

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

November 29, 2007

TO: Persons on the attached mailing list.

RE: Orangefield Water Supply Corporation
TPDES Permit No. WQ0014772001

Decision of the Executive Director.

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

Enclosed with this letter is a copy of the Executive Director's Response to Comments. A copy of the complete application, draft permit and related documents, including public comments, is available for review at the TCEQ Central office. A copy of the complete application, the draft permit, and executive director's preliminary decision are available for viewing and copying at the Orange County Courthouse, 801 West Division, Orange, Texas.

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

How To Request a Contested Case Hearing.

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

0The request must include the following:

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

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

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

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

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

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

Deadline for Submitting Requests.

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

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

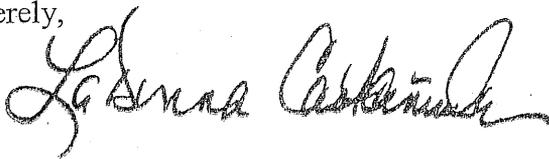
Processing of Requests.

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

How to Obtain Additional Information.

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

Sincerely,



LaDonna Castañuela
Chief Clerk

LDC/er

Enclosures

MAILING LIST
for
Orangefield Water Supply Corporation
TPDES Permit No. WQ0014772001

FOR THE APPLICANT:

Leo Bland
Orangefield Water Supply Corporation
P.O. Box 398
Orangefield, Texas 77639

Benito A. Garcia, Jr.
J.F. Fontaine & Associates, Inc.
P.O. Box 530540
Harlingen, Texas 78553

PROTESTANTS/INTERESTED PERSONS:

Bonnie Brauer
7608 Del Monte Drive
Houston, Texas 77063-1909

FOR THE EXECUTIVE DIRECTOR:

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

Mary Ann Dimakos Airey, P.E., Technical Staff
Texas Commission on Environmental Quality
Water Quality Division MC-148
P.O. Box 13087
Austin, Texas 78711-3087

FOR OFFICE OF PUBLIC ASSISTANCE:

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

FOR PUBLIC INTEREST COUNSEL:

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

FOR THE CHIEF CLERK:

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

TCEQ PROPOSED NEW PERMIT NO. WQ0014772001

APPLICATION BY	§	BEFORE THE	NOV 20 11 3:04
ORANGEFIELD WATER SUPPLY	§	TEXAS COMMISSION	CHIEF CLERK'S OFFICE
CORPORATION	§	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 Orangefield Water Supply Corporation application and Executive Director's Preliminary Decision. As required by 30 Texas Administrative Code (TAC) Section 55.156, before 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 received a timely comment letter from the following person: Bonnie Brauer. This response addresses all such timely public comments received, whether or not withdrawn. If you need more information about this permit application or the wastewater permitting process, please call the TCEQ Office of Public Assistance at 1-800-687-4040. General information about the TCEQ can be found at our website at www.tceq.state.tx.us.

BACKGROUND

Description of Facility

Orangefield Water Supply Corporation has applied to the TCEQ for a new permit to authorize the discharge of treated domestic wastewater at a daily average flow not to exceed 750,000 gallons per day. The treated effluent will be discharged directly to Cow Bayou Tidal in Segment No. 0511 of the Sabine River Basin. The designated uses for Segment No. 0511 are contact recreation and high aquatic life use. The facility will be located west of the City of Pinehurst and northwest of Bridge City, bounded on the north by Farm-to-Market Road 105, to the west by Farm-to-Market Road 408 (west boundary is approximately 276 feet from the center of Farm-to-Market Road 408) and to the south by Cormier Lane in Orange County, Texas.

