

CFUR

CITIZENS FOR FAIR UTILITY REGULATION

P.O. BOX 1894

FORT WORTH, TEXAS

36101

April 5, 1991

Director, Office of Nuclear Reactor Regulation
U. S. Nuclear Regulatory Commission
Washington D.C. 20555

RE: Environmental Matters at the Comanche Peak Nuclear
Facility and Request for Action

Citizens for Fair Utility Regulation, on behalf of its members who live near the Comanche Peak nuclear plant, request the Director of Nuclear Reactor Regulation to take action to require that an environmental impact statement, specific to the issue of the multiple hazardous waste dumps in place at the Comanche Peak facility, be ordered for the reasons and according to the regulations as set out below.

If the Director is not the proper NRC official for this request, CFUR asks that this request be routed to the proper official and CFUR be notified as to who that person or group is.

Sometime following the onset of construction in 1974 and continuing through 1991, Brown & Root, Inc., principal contractor for the Comanche Peak nuclear plant owned and operated by TU Electric, formerly Texas Utilities, in Somervell County Texas, has maintained unlicensed, unauthorized and unpermitted hazardous waste dumps on the Comanche Peak site for the disposal of industrial construction waste, some of it classified as Class I hazardous waste, generated during the construction phase of Units 1 and 2. Unit 1 was licensed in February, 1990. Unit 2 is under construction.

Subcontractors also used the waste sites for disposal of hazardous wastes. The sites contain toxic chemicals, paints and solvents, asbestos, and lab pack waste, among other construction generated wastes. 157 hazardous chemicals have been identified in a report released in March of 1988 by McCulley, Frick, and Gillman, consultants hired by TU in November of 1987 to study the sites and report on the materials dumped in them. No permit has been granted to TU, Brown & Root, or any subcontractor or any company owned by or working for TU to dispose of hazardous wastes at the Comanche Peak site.

The waste sites are all unlined; two are at the edge of Squaw Creek Reservoir, and at least one may be in the reservoir according to former workers. Squaw Creek provides the

COOL 11

cooling water for the reactor, and further downstream mixes with surface waters used by the public.

TU began its internal investigation of the dumps around November, 1987, even though the dumps had been in place and in use for about 10 years. In 1988, Safeteam was notified of the dumps by Linda Porter, a former paint supervisor at the plant who was later terminated after she blew the whistle on behalf of workers in the paint department who had been exposed to hazardous working conditions. Later in 1988, Ms. Porter called the Arlington NRC office to alert the NRC to the presence of the dumps. The NRC's Arlington office has told Ms. Porter that they have no record of her call.

CFUR believes that the NRC was notified about the dumps by TU sometime between June of 1989 and October of 1989. According to a conversation between CFUR board member Betty Brink and Chris Grimes, head of the NRC's Office of Special Projects, in March, 1991, Mr. Grimes says he is not sure when the NRC was first told by TU about the dumps, but he thinks it may have been in October of 1989, four months before licensing. Ms. Porter again told the NRC about the dumps in October, 1989, also.

However, CFUR believes that TU withheld vital information from the NRC staff concerning the numbers of dumps, their locations, and the amounts and types of hazardous materials involved.

The NRC staff with oversight of the Comanche Peak facility prior to licensing has stated that it relied on the Texas Water Commission to monitor the waste dumps and their impact on the waters of Squaw Creek Reservoir, because the NRC did not believe that any issue of safety was involved. However, CFUR believes that the NRC based its decision on incomplete and inaccurate information provided by TU Electric.

Further, the NRC was lax in relying on the TWC to determine any safety significance for the plant from the dumps. The TWC has no nuclear expertise and is not qualified to determine the safety significance to a nuclear plant of hazardous materials in near proximity to its cooling water source. At the very least, the NRC staff should have called for an environmental assessment in conjunction with cooperating agencies such as the TWC and the EPA, in order to determine the degree of contamination and if the materials should have been removed to protect the integrity of the plant and to assure that the health and safety of the public and the environment was protected prior to licensing. The presence of the dumps certainly seems to CFUR to "reflect new information" as defined by 10 CFR §51.53 (a), that is information not found in the Final Environmental Impact Statement submitted to the NRC by TU.

The fallacy of the NRC's reliance on the TWC is obvious today. The TWC initially agreed to allow TU to apply for a hazardous waste facility permit after the fact. Years after the fact as it turned out, and with no public notification or public hearing, as required by law. In a July 28, 1989 letter to TU from the TWC, the TWC appeared to approve TU's closure plan (which would have left the hazardous wastes in place, in unlined pits, capped with clay and monitored for a period of 30 years, 10 years shy of the lifetime of the plant!) Notice of the closure plan was published in the Glen Rose Reporter, a small, limited circulation weekly in Somervell County, on August 15, 1990, a month after the July letter approving the plan and six months after the NRC issued the plant a low power license.

Public outcry coupled with formal requests from Linda Porter, the Government Accountability Project (GAP), Citizens Associated for Sound Energy (CASE), CFUR, Texas Citizen Action, Texans United and the Hood County Taxpayers' Association, as well as citizens who live near the plant and draw their drinking water from the aquifer which runs beneath the plant and the waste dumps, forced a public hearing. On December 18, 1990, a public meeting was held in Fort Worth by the TWC. (Summary attached.) Following the meeting, the TWC ordered TU to respond to 18 allegations raised by persons who testified. (TWC letter to TU, March 8, 1991, attached.)

