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CHIEF CLERKS OFFICE

March 27, 2009

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

Re: TCEQ Docket No. 2008-1839-AIR
Air Quality Permit Number 1360A
Application by TXI Operations, LP, RN#100217199
Cement Manufacturing Plant, Midlothian, Ellis County, Texas

Subject: Request for Hearing and Rebuttal of ED Comments

Dear Ms. Castanuela:

Enclosed please find an original and seven (7) copies of my rebuttal to the Executive Director's (ED) Response to Public Comment. In addition I am mailing under separate cover a copy to the ED, the Applicant, Public Interest Council and Downwinders At Risk as required.

On June 24, 2008, TXI Operations LP submitted an application to the Texas Commission on Environmental Quality (TCEQ) for renewal of Air Quality Permit No. 1360A. The renewal, if approved, would allow continued operation of cement manufacturing facilities at the above referenced plant.

The application was declared administratively complete on June 10, 2008. On July 24, 2008 the Notice of Receipt and Intent to Obtain (NORI) an Air Quality Permit was published in the Midlothian Mirror and Waxahachie Daily Light. Problems were encountered in locating the application which hindered the public in viewing the document. Contrary to the applicant's statement to TCEQ, the application was NOT at the Midlothian Library as attested to by two citizens. In addition there was the usual "lead time" for the regional office to retrieve the document at their location. These issues detracted from the limited fifteen (15) days TCEQ allows for public comment.

As a result, on August 27, 2008 the NORI was republished. The period for public comment and hearing request was closed on September 11, 2008.

PERMIT APPLICATION
RENEWAL REQUEST
KILN NO. 5 BAGHOUSE
0000-0000-0000-0000

I call attention to the facts that comments and requests were filed in the early part of August, 2008, the ED did not complete and file a responses thereof until November 25, 2008 and these responses were not mail to the commenters until March 16, 2009. Further, the deadline for commenters to respond to other party responses was March 30, 2009.

Although these time restraints are in accordance with TCEQ rules does not make this practice honorable and just, when it comes to the public, and does result in considerable hardship for those wanting to be heard whose health is threatened by the emissions these permits allow.

HEARING REQUEST

Sufficient and qualifying reasons which render this application flawed, with regards toward the health and safety of the public have been clearly revealed in the associated documents to require a public hearing in this matter.

There were 194 individual citizen commenters, two (2) State Representatives and four (4) local City officials that responded to this application with opposition to this renewal application. There were 118 timely filed hearing requests from individual citizens along with two (2) hearing requests from Texas State Representatives.

The sizeable number of negative responses to and hearing requests for this application should be sufficient for this matter to be referred to the State Office of Administrative Hearings (SOAH). Further, they clearly demonstrate the public's concern and interest to be heard in a formal hearing procedure. **Therefore, it is incumbent upon TCEQ to respond to the public needs and a hearing must be convened.**

REBUTAL OF EXECUTIVE DIRECTOR'S RESPONSE TO PUBLIC COMMENT

In general, the ED's responses demonstrate a biased (in favor of the applicant) attitude, represent an obvious and total disregard of the facts and the safety, health and well-being of those individuals subjected to TXI's emissions, are irresponsible and incompetent.

RESPONSE 1: There will be additional emissions from the proposed clinker cooler by-pass as stated by TXI in the application-*"The planned change does not decrease emissions and may actually result in an increase in downstream actual emissions from Kiln No. 5 due to improved operation and increased efficiency."* It is obvious that TXI intends to increase production and that the existing number of RTO units, reduced by under design, restricts additional effluent flow due to static pressure limits. All exhaust must flow though the RTO's as the existing permit provides.

Adequate evidence has been presented for many years that TXI is, in fact, a "poor-performer". Allowing particulate matter to spew from baghouses as a result of bursted bags for eight hours to avoid shutting down the kilns, covering an area near a quarter square mile with dust of a 100%.

opacity, caught on film, and claiming they weren't aware of the violation represent disregard for the permit conditions and safety of the residents near the plant.

