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APPLICATION BY LERIN § BEFORE THE CHIEF CLERKS OFFICE
HILLS LTD FOR TPDES § TEXAS COMMISSION ON
PERMIT NO. WQ0014712001 § ENVIRONMENTAL QUALITY

EXECUTIVE DIRECTOR'S RESPONSE TO HEARING REQUESTS

I. Introduction

The Executive Director (ED) of the Texas Commission on Environmental Quality (TCEQ or Commission) files this Response to Hearing Requests (Response) on the application by the Lerin Hills, Ltd. (Applicant) for a new Texas Pollutant Discharge Elimination System (TPDES) Permit Number WQ0014712001. John E. Bakke III and Patricia S. Bakke, Cow Creek Groundwater Conservation District, Robert Webster, Edgar Blanch, and Eric Allmon of Lowerre & Frederick on behalf of Mountainview at Tapatio, Tapatio Springs Real Estate Holdings, Kendall County Development Company, Tapatio Springs Service Company, Kendall County Utility Company, Robert Webster, Edgar Blanch, and Rick Wood submitted contested case hearing (CCH) requests.

John E. Bakke III, Patricia Bakke, Robert Webster, and Cow Creek Groundwater Conservation District subsequently withdrew their CCH requests. Edgar Blanch withdrew his original CCH request on May 31, 2007, but then reasserted his request in the letter CCH request filed by Eric Allmon on July 27, 2007.

This Response only address the requests of Mountainview at Tapatio, Tapatio Springs Real Estate Holdings, Kendall County Development Company, Tapatio Springs Service Company,

Kendall County Utility Company, Edgar Blanch, and Rick Wood.

Attached for Commission consideration are the following:

- Attachment A - Technical Summary & Draft Permit
- Attachment B - TCEQ 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 applied to the TCEQ for a new permit to authorize the discharge of treated domestic wastewater at a daily average flow not to exceed 180,000 gallons per day (gpd) in the Interim I Phase, 360,000 gpd in the Interim II Phase, and 500,000 gpd in the Final Phase. The proposed wastewater treatment facility will serve a proposed development.

The treated effluent will be discharged to an unnamed tributary; then to the headwaters of an impoundment on Deep Hollow Creek; then to Deep Hollow Creek; then to Frederick Creek; then to the Upper Cibolo Creek in Segment No. 1908 of the San Antonio River Basin. The unclassified receiving water uses are no significant aquatic life uses for the unnamed tributary and high aquatic life uses for the impoundment on Deep Hollow Creek and Deep Hollow Creek. The designated uses for Segment No. 1908 are high aquatic life uses, public water supply, aquifer protection, and contact recreation.

The plant site will be located approximately 4.1 miles west of Interstate Highway 10, as measured along State Highway 46, and then approximately 200 feet due west from that point on State Highway 46 in Kendall County, Texas. The facility has not been built.

III. Procedural Background

The application for a new permit was received on May 3, 2006 and declared administratively complete on May 26, 2006. The Notice of Receipt and Intent to Obtain a Water Quality Permit was published on June 9, 2006 in the *Boerne Star and Recorder*. The Notice of Application and Preliminary Decision for a Water Quality Permit and Notice of Public Hearing was published on September 22, 2006 in the *Boerne Star and Recorder*. A public meeting was held in the Old County Courthouse in Boerne, on October 24, 2006. The public comment period ended at the conclusion of the public meeting. The ED's Response to Comments (RTC) was filed on June 21, 2007 with the TCEQ Office of the Chief Clerk. The RTC was mailed by the Office of the Chief Clerk on June 26, 2007.

IV. Evaluation of 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. This application was declared administratively complete on May 26, 2006, and therefore, is subject to the HB 801 requirements. The Commission implemented HB 801 by adopting procedural rules in Title 30 of the Texas Administrative Code (30 TAC) chapters 30, 59, and 55. The regulations governing requests for contested case hearings (CCH) are found at 30 TAC, chapter 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 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; and
- (6) 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 an 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.

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

Mountainview at Tapatio, Tapatio Springs Real Estate Holdings, Kendall County Development Company, Tapatio Springs Service Company, and Kendall County Utility Company filed timely, written CCH requests during the public comment period. On July 7, 2006, Mr. Blanch filed a request for a CCH, but on May 31, 2007, he withdrew his July 7, 2006 request. However, on July 27, 2007 at 5:02 p.m. just after the 5:00 p.m. deadline, Eric Allmon filed an additional CCH request representing the five previously listed requestors, as well as Robert Webster, Edgar Blanch, and Rick Wood. Mr. Webster subsequently withdrew his hearing requests by letter dated August 20, 2007. At the time of the late July 27, 2007 filing, neither Mr. Blanch nor Mr. Wood had an active CCH request in this case. Eric Allmon filed a motion to extend the deadline for filing with the Commission and that motion is pending. Therefore, if the Commission denies the motion to extend the CCH filing deadline then Mr. Blanch and Mr. Wood did not submit timely CCH requests.

If the Commission grants the motion to extend the CCH filing deadline, the ED recommends, the Commission find that all of the CCH requests substantially comply with the requirements of 30 TAC § 55.201(c) and (d). If the Commission denies the motion to extend the CCH filing deadline, the ED recommends the Commission find that Edgar Blanch and Rick Wood did not file timely hearing requests.

2. Whether the Requestor Meets the Requirements of an Affected Person

A. Mountainview at Tapatio, Tapatio Springs Real Estate Holdings, and Kendall County Development Company

These requestors assert that they are concerned about the effect the proposed wastewater treatment plant and the proposed discharge of effluent will have on them and their property, especially as it relates to the impact on the quantity and quality of groundwater and surface water and odors from lift stations, the plant, and the receiving stream. These requestors all own property adjacent to the proposed development, but not adjacent to the proposed facility. Mountainview at Tapatio's property is more than a mile from the proposed discharge point and the proposed wastewater treatment plant location. Tapatio Springs Real Estate Holdings and Kendall County Development Company's properties appear to be more than ½ mile from the proposed discharge point. None of the property owned by Mountainview at Tapatio, Tapatio Springs Real Estate Holdings, and Kendall County Development Company is adjacent to the discharge route. (See Attachment D).

There is not a reasonable relationship between the interests that Mountainview at Tapatio, Tapatio Springs Real Estate Holdings, and Kendall County Development Company claim and the activity regulated. Although they express a concern about groundwater quality and quantity, these requestors fail to demonstrate how they will be affected by any adverse impact in a way different from the general public. They also fail to show how they will be affected by any adverse impact on surface water since all of the real estate holdings appear to be upstream on the discharge route. The regulated activity will occur more than one-half mile from property owned by Mountainview at Tapatio, Tapatio Springs Real Estate Holdings, and Kendall County Development Company and their interests are common with other members of the general public. Therefore, Mountainview at Tapatio, Tapatio Springs Real Estate Holdings, and Kendall County Development Company are not affected persons because they have not established they have a justiciable interest in the permit application.

The ED recommends that the Commission find that Mountainview at Tapatio, Tapatio Springs Real Estate Holdings, and Kendall County Development Company are not affected persons because they do not meet the criteria set out in 30 TAC § 55.203.

B. Tapatio Springs Service Company and Kendall County Utility Company

Tapatio Springs Service Company stated that it owns and operates a sewage treatment plant with excess capacity that is located within three miles of the Applicant's proposed treatment facility. Additionally, Tapatio Springs Service Company stated that it intends to file an application with the Commission to merge with Kendall County Utility Company. The merger of Tapatio Springs Service Company and Kendall County Utility Company was completed on May 10, 2007, and resulted in Kendall County Utility Company being the holder of the sewer Certificate of Convenience and Necessity (CCN) in the area. However, absent an assertion or a demonstration that the CCN extends into or overlaps within the boundaries of the Lerin Hills municipal utility district (MUD), neither may legally serve within Lerin Hills boundaries without the consent of the MUD. Accordingly, neither is an affected person on the basis of their holding a CCN in the area.

These neighboring utilities protested the creation of the Lerin Hills MUD and claim they have the capacity to provide service to the subdivision. However, when the Commission authorized the Lerin Hills MUD at the November 15, 2006 agenda, the Commission made findings that the creation of the MUD was feasible, practicable, and necessary and would be a benefit to the land to be included within the district. Furthermore, under Texas Water Code § 13.242 another retail public utility would need a CCN to provide retail sewer service within the boundaries of the MUD. Kendall County Utility Company recently agreed to amend a pending CCN application to delete any territory located within Lerin Hills MUD. Pursuant to the agreement with Lerin Hills, Kendall County Utility Company filed a motion on September 17, 2007 with the State Office of Administrative Hearings administrative law judge to remand the CCN application to the ED as an uncontested application. Furthermore, the Applicant, as a landowner of a tract of at least 25 acres, could opt out of any future CCN application covering its land under Texas Water Code § 13.246(h). Therefore, Tapatio Springs Service Company and Kendall County Utility Company are not affected persons and do not have a justiciable interest in the permit application.

The ED recommends finding that Tapatio Springs Service Company and Kendall County Utility Company are not affected persons because they do not meet the criteria set out in 30 TAC § 55.203.

C. Rick Wood

According to the map provided by the Applicant, Mr. Wood is adjacent to the development and over one-half mile from the proposed facility. Also, Mr. Wood lives more than a mile downstream of the proposed discharge point (See Attachment D). However, Mr. Wood failed to provide any information regarding his judiciable interest. He is named as a client in the filing of Eric Allmon on July 27, 2007, but there is no attempt to establish that his interest is different from that of the general public.

The ED recommends that if the Commission finds that Mr. Wood is not an affected person because he does not meet the criteria set out in 30 TAC § 55.203.

D. Edgar Blanch

Mr. Blanch indicated that the proposed discharge route is across his property. Mr. Blanch states that he is affected because the discharge may physically affect his property and have a significant impact on the value of his property. Additionally, Mr. Blanch stated that if the proposed wastewater treatment facility is not properly maintained, his property could be damaged. According to the map supplied by the Applicant, Mr. Blanch's property is less than one mile downstream of the discharge directly on the discharge route (See Attachment D).

There is a reasonable relationship between the interests Mr. Blanch claims and the activity regulated. The regulated activity may impact Mr. Blanch's health and safety and the use of his property. Therefore, Mr. Blanch is an affected person who has a personal justiciable interest in the permit application.

Assuming the CCH request for Mr. Blanch is timely, the Executive Director recommends finding that Mr. Blanch is an affected person because he meets the criteria set out in 30 TAC § 55.203.

C. Whether Issues Raised Are Referable to State Office of Administrative Hearings (SOAH) for a Contested Case Hearing.

In addition to recommending to the Commission those persons who qualify as affected persons, the ED analyzes the issues raised in accordance with the regulatory criteria. All of the issues discussed below were raised during the comment period. None of the listed issues were withdrawn. All identified issues in the response are considered disputed, unless otherwise noted.

1. Whether the proposed discharge will be in compliance with regulations that are intended to protect groundwater and surface water quality or with regulations that are intended to protect the health of humans, aquatic life, wildlife, or livestock. (RTC #6, #7, #8, #9, #10, #23, #30, #31, #32, #36, and #37)

This issue is one of fact. If it can be shown that the proposed discharge will not be in compliance with regulations that are intended to protect water quality or with regulations that are intended to protect the health of humans, wildlife, or livestock that information would be relevant and material to the decision on the application. The ED recommends referring this issue to SOAH.

2. Whether the effluent limitations in the draft permit are protective of water quality and the designated uses of the receiving waters. (RTC #1, #30, and #31)

The issue is one of fact. If it can be shown that the effluent limitations in the draft permit are not protective of water quality that information would be relevant and material to the

decision on the application. The ED recommends referring this issue to SOAH.

3. **Whether the permit would authorize the Applicant to discharge the appropriate amount of wastewater based on the service area projections. (RTC #13 and #29)**

This issue is one of fact. The Applicant provided justification for the proposed flows in the draft permit based on estimates of wastewater flows from the proposed development, which includes homes, an elementary school, and some commercial/retail development. Therefore, if it could be shown that those calculations and projections do not justify the volume of the proposed discharge that information would be relevant and material to the decision on the application. The ED recommends referring this issue to SOAH.

4. **Whether the proposed facility would comply with the siting requirements in 30 TAC § 309.12. (RTC #21)**

This is a question of fact. 30 TAC § 309.12 states that the commission may not issue a permit unless it finds that: "The proposed site, when evaluated in light of the proposed design, construction or operational features, minimizes possible contamination of surface water and groundwater." The Applicant must meet all siting requirements specified in 30 TAC, Chapter 309. If it could be shown that the proposed facility would not comply with applicable siting requirements then that information would be relevant and material to the decision on the application. The ED recommends referring this issue to SOAH.

5. **Whether the facility will meet the rule requirements intended to reduce nuisance odor conditions. (RTC #3)**

This issue is one of fact. If it can be shown that the facility will not meet the rule requirements intended to reduce nuisance odor conditions that information would be relevant and material to the decision on the application. The ED recommends referring this issue to

SOAH.

6. **Whether the Applicant's compliance history is such that the permit should not be issued. (RTC #39)**

This issue is one of fact. If it can be shown that the Applicant has a compliance history that should preclude the Commission from issuing this permit that information would be relevant and material to the decision on the application. The ED recommends referring this issue to SOAH.

7. **Whether the facility will have adequate controls and operators so that it will not discharge raw sewage or partially treated wastewater. (RTC #40)**

The issue of controls for accidental spills is addressed in the TCEQ rules regarding design criteria. The rules in 30 TAC Chapter 317, Design Criteria for Sewage Systems, require permit issuance before final design of the facility. The final design of the facility is not required as part of the wastewater permit application because at this stage of the process, an applicant is not certain what type of effluent limits a wastewater treatment plant will have to meet. If issued, the permit requires the Applicant to meet the design criteria requirements for domestic wastewater treatment plants prior to construction of the facility. The draft permit requires the Applicant to clearly show how the treatment system will meet the final permitted effluent limitations. The draft permit requires the Applicant to submit to the TCEQ Wastewater Permitting Section a summary submittal letter for the design criteria according to 30 TAC § 317.1, prior to construction of each phase of the wastewater treatment facilities. The summary letter must be signed and sealed by a licensed professional engineer. If requested by the Wastewater Permitting Section, the Applicant must submit plans, specifications, and a final engineering design report that comply with 30 TAC, Chapter 317, Design Criteria for Sewerage Systems. The ED, in determining whether to perform a review, uses factors, such as the proposed use of a nonconforming or innovative technology, the stream segment where the facility is located, and the Applicant's compliance history. In

addition, after construction a licensed professional engineer must certify that the wastewater treatment facility was constructed according to the plans and specifications. Therefore, this issue is not relevant and material to a decision on the application. The ED recommends not referring this issue to SOAH.

8. Whether alternative disposal methods other than discharge should be used at the proposed facility. (RTC #42)

The ED evaluates the method of treatment and the discharge route that were proposed in the application. If the ED determines that the proposed method of treatment and disposal are protective of human health and the environment and comply with the rules, the ED does not have the authority to mandate a different type of wastewater treatment plant. The ED evaluates applications for wastewater treatment plants, based on the information provided in the application, and the existing quality of the waterbody. Therefore, this issue is not relevant and material to a decision on the application. The ED recommends not referring this issue to SOAH.

