

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 10, 2008

TO: Persons on the attached mailing list.

RE: Julie Ann Thames
TPDES Permit No. WQ0014753001

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 Johnson County Courthouse Annex, 2 North Main Street, Cleburne, 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

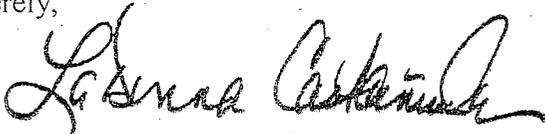
Processing of Requests.

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
Julie Ann Thames
TPDES Permit No. WQ0014753001

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See attached list.

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PROPOSED TPDES PERMIT NO. WQ0014753001

2008 APR -3 PM 3: 53

APPLICATION BY § BEFORE THE
 JULIE ANN THAMES § TEXAS COMMISSION ON
 for PERMIT NO. 14753-001 § ENVIRONMENTAL QUALITY

CHIEF CLERKS 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 Julie Ann Thames's (Applicant) application for a new Texas Pollutant Discharge Elimination System (TPDES) permit, No.WQ0014753001, and the ED's preliminary decision. As required by 30 Texas Administrative Code (TAC) Section 55.156, before a permit is issued, the ED prepares a response to all timely, relevant and material, or significant comments. The Office of the Chief Clerk timely received comment letters and comments at the public meeting from the following persons:

- | | |
|--------------------------|-----------------------|
| Louella Abbasi | Lois Horn |
| Chelsea Adesulu | Jeff Howard |
| Nicholas Ailey | Leon Janusy |
| Cheryl Ananda | Rebecca Jeffries |
| Duval Anglin | James and Jan Johnson |
| Maribeth Ashley | Christian Jones |
| Cindy Ayers | Jarriel Jones |
| John Baker | Omar Kearns |
| Romeasha Baker | Julius Longshaw |
| Alexis Dunn | Kathryn Mackensney |
| Stephen Dickman | Carter Mahanay |
| David Bell | Gerald Manos |
| Jan Bell | Jarid Manos |
| Katrina Bell | Ann Mayo |
| Joshua Bennett | Chassity McLean |
| Mikala Bennett | Marshall Netherland |
| Wanda and Floyd Blakeley | Niyam Netties |
| Evan Blekkenk | Stacey Bell Norton |
| Althea and Robert Bloom | D'Andre Aaron Nutter |
| Sylvia and Robert Borum | Gregory Paige |
| Bettene Bossard | Kelsey Perkins |
| Bonita Bowman | Korena Perkins |
| Sandra Brown | Dennis Purviance |
| Roland Brucks | Joyce Purviance |
| Tony Burgess | HalRay |

State Representative Lon Burnam
Ann Clements Butler
John Butler
Andrew Cantrell
John and Andra Cantrell
John Cantrell
Patsy and Bob Cantrell
Peg Cantrell
R.A. Cantrell
Dominique
Oaneyla Ciezus
John Clements
Dorothy Condon
Dian Crews
Katricia Dawson
Diamond Darsey
Emmet Earl
Lauren Earl
Mary Eleto
Luverne Embry
BobbyFaucett
Durwain Ford
Jasmine Ford
Chrishaun Fowler
Iesha Gonzales
Juanita Gonzalez
Timothy Griffin
Andrew Henderson
Ava Hernandez
Jack Hill
Leon James
Woody Forssard
London Maddox

Mary Rector
Sam Rector Jr.
Manuel Rios
Rachel Roberts
Nathan Roman
Brian Rowe
Mary Runyan
Carl Schrader
Patricia Serrano
Chelsea Session
Al Shealey
Jennifer Shealy
Tony Smith
Tanisha Swain
Robert Syper
Trisha Taylor
Anthony Timmons
Idon Wadsworth
Weldon Wadsworth
Judy Walther
Lorenzo Wilborn
Valda Williams
Tameka Winston
Kambry Zimmer
Mary Cato
Dajeana – No last name given
Maia – No last name given
T.J.
Tarrant Regional Water District
Concerned Citizens who left no name or whose
name was illegible
Lee Christie

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 to authorize the discharge of treated domestic wastewater at a daily average flow not to exceed 10,000 gallons per day. The proposed wastewater treatment facility will serve the Primrose Mobile Home Park.

