

Bryan W. Shaw, Ph.D., *Chairman*
Buddy Garcia, *Commissioner*
Carlos Rubinstein, *Commissioner*
Mark R. Vickery, P.G., *Executive Director*



TEXAS COMMISSION ON ENVIRONMENTAL QUALITY
Protecting Texas by Reducing and Preventing Pollution

October 14, 2011

TO: Persons on the attached mailing list.

RE: United States Department of Energy
and Babcock & Wilcox Technical Services Pantex, LLC
Permit No. WQ0002296000

Decision of the Executive Director.

The executive director has made a decision that the above-referenced permit application meets the requirements of applicable law. **This decision does not authorize construction or operation of any proposed facilities.** Unless a timely request for contested case hearing or reconsideration is received (see below), the TCEQ executive director will act on the application and issue the permit.

Enclosed with this letter is a copy of the Executive Director's Response to Comments. A copy of the complete application, draft permit and related documents, including public comments, is available for review at the TCEQ Central office. A copy of the complete application, the draft permit, and executive director's preliminary decision are available for viewing and copying at the Carson County Library, 401 Main Street, Panhandle, Texas.

If you disagree with the executive director's decision, and you believe you are an "affected person" as defined below, you may request a contested case hearing. In addition, anyone may request reconsideration of the executive director's decision. A brief description of the procedures for these two requests follows.

How To Request a Contested Case Hearing.

It is important that your request include all the information that supports your right to a contested case hearing. You must demonstrate that you meet the applicable legal requirements to have your hearing request granted. The commission's consideration of your request will be based on the information you provide.

The request must include the following:

- (1) Your name, address, daytime telephone number, and, if possible, a fax number.
- (2) If the request is made by a group or association, the request must identify:

- (A) one person by name, address, daytime telephone number, and, if possible, the fax number, of the person who will be responsible for receiving all communications and documents for the group; and
 - (B) one or more members of the group that would otherwise have standing to request a hearing in their own right. The interests the group seeks to protect must relate to the organization's purpose. Neither the claim asserted nor the relief requested must require the participation of the individual members in the case.
- (3) The name of the applicant, the permit number and other numbers listed above so that your request may be processed properly.
 - (4) A statement clearly expressing that you are requesting a contested case hearing. For example, the following statement would be sufficient: "I request a contested case hearing."

Your request must demonstrate that you are an **"affected person."** An affected person is one who has a personal justiciable interest related to a legal right, duty, privilege, power, or economic interest affected by the application. Your request must describe how and why you would be adversely affected by the proposed facility or activity in a manner not common to the general public. For example, to the extent your request is based on these concerns, you should describe the likely impact on your health, safety, or uses of your property which may be adversely affected by the proposed facility or activities. To demonstrate that you have a personal justiciable interest, you must state, as specifically as you are able, your location and the distance between your location and the proposed facility or activities.

Your request must raise disputed issues of fact that are relevant and material to the commission's decision on this application. The request must be based on issues that were raised during the comment period. The request cannot be based solely on issues raised in comments that have been withdrawn. The enclosed Response to Comments will allow you to determine the issues that were raised during the comment period and whether all comments raising an issue have been withdrawn. The public comments filed for this application are available for review and copying at the Chief Clerk's office at the address below.

To facilitate the commission's determination of the number and scope of issues to be referred to hearing, you should: 1) specify any of the executive director's responses to comments that you dispute; and 2) the factual basis of the dispute. In addition, you should list, to the extent possible, any disputed issues of law or policy.

How To Request Reconsideration of the Executive Director's Decision.

Unlike a request for a contested case hearing, anyone may request reconsideration of the executive director's decision. A request for reconsideration should contain your name, address, daytime phone number, and, if possible, your fax number. The request must state that you are requesting reconsideration of the executive director's decision, and must explain why you believe the decision should be reconsidered.

Deadline for Submitting Requests.

A request for a contested case hearing or reconsideration of the executive director's decision must be **received** by the Chief Clerk's office no later than **30 calendar days** after the date of this letter. You may submit your request electronically at <http://www.tceq.texas.gov/about/comments.html> or by mail to the following address:

Bridget C. Bohac, Chief Clerk
TCEQ, MC-105
P.O. Box 13087
Austin, Texas 78711-3087

Processing of Requests.

