

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 22, 2008

TO: Persons on the attached mailing list.

RE: Aqua Utilities, Inc.
TPDES Permit No. WQ0014754001

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 Hood County Courthouse County Clerk's Office, 100 East Pearl Street, Granbury, Texas 76048.

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

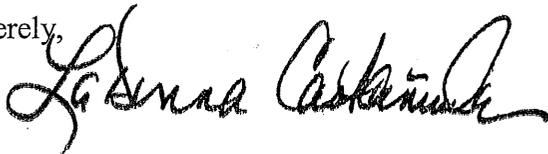
Processing of Requests.

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
Aqua Utilities, Inc.
TPDES Permit No. WQ0014754001

FOR THE APPLICANT:

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FOR THE CHIEF CLERK:

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PROTESTANTS/INTERESTED PERSONS:

See attached list.

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GRACE & JOHN DAVID THORNTON
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APRIL SOUDER
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GRANBURY TX 76049

PATRICIA & TOM TIGNER JR
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DANNY SOUDER
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GRANBURY TX 76049

TOM TIGNER
2021 GREEN WING DR
GRANBURY TX 76049-5576

PROPOSED TPDES PERMIT NO. WQ0014754001

APPLICATION BY § BEFORE THE
AQUA UTILITIES, INC. § TEXAS COMMISSION ON
FOR PERMIT NO. WQ0014754001 § ENVIRONMENTAL QUALITY

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY
2009 FEB 15 PM 4:50
CHIEF CLERK'S OFFICE

EXECUTIVE DIRECTOR'S RESPONSE TO PUBLIC COMMENT

The Executive Director (ED) of the Texas Commission on Environmental Quality (the commission or TCEQ) files this Response to Public Comment (Response) on the application from Aqua Utilities, Inc. (Applicant) for a new Texas Pollutant Discharge Elimination System (TPDES) permit, No. WQ0014754001, and the ED's preliminary decision. As required by 30 Texas Administrative Code (TAC) Section 55.156, before a permit is issued, the ED prepares a response to all timely, relevant and material, or significant comments. The Office of the Chief Clerk timely received comment letters and comments at the public meeting from the following persons:

Dee and Lindsay Bailey
Johnny and Jeannie Ball
Edward S. Balmuth
L. Wayne Bennett
Honorable Steve Berry,
Hood County Commissioner
Bill Betzel
Joe Blakeman
Jerry and Sue Cigainero
Faith Clark
Mark D. Clark
Jerry Combs
Country Club at Lakewood Hills
Homeowners Assoc. (Lakewood
Hills H.O.A.), *represented by Kirby
Douglass*
Rickey J. Creel
Thomas and Rhonda DiCicco
Larry and Shirley Dupler

Honorable Chet Edwards,
U.S. Congressman
Richard and Paula Eldred
Paul and Mary Escobedo
Jason and Mellanie Ferguson
Phil and Tracey Ferrero
Rachel Ferrero
Gwendolyn Massey Findley and
Mary Massey Props, *represented by
Stephen G. Parrott*
Kirk French
Terry C. Gibbs
Vikki Gilbreath
Helen Gregory
George O. Griffin
Mike Hagan
James and Margery Hanna
Derrell and Denise Harmon
Shane Harmon

Dianne and Ronnie Hasty
Charles F. Herndon
Honorable Jim Keffer,
State Representative
Dan J. Loomis
Bud Lowack
George Dixon Mahon
Mallard Pointe on Lake Granbury
Property Owners Assoc. (Mallard
Pointe P.O.A.), *represented by Phil
Ferrero and Dan Loomis*
John L. Meche
Don C. Miller
Emil A. Mosser
James and Susan Norton
Greg and Jo Pipal
Alan H. Plummer, Jr.
William T. and Mary Poulos
Michael and Linda Redenbaugh

James A. Rist
Michael and Holly Robinson
Larry and Carolyn Sadlowski
David and Nancy Shaffer
Doug and Loretta Sherar
David and Patricia Siedal
James and Debbie Sims
Steve and Cindy Skaggs
Brian Smith
Jep Tatum
Texas Historical Commission
Scott J. Thomas
Hoyt Thomas
Patty Thompson
John and Grace Thornton
Tom and Patricia Tigner
Barbara Townsend
James Williams
Pauline and Kirk Wittman

This Response addresses all such timely public comments received, whether or not withdrawn.

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

BACKGROUND

Description of Facility

The Applicant has applied to the TCEQ for a new permit, proposed TPDES Permit No. WQ0014754001, to authorize the discharge of treated domestic wastewater at a daily average flow not to exceed 50,000 gallons per day (gpd) in the interim I phase, 100,000 gpd in the interim II phase, and 150,000 gpd in the final phase. The proposed wastewater treatment facility will serve the Nolan Park residential subdivision. The facility will be located one mile north of Highway 377 on M&M Ranch Road in Hood County, Texas.

The Nolan Park Wastewater Treatment Facility would be an activated sludge process plant operated in the extended aeration mode. Treatment units would include a lift station, bar screen, flow equalization basin, aeration basin, clarifier, digester, and a chlorine contact chamber. The Applicant has not constructed the facility. The draft permit would authorize the disposal of sludge at a TCEQ authorized land application site or co-disposal landfill.

The effluent limitations in all phases of the draft permit, based on a 30-day average, are 10 mg/l Carbonaceous Biochemical Oxygen Demand (CBOD₅), 15 mg/l Total Suspended Solids (TSS), 3.0 mg/l Ammonia-Nitrogen (NH₃-N), and 4.0 mg/l minimum dissolved oxygen (DO). The effluent shall contain a chlorine residual of at least 1.0 mg/l and shall not exceed a chlorine residual of 4.0 mg/l after a detention time of at least 20 minutes based on peak flow. The effluent limitations in the draft permit will maintain and protect the existing instream uses.

The treated effluent will be discharged through a pipe to Rucker Creek; then to Lake Granbury in Segment No. 1205 of the Brazos River Basin. The unclassified receiving water uses are no significant aquatic life uses for Rucker Creek. The designated uses for Segment No. 1205 are high aquatic life, public water supply, and contact recreation. A Tier 1 antidegradation review has preliminarily determined that this permit action will not impair existing water quality uses. This review has preliminarily determined that no water bodies with exceptional, high, or intermediate aquatic life uses are present within the stream reach assessed; therefore, no Tier 2 degradation determination is required. No significant degradation of water quality is expected in water bodies with exceptional, high, or intermediate aquatic life uses downstream, and existing uses will be maintained and protected.

Procedural Background

The TCEQ received the application for a new permit on October 25, 2006, and declared it administratively complete on January 9, 2007. The Notice of Application and Intent to Obtain Water Quality Permit (NORI) was published on February 24, 2007, in the *Hood County News*. The Notice of Application and Preliminary Decision (NAPD) was published on May 5, 2007 in the *Hood County News*. TCEQ held a public meeting on October 16, 2007 and the public comment period ended at the close of the meeting. This application is subject to the procedural requirements of House Bill 801, 76th Legislature, 1999.

