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March 2, 2009

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

Re: TCEQ Docket No. 2008-1876-UIC, In Re
Applications of South Texas Mining Venture,
L.L.P. for Permit Nos. WDW-418 and WDW-419

Ms. Castañuela:

I transmit herewith an original and 7 copies of the following item for filing among the papers of the above-captioned proceeding:

March 2, 2009 South Texas Mining Venture Response to Hearing Requests

A copy of this letter has been served with the said March 2, 2009 Response of South Texas Mining Venture, L.L.P. to Requests for Hearing in the manner indicated and to the persons indicated on the certificate of service attached thereto.

Thank you for your attention to this matter.

Yours truly,



Jep Hill
Attorney for the Applicant,
South Texas Mining Venture, L.L.P.

TEXAS
COMMISSION
ON ENVIRONMENTAL
QUALITY
2009 MAR -2 PM 4: 27
CHIEF CLERKS OFFICE

DOCKET NO. 2008-1876-UIC

ON THE APPLICATIONS OF
SOUTH TEXAS MINING VENTURE
L.L.P., FOR PERMIT NOS.
WDW-418 AND WDW-419

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BEFORE THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY

CHIEF CLERKS OFFICE

2009 MAR -2 PM 4:27

TEXAS
COMMISSION
ON ENVIRONMENTAL
QUALITY

SOUTH TEXAS MINING VENTURE RESPONSE TO HEARING REQUESTS

TO THE HONORABLE CHAIRMAN GARCIA AND
COMMISSIONERS SOWARD AND SHAW:

NOW COMES SOUTH TEXAS MINING VENTURE, L.L.P.. (STMV) and files this, its Response to Hearing requests urging denial of the hearing requests filed in this docket on behalf of DUVAL COUNTY CONSERVATION & RECLAMATION DISTRICT and JIM WELLS COUNTY FRESH WATER SUPPLY DISTRICT NO. 1. In support of this response requesting that the said hearing requests be denied, STMV would respectfully show the following:

I.
SUMMARY

Neither of the Districts requesting a hearing on STMV's pending applications is entitled to "request" a hearing on either pending application unless it has timely filed a hearing request which allows the commission to determine on review of that hearing request that such District is an "affected person" within the meaning of Tex. Water Code § 5.115(a). However, neither District filed a hearing request which substantially complied with 30 TAC § 55.201(d)(2); and, the Districts' deficient hearing requests frustrated the commission's ability to make the required determination. Their hearing requests having failed to provide the commission the explanatory statement required to support an order granting their hearing requests, the Districts' hearing requests should be denied.

Therefore, no hearing should be called on the pending applications unless the commission finds such a hearing necessary and in the public interest under Tex. Water Code §5.556(f) or § 27.018(a). However, there is no genuine controversy as to any of facts necessary to determine that the proposed permits should be issued as proposed; and, there is no legitimate public policy reason to burden the commission and its staff, the State Office of Administrative Hearings or any party with the wasteful delay, distraction, expense and uncertainty such a hearing would impose. Holding such an unnecessary hearing would frustrate sound public policy. Therefore, no public hearing should be held on the pending applications; and, the proposed permits should be issued without further process.

II. BACKGROUND

A. Facility Description

STMV applied to the TCEQ for two Class I waste disposal well permits, authorizing it to dispose of non-hazardous waste water generated from in situ uranium mining operations at the La Palangana site. The draft permits, WDW-418 and WDW-419, would authorize¹ deep disposal of:

1. Wastes generated during the closure of the wells and associated facilities that are compatible with permitted wastes, the reservoir, and well materials;
2. Lixiviant bleed stream;
3. lab waste stream;
4. Resin transfer water;
5. Filter press wash stream;
6. Reverse osmosis brine stream;
7. Restoration wastewater; and
8. Other associated wastes, such as groundwater and rainfall contaminated by the above authorized wastes, and wash waters and solutions used in cleaning and servicing the equipment and process pad that are compatible with the permitted wastes, the reservoir, and well materials.

The proposed deep injection wells will be located approximately 1,500 ft apart on the La Palangana site in Duval County, Texas, approximately six miles north of Benavides, Texas, as shown on Exhibit A.

Union Carbide Corporation (UCC) conducted exploration and mining activities at the La Palangana site from the late 1950's through the late 1970's. In 1990, Chevron Resources USA, Inc. (Chevron) acquired the property from UCC, and continued mining and exploratory activities. In 1991, General Atomics Corporation (GAC) acquired all of Chevron's uranium assets, including La Palangana, but did not conduct further exploration or production activities. Everest Exploration, Inc. (EEI) acquired the leases from GAC in January, 2005, and conveyed them to the Applicant under a partnership agreement.

B. Procedural History

The permit applications were filed at TCEQ on September 6, 2007, and declared administratively complete on September 18, 2007. On September 27, 2007, a copy of STMV's application was delivered to the Duval County Courthouse to be made available to the public. The Notice of Receipt of Application and Intent to Obtain New Underground Injection Control Permits (NORI) was published on October 3, 2007; and, the notices of Application and Preliminary Decision for a Non-hazardous Waste Underground Injection Control Proposed Permit Nos. WDW-419 and WDW-418 (NAPD) were published on July 30 and 31, 2008 ; and, the public comment period ended September 2, 2008. The executive director's

¹ See WDW-418 and WDW-419, ¶ VI.A.

Response to Comments was issued October 31, 2008; and, the executive director's notice of final decision was issued November 4, 2008. The period for requesting public comment closed December 4, 2008. On September 2, 2008, counsel for the Duval County Conservation and Reclamation District (the "District" or "Duval County District") and the Jim Wells County Fresh Water Supply District No. 1 (the "District" or "Jim Wells County District"), together, the "Districts," the filed a single set of comments and a request for hearing on behalf of both districts. The same districts also presented late-filed hearing requests on December 5, 2008.

These applications are subject to the statutory amendments known collectively as "House Bill 801" (Acts 1999, 76th Leg., ch. 1350, Sec. 2, eff. Sept. 1, 1999) and the commission rules adopted pursuant thereto.

C. The Districts' Descriptions of Their Justiciable Interests in the Applications

The Districts' respective claims of personal justiciable interests are stated below at IV.A and IV.B.

D. Issues Raised by the Districts

The Districts' September 2, 2008 letter raises the following issues. Each was amply addressed by the Executive Director's October 31, 2008 Response to their Comments.

1. The Districts allege that the proposed draft permits do not adequately protect the water quality of groundwater in Duval County, and could allow pollution of Jim Wells County District's and Duval County District's sole drinking water source.
2. The Jim Wells District alleges that it believes the proposed deep disposal operations will exacerbate an existing problem of uranium in its water supply well.
3. The Districts allege the Applicant has not demonstrated that the installation of the injection wells is in the public interest and that the Applicant has not adequately shown that there are no other practical, economic, and feasible alternatives for the injection wells
4. The Districts that the Applicant has not demonstrated that it is financially responsible.
5. The Districts allege that the Applicant has not provided for proper operations of the proposed injection wells.

III.
NEITHER DISTRICT MAY REQUIRE A HEARING
UNLESS IT QUALIFIES AS AN "AFFECTED PERSON"

If Tex. Water Code § 27.018(a) is read without reference to other, controlling provisions of the Water Code it seems to allow a "local government" which is not an "affected person" but which is located in the same county as a proposed injection well for disposal of municipal and industrial waste to compel a public hearing on the permitting of the disposal well.² However, Tex. Water Code § 5.556(c), which was passed in 1999³ and took effect on September 1, 1999, provides:

(c) The commission may not grant a request for a contested case hearing unless the commission determines that the request was filed by an affected person as defined by Section 5.115.

This requirement governs the permitting of injection wells, Tex. Water Code § 5.551(a); it was enacted after Tex. Water Code § 27.018(a); and, it directly contradicts the language of Tex. Water Code § 27.018(a). Therefore, this provision controls over the earlier language to the contrary in Tex. Water Code § 27.018(a); and, a local government which is not an "affected person" within the meaning of Tex. Water Code § 5.115 may not "request" (meaning "compel") a contested case hearing on an application for an injection well permit.