The NRC did not attend the hearing in an official capacity.

Workers believe that there are at least 20 sites, possibly more, with hazardous wastes dumped in them, and that at least one of those sites is in the reservoir itself, where wastes were disposed of before the lake filled up. TU now admits to 15 sites. Groundwater contamination has been found in recent samples taken from a 40' monitoring well in Landfill #2, near the reservoir. In a letter from TU to the TWC dated March 5, 1991, TU reports that contaminants from that well were "above reportable drinking water levels." Other contaminants, carcinogenic contaminants, have been found in samples taken near Landfill #5. (The identification of these contaminants and the entire McCulley, Frick, and Gillman report can be obtained from the TWC.)

During the course of the December 18 meeting, former worker Linda Porter, Owen Thero, a consultant for CASE who has access to the site and to some of TU's records, and GAP attorneys, all testified that their investigations into the landfills revealed that most of the landfills contain hazardous materials; that ignitable materials contained in leaking containers were dumped in the landfills; that incompatible materials have been disposed of together; that methane gas is building to dangerous levels in several of the landfills; that fires or explosions could occur with the current mix of wastes and methane; that none of the landfills have liners or any protection against leaching from a leachate collection

system; that overexcavation at the site during initial construction caused fissures and subsurface faulting with the possible result that toxic or hazardous materials could find a pathway into the plants safety systems. Specific concerns were raised by CASE regarding the possibility of toxics getting into the cooling waters of Squaw Creek and eventually causing corrosion of vital components of the plant's cooling systems. CASE also raised the possibility of an explosion or fire in a landfill located near the cooling water intake system, jeopardizing the cooling system.

CFUR has researched the TU environmental reports submitted to the NRC in 1978 and prior to licensing, and the NRC's Environmental Statements on CPSES. Nowhere in the documents made available to CFUR by the NRC is there any mention of these dumps. There is mention on page 8, App. A of CPSES/ER OL, Vol. II, regarding transmission lines, that "some temporary storage of brush, trees and other waste materials resulting from clearance...will occur (but) ...will be removed completely...for disposal." And, "a. Waste materials from transmission line construction will be properly disposed of off site."

So there is recognition by TU that waste materials generated during construction need proper off-site disposal. Yet, the environmental impact of these hazardous dumps is not addressed by TU or the NRC in the NRC's Final Environmental Statment Supplement to NUREG 0775, published in October of 1989, four months prior to licensing. In TU and NRC documents the dumps do not exist. Yet they did exist then and they still do today. When the NRC found out about the dumps in the summer or fall of 1989, there was still time to require TU to address them. Yet the record is silent. It is not that TU did not already have a track record of withholding vital information from the NRC over the years. The fact that TU waited so long to notify the NRC of the dumps should have raised a red flag to the staff.

In the case of the unpermitted waste dumps, TU has managed to violate laws of every regulatory agency involved. TU's NPDES permit issued by EPA under Section 316(b) of the Clean Water Act with regard to the cooling water intake structure, surely has been violated by the location of an unpermitted and unreported hazardous waste dump near the cooling water intake system; the Resource Conservation and Recovery Act (RCRA) land ban disposal restrictions have been violated; by failing to provide the TWC with proper information regarding the wastes in the landfills, TU has violated Texas Administrative Code, section 335.43; the closure plan submitted by TU violates section 265.111 of 40 CFR, because no removal or decontamination has been proposed. And violations of the National Environmental Policy Act (NEPA) at a nuclear facility directly brings the NRC into play.

10 CFR §51 Subpart A, implements within NRC regulations section 102(2) of NEPA, "in a manner consistent with the NRC's domestic licensing and related regulatory authority...."

Under 10 CFR §51.20 (a) "Licensing and regulatory actions requiring an environmental impact statement shall meet at least one of the following criteria:

(1) The proposed action is a major Federal action significantly affecting the quality of the human environment.

(2) The proposed action involves a matter which the Commission, in the exercise of its discretion, has determined should be covered by an environmental impact statement."

Further, 10 CFR §51.53 states, "(a) Operating License Stage. Each Applicant for a license...to operate a production or utilization facility covered by §51.20 shall submit with its application...a separate document entitled 'Supplement to Applicant's Environmental Report--Construction Permit Stage' which will update (the original environmental report.)"

This supplement must be submitted according to §51.53 (a) "...in connection with the first licensing action authorizing full power operation." And "...shall discuss the same matters described in §51.45, 51.51, and 51.52...to the extent that they differ from those discussed or reflect new information in addition to that discussed in the final environmental impact statement prepared by the Commission in connection with the construction permit." (Emphasis added.) The dumps are obviously "new information."

10 CFR §51.45 (c) requires that the "environmental report should contain sufficient data to aid the Commission in its development of an independent analysis." (Emphasis added.)

Under 10 CFR §50.9 (a) "Information provided to the Commission by an applicant for a license or by a licensee or information required by statute or by the Commission's regulations, orders, or license conditions to be maintained by the applicant or the licensee shall be complete and accurate in all material respects." (Emphasis added.)

CFUR believes that TU Electric failed to report significant environmental information to the Commission either by letter or as a supplement to its environmental report prior to the licensing of the plant in February, 1990, regarding the unpermitted hazardous waste dumps at the site.

