

Bickerstaff Heath Delgado Acosta LLP

816 Congress Avenue Suite 1700 Austin, Texas 78701 (512) 472-8021 Fax (512) 320-5638 www.bickerstaff.com

April 13, 2009

Via Hand Delivery

Ms. LaDonna Castañuela, Chief Clerk
Office of the Chief Clerk, MC-105
ATTN: Agenda Docket Clerk
Texas Commission on Environmental Quality
12100 Park 35 Circle, Building F
Austin, TX 78753

TEXAS
COMMISSION
ON ENVIRONMENTAL
QUALITY
2009 APR 13 PM 12: 29
CHIEF CLERKS OFFICE

Re: Application by Hill Country Camp for a New TPDES Permit No. WQ0014832-001; TCEQ Docket No. 2009-0085-MWD

Dear Ms. Castañuela:

Enclosed for filing in connection with the above-referenced matter, please find the original and eight copies of the City of Kerrville's Reply to Responses to its Hearing Request. Please file the original and have the copy filed-stamped and returned to me via our runner.

If you have any questions or concerns, please contact me at 512-472-8021.

Sincerely,


Emily W. Rogers

EWR/dfb
Enclosures

cc: Mailing List

**MAILING LIST
HILL COUNTRY CAMP
DOCKET NO. 2009-0085-MWD; PERMIT NO. WQ0014832001**

FOR THE APPLICANT:

Don Nordin
Hill Country Camp
1319 Harper Road
Kerrville, TX 78028

Scott Shoemaker
The Terrill Firm, P.C.
810 W. 10th St.
Austin, TX 78701-2005

Shelly Young, PE
Waterengineers Inc.
17230 Huffmeister Rd.
Cypress, TX 77429-1643

FOR THE EXECUTIVE DIRECTOR:

Timothy Reidy, Staff Attorney
Texas Commission on Environmental Quality
Environmental Law Division, MC 173
P.O. Box 13087
Austin, TX 78711-3087
Tel: (512) 239-0600
Fax: (512) 239-0606

James Aldredge, Staff Attorney
Texas Commission on Environmental Quality
Environmental Law Division, MC 173
P.O. Box 13087
Austin, TX 78711-3087
Tel: (512) 239-0600
Fax: (512) 239-0606

David Uba Akoma, Technical Staff
Texas Commission on Environmental Quality
Water Quality Division, MC 148
P.O. Box 13087
Austin, TX 78711-3087
Tel: (512) 239-1444
Fax: (512) 239-4430

FOR PUBLIC INTEREST COUNSEL:

Mr. Blas J. Coy, Jr., Attorney
Texas Commission on Environmental Quality
Public Interest Counsel, MC 103
P.O. Box 13087
Austin, TX 78711-3087
Tel: (512) 239-6363
Fax: (512) 239-6377

FOR OFFICE OF PUBLIC ASSISTANCE:

Ms. Bridget Bohac, Director
Texas Commission on Environmental Quality
Office of Public Assistance, MC 108
P.O. Box 13087
Austin, TX 78711-3087
Tel: (512) 239-4000
Fax: (512) 239-4007

FOR ALTERNATIVE DISPUTE RESOLUTION:

Mr. Kyle Lucas
Texas Commission on Environmental Quality
Alternative Dispute Resolution, MC 222
P.O. Box 13087
Austin, TX 78711-3087
Tel: (512) 239-4010
Fax: (512) 239-4015

FOR THE CHIEF CLERK:

Ms. LaDonna Castanuela
Texas Commission on Environmental Quality
Office of Chief Clerk, MC 105
P.O. Box 13087
Austin, TX 78711-3087
Tel: (512) 239-3300
Fax: (512) 239-3311

REQUESTORS:

Ron Atkins
105 Augusta Circle
Kerrville, TX 78028-6512

Moira Attwell
502 Riverhill Blvd.
Kerrville, TX 78028-6539

Wendy Barber
P.O. Box 294911
Kerrville, TX 78029

Wendy Barber
119 McCullough Ranch Road
Kerrville, TX 78028-1674

Roger B. Borgelt
401 W. 15th Street Ste. 850
Austin, TX 78701-1670

David Braden, III
115 Westminster Street
Kerrville, TX 78028-5541

Anne W. Brown
451 McCullough Road
Kerrville, TX 78028

Mary Jo Browning
600 Overhill Drive
Kerrville, TX 78028

Raymond L. Buck, Jr.
General Director
Upper Guadalupe River Authority
125 Lehmann Dr., Ste. 100
Kerrville, TX 78028-6059

