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April 27, 2007

The Honorable Sharon Cloninger
Administrative Law Judge
State Office of Administrative Hearings
300 W. 15th Street, Suite 502
Austin, Texas 78701

Re: *Application of the City of Midlothian to Amend CCN No. 11706 and to Cancel CCN No. 11966 in Ellis County, Texas (TCEQ Docket No. 2005-2007 UCR, SOAH Docket No. 582-06-1029)*

Dear Judge Cloninger:

Wax-Mid, Inc. submits this letter to draw your attention to misstatements in yesterday's Replies to Wax-Mid's Special Exceptions, including the City's assertion that "the parties and ALJ determined that a hearing would last only one day" and the Executive Director's assertion that Wax-Mid was somehow obligated to request a court reporter before the hearing. Since these statements pertain to Wax-Mid's due process issue, it is important to cite the relevant part of the record.

Order No. 1, the scheduling order in this docket provided for a two-day hearing:

**November 28-29: Evidentiary hearing (two days), beginning at 9 a.m., at SOAH Hearing facilities in Austin, Texas-William P. Clements State Office Building, 4th Floor, 300 W. 15th St. (emphasis added).*

No subsequent order in this docket altered that setting. Order No. 8, the last order prior to the hearing (entered after Wax-Mid had withdrawn its request for a cease and desist order) confirmed the two day setting:

FINALLY, IT IS ORDERED that the hearing on the merits will convene on November 28, 2006, as scheduled.

Relying on these orders setting the hearing for more than one day, Wax-Mid, Inc. justifiably expected that a court reporter provided by the agency would be present as required by SOAH rules:

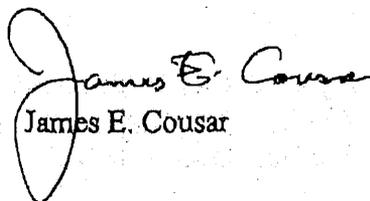
Unless otherwise ordered by the judge, the referring agency shall provide a court reporter for any proceeding in a docket set to last

The Honorable Sharon Cloninger
April 27, 2007
Page 2

longer than one day. The court reporter shall prepare a stenographic record of the proceeding but shall not prepare a transcript unless a party or the judge so requests. 1 TEX. ADMIN. CODE § 155.43(b) (emphasis added).

These assertions about what was said and done about the absence of a court reporter show why accurate hearing record is needed, and why the inaudible audiotape offered in lieu of a transcript of the hearing violates Wax-Mid's due process rights.

Sincerely,


James E. Cousar

CDS:JEC:jlm

cc: (Via Facsimile and First Class Mail):
SOAH Docketing Clerk
LaDonna Castañuela, Chief Clerk, TCEQ
Blas J. Coy, Jr., Counsel for Office of Public Interest, TCEQ
Leonard H. Dougal, Counsel for Lone Elm Water Supply Corporation
Maria S. Sanchez and R. Jo Reser, Counsel for City of Midlothian
Gabriel Soto, Counsel for Executive Director, TCEQ
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