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TEXAS
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TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

CHIEF CLERKS OFFICE

February 1, 2008

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

Re: Application by Seadrift Ranch Partners, Ltd., Permit No. WQ0014716001.

Dear Ms. Castañuela:

Enclosed for filing in the above styled application is the original and eleven copies of:
"Executive Director's Amended Response to Hearing Request."

If you have any questions or comments, please call me at 239-6994. Thank you for your attention to this matter.

Sincerely,

A handwritten signature in cursive script that reads "Michael F. Northcutt, Jr." with a flourish at the end.

Michael F. Northcutt, Jr.
Staff Attorney
Environmental Law Division MC-173

Enclosures

DOCKET NUMBER 2007-1052-MWD

Application by § Before the
Seadrift Ranch Partners, Ltd. § **Texas Commission on Environmental**
for TCEQ Permit No. WQ0014716001 § **Quality**

EXECUTIVE DIRECTOR'S AMENDED RESPONSE TO HEARING REQUESTS

I. Introduction

The Executive Director of the Texas Commission on Environmental Quality (TCEQ or Commission) files this Response to Hearing Requests (Response) on the application of Seadrift Ranch Partners, Ltd. (Applicant) for Permit Number WQ0014716001. Jeffrey and Terri Kubena, Franklin Pierce, Rick Dierlam, Carol Garriot, Virginia Cervenka, Daniel Cervenka, Dudley and Patsy Garrett, and Greg and Christie Waida submitted hearing requests.

Attached for Commission consideration are the following:

- Attachment A - Technical Summary & Draft Permit
- Attachment B - ED's Amended Response to Comments (RTC)
- Attachment C - Compliance History
- Attachment D - GIS Map

Copies were provided to all parties. The RTC was previously mailed by the Office of the Chief Clerk to all persons on the mailing list.

II. Description of the Facility

The Applicant has applied to the TCEQ for a new permit to authorize the discharge of treated domestic wastewater at a daily average flow not to exceed 25,000 gallons per day. The proposed wastewater treatment facility will serve the Bay Club at Falcon Point Ranch Subdivision.

The treated effluent will be discharged to a storm water detention/retention pond; then to an unnamed lake; then to an unnamed drainage ditch; and then to the San Antonio Bay/Hynes Bay/Guadalupe Bay in Segment No. 2462 of the Bays and Estuaries. The unclassified receiving water use for the storm water detention/retention pond and unnamed lake is limited aquatic life use. The designated uses for Segment No. 2462 are contact recreation, oyster waters, and exceptional aquatic life uses. Segment No. 2462 is currently listed on the State's inventory of impaired and threatened waters (2004 Clean Water Act Section 303(d) list). The listing is specifically for bacteria

for oyster waters in Guadalupe Bay, San Antonio Bay near Seadrift, and the Intercoastal Waterway. The facility will be located 3,600 feet southeast of the intersection of Swan Point and Falcon Point Roads in Calhoun County, Texas.

III. Procedural Background

The permit application for a new permit was received on May 12, 2006, and declared administratively complete on July 10, 2006. The Notice of Receipt and Intent to Obtain a Water Quality Permit (NORI) was published on August 2, 2006, in *The Port Lavaca Wave*. The Notice of Application and Preliminary Decision (NAPD) for a Water Quality Permit was published on November 15, 2006 in *The Port Lavaca Wave*. The public comment period ended on December 15, 2006. The RTC was filed on June 1, 2007. Due to an error in the mailing list of the first NAPD, the NAPD was again mailed to the adjacent property owners to correct the error. The second comment period ended on October 22, 2007. The Amended RTC was filed on November 8, 2007.

IV. The Evaluation Process For Hearing Requests

House Bill 801 established statutory procedures for public participation in certain environmental permitting proceedings. For those applications declared administratively complete on or after September 1, 1999, it established new procedures for providing public notice and public comment, and for the Commission's consideration of hearing requests. The application was declared administratively complete on July 10, 2006 and therefore is subject to the HB 801 requirements. The Commission implemented HB 801 by adopting procedural rules in 30 Texas Administrative Code (30 TAC) Chapters 39, 50, and 55.

A. Response to Requests

"The executive director, the public interest counsel, and applicant may submit written responses to [hearing] requests" 30 TAC § 55.209(d).

Responses to hearing requests must specifically address:

- (1) whether the requestor is an affected person;
- (2) whether issues raised in the hearing request are disputed;
- (3) whether the dispute involves questions of fact or of law;
- (4) whether the issues were raised during the public comment period;
- (5) whether the hearing request is based on issues raised solely in a public comment withdrawn by the commenter in writing by filing a withdrawal letter with the chief clerk prior to the filing of the Executive Director's Response to Comment;
- (6) whether the issues are relevant and material to a decision on the application; and
- (7) a maximum expected duration for the contested case hearing.

30 TAC § 55.209(e).

B. Hearing Request Requirements

In order for the Commission to consider a hearing request, the Commission must first determine whether the request meets certain requirements.

A request for a contested case hearing by an affected person must be in writing, must be filed with the chief clerk within the time provided . . . and may not be based on an issue that was raised solely in a public comment withdrawn by the commenter in writing by filing a withdrawal letter with the chief clerk prior to the filing of the Executive Director's Response to Comment.

30 TAC § 55.201(c).

A hearing request must substantially comply with the following:

- (1) give the name, address, daytime telephone number, and where possible, fax number of the person who files the request. If the request is made by a group or association, the request must identify one person by name, address, daytime telephone number, and where possible, fax number, who shall be responsible for receiving all official communications and documents for the group;
- (2) identify the person's justiciable interest affected by the application, including a brief, but specific, written statement explaining in plain language the requestor's location and distance relative to the proposed facility or activity that is the subject of the application and how and why the requestor believes he or she will be adversely affected by the proposed facility or activity in a manner not common to members of the general public;
- (3) request a contested case hearing;
- (4) list all relevant and material disputed issues of fact that were raised during the public comment period and that are the basis of the hearing request. To facilitate the commission's determination of the number and scope of issues to be referred to hearing, the requestor should, to the extent possible, specify any of the executive director's responses to comments that the requestor disputes and the factual basis of the dispute and list any disputed issues of law or policy; and
- (5) provide any other information specified in the public notice of application.

30 TAC § 55.201(d).

C. Requirement that Requestor be an "Affected Person"

In order to grant a contested case hearing, the Commission must determine that a requestor is an "affected person."

- (a) For any application, 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. An interest common to members of the general public does not qualify as a personal justiciable interest.
- (b) Governmental entities, including local governments and public agencies with authority under state law over issues raised by the application may be considered affected persons.
- (c) In determining whether a person is an affected person, all factors shall be considered including but not limited to the following:
 - (1) whether the interest claimed is one protected by the law under which the application will be considered;
 - (2) distance restrictions or other limitations imposed by law on the affected interest;
 - (3) whether a reasonable relationship exists between the interest claimed and the activity regulated;
 - (4) likely impact of the regulated activity on the health and safety of the person, and on the use of property of the person;
 - (5) likely impact of the regulated activity on use of the impacted natural resource by the person; and
 - (6) for governmental entities, their statutory authority over or interest in the issues relevant to the application.

30 TAC § 55.203.

D. Referral to the State Office of Administrative Hearings

“When the commission grants a request for a contested case hearing, the commission shall issue an order specifying the number and scope of the issues to be referred to SOAH for a hearing.” 30 TAC § 50.115(b). “The commission may not refer and issue to SOAH for a contested case hearing unless the commission determines that the issue: (1) involves a disputed question of fact; (2) was raised during the public comment period; and (3) is relevant and material to the decision on the application.” 30 TAC § 50.115(c).

V. Analysis Of The Requests

A. Analysis of the Hearing Requests

The Executive Director has analyzed the hearing request to determine whether it conforms with Commission rules, who qualifies as an affected person, what issues may be referred for a contested case hearing, and what is the appropriate length of the hearing.

1. Whether the Requestors Complied with 30 TAC §§ 55.201(c) and (d).

Jeffrey and Terri Kubena, Franklin Pierce, Rick Dierlam, Carol Garriot, Virginia Cervenka, Daniel Cervenka, Dudley and Patsy Garrett, and Greg and Christie Waida submitted CCH requests that were in writing, were timely filed, requested either a public hearing or a contested case hearing, and identified the application.

The Executive Director concludes that these CCH requests substantially comply with the requirements of 30 TAC Sections 55.201 (c) and (d).

2. Whether the Requestors Met the Requirements of an Affected Person

Daniel Cervenka and Virginia Cervenka are on the affected landowners list provided by the Applicant. They claim that the issuance of this permit will impact their use of a natural resource and may effect the use of their property. Based on Daniel Cervenka and Virginia Cervenka's proximity to the facility and adjacent landownership, the possible impact to a natural resource used by them, the effect this permit might have on their property, and the relationship between the interest claimed and the regulated activity they have met the requirements of 30 TAC § 55.203.

The Executive Director concludes that Daniel Cervenka and Virginia Cervenka are affected persons because they meet the criteria set out in 30 TAC Section 55.203.

Dudley and Patsy Garrett are on the affected landowners list provided by the Applicant. They claim that the issuance of this permit will impact their use of a natural resource and may effect the use of their property. Based on Dudley and Patsy Garrett's proximity to the facility and adjacent landownership, the possible impact to a natural resource used by them, the effect this permit might have on their property, and the relationship between the interest claimed and the regulated activity they have met the requirements of 30 TAC § 55.203.

The Executive Director concludes that Dudley and Patsy Garrett are affected persons because they meet the criteria set out in 30 TAC Section 55.203.

Jeffrey and Terri Kubena are on the affected landowners list provided by the Applicant. They claim that the issuance of this permit will impact their use of a natural resource and may effect the use of their property. Based on Jeffrey and Terri Kubena's proximity to the facility and adjacent landownership, the possible impact to a natural resource used by them, the effect this permit might have on their property, and the relationship between the interest claimed and the regulated activity they have met the requirements of 30 TAC § 55.203.

The Executive Director concludes that Jeffrey and Terri Kubena are affected persons because they meet the criteria set out in 30 TAC Section 55.203.

Franklin Pierce is on the affected landowners list provided by the Applicant. He claims that the issuance of this permit will impact his use of a natural resource and may effect the use of his

property. Based on Franklin Pierce's proximity to the facility and adjacent landownership, the possible impact to a natural resource used by him, the effect this permit might have on his property, and the relationship between the interest claimed and the regulated activity he has met the requirements of 30 TAC § 55.203.

The Executive Director concludes that Franklin Pierce is an affected person because he meets the criteria set out in 30 TAC Section 55.203.

Rick Dierlam is on the affected landowners list provided by the Applicant. He claims that the issuance of this permit will impact his use of a natural resource and may effect the use of his property. Based on Rick Dierlam's proximity to the facility and adjacent landownership, the possible impact to a natural resource used by him, the effect this permit might have on his property, and the relationship between the interest claimed and the regulated activity he has met the requirements of 30 TAC § 55.203.

The Executive Director concludes that Rick Dierlam is an affected person because he meets the criteria set out in 30 TAC Section 55.203.

Greg and Christie Waida are on the affected landowners list provided by the Applicant. They claim that the issuance of this permit will impact their use of a natural resource and may effect the use of their property. Based on Greg and Christie Waida's proximity to the facility and adjacent landownership, the possible impact to a natural resource used by them, the effect this permit might have on their property, and the relationship between the interest claimed and the regulated activity they have met the requirements of 30 TAC § 55.203.

The Executive Director concludes that Greg and Christie are affected persons because they meet the criteria set out in 30 TAC Section 55.203.

Carol Garriot is not on the affected landowner's list and lives approximately 2.7 miles from the facility and not along the discharge route. Based on her distance from the facility and the fact she is not along the discharge route the issues she raised are common to members of the general public.

The Executive Director concludes that Carol Garriot is not an affected person because she does not meet all of the criteria set out in 30 TAC Section 55.203.

B. Whether Issues are Referable to SOAH for a Contested Case Hearing

Issue 1: Whether the Applicant should build an irrigation system.

Neither Chapter 26 of the Texas Water Code nor the applicable TCEQ wastewater regulations authorize the agency to require an Applicant to consider a different process or method of wastewater treatment, whether by discharge, septic, or irrigation. This issue is not relevant and

material to the decision on this permit.

The Executive Director concludes that this issue is not referable to SOAH because it is not relevant and material to the decision on this permit.

Issue 2: Whether this discharge into San Antonio Bay will threaten marine life, and the ecological health of the bay.

This issue is within TCEQ's jurisdiction and is relevant and material to TCEQ's decision on the permit application. The issue involves a question of fact, is disputed, was raised during the public comment period, and was not withdrawn.

The Executive Director concludes that this issue is referable to SOAH because it meets the relevant criteria.

Issue 3: Whether an impact statement should be made concerning the existing pond and San Antonio Bay.

No statute or TCEQ resolution requires an Applicant to submit an environmental impact statement. The application for a domestic wastewater permit include all of the information needed to determine if the application is administratively and technically complete. The wastewater permit application does not require the Applicant to submit an environmental study or impact statement. This issue is not relevant and material to the decision on this permit.

The Executive Director concludes that this issue is not referable to SOAH because it is not relevant and material to the decision on this permit.

Issue 4: Whether whooping cranes and other wildlife will be adversely affected by this facility and discharge.

This issue is within TCEQ's jurisdiction and is relevant and material to TCEQ's decision on the permit application. The issue involves a question of fact, is disputed, was raised during the public comment period, and was not withdrawn.

The Executive Director concludes that this issue is referable to SOAH because it meets the relevant criteria.

Issue 5: Whether the discharge location should be moved.

The Executive Director evaluates the discharge location submitted with the permit application. If the Executive Director determines that the proposed discharge would violate water quality standards, the ED would not recommend issuance of the permit. The Executive Director does

not have the authority to require the Applicant to submit an application for a different point of discharge or to evaluate other locations that are not a part of the permit application.

The Executive Director concludes that this issue is not referable to SOAH because it is not relevant and material to the decision on this permit.

Issue 6: Whether the discharge will adversely effect oyster reefs and sea grass.

This issue is within TCEQ's jurisdiction and is relevant and material to TCEQ's decision on the permit application. The issue involves a question of fact, is disputed, was raised during the public comment period, and was not withdrawn.

The Executive Director concludes that this issue is referable to SOAH because it meets the relevant criteria.

Issue 7: Whether there is adequate information on the proposed flow due to the width of the discharge point stream segment.

This issue is within TCEQ's jurisdiction and is relevant and material to TCEQ's decision on the permit application. The issue involves a question of fact, is disputed, was raised during the public comment period, and was not withdrawn.

The Executive Director concludes that this issue is referable to SOAH because it meets the relevant criteria.

Issue 8: Whether the chlorine and addition of fresh water from this discharge will effect the normal salinity of San Antonio Bay and affect aquatic health.

This issue is within TCEQ's jurisdiction and is relevant and material to TCEQ's decision on the permit application. The issue involves a question of fact, is disputed, was raised during the public comment period, and was not withdrawn.

The Executive Director concludes that this issue is referable to SOAH because it meets the relevant criteria.

Issue 9: Whether the discharge will stagnate in San Antonio Bay.

This issue is within TCEQ's jurisdiction and is relevant and material to TCEQ's decision on the permit application. The issue involves a question of fact, is disputed, was raised during the public comment period, and was not withdrawn.

The Executive Director concludes that this issue is referable to SOAH because it meets the relevant criteria.

Issue 10: Whether this facility will lead to increased flooding causing sewage overflows and property damage.

The permitting process is limited to controlling the discharge of pollutants into water in the state and protecting the water quality of the state's rivers, lakes, and coastal waters. Flooding is not considered during the wastewater permitting process. This issue is not relevant and material to the decision on this permit.

The Executive Director concludes that this issue is not referable to SOAH because it is not relevant and material to the decision on this permit.

Issue 11: Whether this facility is protected from a 100 year flood event.

TCEQ rules and Other Requirements No. 6 on page 23 of the permit require the Applicant to provide facilities for the protection of its wastewater treatment facilities from a 100-year flood. If this section was not followed it would be a violation of the permit and subject the Applicant to enforcement.

The Executive Director concludes that this issue is not referable to SOAH because it is not relevant and material to the decision on this permit.

Issue 12: Whether this facility will have adequate hurricane preparedness.

Chapter 26 of the Texas Water Code and TCEQ regulations do not require the Applicant to submit or prepare a hurricane preparedness plan, so this issue is not relevant and material to the decision on this permit.

The Executive Director concludes that this issue is not referable to SOAH because it is not relevant and material to the decision on this permit.

Issue 13: Whether this facility will affect property values.

The Legislature has given TCEQ the responsibility to protect water quality. However, neither chapter 26 of the Texas Water Code, nor the applicable TCEQ wastewater regulations authorize the TCEQ to consider property values when reviewing a permit application. The TCEQ therefore lacks regulatory authority to consider property values when reviewing wastewater applications and preparing draft permits.

The Executive Director concludes that this issue is not referable to SOAH because it is not relevant and material to the decision on this permit.

Issue 14: Whether this facility will start out small and get bigger in the long term.

If this facility needs to expand in the future it would require a major amendment to the permit. The Applicant would have to go through the same process as getting a new permit including notice and comment, hearing requests, and a requests for reconsideration.

The Executive Director concludes that this issue is not referable to SOAH because it is not relevant and material to the decision on this permit.

Issue 15: Whether this facility will lead to increased waterborne bacteria.

This issue is within TCEQ's jurisdiction and is relevant and material to TCEQ's decision on the permit application. The issue involves a question of fact, is disputed, was raised during the public comment period, and was not withdrawn.

The Executive Director concludes that this issue is referable to SOAH because it meets the relevant criteria.

Issue 16: Whether this facility and discharge will have an effect on all forms of water recreation.

