

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

April 4, 2008

TO: Persons on the attached mailing list.

RE: Diamond Shamrock Refining Company, L.P.
TPDES Permit No. WQ0001353000

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 Live Oak County Branch Library, 102 East Leroy Street, Three Rivers, 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
Diamond Shamrock Refining Company, L.P.
TPDES Permit No. WQ0001353000

FOR THE APPLICANT:

Lisa Trowbridge
Diamond Shamrock Refining Company, L.P.
P.O. Box 490
Three Rivers, Texas 78071-0490

James Miertschin, P.E.
P.O. Box 162305
Austin, Texas 78716

PROTESTANTS/INTERESTED PERSONS:

Mary K. Sahs
Carls McDonald & Dalrymple, LLP
901 South Mopac Expressway
Barton Oaks Plaza 2, Suite 500
Austin, Texas 78746

Lloyd Stewart, Jr.
1299 Highway 72
Three Rivers, Texas 78071-2609

FOR THE EXECUTIVE DIRECTOR:

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FOR THE CHIEF CLERK:

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

TCEQ PERMIT/OR PROPOSED PERMIT NO. WQ0001353000

APPLICATION BY	§	BEFORE THE
	§	
DIAMOND SHAMROCK.	§	TEXAS COMMISSION ON
REFINING COMPANY, L.P.	§	
TPDES PERMIT NO. WQ0001353000	§	ENVIRONMENTAL QUALITY

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY
 CHIEF CLERKS OFFICE
 JUN 10 2011 4:14

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 Diamond Shamrock Refining Company, L.P. application and Executive Director's preliminary decision. As required by 30 Texas Administrative Code (TAC) § 55.156 (Rule), before an application is approved, the Executive Director prepares a response to all timely, relevant and material, or significant comment. The Office of Chief Clerk timely received comment letters from the following persons: Mary Sahs of Sahs & Associates, PC representing Mr. and Mrs. Lloyd Stewart. Notwithstanding the limitation in the Rule to relevant and material, or significant comment, this Response addresses all timely public comments received, whether or not withdrawn.

BACKGROUND

DESCRIPTION OF FACILITY

Diamond Shamrock Refining Company, L.P., P.O. Box 490, Three Rivers, Texas 78071-0490, which operates a petroleum refinery, has applied to the Texas Commission on Environmental Quality (TCEQ) for a major amendment to TPDES Permit No. WQ0001353000 to increase the daily average permitted flow at Outfall 001 from 800,000 gallons per day to 1,500,000 gallons per day; increase the daily maximum permitted flow at Outfall 001 from 1,600,000 gallons per day to 3,000,000 gallons per day; increase effluent limitations for all limited parameters at Outfall 001; remove monitoring/reporting requirements for total antimony, total arsenic, total barium, total cadmium, cyanide, total chromium, hexavalent chromium, total copper, total lead, total mercury, total selenium, total silver, and fecal coliform at Outfall 001; increase the size of the irrigation tract from 1,376 acres to 1,438 acres; increase the minimum irrigation area from 3,41.5 acres to 474 acres; increase the hydraulic application rate from 2.95 acre-feet/acre/year to 3.54 acre-feet/acre/year; and remove the retest provision which requires monitoring for benzene, ethylbenzene, toluene, total xylene, and methyl-tertia-butyl-ether (MTBE) at Outfall 001. The current permit authorizes the discharge of treated

process wastewater, utility wastewater, storm water, and treated ground water via Outfall 001 at a daily average flow not to exceed 800,000 gallons per day; the intermittent flow variable discharge of storm water runoff and plant wash water via Outfall 002; and the disposal of treated process wastewater, utility wastewater, storm water, and treated ground water via irrigation of 1,376 acres. This application was submitted to the TCEQ on December 31, 2004.

The facility is located at 301 Leroy Street in the City of Three Rivers, Live Oak County, Texas; with an irrigation (disposal) site located adjacent to the southwest side of Interstate Highway 37, approximately one mile northwest of the intersection of Interstate Highway 37 and State Highway 72, north of the City of Three Rivers, Live Oak County, Texas. The effluent is discharged to an unnamed ditch, thence to the Nueces/Lower Frio River, in Segment No. 2106 of the Nueces River Basin.

PROCEDURAL BACKGROUND

The application was received on December 31, 2004 and declared administratively complete on February 24, 2005. The Executive Director completed the technical review of the application on February 23, 2005 and prepared a draft permit. The Notice of Receipt of Application and Intent to Obtain a Water Quality Permit was published on March 16, 2005 in the *Progress*. The Notice of Application and Preliminary Decision was published on April 11, 2007 in the *Progress*. The public comment period ended on May 11, 2007. Because this application was administratively complete after September 1, 1999, it is subject to House Bill 801 (76th Legislature, 1999).

COMMENTS AND RESPONSES

Note that all comments below were submitted by Mary Sahs on behalf of Mr. and Mrs. Lloyd Stewart.

Comment 1:

The Stewarts are affected persons as defined by law. Ms. Sahs states that as required by 30 TAC § 55.203, they have a personal justiciable interest related to a legal right, duty, privilege, power, or economic interest affected by the application. Because of the wastewater from the refinery and its irrigation operations, the Stewarts would be adversely affected in a way not common to the general public if the draft permit is approved. The interest claimed is one protected under the Texas Water Code and the Federal Clean Water Act. There are not distance restrictions or other limitations imposed by law on the affected interest.

Ms. Sahs further states that The Stewart's own approximately 200 acres in Live Oak County. The property is a little more than 1/4 mile downstream and downhill of the irrigation property. The Stewarts have evidence showing that wastewater from the irrigation operations at times flows across their property.