Timely requests for a contested case hearing or for reconsideration of the executive director's decision will be referred to the alternative dispute resolution director and set on the agenda of one of the commission's regularly scheduled meetings. Additional instructions explaining these procedures will be sent to the attached mailing list when this meeting has been scheduled.

How to Obtain Additional Information.

If you have any questions or need additional information about the procedures described in this letter, please call the Public Education Program, toll free, at 1-800-687-4040.

Sincerely,



Bridget C. Bohac
Chief Clerk

BCB/ms

Enclosure

MAILING LIST
for
United States Department of Energy
and Babcock & Wilcox Technical Services Pantex, LLC
Permit No. WQ0002296000

FOR THE APPLICANT:

Johnnie F. Guelker
United States Department of Energy
and Babcock & Wilcox Technical Services
Pantex, LLC
P.O. Box 30030
Amarillo, Texas 79120

Chris Purhoff
B & W Pantex, LLC
P.O. Box 30020
Amarillo, Texas 79120

PROTESTANTS/INTERESTED
PERSONS:

See attached list.

FOR THE EXECUTIVE DIRECTOR
via electronic mail:

Brian Christian, Director
Texas Commission on Environmental
Quality
Small Business and Environmental
Assistance
Public Education Program MC-108
P.O. Box 13087
Austin, Texas 78711-3087

Robert Brush, Staff Attorney
Texas Commission on Environmental
Quality
Environmental Law Division MC-173
P.O. Box 13087
Austin, Texas 78711-3087

Michael Sunderlin, Technical Staff
Texas Commission on Environmental
Quality
Water Quality Division MC-148
P.O. Box 13087
Austin, Texas 78711-3087

FOR PUBLIC INTEREST COUNSEL
via electronic mail:

Blas J. Coy, Jr., Attorney
Texas Commission on Environmental
Quality
Public Interest Counsel MC-103
P.O. Box 13087
Austin, Texas 78711-3087

FOR THE CHIEF CLERK
via electronic mail:

Bridget C. Bohac, Chief Clerk
Texas Commission on Environmental
Quality
Office of Chief Clerk MC-105
P.O. Box 13087
Austin, Texas 78711-3087

BELISLE , MAVIS DIRECTOR
THE PEACE FARM
188 US HIGHWAY 60
PANHANDLE TX 79068-7200

FOSTER , JENNIFER
SENATOR ROBERT DUNCAN
119 AVENUE B NW
CHILDRESS TX 79201-4513

GUAJARDO , RALPH 743239 - OFFENDER
WILLIAM CLEMENTS STATE PRISON
9601 SPUR 591
AMARILLO TX 79107-9606

HANCOCK , DON
PEACE FARM
PO BOX 4524
ALBUQUERQUE NM 87196-4524

KLENSKENS , TONYA
STAND INC
4308 CR E
HEREFORD TX 79045

KOETTING , DANA
909 CR G
PANHANDLE TX 79068

POTEET , BILLIE
857 COUNTY ROAD 14
PANHANDLE TX 79068-7405

SMITH , DORIS BERG
18001 EL RANCHO RD
PANHANDLE TX 79068-5000

STEIN , JERRY
5113 SW 16TH AVE
AMARILLO TX 79106-4418

WILLIAMS , C B DIST MGR
PANHANDLE GROUNDWATER CONSERV DIST
PO BOX 637
WHITE DEER TX 79097-0637

APPLICATION BY §
UNITED STATES DEPARTMENT §
OF ENERGY AND BABCOCK & §
WILCOX TECHNICAL SERVICES §
PANTEX, LLC FOR TCEQ PERMIT §
NO. WQ0002296000 §

BEFORE THE
2011 OCT 11 PM 2: 59
TEXAS COMMISSION ON
CHIEF CLERKS OFFICE
ENVIRONMENTAL QUALITY

EXECUTIVE DIRECTOR'S RESPONSE TO PUBLIC COMMENT

The Executive Director (ED) of the Texas Commission on Environmental Quality (TCEQ) files this Response to Public Comment (Response) on the application for renewal of TCEQ Permit No. WQ0002296000 by the United States Department of Energy and Babcock & Wilcox Technical Services Pantex, LLC (Pantex) and the ED's preliminary decision. Pursuant to Title 30 Texas Administrative Code (30 TAC) Section (§) 55.156, before an application is approved and a permit issued, the ED prepares a response to all timely, relevant and material, or significant comments. The Office of the Chief Clerk timely received one comment letter from Mr. Ralph Guajardo. This Response addresses all timely filed public comments received, whether or not withdrawn.

