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Glenn Shankle, *Executive Director*



TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

April 26, 2007

TO: Persons on the attached mailing list.

RE: Hidden View Dairy, a Texas General Partnership
TPDES Permit No. WQ0003197000

Decision of the Executive Director.

The executive director has made a decision that the above-referenced permit application meets the requirements of applicable law. **This decision does not authorize construction or operation of any proposed facilities.** Unless a timely request for contested case hearing or reconsideration is received (see below), the TCEQ executive director will act on the application and issue the permit.

Enclosed with this letter is a copy of the Executive Director's Response to Comments. A copy of the complete application, draft permit and related documents, including public comments, is available for review at the TCEQ Central office. A copy of the complete application, the draft permit, and executive director's preliminary decision are available for viewing and copying at the Erath County Extension Office, 112 West College Street, Courthouse Annex Room 109, Stephenville, Texas 76401.

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

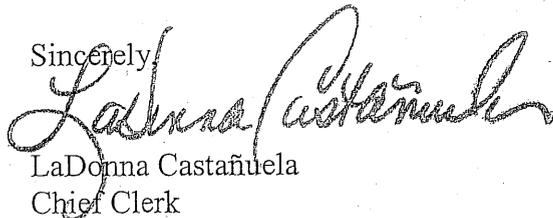
Processing of Requests.

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

Hidden View Dairy, a Texas General Partnership

TPDES Permit No. WQ0003197000

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PROTESTANTS/INTERESTED PERSONS:

See attached list.

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TPDES PERMIT NO. WQ0003197000

2007 APR 20 PM 1:55

Application By §
Hidden View Dairy, a Texas General §
Partnership d.b.a. Hidden View Dairy §

BEFORE THE
TEXAS COMMISSION ON CHIEF CLERKS OFFICE
ENVIRONMENTAL QUALITY

EXECUTIVE DIRECTOR'S RESPONSE TO PUBLIC COMMENT

The Executive Director (ED) of the Texas Commission on Environmental Quality (TCEQ or Commission) files this Response to Public Comment on the preliminary decision by the ED to approve the application of Hidden View Dairy, a Texas General Partnership, d.b.a. Hidden View Dairy (Applicant) for a major amendment of its existing Concentrated Animal Feeding Operation (CAFO) registration and conversion of the registration to an individual permit that would be issued as Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0003197000. As required by Title 30 of the Texas Administrative Code (30 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 the Chief Clerk received timely comment letters from: the Lone Star Chapter of the Sierra Club, represented by Lowerre & Frederick, Attorneys at Law (Sierra Club) and U.S. Fish and Wildlife Service (U.S. Fish and Wildlife).

This response addresses all timely public comments received, whether or not withdrawn. If you need more information about this permit application or the 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 is seeking a major amendment of its existing CAFO registration and conversion of the registration to an individual permit. The draft permit proposes to authorize the Applicant to increase the number of head at the existing dairy cattle facility from 2,000 head to a maximum capacity of 3,000 head. Of those 3,000 head, up to 2,500 could be milking head. The facility consists of five retention control structures (RCSs) with total required capacities without freeboard of 6.3 acre-feet for the RCS treatment pond, 53.9 acre-feet for RCS #1 and RCS #2, 13.5 acre-feet for RCS #3, and 5.9 acre-feet for RCS #4.

The facility also includes nine land management units (LMUs). LMU #1 is 26 acres, LMU #2 is 64 acres, LMU #3 is 54 acres, LMU #3A is 15.2 acres, LMU #4 is 40 acres, LMU #4A is 21.1 acres,

LMU #5 is 23.4 acres, LMU #6 is 18 acres and LMU #7 is 49.5 acres. The facility is located on the northwest side of County Road 522, approximately one-quarter mile northeast of the intersection of County Road 522 and State Highway 6 in Erath County, Texas. The facility is located in the drainage area of the North Bosque River in Segment No. 1226 of the Brazos River Basin.

Procedural Background

The permit application was received on January 27, 2004 and declared administratively complete on March 15, 2004. The Notice of Receipt and Intent to Obtain a Water Quality Permit was published in the *Stephenville Empire Tribune* on April 7, 2004. The Applicant submitted a supplemental technical information packet on April 17, 2006. TCEQ staff completed a technical review of the application and prepared a draft permit. The Notice of Application and Preliminary Decision for a Water Quality Permit was published in the *Stephenville Empire Tribune* on December 19, 2006 and the comment period ended on January 18, 2007. This application is subject to House Bill 801, 76th Legislature, 1999.

COMMENTS AND RESPONSES

Comment 1:

The Sierra Club comments that the expansion of this facility constitutes a “new source” or “new discharger” under federal law and that Title 40 Code of Federal Regulations (40 CFR) § 122.4(a) and (d) effectively forbids TCEQ from issuing a permit to a “new source” or “new discharger” absent a showing that the conditions of the permit ensure compliance with state water quality standards. The Sierra Club comments that under 40 CFR § 122.4(i) when a receiving water is in violation of water quality standards the exclusive method for permitting a “new source” or “new discharge” is a demonstration that sufficient pollutant load allocations exist in the receiving water and that other dischargers are subject to a compliance schedule that will bring the receiving water into compliance with the applicable water quality standards. The Sierra Club notes that TCEQ has made some efforts to evaluate the impact of phosphorus in the North Bosque River through the TMDL, but that no demonstration has been made that sufficient load allocations still exist to justify issuing the proposed permit.

Response 1:

40 CFR § 122.4(a) and (d) prohibit issuing a permit if the conditions of the permit do not provide for compliance with the Clean Water Act and when the imposition of conditions cannot insure compliance with the applicable water quality requirements. The ED does not find that the draft permit violates these provisions.

“New source” is defined in the federal rules at 40 CFR § 122.2. The definition states that a “new source” is:

Any building structure, facility, or installation from which there is or may be a discharge of pollutants, the construction of which commenced: (A) after promulgation of standards of performance under CWA, § 306, or (B) after proposal of standards of performance in accordance with CWA, § 306, which are applicable to such source, but only if the standards are promulgated in accordance with § 306 within 120 days of their proposal.