CFUR believes that this information was material to licensing and the extent of the safety and environmental hazards posed by the toxic materials in the dump should have been known by the Commission. CFUR believes that a supplemental environmental report would then have been ordered by the

Commission under §51.20 (a) (1) or (2) in cooperation with the EPA and the TWC.

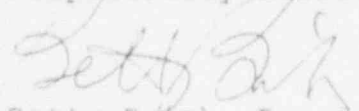
Further, 10 CFR §51.10 (b) states, "The Commission recognizes a continuing obligation to conduct domestic licensing and related regulatory functions in a manner consistent with the Commission's responsibility as an independent regulatory agency for protecting the radiological health and safety of the public. Accordingly, the Commission will:

...
(2) Follow the provisions of 40 CFR 1501.5 and 1501.6 relating to lead agencies, except that the Commission reserves the right to prepare an independent environmental impact statement whenever the NRC has regulatory jurisdiction over an activity even though the NRC has not been designated the lead agency for the preparation of the statement...." While this section "recognizes that responsibility for Federal regulation of non-radiological pollutant discharges into the receiving waters rests by statute with the EPA," CFUR would argue that the cooling water lake, in this case Squaw Creek Reservoir, is an integral part of the Comanche Peak facility, and that environmental hazards posed by the non-radiological wastes in near proximity to the lake could impact dangerously over time on safety systems within the plant. Because Squaw Creek Reservoir is an integral part of the safety system of the Comanche Peak facility, it meets the criteria required for NRC regulatory authority and oversight which includes an NRC environmental impact statement specific to the dumps.

CFUR believes that TU has violated 10 CFR §50.9 by withholding vital information from the NRC about the dumps and therefore did not submit information material to licensing that was "complete and accurate in all material respects."

For all of the reasons stated above, CFUR requests that the Commission, under its discretionary authority as granted in 10 CFR §51.20 (a) (2), require an Environmental Impact Statement specific to the hazardous waste dumps at the Comanche Peak facility, publish notice of such in the Federal Register, and allow interested persons to participate in the process. Further, CFUR would ask that the NRC consider action against TU for its apparent violation of 10 CFR §50.9.

Respectfully submitted,



Betty Brink, Board Member, for CFUR

CC: All Interested Parties

CFUR

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P.O. BOX 1894

FORT WORTH, TEXAS

76101

April 5, 1991

Copies of the enclosed request for action have been sent to the following:

The General Counsel's Office, NRC
EPA, Washington
The Texas Water Commission
The Texas Attorney General's Office
Senator Lloyd Bentsen
Congressman Joe Barton
Congressman Pete Geren
Congressman Edward Markey
Federal Attorney, Fort Worth
Federal Attorney, Waco
NRC Region 4, Arlington, Joe Gilliland
Chris Grimes, Office of Special Projects
Governor Ann Richard's Ombudsman Office, Texas
Richard Condit, GAP
Linda Porter
Lon Burnam, Texas Citizen Action
Allene Van Pelt, Hood County Taxpayers' Assoc.
Texans United
Richard Griffin, Attorney for CFUR
CFUR Board Members
Kendall McCook, Tolar, Texas
Charles Crabtree, Glen Rose, Texas
and
Various Media

TEXAS WATER COMMISSION



B. J. Wynne, III, Chairman
John E. Birdwell, Commissioner
Cliff Johnson, Commissioner

John J. Vay, General Counsel
Michael E. Field, Chief Hearings Examiner
Brenda W. Foster, Chief Clerk

Allen Beinke, Executive Director

February 20, 1991

Mr. Betty Brink
7600 Anglin Drive
Ft. Worth, Texas 76140

Re: Texas Utilities Electric Company - Comanche Peak
Solid Waste Registration No. 33306
Transcript of the Public Comment Hearing conducted on
December 18, 1990

Dear Mr. Brink:

As a follow-up to your request that a copy of the transcript made of the public comment received during the above-referenced hearing be forwarded to you upon completion, we are unable to provide a transcript of that hearing due to the poor sound and reproductive quality of the tape used by the Commission during that hearing. Therefore, we will not be able to provide a complete and accurate transcript of that hearing.

However, several members of the Texas Water Commission staff present during this hearing took notes of the proceeding. Based on these written notes, I have executed a Summary of Public Comment received during the December 18, 1990 hearing on the Closure Plans submitted by Texas Utilities Electric Company. I believe that, although not complete and comprehensive, this summary does fairly and accurately reflect the comments received during that hearing. If you do not agree that this Summary accurately reflects the substance of the comments received during the afore-mentioned hearing, please feel free to contact me. The Commission would be happy to review any comments you might have regarding this Summary.

We apologize for not being able to provide you with a more complete and comprehensive transcription of this proceeding. If you have any questions relating to this matter, please feel free to contact either myself or Mr. Jim Haley, Director of the Commission's Legal Division, at (512) 463-8069

Sincerely,

A handwritten signature in dark ink, reading "Michelle A. McFaddin".