This issue is within TCEQ's jurisdiction and is relevant and material to TCEQ's decision on the permit application. The issue involves a question of fact, is disputed, was raised during the public comment period, and was not withdrawn.

The Executive Director concludes that this issue is referable to SOAH because it meets the relevant criteria.

Issue 17: Whether the construction at Falcon Point Ranch will lead to silt problems.

The proposed permit is for the discharge of treated effluent from the Falcon Point Wastewater Treatment Plant and not construction of the subdivision. The proposed subdivision must be constructed in accordance with applicable stormwater construction regulations and other regulations. The draft permit is limited to the regulation of the wastewater treatment facility.

The Executive Director concludes that this issue is not referable to SOAH because it is not relevant and material to the decision on this permit.

Issue 18: Whether this facility will lead to odor problems.

This issue is within TCEQ's jurisdiction and is relevant and material to TCEQ's decision on the permit application. The issue involves a question of fact, is disputed, was raised during the public comment period, and was not withdrawn.

The Executive Director concludes that this issue is referable to SOAH because it meets the relevant criteria.

VI. Requests for Reconsideration (RFR)

Daniel Cervenka, Virginia Cervenka, and Dudley and Patsy Garrett filed a timely Request for Reconsideration (RFR) of the Executive Director's decision. RFRs are processed under 30 TAC Section 55.209.

Issue 1: Daniel Cervenka and Virginia Cervenka question why the application does not require an environmental impact statement.

Response 1: An environmental impact statement is not required by statute or regulation for a wastewater permit. This issue was addressed in Response 2 of the RTC. The response is as follows:

Part of Response 2:

The application forms for a domestic wastewater permit include all of the information needed to determine if the application is administratively and technically complete. The wastewater permit application does not require the Applicant to submit an environmental study or impact statement.

Issue 2: Daniel Cervenka and Virginia Cervenka state that due to different seasonal changes during parts of the year this discharge will hit a dry coast and create a stagnant mess that will wash up on shore.

Response 2: This issue was addressed in Response 7 of the RTC. The response is as follows:

RESPONSE 7:

TCEQ is authorized under the Texas Water Code to issue wastewater permits that discharge into water in the state. The San Antonio Bay is considered water in the state. The proposed permit was designed to be protective of the quality of water in the state, regardless of tide or wind conditions. The GLO was provided notice of this permit application but did not submit any comments. . . .

The ED also reviewed this permit action for consistency with the goals and policies of the Texas Coastal Management Program (CMP) in accordance with the regulations of the Coastal Coordination Council (CCC) and determined that the action is consistent with the applicable CMP goals and policies.

Issue 3: Daniel Cervenka and Virginia Cervenka state that this is not a small discharge and that future expansion will have an effect on the seagrass.

Response 3: If this facility needs to later expand, it would be a major amendment to the permit. The Applicant would have to go through the same process as getting a new permit including notice and comment, hearing requests, and a request for reconsideration. The issue of seagrass was addressed in Response 5 of the RTC. The response is as follows:

Response 5:

Though the Applicant's response in the application indicated that there are no oyster reefs or seagrasses in the vicinity of the proposed discharge, the ED is aware of the presence of oyster reefs and seagrasses in San Antonio Bay. The proposed draft permit was developed to be protective of the oyster reefs and seagrasses. Specifically, the discharge constituents of primary concern for these aquatic uses are bacteria and nutrients (i.e. nitrogen and phosphorus compounds). The disinfection requirements in the proposed draft permit are intended to reduce bacteria concentrations in the discharge to insignificant levels. With respect to nutrient loading in San Antonio Bay, it is the opinion of the ED staff that the detention time provided by the detention/retention pond and the unnamed lake will substantially reduce nutrient levels in this relatively small discharge and therefore no significant negative impacts to seagrasses will occur.

Issue 4: Daniel Cervenka and Virginia Cervenka state that this development will have an effect on wildlife and the TCEQ should do something about it.

Response 4: This permit will regulate the wastewater treatment plant only. This permit does not regulate the development that will be associated with this plant. This issue was addressed in Response 10 of the RTC. The Response is as follows:

Response 10:

The Legislature has given the TCEQ the responsibility to protect water quality. However, neither chapter 26 of the Texas Water Code, nor the applicable TCEQ wastewater regulations authorize the TCEQ to consider property values when reviewing a permit application. The TCEQ therefore lacks regulatory authority to consider property values when reviewing wastewater applications and preparing draft permits. The issuance of this permit does not authorize the creation of a nuisance or limit a landowner's right to pursue common law remedies for causes of action, which result in injury or adverse effect on property. The wastewater permitting process does not consider a facility's potential impact on development and any ensuing development's effect on wildlife.

Issue 5: Daniel Cervenka and Virginia Cervenka contend the discharge will flood, flow across their property, hit the shore, and go out into the bay.

Response 5: This issue was addressed in Response 8 of the RTC. The response is as follows:

RESPONSE 8:

The permitting process is limited to controlling the discharge of pollutants into water in the state and protecting the water quality of the state's rivers, lakes, and coastal waters. The TCEQ has not considered flooding in the wastewater permitting process. The draft permit includes effluent limits and other requirements that the Applicant must meet even during rainfall events and periods of flooding. Additionally, the issuance of this permit does not authorize the Applicant to cause any invasion of personal rights or any violation of federal, state, or local laws or regulations. This includes creating nuisance conditions, such as flooding. The draft permit does not limit a landowner's right to pursue 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. This permit does not grant to the Applicant the right to use private or public property for the conveyance of wastewater along the discharge route described in the proposed draft permit. To report complaints about the operation of the proposed facility should it be authorized, please contact the TCEQ Region 14 Office at (361) 825-3100 or call the Environmental Complaints Hotline at 1-888-777-3186.

Even though the Applicant indicates the facility is located above the 100-year frequency flood level, the proposed draft permit requires the Applicant to provide facilities for the protection of its wastewater treatment facilities from a 100-year flood (Other Requirements section of the permit). The wastewater permit application does not require that the Applicant submit maps indicating the 100-year frequency flood level. However, copies of FEMA maps are available online at <http://msc.fema.gov> or by searching the FEMA website for the Map Service Center. As indicated on the submitted permit application, the applicable map panels are 4800970229C and 4800970265C.

The Applicant is required to take certain steps to minimize the possibility of an accidental discharge of untreated wastewater, even during rainfall events. The Applicant must maintain adequate safeguards to prevent the discharge of untreated or inadequately treated wastes during rainfall events by maintaining the integrity of the collection system and the wastewater treatment facility. The ED also approves the plans and specifications of a domestic sewage collection and treatment works associated with a wastewater discharge permit.

Additionally, the proposed draft permit requires the Applicant to initiate planning for expanding or upgrading the domestic wastewater treatment/collection facilities if flows reach 75 percent of the permitted daily average flow or annual average flow for three consecutive months. If flows reach 90 percent of the permitted daily average flow or annual average flow for three consecutive months, the Applicant must obtain authorization from TCEQ to begin constructing the necessary additional treatment/collection facilities. It is intended that these requirements will help prevent unauthorized discharges of raw sewage by requiring the Applicant to expand before flows reach capacity on a consistent basis.

For additional flooding concerns, please contact the local floodplain administrator for this area. If you need help finding the local floodplain administrator, please call the TCEQ Resource Protection Team at (512) 239-4691.

Issue 6: Daniel Cervenka and Virginia Cervenka request the discharge to be moved, so as not to cause a nuisance from the beginning.

Response 6: This issue was addressed in Response 4 of the RTC. The response is as follows:

Response 4:

The ED evaluated the proposed wastewater treatment facility, amount of treated effluent to be discharged and the proposed location of the point of discharge along with the information submitted in the application to determine if a draft permit could be prepared that is protective of the existing instream uses. The ED may recommend denial of an application if the proposed discharge would violate water quality standards. However, the ED does not have the authority to require the applicant to submit an application for a different point of discharge or to evaluate other locations that are not part of the permit application.

Issue 7: Daniel Cervenka, Virginia Cervenka and Dudley and Patsy Garrett state this permit should be denied because it would violate water quality standards.

Response 7: This issue was addressed in Response 2 of the RTC. The response is as follows:

Part of Response 2:

The proposed draft permit was developed to protect aquatic life, human health, and recreation use in accordance with the Texas Surface Water Quality Standards. The requirements in the proposed draft permit were established to maintain these water quality standards as long as the Applicant operates and maintains the facility according to TCEQ rules and the requirements in the proposed draft permit. As part of the permit application process, the ED determines the uses of the receiving waters and then sets effluent limits that are protective of those uses. The unclassified receiving water use for the storm water detention/retention pond and the unnamed lake is limited aquatic life. The designated uses for Segment No. 2462 are contact recreation, oyster waters, and exceptional aquatic life. The effluent limits in the proposed draft permit were set to maintain and protect those existing instream uses.

In accordance with 30 TAC Section 307.5, and the TCEQ implementation procedures (January 2003) for the Texas Surface Water Quality Standards, an antidegradation review of the receiving waters was also performed. A Tier 1 antidegradation review

preliminarily determined that the existing water quality uses will not be impaired by this permitting action. Numerical and narrative criteria necessary to protect existing uses will be maintained. A Tier 2 antidegradation review is not required because the antidegradation review preliminarily determined that no water bodies with exceptional, high, or intermediate aquatic life uses was present within the stream reach assessed. The stream reach assessed includes the detention/retention pond and the unnamed lake, which do not have exceptional, high, or intermediate aquatic life uses. However, due to the nature and small size of the discharge, no significant degradation of water quality is expected in water bodies with exceptional, high, or intermediate aquatic life uses downstream, and existing uses will be maintained and protected. The preliminary determination can be reexamined and may be modified if new information is received.

Issue 8: Daniel Cervenka and Virginia Cervenka state this permit does not comply with the “Resource Management Code” from the Texas General Land Office.

Response 8: The Texas General Land Office’s Resource Management Code’s “are suggested guidelines for activities within the tracts, and are designed primarily to encourage the protection of sensitive natural resources by recommending precautionary measures which would minimize adverse impacts for exploration and development activities.” This permit is for the proposed wastewater treatment plant only and does not regulate development associated with it. The Resource Management Code appears to be General Land Office guidance on development of submerged property and does not preclude issuance of this permit. Also, the General Land Office received notice of this permit and did not comment.

Issue 9: Dudley and Patsy Garrett state the antidegradation review and stream segment assessed should have included San Antonio Bay.

Response 9: Staff did consider the possible effects the discharge may have on San Antonio Bay; however, the analysis indicated that there are no expected negative impacts to the bay due to the presence of the intervening storm water ponds and the unnamed lake along the discharge route prior to entry into the bay.

Issue 10: Dudley and Patsy Garrett questions the accuracy of the proposed receiving stream width.

Response 10: In the course of analysis of the discharge, there was sufficient information available from the Applicant to characterize the dimensions of the receiving waters for analysis of the discharge’s potential impacts.

Issue 11: Dudley and Patsy Garrett state the discharge will lower the salinity in the bay and affect fishing and they have seen this.

Response 11: This issue was addressed in Response 6 of the RTC. The response is as follows:

Response 6:

The ED is not aware of documented instances where wastewater discharges have significantly altered bay salinities. While extremely localized (i.e., in the immediate area where the discharge enters the bay via the drainage ditch) decreases in bay salinity could result from this relatively small proposed discharge, it is the opinion of ED staff that this potential effect would not negatively impact aquatic life or fishing in the area. The detention time provided by the detention/retention pond and the unnamed lake should allow for ample dilution and dissipation of any chlorine contributed by the proposed discharge. It is expected that only very small amounts of chlorine will be added to the bay and therefore it will not pose a threat to aquatic life or human health.

Issue 12: Dudley and Patsy Garrett question what will prevent the wastewater pond from overflowing in a storm event and washing across their property.

Response 12: TCEQ rules state and the other requirements section of the permit require that the Applicant ensure protection of its facility from a 100 year flood event. Once the Applicant has received its permit they can then design its facility. That design must ensure that the facility is protected from a 100 year flood event.

Daniel Cervenka, Virginia Cervenka, and Dudley and Patsy Garrett have not presented new evidence for consideration. For the reasons stated above the Executive Director respectfully recommends that Daniel Cervenka, Virginia Cervenka, and Dudley and Patsy Garrett's Request for Reconsideration be denied.

VII. Duration For The Contested Case Hearing

The Executive Director recommends that a contested case hearing, should the Commission decide to refer the case, last approximately six months. This time period begins with the preliminary hearing and concludes with presentation of a proposal for decision before the Commission.

VIII. Executive Director's Recommendation

The Executive Director recommends the following actions by the Commission:

- A. Find that Daniel Cervenka, Virginia Cervenka, Dudley and Patsy Garrett, Jeffrey and Terri Kubena, Franklin Pierce, Rick Dierlam, and Greg and Christie Waida have a right to a contested case hearing and are affected persons.
- B. Deny the Requests for Reconsideration.
- C. Refer the following issues to SOAH for a proceeding of six months duration:

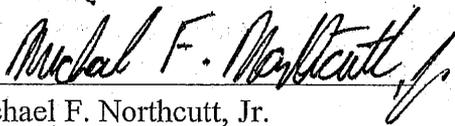
- Issue 2: Whether this discharge into San Antonio Bay will threaten marine life, and the ecological health of the bay.**
- Issue 4: Whether whooping cranes and other wildlife will be adversely affected by this facility and discharge.**
- Issue 6: Whether the discharge will adversely effect oyster reefs and sea grass.**
- Issue 7: Whether there is adequate information on the proposed flow due to the width of the discharge point stream segment.**
- Issue 8: Whether the chlorine and addition of fresh water from this discharge will effect the normal salinity of San Antonio Bay and affect aquatic health.**
- Issue 9: Whether the discharge will stagnate in San Antonio Bay.**
- Issue 15: Whether this facility will lead to increased waterborne bacteria.**
- Issue 16: Whether this facility and discharge will have an affect on all forms of water recreation.**
- Issue 18: Whether this facility will lead to odor problems.**

Respectfully submitted,

TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY

Glenn Shankle, Executive Director

Robert Martinez, Director
Environmental Law Division

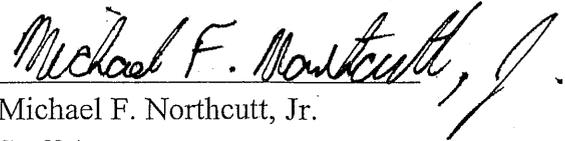
By: 
Michael F. Northcutt, Jr.
Staff Attorney

Environmental Law Division
Texas State Bar No. 24037194
P.O. Box 13087, MC-173
Austin, Texas 78711-3087
(512) 239-6994
(512) 239-0606 (Fax)

ATTORNEYS FOR
THE EXECUTIVE DIRECTOR

CERTIFICATE OF SERVICE

I hereby certify that on February 1, 2008 the original and eleven true and correct copies of the "Executive Director's Amended Response to Hearing Request" relating to the application of Seadrift Ranch Partners for Permit No. 14716001 were filed with the Chief Clerk of the TCEQ and a copy was served to all persons listed on the attached mailing list via hand delivery, facsimile transmission, inter-agency mail, or by deposit in the U.S. Mail.



Michael F. Northcutt, Jr.

Staff Attorney

Environmental Law Division

Texas State Bar No.24037194

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DOCKET NO. 2007-1052-MWD; PERMIT NO. WQ0014716001

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REQUESTER(S):

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Dudley & Patsy Garrett
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Carol Garriott
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Jeffrey & Terri Kubena
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Franklin Pierce
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Christie & Greg Waida
PO Box 4581
Victoria, Texas 77903-4581

Attachment A

STATEMENT OF BASIS/TECHNICAL SUMMARY
AND EXECUTIVE DIRECTOR'S PRELIMINARY DECISION

DESCRIPTION OF APPLICATION

Applicant: Seadrift Ranch Partners, LTD.;
Texas Pollutant Discharge Elimination System (TPDES) Permit No.
WQ0014716001, (TX0128805)

Regulated Activity: Domestic Wastewater Permit

Type of Application: New Permit

Request: New Permit

Authority: Federal Clean Water Act, Section 402; Texas Water Code Section 26.027; 30
TAC Chapters 305, 307, 309, 312, 319, 30; Commission policies; and EPA
guidelines.

EXECUTIVE DIRECTOR RECOMMENDATION

The executive director has made a preliminary decision that this permit, if issued, meets all statutory and regulatory requirements. The proposed permit includes an expiration date of March 1, 2010 according to 30 TAC Section 305.71, Basin Permitting.

REASON FOR PROJECT PROPOSED

The applicant has applied to the Texas Commission on Environmental Quality (TCEQ) for a new permit to authorize the discharge of treated domestic wastewater at a daily average flow not to exceed 0.025 million gallons per day. The proposed wastewater treatment facility will serve the Bay Club at Falcon Point Ranch Subdivision.

PROJECT DESCRIPTION AND LOCATION

The Falcon Point Wastewater Treatment Facility will be an activated sludge process plant operated in the extended aeration mode. Treatment units will include five aeration basins, two final clarifiers, a sludge holding tank, and a chlorine contact chamber. The facility has not been constructed.

Sludge generated from the treatment facility will be hauled by a registered transporter to the Guadalupe-Blanco River Authority/Victoria Regional Wastewater Treatment Facility, Permit No. WQ0011078001 to be digested, dewatered and then disposed of with the bulk of the sludge from the plant accepting the sludge. The draft permit also authorizes the disposal of sludge at a TCEQ authorized land application site or co-disposal landfill.

The plant site will be located 3,600 feet southeast of the intersection of Swan Point and Falcon Point Roads in Calhoun County, Texas.

