

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



TEXAS
COMMISSION
ON ENVIRONMENTAL
QUALITY

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TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

CHIEF CLERKS OFFICE

June 16, 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: Application by H. Bowers, Inc. Permit No. WQ0004815000; TCEQ Docket No.
2008-0423-IWD

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, appearing to read "Scott R. Shoemaker".

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

Enclosures

cc: Mailing list

**MAILING LIST
H BOWERS, INC.**

DOCKET NO. 2008-0423-IWD; PERMIT NO. WQ0004815000

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FOR ALTERNATIVE DISPUTE
RESOLUTION:

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*See attached for a list of Requesters and
Interested Persons:*

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JEANETTE & WESLEY BATCHELDER
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KIMBERLEY K & STEPHEN F COOPER
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CAROLYN INTO
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PAULA M JONES-CARSON
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PALACIOS TX 77465-7105

SALLY & SCOTT KURTZ
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JOE MORTON
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TCEQ Docket Number 2008-0423-IWD

Application by	§	Before the
H. Bowers, Inc.	§	TEXAS COMMISSION ON
For Permit No. WQ0004815000	§	ENVIRONMENTAL QUALITY

EXECUTIVE DIRECTOR'S RESPONSE TO HEARING REQUESTS

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 H. Bowers, Inc. (Applicant) for renewal of Permit Number WQ0004815000. Timely hearing requests were received from the following individuals: Thelma Lee Rackley; Geraldine Batchelder; Wesley & Jeanette Batchelder; Stephen & Kimberly Cooper; Geraldine Jones; Paula Jones-Carson; Jaime Alanis; Scott & Sally Kurtz; Danny & Julie Sliva; Carolyn Into; David & Suzanne Salinas; Charles & Mary Parker; Gloria & Mike Hunter; and Daniel & Sandra Tucker.

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 are provided to the 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 to the TCEQ for a new permit to authorize the disposal of process wastewater from a fish and shrimp processing facility via on-site irrigation of 36.5 acres of Coastal Bermuda and Rye grasses. The volume of effluent routed to the irrigation holding pond system shall not exceed a daily average flow of 102,740 gallons per day. The hydraulic application rate shall not exceed 3.2 acre-inches per acre-irrigated per month. The draft permit would not authorize a discharge of pollutants into water in the state. The facility is located 3.5 miles north of the City of Palacios, Texas on Highway 35, 1000 feet south of the intersection of Highway 35 and FM 521, Matagorda County, Texas. The facility and disposal site are located in the drainage area of Tres Palacios / Turtle Bay in Segment No. 2452 of the Bays and Estuaries.

III. Procedural Background

The application was received on November 21, 2006 and declared administratively complete on February 5, 2007. The Executive Director completed the technical review of the application on July 12, 2007 and prepared a draft permit. The Notice of Receipt of Application and Intent to Obtain a Water Quality Permit (NORI) was published on March 4, 2007 in the *Bay City Tribune*. The Notice of Application and Preliminary Decision (NAPD) was published on August 19, 2007 in the *Bay City Tribune*. The comment period ended on September 18, 2007. The Executive RTC was filed on February 7, 2008, and the period for requesting reconsideration or a contested case hearing ended on March 17, 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 February 5, 2007 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.

D. 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).*

Thelma Lee Rackley, Geraldine Batchelder, Wesley & Jeanette Batchelder, Geraldine Jones, Paula Jones-Carson, Jaime Alanis, Scott & Sally Kurtz, Danny & Julie Sliva, David & Suzanne Salinas, Charles & Mary Parker, Gloria & Mike Hunter, and Daniel & Sandra Tucker filed timely hearing requests in writing that were not based on comments withdrawn prior to the filing of the Executive Director's RTC. 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. However, Stephen & Kimberly Cooper and Carolyn Into only provided their P.O. Boxes, which did not adequately explain their location and distance relative to the proposed facility or activity that is the subject of this application. Accordingly, their requests did not substantially comply with 30 TAC §§ 55.201(c) and (d).

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): Thelma Lee Rackley, Geraldine Batchelder, Wesley & Jeanette Batchelder, Geraldine Jones, Paula Jones-Carson, Jaime Alanis, Scott & Sally Kurtz, Danny & Julie Sliva, David & Suzanne Salinas, Charles & Mary Parker, Gloria & Mike Hunter, and Daniel & Sandra Tucker.

The ED also recommends the Commission find that the following individuals' hearing requests do not substantially comply with the requirements of 30 TAC Sections 55.201(c) and (d): Stephen & Kimberly Cooper and Carolyn Into.

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

Thelma Rackley states that she lives immediately on the east side of Cash Creek. She further indicates that the drainage would only be flowing across one tract of land between the Bowers tract and the creek. She further states that the creek is often out of its banks and on her property. She also provided her physical address. She was not listed on the Applicant's landowner list. Based on map information available to the ED, she does not appear to be adjacent to and appears to be approximately ½ mile away from the application area. Based on these facts, it is unlikely that Thelma Lee Rackley's health and safety or land or water use will be impacted by the regulated activity.

The ED recommends the commission find that Thelma Lee Rackley is not an affected person according to the factors in 30 TAC § 55.203.

Geraldine Batchelder provides her physical mailing address and states that her property is located along the east side of Cash's Creek across from the proposed processing plant. She and her farm were listed on the Applicant's landowner list. Based on map information available to the ED, although she appears to be adjacent to Cash's Creek and downstream approximately one mile away from the application area, she does not appear to be adjacent to the application area. Since the draft permit would not authorize a discharge into Cash's Creek, it is unlikely that Geraldine Batchelder's health and safety or land or water use will be impacted by the regulated activity.

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

Wesley & Jeanette Batchelder provide their physical mailing address and state that their location is directly across Cash Creek, adjacent to the proposed processing facility. They further state that their home and property is located on the eastern side of Cash Creek, directly across the creek from the proposed processing site. They were listed on the Applicant's landowner list (as downstream landowners). Based on map information available to the ED, although they appear to be adjacent to Cash's Creek and downstream approximately one mile away from the application area, they do not appear to be adjacent to the application area. Since the draft permit would not authorize a discharge into Cash's Creek, it is unlikely that Wesley and Jeanette Batchelder's health and safety or land or water use will be impacted by the regulated activity.

The ED recommends the Commission find that Wesley and Jeanette Batchelder are not affected persons according to the factors in 30 TAC § 55.203.

Stephen & Kimberley Cooper state that their property is adjacent to the Applicant's property and that it drains to their property. They only provided a PO Box on their hearing request and they were not listed on the Applicant's landowner list. Since Stephen & Kimberly Cooper did not provide the physical location of their property, the ED was unable to locate them to determine their proximity to the proposed facility and apply the factors in 30 TAC § 55.203. More specifically, they do not adequately explain their physical location and distance in relation to the proposed facility or activity. Accordingly, the ED cannot recommend they be found affected persons. If Stephen & Kimberly Cooper provide additional information regarding their location in relation to the facility, the ED may reconsider his recommendation.

The ED recommends the Commission find that Stephen & Kimberly Cooper are not affected persons.

Geraldine Jones and Paula Jones-Carson provided identical physical mailing addresses. They were not listed on the Applicant's landowner list. Based on map information available to the ED, they do not appear to be adjacent to and appear to be over two miles away from the application area. Based on these facts, it is unlikely that they will be affected by the regulated activity on their health and safety or use of their property.

The ED recommends the Commission find that Geraldine Jones and Paula Jones-Carson are not affected persons according to the factors in 30 TAC § 55.203.

Jaime Alanis provides his physical mailing address. He was listed on the Applicant's landowner list as an adjacent landowner. Based on map information available to the ED, he appears to be adjacent to the application area to the north. Based on these facts, Jaime Alanis' health and safety and personal land use may be impacted by the regulated activity.

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

Scott & Sally Kurtz provide their physical mailing address and state that they live within 10 miles of the proposed facility, but that their property is bordered by the creek. They were on the Applicant's landowner list as downstream landowners. Based on map information available to the ED, it appears that they are not adjacent to and over two miles away from the application area. Based on these facts, it is unlikely their health and safety or land use would be affected by the regulated activity.

The ED recommends the Commission find that Scott & Sally Kurtz are not affected persons pursuant to the factors in 30 TAC § 55.203.

Danny & Julie Sliva provide their physical mailing address. They were not listed on the Applicant's landowner list. Based on map information available to the ED, they do not appear to be adjacent to and are approximately ½ mile away to the north from the proposed application area. Based on these facts, it is unlikely their health and safety or land use will be affected by the regulated activity.

The ED recommends the Commission find that Danny & Julie Sliva are not affected persons.

Carolyn Into only provided her P.O. Box, but further states that she is the Applicant's neighbor, and that the proposed plant will be next to her property. She was not listed on the Applicant's landowner list, but her land is indicated on the Applicant's landowner map. Based on map information available to the ED, she does not appear to be adjacent to and appears to be approximately 470 feet away from the application area, so it would be unlikely that wastewater runoff, if any, would occur on her property. Based on these facts, her health and safety or land use is unlikely to be impacted by the regulated activity.

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

David & Suzanne Salinas provide their physical mailing address and further state that they live "on 521" and that the facility is being built next to their property. They were not on the Applicant's landowner list. Based on map information available to the ED, they appear to be approximately ten miles away from the facility to the east on Farm-to-Market 521. This information contradicts their conclusion that the facility would be build next to their property. If they provide additional information regarding their proximity to the facility, the ED may reconsider his recommendation. However, at this point, it is unlikely that their health and safety or land use would be impacted by the regulated activity.