RESPONSE 2: Fifteen days does not allow sufficient time to locate the application, review, research and prepare comments on an issue as complex as this permit. Review of the compliance files alone required considerable time. TXI files have grown to numerous volumes at the Regional Office, which increases review time. TCEQ should take this into consideration and grant additional time.

RESPONSE 3: Just because TXI says the permit application was there, they offer no proof that it existed. Two credible citizens attested to the fact the application could not be found at the Library. Why does the ED believe TXI but not the public?

RESPONSE 4: Commenter apparently was not referring to this permit MAERT, but to the recent discrepancy in the dioxin/furan sampling and analysis during the recent test burn for compliance certification. TXI has problems with the destruction of these compounds and current data released indicates there may be NO safe limit of dioxins/furans.

RESPONSE 5: An offence was committed. Through neglect, incompetence, operator error or lack of supervision, TXI violated a condition of the permit. TCEQ ignored the offence but the USEPA took appropriate action and issued a Notice of Violation. The practice of "self reporting" a criminal act, especially one of a dangerous nature, should not relieve the actor of prescribed penalty. Penalties/punishment was intended to lessen the incident of violations; apparently TCEQ is biased in favor to the industry.

RESPONSE 6: TXI has an acceptable compliance history??????? What could represent a more *UNFAVORABLE* compliance history than that recounted in my summation of episodes and incidents of permit violations? Again, TCEQ has demonstrated bias in favor of the TXI and ignored their purpose...the protection of public health.

RESPONSE 7: The requested actions that I made in this comment were sincere and based upon personal experience with the short-comings witnessed on the part of TXI and TCEQ. I would have thought they would have been judged with some degree of intelligence and not merely brushed aside as has occurred. This Agency has ignored its purpose and obligation to the protection of public health and safety and again demonstrated its bias in favor of industry.

RESPONSE 8: N/R

RESPONSE 9: The City of Dallas was entirely correct in their concerns regarding reductions in NOx levels during the ozone season. Midlothian cement plants NOx/VOCs contribute to Dallas' ozone problem. Although 30 TAC Ch 117 covers these reductions which were promulgated, and have become law, the new designated emission limits should have been incorporated into the permit. Without hourly Continuous Emissions Monitoring Systems

(GEMS) no one will know for sure that TXI has actually complied with this reduction requirement until the annual Title V review. With TXI's hideous record of violations and a lack of confidence in TXI, there is considerable concern that these limits will be complied with. The Maximum Allowable Emissions Rate Table (MAERT) should be revised to include the emission limits for the ozone season. This condition has been made a part of the MAERT in a similar permit for another Midlothian cement plant. TXI should not be an exception.

RESPONSE 10: The commenters are correct in their concerns; however TCEQ or TXI will not act responsibly in rectifying this issue even knowing these facts are true.

RESPONSE 11: I concur with the commenters. TXI should not be an exception. TXI should not be an exception. TXI should not be an exception.

RESPONSE 12: N/R

RESPONSE 13: N/R

RESPONSE 14: N/R

RESPONSE 15: The existing permit requires operation of the RTOs at all times. Kiln No. 5 is in operation and the application for renewal has not implied any changes in this condition other than the fact that the proposed clinker cooler exhaust being routed to by-pass the RTOs which has been disputed in my comments and is a violation of the original permit.

RESPONSE 16: The TCEQ admits to the ATSDR "indefinite public health hazard" classification and its decision should be on the precautionary principle rather than place the public in harm's way. The "consultation" has since been found seriously lacking in critical data and flawed by mis-interpretations and incorrect use of health exposure data. Attention should be paid to the fact that although TCEQ's independent testing firm is collecting air samples in the area, the four (4) TXI wet kilns have not been in operation since October of 2008. How can TCEQ even consider using present test results for health effects evaluation without TXI's four wet kiln emissions? The test results are useless except for "back-round".

