



30 November 2006

Ms. Ladonna Castanuela - Chief Clerk - Re-permitting  
Texas Commission on Environmental Quality  
P.O. Box 13087  
Austin, Texas 78711-3087

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DEC 06 2006  
BY RY

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Re: Commission Public Hearing request - Cape Royale Utility District- Permit # 10997-01-(Feb. 2007)

Reason for hearing request:

1. We believe the Cape Royale Utility District is and has been causing a common noise nuisance at its Wastewater treatment plant.

Under Texas law, A nuisance is defined as "anything that substantially interferes with the use and enjoyment of land by causing unreasonable discomfort or annoyance to persons of ordinary sensibilities."

Several of the surrounding residents have asked for relief from the 24 hour a day noise coming from their turbine blower and blower motor system. They refuse to bring the noise under control. They contend that we must live with the noise since we have no ability to force them to take action to stop it. They advise us that sovereign immunity exempts them from any action in the noise nuisance matter.

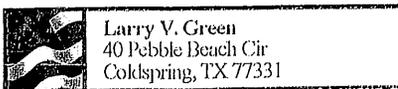
2. We will produce documents to show that they are in fact guilty of violating Texas civil laws concerning the DEED to the property the WTP is located on, and DEED RESTRICTIONS that apply to the Reserve parcel. We intend to show that the deed to the reserve parcel mandates that they comply with deed restrictions applicable to the parcel. They have built a WTP on a covenanted recreational reserve set aside, (AMONG several residential lots). Now they say they have the right to generate noise 24hrs a day seven days a week and we can't do anything about it. WE DISAGREE! We believe we should be afforded a residential environment, not industrial noise. If it were in their back yards it would have been taken care of long ago!

3. Further, we have evidence that the CRUD has been misrepresenting the number of gallons of raw sewage, that has on several occasions in the past, overflowed the WTP. It has also come to our attention that the WTP had been bypassing the very weir-measuring device they are now asking you to re-approve. We were told by Mr. Robert Sweet, (former CRUD Manager) that this has been going on for over 15 years. He indicated that a bypass valve was stuck in a partly open position allowing water to bypass the weir measuring device 24/7 365. He had asked the field supervisor what the valve did, and he had no idea. The valve was not even on the approved plans for the plant and had to be added to the plans this year by their engineering firm. I have been told that bypassing the approved weir measuring point is only allowed to perform required maintenance on a filter system or in an emergency to control plant water levels. In each case a report is required anytime the weir-measuring device is bypassed, with an estimate of the total gallons bypassed. This indicates an under estimation of measured flow throughout the last 3 to 4 permit periods. How can this happen? Some one needs to ask questions and get answers!

One thing that we have learned is even though they do not feel they need to give us the time of day, they come to attention and salute whenever the TCEQ shows an interest in anything they are doing. We would ask that you hold a hearing as soon as possible regarding these issues and give both sides the opportunity to speak ! I have been told that the TCEQ conducts classes on and places emphasis on being a good neighbor. Someone needs to point this out to our board. They can't seem to be bothered at this point since the NOISE is not in their back yard.

Thank You

*Larry V. Green*



TEXAS COMMISSION ON ENVIRONMENTAL QUALITY  
DEC -5 PM 2:41  
CHIEF CLERK'S OFFICE

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03/26/2007

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54992*

TEXAS  
COMMISSION  
ON ENVIRONMENTAL  
QUALITY

To: Mr. Glenn Shankle

2007 MAR 29 AM 9:50

P.O. Box 13087

CHIEF CLERKS OFFICE

Austin, Texas 78711-3087

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*10997-001*

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To whom it may concern:

BY     *DL*    

I am responding to the letter from the Executive Director Mr. Glenn Shankle, dated 3/07/2007. In his letter he proposes to issue a permit to the Cape Royale Utility District, at 1330 Cape Royale Drive, Coldspring, Texas, without conducting a hearing concerning the matters at hand. WE are attaching a copy of the letter since it has the details concerning the MUD district and the permit it is seeking. Four separate residents requested a hearing to address what they felt were valid concerns regarding the operation of this sewage treatment facility. They did so in a timely manner according to Mr. Shankle. It appears that the Director does not see anything wrong with the way this facility has and is being, or will be operated in the future, or he would have arranged for the hearing to be conducted.

Since I am an AFFECTED PERSON, I would like for the Director to proceed with a hearing so that the District in question could explain why it has allowed the following items to occur and what it intends to do to insure the surrounding AFFECTED residents that things will be different in the future.

I will attempt to list the items in a logical order of importance so that all items that can be addressed by the Directors office appear at the top of the list and the more questionable items are addressed lastly.

Item: Item 2 in your letter addresses three major sewage spills that occurred between December, 2005 and February, 2006.

Your response #2 - Faulty, deteriorating, and inoperable equipment!

This about sums up the overall and on going condition of this facility as far as we can see.. The general attitude of overall operations by the Field Supervisor shows a gross lack of concern for the surrounding residents. Regarding the first spill the supervisor submitted a report to the TCEQ, as required by law, but his report listed a false statement concerning the amount of spillage and the duration of the spill. When concerned residents went to the regional office in Beaumont, and questioned the report, he was forced to enter a corrected report reflecting a more accurate description of the nature of the occurrence. We viewed the misrepresentation as an attempt to cover up and hide the fact that they had a problem. Since two more spills occurred within a short period of time our worst fears were confirmed. We were informed, by the TCEQ representatives in Beaumont, that HONESTY in reporting, formed the very foundation of the current system and without it the system cannot work. We were encouraged to call concerning any incidents involving the facility. We are before you attempting to TELL you that there appears to be precious little honesty when it comes to the operation of this facility!!!!

How could this facility be allowed to digress to the point that three major spills occurred in a rapid succession? We would like the Utility district to explain this in the hearing and further explain what has been done to assure that it will not occur again, and that if it does it will be HONESTLY reported.

You make mention in your response #2 of an 8" gate valve that WILL REMAIN CLOSED, in YOUR

*MWD*

words. I can only assume that you are aware that the Districts previous manager became aware that the plant had been illegally discharging an unknown amount of water ( 24 hours a day, seven days a week, 365 days a year ) past the approved weir measuring device that you now intend to issue a permit for. The previous Manager Mr. Robert Sweet Stated that the law required a report for each instance that this valve was opened and the period of time it remained open. Since the current supervisor has been there for 15 plus years, that would be quite a stack of reports. He also stated that the plans and specifications for the plant did not reflect the valve in question. He also stated that since the supervisor could not tell him what the valve was for and it was not on the plans and specifications, they conducted an investigation and determined that it was stuck in a partial open position. The valve was replaced and closed. Strange as it may seem, it was shortly thereafter that the rash of overflows began to occur. One might conclude that there has been a flow problem for YEARS and the districts solution was to illegally bypass water around the filters and measuring weir rather than address the problem. We think an explanation is in order.

Where has the so called BOARD of directors been in this situation?

ITEM: Item three concerning downwind odor!

