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CHIEF CLERKS OFFICE

Mr. Rochelle's Direct Line: (512) 322-5810
mrochelle@lglawfirm.com

April 22, 2009

Ms. LaDonna Castañuela
Chief Clerk
Texas Commission on Environmental Quality
12100 Park 35 Circle
Bldg. F - 1st Floor
Austin, Texas 78753

VIA HAND DELIVERY

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OPA
APR 24 2009
BY RY

Re: Request for Hearing for Gerben Leyendekker / Leyendekker Dairy:
TPDES Permit No. WQ0003259000 (2402-04)

Dear Ms. Castañuela:

Please accept this letter submitted on behalf of my client, the Bosque River Coalition (the "Coalition"), a Texas non-profit corporation, consisting of property owners in the vicinity of the above-referenced draft TPDES permit ("Draft Permit") for Gerben Leyendekker / Leyendekker Dairy (hereinafter, the "Dairy" or "the applicant"). The purpose of this letter is to request a contested case hearing regarding the Draft Permit. The Coalition also hereby requests that it be placed on the mailing list so that it may remain informed on the status of the Draft Permit.

CONTESTED CASE HEARING REQUEST

Pursuant to specific requirements of a request for a contested case hearing under Sections 55.201, 55.203, 55.205 and 50.115 of Title 30 of the Texas Administrative Code ("TAC"), those same requirements being set forth in the March 24, 2009 Notice of the Executive Director's ("ED's") Decision on the Draft Permit, the Coalition offers the following:

Hearing Request Requirements

General Requirements

The Coalition hereby requests a contested case hearing. The applicant is Gerben Leyendekker / Leyendekker Dairy and the Draft Permit is TPDES Permit No. WQ0003259000.

The Coalition is a Texas non-profit corporation represented by Martin Rochelle and Lauren Kalisek. Therefore, all communications should be directed to the undersigned at Lloyd Gosselink Rochelle & Townsend, P.C., 816 Congress Avenue, Suite 1900, Austin, Texas 78701, phone number (512) 322-5810, fax number (512) 472-0532.

Requirements for a Group or Association

The Coalition was formed for the purpose of furthering the protection and enhancement of water quality in the Bosque River watershed. The Coalition seeks to protect the water quality of the Bosque River watershed—an interest germane to the organization's specific purpose. Neither the claim asserted nor the relief requested require the participation of individual members in this case. Members of the Coalition, as discussed below, qualify as affected persons and have standing in their own right to request a contested case hearing.

Requirements for an Affected Person

The following individuals and entities are members of the Coalition and qualify as affected persons under Section 55.203 of the TAC. These individuals and entities are affected persons with personal justiciable interests not common to the general public in that they own property along Gilmore Creek downstream from the Dairy and into which discharges and runoff from the Dairy drain. The proposed discharge authorized by the Draft Permit, and resulting effects on water quality in Gilmore Creek, threaten the use and enjoyment of their property and their use of Gilmore Creek. Please see the enclosed map at Attachment A for reference purposes.

Mr. Claude Kilpatrick owns over 100 acres along Gilmore Creek, approximately 2 miles from the Dairy. He uses the property as a ranch and maintains cattle and horses. Mr. Kilpatrick and his family use Gilmore Creek for fishing and recreation.

Mr. Torrey Moncrief owns over 400 acres also along Gilmore Creek, approximately 1.5 miles from the Dairy.

The Ranch at Hico, LLC (“The Ranch”) owns over 1,500 acres along Gilmore Creek, approximately 1.7 miles from the Dairy. This property also includes Gilmore Creek Reservoir, a PL-566 reservoir, as shown on Attachment A that has already been negatively impacted by discharges from the Dairy. The Ranch uses the property as a cattle ranch and retreat for religious organizations, including the use of Gilmore Creek and Gilmore Creek Reservoir for boating, fishing, swimming, tubing, and stock watering.

Disputed Issues of Fact

The Coalition bases its request for hearing on the following disputed issues of fact. In accordance with Section 50.115(c) of the TAC, the issues set forth below are (1) disputed questions of fact; (2) were raised during the public comment period; and (3) are relevant and material to the decision on the application.