The treated effluent will be discharged to a storm water detention/retention pond; thence to an unnamed lake; thence to an unnamed drainage ditch; thence to the San Antonio Bay/Hynes Bay/Guadalupe Bay in Segment No. 2462 of the Bays and Estuaries. The unclassified receiving water uses are limited aquatic life use for the storm water detention/retention pond and the unnamed lake. The designated uses for Segment No. 2462 are contact recreation, oyster waters, and exceptional aquatic life uses. The effluent limitations in the draft permit will maintain and protect the existing instream uses. In accordance with §307.5 and the TCEQ implementation procedures (January 2003) for

Seadrift Ranch Partners, LTD.
TPDES Permit No. WQ0014716001

Statement of Basis/Technical Summary and Executive Director's Preliminary Decision

the Texas Surface Water Quality Standards, an antidegradation review of the receiving waters was performed. A Tier 1 antidegradation review has preliminarily determined that existing water quality uses will not be impaired by this permit action. Numerical and narrative criteria to protect existing uses will be maintained. This review has preliminarily determined that no water bodies with exceptional, high, or intermediate aquatic life uses are present within the stream reach assessed; therefore, no Tier 2 degradation determination is required. No significant degradation of water quality is expected in water bodies with exceptional, high, or intermediate aquatic life uses downstream, and existing uses will be maintained and protected. The preliminary determination can be reexamined and may be modified if new information is received.

Effluent limitations for the conventional effluent parameters (i.e., Biochemical Oxygen Demand or Carbonaceous Biochemical Oxygen Demand, Ammonia Nitrogen, etc.) are based on stream standards and waste load allocations for water quality limited streams as established in the Texas Water Quality Standards and the water quality management plan.

The effluent limitations in the draft permit have been reviewed for consistency with the State of Texas Water Quality Management Plan (WQMP). The proposed effluent limitations are not contained in the approved WQMP. However, these limits will be included in the next WQMP update. A Waste Load Evaluation has not been completed for the segment.

A priority watershed of critical concern has been identified in Segment 2462 in Calhoun County. The whooping crane, *Grus americana* (Linnaeus), an endangered aquatic dependent species, has been determined to occur in the watershed of Segment 2462. The piping plover, *Charadrius melodus* Ord, can occur in Segment 2462 and Calhoun County. However the county is north of Copano Bay and not a watershed of high priority for the piping plover per Appendix A of the USFWS biological opinion. This determination is based on the State of Texas authorization of the Texas Pollutant Discharge Elimination System (TPDES) (September 14, 1998) (October 21, 1998 update). To make this determination for TPDES permits, TCEQ and EPA only considered species occurring in watersheds of critical concern or high priority as listed in Appendix A of the USFWS biological opinion. The determination is subject to reevaluation due to subsequent updates or amendments to the biological opinion. The presence of the endangered whooping crane requires EPA review and, if appropriate, consultation with USFWS.

Segment No. 2462 is currently listed on the State's inventory of impaired and threatened waters (2004 Clean Water Act Section 303(d) list). The listing is specifically for bacteria (oyster waters) in Guadalupe Bay and in San Antonio Bay near Seadrift and the Intracoastal Waterway. This facility is designed to provide adequate disinfection and when operated properly should not add to the bacterial impairment of the segment.

SUMMARY OF EFFLUENT DATA

N/A - New Permit.

PROPOSED PERMIT CONDITIONS

The draft permit authorizes a discharge of treated domestic wastewater at a volume not to exceed a daily average flow of 0.025 million gallons per day.

The effluent limitations in the draft permit, based on a 30-day average, are 20 mg/l BOD₅, 20 mg/l TSS, and 2.0 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.

Seadrift Ranch Partners, LTD.

TPDES Permit No. WQ0014716001

Statement of Basis/Technical Summary and Executive Director's Preliminary Decision

The permittee shall comply with the requirements of 30 TAC Section 309.13 (a) through (d). In addition, by ownership of the required buffer zone area, the permittee shall comply with the requirements of 30 TAC Section 309.13(e).

The draft permit includes Sludge Provisions according to the requirements of 30 TAC Chapter 312, Sludge Use, Disposal and Transportation. Sludge generated from the treatment facility will be hauled by a registered transporter to the Guadalupe-Blanco River Authority/Victoria Regional Wastewater Treatment Facility, Permit No. WQ0011078001 to be digested, dewatered and then disposed of with the bulk of the sludge from the plant accepting the sludge. The draft permit also authorizes the disposal of sludge at a TCEQ authorized land application site or co-disposal landfill.

SUMMARY OF CHANGES FROM APPLICATION

None.

SUMMARY OF CHANGES FROM EXISTING PERMIT

N/A - New Permit.

BASIS FOR PROPOSED DRAFT PERMIT

The following items were considered in developing the proposed permit draft:

1. Application received May 12, 2006 and additional information received June 9, 2006 and July 5, 2006.
2. The effluent limitations and/or conditions in the draft permit comply with the Texas Surface Water Quality Standards, 30 TAC Sections 307.1 - 307.10.
3. The effluent limitations in the draft permit meet the requirements for secondary treatment and the requirements for disinfection according to 30 TAC Chapter 309, Subchapter A: Domestic Wastewater Effluent Limitations.
4. Interoffice memoranda from the Water Quality Assessment Section of the TCEQ Water Quality Division.
5. Consistency with the Coastal Management Plan: The Executive Director has reviewed this action for consistency with the goals and policies of the Texas Coastal Management Program (CMP) in accordance with the regulations of the Coastal Coordination Council (CCC) and has determined that the action is consistent with the applicable CMP goals and policies.
6. "Procedures to Implement the Texas Surface Water Quality Standards," Texas Commission on Environmental Quality, January 2003.
7. Texas 2004 Clean Water Act Section 303(d) List, Texas Commission on Environmental Quality, May 13, 2005; approved by USEPA on May 8, 2006.
8. "TNRCC Guidance Document for Establishing Monitoring Frequencies for Domestic and Industrial Wastewater Discharge Permits," Document No. 98-001.000-OWR-WQ, May 1998.

Seadrift Ranch Partners, LTD.

TPDES Permit No. WQ0014716001

Statement of Basis/Technical Summary and Executive Director's Preliminary Decision

PROCEDURES FOR FINAL DECISION

When an application is declared administratively complete, the Chief Clerk sends a letter to the applicant advising the applicant to publish the Notice of Receipt of Application and Intent to Obtain Permit in the newspaper. In addition, the Chief Clerk instructs the applicant to place a copy of the application in a public place for review and copying in the county where the facility is or will be located. This application will be in a public place throughout the comment period. The Chief Clerk also mails this notice to any interested persons and, if required, to landowners identified in the permit application. This notice informs the public about the application, and provides that an interested person may file comments on the application or request a contested case hearing or a public meeting.

Once a draft permit is completed, it is sent, along with the Executive Director's preliminary decision, as contained in the technical summary or fact sheet, to the Chief Clerk. At that time, Notice of Application and Preliminary Decision will be mailed to the same people and published in the same newspaper as the prior notice. This notice sets a deadline for making public comments. The applicant must place a copy of the Executive Director's preliminary decision and draft permit in the public place with the application. This notice sets a deadline for public comment.

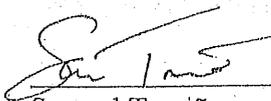
Any interested person may request a public meeting on the application until the deadline for filing public comments. A public meeting is intended for the taking of public comment, and is not a contested case proceeding.

After the public comment deadline, the Executive Director prepares a response to all significant public comments on the application or the draft permit raised during the public comment period. The Chief Clerk then mails the Executive Director's Response to Comments and Final Decision to people who have filed comments, requested a contested case hearing, or requested to be on the mailing list. This notice provides that if a person is not satisfied with the Executive Director's response and decision, they can request a contested case hearing or file a request to reconsider the Executive Director's decision within 30 days after the notice is mailed.

The Executive Director will issue the permit unless a written hearing request or request for reconsideration is filed within 30 days after the Executive Director's Response to Comments and Final Decision is mailed. If a hearing request or request for reconsideration is filed, the Executive Director will not issue the permit and will forward the application and request to the TCEQ Commissioners for their consideration at a scheduled Commission meeting. If a contested case hearing is held, it will be a legal proceeding similar to a civil trial in state district court.

If the Executive Director calls a public meeting or the Commission grants a contested case hearing as described above, the Commission will give notice of the date, time, and place of the meeting or hearing. If a hearing request or request for reconsideration is made, the Commission will consider all public comments in making its decision and shall either adopt the Executive Director's response to public comments or prepare its own response.

For additional information about this application contact Samuel Treviño at (512) 239-4618.



Samuel Treviño
Municipal Permits Team
Wastewater Permitting Section (MC 148)

September 13, 2006
Date



TPDES PERMIT NO. WQ0014716001
[For TCEQ Office Use Only:
EPA ID No. TX0128805]

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY
P.O. Box 13087
Austin, Texas 78711-3087

PERMIT TO DISCHARGE WASTES
under provisions of
Section 402 of the Clean Water Act
and Chapter 26 of the Texas Water Code

Seadrift Ranch Partners, LTD.

whose mailing address is

816 Congress Avenue, Suite 1280
Austin, Texas 78701

is authorized to treat and discharge wastes from the Falcon Point Wastewater Treatment Facility, SIC Code 4952.

located 3,600 feet southeast of the intersection of Swan Point and Falcon Point Roads in Calhoun County, Texas

to a storm water detention/retention pond; thence to an unnamed lake; thence to an unnamed drainage ditch; thence to the San Antonio Bay/Hynes Bay/Guadalupe Bay in Segment No. 2462 of the Bays and Estuaries

only according with effluent limitations, monitoring requirements and other conditions set forth in this permit, as well as the rules of the Texas Commission on Environmental Quality (TCEQ), the laws of the State of Texas, and other orders of the TCEQ. The issuance of this permit does not grant to the permittee the right to use private or public property for conveyance of wastewater along the discharge route described in this permit. This includes, but is not limited to, property belonging to any individual, partnership, corporation or other entity. Neither does this permit authorize any invasion of personal rights nor any violation of federal, state, or local laws or regulations. It is the responsibility of the permittee to acquire property rights as may be necessary to use the discharge route.

This permit shall expire at midnight, **March 1, 2010**.

ISSUED DATE:

For the Commission

EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS

Outfall Number 001

1. During the period beginning upon the date of issuance and lasting through the date of expiration, the permittee is authorized to discharge subject to the following effluent limitations:

The daily average flow of effluent shall not exceed 0.025 million gallons per day (MGD); nor shall the average discharge during any two-hour period (2-hour peak) exceed 61 gallons per minute (gpm).

<u>Effluent Characteristic</u>	<u>Discharge Limitations</u>				<u>Minimum Self-Monitoring Requirements</u>	
	Daily Avg mg/l(lbs/day)	7-day Avg mg/l	Daily Max mg/l	Single-Grab mg/l	Report Daily Avg. & Max. Measurement Frequency	Single Grab Sample Type
Flow, MGD	Report	N/A	Report	N/A	Five/week	Instantaneous
Biochemical Oxygen Demand (5-day)	20 (4.2)	30	45	65	One/week	Grab
Total Suspended Solids	20 (4.2)	30	45	65	One/week	Grab

2. 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), and shall be monitored five times per week by grab sample. An equivalent method of disinfection may be substituted only with prior approval of the Executive Director.
3. The pH shall not be less than 6.0 standard units nor greater than 9.0 standard units and shall be monitored once per month by grab sample.
4. There shall be no discharge of floating solids or visible foam in other than trace amounts and no discharge of visible oil.
5. Effluent monitoring samples shall be taken at the following location(s): Following the final treatment unit.
6. The effluent shall contain a minimum dissolved oxygen of 2.0 mg/l and shall be monitored once per week by grab sample.

DEFINITIONS AND STANDARD PERMIT CONDITIONS

As required by Title 30 Texas Administrative Code (TAC) Chapter 305, certain regulations appear as standard conditions in waste discharge permits. 30 TAC §§ 305.121 - 305.129 (relating to Permit Characteristics and Conditions) as promulgated under the Texas Water Code §§ 5.103 and 5.105, and the Texas Health and Safety Code §§ 361.017 and 361.024(a), establish the characteristics and standards for waste discharge permits, including sewage sludge, and those sections of 40 Code of Federal Regulations (CFR) Part 122 adopted by reference by the Commission. The following text includes these conditions and incorporates them into this permit. All definitions in Section 26.001 of the Texas Water Code and 30 TAC Chapter 305 shall apply to this permit and are incorporated by reference. Some specific definitions of words or phrases used in this permit are as follows:

1. Flow Measurements

- a. Annual average flow - the arithmetic average of all daily flow determinations taken within the preceding 12 consecutive calendar months. The annual average flow determination shall consist of daily flow volume determinations made by a totalizing meter, charted on a chart recorder and limited to major domestic wastewater discharge facilities with a 1 million gallons per day or greater permitted flow.
- b. Daily average flow - the arithmetic average of all determinations of the daily flow within a period of one calendar month. The daily average flow determination shall consist of determinations made on at least four separate days. If instantaneous measurements are used to determine the daily flow, the determination shall be the arithmetic average of all instantaneous measurements taken during that month. Daily average flow determination for intermittent discharges shall consist of a minimum of three flow determinations on days of discharge.
- c. Daily maximum flow - the highest total flow for any 24-hour period in a calendar month.
- d. Instantaneous flow - the measured flow during the minimum time required to interpret the flow measuring device.
- e. 2-hour peak flow (domestic wastewater treatment plants) - the maximum flow sustained for a two-hour period during the period of daily discharge. The average of multiple measurements of instantaneous maximum flow within a two-hour period may be used to calculate the 2-hour peak flow.
- f. Maximum 2-hour peak flow (domestic wastewater treatment plants) - the highest 2-hour peak flow for any 24-hour period in a calendar month.

2. Concentration Measurements

- a. Daily average concentration - the arithmetic average of all effluent samples, composite or grab as required by this permit, within a period of one calendar month, consisting of at least four separate representative measurements.
 - i. For domestic wastewater treatment plants - When four samples are not available in a calendar month, the arithmetic average (weighted by flow) of all values in the previous four consecutive month period consisting of at least four measurements shall be utilized as the daily average concentration.
 - ii. For all other wastewater treatment plants - When four samples are not available in a calendar month, the arithmetic average (weighted by flow) of all values taken during the month shall be utilized as the daily average concentration.
- b. 7-day average concentration - the arithmetic average of all effluent samples, composite or grab as required by this permit, within a period of one calendar week, Sunday through Saturday.
- c. Daily maximum concentration - the maximum concentration measured on a single day, by the sample type specified in the permit, within a period of one calendar month.
- d. Daily discharge - the discharge of a pollutant measured during a calendar day or any 24-hour period that reasonably represents the calendar day for purposes of sampling. For pollutants with limitations expressed in terms of mass, the "daily discharge" is calculated as the total mass of the pollutant discharged over the sampling day. For pollutants with limitations expressed in other units of measurement, the "daily discharge" is calculated as the average measurement of the pollutant over the sampling day.

The "daily discharge" determination of concentration made using a composite sample shall be the concentration of the composite sample. When grab samples are used, the "daily discharge" determination of concentration shall be the arithmetic average (weighted by flow value) of all samples collected during that day.

- e. Fecal coliform bacteria concentration - the number of colonies of fecal coliform bacteria per 100 milliliters effluent. The daily average fecal coliform bacteria concentration is a geometric mean of the values for the effluent samples collected in a calendar month. The geometric mean shall be determined by calculating the n th root of the product of all measurements made in a calendar month, where n equals the number of measurements made; or, computed as the antilogarithm of the arithmetic mean of the logarithms of all measurements made in a calendar month. For any measurement of fecal coliform bacteria equaling zero, a substituted value of one shall be made for input into either computation method. The 7-day average for fecal coliform bacteria is the geometric mean of the values for all effluent samples collected during a calendar week.
- f. Daily average loading (lbs/day) - the arithmetic average of all daily discharge loading calculations during a period of one calendar month. These calculations must be made for each day of the month that a parameter is analyzed. The daily discharge, in terms of mass (lbs/day), is calculated as (Flow, MGD x Concentration, mg/l x 8.34).
- g. Daily maximum loading (lbs/day) - the highest daily discharge, in terms of mass (lbs/day), within a period of one calendar month.

3. Sample Type

- a. Composite sample - For domestic wastewater, a composite sample is a sample made up of a minimum of three effluent portions collected in a continuous 24-hour period or during the period of daily discharge if less than 24 hours, and combined in volumes proportional to flow, and collected at the intervals required by 30 TAC § 319.9 (a). For industrial wastewater, a composite sample is a sample made up of a minimum of three effluent portions collected in a continuous 24-hour period or during the period of daily discharge if less than 24 hours, and combined in volumes proportional to flow, and collected at the intervals required by 30 TAC § 319.9 (b).
 - b. Grab sample - an individual sample collected in less than 15 minutes.
4. Treatment Facility (facility) - wastewater facilities used in the conveyance, storage, treatment, recycling, reclamation and/or disposal of domestic sewage, industrial wastes, agricultural wastes, recreational wastes, or other wastes including sludge handling or disposal facilities under the jurisdiction of the Commission.
 5. The term "sewage sludge" is defined as solid, semi-solid, or liquid residue generated during the treatment of domestic sewage in 30 TAC Chapter 312. This includes the solids which have not been classified as hazardous waste separated from wastewater by unit processes.
 6. Bypass - the intentional diversion of a waste stream from any portion of a treatment facility.

MONITORING AND REPORTING REQUIREMENTS

1. Self-Reporting

Monitoring results shall be provided at the intervals specified in the permit. Unless otherwise specified in this permit or otherwise ordered by the Commission, the permittee shall conduct effluent sampling and reporting in accordance with 30 TAC §§ 319.4 - 319.12. Unless otherwise specified, a monthly effluent report shall be submitted each month, to the Enforcement Division (MC 224), by the 20th day of the following month for each discharge which is described by this permit whether or not a discharge is made for that month. Monitoring results must be reported on an approved self-report form, that is signed and certified as required by Monitoring and Reporting Requirements No. 10.