COMMENTS AND RESPONSES

COMMENT 1:

The following persons were concerned that the proposed wastewater discharge may further increase the level of *E. coli* and other pathogens: Dee and Lindsay Bailey; Thomas and Rhonda DiCicco; Larry and Shirley Dupler; Jerry and Sue Cigainero; Faith Clark; Kirk French; Terry C. Gibbs; James and Margery Hanna; Derrell and Denise Harmon; Charles F. Herndon; Bud Lowack; Michael and Linda Redenbaugh; James and Debbie Sims; Brian Smith; Scott J. Thomas; John and Grace Thornton; Pauline and Kirk Wittman; Dianne and Ronnie Hasty; Doug and Loretta Sherar; Patty Thompson; Mallard Pointe P.O.A.; Alan H. Plummer, Jr.; Dan Loomis; George Dixon Mahon; Emil Mosser; George O. Griffin; James and Susan Norton; Jason and Mellanie Ferguson; Hon. Jim Keffer; John L. Meche; Patricia and David Siedal; Phil, Tracey, and Rachel Ferraro; Richard and Paula Eldred; Steve and Cindy Skaggs; Hon. Steve Berry; Vikki Gilbreath; and William and Mary Poulos.

RESPONSE 1:

Effluent discharged into water in the state from facilities regulated under the Texas Pollution Discharge Elimination System (TPDES) must meet the Texas Surface Water Quality Standards (TSWQS). The TSWQS and other applicable rules are protective of aquatic life, human health, and the environment including the designated uses of the receiving waters. The draft permit for the facility meets the requirements of the TSWQS. The TCEQ does not anticipate that constituents in the discharge will have an adverse effect on the receiving water or its designated uses.

The draft permit requires the facility to chlorinate for disinfection purposes. Disinfection by chlorination is designed to remove harmful bacteria in the effluent and most other disease causing organisms. Facilities that disinfect by proper chlorination have far fewer coliform colonies than the level of concern. TCEQ rules require disinfection in a manner conducive to the protection of both public health and aquatic life by requiring a minimum detention time for the wastewater in the chlorination chamber and a minimum chlorine residual in the effluent to continue disinfection after discharge. The rules and draft permit also set a maximum chlorine residual that will not impact aquatic life in the receiving waters.

COMMENT 2:

The following persons were concerned that the treated wastewater discharge will pollute the water, affect wildlife, impair contact recreation, impact the ecosystem, and cause health problems: Jerry and Sue Cigainero; Jerry Combs; Alan H. Plummer, Jr.; Barbara Townsend; Dan Loomis; David and Nancy Shaffer; George Dixon Mahon; Doug and Loretta Sherar; Edward S. Balmuth; Emil Mosser; George O. Griffin; Gwendolyn Massey Findley and Mary Massey Props; James Williams; Jason and Mellanie Ferguson; Brian Smith; Hoyt Thomas; Hon. Jim Keffer;

John L. Meche; Lakewood Hills H.O.A.; Mallard Pointe P.O.A.; Mark D. Clark; Terry C. Gibbs; Michael and Holly Robinson; Patricia and David Siedal; James and Debbie Sims; Paul and Mary Escobedo; Phil, Tracey, and Rachel Ferraro; Richard and Paula Eldred; Steve and Cindy Skaggs; Michael and Linda Redenbaugh; Michael and Holly Robinson; Larry and Carolyn Sadlowski; Don C. Miller; Mike Hagan; Shane Harmon; Tom and Patricia Tigner; Hon. Steve Berry; and William and Mary Poulos.

Jason and Mellanie Ferguson; Phil, Tracey, and Rachel Ferrero; Mallard Pointe P.O.A.; Emil Mosser; William and Mary Poulos; Doug and Loretta Sherar; James and Debbie Sims; Steve and Cindy Skaggs; Jerry and Sue Cigainero; George O. Griffin; Alan H. Plummer, Jr.; Barbara Townsend; Dan Loomis; David and Nancy Shaffer; George Dixon Mahon; Edward Balmuth; Gwendolyn Massey Findley and Mary Massey Props; James Williams; Mark D. Clark; Michael and Holly Robinson; Paul and Mary Escobedo; Richard and Paula Eldred; and Tom and Patricia Tigner were particularly concerned about increased phosphorous and nitrogen in the proposed discharge that may cause golden algae to flourish and subsequently result in fish kills.

Allan H. Plummer, Jr.; Richard and Paula Eldred; William and Mary Poulos; Steve and Cindy Skaggs; and Tom and Patricia Tigner stated that some property owners use creek water for irrigation of lawns and are concerned about potential exposure to humans and pets.

RESPONSE 2:

As part of the permit application process, TCEQ must determine the uses of the receiving water and set effluent limits that are protective of those uses. The draft permit includes effluent limitations and monitoring requirements for 5-day CBOD₅, TSS, NH₃-N, chlorine residual and pH to ensure that the proposed effluent limits will not result in a violation of TSWQS for the protection of surface water quality, groundwater, and human health. It also includes additional

requirements for the wastewater treatment system to ensure the protection of water quality and human health and for the disposal of domestic sludge generated from the wastewater treatment facility.

In this case, unclassified receiving water uses are no significant aquatic life uses for Rucker Creek. The designated uses for Segment No. 1205 are high aquatic life, public water supply, and contact recreation. The ED determined that the proposed draft permit is protective of the environment, water quality, and human health and that it meets TCEQ rules and requirements if the Applicant operates and maintains the facility as required by the proposed permit and regulations. To report complaints about the facility, please contact the TCEQ at 1-888-777-3186 to reach the TCEQ region office in your area. Noncompliance with the permit may result in enforcement action against the Applicant.

Many natural resource agencies and universities in Texas as well as outside of the state are conducting research on the golden algae to understand the factors that contribute to its harmful blooms and to learn how to control its presence and harmful effects. Currently, researchers do not fully understand the environmental triggers and are still investigating effective management tools. The TCEQ remains supportive of the ongoing research and committed to base regulatory decisions on well established findings in order to protect and maintain water quality in the Lake Granbury watershed and other areas where the golden algae is found.

The discharge is not expected to affect federal endangered or threatened aquatic or aquatic dependent species or proposed species or their critical habitat. The United States Fish and Wildlife Service's (USFWS) biological opinion on the State of Texas authorization of the TPDES is the basis for this determination, which is subject to reevaluation upon subsequent updates or amendments. To make this determination for TPDES permits, TCEQ and the EPA

only considered aquatic or aquatic dependent species occurring in watersheds of critical concern or high priority.

COMMENT 3:

Gwendolyn Massey Findley and Mary Massey Props; James and Debbie Sims; Jason and Mellanie Ferguson; Jerry Combs; Michael and Holly Robinson; Richard and Paula Eldred; Mike Hagan; Shane Harmon; Michael and Linda Redenbaugh; William and Mary Poulos; Steve and Cindy Skaggs; Patricia and David Siedal; and Tom and Patricia Tigner were concerned about the impact this discharge will have on their property values. Don C. Miller was particularly concerned about the economic impact. Jerry Combs; Richard and Paula Eldred; Phil and Tracey Ferrero; Helen Gregory; Mallard Pointe P.O.A.; Michael and Holly Robinson; Steve and Cindy Skaggs; Tom and Patricia Tigner; and William and Mary Poulos were concerned about the impact on quality of life. Steve and Cindy Skaggs stated that water quality would affect tourism. The Hon. Steve Berry was concerned that the new development would cause increased traffic and safety issues as well as increased drainage and runoff issues.

RESPONSE 3:

Although the legislature has given the TCEQ the responsibility to protect water quality, TCEQ does not address these issues in the wastewater permitting process. The water quality permitting process is limited to controlling the discharge of pollutants into water in the state and protecting the water quality of the state's rivers, lakes, and coastal waters. The TCEQ cannot consider economic impacts, property values, quality of life, tourism, traffic, and non-point source issues when reviewing wastewater applications and preparing draft permits.

However, the issuance of a permit does not grant to the Applicant the right to use private or public property for conveyance of wastewater along the discharge route. This includes

property belonging to any individual, partnership, corporation or other entity. The permit does not authorize any invasion of personal rights or any violation of federal, state, or local laws or regulations. It is the Applicant's responsibility to acquire the necessary property rights to use the discharge route.

Also, the draft permit does not limit the ability of nearby landowners to use common law remedies for trespass, nuisance, or other causes of action in response to activities that may or actually do result in injury or adverse effects on human health or welfare, animal life, vegetation, or property, or that may or actually do interfere with the normal use and enjoyment of animal life, vegetation, or property.

COMMENT 4:

John L. Meche; Steve and Cindy Skaggs; William and Mary Poulos; Barbara Townsend; David and Nancy Shaffer; Doug and Loretta Sherar; Edward S. Balmuth; Tom and Patricia Tigner; Richard and Paula Eldred; James and Debbie Sims; and Mark D. Clark were concerned about odor that the wastewater treatment plant may cause.

RESPONSE 4:

TCEQ rules require domestic wastewater treatment facilities to meet buffer zone requirements for the abatement and control of nuisance odors (30 TAC Section 309.13(e)). These rules provide three options to satisfy the nuisance odor abatement and control requirement. The Applicant can meet this requirement by owning the buffer zone area, by obtaining a restrictive easement from the adjacent property owners for any part of the buffer zone not owned by the Applicant, or by providing odor control. The Applicant meets the buffer zone requirements by owning the buffer zone in accordance with the requirements of 30 TAC Section 309.13(a)

through (d). In addition, by ownership of the required buffer zone area, the Applicant is required to comply with the requirements of 30 TAC Section 309.13(e).

To report complaints about the facility if the permit is issued, please contact the TCEQ at 1-888-777-3186 to reach the TCEQ region office in your area. Noncompliance with the permit may result in an enforcement action against the Applicant.

COMMENT 5:

Jerry and Sue Cigainero; George Dixon Mahon; Mallard Pointe P.O.A.; Brian Smith; Bud Lowack; Charles F. Herndon; Dan Loomis; Derrell and Denise Harmon; Dee and Lindsay Bailey; George O. Griffin; James and Margery Hanna; James and Susan Norton; James and Debbie Sims; James Williams; Jason and Mellanie Ferguson; Jerry Combs; John and Grace Thornton; Kirk French; Pauline and Kirk Wittman; Larry and Shirley Dupler; Doug and Loretta Sherar; Michael and Linda Redenbaugh; Rachel, Tracey, and Phil Ferrero; Scott J. Thomas; Terry C. Gibbs; and Thomas and Rhonda DiCicco requested a Tier 2 antidegradation review.

RESPONSE 5:

TCEQ staff conducts an antidegradation review on new permit applications and permit amendments that would increase pollution loading to a water body. In Texas, there are two levels of antidegradation reviews. A Tier 1 antidegradation review applies to all water bodies and ensures that an increase in pollution loading will not impair existing water quality uses and will maintain the criteria associated with those uses. A Tier 2 antidegradation review applies to water bodies that have intermediate, high, or exceptional aquatic life uses and a contact recreation use. This review ensures that water quality that exceeds the normal range of fishable/swimmable criteria will be maintained unless lowering it is necessary for important economic or social development.

During the water quality standards review, TCEQ staff assigns appropriate uses and criteria to the receiving waters. These uses and criteria are the standards used by TCEQ to determine effluent limits and other requirements necessary to protect and maintain water quality. For the antidegradation review, TCEQ staff follows the guidance for antidegradation implementation contained in the TSWQS Implementation Procedures and the TSWQS. TCEQ also uses available information, including the pollutant analysis of treated effluent, the Texas Water Quality Inventory, and characteristics of the water body and local aquatic communities, when conducting an antidegradation review. TCEQ evaluates potential parameters of concern typically associated with the type of proposed effluent discharge to determine whether sufficient potential for degradation exists. In the Tier 1 review, TCEQ staff preliminarily determines if the proposed permit action will impair existing uses. In the Tier 2 review, they also determine if there will be significant degradation of water quality in water bodies with exceptional, high, or intermediate aquatic life uses. In addition, they evaluate any draft permit associated with the permit application to ensure compliance with the TSWQS.

Based on these evaluations, a Tier 1 antidegradation review has preliminarily determined that this permit action will not impair water quality uses and will maintain numerical and narrative criteria to protect existing uses. This review has preliminarily determined that no water bodies with exceptional, high, or intermediate aquatic life uses are present within the stream reach assessed; therefore, no Tier 2 degradation determination is required. TCEQ staff performs an antidegradation evaluation on receiving waters that fall within a certain distance downstream of the discharge point. The distance depends on the size of the discharge and the type of wastewater and receiving water. In this case, because the proposed discharge is relatively small, oxygen-demanding pollutants were the immediate concern. Based on the proposed final phase flow and

general dissolved oxygen modeling principles, the distance from the discharge point that the effluent could exert an effect on Rucker Creek would be approximately one mile. Because the discharge would travel over 5 miles to Lake Granbury, the TCEQ staff consider the lake to be beyond the zone of influence with respect to oxygen-demanding pollutants. As to other potential pollutants, such as nutrients and toxic materials, the lake is also beyond the range of significant impact. This is a result of the distance from the discharge point and the small amount of discharge.

No significant degradation of water quality is expected in water bodies with exceptional, high, or intermediate aquatic life uses downstream, and existing uses will be maintained and protected. TCEQ can reexamine and may modify the preliminary determination if it receives new information.