Michelle A. McFaddin
Senior Attorney
Texas Water Commission

Enclosure

SUMMARY OF PUBLIC COMMENT

Public Comment Hearing held on Texas Utilities Electric Company-
Comanche Peak Facility: Closure Plans
December 18, 1990

1. Ms. Linda Porter:

Ms. Porter initiated the public comment session by thanking those citizens groups, the Government Accountability Project and individuals who have supported her efforts to address the environmental situation at the Texas Utilities Electric Company's (TU Electric) Comanche Peak facility. She stated that the landfills present at the TU Electric - Comanche Peak facility were illegal and unauthorized and as such should be removed entirely from the facility for off-site authorized disposal. She then remarked that the Texas Water Commission has pursued selective enforcement which has allowed companies to blatantly violate the law and stated that she believes that all of the landfills present at the facility have managed Class I hazardous waste in the past and are "unmarked graves" of toxic waste. All of the known landfills present should therefore be closed as hazardous waste management units and/or permitted as such. In addition, she stated that the landfills had managed approximately 157 chemicals other than paint wastes and thinner, including lab pack waste materials, and that such disposal was intentional.

She went on to note that the \$10,000 administrative penalty for use of unauthorized landfills at the Comanche Peak facility which was assessed in a 1989 Enforcement Order issued by the Commission was a mere slap on the wrist for intentional, illegal activities and that the Commission has been lax on enforcement and has allowed TU Electric to continue illegal dumping activities. She commented on the groundwater contamination which has been documented adjacent to Landfill Unit #3, which she stated is built in Squaw Creek Reservoir, and stated that the waste removed from the landfill went to unauthorized disposal facilities, including a cement kiln in Midlothian, Texas.

She further remarked that the Environmental Protection Agency (EPA) takes environmental problems more seriously than does the Texas Water Commission, but requested us to pass on the facts to the Nuclear Regulatory Commission (NRC). She believes that a new environmental impact study should be conducted by the NRC and that the Texas Water Commission has the moral obligation to cooperate in such additional studies. She finalized her comments by wondering why post-closure care monitoring for hazardous waste facilities only lasts for 30 years; she believes that this time frame is insufficient and concluded by stating that closure of all of the landfills at

the TU Electric - Comanche Peak facility should be accomplished by removal of all wastes and gases from the Comanche Peak facility to an off-site disposal facility.

2. Mr. Charles Crabtree

Mr. Crabtree was the second speaker at the hearing and commenced by stating that he lived in close proximity to the Comanche Peak facility and is deeply concerned about the activities at the site. He noted that he is an engineer and stated that he was particularly concerned about radioactive releases and other releases from the facility. In addition, he was concerned about groundwater contamination. He has a drinking water well which he relies on for water as do his neighbors and he believes that the Comanche peak facility poses an unacceptable risk to those water resources. He also expressed concern about contamination getting into the cooling water which feeds the Comanche Peak nuclear power plant. He believes that we should require TU Electric to remove all waste from the on-site landfills. They should not be allowed to continue these illegal waste management activities.

3. Mr. Kendall McCook

Mr. McCook began his presentation by noting that he lives 3 1/2 miles downwind of the Comanche Peak facility. He is concerned about the milk products being produced by nearby dairies and about the increased cancer risk posed by this facility. He was specifically outraged by a pamphlet which had been published and distributed by TU Electric promoting recreation in Squaw Creek Reservoir. He believes that the agencies should be looking into the water quality of this Reservoir as well as testing the fish which are living in the Reservoir. He stated that the agencies thus far had not been receptive to his concerns. He also requested that his groundwater be tested. He is afraid.

4. Mr. Richard Condit, Government Accountability Project

Mr. Condit opened up his comments by expressing his concern that the Commission was not in a position to supply detailed comments regarding the Closure Plans submitted by TU Electric - Comanche Peak facility. He noted that the Commission appeared to have already decided to approve TU Electric's proposed closure activities and cited a July 28, 1989 letter from Russ Kimble approving an interim cap design for the landfill units and stated that he did not see how we could claim not to have already decided to approve the closure plans calling for in-place capping and closure of the two hazardous waste landfill cells. To further support his view that a decision had already been made, he noted that we had already sent out a Notice of Deficiency letter on the Closure Plans

and that TU Electric had responded to this Notice of Deficiency letter.

[Anne Dobbs responded to these remarks by stating that the July 28, 1989 letter approving the design of a cap for certain landfill units at the facility was an approval for an interim cap to prevent rainfall runoff and infiltration until such time as the Commission could receive and approve a formal Closure Plan. She also stated that to her knowledge we had not received any response from TU Electric on the Notice of Deficiency letter.]

Mr. Condit continued by stating that he believed that the hearing being conducted was biased and legally insufficient. He stated that he had not been able to review all of the records relating to the Comanche Peak facility and complained that only a small portion of the Commission's records on the Comanche Peak facility had been released to the University of Texas - Arlington library. He stated that the hearing was illegal in terms of the applicable public participation requirements and he is concerned about our involvement in decisions made with respect to capping the landfills. He stated that the public record is not clear on what our position over time has been. He stated that the critical point of his comments was that TU Electric and Brown & Root should not be allowed to benefit from these illegal landfill activities.

He notes that the Closure Plans as currently drafted violate RCRA land ban requirements. Companies are not permitted to put liquid wastes into the ground for disposal purposes. Deciding to allow TU Electric to leave the wastes in place is violative of these land ban requirements. He believes that the decision to allow TU Electric to leave the wastes in place triggers land ban requirements and stated that he believes that this position is legally correct and supportable.

He also addressed the Commission's 1989 Enforcement Order issued to TU Electric for the use of unauthorized landfills and stated that the \$10,000 assessed penalty was preposterous. He stated that fines like these encourage illegal dumping and do not provide any sort of disincentive. He discussed the \$25,000 per day penalties which can be assessed by the federal government for these types of violations and concluded that a multi-million penalty would have been more appropriate. In addition, he noted that state penalties which could have been collected as a result of an action in court would have been greater. The bottom line is that we are not doing our jobs in enforcing environmental regulations at the state level. He remarked that criminal penalties had been ignored and stated that the Commission should have sought criminal prosecution in this case. Individuals need to be made accountable for their acts and the state needs to be more aggressive.

Finally, he noted that we are looking too narrowly at the environmental issues posed by the TU Electric nuclear power plant. There are more landfills than we have been informed of. There may be a build-up of methane gas in the landfills which could cause an explosion risk and there is ground water contamination. He again noted that he believes that the Commission has already made up its mind to approve the Closure Plan which has been drafted by TU Electric for this facility and that we are biased.

5. Mr. Mick Harrison, Government Accountability Project

Mr. Harrison commenced by stating that the Commission has no authority to allow closure of these landfills under interim status regulations and standards. TU Electric has failed to provide us with adequate information on the wastes contained within the landfills and does not qualify for interim status under 31 Texas Administrative Code (TAC) section 335.43 of our rules. He stated that they need to get a permit authorizing their proposed closure activities and must go through a contested case proceeding under the Administrative Procedures Act. We need a more formal, adjudicatory process; they want an evidentiary hearing on this matter as soon as possible.

He noted that even if interim status standards did apply to these landfill units, the closure plan should be rejected under 40 Code of Federal Regulation (CFR) section 265.111. The Closure Plans as drafted do not prevent releases in a manner sufficiently protective of human health and the environment because no removal or decontamination is being provided for. He noted that he has information that the landfills contain ignitable wastes, which were disposed of in leaking containers, and incompatible wastes would be left in place under the current closure proposal such as bromoform/acetone and acido/solvents. He noted that these were routine disposal practices at Comanche Peak.

He also expressed his concern about the high levels of methane gas (up to 24% which could be higher than explosive levels). The fact that there are ignitable and incompatible wastes present as well further complicates this situation. This situation indicates that the closure performance standard of "remove or decontaminate" cannot be met with the current waste materials in place in the landfill units. He also believes that leaving the wastes currently in these units in place is a violation of land disposal ban restrictions and noted that simple capping and monitoring is not sufficient. In-place closure would mean that solvents would be allowed to continue migrating into the ground water beneath the facility. He was concerned that no scientific assessment and/or characterization of the materials in the landfills has been conducted by anyone other than TU Electric and its contractors.

He concluded his statement by remarking that the administrative record in this matter does not support Closure Plan approval. A fire and/or explosion are likely with the current mix of wastes in the landfill units and this could lead to an environmental release. Finally, allowing these closure activities could lead to interference with the nuclear power plant's operations.

6. Mr. Owen L. Thero (?)

Mr. Thero initiated his comments by requesting that a copy of this transcript be provided. In addition, he wanted to introduce a letter written by Ms. Juanita Ellis, a representative of CASE, into the record. The letter was received into the record. He went on to state that environmental issues are within the purview of CASE's concerns. They are concerned about soil, surface water and groundwater contamination. His position is that all hazardous materials at the Comanche Peak facility should be removed. He requested that a new environmental impact statement be prepared which studies these landfill units.

He went on to state that the closure activities proposed could affect the nuclear power plant's operations and that we should coordinate with the NRC so that the NRC could do its job. He requested that we again extend the comment period on TU Electric's closure plans until such time as CASE can finalize its investigation and submit a summary report. He then described the responses that CASE has received, apparently at the same time, from the Commission and from the NRC and noted that the NRC has abrogated its regulatory authority. He is concerned about relying on us to do our job.

He stated that he believes that the documentation that he has reviewed clearly demonstrates that unauthorized disposal of hazardous waste has taken place and believes that Landfill Unit Nos. 6 and 7 may also be a problem. He thinks that the investigations that have been conducted are insufficient. He is also concerned about the methane gas issue. He believes that methane gas at detectable levels has been generated within the landfill units as the result of waste decomposition. This has created a very dangerous situation; there needs to be venting or some other technical response to the presence of methane gas. He also expressed concerns about the presence of ignitable and incompatible wastes in the landfill cells. He thinks that there may be a problem with the cooling water in Squaw Creek Reservoir. He noted that the landfills are located in close proximity to the cooling water intake system for the nuclear power plant and is worried that an explosion occurring in the landfills could adversely affect the operations of the nuclear power plant equipment and associated piping. This is a major safety problem. In addition, he posed a concern about the effect that an explosion might have on the three major pipelines that run

through the Comanche Peak facility. He concluded by stating that TU Electric should be required to remove all of the waste off-site.

7. Mr. Gatlin Mitchell

Mr. Mitchell introduced himself by stating that he is a landowner near the Comanche Peak facility and that he is outraged by the proposed Closure Plans. He cannot believe that we would even consider allowing TU Electric to leave these landfills in place. He stated that we need to do our jobs.

8. Betty Brink, Citizens for Fair Utility Regulation

Ms. Brink commenced by stating that she would like an explanation of the July, 1989 approval letter for an interim cap for landfills at the Comanche Peak facility. She stated that she could not believe that this letter would go into so much detail if it only related to an interim cap, unless the interim cap was to be in place through final closure in-place of the waste. She stated that we should require removal of the waste to an authorized hazardous waste management facility and there should be a new investigation of the illegal dumping activities at the Comanche Peak facility. She noted that the Commission had not interviewed workers at the Comanche Peak facility.

She went on to state that a 30-year post-closure care period is not sufficient and asked what would happen if groundwater was contaminated. She noted that we could not fix that. She remarked that over-excavation at the facility had resulted in subsurface faulting and the creation of fissures. She also expressed concern about the potential for an explosion due to the presence of methane gas and incompatible wastes.

She further remarked that the NRC has stepped aside in this matter and that the Commission now has the responsibility for these issues. We need to conduct a more careful investigation at the facility regarding the illegal dumping activities. She stated that the sites are not appropriate for hazardous waste management and we should not let TU Electric permit them for such activities at this point in time. She requested an evidentiary hearing on any permit for these units and stated that this should have been done before waste was ever placed into these units. She noted that there has been a regulatory breakdown. TU Electric could not meet NRC criteria today with these illegal dumps and therefore would not be able to get a license to operate today. She went on to state that TU Electric is not being adequately regulated; we should impose additional fines on them for the illegal dumping and none of the costs should be passed on to the ratepayer.

8. Mr. Lon Burnam, Texas Citizen Action

Mr. Burnam opened up his comments by stating that he is very unhappy with the Texas Water Commission. He stated that Rep. Glasgow had an aide present listening to the meeting and stated that the Commission is predisposed towards allowing polluters to shift the cost of polluting to the public at large. He claimed that we are working with an elite group of regulated industry and that we are therefore not to be trusted. We are not doing our jobs and the entire agency needs to be overhauled.

He asked whether we were willing to support revolving door legislation and a cost reimbursement system for people like Linda Porter. He stated that there is general discontent with TU Electric and that they are a criminal offender. He believes that we are covering something up. He also discussed the Juanita Ellis letter and our response to that letter. He stated that he did not believe that we had not started a detailed review of the Closure Plans and quoted from a December 13, 1990 letter from Anne Dobbs disallowing further extension to the public comment period on the Comanche Peak Closure Plans. He believes that we are attempting to rush approval through before we have adequate information.

[Anne Dobbs responded to these remarks by stating that we were evaluating this closure plan like any other closure plan and noted that we did not have the resources to conduct full investigation at every regulated site in the State.]

He stated that we have too narrowly construed our obligations and review of the TU Electric facility and is unhappy with our decision on Landfill Unit Nos. 6 and 7. He also stated that he wanted us to inform the Public Utility Commission (PUC) that costs associated with illegal dumping should not be allowed to be passed on to ratepayers.

He concluded by calling on individual criminal investigations of the staff's activities in this matter and stated that we needed to clarify our position not only on the Closure Plans but also on our legislative policy goals.

9. Mr. John David Parker

Mr. Parker began by stating that the Commission is being watched very carefully. He stated that an environmental study should be conducted at the Comanche Peak facility. He believes that there are problems with the 1987 McCulley, Frick investigations conducted at the Comanche Peak site and stated that there was no way we could make an intelligent decision related to closure before additional studies had been completed. He noted that the area around Ft. Worth, Texas has unusual geology and that limestone subsurface fractures may exist and need to be evaluated. In addition, he is worried that we do not know enough about contamination currently in and around the landfills and Squaw Creek Reservoir. We need

to know how that contamination might affect the nuclear power plant's operations. He concluded by stating that we should not allow TU Electric to keep these landfills in place, thereby rewarding them for their illegal dumping activities, and that we need to pay for these studies; not TU Electric. They should have to pay for the cleanup, without passing the costs on to the taxpayers.

10. Jim Shembeck, Texans United

Mr. Shembeck commenced by remarking that he wishes this information about unauthorized landfills had been available to him before the NRC licensing hearing. He went on to state that the Texas Water Commission is horrible and is not concerned about pollution. He further stated that the Commission has willfully ignored and violated the law and that he has no faith in our ability to carry out the law. He addressed the issue of punishment by noting that the Texas Water Commission has proposed a \$2,000,000 fine against a company in Dallas County for one illegal landfill and that this indicates that there is a clear double standard which should not be tolerated. He stated that the Commission engages in discriminatory enforcement. We should be protecting the citizens against TU Electric.

He expressed concern that we did not know of the hazards presented by the other landfills at this site. We have not properly investigated the site. He expressed concerns about the cement kilns in Midlothian, Texas which have received hazardous waste generated by TU Electric and noted that the ash generated by the cement kilns has been disposed of in quarries, such disposal having resulted in both surface and groundwater contamination.

He stated that there are more landfills at this site, then moved onto the issue of capping the landfills as a solution. He noted that TU Electric's capping proposal fails to address leakage and/or leaching from the landfill units; leachate will only get more concentrated over time and we don't know what synergistic effects the chemical compounds in the landfills will be. He addressed the methane gas problem and stated that the Texas Air Control Board needs to look at this issue. He doesn't trust either the Texas Water Commission or TU Electric to adequately monitor the situation.

He further stated that he believes that the Commission has already made up its mind to approve the Comanche Peak Closure Plans and believes that we have avoided the hearings on this matter required by law. He stated that he felt that the \$10,000 dollar penalty assessed against TU Electric in 1989 was totally inadequate and suggested that a \$2,000,000 penalty would have been more appropriate.

He concluded by stating that the wastes should be removed from the Comanche Peak facility to an authorized off-site facility; additional investigation for unauthorized landfills that might be located at the facility should be undertaken; we need to ensure that the costs of such investigation and cleanup activities are not passed through to the ratepayer; and concluded by stating that our agency should be entirely reorganized with elected commissioners. A broom needs to be taken after the Texas Water Commission so we do our jobs.

11. Ms. Allene VanPelt

Ms. Van Pelt commenced by noting that the Texas Water Commissioners themselves should have been present at the hearing and that they should be listening more closely to the people. She stated that Hood County has been devastated by pollution. The citizens of Hood County are concerned about air pollution and emissions and any resulting contamination from such emissions. She is also concerned about the water quality in Lake Granberry, which is their drinking water supply, and about the presence of hazardous constituents in their drinking water, which originates or derives from Squaw Creek Reservoir.

She stated that she believes that we are protecting TU Electric and that we should not allow illegal dumps to stay in place. If we do, that shows that we are indeed corrupt. She stated that we need to investigate TU Electric, but wants her comments directed where it counts - at our Commissioners. She stated that she was part of a statewide taxpayer's organization and they are working on an initiative/referendum to see to it that our Commissioners are elected since the Commissioners appointed at the Texas Water Commission aren't being responsive to the people. She also expressed concern about the generation of methane gas in the landfill. She does not think that waste should just be covered up and believes that we should fine TU Electric - a lot. The government should not be protecting big utilities. She stated that Comanche Peak is not necessary. If they don't remove the waste from their site, the entire facility should be closed down.

She concluded by asking whether it is our position that we don't have enough resources to investigate the Comanche Peak facility.

[Anne Dobbs responded by stating that we typically expect the company to conduct the investigations and we review the results and determine if adequate scientific investigations have been completed.]

Ms. Van Pelt's concluding comment was that the shareholders of TU Electric should be required to hire independent investigators to study the conditions at the site.

12. Mr. Mick Harrison, Government Accountability Project
(Supplemental Comments)

Mr. Harrison supplemented his earlier comments by noting that the landfill cells did not have liners or leachate collection systems and therefore TU Electric's closure plans should be rejected for failing to meet design and operational requirements. He reminded us of his position that this hearing was legally inadequate and that misrepresentations by the staff of the record is a criminal violation of RCRA. He instructed the staff that we would be protected if we decided to become whistleblowers. He then asked a series of questions relating to the extent of the review that had been conducted on the Closure Plans submitted by TU Electric and then stated that he does not believe that a decision has not already been made to approve a Closure Plan that would result in wastes being left in place and capped, and pointed to the July, 1989 letter from Russ Kimble approving their interim cap design. He concluded by stating that he believed that staff had misrepresented the record in this hearing. He called for an evidentiary hearing on this matter after a NEPA environmental assessment had been completed for the Comanche Peak facility. He thinks that we should require removal of all waste to an off-site authorized hazardous waste management facility.

13. Mr. Lon Burnam, Texas Citizen Action
(Supplemental Comments)

He opened his supplemental comments by stating that he had calculated what he believed to be appropriate penalties for the violations which have occurred at the TU Electric facility and had arrived at a figure of \$350,000,000. He wanted to know whether we would contact the PUC regarding these illegal activities and said that he would call for a criminal investigation of our activities.

(QUESTION AND ANSWER SESSION AFTER CLOSE OF PUBLIC COMMENT)

Name

Address

Page 1

1. Kendall McCook Rt. 1 Box 70 Tolar, TX 76476
2. Owen L. Thero PO Box 1619 Glen Rose, TX 76043
3. Bill Hamner PO Box 1205 Granbury, TX 76048
4. Linda Fortre PO 950 Argyle TX 76010
5. Kathy Fehl ^{Geo. Con. Inc.} 1720 Westminster Denton, TX 76201
6. Dick White 2001 Bryan Blvd Suite 2060 Dallas TX 75201
7. Richard Werner 1401 Barclay Carrollton TX 75007
8. Conrad Boeg 1826 MICHELLE LING RD. Baton Rouge, LA
9. JOHN McCROSH 5025 CROSS LANE BATON ROUGE, LA
10. MIKE WHITLEY STAR-TOUGERMAN Fort Worth
11. Bridgette Yfese Dallas Times Herald 401 Pacific Ave TX
12. Richard Condit GAP 25 EST, NW, S700 Wash, DC 20001
13. Mick HARRISON " " " "
14. BROOKE AULVIN KRLD Radio Dallas/FW
15. Lon Burnham TX Citizen Action P.O. Box 184 FW 76101
16. CHARLES CRABTREE Rt. 1 Box 62AB GRANBURY, TX 76048
17. Betty CRABTREE Rt. 1 Box 62AB GRANBURY, TX 76048
18. George Hedrick 5636 Bluebonnet Dr. Fort Worth TX 76111
19. David Fiorelli 2001 Bryan St. Suite 1680 Dallas, TX 75201
20. Nick Kamy 7144 Normandy Ft. Worth TX
21. Peter Brink 7600 Anglin Dr. FW TX 76140
22. Charles A. Brink 7600 Anglin Dr. FW TX 76140
23. Elaine Levine 3508 Halifax Dr. Arlington TX 76013
24. Gary Zanten Rt 5, Box 517, Ft. Worth 76126
25. John David Bartlett Rt 5, Box 517 Ft. Worth 76126
26. Linda Cludge 6410 Southern Blvd, Ste 109, ^{States & Highway} Fort Worth, TX 76105
27. Ellen Morfitt P.O. Box 932, GRANBURY TEXAS 76048
28. Miguel Angel Mata 46 Doyle ^{Grand} TX 76048

