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TEXAS
COMMISSION
ON ENVIRONMENTAL
QUALITY

2008 MAY 23 PM 4: 11

CHIEF CLERKS OFFICE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

May 23, 2008

VIA HAND DELIVERY

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

RE: Wise Service Company—Water for TPDES Permit No. WQ0014708001; TCEQ
Docket No. 2008-0294-MWD

Dear Ms. Castañuela:

Enclosed for filing in the above styled application is the original and eleven copies of:

“Executive Director’s Response to Hearing Requests.”

If you have any questions or comments, please call me at 239-2679. Thank you for your attention to this matter.

Sincerely,

A handwritten signature in cursive script, reading "Scott R. Shoemaker".

Scott R. Shoemaker, Staff Attorney
Environmental Law Division MC 173

Enclosures

TCEQ Docket Number 2008-0294-MWD

2008 MAY 23 PM 4: 11

Application by	§	Before the
Wise Service Company—Water	§	TEXAS COMMISSION ON ENVIRONMENTAL QUALITY
For TPDES Permit No. WQ0014708001	§	CHIEF CLERKS OFFICE

**EXECUTIVE DIRECTOR'S RESPONSE TO HEARING REQUESTS
AND REQUESTS FOR RECONSIDERATION**

I. Introduction

The Executive Director (ED) of the Texas Commission on Environmental Quality (TCEQ or commission) files this Response to Hearing Requests and Requests for Reconsideration (Response) on the application by Wise Service Company—Water ("Applicant") for a new permit, Texas Pollutant Discharge Elimination System (TPDES) Permit Number WQ0014708001. Timely hearing requests were received from the following individuals: Ann Jolley, Rob & Stephanie Fothergill, Jana Woodruff, Wise County WCID No. 1 (the WCID), Nancy Carnahan, Thomas Long, M.D. (Thomas Long), Cathy & Richard Fothergill, Catherine Russell, Althea Forbis, Deborah White, Kevin Smith, Joylyn Woodruff, and Gordon & Roxie Ploeger.

Attached for Commission consideration are the following:

- Attachment A – Draft Permit
- Attachment B – Statement of Basis/Technical Summary and Executive Director's Preliminary Decision
- Attachment C – Compliance History of the Applicant and Facility
- Attachment D – Executive Director's Response to Public Comment (RTC)
- Attachment E – Map of the Facility Site

Copies of this Response were also provided to all parties. The RTC was previously mailed by the Office of the Chief Clerk to all persons on the mailing list.

II. Facility Description

The Applicant has applied for a new permit that would authorize the discharge of treated domestic wastewater at a daily average flow not to exceed 75,000 gallons per day. The wastewater treatment plant would serve the Canyon Springs Subdivision. The Canyon Springs Wastewater Treatment Facility would be an activated sludge process plant operated in the extended aeration mode. Treatment units would include bar screens, an aeration basin, a clarifier, a sludge digester and a chlorine contact chamber. The facility has not been constructed.

The plant site would be located approximately 3.75 miles north northwest of the intersection of U.S. Highway 380 and Farm-to-Market Road 730 and approximately 1.4 miles east of the intersection of U.S. Highway 287 and County Road 2175 in Wise County, Texas. Treated effluent would be discharged via pipeline to an unnamed tributary; then to an unnamed reservoir; then to an unnamed tributary; then to Watson Branch; then to Sandy Branch; then to West Fork Trinity River Below Bridgeport Reservoir in Segment No. 0810 of the Trinity River Basin. The unclassified receiving water uses are no significant aquatic life use for the unnamed tributary and high aquatic life use for the unnamed reservoir. The designated uses for Segment No. 0810 are high aquatic life use, public water supply, and contact recreation.

III. Procedural Background

The application for a new permit was received on April 20, 2006 and declared administratively complete on July 20, 2006. The Notice of Receipt and Intent to Obtain a Water Quality Permit (NORI) was published on August 10, 2006 in the *Wise County Messenger*. The TCEQ Executive Director completed the technical review of the application on August 21, 2006, and prepared a draft permit. The Notice of Application and Preliminary Decision (NAPD) for a Water Quality Permit was published on October 8, 2006 in the *Wise County Messenger*. The Notice of Public Meeting was published on March 15, 2007 in the *Wise County Messenger* and a public meeting was held on April 3, 2007 in Decatur, Texas. The public comment period ended on April 3, 2007. The Executive Director's Response to Public Comment (RTC) was filed on January 15, 2008. Additional time was taken to adequately prepare the RTC for this application. Although the comments raised varied in complexity, many of the comments raised very specific and technical concerns, and required much of staff's effort to address. The period for requesting reconsideration or a contested case hearing ended on February 19, 2008. Since this application was administratively complete after September 1, 1999, it is subject to House Bill 801 (76th Legislature, 1999).

IV. The Evaluation Process for 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 application was declared administratively complete on July 26, 2006 and therefore is subject to the HB 801 requirements. The commission implemented HB 801 by adopting procedural rules in 30 Texas Administrative Code (30 TAC) Chapters 39, 50, and 55.

A. Responses to Requests

“The executive director, the public interest counsel, and the applicant may submit written responses to [hearing] requests . . .” 30 TAC § 55.209(d).

Responses to hearing requests 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 Response to Comment;
- (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.

30 TAC § 55.209(e).

B. Hearing Request Requirements

In order for the commission to consider a hearing request, the commission must first determine whether the request meets certain requirements.

A request for a contested case hearing by an affected person must be in writing, must be filed with the chief clerk within the time provided . . . and may not be based on an issue that was 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 Response to Comment.

30 TAC § 55.201(c).

A hearing request must 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.

30 TAC § 55.201(d).

C. Requirement that Requestor be an "Affected Person"

In order to grant a contested case hearing, the commission must determine that a requestor is an "affected person."

- (a) For any application, 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. An interest common to members of the general public does not qualify as a personal justiciable interest.
- (b) Governmental entities, including local governments and public agencies with authority under state law over issues raised by the application may be considered affected persons.
- (c) In determining whether a person is an affected person, all factors shall be considered, including, but not limited to, the following:
 - (1) whether the interest claimed is one protected by the law under which the application will be considered;
 - (2) distance restrictions or other limitations imposed by law on the affected interest;
 - (3) whether a reasonable relationship exists between the interest claimed and the activity regulated;
 - (4) likely impact of the regulated activity on the health and safety of the person, and on the use of property of the person;
 - (5) likely impact of the regulated activity on use of the impacted natural resource by the person; and
 - (6) for governmental entities, their statutory authority over or interest in the issues relevant to the application.

30 TAC § 55.203.

E. Referral to the State Office of Administrative Hearings

“When the commission grants a request for a contested case hearing, the commission shall issue an order specifying the number and scope of the issues to be referred to SOAH for a hearing.” 30 TAC § 50.115(b). “The commission may not refer an issue to SOAH for a contested case hearing unless the commission determines that the issue: (1) involves a disputed question of fact; (2) was raised during the public comment period; and (3) is relevant and material to the decision on the application.” 30 TAC § 50.115(c).

V. Analysis of the Requests

A. Analysis of the Hearing Requests.

1. Whether the Requestors Complied With 30 TAC §§ 55.201(c) and (d).

The hearing requestors below filed timely hearing requests in writing that were not based on comments withdrawn prior to the filing of the Executive Director’s Response to Comments. Their requests gave appropriate contact information, identified their personal justiciable interests alleged to be adversely affected by the application, requested a hearing, and listed various issues.

The ED recommends the Commission find that the following individuals’ hearing requests substantially comply with the requirements of 30 TAC Sections 55.201(c) and (d): Ann Jolley, Rob & Stephanie Fothergill, Jana Woodruff, Wise County WCID No. 1, Nancy Carnahan, Thomas Long, M.D., Cathy & Richard Fothergill, Catherine Russell, Althea Forbis, Deborah White, Kevin Smith, Joylyn Woodruff, and Gordon & Roxie Ploeger.

2. Whether the Requestors Met the Requirements of an Affected Person

Catherine Russell states that she resides on land that joins the proposed facility site at the west and south. She further states that her home is within 1,000 yards of the proposed sewer site. She also states that the reservoir adjoins her farm, and that the distance from the proposed treatment plant to the reservoir appears to be approximately ¼ mile. In another letter, she states that the proposed facility site appears to be located “only a matter of feet immediately north of the northeast corner” of her farm. She also states that the tributary and frontage of the reservoir border her property on the north side. She shares the same address and location as Cathy & Richard Fothergill (or she may be Cathy Fothergill), and they are listed on the Applicant’s adjacent landowner list. Based on these facts, Catherine Russell’s health and safety and personal land or water use may be impacted by the regulated activity.

The ED recommends the Commission find that Catherine Russell is an affected person according to the factors in 30 TAC § 55.203.

Cathy and Richard Fothergill state that they own the land that adjoins the west and south of the proposed site, and further state that the proposed site appears to be only a few feet immediately north of the northeast corner of their property. They further state that a portion of the reservoir is on the north border of their land. They are included on the Applicant's adjacent landowner map. Based on these facts, Cathy and Richard Fothergill's health and safety and personal land or water use may be impacted by the regulated activity.

The ED recommends the Commission find that Cathy and Richard Fothergill are affected persons according to the factors in 30 TAC § 55.203.

Rob and Stephanie Fothergill indicate that their family owns the property "directly south and west which joins the proposed sewer site." They further indicate that they own an interior portion of the land that adjoins the west and south corner of the proposed site. They also indicate that their property is surrounded on all sides by Rob Fothergill's family's farm. Based on these facts, Rob and Stephanie Fothergill's health and safety and personal land or water use may be impacted by the regulated activity.

The ED recommends the Commission find that Rob and Stephanie Fothergill are affected persons according to the factors in 30 TAC § 55.203.

Jana Woodruff provides her address and indicates that she is a partial owner in the reservoir that is proposed to be part of the discharge route. According to the map information available to the ED, Jana Woodruff appears to be among a group of landowners that are adjacent to the reservoir. Based on these facts, Jana Woodruff's health and safety and personal land or water use may be impacted by the regulated activity.

The ED recommends the Commission find that Jana Woodruff is an affected person according to the factors in 30 TAC § 55.203.

Nancy Carnahan states that she owns property that abuts the proposed facility, and that the reservoir in the discharge route is located entirely on her property. She further states that her land and the reservoir will be adversely affected by the construction of the proposed facility and the granting of the permit. Further, Nancy Carnahan states that the discharge would take place along her fence line and onto her property and then into the reservoir. Based on map information available to the ED, Nancy Carnahan appears to be among a group of homeowners that are located adjacent to the reservoir. Based on these facts, Nancy Carnahan's health and safety and personal land or water use may be impacted by the regulated activity.

The ED recommends the Commission find that Nancy Carnahan is an affected person according to the factors in 30 TAC § 55.203.

Thomas Long states that he owns an undivided interest in the 200 acres immediately west and downstream from the discharge point for the proposed facility. He further states that his property is immediately west of and adjoining the Applicant's property. He also states that the point of discharge is approximately 200 feet east of his property boundary, and the discharge route is into a tributary that runs onto his property into the reservoir. Based on map information available to the ED, Thomas Long appears to be among a group of homeowners that are located adjacent to the reservoir. Based on these facts, Thomas Long's health and safety and personal land or water use may be impacted by the regulated activity.

The ED recommends the Commission find that Thomas Long, M.D. is an affected person according to the factors in 30 TAC § 55.203.

Althea Forbis states that she, along with her four children, own the reservoir that the proposed facility plans to discharge into. She also states that the wastewater disposal site is about 7/10 of a mile from the reservoir. Althea Forbis indicates that James Forbis is her late husband and shares the same P.O. Box as James Forbis, who is listed on the Applicant's adjacent landowner list. Based on her indications, she appears to live on and likely owns the James Forbis property, which is considered adjacent based on the Applicant's landowner list. Based on map information available to the ED, Althea Forbis appears to be among a group of homeowners that are located adjacent to the reservoir. Based on these facts, Althea Forbis' health and safety and personal land or water use may be impacted by the regulated activity.

The ED recommends the Commission find that Althea Forbis is an affected person according to the factors in 30 TAC § 55.203.

Wise County WCID No.1 states that it is a legal sponsor of the Big Sandy Watershed Project of which Site #35 is affected. Site #35 is the reservoir in the discharge route. Additionally, it states that it joins the other three sponsors in operation and maintenance of the site. Further, it states that it has a legal, recorded perpetual easement from the landowners with specific responsibilities. They also state that discharging into the reservoir would violate item #5 of their easement, which states, "Only grantee, its agents, representatives, or licensees shall have the right to control the level of water impounded by the above works of improvement." The WCID states that the acreage where the proposed facility will reside is subject to easements in its favor, which gives it the sole right to control the level of both the receiving water and the reservoir, and that the discharge would affect those levels in violation of the easement. Based on these facts, there may be a reasonable relationship between the interest the WCID claims and the regulated activity. Also, the regulated activity may have an impact on their use of the reservoir.

The ED recommends the Commission find that Wise County WCID No. 1 is an affected person according to the factors in 30 TAC § 55.203.

Ann Jolley indicates that her property is located approximately ½ mile from the proposed facility location. Additionally, she indicates that the reservoir and dam is less than ½ mile north of her home and property. However, she does not appear to be located adjacent to the facility or discharge route. Therefore, it is unlikely that she will be impacted by the regulated activity on her health and safety or use of her property.

The ED recommends the Commission find that Ann Jolley is not an affected person according to the factors in 30 TAC § 55.203.

Deborah White provided her physical address and states that the proposed facility would be constructed behind her property. Based on map information available to the ED, Deborah White appears to be upstream from the point of discharge. Therefore, it is unlikely that she will be impacted by the regulated activity on her health and safety or use of her property.

The ED recommends the Commission find that Deborah White is not an affected person according to the factors in 30 TAC § 55.203.

Kevin Smith states that his family owns property approximately ¼ to ½ mile from the proposed facility site. He further states that his house is within 600-800 yards of the proposed facility site. Based on information available to the ED at this time, it appears that Kevin Smith is not located adjacent to the facility site or discharge route, and appears to be upstream. Therefore, it is unlikely that he will be impacted by the regulated activity on his health and safety or use of his property.

The ED recommends the Commission find that Kevin Smith is not an affected person according to the factors in 30 TAC § 55.203.

Gordon and Roxie Ploeger provide their physical address and raise issues related to the proposed facility. However, based on map information available to the ED at this time, Gordon and Roxie Ploeger do not appear to be located adjacent to the facility or discharge route. Therefore, it is unlikely that they will be impacted by the regulated activity on their health and safety or use of their property.

The ED recommends the Commission find that Gordon and Roxie Ploeger are not affected persons according to the factors in 30 TAC § 55.203.

Joylyn Woodruff provides her physical address and raises issues related to the proposed facility. However, she appears to be over ½ mile away and likely upstream from the discharge route. Therefore, it is unlikely that she will be impacted by the regulated activity on her health and safety or use of her property.

The ED recommends the Commission find that Joylyn Woodruff is not an affected person according to the factors in 30 TAC § 55.203.

B. *Whether the Issues Raised are Referable to SOAH for a Contested Case Hearing*

The Executive Director has analyzed the issues raised in accordance with the regulatory criteria. The issues raised for this application and the Executive Director's recommendations follow.

1. Whether the permit application satisfies applicable regulatory requirements?

Many requestors raised various issues regarding application errors, omissions, or mistakes. This issue was raised during the comment period, raises a concern related to water quality permitting requirements, and is therefore relevant and material to a decision on this application.

The ED recommends the Commission find that this issue is referable.

2. Whether the discharge route was appropriately assessed under the Texas Surface Water Quality Standards?

Many requestors raised issues disputing the characterization of the discharge route, particularly the reservoir. This issue was raised during the comment period, raises a concern related to water quality permitting requirements, and is therefore relevant and material to a decision on this application.

The ED recommends the Commission find that this issue is referable.

3. Whether the draft permit fails to satisfy regulatory requirements intended to protect water quality, human health, the environment, wildlife, and existing uses?

Many requestors raise issues related to water quality, human health, the environment, wildlife, and existing uses. These issues were raised during the comment period, raise a concern related to water quality permitting requirements, and are therefore relevant and material to a decision on this application.

The ED recommends the Commission find that this issue is referable.

4. Whether the draft permit is based on incorrect numerical models?

Many requestors disputed the validity of the numerical models used to develop the draft permit. This issue was raised during the comment period, raises a concern related to water quality permitting requirements, and is therefore relevant and material to a decision on this application.

The ED recommends the Commission find that this issue is referable.

5. Whether the proposed facility location satisfies applicable regulatory requirements intended to protect private water wells?

A number of requestors raised issues related to the facility location and private wells. This issue was raised during the comment period, raises a concern related to water quality permitting requirements, and is therefore relevant and material to a decision on this application.

The ED recommends the Commission find that this issue is referable.

6. Whether the applicant will be the owner of the proposed facility?

A number of requestors dispute whether the Applicant owns the land where the proposed facility would be located. This issue was raised during the comment period, raises a concern related to water quality permitting requirements, and is therefore relevant and material to a decision on this application.

The ED recommends the Commission find that this issue is referable.

7. Whether the proposed activity satisfies applicable regulatory requirements intended to address odor?

A number of requestors raised issues related to odor. This issue was raised during the comment period, raises a concern related to water quality permitting requirements, and is therefore relevant and material to a decision on this application.

The ED recommends the Commission find that this issue is referable.