Betty Bumgamer
100 Oak Ridge Road, Lot 44
Fredericksburg, TX 78624-8237

Darci Burchers
540 Camelot Drive
Kerrville, TX 78028

Barbara Burton
235 Guadalupe Street
Kerrville, TX 78028-5101

Susan Candy
659 Windy Ridge Road
Fredericksburg, TX 78624

Anthony S. Corbett
Freeman & Corbett LLP
8500 Bluffstone CV Ste. B104
Austin, TX 78759-7811

Chris Hughes
105 El Rancho Grande Road
Kerrville, TX 78028-7605

Elizabeth Ireland
214 Spanish Oak Lane
Kerrville, TX 78028

Deborah Jascur
1921 Summit Ridge Drive
Kerrville, TX 78028

John M. Jascur
1921 Summit Ridge Drive
Kerrville, TX 78028

Paula T. Karl
625 Rock Creek Loop
Kerrville, TX 78028

Steve Loudon
285 Indian Creek Loop
Kerrville, TX 78028

Marie R. McMillen
1621 Indian Creek Loop
Kerrville, TX 78028-1767

S. W. McMillen
1621 Indian Creek Loop
Kerrville, TX 78028-1767

Dennis McNamara
275 Estates Drive
Kerrville, TX 78028-8374

Nanette & Tom Newbern
515 Scenic Valley Road
Kerrville, TX 78028

Bonnie Gene Olafson
160 Turkey Run Circle
Kerrville, TX 78028-1671

Pia & Tommy Olafson
1308 Harper Road
Kerrville, TX 78028-2982

Tammy Patterson
P.O. Box 560023
Dallas, TX 75356

Joyce Pelto
127 Terrace Lane
Kerrville, TX 78028

Jean Reed
243 Indian Creek Loop
Kerrville, TX 78028

Angela Santagata
719 Jackson Road
Kerrville, TX 78028-4110

Sherry Secor
2028 Junction Highway
Kerrville, TX 78028

Randy Simmons
208 Timber Lane
Kerrville, TX 78028

Barsha Thibodeaux
1424 5th Street
Kerrville, TX 78028-3611

Arlene A. Wheaton
404 Deer Run Drive
Mountain Home, TX 78058-5110

Ann Wickham
706 Cardinal Drive
Kerrville, TX 78028

D. H. Wilson
100 North Crestline
Kerrville, TX 78028

Mary Ann Young
237 Old Oaks
Kerrville, TX 78028-4032

The Honorable Harvey Hilderbran
Texas House of Representatives
P. O. Box 2910
Austin, TX 78768-2910

TCEQ DOCKET NO. 2009-0085-MWD

APPLICATION BY HILL COUNTRY § **BEFORE THE TEXAS**
 §
CAMP FOR A NEW TPDES PERMIT § **COMMISSION ON**
 §
NO. WQ0014832-001 § **ENVIRONMENTAL QUALITY**

CITY OF KERRVILLE'S
REPLY TO RESPONSES TO ITS HEARING REQUEST

2009 APR 13 PM 12:29
CHIEF CLERKS OFFICE
TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

TO THE HONORABLE COMMISSIONERS:

COMES NOW the City of Kerrville (“City” or “Kerrville”) and files this Reply to Responses to its Hearing Request filed by Hill Country Camp (“Applicant”) and the Executive Director (“ED”) to the City’s hearing request on the application for TPDES Permit No. WQ0014832-001 (“Application”), and would respectfully show the Commission as follows.

I. INTRODUCTION

The City timely filed its hearing request with the Texas Commission on Environmental Quality (“TCEQ”) in which the City showed it was an affected person because: (1) the location of the proposed wastewater discharge is immediately upstream of the City’s current corporate boundaries (approximately 2.2 miles) and, following a planned annexation to be completed in January 2010, the Applicant’s property and discharge point will be within the City’s one mile extraterritorial jurisdiction; (2) the proposed discharge from the Applicant’s wastewater plant will ultimately flow into the Guadalupe River upstream of several City parks that are on the Guadalupe River, including Louise Hays Park, Lehmann Monroe Park, and Kerrville Schreiner Park; and (3) the City’s Parks, Recreation, and Open Space Master Plan recommends that Town Creek (a receiving stream for the proposed discharge) be incorporated into the City’s trail and

park system and that a community based park consisting of 16 – 75 acres be located near I-10 and State Road FM 783 (Harper Road), which is in close proximity to the discharge site. The City is concerned the proposed discharge will have an adverse affect upon the recreational opportunities within the above-mentioned City parks and in its ETJ.