In your response You state that there is no requirement for this facility to meet the buffer zone requirements for nuisance odor and with the next breath you say, don't hesitate to contact the TCEQ region ten office if there is an odor problem. Sir, we have told you , that there is an occasional objectionable odor, and you as we understand it are supposed to intercede on our behalf to see that this does not occur, through the hearing and permit process. At the very least THEY should be required to explain what they intend to do to prevent any future events of this objectionable nature. The TECQ holds classes at their state conventions concerning HOW TO BE A GOOD NEIGHBOR. If you do not intend to hold the districts accountable WHY BOTHER?

ITEM: Item four concerns the use of the land on which the plant is physically located.

In your response you state that you can issue a permit for discharge of waste water without concern for zoning, potential effects on property values and quality of life, deed restriction violations. IS THEIR ANY ITEM WE MISSED? In the next breath you inform that the permit does not preclude the land owner from the use of common law remedies for trespass, nuisance, or other causes of action ECT. ECT. I mention this item because we intend to send this letter to our elected representatives. As we see it the state has formed, and you show intention to approve, a permit for an organization that has built a waste water treatment plant on land that was set aside for recreational use by DEED and Platt. recorded in the San Jacinto Courthouse.

There are no records of rezoning, even though there is an approved process for that on record, nor to our knowledge has there been any attempt to do so. Why might you ask? Because once the district was approved they knew that they qualified for STATE SOVERGIN IMMUNITY, and could hide behind this status, and beat anyone ,who dared to attempt to use common law remedies, over the head with it! As you might guess they can now take a persons hard earned tax money and hire the best lawyers to administer the BEATING! It would seem to me Mr. state representative that the least this office should be required to do is investigate the zoning status of a parcel of land prior to issuing a permit. If the TCEQ is not required to do this then I would hope you can amend their procedures requiring them to do so.

Item: Item one concerns noise generated by the blower system used to operate the sewer system. As with the other components of this system there is little concern placed on the mechanical condition of the blower system and its operation. It is allowed to operate until it disintegrates with no concern on the noise it generates 24 hours a day seven days a week. The Board of directors position is clear on this matter. We are SOVERGIN IMMUNE so we do not and will not offer any relief to the surrounding property owners. This is their GOOD NEIGHBOR policy. SO MUCH FOR YOUR COMMON LAW REMEDIE! If due

diligence concerning zoning and deed restrictions were a part of the approval process the district would not have been able to purchase this parcel for \$10.00 from a bankrupt developer, and summarily (not legally) rezone it from recreational to industrial waste treatment . The deed of record for the parcel binds them to comply with everything recorded concerning the parcel, but that has not stopped them from placing what we see as an illegal facility on the property. Had the TCEQ researched, or required the then approved district to research the valid land use attached to this property prior to approving this facility we would not be in this deplorable situation. The situation is made worse by the fact that the surrounding property owners have been asking for relief from the noise for two years to know avail! The boards response has been, WE ARE NOT INTERESTED, and WE ARE SOVERGIN IMMUNE! The concerned group of residents offered to PAY for an enclosure to house the offending blower system and were again told, WE ARE NOT INTERESTED!

THAT'S right we offered to pay!!! So much for the good neighbor doctrine. Is this the kind of organization the State envisioned when it enacted the legislation establishing the Special Purpose Mud District. WE HOPE NOT!

In closing I want to acknowledge that you as the Executive Director may have legal grounds to ignore the last two items on this list. You do have a legal right to ask for an explanation concerning the first two items on the list. I would hope that after reading this you would be inclined to want the same answers that we do, and hold a hearing as we have requested!

For the other persons who receive this letter we hope that you will act in whatever capacity you can to bring about a timely and fair solution to this situation.

We the affected persons listed below deserve BETTER!

Robert and Pamela Chandler ✓  
271 North Fairway Loop  
Coldspring, Texas 77331

Larry Green ✓  
40 Pebble Beach Circle  
Coldspring, Texas 77331

Patrick Shay ✓  
12418 Normount  
Houston, Texas 77070

William and Helen Williams ✓  
251 North Fairway Loop  
Coldspring, Texas 77331

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



## TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

*Protecting Texas by Reducing and Preventing Pollution*

March 7, 2007

TO: Persons on the attached mailing list.

RE: Cape Royale Utility District  
TPDES Permit No. WQ0010997001

### **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 Cape Royale Utility District, 1330 Cape Royale Drive, Coldspring, 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 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

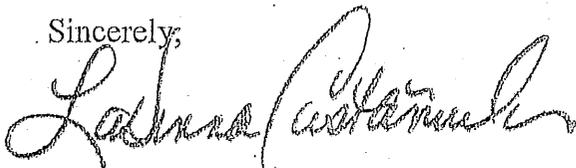
## Processing of Requests.

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  
Cape Royale Utility District  
TPDES Permit No. WQ0010997001

FOR THE APPLICANT:

Tim Tucker  
Bruce Conner  
Cape Royale Utility District  
1330 Cape Royale Drive  
Coldspring, Texas 77331

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

PROTESTANTS/INTERESTED PERSONS:

Robert and Pamela Chandler  
271 North Fairway Loop  
Coldspring, Texas 77331

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

Larry Green  
40 Pebble Beach Circle  
Coldspring, Texas 77331

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

Patrick Shay  
12418 Normont  
Houston, Texas 77070

William and Helen Williams  
251 North Fairway Loop  
Coldspring, Texas 77331

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

FOR THE EXECUTIVE DIRECTOR:

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

TCEQ PERMIT NO. WQ0010997001

2007 MAR -2 PM 4: 2

APPLICATION BY	§	BEFORE THE	CHIEF CLERKS OFFICE
CAPE ROYALE UTILITY DISTRICT	§	TEXAS COMMISSION ON	
FOR PERMIT NO. WQ0010997001	§	ENVIRONMENTAL QUALITY	

**EXECUTIVE DIRECTOR'S RESPONSE TO PUBLIC COMMENT**

The Executive Director (ED) of the Texas Commission on Environmental Quality (the commission or TCEQ) files this Response to Public Comment (Response) on the application from Cape Royale Utility District (Applicant) for a renewal of Permit No. WQ0010997001 and ED's preliminary decision. As required by 30 Texas Administrative Code (TAC) Section 55.156, before a permit is issued, the ED prepares a response to all timely, relevant and material, or significant comments. The Office of Chief Clerk received timely comment letters from the following persons: Pamela and Robert Chandler, Larry Green, Patrick Shay, and Helen and William Williams. 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](http://www.tceq.state.tx.us).

**BACKGROUND**

Description of Facility

The Applicant has applied to the TCEQ for a renewal of the existing permit, TPDES Permit No. WQ0010997001, that authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 150,000 gallons per day (gpd). The Cape Royale Wastewater Treatment Facility

is an activated sludge process plant operated in the contact stabilization mode. Treatment units include a bar screen, two contact stabilization chambers, two re-aeration basins, two final clarifiers, two aerobic sludge digesters, a chlorine contact chamber, a mixed media filter, a mud well and a clear well. The facility is in operation. The draft permit also authorizes the disposal of sludge at a TCEQ authorized land application site or co-disposal landfill.

