

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

September 25, 2008

TO: Persons on the attached mailing list.

RE: Wood Oaks Hollow, LLC
TPDES Permit No. WQ0014878001

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 City Hall, 110 North Powell Parkway, Anna, 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

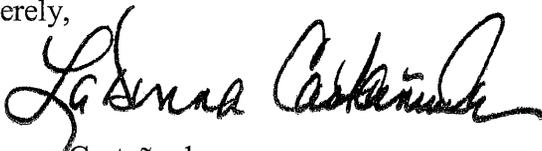
Processing of Requests.

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
Wood Oaks Hollow, LLC
TPDES Permit No. WQ0014878001

FOR THE APPLICANT:

Roger Lindsey
Wood-Oak Hollow, LLC
2808 Fairmount Street
Dallas, Texas 75201

Mark Hill, P.E.
Jacobs Carter Burgess
7950 Elmbrook Drive
Dallas, Texas 75247

PROTESTANTS/INTERESTED PERSONS:

Martin C. Rochelle, Attorney
Lloyd Gosselink Rochelle & Townsend, P.C.
816 Congress Avenue, Suite 1900
Austin, Texas 78701

Arturo D. Rodriguez, Jr.
Russell & Rodriguez, L.L.P.
1633 Williams Drive, Building 2, Suite 200
Georgetown, Texas 78628

Philip Sanders
City of Anna
P.O. Box 776
Anna, Texas 75409

FOR THE EXECUTIVE DIRECTOR:

Christiaan Siano, Staff Attorney
Texas Commission on Environmental Quality
Environmental Law Division MC-173
P.O. Box 13087
Austin, Texas 78711-3087

Kent Trede, 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

TEXAS
COMMISSION
ON ENVIRONMENTAL
QUALITY

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CHIEF CLERKS OFFICE

TCEQ PROPOSED PERMIT NO. 14878001

APPLICATION BY
WOOD OAKS
HOLLOW, LLC

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BEFORE THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY

EXECUTIVE DIRECTOR'S RESPONSE TO PUBLIC COMMENT

The Executive Director of the Texas Commission on Environmental Quality (the commission or TCEQ) files this Response to Public Comment (Response) on the Wood Oaks Hollow, LLC 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 from Mr. Arturo D. Rodriguez, Jr. representing the City of Anna, and Mr. Martin C. Rochelle, representing North Texas Municipal Water District. 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

The Applicant, Wood Oaks Hollow, LLC, 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 0.25 million gallons per day (MGD) in the interim phase and a daily average flow not to exceed 0.5 MGD in the final phase. The wastewater treatment plant will serve a residential subdivision.

The treated effluent will be discharged to a ditch, thence to an unnamed tributary; thence to East Fork Trinity River; thence to Lake Lavon in Segment No. 0821 of the Trinity River Basin. The unclassified receiving water uses for the ditch and the unnamed tributary are no significant aquatic life use; and for the East Fork Trinity River the unclassified receiving water use is high aquatic life use. The designated uses for Segment No. 0821 are high aquatic life use, public water supply and contact recreation. The effluent limitations in the draft permit will maintain and protect the existing instream uses. 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 by TCEQ has preliminarily determined that no significant degradation of water quality is expected in East Fork Trinity River or Lake Lavon, which have 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.

Procedural Background

The permit application for a new permit was received on February 19, 2008, and declared administratively complete on March 4, 2008. The Notice of Receipt and Intent to Obtain a Water Quality Permit (NORI) was published on March 18, 2008 in the *Dallas Morning News*; and in Spanish it was published in *Al Día* on April 21, 2008. The Notice of Application and Preliminary Decision (NAPD) for a Water Quality Permit was published on June 23, 2008, in the *Dallas Morning News*; and in Spanish it was published in *Al Día* on June 23, 2008. The public comment period ended on July 23, 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:

The City of Anna is concerned that the proposed permit seeks to serve an area within its sewer Certificate of Convenience and Necessity (CCN) and within its extraterritorial jurisdiction (ETJ).