8. Whether the proposed facility location meets applicable regulatory requirements intended to provide for proper facility location?

A number of requestors raised issues related to the proposed facility location. Facility location requirements are addressed in 30 TAC § 309.13. This issue was raised during the comment period, raises a concern related to water quality permitting requirements, and is therefore relevant and material to a decision on this application.

The ED recommends the Commission find that this issue is referable.

9. Whether notice for the proposed activity satisfies applicable regulatory requirements intended to provide public notice?

Many hearing requestors raised issues related to notice, including the failure to provide mailed notice to landowners, and deficiencies in the published notices, particularly the discharge route description. This issue was raised during the comment period, raises a concern related to water quality permitting requirements, and is therefore relevant and material to a decision on this application.

The ED recommends the Commission find that this issue is referable.

10. Whether development in the area will affect the water table in the area?

Several requestors raise concerns related to how the facility and development would affect the local water table. This issue relates to water quantity, or raises issues related to impacts to water supply, which is not related to water quality, and is not considered during the permitting process. Accordingly, this issue is not relevant or material to a decision on this application.

The ED recommends the Commission find that this issue is not referable.

11. Whether the proposed activity would result in a trespass or easement violation for the requestors?

Several requestors indicate that the discharge would constitute a trespass on their land or violate easements concerning the ability to control the level of the reservoir. Issuance of the draft permit would not grant the Applicant the right to use private or public property for conveyance of wastewater along the discharge route described in the permit. As indicated in the draft permit, this includes property belonging to any individual, partnership, corporation, or other entity. Additionally, the Applicant would be required to acquire property rights as may be necessary to use the discharge route. Since the draft permit does not authorize trespass or easement violations, it is not further considered during the permitting process. Accordingly, this issue is not relevant or material to a decision on this application.

The ED recommends the Commission find that this issue is not referable.

12. Whether the proposed activity will result in flooding or erosion in violation of applicable regulatory requirements?

Several requestors assert that the reservoir was constructed for flood or erosion control. They also allege that a discharge to the reservoir would adversely affect these purposes. These issues raise concerns with water volume, not water quality, and they are not currently addressed in the permitting process for this application. Accordingly, these issues are not relevant and material to a decision on this application.

The ED recommends the Commission find that this issue is not referable.

13. Whether the facility will affect air quality not related to odor?

Several requestors allege that the proposed activity would impact air quality. Under air regulations in 30 TAC § 106.532, the proposed activity in this application is permitted by rule with regard to air quality issues. Otherwise, air quality issues not related to odor are not considered during the permitting process for this application. Accordingly, this issue is not relevant and material to a decision on this application.

The ED recommends the Commission find that this issue is not referable.

14. Whether the Applicant will operate the facility in a manner that will result in malfunctions or environmental harm?

Several issues were raised concerning malfunctions of the plant and the Applicant's experience and ability to operate the facility. This issue refers to a future possible enforcement matter, and is therefore not relevant or material to a decision on this application.

The ED recommends the Commission find that this issue is not referable.

15. Whether the proposed activity will deface the southern portion of the LBJ Grasslands or make the surrounding area unattractive for visitors?

Rob and Stephanie Fothergill and Kevin Smith indicate that the proposed facility site and development would deface the southern portion of the LBJ Grasslands and make it unattractive for visitors. This issue relates to aesthetic issues, which are not considered during the permitting process. Accordingly, this issue is not relevant or material to a decision on this application.

The ED recommends the Commission find that this issue is not referable.

16. Whether the proposed activity will result in nuisance noise affecting the requestors?

Jana Woodruff indicates that noise from the facility will be an imposition on the area, disrupting peace and tranquility. Althea Forbis states that “any noise at all from such a facility will be an imposition on the area.” The draft permit does not authorize any invasion of personal rights, such as conditions related to noise. Noise is not addressed during the permitting process. Therefore, this issue is not relevant or material to a decision on this application.

The ED recommends the Commission find that this issue is not referable.

17. Whether construction of the facility would cause stormwater runoff, and if so, whether the runoff would have adverse effects?

To construct the facility, the Applicant would have to apply for authorization under the construction general permit. Therefore, this issue refers to a separate matter that is not considered during this permitting decision. Accordingly, this issue is not relevant or material to a decision on this application.

The ED recommends the Commission find that this issue is not referable.

18. Whether an inspection of the proposed facility site and discharge route is required by applicable regulatory requirements prior to permit issuance?

Several requestors assert that an inspection of the proposed facility site and discharge route should be required before permit issuance. Applicable regulations do not require onsite inspection prior to permit issuance.¹ Accordingly, this issue is not relevant or material to a decision on this application.

The ED recommends the Commission find that this issue is not referable.

19. Whether the proposed activity will affect the structural integrity of the reservoir’s dam?

While issues regarding adding volume to the reservoir were raised during the comment period, no specific issues related to the dam’s structural integrity were raised during the public comment period. The structural integrity of a portion of the discharge route is not considered during the permitting process. Accordingly, this issue was not raised during the public comment period and is not relevant or material to a decision on this application.

The ED recommends the Commission find that this issue is not referable.

¹ TCEQ staff visited the Applicant’s and Thomas Long’s property prior to the public meeting on April 3, 2007. During this visit, staff was able to see the front of the applicant’s development area and the reservoir. Staff did not see the specific proposed facility site during the visits.

20. Whether developers are already misusing roads and cutting locks on exterior gates to access the land prior to permit issuance?

Several requestors assert that the developers are misusing the roads and cutting locks on exterior gates to access the land before they have permits to start. This issue refers to activities unrelated to the specific water quality permitting decision at hand. Accordingly, this issue is not relevant or material to a decision on this application.

The ED recommends the Commission find that this issue is not referable.

21. Whether the proposed activity will affect property values?

Property values are not considered during the permitting process, and are therefore not relevant or material to a decision on this application.

The ED recommends the Commission find that this issue is not referable.

22. Whether the Applicant should seek an alternative discharge route?

Nancy Carnahan states that the Applicant should be required to seek a discharge route that does not constitute a trespass, such as across the developer's own property. Currently, applicants are not required to consider alternative discharge routes during the permitting process. Accordingly, this issue is not relevant or material to a decision on this application.

The ED recommends the Commission find that this issue is not referable.

23. Whether the developer wants the facility in order to subdivide his acreage into smaller plots?

This issue relates to activities by a developer that relate to development plans that do not affect the specific permitting decision at hand. This issue does not raise a water quality issue to be considered during this permitting process. Accordingly, it is not relevant or material to a decision on this application.

The ED recommends the Commission find that this issue is not referable.

24. Whether the local electric cooperative failed to act in accordance with its rules and regulations?

Several requestors raise concerns related to the Wise Electrical Cooperative not acting in accordance with their rules and regulations. These issues relate to activities by an electric cooperative that are not considered or addressed by a decision on this application. Accordingly, this issue is not relevant or material to a decision on this application.

The ED recommends the Commission find that this issue is not referable.

25. Whether TCEQ is more concerned with promoting “big business” rather than environmental quality?

Althea Forbis states, “I am also upset to know that the letterhead on your stationary doesn’t really mean that your agency is concerned with preserving environmental quality of Texas land and water resources but that you are more concerned with promoting big business.” This issue does not raise a specific issue related to this permitting matter. Accordingly, this issue is not relevant or material to a decision on this application.

The ED recommends the Commission find that this issue is not referable.

26. Whether the housing development connected to the facility will increase traffic?

Catherine Russell states that the proposed housing development connected to the facility will increase traffic on her road so much that she will have a difficult time getting out of her driveway. Traffic issues are not currently considered during the permitting process. Therefore, this issue is not relevant or material to a decision on this application.

The ED recommends the Commission find that this issue is not referable.

27. Whether the proposed residential community will consist of smaller plots resulting in the need for a community water and sewage system?

Joylyn Woodruff states that she has concerns regarding the proposed residential community in that the new plans indicate that lots will be significantly smaller, meaning that the homeowners will need a community water and sewage system instead of individual systems. This issue relates to development issues that are not considered during the permitting process. Accordingly, this issue is not relevant or material to a decision on this application.

The ED recommends the Commission find that this issue is not referable.

28. Whether individual septic systems will provide more control and less pollution than the proposed facility?

Joylyn Woodruff states that she firmly believes individual septic systems would provide more control and less pollution than the proposed facility. This issue does not raise an issue that is considered during the permitting process for this specific application. Accordingly, it is not relevant or material to a decision on this application.

The ED recommends the Commission find that this issue is not referable.

VII. Requests for Reconsideration (RFR)

Wise County WCID No. 1, Nancy Carnahan, and Thomas Long, M.D. also requested reconsideration of the Executive Director's decision.

RFR 1. Whether the permit application satisfies applicable regulatory requirements?

This issue was addressed in Response 2 of the RTC:

RESPONSE 2:

Based on information provided by individuals at the public meeting held on April 3, 2007 in Decatur, Texas, the Executive Director acknowledges that the "unnamed reservoir" is properly named Big Sandy Creek Watershed Site No. 35 (hereinafter "the reservoir"). However, this naming of the reservoir did not affect the staff's analysis of the impact of the wastewater on the reservoir, as it was identified by TCEQ staff and considered in the development of the draft permit.

By submitting a signed and completed application, the Applicant certified under penalty of law that, to the best of their knowledge and belief, the information submitted is true, accurate, and complete. In the event the applicant or 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 must promptly submit such facts or information. A permit may be modified, suspended, or revoked, in whole or in part, if it is determined that the permit was obtained by misrepresentation or failure to disclose fully all relevant facts.

This issue has been addressed in the RTC and therefore does not raise a new issue previously unconsidered by the ED. Further, the ED has recommended referral of a similar issue to SOAH for determination. Accordingly, this issue does not justify reconsideration of the ED's Preliminary Decision on this application.

The ED recommends the Commission find that this issue does not warrant reconsideration of the ED's Preliminary Decision.

RFR 2. Whether the discharge route was appropriately assessed under Texas Surface Water Quality Standards?

This issue was addressed in Responses 2 (as quoted in RFR 1 above), 4, and 5 of the RTC:

RESPONSE 4:

For new permit and major amendment applications, applicants must provide a landowners list and a map showing their location(s). According to the application instructions, affected landowners are landowners located adjacent to the wastewater treatment plant site and landowners with property on either side of the receiving stream for approximately one mile downstream from the point of discharge.

The Applicant submitted correspondence dated July 13, 2007, which provided a revision to the landowners list and map that was previously submitted in the application. Based on a review of the information, the Applicant submitted a landowner map that appears to identify landowners surrounding the Applicant's property boundaries and those within one mile downstream of the point of discharge. In this map, the Applicant indicated fifteen tracts of land that were adjacent to the Applicant's property boundary and landowners with property on either side of the receiving stream for approximately one mile downstream from the point of discharge. Based on the map, tracts 1-6 are owned by Larry Cole, tract 7 is owned by Shawn White, tract 8 is owned by C.A. Russell, tract 9 is owned by James Forbis, tract 10 is owned by Gordon & Roxie Ploeger, tract 11 is owned by Wesley W. Simmons, tract 12 is owned by Shawn White, tract 13 is owned by J.K. Miller & Gary S. Helton, tract 14 is owned by Cathy Russell Fothergill and tract 15 is owned by James Forbis. The map also appears to map out the property boundaries of these landowners. The TCEQ mails notice of the application to the listed landowners and others on the mailing list for the application, which is maintained by the Office of the Chief Clerk.

If the proposed point of discharge is to a reservoir, the TCEQ application instructions require the applicant to clearly map out the property boundaries of landowners for a one-half mile radius from the point of discharge. Since the point of discharge for this application is not directly into the reservoir, this particular requirement does not apply. However, the application instructions do require applicants to clearly map out the property boundaries of all landowners surrounding the point of discharge and on both sides of the discharge route for one full stream mile downstream of the point of discharge. Based on a review of the map provided, the Applicant provided this information.

For all applications, the agency prepares two public notices—the Notice of Receipt and Intent to Obtain a Water Quality Permit (NORI) and the Notice of Application and Preliminary Decision for a Water Quality Permit (NAPD). The Applicant is required to publish these notices in a local newspaper and to provide a copy of the application, proposed draft permit and Executive Director's Preliminary Decision in a public place for

viewing and copying. The NORI and the NAPD are also mailed to the individuals on the landowner list and mailing list for the application.

The NORI is the initial notice that informs the public that a permit application was submitted. It is published early in the process before the Executive Director's staff conducts its technical review of the application. For this application, the NORI was required to be published in accordance with 30 TAC §§ 39.411(1)-(9), (12), and 39.551(b)(1). The Applicant submitted an affidavit of publication that indicated that the NORI was published in the *Wise County Messenger* on August 10, 2006. Based on a review of the text of the NORI, it meets applicable requirements. According to the applicable requirements, the text of the NORI for this application must include the following, generally: (1) the name and address of the agency and telephone number of an agency contact from whom interested persons may obtain further information; (2) the name, address, and telephone number of the applicant and a description of the manner in which a person may contact the applicant for further information; (3) a brief description of the location and nature of the proposed activity; (4) a brief description of public comment procedures; (5) a brief description of procedures by which the public may participate in the final permit decision, generally; (6) the application or permit number; (7) if applicable, a statement that the application or requested action is subject to the Coastal Management Program and must be consistent with the Coastal Management Program goals and policies; (8) the location, at a public place in the county in which the facility is located or proposed to be located, at which a copy of the application is available for review and copying; (9) a description of the procedure by which a person may be placed on the mailing list in order to receive information about the application; and (10) any additional information required by the Executive Director or needed to satisfy public notice requirements of any federally authorized program.

Applicants must publish the NAPD at least once in the same newspaper as the NORI. After the draft permit was written, the Applicant submitted an affidavit of publication indicating that the NAPD was published in the *Wise County Messenger* on October 8, 2006. Based on a review of the text of the NAPD, it has met applicable requirements. The Applicant has complied with TCEQ's regulations by publishing the NORI and the NAPD in the above-mentioned newspapers.

The Applicant indicates in their notices that the address for the place of public viewing is the John A. and Katherine G. Jackson Public Library, located at 1700 South Farm-to-Market Road 51, Decatur, Texas. The Executive Director's staff contacted the library and the address listed in the notices was confirmed. The Applicant is required to provide the name, physical address and the county of the public place where the application is available for viewing and copying. The application states that the information would be available for viewing at the John A. and Katherine G. Jackson Public Library, 1700 South Farm-to-Market Road 51 in Decatur, Texas. The above information was therefore stated in the NORI and the NAPD.

While it is recognized that the applicant did not include the 16 acre reservoir in the application, the reservoir was identified by TCEQ staff and fully considered in the development of the draft permit. Therefore, the discharge route identified in the NAPD was based on the review by the Water Quality Standards Team. The Standards Team determined that the treated effluent would be discharged via pipeline to an unnamed tributary, then to the reservoir, then to an unnamed tributary, then to Watson Branch; then to Sandy Branch, then to West Fork Trinity River Below Bridgeport Reservoir in Segment No. 0810 of the Trinity River Basin. This discharge route was provided in the NAPD. Based on information provided by individuals at the public meeting held on April 3, 2007 in Decatur, Texas, the Executive Director acknowledges that the "unnamed reservoir" is properly named Big Sandy Creek Watershed Site No. 35 (hereinafter "the reservoir"). Based on the information available for this application, it appears that the notice requirements for this application have been met.

By submitting a signed and completed application, the Applicant certified under penalty of law that, to the best of their knowledge and belief, the information submitted was true, accurate, and complete. In the event the applicant or 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 must promptly submit such facts or information. A permit may be modified, suspended, or revoked, in whole or in part, if it is determined that the permit was obtained by misrepresentation or failure to disclose fully all relevant facts.

RESPONSE 5:

While it is recognized that the applicant did not include the 16 acre reservoir in the application, the reservoir was identified by TCEQ staff and fully considered in the development of the draft permit. The unnamed tributary provided in the permit application was also assessed in accordance with the Texas Surface Water Quality Standards as water in the state. By submitting a signed and completed application, the Applicant certified under penalty of law that, to the best of their knowledge and belief, the information submitted is true, accurate, and complete. In the event the applicant or 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 must promptly submit such facts or information. A permit may be modified, suspended, or revoked, in whole or in part, if it is determined that the permit was obtained by misrepresentation or failure to disclose fully all relevant facts.

At this time, the Executive Director characterizes the discharge route as follows: Treated effluent would be discharged via pipeline to an unnamed tributary, then to the reservoir, then to an unnamed tributary, then to Watson Branch; then to Sandy Branch, then to West Fork Trinity River Below Bridgeport Reservoir in Segment No. 0810 of the Trinity River Basin.

This issue has been addressed in the RTC and therefore does not raise a new issue previously unconsidered by the ED. Further, the ED has recommended referral of a similar issue to SOAH for determination. For these reasons, this issue does not justify reconsideration of the ED's Preliminary Decision on this application.

The ED recommends the Commission find that this issue does not warrant reconsideration of the ED's Preliminary Decision.

RFR 3. Whether the draft permit fails to satisfy regulatory requirements intended to protect water quality, human health, the environment, wildlife, and existing uses?

This issue was addressed in Response 1 of the RTC:

RESPONSE 1:

The draft permit was developed to protect aquatic life and human health in accordance with Texas Surface Water Quality Standards and 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 draft 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 the treated effluent meets Texas Surface Water Quality Standards for the protection of surface water and human health according to TCEQ rules and policies.

