

STATUS REPORT ~ MAY 20, 2008
Proposed Injection Well Application by TexCom Gulf Disposal

**SOAH ISSUES ITS RECOMMENDATION
ON TEXCOM'S APPLICATIONS**

The State Office of Administrative Hearings (SOAH) have issued their recommendations in the two TexCom cases. SOAH prepared a separate recommendation, termed a "Proposal for Decision, Findings of Fact, and Conclusions of Law" (PFD) for each case—one for the UIC / deep-well injection case and the other for the ISW / surface facilities case. PFDs are not the final decision in the case, but rather SOAH's recommendation for TCEQ's three-member Commission to consider as they vote on a final decision. Both PFDs recommend that the Commission grant TexCom's applications subject to significant special conditions. The special conditions were proposed to address the serious risk that TexCom's proposed project presents, based on the best available science that was admitted as evidence in the SOAH hearing.

SUMMARY OF SOAH'S RECOMMENDATION AND SPECIAL CONDITIONS

Special Condition #1. SOAH concluded that TexCom's modeling assumptions in the UIC case were faulty and not credible, and that the appropriate assumptions were those presented by the Lone Star Groundwater Conservation District's expert, Phil Grant, P.G. Mr. Grant had testified that SOAH and TCEQ ought to be relying upon the fall-off test conducted by the predecessor owner of TexCom's existing well, which showed a very low permeability (81 millidarcies) and, under Mr. Grant's model, an unacceptable pressure build-up within the Cockfield formation. SOAH agreed. SOAH also agreed with Mr. Grant that a significant fault to the south of TexCom's site should be considered nontransmissive, which would significantly increase pressure build-up by TexCom's proposed injection. Applying the appropriate assumptions, TexCom's applications would present unacceptable risks to the local underground

sources of drinking water (USDWs). SOAH should have stopped there, recognized that TexCom had not met its burden to show no risk of contaminating USDWs, and proposed denial of the UIC applications. However, given the undisputed, high level of confidence in a fall-off test to determine permeability and transmissiveness of faults, SOAH was of the opinion that TexCom ought to be given a chance to rework its well and run another fall-off test to determine whether the reworked well would perform better. Unfortunately, SOAH proposed that this well-reworking and subsequent fall-off test be performed after permit issuance, and after any opportunity for the District or the other protestants to review or complain about TexCom's testing or TCEQ staff's evaluation of the testing results. It is our opinion that this special condition is unlawful because it vests discretion with TCEQ staff to evaluate and make decisions that should have been addressed prehearing and during the hearing. The special condition would deprive the three-member Commission from making a decision based on the best available science.

Special Condition #2. SOAH also agreed with protestants that traffic flow from TexCom's and its customers' trucks presented a serious problem. Consequently, SOAH proposed that a second special condition be imposed that mandates relocation of the entrance to TexCom's proposed facility from Creighton Road to FM 3083. It is currently unclear from the language used in SOAH's draft, proposed Special Condition #2 whether the permit would fail if TexCom were unsuccessful in securing TxDOT's approval of the entry point on FM 3083.

Ruling on TCEQ's lack of rules governing ISW application. With respect to the ISW application, SOAH agreed with the District's argument that "no specific set of solid-waste rules expressly addresses a

surface facility at an underground injection well site for nonhazardous industrial wastewater." All the protestants, joined by TCEQ's Public Interest Counsel, had previously requested denial of the ISW application on that ground alone, based in part on the results of another case (the TSP case), which involved a similar issue. However, SOAH concluded that such an argument was inappropriate at SOAH, and should be structured as a request for rulemaking at TCEQ.

CURRENT STATUS AT TCEQ

Exceptions to the PFDs were filed by all the parties on May 15, 2008. Replies to the exceptions are due May 27, 2008. It is uncertain when the Commission will set these cases for consideration, though it will likely be this summer, no sooner than June.

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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