

# Downwinders

reducing toxic air pollution in north texas *at risk*

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March 30, 2009

Via mail and fax 512/239-3311

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

Re: TXI Operations LP (TXI)  
Midlothian, Ellis County, Texas  
Permit No. 1360A  
Application for Permit Renewal

CHIEF CLERKS OFFICE

2009 MAR 30 AM 10:05

TEXAS  
COMMISSION  
ON ENVIRONMENTAL  
QUALITY

Dear Ms. Castanuela:

The Executive Director's (ED) Response to Comments (RTC) on application to renew Permit No. 1360A referenced above fails to remedy or address, and/or adequately remedy or address, all concerns, problems, and deficiencies raised during the comment period, including the comments previously submitted by Downwinders at Risk.

The Executive Director's Response to Hearing Requests (RTHR) fails to give adequate reasons for a denial of hearing requests.

This letter serves as another contested case hearing request on behalf of Downwinders at Risk (DAR). All relevant and material disputed issues of fact that were raised during the public comment period are the basis of this hearing request. This includes all comments provided by EPA, legislators, DAR, and other persons/organizations. DAR rejects the Executive Director's responses based upon the facts, law and/or policy that have been provided in all comments submitted.

The RTHR submitted by the ED claimed that, "The RTC was filed on November 25, 2008 and mailed to all interested persons... The cover letter to the RTC provided information about filing a response to hearing requests." This is not true. **The RTC may have been filed on November 25, 2008, but it was not mailed until March 4, 2009.** Therefore the interested persons have had very little time to respond to the ED. DAR was forced to respond to the RTC and the RTHR's simultaneously.

### QUALIFICATIONS AS AN AFFECTED PERSON AND ORGANIZATION

DAR qualifies as an affected organization as required by Title 30, Chapter 55, of the Texas Administrative Code. Downwinders At Risk was formed in 1993 and organized for the purpose of protecting the public health and property of citizens in the communities surrounding cement plants, including TXI's Midlothian cement plant incinerating hazardous and toxic wastes, tires and other kinds of so-called non-hazardous wastes.

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Over 200 DAR members in the city of Midlothian and thousands of members in North Texas have been repeatedly adversely affected by the release of air pollutants from TXI's facility. DAR members reside or work within the immediate area of TXI's property line, predominantly downwind from the cement plant, including members such as Sue Pope, Debra Markwardt, Kathy Flanagan, Alex & Kerrie Allred and Ann Sears, all who have previously been granted party status in TXI permit matters.

Our membership, including but not limited to the above-mentioned members, is affected by this plant since as demonstrated by meteorological and other scientific data provided by the TCEQ their residences, their children's schools and their families' outdoor activities are in the direct path of emissions from this facility and these emissions are of a proven nature to adversely affect their health and safety and the use and enjoyment of their property.

Health effects being experienced by DAR members include but are not limited to onset asthma, primary immune deficiency, thyroid disorders, autoimmune disorders, cancers, respiratory disorders, and conditions affecting the heart, lungs, and gastrointestinal tract and fetal development. Additionally, many DAR members have experienced and documented ill health effects on their animals, including livestock, horses, and house pets. Professional breeders have experienced financial loss and emotional trauma from dealing with sick and dying animals.

DAR's request for a Contested Case Hearing regarding TXI's proposed permit renewal is germane and consistent with our organizational purpose. DAR represents citizens who reside adjacent to the TXI cement plant, or reside or work in the surrounding area and whose personal, justiciable and economic interests are affected and impacted by the air pollution caused by the TXI facility.

These public comments and requests for a hearing are not an effort to delay the processing of the application; they are submitted to bring to the attention of the Executive Director and Commission the numerous problems that now exist with TXI's facility and the inadequacies of the permit.

#### **DAR'S RESPONSE TO RTHR of ED, TXI and OPIC**

DAR agrees with OPIC's determination that "The Commission has authority to hold a public interest hearing". However, we disagree with the ED, TXI and OPIC that a hearing should be denied under THSC Chapter 382 because there is no increase or change in emissions. Evidence shows that there are, and could be, such increases and changes in emissions at TXI based on the allowances of this permit.

#### **PROBLEMS WITH EXECUTIVE DIRECTOR'S RESPONSE TO COMMENTS**

**ED's Response 1:** We disagree with the ED that there will be no change in the allowable emissions rates in this permit renewal. Based on TXI's statements and data, there will be additional emissions from the proposed clinker cooler and the burning of tires.