The effluent limits in the draft permit are set to maintain and protect existing instream uses. As part of the application process, the Executive Director 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 unclassified receiving water uses for the unnamed tributary are no significant aquatic life use. The unclassified receiving water uses for the reservoir are high aquatic life use. The designated uses for Segment No. 0810 are high aquatic life use, public water supply, and contact recreation. In order to determine whether the action to be authorized by the draft permit would affect existing uses related to aquatic life and contact recreation, antidegradation reviews were performed. The antidegradation reviews preliminarily determined that existing water quality uses would not be impaired by this permit action—existing uses would be maintained and protected if the facility is operated and maintained as required by the proposed permit and applicable regulations. These determinations may be reexamined if new information is received.

Most common water quality issues affecting livestock production are excessive salinity (high concentration of minerals), high nitrogen content, bacterial contamination, and heavy growths of blue-green algae. Salinity levels typically have to be in excess of

5,000 mg/L total soluble salts before affecting cattle. These salinity levels are in excess of what would be acceptable for drinking water in a household, which is less than 1,000 mg/L. Since this facility is not proposing to accept waste streams from facilities which may be concentrating salts, it is expected that the salinity of the wastewater would only marginally increase from the salinity of the receiving stream. The facility is proposing to chlorinate the discharge to address bacterial contamination issues. Heavy growths of algae have been addressed by adding a phosphorous limit to the permit. The reservoir is not a designated drinking water supply, and all surface waters should receive treatment (at a minimum chlorination) before entering a home for consumption. Accordingly, the wastewater treatment facility would not be required to meet drinking water standards.

The discharge from this permit action is not expected to have an effect on any federal endangered or threatened aquatic or aquatic dependent species or proposed species or their critical habitat. The application for this facility was reviewed to determine whether the discharge could potentially have an adverse effect on an aquatic or aquatic-dependent federally endangered or threatened species, including proposed species. TCEQ staff followed the screening process for aquatic or aquatic-dependent federally endangered and threatened species contained in the *Procedures to Implement the Texas Surface Water Quality Standards*, RG-194 (January 2003).

The draft permit requires that the facility be designed to produce an effluent quality in compliance with the permit parameters required in the draft permit. The effluent limits in the draft permit, based on a 30-day average, are 5 milligrams per liter (mg/L) 5-day carbonaceous biochemical oxygen demand, 5 mg/L total suspended solids, 2 mg/L ammonia-nitrogen, 1 mg/l total phosphorus and 4.0 mg/L minimum dissolved oxygen. The effluent must contain a chlorine residual of at least 1.0 mg/L and may not exceed a chlorine residual of 4.0 mg/L after a detention time of at least 20 minutes based on peak flow. The effluent limits for 5-day carbonaceous biochemical oxygen demand, total suspended solids, ammonia-nitrogen, and phosphorus are some of the more stringent effluent limits currently used. The plant would be designed as an activated sludge facility operating in the extended aeration mode. If requested by the Wastewater Permitting Section, the permittee must submit plans, specifications and a final engineering design report. The permittee must clearly show how the treatment system will meet the permitted effluent limitations required by the permit.

The Applicant is required to analyze the treated effluent prior to discharge and to provide monthly reports to the TCEQ that include the results of the analyses. The Applicant may either collect and analyze the effluent samples itself, or it may contract with a third party for either or both the sampling and analysis. However, all samples must be collected and analyzed according to 30 TAC Chapter 319, Subchapter A, Monitoring and Reporting System. The Applicant is also required to further notify the agency if the effluent does not meet the permit limits according to the requirements in the permit. Additionally, the TCEQ regional staff may sample the effluent during routine inspections or in response to a complaint.

TCEQ staff evaluated the potential impacts on water quality associated with the proposed wastewater discharge. The treated effluent from the wastewater treatment facility would be discharged via pipeline to an unnamed tributary, then to a reservoir, then to an unnamed tributary, then to Watson Branch, then to Sandy Branch and then to West Fork Trinity River Below Bridgeport Reservoir. Because treated effluent from the facility would be flowing away from the Lyndon B. Johnson Grasslands, the discharge itself is not likely to have a direct impact on the grasslands. Typically, the Executive Director does not consider land use concerns such as the movement of wildlife from the grasslands to other property or visual appeal to grasslands visitors during the permitting process.

It is the responsibility of the permittee to acquire property rights as may be necessary to use the discharge route. The 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 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.

This issue has been addressed in the RTC and therefore does not raise a new issue previously unconsidered by the ED. Further, the ED has recommended referral of a similar issue to SOAH for determination. Accordingly, this issue does not justify reconsideration of the ED's Preliminary Decision on this application.

The ED recommends the Commission find that this issue does not warrant reconsideration of the ED's Preliminary Decision.

RFR 4. Whether the proposed activity would result in a trespass or easement violation for the requestors?

This issue was addressed in Responses 6 and 7 of the RTC:

RESPONSE 6:

The effluent limits set out in the draft permit for the protection of dissolved oxygen levels in the reservoir were developed with the aid of a numerical model. Numerical models are routinely used by TCEQ staff because they provide a systematic way for estimating the impact of a discharge on the level of dissolved oxygen in a water body. Generally, dissolved oxygen modeling accounts for the oxygen demand exerted by constituents in the wastewater, demand exerted by the sediments in the reservoir, and oxygen transfer from the atmosphere into reservoir waters. The model was conservatively structured to evaluate the reservoir under conditions when dissolved oxygen is expected to be at its minimum. The analysis was performed for a scenario simulating a discharge during summertime conditions when only effluent from this facility is contributing flow to the reservoir and oxygen demanding constituents and flow are at maximum allowable

values. Model results, when considered with the inherently conservative nature of the critical condition formulation, suggest that a dissolved oxygen level consistent with a high aquatic life use should be maintained in the reservoir. Accordingly, the draft permit has incorporated a dissolved oxygen limit consistent with this model.

Discharges from domestic wastewater facilities are fairly uniform in nature and have definite constituents of concern. These constituents most often include bacteria and nutrients. The facility is proposing to disinfect bacteria by chlorination, and phosphorous limits were placed in the draft permit to help protect the reservoir from nutrient loadings. Information collected from water quality monitoring stations in the watershed were used to assess any potential water quality issues in the area, and none were identified which might be exacerbated by a discharge of this nature. The finding that existing uses would be maintained and protected can be amended with new information provided by the public, additional monitoring data, and/or any further information regarding the facility itself.

From the applicant's description and photos provided in the permit application, the initial point of discharge is into a dry portion of the stream; however, it was noted in the permit review process that the characteristics of the stream change very rapidly shortly after the point of discharge. Reservoir water begins to back up into the creek as the creek transitions into a reservoir. In accordance with the Texas Surface Water Quality Standards, any stream which has zero flow for at least one week during most years is an intermittent stream and is assigned an aquatic life use of "no significant," but protection is still afforded to these streams. A minimum dissolved oxygen criterion and acute aquatic life criteria must still be met in an intermittent stream. However, the effluent limits placed in the permit regarding nutrient loading and dissolved oxygen protection were all driven by the fact that the intermittent stream transitions very quickly into a reservoir. Therefore, the effluent limits are more stringent to protect the water quality in the reservoir.

RESPONSE 7:

It is the responsibility of the permittee to acquire property rights as may be necessary to use the discharge route. The 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 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.

TCEQ's jurisdiction is established by the Legislature and is required to address the issues set forth in Chapter 26 of the Texas Water Code. To implement this statutory mandate, TCEQ is tasked to issue permits that are consistent with applicable law. Texas Water Code § 26.027 authorizes TCEQ to issue permits for wastewater discharge into water in the state, provided the discharger does not violate applicable rules or regulations.

This issue has been addressed in the RTC and therefore does not raise a new issue previously unconsidered by the ED. Accordingly, this issue does not justify reconsideration of the ED's Preliminary Decision on this application.

The ED recommends the Commission find that this issue does not warrant reconsideration of the ED's Preliminary Decision.

RFR 5. Whether the proposed activity will result in flooding or erosion in violation of applicable regulatory requirements?

This issue was addressed in Response 11 of the RTC:

RESPONSE 11:

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, reservoirs and coastal waters. TCEQ does not address flooding or erosion issues associated with a discharge in the wastewater permitting process. The draft permit includes effluent limits and other requirements that the Applicant must meet even during rainfall events and periods of flooding. For flooding concerns, please contact the local plain administrator for your area. If you need help finding the local floodplain administrator, please call the TCEQ Resource Protection Team at (512) 239-4691.

Based on information obtained during the public meeting held on April 13, 2007 in Decatur, Texas, there is an overflow valve that allows the water to flow out of the reservoir when it reaches a certain level. In this case, it would seem to be unlikely that the level would rise above the set level.

The issuance of the permit would not grant the Applicant the right to use private or public property for conveyance of wastewater along the discharge route. Also, the issuance of the permit would not authorize any invasion of personal rights or any violation of federal, state, or local laws or regulations. Before commencing any activity authorized in the draft permit, the Applicant would have to acquire property rights necessary to use the discharge route. Accordingly, the draft permit does not authorize the Applicant to build a facility on another's land or discharge onto another's property without permission.

The draft permit does not limit the ability of a nearby landowner to seek relief from a court in response to activities that may or do interfere with the use and enjoyment of their property. If the Applicant's activities create a nuisance condition, TCEQ may be contacted to investigate whether a permit violation has occurred. Potential permit violations may be reported to TCEQ Region 4 Office in Dallas at (817) 588-5800, or by calling the state-wide toll-free number at 1-888-777-3186. Citizen complaints may also be filed online at the following website:

<http://www.tceq.state.tx.us/enforcement/complaints/index.html>.

Please refer to responses 1 and 6 for issues related to aeration, the water table, recreational use, and aquatic life use.

This issue has been addressed in the RTC and therefore does not raise a new issue previously unconsidered by the ED. Accordingly, this issue does not justify reconsideration of the ED's Preliminary Decision on this application.

The ED recommends the Commission find that this issue does not warrant reconsideration of the ED's Preliminary Decision.

RFR 6. Whether notice for the proposed activity satisfies applicable regulatory requirements intended to provide public notice?

This issue was addressed in Responses 4 (as quoted in RFR 2 above) and 15 of the RTC:

RESPONSE 15:

The Applicant did submit a permit application on July 22, 2005, under the name of Brighton Water Systems. However, a letter dated June 19, 2006 from the Applicant stated the correct legal name on file with the Texas Secretary of States to be Wise Service Company – Water. Therefore, the change was noted and applied in the processing of the permit.

This issue has been addressed in the RTC and therefore does not raise a new issue previously unconsidered by the ED. Further, the ED has recommended referral of a similar issue to SOAH for determination. Accordingly, this issue does not justify reconsideration of the ED's Preliminary Decision on this application.

The ED recommends the Commission find that this issue does not warrant reconsideration of the ED's Preliminary Decision.

RFR 7. Whether the draft permit meets applicable regulatory requirements intended to provide for protection in the event of malfunctions or plant failure?

This issue was addressed in Responses 3 and 10 of the RTC:

RESPONSE 3:

The rules in 30 TAC Chapter 317, Design Criteria for Sewage Systems, provide for permit issuance before final design of the facility. The proposed draft permit requires the Applicant to meet the design criteria requirements for domestic wastewater treatment plants prior to construction of the facility. Other Requirement No. 8 on page 23 of the proposed draft permit requires the Applicant to clearly show how the treatment system will meet the final permitted effluent limitations required for each phase of the proposed draft permit. The proposed draft permit requires the Applicant to submit to the TCEQ Wastewater Permitting Section a summary submittal letter for the design criteria according to 30 TAC § 317.1, prior to construction of each phase of the wastewater treatment facilities. The summary letter must be signed and sealed by a licensed professional engineer.

The Applicant is required to take certain steps to minimize the possibility of an accidental discharge of untreated wastewater. For example, the draft permit requires that the Applicant must at all times ensure that the facility and all of its systems of collection, treatment, and disposal are properly operated and maintained. Under the draft permit, the Applicant would be responsible for installing 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.

TCEQ's regulations require that domestic wastewater treatment plants be operated and maintained by operators holding a valid certificate of competency at the required level as defined in 30 TAC Chapter 30. This facility must be operated by a chief operator holding a Category C license or higher. The facility must be operated a minimum of five days per week by the operator and they must be available by telephone or pager seven days per week.

TCEQ's jurisdiction is established by the Legislature and is limited to the issues set forth in Chapter 26 of the Texas Water Code. To implement this statutory mandate, TCEQ issues permits that must be consistent with applicable law. The Executive Director must consider the quality of the discharge and its effect on the quality of the receiving waters, but the Executive Director cannot require an Applicant to use independent entities to provide monitoring services.

The Applicant is required to monitor and sample the treated effluent prior to discharge and provide monthly reports to TCEQ that include the results. All samples must

be collected and analyzed according to 30 TAC Chapter 319, Subchapter A, Monitoring and Reporting System. For this application, the draft permit requires the Applicant to sample the discharge flow five times per week, carbonaceous biochemical oxygen demand once per week, total suspended solids once per week, ammonia nitrogen once per week, chlorine residual five times per week, phosphorous once per week, and dissolved oxygen once per week. The Applicant is required to notify the agency if the effluent does not meet the permit limits according to the requirements in the permit. TCEQ regional staff may also sample the effluent during routine inspections or in response to a complaint.

The Executive Director is authorized by statute to initiate an enforcement action based on information provided by a private individual (Tex. Water Code §7.0025; 30 Tex. Admin. Code §70.4). Agency protocols, procedures, and guidelines must be used when collecting and submitting information or evidence to ensure that the information or evidence is scientifically reliable and legally defensible. Protocols vary depending on the nature of the problem, for example, water quality sampling procedures are very different from nuisance odor evaluation. If a protocol has specific training requirements, training must be completed before submitting information based on it. If information is gathered in the form of physical sampling data, the analysis of that data must be completed by a laboratory that follows established protocols to produce scientifically reliable information. You may contact the TCEQ at 1-888-777-3186 to receive a list of laboratories or if you have questions about sampling protocols and procedures.

The Applicant 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. These violations include knowingly making any false statement, representation, or certification on any report, record, or other document submitted or required to be maintained under the 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.

If an unauthorized discharge occurs, the Applicant is required to report it to TCEQ within 24 hours. The Applicant would be subject to potential enforcement action for failure to comply with TCEQ rules or the permit, including unauthorized discharges. TCEQ regional staff investigates complaints and the agency takes appropriate enforcement action if the investigator documents a violation. Anyone may contact TCEQ at 1-888-777-3186 or by e-mail at complaint@TCEQ.state.tx.us to report a potential violation of the Applicant's permit or regulations. Citizens may also gather data to show that a permittee is not in compliance with TCEQ rules. For more information on citizen collected evidence, please see:

www.TCEQ.state.tx.us/enforcement/complaints.html.

RESPONSE 10:

Wastewater treatment facility permittees must employ or contract with at least one licensed wastewater treatment facility operator holding a valid license or registration. TCEQ's regulations require that domestic wastewater treatment plants be operated and maintained by operators holding a valid certificate of competency at the required level as defined in 30 TAC Chapter 30. This facility must be operated by a chief operator holding a Category C license or higher. To become licensed by TCEQ as a wastewater treatment plant operator, individuals must have the required education and experience, complete the related training, pay an application or renewal fee, and pass a qualifying exam. In order to become a Category C Operator, individuals must have at least two years of experience—one year of experience may be satisfied by college education, but at least one year of the experience must consist of actual domestic wastewater treatment facility operation or maintenance duties. The operator is not required to be onsite at all times; the facility must be operated a minimum of five days per week by the operator and they must be available by telephone or pager seven days per week.

The rules in 30 TAC Chapter 317, Design Criteria for Sewage Systems, provide for permit issuance before final design of the facility. The final design of the facility is not required as part of the wastewater permit application. However, the draft permit requires the Applicant to meet the design criteria requirements for domestic wastewater treatment plants prior to construction of the facility. Other Requirement No. 8 on page 23 of the proposed draft permit requires the Applicant to clearly show how the treatment system will meet the final permitted effluent limitations required for each phase of the proposed draft permit. The proposed draft permit requires the Applicant to submit to the TCEQ Wastewater Permitting Section a summary submittal letter for the design criteria according to 30 TAC Section 317.1, prior to construction of each phase of the wastewater treatment facilities. The summary letter must be signed and sealed by a licensed professional engineer.

If requested by the Wastewater Permitting Section, the permittee must also submit plans, specifications, and a final engineering design report that comply with applicable rules. The Executive Director, in determining whether to perform a review, uses factors such as whether a nonconforming or innovative technology is being proposed, the stream segment in which the project is located, and the Applicant's compliance record. In addition, a licensed professional engineer must certify that the wastewater treatment facility was constructed according to the plans and specifications.

The Applicant is also required to take certain steps to minimize the possibility of an accidental discharge of untreated wastewater. For example, the draft permit states that the Applicant must at all times ensure that the facility and all of its systems of collection, treatment, and disposal are properly operated and maintained. Under the draft permit, the Applicant would be responsible for installing 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.

The Applicant indicates in their notices that the address for the place of public viewing is the John A. and Katherine G. Jackson Public Library, located at 1700 South Farm-to-Market Road 51, Decatur, Texas. The Executive Director's staff contacted the library and the address listed in the notices was confirmed. The Applicant is required to provide the name, physical address and the county of the public place where the application is available for viewing and copying. The above information was therefore stated in the first and second notice.

