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

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

September 17, 2007

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

2007 SEP 17 PM 4:42
CHIEF CLERKS OFFICE
TEXAS COMMISSION
ON ENVIRONMENTAL
QUALITY

Re: Application of Midtex Partners, Ltd., for Water Quality Permit No. 14472-001
TCEQ Docket No. 2005-1720-MWD
SOAH Docket No. 582-06-1581

Dear Ms. Castañuela:

Enclosed for filing in the above-referenced matter is the original and eleven copies of the Office of Public Interest Counsel's Reply to Exceptions.

Sincerely,

A handwritten signature in cursive script, appearing to read "Emily A. Collins".

Emily A. Collins, Attorney
Office of 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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SOAH DOCKET NO. 582-06-1581
TCEQ DOCKET NO. 2005-1720-MWD

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APPLICATION OF MIDTEX	§	BEFORE THE STATE OFFICE
PARTNERS, LTD., FOR WATER	§	CHIEF CLERKS OFFICE
QUALITY PERMIT NO. 14472-001,	§	OF
AUTHORIZING THE DISPOSAL OF	§	
TREATED DOMESTIC WASTEWATER	§	ADMINISTRATIVE HEARINGS

THE OFFICE OF PUBLIC INTEREST COUNSEL'S REPLY TO EXCEPTIONS

TO THE HONORABLE ADMINISTRATIVE LAW JUDGE:

COMES NOW, the Office of Public Interest Counsel (OPIC) of the Texas Commission on Environmental Quality (TCEQ or Commission), and submits the following Reply to Exceptions in the above-captioned matter and would respectfully show the following:

I. INTRODUCTION

The Administrative Law Judge (ALJ) issued a Proposal for Decision (PFD) on August 16, 2007, recommending denial of the proposed permit. While OPIC agrees that the permit should be denied based on regionalization and every water quality issue except clogging of the drip disposal system, OPIC provides this Reply to join in the City of Pflugerville's Exceptions to the PFD on the issue of whether the soil conditions are adequate for the proposed activities.

II. THE PFD'S ANALYSIS OF SOIL CONDITIONS FAILS TO ADDRESS SOIL PERMEABILITY IN THE CONTEXT OF HYDRAULIC LOADING LIMITS OF THE SOIL.

OPIC recognizes that the Commission referred two distinct issues (among several others) of (1) whether the soil conditions are adequate for the proposed activities, and (2) whether the application rate is excessive, and the ALJ addressed them as separate and distinct questions.

However, in keeping the issues separate and distinct, the ALJ failed to analyze the soil condition issue in the context of the irrigation site's hydraulic loading limits of the soil based on soil permeability. The two issues are interrelated and cannot be analyzed in isolation.

The ALJ addresses the adequacy of soil conditions through a comparison of soil permeability to the proposed application rate, which is a direct comparison of the 0.06 in/hr permeability of the on-site soils to the application rate of 0.1 gal/ft²/day. OPIC does not support the direct comparison of the application rate to the soil permeability. The soil permeability functions as part of an equation determining hydraulic loading limits based on permeability. The result of that equation yields an application rate that is adequate based on soil permeability.

The adequacy of the soil conditions depend on the proposed application rate in comparison to the result of the hydraulic limit application rate equation in the Metcalf & Eddy text.¹ Mr. Earl testified that the soils on the proposed disposal site are inadequate due to insufficient nitrogen removal and insufficient soil permeability testing to verify the adequacy of the proposed application rates.² The record contains extensive testimony on the subject of determining hydraulic loading rates based on the permeability of the soil, which involves the above-referenced equation in the Metcalf & Eddy text.³ Metcalf & Eddy recommend ultimately comparing the application rate based on nitrogen loading to the soil permeability limitation and

¹ Pflugerville Ex. S, WASTEWATER ENGINEERING: TREATMENT, DISPOSAL, REUSE (Metcalf & Eddy, 3d ed. 1991).

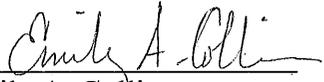
² City of Pflugerville Ex. 3, Earl Pre-filed Testimony at 15, lines 12-15; 17, lines 1-5. While Mr. Earl testified that a basin infiltration test should have been performed to determine actual soil permeability, rather than theoretical soil permeability, the only evidence on soil permeability (even if not preferable), is the Travis County Soil Survey, which shows the soil classifications on the Midtex site as having a 0.06 in/hr permeability.

³ Pflugerville Ex. 3, page 15, lines 12-15; Pflugerville Ex. S. Mr. Phelps testified that the Metcalf & Eddy text is considered an authority in the area of land application of effluent and wastewater systems. Tr. at 129, lines 1-5.

use the greater value as the hydraulic loading rate.⁴ OPIC extensively analyzed the hydraulic loading rate on the basis of soil permeability in our Closing Argument, pages 18-28, and will not repeat that analysis here. We do, however, join the City of Pflugerville in their exceptions on the soil conditions issue, and agree that the ALJ misapplied the permeability evidence in his comparison of the soil permeability number for the soil classification with the proposed application rate. OPIC supports using the permeability number in the Metcalf & Eddy equation to determine the hydraulic loading rate based on soil permeability, and then comparing the application rate that the equation finds as suitable for the soil conditions to the application rate proposed for the irrigation site.

Respectfully submitted,

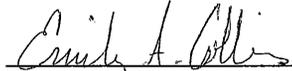
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⁴ Pflugerville Ex. S, page 959 (first sentence of last paragraph).

CERTIFICATE OF SERVICE

I hereby certify that on September 17, 2007, the original and eleven copies of the Office of the Public Interest Counsel's Reply to Exceptions 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 or by deposit in the U.S. Mail.



Emily A. Collins

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CHIEF CLERKS OFFICE

MAILING LIST
MIDTEX PARTNERS, LTD
SOAH DOCKET NO. 582-06-1581
TCEQ DOCKET NO. 2005-1720-MWD

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