

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 28, 2006

TO: Persons on the attached mailing list.

RE: City of Sabinal
TPDES Permit No. WQ0014689001

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 Sabinal City Hall, 501 North Center Street, Sabinal, 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

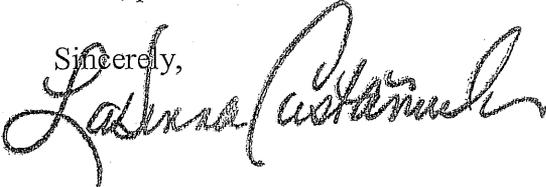
Processing of Requests.

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/cz

Enclosures

MAILING LIST
for
City of Sabinal
TPDES Permit No. WQ0014689001

FOR THE APPLICANT:

Betty Jo Harris
City of Sabinal
P.O. Box 838
Sabinal, Texas 78881

Raul H. Garcia, P.E.
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San Antonio, Texas 78216

PROTESTANTS/INTERESTED PERSONS:

L. T. McCann
P.O. Box 5954
Austin, Texas 78763

FOR THE EXECUTIVE DIRECTOR:

Marc Friberg, Staff Attorney
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Environmental Law Division MC-173
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Austin, Texas 78711-3087

Samuel Treviño
Texas Commission on Environmental Quality
Water Quality Division MC-148
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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

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY
12/17 PM 1:10
CHIEF CLERK'S OFFICE

Proposed TPDES Permit No. WQ0014689001

Application by § Before the
the City of Sabinal § TEXAS COMMISSION ON
for TPDES Permit No. WQ0014689001 § 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 City of Sabinal's application and Executive Director's preliminary decision. As required by 30 Texas Administrative Code (TAC) Section 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 the Chief Clerk timely received comment letters from **L.T. McCann**. 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

Description of Facility

The City of Sabinal (Applicant) has applied to the TCEQ for a new permit that would authorize the discharge of treated domestic wastewater at a daily average flow not to exceed 340,000 gallons per day. The City of Sabinal Wastewater Treatment Facility will be an activated sludge process plant operated in the extended aeration mode. Treatment units include a bar screen, an aeration basin, two clarifiers, two sludge drying beds, a parshall flume, and ultraviolet disinfection. The facility has not been constructed. The wastewater treatment plant will serve the City of Sabinal.

The treated effluent will be discharged to an unnamed tributary, then to the Lower Sabinal River in Segment No. 2110 of the Nueces River Basin. The unclassified receiving water uses are no significant aquatic life uses for the unnamed tributary. The designated uses for Segment No. 2110 are contact recreation, public water supply, and high aquatic life use. The plant site will be located approximately 5,300 feet south of the intersection of State Hwy. 187 and Dunlap Avenue, along Dunlap Avenue and Rhylander Road (County Road 386) in Uvalde County, Texas.

Procedural Background

The permit application for a new permit was received on January 23, 2006 and declared administratively complete on March 9, 2006. The Notice of Receipt and Intent to Obtain a Water Quality Permit was published on March 26, 2006 in the *Uvalde Leader-News*. The Notice of Application and Preliminary Decision for a Water Quality Permit was published on July 6, 2006 in *Uvalde Leader-News*. The public comment period ended on August 7, 2006. This application was administratively complete on or after September 1, 1999; therefore, this application is subject to the procedural requirements adopted pursuant to House Bill 801, 76th Legislature, 1999.

COMMENTS AND RESPONSES

COMMENT 1:

Mr. McCann expresses concern regarding the aquatic environment close to the proposed discharge point. Additionally, Mr. McCann expresses concerns of contamination regarding his family's health and recreational activities such as fishing, swimming, and wildlife consumption.

RESPONSE 1:

The draft permit was developed to protect aquatic life and human health. The effluent limits in the draft permit are designed to maintain and protect the existing instream uses. No significant degradation of water quality is expected in the Lower Sabinal River, which has been identified as having high aquatic life uses. However, even streams that are designated for contact recreation may not be completely free of disease-causing organisms; thus, exposure to surface water always potentially poses a risk regardless of whether the stream receives a permitted discharge.

COMMENT 2:

Mr. McCann is concerned that the Sabinal River low flow rate is not able to dilute the proposed discharge and will therefore affect the water based natural ecosystems.

RESPONSE 2:

The Executive Director has performed an evaluation of the discharge route and has determined that the resultant effluent limitations in the draft permit meet the requirements of the Texas Surface Water Quality Standards, codified in 30 TAC Chapter 307. The Executive Director anticipates that the discharge, in compliance with the effluent limits contained in the draft permit, will not have an adverse effect on the receiving streams or their designated uses. In addition, staff performed dissolved oxygen modeling for this proposed discharge and the discharge route. The modeling used high temperature and low flow conditions. Based on the results of the model, the proposed effluent limits of 10 mg/L 5-day carbonaceous biochemical oxygen demand (CBOD₅), 3 mg/L ammonia-nitrogen (NH₃-N), and 4 mg/L dissolved oxygen (DO) are adequate

to help ensure that the dissolved oxygen level will be maintained above the criterion for the Sabinal River (5 mg/L).

