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Glenn Shankle, *Executive Director*



TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

August 23, 2006

TO: Persons on the attached mailing list.

RE: Chevron Phillips Chemical Company LP
TPDES Permit No. WQ0000359000

Decision of the Executive Director.

The executive director has made a decision that the above-referenced permit application meets the requirements of applicable law. **This decision does not authorize construction or operation of any proposed facilities.** Unless a timely request for contested case hearing or reconsideration is received (see below), the TCEQ executive director will act on the application and issue the permit.

Enclosed with this letter is a copy of the Executive Director's Response to Comments. A copy of the complete application, draft permit and related documents, including public comments, is available for review at the TCEQ Central office. A copy of the complete application, the draft permit, and executive director's preliminary decision are available for viewing and copying at the Orange Public Library, 220 North 5th Street, Orange, Texas.

If you disagree with the executive director's decision, and you believe you are an "affected person" as defined below, you may request a contested case hearing. In addition, anyone may request reconsideration of the executive director's decision. A brief description of the procedures for these two requests follows.

How To Request a Contested Case Hearing.

It is important that your request include all the information that supports your right to a contested case hearing. You must demonstrate that you meet the applicable legal requirements to have your hearing request granted. The commission's consideration of your request will be based on the information you provide.

The request must include the following:

- (1) Your name, address, daytime telephone number, and, if possible, a fax number.
- (2) If the request is made by a group or association, the request must identify:
 - (A) one person by name, address, daytime telephone number, and, if possible, the fax number, of the person who will be responsible for receiving all communications and documents for the group; and
 - (B) one or more members of the group that would otherwise have standing to request a hearing in their own right. The interests the group seeks to protect must relate to the organization's purpose. Neither the claim asserted nor the relief requested must require the participation of the individual members in the case.
- (3) The name of the applicant, the permit number and other numbers listed above so that your request may be processed properly.
- (4) A statement clearly expressing that you are requesting a contested case hearing. For example, the following statement would be sufficient: "I request a contested case hearing."

Your request must demonstrate that you are an **"affected person."** An affected person is one who has a personal justiciable interest related to a legal right, duty, privilege, power, or economic interest affected by the application. Your request must describe how and why you would be adversely affected by the proposed facility or activity in a manner not common to the general public. For example, to the extent your request is based on these concerns, you should describe the likely impact on your health, safety, or uses of your property which may be adversely affected by the proposed facility or activities. To demonstrate that you have a personal justiciable interest, you must state, as specifically as you are able, your location and the distance between your location and the proposed facility or activities.

Your request must raise disputed issues of fact that are relevant and material to the commission's decision on this application. The request must be based on issues that were raised during the comment period. The request cannot be based solely on issues raised in comments that have been withdrawn. The enclosed Response to Comments will allow you to determine the issues that were raised during the comment period and whether all comments raising an issue have been withdrawn. The public comments filed for this application are available for review and copying at the Chief Clerk's office at the address below.

To facilitate the commission's determination of the number and scope of issues to be referred to hearing, you should: 1) specify any of the executive director's responses to comments that you dispute; and 2) the factual basis of the dispute. In addition, you should list, to the extent possible, any disputed issues of law or policy.

How To Request Reconsideration of the Executive Director's Decision.

Unlike a request for a contested case hearing, anyone may request reconsideration of the executive director's decision. A request for reconsideration should contain your name, address, daytime phone number, and, if possible, your fax number. The request must state that you are requesting reconsideration of the executive director's decision, and must explain why you believe the decision should be reconsidered.

Deadline for Submitting Requests.

A request for a contested case hearing or reconsideration of the executive director's decision must be in writing and must be **received by** the Chief Clerk's office no later than **30 calendar days** after the date of this letter: You should submit your request to the following address:

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

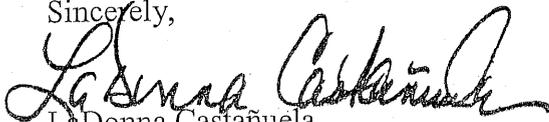
Processing of Requests.

Timely requests for a contested case hearing or for reconsideration of the executive director's decision will be referred to the alternative dispute resolution director and set on the agenda of one of the commission's regularly scheduled meetings. Additional instructions explaining these procedures will be sent to the attached mailing list when this meeting has been scheduled.

How to Obtain Additional Information.

