

TCEQ DOCKET NO. 2007-1765-MWD

2008 JAN 18 PM 4:46

APPLICATION BY TCB RENTAL, INC. § BEFORE THE TEXAS COMMISSION
TCB RENTAL, INC. FOR NEW § ON CHIEF CLERKS OFFICE
TPDES PERMIT NO. WQ0014725001 § ENVIRONMENTAL QUALITY

**TCB RENTAL, INC.'S RESPONSE TO HEARING REQUESTS AND
RESPONSE TO REQUEST FOR RECONSIDERATION**

TO THE HONORABLE COMMISSIONERS:

COMES NOW TCB Rental, Inc. ("TCB" or "Applicant") and files this Response to Hearing Requests and Request for Reconsideration submitted to the Commission in connection with TCB's application for TPDES Permit No. WQ0014725001 ("Application"); and would respectfully show the Commission as follows.

I. BACKGROUND

TCB Rental, Inc. currently provides domestic wastewater hauling services for temporary residences located at drilling sites in various parts of the State. Currently, TCB relies on publicly owned treatment works ("POTWs") for treatment and disposal of its domestic wastewater. TCB now desires to construct its own independent domestic wastewater treatment facility so that it can independently manage the wastewater it hauls without reliance on third parties.

To that end, TCB filed the Application on June 29, 2006. It was declared administratively complete on July 20, 2006. The Application is subject to the TCEQ procedural requirements adopted pursuant to House Bill 801 (76th Legislature, 1999). TCB has complied with all applicable public notice requirements under TCEQ rules.

Following review of TCB's Application, the Executive Director issued a Draft Permit. The Draft Permit prepared by the Executive Director in response to the Application would authorize a

relatively small volume of treated domestic wastewater discharge to an unnamed drainage ditch located in Burleson County. *See* Draft Permit, at 1-2 (attached as “Exhibit A”). The authorized discharge would not exceed a daily average flow of 25,000 gallons per day (“gpd”). *Id.* The unnamed drainage ditch flows to the Koontz Bayou Drain, then to Koontz Bayou, then to the Old River, and finally to the Brazos River above the Navasota River in Segment No. 1242 of the Brazos River Basin. *Id.* There are no significant aquatic life uses designated for the unnamed ditch or Koontz Bayou Drain. *See* Statement of Basis/Technical Summary and Executive Director’s Preliminary Decision, at 2 (attached as “Exhibit B”). The average discharge during any two-hour period would not exceed 69 gallons per minute (gpm). Exhibit B, at 2. Strict treatment standards for the discharged effluent are required by the Draft Permit. *Id.*

The Application authorizes TCB to locate its facility in a 100-year floodplain, but requires the plant unit to be protected from inundation and damage that may occur during that flood event. 30 TEX. ADMIN. CODE § 309.13(a); Exhibit A, at 23 (Other Requirements No. 4 and 6). Several individuals, including members of a group calling itself the Koontz Bayou Old River Group (“KBOR”), have requested a hearing on the Application primarily on the basis of a feared “inevitable” flood event that would cause inundation or damage to the plant unit and resulting harm. *See* October 29, 2007 KBOR Letter (attached as Exhibit “C”).

No governmental entities or governmental officials have requested a contested case hearing. The Burleson County Commissioners’ Court has stated that the Commission should grant contested case hearing requests for “directly effected property owners”, but has not identified any affected persons, leaving it to the Commission to find whether any such individuals actually exist. *See* May 14, 2007 Resolution of Burleson County Commissioners Court (attached as Exhibit “D”). The Honorable Representative Robert L. “Robby” Cook requested a “public hearing” for the constituents

of Burleson County, but not a contested case hearing. *See* October 23, 2007 Letter from Hon. Rep. Cook to Glenn Shankle, TCEQ Executive Director and November 5, 2007 response from Shankle to Hon. Rep. Cook (attached as Exhibit “E”). Finally, the Honorable Senator Stephen E. Ogden requested that TCEQ hold a “public meeting” on the Application, but did not request a contested case hearing. *See* December 21, 2006 Letter from Hon. Sen. Stephen E. Ogden to TCEQ (attached as Exhibit “F”). A well-attended public meeting and extended comment period took place with respect to the Application. *See* Exhibit E.

II. APPLICABLE LAW

Federal Clean Water Act, Section 402, TEX. WATER CODE, Chapters 5 and 26, and 30 TEX. ADMIN. CODE, Chapters 281, 305, 307, 309, 312, and 319, are all applicable to the Commission’s consideration of the City’s Application. Chapters 5 and 26 of the Texas Water Code and 30 TEX. ADMIN. CODE, Chapters 50 and 55 govern the Commission’s consideration of hearing requests on TPDES domestic wastewater permit applications.

A. “Affected Person” Status

The Texas Water Code states that in a contested administrative hearing held by or for the Commission, “affected person,” or “person affected,” or “person who may be affected” means a person who has a personal justiciable interest related to a legal right, duty, privilege, power, or economic interest affected by the administrative hearing. TEX. WATER CODE § 5.115(a). The Commission rules incorporate the Texas Water Code definition for “affected person,” but further specify that the interest asserted must be affected “by the application.” 30 TEX. ADMIN. CODE §§ 55.103 and 55.203(a). An interest common to members of the general public does not qualify as a personal justiciable interest. TEX. WATER CODE ANN. § 5.115(a); 30 TEX. ADMIN. CODE

§§ 55.103 and 55.203(a). A group requesting a contested case hearing must also meet the requirements of 30 TEX. ADMIN. CODE § 55.205.

To determine whether one is an “affected person” under 30 TEX. ADMIN. CODE § 55.203(c), 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 TEX. ADMIN. CODE § 55.203(c).

B. Commission Referral to SOAH or Action on Application

Under 30 TEX. ADMIN. CODE , Chapter 55, Subchapter F, an “affected person” may request a contested case hearing on a TPDES domestic wastewater permit application, but it must comply with 30 TEX. ADMIN. CODE § 55.201(c) in that it must be based on an issue raised during the public comment period. Further, the request must substantially comply with the requirements of 30 TEX. ADMIN. CODE § 55.201(d), including identifying the person’s personal justiciable interest affected by the application and listing all relevant and material disputed issues of fact that were raised during the comment period and that are the basis of the hearing request.

30 TEX. ADMIN. CODE § 55.205 prevents a group or association from group standing to request a hearing unless all of the following requirements are met:

- (1) one or more of the members of the group or association would otherwise have standing to request a hearing in their own right;
- (2) the interests the group or association seeks to protect are germane to the organization's purpose; and
- (3) neither the claim asserted nor the relief requested requires the participation of the individual members in the case.

30 TEX. ADMIN. CODE § 55.205(a). Applicants are allowed to request an explanation for how the group meets each of these requirements. 30 TEX. ADMIN. CODE § 55.205(b).

The Commission has the authority to determine that a hearing request does not meet the requirements of 30 TEX. ADMIN. CODE, Chapter 55, Subchapter F, and act on the application. 30 TEX. ADMIN. CODE § 55.211(b)(2). Alternatively, the Commission may determine that the hearing request meets the requirements of 30 TEX. ADMIN. CODE, Chapter 55, Subchapter F and: (1) if the request raises disputed issues of fact raised during the comment period that are not withdrawn and are relevant and material to the Commission's decision on the application, specify the number and scope of specific factual issues to be referred to SOAH, specify the maximum expected duration of the hearing, and direct the Chief Clerk to refer the issues to SOAH for a hearing; or (2) if the request raises only disputed issues of law or policy, make a decision on the issues and act on the application. 30 TEX. ADMIN. CODE § 55.211(b)(3). The Commission is only required to grant a hearing request made by an affected person on a TPDES domestic wastewater permit application if all the requirements found in 30 TEX. ADMIN. CODE § 55.211(c) are met, including compliance with the requirements of 30 TEX. ADMIN. CODE § 55.201.

C. Commission Action Under Chapter 50

30 TEX. ADMIN. CODE, Chapter 50, Subchapter F also permits the Commission to act on the Application without a contested case hearing. The Commission may act on the Application without holding a contested case hearing if the Commission finds there are no issues that: (1) involve a

disputed question of fact; (2) were raised during the public comment period; and (3) are relevant and material to the decision on the Application. 30 TEX. ADMIN. CODE § 50.113(c). For applications filed under Chapter 26 of the Texas Water Code, 30 TEX. ADMIN. CODE § 50.115 requires the Commission to issue an order specifying the number and scope of issues to be referred. 30 TEX. ADMIN. CODE § 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 issue of fact; (2) was raised during the public comment period; and (3) is relevant and material to the decision on the application. 30 TEX. ADMIN. CODE § 50.115(c). The Commission is required to specify the maximum expected duration of the hearing by stating the date by which the judge is expected to issue a proposal for decision. 30 TEX. ADMIN. CODE § 50.115(d).

III. THE REQUESTS FOR HEARING ON THE APPLICATION

The Commission should deny the hearing requests on the Application for three reasons. First, the issues raised in the hearing requests are legal or policy issues that are inappropriate for a contested case hearing under the Commission's rules because they do not constitute disputed issues of fact relevant and material to the Commission's decision on the Application. Second, KBOR does not meet all the requirements for group or associational standing. Third, the individual hearing requesters, who may or may not be part of KBOR, are not "affected persons" with respect to the Application in light of the issues asserted. Therefore, no hearing request should be granted in this case.

A. No Hearing Appropriate Based on Issues Raised

The hearing requesters have raised a number of issues supposedly justifying a contested case hearing. However, several of those issues are outside the scope of the Commission's review of TCB's application and the provisions contained in the Draft Permit. Those issues outside the scope of review are: (1) whether granting the Application will result in increased truck traffic, concerns

about traffic are not germane to wastewater permitting; (2) whether the wastewater treatment plant (“WWTP”) can be located in a floodplain, concerns regarding flooding are outside the scope of wastewater permitting; (3) whether the quantity of the permitted discharge from the proposed WWTP will cause flooding, concerns regarding flooding are outside the scope of wastewater permitting; (4) whether the proposed WWTP should be located somewhere other than Burleson County, concerns about what county a wastewater treatment plant should be located in are not germane to wastewater permitting; and (5) whether environmental justice concerns related to a separate permit application should be considered in granting the Application, concerns regarding generalized environmental justice issues and other permit applications are not relevant and material to this application.

The following issues raised during the public comment period are potentially within the Commission’s jurisdiction, but should not be referred for hearing in this case:

1. Whether locating the wastewater treatment plant (“WWTP”) in a floodplain will result in harm to water quality, health and safety, and the environment in the event the WWTP is damaged by a flood;
2. Whether the proposed WWTP will be accessible in the event of a flood; and
3. Whether the proposed WWTP will cause an odor nuisance.