RESPONSE 17: The ED's response is considered "non-responsive" since it fails to deal with the fact changes are approved by TCEQ without public knowledge and notice. Small, authorized increases in emissions over a period of time translate to large emission increases. When a revision is made to a plant, additional control technology must be incorporated to abate the resulting emissions.

RESPONSE 18: The ED's response is evasive. TXI admits the proposed modification will result in an increase of emissions (PM) but does not state in quantity or character what will be released. Chemical components as well as particulate matter will be absorbed in the cooling air and the contaminates released into the air (through a dust collector). The existing permit for Kiln No. 5 requires all emissions to be exhausted through the RTO units and any by-pass of these

units is a violation of Permit 1360A. "Increased efficiency" could mean reduced fan horsepower avoiding the high static pressure of this kiln resulting from errors in design.

The ED is mistaken in his assumption the "agreement between DAR/BSA and TXI is not within SOAH jurisdiction. In fact these negotiations were conducted to avoid a contested case hearing.

RESPONSE 19: Concur with commenter.

RESPONSE 20: The problem with hourly, 30 day and annual averaging of emissions releases to comply with an established "safe" limit is that the plant may release emissions in harmful quantities many times in excess of the standard for thirty minutes and the remaining time period the emission levels will be considerable below the standard. Those emissions in excess of the standard have already entered the body and the harmful effects cannot be offset by lower levels for the next thirty minutes. This practice is done for the convenience of industry and reduction of their operating expenses while it denies the public air conditions that are protective of their health.

RESPONSE 21: Selective non-catalytic reduction (SNCR) will be required for the wet kilns to meet the new NOx limits. SNCR is subject to ammonia "slip" and requires precise mole-ratio control. There is the possibility for excess ammonia releases from this operation. TRI is a voluntary reporting program and industries report whatever they wish anyone to see. It cannot be relied upon when judging actions for public health. Trusting industries to report accurate releases when profits are their main concern (not public health) is nothing more than wishful thinking.

RESPONSE 22: N/R

RESPONSE 23: Cement kiln dust (CKD) is particulate matter collected from the electrostatic precipitators representing the only pollution abatement device on the wet kilns. The ED fails to reveal the CKD is deposited in un-lined collection areas in the quarry. Leaching into the aquifer is assumed protected by a shale stratum beneath the quarry. Wells were required (under the waste permit) for periodic sampling of groundwater below this depth. Test results have indicated the presence of total chromium which does not indicate the percent of CR-VI. Other contaminants such as arsenic, barium, cadmium, lead and zinc have also been reported in well sample water.

The ED fails to mention the deteriorated condition of these wells from age and deferred maintenance. Most are in such bad shape the sampling results cannot be trusted. Further, he does not reveal the fact that TXI is requesting and in some cases has been granted TCEQ authorization to discontinue groundwater sampling under the waste permit HW-50316-1. Once again public health safety was averted by deferring repair/replacement cost that reduces profits.

RESPONSE 24: The 1995 risk assessments used data that has since been found flawed and inaccurate. Screening levels have been determined to be too high for the protection of public

health. There are testing devices to measure lead and mercury; however, TXI chooses not to spend the money for this equipment. The four (4) wet kilns which burn waste derived fuels (hazardous waste) do not have CEMS to monitor many of the contaminants; only NAAQS pollutants, total hydrocarbons and oxygen. The remaining chemical contaminants released from combustion of waste-derived fuel are not. TXI conducted a Performance Compliance testing to determine the emissions and their levels of destruction (Destruction Removal Efficiency (DRE)). Under the RCRA rules only the more intense compounds require 99.9999% destruction. None require a complete (100%) destruction. However, during the day to day operation there is no testing for these components. An onsite laboratory operated by TXI employees analyze the waste and calculate the anticipated emissions. No one knows exactly what contaminants enter the air.