Response: 1: The Executive Director will evaluate all hearing requests submitted for this case in accordance with TCEQ rules set for in 30 Texas Administrative Code Chapter 50. The Executive Director will make a written recommendation to the Commission as to which individuals qualify as affected persons and which hearing request meet the regulatory requirements. Ultimately, the commissioners will decide which individuals are affected persons and whether this case should be referred to the State Office of Administrative Hearings (SOAH) for a contested case hearing.

Comment 2:

Ms. Sahs comments that there was not proper notice of the application as required by the Texas Water Code 26.028, and requests that the TCEQ require the Applicant to begin over and re-notice through all of the required steps.

Ms. Sahs believes that the notice is confusing and totally uninformative, and that major, significant changes are being proposed for the discharge of wastewater to the irrigation fields. Ms. Sahs further states that an Applicant in the TCEQ context must provide the public with notice of application adequate to afford individuals who may be affected by the permit action a meaningful opportunity to voice their concerns and to participate in the permit process, including contested case hearing, if they so desire.

Response: 2: The notices that were published by the Applicant and mailed by the Chief Clerk's Office in this case meet the requirements of Texas Water Code § 26.028 and TCEQ rules found at 30 TAC § 39.151 and § 39.11. These rules require that the notice include information such as: the name and address of the agency; the name and address of the Applicant and, if different, the location of the facility or activity to be regulated by the permit; a brief description of the business conducted at the facility or activity described in the application or the draft permit; the name, address, and telephone number of an agency contact person from whom interested persons may obtain further information; a brief description of public comment procedures; a statement of procedures by which the public may participate in the final permit decision and, if applicable, how to request a hearing, or a statement that later notice will describe procedures for public participation; the application or permit number; the deadline to file comments and, if applicable, hearing requests; and a statement of whether the Executive Director has prepared a draft permit.

Comment 3:

Ms. Sahs states that the Notice is defective because it fails to include critical information related to the discharge to and operation of the irrigation fields, even though over the past 20 years virtually all wastewater has been discharged to the fields and not to the river. As drafted, the permit authorizes unlimited quantities of the refinery's liquid waste and off-spec product to be disposed of on the 1,438-acre irrigation tract. The Notice mentions only the increase in the discharge to the Nueces/Lower Frio River and fails to mention the increase in discharge volume to the irrigation fields.

Response 3: The draft permit does not authorize unlimited quantities of the refinery's liquid waste and off-spec product to be disposed of on the 1,438-acre irrigation tract. The draft permit specifically limits the hydraulic application rate of wastewaters to the 1,438-acre irrigation tract to 3.54 acre-feet/acre/year.

The public notice specifically notes the following requested changes in the proposed permit with respect to the irrigation operations:

1. Increase the size of the irrigation tract from 1,376 acres to 1,438 acres.
2. Increase the minimum irrigation area from 341.5 acres to 474 acres
3. Increase the hydraulic application rate from 2.95 acre-feet/acre/year to 3.54 acre-feet/acre/year.

Comment 4:

Ms. Sahs comments that the Notice is defective because, as drafted, the permit authorizes the expansion of the definition of wastewater. The current permit authorizes using treated effluent and discharge into the River of treated effluent. Nothing in the Notice alerts the public to the fact that the permit as drafted would authorize disposal by irrigation of treated, partially treated, and untreated wastewater; fertilizers, maintenance chemicals, pesticides, treatment chemicals, and other "supplements"; off-spec product; deep well back flush; "and any other materials and /or substances applied to the irrigation tract sized at 1,438 acres."

Response 4: The referenced changes in the draft permit were made to better clarify what wastestreams and other materials are authorized to be applied to the irrigation tract. This did not expand the list of authorized wastestreams from what was previously authorized.

The term "partially treated wastewater" refers to wastewaters that are routed through a portion of the wastewater treatment system. This may occur when full treatment is not needed for the specific wastestream or when a treatment unit is temporarily unavailable and the effluent quality is compliant with the required limitations specified in the permit.

The term "untreated wastewater" refers to wastewaters that are not routed through any portion of the wastewater treatment system. This may occur when no treatment is needed for the specific wastestream or when the treatment unit typically used is temporarily unavailable and the effluent quality is compliant with the required limitations specified in the permit.

The term "fertilizers" refers to supplements that are applied to the irrigation tract to provide nutrients to the vegetative cover.

The term "maintenance chemicals" refers to supplements that are routed through the irrigation system for maintenance purposes of the wastewater distribution system.

The term "pesticides" refers to supplements that are applied to the irrigation tract to provide insect and other pest control for the vegetative cover.

The term "treatment chemicals" refers to supplements that are applied to the irrigation tract to provide treatment/conditioning of the soils and/or vegetative cover.

The term "off-spec product" refers to product that does not meet manufacturer specifications and are applied to the irrigation tract as either a waste or as a supplement substitute.

The term "any other materials and/or substances" refers to any other supplements that may be legitimately applied to the irrigation tract that are not previously described and/or listed.

Comment 5:

Ms. Sahs states that the Notice is defective because the Applicant failed to mail notice to all persons required by law. On information and belief, Darlene Bellows owns the eastern corner of the property designated as No. 6 on the Applicant's landowner map and was not provided mailed notice.

Response 5: For new permit and major amendment applications, the Applicant must provide a list of affected landowners and a map showing their location(s). Affected landowners are landowners located adjacent to the wastewater treatment plant site and landowners with property on either side of the receiving stream for approximately one mile downstream from the point of discharge. The Applicant is required to certify that the submitted application is accurate. The TCEQ mails notice of the application to the affected landowners and others on

the mailing list for the application, which is maintained by the Office of Chief Clerk.

