

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*

August 2, 2007

TO: Persons on the attached mailing list.

RE: UA Holdings 1994-95, Inc.  
TCEQ Docket No. 2005-1184-MWD; SOAH Docket No. 582-06-0393  
TCEQ TPDES Permit No. WQ0014468001

### **Decision of the Commission on Application**

The Texas Commission on Environmental Quality ("TCEQ" or "Commission") has made a decision to deny the above-referenced matter. Enclosed with this letter is a copy of the Commission's order. Unless a Motion for Rehearing ("MFR" or "motion") is timely filed with the chief clerk, as described below, this action of the Commission will become final. A MFR is a request for the Commission to review its decision on the matter. Any motion must explain why the Commission should review the decision.

### **Deadline for Filing Motion for Rehearing.**

A MFR must be received by the chief clerk's office no later than 20 days after the date a person is notified of the Commission's order on this matter. A person is presumed to have been notified on the third day after the date that this order is mailed.

An original and 11 copies of the motion must be sent to the chief clerk at the following address:

LaDonna Castañuela, Chief Clerk  
TCEQ, MC-105  
P.O. Box 13087  
Austin, Texas 78711-3087

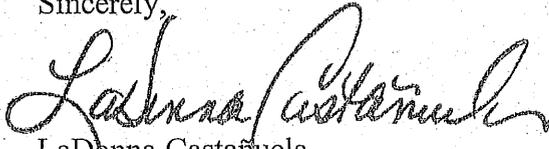
In addition, a copy of the motion must be sent on the same day to each of the individuals on the attached mailing list. A certificate of service stating that copies of the motion was sent to those on the mailing list must also be sent to the chief clerk.

The written motion must contain (1) the name and representative capacity of the person filing the motion; (2) the style and official docket number assigned by SOAH or official docket number assigned by the Commission; (3) the date of the order; and (4) a concise statement of each allegation of error.

Unless the time for the Commission to act on the motion is extended, the MFR is overruled by operation of law 45 days after a person is notified of the Commission's order on this matter.

If you have any questions or need additional information about the procedures described in this letter, please call the Office of Public Assistance toll free at 1-800-687-4040.

Sincerely,



LaDonna Castañuela  
Chief Clerk

LDC/mr

Enclosure

MAILING LIST  
UA Holdings 1994-95, Inc.  
TCEQ Docket No. 2005-1184-MWD

FOR THE APPLICANT:

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INTERESTED PERSONS:

See attached list.

FOR THE EXECUTIVE DIRECTOR:

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FOR THE CHIEF CLERK:

LaDonna Castañuela  
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\* The Honorable Tommy L. Broyles  
Administrative Law Judge  
State Office of Administrative Hearings  
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\* Courtesy Copy

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TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



AN ORDER

Denying the application of UA Holdings 1994-95, Inc.  
for a new TPDES Permit No. WQ14468-001;  
TCEQ Docket No. 2005-1184-MWD;  
SOAH Docket No. 582-06-0393

On July 25, 2007, the Texas Commission on Environmental Quality (the TCEQ or Commission) considered the application of UA Holdings 1994-95, Inc. (UA) for a new TPDES Permit No. WQ14468-001 for a wastewater treatment plant in Montgomery County. The application was presented to the Commission with a Proposal for Decision by Tommy L. Broyles, Administrative Law Judge (ALJ) with the State Office of Administrative Hearings (SOAH). After considering the ALJ's Proposal for Decision and the evidence and arguments presented, the Commission makes the following Findings of Fact and Conclusions of Law:

I. FINDINGS OF FACT

Procedural History and Parties

1. In July 2003, UA filed an application to discharge treated domestic wastewater from a treatment plant with the TCEQ.
2. UA's application was found to be technically complete by the Executive Director (ED) of the TCEQ and subsequently referred to SOAH by Commission Order on October 17, 2005.
3. After an agreed motion for continuance of the initial preliminary hearing was granted, the preliminary hearing was held on February 15, 2006, in Conroe, Texas.

4. The Office of Public Interest Counsel (OPIC) and the ED of the Commission elected to participate in the proceeding.
5. The application was protested by Phil Berthelot, Doug Joslyn, and Maria Brasher, who were found to be affected persons and granted party status.
6. Blue Heron Bay Property Owner's Association also sought party status, but its request was denied.
7. After the evidentiary hearing was continued, at the request of Mr. Joslyn and without objection from the other parties, the hearing convened on September 11, 2006, in Austin, Texas, and ended that same day.
8. The record closed on the day of the hearing.

#### **Notice**

9. On or about August 6, 2004, UA placed a copy of the application in the Montgomery County Central Library for public inspection and copying.
10. UA published a Notice of Receipt and Intent to Obtain a Permit in *The Courier* on September 15, 2003. This newspaper is published and regularly circulated in Montgomery County. The TCEQ Chief Clerk also mailed copies of the notice to interested persons, other agencies, elected officials and others.
11. UA published a Notice of Application and Preliminary Decision in *The Courier* on November 26, 2003, and then again on August 18, 2004. The TCEQ Chief Clerk also mailed copies of the notice to interested persons, other agencies, elected officials and others.

