

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

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

September 16, 2009

TO: Persons on the attached mailing list.

RE: Fannett Sewer Service and Water Supply Corporation
TPDES Permit No. WQ0014867001

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 Revised 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 Jefferson County Precinct 4 Justice of the Peace Office, 19217 Farm-to-Market Road 365, Beaumont, 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 Revised 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 **received** by the Chief Clerk's office no later than **30 calendar days** after the date of this letter. You may submit your request electronically at <http://www.tceq.state.tx.us/about/comments.html> or by mail to the following address:

LaDonna Castañuela, Chief Clerk
TCEQ, MC-105
P.O. Box 13087
Austin, Texas 78711-3087

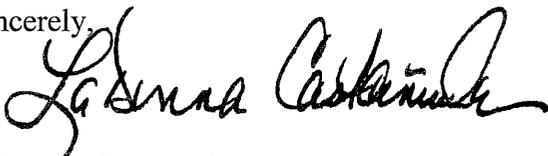
Processing of Requests.

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
Fannett Sewer Service and Water Supply Corporation
TPDES Permit No. WQ0014867001

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PROTESTANTS/INTERESTED PERSONS:

See attached list.

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14934 BOONDOCKS RD
BEAUMONT TX 77705-7492

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5756 BURRELL LOOP
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STINES, TONY
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PROPOSED TPDES PERMIT NO. WQ0014867001

2009 SEP 11 PM 2:48

APPLICATION BY
FANNETT SEWER SERVICE AND
WATER SUPPLY CORPORATION

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§
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BEFORE THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY
CHIEF CLERKS OFFICE

EXECUTIVE DIRECTOR'S REVISED 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 Fannett Sewer Service and Water Supply Corporation's (Applicant) application for a new Texas Pollutant Discharge Elimination System (TPDES) permit no. WQ0014867001, and the ED's preliminary decision. As required by Title 30 of the Texas Administrative Code (30 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 timely filed comment letters and comments at the public meeting from the following persons:

L.J. Bergeron, Chris Betar, Lloyd Betar, Barbara Blanchard, Chad Blanchard, Roland Blanchard, Earl W. Callahan, Janette Callahan, John Callahan, Debbie Colston, Hope Colston, Ronnie Colston, Lloyd Dawson, James O. Derouen, Christine Edmonds, John L. Floyd, Joyce Sewell Hankamer, Sharon Harley, Rose Marie Hester, Jackie Jordon, Jerry J. Jordon, G.C. Kessler, Anita Kiker, Glenn Kiker, Homer G. Kiker, Lindsey Kiker, Leonard King, Dorothy Kubicek, Joe Kubicek, Elaine Lavergne, Susan LeBlanc, Roy Leger, Bert Manning, Chris Matak, Beth McGown, James McGown, Candy Melancon, Cathy Pennell, Charlotte Rainey, Charles Reneau, Mr. and Mrs. Bobby Thornton, Ann Tully, Joey Villenez, Eric Viator, Missy Viator, James V. Walsh, Jim Wingate, Darwin Wood, and Wayne Wright.

A comment letter expressing interest in the permit application was also submitted by The Honorable Ted Poe, U.S. House of Representatives, 2nd District, Texas. This Response addresses all such timely public comments received, whether or not withdrawn.

BACKGROUND

Description of Facility

The Applicant has applied for a new permit to authorize the discharge of treated domestic wastewater at a daily average flow not to exceed 120,000 gallons per day. It is planned that the facility will be an activated sludge process plant operated in the extended aeration mode. Treatment units include a lift station, bar screens, aeration basins, final clarifiers, a roll-off sludge dewatering box, and a chlorine contact chamber. The draft permit authorizes the disposal of sludge at a TCEQ authorized land application site or co-disposal landfill. The facility has not been constructed.

The effluent limitations in the draft permit, based on a 30-day average, are 10 mg/l 5-day carbonaceous biochemical oxygen demand (CBOD₅), 15 mg/l total suspended solids (TSS), 3 mg/l ammonia nitrogen (NH₃-N), and 4.0 mg/l minimum dissolved oxygen. The effluent must contain a chlorine residual of at least 1.0 mg/l and must not exceed a chlorine residual of 4.0 mg/l after a detention time of at least 20 minutes based on peak flow.

The treated effluent will be discharged via pipe to Burrell Gully, then to North Fork of Taylor Bayou, then to Taylor Bayou above tidal in Segment No. 0701 of the Neches-Trinity Coastal Basin. The unclassified receiving water uses are limited aquatic life use for Burrell Gully. The designated uses for Segment No. 0701 are intermediate aquatic life uses and contact recreation.