1. Whether retention control structures ("RCSs") will be adequately regulated and managed to protect water quality (Comment Nos. 1, 2).
2. Whether Draft Permit provisions for the storage of slurry from freestall barns will negatively impact water quality (Comment No. 3).
3. Whether manure production and storage is properly regulated under the Draft Permit (Comment Nos. 4, 5).
4. Whether settling basins are properly designed, regulated, and certified to protect water quality (Comment Nos. 6, 7, 8, 9).
5. Whether capacity certification and requirements for RCSs are properly described and established in the Draft Permit to ensure water quality is protected (Comment Nos. 10, 11).
6. Whether RCS No. 1 will be able to accommodate 25-year, 24-hour precipitation event runoff and prevent degradation of water quality prior to the enlargement of RCS No. 1 (Comment No. 11).
7. Whether liner certification and testing specifications are adequate to ensure protection of water quality (Comment Nos. 12, 13).
8. Whether embankment testing specifications are adequate to ensure protection of water quality (Comment No. 14).
9. Whether the conditions for granting extensions to the RCS compliance schedule should be included within the Draft Permit (Comment No. 15).
10. Whether an adequate description of structural controls exists in the Draft Permit (Comment No. 16).
11. Whether the Applicant has demonstrated adequate dewatering capacity (Comment No. 17).
12. Whether monitoring, reporting, and evaluation requirements under the Draft Permit will ensure that water quality is protected (Comment Nos. 18, 19).
13. Whether structural controls should be certified prior to permit issuance to ensure that water quality is protected (Comment No. 19).
14. Whether sampling of wastewater and manure under the Draft Permit is adequate to protect water quality (Comment No. 20).
15. Whether the Draft Permit properly manages phosphorus production (Comment No. 21).
16. Whether removal of solid manure under the Draft Permit is adequate to meet water quality requirements for the North Bosque watershed (Comment No. 22).
17. Whether land management units ("LMUs") are properly sized and buffered (Comment Nos. 24, 25).
18. Whether the special provisions added to the Draft Permit to address the relocated streambed on the site are sufficient to ensure the protection of water quality (Comment No. 26).
19. Whether the Applicant's information regarding the size of its LMUs and its revised nutrient management plan ("NMP") are correct and adequate to ensure the protection of water quality (Comment Nos. 27, 28).
20. Whether the Applicant's projected crop yields for its LMUs and third party fields are reasonable (Comment No. 29).

Ms. LaDonna Castañuela

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21. Whether the NMP adequately identifies soil test locations and timing (Comment No. 30).
22. Whether agronomic rates are properly calculated in the NMP (Comment No. 31).
23. Whether application of supplemental phosphorus by the Applicant will negatively affect water quality (Comment No. 32).
24. Whether the Draft Permit provisions regarding waste application on noncultivated fields are adequate to protect water quality (Comment No. 33).
25. Whether the Draft Permit provisions regarding use of third party fields are adequate to protect water quality (Comment No. 33).
26. Whether manure and wastewater application on third party fields will be properly managed and regulated to prevent degradation of water quality (Comment Nos. 34, 35).
27. Whether the Draft Permit should require the NMP to address the five-year permit term as opposed to just the first year (Comment No. 36).
28. Whether the historical waste application fields should be identified in the application or the Draft Permit (Comment No. 37).
29. Whether the Draft Permit provides meaningful definition of vegetative buffers (Comment No. 38).
30. Whether provisions of the Draft Permit will allow attainment of bacterial water quality standards (Comment No. 39).
31. Whether the Draft Permit establishes adequate reporting requirements for third party fields (Comment No. 40).
32. Whether the Draft Permit provides adequate protection of water quality from drainage or discharge from third party fields (Comment No. 41).

Based upon the foregoing, the Coalition hereby requests a contested case hearing and requests that a hearing be held to determine compliance with Texas Surface Water Quality Standards, 30 TAC Chapter 307 and concentrated animal feeding operation requirements, 30 TAC Chapter 321. I appreciate your consideration of these comments and the contested case hearing request as well as the Coalition's request to be maintained on the mailing list of the above-referenced Draft Permit. If you have any questions or concerns, do not hesitate to contact me or Lauren Kalisek at (512) 322-5847.