Additionally, for all applications (new, major amendment and renewal applications), the agency prepares two public notices; the Notice of Receipt and Intent to Obtain a Water Quality Permit (NORI) and the Notice of Application and Preliminary Decision for a Water Quality Permit (NAPD). The Applicant is required to publish these notices in a local newspaper and to provide a copy of the application, proposed draft permit and Executive Director's Preliminary Decision in a public place for viewing and copying.

In this case, the adjacent landowners map submitted by the Applicant does identify a Mildred Bellows as an adjacent landowner and TCEQ records indicate that notices were sent to this individual.

Comment 6:

Ms. Sahs states that the Notice is defective because the Applicant failed to publish notice within the 45-day period required by 30 TAC 39.405(a). The Stewarts urge the Executive Director to return the application and instruct the Applicant to resubmit it, as authorized by 30 TAC § 39.405(a)(2).

Response 6: 30 TAC § 39.405 (a) gives the Executive Director the discretion to suspend further processing of an application if a notice is not published within 45 days of receiving the notice from the Chief Clerk. In this case, the Executive Director did not suspend processing of the application and the notice was published by the Applicant as required by rule.

Comment 7:

Ms. Sahs comments that the Notice is defective because the Amended Notice, which was published after expiration of the 45-day period, contains several typographical errors. The most serious is the failure to include the proposed hydraulic application rate. Even if the Executive Director does not return the application as requested above, at a minimum, the Applicant should be required to re-publish an accurate notice.

Response 7: It is not clear which typographical errors Ms. Sahs is referencing. However, the Notice does include appropriate references to the Applicant's amendment requests with respect to the requested increase in the hydraulic application rate. Specifically, in the first paragraph it is stated "Diamond Shamrock Refining Company, L.P., ... has applied to the Texas Commission on Environmental Quality (TCEQ) for a major amendment to TPDES Permit No. WQ0001353000 to ... increase the hydraulic application rate from 2.95 acre-feet/acre/year to 3.54 acre-feet/acre/year."

Comment 8:

Ms. Sahs states that under 30 TAC § 60.1, the Applicant's history of poor compliance at this and other facilities requires denial of the amendment. In the alternative, the Applicant's poor compliance record requires additional conditions and terms in the proposed permit to minimize the likelihood of future violations.

Response 8: During the technical review, a compliance history review is conducted on the company and the site based on the criteria in Title 30, Chapter 60 of the Texas Administrative Code (TAC). The compliance history is reviewed for the company and site for the five-year period prior to the date the permit application was received by the Executive Director. The compliance history includes multimedia compliance-related components about the site under review. These components include the following: enforcement orders, consent decrees, court judgments, criminal convictions, chronic excessive emissions events, investigations, notices of violations, audits and violations disclosed under the Audit Act, environmental management systems, voluntary on-site compliance assessments, voluntary pollution reduction programs and early compliance.

This permit application was received after September 1, 2002, and the company and site have been rated and classified pursuant to Title 30, Chapter 60 of the Texas Administrative Code (TAC). A company and site may have one of the following classifications and ratings:

High:	rating < 0.10 (above-average compliance record)
Average by Default:	rating =3.01 (these are for sites which have never been investigated)
Average:	0.10 < rating < 45 (generally complies with environmental regulations)
Poor:	45 < rating (performs below average)

This site has a rating of (5.35) and a classification of AVERAGE. The company rating and classification, which is the average of the ratings for all sites the company owns, is 2.85 and AVERAGE. Based on this rating and classification, the Executive Director has determined that the company is operating in compliance with rules and regulations, and this permit should be issued.

Comment 9:

The conditions of the permit fail to provide clear and enforceable terms, as required by Texas Water Code § 26.029. Additionally, the proposed permit fails to prescribe adequate monitoring and reporting, in violation of Texas Water Code § 26.042.

Response 9: The conditions of the permit and the monitoring requirements are standard requirements which are contained in TCEQ issued water quality permits. If the Applicant fails to comply with all requirements of the permit, they are subject to administrative enforcement action, fines, and penalties.

Suspected incidents of noncompliance with the permit or TCEQ rules may be reported by calling toll-free, 1-888-777-3186 or calling the TCEQ, Region 14 Corpus Christi Office at (361) 825-3101. Citizen complaints may also be filed on-line at <http://www.tnrcc.state.tx.us/cgi-bin/enforcement/complaints>.

Comment 10:

Ms. Sahs states that the proposed amendment must be denied because it does not comply with agency rules; would allow contamination of groundwater and surface water; and would cause health hazards.

Response 10: The proposed permit complies with all applicable agency rules. Analytical data reported in the application was screened against calculated water quality-based effluent limitations for the protection of aquatic life and human health. In cases where a pollutant is monitored as a requirement of the current permit, historical self report data was also considered in the screening against calculated water quality-based effluent limitations for the protection of aquatic life and human health.

All effluent limitations in the draft permit comply with applicable EPA categorical guidelines for required technology-based effluent limitations and with Texas Surface Water Quality Standards (TSWQS) for water quality-based effluent limitations for aquatic life and human health protection.

Specific conditions are included in the draft permit to protect ground water and surface water from any adverse impact from the irrigation activities. These conditions include hydraulic application rate limitations, effluent quality limitations, prohibition on the land application of effluent during specific situations (within 24 hours following a measured rainfall of one-half inch or greater and/or on any zone that contains standing water), and soil monitoring requirements. The draft permit also requires irrigation practices be managed to prevent contamination of ground water and surface water.

Comment 11:

The proposed permit would authorize the discharge of treated, partially treated, and untreated wastewater, fertilizers, maintenance chemicals, pesticides, treatment chemicals, off-spec product, and any other materials and/or substances to the irrigation tract. The current permit authorizes irrigation of effluent from the process wastewater treatment facility only. The proposed permit wastewater definition including "and any other material and/or substance applied to the irrigation tract" would authorize irrigation of any material meeting a limited set of effluent criteria. Examples of the types of materials that could be irrigated without violating permit terms include contaminated and untreated groundwater, brines, radioactive materials, materials with high concentrations of petroleum hydrocarbons, solvents, and materials containing toxic metals other than chromium.