With respect to these issues, TCB respectfully submits that they are not appropriate for a hearing in this case in that they do not raise disputed issues of fact relevant and material to the Commission’s decision on the Application. They are based on hypothetical non-compliance with the Draft Permit by the Applicant. TCB should be given the opportunity to construct and operate the proposed WWTP in accordance with the Draft Permit before it is criticized for purely speculative non-compliance with same.

First, the TCEQ rules permit location of a WWTP in a 100-year floodplain if the plant unit is protected from inundation and damage that may occur during that flood event. 30 TEX. ADMIN.

CODE § 309.13(a). TCEQ rules do not prohibit this type of WWTP siting outright. By complying with 30 TEX. ADMIN. CODE § 309.13(a), which TCB is obligated to do, TCEQ rules would allow TCB to locate its proposed WWTP in a 100-year floodplain.

Second, the Draft Permit already contains provisions that are protective against the type of harm feared by the hearing requesters. The Draft Permit specifically mandates that TCB comply with 30 TEX. ADMIN. CODE § 309.13(a). *See* Exhibit A, at 23 (Other Requirements, No. 4). It also specifically requires TCB provide facilities for the protection of its wastewater treatment facilities from a 100-year flood. Exhibit A, at 23 (Other Requirements, No. 6). Finally, in response to the public comments relating to flooding and access, the TCEQ Executive Director has revised Other Requirements No. 7 of the Draft Permit to require TCB to submit plans, specifications, and a final engineering design report in compliance with 30 TEX. ADMIN. CODE § 317.7(e) as a condition to approval of the application. *See* Executive Director's Response to Public Comment, at 15; *see also* Exhibit A, at 23 (Other Requirements, No. 7). 30 TEX. ADMIN. CODE § 317.7(e) requires construction of at least one all-weather access road above the 100-year floodplain or an approved alternative method of access. TCB will comply with all these requirements.

Third, the current design for the proposed WWTP calls for the facilities to be built above flood levels. For example, a 100 gallon tank full of bleach containing chlorine, the only chemical to be used on site, will be constructed on a pedestal to avoid inundation by flood. The TCEQ Executive Director will have the final word on whether the proposed design is protective enough. *See* 30 TEX. ADMIN. CODE §§ 317.1 and 317.7. If it is not, TCB will not be permitted to construct and operate the proposed WWTP because the Draft Permit would prohibit it. *See* Executive Director's Response to Public Comment, at 15; *see also* Exhibit A, at 23 (Other Requirements, No. 7). This should not be the basis for a contested case hearing on whether the permit should be issued as drafted.

Fourth, if the proposed WWTP is damaged in the hypothetical manner contemplated by the hearing requesters, the resulting impact on the hearing requesters' respective properties and the environment would be practically non-existent. The cow manure, fertilizer, pesticides, oil, gasoline, and other possible substances and debris from other sources that would also be in the flood waters of a 100-year flood would dwarf the release (if any) from the flood-protected proposed WWTP.

Fifth, the odor issue is also sufficiently addressed by the Draft Permit provisions and TCB design plans. To comply with TCEQ odor control requirements, the Draft Permit requires TCB to own the required buffer zone area. Exhibit A, at 23 (Other Requirements, No. 4); 30 TEX. ADMIN. CODE § 309.13(e). However, TCB is also considering the use of a submerged discharge system to eliminate hydrogen sulfide emissions when trucks are offloading wastewater to the WWTP, which would reduce the likelihood of odors. TCB's compliance with permit requirements and 30 TEX. ADMIN. CODE § 309.13(e) should eliminate the need for a hearing on this issue.

Finally, TCB notes that the issue the hearing requesters have raised as to whether the quantity of discharge from the proposed WWTP into the unnamed drainage ditch leading to the Koontz Bayou and Koontz Bayou Drain will cause flooding is absurd given the maximum discharge rate provided in the Draft Permit. The daily average flow is not to exceed 25,000 gpd. The average discharge during any two-hour period (2-hour peak) is not to exceed 69 gallons per minute ("gpm"). Distributed over a twenty-four hour period, the flow rate would be equivalent to 17.36 gpm, or the same flow rate as just over one garden hose running continuously. The 2-hour peak flow rate, 69.44 gpm, would be equivalent to just over 4.5 garden hoses. However, this particular WWTP will not be discharging constantly. Since TCB does not plan for wastewater to be continuously off-loaded from its trucks, there will be times when no treatment is needed at all. Hence, no discharge will be occurring. Nevertheless, the garden hose analogy demonstrates that no flooding would be directly caused by discharge from the proposed WWTP even at its maximum permitted discharge rate.

In sum, no issue raised during the comment period by a hearing requester warrants a hearing in this particular case. Therefore, TCB respectfully requests that the Commission deny the hearing requests and grant its permit as proposed by the TCEQ Executive Director.

B. Group Standing Requirements Not Met

A general discussion of facts that relate to TCEQ's group standing requirements is included for the first time in KBOR's October 29, 2007 letter. *Compare* Exhibit C, at 1-2, *with* 30 TEX. ADMIN. CODE § 55.205(a). However, there is not a detailed discussion specifically stating how KBOR meets those requirements. TCB submits that the entire body of KBOR correspondence submitted to TCEQ regarding the application indicates that KBOR does not meet TCEQ's group standing requirements for several reasons.

First, at least one member of the group must have standing to request a hearing in their own right. 30 TEX. ADMIN. CODE § 55.205(a)(1). KBOR's October 29, 2007 letter only mentions Jean and Leonard Killgore as representative affected members due to flooding. *See* Exhibit C, at 1. However, their property is located upstream from the proposed site and their issues raised in this case are not justiciable. *See* September 25, 2006 KBOR Letter (attached as Exhibit "G"); TEX. WATER CODE ANN. § 5.115(a); 30 TEX. ADMIN. CODE §§ 55.103 and 55.203(a), (c). Therefore, the Killgores are not "affected persons" with respect to TCB's application. Similarly, other purported KBOR members do not meet the requirements for "affected persons." *Id.* This analysis is somewhat complicated by conflicting KBOR correspondence identifying who its members are. *Compare* Exhibits C, *with* Exhibit G and August 6, 2006 KBOR Letter (attached as Exhibit "H"). Nevertheless, TCB respectfully submits that the KBOR members' lack of standing in their own right defeats KBOR's group standing with respect to the application.

Second, the interests the group or association seeks to protect must be germane to the organization's purpose. 30 TEX. ADMIN. CODE § 55.205(a)(2). While the asserted interest and

purpose of KBOR is “to protect . . . individuals’ land for use as ranching and farming property,” the group was apparently formed for the sole purpose of opposing TCB’s application. Therefore, KBOR’s group standing fails for this second reason.

Third, the claims asserted and the relief requested would require the participation of KBOR’s individual members in this case, if KBOR’s issues are referred for hearing. 30 TEX. ADMIN. CODE § 55.205(a)(3). KBOR members have varied property interests and property uses at distinct locations that would be affected differently, if at all, by the issues raised. KBOR states their “members’ properties are located anywhere from 200 yards to three miles away from the proposed plant’s location.” Exhibit C, at 1. As an example, if the flooding or odor concerns raised by KBOR members are actually realized, each member would be impacted differently according to location. Therefore, KBOR is not entitled to group standing because its individual members would need to participate in any contested case hearing on TCB’s application for their specific unique interests to be heard, as opposed to interests that may be common to members of the general public.

For these reasons, KBOR has not met the group standing requirements in this case. Each member’s “affected person” status and issues raised during the comment period should be individually assessed by TCEQ. Alternatively, TCB requests that a more detailed explanation for how KBOR meets the TCEQ’s group standing requirements be provided in its reply for Commission consideration pursuant to 30 TEX. ADMIN. CODE § 55.205(b).

C. The Hearing Requesters Are Not “Affected Persons”

Under TCEQ rules, only downstream or adjacent landowners could potentially be impacted by the issues raised. Here, the vast majority of hearing requesters are not even arguably “affected persons” because they are neither downstream, nor adjacent. The only two requesters that are even arguably affected persons are Douglas Kettler and KBOR. However, neither should be granted a hearing request.

Douglas Kettler's request should be denied for the following reasons. First, Kettler is not downstream of the discharge point. Second, the issues Kettler has raised are either generalized grievances or are not germane to the wastewater treatment permitting process. Specifically, Kettler's concern about traffic is not relevant, nor is his concern about the distance that must be traveled from where wastewater is picked up to where it is treated. Those issues are simply not within the scope of wastewater permitting. Similarly, Kettler's belief that the wastewater should be treated in another county is irrelevant. Finally, Kettler's concern that the wastewater may contain harmful chemicals assumes non-compliance with the Draft Permit. TCB is treating domestic wastewater. Industrial or other wastes feared by Kettler are prohibited by the Draft Permit.

KBOR's hearing request should be denied as well. KBOR says that it is comprised of individual property owners located both upstream and downstream of the proposed WWTP location and discharge point, but fails to identify those land owners with precision. *See Exhibit G.* The October 29, 2007 KBOR hearing request letter does not identify KBOR's membership other than the Killgores. *See Exhibit C.*

The Killgores are upstream non-adjacent property owners who are not affected in this case. *See Exhibits C and G.* It is apparent that the Killgores and KBOR are attempting to bootstrap standing for property owners with tenuous connections to the proposed WWTP location and discharge point using property owners who have a more direct geographic connection to those locations.

As previously stated, no hearing is warranted given the issues raised during the public comment period by the hearing requesters. Further, none of the hearing requesters is an "affected person". For those reasons, the Commission should deny the request for a contested case hearing.

IV. ALTERNATIVE REQUEST FOR LIMITED PARTIES AND SCOPE OF HEARING

If any of the hearing requests are granted despite TCB's request for denial, TCB respectfully requests alternatively that the Commission exercise its discretion to limit the scope of the hearing to whether the Draft Permit provisions are compliant with TCEQ's rules relating to, and thus protective against, the following:

1. Inundation and damage to the proposed wastewater treatment plant unit that may occur during a 100-year flood event;
2. Inaccessibility to the proposed wastewater treatment plant unit during a 100-year flood event; and,
3. Potential odor nuisance caused by operation of the proposed WWTP.

The duration of the hearing from the preliminary hearing date to the date the ALJ issues a proposal for decision should be ordered not to exceed six months.

V. RESPONSE TO ALTERNATIVE REQUEST FOR RECONSIDERATION

In the October 29, 2007 KBOR Letter, KBOR alternatively requests reconsideration of the Executive Director's decision in this matter. *See Exhibit C, at 7.* For the same reasons stated in this response, and because no other evidence in support of reconsideration was presented by KBOR in its request for reconsideration, TCB respectfully requests that the Commission deny KBOR's alternative request for reconsideration and allow the Executive Director's decision in this matter to stand.