The effluent limitations in the draft permit, based on a 30-day average, are 10 mg/l five-day Biochemical Oxygen Demand (BOD<sub>5</sub>), 15 mg/l Total Suspended Solids (TSS); Report mg/l Ammonia-Nitrogen (NH<sub>3</sub>-N), and 4.0 mg/l minimum dissolved oxygen (DO). The effluent shall contain a chlorine residual of at least 1.0 mg/l and shall not exceed a chlorine residual of 4.0 mg/l after a detention time of at least 20 minutes based on peak flow. The effluent limitations in the draft permit will maintain and protect the existing instream uses.

The treated effluent is discharged directly to Lake Livingston in Segment No. 0803 of the Trinity River Basin. The designated uses for Segment No. 0803 are high aquatic life use, public water supply, and contact recreation. Segment 0803 is currently listed on the State's inventory of impaired and threatened waters, the 2004 Clean Water Act Section 303(d) list. The listing is specifically for elevated pH values and depressed dissolved oxygen concentrations. This application is for renewal of an existing authorization and will not represent an increase in the permitted levels of oxygen-demanding constituents to Segment 0803.

The facility is located approximately 5.5 miles north of the City of Coldspring in the northwest corner of the Cape Royale Subdivision, on the shore of Lake Livingston in San Jacinto County, Texas. The existing wastewater treatment facility serves Cape Royale Municipal Utility District.

## Procedural Background

The permit application for a permit renewal was received on August 8, 2006 and declared administratively complete on August 28, 2006. The Notice of Receipt and Intent to Obtain a Water Quality Permit was published on September 7, 2006 in the *San Jacinto News Times*. The Notice of Application and Preliminary Decision for a Water Quality Permit was published on December 14, 2006 in the *San Jacinto News Times*. The public comment period ended on January 18, 2007. This application is subject to the procedural requirements of House Bill 801, 76th Legislature, 1999.

## COMMENTS AND RESPONSES

### COMMENT 1:

Pamela and Robert Chandler, Larry Green, Patrick Shay, and Helen and William Williams expressed concern about constant noise from the facility. Larry Green and Patrick Shay indicate the Applicant's failure to control the noise may constitute a nuisance with potential impact on property values.

### RESPONSE 1:

Chapter 26 of the Texas Water Code (TWC) authorizes the Commission to issue permits for wastewater discharge facilities to maintain and protect water quality in the state. Potential effects on property values, including noise issues, are not considered in the review of a wastewater permit application. The draft permit does not limit the ability of nearby landowners to use common law remedies for trespass, nuisance, or other causes of action in response to activities that may or actually do result in injury or adverse effect on human health or welfare, animal life, vegetation, or property. Also, to report complaints about the operation of the facility should it be authorized, please contact the TCEQ Region 10 Office at 1-409-898-3838 or call the Environmental Compliance Hotline at 1-888-777-3186.

**COMMENT 2:**

Pamela and Robert Chandler, Larry Green, Patrick Shay, and Helen and William Williams expressed concern about inaccurate reporting of unauthorized discharges. Residents have noticed at least three overflows of untreated effluent, citing TCEQ Incidence No. 70578 and Investigation No. 455042. In addition, standing raw sewage in the lake bed and on public use land adjacent to the Applicant's facility raised concerns regarding proper operation practices and maintenance.

**RESPONSE 2:**

According to the Region 10 office, there have been three incidents of noncompliance involving the Applicant since December of 2005. In all three instances, the Applicant submitted notification to the TCEQ within the required 24-hour time frame. On February 7, 2006, the TCEQ Region 10 field investigator conducted a reconnaissance compliance investigation at the facility and met with the Applicant's plant operators and field operations supervisor to discuss the discharge allegations. On March 24, 2006, TCEQ issued a written notice of violation to the Applicant with recommended corrective action. On May 30, 2006, the Applicant submitted an engineering assessment report evaluating the facility and determining the cause of the unauthorized discharges. Faulty, deteriorating, or inoperable equipment was subsequently replaced including sand filter actuator valves, an 8" gate valve which will remain closed, and the sand filter media (including new nozzles). Overflow piping from the chlorine contact chamber to the effluent weir structure was installed to help ensure that plant overflow does not reoccur. In addition, a new bulkhead was constructed. On December 20, 2006, the Applicant submitted compliance documentation to the TCEQ certifying that the corrective action was complete.

The Applicant must also maintain adequate safeguards to prevent the discharge of untreated or inadequately treated wastes during electrical power failures by means of alternate power sources,

standby generators, or retention of inadequately treated wastewater. In addition, the plans and specifications for domestic sewage collection and treatment works associated with any domestic permit must be approved by TCEQ. These permit provisions are designed to help prevent unauthorized discharges of raw sewage. If an unauthorized discharge occurs, the Applicant is required to report it to TCEQ within 24 hours. Finally, the Applicant is subject to potential enforcement action for failure to comply with TCEQ rules or the permit. The TCEQ urges the public to report unauthorized discharges or other compliance issues to the TCEQ Region 10 office at 1-409-898-3838.

**COMMENT 3:**

Robert and Pamela Chandler and Helen and William Williams indicated concern about occasional downwind odor of raw sewage.

**RESPONSE 3:**

TCEQ rules require domestic wastewater treatment facilities to meet buffer zone requirements for the abatement and control of nuisance odor according to 30 TAC Section 309.13(e), which was implemented in 1990. However, the applicant is not required to meet the buffer zone rules because the facility was constructed before 1990. According to TCEQ records, the facility became operational in February of 1970, prior to the construction of the majority of the residential structures.

Because this facility is an activated sludge plant and the sludge is hauled off-site for disposal, there are no anaerobic zones, primary clarifiers, or anaerobic digesters in the treatment plant. These generally are the sources of objectionable odors. Prior complaints have not listed odors as concerns. However, if the facility has problems with odor or other issues that need to be addressed, contact the TCEQ Region 10 office at 1-409-898-3838.

Larry Green and Patrick Shay indicate concern over violations of deed restrictions of the land on which the facility is located. They claim that the Applicant's facility is sited on a parcel of land originally intended for a recreation reserve.

**RESPONSE 4:**

Chapter 26 of the TWC authorizes the Commission to issue permits for wastewater discharge facilities to maintain and protect water quality in the state. Potential effects on property values and quality of life, including the existence of deed restriction violations, are not considered in the review of a wastewater permit application. The draft permit does not limit the ability of nearby landowners to use common law remedies for trespass, nuisance, or other causes of action in response to activities that may or actually do result in injury or adverse effect on human health or welfare, animal life, vegetation, or property.

Respectfully submitted,

Texas Commission on Environmental Quality

Glenn Shankle,  
Executive Director

Robert Martinez, Director  
Environmental Law Division

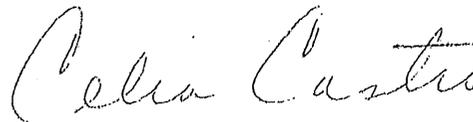


Celia Castro, Staff Attorney  
Environmental Law Division  
State Bar No. 03997350  
P.O. Box 13087, MC 173  
Austin, Texas 78711-3087  
(512) 239-5692

REPRESENTING THE  
EXECUTIVE DIRECTOR OF THE  
TEXAS COMMISSION ON  
ENVIRONMENTAL QUALITY

### CERTIFICATE OF SERVICE

I certify that on March 2, 2007, the "Executive Director's Response to Public Comment" for Permit No. WQ0010997001 was filed with the Texas Commission on Environmental Quality's Office of the Chief Clerk.



