

Prepared by Jewel Alt, Applicant

Application by O KEE DAIRY
WQ0004108000 (Permit, Not a Conversion)

TCEQ Docket No. 2007-1496-AGR

Applicant's Response to Hearing Request

To: Honorable Commissioners, Texas Commission on Environmental Quality

APPLICATION PROCESS

I applied for renewal of the above referenced permit February 2004. I worked personally with the TCEQ staff, my paid consultant, and the Natural Resources Conservation Service State Agronomist throughout the process. This application was placed in a priority status by TCEQ and has been a learning/teaching tool in TCEQ's interpretation of the July, 2004 Rules. Four years later, the permit has not been issued. The permit application was administratively and technically correct and had been approved by TCEQ and EPA by January 2007; however, the City of Waco has continued to control and delay the process to the present time. Furthermore, not having the new permit has prevented O Kee Dairy from making necessary dewatering improvements. Environmentally sound improvements have been quashed by TCEQ and the City of Waco.

TEXAS
COMMISSION
ON ENVIRONMENTAL
QUALITY
MAY 3 2007
CLERK'S OFFICE

I, the permittee, find myself in the midst of a battle between TCEQ and the City of Waco. This is not my battle, but I am forced into it.

Six (6) year wait to initiate improvements;
Three (3) years to process an application; and
Four (4) years prevented from complying with the law; all

"Shocking and Unconscionable"; and
in my opinion, SANCTIONS should be applied against the City of Waco and TCEQ.

FACTS -LAW

***** Plainly, compliance with the law is not the attitude of TCEQ and the City of Waco as they are preventing the O Kee Dairy from complying with the July, 2004 Rules. This is a **Violation of Due Process** by TCEQ and the City of Waco--:

***** **While being negligent in expediting the permitting process, TCEQ had extreme difficulty interpreting and applying the rules, resulting in many changes, causing a 3-year delay to complete this application.** Interpretation example: It was necessary for the Water Quality team to make a site visit to confirm my argument that an old fence line and an armadillo hole are not waters of the state as they claimed. **A Rule violates due process when terms are so vague that men of common intelligence must guess at meanings.**

***** **The City of Waco has apparent control over TCEQ.** They continually interfere with TCEQ's processing of applications for Individual Permits in the Bosque River watershed thus

“preventing fair and orderly administration of law,” and “Fundamentally Abusing and Obstructing Due Process”.

*******This protest by the City of Waco before this Commission is due to a continuation of the City of Waco’s apparent control over TCEQ, moving themselves under cloak of affected person in the case of O Kee Dairy, as they also moved under cloak of Sierra Club in TCEQ Docket 2007-0831-AGR. In comparing each of the following City of Waco situations of apparent control over TCEQ, it is evident that the issues in each are the same/similar repeated issues, as the City of Waco attempts to make their own rules, usurping the authority granted TCEQ by the State of Texas and the Environmental Protection Agency**

- Issues the City of Waco failed to get into the July, 2004 Rules, all over and above both EPA and TCEQ requirements;**
- Unresolved issues in the settlement of the City of Waco’s lawsuit against several Bosque River watershed dairies;**
- Issues protested in the Sierra Club case TCEQ Docket No. 2007-0831-AGR;**
- Issues protested here against O Kee Dairy;**
- And issues against all other Individual Permits.**

All of the above actions “prevent fair and orderly administration of law”.
All of the above “Fundamentally Abuse and Obstruct Due Process”.

******* It is clearly stated in Texas Water Code section 5.115(a) and by Commissioner Soward, August 22, 2007 -Docket # 2007-0831-AGR (Hidden View Dairy) that City of Waco and Lake Waco water users are **not an affected person.****

******* Map and Mapquest search located a City named Waco a distance of 60 aerial miles and 75 driving miles from O Kee Dairy, much farther than the 45 miles stated by the Requester who provided only a post office box, not a physical address.**

******* O Kee Dairy’s adjacent neighbors, stated on record at the Public Meeting, “Let the permit go through.”**

CONCLUSION

Requester (City of Waco) has no qualified cloak to protest this permit: Texas Water Code Section 5.115 (a); as determined and stated by Commissioner Soward on August 22, 2007, TCEQ Docket 2007-0831-AGR.

Therefore, a contested case hearing should be denied and the permit should be issued.

CERTIFICATE OF SERVICE

I hereby certify that a copy of Applicant's Response to Hearing Request has been forwarded to the following as of 17 day of Dec 2007

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