As provided by state law, the permittee is subject to administrative, civil and criminal penalties, as applicable, for negligently or knowingly violating the Clean Water Act, the Texas Water Code, Chapters 26, 27, and 28, and Texas Health and Safety Code, Chapter 361, including but not limited to knowingly making any false statement, representation, or certification on any report, record, or other document submitted or required to be maintained under this permit, including monitoring reports or reports of compliance or noncompliance, or falsifying, tampering with or knowingly rendering inaccurate any monitoring device or method required by this permit or violating any other requirement imposed by state or federal regulations.

2. Test Procedures

Unless otherwise specified in this permit, test procedures for the analysis of pollutants shall comply with procedures specified in 30 TAC §§ 319.11 - 319.12. Measurements, tests and calculations shall be accurately accomplished in a representative manner.

3. Records of Results

- a. Monitoring samples and measurements shall be taken at times and in a manner so as to be representative of the monitored activity.
- b. Except for records of monitoring information required by this permit related to the permittee's sewage sludge use and disposal activities, which shall be retained for a period of at least five years (or longer as required by 40 CFR Part 503), monitoring and reporting records, including strip charts and records of calibration and maintenance, copies of all records required by this permit, records of all data used to complete the application for this permit, and the certification required by 40 CFR § 264.73(b)(9) shall be retained at the facility site, or shall be readily available for review by a TCEQ representative for a period of three years from the date of the record or sample, measurement, report, application or certification. This period shall be extended at the request of the Executive Director.
- c. Records of monitoring activities shall include the following:
 - i. date, time and place of sample or measurement;
 - ii. identity of individual who collected the sample or made the measurement.
 - iii. date and time of analysis;
 - iv. identity of the individual and laboratory who performed the analysis;
 - v. the technique or method of analysis; and
 - vi. the results of the analysis or measurement and quality assurance/quality control records.

The period during which records are required to be kept shall be automatically extended to the date of the final disposition of any administrative or judicial enforcement action that may be instituted against the permittee.

4. Additional Monitoring by Permittee

If the permittee monitors any pollutant at the location(s) designated herein more frequently than required by this permit using approved analytical methods as specified above, all results of such monitoring shall be included in the calculation and reporting of the values submitted on the approved self-report form. Increased frequency of sampling shall be indicated on the self-report form.

5. Calibration of Instruments

All automatic flow measuring or recording devices and all totalizing meters for measuring flows shall be accurately calibrated by a trained person at plant start-up and as often thereafter as necessary to ensure accuracy, but not less often than annually unless authorized by the Executive Director for a longer period. Such person shall verify in writing that the device is operating properly and giving accurate results. Copies of the verification shall be retained at the facility site and/or shall be readily available for review by a TCEQ representative for a period of three years.

6. Compliance Schedule Reports

Reports of compliance or noncompliance with, or any progress reports on, interim and final requirements contained in any compliance schedule of the permit shall be submitted no later than 14 days following each schedule date to the Regional Office and the Enforcement Division (MC 224).

7. Noncompliance Notification

- a. In accordance with 30 TAC § 305.125(9) any noncompliance which may endanger human health or safety, or the environment shall be reported by the permittee to the TCEQ. Report of such information shall be provided orally or by facsimile transmission (FAX) to the Regional Office within 24 hours of becoming aware of the noncompliance. A written submission of such information shall also be provided by the permittee to the Regional Office and the Enforcement Division (MC 224) within five working days of becoming aware of the noncompliance. The written submission shall contain a description of the noncompliance and its cause; the potential danger to human health or safety, or the environment; the period of noncompliance, including exact dates and times; if the noncompliance has not been corrected, the time it is expected to continue; and steps taken or planned to reduce, eliminate, and prevent recurrence of the noncompliance, and to mitigate its adverse effects.
- b. The following violations shall be reported under Monitoring and Reporting Requirement 7.a.:

- i. Unauthorized discharges as defined in Permit Condition 2(g).
 - ii. Any unanticipated bypass which exceeds any effluent limitation in the permit.
 - iii. Violation of a permitted maximum daily discharge limitation for pollutants listed specifically in the Other Requirements section of an Industrial TPDES permit.
- c. In addition to the above, any effluent violation which deviates from the permitted effluent limitation by more than 40% shall be reported by the permittee in writing to the Regional Office and the Enforcement Division (MC 224) within 5 working days of becoming aware of the noncompliance.
- d. Any noncompliance other than that specified in this section, or any required information not submitted or submitted incorrectly, shall be reported to the Enforcement Division (MC 224) as promptly as possible. For effluent limitation violations, noncompliances shall be reported on the approved self-report form.
8. In accordance with the procedures described in 30 TAC §§ 35.301 - 35.303 (relating to Water Quality Emergency and Temporary Orders) if the permittee knows in advance of the need for a bypass, it shall submit prior notice by applying for such authorization.

9. Changes in Discharges of Toxic Substances

All existing manufacturing, commercial, mining, and silvicultural permittees shall notify the Regional Office, orally or by facsimile transmission within 24 hours, and both the Regional Office and the Enforcement Division (MC 224) in writing within five (5) working days, after becoming aware of or having reason to believe:

- a. That any activity has occurred or will occur which would result in the discharge, on a routine or frequent basis, of any toxic pollutant listed at 40 CFR Part 122, Appendix D, Tables II and III (excluding Total Phenols) which is not limited in the permit, if that discharge will exceed the highest of the following "notification levels":
 - i. One hundred micrograms per liter (100 µg/L);
 - ii. Two hundred micrograms per liter (200 µg/L) for acrolein and acrylonitrile; five hundred micrograms per liter (500 µg/L) for 2,4-dinitrophenol and for 2-methyl-4,6-dinitrophenol; and one milligram per liter (1 mg/L) for antimony;
 - iii. Five (5) times the maximum concentration value reported for that pollutant in the permit application; or
 - iv. The level established by the TCEQ.
- b. That any activity has occurred or will occur which would result in any discharge, on a nonroutine or infrequent basis, of a toxic pollutant which is not limited in the permit, if that discharge will exceed the highest of the following "notification levels":
 - i. Five hundred micrograms per liter (500 µg/L);
 - ii. One milligram per liter (1 mg/L) for antimony;
 - iii. Ten (10) times the maximum concentration value reported for that pollutant in the permit application; or
 - iv. The level established by the TCEQ.

10. Signatories to Reports

All reports and other information requested by the Executive Director shall be signed by the person and in the manner required by 30 TAC § 305.128 (relating to Signatories to Reports).

11. All Publicly Owned Treatment Works (POTWs) must provide adequate notice to the Executive Director of the following:
- a. Any new introduction of pollutants into the POTW from an indirect discharger which would be subject to section 301 or 306 of the CWA if it were directly discharging those pollutants;
 - b. Any substantial change in the volume or character of pollutants being introduced into that POTW by a source introducing pollutants into the POTW at the time of issuance of the permit; and
 - c. For the purpose of this paragraph, adequate notice shall include information on:
 - i. The quality and quantity of effluent introduced into the POTW; and
 - ii. Any anticipated impact of the change on the quantity or quality of effluent to be discharged from the POTW.

PERMIT CONDITIONS

1. General

- a. When the permittee becomes aware that it failed to submit any relevant facts in a permit application, or submitted incorrect information in an application or in any report to the Executive Director, it shall promptly submit such facts or information.
- b. This permit is granted on the basis of the information supplied and representations made by the permittee during action on an application, and relying upon the accuracy and completeness of that information and those representations. After notice and opportunity for a hearing, this permit may be modified, suspended, or revoked, in whole or in part, in accordance with 30 TAC Chapter 305, Subchapter D, during its term for good cause including, but not limited to, the following:
 - i. Violation of any terms or conditions of this permit;
 - ii. Obtaining this permit by misrepresentation or failure to disclose fully all relevant facts; or
 - iii. A change in any condition that requires either a temporary or permanent reduction or elimination of the authorized discharge.
- c. The permittee shall furnish to the Executive Director, upon request and within a reasonable time, any information to determine whether cause exists for amending, revoking, suspending or terminating the permit. The permittee shall also furnish to the Executive Director, upon request, copies of records required to be kept by the permit.

2. Compliance

- a. Acceptance of the permit by the person to whom it is issued constitutes acknowledgment and agreement that such person will comply with all the terms and conditions embodied in the permit, and the rules and other orders of the Commission.
- b. The permittee has a duty to comply with all conditions of the permit. Failure to comply with any permit condition constitutes a violation of the permit and the Texas Water Code or the Texas Health and Safety Code, and is grounds for enforcement action, for permit amendment, revocation or suspension, or for denial of a permit renewal application or an application for a permit for another facility.
- c. It shall not be a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of the permit.
- d. The permittee shall take all reasonable steps to minimize or prevent any discharge or sludge use or disposal or other permit violation which has a reasonable likelihood of adversely affecting human health or the environment.
- e. Authorization from the Commission is required before beginning any change in the permitted facility or activity that may result in noncompliance with any permit requirements.
- f. A permit may be amended, suspended and reissued, or revoked for cause in accordance with 30 TAC §§ 305.62 and 305.66 and Texas Water Code Section 7.302. The filing of a request by the permittee for a permit amendment, suspension and reissuance, or termination, or a notification of planned changes or anticipated noncompliance, does not stay any permit condition.
- g. There shall be no unauthorized discharge of wastewater or any other waste. For the purpose of this permit, an unauthorized discharge is considered to be any discharge of wastewater into or adjacent to water in the state at any location not permitted as an outfall or otherwise defined in the Other Requirements section of this permit.
- h. In accordance with 30 TAC § 305.535(a), the permittee may allow any bypass to occur from a TPDES permitted facility which does not cause permitted effluent limitations to be exceeded or an unauthorized discharge to occur, but only if the bypass is also for essential maintenance to assure efficient operation.
- i. The permittee is subject to administrative, civil, and criminal penalties, as applicable, under Texas Water Code §§ 7.051 - 7.075 (relating to Administrative Penalties), 7.101 - 7.111 (relating to Civil Penalties), and 7.141 - 7.202 (relating to Criminal Offenses and Penalties) for violations including, but not limited to, negligently or knowingly violating the federal Clean Water Act, §§ 301, 302, 306, 307, 308, 318, or 405, or any condition or limitation implementing any sections in a permit issued under the CWA § 402, or any requirement imposed in a pretreatment program approved under the CWA §§ 402 (a)(3) or 402 (b)(8).

3. Inspections and Entry

- a. Inspection and entry shall be allowed as prescribed in the Texas Water Code Chapters 26, 27, and 28, and Texas Health and Safety Code Chapter 361.
- b. The members of the Commission and employees and agents of the Commission are entitled to enter any public or private property at any reasonable time for the purpose of inspecting and investigating conditions relating to the quality of water in the state or the compliance with any rule, regulation, permit or other order of the Commission. Members, employees, or agents of the Commission and Commission contractors are entitled to enter public or private property at any reasonable time to investigate or monitor or, if the responsible party is not responsive or there is an immediate danger to public health or the environment, to remove or remediate a condition related to the quality of water in the state. Members, employees, Commission contractors, or agents acting under this authority who enter private property shall observe the establishment's rules and regulations concerning safety, internal security, and fire protection, and if the property has management in residence, shall notify management or the person then in charge of his presence and shall exhibit proper credentials. If any member, employee, Commission contractor, or agent is refused the right to enter in or on public or private property under this authority, the Executive Director may invoke the remedies authorized in Texas Water Code Section 7.002. The statement above, that Commission entry shall occur in accordance with an establishment's rules and regulations concerning safety, internal security, and fire protection, is not grounds for denial or restriction of entry to any part of the facility, but merely describes the Commission's duty to observe appropriate rules and regulations during an inspection.

4. Permit Amendment and/or Renewal

- a. The permittee shall give notice to the Executive Director as soon as possible of any planned physical alterations or additions to the permitted facility if such alterations or additions would require a permit amendment or result in a violation of permit requirements. Notice shall also be required under this paragraph when:
 - i. The alteration or addition to a permitted facility may meet one of the criteria for determining whether a facility is a new source in accordance with 30 TAC § 305.534 (relating to New Sources and New Dischargers); or
 - ii. The alteration or addition could significantly change the nature or increase the quantity of pollutants discharged. This notification applies to pollutants which are subject neither to effluent limitations in the permit, nor to notification requirements in Monitoring and Reporting Requirements No. 9;
 - iii. The alteration or addition results in a significant change in the permittee's sludge use or disposal practices, and such alteration, addition, or change may justify the application of permit conditions that are different from or absent in the existing permit, including notification of additional use or disposal sites not reported during the permit application process or not reported pursuant to an approved land application plan.
- b. Prior to any facility modifications, additions, or expansions that will increase the plant capacity beyond the permitted flow, the permittee must apply for and obtain proper authorization from the Commission before commencing construction.
- c. The permittee must apply for an amendment or renewal at least 180 days prior to expiration of the existing permit in order to continue a permitted activity after the expiration date of the permit. If an application is submitted prior to the expiration date of the permit, the existing permit shall remain in effect until the application is approved, denied, or returned. If the application is returned or denied, authorization to continue such activity shall terminate upon the effective date of the action. If an application is not submitted prior to the expiration date of the permit, the permit shall expire and authorization to continue such activity shall terminate.
- d. Prior to accepting or generating wastes which are not described in the permit application or which would result in a significant change in the quantity or quality of the existing discharge, the permittee must report the proposed changes to the Commission. The permittee must apply for a permit amendment reflecting any necessary changes in permit conditions, including effluent limitations for pollutants not identified and limited by this permit.
- e. In accordance with the Texas Water Code § 26.029(b), after a public hearing, notice of which shall be given to the permittee, the Commission may require the permittee, from time to time, for good cause, in accordance with applicable laws, to conform to new or additional conditions.
- f. If any toxic effluent standard or prohibition (including any schedule of compliance specified in such effluent standard or prohibition) is promulgated under Section 307(a) of the Clean Water Act for a toxic pollutant which is present in the discharge and that standard or prohibition is more stringent than any limitation on the pollutant in this permit, this permit

shall be modified or revoked and reissued to conform to the toxic effluent standard or prohibition. The permittee shall comply with effluent standards or prohibitions established under Section 307(a) of the Clean Water Act for toxic pollutants within the time provided in the regulations that established those standards or prohibitions, even if the permit has not yet been modified to incorporate the requirement.

5. Permit Transfer

- a. Prior to any transfer of this permit, Commission approval must be obtained. The Commission shall be notified in writing of any change in control or ownership of facilities authorized by this permit. Such notification should be sent to the Applications Review and Processing Team (MC.148) of the Water Quality Division.
- b. A permit may be transferred only according to the provisions of 30 TAC § 305.64 (relating to Transfer of Permits) and 30 TAC § 50.133 (relating to Executive Director Action on Application or WQMP update).

6. Relationship to Hazardous Waste Activities

This permit does not authorize any activity of hazardous waste storage, processing, or disposal which requires a permit or other authorization pursuant to the Texas Health and Safety Code.

7. Relationship to Water Rights

Disposal of treated effluent by any means other than discharge directly to water in the state must be specifically authorized in this permit and may require a permit pursuant to Chapter 11 of the Texas Water Code.

8. Property Rights

A permit does not convey any property rights of any sort, or any exclusive privilege.

9. Permit Enforceability

The conditions of this permit are severable, and if any provision of this permit, or the application of any provision of this permit to any circumstances, is held invalid, the application of such provision to other circumstances, and the remainder of this permit, shall not be affected thereby.

10. Relationship to Permit Application

The application pursuant to which the permit has been issued is incorporated herein; provided, however, that in the event of a conflict between the provisions of this permit and the application, the provisions of the permit shall control.

11. Notice of Bankruptcy.

- a. Each permittee shall notify the executive director, in writing, immediately following the filing of a voluntary or involuntary petition for bankruptcy under any chapter of Title 11 (Bankruptcy) of the United States Code (11 USC) by or against:
 - i. the permittee;
 - ii. an entity (as that term is defined in 11 USC, §101(14)) controlling the permittee or listing the permit or permittee as property of the estate; or
 - iii. an affiliate (as that term is defined in 11 USC, §101(2)) of the permittee.
- b. This notification must indicate:
 - i. the name of the permittee and the permit number(s);
 - ii. the bankruptcy court in which the petition for bankruptcy was filed; and
 - iii. the date of filing of the petition.

OPERATIONAL REQUIREMENTS

1. The permittee shall at all times ensure that the facility and all of its systems of collection, treatment, and disposal are properly operated and maintained. This includes, but is not limited to, the regular, periodic examination of wastewater solids within the treatment plant by the operator in order to maintain an appropriate quantity and quality of solids inventory as described in the various operator training manuals and according to accepted industry standards for process control. Process control, maintenance, and operations records shall be retained at the facility site, or shall be readily available for review by a TCEQ representative, for a period of three years.