The ED recommends the Commission find that David & Suzanne Salinas are not affected persons according to the factors in 30 TAC § 55.203.

Charles & Mary Parker provide their physical mailing address. They were on the Applicant's landowner list as downstream landowners. Based on the map information available to the ED, they appear to be adjacent to the creek on the east side, but not the application area located on the west side of the creek. Based on these facts, it is unlikely their health and safety or land use will be affected by the regulated activity.

The ED recommends the Commission find that Charles & Mary Parker are not affected persons.

Gloria & Mike Hunter provide their physical mailing address and further state that the proposed facility is going up on the back side of their land. They were listed on the Applicant's landowner list as adjacent landowners. Based on map information available to the ED, they appear to be adjacent to the north of the proposed facility and application area. Based on these facts, their health and safety or land use may be impacted by the regulated activity.

The ED recommends the Commission find that that Gloria & Mike Hunter are affected persons.

Daniel & Sandra Tucker provide their physical mailing address and state that they have a new home built on property ½ mile to the north east on FM 521. They further state that they also lease the hay meadow adjoining the facility to the east. They further elaborate, stating that their home and 75 acres of land are located 433 yards northeast of the proposed facility property, and that they lease 80 acres immediately adjoining the Applicant's property to the east with a common boundary line on which they grow and harvest hay. They were not on the Applicant's landowner list. Based on the lease of property adjacent to the proposed irrigation area, their health and safety and personal land or water use may be affected by the regulated activity.

The ED recommends the Commission find that Daniel & Sandra Tucker are affected persons pursuant 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 issues raised in accordance with the regulatory criteria. The issues raised for this application and the Executive Director's analysis and recommendations follow.

ISSUE 1. Whether the draft permit satisfies regulatory requirements intended to protect human health, water quality, and the environment?

Most of the hearing requestors raised health and water quality concerns, such as contamination, health hazards, and potential effects of the wastewater on their property. This issue was raised during the public 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.

ISSUE 2. Whether the draft permit satisfies regulatory requirements intended to prevent groundwater contamination and contamination of water supply?

Wesley, Jeanette, and Geraldine Batchelder state that they are concerned about groundwater contamination. Carolyn Into states that she is concerned about contamination of her water supply. This issue was raised during the public 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.

ISSUE 3. Whether the draft permit adequately provides for the abatement of odor associated with the facility's storage and irrigation of the wastewater?

Many of the hearing requestors raised concerns about odor. This issue, as it relates to storage and irrigation of wastewater, was raised during the public comment period, raises a concern related to water quality permitting requirements, and is therefore relevant and material to a decision on this application. Odor concerns related to the rendering of shrimp and fish are not considered during the wastewater permitting process.

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

ISSUE 4. Whether the Applicant met applicable regulatory requirements related to providing a map showing the location of adjacent landowners?

Daniel & Sandra Tucker state that the Applicant failed to provide a map showing the location of adjacent landowners, even though land ownership is a public record. This issue was raised during the public 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.

ISSUE 5. Whether operations according to the draft permit would prevent effluent runoff from the land application area?

Many of the requestors raised concern over runoff from the irrigation area. This issue was raised during the public 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.

ISSUE 6. Whether the land application process will adversely affect wildlife?

Wesley, Jeanette, and Geraldine Batchelder state that they are concerned about stagnant water supply for wildlife. This issue was raised during the public 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.

ISSUE 7. Whether operations according to the draft permit would be protective of water quality in events such as high tide, flooding, or high rainfall?

Many of the requestors raised concerns related to how storage and irrigation of wastewater during events such as high tide, flooding, or high rainfall would affect the surrounding area. This issue was raised during the public 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.

ISSUE 8. Whether the draft permit's provisions regarding the regulated activity's proximity to private water wells is protective of water quality?

Daniel & Sandra Tucker question that all wastewater ponds and irrigation areas are 150 feet from all private water wells on lands to the north of the property. This issue was raised during the public 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.

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

Thelma Rackley, Danny & Julie Sliva, Carolyn Into, David & Suzanne Salinas, Gloria & Mike Hunter, and Daniel & Sandra Tucker indicate that they did not receive any notice concerning the proposed facility. Daniel & Sandra Tucker state that a number of the landowners in the area affected by the permit were not notified, some of which are immediately adjacent to the property with common property lines. Charles & Mary Parker state that they "got the first letter, but not the one with this form. A neighbor had to supply this form." This issue was raised during the public 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.

ISSUE 10. Whether the application should be denied because the Applicant proceeded with construction without prior authorization?

Charles & Mary Parker ask, "If this project is not permitted yet [sic] why has the facility already being built. [sic]" The Applicant had indicated to the ED's staff that they began constructing the irrigation holding pond system. In response, the ED's staff contacted Region 12 staff. On December 14, 2007, a Region 12 inspector conducted a site assessment and verified that construction of the holding pond system had begun. Thereafter, the Applicant indicated that pond construction ceased. This issue was raised during the public 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.

ISSUE 11. Whether the Applicant will safely conclude operations in the event of business failure or closing?

Stephen & Kimberley Cooper state that they are concerned about the possibility of the Applicant's business failing and closing, and are concerned about who would be in charge of cleaning up in that event. Daniel & Sandra Tucker state that they are concerned about a "clean up fund, or lack of one, when the operation closes." Daniel & Sandra Tucker ask what happens in case of business failure or closing, and state that evidently there is no clean up fund provision. They further state they would be interested in hearing about any provisions the Applicant is making for such event. This issue raises a concern regarding the Applicant's ability to safely conclude operations in the event of business failure or closing that would be addressed in an enforcement context. As a result, 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.

ISSUE 12. What kind of irrigation would the applicant use?

Geraldine Batchelder asks, "What kind of irrigation?" This was a question Ms. Batchelder raised during the comment period in her letter dated September 17, 2007. This does not raise an issue that, if resolved, would affect a decision on this application. Accordingly, this question, which was answered in the RTC (a "big gun" traveling sprinkler system), is not relevant or material to a decision on this application.

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

ISSUE 13. What chemicals will be used for processing, wastewater disposal, and solids disposal?

David and Suzanne Salinas state that they would like to know what kinds of chemicals are going to be used and what kind of health problem might they encounter because of the chemicals. Daniel & Sandra Tucker state that they asked what chemicals would be used in the processing plant, solid waste disposal, and wastewater disposal. This question does not raise a disputed fact issue that, if resolved, would affect a decision on this application. Accordingly, this question is not relevant or material to a decision on this application.

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

ISSUE 14. Whether the proposed activity will attract flies, maggots, alligators, or other wild animals or reptiles to the land application area?

Danny & Julie Sliva state that it would be a breeding ground for flies and maggots. David and Suzanne Salinas state that they have children and small grandchildren that play outside and they do not want to worry about any kind of wild animals or reptiles that might be drawn to ponds and standing water. Charles & Mary Parker state that they are concerned about an increase in alligators. The draft permit does not authorize invasions of personal property rights, such as creation of nuisance conditions. These specific concerns are not typically considered during the wastewater 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.

ISSUE 15. Where and how will fish remains and solid waste will be disposed of?

Daniel & Sandra Tucker ask how all the fish remains and solid waste is to be disposed? The draft permit requires that solids be rendered and hauled to other processing facilities. Daniel & Sandra Tucker ask, "where are the offsite rendering facilities?" The draft permit requires that solids be rendered and hauled to other processing facilities. This issue raises a solid waste concern. Further, beyond the requirement that solid waste be taken to another facility, this issue is not further addressed in the permitting process. Additionally, resolution of this issue would not affect a decision on the proposed facility and activity. 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.

ISSUE 16. Whether the draft permit will affect air quality not associated with odor?

Many of the hearing requestors raised concerns about air quality. This issue does not raise a concern related to water quality. Also, this issue raises a concern that may be addressed during the air permitting process. Since issues reserved for air permitting are not generally considered during the permitting process for industrial wastewater discharges, 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.

ISSUE 17. Whether the draft permit will affect property values?

Many of the requestors are concerned about devaluation of their property. 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.

ISSUE 18. Whether the proposed facility would prevent requestors from building homes on their land?

Gloria & Mike Hunter state that as a result of the proposed facility, they cannot build a house on their land. Issuance of the draft permit would not grant the Applicant the right to use private or public property for the treatment of wastewater. Since the draft permit does not convey any property rights or exclusive privilege, 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.

ISSUE 19. Whether the Applicant should pursue an alternative location for the proposed facility?

Gloria & Mike Hunter state, "doesn't Bower have 100 acres to build this plant. [sic]" 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.

ISSUE 20. Whether the draft permit meets applicable regulatory requirements intended to address concerns related to prevention of trespass, or other matters addressed in civil court?

Daniel & Sandra Tucker state that they "feel TCEQ's objective should be to provide for prevention of any damage possibilities so as not to have to resort to the courts." Issuance of the draft permit would not grant the Applicant the right to use private or public property for the treatment of wastewater. Since the draft permit does not convey any property rights or exclusive privilege, it is not currently 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.

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.