Sincerely,

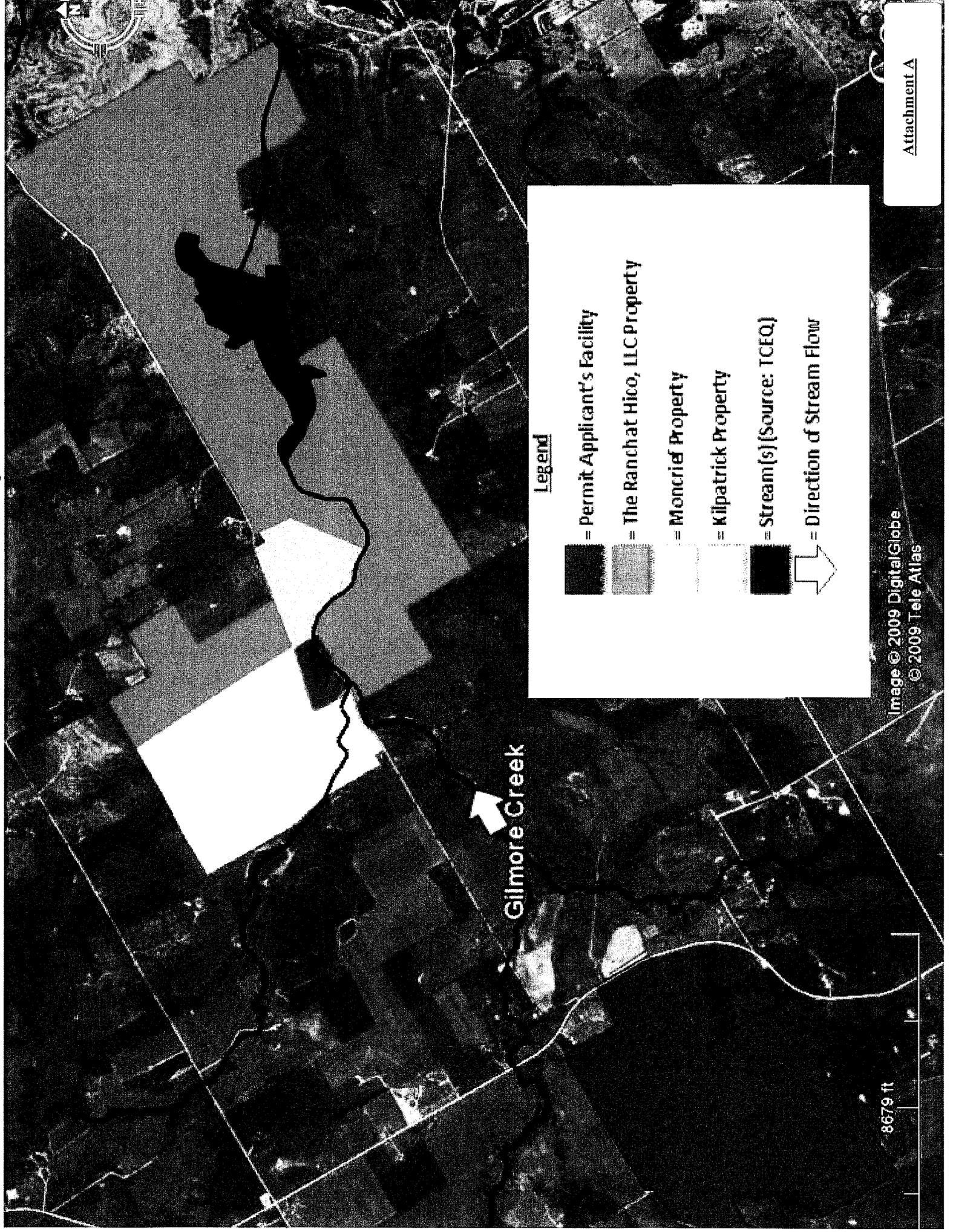


Martin C. Rochelle

MCR/mab

ENCLOSURES

cc: Attached Mailing List (via regular mail)



Legend

-  = Permit Applicant's Facility
-  = The Ranch at Hico, LLC Property
-  = Moncrief Property
-  = Kilpatrick Property
-  = Stream(s) (Source: TCEQ)
-  = Direction of Stream Flow

Gilmore Creek

8679 ft

Image © 2009 DigitalGlobe
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MAILING LIST

For

Gerben Leyendekker / Leyendekker Dairy
TPDES Permit No. WQ0003259000

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November 24, 2008

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VIA HAND DELIVERY
NOV 24 PM 3:47
OFF CLERKS OFFICE
TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Re: Comments on Draft Permit for Gerben Leyendekker / Leyendekker Dairy:
TPDES Permit No. WQ0003259000 (2402-04)

Dear Ms. Castañuela:

Please accept these written comments on behalf of my client, the City of Waco ("City"), concerning the above-referenced draft TPDES permit ("Draft Permit") for Gerben Leyendekker / Leyendekker Dairy (hereinafter, the "Dairy" or "the applicant"). Please feel free to contact me at my law firm, Lloyd Gosselink Rochelle & Townsend, P.C., 816 Congress Avenue, Suite 1900, Austin, Texas 78701, phone number (512) 322-5810, fax number (512) 472-0532, concerning any aspect of these comments or the Commission's responses to same.

