

Texas Commission on Environmental Quality
INTEROFFICE MEMORANDUM

TEXAS
COMMISSION
ON ENVIRONMENTAL
QUALITY

TO: LaDonna Castenuela, Chief Clerk

DATE: June 17, 2008

2008 JUN 24 PM 4:07

CHIEF CLERKS OFFICE

ATTN: Melissa Chao, Agenda Team Leader

THRU: Guy Henry, Senior Attorney, Waste Section
Environmental Law Division

FROM: Susan Jere White, Staff Attorney
Dawn Burton, Staff Attorney
Waste Section, Environmental Law Division

SUBJECT: Transmittal of **Response Letter to Commenter** on Post-closure Order (PCO) for U.S. Steel Tubular Products, Inc. (formerly Lone Star Steel Company), Morris County, Texas
Docket No. 2006-0349-IHW
Post-closure Order No. 30093

Transmitted herewith for filing with the Texas Commission on Environmental Quality is a copy of a **Response Letter to Commenter** Donnie Turner related to the proposed Post-closure Order (PCO) for consideration of issuance to U.S. Steel Tubular Products (formerly Lone Star Steel Company) (Applicant) pursuant to the authority vested in the Texas Commission on Environmental Quality ("the Commission" or "TCEQ") under TEX. HEALTH & SAFETY CODE, §361.082(h) and TEX. WATER CODE, §7.031(f).

The PCO Applicant timely completed applicable notice requirements of 30 TAC §§39.801-39.810. No adverse comments were received during the 30-day public comment period on the proposed PCO. Therefore, the Executive Director is not required to file a Response-to-Comments document under 30 TAC §55.156. However, Mr. Donnie Turner sent a comment letter and hearing request six months after the close of the comment period for the PCO. The Executive Director responded to Mr. Turner's waste-related concerns in a Response Letter (copy attached).

Accordingly, the Executive Director requests this Response Letter to Commenter be added to the Signed PCO Back up materials transmitted to the Office of the Chief Clerk's on March 25, 2008 and that the PCO be set on Commission agenda.

PCOs are not subject to requests for hearing from members of the general public nor subject to requests for reconsideration of the Executive Director's Preliminary Decision. See § 80.109.

After the Commission makes a final decision on this matter, the PCO is subject to a Motion for Rehearing pursuant to §80.272. Only the Applicant, the Executive Director, or the Public Interest Counsel may file a Motion for Rehearing on a PCO pursuant to §80.272(b). However, any person affected by a final order of the Commission may file a petition for judicial review within 30 days after the order is final and appealable in accordance with §80.275(a).

Guy Henry, Senior Attorney

Attachments

cc: Mr. Blas J. Coy, Jr., Public Interest Counsel
Mr. James C. Morriss III, Thompson & Knight, LLP
Ms. Leah Cooper, U.S. Steel Tubular Products, Inc.

bcc: Ms. Susan Jere White, Staff Attorney, Waste Section, Environmental Law Div.
Ms. Dawn Burton, Staff Attorney, Waste Section, Environmental Law Div.
Ms. Gary Beyer, Remediation Division
Mr. Enoch Johnbull, I&HW Permits Section
Ms. Katherine Nelson, I&HW Permits Section

Buddy Garcia, *Chairman*
Larry R. Soward, *Commissioner*
Bryan W. Shaw, Ph.D., *Commissioner*
Glenn Shankle, *Executive Director*



TEXAS
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2008 JUN 24 PM 4:08

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

CHIEF CLERKS OFFICE

Protecting Texas by Reducing and Preventing Pollution

April 23, 2008

Mr. Donnie O. Turner
P.O. Box 56159
Riverside, CA 92517

Re: Response to Comment Letter
U. S. Steel Tubular Products, Inc. (formerly Lone Star Steel, LLC)
Application for Post-closure Order
POST-CLOSURE ORDER NO. 30093
DOCKET NO. 2006-0349-IHW

Dear Mr. Turner:

The Executive Director of the Texas Commission on Environmental Quality (TCEQ) received your comment letter dated December 14, 2007 related to Lone Star Steel Company (Applicant) of Lone Star, Morris County, Texas. In the letter, you request a contested case hearing on applications for both an air permit renewal and a post-closure order (PCO) filed by the Applicant, which became U. S. Steel Tubular Products, Inc. (USSTP) on January 1, 2008.

Your comment letter is timely as far as the air permit renewal and, accordingly, you will soon receive a formal response to your air quality comments. However, your letter was not timely as far as the PCO. The comment period for the PCO ended July 15, 2007. Although your letter was not received during the comment period for the PCO, the Executive Director is pleased to provide you with an informal response to your four comments about waste-related matters.

By way of background, the USSTP facility conducted on-site waste disposal as part of its steel manufacturing operations. Wastes were disposed in two landfills authorized by registration under the Resource Conservation and Recovery Act (RCRA) program and subsequently closed as part of the Land Ban restrictions limiting the types of wastes that may be applied to the land. USSTP's compliance history dated March 2008 shows no waste-related violations. No complaints have been filed with TCEQ's Region Office in Tyler regarding this facility over the past 5 years. The last RCRA inspection of this facility by TCEQ was March 2003.