VII. Executive Director's Recommendation

The Executive Director recommends the Commission find that Jaime Alanis, Gloria & Mike Hunter, and Daniel & Sandra Tucker are affected persons, and refer the following issues to SOAH for a proceeding of nine months duration:

- ISSUE 1. Whether the draft permit satisfies regulatory requirements intended to protect human health, water quality, and the environment?
- ISSUE 2. Whether the draft permit satisfies regulatory requirements intended to prevent groundwater contamination and contamination of water supply?
- ISSUE 3. Whether the draft permit adequately provides for the abatement of odor associated with the facility's storage and irrigation of the wastewater?
- ISSUE 4. Whether the Applicant met applicable regulatory requirements related to providing a map showing the location of adjacent landowners?
- ISSUE 5. Whether operations under the draft permit would prevent effluent runoff from the land application area?
- ISSUE 6. Whether the land application process will adversely affect wildlife?
- ISSUE 7. Whether operations under the draft permit would be protective of water quality in events such as high tide, flooding, or high rainfall?
- ISSUE 8. Whether the draft permit's provisions regarding the regulated activity's proximity to private water wells is protective of water quality?
- ISSUE 9. Whether notice for the proposed activity satisfies applicable regulatory requirements intended to provide public notice?
- ISSUE 10. Whether the application should be denied because the Applicant proceeded with construction without prior authorization?

Respectfully submitted,

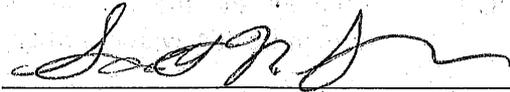


Scott Ramsey Shoemaker, Staff Attorney
Environmental Law Division
State Bar No. 24046836

Representing the Executive Director of the
Texas Commission on Environmental Quality

CERTIFICATE OF SERVICE

I certify that on June 16, 2008, the original and eleven copies of the "Executive Director's Response to Hearing Requests" for Permit No. WQ0004815000 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 Ramsey Shoemaker, Staff Attorney
Environmental Law Division
State Bar No. 24046836

Attachment A – Draft Permit



TEXAS COMMISSION ON ENVIRONMENTAL QUALITY
P. O. Box 13087
Austin, Texas 78711-3087

PERMIT TO DISCHARGE WASTES
under provisions of Chapter 26
of the Texas Water Code

I. Name of Permittee:

- A. Name: H Bowers, Inc.
B. Address: Rural Route 1, Box 534
Palacios, Texas 77465

II. Nature of Business Producing Waste:

a shrimp and catfish processing facility. (SIC 2092)

III. General Description and Location of Waste Disposal System:

Description: Process wastewater consists of wash down water from a fish and shrimp processing facility. Solids will be rendered and hauled to other processing facilities. The wash down water will be collected in an in-ground concrete holding tank for solids removal prior to routing to the irrigation holding pond system with a surface area and storage capacity of 5.3 acres and 27.9 acre-feet, respectively. Wastewater will be irrigated on 36.5 acres of Coastal Bermuda grass hay fields over seeded with Rye grass at an application rate not to exceed 3.2 acre-inches/acre-irrigated/month.

Location: Located 3.5 miles north of the City of Palacios on Highway 35, 1000 feet south of the intersection of Highway 35 and FM 521, Matagorda County, Texas.

Drainage Basin: The facility and disposal site are located in the drainage area of Tres Palacios/Turtle Bay in Segment No. 2452 of the Bays and Estuaries. No discharge of pollutants into water in the state is authorized by this permit.

This permit and the authorization contained herein shall expire at midnight on December 1, 2012.

ISSUED DATE:

For the Commission

IV. CONDITIONS OF THE PERMIT:

Character: Process wastewater from the wash down of a fish and shrimp processing facility.

Volume: At a daily average flow not to exceed 102,740 gallons per day and a daily maximum flow not to exceed 150,000 gallons per day routed to the irrigation holding pond system.

Quality: Wastewater disposed of via irrigation is subject to the following effluent limitations and monitoring requirements. Flow shall be measured prior to routing of wastewater to the irrigation holding pond system. All other samples shall be collected at the prescribed frequency, prior to routing to the irrigated fields.

<u>Pollutant</u>	<u>Daily Average</u>	<u>Daily Maximum</u>	<u>Frequency</u>	<u>Sample Type</u>
Flow (MGD)	(Report)	(Report)	1/day	Record
Total Suspended Solids	Report mg/L	Report mg/L	2/month	Grab
Biochemical Oxygen Demand (5-day)	Report mg/L	Report mg/L	2/month	Grab
Oil and Grease	Report mg/L	Report mg/L	2/month	Grab
Total Nitrogen	Report mg/L	Report mg/L	2/month	Grab
pH (standard units)	(minimum 6.0)	(maximum 9.0)	1/week	Grab

Results from the analyses shall be retained on site for five years and available for inspection by authorized representatives of the TCEQ. This data shall be submitted to the Enforcement Division (MC 224), Industrial Permits Team (MC-148), and the Region 12 Office of the Texas Commission on Environmental Quality (TCEQ) during the month of September of each calendar year.

V. SPECIAL PROVISIONS:

A. For the purpose of Part IV of this permit, the following definitions shall apply:

1. A grab sample means an individual sample collected in less than 15 minutes.
2. Grab sample quality means the quality determined by measuring the concentration in milligrams per liter, parts per million or other appropriate units of measurement in a single grab sample of the defined waste.
3. Daily average flow volume means the arithmetic average of all determinations of the daily flow measurement 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 discharge, the determination shall be the arithmetic average of all instantaneous measurements taken during that month.
4. Daily maximum flow means the highest total flow for any 24-hour period in a calendar month.

B. The permittee shall use cultural practices to promote and maintain the health and propagation of the Bermuda/Rye grass and avoid plant lodging. The permittee shall harvest crops (cut and remove it from the application field) at least once per year. Harvesting and mowing dates shall be recorded in a log book kept on site to be made available to TCEQ personnel upon request.

- C. The permittee shall obtain representative soil samples from the root zones of the irrigation areas. Composite sampling techniques shall be used. Each composite sample shall represent no more than 40 acres. Subsamples shall be composited by like sampling depth and soil type for analysis and reporting. Soil types are soils that have like topsoil or plow layer textures. These soils shall be sampled individually from 0 to 6 inches, 6 to 18 inches and 18 to 30 inches below ground level. The permittee shall sample and analyze soils in December and February of each year.

The permittee shall provide annual soil analyses of the irrigation area for pH [2:1 (v/v) water/soil mixture]; electrical conductivity [2:1 (v/v) water/soil mixture]; and total Kjeldahl nitrogen (TKN); nitrate-nitrogen; plant-available potassium, calcium, magnesium, sulfur, and phosphorus; and sodium adsorption ratio (SAR) and its constituent parameter analysis, i.e., water-soluble sodium, calcium, magnesium (water soluble ions expressed in mg/liter). The plant nutrient parameters shall be analyzed on a plant-available basis. Phosphorus shall be analyzed according to the Mehlich III procedure and potassium, calcium, magnesium, sodium, and sulfur may also be analyzed in the Mehlich III extract. Plant-available phosphorus, potassium, calcium, magnesium, sodium and sulfur shall be reported on a dry weight basis in mg/kg; electrical conductivity, in mmho/cm; and pH, in standard units. Kjeldahl procedures that use methods that rely on mercury as a catalyst are not acceptable. If the SAR is 10 or greater, amendments (e.g. lime, gypsum) shall be added to the soil to adjust the SAR to less than 10.

The permittee shall submit the results of the annual soil sample analyses with copies of the laboratory reports to the TCEQ Regional Office (MC Region 12) and the Enforcement Division (MC 224) no later than the end of September of each sampling year.

- D. All wastewater ponds and irrigation areas shall be located a minimum of 150 feet away from any private water well and a minimum of 500 feet from any public water supply well.
- E. All wastewater ponds shall be constructed to the following specifications as one of the following:
- (1) Compacted Clay Liner: The soil liner shall contain at least 3 feet, along the sides and bottom, of clay-rich soil material compacted in lifts of no more than 9 inches, to 95% standard proctor density at the optimum moisture content to achieve a permeability equal to or less than 1×10^{-7} cm/sec.
 - (2) In-situ clay liner: The soil liner shall contain at least 3 feet, along the sides and bottom, of clay-rich soil material having more than 30% passing a 200-mesh sieve, liquid limit greater than or equal to 30%, and a plasticity index greater than or equal to 15, to achieve a permeability equal to or less than 1×10^{-7} cm/sec.
 - (3) Synthetic/Plastic/Rubber liner: The liner shall be either a plastic or rubber membrane liner at least 30 mils in thickness which completely covers the sides and the bottom of the pond and which is not subject to degradation due to reaction with wastewater with which it will come into contact. If this lining material is vulnerable to ozone or ultraviolet deterioration it should be covered with a protective layer of soil of at least 6 inches. A leak detection system is also required.

Liner certifications shall be certified by a professional engineer licensed in the state of Texas and shall be sent to Enforcement Division at MC-224, the Houston Regional Office at R-12, and the Water Quality Assessment Team at MC-150 prior to use.

- F. Irrigation practices shall be designed and managed to prevent contamination of ground or surface waters and to prevent to occurrence of nuisance conditions. Tail water control facilities shall be provided, where necessary, to prevent the discharge of any wastewater which might drain from irrigated lands to water in the state.