9. Whether the draft permit should require disinfection through the use of ultraviolet light rather than chlorination. (RTC #14)

A method for disinfection is required in all wastewater discharge permits, but the rules do not dictate a particular method. During the permitting process, the ED reviews the disinfection process, but does not dictate to an applicant what method to use. The draft permit contains a requirement for disinfection that the ED determined can meet the proposed effluent limitations. Therefore, this issue is not relevant and material to the decision on the application. The ED recommends not referring this issue to SOAH.

10. Whether the Applicant has obtained all the necessary property rights for use of the discharge route. (RTC #5)

This is a mixed question of law and fact. If this permit is issued, it does not grant the Applicant the right to use private or public property for conveyance of wastewater along the discharge route. Additionally, the draft permit does not authorize any invasion of property rights or violation of any laws or regulations. It is the responsibility of Lerin Hills to acquire all property rights necessary to use the discharge route, if necessary. Therefore, this issue is not relevant and material to the decision on the application. The ED recommends not referring this issue to SOAH.

11. Whether it is appropriate that the discharge from the facility would comprise the total flow in the receiving streams most of the time. (RTC #2)

The effluent limits in the draft permit were developed based on minimum low flow, i.e., the critical low flow conditions to be protective of the dissolved oxygen criteria for the receiving waters. The draft permit requires that the effluent must be treated to a level that is protective of human health and the environment without dilution from the receiving waterbody. Therefore, the appropriateness of the stream flow being made up in large part from effluent discharged from the facility is not relevant and material to the decision on the application. The ED recommends not referring this issue to SOAH.

12. Whether the need for this facility can be met by existing wastewater treatment infrastructure (regionalization). (RTC #12)

Neighboring utilities protested the creation of the Applicant's MUD and claimed they can provide service to the subdivision. However, since the Commission created the Lerin Hills MUD on November 22, 2006, they cannot legally serve within the district without consent of the Applicant. Therefore, this issue is not relevant and material to the decision on the permit application. The ED recommends not referring this issue to SOAH.

13. Whether large amounts of potentially contaminated storm water will enter the lake because of an increase in impervious cover due to the facility and development. (RTC #11 and #17)

This permit application is limited to authorizing the discharge of pollutants from the proposed wastewater treatment facility. The draft permit includes effluent limits and other requirements that the Applicant must meet even during rainfall events and periods of flooding. The domestic wastewater permitting process does not address storm water runoff from impervious cover from the proposed development. Therefore, this issue is not relevant and material to the decision on the application. The ED recommends not referring this issue to SOAH.

14. Whether the draft permit authorizes an interbasin transfer that violates TCEQ's interbasin transfer policy. (RTC #15)

A wastewater discharge permit may not be the only permit that the Applicant is required to obtain. If the Applicant was planning on transferring water from one basin to another, it would be required to obtain a permit under Texas Water Code § 11.085. The Applicant indicated it intends to purchase water from the Guadalupe-Blanco River Authority (GBRA). In that case, it is GBRA's responsibility to obtain a water right for an interbasin transfer. Therefore, this issue is not relevant and material to the decision on the permit application. The ED recommends not referring this issue to SOAH.

15. Whether there is sufficient groundwater in the area to serve the proposed development. (RTC #19)

The ED does not address water supply issues in the wastewater permitting process. Obviously, the availability of a sufficient water supply is important to the developer, but the ED considers water quality issues related to the proposed wastewater discharge. Therefore,

this issue is not relevant and material to a decision on the application. The ED recommends not referring this issue to SOAH.

16. Whether the Applicant will turn over the facility to some entity without the experience to operate it. (RTC #22)

TCEQ regulations require all facilities to be operated by a properly licensed operator. However, as raised, this issue is not an issue of fact, but a hypothetical issue of a situation that could happen in the future. Furthermore, the Commission created the Lerin Hills MUD on November 22, 2006 that has the responsibility to provide retail sewer service within its boundaries. Therefore, this issue is not relevant and material to a decision on the application. The ED recommends not referring this issue to SOAH.

17. Whether a bond will be necessary to ensure the safe operation and possible closure of the proposed facility. (RTC # 25)

This issue is an issue of law. According to 30 TAC § 291.142, the Applicant is not required to post a bond to ensure that adequate funds are available to construct and operate the wastewater treatment plant. TCEQ may appoint a person to temporarily operate or manage a facility if the Applicant discontinues or abandons operations. This issue is not referable to SOAH because it is an issue of law and not a disputed fact issue. The ED recommends not referring this issue to SOAH.

18. Whether it is improper for the municipal utility district creation and the TPDES permit application to be processed independently of one another. (RTC #38)

The process for obtaining wastewater discharge permit and the process to create a district are separate and distinct processes and are evaluated on their own merits. It is possible for a MUD to be created many years before it obtains a wastewater discharge permit. Therefore,

this issue is not relevant and material to a decision on the application. The ED recommends not referring this issue to SOAH.

- 19. Whether MUD customers will be required to pay for a wastewater treatment plant that is larger than necessary for the number of customers it will serve. (RTC #38)**

Rate payment for service is beyond the scope of the wastewater permitting process for this application. Therefore, this issue is not relevant and material to a decision on the application. The ED recommends not referring this issue to SOAH.

- 20. Whether the Applicant is properly following environmental regulations for construction activities conducted in conjunction with this project. (RTC #33)**

The Applicant is required to comply with TCEQ requirements that seek to minimize water quality impacts to the receiving stream from construction activities. Specifically, an applicant may get coverage under the Construction General Permit (CGP) for Storm Water, TXR. 150000, or apply for an individual permit. Under the CGP, an entity who seeks authorization under the general permit is required to develop and implement a storm water pollution prevention plan at any construction site that disturbs in excess of one acre. The Applicant may begin work on the development prior to receiving a wastewater discharge permit, but may not begin construction on the actual wastewater treatment facility prior to obtaining a permit. These requirements are not part of the wastewater permitting process for this application. Therefore, this issue is not relevant and material to a decision on the application. The ED recommends not referring this issue to SOAH.

- 21. Whether there are statutory ramifications to mixing ground and surface water and then discharging it as surface water. (RTC #41)**

Typically, the source of water for the proposed development does not have a legal impact on whether the TCEQ can issue a wastewater discharge permit under Chapter 26 of the Texas Water Code. Therefore, this issue is not relevant and material to a decision on the application. The ED recommends not referring this issue to SOAH.

22. Whether GBRA should provide data showing the impact of a wastewater treatment plant constructed in the Cibolo Creek watershed. (RTC #43)

The ED requires an applicant to provide information in the application that meets the requirements for a domestic wastewater TPDES permit. The ED reviews the material in the application, requests any additional information that may be required, and provides recommendations on whether a draft permit can be prepared and if so, what provisions should be included in the draft permit. Studies from these other entities are not required to complete the permitting process. Therefore, this issue is not relevant and material to a decision on the application. The ED recommends not referring this issue to SOAH.

23. Whether a study should be initiated to measure the impact the proposed discharge would have on the Edward's Aquifer contributing zone. (RTC #18)

The proposed facility and development will be located in Kendall County, more than ten stream miles from the contributing zone and over five miles from the recharge zone. TCEQ's rules require stringent effluent limits for all new or increased discharges of treated wastewater from zero to five miles upstream of the Edwards Aquifer recharge zone. Therefore, the proposed facility is not subject to the Edwards Aquifer rules. The proposed discharge location is more than 13 miles from the Edwards Aquifer recharge zone. However, the effluent limits in the draft permit are more stringent than what are required for new discharges eight miles closer to the recharge zone. Therefore, this issue is not relevant and material to a decision on the application. The ED recommends not referring this issue to SOAH.

24. Whether TCEQ should conduct a survey to identify critical recharge features. (RTC #43)

The ED requires an applicant to provide information in the application that meets the requirements for a domestic wastewater TPDES permit. The ED reviews the material in the application, requests any additional information that may be needed, and provides recommendations on whether a draft permit can be prepared and if so, what requirements should be included in the draft permit. Studies conducted by TCEQ are not required to complete the permitting process. Therefore, this issue, as raised, is not relevant and material to a decision on the application. However, if there is evidence of threats to actual recharge features from the proposed discharge that evidence may be raised under issue #1. The ED recommends not referring this issue to SOAH.

25. Whether the Cibolo Creek Enhancement Project study by the U.S. Corps of Engineers, SARA, GBRA, and SAWS should be completed before the permit is issued. (RTC #43)

The ED requires an applicant to provide information in the application that meets the requirements for a domestic wastewater TPDES permit. The ED reviews the material in the application, requests any additional information that may be needed, and provides recommendations on whether a draft permit can be prepared and if so, what requirements should be included in the draft permit. Studies conducted by other entities are not required to complete the permitting process. Therefore, this issue is not relevant and material to a decision on the application. The ED recommends not referring this issue to SOAH.

26. Whether GBRA should develop a study for the Cibolo Creek watershed to measure the impact to the Trinity Aquifer. (RTC #43)

The ED requires an applicant to provide information in the application that meets the requirements for a domestic wastewater TPDES permit. The ED reviews the material in the

application, requests any additional information that may be needed, and provides recommendations on whether a draft permit can be prepared and if so, what requirements should be included in the draft permit. Studies conducted by other entities are not required to complete the permitting process. Therefore, this issue is not relevant and material to a decision on the application. The ED recommends not referring this issue to SOAH.

27. Whether the facility and its operation will negatively impact the quality of life and the use and enjoyment of nearby property. (RTC #24 and #44)

This issue is not considered in the wastewater permitting process. Therefore, this issue is not relevant and material for a decision on the application. The ED recommends not referring this issue to SOAH.

28. Whether the facility and its operations will negatively affect property values. (RTC #44)

This issue is not considered in the wastewater permitting process. Therefore, this issue is not relevant and material for a decision on the application. The ED recommends not referring this issue to SOAH.

29. Whether the density of the proposed development is appropriate. (RTC #44)

The ED does not address concerns about the size of a proposed development in the wastewater permitting process. However, the ED does look at whether the proposed facility is sized to serve the expected population (See issue #3). Therefore, this issue, as raised, is not relevant and material to a decision on the application. The ED recommends not referring this issue to SOAH.

30. Whether TCEQ should complete the PGMA process to provide a Groundwater Conservation District for Comal County. (RTC #44)

The permitting process is intended to control the discharge of pollutants into water in the state and to protect the water quality of the state's rivers, lakes, and coastal waters. The process for providing a Groundwater Conservation District is beyond the scope of this particular permitting process. Therefore, this issue is not relevant and material to a decision on the application. The ED recommends not referring this issue to SOAH.

**31. Whether the additional effluent could hinder the dam for flood control.
(RTC #44)**

The permitting process is intended to control the discharge of pollutants into water in the state and to protect the water quality of the state's rivers, lakes, and coastal waters. Flood control is not typically addressed in the wastewater permitting process, unless the issue of flooding could have an adverse impact on water quality. Therefore, this issue is not relevant and material to a decision on the application. The ED recommends not referring this issue to SOAH.

**32. Whether the plats for the development have been approved by the
Commissioners' Court. (RTC #44)**

Proper approval of plats for a proposed development is beyond the scope of this permitting process. Therefore, this issue is not relevant and material to a decision on the application. The ED recommends not referring this issue to SOAH.

33. Whether the proposed facility would be aesthetically pleasing. (RTC #44)

The physical appearance of a proposed wastewater treatment facility is not relevant and material to a decision on the application. The ED recommends not referring this issue to SOAH.

34. Whether mailed notice was defective because the envelopes containing the notice of application sent to Mountainview at Tapatio, Tapatio Springs Real Estate Holdings, and Kendall County Development Company only contained blank paper. (RTC #20)

An error did occur during the mailed notice process. However, the affected named parties each had actual notice of the permit application, as evidenced by their written comments and their attendance at the public meeting on October 24, 2006. This is an issue of law and not fact, so it is not appropriate to refer to SOAH. However, if the commission finds notice is defective, the permit application should be remanded to the ED. The ED recommends not referring this issue to SOAH.

The ED recommends referring issues #1-#6 to SOAH.

VI. Duration of the Contested Case Hearing

The ED recommends that the duration for a CCH on this matter between preliminary hearing and the presentation of a proposal for decision before the Commission, be nine months.

VII. Executive Director's Recommendation

The ED recommends the following actions by the Commission:

1. The ED recommends that the Commission find that Mountainview at Tapatio, Tapatio Springs Real Estate Holdings, Kendall County Development Company, Tapatio Springs Service Company, Kendall County Utility Company, and Rick Wood are not affected persons because they do not meet the criteria set out in 30 TAC § 55.203.

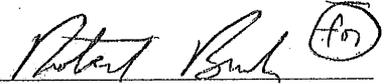
2. If the Commission grants the motion to extend the time period to request a CCH, the ED recommends the Commission find that Edgar Blanch is an affected person because he meets the criteria set out in 30 TAC § 55.203.
3. Refer issues #1-#6 to SOAH for a proceeding of nine months duration with the time period beginning with the preliminary hearing and concluding with presentation of a proposal for decision before the Commission.
4. If referred to SOAH, first refer to Alternative Dispute Resolution for a reasonable period.

Respectfully submitted,

TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY

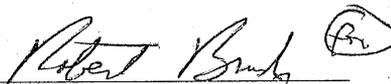
Glenn Shankle, Executive Director

Robert Martinez, Director
Environmental Law Division

By 
Kathy Humphreys, Staff Attorney
Environmental Law Division
State Bar No. 24006911
P.O. Box 13087, MC 173
Austin, Texas 78711-3087
(512) 239-3417
(512) 239-0606
REPRESENTING THE
EXECUTIVE DIRECTOR OF THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY

CERTIFICATE OF SERVICE

I hereby certify that on October 1, 2007 the original and eleven true and correct copies of the "Executive Director's Response to Hearing Request" relating to the application of Lerin Hills, Ltd. for a new TPDES Permit No. WQ0014712001 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.

Handwritten signature of Robert Brubaker in cursive, with a circled 'R' to the right.

