

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

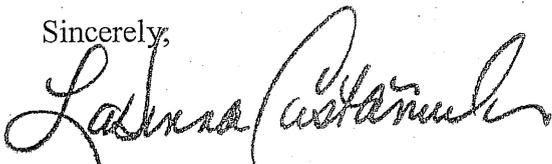
Processing of Requests.

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

Larry Green
40 Pebble Beach Circle
Coldspring, Texas 77331

Patrick Shay
12418 Normont
Houston, Texas 77070

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

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

TCEQ PERMIT NO. WQ0010997001

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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.

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 (BOD₅), 15 mg/l Total Suspended Solids (TSS), Report mg/l Ammonia-Nitrogen (NH₃-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.

COMMENT 4:

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.

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

Robert Martinez, Director
Environmental Law Division

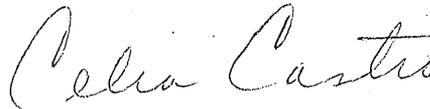


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REPRESENTING THE
EXECUTIVE DIRECTOR OF THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY

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 OFFICE

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