

Buddy Garcia, *Chairman*  
Larry R. Soward, *Commissioner*  
Bryan W. Shaw, Ph.D., *Commissioner*  
Mark R. Vickery, P.G., *Executive Director*



## TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

*Protecting Texas by Reducing and Preventing Pollution*

July 29, 2008

TO: Persons on the attached mailing list.

RE: LCS Corrections Services, Inc.  
TPDES Permit No. WQ0014802001

### **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 TCEQ Region 14 Office, 6300 Ocean Drive, Suite 1200, Corpus Christi, 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.**

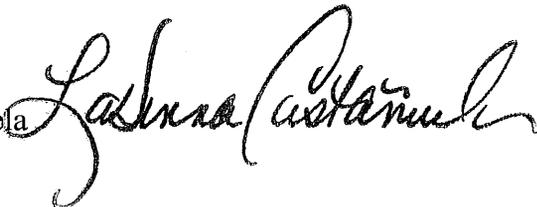
Timely requests for a contested case hearing or for reconsideration of the executive director's decision will be referred to the alternative dispute resolution director and set on the agenda of one of the commission's regularly scheduled meetings. Additional instructions explaining these procedures will 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/lg

Enclosures

MAILING LIST  
For  
LCS Corrections Services, Inc.  
TPDES Permit No. WQ0014802001

FOR THE APPLICANT:

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FOR PUBLIC INTEREST COUNSEL:

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FOR THE CHIEF CLERK:

LaDonna Castañuela  
Texas Commission on Environmental Quality  
Office of Chief Clerk MC-105  
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PROTESTANTS/INTERESTED PERSONS:

See attached list.

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CORPUS CHRISTI TX 78411-5058

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JOHNNY LUNA  
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ROBSTOWN TX 78380-5421

CHRISTINA PONCE  
3181 NYE PETERSON RD  
ROBSTOWN TX 78380-5421

ROBERT & SANDRA BRISTOL  
3177 NYE PETERSON RD  
ROBSTOWN TX 78380-5421

TERRY LUNA  
3163 NYE PETERSON RD  
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RODRIGO RAMON JR MAYOR  
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ISRAEL CARRASCO JR  
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TPDES PROPOSED PERMIT NO. WQ0014802001

APPLICATION BY	§	BEFORE THE TEXAS
	§	
LCS CORRECTIONS	§	COMMISSION ON
	§	
	§	ENVIRONMENTAL
SERVICES, INC.	§	QUALITY

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**EXECUTIVE DIRECTOR'S RESPONSE TO PUBLIC COMMENT**

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The Executive Director (ED) of the Texas Commission on Environmental Quality (the commission or TCEQ) files this Response to Public Comment (Response) on the LCS Corrections Services, Inc. (Applicant) application and Executive Director's preliminary decision. As required by 30 Texas Administrative Code (TAC) (§) Section 55.156, before a permit is issued, the Executive Director prepares a response to all timely, relevant and material, or significant comments. The Office of the Chief Clerk timely received comment letters or comments at the public meeting from the following persons: Michael Baumann on behalf of Winding Brook Corporation, Robert and Sandra Bristol, Reagan Brown, Becky Cantu, Israel J. Carrasco, Sr., Israel J. Carrasco, Jr., Lionel Lopez, South Texas Colonia Initiative, Inc., Johnny Luna, Terry Luna, Debra Martinez, Jimmy and Shelly Monse, Antonio M. Orozco, Rene M. Orozco, Christina Ponce, Rodrigo Ramon, Jr., Rorque Torres and Elias R. Vasquez. Robert and Sandra Bristol, Reagan Brown, Becky Cantu, Israel J. Carrasco, Sr., Israel J. Carrasco, Jr., Johnny Luna, Terry Luna, Debra Martinez, Jimmy and Shelly Monse, Antonio M. Orozco, Rene M. Orozco, Rorque Torres, and Christina Ponce withdrew their comments before the RTC was filed. This response addresses all such timely public comments received, whether or not withdrawn. If you need more information about this permit application or the wastewater permitting process, please call the TCEQ Office of Public Assistance at 1-800-687-4040. General information about the TCEQ can be found at our website at [www.tceq.state.tx.us](http://www.tceq.state.tx.us).