Kathy Humphreys, Staff Attorney
Environmental Law Division
State Bar No. 24006911

**MAILING LIST
LERIN HILLS, LTD.**

DOCKET NO. 2007-1178-MWD; PERMIT NO. WQ0014712001

FOR THE APPLICANT

J. Abel Godines
Lerin Hills MUD, WWTP
4820 Bacon Road
San Antonio, Texas 78249-4001

Charles R. Hallenberger
Pate Engineers
8200 W. IH-10, Ste. 440
San Antonio, Texas 78230-3807
Tel: (210) 340-8481
Fax: (210) 340-3964

Teague G. Harris, P.E.
Pate Engineers, Inc.
13333 Northwest Freeway, Ste. 300
Houston, Texas 77040
Tel: (713) 462-3178
Fax: (713) 462-1631

Richard Kammerman
3139 W. Holcombe, No. 175
Houston, Texas 77025-1505
Tel: (512) 343-2424
Fax: (512) 233-2763
Fax: (713) 669-0826

FOR THE EXECUTIVE DIRECTOR

Kerrie Jo Qualtrough, Senior Attorney
Texas Commission on Environmental Quality
Environmental Law Division, MC-173
P.O. Box 13087
Austin, Texas 78711-3087
Tel: (512) 239-0600
Fax: (512) 239-0606

Chris Linnendoll
Mary Ann Airey
Texas Commission on Environmental Quality
Water Quality Division, MC-148
P.O. Box 13087
Austin, Texas 78711-3087
Tel: (512) 239-4540
Fax: (512) 239-4114

FOR PUBLIC INTEREST COUNSEL:

Mr. Garrett Arthur
Texas Commission on Environmental Quality
Public Interest Counsel, MC-103
P. O. Box 13087
Austin, Texas 78711-3087
Tel: (512) 239-6363
Fax: (512) 239-6377

FOR THE 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
Tel: (512) 239-4000
Fax: (512) 239-4007

FOR ALTERNATIVE DISPUTE
RESOLUTION:

Mr. Kyle Lucas
Texas Commission on Environmental Quality
Alternative Dispute Resolution, MC-222
P. O. Box 13087
Austin, Texas 78711-3087
Tel: (512) 239-4010
Fax: (512) 239-4015

FOR THE CHIEF CLERK

Ms. LaDonna Castañuela
Texas Commission on Environmental Quality
Office of the Chief Clerk, MC-105
P. O. Box 13087
Austin, Texas 78711-3087
Tel: (512) 239-3300
Fax: (512) 239-3311

REQUESTER(S)

Eric Allmon
Lowerre & Frederick
44 East Ave, Ste. 100
Austin, Texas 78701-4386

John E. & Patricia S. Bakke
305 State Highway 46 W
Boerne, Texas 78006-8311

Grady B. Jolley
Nunley, Davis, Jolley, Cluc,k Aelvoet, LLP
1580 S. Main Street, Ste. 200
Boerne, Texas 78006-3311

Patrick W. Lindner
Davidson & Troilo Pc
7550 W. IH 10, Ste. 800
San Antonio, Texas 78229-5803

E. W. Blanch, Jr.
415 Highway 46 W
Boerne, Texas 78006-8121

**PUBLIC OFFICIALS-INTERESTED
PERSON(S)**

The Honorable Carter Casteel
Texas House of Representatives
P.O. Box 2910
Austin, Texas 78768-2910

The Honorable Jeff Wentworth
Texas Senate
P.O. Box 12068
Austin, Texas 78711-2068

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Attachment A

Texas Commission on Environmental Quality

INTEROFFICE MEMORANDUM

To: Firoj Vahora, Team Leader
Municipal Permits Team, Wastewater Permitting Section

Date: August 16, 2006

From: Mary Ann Dimakos Airey, P.E., Municipal Permits Team

APPLICANT: Lerin Hills, Ltd.

PLANT NAME: Lerin Hills MUD WWTP

TPDES PERMIT NO: WQ0014712001

EPA ID NO: TX0128767

FILE NAME: C:\WINDOWS\Temp\14712-001 Lerin Hills.wpd

MODELING MEMO: 6/30/06

STANDARDS MEMO: 6/22/06

PRETREATMENT MEMO: N/A

ADMIN COMPLETE DATE: 5/26/06

ASSIGN DATE: 6/30/06

TECH COMPLETE DATE: 8/16/06

ADDL INFO RECD: 7/7/2006 with technical information; however, permittee indicated some info would be provided at a later date, specifically letter from SAWS saying they will accept sludge from proposed wwtp. Letter not provided as of 8/16/06 so draft permit finalized without authorization to take sludge to another wwtp.

Discharge (TPDES) **PERMIT TYPE**
PRIVATE DOMESTIC MINOR(< 1 MGD)

PERMIT ACTION
New

PERMIT PACKAGE

YES	NO	
✓		Transmittal letter to applicant
✓		Transmittal letter to EPA
✓		Statement of Basis/Technical Summary and ED Preliminary Decision
✓		Permit Draft
	✓	Pretreatment Requirements for POTWs
✓		EPA REVIEW CHECKLIST
✓		FACILITY PROCESS FORM (saved to I:\wq\muni\tracs forms)
✓		NOTICE for admin complete on or after 9/1/99
✓		CAPTION (also saved in I:\EVERYONEwq\CAPTION)
	✓	MAJOR/MINOR DETERMINATION (if needed)
	✓	LOCATED IN THE COASTAL ZONE (if located in coastal zone, include CMP Threshold Review Sheet)
✓		SPELLCHECK: DRAFT PERMIT/TECH SUM/SOB/FACT SHEET/NOTICE/LETTER(S)
✓		SCHEDULE FOR ERC Part A: All major and minor amendments, new applications and permits in Edwards Aquifer area are scheduled for ERC Located in the Edwards Aquifer area: NO
✓		COMPLIANCE HISTORY:
✓		✓ No enforcement orders; does not need to go to ERC Part C.

COMMENTS: The draft permit authorizes interim I volume of 0.18 MGD, interim II volume of 0.36 MGD and a final volume of 0.5 MGD. Effluent limits in the each of the phases are 5 mg/l CBOD₅, 5 mg/l TSS, 1 mg/l NH₃-N, 0.5 mg/l Phosphorus, Report mg/l NO₃-N, Report mg/l Total N, and 6.0 mg/l minimum DO. The effluent shall contain a chlorine residual of at least 1.0 mg/l and shall not exceed a chlorine residual of 4.0 mg/l after a detention time of at least 20 minutes based on peak flow. The permittee shall obtain legal restrictions prohibiting residential structures within the part of the buffer zone not owned by the permittee according to 30 TAC Section 309.13(e)(3).

Mr. Charles R. Hallenberger, P.E.
Pate Engineers, Inc.
8200 Interstate 10 West, Suite 440
San Antonio, Texas 78230

Re: Lerin Hills, Ltd. - Proposed TPDES Permit No. WQ0014712001, (TX0128767)
(CN603039611; RN104957972)

Dear Mr. Hallenberger:

Enclosed for your review and comment is a copy of a draft proposed permit and statement of basis/technical summary for the above-referenced operation. This draft permit is subject to further staff review and modification; however, we believe it generally includes the terms and conditions that are appropriate to your discharge. **Please read the entire draft carefully and note the following:**

1. The draft permit will be issued to expire March 1, 2010, in accordance with 30 TAC Section 305.71, Basin Permitting.
2. The draft permit authorizes a discharge of treated domestic wastewater at an interim I volume not to exceed a daily average flow of 0.18 million gallons per day (MGD), an interim II volume not to exceed a daily average flow of 0.36 MGD and a final volume not to exceed a daily average flow of 0.5 MGD.
3. The effluent limitations in the each of the phases of the draft permit, based on a 30-day average, are 5 mg/l CBOD₅, 5 mg/l TSS, 1 mg/l NH₃-N, 0.5 mg/l Phosphorus, Report mg/l NO₃-N, Report mg/l Total N and 6.0 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.
4. The permittee shall comply with the requirements of 30 TAC Section 309.13 (a) through (d). In addition, the draft permit includes a requirement for the permittee to obtain legal restrictions prohibiting residential structures within the part of the buffer zone not owned by the permittee according to 30 TAC Section 309.13(e)(3).
5. Please note that authorization to dispose of sludge from the proposed wastewater treatment plant by transporting it to the San Antonio Water System wastewater treatment facilities has not been included in the draft permit since the applicant did not provide a letter from SAWS that indicates they will accept sludge from the proposed wastewater treatment plant.

Mr. Charles R. Hallenberger, P.E.
Page 2

Also enclosed for your review and comment is a copy of the draft second notice, the Notice of Application and Preliminary Decision (NAPD), that was prepared for your application. Please review this notice and provide comments if there are any inaccuracies or any information that is not consistent with your application. Please do not publish the notice at this time; after the draft permit is filed with the Office of the Chief Clerk, you will receive instructions for publishing this notice in a newspaper from the Office of the Chief Clerk. Please note that these instructions will not be mailed if the Office of the Chief Clerk has not received the requested proof that the first notice (Notice of Receipt and Intent to Obtain a Permit) has been published. This could cause delays in the processing of your application and the final issuance of the proposed draft permit. When the NAPD notice is received, please publish promptly and submit proof of publication (affidavit and tearsheet) to the Office of the Chief Clerk. Failure to publish notice and submit proof of publication in a timely manner may result in returning of the application and loss of authorization to operate.

Please read the enclosed "Draft Permit Form" and submit your comments prior to the deadline that is indicated on the form. If your comments are not received by the deadline, the draft permit will be transferred to the Office of the Chief Clerk and comments received after this date will not be considered. Please see the enclosed form for further details.

If you have any comments or questions, please contact me at (512) 239-4521 or if by correspondence, include MC 148 in the letterhead address following my name.

Sincerely,

Mary Ann Dimakos Airey, P.E., Permit Coordinator
Municipal Permits Team
Wastewater Permitting Section (MC 148)
Water Quality Division
Texas Commission on Environmental Quality

Enclosures

cc: Mr. Teague G. Harris, P.E., Pate Engineers, Inc.
13333 Northwest Freeway, Suite 300, Houston, Texas 77040
Mr. Richard E. Kammerman, Richard Kammerman, P.C.,
7200 North Mopac, Suite 150, Austin, Texas 78731
TCEQ Region 13

CERTIFIED MAIL

Ms. Evelyn Rosborough (6WQ-CA)
U.S. Environmental Protection Agency
Region 6
1445 Ross Avenue
Dallas, Texas 75202

Re: Lerin Hills, Ltd.
TPDES Draft Permit No. WQ0014712001, (TX0128767)
(CN603039611; RN104957972)

Dear Ms. Rosborough:

Enclosed is the draft proposed permit, Fact Sheet and Executive Director's Preliminary Decision, Technical Summary and Executive Director's Preliminary Decision, and application material for the draft TPDES Permit No. WQ0014712001 as required under the TCEQ/EPA Memorandum of Agreement. Please review and provide any written comments, objections (general or interim) or recommendations with respect to the draft permit within forty-five days from the receipt of this draft permit to me.

If you need additional information or have any questions, please call Ms. Mary Ann Dimakos Airey, P.E. of my staff by telephone at (512) 239-4521, by e-mail at mairey@tceq.state.tx.us, by fax at 512/239-4430 or if by correspondence, include MC 148 in the letterhead address following his/her name. Thank you for your cooperation in this matter.

Sincerely,

Firoj Vahora, Team Leader
Municipal Permits Team
Wastewater Permitting Section
Water Quality Division

FV/MDA/mam

Enclosures

ATTACHMENT 1
EPA - REGION 6
NPDES PERMIT CERTIFICATION CHECKLIST
Page 2 of 2

	Yes	No	N/A
8. Does this permit authorize ammonia discharges > 4.0 mg/l at the edge of the mixing zone?		✓	
9. Does this permit require testing for Whole Effluent Toxicity in accordance with the state's standard practices and implementation plan?			✓
10. If this facility has completed and implemented a Toxicity Reduction Evaluation (TRE), has any subsequent toxicity been identified?			✓
11. Does this permit propose to grant a variance request (<i>WQS, FDF, etc.</i>) or does it incorporate a proposed or final approval of a variance request?		✓	
12. If a POTW is ≥ 5 MGD, does it have an approved Pretreatment Program?			✓
13. Since the last permit issuance, has the POTW had a new Pretreatment Program approved or a Pretreatment Program modification approved?			✓
14. Does this permit contain authorization for wet weather related peak-flow discharges?		✓	
15. Does this permit include a bypasses of any treatment unit or authorize overflows in the system?		✓	
16. Does this permit include provisions for effluent trading?		✓	
17. Does this permit contain specific issues on which EPA and the state are not in agreement regarding the permitting approach?		✓	
18. Is this facility subject to a national effluent limitations guideline? Please specify:		✓	
19. Does this permit contain "first-time" implementation of a new federal guideline, policy, regulation, etc.? Please specify:		✓	
20. Is this a new facility or an expansion of an existing facility? For an EXISTING facility, if any limits have been removed or are less stringent than those in the previous permit, is it in accordance with the anti-backsliding regulations?		✓	
21. Does this permit incorporate any exceptions to the standards or regulations?		✓	
22. If this is a permit modification/amendment? Please specify:		✓	

Name: Mary Ann Dimakos Airey, P.E.

Date: August 15, 2006

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



NOTICE OF APPLICATION AND PRELIMINARY DECISION FOR TPDES PERMIT FOR MUNICIPAL WASTEWATER NEW

PROPOSED PERMIT NO. WQ0014712001

APPLICATION AND PRELIMINARY DECISION. Lerin Hills, Ltd., 4820 Bacon Road, San Antonio, Texas 78249, a private developer, has applied to the Texas Commission on Environmental Quality (TCEQ) for a new permit, proposed Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0014712001, to authorize the discharge of treated domestic wastewater at a daily average flow not to exceed 500,000 gallons per day. TCEQ received this application on May 3, 2006.

The facility is located approximately 4.1 miles west of Interstate Highway 10, as measured along State Highway 46, and then approximately 200 feet due west from that point on State Highway 46 in Kendall County, Texas. The treated effluent is discharged to an unnamed tributary; thence to the headwaters of an impoundment on Deep Hollow Creek; thence to Deep Hollow Creek; thence to Frederick Creek; thence to the Upper Cibolo Creek in Segment No. 1908 of the San Antonio River Basin. The unclassified receiving water uses are no significant aquatic life uses for the unnamed tributary and high aquatic life uses for the impoundment on Deep Hollow Creek and Deep Hollow Creek. The designated uses for Segment No. 1908 are high aquatic life uses, public water supply, aquifer protection, and contact recreation. In accordance with §307.5 and the TCEQ implementation procedures (January 2003) for the Texas Surface Water Quality Standards, an antidegradation review of the receiving waters was performed. Upper Cibolo Creek Segment No. 1908 has been listed in the 2002 305(b) Texas Water Quality Inventory for nutrient enrichment concerns for Orthophosphorus. Additionally, the segment is also listed on the 2002 303(d) List of Impaired Waterbodies for depressed dissolved oxygen. To help preclude degradation and more closely monitor wastewater, an effluent limit of 0.5 mg/l Total Phosphorus and monitoring requirements for Nitrate-Nitrogen and Total Nitrogen are required in the draft permit. With the incorporation of these requirements in the draft permit, the Water Quality Standards Team has preliminarily determined that no significant degradation of high quality waters is expected and that existing uses will be maintained and protected. The preliminary determination can be reexamined and may be modified if new information is received.

The TCEQ Executive Director has completed the technical review of the application and prepared a draft permit. The draft permit, if approved, would establish the conditions under which the facility must operate. The Executive Director has made a preliminary decision that this permit, if issued, meets all statutory and regulatory requirements. The permit application, Executive Director's preliminary decision, and draft permit are available for viewing and copying at the Boerne Public Library, 210 North Main Street, Boerne, Texas.