The treated effluent will be discharged via pipe to an unnamed tributary; thence to Rock Creek; thence to Benbrook Lake in Segment No. 0830 of the Trinity River Basin. The unclassified receiving water uses are no significant aquatic life uses for the unnamed tributary and high aquatic life uses for Rock Creek. The designated uses for Segment No. 0830 are high aquatic life use, public water supply, and contact recreation. The facility will be located approximately 7 miles west of the City of Burleson, approximately 2 miles south of FM 1187 and approximately 3/8 mile west of FM 1902, Johnson County, Texas.

Procedural Background

The permit application was received on October 25, 2006, and declared administratively complete on November 15, 2006. The Notice of Application and Intent to Obtain Water Quality Permit (NORI) was published December 17, 2006 in the *Cleburne Times Review*. The Notice of Application and Preliminary Decision (NAPD) was published May 03, 2007 in the *Cleburne Times Review*. The Notice of Public Meeting was published on October 15, 2007 in the *Cleburne Times Review*. TCEQ held a public meeting on November 15, 2007 at Joshua Community Room, 909 South Broadway Street, Joshua, Texas 76058. The combined NORI and NAPD was published on December 21, 2007 in the *Cleburne Times Review*. The public comment period ended on January 22, 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:

Comments were received expressing concern that the treated wastewater discharge will pollute the water, affect animals and wildlife, impair contact recreation, impact the ecosystem, cause health problems, harm agriculture, and pollute drinking and bathing water. Other comments indicated that Rock Creek is one of the few remaining pristine streams in north Texas and worry about the impact this discharge will have on this stream. Further comments indicated that tall grass prairie, which is the main constituent of the Fort Worth Prairie Park, is the most endangered major ecosystem in North America. Commenters additionally add that the Fort Worth Prairie Park is serving as a teaching ground for city children, students from Texas Christian University and The University of Texas-Arlington.

RESPONSE 1:

As part of the permit application process, the ED must determine the uses of the receiving water and set effluent limits that are protective of those uses. The draft permit includes effluent limitations and monitoring requirements for 10 mg/l BOD₅ (Biochemical Oxygen Demand (5-day)), 15 mg/l TSS (Total Suspended Solids), 4.0 mg/l minimum dissolved oxygen (DO),

chlorine residual and pH to ensure that the proposed wastewater treatment plant meets water quality standards for the protection of surface water quality, groundwater, aquatic and terrestrial life, and human health according to TCEQ rules and policies. The ED has determined that the proposed draft permit is protective of the environment, water quality, and human health and that it meets TCEQ rules and requirements.

In this case, the unclassified receiving water uses are no significant aquatic life uses for the unnamed tributary and high aquatic life uses for Rock Creek. The designated uses for Segment No. 0830 are high aquatic life use, public water supply, and contact recreation. The ED determined that the proposed draft permit is protective of the environment, water quality, human health, and it meets TCEQ rules and requirements, if the Applicant operates and maintains the facility as required by the proposed permit and regulations.

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

In addition, according to available TCEQ Source Water Assessment Data, there are no surface water intakes for public water supply located in the vicinity of the discharge.

COMMENT 2:

Commenters expressed concern about bacteria being put into the creek and the release of excess treatment chemicals going into the stream including chlorine. Other comments state that no chlorine or other chemical disinfectants should be used prior to discharge. Commenters also want ultraviolet disinfection or other non-chemical means used to safeguard the health of aquatic life in this stream.

RESPONSE 2:

Chlorination is a commonly used disinfection method for domestic wastewater because of its ability to inactivate or destroy pathogenic organisms with less difficulty, and it is safer to operate. The draft permit requires the facility to chlorinate for disinfection purposes. The rules require disinfection in a manner conducive to the protection of both public health and aquatic life by requiring a minimum detention time of 20 minutes at peak hydraulic flow for the wastewater in the chlorination chamber and a minimum chlorine residual of 1.0 mg/l in the effluent to continue disinfection after discharge. The rules and draft permit also set a maximum chlorine residual of 4.0 mg/l designed not to impact aquatic life in the receiving waters.

COMMENT 3:

Commenters question whether the permit should be issued before the environmental impacts of the discharge are fully understood, and whether TCEQ has performed a specific environmental study of the impact of the effluent on Rock Creek. Commenters question the impact of the

discharge on Benbrook Reservoir. Commenters want the TCEQ to evaluate whether the water quality will impact Lake Benbrook and the Lake Benbrook watershed. Commenters also want the cumulative impacts of all wastewater discharges on Lake Benbrook and the Lake Benbrook watershed analyzed. Additionally, Commenters indicate that the Army Corps of Engineers (COE) has an interest in the overall quality of water in Lake Benbrook, and that disposal of effluent into the drainage may not be in either the overall public interest, or the interest of the COE.

RESPONSE 3:

The draft permit complies with the Lake Benbrook watershed rules found in 30 TAC Sections 311.61 through 311.66. These rules apply to the Lake Benbrook Watershed including five stream miles upstream of the pool level of Lake Benbrook. The effluent limitations contained in the draft permit, 10 mg/l BOD₅, 15 mg/l TSS, and 4.0 mg/l DO comply with Section 311.63. Additionally, a requirement to employ filtration to supplement suspended solids removal has been added as item 12 on page 24 of Other Requirements Section of the draft permit as required by Section 311.63(a)(2). Section 311.66 requires more stringent requirements than those specified in 30 TAC Section 311.63, on a case-by-case basis, wherever appropriate to maintain desired water quality levels. However, because of the relatively small size of the proposed discharge, the ED has determined that the effluent limits in the draft permit will protect and maintain water quality in Rock Creek as well as Benbrook Lake.

COMMENT 4:

Commenters were concerned about damage to wetlands and natural habitat between the proposed site and Benbrook Lake.

RESPONSE 4:

The United States Army Corps of Engineers (USACE) regulates certain activities occurring in waters of the United States, including wetlands, under Section 404 of the Clean Water Act and Section 10 of the River and Harbors Act of 1899. A USACE permit is required for the discharge of dredged or fill material into waters of the US, including wetlands. According to the Benbrook quadrant wetland inventory map of the USACE, there are no wetlands in the proposed discharge route except for a few stock tanks and surface water channels like creeks and ditches.

COMMENT 5:

Commenters worry that the depletion of oxygen may end up leading to a fish kill.

RESPONSE 5:

Based on the model result, the proposed effluent set of 10 mg/l BOD₅, 15 mg/l TSS, and 4.0 mg/l minimum DO is adequate to ensure that the DO level will be maintained above the criteria established by the Water Quality Standards Team of the TCEQ. These criteria are 2.0 mg/l DO for the unnamed tributary and 5.0 mg/l DO for Rock Creek. If the plant operates in accordance

with the terms of the permit no fish kill is expected to occur due to the discharge of treated wastewater.

COMMENT 6:

Commenters requested that the plant have 50% excess treatment capacity and that the permit require tertiary treatment. Additionally, Commenters indicate that small sewage treatment systems usually do not perform tertiary polishing to remove nutrients, and they are known to discharge chlorinated water. Commenters express concerns about the implementation of the watershed rules and focus on the fact the draft permit did not have a tertiary filter requirement until after it was brought to TCEQ's attention.

RESPONSE 6:

If the facility operates properly, there should not be any circumstances where the discharge exceeds the permitted flow. Operational Requirements No. 8 of the proposed draft permit states that when the flow reaches 75% of the permitted daily average flow for three consecutive months, the Applicant must initiate engineering and financial planning for expansion or upgrade of the domestic wastewater treatment or collection facilities. When the flow reaches 90 percent of the permitted daily average flow for three consecutive months, the Applicant must obtain authorization from TCEQ to begin constructing the necessary additional treatment or collection facilities.

