

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*

November 7, 2006

TO: Persons on the attached mailing list.

RE: JOCO Holding Corporation  
Permit No. WQ0002730000

### **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 Environmental Services City Service Center, 1675 S. E. John Jones, Burleson, 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

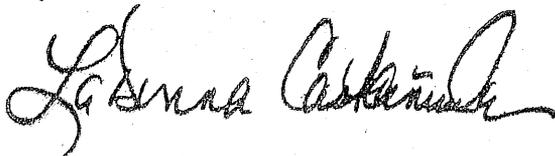
### **Processing of Requests.**

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

JOCO Holding Corporation  
Permit No. WQ0002730000

FOR THE APPLICANT:

Martha C. Martin  
JOCO Holding Corporation  
P.O. Box 10  
Burleson, Texas 76097

James D. Martin, P.E.  
Martin Consulting Engineers, Inc.  
P.O. Box 121962  
Fort Worth, Texas 76121

FOR THE EXECUTIVE DIRECTOR:

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

Charles Sheppard, 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

BOBBY G BROWN  
215 W BETHESDA RD  
BURLESON TX 76028-1632

KEN OLSEN  
2540 S INTERSTATE 35 W  
BURLESON TX 76028-1625

NINA FAYE BROWN  
145 W BETHESDA RD  
BURLESON TX 76028

RAND RADEMAKER  
300 W BETHESDA RD  
BURLESON TX 76028-1631

SONNY J CREACH  
301 W BETHESDA RD  
BURLESON TX 76028-1633

FLOYD WATKINS  
2324 S INTERSTATE 35 W  
BURLESON TX 76028-6176

TIM DAVIS  
175 W BETHESDA RD  
BURLESON TX 76028-1611

BENNIE FAY WOODS  
305 W BETHESDA RD  
BURLESON TX 76028-1633

ALBERT GERMAIN  
2260 S BURLESON BLVD  
BURLESON TX 76028-1622

ROGER HOLCOMB  
2450 S BURLESON RD  
BURLESON TX 76028

J WALKER HOLLAND ATTORNEY  
HOLLAND JOHNS SCHWARTZ & PENNY LLP  
STE 500  
306 W 7TH ST  
FORT WORTH TX 76102-4900

NORMAN LASSETTER  
3408 MORFELD DR  
CROWLEY TX 76036-4534

PATSY LAUDERBACK  
2760 S INTERSTATE 35 W  
BURLESON TX 76028-1446

K C NEUBAUER  
2710 S INTERSTATE 35 W  
BURLESON TX 76028-1446

TPDES PERMIT NO. WQ0002730000

APPLICATION BY

JOCO Holding Corporation

TPDES PERMIT NO. WQ0002730000

§  
§  
§  
§  
§  
§

BEFORE THE

TEXAS COMMISSION

ENVIRONMENTAL QUALITY

CHIEF CLERK'S OFFICE

2004 NOV - 2 AM 11: 42

TEXAS  
COMMISSION  
ON 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 application by JOCO Holdings Corporation (Applicant), for a major amendment to TCEQ Permit Number WQ0002730000 and on the Executive Director's preliminary decision. As required by Title 30 of the Texas Administrative Code (30 TAC), Section 55.156, 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 comment letters from the following persons: Ken Olsen, Albert Germain, Bobby G. Brown, Roger Holcomb, Patsy Lauderback, Nina Faye Brown, Norman Lassetter, Tim Davis, K.C. Neubauer, Floyd Watkins, Bennie Fay Woods, Rand Rademaker, Sonny J. Creach, and J. Walker Holland, P.C. 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](http://www.tceq.state.tx.us).

**BACKGROUND**

Description of Facility

The Applicant operates a motel and restaurant complex and has applied to the TCEQ for a major amendment to TCEQ Permit Number WQ0002730000 to authorize the discharge of treated domestic and food wastewaters at a volume not to exceed a daily average flow of 10,000 gallons per day via Outfall 001. The current permit, TCEQ Permit Number WQ0002730000, authorizes the disposal of domestic wastewater by evaporation and irrigation of 152 acres of coastal bermuda grass at an application rate not to exceed 3.85 acre-feet per year per acre irrigated. This application for a major amendment was submitted to the TCEQ on October 20, 2004.

The facility is located on the east side of Interstate Highway 35 West, approximately 2000 feet southeast of the Bethesda Road overpass and approximately 5.1 miles southeast of the City of Burleson, Johnson County, Texas. The effluent will be discharged to a series of ditches; thence to Quil Miller Creek; thence to Village Creek; thence to Lake Arlington, in Segment No. 0828 of the Trinity River Basin.

## Procedural Background

The application was submitted on October 20, 2004 and declared administratively complete on January 28, 2005. Notice of Receipt and Intent (NORI) was published February 9, 2005, in the *Burleson Star*. The Executive Director completed the technical review of the application on April 15, 2005, and prepared a draft permit. Notice of Application and Preliminary Decision (NAPD1) was published November 2, 2005, in the *Burleson Star*. A public meeting was held on June 22, 2006. No comments were received at the public meeting. Notice of Application and Preliminary Decision (NAPD2) was republished on August, 21, 2006, in the *Burleson Star*. The comment period closed on September 22, 2006. House Bill 801 applies to this application.