IV.
BOTH DISTRICTS' HEARING REQUESTS SHOULD BE DENIED BECAUSE
NEITHER REQUEST SUBSTANTIALLY COMPLIED WITH RULE 55.201(d)(2)

One who requests a hearing must comply with the commission's requirements in the Rule at 30 TAC § 55.201(d)(2) and has the burden of pleading (that is, writing into its hearing request) sufficient explanatory detail, including facts such as those suggested at 30 TAC § 203(b) and (c), to show the requestor an "affected person" within the meaning of Tex. Water Code § 5.115(a) and 30 TAC § 55.203(a). The Districts' sole response to this requirement are presented solely in the September 2,

² The relevant portion of Tex. Water Code § 27.018(a) provides:
Sec. 27.018. HEARING ON PERMIT APPLICATION. (a) . . . The commission shall hold a hearing on a permit application for an injection well to dispose of industrial and municipal waste if a hearing is requested by a local government located in the county of the proposed disposal well site or by an affected person. In this subsection, "local government" has the meaning provided for that term by Chapter 26 of this code.

³ Acts 1999, 76th Leg., ch. 1350, Sec. 2, eff. Sept. 1, 1999.

2008 letter from their joint counsel.⁴ The Districts' respective hearing requests do not substantially comply with the pleading requirements of Rule 55.201(d)(2);⁵ and, that non-compliance frustrates, and this case prevents, the deliberation and exercise of commission authority required to identify and honor proper hearing requests under by Tex. Water Code § 5.556(c). Specifically, neither hearing request offers any explanatory support to assist the commission even to imagine how either District could or would be adversely affected by the deep injection wells proposed in the pending applications.⁶ Moreover, having offered nothing to identify or explain how or why, under any circumstances either District could be adversely affected, their hearing request also offers nothing to "explain" how or why the unexplained allegedly adverse effect of STMV's deep disposal wells on either District would differ from the effect such an unstated event would impose upon members of the general public.⁷

⁴ Although it is not before the commission for consideration, the Districts' late-filed December 5, 2008 hearing request alleges no additional grounds for either District's claim of standing.

⁵ In relevant part, the cited provision requires the hearing requestor to "identify the [requestor's] personal justiciable interest affected by the application, including a brief, but specific, written statement explaining in plain language . . . 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;"

⁶ If either district should argue that the compliance of its response with Rule 55.201(d)(2) must be understood and evaluated by reference not to the noticed applications, but rather by reference to the entire La Palangana in situ uranium mine, then such a hearing request should be discarded or denied as frustrating to the commission's purposes and not substantially compliant with Rule 55.201(d)(2) because non-compliant with the controlling statutory and the regulatory definitions of "affected person." Tex. Water Code § 5.115(a) ("affected person" determined by reference to an anticipated "administrative hearing"); Rule 55.203(a) ("affected person" to be determined by reference to an "application").

⁷ The vagueness of the Districts' hearing request makes the commission's job all but impossible. The commission is called upon to distinguish the effects of one sequence of unstated and unimagined events on a District from the effect of that or a related sequence of unstated and unimagined events on the general public. An interest shared with the general public will not support a claim of a private justiciable interest. However, it seems the persons served by each District are themselves "members of the general public;" and, it seems likely they themselves would suffer the same adversity as either District serving them might claim to suffer. The Districts have not provided the commission any supporting facts or explanation to clarify the situation.

A. The Duval County District's Claim of a Personal Justiciable Interest

The Duval County District alleges it has a "personal justiciable interest in the STMV deep injection well applications because (i) STMV's proposed injection wells are located within the District; (ii) the District "has five water wells" located approximately 6 miles from the proposed injection wells; (iii) its sole water supply is groundwater; (iii) it purveys potable water "throughout Duval County" and to 1200 retail water customers; and, (iv) STMV's proposed deep injection wells will have an adverse impact on the District's water supply.

Rule 55.203(b) allows local governments with authority under state law over issues raised by the application to be considered affected persons; and, Rule 55.203(c)(6) indicates the commission will consider, for governmental entities, the entity's statutory authority over the issues relevant to the application. However, the Duval County District identified no statutory authorities in response to either rule.

B. The Jim Wells County District's Claim of a Personal Justiciable Interest

The Jim Wells County District's hearing request on STMV's pending applications to permit two deep disposal wells at its La Palangana site in Duval County, Texas should be denied because they do not substantially comply with the requirements of Rule 55.201(d)(2) and that failure frustrates and defeats the commission's exercise of its authority to determine and honor deserving hearing requests.

The Jim Wells County District alleges it has a "personal justiciable interest in the STMV deep injection well applications because (i) it has one water well producing from a presumably shallow, but unstated depth;⁸ (ii) it provides potable water from that well to provide drinking water service in Jim Wells County; (iii) it serves some 1,900 persons in a service area which lies at some unstated distance to the east of the proposed deep injection wells; (iv) the District "has uranium in its water supplies" –uranium which it claims to believe came from "ongoing mining in the area;" and, (v) it "fears" the proposed injection wells will "exacerbate" its current but otherwise undescribed "uranium contamination problem."

Rule 55.203(b) allows local governments with authority under state law over issues raised by the application to be considered affected persons; and Rule 55.203(c)(6) indicates the commission will consider, for governmental entities, the entity's statutory authority over the issues relevant to the application. However, the Jim Wells County District identified no statutory authorities in response to either rule.

⁸ Based on coordinates provided by Commission staff, the Jim Wells District's well lies more than 21 miles from STMV's nearer deep disposal well on a vector of approximately 93.°

C. Neither District's Hearing Request Complies with Rule 55.201(d)(2)

The commission rule at 30 TAC § 55.201(d)(2) requires that a hearing requestor identify and explain in a brief, specific written statement how and why the requestor believes he, she or it will be adversely affected in a way "not common to members of the general public." This requires the identification and explanation of an adverse effect upon the requestor which will be caused by the permitted activity and which will affect the requestor in a way not common to the general public. However, the Districts' hearing requests fail to identify even in simple terms, any set of circumstances in which harm or a threat of harm to either District could arise from the proposed deep injection wells.

Without more identification or description of the "why and how" of a hypothetical harm called for by Rule 55.201(d)(2), the commission cannot determine whether an undescribed harm would affect either District in a manner not common to the general public. All of the water wells which both Districts urge as the basis of their concerns are located far beyond the 2.5 mile radius of review,⁹ which is the outer radius (unless specific facts and calculations not here applicable indicate a greater area of review) of the potentially adverse individualized impacts, if any, from the proposed injection activities are presumed to occur. Furthermore, neither district has suggested that the rate or direction of groundwater movement in either the unidentified shallow aquifer(s) from which their wells produce (information presumably known to but withheld or deemed unimportant by the Districts) or the deep injection zone into which STMV proposes to inject would present any risk of harm particular to either district.

The Districts' claims of personal, justiciable interests are not clarified by review of their September 2, 2008 hearing request. It does not suggest any harm or threat which would support either District's claim of a "personal justiciable interest" not common to the general public. The Districts' hearing request suggested 5 issues.

Issues 1. & 2. Contamination of the Groundwater

The Districts claim the proposed draft permits do not adequately protect the quality of Duval County groundwater against pollution from STMV's deep injection activities and could pollute the sole source of drinking water for both Districts. The Jim Wells District has expressed specific concern because of the uranium already found in its water at levels exceeding that allowed for a public water supply. The adequacy of permits and the presence of groundwater contamination are matters of statewide concern; and, both must be specifically considered before an injection well permit may be issued. However, any hypothetical shallow groundwater contamination, including uranium contamination, found in the vicinity of or emanating from STMV's proposed deep injection wells would almost certainly have far more effect on those situated closer to the STMV site than either District's wells are located. Considering these issues does not serve to shed any light on the missing "how or why" of either District's claim of a personal justiciable interest.

⁹ See 30 TAC §§ 331.2 (9) (definition), 331.42(a)(designation of area of review for Class I wells), and 331.121 (details as to detailed local environmental considerations required to be taken into account in permitting).

