

Kathleen Hartnett White, *Chairman*
Larry R. Soward, *Commissioner*
H. S. Buddy Garcia, *Commissioner*
Glenn Shankle, *Executive Director*



TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

June 8, 2007

TO: Persons on the attached mailing list.

RE: Interstate Southwest, Ltd.
TPDES Permit No. WQ0004073000

Decision of the Executive Director.

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

Enclosed with this letter is a copy of the Executive Director's Response to Comments. A copy of the complete application, draft permit and related documents, including public comments, is available for review at the TCEQ Central office. A copy of the complete application, the draft permit, and executive director's preliminary decision are available for viewing and copying at the Navasota Public Library, 1411 East Washington Avenue, Navasota, Texas.

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

How To Request a Contested Case Hearing.

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

The request must include the following:

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

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

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

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

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

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

Deadline for Submitting Requests.

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

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

Processing of Requests.

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

How to Obtain Additional Information.

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

Sincerely,



LaDonna Castañuela
Chief Clerk

LDC/cz

Enclosures

MAILING LIST
for
Interstate Southwest, Ltd.
TPDES Permit No. WQ0004073000

FOR THE APPLICANT:

Ken Morris
Interstate Southwest, Ltd.
P.O. Box 1030
Navasota, Texas 77868

FOR THE CHIEF CLERK:

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

PROTESTANTS/INTERESTED PERSONS:

See attached list.

FOR THE EXECUTIVE DIRECTOR:

Michael F. Northcutt, Jr.
Texas Commission on Environmental Quality
Environmental Law Division MC-173
P.O. Box 13087
Austin, Texas 78711-3087

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

FOR OFFICE OF PUBLIC ASSISTANCE:

Ms. Bridget Bohac, Director
Texas Commission on Environmental Quality
Office of Public Assistance MC-108
P.O. Box 13087
Austin, Texas 78711-3087

FOR PUBLIC INTEREST COUNSEL:

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

SHARON SWANK BACKHUS & BENJAMIN F SW
16934 COUNTY ROAD 323
NAVASOTA TX 77868-6924

FLOYD BURZYNSKI
6502 COUNTY ROAD 313
NAVASOTA TX 77868

THE HONORABLE LOIS W KOLKHORST
HOUSE OF REPRESENTATIVES DIST 13
ATTN SALLY WRIGHT
PO BOX 2910
AUSTIN TX 78768-2910

BENJAMIN F SWANK III
16934 COUNTY ROAD 323
NAVASOTA TX 77868

SUSIE SWANK
16934 CR 323
NAVASOTA TX 77867

TCEQ PERMIT NO. WQ0004073000

APPLICATION BY §
INTERSTATE SOUTHWEST, LTD. §
FOR TPDES PERMIT NO. §
WQ0004073000 §

BEFORE THE 2007 JUN -6 PM 4:29
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY
CLERKS OFFICE

EXECUTIVE DIRECTOR'S RESPONSE TO PUBLIC COMMENT

The Executive Director (ED) of the Texas Commission on Environmental Quality (the Commission or TCEQ) files this Response to Public Comment (Response) on the application by Interstate Southwest, Ltd. (Applicant), for a major amendment to Texas Pollutant Discharge Elimination System (TPDES) Permit Number WQ0004703000 and on the ED's preliminary decision. As required by 30 Texas Administrative Code (TAC) Section 55.156, before an application is approved, the ED prepares a response to all timely, relevant and material, or significant comments. The Office of the Chief Clerk timely received comment letters from Benjamin F. Swank, III and Sharon Swank Backhus, and comments at the public meeting from Benjamin F. Swank, III and Floyd Burzynski. This response addresses all such timely public comments received, whether or not withdrawn. If you need more information about this permit application or the wastewater permitting process, please call the TCEQ Office of Public Assistance at 1-800-687-4040. General information about the TCEQ can be found at our website at www.tceq.state.tx.us.