Celia Castro, Staff Attorney  
Environmental Law Division  
State Bar No. 03997350

CHIEF CLERKS OFF

2007 MAR -2 PM 4

TEXAS  
COMMISSION  
ON ENVIRONMENTAL  
QUALITY

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Texas Commission on Environmental Quality  
Commissioners Offices

BY RL

TO WHOM IT MIGHT CONCERN:

This is a cover letter attempting to lay out in a logical order the ongoing issues and problems facing a group of residents of the Cape Royale subdivision located in Coldspring, Texas ( San Jacinto County)

What are the problems?

Sewage spills, sewage smell, noise from sewage plant co-located in residential area, and questions concerning the zoning of the land the sewage facility is located on.

A special purpose municipal utility district that refuses to respond to complaints in a responsible manor, or at all!

A board of directors that rushes to rap itself in the MANTLE of SOVEREIGN IMMUNITY rather than provide any solutions to their numerous violations. A policy of attacking the messenger rather than seeking a solution to a problem.

The T.C.E.Q., who it seems professes to have no direct control over the way a MUDD abuses its neighbors, nor at this point any interest in investigating to see exactly what is or is not being done. Even though four families wrote letters, it would appear that the result is to allow the MUDD to continue the beating until our morale improves. There are violations of procedure and possibly the LAW concerning how we are being treated and no one seems the least bit interested!

Questions concerning who can and cannot vote for the board of directors of the MUDD. As it stands now we have 1200 to 1400 lot owners, who are required by TEXAS law, to pay a considerable amount of TAX money each year to this MUDD. The Board of dictators has chosen to interpret the voter law by saying that only persons who reside in the precinct were the MUDD is located are allowed to vote in the directors or any elections. This translates into 300 owners running the MUDD and the other hundreds of property owners not having a say at all. THAT'S TAXATION WITHOUT REPRESENTATION!!! Is this what our representatives had in mind when they formed this 1000 lb gorilla called a MUDD and then bestowed the crown of SOVEREIGN IMMUNITY upon its head. I HOPE NOT!

We are asking for a hearing with the T.C.E.Q. to address those issues that can be addressed. We have been told that if it is granted it is customary for our representative to attend. We want them to see the way that this power can and we feel is being abused. We would also invite you to read the items in this package so that you can get a better feel for what is going on. If the T.C.E.Q. has no authority in any of these areas then a change is needed to bestow that authority somewhere in order to prevent what we see as TYRANNY at the hands of a few.

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TAXPAYERS SEEKING RESPECT AND RELIEF !

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY  
2007 APR 10 AM 9:43  
CHIEF CLERKS OFFICE

MW



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THAT'S right we offered to pay!!! So much for the good neighbor doctrine. Is this the kind of organization the State envisioned when it enacted the legislation establishing the Special Purpose Mud District. WE HOPE NOT!

In closing I want to acknowledge that you as the Executive Director may have legal grounds to ignore the last two items on this list. You do have a legal right to ask for an explanation concerning the first two items on the list. I would hope that after reading this you would be inclined to want the same answers that we do, and hold a hearing as we have requested!

For the other persons who receive this letter we hope that you will act in whatever capacity you can to bring about a timely and fair solution to this situation.

We the affected persons listed below deserve BETTER!

Robert and Pamela Chandler  
271 North Fairway Loop  
Coldspring, Texas 77331

Larry Green  
40 Pebble Beach Circle  
Coldspring, Texas 77331

Patrick Shay  
12418 Normount  
Houston, Texas 77070

William and Helen Williams  
251 North Fairway Loop  
Coldspring, Texas 77331

Kathleen Hartnett White, *Chair*  
Larry R. Soward, *Commissioner*  
Glenn Shankle, *Executive Director*



## TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

*Protecting Texas by Reducing and Preventing Pollution*

March 7, 2007

TO: Persons on the attached mailing list.

RE: Cape Royale Utility District  
TPDES Permit No. WQ0010997001

### **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 Cape Royale Utility District, 1330 Cape Royale Drive, Coldspring, 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

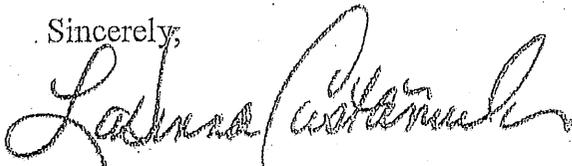
## Processing of Requests.

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

for  
Cape Royale Utility District  
TPDES Permit No. WQ0010997001

FOR THE APPLICANT:

Tim Tucker  
Bruce Conner  
Cape Royale Utility District  
1330 Cape Royale Drive  
Coldspring, Texas 77331

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

PROTESTANTS/INTERESTED PERSONS:

Robert and Pamela Chandler  
271 North Fairway Loop  
Coldspring, Texas 77331

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

Larry Green  
40 Pebble Beach Circle  
Coldspring, Texas 77331

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

Patrick Shay  
12418 Normont  
Houston, Texas 77070

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

William and Helen Williams  
251 North Fairway Loop  
Coldspring, Texas 77331

FOR THE EXECUTIVE DIRECTOR:

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

TCEQ PERMIT NO. WQ0010997001

2007 MAR -2 PM 4: 2

APPLICATION BY	§	BEFORE THE	CHIEF CLERKS OFFICE
CAPE ROYALE UTILITY DISTRICT	§	TEXAS COMMISSION ON	
FOR PERMIT NO. WQ0010997001	§	ENVIRONMENTAL QUALITY	

**EXECUTIVE DIRECTOR'S RESPONSE TO PUBLIC COMMENT**

The Executive Director (ED) of the Texas Commission on Environmental Quality (the commission or TCEQ) files this Response to Public Comment (Response) on the application from Cape Royale Utility District (Applicant) for a renewal of Permit No. WQ0010997001 and ED's preliminary decision. As required by 30 Texas Administrative Code (TAC) Section 55.156, before a permit is issued, the ED prepares a response to all timely, relevant and material, or significant comments. The Office of Chief Clerk received timely comment letters from the following persons: Pamela and Robert Chandler, Larry Green, Patrick Shay, and Helen and William Williams. 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](http://www.tceq.state.tx.us).

**BACKGROUND**

Description of Facility

The Applicant has applied to the TCEQ for a renewal of the existing permit, TPDES Permit No. WQ0010997001, that authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 150,000 gallons per day (gpd). The Cape Royale Wastewater Treatment Facility

is an activated sludge process plant operated in the contact stabilization mode. Treatment units include a bar screen, two contact stabilization chambers, two re-aeration basins, two final clarifiers, two aerobic sludge digesters, a chlorine contact chamber, a mixed media filter, a mud well and a clear well. The facility is in operation. The draft permit also authorizes the disposal of sludge at a TCEQ authorized land application site or co-disposal landfill.