According to 40 CFR § 122.29(b), an applicant is a “new source” if it meets the above definition and meets the following criteria:

1. It is constructed at a site where no other source is located;
2. It totally replaces the process or production equipment that causes the discharge of pollutants at an existing source; or
3. Its processes are substantially independent of an existing source at the same site (In making this determination, factors to consider include to the extent the new facility is integrated with the existing facility and to the extent the new facility is engaged in the same general activity as the existing source).

The Applicant is applying for an expansion of an existing dairy and the expansion will be constructed at a site where a source is already located. Also, the Applicant does not seek to replace the existing process. The dairy expansion would be integrated with the existing facility.

In the preamble to the EPA’s federal CAFO rules, EPA responded to comments that sought to have expanding facilities be treated as “new sources” by stating: “In response to commenters who believe that EPA should consider any facility that expands to be a new source, EPA did not propose such a definition, the reasons for which are discussed at 66 FR 3066 of the proposed rulemaking.”¹

EPA goes on to cite as an example of what is not a “new source” a very similar scenario to that presented in this permit application: “For example, a facility that expands its operations by simply extending existing housing structures by constructing new housing adjacent to existing housing is not typically considered a new source.”²

Also, EPA does not consider an expansion of a CAFO as a new source in its current CAFO rules and specifically state:

The Agency, however, decided against proposing to identify facility expansion as a trigger for the application of NSPS [New Source Performance Standards]. Many CAFOs oversize or over-engineer their waste handling systems to accommodate future increases in production. Thus, in many cases, the actual increases in production may not present a new opportunity for the CAFO to install the additional NSPS technologies--e.g. liners. To install liners, these operations would need to retrofit their facilities the same as existing sources would. EPA has explained above that such retrofitting would not be economically achievable in these animal sectors. Similarly, the costs associated with these requirements

1 68 FR 7176, 7200 (February 12, 2003).

2 *Id.*

would represent a barrier to the expansion. Therefore, it would not be appropriate to require these operations, upon facility expansion, to meet the additional groundwater-related requirements that are a part of today's proposed NSPS.³

The proposed CAFO expansion does not trigger the prohibition in 40 CFR § 122.4. Also, Texas Water Code (TWC) § 26.503(a) specifically authorizes that a CAFO in a major sole source impairment zone may increase the number of animals confined in an existing operation.

Furthermore, the expansion of the facility is not a "new discharger." "New discharger" is defined in the federal rules at 40 CFR § 122.2 as:

Any building, structure, facility, or installation:

- (a) from which there is or may be a discharge of pollutants;
- (b) that did not commence the discharge of pollutants at a particular site prior to August 13, 1979;
- (c) which is not a new source; and
- (d) which has never received a finally effective NPDES permit for discharges at that site.

The facility has been covered by TCEQ permit no. 03197, since July 12, 1990 (possibly earlier, but no TCEQ records exist for any earlier permitting). In addition, a search of TCEQ Central Records indicated that the Applicant had also submitted an NOI to EPA for coverage under the federal NPDES general permit for CAFOs in 1994, prior to delegation of the NPDES program to the state in 1998. EPA rules at 40 CFR § 122.2 contains the following definition of what constitutes a permit:

Permit means an authorization, license, or equivalent control document issued by EPA or an "approved State" to implement the requirements of this part and parts 123 and 124. "Permit" includes an NPDES "general permit"...

Since an authorization under the NPDES CAFO general permit qualifies as an "effective NPDES permit," the ED has determined that the Applicant does not meet the federal requirement for being considered a new discharger.

Comment 2:

The Sierra Club is concerned that issuance of the proposed permit would defy the assumptions made in the Total Maximum Daily Load (TMDL) for phosphorus inputs into the North Bosque River. The Sierra Club asserts that the proposed permit undermines each of the following assumptions made in the North Bosque River TMDL:

³ 66 FR 3067 (January 12, 2001).

- A) 40,450 dairy cows in the watershed;
- B) 50% of solid manure from 40,450 dairy cows would be removed from the watershed;
- C) Phosphorus in the diet of permitted cows would be limited to 0.4%;
- D) Waste application on existing fields would be limited so that phosphorus never exceeds 200 parts per million (ppm);
- E) Waste application rates would be limited to the phosphorus needs of the crop; and
- F) Initial phosphorus on new fields would be 60 ppm and could not exceed that level.

Response 2A – Cows in the Watershed:

The North Bosque River TMDL for phosphorus is based on narrative water quality criteria and uses best management practices (BMPs) to protect water quality. The TMDL does not limit the number of dairy cows in the watershed. Permits that are issued must be consistent with the TMDL. While this permit application adds to the number of permitted cows on the facility, the Applicant must construct RCSs that are designed to hold a 25-year, 10-day rainfall event. This will increase their RCS capacity by approximately 60% over the previous standard in earlier versions of the CAFO rules. It is also anticipated the loading will be reduced due to the emphasis the new CAFO rules place on phosphorus levels in soil application areas.

The TMDL was approved with the understanding that an adaptive management approach was an appropriate means to manage phosphorus loading in the Bosque. The TMDL Implementation Plan (I-Plan) emphasized this approach to achieve the phosphorus reductions targeted in the TMDL. The CAFO rules in 30 TAC Chapter 321 reflect the necessary adjustments to management practices necessary to, over time, reach the TMDL target. Accordingly, the TMDL is not directly tied to the number of animals permitted in the watershed; it is instead tied to BMPs, including the land application of the nutrients consistent with management practices that ensure appropriate utilization by the crops.

The model used in the TMDL demonstrated that water quality conditions would improve significantly even with many more dairy cattle in the watershed if management practices improved. The new CAFO rules incorporated more stringent management practices in the watershed in order to address phosphorus loading and regardless of the number of dairy cattle in the watershed, the instream water quality goals remain as they were established in the TMDL.