BACKGROUND

Description of Facility

The Applicant operates an iron and steel forge facility. The facility uses steel ingots to manufacture oil field equipment, aircraft landing gears, parts for construction equipment and automotive defense industries, and heavy equipment. Wastewater is produced from boiler blowdown, cooling waters, wash down waters, and process wastewaters. Several cooling streams are generated from the steel forging process. The Applicant uses a closed-loop cooling system to keep the induction heaters from becoming too hot. The closed-loop cooling system is only drained to the wastewater system in the event of power failure or emergency. Two wastewater ponds collect site storm water and the various wastewater streams from the wastewater generating processes at the site. The ponds allow retention and equalization of the wastewater streams before discharge from Outfall 001.

The Applicant has applied for a major amendment to authorize the additional discharge of process wastewaters to the discharge from iron and steel forging operations via Outfall 001. The current permit authorizes the disposal of once through cooling water, boiler blowdown, wash down water and storm water at a daily average flow not to exceed 500,000 gallons per day via Outfall 001.

The effluent is discharged to an unnamed tributary of Sandy Creek; thence to Sandy Creek; thence to Grassy Creek; thence to Brazos River Below Navasota River in Segment No. 1202 of the Brazos

River Basin. The unclassified receiving waters have no significant aquatic life use for the unnamed tributary of Sandy Creek and limited aquatic life use for Sandy Creek. The designated uses for Segment No. 1202 are contact recreation, high aquatic life use, and public water supply. The draft permit authorizes the discharge of treated process wastewaters, once through cooling water, boiler blowdown, wash-down water, and storm water at a daily average dry weather flow not to exceed 500,000 gallons per day (MGD) via Outfall 001.

The facility is located adjacent to the west side of the Texas and New Orleans Rail Road, with an entrance roadway off State Highway 508, approximately one mile south of the intersection of State Highway 508 and Farm-to-Market Road 379, and approximately three miles south of the City of Navasota, Grimes County, Texas.

Procedural Background

The application was submitted on August 16, 2005, and declared administratively complete on October 6, 2005. The Notice of Receipt of Application and Intent to Obtain Permit was published October 19, 2005 in the *Navasota Examiner* in Grimes County, Texas. The ED completed the technical review of the application on December 31, 2005, and prepared a draft permit. The Notice of Application and Preliminary Decision was published March 15, 2006 in the *Navasota Examiner* in Grimes County. A public meeting was held in Navasota on March 27, 2007. The comment period for this application closed at the end of the public meeting. 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:

Mr. Swank and Ms. Swank Backhus stated that there was a "significant occurrence" in February 2005. They stated the Applicant released 1,200 gallons of an oily substance that overflowed onto their property and left much of the grass and water coated with a black substance. The black substance was released into a drainage ditch which feeds into Sandy Creek which is the main source of water for their property.

RESPONSE 1:

The TCEQ investigated the incident on February 9, 2005, and the investigator met with the complainant. That day the Applicant discovered the source of the discharge as a leaky valve in an abandoned wastewater treatment unit. That evening the Applicant hired Oil Mop LLC to begin the cleanup of the property. The Applicant took steps to prevent a recurrence. The Applicant continued to clean up the site and by April 15, 2005 scaled back their clean up operations to one monitoring per week and any necessary clean up. The area was fully cleaned shortly after. The Applicant was issued two Notice of Violations (NOV) for this incident. The first was for failure by the permittee to prevent the discharge of wastewater into or adjacent to water in the state without authorization of

the commission. The second NOV was for failure by the permittee to ensure that all systems of collection, treatment, and disposal are properly operated and maintained.

The acceptance of this 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 TCEQ. 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. 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 not authorized or adjacent to water in the state at any location not permitted or otherwise defined in the Effluent Limitations and Monitoring Requirements section of this permit.

