

EXECUTIVE SUMMARY ON OPPOSITION TO TEXCOM GULF DISPOSAL INJECTION WELLS

TexCom Gulf Disposal, LLC filed applications with the Texas Commission on Environmental Quality (TCEQ) requesting approval to inject industrial commercial nonhazardous wastes underground in Montgomery County. TexCom proposes to inject a variety of chemicals more than 6,000 feet beneath the surface through multiple aquifers and at least one oil formation. TexCom's applications are of serious concern to many local stakeholders because of the potential for contamination of the local aquifers, which are sources of drinking water supply within Montgomery County. Montgomery County, the City of Conroe, the Lone Star Groundwater Conservation District, and thirteen landowners formally protested TexCom's applications. Subsequent to the deadline for joining in the legal challenge to TexCom's applications, hundreds of citizens formed CROW (Citizens/Residents Oppose Wells) to protest the applications, and several other water utilities, governmental entities, developer/landowners, and state legislators representing the area publicly expressed serious concern about the project. Waipiti Energy, LLC operates oil wells currently producing in the oil field beneath TexCom's proposed facility, and recently sued TexCom alleging that TexCom's proposed project would impair Waipiti's oil production.

U.S. Congress adopted a program under the Safe Drinking Water Act in the 1970s that specifically authorizes this type of waste disposal beneath "underground sources of drinking water" (USDWs) if the disposal company can establish primarily that the injected wastes will not endanger the USDWs and fresh or surface water, and that the public interest is served and not impaired. The U.S. Environmental Protection Agency implemented this

federal program, and then delegated the program to those states, including Texas, which demonstrated that their state programs met the objectives of the Safe Drinking Water Act. TCEQ is the Texas state agency responsible for administering the federal program.

TCEQ, after more than a year of internal review, referred TexCom's applications for an administrative hearing. This hearing, which is similar to a traditional trial in state court, was held December 12-18, 2007, and followed five months of extensive discovery, depositions, and written pleadings by all the parties. More than a dozen injection-well experts, environmental engineers, hydrogeologists and safety and traffic-pattern experts were retained by the parties, and offered sworn testimony during the hearing. Clearly the key issues in dispute were:

1) Whether TexCom's injection of nonhazardous chemical fluids would increase pressure in the geologic formation 6,000+ feet underground in a way that would cause chemicals or native brine to migrate into and contaminate the USDWs;

(2) Whether the public was harmed by the increase in traffic from trucks loaded with incoming chemicals, and whether there were unreasonable safety concerns from the truck routes; and

(3) Whether TCEQ's rules governing TexCom's proposed surface storage and transmission facilities were adequate to protect public health and the environment.

Underlying all of the testimony was the reality that 500+ oil wells, many which were abandoned and deteriorating, were located within close proximity to TexCom's proposed project. The question

that all of the hydrogeologists addressed was whether TexCom's chemicals or native brines would be forced, under pressure, into any of those old, deteriorated well bores and, from those wells into a USDW. The Lone Star GCD's expert offered strong testimony that TexCom's and even TCEQ's own assumptions were unreasonable, and that their subsurface modeling work was therefore flawed. As a result, Lone Star GCD's expert testified that subsurface modeling which applied the best available scientific evidence proved that TexCom's project would likely impair one or more local USDWs. Conroe and Montgomery County's expert echoed the Lone Star GCD's concerns and testimony, focusing on the unique subsurface faults which could serve as conduits for fluids into the USDWs. Many of the parties offered evidence on the general unsuitability of TexCom's proposed site, and of the adverse effects on the residences in the immediate area, and increased traffic from trucks loaded with incoming chemicals. At the end of the day, it was apparent that TexCom's applications presented an unreasonable risk of contamination of local USDWs. At the final day of the hearing, TexCom made clear that it wanted authority to modify its existing disposal well and run tests to determine what the actual effects would be on subsurface pressure build-up.

A final decision on TexCom's applications must be made by TCEQ's three Commissioners. Prior to the Commission's consideration of the applications, the Administrative Law Judges who officiated over the December 2007 hearing will prepare a "Proposal for Decision," which outlines all of the key evidence and arguments made in the hearing, and which concludes with a recommendation to the Commission. Written closing arguments from the parties are due to the Administrative Law Judges by early February 2008, with replies due in late February. The Judges must complete their Proposal for Decision by April 2008, and it is expected that

the Commission will consider TexCom's applications in late 2008. Any party that participated in the hearing and that is dissatisfied with the Commission's ruling may appeal that ruling in state district court.

The Woodlands Joint Powers Agency is represented on the Lone Star GCD's Board of Directors, which also includes representatives of virtually all other major water stakeholders in Montgomery County, including the San Jacinto River Authority, the City of Conroe and other incorporated cities in the county, the Soil and Water Conservation District, the various municipal utility districts, and two representatives of the public appointed by the Montgomery County Commissioners Court. The Lone Star GCD is committed to protecting all aquifers and groundwater resources in Montgomery County, and its Board of Directors and General Manager are treating TexCom's applications as a high priority.

What action you can take to express your opposition and concerns:

Even if you were not a party to the hearing, you may still express your opposition and concerns. Make your state legislators aware of your concerns, and request that they get involved. Support a council or board resolution by your utility, city, or other special district in opposition to TexCom's project. Plan to show up in Austin to voice your concerns to the Commission when it considers TexCom's applications later in 2008. Request your legislators to show up and protest the project at the Commission. The Woodlands Joint Powers Agency will update its webpage with details of when and where the Commission will consider TexCom's applications.



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