- G. A readily accessible sampling point and flow measuring device shall be provided by the permittee.
- H. Adequate signs shall be erected stating that the irrigation water is from a non-potable water supply. Said signs shall consist of a red slash superimposed over the international symbol for drinking water accompanied by the message "Do not drink the water", in both English and Spanish.
- I. No wastewater may be applied within twenty-four hours after a measured rainfall of 0.5 inches or greater, or to any zone containing standing water.
- J. The permittee shall tabulate the volume and quality of the wastewater used for irrigation, the acreage which has been irrigated, and the soil sampling results for the preceding year. This data shall be submitted to the Water Quality Compliance Monitoring Team (MC 224) of the Enforcement Division, Industrial Permits Team (MC 148) of the Water Quality Division, and the Region 12 Office of the Texas Commission on Environmental Quality (TCEQ) during the month of September of each calendar year.
- K. All wastewater retention ponds shall be operated in such a manner as to maintain a minimum freeboard of two feet.
- L. The permittee shall provide adequate maintenance of the treatment and irrigation facilities to ensure that the facilities are in working condition. No treatment or irrigation facilities shall be removed from service without prior notification of the Executive Director of the TCEQ.
- M. This permit does not authorize the discharge of any pollutant from the irrigation site. The wastewater disposal system shall be designed and operated to prevent:
1. Discharge from the irrigated property.
 2. Recharge of groundwater resources which supply or may potentially supply domestic raw water.
 3. The occurrence of nuisance conditions.
- N. Storm water drainage shall be prevented from entering all ponds and from running onto the irrigation tract.
- O. Wastewater shall be sampled and analyzed for those parameters listed on Attachment A of this permit for two (2) separate sampling events which are a minimum of one (1) week apart. Attachment A shall be completed and sent to the TCEQ, Wastewater Permitting Section (MC-148), Industrial Team within 180 days of permit issuance. Based on a technical review of the submitted analytical results, an amendment may be initiated by TCEQ staff to include additional effluent limitations and/or monitoring requirements.
- P. The permittee shall provide a minimum storage capacity of 27.8 acre-feet within the irrigation holding pond system.

VI. STANDARD PERMIT CONDITIONS

This permit is granted in accordance with the Texas Water Code and the rules and other Orders of the Commission and the laws of the State of Texas.

DEFINITIONS

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. 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.
- b. 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.
- c. Instantaneous flow - the measured flow during the minimum time required to interpret the flow measuring device.

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.

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 REQUIREMENTS

1. Monitoring Requirements

Monitoring results shall be collected 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 in accordance with 30 TAC §§ 319.4 - 319.12.

As provided by state law, the permittee is subject to administrative, civil and criminal penalties, as applicable, for negligently or knowingly violating 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, records 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, monitoring and reporting records, including strip charts and records of calibration and maintenance, copies of all records required by this permit, and records of all data used to complete the application for this permit 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, or application. 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 determining compliance with permit requirements.

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.

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.

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).

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 Special Provisions section of this permit.
- h. 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).

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 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 Requirements No. 9;
 - ii. 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.

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. Property Rights

A permit does not convey any property rights of any sort, or any exclusive privilege.

8. 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.

9. 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.

10. 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(15)) 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;
 - ii. the permit number(s);
 - iii. the bankruptcy court in which the petition for bankruptcy was filed; and
 - iv. 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 Applications 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 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. 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 Permitting and Remediation Support 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.

The above records shall be maintained on a monthly basis. The records shall be retained at the facility site, or shall be readily available for review by authorized representatives of the TCEQ for at least five years.

- 11. 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.

TCEQ Revision 04/2006

ATTACHMENT A

Outfall No.:	<input type="checkbox"/> C <input type="checkbox"/> G	Effluent Concentration (mg/l)			
		Sample 1	Sample 2	Average	
Pollutants					
BOD (5-day)					
CBOD (5-day)					
Chemical Oxygen Demand					
Total Organic Carbon					
Ammonia Nitrogen					
Total Suspended Solids					
Nitrate Nitrogen					
Total Organic Nitrogen					
Total Phosphorus					
Oil and Grease					
Total Residual Chlorine					
Total Dissolved Solids					
Sulfate					
Chloride					
Fluoride					
Fecal Coliform					
Specific Conductance (mmhos/cm)					
pH (Standard Units; min/max)					
Soluble Sodium					
Soluble Calcium					
Soluble Magnesium					
SAR					
		Effluent Concentration (µg/l)			MAL
Total Aluminum					30
Total Antimony					30
Total Arsenic					10
Total Barium					10
Total Beryllium					5
Total Cadmium					1
Total Chromium					10
Trivalent Chromium					N/A
Hexavalent Chromium					10
Total Copper					10
Cyanide					20
Total Lead					5
Total Mercury					0.2
Total Nickel					10
Total Selenium					10

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

TECHNICAL SUMMARY AND EXECUTIVE DIRECTOR'S PRELIMINARY DECISION

DESCRIPTION OF APPLICATION

Applicant: H Bowers, Inc.; Permit No. WQ0004815000.

Regulated Activity: Industrial Wastewater Permit.

Type of Application: New permit to authorize the disposal of process wastewater via irrigation.

Request: New Permit.

Authority: Texas Water Code § 26.027; 30 TAC Chapter 305, Subchapters C-F, Chapters 307, 309, and 319, 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. It is proposed the permit be issued to expire December 1, 2012 in accordance with 30 TAC Section 305.71, Basin Permitting.

REASON FOR PROJECT PROPOSED

The applicant has applied to the TCEQ for a new permit to authorize the disposal of process wastewater via irrigation.

PROJECT DESCRIPTION AND LOCATION

The applicant proposes to operate a shrimp and catfish processing facility.

Process wastewater consists of wash down water from a fish and shrimp processing facility. Solids will be rendered and hauled to other processing facilities. The wash down water will be collected in an in-ground concrete holding tank for solids removal prior to routing to the irrigation holding pond system with a surface area and storage capacity of 5.3 acres and 27.9 acre-feet, respectively. Wastewater will be irrigated on 36.5 acres of Coastal Bermuda grass hay fields over seeded with Rye grass at an application rate not to exceed 3.2 acre-inches/acre-irrigated/month.

The facility is located 3.5 miles north of the City of Palacios on Highway 35, 1000 feet south of the intersection of Highway 35 and FM 521, Matagorda County, Texas.

The facility and disposal site are located in the drainage area of Segment No. 2452 of the Bays and Estuaries. The designated uses for Segment No. 2452 are exceptional aquatic life use, contact recreation, and oyster waters. All determinations are preliminary and subject to additional review and/or revisions. No discharge of pollutants into water in the state is authorized by this permit.

PROPOSED PERMIT CONDITIONS

The draft permit authorizes the disposal of process wastewater from a fish and shrimp processing facility via irrigation of 36.5 acres of Coastal Bermuda grass hay fields over seeded with Rye grass at an application rate not to exceed 3.2 acre-inches/acre-irrigated/month.

TECHNICAL SUMMARY AND EXECUTIVE DIRECTOR'S PRELIMINARY DECISION
Permit No. WQ0004815000

The following limitations have been established in the draft permit:

<u>Parameter</u>	<u>Daily Average</u>	<u>Daily Maximum</u>
Flow (MGD)	(0.10274)	(0.150)
Total Suspended Solids	Report mg/L	Report mg/L
Total Organic Carbon	Report mg/L	Report mg/L
Oil and Grease	Report mg/L	Report mg/L
Total Nitrogen	Report mg/L	Report mg/L
pH (standard units)	(minimum 6.0)	(maximum 9.0)

Effluent monitoring requirements and limitations are based upon best professional judgement (BPJ), 30 TAC Chapter 309, and similar fish processing operations. A water balance is included on Appendix A of this Technical Summary.

SUMMARY OF CHANGES FROM APPLICATION

The following additional requirements have been proposed in the draft permit.

1. A retest requirement has been proposed as Special Provision Item O. No nitrogen loading limit is proposed in the draft permit since the proposed hydraulic application rate of 3.2 acre-inches/acre-irrigated/month is limiting. However, based on a technical review of the submitted wastewater analysis, an amendment may be initiated by TCEQ staff to include additional effluent limitations and/or monitoring requirements.
2. Special Provision Item P., which requires a minimum storage capacity of 27.8 acre-feet, has been included on Page 4 of the draft permit.

SUMMARY OF CHANGES FROM EXISTING PERMIT

N/A - This is an application for a new permit.

BASIS FOR PROPOSED DRAFT PERMIT

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

1. Application submitted with letter dated November 21, 2006 and additional information submitted with letters dated January 10, 2007, and January 31, 2007.
2. TCEQ Rules.
3. "Guidance Document for Establishing Monitoring Frequencies for Domestic and Industrial Wastewater Discharge Permits," May 1998.
4. Texas Commission on Environmental Quality Ground-Water Impact Evaluation, Permit No. WQ0004815000, dated June 14, 2007.
5. 30 TAC Chapter 309.
6. "Bulletin 6019 - Consumptive Use Of Water By Major Crops In Texas," Texas Water Development Board, November 1960.
7. Texas Water Development Board Lake Evaporation and Precipitation data for Quadrangle 911.
8. Consistency with the Coastal Management Plan: N/A - This facility does not discharge into water in the state.

TECHNICAL SUMMARY AND EXECUTIVE DIRECTOR'S PRELIMINARY DECISION
Permit No. WQ0004815000

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 David W. Galindo at (512) 239-0951.