In accordance to the requirements of Section 311.63(a)(2) and based on the comments received, a requirement to employ filtration to supplement suspended solids removal has been added as item 12 on page 24 of Other Requirements Section of the draft permit. In addition to filtration, the permit will have disinfection which is also a form of tertiary treatment.

COMMENT 7:

Commenters pointed out that the Notice of Public Meeting published in the *Cleburne Times Review* on October 15, 2007 states that TCEQ has determined that a phosphorus limit of 0.1 mg/l is necessary to prevent significant degradation of water quality. Commenters want effluent limits on phosphorus and possibly limits for total nitrogen and ammonia in the draft permit. Commenters state that self-reporting requirements should also apply to the requested effluent limits for phosphorus and ammonia-nitrogen. Additionally, Commenters note that the reservoir is listed on the 305(b) list as impaired for chlorophyll *a* and ammonia; and that excessive phosphorus is a contributor to high chlorophyll *a* levels. Commenters want TCEQ to address the causes of this impairment in the permitting process. Commenters also want TCEQ to run QUAL-TX modeling for phosphorus to estimate the concentrations in Rocky Creek. Commenters also note some species will be favoured by the eutrophication and the increased dry-season flow, and their increase will cause cascading effects throughout the food web, which will change the character of the aquatic biota. Finally, Commenters note that analysis strongly suggests that there will be filamentous algae problems in the creek as a result of this discharge as well as additional loading to Lake Benbrook.

RESPONSE 7:

The phosphorus limit of 0.1 mg/l indicated on the Notice of Public Meeting published in the *Cleburne Times Review* on October 15, 2007 was an editing error in the notice. The permit drafted does not include this requirement. A Combined NORI and NAPD were published on December 21, 2007 in the *Cleburne Times Review*, to correct this mistake.

The ED has determined that the effluent limits in the draft permit will protect and maintain water quality in Rock Creek as well as Benbrook Lake. The ED evaluates the need for effluent limits on total nitrogen or phosphorus on a case by case basis. The proposed discharge is 10,000 gallons per day and travels over 4.5 miles before reaching Benbrook Lake. Therefore, the ED does not consider it necessary to model total nitrogen or phosphorus. Although Benbrook Lake is currently listed on the Texas Water Quality Inventory 305(b) report with concerns for chlorophyll *a* and ammonia it is not currently listed on the State's Clean Water Act Section 303(d) list of impaired water bodies. Therefore, limits on total nitrogen, phosphorus, or ammonia are not warranted in this case. If the plant is operated properly there should be no problems with chlorophyll *a* or phosphorus as a result of this discharge. Additionally, because of the relatively small size of the proposed discharge, no monitoring and reporting requirements for nitrogen, phosphorus, or ammonia were included in the draft permit.

Based upon the proposed draft permit and its requirements no degradation is expected to water quality or aquatic biota within the discharge route.

The TCEQ is currently developing nutrient criteria and reserves the right to implement nutrient limits if such action is warranted.

COMMENT 8:

Commenters indicate that the TCEQ has authority to establish more stringent sampling requirements. Commenters want the minimum self-reporting requirements for BOD₅, TSS, and DO reduced from once per week to once every four days.

RESPONSE 8:

The draft permit requires the permittee to sample the flow five times per week by instantaneous measurement; BOD₅, TSS and minimum DO once per week by Grab sample; the Chlorine Residual five times per week by grab sample; and the pH once per month by grab sample. This is based on the requirements found in TCEQ rules for facilities designed to discharge less than 500,000 gallons per day. These effluent monitoring requirements can be found in Section 319.9(a).

COMMENT 9:

Commenters want the Applicant to consider an alternative method of disposal instead of discharging to Rock Creek.