WRITTEN COMMENTS

The City appreciates the Commission's preparation of the Draft Permit and this opportunity to provide comments, and it hereby provides several comments to the terms and conditions of the Draft Permit, as follows:

1. RCS Surface Areas in the Stage/Storage Table of the RCS Management Plan

The surface area of a retention control structure ("RCS") is a critical component of any reliable calculation regarding the effect of evaporation on the monthly water balance, and thus overall structure capacity. Draft Permit Provision VII.A.5(a)(2)(iv), however, does not require that this information—the surface area for each one-foot of depth in the RCS—be provided. Instead, the provision requires the applicant to compile a stage/storage table that shows only storage *volume* for each foot of depth. Without considering a stage/surface area table based on the average surface area during each month of operation, there is no reliable method of calculating RCS evaporation. This means that the TCEQ will have a difficult time making an objective determination regarding whether the applicant's RCS Management Plan is based on reliable assumptions. The City believes that Draft Permit Provision VII.A.5(a)(2)(iv) should be revised as follows: "a stage/storage table for each RCS with minimum depth increments of one foot, including the storage volume and surface area provided at each depth."

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2. RCS Management Plan for Modified RCSs

The Draft Permit requires an RCS Management Plan to be prepared and placed in the Pollution Prevention Plan (“PPP”) after the RCS is modified. However, under the Draft Permit there is no opportunity for any meaningful review of this plan before the permit is issued or even before it is implemented after the permit is issued. The water balance and RCS Management Plan are an integral part of properly sizing each RCS. Without an RCS Management Plan to draw upon, any water balance calculation has marginal utility.

Under the current Draft Permit, the only time the RCS Management Plan will be subject to review is when field inspectors conduct annual inspections. As a practical matter, field inspectors will likely not have sufficient time, and in some instances, perhaps, the requisite engineering expertise, to properly evaluate the plan. At a minimum, the City would encourage the TCEQ to consider revising the Draft Permit so that the RCS Management Plan would have to be submitted to the TCEQ permitting staff for review and approval. The City is concerned that without even this level of review, the RCS Management Plan—which is critical to the proper operation of this facility—might never be subject to any meaningful scrutiny.

3. RCS Management Plan for Existing RCSs

The Draft Permit does not appear to require an RCS Management Plan for the existing RCSs. Since the existing RCSs will be used by the applicant until construction of the modified RCS is completed, the absence of any RCS Management Plan requirement for the existing RCSs would seem inconsistent with Title 30, Section 321.42(g) of the Texas Administrative Code, which requires, without exception, an RCS Management Plan for all RCSs.

4. Regulation of Slurry from Freestall Barns

Draft Permit provision X.G.3 allows the storage of slurry from freestall barns if they are vacuumed or scraped, but no storage areas have been designated on the site map, and the waste flow chart in the application shows no storage. Furthermore, Draft Permit provision X.G.2 prohibits overflow into settling ponds. Because of its liquid nature and inability to be stacked like dry manure, any storage of slurry would require a storage basin (i.e., an RCS). Since no RCS has been indicated in the permit application for this slurry storage, any slurry storage that might be constructed in the future would require the permit to be amended. Thus, the City believes that provision X.G should be stricken from the Draft Permit and replaced with a provision that makes clear the applicant shall not store slurry from vacuuming or scraping unless it obtains a permit amendment.

5. Manure Production in Calf Barn

The site map (Attachment A to the Draft Permit) indicates the presence of a calf barn outside of the drainage area. The applicant, however, has provided no information describing

how the manure generated from activities in this barn will be managed. If the applicant intends to vacuum or scrape the materials, there should be a provision indicating how and where the slurry will be disposed. If the applicant's plan is to flush the manure, then the location of any facilities associated with flushing should be disclosed on the maps along with the source of the flush water (i.e., recycled or freshwater). If freshwater is used for flushing, this should be incorporated in the process-generated wastewater. If recycle water is used for flushing, a provision similar to X.J should be placed in the Draft Permit. Since it is likely that there will be water used within this barn and since the barn is located outside of the drainage area, a provision similar to X.I should be placed in the Draft Permit prohibiting any discharge from this barn.

6. Lack of Best Management Practices in Manure Storage Area

The applicant has indicated that the majority of the runoff will flow directly through the Manure Storage Area. Unless this runoff is routed around the manure storage piles, the City is concerned that the runoff will come into contact with the manure storage piles and will accumulate additional solids in the process. These additional solids are then likely to be transported to the settling pond, rendering the pond much less efficient than the applicant has claimed. The City additionally questions the benefit of routing the process wastewater through a concrete settling basin, and then allowing the process wastewater to flow through a manure storage area where it undoubtedly will accumulate additional solids. The City would suggest amending the Draft Permit to require a network of berms and/or ditches to route the runoff and process wastewater around the manure storage piles.