The ED argues that, while the City has authority over and an interest in the issues relevant to the Application, the City is too far from the proposed discharge to be adversely affected. The Applicant argues that the City has no lawful regulatory authority over the Application and that, because the City’s wastewater discharge is directly into the Guadalupe River in amounts greater than what the Applicant is proposing, the City’s concerns are “difficult to comprehend.” These arguments do not withstand scrutiny.

II. AFFECTED PARTY STATUS

A. The City is not too far from the discharge to be affected.

The location of the discharge is projected to be inside the ETJ of the City in a year’s timeframe. Under Texas Local Government Code §§401.002, a home-rule city, such as Kerrville, may prohibit pollution and degradation of and may police a stream that may constitute a source of water supply for the municipality, and may provide for the protection of and may police any watershed. A city is authorized to exercise this power inside the city limits and the ETJ. TEX. WATER CODE ANN. § 401.002. So, while the discharge *point* is not within the City limits or ETJ today, it will be in the near future. Moreover, the City is concerned about the effect the discharge will have on the water bodies within its jurisdiction today. The opinion that it is unlikely the water bodies within Kerrville’s jurisdiction will be affected is not quantified (how unlikely is it?) and it is unsubstantiated by evidence. *See e.g. United Copper Indus., Inc. v. Grissom*, 17 S.W.3d 797, 803 (Tex. App.—Austin 2000, pet. dismiss’d) (holding that the affected

person standard “does not require parties to show that they will ultimately prevail on the merits; it simply requires that they show they will potentially suffer harm or have a justiciable interest that will be affected”). The City has a justiciable interest in protecting Town Creek and the Guadalupe River within its jurisdiction, which is potentially affected by this Application.

The fact that the City is an affected person is further supported by the ED’s referable issues. The ED proposes, among others, that the following issues be referred to the State Office of Administrative Hearings (“SOAH”):

- Issue 1: Whether the proposed discharge will be in compliance with the regulations that are intended to protect surface water quality;
- Issue 2: Whether the effluent limits contained in the draft permit are adequately protective of the receiving waters and their designated uses; and
- Issue 3: Whether the proposed discharge will adversely affect the recreational uses of Town Creek, the Guadalupe River, and Kerrville City Parks.

Each of these deal with and address the quality of the discharge and the effect it will have on the very water bodies that flow through the heart of the City – *i.e.* Town Creek and the Guadalupe River. Issue 3 specifically addresses whether the proposed discharge will adversely affect recreational uses in City parks. Yet, the ED argues that the City is not affected by the Application. It is nonsense and disingenuous to deny the City the right to participate in a hearing when the issues in the hearing are whether the discharge will adversely affect the natural and civic resources in the City – the Kerrville City Parks.

B. The City does have authority over or interest in the issues relevant to the Application.

The Applicant contends that the City has no regulatory authority under state law over the issues contemplated by the Application and therefore is not affected. The City does not rely on

or contend that it has regulatory authority over the Applicant such as that granted by Texas Water Code §§ 7.351, 26.171, and 26.173.¹ The City is affected because of the potential adverse affects the discharge has on the water quality of Town Creek and the Guadalupe River. These water bodies are focal points in many of the City's parks and are used recreationally by the citizens within the City and tourists visiting the City. Maintaining the water quality of Town Creek and the Guadalupe River is important to protect the public health, safety, and welfare of the citizens and the economy of the City. It is for these reasons the City has a justiciable interest in the Application and is an affected person.

C. The Applicant's supposition that the City's discharge is worse than that which will be discharged by the Applicant is irrelevant, misleading, and incorrect.

It is irrelevant to the City's affected person status whether or not the City has a discharge permit. Using this rationale as a basis to determine an "affected party" would mean that no permittee could ever participate in a contested case concerning another's discharge permit. With that said, the Applicant's portrayal of the City's discharge as somehow being less "superior" to that which is proposed by the Applicant is misleading and incorrect. First, unlike the Applicant's discharge which will flow through the heart of the City and its parks, the City's discharge is downstream of the City. Second, the City's permitted discharge limits are very stringent. The City's permit perimeters are: BOD - 5 ppm; TSS - 5 ppm; Total Phosphorus - 2 ppm; and NH₃-N- 1 ppm, and whenever the flow in the Guadalupe River is below 50 cfs, the NH₃-N is reduced to 0.5 ppm. These limits are much more stringent than the perimeters proposed for the Applicant. Moreover, the operations of the City's wastewater plant and the discharge of effluent are closely monitored, which the City fears will not be the case with the Applicant's discharge.