The effluent limitations in the draft permit, based on a 30-day average, are 10 mg/l five-day Biochemical Oxygen Demand ( $BOD_5$ ), 15 mg/l Total Suspended Solids (TSS), Report mg/l Ammonia-Nitrogen ( $NH_3-N$ ), and 4.0 mg/l minimum dissolved oxygen (DO). The effluent shall contain a chlorine residual of at least 1.0 mg/l and shall not exceed a chlorine residual of 4.0 mg/l after a detention time of at least 20 minutes based on peak flow. The effluent limitations in the draft permit will maintain and protect the existing instream uses.

The treated effluent is discharged directly to Lake Livingston in Segment No. 0803 of the Trinity River Basin. The designated uses for Segment No. 0803 are high aquatic life use, public water supply, and contact recreation. Segment 0803 is currently listed on the State's inventory of impaired and threatened waters, the 2004 Clean Water Act Section 303(d) list. The listing is specifically for elevated pH values and depressed dissolved oxygen concentrations. This application is for renewal of an existing authorization and will not represent an increase in the permitted levels of oxygen-demanding constituents to Segment 0803.

The facility is located approximately 5.5 miles north of the City of Coldspring in the northwest corner of the Cape Royale Subdivision, on the shore of Lake Livingston in San Jacinto County, Texas. The existing wastewater treatment facility serves Cape Royale Municipal Utility District.

## Procedural Background

The permit application for a permit renewal was received on August 8, 2006 and declared administratively complete on August 28, 2006. The Notice of Receipt and Intent to Obtain a Water Quality Permit was published on September 7, 2006 in the *San Jacinto News Times*. The Notice of Application and Preliminary Decision for a Water Quality Permit was published on December 14, 2006 in the *San Jacinto News Times*. The public comment period ended on January 18, 2007. This application is subject to the procedural requirements of House Bill 801, 76th Legislature, 1999.

## **COMMENTS AND RESPONSES**

### **COMMENT 1:**

Pamela and Robert Chandler, Larry Green, Patrick Shay, and Helen and William Williams expressed concern about constant noise from the facility. Larry Green and Patrick Shay indicate the Applicant's failure to control the noise may constitute a nuisance with potential impact on property values.

### **RESPONSE 1:**

Chapter 26 of the Texas Water Code (TWC) authorizes the Commission to issue permits for wastewater discharge facilities to maintain and protect water quality in the state. Potential effects on property values, including noise issues, are not considered in the review of a wastewater permit application. The draft permit does not limit the ability of nearby landowners to use common law remedies for trespass, nuisance, or other causes of action in response to activities that may or actually do result in injury or adverse effect on human health or welfare, animal life, vegetation, or property. Also, to report complaints about the operation of the facility should it be authorized, please contact the TCEQ Region 10 Office at 1-409-898-3838 or call the Environmental Compliance Hotline at 1-888-777-3186.

**COMMENT 2:**

Pamela and Robert Chandler, Larry Green, Patrick Shay, and Helen and William Williams expressed concern about inaccurate reporting of unauthorized discharges. Residents have noticed at least three overflows of untreated effluent, citing TCEQ Incidence No. 70578 and Investigation No. 455042. In addition, standing raw sewage in the lake bed and on public use land adjacent to the Applicant's facility raised concerns regarding proper operation practices and maintenance.

**RESPONSE 2:**

According to the Region 10 office, there have been three incidents of noncompliance involving the Applicant since December of 2005. In all three instances, the Applicant submitted notification to the TCEQ within the required 24-hour time frame. On February 7, 2006, the TCEQ Region 10 field investigator conducted a reconnaissance compliance investigation at the facility and met with the Applicant's plant operators and field operations supervisor to discuss the discharge allegations. On March 24, 2006, TCEQ issued a written notice of violation to the Applicant with recommended corrective action. On May 30, 2006, the Applicant submitted an engineering assessment report evaluating the facility and determining the cause of the unauthorized discharges. Faulty, deteriorating, or inoperable equipment was subsequently replaced including sand filter actuator valves, an 8" gate valve which will remain closed, and the sand filter media (including new nozzles). Overflow piping from the chlorine contact chamber to the effluent weir structure was installed to help ensure that plant overflow does not reoccur. In addition, a new bulkhead was constructed. On December 20, 2006, the Applicant submitted compliance documentation to the TCEQ certifying that the corrective action was complete.

The Applicant must also maintain adequate safeguards to prevent the discharge of untreated or inadequately treated wastes during electrical power failures by means of alternate power sources,

standby generators, or retention of inadequately treated wastewater. In addition, the plans and specifications for domestic sewage collection and treatment works associated with any domestic permit must be approved by TCEQ. These permit provisions are designed to help prevent unauthorized discharges of raw sewage. If an unauthorized discharge occurs, the Applicant is required to report it to TCEQ within 24 hours. Finally, the Applicant is subject to potential enforcement action for failure to comply with TCEQ rules or the permit. The TCEQ urges the public to report unauthorized discharges or other compliance issues to the TCEQ Region 10 office at 1-409-898-3838.

**COMMENT 3:**

Robert and Pamela Chandler and Helen and William Williams indicated concern about occasional downwind odor of raw sewage.

**RESPONSE 3:**

TCEQ rules require domestic wastewater treatment facilities to meet buffer zone requirements for the abatement and control of nuisance odor according to 30 TAC Section 309.13(e), which was implemented in 1990. However, the applicant is not required to meet the buffer zone rules because the facility was constructed before 1990. According to TCEQ records, the facility became operational in February of 1970, prior to the construction of the majority of the residential structures.

Because this facility is an activated sludge plant and the sludge is hauled off-site for disposal, there are no anaerobic zones, primary clarifiers, or anaerobic digesters in the treatment plant. These generally are the sources of objectionable odors. Prior complaints have not listed odors as concerns. However, if the facility has problems with odor or other issues that need to be addressed, contact the TCEQ Region 10 office at 1-409-898-3838.

Larry Green and Patrick Shay indicate concern over violations or deed restrictions of the land on which the facility is located. They claim that the Applicant's facility is sited on a parcel of land originally intended for a recreation reserve.

**RESPONSE 4:**

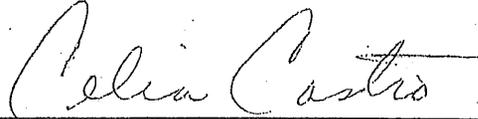
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Respectfully submitted,

Texas Commission on Environmental Quality

Glenn Shankle,  
Executive Director

Robert Martinez, Director  
Environmental Law Division

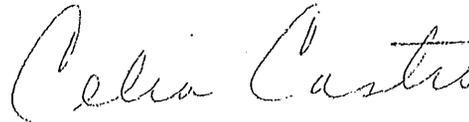


Celia Castro  
Celia Castro, Staff Attorney  
Environmental Law Division  
State Bar No. 03997350  
P.O. Box 13087, MC 173  
Austin, Texas 78711-3087  
(512) 239-5692

REPRESENTING THE  
EXECUTIVE DIRECTOR OF THE  
TEXAS COMMISSION ON  
ENVIRONMENTAL QUALITY

### CERTIFICATE OF SERVICE

I certify that on March 2, 2007, the "Executive Director's Response to Public Comment" for Permit No. WQ0010997001 was filed with the Texas Commission on Environmental Quality's Office of the Chief Clerk.