7. Design Specifications and Capacity Certification for Settling Basin

Title 30, Section 321.32(47) of the Texas Administrative Code defines an RCS as "any basins, ponds, pits, tanks, conveyances, and lagoons used to store and/or treat manure, litter, wastewater, and sludge." Settling basins are used primarily to separate manure and other solids from the water in which such solids would be suspended. They are, therefore, used to treat that wastewater and also to store the settled manure and solids after separation. The USDA certainly regards these settling basins as treatment structures in its Agricultural Waste Management Field Handbook (Chapter 10) (651.1004). In other words, settling basins are RCSs by TCEQ's own definition.

In its recent responses to comments on draft CAFO permits, the TCEQ appears to have agreed that settling basins are RCSs. Draft Permit Provision VII.A.3(a), however, fails to require the applicant to provide capacity certifications for the settling basins as is required of all RCSs. Thus, the application would appear to be inconsistent with Title 30, Section 321.38(e)(2) of the Texas Administrative Code, which requires, without exception, a licensed Texas professional engineer certification for design specifications and completed construction specifications for RCSs. While the City agrees that a settling basin does not need to be designed to store the 25-year 10-day design volume, for the settling basin to work correctly, it nevertheless should be properly sized and have adequate capacity to allow the projected solids removal rate to occur.

For this particular facility, it appears that the settling basin may be a necessary component for storing runoff from the 25-yr 24-hr storm event until RCS No. 1 can be enlarged. Therefore, a capacity certification should be required.

8. Failure to Justify Settling Rates

The applicant has indicated that the settling basin will remove 60 percent of the solids. The applicant cites to the Midwest Plan Service Structures and Environment Handbook for its authority in justifying this removal efficiency assumption. A review of the Midwest Plan Service Structures and Environment Handbook makes clear, however, that these types of settling basins (weir notch or dewatering) must be constructed using specific design parameters in order to make such removal efficiencies possible. The applicant has provided no information in the application demonstrating that the settling basin was designed and constructed using the specifications that the Midwest Plan Service Structures and Environment Handbook suggests are required to achieve a 60 percent removal efficiency. In fact, the settling basin identified in the application was not designed to be a settling basin at all, but instead was built as a simple storage lagoon. Without any evidence indicating that the settling basin meets the design parameters suggested by the Midwest Plan Service Structures and Environment Handbook, the applicant has provided no information that would justify its use of the 60 percent removal efficiency for the settling basin.

9. Schedule for Solids Removal in Settling Ponds

While provision X.M. of the Draft Permit requires that the solids in the settling basin be removed on a “regular and consistent basis so as to assure attainment of the 60% designed removal efficiency,” this requirement is inappropriately subjective and almost unenforceable given the applicant's failure to include any design information in the application that justifies its reliance on this removal efficiency. Given the importance of removing solids to maintain the removal efficiency of the settling basin, the removal requirements should be more specific in the permit. The Midwest Plan Service Structures and Environment Handbook referred to by the applicant recommends removing solids after every major rainfall event or 3 to 4 times a year depending on the type of settling basin. Since the applicant is relying on removal efficiencies described in this handbook, the City believes a provision consistent with these recommendations should be placed in the permit: “Solids from the settling basin shall be removed after every rainfall event in excess of one inch and at a minimum of four times per year.”

10. Designating Solids from the Settling Basin

Draft Permit Provision X.H.1 states that “settling basin solids shall be defined as manure.” This provision appears to contradict the terms of Title 30, Section 321.32(49) of the Texas Administrative Code, which provides that “sludge” is “solid, semi-solid, or slurry waste generated during the treatment of and/or storage of any wastewater. The term includes material resulting from treatment, coagulation, or sedimentation of waste in a retention control structure.”

In Provision X.H.2, the TCEQ acknowledges that the settling basin solids are different than manure when it requires that settled solids be sampled separately. Since settling basin solids are clearly materials resulting from the sedimentation of waste in a retention control structure, these settling basin solids are correctly defined as "sludge," and this provision redefining settling basin solids as "manure" must be removed.

11. Description of Capacity Certifications and Requirements

Draft Permit Provision VII.A.3(a)(2), regarding the required RCS capacity certification, should be amended to make clear that all capacity certifications include both total as-built capacity and the remaining capacity as a result of sludge accumulation, by inserting the following sentence: "Capacity certifications shall include both the total as-built RCS capacity and the remaining RCS capacity due to sludge accumulation."

12. RCS No. 1 Capacity Certification

The existing capacity survey as shown in Draft Permit Provision VII.A.3(a)(2) was conducted in March 2008 and certified on August 4, 2008 (contrary to the March 2008 certification date shown in the draft permit). This certification, however, fails to indicate whether the listed capacity is an as-built capacity or an existing capacity, and it makes no determination of the existing sludge volume. Without a certification of the sludge volume, the applicant cannot demonstrate that RCS No. 1 can accommodate a 25-year 24-hour precipitation event, as it is required to do until the enlarged RCS is completed.