¹ It should be noted that for areas within the City limits and ETJ, the City does have authority to police a stream that is a source of water supply to the City and to protect the watersheds. See TEX. LOCAL GOV'T CODE ANN. § 401.003.

III. REFERABLE ISSUES

The ED and the Office of the Public Interest Council (“OPIC”) recommend referring essentially the same list of issues with a few exceptions. Both lists include all of the issues that the City raised in its hearing request and, thus, either list is acceptable to the City. However, on the issue of sludge disposal, the ED and OPIC took differing positions. How sludge is disposed is contained in the permit and, thus, relevant and material to a decision on the Application. The Commission should include OPIC’s Issue No. 9 in the issues referred to SOAH.

IV. DURATION OF THE HEARING

The ED and OPIC recommend that the maximum duration of the hearing be nine months. The Applicant recommends six months. While the City appreciates the Applicant’s desire to finalize its permit so that it will no longer have to haul its waste (assuming its permit is issued), it is unrealistic for these types of applications to be completed in a six-month timeframe. The City urges the Commission to adopt a nine-month maximum expected duration of the hearing.

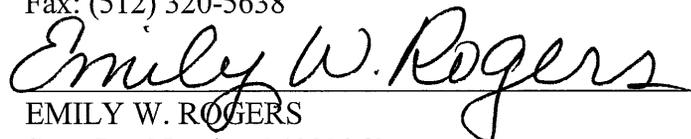
V. CONCLUSION

The City respectfully requests that the Commission grant its hearing request and refer to SOAH the issues it raised in its hearing request.

Respectfully submitted,

BICKERSTAFF HEATH DELGADO ACOSTA LLP
816 Congress Avenue, Suite 1700
Austin, TX 78701
Tel: (512) 472-8021
Fax: (512) 320-5638

By:



EMILY W. ROGERS
State Bar Number 24002863
ATTORNEYS FOR CITY OF KERRVILLE

CERTIFICATE OF SERVICE

I certify that on April 13, 2009, an original and seven copies of the City of Kerrville's Reply to Responses to its Hearing Request was filed with the Texas Commission on Environmental Quality's Office of the Chief Clerk, and a complete copy was transmitted by mail, facsimile, or hand-delivery to all persons on the attached mailing list.

Emily W. Rogers
EMILY W. ROGERS

TEXAS
COMMISSION
ON ENVIRONMENTAL
QUALITY
2009 APR 13 PM 12: 29
CHIEF CLERKS OFFICE

**MAILING LIST
HILL COUNTRY CAMP
DOCKET NO. 2009-0085-MWD; PERMIT NO. WQ0014832001**

FOR THE APPLICANT:

Don Nordin
Hill Country Camp
1319 Harper Road
Kerrville, TX 78028

Scott Shoemaker
The Terrill Firm, P.C.
810 W. 10th St.
Austin, TX 78701-2005

Shelly Young, PE
Waterengineers Inc.
17230 Huffmeister Rd.
Cypress, TX 77429-1643

FOR THE EXECUTIVE DIRECTOR:

Timothy Reidy, Staff Attorney
Texas Commission on Environmental Quality
Environmental Law Division, MC 173
P.O. Box 13087
Austin, TX 78711-3087
Tel: (512) 239-0600
Fax: (512) 239-0606

James Aldredge, Staff Attorney
Texas Commission on Environmental Quality
Environmental Law Division, MC 173
P.O. Box 13087
Austin, TX 78711-3087
Tel: (512) 239-0600
Fax: (512) 239-0606

David Uba Akoma, Technical Staff
Texas Commission on Environmental Quality
Water Quality Division, MC 148
P.O. Box 13087
Austin, TX 78711-3087
Tel: (512) 239-1444
Fax: (512) 239-4430

FOR PUBLIC INTEREST COUNSEL:

Mr. Blas J. Coy, Jr., Attorney
Texas Commission on Environmental Quality
Public Interest Counsel, MC 103
P.O. Box 13087
Austin, TX 78711-3087
Tel: (512) 239-6363
Fax: (512) 239-6377

FOR OFFICE OF PUBLIC ASSISTANCE:

Ms. Bridget Bohac, Director
Texas Commission on Environmental Quality
Office of Public Assistance, MC 108
P.O. Box 13087
Austin, TX 78711-3087
Tel: (512) 239-4000
Fax: (512) 239-4007

FOR ALTERNATIVE DISPUTE RESOLUTION:

Mr. Kyle Lucas
Texas Commission on Environmental Quality
Alternative Dispute Resolution, MC 222
P.O. Box 13087
Austin, TX 78711-3087
Tel: (512) 239-4010
Fax: (512) 239-4015

FOR THE CHIEF CLERK:

Ms. LaDonna Castanuela
Texas Commission on Environmental Quality
Office of Chief Clerk, MC 105
P.O. Box 13087
Austin, TX 78711-3087
Tel: (512) 239-3300
Fax: (512) 239-3311

REQUESTORS:

Ron Atkins
105 Augusta Circle
Kerrville, TX 78028-6512

Moira Attwell
502 Riverhill Blvd.
Kerrville, TX 78028-6539

Wendy Barber
P.O. Box 294911
Kerrville, TX 78029

Wendy Barber
119 McCullough Ranch Road
Kerrville, TX 78028-1674

Roger B. Borgelt
401 W. 15th Street Ste. 850
Austin, TX 78701-1670

David Braden, III
115 Westminster Street
Kerrville, TX 78028-5541

Anne W. Brown
451 McCullough Road
Kerrville, TX 78028

Mary Jo Browning
600 Overhill Drive
Kerrville, TX 78028

Raymond L. Buck, Jr.
General Director
Upper Guadalupe River Authority
125 Lehmann Dr., Ste. 100
Kerrville, TX 78028-6059

Betty Bumgamer
100 Oak Ridge Road, Lot 44
Fredericksburg, TX 78624-8237

Darci Burchers
540 Camelot Drive
Kerrville, TX 78028

Barbara Burton
235 Guadalupe Street
Kerrville, TX 78028-5101

Susan Candy
659 Windy Ridge Road
Fredericksburg, TX 78624

Anthony S. Corbett
Freeman & Corbett LLP
8500 Bluffstone CV Ste. B104
Austin, TX 78759-7811

Chris Hughes
105 El Rancho Grande Road
Kerrville, TX 78028-7605

Elizabeth Ireland
214 Spanish Oak Lane
Kerrville, TX 78028

Deborah Jascur
1921 Summit Ridge Drive
Kerrville, TX 78028

John M. Jascur
1921 Summit Ridge Drive
Kerrville, TX 78028

Paula T. Karl
625 Rock Creek Loop
Kerrville, TX 78028

Steve Loudon
285 Indian Creek Loop
Kerrville, TX 78028

Marie R. McMillen
1621 Indian Creek Loop
Kerrville, TX 78028-1767

S. W. McMillen
1621 Indian Creek Loop
Kerrville, TX 78028-1767

Dennis McNamara
275 Estates Drive
Kerrville, TX 78028-8374

Nanette & Tom Newbern
515 Scenic Valley Road
Kerrville, TX 78028

Bonnie Gene Olafson
160 Turkey Run Circle
Kerrville, TX 78028-1671

Pia & Tommy Olafson
1308 Harper Road
Kerrville, TX 78028-2982

Tammy Patterson
P.O. Box 560023
Dallas, TX 75356

Joyce Pelto
127 Terrace Lane
Kerrville, TX 78028

Jean Reed
243 Indian Creek Loop
Kerrville, TX 78028

Angela Santagata
719 Jackson Road
Kerrville, TX 78028-4110

Sherry Secor
2028 Junction Highway
Kerrville, TX 78028

Randy Simmons
208 Timber Lane
Kerrville, TX 78028

Barsha Thibodeaux
1424 ^{5th} Street
Kerrville, TX 78028-3611

Arlene A. Wheaton
404 Deer Run Drive
Mountain Home, TX 78058-5110

Ann Wickham
706 Cardinal Drive
Kerrville, TX 78028

D. H. Wilson
100 North Crestline
Kerrville, TX 78028

Mary Ann Young
237 Old Oaks
Kerrville, TX 78028-4032

The Honorable Harvey Hilderbran
Texas House of Representatives
P. O. Box 2910
Austin, TX 78768-2910