Failure to comply with any permit condition will constitute a violation of the permit and the Texas Water Code or the Texas Health and Safety Code, and may be grounds for enforcement action, for permit amendment, revocation or suspension, or for denial of a permit renewal application or of an application for a permit for another facility. If at any time, the Applicant poses a threat to public health, safety, or the environment, or is suspected of violating the applicable laws or conditions of its permit, the public may contact the TCEQ's Environmental Violation Hotline toll-free at 1-888-777-3186 or the Region 9 Office in Waco at 254-751-0335.

The draft permit does not limit the ability of nearby landowners to use common law remedies for trespass, nuisance, or other causes of action in response to activities that may or actually do result in injury or adverse effects on human health or welfare, animal life, vegetation, or property, or that may or actually do interfere with the normal use and enjoyment of animal life, vegetation, or property.

COMMENT 2:

Mr. Swank and Ms. Swank Backhus are concerned that the Applicant's activities are affecting the use and enjoyment of their property and expressed concerns over property values.

RESPONSE 2:

In the wastewater permitting process, TCEQ is tasked by the Legislature with protecting the quality of the water in the state. Property value is not a factor in determining whether an applicant has met all of the statutory and regulatory criteria applicable to a wastewater permit.

The draft permit does not limit the ability of nearby landowners to use common law remedies for trespass, nuisance, or other causes of action in response to activities that may or do result in injury or adverse effects on human health or welfare, animal life, vegetation, or property, or that may or actually do interfere with the normal use and enjoyment of animal life, vegetation, or property.

COMMENT 3:

Mr. Swank and Ms. Swank Backhus expressed concern regarding the Applicant's compliance history.

RESPONSE 3:

The applicant has a compliance history of average with a cite rating of 0.25. In the period from August 16, 2000 to January 12, 2007 the Applicant had eight notices of violation. If there is believed to be an unauthorized discharge occurring, please contact the local TCEQ region office. To report complaints about the facility, please contact the TCEQ at 1-888-777-3186 to reach the TCEQ region office in your area or by e-mail at cmplaint@TCEQ.state.tx.us.

COMMENT 4:

Mr. Swank and Ms. Swank Backhus state that it took numerous calls to the TCEQ Office of Public Assistance and four different trips to the library before the Applicant posted the proposed permit in the correct spot.

RESPONSE 4:

30 TAC Section 39.405(g) requires the applicant to make a copy of the application available for review and copying at a public place in the county in which the facility is located or proposed to be located. In a letter dated October 31, 2005, the Applicant states that notice was published in the Navasota Examiner and a copy of the application was posted in the Navasota Public Library. In Mr. Benjamin Swank's letter dated November 22, 2005, he states that after numerous attempts to find the application he found it in the library.

COMMENT 5:

Mr. Burzynski indicated that there are two unnamed tributaries that meet at a point near the plant and the water in the tributary not flowing from the plant is clear, but the water flowing from the plant is dark. Mr. Burzynski stated that the water in the unnamed tributary from the plant has always been dark and the difference is noticeable. Mr. Swank and Ms. Swank Backhus state that the appearance of the creek is unattractive and they are concerned about the Brazos River.

RESPONSE 5:

The draft permit specifically prohibits any discharge of untreated wastewater from the facility. The draft permit was written in accordance with 30TAC, Section 307.4(b)(5). According to this section waste discharges shall not cause substantial and persistent changes from ambient conditions of turbidity or color and to protect the water quality of the receiving stream. Also, surface waters shall be maintained so that oil, grease, or related residue will not produce a visible film of oil or globules of grease on the surface or coat the banks or bottom of the watercourse; or cause toxicity to man, aquatic life, or terrestrial life in accordance 30 TAC, Section 307.4(d).

Regarding the downstream affect on the Brazos River, the discharge is subject to federal categorical guidelines at Title 40 Code of Federal Regulation (CFR), Part 420, Subpart M, §420.132(b) (Iron and Steel Manufacturing Point Source Category as amended to include guidelines for forging operations). Subpart M requires effluent limitations for oil and grease, total suspended solids, and pH. The following daily average and daily maximum effluent limitations are established in the draft permit: 95 °F daily maximum temperature; 125 lb/day and 190 lb/day total suspended solids; 83 lb/day and 167 lb/day carbonaceous biochemical oxygen demand (5-day); 835 lb/day and 1150 lb/day chemical oxygen demand; 42 lb/day and 65 lb/day oil and grease; 8 lb/day and 16 lb/day ammonia nitrogen, respectively. The draft permit requires an effluent pH between 6.0 and 9.0 standard units.