13. Accommodation of 25-year 24-hour Precipitation Event Runoff

Although the applicant is enlarging RCS No. 1 to contain the 25-year 10-day precipitation event, it must in the interim accommodate runoff from a 25-year 24-hour event. The applicant has provided no evidence that RCS No. 1 will in fact contain this runoff. Based on the capacity certification for RCS No. 1, RCS No. 2 has a capacity of no more than 15.67 acre-feet (even less if this is an as-built capacity that does not include the sludge accumulation). Runoff from a 25-year 24-hour precipitation event alone will be more than 15.67 acre-feet, and the RCS will still be required to accommodate the storage of process wastewater, sludge, and normal rainfall. Since no capacity certification was performed on the settling basin, there is no way to know if the settling basin could contain part of the required capacity in the interim. The applicant has simply failed to demonstrate that its proposed RCSs have sufficient capacity to satisfy the appropriate standards.

14. Certification of Structural Integrity of Concrete Settling Basin

The applicant is required to certify that its concrete settling basin has no hydrologic connection to waters of the state and that no significant leakage will occur based on demonstrated evidence. No engineer's certification has been provided that the concrete settling

basin is indeed concrete with both a concrete bottom and sides of adequate height. Even if the basins are constructed completely of concrete, there is no certification that they are structurally sound, have no cracks, and will not leak. The City would encourage the TCEQ to require, prior to issuance of the permit, that all basins should be certified by a professional engineer as having competent liners or otherwise being constructed of concrete without any cracks or leaks.

15. Liner Certification for Settling Basin

According to the Draft Permit, a liner certification for the settling basin was prepared on May 8, 1990. The certification submitted with the application refers to three wastewater retention ponds, but data for only two ponds could be located. There is no map distinguishing between the ponds so there is no way to verify if the data for the settling pond was submitted. Additionally, the locations of the samples within the ponds are not provided so it cannot be determined if samples were taken in the bottom, sides, or both. There is insufficient information in the application to determine whether there will be leakage from the settling pond. Before the permit is issued, proper certification should be performed.

16. RCS No. 1 Liner Certification

According to the submitted liner certification for RCS No. 1 (former RCS No. 2) dated April 7, 2007, the certification was based on four samples taken in the sides of the RCS. Since no samples were taken in the bottom of the RCS, there is insufficient information in the application to determine whether there will be leakage from the settling pond. Before the permit is issued, proper certification should be performed.

17. Liner Testing Specifications

In other previous CAFO permits in the Bosque watershed, the TCEQ has required a minimum of one floor sample per acre of surface area and a minimum of one sidewall sample per each two acres of surface area in order to certify the hydraulic conductivity of a liner. The City has commended the TCEQ for this requirement. The Draft Permit, however, requires only one sample per acre of surface area to be distributed between the sidewalls and floor. The City believes that the requirement for a minimum of one floor sample per acre of surface area and a minimum of one sidewall sample per each two acres of surface area is the more appropriate and reliable standard, and should be required in the Draft Permit.

18. Embankment Testing Specifications

Title 30, Section 321.38(g) of the Texas Administrative Code requires the Draft Permit to identify the required design specifications for all RCSs, including procedures and minimum requirements for liner and embankment testing. The City commends the TCEQ for adding Draft Permit Provision VII.A.3(g)(4) concerning Liner Sampling and Analysis with the reservations stated in the previous comment.

While this addresses concerns of the City related to liner testing, however, it does not address the City's concerns related to testing of embankment construction. Specifically, in Draft Permit Provision VII.A.3(f)(4) related to compaction testing, the City would encourage the TCEQ to consider 1) requiring that the field density tests be based on predetermined moisture-density compaction curves, 2) defining the frequency of testing (*e.g.*, number of tests per specific area per lift), 3) requiring compaction testing on each lift during the construction of the liner (not on the last lift after completion of the liner), 4) requiring documentation of compaction test locations and results to be provided to the TCEQ, and 5) requiring continuous on-site inspection during construction.

The integrity of RCS embankments is critical to the protection of public welfare. An embankment failure could easily have catastrophic consequences not only with respect to water quality but also to human life. There is no reason to believe that simply providing a certification from a Licensed Professional Engineer can substitute for review of the supporting information by the TCEQ. The TCEQ should review the compaction testing results to make an independent verification of the certification.

19. Conditions for Granting Extensions to the RCS Compliance Schedule

The compliance schedule in Draft Permit Provision X.A.2 allows the Dairy to obtain multiple extensions to the deadline for completing RCS modifications. A list of specific circumstances which would qualify for an extension (*e.g.*, a documented period of extended bad weather) should be included in the Draft Permit.

20. Description of Structural Controls

The Site Map of the production area provides an outline of the drainage areas but does not provide an adequate description of structural controls, particularly with respect to the berms. The map shows the location of berms and ditches surrounding the RCS drainage area with a dashed line, but no information has been provided regarding the size of the berms and ditches (*i.e.*, the width, height, depth). It fails to even distinguish berms from ditches.

The berms and ditches are an integral part of the facility, needed to prevent contaminated runoff from leaving the site. An inspector can observe whether berms and ditches are actually present and can judge the height, depth and width of a berm or ditch, but the inspector may not in all circumstances have the technical expertise to determine whether they are sufficient to contain flows. The inspector certainly could not do this without performing the necessary surveying and making the necessary engineering calculations first, something that is unlikely to happen in the field. Therefore, some means must be given to the inspector to evaluate compliance. Additionally, if the operators are not given an adequate description of structural controls, the operators will not be able to determine their own compliance and how to make repairs if, for example, a berm deteriorates over time as a result of settling, some action of a careless worker, or runoff erosion. Simply pushing up a few inches of uncompacted dirt with a tractor blade is

usually not adequate. The permit application and the Draft Permit should describe these berms in sufficient detail with respect to location, size, and construction method so that TCEQ inspectors can determine if the facility is in compliance and so that the operator can make adequate repairs when necessary.

21. Adequacy of Dewatering Capability

The applicant has indicated that it has a dewatering capacity of 450 gpm and 250 gpm. However, nothing in the application demonstrates that this dewatering capacity is adequate. Additionally, there is no information in the application that would demonstrate the validity of capacities listed (e.g., the pump models, horsepower, and dynamic head for the applicable pumping systems). The stated pumping capacity is more than likely a rated flow and does not take into account head losses in the piping and irrigation nozzles. Because Title 30, Section 321.38(f) requires that “[a]n irrigation system or other liquid removal system used by an AFO must be designed to ensure that the system is capable of dewatering the RCSs on a regular schedule,” the applicant should produce design information in the application that demonstrates it actually has the dewatering capacities claimed. The City would encourage the TCEQ to verify the capabilities of the dewatering equipment listed in the application by requesting the necessary information to determine the actual delivery rate of this equipment and how it is designed and operated.

22. Annual Facility Inspection Report

Draft Permit Provision VII.A.10(a)(5) requires an annual site inspection. However, this provision does not require a report of the findings to be prepared and sent to the TCEQ as required by Title 30, Sections 321.46(c)(2) and (e)(2). The requirement to send this report to TCEQ’s Office of Enforcement and Compliance should be added to Draft Permit Provision VII.A.10(a)(5).

23. Five-Year Evaluation Report

Draft Permit Provision VII.A.10(b) requires the Five-Year Evaluation to be kept in the PPP. However, this provision does not require it to be sent to TCEQ as required by Title 30, Section 321.46(e)(2). The requirement to send this report to TCEQ’s Office of Enforcement and Compliance should be added to Draft Permit Provision VII.A.10(b).

24. Adequacy of Five-Year Evaluation of Structural Controls

Draft Permit Provision VII.A.10(b) requires a Five-Year Evaluation to be kept in the PPP. This evaluation requires a licensed Texas professional engineer to review the existing engineering documentation, complete a site evaluation of the structural controls, review existing liner documentation, and complete and certify a report of their findings. However, this provision does not require the engineer to certify that the controls are adequate. Presumably, the purpose

of this five-year evaluation is to determine if the structural controls are adequate to prevent unauthorized discharges. In addition to simply certifying a report of findings, the Draft Permit should be amended to require that the engineer certify whether the structural controls are adequate.

25. Requiring Certification of Structural Controls Before Permit Issuance

Provision VII.A.10(b) of the Draft Permit requires a licensed Texas professional engineer to complete a site evaluation of the structural controls once every five years and certify a report of findings, but it does not require a certification that the structural controls are adequate prior to issuance of the permit. Adequately designed and constructed structural controls, particularly the berms, play an integral role in preventing contaminated runoff from leaving the site. The applicant should be required to provide a current certification of structural controls before this Draft Permit is issued.