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/spb

Enclosures

MAILING LIST

for

Chevron Phillips Chemical Company LP
TPDES Permit No. WQ0000359000

FOR THE APPLICANT:

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TPDES PERMIT NO. WQ0000359000

APPLICATION BY	§	BEFORE THE
	§	
CHEVRON PHILLIPS CHEMICAL COMPANY LP	§	TEXAS COMMISSION ON
	§	
TPDES PERMIT NO. WQ0000359000	§	ENVIRONMENTAL QUALITY

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY
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EXECUTIVE DIRECTOR'S RESPONSE TO PUBLIC COMMENT

The Executive Director of the Texas Commission on Environmental Quality (the Commission or TCEQ) files this Response to Public Comment (Response) on the application by Chevron Phillips Chemical Company LP (Applicant), for a major amendment to Texas Pollutant Discharge Elimination System (TPDES) Permit Number WQ0000359000 and on the Executive Director's preliminary decision. As required by Title 30 of the Texas Administrative Code (30 TAC), Section 55.156 (Rule), before an application is approved, the Executive Director prepares a response to all timely, relevant and material, or significant comment. The Office of Chief Clerk timely received a comment letter from Carolyn Smith Pravlik, counsel for Friends of the Earth (FOTE). Notwithstanding the limitation in the Rule to relevant and material, or significant comment, this Response addresses all timely public comments received, whether or not withdrawn. If you need more information about this permit application or the wastewater permitting process, please call the TCEQ Office of Public Assistance at 1-800-687-4040. General information about the TCEQ can be found at our website at www.tceq.state.tx.us.

BACKGROUND

Description of Facility

The Applicant operates a polyethylene manufacturing facility, the Orange Plant. The Applicant has removed multiple process units associated with its manufacturing of polyethylene and has applied to the TCEQ for a major amendment to its existing permit. The major amendment application would increase the daily maximum effluent limitation for total suspended solids at Outfall 001 and reduce the monitoring frequencies for total copper, oil and grease, biochemical oxygen demand (5-day), and chemical oxygen demand at Outfall 001. The current permit authorizes the discharge of process wastewater, utility wastewater, storm water, and domestic wastewater at a daily average flow not to exceed 3,150,000 gallons per day via Outfall 001. The effluent will be discharged to West Bunch Gully then to Cow Bayou Tidal in Segment No. 0511 of the Sabine River Basin.

The facility is located on the south side of Farm-to-Market Road 1006, approximately 1.7 miles east of the intersection of Farm-to-Market Road 1006 and State Highway 87, southwest of the City of Orange, Orange County, Texas.

Procedural Background

The application was received on August 29, 2005, and declared administratively complete on September 12, 2005. Notice of Receipt of Application and Intent to Obtain Permit was published on January 24, 2006, in the *Orange Leader*. The TCEQ Executive Director completed the technical review of the application on March 22, 2006, and prepared a draft permit. Notice of Application and Preliminary Decision was published on May 22, 2006, in the *Orange Leader*. The comment period ended on June 21, 2006. House Bill 801 (76th Legislature, 1999) applies to this application.

COMMENTS AND RESPONSES

COMMENT 1: FOTE states that there is no basis for backsliding when the treatment facilities have been found to be inadequate with regard to treating total suspended solids (TSS) during rain events. A permit modification is never justified when the treatment facilities are inadequate.

RESPONSE 1: A review of the historical self report data from the Environmental Protection Agency's (EPA) Permit Compliance System (PCS) records for the review period of September 2001 through November 2005 identified only one month, September 2002, of non-compliance with the specified limitation for TSS. This historical record tends to indicate that the treatment facilities have a record that demonstrates general compliance with the specified limitations for TSS on a year round basis.

This application is not subject to EPA's backsliding limitations because it qualifies for the backsliding exception. Title 40 of the Code of Federal Regulations (40 CFR), Section 122.44(1)(2)(i), provides that a permit may be renewed, reissued, or modified to contain a less stringent effluent limitation applicable to a pollutant if material and substantial alterations or additions to the permitted facility occurred after permit issuance which justify the application of a less stringent effluent limitation. Facility modifications have resulted in an increase of storm water runoff from uncovered/unpaved areas which may have a significant impact on the quality of the discharge with respect to TSS. More information concerning the basis for the justification for the backsliding of the TSS limitations can be found in the response to Comment No. 3 below.

COMMENT 2: FOTE states that the only TSS violation that occurred between the issuance of the 2001 permit and the 2005 permit was due to the fact that solids were scoured out of the Cube Pond. FOTE states that their engineering analysis of the capabilities of the Applicant's treatment facilities shows that, even with the Applicant's new program of removing sediments from the Cube Pond semi-annually, solids in the Cube Pond will be scoured during rainfall events due to insufficient weir capacity between the various chambers of the Cube Pond which causes flow velocities that resuspend the settled sediments and cause excess TSS in the discharge.

RESPONSE 2: As stated in the response to Comment 1 above, the historical record tends to indicate that the treatment facilities have a record that demonstrates general compliance with the specified limitations for TSS on a year round basis. It is not expected that the Applicant's program of removing sediments from the Cube Pond will result in any significant change in the quality of the effluent with respect to TSS or the applicant's ability to treat TSS.

COMMENT 3: FOTE asserts that the change at the facility that was the basis of justification for the modification of the daily maximum limitation for TSS should actually result in a decrease of the TSS loading from storm water sources.

RESPONSE 3: The proportion of storm water flow to the total flow from the Outfall 001 was reduced from 22% to 18.7% between the existing permit and this proposed permit. However, the daily maximum limit for TSS was increased because of the changes made to the facility affecting the character of the storm water.