Celia Castro  
Celia Castro, Staff Attorney  
Environmental Law Division

04/02/2007

*MUDD  
34993*

OPA

*10997-001*

TEXAS  
COMMISSION  
ON ENVIRONMENTAL  
QUALITY

H APR 11 2007

2007 APR 10 PM 2:43

BY *DC*

TO WHOM IT MIGHT CONCERN:

CHIEF CLERKS OFFICE

This is a cover letter attempting to lay out in a logical order the ongoing issues and problems facing a group of residents of the Cape Royale subdivision located in Coldspring, Texas ( San Jacinto County)

What are the problems?

Sewage spills, sewage smell, noise from sewage plant co-located in residential area, and questions concerning the zoning of the land the sewage facility is located on.

A special purpose municipal utility district that refuses to respond to complaints in a responsible manor, or at all!

A board of directors that rushes to rap itself in the MANTLE of SOVEREIGN IMMUNITY rather than provide any solutions to their numerous violations. A policy of attacking the messenger rather than seeking a solution to a problem.

The T.C.E.Q., who it seems professes to have no direct control over the way a MUDD abuses its neighbors, nor at this point any interest in investigating to see exactly what is or is not being done. Even though four families wrote letters, it would appear that the result is to allow the MUDD to continue the beating until our morale improves. There are violations of procedure and possibly the LAW concerning how we are being treated and no one seems the least bit interested!

Questions concerning who can and cannot vote for the board of directors of the MUDD. As it stands now we have 1200 to 1400 lot owners, who are required by TEXAS law, to pay a considerable amount of TAX money each year to this MUDD. The Board of dictators has chosen to interpret the voter law by saying that only persons who reside in the precinct were the MUDD is located are allowed to vote in the directors or any elections. This translates into 300 owners running the MUDD and the other hundreds of property owners not having a say at all. THAT'S TAXATION WITHOUT REPRESENTATION!!! Is this what our representatives had in mind when they formed this 1000 lb gorilla called a MUDD and then bestowed the crown of SOVEREIGN IMMUNITY upon its head. I HOPE NOT!

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*MW*



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This is their GOOD NEIGHBOR policy. SO MUCH FOR YOUR COMMON LAW REMEDIE! If due diligence concerning zoning and deed restrictions were a part of the approval process the district would not have been able to purchase this parcel for \$10.00 from a bankrupt developer, and summarily (not legally) rezone it from recreational to industrial waste treatment . The deed of record for the parcel binds them to comply with everything recorded concerning the parcel, but that has not stopped them from placing what we see as an illegal facility on the property. Had the TCEQ researched, or required the then approved district to research the valid land use attached to this property prior to approving this facility we would not be in this deplorable situation. The situation is made worse by the fact that the surrounding property owners have been asking for relief from the noise for two years to know avail! The boards response has been, WE ARE NOT INTERESTED, and WE ARE SOVEREIGN IMMUNE! The concerned group of residents offered to PAY for an enclosure to house the offending blower system and were again told, WE ARE NOT INTERESTED!

THAT'S right we offered to pay!!! So much for the good neighbor doctrine. Is this the kind of organization the State envisioned when it enacted the legislation establishing the Special Purpose Mud District. WE HOPE NOT!

In closing I want to acknowledge that you as the Executive Director may have legal grounds to ignore the last two items on this list. You do have a legal right to ask for an explanation concerning the first two items on the list. I would hope that after reading this you would be inclined to want the same answers that we do, and hold a hearing as we have requested!

For the other persons who receive this letter we hope that you will act in whatever capacity you can to bring about a timely and fair solution to this situation.

We the affected persons listed below deserve BETTER!

Robert and Pamela Chandler  
271 North Fairway Loop  
Coldspring, Texas 77331

Larry Green  
40 Pebble Beach Circle  
Coldspring, Texas 77331

Patrick Shay  
12418 Normount  
Houston, Texas 77070

William and Helen Williams  
251 North Fairway Loop  
Coldspring, Texas 77331

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



## TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

*Protecting Texas by Reducing and Preventing Pollution*

March 7, 2007

TO: Persons on the attached mailing list.

RE: Cape Royale Utility District  
TPDES Permit No. WQ0010997001

### **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 Cape Royale Utility District, 1330 Cape Royale Drive, Coldspring, 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

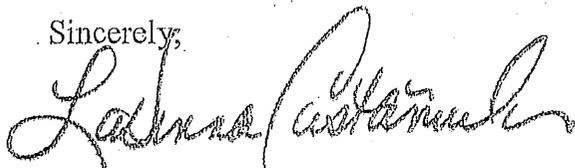
### Processing of Requests.

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  
Cape Royale Utility District  
TPDES Permit No. WQ0010997001

FOR THE APPLICANT:

Tim Tucker  
Bruce Conner  
Cape Royale Utility District  
1330 Cape Royale Drive  
Coldspring, Texas 77331

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

PROTESTANTS/INTERESTED PERSONS:

Robert and Pamela Chandler  
271 North Fairway Loop  
Coldspring, Texas 77331

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

Larry Green  
40 Pebble Beach Circle  
Coldspring, Texas 77331

FOR PUBLIC INTEREST COUNSEL:

Patrick Shay  
12418 Normont  
Houston, Texas 77070

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

William and Helen Williams  
251 North Fairway Loop  
Coldspring, Texas 77331

FOR THE CHIEF CLERK:

FOR THE EXECUTIVE DIRECTOR:

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

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

TCEQ PERMIT NO. WQ0010997001

2007 MAR -2 PM 4: 2

APPLICATION BY	§	BEFORE THE	CHIEF CLERKS OFFICE
CAPE ROYALE UTILITY DISTRICT	§	TEXAS COMMISSION ON	
FOR PERMIT NO. WQ0010997001	§	ENVIRONMENTAL QUALITY	

**EXECUTIVE DIRECTOR'S RESPONSE TO PUBLIC COMMENT**

The Executive Director (ED) of the Texas Commission on Environmental Quality (the commission or TCEQ) files this Response to Public Comment (Response) on the application from Cape Royale Utility District (Applicant) for a renewal of Permit No. WQ0010997001 and ED's preliminary decision. As required by 30 Texas Administrative Code (TAC) Section 55.156, before a permit is issued, the ED prepares a response to all timely, relevant and material, or significant comments. The Office of Chief Clerk received timely comment letters from the following persons: Pamela and Robert Chandler, Larry Green, Patrick Shay, and Helen and William Williams. 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](http://www.tceq.state.tx.us).

**BACKGROUND**

Description of Facility

The Applicant has applied to the TCEQ for a renewal of the existing permit, TPDES Permit No. WQ0010997001, that authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 150,000 gallons per day (gpd). The Cape Royale Wastewater Treatment Facility

is an activated sludge process plant operated in the contact stabilization mode. Treatment units include a bar screen, two contact stabilization chambers, two re-aeration basins, two final clarifiers, two aerobic sludge digesters, a chlorine contact chamber, a mixed media filter, a mud well and a clear well. The facility is in operation. The draft permit also authorizes the disposal of sludge at a TCEQ authorized land application site or co-disposal landfill.

