

Kathleen Hartnett White, *Chairman*
Larry R. Soward, *Commissioner*
Martin A. Hubert, *Commissioner*
Glenn Shankle, *Executive Director*



TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

October 25, 2006

TO: Persons on the attached mailing list.

RE: Southwest Festivals, Inc. and Richard Korsh
Permit No. WQ 0014665001

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 Ellis County Clerk's Office, 117 West Franklin Street, Waxahachie, 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/ec

Enclosures

MAILING LIST

for

Southwest Festivals, Inc. and Richard Korsh
Permit No. WQ 0014665001

FOR THE APPLICANT:

Richard Holeyfield
Southwest Festivals, Inc. and Richard Korsh
P.O. Box 538
Waxahachie, Texas 75168

Jerry Palady
Palco-Engineering and
Construction Services, Inc.
211 East Beltline, Suite 103
Desoto, Texas 75115

FOR THE EXECUTIVE DIRECTOR:

Scott Ramsey Shoemaker, Staff Attorney
Texas Commission on Environmental Quality
Environmental Law Division MC-173
P.O. Box 13087
Austin, Texas 78711-3087

June Ella Martinez, Technical Staff
Texas Commission on Environmental Quality
Water Quality Division MC-148
P.O. Box 13087
Austin, Texas 78711-3087

FOR OFFICE OF PUBLIC ASSISTANCE:

Jodena Henneke, Director
Texas Commission on Environmental Quality
Office of Public Assistance MC-108
P.O. Box 13087
Austin, Texas 78711-3087

FOR PUBLIC INTEREST COUNSEL:

Blas J. Coy, Jr., Attorney
Texas Commission on Environmental Quality
Public Interest Counsel MC-103
P.O. Box 13087
Austin, Texas 78711-3087

FOR THE CHIEF CLERK:

LaDonna Castañuela
Texas Commission on Environmental Quality
Office of Chief Clerk MC-105
P.O. Box 13087
Austin, Texas 78711-3087

PROTESTANTS/INTERESTED PERSONS:

SEE ATTACHED LIST

SIG BRANDENBURG
1149 WATERFORD DR
WAXAHACHIE TX 75167-8185

EVERETT H JEWELL
1015 RED RIVER DR
WAXAHACHIE TX 75167-8187

ROBERT R BREWER
1006 RED RIVER DR
WAXAHACHIE TX 75167-8186

B JUAREZ
1026 RED RIVER DR
WAXAHACHIE TX 75167-8186

CONCERNED CITIZEN
3010 RED RIVER CT
WAXAHACHIE TX 75167-8188

CODY KELLEY
20 ROCKY DR
WAXAHACHIE TX 75167-9538

BOBBIE CORRY
2030 PALUXY CT
WAXAHACHIE TX 75167-8177

REVEREND SYLVIA LLOYD
2702 FM 66
WAXAHACHIE TX 75167-5516

GARY GENTRY
1096 WATERFORD DR
WAXAHACHIE TX 75167-8179

DEBRA PATINO
20 ROCKY DR
WAXAHACHIE TX 75167-9538

NINNI GETSO
2702 FM 66
WAXAHACHIE TX 75167-5516

JOE PRATO
1036 RED RIVER DR
WAXAHACHIE TX 75167-8186

ELIJAH & TWYLA GUEST
1071 WATERFORD DR
WAXAHACHIE TX 75167-8180

COY B SEVIER
2511 FM 66
WAXAHACHIE TX 75167-5527

AMY HOLLINGSWORTH
1037 WATERFORD DR
WAXAHACHIE TX 75167-8180

GARY TUBB
3030 RED RIVER CT
WAXAHACHIE TX 75167-8188

RICHARD HOLYFIELD
PO BOX 538
WAXAHACHIE TX 75168-0538

ALLEN & LAUREL VAN BLARCUM
1129 WATERFORD DR
WAXAHACHIE TX 75167-8185

JOSEPH R HURLEY
3031 RED RIVER CT
WAXAHACHIE TX 75167-8189

TCEQ PROPOSED PERMIT NO. WQ0014665001

APPLICATION BY § BEFORE THE
SOUTHWEST FESTIVALS, INC. AND § TEXAS COMMISSION ON
RICHARD KORSH § ENVIRONMENTAL QUALITY

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 Southwest Festivals, Inc. and Richard Korsh (the Applicant) application and Executive Director's preliminary decision. As required by 30 Texas Administrative Code (TAC) § 55.156, before a permit is issued, the Executive Director prepares a response to all timely, relevant and material, or significant comments. The Office of Chief Clerk timely received comment letters from the following individuals: Omar Abraham, Sig Brandenburg, Bobbie Correy, Gary Gentry, Elijah and Twyla Guest, Amy Hollingsworth, Joseph Hurley, Everett Jewell, B. Juarez, Rev. Sylvia Lloyd, Joe Prato, Gary Tubb, and Allen and Laurel Van Blarcum. This Response addresses all such 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

Facility Description

Southwest Festivals, Inc. and Richard Korsh have applied to the TCEQ for a new permit that will authorize the disposal of treated domestic wastewater at a daily average flow not to exceed 17,700 gallons per day during seasonal operation via surface irrigation of two acres of non-public access land. The wastewater treatment plant would serve the Scarborough Faire Renaissance Festival grounds.