Issue 3. The Public Interest

The Districts allege the Applicant has not demonstrated that the installation of the proposed deep disposal wells is in the public interest and that the Applicant has not adequately shown that there is no practical, economic, and feasible alternative to the use of the proposed deep disposal wells. This claim is false; but, even if it were assumed true, this claim does not help to cure the vagueness and lack of supporting explanation in the Districts' hearing request

Issue 4. Financial Responsibility

The Districts claim that STMV has not proven itself financially responsible. In fact, the claim is false; STMV has already posted financial assurance sufficient to cover the estimated plugging and abandonment cost of the first deep disposal well, \$164,900. However, even if the Districts' claim were true, this claim does not serve to identify a potential adverse consequence for either District. Neither District has any liability for plugging and abandoning either proposed deep injection well; nor, would either District be a beneficiary of any financial assurance instrument.

Issues 5. No Provision for Proper Operations

The Districts allege that the Applicant has not provided for proper operation of the proposed injection wells. However, the Districts have made such provision, as outlined in the executive director's October 31, 2008 Response to Comments on the same point. But the purpose of considering the Districts' contentions here was to discover whether any of those claims served in any way to cure the problem caused by the District's failure to provide the explanatory "why or how" called for by 30 TAC § 55.201(d)(2). However, this allegation does not help to identify any potential adverse consequence of the permitting for either District. Improper operations are matters of statewide interest and matters of interest to the commission; there is no evidence they would adversely affect either District in a manner not common to members of the general public.

V.

BOTH HEARING REQUESTS SHOULD BE DENIED BECAUSE NEITHER DISTRICT QUALIFIES AS AN AFFECTED PERSON

For either District to show itself eligible to "request" a hearing on STMV's disposal well applications, that District must identify in a timely hearing request facts which show that the requestor is an "affected person." The required facts include those which show a likely adverse impact upon the requestor (and, those facts which show that the requestor is adversely affected in a manner not common to the general public). These facts are needed because a hearing requestors' simple self-declaration of its belief or fears or its bald claim that it has a personal justiciable interest in an application is insufficient under Tex. Water Code § 5.556(c). The statute requires and §5.115(a) also contemplates a "commission determination" whether a hearing requestor is an "affected person" within the meaning of Tex. Water Code § 5.115(a) and 30 TAC § 55.203(a). To make that "determination," the commission must examine the underlying facts provided in a hearing request light of the criteria of 30 TAC §55.203(b) and (c). The

commission may also apply other factors as may be justified, including judicial interpretations of “standing” which illuminate the concept of a “personal justiciable interest” in a matter.¹⁰

However, neither District has provided the commission any facts to consider under 30 TAC §§ 203(c)(4)(likely adverse impacts on requestors health, safety or enjoyment of property) or 203(c)(5) (likely adverse impacts on an environmental resource) to show that the proposed installation, operation, and ultimate closure of STMV’s proposed deep injection wells at the La Palangana mine site is likely to have any adverse impact whatsoever on either District. In addition, neither hearing request presents the commission any claim of relevant authority under 30 TAC § 55.203(b) or § 55.203(c)(6) (authority under state law over any of the issues raised by issuance of a Class I non hazardous injection well permit).

Finally, under the holding of *DaimlerChrysler Corp. v. Inman*, 252 S.W.3d 299 (Tex. 2008), both Districts’ claims of a personal justiciable interest are too remote and speculative to support either District’s claim of having a personal, justiciable interest in STMV’s disposal well applications. Neither District qualifies as an “affected person;” and, the Districts’ hearing requests should be denied.

A. No Hearing Request Presents Facts Showing A Likely Adverse Impact On Either District

The Districts’ September 2, 2008 hearing requests makes the bald, conclusory claim that both Districts are “affected persons” and entitled to a contested case hearing on STMV’s applications for two Class I non-hazardous injection well permits; and, the same letter makes the equally bald and conclusory claim that STMV’s proposed deep injection wells will adversely affect each District’s water supply. However, despite the request of Rule 55.201(d)(2) for an explanation of the “how and why” of the Districts’ claims of adverse impact, the Districts’ hearing request offers no such explanation. The Districts’ hearing request provides no factual basis which would allow the commission to make a supported determination under Tex. Water Code §§ 5.556(c) and 5.115(a) that either District qualifies as an “affected person” in regard to the STMV deep disposal well applications.

B. The Applications and Technical Report Show Adverse Impacts on Districts Highly Unlikely

Despite the silence of the Districts’ hearing requests as to how and why the Districts expect to be adversely affected, the generalized information provided by the Districts as to the locations of their wells and the distances of the Duval District’s wells from the site of STMV’s proposed deep injection wells shows even more forcefully that STMV’s proposed deep injection wells are highly unlikely ever to have any adverse impact on either District’s water supply. This showing under the criteria set out in Rules

¹⁰ Like determinations as to who is or is not eligible to be designated a “affected person” under Tex. Water Code § 5.115(a) and 30 TAC 55.203(a), judicial determinations of “standing” address the concept of “personal justiciable interest,” *Hunt v. Bass*, 664 S.W.2d 323, 324 (Tex. 1984). The definition of “affected person” in Tex. Water Code § 5.115(a) was written to take advantage of judicial decisions as to standing.

55.203(c)(4) and (5)¹¹ (likelihood of impact, if any, on a hearing requestor's health, safety or enjoyment of property or enjoyment of a natural resource) undercuts any District claim of adverse impact. This same information also undercuts any claim by either District that any hypothetical adverse impact on a District would not also be suffered similarly by members of the general public, especially other owners and users of water wells located at the same or lesser distance from the STMV site between that site and the Gulf of Mexico.

The technical report supporting both applications¹² and the Executive Director's detailed October 31, 2008 Response to Comments both show there is no credible adverse impact on the Districts. For example:

a. At the sites of the proposed deep injection wells, the uppermost level of the proposed deep injection zone (where the current fluid is equivalent to NaCl brine of 200,000 ppm TDS) (Application, p. VII-4) lies approximately 5,000 ft below the base of the lowermost USDW (the Goliad at -390 ft MSL, >10,000 mg/L TDS) (Application, p. V-5). In addition to the 5- 20 miles of horizontal distance separating the STMV deep injection well site from the water supply wells of either District, the thousands of feet of vertical separation between the base of usable water and the upper confining layer of the proposed injection zone and the vast differences between the TDS values of the injection zone and those at the base of fresh water (presumably the Districts' water supplies are far better still), demonstrate the lack of any hydraulic communication between the formations.

¹¹ The cited rules state

(c) In determining whether a person is an affected person, all factors shall be considered, including, but not limited to, the following:

...

(4) likely impact of the regulated activity on the health and safety of the person, and on the use of property of the person;

(5) likely impact of the regulated activity on use of the impacted natural resource by the person;

...

¹² Like the Districts' hearing request, STMV's applications and supporting technical report are also pleadings; but, they have been pleaded in detail; and, they are supported by the professional seals of independent professional engineers and geoscientists and by sworn oath. In the commission's processes, if these documents and the commission's deliberations on them are to be contradicted, the commission deserves at a minimum the factual support called for by 30 TAC § 55.201(d)(2).

b. After 30 years of operation at the maximum permitted injection rate, the waste front from each well would have moved only 1,533 ft from the well bore of each well (Application p. VII-10. waste plume radius with dispersion). This 30 year plume is mapped on Exhibit 1.

c. After an assumed 30 years of operation, the cone of influence (pressure increase sufficient to lift the weight of a column of 9 lb./gal. mud) of each deep disposal well would reach no more than 3,000 ft from each well; but, there are no penetrations of the injection reservoir within that radius. (Application, pp.VII-7-8) Injection zone pressures do not threaten its containment of fluids.

d. The regional gradients in both shallow aquifers from which the Districts draw their water supply and in the deep injection zone STMV proposes to use are generally toward the Gulf of Mexico, and not in the direction from the STMV injection well sites toward the City of Benavides. (Application, pp. V-7 through 9, 12 and 14 (shallow); VII-8 (Yegua). Absent other, specific information not known to experts and not provided by the Districts, if water in shallow aquifers or fluids in the deep injection zone beneath the STMV well site move at all, they should be expected to move slowly (and even more slowly at depth) towards the Gulf, not towards the City of Benavides.