PUBLIC COMMENT / PUBLIC MEETING. You may submit public comments or request a public meeting about this application. The purpose of a public meeting is to provide the opportunity to submit comments or to ask questions about the application. TCEQ holds a public meeting if the Executive Director determines that there is a significant degree of public interest in the application or if requested by a local legislator. A public meeting is not a contested case hearing.

OPPORTUNITY FOR A CONTESTED CASE HEARING. After the deadline for submitting public comments, the Executive Director will consider all timely comments and prepare a response to all relevant and material, or significant public comments. Unless the application is directly referred for a contested case hearing, the response to comments will be mailed to everyone who submitted public comments and to those persons who are on the mailing list for this application. If comments are received, the mailing will also provide instructions for requesting a contested case hearing or reconsideration of the Executive Director's decision. A contested case hearing is a legal proceeding similar to a civil trial in a state district court.

TO REQUEST A CONTESTED CASE HEARING, YOU MUST INCLUDE THE FOLLOWING ITEMS IN YOUR REQUEST: your name; address, phone; applicant's name and permit number; the location and distance of your property/activities relative to the facility; a specific description of how you would be adversely affected by the facility in a way not common to the general public; and the statement "[I/we] request a contested case hearing." If the request for contested case hearing is filed on behalf of a group or association, the request must designate the group's representative for receiving future correspondence; identify an individual member of the group who would be adversely affected by the proposed facility or activity; provide the information discussed above regarding the affected member's location and distance from the facility or activity; explain how and why the member would be affected; and explain how the interests the group seeks to protect are germane to the group's purpose.

Following the close of all applicable comment and request periods, the Executive Director will forward the application and any requests for reconsideration or for a contested case hearing to the TCEQ Commissioners for their consideration at a scheduled Commission meeting.

The Commission will only grant a contested case hearing on disputed issues of fact that are relevant and material to the Commission's decision on the application. Further, the Commission will only grant a hearing on issues that were raised in timely filed comments that were not subsequently withdrawn.

EXECUTIVE DIRECTOR ACTION. The Executive Director may issue final approval of the application unless a timely contested case hearing request or request for reconsideration is filed. If a timely hearing request or request for reconsideration is filed, the Executive Director will not issue final approval of the permit and will forward the application and request to the TCEQ Commissioners for their consideration at a scheduled Commission meeting.

MAILING LIST. If you submit public comments, a request for a contested case hearing or a reconsideration of the Executive Director's decision, you will be added to the mailing list for this specific application to receive future public notices mailed by the Office of the Chief Clerk. In addition, you may request to be placed on: (1) the permanent mailing list for a specific applicant name and permit number; and/or (2) the mailing list for a specific county. If you wish to be placed on the permanent and/or the county mailing list, clearly specify which list(s) and send your request to TCEQ Office of the Chief Clerk at the address below.

All written public comments and public meeting requests must be submitted to the Office of the Chief Clerk, MC 105, TCEQ, P.O. Box 13087, Austin, TX 78711-3087 within 30 days from the date of newspaper publication of this notice.

AGENCY CONTACTS AND INFORMATION. If you need more information about this permit application or the permitting process, please call the TCEQ Office of Public Assistance, Toll Free, at 1-800-687-4040. Si desea información en Español, puede llamar al 1-800-687-4040. General information about the TCEQ can be found at our web site at www.TCEQ.state.tx.us.

Further information may also be obtained from Lerin Hills, Ltd. at the address stated above or by calling Mr. Charles R. Hallenberger, P.E. at 210/340-8481.

Issuance Date _____

AGENDA CAPTION FOR PERMIT NO. WQ0014712001

Lerin Hills, Ltd., a private developer, has applied to the TCEQ for a new permit, proposed Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0014712001, to authorize the discharge of treated domestic wastewater at a daily average flow not to exceed 500,000 gallons per day. The facility is located approximately 4.1 miles west of Interstate Highway 10, as measured along State Highway 46, and then approximately 200 feet due west from that point on State Highway 46 in Kendall County, Texas.

MUNICIPAL EPA REVIEW CHECKLIST

Permittee Name: Lerin Hills, Ltd.

Permit Number: TPDES Permit No. WQ0014712001, TX0128767

NOTE: Minor amendments, endorsements, and minor modifications (except for pretreatment) are exempt from EPA review. For renewal, amendment or new applications, check any items that apply to determine if permit application is subject to EPA review:

PLEASE CHECK ALL THE APPLICABLE BELOW: ✓

Draft permit authorizes:

YES	NO	
✓		- discharge from a designated major facility
✓		- discharge from a POTW with an approved pretreatment program
✓		- discharge from a facility with a daily/annual average flow >1.0 MGD
✓		- discharge to a critical concern species watershed that requires EPA review
✓		- discharge that includes a request for a water quality variance
✓		- storm water discharge to high priority species watershed
✓		- prior to a final TMDL, new permit or expanded discharge to an impaired listed 303(d) listed segment, and which has the potential to discharge any pollutant which is causing or contributing to the impairment.
✓		- after a final TMDL, new permit or expanded discharge to an impaired listed 303(d) listed segment where the TMDL does not allocate the loadings described in the draft permit
✓		- after a final TMDL, a permit with effluent limits which allow loadings in excess of those prescribed by the TMDL for the segment
✓		- after a final TMDL, a permit that allows more than a 3-year schedule for an existing facility to be in compliance with final effluent limits based on the TMDL allocation (new facilities have to be compliant upon discharge)
✓		- discharge directly to territorial seas of the United States (from the coastline to 3 miles out but not including Bays and Estuaries)
✓		- discharge or sewage sludge management that may affect another state or Mexico. For sewage sludge management, "may affect" means, accepts sewage sludge from another state or Mexico. For discharge, it means a discharge within 3 miles of a boundary with a another state or Mexico.
✓		- discharge from a Class I sludge management facility. (A Class I facility is a POTW or combination of POTWs operated by the same authority with a design flow of >5 MGD and that have IUs and are required to have an approved pretreatment program or are subject to pretreatment standards, OR any other treatment works treating domestic sewage sludge classified as a Class I sludge management facility by the Regional Administrator in conjunction with the TCEQ.)

If any column is marked "YES", EPA must receive a copy of the full permit package.
If all columns are marked "NO", EPA does not need to review the draft permit.

Permit Writer: Mary Ann Dimakos Airey, P.E.

Date: August 15, 2006

TRACS FACILITY EXTENSION - TREATMENT PROCESS

PERMIT NO. WQ0014712001

PERMITTEE Lerin Hills, Ltd.

PLANT NAME Lerin Hills MUD WWTP

TOXICITY RATING: **II (for minor TPDES)**

New Interim I Interim II Final

LIQUID TREATMENT PROCESSES

- Primary Treatment
- 01 Pumping raw materials
- 02 Preliminary treatment - bar screen**
- 03 Preliminary treatment - grit removal
- 04 Preliminary treatment - comminutors
- 05 Preliminary treatment - others
- B1 Imhoff tank
- 06 Scum removal
- 07 Flow equalization basins
- 08 Preaeration
- 09 Primary sedimentation
- D2 Septic tank
- A5 Facultative lagoon
- Secondary Treatment
- 10 Trickling filter - rock media
- 11 Trickling filter - plastic media
- 12 Trickling filter - redwood slats
- 13 Trickling filter - other media
- 14 Activate sludge - conventional
- 15 Activate sludge - complete mix**
- 16 Activate sludge - contact stabilization
- 17 Activated sludge - extended aeration
- 18 Pure oxygen activate sludge
- 19 Bio-Disc (rotating biological filter)
- 20 Oxidation ditch
- 21 Clarification using tube settlers
- 22 Secondary clarification
- B6 Constructed wetlands
- E5 Natural treatment
- E6 Overland flow
- Advanced Treatment - Biological
- 23 Biological nitrification - separate stage
- 24 Biological nitrification - combined**
- 25 Biological denitrification
- 26 Post aeration (reaeration)
- Advanced Treatment-Physical/Chemical
- 27 Microstrainers - primary
- 28 Microstrainers - secondary
- D1 Dunbar beds
- 29 Sand filters**
- 30 Mix media filters (sand and coal)
- 31 Other filtrations
- B2 Bubble diffuser (compressor)
- 32 Activated carbon - granular
- B3 Mechanical surface aerator
- 33 Activated carbon-powered
- 34 Two stage lime treatment of raw wastewater
- 35 Two stage tertiary lime treatment
- 36 Single stage lime treatment of raw wastewater
- 37 Single stage tertiary lime treatment
- 38 Recarbonation
- 39 Neutralization
- 40 Alum addition to primary

- 41 Alum addition to secondary
- 42 Alum addition to separate state tertiary
- 43 Ferri-chloride addition to primary
- 44 Ferri-chloride addition to secondary
- 45 Ferri-chloride addition to separate stage tertiary
- 46 Other chemical additions
- 47 Ion exchange
- 48 Breakpoint chlorination
- 49 Ammonia stripping
- 50 Dechlorination
- Disinfection
- 51 Chlorination for disinfection**
- 52 Ozonation for disinfection
- 53 Other disinfection
- D3 Ultra violet light
- Land Treatment
- 54 land treatment of primary effluent
- 55 Land treatment of secondary effluent
- 56 land treatment of intermediate effluent (less than secondary)
- Other Treatment
- 57 Stabilization ponds
- 58 Aerated lagoons
- 59 Outfall pumping
- 60 Outfall diffuser
- 61 Effluent to other plants
- 62 Effluent outfall
- 63 Other treatment
- B4 Evapo-transpiration beds
- 64 Recalcination
- A5 Facultative lagoons
- D4 Pressure dosing system
- D5 Percolation system
- Disposal Method
- A7 Irrigation - public access
- A8 Irrigation - agricultural
- B4 Evapo-transpiration beds
- B6 Constructed wetlands
- C1 Irrigation - pastureland
- D4 Pressure dosing system
- D5 percolation system
- D8 Other reuse method
- E1 Evaporation/playa
- E2 Discharge only**
- E3 Discharge and (use other #)
- E4 Injection well(s)
- SLUDGE TREATMENT PROCESSES
- 65 Aerobic digestion - air**
- 66 Aerobic digestion - oxygen
- 67 Composting
- 68 Anaerobic digestion
- 69 Sludge lagoons
- 70 Heat treatment - dryer
- 71 Chlorine oxidation of sludge

- 72 Lime stabilization
- 73 Wet air oxidation
- 74 Dewatering -sludge drying beds, sand
- F2 Dewatering -sludge drying bed, vacuum assisted
- 75 Dewatering-mechanical -vacuum filter
- 76 Dewatering - mechanical-centrifuge
- 77 Dewatering - mechanical-filter press
- 78 Dewatering - others
- 79 Gravity thickening
- 80 Air flotation thickening
- D6 Sludge holding tank
- Incineration
- 81 Incineration - multiple hearth
- 82 Incineration - fluidized beds
- 83 Incineration - rotary kiln
- 84 Incineration - others
- 85 Pyrolysis
- 86 Co-incineration with solid waste
- 87 Co-pyrolysis with solid waste
- 88 Co-incineration - others
- Disposal
- 89 Co-disposal landfill**
- D7 Sludge-only monofill
- 90 Land application (permitted)
- 91 Commercial land application (register)**
- 92 Trenching
- B5 Transport to another WWTP
- F3 Transport to Regional compost facility
- 94 Other sludge handling
- 95 Digest gas utilization facilities
- E7 Commercial land application (permit)
- F4 Dedicated land disposal
- F5 Marketing and distribution - composted
- F6 marketing and distribution-noncomposted
- MISCELLANEOUS
- 96 Control/lab/maintenance buildings
- 97 Fully automated using digital control(computer)
- 98 Fully automated using analog control
- 99 Semi-automated plant
- A1 Manually operated and controlled plant
- A2 Package plant
- A3 Semi-package plant
- A4 Custom built plant
- A7 Irrigation - public access
- A8 Irrigation - agriculture
- A9 Effluent storage ponds (irrigation)
- C1 Irrigation - pastureland
- D8 Other reuse method
- D9 Emergency holding ponds
- E1 Evaporation or playa
- E8 Monitoring wells
- E9 Biomonitoring
- F7 Stormwater (SSO)
- F8 Unconventional

PERMIT WRITER: Mary Ann Dimakos Airey, P.E.
 Municipal Permits Team
 Wastewater Permitting Section, Water Quality Division

August 15, 2006
 Date

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

DESCRIPTION OF APPLICATION

Applicant: Lerin Hills, Ltd.;
Texas Pollutant Discharge Elimination System (TPDES) Permit No.
WQ0014712001, (TX0128767)

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 0.18 million gallons per day (MGD) in the interim I phase, 0.36 MGD in the interim II phase, and 0.5 MGD in the final phase. The proposed wastewater treatment facility will serve a proposed development.

PROJECT DESCRIPTION AND LOCATION

The Lerin Hills MUD Wastewater Treatment Facility will be an activated sludge process plant operated in the complete mix mode with nitrification. Treatment units include bar screens, aeration basins, final clarifiers, aerobic sludge digesters, sand filters and chlorine contact chambers. The facility has not been constructed.

The plant site is located approximately 4.1 miles west of Interstate Highway 10, as measured along State Highway 46, and then approximately 200 feet due west from that point on State Highway 46 in Kendall County, Texas.

The treated effluent is discharged to an unnamed tributary; thence to the headwaters of an impoundment on Deep Hollow Creek; thence to Deep Hollow Creek; thence to Frederick Creek; thence to the Upper Cibolo Creek in Segment No. 1908 of the San Antonio River Basin. The unclassified receiving water uses are no significant aquatic life uses for the unnamed tributary and high aquatic life uses for the impoundment on Deep Hollow Creek and Deep Hollow Creek. The designated uses for Segment No. 1908 are high aquatic life uses, public water supply, aquifer protection, and contact recreation. The effluent limitations in the draft permit will maintain and protect the existing instream uses.

Lerin Hills, Ltd.

TPDES Permit No. WQ0014712001

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

In accordance with §307.5 and the TCEQ implementation procedures (January 2003) for the Texas Surface Water Quality Standards, an antidegradation review of the receiving waters was performed. Upper Cibolo Creek Segment No. 1908 has been listed in the 2002 305(b) Texas Water Quality Inventory for nutrient enrichment concerns for Orthophosphorus. Additionally, the segment is also listed on the 2002 303(d) List of Impaired Waterbodies for depressed dissolved oxygen. To help preclude degradation and more closely monitor wastewater, an effluent limit of 0.5 mg/l Total Phosphorus and monitoring requirements for Nitrate-Nitrogen and Total Nitrogen are required in the draft permit. With the incorporation of these requirements in the draft permit, the Water Quality Standards Team has preliminarily determined that no significant degradation of high quality waters is expected and that 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 prepared for Segment No. 1908.

The discharge from this permit action is not expected to have an effect on any federal endangered or threatened aquatic or aquatic dependent species or proposed species or their critical habitat. This determination is based on the United States Fish and Wildlife Service's (USFWS) biological opinion 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 aquatic or aquatic dependent 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 permit does not require EPA review with respect to the presence of endangered or threatened species.

