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Richard A. Hyde, P.E., *Executive Director*



*Vic McWherter, Public Interest Counsel*

## TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

*Protecting Texas by Reducing and Preventing Pollution*

February 9, 2015

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

**RE: UNITED STATES DEPARTMENT OF THE NAVY  
TCEQ DOCKET NO. 2014-1673-IWD**

Dear Ms. Bohac:

Enclosed for filing is the Office of Public Interest Counsel's Response to Request for Hearing in the above-entitled matter.

Sincerely,

A handwritten signature in black ink that reads "Pranjal".

Pranjal M. Mehta, Attorney  
Assistant Public Interest Counsel

cc: Mailing List

Enclosure

**TCEQ DOCKET NO. 2014-1673-IWD**

**IN THE MATTER  
OF THE APPLICATION OF  
UNITED STATES DEPARTMENT  
OF THE NAVY FOR RENEWAL  
OF TPDES PERMIT  
NO. WQ0002335000**

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§

**BEFORE THE  
TEXAS COMMISSION ON  
ENVIRONMENTAL QUALITY**

**THE OFFICE OF PUBLIC INTEREST COUNSEL'S RESPONSE  
TO REQUEST FOR HEARING**

TO THE HONORABLE MEMBERS OF THE TEXAS COMMISSION ON  
ENVIRONMENTAL QUALITY:

The Office of Public Interest Counsel (OPIC) of the Texas Commission on Environmental Quality (Commission or TCEQ) files this Response to Request for Hearing in the above-referenced matter and respectfully submits the following.

**I. INTRODUCTION**

**A. Background of Facility**

United States Department of the Navy (Applicant) has applied to the TCEQ for a renewal of Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0002335000 for its existing Naval Weapons Industrial Reserve Plant (Plant) in Coryell County. This plant formerly manufactured solid-propellant rocket motors. The manufacturing operations ceased in 1995. The wastewater system consists of a groundwater recovery and treatment system. Wastewater discharge is related to the treatment of contaminated groundwater per the requirements of TCEQ Post Closure Order No. 30056. The draft permit authorizes the discharge of treated groundwater from Area M and other groundwater on an intermittent and flow variable basis via Outfall 001.

The draft permit continues the existing permit monitoring requirement for flow. In place of flow limitations, mass-based effluent limitations are included in the permit for perchlorate. Mass-based and concentration-based limitations will provide the same level of protection as restricting the

flow and include concentration-based perchlorate limitations, but allow greater flexibility in managing effluent during rainfall events.

The Plant site is located at 1701 Bluebonnet Parkway, just west of State Highway 317, bounded on the south by Farm-to-Market Road 2671 and on the north by the St. Louis Southwestern Railway, southwest of the City of McGregor, in Coryell County, Texas. Outfall 001 discharge into the unnamed tributary of Station Creek, then to Station Creek; then to the Leon River Below Proctor Lake in Segment No. 1221 of the Brazos River Basin. The unclassified receiving waters have minimal aquatic life use for the unnamed tributary of Station Creek and intermediate aquatic life use for Station Creek. The designated uses for Segment No. 1221 are high aquatic life use, primary contact recreation, and public water supply.

#### **B. Procedural Background**

TCEQ received Applicant's application on September 9, 2013. On October 23, 2013, the Executive Director (ED) declared the application administratively complete. The Notice of Receipt and Intent to Obtain a Water Quality Permit (NORI) was published in English on November 14, 2013 in McClennan County in *The McGregor Mirror*, and on November 27, 2013 in Coryell County in *The Gatesville Messenger*. The ED completed the technical review of the application and prepared a draft permit. The Notice of Application and Preliminary Decision for a Water Quality Permit (NAPD) was published on March 26, 2014 in *The Gatesville Messenger*, in Coryell County, Texas. The NAPD was also published on March 27, 2014 in the *McGregor Mirror*, McClennan County, Texas. The Combined NORI/NAPD was published in Spanish on August 20, 2014 in *The Tiempo*, in McLennan County, Texas and Coryell County, Texas. The public comment period for this application ended on September 19, 2014. On October 2, 2014, the ED filed his decision and Response to Comments, which the Chief Clerk's office mailed on October 6, 2014. The deadline to request a contested case hearing was November 5, 2014.

TCEQ received timely comments and a request for a contested case hearing from Mr. Tim Fegette (Requester) on November 15, 2013. OPIC recommends denying the hearing request.

## II. APPLICABLE LAW

This application was declared administratively complete on October 23, 2013. Because the application was declared administratively complete after September 1, 1999, a person may request a contested case hearing on the application pursuant to the requirements of House Bill 801, Act of May 30, 1999, 76th Leg., R.S., § 5 (codified at TEX. WATER CODE (TWC) § 5.556).

Under the applicable statutory and regulatory requirements, a hearing request must substantially comply with the following: give the name, address, daytime telephone number, and, where possible, fax number of the person who files the request; identify the requestor's personal justiciable interest affected by the application showing why the requestor is an "affected person" who may be adversely affected by the proposed facility or activity in a manner not common to members of the general public; request a contested case hearing; list all relevant and material disputed issues of fact that were raised during the comment period that are the basis of the hearing request; and provide any other information specified in the public notice of the application. 30 TEX. ADMIN. CODE (TAC) § 55.201(d).

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." 30 TAC § 55.203(a). This justiciable interest does not include an interest common to the general public. *Id.* Governmental entities with authority under state law over issues contemplated by the application may be considered affected persons. 30 TAC § 55.203(b). Relevant factors considered in determining whether a person is affected include:

- (1) whether the interest claimed is one protected by the law under which the application will be considered;
- (2) distance restrictions or other limitations imposed by law on the affected interest;
- (3) whether a reasonable relationship exists between the interest claimed and the activity regulated;
- (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; and
- (6) for governmental entities, their statutory authority over or interest in the issues relevant to the application.