COMMENT 3:

Mr. McCann expresses concern regarding erosion for the discharge area.

RESPONSE 3:

The TCEQ typically does not address concerns about erosion as part of the wastewater permitting process, as that process concerns water quality issues. Erosion caused by the discharge should be addressed in the context of property rights. If the draft permit is approved, its issuance does not grant to the permittee the right to use private or public property for conveyance of wastewater along the discharge route described in the permit. This includes, but is not limited to, property belonging to any individual, partnership, corporation or other entity. Neither does the 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.

A permit does not limit the ability of a nearby landowner to seek relief from a court in response to activities that may interfere with a landowner's use and enjoyment of his or her property.

COMMENT 4:

Mr. McCann expresses concerns regarding flooding at the future wastewater treatment facility site, specifically due to its location in the 100/500 year flood plain. Mr. McCann also states that the initial reason for the treatment plant to be relocated was due to the fact that it operates in the flood zone and is subject to heavy floods. He states that the new site still remains in the same flood zone.

RESPONSE 4:

The draft permit includes effluent limits and other requirements that the Applicant must meet. These effluent limits and requirements must continue to be met during rainfall events and periods of flooding.

A total maximum daily load (TMDL) study was performed on the Lower Sabinal River (Segment 2110) due to impairment for nitrate-nitrogen. The TMDL identified the City of Sabinal Wastewater Treatment Facility as a major source of nitrogen input into the Lower Sabinal River due to seepage from oxidation ponds. The reduction goals for nitrate-nitrogen specified in the TMDL are thought to be achievable with the City of Sabinal's relocation and subsequent upgrade of its wastewater treatment facility. As part of the Implementation Plan for the TMDL, and through this proposed permit application, the City of Sabinal is in the process of relocating its wastewater treatment facility to a new location above the 100-year flood plain and

upgrading its facility by converting from an Imhoff tank and lagoon system to the new system described above.

The Applicant indicates the facility is not located within the 100-year floodplain. In addition, the proposed draft permit includes Other Requirement No.6, on page 23 of the draft permit, which requires the Applicant to provide protection for the facility from a 100-year flood.

COMMENT 5:

Mr. McCann is concerned about neglected sewer lines going under the river.

RESPONSE 5:

The draft permit requires the permittee to ensure, at all times, that the facility and all of its systems of collection, treatment, and disposal are properly operated and maintained.

Permit Conditions No. 2(g), on page 7 of the draft permit, requires that "there shall be no unauthorized discharge of wastewater or any other waste. An unauthorized discharge is considered to be any discharge of wastewater into or adjacent to water in the state at any location not permitted as an outfall or otherwise defined in the Special Provisions section of this permit." Any unauthorized discharge constitutes a violation of the permit and is grounds for enforcement action or for permit amendment, revocation, or suspension.

COMMENT 6:

Mr. McCann is concerned about the location of the proposed wastewater treatment facility being adjacent to subdivided properties.

RESPONSE 6:

Evaluations of applications for wastewater treatment plants are based on information provided in the application to determine if the proposed discharge can comply with the Texas Surface Water Quality Standards. If it is determined that the proposed discharge, made in compliance with the draft permit, will be protective of human health and the environment, the Executive Director does not have the authority to require a different discharge location.

The TCEQ also has regulations regarding unsuitable site characteristics found in 30 TAC 309, Subchapter B. For example, a permittee must meet certain restrictions as a compliance requirement to abate and control nuisance of odor prior to construction of a new wastewater treatment plant. According to 30 TAC 309.13(e)(3), and, as is stated in Other Requirements No. 4 of the draft permit, the permittee must submit sufficient evidence of legal restrictions prohibiting residential structures within the part of the buffer zone not owned by the permittee. Sufficient evidence of legal restrictions may, among others, take the form of a suitable restrictive easement, right-of-way, covenant, deed restriction, deed recorded, or a private agreement provided as a certified copy of the original document. The request shall be submitted, prior to

construction, either with a permit application and subject to review during the permitting process or submitted for the Executive Director's approval after the permitting process is completed. The Applicant has complied with the requirements in 30 TAC 309, Subchapter B.

COMMENT 7:

Mr. McCann is concerned about discrepancies in the engineer's data for the permit.

RESPONSE 7:

All new wastewater discharge permit applications are required to undergo a technical review by the Executive Director. This permit application has been technically evaluated by the Executive Director's staff and was declared technically complete on April 17, 2006.

CHANGES MADE TO THE DRAFT PERMIT IN RESPONSE TO COMMENT

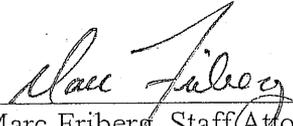
- No changes to the draft permit have been made in response to public comment.

Respectfully submitted,

Texas Commission on Environmental Quality

Glenn Shankle
Executive Director

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Environmental Law Division


Marc Friberg, Staff Attorney
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REPRESENTING THE
EXECUTIVE DIRECTOR OF THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY