

Buddy Garcia, *Chairman*  
Larry R. Soward, *Commissioner*  
Bryan W. Shaw, Ph.D., *Commissioner*  
Glenn Shankle, *Executive Director*



## TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

*Protecting Texas by Reducing and Preventing Pollution*

January 18, 2008

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

Re: TCEQ Docket No. 2007-1765-MWD  
TCEQ TPDES Permit No. WQ0014725001  
Application by TCB Rental, Inc. for a New TPDES Permit

Dear Ms. Castañuela:

Enclosed for filing, please find one original and 11 copies of the "*Executive Director's Response to Hearing and Request for Reconsideration.*"

Please file stamp these documents and return a file-stamped copy to D. A. Chris Ekoh, Staff Attorney, Environmental Law Division, MC 173.

If you have any questions, please do not hesitate to contact me at (512) 239-5487.

Sincerely,

  
D. A. Chris Ekoh  
Staff Attorney  
Environmental Law Division

CC: Mailing List

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Texas. The wastewater treatment facility will be an activated sludge processing plant operated in the extended aeration mode. Treatment units will 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 effluent limitations in the draft permit, based on a 30-day average, are 10 mg/l CBOD<sub>5</sub> (five-day carbonaceous biochemical oxygen demand), 15 mg/l TSS (total suspended solids), 3 mg/l NH<sub>3</sub>-N (ammonia-nitrogen), 4.0 mg/l DO (minimum dissolved oxygen) and the pH shall not be less than 6.0 standard units nor greater than 9.0 standard units. The effluent shall be chlorinated in a chlorine contact chamber to a residual of 1.0 mg/l with a minimum detention time of 20 minutes based on peak flow. 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.

The treated effluent will be discharged to an unnamed drainage ditch; then to Koontz Bayou Drain; then to Koontz Bayou; then to the Old River; then to the Brazos River above Navasota River in Segment No. 1242 of the Brazos River Basin. 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. In accordance with 30 TAC § 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.

### **III. Procedural Background**

The application was received on June 29, 2006, and declared administratively complete on July 20, 2006. Notice of Receipt and Intent to Obtain a Water Quality Permit (NORI) was published on August 3, 2006 in the *Burleson County Tribune*. The Notice of Application and Preliminary Decision (NAPD) for a Water Quality Permit was published on December 21, 2006, in the *Burleson County Tribune*. A public meeting was held on April 17, 2007, and the comment period was extended from April 17, 2007, to May 17, 2007. The Executive Director's response to public comment (RTC) was filed on September 24, 2007. The Office of the Chief Clerk mailed out the Executive Director's decision granting the permit with instructions soliciting hearing requests on October 1, 2007. The deadline to file requests for contested case hearing ended on October 31, 2007. Since this application was administratively complete after September 1, 1999, it is subject to the procedural requirements of House Bill 801 (76th Legislature, 1999).

#### IV. Legal Authority for Review of Hearing Requests

House Bill 801 established statutory procedures for public participation in certain environmental permitting proceedings. For those applications declared administratively complete on or after September 1, 1999, it established new procedures for providing public notice and public comment, and for the Commission's consideration of hearing requests. The Commission implemented HB 801 by adopting procedural rules in Title 30, Chapters 39, 50, and 55. The application was declared administratively complete on July 20, 2006, and it is therefore subject to the procedural requirements of HB 801.

##### **A. Requirements for Hearing Requests**

In order for the Commission to consider a hearing request, the Commission must first determine whether the request meets the requirements found in 30 TAC § 55.201. A hearing request by an affected person must be in writing; filed no later than 30 days after the Chief Clerk mails the Executive Director's response to public comments; and substantially comply with the following:

- (1) give the name, address, daytime telephone number, and, where possible, fax number of the person who files the request. If the request is made by a group or association, the request must identify one person by name, address, daytime telephone number, and, where possible, fax number, who shall be responsible for receiving all official communications and documents for the group;
- (2) identify the person's personal justiciable interest affected by the application, including a brief, but specific, written statement explaining in plain language the requestor's location and distance relative to the proposed facility or activity that is the subject of the application and how and why the requestor believes he or she will be adversely affected by the proposed facility or activity in a manner not common to members of the general public;
- (3) request a contested case hearing;
- (4) list all relevant and material disputed issues of fact that were raised during the public comment period and that are the basis of the hearing request. To facilitate the Commission's determination of the number and scope of issues to be referred to hearing, the requestor should, to the extent possible, specify any of the Executive Director's responses to comments that the requestor disputes and the factual basis of the dispute and list any disputed issues of law or policy; and
- (5) provide any other information specified in the public notice of application.

*See* 30 TAC §§ 55.201(a), (c) and (d).

## **B. Requirement that Requestor be an “Affected Person”**

In order to grant a contested case hearing, the Commission must next determine whether a requestor is an “affected person.” An “affected person” is defined as anyone who “has a personal justiciable interest related to a legal right, duty, privilege, power, or economic interest affected by the application. An interest common to members of the general public does not qualify as a personal justiciable interest.” *See* 30 TAC § 55.203(a). Governmental agencies and entities “with authority under state law over issues raised by the application may be considered affected persons.” *See* 30 TAC § 55.203(b). The Commission must evaluate a number of factors when determining whether a person is an “affected person” under HB 801 and the Commission rules implementing it. The factors that must be considered include 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.

*See* 30 TAC § 55.203(c).

## **C. Referral to the State Office of Administrative Hearings**

If the Commission determines that the requestor has met the requirements for requesting a hearing, the Commission may grant the request and “shall issue an order specifying the number and scope of the issues to be referred to” the State Office of Administrative Hearings (SOAH). *See* TEX.

WATER CODE § 5.556(e) and 30 TAC § 50.115(b). The Commission may refer an issue to SOAH if the issue:

- (1) involves a disputed question of fact;
- (2) was raised during the public comment period; and
- (3) is relevant and material to the decision on the application.

See TEX. WATER CODE § 5.556(d) and 30 TAC § 50.115(c).

#### **D. Response to Hearing Requests**

Pursuant to Section 55.209 of the Commission rules, the Executive Director, the public interest counsel, and the applicant may file a response to a hearing request. A response to hearing request must specifically address:

- (1) whether the requestor is an affected person;
- (2) which issues raised in the hearing request are disputed;
- (3) whether the dispute involves questions of fact or of law;
- (4) whether the issues were raised during the public comment period;
- (5) whether the hearing request is based on issues raised solely in a public comment withdrawn by the commenter in writing by filing a withdrawal letter with the chief clerk prior to the filing of the Executive Director's RTC;
- (6) whether the issues are relevant and material to the decision on the application; and
- (7) a maximum expected duration for the contested case hearing.

See 30 TAC § 55.209(e).

In adopting the rules implementing HB 801, the Commission expressly declined to define the phrase "relevant and material." The Commission however stated that "the meaning of the phrase 'relevant and material' will vary from case to case to reflect the peculiar facts of the particular permit at issue and of the statutes and rules applicable to that permit." 24 TexReg 9015, 9029-31 (October 15, 1999).

Although the TCEQ's rules lack specific guidance regarding whether an issue is relevant and material to the Commission's decision, the Executive Director finds that other sources are useful in defining the terms. Relevance is defined in Black's Legal Dictionary as "applying to the matter in question." Rule 401 of the Texas Rules of Evidence defines relevant evidence as "evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." While these definitions are somewhat helpful, better guidance on what is relevant can be found in case law. In Sunshine Gas Company v. U.S. Dept. of Energy, 524 F. Supp. 834 (N.D. Tex. 1981), the court stated that relevancy is tied to the purpose of the action –

"Relevance" simply cannot be determined in the absence of defined "purpose," whether that purpose be as sharply defined as in a criminal trial, less precisely

delineated as in a civil proceeding, or more generally defined as in a grand jury inquiry or in an administrative agency investigation as here. In all situations, purpose in some degree must be defined . . . and relevance thereafter may be assessed.

Id. at 838 [quoting F.T.C. v. Texaco, Inc., 555 F.2d 862, 905 (D.C. Cir. 1977)]. See also, United States v. Powell, 379 U.S. 48, 58 (1964) (holding that the purpose for an administrative investigation must first be determined and then issues of inquiry must be found relevant to that purpose).

Therefore, in determining the relevancy of an issue raised by an affected person, the Commission should first determine the purpose of its decision on the application. The decision on the application to be made by the Commission is whether the particular application at issue meets the requirements in the applicable statutes and rules, and whether the permit should be issued as drafted or with revisions to the conditions in the permit.

### **V. Evaluation/Analysis of the Hearing Requests**

The TCEQ received timely filed hearing requests from State Representative Robert L. “Robby” Cook, Burleson County Commissioners Court (Mike Sutherland, Frank Kristof, David Hildebrand, Vincent Svec, Jr., and John Landolt), Jean Killgore and Leonard Killgore, W. H. Giesenschlag, Camilla J. Godfrey, Douglas R. Kettler, Charles Janner and Mary K. Janner, Helen M. Landry, Henry W. Hilton and Lydia R. Hilton, Concerned Citizen (name indiscernible), William H. Tomm, III, Koontz Bayou/Old River Landowners/Lessees Group (Jean Killgore and Leonard Killgore, Mary Kay Janner and Charles Janner, Helen M. Landry, Camilla J. Godfrey, Concerned Citizen, Henry W. Hilton, and Lydia R. Hilton), and Amy Rickers (representing Koontz Bayou Old River Group).

#### **A. Hearing Requests - Whether the Requestors Complied With 30 TAC §§ 55.201(c) and (d).**

The Office of the Chief Clerk received a total of 14 hearing requests on this application.

**Hon. Robert L. “Robby” Cook**, State Representative, District 17, filed a timely hearing request on behalf of the constituents of Burleson County, Texas on October 31, 2007. The request provided sufficient contact information; identified the Applicant and the permit number; and listed disputed issues of concern.

**Burleson County Commissioners Court** (Mike Sutherland, Frank Kristof, Vincent Svec, Jr., David Hildebrand, and John Landolt) filed a timely hearing request with the Office of the Chief Clerk on May 14, 2007, requesting that the Commission grant the hearing requests of the property owners who will be directly affected by the proposed wastewater treatment plant. The request provided sufficient contact information; identified the Applicant and the permit number; and listed disputed issues of concern.

**Koontz Bayou/Old River Landowners/Lessee Group** (Jean Killgore and Leonard Killgore, Mary Kay Janner and Charles Janner, Helen M. Landry, Camilla J. Godfrey, Henry W. Hilton and Lydia R. Hilton, and Concerned Citizen) filed a timely hearing request with the Office of the Chief Clerk on August 9, 2006. The request named Jean Killgore as the group's representative; provided sufficient contact information (for Jean and Leonard Killgore, Helen M. Landry, Camilla Godfrey, and Henry and Lydia Hilton); identified the Applicant and the permit number; and listed disputed issues of concern. The entity status of Koontz Bayou/Old River Landowners/Lessee Group (Koontz Bayou Group) is not clear.

**Jean & Leonard Killgore** filed a timely hearing request with the Office of the Chief Clerk. The request was received on August 9, 2006. The request was signed by multiple requestors who purportedly belong to Koontz Bayou Group. The request named Jean Killgore as the group's representative; provided sufficient contact information; identified the Applicant and the permit number; and listed disputed issues of concern.

**Camilla J. Godfrey** filed a timely hearing request with the Office of the Chief Clerk on August 9, 2006. The request was submitted by Koontz Bayou Group. Ms. Godfrey was identified in, and signed the request. The request provided sufficient contact information; identified the Applicant and the permit number; and listed disputed issues of concern.

**Mary K. Janner and Charles Janner** filed a timely hearing request with the Office of the Chief Clerk on August 9, 2006. The request was submitted by Koontz Bayou Group. Mary and Charles Janner were identified in, and signed the request. The request provided sufficient contact information; identified the Applicant and the permit number; and listed disputed issues of concern.

**Helen M. Landry** filed a timely hearing request with the Office of the Chief Clerk on August 9, 2006. The request was submitted by Koontz Bayou Group. Ms. Landry was identified in, and signed the request. The request provided sufficient contact information; identified the Applicant and the permit number; and listed disputed issues of concern.

**Henry W. Hilton and Lydia R. Hilton** filed a timely hearing request with the Office of the Chief Clerk on August 9, 2006. The request was submitted by Koontz Bayou Group. Henry and Lydia Hilton were identified in, and signed the request. The request provided sufficient contact information; identified the Applicant and the permit number; and listed disputed issues of concern.