VI. CONCLUSION

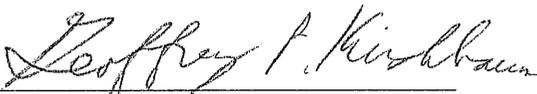
TCB respectfully requests that the Commission deny the hearing requests submitted regarding its proposed TPDES domestic wastewater permit application. The hearing requesters have failed to state an issue within the Commission's limited jurisdiction for which they have a personal justiciable interest that would make them an "affected person" under the Commission's rules. The issues raised do not warrant a contested case hearing as a matter of law and only a handful of hearing

requesters could even potentially be impacted in the manner asserted. Moreover, KBOR should not be granted group standing because it does not meet the requirements for group standing under TCEQ rules. TCB asks that the Commission exercise its authority to approve its application and grant the proposed permit as drafted by the Executive Director. TCB accepts the changes to the Draft Permit set forth in the Executive Director's Response to Public Comment.

Alternatively, should the Commission decide to grant a hearing on the application, TCB requests that its scope and the participating parties be limited as described in this response. TCB requests that a PFD be issued within six months if the Commission refers the application for hearing.

Respectfully submitted,

THE TERRILL FIRM, P.C.

By: 

Paul M. Terrill III
State Bar No. 00785094
Geoffrey P. Kirshbaum
State Bar No. 24029665
810 West 10th Street
Austin, Texas 78701
Tel: (512) 474-9100
Fax: (512) 474-9888

ATTORNEYS FOR TCB RENTAL, INC.

CERTIFICATE OF SERVICE

I hereby certify that on January 18, 2008, a true and complete copy of the foregoing was sent to the individuals on the attached mailing list via the method indicated.

Party	Address	Service Method
TCEQ Chief Clerk	LaDonna Castanuela TCEQ Office of the Chief Clerk, MC-105 P.O. Box 13087 Austin, Texas 78711-3087	via hand delivery
TCEQ Executive Director	Chris Ekoh TCEQ Environmental Law Division, MC-173 P.O. Box 13087 Austin, Texas 78711-3087	via fax to: 239-0606
	Kent Trede TCEQ Wastewater Permits Section, MC-148 P.O. Box 13087 Austin, Texas 78711-3087	via fax to: 239-4114
Office of Public Assistance	Bridget Bohac TCEQ Office of Public Assistance, MC-108 P.O. Box 13087 Austin, Texas 78711-3087	via fax to: 239-4007
Alternative Dispute Resolution	Kyle Lucas TCEQ Alternative Dispute Resolution, MC-222 P.O. Box 13087 Austin, Texas 78711-3087	via fax to: 239-4015
Office of Public Interest Council	Blas J. Coy, Jr. TCEQ Office of Public Interest, MC-103 P.O. Box 13087 Austin, Texas 78711-3087	via fax to: 239-6377
Requesters	Concerned Citizen 1524 Country Road 112 Caldwell, TX 77836-6884	via First-Class Mail
	W.H. Giesenschlag 9201 FM 2039 Somerville, TX 77879	via First-Class Mail

Party	Address	Service Method
	Camilla J Godfrey 17302 County Road 438 Somerville, TX 77879-4037	via First-Class Mail
	Burleson County Commissioners Court 100 W. Buck Street, Suite 306 Caldwell, Texas 77836-1724	via First-Class Mail
	Henry W. & Lydia R. Hilton 4978 Afton Oaks Dr. College Station, Texas 77845-7666	via First-Class Mail
	Charles and Mary Kay Janner 1787 CR 444 Somerville, Texas 77879	via First-Class Mail
	Douglas Kettler 10409 St. Peters School Road Brenham, Texas 77833	via First-Class Mail
	Helen M. Landry 1518 Hartwick Rd. Houston, Texas 77079-3302	via First-Class Mail
Koontz Bayou Old River Group	Amy Rickers Munsch, Hardt, Kopf & Harr, P.C. 500 N. Akard St. 3800 Lincoln Plaza Dallas, Texas 75201-3302	via fax to: (214) 978-4339
	William H. Tonn 6310 Dogwood Road Brenham, Texas 77833	via First-Class Mail
	Jean & Leonard Kilgore P.O. Box 625 Somerville, Texas 77879-0625	via First-Class Mail
Public Official	Honorable Robert L. Cook Texas House of Representatives P.O. Box 2910 Austin, Texas 78768-2910	via First-Class Mail



 Geoffrey P. Kirshbaum



TPDES PERMIT NO. WQ0014725001
[For TCEQ Office Use Only:
EPA ID No. TX0128899]

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

DRAFT

TCB Rental, Inc.

whose mailing address is

P.O. Box 1593
Brenham, Texas 77834

is authorized to treat and discharge wastes from the TCB Rental Wastewater Treatment Facility, SIC Code 4952

located on the west side of Farm-to-Market Road 50, approximately 1.5 miles south of the intersection of Farm-to-Market Road 50 and Farm-to-Market Road 1361 in Burleson County, Texas

to an unnamed drainage ditch; thence to Koontz Bayou Drain; thence to Koontz Bayou; thence to the Old River; thence to the Brazos River Above Navasota River in Segment No. 1242 of the Brazos 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, **December 1, 2011.**

ISSUED DATE:

For the Commission



EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS

Outfall Number 001

1. During the period beginning upon the date of issuance 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 0.025 million gallons per day (MGD); nor shall the average discharge during any two-hour period (2-hour peak) exceed 69 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. Single Grab Measurement Frequency	Sample Type
Flow, MGD	Report	N/A	Report	N/A	Five/week	Instantaneous
Carbonaceous Biochemical Oxygen Demand (5-day)	10 (2.1)	15	25	35	One/week	Grab
Total Suspended Solids	15 (3.1)	25	40	60	One/week	Grab
Ammonia Nitrogen	3 (0.6)	6	10	15	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. 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 4.0 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:
 - a. 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.
 - b. 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.
 - c. 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.
 - d. 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.
 - e. 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.
 - f. 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:
 - i. Volume of waste and date(s) generated from treatment process;
 - ii. Volume of waste disposed of on-site or shipped off-site;
 - iii. Date(s) of disposal;
 - iv. Identity of hauler or transporter;
 - v. Location of disposal site; and
 - vi. Method of final disposal.
 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.

TCEQ Revision 06/2006

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 9) 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 9) 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

<u>Pollutant</u>	<u>Ceiling Concentration (milligrams per kilogram)*</u>
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 9) 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 9) 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 9) 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.

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. 1242 of the Brazos River Basin and any subsequent updating of the water quality model for Segment No. 1242, 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.
4. The permittee shall comply with the requirements of 30 TAC Section 309.13 (a) through (d). In addition, by ownership of the required buffer zone area, the permittee shall comply with the requirements of 30 TAC Section 309.13(e).
5. 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 9) 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.
6. The permittee shall provide facilities for the protection of its wastewater treatment facilities from a 100-year flood.
7. Prior to construction of the facility, 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 permitted effluent limitations required on Page 2 of the permit.

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

DESCRIPTION OF APPLICATION

Applicant: TCB Rental, Inc.;
Texas Pollutant Discharge Elimination System (TPDES)
Permit No. WQ0014725001, (TX0128899)

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.

DRAFT

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 December 1, 2011 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 0.025 million gallons per day. The proposed wastewater treatment facility will serve temporary residences on drilling sites

PROJECT DESCRIPTION AND LOCATION

The TCB Rental Wastewater Treatment Facility will be an activated sludge process plant operated in the extended aeration mode. Treatment units include bar screens, flow equalization basin, activated sludge aeration basin, final clarifier, aerobic sludge digester and a chlorine contact chamber. The facility has not been constructed.

The draft permit authorizes the disposal of sludge at a TCEQ authorized land application site or co-disposal landfill.

The plant site will be located on the west side of Farm-to-Market Road 50, approximately 1.5 miles south of the intersection of Farm-to-Market Road 50 and Farm-to-Market Road 1361 in Burleson County, Texas.

The treated effluent will be discharged to an unnamed drainage ditch; thence to Koontz Bayou Drain; thence to Koontz Bayou; thence to the Old River; thence to the Brazos River Above Navasota River in Segment No. 1242 of the Brazos River Basin.



TCB Rental, Inc.

TPDES Permit No. WQ0014725001

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

The unclassified receiving water uses are no significant aquatic life uses for the unnamed drainage ditch and Koontz Bayou Drain. The designated uses for Segment No. 1242 are high aquatic life uses, public water supply and contact recreation. The effluent limitations in the draft permit will maintain and protect the existing instream uses. 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. A Tier 1 antidegradation review has preliminarily determined that existing water quality uses will not be impaired by this permit action. Numerical and narrative criteria to protect existing uses will be maintained. This review has preliminarily determined that no water bodies with exceptional, high, or intermediate aquatic life uses are present within the stream reach assessed; therefore, no Tier 2 degradation determination is required. No significant degradation of water quality is expected in water bodies with exceptional, high, or intermediate aquatic life uses downstream, and existing uses will be maintained and protected. The preliminary determination can be reexamined and may be modified if new information is received.

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 completed for the segment.

A priority watershed of critical concern has been identified in Segment 1242 in Burleson County. Therefore, the Houston Toad (*Bufo houstonensis* Sanders) an endangered aquatic dependent species, has been determined to occur in the watershed of Segment 1242. To make this determination for TPDES permits, TCEQ and EPA only considered 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 presence of the endangered Houston Toad requires EPA review and, if appropriate, consultation with USFWS.

Segment No. 1242 is currently listed on the State's inventory of impaired and threatened waters (the Clean Water Act Section 303(d) list). The segment is specifically for elevated levels of bacteria in the downstream portion of the segment and in the portion of the segment within Waco city limits. The wastewater treatment facility uses chlorination as disinfection, the treated and disinfected effluent from the facility should not contribute to the problem in the segment.

SUMMARY OF EFFLUENT DATA

N/A - facilities has not been constructed

PROPOSED PERMIT CONDITIONS

The draft permit authorizes a discharge of treated domestic wastewater at a volume not to exceed a daily average flow of 0.025 million gallons per day.

The effluent limitations in the draft permit, based on a 30-day average, are 10 mg/l CBOD₅, 15 mg/l TSS, 3 mg/l NH₃-N, and 4.0 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, by ownership of the required buffer zone area, the permittee shall comply with the requirements of 30 TAC Section 309.13(e).

The draft permit includes Sludge Provisions according to the requirements of 30 TAC Chapter 312, Sludge Use, Disposal and Transportation. The draft permit authorizes the disposal of sludge at a TCEQ authorized land application site or co-disposal landfill.

SUMMARY OF CHANGES FROM APPLICATION

None.

BASIS FOR PROPOSED DRAFT PERMIT

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

1. Application received June 29, 2006 and additional information received July 18, 2006 and September 27, 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.
6. Consistency with the Coastal Management Plan: The facility is not located in the Coastal Management Program boundary.
7. "Procedures to Implement the Texas Surface Water Quality Standards," Texas Commission on Environmental Quality, January 2003.
8. Texas 2004 Clean Water Act Section 303(d) List, Texas Commission on Environmental Quality, May 13, 2005; approved by USEPA on May 8, 2006.
9. "TNRCC Guidance Document for Establishing Monitoring Frequencies for Domestic and Industrial Wastewater Discharge Permits," Document No. 98-001.000-OWR-WQ, May 1998.