The facility would be a pond system. Wastewater would be collected in existing storage tanks and pumped to the facultative pond system. Treatment units would include a facultative lagoon with a surface area of 1.61 acres and volume of 7.9 acre-feet and a stabilization (storage) pond with a surface area of 0.6 acres and volume of 4 acre-feet. The disposal site would be located in the drainage basin of South Prong Creek in Segment No. 0816 of the Trinity River Basin. No discharge of pollutants into water in the state is authorized by this permit. The wastewater treatment facilities and disposal site would be located on Farm-to-Market Road 66, approximately 1.6 miles southwest of Interstate Highway 35 East in Ellis County, Texas.

Procedural Background

The permit application for a new permit was received on November 18, 2005 and declared administratively complete on January 3, 2006. The Notice of Receipt and Intent to Obtain a Water Quality Permit (NORI) was published on January 11, 2006 in the *Waxahachie Daily Light*. The Executive Director completed technical review of the application on May 18, 2006, and prepared a draft permit. The Notice of Application and Preliminary Decision (NAPD) for a Water Quality Permit was published on July 9, 2006 in the *Waxahachie Daily Light*. The public comment period ended on August 8, 2006. Since this application was administratively complete on or after September 1, 1999, it is subject to the procedural requirements adopted pursuant to House Bill 801, 76th Legislature, 1999.

COMMENTS AND RESPONSES

COMMENT 1:

Amy Hollingsworth comments that she does not want treated water to be discharged into the creek that flows behind her home where her child plays. Rev. Sylvia Lloyd comments that she objects to the "dumping" of 53,000 gallons of wastewater into South Prong Creek. She also expresses concern that too many chemicals are already being used to purify the water and that more chemicals will be added to the water supply if the discharge is permitted. She does not want a discharge occurring in the neighborhood or to the natural water ways. She comments that people swim in the creek located nearby.

RESPONSE 1:

The draft permit does not authorize discharge of pollutants into water in the state. Under the draft permit, discharges to ground or surface water such as South Prong Creek and other natural waterways would constitute a permit violation and would be subject to TCEQ enforcement action. In order to help ensure that irrigated wastewater does not reach surface water, Special Provision No. 18 on page 24 of the draft permit requires the Applicant to maintain a 50-foot vegetative buffer for South Prong Creek where no effluent may be applied. The draft permit authorizes disposal of treated domestic wastewater effluent at a daily average flow not to exceed 17,700 gallons per day during seasonal operation via surface irrigation of two acres of non-public access land.

COMMENT 2:

Amy Hollingsworth comments that the facility will "cause a smell around the whole surrounding neighborhood." Gary Tubb also expresses concern that he does not want his neighborhood smelling like a waste treatment plant.

RESPONSE 2:

The proposed facility meets the buffer zone requirements intended to abate and control a nuisance of odor by providing the required 150-foot distance from the proposed wastewater treatment facility to the Applicant's property line. The draft permit does not limit the ability of a nearby landowner to seek relief from a court in response to activities that may or do interfere with the use and enjoyment of their property. If the Applicant's activities create a nuisance condition, TCEQ may be contacted to investigate whether a permit violation has occurred. Potential permit violations may be reported to TCEQ Region 4 Office in Dallas at (817) 588-5800, or by calling the state-wide toll-free number at 1-888-777-3186. Citizen complaints may also be filed online at the following website:

<http://www.tceq.state.tx.us/enforcement/complaints/index.html>.

COMMENT 3:

Omar Abraham, Sig Brandenburg, Bobbie Correy, Gary Gentry, Elijah and Twyla Guest, Joseph Hurley, Everett Jewell, B. Juarez, Joe Prato, Gary Tubb, and Allen and Laurel Van Blarcum comment that "[t]he Notice of Receipt of Application and Intent to Obtain a Water Quality Permit is more than just a little uninformative."