2. Rule 55.203(c)(2): Distance Restrictions— The Districts' Wells Lie Outside the Area of Review

Rule 55.203(c)(2) requires the commission to consider distance restrictions or other limitations imposed by law on the Districts' interests. The commission has granted the hearing requests of adjacent downstream riparian owners with respect to intermittently flowing streams;¹³ and the commission erred in denying hearing requests predicated on the respiratory sensitivity and claimed adverse health effects from air pollutants of persons living 2 miles downwind from a source of air pollutants.¹⁴ The Districts who here present hearing requests place themselves much farther than 2 miles from the STMV permit site and predicate their claims on movement of contaminants in either shallow or deep groundwater (they have not indicated which) which moves much more slowly than the wind or flowing water, if it moves at all; and,

¹³ See, *Hooks V. Texas Dept. of Water Resources*, 611 S.W.2d 417,419 (Tex. 1981) (Commission predecessor recognized standing of Hooks parties before agency and Supreme Court upheld standing for judicial review; as adjacent downstream riparian owners on an intermittent stream, the Hooks' complained of a 0.750 MGD average and 2.25 MGD maximum discharge of effluent into a stream where they had occasionally watered cattle). These are far more dramatic facts than those before the commission in the pending case,

¹⁴See *United Copper Ind. v. Grissom*, 17 S.W.3d 797 (Tex.app–Austin 2000 pet. dismiss'd as moot) (hearing requestor living 2 miles from copper smelter had standing to request a hearing based on timely allegation respiratory sensitivity and adverse health effects supported by modeling evidence of impacts).

the groundwater which the requestors presumably assume would carry contaminants to their wells may not move in the required direction, or may not move fast enough to traverse the required distance in thousands of years. All of the Duval County District's water wells appear to be situated more than 5 airline miles from STMV's proposed injection wells; however, if the District's wells are located in or near the City of Benavides, as requestors suggest, those wells are not situated in a direction from the permit sites that falls within 45 degrees of a line between the permit sites and the Gulf of Mexico. The only claimed well of the Jim Wells County District appears to lie more than 20 miles from the STMV well sites. These distances should be contrasted with the commission's established "area of review"¹⁵ for Class I wells, which reflects the commission's best conservative judgment as to the nature and extent of the potential influence of an injection well and the rate of groundwater movement. That radius is 2.5 miles around each Class I injection well, unless prescribed calculations disclose a greater radius is required to capture a proposed well's cone of endangering influence. STMV performed the calculations; and, they showed a 2.5 mile area of review was appropriate for the STMV deep injection wells. That being the case, the Districts hearing requests predicated on assumed injection well influence at twice to eight times that distance times are wholly unjustified unless the Districts had suggested (which they have not) some factual basis¹⁶ for assuming injection well influence would extend over such extraordinary distances and directions.

B. Under *DaimlerChrysler*. The Districts' Interests Are Too Remote to Support Standing

The Districts' hearing requests are founded on their declared but unsupported conclusion that "the proposed injection wells will have an adverse affect [sic] on the District's water supply wells." However, the Districts have not even suggested facts which would tend to show how they could be adversely affected by any STMV deep disposal well; and, the application materials presented in support of the proposed deep injection wells show that it is highly unlikely that the STMV deep wells will cause either District any adverse consequence over an assumed 30 year lifetime or ever.

In *DaimlerChrysler Corp. v. Inman*,¹⁷ three plaintiffs sued DaimlerChrysler for themselves and a nationwide class of some 10 Million owners and lessees of Chrysler vehicles equipped with Gen-3

¹⁵ See 30 TAC §§ 331.2(9)(definition), 331.42(a)(1)(2.5 miles or radius of cone of endangering influence, whichever is greater), and 331.121 (detailed facts required for permit review)

¹⁶ This a matter of pleading (i.e., writing a hearing request which provides a suitable supporting statement in response to the requirement of 30 TAC § 55.201(d)(2) that a hearing requestor explain briefly the "how and why" of a request). It is not a matter of requiring a hearing requestor to offer or even identify proof or evidence—although a cautious hearing requestor could do so.

¹⁷*DaimlerChrysler Corp. v. Inman*, 252 S.W.3d 299 (Tex. 2008).

seatbelts over a decade. Plaintiffs did not claim the buckles would release by themselves; they alleged instead that the buckles were too susceptible to accidental release by the wearer or another vehicle occupant. alleged accidental release was either unavoidable, probable or even eventual; they argued merely that it was possible. However, two plaintiffs admitted they had never experienced anything like what they claimed might happen. The third plaintiff claimed he was not sure whether he had or had not experienced the claimed accidental release; but, he had never been injured as a result of such an event.

DaimlerChrysler moved for summary judgment on grounds plaintiffs had failed to state a viable cause of action because no plaintiff had suffered any injury. The trial court granted certification of the class and denied DaimlerChrysler's motion for summary judgment. On appeal, the Court of Appeals rejected DaimlerChrysler's argument that plaintiffs' lacked standing because plaintiffs' fear of the possibility of injury from accidental release of a seatbelt was so remote that plaintiffs lacked standing to assert their claims. The Court of Appeals remanded the case to the trial court for further proceedings on class certification.

The Supreme Court took the case to consider DaimlerChrysler's argument that plaintiffs lacked standing to assert their claims because plaintiffs' claimed injuries were simply too hypothetical and "iffy;" and, the Court reversed the court of appeals and dismissed the case because of plaintiffs' lack of standing. Explaining its ruling, the Court noted that the injury which gave rise to plaintiffs' claim of standing was one which two plaintiffs had never experienced and the third could not say for sure he had ever experienced. The court continued by observing the injury was so remote that it might never happen.¹⁸ The Court further observed that it was not disposing of the case on its merits, but only holding that the particular plaintiffs who had brought the case lacked the requisite standing to maintain the action

Like the plaintiffs in *DaimlerChrysler*, the Districts predicate their claim of a personal justiciable interest in the STMV applications on their claim the permitted activity may result in an adverse consequence which would impact them in a manner different from the way it impact the general public. This injury is a necessary part of the "personal justiciable interest" they claim to have (i.e., it's the basis of their claimed status as "affected persons," their "standing"). The Districts, like the plaintiffs in *DaimlerChrysler* must show they have standing and like the *DaimlerChrysler* plaintiffs, the Districts predicate their claims of standing on the possibility of an adverse consequence so extraordinarily hypothetical, remote and unimaginable that (i) they cannot or will not describe how it could possibly happen, and (ii) it is not likely to happen at all.

However, the Districts are unlike the *DaimlerChrysler* plaintiffs in three important ways. The Districts have not been require to and are not now required to present or even identify any evidence in support of their hearing request. The Districts have merely been asked by 30 TAC § 55.201(d)(2)—and they did not respond—to explain in their hearing request something of the "how and why" of their claimed risk

¹⁸ 252 S.W.3d at 306.

of an adverse effect. This merely asks them to provide some explanatory texts to give their hearing request some recognizable substance for consideration by the commission and the applicant. Second, unlike the plaintiffs in *DaimlerChrysler*, the Districts, for whatever reason, simply did not respond to the requirement of 30 TAC § 55.201(d)(2). This should be of considerable importance to the commission. The Districts could have responded to the rule by adding supporting facts to their hearing requests—but they did not. Third, it cannot have been for lack of time or opportunity that the Districts failed to add supporting facts to their pleading; and, it cannot have been for lack of opportunity to understand the fundamentals of the applications. The Districts’ hearing request was filed in response to the pending STMV applications. STMV filed its applications and the supporting technical report—together, one-volume—September 6, 2007. A copy of that application was placed in the Duval County courthouse for public review on September 27, 2007; Notice of Receipt of Application and Intent to Obtain New Underground Injection Control Permits (NORI) was published on October 3, 2007; and, the notices of Application and Preliminary Decision for a Non-hazardous Waste Underground Injection Control Proposed Permit Nos. WDW-419 and WDW-418 (NAPD) were published on July 30 and 31, 2008. The Districts had more than a year to review and consider the application and ample time to discuss the applications with the applicant and the regulatory authorities.