By submitting a signed and completed application, the Applicant certified under penalty of law that, to the best of their knowledge and belief, the information submitted is true, accurate, and complete. In the event the applicant or 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 must promptly submit such facts or information. A permit may be modified, suspended, or revoked, in whole or in part, if it is determined that the permit was obtained by misrepresentation or failure to disclose fully all relevant facts.

Acceptance of the permit by the entity to whom it is issued constitutes acknowledgment and agreement that the permittee will comply with all the terms and conditions embodied in the permit, and the rules and other orders of the Commission. 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 and is grounds for enforcement action.

This issue has been addressed in the RTC and therefore does not raise a new issue previously unconsidered by the ED. Accordingly, this issue does not justify reconsideration of the ED's Preliminary Decision on this application.

The ED recommends the Commission find that this issue does not warrant reconsideration of the ED's Preliminary Decision.

RFR 8. Whether the tributary or reservoir is considered a district drainage ditch?

This issue was addressed in Response 20 of the RTC:

RESPONSE 20:

The application does require the applicant to identify where the effluent is discharged to a city, county, state highway right-of way, or flood control district drainage ditch. According to the information available for the tributary, it appears to be a naturally flowing tributary. It does not appear to have been constructed for the sole purpose of conveying flood water. Accordingly, that part of the discharge does not appear to require special authorization for a discharge. The TCEQ application does not require the Applicant to get authorization to discharge to a flood control reservoir.

This issue has been addressed in the RTC and therefore does not raise a new issue previously unconsidered by the ED. Further, the ED has recommended referral of a similar issue to SOAH for determination. Accordingly, this issue does not justify reconsideration of the ED's Preliminary Decision on this application.

The ED recommends the Commission find that this issue does not warrant reconsideration of the ED's Preliminary Decision.

RFR 9. Whether the proposed facility location meets applicable regulatory requirements intended to provide for proper facility location in satisfaction of buffer zone requirements?

This issue was addressed in Response 1 of the RTC (as quoted in RFR 3 above). This issue has been addressed in the RTC as indicated above and therefore does not raise a new issue previously unconsidered by the ED. Further, the ED has recommended referral of a similar issue to SOAH for determination. Accordingly, this issue does not justify reconsideration of the ED's Preliminary Decision on this application.

The ED recommends the Commission find that this issue does not warrant reconsideration of the ED's Preliminary Decision.

RFR 10. Whether the draft permit provides for safeguards in accordance with applicable regulatory requirements; Whether TCEQ must specify which safeguards would be employed to prevent accidental discharge?

This issue was addressed in Responses 3 and 10 in the RTC (as quoted in RFR 7 above). This issue has been addressed in the RTC and therefore does not raise a new issue previously unconsidered by the ED. Accordingly, these issues do not justify reconsideration of the ED's Preliminary Decision on this application.

The ED recommends the Commission find that this issue does not warrant reconsideration of the ED's Preliminary Decision.

RFR 11. Whether construction of the facility would cause stormwater runoff, and if so, whether the runoff would have adverse effects?

This issue was addressed in Response 19 of the RTC:

RESPONSE 19:

TCEQ's jurisdiction is established by the legislature and is limited to the issues set forth in Chapter 26 of the Texas Water Code. TCEQ must consider the quality of the discharge and its effect on the receiving waters, but the Executive Director does not consider concerns related to increased traffic resulting from facility or development operations if they do not otherwise conflict with applicable rules and regulations related to the wastewater permitting process. Further, the Executive Director cannot address concerns related to the practices of an electric co-op if such practices do not otherwise negatively affect the environment in violation of applicable rules and regulations that TCEQ is tasked to implement. Additionally, TCEQ cannot consider development issues, property values, or require an applicant to pursue a different discharge route.

The developer/owner/whichever it is in this case is also subject to TCEQ storm water permitting during construction activities. The developer is required to develop and implement a storm water pollution prevention plan (SWP3) and submit a notice of intent to TCEQ for coverage under TXG150000, TCEQ's construction general permit prior to beginning any earth disturbing activities at the site. The SWP3 sets forth the best management practices, e.g. silt fences, etc. that will be utilized to minimize runoff of total suspended solids from construction activities. Runoff controls must remain in place until construction activities cease and the site is stabilized. For more information on TCEQ's permitting program for construction activities, please visit TCEQ's web site at:

http://www.tceq.state.tx.us/nav/permits/wq_construction.html.

This issue has been addressed in the RTC and therefore does not raise a new issue previously unconsidered by the ED. Accordingly, this issue does not justify reconsideration of the ED's Preliminary Decision on this application.

The ED recommends the Commission find that this issue does not warrant reconsideration of the ED's Preliminary Decision.

RFR 12. Whether the draft permit is based on incorrect numerical models?

This issue was addressed in Response 6 of the RTC (as quoted in RFR 4 above). This issue has been addressed in the RTC and therefore does not raise a new issue previously unconsidered by the ED. Further, the ED has recommended referral of a similar issue to SOAH for determination. Accordingly, this issue does not justify reconsideration of the ED's Preliminary Decision on this application.

The ED recommends the Commission find that this issue does not warrant reconsideration of the ED's Preliminary Decision.

RFR 13. Whether an inspection of the proposed facility site and discharge route is required by applicable regulatory requirements prior to permit issuance?

This issue was addressed in Response 18 of the RTC.

RESPONSE 18:

TCEQ staff that participated in the public meeting visited the site, including the reservoir. However, due to the conditions of the land, an inspection of the entire site could not be conducted at that time. "Other Requirement No. 3" in the draft permit would require the Applicant to provide written notice to the TCEQ Region 4 Office and Applications Review and Processing Team at least 45 days prior to plant startup or anticipated discharge, which provides an additional opportunity for TCEQ staff to conduct a site visit. Additionally, the TCEQ regional office conducts periodic inspections of wastewater facilities and conducts investigations based on complaints received from the public. To report complaints about the facility, please contact the TCEQ at 1-888-777-3186 to reach the TCEQ region office in your area or by e-mail at cmplnt@TCEQ.state.tx.us. Noncompliance with TCEQ rules or the permit may result in the Applicant receiving a notice of violation. For more information regarding enforcement, please see TCEQ's web site at www.tceq.state.tx.us/ and click on "Compliance, Enforcement and Cleanups."

This issue has been addressed in the RTC and therefore does not raise a new issue previously unconsidered by the ED. Accordingly, this issue does not justify reconsideration of the ED's Preliminary Decision on this application.

The ED recommends the Commission find that this issue does not warrant reconsideration of the ED's Preliminary Decision.

RFR 14. Whether the proposed activity will affect the structural integrity of the reservoir's dam?

This issue arises from Response 21 of the RTC:

RESPONSE 21:

No evaluation of the adequacy of this drain [in the dam] was performed by Commission staff as a part of the review of this application. As a practical matter, it is likely that this drain has been sized to accommodate large flows that would be the result of a heavy rainfall event in the watershed. These flows would likely be much larger than the proposed permitted flow for this facility. The reason the riser is designed this way is so that under all but extreme conditions, the emergency spillway for these structures is not used. This prevents the structural integrity of the dam from possibly being compromised.

No specific issues related to the dam's structural integrity were raised during the public comment period. However, the structural integrity of a portion of the discharge route is not considered during the permitting process. Accordingly, this issue does not justify reconsideration of the ED's Preliminary Decision on this application.

The ED recommends the Commission find that this issue does not warrant reconsideration of the ED's Preliminary Decision.

RFR 15. Whether the Applicant should seek an alternative discharge route?

This issue was addressed in Response 19 of the RTC (as quoted in RFR 11 above). This issue has been addressed in the RTC as indicated above and therefore does not raise a new issue previously unconsidered by the ED. Accordingly, this issue does not justify reconsideration of the ED's Preliminary Decision on this application.

The ED recommends the Commission find that this issue does not warrant reconsideration of the ED's Preliminary Decision.

RFR 16. Whether construction of the housing development would cause stormwater runoff, and if so, whether the runoff would have adverse effects?

This issue was addressed in Responses 1 (as quoted in RFR 3 above) 19 (as quoted in RFR 11 above) of the RTC. This issue has been addressed in the RTC and therefore does not raise a new issue previously unconsidered by the ED. Accordingly, this issue does not justify reconsideration of the ED's Preliminary Decision on this application.

The ED recommends the Commission find that this issue does not warrant reconsideration of the ED's Preliminary Decision.

VI. Duration of the Contested Case Hearing

The Executive Director recommends a nine month duration for a contested case hearing on this matter, should there be one, between preliminary hearing and the presentation of a proposal for decision before the commission.

VIII. Executive Director's Recommendation

The Executive Director recommends that the commission deny all requests for reconsideration, grant the hearing requests of Catherine Russell, Cathy and Richard Fothergill, Rob and Stephanie Fothergill, Jana Woodruff, Nancy Carnahan, Thomas Long, M.D., Althea Forbis, and Wise County WCID No. 1, and refer the following issues to SOAH for a proceeding of nine months duration:

1. Whether the permit application satisfies applicable regulatory requirements?
2. Whether the discharge route was appropriately assessed under Texas Surface Water Quality Standards?
3. Whether the draft permit fails to satisfy regulatory requirements intended to protect water quality, human health, the environment, wildlife, and existing uses of the requestors?
4. Whether the draft permit is based on incorrect numerical models?
5. Whether the proposed facility location satisfies applicable regulatory requirements intended to protect private water wells?
6. Whether the applicant will be the owner of the proposed facility?
7. Whether the proposed activity satisfies applicable regulatory requirements intended to provide for abatement of odor?
8. Whether the proposed facility location meets applicable regulatory requirements intended to provide for proper facility location?
9. Whether notice for the proposed activity satisfies applicable regulatory requirements intended to provide public notice?

Respectfully submitted,


Scott Ramsey Shoemaker, Staff Attorney

Environmental Law Division
State Bar No. 24046836

Representing the Executive Director of the
Texas Commission on Environmental Quality

CERTIFICATE OF SERVICE

I certify that on May 23, 2008, the original and eleven copies of the "Executive Director's Response to Hearing Requests and Requests for Reconsideration" for TPDES Permit No. WQ0014708001 were filed with the Texas Commission on Environmental Quality's Office of the Chief Clerk, and a complete copy was mailed to all persons on the mailing list.



Scott R. Shoemaker, Staff Attorney
Environmental Law Division
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TEXAS
COMMISSION
ON ENVIRONMENTAL
QUALITY

2008 MAY 23 PM 4:12

CHIEF CLERK'S OFFICE

MAILING LIST
WISE SERVICE COMPANY WATER
DOCKET NO. 2008-0294-MWD; PERMIT NO. WQ0014708001

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Attachment A – Draft Permit



TPDES PERMIT NO. W00014708001
[For TCEQ Office Use Only:
EPA ID No. TX0128732]

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

Wise Service Company - Water

whose mailing address is

P.O. Box 269
Decatur, Texas 76234-0269

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

located approximately 3.75 miles north northwest of the intersection of U.S. Highway 380 and Farm-to-Market Road 730 and approximately 1.4 miles east of the intersection of U.S. Highway 287 and County Road 2175 in Wise County, Texas

via pipeline to an unnamed tributary; thence to an unnamed reservoir; thence to an unnamed tributary; thence to Watson Branch; thence to Sandy Branch; thence to West Fork Trinity River Below Bridgeport Reservoir in Segment No. 0810 of the Trinity 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 0.075 million gallons per day (MGD); nor shall the average discharge during any two-hour period (2-hour peak) exceed 156 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)	5 (3.1)	10	20	30	One/week	Grab
Total Suspended Solids	5 (3.1)	10	20	30	One/week	Grab
Ammonia Nitrogen	2 (1.3)	5	10	15	One/week	Grab
Total Phosphorous	1 (0.63)	2	4	6	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.

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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 4) 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 4) 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 4) 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 4) 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 4) 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 4) 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. 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 4) 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.
4. 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. 0810 of the Trinity River Basin and any subsequent updating of the water quality model for Segment No. 0810, 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.
5. 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).
6. Prior to construction of the treatment facilities, 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 final permitted effluent limitations required on Page 2 of the permit.
7. The permittee shall provide facilities for the protection of its wastewater treatment facilities from a 100-year flood.
8. The permittee is authorized to haul sludge from the wastewater treatment facility, by a licensed hauler, to the City of Willow Park Wastewater Treatment Facility, TPDES Permit No. WQ0013834001, to be blended, dewatered and then disposed of with the sludge from the plant accepting the sludge.

The permittee shall keep records of all sludge removed from the wastewater treatment plant site and these records shall include the following information:

- a. The volume of sludge hauled;
- b. The date(s) that sludge was hauled;
- c. The identity of haulers; and
- d. The permittee, TCEQ permit number, and location of the wastewater treatment plant to which the sludge is hauled.

These records shall be maintained on a monthly basis and shall be reported to the TCEQ Regional Office (MC Region 4) and the TCEQ Water Quality Compliance Monitoring Team (MC 224) of the Enforcement Division by September 1 of each year.

**Attachment B –Statement of Basis/Technical Summary
& Executive Director’s Preliminary Decision**

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

DESCRIPTION OF APPLICATION

Applicant: Wise Service Company - Water;
Texas Pollutant Discharge Elimination System (TPDES) Permit No.
WQ0014708001, (TX0128732)

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 0.075 million gallons per day. The proposed wastewater treatment facility will serve the Canyon Springs Subdivision.

PROJECT DESCRIPTION AND LOCATION

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

Sludge generated from the treatment facility will be hauled by a registered transporter to the City of Willow Park Wastewater Treatment Facility, Permit No. WQ0013834001 to be blended, dewatered and then disposed of with the bulk of the sludge from the plant accepting the sludge. The draft permit also authorizes the disposal of sludge at a TCEQ registered or permitted land application site, commercial land application site or co-disposal landfill.

The plant site will be located approximately 3.75 miles north northwest of the intersection of U.S. Highway 380 and Farm-to-Market Road 730 and approximately 1.4 miles east of the intersection of U.S. Highway 287 and County Road 2175 in Wise County, Texas.

The treated effluent will be discharged via pipeline to an unnamed tributary; thence to an unnamed reservoir; thence to an unnamed tributary; thence to Watson Branch; thence to Sandy Branch; thence to West Fork Trinity River Below Bridgeport Reservoir in Segment No. 0810 of the Trinity River Basin. The unclassified receiving water uses are no significant aquatic life use for the unnamed tributary and high aquatic life use for the unnamed reservoir. The

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

designated uses for Segment No. 0810 are high aquatic life use, 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. A Tier 2 review has preliminarily determined that no significant degradation of water quality is expected in the unnamed reservoir, which has been identified as having high aquatic life uses. 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.

The discharge from this permit action is not expected to have an effect on any federal endangered or threatened aquatic or aquatic dependent species or proposed species or their critical habitat. This determination is based on the United States Fish and Wildlife Service's (USFWS) biological opinion on the State of Texas authorization of the Texas Pollutant Discharge Elimination System (TPDES, September 14, 1998; October 21, 1998 update). To make this determination for TPDES permits, TCEQ and EPA only considered aquatic or aquatic dependent 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 permit does not require EPA review with respect to the presence of endangered or threatened species.

Segment No. 0810 is currently listed on the State's inventory of impaired and threatened waters (the Clean Water Act Section 303(d) list). The listing is specifically for elevated bacteria levels in lower 25 miles of the Segment. The effluent will be disinfected by means of chlorination and is therefore not expected to contribute to the segment impairment. The draft permit includes effluent limits and monitoring requirements to ensure that disinfection is adequate.

SUMMARY OF EFFLUENT DATA

N/A - New permit.

PROPOSED PERMIT CONDITIONS

The draft permit authorizes a discharge of treated domestic wastewater at a volume not to exceed a daily average flow of 0.075 million gallons per day.

The effluent limitations in the draft permit, based on a 30-day average, are 5 mg/l CBOD₅, 5 mg/l TSS, 2 mg/l NH₃-N, 1 mg/l Total Phosphorous 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.

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

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. Sludge generated from the treatment facility will be hauled by a registered transporter to the City of Willow Park Wastewater Treatment Facility, Permit No. WQ0013834001 to be digested, dewatered and then disposed of with the bulk of the sludge from the plant accepting the sludge. The draft permit also authorizes the disposal of sludge at a TCEQ registered or permitted land application site, commercial land application site or co-disposal landfill.

SUMMARY OF CHANGES FROM APPLICATION

The applicant requested effluent limitations, based on a 30-day average, of 10 mg/l CBOD₅, 15 mg/l TSS, 3 mg/l NH₃-N and 4 mg/l minimum dissolved oxygen (DO). However, the effluent limitations in the draft permit, based on a 30-day average, are 5 mg/l CBOD₅, 5 mg/l TSS, 2 mg/l NH₃-N, 1 mg/l Total Phosphorous and 4.0 mg/l minimum dissolved oxygen (DO). The recommended effluent set is based on model results reviewed by our Water Quality Assessment Staff. The effluent limits in the draft permit are necessary to ensure that the dissolved oxygen level in the receiving waters will be maintained above the criteria for the unnamed tributary (2 mg/l DO) and the unnamed reservoir (5 mg/l DO).

The Water Quality Standards Staff has recommended the effluent limitation of 1 mg/l Total Phosphorous. A Tier 2 antidegradation review has preliminarily determined that by adding the limit to the permit, then no significant degradation of the unnamed reservoir which supports a high aquatic life use is expected.

