

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



TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

August 20, 2007

TO: Persons on the attached mailing list.

RE: Tri-B Industrial Partners, L.P.
Permit No. WQ0004800000

Decision of the Executive Director.

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

Enclosed with this letter is a copy of the Executive Director's Response to Comments. A copy of the complete application, draft permit and related documents, including public comments, is available for review at the TCEQ Central office. A copy of the complete application, the draft permit, and executive director's preliminary decision are available for viewing and copying at the El Paso Public Library, 501 North Oregon, El Paso, Texas..

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

How To Request a Contested Case Hearing.

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

The request must include the following:

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

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

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

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

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

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

Deadline for Submitting Requests.

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

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

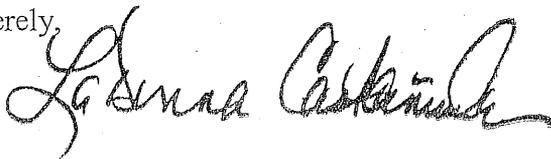
Processing of Requests.

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

How to Obtain Additional Information.

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

Sincerely,



LaDonna Castañuela
Chief Clerk

LDC/er

Enclosures

MAILING LIST
for
TRI-B INDUSTRIAL PARTNERS, L.P.
PERMIT NO. WQ0004800000

FOR THE APPLICANT:

Dirk Eggleston
Tri-B Industrial Partners, L.P.
P.O. Box 1150
Clint, Texas 79836

Michael Mears, E.I.T.
Enviro-Ag Engineering, Inc.
3404 Airway Boulevard
Amarillo, Texas 79118

PROTESTANTS/INTERESTED PERSONS:

Lee Thompson, Jr.
12255 Mankato Road
Clint, Texas 79836

FOR THE EXECUTIVE DIRECTOR:

Kathy Humphreys, Staff Attorney
Texas Commission on Environmental Quality
Environmental Law Division MC-173
P.O. Box 13087
Austin, Texas 78711-3087

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

FOR OFFICE OF PUBLIC ASSISTANCE:

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

FOR PUBLIC INTEREST COUNSEL:

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

FOR THE CHIEF CLERK:

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

TCEQ PROPOSED PERMIT NO. WQ0004800000

AUG 10 PM 4:09

APPLICATION BY TRI-B	§	BEFORE THE
	§	CHIEF CLERKS OFFICE
INDUSTRIAL PARTNERS, L.P.	§	
	§	
(OWNER) AND TIMELY	§	TEXAS COMMISSION ON
	§	
INTEGRATED, INC. (OPERATOR)	§	
	§	
For TCEQ Permit No. WQ0004800000	§	ENVIRONMENTAL QUALITY

EXECUTIVE DIRECTOR'S RESPONSE TO PUBLIC COMMENT

The Executive Director (ED) of the Texas Commission on Environmental Quality (TCEQ) files this Response to Public Comment (Response) on the Tri-B Industrial Partners, L.P. and Timely Integrated, Inc. (Tri-B) application and ED's preliminary decision. As required by 30 Texas Administrative Code (TAC) Section 55.156, before a permit is issued, the ED prepares a response to all timely, relevant and material, or significant comments. The Office of Chief Clerk timely received two comment letters (July 11, 2002 and December 1, 2006) from Mr. Lee Thompson, Jr. Mr. Thompson references Texas Land Application Permit (TLAP) number 04491 in his July 11, 2002 comment letter. TLAP 04491 was never issued because the application was withdrawn on February 2, 2004. In his December 1, 2006 comment letter, Mr. Thompson references TLAP number WQ0004800000 and incorporates the July 2002 letter by reference. This response addresses both public comments received, whether or not withdrawn. If you need more information about this permit application or the wastewater permitting process, please call the TCEQ Office of Public Assistance at 1-800-687-4040. General information about the TCEQ can be found at our website at www.tccq.state.tx.us.