Segment No. 1908 is currently listed on the State's inventory of impaired and threatened waters (the 2004 Clean Water Act Section 303[d] list). The listing is specifically for depressed dissolved oxygen concentrations. The impairment in Upper Cibolo Creek is from the confluence with Balcones Creek to approximately 2 miles upstream of State Highway 87 in Boerne, Texas. Model analysis indicates that this discharger's CBOD₅, NH₃-N, and effluent DO concentrations will be below background levels before entering the impaired portion of Upper Cibolo Creek.

In addition, the TCEQ Total Maximum Daily Load (TMDL) Team has coordinated a study by the Texas Engineering Experiment Station and the Conrad Blucher Institute that resulted in the report titled Impairment Verification Monitoring Dissolved Oxygen Segment 1908 Upper Cibolo Creek (January 2005). Briefly, this report concluded that 24-hour dissolved oxygen sampling indicated 0 violations out of 15 and 12 samples, at two different locations on Segment 1908. Consequently, the TCEQ Stream Water Quality Monitoring (SWQM) Team has preliminarily determined to delist the dissolved oxygen impairment from Segment 1908 on the draft 303[d] list. Additional details concerning the report can be found at:

http://www.tceq.state.tx.us/implementation/water/tmdl/31-sc_bacox_project.html#phase1

SUMMARY OF EFFLUENT DATA

N/A

Lerin Hills, Ltd.

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

PROPOSED PERMIT CONDITIONS

The draft permit authorizes a discharge of treated domestic wastewater at an interim I volume not to exceed a daily average flow of 0.18 million gallons per day (MGD), an interim II volume not to exceed a daily average flow of 0.36 MGD and a final volume not to exceed a daily average flow of 0.5 MGD.

The effluent limitations in the each of the phases of the draft permit, based on a 30-day average, are 5 mg/l CBOD₅, 5 mg/l TSS, 1 mg/l NH₃-N, 0.5 mg/l Phosphorus, Report mg/l NO₃-N, Report mg/l Total N, and 6.0 mg/l minimum dissolved oxygen (DO). The effluent shall contain a chlorine residual of at least 1.0 mg/l and shall not exceed a chlorine residual of 4.0 mg/l after a detention time of at least 20 minutes based on peak flow.

The permittee shall comply with the requirements of 30 TAC Section 309.13 (a) through (d). In addition, the draft permit includes a requirement for the permittee to obtain legal restrictions prohibiting residential structures within the part of the buffer zone not owned by the permittee according to 30 TAC Section 309.13(e)(3).

The draft permit includes Sludge Provisions according to the requirements of 30 TAC Chapter 312, Sludge Use, Disposal and Transportation.

SUMMARY OF CHANGES FROM APPLICATION

The draft permit includes effluent limitations as requested by the applicant except for an additional effluent limit of 0.5 mg/l Phosphorus and a more stringent limit of 5 mg/l TSS, both based on a daily average. In addition, the draft permit includes monitoring requirements for Nitrate-nitrogen and Total Nitrogen.

SUMMARY OF CHANGES FROM EXISTING PERMIT

N/A

BASIS FOR PROPOSED DRAFT PERMIT

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

1. Application received May 3, 2006 and additional information received May 4, May 12, July 7, 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 facility is not located in the Coastal Management Program boundary.

Lerin Hills, Ltd.

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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.

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.

Lerin Hills, Ltd.

TPDES Permit No. WQ0014712001

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

For additional information about this application contact Mary Ann Dimakos Airey, P.E. at (512) 239-4521.

Mary Ann Dimakos Airey, P.E.
Municipal Permits Team
Wastewater Permitting Section (MC 148)

Date



TPDES PERMIT NO. WQ0014712001

[For TCEQ Office Use Only:

EPA ID No. TX0128767]

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

Lerin Hills, Ltd.

whose mailing address is

4820 Bacon Road
San Antonio, Texas 78249

is authorized to treat and discharge wastes from the Lerin Hills MUD Wastewater Treatment Facility, SIC Code 4952

located approximately 4.1 miles west of Interstate Highway 10, as measured along State Highway 46, and then approximately 200 feet due west from that point on State Highway 46 in Kendall County, Texas

to an unnamed tributary; thence to the headwaters of an impoundment on Deep Hollow Creek; thence to Deep Hollow Creek; thence to Frederick Creek; thence to the Upper Cibolo Creek in Segment No. 1908 of the San Antonio River Basin

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

INTERIM I EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTSOutfall Number 001

1. During the period beginning upon the date of issuance and lasting through the completion of the 0.36 million gallon per day facilities, the permittee is authorized to discharge subject to the following effluent limitations:

The daily average flow of effluent shall not exceed 0.18 million gallons per day (MGD); nor shall the average discharge during any two-hour period (2-hour peak) exceed 500 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
Carbonaceous Biochemical Oxygen Demand (5-day)	5 (7.5)	10	20	30	One/week	Grab
Total Suspended Solids	5 (7.5)	10	20	30	One/week	Grab
Ammonia Nitrogen	1 (1.5)	2	4	6	One/week	Grab
Total Phosphorus	0.5 (0.75)	1	2	3	One/week	Grab
Nitrate-nitrogen	Report (Report)	N/A	N/A	Report	One/week	Grab
Total Nitrogen	Report (Report)	N/A	N/A	Report	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. The permittee shall dechlorinate the chlorinated effluent to less than 0.1 mg/l chlorine residual and shall monitor chlorine residual five times per week by grab sample after the dechlorination process. 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 6.0 mg/l and shall be monitored once per week by grab sample.

INTERIM II EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTSOutfall Number 001

1. During the period beginning upon the completion of the 0.36 million gallon per day facilities and lasting through the completion of the 0.50 million gallon per day facilities, the permittee is authorized to discharge subject to the following effluent limitations:

The daily average flow of effluent shall not exceed 0.36 million gallons per day (MGD); nor shall the average discharge during any two-hour period (2-hour peak) exceed 1000 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
Carbonaceous Biochemical Oxygen Demand (5-day)	5 (15)	10	20	30	One/week	Grab
Total Suspended Solids	5 (15)	10	20	30	One/week	Grab
Ammonia Nitrogen	1 (3)	2	4	6	One/week	Grab
Total Phosphorus	0.5 (1.5)	1	2	3	One/week	Grab
Nitrate-nitrogen	Report (Report)	N/A	N/A	Report	One/week	Grab
Total Nitrogen	Report (Report)	N/A	N/A	Report	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. The permittee shall dechlorinate the chlorinated effluent to less than 0.1 mg/l chlorine residual and shall monitor chlorine residual five times per week by grab sample after the dechlorination process. 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 6.0 mg/l and shall be monitored once per week by grab sample.

FINAL EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTSOutfall Number 001

1. During the period beginning upon the upon completion of the 0.50 million gallon per day facilities 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 0.5 million gallons per day (MGD); nor shall the average discharge during any two-hour period (2-hour peak) exceed 1,652 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. & Daily Max. Measurement Frequency	Sample Type
Flow, MGD	Report	N/A	Report	N/A	Continuous	Totalizing meter
Carbonaceous Biochemical Oxygen Demand (5-day)	5 (21)	10	20	30	One/week	Composite
Total Suspended Solids	5 (21)	10	20	30	One/week	Composite
Ammonia Nitrogen	1 (4.2)	2	4	6	One/week	Composite
Total Phosphorus	0.5 (2.1)	1	2	3	One/week	Composite
Nitrate-nitrogen	Report (Report)	N/A	Report	N/A	One/week	Composite
Total Nitrogen	Report (Report)	N/A	Report	N/A	One/week	Composite

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 daily by grab sample. The permittee shall dechlorinate the chlorinated effluent to less than 0.1 mg/l chlorine residual and shall monitor chlorine residual five times per week by grab sample after the dechlorination process. 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 twice 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 6.0 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 nth 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 13) 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 13) 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 I.C.

TABLE 1

Pollutant	Ceiling Concentration (milligrams per kilogram)*
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 13) 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 13) 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 13) 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 13) 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 C facility must be operated by a chief operator or an operator holding a Category C 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 facility is not located in the Coastal Management Program boundary.
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. 1908 of the San Antonio River Basin and any subsequent updating of the water quality model for Segment No. 1908, 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.
5. Prior to construction of the wastewater treatment facilities, the permittee shall submit sufficient evidence of legal restrictions prohibiting residential structures within the part of the buffer zone not owned by the permittee according to 30 TAC Section 309.13(e)(3). The evidence of legal restrictions shall be submitted to the executive director in care of the TCEQ Wastewater Permitting Section (MC 148). The permittee shall comply with the requirements of 30 TAC Section 309.13(a) through (d). (See Attachment A.)
6. 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 13) 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 and prior to completion of each additional phase.
7. Prior to construction of the Interim I Phase, Interim II Phase and Final Phase wastewater 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, 2a, and 2b of the permit.

8. In addition, the permittee is also authorized to haul sludge from the wastewater treatment facility, by a licensed hauler, to the San Antonio Water System Dos Rios Recycling Center Wastewater Treatment Facility, TPDES Permit No. WQ0010137033, 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 13) and the TCEQ Water Quality Compliance Monitoring Team (MC 224) of the Enforcement Division by September 1 of each year.

The following information is provided for your information only. It is not intended to be used as a substitute for professional advice. The information is provided for your information only. It is not intended to be used as a substitute for professional advice.

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Attachment B

APPLICATION BY
LERIN HILLS, LTD.
FOR TPDES PERMIT NO.
WQ0014712001

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§
§

BEFORE THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY

CHIEF CLERK'S OFFICE
MAY 1 11 41 10

TEXAS
COMMISSION ON
ENVIRONMENTAL
QUALITY

EXECUTIVE DIRECTOR'S 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 application for a new Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0014712001 by Lerin Hills, Ltd. (Lerin Hills) and the Executive Director's preliminary decision. Pursuant to 30 Texas Administrative Code (TAC) Section 55.156, before an application is approved and a permit is issued, the Executive Director must prepare a response to all timely, relevant and material, or significant comments. The Office of the Chief Clerk timely received comments from: Robert Abernethy, Brian Adams, John and Patricia Bakke, Grady B. Jolley on behalf of Edgar Blanch, Jr., J. Dale and Pamela Bransford (the Bransfords), Dr. Craig Carlson, Cal Chapman, Brent Evans on behalf of the Cibolo Conservancy (Cibolo), Rod Fowler, Tommy Mathews on behalf of Cow Creek Groundwater Conservation District (Cow Creek), Al Hamilton, Mervin Hayner, Le Roy Hahnfeld, Eddie J. Vogt and Terry Anderson on behalf of the Kendall County Commissioners Court (Kendall County), John Kite, Milan J. Michalec, Ed Rodgers, Patrick W. Lindner on behalf of Mountainview at Tapatio, L.P., Tapatio Springs Real Estate Holdings, L.P., Kendall County Development Co., L.P., Tapatio Springs Service Company, and Kendall County Utility Company (Tapatio), Michael Valentine, Robert Webster, Patrick Wood, and William "Rick" Wood. Additionally, the Office of the Chief Clerk received two timely petitions (see

Attachments A and B for a complete list of signatories). This Response addresses all timely filed public comments received, whether or not withdrawn.

BACKGROUND

Description of Facility

Lerin Hills applied to the TCEQ for a new permit to authorize the discharge of treated domestic wastewater at a daily average flow not to exceed 0.18 million gallons per day (MGD) in the Interim I Phase, 0.36 MGD in the Interim II Phase, and 0.5 MGD in the Final Phase. The proposed wastewater treatment facility will serve a proposed development.

The plant site will be located approximately 4.1 miles west of Interstate Highway 10, as measured along State Highway 46, and then approximately 200 feet due west from that point on State Highway 46 in Kendall County, Texas.

The treated effluent will be discharged to an unnamed tributary; thence to the headwaters of an impoundment on Deep Hollow Creek; thence to Deep Hollow Creek; thence to Frederick Creek; thence to the Upper Cibolo Creek in Segment No. 1908 of the San Antonio River Basin. The unclassified receiving water uses are no significant aquatic life uses for the unnamed tributary and high aquatic life uses for the impoundment on Deep Hollow Creek and Deep Hollow Creek. The designated uses for Segment No. 1908 are high aquatic life uses, public water supply, aquifer protection, and contact recreation.

Procedural Background

The application was received May 3, 2006 and declared administratively complete on May 26, 2006. The Notice of Receipt of Application and Intent to Obtain Water Quality Permit (NORI) was published on June 9, 2006, in the *Boerne Star and Recorder*. The Executive Director completed the technical review of the application and prepared an initial

TPDES draft permit. The combined Notice of Application and Preliminary Decision (NAAPD) and Public Meeting was published on September 22, 2006 in the *Boerne Star and Recorder*. The Office of the Chief Clerk received requests for a public meeting from Senator Jeff Wentworth, Representative Carter Casteel, the Cow Creek Groundwater Conservation District, and the Indian Springs Homeowners Association. The public meeting was held on October 24, 2006. The comment period ended at the conclusion of the public meeting. House Bill 801 applies to this permit application.

COMMENTS AND RESPONSES

Comment 1:

Robert Abernethy asked what the whole effluent toxicity requirements are.

Response 1:

Whole effluent toxicity (WET) testing, also known as biomonitoring, is required in permits where the potential exists for the effluent to cause toxicity in the receiving water.¹ TCEQ's rules require WET testing for domestic wastewater facilities with a final permitted average flow of one MGD or greater, most major industrial facilities, and other facilities that have the potential to cause toxicity in the receiving water. Because Lerin Hills applied for a domestic wastewater permit with a flow limit of less than one MGD to serve a proposed residential subdivision with no significant industrial users, the Executive Director has determined that the facility would not have the potential to cause toxicity; therefore, the draft permit does not include biomonitoring requirements.

Comment 2:

Robert Abernethy expressed concern that the effluent will comprise the total flow in the

creek most of the time.

Response 2:

The proposed daily average flow of 0.5 MGD or 0.8 cubic feet per second (cfs) will probably

comprise the total flow in the creek most of the time. The immediate receiving stream (the intermittent unnamed creek) normally has no flow; Deep Hollow Creek has an estimated low flow of 0.1 cfs. The effluent limits in the draft permit were developed based on minimum low flow, i.e., the critical low flow conditions to be protective of the dissolved oxygen criteria for the receiving streams. The draft permit, therefore, requires that the effluent must be treated to a level that is protective of human health and the environment without dilution from the receiving waterbody.

Comment 3:

John and Patricia Bakke expressed concern over air quality because they live directly in the path of the prevailing winds. Robert Webster expressed concern over odor from the proposed wastewater treatment plant. Tapatio and Rick Wood expressed concern that the proposed wastewater treatment plant will produce nuisance odors and asked if Lerin Hills proposed an adequate buffer zone. Mervin Hayner expressed concern over odor from both the proposed wastewater treatment plant and the creek that it would discharge to.