**Concerned Citizen** (name indiscernible) filed a hearing request with the Office of the Chief Clerk on August 9, 2006. The request was submitted by Koontz Bayou. Concerned Citizen was identified in, and signed the request. The request provided insufficient contact information; identified the Applicant and the permit number; and listed disputed issues of concern.

**W. H. Giesenschlag** filed a timely hearing request with the Office of the Chief Clerk. The request was submitted at the public meeting held in Somerville, Texas on April 17, 2007. The request provided sufficient contact information; identified the Applicant and the permit number; and listed disputed issues of concern.

**Douglas R. Kettler** filed a timely hearing request with the Office of the Chief Clerk. The request was received on May 23, 2007. The request provided sufficient contact information; identified the Applicant and the permit number; and listed disputed issues of concern.

**William H. Tonn, III** filed a timely hearing request with the Office of the Chief Clerk on October 24, 2007. The request provided sufficient contact information; identified the Applicant and the permit number; and listed disputed issues of concern.

**Amy Rickers** on behalf of **Koontz Bayou Old River Group (KBOR)** filed a timely hearing request with the Office of the Chief Clerk on October 30, 2007. The request provided sufficient contact information; listed Jean and Leonard Killgore as representative of the group; identified the Applicant and the permit number; and listed disputed issues of concern.

The Executive Director concludes that Representative Robert L. "Robby" Cook, Burleson County Commissioners Court, Jean Killgore and Leonard Killgore, W. H. Giesenschlag, Camilla J. Godfrey, Douglas R. Kettler, Charles Janner and Mary K. Janner, Helen M. Landry, Henry W. Hilton and Lydia R. Hilton, William H. Tonn, III, Koontz Bayou Group (Jean Killgore, Leonard Killgore, Mary K. Janner, Charles Janner, Helen M. Landry, Camilla J. Godfrey, Henry W. Hilton, and Lydia R. Hilton), and KBOR substantially complied with the requirements of 30 TAC §§ 55.201(c) and (d). Concerned Citizen (name indiscernible) did not comply with the requirements of 30 TAC § 55.201(d)(1).

**B. Affected Person Status - Whether Requestors Meet the Requirements of an Affected Person**

**1. Jean and Leonard Killgore**

Jean and Leonard Killgore are not adjacent landowners and as such are not identified on the Applicant's Adjacent Landowners Map (Attachment B). Their property is however identified on the Aerial Map (Attachment A). Jean and Leonard Killgore's property is located upstream of the discharge point. Their property is located approximately 1000 feet from the proposed facility. The Applicant owns the entire property within 150 feet radius of the proposed facility. Additionally, approximately  $\frac{3}{4}$  of the unnamed drainage ditch into which treated effluent will be initially discharged is located within the Applicant's property. Jean and Leonard Killgore identified the following issues in their request for hearing:

- The proposed wastewater treatment plant will be located in a flood plain.
- The area where the proposed facility will be located experiences severe flooding. They indicated that Koontz Bayou floods easily and rapidly because of slow drainage problems caused by silting, debris, and vegetation growth. They stated that when Koontz Bayou floods, it backs up onto their road and lower pastures.
- They expressed concerns about their health and safety, the health of their cattle, native wildlife, and the environment in the event the proposed facility is damaged by flood.

The Killgores have failed to articulate a personal justiciable interest related to their legal right, duty, privilege, power, or economic interest that will be affected by the proposed wastewater treatment facility. Their concerns about flooding are general concerns that are not addressed in the wastewater permitting process. The Killgores' property is located upstream from the proposed facility and their interest in the property is unlikely to be impeded by the proposed facility. The Killgores have not demonstrated a likely impact from the regulated activity on the use of their property.

The Executive Director concludes that the Killgores are not affected persons under 30 TAC §§ 55.203(a) and (c)(2) – (5). If additional information demonstrating that the Killgores have a personal justiciable interest affected by the proposed facility is timely furnished, the Executive Director may reconsider his recommendation.

## **2. W. H. Giesenschlag**

Mr. Giesenschlag stated in his hearing request that his address is 9201 Farm Road 2039, Somerville, Texas. The request did not provide distance information about Mr. Giesenschlag's property relative to the proposed facility or the discharge route. Neither the Applicant's Landowners Map nor the Executive Director's Aerial Map shows the location of Mr. Giesenschlag's property relative to the proposed facility. The hearing request also did not indicate whether Mr. Giesenschlag owns property downstream or upstream of the proposed facility. Based on the Executive Director's aerial map, it appears that Mr. Giesenschlag does not own property within one mile of the proposed facility.

Mr. Giesenschlag has failed to articulate a personal justiciable interest related to his legal right, duty, privilege, power, or economic interest that will be affected by the proposed wastewater treatment facility. His concern about flooding is a general concern which is common to the general public. He has not demonstrated that a reasonable relationship exists between his concern about flooding and the proposed activities at the wastewater treatment plant. It is doubtful that Mr. Giesenschlag owns property within the vicinity of the proposed facility that would be affected if the instant permit application is approved.

The Executive Director concludes that Mr. Giesenschlag is not an affected person under 30 TAC §§ 55.203(a) and (c)(2) – (5). If additional information demonstrating that Mr. Giesenschlag has a personal justiciable interest affected by the proposed facility is timely furnished, the Executive Director may reconsider his recommendation.

## **3. Camilla J. Godfrey**

Ms. Godfrey is not an adjacent landowner and as such was not identified on the Applicant's Adjacent Landowners Map (Attachment B). Her properties are identified on the Aerial Map (Attachment A). However, neither property is located within one mile radius of the proposed wastewater treatment facility. Both properties are upstream of the discharge point and route. Ms. Godfrey in conjunction with the Koontz Bayou Group identified the following issues in her request

for hearing:

- The proposed wastewater treatment plant will be located in a flood plain.
- The area where the proposed facility will be located experiences severe flooding. They indicated that Koontz Bayou floods easily and rapidly because of slow drainage problems caused by silting, debris, and vegetation growth. They stated that when Koontz Bayou floods, it backs up onto their road and lower pastures.
- They expressed concerns about their health and safety, the health of their cattle, native wildlife, and the environment in the event the proposed facility is damaged by flood.

Ms. Godfrey has failed to articulate a personal justiciable interest related to her legal right, duty, privilege, power, or economic interest that will be affected by the proposed wastewater treatment facility. Her concerns about flooding are general concerns that are not addressed in the wastewater permitting process. Her properties are located upstream from the proposed facility and her interests in the properties are unlikely to be impeded by the proposed facility. She has not demonstrated a likely impact from the regulated activity on the use of her property.

The Executive Director concludes that Ms. Godfrey is not an affected person under 30 TAC §§ 55.203(a) and (c)(2) – (5). If additional information demonstrating that Ms. Godfrey have a personal justiciable interest affected by the proposed facility is timely furnished, the Executive Director may reconsider his recommendation.

#### **4. Douglas R. Kettler**

Mr. Kettler is an adjacent upstream landowner. He owns property adjacent to the proposed wastewater treatment facility. He is identified as owning parcel #1 in the Applicant's Adjacent Landowners Map (Attachment B). Mr. Kettler identified the following issues in his request for hearing:

- Wastewater containing harmful chemical could spill on his field during flood events.
- Increased truck traffic on a small Farm-to-Market Road.
- Hauling waste over long distance is not environmentally friendly as the activity involves burning more fuel.
- He stated that the wastewater should be treated in Washington County where it is generated.

Due to the proximity of his property to the proposed plant and the discharge route, Mr. Kettler has demonstrated a personal justiciable interest not common to the general public. The water quality interests asserted by Mr. Kettler include issues that are protected by the Texas Water Code and the Commission rules implementing it. A reasonable relationship exists between his water quality interests and the proposed facility due to the proximity of the site to his property. There may be an impact from the regulated activity on the use of his property.

The Executive Director concludes that the information provided in Mr. Kettler's request demonstrates that he is an affected person under 30 TAC §§ 55.203(a) and c(1)-(5).

## 5. **Mary K. Janner and Charles Janner**

Mary and Charles Janner are not adjacent landowners and as such are not identified on the Applicant's Adjacent Landowners Map (Attachment B). Their property, if any, is not identified on the Aerial Map (Attachment A). They did not provide specific information in their hearing request regarding the proximity of their property to the proposed wastewater treatment facility. They also failed to state whether they own property downstream or upstream from the proposed facility. Mary and Charles Janner in conjunction with the Koontz Bayou Group identified the following issues in their request for hearing:

- The proposed wastewater treatment plant will be located in a flood plain.
- The area where the proposed facility will be located experiences severe flooding. They indicated that Koontz Bayou floods easily and rapidly because of slow drainage problems caused by silting, debris, and vegetation growth. They stated that when Koontz Bayou floods, it backs up onto their road and lower pastures.
- They expressed concerns about their health and safety, the health of their cattle, native wildlife, and the environment in the event the proposed facility is damaged by flood.

Mary and Charles Janner have failed to articulate a personal justiciable interest related to their legal right, duty, privilege, power, or economic interest that will be affected by the proposed wastewater treatment facility. The Janners' interest in any property is unlikely to be impeded by the activities at the proposed facility. The Janners have failed to demonstrate how their property will be impacted by the regulated activity.

The Executive Director concludes that Mary and Charles Janner are not affected persons under 30 TAC §§ 55.203(a) and (c)(2) – (5). If additional information demonstrating that the Janners have a personal justiciable interest affected by the proposed facility is timely furnished, the Executive Director may reconsider his recommendation.

## 6. **Helen M. Landry**

Ms. Landry is not an adjacent landowner and as such was not identified on the Applicant's Adjacent Landowners Map (Attachment B). Her property is identified on the Aerial Map (Attachment A). According to information provided by Koontz Bayou Group and represented in the Aerial Map, Ms. Landry's property is located outside the one-mile radius of the proposed wastewater treatment facility. Her property is not located on the discharge route. Ms. Landry in conjunction with the Koontz Bayou Group identified the following issues in her request for hearing:

- The proposed wastewater treatment plant will be located in a flood plain.
- The area where the proposed facility will be located experiences severe flooding. They indicated that Koontz Bayou floods easily and rapidly because of slow drainage problems caused by silting, debris, and vegetation growth. They stated that when Koontz Bayou floods, it backs up

onto their road and lower pastures.

- They expressed concerns about their health and safety, the health of their cattle, native wildlife, and the environment in the event the proposed facility is damaged by flood.

Ms. Landry has failed to articulate a personal justiciable interest related to her legal right, duty, privilege, power, or economic interest that will be affected by the proposed wastewater treatment facility. Her property is not likely to be affected by the activities at the proposed facility. Ms. Landry has not demonstrated a likely impact from the regulated activity on the use of her property.

The Executive Director concludes that Ms. Landry is not an affected person under 30 TAC §§ 55.203(a) and (c)(2) – (5). If additional information demonstrating that Ms. Landry has a personal justiciable interest affected by the proposed facility is timely furnished, the Executive Director may reconsider his recommendation.

## **7. Henry W. Hilton and Lydia R. Hilton**

Henry and Lydia Hilton are not adjacent landowners and as such are not identified on the Applicant's Adjacent Landowners Map (Attachment B). Their property is identified on the Aerial Map (Attachment A). According to information provided by Koontz Bayou Group and represented in the Aerial Map, the Hiltons' property is located approximately one-half mile upstream from the proposed wastewater treatment facility. Henry and Lydia Hilton in conjunction with the Koontz Bayou Group identified the following issues in their request for hearing:

- The proposed wastewater treatment plant will be located in a flood plain.
- The area where the proposed facility will be located experiences severe flooding. They indicated that Koontz Bayou floods easily and rapidly because of slow drainage problems caused by silting, debris, and vegetation growth. They stated that when Koontz Bayou floods, it backs up onto their road and lower pastures.
- They expressed concerns about their health and safety, the health of their cattle, native wildlife, and the environment in the event the proposed facility is damaged by flood.

Henry and Lydia Hilton have failed to articulate a personal justiciable interest related to their legal right, duty, privilege, power, or economic interest that will be affected by the proposed wastewater treatment facility. The Hiltons have not demonstrated a likely impact from the regulated activity and the use of their property. Their property interest is unlikely to be impeded by the activities at the proposed facility.

The Executive Director concludes that the Henry and Lydia Hilton are not affected persons under 30 TAC §§ 55.203(a) and (c)(2) – (5). If additional information demonstrating that the Hiltons have a personal justiciable interest affected by the proposed facility is timely furnished, the Executive Director may reconsider his recommendation.