The storm water source is the most significant change affecting the calculation of TSS limits for storm water. The existing permit's TSS concentration limit was based on the fact that the storm water was predominantly from process areas with categorical guidelines. The specific categorical guidelines set a TSS concentration limit allocation of 130 milligrams per liter for process wastewaters from facilities producing organic chemicals, plastics, and/or synthetic fibers (40 CFR, Part 414, Subpart D). The source of the storm water for the proposed permit is different because the Applicant has removed multiple process units. The source of storm water is now consistent with that of storm water runoff from areas associated with industrial activity. Therefore, the TSS limit allocations are based on the limits in the Multi-Sector General Permit (MSGP). The MSGP sets TSS concentration limits at 200 milligrams per liter and the proposed permit was amended to include a higher limit based on that higher limit allocation.

Differences in the proportions of contributing source flows between the existing permit and the proposed permit had a minimal influence on the final calculated daily maximum limitation for TSS. The concentration limit allocation change had the most influence on the final calculated daily maximum limitation for TSS.

COMMENT 4: FOTE states that the reduction in the process wastewater flow will cause an increase in the available capacity of the wastewater treatment plant to treat more storm water than has been previously treated. FOTE believes this change should justify more stringent limitations for TSS since a higher proportion of the storm water flow can be routed through the treatment system.

RESPONSE 4: The TSS effluent limitations were calculated by dividing the waste streams contributing to the final waste stream discharged to Outfall 001 into four categories: process wastewater, utility wastewater, domestic wastewater, and storm water. The proportional contribution of each waste stream category to the final waste stream was determined from the information submitted in the application. The contributions were converted into fractions and multiplied by the respective concentration criteria (limits) to determine the contributing fraction of each waste stream. All contributing fractions were then added to determine the total TSS limitation for the discharge.

Any additional capacity of the wastewater treatment plant was not a factor in these calculations. As described in Response No. 3, the change in character of the storm water had the most significant effect on the calculation of the final TSS daily maximum limit. The change in contributing waste stream flows had minimal influence on the calculation of the TSS limits.

COMMENT 5: FOTE states that no where in the permit application does the Applicant represent how much of the effluent flow, and/or the percentage of total flows, are amounts that are relevant in evaluating compliance with the TSS limitations during storm events. FOTE encourages the TCEQ to demand the Applicant to explain how much of each of its contributing waste streams are irrelevant during storm events due to the fact that all or some of the particular waste streams are held back from the waste treatment plant by rice gates during storm events.

RESPONSE 5: Adequate information was provided in the original application and subsequent correspondences for the TCEQ staff to calculate the appropriate discharge limitations at Outfall 001. Since the volumes and proportions of contributing wastewaters will vary from day to day, the daily maximum limitation for TSS in concentration form is more protective than mass limitations during low or otherwise variable flow conditions.

The Applicant's decision to use rice gates to hold back wastewater and/or storm water during storm events is an option available to the Applicant in its management of wastewater. The TPDES permit cannot require the use of rice gates for wastewater management, therefore, the use of the rice gates cannot be taken into account when calculating the permit limitations.

COMMENT 6: FOTE states that their expert observed instances where the Applicant failed to institute erosion control measures to stabilize materials that would contribute solids to the discharge during a storm event. FOTE states that the TSS limitation should not be increased under the circumstances where the Applicant has failed to follow a rudimentary best management practice (BMP).

RESPONSE 6: The Applicant has the flexibility to use a variety of combinations of BMPs and wastewater treatment methods to achieve compliance with required effluent limitations. FOTE has not provided to the TCEQ any evidence to support its allegation, nor evidence of its alleged impact on the environment. Without sufficient evidence to support the allegations, the TCEQ is unable to consider the allegations when making regulatory decisions related to the submitted application. The proposed TSS limitations were developed in compliance with all applicable TPDES rules, regulations, and practices.

COMMENT 7: FOTE states that there is no justification for allowing the addition of further TSS from this plant into West Bunch Gully which is identified as having "high aquatic life uses." Additional solids will negatively impact the "high aquatic life uses" and is an affront to the Congressionally prescribed goal of zero-discharge into the nation's waterways.

RESPONSE 7: The Texas Surface Water Quality Standards (TSWQS) do not have any numerical criteria for TSS. The TSWQS do have narrative standards in 30 TAC, Section 307.4, related to general criteria for aesthetic parameters. On page 2c of the draft permit, Item No. 4, it requires compliance with this narrative standard:

"There shall be no discharge of floating solids or visible foam in other than trace amounts and no

discharge of visible oil.”

The designation of the receiving water as “high aquatic life use” has no impact on the allowable TSS loading from the permitted discharge as compared to an aquatic life designation of a lower use (i.e., intermediate aquatic life use or no significant aquatic life use). The permit has been written to meet all applicable rules and regulations including the protection of the high aquatic life use of the receiving water.

No changes to the draft permit have been made.

Respectfully submitted,

Texas Commission on Environmental Quality

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By 
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REPRESENTING THE EXECUTIVE
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