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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: WYA Autumnwood, Ltd.
TPDES Permit No. WQ0014853001

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 Malcolm Purvis Library, 510 Melton Street, Magnolia, 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/ka

Enclosures

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TPDES Permit No. WQ0014853001

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MAGNOLIA TX 77354

JERRY SOIFNIER
603 TALL PINES DR
MAGNOLIA TX 77354

NANNETTE SZAYKO
202 SAWMILL RD
MAGNOLIA TX 77354

NORMA WAMPLER
1006 VIRGIE COMMUNITY RD
MAGNOLIA TX 77354

KATY SOIFNIER
603 TALL PINES DR
MAGNOLIA TX 77354

NICK TABELLIJA
32026 DECKER OAKS DR
PINEHURST TX 77362

JAMES L WATSON
27418 VIOLET CT
MAGNOLIA TX 77354

ALICE J STANDLEY
27019 BUTTERCUP LN
MAGNOLIA TX 77354

KAREN TEMPLIN
27211 CHEROKEE LN
MAGNOLIA TX 77354

ANGIE WEATHERBY
26203 DOBBIN HUFSMITH RD
MAGNOLIA TX 77354-3741

ANGELA STANLEY
26211 RIMWICK FOREST DR
MAGNOLIA TX 77354-2840

LUNTHART TEMPLIN
27211 CHEROKEE LN
MAGNOLIA TX 77354

MARILYN WENRICH
1006 DECKER FORREST BLVD
MAGNOLIA TX 77354

DONNIE STANSEL
29622 ABILENE ST
MAGNOLIA TX 77354-2903

CATHY TUBBS
12023 HELENE CT
PINEHURST TX 77362

FRANK H WENZEL
28414 FOXWOOD DR
PINEHURST TX 77362-4088

ELIZABETH STANSEL
29622 ABILENE ST
MAGNOLIA TX 77354-2903

MICHAEL VISSER
26650 DOBBIN HUFSMITH RD
MAGNOLIA TX 77354

LAURA WENZEL
28414 FOXWOOD DR
PINEHURST TX 77362-4088

NICOLE STEELHAMMER
27015 BUTTERCUP LN
MAGNOLIA TX 77354

RHONDA VISSER
26650 DOBBIN HUFSMITH RD
MAGNOLIA TX 77354

JIM WILKIE
302 TALL PINES DR
MAGNOLIA TX 77354

BOB STEPHENS
711 RUBY LN
MAGNOLIA TX 77354

O W
27018 BUTTERCUP LN
MAGNOLIA TX 77354

KELLY WILKIE
302 TALL PINES DR
MAGNOLIA TX 77354

BEN STINE
27015 BUTTERCUP LN
MAGNOLIA TX 77354

GUY WALLACE
11906 SUSIE CT
PINEHURST TX 77362

BOBBY WILLIAMS
331 NEIDIGK SAWMILL RD
MAGNOLIA TX 77354

JUDY STRICKLIN
32030 ASHTON LN
PINEHURST TX 77362

KELLY WAMPLER
1006 VIRGIE COMMUNITY RD
MAGNOLIA TX 77354

DEBBIE WILLIAMS
331 NEIDIGK SAWMILL RD
MAGNOLIA TX 77354

ROBBIE WILLIAMS
29803 MIDLAND ST
MAGNOLIA TX 77354

MARILYN S ZIMMERMAN
27414 VIOLET CT
MAGNOLIA TX 77354

GEORGE W WILSON
32037 DOBBIN HUFSMITH RD
MAGNOLIA TX 77354

PATRICIA WILSON
32037 DOBBIN HUFSMITH RD
MAGNOLIA TX 77354

AMY YAWS
26320 PIN OAK DR
MAGNOLIA TX 77354

MARK YAWS
26320 PIN OAK DR
MAGNOLIA TX 77354

JOAN YOUNG
27119 APACHE TRL
MAGNOLIA TX 77354

OTTIS M YOUNG
27119 APACHE TRL
MAGNOLIA TX 77354

GARY W ZBORNAK
31734 PLEASANT VALLEY RD
MAGNOLIA TX 77354

L DIANA ZBORNAK
31734 PLEASANT VALLEY RD
MAGNOLIA TX 77354

MARTIN ZELLER
610 RUBY LN
MAGNOLIA TX 77354

TCEQ PERMIT NO. WQ0014853001

APPLICATION BY
WYA AUTUMNWOOD, LTD
for
TPDES Permit No. WQ0014853001

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§
§
§

BEFORE
THE TEXAS COMMISSION
ON
ENVIRONMENTAL QUALITY

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY
2008 MAR 28 AM 10:30
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 WYA Autumnwood Ltd.'s (the Applicant) application and 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 Chief Clerk timely received comment letters from the following persons: J. Ross Nichols and Elaine J. Nichols. 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 Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0014853001, to authorize the discharge of treated domestic wastewater at a daily average flow not to exceed 200,000 gallons per day. The proposed wastewater treatment facility will serve the Hardin Store Road MUD.