TCB Rental, Inc.

TPDES Permit No. WQ0014725001

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

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.

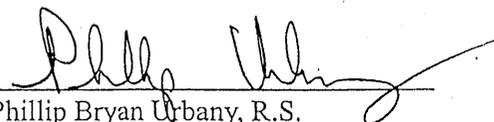
Any interested person may request a public meeting on the application until the deadline for filing public comments. A public meeting is intended for the taking of public comment, and is not a contested case proceeding.

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.

For additional information about this application contact Phillip Bryan Urbany, R.S. at (512) 239-4542.


Phillip Bryan Urbany, R.S.
Municipal Permits Team
Wastewater Permitting Section (MC 148)

October 26, 2006
Date

The interests of KBOR and the primary purpose of the organization is to protect these individuals' land for use as ranching and farming property and this purpose directly coincides with the position of the group and the interests they are attempting to protect in this request. As a collective unit, this group is able to assert claims and interests seeking relief that do not require the participation of the individual members.

Affected Person Status

To be considered an "affected person" and therefore obtain party status in this matter, the KBOR must have a "personal justiciable interest related to a legal right, duty, privilege, power, or economic interest affected by the application." 30 Texas Administrative Code ("TAC") §§ 55.3 and 55.103. Without limitation, and subject to revision after more facts are known, the property owners that constitute KBOR have a legal right to use and enjoyment of their property. These property owners are farmers and ranchers that utilize this land for their personal enjoyment and economic benefit. Many of these property owners are struggling at or below poverty level and this land supplies the only basis for their income. They each have an economic interest in the use of their property that will be directly affected by the proposed plant. The discharge proposed for this plant is likely to cause flooding of the neighboring properties, including those owned by KBOR members. Even slight increases in rainfall cause the creeks and drainage channels in this area to overflow. To authorize a continuous increase in the discharges to these creeks and drainage channels under the volumes under consideration ensures that flooding will occur. This flooding will not be something that the public in general will experience; rather it is something that will afflict these property owners in particular. Furthermore, this flooding from a wastewater treatment plant is likely to cause pollution and contamination to the surrounding waterways that has not been assessed in the application. This potential pollution will directly affect the KBOR members in their use and enjoyment of their property and in their ability to economically benefit from that use. The expected impacts are further discussed below.

Additionally, the skeleton criteria for consideration of affected person status are established in 30 TAC 55.203 and include, among others, the "likely impact of the regulated activity on the health and safety of the person, and on the use of property of the person." It has become clear through the application and associated public comments that this proposed plant will adversely affect the use of the property of the surrounding property owners. This, along with their legal and economic interests, establishes the affected party status of KBOR.

Disputed Issues of Fact

The Commission is in a unique position in reviewing this and every permit application. It is the responsibility of the Commission to ensure that the purpose of the permit authorization is carried out and that all necessary concerns of the public and the Texas Commission on Environmental Quality (the "Agency") are reviewed. The purpose of this particular permit review process is clear:

The purpose of this chapter is to condition issuance of a permit and/or approval of construction plans and specifications for new domestic wastewater treatment facilities or the substantial change of an existing unit on selection of a site that minimizes possible contamination of ground and surface waters; to define the characteristics that make an area unsuitable or inappropriate for a wastewater treatment facility; to minimize the possibility of exposing the public to nuisance conditions; and to prohibit the issuance of a permit for a facility to be located in an area determined to be unsuitable or inappropriate, unless the design, construction, and operational features of the facility will mitigate the unsuitable site characteristics.

30 TAC §309.10. Furthermore, “[t]he commission may not issue, amend, or renew a permit for a wastewater treatment plant if the facility does not meet the requirements of §309.13 of this title (relating to Unsuitable Site Characteristics).” 30 TAC §309.14. The public comments in this matter have certainly raised questions as to the suitability of this area for this wastewater treatment plant. These concerns should prompt the Commission to authorize a contested case hearing to ensure that sufficient information is before them to determine the suitability of this permit application and to ensure that the Applicant has sufficiently proven the statutory compliance necessary to guarantee the nuisance to surrounding property owners is minimized.

The following comments from the Decision of the Executive Director dated October 1, 2007 and the Executive Director’s Response to Public Comment form the basis for this request for a contested case hearing:

A. Health and Safety Concerns

The Burleson County Commissioner Court has indicated that they are extremely concerned about the impacts of this plant:

Comment 3: The **Burleson County Commissioner Court** (Mike Sutherland, Frank Kristof, Vincent Svec, David Hildebrand and John Jandolt) adopted and filed a resolution recognizing the potential danger the wastewater treatment plant might pose to the health and safety of residents, landowners, livestock, native wildlife, crops, and the environment due to its location in the volatile flood plain of the Brazos River in Burleson County.

These sediments are shared by the members of KBOR. The volatility of this area increases the chances of difficulties arising in the operation of the proposed plant and its impact on the surrounding area.

The Executive Director’s response to this comment indicates that “the Applicant is required to comply with the site characteristics requirements in 30 Texas Administrative Code (“TAC”) § 309.13.” The response goes on to indicate that “A wastewater treatment plant may not be located: (a)

in the 100-year flood plain unless the plant unit is protected from inundation and damage that may occur during the flood event. . . The applicant is also required to comply with one of the nuisance odor control and buffer requirements of 30 TAC §309.13(e).” This type of response is common throughout the Executive Director’s Response. While it may be a fact that the Applicant is required to comply with these regulations, the requirement for compliance does not ensure compliance; that is why there are enforcement measures available, because applicants do not always achieve compliance with the regulations. It is the purpose of the permit review process to do everything possible to ensure that compliance can be achieved, especially to require that applicants can demonstrate their ability to achieve compliance. It is the contention of KBOR that the Applicant has not made such a demonstration in this case.

The Executive Director further responds that effluent limitations have been established yet fails to address the fact that there is a large concern regarding the impact of flooding in addition to the pollutant content of the flood waters. Flooding of property is certainly a nuisance and would seemingly make the site unsuitable for the location of a wastewater treatment plant. Again, it is the Applicant’s responsibility and burden in the permitting process to demonstrate that they can and will achieve compliance with applicable laws and regulations. This standard has not been met in this application process.

Additionally, as noted in the Technical Summary and Executive Director’s Preliminary Decision in this matter, the affected segment of the Brazos River (Segment 1242) “is currently listed on the State’s inventory of impaired and threatened waters.” P. 2. The effect of the inevitable flooding and the carrying pollutants not necessarily expected in the discharge stream to an impaired waterway is a concern that must be addressed. The applicant has not evaluated this concern in its application and the Commission is entitled to see such an analysis before considering a permit that may have a negative impact on a waterbody and “health and safety of residents, landowners, livestock, native wildlife, crops, and the environment.”

B. Proposed Plant’s Location is in the Floodplain

Comment 4 establishes that the proposed plant’s location is in the floodplain which experiences severe flooding. There were at least 11 commentors remarking on the severe flooding in the area. The response by the Executive Director is that the TCEQ does not prohibit placement of water treatment plant in the flood plain, but that it must be protected from inundation and damage during flood events.

There are at least two significant problems with the application in this regard. The first is that the Applicant’s analysis of this area does not account for flooding. Other than the mention that the proposed plant is located in the floodplain, there is no indication that flooding is a problem in the area. In fact, the assessment of the site indicates, on page 10 of 30, that the flow fluctuations into the initial tributary are minor. The testimony at the public hearing as recited in the Executive Director’s Response shows otherwise. Numerous people testified to the fact that this area floods on a recurring basis. The analysis supporting the Applicant’s submittal does not recognize this fact and fails to

address the necessary protections for the wastewater treatment plant to be placed in an area inundated by flood waters. Furthermore, it fails to analyze the impact of an increased discharge into tributaries that flood and the resulting impact to the landowners and the property which experience the flow of those tributaries. The second problem is that the measures proposed for the plant's configuration based on the fact that it is in the floodplain are insufficient. This area admittedly is in the Special Flood Hazard Area, this is the land area covered by the floodwaters of the base flood.¹ The Applicant proposes to place the top of the treatment tanks at 4 feet above the listed elevation for the area. However, this area is known to flood by more than four feet, therefore, this protection is inadequate.

C. Drainage is Already Hampered at the Proposed Discharge Point

In Comment 5 there is reference to the fact that due to silting and overgrowth the drainage in the area is severely hampered. The response by the Executive Director is that the permitting process does not allow the Commission to consider this matter but rather that the flood plain administrator should address the issue. Again, the Executive Director believes that its role is limited to controlling the discharge of pollutants into water of the state. However, pursuant to 30 TAC §309.10, the specific mandate to the Commission is to not allow this plant unless adequate protections are employed, this would include a review of the potential damage to be caused by inadequate drainage.

D. Contamination Concerns

Comment 6 centers around the issue of potential contamination of surrounding properties during flooding. The Executive Director's Response is that the Applicant must take precautions to prevent discharges and must comply with water-quality based effluent limitations. The response goes so far as to state that "[t]he Executive Director does not have the authority to mandate a different discharge location or different type of wastewater treatment plant." While this may be true, the Executive Director and the Commission do have the authority to determine that a permit application is incomplete in its assessment of the probable impacts and necessary precautions to ensure compliance to permit it for this location. It is certainly the duty of the Executive Director to control the discharge of pollutants to waters of the state, however, in accordance with 30 TAC §309.10 it is also clearly required to ensure that there are adequate protections and no nuisance caused by the activities forming the basis of the application. The concern of an overflow from the proposed plant during flooding affecting the property, both land and livestock, is a valid justiciable interest that must be reviewed by the Commission.

Additionally, the comment addresses the fact that the overflow of water from the plant could be a trespass to adjoining landowners property and that the proposed draft permit does not authorize such a trespass. However, the Applicant has not acquired all necessary property rights to convey this water. Because this conveyance is a condition to operating under the permit and the Executive Director and Commission are being informed that it has not been met, the application should not be

¹ <http://www.fema.gov/plan/prevent/floodplain/nfipkeywords/sfha.shtm>; see also 44 C.F.R. §59.1.

approved because the Applicant has not met their burden for ensuring compliance with the permit conditions.

E. Accessibility of the Proposed Plant

Mr. Wilkerson noted in Comment 7 that there would be times of inaccessibility of the plant due to the flooding. The response by the Executive Director is that the Applicant is required to have at least one all-weather access road. Again, the requirement does not ensure the compliance. The Applicant has not demonstrated how, in the adverse conditions of the area, they intend to ensure compliance with this requirement. Simply stating that the Applicant is required to have access does not address the fact that there is no analysis in the application that shows the Applicant will have access throughout the year. Again, the Applicant's review of the location did not take into account the flooding that occurs in the area and therefore does not account for the need for access during those floods.