2. Upon request by the Executive Director, the permittee shall take appropriate samples and provide proper analysis in order to demonstrate compliance with Commission rules. Unless otherwise specified in this permit or otherwise ordered by the Commission, the permittee shall comply with all applicable provisions of 30 TAC Chapter 312 concerning sewage sludge use and disposal and 30 TAC §§ 319.21 - 319.29 concerning the discharge of certain hazardous metals.
3. Domestic wastewater treatment facilities shall comply with the following provisions:
 - a. The permittee shall notify the Municipal Permits Team, Wastewater Permitting Section (MC 148) of the Water Quality Division, in writing, of any facility expansion at least 90 days prior to conducting such activity.
 - b. The permittee shall submit a closure plan for review and approval to the Land Application Team, Wastewater Permitting Section (MC 148) of the Water Quality Division, for any closure activity at least 90 days prior to conducting such activity. Closure is the act of permanently taking a waste management unit or treatment facility out of service and includes the permanent removal from service of any pit, tank, pond, lagoon, surface impoundment and/or other treatment unit regulated by this permit.
4. The permittee is responsible for installing prior to plant start-up, and subsequently maintaining, adequate safeguards to prevent the discharge of untreated or inadequately treated wastes during electrical power failures by means of alternate power sources, standby generators, and/or retention of inadequately treated wastewater.
5. Unless otherwise specified, the permittee shall provide a readily accessible sampling point and, where applicable, an effluent flow measuring device or other acceptable means by which effluent flow may be determined.
6. The permittee shall remit an annual water quality fee to the Commission as required by 30 TAC Chapter 21. Failure to pay the fee may result in revocation of this permit under Texas Water Code § 7.302(b)(6).
7. Documentation

For all written notifications to the Commission required of the permittee by this permit, the permittee shall keep and make available a copy of each such notification under the same conditions as self-monitoring data are required to be kept and made available. Except for information required for TPDES permit applications, effluent data, including effluent data in permits, draft permits and permit applications, and other information specified as not confidential in 30 TAC § 1.5(d), any information submitted pursuant to this permit may be claimed as confidential by the submitter. Any such claim must be asserted in the manner prescribed in the application form or by stamping the words "confidential business information" on each page containing such information. If no claim is made at the time of submission, information may be made available to the public without further notice. If the Commission or Executive Director agrees with the designation of confidentiality, the TCEQ will not provide the information for public inspection unless required by the Texas Attorney General or a court pursuant to an open records request. If the Executive Director does not agree with the designation of confidentiality, the person submitting the information will be notified.

8. Facilities which generate domestic wastewater shall comply with the following provisions; domestic wastewater treatment facilities at permitted industrial sites are excluded.
 - a. Whenever flow measurements for any domestic sewage treatment facility reach 75 percent of the permitted daily average or annual average flow for three consecutive months, the permittee must initiate engineering and financial planning for expansion and/or upgrading of the domestic wastewater treatment and/or collection facilities. Whenever the flow reaches 90 percent of the permitted daily average or annual average flow for three consecutive months, the permittee shall obtain necessary authorization from the Commission to commence construction of the necessary additional treatment and/or collection facilities. In the case of a domestic wastewater treatment facility which reaches 75 percent of the permitted daily average or annual average flow for three consecutive months, and the planned population to be served or the quantity of waste produced is not expected to exceed the design limitations of the treatment facility, the permittee shall submit an engineering report supporting this claim to the Executive Director of the Commission.

If in the judgement of the Executive Director the population to be served will not cause permit noncompliance, then the requirement of this section may be waived. To be effective, any waiver must be in writing and signed by the Director of the Enforcement Division (MC 149) of the Commission, and such waiver of these requirements will be reviewed upon expiration of the existing permit; however, any such waiver shall not be interpreted as condoning or excusing any violation of any permit parameter.

- b. The plans and specifications for domestic sewage collection and treatment works associated with any domestic permit must be approved by the Commission, and failure to secure approval before commencing construction of such works or making a discharge is a violation of this permit and each day is an additional violation until approval has been secured.

- c. Permits for domestic wastewater treatment plants are granted subject to the policy of the Commission to encourage the development of area-wide waste collection, treatment and disposal systems. The Commission reserves the right to amend any domestic wastewater permit in accordance with applicable procedural requirements to require the system covered by this permit to be integrated into an area-wide system, should such be developed; to require the delivery of the wastes authorized to be collected in, treated by or discharged from said system, to such area-wide system; or to amend this permit in any other particular to effectuate the Commission's policy. Such amendments may be made when the changes required are advisable for water quality control purposes and are feasible on the basis of waste treatment technology, engineering, financial, and related considerations existing at the time the changes are required, exclusive of the loss of investment in or revenues from any then existing or proposed waste collection, treatment or disposal system.
9. Domestic wastewater treatment plants shall be operated and maintained by sewage plant operators holding a valid certificate of competency at the required level as defined in 30 TAC Chapter 30.
10. For Publicly Owned Treatment Works (POTWs), the 30-day average (or monthly average) percent removal for BOD and TSS shall not be less than 85 percent, unless otherwise authorized by this permit.
11. Facilities which generate industrial solid waste as defined in 30 TAC § 335.1 shall comply with these provisions:
- Any solid waste, as defined in 30 TAC § 335.1 (including but not limited to such wastes as garbage, refuse, sludge from a waste treatment, water supply treatment plant or air pollution control facility, discarded materials, discarded materials to be recycled, whether the waste is solid, liquid, or semisolid), generated by the permittee during the management and treatment of wastewater, must be managed in accordance with all applicable provisions of 30 TAC Chapter 335, relating to Industrial Solid Waste Management.
 - Industrial wastewater that is being collected, accumulated, stored, or processed before discharge through any final discharge outfall, specified by this permit, is considered to be industrial solid waste until the wastewater passes through the actual point source discharge and must be managed in accordance with all applicable provisions of 30 TAC Chapter 335.
 - The permittee shall provide written notification, pursuant to the requirements of 30 TAC § 335.8(b)(1), to the Environmental Cleanup Section (MC 127) of the Remediation Division informing the Commission of any closure activity involving an Industrial Solid Waste Management Unit, at least 90 days prior to conducting such an activity.
 - Construction of any industrial solid waste management unit requires the prior written notification of the proposed activity to the Registration and Reporting Section (MC 129) of the Registration, Review, and Reporting Division. No person shall dispose of industrial solid waste, including sludge or other solids from wastewater treatment processes, prior to fulfilling the deed recordation requirements of 30 TAC § 335.5.
 - The term "industrial solid waste management unit" means a landfill, surface impoundment, waste-pile, industrial furnace, incinerator, cement kiln, injection well, container, drum, salt dome waste containment cavern, or any other structure vessel, appurtenance, or other improvement on land used to manage industrial solid waste.
 - The permittee shall keep management records for all sludge (or other waste) removed from any wastewater treatment process. These records shall fulfill all applicable requirements of 30 TAC Chapter 335 and must include the following, as it pertains to wastewater treatment and discharge:
 - Volume of waste and date(s) generated from treatment process;
 - Volume of waste disposed of on-site or shipped off-site;
 - Date(s) of disposal;
 - Identity of hauler or transporter;
 - Location of disposal site; and
 - Method of final disposal.
- The above records shall be maintained on a monthly basis. The records shall be retained at the facility site, or shall be readily available for review by authorized representatives of the TCEQ for at least five years.
12. For industrial facilities to which the requirements of 30 TAC Chapter 335 do not apply, sludge and solid wastes, including tank cleaning and contaminated solids for disposal, shall be disposed of in accordance with Chapter 361 of the Texas Health and Safety Code.

SLUDGE PROVISIONS

The permittee is authorized to dispose of sludge only at a Texas Commission on Environmental Quality (TCEQ) authorized land application site or co-disposal landfill. The disposal of sludge by land application on property owned, leased or under the direct control of the permittee is a violation of the permit unless the site is authorized with the TCEQ. This provision does not authorize Distribution and Marketing of sludge. This provision does not authorize land application of Class A Sludge. This provision does not authorize the permittee to land apply sludge on property owned, leased or under the direct control of the permittee.

SECTION I. REQUIREMENTS APPLYING TO ALL SEWAGE SLUDGE LAND APPLICATION

A. General Requirements

1. The permittee shall handle and dispose of sewage sludge in accordance with 30 TAC Chapter 312 and all other applicable state and federal regulations in a manner which protects public health and the environment from any reasonably anticipated adverse effects due to any toxic pollutants which may be present in the sludge.
2. In all cases, if the person (permit holder) who prepares the sewage sludge supplies the sewage sludge to another person for land application use or to the owner or lease holder of the land, the permit holder shall provide necessary information to the parties who receive the sludge to assure compliance with these regulations.
3. The permittee shall give 180 days prior notice to the Executive Director in care of the Wastewater Permitting Section (MC 148) of the Water Quality Division of any change planned in the sewage sludge disposal practice.

B. Testing Requirements

1. Sewage sludge shall be tested once during the term of this permit in accordance with the method specified in both 40 CFR Part 261, Appendix II and 40 CFR Part 268, Appendix I [Toxicity Characteristic Leaching Procedure (TCLP)] or other method, which receives the prior approval of the TCEQ for the contaminants listed in Table 1 of 40 CFR Section 261.24. Sewage sludge failing this test shall be managed according to RCRA standards for generators of hazardous waste, and the waste's disposition must be in accordance with all applicable requirements for hazardous waste processing, storage, or disposal. Following failure of any TCLP test, the management or disposal of sewage sludge at a facility other than an authorized hazardous waste processing, storage, or disposal facility shall be prohibited until such time as the permittee can demonstrate the sewage sludge no longer exhibits the hazardous waste toxicity characteristics (as demonstrated by the results of the TCLP tests). A written report shall be provided to both the TCEQ Registration and Reporting Section (MC 129) of the Registration, Review, and Reporting Division and the Regional Director (MC Region 14) within 7 days after failing the TCLP Test.

The report shall contain test results, certification that unauthorized waste management has stopped and a summary of alternative disposal plans that comply with RCRA standards for the management of hazardous waste. The report shall be addressed to: Director, Registration, Review, and Reporting Division (MC 129), Texas Commission on Environmental Quality, P. O. Box 13087, Austin, Texas 78711-3087. In addition, the permittee shall prepare an annual report on the results of all sludge toxicity testing. This annual report shall be submitted to the TCEQ Regional Office (MC Region 14) and the Water Quality Compliance Monitoring Team (MC 224) of the Enforcement Division by September 1 of each year.

2. Sewage sludge shall not be applied to the land if the concentration of the pollutants exceed the pollutant concentration criteria in Table 1. The frequency of testing for pollutants in Table 1 is found in Section 1.C.

TABLE 1

<u>Pollutant</u>	<u>Ceiling Concentration (milligrams per kilogram)*</u>
Arsenic	75
Cadmium	85
Chromium	3000
Copper	4300
Lead	840
Mercury	57
Molybdenum	75
Nickel	420
PCBs	49
Selenium	100
Zinc	7500

* Dry weight basis

3. Pathogen Control

All sewage sludge that is applied to agricultural land, forest, a public contact site, or a reclamation site shall be treated by one of the following methods to ensure that the sludge meets either the Class A or Class B pathogen requirements.

- a. Six alternatives are available to demonstrate compliance with Class A sewage sludge. The first 4 options require either the density of fecal coliform in the sewage sludge be less than 1000 Most Probable Number (MPN) per gram of total solids (dry weight basis), or the density of *Salmonella* sp. bacteria in the sewage sludge be less than three MPN per four grams of total solids (dry weight basis) at the time the sewage sludge is used or disposed. Below are the additional requirements necessary to meet the definition of a Class A sludge.

Alternative 1 - The temperature of the sewage sludge that is used or disposed shall be maintained at or above a specific value for a period of time. See 30 TAC Section 312.82(a)(2)(A) for specific information.

Alternative 2 - The pH of the sewage sludge that is used or disposed shall be raised to above 12 std. units and shall remain above 12 std. units for 72 hours.

The temperature of the sewage sludge shall be above 52 degrees Celsius for 12 hours or longer during the period that the pH of the sewage sludge is above 12 std. units.

At the end of the 72-hour period during which the pH of the sewage sludge is above 12 std. units, the sewage sludge shall be air dried to achieve a percent solids in the sewage sludge greater than 50 percent.

Alternative 3 - The sewage sludge shall be analyzed for enteric viruses prior to pathogen treatment. The limit for enteric viruses is less than one Plaque-forming Unit per four grams of total solids (dry weight basis) either before or following pathogen treatment. See 30 TAC Section 312.82(a)(2)(C)(i-iii) for specific information. The sewage sludge shall be analyzed for viable helminth ova prior to pathogen treatment. The limit for viable helminth ova is less than one per four grams of total solids (dry weight basis) either before or following pathogen treatment. See 30 TAC Section 312.82(a)(2)(C)(iv-vi) for specific information.

Alternative 4 - The density of enteric viruses in the sewage sludge shall be less than one Plaque-forming Unit per four grams of total solids (dry weight basis) at the time the sewage sludge is used or disposed. The density of viable helminth ova in the sewage sludge shall be less than one per four grams of total solids (dry weight basis) at the time the sewage sludge is used or disposed.

Alternative 5 (PFRP) - Sewage sludge that is used or disposed of shall be treated in one of the processes to Further Reduce Pathogens (PFRP) described in 40 CFR Part 503, Appendix B. PFRP include composting, heat drying, heat treatment, and thermophilic aerobic digestion.

Alternative 6 (PFRP Equivalent) - Sewage sludge that is used or disposed of shall be treated in a process that has been approved by the U. S. Environmental Protection Agency as being equivalent to those in Alternative 5.

- b. Three alternatives are available to demonstrate compliance with Class B criteria for sewage sludge.

Alternative 1 -

- i. A minimum of seven random samples of the sewage sludge shall be collected within 48 hours of the time the sewage sludge is used or disposed of during each monitoring episode for the sewage sludge.
- ii. The geometric mean of the density of fecal coliform in the samples collected shall be less than either 2,000,000 MPN per gram of total solids (dry weight basis) or 2,000,000 Colony Forming Units per gram of total solids (dry weight basis).

Alternative 2 - Sewage sludge that is used or disposed of shall be treated in one of the Processes to Significantly Reduce Pathogens (PSRP) described in 40 CFR Part 503, Appendix B, so long as all of the following requirements are met by the generator of the sewage sludge.

- i. Prior to use or disposal, all the sewage sludge must have been generated from a single location, except as provided in paragraph v. below;
- ii. An independent Texas Licensed Professional Engineer must make a certification to the generator of a sewage sludge that the wastewater treatment facility generating the sewage sludge is designed to achieve one of the PSRP at the permitted design loading of the facility. The certification need only be repeated if the design loading of the facility is increased. The certification shall include a statement indicating the design meets all the applicable standards specified in Appendix B of 40 CFR Part 503;
- iii. Prior to any off-site transportation or on-site use or disposal of any sewage sludge generated at a wastewater treatment facility, the chief certified operator of the wastewater treatment facility or other responsible official who manages the processes to significantly reduce pathogens at the wastewater treatment facility for the permittee, shall certify that the sewage sludge underwent at least the minimum operational requirements necessary in order to meet one of the PSRP. The acceptable processes and the minimum operational and record keeping requirements shall be in accordance with established U. S. Environmental Protection Agency final guidance;
- iv. All certification records and operational records describing how the requirements of this paragraph were met shall be kept by the generator for a minimum of three years and be available for inspection by commission staff for review; and
- v. If the sewage sludge is generated from a mixture of sources, resulting from a person who prepares sewage sludge from more than one wastewater treatment facility, the resulting derived product shall meet one of the PSRP, and shall meet the certification, operation, and record keeping requirements of this paragraph.

Alternative 3 - Sewage sludge shall be treated in an equivalent process that has been approved by the U. S. Environmental Protection Agency, so long as all of the following requirements are met by the generator of the sewage sludge.

- i. Prior to use or disposal, all the sewage sludge must have been generated from a single location, except as provided in paragraph v. below;
- ii. Prior to any off-site transportation or on-site use or disposal of any sewage sludge generated at a wastewater treatment facility, the chief certified operator of the wastewater treatment facility or other responsible official who manages the processes to significantly reduce pathogens at the wastewater treatment facility for the permittee, shall certify that the sewage sludge underwent at least the minimum operational requirements necessary in order to meet one of the PSRP. The acceptable processes and the minimum operational and record keeping requirements shall be in accordance with established U. S. Environmental Protection Agency final guidance;
- iii. All certification records and operational records describing how the requirements of this paragraph were met shall be kept by the generator for a minimum of three years and be available for inspection by commission staff for review;
- iv. The executive director will accept from the U. S. Environmental Protection Agency a finding of equivalency to the defined PSRP; and

- v. If the sewage sludge is generated from a mixture of sources resulting from a person who prepares sewage sludge from more than one wastewater treatment facility, the resulting derived product shall meet one of the Processes to Significantly Reduce Pathogens, and shall meet the certification, operation, and record keeping requirements of this paragraph.

In addition, the following site restrictions must be met if Class B sludge is land applied:

- i. Food crops with harvested parts that touch the sewage sludge/soil mixture and are totally above the land surface shall not be harvested for 14 months after application of sewage sludge.
- ii. Food crops with harvested parts below the surface of the land shall not be harvested for 20 months after application of sewage sludge when the sewage sludge remains on the land surface for 4 months or longer prior to incorporation into the soil.
- iii. Food crops with harvested parts below the surface of the land shall not be harvested for 38 months after application of sewage sludge when the sewage sludge remains on the land surface for less than 4 months prior to incorporation into the soil.
- iv. Food crops, feed crops, and fiber crops shall not be harvested for 30 days after application of sewage sludge.
- v. Animals shall not be allowed to graze on the land for 30 days after application of sewage sludge.
- vi. Turf grown on land where sewage sludge is applied shall not be harvested for 1 year after application of the sewage sludge when the harvested turf is placed on either land with a high potential for public exposure or a lawn.
- vii. Public access to land with a high potential for public exposure shall be restricted for 1 year after application of sewage sludge.
- viii. Public access to land with a low potential for public exposure shall be restricted for 30 days after application of sewage sludge.
- ix. Land application of sludge shall be in accordance with the buffer zone requirements found in 30 TAC Section 312.44.

4. Vector Attraction Reduction Requirements

All bulk sewage sludge that is applied to agricultural land, forest, a public contact site, or a reclamation site shall be treated by one of the following alternatives 1 through 10 for Vector Attraction Reduction.