**ED's Response 3:** Without any evidence, the ED takes TXI's word that permit was available for review in Midlothian when there are at least two local citizens saying it was not. The inability of interested citizens to review these kinds of permit requests is a chronic problem with TCEQ. The Commission should modernize its notification and publication policy and put all of these documents on-line.

**ED's Response 6:** Complaints are not investigated in a timely manner. It's often 30 days after the complaint is filed before an investigator follows up. From our personal experience, the results of the investigation are unsatisfactory and indeterminate. In our original comments on this renewal, we listed an example of notices of violation against TXI in which no enforcement action was ever taken by TCEQ.

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**ED's Response 9:** The City of Dallas was entirely correct in their concerns regarding reductions in NOx levels during the ozone season. The permit should, at a minimum, reflect the proposed maximum emission limits for Nitrogen Oxide pollution from cement kilns in the *Dallas Fort Worth (DFW) State Implementation Plan*.

**ED's Response 10:** The ED states: "The commission may not impose requirements more stringent than those of the existing permit unless the commission determines that the requirements are necessary to avoid a condition of air pollution or to ensure compliance with otherwise applicable federal or state air quality control requirements." We believe this statement provides clear direction to the Commission for setting standards to limit air pollution and to insure the emission limits in the DFW SIP are met.

**ED RESPONSE 15:** The existing permit requires operation of the RTOs at all times. As far as we know, Kiln No. 5 is in operation and the application for renewal has not implied any changes in this condition other than the proposed by-pass of clinker cooler exhaust from the RTOs, which has been addressed in our comments and is a violation of the original permit.

**ED RESPONSE 16:** TCEQ contracted with an independent entity to analyze ambient air samples during the only period in the past 20 years that TXI's four antiquated wet kilns have been completely shut down and no hazardous wastes are being burned. Additionally, due to the economic downturn, none of the cement plants nor the steel mill are operating at full capacity. This guarantees that the results of the monitoring will be useless. If TCEQ desires to obtain accurate results, it is necessary to conduct the monitoring during normal operational conditions. This new monitoring data should not be considered as an accurate representation of normal operational conditions.

**ED RESPONSE 18:** TCEQ should not have allowed this change. 30 TAC Sec 116.116 states a qualified facility may make a physical change provided that the change does not result in an increase in allowable emissions or a change in the character of emissions. By TCEQ's own admission in its January 15, 2008 "Notification of Change", "**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.**" This fact alone provides sufficient reason to grant a contested case hearing.

The original permit requires ALL exhaust gases to travel through the RTO. Citizens followed TCEQ's rules in protesting TXI's request in August 2004 to discontinue the operation of the RTOs. Citizens were granted a contested case hearing, which led to TCEQ-endorsed mediation in which the applicant agreed to continue operation of the RTOs. Then, in February 2008, TCEQ allows TXI to by-pass the RTOs, violating both the spirit and the letter of an agreement that the Commission is responsible for helping to mediate. The Commission pretends it has nothing to do with this agreement, or its violation, even though its own regulatory process spawned it and it's the state's environmental enforcement agency. Why should citizens bother to pursue these issues if applicant and TCEQ will only find a way around the rules?

ED states, "There are no combustion gases in this stream." There is no data to support this conclusion. Given that the only data in the record is from TXI and concludes emissions may increase, the ED has the burden of proof to show no increases will take place. It does not meet that burden.

**ED RESPONSE 19:** DAR maintains that TCEQ's air monitoring every 6<sup>th</sup> day is not an accurate representation of daily air concentrations. Monitoring should be conducted on an irregular schedule to best indicate daily ranges of air pollutants. See our response to 16 above as well.

**ED RESPONSE 22:** Emissions did increase during the 2002 trial burn for tires at TXI as we noted in our May 10, 2006 comments on TXI's request for a permit modification to burn tires:

**"There will be emission increases contrary to comments made in the application. Attachment 7, of the application included a "Typical Tire Metals Analysis" which indicates tire derived fuel (TDF) will contribute significant, additional emissions of arsenic, barium, lead and a significant increase in chromium (including hexavalent chromium), a known carcinogen. The analysis includes values of some constituents listed as ND, yet this value is not defined. If this represents "not detected", the limiting value must be provided. Attachment 7 appears to be incomplete since there is no information about metals and chlorides, nor any description of testing to monitor for metals and chlorides/chlorine that will result from the addition of TDF....**

**Sulfur dioxide (SO<sub>2</sub>) emissions did increase during the previous trial burn of TDF, but the application maintains that they will "decrease". The existing kilns do not have adequate control provisions for the removal of sulfur compounds. Scrubbers should be required to control probable emission increases of sulfur dioxide.**