**BACKGROUND**

Description of Facility

The Applicant has applied to the TCEQ for a new permit that would authorize the discharge of treated domestic wastewater at a daily average flow not to exceed 150,000 gallons per day. The wastewater treatment facility would serve the Nueces Detention Facility.

The treated effluent would be discharged to a ditch; then to Petronila Creek Above Tidal in Segment No. 2204 of the Nueces-Rio Grande Coastal Basin. The unclassified receiving water uses are no significant aquatic life use for the ditch. The designated uses for Segment No. 2204 are intermediate aquatic life use and contact recreation. The plant site would be located at 4909 Farm-to-Market Road 2826, approximately 470 feet west of the centerline of County Road 81 in the southwest quadrant of the intersection of County Road 81 and Farm-to-Market Road 2826, southwest of the City of Robstown in Nueces County, Texas.

### Procedural Background

The permit application for a new permit was received on May 3, 2007 and declared administratively complete on May 30, 2007. The Notice of Receipt of Application and Intent to Obtain a Water Quality Permit (NORI) was published in Spanish on June 26, 2007, August 24, 2007, and November 2, 2007 in the *Corpus Christi Hispanic News* and in English on June 27, 2007, and August 28, 2007 in the *Corpus Caller Times*. The Notice of Application and Preliminary Decision (NAPD) for a Water Quality Permit was published in English on October 31, 2007 in the *Corpus Caller Times* and in Spanish on January 11, 2008 in *Corpus Christi Hispanic News*. The Notice of Public Meeting was published on April 15, 2008, in the *Corpus Caller Times* and a public meeting was held on May 15, 2008, in Corpus Christi, at which time the comment period closed. 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:**

Reagan Brown expresses concern about the discharge into Petronila Creek and the potential impacts it will have. She states that an alternative method should be discussed for controlling the discharge in an environmentally acceptable manner. Becky Cantu asked why the facility can not put in a septic tank.

### **RESPONSE 1:**

The Texas Water Code (TWC), § 26.027, authorizes the TCEQ to issue permits for discharges into or adjacent to water in the state, provided the discharger obtains a permit from the commission. The ED does not have the authority to mandate a different discharge location or different type of wastewater treatment plant. The ED evaluates applications for wastewater treatment plants, based on the information provided in the application, and by making an independent technical review the proposed discharge and

its impact on water quality. The ED has determined that the discharge will not violate the Texas Surface Water Quality Standards (TSWQS) or have an adverse effect on water quality.

**COMMENT 2:**

Robert and Sandra Bristol, Becky Cantu, Johnny Luna, Terry Luna, Debra Martinez, Jimmy and Shelly Monse, Antonio M. Orozco, Rene M. Orozco, Christina Ponce and Rorque Torres express concern for their property along Petronila Creek and property lines which extend into the middle of the creek. They feel that the proposal will become a dumping ground on their property.

**RESPONSE 2:**

According to TWC § 11.021(a), all surface water within the State of Texas is property of the State. See also *Domal v. City of Georgetown*, 6 S.W.3d 349 (Tex. App.—Austin, 1999, pet. denied). Surface water in the state is defined in the TSWQS, 30 TAC, Chapter 307.3(a)(57), as lakes, bays, ponds, impounding reservoirs, springs, rivers, streams, creeks, estuaries, wetlands, marshes, inlets, canals, the Gulf of Mexico inside the territorial limits of the state (from the mean high water mark (MHW) out 10.36 miles into the Gulf), and all other bodies of surface water, natural or artificial, inland or coastal, fresh or salt, navigable or nonnavigable, and including the beds and banks of all water-courses and bodies of surface water, that are wholly or partially inside or bordering the state or subject to the jurisdiction of the state; except that waters in treatment systems which are authorized by state or federal law, regulation, or permit, and which are created for the purpose of waste treatment are not considered to be water in the state. TWC § 26.027 authorizes the TCEQ to issue permits for discharges into or adjacent to water in the state.