The effluent limits in the draft permit will maintain and protect the existing instream uses. No significant degradation of high quality receiving waters is anticipated. In accordance with Section 307.5 and the TCEQ implementation procedures for the Texas Surface Water Quality Standards, an antidegradation review of the receiving waters was performed. A Tier 1 antidegradation review 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. The stream reach assessed was the unnamed tributary to Sandy Creek and Sandy Creek. 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.

TCEQ practice for determining significant potential is to compare the reported analytical data against percentage of the calculated daily average water quality-based effluent limitation. Permit limitations are required when analytical data reported in the application exceeds 85% of the calculated daily average water quality-based effluent limitation. Monitoring and reporting is required when analytical data reported in the application exceeds 70% of the calculated daily average water quality-based effluent limitation. No analytical data reported in the application for Outfall 001 exceeded 70% and 85% threshold of the calculated daily average water quality-based effluent limitation for aquatic life protection. An elevated level of fecal coliform concentration was reported in the application for Outfall 001. Therefore, a retest requirements were placed in the draft permit for discharges via Outfall 001.

Based on comments and numerous complaints to the Region 9 Office on the receiving water being black, a storm water best management practices has been added to the draft permit "Other Requirements item number 8." "Other Requirements item number 8" will also help to expedite the Applicant's plan with the County to construct a drainage system to minimize storm water runoff in storm events.

COMMENT 6:

Mr. Burzynski, who has cattle on the property of Mr. Swank, expressed concern for his cattle. He stated his cows graze on the property and any little bit of steel that a cow picks up will get inside the

cow, and kill the cow. Mr. Burzynski also stated that if a cow licks oil containing steel in it, it will kill the cow. In addition, Mr. Burzynski stated that if the water is not good to drink, he expects the permittee to put some clean water there, and if the animals die from the water, he expects the permittee to pay the vet bill to have the animals checked out. Mr. Swank and Ms. Swank Backhus expressed concern for cattle grazing and drinking water in and around the creek.

RESPONSE 6:

The proposed permit does not authorize the Applicant to discharge bits of steel. The proposed permit was drafted in accordance with 30 TAC Chapter 307, and "Procedures to Implement the Texas Surface Water Quality Standards," January 2003 (Implementation Procedures). 30 TAC Chapter 307, states that surface waters cannot be made toxic to aquatic or terrestrial organisms. While 30 TAC Chapter 307, and the Implementation Procedures do not specifically designate criteria for the protection of livestock, they do designate criteria for the protection of aquatic life and human health that should preclude impacts to the health and performance of livestock.

A guidance document provided by the Texas Agricultural Extension Service entitled "Water Quality: Its Relationship to Livestock" (Doc. No. L2374) states that the most common water quality problems affecting livestock production are high mineral concentrations (excess salinity), high nitrogen, bacteria contamination, heavy growths of blue-green algae, petroleum, pesticide, and fertilizer spills. Except for nitrogen the constituents of concern mentioned in the guidance document are generally not found in the waste streams generated from this facility and therefore, the discharge should not adversely affect livestock. The effluent limits for ammonia nitrogen in the draft permit are daily average of 2 mg/l and a daily maximum of 4 mg/l. These permit limits are very stringent and should not affect the health and performance of livestock.

In addition, the draft permit does not limit the ability of nearby landowners to use common law remedies for trespass, nuisance, or other causes of action in response to activities that may or actually do result in injury or adverse effects on human health or welfare, animal life, vegetation, or property, or that may or actually do interfere with the normal use and enjoyment of animal life, vegetation, or property.