F. Odor Nuisance

Odor nuisance was the subject of Comment 9. The application indicates that the buffering requirement to avoid odor nuisance will be met by the Applicant owning sufficient buffering property under 30 TAC §309.13(e). Again the Executive Director refers to the regulation requirements and states that the Applicant must comply. However, the unique nature of this proposed location with the recurring flooding of the area presents a situation in which the odor nuisance may reach further than the typical site. This abatement requirement must be considered under the unique conditions of the site to ensure that the Commission fulfills the purpose of this permitting process under 30 TAC § 309.10. Then the Executive Director refers remaining air issues to the air permitting section. The odor issue raised in Comment 9 does not deal with air permitting issues under the air permitting section, rather it focuses on the odor nuisance concerns to be addressed specifically under this permitting process.

G. Increased Truck Traffic

A concern is raised in Comment 10 regarding the increased truck traffic and inability of the roads in the area to accommodate this traffic. The response is that this is not an issue for the TCEQ to consider. Again, if these issues and concerns of the KBOR members as surrounding property owners indicate that there may be a nuisance issue or a situation that makes this site unsuitable to the proposed wastewater treatment plant then the Commission must review whether those issues have been adequately addressed in the application. The issue of increased truck traffic on roads that are seemingly not designed for such traffic has not been addressed in this application and should be reviewed by the Commission prior to considering the approval of this proposed permit.

H. Similar Permits Denied

The concern of Comment 12 is that the community of Clay, located in the surrounding area, had applied for a similar wastewater treatment permit and been rejected because it was in the floodplain. The Executive Director refers the commentors to the Environmental Justice section without the issue being addressed. However, that situation may be instructive here. If one wastewater treatment plant is unsuitable for this floodplain area, perhaps all are unsuitable.

I. Impact of Overflow Waters

In comment 14 the concern of the impact on the supply waters for Burleson County during a flood event are raised. The Executive Director again refers to the regulations and fails to address the issue. Additionally, the Executive Director notes that there are few concerns of groundwater contamination with the discharge of treated effluent to the surface water. While that may be true in an area that does not flood on a repeated basis, the groundwater contamination concerns seem higher in this situation and should be properly reviewed. This issue is not reviewed in the application, because, again, the Applicant did not even acknowledge that this is a flood prone area.

Conclusion

The public comments, many of them made by the KBOR members, establish the need for a contested case hearing. Without such a hearing, the Commission is left with insufficient information upon which to grant this permit. KBOR members are at risk of damage to their property and threats to their health and safety from the inevitable flooding that the proposed discharge will cause. The application clearly does not address the impacts of flooding on the proposed site, its operations, or the interaction of the flooding with the effect of the proposed plant on the surrounding landowners. The Applicant should be forced, at a minimum, to evaluate this impact and a proper forum to ensure that the Commission is supplied with the necessary information upon which to base its review of the permit is a contested case hearing.

In the alternative, if the Commission does not grant a contested case hearing, the KBOR would at the very least request reconsideration of the Executive Director's Decision in this matter. For the above reasons, the KBOR feels that the Executive Director's Decision was not a fully informed decision and should be reconsidered.

KBOR further reserves its right to amend or supplement this request as may be required, desirable, or necessary.

Having established the criteria required under 30 TAC § 55.201(d) the KBOR respectfully requests that this case be referred for a contested case hearing.

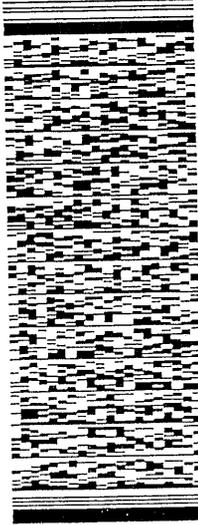
From: Origin ID: RBDA (214)880-7651
Amy Rickers
Munsch, Hardt, Kopf & Harr, PC
3800 Lincoln Plaza
500 N. Akard Street
Dallas, TX 752016659



CL59896072123

BILL SENDER

SHIP TO: (512)239-3300
LaDonna Castanuela
TCEQ
12100 PARK 35 CIR BLDG F
AUSTIN, TX 787531808



Ship Date: 29OCT07
ActWgt: 1 LB
System#: 7771780/INET7091
Account#: S *****

Delivery Address Bar Code



Ref # 990007.133
Invoice #
PO #
Dept #

RECEIVED

OCT 30 2007

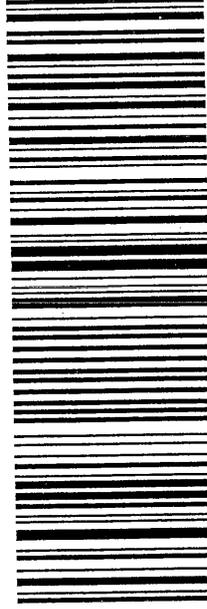
TCEQ MAIL CENTER TUE - 30OCT A1

TRK# 7982 9726 7219
0201

FIRST OVERNIGHT

AUS
TX-US
78753

A1-MMRA



MWD
54156

HR OPA
MAY 14 2007
BY Paul

RESOLUTION OF
BURLESON COUNTY COMMISSIONERS COURT

Request for Contested Hearing RE: Proposed Permit No. WQ0014725001

"BE IT RESOLVED that the Burleson County Texas Commissioners Court recognizes the potential danger to the health and safety of residents and landowners, health of livestock, crops, native wildlife and the natural environment from the proposed wastewater treatment plant to be located in the very volatile flood plain of the Brazos River in Burleson County.

BE IT FURTHER RESOLVED that the Burleson County Texas Commissioners Court hereby requests the Texas Commission on Environment Quality to grant the request by the directly effected property owners for a contested hearing regarding Application of TCB Rental, Inc. for Discharge of Treated Domestic Wastewater TPDES Proposed Permit No. WQ0014725001."

ADOPTED the 14th day of May, 2007.

SIGNED AND ENTERED ON THE ABOVE DATE BY:

[Signature]
Mike Sutherland, County Judge

[Signature]
Frank Kristof,
Commissioner, Precinct 1

[Signature]
Vincent Svec, Jr.
Commissioner, Precinct 2

[Signature]
David Hildebrand
Commissioner, Precinct 3

[Signature]
John Landolt
Commissioner, Precinct 4

ATTEST:

[Signature]
Anna L. Schelack
County Clerk



TEXAS COMMISSION ON ENVIRONMENTAL QUALITY
2007 MAY 14 AM 10:20
CHIEF CLERKS OFFICE



MIKE SUTHERLAND
COUNTY JUDGE
BURLESON COUNTY

100 WEST BUCK ST., SUITE 306
CALDWELL, TEXAS 77836
PHONE: (979) 567-2333
FAX: (979) 567-2372



FAX TRANSMITTAL

DATE: 5-14-07

TO: Ladonna Castanuela

FROM: Mike Sutherland

FAX NO. OF RECIPIENT: 512-239-3311

NUMBER OF PAGES, INCLUDING COVER SHEET: 2

MESSAGE: Request for Contested Hearing

TEXAS COMMISSION
ON ENVIRONMENTAL
QUALITY
2007 MAY 14 AM 10:20
CHIEF CLERKS OFFICE

IF YOU DO NOT RECEIVE ALL PAGES, PLEASE CALL (979) 567-2333.

CC: OPA, IGR, GS, MV



OPA
BY *[Signature]*

CAPITOL OFFICE:
P.O. BOX 2910
AUSTIN, TEXAS 78768-2910
512-463-0682

DISTRICT OFFICE:
P.O. BOX 217
EAGLE LAKE, TEXAS 77434
979-234-2492

COMMITTEES:
NATURAL RESOURCES
LOCAL & CONSENT
CALENDARS
GOVERNMENT REFORM

Robert L. "Robby" Cook

TEXAS HOUSE OF REPRESENTATIVES

RECEIVED BY OPA
TRACKING # 15718
ASSIGNED TO: JPC

October 23, 2007

OCT 31 2007

Glenn Shankle, Executive Director
Texas Commission on Environmental Quality
12100 Park 35 Circle
Austin, TX 78753

DUE DATE: 11-8-07

Dear Mr. Shankle,

I have been contacted by constituents from Burleson County concerning the water quality permit by TCB Rental, Inc. regarding the operation of a wastewater treatment facility with outflow to Koontz Bayou and the Brazos River (permit number: W0004725001).

The constituents have asked me to contact you on their behalf to voice their concerns about possible environmental implications including contamination of nearby water sources in the flood plain. I respectfully request a public hearing for the constituents of Burleson County to fully discuss all issues pertaining to the permit with TCEQ officials. Any consideration you can give these constituents would be greatly appreciated.

Thank you for your time. If you have any questions or if I can be of assistance to you, please feel free to contact my office.

Sincerely,

Robert L. "Robby" Cook
State Representative, District 17

STATE OF TEXAS
COUNTY OF TRAVIS
I HEREBY CERTIFY THAT THIS IS A TRUE AND CORRECT COPY
OF A TRUE ORIGINAL OR ENVIRONMENTAL QUALITY
DOCUMENT AS FILED IN THE REGISTERED RECORDS
OF THE COMMISSION UNDER MY HAND AND THE
SEAL OF THIS OFFICE.
8007-01-11
LACERRA CARRASQUILLA, CHIEF CLERK
TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

TEXAS
COMMISSION
ON ENVIRONMENTAL
QUALITY
2007 DEC 28 PM 1:27
CHIEF CLERKS OFFICE

RECEIVED
OCT 29 2007
EXECUTIVE DIRECTOR

Blumberg No. 515
EXHIBIT
E

Buddy Garcia, *Chairman*
Larry R. Soward, *Commissioner*
Glenn Shankle, *Executive Director*



TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

November 5, 2007

The Honorable Robert L. Cook
Texas House of Representatives
P.O. Box 2910
Austin, Texas 78768-2910

Dear Representative Cook:

I'm writing in response to your letter regarding the application by TCB Rental, Inc. for proposed Water Quality Permit No. WQ0014725001. I appreciate your interest in this matter. Your letter has been forwarded to the Office of the Chief Clerk to be included with the permanent file for this permit application. Additionally, I have asked that my staff include you on the list to receive future mailings regarding this permit.

The period to submit requests for a contested case hearing ended on October 31, 2007. Since the agency has received hearing requests on this permit application, this matter will be presented to the commissioners for consideration and to make a decision whether to grant those hearing requests. If the Commission grants any of the requests, the matter will be referred to the State Office of Administrative Hearings for further proceedings.

It should be noted that during the technical review process, the agency conducted a public meeting on this permit application. The meeting was well attended, with approximately 60 individuals in attendance. Also, to ensure that concerned citizens had sufficient time to submit comments, the comment period was extended by 30 days.