Response 3:

The Texas Clean Air Act provides that certain facilities may be exempt from the requirements of an air quality permit if, upon review, it is found that those facilities will not make a significant contribution of air contaminants to the atmosphere and that human health

¹ 30 TEX. ADMIN. CODE § 307.6(e)(2)(A).

and the environment will be protected. Wastewater treatment plants have undergone this review and are permitted by rule as long as the wastewater treatment plant only performs the functions listed in the rule.² Lerin Hills, therefore, is not required to obtain an air permit for the proposed wastewater treatment plant because it should not have an effect on air quality.

TCEQ rules provide three options for applicants to satisfy nuisance odor abatement and control requirements. An applicant can: own the buffer zone area, obtain a restrictive easement from the adjacent property owners for any part of the buffer zone they do own, or provide odor control.³

Lerin Hills intends to meet the buffer zone requirements by obtaining restrictive easements. Other Requirement No. 5 in the draft permit requires Lerin Hills, to submit sufficient evidence of legal restrictions prohibiting residential structures within the part of the buffer zone it does not own prior to construction of the wastewater treatment facilities not owned by the permittee.⁴

You may contact the TCEQ at 1-888-777-3186 to reach the TCEQ region office and request an investigation of any orders or any other issues in your area.

Comment 4:

John and Patricia Bakke stated that a contested case hearing should be held before the Commission makes a final decision on the permit.

Response 4:

A contested case hearing may be held before the Commission makes a final decision on

² 30 TEX. ADMIN. CODE § 116.532.

³ 30 TEX. ADMIN. CODE § 309.13.

⁴ 30 TEX. ADMIN. CODE § 309.13(e)(3).

the Lerin Hills permit if a request for a contested case hearing is made by an affected person.⁵

If a contested case hearing is requested by an affected person,⁶ the Commission may refer the permit to

the State Office of Administrative Hearings (SOAH) for a contested case hearing. John and Patricia

Bakke's comment will be considered as a request for a contested case hearing.

Comment 5:

Edgar Blanch, Jr., stated that the proposed permit will discharge water directly over and across my property, which has been developed into a high-quality, residential subdivision. Similarly, Al Hamilton expressed concern that the wastewater would be discharged directly onto property owned by other people, without their consent.

Response 5:

If this permit is issued, it does not grant Lerin Hills the right to use private or public property for conveyance of wastewater along the discharge route.⁷ The permit does not authorize any invasion of personal rights or any violation of federal, state, or local laws or regulations.⁸ It is the responsibility of Lerin Hills to acquire all property rights necessary to use the discharge route.⁹

Comment 6:

Cow Creek and Cibolo expressed concern that the proposed development would compromise the integrity of the groundwater. The Bransfords expressed concern over the

⁵ 30 TEX. ADMIN. CODE §55.201.

⁶ See 30 TEX. ADMIN. CODE § 55.203 for a description of an affected person. An affected person is one who has a personal justiciable interest affected by the application.

⁷ See Page 1 of the draft permit.

⁸ See Page 1 of the draft permit.

impact the proposed discharge would have over their water source. Ed Rogers expressed concern over the two drinking water wells on the Double Diamond Ranch. Tapatio expressed concern that the proposed wastewater treatment plant and discharge would adversely impact groundwater and drinking water. Robert

Webster is concerned about his drinking water wells. Mr. Webster stated that he has been told by civil engineers that there is the potential for groundwater contamination of his wells. He noted that he also irrigates an organic garden with creek water.

Response 6:

ED staff generally agrees that Mr. Webster's wells are shallow, not fully cased, and one is located within twenty feet of Deep Hollow Creek. Therefore, the groundwater that supplies the wells may be hydraulically connected to the creek. Water quality modeling indicated that a first order decay constituent (such as nitrate), assuming a starting concentration of 20 milligrams per liter (mg/l), a discharge would travel 900 meters to the impoundment on Mr. Webster's property. The Executive Director's staff estimates that the when Lerin Hills is discharging, the concentration of the constituent in the impoundment will be 3.76 mg/l. At the outlet from the impoundment dam into Deep Hollow Creek, approximately 200 meters upstream from Mr. Webster's well, the concentration is estimated at 1.64 mg/l. These concentrations are less than the drinking water maximum contaminant level (MCL) for nitrate, 10 mg/l and contamination of the wells is not expected. However, it is not advisable to use untreated surface water as a drinking water source, regardless of whether or not there is a permitted discharger into the waterbody.

⁹See Page 1 of the draft permit.

Comment 7:

Cow Creek stated that an on-site investigation of existing conditions should be performed. Cibolo recommended that the TCEQ do a more extensive study on the receiving lake to determine background nutrient levels, existing aquatic life and the like. Rick Wood stated that someone should perform a baseline study to determine what the appropriate discharge levels should be. Mervin Hayner asked if there had been a complete study on everything south or east of the proposed discharge point. Bob Webster asked how studies were performed without anyone coming onto his property. Cow Creek also stated that the data available to determine appropriate water quality standards for the discharge to the dry creek and the flood control pool is limited and conflicting.

Response 7:

Receiving waters are water bodies that receive effluent from a wastewater treatment plant and can be assigned several different aquatic life uses based on the best available information obtained by the Executive Director. These aquatic life uses, in order of increasing quality, are: no significant aquatic life use, limited aquatic life use, intermediate aquatic life use, high aquatic life use and exceptional aquatic life use. The immediate receiving stream is an unnamed tributary flowing down a steep gradient to the impounded Deep Hollow Creek. The unnamed tributary was presumed to be intermittent due to its minimal watershed and steep gradient. According to the current TCEQ *Procedures to Implement the Texas Surface Water Quality Standards* (IPs), dated January 2003, an intermittent stream is defined as having a period of zero flow for at least one week during most years. A site visit to the unnamed tributary prior to the public meeting supports this presumption. Since there are currently no permitted discharges to Deep Hollow Creek and

no site specific data was available for this creek, aerial photography was obtained from Texas Natural Resource Information Systems records. The Executive Director concluded that the impounded portion of Deep Hollow Creek within the discharge route would have water levels sufficient to support a high aquatic life use during most years. Therefore, a high aquatic life use was presumed for impounded Deep Hollow Creek. This requires that the draft permit provide for a higher level of protection for water quality to protect the higher aquatic life use.

No site-specific studies have been conducted regarding the modeling assessment. Conventional effluent discharge limits, such as biochemical oxygen demand, ammonia nitrogen, and minimum dissolved oxygen, were determined by regular analysis with a water quality model (QUAL-TX) following guidelines codified in the IPs and the QUAL-TX Standard Operating Procedure (SOP) document.

Comment 8:

The Bransfords expressed concern over the concentrated destruction of habitat. Robert Webster stated that the lake is under a conservation easement to ensure that it will continue to support a wide range of organisms and a diverse ecosystem.

Response 8:

Provided the operator of the wastewater treatment plant operates within the permitted limits, the ecosystem should continue to be diverse and support a wide range of organisms. In addition to the usual effluent limitations, phosphorus limits were added to the draft permit to ensure that nutrient levels do not become elevated to levels that might lead to excessive algal or aquatic vegetation growth.

Comment 9:

The Bransfords expressed concern over the impact the proposed discharge would have on the creeks and the environment. Similarly, Al Hamilton expressed general concern over the impact of the proposed discharge on the environment. Mervin Hayner expressed concern over the impact of the proposed discharge on waterfowl and fish downstream of Boerne. Michael Valentine stated that his children enjoy feeding the ducks and fishing in Cibolo Creek. Cibolo, and Tapatio expressed concern that the proposed discharge would negatively impact surface water.

Response 9:

TCEQ modeling predicts that the proposed discharge will maintain the 5.0 mg/l dissolved oxygen criterion associated with the high aquatic life use for both Deep Hollow Creek and the in-stream impoundments. The draft permit includes stringent effluent limits based on this criterion for the protection of human health and aquatic life, i.e., fish, and by extension, waterfowl. The Executive Director has determined that the proposed draft permit will be protective of the environment, water quality, and human health and that it meets TCEQ rules.

Comment 10:

Cibolo expressed concern over the impact of the proposed discharge on aquatic life in Cibolo Creek. Cibolo specifically noted that Texas Parks and Wildlife recently discovered a genetically pure population of the Guadalupe River Bass, which is the Texas state fish. Cibolo is particularly concerned over phosphate, total suspended solids, and chlorine. Kendall County also expressed concern over phosphates and suspended solids in Lerin Hills effluent. Robert Webster expressed concern over the potential for severe nutrient loading resulting in algal blooms, fish die-off, and potential harmful, even deadly, bacteria and

parasite accumulation.

Response 10:

The proposed discharge is approximately seven miles upstream of Cibolo Creek (Segment 1908) and travels through three separate impoundments before reaching Cibolo Creek. Because of the distance between the discharge location and Segment 1908, dissolved oxygen impacts to Segment 1908 from this discharge will be non-existent. Conventional pollutant concentrations are expected to be at background concentrations downstream of the impoundment on Bob Webster's property.

The genetically pure strain of Guadalupe Bass was found in Cibolo Creek. Since Guadalupe Bass are typically found in the flowing waters of clear streams, it is unlikely that the Guadalupe Bass reside in the impounded Deep Hollow Creek. Additionally, the effluent limitations proposed for this wastewater treatment facility were determined to be protective of high aquatic life uses, which the Executive Director has determined would be consistent with maintaining the existing aquatic life uses of the impoundment, including Guadalupe Bass, should any reside in that water body.

To help reduce nutrient loading, bacteria and parasite accumulation in the impoundment on Deep Hollow Creek, the ED has recommended stringent phosphorus and ammonia limits to safeguard against such algal blooms and is requiring Lerin Hills to disinfect the treated effluent via chlorination to reduce, if not eliminate harmful bacteria levels. The disinfected treated wastewater will then be dechlorinated prior to discharge.

Comment 11:

Cibolo expressed concern over the possibility of large amounts of potentially contaminated storm water entering the lake because of the large increase in impervious

cover. Similarly, Le Roy Hahnfeld expressed concern over site drainage.

Response 11:

This permit application is limited to authorizing the discharge of pollutants from the proposed wastewater treatment facility. The draft permit includes effluent limits and other requirements that Lerin Hills must meet even during rainfall events and periods of flooding. The domestic wastewater permit does address the stormwater runoff from impervious cover from the proposed development. The Construction General Permit regulates the stormwater runoff.

Additionally, during construction, Lerin Hills must comply with the requirements in the Construction General Permit for Storm Water Controls (TXR 150000). More information on the general permit can be found at:

http://www.tceq.state.tx.us/nav/permits/wq_construction.html.

Comment 12:

Al Hamilton stated Lerin Hills should be required to use an adjacent existing wastewater treatment plant. Tapatio stated that Tapatio Spring Service Company owns and operates a wastewater treatment plant with excess capacity within three miles of the proposed wastewater treatment plant. Moreover, Tapatio stated that Lerin Hills did not contact either Tapatio Springs Service Company or Kendall County Utility Company to see if they had excess capacity. Tapatio also asked if Lerin Hills' permit should be denied based on the Commission policy of regionalization.

Response 12:

According to the Texas Water Code, when the Commission is considering the issuance, amendment, or renewal of a permit to discharge waste, they may deny or alter the terms and

conditions of the proposed permit, amendment, or renewal based on consideration of need, including the expected volume and quality of the influent and the availability of existing or proposed areawide or regional waste collection, treatment, and disposal systems not designated as areawide or regional disposal systems by Commission order.¹⁰ This section is expressly directed to the control and treatment of conventional pollutants normally found in domestic wastewater.

Additionally, the legislature mandated that TCEQ must encourage and promote the development and use of regional and area-wide waste collection, treatment, and disposal systems to serve the waste disposal needs of the citizens of the state and to prevent pollution and maintain and enhance the quality of the water in the state.¹¹ The Domestic Wastewater Permit Application Technical Report requires information concerning regionalization of wastewater treatment plants. Lerin Hills was required to review a three-mile area surrounding the proposed facility to determine if there are existing wastewater treatment plants or sewer collection lines with sufficient existing capacity to accept wastewater from Lerin Hills.

Tapatio Springs Service Company, Texas Land Application Permit No. WQ0012404001, is the only permitted wastewater treatment facility located within a three-mile radius of Lerin Hills' proposed facility. Tapatio Springs Service Company is authorized to dispose treated domestic wastewater at a volume not to exceed a daily average flow of 150,000 gallons per day via irrigation on 40 acres of a golf course. Lerin Hills applied for a permit to authorize the discharge of treated domestic wastewater for a proposed development

¹⁰ TEX. WATER CODE § 26.0282.

¹¹ TEX. WATER CODE § 26.081.

with a final flow of 500,000 gallons per day. Therefore, Tapatio does not have the capacity to provide wastewater service to the proposed development.

Lerin Hills indicated that it did not send a letter to Tapatio Springs Service Company because it met with the owners of Tapatio Springs Service Company and discussed wastewater service. According to Lerin Hills, Tapatio Springs Service Company stated that it would not provide wastewater service to Lerin Hills. In addition, the proposed facility is located on the opposite side of a major topographic ridge from the Tapatio Springs Service Company facility.

If the Lerin Hill's permit is issued, wastewater would be collected in gravity sanitary sewers and then pumped at relatively low pressures to the proposed facility; however for Lerin Hill to connect to the Tapatio Springs Service Company facility, wastewater would first have to be centrally collected in the lower part of the Lerin Hills area and then pumped over the ridge, requiring a vertical lift over 200 feet. Lerin Hills indicates this is undesirable because it will increase costs for the future Lerin Hills homeowners and it will increase the risk of raw sewage spills due to higher pressure in the sewage force main.

Comment 13:

Al Hamilton stated that the volume of wastewater that the permit would authorize Lerin Hills to discharge is excessive. Cal Chapman stated that the proposed wastewater treatment plant will be oversized by a factor of about two.

Response 13:

Lerin Hills provided justification for the proposed flows in the draft permit based on estimates of wastewater flows from the proposed development, which includes homes, an elementary school and some commercial/retail development. Review of the proposed

wastewater flow estimates for the development indicates the requested daily average flows are appropriate.

Comment 14:

Kendall County and Rick Wood stated that Lerin Hills should be required to disinfect its effluent using ultra-violet light instead of chlorine. Cibolo expressed concern that the chlorine used for disinfection could cause an accident that would impact the recharge features of the aquifer. Bob Webster stated that he does not want to be exposed to chlorine in his drinking water.

Response 14:

Disinfection of treated effluent is required and can be accomplished by using various methods, such as chlorination or ultra-violet light. The draft permit includes a requirement to disinfect the treated effluent via chlorination. To address concerns about chlorine levels in the receiving stream, the draft permit requires Lerin Hills to dechlorinate its treated effluent to a maximum chlorine residual of 0.1 milligram per liter before discharging it to the unnamed tributary.

Comment 15:

Mr. Michalec requested that TCEQ review its policy on interbasin transfers. He commented that since Lerin Hills is planning on obtaining its water from the Guadalupe-Blanco River Authority, but discharging the wastewater to the San Antonio River watershed, Lerin Hills is proposing an interbasin transfer.

