

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

March 18, 2009

TO: Persons on the attached mailing list.

RE: City of Gatesville
TPDES Permit No. WQ0004464000

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 Gatesville City Hall, 110 North 8th Street, Gatesville, 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

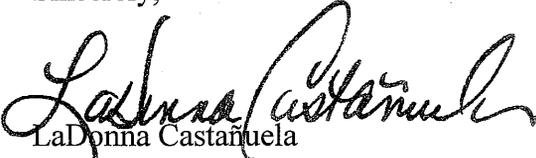
Processing of Requests.

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
City of Gatesville
TPDES Permit No. WQ0004464000

FOR THE APPLICANT:

Roger Mumby
City of Gatesville
110 North 8th Street
Gatesville, Texas 76528

Gilbert Gregory
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Temple, Texas 76502

PROTESTANTS/INTERESTED PERSONS:

Elizabeth Haley, Director of Human Resources
Bowhead Logistics Support
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Huntsville, Alabama 35805

Debra Sloane, EH&S Engineer
Laerdal Medical Corp.
P.O. Box 38
Gatesville, Texas 76528

Don Strieber
840 Chitwood Road
Gatesville, Texas 76528

FOR THE EXECUTIVE DIRECTOR
via electronic mail:

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

Kellie Crouch-Elliot, Technical Staff
Texas Commission on Environmental Quality
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FOR OFFICE OF PUBLIC ASSISTANCE
via electronic mail:

Bridget Bohac, Director
Texas Commission on Environmental Quality
Office of Public Assistance MC-108
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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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Austin, Texas 78711-3087

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

TCEQ PERMIT NO. WQ0004464000

APPLICATION BY §
CITY OF GATESVILLE §
AUTHORITY FOR PROPOSED §
SLUDGE PERMIT NO. WQ0004464000 §

BEFORE THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY

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CHIEF CLERK'S OFFICE

TEXAS
COMMISSION
ON ENVIRONMENTAL
QUALITY

EXECUTIVE DIRECTOR'S RESPONSE TO PUBLIC COMMENT

The Executive Director (ED) of the Texas Commission on Environmental Quality (TCEQ or the Commission) files this Response to Public Comment (Response) on the application of the City of Gatesville (Applicant) for a renewal of Beneficial Land Use Permit, No. WQ0004464000, and the ED's preliminary decision. Pursuant to Title 30, Section 55.156 of the Texas Administrative Code (TAC), before a permit is issued, the ED must prepare a response to all timely, relevant and material, or significant comments. The Office of the Chief Clerk timely received comments from Elizabeth Haley, Debra Sloane, and Don Strieber. This Response addresses all 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.

DESCRIPTION OF FACILITY

The Applicant has applied to TCEQ for a renewal of the existing permit that would authorize the beneficial land application of wastewater treatment plant (WWTP) sewage sludge and water treatment plant (WTP) sludge at a rate not to exceed 8.5 dry tons per acre per year (tons/acre/year). The proposed land application site is approximately 25 acres within an approximately 51.5 acre tract located on the Gatesville Airport property, approximately one mile southwest of the intersection of

State Highway 116 and U.S. Highway 84 in Coryell County, Texas. The draft permit does not authorize any discharge of pollutants into or adjacent to water in the State. The proposed land application site is located in the drainage area of the Leon River Below Proctor Lake in Segment No. 1221 of the Brazos River Basin.

PROCEDURAL BACKGROUND

TCEQ received the permit application on November 26, 2007, and declared it administratively complete on February 11, 2008. The Applicant published the Notice Of Receipt Of Application And Intent To Obtain A Beneficial Land Use Permit in the *Gatesville Messenger* on April 12, 2008. The ED completed the technical review of the application and prepared a preliminary decision and draft permit on November 17, 2008. The Applicant published the Notice Of Application And Preliminary Decision in the *Gatesville Messenger* on December 20, 2008. The public comment period closed on January 20, 2009. The application is subject to the procedural requirements of House Bill 801, 76th Legislature, 1999.

COMMENTS AND RESPONSES

COMMENT 1:

Don Strieber commented that the TCEQ does not seem to be concerned about the impacts from land application of Class B sludge on groundwater in the area, particularly during rainfall events.