BACKGROUND

Description of Facility

Tri-B proposes to operate a truck wash facility and has applied to the TCEQ for a new TLAP, proposed Permit No. WQ0004800000 to authorize the disposal of truck wash water at a daily average flow not to exceed 270 gallons per day (gpd) via evaporation. The site contains an existing unused impoundment with a synthetic liner without a leak detection system. This type of liner is not approved for wastewater disposal, therefore, Tri-B proposes to rework the pond and install a compacted clay liner in accordance with TCEQ liner requirements. Storm water runoff may not be routed to the evaporation pond and it shall be protected from inundation from a 100-year flood by construction of a berm around the evaporation pond. The berm shall be a minimum of two feet above the flood plain elevation. Domestic wastewater will be disposed of by an on-site septic tank/drainfield system. This permit will not authorize a discharge of pollutants into water in the state.

The facility site and evaporation pond are located at 13006 Gateway East, adjacent to Interstate Highway 10, approximately 2.3 miles southeast of the City of Socorro, and approximately 2.5 miles northeast of the City of Clint, El Paso County, Texas. The facility site and evaporation pond are located in the drainage area of the Rio Grande below Riverside Diversion Dam in Segment No. 2307 of the Rio Grande Basin.

Procedural Background

The permit application for a new permit was received on July 11, 2006 and declared administratively complete on September 27, 2006. The Notice of Receipt and Intent to Obtain a Water Quality Permit (NORI) was published on October 26, 2006 (English version) in the *El Paso Times* and November 2, 2006 (Spanish version) in the *El Paso y Mas*. The Notice of

Application and Preliminary Decision (NAPD) for a Water Quality Permit was published on April 18, 2007 (English version) in the *El Paso Times* and April 21, 2007 (Spanish version) in the *El Paso y Mas*. The public comment period ended on May 21, 2007 and the affidavit of publication was received July 16, 2007. This application was administratively complete on or after September 1, 1999; therefore, this application is subject to the procedural requirements adopted pursuant to House Bill 801, 76th Legislature, 1999.

COMMENTS AND RESPONSES

COMMENT 1:

Lee Thompson, Jr. expressed concern that the reservoir (evaporation pond) may not hold the runoff from the parking lot. (July 2002 letter).

RESPONSE 1:

Tri-B is not authorized to discharge storm water runoff to the evaporation pond. The draft permit provides that “[s]torm water runoff shall be prevented from entering the pond. The top of the berm of the pond shall be a minimum of two feet above the 100-year flood plain level.”¹

Tri-B is only authorized to discharge truck wash water to the evaporation pond. The truck wash water must be routed through a sedimentation and oil/water separator prior to disposal into the lined evaporation pond at a daily average flow not to exceed 270 gallons per day. The proposed evaporation pond will have a minimum surface area of 0.9 acres and a minimum capacity of 0.113 acre-feet (36,864 gallons).

Therefore, the evaporation pond authorized by the draft permit has not been designed or sized to contain storm water runoff. The routing of storm water runoff to the evaporation pond

¹ See Draft Permit, Special Provision B, Item 5.

would be a violation of this draft permit.

COMMENT 2:

Lee Thompson, Jr. expressed concern that proper maintenance on the evaporation pond will not be performed and wind will erode the sand sides or fill the pond with sand. (December 2006 letter).

RESPONSE 2:

Construction and maintenance of the evaporation pond are addressed in the draft permit.² First, Tri-B must notify the TCEQ Regional Office upon completion of construction of the pond at least a week prior to its use and provide certification of the lining specifications by a Texas licensed professional engineer.³

Second, Tri-B must provide adequate maintenance of the treatment and disposal facilities to ensure that they are in working condition; and Tri-B may not remove treatment or disposal facilities from service without prior notification of the ED of the TCEQ.⁴

Third, Tri-B must manage the wastewater evaporation pond to avoid an accumulation of pollutants which could classify the evaporation pond as a hazardous waste in accordance with 40 Code of Federal Regulations (CFR) Part 261 Subpart C - *Characteristics of Hazardous Waste*. At a minimum Tri-B must:

1. Keep records on the quantity and description of all discharges to the evaporation pond.
2. Conduct toxicity tests once a year on representative sludge samples from the evaporation pond.
3. Manage oily material that collect on the surface of the evaporation pond to prevent nuisance conditions.