RESPONSE 1:

If a retail public utility encroaches on another CCN holder's service area, the CCN holder can file a motion for a cease and desist order under Texas Water Code, §13.252. CCN related issues are covered under Chapter 13 of the Texas Water Code, and Chapter 291, Subchapter G, of the Texas Administrative Code. The wastewater permitting process focuses solely on the ability of the Applicant to properly install, operate and maintain the wastewater treatment plant in compliance with all state and federal laws.

COMMENT 2:

The City of Anna and North Texas Municipal Water District has concerns regarding regionalization and the locating of two wastewater treatment facilities within 4 miles.

RESPONSE 2:

On page 5 of the application, the technical report states that there were no Wastewater Treatment Facilities within 3 miles of the proposed facility that currently have the capacity to accept the volume of wastewater proposed in this application. A review of the permit held by the City of Anna

indicated its treatment plant is currently permitted for a daily average flow of 0.50 MGD and is currently treating approximately 0.2 MGD. Therefore, this facility does not have the capacity to treat the daily average flow of 0.5 MGD from the proposed development. Additionally, the City's treatment plant is greater than 3 miles from the one proposed in the application. Accordingly, the Applicant has met its regionalization inquiry.

COMMENT 3:

The City of Anna has concerns regarding the proposed effluent limits in the draft permit. The City has a permit with a minimum dissolved oxygen (DO) of 5.0 mg/liter, while the proposed permit for Wood Oaks Hollow has a minimum DO of 4.0 mg/liter.

RESPONSE 3:

Wastewater permit effluent limit recommendations for 5-day Carbonaceous Biochemical Oxygen Demand (CBOD₅), Ammonia-Nitrogen (NH₃-N), and effluent dissolved oxygen (DO) are made based on modeling results that evaluate the predicted effect of the oxygen-demanding constituents (CBOD₅ and NH₃-N) and the DO concentration in the treated wastewater discharge on DO concentrations within the bodies of water along a discharge route. Various factors contribute to the predicted DO concentrations in the water bodies that receive these wastewater discharges, including: the size of wastewater discharges entering them; the level of treatment of these wastewater discharges; the potential combined effect of more than one discharge into a water body; site-specific hydraulic conditions in the water body; the amount of other flow in a water body; the DO criteria assigned to different water bodies along the discharge route; and how far downstream from the point of discharge these water bodies of differing DO criteria are located.

The effluent limits in Wood-Oak Hollow's draft permit are 10 mg/L CBOD₅, 3 mg/L NH₃-N, and 4 mg/L DO for both the 0.25 MGD interim flow phase and the 0.50 MGD final flow phase. City of Anna's existing permit authorizes discharge from two outfalls, Outfall 001 at 0.25 MGD with effluent limits of 30 mg/L CBOD₅, 4 mg/L NH₃-N, and 5 mg/L DO and Outfall 002 with two phases (0.50 MGD (interim) and 0.975 MGD (final)), both with effluent limits of 10 mg/L CBOD₅, 2 mg/L NH₃-N, and 6 mg/L DO. The concentrations of CBOD₅ and NH₃-N in a wastewater discharge tend to have a greater and more prolonged downstream impact on DO levels in a water body than the DO concentrations in the effluent have on these water body DO levels. The higher total (permitted) flow from City of Anna's two outfalls as well as other differing water body-specific conditions and DO criteria also contribute to different levels of treatment being predicted to be necessary for the two facilities to ensure that DO levels in the various water bodies along the two facilities' discharge routes will be maintained above their respective criteria.

City of Anna's two outfalls were included in the DO modeling analysis of the Applicant's proposed discharge. DO levels in the water bodies along both discharge routes are predicted to be maintained above their respective criteria at City of Anna's existing permitted flows and effluent limits and Applicant's proposed flows and effluent limits.