The effluent limitations in the draft permit, based on a 30-day average, are 10 mg/l five-day Biochemical Oxygen Demand ( $BOD_5$ ), 15 mg/l Total Suspended Solids (TSS), Report mg/l Ammonia-Nitrogen ( $NH_3-N$ ), and 4.0 mg/l minimum dissolved oxygen (DO). The effluent shall contain a chlorine residual of at least 1.0 mg/l and shall not exceed a chlorine residual of 4.0 mg/l after a detention time of at least 20 minutes based on peak flow. The effluent limitations in the draft permit will maintain and protect the existing instream uses.

The treated effluent is discharged directly to Lake Livingston in Segment No. 0803 of the Trinity River Basin. The designated uses for Segment No. 0803 are high aquatic life use, public water supply, and contact recreation. Segment 0803 is currently listed on the State's inventory of impaired and threatened waters, the 2004 Clean Water Act Section 303(d) list. The listing is specifically for elevated pH values and depressed dissolved oxygen concentrations. This application is for renewal of an existing authorization and will not represent an increase in the permitted levels of oxygen-demanding constituents to Segment 0803.

The facility is located approximately 5.5 miles north of the City of Coldspring in the northwest corner of the Cape Royale Subdivision, on the shore of Lake Livingston in San Jacinto County, Texas. The existing wastewater treatment facility serves Cape Royale Municipal Utility District.

## Procedural Background

The permit application for a permit renewal was received on August 8, 2006 and declared administratively complete on August 28, 2006. The Notice of Receipt and Intent to Obtain a Water Quality Permit was published on September 7, 2006 in the *San Jacinto News Times*. The Notice of Application and Preliminary Decision for a Water Quality Permit was published on December 14, 2006 in the *San Jacinto News Times*. The public comment period ended on January 18, 2007. This application is subject to the procedural requirements of House Bill 801, 76th Legislature, 1999.

## **COMMENTS AND RESPONSES**

### COMMENT 1:

Pamela and Robert Chandler, Larry Green, Patrick Shay, and Helen and William Williams expressed concern about constant noise from the facility. Larry Green and Patrick Shay indicate the Applicant's failure to control the noise may constitute a nuisance with potential impact on property values.

### RESPONSE 1:

Chapter 26 of the Texas Water Code (TWC) authorizes the Commission to issue permits for wastewater discharge facilities to maintain and protect water quality in the state. Potential effects on property values, including noise issues, are not considered in the review of a wastewater permit application. The draft permit does not limit the ability of nearby landowners to use common law remedies for trespass, nuisance, or other causes of action in response to activities that may or actually do result in injury or adverse effect on human health or welfare, animal life, vegetation, or property. Also, to report complaints about the operation of the facility should it be authorized, please contact the TCEQ Region 10 Office at 1-409-898-3838 or call the Environmental Compliance Hotline at 1-888-777-3186.

**COMMENT 2:**

Pamela and Robert Chandler, Larry Green, Patrick Shay, and Helen and William Williams expressed concern about inaccurate reporting of unauthorized discharges. Residents have noticed at least three overflows of untreated effluent, citing TCEQ Incidence No. 70578 and Investigation No. 455042. In addition, standing raw sewage in the lake bed and on public use land adjacent to the Applicant's facility raised concerns regarding proper operation practices and maintenance.

**RESPONSE 2:**

According to the Region 10 office, there have been three incidents of noncompliance involving the Applicant since December of 2005. In all three instances, the Applicant submitted notification to the TCEQ within the required 24-hour time frame. On February 7, 2006, the TCEQ Region 10 field investigator conducted a reconnaissance compliance investigation at the facility and met with the Applicant's plant operators and field operations supervisor to discuss the discharge allegations. On March 24, 2006, TCEQ issued a written notice of violation to the Applicant with recommended corrective action. On May 30, 2006, the Applicant submitted an engineering assessment report evaluating the facility and determining the cause of the unauthorized discharges. Faulty, deteriorating, or inoperable equipment was subsequently replaced including sand filter actuator valves, an 8" gate valve which will remain closed, and the sand filter media (including new nozzles). Overflow piping from the chlorine contact chamber to the effluent weir structure was installed to help ensure that plant overflow does not reoccur. In addition, a new bulkhead was constructed. On December 20, 2006, the Applicant submitted compliance documentation to the TCEQ certifying that the corrective action was complete.

The Applicant must also maintain adequate safeguards to prevent the discharge of untreated or inadequately treated wastes during electrical power failures by means of alternate power sources,

standby generators, or retention of inadequately treated wastewater. In addition, the plans and specifications for domestic sewage collection and treatment works associated with any domestic permit must be approved by TCEQ. These permit provisions are designed to help prevent unauthorized discharges of raw sewage. If an unauthorized discharge occurs, the Applicant is required to report it to TCEQ within 24 hours. Finally, the Applicant is subject to potential enforcement action for failure to comply with TCEQ rules or the permit. The TCEQ urges the public to report unauthorized discharges or other compliance issues to the TCEQ Region 10 office at 1-409-898-3838.

**COMMENT 3:**

Robert and Pamela Chandler and Helen and William Williams indicated concern about occasional downwind odor of raw sewage.

**RESPONSE 3:**

TCEQ rules require domestic wastewater treatment facilities to meet buffer zone requirements for the abatement and control of nuisance odor according to 30 TAC Section 309.13(e), which was implemented in 1990. However, the applicant is not required to meet the buffer zone rules because the facility was constructed before 1990. According to TCEQ records, the facility became operational in February of 1970, prior to the construction of the majority of the residential structures.

Because this facility is an activated sludge plant and the sludge is hauled off-site for disposal, there are no anaerobic zones, primary clarifiers, or anaerobic digesters in the treatment plant. These generally are the sources of objectionable odors. Prior complaints have not listed odors as concerns. However, if the facility has problems with odor or other issues that need to be addressed, contact the TCEQ Region 10 office at 1-409-898-3838.

Larry Green and Patrick Shay indicate concern over violations of deed restrictions of the land on which the facility is located. They claim that the Applicant's facility is sited on a parcel of land originally intended for a recreation reserve.

**RESPONSE 4:**

Chapter 26 of the TWC authorizes the Commission to issue permits for wastewater discharge facilities to maintain and protect water quality in the state. Potential effects on property values and quality of life, including the existence of deed restriction violations, are not considered in the review of a wastewater permit application. The draft permit does not limit the ability of nearby landowners to use common law remedies for trespass, nuisance, or other causes of action in response to activities that may or actually do result in injury or adverse effect on human health or welfare, animal life, vegetation, or property.