The plant site will be located approximately 2.3 miles southwest of the intersection of Hardin Store Road and Farm-to-Market Road 2978, on the north side of Hardin Store Road, east of Mill Creek in Montgomery County, Texas. The treated effluent will be discharged via pipe to Mill Creek; then to Neidigk Lake; then to Mill Creek; then to Spring Creek in Segment No. 1008 of the San Jacinto River Basin. The unclassified receiving water uses are intermediate aquatic life use for Mill Creek and high aquatic life use for Neidigk Lake. The designated uses for Segment No. 1008 are high aquatic life use, public water supply, and contact recreation. In accordance with §307.5 and the TCEQ implementation procedures (January 2003) for the Texas Surface Water Quality Standards, an antidegradation review of the receiving waters was performed. A Tier 1 antidegradation review has preliminarily determined that existing water quality uses will not be impaired by this permit action. Numerical and narrative criteria to protect existing uses will be maintained. A Tier 2 review has preliminarily determined that no significant degradation of water quality is expected in Mill Creek, which has been identified as

having an intermediate aquatic life use. Existing uses will be maintained and protected. The preliminary determination can be reexamined and may be modified if new information is received.

Segment 1008 is currently listed on the State's inventory of impaired and threatened waters (2004 and 2006 Clean Water Act Section 303(d) lists). The listing is specifically for depressed dissolved oxygen concentrations and elevated levels of bacteria from Field Store Road to SH 249 and for elevated bacteria levels from SH 249 to IH 45 and from IH 45 to the confluence with Lake Houston. This discharge enters Spring Creek downstream of the dissolved oxygen-impaired portion of the segment and will therefore not affect dissolved oxygen levels in the impaired portion. This facility is designed to provide adequate disinfection and, when operated properly, should not add to the bacterial impairment of the segment.

Procedural Background

The permit application for a new permit was received on September 20, 2007 and declared administratively complete on October 31, 2007. The Notice of Receipt and Intent to Obtain a Water Quality Permit (NORI) was published on November 16, 2007 in *The Courier*. The bilingual NORI was published on November 16, 2007 in *El Sol*. The Notice of Application and Preliminary Decision (NAPD) for a Water Quality Permit was published on February 1, 2008 in *The Courier*. The bilingual NAPD was published on February 1, 2008 in *El Sol*. The public comment period ended on March 3, 2008. This application was administratively complete on or after September 1, 1999; therefore, this application is subject to the procedural requirements adopted pursuant to House Bill 801, 76th Legislature, 1999.

COMMENTS AND RESPONSES

COMMENT 1:

J. Ross Nichols and Elaine J. Nichols are concerned about potential flooding along Sandy Branch Creek at their property caused by the proposed discharge of wastewater from the proposed plant into Mill Creek.

RESPONSE 1:

The TCEQ does not address flooding in the wastewater permitting process unless there is a potential impact to water quality. However, the wastewater treatment plant has a proposed permitted average daily flow in its final phase of 200,000 gallons per day (GPD). At this final average daily flow, the treatment plant would contribute 0.31 cubic feet per second (CFS) to any existing flow in Mill Creek. Given that the ditch is 10 to 20 feet wide along most of its course, the treatment plant effluent should not cause any flooding of the ditch. The amount of water contributed by the wastewater plant would be insignificant compared to the amount of water flowing overland, into and through the creek during and after a major rain event. The commentors' property is approximately one-mile downstream of the discharge point for the wastewater plant, further mitigating the possibility that the proposed discharge would contribute to any flooding of the Nichols' property.

CHANGES MADE TO THE DRAFT PERMIT IN RESPONSE TO COMMENT

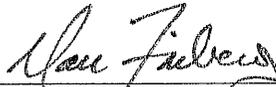
No changes to the draft permit have been made in response to public comment.

Respectfully submitted,

Texas Commission on Environmental Quality

Glenn Shankle
Executive Director

Robert Martinez, Director
Environmental Law Division



Marc Friberg, Staff Attorney
Environmental Law Division
State Bar No. 24048472
P.O. Box 13087, MC 173
Austin, Texas 78711-3087
(512) 239-0611

REPRESENTING THE
EXECUTIVE DIRECTOR OF THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY

CERTIFICATE OF SERVICE

I hereby certify that on March 28, 2008 the original of the "Executive Director's Response to Public Comment" on WYA Autumnwood Ltd.'s application for proposed TPDES Permit No. WQ WQ0014853001 was filed with the Chief Clerk, Texas Commission on Environmental Quality, Austin, Texas.

A handwritten signature in cursive script, reading "Marc Friberg", is written over a horizontal line.

Marc Friberg, Staff Attorney
Environmental Law Division
State Bar No. 24048472