**8. Concerned Citizen (name indiscernible)**

In addition to not meeting the requirements set forth at 30 TAC § 55.201(d)(1), Concerned Citizen is not an adjacent landowner and as such was not identified on the Applicant's Adjacent Landowners Map (Attachment B). His property and/or interest in any property, is not identified in the hearing request. He did not provide information in his hearing request regarding the proximity of his property relative to the proposed wastewater treatment facility. He also failed to state whether he owns property downstream or upstream from the proposed facility.

Concerned Citizen has failed to articulate a personal justiciable interest related to his legal right, duty, privilege, power, or economic interest that will be affected by the proposed wastewater treatment facility.

The Executive Director concludes that Concerned Citizen is not an affected person under 30 TAC §§ 55.203(a) and (c)(2) – (5). If additional information demonstrating that the he has a personal justiciable interest affected by the proposed facility is timely furnished, the Executive Director may reconsider his recommendation.

**9. William H. Tonn, III**

William H. Tonn, III is not an adjacent landowner and as such is not identified on the Applicant's Adjacent Landowners Map (Attachment B). Mr. Tonn's property is identified on the Aerial Map (Attachment A). He stated that his property is located approximately 1,750 feet north of the proposed wastewater treatment facility. According to information provided by Koontz Bayou Group and represented in the Aerial Map, his property is located approximately one-half mile upstream from the proposed wastewater treatment facility and the discharge point. Mr. Tonn identified the following issues in his request for hearing:

- The area where the proposed facility will be located experiences severe flooding. Previous flooding in 1991 damaged his house, barn, and bridge. He stated further that if flooding occurs, any backup of raw sewage could contaminate his water wells and that could in turn affect his rental income.
- He expressed concerns that Mr. Buckner (the owner of the proposed facility) will not be a responsible operator because he was "vague and defensive" in the responses he gave at the April 17, 2007 public meeting.
- He is concerned that the Applicant might inadvertently or otherwise pick up non-permitted waste for treatment at the proposed facility. He stated that the waste haulers could be paid to haul such non-domestic waste to the proposed facility. He is worried that spreading of such waste (non-domestic waste) during a flood event could cause major environmental problem.
- Mr. Tonn raised odor concerns stating that his house is "directly downwind from the proposed site." He indicated that odor from the proposed plant could cause him to lose rental income.
- He expressed concerns about waste from other parts of the state ending up in his doorstep.

Mr. Tonn has failed to articulate a personal justiciable interest related to his legal right, duty, privilege, power, or economic interest that will be affected by the proposed wastewater treatment facility. Mr. Tonn has not demonstrated a likely impact from the regulated activity and the use of his property. His property interest is unlikely to be impeded by the activities at the proposed facility.

The Executive Director concludes that Mr. Tonn is not an affected person under 30 TAC §§ 55.203(a) and (c)(2) – (5). If additional information demonstrating that the Mr. Tonn has a personal justiciable interest affected by the proposed facility is timely furnished, the Executive Director may reconsider his recommendation.

#### **10. Hon. Robert L. “Robby” Cook**

State Representative Cook requested a public hearing on behalf of the constituents of Burleson County, Texas. The Honorable Robert Cook did not file an individual hearing request seeking to protect his own interests. Instead, he stated in his request that he was respectfully requesting a “public hearing for the constituents of Burleson County to fully discuss all issues pertaining to [this] permit.” Although Representative Cook did not name any Burleson County constituent likely to be affected by the proposed wastewater treatment plant, the Executive Director is recommending that the Commission grant the hearing request of Douglas Kettler.

#### **11. Koontz Bayou Old River Group (KBOR)**

The standing requirements for a group or association to request a contested case hearing are set forth at 30 TAC § 55.205. “A group or association may request a contested case hearing *only* if the group or association meets all of the following requirements:

- (1) one or more 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.” (Emphasis added).

Amy Rickers, representing KBOR appears to have identified Jean and Leonard Killgore as members of KBOR who independently met the standing requirements to represent the group in a contested case hearing. The request stated that the primary objective of the group is to protect the land belonging to its members for ranching and farming purposes. The interest the group seeks to protect involves protections of its members’ land “for use as ranching and farming property.”

For KBOR to qualify as a group seeking an affected person status, it must demonstrate that Jean and Leonard Killgore have standing in their own rights to request a contested case hearing. To qualify as affected persons in their own right, Jean and Leonard Killgore must satisfy the regulatory requirements contained in 30 TAC §§ 55.203(a) and (c)(1)-(5). As stated earlier, Jean and Leonard Killgore are not affected persons under 30 TAC §§ 55.203(a) and (c)(2) – (5). Jean and Leonard

Killgore are not adjacent landowners. Their property is located upstream of the discharge point and approximately 1000 feet from the proposed facility. The Killgores' property is a narrow elongated road originating from FM 50; and crossing Koontz Bayou about 1000 feet upstream of the proposed discharge point into the Bayou.

KBOR has failed to articulate a personal justiciable interest for Jean and Leonard Killgore related to their legal right, duty, privilege, power, or economic interest that would be affected by the proposed wastewater treatment facility.

KBOR has not demonstrated that the representative of the group (Jean and Leonard Killgore) "would otherwise have standing to request a hearing in their own right." KBOR has failed to demonstrate that a reasonable relationship exists between their concerns about flooding and the proposed activities at the wastewater treatment plant. The group representatives' property is located upstream from the proposed facility and their interest in the property is unlikely to be impeded by the proposed facility.

The Executive Director concludes that the information provided by KBOR fails to demonstrate that KBOR qualifies as an affected person under 30 TAC §§ 55.205(a); and 55.203(a) and (c). If additional information demonstrating that the KBOR has a personal justiciable interest affected by the proposed facility is timely furnished, the Executive Director may reconsider his recommendation.

**12. Koontz Bayou/Old River Landowners/Lessees Group** (Jean Killgore and Leonard Killgore, Mary Kay Janner and Charles Janner, Helen M. Landry, Camilla J. Godfrey, Henry W. Hilton and Lydia R. Hilton, and Concerned Citizen)

Koontz Bayou Group appears to be seeking associational standing for purposes of the hearing request. The request did not comply with Section 55.205 of the rules. The requirements for group standing are articulated in the preceding section and will not be repeated here. In the preceding paragraphs, the Executive Director reviewed the merits of the hearing request and the affected person status for each individual who signed the hearing request. The review reveals that Koontz Bayou Group did not articulate its purpose or objectives; how the interests it seeks to protect are germane to the group's purpose; it does not appear that "one or more members of the group would otherwise have standing to request a hearing on their own right;" and non of the individuals qualify as an affected person.

The Executive Director concludes that the information provided by Koontz Bayou Group fails to demonstrate that Koontz Bayou Group qualifies as an affected person under 30 TAC §§ 55.205(a); and 55.203(a) and (c). If additional information demonstrating that the Koontz Bayou Group has a personal justiciable interest affected by the proposed facility is timely furnished, the Executive Director may reconsider his recommendation.

### 13. **Burleson County Commissioners Court**

Burleson County Commissioners Court did not file a request for hearing as an affected person. The resolution adopted by the Commissioners Court stated that "Burleson County Commissioners Court hereby requests the Texas Commission on Environmental Quality to grant the request by the directly affected property owners for a contested hearing regarding the" permit application. Although the Commissioners Court did not name any property owner likely to be affected by the proposed facility, the Executive Director is recommending that the Commission grant the hearing request of Douglas Kettler, an adjacent landowner.

#### **C. Whether Issues Raised Are Referable to SOAH for a Contested Case Hearing.**

In addition to recommending to the Commission those persons who qualify as affected persons, the Executive Director analyzes issues raised in accordance with the regulatory criteria. Unless otherwise noted, the issues discussed below were all raised during the public comment period. None of the issues were raised solely in a comment which has been withdrawn. All the identified issues in the response are considered disputed, unless otherwise noted..

##### **1. Whether the proposed discharge will be in compliance with regulations that are intended to protect water quality or with regulations that are intended to protect the health and safety of humans, native wildlife, or livestock.**

This issue was raised in the Executive Director's Response to Public Comment (RTC) numbers 3, 6, and 14. The issue involves a question of fact and it is relevant and material to the decision on this application.

The Executive Director concludes that this issue **is relevant and material and recommends** referral to SOAH.

##### **2. Whether the facility is located on a 100-year flood plain, if so whether the Applicant will comply with Section 309.13(a) of the Commission rules.**

The issues relating to unsuitable site characteristics, including location in the 100-year flood plain and protection against inundation by a 100-year flood event were raised in the Executive Director's RTC numbers 3, 4, 5 and 6. The issues involve mixed questions of fact and law and are relevant and material to the decision on this application.

The Executive Director concludes that these issues **are relevant and material and recommends** referral to SOAH.

**3. Whether the discharge will cause or significantly contribute to flooding in the area around Koontz Bayou.**

This issue was raised in the Executive Director's RTC numbers 3, 4, 5, and 6. The issue involves a mixed question of fact and law. The flooding issue is not relevant and material to the Commission's decision on this application.

The Executive Director's wastewater permitting process focuses on controlling the discharge of pollutants into water in the state and protecting the water quality of the state's rivers, lakes and coastal waters. The Executive Director does not have the authority under Chapter 26 of the Texas Water Code to address flooding issues in the wastewater permitting process.

The Executive Director concludes that this issue is not relevant and material and recommends against referral to SOAH.

**4. Whether the facility will meet the rule requirements intended to reduce nuisance odor conditions.**

This issue was raised in the Executive Director's RTC number 9. The issue involves a question of fact. The issue of nuisance odor from the operation of the proposed wastewater treatment facility is relevant and material to the Commission's decision on this application.

The Executive Director concludes that this issue is relevant and material and recommends referral to SOAH.

**5. Whether the Applicant will accept and treat non-permitted wastewater or hazardous chemicals at the facility.**

This issue was raised in the Executive Director's RTC number 8. The issue involves a question of law. This issue is not relevant and material to the Commission's decision on this application.

The proposed wastewater treatment facility will be permitted to accept, store and process only domestic wastewater. Acceptance of any other waste is unauthorized. Acceptance of such waste would be a violation of the permit.

The Executive Director concludes that this issue is not relevant and material and does not recommend referral to SOAH.

**6. Whether the wastewater intended to be treated at the facility should be treated in the city or county where it is generated.**

This issue was raised in the Executive Director's RTC numbers 11 and 12. The issue involves a question of law. This issue is not relevant and material to the Commission's decision on

this application.

Section 26.027 of the Texas Water Code authorizes the TCEQ to issue permits for discharges into water in the state. While it is true that the Executive Director may not issue a permit if the permit application fails to comply with TCEQ rules, however he does not have a specific statutory or regulatory authority to mandate a different discharge location or a different type of wastewater treatment plant. The Executive Director evaluates applications for wastewater treatment plants based on the information provided in the application. The Executive Director can recommend issuance or denial of an application based on whether the application complies with TCEQ regulations and water quality standards.

The Executive Director concludes that this issue **is not relevant and material and does not recommend** referral to SOAH.

7. **Whether a similar wastewater application was received from the community of Clay and denied by the Commission on the basis that the alleged facility would have been located in a 100-year flood plain.**

This issue was not raised during the public comment period and as such was not addressed in the Executive Director's RTC. Therefore the issue may not be referred to SOAH. See 30 TAC § 55.201(d)(4).

The Executive Director concludes that this issue **should not be referred** to SOAH.

8. **Whether FM 50 is adequate to handle the increased truck traffic attributable to trucks which will be hauling domestic wastewater to the proposed facility and whether this increase in traffic will result in increased vehicular accidents.**

This issue was raised in the Executive Director's RTC number 10. The issue involves a mixed question of fact and law. The issue is not relevant and material to the Commission's decision on this application.

The TCEQ's jurisdiction in a wastewater permit application is limited to the issues set out in Chapter 26 of the Texas Water Code. Chapter 26 provides TCEQ with authorization to consider issues that directly affect water quality, but it does not provide authorization for TCEQ to consider issues such as traffic congestions or traffic accidents. The TCEQ does not have jurisdiction over traffic issues in the wastewater permitting process. In the event that someone is adversely affected by the Applicant's transportation of wastewater, the draft permit does not limit the ability of the affected person to use remedies for trespass, nuisance, or other causes of action in response to activities that may or actually do result in injury or adverse impact to human health, animal life, vegetation, or property.

The Executive Director concludes that this issue **should not** be to SOAH.

9. **Whether Mr. Buckner, the owner of the proposed wastewater treatment plant, will be a responsible operator.**

This issue was not raised during the public comment period and as such was not addressed in the Executive Director's RTC. Therefore the issue may not be referred to SOAH. See 30 TAC § 55.201(d)(4).

