

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

January 11, 2010

- Re: 1. City of Vernon/Water Quality TPDES Permit # WQ0004868000
2. Request for Public Hearings Dated June 17, 2009
3. Public Meeting Acknowledgement Letter Dated August 13, 2009
4. Public Comments, Public Hearing of August 31, 2009 at Wilbarger Auditorium
5. Decision of the Executive Director, Letter Dated November 4, 2009
6. Contested Case Hearing Request Letter Dated November 23, 2009 (2nd. Request)
7. Letter of Dec. 10, 2009 from Bridget C. Bohac, Office of Public Assistance Direc'r.
8. Notice of Public Meeting, Letter Dated December 14, 2009
9. OPIC's Response to Request for Hearing, Letter Dated December 30, 2009
10. Executive Director's Response to Hearing Requests, Letter of December 30, 2009
11. Applicants Response to Hearing Requests; none provided.

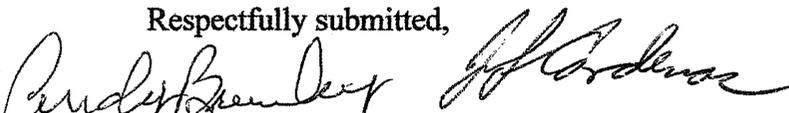
Subject: TCEQ Docket Number 2009-1970-MWD

Dear Ms. Castanuela:

Please accept our apology for not being able to write your name correctly; our equipment is not set up to do so, we are not smart enough to correct it, but we are sensitive enough to acknowledge our shortcoming.

Enclosed please find our Reply to the Office of Public Interest Council's Response to Requests for Hearing on above subject. Thank you for your continued support and assistance in regards to this matter.

Respectfully submitted,


Andy Brumley & Jose L. Cardenas

TEXAS
COMMISSION
ON ENVIRONMENTAL
QUALITY

2010 JAN 15 PM 3:27
CHIEF CLERKS OFFICE

To: Honorable Members of the Board of Commissioners,
Texas Commission of Environmental Quality

January 11, 2010

From: Andy Brumley & Jose L. Cardenas,
Representing Group of Affected Citizens

Subject: TCEQ DOCKET NO. 2009-1970-MWD
Re: Application by City of Vernon for TPDES Permit No. WQ0004868000

TEXAS
COMMISSION
ON ENVIRONMENTAL
QUALITY
2010 JAN 15 PM 2:37
CHIEF CLERKS OFFICE

Gentlemen:

Thank you for the opportunity to present our Reply to the Response filed by Executive Director and the Office of Public Interest Council of the Texas Commission on Environmental Quality with regard to our Requests for Contested Case Hearing on the above reference as follows;

1. Introduction

The City of Vernon applied to TCEQ for issuance of a Permit to discharge 'Pollutants' directly into the Pease River under the Texas Pollutant Discharge Elimination System. In order to be 'approved', the application was 'doctored' by providing incomplete answers to the required questions, failing to answer some of the questions and/or providing false or misleading information. **Written** evidence of this doctoring process has been presented to TCEQ staff; our accusations of impropriety have been made directly to Applicant's representatives in the presence of TCEQ representatives (at least nine members from each group were present at the time); and by the silence from both sides, it appears that no one is listening and creates the appearance of collusion.

Our original request was for TCEQ to deny the Permit, that same request is again made today of this Commission for reason stated above and for the following additional reasons;

In response to the refusal for a contested case hearing, the letters from TCEQ Staff are written to take issue with several points made in the determination that such a hearing is unwarranted. The points of contention include the definition of "Affected Persons", the apparent lack of any real, hard data used in calculations, the seemingly off-hand manner in which the effects of the proposed discharge to the surface water of Pease River is dealt, and, finally, the apparent refusal of TCEQ to understand or consider that affecting surface water will also effect groundwater.