I hope this information is helpful. If you need additional information, please feel free to contact me at (512) 239-3900, or Leonard Olson in our Intergovernmental Relations Division at (512) 239-3267.

Sincerely,

A handwritten signature in black ink, appearing to read "Glenn Shankle".

Glenn Shankle, Executive Director
Texas Commission on Environmental Quality

cc: Leonard Olson, Intergovernmental Relations
LaDonna Castañuela, Chief Clerk

U

THE SENATE of
THE STATE of TEXAS
ON ENVIRONMENTAL



2004 41

CHIEF CLERKS OFFICE

Stephen E. Ogden
District 5

MWD
34156

P.O. Box 12068
Austin, Texas 78711-2068
Tel: (512) 463-0105
Fax: (512) 463-5713
Dial 711 For Relay Calls
steve.ogden@senate.state.tx.us

3740 Copperfield Drive, Suite 103
Bryan, Texas 77802
Tel: (979) 776-0521
Fax: (979) 776-8951
1-888-694-2609

309 West Main Street, Suite 115
Round Rock, Texas 78664
Tel: (512) 828-5224
Fax: (512) 828-5229

PM OPA
DEC 28 2006

BY SM

December 21, 2006

Office of the Chief Clerk
Texas Commission on Environmental Quality
P.O. Box 13082
MC105
Austin, Texas 78711-3087

RE: Proposed Permit No. WQ0014725001

Dear Sir/Madam:

Due to the significant degree of public interest expressed by residents in Burleson County regarding the above matter, I would like for the interested parties to have the opportunity to be informed about the proposed permit and to provide their input in that regard.

Please, hold the public meeting at a location convenient to the interested residents in Burleson County so that it will serve its intended purpose.

Sincerely,

Stephen E. Ogden

SEO/ca

cc: Mrs. Jean Killgore, Koontz Bayou/Old River Group Representative (via Fax)
Ms. Jennifer Ahrens, TCEQ (via Fax)



Jean Killgore
Koontz Bayou/Old River Group
P.O. Box 625, Somerville, TX 77879
979-272-8727 Fax 979-272-9181 jeaniek@texasbb.com

September 25, 2006

RECEIVED
SEP 27 2006
MUNICIPAL PERMITS

Mr. Phillip Urbany
Mail Code 148
Texas Commission on Environmental Quality
12100 Park 35 Circle
Austin, Texas 78753

Dear Mr. Urbany: RE: Proposed TPDES Permit No. WQ0014725-001

We respectfully submit for your consideration the following information regarding TCB Rental's application.

Reference the Application by TCB Rental, Inc.:

Page 7 of 12, Question K: Koontz Bayou is a flood control drainage ditch.

Page 10 or 12, Question 7: Koontz Bayou is not a creek, it is a manmade drainage ditch to the Old River.

Page 8 of 30, Question 1: The community of Clay is less than 3 miles downstream from the intake. They get their water from shallow wells. This is a historic Black Community.

Question 4 (a): Koontz Bayou is a manmade drainage ditch.

Question 4 (b): How does applicant know this? We observed otherwise over the years. He is a new owner without the advantage of observation over time.

Page 9 of 30, Question 4 (e): Only 4-6 inches of rain will fill Koontz Bayou and it starts to backup onto our private road and our pasture, and there have been three floods of historic proportion at the site location since 1990. There was at least 6 feet of water over the proposed site and the surrounding area backing up onto the upstream properties each time. There are a number of members of our Koontz Bayou Group and others who can attest to this from observation. When it floods we have had to come and go by boat.

Reference Attachment "Admin.03" Downstream & Adjacent Landowners: Owner number 2 (marked in red), the Hintons don't have any agreement with applicant about right of way or access of the unnamed drainage ditch over their property. They are members of our KBOR Group. How can applicant discharge treated waste onto or through their property without an agreement with them?

Thank you for your consideration of this information. If you have questions, please don't hesitate to call me, Jean Killgore, KBOR representative.

Sincerely,



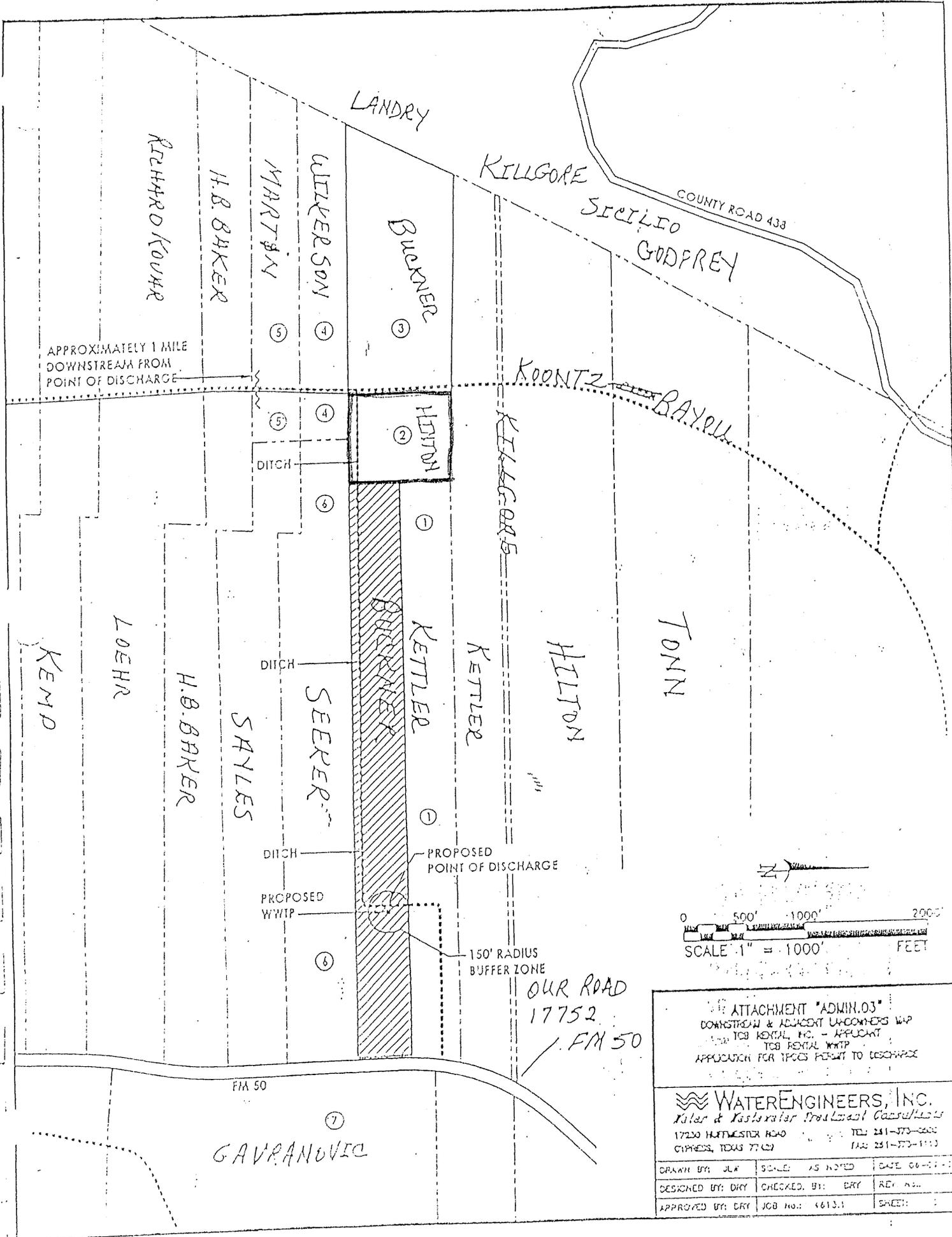
Jean Killgore

Attachments: Federal Emergency Management Agency Map, Downstream & Adjacent Landowners & Lessees
List of Koontz Bayou/Old River Landowners & Lessees

THE STATE OF TEXAS
COUNTY OF TRAVIS
I HEREBY CERTIFY THAT THIS IS A TRUE AND CORRECT COPY
OF A TEXAS COMMISSION ON ENVIRONMENTAL QUALITY
DOCUMENT, WHEN FILED IN THE PERMITS RECORDS
JAN 10 2007
OF THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY
LACONIA CRYSTABELL, CHIEF CLERK

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY





ATTACHMENT "ADMIN.03"
 DOWNSTREAM & ADJACENT LANDOWNERS MAP
 FOR TCB RENTAL, INC. - APPLICANT
 TCB RENTAL WWTP
 APPLICATION FOR TPOCS PERMIT TO DISCHARGE

WaterEngineers, Inc.
Kilar & Kalaratar Treatment Consultants
 17230 HUFFMASTER ROAD TEL: 281-370-2800
 CYPRESS, TEXAS 77429 FAX: 281-370-1110

DRAWN BY: JUK	SCALE: AS NOTED	DATE: 08-11-12
DESIGNED BY: DRY	CHECKED BY: DRY	REV: N/A
APPROVED BY: DRY	JOB NO.: 4613.1	SHEET: 1

KBOR Members

UPSTREAM:

Jean and Leonard Killgore
P.O. Box 625, Somerville, TX 77879 979-272-8727 Fax 979-272-9181
jeaniek@texasbb.com

Helen Landry, 1518 Hartwick, Houston, TX 77093

Camilla J. Godfrey
17302 CR 438, Somerville, TX 77879 979-272-3678, 281-449-5541

William (Bill) Tonn
Home 713-973-0243 713-468-1882 Fax 713-973-7390

Kenneth Lauderdale
1524 CR 112, Caldwell, TX 77836

Henry W. & Lydia R. Hilton
4978 Afton Oaks Drive, Bryan, TX 77845 979-774-7049

Willie Gavranovic, Jr.
5713 CR 156, Wharton, TX 77488
Cell 979-533-1531 Home 979-532-4102 Fax 979-532-8805

Sicilio Family Trust
Neeley C. Lewis, P.O. Box 4067, Bryan, TX 77805
979-846-1773

Douglas & Theresa Kettler
10409 St. Peters School Road, Brenham, TX 77833
979-836-1104, 979-386-8060 Matthew 979-836-8060

DOWNSTREAM:

German B. Hinton, C/O Mary Hinton
4214 S. Acres Drive, Houston, TX 77047-1137

Edwin A., Jr. & Lanell J. Seeker
5705 Seeker Road, Brenham, TX 77833

Doug Pecore, Old River Ranch 713-614-2106, Pete Scarmardo, 1893 FM 1362 N.,
Caldwell, TX 77836 (272-3109, Home 272-8476)

Leon and Florence Schwarz 979-836-4756, Home 979-836-8682, Cattlemen's Supply
Brenham

Charles and Mary Kay Janner, 1787 CR 444, Somerville, TX 77879 979-272-8088

Jean Killgore
Koontz Bayou/Old River Landowners/Lessee Group
P.O. Box 625, Somerville, TX 77879 (Physical Address 17752 FM 509)
979-272-8727 Fax 979-272-9181 jeaniek@texasbb.com

Overnight Delivery via Fed Ex
August 6, 2006

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

OPA
H AUG 10 2006
BY ll

STATE OF TEXAS
COUNTY OF TRAVIS
LIBRARY CENTER
2003-01 NOV 15
JAN 10 2006

CHIEF CLERK'S OFFICE

OF THE PUBLIC RECORDS SUPERVISOR BY MAIL TO THE
SCALE OF THIS COUNTY

Jean Killgore
JEAN KILLGORE, CHIEF CLERK
TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

TEXAS
COMMISSION
ON ENVIRONMENTAL
QUALITY

RE: Request for a Contested Case Hearing: TCB Rental Proposed Permit No. WQ0014725001
(TCEQ Notice of Receipt of Application Published in the Burleson Co. Tribune, August 3, 2006)

Dear Sir/Ms:

The site for the proposed TCB Rental Wastewater Treatment Plant is approximately 300 yards from our property. We request a contested case hearing because the proposed site of the wastewater treatment plant and drainage is in a flood plain and would adversely affect the drainage of the area which is in active agricultural production. The floods in the Koontz Bayou/Old River area are of historic proportion. When the Brazos River is up, water from Koontz Bayou/Old River does not flow into the river.