David W Galindo
David W. Galindo

1/30/08
Date

TECHNICAL SUMMARY AND EXECUTIVE DIRECTOR'S PRELIMINARY DECISION
Permit No. WQ0004815000

Appendix A - Water Balance

TABLE 1: WATER BALANCE CALCULATIONS, all units in inches

Facility Name: Bowers Shrimp

Month	Avg Prec	Avg Runoff	Avg Infil Rainfall	Evapo trans	Req Leach	Total Water Needs	Effl Needed Root Zn	Net Evap Res. Ft.	Net Evap. Res. Surf	Efflnt Needed Based on Irrigation Efficiency	Consump. from Reserv. (Including Res. Evap.)
January	2.75	0.95	1.80	2.23	0.09	2.32	0.52	-0.06	-0.10	0.61	0.51
February	2.63	0.87	1.76	3.42	0.33	3.75	2.00	-0.02	-0.03	2.35	2.31
March	2.17	0.58	1.59	7.90	1.26	9.16	7.58	0.12	0.21	8.91	9.12
April	2.47	0.77	1.70	10.50	1.76	12.26	10.56	0.15	0.26	12.42	12.68
May	4.06	1.93	2.13	11.70	1.91	13.61	11.49	0.06	0.10	13.52	13.62
June	4.23	2.07	2.16	6.90	0.95	7.85	5.69	0.15	0.26	6.69	6.96
July	2.79	0.98	1.81	6.51	0.94	7.45	5.64	0.34	0.59	6.64	7.23
August	3.34	1.38	1.96	4.65	0.54	5.19	3.22	0.25	0.44	3.79	4.23
September	5.64	3.26	2.38	5.10	0.54	5.64	3.27	-0.05	-0.09	3.84	3.76
October	4.50	2.29	2.21	5.23	0.60	5.83	3.63	-0.01	-0.02	4.27	4.25
November	2.92	1.07	1.85	3.40	0.31	3.71	1.86	0.01	0.02	2.19	2.21
December	2.64	0.88	1.76	2.23	0.09	2.32	0.56	-0.03	-0.05	0.66	0.61
Total	40.14	17.05	23.09	69.77	9.34	79.11	56.02	0.91	1.59	65.90	67.49

Crop is Co. Berm/Rye
 CN 78.00
 Ce 1.50
 CL 9.00
 PND AREA 5.30 ACRES
 PND CAPACITY 27.9 AC-FEET
 IRR. AREA 36.50 ACRES
 Irr. Eff., K 0.85
 Design Flow 0.103 MGD
 Effluent Avail.
 Application= 3.15 IN/AC/MONTH

Max. Appl = 5.62 Ac-in/ac/month

TECHNICAL SUMMARY AND EXECUTIVE DIRECTOR'S PRELIMINARY DECISION
Permit No. WQ0004815000

Appendix A - Water Balance

TABLE 2: STORAGE CALCULATIONS

Month	Effluent Application (inches)	Rain Dist	Rain Worst Year (inches)	Field Runoff Worst Year (inches)	Infiltration Rain Check (inches)	Infiltration Rain (inches)	Avail Water (inches)	Net Low Evap. Mean Dist	Net Low Evap. Res. Surf	Storage (inches)	Accum Storage
January	3.15	6.85	4.15	2.00	2.14	2.14	5.30	N/A	-0.16	3.11	7.99
February	3.15	6.56	3.97	1.86	2.11	2.11	5.26	N/A	0.08	1.14	9.13
March	3.15	5.41	3.27	1.33	1.95	1.95	5.10	N/A	-1.17	-4.17	4.96
April	3.15	6.17	3.73	1.68	2.06	2.06	5.21	N/A	-0.13	-8.72	0.00
May	3.15	10.10	6.11	3.68	2.43	2.43	5.59	N/A	-0.27	-9.73	0.00
June	3.15	10.53	6.37	3.91	2.46	2.46	5.62	N/A	0.59	-3.78	0.00
July	3.15	6.94	4.20	2.05	2.15	2.15	5.31	N/A	0.79	-3.87	0.00
August	3.15	8.32	5.04	2.74	2.29	2.29	5.45	N/A	0.72	-0.97	0.00
September	3.15	14.05	8.50	5.86	2.65	2.65	5.80	N/A	-0.76	0.38	0.38
October	3.15	11.21	6.79	4.28	2.50	2.50	5.66	N/A	-0.94	0.17	0.55
November	3.15	7.27	4.40	2.21	2.19	2.19	5.34	N/A	-0.21	1.57	2.12
December	3.15	6.59	3.99	1.88	2.11	2.11	5.26	N/A	0.15	2.76	4.88

	37.84	100.00	60.53	33.48	27.05	27.05	64.88	0.00	-1.31	-22.10	9.13
Low Net Evap. =		-0.75	feet								
Max. Annual Rain =		60.53	Inches			Storage Requirements =		27.77		Ac-Ft	

Attachment C – Compliance History

Compliance History

Customer/Respondent/Owner-Operator:	CN603139411	H. Bowers, Inc.	Classification: AVERAGE	Rating: 3.01
Regulated Entity:	RN105137962	BOWERS SHRIMP	Classification: AVERAGE BY DEFAULT	Site Rating: 3.01
ID Number(s):				
Location:	1000 FT SOUTH OF THE INTERSECTION OF FM 521 AND STATE HWY 35 IN MATAGORDA COUNTY		Rating Date: 9/1/2007 Repeat Violator: NO	
TCEQ Region:	REGION 12 - HOUSTON			
Date Compliance History Prepared:	June 02, 2008			
Agency Decision Requiring Compliance History:	Permit - Issuance, renewal, amendment, modification, denial, suspension, or revocation of a permit.			
Compliance Period:	November 21, 2001 to June 02, 2008			
TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History				
Name:	David W. Galindo		Phone:	512-239-0951

Site Compliance History Components

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

Components (Multimedia) for the Site :

- A. Final Enforcement Orders, court judgments, 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

APPLICATION BY
H BOWERS, INC., FOR TPDES
PERMIT NO. WQ0004815000

§
§
§

BEFORE THE
TEXAS COMMISSION
ON ENVIRONMENTAL QUALITY

FEB -7 PM 3:37

CHIEF CLERKS OFFICE

EXECUTIVE DIRECTOR'S RESPONSE TO PUBLIC COMMENT

The Executive Director of the Texas Commission on Environmental Quality (the Commission or TCEQ) files this Response to Public Comment (Response) on the application for a renewal of Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0004815000 by H Bowers, Inc., (Applicant) and the Executive Director's Preliminary Decision. Pursuant to 30 Texas Administrative Code (30 TAC) § 55.156, before an application is approved and a permit issued, the Executive Director prepares a response to all timely, relevant and material, or significant comments. The Office of the Chief Clerk timely received comment letters from Geraldine Jones, David Salinas, Suzanne Salinas, Danny Sliva, Julie Sliva, Mike Hunter, Gloria Hunter, Geraldine Batchelder, Paula M. Jones-Carson, Scott Kurtz, Sally Kurtz, Charles O. Parker, Mary T. Parker, Stephen Cooper, Kimberley Cooper, Daniel Tucker, Sandra Tucker, Jaime Alanis, Carolyn Into, Wesley Batchelder, Jeanette Batchelder, and Thelma Lee Rackley. This Response addresses all timely filed public comments received, whether or not withdrawn.

BACKGROUND

Facility Description

The Applicant has applied to the TCEQ for a new permit, Proposed Permit No. WQ0004815000 to authorize the disposal of process wastewater from a fish and shrimp processing facility via on-site irrigation of 36.5 acres of Coastal Bermuda and Rye grasses. The volume of effluent routed to the irrigation holding pond system shall not exceed at a daily average flow of 102,740 gallons per day. The hydraulic application rate shall not exceed 3.2 acre-inches per acre-irrigated per month. This permit would not authorize a discharge of pollutants into water in the state. The facility is located 3.5 miles north of the City of Palacios Texas on Highway 35, 1000 feet south of the intersection of Highway 35 and FM 521, Matagorda County, Texas. The facility and disposal site are located in the drainage area of Tres Palacios / Turtle Bay in Segment No. 2452 of the Bays and Estuaries.

Procedural Background

The application was received on November 21, 2006 and declared administratively complete on February 5, 2007. The Executive Director completed the technical review of the application on July 12, 2007 and prepared a draft permit. The Notice of Receipt of Application and Intent to Obtain a Water Quality Permit (NORI) was published on March 4, 2007 in the *Bay City Tribune*. The Notice of Application and Preliminary Decision (NAPD) was published on August 19, 2007 in the *Bay City Tribune*. The comment period ended on September 18, 2007 following the public meeting.

Since this application was administratively complete after September 1, 1999, it is subject to House Bill 801 (76th Legislature, 1999).

COMMENTS AND RESPONSES

COMMENT 1:

Geraldine Batchelder, Wesley Batchelder, Jeanette Batchelder, Paula M. Jones-Carsen, Jaime H. Alanis, Gloria Hunter, and Mike Hunter comment that they are concerned about drainage. Daniel R. Tucker III and Sandra G. Tucker comment that they will be adversely affected by the drainage across their property during heavy rainfall which is common in this area. Scott and Sally Kurtz comment that they are concerned about the wastewater and the effects it will have on their property. Scott and Sally Kurtz also comment that they do not want their land destroyed by pollutants. Gloria and Mike Hunter are concerned about drainage, and want to know whether it will drain on their land. Stephen F. Cooper and Kimberley K. Cooper comment that the facility is adjacent to and drains across their property to Cash Creek.