The facility will be located 6,200 feet south of the intersection of Farm-to-Market Road 365 and Gaulding Road in Jefferson County, Texas.

Procedural Background

TCEQ received the permit application on December 11, 2007, and declared it administratively complete on January 7, 2008. The Notice of Application and Intent to Obtain Water Quality Permit (NORI) was published on January 13, 2008 in the *Beaumont Enterprise*. Due to significant public interest, TCEQ originally scheduled a public meeting for September 30, 2008, but re-scheduled the meeting in the aftermath of Hurricane Ike. A combined Notice of Application and Preliminary Decision (NAPD) and Notice of Public Meeting were published on October 20, 2008 in the *Beaumont Enterprise*. The rescheduled public meeting was held on December 11, 2008 and the original public comment period ended at the close of the meeting. The original Response to Comment (RTC) was filed on February 5, 2009.

The contested case hearing requests and requests for reconsideration on this permit application were set on the May 20, 2009 commission agenda. Prior to the agenda date, it was determined that the permit file in the Office of the Chief Clerk did not contain accurate maps showing the proposed location of the facility. Therefore, the ED filed a Motion to Remand on May 15, 2009. The permit file was appropriately updated and the Applicant published a combined NORI and NAPD on July 24, 2009 in the *Beaumont Enterprise*. The new comment period ended on August 24, 2009. One additional comment letter was received during the new comment letter from Dorothy Kubicek and the issue raised and response is reflected in RTC #13.

This application is subject to the procedural requirements adopted pursuant to House Bill 801, 76th Legislature, 1999.

Access to Rules, Laws and Records

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. Other information can be obtained on the web that following addresses:

Secretary of State website for all administrative rules: www.sos.state.tx.us
TCEQ rules in Title 30 of the Texas Administrative Code: www.sos.state.tx.us/tac/
(select "TAC Viewer" on the right, then "Title 30 Environmental Quality")
Texas statutes: www.capitol.state.tx.us/statutes/statutes.html
TCEQ website: www.tceq.state.tx.us (for downloadable rules in WordPerfect or Adobe
PDF formats, select "Rules, Policy, & Legislation," then "Rules and
Rulemaking," then "Download TCEQ Rules")
Federal rules in Title 40 of the Code of Federal Regulations: [www.epa.gov/epahome/
cfr40.htm](http://www.epa.gov/epahome/cfr40.htm)
Federal environmental laws: www.epa.gov/epahome/laws.htm

Commission records for this facility are available for viewing and copying. Those records are located at TCEQ's main office in Austin, 12100 Park 35 Circle, Building F, 1st Floor (Office of Chief Clerk, for the current application until final action is taken) and at TCEQ's Region 10 Office at 3870 Eastex Freeway, Beaumont, TX 77703-1830. The application for this facility is available for viewing and copying at the Jefferson County Precinct 4 Justice of the Peace Office, 19217 Farm-to-Market Road 365, Beaumont, Texas, since publication of the NORI. The permit application, draft permit, statement of basis/technical summary, and ED's preliminary decision have been available for viewing and copying at the same location since publication of the combined NAPD and Notice of Public Meeting.

COMMENTS AND RESPONSES

COMMENT 1:

There were comments that expressed concern that the treated wastewater discharge will impact water quality and cause health problems.

RESPONSE 1:

As part of the permit application process, the ED determines the uses of the receiving water and sets effluent limits that are protective of those uses. The draft permit includes effluent limitations (see page 2 of this document) and monitoring requirements to ensure that the proposed effluent limits will not violate the Texas Surface Water Quality Standards for the protection of surface water, groundwater, aquatic and terrestrial life, and human health. It also includes additional requirements for the wastewater treatment system to ensure the protection of water quality and human health; and for the disposal of domestic sludge generated from the wastewater treatment facility. In this case, the unclassified receiving water uses are limited aquatic life use for Burrell Gully. The designated uses for Segment No. 0701 are intermediate aquatic life uses and contact recreation.

In accordance with 30 TAC § 307.5 and 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 preliminarily determined that existing water quality uses should not be impaired by this permit action. Also, this review preliminarily

determined that no water bodies with exceptional, high, or intermediate aquatic life uses are present within the stream reach that was assessed for purposes of this permit action. Therefore, a Tier 2 degradation determination was not required.