SUMMARY OF CHANGES FROM EXISTING PERMIT

N/A - New permit.

BASIS FOR PROPOSED DRAFT PERMIT

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

1. Application received April 20, 2006 and additional information received June 21, 2006 and July 14, 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.
5. Consistency with the Coastal Management Plan: The facility is not located in the Coastal Management Program boundary.
6. "Procedures to Implement the Texas Surface Water Quality Standards," Texas Commission on Environmental Quality, January 2003.

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

7. Texas 2004 Clean Water Act Section 303(d) List, Texas Commission on Environmental Quality, May 13, 2005; approved by USEPA on May 8, 2006.
8. "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 June Ella Martinez at (512) 239-3235.

June Ella Martinez
Municipal Permits Team
Wastewater Permitting Section (MC 148)

Date

Attachment C – Compliance History

Compliance History

Customer/Respondent/Owner-Operator:	CN601573843	Wise Service Company-Water	Classification: AVERAGE	Rating: 3.01
Regulated Entity:	RN104990288	CANYON SPRINGS RANCH WWTP	Classification: AVERAGE BY DEFAULT	Site Rating: 3.01
ID Number(s):	WASTEWATER	PERMIT	WQ0014708001	
	WASTEWATER	EPA ID	TX0128732	
Location:	NORTH ON US 287 FROM DECATUR EAST ON CR 2175 APPROX 1.6 MI ON NORTH SIDE OF RD		Rating Date: 9/1/2007 Repeat Violator: NO	
TCEQ Region:	REGION 04 - DFW METROPLEX			
Date Compliance History Prepared:	May 20, 2008			
Agency Decision Requiring Compliance History:	Permit - Issuance, renewal, amendment, modification, denial, suspension, or revocation of a permit.			
Compliance Period:	April 20, 2001 to May 20, 2008			

TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History

Name: June Ella Martinez Phone: (512) 239-3235

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? | <u>N/A</u> |
| 4. If Yes, who was/were the prior owner(s)? | <u>N/A</u> |
| 5. When did the change(s) in ownership occur? | <u>N/A</u> |

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

Attachment D – Executive Director’s Response to Public Comment

PROPOSED PERMIT NO. WQ0014708001

2008 JAN 15 PM 1:42

APPLICATION BY	§	BEFORE THE	CHIEF CLERKS OFFICE
WISE SERVICE COMPANY-	§	TEXAS COMMISSION ON	
WATER	§	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 Wise Service Company – Water's (Applicant) 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 Chief Clerk timely received comment letters or comments at the public meeting from the following persons: Lou Bridges, President of the Wise County Water Control and Improvement District No. 1, Nancy Carnahan, Althea Forbis, Cathy Russell Fothergill, Richard Fothergill, Rob Fothergill, Cody Gillespie, Ann Jolley, Thomas Long, Gordon and Roxie Ploeger, Catherine Russell, Kevin Smith, Deborah White, Jana Woodruff, Joylyn Woodruff and Martin Woodruff. 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

Facility Description

The Applicant has applied for a new permit that would authorize the discharge of treated domestic wastewater at a daily average flow not to exceed 75,000 gallons per day. The wastewater treatment plant would serve the Canyon Springs Subdivision. The Canyon Springs Wastewater Treatment Facility would be an activated sludge process plant operated in the extended aeration mode. Treatment units would include bar screens, an aeration basin, a clarifier, a sludge digester and a chlorine contact chamber. The facility has not been constructed.

The plant site would be located approximately 3.75 miles north northwest of the intersection of U.S. Highway 380 and Farm-to-Market Road 730 and approximately 1.4 miles east of the intersection of U.S. Highway 287 and County Road 2175 in Wise County, Texas. Treated effluent would be discharged via pipeline to an unnamed tributary; then to an unnamed reservoir; then to an unnamed tributary; then to Watson Branch; then to Sandy Branch; then to West Fork Trinity River Below Bridgeport Reservoir in Segment No. 0810 of the Trinity River Basin. The unclassified receiving water uses are no significant aquatic life use for the unnamed

tributary and high aquatic life use for the unnamed reservoir. The designated uses for Segment No. 0810 are high aquatic life use, public water supply, and contact recreation.

Procedural Background

The application for a new permit was received on April 20, 2006 and declared administratively complete on July 20, 2006. The Notice of Receipt and Intent to Obtain a Water Quality Permit (NORI) was published on August 10, 2006 in the *Wise County Messenger*. The TCEQ Executive Director completed the technical review of the application on August 21, 2006, and prepared a draft permit. The Notice of Application and Preliminary Decision (NAPD) for a Water Quality Permit was published on October 8, 2006 in the *Wise County Messenger*. The Notice of Public Meeting was published on March 15, 2007 in the *Wise County Messenger* and a public meeting was held on April 3, 2007 in Decatur, Texas. The public comment period ended on April 3, 2007. Since this application was administratively complete on or after September 1, 1999, it is subject to the procedural requirements adopted pursuant to House Bill 801, 76th Legislature, 1999.

COMMENTS AND RESPONSES

COMMENT 1:

Lou Bridges, President of the Wise County Water Control and Improvement District No. 1, Cody Gillespie and Ann Jolley comment that the discharge from the proposed facility into the reservoir would adversely affect the water quality, fish and wildlife habitat, and other environmental features. Lou Bridges and Cody Gillespie also comment that they are concerned about the location and long range effect the proposed facility would have on the area. Nancy Carnahan, Althea Forbis, Cathy Russell Fothergill, Richard Fothergill, Rob Fothergill, Gordon and Roxie Ploeger, Catherine Russell, Jana Woodruff and Joylyn Woodruff comment that such a large quantity and unanticipated discharge will have a negative impact on the lake, affect recreational uses and the wildlife, as well as cattle that graze the property. Cathy Russell Fothergill, Richard Fothergill, Rob Fothergill, Ann Jolley, Thomas Long, Kevin Smith, Deborah White and Jana Woodruff comment that the lake was designed to provide a sanctuary for wildlife and the island was created to provide a safe haven for migratory birds. Catherine Russell comments that she wants her grandchildren to be able to enjoy recreational activities without the fear of contamination from human wastewater. Deborah White is concerned that the wildlife's water supply will be affected. Jana Woodruff comments that the discharge will have a negative impact on the environmental and ecological health of the area. Jana Woodruff comments that she is concerned about the effluent and levels of contamination. Althea Forbis comments that fish may not be able to lay their eggs in treated water and is concerned about the effect it will have on the waterfowl. Joylyn Woodruff comments that she is concerned about the protection of the environment. Rob Fothergill inquires who will guarantee that their water will be safe enough to drink. Gordon and Roxie Ploeger comment that they enjoy their quality of life as it stands today. Catherine Russell is concerned that the project will affect her way of life. Kevin Smith also comments that the proposed facility will reduce the quality of their life. Althea Forbis

comments that their land is enhanced by the lake and condones having a wastewater treatment facility managing the lake. Cathy Russell Fothergill comments that she is concerned that the developer's desire to sell lots does not warrant the damage that the project will have to their land, water, and environment. Gordon and Roxie Ploeger comment that they are concerned about the increase of activities related to the construction of the facility, its operation and removal of sludge for the years to come. Althea Forbis comments that the proposed type of system has not been proven to be safe and capable of providing clean wastewater that will not harm wildlife. Richard Fothergill comments that no one can guarantee the safety of the treated sewage water from the proposed development. Deborah White comments that the quality of water to be discharged has not been fully explained. Cathy Russell Fothergill and Richard Fothergill comment that the construction and completion of the proposed facility would prevent wildlife from Lyndon B. Johnson Grasslands to find their way to the lake and land. Rob Fothergill and Kevin Smith comment that the proposed development would displace many species of wildlife that exist on the surrounding land. Cathy Russell Fothergill comments that the Lyndon B. Johnson Grasslands will be affected by the proposed wastewater treatment facility by making outdoor activities unpleasant and unsafe. Cathy Russell Fothergill comments that the grasslands attract thousands of people who use the area for outdoor recreation. Rob Fothergill and Kevin Smith comment that they are concerned that the proposed facility would deface the southern portion of the grasslands and make it unattractive to visitors. Ann Jolley comments that the proposed facility will be located on former Caddo-LBJ Grassland. Ann Jolley comments that it does not make sense to destroy an area that has been in place since 1999. Joylyn Woodruff comments that the disposal site adjoins the protected grasslands and strongly opposes the effects the project will have on this land. Cathy Russell Fothergill comments that her family has been raising beef cattle on their farm and is concerned that the wastewater treatment facility is going to contaminate the water that has been watering her farm. Rob Fothergill comments that his family uses land adjacent to the proposed facility site to operate a farm for beef cattle production. Rob Fothergill and Kevin Smith comment that they are concerned that overflow from the lake could spill onto pastureland used for grazing cattle and contain tainted water. Jana Woodruff comments that the reservoir was built to protect farm and grazing pastures in the area.

RESPONSE 1:

The draft permit was developed to protect aquatic life and human health in accordance with Texas Surface Water Quality Standards and 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 draft 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 the treated effluent meets Texas Surface Water Quality Standards for the protection of surface water and human health according to TCEQ rules and policies.

The effluent limits in the draft permit are set to maintain and protect existing instream uses. As part of the application process, the Executive Director 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 unclassified receiving water uses for the unnamed tributary are no significant aquatic life use. The unclassified receiving water uses for the reservoir are high aquatic life use. The designated uses for Segment No. 0810 are high aquatic life use, public water supply, and contact recreation. In order to determine whether the action to be authorized by the draft permit would affect existing uses related to aquatic life and contact recreation, antidegradation reviews were performed. The antidegradation reviews preliminarily determined that existing water quality uses would not be impaired by this permit action—existing uses would be maintained and protected if the facility is operated and maintained as required by the proposed permit and applicable regulations. These determinations may be reexamined if new information is received.

Most common water quality issues affecting livestock production are excessive salinity (high concentration of minerals), high nitrogen content, bacterial contamination, and heavy growths of blue-green algae. Salinity levels typically have to be in excess of 5,000 mg/L total soluble salts before affecting cattle. These salinity levels are in excess of what would be acceptable for drinking water in a household, which is less than 1,000 mg/L. Since this facility is not proposing to accept waste streams from facilities which may be concentrating salts, it is expected that the salinity of the wastewater would only marginally increase from the salinity of the receiving stream. The facility is proposing to chlorinate the discharge to address bacterial contamination issues. Heavy growths of algae have been addressed by adding a phosphorous limit to the permit. The lake is not a designated drinking water supply, and all surface waters should receive treatment (at a minimum chlorination) before entering a home for consumption. Accordingly, the wastewater treatment facility would not be required to meet drinking water standards.

The discharge from this permit action is not expected to have an effect on any federal endangered or threatened aquatic or aquatic dependent species or proposed species or their critical habitat. The application for this facility was reviewed to determine whether the discharge could potentially have an adverse effect on an aquatic or aquatic-dependent federally endangered or threatened species, including proposed species. TCEQ staff followed the screening process for aquatic or aquatic-dependent federally endangered and threatened species contained in the *Procedures to Implement the Texas Surface Water Quality Standards*, RG-194 (January 2003).

The draft permit requires that the facility be designed to produce an effluent quality in compliance with the permit parameters required in the draft permit. The effluent limits in the draft permit, based on a 30-day average, are 5 milligrams per liter (mg/L) 5-day carbonaceous biochemical oxygen demand, 5 mg/L total suspended solids, 2 mg/L ammonia-nitrogen, 1 mg/l total phosphorus and 4.0 mg/L minimum dissolved oxygen. The effluent must contain a chlorine residual of at least 1.0 mg/L and may not exceed a chlorine residual of 4.0 mg/L after a detention time of at least 20 minutes based on peak flow. The effluent limits for 5-day carbonaceous biochemical oxygen demand, total suspended solids, ammonia-nitrogen, and phosphorus are

some of the more stringent effluent limits currently used. The plant would be designed as an activated sludge facility operating in the extended aeration mode. If requested by the Wastewater Permitting Section, the permittee must submit plans, specifications and a final engineering design report. The permittee must clearly show how the treatment system will meet the permitted effluent limitations required by the permit.

The Applicant is required to analyze the treated effluent prior to discharge and to provide monthly reports to the TCEQ that include the results of the analyses. The Applicant may either collect and analyze the effluent samples itself, or it may contract with a third party for either or both the sampling and analysis. However, all samples must be collected and analyzed according to 30 TAC Chapter 319, Subchapter A, Monitoring and Reporting System. The Applicant is also required to further notify the agency if the effluent does not meet the permit limits according to the requirements in the permit. Additionally, the TCEQ regional staff may sample the effluent during routine inspections or in response to a complaint.

TCEQ staff evaluated the potential impacts on water quality associated with the proposed wastewater discharge. The treated effluent from the wastewater treatment facility would be discharged via pipeline to an unnamed tributary, then to a reservoir, then to an unnamed tributary, then to Watson Branch, then to Sandy Branch and then to West Fork Trinity River Below Bridgeport Reservoir. Because treated effluent from the facility would be flowing away from the Lyndon B. Johnson Grasslands, the discharge itself is not likely to have a direct impact on the grasslands. Typically, the Executive Director does not consider land use concerns such as such as the movement of wildlife from the grasslands to other property or visual appeal to grasslands visitors during the permitting process.

It is the responsibility of the permittee to acquire property rights as may be necessary to use the discharge route. The 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 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.

COMMENT 2:

Lou Bridges, Althea Forbis, Cathy Russell Fothergill, Richard Fothergill, Rob Fothergill, Cody Gillespie, Ann Jolley, Thomas Long, Catherine Russell, Kevin Smith, Deborah White and Jana Woodruff comment that they are concerned that the application submitted by the Applicant identifies Site #35 as an unnamed reservoir and provided incorrect information to TCEQ. Nancy Carnahan also comments that she is concerned that the applicant made material misrepresentations and omissions in the application, such as failure to correctly identify the reservoir. Thomas Long also comments that the applicant failed to revise or correct the data in the application after they were informed of the lake's existence.

RESPONSE 2:

Based on information provided by individuals at the public meeting held on April 3, 2007 in Decatur, Texas, the Executive Director acknowledges that the "unnamed reservoir" is properly named Big Sandy Creek Watershed Site No. 35 (hereinafter "the reservoir"). However, this naming of the reservoir did not affect the staff's analysis of the impact of the wastewater on the reservoir, as it was identified by TCEQ staff and considered in the development of the draft permit.

By submitting a signed and completed application, the Applicant certified under penalty of law that, to the best of their knowledge and belief, the information submitted is true, accurate, and complete. In the event the applicant or 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 must promptly submit such facts or information. A permit may be modified, suspended, or revoked, in whole or in part, if it is determined that the permit was obtained by misrepresentation or failure to disclose fully all relevant facts.

COMMENT 3:

Lou Bridges is concerned about the possibility of plant failure. Nancy Carnahan comments that insufficient safeguards have been put into place for this proposed permit. She further comments that the permit should not allow self-monitoring data and should be denied until the permit includes weekly testing by a TCEQ representative, an automatic system shut down and prevention of discharge in the event of any failure. Thomas Long express concern that the Applicant would be subject to a system that depends on self-reporting data to meet compliance. She also feels that the proposed facility should provide an alarm to trigger such an event, conduct computer and/or satellite monitoring and a water quality testing report. In the event of machinery or equipment breakdown, both she and Althea Forbis feel that the plant will not be capable to hold several days of sewer water without discharging effluent that does not meet TCEQ standards. Althea Forbis also expresses concern that once something goes wrong with the plant, it will be difficult to fix. She also feels that the smallest human error in the operation of the facility could cause severe consequences on the environment. Jana Woodruff comments that she is aware of the errors, mistakes and breakdowns associated with this project. Martin Woodruff asks if TCEQ can require a maximum level of backup equipment to ensure an operation free of errors.

RESPONSE 3:

The rules in 30 TAC Chapter 317, Design Criteria for Sewage Systems, provide for permit issuance before final design of the facility. The proposed draft permit requires the Applicant to meet the design criteria requirements for domestic wastewater treatment plants prior to construction of the facility. Other Requirement No. 8 on page 23 of the proposed draft permit requires the Applicant to clearly show how the treatment system will meet the final permitted effluent limitations required for each phase of the proposed draft permit. The proposed draft permit requires the Applicant to submit to the TCEQ Wastewater Permitting Section a summary submittal letter for the design criteria according to 30 TAC § 317.1, prior to construction of each phase of the wastewater treatment facilities. The summary letter must be signed and sealed by a licensed professional engineer.

The Applicant is required to take certain steps to minimize the possibility of an accidental discharge of untreated wastewater. For example, the draft permit requires that the Applicant must at all times ensure that the facility and all of its systems of collection, treatment, and disposal are properly operated and maintained. Under the draft permit, the Applicant would be responsible for installing 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.

TCEQ's regulations require that domestic wastewater treatment plants be operated and maintained by operators holding a valid certificate of competency at the required level as defined in 30 TAC Chapter 30. This facility must be operated by a chief operator holding a Category C

license or higher. The facility must be operated a minimum of five days per week by the operator and they must be available by telephone or pager seven days per week.

TCEQ's jurisdiction is established by the Legislature and is limited to the issues set forth in Chapter 26 of the Texas Water Code. To implement this statutory mandate, TCEQ issues permits that must be consistent with applicable law. The Executive Director must consider the quality of the discharge and its effect on the quality of the receiving waters, but the Executive Director cannot require an Applicant to use independent entities to provide monitoring services.

