

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*

March 17, 2008

TO: Persons on the attached mailing list.

RE: AUC Group, L.P.  
TPDES Permit No. WQ0014724002

### **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 Brazoria County Public Library, Pearland Branch, 3522 Liberty Drive, Pearland, 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  
AUC Group, L.P.  
TPDES Permit No. WQ0014724002

FOR THE APPLICANT:

Jeff Goebel  
AUC Group, L.P.  
5851 San Felipe Street, Suite 360  
Houston, Texas 77057

PROTESTANTS/INTERESTED PERSONS:

George and Brenda Dillard  
P.O. Box 131  
Manvel, Texas 77578-0131

Lonah Lonis  
P.O. Box 132  
Manvel, Texas 77578

FOR THE EXECUTIVE DIRECTOR:

Robert Brush, Staff Attorney  
Texas Commission on Environmental Quality  
Environmental Law Division MC-173  
P.O. Box 13087  
Austin, Texas 78711-3087

June Ella Martinez, Technical Staff  
Texas Commission on Environmental Quality  
Water Quality Division MC-148  
P.O. Box 13087  
Austin, Texas 78711-3087

FOR OFFICE OF PUBLIC ASSISTANCE:

Bridget Bohac, Director  
Texas Commission on Environmental Quality  
Office of Public Assistance MC-108  
P.O. Box 13087  
Austin, Texas 78711-3087

FOR PUBLIC INTEREST COUNSEL:

Blas J. Coy, Jr., Attorney  
Texas Commission on Environmental Quality  
Public Interest Counsel MC-103  
P.O. Box 13087  
Austin, Texas 78711-3087

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

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TCEQ PERMIT/PROPOSED PERMIT NO. WQ0014724002

CHIEF CLERKS OFFICE

APPLICATION BY  
AUC GROUP LP

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BEFORE THE  
TEXAS COMMISSION ON  
ENVIRONMENTAL QUALITY

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### EXECUTIVE DIRECTOR'S RESPONSE TO PUBLIC COMMENT

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The Executive Director (ED) of the Texas Commission on Environmental Quality (the commission or TCEQ) files this Response to Public Comment on the Auc Group, L.P.'s (Applicant) application for Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0014724002 and ED's preliminary decision. As required by Title 30 of the Texas Administrative Code (30 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 Chief Clerk received timely public comments from George and Brenda Dillard and Lonah Lonis.

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](http://www.tceq.state.tx.us).

### BACKGROUND

#### Description of Facility

The Applicant has applied to TCEQ for a new permit to authorize the discharge of treated domestic wastewater at a daily average flow not to exceed 160,000 gallons per day (gpd) in the interim I phase, a daily average flow not to exceed 320,000 gpd in the interim II phase and a daily average flow not to exceed 995,000 gpd in the final phase. The proposed wastewater treatment facility will serve the Seven Oaks Ranch development.

The facility will be an activated sludge process plant operated in the complete mix mode with single stage nitrification. Treatment units in the interim I phase will include a bar screen, two aeration basins, a clarifier, two sludge digesters and a chlorine contact chamber. The interim II phase will include a bar screen, four aeration basins, a clarifier, four sludge digesters, and a chlorine contact chamber. Treatment units in the final phase will include a bar screen, an aeration basin, a clarifier, a sludge digester, and a chlorine contact chamber. The facility has not been constructed.

Sludge generated from the treatment facility will be hauled by a registered transporter and disposed of at various TCEQ authorized land application sites in both Colorado and Waller County.

The draft permit authorizes the disposal of sludge at a TCEQ authorized land application site or co-disposal landfill.

The facility is proposed to be located approximately 1,700 feet north-northwest of the intersection of Hanselman Road and County Road 67, on the west side of Chocolate Bayou in Brazoria County, Texas. The treated effluent will be discharged directly to Chocolate Bayou above tidal in Segment No. 1108 of the San Jacinto-Brazos Coastal Basin. The designated uses for Segment No. 1108 are high aquatic life use and contact recreation. The effluent limitations in the draft permit are intended to maintain and protect the existing instream uses.

### Procedural Background

The permit application was received on February 27, 2007 and declared administratively complete on March 21, 2007. The Notice of Receipt and Intent to Obtain a Water Quality Permit (NORI) was published on April 26, 2007 and August 23, 2007 in the *Houston Chronicle*. The alternative language NORI was published in the *Houston Chronicle* d.b.a. *La Voz de Houston* on April 25, 2007. The Notice of Application and Preliminary Decision (NAPD) for a water quality permit was published in the *Houston Chronicle* on December 27, 2007. The alternative language NAPD was published in the *Houston Chronicle* d.b.a. *La Voz de Houston* on December 26, 2007. The public comment period ended on January 28, 2008. This application is subject to House Bill 801, 76th Legislature, 1999.

## **COMMENTS AND RESPONSES**

### **COMMENT 1:**

Ms. Lonis and Mr. and Mrs. Dillard have concerns regarding flooding. Mr. and Mrs. Dillard state that they do not see where there are studies of reviews made on the effect the increased volume and constant flow will have on properties downstream of the facilities.

### **RESPONSE 1:**

The review process used by TCEQ for wastewater permitting focuses on controlling the discharge of pollutants into water in the state and protecting the water quality of the state's rivers, lakes, and coastal waters. TCEQ does not typically address flooding issues in the wastewater permitting process. TCEQ's review focuses on whether the discharge will be protective of water quality in the receiving stream.

However, to put this volume of water in perspective, the final phase volume requested by this facility is 995,000 gpd, which equals 133,000 cubic feet of water. As of 3/3/08, the long-term mean flow of Chocolate Bayou was 91 cubic feet of water *per second*. Therefore, over a 24-hour period at the long-term mean flow, a total of 7,862,400 gallons of water flows through the bayou. The maximum discharge requested in the permit would represent an increase of 1.7% in the volume of water at the long-term mean flow of the bayou. The Applicant will begin operations in phase I with

a maximum discharge of 160,000 gpd or 21,400 cubic feet of water. That volume would increase the median long-term flow by 0.2% or well under 1%.

For flooding concerns, please contact the local floodplain administrator for this area. If you need help finding the local floodplain administrator, please call the TCEQ Resource Protection Team at (512) 239-4691.

**COMMENT 2:**

Ms. Lonis does not understand why she has to go to the Brazoria Country Library in Pearland to view the permit application when the permit pertains to Manvel not Pearland.

**RESPONSE 2:**

TCEQ rules at 30 TAC § 39.405(g) requires the Applicant to post a copy of the application for review and copying at a public place "in the county in which the facility is located or proposed to be located." The rule specifies the county, not the city where the application should be posted for public review. Since the facility is proposed to be located in Brazoria County, the Applicant meets the TCEQ public notice requirements by posting a copy of the permit application at the Brazoria County Library.

**COMMENT 3:**

Mr. and Mrs. Dillard would like to know why this plant will be located as described in the permit and not located closer to the SORD property where the sewage will be generated.

**RESPONSE 3:**

Many factors are considered when determining the location of a wastewater treatment. This may include, but is not limited to, locating the facility to allow for gravity flow of wastewater and locating the point of discharge adjacent to a stream or other conveyance with a minimum of piping. TCEQ rules address issues regarding placement of the facility on a particular piece of property in the permitting process with regards to water quality, flood plain location requirements, and buffer zones. However, absent an inability to comply with these requirements, the TCEQ does not make recommendations or judgments about an applicant's placement of a wastewater treatment system on their property.

**COMMENT 4:**

Mr. and Mrs. Dillard have concerns regarding odors generated by the treatment plant as well as the added risk of odors from chemicals used to operate the facility.