COMMENT 6:

Greg and Jo Pipal; Michael and Linda Redenbaugh; Mallard Pointe P.O.A.; Dan Loomis; Emil Mosser; Jason and Mellanie Ferguson; and Phil and Tracey Ferrero mentioned the past compliance history of the Applicant's wastewater treatment plants and asked what would happen if similar noncompliance occurs on the proposed facility. Greg Pipal was also concerned about future compliance after considering the performance associated with the drinking water that the Applicant is supplying for several residents in the neighborhood. Dan Loomis wanted to know the Applicant's compliance history.

RESPONSE 6:

The Applicant owns and operates many wastewater treatment facilities in the State. The commenters have not clearly indicated which facility has a compliance problem. In this instance, the Applicant has not begun discharging and there are no compliance issues. However, using an

assigned customer number, TCEQ was able to review an entire compliance history that includes all types of facilities authorized by the TCEQ and operated by the Applicant. The classification for the Applicant is average with a rating of 0.96.

The ED determined that the proposed draft permit is protective of the environment, water quality, and human health and that it meets TCEQ rules and requirements if the Applicant operates and maintains the facility as required by the proposed permit and regulations. To report complaints about the facility if the permit is issued, please contact the TCEQ at 1-888-777-3186 to reach the TCEQ region office in your area. Citizens may also report suspected incidents of non-compliance through the commission's Web site by following the menu for "Reporting" and "Reporting Environmental Problems to TCEQ" at <http://www.tceq.state.tx.us>. TCEQ's regional staff investigates citizen complaints and the commission takes appropriate enforcement action if the investigator documents a violation of regulations.

COMMENT 7:

The Texas Historical Commission (THC) requested a cultural resources survey of the proposed project area.

RESPONSE 7:

The Applicant is in the process of conducting archaeological studies at the proposed site. TCEQ will not issue the permit before the Applicant secures an approval from the THC on this matter.

COMMENT 8:

Edward S. Balmuth was concerned about the increase of insect and mosquito populations and the associated health hazards.

RESPONSE 8:

The permitting process is limited to controlling the discharge of pollutants into water in the state and protecting the water quality of the state's rivers, lakes and coastal waters. All discharges to surface water must comply with the Texas Surface Water Quality Standards (TSWQS) in 30 TAC Chapter 307. The purpose of the TSWQS is to maintain the quality of water in the state and to protect aquatic life, human health, and wildlife along the discharge route.

If you observe any risk of insect-borne diseases, you may contact Hood County Environmental Health Department, Annex 2, 201 West Bridge Street, Granbury, TX 76048, or at their phone number (817) 579-3288.

COMMENT 9:

Gwendolyn Massey Findley and Mary Massey Props were concerned about surface erosion from the discharge of wastewater.

RESPONSE 9:

The proposed final phase flow of 150,000 gpd, which is equal to a flow of 0.23 cubic feet per second (cfs) will have a velocity that is significantly less than the minimum scouring velocity used in the design of sewer lines, i.e., 2 cfs. Therefore, TCEQ does not anticipate that the discharge of wastewater at the final phase flow will contribute to surface erosion.

The water quality permitting process is limited to controlling the discharge of pollutants into water in the state and protecting the water quality of the state's rivers, lakes, and coastal waters. Downstream erosion is not typically addressed in the wastewater permitting process. However, the permit does not limit the ability of nearby landowners to use common law remedies for trespass, nuisance, or other causes of action in response to activities that may or

actually do result in injury or adverse effect on human health or welfare, animal life, vegetation, or property, or that may or actually do interfere with the normal use and enjoyment of animal life, vegetation, or property.

COMMENT 10:

Jerry and Sue Cigainero; Mallard Pointe P.O.A.; Emil Mosser; Michael and Linda Redenbaugh; Hon. Steve Berry; George Dixon Mahon; Bill Betzel; Bud Lowack; Charles F. Herndon; Dan Loomis; Derrell and Denise Harmon; Dee and Lindsay Bailey; Doug and Loretta Sherar; Edward S. Balmuth; George O. Griffin; James and Margery Hanna; James and Susan Norton; Brian Smith; James and Debbie Sims; Jason and Mellanie Ferguson; Jep Tatum; Jerry Combs; Joe Blakeman; John and Grace Thornton; Kirk French; Pauline and Kirk Wittman; Larry and Shirley Dupler; Larry and Carolyn Sadlowski; Rachel, Tracey, and Phil Ferrero; Scott Thomas; Terry C. Gibbs; and Thomas and Rhonda DiCicco asked what other wastewater disposal alternatives have been examined (for use as frac water (support well drilling), irrigation, and septic systems) other than discharging to Rucker Creek. Edward S. Balmuth also asked if it is possible to pipe the wastewater to Lake Granbury or into the Brazos River below the Lake.

RESPONSE 10:

The TWC, Section 26.027, authorizes the TCEQ to issue permits for discharges into water in the state. The permitting process is also limited to controlling the discharge of pollutants into water in the state and protecting the water quality of the state's rivers, lakes and coastal waters. If a proposed discharge would result in a violation of a water quality standard, the TCEQ cannot issue the permit. TCEQ does not determine and cannot mandate a different facility location, different discharge location, alternative means of conveyance and disposal, or different type of wastewater treatment plant.

COMMENT 11:

The Hon. Steve Berry stated that because of lake safety and pollution concerns, that his constituents needed more time and studies in regards to the proposed site before TCEQ can act on the permit. He stated that FEMA and the Brazos River Authority were in the process of completing a new 100-year flood plain study for the area and that TCEQ should consider this new information when reviewing this permit.

RESPONSE 11:

Based on existing facts and data, TCEQ has determined that the proposed wastewater treatment facility is located above the 100-year frequency level. If future studies indicate need for revision of their decision, TCEQ will require the Applicant to protect the facility from the 100-year flood.

COMMENT 12:

Edward S. Balmuth asked about the water quality standards, the frequency of sampling, and the limits on carcinogens, heavy metals, bacteria, and pharmaceuticals. He also asked if there would be any industrial wastewater contribution or any restrictions on the type of wastewater to be treated.

RESPONSE 12:

The effluent limitations in all phases of the draft permit, based on a 30-day average, are 10 mg/l CBOD₅, 15 mg/l TSS, 3.0 mg/l NH₃-N, and 4.0 mg/l minimum dissolved oxygen (DO). The effluent shall contain a chlorine residual of at least 1.0 mg/l and shall not exceed a chlorine residual of 4.0 mg/l after a detention time of at least 20 minutes based on peak flow.

The Applicant is required to analyze the treated effluent prior to discharge and provide monthly reports to TCEQ. The Applicant must collect and analyze all samples according to 30

TAC Chapter 319, Subchapter A, Monitoring and Reporting System. In addition, the draft permit requires the Applicant to sample the flow five times per week by instantaneous measurement. The Applicant must sample CBOD₅, TSS, NH₃-N, and DO once per week, the chlorine residual five times per week, and the pH once per month by grab sample.

The permit application indicates that the Applicant is requesting a permit for the development of residential housing. The proposed facility will treat the wastewater generated by the subdivisions located within that development. Therefore, the proposed discharge would consist of domestic wastewater from a municipal facility and not industrial wastewater. The permit does not allow waste of industrial or toxic origin nor does it authorize hazardous waste storage, processing, or disposal. Therefore, the treated effluent should not contain these substances prior to disposal.

COMMENT 13:

Edward S. Balmuth asked who conducts and oversees the testing procedures and equipment, whether tests are independent, and the location and accessibility of test reports.

RESPONSE 13:

As long as the testing is conducted in accordance with analytical procedures established by the Environmental Protection Agency (EPA) and the testing laboratory is registered by the TCEQ, there are no specific criteria as to whom should conduct the test. The Applicant may send the samples to the TCEQ registered laboratories or use their own laboratory, if registered, to run the test. As a part of a routine compliance investigation or upon receipt of complaints, the TCEQ regional investigator may conduct an inspection that would include review of records and sampling and testing of the wastewater.

The Applicant must send a Discharge Monitoring Report (DMR) every month to the TCEQ, who then reviews it. Discharge records are public information and are available on the following website, <http://www.epa.gov/enviro/html/pcs/adhoc.html>. The Customized Query Engine User's Guide located at the beginning of the website will provide you with detailed information on how to use the Query Engine.

COMMENT 14:

Edward S. Balmuth asked under what circumstances the discharge might exceed the maximum permitted flow and how the Applicant will measure and report the discharge rate.

RESPONSE 14:

If the facility operates properly, there should not be any circumstances where the discharge exceeds the permitted flow. There are permit provisions that help in preventing unauthorized discharges. Standard Provision 7 of the proposed draft permit states that when the flow reaches 75 percent of the permitted daily average flow for three consecutive months, the Applicant must initiate engineering and financial planning for expansion or upgrade of the domestic wastewater treatment or collection facilities. When the flow reaches 90 percent of the permitted daily average flow for three consecutive months, the Applicant must obtain authorization from TCEQ to begin constructing the necessary additional treatment or collection facilities.

The draft permit has three phases. In the interim I phase, the daily average flow of effluent is limited to 50,000 gpd. The interim II phase will have a daily average flow of 100,000 gpd. In the final phase, the daily average flow will be 150,000 gpd.. The Applicant must measure the effluent flow after it passes through the final treatment unit. In all phases, the Applicant is

required to sample the flow five times per week by instantaneous measurement and send a monthly DMR to the TCEQ.

Daily average flow is 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. In this permit, instantaneous measurements are used to determine the daily average flow by using the arithmetic average of all instantaneous measurements taken during that month.

COMMENT 15:

Edward S. Balmuth asked what technology and processes will be used for treating the wastewater, if advanced technologies to remove nitrogen and phosphorus will be employed, and if any additional treatments could be applied to improve the wastewater quality.

RESPONSE 15:

The proposed treatment facility is an activated sludge process plant operated in the extended aeration mode. Treatment units include a lift station, bar screen, flow equalization basin, aeration basin, clarifier, digester, and a chlorine contact chamber. If properly operated, the technology employed and the units mentioned have been proven to achieve the level of water quality effluent limitations contained in the permit. The current permit contains a 3.0 mg/l nitrogen limit in the form of Ammonia-Nitrogen that is achieved with the proposed activated sludge process plant operating in the extended aeration mode. No phosphorus limit has been found necessary at this time. However, if the need arises after further assessments and studies, the Applicant may be required to achieve a higher effluent standard by either modifying the existing facility or having a new plant installed.

COMMENT 16:

Edward S. Balmuth asked how much wastewater could raise the water level in the creek and what the fate of wastewater will be when the creek freezes.

RESPONSE 16:

The maximum proposed flow of 150,000 gpd, which is equal to a flow of 0.23 cfs, is not expected to cause any significant increase in the flow of the creek. Similar facilities across the state report no incidence of effluent backup during periods of low temperature.

COMMENT 17:

Edward S. Balmuth asked for the maximum amount of discharge into Rucker Creek that the state would allow.

RESPONSE 17:

At the proposed advanced secondary effluent set with nitrification, the maximum amount of discharge that would not violate the 2.0 mg/L dissolved oxygen (DO) criterion of Rucker Creek nor the 5.0 mg/L DO criterion of Lake Granbury, would be 2,000,000 gpd.

COMMENT 18:

Edward S. Balmuth asked what resources are available and who will be liable in the event of damage to his property or health caused by the wastewater discharge. He also wanted to know if the Applicant is required to post bond and maintain insurance or indemnity against damage.

RESPONSE 18:

There are no TCEQ rules that require the Applicant to post bond and maintain insurance or indemnity against damage. The ED determined that the proposed draft permit is protective of the environment, water quality (including surface water and groundwater), and human health and

that it meets TCEQ rules and requirements if the Applicant operates and maintains the facility as required by the proposed permit and regulations.

The issuance of a permit does not grant to the Applicant the right to use private or public property for conveyance of wastewater along the discharge route. This includes property belonging to any individual, partnership, corporation or other entity. The permit does not authorize any invasion of personal rights or any violation of federal, state, or local laws or regulations. It is the Applicant's responsibility to acquire the necessary property rights to use the discharge route. Also, the draft permit does not limit the ability of nearby landowners to use common law remedies for trespass, nuisance, or other causes of action in response to activities that may or actually do result in injury or adverse effects on human health or welfare, animal life, vegetation, or property, or that may or actually do interfere with the normal use and enjoyment of animal life, vegetation, or property.

COMMENT 19:

Edward S. Balmuth asked what the water analysis showed in the Mallard area, and if modeling can be done to assess the impact of additional wastewater flowing into the cove at Mallard Pointe.

RESPONSE 19:

The proposed discharge is approximately 5.1 miles upstream of the designated segment boundary of Lake Granbury (Segment No. 1205). The segment description of Lake Granbury is up to the normal pool elevation of 693 feet, including all coves. DO modeling predicts that the proposed 150,000 gpd discharge will maintain the 2.0 DO criterion of Rucker Creek, as well as be at background levels for oxygen demanding constituents before reaching Lake Granbury and the 693-foot contour.

Lake Granbury currently meets water quality standards and is not on the State's inventory of impaired and threatened waters, the 2004 Clean Water Act Section 303(d) list and 2006 Draft 303(d) list. TCEQ staff did not observe any detectable bacteria level at the upstream and main stem of the lake. However, due to local and regional concerns, TCEQ, through its Clean Rivers Program, is conducting an ongoing study focusing on bacteria modeling in coves and canals of Lake Granbury. This program will coordinate with the Lake Granbury Watershed Protection Plan to address bacteria concerns.