Response 11: Please refer to the Response to Comment No. 4.

Comment 12:

The monitoring frequency and parameters proposed in the permit would not protect downstream soil and water resources. Proposed monitoring fails to effectively limit the type and amount of waste because no regular monitoring frequency will effectively capture potentially erratic and sporadic material applications. There is no requirement that monitoring adequately represent the range, frequency, and character of materials applied. The specific monitoring frequency would only be appropriate if irrigated wastewater were limited to effluent from a reasonably stable treatment process. It is not appropriate for the range of materials that could be applied to the irrigation fields under the proposed permit conditions.

Response 12: The monitoring requirements (required parameters and frequencies) proposed in the draft permit are protective of aquatic life, human health, and the environment (downstream soils and water resources).

The required parameters were selected based on required categorical guidelines for petroleum refineries (40 CFR Part 419) and water quality screening of the effluent in accordance with approved TSWQS rules and implementation procedures. The required parameters are representative of the types of wastes and materials that are generated and processed at the facility.

The monitoring frequencies specified in the draft permit are consistent with "TCEQ Guidance Document for Establishing Monitoring Frequencies for Domestic and Industrial Wastewater Discharge Permits," TCEQ Document No. 98-001.000-OWR-WQ, May 1998. The selection of the proposed monitoring frequencies takes into account the potential for effluent quality and composition variability.

Provision No. 3.a. on Page No. 5 of the draft permit states "Monitoring samples and measurements shall be taken at times and in a manner so as to be representative of the monitored activity." The permittee's compliance with this requirement should insure that samples taken for effluent self reporting are representative of the type of the effluent that is land applied for irrigation.

Comment 13:

Given the broad authorization of materials that could be applied to the irrigation tract, there is no single location from which samples could be collected to represent the range of materials applied.

Response 13: Sampling of the wastewater land applied to the irrigation tract is after it is pumped from the effluent storage pond on its way to the irrigation sprinklers. The current sampling procedure does capture a representative composite of everything that has been sent to the storage pond.

Provision No. 3.a. on Page No. 5 of the draft permit states "Monitoring samples and measurements shall be taken at times and in a manner so as to be representative of the monitored activity." The permittee's compliance with this requirement should insure that samples taken for effluent self reporting are representative of the quality of the effluent land applied for irrigation.

Comment 14:

The proposed set of effluent parameters is significantly limited given the wide range of materials that can be applied to the irrigation tract. The self-reporting data for wastewater effluent presented in the application for this permit renewal does not represent materials that may be discharged to the irrigation fields other than wastewater.

Response 14: The proposed permit contains technology-based effluent limits reflecting the best controls available for parameters that are expected to be found in the wastewater. Where these technology-based permit limits do not protect water quality or the designated uses, additional water quality-based effluent limitations and/or conditions are included. State narrative and numerical water quality standards are used in conjunction with EPA criteria and other toxicity data bases to determine the adequacy of technology-based permit limits and the need for additional water quality-based controls.

The proposed permit includes technology-based effluent limitations for chemical oxygen demand, total suspended solids, oil and grease, phenols, sulfides, total chromium, and pH at

Outfall 001 that are based on EPA categorical guidelines for Petroleum Refining Point Source Category (40 CFR Part 419).

In addition to the technology-based effluent limitations discussed above, the proposed draft permit includes water quality-based effluent limitations (for aquatic life protection) for carbonaceous biochemical oxygen demand (5-day), ammonia (as Nitrogen), and hexavalent chromium at Outfall 001 that are more stringent than the required calculated technology-based effluent limitations.

With the exception of total suspended solids, all of the parameters above have also been designated with effluent limitations and monitoring requirements for the wastewaters applied to the irrigation tract. The selection of limited parameters for the irrigation tract, and their respective limitations, are consistent with the types (character and sources) of wastewaters associated with petroleum refinery operations.

Comment 15:

The permit proposes no limit on total dissolved solids, sulfate, chlorides, or sodium concentrations in effluent discharged to the irrigation area. These substances have been detected in downstream water samples at concentrations substantially higher than in a sample from a similar local stream outside of the irrigated effluent area. These substances are also measured at significantly elevated concentrations in shallow groundwater samples from the vicinity of the irrigation fields compared to shallow groundwater elsewhere within the Live Oak Underground Water Conservation District.

Response 15: The irrigation tract is to be designed, managed, and operated in a manner to prevent adverse impact to local groundwater resources and local surface waters. Specifically, the draft permit contains Other Requirements Provision No. 6.H. to address this issue. Other Requirements Provision No. 6.H. states:

"Irrigation practices shall be managed so as to prevent contamination of ground water and surface water. Practices shall prevent the occurrence of nuisance conditions. Wastewater shall be applied evenly so that potential for runoff of irrigation water is minimized or prevented. Tailwater control facilities shall be provided, as necessary, to insure that there is no discharge of wastewater or commingled process wastewater from the irrigation site. Commingled process wastewater includes applied wastewater that has not soaked into the ground and that comes into contact with storm water runoff."

Compliance with this requirement should suitably protect local groundwater and surface waters from any adverse impacts from the irrigation operations.

Comment 16:

On August 5, 2004 Valero Three Rivers Refinery notified TCEQ of an additional 50 gallon per minute wastewater stream from the refinery sulfate scrubber. The letter identified sodium sulfate as the primary component of the waste stream, but provided no information regarding sodium sulfate concentrations or total mass load. There is no limit to either sulfate or sodium in wastewater used for irrigation. Both of these chemical will impair water and soils for ranching operations.