RESPONSE 9:

In Section 26.027 of the Texas Water Code, the Legislature has authorized the TCEQ to issue permits for discharges into water in the state. The permitting process protects the water quality of the state's rivers, lakes and coastal waters. If a proposed discharge would result in a violation of a water quality standard, the TCEQ cannot issue the permit. TCEQ rules do not allow the ED to determine or mandate a different facility location, different discharge location, alternative means of conveyance and disposal, or different type of wastewater treatment plant if the proposed facility complies with the applicable rules and statutes.

COMMENT 10:

Commenters expressed odor concerns, and stated that property that lies north of the proposed facility location will be directly affected by potential air born pollutants as a result of prevailing south winds in this area. In addition, Commenters expressed concern about chemical air pollutants.

RESPONSE 10:

TCEQ rules require domestic wastewater treatment facilities to meet buffer zone or other requirements for the abatement and control of nuisance odor according to 30 TAC Section 309.13(e). These rules provide three options for applicants to satisfy the nuisance odor abatement and control requirement. An applicant can meet this requirement by ownership of the buffer zone area, by restrictive easement from the adjacent property owners for any part of the buffer zone not owned by the Applicant, or by providing odor control. The Applicant is intending to meet the buffer zone requirements by ownership of the buffer zone area in accordance with 30 TAC Section 309.13(e)(1). If the permit is issued and if the facility has problems with odor or other issues that need to be addressed, contact the TCEQ at 1-888-777-3186 to reach the TCEQ region office in your area.

Due to the size and nature of this facility the only chemical of concern might be chlorine. If the permit is granted, the design and specifications for the facility will be evaluated by the TCEQ. To protect from possible chlorine issues the facility must be designed in compliance with 30 TAC Section 317.6(b)(1)(A-G).

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

COMMENT 11:

Commenters question whether a Class "C" operator is more appropriate for this facility. In addition, Commenters want trained and licensed personnel to treat the wastewater. Commenters raise the issue of Ms. Thames past compliance history. They state that Ms. Thames' current

system has malfunctioned for years and is currently not fixed. Commenters state they have lived with the smell of the sewer in the air and creek for the last six years, and that there is stagnant water standing in the creek. Commenters feel TCEQ has not adequately addressed the problem, and after calls to the Dallas Region the problem still persists.

RESPONSE 11:

Ms. Thames has been cited by the TCEQ in the past for her current system. Ms. Thames is currently working with the TCEQ enforcement staff to remedy the problem. The system that Ms. Thames has proposed will be far superior to her current system. If this permit is granted, the facility will have to meet all of the requirements of the proposed draft permit. The draft permit requires the permittee to employ or contract with one or more licensed wastewater treatment facility operators or wastewater system operations companies holding a valid license or registration according to the requirements of 30 TAC, Chapter 30, Subchapter J, Wastewater Operators and Operations Companies. According to 30 TAC Section 30.5(e), the proposed category D facility requires a chief operator or an operator holding a Category D license or higher. Based on compliance issues observed in the current system, comments received, and in order to avoid similar occurrences in the proposed permit, a requirement to contract with a third party wastewater operator has been added in the draft permit. The requirements for the third party operator can be found on page 23 and 24 of the draft permit in the Other Requirements Section 2 through 7.

COMMENT 12:

Concern was expressed that Rock Creek does not flow, and polluting it with sewage will leave a stinking stagnant mess. In addition, Commenters note that Rock Creek has intermittent flow and low spots that makes it vulnerable to pollution in the form of toxic overloads of metals.

RESPONSE 12:

The proposed treated effluent will have to meet the limits and criteria set forth in the permit, which have been set at a level to ensure both environmental and public health are maintained. The unnamed tributary was determined to be an intermittent stream (times of no flow) and Rock Creek was determined to be a perennial stream when these limits and criteria were developed.

This application is for a private domestic wastewater treatment facility. The facility does not receive industrial wastewater contributions; therefore the effluent from this facility should not contribute heavy metals to Rock Creek.

COMMENT 13:

Commenters comment that package wastewater treatment plants for trailer parks often are not properly operated or monitored, resulting in the periodic discharge of inadequately treated wastewater. Additionally, Commenters note that of all treatment facilities in Texas, the failure rate is greatest among small, private plants such as the one proposed for this permit.

RESPONSE 13:

TCEQ's jurisdiction is established by the Legislature and is limited to the issues set forth in Chapter 26 of the Texas Water Code. To implement this statutory mandate, TCEQ issues permits that must be consistent with applicable law. The ED must consider the quality of the discharge and its effect on the quality of the receiving waters. TCEQ's regulations require that domestic wastewater treatment plants be operated and maintained by operators holding a valid certificate of competency at the required level as defined in 30 TAC 30.350(e). This facility must be operated by a chief operator holding a Category D license or higher. In addition, a requirement to contract with a third party wastewater operator has been added in the draft permit. The requirements for the third party operator can be found on page 23 and 24 of the draft permit in the Other Requirements Section 2 through 7.

The Applicant is also required to take certain steps to minimize the possibility of an accidental discharge of untreated wastewater. For example, the draft permit states 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 would be subject to potential enforcement action for failure to comply with TCEQ rules or the permit, including unauthorized discharges. Anyone may contact TCEQ at 1-888-777-3186 or by e-mail at cmplnt@TCEQ.state.tx.us to report a potential violation of the Applicant's permit or regulations.

COMMENT 14:

Commenters are concerned about decreases in property value, that the discharge of treated sewage is likely to alter the value of the downstream land at Fort Worth Prairie Park and added that that the value of the land as a park depends upon the health of its ecological communities and the degree to which this ecosystem represents conditions that reflect natural processes. Commenters are also concerned about the increased costs of treating drinking water, about proposed roadways whose construction could impact the discharge route, and about the Applicant installing additional mobile homes on her property. Commenters add that if the area can be protected from development, it could serve as a reference site for healthy riparian and aquatic communities. Additionally Commenters state that Rock Creek has a very high volume of fossils located on the dry creek bed, and it is a favorite pastime of families that live along the creek to have family outings to collect fossils and this will not occur if Ms. Thames is allowed to pump up to 10,000 gallons of wastewater into the creek daily.

RESPONSE 14:

Although the legislature has given the TCEQ the responsibility to protect water quality, TCEQ does not address these issues in the wastewater permitting process. The water quality permitting

process is limited to controlling the discharge of pollutants into water in the state and protecting the water quality of the state's rivers, lakes, and coastal waters. The ED cannot consider economic impacts, property values, quality of life, tourism, traffic, construction activities, fossil harvest and non-point source issues when reviewing wastewater applications and preparing draft permits.

However, the issuance of a permit does not grant to the Applicant the right to use private or public property for conveyance of wastewater along the discharge route. This includes property belonging to any individual, partnership, corporation or other entity. The permit does not authorize any invasion of personal rights or any violation of federal, state, or local laws or regulations. It is the Applicant's responsibility to acquire the necessary property rights to use the discharge route.

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

COMMENT 15:

Commenters wanted the TCEQ to provide them with relevant information regarding the details of this application, public comment regarding it, and its approval or denial.

RESPONSE 15:

Individuals or entities may request to be placed on a mailing list to receive notices of future activities associated with this particular application or any applications filed in their area. For information and instructions on how to be added to a particular mailing list, please call the TCEQ Office of the Chief Clerk at (512) 239-3300. All Commenters or interested persons are currently on the mailing list. You may contact TCEQ's Office of Public Assistance at 1-800-687-4040 for more information.

COMMENT 16:

Commenters raise the issue that there are several inaccuracies in Ms. Thames' application with particular reference to the location of neighboring property.