Respectfully submitted,

Texas Commission on Environmental Quality

Glenn Shankle,  
Executive Director

Robert Martinez, Director  
Environmental Law Division

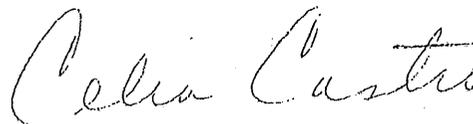


*Celia Castro*, Staff Attorney  
Environmental Law Division  
State Bar No. 03997350  
P.O. Box 13087, MC 173  
Austin, Texas 78711-3087  
(512) 239-5692

REPRESENTING THE  
EXECUTIVE DIRECTOR OF THE  
TEXAS COMMISSION ON  
ENVIRONMENTAL QUALITY

**CERTIFICATE OF SERVICE**

I certify that on March 2, 2007, the "Executive Director's Response to Public Comment" for Permit No. WQ0010997001 was filed with the Texas Commission on Environmental Quality's Office of the Chief Clerk.



*Celia Castro*, Staff Attorney  
Environmental Law Division  
State Bar No. 03997350

CHIEF CLERK'S OFFICE

2007 MAR -2 PM 4P

TEXAS  
COMMISSION ON  
ENVIRONMENTAL  
QUALITY

December 1, 2006

Ms. Ladonna Castanuela - Chief Clerk - Re-permitting  
Texas Commission on Environmental Quality  
P.O. Box 13087  
Austin, Texas 78711-3087

MWD  
54992

H OPA  
DEC 06 2006  
BY KY

Re: Commission Public Hearing request - Cape Royale Utility District- Permit # 10997-01-(Feb. 2007)

Reason for hearing request:

The Cape Royale Utility District is and has been causing a common noise nuisance at its Wastewater treatment plant. They have also had numerous un-authorized discharges of untreated effluent.

The sewer treatment plant is presently located on Reserve F (waterfront lake property that is adjacent to residential lots/homes) of the Royal Greens section of Cape Royale. This tract is subject to the restrictions including fence heights, fence distance from water front, building set back location relative to property boundaries, nuisance issues, etc. The CRUD sewer treatment plant is located on Reserve tract F...this is a direct violation of the deed restrictions. In November 1987 when Reserve Tract F was sold to the Utility district, the deed of sale also sold all the pumps, buildings, improvements, etc. with the land. The deed of sale states that the property is 'subject to all matters of record which affect the property conveyed...that are of record in the County Clerk's office of San Jacinto County.' The records on file are a plat map of the Royal Greens section, showing Reserve F and the deed restrictions. Section 27 of the deed restrictions designates this tract for primary park use. This site was never intended for the permanent location of the sewer treatment plant, but instead for residents to use it as a park and access to the water front. Section 28 of the deed restrictions, states that all sections/paragraphs in the deed restrictions shall have no efficacy in construing any of the restrictions, covenants or conditions contained within the deed. In other words, the Reserve tracts are subject to the deed restrictions. The district is in violation of the deed restrictions by using this reserve lot for the sewer treatment plant. They are also in violation of the deed's noise ordinance, fence requirements, location of facilities relative to the property line, etc.

Several of the surrounding residents have formally asked the District to eliminate the 24/7 noise. The residents have offered to work with the District to erect and pay for an enclosure, have researched mufflers for the blowers, have obtained sources for donation of building materials, etc. The District has taken noise readings and has erected a 7 ft high plywood wall just east of the blowers. The decibel level did not change from the before/after site condition of the plywood wall installation. Obviously, the District recognized a noise issue and responded by installing one wall on one side of the blowers. This is the only action they are willing to take.

I have attempted to explain to the District that elimination of the noise would be beneficially to the community and the District. Not only would we have the peace and quit of lake front living, but the property values would be increased. This would generate more tax dollars for the District and off-set any potential costs associated with installation and maintenance to eliminate the noise.

The sewer plant has overflowed untreated effluent on at least three cases, noted by residents, in the past 12 months. They occurred in Dec. 2005, Jan. 2006, and Feb. 2006. We asked that the District explain what measures would be taken to ensure this type operation would not continue and to minimize the health risk. They set up a special meeting with myself and then cancelled it (due to one of the plant overflows on the day of the meeting). They have yet to re-schedule a meeting to discuss our concerns and a course of action.

Thank you for your attention on this matter,

*Patrick Shay*  
Patrick Shay, PE

12418 Normont  
Houston, TX 77070  
281 364-2368

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY  
OFFICE OF PERMITS  
NOV 15 11 25 55

*MWD*

OPA

H NOV 28 2006

JP 92030

November 27, 2006

BY ll  
54992

CHIEF CLERK'S OFFICE

NOV 28 AM 8:28

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

MWD  
54992

Ms Ladonna Castanuela - Chief Clerk - Repermitting  
Texas Commission on Environmental Quality  
P.O. Box 13087  
Austin, TX 78711 - 3087  
Fax: 512-239-3333

Re: Commission Public Hearing Request - Cape Royale Utility District -  
Permit # 10997-01 - (Feb. 2007 Renewal)

My wife and I live a very short distance from the (150-200 yds) from the Cape Royale Utility District's Waste Water Treatment facility. We have justly complained to the CRUD Board on several occasions regarding operating problems and issues at the WWT plant. Our complaints have fallen on deaf ears and disregarded for over a year. Contacts at the TECQ Beaumont Region 10 office suggest we request a public hearing by the Commission during the permit renewal process. You will receive several public hearing request from other persons living near the CRUD WWT plant in our neighborhood.

Issues and Complaints:

1. Noise nuisance - operating noise 24 hrs per day - 7 days per weeks.
2. Odor nuisance - occasional downwind raw sewage odor.
3. Poor operation practices and maintenance (example-TCEQ Incident No. 70578, TCEQ ID No, 0010997-001, Investigation No. 455042 - Ronald Hebert - Beaumont Region Office)
4. Inaccurate reporting of discharges and untreated discharge waste standing on public use land adjacent to CRUD plant.

The issues and problems I have listed can and will be substantiated by witnesses, photographs and TECQ records and documents. We can get NO cooperation from the Cape Royale Utility District regarding the above. The official CRUD position is they are a state entity, in compliance with the TECQ regulations and therefore protected by the TECQ and sovereign immunity. They are not responsible and will do nothing in these matters. My wife and I formally request, we be granted a public hearing by the Commission in the permit renewal process.

Very sincerely,

*Bill & Helen Williams*

William J. Williams & Helen A. Williams  
251 North Fairway Loop  
Coldspring, TX 77331  
bwilliams1@eastex.net / Phone: 936-653-3949

Please confirm receipt of FAX by phone, e-mail or return letter. Thank You.

BG

# Fax Cover Sheet

Page 1 of 2 pages Date 11-27-06 Time 8:20  am  pm  
Time Zone:  Pacific  Mountain  Central  Eastern  Atlantic

To Ms Ladonna Castanuela Fax Number (512) 239-3333  
Company TEXAS Commission on Environmental Quality Telephone ( )

From William J. Williams & Helen A. Williams  
Company \_\_\_\_\_

Regarding Renewal- Permit # 10997-01 - Cape Royoke  
Utility District

Comments  
Problems existing must & should be  
addressed and resolved prior to permit  
renewal,

William J Williams  
letter attached - requesting public  
hearing.

Fax  
X 3311  
(2 pgs)

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY  
CHIEF CLERK'S OFFICE  
NOV 27 2006 11:23 AM  
TX/CAM/STP (406) 226-2873