The Executive Director concludes that this issue **should not be referred** to SOAH.

10. **Whether the facility and its operations will negatively affect property values (specifically, impact on rental income).**

This issue was raised in the Executive Director's RTC number 9. The issue involves a question of law. The issue is not relevant and material to the Commission's decision on this application. The Commission has no specific authority in the wastewater permitting process to consider property value or impact on rental income. TCEQ is tasked by the Legislature with protecting the quality of the water in the state. In the wastewater permitting process, property value, the possibility of a loss in property value, or impact on rental income is not a factor in determining whether an applicant has met all of the statutory and regulatory criteria applicable to a wastewater permit. Finally, if this permit is issued, it does not authorize any invasion of personal or property rights or any violation of federal, state, or local laws or regulations.

The Executive Director concludes that this issue should **not be referred** to SOAH.

11. **Whether the Applicant can meet the all-weather access road requirement in 30 TAC § 317.7(e).**

This issue was raised in the Executive Director's RTC number 7. The issue involves a question of fact. The issue is relevant and material to the Commission's decision on this application.

A condition precedent to the operation of a wastewater treatment plant is the construction of an all weather road prior to the operation of the facility. Under Section 317.7(e) of the Commission rules, the plant "shall have at least one all-weather access road with the driving surface situated above the 100-year flood plain or be provided by an alternate method of access approved by the commission." This facility will not be authorized to operate unless the Applicant complies with this regulation. Failure to comply with Section 317.7(e) of the rules will constitute a violation requiring an enforcement action by the Commission.

The Executive Director concludes that this issue **is relevant and material and recommends referral** to SOAH.

12. **Whether the Applicant can meet the private water well buffer requirement in 30 TAC § 309.13.**

This issue was raised in the Executive Director's RTC number 14. The issue involves a  
Executive Director's RTH - TCB Rental WQ0014725001 Page 19

question of fact. The issue is relevant and material to the Commission's decision on this application.

A wastewater treatment unit may not be located closer than 500 feet from a public water well nor 250 feet from a private water well. Under Section 309.13(c), the following horizontal separation distances apply to a facility used for the storage, processing, or disposal of domestic wastewater. A wastewater treatment plant unit must be located a minimum horizontal distance of:

1. 150 feet from a private water well;
2. 500 feet from an elevated or portable-water storage tank;
3. 500 feet from a public water well;
4. 500 feet from a surface water treatment plant; and
5. a wet well or pump station at a wastewater treatment plant must be located a minimum horizontal distance of 300 feet from a public water well.

The Executive Director concludes that this issue is relevant and material and recommends referral to SOAH.

#### **VI. Executive Director's Response to Request for Reconsideration**

Amy Rickers filed a timely request for reconsideration on behalf of KBOR. The request raised the following issues which were previously addressed in the Executive Director's Response to Public Comment filed on September 24, 2007: (1) general concerns regarding health, safety and the environment; (2) location in floodplain; (3) poor drainage along the proposed discharge route; (4) contamination of surrounding properties and access to the plant during a flood event; (5) nuisance odor and traffic concerns; and (6) alleged denial of a similar permit application. The request presents no new evidence that was not considered by the Executive Director during the comment period. Accordingly, the Executive Director recommends denial of the request for reconsideration.

1. Health and safety concerns were addressed in the Executive Director's RTC numbers 3, 6, and 14. The proposed draft permit was developed to protect aquatic life, human health and the environment in accordance with the Texas Surface Water Quality Standards. As part of the permit application process, the Executive Director must determine the uses of the receiving water and set effluent limits that are protective of those uses. The effluent limits in the draft permit are set to maintain and protect the existing instream uses. In this case, the treated wastewater from the plant will be discharged into an unnamed drainage ditch; then to Koontz Bayou Drain; then to Koontz Bayou; then to Old River; and then to Brazos River above Navasota River in Segment No. 1242 of the Brazos River Basin. 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 proposed draft permit includes effluent limitations and monitoring requirements for 5-day Biochemical Oxygen Demand (CBOD<sub>5</sub>), Total Suspended Solids (TSS), Ammonia Nitrogen, Dissolved Oxygen (DO), chlorine residual, and pH to ensure that discharges from the proposed wastewater treatment plant meet water quality standards for the protection of surface water, groundwater, and human health in accordance with TCEQ rules and policies. The proposed draft permit includes requirements for the disposal of domestic sludge generated from the wastewater treatment facility based on TCEQ rules. Permit Condition 2(d) in the proposed draft permit requires the Applicant to take all reasonable steps to minimize or prevent any discharge, disposal or other permit violation which has a reasonable likelihood of adversely affecting human health and the environment.

If the proposed wastewater treatment plant is designed, constructed, and operated as shown in the application and as required by the regulations, the Executive Director expects human health and the environment to be protected. No new evidence was presented in the motion for reconsideration that would justify a contrary finding by the Executive Director on this issue.

2. The issues relating to location in a flood plain and flooding concerns were addressed in the Executive Director's RTC numbers 3, 4, 5, and 6. TECQ rules do not prohibit an applicant from locating a wastewater treatment plant in a flood plain. The rules require that a wastewater treatment plant unit may not be located in the 100-year flood plain unless the plant unit is protected from inundation and damage that may occur during that flood event. 30 TAC § 309(a). In the application, the Applicant demonstrated using the Flood Insurance Rate Map (FIRM) that the plant site is located in Zone A which is a hazard area that is inundated by the 100-year flood. The United States Geological Services (USGS) map shows that the elevation in the area of the proposed site is 205 feet above sea level. The Applicant has proposed to construct the treatment tanks so that the top of the tanks would be at an elevation of 209 feet or above. All mechanical equipment will be mounted on top of the plant to avoid inundation by flood. Other Requirement No.6 in the proposed draft permit requires the Applicant to provide facilities for the protection of its wastewater treatment plant from a 100-year flood event. This provision and the proposed design requirements for the facility were added to protect the wastewater treatment plant from flooding related damages. Compliance with the design requirement will ensure that the facility will withstand a severe flood event. The Executive Director has determined that the Applicant complied with the statutory requirements set forth at 30 TAC § 309(a). If the plant is constructed and operated as contemplated in the proposed draft permit, the danger posed by flooding will be greatly minimized.

On the specific issue of flooding, the Executive Director's wastewater permitting process focuses on controlling the discharge of pollutants into water in the state and protecting the water quality of the state's rivers, lakes and coastal waters. The Executive Director does not have the authority under Chapter 26 of the Texas Water Code to address flooding issues in the wastewater permitting process.

No new evidence was presented in the motion for reconsideration that would justify a contrary finding by the Executive Director on these issues.

3. The issue of all-weather access road to the plant in compliance with Section 317.7(e) of the Commission rules was addressed in the Executive Director's RTC number 7. A condition precedent to the operation of a wastewater treatment plant is the construction of an all weather road prior to the operation of the facility. Under Section 317.7(e) of the Commission rules, the plant "shall have at least one all-weather access road with the driving surface situated above the 100-year flood plain or be provided by an alternate method of access approved by the commission." This facility will not be authorized to operate unless the Applicant complies with this regulation. Failure to comply with Section 317.7(e) of the rules will constitute a violation requiring an enforcement action by the Commission.

4. The issues relating to nuisance odor and traffic were addressed in the Executive Director's RTC numbers 9 and 10. Section 309.13(e) of the Commission rules require an Applicant to use one of the following alternatives to demonstrate compliance with the nuisance odor abatement and control requirement prior to the construction of a new wastewater treatment plant:

The Applicant must meet the buffer zone requirements that are established to help minimize the impact of odors on nearby residents and property owners. "Lagoons with zones of anaerobic activity (e.g., facultative lagoons, un-aerated equalization basins, etc) may not be located [within] 500 feet [of] the nearest property line. All other wastewater treatment plant units may not be located [within] 150 feet [of] the nearest property line." The Applicant may meet the buffer zone requirement by owning the buffer zone area or by obtaining sufficient property interests in all adjacent land necessary to meet the distance requirement;

The applicant must submit a nuisance odor prevention request for approval by the executive director. A request for nuisance odor prevention must be in the form of an engineering report, prepared and sealed by a licensed professional engineer in support of the request. At a minimum, the engineering report shall address existing climatological conditions such as wind velocity and atmospheric stability, surrounding land use which exists or which is anticipated in the future, wastewater characteristics in affected units pertaining to the area of the buffer zone, potential odor generating units, and proposed solutions to prevent nuisance conditions at the edge of the buffer zone and beyond. Proposed solutions shall be supported by actual test data or appropriate calculations. The request shall be submitted, prior to construction, either with a permit application and subject to review during the permitting process or submitted for executive director approval after the permitting process is completed; or

The permittee must submit sufficient evidence of legal restrictions prohibiting residential structures within the part of the buffer zone not owned by the applicant. Sufficient evidence of legal restriction may, among others, take the form of a suitable restrictive easement, right-of-way, covenant, deed restriction, deed recorded, or a private agreement provided as a certified copy of the original document. The request shall be submitted, prior to construction, either with a permit application and subject

to review during the permitting process or submitted for executive director approval after the permitting process is completed.

According to the permit application, the Applicant intends to meet the buffer zone requirements on the existing site by owning the land. The Aerial Map (Attachment A) indicates that the Applicant owns the property within 150 feet radius of the proposed facility. The Applicant intends to locate all wastewater treatment units not closer than 150 feet of the nearest property line.

The draft permit was developed to minimize nuisance odor. If the proposed wastewater treatment plant is designed, constructed, and operated as shown in the application and as required by the regulations, the Executive Director expects that nuisance odor will be significantly curtailed.

On the specific issue relating to traffic, the TCEQ's jurisdiction in a wastewater permit application is limited to the issues set out in Chapter 26 of the Texas Water Code. Chapter 26 provides TCEQ with authorization to consider issues that directly affect water quality, but it does not provide authorization for TCEQ to consider issues such as traffic congestions or traffic accidents. The TCEQ does not have jurisdiction over traffic issues in the wastewater permitting process. In the event that someone is adversely affected by the Applicant's transportation of wastewater, the draft permit does not limit the ability of the affected person to use remedies for trespass, nuisance, or other causes of action in response to activities that may or actually do result in injury or adverse impact to human health, animal life, vegetation, or property.

No new evidence was presented in the motion for reconsideration that would justify a contrary finding by the Executive Director on this or any other issue contained therein.

#### **VII. Duration of the Contested Case Hearing**

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

#### **VIII. Executive Director's Recommendations**

The Executive Director recommends that the Commission deny the request for reconsideration filed by Amy Rickers on behalf of KBOR.

The Executive Director recommends that the Commission determines that Douglas R. Kettler *qualify as an affected persons.*

The Executive Director further recommends that the Commission finds that Jean and Leonard Killgore, W. H. Giesenschlag, Camilla J. Godfrey, Mary K. Janner and Charles Janner, Helen M. Landry, Henry W. Hilton and Lydia R. Hilton, Concerned Citizen, William H. Tonn, III, Koontz Bayou/Old River Landowners/Lesseees Group, and Koontz Bayou Old River Group *are not affected persons.*

The Executive Director also recommends that the Commission finds that the following disputed issues of fact were raised during the comment period and are relevant and material to the Commission's decision on this application:

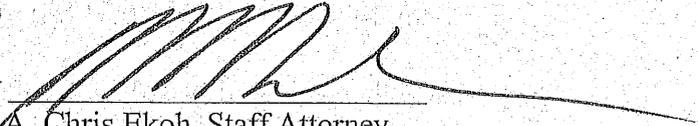
1. Whether the proposed discharge will be in compliance with regulations that are intended to protect water quality or with regulations that are intended to protect the health and safety of humans, native wildlife, or livestock.
2. Whether the facility is located on a 100-year flood plain, if so whether the Applicant has complied with Section 309.13(a) of the Commission rules.
5. Whether the facility will meet the rule requirements intended to reduce nuisance odor conditions.
12. Whether the Applicant can meet the all-weather access road requirement in 30 TAC § 317.7(e).
13. Whether the Applicant can meet the private water well buffer requirement in 30 TAC § 309.13.

