



Luminant

Gerald R. Johnson
Generation Environmental Manager
Environmental Services
gr.johnson@luminant.com

Luminant Power
500 N. Akard Street
Dallas, TX 75201

T 214.875.8330
C 214.534.9040
F 214.875.8333

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Via Facsimile (512.239.3311) & Certified Mail

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

Certified Mail: 7007 0220 0000 4473 875

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CHIEF CLERKS OFFICE

TEXAS
COMMISSION
ON ENVIRONMENTAL
QUALITY

Re: TCEQ Docket No. 2008-0747-IHW; CN600135511/ RN103044053
Application for Renewal of Hazardous Waste Permit No. 50356
Applicant's Response to Request for Contested Case Hearing

Dear Ms. Castañuela :

Applicant Luminant Generation Company LLC ("Luminant") (formerly TXU Generation Company, L.P.) has filed an application for renewal of its permit for closed landfills and a mixed waste container storage area at its Comanche Peak power plant. Ms. Debbie Harper, a resident in the area, has requested that TCEQ hold a full contested case hearing on the renewal of this permit. There is no need or basis for a contested case hearing since there is no likelihood of any impact on Ms. Harper's health or safety, or on her use of any natural resource. We believe that the TCEQ rules are clear that no contested case hearing is required and the rules do not call for one.

For the reasons set forth below, Ms. Harper's request fails to satisfy the regulatory criteria for contested case hearing requests and fails to demonstrate that Ms. Harper has a personal justiciable interest affected by the permit renewal application at issue. Accordingly, there is no right to a contested case hearing and if considered, Ms. Harper's request should be denied.

Luminant's application is limited to the renewal of a hazardous waste permit that was originally issued in February 1997, with a 10-year permit term. The activities authorized by the permit have been ongoing for over a decade and, in its application, Luminant does not propose any substantive changes to the terms of the existing permit. Rather, Luminant seeks only to renew the permit to provide for the continued operation of its mixed waste storage area and ongoing post-closure care of two on-site landfills.

By written request dated September 17, 2007, Ms. Harper requested that the Texas Commission on Environmental Quality ("TCEQ" or "the Commission") hold a public meeting on Luminant's application. To Luminant's knowledge, Ms. Harper was the only person that requested a public meeting on the application. Indeed, Ms. Harper's September 2007 request appears to be the only public comment on the application. In her request, Ms. Harper stated that she was "requesting a public meeting" and "would like a hearing about where the radioactive materials are stored." In light of this latter statement, specifically the use of the word "hearing," the Executive Director of

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the TCEQ ("Executive Director") conservatively construed Ms. Harper's request as one requesting not only a public meeting, but also a contested case hearing.

In his Amended Response to Public Comment in this matter, the Executive Director notes that TCEQ staff contacted Ms. Harper regarding her request and that Ms. Harper clarified that she did not intend to request a contested case hearing. *See* Executive Director's Amended Response to Public Comment, TCEQ Docket No. 2008-0747-IHW, at 6 n.10 (Mar. 28, 2008). Accordingly, this response to Ms. Harper's request may be unnecessary. However, because Ms. Harper has not withdrawn her request or otherwise provided written clarification of the scope of her request, Luminant provides this brief response.

Regardless of the wording of Ms. Harper's request, TCEQ's rules are clear: There is no right to a contested case hearing on an application, such as Luminant's, for renewal of a hazardous waste permit under §305.65. *See* 30 Tex. Admin. Code §§ 55.201(i)(4), 305.65(8). The wastes managed by Luminant pursuant to the permit being renewed are generated on-site and do not include "waste generated from other waste transported to the site." *Id.* § 305.65(8)(A)(i)-(ii), (B)(i)-(ii). Additionally, the permit at issue does not authorize, and Luminant does not conduct, thermal processing of wastes at the site. *See id.* § 305.65(B)(iii). Accordingly, the Commission may act on Luminant's application "without providing an opportunity for a contested case hearing" to Ms. Harper or any other person. *Id.* § 305.65(8).

Should the Commission nevertheless consider the merits of Ms. Harper's request, the agency will find that the request fails to satisfy the regulatory criteria for contested case hearing requests. The TCEQ's rules establish the procedural and substantive requirements for valid contested case hearing requests. Per the agency's rules, Ms. Harper's request is both procedurally and substantively inadequate.

TCEQ's rules require hearing requests to include a statement explaining the requestor's "personal justiciable interest affected by 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." *Id.* § 55.201(d)(2). Ms. Harper's request contains no such statement. Ms. Harper does not claim a personal justiciable interest affected by Luminant's permit renewal application. Nor does she allege that she will be affected by the continued operation of Luminant's mixed waste storage area and ongoing post-closure care of its on-site landfills.

TCEQ's rules also require requestors – in their hearing requests – to "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." *Id.* § 55.201(d)(4). Ms. Harper's request contains no such list of facts in dispute. Indeed, Ms. Harper has provided no basis for her hearing request. Accordingly, if it is even considered, Ms. Harper's request should be denied.

If the merits of Ms. Harper's request are considered, the Commission will also find that Ms. Harper cannot demonstrate that she is an "affected person" under TCEQ's rules – that she "has a

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personal justiciable interest related to a legal right, duty, privilege, power, or economic interest affected by the application" that is not "common to members of the general public." *Id.* § 55.203(a). TCEQ's rules list a number of factors that are to be considered when determining whether a requestor is an "affected person." *See id.* § 55.203(c). Given the above-noted inadequacies of Ms. Harper's request, which alone are grounds for denial of the request, Ms. Harper fails even to allege the applicability of any of the listed factors.

While Ms. Harper states that she lives within five miles of the facility, Ms. Harper's listed address of 1502 County Road 2018 in Glen Rose, Texas, is more than eight miles from Luminant's mixed waste container storage area and landfills. *See id.* § 55.203(c)(2). Ms. Harper is located further from the facility than the entire City of Glen Rose. Accordingly, Ms. Harper can make no reasonable claim of any interest in the application or facility that is not in common with other members of the general public in the area of the facility.

There is no need or basis for a contested case hearing since there is no likelihood of any impact on Ms. Harper's health or safety, or on her use of any natural resource, from the renewal of Luminant's permit and the continued operation of Luminant's mixed waste storage area and ongoing post-closure care of its on-site landfills. *See id.* § 55.203(c)(4)-(5). As noted in the Executive Director's Amended Response to Public Comment dated March 28, 2008, the mixed waste container storage area is a small building specifically fabricated to store mixed waste containers and includes a secondary containment area that meets federal regulatory requirements. The mixed waste container storage area is located inside a larger warehouse within the power plant facility. Additionally, the two on-site landfills were closed in accordance with state and federal regulations in 1992, as approved by TCEQ's predecessor agency. As discussed in the permit renewal application, the leachate from the landfills meets drinking water standards and, thus, does not pose a threat to groundwater or surface water in the vicinity of the site.

For all of the foregoing reasons, Ms. Harper's request should be denied. There is no right to a contested case hearing on this application. Moreover, Ms. Harper has not met, and cannot meet, the applicable regulatory requirements for contested case hearing requests. Ms. Harper has not and cannot reasonably claim that she has a personal justiciable interest affected by the permit renewal application at issue that is separate and distinct from the interests that other members of the general public may have. Accordingly, Ms. Harper's request should be denied. Furthermore, because there will be no impact on the general public or Ms. Harper from continued operation of Luminant's mixed waste storage area and ongoing post-closure care of its on-site landfills, there is no need for a hearing on Luminant's application to renew a permit that has been in existence for over a decade.

Thank you for your time and consideration of this response.

Sincerely,


Gerald R. Johnson