

TCEQ DOCKET NO. 2008-0353-MWD

2008 APR 28 PM 4:31

APPLICATION BY	§	BEFORE THE
GUADALUPE-BLANCO RIVER	§	
AUTHORITY FOR WASTEWATER	§	TEXAS COMMISSION ON
PERMIT AMENDMENT;	§	
TPDES PERMIT NO. WQ0011496001	§	ENVIRONMENTAL QUALITY

CHIEF CLERKS OFFICE

**GUADALUPE-BLANCO RIVER AUTHORITY'S
RESPONSE TO REQUEST FOR RECONSIDERATION**

COMES NOW Applicant Guadalupe-Blanco River Authority ("*Applicant*" or "*GBRA*") and files this its Response to the Request for Reconsideration filed by Ms. Lois M. Duggan (the "*Request*") regarding GBRA's Application to Amend Permit No. WQ0011496001 (the "*Application*"). GBRA respectfully asks the Commission to deny the Request and promptly issue the permit amendment for Permit No. WQ0011496001 as recommended by the Executive Director (the "*Amended Permit*").

I.

BACKGROUND

GBRA holds Permit No. WQ0011496001 for the Canyon Park Estates Wastewater Treatment Facility (the "*Facility*"). On July 9, 2007, GBRA filed the Application seeking both to expand the Facility (and increase in phases the volume of wastewater discharged from the Facility) and to improve the quality of the discharged effluent. The expansion is necessary to accommodate the ever growing Canyon Lake community including five resorts, one car wash, one restaurant, and residential properties in the unincorporated area of Hancock, Texas.

The Application was determined to be administratively complete on August 23, 2007. First Notice of the Application was published on August 29, 2007 in accordance with 30 Tex. Admin. Code §39.551 in two area newspapers, including the *Times Guardian* – a newspaper regularly published or circulated within the county where the discharge is located and in each county affected by the discharge.¹ Ms. Duggan responded to the first notice; she sent a September 3, 2007 letter thanking the Executive Director for the notice in the *Times Guardian* and for the viewing copy of the Application placed at the Tye Preston Memorial Library in

¹ The first notice also was published in the *San Antonio Express*.

Canyon Lake.² This letter contains no substantive comments about the Application, the Applicant, the current permit, or the Facility.

Next in the process, the Executive Director undertook a technical review of the Application. He issued the Statement of Basis/Technical Summary, Preliminary Decision, and Draft Permit on October 19, 2007. The Second Notice of the Application was published on November 15, 2007 in the *Times Guardian* and on November 21, 2007 in the *San Antonio Express*. One comment was submitted after the Second Notice, but, significantly, before the public comment period ended on December 21, 2007, the commenter submitted a follow-up letter to TCEQ stating that, after meeting with a GBRA representative, his concerns about the Amended Permit were satisfactorily answered.³ The Executive Director prepared and published a response to comment and, on January 28, 2008, took the final administrative step toward permit issuance – he mailed his Final Decision letter recommending that the Amended Permit for the Facility be issued. Only one request for reconsideration was submitted, that of Ms. Duggan. No timely requests for a contested case hearing were received.

II.

ARGUMENT

Under the TCEQ rules, requests for reconsideration **MUST** include certain information. Critical in this matter is the following requirement applicable to requests for reconsideration:

“The request for reconsideration **must** expressly state that the person is requesting reconsideration of the executive director's decision, and **give reasons why the decision should be reconsidered.**”⁴

Neither Ms. Duggan's first letter to TCEQ or the Request articulates any defects in the Application or shortcomings in the Amended Permit. Neither communicates any issues regarding the Applicant or concerns about the Facility. Instead, the only reason given in the Request as to why the decision should be reconsidered is that “[r]elevant and material facts relating to the permit are not addressed in the Executive Director's Decision.” No further

² See letter attached as Attachment A dated September 3, 2007.

³ See letter attached as Attachment B dated December 14, 2007.

⁴ 30 TEX. ADMIN. CODE §55.201(e) (*emphasis added*).

explanation or delineation of those alleged “facts” is provided in the Request. That abbreviated reason amounts to no reason at all. With no reasons expressed in the Request, GBRA can’t possibly “address the issues raised in the request” as specified in 30 Tex. Admin. Code §55.209(f) – no issues were raised with sufficient specificity to allow a rational or coherent response.

The pledge made in the Request to disclose the so-called relevant facts at a later date is too little, too late under the rules. Ms. Duggan’s proposal to reveal the alleged “facts” now that her Request has been set on the Agenda (i.e., either in her Reply to the parties’ Responses or at the Agenda itself) has effectively prevented the Commission from timely receiving a full briefing from all parties in advance of the Commission’s consideration of this matter. And to get that full briefing now would require further unnecessary delay in the permitting process to the immediate and sole detriment of the Canyon Lake community. Ms. Duggan was required to state the reasons for overturning the Executive Director’s decision on the Amended Permit in her Request. Having failed to do so, the Commission should not endorse her tactic by allowing her to supplement her Request, particularly when that will only result in further delay that is adverse to GBRA’s interests. The Commission considers four specific items when deciding upon a request for reconsideration: the public comments, the Executive Director’s response to comment, requests for reconsideration, and requests for contested case hearing (and there were no timely requests for contested case hearings in this case).⁵ Those materials offer no valid basis for overturning the decision to issue the Amended Permit.