COMMENT 20:

Mallard Pointe P.O.A.; Brian Smith; Bud Lowack; Charles F. Herndon; Dan Loomis; Derrell and Denise Harmon; Dee and Lindsay Bailey; Faith Clark; James and Margery Hanna; James and Susan Norton; James and Debbie Sims; Jason and Mellanie Ferguson; John and Grace Thornton; Kirk French; Pauline and Kirk Wittman; Larry and Shirley Dupler; Doug and Loretta Sherar; Michael and Linda Redenbaugh; Rachel, Tracey, and Phil Ferrero; Dianne and Ronnie Hasty; Scott Thomas; Terry C. Gibbs; and Thomas and Rhonda DiCicco requested TCEQ to review and analyze water quality and ecological data collected by the Brazos River Authority in Lake Granbury, including Rucker Creek.

RESPONSE 20:

TCEQ uses surface water monitoring data generated by the agency as well as various research and development organizations. Brazos River Authority (BRA) is one of our partners and the TCEQ staff has reviewed data generated by it as part of its water quality assessment activities under the Clean Rivers Program.

COMMENT 21:

George O. Griffin; Johnny and Jeannie Ball; Jerry and Sue Cigainero; Mike Hagan; Shane Harmon; Larry and Carolyn Sadlowski; Mallard Pointe P.O.A.; David and Nancy Shaffer; Lakewood Hills H.O.A.; James Williams; Alan H. Plummer, Jr.; Brian Smith; Bud Lowack; Charles F. Herndon; Dan Loomis; Derrell and Denise Harmon; Dee and Lindsay Bailey; Emil Mosser; Faith Clark; James and Margery Hanna; James and Susan Norton; James Sims; Jason and Mellanie Ferguson; Jep Tatum; John and Grace Thornton; John L. Meche; Kirk French; Pauline and Kirk Wittman; Larry and Shirley Dupler; Doug and Loretta Sherar; Michael and Linda Redenbaugh; Mark D. Clark; Patricia and David Siedal; Rachel, Tracey, and Phil Ferrero; Richard and Paula Eldred; Dianne and Ronnie Hasty; Scott Thomas; Steve and Cindy Skaggs; Hon. Steve Berry; Terry C. Gibbs; Thomas and Rhonda DiCicco, and William and Mary Poulos requested evidence that the Applicant has investigated the use of all reasonable methods to implement TWC, Section 26.003, that encourages and promotes the development and use of regional and area wide collection, treatment, and disposal systems. Faith Clark also asked why the TCEQ staff failed to locate the presence of a collection system within a three-mile radius of the proposed wastewater treatment facility.

RESPONSE 21:

As part of the application process, the Applicant is required to review a three-mile area surrounding the proposed facility to determine if there is a wastewater treatment plant or sewer collection lines within the area that they can utilize. The wastewater treatment plant must have sufficient existing capacity to accept the additional waste. If such a facility exists and they are willing to accept the proposed waste, the Applicant must provide an analysis of expenditures required to connect to the existing wastewater treatment facility.

In the application received on October 25, 2006, the Applicant provided TCEQ with information that no wastewater treatment plant or sewer collection lines existed within a three-mile radius. Upon receipt of the application, with the help of the most current Geographical Information System (GIS) based map, TCEQ staff reached a conclusion that no wastewater treatment plant existed within a three-mile area surrounding the proposed facility. However, the staff cannot determine the location of sewer lines and must rely on the information provided by the Applicant.

At the public meeting held on October 16, 2007, TCEQ became aware that a sewer collection line belonging to the City of Granbury (City) exists within a three-mile area surrounding the proposed facility. By submitting a signed and completed application, the Applicant certified that, to the best of their knowledge and belief, the information submitted was true, accurate, and complete. In the event the Applicant becomes aware that it failed to submit any relevant facts or submitted incorrect information in an application or in any report to the ED, it must promptly submit such facts or information. Therefore, TCEQ subsequently requested the Applicant to provide corrected information.

In a letter to TCEQ dated November 13, 2007, the Applicant indicated that it would cost them fifty percent more to connect the line with the City's sewer collection system than to build their own treatment facility. The Applicant estimated that it would need \$867,966 to connect the line to the City's sewer collection system and \$590,765 to build the proposed wastewater treatment facility. The Applicant also added that it would take eighteen months to obtain the permit to bore a hole under the railway system that separates the proposed development from the City's sewer collection system. According to the Applicant, each month that they do not have the permit will cost them \$10,000; thereby incurring an additional sum of \$180,000.

COMMENT 22:

Alan H. Plummer, Jr.; William and Mary Poulos; Mallard Pointe P.O.A.; Johnny & Jeannie Ball; Brian Smith; Bud Lowack; Charles F. Herndon; Dan Loomis; Derrell and Denise Harmon; Dee and Lindsay Bailey; Mark D. Clark; George Dixon Mahon; James and Margery Hanna; James and Susan Norton; James and Debbie Sims; James Williams; Jason and Mellanie Ferguson; John and Grace Thornton; Kirk French; Pauline and Kirk Wittman; Larry and Shirley Dupler; Michael and Linda Redenbaugh; Mike Hagan; Patty Thompson; Rachel, Tracey, and Phil Ferrero; Richard and Paula Eldred; Scott Thomas; Steve and Cindy Skaggs; Terry C. Gibbs; and Thomas and Rhonda DiCicco requested TCEQ to establish strict permit effluent quality requirements (i.e. Phosphorus removal, etc.) needed to avoid degradation of water quality conditions and impact on the environment, specifically Lake Granbury and the designated uses within Rucker Creek Cove.

RESPONSE 22:

The ED has determined that the effluent limits in the draft permit will protect and maintain water quality in Rucker Creek as well as the Rucker Creek arm of Lake Granbury. Because of the relatively small size of the proposed discharge and the distance traveled in Rucker Creek before reaching the cove (approximately five miles), additional permit requirements such as phosphorus limits are not necessary.

TCEQ may review the permit after the completion of any new intensive water quality survey on Segment No. 1205 of the Brazos River Basin and any subsequent updating of the water quality model for Segment No. 1205. TCEQ may amend the permit and make effluent limits more stringent at renewal if there is any change to the approved modeling protocol.

COMMENT 23:

Alan H. Plummer, Jr.; Brian Smith; Bud Lowack; Charles F. Herndon; Dan Loomis; Derrell and Denise Harmon; Dee and Lindsay Bailey; James and Margery Hanna; James and Susan Norton; James and Debbie Sims; Jason and Mellanie Ferguson; John and Grace Thornton; Kirk French; Pauline and Kirk Wittman; Larry and Shirley Dupler; Michael and Linda Redenbaugh; Mike Hagan; Rachel, Tracey, and Phil Ferrero; Scott Thomas; Terry C. Gibbs; and Thomas and Rhonda DiCicco requested that TCEQ require the Applicant to equip the treatment plant with effluent filters to improve the effectiveness of the disinfection process.