30 TAC § 55.203(c).

Further, a group or association may request a contested case hearing if:

- (1) one or more members of the group or association would otherwise have standing to request a hearing in their own right;
- (2) the interests the group or association seeks to protect are germane to the organization's purpose; and
- (3) neither the claim asserted nor the relief requested requires the participation of the individual members in the case.

30 TAC § 55.205(a). The ED, OPIC, or applicant may request the group or association provide an explanation of how the group or association meets these requirements. 30 TAC § 55.205(b).

The Commission shall grant an affected person's timely filed hearing request if: (1) the request is made pursuant to a right to hearing authorized by law; and (2) the request raises disputed issues of fact that were raised during the comment period and that are relevant and material to the Commission's decision on the application. 30 TAC § 55.211(c).

Accordingly, responses to hearing requests must specifically address:

- (1) whether the requestor is an affected person;
- (2) which issues raised in the hearing request are disputed;
- (3) whether the dispute involves questions of fact or of law;
- (4) whether the issues were raised during the public comment period;
- (5) whether the hearing request is based on issues raised solely in a public comment withdrawn by the commenter in writing by filing a withdrawal letter with the Chief Clerk prior to the filing of the Executive Director's Response to Comment;

- (6) whether the issues are relevant and material to the decision on the application;  
and
- (7) a maximum expected duration for the contested case hearing.

30 TAC § 55.209(e).

There is no right to a contested case hearing for an application under TWC Chapter 26 to renew or amend a permit if:

- (A) the applicant is not applying to:
  - (i) increase significantly the quantity of waste authorized to be discharged; or
  - (ii) change materially the pattern or place of discharge;
- (B) the activity to be authorized by the renewal or amended permit will maintain or improve the quality of waste authorized to be discharged;
- (C) any required opportunity for public meeting has been given;
- (D) consultation and response to all timely received and significant public comment has been given; and
- (E) the applicant's compliance history for the previous five years raises no issues regarding the applicant's ability to comply with a material term of the permit.

30 TAC § 55.201(i)(5).

### **III. DISCUSSION**

#### **A. Right to Hearing**

Because this application is for a permit renewal under TWC Chapter 26, the hearing request must be evaluated to determine if there is a right to a hearing under 30 TAC § 55.201(i)(5). Based on these requirements, OPIC concludes that there is no right to a contested case hearing in this matter.

Applicant is not applying to increase the quantity of waste to be discharged or the pattern or place of discharge. 30 TAC § 55.201(i)(5)(A). Further, it appears that the standards and criteria in the renewed permit will maintain the quality of waste to be discharged. 30 TAC § 55.201(i)(5)(B). Requester has not contended that any changes have been made to the permit which would trigger a right to hearing under the applicable law. OPIC cannot find that the draft

permit changes the Plant's operation in a manner that increases the quantity of waste being discharged, or materially changes the pattern or place of discharge.

OPIC is satisfied that the public comments in this matter were processed in accordance to TCEQ rules. 30 TAC § 55.201(i)(5)(D). The ED filed a Response to Comments on October 2, 2014. In the Response to Comments, the ED stated that a hearing request must meet several requirements pursuant to 30 TAC § 55.201(d). In the Response to Comments, the ED also explained applicable statutory and regulatory requirements under 30 TAC § 55.201(d).

Finally, Applicant's compliance history for the previous five years raises no issues regarding its ability to comply with a material term of the permit. 30 TAC § 55.201(i)(5)(E). The Commission rated the Applicant as "satisfactory" performer and the Plant as "high" performer in their compliance history classifications developed under the criteria established by the Commission rules. Therefore Applicant's compliance history does not cause OPIC to question Applicant's ability to comply with a material term of the permit. Accordingly, OPIC concludes there is no right to a contested case hearing pursuant to 30 TAC § 55.201(i)(5).

#### **B. Determination of Affected Person Status**

Requester has failed to show that he meets the requirements for affected person status under 30 TAC § 55.203(a). Requester must identify his personal justiciable interest affected by this renewal permit application, including a written statement explaining his location and distance relative to the Plant, and how and why he believes he will be adversely affected by the Plant in a manner not common to members of the general public. 30 TAC § 55.201(d)(2). Requester has mentioned in his hearing request that he is south of the Plant (On Station creek). However, his request does not provide his location and distance relative to the Plant. Requester's

hearing request also does not mention how and why he believes he will be adversely affected by the Plant in a manner not common to members of the general public. Accordingly, Requester's hearing request does not comply with 30 TAC § 55.201(d). Therefore, even if the Commission were to determine that a right to hearing exists, OPIC finds that Requester failed to meet the requirements for establishing affected person status.

#### IV. CONCLUSION

For the reasons stated above, OPIC recommends denying the hearing request.

Respectfully submitted,

Vic McWherter  
Public Interest Counsel

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**CERTIFICATE OF SERVICE**

I hereby certify that on February 9, 2015 the original and seven true and correct copies of the Office of Public Interest Counsel's Response to Request for Hearing was filed with the Chief Clerk of the TCEQ and a copy was served to all persons listed on the attached mailing list via hand delivery, facsimile transmission, Inter-Agency Mail, electronic mail, or by deposit in the U.S. Mail.



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Pranjal M. Mehta

**MAILING LIST**  
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**TCEQ DOCKET NO. 2014-1673-IWD**

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FOR ALTERNATIVE DISPUTE

RESOLUTION:

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