Drainage of water is critical to all agricultural production on our property and other properties adjacent to and along the Koontz Bayou/Old River both upstream and downstream. As you can see from the enclosed photographs taken during a couple of floods, adding any volume of discharge into the Bayou/Old River would have an adverse impact. Drainage is already hampered by overgrowth, silting and dumping in the Bayou over approximately 60 years. About 14 years ago we contacted Texas Agriculture Commission about cleaning out Koontz Bayou and were told it would require a costly comprehensive environmental impact study first.

It only takes about 6-8 inches of rain area wide to start the water in the Bayou backing up onto to corn, maize, cotton, and hay fields, and grazing pastures. At a time of more severe flooding the wastewater treatment plant would have the adverse affect of untreated waste/spillage backing up and then flowing down the Bayou and Old River. This would create a health and safety hazard for those of us who live on our properties in this area.

The properties along the Koontz Bayou and Old River are host to Canada and Snow Geese, Sand Cranes and other migratory water fowl each year. We are also concerned the proposed wastewater treatment plant may have an adverse impact on their migration and safety.

Our group's representative will be Jean Killgore (979-272-8727) for receiving future correspondence. We would sincerely appreciate your consideration of our request.

Sincerely,

Jean Killgore Leonard Killgore
Jean and Leonard Killgore

Mary Kay Janner Charles Janner
Mr. & Mrs. Charles Janner

Enclosures

Cc: State Senator Steve Ogden, TX Ag Commis. Susan Combs, County Judge Mike Sutherland, Phil Ford BRA



BS
MILLER

Koontz Bayou/Old River Landowners/Lessee Group:

(More signatures to come)

Helen M. Landrey

1518 Hartwick
Houston, TX 77093

Kenneth A. Landrey

1524 CR 112
Caldwell, TX 77836

TEXAS
COMMISSION
ON ENVIRONMENTAL
QUALITY
2003 AUG -9 PM 5:35
CHIEF CLERKS OFFICE

(Ag Lessee)

Camilla J. DeFrey

17302 CR 438
Somerville, TX 77879

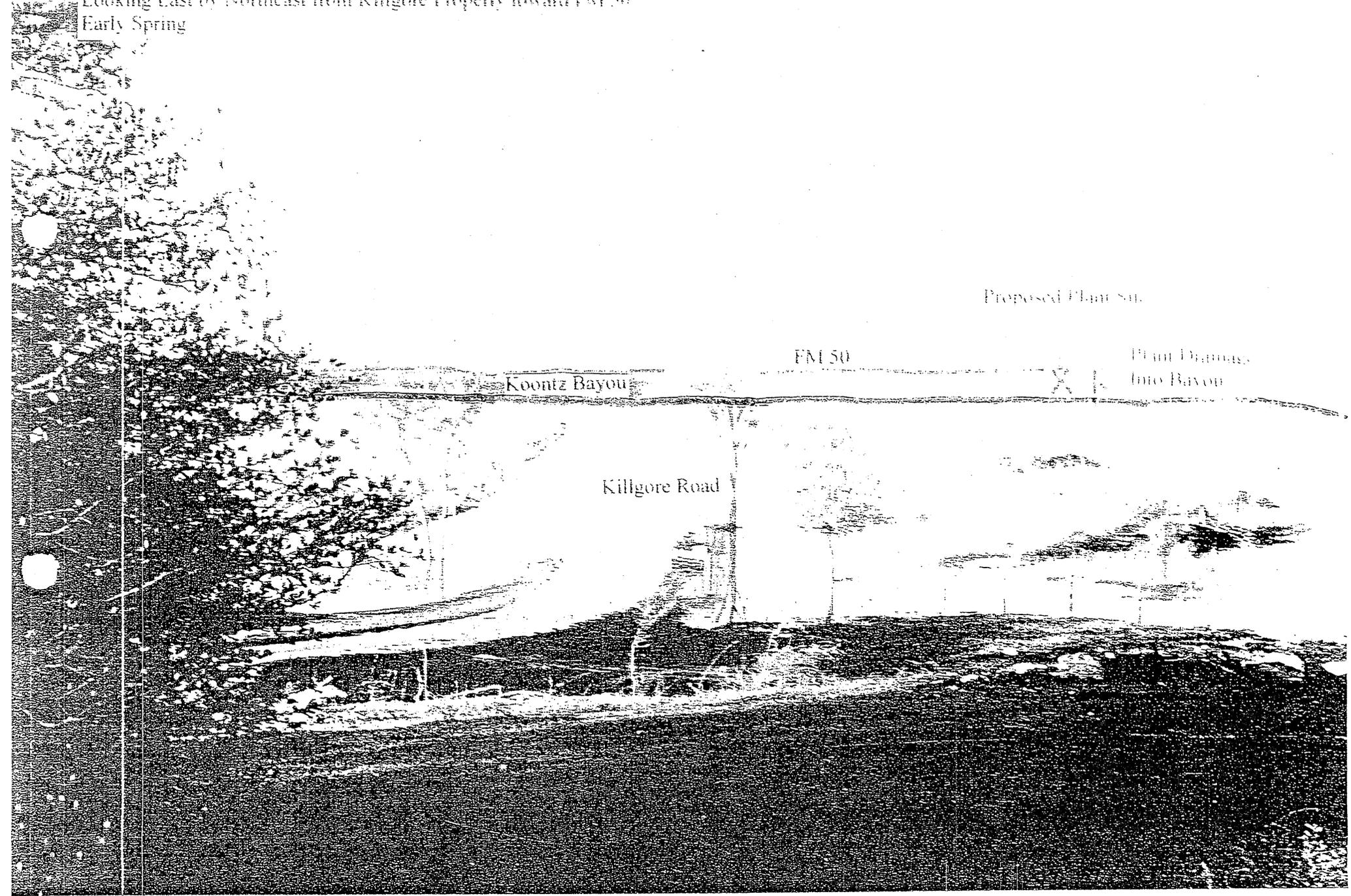
Henry W. & Lydia R. Hilton
(by Jean Kellone)
4978 Afton Oaks Drive
Bryan, TX 77845

BS

Photo #1

Looking East by Northeast from Killgore Property toward FM 50

Early Spring



Koontz Bayou

Killgore Road

FM 50

Proposed Plant Site

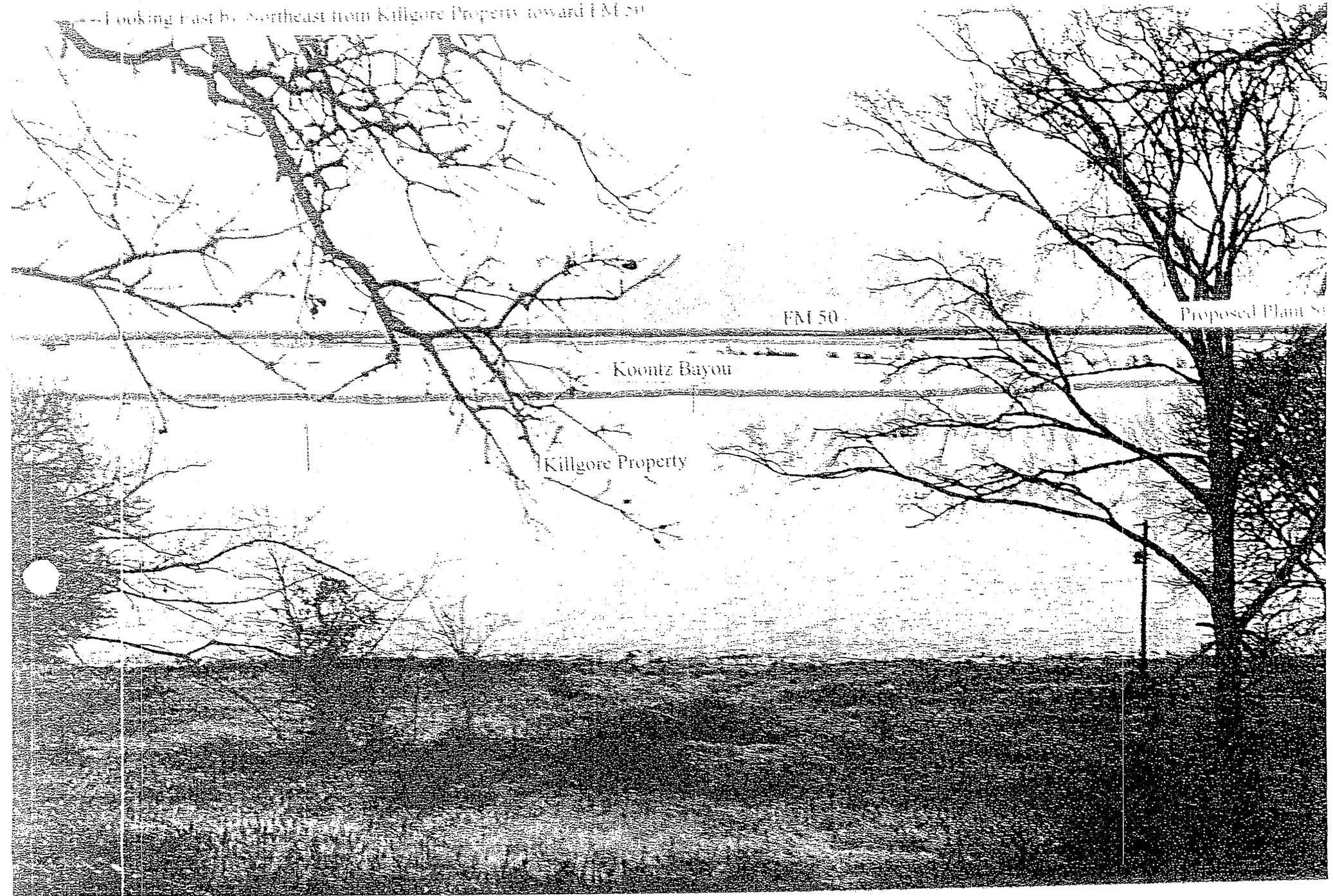
Plant Drainage
Into Bayou

Photo #7 Taken from same location as Photo #1
Looking East by Northeast from Killgore Property toward FM 50
Fall