RESPONSE 23:

The proposed treatment facility is an activated sludge process plant operated in the extended aeration mode. Treatment units include a lift station, bar screen, flow equalization basin, aeration basin, clarifier, digester, and a chlorine contact chamber. The effluent limitations in the draft permit, based on a 30-day average, are 10 mg/l CBOD₅, 15 mg/l TSS, 3.0 mg/l NH₃-N and 4.0 mg/l minimum dissolved oxygen (DO). The effluent shall contain a chlorine residual of at least 1.0 mg/l and shall not exceed a chlorine residual of 4.0 mg/l after a detention time of at least 20 minutes based on peak flow. With the level of technology employed and the effluent limitations contained, if properly operated, the facility should meet the permit requirements without the need for effluent filters.

COMMENT 24:

Alan H. Plummer, Jr.; William and Mary Poulos; Brian Smith; Bud Lowack; Charles F. Herndon; Dan Loomis; Derrell and Denise Harmon; Dee and Lindsay Bailey; James and Margery Hanna; James and Susan Norton; James and Debbie Sims; Jason and Mellanie Ferguson; John and Grace Thornton; Kirk French; Pauline and Kirk Wittman; Larry and Shirley

Dupler; Michael and Linda Redenbaugh; Rachel, Tracey, and Phil Ferrero, Richard and Paula Eldred; Scott Thomas; Steve and Cindy Skaggs, Terry C. Gibbs, and Thomas and Rhonda DiCicco requested TCEQ to require the Applicant to sample and test the discharge frequently for the permitted parameters, including phosphorus.

RESPONSE 24:

The draft permit requires the Applicant to sample the flow five times per week by instantaneous measurement. The Applicant must sample the CBOD₅, TSS, NH₃-N, and DO once per week, the chlorine residual five times per week, and the pH once per month by grab sample. It is not the usual practice to increase permit sampling frequencies unless TCEQ staff observe noncompliance issues. Since the Applicant has not begun discharging and there are no compliance issues, it is not necessary to increase the sampling and testing frequencies. Based on the review made by the Water Quality Standards Team, a phosphorus limit is not necessary for the discharge rate of 150,000 gpd to Rucker Creek.

COMMENT 25:

Alan H. Plummer, Jr.; Edward S. Balmuth; Joe Blakeman; Lakewood Hills H.O.A.; Mallard Pointe P.O.A.; David and Patricia Siedal; Jerry Combs; John L. Meche; Don C. Miller; Emil Mosser; William and Mary Poulos; Hoyt Thomas; Brian Smith; Charles F. Herndon; Dan Loomis; Derrell and Denise Harmon; Dee and Lindsay Bailey; Faith Clark; George Dixon Mahon; James and Margery Hanna; James and Susan Norton; James and Debbie Sims; James Williams; Jason and Mellanie Ferguson; Jerry and Sue Cigainero; John and Grace Thornton; Kirk French; Pauline and Kirk Wittman; Larry and Shirley Dupler; Larry and Carolyn Sadlowski; Doug and Loretta Sherar; Michael and Linda Redenbaugh; Mike Hagan; Patty Thompson; Rachel, Tracey, and Phil Ferrero; Richard and Paula Eldred; Rickey Creel; Michael

and Holly Robinson; Dianne and Ronnie Hasty; Scott Thomas; Shane Harmon; Steve and Cindy Skaggs; Terry C. Gibbs; and Tom and Patricia Tigner opposed the application or asked that it be denied.

RESPONSE 25:

The Applicant is required to operate in compliance with the TWC, TCEQ's rules, and the terms of the proposed draft permit. TCEQ may issue a permit if the application meets all administrative and technical requirements to protect water quality.

COMMENT 26:

John L. Meche requested that the TCEQ ban any flow, current or future, to Rucker Creek.

RESPONSE 26:

The legislature has given the TCEQ the responsibility to protect water quality in the state. Neither Chapter 26 of the TWC, nor the applicable TCEQ wastewater rules and regulations require a ban on discharges to Rucker Creek. Such determinations require detailed studies and assessments. Current studies indicate that, at the proposed advanced secondary effluent set with nitrification, a discharge of treated wastewater of up to be 2,000,000 gpd will violate neither the 2.0 mg/L DO criterion of Rucker Creek nor the 5.0 mg/L DO criterion of Lake Granbury. The DO modeling conducted by the TCEQ staff also indicates that the proposed 150,000 gpd discharge is predicted to maintain the 2.0 DO criterion of Rucker Creek, as well as be at background levels for oxygen demanding constituents before reaching Lake Granbury and the 693 ft contour. In order to meet this criterion, a 10 mg/l CBOD₅, 15 mg/l TSS, 3.0 mg/l NH₃-N, and 4.0 mg/l DO are required as a discharge effluent limitation to Rucker Creek. The effluent shall contain a chlorine residual of at least 1.0 mg/l and shall not exceed a chlorine residual of 4.0 mg/l after a detention time of at least 20 minutes based on peak flow. The ED determined

that the proposed draft permit is protective of the environment, water quality, and human health and that it meets TCEQ rules and requirements if the Applicant operates and maintains the facility as required by the proposed permit and regulations.

COMMENT 27:

Rachel, Tracey, and Phil Ferrero asked TCEQ to present the findings of their comments to all the Mallard Pointe property owners.

RESPONSE 27:

TCEQ does not have a mailing list of all Mallard Pointe property owners. TCEQ correspondence goes to affected or interested individuals or entities on the mailing list for this specific application or individuals or entities that showed countywide interest in receiving notice on similar permit actions in their area.

Individuals or entities may request to be placed on a mailing list to receive notices of future activities associated with this particular application or any applications filed in their area. For information and instructions on how to be added to a particular mailing list, please call the TCEQ Office of the Chief Clerk at (512) 239-3300.

COMMENT 28:

Greg Pipal indicated that the application states that there is no flow or flow fluctuation in Rucker Creek. Mr. Pipal presented photos to show major fluctuation in flow and asked if this information calls for reevaluation of the application. Johnny and Jeannie Ball; Edward Balmuth; John L. Meche; Michael and Linda Redenbaugh; David and Nancy Shaffer; Patty Thompson; Barbara Townsend; Phil, Tracey, and Rachel Ferrero; Jason and Mellanie Ferguson; Lakewood Hills H.O.A.; Mallard Pointe P.O.A.; Emil Mosser; Richard and Paula Eldred; and William and Mary Poulos were concerned about the extremes in water flow in Rucker Creek. Specifically,

they were concerned that it was a dry creek and with little or no flow, the majority of the flow would be wastewater, which could lead to reduced oxygen, adverse effects on aquatic life and wildlife, and offensive odors. When flooding conditions exist, they were concerned that the wastewater buildup would flush contaminants into inhabited areas. Dan Loomis also asked if there are plans to mitigate variable flow.