A. As to your first comment, the Executive Director inquired into the allegations of illegal waste dumping by USSTP, which at the time was Lone Star Steel (LSS). You provided no date when this incident or incidents occurred. TCEQ Regional investigators reviewed a number of documents related to a complaint alleging the same violations you filed in 2004 with the Environmental Protection Agency (EPA), including: EPA memos regarding its investigation into the allegations; closure reports from LSS related to waste handling practices at units, including maps of the area in question; an EPA Investigation Worksheet evaluating LSS's waste management units; and a final assessment memo from the Criminal Investigation Division (CID) at the EPA Washington office.

Based on topographical maps and LSS's identification as to the location of your property, Region Office investigators believe that the site of LSS's disposal of wastes was not on your property but rather just east of your property on LSS property. Historically, LSS had disposed of two different waste streams on LSS property near your property. LSS's landfills were properly registered with TCEQ. LSS had "clean closed" one of the landfills (Unit 07A) in the late 1980's by removing all waste materials (i.e., sludges generated by the air pollution control device). Under a closure plan approved by TCEQ, the removed wastes were consolidated with material in the other landfill (Unit 07B) and then topped with an engineered clay cap and vegetation. At the same time, LSS also closed its acid pits (Unit 04) by neutralizing the dilute sulfuric acid, solidifying the liquids into solids, and then constructing an engineered clay cap over the pits consisting of three feet of compacted clay, one foot of topsoil, and vegetation to prevent erosion. In 1991, LSS submitted its closure plans for the three units and began post-closure monitoring of the three areas consistent with TCEQ's Chapter 335 rules. In 1996 TCEQ approved closure of these units. The 1996 report from LSS demonstrated that there had been no release to the groundwater from either landfill. TCEQ authorized discontinuation of groundwater monitoring of Unit 07B. Monitoring of Units 07A continues to show no release to groundwater. These units have been deed recorded as closed in county records.

To date, LSS continues its groundwater monitoring of this so-called Northern Waste Management Area. The results are submitted to TCEQ annually and were reviewed by Mr. Chris Siegel, a chemical engineer in the Remediation Division. Mr. Siegel indicated that the groundwater flow in the subject area is to the northeast, which would be away from your property. Therefore, the Executive Director has concluded that these waste units should have no adverse impact on your property.

The Executive Director's position is supported by an EPA investigation conducted in 2004 in response to your allegations of illegal dumping of hazardous chemicals by LSS. EPA investigator Keith Phillips reviewed the closure plans approved by TCEQ for the waste landfills and the pits referenced by you. The investigator concludes: "Based on the investigation to date, no further action is warranted. This lead is closed." By memo dated December 8, 2004, EPA Washington CID reviewed the report by EPA's investigator and also concluded that no further action is warranted and closed the case.

B. The Executive Director agrees with your second comment about the public having a right to be informed about industrial chemicals at a facility such as USSTP. This facility is subject to state and federal statutory requirements for reporting quantities and types of hazardous chemicals kept at the site. Title 30 Texas Administrative Code (TAC) Chapter 370 of the Texas Health and Safety Code authorizes the State of Texas to administer Section 313 of the federal Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA). TCEQ staff in the Emissions Assessment section of the Air Quality Division receives USSTP's annual Toxic Release Inventory (TRI) reports filed in compliance with EPCRA and makes the reports available to the public. In addition, Chapter 505 of the Texas Health and Safety Code authorizes the Texas State Health and Human Services Commission to administer the EPCRA Section 312 program for emergency planning. Under this program, USSTP must submit annual Texas Tier Two Chemical Description reports which are available for public review.

C. As to your request for a contested case hearing, the issue of waste dumping which alleged occurred within the last 5 years would be relevant and material to USSTP's compliance history for the post-closure order matter. Also, the units in question are part of the PCO, which requires USSTP to continue post-closure monitoring and maintenance of all solid waste management units at the facility, including those units of concern to Mr. Turner.

However, TCEQ rules do not provide private citizens an opportunity for a contested case hearing on post-closure orders. Title 30 TAC Section 80.109(b)(11) limits the parties to a contested case hearing on a post-closure order to the executive director, applicant, and Office of Public Interest Counsel. TCEQ rules allow the public the opportunity to comment on the proposed post-closure order itself, which you chose not to do and instead raised illegal dumping allegations which has been investigated by EPA. You also did not recommend any changes to the proposed PCO nor recommend denial of issuance of the PCO. Accordingly, the Executive Director has made no changes to the proposed PCO in response to public comment.

D. TCEQ rules do not provide for appointment and payment of an attorney to assist a private citizen in a contested case hearing.

In summary, EPA fully investigated the allegations related to hazardous waste management and found no merits to your claims. The Executive Director reviewed the record related to these allegations and agrees with EPA's conclusions. Issuance of the PCO is in the best interests of all parties, as well as the general public, because the PCO mandates strict schedules for inspection of the units and reporting of any releases from the units.

If you have any questions regarding this matter, you may contact Susan Jere White, Staff Attorney, Environmental Law Division at 512/239-0454 or me at 512/239-6259.

Sincerely,

A handwritten signature in cursive script, appearing to read "Guy Henry".

Guy Henry,
Senior Attorney,
Waste Section
Environmental Law Division

cc: Blas Coy, Public Interest Counsel, TCEQ MC 103
Michael Brashear, Waste Section Manager, Tyler Regional Office, MC R-5