No significant degradation of water quality is expected in water bodies with exceptional, high, or intermediate aquatic life uses downstream, and existing uses should be maintained and protected as long as the Applicant operates and maintains the facility according to TCEQ rules and the requirements of the draft permit. The preliminary determination can be re-examined and may be modified if new information is received.

COMMENT 2:

There were comments that expressed concern that the treated wastewater discharge will impact water wells.

RESPONSE 2:

According to 30 TAC § 309.13(a), a wastewater treatment plant unit may not be located closer than 500 feet from a public water well or 250 feet from a private water well. These separation distances apply to any facility used for the storage, processing, or disposal of domestic wastewater. During the permitting process, the ED conducted a detailed review and found no public or private water wells within the radius specified in the rule.

COMMENT 3:

There were comments that expressed concern about potential odor problems from the proposed treatment facility.

RESPONSE 3:

30 TAC § 309.13(e) requires that the Applicant meet one of three options to abate and control nuisance odor. Those options are:

- 1) Lagoons with zones of anaerobic activity (e.g., facultative lagoons, un-aerated equalization basins, etc.) may not be located closer than 500 feet to the nearest property line. All other wastewater treatment plant units may not be located closer than 150 feet to the nearest property line. The Applicant must hold legal title or have other sufficient property interest to a contiguous tract of land necessary to meet the distance requirements specified in this paragraph during the time effluent is disposed by irrigation;
- 2) The Applicant must submit a nuisance odor prevention request for approval by the ED.
- 3) The Applicant must submit sufficient evidence of legal restrictions prohibiting residential structures within the part of the buffer zone not owned by the Applicant.

According to the permit application, the Applicant is meeting the buffer zone requirements by ownership. If nearby residents experience nuisance odor conditions or any other suspected incidents of noncompliance with the permit or TCEQ rules they may be reported to TCEQ by calling toll-free 1-888-777-3186 or by calling the TCEQ Region 10 Office in Beaumont at (409) 898-3838. Citizen complaints may also be filed on-line at <http://www.tnrcc.state.tx.us/cgi-bin/enforcement/complaints>. If the Applicant fails to comply with all requirements of the permit, the facility is subject to administrative enforcement action, fines, and penalties.

In addition, the permit does not limit the ability to seek legal remedies against an applicant regarding any potential trespass, nuisance, or other causes of action in response to activities that may result in injury to human health or property or that interfere with the normal use and enjoyment of property.

COMMENT 4:

There were comments about the potential damage to wetlands by the discharge from the proposed facility.

RESPONSE 4:

According to 30 TAC § 309.13(b), a wastewater treatment plant unit cannot be located in wetlands. However, this prohibition does not apply to manmade constructed wetlands. The United States Army Corps of Engineers (Corp of Engineers) 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 Corp of Engineers permit is required for the discharge of dredged or fill material into waters of the U.S., including wetlands. It is the responsibility of the Applicant to obtain all necessary authorizations, including a Federal Clean Water Act Chapter 404 Dredge and Fill permit. The Applicant has indicated that they have submitted a 404 permit application (pending permit SWG-2008-01256) to the Corp of Engineers, but this process is completely separate and independent of TCEQ's wastewater permitting process.

COMMENT 5:

There were comments that the Applicant should consider a different outfall location, instead of discharging to Burrell Gully.

RESPONSE 5:

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 than what is proposed by an applicant if the proposed facility complies with the applicable rules and statutes. The ED evaluates the outfalls in the locations proposed by an applicant and determines what effluent limitations are appropriate and whether water quality standards will be maintained. If the Applicant were to request changing the discharge location,

the ED would review the new proposal using the same standards as used to evaluate the proposed outfall location.

COMMENT 6:

There were comments about the discharge contributing to flooding conditions in the area.

RESPONSE 6:

TCEQ does not address flooding issues in the wastewater permitting process, unless there is a potential impact to water quality. 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.

The permit application indicates the facility is located above the 100-year flood plain. In addition, the maximum proposed flow of 120,000 gpd, assuming a uniform discharge over 24-hours, is equal to a flow of 0.19 cubic feet per second. Less than one cubic foot per second is not a volume of water that is expected to cause any significant increase in the water flow in the gully.

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

COMMENT 7:

There were comments that the permit application process was executed in a secretive and underhanded manner; and the public was not properly notified.

RESPONSE 7:

TCEQ rules require an applicant to place a copy of the administratively complete application in a public place for review and copying by the public after publication of their NORI. On a Public Notice Verification Form dated January 16, 2008, the Applicant verified that a copy of the complete water quality application, and any revisions, were available for review and copying at the Jefferson County Precinct 4 Justice of the Peace Office, 19217 Farm-to-Market Road 365, Beaumont, Texas for the duration of the public comment period.