Response 15:

A wastewater discharge permit may not be the only permit that Lerin Hills is required to obtain. If Lerin Hills was planning on transferring water from one basin to another, it would

be required to obtain a permit under Texas Water Code § 11.085. In this case, however, Lerin Hills intends to purchase its water from the Gaudalupe-Blanco River Authority (GBRA). It is GBRA's responsibility to ensure it obtains all necessary permits.

Comment 16:

Mr. Michalec requested that the TCEQ evaluate the projected effects of loading from the Lerin Hills proposed wastewater treatment plant on Segment 1908 of Cibolo Creek, including its tributaries and surface water impoundments.

Response 16:

The proposed discharge is approximately seven miles upstream of Cibolo Creek (Segment 1908) and travels through three separate impoundments before reaching Cibolo Creek. Because of the distance between the discharge location and Segment 1908, dissolved oxygen impacts to Segment 1908 from this discharge will be non-existent. Conventional pollutant concentrations are expected to be at background concentrations downstream of the impoundment on Bob Webster's property.

Comment 17:

Mr. Michalec suggested that TCEQ establish impervious cover limits similar to those proposed by the Edwards Aquifer Authority. The Bransfords expressed concern over the amount of impervious cover in the proposed project.

Response 17:

The permitting process is intended to control the discharge of pollutants into water in the state from point sources and to protect the water quality of the state's rivers, lakes, and coastal waters. TCEQ does not have jurisdiction to address impervious cover concerns.

Comment 18:

Mr. Michalec stated that since the proposed Lerin Hills discharge would have an impact on the Edwards Aquifer contributing zone, a study should be initiated to measure the impact.

Response 18:

TCEQ rules define the Edwards Aquifer as that portion of an arcuate belt of porous, waterbearing, predominantly carbonate rocks known as the Edwards (Balcones Fault Zone) Aquifer trending from west to east to northeast in Kinney, Uvalde, Medina, Bexar, Comal, Hays, Travis, and Williamson Counties.¹² The contributing zone is defined as all points in watersheds that drain to the recharge zone within five stream miles, and all of the watersheds in the specified counties that drain to the recharge zone according to 30 TAC § 213.22.¹³ Lerin Hills' proposed facility is located in Kendall County, more than ten stream miles from the contributing zone and much farther than five miles from the recharge zone. Therefore, the proposed facility is not subject to the Edwards Aquifer rules and the discharge is not expected to have an adverse impact on the contributing zone.

TCEQ's rules require stringent effluent limits for all new or increased discharges of treated wastewater from zero to five miles upstream of the Edwards Aquifer recharge zone.¹⁴

The proposed discharge location is more than 13 miles from the Edwards Aquifer recharge zone; however the effluent limits in the draft permit are more stringent than what are required for new discharges eight miles closer to the recharge zone. The following table demonstrates the difference between the effluent limits required upstream of the Edwards Aquifer recharge zone and the effluent limits in the draft permit.

¹² 30 TEX. ADMIN. CODE § 213.3(8).

¹³ 30 TEX. ADMIN. CODE § 213.6(c).

¹⁴ 30 TEX. ADMIN. CODE § 213.6.

Parameter	30 TAC § 213.6 mg/l, based on 30-day average	Lerin Hills Draft Permit mg/l, based on 30-day average
Carbonaceous Biochemical Oxygen Demand	5	5
Total Suspended Solids	5	5
Ammonia Nitrogen	2	1
Phosphorus	1	0.5
Nitrate-nitrogen	Not Applicable	Report
Total Nitrogen	Not Applicable	Report

Comment 19:

Mr. Michalec and Mr. Fowler expressed concern that there is not sufficient groundwater in the area to serve the proposed development. Tapatio stated that the volume of effluent that the permit would authorize is too much considering the limited amount of water available for the project.

Response 19:

Water supply issues are not part of the application for a domestic wastewater permit. The ED is limited to addressing water quality issues related to the proposed wastewater discharge and cannot address issues related to the water supply for the proposed development.

Comment 20:

Tapatio stated that the mailed notice was defective because the envelopes containing the notice of application sent to Mountainview at Tapatio, Tapatio Springs Real Estate Holdings, and Kendall County Development Company only contained blank paper.

Response 20:

Errors can occur in the administrative process, however, Mountainview at Tapatio, Tapatio Springs Real Estate Holdings, and Kendall County Development Company had actual notice of the notices, as evidenced by their written comments and their attendance at the public meeting on October 24, 2006. Moreover, along with mailed notice both notices were published, in the *Boerne Star and Recorder*.

Comment 21:

Tapatio expressed concern that the proposed wastewater treatment plant would not comply with the siting requirements in 30 TAC § 309.12.

Response 21:

The permitting process assures compliance with section 309.12. This section requires that the commission may not issue a permit unless it finds that “the proposed site, when evaluated in light of the proposed design, construction or operational features, minimizes possible contamination of surface water and groundwater.” Lerin Hills has proposed a treatment process at a particular location to treat domestic sewage. This proposed treatment process is routinely used to treat sewage to levels appropriate for discharge to surface water. Furthermore, the Executive Director has evaluated the application and Lerin Hills must meet all siting requirements specified in subchapter B of chapter 309. Lerin Hills has not proposed to locate the discharge within the recharge zone as prohibited by section 213.8(a)(6). The factors listed in section 309.12 that the commission may consider in evaluating an application are more appropriate to evaluate an application for authorization to the land application of effluent, not a direct discharge to surface water. There is no indication that contamination of either surface water or groundwater will occur by the

location of this facility. The Executive Director's staff evaluated Lerin Hill's application and determined that the discharge from the proposed facility will minimize the possible contamination of both surface water and groundwater.

Comment 22:

Rick Wood expressed concern that after the wastewater treatment plant is built it will be turned over to a Home Owners Association, or some other entity that does not have the experience needed to operate the wastewater treatment plant.

Response 22:

TCEQ's rules require permittees 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.¹⁵ The application requires information from both the current owner and proposed owner of the facility. The Executive Director reviews the application and transfers the permit if the application is administratively complete. TCEQ rules do not require notice to the public to transfer ownership of the facility. The Executive Director may refuse to approve a transfer if the conditions of a judicial decree, compliance agreement, or enforcement order have not been met. The Executive Director shall consider the prior compliance record of the transferee, if any. The wastewater treatment facility can be sold separately from the property in the development. However, any transferee will be required to comply with all permit terms, TECQ regulations, including the operation of the facility by a licensed operator. Failure to do so may subject the transferee to enforcement.

Comment 23:

¹⁵ 30 TEX. ADMIN. CODE § 305.64.

Tapatio asked if the proposed permit would be protective of the health and safety of nearby residents. Robert Webster expressed concern over the health of people that use the lake.

Response 23:

The draft permit includes disinfection requirements to reduce or eliminate bacteria levels in the treated effluent prior to discharge. The draft permit also requires Lerin Hills to disinfect the treated effluent via chlorination and then dechlorinate it before it is discharged. Disinfection is a standard method to remove bacteria to protect human health.

Comment 24:

Tapatio asked if the proposed permit would protect the use and enjoyment of property by nearby residents. Robert Webster stated that the proposed discharge could destroy his ability to use and enjoy his property.

Response 24:

TCEQ was charged by the legislature to maintain the quality of water in Texas, consistent with public health and enjoyment, and the draft permit is compliant with all TCEQ's rules.¹⁶ The wastewater permit, does not allow the permit holder to create or maintain a nuisance that interferes with a landowner's use and enjoyment of his property. The draft permit does not limit the ability of a landowner to seek relief from a court in response to any such activities.

Comment 25:

¹⁶ TEX. WATER CODE § 26.003.

Tapatio asked if a bond would be necessary to ensure the safe operation and possible closure of the facility.

Response 25:

According to TCEQ rules, Lerin Hills is not required to post a bond to ensure that adequate funds are available to construct and operate the wastewater treatment plant. TCEQ may appoint a person to temporarily operate or manage a facility if Lerin Hills discontinues or abandons operations.¹⁷

Comment 26:

Tapatio stated that if Lerin Hills digs into the caliche hillside to create its plant site, it will cause erosion and sediment that will damage water quality.

Response 26:

Lerin Hills is required to comply with the Construction General Permit to minimize water quality impacts to the receiving stream from its construction activities. Specifically, Lerin Hills is required to comply with the general permit requirements for discharges from construction sites into surface water in the state. Information on the stormwater general permits for construction projects and developed areas can be found at:

http://www.tceq.state.tx.us/nav/permits/wq_cities.html

Comment 27:

Tapatio expressed concern over Lerin Hills inconsistent answers in its application for the wastewater discharge permit and in its petition to create a district.

Response 27:

The information provided by Lerin Hills in the domestic wastewater permit application was reviewed by staff and was determined to be administratively and technically complete. A representative of Lerin Hills certified that the information contained in the application was true and complete. The process for obtaining wastewater discharge permit and process to create a district are separate and distinct processes and are each evaluated on their own merits.

Comment 28:

Rick Wood asked who would operate the Lerin Hills Wastewater Treatment Plant. Tapatio expressed concern that the operator of the proposed wastewater treatment plant is not an applicant for the permit and Lerin Hills lacks experience in operating a wastewater treatment plant.

Response 28:

As a permittee, Lerin Hills will be responsible for the operation of the facility; however, it may contract with an individual operator, company, and other entity to perform the day to day operations. Anyone who operates a domestic wastewater facility is required to hold a current wastewater operator registration issued by the TCEQ.

TCEQ rules require a licensed wastewater operator to operate the facility. The specific level of license required is based on the type of treatment and permitted daily average flow. The Lerin Hills facility must be operated by a chief operator or an operator holding a Category C license or higher.¹⁸

¹⁷ 30 TAC § 291.142.

¹⁸ A category C operator must have two years of work experience and 60 hours of training. 30 TEX. ADMIN. CODE § 30.304.

According to the draft permit, the facility must be operated a minimum of five days per week by the licensed chief operator or an operator holding a Category C license or higher. The licensed chief operator must be available by telephone or pager seven days per week.

Comment 29:

Tapatio expressed concern over the amount of wastewater that Lerin Hills will need to discharge during the first five-year term of the permit.

Response 29:

Lerin Hills indicated that the wastewater treatment facility would be constructed in three phases with the a daily average flow not to exceed 0.18 million gallons per day (MGD) in the Interim I Phase, 0.36 MGD in the Interim II Phase, and 0.5 MGD in the Final Phase. Although construction of the wastewater treatment facility is not authorized until a wastewater permit is issued, Lerin Hills estimated in the application that construction on the Interim I Phase could begin in the winter of 2006, on the Interim II Phase in the winter of 2008, and on the Final Phase in the spring of 2011. Lerin Hills indicates the development will include about 1,475 single family homes, an elementary school, and retail/commercial development. Lerin Hills estimates that about 200 homes will be constructed each year and therefore, the facility includes three phases to accommodate the anticipated increase in wastewater flows. At 200 homes per year with an estimated wastewater flow of 300 gallons per day from each home and additional flow from the proposed retail/commercial development, the proposed Interim I Phase at 0.18 MGD should provide adequate treatment capacity for the first two to three years of the development.

Comment 30:

Tapatio asked if a discharge authorized by the proposed permit would cause a violation

of the general criteria of the stream standards as set forth in 30 TAC Section 307.4, including but not limited to the aesthetic parameters, nutrients, salinity, and aquatic life uses and dissolved oxygen.

Response 30:

The Executive Director staff has evaluated the proposed discharge and has determined that the proposed effluent limits will be protective of both the numerical and narrative criteria in the Texas Water Quality Standards. After reviewing the available information, Executive Director established stringent effluent limits to address pollutants of concern which are also protective of the numerical and narrative criteria.

Comment 31:

Robert Webster stated that the permit application is inaccurate because Lerin Hills stated that his lake is used solely for livestock watering. According to Mr. Webster, his lake is also used for swimming, skin diving, and water sports by children and adults. Rick and Patrick Wood also noted that the lake is used for recreation; specifically he stated that there are piers and paddleboats on the lake. Le Roy Hahnfeld stated that the lake is a recreational lake, not a cattle watering hole. Specifically, he stated that his family swim and fish in the lake. Craig Carlson stated that his family and friends have been swimming and fishing in the lake for 20 years, and if the proposed permit is issued they will quit. The individuals who signed Petitions #1 and #2 expressed concern over their ability to use the lake for recreation.

Response 31:

The permit limits given to Lerin Hills are very stringent and should be protective of the existing conditions and should not hinder the ability of nearby residents to safely enjoy contact recreation within water bodies along the discharge route.

Comment 32:

Robert Webster stated that people eat fish from the lake and is concerned that they could be impacted. The individuals who signed Petitions #1 and #2 expressed concern that all the fish in the receiving lake would die.

Response 32:

The stringent treatment levels proposed for the Lerin Hills discharge permit are expected to remove the pollutants of concern and maintain high dissolved oxygen concentrations downstream so that the propagation and consumption of fish will be protected. The draft permit requires Lerin Hills remove oxygen demanding constituents to ensure the dissolved oxygen levels will be met and to protect high aquatic life uses.

Comment 33:

Rod Fowler expressed concern that Lerin Hills has started construction without a permit, and that Lerin Hills has started to put in the roads and other infrastructure and asked how the environment was being protected.

Response 33:

Lerin Hills may begin construction of the development without a wastewater discharge permit; however, it can not begin construction of the wastewater treatment plant until it obtains a permit for the plant.

During construction of the development, Lerin Hills must comply with the requirements in the Construction General Permit for Storm Water Controls (TXR 150000). More information on the general permit can be found at:

http://www.tceq.state.tx.us/nav/permits/wq_construction.html.

Comment 34:

Rod Fowler asked if the wastewater treatment plant would be completed before the development is completed, or if Lerin Hills would have to truck the waste to another facility for a while.

Response 34:

Lerin Hills indicates that the wastewater treatment facility will be constructed in three phases to meet the needs of the proposed development. For a wastewater treatment plant to perform correctly, it must receive a minimum amount of wastewater. Initially, there may be a period where insufficient wastewater flows are generated from the development to operate the interim I facility and Lerin Hills would have to pump and haul its effluent to another wastewater treatment facility for a short period of time.

Comment 35:

Rick Wood expressed concern over the location of the proposed wastewater treatment plant. According to Mr. Wood, a better location would be at the most downstream end of the property near the large lake, where it would be out of sight of existing homes. He also stated that the receiving stream is larger there and thus there would be more of a buffer to absorb the discharge if there was an upset. Cibolo, Kendall County, and Le Roy Hahnfeld suggested that Lerin Hills discharge to its own lake where there would be more dilution.

Response 35:

The Texas Water Code, authorizes discharges into wates in the state, provided the discharger obtains a permit from the Commission.¹⁹ TCEQ does not have the authority to

¹⁹ TEX. WATER CODE § 26.121.

mandate a different discharge location or different type of wastewater treatment plant if the proposed discharge will not adversely affect human health and the environment.

