Click to View Bookmarks

JACKSON WALKER L.L.P.
ATTORNEYS & COUNSELORS

Courtney E. Cox
(817) 334-7213 (Direct Dial)
(817) 870-5113 (Direct Fax)
cecox@jw.com

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY
2007 NOV -1 PM 3:44
CHIEF CLERKS OFFICE

November 1, 2007

Via Hand Delivery

LaDonna Castañuela, Chief Clerk
State of Texas Commission On Environmental Quality
12100 Park Thirty Five Circle, Building F
Austin, Texas 78753-1808

Re: TCEQ Docket No. 2007-1128-IWD; *In the Matter of the Application of Elmer Jack Parks d/b/a Jack Parks Dairy for Individual Permit No. WQ0003590000 to Operate a Concentrated Animal Feeding Operation*

Dear Ms. Castañuela:

Enclosed for filing is the original and 11 copies of *Elmer Jack Parks' Status Report on the Motion to Overturn the Executive Director's Decision and Motion to Determine the Sufficiency of Necessary Technical Data*. Please return the extra file-marked copy to me with the courier. I have this day forwarded a copy of this document to all interested parties as indicated below.

Please contact me if you have any questions regarding this matter.

Very truly yours,

Courtney E. Cox

Courtney E. Cox

CEC
Enclosures

cc: *Via Hand Delivery*
Mr. Robert Brush
Texas Commission on Environmental Quality
Environmental Law Division, MC-173
12100 Park 35 Circle, Bldg. A, 3rd Floor
Austin, Texas 78753

Via Hand Delivery
Ms. Christina Mann
Texas Commission on Environmental Quality
Office of Public Interest Counsel, MC-103
12100 Park 35 Bldg. A, 3rd Floor
Austin, Texas 78753

Via Hand Delivery
Mr. Kyle Lucas
Texas Commission on Environmental Quality
Alternative Dispute Resolution, MC-222
12100 Park 35 Circle, Bldg. F, 4th Floor
Austin, Texas 78753

Via Hand Delivery
Mr. Charles Maguire
Mr. Chris Linendoll
Texas Commission on Environmental Quality
Land Application Team, MC-148
12100 Park 35 Circle, Bldg. F, 2nd Floor
Austin, Texas 78753

Via Hand Delivery
Ms. Bridget Bohac
Texas Commission on Environmental Quality
Office of Public Assistance, MC-108
12100 Park 35 Circle, Bldg. F, 4th Floor
Austin, Texas 78753

TCEQ DOCKET NO. 2007-1128-IWD

IN THE MATTER OF THE	§	**BEFORE THE**
APPLICATION OF ELMER JACK	§	
PARKS D/B/A JACK PARKS DAIRY	§	
FOR INDIVIDUAL PERMIT	§	**TEXAS COMMISSION ON**
NO. WQ0003590000 TO OPERATE A	§	
CONCENTRATED ANIMAL	§	
FEEDING OPERATION	§	**ENVIRONMENTAL QUALITY**

ELMER JACK PARKS' STATUS REPORT ON THE MOTION TO OVERTURN THE EXECUTIVE DIRECTOR'S DECISION AND MOTION TO DETERMINE THE SUFFICIENCY OF NECESSARY TECHNICAL DATA

TO THE HONORABLE COMMISSIONERS OF THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY:

COMES NOW, Elmer Jack Parks d/b/a Jack Parks Dairy ("Parks") and files this Status Report on the Motion to Overturn the Executive Director's Decision and Motion to Determine the Sufficiency of Necessary Technical Data concerning Parks' Application for an Individual Permit No. WQ0003590000 to operate a concentrated animal feeding operation ("CAFO"), and in support respectfully shows as follows:

I. INTRODUCTION

This case concerns the Executive Director's decision to return Parks' application for a major amendment to his Individual Permit No. WQ0003590000 to operate a CAFO. On September 19, 2007, the Commissioners considered Parks' Motion to Overturn the Executive Director's Decision and Motion to Determine the Sufficiency of Necessary Technical Data and determined that Parks should have an additional thirty days to resolve any remaining technical deficiencies in his application. The Commissioners ordered that Parks and the Executive Director would return for hearing on November 7, 2007 to determine whether his application is technically sufficient. Just more than one week later, Parks, through his new consultant Enviro-Ag Engineering, Inc. ("EAE"), submitted an updated application on September 28, 2007.

Shortly thereafter, TCEQ permitting staff advised Parks' consultant of additional information needed to process his application. Days later, EAE delivered the requested information to TCEQ permitting staff. Parks now files this Status Report to further update the Commissioners on the status of his application and to request that the application be found to be technically sufficient.

II. FACTUAL AND PROCEDURAL BACKGROUND

On June 20, 2007, the Executive Director returned Parks' permit application and revoked his authorization to operate as a CAFO. After receiving the June 20, 2007 letter from the TCEQ returning his application, Parks immediately changed environmental consultants and retained Norman Mullin, P.E. of EAE. *See* Affidavit of Norman Mullin, P.E., attached hereto as Exhibit A. Shortly thereafter, EAE began work on revising Parks' application and attempting to remedy the purported deficiencies. On July 11 and 12, 2007, a representative of EAE contacted TCEQ permitting staff and submitted additional information concerning the Water Quality Standards Map for Parks. EAE did not receive any response to these communications prior to the September 19, 2007 hearing before the Commission.

After the Commission granted an additional thirty days for Parks and TCEQ permitting staff to complete the application and resolve deficiencies, EAE diligently continued working to complete Parks' application. Approximately one week later, on September 28, 2007, EAE filed with the TCEQ Parks' revised application and requested that TCEQ staff promptly contact him for additional information or to resolve any remaining questions. *See* Attachment A to the Executive Director's Status Report. As a follow-up to the filing, EAE sent a letter to Charles Maguire on October 8, 2007 requesting that the staff contact them within the following ten days in the event there are any outstanding issues. Additionally, EAE requested an in-person meeting with the staff for the week of October 22, 2007 to discuss the updated application and ensure that

all technical aspects had been covered. *See* October 8, 2007 Letter from Norman Mullin, P.E. to Charles Maguire, attached hereto as Exhibit B.

On October 12, 2007, L'Oreal Stepney, P.E. sent a letter to EAE acknowledging receipt of Parks' updated application and attaching a list of additional administrative and technical information that would be needed by permitting staff. *See* October 12, 2007 Letter from L'Oreal Stepney, P.E. to Norman Mullin, P.E., attached hereto as Exhibit C. In this letter, Ms. Stepney also agreed to meet with Mr. Mullin to discuss any outstanding issues. On October 15, 2007, the Executive Director filed a Status Report outlining the remaining deficiencies in Parks' application. In response to the October 12 letter and subsequent Status Report, EAE contacted the TCEQ staff on October 17, 2007 attempting to schedule an in-person meeting to discuss the purported deficiencies. *See* October 17, 2007 email from Norman Mullin, P.E. to L'Oreal Stepney, P.E., attached hereto as Exhibit D.

On October 22, 2007, Mr. Mullin met with several TCEQ staff members regarding the application and hand-delivered supplemental materials addressing each of the remaining deficiencies outlined on the October 12, 2007 letter from TCEQ. *See* October 20, 2007 Transmittal Memo, attached hereto as Exhibit E. At the meeting's conclusion, TCEQ's permitting staff indicated that they would review the information and promptly advise of any outstanding issues. As of the filing of this Response, EAE has not received any further inquiries from the TCEQ regarding Parks' application.

III. STATUS REPORT

Considering the progression of events from the return of Parks' application up through the date of this Response, the status of communication and cooperation between TCEQ staff and Parks or his consultant is much improved. Parks and his consultant have made every effort and

will continue to make every effort to supply the TCEQ with any and all information needed to complete the technical review of his application. In the interest of renewed cooperation, Parks has provided materials to the TCEQ concerning his application with all deliberate speed.

The communications and spirit of cooperation demonstrated over the last month between Parks and the TCEQ is significant progress and a strong indicator of how permits can and should proceed. The process must continue, however, and not veer off course by unnecessarily halting the process and requiring Parks to begin again. The message intended to be sent by the TCEQ in returning Parks' application has been received, and the events of the last month demonstrate that the problem is resolved. No one will benefit—not Parks, not the environment, not the TCEQ, and not the State of Texas—from now returning Parks' application. The Executive Director's decision to return Parks' application should therefore be overturned.

IV. PRAYER

WHEREFORE, PREMISES CONSIDERED, Elmer Jack Parks d/b/a Jack Parks Dairy respectfully prays that the Commissioners overturn the Executive Director's decision returning Parks' permit application.

Respectfully submitted,

Courtney E. Cox

James D. Bradbury
State Bar No. 02814500

JAMES D. BRADBURY, P.L.L.C.
500 Main Street, Suite 600
Fort Worth, Texas 76102
Telephone: 817.341.1356
Facsimile: 817.386.8054

Courtney E. Cox
State Bar No. 24045711

JACKSON WALKER L.L.P.
301 Commerce Street, Suite 2400
Fort Worth, Texas 76102
Telephone: 817.334.7200
Facsimile: 817.870.5113

ATTORNEYS FOR ELMER JACK PARKS D/B/A JACK PARKS DAIRY

CERTIFICATE OF SERVICE

I hereby certify that on this **1st** day of **November, 2007** a true and correct copy of the above and foregoing document has been forwarded to the following parties as indicated below:

Via Hand Delivery
Mr. Robert Brush
Texas Commission on Environmental Quality
Environmental Law Division, MC-173
12100 Park 35 Circle, Bldg. A, 3rd Floor
Austin, Texas 78753

Via Hand Delivery
Ms. Christina Mann
Texas Commission on Environmental Quality
Office of Public Interest Counsel, MC-103
12100 Park 35 Circle, Bldg. A, 3rd Floor
Austin, Texas 78753

Via Hand Delivery
Mr. Kyle Lucas
Texas Commission on Environmental Quality
Alternative Dispute Resolution, MC-222
12100 Park 35 Circle, Bldg. F, 4th Floor
Austin, Texas 78753

Via Hand Delivery
Mr. Charles Maguire
Mr. Chris Linendoll
Texas Commission on Environmental Quality
Land Application Team, MC-148
12100 Park 35 Circle, Bldg. F, 2nd Floor
Austin, Texas 78753

Via Hand Delivery
Ms. Bridget Bohac
Texas Commission on Environmental Quality
Office of Public Assistance, MC-108
12100 Park 35 Circle, Bldg. F, 4th Floor
Austin, Texas 78753

Courtney E. Cox

EXHIBIT A

TCEQ DOCKET NO. 2007-1128-IWD

IN THE MATTER OF THE APPLICATION OF ELMER JACK PARKS D/B/A JACK PARKS DAIRY FOR INDIVIDUAL PERMIT NO. WQ0003590000 TO OPERATE A CONCENTRATED ANIMAL FEEDING OPERATION	§	BEFORE THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

AFFIDAVIT OF NORMAN MULLIN, P.E.

STATE OF TEXAS §
§
COUNTY OF Bailey §

Before me, the undersigned authority, on this day personally appeared Norman Mullin, P.E., known to me, and stated under oath as follows:

1. "My name is Norman Mullin. I am over twenty-one years of age and am otherwise competent to testify as to the matters contained herein. I am President of Enviro-Ag Engineering, Inc. ("EAE"). EAE has been involved with representing Elmer Jack Parks and his dairy (collectively, "Parks") in his efforts at obtaining an amended water quality permit to operate as a concentrated animal feeding operation from the Texas Commission on Environmental Quality ("TCEQ"). In that capacity and from the knowledge in the possession of EAE, I have gained personal knowledge of the facts contained herein, each of which is true and correct.

2. "On or about June 26, 2007, Parks retained EAE to perform all engineering and permitting work for the dairy.

3. "On July 11 and 12, 2007, EAE contacted the TCEQ and submitted additional information concerning the Water Quality Standards Map for Parks. EAE did not receive any response to these communications prior to the September 19, 2007 hearing before the Commissioners.

4. "On September 28, 2007, EAE submitted a revised application to the TCEQ and requested that TCEQ staff promptly contact me for any additional information or to resolve any remaining questions.

5. "On October 8, 2007, I sent a letter to Charles Maguire requesting that the TCEQ staff contact me within ten days in the event there are any outstanding issues and requested an in-person meeting with TCEQ staff for the week of October 22, 2007 to discuss the application and resolve any remaining issues.

6. "On October 12, 2007, I received a letter from L'Oreal Stepney, P.E. at the TCEQ attaching a list of technical issues which needed to be resolved with Parks' application.

7. "On October 17, 2007, I contacted the TCEQ staff to again attempt to schedule an in-person meeting regarding the application and any remaining issues that needed resolution.

8. "On October 22, 2007, I personally met with several TCEQ staff members regarding Parks' application. At that meeting, I hand-delivered a packet of supplemental materials addressing each of the remaining issues outlined in the October 12, 2007 letter from TCEQ. At the conclusion of the meeting, TCEQ's permitting staff indicated that they would review the information submitted and promptly advise of any outstanding issues.

9. "As of the date of this Affidavit, I have not received any further inquiries from TCEQ staff regarding outstanding issues on the application."

FURTHER AFFIANT SAITH NAUGHT.

NORMAN MULLIN, P.E., Affiant

SUBSCRIBED AND SWORN TO before me by Norman Mullin, P.E. this 1st day of November, 2007.

ESMERALDA P CAMPOLLA
My Commission Expires
December 6, 2008

Notary Public in and for the State of Texas

EXHIBIT B

ENVIRO-AG
EAE
ENGINEERING

October 8, 2007

Mr. Charles Maguire
TCEQ (MC-150)
P. O. Box 13087
Austin, TX 78711-3087

RE: Jack Parks Dairy – Erath County, Texas

Dear Mr. Maguire:

As we have discussed, you have acknowledged receipt of the materials submitted on behalf of Jack Parks Dairy on September 28, 2007. We supplied these materials to you promptly so that you could have the opportunity to review them well in advance of the November 7, 2007 agenda before the Commission. As indicated in my transmittal letter, this submission addresses and resolves all prior issues identified by the Executive Director on Jack Parks Dairy. In the event that you believe that there are any remaining outstanding issues, we ask that you advise us within the next 10 days so that we will be able to address any concerns. Further, I would like to schedule a meeting with you and your staff to discuss any outstanding issues during the week of October 22nd.

Thank you in advance for your consideration of this matter and we look forward to working with you on this permit.

Sincerely,

Norman Mullin, P.E.
President

Cc: Ms. Keri Jo Qualtrough
Mr. Jack Parks
Mr. James Bradbury
File

3404 AIRWAY BLVD. • AMARILLO, TEXAS 79118 • TEL (806) 353-6123 • FAX (806) 353-4132
www.enviroag.com

EXHIBIT C

Kathleen Hartnett White, *Chairman*
Larry R. Soward, *Commissioner*
H. S. Buddy Garcia, *Commissioner*
Glenn Shankle, *Executive Director*

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

October 12, 2007

Mr. Norman Mullin, P.E.
Enviro-Ag Engineering
3404 Airway Boulevard
Amarillo, Texas 79118

Re: Jack Parks Dairy – Erath County, Texas

Dear Mr. Mullin:

We received the new application for the Jack Parks Dairy on September 28, 2007. In your cover letter, you generally stated that the new application resolves the March 28, 2007 Notice of Deficiency (NOD). Other than this general statement, you did not provide any specificity in your 189 page application on how those old deficiencies were resolved. In fact, the new application creates new deficiencies necessitating yet another NOD.

In our preliminary review of the new application, we have found both administrative and technical deficiencies. The Executive Director will file a status report with the Commission on October 15, 2007. We will include the staff's preliminary list of both administrative and technical deficiencies. Due to the rushed nature of the staff's review, we cannot state that the list of deficiencies is complete and exhaustive.

The staff will be happy to meet with you to discuss the new deficiencies prior to the November 7, 2007 agenda. Please be aware that in doing so, we may be going beyond the Commission's directive. The Commission contemplated that Mr. Parks would respond to the March 28, 2007 NOD. Now, we are in the position where we will in essence, be sending out yet another NOD for this facility. The Commission did not contemplate this course of action but instead wanted to give Mr. Parks a final opportunity to resolve the problems in his old application. Nevertheless, we will work with you to attempt to resolve the new deficiencies in your new application prior to the November 7 agenda.

Sincerely,

L'Oreal Stepney, P.E.
Division Director
Water Quality Division

LWS/SH/jp

Enclosures

cc: Mr. Elmer Jack Parks, Lingleville Dairy, 429 County Road 297, Stephenville, Texas 76401

ADMINISTRATIVE REVIEW DEFICIENCIES IN THE NEW PERMIT APPLICATION

The ED's preliminary review of the new application identified the following administrative deficiencies.

1. The Landowner map and landowner list were revised by Mr. Parks and now have the following deficiencies. See requirements at 30 TAC §§ 305.45(a)(6) and 305.48(2).

    a. Landowners map showed Landowner T, but landowner list did not give name and mailing address.
    b. Landowner list showed Landowner Y, but map did not identify the location of this landowner.

2. The location and road description in the new application are different from the previous application and are not correct (See requirement in 30 TAC 305.45(a)(1)). Road names are different and the direction is different.

TECHNICAL REVIEW DEFICIENCIES IN THE NEW PERMIT APPLICATION

The ED's preliminary review of the new application identified the following technical deficiencies.

Significant Deficiencies in the New Application

1. The drainage areas for RCS #1 and #2 are not consistent with acreage previously provided by the Applicant and estimated by TCEQ staff. The new application uses engineering calculations based on a drainage area of 20.1 acres, but as presented on the site map and in tax records that were provided with the application, the drainage area is at least 30 acres. That dramatically impacts the engineering design calculations and NMP. This discrepancy makes the design storm volume, operating volume, and sludge volume incorrect. Because of the need to revise the acreage will require the planned withdrawal from the RCSs to increase making the current NMP incorrect. See requirement at 30 TAC § 321.36(c). Technical Packet, Page 4.

2. RCS #1 contains 88% of the wastewater pumped for land application, but the only effluent sample provided was from RCS #2 and that is the sample used in the NMP. The NMP is not acceptable without a sample that is representative of the nutrient concentrations in all the effluent land applied. Therefore, a sample from RCS #1 is needed to make sure the ED has a representative sample of the nutrient

concentrations of the effluent being land applied. See requirement at 30 TAC § 305.45(a)(8)(B)(ii).

3. Proposed crops and yield goals are inconsistent with the NMP (See requirement at 30 TAC § 305.45(a)(8)(A)). Technical Packet, Page 6 Attachment.

4. On the Land Application Summary table, the estimated land application rates are based on the maximum application rate not the planned rate. As presented, it is inconsistent with the NMP and the engineering calculations. The estimated land application rate should not exceed what is available. See requirement at 30 TAC § 305.45(a)(8)(B)(i). Technical Packet, Page 6 attachment.

5. The available irrigation equipment consists of a pivot for land management unit (LMU) #1 and a wheel roll system. The ED needs verification that the wheel roll system can cover all LMU acreage shown in LMU #7a, #7b, and #7c. The irregular boundary shapes shown for these LMUs do not fit the rectangular shape that would occur due to the use of a wheel roll system. No other system is indicated in the application other than the pivot on LMU #1. The LMU map needs to show the area watered just like it does for the pivot. If some of the acres cannot be watered using the available equipment, the water balance and NMP are incorrect. See requirement at 30 TAC § 305.45(a)(8)(B)(i). Technical Packet, Page 7.

6. The acreage and location of LMU #1 needs verification. The center of the pivot appears to start inside of RCS #1. Also, buffers, well locations, and configuration of LMU #1 on the Site Map and the Proposed Buffer Map, Figure 6.1 are inconsistent. Some maps show the pivot covering part of the buffered area and others show a portion of the pivot shut off to avoid application in the buffered area. However, all report the same acreage, which is unlikely given their differing areas. The pivot cannot operate over the buffer zone and it needs to be accurately placed on the maps with an accurate representation of the covered acreage. Also, if the end gun is to be cut off the shut off distance needs to be documented in the application and reflected on the map. It is not likely that the shut off of the end gun will exactly match the line on the buffer. See requirements at 30 TAC §§ 305.45(a)(8)(B)(i) and 30 TAC § 321.43(f)(4)(a).

7. The buffered area between LMUs #12a and #12b needs verification. It appears there is an area of the stream that is not properly buffered. No documentation was provided to indicate that this stream is not waters in the state. There are also drainage areas in LMUs #3, #5b, #7a, #7c, #8, #9a, and #9b that need photographic documentation to justify the lack of need for buffering. The addition of the required buffer will change spreadable acreage and affect the NMP

and possibly the engineering calculations. See requirements at 30 TAC §§ 321.34(f)(4)(a) and 30 TAC § 321.42(w).

8. On the Runoff Control Map, the calf hutches are outside the RCS Drainage Area. The application proposes to contain only the design storm event runoff. That potential discharge cannot be authorized since there is no RCS containment for the calf hutches. If left outside the drainage area there can be no discharge of contaminated rainfall runoff and the application will need to be modified to reflect no discharge from this area. See requirements at 30 TAC §§ 321.37(d) and 30 TAC § 321.38(e)(7).

9. A portion of the runoff in drainage area #1 flows into the bar ditch and then under a county road. This is a major design change from what was previously provided by Mr. Parks. The county road ditch is considered water in the state, and as such must be protected from wastewater. There is no verification that the proposed use of the county road culvert and bar ditch appropriately protects waters in the state or that water moving in the bar ditch from above the production area has been accounted for or diverted according to design requirements. With respect to using the county road culvert as a conveyance, there needs to be some verification that the culvert under the road will carry the runoff from a 25-year 10-day storm water event without overtopping the road, or that if the road is overtopped, runoff will not discharge down the road. The ED also needs documentation from Erath County that grants the Applicant a legal right to use the road crossing for this purpose. This production area is upstream from a nutrient and bacteria impaired stream segment. The impacts of resolving this issue will most likely require new engineering calculations and a new NMP. See requirements at 30 TAC §§ 321.38(e)(1) and 30 TAC § 321.38(e)(6).

10. The design assumptions for the engineering calculations do not demonstrate a way for RCS #1 effluent to get to any LMUs other than LMU #1. If this is the case, the Water Balance is not correct and RCS #1 does not have adequate storage for the operating volume. Either the Water Balance should be revised or an explanation as to how RCS #1 effluent can be applied to LMUs #7a, #7b, and #7c as assumed in the water balance. The same issue arises for RCS #2 effluent being land applied on LMU #1 as assumed in the water balance. If all of the RCS #1 effluent can only be applied to LMU #1 and RCS #2 applied only to LMU #7a, #7b, and #7c as it appears in the site plan then the water balance and the NMP are both incorrect. See requirement at 30 TAC § 321.38(e)(7)(B).

11. The application proposes to allow cows to graze on LMUs with filter strips without providing any BMPs to protect the filter strips. Permitting staff has been told that Mr. Parks has fencing on the water courses to keep cattle out but the fencing does not enclose the entire buffer area. To the extent the fences don't

protect the buffers a grazing plan associated with NRCS Practice Standard Code 393 must be provided to support the NMP. See requirement in NRCS Practice Standard Code 393.

12. The phosphorus index (P-Index) Report in the NMP shows LMU #4a and LMU #6a to have soil test phosphorus values in the P-Index that are inconsistent with other application information. See requirement at 30 TAC § 321.36(d)(1).

13. There are inconsistencies in the numbering of the LMUs on the Soil Test Results and in the NMP.

14. If manure or wastewater has planned applications in the NMP to off-site LMUs, soil analyses must be submitted so that the NMP and P-Index can be evaluated. Soil analyses were not included for all the LMUs with planned applications in the NMP. See requirement at 30 TAC § 305.45(a)(8)(B)(ii).

15. Page 8 of the Technical Packet lists 15 wells. Page 33, the Recharge Feature Certification (RFC) lists 16 wells. The Recharge Feature Map shows 18 wells. All of the documents need to reflect the right number of wells and the maps need to accurately show locations. Figure 6.1a, Proposed Buffer Map; a neighboring well on the bottom of LMU #5b is not shown. It is possible that well is close enough that a buffer will be required. See requirement at 30 TAC § 321.34(f)(3).

16. The RFC identifies the two seepage detection wells as wells 17 and 18. These wells are required in the current permit, and will remain in the renewal of the permit application. Therefore, the wells may not be plugged at this time. Please revise the BMPs for these wells to reflect how the underlying groundwater will be protected from the introduction of any contaminants. Additionally, include these wells on Table E in the Technical Information Packet and in Table 5.4--Well Information. See requirement at 30 TAC § 321.34(f)(4)(A).