The immediate receiving water, Petronila Creek, as well as the other water bodies in the proposed discharge route are considered to be surface water in the state. Therefore, a TPDES permit is required in order to discharge wastewater into these water bodies.

The Executive Director 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.

**COMMENT 3:**

Robert and Sandra Bristol, Becky Cantu, Johnny Luna, Terry Luna, Debra Martinez, Jimmy and Shelly Monse, Antonio M. Orozco, Rene M. Orozco, Christina Ponce and Rorque Torres express concern that when it rains even four to five inches, the creek overflows and runs within close proximity to their habitats. They are concerned with flooding that may occur. Sandra Bristol is also concerned that the discharge from the wastewater treatment facility will create a continuous flooded area. Becky Cantu states that she has counted the number of times the creek has flooded and is concerned

with the discharge of wastewater into the creek. She asks whether the water will remain in the ditch or if it will flow over the whole ditch. She is also concerned about the erosion that may result from the amount of water going through the creek. Israel J. Carrasco, Sr. and Israel Carrasco, Jr. express concern with the flooding that occurs on their property and the contamination that results from it. Israel J. Carrasco, Sr., states that he can not go out there to do work, because he gets physically sick and is restricted because of the vegetation that has taken over the creek. Israel J. Carrasco, Sr. and Israel J. Carrasco, Jr. also state that the creek already smells bad and are concerned that it will only get much worse once the wastewater is discharged. Lionel Lopez, with the South Texas Colonia Initiatives, expresses concern for the residents that reside in the Colonia along Petronila Creek, who experience flooding on their property. He also states the hardships the residents have suffered because of the flooding. Deborah Martinez states that they pay a lot of taxes to live on property that is considered flood land. She expresses that the company should have further investigated the effects it may have on the people that live in the area. Michael Baumann stated that Petronila Creek frequently overflows its natural boundaries during periods of heavy rainfall and the added wastewater from this discharge will add to the potential damage to property owned by the Winding Brook Corporation. Rodrigo Ramon, Mayor of the City of Robstown and Elias R. Vasquez, Mayor Pro Tempore of the City of Robstown, express concern and acknowledgment that Nueces County has drainage problems. Mayor Ramon and Mayor Pro Tempore Vasquez also stated that they have been working to address the drainage issue and are in agreement that something must be done.

**RESPONSE 3:**

The ED does not have the authority to address flooding or erosion issues in the wastewater permitting process. 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. The draft permit includes effluent limits and other requirements that the Applicant must meet even during rainfall events and periods of flooding.

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

**COMMENT 4:**

Robert and Sandra Bristol, Becky Cantu, Johnny Luna, Terry Luna, Debra Martinez, Jimmy and Shelly Monse, Antonio M. Orozco, Rene M. Orozco, Christina Ponce and Rorque Torres state that this project was not discussed at the Town Hall meetings and are not pleased with it. Sandra Bristol also expresses concern that they were not notified about the proposed facility. Deborah Martinez states that they were not aware of the plans for this project. Lionel Lopez expresses concern that the public notice was not published in the City of Robstown newspaper where the affected landowners

reside and where the wastewater treatment facility will be located. He also requested that the public meeting be held in Robstown.

**RESPONSE 4:**

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 the Chief Clerk.

Additionally, for all applications (new, major amendment and renewal applications), the agency prepares two public notices: the NORI and the NAPD. TCEQ rules require that the NORI be published in the newspaper of largest circulation in the county where the facility is located or proposed to be located, or if in a municipality, in any newspaper of general circulation in the municipality. The NAPD must be published at least once in the same newspaper as the NORI. 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.

The public meeting was held at the Holiday Inn – Airport, 5549 Leopard Street, Corpus Christi, Texas 78408. A representative for the Applicant stated that it called several venues and that this was the only one available for the May 15, 2008 date.