- Alternative 1 - The mass of volatile solids in the sewage sludge shall be reduced by a minimum of 38 percent.
- Alternative 2 - If Alternative 1 cannot be met for an anaerobically digested sludge, demonstration can be made by digesting a portion of the previously digested sludge anaerobically in the laboratory in a bench-scale unit for 40 additional days at a temperature between 30 and 37 degrees Celsius. Volatile solids must be reduced by less than 17 percent to demonstrate compliance.
- Alternative 3 - If Alternative 1 cannot be met for an aerobically digested sludge, demonstration can be made by digesting a portion of the previously digested sludge with a percent solids of two percent or less aerobically in the laboratory in a bench-scale unit for 30 additional days at 20 degrees Celsius. Volatile solids must be reduced by less than 15 percent to demonstrate compliance.
- Alternative 4 - The specific oxygen uptake rate (SOUR) for sewage sludge treated in an aerobic process shall be equal to or less than 1.5 milligrams of oxygen per hour per gram of total solids (dry weight basis) at a temperature of 20 degrees Celsius.
- Alternative 5 - Sewage sludge shall be treated in an aerobic process for 14 days or longer. During that time, the temperature of the sewage sludge shall be higher than 40 degrees Celsius and the average temperature of the sewage sludge shall be higher than 45 degrees Celsius.

- Alternative 6 - The pH of sewage sludge shall be raised to 12 or higher by alkali addition and, without the addition of more alkali shall remain at 12 or higher for two hours and then remain at a pH of 11.5 or higher for an additional 22 hours at the time the sewage sludge is prepared for sale or given away in a bag or other container.
- Alternative 7 - The percent solids of sewage sludge that does not contain unstabilized solids generated in a primary wastewater treatment process shall be equal to or greater than 75 percent based on the moisture content and total solids prior to mixing with other materials. Unstabilized solids are defined as organic materials in sewage sludge that have not been treated in either an aerobic or anaerobic treatment process.
- Alternative 8 - The percent solids of sewage sludge that contains unstabilized solids generated in a primary wastewater treatment process shall be equal to or greater than 90 percent based on the moisture content and total solids prior to mixing with other materials at the time the sludge is used. Unstabilized solids are defined as organic materials in sewage sludge that have not been treated in either an aerobic or anaerobic treatment process.
- Alternative 9 -
 - i. Sewage sludge shall be injected below the surface of the land.
 - ii. No significant amount of the sewage sludge shall be present on the land surface within one hour after the sewage sludge is injected.
 - iii. When sewage sludge that is injected below the surface of the land is Class A with respect to pathogens, the sewage sludge shall be injected below the land surface within eight hours after being discharged from the pathogen treatment process.
- Alternative 10-
 - i. Sewage sludge applied to the land surface or placed on a surface disposal site shall be incorporated into the soil within six hours after application to or placement on the land.
 - ii. When sewage sludge that is incorporated into the soil is Class A with respect to pathogens, the sewage sludge shall be applied to or placed on the land within eight hours after being discharged from the pathogen treatment process.

C. Monitoring Requirements

- Toxicity Characteristic Leaching Procedure (TCLP) Test - once during the term of this permit
- PCBs - once during the term of this permit

All metal constituents and Fecal coliform or Salmonella sp. bacteria shall be monitored at the appropriate frequency shown below, pursuant to 30 TAC Section 312.46(a)(1):

<u>Amount of sewage sludge (*) metric tons per 365-day period</u>	<u>Monitoring Frequency</u>
0 to less than 290	Once/Year
290 to less than 1,500	Once/Quarter
1,500 to less than 15,000	Once/Two Months
15,000 or greater	Once/Month

(*) The amount of bulk sewage sludge applied to the land (dry weight basis).

Representative samples of sewage sludge shall be collected and analyzed in accordance with the methods referenced in 30 TAC Section 312.7.

SECTION II. REQUIREMENTS SPECIFIC TO BULK SEWAGE SLUDGE FOR APPLICATION TO THE LAND MEETING CLASS A or B PATHOGEN REDUCTION AND THE CUMULATIVE LOADING RATES IN TABLE 2, OR CLASS B PATHOGEN REDUCTION AND THE POLLUTANT CONCENTRATIONS IN TABLE 3

For those permittees meeting Class A or B pathogen reduction requirements and that meet the cumulative loading rates in Table 2 below, or the Class B pathogen reduction requirements and contain concentrations of pollutants below listed in Table 3, the following conditions apply:

A. Pollutant Limits

Table 2

<u>Pollutant</u>	<u>Cumulative Pollutant Loading Rate (pounds per acre)</u>
Arsenic	36
Cadmium	35
Chromium	2677
Copper	1339
Lead	268
Mercury	15
Molybdenum	Report Only
Nickel	375
Selenium	89
Zinc	2500

Table 3

<u>Pollutant</u>	<u>Monthly Average Concentration (milligrams per kilogram)*</u>
Arsenic	41
Cadmium	39
Chromium	1200
Copper	1500
Lead	300
Mercury	17
Molybdenum	Report Only
Nickel	420
Selenium	36
Zinc	2800

* Dry weight basis

B. Pathogen Control

All bulk sewage sludge that is applied to agricultural land, forest, a public contact site, a reclamation site, shall be treated by either Class A or Class B pathogen reduction requirements as defined above in Section I.B.3.

C. Management Practices

1. Bulk sewage sludge shall not be applied to agricultural land, forest, a public contact site, or a reclamation site that is flooded, frozen, or snow-covered so that the bulk sewage sludge enters a wetland or other waters in the State.
2. Bulk sewage sludge not meeting Class A requirements shall be land applied in a manner which complies with the Management Requirements in accordance with 30 TAC Section 312.44.
3. Bulk sewage sludge shall be applied at or below the agronomic rate of the cover crop.

4. An information sheet shall be provided to the person who receives bulk sewage sludge sold or given away. The information sheet shall contain the following information:
 - a. The name and address of the person who prepared the sewage sludge that is sold or given away in a bag or other container for application to the land.
 - b. A statement that application of the sewage sludge to the land is prohibited except in accordance with the instruction on the label or information sheet.
 - c. The annual whole sludge application rate for the sewage sludge application rate for the sewage sludge that does not cause any of the cumulative pollutant loading rates in Table 2 above to be exceeded, unless the pollutant concentrations in Table 3 found in Section II above are met.

D. Notification Requirements

1. If bulk sewage sludge is applied to land in a State other than Texas, written notice shall be provided prior to the initial land application to the permitting authority for the State in which the bulk sewage sludge is proposed to be applied. The notice shall include:
 - a. The location, by street address, and specific latitude and longitude, of each land application site.
 - b. The approximate time period bulk sewage sludge will be applied to the site.
 - c. The name, address, telephone number, and National Pollutant Discharge Elimination System permit number (if appropriate) for the person who will apply the bulk sewage sludge.
2. The permittee shall give 180 days prior notice to the Executive Director in care of the Wastewater Permitting Section (MC 148) of the Water Quality Division of any change planned in the sewage sludge disposal practice.

E. Record keeping Requirements

The sludge documents will be retained at the facility site and/or shall be readily available for review by a TCEQ representative. The person who prepares bulk sewage sludge or a sewage sludge material shall develop the following information and shall retain the information at the facility site and/or shall be readily available for review by a TCEQ representative for a period of five years. If the permittee supplies the sludge to another person who land applies the sludge, the permittee shall notify the land applier of the requirements for record keeping found in 30 TAC Section 312.47 for persons who land apply.

1. The concentration (mg/kg) in the sludge of each pollutant listed in Table 3 above and the applicable pollutant concentration criteria (mg/kg), or the applicable cumulative pollutant loading rate and the applicable cumulative pollutant loading rate limit (lbs/ac) listed in Table 2 above.
2. A description of how the pathogen reduction requirements are met (including site restrictions for Class B sludges, if applicable).
3. A description of how the vector attraction reduction requirements are met.
4. A description of how the management practices listed above in Section II.C are being met.
5. The following certification statement:

"I certify, under penalty of law, that the applicable pathogen requirements in 30 TAC Section 312.82(a) or (b) and the vector attraction reduction requirements in 30 TAC Section 312.83(b) have been met for each site on which bulk sewage sludge is applied. This determination has been made under my direction and supervision in accordance with the system designed to ensure that qualified personnel properly gather and evaluate the information used to determine that the management practices have been met. I am aware that there are significant penalties for false certification including fine and imprisonment."
6. The recommended agronomic loading rate from the references listed in Section II.C.3. above, as well as the actual agronomic loading rate shall be retained.

The person who applies bulk sewage sludge or a sewage sludge material shall develop the following information and shall retain the information at the facility site and/or shall be readily available for review by a TCEQ representative indefinitely. If the permittee supplies the sludge to another person who land applies the sludge, the permittee shall notify the land applier of the requirements for record keeping found in 30 TAC Section 312.47 for persons who land apply.

1. A certification statement that all applicable requirements (specifically listed) have been met, and that the permittee understands that there are significant penalties for false certification including fine and imprisonment. See 30 TAC Section 312.47(a)(4)(A)(ii) or 30 TAC Section 312.47(a)(5)(A)(ii), as applicable, and to the permittee's specific sludge treatment activities.
2. The location, by street address, and specific latitude and longitude, of each site on which sludge is applied.
3. The number of acres in each site on which bulk sludge is applied.
4. The date and time sludge is applied to each site.
5. The cumulative amount of each pollutant in pounds/acre listed in Table 2 applied to each site.
6. The total amount of sludge applied to each site in dry tons.

The above records shall be maintained on-site on a monthly basis and shall be made available to the Texas Commission on Environmental Quality upon request.

F. Reporting Requirements

The permittee shall report annually to the TCEQ Regional Office (MC Region 14) and Water Quality Compliance Monitoring Team (MC 224) of the Enforcement Division, by September 1 of each year the following information:

1. Results of tests performed for pollutants found in either Table 2 or 3 as appropriate for the permittee's land application practices.
2. The frequency of monitoring listed in Section I.C. which applies to the permittee.
3. Toxicity Characteristic Leaching Procedure (TCLP) results.
4. Identity of hauler(s) and TCEQ transporter number.
5. PCB concentration in sludge in mg/kg.
6. Date(s) of disposal.
7. Owner of disposal site(s).
8. Texas Commission on Environmental Quality registration number, if applicable.
9. Amount of sludge disposal dry weight (lbs/acre) at each disposal site.
10. The concentration (mg/kg) in the sludge of each pollutant listed in Table 1 (defined as a monthly average) as well as the applicable pollutant concentration criteria (mg/kg) listed in Table 3 above, or the applicable pollutant loading rate limit (lbs/acre) listed in Table 2 above if it exceeds 90% of the limit.
11. Level of pathogen reduction achieved (Class A or Class B).
12. Alternative used as listed in Section I.B.3. (a. or b.). Alternatives describe how the pathogen reduction requirements are met. If Class B sludge, include information on how site restrictions were met.
13. Vector attraction reduction alternative used as listed in Section I.B.4.
14. Annual sludge production in dry tons/year.

15. Amount of sludge land applied in dry tons/year.
16. The certification statement listed in either 30 TAC Section 312.47(a)(4)(A)(ii) or 30 TAC Section 312.47(a)(5)(A)(ii) as applicable to the permittee's sludge treatment activities, shall be attached to the annual reporting form.
17. When the amount of any pollutant applied to the land exceeds 90% of the cumulative pollutant loading rate for that pollutant, as described in Table 2, the permittee shall report the following information as an attachment to the annual reporting form.
 - a. The location, by street address, and specific latitude and longitude.
 - b. The number of acres in each site on which bulk sewage sludge is applied.
 - c. The date and time bulk sewage sludge is applied to each site.
 - d. The cumulative amount of each pollutant (i.e., pounds/acre) listed in Table 2 in the bulk sewage sludge applied to each site.
 - e. The amount of sewage sludge (i.e., dry tons) applied to each site.

The above records shall be maintained on a monthly basis and shall be made available to the Texas Commission on Environmental Quality upon request.

SECTION III. REQUIREMENTS APPLYING TO ALL SEWAGE SLUDGE DISPOSED IN A MUNICIPAL SOLID WASTE LANDFILL

- A. The permittee shall handle and dispose of sewage sludge in accordance with 30 TAC Chapter 330 and all other applicable state and federal regulations to protect public health and the environment from any reasonably anticipated adverse effects due to any toxic pollutants that may be present. The permittee shall ensure that the sewage sludge meets the requirements in 30 TAC Chapter 330 concerning the quality of the sludge disposed in a municipal solid waste landfill.
- B. If the permittee generates sewage sludge and supplies that sewage sludge to the owner or operator of a Municipal Solid Waste Landfill (MSWLF) for disposal, the permittee shall provide to the owner or operator of the MSWLF appropriate information needed to be in compliance with the provisions of this permit.
- C. The permittee shall give 180 days prior notice to the Executive Director in care of the Wastewater Permitting Section (MC 148) of the Water Quality Division of any change planned in the sewage sludge disposal practice.
- D. Sewage sludge shall be tested once during the term of this permit in accordance with the method specified in both 40 CFR Part 261, Appendix II and 40 CFR Part 268, Appendix I (Toxicity Characteristic Leaching Procedure) or other method, which receives the prior approval of the TCEQ for contaminants listed in Table 1 of 40 CFR Section 261.24. Sewage sludge failing this test shall be managed according to RCRA standards for generators of hazardous waste, and the waste's disposition must be in accordance with all applicable requirements for hazardous waste processing, storage, or disposal.

Following failure of any TCLP test, the management or disposal of sewage sludge at a facility other than an authorized hazardous waste processing, storage, or disposal facility shall be prohibited until such time as the permittee can demonstrate the sewage sludge no longer exhibits the hazardous waste toxicity characteristics (as demonstrated by the results of the TCLP tests). A written report shall be provided to both the TCEQ Registration and Reporting Section (MC 129) of the Registration, Review, and Reporting Division and the Regional Director (MC Region 14) of the appropriate TCEQ field office within 7 days after failing the TCLP Test.

The report shall contain test results, certification that unauthorized waste management has stopped and a summary of alternative disposal plans that comply with RCRA standards for the management of hazardous waste. The report shall be addressed to: Director, Registration, Review, and Reporting Division (MC 129), Texas Commission on Environmental Quality, P. O. Box 13087, Austin, Texas 78711-3087. In addition, the permittee shall prepare an annual report on the results of all sludge toxicity testing. This annual report shall be submitted to the TCEQ Regional Office (MC Region 14) and the Water Quality Compliance Monitoring Team (MC 224) of the Enforcement Division by September 1 of each year.

- E. Sewage sludge shall be tested as needed, in accordance with the requirements of 30 TAC Chapter 330.
- F. Record keeping Requirements

The permittee shall develop the following information and shall retain the information for five years.

1. The description (including procedures followed and the results) of all liquid Paint Filter Tests performed.
2. The description (including procedures followed and results) of all TCLP tests performed.

The above records shall be maintained on-site on a monthly basis and shall be made available to the Texas Commission on Environmental Quality upon request.

G. Reporting Requirements

The permittee shall report annually to the TCEQ Regional Office (MC Region 14) and Water Quality Compliance Monitoring Team (MC 224) of the Enforcement Division by September 1 of each year the following information:

1. Toxicity Characteristic Leaching Procedure (TCLP) results.
2. Annual sludge production in dry tons/year.
3. Amount of sludge disposed in a municipal solid waste landfill in dry tons/year.
4. Amount of sludge transported interstate in dry tons/year.
5. A certification that the sewage sludge meets the requirements of 30 TAC Chapter 330 concerning the quality of the sludge disposed in a municipal solid waste landfill.
6. Identity of hauler(s) and transporter registration number.
7. Owner of disposal site(s).
8. Location of disposal site(s).
9. Date(s) of disposal.

The above records shall be maintained on-site on a monthly basis and shall be made available to the Texas Commission on Environmental Quality upon request.

OTHER REQUIREMENTS

1. The permittee shall employ or contract with one or more licensed wastewater treatment facility operators or wastewater system operations companies holding a valid license or registration according to the requirements of 30 TAC Chapter 30, Occupational Licenses and Registrations and in particular 30 TAC Chapter 30, Subchapter J, Wastewater Operators and Operations Companies.

This Category D facility must be operated by a chief operator or an operator holding a Category D license or higher. The facility must be operated a minimum of five days per week by the licensed chief operator or an operator holding the required level of license or higher. The licensed chief operator or operator holding the required level of license or higher must be available by telephone or pager seven days per week. Where shift operation of the wastewater treatment facility is necessary, each shift which does not have the on-site supervision of the licensed chief operator must be supervised by an operator in charge who is licensed not less than one level below the category for the facility.

2. The Executive Director has reviewed this action for consistency with the goals and policies of the Texas Coastal Management Program (CMP) in accordance with the regulations of the Coastal Coordination Council (CCC) and has determined that the action is consistent with the applicable CMP goals and policies.
3. The permittee is hereby placed on notice that this permit may be reviewed by the TCEQ after the completion of any new intensive water quality survey on Segment No. 2462 of the Bays and Estuaries and any subsequent updating of the water quality model for Segment No. 2462, in order to determine if the limitations and conditions contained herein are consistent with any such revised model. The permit may be amended, pursuant to 30 TAC Section 305.62, as a result of such review. The permittee is also hereby placed on notice that effluent limits may be made more stringent at renewal based on, for example, any change to modeling protocol approved in the TCEQ Continuing Planning Process.
4. The permittee shall comply with the requirements of 30 TAC Section 309.13 (a) through (d). In addition, by ownership of the required buffer zone area, the permittee shall comply with the requirements of 30 TAC Section 309.13(e).
5. Reporting requirements according to 30 TAC Sections 319.1-319.11 and any additional effluent reporting requirements contained in this permit are suspended from the effective date of the permit until plant startup or discharge, whichever occurs first, from the facility described by this permit. The permittee shall provide written notice to the TCEQ Regional Office (MC Region 14) and the Applications Review and Processing Team (MC 148) of the Water Quality Division at least forty-five (45) days prior to plant startup or anticipated discharge, whichever occurs first.
6. The permittee shall provide facilities for the protection of its wastewater treatment facilities from a 100-year flood.
7. Prior to construction of the treatment facilities, the permittee shall submit to the TCEQ Wastewater Permitting Section (MC 148) a summary submittal letter in accordance with the requirements in 30 TAC Section 317.1. If requested by the Wastewater Permitting Section, the permittee shall submit plans, specifications and a final engineering design report which comply with 30 TAC Chapter 317, Design Criteria for Sewerage Systems. The permittee shall clearly show how the treatment system will meet the final permitted effluent limitations required on Page 2 of the permit.