On a Public Notice Verification Form dated October 30, 2008, the Applicant verified that a copy of the complete water quality application, draft permit, and any revisions were available for review and copying at the Jefferson County Precinct 4 Justice of the Peace Office, 19217 Farm-to-Market Road 365, Beaumont, Texas, from the first day after newspaper publication of the NAPD.

The water quality application, draft permit, and any revisions must remain in the designated public place until either the TCEQ acts on the application or the application is referred to the State Office of Administrative Hearings (SOAH) for a contested case hearing.

COMMENT 8:

There were comments that the facility would be designed by the consulting firm Schaumberg and Polk, Inc. and that treatment facilities designed by this firm were known to suffer from noncompliance. Therefore, there were concerns that the proposed wastewater treatment plant would experience similar problems.

RESPONSE 8:

It is not clear from the information provided, how the facilities designed by Schaumberg and Polk, Inc. have failed to meet the water quality standards. However, the draft permit requires that prior to construction of the treatment facilities, the Applicant must submit to the TCEQ Wastewater Permitting Section (MC 148) its plans and specifications for the facility in accordance with the requirements in 30 TAC § 217.6. The plans and specifications are not required to be submitted to TCEQ prior to the permit being issued. *See* 30 TAC § 217.6(a). The Applicant must clearly show how the treatment system will meet the final permitted effluent limitations required on Page 2 of the permit.

Additionally, the Applicant is required to take certain steps to minimize the possibility of an accidental discharge of untreated wastewater. For example, the Applicant must maintain adequate safeguards to prevent the discharge of untreated or inadequately treated wastes during electrical power failures by means of alternate power sources, standby generators, or retention of inadequately treated wastewater.

The Applicant is required to report any unauthorized discharge to TCEQ within 24 hours. If the Applicant fails to report the unauthorized discharge or bypass to TCEQ within the prescribed time period, they are subject to enforcement action. TCEQ conducts periodic inspections of wastewater facilities and also conducts investigations based on complaints received from the public. To report complaints about the facility, please contact the Beaumont Regional Office at (409) 898-3838, or call the 24-hour toll-free Environmental Complaints Hotline at 1-888-777-3186.

Citizen complaints may also be filed on-line at www.tceq.state.tx.us/compliance/complaints/index.html. The TCEQ investigates all complaints received. If the facility is found to be out of compliance with the terms and conditions of its permit, it will be subject to investigation and possible enforcement action.

COMMENT 9:

There were comments asking whether the Applicant could commence constructing the wastewater treatment facility before the proposed permit is issued.

RESPONSE 9:

The proposed draft permit does not authorize the construction of wastewater treatment facility before the proposed permit is issued. Texas Water Code § 26.027(c) specifically prohibits commencing construction of a treatment facility until the TCEQ has issued a permit to authorize the discharge of waste from the facility, unless TCEQ has authorized a facility to begin construction. To date, the Applicant has not made or been granted any authorization by TCEQ to begin construction before being issued a permit. Any actual construction of treatment facilities at the proposed location would be a violation of the Texas Water Code and the Applicant would be subject to TCEQ enforcement action.

COMMENT 10:

There were comments that the proposed site is landlocked and there were questions regarding how the Applicant plans to access the facility during all types of weather conditions. There was also a comment that there was a discrepancy in the TCEQ Core Data Form, page 2 of 2, paragraph 35. It was noted that the application states that there is a limestone road to the proposed facility, but there is, in fact, not a road and, in fact, the facility is landlocked and cannot be reached without building a bridge across Burrell Gulley.

RESPONSE 10:

30 TAC § 217.328(d) requires a wastewater treatment facility must have at least one all-weather access road with the driving surface situated above the 100-year flood plain. It is the responsibility of the Applicant to find ways to comply with this rule. However, the Applicant is not required to show compliance with this rule prior to being issued a permit, but must demonstrate compliance prior to the actual start-up and use of the proposed facility. Additionally, it is the responsibility of the Applicant, to acquire all necessary property rights, including access rights, in order to make use of a wastewater discharge permit.

COMMENT 11:

There was a comment that there was a discrepancy in the Domestic Technical Report page 12 of 39, paragraph 4.b. relating to flooding of a drinking water well less than ¼ mile from the proposed site.