**COMMENT 5:**

Michael M. Baumann expresses concern on behalf of Winding Brook Corporation, for the possible adverse effects that the discharge may have on the property and farming operation. He also expresses concern for the quality of water being discharged and the possible effects it may have on the crops and productivity of the land. Robert and Sandra Bristol, Becky Cantu, Johnny Luna, Terry Luna, Debra Martinez, Jimmy and Shelly Monse, Antonio M. Orozco, Rene M. Orozco, Christina Ponce and Rorque Torres express concern for the discharge of wastewater into the creek which they use for recreational activities and enjoyment. Sandra Bristol also expresses concern that the wildlife that lives in the creek will be affected by the discharge of treated wastewater.

**RESPONSE 5:**

The proposed draft permit was developed to protect aquatic life, terrestrial wildlife, livestock or domestic animals and human health in accordance with the TSWQS. The requirements in the proposed draft permit were established to be protective of human health and the environment as long as the Applicant operates and maintains the facility

according to TCEQ rules and the requirements in the proposed draft permit. 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. In this case, the unclassified receiving water uses are no significant aquatic life use for the ditch. The designated uses for Segment No. 2204 are intermediate aquatic life use and contact recreation. The effluent limits in the draft permit are set to maintain and protect the existing instream uses.

If the permit is issued, the facility will be designed to produce an effluent quality in compliance with the permit parameters required in the draft permit. The effluent limits in the draft permit, based on a 30-day average, are 10 milligrams per liter (mg/L) 5-day biochemical oxygen demand, 15 mg/L total suspended solids, and 4.0 mg/L minimum dissolved oxygen. The effluent must contain a chlorine residual of at least 1.0 mg/L and may not exceed a chlorine residual of 4.0 mg/L after a detention time of at least 20 minutes based on peak flow. If requested by the Wastewater Permitting Section, the Applicant must submit plans, specifications and a final engineering design report. The Applicant must clearly show how the treatment system will meet the final permitted effluent limitations required by the permit.

In addition, 30 TAC § 307.6(b)(3) states that water in the state shall be maintained to preclude adverse toxic effects on human health resulting from contact recreation, consumption of aquatic organisms, consumption of drinking water, or any combination of the three. Further, according to 30 TAC § 307.6(b)(4), water in the state shall be maintained to preclude adverse toxic effects on aquatic life, terrestrial wildlife, livestock, or domestic animals, resulting from contact, consumption of aquatic organisms, consumption of water, or any combination of the three.

**COMMENT 6:**

Robert and Sandra Bristol, Becky Cantu, Johnny Luna, Terry Luna, Debra Martinez, Jimmy and Shelly Monse, Antonio M. Orozco, Rene M. Orozco, Christina Ponce and Rorque Torres express concern that Petronila Creek is not a flowing river. They state that the brush growth in Petronila Creek creates unending flooding of their property and is unusable. Lionel Lopez states that flooding occurs because Petronila Creek is so full of debris. He adds that the creek is blocked and any water entering the creek has nowhere to go, therefore, becoming stagnant and contaminated. Israel J. Carrasco, Jr. and Israel J. Carrasco, Sr. state that there is a lot of vegetation and debris in the Creek. Israel J. Carrasco, Jr. state that animals have been dumped into the creek and are decaying.

**RESPONSE 6:**

To address these concerns, the Applicant agreed to work with local officials and residents to clear some of the debris in the creek.

**COMMENT 7:**

Commenters expressed concern about prisoners escaping from the facility and going through the Creek.

**RESPONSE 7:**

The TCEQ's jurisdiction is established by the Legislature and is limited to the issues set forth in statute. Accordingly, the TCEQ does not have jurisdiction to consider whether prisoners will escape from a facility when determining whether to approve or deny a wastewater permit application. The scope of the Agency's regulatory jurisdiction does not affect or limit the ability of a landowner to consult local law enforcement authorities or to seek relief from a court in response to activities that interfere with the landowner's use and enjoyment of his 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

Mark R. Vickery, P.G.  
Executive Director

Robert Martinez, Director  
Environmental Law Division



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REPRESENTING THE  
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ENVIRONMENTAL QUALITY