RESPONSE 1:

The Applicant has applied for a wastewater permit to dispose of process wastewater from a fish and shrimp processing operation by irrigation. The draft permit would not authorize the discharge of wastewater from the designated irrigation site. If the Applicant operates the facility in compliance with the permit provisions, no unauthorized drainage of wastewater from facility is expected to occur. The following provisions are included in the draft permit to help ensure the disposal system is properly designed and operated to prevent wastewater from draining from the irrigation area onto adjacent properties:

Hydraulic Application Rate: The hydraulic application rate is the amount of wastewater applied over the irrigation area within a given period of time. The rate is expressed in the terms of inches per acre irrigated per month. As part of the permit application, the Applicant is required to submit a calculation called a water balance to determine the appropriate hydraulic application rate for the proposed crop. The water balance takes into account the crops' water requirements, evapotranspiration needs, the infiltration of water based upon the soil type, salt concentrations within the wastewater, and area rainfall data for the previous 25 years on record. The applicant demonstrated that their proposed hydraulic application rate would not exceed the water needs of the crop and would not result in over-application of wastewater.

Nitrogen Application Rate: Following the initiation of the operation, the draft permit would require the Applicant to submit laboratory analysis of the wastewater generated to the TCEQ. The nitrogen content of the effluent would be evaluated to determine an appropriate nitrogen application rate. The nitrogen application rate prevents the application of more nitrogen than required annually by the crop. The nitrogen application rate would be compared to the hydraulic application rate of 3.2 acre-inches per acre-irrigated per month. If the nitrogen application rate is determined to limit the

amount of wastewater irrigated, the Executive Director would seek to amend the permit to include a more stringent nitrogen application rate.

Irrigation Records: The draft permit would require the Applicant to determine the volume and quality of the wastewater used for irrigation, the acreage that has been irrigated, and analyze the irrigation area soils to prevent the build up of pollutants within the irrigated areas. Results of the analysis would be submitted to the TCEQ Enforcement Division, Industrial Permits Team, and the Houston Regional Office. These records must also be maintained on site for a period of at least three years for review by TCEQ personnel.

Storage Capacity: In addition to the hydraulic application rate, the water balance calculates the amount of storage capacity necessary to retain the volume of wastewater generated during a "worst case year." The "worst case year" scenario is based upon the highest annual rainfall and minimum evaporation during the past 25 years. Based upon this calculation, the draft permit requires the Applicant to provide a minimum storage capacity of 27.8 acre-feet. The applicant proposes to provide 27.9 acre-feet of storage capacity in compliance with the minimum storage requirement of 27.8 acre-feet.

Operational Controls: The draft permit prohibits activities that could result in an unauthorized discharge of process wastewater from the irrigation area. For example, the draft permit would prohibit application of wastewater in excess of crop needs, and application of wastewater within 24 hours of a 0.5 inch rainfall event. Also, the draft permit would prohibit the application of wastewater to any area containing standing water. Additionally, the Applicant must maintain a two foot freeboard within any irrigation holding pond to prevent the overflow of wastewater.

Facility Design: Storm water must be prevented from entering all irrigation holding ponds. The Applicant is required to provide tail water control facilities, where necessary, to prevent the discharge of irrigated wastewater from the irrigation area. Under the draft permit, the irrigation of any area other the permitted irrigation site or the drainage of wastewater over adjacent property would constitute a permit violation and are subject to TCEQ enforcement action.

A permit does not convey any property rights of any sort, or any exclusive privilege. Accordingly, the draft permit would not authorize a permittee to interfere with the use and enjoyment of another's property. 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 result in a trespass, TCEQ may be contacted to investigate whether a permit violation has occurred. Potential permit violations may be reported to TCEQ Region 12 Office in Houston at (713) 767-3500, 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 2:

Daniel R. Tucker III and Sandra G. Tucker comment that they are concerned that surface water quality will be adversely affected by the operation. Geraldine Batchelder, Wesley Batchelder, and Jeanette Batchelder comment that they are concerned about pollution during high tide and flooding conditions. Geraldine Batchelder comments that in a wet year, the daily flow of 102,740 gallons per day is too much and in a wet year there will be run off into Cash's Creek. Geraldine Batchelder also comments that the ground is saturated and "1/10 of an inch of rain makes water stand." Geraldine Batchelder also comments that she wants to know what kind of irrigation the facility is proposing to use.

RESPONSE 2:

The proposed draft permit does not authorize the discharge of any wastewater from the designated irrigation site. Accordingly, the draft permit would not authorize discharge of pollutants into water in the state. Under the draft permit, the discharge of wastewater to surface water would constitute a permit violation and the Applicant would be subject to TCEQ enforcement action. If the permittee operates the facility in compliance with the permit provisions, no detrimental impact to nearby water in the state, including Cash Creek, is expected to occur.

The daily average flow limitation of 102,740 gallons per day is the amount of wastewater that may be routed to the irrigation holding pond system, and not the volume of wastewater that may be applied to the irrigation area on a daily basis. As part of the wastewater permit application, the Applicant was required to demonstrate adequate storage capacity based upon technical guidance provided by TCEQ's regulations. The irrigation pond storage requirements are based on the highest annual rainfall and minimum annual evaporation during the last 25 years of record. The Applicant proposes to use a big gun traveling sprinkler system. As stated in Response No. 1, the draft permit includes provisions to help ensure the volume and manner in which wastewater is applied will not result in a discharge into water in the state, including the prohibition of applying wastewater to standing water or within 24 hours of a 0.5 inch rainfall. Also, as previously mentioned, the draft permit would prohibit application of wastewater in excess of crop needs. Additionally, the draft permit would prohibit the application of wastewater to any zone containing standing water.

COMMENT 3:

Charles and Mary Parker comment that they live on the creek where waste will be dumped and worry about an increase in alligators. David and Suzanne Salinas are concerned about the safety of their children and small grandchildren due to wild animals or reptiles that might be drawn to the wastewater ponds and standing water. Geraldine, Wesley, and Jeanette Batchelder comment that they are concerned about stagnant water supply for wildlife.

RESPONSE 3:

The draft permit does not authorize discharge of pollutants into water in the state. Under the draft permit, discharges to ground or surface water would constitute a permit violation and are subject to TCEQ enforcement action. The draft permit authorizes disposal of process wastewater via surface irrigation at an application rate not to exceed 3.2 acre-inches per acre-irrigated per month. Further, the permit would not authorize the discharge of any pollutant from the irrigation site. Similarly, the draft permit prohibits the over-application of wastewater which would result in the stagnant ponding of wastewater on the irrigation area. Accordingly, no impact to nearby water in the state, including creeks, is expected. Additionally, the draft permit would not authorize the disposal of any solid wastes including fish remains on-site. Accordingly, the Applicant would be required to remove all fish remains from the wastewater and haul them to an offsite rendering facility.

There are no permit provisions specifically included in the draft permit to prohibit the occurrence of wildlife within the irrigation holding pond. However, the Applicant is required to ensure that the facility and all of its systems of collection, treatment, and disposal are properly operated and maintained. This would include preventing wildlife from threatening the safety of its personnel or interfering with the proper operation of the wastewater disposal system.

COMMENT 4:

Geraldine, Wesley, and Jeanette Batchelder comment that they are concerned about groundwater contamination. Carolyn Into is concerned about contamination of her water supply. Stephen F. Cooper and Kimberley K. Cooper are concerned about contamination.

RESPONSE 4:

The permit application undergoes review by a TCEQ staff professional geologist who recommended the following provisions designed to protect groundwater resources:

All wastewater ponds and irrigation areas shall be located a minimum of 150 feet away from any private water well and a minimum of 500 feet from any public water supply well.

All wastewater ponds shall be constructed to one of the following specifications:

Compacted Clay Liner: The soil liner shall contain at least 3 feet, along the sides and bottom, of clay-rich soil material compacted in lifts of no more than 9 inches, to 95% standard proctor density at the optimum moisture content to achieve a permeability equal to or less than 1×10^{-7} cm/sec.

In-situ clay liner: The soil liner shall contain at least 3 feet, along the sides and bottom, of clay-rich soil material having more than 30% passing a 200-mesh sieve, liquid limit greater than or equal to 30%, and a plasticity index greater than or equal to 15, to achieve a permeability equal to or less than 1×10^{-7} cm/sec.

Synthetic/Plastic/Rubber liner: The liner shall be either a plastic or rubber membrane liner at least 30 mils in thickness which completely covers the sides and the bottom of the pond and which is not subject to degradation due to reaction with wastewater with which it will come into contact. If this lining material is vulnerable to ozone or ultraviolet deterioration it should be covered with a protective layer of soil of at least 6 inches. A leak detection system is also required.

The completed liner shall be certified by a professional engineer licensed in the state of Texas as meeting the above specified requirements. The certification shall be sent to the TCEQ Enforcement Division, the TCEQ Houston Regional Office, and the TCEQ Water Quality Assessment Team prior pond to use.

Additionally, according to the draft permit, irrigation practices shall be designed and managed to prevent contamination of ground or surface waters and to prevent occurrence of nuisance conditions. Also, tailwater control facilities shall be provided, where necessary, to prevent the discharge of any wastewater which might drain from irrigated lands to water in the state.

