

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

February 23, 2009

TO: Persons on the attached mailing list.

RE: Northwest Harris County Municipal Utility District No. 19
TPDES Permit No. WQ0014908002

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 Harris County Public Library - Tomball Branch, 30555 Tomball Parkway, Tomball, 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 **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/ms

Enclosures

MAILING LIST
for
Northwest Harris County Municipal Utility District No. 19
TPDES Permit No. WQ0014908002

FOR THE APPLICANT:

Jason L. Johnson, P.E.
Northwest Harris County MUD No. 19
c/o R. G. Miller Engineers, Inc.
12121 Wickchester Lane, Suite 200
Houston, Texas 77079

Ron Young
Young & Brooks
1415 Louisiana Street, Fifth Floor
Houston, Texas 77002

PROTESTANTS/INTERESTED PERSONS:

Shaun Phillip Lopez
6626 Radley Drive
Spring, Texas 77379

FOR THE EXECUTIVE DIRECTOR
via electronic mail:

James Aldredge, Staff Attorney
Texas Commission on Environmental Quality
Environmental Law Division MC-173
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Austin, Texas 78711-3087

David Akoma, Technical Staff
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FOR OFFICE OF PUBLIC ASSISTANCE
via electronic mail:

Bridget Bohac, Director
Texas Commission on Environmental Quality
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FOR PUBLIC INTEREST COUNSEL
via electronic mail:

Blas J. Coy, Jr., Attorney
Texas Commission on Environmental Quality
Public Interest Counsel MC-103
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FOR THE CHIEF CLERK
via electronic mail:

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

Proposed New TPDES Permit No. WQ0014908002

2009 FEB 19 PM 4:48

Application by	§	Before the	CHIEF CLERKS OFFICE
NORTHWEST HARRIS COUNTY	§		
MUNICIPAL UTILITY DISTRICT	§	TEXAS COMMISSION ON	
NO. 19	§		
for TPDES Permit No. 14908-002	§	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 application by Northwest Harris County Municipal Utility District No. 19 (Applicant) for new Texas Pollutant Discharge Elimination System (TPDES) Permit Number 14908-002 and on the Executive Director's preliminary decision on the application. As required by Title 30 of the Texas Administrative Code, 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 Chief Clerk timely received a comment letter from **Shaun Phillip Lopez**. This Response addresses all comments received, whether or not withdrawn. If you need more information about this permit application or the wastewater permitting process, please call the TCEQ Office of Public Assistance at 1-800-687-4040. General information about the TCEQ can be found at our website at www.tceq.state.tx.us.

BACKGROUND

Description of Facility

Northwest Harris County Municipal Utility District No. 19 has applied to the TCEQ for a new TPDES permit that would authorize the Applicant to discharge treated domestic wastewater at a daily average flow not to exceed 250,000 gallons per day. The facility was previously permitted under TPDES Permit No. WQ0012153001, which expired March 1, 2008. The facility is located at 25714 Steeple Canyon Road, Spring, Harris County, Texas. The facility serves the Augusta Pines and Coventry Subdivisions within Northwest Harris County Municipal Utility District No. 19.

The treated effluent is discharged to Harris County Flood Control District (HCFCD) ditch M104-00-00; thence to Willow Creek; thence to Spring Creek in Segment No. 1008 of the San Jacinto River Basin. The unclassified receiving water uses are no significant aquatic life uses for HCFCD ditch M104-00-00 and high aquatic life uses for Willow Creek. The designated uses for Segment No. 1008 are high aquatic life uses, public water supply and contact recreation.

In accordance with §307.5 and the TCEQ implementation procedures (January 2003) for the Texas Surface Water Quality Standards, an antidegradation review of the receiving waters was performed. A Tier 1 antidegradation review has preliminarily determined that existing water quality uses will not be impaired by this permit action. Numerical and narrative criteria to protect existing uses will be maintained. A Tier 2 review has preliminarily determined that no significant degradation of water quality is expected in Willow Creek, which has been identified as having a high aquatic life use. 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 application was received on June 6, 2008, and declared administratively complete on July 23, 2008. The Notice of Receipt and Intent to Obtain a Water Quality Permit (NORI) was published on August 13, 2008 in the *Houston Chronicle* in English and on August 13, 2008, in the *La Voz De Houston* in Spanish. The TCEQ Executive Director completed the technical review of the application on September 16, 2008, and prepared a draft permit. Notice of Application and Preliminary Decision for TPDES Permit for Municipal Wastewater (NAPD) was published on November 19, 2008 in the *Houston Chronicle* in English and November 19, 2008, in the *La Voz De Houston* in Spanish. 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).

Access to Rules, Laws and Records

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," then "Current TCEQ Rules," then "Download TCEQ Rules")
Federal rules in Title 40 of the Code of Federal Regulations: 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 and are located at TCEQ's main office in Austin, 12100 Park 35 Circle, Building F, 1st Floor (Office of Chief Clerk). The application for this facility has been available for viewing and copying at the Harris County Public Library – Tomball Branch, 30555 Tomball Parkway, Tomball, Texas since publication of the NORI and the application draft permit, statement of basis/technical summary, and Executive Director's preliminary decision have been available for viewing and copying at the same location since publication of the NAPD.

COMMENTS and RESPONSES

COMMENT 1

Shaun Phillip Lopez requested a contested case hearing in protest of the proposed permit application to authorize the discharge of treated domestic wastewater at a daily average flow not to exceed 250,000 gallons per day. Included in his request are comments alleging evasive conduct by the applicant and TCEQ regarding the public notification process; and more importantly, he alleges collaboration with intent to cause pollution with the proposed discharge permit.