Other Noted Technical Deficiencies in the New Permit Application

17. Page 5 of 13, Administrative Application, Section A Authorization; the application type marked is incorrect, this is a major amendment not a renewal. See requirement at 30 TAC § 305.62(c)(1).

18. Page 6, Technical Packet; solids application amount is inconsistent with NMP. The difference is small but both documents should be consistent. See requirement at 30 TAC § 321.45(a)(8)(B)(i).

19. Page 6, Technical Packet; wastewater application amount inconsistent with engineering calculations and NMP. The difference is small but should be consistent. See requirement at 30 TAC § 305.45(a)(8)(B)(i).

20. Page 10 of 13, Administrative Application, Section 2 Technical Information; for amendments, the applicant must describe all major changes proposed for the facility. This section was left blank. See requirements at 30 TAC §§ 321.34(d) and 30 TAC § 305.62(b).

21. An improper signature is on the cover page of the NMP, Amy Haschke signed for Corey Mullin. The cover page has to be actually signed by a certified nutrient management specialist responsible for the plan.

22. On the signature page of the NMP, Corey Mullin signed for Elmer Jack Parks and there is no indication how the operator was informed of the contents of the NMP. If the operator does not sign the plan it is a requirement of the NMP to provide a statement indicating how the plan will be reviewed with the operator. The date of Mr. Mullin's signature on the signature page is prior to the date on the rest of the NMP. The signature date should be the same or after the date of the plan.

23. The P-Index Report in the NMP shows LMU #7c to have a slope that appears inconsistent with the USGS topo map provided in the application. See requirement at 30 TAC § 321.36(d)(1).

24. On Page 21 of the RFC, Section 5.4, Definition of Waste Production, has a reference to a headcount increase that is inconsistent with the application.

25. On Page 24 of the RFC, the geology map submitted as figure 5.1 appears to have the offsite property incorrectly mapped. The map needs to be revised and if appropriate the RFC.

26. On Page 25 of the RFC, Section 5.6.2, Excessive Slopes, states that no slopes of greater than 8% on this property will receive manure solids and/or wastewater. The P-Index Report in the NMP states that LMU #12a has a slope of 8.1%. The NMP should be revised so that no application is planned on slopes greater than 8% since that is a NRCS 590 Practice Standard guideline.

27. Please send documents identifying whether water has been found in the seepage detection wells identified as wells #17 and #18. If water has ever been detected in the wells, please identify when the water was detected and submit the test results.

EXHIBIT D

From: Norman Mullin [mailto:norman@enviroag.com]
Sent: Wednesday, October 17, 2007 5:15 PM
To: L'Oreal Stepney
Subject: Parks 3590

Ms. Stepney,
I would like to schedule a meeting on the Parks' application for either Monday (10/22) or Tuesday (10/13) preferably after 10 am. Please let me know if these dates meet with your schedule.

Thanks

ENVIRO-AG EAE ENGINEERING, INC.
Norman Mullin
P.E., President
3404 Airway Blvd.| Amarillo, Texas 79118
(806) 353-6123 ex.102 | (806) 353-4132 (fax)
(806) 679-0204 (cell)
www.enviroag.com

Enviro-Ag Engineering, Inc. is a progressive consulting firm offering a unique blend of talent and engineering experience. EAE is centrally located to serve a client base covering much of the United States. This email and any files transmitted with it are confidential and intended solely for the use of the individual or entity to whom they are addressed. If you have received this email in error please notify the sender and delete this message. For more information, please visit our website or give us a call.

No virus found in this outgoing message.
Checked by AVG Free Edition.
Version: 7.5.488 / Virus Database: 269.14.13/1074 - Release Date: 10/16/2007 2:14 PM

No virus found in this outgoing message.
Checked by AVG Free Edition.
Version: 7.5.488 / Virus Database: 269.14.13/1074 - Release Date: 10/16/2007 2:14 PM

EXHIBIT E

ENVIRO-AG ENGINEERING

TRANSMITTAL MEMO

COPY

DATE: October 20, 2007

TO: L'Oreal Stepney, P.E.
TCEQ Water Quality Division, Applications Team (MC-150)
TCEQ Region 4, Stephenville
Lingleville Dairy

FROM: Norman Mullin, P.E.