RESPONSE 28:

The flow fluctuation characterization of Rucker Creek given in the application is most likely the result of the Applicant's misinterpretation of the meaning of that portion of the receiving stream. TCEQ Water Quality Division staff visited the proposed discharge site on October 16, 2007 and noted evidence of moderate to severe flow fluctuations in Rucker Creek, which is typical of intermittent streams of this size. Since the ED staff has gained first-hand knowledge of the flow characteristics of Rucker Creek in the area of the proposed discharge, a reevaluation of the application is not necessary.

Based on the water quality modeling results, the proposed effluent set is adequate to ensure that the dissolved oxygen will be maintained above the criterion established for Rucker Creek (2.0 mg/l) and Lake Granbury (5.0 mg/l). This effluent set also satisfies 30 TAC, Section 309.3(c). Therefore, no impairment of aquatic life is expected. Effects of variable flow in streams are outside the purview of the normal evaluations of a TPDES permit application.

COMMENT 29:

Edward S. Balmuth, and Tom and Patricia Tigner are concerned about the discharge of untreated or raw sewage that may occur if the facility fails to operate properly. Edward S. Balmuth asked what the Applicant or TCEQ will do if sewage volume exceeds treatment capacity.

RESPONSE 29:

The Applicant is required to take certain steps to minimize the possibility of an accidental discharge of untreated wastewater. For example, the Applicant must maintain adequate safeguards to prevent the discharge of untreated or inadequately treated wastes during electrical power failures by means of alternate power sources, standby generators, or retention of inadequately treated wastewater. In addition, the TCEQ must approve plans and specifications for domestic sewage collection and treatment works associated with any domestic permit. Also, Standard Provision 7 of the proposed draft permit states that when the flow reaches 75 percent of the permitted daily average flow for three consecutive months, the Applicant must initiate engineering and financial planning for expansion or upgrade of the domestic wastewater treatment or collection facilities. When the flow reaches 90 percent of the permitted daily average flow for three consecutive months, the Applicant must obtain authorization from TCEQ to begin constructing the necessary additional treatment or collection facilities.

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

The Applicant is also required to report any unauthorized discharge to TCEQ within 24 hours. If the Applicant fails to report the unauthorized discharge or bypass to TCEQ within the prescribed time, the Applicant will be subject to enforcement by TCEQ. Should there be an accidental discharge, TCEQ and other local governmental entities determine if nearby residents

need to be notified of any leak or runoff based on the severity and potential health impact of the discharge.

TCEQ conducts periodic inspections of wastewater facilities and conducts investigations based on complaints received from the public. To report complaints about the facility if this permit is issued, please contact the Dallas Fort Worth Regional Office at (817) 588-5800, or by calling the 24-hour toll-free Environmental Complaints Hotline at 1-888-777-3186. Citizen complaints may also be filed on-line at www.tceq.state.tx.us/compliance/complaints/index.html. The TCEQ investigates all complaints received. If TCEQ finds that the facility does not comply with the terms and conditions of its permit, it will be subject to investigation and possible enforcement action. For more information regarding enforcement, please see TCEQ's web site at www.tceq.state.tx.us/ and click on "Compliance, Enforcement and Cleanups."

COMMENT 30:

Mr. Edward S. Balmuth is concerned that the Applicant may eventually want to increase the discharge with future developments in the area.

RESPONSE 30:

According to TCEQ regulations, a change in a term, condition, or provision of a permit would require an amendment. A major amendment is required when an Applicant seeks to change a substantive term, provision, requirement, or a limiting parameter of a permit. Assuming TCEQ issues the draft permit, and the Applicant needed to increase the flow of the discharge authorized in the permit, it would have to apply for a major amendment. When an Applicant seeks a major amendment, the application would be subject to the same processing, technical review, and public notice regulations as the current application. Accordingly, the public

would have an opportunity to comment, request reconsideration, and request a contested case hearing.

Individuals may request to be placed on a mailing list to receive notices of future applications filed in their area. For information and instructions on how to be added to a particular mailing list, please call the TCEQ Office of the Chief Clerk at (512) 239-3300.

COMMENT 31:

Tom and Patricia Tigner asked what the life of the plant is and how the Applicant decommissions a facility.

RESPONSE 31:

There is no specified lifetime for wastewater treatment facilities. Operations will continue as long as the facility attains the effluent limitations contained in the permit and meets required standards. If an Applicant does plan to phase-out a facility, it must follow certain procedures. A registered professional engineer must submit a request for closure plan that contains detailed information regarding the steps taken during the facility's closure and copies of laboratory data of soils and sludge analyses. The TCEQ Municipal Permits Team and Environmental Cleanup Section will evaluate this information to determine if the site requires remediation under the Texas Risk Reduction Program.

COMMENT 32:

Edward S. Balmuth asked what the capacity of the facility is and how much wastewater it will produce on average days.

RESPONSE 32:

Because the Applicant has not built the facility, there is no exact figure on the amount of wastewater that it will produce on average days. However, the draft permit authorizes a

discharge of treated domestic wastewater at a volume not to exceed a daily average flow of 50,000 gpd in the interim I phase, 100,000 gpd in the interim II phase, and 150,000 gpd in the final phase. The treatment facility has adequate treatment capacity to handle both the organic and hydraulic loads in accordance with the provisions of 30 TAC Section 317, Design Criteria for Sewerage Systems.

COMMENT 33:

Alan Plummer, Jr. stated that when he went to the Hood County Courthouse to review the permit application, the staff informed him that the application was available, but not the draft permit and the ED's preliminary decision. He submitted his comments without knowledge of the information contained in those documents.

RESPONSE 33:

30 TAC Section 39.405(g) requires the Applicant to make application documents available at a site accessible to the general public for review and copying. The Notice of Application and Preliminary Decision (NAPD) was published on May 5, 2007 in the *Hood County News*. The draft permit is available only after the publication of the second notice, the NAPD. On May 15, 2007, the Applicant submitted a public notice verification form to the Office of the Chief Clerk certifying that a copy of the permit application, Statement of Basis/Technical Summary, draft permit, the ED's preliminary decision, and all other related correspondence were available for public viewing and copying during the comment period at the Hood County Courthouse, County Clerk's Office, 100 East Pearl Street, Granbury, Texas.

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

Respectfully submitted,

Texas Commission on Environmental Quality

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REPRESENTING THE
EXECUTIVE DIRECTOR OF THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY

CERTIFICATE OF SERVICE

I certify that on February 15, 2008, the "Executive Director's Response to Public Comment" for Permit No. WQ0014754001 was filed with the Texas Commission on Environmental Quality's Office of the Chief Clerk.



Celia Castro
Staff Attorney
Environmental Law Division