RESPONSE 3:

The NORI is the initial notice that informs the public that a permit process was initiated in the area. It is published early in the process before the Executive Director's staff conducts its technical review of the application. Based on a review of the NORI, it meets applicable requirements. For this application, the NORI was required to be published in accordance with 30 TAC §§ 39.411(1)-(9), (12), 39.551(b)(1). According to the applicable requirements, the text of the NORI for this application must include the following, generally: (1) the name and address of the agency and telephone number of an agency contact from whom interested persons may obtain further information; (2) the name, address, and telephone number of the applicant and a description of the manner in which a person may contact the applicant for further information; (3) a brief description of the location and nature of the proposed activity; (4) a brief description of public comment procedures; (5) a brief description of procedures by which the public may participate in the final permit decision, generally; (6) the application or permit number; (7) if applicable, a statement that the application or requested action is subject to the Coastal Management Program and must be consistent with the Coastal Management Program goals and policies; (8) the location, at a public place in the county in which the facility is located or proposed to be located, at which a copy of the application is available for review and copying; (9) a description of the procedure by which a person may be placed on the mailing list in order to

receive information about the application; and (10) any additional information required by the executive director or needed to satisfy public notice requirements of any federally authorized program. Based on a review of the NORI that was published, the above requirements were met.

COMMENT 4:

Omar Abraham, Sig Brandenburg, Bobbie Correy, Gary Gentry, Elijah and Twyla Guest, Joseph Hurley, Everett Jewell, B. Juarez, Joe Prato, Gary Tubb, and Allen and Laurel Van Blarcum comment that they are “concerned about the proposal to treat so many gallons of waste water and would like to be afforded further information on the project.” Amy Hollingsworth is concerned about possible flooding. Rev. Sylvia Lloyd feels that there are “health issues stamped all over this permit.” She objects to the permit because she is concerned that the facility will be in a flood plain, and that most of the applicant’s business will occur during the rainy season.

RESPONSE 4:

As mentioned in Response 1, the draft permit authorizes the disposal of treated domestic wastewater at a daily average flow not to exceed 17,700 gallons per day during seasonal operation via irrigation. Scarborough Faire is a seasonal theme park open on seven consecutive weekends in April and May, four consecutive weekends in October and several single day events throughout the year.

The Executive Director has determined that the draft permit is protective of the environment and human health. The draft permit contains requirements to help ensure the soil where effluent is applied does not become saturated to the extent that it becomes a health concern. For example, according to the draft permit, the Applicant would not be able to apply more than a rate of 2.4 acre-feet per year per acre irrigated. The draft permit contains Special Provision No. 8 on page 23, which requires that irrigation practices must be designed and managed so as to prevent ponding of effluent or contamination of ground and surface waters and to prevent the occurrence of nuisance conditions in the area. Also, the draft permit contains Special Provision No. 9 on page 23 that states, “wastewater shall not be applied for irrigation during rainfall events or when the ground is frozen or saturated.” Additionally, the Applicant has indicated that the proposed facility is located above the 100-year flood plain. Since the irrigation site is a non public access area, there should be no human health issues created by the irrigation of wastewater.

COMMENT 5:

Rev. Sylvia Lloyd is concerned about property values in the area.

RESPONSE 5:

TCEQ's jurisdiction is established by the Legislature and is limited to the issues set forth in Chapter 26 of the Texas Water Code. To implement this statutory mandate, TCEQ issues permits that must be consistent with applicable law and protective of human health and the environment. TCEQ must consider the quality of the discharge and its effect on the quality of the land application areas, but does not have jurisdiction to consider property values when determining whether to approve a permit application.

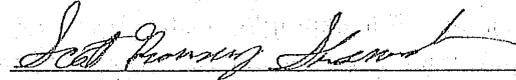
- **No changes to the draft permit have been made in response to public comment.**

Respectfully submitted,

Texas Commission on
Environmental Quality

Glenn Shankle
Executive Director

Stephanie Bergeron Perdue, Director
Environmental Law Division



Scott Ramsey Shoemaker, Staff Attorney
Environmental Law Division
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REPRESENTING THE
EXECUTIVE DIRECTOR OF THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY

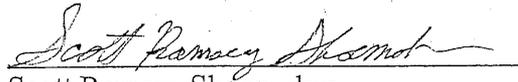
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CONFIDENTIAL

CERTIFICATE OF SERVICE

I certify that on October 18, 2005 the "Executive Director's Response to Public Comment" for Southwest Festivals, Inc. and Richard Korsh, Permit No. WQ0014665001 was filed with the Texas Commission on Environmental Quality's Office of Chief Clerk.



Scott Ramsey Shoemaker
Environmental Law Division
State of Texas Bar No. 24046836

CHIEF CLERK'S OFFICE

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