The Applicant is required to monitor and sample the treated effluent prior to discharge and provide monthly reports to TCEQ that include the results. All samples must be collected and analyzed according to 30 TAC Chapter 319, Subchapter A, Monitoring and Reporting System. For this application, the draft permit requires the Applicant to sample the discharge flow five times per week, carbonaceous biochemical oxygen demand once per week, total suspended solids once per week, ammonia nitrogen once per week, chlorine residual five times per week, phosphorous once per week, and dissolved oxygen once per week. The Applicant is required to notify the agency if the effluent does not meet the permit limits according to the requirements in the permit. TCEQ regional staff may also sample the effluent during routine inspections or in response to a complaint.

The Executive Director is authorized by statute to initiate an enforcement action based on information provided by a private individual (Tex. Water Code §7.0025; 30 Tex. Admin. Code §70.4). Agency protocols, procedures, and guidelines must be used when collecting and submitting information or evidence to ensure that the information or evidence is scientifically reliable and legally defensible. Protocols vary depending on the nature of the problem, for example, water quality sampling procedures are very different from nuisance odor evaluation. If a protocol has specific training requirements, training must be completed before submitting information based on it. If information is gathered in the form of physical sampling data, the analysis of that data must be completed by a laboratory that follows established protocols to produce scientifically reliable information. You may contact the TCEQ at 1-888-777-3186 to receive a list of laboratories or if you have questions about sampling protocols and procedures.

The Applicant 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. These violations include knowingly making any false statement, representation, or certification on any report, record, or other document submitted or required to be maintained under the 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.

If an unauthorized discharge occurs, the Applicant is required to report it to TCEQ within 24 hours. The Applicant would be subject to potential enforcement action for failure to comply with TCEQ rules or the permit, including unauthorized discharges. TCEQ regional staff

investigates complaints and the agency takes appropriate enforcement action if the investigator documents a violation. Anyone may contact TCEQ at 1-888-777-3186 or by e-mail at cmplait@TCEQ.state.tx.us to report a potential violation of the Applicant's permit or regulations. Citizens may also gather data to show that a permittee is not in compliance with TCEQ rules. For more information on citizen collected evidence, please see:

www.TCEQ.state.tx.us/enforcement/complaints.html.

COMMENT 4:

Nancy Carnahan objects to the Applicant's failure to provide timely and personal written notice to all directly affected adjacent property holders. Nancy Carnahan also comments that she did not receive direct notice from the Applicant or TCEQ regarding the application, even though she is on the taxing authority's mailing list for her property. Cathy Russell Fothergill and Richard Fothergill and also comment that the applicant failed to identify adjacent landowners that would be impacted by the proposed facility. Cathy Fothergill further states that the landowner map and the list of landowners is difficult to decipher and feels it is incorrect. Rob Fothergill and Ann Jolley comment that several others were not properly notified from TCEQ or included on the adjacent landowners list. Thomas Long and Kevin Smith comment that their families did not receive notification of the proposed permit. Thomas Long also noted that the J.E. Forbis Trust and his heirs were not notified and are significantly affected. Catherine Russell comments that legal ownership of tracts adjacent to the proposed facility were not identified. Deborah White comments that she and other landowners affected by the project did not receive the first notice, but did receive the second notice. Deborah White asks why they were not informed of the project until the second notice. Jana Woodruff comments that adjacent landowners were not notified when the application was requested. Althea Forbis comments that the notice for the application was inadequate. Cathy Russell Fothergill and Richard Fothergill, and Catherine Russell comment that the notice published in August 2006, does not mention the lake. Ann Jolley comments that descriptions provided in the notices were misleading and incorrect. She further states that the NORI did not mention the lake known as "Big Sandy Creek Watershed Project Site #35" and that the NAPD incorrectly referred to the lake as an unnamed reservoir. Thomas Long also comments that the NORI did not mention the unnamed reservoir or a lake of any kind and the NAPD did not properly identify the lake. Thomas Long asks how late the Applicant can continue to alter the facts of the application. Deborah White comments that after obtaining a copy of the first notice, the unnamed reservoir was not stated in that notice but was mentioned in the second notice. Ann Jolley comments that the four sponsors of the reservoir project (Wise County Water Control District No. 1, Wise County Commissioner's Court, Wise Soil and Water Conservation District No. 548, and Tarrant Regional Water District) were not included in the mailing list. She states that Wise County Commissioner's Court were the only ones to have any knowledge on this application. Jana Woodruff comments that she and her family were not aware of the plans to build the treatment facility because the notices did not provide an accurate description of the site. She also feels that the terminology used in describing the discharge route was so vague, that owners could not determine if the discharge would occur on their property. Nancy Carnahan and Thomas Long express concern that the application did not include the boundaries of affected property owners that is required on page 11 of the Domestic Administrative Report 1.1. Nancy Carnahan feels that the Applicant failed to submit a landowners map of the properties along the watercourse for a ½ mile radius from the point of discharge into a lake and surrounding landowners where the effluent disposal site is located. Richard Fothergill comments that the members of the Wise County Electric Co-Op were not informed of the proposed project. Catherine Russell comments that she attends the local business meetings and the application was not brought to public attention.

RESPONSE 4:

For new permit and major amendment applications, applicants must provide a landowners list and a map showing their location(s). According to the application instructions, affected landowners are landowners located adjacent to the wastewater treatment plant site and landowners with property on either side of the receiving stream for approximately one mile downstream from the point of discharge.

The Applicant submitted correspondence dated July 13, 2007, which provided a revision to the landowners list and map that was previously submitted in the application. Based on a review of the information, the Applicant submitted a landowner map that appears to identify landowners surrounding the Applicant's property boundaries and those within one mile downstream of the point of discharge. In this map, the Applicant indicated fifteen tracts of land that were adjacent to the Applicant's property boundary and landowners with property on either side of the receiving stream for approximately one mile downstream from the point of discharge. Based on the map, tracts 1-6 are owned by Larry Cole, tract 7 is owned by Shawn White, tract 8 is owned by C.A. Russell, tract 9 is owned by James Forbis, tract 10 is owned by Gordon & Roxie Ploeger, tract 11 is owned by Wesley W. Simmons, tract 12 is owned by Shawn White, tract 13 is owned by J.K. Miller & Gary S. Helton, tract 14 is owned by Cathy Russell Fothergill and tract 15 is owned by James Forbis. The map also appears to map out the property boundaries of these landowners. The TCEQ mails notice of the application to the listed landowners and others on the mailing list for the application, which is maintained by the Office of the Chief Clerk.

If the proposed point of discharge is to a lake, the TCEQ application instructions require the applicant to clearly map out the property boundaries of landowners for a one-half mile radius from the point of discharge. Since the point of discharge for this application is not directly into the reservoir, this particular requirement does not apply. However, the application instructions do require applicants to clearly map out the property boundaries of all landowners surrounding the point of discharge and on both sides of the discharge route for one full stream mile downstream of the point of discharge. Based on a review of the map provided, the Applicant provided this information.

For all applications, the agency prepares two public notices—the Notice of Receipt and Intent to Obtain a Water Quality Permit (NORI) and the Notice of Application and Preliminary Decision for a Water Quality Permit (NAPD). The Applicant is required to publish these notices in a local newspaper and to provide a copy of the application, proposed draft permit and Executive Director's Preliminary Decision in a public place for viewing and copying. The NORI and the NAPD are also mailed to the individuals on the landowner list and mailing list for the application.

The NORI is the initial notice that informs the public that a permit application was submitted. It is published early in the process before the Executive Director's staff conducts its technical review of the application. For this application, the NORI was required to be published in accordance with 30 TAC §§ 39.411(1)-(9), (12), and 39.551(b)(1). The Applicant submitted an affidavit of publication that indicated that the NORI was published in the *Wise County*

Messenger on August 10, 2006. Based on a review of the text of the NORI, it meets applicable requirements. According to the applicable requirements, the text of the NORI for this application must include the following, generally: (1) the name and address of the agency and telephone number of an agency contact from whom interested persons may obtain further information; (2) the name, address, and telephone number of the applicant and a description of the manner in which a person may contact the applicant for further information; (3) a brief description of the location and nature of the proposed activity; (4) a brief description of public comment procedures; (5) a brief description of procedures by which the public may participate in the final permit decision, generally; (6) the application or permit number; (7) if applicable, a statement that the application or requested action is subject to the Coastal Management Program and must be consistent with the Coastal Management Program goals and policies; (8) the location, at a public place in the county in which the facility is located or proposed to be located, at which a copy of the application is available for review and copying; (9) a description of the procedure by which a person may be placed on the mailing list in order to receive information about the application; and (10) any additional information required by the Executive Director or needed to satisfy public notice requirements of any federally authorized program.

Applicants must publish the NAPD at least once in the same newspaper as the NORI. After the draft permit was written, the Applicant submitted an affidavit of publication indicating that the NAPD was published in the *Wise County Messenger* on October 8, 2006. Based on a review of the text of the NAPD, it has met applicable requirements. The Applicant has complied with TCEQ's regulations by publishing the NORI and the NAPD in the above-mentioned newspapers.

The Applicant indicates in their notices that the address for the place of public viewing is the John A. and Katherine G. Jackson Public Library, located at 1700 South Farm-to-Market Road 51, Decatur, Texas. The Executive Director's staff contacted the library and the address listed in the notices was confirmed. The Applicant is required to provide the name, physical address and the county of the public place where the application is available for viewing and copying. The application states that the information would be available for viewing at the John A. and Katherine G. Jackson Public Library, 1700 South Farm-to-Market Road 51 in Decatur, Texas. The above information was therefore stated in the NORI and the NAPD.

While it is recognized that the applicant did not include the 16 acre lake in the application, the lake was identified by TCEQ staff and fully considered in the development of the draft permit. Therefore, the discharge route identified in the NAPD was based on the review by the Water Quality Standards Team. The Standards Team determined that the treated effluent would be discharged via pipeline to an unnamed tributary, then to the reservoir, then to an unnamed tributary, then to Watson Branch; then to Sandy Branch, then to West Fork Trinity River Below Bridgeport Reservoir in Segment No. 0810 of the Trinity River Basin. This discharge route was provided in the NAPD. Based on information provided by individuals at the public meeting held on April 3, 2007 in Decatur, Texas, the Executive Director acknowledges that the "unnamed reservoir" is properly named Big Sandy Creek Watershed Site No. 35 (hereinafter "the reservoir"). Based on the information available for this application, it appears that the notice requirements for this application have been met.

By submitting a signed and completed application, the Applicant certified under penalty of law that, to the best of their knowledge and belief, the information submitted was true, accurate, and complete. In the event the applicant or 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 must promptly submit such facts or information. A permit may be modified, suspended, or revoked, in whole or in part, if it is determined that the permit was obtained by misrepresentation or failure to disclose fully all relevant facts.

COMMENT 5:

Nancy Carnahan comments that the permit application states that the discharge will be to a dry river that has no flow present. However, she comments that it is incorrect because the discharge will actually occur into the mouth of their lake. Nancy Carnahan and Cathy Russell Fothergill comment that the Applicant incorrectly classified the discharge route as intermittent with perennial pools and that the discharge route will not reach the Trinity River as represented in the application. Nancy Carnahan comments that the waterway has almost never been dry since the lake was constructed and is several feet deep. She states that page 8 of the Technical Report indicates that the receiving water is a 'stream' and is incorrect, because it is a lake with a surface area of approximately 16 acres. Ann Jolley comments that the unnamed tributary provided in the notice is actually called Watson Branch. Thomas Long comments that the Applicant failed to provide an accurate description of the point of discharge, from an unnamed tributary to the lake on his property, which is within three miles from the outfall. He further comments that the discharge will occur into the largest tributary feeding the lake which is very wide and deep. Catherine Russell comments that the conservation lake appears to be less than one-quarter mile from the proposed facility. Jana Woodruff comments that the effluent will not be discharged into a dry creek bed, but into the backwaters of a contained impounded lake. Deborah White comments that the unnamed tributary following the reservoir to Watson Branch does not exist. Cathy Russell Fothergill, Richard Fothergill, Rob Fothergill, Ann Jolley, Catherine Russell and Kevin Smith comment that the Applicant failed to reveal pertinent information by providing a map dated 1997 which does not show the conservation lake that was constructed in 1999, therefore indicating a poorly planned project or hiding facts by providing false information.

RESPONSE 5:

While it is recognized that the applicant did not include the 16 acre lake in the application, the lake was identified by TCEQ staff and fully considered in the development of the draft permit. The unnamed tributary provided in the permit application was also assessed in accordance with the Texas Surface Water Quality Standards as water in the state. By submitting a signed and completed application, the Applicant certified under penalty of law that, to the best of their knowledge and belief, the information submitted is true, accurate, and complete. In the event the applicant or 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 must promptly submit such facts or information. A permit may be

modified, suspended, or revoked, in whole or in part, if it is determined that the permit was obtained by misrepresentation or failure to disclose fully all relevant facts.

At this time, the Executive Director characterizes the discharge route as follows: Treated effluent would be discharged via pipeline to an unnamed tributary, then to the reservoir, then to an unnamed tributary, then to Watson Branch; then to Sandy Branch, then to West Fork Trinity River Below Bridgeport Reservoir in Segment No. 0810 of the Trinity River Basin.

COMMENT 6:

Nancy Carnahan comments that page 9 of the Technical Report states that the West Fork of the Trinity River joins the receiving water within three miles downstream of the discharge point. Nancy Carnahan comments that the permit application is incorrect because the water will stay in the conservation lake and become stagnant. She is also concerned that even if the discharge is thoroughly chlorinated it will not provide sufficient time for aeration and dilution of the water before it stagnates in the lake. Althea Forbis comments that the wastewater will stay in the lake because it will become stagnant with no flow. Cathy Russell Fothergill, Richard Fothergill, Rob Fothergill, and Catherine Russell comment that the unnamed tributary and the lake are considered one body of water and will become stagnant because the water will flow only when the lake reaches overflow levels. They also feel that only a limited amount of water can escape through the overflow which makes the lake susceptible to contamination. Thomas Long comments that there will be little movement in the water to aid in the dissipation of remaining contaminants and will be detrimental to the quality of water in the lake. Gordon and Roxie Ploeger comment that they are concerned that the discharge is not going to be properly aerated going into Big Sandy Creek Water Shed Lake. Kevin Smith states that the tributary that receives the discharge is the back end portion of the lake and does not flow at all. Martin Woodruff comments that during a time of drought, the lake would be made up of effluent and is concerned about the stagnant conditions that may result in health and nuisance problems. Nancy Carnahan comments that the introduction of effluent will stagnate in the lake and will degrade the water quality of the lake, negatively impacting the surrounding ecosystem. She states that the stagnation will make it difficult for the discharge to achieve the oxygen level of 5 mg/l DO in the lake which is required to maintain the classification as high aquatic life use. She further comments that it does not appear that the discharge would provide enough dilution for the oxygen levels to increase. Nancy Carnahan comments that the Applicant could not have undertaken a Tier 2 investigation of the effect of the discharge on the lake, because doing so would require a thorough study of the quality of water itself and the fish and wildlife. She feels that since the study would require samples from the lake, it would be considered trespassing on private property. Richard and Cathy Russell Fothergill comment that the antidegradation review is both unreliable and invalid. Nancy Carnahan expresses concern that the applicant could not have sampled the lake nor properly evaluated the potential effect the effluent may have on the lake, to be able to provide a fair evaluation of the water quality. Cathy Russell Fothergill, Richard Fothergill, and Thomas Long comment that the Applicant failed to describe the distance from the discharge point to the lake and the tributary. Cathy Russell Fothergill, Richard Fothergill and Thomas Long further comment that the proposed wastewater treatment facility will be located less than 200 yards from the lake. Cathy Russell Fothergill, Richard Fothergill,

and Catherine Russell comment that the Applicant incorrectly classified the tributary as having no significant aquatic life use and the lake as having high aquatic life use. Cathy Russell Fothergill, Richard Fothergill, and Catherine Russell further comment that the tributary and lake are one body of water with significant aquatic life use.

RESPONSE 6:

The effluent limits set out in the draft permit for the protection of dissolved oxygen levels in the reservoir were developed with the aid of a numerical model. Numerical models are routinely used by TCEQ staff because they provide a systematic way for estimating the impact of a discharge on the level of dissolved oxygen in a water body. Generally, dissolved oxygen modeling accounts for the oxygen demand exerted by constituents in the wastewater, demand exerted by the sediments in the reservoir, and oxygen transfer from the atmosphere into reservoir waters. The model was conservatively structured to evaluate the reservoir under conditions when dissolved oxygen is expected to be at its minimum. The analysis was performed for a scenario simulating a discharge during summertime conditions when only effluent from this facility is contributing flow to the reservoir and oxygen demanding constituents and flow are at maximum allowable values. Model results, when considered with the inherently conservative nature of the critical condition formulation, suggest that a dissolved oxygen level consistent with a high aquatic life use should be maintained in the reservoir. Accordingly, the draft permit has incorporated a dissolved oxygen limit consistent with this model.