The TMDL I-Plan recognizes that new dairies may begin operating in the watershed or that existing dairies may expand. New or expanding operations are required to meet all the new management practices found in the Chapter 321, Subchapter B CAFO rules, which were approved by EPA as meeting all federal requirements for the protection of water quality. The focus of the rules was to reduce nutrient loading by requiring BMPs designed to significantly decrease the potential for discharges. Special provisions applicable to the North Bosque watershed that were not in the previous version of the CAFO rules were designed and adopted to specifically address the TMDL requirements to reduce phosphorus loadings. The operational and management strategies in the rules and draft permit are designed to reduce nutrient loading and be consistent with the North Bosque River TMDL.

The TMDL I-Plan adopted by TCEQ allows dairies to grow in size (number of cattle and waste application field acreage), but they are required to improve their management practices. The allowance for growth in the TMDL is specifically allocated for municipal wastewater treatment facilities to allow for human population growth.

Response 2B – 50% Removal of Solid Manure from the Watershed:

The North Bosque TMDL has a goal of a 50% reduction instream loading. The TMDL and TMDL I-Plan address growth of CAFOs through BMPs designed to decrease loading, not by capping the number of head or acres of land. New or existing CAFOs who seek to add head in the watershed are given five options for dealing with 100% of the collectible manure. Those options are found in Texas Water Code (TWC) § 26.503(b)(2) and the options are:

- 1) Disposed of or used outside of the watershed;
- 2) Delivered to a composting facility approved by the ED;
- 3) Applied as directed by the commission to a waste application field owned or controlled by the owner of the CAFO if the field is not a historical waste application field;
- 4) Put to another beneficial use approved by the ED; or
- 5) Applied to a historical waste application field that is owned or operated by the owner or operator of the CAFO only if:
 - a) Results of representative composite soil sampling conducted at the waste application field and filed with the commission show that the waste application field contains 200 or fewer ppm of extractable phosphorus; or
 - b) The manure is applied with commission approval, in accordance with a detailed nutrient utilization plan approved by the commission that is developed by:
 - 1) An employee of the United States Department of Agriculture's Natural Resources Conservation Service;
 - 2) A nutrient management specialist certified by the United States Department of Agriculture's Natural Resources Conservation Service;
 - 3) The State Soil and Water Conservation Board;
 - 4) The Texas Agricultural Extension Service;
 - 5) An agronomist or soil scientist on the full-time staff of an accredited university located in the state; or
 - 6) A professional agronomist or soil scientist certified by the American Society of Agronomy.

The nutrient management plan (NMP) submitted with the application reflect the Applicant's present intent to route manure off-site. However, the other disposal methods allowed by TWC § 26.503(b)(2) remain available to the Applicant.

Response 2C – Phosphorus Limit in Diet to 0.4%:

The TMDL I-Plan states that dairy operators will receive training related to diet control but does not mandate lower phosphorus content in feed. There is no TCEQ rule related to requiring reduced phosphorus content in feed rations. The nutrient content in the annual wastewater and manure samples should reflect the Applicant's efforts to lower phosphorus content in feed rations if the Applicant pursues this BMP in an effort to manage nutrients.

The Applicant is required to implement a comprehensive nutrient management plan (CNMP) and one aspect of that planning process is the consideration for reduced phosphorus in the feed. The Applicant may consider the nutritional needs of his herd in implementing a CNMP.

Response 2D – Limiting Application so that Phosphorus Never Exceeds 200 ppm:

TCEQ established rules to implement the TMDL I-Plan and the draft permit is consistent with those rules. Neither the rules nor the TMDL I-Plan cap phosphorus at 200 ppm on LMUs. The model used in development of the TMDL did not provide that soil test phosphorous levels on application fields remain at or below 200 ppm. Predicted soil concentrations after the 39 years of application that were simulated by the model were not specifically considered in discussions or in development of the TMDL. The draft permit requires submission of a nutrient management plan. When LMUs test at over 200 ppm of phosphorus, the Applicant must also implement a nutrient utilization plan specific to those LMUs that takes into consideration the phosphorus crop removal rate.

Response 2E – Application Limited to Phosphorus Needs of Crop:

The model used for the TMDL simulated application at the "phosphorus agronomic rate" recommended by U.S. Department of Agriculture and others. Recommended agronomic rates account for some soil storage of phosphorus and may not be identical to the crop phosphorus "need only" application rate. The NMP provided by the Applicant addresses application limitations based on the agronomic needs of the crop. If phosphorus levels rise beyond 200 ppm on LMUs, a NUP must be implemented that will require phosphorus application be based on crop removal levels, rather than on the agronomic needs of the crop. This is consistent with the TCEQ CAFO rules.

Response 2F – Phosphorus on New Fields Would Not Exceed 60 ppm:

TCEQ established rules to implement the TMDL I-Plan and the draft permit is consistent with those rules. The model assumed that new waste application fields began at soil concentrations of 60 ppm for phosphorus as an estimate of typical conditions across the North Bosque watershed. The model did not limit application to the new waste application fields to keep soil phosphorus at or below 60 ppm, and was not able to do so because of model code limitations. Soil concentrations in the simulated new waste application fields would have been something different than 60 ppm after the 39 years of application simulated by the model, but that was not specifically considered during development of the TMDL. The TMDL is based on meeting stream water quality criteria, not soil concentrations. The permit is consistent with nutrient management requirements in the TCEQ CAFO rules.

Comment 3:

The Sierra Club asserts that TCEQ has not performed TMDL evaluations as required by federal law prior to issuing additional permits. No demonstration has been made that sufficient load allocations still exist to justify issuing the proposed permit.

Response 3:

TCEQ established rules to implement the TMDL I-Plan and the draft permit is consistent with those rules. TCEQ rules and permit requirements are consistent with or more stringent than the federal rules and national guidance for managing agricultural runoff. CAFO loads are not amenable to simple total daily allocations of the type that are often applied to continuous point source discharges.

TCEQ has performed TMDL evaluations sufficient to satisfy federal requirements and to justify implementing the new CAFO regulations. The draft permit is consistent with the Bosque TMDL, TMDL I-Plan, and CAFO rules in 30 TAC, Chapter 321. The draft permit for the Applicant was approved by EPA on January 9, 2007.