TCEQ may be contacted to investigate whether a permit violation has occurred. Potential permit violations may be reported to TCEQ Region 12 Office in Houston at (713) 767-3500, 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 5:

Stephen F. Cooper, Kimberley K. Cooper, Geraldine Batchelder, Wesley Batchelder, Jeanette Batchelder, Paula M. Jones-Carsen, Geraldine Jones, Jaime H. Alanis, Danny Sliva, Julie Sliva, Gloria Hunter, Mike Hunter, Thelma Lee Rackley, Scott Kurtz, and Sally Kurtz comment that they have health concerns. Daniel R. Tucker III and Sandra G. Tucker comment that there will be potential health hazards. David and Suzanne Salinas comment that they would like to know what kind of chemicals will be used and "what health problems might we encounter due to their use." Charles and Mary Parker comment that they are concerned about an increase in waste. Gloria and Mike Hunter comment that they have horses for their children to ride on their land and that children live in homes around the area. Stephen F. Cooper and Kimberley K. Cooper comment that they do not know or understand the effects of this fish processing plant to their property or to the area. Gloria and Mike Hunter comment that now they cannot build a house on their land.

RESPONSE 5:

Process wastewater would consist of wash down water from a fish and shrimp processing facility. Solids would be removed to an offsite rendering facility. The wash down water would be collected in an in-ground concrete holding tank for solids removal prior to routing to the irrigation holding pond with a surface area and storage capacity of 5.3 acres and 27.9 acre-feet respectively. The draft permit includes effluent limitations for flow and pH, and monitoring requirements for total suspended solids (TSS), biochemical oxygen demand (BOD)(5-day), oil and grease, and total nitrogen. The draft permit requires the sampling of process wastewater prior to land application and to maintain monthly reports of the results of the effluent analyses and flow measurements for a minimum of three years. The Applicant may collect and analyze the effluent samples themselves, or they 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 notify the agency if the effluent does not meet the permit limits according to the requirements in the permit. In addition, the TCEQ regional staff may sample the effluent during routine inspections or in response to a complaint.

Additionally, the Applicant is required to obtain representative soil samples from the irrigation area to demonstrate that irrigation is not resulting in the buildup of pollutants in the soil. The Applicant shall provide annual soil analyses for pH; electrical conductivity; and total Kjeldahl nitrogen (TKN); nitrate-nitrogen; plant-available potassium, calcium, magnesium, sulfur, and

phosphorus; and sodium adsorption ratio (SAR).

The draft permit requires that all wastewater ponds and irrigation areas shall be located a minimum of 150 feet away from any private water well and a minimum of 500 feet away from any public water supply well. Adequate signs shall be erected stating that the irrigation water is from a non-potable water supply and accompanied by the message "Do not drink the water", in both English and Spanish.

Additionally, the draft permit includes a requirement for the Applicant to submit wastewater analyses to the TCEQ following initiation of production at the facility. Based on a technical review of the submitted wastewater analysis, an amendment may be initiated by TCEQ staff to include additional effluent limitations or monitoring requirements if necessary to ensure the irrigation activity does not detrimentally impact human health and the environment.

A permit does not convey any property rights of any sort, or any exclusive privilege. Accordingly, the draft permit would not authorize an Applicant to interfere with the use and enjoyment of another's property. 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 result in a trespass, TCEQ may be contacted to investigate whether a permit violation has occurred. Potential permit violations may be reported to TCEQ Region 12 Office in Houston at (713) 767-3500, 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 6:

Stephen F. Cooper and Kimberley K. Cooper comment that they are concerned about business failure/closing and who's in charge of cleaning up the site. Daniel R. Tucker III and Sandra G. Tucker are concerned about a lack of a cleanup fund when the operation closes.

RESPONSE 6:

Under the draft permit, the Applicant must at all times, including during times of desired closure, ensure that the facility and all of its systems of collection, treatment, and disposal are properly operated and maintained. No treatment or irrigation facilities may be removed from service by the Applicant without prior notification of the TCEQ Executive Director. According to the draft permit, the Applicant would be required to submit a closure plan for review and approval to the TCEQ Land Applications Team, Wastewater Permitting Section of the Water Quality Division, for any closure activity at least 90 days prior to conducting such activity. An act of closure includes 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 or other

treatment unit regulated by the draft permit.

A permittee must also notify the Executive Director in writing immediately following the filing of a voluntary or involuntary petition for bankruptcy under any chapter of Title 11 of the United States Code by or against the permittee, an entity controlling the permittee or listing the permit or permittee as property of the estate, or an affiliate of the permittee.

COMMENT 7:

Charles and Mary Parker ask to know why the Applicant has already begun construction of the facility if this project is not yet permitted.

RESPONSE 7:

Texas Water Code § 26.027 (c) states that “a person may not commence construction of a treatment facility until the commission has issued a permit to authorize the discharge of waste from the facility, except with the approval of the commission.” The Applicant has indicated that they began construction of the irrigation holding pond system. On December 14, 2007, a TCEQ Region 12 inspector conducted a site assessment and verified that construction of the irrigation holding pond system had begun. Thereafter, the Applicant indicated that pond construction has ceased.

COMMENT 8:

Daniel R. Tucker III and Sandra G. Tucker comment that they will be adversely affected by the odor and air quality. Geraldine Batchelder comments that she is concerned about offensive odor and air quality. Wesley and Jeanette Batchelder comment that they are concerned about offensive odor and deteriorated air quality. David and Suzanne Salinas, Paula M. Jones-Carsen, Jaime H. Alanis, Charles and Mary Parker, Thelma Lee Rackley, and Stephen F. Cooper and Kimberley K. Cooper comment that they are concerned about odor. Danny and Julie Sliva comment that the odor from this plant will be horrendous. Gloria and Mike Hunter want to know if the odor is going to stop them from going out on their land. Carolyn Into comments that she has numerous health concerns and odors will further worsen these conditions. Danny and Julie Sliva comment that they are concerned about a “breeding ground for flies and maggots.”

RESPONSE 8:

According to the draft permit, the wastewater disposal system shall be designed and operated to prevent the occurrence of nuisance conditions. Additionally, the Applicant at all times would be required to ensure that the facility and all of its systems of collection, treatment, and disposal are properly operated and maintained.

“Vectors” are living organisms capable of transmitting diseases, including some flies and rodents. Wastewater intended for irrigation use is required to be treated to reduce its attraction for vectors (which limits the potential for transmitting diseases) by reducing odors. TCEQ permits are intended to ensure the protection of the quality of water in the state consistent with public health and enjoyment, and the propagation and protection of terrestrial and aquatic life. The draft permit would not allow the Applicant to maintain a condition of nuisance that could interfere with a landowner’s use and enjoyment of his property. However, the draft permit only regulates wastewater treatment and disposal practices. The draft permit does not regulate odors or air emissions not associated with wastewater disposal practices.

COMMENT 9:

Stephen F. Cooper and Kimberley K. Cooper comment that they “feel that this operation could adversely affect the value of our property in the future.” Daniel R. Tucker III and Sandra G. Tucker are concerned about devaluation of their property where they have a tremendous investment. Geraldine Batchelder, Wesley and Jeanette Batchelder, Geraldine Jones, Carolyn Into, Jaime H. Alanis, and Thelma Lee Rackley comment that they are concerned about devaluation of property. Danny and Julie Sliva comment that their property will be significantly devalued. Charles and Mary Parker comment that they do not want their property values to go down. Gloria and Mike Hunter comment that if the plant was there they would never have bought the land and that their land will depreciate due to the plant going up on the back side of their land. Additionally, Gloria and Mike Hunter comment that the Applicant has 100 acres to build this plant.

RESPONSE 9:

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, but the Executive Director does not consider property values in determining whether to issue a permit. Similarly, the Executive Director cannot require an applicant to change the proposed facility location if the location is otherwise consistent with applicable regulations.

COMMENT 10:

Daniel R. Tucker III and Sandra G. Tucker comment that they have not received any written notice directly concerning this proposed operation. David and Suzanne Salinas comment that they did not receive notification that this facility was going to be built. Danny and Julie Sliva comment that they did not receive notice of the proposed activity. Charles and Mary Parker comment that they received "the first letter, but not the one with this form. A neighbor had to supply this form." Gloria and Mike Hunter, Carolyn Into, and Thelma Lee Rackley comment that they did not receive notice of the proposed activity.

RESPONSE 10:

For new applications, the TCEQ application requires Applicants applying for a new Texas Land Application Permit to provide a list of landowners located adjacent to the facility site and wastewater application area. The Applicant must also provide a map showing the location of the adjacent landowners. The Applicant provided information to meet this application requirement.

The TCEQ Office of the Chief Clerk mails two notices of the application to the affected landowners and others on the mailing list for the application, which is maintained by the TCEQ Office of the Chief Clerk. TCEQ's regulations require that the Applicant publish at least two public notices in appropriate newspapers. The Applicant has complied with these requirements. The Applicant submitted an affidavit of publication indicating that the NORI was published in the *Bay City Tribune* on March 4, 2007. Additionally, the Applicant submitted an affidavit of publication indicating that the NAPD was published in the *Bay City Tribune* on August 19, 2007. The Applicant has complied with TCEQ's regulations by publishing the NORI and NAPD in the *Bay City Tribune*.