SUBJECT: Revisions to IP Application for Elmer Jack Parks, #03590
CN601127798, RN102091873 – Erath County

Attached please find the original and two copies of the items requested in your letter dated October 12, 2007.

Administrative:

1. Landowners list (page 10) has been revised to list Landowner T which corresponds to the Landowners Map previously submitted.
2. The location and road description has been corrected to include accurate road names and directions.

Technical:

1. Survey data collected by Enviro-Ag is represented in the revised Tables 2.2 a-b, reflect the bermed drainage area for each RCS. The engineering calculations and Nutrient Management Plan (NMP) have been revised to reflect the correction of the drainage acres.
2. The NMP has been revised to utilize an effluent sample from RCS #1 and #2.
3. The proposed crops and yield goals have been revised to include small grains.
4. The land application summary table has been revised to correspond with the planned rates outlined in the NMP.
5. All land application of wastewater will be performed using a pivot or big gun sprinkler system.
6. All appropriate figures have been revised to accurately reflect the location of LMU 1 in reference to the buffers.
7. Figures 6.1 a-b have been revised to include all appropriate buffers between waste application and waters of the state.
8. The calf hutches are excluded from the drainage area in a covered calf barn because no storm water runoff is generated.
9. A letter signed by Erath County Judge Tab Thompson and Commissioner Lynn Tidwell stating Parks Dairy has access to the county road and the County right-of-way for runoff conveyance is attached. The waterway present south of the

3404 AIRWAY BLVD. • AMARILLO, TEXAS 79118 • TEL (806) 353-6123 • FAX (806) 353-4132
www.enviroag.com

retention pens and west of the county road is currently abandoned and serves no purpose, therefore, the culvert size moot. The rainfall runoff from the pens, is and will continue to be, directed across the county road at a point north of the existing culverts.

10. Irrigated acreage for RCS #1 includes LMUs 1, 2a, 2b and 3. The applicant has secured NRCS EQIP funding approved to extend the underground water line from RCS #1 to LMU #3 to access these fields with a walking big gun. Similarly, irrigated acreage for RCS # 2 includes LMUs 7a, 7b and 7c which are also to be irrigated with a walking big gun.
11. Filter strips will be installed and maintained in accordance with NRCS Practice Code 393. Specific management of filter strip vegetation may include cutting or grazing. All grazing will be in accordance with NRCS Practice Code 528 – Prescribed Grazing, to prevent overgrazing. If the vegetative component of a filter strip is not managed (harvested) plant densities will decrease and render the vegetation ineffective for the intended purpose. Thus, grazing may be utilized to assist in maintaining the desired species composition and vigor of the plant community to ensure adequacy of filtering capacity.
12. The NMP was revised to reflect very high soil test P.
13. The executive summary of the NMP clarifies the LMU configuration.
14. As stated in the executive summary of the NMP, no application to off-site LMUs.
15. The additional wells were omitted by mistake. The well section of the TIP only allows for 15 entries and an additional page was inadvertently left out. This additional page has been added to the Technical Packet to include 19 wells. As shown on the Proposed Buffer Map, Figure 6.1a, the 150-foot buffer shown on the map will be maintained.
16. Table 5.4 has been revised to include leak/seep detection wells (#17 and #18) and associated BMPs for the wells
17. Page 5 of 13 has been revised to correct the application type as major amendment due to adding non-adjacent land owned or leased by the applicant.
18. & 19. The solids and wastewater application rate has been revised to be consistent with the revised NMP. Calculations were performed in Microsoft Excel using floating point arithmetic in order to maintain the accuracy of the data. Any inconsistencies in rounding of the displayed values are not to be construed as errors in the calculation. For more information, please refer to http://support.microsoft.com/kb/42980
20. Page 10 of 13 has been revised to include a description of all proposed changes.

21, 22 & 23. The NMP has been revised and signed by a certified nutrient management specialist and the operator.

24-26 Pages 21, 24, 30, 31, 34, 35 & 36 of the RFC has been revised and the RFC recertified.

27. A copy of the current years detection well inspection report is attached as supporting documentation that seepage has not been detected in the wells (#17 and #18).