Comment 4:

The Sierra Club comments that no attempt has been made to assess the appropriate total load for bacteria in the North Bosque watershed that would preserve the state water quality standard for that parameter. TCEQ's failure to ensure adequate load allocations of bacteria is a violation of federal law.

Response 4:

The North Bosque River TMDLs are intended to achieve significant reductions in the annual average concentrations and total annual loading of soluble phosphorus in the river by focusing on controlling soluble phosphorus loading and stream concentrations to obtain and protect designated uses. The management measures for controlling phosphorus loading will also have some corollary effect on reducing bacteria loading, since non-point source nutrient and bacteria loads largely originate from the same sites and materials and are transported via the same processes and pathways. Other provisions in the rules and draft permit directed at reducing and minimizing all pollutants, including bacteria, that are potential constituents of animal wastes include:

- 1) Requiring a larger RCS with capacity to contain a designed 25-year, 10-day rainfall event (approximately 60% larger than required to contain the 25-year, 24-hour rainfall event);
- 2) Establishing an RCS management plan;
- 3) Controlling runoff from manure piles by covering, berming, or requiring that they drain into an RCS;
- 4) Setting additional minimum buffer distances between land application units and surface water in the state;

- 5) Prohibiting nighttime land application between 12 a.m. and 4 a.m.; and
- 6) Requiring a NMP that uses phosphorus transport considerations to determine allowable applications of nutrients. The P-Index approach reduces allowable application of nutrients to levels that are appropriate for reducing and minimizing all pollutants that are constituents of animal wastes.

Although increasing the number of head, the draft permit reduces the potential for RCS overflows and reduces the rate of waste application on LMUs.

Comment 5:

The Sierra Club comments that contrary to the TMDL, the draft permit discourages the composting or exporting of dairy waste outside the watershed. The Sierra Club notes that the basic goal of the TMDL strategy is to remove from the North Bosque watershed approximately 50% of the manure produced by the dairies. The expanded use of third party fields with little control of nutrient application encourages dairies to avoid exporting of waste.

Response 5:

The permit is consistent with the TCEQ rule requirements for allowing the Applicant to use third party fields. Composting is one of the options available to the Applicant for handling its waste. The draft permit has additional requirements that limit the nutrients applied to these third party fields. Section VII of the draft permit provides for the following offsite methods for disposal of manure generated by the Applicant:

- 1) Delivery to a composting facility authorized by the executive director;
- 2) Delivery to a permitted landfill located outside of the major sole source impairment zone, subject to the requirements of commission rules relating to industrial solid waste;
- 3) Beneficial use outside of the major sole source impairment zone;
- 4) Another beneficial use approved by the executive director; or
- 5) Provision of manure, sludge or wastewater to operators of third-party fields, i.e. areas of land in the major sole source impairment zone not owned, operated, controlled, rented, or leased by the CAFO owner or operator, that have been identified in the PPP (see draft permit for additional requirements if this option is chosen).

Also, Section VII.A.8.(e)(5)(i) of the draft permit goes beyond the rule requirement related to third party fields at 30 TAC § 321.42. The conditions in the draft permit cap application when fields reach 200 ppm of phosphorus, which is consistent with the rule. The draft permit also sets a tiered application rate based on soil test results consistent with the NRCS Practice Standard Code 590.

Comment 6:

The Sierra Club states that TCEQ has no commitment whatsoever to actually attain the reductions in phosphorus loading set forth in the TMDL for the North Bosque River and that TCEQ has flagrantly disregarded the conclusions of the TMDL.

Response 6:

The ED disagrees with this comment. TCEQ rules and provisions in the draft permit contain control actions and management measures to address the goals of the TMDL. TCEQ has done and will continue to do instream monitoring, and the issuance of CAFO dairy permits in the Bosque under the new rules will provide for additional protection in order to meet the goals of the TMDL.

Comment 7:

Based on the compliance history of the Applicant, the Sierra Club questions whether the permit should be granted.

Response 7:

The Applicant has a numerical compliance rating of 9.89, which classifies the Applicant as "average" on the compliance history rating scale. A compliance history rating of "average" does not necessarily constitute a reason to deny the permit application. The calculation of the rating complies with 30 TAC § 60.3, which provides for permit denial in cases when the compliance rating is "poor."

Comment 8:

The Sierra Club is concerned that an additional 1,000 head will result in nuisance odor conditions at the facility.

Response 8:

There are a number of requirements in 30 TAC Chapter 321, Subchapter B rules and the draft permit designed to address the potential for nuisance odors and/or a condition of air pollution. 30 TAC § 321.43(j)(1)(A) requires that:

[CAFO facilities] shall be operated in such a manner as to prevent the creation of a nuisance or a condition of air pollution as defined by Texas Health and Safety Code, §341.011 and §321.32(32) of this title (relating to Definitions), and as prohibited by §101.4 of this title (relating to Nuisance).

The rule also requires Applicants to operate facilities in such a manner as to prevent a condition of air pollution as defined by Texas Health and Safety Code, 30 TAC § 382.003(3). Additionally, the

rule requires an operator to take necessary action to identify any nuisance condition that occurs and take action to abate such condition as soon as practicable or as specified by the ED.

30 TAC § 321.32(32) defines "nuisance" as:

Any discharge of air contaminant(s), including but not limited to odors, of sufficient concentration and duration that are or may tend to be injurious to or that adversely affects human health or welfare, animal life, vegetation or property, or that interferes with the normal use and enjoyment of animal life, vegetation, or property.

The draft permit requires the Applicant to design and operate RCSs to minimize odors in accordance with accepted engineering practices. Each system must be operated in accordance with its design requirements and an RCS management plan that minimizes odors. Additionally, storage and land application of wastewater may not cause nuisance conditions. The solids must be cleaned out of the RCSs to prevent the accumulation of solids from exceeding the sludge volume designed for the structure. Removal should be conducted during favorable wind conditions that carry odors away from nearby receptors. Dead animals must be properly disposed of within three days, unless otherwise provided by the ED and the animals must be disposed of in a manner to prevent nuisance conditions. Earthen pen areas must be maintained by scraping un-compacted manure and shaping pen surfaces, as necessary, to minimize odors and ponding.