8. The permittee is authorized to haul sludge from the wastewater treatment facility, by a licensed hauler, to the Guadalupe-Blanco River Authority/Victoria Regional Wastewater Treatment Facility, Permit No. WQ0011078001 to be digested, blended, dewatered and then disposed of with the sludge from the plant accepting the sludge.

The permittee shall keep records of all sludge removed from the wastewater treatment plant site and these records shall include the following information:

- a. The volume of sludge hauled;
- b. The date(s) that sludge was hauled;
- c. The identity of haulers; and
- d. The permittee, TCEQ permit number, and location of the wastewater treatment plant to which the sludge is hauled.

These records shall be maintained on a monthly basis and shall be reported to the TCEQ Regional Office (MC Region 14) and the TCEQ Water Quality Compliance Monitoring Team (MC 224) of the Enforcement Division by September 1 of each year.

Attachment B

PROPOSED PERMIT NO. WQ0014716001

APPLICATION BY

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BEFORE THE

2007 NOV -8 AM 9: 54

SEADRIFT RANCH

TEXAS COMMISSION ON

CHIEF CLERKS OFFICE

PARTNERS, LTD.

ENVIRONMENTAL QUALITY

EXECUTIVE DIRECTOR'S AMENDED RESPONSE TO PUBLIC COMMENT

The Executive Director of the Texas Commission on Environmental Quality (the Commission or TCEQ) files this Response to Public Comment (Response) on the Seadrift Ranch Partners, LTD.'s application and the Executive Director's preliminary decision. As required by Title 30 of the Texas Administrative Code (TAC), Section 55.156, before a permit is issued, the Executive Director prepares a response to all timely, relevant and material, or significant comments. The Office of the Chief Clerk timely received comment letters from the following persons: Virginia Cervenka, Daniel Cervenka, Rick Dierlam, Steven B. Dublin, Carol J. Garriott, Dudley W. and Patsy A. Garrett, Willa Vee Hewlett, Petra Hockey, Chris Martin, Ben N. and Barbara B. Nurick, Franklin Pierce, Jeffrey and Terri Kubena, Carrie N. Henry, Rosa Mary and L.M. Caddell, Ron and Christi A. Walter, Greg A. and Christie K. Waida, Captain Lynn Stackable, Helen Arnold, Russell Douglass, and Mary Jo Adams. This response addresses all such 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

Seadrift Ranch Partners, LTD. (Applicant) has applied to the TCEQ for a new permit to authorize the discharge of treated domestic wastewater at a daily average flow not to exceed 25,000 gallons per day. The proposed wastewater treatment facility will serve the Bay Club at Falcon Point Ranch Subdivision.

The treated effluent will be discharged to a storm water detention/retention pond; then to an unnamed lake; then to an unnamed drainage ditch; and then to the San Antonio Bay/Hynes Bay/Guadalupe Bay in Segment No. 2462 of the Bays and Estuaries. The unclassified receiving water use for the storm water detention/retention pond and unnamed lake is limited aquatic life use. The designated uses for Segment No. 2462 are contact recreation, oyster waters, and exceptional aquatic life uses. Segment No. 2462 is currently listed on the State's inventory of impaired and threatened waters (2004 Clean Water Act Section 303(d) list). The listing is specifically for bacteria for oyster waters in Guadalupe Bay, San Antonio Bay near Seadrift and the Intercoastal Waterway.

The facility will be located 3,600 feet southeast of the intersection of Swan Point and Falcon Point Roads in Calhoun County, Texas.

Procedural Background

The permit application for a new permit was received on May 12, 2006, and declared administratively complete on July 10, 2006. The Notice of Receipt and Intent to Obtain a Water Quality Permit (NORI) was published on August 2, 2006, in *The Port Lavaca Wave*. The Notice of Application and Preliminary Decision (NAPD) for a Water Quality Permit was published on November 15, 2006 in *The Port Lavaca Wave*. The public comment period ended on December 15, 2006. The original RTC was filed on June 1, 2007. Due to an error in the mailing list of the first NAPD, the NAPD was again mailed to the adjacent property owners to correct the error. The second comment period ended on October 22, 2007. This application was administratively complete on or after September 1, 1999; therefore, this application is subject to the procedural requirements adopted pursuant to House Bill 801, 76th Legislature, 1999.

COMMENTS AND RESPONSES

COMMENT 1:

Willa Vee Hewlett and Helen Arnold are concerned that the Applicant is not requiring septic systems for their individual lots. Jeffery and Terri Kubena believe the Applicant should build an irrigation system. Steven B. Dublin believes that there must be a better way to handle the sewage needs of the development.

RESPONSE 1:

Section 26.027 of the Texas Water Code authorizes TCEQ to issue permits for the discharge of waste or pollutants into or adjacent to water in the state. Neither Chapter 26 of the Texas Water Code nor the applicable TCEQ wastewater regulations authorize the agency to require a permittee to consider a different process or method of wastewater treatment, whether by discharge, septic, or irrigation. The Applicant applied for a wastewater discharge permit and the ED has preliminarily determined that the proposed permit, if issued, will be protective of water in the state.

COMMENT 2:

Rosa Mary and L.M. Caddell, Jeffrey and Terri Kubena, Carol J. Garriott, Stephen B. Dublin, Dudley W. and Patsy A. Garrett, Petra Hockey, Ben N. and Barbara Nurick, Willa Vee Hewlett, Carrie N. Henry, Greg A. and Christie K. Waida, Chris Martin, Daniel Cervenka, Virginia Cervenka, Christi and Ron Walter, and Helen Arnold are concerned that the discharge of wastewater into San Antonio Bay could very well be a threat to marine life and the ecological health of the bay. Ben N. and Barbara Nurick are also concerned that no environmental studies have been provided by the Applicant to support the proposal. Dudley W. and Patsy A. Garrett comment that no impact statement was made concerning the existing pond and San Antonio Bay.

RESPONSE 2:

The proposed draft permit was developed to protect aquatic life, human health, and recreation use in accordance with the Texas Surface Water Quality Standards. The requirements in the proposed draft permit were established to maintain these water quality standards as long as the Applicant operates and maintains the facility according to TCEQ rules and the requirements in the proposed draft permit. As part of the permit application process, the ED determines the uses of the receiving waters and then sets effluent limits that are protective of those uses. The unclassified receiving water use for the storm water detention/retention pond and the unnamed lake is limited aquatic life. The designated uses for Segment No. 2462 are contact recreation, oyster waters, and exceptional aquatic life. The effluent limits in the proposed draft permit were set to maintain and protect those existing instream uses.

In accordance with 30 TAC Section 307.5, and the TCEQ implementation procedures (January 2003) for the Texas Surface Water Quality Standards, an antidegradation review of the receiving waters was also performed. A Tier 1 antidegradation review preliminarily determined that the existing water quality uses will not be impaired by this permitting action. Numerical and narrative criteria necessary to protect existing uses will be maintained. A Tier 2 antidegradation review is not required because the antidegradation review preliminarily determined that no water bodies with exceptional, high, or intermediate aquatic life uses was present within the stream reach assessed. The stream reach assessed includes the detention/retention pond and the unnamed lake, which do not have exceptional, high, or intermediate aquatic life uses. However, due to the nature and small size of the discharge, no significant degradation of water quality is expected in water bodies with exceptional, high, or intermediate aquatic life uses downstream, and existing uses will be maintained and protected. The preliminary determination can be reexamined and may be modified if new information is received.

The application forms for a domestic wastewater permit include all of the information needed to determine if the application is administratively and technically complete. The wastewater permit application does not require the Applicant to submit an environmental study or impact statement.

COMMENT 3:

Willa Vee Hewlett is concerned that San Antonio Bay is a flyway path of many migratory birds, including the whooping crane, which use it for a feeding ground during their migrations. Jeffery and Terri Kubena, Petra Hockey, and Greg A. and Christie K. Waida, also expressed concern regarding whooping cranes. Helen Arnold expressed concern for various different types of wading birds.

RESPONSE 3:

The ED developed the proposed draft permit to be protective of aquatic life, some of which can serve

as a food source for migratory birds. In addition, the proposed discharge was reviewed by the ED for potential impacts specifically to threatened and endangered aquatic and aquatic dependent species, including the whooping crane. To ensure the protection of the whooping crane, the ED requested the review of the United States Environmental Protection Agency (EPA) and, if appropriate, consultation with the United States Fish and Wildlife Service. In a letter dated October 23, 2006, the EPA provided approval to continue the permitting process.

COMMENT 4:

Willa Vee Hewlett, Chris Martin, Rick Dierlam, Carol J. Garriott, Carrie N. Henry, Virginia Cervenka, and Greg A. and Christie K. Waida are concerned about the location of the proposed discharge of wastewater and would like it moved.

RESPONSE 4:

The ED evaluated the proposed wastewater treatment facility, amount of treated effluent to be discharged and the proposed location of the point of discharge along with the information submitted in the application to determine if a draft permit could be prepared that is protective of the existing instream uses. The ED may recommend denial of an application if the proposed discharge would violate water quality standards. However, the ED does not have the authority to require the applicant to submit an application for a different point of discharge or to evaluate other locations that are not part of the permit application.

COMMENT 5:

Carol J. Garriott, Dudley W. and Patsy A. Garrett, Daniel Cervenka, Jeffery and Terri Kubena, Chris Martin, and Steve B. Dublin indicate a strong concern that the Applicant's responses in its application, regarding the existence of oyster reefs and seagrasses, are not true. Helen Arnold is concerned about oysters and sea grass. Dudley W. and Patsy A. Garrett are also concerned that the permit application does not indicate the width of the receiving water at the outfall.

RESPONSE 5:

Though the Applicant's response in the application indicated that there are no oyster reefs or seagrasses in the vicinity of the propose discharge, the ED is aware of the presence of oyster reefs and seagrasses in San Antonio Bay. The proposed draft permit was developed to be protective of the oyster reefs and seagrasses. Specifically, the discharge constituents of primary concern for these aquatic uses are bacteria and nutrients (i.e. nitrogen and phosphorus compounds). The disinfection requirements in the proposed draft permit are intended to reduce bacteria concentrations in the discharge to insignificant levels. With respect to nutrient loading in San Antonio Bay, it is the opinion of the ED staff that the detention time provided by the detention/retention pond and the unnamed lake will substantially reduce nutrient levels in this relatively small discharge and therefore no significant negative impacts to seagrasses will occur.

COMMENT 6:

Carol J. Garriott, Jeffery and Terri Kubena, Greg A. and Christie K. Waida, Ron and Christi A. Walter, and Daniel Cervenka are concerned about the effects the wastewater discharge will have on the salinity of San Antonio Bay and the aquatic life. Ben N. and Barbara Nurick, and Dudley W. and Patsy A. Garrett are concerned that the constant discharge of chlorinated water into the bay will prevent the return of normal water salinity and result in harm to the aquatic life and create a health hazard. Mary Jo Adams is concerned about more fresh water being put into the bay.

RESPONSE 6:

The ED is not aware of documented instances where wastewater discharges have significantly altered bay salinities. While extremely localized (i.e., in the immediate area where the discharge enters the bay via the drainage ditch) decreases in bay salinity could result from this relatively small proposed discharge, it is the opinion of ED staff that this potential effect would not negatively impact aquatic life or fishing in the area. The detention time provided by the detention/retention pond and the unnamed lake should allow for ample dilution and dissipation of any chlorine contributed by the proposed discharge. It is expected that only very small amounts of chlorine will be added to the bay and therefore it will not pose a threat to aquatic life or human health.

COMMENT 7:

Jeffery and Terri Kubena have a concern that the wastewater discharge is in a certain position that it will flow down to their seawall and settle in that location. Additionally, Jeffery and Terri Kubena indicate that the General Land Office (GLO) has informed them that this area is referred to as an agromat area. They indicate it is a protected shoreline and the water is unable to move. Willa Vee Hewlett, Jeffrey and Terri Kubena, Daniel Cervenka, Ron and Christi A. Walter, Carol J. Garriott, Rick Dierlam, Greg A. and Christie K. Waida, and Virginia Cervenka are concerned that because of wind or tidal influences the effluent will not leave the bay and will stagnate.

RESPONSE 7:

TCEQ is authorized under the Texas Water Code to issue wastewater permits that discharge into water in the state. The San Antonio Bay is considered water in the state. The proposed permit was designed to be protective of the quality of water in the state, regardless of tide or wind conditions. The GLO was provided notice of this permit application but did not submit any comments. Though ED staff are unfamiliar with the term "agromat area," the discharge route represented in the proposed draft permit was formulated based on information provided by the Applicant and supplemented with topographic maps and aerial photographs of the area. The ED is open to receiving information that would potentially modify or correct our understanding of the discharge route.

The ED also reviewed this permit action for consistency with the goals and policies of the Texas Coastal Management Program (CMP) in accordance with the regulations of the Coastal Coordination Council (CCC) and determined that the action is consistent with the applicable CMP goals and policies.

COMMENT 8:

Jeffery and Terri Kubena, Daniel Cervenka, Virginia Cervenka, and Petra Hockey have expressed concerns regarding flooding. Ben N. and Barbara Nurick state that their area floods during significant rainfall and that the proposed facility's discharge will be to a pond prior to discharging to the bay. They are concerned that there is no information regarding the level of the pond or the facility. They are also concerned about the threats to their property and health if the pond overflows during a heavy rain. Virginia Cervenka is concerned about damage to her property caused by current flooding and future flooding if the permit is issued. She states that the ranches have never offered any enumeration of any kind for damage done to her property and are using her property without permission. Daniel Cervenka is also concerned that during the rainy season the proposed sewage treatment lakes will overflow and sewage will flow onto his property and the shoreline. He states that the existing channel on his property was never intended to handle the additional discharge from Falcon Point Ranch and Swan Point Landing. Dudley W. and Patsy Garrett comment that the application indicates that the proposed facilities will be located above the 100-year frequency flood level but offers no indication at what level the proposed facilities will be located to determine the accuracy of that statement or a copy of the FEMA map.

RESPONSE 8:

The permitting process is limited to controlling the discharge of pollutants into water in the state and protecting the water quality of the state's rivers, lakes, and coastal waters. The TCEQ has not considered flooding in the wastewater permitting process. The draft permit includes effluent limits and other requirements that the Applicant must meet even during rainfall events and periods of flooding. Additionally, the issuance of this permit does not authorize the Applicant to cause any invasion of personal rights or any violation of federal, state, or local laws or regulations. This includes creating nuisance conditions, such as flooding. The draft permit does not limit a landowner's right to pursue 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. This permit does not grant to the Applicant the right to use private or public property for the conveyance of wastewater along the discharge route described in the proposed draft permit. To report complaints about the operation of the proposed facility should it be authorized, please contact the TCEQ Region 14 Office at (361) 825-3100 or call the Environmental Complaints Hotline at 1-888-777-3186.

Even though the Applicant indicates the facility is located above the 100-year frequency flood level, the proposed draft permit requires the Applicant to provide facilities for the protection of its wastewater treatment facilities from a 100-year flood (Other Requirements section of the permit). The wastewater permit application does not require that the Applicant submit maps indicating the

100-year frequency flood level. However, copies of FEMA maps are available online at <http://msc.fema.gov> or by searching the FEMA website for the Map Service Center. As indicated on the submitted permit application, the applicable map panels are 4800970229C and 4800970265C. The Applicant is required to take certain steps to minimize the possibility of an accidental discharge of untreated wastewater, even during rainfall events. The Applicant must maintain adequate safeguards to prevent the discharge of untreated or inadequately treated wastes during rainfall events by maintaining the integrity of the collection system and the wastewater treatment facility. The ED also approves the plans and specifications of a domestic sewage collection and treatment works associated with a wastewater discharge permit.

Additionally, the proposed draft permit requires the Applicant to initiate planning for expanding or upgrading the domestic wastewater treatment/collection facilities if flows reach 75 percent of the permitted daily average flow or annual average flow for three consecutive months. If flows reach 90 percent of the permitted daily average flow or annual average flow for three consecutive months, the Applicant must obtain authorization from TCEQ to begin constructing the necessary additional treatment/collection facilities. It is intended that these requirements will help prevent unauthorized discharges of raw sewage by requiring the Applicant to expand before flows reach capacity on a consistent basis.

For additional flooding concerns, please contact the local floodplain administrator for this area. If you need help finding the local floodplain administrator, please call the TCEQ Resource Protection Team at (512) 239-4691.

COMMENT 9:

Jeffery and Terri Kubena would like to know the wastewater treatment facility's plans for hurricane preparedness.

RESPONSE 9:

The wastewater permit application does not require the Applicant to submit or prepare a hurricane preparedness plan.

COMMENT 10:

Daniel Cervenka, Rick Dierlam, Ron and Christi A. Walter, Steven B. Dublin, Jeffery and Terri Kubena, and Franklin Pierce have indicated concerns regarding the facility's impact on property values and/or existing homes. Rick Dierlam is also concerned about the effect the facility will have on his quality of life. Dudley W. and Patsy A. Garrett are concerned that the proposed discharge will decrease the enjoyment and value of their property. Ron and Christi A. Walter are concerned that if the permit is approved then there is a real potential for higher density housing that would likely change the area, possibly alter land values, and further disrupt wildlife in the area.