² See Draft Permit, Special Provision B.

³ See Draft Permit, Special Provision H.

⁴ See Draft Permit, Special Provision I.

4. Maintain the berms and perform all other measures necessary to prevent seepage of wastewater from the evaporation pond to the surrounding surface area or the groundwater.
5. Prevent discharge from the evaporation pond to water in the state.
6. Report on a yearly basis all information prescribed above in items (1) and (2) to the Enforcement Division (MC 224), Industrial Permits Team (MC-148) of the Water Quality Division, and the Regional Office of the TCEQ during the month of September of each calendar year. The report which includes the results from the analyses shall be retained on site for five years and available for inspection by authorized representatives of the TCEQ.⁵

COMMENT 3:

Lee Thompson, Jr. commented that the evaporation pond should not be located in the 100-year flood plain, nor should the evaporation pond be located next to the arroyo, which flows through his property. (July 2002 and December 2006 letters).

RESPONSE 3:

According to TCEQ's rules an evaporation pond may not be located in the 100-year flood plain unless the pond is protected from inundation and damage that may occur during that flood event.⁶ The proposed evaporation pond located within the 100-year flood plain is addressed in the draft permit which provides:

The evaporation pond shall be protected from inundation from the 100-year flood plain. In addition, the applicant shall construct a berm around the evaporation pond which shall be a minimum of 2 feet above the flood plain elevation. A topographic survey and elevation calculation shall be performed and a licensed professional engineer in the State of Texas shall seal the results of the survey and calculation. Results shall be sent to Enforcement Division at MC-224, the El Paso Regional Office at R-6, and the Water Quality Assessment Team at MC-150, prior to use and available for inspection by TCEQ personnel upon request.⁷

⁵ See Draft Permit, Special Provision I.

⁶ 30 TAC § 309.13(a).

⁷ See Draft Permit, Special Provision C.

COMMENT 4:

Lee Thompson, Jr. is concerned with the severe flooding which has recently occurred in the El Paso area and the impact this flooding has on his property. (December 2006 letter).

RESPONSE 4:

As previously stated, the evaporation pond must be protected from inundation from a 100 year flood. The permitting process is limited to protecting the water quality of the state's rivers, lakes and coastal waters. The draft permit includes effluent limits and other requirements to protect water quality that the Tri-B must meet even during rainfall events and periods of flooding.

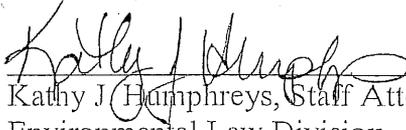
The TCEQ regional office conducts periodic inspections of wastewater facilities and conducts investigations based on complaints received from the public. To report complaints about the facility, please contact the TCEQ at 1-888-777-3186 to reach the TCEQ region office in your area or by e-mail at complaint@TCEQ.state.tx.us. Noncompliance with TCEQ rules or the permit may result in Tri-B receiving a notice of violation.

No changes were made to the draft permit in response to comments.

Respectfully submitted,

Texas Commission on Environmental Quality

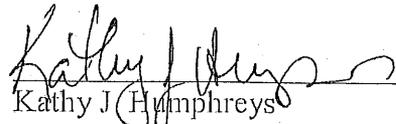
Robert Martinez, Director
Environmental Law Division


Kathy J. Humphreys, Staff Attorney
Environmental Law Division
State Bar No. 24006911
P.O. Box 13087, MC 173
Austin, Texas 78711-3087
Tel: (512) 239-3417
Fax: (512) 239-0606

REPRESENTING THE
EXECUTIVE DIRECTOR OF THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY

CERTIFICATE OF SERVICE

I certify that on August 10, 2007 the "Executive Director's Response to Public Comment" for Permit No. WQ0004800000 was filed with the Texas Commission on Environmental Quality's Office of the Chief Clerk.



Kathy J. Humphreys
Staff Attorney
Environmental Law Division
State Bar No. 24006911
P.O. Box 13087, MC 173
Austin, Texas 78711-3087
Phone (512) 239-3417