The facility must meet the requirements of 30 TAC § 321.43 in order to obtain an air standard authorization. The facility was constructed prior to August 19, 1998 and meets the ¼ mile buffer option required in 30 § TAC 321.43(j)(2). Therefore, no odor control plan is required.

If concerned about potential violations, the public may contact TCEQ's Dallas/Fort Worth Region Office at 817-588-5800, TCEQ's Stephenville Special Project Office at 800-687-7078, or the statewide toll-free number at 1-888-777-3186. Additionally, you may file a complaint on line at <http://www2.tnrcc.state.tx.us/complaints/index.cfm>. TCEQ's regional staff investigates public complaints and the agency takes appropriate enforcement action if the investigator documents a violation. Finally, the draft permit does not limit the ability 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 effects on human health or welfare, animal life, vegetation, or property, or that may or actually do interfere with the normal use and enjoyment of animal life, vegetation, or property.

Comment 9:

The Sierra Club comments that issuance of this permit will result in harm to the health and safety of area residents, downstream users of water from the North Bosque River, and livestock who drink water from the North Bosque River. They also contend that impacts from the facility, including increased algal blooms, will impact recreational use in the North Bosque River.

Response 9:

TCEQ implements and enforces standards that are established to protect human health, safety, and the environment. TCEQ rules allow wastewater to be beneficially used by land application at agronomic rates. The Applicant must maintain information on the cover crop planted and harvested and information on the application rate for the LMUs in the PPP. As crops are removed by harvesting or grazing, the nutrients in them are removed from the soil.

Herbicides, pesticides, and other toxic chemicals are required to be stored, used, and disposed of in a manner that prevents significant pollutants from entering water in the state or creating a nuisance condition. Also, the draft permit contains provisions for larger RCSs and RCS management plans to reduce the potential for overflows resulting in discharges into surface waters.

Comment 10:

The Sierra Club is concerned that a proper anti degradation analysis was not performed with regard to the impact of the expanded facility on the quality of the receiving waters and that the proposed expansion would violate the anti-degradation policy in TCEQ rules and Texas statutes. The Sierra Club contends that the quality of the receiving waters will be impaired by greater than a *de minimus* amount.

Response 10:

The anti degradation analysis was performed and results are represented in the memo from the Water Quality Assessments and Standards Section of the Water Quality Division (See footnote #2). A discussion of that analysis is included in the technical summary provided with the draft permit. The memo specifically states that the requirements found in 30 TAC §§ 321.31-321.47 are expected to be incorporated into the permit for this facility. These requirements reflect the approved TMDLs and TMDL I-Plan that establish measures for reductions in loadings of phosphorus and consequently other potential pollutants. The additional requirements found in § 321.42 that are applicable to a major sole-source impairment zone are expected to help preclude a permitted increase in pollutant loadings from this facility, so that the permit is consistent with the requirements of the antidegradation implementation procedures in 30 TAC § 307.5(c)(2)(G) of the Texas Surface Water quality Standards.

Comment 11:

The Sierra Club states that the federal courts in the *Waterkeeper*⁴ case have made it clear that the plans for controlling the operation of a CAFO are an integral part of the permit for the facility and an evaluation of the sufficiency of those plans must consequently be part of the permitting process. Thus, the Sierra Club comments that TCEQ must evaluate each of the following plans prior to permitting and make them available to the public throughout the public comment period: NMPs,

⁴ *Waterkeeper Alliance, Inc. v. Environmental Protection Agency*, 399 F.3rd 486 (2nd Cir. 2005)

CNMPs, NUPs, RCS management plans, and pollution prevention plans (PPPs). The Sierra Club states that TCEQ should suspend consideration of the permit application until the Applicant has submitted its current PPP, CNMP, and RCS management plan, as well as a NMP for each third party application field where waste will be applied. Also, the process should be further delayed until the public is provided a full opportunity to review these documents and provide comments to TCEQ.

Response 11:

The *Waterkeeper* court found that BMPs were the equivalent of effluent limitations for land application. Also, *Waterkeeper* states that if the NMP is not included in permits the public is deprived of the right to assist in development, revision, and enforcement of an effluent limitation. The ED is requiring North Bosque dairies to submit their NMP with their permit applications and that plan was technically reviewed and is available to the public.

A CNMP is not required by the Clean Water Act and is not addressed in the *Waterkeeper* case. TCEQ rules at 30 TAC § 321.42(s) require all dairy CAFOs in a major sole-source impairment zone to operate under a CNMP approved by the Texas State Soil and Water Conservation Board. Bosque dairy permits required implementation of the CNMP by December 31, 2006, and the Applicant should maintain a copy as part of their PPP. However, the rules do not require the CNMP to be submitted to TCEQ and the review is not part of the CAFO permitting process. The CNMPs are confidential under state law as part of the local soil and water conservation district's files, unless the Applicant chooses to make the information available to the public. However, most of the information contained in the CNMP is part of the permit technical information packet and available in that form to the public.

NUPs are NMPs that utilizes a crop removal application rate. However, NUPs are not required until annual testing indicates phosphorus in excess of 200 ppm. Based on the language in the statute and rule, the NUP is not considered part of the permit, but may be changed to address changing conditions. TWC § 26.504 requires testing every 12 months to determine whether phosphorus levels exceed 200 ppm. Reaching the 200 ppm level triggers the requirement to develop and implement an NUP. TWC § 26.504(c) states "the operator shall file with the commission a new or amended nutrient utilization plan with a phosphorus reduction component..." The statute does not say anything about the NUP being part of the permit or permit application. 30 TAC § 321.40 tracks the statute, but also states that land application can begin under a NUP 30 days after the NUP is filed with the ED, unless the ED has returned the NUP for not meeting rule requirements. This requirement is also an indication that the NUP is not intended to be part of the permit. The NMP plan for the Applicant contained in the application indicates fields 3, 3a, 5 and 7 are under a NUP and shows the planned application rates.