RESPONSE 11:

Item 4.b. of the Domestic Technical Report 2.0 refers to the description of the receiving waters downstream of the proposed discharge. This permit application was reviewed by the ED staff and no discrepancy in the Domestic Technical Report was found.

COMMENT 12:

There was a comment that the physical description of the location of the facility in the permit application was incorrect and that the Applicant intended to locate the facility in a different spot.

RESPONSE 12:

Item 5.b. on page 6 of 39 of the Domestic Administrative Report states that the facility is proposed to be located 5,890 feet south of the intersection of Highway 365 and Gualding Road in Jefferson County, Texas. The ED did not find any information in the permit application showing that the Applicant intends to locate the facility in a different location.

COMMENT 13:

There was a comment that the Applicant has not obtained the rights to build a road to access the proposed facility in the location indicated in the permit application. The commentor noted that the proposed road would cross their property and that no authority to build such a road has been obtained from the property owner.

RESPONSE 13:

On January 29, 2009, TCEQ received a revised description of the physical location of the facility. The revised description of the physical location of the facility indicates the following access information:

Temporary access: E on Highway 365 from Interstate 10, turn right after 2.77 miles at limestone road immediately south of Gualding Road; continue 1.25 miles south on limestone road to facility site.

Permanent access: E on Highway 365 from Interstate 10, turn right after 1.16 miles into Hwy 124; continue on Hwy 124 for 0.12 miles before turning left on Burrell- Wingate Road; continue on Burrell- Wingate Road 2.15 miles before turning left on a proposed access road; continue on a proposed access road for 0.60 miles to the facility site.

However, if this permit is issued, it does not grant the Applicant the right to use private or public property to access their wastewater treatment plant site. The permit does not authorize any invasion of personal rights or any violation of federal, state, or local laws or regulations. It is the responsibility of the Applicant to acquire all property rights necessary to use and access the wastewater treatment plant site. If the Applicant is unable to legally obtain those rights, then the Applicant will be unable to make use of this permit as issued.

COMMENT 14:

There were comments asking what would happen if electricity went out for several days at the facility. They ask if the system were inoperable would sewer start backing up into homes.

RESPONSE 14:

The draft permit requires that the Applicant maintain adequate safeguards to prevent the discharge of untreated or inadequately treated wastes during electrical power failures by means of alternate power sources, standby generators, or retention of inadequately treated wastewater.

COMMENT 15:

There were comments asking who is going to be operating the facility to keep it properly maintained and functioning.

RESPONSE 15:

TCEQ 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, Chapter 30. This facility must be operated by a chief operator holding a Category C license or higher. The facility must be operated a minimum of five days per week by the operator and they must be available by telephone or pager seven days per week.

COMMENT 16:

There were also comments related to:

The proposed facilities effect on property values; quality of life issues; who will pay costs associated with the sewer services and how much will service cost; whether there will be grant money available to homeowners; whether persons can be forced to use the service provided by the Applicant; eminent domain (condemnation) issues for the proposed facility; the quantity of electricity that will be used by the facility; the ownership of equipment at the proposed facility; potential traffic issues; what happens if the company gets into a financial trouble; the Applicant's authority to enter land; and whether the property had been acquired where the plant is proposed to be located.

RESPONSE 16:

Although the legislature has given the TCEQ the responsibility to protect water quality, TCEQ does not address these types of issues when considering whether to issue a wastewater discharge permit. 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, eminent domain, utility service agreements, and traffic 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 site of the planned facility and the discharge route.

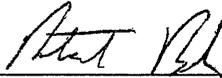
Also, the draft permit does not limit the ability of nearby landowners to use common law remedies for trespass, nuisance, or other causes of action in response to activities that may or actually do result in injury or adverse effects on human health or welfare, animal life, vegetation, or property, or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

Respectfully submitted,

Texas Commission on Environmental Quality

Mark R. Vickery, P.G.
Executive Director

Robert Martinez, Director
Environmental Law Division

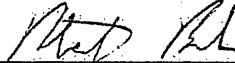
By 
Robert D. Brush, Staff Attorney

Environmental Law Division
State Bar No. 00788772

Representing the EXECUTIVE DIRECTOR of
the Texas Commission on Environmental
Quality

CERTIFICATE OF SERVICE

I certify that on September 11, 2009 the "Executive Director's Revised Response to Public Comment" for Permit No.WQ0014867001 was filed with the Texas Commission on Environmental Quality's Office of Chief Clerk.



Robert D. Brush, Staff Attorney
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State Bar No. 00788772

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