RESPONSE 16:

TCEQ acknowledges that the location description indicated in the draft permit, the first and second public notices, and the public meeting notice had an error. Based on the comments received the applicant has provided a new location description, which reads as "The facility will be located approximately 7 miles west of the City of Burleson, approximately 2 miles south of FM 1187 and approximately 3/8 mile west of FM 1902, Johnson County, Texas." Staff has verified in person that the new location description provided is descriptive of the actual site

location. The Applicant published the combined NORI and NAPD on December 21, 2007 in the *Cleburne Times Review*, with the new location description. Notice was also mailed to those on the landowner and mailing list. The comment period was extended by one month because of the combined NORI and NAPD. Other than the location description the TCEQ is unaware of any other discrepancies in the draft permit.

COMMENT 17:

Commenters state that the public meeting notice is defective because there is no evidence that the unnamed tributary described in the permit is water in the state at the point of discharge or at any point from the point of discharge to either Rock Creek or Lake Benbrook. Neighbors are concerned that the discharge of Ms. Thames is not to a true unnamed tributary and worried the discharge will sheet flow across their property. The Commenters state that the Applicant has not made arrangements to transport effluent over private property and it would appear that the proposed discharge route is not feasible.

RESPONSE 17:

The term "water in the state" refers to the groundwater, percolating or otherwise, lakes, bays, ponds, impounding reservoirs, springs, rivers, streams, creeks, estuaries, marshes, inlets, canals, the Gulf of Mexico inside the territorial limits of the state, and all other bodies of surface water, natural or artificial, inland or coastal, fresh or salt, navigable or non-navigable, and including the beds and banks of all watercourses and bodies of surface water, that are wholly or partially inside or bordering the state or inside the jurisdiction of the state. Based on this definition, the unnamed tributary that flows to Rock Creek is regarded as water in the state.

The TCEQ Region 4 office has personally visited the site of the proposed discharge. According to staff who have visited the site, the unnamed tributary has well defined beds and banks. No sheet flow should occur along this discharge route.

The issuance of a permit does not grant to the Applicant the right to use private or public property for conveyance of wastewater along the discharge route. This includes property belonging to any individual, partnership, corporation or other entity. The permit does not authorize any invasion of personal rights or any violation of federal, state, or local laws or regulations. It is the Applicant's responsibility to acquire the necessary property rights to use the discharge route.

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

COMMENT 18:

Commenters are concerned that the Applicant is putting trash such as cans, plastic, water bottles and other litter into the creek.

RESPONSE 18:

The ED cannot consider litter when reviewing wastewater applications and preparing draft permits. The ED evaluates the proposed discharge to determine whether the discharge will meet the Texas Surface Water Quality Standards. The ED does not address litter in the modeling context.

COMMENT 19:

Commenters raised concerns about TCEQ's QUAL-TX modeling predictions regarding nutrient loading to the stream. Commenters state the model gives a background concentration of 0.05 mg/l total nitrogen for Rock Creek above the discharge and then shows total nitrogen to be 1.6 mg/l at the end of the simulated reach which is about 1 mile above the reservoir. Commenters state this is a substantial increase as a result of the wastewater discharge.

RESPONSE 19:

The TCEQ's QUAL-TX model was set up solely to evaluate the effect of the proposed discharge on dissolved oxygen levels in the unnamed tributary and Rock Creek. The model as it was set up and run was not intended to be used to predict total nitrogen concentrations in Rock Creek or at the confluence of Rock Creek with Benbrook Lake. The background concentration of 0.05 mg/l total nitrogen mentioned in the comment is erroneous; it is the assumed background concentration of ammonia-nitrogen in Rock Creek. No information on total nitrogen concentrations in Rock Creek or in the effluent was included or predicted by the model. In addition, the TCEQ has no numerical criteria for total nitrogen, and the need for an effluent limit on total nitrogen in any particular permit is evaluated on a case-by-case basis. The proposed discharge is only 10,000 gallons per day and travels over 4.5 miles before reaching Benbrook Lake. The ED determined that a limit on total nitrogen is not warranted in this case.

COMMENT 20:

Commenters question why the Texas Government deems it necessary for its residents to write letters to stop this travesty.