Respectfully submitted,

TEXAS COMMISSION ON  
ENVIRONMENTAL QUALITY

Glenn Shankle, Executive Director

Robert Martinez, Director  
Environmental Law Division

By 

D. A. Chris Ekoh, Staff Attorney

Environmental Law Division

State Bar No. 06507015

P. O. Box 13087 (MC-173)

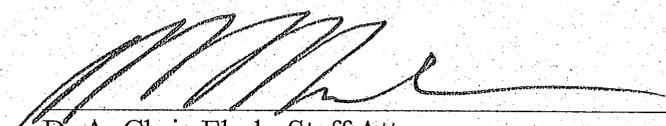
Austin, Texas 78711-3087

512/239-5487 Fax: 512/239-0606

Representing the Executive Director of the  
Texas Commission on Environmental Quality

**CERTIFICATE OF SERVICE**

I certify that on January 18, 2008, the "Executive Director's Response to Hearing Requests and Request for Reconsideration" for TPDES Permit No. WQ0014725001 was filed with the Office of the Chief Clerk, Texas Commission on Environmental Quality; and copies mailed to the attached mailing list.

  
D. A. Chris Ekoh, Staff Attorney

Environmental Law Division

Texas Bar No. 06507015

**MAILING LIST**  
**Docket No. 2007-1765-MWD**  
**TPDES Permit No. WQ0014725001**  
**TCB Rental, Inc.**

FOR THE APPLICANT:

Geoffrey P. Kirshbaum  
Hazen & Terrill, P.C.  
810 West 10<sup>th</sup> Street  
Austin, Texas 78701  
512/474-9100 Fax: 512/474-9888

Ms. Shelley Young, P.E.  
Water Engineers, Inc.  
17230 Huffmeister Road  
Cypress, Texas 77429  
281/373-0500 Fax: 281/373-1113

FOR THE EXECUTIVE DIRECTOR:

D. A. Chris Ekoh  
Texas Commission on Environmental Quality  
Environmental Law Division MC-173  
P.O. Box 13087  
Austin, Texas 78711-3087  
512/239-5487 Fax: 512/239-0606

Kent Trede  
Texas Commission on Environmental Quality  
Wastewater Permits Section, MC-148  
P.O. Box 13087  
Austin, Texas 78711-3087  
512/239-1747 Fax: 512/239-4114

FOR OFFICE OF PUBLIC ASSISTANCE:

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

FOR THE CHIEF CLERK:

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

FOR ALTERNATIVE DISPUTE  
RESOLUTION

Kyle Lucas  
Texas Commission on Environmental Quality  
Alternative Dispute Resolution, MC-222  
P.O. Box 13087  
Austin, Texas 78711-3087

OFFICE OF PUBLIC INTEREST COUNCIL

Blas J. Coy, Jr.  
Texas Commission on Environmental Quality  
Office of Public Interest, MC-103  
P.O. Box 13087  
Austin, Texas 78711-3087  
Fax: 512/239-6377

REQUESTERS

Concerned Citizen  
1524 Country Road 112  
Caldwell TX 77836-6884

W. H. Giesenschlag  
9201 FM 2039  
Somerville, TX 77879

Camilla J. Godfrey  
17302 County Road 438  
Somerville TX 77879-4037

Burleson County Commissioners Court  
Mike Sutherland, David Hilderbrand, Frank  
Kristof, Vincent Svec, Jr., John Landolt  
100 W. Buck St., Ste. 306  
Caldwell, TX 77836-1724

Henry W. & Lydia R. Hilton  
4978 Afton Oaks Dr.  
College Station, TX 77845-7666

Charles & Mary Kay Janner  
1787 CR 444  
Somerville, TX 77879

Douglas R. Kettler  
10409 St. Peters School Rd  
Brenham, TX 77833

Jean & Leonard Killgore  
Koonz Bayou/Old River Landowners/Lesseees  
Group  
PO Box 625  
Somerville, TX 77879-0625

Helen M. Landry  
1518 Hartwick Rd.  
Houston, TX 77079-3302

FOR KOONTZ BAYOU OLD RIVER  
GROUP:

Amy Rickers  
Munsch, Hardt, Kopf & Harr, PC  
500 N. Akard St. 3800 Lincoln Plaza  
Dallas, TX 75201-3302

William H. Tonn, III  
6310 Dogwood Rd.  
Brenham, TX 77833

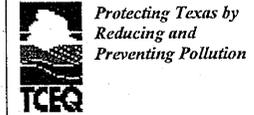
Public Official – Requester:

The Honorable Robert L. “Robby” Cook  
Texas House of Representatives  
PO Box 2910  
Austin, TX 78768-2910

# Attachment A

# TCB Rental WWTP - TPDES Permit No. WQ0014725001

## Aerial Map of Permit No. WQ0014725001 Map Requested by TCEQ Office of Legal Services



Texas Commission on Environmental Quality  
GIS Team (Mail Code 197)  
P.O. Box 13087  
Austin, Texas 78711-3087

January 7, 2008



Projection: Texas Statewide Mapping System (TSMS)  
Scale 1:24,183

### Legend

- Proposed Facility
- ⊙ Requestors
- Public Water Well

Note: Area shown on map is in the 100-year flood plain.

Source: The location of the plant was provided by the TCEQ Office of Legal Services (OLS). OLS obtained the site location information and the requestor information from the applicant. The counties are U.S. Census Bureau 1992 TIGER/Line Data (1:100,000). The background of this map is a source photograph from the 2004 U.S. Department of Agriculture Imagery Program. The imagery is one-meter Color-Infrared (CIR). The image classification number is tx051\_1-1.

This map depicts the following:

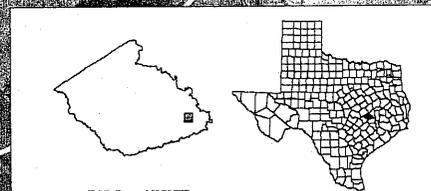
- (1) The approximate location of the facility. This is labeled "Proposed WWTP".
- (2) Circles depicting the radii.
- (3) Drainage ditch. This is labeled "Ditch".
- (4) Public Water Well. This is labeled "Public Water Well".



### Hearing Requestors

- Kettler
- Hilton
- Killgore
- Godfrey
- Tonn
- Landry
- Burleson County Commissioners Court
- KBOR - Killgore
- Koontz Bayou Group - Killgore

- 150' Radius
- 500' Radius
- 1 Mile Radius



TCB Rental WWTP

The proposed plant is located in Burleson County. The red square in the first inset map represents the approximate location of the proposed plant. The second inset map represents the location of Burleson County in the state of Texas; Burleson County is shaded in red.

This map was generated by the Information Resources Division of the Texas Commission on Environmental Quality. This map was not generated by a licensed surveyor, and is intended for illustrative purposes only. No claims are made to the accuracy or completeness of the data or to its suitability for a particular use. For more information concerning this map, contact the Information Resources Division at (512) 239-0800.

# Attachment B

# TABLE "ADMIN.03"

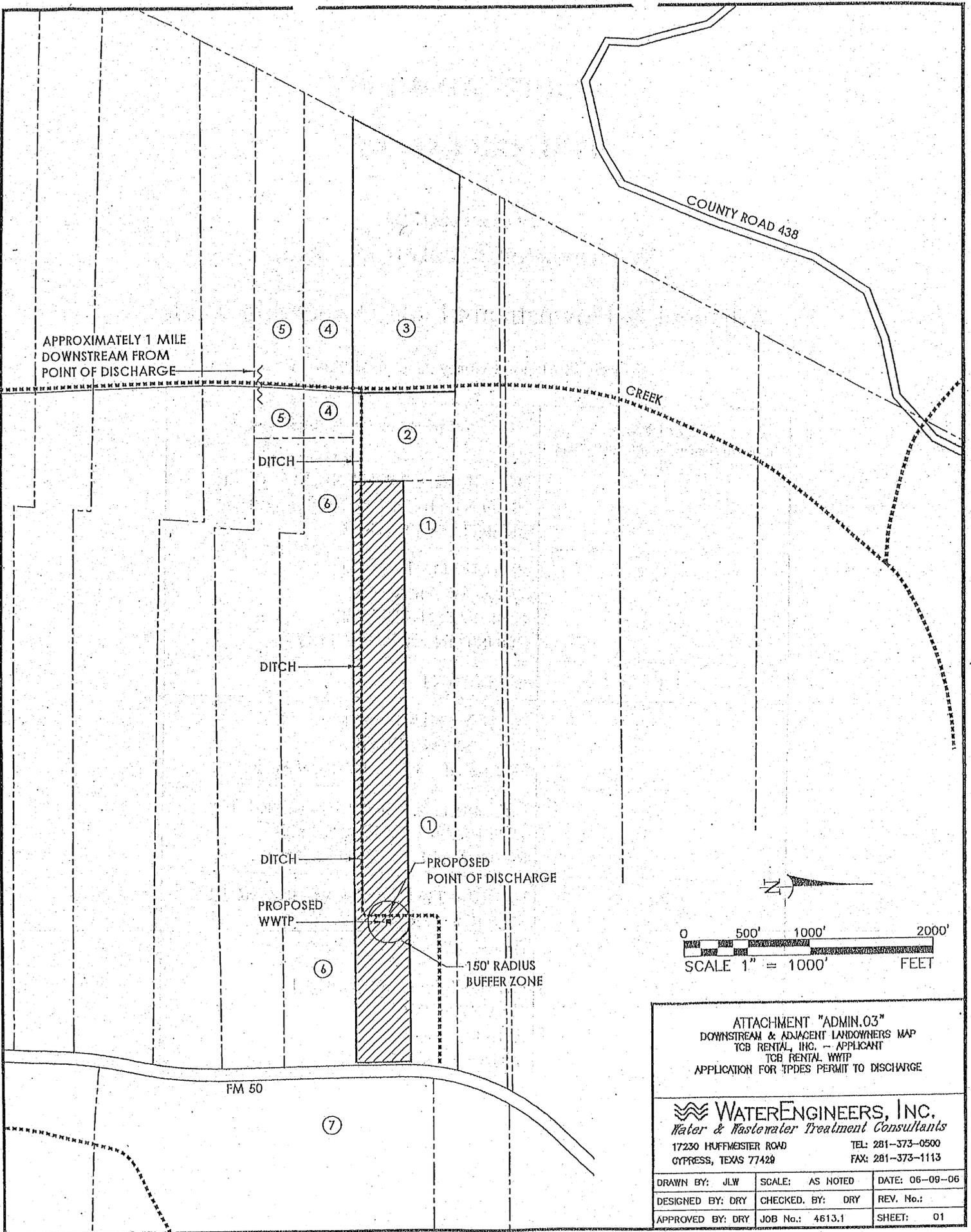
## TCB RENTAL, INC.

### TCB Rental Wastewater Treatment Plant

#### Adjacent & Downstream Land Ownership Table

Source: Burleson County Appraisal District

Tract No. (See Attachment "ADMIN.03" Map)	Title Owner & Address
1	DOUGLAS & THERESA KETTLER 10409 ST PETERS SCHOOL ROAD BRENHAM TX 77833
2	GERMAN B HINTON C/O MARY HINTON 4214 S ACRES DRIVE HOUSTON TX 77047-1137
3	APPLICANT
4	BARRY WILKERSON 12971 SHORT ROAD COLLEGE STATION TX 77845
5	MICHAEL & CAROLYN MARTIN 1527 BRADY CREEK LANE RICHMOND TX 77469-8264
6	LANELL J & EDWIN A SEEKER JR 5705 SEEKER ROAD BRENHAM TX 77833
7	GLADYS M & WILLIAM J GAVRANOVIC JR 5713 CR 156 WHARTON TX 77488



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

**WaterEngineers, Inc.**  
*Water & Wastewater Treatment Consultants*  
 17230 HUFFWEISTER ROAD TEL: 281-373-0500  
 GYPSY, TEXAS 77429 FAX: 281-373-1113

DRAWN BY: JLW	SCALE: AS NOTED	DATE: 06-09-06
DESIGNED BY: DRY	CHECKED BY: DRY	REV. No.:
APPROVED BY: DRY	JOB No.: 4613.1	SHEET: 01

# Attachment C

**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.

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.

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 CBOD<sub>5</sub>, 15 mg/l TSS, 3 mg/l NH<sub>3</sub>-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.

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.

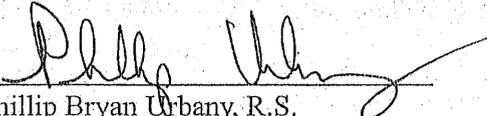
Any interested person may request a public meeting on the application until the deadline for filing public comments. A public meeting is intended for the taking of public comment, and is not a contested case proceeding.

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

# Attachment D



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

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. Measurement Frequency	Single Grab 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  $n$ th 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.