This permit requires that the Applicant implement an RCS management plan and maintain a copy in the PPP. This plan must establish expected end of the month water storage volumes for each RCS. These maximum levels are based on the design assumptions used to determine the required size of the RCS. This plan assures the Applicant will maintain wastewater volumes within the design capacity of the structures. The Applicant must document and provide an explanation for all

occasions where the water level exceeds the expected end of the month storage volumes. By maintaining the wastewater level at or below the expected monthly volume, the RCS will be less likely to encroach into the volume reserved for the design rainfall event and/or discharge during smaller rainfall events. This has resulted in an increased operating volume in RCS #1 & 2 and RCS #3. Operating volumes in RCS #1 & 2 are 12.6 acre-feet and RCS #3 is 1.9 acre-feet. These volumes exceed calculations of the maximum 30 day inflow, minus evaporation in the water balance. Until the actual expansion of the RCS system is completed and volumes certified, the RCS management plan cannot be completed and implemented.

The draft permit lists the requirements for what to include in the PPP. The Applicant is required to have documentation for all of the following as part of their PPP: Copy of the CNMP, NMP, NUP (if required), RCS liner certifications, the RCS operation and management plan; and the capacity of each RCS, as certified by a licensed Texas professional engineer. The draft permit specifically allows the Applicant to amend the PPP and lists specific instances when it must be amended, one being within 90 days of receiving written notification from the ED that the plan does not meet permit requirements.

The PPP is not part of the permit review process, but the information contained in the application, technical information packet, and the NMP make up the core content of the PPP. The other items contained in the PPP are not subject to TCEQ review except during site investigations.

EPA has established nine critical elements to be considered part of the NMP. Included with the permit application is a table that lists the nine elements and the location of those elements in the file reviewed by the ED and made available to the public.

Comment 12:

The Sierra Club comments that the permit does not include adequate requirements to control pathogens and bacteria. The Sierra Club states that federal law requires a permitting authority to establish technology-based effluent limitations on a case-by-case basis where no national effluent limitations have been implemented for a particular contaminant. The Sierra Club notes that EPA has not yet issued a national effluent limitation for pathogens, so this requirement applies to the processing of this permit. The Sierra Club comments that TCEQ should have developed appropriate effluent limitations for pathogens and this failure will result in harm to health and human safety if the permit is issued.

Response 12:

The Sierra Club asserts that TCEQ did not satisfy 40 CFR § 122.44(d)(1)(vi), which requires states to establish numeric effluent limitations, or other types of concentration-based effluent limitations in some circumstances. However, 40 CFR § 122.43(k)(3) allows states to use BMPs to control or abate discharges “when numeric effluent limitations are infeasible.” In the case of North Bosque dairies, they are only authorized to discharge in the event of a chronic rainfall event that exceeds the 25-year, 10-day storm event. If and when such an event occurs, the amount of rainfall involved and any

resulting discharge will be highly variable both in volume and concentration of waste. Discharges from chronic rainfall events are nothing like the continuous discharges from municipal wastewater treatment plants or industrial facilities. Therefore, it is impracticable to develop and apply numeric effluent limitations to infrequent, highly variable potential discharges that may occur at CAFOs. In fact, the *Waterkeeper* case, cited earlier by the Sierra Club, found that the NMPs developed by applicants were the equivalent of effluent limitations. That court did not find that BMPs could not substitute for numeric effluent limitations in the regulation of CAFOs.

Comment 13:

The Sierra Club questions computations in the permit application regarding the amount of phosphorus that will be produced by the Applicant. The Sierra Club computes that over ½ the phosphorus produced by the facility is ignored in the permit. Therefore, the draft permit fails to include plans for how all the phosphorus produced will be handled.

Response 13:

It is projected that 3,000 cows will generate 525 lbs. of phosphorus per day. The calculation is based on a book value for phosphorus production by dairy cows developed by the American Society of Agricultural and Biological Engineers. It is part of a set of data intended for use in designing facilities to accommodate actual waste production once a facility is in place.

While the data is extremely useful for designing facilities that are capable of handling the waste loads generated at dairies, it is not intended nor should it be used to represent actual phosphorus production values on any given facility at any particular time. The lab analyses of effluent, slurry, and solids, as well as sludge when sludge removal occurs are used to determine and manage the actual nutrient production at the dairy. To compare actual production of waste with design criteria is valuable to verify that the design criteria does result in adequately sized management facilities, but it is a misuse of the design criteria to include it with actual waste production as part of a nutrient balance.

Comment 14:

The Sierra Club comments that the permit does not require a plan to reduce the soil phosphorus levels in any on-site field until the phosphorus concentrations reach 500 ppm. With on-site fields allowed to reach 500 ppm before any remedial action is taken and off-site fields likely to quickly reach soil phosphorus levels of 200 ppm the Sierra Club claims that it is likely to result in significantly increasing phosphorus runoff into the North Bosque River.

Response 14:

The draft permit requirements are consistent with the rules relative to phosphorus reduction in waste application fields. The use of phosphorus based assessments does provide remedial action on fields exceeding 200 ppm. All waste application is limited under the permit provisions to avoid

significantly increasing phosphorus runoff into the North Bosque River. An LMU that reaches 200 ppm of phosphorus triggers the NUP requirement. The NUP must be approved by the ED prior to land application of any additional manure, sludge, or wastewater. Application of manure, sludge or wastewater to third party fields must stop if a field reaches a phosphorus level of 200 ppm or higher.

The table below illustrates numbers from the Applicant's NMP to compare the crop requirement for phosphorus versus the actual pounds applied. The pounds applied are significantly less. In every LMU the Applicant is planning to land apply below the maximum allowable. In LMUs 3, 3a, 5, and 7 the Applicant is planning application below the maximum allowable under the NUP.