CHANGES MADE TO THE DRAFT PERMIT IN RESPONSE TO COMMENT

Based upon comments received a storm water best management practices requirement has been added to Other Requirements item number 8:

Storm Water Best Management Practices

The permittee must develop and implement a storm water pollution prevention plan (SWP3) that includes a set of best management practices (BMPs) to eliminate or lessen the exposure of storm water to industrial activities and pollutants. The SWP3 must be maintained on site and be made readily available for review by authorized TCEQ personnel. The SWP3 must contain elements, or sections, to require implementation of the following activities:

A. *Good Housekeeping Measures* - Activities must be defined and implemented to ensure areas of the facility that either contribute or potentially contribute pollutants to storm water discharges are maintained and operated in a clean and orderly manner. The frequency for conducting each of the good housekeeping measures must be defined in the SWP3.

B. *Spill Prevention and Response Measures* - Areas must be identified where spills would likely contribute pollutants to storm water discharges. Procedures must be identified and implemented to minimize or prevent contamination of storm water from spills. Spill cleanup techniques must be identified and the necessary materials and equipment for cleanup made available to facility personnel. Facility personnel that work in the identified areas must be trained in spill prevention and response measures at a minimum frequency of once per year. A record of employee training shall be maintained on a minimum frequency of once per year, maintained on site, and be made readily available for inspection by authorized TCEQ personnel upon request.

The SWP3 may be modified at any time in order to implement either additional or more effective pollution control measures. A summary of revisions, including the dates of the revisions, shall be maintained on a quarterly basis, maintained as a part of the SWP3 document, and made readily available for inspection by authorized TCEQ personnel upon request.

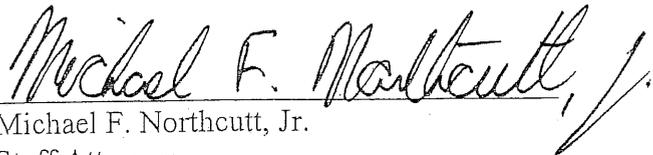
Qualified personnel, who are familiar with the industrial activities performed at the facility, must conduct monthly inspections to determine the effectiveness of the Good Housekeeping Measures, Spill Prevention and Response Measures, Best Management Practices, and the Employee Training Program. The results of inspections must be documented in an inspection summary report; include an assessment for any necessary revisions or additional measures to increase effectiveness of the SWP3; and include a time-frame for implementation of any follow-up actions. The summary report must be maintained on site, and be made readily available for inspection by authorized TCEQ personnel upon request.

Respectfully submitted,

Texas Commission on Environmental Quality

Glenn Shankle
Executive Director

Robert Martinez, Director
Environmental Law Division



Michael F. Northcutt, Jr.

Staff Attorney

Environmental Law Division

State Bar No. 24037194

P.O. Box 13087, MC 173

Austin, Texas 78711-3087

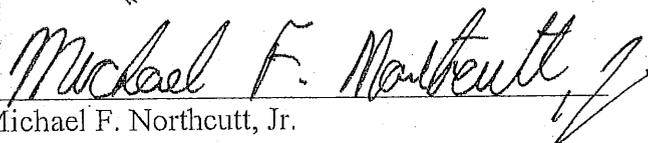
Phone (512) 239-6994

Fax: (512) 239-0606

REPRESENTING THE EXECUTIVE DIRECTOR
OF THE TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY

CERTIFICATE OF SERVICE

I certify that on June 6, 2007 the "Executive Director's Response to Public Comment" for Permit No. WQ0004073000 was filed with the Texas Commission on Environmental Quality's Office of the Chief Clerk.



Michael F. Northcutt, Jr.
Staff Attorney
Environmental Law Division
State Bar No. 24037194
P.O. Box 13087, MC 173
Austin, Texas 78711-3087
Phone (512) 239-6994
Fax: (512) 239-0606

CHIEF CLERK'S OFFICE

2007 JUN - 6 PM 4: 29

TEXAS
COMMISSION
ON ENVIRONMENTAL
QUALITY