## 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.

## G. 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. Toxicity Characteristic Leaching Procedure (TCLP) results.
2. Annual sludge production in dry tons/year.
3. Amount of sludge disposed in a municipal solid waste landfill in dry tons/year.
4. Amount of sludge transported interstate in dry tons/year.
5. A certification that the sewage sludge meets the requirements of 30 TAC Chapter 330 concerning the quality of the sludge disposed in a municipal solid waste landfill.
6. Identity of hauler(s) and transporter registration number.
7. Owner of disposal site(s).
8. Location of disposal site(s).
9. Date(s) of disposal.

The above records shall be maintained on-site on a monthly basis and shall be made available to the Texas Commission on Environmental Quality upon request.

**OTHER REQUIREMENTS**

1. The permittee shall employ or contract with one or more licensed wastewater treatment facility operators or wastewater system operations companies holding a valid license or registration according to the requirements of 30 TAC Chapter 30, Occupational Licenses and Registrations and in particular 30 TAC Chapter 30, Subchapter J, Wastewater Operators and Operations Companies.

This Category C facility must be operated by a chief operator or an operator holding a Category C license or higher. The facility must be operated a minimum of five days per week by the licensed chief operator or an operator holding the required level of license or higher. The licensed chief operator or operator holding the required level of license or higher must be available by telephone or pager seven days per week. Where shift operation of the wastewater treatment facility is necessary, each shift which does not have the on-site supervision of the licensed chief operator must be supervised by an operator in charge who is licensed not less than one level below the category for the facility.

2. The facility is not located in the Coastal Management Program boundary.
3. The permittee is hereby placed on notice that this permit may be reviewed by the TCEQ after the completion of any new intensive water quality survey on Segment No. 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.

# Attachment E

Proposed New TPDES Permit No. WQ0014725001

2007 SEP 24 PM 4:07

Application by	§	Before the	CHIEF CLERKS OFFICE
TCB Rental, Inc. for a New	§	TEXAS COMMISSION ON	
TPDES Permit No. WQ0014725001	§	ENVIRONMENTAL QUALITY	

**EXECUTIVE DIRECTOR'S RESPONSE TO PUBLIC COMMENT**

The Executive Director of the Texas Commission on Environmental Quality (the Commission or TCEQ) files this Response to Public Comment (Response) on the application of TCB Rental, Inc. (Applicant) for a new Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ00147254001, and the Executive Director's preliminary decision on the application. Pursuant to 30 Texas Administrative Code (TAC) Section 55.156, before an application is approved and a permit is issued, the Executive Director prepares a response to all timely, relevant and material, or significant comments. The Office of the Chief Clerk timely received comment letters and comments at the public meeting from the following persons: The Honorable Stephen E. Ogden (State Senator), Burleson County Commissioners Court (Mike Sutherland, Frank Kristof, Vincent Svec, David Hildebrand and John Landolt), Jean and Leonard Killgore, Douglas Pecore, Leon Schwartz, Camilla Godfrey, David Godfrey, Charles and Mary Kay Janner, William H. Tonn III, G.H. Giesenschlag, Douglas and Thersa Kettler, Mark Sicilio, Ester Wilson, Avis Munson, Barry Wilkerson, Cheryl Wooten, Henry and Lydia Hilton, John Landry, and Helen Landry. This Response addresses all timely public comments received, whether or not withdrawn. If you would like more information about this permit application or the wastewater permitting process, please call the TCEQ Office of Public Assistance at 1-800-687-4040. General information about the TCEQ can be found at our website at [www.tceq.state.tx.us](http://www.tceq.state.tx.us).

**BACKGROUND**

Description of Facility

The Applicant has applied to the TCEQ for a new TPDES permit, to authorize the discharge of treated domestic wastewater at a daily average flow not to exceed 25,000 gallons per day. The facility 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 wastewater treatment facility will be an activated sludge processing plant operated in the extended aeration mode. Treatment units will 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 effluent limitations in the draft permit, based on a 30-day average, are 10 mg/l CBOD<sub>5</sub> (five-day Carbonaceous Biochemical Oxygen Demand), 15 mg/l TSS (Total Suspended Solids).  
Executive Director's Response to Public Comment, Permit No. WQ0014725001

Solids), 3 mg/l NH<sub>3</sub>-N (Ammonia-Nitrogen), 4.0 mg/l DO (Minimum Dissolved Oxygen) and the pH shall not be less than 6.0 standard units nor greater than 9.0 standard units. The effluent shall be chlorinated in a chlorine contact chamber to a residual of 1.0 mg/l with a minimum detention time of 20 minutes based on peak flow. 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.

#### Procedural Background

The application was received on June 29, 2006 and declared administratively complete on July 20, 2006. Notice of Receipt and Intent to Obtain a Water Quality Permit (NORI) was published on August 3, 2006 in the *Burleson County Tribune*. The Notice of Application and Preliminary Decision (NAPD) for a Water Quality Permit was published on December 21, 2006 in the *Burleson County Tribune*. A public meeting was held on April 17, 2007 and the comment period was extended from April 17, 2007 to May 17, 2007. Since this application was administratively complete after September 1, 1999, it is subject to the procedural requirements of House Bill 801 (76th Legislature, 1999).

#### COMMENTS AND RESPONSES

##### COMMENT 1:

Senator Stephen E. Ogden commented that a public meeting should be held to inform the interested parties about the proposed permit and give them an opportunity to provide input. He requested that the public meeting be held at a location convenient for the residents of Burleson County.

##### RESPONSE 1:

A public meeting was held on April 17, 2007 at the American Legion Hall, Somerville, Texas. Presentation at the public meeting was bifurcated; an informal discussion period and a formal comment period. During the informal discussion period, the public was encouraged to ask questions of the Applicant and TCEQ staff concerning the application. During the formal comment period, members of the public stated their formal comments into the official record.

##### COMMENT 2:

Ms. Killgore commented that she went to the location (Harrie P. Woodson Memorial Library in Caldwell, Texas) where a copy of the application would be available for viewing and copying and that the documents were not there.

### RESPONSE 2:

It is the Applicant's responsibility to ensure that the permit application, Executive Director's preliminary decision, and draft permit are available for viewing and copying. The Applicant's representative was contacted and she submitted postal documentation demonstrating that copies of the application and other documents related to this permit were forwarded to the library and that the library actually received them. The Applicant representative was instructed to resend copies of the documents to the library and to Ms. Killgore directly. On April 2, 2007, the representative complied with both requests (the information was sent to Harrie P. Woodson Memorial Library, 704 Highway 21, Caldwell, Texas via certified mail and to Ms. Killgore.) Additionally, the Executive Director extended the comment period by 30 days because the documents may or may not have been available for viewing and copying for a period of time at the library.

### COMMENT 3:

The **Burleson County Commissioners Court** (Mike Sutherland, Frank Kristof, Vincent Svec, David Hildebrand and John Landolt) 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. The Commissioners Court also requested a contested case hearing on the application.

### RESPONSE 3:

Since a hearing request was 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. Unless the case is directly referred to the State Office of Administrative Hearings (SOAH), the Commission will make a determination on the contested case hearing requests. If the Commission grants the contested case hearing requests, the case will be referred to SOAH for a contested case hearing. A contested case hearing is a legal proceeding similar to a civil trial in a district court.

Additionally, the Executive Director is aware of the concerns raised regarding the location of the wastewater treatment plant. Accordingly, the Applicant is required to comply with the site characteristics requirements in 30 TAC § 309.13. 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;
- (b) wetlands;

- (c) subject to limited exceptions, within 500 feet of a public water well, or 250 feet of a private water well; and
- (d) a wastewater plant's "surface impoundment may not be located in areas overlying the recharge zones of major or minor aquifers . . . unless the aquifer is separated from the base of the containment structure by a minimum of three feet material with a hydraulic conductivity toward the aquifer . . ."

The Applicant is also required to comply with one of the nuisance odor control and buffer requirements of 30 TAC § 309.13(e).

The draft permit was developed to protect aquatic life, human health and the environment in accordance with the Texas Surface Water Quality Standards. As part of the permit application process, the Executive Director must determine the uses of the receiving water and set effluent limits that are protective of those uses. The effluent limits in the draft permit are set to maintain and protect the existing instream uses. In this case, the treated wastewater from the plant will be discharged into an unnamed drainage ditch; then to Koontz Bayou Drain; then to Koontz Bayou; then to Old River; and then to Brazos River above Navasota River in Segment No. 1242 of the Brazos River Basin. 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 proposed draft permit includes effluent limitations and monitoring requirements for 5-day Biochemical Oxygen Demand (CBOD<sub>5</sub>), Total Suspended Solids (TSS), Ammonia Nitrogen, Dissolved Oxygen (DO), chlorine residual, and pH to ensure that discharges from the proposed wastewater treatment plant meet water quality standards for the protection of surface water, groundwater, and human health in accordance with TCEQ rules and policies. The proposed draft permit includes requirements for the disposal of domestic sludge generated from the wastewater treatment facility based on TCEQ rules. The Executive Director expects that human health and the environment will be protected if the Applicant operates and maintains the facility as permitted and in accordance with TCEQ rules. The Executive Director has determined that the proposed draft permit is protective of the environment, water quality, and human health in accordance with TCEQ rules and requirements. Any noncompliance with the terms of the proposed draft permit could result in enforcement action against the permittee.

#### COMMENT 4:

Jean and Leonard Killgore commented that the proposed location for the plant is in a flood plain and that the area experiences severe flooding. They expressed concerns about their health and safety, the health of their cattle, native wildlife, and the environment in the event the proposed facility is damaged by flood. They stated that they had observed the extreme flooding in the Koontz Bayou Basin and provided photographs of some of the flooding events. They indicated that Koontz Bayou floods easily and rapidly because of slow drainage problems caused by silting, debris, and vegetation growth. They stated that when Koontz Bayou floods, it backs up onto their road and lower pastures.

Charles and Mary Kay Janner commented that the wastewater treatment plant will be located in a flood plain. They own property which is often inundated by flood waters from Koontz Bayou. They expressed concerns that the Applicant will not be able to adequately protect against raw sewage and chemicals from mixing with flood waters during a flood event. They are concerned that flood waters mixed with raw sewage and chemicals could contaminate their "hay meadow," cattle fed with the hay, and ultimately humans. They wanted to know who will be responsible for the cleanup if flood waters carry sewage and other chemicals onto their property.

William H. Tonn, III. commented that the proposed site for the wastewater treatment plant is subject to frequent flooding. He is concerned that a flood event could overwhelm the proposed facility and result in effluent being transported by flood into his property. He indicated that the facility should be located in an area of higher elevation.

W. H. Giesenschlag commented that the proposed site for the wastewater treatment plant is "on low ground" and subject to frequent flooding during heavy rains and whenever the Brazos River overflows. Mr. Giesenschlag requested that TCEQ explore all environmental issues before permitting this facility to operate in the current proposed location.

Camilla Godfrey commented that the plant will be located in a flood plain; the flooding and drainage problem in the area; the possibility that sewage will be discharged into Koontz Bayou and her property during a severe flood event; interference with the recreational use and enjoyment of her property; the possibility of ecoli contamination and other health risks. David Godfrey commented about environmental stewardship, preservation, love and esthetic value of the land; long term effect of the plant on the people who love the land; flooding; and safety concerns.

Henry W. Hilton and Lydia Hilton expressed concerns about recent flooding of Koontz Bayou and that their land and crops will be contaminated by overflow from the plant during a flood event.

Helen Landry commented about the flood and the fact that the facility would be located in a flood prone area next to her property. She stated that her property would be flooded with raw sewage and chemicals from the facility when it floods.

John Landry commented about flooding in the area and the fact that he would be walking or driving through raw sewage if a flood event causes the facility to overflow. He stated that the facility has the potential to contaminate pasture land, surface, and ground water.

Mrs. Avis Munson & Mrs. Ester Wilson commented that the facility will be located in a flood plain. They commented that the communities of Clay and Wilcox experience floods that remain stagnant for about one to two weeks. They expressed concerns about flooding and the release of waste into the Koontz Bayou. They are concerned about the health effects on humans and livestock should an overflow during a flood event lead to sewer contamination.

Leon Schwartz stated that he owns 844 acres ranch within one mile of the proposed facility location. He commented about the flooding and drainage problem in the area. He stated that the area around Koontz Bayou and Old River floods frequently and it takes about seven to ten days for flood water to drain. He is concerned that the owner of the facility cannot prevent the plant from overflowing or being damaged by flood.

Douglas Kettler commented about flooding in the area. He was concerned that wastewater and chemicals could spill onto his field if the facility overflows during a flood event. He stated that the wastewater should be treated where it was generated. He stated that locating the facility in Burlason County would constitute an "unsightly environmental hazard."