Discharges from domestic wastewater facilities are fairly uniform in nature and have definite constituents of concern. These constituents most often include bacteria and nutrients. The facility is proposing to disinfect bacteria by chlorination, and phosphorous limits were placed in the draft permit to help protect the lake from nutrient loadings. Information collected from water quality monitoring stations in the watershed were used to assess any potential water quality issues in the area, and none were identified which might be exacerbated by a discharge of this nature. The finding that existing uses would be maintained and protected can be amended with new information provided by the public, additional monitoring data, and/or any further information regarding the facility itself.

From the applicant's description and photos provided in the permit application, the initial point of discharge is into a dry portion of the stream; however, it was noted in the permit review process that the characteristics of the stream change very rapidly shortly after the point of discharge. Lake water begins to back up into the creek as the creek transitions into a lake. In accordance with the Texas Surface Water Quality Standards, any stream which has zero flow for at least one week during most years is an intermittent stream and is assigned an aquatic life use of "no significant," but protection is still afforded to these streams. A minimum dissolved oxygen criterion and acute aquatic life criteria must still be met in an intermittent stream. However, the effluent limits placed in the permit regarding nutrient loading and dissolved oxygen protection were all driven by the fact that the intermittent stream transitions very quickly into a lake. Therefore, the effluent limits are more stringent to protect the water quality in the lake.

COMMENT 7:

Nancy Carnahan comments that she is concerned how the discharge will affect the lake levels. Nancy Carnahan comments that the discharge of 75,000 gallons per day into the lake would essentially affect the water level which would be a violation to the easements granted to Wise County WCID. Thomas Long states that existing easements only allow the Wise County WCID to control the level of water impounded by the lake and dam. He feels that the easements prevent the proposed activities. Martin Woodruff expresses concern that the lake does not have the capacity to handle a discharge of 75,000 per day.

Nancy Carnahan and Thomas Long comment that the application states that the stream was evaluated for 500 feet downstream which could not have occurred because the discharge route is surrounded by private property. Nancy Carnahan further comments that the unnamed tributary and unnamed reservoir are located entirely on her property, therefore, necessary property rights must be obtained by the Applicant. Nancy Carnahan and Thomas Long state that the Applicant made no efforts to obtain nor will they be granted property rights to use for the discharge route. Nancy Carnahan comments that the application should be denied because the discharge will constitute a trespass onto her property and would be considered an unconstitutional taking of private property. Althea Forbis also comments that she is concerned about trespassing on private property. Nancy Carnahan comments that "dumping 75,000 gallons per day on our property is like dumping liquid trash over the fence" and into their private conservation lake. Althea Forbis also asks how a company can pump polluted water into a conservation lake in good conscience. Deborah White questions how a person can be allowed to dump on another person's private property. Althea Forbis asks how the TCEQ could even consider such a proposal when our job is to reduce and prevent pollution which is stipulated in our letterhead.

RESPONSE 7:

It is the responsibility of the permittee to acquire property rights as may be necessary to use the discharge route. The 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 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.

TCEQ's jurisdiction is established by the Legislature and is required to address the issues set forth in Chapter 26 of the Texas Water Code. To implement this statutory mandate, TCEQ is tasked to issue permits that are consistent with applicable law. Texas Water Code § 26.027 authorizes TCEQ to issue permits for wastewater discharge into water in the state, provided the discharger does not violate applicable rules or regulations.

COMMENT 8:

Nancy Carnahan expresses concern that the Applicant did not provide the coordinates for the exact point of discharge. Nancy Carnahan also comments that the lake would have been easily visible and leads her to believe that the Applicant did not wish to include the lake in the application. Thomas Long also comments that geographic coordinates were not provided for the proposed facility or for the point of discharge.

RESPONSE 8:

TCEQ's application instructions require the Applicant to provide the latitude and longitude of the facility's outfall. The Applicant provided the following coordinates for the outfall: Latitude – 33 degrees, 17 minutes, 08 seconds; Longitude – 97 degrees, 36 minutes, 19 seconds. During the application process, the Water Quality Assessment staff receives the permit application and plots the point of discharge on a county map based on a topographic map provided by the Applicant. While it is recognized that the Applicant did not include the 16 acre lake in the application, the lake was identified by TCEQ staff and fully considered in the development of the draft permit.

By submitting a signed and completed application, the Applicant certified under penalty of law that, to the best of their knowledge and belief, the information submitted is true, accurate, and complete. In the event the applicant or 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 must promptly submit such facts or information. A permit may be modified, suspended, or revoked, in whole or in part, if it is determined that the permit was obtained by misrepresentation or failure to disclose fully all relevant facts.

COMMENT 9:

Nancy Carnahan comments that the Applicant states they "believed that from creek bank to creek bank...was public property." She indicates that having researched the matter herself, public property has to be navigable to the ocean.

RESPONSE 9:

The immediate receiving water, as well as the other water bodies in the proposed discharge route are considered by TCEQ to be surface water in the state.¹ TCEQ is authorized to issue permits for discharges into water in the state. The Texas Water Code defines "water in the state," and the definition does not define whether underlying property is considered private property or water in the state.

¹ TEX. WATER CODE ANN. §§ 26.027, 26.001 (Vernon Supp. 1997).

COMMENT 10:

Nancy Carnahan, Althea Forbis, Cathy Russell Fothergill, Richard Fothergill, Rob Fothergill, Thomas Long, Catherine Russell, and Kevin Smith comment that since the Applicant has not operated a wastewater treatment facility before, then they have no previous experience in the construction, operation, and maintenance of a facility. Cathy Russell Fothergill comments that the Applicant has not thoroughly researched the proposal and lacks the proper expertise. Rob Fothergill and Kevin Smith state that they attended a meeting by the Applicant Service and feel that the Applicant does not have experience with inspecting facilities or intention to check the water quality in the lake. Thomas Long comments that by lack of disclosing information in the application, the Applicant has not demonstrated the ability to construct, operate, or maintain a wastewater treatment plant. Deborah White comments that the individuals involved in the project did not fully research the area to truly know what they were going to be doing.

Nancy Carnahan comments that the Applicant's failure to correctly spell "application" and provide the correct address for the place of public viewing, indicates the lack of care taken in the preparation of the application. Cathy Russell Fothergill and Richard Fothergill comment that an Applicant who pays little attention to the detail of work submitted in the application is a poor prospect for the construction and operation of such a project that will cause potential harm to the environment. Rob Fothergill comments that the material in the permit application does not provide accurate information and that the Applicant has not been upfront with anyone in the application. Ann Jolley comments that the application is incomplete, incorrect and outdated. Kevin Smith comments that the application is an indication of a poorly planned project and that a permit granted to the Applicant would be under a false pretense for a facility that would greatly harm the environment. Deborah White comments that the application contains many untruths. Jana Woodruff comments that the information in the application is fraudulent and inaccurate. Nancy Carnahan comments that the proposed facility should require a licensed chief operator on-site 24 hours a day, seven days a week.

RESPONSE 10:

Wastewater treatment facility permittees must employ or contract with at least one licensed wastewater treatment facility operator holding a valid license or registration. TCEQ's regulations require that domestic wastewater treatment plants be operated and maintained by operators holding a valid certificate of competency at the required level as defined in 30 TAC Chapter 30. This facility must be operated by a chief operator holding a Category C license or higher. To become licensed by TCEQ as a wastewater treatment plant operator, individuals must have the required education and experience, complete the related training, pay an application or renewal fee, and pass a qualifying exam. In order to become a Category C Operator, individuals must have at least two years of experience—one year of experience may be satisfied by college education, but at least one year of the experience must consist of actual domestic wastewater treatment facility operation or maintenance duties. The operator is not required to be onsite at all times; the facility must be operated a minimum of five days per week by the operator and they must be available by telephone or pager seven days per week.

The rules in 30 TAC Chapter 317, Design Criteria for Sewage Systems, provide for permit issuance before final design of the facility. The final design of the facility is not required as part of the wastewater permit application. However, the draft permit requires the Applicant to meet the design criteria requirements for domestic wastewater treatment plants prior to construction of the facility. Other Requirement No. 8 on page 23 of the proposed draft permit requires the Applicant to clearly show how the treatment system will meet the final permitted effluent limitations required for each phase of the proposed draft permit. The proposed draft permit requires the Applicant to submit to the TCEQ Wastewater Permitting Section a summary submittal letter for the design criteria according to 30 TAC Section 317.1, prior to construction of each phase of the wastewater treatment facilities. The summary letter must be signed and sealed by a licensed professional engineer.

If requested by the Wastewater Permitting Section, the permittee must also submit plans, specifications, and a final engineering design report that comply with applicable rules. The Executive Director, in determining whether to perform a review, uses factors such as whether a nonconforming or innovative technology is being proposed, the stream segment in which the project is located, and the Applicant's compliance record. In addition, a licensed professional engineer must certify that the wastewater treatment facility was constructed according to the plans and specifications.

The Applicant is also required to take certain steps to minimize the possibility of an accidental discharge of untreated wastewater. For example, the draft permit states that the Applicant must at all times ensure that the facility and all of its systems of collection, treatment, and disposal are properly operated and maintained. Under the draft permit, the Applicant would be responsible for installing 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.

The Applicant indicates in their notices that the address for the place of public viewing is the John A. and Katherine G. Jackson Public Library, located at 1700 South Farm-to-Market Road 51, Decatur, Texas. The Executive Director's staff contacted the library and the address listed in the notices was confirmed. The Applicant is required to provide the name, physical address and the county of the public place where the application is available for viewing and copying. The above information was therefore stated in the first and second notice.

By submitting a signed and completed application, the Applicant certified under penalty of law that, to the best of their knowledge and belief, the information submitted is true, accurate, and complete. In the event the applicant or 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 must promptly submit such facts or information. A permit may be modified, suspended, or revoked, in whole or in part, if it is determined that the permit was obtained by misrepresentation or failure to disclose fully all relevant facts.

Acceptance of the permit by the entity to whom it is issued constitutes acknowledgment and agreement that the permittee will comply with all the terms and conditions embodied in the permit, and the rules and other orders of the Commission. 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 and is grounds for enforcement action.

COMMENT 11:

Nancy Carnahan comments that if the lake level is reached and the overflow valve is triggered, the proposed discharge will flow downstream and “will thwart the erosion and flood control purpose of the lake.” Nancy Carnahan also comments that TCEQ should determine what effect the discharge may have on the erosion and flood control purposes in place. Nancy Carnahan and Jana Woodruff comment that the intention of the lake project was to control soil erosion and flooding in the area. Althea Forbis, Cathy Russell Fothergill, Rob Fothergill, Ann Jolley, Kevin Smith, Catherine Russell, Deborah White and Joylyn Woodruff comment that the reservoir was designed to prevent erosion. Cathy Russell Fothergill and Richard Fothergill comment that the proposed facility will contribute to increased erosion.

Ann Jolley comments that if this permit is issued, flooding will occur when the flood level in the lake is reached and spills over. Ann Jolley comments that flooding of over 44 plus acres will occur. Ann Jolley also comments that it will occur onto others’ private property rather than on the Applicant’s land. Ann Jolley comments that she is concerned that the flooded water would not be aerated and be unsafe for the water table, recreation use, wildlife and aquatic life use. Thomas Long comments that the lake was built to impound flood water and discharge of thousands of gallons of effluent on a daily basis is not in the public’s best interest. Deborah White comments that once the lake is at its capacity, any addition will cause the back up and they could be looking at a 45 acre flood. She also feels that as the creek rises, it will affect surrounding owner’s property. Jana Woodruff comments that the proposed facility will increase the water level of the lake from 16 acres to 26 acres before the overflow would be affected and sent downstream. She further states that it will cover more of their land and endanger much of the wildlife.

RESPONSE 11:

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. TCEQ does not address flooding or erosion issues associated with a discharge in the wastewater permitting process. The draft permit includes effluent limits and other requirements that the Applicant must meet even during rainfall events and periods of flooding. For flooding concerns, please contact the local floodplain administrator for your area. If you need help finding the local floodplain administrator, please call the TCEQ Resource Protection Team at (512) 239-4691.

Based on information obtained during the public meeting held on April 13, 2007 in Decatur, Texas, there is an overflow valve that allows the water to flow out of the reservoir when it reaches a certain level. In this case, it would seem to be unlikely that the level would rise above the set level.

The issuance of the permit would not grant the Applicant the right to use private or public property for conveyance of wastewater along the discharge route. Also, the issuance of the permit would not authorize any invasion of personal rights or any violation of federal, state, or local laws or regulations. Before commencing any activity authorized in the draft permit, the Applicant would have to acquire property rights necessary to use the discharge route. Accordingly, the draft permit does not authorize the Applicant to build a facility on another's land or discharge onto another's property without permission.

The draft permit does not limit the ability of a nearby landowner to seek relief from a court in response to activities that may or do interfere with the use and enjoyment of their property. If the Applicant's activities create a nuisance condition, TCEQ may be contacted to investigate whether a permit violation has occurred. Potential permit violations may be reported to TCEQ Region 4 Office in Dallas at (817) 588-5800; or by calling the state-wide toll-free number at 1-888-777-3186. Citizen complaints may also be filed online at the following website:

<http://www.tceq.state.tx.us/enforcement/complaints/index.html>.

Please refer to responses 1 and 6 for issues related to aeration, the water table, recreational use, and aquatic life use.

COMMENT 12:

Nancy Carnahan comments that property owners who called the Applicant's office to inquire and protest the permit were addressed by the Applicant's representatives and told that the facility was a "done deal." Rob Fothergill and Kevin Smith comment that they are concerned that the developers may already be misusing roads and cutting locks on gates to access the land before they have received the proper permits. Ann Jolley feels that they may not be able to protest the wastewater treatment plant once the permit has been issued. Catherine Russell, Kevin Smith, and Deborah White comment that at a meeting with the Applicant, the audience asked what the facility would smell like and it was stated, "it smells like money to me."

RESPONSE 12:

The Applicant has not been issued the draft permit at this time. This Response, along with the Executive Director's Preliminary Decision on the application, is mailed to persons who submitted public comments or who requested to be on the mailing list for the application. The letter transmitting this Response specifies the deadline by which affected persons may request a contested case hearing or request reconsideration, which provides additional opportunities for public participation in the permitting process.

The issuance of the permit would not grant the Applicant the right to use private or public property for conveyance of wastewater along the discharge route. Also, the issuance of the permit would not authorize any invasion of personal rights or any violation of federal, state, or local laws or regulations. Before commencing any activity authorized in the draft permit, the

Applicant would have to acquire property rights necessary to use the discharge route. Accordingly, the draft permit does not authorize the Applicant to build a facility on another's land or discharge onto another's property without permission.

COMMENT 13:

Althea Forbis expresses concern that the facility will be very noisy and disrupt the peace and tranquility of the neighborhood. Cathy Russell Fothergill and Richard Fothergill comment that the proposed development site will guarantee that established homes in the area will be smothered in dust and noise pollution. Cathy Russell Fothergill and Richard Fothergill also comment that they are concerned that the plant will create an intolerable odor and limit their use of outdoor activities. Richard Fothergill also comments that he has "yet to see a sewage treatment plant that did not emit an intolerable odor." Rob Fothergill and Kevin Smith comment that they are concerned that the air quality for their families and neighbors will be polluted and unbearable. Catherine Russell comments that the Applicant has shown little concern for the prevention of nuisance and odor. Deborah White comments that the facility will emit smells. Cathy Russell Fothergill comments that if odor will not be present, then why is the wind speed and direction provided in the permit application.

RESPONSE 13:

TCEQ rules require domestic wastewater treatment facilities to meet buffer zone requirements for the abatement and control of nuisance odors according to 30 TAC § 309.13(e). These rules provide three options for applicants to use to satisfy the nuisance odor abatement and control requirement. The Applicant can meet this requirement by owning the buffer zone area, by obtaining a restrictive easement from the adjacent property owners for any part of the buffer zone not owned by the Applicant, or by providing odor control. The proposed facility meets the buffer zone requirements by ownership of a 150-foot distance from the proposed wastewater treatment facility to the Applicant's property line.

TCEQ's jurisdiction is established by the Legislature and is limited to the issues set forth in Chapter 26 of the Texas Water Code. To implement this statutory mandate, TCEQ issues permits that must be consistent with applicable law. TCEQ must consider the quality of the discharge and its effect on the quality of the receiving waters, but the Executive Director does not consider development issues if they do not conflict with applicable rules and regulations related to the wastewater permitting process.

The draft permit does not limit the ability of a nearby landowner to seek relief from a court in response to activities that may or do interfere with the use and enjoyment of their property. If the Applicant's activities create a nuisance condition, TCEQ may be contacted to investigate whether a permit violation has occurred. Potential permit violations may be reported to TCEQ Region 4 Office in Dallas at (817) 588-5800, or by calling the state-wide toll-free number at 1-888-777-3186. Citizen complaints may also be filed online at the following website:

<http://www.tceq.state.tx.us/enforcement/complaints/index.html>.

COMMENT 14:

Cathy Russell Fothergill comments that water wells that provide drinking water for humans and farm animals, are located on the northeast corner of her property and are a few feet from the proposed wastewater treatment facility site. Cathy Russell Fothergill further comments that her son has a water well that is located within the half-mile radius noted in the TCEQ guidelines. Cathy Russell Fothergill comments that the Applicant failed to locate and identify water wells within a half-mile from the plant site. Rob Fothergill comments that his family and neighbors have water wells located within one-quarter mile or closer to the proposed facility site. Ann Jolley comments that surrounding private water wells and the water quality may be endangered in this area. Kevin Smith comments that he is concerned about poisoning of ground water in the area surrounding the plant. Deborah White comments that she and several other landowners have water wells located close to, if not within the half-mile mile radius that is required. Joylyn Woodruff comments that they depend on wells for their drinking water in the area.

RESPONSE 14:

TCEQ rules require that 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. These separation distances apply to any facility used for the storage, processing, or disposal of domestic wastewater. The applicant must indicate if they have addressed the unsuitable site characteristics required in the TCEQ rules, which provides the buffers to private and public wells. Based on information from the Applicant, these requirements are met.

COMMENT 15:

Cathy Russell Fothergill comments that the written notices mailed to her from TCEQ provided the company name as Wise Service Company - Water. Cathy Russell Fothergill also comments that the application available for viewing at the Decatur Public Library provided the name of Brighton Water Systems.

RESPONSE 15:

The Applicant did submit a permit application on July 22, 2005, under the name of Brighton Water Systems. However, a letter dated June 19, 2006 from the Applicant stated the correct legal name on file with the Texas Secretary of States to be Wise Service Company – Water. Therefore, the change was noted and applied in the processing of the permit.

COMMENT 16:

Cathy Russell Fothergill and Richard Fothergill comment that the Applicant does not own the land where the proposed facility is to be located as shown on the maps provided. Ann Jolley also comments that the Applicant does not own the 266 acres of land indicated on the maps that were provided. Thomas Long comments that the documents filed with the library for public viewing did not list the owners of the property for the location of the facility. Catherine Russell comments that the Applicant does not hold the legal title for the land claimed to be used.

RESPONSE 16:

Additional information was received in a revised permit application dated June 19, 2006, where the Applicant indicates that since the original filing of the application, secured ownership of the property had been obtained. The issuance of the permit would not grant the Applicant the right to use private or public property for conveyance of wastewater along the discharge route. Also, the issuance of the permit would not authorize any invasion of personal rights or any violation of federal, state, or local laws or regulations. Before commencing any activity authorized in the draft permit, the Applicant would have to acquire property rights to use the discharge route. Accordingly, the draft permit does not authorize the Applicant to build a facility on another's land. The draft permit does not limit the ability of a nearby landowner to seek relief from a court in response to activities that may or do interfere with the use and enjoyment of their property.

COMMENT 17:

Cathy Russell Fothergill comments that the water from the reservoir ultimately supplies water to Fort Worth.

RESPONSE 17:

Based on a review by the TCEQ Water Quality Standards Team, the reservoir is not designated as a drinking water supply. However, Segment No. 0810 is classified as a public water supply, which is located more than five miles downstream from the point of discharge. Given the size of the discharge, the distance it has to travel, and the dilution it will receive along the way it is unlikely that this discharge could negatively impact Segment 0810.

COMMENT 18:

Richard Fothergill comments that a complete visual inspection of the area should be made by representatives of the TCEQ.

RESPONSE 18:

TCEQ staff that participated in the public meeting visited the site, including the reservoir. However, due to the conditions of the land, an inspection of the entire site could not be conducted at that time. "Other Requirement No. 3" in the draft permit would require the Applicant to provide written notice to the TCEQ Region 4 Office and Applications Review and Processing Team at least 45 days prior to plant startup or anticipated discharge, which provides an additional opportunity for TCEQ staff to conduct a site visit. Additionally, the TCEQ regional office conducts periodic inspections of wastewater facilities and conducts investigations based on complaints received from the public. To report complaints about the facility, please contact the TCEQ at 1-888-777-3186 to reach the TCEQ region office in your area or by e-mail at cmplaint@TCEQ.state.tx.us. Noncompliance with TCEQ rules or the permit may result in the Applicant receiving a notice of violation. For more information regarding enforcement, please see TCEQ's web site at www.tceq.state.tx.us/ and click on "Compliance, Enforcement and Cleanups."

COMMENT 19:

Nancy Carnahan comments that an alternative discharge route on the developer's own property should be investigated. Cathy Russell Fothergill and Richard Fothergill as well as Catherine Russell comment that the proposed housing development of 200 houses or more will strain the water table and possibly cause a water shortage for personal consumption and agricultural use. Ann Jolley comments that the new development will have an impact on the water table which has been stressed due to several years of drought. Deborah White comments that with the addition of 270 homes then they might not have to worry about being flooded, because there may not be any water to do so. Cathy Russell Fothergill and Richard Fothergill express concern that the removal of trees and dirt for construction will create silt to destroy the tributary and lake. Richard Fothergill further states that the development would interrupt the movement of game animals and affect hunting and fishing activities. Cathy Russell Fothergill and Richard Fothergill comment that the Farm-to-Market Road provides bare adequacy for the existing traffic, but will certainly be inadequate to handle additional households that are projected in the development. Rob Fothergill expressed that they have not been treated fairly by Wise Electric because of the lack of information and proper notice that they deserve as members. Rob Fothergill and Catherine Russell comment that they participated in government funded cost share programs to enhance the value and quality of the land. He also comments that the facility would reduce the quality of life and reduce the property value of his land. Kevin Smith comments that the primary purpose of the government funded program was to improve the habitat for wildlife and the facility will reduce the property value of his land as well.

RESPONSE 19:

TCEQ's jurisdiction is established by the legislature and is limited to the issues set forth in Chapter 26 of the Texas Water Code. TCEQ must consider the quality of the discharge and its effect on the receiving waters, but the Executive Director does not consider concerns related to increased traffic resulting from facility or development operations if they do not otherwise conflict with applicable rules and regulations related to the wastewater permitting process. Further, the Executive Director cannot address concerns related to the practices of an electric co-op if such practices do not otherwise negatively affect the environment in violation of applicable rules and regulations that TCEQ is tasked to implement. Additionally, TCEQ cannot consider development issues, property values, or require an applicant to pursue a different discharge route.

The developer/owner/whoever it is in this case is also subject to TCEQ storm water permitting during construction activities. The developer is required to develop and implement a storm water pollution prevention plan (SWP3) and submit a notice of intent to TCEQ for coverage under TXG150000, TCEQ's construction general permit prior to beginning any earth disturbing activities at the site. The SWP3 sets forth the best management practices, e.g. silt fences, etc. that will be utilized to minimize runoff of total suspended solids from construction activities. Runoff controls must remain in place until construction activities cease and the site is stabilized. For more information on TCEQ's permitting program for construction activities, please visit TCEQ's web site at:

http://www.tceq.state.tx.us/nav/permits/wq_construction.html.

COMMENT 20:

Thomas Long comments that the Applicant failed to indicate that the discharge would occur to a flood control drainage ditch as required in the application. He further states that the effluent "will clearly discharge into a flood control lake."

RESPONSE 20:

The application does require the applicant to identify where the effluent is discharged to a city, county, state highway right-of way, or flood control district drainage ditch. According to the information available for the tributary, it appears to be a naturally flowing tributary. It does not appear to have been constructed for the sole purpose of conveying flood water. Accordingly, that part of the discharge does not appear to require special authorization for a discharge. The TCEQ application does not require the Applicant to get authorization to discharge to a flood control lake.

COMMENT 21:

Deborah White comments, "In doing modeling, did you use the pipe that was in the lake to show the water flow from the lake? And then adding, and doing an assumption of 250 more households dumping water into this lake, would that drain in this lake be able to handle all of that water coming in from there?"

RESPONSE 21:

No evaluation of the adequacy of this drain was performed by Commission staff as a part of the review of this application. As a practical matter, it is likely that this drain has been sized to accommodate large flows that would be the result of a heavy rainfall event in the watershed. These flows would likely be much larger than the proposed permitted flow for this facility. The reason the riser is designed this way is so that under all but extreme conditions, the emergency spillway for these structures is not used. This prevents the structural integrity of the dam from possibly being compromised.

COMMENT 22:

Joylyn Woodruff comments that she feels that septic systems provide more control and less pollution than the proposed facility. She feels that because the planned lots will be smaller than the original lots, a community water and sewerage system is now required rather than individual systems. Kevin Smith comments that the original plat could have been serviced by independent septic systems, however, the second plat now requires the sewer plant to service approximately 200 homes.

RESPONSE 22:

The Executive Director considers the application submitted by the Applicant. The Executive Director cannot dictate lot size and require the use of septic tanks instead of a centralized sewer collection system. The draft permit requires the proposed facility to be designed to produce an effluent quality in compliance with the permit parameters required in the draft permit. The effluent limits in the draft permit, based on a 30-day average, are 5 milligrams per liter (mg/L) 5-day carbonaceous biochemical oxygen demand, 5 mg/L total suspended solids, 2 mg/L ammonia-nitrogen, 1 mg/l total phosphorus and 4.0 mg/L minimum dissolved oxygen. By meeting the required effluent limitations in the permit, the proposed facility will be capable of treating effluent that is considered enhanced secondary treatment with nutrient removal. That level of treatment cannot be achieved through septic systems.

COMMENT 23:

Martin Woodruff asks if a meter will be used to measure the amount of effluent at the point of discharge. Martin Woodruff also asks if that information would be available to the public.

RESPONSE 23:

The draft permit requires the effluent monitoring samples to be taken following the final treatment unit based on TCEQ rules. The Applicant is required to submit a flow diagram to identify the final treatment unit prior to discharge. For this facility, the sampling point would be at the location following the chlorine contact chamber and prior to discharge.

The Applicant is required to monitor the volume of treated effluent discharged. The Applicant is also required to analyze the treated effluent prior to discharge and to provide monthly reports to the TCEQ that include the results of the analyses. The Applicant may either collect and analyze the effluent samples itself, or it may contract with a third party for either or both the sampling and analysis. However, all samples must be collected and analyzed according to 30 TAC Chapter 319, Subchapter A, Monitoring and Reporting System. The Applicant is required to further notify the agency if the effluent does not meet the permit limits according to the requirements in the permit. Additionally, the TCEQ regional staff may sample the effluent during routine inspections or in response to a complaint.

Information such as the discharge monitoring reports (DMRs) submitted to TCEQ are considered public information and can be requested. For more information on obtaining public information, you may call TCEQ at (512) 239-1000. Additional information is available online at the following address:

<http://www.tceq.state.tx.us/admin/data/reqinfo.html#pubinfoact>.

The DMRs for wastewater treatment facilities can also be obtained on the Environmental Protection Agency's web site at <http://www.epa.gov/>, click on the link for "Information Sources" and then "Databases and Software". Envirofacts is the name of the national information system that provides a single point of access to data extracted from seven major EPA databases.

COMMENT 24:

Martin Woodruff asks what procedure the Applicant would have to meet in order to expand the facility in the future.

RESPONSE 24:

In order to expand the wastewater treatment facility, the Applicant would have to submit a major amendment application to the permit. The major amendment would have to provide justification for the need of the expanded facility and would require a full review of the operation of the wastewater treatment facility. An application for a major amendment is also subject to applicable public notice rules, similar to this application.

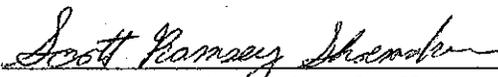
- **No changes to the draft permit have been made in response to public comment.**

Respectfully submitted,

Texas Commission on Environmental Quality

Glenn Shankle
Executive Director

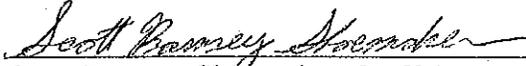
Robert Martinez, Director
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REPRESENTING THE
EXECUTIVE DIRECTOR OF THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY

CERTIFICATE OF SERVICE

I hereby certify that on January 15, 2008, the original of the "Executive Director's Response to Comments" on Wise Service Company-Water's application for TPDES Permit No. WQ0014708001 was filed with the Chief Clerk, Texas Commission on Environmental Quality, Austin, Texas.



Scott Ramsey Shoemaker, Staff Attorney
Environmental Law Division
Texas Commission on Environmental Quality

TEXAS
COMMISSION
ON ENVIRONMENTAL
QUALITY
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CHIEF CLERKS OFFICE

**Attachment E – Map of the Proposed Facility Site
& Surrounding Land**

Wise Service Company-Water Proposed Canyon Springs Wastewater Treatment Facility Map Requested by TCEQ Office of Legal Services



Protecting Texas by
Reducing and
Preventing Pollution

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

May 16, 2008

0 0.1 0.2 0.3 0.4 Miles

Projection: Texas Statewide Mapping System
(TSMS)

Scale 1:19,179

Legend

- Requestor
- Proposed Facility
- 1-Mile Radius Around Proposed Facility
- Lake / Pond

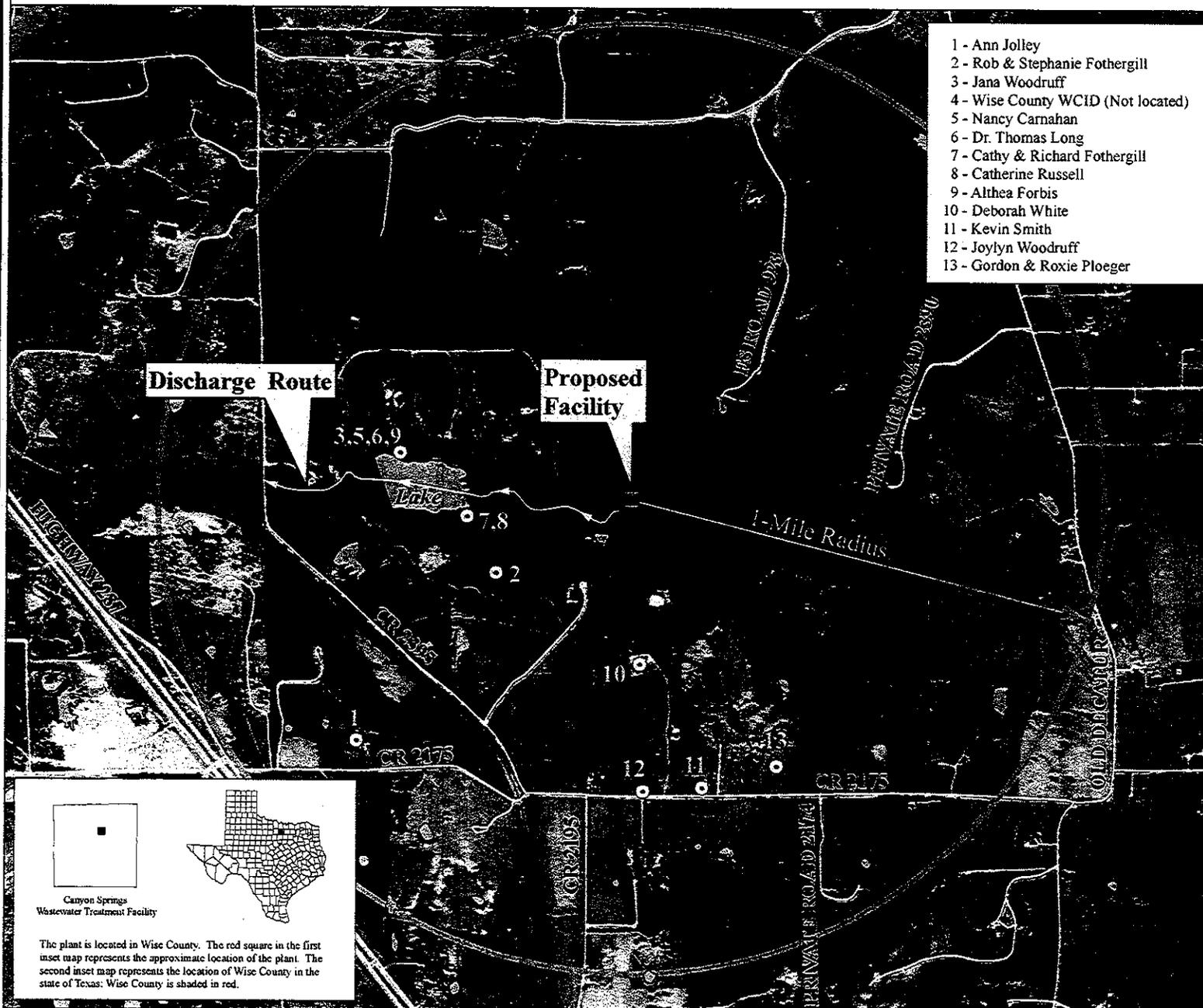
Source: The location of the facility was provided by the TCEQ Office of Legal Services (OLS). OLS obtained the site location information and the requestor information from the applicant. The counties are U.S. Census Bureau 1992 TIGER/Line Data (1:100,000). The background of this map is a source photograph from the 2004 U.S. Department of Agriculture Imagery Program. The imagery is one-meter Color-Infrared (CIR). The image classification number is tx497_1-1.

This map depicts the following:

- (1) The approximate location of the proposed facility. This is labeled "Proposed Facility".
- (2) Discharge Route. This is labeled "Discharge Route".
- (3) One-mile radius. This is labeled "1-mile radius".

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 Resource Division at (512) 239-0800.

- 1 - Ann Jolley
- 2 - Rob & Stephanie Fothergill
- 3 - Jana Woodruff
- 4 - Wise County WCID (Not located)
- 5 - Nancy Carnahan
- 6 - Dr. Thomas Long
- 7 - Cathy & Richard Fothergill
- 8 - Catherine Russell
- 9 - Althea Forbis
- 10 - Deborah White
- 11 - Kevin Smith
- 12 - Joylyn Woodruff
- 13 - Gordon & Roxie Ploeger



Discharge Route

Proposed Facility

1-Mile Radius

Canyon Springs
Wastewater Treatment Facility

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