Comment 36:

Rick Wood expressed concern over the permit limits being on a 30-day average. According to Mr. Wood, the effluent limits could be exceeded everyday, but yet still meet the 30-day average limit.

Response 36:

The facility is required to meet the 30-day average effluent limits based on an average of the measurements taken during a single month, although some variability may occur in the quality of the treated effluent. In addition to the 30-day average effluent limits, the draft permit includes 7-day average (or weekly average) effluent limits, daily maximum effluent limits, and single grab effluent limits to ensure that the facility is operating properly on a consistent basis.

Comment 37:

Mervin Hayner asked if there would be green sludge in the creeks after a dry spell. Michael Valentine expressed concern over the impact of the proposed wastewater treatment plant on the creeks after a drought.

Response 37:

The draft permit includes a requirement for the discharge to be free of floating solids or visible foam in other than trace amounts and for no discharge of visible oil. The facility, if operated properly, should not discharge any sludge into the receiving stream. The effluent limits in the draft permit were set to be protective at low flow conditions, when little or no ambient flow is occurring in the receiving stream; therefore the discharge of treated effluent

should not adversely affect the receiving stream after drought conditions. In addition, the phosphorus limit is expected to preclude excessive vegetation growth in the stream.

Comment 38:

Cal Chapman expressed concern that the municipal utility district (MUD) creation and the TPDES permit were being processed independently of each other. Also, Mr. Chapman is concerned that the MUD customers will be required to pay for a wastewater treatment plant that is too big for the number of customers it will serve.

Response 38:

The process for obtaining wastewater discharge permit and the process to create a district are separate and distinct processes and are evaluated on their own merits. It is possible for a MUD to be created many years before it obtains a wastewater discharge permit.

Lerin Hills is not required to obtain a Certificate of Convenience and Necessity (CCN) from the TCEQ in order to obtain a wastewater discharge permit. However, it must obtain a CCN before it can start billing customers for water and wastewater services.

Comment 39:

Brian Adams expressed concern over Lerin Hills' compliance history. According to Mr. Adams, Lerin Hills and KGME construction have been blasting within 500 feet of a well and within 1,000 feet of a private residence. Mr. Adams also stated that a water truck has been parked near the rock crusher, but water has not been used to control the dust. Based on his experience thus far, Mr. Adams is concerned that Lerin Hills will not properly operate the wastewater treatment plant and will endanger the entire ecosystem.

Response 39:

During the technical review, a compliance history review of the company and the site

is conducted based on the criteria in Title 30, Chapter 60 of the Texas Administrative Code (TAC). These rules may be found at the following website: <http://www.tceq.state.tx.us/rules/index.html>. The compliance history for the company and site is reviewed for the five-year period prior to the date the permit application was received by the Executive Director. The compliance history includes multimedia compliance-related components about the site under review. These components include the following: enforcement orders, consent decrees, court judgments, criminal convictions, chronic excessive emissions events, investigations, notices of violations, audits and violations disclosed under the Audit Act, environmental management systems, voluntary on-site compliance assessments, voluntary pollution reduction programs, and early compliance.

This permit application was received after September 1, 2002; the company and site have been rated and classified pursuant to Title 30, Chapter 60 of the Texas Administrative Code.

A company and site may have one of the following classifications and ratings:

High: rating < 0.10 (above-average compliance record)

Average by Default: rating = 3.01 (these are for sites which have never been investigated)

Average: $0.10 < \text{rating} < 45$ (generally complies with environmental regulations)

Poor: $45 < \text{rating}$ (performs below average)

This site has a rating of 3.01 and a classification of average by default. The company rating and classification, which is the average of the ratings for all sites the company owns, is 3.01 and a classification of average by default. You may contact the TCEQ at 1-888-777-3186 to reach the TCEQ region office and request an investigation of any issues in your area.

Comment 40:

Bob Webster expressed concern over contamination from an accidental discharge. Tapatio asked if the proposed wastewater treatment plant will have controls and operators to prevent the discharge of improperly treated waste.

Response 40:

Lerin Hills is required to minimize the possibility of an accidental discharge of untreated wastewater. For example, Lerin Hills must maintain adequate safeguards to prevent the discharge of untreated or inadequately treated wastes during electrical power failures by means of alternate power sources, standby generators, or equipment to retain inadequately treated wastewater. In addition, the plans and specifications for domestic sewage collection and treatment works associated with any domestic permit must be approved by the Executive Director. Also, Standard Provision No. 7 of the proposed draft permit states that when the flow reaches 75 percent of the permitted daily average flow for three consecutive months, Lerin Hills must initiate engineering and financial planning for expansion or upgrade of the domestic wastewater treatment or collection facilities. When the flow reaches 90 percent of the permitted daily average flow for three consecutive months, Lerin Hills must obtain authorization from TCEQ to begin constructing the necessary additional treatment or collection facilities. These permit provisions are designed to help prevent an unauthorized discharge due to insufficient capacity. If an unauthorized discharge occurs, Lerin Hills is required to report it to TCEQ within 24 hours. Finally, Lerin Hills is subject to potential enforcement action for failure to comply with TCEQ rules or the permit.

Comment 41:

Milan Michalec suggested that the TCEQ should review the statutory ramifications of

mixing ground and surface water and distributing it as surface water.

Response 41:

Typically, the source of water for the proposed development does not have a legal impact on whether the TCEQ can issue a wastewater discharge permit under Chapter 26 of the Texas Water Code.

Comment 42:

Cow Creek, Cibolo, Kendall County, Bob Webster, and Le Roy Hahnfeld stated that other alternatives such as zero discharge or drip irrigation should be considered to reduce the impact to groundwater.

Response 42:

The Executive Director evaluates the method of treatment and the discharge route that were proposed in the application. If the Executive Director determines that the proposed method of treatment and disposal are protective of human health and the environment and comply with the rules, the Executive Director does not have the authority to mandate a different type of wastewater treatment plant. The Executive Director evaluates applications for wastewater treatment plants, based on the information provided in the application, and the existing quality of the water body.

Comment 43:

Milan Michalec stated that GBRA should provide data that shows the impact of a wastewater treatment plant constructed in the Cibolo Creek watershed and that the TCEQ should conduct surveys to identify critical recharge features. In addition, the study that the US Army Corps of Engineers, SARA, GBRA, and SAWS is working on for the Cibolo Creek Enhancement Project should be completed; and as part of GBRA statutory authority, a

study should be developed for the Cibolo Creek Watershed in order to measure impact to the Trinity Aquifer.

Response 43:

The TCEQ regulations and application forms request the information that is required to apply for a domestic wastewater TPDES permit. The Executive Director reviews the material in the application, request any additional information that may be needed and provide recommendations on whether a draft permit can be prepared and if so, what the requirements should be included in the draft permit. Studies from these other entities are not required to complete the permitting process.

Comment 44:

John and Patricia Bakke expressed concern over their quality of life and the economic value of their home. Edgar Blanch, Jr., and Robert Webster expressed concern over property values. The Bransfords expressed concern over the density of the proposed development. Milan Michalec stated that TCEQ should encourage the developer of Lerin Hills to consider subdivision design criteria that encourages low impact development and supports existing county subdivision rules. Milan Michalec stated that TCEQ should support established county density limits, and this should be extended to situations where new rules reflect the limitations established by new growth trends. Milan Michalec stated that TCEQ should complete the PGMA process to provide a Groundwater Conservation District for Comal County. Robert Webster expressed concern that the additional effluent could hinder the dam for flood control. Rod Fowler expressed concern that the plats have not been approved by the Commissioners Court. Michael Valentine expressed concern that the proposed facility would be an eye-sore.

Response 44:

The permitting process is intended to control the discharge of pollutants into water in the state and to protect the water quality of the state's rivers, lakes, and coastal waters. TCEQ does not have jurisdiction to address concerns such as those listed in the above comment in the wastewater permitting process. Regarding the County's subdivision rules, issuance of a permit would not authorize Lerin Hills to violate any other state, local or federal regulations.

CHANGES MADE TO THE DRAFT PERMIT IN RESPONSE TO COMMENT

Based on concerns about the introduction of chlorine in the receiving stream from commentors, the draft permit was revised to include a requirement for Lerin Hills to dechlorinate the treated effluent after disinfection via chlorination. The draft permit includes a requirement to dechlorinate the treated effluent to a chlorine residual not to exceed 0.1 milligrams per liter.

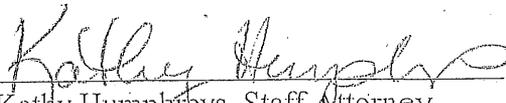
In addition, the applicant submitted comments concerning the disposal of sludge from the proposed wastewater treatment facility. Lerin Hill submitted a letter from the San Antonio Water System (SAWS) that indicates it will accept sludge for disposal from the proposed wastewater treatment facility. Therefore, the draft permit has been revised to include an additional other requirement, Other Requirement No. 8, that authorizes the disposal of sludge by taking it to the SAWS Dos Rios Recycling Center Wastewater Treatment Facility, TPDES Permit No. WQ0010137033.

Respectfully submitted,

Texas Commission on Environmental Quality

Glenn Shankle
Executive Director

Robert Martinez, Director
Environmental Law Division



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REPRESENTING THE
EXECUTIVE DIRECTOR OF THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY

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Attachment C

Attachment D

Attachment D

Lerin Hills, Ltd.
WQ0014712001

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

September 28, 2007

0 0.125 0.25 0.5 0.75 Miles

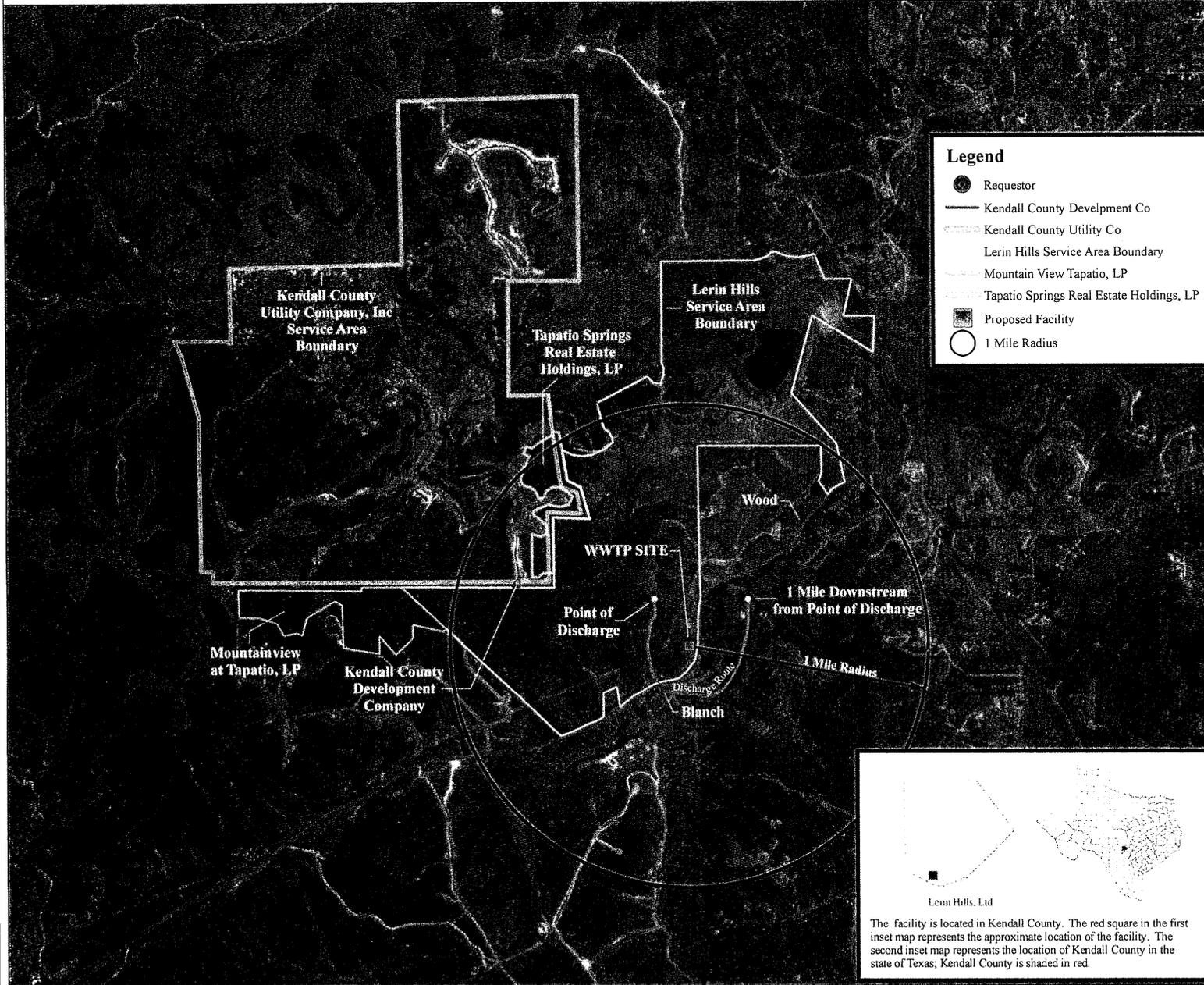
Projection: Texas Statewide Mapping System (TSMS)

Scale 1:39,552

Source: The location of the facility was provided by the TCEQ Office of Legal Services (OLS). The property boundaries depicted were manually digitized and approximated (survey data not available) using paper maps provided by OLS. OLS obtained the site location information and the requester information from the applicant. The counties are GDT 2000 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 Color-Infrared (CIR). The image classification number is tx029_1-1.

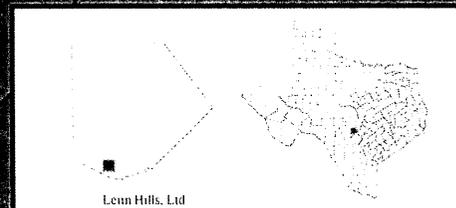
Legend

- Requestor
- Kendall County Development Co
- Kendall County Utility Co
- Lerin Hills Service Area Boundary
- Mountain View Tapatio, LP
- Tapatio Springs Real Estate Holdings, LP
- Proposed Facility
- 1 Mile Radius



This map depicts the following:

- (1) The approximate location of the facility. This is labeled "WWTP SITE."
- (2) The Lerin Hills service area boundary. This is labeled "Lerin Hills Service Area Boundary."
- (3) The Kendall County Utility Company service area boundary. This is labeled "Kendall County Utility Company, Inc Service Area Boundary."
- (4) The Tapatio Springs Real Estate Holdings property. This is labeled "Tapatio Springs Real Estate Holdings, LP."
- (5) The Kendall County Development Co. property. This is labeled "Kendall County Development Company."
- (6) Mountainview at Tapatio property. This is labeled "Mountainview at Tapatio, LP."
- (7) Circle and arrow depicting 1 mile radius. This is labeled "1 Mile Radius."
- (8) Point of discharge. This is labeled "Point of Discharge."



The facility is located in Kendall County. The red square in the first inset map represents the approximate location of the facility. The second inset map represents the location of Kendall County in the state of Texas; Kendall 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.