## **COMMENTS AND RESPONSES**

### **COMMENT 1:**

Ken Olsen, Albert Germain, Bobby G. Brown, Roger Holcomb, Patsy Lauderback, Nina Faye Brown, Norman Lassetter, Tim Davis, K.C. Neubauer, Floyd Watkins, Bennie Fay Woods, Rand Rademaker, and Sonny J. Creach all commented that the permit application was not available for viewing and copying at the U.S. Post Office at 232 Southwest Johnson Avenue, Burleson, Texas.

### **RESPONSE 1:**

The Applicant is required to complete an Application Availability Verification Form (AAVF) for each wastewater permit application submitted to the TCEQ. The AAVF requires that the Applicant certify that a copy of the complete permit application, including revisions, draft permit, and the Executive Director's preliminary decision, was made available at a public place in the county where the facility is located "in accordance with the provisions of 30 TAC, Section 39.405(g)(2)." This provision also provides that the application shall be available "beginning on the first day of newspaper publication required by this section and remain available until final resolution, either by TCEQ or the State Office of Administrative Hearing (SOAH)." The TCEQ received the Applicant's AAVF on November 15, 2005, stating that the application was available at the Burleson City Hall during the comment period. However, the NORI stated that the application was available at the U.S. Post Office in Burleson.

In response to Comment 1, the Applicant was required to republish the NAPD and submit a new AAVF. The AAVF certified that a copy of the application was available at the Environmental Services City Service Center, 1675 S.E. John Jones, Burleson, Texas. This is consistent with the republished NAPD.

**COMMENT 2:**

Ken Olsen, Albert Germain, Bobby G. Brown, Roger Holcomb, Patsy Lauderback, Nina Faye Brown, Norman Lassetter, Tim Davis, K.C. Neubauer, Floyd Watkins, Bennie Fay Woods, Rand Rademaker, and Sonny J. Creach commented that Quil Miller Creek is in a flood zone.

**RESPONSE 2:**

The wastewater permitting process is limited to controlling the discharge of pollutants into water in the state and protecting the water quality of the state's rivers, lakes, and coastal waters. The TCEQ has not considered flooding in water quality permit processing. However, proposed permit does not authorize any invasion of personal rights nor any violation of federal, state, or local laws or regulations.

**COMMENT 3:**

J. Walker Holland and Nina Faye Brown commented that they own the property down gradient from the above-referenced motel and restaurant complex and that they object to effluent discharged to creeks that traverse their property. Tim Davis also expressed concern regarding how the Applicant will get the 10,000 gallons of water per day to Quil Miller Creek.

**RESPONSE 3:**

The issuance of this permit does not grant to the permittee the right to use private or public property for conveyance of wastewater along the discharge route described in this permit. This includes, but is not limited to, property belonging to any individual, partnership, corporation, or other entity. Neither does this permit authorize any invasion of personal rights nor any violation of federal, state, or local laws or regulations. It is the responsibility of the permittee to acquire property rights as may be necessary to use the discharge route.

**COMMENT 4:**

Tim Davis and Nina Faye Brown commented that they graze cattle along the discharge route and do not want their cows drinking treated wastewater or eating grass that is growing in wastewater land.

**RESPONSE 4:**

The draft permit was written to comply with the Texas Surface Water Quality Standards (30 TAC, Chapter 307). The Texas Surface Water Quality Standards require that any discharge maintain water quality consistent with the protection of human health, terrestrial life, and aquatic life. The effluent from the proposed facility has reported a TDS concentration of 662 mg/L of TDS and therefore should not pose a problem for cattle consumption. The permittee's effluent analysis provided with the permit application yielded a nitrate nitrogen level of 17 mg/L nitrate nitrogen. This level of nitrate nitrogen should not pose a problem to the cattle.

The permittee has also proposed to chlorinate the effluent to preclude bacterial contamination to surface water which should prevent bacterial infection of any cattle drinking from the receiving stream.

No changes to the draft permit have been made.

Respectfully submitted,

Glenn Shankle, Executive Director  
Texas Commission on Environmental Quality

Robert Martinez, Director  
Environmental Law Division  
Texas Commission on Environmental Quality

By   
Paul Tough, Staff Attorney  
Environmental Law Division  
State Bar No. 24051440  
P.O. Box 13087, MC 173  
Austin, Texas 78711-3087  
(512) 239-6996 (PH)  
(512) 239-0606 (FAX)

REPRESENTING THE EXECUTIVE  
DIRECTOR OF THE TEXAS  
COMMISSION ON ENVIRONMENTAL  
QUALITY

CERTIFICATE OF SERVICE

I hereby certify that on November 2, 2006, a true and correct copy of the "Executive Director's Response to Public Comment" for Permit No. WQ0002730000 was filed with the Texas Commission on Environmental Quality's Office of the Chief Clerk.



Paul Tough, Staff Attorney  
Environmental Law Division  
Texas Commission on Environmental Quality

CHIEF CLERK'S OFFICE

NOV 07 - 2 11:42

TEXAS  
COMMISSION  
ON ENVIRONMENTAL  
QUALITY