RESPONSE 1:

TCEQ has established management requirements, in accordance with 30 TAC Section 312.44, to protect against groundwater contamination. The draft permit incorporates these

requirements. The Applicant is required to apply sludge uniformly over the surface of the land and under conditions that prevent runoff of sludge beyond the active application area and protect the quality of the surface water and the soils in the unsaturated zone. The draft permit prohibits the Applicant from applying sludge during rainstorms or periods in which surface soils are water-saturated. If sludge runoff from the active application area is evident, the draft permit requires the Applicant to cease further sludge application until the situation is corrected.

TCEQ also reviewed the application to determine if the proposed site has adequate buffer zones between it and any private water wells, sources of public water supply, conduits to ground water, and any surface bodies. Specifically, 30 TAC Section 312.44(c)(2) requires the following buffer zones from application areas:

- (A) 150 feet, private water supply well;
- (B) 500 feet, public water supply well, intake, spring or similar source, public water supply treatment plant, or public water supply elevated or ground storage tank;
- (C) 200 feet, solution channel, sinkhole, or other conduit to groundwater;
- (D) 750 feet, established school, institution, business, or occupied residential structure;
- (E) 50 feet, public right-of-way and property boundaries; and
- (F) 10 feet, irrigation conveyance canal.

In addition, the draft permit contains additional criteria that are protective of surface and groundwater and that will help ensure the utilization of plant nutrient within the application area and within the rooting zone. A maximum sludge application must not exceed 8.5 dry tons/acre/year. The Applicant may not apply sludge when the water table is within 3 feet of the surface in soils with permeabilities less than 2 inches per hour (inches/hour), or when it is within 4 feet of the surface in soils with permeabilities between 2 inches/hour and 20 inches/hour. In addition, the Applicant may not apply sludge within 33 feet of water in the State when sludge is incorporated into the soil within

48 hours of application and a vegetated cover is established; or on land that is flooded, frozen, or snow covered. These requirements are designed to protect water sources against adverse effects on the groundwater in the area. In addition, the Applicant is required to land apply sludge at rates no greater than the agronomic rates.

In its application, the Applicant submitted information that the proposed sludge application of 8.5 dry tons/acre/year will supply 91 pounds of nitrogen per acre per year for Coastal Bermuda grass growth. According to the Natural Resources Conservation Service, Coastal Bermuda grass can uptake upwards of 500 pounds of nitrogen per acre per year. At this site, the Bermuda grass is expected to consume the smaller amount of nitrogen proposed for plant growth by the incorporation of 8.5 tons/acre/year of sludge. Movement of plant nutrients from the breakdown of incorporated sludge is not expected out of the land application area or beyond the rooting zone. Movement of incorporated sludge in a grassed field during rainfall events is not expected to occur. Therefore, contamination of surface or groundwater is not likely from the proposed sludge application operation.

COMMENT 2:

Don Strieber commented that odors from the site affect nearby residents and property owners.

RESPONSE 2:

TCEQ has established management requirements for odor controls at land application sites and has incorporated them into the draft permit. In addition, the draft permit does not allow the Applicant to maintain or create any nuisance odor conditions. Title 30 of the TAC, Section 312.44(k)(3), requires the applicant to operate the proposed site in a manner to prevent public health

nuisances. The Applicant must prevent sludge debris from blowing or running off site boundaries or into surface waters. The Applicant must minimize dust migration from the site and access roadways and minimize objectionable odors through incorporation of sludge into the soil or by taking some other type of corrective action. Also, 30 TAC § 312.44(d) requires the permit to include buffer restrictions that do not allow a land application area to be located closer than 750 feet to a business or occupied residential structure or closer than 50 feet to a public right of way or property boundary to minimize any off-site odor problems.

If the ED or the Commission issues the permit and the facility has problems with odor or other issues with the application area, members of the public may contact the TCEQ Regional Office at (254) 751-0335 or call the toll free 24-hour hot line at 1-888-777-3186. Citizens may also register complaints on-line at <http://www.tceq.state.tx.us/compliance/complaints/index.html>. If the regional investigator documents a violation of TCEQ regulations or the permit, then appropriate action may include referral for an enforcement action, fines, and penalties. In addition, the draft permit does not limit the ability to seek legal remedies regarding any potential 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 3:

Don Strieber commented that problems with flies affect nearby residents and property owners.