RESPONSE 10:

The Legislature has given the TCEQ the responsibility to protect water quality. However, neither chapter 26 of the Texas Water Code, nor the applicable TCEQ wastewater regulations authorize the TCEQ to consider property values when reviewing a permit application. The TCEQ therefore lacks regulatory authority to consider property values when reviewing wastewater applications and preparing draft permits. The issuance of this permit does not authorize the creation of a nuisance or limit a landowner's right to pursue common law remedies for causes of action, which result in injury or adverse effect on property. The wastewater permitting process does not consider a facility's potential impact on development and any ensuing development's effect on wildlife.

COMMENT 11:

Greg A. and Christie K. Waida expressed concern that this permit ignores increased numbers of persons during peak summer periods including Memorial Weekend, Fourth of July Week, and Labor Day. Ignored also are various fishing tournaments and special events, designed to bring large numbers of tourists and weekend visitors to enjoy longer stays at the proposed Falcon Point properties on San Antonio Bay. The Waidas expressed concern that Falcon Point Ranch Lodge's existing wastewater treatment system would be shut down and treated through the proposed residential treatment site. Rick Dierlam is concerned that the facility will start out small but get bigger based on future growth.

RESPONSE 11:

The proposed draft permit was written to meet the flow needs proposed by the Applicant. The Applicant provided justification for the proposed flow based on 109 lots in the submitted application. The ED is not aware if the proposed flow includes peak summer events and/or other events, but the Applicant is limited to the flow requirements in the proposed permit. The permit would need to be amended to accommodate any future flow needs greater than what is allowed by the proposed permit.

The proposed draft permit requires the Applicant to initiate planning for expanding or upgrading the domestic wastewater treatment/collection facilities if flows reach 75 percent of the permitted daily average flow or annual average flow for three consecutive months. If flows reach 90 percent of the permitted daily average flow or annual average flow for three consecutive months, the Applicant must obtain authorization from TCEQ to begin constructing the necessary additional treatment/collection facilities. It is intended that these requirements will help prevent unauthorized discharges of raw sewage by requiring the Applicant to expand before flows reach capacity on a consistent basis.

COMMENT 12:

Greg A. and Christie K. Waida expressed concern regarding the "potential increase of waterborne bacteria harmful to man is known in the research when the salinity of the local bay waters are altered by prolonged rainfall, and become deadly to man and sea creatures." Ben N. and Barbara Nurick are concerned that the altered water state in the bay caused by the Applicant's facility could encourage

harmful organisms to flourish and create a health hazard.

RESPONSE 12:

The proposed wastewater treatment facility is designed to provide adequate disinfection of the treated effluent and when operated properly should not contribute in any significant way to the bacterial loading of the bay. The application proposes to disinfect the treated effluent via chlorination. Therefore, the draft permit includes effluent limits and monitoring requirements for chlorine residual to demonstrate that disinfection is adequately provided. The permittee is required to maintain a chlorine residual of at least 1.0 mg/l and not to exceed a chlorine residual of 4.0 mg/l after a detention time of at least 20 minutes (based on peak flow), and is required to monitor chlorine residual five times per week by grab sample. Additionally the effluent limits in the draft permit are designed to protect water quality and aquatic life in the bay.

Segment No. 2462 is currently listed on the State's inventory of impaired and threatened waters (2004 Clean Water Act Section 303(d) list and 2006 Draft 303(d) list). The listing is specifically for bacteria for oyster waters. The proposed facility is designed to provide adequate disinfection and when operated properly will not cause or contribute to the bacterial impairment of the segment.

For additional discussion on salinity, see Response No. 6.

COMMENT 13:

Greg A. and Christie K. Waida are concerned that the engineering design of the sewage plant project does not appear to meet the standards for water protection set by the Texas Department of Health and imposed on individual home owners along the bay front.

RESPONSE 13:

Generally an applicant will develop detailed engineering plans and specifications based on the conditions and effluent limits in the permit. But until the permit is issued, a permittee does not know what conditions and effluent limits will be required. Therefore, the design information in the permit application is preliminary. If the permit is issued, the conditions and specifications in the permit will be used as design criteria, along with applicable TCEQ regulations and generally accepted engineering design principles, in the development of the final engineering design for the facility. An applicant will then submit for review and approval the final plans and technical specifications for the proposed activated sludge process wastewater treatment plant operated in the extended air mode, signed, sealed and dated by a Texas licensed professional engineer. The design criteria are found in 30 TAC, Chapter 317.

The design criteria for on-site sewage disposal from individual homes required by the Texas Department of Health do not apply to this proposed facility for a domestic wastewater treatment plant that will discharge treated effluent directly to water in the state. The requirements in the draft

permit for this proposed facility are generally more stringent than the requirements that need to be met by individual homes that use an on-site system for disposal of domestic wastewater.

COMMENT 14:

Ron and Christi A. Walter, Willa Vee Hewlett, Petra Hockey, Ben N. and Barbara B. Nurick, Dudley W. and Patsy A. Garrett, Greg A. and Christie K. Waida, Chris Martin, Daniel Cervenka, and Mary Jo Adams expressed concerns about the effect the discharge will have on fishing, shrimping, oystering, waterfowl hunting, swimming, children playing in the bay, and tourism. Franklin Pierce was concerned about the effect the discharge would have on water sports.

RESPONSE 14:

The ED has developed the proposed draft permit to be protective of aquatic recreation uses such as fishing, shrimping, oystering, waterfowl hunting, and swimming. The effluent limits and conditions in the permit will protect the existing uses of the receiving waters. The specific designated uses for Segment No. 2462 are contact recreation, oyster waters, and exceptional aquatic life. The effluent limits in the proposed permit are designed to be protective of human health and contact recreation.

COMMENT 15:

Ron and Christi A. Walter expressed concern that a plant this size will not scrub phosphate or nitrogen from the effluent.

RESPONSE 15:

As part of the permit application process, the ED must determine the uses of the receiving water and set effluent limits that are protective of those uses. The effluent limitations developed for this draft permit, based on a 30-day average, are 20 milligrams/liter (mg/l) biochemical oxygen demand (BOD₅), 20 mg/l total suspended solids (TSS), and 2.0 mg/l minimum dissolved oxygen (DO) and do not include a phosphorus limit and a nitrogen limit.

The dissolved oxygen modeling analysis indicates that no effluent limit for ammonia-nitrogen is necessary to ensure that the required dissolved oxygen criteria for the receiving waters will be maintained. Given the small volume of discharge and the expected detention time in the detention/retention pond and the unnamed lake, there will be sufficient nutrient attenuation and therefore minimal impact to the bay. Based on that information, the ED staff did not recommend nutrient limits.

COMMENT 16:

Ron and Christi A. Walter expressed concerns regarding the effect on wildlife due to construction. Jeffrey and Terri Kubena are concerned about the silt from the construction at Falcon Point Ranch.

RESPONSE 16:

The proposed permit is for the discharge of treated effluent from the Falcon Point Wastewater Treatment Plant (WWTP) and not construction of the subdivision. The proposed subdivision must be constructed in accordance with applicable stormwater construction regulations and other regulations; however, the draft permit does not include authorization or requirements for construction of the proposed subdivision. The draft permit is limited to the construction and operation of the wastewater treatment facility.

COMMENT 17:

Ron and Christi A. Walter would like to know if the seasonal fluctuations in water depth were considered in this proposal.

RESPONSE 17:

Based on information provided by the Applicant and available from existing topographic maps and aerial photos, the ED considered typical depth characteristics and tidal influences of the receiving waters as part of the review of the permit application and development of the draft permit.

COMMENT 18:

Ron and Christi A. Walter would like to know who will oversee and assume liability for inappropriate discharge events after the developer leaves. They do not know what safeguards are in place for long term management and maintenance of the treatment facility once the development is completed. Mary Jo Adams expresses concerns about possible ownership changes.

RESPONSE 18:

The Applicant is responsible for operating the facility, but the Applicant may contract with an individual operator, company, or other entity to operate the facility. Non-governmental entities, including corporations and individuals, that contract to operate domestic wastewater facilities are required to hold a current wastewater operator registration issued by the TCEQ. 30 TAC, Chapter 30, Subchapters A and J, contain the rules that apply to operators and contract operators.

TCEQ rules require the facility to employ licensed wastewater operator and the chief operator for the facility is required to hold a specific level of license based on the type of treatment and permitted daily average flow. This facility must be operated by a chief operator or an operator holding a Category D license or higher. The rules state that the chief operator or operator with the required level of license must be present at the facility five days per week and available by phone or pager seven days per week. The amount of time per day that the operator is required to be onsite is not

stipulated in the rules.

Acceptance and issuance of this permit to the Applicant constitutes acknowledgment and agreement that the Applicant will comply with all the terms and conditions embodied in the permit, and the rules and other orders of the Commission. TCEQ rules and conditions in the permit require that the Commission be notified in writing of any change in control or ownership of the facility. 30 TAC, Section 305.64, requires the Applicant to submit an application at least 30 days prior to an ownership change to transfer the permit to the new owner if the wastewater treatment facility is sold. The transfer application requires information from both the current owner and the new owner of the facility. The ED will review the application and approve the transfer if the application is administratively complete. TCEQ rules do not require notice to the public when such a transfer occurs. TCEQ may refuse to approve a transfer if the conditions of a judicial decree, compliance agreement or enforcement order have not been entirely satisfied. TCEQ shall also consider the compliance record of the transferee. The wastewater treatment facility can be sold separately from the property in the development.

If no agreement regarding transfer of permit responsibility and liability is provided, responsibility for compliance with the terms and conditions of the permit and liability for any violation associated therewith is assumed by the transferee, effective on the date of the approved transfer. Until the permit is transferred, the Applicant assumes liability and must comply with the provisions in the permit.

COMMENT 19:

Captain Lynn Stackable is adamantly opposed to granting this permit to Falcon Point Ranch.

RESPONSE 19:

The Applicant is required to operate in compliance with the Texas Water Code, TCEQ's rules, and the terms of the proposed draft permit. A permit is issued if the application meets all administrative and technical requirements to protect water quality.

COMMENT 20:

Rick Dierlam and Ben N. and Barbara B. Nurick are concerned about effects of the wastewater treatment plant on odor and air quality.

RESPONSE 20:

TCEQ air pollution rules in 30 TAC, Section 106.532, permit wastewater treatment facilities by rule if the wastewater treatment facility only performs the functions provided in the rule. The Commission has made a determination that those particular wastewater treatment facilities will not make a significant contribution of air contaminants to the atmosphere.

30 TAC, Section 309.13, provides the Applicant with three alternatives to address odor concerns. The Applicant has satisfied Section 309.13 through ownership of the required 150 foot buffer zone area. Regardless of the Applicant's choice of compliance with Section 309.13, the issuance of the proposed permit does not authorize the creation of a nuisance which includes nuisance odor. Landowners still maintain their common law property rights and may bring suit in civil court to protect those rights. In addition, landowners may report complaints to the TCEQ regarding nuisance odor or any problems with the operation of the proposed facility should it be authorized, by contacting the TCEQ Region 14 Office at (361) 825-3100 or calling the Environmental Complaints Hotline at 1-888-777-3186.

COMMENT 21:

Ben N. and Barbara B. Nurick, and Dudley W. and Patsy Garrett are concerned that there is no record of any correspondence or attempt by the Applicant to consider using other nearby wastewater treatment systems. They state that the City of Seadrift is located within three miles of the proposed facility with collection points across the road from the Applicant's land.

RESPONSE 21:

The Applicant submitted a letter from the City of Seadrift dated August 31, 2006, that indicates the City does not have the capacity to serve the proposed development. There are no other permitted wastewater treatment facilities located within three miles of the proposed wastewater treatment facility.

COMMENT 22:

Russell Douglass states his support for the permit. He also states that he owns land in several parts of the state and it is better to do sewer as opposed to septic especially in areas where water is involved.

RESPONSE 22:

The ED acknowledges the comment of Mr. Douglass.

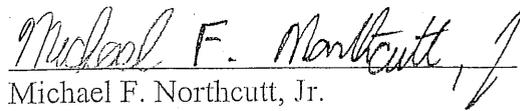
No changes to the draft permit have been made in response to public comment.

Respectfully submitted,

Texas Commission on Environmental Quality

Glenn Shankle
Executive Director

Robert Martinez, Director
Environmental Law Division



Michael F. Northcutt, Jr.

Staff Attorney

State Bar No. 24037194

P.O. Box 13087, MC 173

Austin, Texas 78711-3087

(512) 239-6996 (Phone)

(512) 239-0606 (Fax)

REPRESENTING THE EXECUTIVE DIRECTOR OF
THE TEXAS COMMISSION ON ENVIRONMENTAL
QUALITY

CERTIFICATE OF SERVICE

I certify that on November 8, 2007, a true and correct copy of the "Executive Director's Amended Response to Public Comment" for Permit No. WQ0014716001 was filed with the Texas Commission on Environmental Quality's Office of the Chief Clerk.

Michael F. Northcutt, Jr.

Michael F. Northcutt, Jr.

Staff Attorney

State Bar No. 24037194

P.O. Box 13087, MC 173

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(512) 239-6996 (Phone)

(512) 239-0606 (Fax)

CHIEF CLERKS OFFICE

2007 NOV -8 AM 9:54

TEXAS
COMMISSION
ON ENVIRONMENTAL
QUALITY

Attachment C

Compliance History

Customer/Respondent/Owner-Operator:	CN603036989	Seadrift Ranch Partners, Ltd.	Classification: AVERAGE BY DEFAULT	Rating: 3.01
Regulated Entity:	RN104955273	FALCON POINT WWTP	Classification: AVERAGE BY DEFAULT	Site Rating: 3.01
ID Number(s):	WASTEWATER PERMIT		WQ0014716001	
Location:	816 CONGRESS AVE STE 1280, AUSTIN, TX, 78701		Rating Date: September 01 06	Repeat Violator: NO
TCEQ Region:	REGION 14 - CORPUS CHRISTI			
Date Compliance History Prepared:	October 02, 2006			
Agency Decision Requiring Compliance History:	Permit - Issuance, renewal, amendment, modification, denial, suspension, or revocation of a permit.			
Compliance Period:	May 12, 2001 to October 02, 2006			

TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History

Name: Samuel Treviño Phone: (512) 239-4618

Site Compliance History Components

- | | |
|--|------------|
| 1. Has the site been in existence and/or operation for the full five year compliance period? | Yes |
| 2. Has there been a (known) change in ownership of the site during the compliance period? | No |
| 3. If Yes, who is the current owner? | <u>N/A</u> |
| 4. If Yes, who was/were the prior owner(s)? | <u>N/A</u> |
| 5. When did the change(s) in ownership occur? | <u>N/A</u> |

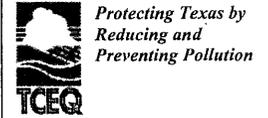
Components (Multimedia) for the Site:

- A. Final Enforcement Orders, court judgments, and consent decrees of the state of Texas and the federal government.
N/A
 - B. Any criminal convictions of the state of Texas and the federal government.
N/A
 - C. Chronic excessive emissions events.
N/A
 - D. The approval dates of investigations. (CCEDS Inv. Track. No.)
N/A
 - E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)
N/A
 - F. Environmental audits.
N/A
 - G. Type of environmental management systems (EMSs).
N/A
 - H. Voluntary on-site compliance assessment dates.
N/A
 - I. Participation in a voluntary pollution reduction program.
N/A
 - J. Early compliance.
N/A
- Sites Outside of Texas
N/A

Attachment D

**Seadrift Ranch Partners
Permit No. WQ0014716-001**

Map requested by TCEQ Office of Legal Services



Texas Commission on Environmental Quality
GIS Team (Mail Code 197)
P.O. Box 13087
Austin, Texas 78711-3087

August 15, 2007

0 250 500 1,000 1,500 Feet

Projection: Texas Statewide Mapping System
(TSMS)

Scale 1:16,000

Legend

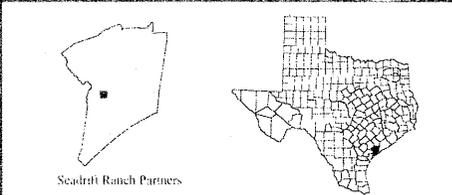
- Proposed Plant
- Approx. Locations of Requestors
- ➔ Discharge Route

Source: The location of the plant was provided by the TCEQ Office of Legal Services (OLS). OLS obtained the site location information from the applicant. The counties are U.S. Census Bureau 1992 TIGER/Line Data (1:100,000). The background of this map is a source photograph from the 2004 U.S. Department of Agriculture Imagery Program. The imagery is one meter ColorInfrared (CIR). The image classification number is tx057_1-1.

- This map depicts the following:
- (1) The approximate location of the facility. This is labeled "Proposed facility".
 - (2) The approximate discharge route. This is labeled "Discharge Route".



- 1 - Kubena Property (Approx. 3615' from plant)
- 2 - Garrett Property (Approx. 3290' from plant)
- 3 - Daniel Cervenka and Virginia Cervenka Property (Approx. 2960' from plant)
- 4 - Pierce Property (Approx. 4940' from plant)
- 5 - Waida Property (Approx. 4476' from plant)
- 6 - Dierlam Property (Approx. 4740' from plant)
- Carol Garrriott not shown (Approx. 2.7 miles from plant)



The proposed plant is to be located in Calhoun County. The red square in the first inset map represents the approximate location of the plant. The second inset map represents the location of Calhoun County in the state of Texas; Calhoun County is shaded in red.

This map was generated by the Information Resources Division of the Texas Commission on Environmental Quality. This map was not generated by a licensed surveyor, and is intended for illustrative purposes only. No claims are made to the accuracy or completeness of the data or to its suitability for a particular use. For more information concerning this map, contact the Information Resource Division at (512) 239-0800.