Let us begin with the definition of "Affected Persons". For the purpose of the refusal for a contested case hearing, the main determinant of whether or not "Persons" are "Affected" seems to be the distance from the wastewater plant of a person's residence; specifically, whether or not a person lives within a single mile radius of the plant. There are two main sticking points about this definition, the first of which is the apparent randomness of choosing a one-mile radius around the plant itself. There seems to be no sound reason for choosing that distance from the plant, and no sound reason for choosing the plant itself as the focal point, since it is the discharge into the Pease River from the

plant that is the issue of debate. The second sticking point is the use of a person's place of residence alone in determining whether or not they are "Affected". Many people own farms, ranches, businesses, and other property near, or inside, the one-mile radius of the plant, or, more importantly, the proposed discharge location of the contaminated discharge water. In short, if these are the factors used in denying a hearing because there are no "Affected Persons", then OPIC needs to reconsider both the issue of whether there are any "Affected Persons", and the definition of whom an "Affected Person" is.

2. Requirements of Applicable Law

It is our opinion that the application was declared to be administratively complete mostly because TCEQ Staff failed to perform their due diligence in the review process. This opinion is based on a substantial number of errors and inconsistencies in the application that appear to have been overlooked by the review team; along with glaring facts on missing information that should have triggered a negative response from a willing and adequately trained observer. Now let us address the apparent lack of real data used in determining the permit's viability. In response number 13 of the "Executive Director's Response to Public Comment", it is stated that there are no estimates available for determining the recharge rate of the alluvial aquifer adjacent to the Pease River. Thus, a "broad assumption" was made based on rainfall recharge rates for the Seymour Aquifer as a whole. As the issue of this permit pertains to the waters of the Pease, and, therefore, by necessity, the adjacent aquifer, wouldn't it be prudent to gather actual facts and figures instead of basing decisions on "broad assumptions" of "estimates"?

Onward now to the manner in which the Pease River water contamination is being addressed. Response number 8 of the "Executive Director's Response to Public Comment" puts the river's flow at 0.28 cubic feet per second, and states that the plant discharge would constitute **"only" 20.27% of the total flow of the river**. It may only be our opinion at this time, but when 20.27% of a river's flow is made up solely of contaminated discharge, that is entirely too much. Add to that the fact that the Pease River often sees extended periods of no flow at all several times per year, and what you have is a situation where discharged contaminants are left to stand, accumulate, and filtrate into the adjacent aquifer. For a commission whose purpose is to safeguard the Texas environment, allowing this type of occurrence by issuing a permit seems wrong.

The final point of contention to address with regards to allowing a contested case hearing is the apparent refusal of TCEQ to acknowledge the fact that surface water impacts groundwater. In comment number 16, as recorded in the "Executive Director's Response to Public Comment", Andy Brumley asks for further testing of groundwater by TCEQ or the EPA before issuance of the permit, as discharge into the Pease will impact the adjacent aquifer. The response given skirts the issue. Mr. Brumley knows first hand the detrimental effect of the proposed discharge on groundwater, as his well located immediately across the river from the previous permitted discharge location was rendered useless for wildlife, domestic stock, irrigation, and human consumption in less than two years from the commencement of discharge. Mr. Brumley has had the water from the

aquifer adjacent to the river tested over a period from 2003 to 2009. The tests were electrical conductivity tests, and the results over time eroded from 3.8 EC in 2003 to 13.1 EC in 2009. The results correspond with the original permitted ion exchange discharge.

3. Hearing Requests

Hearing requests were timely filed by all individual requestors or via their selected representatives, Andy Brumley and Jose Cardenas. Requestors are affected persons because of the fact that they live and/or own property at or near the proposed toxic dump site; this is a fact that is not common to the general public since the current number of affected persons represents less than ¼ of 1% of the population in our community. Interestingly enough, OPIC finds the requestors are not affected persons...**“based on information provided by...the Executive Director”**. It occurs to us that if a state agency’s department is going to refer to itself as the “Office of Public Interest Council,” they should at least make an attempt to downplay their prejudiced and biased opinion. In regard to ‘Issues Raised in the Hearing Requests’; they all remain disputed, are factual, were timely made during comment period, all are relevant and material to our request of this Commission. Mr. Vic McWherter, Senior Attorney states that we do not appear to be satisfied by the response to comments provided by Mr. Mark R. Vickery, Executive Director for TCEQ...i.e. one of the responses to our question regarding expected contamination of the Pease River and our drinking water wells went something like this...” we agree that the Pease is part of the Red River Basin and the Seymour Aquifer and yes, your drinking water wells located along the river basin will become contaminated by the proposed discharge which will exceed safe drinking limits; but we are still within the law because the state has not classified the Pease River as a source of drinking water”. In the opinion of Mark Vickery, my family and I, as well as all the other people who live along and/or use the Peace River just became expendable; and he thinks he can get away with it in complicity with the City of Vernon, because it is not illegal in his interpretation of Texas State Law.