RESPONSE 1

The applicant published all the notices as required by TCEQ in both English and Spanish newspapers. All listed landowners were duly notified accordingly. The permit application is requesting a continuation of the permitted flow in the expired permit and therefore, does not constitute additional loading to the receiving stream. There was no indication of attempt to withhold information from landowners in the area during the public notification process via the *Houston Chronicle* publications in English and *La Voz De Houston* in Spanish.

The Texas Water Code (TWC), Section 26.027, authorizes the TCEQ to issue permits for discharges into water in the state. The permitting process is also 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 evaluates applications for wastewater treatment plants based on the information provided in the application, and either issues the permit or denies the application, if a proposed discharge would not meet the Texas Surface Water Quality Standards.

Pursuant to 30 TAC Section 307.6(b)(3), water in the state must 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. Water in the state with sustainable fisheries and/or public drinking water supply uses may not exceed applicable human health toxic criteria. 30 TAC Section 307.6(b)(4) requires water in the state to 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. Since the proposed discharge is less than one million gallons per day, and the Applicant is not conducting manufacturing, commercial, mining, or silvicultural activities, the ED does not anticipate the discharge of toxic effluent from the proposed discharge.

After the antidegradation review of the receiving waters, the ED has preliminarily determined that existing water quality uses will not be impaired by the proposed discharge and that no significant degradation of water quality is expected in Willow Creek, which have been identified as having high aquatic life uses.

COMMENT 2

Mr. Lopez states that he is adversely affected by the fact that the facility is located less than three miles from his residence, and that his residence is located 100 yards from the discharge route.

RESPONSE 2

30 TAC Section 309.13(e) requires that the Applicant meet one of three options to abate and control nuisance odor. The buffer zone distance requirement of, either 150 or 500 feet from the treatment units can be met by: (1) owning the buffer zone area, (2) obtaining restrictive easements from adjacent property owners, or (3) developing an approved nuisance odor prevention plan. According to Other Requirements No. 4 of the draft permit, the Applicant shall submit sufficient evidence of legal restrictions prohibiting residential structures within the part of the buffer zone not owned by the permittee according to 30 TAC Section 309.13(a) through (d). There are no rules concerning the proximity of residences to discharge routes.

Acceptance of the permit by the applicant to whom it is issued constitutes acknowledgement and agreement that the applicant will comply with all the terms and conditions embodied in the permit, and the rules and other orders of the Commission. In accordance with 30 TAC Section 305.125(9), any noncompliance that may endanger human health or safety, or the environment must be reported by the permittee to the TCEQ. This information must be reported orally or by facsimile transmission to the appropriate Regional Office within 24 hours of becoming aware of the noncompliance. A written submission of such information must also be provided by the permittee to the appropriate Regional Office and the Enforcement Division within five working days of becoming aware of the noncompliance. The TCEQ conducts periodic inspections of wastewater treatment facilities and also conducts investigations based on complaints received from the public. If a permit is issued and the facility is constructed, to report complaints about the facility please contact the TCEQ at 1-888-777-3186 to reach the appropriate TCEQ Regional Office or by e-mail at cmplaint@TCEQ.state.tx.us. Citizen complaints may also be filed on-line at <http://www.tceq.state.tx.us/compliance/complaints>. Noncompliance with TCEQ rules or the permit may result in an enforcement action.

The issuance of this permit does not grant the permittee the right to use private or public property to convey wastewater along the discharge route described therein. The issuance of this 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 permittee to acquire any property rights that may be necessary to use the discharge route. The issuance of this permit does not limit the ability of nearby landowners to use common law remedies to seek redress for any interference with the use and enjoyment of their property.

COMMENT 3

Mr. Lopez claims that the statement in the Notice of Application and Preliminary Decision

(NAPD), paragraph 7, which requires a specific description of how he is adversely affected by the facility in a way not common to the general public, is not relevant. He considers himself adversely affected as a resident within a close distance to the discharge route. He reiterates his request for a contested case hearing irrespective of public interest or technical review of the permit application.

RESPONSE 3

The Commission will consider Mr. Lopez's request for a contested case hearing at a later date in accordance with 30 TAC, Chapter 55. All relevant factors shall be considered in the evaluation of a person's request for a hearing as an affected person, including, but not limited to: whether the interest claimed is one protected by the law under which the application will be considered; distance restrictions or other limitations imposed by law on the affected interest; whether a reasonable relationship exists between the interest claimed and the activity regulated; likely impact of the regulated activity on the health, safety, and use of property of the person, and other applicable conditions.

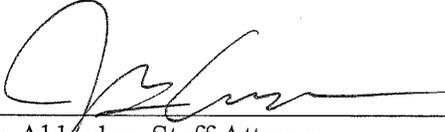
No changes to the draft permit have been made.

Respectfully submitted,

Texas Commission on Environmental Quality

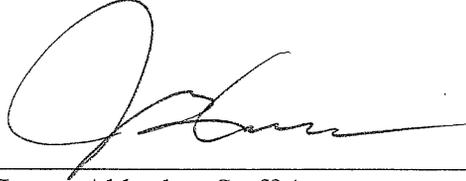
Mark R. Vickery, P.G.
Executive Director

Robert Martinez, Director
Environmental Law Division

By 
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Environmental Law Division
State Bar No. 24058514
P.O. Box 13087, MC 173
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512-239-2496
Representing the Executive Director of the Texas
Commission on Environmental Quality

CERTIFICATE OF SERVICE

I certify that on February 19, 2009, the "Executive Director's Response to Public Comment" for Permit No. 14908-002 was filed with the Texas Commission on Environmental Quality's Office of the Chief Clerk.



James Aldredge, Staff Attorney
Environmental Law Division
State Bar No. 24058514

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