**Carbon Monoxide emission increases were also noted in the 2002 trial burn of TDF at TXI. There were 115 one-minute entries when CO exceeded the 213 lbs/hr MAERT limit and two hourly entries when the CO exceeded the 814 ppmv AWFCO limit....**

As represented in the application, TDF rates are limited and will contribute to increases in THC emissions. During the limited trial burn, there were 3,150 one-minute entries when THC exceeded the 20 ppmv AWFCO limit and there were eight (8) actual cut-off incidents. Typically, any increase in the TDF feed rate dramatically increases THC emissions. TCEQ must require a maximum feed rate (lbs/hr) limit of TDF as part of the condition in this modification.

**In the 2002 limited purpose trial burn of TDF, TXI failed to conduct tests for metals, hydrogen chloride (HCL), chloride/chlorine or dioxin/furans and they did not verify DRE (destruction removal efficiency) capabilities of the kilns. Therefore there is no way to estimate the type and quantity of harmful pollutants that were released during this test or their negative impact on public health."**

Over the past 20 years in Midlothian, TXI and the state have been poor judges as to what would increase and decrease pollution. Hazardous waste was supposed to decrease emissions. It increased them. Burning tires were supposed to decrease emission. It increased them. SNCR couldn't possibly work in Midlothian. Now it's on five Midlothian wet and dry kilns. Given their poor track record, the presumption should be that, indeed, this permit would once again increase emissions. Combined with evidence from the applicant itself that emissions will increase, there should be no doubt. **And an increase in emissions constitutes reason to grant a contested case hearing in a permit renewal.**

**ED 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 unlined pond areas in the quarry. Test results of sampling wells 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. TXI is requesting and in some cases has been granted authorization to discontinue groundwater sampling under the waste permit HW-50316-1. This was irresponsible.

**ED RESPONSE 24:** The 1995 risk assessments used data found flawed by peer-reviewed, journal published scientific papers. Screening levels have been determined to be too high for the protection of public health. Although there are testing devices available to measure lead and mercury, TXI does not test. TCEQ responsibly cannot and should not depend on out-of-date research that is nineteen years old to approve operating an approximately 50-year-old facility for another ten years.

**ED RESPONSE 26:** Chemical odors from TXI are symptoms of poor operation. They are often associated with serious health effects in the long record of community complaints lodged against TXI. It is unacceptable for the ED to minimize the importance of this issue to local residents and to make excuses for the TCEQ's lack of oversight. TCEQ has been negligent in their efforts to protect the public and community from sickening smells that result in burning eyes and throat, bleeding from the nose and difficulty in breathing. How can the TCEQ protect citizens and ensure that TXI is operating within permit limits when it is usually anywhere from a week to over a month before TCEQ acts on these complaints?

**ED RESPONSE 28:** The ED states that TCEQ investigators did not show a correlation between oxygen and odor in TXI's records at the time of odor complaints, yet TCEQ admits that very low oxygen levels were found to exacerbate odor levels. It was sulfur odors that lead to Texas Administrative Law Judges declaring that TXI was creating a nuisance condition and prompted an increase in TXI's oxygen level when company won its permit to burn hazardous waste in 1999. They were also responsible for a 1995 Order four years before that. TXI has a lengthy history of causing nuisance odors associated with adverse health effects, and every remedy proposed by the state so far has failed to solve the problem. Downwinders At Risk believes this problem will never be solved without requiring "scrubbers" control technology for removal of Sulfur Dioxide pollution. **This is a major reason why we object to the lack of a BACT review for this permit, even though emission increases will result from its issuance.** Such a review would demonstrate the need and utility of installing scrubbers on TXI's obsolete wet kilns, which when combined with the other five cement kilns in Midlothian contribute 80% of all industrial SOx in the DFW non-attainment area. Before this permit is issued once again, citizens deserve to see this long-standing problem finally solved with a real best technology review.

**ED RESPONSE 29:** Our members have taken photographs of dust emissions and we listed violations in our previous comments. We disagree with the ED's conclusion that "these Special Conditions have not identified violations that would justify additional particulate controls or work practices."

**ED RESPONSE 30:** ED offers no solution to this ongoing problem for citizens, and in fact is offering TXI a perpetual exemption to 30 TAC 101.4, which prohibits nuisance conditions. TCEQ does not enforce the rule by allowing TXI to continually discharge air contaminants in such concentration and duration as to adversely affect human health or welfare, animal life, vegetation, or property, or as to interfere with the normal use and enjoyment of animal life, vegetation, or property. TXI is not operating in compliance with the terms of the permit, or nuisance conditions and/or conditions of air pollution would not be present in the first place.