Regarding the form letter that Charles and Mary Parker referred to, TCEQ's regulations do not require a form comment letter to be sent to interested persons for use to comment on an application. It is likely the form comment letter was originally supplied by another interested person.

Gloria and Mike Hunter were included on the list of adjacent landowners supplied by the Applicant. Accordingly, it would appear that the TCEQ Office of the Chief Clerk would have mailed the NORI and the NAPD to Gloria and Mike Hunter at the following address: 218 Beecher, Palacios, Texas 77465.

COMMENT 11:

Daniel R. Tucker III and Sandra G. Tucker comment, "to approve the permit and proceed without a hearing would not be properly serving the affected public as the Texas Commission on Environmental Quality is mandated." Geraldine Jones, David Salinas and Suzanne Salinas, Danny Sliva and Julie Sliva, Mike Hunter and Gloria Hunter, Geraldine Batchelder, Paula M. Jones-Carson, Scott Kurtz and Sally Kurtz, Charles O. Parker and Mary T. Parker, Stephen Cooper and Kimberley Cooper, Daniel Tucker and Sandra Tucker, Jaime Alanis, and Carolyn Into request a contested case hearing. Also, Charles and Mary Parker do not feel enough information had been supplied.

RESPONSE 11:

The deadline for requesting a contested case hearing on this application has not yet expired. Along with this Response, you will find additional instructions included on how to request a contested case hearing or reconsideration of the Executive Director's decision on the application. The letter transmitting this Response specifies the deadline by which interested persons must seek a contested case hearing or request reconsideration. A contested case hearing is an evidentiary proceeding held before an administrative law judge, similar to a civil trial in a state district court.

If you need more information about this permit application or the permitting process, you may call the TCEQ Office of Public Assistance, toll free, at 1-800-687-4040. General information about TCEQ can be found at our website at www.tceq.state.tx.us.

The Applicant submitted an Application Availability Verification Form where it certifies that a copy of the complete application and any subsequent revisions, the draft permit, and the Executive Director's Preliminary Decision were made available for review and copying at the Matagorda County Courthouse, 1683 7th Street, Bay City, Texas. The materials are also available for review and copying at the TCEQ Office of the Chief Clerk, ground floor, Building F, Texas Commission on Environmental Quality, 12100 Park 35 Circle, Austin, Texas 78753. The TCEQ Office of the Chief Clerk may be reached at (512) 239-3300.

- **The following changes have been made to the draft permit:**

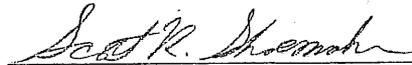
1. The previous storage capacity proposed by the applicant of 25.4 acre-feet has been increased to 27.9 acre-feet. Accordingly, all references to the previous storage capacity of "25.4" acre-feet have been revised to "27.9" acre-feet."
2. All references to the "irrigation holding pond" have been revised to the "irrigation holding pond system."
3. New Special Provision Item P. on Page 4 of the draft permit has been added to require that the irrigation holding pond system maintain a minimum storage capacity of 27.8 acre-feet in accordance with the required storage capacity referred to on Page 3 of the Response.

Respectfully submitted,

Texas Commission on
Environmental Quality

Glenn Shankle
Executive Director

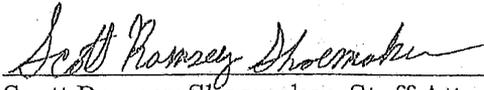
Robert Martinez, Director
Environmental Law Division



Scott R. Shoemaker, Staff Attorney
Environmental Law Division
P.O. Box 13087, MC 173
Austin, Texas 78711-3087
(512) 239-2679 Telephone
(512) 239-0606 Facsimile
*Representing the Executive Director of the
Texas Commission on
Environmental Quality*

CERTIFICATE OF SERVICE

I hereby certify that on February 7, 2008, the original of the "Executive Director's Response to Comments" on H Bowers, Inc., application for TPDES Permit No. WQ0004815000 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

2008 FEB -7 PM 3:37

CHIEF CLERKS OFFICE

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

H. Bowers, Inc.
WQ0004815000



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

June 10, 2008

0 0.25 0.5 1 1.5 2 2.5 Miles

Projection: Texas Statewide Mapping System (TSMS)
Scale 1:100,000

Legend

- Proposed Facility Boundary
- Hearing Requestor Physical Address
- Applicant Property Boundary
- Private Property Boundary
- River / Creek
- 1-Mile Radius Around Collection Pond

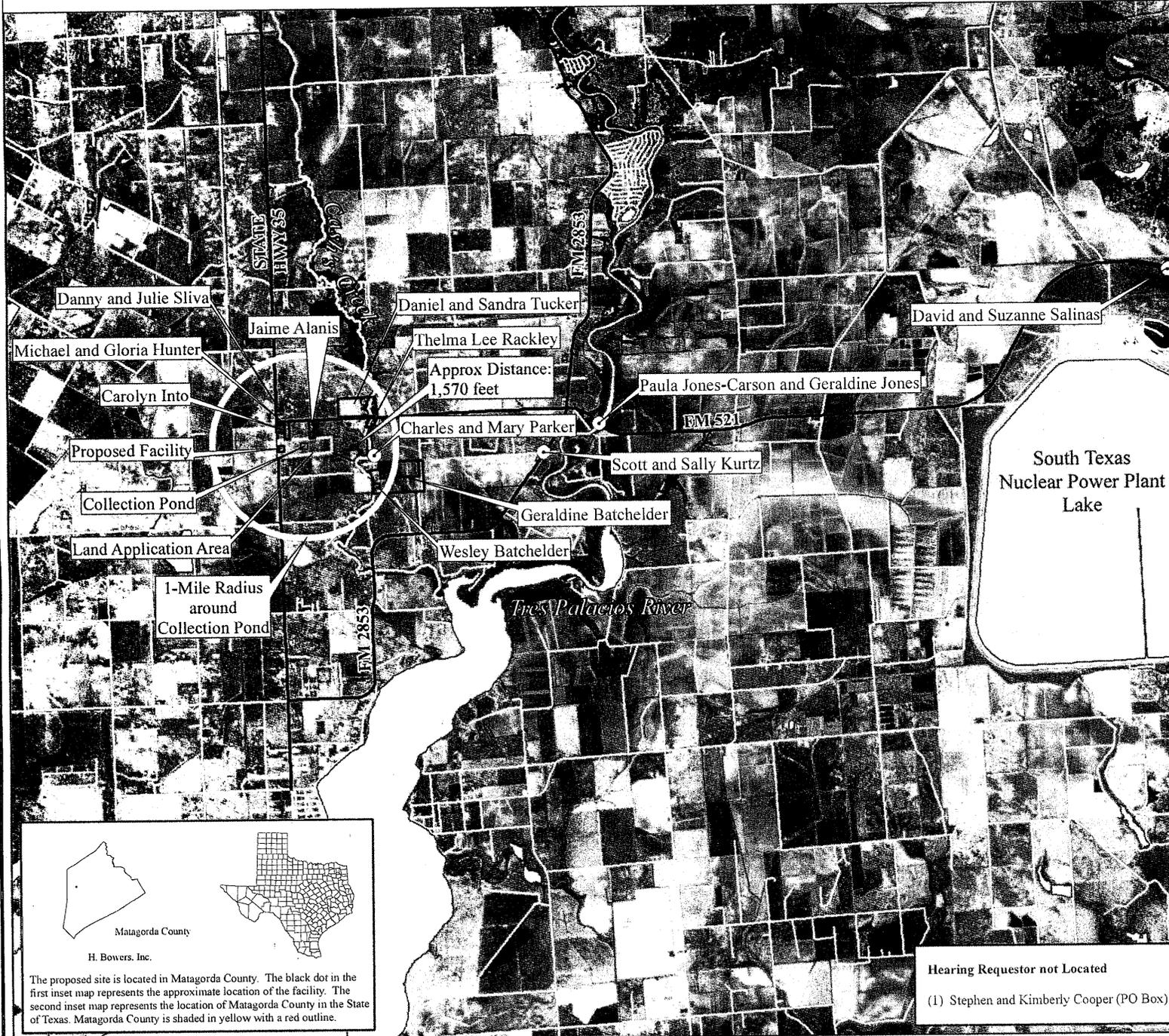
Source: This map was requested by TCEQ's Office of Legal Services (OLS). The location of the facility was provided by OLS. The property boundaries depicted were manually digitized and approximated (survey data not available) using paper maps provided by OLS. Hearing Requestor addresses (if shown) were provided by OLS and geocoded using Tele Atlas Streets 2006-2007 geodatabase technology. Unmatched addresses are manually plotted based on Google Maps and Map Quest Internet site locators. PO Boxes cannot be located and are not plotted.

Source:
The counties are Tele Atlas 2007 Line Data. The DOQQ (Digital Orthophoto Quarter Quadrangle) aerial imagery was obtained from the USDA Farm Service Agency's National Agriculture Imagery Program (NAIP). The 2004 imagery is color infrared (CIR) at one-meter resolution. The imagery is shown as a false color composite in RGB mode (band 2,3,3).

DOQQ Quads: Blessing and Palacios.



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.



Matagorda County
H. Bowers, Inc.

The proposed site is located in Matagorda County. The black dot in the first inset map represents the approximate location of the facility. The second inset map represents the location of Matagorda County in the State of Texas. Matagorda County is shaded in yellow with a red outline.

Hearing Requestor not Located
(1) Stephen and Kimberly Cooper (PO Box)