If you need more information about this permit application or the wastewater permitting process, please call the TCEQ Public Education Program, Toll Free, at 1-800-687-4040. General information about the TCEQ can be found at our website at www.tecq.texas.gov.

BACKGROUND

Facility Description

Pantex, which operates the Pantex Plant, a facility principally engaged in the assembly of nuclear weapons from components received from other Department of Energy plants; the fabrication of chemical high explosive components for nuclear weapons; surveillance testing and processing of chemical high explosives; disassembly of nuclear weapons; maintenance, modification, repair and nonexplosive testing of nuclear weapons components; and disposal of treated environmental restoration wastewater, has applied to TCEQ for the renewal of Texas Water Quality Permit No. WQ0002296000, which authorizes the discharge of domestic effluent and industrial effluent at a daily average flow not exceed 560,000 gallons per day and a maximum flow of 820,000 gallons per day.

The facility is located approximately 17 miles northeast of the City of Amarillo and 10 miles west of the City of Panhandle, west of Farm-to-Market Road 2373, south of Farm-to-Market Road 293 and north of U.S. Highway 60, Carson County, Texas. The

effluent is discharged to a playa lake, located adjacent to the watershed of McClellan Creek, which flows into the North Fork Red River in Segment No. 0224 of the Red River Basin. The designated uses for Segment No. 0224 are high aquatic life use and contact recreation.

Procedural Background

The application was received on June 1, 2010 and declared administratively complete on July 19, 2010. The ED completed the technical review of the application on December 21, 2010 and prepared a draft permit. The Notice of Receipt of Application and Intent to Obtain a Water Quality Permit (NORI) was published on August 5, 2010 in the *Amarillo Globe News* and in the *Panhandle Herald*. The Notice of Application and Preliminary Decision (NAPD) was published on June 23, 2011 in the *Amarillo Globe News* and in the *Panhandle Herald/White Deer News*. The public comment period ended on July 25, 2011. Since this application was administratively complete after September 1, 1999, it is subject to House Bill 801 (76th Legislature, 1999).

COMMENTS AND RESPONSES

COMMENT 1:

Mr. Guajardo requests that electronic air monitors to be placed in and around Pantex to warn the residents of any unsafe air, vapors, or fumes from the facility. Additionally, Mr. Guajardo comments that the waste ponds should be covered so the fumes will not escape and harm the residents of Potter County or the local wildlife in and around the facility.

Mr. Guagardo also comments that since Pantex manufactures and dismantles bombs, it produces dangerous and harmful waste, toxic waste, radioactive waste, fumes, and vapors that have killed birds and other wildlife that venture on to Pantex property.

RESPONSE 1:

Air quality issues are outside of the scope of normal evaluations for a wastewater discharge permit application. The wastewater permitting process is limited to controlling the discharge of pollutants into or adjacent to water in the state and protecting the water quality of the state's rivers, lakes, and coastal waters.

Separate air quality authorizations are required for all facilities in Texas that emit air contaminants. Pantex has multiple air quality authorizations that are subject to the regulatory oversight of TCEQ. Additionally, air monitoring is conducted on a regular basis at the facility. For more information regarding air quality authorizations please contact the TCEQ Air Permits Division at (512) 239-1250 or you may consult the TCEQ website at: http://www.tceq.state.tx.us/nav/permits/air_permits.html.

All Texas facilities must comply with the Texas Clean Air Act and all TCEQ rules and regulations. Individuals are encouraged to report any concerns about nuisance issues or suspected noncompliance with the terms of any permit or other environmental regulation by contacting the TCEQ Amarillo Regional Office at (806) 353-9251, or by calling the 24-hour toll-free Environmental Complaints Hotline at 1-888-777-3186. The TCEQ investigates all complaints received. If the facility is found to be out of compliance with the terms and conditions of its permit, it will be subject to investigation and possible enforcement action.

COMMENT 2:

Mr. Guajardo requests that the history of Pantex and any unsafe accidents should be made public at the public meeting for the benefit of the residents of Potter and Randall counties under The Freedom of Information Act of 1996; The Texas Public Information Law Section 551.074; The Texas Open Meetings Act; The Texas Open Records Act; see *Sample v. Bureau of Prisons*, 466 F.3d 1086 (D.C. Cir. 2006).