#### RESPONSE 4:

TECQ rules do not prohibit an applicant from locating a wastewater treatment plant in a flood plain. As stated in Response No. 2, a wastewater treatment plant unit may not be located in the 100-year flood plain unless the plant unit is protected from inundation and damage that may occur during that flood event. 30 TAC § 309(a). In the application, the Applicant demonstrated using the Flood Insurance Rate Map (FIRM) that the plant site is located in Zone A which is a hazard area that is inundated by the 100-year flood. The United States Geological Services (USGS) map shows that the elevation in the area of the proposed site is 205 feet above sea level. The Applicant has proposed to construct the treatment tanks so that the top of the tanks would be at an elevation of 209 feet or above. All mechanical equipment will be mounted on top of the plant to avoid inundation by flood. Other Requirement No.6 in the proposed draft permit requires the Applicant to provide facilities for the protection of its wastewater treatment plant from a 100-year flood event. This provision and the proposed design requirements for the facility were added to protect the wastewater treatment plant from flooding related damages. Compliance with the design requirement will ensure that the facility will withstand a severe flood event. The Executive Director has determined that if the plant is built and operated as contemplated in the proposed draft permit, the danger posed by flooding will be greatly minimized.

#### COMMENT 5:

Ms. Killgore commented that drainage is critical and is currently hampered by overgrowth and silting. She stated that discharge of any quantity of water into the Bayou would add to the flooding. She commented that it only takes about 6-8 inches of rain area-wide for the water in the Bayou to start backing up onto the fields. Ms. Godfrey stated that there is a problem with flood control and that it is well documented that flooding occurs from the water that drains from the area around Snook. Mr. Schwartz stated that this would be a very bad location for a sewage treatment plant because of concerns regarding overflow, back up, and the drainage problem with the Bayou due to accumulation of debris and silt. He commented that there are already a number of low water crossings and bridges that keep the flood water from draining.

#### RESPONSE 5:

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The permitting process is limited to controlling the discharge of pollutants into water in the state and protecting the water quality of the state's rivers, lakes and coastal waters. The draft permit includes effluent limits and other requirements that the Applicant must meet even during rainfall events and periods of flooding. In this case, the Applicant and the Executive Director are aware that the proposed facility will be located an area within the 100-year flood plain and the proposed draft permit includes Other Requirements No. 6 which requires the Applicant to provide protection for the facility from a 100-year flood. For flooding concerns, please contact the local flood plain administrator for your area. If you need help finding the local flood plain administrator, please call the TCEQ Resource Protection Team at 512-239-4691. The flood plain administrator for your area can request a low-interest loan for flood control protection from the Texas Water Development Board.

#### COMMENT 6:

**Ms. Killgore** commented about the health and safety of her family, cattle, and environmental contamination that would be caused by the proposed wastewater treatment plant. **Mr. Pecore** commented about what would be deposited in the waterways and pastures if the facility is breached by flood. **Ms. Godfrey** commented that this plant will allow human waste to overflow and spread onto her field used to graze cattle. **Mr. and Ms. Janner** expressed concerns that flood water could transport raw sewage and chemicals from the open treatment tanks and contaminate the hay feed for their cattle. **Mr. and Ms. Kettler** stated that their property borders the proposed site and that wastewater would spill out in times of floods and contaminate their cattle feed. **Mr. and Ms. Hilton** commented that the overflow from the plant during flooding would contaminate their land and affect the quality of their crops. **Mr. Landry** commented that he does not want to drive or walk through raw sewage and that raw sewage from the treatment plant would contaminate their pasture land, surface and groundwater. **Ms. Landry** stated that raw sewage and chemicals from the proposed facility will contaminate their land. **Mr. Geisenschlag** commented that flood water carrying pollutants from the proposed facility would contaminate their land.

#### RESPONSE 6:

The Applicant is required to take certain steps to minimize the possibility of an accidental discharge of untreated wastewater. For example, Operational Requirement 1 in the proposed draft permit states that the Applicant must maintain adequate safeguards to prevent the discharge of untreated or inadequately treated wastes during electrical power failures by means of alternate power sources, standby generators, and/or retention of inadequately treated wastewater. In addition, the plans and specifications for domestic sewage treatment works associated with any domestic wastewater permit must be approved by TCEQ.

Permit Condition 2(d) in the proposed draft permit requires the Applicant to take all reasonable steps to minimize or prevent any discharge, disposal or other permit violation which has a reasonable likelihood of adversely affecting human health and the environment. Permit Condition 2(g) in the proposed draft permit states that there shall be no unauthorized discharge

Executive Director's Response to Public Comment, Permit No. WQ00147250001

of wastewater or any other waste. These permit provisions are designed to help prevent unauthorized discharges of raw sewage. If an unauthorized discharge occurs, the Applicant is required to report it to TCEQ within 24 hours. If the Applicant fails to report the unauthorized discharge to TCEQ within the prescribed time period, the Applicant will be subject to enforcement by TCEQ. At the time of any accidental discharge, TCEQ and other local governmental entities will determine if nearby residents need to be notified of any leak or runoff based on the severity and potential health impact of the discharge.

The draft permit was developed to protect aquatic life and human health in accordance with the Texas Surface Water Quality Standards. The draft permit was established to be protective of human health and the environment provided the Applicant operates and maintains the facility according to TCEQ rules and the requirements in the permit. The Executive Director has determined that this draft permit would be protective of the environment, water quality, aquatic and terrestrial life, and human health. The draft permit includes effluent limitations and monitoring requirements designed to ensure that treated effluent meets the Texas Surface Water Quality Standards for the protection of surface water and human health according to TCEQ rules and policies.

As part of the application process, TCEQ must determine the uses of the receiving water and set effluent limits that are protective of those uses, including aquatic life and contact recreation. The Commission does not have water-quality based effluent limitations for cattle water. However, the TCEQ Water Quality Assessment Section has determined that the proposed draft permit for the facility meets the requirements of the Texas Surface Water Quality Standards, which are established to protect human health and terrestrial and aquatic life. Aquatic organisms are more sensitive to water quality components than terrestrial organisms. In accordance with 30 TAC §307.5 and the TCEQ implementation procedures for the Texas Surface Water Quality Standards, an antidegradation review of the receiving waters was performed. This review has preliminarily determined that no significant degradation of high quality waters is expected and that existing uses will be maintained and protected.

The Texas Water Code, Section 26.027, authorizes the TCEQ to issue permits for discharges into water in the state. The Executive Director does not have the authority to mandate a different discharge location or different type of wastewater treatment plant. The Executive Director evaluates applications for wastewater treatment plants based on the information provided in the application. The Executive Director can recommend issuance or denial of an application based on whether the application complies with TCEQ regulations and water quality standards.

If this permit is issued, it does not grant the permittee the right to use private or public property for conveyance of wastewater along the discharge route. The permit does not authorize any invasion of personal rights or any violation of federal, state, or local laws or regulations. It is the responsibility of the permittee to acquire all property rights necessary to use the discharge route. The proposed draft permit does not authorize trespass by the Applicant on any nearby landowner's property. Accordingly, Permit Condition 8 in the proposed draft permit states that a permit does not convey any property rights of any sort, or any exclusive privilege.

COMMENT 7:

Barry Wilkerson commented that the plant site would be inaccessible to the plant operator in times of floods.

RESPONSE 7:

Under Section 317.7(e) of the Commission rules, the plant "shall have at least one all-weather access road with the driving surface situated above the 100-year flood plain or be provided by an alternate method of access approved by the commission." After the permit is issued, the Applicant must construct an all weather road prior to operations.

COMMENT 8:

Mr. Janner stated that in his experience working in the oil fields, he knows that the "oil field" is not to be trusted and that they might "pour things" into the domestic waste just to get rid of them. Mr. Sicilio commented that as a pediatrician, he is aware of the amount of cancer in the Galveston/Houston area because of the refineries there and that many of these products would be brought in from the drilling sites across the state. He wanted to know about wastewater management programs and cancer rates in Texas and how they compare with other states.

RESPONSE 8:

The proposed discharge would consist of domestic wastewater similar to wastewater discharged by a municipal wastewater treatment facility. The permit application indicates that the plant will treat only domestic wastewater from temporary residences located at drilling sites. The domestic wastewater will be deposited into holding tanks containing only domestic waste. Drilling related wastewater or process water will not be accepted or processed at the facility. Permit Condition 4(d) in the proposed draft permit contains the following provision: "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." This facility will be permitted to accept, store and process only domestic wastewater. Acceptance of any other waste is unauthorized.

The proposed activated sludge treatment process for the plant is a biological treatment system that is sensitive to any harmful chemicals. For efficient treatment, the plant operator would want to ensure that the wastewater received is treatable by the activated sludge.

The proposed draft permit does not authorize the facility to accept refinery waste. Acceptance of such waste would be a violation of the permit. The Commission has not studied the relationship between cancer rates and wastewater management programs in Texas.

**COMMENT 9:**

Ms. Godfrey stated that her home is close to the proposed facility and that she will be impacted by the odor from operation of the facility particularly when the wind is blowing in a southerly direction. Mr. Tonn commented about odors that could be generated as a result of the operation of the facility. His property is located downwind from the proposed location of the facility. He owns rental property in the area, and he is concerned that the odor from the facility will affect his rental income. Mr. Wilkerson is concerned that the hydrogen sulfide that is going to be contained in the holding tanks will have to be vented somewhere and that there will be prolonged exposure downwind to the gas. Mr. Sicilio commented that a wastewater treatment plant at the bottom of the hill with the ambient and the odors is in no way appealing. Mrs. Munson and Mrs. Wilson expressed concerns about the fumes and odors that will be released as a result of operation of the facility.

**RESPONSE 9:**

Section 309.13(e) of the Commission rules require an Applicant to use one of the following alternatives to demonstrate compliance with the nuisance odor abatement and control requirement prior to the construction of a new wastewater treatment plant:

1. The Applicant must meet the buffer zone requirements that are established to help minimize the impact of odors on nearby residents and property owners. "Lagoons with zones of anaerobic activity (e.g., facultative lagoons, un-aerated equalization basins, etc) may not be located [within] 500 feet [of] the nearest property line. All other wastewater treatment plant units may not be located [within] 150 feet [of] the nearest property line." The Applicant may meet the buffer zone requirement by owning the buffer zone area or by obtaining sufficient property interests in all adjacent land necessary to meet the distance requirement;
2. "The applicant must submit a nuisance odor prevention request for approval by the executive director. A request for nuisance odor prevention must be in the form of an engineering report, prepared and sealed by a licensed professional engineer in support of the request. At a minimum, the engineering report shall address existing climatological conditions such as wind velocity and atmospheric stability, surrounding land use which exists or which is anticipated in the future, wastewater characteristics in affected units pertaining to the area of the buffer zone, potential odor generating units, and proposed solutions to prevent nuisance conditions at the edge of the buffer zone and beyond. Proposed solutions shall be supported by actual test data or appropriate calculations. The request shall be submitted, prior to construction, either with a permit application and subject to review during the permitting process or submitted for executive director approval after the permitting process is completed; or

3. The Applicant "must submit sufficient evidence of legal restrictions prohibiting residential structures within the part of the buffer zone not owned by the applicant. Sufficient evidence of legal restriction may, among others, take the form of a suitable restrictive easement, right-of-way, covenant, deed restriction, deed recorded, or a private agreement provided as a certified copy of the original document. The request shall be submitted, prior to construction, either with a permit application and subject to review during the permitting process or submitted for executive director approval after the permitting process is completed.

According to the permit application, the Applicant intends to meet the buffer zone requirements on the existing site by owning the land.

Air emission authorizations are handled by a separate program in the air permits division. In accordance with 30 TAC §§106.531-32, air emissions from sewage treatment facilities are permitted by rule. 30 TAC Chapter 106 identifies certain types of facilities, including sewage treatment facilities, which the Commission has determined "will not make a significant contribution of air contaminants to the atmosphere" under the Texas Clean Air Act, Sections 382.057 and 382.05196.

The draft permit was developed to minimize nuisance odor. If the plant is designed and operated in accordance with the draft permit, nuisance odor will be significantly curtailed.

**COMMENT 10:**

**Ms. Godfrey** commented that Highway 50 has a very high amount of traffic accidents because it is like a Farm-to-Market Road that is narrow with no shoulders. She indicated that she does not want 18-wheelers on Highway 50 much less worry about one tipping over. She was also concerned about wastewater being trucked to the plant by eighteen wheelers and the risk of traffic accident and sewage spills. **Mr. and Ms. Kettler** commented about increased truck traffic on a small Farm-to-Market Road.