Nutrient Application

LMU #	Soil Test P (ppm)	Crop P2O5 Required (pounds/ac.)	Pounds Applied P2O5 (pounds/ac.)	Percentage of Maximum Allowable
1	65	125	32	49%
2	50	170	46	50%
3	217	170	22	34%
3a	217	125	35	90%
4	156	170	65	71%
4a	156	125	39	52%
5	225	125	21	38%
6	64	125	32	49%
7	213	125	47	90%

Comment 15:

The Sierra Club questions the monitoring of sludge volume in the existing lagoons. They note that the draft permit does not require the Applicant to measure the sludge volume in the lagoons until three years after the permit is issued. The Sierra Club requests that sludge measurement in the lagoons be required immediately after the permit is issued and annually, thereafter.

Response 15:

30 TAC § 321.39(c) prohibits the Applicant from allowing sludge accumulation to exceed the design volume. This is achieved by removing the sludge according to the design schedule. The design criterion for this dairy is five years of accumulation. The RCS management plan will establish accumulation rates in the RCSs. Taking volume measurements starting in year three will help reevaluate the accumulation rates prior to reaching the five year design volume. By starting in year three with the measurements, the operator has time to complete new construction and develop and implement an RCS management plan to appropriately manage the sludge volume in the ponds.

Furthermore, daily pond marker readings should assist in determining excessive sludge accumulation in any RCS.

Comment 16:

The Sierra Club is concerned that the NMP may be based on a single annual sample of wastewater and a single annual sample of the slurry produced at the facility. They state that this is not an adequate sampling because it does not provide a statistically significant basis for evaluating the characteristics of the wastewater and is likely to underestimate the concentrations of phosphorus. The Sierra Club recommends that samples of wastewater being land applied should be taken at least once during every irrigation event and should also be obtained from the irrigation pipeline apparatus at a sampling point located after the pump at the source lagoon.

Response 16:

The permit provisions for sampling and monitoring are consistent with 30 TAC § 321.36(e) and (g), and with the requirements of the NRCS Practice Standard Code 590. The draft permit requires annual sampling and the NMP must be updated to modify application amounts based on soil testing and wastewater/manure/slurry testing.

Comment 17:

The Sierra Club states the meaning of the phrase “not exceed the nitrogen application rate” at Part VII.A.8(e)(4)(i)(C) of the draft permit is unclear. The term “nitrogen application rate” is not defined in the permit or in 30 TAC, Chapter 321. To impose the appropriate limitation and to make the permit consistent with the remainder of the permit, this phrase should be replaced with “not to exceed the nitrogen crop removal rate.”

Response 17:

The ED declines to make this change because 30 TAC 321.42(i)(5)(A) requires that land application occur in accordance with the NRCS Practice Standard Code 590. This standard expresses the limit for nitrogen application adequately. Unless otherwise limited, the nitrogen application rate will be limited to the crop nitrogen requirement in the NRCS Practice Standard Code 590.

Comment 18:

The Sierra Club requests revision to the provisions applicable to third party fields at Part VII.A.8(e)(4)(D) and (E) of the draft permit to ensure protections apply when the soil limits for phosphorus show values of 50, 51, 150, and 151 ppm. Sierra Club comments that the ED should include language that makes it clear what requirements apply when a value is less than or equal to each of these values. The Sierra Club also requests revision to the provisions applicable to third party fields at Part VII.A.8(e)(4)(D) and (E) of the draft permit to make it clear that the application rate cannot exceed the annual nitrogen crop removal rate where that value is more restrictive than the

application rate that would be allowed in consideration of phosphorus only. The Sierra Club requests that language be added to those sections to make it clear when the requirements of the NRCS Practice Standard Code 590 are more strict than the requirements in Part VII.A.8(e)(4)(C)-(E), then the NRCS Practice Standard Code 590 should apply.

Response 18:

The ED partially agrees with the comment and modifies the following sections of the draft permit to better define the nitrogen application rate and clarify that the ranges include 50, 150, and 200 ppm. Part VII.A.8(e)(i)(5)(C) of the draft permit now reads:

Land application rates shall not exceed the crop nitrogen requirement when soil phosphorus concentrations in zone 1 (0-6 inch incorporated; 0-2 or 2-6 inch not incorporated) depth is less than or equal to 50 ppm phosphorus.

Part VII.A.8(e)(i)(5)(D) of the draft permit now reads:

Land application rates shall not exceed two times the phosphorus crop removal rate, not to exceed the crop nitrogen requirement, when soil phosphorus concentrations in zone 1 (0-6 inch incorporated; 0-2 or 2-6 inch not incorporated) depth is greater than 50 ppm phosphorus and less than or equal to 150 ppm phosphorus.

Part VII.A.8(e)(i)(5)(E) of the draft permit now reads:

Land application rates shall not exceed one times the phosphorus crop removal rate, not to exceed the crop nitrogen requirement, when soil phosphorus concentrations in zone 1 (0-6 inch incorporated; 0-2 or 2-6 inch not incorporated) depth is greater than 150 ppm phosphorus and less than or equal to 200 ppm phosphorus.

The ED does not agree to restrict nitrogen application on third party fields to the nitrogen crop removal rate.

Comment 19:

The Sierra Club comments that NUPs (where required) and NMPs for each third party field should be submitted and reviewed during the permitting process.

Response 19:

The draft permit limits application on third party fields based on soil test phosphorus levels. An NUP would not be required for a third party field because a NUP is not required until an application field is found to contain 200 ppm or more of phosphorus. At that level land application must cease on any third party field. The regulatory focus on third party fields is related to controlling the amount of nutrients being applied. With the NMP for LMUs, the focus includes controlling the

amount of nutrients applied and also the adequacy of the permitted waste application field acres to receive the total volume of nutrients planned for application. The application limitations on third party fields are consistent with the NRCS Practice Standard Code 590. Similar to an NMP, as soil phosphorus levels increase on third party fields, the Applicant must reduce waste application rates.