DAR contends that the city of Midlothian is in a condition of air pollution caused by the concentration of cement plants, including TXI's facility. Approximately 7,000 students attend 9 schools located in Midlothian. *USA Today* in collaboration with the University of Massachusetts, the University of Maryland and Johns Hopkins University employed EPA Model, "Risk Screening Environmental Indicators," in an attempt to measure the extent of chemicals children were being exposed to while attending school. This model relied on EPA TRI data for calendar year 2005. "Toxic Air and America's Schools" was published in December 2008, in the *USA Today*. It ranks Frank Seale Middle School, Irvin Elementary, and Midlothian High School in the third percentile of the nation's most toxic schools. J.A. Vitovsky Elementary and Mt. Peak Elementary are ranked in the first percentile of the nation's most toxic schools. The study names TXI Operations, LP as the polluter most

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responsible for the air pollution at Mt. Peak Elementary, Midlothian High School, and Frank Scale Middle School. TXI Operations, LP is listed as the #2 polluter most responsible for toxic air at J.A Vitovsky Elementary and Irvin Elementary. DAR does not understand how an agency charged with protecting the public's air can consciously allow this company to continue to compromise our children's health and ability to learn by not allowing them the choice of clean air to breathe.

TXI's Compliance History Report shows 128 investigation events from 6/24/2003 to 1/16/2009. This equals roughly two events per month. This isn't a compliance record in which TXI and TCEQ can take pride. TXI's Compliance History Report indicates thirteen written Notices of Violations, yet only one of these was self-reported by TXI. Again, this isn't indicative of a company that places a high standard on environmental controls or meeting the conditions of its permit. DAR believes TXI's failure to conduct storm water discharge sampling since permit issuance, failure to restrict kiln operation to two wet kilns with kiln 5, failure to meet limits of permit parameters, and failure to record daily calibration of NOx and SO2 analyzers show disregard for the consequences of these actions upon the public. DAR believes that TCEQ's classification parameters fail to protect the public health and good.

TXI's Environmental audits reveal that TXI has accepted waste loads without previously receiving and reviewing the required profile sheet and the company has allowed waste tankers containing waste liquids and facility-generated wastewater to park in the TXI truck yard for over 30 days. In addition, TXI employees violate company procedures or are not properly trained. TXI has also changed the piping system at their Midlothian plant without modifying the Permit.

TXI's audit identified "a number of occasions on which records of repairs and maintenance are inconsistent with the Daily Inspection Forms" and "daily and weekly inspection sheets used in the Facility did not contain the required information found in the inspection schedule." If the Facility inspection sheets are not reliable, how can TCEQ ever expect to resolve these pollution issues with inconsistent and missing data? DAR believes the types of violations as listed here should require more than a minor or moderate classification on the part of TCEQ as they place the citizens of Midlothian in a dangerous situation.

#### ADDITIONAL ISSUES

In their letter on August 8, 2008 EPA noted that TCEQ must follow EPA policy for addressing periods of maintenance, start up, and shut down.

A Best Available Control Technology review should be triggered by the re-routing of Kiln #5 clinker cooler gases away from the RTO, which TXI admits very well might increase emissions.

This permit should reflect the increase in ammonia emissions and other effects from the operation of SNCR in TXI's four wet kilns as required under DFW's SIP.

#### CONCLUSION

We hereby request the Commissioners deny this permit renewal and grant a contested case hearing to resolve many discrepancies and deficiencies.

FROM :

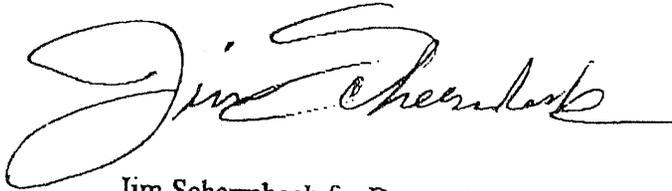
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**CERTIFICATE OF SERVICE**

An original and 7 copies of the foregoing document has been mailed and faxed to the Chief Clerk of the TCEQ. One copy has been sent to the Executive Director, Public Interest Counsel, Office of Public Assistance, the applicant and persons on the mailing list via hand delivery, fax, regular mail or e-mail this 30th day of March 2009.

Sincerely,



Jim Schermbek for Downwinders At Risk

CHIEF CLERKS OFFICE

2009 MAR 30 AM 10:05

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