Procedural Background

The application was received on January 4, 2007, and declared administratively complete on February 16, 2007. Notice of Receipt of Application and Intent to Obtain a Water Quality Permit (NORJ) was published on March 3, 2007 in the *Orange Leader*. The TCEQ Executive Director completed the technical review of the application, and prepared a draft permit. Notice of Application and Preliminary Decision for a Water Quality Permit (NAPD) was published on August 8, 2007 in the *Orange Leader*, and the

public comment period closed on September 7, 2007. This application was administratively complete on or after September 1, 1999; therefore, this application is subject to the procedural requirements adopted pursuant to House Bill 801 (76th Legislature, 1999).

COMMENTS AND RESPONSES

COMMENT 1

In her comments, Ms. Brauer expressed concern that the proposed discharge will further pollute Cow Bayou.

RESPONSE 1

Segment No. 0511, Cow Bayou Tidal, is currently listed on the State's inventory of impaired and threatened waters. *See 2004 Clean Water Act 303(d) List*, p. 10 (May 13, 2005). This listing is specifically for elevated bacteria levels, low pH, and depressed dissolved oxygen. The pH impairment is confined to the upper four miles of the segment. The bacteria impairment is confined to the upper four miles and lower five miles of the segment. The dissolved oxygen impairment affects the entire segment.

The proposed wastewater treatment facility will serve residential customers located within the city limits of the City of Orangefield. The Applicant has commitments for about 1,400 connections from existing on-site sewage facilities, many of which are failing and contributing to the impairment of Cow Bayou Tidal. On-site sewage facilities with malfunctioning septic tanks that have been improperly engineered or installed, poorly maintained, or are located where soils do not permit the sanitary absorption of septic effluent. These facilities can serve as nonpoint sources of pollutants, and connection to the proposed wastewater treatment plant will remove these sources from Cow Bayou Tidal.

The remaining capacity (approximately 1,100 connections) may be used to connect existing homes, businesses, or schools whose wastewater is currently being treated at other facilities, or new construction. The facility will need to have an appropriate mix of existing and new connections to prevent any increase in the loading of oxygen-demanding substances to Cow Bayou Tidal. The proposed draft permit requires the Applicant to do just that.

"The permittee shall ensure that connections to the wastewater treatment plant consist of an appropriate mix of exiting on-site treatment systems, existing homes, businesses, or schools that are currently connected to other treatment plants, and new construction such that the loading of oxygen-demanding substances to Cow Bayou is not increased. Such an increase would violate the provisions of the TMDL for dissolved oxygen in Cow Bayou that was adopted by the TCEQ on June 13, 2007." *See Draft TPDES Permit No. 0014772001*, p. 24.

The TCEQ would monitor the mix of connections by mandating that the Applicant submit an annual report listing the customer addresses connected to the collection system during the calendar year, the date of connection, and whether the customer had an existing on-site treatment system, was previously connected to another treatment plant, or was newly constructed.

COMMENT 2

Ms. Brauer comments that she is concerned about accidental discharges from the proposed facility resulting from human error or technical failure.

RESPONSE 2

The Applicant is required to take certain steps to minimize the possibility of an accidental discharge of untreated wastewater. For example, the Applicant must maintain adequate safeguards to prevent the discharge of untreated or inadequately treated wastes during electrical power failures by means of alternative power sources, standby generators, or retention of inadequately treated wastewater. *See Draft TPDES Permit No. 0014772001*, p. 10. Also, please note that the proposed draft permit requires that when the flow measurements reach 75 percent of the permitted daily average flow for three consecutive months, the Applicant must initiate engineering and financial planning for expansion and/or upgrading the domestic wastewater treatment or collection facilities. *Id.* When the flow measurements reach 90 percent of the permitted daily average flow for three consecutive months, the Applicant must obtain authorization from the TCEQ to begin construction of necessary additional wastewater treatment or collection facilities. *Id.* All of these permit provisions are designed to prevent unauthorized discharges of raw sewage. If an unauthorized discharge does occur, the Applicant is required to report it to the Commission within 24 hours. *See Draft TPDES Permit No. 0014772001*, p. 5. Finally, the Applicant is subject to potential enforcement action for failure to comply with TCEQ rules or permit requirements.

COMMENT 3

Ms. Brauer states that she is concerned about the presence of bacteria and viruses in the wastewater.

RESPONSE 3

The proposed draft permit requires the treated effluent to be disinfected prior to discharge. Chlorination of the treated effluent is required to provide adequate disinfection and reduce pathogenic organisms. The proposed draft permit requires that the effluent contain a chlorine residual of at least 1.0 milligram per liter (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. *See TPDES Permit No. 0014772001*, p. 2. Chlorination of the treated effluent is monitored daily by grab sampling. *Id.* These permit provisions are intended to control bacteria to protect human health.

COMMENT 4

Ms. Brauer comments that she is concerned that her well water may become polluted with treated sewage.

RESPONSE 4

The proposed facility is located approximately 1-mile downstream of the address given by Ms. Brauer in her comment letter. Groundwater in the area is produced from the Chicot aquifer. Groundwater gradient for the Chicot aquifer tends to follow the regional topographic gradient. In this area, groundwater generally flows towards the southeast, which is away from Ms. Brauer's property. Because Ms. Brauer's property is located upstream and upgradient of the proposed discharge, it is unlikely that her well will be impacted from the proposed facility.

Additionally, the geology underlying the proposed discharge route is mapped in the clay-rich portion of the Beaumont Formation. Recharge to the underlying aquifer is minimal where this geologic formation outcrops due to the presence of the clays acting like a barrier to downward migration of water. Recharge to the Chicot aquifer occurs more readily where the sandy portion of the Beaumont Formation is exposed at the ground surface. The sandy portion of the Beaumont Formation is located generally to the north of the proposed discharge route.

Finally, the proposed draft permit includes effluent limitations and monitoring requirements for 5-day Biochemical Oxygen Demand (BOD₅), Total Suspended Solids (TSS), chlorine residual, and pH to ensure that the proposed wastewater treatment facility meets water quality standards for the protection of surface water quality, groundwater, and human health. The Executive Director has determined that the proposed draft permit complies with all applicable TCEQ rules, and is protective of the environment, water quality, and human health.

COMMENT 5

In her comments, Ms. Brauer states that she is concerned that pollution from the proposed facility will substantially lower her property value.

RESPONSE 5

The legislature has given the TCEQ the responsibility to protect water quality. However, neither the Texas Water Code, nor the applicable TCEQ rules authorize the TCEQ to consider property values when reviewing a permit application. Therefore, the TCEQ lacks regulatory authority to consider property values when reviewing wastewater applications and preparing draft permits.

CHANGES MADE TO THE DRAFT PERMIT IN RESPONSE TO COMMENT

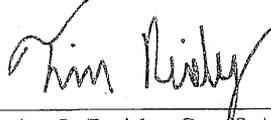
No changes to the draft permit have been made in response to public comment.

Respectfully submitted,

Texas Commission on Environmental
Quality

Glenn Shankle
Executive Director

Robert Martinez, Director
Environmental Law Division

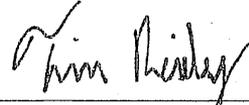
By 

Timothy J. Reidy, Staff Attorney
Environmental Law Division
State Bar No. 24058069
P.O. Box 13087, MC 173
Austin, Texas 78711-3087
(512) 239-0969

REPRESENTING THE EXECUTIVE
DIRECTOR OF THE TEXAS
COMMISSION ON ENVIRONMENTAL
QUALITY

CERTIFICATE OF SERVICE

I certify that on November 20, 2007, the "Executive Director's Response to Public Comment" for Permit No. WQ0014772001 was filed with the Texas Commission on Environmental Quality's Office of the Chief Clerk.



Timothy J. Reidy, Staff Attorney
Environmental Law Division
State Bar No. 24058069

TEXAS
COMMISSION
ON ENVIRONMENTAL
QUALITY

NOV 20 PM 3:04

CHIEF CLERKS OFFICE