RESPONSE 20:

The Texas Legislature has provided the public with the opportunity to participate in permitting matters. These statutes are found in TWC Sections 5.551 through 5.558. You may contact TCEQ's Office of Public Assistance at 1-800-687-4040 for more information.

CHANGES MADE TO THE DRAFT PERMIT IN RESPONSE TO COMMENT

The following requirements were added on pages 23 and 24 in the Other Requirements section of the draft permit in response to comments:

2. No later than forty-five (45) days after issuance of this permit, the permittee shall provide the TCEQ Wastewater Permitting Section (MC 148) and the TCEQ Regional Office (MC Region 4) a copy of the contract with the third party that will operate the facility on a contract basis for review to ensure compliance with the terms and conditions of this permit. The permittee shall demonstrate that the term of the third party contract exceeds the term of the permit. At a minimum, the contract must specify that for the term of the permit, the facility will be operated and maintained by the third party. The contract must also include provisions stating the third party's responsibilities under the permit. Any provisions in the contract that address compliance with the terms and conditions of this permit or the third party's responsibilities under this permit will be reviewed by the TCEQ Wastewater Permitting Section and the TCEQ Regional Office (MC Region 4).
3. The third party must document its presence at the facility for a minimum of one hour per day, seven days per week, and must be otherwise available by telephone or pager seven days per week. Records of the third party's presence at the facility must be maintained (signed logbook) and available at the facility for inspection by authorized representatives of the commission for at least three years. The third party must submit a copy of the signed logbook each month, to the TCEQ Regional Office (MC Region 4), by the 20th day of the following month.
4. The third party shall inspect the facility seven days per week and maintain at the facility a record of these inspections. These records must be available at the facility for inspection by the authorized representatives of the commission for at least three years. During this daily inspection the proper operation and maintenance of the treatment pond system must be checked by the third party to ensure compliance with the terms and conditions of the permit. These records must also be submitted each month, to the TCEQ Regional Office (MC Region 4), by the 20th day of the following month.
5. If the third party gives notice that it wishes to terminate the contract with the permittee, or if for any reason the third party is no longer servicing the permitted facility, the permittee must notify the TCEQ Regional Office (MC Region 4) as soon as it is aware of the break in service. Included in the notice shall be an action plan to replace the current third party with another qualified third party.
6. The permittee must submit copies of all self-reported effluent monitoring performed by the third party and certified copies of all lab analysis each month, to the TCEQ Regional Office (MC Region 4), by the 20th day of the following month.
7. The permittee shall maintain and operate the treatment facility in order to achieve optimum efficiency of treatment capability. This shall include required monitoring of effluent flow and quality as well as appropriate grounds and building maintenance.

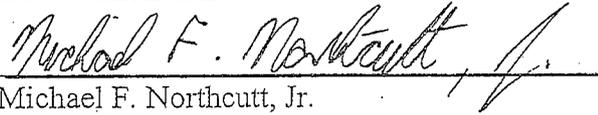
12. According to the requirements of 30 TAC Section 311.63 (a)(2), the permittee shall employ filtration to supplement suspended solids removal.

Respectfully submitted,

Texas Commission on Environmental Quality

Glenn Shankle
Executive Director

Robert Martinez, Director
Environmental Law Division



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Attorney

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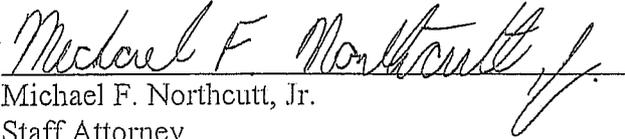
Phone (512) 239-6994

Fax: (512) 239-0606

REPRESENTING THE
EXECUTIVE DIRECTOR OF THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY

CERTIFICATE OF SERVICE

I certify that on April 3, 2008, the "Executive Director's Response to Public Comment" for Permit No. WQ0014753001 was filed with the Texas Commission on Environmental Quality's Office of the Chief Clerk.



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