

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



TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

November 3, 2008

LaDonna Castañuela
TCEQ Office of Chief Clerk
MC-105
P.O. Box 13087
Austin, Texas 78711-3087

RE: City of Aledo
TCEQ Docket No. 2007-0020-MWD

Dear Ms. Castañuela

Enclosed for filing is the Executive Director's Reply to Motion for Rehearing in the above-entitled matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Christiaan Siano".

Christiaan Siano, Staff Attorney
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Cc: Mailing list

Enclosure

TEXAS
COMMISSION
ON ENVIRONMENTAL
QUALITY
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CHIEF CLERKS OFFICE

MAILING LIST

City of Aledo
TPDES Permit No. WQ0010847001
TCEQ DOCKET NO. 2007-0020-MWD

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FOR THE PROTESTANT:

Martin O. Siegmund
10 Taylor Court
Aledo, Texas 76008-4438

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TCEQ Docket No. 2007-0020-MWD

**APPLICATION BY
CITY OF ALEDO
FOR PERMIT No. WQ0010847001**

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**BEFORE THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY**

CHIEF CLERKS OFFICE

**EXECUTIVE DIRECTOR'S
REPLY TO MOTION FOR REHEARING**

TO THE HONORABLE COMMISSIONERS:

The Executive Director (ED) of the Texas Commission on Environmental Quality (the Commission or TCEQ) files this Reply to Mr. Martin O. Siegmund's Motion for Rehearing for the Commission's order approving the City of Aledo's discharge permit application. For the reasons described below, the ED respectfully requests that the Commission grant the Motion for Rehearing.

A. Find of Fact No. 19

Mr. Siegmund points out that the Commission's Finding of Fact No. 19 in the Commission's order approving the wastewater permit, dated September 30, 2008, is in error. This Fact was correct at the time the ALJ wrote her PFD, and at the time of the Agenda. However, at the Commission's September 24, 2008 Agenda, the ED offered two replacement pages, one of which sets out the Other Requirements. As OPIC correctly points out in its Reply to Motion for Rehearing, dated October 30, 2008, the *original draft* permit required evidence of legal restriction prohibiting structures within the part of the buffer zone the City does not own, in accordance with 30 TAC §309.13(e)(3). The replacement page changed this to reflect the reality that the City could not obtain the legal restrictions and required specific odor prevention requirements. Including the ED's replacement page 23 in the final permit renders Finding of Fact No. 19 inconsistent with the final permit. The ED recommends that the Commission's order be corrected by removing Finding of Fact No. 19 so that the order will correspond to the action taken at the September 24 Agenda.

B. Finding of Fact No. 21

Mr. Siegmund also points to the Commission's Finding of Fact No. 21. The finding that "The nearest residence to the facility is about 1,000 to 1,200 feet away," was the subject of the Executive Director's Exceptions to the June 12, 2008 Proposal for Decision (PFD). The ED's Exceptions pointed out that this was a misstatement and requested that this Finding of Fact be deleted. The ALJ concurred and issued an Amended Proposal For Decision and Amended Order, dated August 7, 2008, in which the Finding of Fact No. 21, as it previously existed, and as it erroneously exists in the Commission's Order, was deleted. The ALJ's cover-letter to the August 7, 2008, PFD states "In the Amended Order, Finding of Fact No. 21 has been deleted because it was incorrect."

The ED recommends that the Commission's order be revised to comply with the action taken at Agenda. At the September 24, 2008 Agenda, the Commission unanimously adopted "the ALJ's PFD and Amended Order." The PFD and Amended Order at the time of that Agenda did not include the finding that the nearest residence is 1,000 to 1,200 feet away. Accordingly, the Commission should issue a revised order that conforms to the action already taken.

Executive Director's Recommendation

The Executive Director recommends granting the Motion for Rehearing for the limited purpose of correcting the Findings of Fact, namely:

- Adopt language for Finding of Fact No. 19, as proposed in OPIC's October 30, 2008 "Reply to Motion for Rehearing," and
- Delete Finding of Fact No. 21

Respectfully submitted,

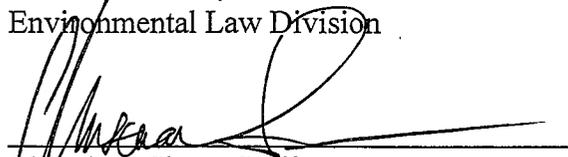
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY

Mark R. Vickery, R. G., Executive Director

Stephanie Bergeron Perdue, Deputy Director

Office of Legal Services

Robert Martinez, Director
Environmental Law Division



Christiaan Siano, Staff Attorney
Environmental Law Division
State Bar No. 24051335

REPRESENTING THE EXECUTIVE DIRECTOR
OF THE TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY

CERTIFICATE OF SERVICE

I certify that on November 3, 2008, the original and seven copies of the "Executive Director's Reply to Motion for Rehearing" for Permit No. WQ0010847001, were filed with the Texas Commission on Environmental Quality's Office of the Chief Clerk, and a complete copy was served to all persons listed on the attached mailing list via hand delivery, facsimile transmission, inter-agency mail, or by deposit in the U.S. mail.



Christiaan Siano, Staff Attorney
Environmental Law Division
State Bar No. 24051335

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