Comment 20:

The Sierra Club comments that the Applicant, through its contracts regarding the use of third party fields will, in effect, control those fields. Thus, these third party fields should be considered LMUs and the exact location and boundaries of these fields identified in the permit application. These fields should be subject to all other LMU requirements, including land applying in accordance with an NMP and CNMP, etc. The Sierra Club notes that phosphorus leaving third party fields is no less harmful than the phosphorus leaving on-site application fields. Therefore, it does not make sense for the conditions of nutrient application on third party fields to be any less stringent than on-site LMUs.

Response 20:

TWC § 26.503 provides for disposal practices for dairy CAFOs, which include allowing manure to be put to other beneficial uses, such as land application on third party fields. 30 TAC § 321.42(j)(3) was specifically worded to reflect that “LMUs are not associated with third party fields.”⁵ The CAFO operator does not control the third party fields under contract with the CAFO. Application on third party fields is optional and represents “excess capacity to provide for more sound waste management by existing dairy CAFOs.”⁶ Even though an applicant does not control third party fields, the rules provide that an applicant is responsible for any non-compliance with the permit or TCEQ rules on such fields. Additionally, third party fields have a 200 ppm cap on phosphorus. Unlike LMUs, once a third party field contains phosphorus at 200 ppm or greater, land application must cease.

Comment 21:

U.S. Fish & Wildlife was concerned about the location of this CAFO because it is within the wintering range of the bald eagle (*Haliaeetus leucocephalus*), a federally listed threatened species and within the migratory range of the whooping crane (*Grus Americana*), a federally listed endangered species. U.S. Fish & Wildlife recommends including a provision in the permit requiring the Applicant to notify U.S. Fish & Wildlife immediately if there is an accidental release or a storm event in excess of the 25-year, 24-hour event that results in a discharge.

Response 21:

U.S. Fish & Wildlife submitted a letter on January 9, 2007, stating that it had reached an agreement with the Applicant regarding notification in the event of any releases of wastewater from the RCSs. The Applicant agreed to verbally contact the Service’s Arlington field office within 24-hours if the

⁵ 29 TexReg 6652, 6658 (July 9, 2004).

⁶ *Id.* at 6692.

event affects resources administered by the U.S. Fish & wildlife. Based on this information, U.S. Fish & Wildlife stated in their letter that “no further comments by the Service regarding this permit renewal are warranted.” Also, the Applicant is required to have RCSs that will contain the 25-year, 10-day rain event, which is a significantly larger rain event than the 25-year, 24-hour event.

Comment 22:

U.S. Fish & Wildlife is concerned about the potential impacts of waste management practices employed by the Applicant may have on other migratory avian species. They note that Erath County is located in the central flyway, an area heavily used by migratory birds. During flight, migratory birds may not distinguish between RCSs and natural water bodies, and that the contents of the RCSs may pose a health risk to migratory avian species and other wildlife. U.S. Fish & Wildlife recommended that TCEQ require the Applicant to develop a migratory bird monitoring program. This monitoring program should include at minimum: Periodic visual monitoring activities, the maintenance of a log book for recording observations, and establishing contact with the U.S. Fish & Wildlife’s Arlington, Texas field office when detrimental impacts to migratory birds are observed. This program may be modified to include the establishment of a migratory bird exclusion system by the Applicant to prevent birds from using RCSs as stop-over areas in the event detrimental impacts are observed.

Response 22:

In the same letter as noted in Response #21, U.S. Fish & Wildlife indicated they have reached an agreement with the Applicant regarding the monitoring process and notification of U.S. Fish & Wildlife if any detrimental effects to resources administered by that agency are detected. The Applicant agreed to initiate a migratory bird monitoring program and will verbally contact the Service’s Arlington field office within 24-hours in the event that effects to federal trust resources are detected. Based on this information, U.S. Fish & Wildlife stated in their letter that “no further comments by the service regarding this permit renewal are warranted.”

Changes to Draft Permit for Hidden View Dairy as a result of public comment:

Part VII.A.8(e)(i)(5)(C) of the draft permit now reads:

Land application rates shall not exceed the crop nitrogen crop requirement when soil phosphorus concentrations in zone 1 (0-6 inch incorporated; 0-2 or 2-6 inch not incorporated) depth is less than or equal to 50 ppm phosphorus.

Part VII.A.8(e)(i)(5)(D) of the draft permit now reads:

Land application rates shall not exceed two times the phosphorus crop removal rate, not to exceed crop nitrogen crop requirement, when soil phosphorus concentrations in zone 1 (0-6 inch incorporated; 0-2 or 2-6 inch not incorporated) depth is greater than 50 ppm phosphorus and less than or equal to 150 ppm phosphorus.

Part VII.A.8(e)(i)(5)(E) of the draft permit now reads;

Land application rates shall not exceed one times the phosphorus crop removal rate, not to exceed the crop nitrogen requirement, when soil phosphorus concentrations in zone 1 (0-6 inch incorporated; 0-2 or 2-6 inch not incorporated) depth is greater than 150 ppm phosphorus and less than or equal to 200 ppm phosphorus.

Respectfully submitted,

Texas Commission on Environmental Quality

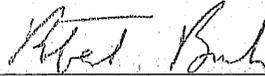
Glenn Shankle

Executive Director

Robert Martinez, Director

Environmental Law Division

By



Robert D. Brush, Staff Attorney

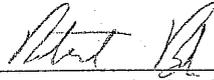
Environmental Law Division

State Bar No. 00788772

Representing the EXECUTIVE DIRECTOR of the
Texas Commission on Environmental Quality

CERTIFICATE OF SERVICE

I certify that on April 20, 2007 the "Executive Director's Response to Public Comments" for Permit No. WQ0003197000 was filed with the Texas Commission on Environmental Quality's Office of the Chief Clerk.



Robert D. Brush, Staff Attorney
Environmental Law Division
State Bar No. 00788772

TEXAS
COMMISSION
ON ENVIRONMENTAL
QUALITY

2007 APR 20 PM 1:55

CHIEF CLERKS OFFICE

MEMORANDUM

TO : [Illegible]

FROM : [Illegible]

SUBJECT: [Illegible]

1. [Illegible]

2. [Illegible]

3. [Illegible]