	Name	Address	Page
29.	Cherry Richardson	5423 El Camino St. W. TX. 76110	
30.	Jim Schenck	11520 N. Central 133 Dallas 75243	
31.	GATLIN MITCHELL	1790 6th Ave Ft. Worth, TX 76110	
32.	Allen Kerkut	68 Norfolk Bay - Shalvey, TX. 7609	
33.	Terry McIntire	5910 Polo Club Dr. Arlington, TX 76012	
34.	Annet Nelson	1215 BRITT ARLINGTON 7601	
35.	Bill Nichols	" "	
36.	Sandra + John Flanagan	2428 Sweetwood Dr Fort Worth TX 76131	
37.	Martin Gary	TWC DIST. 3 WACO, TX	
38.	Dan Eden	TWC	
39.	Michelle McFadden	"	
40.	Anne Dobbs	"	
41.	Tracy Osha	"	
42.	Richard Clark	"	
43.	Bill Colbert	"	
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TEXAS WATER COMMISSION



B. J. Wynne, III, Chairman
John E. Birdwell, Commissioner
Chris Johnson, Commissioner

Allan Bainske, Executive Director

John J. Vay, General Counsel
Michael E. Field, Chief Hearings Examiner
Gloria A. Vasquez, Chief Clerk

March 8, 1991

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mr. Gerald Johnson, Manager
Environmental Services
Texas Utilities Generating Company
400 North Olive Street, L.B. 81
Dallas, Texas 75201

Re: Texas Utilities Generating Company/Comanche Peak
TWC Solid Waste Registration No. 33306
Two Hazardous Waste Landfills/TWC Fac. Nos. 01 and 02 and
Three Non-hazardous Waste Landfills/TWC Fac. Nos. 03, 04 and
05
Publisher's Affidavit Receipt and Closure Plan Review Based on
Public Meeting Concerns

MAR 17 1991

Dear Mr. Johnson:

On August 15, 1990, the Texas Water Commission (TWC) received your publisher's affidavit stating that Texas Utilities Generating Company/Comanche Peak had published notice of closure on August 9, 1990 in the Glen Rose Reporter. The TWC received requests for a public hearing from concerned citizens. In response to this request, the TWC held a public meeting on December 18, 1990 in the Tarrant County Convention Center.

Numerous allegations involving the closure were stated in this meeting:

- * all the landfills contain hazardous waste ('157 chemicals other than paint wastes and thinner, including lab pack waste materials');
- * ignitable materials contained in leaking containers were disposed in the landfills;
- * incompatible materials were disposed in the landfills;
- * methane gas may build-up in the landfills;
- * fire and/or explosion is likely with the current mix of wastes in the landfill;
- * RCRA land ban requirements have been violated;

Mr. Gerald Johnson
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- * the plans do not prevent releases in a manner sufficiently protective of human health and the environment because no removal or decontamination was provided for;
- * the landfill cells do not have liners or leachate collection systems and thus do not meet design and operational requirements;
- * over-excavation at the facility had resulted in subsurface faulting and the creation of fissures;
- * the ground water is contaminated;
- * the drinking water contains hazardous constituents;
- * the contamination has or could reach the surface waters;
- * Landfill No. 3 was built in Squaw Creek Reservoir;
- * Landfill Units 6 and 7 should be reevaluated;
- * there are more landfills at the facility;
- * the capping proposal fails to address leakage and/or leaching from the landfill units;
- * the leachate will only get more concentrated over time; and
- * 30 years post-closure care would be insufficient.

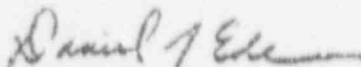
The concerned citizens feel strongly that the presence of the landfills threatens their community. They are primarily requesting that all wastes be removed or at a minimum all the landfills be closed as hazardous waste landfills under the permitting process.

In response to these concerns, the TWC is requesting that Texas Utilities Generating Company - Comanche Peak provide a written response to the above allegations to the TWC, conduct an assessment of the necessary actions needed to conduct a clean closure of the subject landfills and submit the resulting assessment report to the TWC. The information provided in the assessment report should include, at a minimum, the methods for any treatment or removal action, the proposed disposal site(s), an evaluation of the exposure risks due to removal of wastes and a detailed comparison of the risk of removal versus closure in place. All technical assumptions used to develop this report should be clearly identified and justified. Cost information should also be included. Texas Utilities Generating Company/Comanche Peak must submit a written response to the allegations and the assessment report to the TWC within 60 days from your receipt of this letter.

Mr. Gerald Johnson
Page 3

If you have any questions please contact Mary Adrian or Linda Smith of the Hazardous and Solid Waste Enforcement Section at (512) 463-8425.

Sincerely,


Daniel J. Eden, Director
Hazardous and Solid Waste Division

DJE/LLS:lls

cc: Linda Porter
Tony Robbleto, U.S. Environmental Protection Agency (SH-PT)
Michelle McFaddin, TWC Legal Division
TWC District 3 Office
TWC Reports and Information Management Section