

Buddy Garcia, *Chairman*  
Larry R. Soward, *Commissioner*  
Bryan W. Shaw, Ph.D., *Commissioner*



Blas J. Coy, Jr., *Public Interest Counsel*

## TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

*Protecting Texas by Reducing and Preventing Pollution*

October 30, 2008

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

TEXAS  
COMMISSION  
ON ENVIRONMENTAL  
QUALITY  
2008 OCT 30 PM 2:53  
CHIEF CLERKS OFFICE

Re: **CITY OF ALEDO**  
**TCEQ DOCKET NO. 2007-0020-MWD**

Dear Ms. Castañuela:

Enclosed for filing is the Public Interest Counsel's Reply to Motion for Rehearing in the above-entitled matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Garrett Arthur".

Garrett Arthur, Attorney  
Assistant Public Interest Counsel

cc: Mailing List

Enclosure

REPLY TO: PUBLIC INTEREST COUNSEL, MC 103 • P.O. BOX 13087 • AUSTIN, TEXAS 78711-3087 • 512-239-6363

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TCEQ DOCKET NO. 2007-0020-MWD

2008 OCT 30 PM 2: 53

APPLICATION BY CITY OF ALEDO  
TO AMEND TPDES PERMIT NO.  
WQ0010847001

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§  
§

BEFORE THE TEXAS  
COMMISSION ON CHIEF CLERKS OFFICE  
ENVIRONMENTAL QUALITY

OFFICE OF PUBLIC INTEREST COUNSEL'S  
REPLY TO MOTION FOR REHEARING

**To the members of the Texas Commission on Environmental Quality:**

The Office of the Public Interest Counsel (OPIC) files this reply to the motion for rehearing submitted by Protestant Martin Siegmund.

**I. Background**

On September 30, 2008, the agency mailed the Commission's final order regarding the City of Aledo's application to amend Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0010847001. The Commission's order approved Aledo's application and issued the permit. On October 23, 2008, Martin Siegmund filed a motion for rehearing. For the reasons stated herein, OPIC recommends that the motion be granted.

**II. Discussion**

Mr. Siegmund's motion refers specifically to two findings of fact (Findings of Fact 19 and 21) contained in the Commission's order. Due to errors involving Findings of Fact 19 and 21, OPIC recommends the Commission grant this motion for rehearing.

**Finding of Fact 19**

Finding of Fact 19 from the Commission's order states:

The Draft Permit requires that, before construction of the final phase, the City must submit sufficient evidence of legal restrictions prohibiting residential structures within the part of the buffer zone that the City does not own, in accordance with 30 TAC § 309.13(e)(3).

However, the permit attached to the Commission's order does not contain the requirement stated in Finding of Fact 19. A previous version of the draft permit did contain the requirement and citation stated in Finding of Fact 19, but the permit issued with the Commission's order no longer contains the requirement and citation referenced by Finding of Fact 19. Instead, Other Requirement No. 5 from the issued permit states:

Prior to construction of the final phase, the permittee shall submit a nuisance odor prevention request for approval by the executive director in care of the TCEQ Wastewater Permitting Section (MC 148). The request for nuisance odor prevention shall be in the form of an engineering report, prepared and sealed by a licensed professional engineer, in support of the request *according to the requirements of 30 TAC § 309.13(e)(2)*. (emphasis added)

Other Requirement No. 5 is found on page 23 of the permit, and during the Commission's consideration of this matter at the September 24, 2008 Agenda, the Executive Director (ED) provided the Commission with a replacement page 23. Previously, Other Requirement No. 4 on page 23 of the draft permit contained a reference to 30 TAC § 309.13(e)(3) and stated a requirement that tracked this subsection. In the ED's replacement page 23, Other Requirement No. 4 was split into Other Requirement Nos. 4 and 5, and the requirement tracking 30 TAC §309.13(e)(3), along with the reference to that subsection, was deleted. It appears that the changed language on page 23 of the permit caused the previously accurate Finding of Fact 19 to become inaccurate.

#### **Finding of Fact 21**

In the Commission's order, Finding of Fact 21 states:

The nearest residence to the facility is about 1,000 to 1,200 feet away. The homes are to the south of the plant.

This finding of fact is incorrect, and Mr. Siegmund points out the inaccuracy in his motion. The original Proposal for Decision (PFD) included this finding, but in response to an exception from

the ED, the finding was deleted from the amended PFD. The Commission's order, however, includes Finding of Fact 21. It appears the inclusion of this finding was a mistake, and the finding should be removed.

### III. Conclusion

OPIC respectfully recommends that Mr. Siegmund's motion be granted for the limited purpose of correcting the errors contained in the Commission's order. This recommendation is based solely on the errors involving Findings of Fact 19 and 21.

Regarding Finding of Fact 19, OPIC recommends that the Commission amend this finding to read as follows:

The Permit requires that, prior to construction of the final phase, the City must submit a nuisance odor prevention request for approval by the ED, in accordance with 30 TAC § 309.13(e)(2).

Regarding Finding of Fact 21, OPIC recommends that the Commission delete this finding from its order.

Respectfully submitted,

Blas J. Coy, Jr.  
Public Interest Counsel

By   
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**CERTIFICATE OF SERVICE**

I hereby certify that on October 30, 2008, the original and seven true and correct copies of the foregoing document were filed with the TCEQ Chief Clerk, and copies were served to all parties listed on the attached mailing list via hand delivery, facsimile transmission, inter-agency mail, or by deposit in the U.S. Mail.



Garrett Arthur

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TCEQ DOCKET NO. 2007-0020-MWD**

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