In this case, unwarranted delay in approving the Application should be avoided for another reason--the Amended Permit imposes more stringent effluent limitations than in the Facility’s existing permit. The effluent parameters specifically impacted are carbonaceous biochemical oxygen demand (“*CBOD₅*”) and total suspended solids (“*TSS*”). In the Interim I Phase, the effluent limitations, based on a 30-day average, are 7 mg/L *CBOD₅* and 15 mg/L *TSS*.⁶ In the Interim II and Final Phases, the effluent limitations decrease to 5 mg/L *CBOD₅* and

⁵ See 30 TEX. ADMIN. CODE §55.211(b).

⁶ See Technical Summary at 3.

5 mg/L TSS.⁷ This decrease results not only in a significant improvement to the effluent water quality, but also improves Canyon Lake's water quality. Any delay in issuing the Amended Permit simply delays the imposition of these improved water quality requirements.

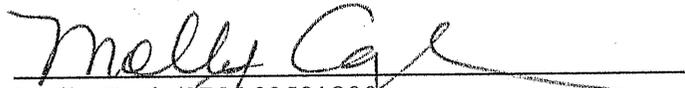
III.

CONCLUSION

For the foregoing reasons, Applicant GBRA respectfully requests that the Commission deny the Request for Reconsideration and grant the Amended Permit for Permit No. WQ0011496001.

Respectfully submitted,

VINSON & ELKINS L.L.P.
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COUNSEL FOR APPLICANT
GUADALUPE-BLANCO RIVER AUTHORITY

⁷ See *id.* Note that the effluent limitations for ammonia-nitrogen ("NH₃-N₂"), Total Phosphorous, and minimum dissolved oxygen ("DO") do not change with the phases, but remain 2 mg/L NH₃-N₂, 1.0 mg/L Total Phosphorous, and 4.0 mg/L DO, respectively. *Id.*

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing brief has been served on the following on this the 28th day of April, 2008:

FOR THE APPLICANT:

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Guadalupe-Blanco River Authority
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Seguin, Texas 78155-5819
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**FOR ALTERNATIVE DISPUTE
RESOLUTION:**

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FOR OFFICE OF PUBLIC ASSISTANCE:

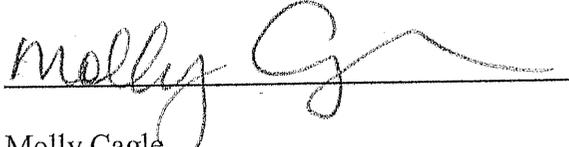
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REQUESTER:

Lois Marie Duggan
16391 Highway 306
Canyon Lake, Texas 78133


Molly Cagle

ATTACHMENT A

Letter to the
Editor

September 3, 2007

TPA OPA

06

BY _____

21. Executive Director
2 C & G
P.O. Box 13087
Austin, Texas 78711

From: Lai M. Truyen, Researcher
ONE OAKS DRIVE # 391 Hwy 306
Canyon Lake Texas
78133

MWD
59847

TPA Application to Increase Discharge
Acknowledgment and Appreciation

"Changes in Public Policy August 2007"

A sincere thank you for providing the local newspaper, Time Guardian, the notice of the Application and providing the permit application for viewing and copying at the Eye Preston Municipal Library in Canyon Lake, Texas.

Your consideration in the above provisions, is, as a result of my direct insistence that the practice of supplying other newspaper and the New Braunfels Public Library, did not and could not provide affected persons with readily and accessible public information on the Pollutant Discharge Elimination System (TPDES) Permit No. 205 00149600 (TPA I.D. No. TX 0025224) held by the Guadalupe Blanco River Authority.

Respectfully Submitted
Lai M. Truyen

Please include my name on the mailing list.

MWD

ATTACHMENT B

MWD
59847

CFA

DEC 13 2007

To: Chief Clerk's Office, MC 105
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, TX 78711-3087

BY *DL*

RE: Permit Amendment to Permit No. WQ0011496001
As described in letter from the Commission "Notice of Receipt of Application and Intent
To Obtain Water Quality Permit Amendment," dated August 23, 2007

From: Dr. Seth Parker
825 Hancock Road
Canyon Lake, TX 78133-2601

Date: December 14, 2007

CHIEF CLERK'S OFFICE

2007 DEC 17 PM 3:06

TEXAS
COMMISSION
ON ENVIRONMENTAL
QUALITY

Dear Sir:

I will not be submitting a request for a public hearing related to the above permit.

About two weeks ago, a Ms. Cathy Thomas (tel 409-789-9284; whom I believe does public relations for the company involved in the submission of the above permit. She informed me, that she had been informed by the Commission, that mine was the only written comment submitted to the Commission re the above permit.

Approximately six weeks ago, an engineer (I think it was Ms. Elizabeth Lamb) from the Guadalupe-Blanco River Authority contacted me. She had a copy of my letter to the Commission and asked to discuss my concerns with me.

We discussed for more than half an hour. The public copy of the application that I read is not entirely self-explanatory to someone (like myself) without prior knowledge of the operation of a wastewater treatment plant. The engineer's patient explanations and answering other questions not in my letter to the Commission, I feel satisfactorily answered my concerns concerning the above permit amendment.

Ms. Thomas asked if my concerns had been answered, would I write to the Commission to that effect. I have been busy, but I now write to that effect.

"I will not be submitting a request for a public hearing related to the above permit."

Yours truly,
Seth Parker
Dr. Seth Parker

MWD