

Buddy Garcia, *Chairman*
Larry R. Soward, *Commissioner*
Bryan W. Shaw, Ph.D., *Commissioner*
Glenn Shankle, *Executive Director*



TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

November 15, 2007

TO: Persons on the attached mailing list.

RE: Seadrift Ranch Partners, LTD.
TPDES Permit No. WQ0014716001

Decision of the Executive Director.

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

Enclosed with this letter is a copy of the Executive Director's Amended Response to Comments. A copy of the complete application, draft permit and related documents, including public comments, is available for review at the TCEQ Central office. A copy of the complete application, the draft permit, and executive director's preliminary decision are available for viewing and copying at Calhoun County Public Library, 200 West Mahan Street, Port Lavaca, Texas.

If you disagree with the executive director's decision, and you believe you are an "affected person" as defined below, you may request a contested case hearing. In addition, anyone may request reconsideration of the executive director's decision. A brief description of the procedures for these two requests follows.

How To Request a Contested Case Hearing.

It is important that your request include all the information that supports your right to a contested case hearing. You must demonstrate that you meet the applicable legal requirements to have your hearing request granted. The commission's consideration of your request will be based on the information you provide.

The request must include the following:

- (1) Your name, address, daytime telephone number, and, if possible, a fax number.
- (2) If the request is made by a group or association, the request must identify:
 - (A) one person by name, address, daytime telephone number, and, if possible, the fax number, of the person who will be responsible for receiving all communications and documents for the group; and
 - (B) one or more members of the group that would otherwise have standing to request a hearing in their own right. The interests the group seeks to protect must relate to the organization's purpose. Neither the claim asserted nor the relief requested must require the participation of the individual members in the case.
- (3) The name of the applicant, the permit number and other numbers listed above so that your request may be processed properly.
- (4) A statement clearly expressing that you are requesting a contested case hearing. For example, the following statement would be sufficient: "I request a contested case hearing."

Your request must demonstrate that you are an **"affected person."** An affected person is one who has a personal justiciable interest related to a legal right, duty, privilege, power, or economic interest affected by the application. Your request must describe how and why you would be adversely affected by the proposed facility or activity in a manner not common to the general public. For example, to the extent your request is based on these concerns, you should describe the likely impact on your health, safety, or uses of your property which may be adversely affected by the proposed facility or activities. To demonstrate that you have a personal justiciable interest, you must state, as specifically as you are able, your location and the distance between your location and the proposed facility or activities.

Your request must raise disputed issues of fact that are relevant and material to the commission's decision on this application. The request must be based on issues that were raised during the comment period. The request cannot be based solely on issues raised in comments that have been withdrawn. The enclosed Amended Response to Comments will allow you to determine the issues that were raised during the comment period and whether all comments raising an issue have been withdrawn. The public comments filed for this application are available for review and copying at the Chief Clerk's office at the address below.

To facilitate the commission's determination of the number and scope of issues to be referred to hearing, you should: 1) specify any of the executive director's responses to comments that you dispute; and 2) the factual basis of the dispute. In addition, you should list, to the extent possible, any disputed issues of law or policy.

How To Request Reconsideration of the Executive Director's Decision.

Unlike a request for a contested case hearing, anyone may request reconsideration of the executive director's decision. A request for reconsideration should contain your name, address, daytime phone number, and, if possible, your fax number. The request must state that you are requesting reconsideration of the executive director's decision, and must explain why you believe the decision should be reconsidered.

Deadline for Submitting Requests.

A request for a contested case hearing or reconsideration of the executive director's decision must be in writing and must be **received by** the Chief Clerk's office no later than **30 calendar days** after the date of this letter: You should submit your request to the following address:

LaDonna Castañuela, Chief Clerk
TCEQ, MC-105
P.O. Box 13087
Austin, Texas 78711-3087

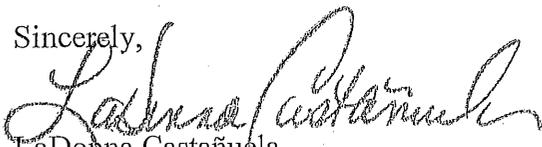
Processing of Requests.

Timely requests for a contested case hearing or for reconsideration of the executive director's decision will be referred to the alternative dispute resolution director and set on the agenda of one of the commission's regularly scheduled meetings. Additional instructions explaining these procedures will be sent to the attached mailing list when this meeting has been scheduled.

How to Obtain Additional Information.

If you have any questions or need additional information about the procedures described in this letter, please call the Office of Public Assistance, Toll Free, at 1-800-687-4040.

Sincerely,



LaDonna Castañuela
Chief Clerk

LDC/mr

Enclosures

MAILING LIST
for
Seadrift Ranch Partners, LTD.
TPDES Permit No. WQ0014716001

FOR THE APPLICANT:

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FOR PUBLIC INTEREST COUNSEL:

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FOR THE CHIEF CLERK:

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Office of Chief Clerk MC-105
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PROTESTANTS/INTERESTED PERSONS:

SEE ATTACHED LIST

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LYNN STACKABLE CAPTAIN
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STEVEN DUBLIN
9 SWAN POINT RD
SEADRIFT TX 77983-4412

FRANKLIN PIERCE
111 FAIRLANE DR
ROUND ROCK TX 78664-7511

PROPOSED PERMIT NO. WQ0014716001

APPLICATION BY

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§
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BEFORE THE

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.

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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.

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