Plate 13

Looking East by Northeast from Killgore Property toward FM 50



FM 50

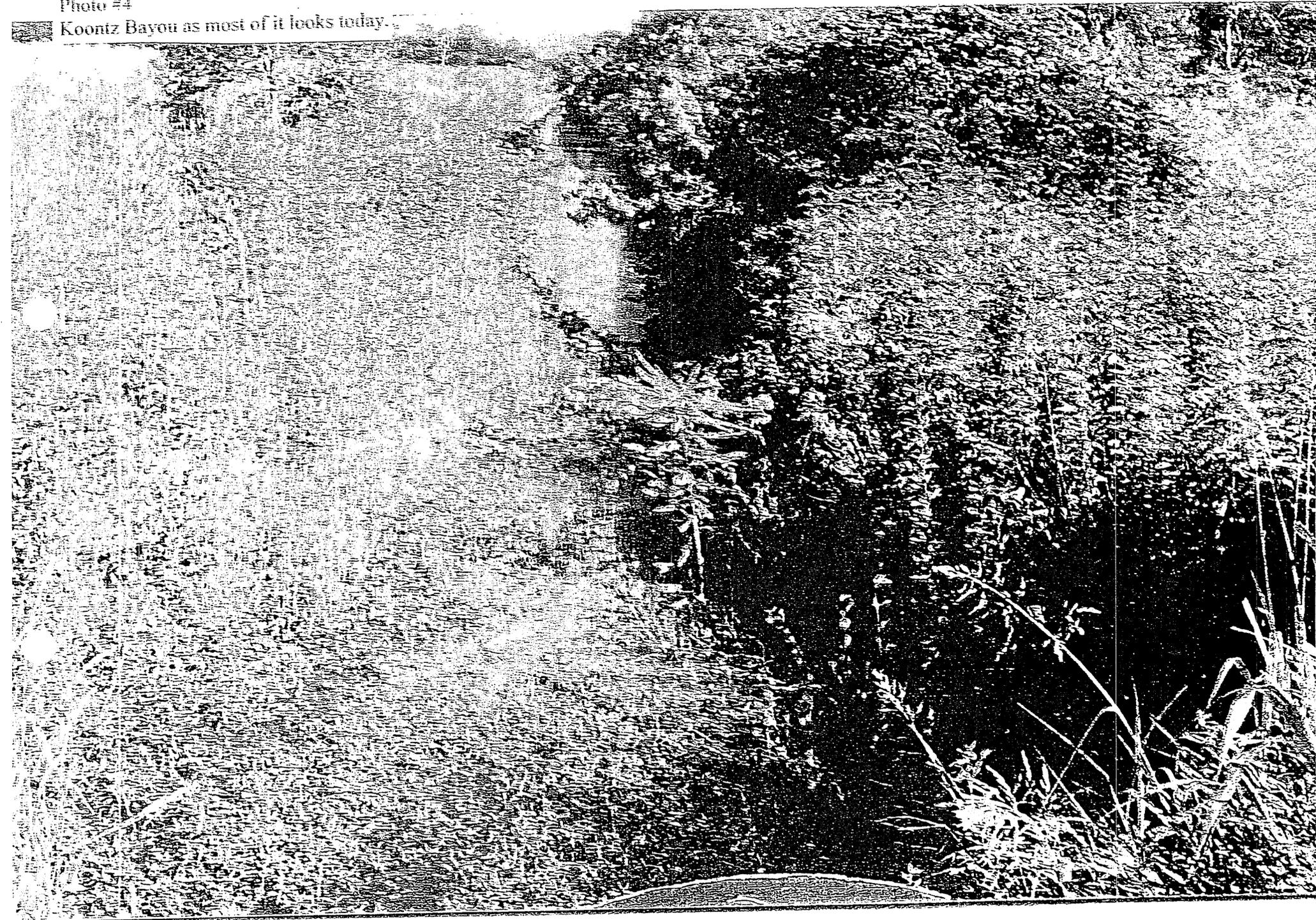
Koontz Bayou

Killgore Property

Proposed Plant Site

Photo #4

Koontz Bayou as most of it looks today.





The Tribune
Aug. 3, 2006

**NOTICE OF RECEIPT OF APPLICATION AND
INTENT TO OBTAIN WATER QUALITY PERMIT**

PROPOSED PERMIT NO. WQ0014725001

APPLICATION. TCB Rental, Inc., P.O. Box 1593, Brenham, Texas 77834, has applied to the Texas Commission on Environmental Quality (TCEQ) for a proposed Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0014725001 (EPA I.D. No. TX0128899) to authorize the discharge of treated wastewater at a volume not to exceed a daily average flow of 25,000 gallons per day. The proposed domestic wastewater treatment facility is located on the west side of Farm-to-Market Road 50, approximately 1.5 miles south of the intersection of Farm-to-Market Road 50 and Farm-to-Market Road 1361 in Burleson County, Texas. The discharge route is from the plant site to an unnamed drainage ditch; thence to Kooztz Bayou; thence to Old River; thence to the Brazos River. TCEQ received this application on June 29, 2006. The permit application is available for viewing and copying at the Harrie P. Woodson Memorial Library, 704 Highway 21, Caldwell, Texas.

ADDITIONAL NOTICE. TCEQ's Executive Director has determined the application is administratively complete and will conduct a technical review of the application. After technical review of the application is complete, the Executive Director may prepare a draft permit and will issue a preliminary decision on the application. **Notice of the Application and Preliminary Decision will be published and mailed to those who are on the county-wide mailing list and to those who are on the mailing list for this application.** That notice will contain the deadline for submitting public comments.

PUBLIC COMMENT / PUBLIC MEETING. You may submit public comments or request a public meeting on this application. The purpose of a public meeting is to provide the opportunity to submit comments or to ask questions about the application. TCEQ will hold 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, and the Executive Director's decision on the application, 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 reconsideration of the Executive Director's decision and for requesting a contested case hearing. A contested case hearing is a legal proceeding similar to a civil trial in state district court.

TO REQUEST A CONTESTED CASE HEARING, YOU MUST INCLUDE THE FOLLOWING ITEMS IN YOUR REQUEST: your name, address, phone number; applicant's name and proposed permit number; the location and distance of your property/activities relative to the proposed 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 "[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 relevant 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.

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.

AGENCY CONTACTS AND INFORMATION. All written public comments and requests must be submitted to the Office of the Chief Clerk, MC 105, TCEQ, P.O. Box 13087, Austin, TX 78711-3087. If you need more information about this permit application or the permitting process, please call 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 TCEQ can be found at our web site at www.tceq.state.tx.us.

Further information may be obtained from TCB Rental, Inc. at the address stated above or by calling Shelley Young, P.E., Water Engineers, Inc., at (281) 373-0500.

Leonard + Jean Killgore
P.O. Box 625
Somerville, TX 77879

TEXAS
COMMISSION
ON ENVIRONMENTAL
QUALITY

2016 AUG -9 PM 3:35

CHIEF CLERKS OFFICE

Texas Commission on Environmental Quality
Office of the Clerk
MC 105, TCEQ
P.O. Box 13087
Austin, TX 78711-3087

CALL 1-800-222-1811 FOR PICKUP OR TRACKING OF ALL YOUR PACKAGES



U.S. POSTAGE
PAID
CALDWELL, TX
77836
AUG 08 '06
AMOUNT
\$14.40
00076862-02

www.usps.com

0000

HOW TO USE:



EQ 895310894 US



Mailing Label
Label 11-B, March 2004

UNITED STATES POSTAL SERVICE Post Office To Addressee

Delivery Attempt	Time	Employee Signature
Mo. Day	<input type="checkbox"/> AM <input type="checkbox"/> PM	
Delivery Attempt	Time	Employee Signature
Mo. Day	<input type="checkbox"/> AM <input type="checkbox"/> PM	
Delivery Date	Time	Employee Signature
Mo. Day	<input type="checkbox"/> AM <input type="checkbox"/> PM	

RECEIVED

AUG 09 2006

TCEQ MAIL CENTER
LM

inner of envelope.

FO ZIP Code		Day of Delivery	Postage
77836		<input checked="" type="checkbox"/> 1st <input type="checkbox"/> 2nd <input type="checkbox"/> 2nd Del. Day	\$ 14.40
Date Accepted	Scheduled Date of Delivery	Return Receipt Fee	
8 8 06	Mo. 8 Da. 9	\$	
Time Accepted	Scheduled Time of Delivery	COD Fee	Insurance Fee
1135 AM	<input checked="" type="checkbox"/> Noon <input type="checkbox"/> 3 PM	\$	\$
Flat Rate <input type="checkbox"/> or Weight	Military	Total Postage & Fees	
4 lbs. ozs.	<input type="checkbox"/> 2nd Day <input type="checkbox"/> 3rd Day	\$ 14.40	
	Int'l Alpha Country Code	Acceptance Emp. Initials	
		OB	

CUSTOMER USE ONLY

PAYMENT BY ACCOUNT WAIVER OF SIGNATURE (Domestic Mail Only)
Express Mail Corporate Acct. No. Additional merchandise insurance is void if customer requests waiver of signature.
I wish delivery to be made without obtaining signature of addressee or addressee's agent (if delivery employee judges that article can be left in secure location) and I authorize that delivery employee's signature constitutes valid proof of delivery.

to remove the

NO DELIVERY
 Weekend Holiday Mailer Signature

FROM: (PLEASE PRINT) PHONE (979 272-8727)
Jean Killgo RE
P.O. Box 625
SOMERVILLE, TX 77879

TO: (PLEASE PRINT) PHONE ()
TX Commission on Environmental Quality
OFFICE OF THE CLERK
MC 105, TCEQ
P.O. BOX 13087
AUSTIN, TX 78711-3087

no matter how many
Express Mail box.

7 8 7 1 1 + 3 0 8 7

inside and pay only

FOR PICKUP OR TRACKING
Visit www.usps.com
Call 1-800-222-1811

FOR INTERNATIONAL DESTINATIONS, WRITE COUNTRY NAME BELOW.
TEXAS

PRESS HARD. YOU ARE MAKING 3 COPIES.