Response 16: With respect to potential impacts of sodium, sulfate, and/or other salts, the draft permit contains the following provisions:

Other Requirements Provision No. 6.E.:

Surficial samples of irrigated soil shall be collected quarterly from the most heavily irrigated areas. The exchangeable sodium percentage (ESP) of each sample shall be analyzed. If the average of the value exceeds 20%, a program of calcium amendments shall be immediately implemented to reduce the ESP to approximately 10% or less. Results of the quarterly ESP testing shall be reported to the TCEQ, Water Quality Assessment Team (MC-150) and Industrial Permits Team (MC-148) of the Water Quality Division during September, December, March, and June of each year.

Other Requirements Provision No. 6.F.:

The permittee shall develop a written plan for investigation of elevated soil salinity and sodium adsorption ratios within the irrigation tract. The plan shall include detailed information regarding past, present and future management of soils, wastewater quality, and crops. Analytical results of historical wastewater and soil monitoring shall be incorporated in the investigation as is appropriate. The plan shall be submitted to the Water Quality Assessment Team (MC-150) of the Water Quality Division and a copy forwarded to the Industrial Permits Team (MC-148) of the Water Quality Division within 90 days following date of permit issuance. Approval for implementation of the plan shall be obtained from the Water Quality Assessment Team and the plan shall be initiated within 60 days of receiving the approval. This permit may be reopened to include additional requirements or limitations based upon a review of the information that is submitted.

Annual soil sampling from the root zone of the irrigated site is required. Sampling procedures shall employ accepted techniques of soil science for

obtaining representative analytical results. Analyses shall be performed for oil and grease, pH, total and nitrate nitrogen, potassium, phosphorus, and conductivity. The results of the annual sampling shall be reported to the TCEQ, Water Quality Assessment Team (MC-150) of the Water Quality Division during September of each year.

Other Requirements Provision No. 7:

The permittee shall develop an updated management plan that illustrates monitoring/management of nutrient salinity and sodic constituents within the effluent, soils, and crops. This plan shall address the loading rates of constituents contained within the effluent and long term management goals to address potential buildup of these constituents. Specifically, this plan shall include:

- A. An annual effluent analyses as required by the current permit provisions.
- B. Prior to land application of treated effluent, and annually thereafter, the permittee shall obtain representative soil samples from the root zone of each individual field of land application. Composite sampling techniques shall be used. Each composite sample shall represent no more than each individual field with no less than 15 sub-samples representing each composite sample. Sub-samples shall be composited by like sampling depth and soil type for analysis and reporting. Soil types are soils that have like topsoil or plow layer textures. These soils shall be sampled individually from 0 to 12 inches annually. Soils shall be sampled at depth increments of 0-12, 12-24, and 24-36 inches every third year or triennium. The permittee shall sample and analyze soils in September-October of each year. Samples shall be taken within the same 45 day time-frame each year.

The permittee shall provide annual and triennial soil analysis of the land application area for pH [2:1 (v/v) water/soil mixture], conductivity [2:1 (v/v) water/soil mixture]; total kjeldahl nitrogen (TKN); nitrate-nitrogen; and plant-available potassium, calcium, magnesium, sodium, sulfur, and phosphorus. The plant nutrient parameters shall be analyzed on a plant available or extractable basis. Phosphorus shall be analyzed according to the Mehlich III procedure; potassium, calcium, magnesium, sodium, and sulfur

may also be analyzed in the Mehlich III extract. Plant-available phosphorus, potassium, calcium, magnesium, sodium, and sulfur shall be reported on a dry weight basis in mg/kg; conductivity shall be reported in mmho/cm; and pH shall be reported in standard units. TKN procedures that use methods that rely on mercury as a catalyst are not acceptable.

The permittee shall submit the results of the annual and triennial soil sample analyses with copies of the laboratory reports to the TCEQ Water Quality Assessment (WQA) Team of the Water Quality Division (MC-150); Region 14 Office (MC-R14); and the Enforcement Division (MC-224) no later than the end of December of each sampling year. If wastewater is not applied in a particular year, the permittee shall notify the same TCEQ offices and indicate that wastewater has not been applied on the approved land disposal site during that year.

Comment 17:

Ms. Sahs comments that the draft permit proposes no limit on selenium concentrations. Existing wastewater quality data for the refinery show significant variability in the concentrations, and all but four results were above screening values. Because effluent from the irrigation fields migrates onto Mr. Stewart's property used for livestock, and because selenium can bioaccumulate in plants, the permit limit should be 0.02 mg/l, which is the maximum recommended concentration for irrigation.

Response 17: The Applicant requested that selenium monitoring requirements be removed from the current permit. After review of the application analytical data for total selenium, it was noted that there was significant variability in the individual results submitted but all four results were above the screening values to continue monitoring requirements and/or impose new effluent limitations.

A review of the historical self report data indicates that of the 26 months that reported discharges in the reporting period of August 2002-September 2005, the reported monthly average values for no months exceed either of the screening values for effluent monitoring requirements or effluent limitations. The reported daily maximum values for 7 months exceeded the effluent monitoring requirement screening value, and the reported daily maximum values for 4 months exceeded the effluent limitation requirement screening value.

Typical screening procedures require the average effluent value be screened against the respective water quality screening values. The screening values to require effluent monitoring requirements and to require effluent limitations are 0.0118 ug/l and 0.0143 ug/l, respectively. The average of the monthly average values for the reporting period of August 2002-September 2005 is 0.004 ug/l and the highest of the monthly average values for that reporting period is 0.0107

It was determined that effluent limitations are not necessary at this time because the historical self reporting values are below the screening values. It has also been recommended that the Applicant's request to remove monitoring requirements for total selenium not be processed at this time due to the variability observed in the submitted application data. Therefore, monitoring requirements for total selenium are continued in the draft permit.