RESPONSE 2:

Under Texas law, each person is entitled to complete information about the affairs of government and the official acts of public officials and employees at all times, unless otherwise expressly provided by law. "Public information" means information that is collected, assembled, or maintained under a law or ordinance or in connection with the transaction of official business: (1) by a governmental body; or (2) for a governmental body and the governmental body owns the information or has a right of access to it. The term is defined in Government Code Section 552.002.

The TCEQ is committed to upholding the Public Information Act (PIA) and to ensuring public access to its records. All agency staff are obligated to abide by the TCEQ's Operating Policy and Procedure regarding requests for information under the Texas Public Information Act. Open records requests under the PIA may be mailed to:

Texas Commission on Environmental Quality
Attn: Public Information Officer, MC 197
P.O. Box 13087
Austin, Texas 78711-3087

Additional information related to environmental issues at Pantex can be found at the Pantex website (<http://www.pantex.com/about/environment/index.htm>), which is maintained by Pantex to provide the general public access to this type of information.

COMMENT 3:

Mr. Guajardo asks whether an emergency evacuation plan has been devised for the local Texas Department of Criminal Justice (TDCJ) state prison (William P. Clements Unit) and its residents.

RESPONSE 3:

Any emergency evacuation plans devised for TDCJ facilities and its residents fall within the authority of TDCJ and not TCEQ. Any questions on this subject should be directed to the administrators of that specific TDCJ facility.

COMMENT 4:

Mr. Guajardo requests that the TCEQ also notify various other organizations of its findings on Pantex.

RESPONSE 4:

Notice of the Pantex permit was provided in accordance with TCEQ rules at 30 TAC Chapter 39. Public notice was published in multiple newspapers with wide circulation in the area where the facility is located. The NORI was published on August 5, 2010 in the *Amarillo Globe News* and in the *Panhandle Herald*. The NAPD was published on June 23, 2011 in the *Amarillo Globe News* and in the *Panhandle Herald/White Deer News*. The permit application, ED's preliminary decision, and draft permit were made available for viewing and copying at the Carson County Library, 401 Main Street, Panhandle, Texas.

TCEQ does not provide notification to individuals or organization, unless required by law or at the request by an authorized representative of an interested individual or organization. Mr. Guajardo has not demonstrated that he is an authorized representative of any of the organizations he request to be notified. Therefore, no additional notices will be provided to the various organizations listed by Mr. Guajardo absent a request from an authorized representative of any of those groups.

COMMENT 5:

Mr. Guajardo comments that it is TCEQ's job to protect the health and well being of the residents of the City of Amarillo, Potter, and Randall Counties.

RESPONSE 5:

The mission of the TCEQ is to protect our state's human and natural resources consistent with sustainable economic development. TCEQ's goal is clean air, clean water, and the safe management of waste. To accomplish the mission, TCEQ: 1) bases decisions on the law, common sense, good science, and fiscal responsibility; 2) ensures that regulations are necessary, effective, and current; 3) applies regulations clearly and consistently; 4) ensures consistent, just, and timely enforcement when environmental laws are violated; 5) ensure meaningful public participation in the decision-making process; and 6) promotes and fosters voluntary compliance with environmental laws and provide flexibility in achieving environmental goals.

The effluent limitations and other regulatory requirements proposed in the draft permit are consistent with applicable agency rules, regulations, and policies that have been developed and implemented to be protective of human health and the environment.

COMMENT 6:

Mr. Guajardo comments that he has a health condition that was not bad until he got to this State Prison unit. He states that he has demanded and repeatedly requested to be transferred out of this State prison or released on parole for years. Mr. Guajardo also comments that his health and mentality has been adversely affected by Pantex and the TDCJ State Prison System.