The fundamental consideration for the commission is this: If the commission is to make a genuine “determination” on hearing requests, rather than simply granting a hearing anytime one is requested, the commission must make the “determination” on the basis of a requestor’s pleading (hearing request), that hearing request must contain more than the magic words, “hearing request” and a bald claim of a personal justiciable interest. The commission has addressed this in its rules by requiring that a hearing requestor “substantially comply” with 30 TAC § 55.201(d)(2) by “identifying” the requestor’s personal, justiciable interest by including a providing a “brief, but specific written statement explaining” the how and why of the requestor’s claim of a personal, justiciable interest. Such a statement, going at least one level of detail behind the ultimate claim of a personal, justiciable interest, provides the commission information it needs to make its “determination” and to make it on the pleadings (hearing request) without requiring the requestor to offer or even identify the evidence which might be used to support the claim. If the commission does not insist upon such supporting information, it cannot make a determination and cannot perform its statutory role.

C. Conclusion

Both Districts claim to be “entitled to a contested case hearing” on the pending applications. But, neither district has presented a hearing request which complies with 30 TAC § 55.201(d)(2) or shown itself an “affected person” within the meaning of Tex. Water Code § 5.115(a) and 30 TAC § 55.203(a). If hearings are not to be offered for the asking, but made available to a hearing requestor only if the commission has “determined” the requestor genuinely qualifies as an “affected person” within the meaning of Tex. Water Code § 5.115(a), the commission must insist that hearing requestors heed 30 TAC § 55.201(d)(2). In this case, the Districts disregarded the rule; and, their hearing requests should be denied for that reason.

VI.
HOLDING A HEARING ON THESE APPLICATIONS
WOULD FRUSTRATE PUBLIC POLICY

The commission has statutory authority to hold a hearing on an injection well application whenever the public interest warrants. Tex. Water Code §§ 5.556(f) and 27.018(a). However, the executive director's October 31, 2008 Response to Comments demonstrates that no genuine questions of fact or law remain on the applications for WDW-418 and WDW-419. In that case, the public interest does not necessitate or warrant a hearing on these applications and no legitimate public interest would be served by burdening the commission, its staff, the State Office of Administrative Hearings, or any of the parties with the expense and distraction of a contested case hearing on these applications. Holding a hearing where none is warranted not only wastes resources but also invites false expectations as to the role, rationale and availability of such hearings.

VII.
APPLICANT'S RESPONSES UNDER RULE 55.209(e)

Applicant makes the following responses under Rule 55.209(e):

- A. Neither of the requestors is an "affected person" within the meaning of Tex. Water Code §5.115(a). 30 TAC § 55.209(e)(1).
- B. The applicant contends that the designation of comments or issues by the requestors does not raise a genuine question of fact or law as to any of requestors' comments or contentions. The applicant disputes all five of the comments or issues presented by the requestors' September 2, 2008 letter presenting their hearing request. 30 TAC § 55.209(e)(2).

All of the issues raised in the Districts' hearing request were raised and addressed in the comment period. Those issues are set out below; none has any merit. Each of these issues was addressed by the Executive Director's October 31, 2008 Response to their Comments. The applicant adopts the responses to each provided by the executive director in his October 31, 2008 and adds further response as may be set out below:

1. The Districts allege that the proposed draft permits do not adequately protect the water quality of groundwater in Duval County, and could allow pollution of the Districts' sole drinking water source.
2. The Jim Wells District alleges that it believes the proposed deep disposal operations will exacerbate an existing problem of uranium in its water supply well.
3. The Districts allege the Applicant has not demonstrated that the installation of the

injection wells is in the public interest and that the Applicant has not adequately shown that there are no other practical, economic, and feasible alternatives for the injection wells

4. The Districts do not believe that the Applicant has demonstrated that it is financially responsible.

ADDED RESPONSE: The applicant has already tendered its financial assurance in an amount which includes the financial assurance required for WDW-418, \$164,900.00. Financial assurance for WDW-419 will be provided at least 60 days before commencement of drilling of the well.

5. The Districts allege that the Applicant has not provided for proper operations of the proposed injection wells.

C. As best applicant can understand the requestors' hearing requests, questions of both fact and law are presented. 30 TAC § 55.209(e)(3).

D. All issues raised by the hearing requestors were raised and answered in the public comment period. 30 TAC § 55.209(e)(4).

E. The applicant does not believe that any of the issues raised by requestors' hearing request have been withdrawn. 30 TAC § 55.209(e)(5)

F. If there were any genuine question as to the issues presented in requestors' hearing request, they would be relevant and material to the decision on both pending applications. 30 TAC § 55.209(e)(6)

G. Because no hearing should be required, the costs of hearing should be taxed equally applicant and opponents. The maximum expected duration for the contested case hearing should not exceed 12 months. 30 TAC § 55.209(e)(7).

VIII. LIST OF EXHIBITS

Exhibit A. Map Showing locations of WDW-418 and WDW-419 and Requestors' wells.

Exhibit B. Executive Director's October 31, 2008 Response to Comments.

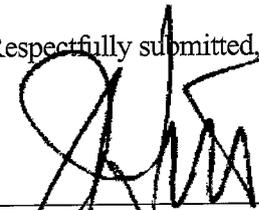
WHEREFORE, PREMISES CONSIDERED, STMV urges the Commission to deny both hearing requests on the ground that neither pleads sufficient supporting facts as to the "how and why" of either requestor's claim of a personal justiciable interest in either application to allow the commission to make the "determination" required by Tex. Water Code § 5.556(c) as to whether either is an "affected person." STMV further asks the commission to direct that the draft permits be issued as proposed.

In the alternative, and only in the event the Commission declines to deny both hearing requests, STMV requests, and

1. That the Commission deny the hearing request of the Jim Wells County Fresh Water Supply District No. 1 on the ground that the Jim Wells County Fresh Water Supply District No. 1 is not a person affected within the meaning of Tex. Water Code §5.115(a);
2. That the Commission decline to rule that the Duval County Conservation and Reclamation District is an "affected person" but direct the Administrative Law Judge to determine whether the Duval County District is an "affected person" within the meaning of Tex. Water Code § 5.115(a);
3. That the Executive Director be directed to participate in the hearing
4. That the issues be narrowly limited to determining whether the proposed permits adequately protect the groundwater; and,
5. That the hearing be completed in 12 months.

March 2, 2009

Respectfully submitted,



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CERTIFICATE OF SERVICE

I certify that on March 2, 2009, the foregoing South Texas Mining Venture Response to Hearing Requests was served upon each of the following by one or more of the following means: by hand delivery, by electronic or facsimile transmission, or by deposit of a true copy of the same into the U. S. Mail, first class mail, postage prepaid, addressed as shown below:

