements, a hearing request must 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 the application.<sup>1</sup>

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."<sup>2</sup> This justiciable interest does not include an interest common to the general public.<sup>3</sup> Relevant factors that will be considered in determining whether a person is affected 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.<sup>4</sup>

The Commission shall grant an affected person's timely filed hearing request if: (1) the request is made pursuant to a right to hearing authorized by law; and (2) the request raises disputed issues of fact that were raised during the comment period and that are relevant and material to the Commission's decision on the application.<sup>5</sup>

Accordingly, 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;

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<sup>1</sup> 30 TEXAS ADMIN. CODE ("TAC") § 55.201(d).

<sup>2</sup> 30 TAC § 55.203(a).

<sup>3</sup> *Id.*

<sup>4</sup> 30 TAC § 55.203(c).

<sup>5</sup> 30 TAC § 55.211(c).

- (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.<sup>6</sup>

### III. DISCUSSION

Ms. Lonis states in her hearing request that she will be affected by approval of the application. Ms. Lonis states that the proposed facility is 1700 feet west-northwest of her property. The downstream property owners map included in the application confirms that Ms. Lonis' property is adjacent to the discharge route and approximately 1700 feet downstream from the proposed discharge point. Ms. Lonis states that her property lies in the flood plain and that the proposed discharge will cause flooding or exacerbate existing flooding problems in the Chocolate Bayou.

OPIC cannot find that the interest claimed in the request is one that is protected by the law governing this application.<sup>7</sup> This permitting process is governed by Texas Water Code Chapter 26 which regulates water quality. TCEQ does not have jurisdiction to regulate wastewater discharge applicants based on flooding concerns which have not been clearly tied to specific physical impairments of the discharge route or other factors that would adversely affect mixing and dilution; erosion or turbidity; or other water quality interests. The flooding concern raised by Ms. Lonah is not addressed by Texas Water Code Chapter 26; therefore, this interest is not protected by the law governing these proceedings. Because the stated concern about flooding cannot provide a basis for finding that Ms. Lonis is an affected person, OPIC recommends that the Commission deny Ms. Lonis' hearing request.

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<sup>6</sup> 30 TAC § 55.209(e).

<sup>7</sup> 30 TAC § 55.203(c)

#### IV. CONCLUSION

Because OPIC find that the requestor is not an affected person, OPIC respectfully recommends that the commission deny the hearing request filed by Ms. Lonah Lonis.

Respectfully submitted,

Blas J. Coy, Jr.  
Public Interest Counsel

By *Vic McWherter*  
Vic McWherter  
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#### CERTIFICATE OF SERVICE

I hereby certify that on August 14, 2008, the original and eleven true and correct copies of the Office of Public Interest Counsel's Response to Request for Hearing on were filed with the Chief Clerk of the TCEQ and a copy was served to all persons listed on the attached mailing list via hand delivery, facsimile transmission, Inter-Agency Mail or by deposit in the U.S. Mail.

*Vic McWherter*  
Vic McWherter

CHIEF CLERKS OFFICE

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COMMISSION  
ON ENVIRONMENTAL  
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**FOR ALTERNATIVE DISPUTE**

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