**RESPONSE 10:**

The TCEQ's jurisdiction in a wastewater permit application is limited to the issues set out in Chapter 26 of the Texas Water Code. Chapter 26 provides TCEQ with authorization to consider issues that directly affect water quality, but it does not provide authorization for TCEQ to consider issues such as traffic congestion. The TCEQ does not have jurisdiction over traffic issues in the wastewater permitting process. In the event that someone is adversely affected by the Applicant's transportation of wastewater, the draft permit does not limit the ability of nearby landowners to use remedies for trespass, nuisance, or other causes of action in response to activities that may or actually do result in injury or adverse effect on human health or welfare, animal life, vegetation, or property.

Transporters of sewage sludge, water treatment sludge, and domestic septage are regulated by the Commission under 30 TAC Chapter 312. Section 312.142(a) requires sewage sludge transporters to register with the Commission. Under Section 312.144(a), all vehicles used to transport wastewater must be registered and prominently marked with the company name, telephone number, authorization sticker, and the Commission assigned registration number. In accordance with Section 312.144(b), all "vehicles and equipment used for the collection and transportation of . . . [sewage sludge, water treatment sludge, and domestic septage] shall be constructed, operated, and maintained to prevent loss of liquid or solid waste materials and to prevent health nuisance and safety hazards to operating personnel and the public. Collection vehicles and equipment shall be maintained in a sanitary condition to preclude nuisance conditions such as odors and insect breeding." Section 312.146 states that in "the event of a discharge or spill of waste during collection or transportation, the collector or transporter must take appropriate action to protect human health and the environment, e.g., notify local law enforcement and health authorities; dike the discharge area; clean up any waste discharge that occurs during transportation; or take such action as may be required or approved by federal, state, or local officials having jurisdiction so that the waste discharge no longer presents a public health or environmental problem." These regulations are promulgated to ensure that domestic waste transporters employ all reasonable means to avoid harm to humans and the environment. Accordingly, the Executive Director has added a special provision requiring the permittee to comply with the provisions of 30 TAC Chapter 312, Subchapter G, to the draft permit.

**COMMENT 11:**

Mr. Tonn, III noted that much of the wastewater will be trucked in from drilling sites in the Ft. Worth area, and asked why the applicant did not site the facility in Ft. Worth, Texas where the wastewater originated. Mr. Wilkerson commented that the Applicant will not be able to operate the facility year round because of the flooding concerns in the area and asked why the Applicant would build the plant if he cannot operate it year-round.

**RESPONSE 11:**

Under the Texas Water Code, TCEQ is tasked with protecting the quality of water in the state. To implement this statutory mandate, TCEQ issues permits that must be consistent with applicable law. Under this authority, TCEQ requires that a discharge must meet both statutory and regulatory criteria designed to protect water quality. However, the TCEQ cannot require an applicant to consider an alternate facility location if the proposed location is otherwise consistent with applicable law. The Executive Director has reviewed the proposed site for this facility and has determined that the application complies with the unsuitable site characteristics requirements contained in Section 309.13 of the Commission rules as it relates to the 100-year flood plain, wetlands, public and private water wells, recharge zones for minor and major aquifers; and odor control buffer requirements.

**COMMENT 12:**

Mrs. Wilson stated that she represented the community of Clay which is about 98% black and is downstream of the discharge. Mrs. Munson and Mrs. Wilson commented that it is morally unethical for their community to become the dumping ground for waste from other counties. They commented about environmental racism. They stated that the citizens of Clay are predominantly African-American, poor, and "do not own large homes, huge amounts of land, or large herds of livestock." They stated that they were denied grants for sewer systems because they were told Clay is located in a flood plain. They question why this facility could be located in a flood plain when they were denied grant for a sewer system on the basis that the system would be located in a flood plain. Ms. Godfrey commented that rural areas are being taken advantage of and that waste from other parts of the state should not be brought to Burleson County. Mr. and Ms. Kettler stated that the wastewater business should not be located in Washington County. They do not want the unsightly environmentally hazardous wastewater business in Burleson County.

#### **RESPONSE 12:**

When evaluating permit applications, the Commission considers the surrounding community without regard to its socioeconomic or racial status. However, the Commission has a structure in place to deal with environmental justice concerns. The Commission's Environmental Equity Program (EEP) was designed to assist the community with environmental justice issues. The goals of the EEP include helping "citizens and neighborhood groups to participate in regulatory processes; serv[ing] as the agency contact to address allegations of environmental injustice; serv[ing] as a link for communications between the community, industries, and the government; ensur[ing] that agency programs that substantially affect human health or the environment operate without discrimination; promot[ing] greater use and analysis of demographic information for areas surrounding proposed facilities or sites; giv[ing] greater attention to the environmental and human health conditions in affected minority and low-income communities; and thoroughly consider[ing] all citizens' concerns and handl[ing] them fairly." Individuals may raise environmental equity or environmental justice concerns with the TCEQ by calling a toll-free number, 1-800-687-4040, or at the following address, telephone and facsimile numbers:

Environmental Equity (MC-108)  
Texas Commission on Environmental Quality  
P.O. Box 13087  
Austin, TX 78711-3087  
Telephone No. 512/239-4000  
Facsimile No. 512/239-4007  
opa@tceq.state.tx.us (E-mail)

Additional information can be found at [www.tceq.state.tx.us/comm\\_exec/opa/envequ.html](http://www.tceq.state.tx.us/comm_exec/opa/envequ.html).

#### **COMMENT 13:**

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Mr. Wilkerson commented that lightening could knock out the electricity and that the pumps will not run if the breakers trip. He stated that unless there is a telemetry system in place, the treatment system will not get air. He stated that it would take six hours for the system to go anaerobic and in six hours there would be large quantities of hydrogen sulfide gas.

**RESPONSE 13:**

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. Section 317.4 (g) of the Commission rules contains the requirements for aeration of activated sludge facilities. Under Section 317.4(g)(B)(iii), "blower/compressor units shall automatically restart after a period of power outage or the operator or owner shall be notified by some method such as telemetry or an auto-dialer."

**COMMENT 14:**

Mrs. Wilson commented about the effects an overflow of domestic waste from the plant might have on water supply systems in Burleson County during a flood event. She expressed concerns about the health impact the plant might have on the elderly, children, cattle and other animals. Ms. Wooten expressed concerns about the impacts the plant might have on her only source of water which is from a residential well.

**RESPONSE 14:**

A wastewater treatment unit may not be located closer than 500 feet from a public water well nor 250 feet from a private water well. 30 TAC §309.13(c). The following horizontal separation distances apply to a facility used for the storage, processing, or disposal of domestic wastewater. A wastewater treatment plant unit must be located a minimum horizontal distance of:

1. 150 feet from a private water well;
2. 500 feet from an elevated or portable-water storage tank;
3. 500 feet from a public water well;
4. 500 feet from a surface water treatment plant; and

5. a wet well or pump station at a wastewater treatment plant must be located a minimum horizontal distance of 300 feet from a public water well.

See 30 TAC §309.13(c). The Executive Director has determined that the Applicant complied with the separation distance requirements of the Commission rules.

In addition, groundwater contamination is typically not a concern for the discharge of treated effluent to surface water. Under the proposed draft permit, Monitoring and Reporting Requirement 7, the permittee will be required to report any unauthorized discharge, unanticipated bypass which exceeds any effluent limitation in the permit, or violation of the maximum daily discharge limitation for pollutants to TCEQ within 24 hours. If the applicant fails to report the unauthorized discharge, bypass or exceedance of effluent limitation to TCEQ within the prescribed time period, the applicant will be subject to enforcement by TCEQ. At the time of any accidental discharge, TCEQ and other local governmental entities determine if nearby residents need to be notified of any leak or runoff based on the severity and potential health impact of the discharge.

#### **CHANGES MADE TO THE DRAFT PERMIT IN RESPONSE TO COMMENT**

Other Requirement No. 7 was revised as follows in response to public comments relating to flooding and access to the plant by the plant operator during a flood event:

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. In addition, and as a condition to the approval of this application, the permittee is specifically required to submit plans, specifications, and a final engineering design report which comply with 30 TAC Chapter 317.7(e).

Other Requirement No. 8: The following provision is added to the draft permit in response to public comments to address concerns regarding transportation of domestic wastewater to the facility:

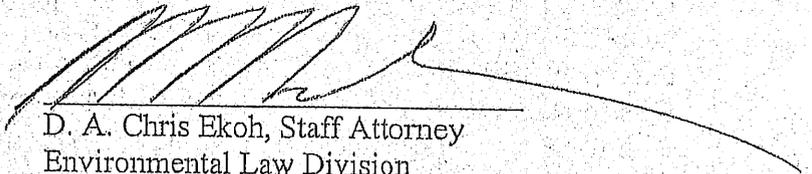
Prior to transporting domestic wastewater to the facility, the permittee shall comply with the requirements in 30 TAC Chapter 312, Subchapter G relating to registration of persons who transport sewage sludge, water treatment sludge, domestic septage, chemical toilet waste, grit trap waste, or grease trap waste. Additionally, the permittee shall only accept domestic wastewater that is

transported by a person licensed under 30 TAC Chapter 312, Subchapter G.

Respectfully submitted,

Texas Commission on Environmental Quality

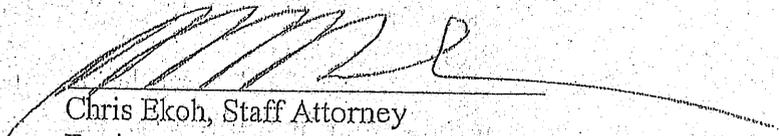
Glenn Shankle, Executive Director  
Robert Martinez, Director  
Environmental Law Division



D. A. Chris Ekoh, Staff Attorney  
Environmental Law Division  
State Bar No. 06507015  
P.O. Box 13087, MC 173  
Austin, Texas 78711-3087  
(512) 239-5487  
Representing the Executive Director of the  
Texas Commission on Environmental Quality

**CERTIFICATE OF SERVICE**

I certify that on September 24, 2007, the "Executive Director's Response to Public Comment" for TPDES Permit No. WQ0014725001 was filed with the Office of the Chief Clerk, Texas Commission on Environmental Quality.



Chris Ekoh, Staff Attorney  
Environmental Law Division  
State Bar No. 06507015

TEXAS  
COMMISSION  
ON ENVIRONMENTAL  
QUALITY  
2007 SEP 24 PM 4:07  
CHIEF CLERKS OFFICE

# Attachment F

# Compliance History

Customer/Respondent/Owner-Operator:	CN601405301 TCB RENTAL INC	Classification: AVERAGE	Rating: 3.01
Regulated Entity:	RN104998877 TCB RENTAL WWTP	Classification: AVERAGE BY DEFAULT	Site Rating: 3.01
ID Number(s):	WASTEWATER PERMIT	WQ0014725001	
Location:	APPROX 1.5 MI SOUTH OF THE INTERSECTION OF FM 50 AND FM 1361 RD IN FORT BEND COUNTY		Rating Date: September 01 07 Repeat Violator: NO
TCEQ Region:	REGION 09 - WACO		
Date Compliance History Prepared:	January 10, 2008		
Agency Decision Requiring Compliance History:	Permit - Issuance, renewal, amendment, modification, denial, suspension, or revocation of a permit.		
Compliance Period:	October 19, 2001 to January 10, 2008		
TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History			
Name:	jbonham		Phone:

## Site Compliance History Components

- |                                                                                              |     |
|----------------------------------------------------------------------------------------------|-----|
| 1. Has the site been in existence and/or operation for the full five year compliance period? | Yes |
| 2. Has there been a (known) change in ownership of the site during the compliance period?    | No  |
| 3. If Yes, who is the current owner?                                                         | N/A |
| 4. If Yes, who was/were the prior owner(s)?                                                  | N/A |
| 5. When did the change(s) in ownership occur?                                                | N/A |

### Components (Multimedia) for the Site :

- A. Final Enforcement Orders, court judgements, and consent decrees of the state of Texas and the federal government.  
N/A
  - B. Any criminal convictions of the state of Texas and the federal government.  
N/A
  - C. Chronic excessive emissions events.  
N/A
  - D. The approval dates of investigations. (CCEDS Inv. Track. No.)
  - E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)
  - F. Environmental audits.  
N/A
  - G. Type of environmental management systems (EMSs).  
N/A
  - H. Voluntary on-site compliance assessment dates.  
N/A
  - I. Participation in a voluntary pollution reduction program.  
N/A
  - J. Early compliance.  
N/A
- Sites Outside of Texas  
N/A