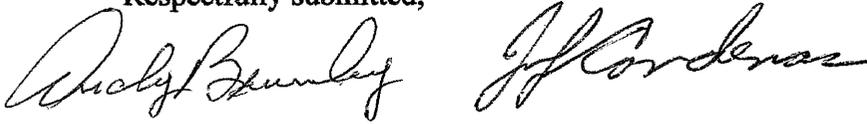
We trust you may now understand the source of our dissatisfaction with Mr. Vickery’s response to our comments and his persistent attitude towards discrimination of individuals along the Pease River who are most affected by his inappropriate decision to issue a Permit. By failing to act in a pro-active manner when confronted with the facts about the now fraudulent application, Mark Vickery lost credibility with our group; by failing to accept responsibility for the safety and health of the citizens of the State of Texas and to protect our natural resources he has lost the ability to perform his duty in the best interest of the State of Texas and its citizens.

4. Conclusion

In conclusion, let it be said that many of our group are supplied by City of Vernon water. We want good quality drinking water. We are not opposed to the water treatment plant. However, we believe that there are better, safer, more permanent ways to dispose of the plant’s contaminated discharge. Dumping in the river is not the answer.

It is not our wish to go before the State Office of Administrative Hearings, but if that is the decision of this Commission we will comply; rather, our hope is for members of this Commission to deny the permit based on incorrect information provided, with the intent to defraud the state out of a legitimate Permit. Subsequently, our request for hearings may be denied, or withdrawn by us at the option of the Commission. We pray that our request meets with your most favorable response and May God Bless you.

Respectfully submitted,

Handwritten signatures of Andy Brumley and Jose L. Cardenas. The signature of Andy Brumley is on the left, and the signature of Jose L. Cardenas is on the right.

Andy Brumley & Jose L. Cardenas

**GENERAL PUBLIC MEETINGS
ION EXCHANGE & TOXIC WASTE DUMPING IN PEASE RIVER**

Objective: The goal of these meetings have been to discuss, to gather information and attempt to educate the general public on the issues relating to the City of Vernon's Proposed discharge of toxic wastes from its water plant directly into the Pease River. Over the course of many months, members of a 'concerned group of citizens who are directly affected' have concluded that City of Vernon Officials have been less than sincere in communicating with the public about the extent of the negative impact to our environment that their proposal truly represents.

Purpose: The purpose of the 'concerned group of citizens' is to work together and organize as a group with a common purpose/goal/and objective as follows:
To represent the best interest of all members of the group through their two (2) selected representatives (Mr. Andy Brumley and Mr. Jose L. Cardenas) for the purpose of preventing the issuance of a permit by TCEQ to the City of Vernon based on wrong, misleading, erroneous and/or fraudulent information submitted with the application for the purpose of 'legally' dumping toxic wastes directly into the Pease River/ the goal of this group will be to work with City of Vernon Elected Officials and Administrative Personnel as well as TCEQ Representatives to consider other available options and alternatives that will be less harmful to our local environment and that will not represent an imminent threat to our lives, our safety and our health/ our objective as a group shall be to remain committed to protecting ourselves and our families from this imminent threat that has been demonstrated to affect us in a manner that is substantially different from the immediate effects to the general public.

Now therefore we set out to request public meetings, public hearings, contested case hearings, meet with the TCEQ Commissioners 'Court' and pursue all reasonable venues towards achieving the above stated purpose of this group. To this end, every member of the group will be asked to sign the attached sheets to confirm their participation and acceptance of their selected representatives. Thank you for caring, thank you for your continued support, and May God be with us.

Andy Brumley,
Group Representative

Jose L. Cardenas,
Group Representative