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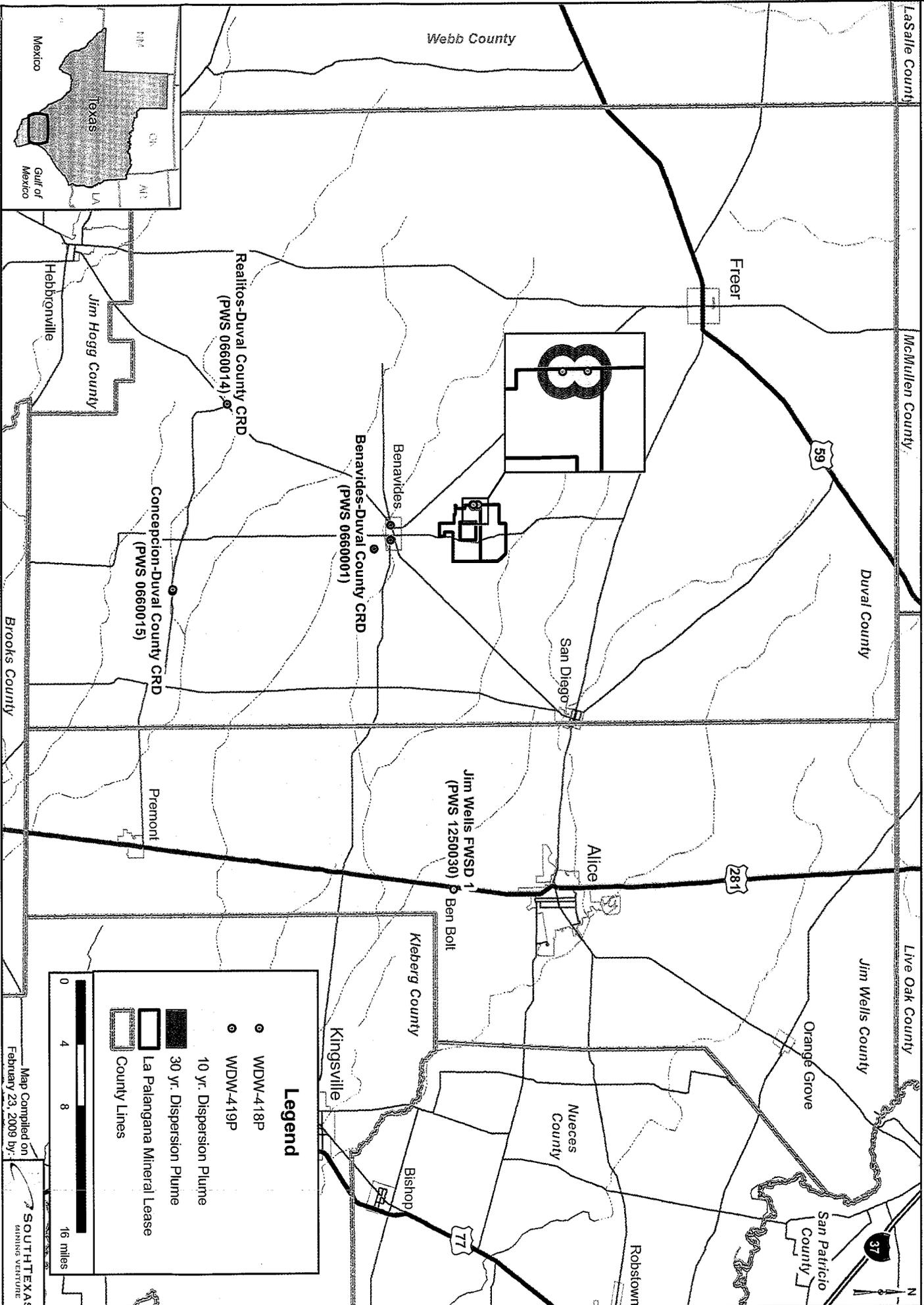
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Jep Hill

CHIEF CLERKS OFFICE

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Water Wells of Jim Wells County FWSD 1 and the Benavides-Duval, Concepcion-Duval and Realitos-Duval PWS



TCEQ PROPOSED PERMIT NOS. WDW418 & WDW419

APPLICATIONS BY	§	BEFORE THE
SOUTH TEXAS MINING	§	TEXAS COMMISSION ON
VENTURE, L.L.P.	§	ENVIRONMENTAL QUALITY

EXECUTIVE DIRECTOR'S RESPONSE TO PUBLIC COMMENT

The Executive Director of the Texas Commission on Environmental Quality (the Commission or TCEQ) files this Response to Public Comment (Response) on South Texas Mining Venture, L.L.P.'s (Applicant) applications and on the Executive Director's Preliminary Decision. As required by Title 30 of the Texas Administrative Code (30 TAC) Section (§) 55.156, before a permit is issued, the Executive Director prepares a response to all timely, relevant and material, or significant comments. The Office of the Chief Clerk timely received comment letters from the following persons: Melida K. Rangel, on behalf of Jim Wells County Fresh Water Supply District No. 1 (Jim Wells County District), and Emily Rogers, on behalf of Duval County Conservation and Reclamation District (Duval County District) and Jim Wells County District. This response addresses all such timely public comments received, whether or not withdrawn. If you need more information about these permit applications or the permitting process, please call the TCEQ Office of Public Assistance at 1-800-687-4040. General information about the TCEQ can be found at our website at www.tceq.state.tx.us.

BACKGROUND

Description of the Facility

The Applicant has applied to the TCEQ for two Class I waste disposal well permits, authorizing it to dispose of by-product materials¹ generated from in situ uranium mining operations at the La Palangana site. These permits authorize the disposal of: 1.) wastes generated during the closure of the wells and associated facilities that are compatible with permitted wastes, the reservoir, and well materials; 2.) lixiviant bleed stream; 3.) lab waste stream; 4.) resin transfer water; 5.) filter press wash stream; 6.) reverse osmosis brine stream; 7.) restoration wastewater; and 8.) other associated wastes, such as groundwater and rainfall contaminated by the above authorized wastes, and wash waters and solutions used in cleaning and servicing the waste disposal well system

¹ For the purposes of this Response, "by-product materials" are limited to those materials described in Texas Health and Safety Code (THSC) § 401.003(3)(B); namely, tailings or wastes produced by or resulting from the extraction or concentration of uranium or thorium from ore processed primarily for its source material content, including discrete surface wastes resulting from uranium solution extraction processes.

equipment and process pad that are compatible with the permitted wastes, the reservoir, and well materials.

The proposed wells will be located on the La Palangana site in Duval County, Texas, approximately six miles north of Benavides, Texas. The site is approximately 150 miles south of San Antonio, Texas and 70 miles west of Corpus Christi, Texas. The La Palangana project site is accessible from Ranch Road 3196.

Union Carbide Corporation (UCC) conducted exploration and mining activities at the La Palangana site from the late 1950s through the late 1970s. In 1980, Chevron Resources USA, Inc. (Chevron) acquired the property from UCC, and continued mining and exploratory activities. In 1991, General Atomics Corporation (GAC) acquired all of Chevron's uranium assets, including La Palangana, but did not conduct further exploration or production activities. Everest Exploration, Inc. (EEI) acquired the leases from GAC in January 2005, and sold them to the Applicant under a partnership agreement.

In addition to its applications for the waste disposal well permits, the Applicant has applied to the TCEQ for a Radioactive Materials License, a Class III injection well area permit, and a Production Area Authorization.²

Procedural History

The permit applications were received on September 6, 2007, and declared administratively complete on September 18, 2007. The Notice of Receipt of Application and Intent to Obtain New Underground Injection Control Permits (NORI) was published on October 3, 2007 in the *Freer Press*. The Notice of Application and Preliminary Decision for a Non-hazardous Waste Underground Injection Control Proposed Permit Nos. WDW418 and WDW419 (NAPD) was published on July 30, 2008 in the *Alice Echo News Journal*, the *Freer Press*, and *The Progress*; and July 31, 2008 in the *Falfurrias Facts*, the *Frio-Nueces Current*, the *Hebbronville View*, and the *Laredo Morning Times*. The public comment period ended on August 2, 2008. The applications were administratively complete on or after September 1, 1999; therefore, these applications are subject to the procedural requirements adopted pursuant to House Bill 801 (76th Legislature, 1999).

Access to Rules, Laws, and Records

The Commission's rules may be accessed online by using the Texas Administrative Code (TAC) viewer feature on the Texas Secretary of State website at: www.sos.state.tx.us (Select "State Rules & Open Meetings," then "Texas Administrative Code," and then "TAC Viewer").

² See Proposed License No. R06062, Proposed Permit No. UR03070, and Proposed Permit No. UR03070PAA1.

Texas statutes may be accessed through the Texas Legislative Council's website at: <http://www.tlc.state.tx.us> (Select "Internet Resources," then "Texas Statutes").

General information about the TCEQ can be found at our website at: www.tceq.state.tx.us (For downloadable rules in Adobe PDF format, select "Rules," then "Current TCEQ Rules," then "Download TCEQ Rules")

Federal statutes and regulations may be accessed through the Environmental Protection Agency (EPA) website at: www.epa.gov (Select "Laws & Regulations").

The draft permits, any comment letters received, along with this Response, and any other communications made during the review of these applications are/will be contained in the public file located in the TCEQ Office of the Chief Clerk, and may be reviewed or copied during regular business hours at the Office of the Chief Clerk, Building F, 12100 Park 35 Circle, Austin, TX. 78753. A copy of the applications and draft permits are currently available for review and copying at the Duval County Courthouse, 400 E. Gravis, San Diego, TX.; and will remain there until either the TCEQ acts on the applications, or the applications are referred to the State Office of Administrative Hearings (SOAH) for hearing.

COMMENTS

COMMENT 1: (Groundwater & Drinking Water Protection)

Emily Rogers commented that the proposed draft permits do not adequately protect the water quality of groundwater in Duval County, and could pollute Jim Wells County District's and Duval County District's sole drinking water source.