**RESPONSE 4:**

30 TAC § 309.13(e) requires that the Applicant meet one of three options to abate and control nuisance odor. Those options are:

- 1) Lagoons with zones of anaerobic activity (e.g., facultative lagoons, un-aerated equalization basins, etc.) may not be located closer than 500 feet to the nearest property line. All other wastewater treatment plant units may not be located closer than 150 feet to the nearest property line. The Applicant must hold legal title or have other sufficient property interest to a contiguous tract of land necessary to meet the distance requirements specified in this paragraph during the time effluent is disposed by irrigation;
- 2) The Applicant must submit a nuisance odor prevention request for approval by the ED.
- 3) The Applicant must submit sufficient evidence of legal restrictions prohibiting residential structures within the part of the buffer zone not owned by the Applicant.

According to the permit application, the Applicant is meeting the buffer zone requirement by ownership. If nearby residents experience nuisance odor conditions or any other suspected incidents of noncompliance with the permit or TCEQ rules they may be reported to TCEQ by calling toll-free, 1-888-777-3186 or calling the TCEQ Region 12 Office in Houston at (713) 767-3500. Citizen complaints may also be filed on-line at <http://www.tnrcc.state.tx.us/cgi-bin/enforcement/complaints>. If the Applicant fails to comply with all requirements of the permit, it is subject to administrative enforcement action, fines, and penalties.

In addition, the permit does not limit the ability to seek legal remedies against an applicant regarding any potential trespass, nuisance, or other causes of action in response to activities that may result in injury to human health or property or that interfere with the normal use and enjoyment of property.

**COMMENT 5:**

Mr. and Mrs. Dillard are concerned about the risk of transferring, via pipeline, raw sewage over a long distance to get it from the point of origin to the treatment facility.

**RESPONSE 5:**

The rules in 30 TAC Chapter 317, Design Criteria for Sewage Systems, provide for permit issuance before final design of the facility. However, the draft permit requires the Applicant to meet the design criteria requirements for domestic wastewater treatment plants prior to construction of the facility and to submit to the TCEQ Wastewater Permitting Section a summary submittal letter for the design criteria according to 30 TAC § 317.1, prior to construction of each phase of the wastewater treatment facilities. The summary letter must be signed and sealed by a licensed professional engineer.

The Applicant is required to take certain steps to minimize the possibility of an accidental discharge of untreated wastewater. For example, the draft permit requires that the Applicant must at all times ensure that the facility and all of its systems of collection, treatment, and disposal are properly operated and maintained. Under the draft permit, the Applicant would be responsible for installing adequate safeguards to prevent the discharge of untreated or inadequately treated wastes during electrical power failures by means of alternate power sources, standby generators, and/or retention of inadequately treated wastewater.

If an unauthorized discharge occurs, the Applicant is required to report it to TCEQ within 24 hours. The Applicant is subject to potential enforcement action for failure to comply with TCEQ rules or the permit, including unauthorized discharges. TCEQ regional staff investigates complaints and the agency takes appropriate enforcement action if the investigator documents a violation. As noted in Response #4, there are phone numbers and an email address where members of the public may report potential violations of the permit or regulations.

**COMMENT 6:**

Mr. and Mrs. Dillard state that the property where the facility will be located was not zoned for commercial facilities such as a sewage treatment plant.

**RESPONSE 6:**

Zoning issues are not taken into account during the wastewater permitting process. The ED's review of the application only relates to the quality of the effluent discharge to be protective of aquatic life and human health. However, possession of a permit issued by TCEQ does not give the Applicant the authorization to violate local ordinances that apply to the property in question. It is the responsibility of the Applicant to obtain all of the necessary property rights for operation of the proposed facility.

Respectfully submitted,

Texas Commission on Environmental Quality

Glenn Shankle  
Executive Director

Robert Martinez, Director  
Environmental Law Division

*Robert Brush*

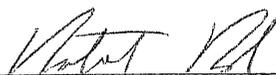
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REPRESENTING THE  
EXECUTIVE DIRECTOR OF THE  
TEXAS COMMISSION ON  
ENVIRONMENTAL QUALITY

CERTIFICATE OF SERVICE

I certify that on March 10, 2008, the "Executive Director's Response to Public Comment" for Permit No. WQ0014724002 was filed with the Texas Commission on Environmental Quality's Office of the Chief Clerk.



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