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

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

December 10, 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 DEC 10 PM 2: 54
CHIEF CLERKS OFFICE

**RE: HAYS COUNTY WATER CONTROL & IMPROVEMENT DISTRICT NO. 1
SOAH DOCKET NO. 582-08-0202
TCEQ DOCKET NO. 2007-1426-MWD**

Dear Ms. Castañuela:

Enclosed for filing is the Public Interest Counsel's Exceptions to the Administrative Law Judges' Proposal for Decision and Order in the above-entitled matter.

Sincerely,

A handwritten signature in cursive script that reads "Christina Mann".

Christina Mann, Attorney
Assistant Public Interest Counsel

Handwritten initials in cursive script, appearing to be "BJC".

cc: Mailing List

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**SOAH DOCKET NO. 582-08-0202
TCEQ DOCKET NO. 2007-1426-MWD**

IN THE MATTER OF	§	
THE APPLICATION OF	§	BEFORE THE TEXAS
HAYS COUNTY WATER	§	
CONTROL AND	§	COMMISSION ON
IMPROVEMENT	§	
DISTRICT NO. 1 FOR	§	ENVIRONMENTAL
AMENDMENT TO	§	
TPDES PERMIT NO.	§	QUALITY
WQ0014293001	§	

**THE OFFICE OF PUBLIC INTEREST COUNSEL'S EXCEPTIONS TO THE
ADMINISTRATIVE LAW JUDGES' PROPOSAL FOR DECISION AND ORDER**

COMES NOW, the Office of Public Interest Counsel (OPIC) of the Texas Commission on Environmental Quality (Commission or TCEQ) and files these Exceptions to the Proposal for Decision (PFD) and Order recommended by the Administrative Law Judges (ALJs) in the above styled matter and would respectfully show the following:

OPIC is supportive of the findings of fact and conclusions of law related to the anticipated degradation of the receiving waters which would result from the operation under the draft permit. OPIC agrees with the ALJs Cassandra Church and Roy Scudday that the record does not support a finding that operation under the terms of the draft permit would not cause degradation (and potential water quality issues in Barton Springs and the Edwards Aquifer). Therefore, the record cannot support issuance of the draft permit as it is written.

Additional Permit Terms

The ALJs however, support the issuance of a modified version of the draft permit based upon the extensive testimony and evidence presented regarding a non-unanimous settlement agreement. The provisions which are currently part of the settlement agreement, but are not included in the draft permit are found in Finding of Fact No. 25 on page six of the proposed order. OPIC is concerned about the enforceability (finality) of the proposed terms and provides the following modified terms (in the order the terms appear on pages 6-7 of the proposed order) in an attempt to help draft a stronger permit. Suggested modifications are in italics. In addition, we recommend inclusion of all other unmodified terms listed on pages 6-7.

- *Prior to beginning Interim II Phase*, WCID shall receive the appropriate 30 Texas Administrative Code Chapter 210 Beneficial Reuse Authorizations to treat at least 201 acres of irrigable land at a rate required for applying no more than 0.350 MGD of effluent, with soil moisture monitors in order to determine when irrigation areas are unsuitable for effluent irrigation.
- *Prior to beginning Interim II Phase*, WCID will build and maintain a lines effluent storage ponf with a capacity of at least 5,250,000 gallons, ex
- WCID agrees to discharge no more than 0.350 MGD. WCID is only allowed to discharge during the following situations:
 - When the land to be surface irrigated *through its Chapter 210 Beneficial Reuse Authorizations* is frozen or saturated and the effluent pond is full; *AND/OR*

- Bear Creek is flowing at a rate of 14 cubic feet per second measured at the U.S. Geological Survey gauge on Bear Creek, 5.1 miles downstream.
- If, as a result of the in-stream monitoring it is determined *by the Executive Director*, that *more than de minimus differences* in the water quality of Bear Creek are caused by WCID's discharge, WCID shall commence construction *within 180 days* of at least 1,750,000 gallons of additional effluent storage capacity and, *within 90 days*, employ other measures to decrease the volume of effluent to be discharged.
- WCID shall conduct weekly sampling for Total Nitrogen and turbidity in the effluent to determine the effectiveness and performance of the membrane bioreactor wastewater treatment plant. *The results of the sampling should be submitted monthly to the Executive Director, both as assurance of compliance with the draft permit and to assist the Executive Director in evaluating emerging treatment technologies.*

In addition, OPIC recommends the following additional terms:

- Adopt Ms. Murphy's initial recommendation of a .1 mg/L phosphorus limitation. Her review was conducted based upon this effluent limitation. Applicant's expert Dr. Calvin Patterson, testified that Applicant's testimony is that .1 mg/L is consistently achievable and the plant is designed to achieve .1 mg/L all the time when alum is added during treatment.¹

¹ See live testimony of Dr. Calvin Patterson, transcript, page 244, lines 16-22.

- Require the same nutrient limitations on all wastewater, regardless if it is going to be used as re-use or as discharge. Since .1 mg/L is achievable and 6mg/L total N is a permit term, we recommend it to be included all the time, even if Applicant is irrigating via a 210 Reuse Authorization. The bulk of the evidence introduced demonstrates that Protestants are mainly concerned about any additional nutrient loading and would rather have seen a TLAP permit for disposal of the wastewater. A TLAP permit requires specific amount and quality of soil and additional storage capacity. There is testimony that suggests that a TLAP permit would be more protective. Since the strict soil characteristics requirements of a TLAP are not imposed, the draft permit's discharge effluent requirements (for nutrients) could be utilized to reduce unintended nutrient loading from runoff. This would not have to change the Applicant's operating plans since Dr. Patterson testifies that his design will ensure a total nitrogen concentration of 6 or less.² Likewise, the design of the plant includes a requirement to add alum in the treatment process to insure reduction of the phosphorus limit to .1 mg/L and this should be done even when irrigating. A permit term requiring this effluent limitation at all times might reduce a bit of the potential impact from irrigation.

Conclusion

In closing, OPIC agrees with the findings of the ALJs and cannot recommend the Commission issue the draft permit. OPIC suggests the above modifications to the ALJs proposed additional permit terms and two new terms to create a more protective and enforceable permit.

² See live testimony of Dr. Calvin Patterson, transcript, page 228, lines 2-8.

Respectfully submitted,
Blas Coy, Jr.
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CERTIFICATE OF SERVICE

I hereby certify that on December 10, 2008 seven true and correct copies of the Office of the Public Interest Counsel's Exceptions to the Proposal for Decision (PFD) and Order were 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.

Christina Mann
Christina Mann

MAILING LIST
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SOAH DOCKET NO. 582-08-0202
TCEQ DOCKET NO. 2007-1426-MWD

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