Comment 18:

The draft permit fails to limit the volume of material that could be irrigated, except that the hydraulic loading must be not more than 3.54 acre-feet per acre per year. If the Applicant were to convert the entire 1,438 acres of the existing irrigation tract to irrigation fields, an average daily irrigation volume of 4.5 million gallons per day could be irrigated.

The draft permit would allow the refinery to increase the hydraulic loading rates on the irrigation area from the currently allowed 2.95 acre-feet per acre per year to 3.54 acre-feet per acre per year. Two separate water balance calculations have been conducted, one by the TCEQ and one by the Applicant, to justify the requested increase in hydraulic loading. Both water balances are significantly flawed because they are based on average monthly precipitation and evapotranspiration amounts. The TCEQ water balance calculations show an effluent irrigation capacity of 65.41 inches, equivalent to 5.45 acre-feet per acre per year. The Applicant's water balance proposes that 9.8 acre-feet per acre per year be applied to the tract.

Both water balances fail to consider conditions wetter than average. They are demonstrated to be false and unprotective by historical and on-going inundation of low-lying property downstream from the irrigation tract in the Old Slough watershed. These problems occurred at irrigation rates lower than the rate proposed in the draft permit and significantly lower than the five-to-ten foot hydraulic loading rate purportedly demonstrated to be acceptable by the water balances.

The commentor's water balance calculations are based on actual rainfall, evapotranspiration, and irrigation amounts for 849 days from January 1, 2003 through April 28, 2005. These calculations predict that an average of 11% of the irrigated volume migrated below the soil root zone through deep percolation during simulated period. The proposed permit would allow conditions in which the volume of wastewater escaping below the root zone would increase to

an average of about 21% of the volume applied. The proposed permit change to increase the hydraulic loading would exacerbate existing problems associated with effluent seepage, saturated soil and wet conditions on adjacent property.

Response 18: Hydraulic loading for land application (irrigation) permits is calculated based on the site-specific climatic conditions for the previous 25-year period due to the climatic variability that can occur year to year.

In addition to the hydraulic loading rate that is specified in the permit, the permit contains provisions impose appropriate controls to prevent over application of water on the irrigation fields, especially during wetter climate periods

Other Requirement Provision No. 6.H. states as follows: "Irrigation practices shall be managed so as to prevent contamination of ground water and surface water. Practices shall prevent the occurrence of nuisance conditions. Wastewater shall be applied evenly so that potential for runoff of irrigation water is minimized or prevented. Tailwater control facilities shall be provided, as necessary, to insure that there is no discharge of wastewater or co-mingled process wastewater from the irrigation site. Co-mingled process wastewater includes applied wastewater that has not soaked into the ground and that comes into contact with storm water runoff."

Other Requirement Provision No. 6.I. states as follows: No irrigation may be conducted within 24 hours following a measured rainfall of one-half inch or greater. No irrigation may be conducted on any zone that contains standing water.

Comment 19:

All of the water balances assume Coastal Bermuda hay production from the irrigated tracts. The water balances also assume that plant growth is unimpaired by wastewater irrigation. Coastal Bermuda grass consumes relatively high quantities of both water and nitrogen. If fields are irrigated with materials that are toxic to Coastal Bermuda, any reduction in the field productivity will increase water and effluent discharge to shallow groundwater and downstream properties.

Response 19: The irrigation water balance utilizes crop/site-specific input data for the variable assumptions associated with the wastewater irrigation activity. This data includes crop water consumption rates, crop salt tolerances, effluent conductivity, and historical local climatic data (evaporation and precipitation). The data utilized is from the more conservative portion of the acceptable range for a specific input. The final hydraulic loading application rate was calculated using these more conservative input values and is itself considered to be a conservative hydraulic loading application rate.

In addition to the conservative hydraulic loading application rate, the permit includes specific provisions (Other Requirements 6.H. and 6.I., discussed in the response to Comment No. 8 above) that minimize the potential of over application of wastewater to the irrigation tract. All of these requirements protect against the off-site (surface and subsurface) migration of wastewater from the irrigation activities.

Comment 20:

The draft permit would increase the minimum irrigation area from 341.5 acres to 474 acres. The refinery currently irrigates approximately 471.5 acres. This permit change will not reduce the hydraulic loads on the irrigation fields or reduce downstream property inundation. An irrigation area of about 884 acres would be required to achieve the same hydraulic loading as the current permit with an increase in average daily flow from 0.8 to 1.5 million gallons per day. Even with a larger irrigation area and no change in effluent application rates, however, there would continue to be effluent migration onto downstream properties.

Response 20: The increased authorized irrigation application rate and increased minimum irrigation area do represent a potential increased hydraulic loading of effluent on the irrigation tract. The increased daily average permitted flow at Outfall 001 is an entirely independent issue that has no direct correlation on the hydraulic loading of the irrigation tract.

The only requirements of the permit that relate to the allowable quantity of wastewater that can be applied to the irrigation tract are the hydraulic loading application rate, the minimum application area, and the total application area.

The hydraulic application rate has been increased from 2.95 acre-feet/acre/year to 3.54 acre-feet/acre/year; the minimum irrigation area has been increased from 341.5 acres to 474 acres; and the size of the irrigation tract has increased from 1,376 acres to 1,438 acres. Based on these changes, the annual volume of wastewater that can be disposed of via irrigation at this facility has increased from 1,322.69 million gallons per year to 1,658.75 million gallons per year. As discussed in the responses to Comments Nos. 5, 6, and 8 above, the permit includes specific provisions to minimize the potential of surface and subsurface migration of wastewater from the irrigation tract.

Comment 21:

The current draft permit overstates available effluent storage by 20 acre-feet, or 10 percent. The proposed permit requires the Applicant to maintain and use the existing storage pond with a

maximum storage capacity of 224 acre-feet. The permit also requires, however, that the pond be managed to maintain at least two feet of freeboard. With two feet of freeboard the storage capacity is only 204 acre-feet. Furthermore, the permit specifies no maximum volume of water to the irrigation fields, in terms of daily average flow. It allows Ponds 5, 6, and 7 to be used to store storm water, sandfilter backflush, or deep well backflush. There is no limitation on the volume of these materials and therefore no requirement that storage be available for wastewater effluent during conditions when there is insufficient soil moisture capacity for irrigation.

Response 21: Storage requirements are only specified when irrigation is the only authorized method of wastewater disposal. Storage requirements are not necessary in this permit because the permit authorizes the same wastewaters to be discharged via Outfall 001.

Comment 22:

The proposed permit eliminates monitoring and reporting requirements at Outfall 001 for antimony, arsenic, barium, cadmium, cyanide, lead, and fecal coliform.

Response 22: A review of the historical self report data indicated the average concentration reported for these parameters do not cause any water quality concerns with respect to water quality screening against the Texas Surface Water Quality Standards.

Comment 23:

The Water Quality Summary describes flow routes and water quality impacts of discharges through Outfalls 001 and 002. The permit fails, however, to describe effluent migration routes and water quality effects from irrigation of the soil and vegetative system at loading rates higher than plant uptake capacities. Samples from wells, seeps, and storage basins demonstrate an increase in total dissolved solids, sodium, sulfate, and chloride associated with the existing effluent irrigation operation. The lack of a description of potential irrigated effluent migration routes ignores potential impacts from the permitted irrigation. Without migration pathways and consideration of the potential impacts, there is no scientific basis for establishing protective irrigated effluent limits.

Response 23: The permit does not describe "potential irrigated effluent migration routes" because the requirements of the permit should prevent the migration of irrigated effluent to off-site water (surface and subsurface) sources. As discussed in the responses to Comments Nos. 5, 6, and 8 above, the requirements of the permit minimize the potential migration of irrigation effluent from the root zone of the land application site.

Comment 24:

The Applicant submitted four results for cyanide, one at 159 ug/l and three non-detect results (<20 ug/l). The aquatic life acute standard is 45.78 ug/l and the chronic standard is 10.69 ug/l of free cyanide. TCEQ has determined that the measured value is either an analytical anomaly or a statistical outlier and has deleted monitoring requirements for cyanide.

Response 24: In addition to the effluent quality analytical data submitted with the application the TCEQ reviewed historical effluent self-report data for cyanide at Outfall 001. All data for cyanide during the reporting period of July 2004 through February 2006 was non-detectable. Based on this review, the detectable result appears to be either an analytical anomaly or a statistical outlier. Based on this additional review, no limitations are recommended at this time for cyanide at Outfall 001. The amendment application includes a request to remove the monitoring requirements for cyanide at Outfall 001; based on the review above, it is recommended that monitoring requirements be removed from the draft permit.

Comment 25:

The permit would require the permittee to prepare a written plan for investigating elevated soil salinity, and an irrigation management plan. There are, however, no deadlines for submittal, no submittal process, and no provision for agency or public review of the plans. Furthermore, there is no requirement that the written plan address problems resulting from leaching refinery wastewater salts through irrigated soils to underlying groundwater and downstream water users.

The current permit required the permittee to develop a written plan for investigation of elevated soil salinity and sodium adsorption ratios within the irrigation tract and detailed information regarding past, present, and future management of soils, wastewater quality and crops. The plan was to be submitted to the TCEQ within 90 days of June 7, 2004. No plan was submitted until August 22, 2005.

These plans are critical to operating the effluent irrigation fields in a manner that is protective of affected ground and surface water and soil resources. These written plans must be submitted prior to permit approval and included in the permit to protect downstream water and soil.

Response 25: The proposed permit requires that the written plan for investigation of elevated soil salinity and sodium adsorption ratios within the irrigation tract be submitted within 90 days following the date of permit issuance. Approval for implementation of the plan shall be obtained from the Water Quality Assessment Team and the plan shall be initiated within 60 days of receiving the approval. This requirement is included as "Other Requirements" Provision No. 6.F., and states as follows:

"The permittee shall develop a written plan for investigation of elevated soil salinity and sodium adsorption ratios within the irrigation tract. The plan shall include detailed information regarding past, present and future management of soils, wastewater quality, and crops. Analytical results of historical wastewater and soil monitoring shall be incorporated in the investigation as is appropriate. The plan shall be submitted to the Water Quality Assessment Team (MC -150) of the Water Quality Division and a copy forwarded to the Industrial Permits Team (MC-148) of the Water Quality Division within 90 days following date of permit issuance. Approval for implementation of the plan shall be obtained from the Water Quality Assessment Team and the plan shall be initiated within 60 days of receiving the approval. This permit may be reopened to include additional requirements or limitations based upon a review of the information that is submitted."

Comment 26:

The Fact Sheet and Executive Director's Preliminary Decision presents a quantitative description of the refinery discharge based on Monthly Effluent Report data from August 2002 through September 2005. The data describes the average of the daily average hexavalent chromium measurements as 0.032 lbs/day and the average of the daily average total chromium as 0.0116 lbs/day. Since hexavalent chromium is one component of total chromium, the mass of total chromium must be at least as high as the mass of hexavalent chromium.

Response 26: TCEQ personnel agree that scientifically the total chromium value must be equal to or greater than the corresponding hexavalent chromium value. It was observed that the reported values for both species of chromium were normally around the minimum analytical level specified. At this low level of detection it is not abnormal for some values for the hexavalent to be reported as higher than the total. When this occurs, the permittee is required to report the data based on the actual analytical results obtained. The permittee is not allowed to substitute the higher hexavalent chromium value for the lower total chromium value for reporting purposes.

Comment 27:

Under the proposed permit terms, significant information regarding operation of the irrigation area would be kept by the operator onsite and would only be available for inspection to authorized TCEQ personnel. The interests of potentially affected persons would be better served by requiring the information to be sent to the TCEQ and made available for public review.

Response 27: If a third party (adjacent landowner, member of the general public, other government official, etc.) believes that the facility is violating the irrigation conditions of the permit, the third party may contact the Corpus Christi Region 14 office and request an inspector

to visit the site and copy the requested significant information that the permittee must retain on-site for 3 years.

Comment 28:

Other Requirements Provision No. 8 requires an annual vegetative analysis for selenium. The permit does not specify to whom the results must be submitted.

Response 28: The following sentence has been added to "Other Requirements" Provision No. 8:

"The permittee shall submit the results of the annual vegetative analysis for selenium contained by the proposed crop with copies of the laboratory reports to the TCEQ Water Quality Assessment (WQA) Team of the Water Quality Division (MC-150); Region 14 Office (MC-R14); and the Enforcement Division (MC-224)."

Comment 29:

The TCEQ interoffice memorandum (Chadwick/Reynolds dated 11/08/2005) states "*the lower TDS content of the wastewater would no be expected to increase the TDS of the existing moderate saline shallow groundwater in the region.*" Regional shallow groundwater quality, in the memorandum, is based on wells monitoring the irrigation site and surface water that "is probably in hydrologic connection" with shallow groundwater beneath the irrigation site. All of the locations analyzed as a basis for the characteristics of shallow groundwater in the region are impacted by refinery waste irrigation. Data from shallow wells and surface water that are not impacted by waste irrigation show significantly lower concentrations of total dissolved solids, chlorides, sodium, and sulfate. The lower total dissolved solids concentration in the effluent storage pond compared to concentrations observed in the groundwater is attributable to evapotranspiration.

The TCEQ interoffice memorandum (Chadwick/Reynolds dated 11/08/2005) states "*The additional information submitted for the pond liner construction lends support that the ponds do not contribute to the elevated TDS content of the shallow groundwater.*" Even if the pond liners have perfect integrity, irrigation of the wastewater in the ponds onto unlined areas has contributed to the elevated total dissolved solids content of shallow groundwater.

Response 29: Shallow groundwater in the area, out of the influence by the facility irrigation, also show saline water quality. Water well 7831802 was also reviewed for shallow groundwater quality from 60 feet below ground level. The well is located west of Hwy 281 near the irrigation area but not influenced from irrigation practices. The water quality was tested 3/25/2005 and showed 3,250 total dissolved solids which is characterized as moderately saline. The

groundwater impact evaluation dated 1997 and 2005 found that the information submitted with the permit application and TWDB groundwater quality data together indicated that this facility as proposed should provide adequate protection of existing (existing as of 1997) groundwater in the area.

In response to public comment, the Executive Director has changed certain provisions of the draft permit. These changes and the reasons for these changes are more fully described above.

1. The following sentence has been added to Other Requirements Provision No. 8:

"The permittee shall submit the results of the annual vegetative analysis for selenium contained by the proposed crop with copies of the laboratory reports to the TCEQ Water Quality Assessment (WQA) Team of the Water Quality Division (MC-150); Region 14 Office (MC-R14); and the Enforcement Division (MC-224)."

In addition to the changes above the Executive Director has changed certain provisions of the draft permit based on the request of the Applicant in a letter dated June 8, 2007. The following changes make the proposed draft permit more stringent than the draft permit that on file at the time of public notice:

1. The total dissolved solids (TDS) daily average effluent limitation of 26,504 lbs/day is changed to 23,400 lbs/day on pages 2 and 2b of the proposed draft permit.
2. The following new provision is added to the proposed draft permit as "Other Requirements" Provision No. 10:

"The permittee shall sample Outfall 002 under the following conditions:

- A. Once during every calendar quarter that a discharge event occurs via Outfall 002, and
- B. During any discharge event at Outfall 002 following any overtopping of containment areas.

Samples shall be analyzed for the following constituents: Benzene, Toluene, Ethylbenzene, and Xylene (BTEX); Total Chromium; Hexavalent Chromium; Total Mercury; Total Zinc; Total Copper; Total Selenium; and Total Silver. The monitoring results shall be reported to the TCEQ, Industrial Permits Team (MC-148) of the Water Quality Division, Region 14 Office, and to the Enforcement Division (MC 224) by the 25th day of the month following the end of each

calendar quarter. This requirement is effective upon date of permit issuance and lasting until April 30, 2010."

In addition to the changes above the Executive Director has made corrections with respect to TCEQ team name references in the proposed draft permit:

1. The team reference of "TCEQ, Applications Review and Processing Team (MC-148)" in Other Requirements Provision No. 6.E. has been replaced with the team reference of "Water Quality Assessment Team (MC-150)."
2. The team reference of "TCEQ, Applications Review and Processing Team (MC-148) of the Water Quality Division" in the second paragraph of Other Requirements Provision No. 6.F. has been replaced with the team reference of "Water Quality Assessment Team (MC-150) of the Water Quality Division."

Inclusion of these changes does not require notice to be republished.

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 March 28, 2008, the foregoing was sent by first-class mail, agency mail, e-mail or facsimile to all persons on the attached mailing list.


Anthony Tatu, Staff Attorney
Environmental Law Division, MC 173