COMMENT 4:

The City of Anna is concerned that the proposed facility was identified by the Applicant as a public facility.

RESPONSE 4:

The Application Review and Processing Team has classified this facility as a private domestic wastewater treatment plant. Therefore, the facility will not be classified as a public facility.

COMMENT 5:

The City of Anna has concerns regarding who will operate the facility.

RESPONSE 5:

All permittees must 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, Occupational Licenses and Registrations and in particular 30 TAC Chapter 30, Subchapter J, Wastewater Operators and Operations Companies. In this case the facility must be operated by a chief operator or an operator holding a Category C license or higher. The facility must be operated a minimum of five days per week by the licensed chief operator or an operator holding the required level of license or higher. 30 TAC § 30.350(i). The operator must be available by telephone or pager seven days per week. 30 TAC § 30.350(j). Where shift operation of the wastewater treatment facility is necessary, each shift that does not have the on-site supervision of the licensed chief operator must be supervised by an operator in charge who is licensed not less than one level below the category for the facility. 30 TAC § 30.350(k).

COMMENT 6:

The North Texas Municipal Water District has concerns regarding the increase in loading to the receiving stream.

RESPONSE 6:

In regard to oxygen-demanding constituents, dissolved oxygen modeling results indicate that the effluent limits included in the draft permit are predicted to be adequate for both proposed flow phases to ensure that dissolved oxygen levels will be maintained above the assigned criteria for the ditch, the unnamed tributary, the East Fork Trinity River, and Lavon Lake.

There are currently no numerical nutrient criteria in the Texas Surface Water Quality Standards. Degradation is therefore determined according to 30 TAC § 307.4(e) (General Criteria). The General Criteria require that nutrients from permitted discharges shall not cause excessive growth of aquatic vegetation which impairs an existing, attainable, or designated use.

COMMENT 7:

The North Texas Municipal Water District has concerns regarding the increase in traffic and the potential for increased environmental concerns.

RESPONSE 7:

The ED does not consider traffic in its determination of whether to prepare a draft permit. In the event that adjacent landowners are adversely affected by the Applicant's transportation of sludge, 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 effect on human health or welfare, animal life, vegetation, or property. Also, the Applicant is required to comply with other local, state or federal laws that may apply.

COMMENT 8:

The North Texas Municipal Water District has concerns regarding odors generated at the WWTP.

RESPONSE 8:

TCEQ rules require domestic wastewater treatment facilities to meet buffer zone requirements for the abatement and control of nuisance odors according to 30 TAC § 309.13(e). These rules provide three options for Applicants to use to satisfy the nuisance odor abatement and control requirement. The Applicant can meet this requirement by owning the buffer zone area, by obtaining a restrictive easement from the adjacent property owner(s) for any part of the buffer zone not owned by the Applicant, or by providing odor control. Here, the Applicant proposes to meet the buffer zone requirements by ownership.

COMMENT 9:

The North Texas Municipal Water District has concerns regarding the quality of the water utilized for drinking water by the district.

RESPONSE 9:

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. The draft permit has effluent limits to meet this requirement.

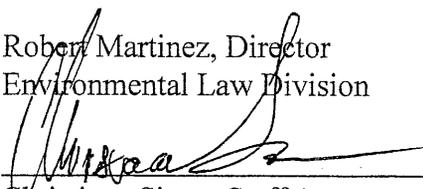
**NO CHANGES HAVE BEEN MADE TO THE DRAFT PERMIT IN RESPONSE TO
COMMENT**

Respectfully submitted,

Texas Commission on Environmental Quality

Mark R. Vickery, P. G.
Executive Director

Robert Martinez, Director
Environmental Law Division



Christiaan Siano, Staff Attorney
Environmental Law Division
State Bar No. 24051335
P.O. Box 13087, MC 173
Austin, Texas 78711-3087
(512) 239-6743

REPRESENTING THE
EXECUTIVE DIRECTOR OF THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY