

APPLICANT: WISE SERVICE COMPANY-WATER
PROPOSED PERMIT NO. WQ 0014708-001

2008 JUN -9 AM 10: 37

CHIEF CLERKS OFFICE

BEFORE THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

**THOMAS N. LONG'S REPLY TO RESPONSES
OF APPLICANT, EXECUTIVE DIRECTOR,
AND PUBLIC INTEREST COUNSEL**

1. INTRODUCTION

In the fall of 2006, I and other members of my family became aware of the above TPDES application after conversations with neighboring property owners. Neither I nor any family member (heirs of the James E. Forbis Estate), received any notice whatsoever from the applicant or from TCEQ, even though our property

- adjoins the applicant's property
- is approximately 200 feet downstream from the proposed facility (according to diagrams in the application)
- will receive 100% of the effluent discharged by the facility into a federally funded flood control reservoir (completely omitted from application)

Despite the fact that the applicant failed to follow the most basic guidelines for TPDES permitting (adjacent property notice, accurate facility location, description of discharge route), the Executive Director and Staff have continued to move this application forward toward approval, and at times, by Staff's own admission, have actually amended the application on behalf of the applicant .

It is my position that TCEQ Staff have failed to discharge their duty to impartially review this application. They have ignored relevant misstatements of fact in the application and corrected others. As well, on a visit to Wise County prior to the public meeting (April 3, 2007), Staff declined an opportunity view the facility site and the receiving stream, and only visited the reservoir at my invitation and insistence.

It seems a terrible waste of the resources of the State of Texas to argue the "merits" of an application, so full of undisputed inaccuracies, in a SOAH courtroom. If it is within the purview of the Commission to deny the application at this juncture, I respectfully submit that this action is warranted . If not, a contested case hearing appears to be the next best alternative.

II. AFFECTED PARTY STATUS

The applicant's claim that members of the Forbis group have no legal standing in this matter is unconscionable. For many years immediately preceding his death in 1994, James E. "Ed" Forbis served as the local legal counsel for Wise Electric Cooperative, parent company of Wise Service Company-Water. The applicant is well aware of the death of Mr. Forbis, as well as the location of the Forbis property. Wise Electric Cooperative billed for electric service to the Forbis farm property in question until very recently.

My step-father, James E. Forbis, purchased the approximately 200 acres adjoining the applicant's property in several different transactions between 1970 and 1973. In his will, Mr. Forbis left this property to his widow (my mother), Althea Forbis, and, subject to her discretion, to her four children. At the time of this application, the James E. Forbis property is owned in undivided interests by Althea Forbis, Christopher N. Forbis, Nancy (Forbis) Carnahan, Jana Sue Woodruff, and Thomas N. Long. Warranty deeds, as well as the James E. Forbis will, and my mother's disclaimer are available for review at the Wise County courthouse. Copies of these documents will gladly be provided to the Commission and the SOAH judges if requested.

My family continues to receive tax notices on all tracts of this land at the same address, (P. O. Box 534, Decatur, Tx.), that has been valid for this property since its purchase. There is no explanation as to why the applicant, claiming to use tax records, failed to include this property in the earliest notices for this application. (See "Adjacent Property Owners" in application).

III. RELEVANCE OF "UNNAMED RESERVOIR"

Throughout this application process, the Executive Director has maintained that the failure of the applicant to mention the reservoir, (that is one third mile downstream from the proposed facility and directly in the discharge route), is no cause for concern. He notes that the reservoir was "identified" by Staff, and "considered" in the development of the draft permit. There are several troubling aspects to the ED's position.

1. The reservoir, "Big Sandy Creek Watershed, Site 35", was completed in 1999. The applicant was clearly grossly negligent and/or deceptive in describing the discharge route.
2. Staff, instead of serving as advocates for the natural resources affected by the discharge route, actually became advocates for the applicant by amending the second published notice (NAPD) to include mention of the reservoir.
3. Members of the Forbis extended family enjoy boating and fishing in the reservoir. These activities unavoidably involve human contact with the waters of the lake, especially by young children. Surely these activities constitute "contact recreation." As well, the reservoir is home to many species of migrating waterfowl, and a water supply to large turkey and deer populations.

The ED claims that Staff's modeling indicates that current water quality would be maintained. It is my position that Staff has not fully considered the fact that the reservoir is *not* a constant level body of water. Its size is totally dependent on rainfall patterns, and it is very seldom a 16 acre lake. The real danger to this reservoir will come when drought conditions persist, (a much more common occurrence than overflow). At these times, the lake could be half its conservation level or less. On many occasions, as recently as 2006, the "duck island" in the lake has actually been a peninsula because of low water levels.

The problem of greatly concentrated effluent levels during low rainfall years is obvious. What should also be obvious is that any accidental discharge of untreated wastes (mechanical failures or human errors), would have catastrophic effects on the water quality in the reservoir and the delicate ecosystem it supports. Unlike most discharge system designs, treated (or untreated) wastewater in this system will have no where to flow to promote dissipation, except in very rare overflow events. This is why the Wise County WCID #1 must enforce the terms of its easement.

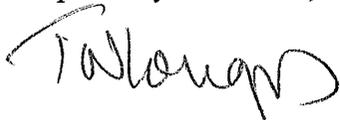
IV. COMPLIANCE HISTORY OF APPLICANT

Those of us in Wise County familiar with this applicant are amazed that Staff was able to generate a five year compliance history on Wise Service Company-Water. What Staff neglected to mention is that the business of WSCW to this point has been to provide water to rural subdivisions. I am aware of no previous history of owning or operating a wastewater treatment facility. The many inaccuracies noted in this application should forewarn the Commission that compliance with the TCEQ regulations could present a real challenge to this company. The heavy dependence on self-monitoring and self-reporting is particularly worrisome considering this applicant's performance thus far. It would be humorous were it not so tragic that the TCEQ asks us to trust a company that cannot spell the word "application" (see cover page of application), to operate a highly technical sewage treatment facility.

V. CONCLUSION

Sufficient data has been transmitted to the TCEQ in this and previous correspondences to establish that I am an affected party in this matter, and that there exist numerous relevant and material issues that must be resolved before the TCEQ considers issuing a permit to Wise Service Company-Water. It is my position that the Commission should either deny the application at this juncture, or refer the matter to the State Office of Administrative Hearings.

Respectfully Submitted,



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940-627-2000

Certificate of Service

I certify that on or before June 9, 2008, a copy of this document was sent by U.S. Mail, Courier, facsimile, or by hand delivery to the Chief Clerk, TCEQ, and all parties in this case.



Thomas N. Long, M.D.