RESPONSE 1:

The main goal of the TCEQ's Underground Injection Control (UIC) Program is to prevent pollution of underground sources of drinking water (USDWs).³ 30 TAC, Chapter 331 requires Class I waste disposal wells to be designed, constructed, operated, and closed in a manner that will not allow the movement of fluids that could result in the pollution of an USDW. In order to fulfill this mandate, the owner or operator of a Class I waste disposal well must comply with the following regulations:

1. 30 TAC § 331.4, Mechanical Integrity Required
2. 30 TAC § 331.5, Prevention of Pollution
3. 30 TAC § 331.7, Permit Required
4. 30 TAC § 331.43, Mechanical Integrity Standards
5. 30 TAC § 331.44, Corrective Action Standards

³ An underground source of drinking water (USDW) is defined as "[a]n "aquifer" or its portions: (A) which supplies drinking water for human consumption; or (B) in which the groundwater contains fewer than 10,000 milligrams per liter of total dissolved solids; and (C) which is not an exempted aquifer." 30 TAC § 331.2(97).

6. 30 TAC § 331.45, Executive Director Approval of Construction and Completion
7. 30 TAC § 331.46, Closure Standards
8. 30 TAC § 331.62, Construction Standards
9. 30 TAC § 331.63, Operating Requirements
10. 30 TAC § 331.64, Monitoring and Testing Requirements
11. 30 TAC § 331.65, Reporting Requirements
12. 30 TAC § 331.66, Additional Requirements and Conditions
13. 30 TAC § 331.68, Post-Closure Care
14. 30 TAC § 331.121, Class I Wells

These rules were adopted to protect USDWs. There have been no documented cases of contamination of water wells used for human drinking water supply or of strata which meet the criteria of USDWs from the operation of more than 100 Class I injection wells in Texas in the 26 years since the establishment of this class of injection well in the federal UIC Program.

Pursuant to 30 TAC § 331.121, before issuing a Class I waste disposal well permit, the Commission must consider the location of the proposed well. All Class I waste disposal wells must be sited such that they inject into a formation that is beneath the lowermost formation containing, within 1/4 mile of the wellbore, a USDW or freshwater aquifer.⁴ Class I waste disposal wells must be located in areas that the Executive Director determines are geologically suitable.⁵

A Class I waste disposal well must be sited such that: 1.) the injection zone⁶ has sufficient permeability, porosity, thickness, and areal extent to prevent migration of fluids into USDWs or freshwater aquifers; and 2.) the confining zone⁷ is laterally continuous and free of transecting, transmissive faults or fractures over an area sufficient to prevent the movement of fluids into a USDW or freshwater aquifer; and contains at least one formation of sufficient thickness and with lithologic and stress characteristics capable of preventing initiation and/or propagation of fractures.⁸ A review of the local geology in the area of the proposed disposal wells did not reveal any transmissive faults or inadequately plugged abandoned wells which could provide pathways for fluid movement from the injection zones to the overlying USDW.

The Applicant has demonstrated to the satisfaction of the Executive Director that the confining zone is separated from the base of the lowermost USDW or freshwater aquifer by at least one sequence of permeable and less permeable strata that will provide an added layer of protection for the USDW or freshwater aquifer in the event of fluid

⁴ 30 TAC § 331.121(c)(1).

⁵ 30 TAC § 331.121(c)(2).

⁶ The injection zone is defined as “[a] formation, a group of formations, or part of a formation that receives fluid through a well.” 30 TAC § 331.2(48).

⁷ The confining zone is defined as “[a] part of a formation, a formation, or group of formations between the injection zone and the lowermost underground source of drinking water or freshwater aquifer that acts as a barrier to the movement of fluids out of the injection zone.” 30 TAC § 331.2(26).

⁸ 30 TAC § 331.121(c)(3).

movement in an unlocated borehole or transmissive fault.⁹ The net thickness, number, and character of these strata in the subsurface between the confining zone and the base of the USDW provide additional safeguards against upward movement of fluid from the injection zones reaching the overlying USDW.

Finally, as part of its applications, the Applicant calculated a 2,134 foot expected maximum radius of the injected wastewater plume from the proposed wells.¹⁰ To reach a conservative estimate of the composite wastewater plume size after the projected thirty-year life of the wells, the Applicant's calculation assumed continuous operation of the wells at the maximum proposed injection rates, and placed the total volume injected for both wells into a single composite injection well.¹¹ The edge of the estimated plume is approximately 4.9 miles from Duval County District's water wells, and approximately 21.3 miles from Jim Wells County District's water wells. The proposed Class I waste disposal wells are also injecting into a brine saturated formation approximately 5,321 feet below Duval County District's deepest water well, and approximately 4,874 feet below the aquifer that the Jim Wells County District currently relies on to produce drinking water.

COMMENT 2: (Uranium in Jim Wells County District's Water Supply)

Melida K. Rangel and Emily Rogers stated that the Jim Wells County District has uranium in its water supply, which it believes came from mining activities in the area. Ms. Rogers commented that the Jim Wells County District believes that the proposed injection wells will exacerbate the existing problem.

RESPONSE 2:

According to TCEQ records, Chevron Resources USA, Inc. (Chevron) was the last permitted entity to conduct mining and exploratory activities at the La Palangana site.¹² After mining activities ended, groundwater restoration was conducted pursuant to 30 TAC § 331.107. TCEQ records show no instances of mining solutions bearing uranium migrating beyond the permitted area at the La Palangana site. Other historic in situ uranium mining activities in Duval County were located twenty miles or more northwest or southwest of the Jim Wells County District's water wells. TCEQ is not aware of any migration of injected mining solutions bearing uranium outside of the permitted areas for these operations.

With regard to possible sources of the uranium found in Jim Wells County District's water wells, TCEQ records identify approximately thirteen public water systems in Texas with radionuclides in the drinking water at concentrations that require

⁹ See p. V-22, Section V(B)(9) of the Applicant's applications for Proposed TCEQ Permit Nos. WDW418 & WDW419; 30 TAC § 331.121(c)(4)(A).

¹⁰ See p. VII-10 – VII-11, Section VII(A)(11) of the Applicant's applications for Proposed TCEQ Permit Nos. WDW418 & WDW419.

¹¹ See *Id.*

¹² See TCEQ Permit No. UR02051 and Production Area Authorization 1 (PAA 1).

treatment in order to meet the federal primary drinking water standard for uranium. These public water supply systems provide examples of uranium in groundwater presumably from natural depositional and geochemical processes.

Finally, as previously mentioned, 30 TAC, Chapter 331 requires Class I waste disposal wells to be designed, constructed, operated, and closed in a manner that will not allow the movement of fluids that could result in the pollution of a USDW. The proposed waste disposal wells inject into a formation that is approximately 4,874 feet below the formation from which the district withdraws its water, and the proposed injection is below the confining zone to prevent upward movement of injected wastewater. The Executive Director does not believe that the proposed permitted activity will negatively impact Jim Wells County District's water supply.

COMMENT 3: (Public Interest)

Emily Rogers stated that the Duval County District and the Jim Wells County District believe that the Applicant has not demonstrated that the installation of the injection wells is in the public interest. Ms. Rogers also commented that the Duval County District and the Jim Wells County District do not believe that the Applicant has adequately determined that there are no other practical, economic, and feasible alternatives for the injection wells.

RESPONSE 3:

Section 27.051 of the Texas Water Code (TWC) states that the Commission may issue a UIC permit if it finds that the use or installation of the injection well is in the public interest.¹³ In determining whether the installation of an injection well that will not dispose of hazardous waste is in the public interest, the Commission considers: 1.) the compliance history of the applicant and related entities, and 2.) whether there is a practical, economic, and feasible alternative to an injection well reasonably available.¹⁴

The Applicant addresses its compliance history in Attachment C of the permit applications.¹⁵ Attachment C states, "The applicant, STMV, has not previously operated this facility and does not yet have a compliance history."¹⁶ During the technical review, staff conducts a compliance history review of the company and the site based on the criteria in 30 TAC, Chapter 60. Staff reviewed the compliance history for the company and site for the five-year period prior to the date the permit application was received by the Executive Director. The compliance history includes multimedia compliance-related components about the site under review. These components include the following: enforcement orders, consent decrees, court judgments, criminal convictions, chronic excessive emissions events, investigations, notices of violations, audits and violations

¹³ TWC § 27.051(a)(1).