RESPONSE 6:

The effluent limitations in the draft permit and in previous versions of this permit were established to be protective of human health and the environment. Those limitations are as follows:

<u>Outfall Number</u>	<u>Pollutant</u>	<u>Daily Average</u>	<u>Daily Maximum</u>
001	Flow (MGD)	0.56 MGD	0.82 MGD
	Biochemical Oxygen Demand (5-day)	30 mg/l	70 mg/l
	Chemical Oxygen Demand	N/A	150 mg/l
	Total Suspended Solids	60 mg/l	90 mg/l
	Oil and Grease	N/A	15 mg/l
	Copper (total)	0.5 mg/l	1.0 mg/l
	Manganese (total)	1.0 mg/l	2.0 mg/l
	Zinc (total)	1.0 mg/l	2.0 mg/l
	HMX	0.1 mg/l	Report (mg/l)
	RDX	0.2 mg/l	Report (mg/l)
	PETN	0.4 mg/l	Report (mg/l)
	TNT	0.02 mg/l	Report (mg/l)
	pH	6.0 SU (min)	10.0 SU
	Total Residual Chlorine (*1)	1.0 mg/l (min)	4.0 mg/l

(*1) The domestic sewage effluent shall 1) have a minimum residence time in the treatment system of 21 days before discharge via Outfall 001; or 2) contain a chlorine residual of at least 1.0 mg/l and a maximum chlorine residual of 4.0 mg/l after a detention time of at least 20 minutes (based on peak flow).

Additionally, the following considerations went into the selection of and continuance of specific effluent limitations:

- * Effluent limitations for biochemical oxygen demand (5-day) and total suspended solids are continued from the current permit and were previously based on best professional judgment (BPJ) to establish technology-based limitations.
- * Effluent limitations for chemical oxygen demand, oil and grease, and pH were previously based on the effluent limitations TCEQ typically imposes on industrial wastewaters and were established as BPJ technology-based limitations.
- * Effluent limitation and monitoring requirement for total residual chlorine were continued from the current permit and based on disinfection requirements for treated sanitary wastewater. These limitations and monitoring requirements are only required when the permittee cannot maintain a minimum residence time in the treatment system of 21 days before discharge via Outfall 001. The 21 days residence time requirement is based on TCEQ rule 30 TAC 309.3(g)(5).
- * Effluent limitations and monitoring requirements for total copper, total manganese, and total zinc at Outfall 001 are based on 30 TAC 319.22.
- * Effluent limitations and monitoring requirements for HMX, RDX, PETN, and TNT are continued from the current permit and were established as BPJ technology-based limitations.

TCEQ has no statutory authority with regards to incarceration assignments for inmates or the granting of paroles. Any requests for a transfer to another prison facility should be directed to the Texas Department of Criminal Justice, Classifications, and Records Department at (936) 437-6231. Any questions regarding a prisoner's review status can be directed to the Texas Board of Pardons and Paroles status line at (936) 291-2106.

The Texas Department of Criminal Justice is responsible for ensuring that proper medical, dental and mental health care is provided to the prisoners in their custody. The Patient Liaison Family/Public Hotline number, 936-437-4271, is available for family members and the public to inquire about an incarcerated offender's health care.

COMMENT 7:

Mr. Guajardo asks if a study has been done to assess the public health risks from the Pantex facility and stated that he has a right to know if there is any risk to his health from the Pantex facility. Mr. Guajardo requested that TCEQ provide a bilingual response.

RESPONSE 7:

Pantex was not required to submit any health studies as part of its application, nor is the Executive Director aware of any such study. The wastewater effluent limitations and other regulatory requirements proposed in the draft permit are consistent with applicable agency rules, regulations, and policies that have been developed and are implemented to be protective of human health and the environment.

TCEQ's rules require some public notices to be published in an alternative language if certain conditions are met.¹ However, the wastewater permitting rules do not require any other correspondence from the TCEQ relating to a permit application to be in an alternative language.

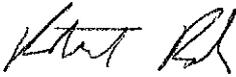
No changes were made to the draft permit in response to comments.

Respectfully submitted,

Texas Commission on Environmental Quality

Mark R. Vickery, P. G.
Executive Director

Robert Martinez, Director
Environmental Law Division

By: 
Robert Brush, Staff Attorney
Environmental Law Division
P.O. Box 13087, MC 173
Austin, Texas 78711-3087
(512) 239-5600

REPRESENTING THE
EXECUTIVE DIRECTOR OF THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY

¹ See 30 TAC § 39.405(h)

CERTIFICATE OF SERVICE

I hereby certify that on this October 11, 2011, the original of the "Executive Director's Response to Comments" on United States Department of Energy and BWXT Pantex, L.L.C., application for TCEQ Permit No. WQ0002296000 was filed with the Chief Clerk, Texas Commission on Environmental Quality, Austin, Texas.



Robert Brush, Staff Attorney
Environmental Law Division
Texas Commission on Environmental Quality