

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



TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

February 14, 2008

TO: Persons on the attached mailing list.

RE: H Bowers, Inc.
Permit No. WQ0004815000

Decision of the Executive Director.

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

Enclosed with this letter is a copy of the Executive Director's Response to Comments. A copy of the complete application, draft permit and related documents, including public comments, is available for review at the TCEQ Central office. A copy of the complete application, the draft permit, and executive director's preliminary decision are available for viewing and copying at the Matagorda County Courthouse, 1683 7th Street, Bay City, Texas.

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

How To Request a Contested Case Hearing.

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

The request must include the following:

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

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

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

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

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

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

Deadline for Submitting Requests.

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

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

Processing of Requests.

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

How to Obtain Additional Information.

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

Sincerely,



LaDonna Castañuela
Chief Clerk

LDC/er

Enclosures

MAILING LIST
for
H Bowers, Inc.
Permit No. WQ0004815000

FOR THE APPLICANT:

Mike Hooper
H Bowers, Inc.
Rural Route 1, Box 534
Palacios, Texas 77465

Jerry G. Ince, P.E.
Ince Engineering, LLC
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Richmond, Texas 77469

FOR THE EXECUTIVE DIRECTOR:

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Texas Commission on Environmental Quality
Environmental Law Division MC-173
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FOR OFFICE OF PUBLIC ASSISTANCE:

Bridget Bohac, Director
Texas Commission on Environmental Quality
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FOR PUBLIC INTEREST COUNSEL:

Blas J. Coy, Jr., Attorney
Texas Commission on Environmental Quality
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FOR THE CHIEF CLERK:

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

PROTESTANTS/INTERESTED PERSONS:

See attached list.

JAIME H ALANIS
1616 PERRYMAN AVE
PALACIOS TX 77465

CHARLES & MARY T PARKER
122 RIVERSIDE ST
PALACIOS TX 77465

GERALDINE BATCHELDER
415 GREEN ST
PALACIOS TX 77465

THELMA LEE RACKLEY
1152 FM 521
PALACIOS TX 77465

JEANETTE & WESLEY BATCHELDER
551 CR 348
PALACIOS TX 77465

DAVID & SUZANNE SALINAS
331 FM 521
PALACIOS TX 77465

KIMBERLEY & STEPHEN F COOPER
PO BOX 1616
EL CAMPO TX 77437

DANNY & JULIE SILVA
RT 1 BOX 482
PALACIOS TX 77465

VIRGIL FEAZELL
PO BOX 65
FREDONIA TX 76842

DANIEL & SANDRA G TUCKER
1033 FM 521
PALACIOS TX 77465

GLORIA & MIKE HUNTER
218 E BEECHER AVE
PALACIOS TX 77465

CAROLYN INTO
PO BOX 592
PALACIOS TX 77465

GERALDINE JONES
1024 FM 521
PALACIOS TX 77465

PAULA M JONES-CARSON
1024 FM 521
PALACIOS TX 77465

SALLY & SCOTT KURTZ
11798 FM 2853
PALACIOS TX 77465

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

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BEFORE THE
TEXAS COMMISSION
ON ENVIRONMENTAL QUALITY

TEXAS
COMMISSION
ON ENVIRONMENTAL
QUALITY

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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 than 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

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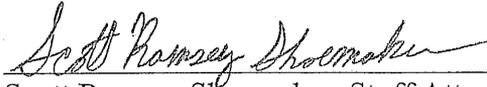
Representing the Executive Director of the

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

CHIEF CLERKS OFFICE

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