RESPONSE 3:

An applicant is not required to eliminate all vectors from a beneficial use site due to the

pervasive presence of flies and other vectors in agriculture operations and on land in general. However, an applicant is required to treat sludge intended for beneficial land use in order to reduce odors, thereby limiting its attraction for vectors, such as flies and mosquitoes. This action limits the potential for transmitting diseases.

Title 30 of the TAC, Section 312.83, outlines required methods for vector attraction reduction: a reduction of the volatile solids by 38%, Specific Oxygen Uptake Rate (SOUR) Test, injection of the sludge into the soil, incorporation of the sludge into the soil, etc. The permit application states that the Applicant will be treating sludge (by incorporating it into the soil within six hours after application) from each of the wastewater treatment plants that may provide it for land application at this specific site. Additionally, if the site does attract vectors, it is considered a nuisance condition, which the permit and rules specifically prohibit. Should such a problem occur, the site operator must take appropriate steps to correct it within a short time.

COMMENT 4:

Elizabeth Haley and Debra Sloane commented that the land application site has affected their businesses and they wanted to discuss options to renewal of the permit. Don Strieber commented that the site has affected his residence, land, and waterways, and he requested that the Applicant relocate the site to a more appropriate location.

RESPONSE 4:

TCEQ does not address these issues in the permitting process for land application sites. The Texas Legislature has authorized TCEQ to protect the quality of surface and groundwater in the state. Section 26.027 of the Texas Water Code authorizes the TCEQ to issue permits to control the

discharge of wastes or pollutants into or adjacent to water in the state. The permitting process protects the water quality of the state's rivers, lakes and coastal waters. TCEQ rules do not allow the ED to determine or mandate a different facility location or alternative means of conveyance and disposal if the proposed facility complies with the applicable rules and statutes. Title 30 of the TAC, Section 312.44(j), states that an Applicant must select a land application site and operate it in a manner to prevent public health nuisances.

However, the 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.

COMMENT 5:

Don Streiber asked if TCEQ has approved the pending permit at the airport site and issued it to the Applicant.

RESPONSE 5:

The proposed permit at the airport site is currently pending and TCEQ has not issued it; however, it is for a renewal of an existing permit. The ED has completed the technical review of the application and prepared a draft permit. The draft permit, if approved, would establish the conditions under which the facility must operate. The ED has made a preliminary decision that this permit, if issued, meets all statutory and regulatory requirements. The permit application, technical summary and ED's preliminary decision, and draft permit are available for viewing and copying at Gatesville

City Hall, 110 North 8th Street, Gatesville, Texas.

The TCEQ's Office of the Chief Clerk will mail this Response to everyone who submitted public comments and to those persons who are on the mailing list for this application. The mailing will also provide instructions for requesting a contested case hearing or reconsideration of the ED's decision. The ED may issue final approval of the application unless a timely contested case hearing request or request for reconsideration is filed. If this occurs, the ED will not issue final approval of the permit and will forward the application and request to the TCEQ Commissioners for their consideration at a scheduled Commission meeting.

COMMENT 6:

Don Streiber wanted a copy of the Applicant's previously proposed permit for beneficial land use, but did not know the permit number. He also wanted to know if the Applicant had authority to use the landfill site for sludge disposal.

RESPONSE 6:

You may obtain information regarding the application for the proposed permit, WQ0004851000, at TCEQ's Central Records office in Austin at (512) 239-2900, or you may contact the TCEQ Office of Public Assistance at their toll-free number, 1-800-687-4040. According to TCEQ staff, this is not an issued permit. In addition, the application is for land application and not sludge disposal. Therefore, the Applicant is not authorized to use the landfill site for this purpose.

No changes to the draft permit have been made in response to public comment.

Respectfully submitted,

Texas Commission on Environmental Quality

Mark R. Vickery, P.G.
Executive Director

Robert Martinez, Director
Environmental Law Division



Celia Castro, Staff Attorney
Environmental Law Division
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REPRESENTING THE
EXECUTIVE DIRECTOR OF THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY

TEXAS
COMMISSION
ON ENVIRONMENTAL
QUALITY
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CHIEF CLERKS OFFICE

CERTIFICATE OF SERVICE

I certify that on March 13, 2009, the "Executive Director's Response to Public Comment" for Permit No. WQ0004464000 was filed with the Texas Commission on Environmental Quality's Office of the Chief Clerk.



Celia Castro
Staff Attorney
Environmental Law Division