

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

May 7, 2008

TO: Persons on the attached mailing list.

RE: Montgomery County Utility District No. 2
TPDES Permit No. WQ0011271001

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 Montgomery County Central Library – Reference Department, 104 Interstate Highway 45 North, Conroe, 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

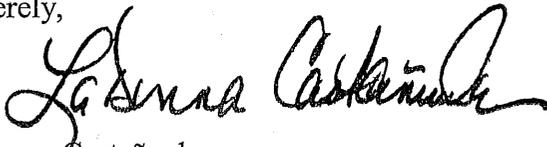
Processing of Requests.

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
Montgomery County Utility District No. 2
TPDES Permit No. WQ0011271001

FOR THE APPLICANT:

Larry Folk
Montgomery County Utility District No. 2
3 Greenway Plaza, Suite 2000
Houston, Texas 77046

Shayna Watson, P.E.
AEI Engineering, Inc.
616 Farm-to-Market Road 1960 West,
Suite 250
Houston, Texas 77090

PROTESTANTS/INTERESTED PERSONS:

John DeCesare
Seven Coves Home Owners Association
6691 Kingston Cove Lane
Willis, Texas 77318

FOR THE EXECUTIVE DIRECTOR:

Michael F. Northcutt, Jr., Staff Attorney
Texas Commission on Environmental Quality
Environmental Law Division MC-173
P.O. Box 13087
Austin, Texas 78711-3087

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

FOR OFFICE OF PUBLIC ASSISTANCE:

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

FOR PUBLIC INTEREST COUNSEL:

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

FOR THE CHIEF CLERK:

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

PROPOSED TPDES PERMIT NO. WQ0011271001

APPLICATION BY
MONTGOMERY COUNTY
UTILITY DISTRICT NO. 2
for PERMIT NO. 11271-001

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BEFORE THE
TEXAS COMMISSION
ON ENVIRONMENTAL QUALITY

2008 APR 30 PM 1:54
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 (RTC) on Montgomery County Utility District No. 2's (Applicant) application for Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0011271001 and the ED's preliminary decision. As required by Title 30 of the 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 received a timely comment letter from Mr. John DeCesare, representing the Seven Coves Home Owners Association. As required by TCEQ rules, 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 is seeking a major amendment to TPDES Permit No. WQ0011271001 to authorize an increase in the discharge of treated domestic wastewater to a daily average flow not to exceed 550,000 gallons per day and to change the outfall location. The current permit authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 250,000 gallons per day. The existing wastewater treatment facility serves Seven Coves Subdivision and a portion of the Far Hills Utility District.

The treated effluent is discharged to an unnamed creek; thence to an unnamed tributary of Lake Conroe; thence to Lake Conroe in Segment No. 1012 of the San Jacinto River Basin. The unclassified receiving water uses are no significant aquatic life uses for the unnamed tributary of Lake Conroe. The designated uses for Segment No. 1012 are high aquatic life uses, public water supply and contact recreation. In accordance with 30 TAC §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 Lake Conroe (Segment 1012), which has been identified as having high aquatic life uses. Existing uses will be maintained and protected. The preliminary determination can be reexamined and may be modified if new information is received. The facility is located on the east side of Lake Conroe, immediately south of Farm-to-Market Road 830 and approximately 500 feet east of Kingston Cove Lane in Montgomery County, Texas.

Procedural Background

The permit application was received on September 25, 2007 and declared administratively complete on October 22, 2007. The Notice of Application and Intent to Obtain Water Quality Permit (NORI) was published November 11, 2007, in *Houston Chronicle* in English and October 31, 2007, in *La Voz De Houston* in Spanish. The Notice of Application and Preliminary Decision (NAPD) was published February 07, 2008, in *Houston Chronicle* in English and February 06, 2008 in *La Voz De Houston* in Spanish. The public comment period ended on March 10, 2008. This application is subject to the procedural requirements of House Bill 801, 76th Legislature, 1999.

COMMENTS AND RESPONSES

COMMENT 1:

Mr. DeCesare is concerned that the free flow of the creek into which the treated wastewater is discharged is clogged by silt build up and overgrown debris, needs dredging, is a health risk, and smells.

RESPONSE 1:

The TWC, Section 26.027, authorizes the TCEQ to issue permits for discharges into water in the state. The permitting process controls the discharge of pollutants into water in the state and 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 and the Texas Water Code do not grant TCEQ the authority to require the Applicant to dredge or clear debris from the discharge route on property it does not own.

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.

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 2:

Mr. DeCesare is concerned about the insect-borne diseases like West Nile virus, which may arise from the water stagnated due to silt build up and overgrown debris.

RESPONSE 2:

The permitting process is limited to controlling the discharge of pollutants into water in the state and protecting the water quality of the state's rivers, lakes and coastal waters. All discharges to surface water must comply with the Texas Surface Water Quality Standards in 30 TAC Chapter 307. The purpose of the Texas Surface Water Quality Standards is to maintain the quality of water in the state and to protect aquatic life, human health, and wildlife along the discharge route. Additionally, properly treated wastewater does not create a mosquito breeding area differently than created by other surface waters.

For concerns relating to insect-borne diseases please contact the Montgomery County Environmental Health services office in person at 301 N. Thompson, Suite 206, Conroe, Texas 77301. Additionally, you can contact them by phone at 936-539-7839 or 281-364-4200 ext. 7839.

COMMENT 3:

Mr. DeCesare is concerned that the condition of the discharge creek lowers property values.

RESPONSE 3:

The Legislature has given the TCEQ the responsibility to protect water quality. However, neither chapter 26 of the Texas Water Code, nor the applicable TCEQ wastewater regulations authorize the ED to consider property values when reviewing a water quality application.

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

Michael F. Northcutt, Jr.

Michael F. Northcutt, Jr.

Staff Attorney

Environmental Law Division

State Bar No. 24037194

P.O. Box 13087, MC 173

Austin, Texas 78711-3087

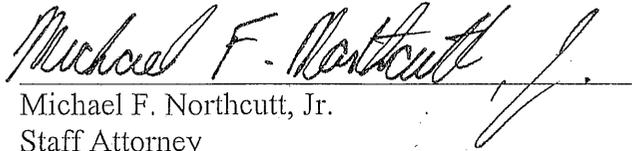
Phone (512) 239-6994

Fax: (512) 239-0606

REPRESENTING THE
EXECUTIVE DIRECTOR OF THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY

CERTIFICATE OF SERVICE

I certify that on April 30, 2008, the "Executive Director's Response to Public Comment" for Permit No. WQ0011271001 was filed with the Texas Commission on Environmental Quality's Office of the Chief Clerk.



Michael F. Northcutt, Jr.
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