RESPONSE 25: N/A. No response is given for the comment.

RESPONSE 26: When a resident detects a sulfur based odor (SO_2/H_2S), has trouble breathing and begins to cough up blood I would think this would be considered a nuisance, not to mention the almost daily exposure and discomfort the residents experience from these disgusting odors. Residents have complained about the variety of chemical odors coming from TXI for over twenty years, yet TCEQ still turns a deaf ear to these complaints. In most cases by the time an investigator arrives at the location the odors have dispersed and no longer noticeable. In one recent incident, the investigator did arrive during the odor event and reported he had been overcome from a sulfur odor. My comments of August 05, 2008, list over two pages of recent investigation reports where investigators have experienced sulfur odors along with other violations, retrieved from TCEQ's own files. It is irresponsible that TCEQ continues to ignore these events. It is also unconscionable, why knowing these infractions exist and in the face of violations issued by TCEQ investigators, TCEQ continues to pardon TXI by waving penalties.

RESPONSE 27: If the ED is so confident of the accuracy of TXI's coal sulfur content why is there an objection to revealing this information to the commenters? Instead he ignores the possibility of fraudulent reporting.

RESPONSE 28: Non-responsive. The ED does recognize that odors do exist, but cites concern over economic issues TXI may face. This is TXI profits over resident's health and quiet enjoyment of their property. I asked that this matter be investigated to determine what could be done to protect the residents, but apparently the ED did not find this of substantial importance.

RESPONSE 29: Non-responsive and irresponsible. Incidents and violations offered in my August 05, 2008 comments detail one incident after another of violations. Events have been evidenced by local residents who have photographed dust emissions engulfing the plant and Hwy 67 all night. I am told TXI "did not know there was a problem until the next morning" and offered the excuse that opacity readings cannot be taken at night. It appears TCEQ has no intentions to take any action against TXI or to prosecute for these offenses. The most reasonable

action would be to force TXI to install and maintain CEMS on all wet kilns.

and effective solution to this problem would be to require broken bag detectors and opacity monitors on all baghouses.

RESPONSE 30: Non-responsive. Citing regulations and intent does not offer a solution to these continuous infractions and TCEQ's denial of TXI's guilt in these matters.

RESPONSE 31: It is still my firm opinion; operation should be based upon hourly averages which will prevent many of the releases that contribute to the health issues in this area. Rolling 12-month averages are for the industries convenience and disregard the resultant health issues.

RESPONSE 32: Special Condition 22. C. (11) a. (with reference to leaks in hazardous waste piping components) states--

"Immediately, but no later than one hour upon detection of a leak, plant personnel shall take the following actions:

One hour is an absurd period of time to allow hazardous waste to spill into the area. This should be re-worded to delete *one hour* and require that the leak be stopped *immediately*. The only reason this is worded in this manner is to spare TXI the cost of a shut-down of free waste derived fuel and a switch to coal or natural gas. Most of these failures result from lack of or deferred maintenance to begin with.

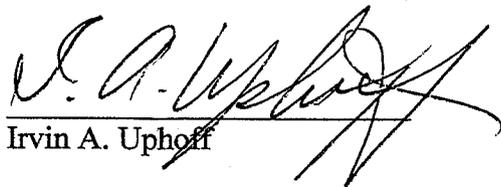
END OF REBUTTAL

It is my opinion the ED has ignored the nature and depth of the many issues presented in the numerous comments offered. As I stated in my August 05, 2008 comments, page one, paragraph three; *TXI's negative approach to this issue represents a reoccurring pattern of egregious conduct which demonstrates a consistent disregard for the regulatory process and which have resulted in excess emissions releases that are proven injurious to public health.*

I hereby request the Commissioners do not approve this application for renewal and forward the matter to SOAH to schedule a contested case hearing.

Thank you for your consideration.

Respectfully Submitted,


Irvin A. Uphoff