¹⁴ TWC § 27.051(d)(1)&(2).

¹⁵ See p. C-1, Attachment C of the Applicant's applications for Proposed TCEQ Permit Nos. WDW418 & WDW419.

¹⁶ Id.

disclosed under the Audit Act, environmental management systems, voluntary on-site compliance assessments, voluntary pollution reduction programs, and early compliance. These permit applications were received on September 6, 2007; the company and site have been rated and classified pursuant to 30 TAC, Chapter 60. A company and site may only have one of the following classifications and ratings: High: rating < 0.10 (above-average compliance record); Average by Default: rating = 3.01 (these are for sites which have never been investigated); Average: rating = 0.10 < 45 (generally complies with environmental regulations); Poor: rating = 45 < (performs below average). This site has a rating of 3.01 and a classification of average by default. The company rating and classification, which is the average of the ratings for all sites the company owns, is 3.01 and a classification of average.

Attachment C of the applications discusses whether there is a practical, economic, and feasible alternative to an injection well reasonably available.¹⁷ Other disposal methods considered by the Applicant include solar evaporation ponds, land application, thermal evaporation, and surface discharge under a National Pollutant Discharge Elimination System (NPDES) permit.¹⁸ In Attachment C of the applications, the Applicant states, "Of the alternate treating schemes investigated, all but deep well disposal yield a concentrated slurry of low level radioactive material which must be indefinitely stored...Considering the safety and reliability associated with the different ultimate disposal methods available, the preferred method of disposal is by deep well injection into saline aquifers."¹⁹ After analyzing the Applicant's compliance history and evaluating alternative methods of waste disposal, the Executive Director has preliminarily determined that the installation of the injection wells is in the public interest.

COMMENT 4: (Financial Responsibility)

Emily Rogers commented that the Duval County District and the Jim Wells County District do not believe that the Applicant has demonstrated that it is financially responsible.

RESPONSE 4:

Section 27.051 of the TWC states that the Commission may issue a UIC permit if it finds that the applicant has made a satisfactory showing of financial responsibility.²⁰ Before issuing a Class I UIC permit, Section 331.121 requires the Commission to consider whether the applicant has provided financial assurance in accordance with 30 TAC, Chapter 37 for the closure, plugging, abandonment, and, if necessary, post-closure care of the well.²¹ Additional financial assurance requirements for injection wells are found in 30 TAC, Chapter 331, Subchapter I.²² The owner or operator of the well must

¹⁷ Attachment C of the Applicant's applications for Proposed TCEQ Permit Nos. WDW418 & WDW419.

¹⁸ *Id.* at C-2 - C-3.

¹⁹ *Id.* at C-3.

²⁰ TWC § 27.051(a)(4).

²¹ 30 TAC § 331.121(a)(3).

²² 30 TAC §§ 331.142 - 331.144.

prepare a written estimate, in current dollars, of the cost of plugging the well in accordance with its plugging and abandonment plan.²³ The plugging and abandonment cost estimate must equal the cost of plugging and abandonment at the point in the facility's operating life when the extent and manner of its operation would make plugging and abandonment the most expensive, as indicated by its plugging and abandonment plan.²⁴ An owner or operator may use any of the following mechanisms to demonstrate financial assurance for plugging and abandonment: 1.) a trust fund (fully funded or pay-in trust); 2.) a surety bond guaranteeing payment; 3.) a surety bond guaranteeing performance; 4.) an irrevocable standby letter of credit; 5.) insurance; 6.) a financial test; or 7.) a corporate guarantee.²⁵ Financial assurance must be in place 60 days prior to commencement of drilling operations, and remain in place until the Executive Director provides written approval of the plugging and abandonment.²⁶ Finally, the owner or operator of the well is required to annually update the closure cost estimate to account for prevailing general economic conditions.²⁷

In its applications, the Applicant provided a well closure plan and a plugging cost estimate for the proposed wells.²⁸ The applications also state that the Applicant will submit evidence of financial assurance for the plugging and abandonment of the proposed wells at least 60 days prior to commencement of drilling operations.²⁹ Finally, the applications state that the Applicant will revise, update, and maintain its plugging and abandonment cost estimates in accordance with 30 TAC § 331.143.³⁰ Should the draft permits be issued, the Applicant would be required to secure and maintain financial assurance in the amount of \$164,900 (in 2007 dollars) for Waste Disposal Well 418 and \$167,000 (in 2007 dollars) for Waste Disposal Well 419. Based on the information provided in its applications, the Executive Director has preliminarily determined that the Applicant has made a satisfactory showing of financial responsibility.

COMMENT 5: (Operating Requirements)

Emily Rogers commented that the Duval County District and the Jim Wells County District believe that the Applicant has not provided for proper operations of the proposed injection wells.

RESPONSE 5:

The operating requirements for Class I injection wells are contained in 30 TAC § 331.63. Section 331.63 provides that, "All Class I wells shall be operated to prevent the

²³ 30 TAC § 331.143(a), Cost Estimate for Plugging and Abandonment.

²⁴ *Id.*

²⁵ 30 TAC § 37.7021(b).

²⁶ 30 TAC § 37.7021(c) and 30 TAC § 331.144.

²⁷ 30 TAC § 37.131.

²⁸ See p. VI-47 – VI-51, Section VI(E)(1) and Table VI-2 & Table VI-3 of the Applicant's applications for Proposed TCEQ Permit Nos. WDW418 & WDW419.

²⁹ See Attachment F of the Applicant's applications for Proposed TCEQ Permit Nos. WDW418 & WDW419.

³⁰ *Id.*

movement of fluids that could result in the pollution of an underground source of drinking water (USDW) and to prevent leaks from the well into unauthorized zones.”³¹ Additionally, 30 TAC § 331.121 states that before issuing a Class I UIC permit, the Commission is required to consider the proposed operating data and the proposed operation and injection procedures provided in the Technical Report submitted with the applications.³²

The Applicant provided plans for the proposed injection well operations as part of its applications.³³ The plans included proposed operating data and procedures, such as maximum and average injection rates and volumes, maximum surface injection pressure, ranges of injection rate and surface injection pressure, well maintenance, mechanical integrity testing, the waste analysis plan, access to the well site, and the maintenance of operations records.³⁴ Should the draft permits be issued, the maximum injection rate for the wells shall not exceed 200 gallons per minute, and the operating surface injection pressure for the wells shall not exceed 1,350 pound-force per square inch gauge (psig).³⁵ Based on the information provided in the applications, the Executive Director has preliminarily determined that the proposed operating data and proposed operation and injection procedures meet the applicable regulatory requirements.

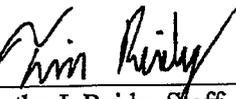
CHANGES MADE TO THE DRAFT PERMITS IN RESPONSE TO COMMENT

No changes to the draft permits have been made in response to public comment.

Respectfully submitted,
Texas Commission on Environmental
Quality

Mark R. Vickery, P.G.
Executive Director

Robert Martinez, Director
Environmental Law Division

By 
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³¹ 30 TAC § 331.63(b).

³² 30 TAC §§ 331.121(a)(2)(G)&(a)(2)(J).

³³ See p. VI-41 – VI-45, Section VI(C) of the Applicant's applications for TCEQ Proposed Permit Nos. WDW418& WDW419.

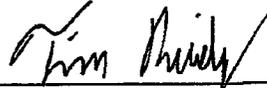
³⁴ *Id.*

³⁵ See p. 3 of the draft permit for WDW418, Section VII(C)&(D) and p. 3 of the draft permit for WDW419, Section VII(C)&(D); *Also see* p. VI-43, Section VI(C) of the Applicant's applications for TCEQ Proposed Permit Nos. WDW418& WDW419.

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REPRESENTING THE EXECUTIVE
DIRECTOR OF THE TEXAS
COMMISSION ON ENVIRONMENTAL
QUALITY

CERTIFICATE OF SERVICE

I certify that on October 31, 2008 the "Executive Director's Response to Public Comment" for Permit Nos. WDW418 & WDW419 was filed with the Texas Commission on Environmental Quality's Office of the Chief Clerk.



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State Bar No. 24058069

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