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

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

September 29, 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 SEP 29 PM 3: 07
CHIEF CLERKS OFFICE

Re: **LCS CORRECTIONS SERVICES, INC.**
TCEQ DOCKET NO. 2008-1406-MWD

Dear Ms. Castañuela:

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

Sincerely,

A handwritten signature in cursive script, appearing to read "Garrett Arthur".

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. 2008-1406-MWD

2008 SEP 29 PM 3:07

**LCS CORRECTIONS SERVICES, INC.
PROPOSED TPDES PERMIT NO.
WQ0014802001**

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**BEFORE THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY**

CHIEF CLERKS OFFICE

**OFFICE OF PUBLIC INTEREST COUNSEL'S
RESPONSE TO REQUEST 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 a request for reconsideration.

I. Introduction

On May 3, 2007, LCS Corrections Services, Inc. ("LCS" or the "Applicant") applied to the TCEQ for a new Texas Pollutant Discharge Elimination System (TPDES) permit. The permit would authorize the construction and operation of a new municipal wastewater treatment plant. Under the proposed permit, the facility would be allowed to discharge treated domestic wastewater at a daily average flow not to exceed 150,000 gallons per day. The proposed facility would be located at 4909 FM 2826, approximately 470 feet west of the intersection of County Road 81 and FM 2826, near Robstown in Nueces County. The effluent would be discharged to a ditch, then to Petronilla Creek in Segment No. 2204 of the Nueces-Rio Grande Coastal Basin. The designated uses for Segment No. 2204 are intermediate aquatic life use and contact recreation.

LCS' application was declared administratively complete May 30, 2007. The first notice was published June 26, 2007 in the *Corpus Christi Hispanic News* and June 27, 2007 in the *Corpus Christi Caller-Times*. The second notice was published October 31, 2007 in the *Corpus*

Christi Caller-Times and January 11, 2008 in the *Corpus Christi Hispanic News*. The Executive Director's (ED) Response to Comments (RTC) was mailed July 29, 2008, and the deadline for requests for reconsideration was August 28, 2008. The TCEQ received a timely request for reconsideration from Michael M. Baumann on behalf of Midnight Sun, Inc. VI.

OPIC recommends that the Commission deny Mr. Baumann's request for reconsideration.

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). A response to a request for reconsideration should address the issues raised in the request. 30 TAC § 55.209(f).

III. Request for Reconsideration

Mr. Baumann's request states two concerns. First, during periods of heavy rainfall, Petronilla Creek overflows, and the addition of the discharged wastewater will increase the flooding of the Midnight Sun property. Such increased flooding will damage the property and any crops growing on it. Second, the discharged wastewater may have long term adverse effects on the soil of the Midnight Sun farm, decreasing its productivity and negatively affecting the value of the farm property.

For the following reasons, OPIC cannot support the issues raised by Mr. Baumann as the basis for reconsideration of the ED's decision. As discussed in the RTC, the Commission does not have the authority to address flooding issues in the wastewater permitting process. Likewise, the Texas Legislature has not given the Commission the authority or jurisdiction to address

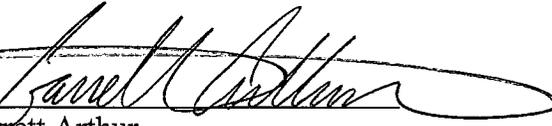
property values in permitting matters. As for the protection of the Midnight Sun property from contaminants, the RTC states that the draft permit includes effluent limits that the Applicant must meet even during rainfall events and periods of flooding. Furthermore, an evidentiary record would be necessary for OPIC to make a recommendation to the Commission as to whether the application should be denied based on the issue of potential impacts to the Midnight Sun property.

IV. Conclusion

Mr. Baumann requested only reconsideration, not a contested case hearing. While the issues raised by Mr. Baumann concerning the potential contamination of property 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 the request for reconsideration be denied.

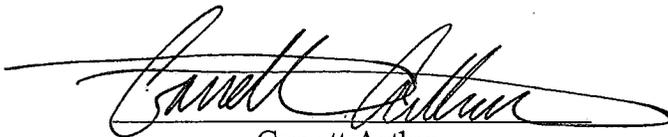
Respectfully submitted,

Blas J. Coy, Jr.
Public Interest Counsel

By 
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CERTIFICATE OF SERVICE

I hereby certify that on September 29, 2008, the original and eleven true and correct copies of the foregoing document were 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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ON ENVIRONMENTAL
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2008 SEP 29 PM 3:07
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TCEQ DOCKET NO. 2008-1406-MWD

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