12. Notice was provided and a public meeting was held on February 15, 2006, at the Montgomery County Commissioner's Courtroom.
13. UA published a Notice of Hearing in *The Courier* on January 8, 2006. This newspaper is published and regularly circulated in Montgomery County. The TCEQ Chief Clerk also mailed copies of the notice to interested persons, other agencies, elected officials and others.

### Whether the Applicant Proved Compliance with the Legal Standards

14. The Commission referred the following disputed, relevant and material issues of fact to SOAH for consideration:
  - a. Whether the effluent limitations in the draft permit are designed to maintain and protect the existing instream uses and are they consistent with the Texas Surface Water Quality Standards;
  - b. Will the permitted discharge adversely impact the use of Mr. Josyln's property; and
  - c. Whether issuing the permit is consistent with the Commission's regionalization policy.
15. Applicant rested its direct case without offering sufficient and admissible evidence to prove that the effluent limitations in the draft permit are designed to maintain and protect the existing instream uses and to prove that they are consistent with the Texas Surface Water Quality Standards.

## II. CONCLUSIONS OF LAW

1. The Commission has jurisdiction over water quality in Texas and to issue a permit to discharge waste into or adjacent to water in the state under TEX. WATER CODE §§ 5.013, 26.003, 26.011 and 26.027.

2. SOAH has jurisdiction over all matters relating to the conduct of a hearing in this proceeding, including the preparation of a proposal for decision with findings of fact and conclusions of law under TEX. GOVT. CODE §§ 2001.058 and 2003.047 and TEX. WATER CODE § 5.557.
3. At the request of UA, the TCEQ properly referred this case to SOAH for a contested case hearing under TEX. WATER CODE § 5.557 and 30 T.A.C. §§ 55.210.
4. The proceedings herein described were conducted in accordance with applicable law and regulations, specifically TEX. WATER CODE Chapters 5 and 26, TEX. GOVT. CODE Chapter 2001 and § 2003.047, the Commission's rules, and SOAH's procedural rules.
5. UA and TCEQ satisfied all public notice requirements set forth in TEX. GOVT. CODE § 2001.051 and § 2001.052, TEX. WATER CODE §§ 5.552, 5.553, 5.555, 26.022 and 26.028 and 30 T.A.C. §§ 39.551, *et seq.*
6. The Texas Surface Water Quality Standards, Title 30, Chapter 307 of the Texas Administrative Code are developed and adopted by TCEQ with the authority of Section 303(c) of the Federal Clean Water Act and Section 26.023 of the TEXAS WATER CODE. Under 30 T.A.C. § 307.1, the purpose of the Standards is to "maintain the quality of water in the state consistent with public health and enjoyment, propagation and protection of terrestrial and aquatic life, operation of existing industries, and economic development of the state."
7. Pursuant to 30 TEX. ADMIN. CODE §§ 80.17(a) and 80.117(b), Applicant had the burden of proof on all issues in controversy.
8. UA failed to offer sufficient and admissible evidence proving that, in accordance with TEX. WATER CODE §§ 26.023 and 26.027, UA's proposed wastewater treatment plant under the terms of the draft permit would maintain and protect the existing instream uses and Texas Surface Water Quality Standards of the receiving waters.

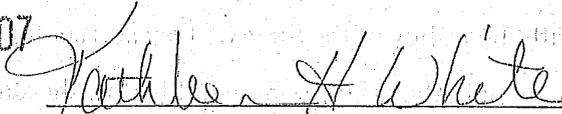
9. UA failed to offer sufficient and admissible evidence to meet its burden of proving that, in accordance with TEX. WATER CODE § 26.041, UA's wastewater treatment plants discharge under the terms of the draft permit would not be injurious to public health and are consistent with the Texas Surface Water Quality Standards.
10. UA failed to offer sufficient and admissible evidence to meet its burden of proving that, in accordance with the policy of the State of Texas as set forth at TEX. WATER CODE § 26.003, discharges pursuant to the draft permit would allow the state to maintain the quality of water in the state consistent with the public health and enjoyment, the propagation and protection of terrestrial and aquatic life, and the operation of existing industries, taking into consideration the economic development of the state.
11. UA's application should be denied and TPDES Permit No. WQ14468-001 should not be issued.

**NOW, THEREFORE, IT IS ORDERED BY THE TEXAS COMMISSION ON ENVIRONMENT QUALITY THAT:**

1. The application of UA Holdings 1994-95, Inc. for TPDES Permit No. WQ14468-001 is denied.
2. UA shall pay all transcription and reporting costs.
3. All other motions, requests for entry of specific Findings of Fact or Conclusions of Law, and any other requests for general or specific relief, if not expressly granted herein, are hereby denied.
4. The effective date of this Order is the date the Order is final, as provided by 30 TAC § 80.273 and Gov't Code § 2001.144.

5. The Commission's Chief Clerk shall forward a copy of this Order to all parties.
6. If any provision, sentence, clause, or phrase of this Order is for any reason held to be invalid, the invalidity of any provision shall not affect the validity of the remaining portions of this Order.

ISSUED: JUL 30 2007



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TEXAS COMMISSION ON ENVIRONMENTAL QUALITY  
Kathleen Hartnett White, Chairman  
For the Commission