26. Adequacy of Wastewater and Manure Sampling

The Draft Permit provides that one annual sample is required to be collected for wastewater, "dry" manure, and settling basin solids. The entire NMP and future application to third-party fields are based on these single annual samples. These single samples, if not representative, could and probably do drastically underestimate phosphorus loading to a field. Wastewater is typically sampled from the surface of RCSs. Taking a sample from the surface of a quiescent RCS will result in significantly lower sample concentrations than if they are taken from the irrigation pipeline. When the irrigation pumps in the RCSs are operating, sludge in the bottom of the RCSs is agitated and becomes mixed with the wastewater. This sludge agitation has often been cited by the dairies as a reason that sludge removal may not be needed as often as predicted. Since this sludge contains high levels of phosphorus, the wastewater that is actually being used to irrigate the fields may contain much higher levels of phosphorus than is measured in the single annual surface sample. This undermines the reliability of the assumptions used in the NMP. Additionally, the concentration of phosphorus in the RCS varies according to the antecedent rainfall or drought conditions which may cause varying degrees of dilution or concentration. The Draft Permit should be amended to require that the RCS samples be obtained from the irrigation pipeline following the pump rather than from the surface of the RCS, in order to provide a more realistic estimate of what is being land-applied.

Furthermore, the Draft Permit should be amended to require that RCS samples be taken much more often (preferably at least once during each irrigation event). An average of the sampling events over the year could be utilized in updating the NMP. Similar problems arise with manure, slurry, and settling basin solids, and the Draft Permit should be amended to provide more than one annual sample of these (preferably one sample each month or one sample from each transport event). Taking only annual samples from these solids can result in significant errors in calculating the amount of nutrients applied to the land. A requirement similar to

Special Provision X.L for sludge, which requires an analysis for each haul off, should be required for manure, slurry, and settling basin solids.

27. Management of Phosphorus Production

The manure production tables in the application indicate that the total phosphorus produced by the proposed 999 cows is 389 lb/day P_2O_5 . This is equivalent to 426,320 lb/year P_2O_5 (1,168 x 365). This is equivalent to 141,985 lb/year P_2O_5 (389 x 365). The NMP (dated August 2, 2008) indicates that the amount of phosphorus to be applied to the LMUs is only 38,999 lb/year P_2O_5 (4,876 from wastewater and 34,123 from solids), leaving 102,986 lb/year P_2O_5 in the manure, slurry, sludge, and wastewater that must be managed. Other than to say generally that the solids and wastewater may be transferred to other persons, sent to third-party fields, or sent to composting, neither the application nor the Draft Permit contain any specific information concerning the location of where these solids and wastewater may be applied. Although listed as one of a number of possible options, there is no indication that any of the manure will actually be sent to composting or out of the watershed. This means that a total of 102,986 lb/year P_2O_5 (72.5 percent) from manure, slurry, sludge, and wastewater will be potentially managed on third-party fields within the North Bosque River watershed without any nutrient management plan and very little regulation or oversight. If all of the 102,986 lb/year P_2O_5 from solids and wastewater is applied to third-party fields in the watershed with soil concentrations less than 151 ppm P, approximately 696 additional acres (assuming 3-cut coastal) will have phosphorus applied at application rates ranging between the nitrogen crop requirement rate and two times the crop phosphorus removal rate. Assuming application at two times the crop phosphorus removal rate (not to exceed the nitrogen rate), this will result in an increase of the soil P in these additional acres of 16 ppm per year. The cumulative impact will be significant. The City is obviously concerned that such a failure to plan for proper management of this phosphorus will lead to excess and unmanaged phosphorus distribution within the watershed resulting in further degradation of water quality in the North Bosque River and Lake Waco.

28. Removal of Solid Manure from the Watershed

The TMDL for the North Bosque watershed recommends removal of 50 percent of the manure in order to meet the water quality goals. Based on the CDM Erath County Animal Waste Management Study performed for BRA in September 1998 and the SWAT modeling that was done in support of this TMDL, 50 percent of the solid manure (38.1 percent of the total manure production) was assumed to be removed from the watershed. From a larger perspective, if this manure is not removed from the watershed, the water quality modeling shows that the water quality goal will not be met. While the Draft Permit provides the applicant with several disposal options, it still allows 100 percent of the manure to be applied in the watershed.

Based on the NMP (dated August 2, 2008) submitted in the application, the applicant is proposing to apply 66 percent of its total manure production offsite, presumably to third-party

fields within the Bosque watershed. Because the applicant is proposing biennial application, 100 percent of its total manure production will go offsite the following year, again, presumably to third-party fields within the Bosque watershed. It would seem most prudent to require some percentage—if not 50 percent—of the applicant's generated waste to be managed outside of the watershed. Otherwise, the TCEQ is left with shifting perhaps a disproportionate burden of waste transport on to subsequent CAFO permit applicants in the North Bosque if TMDL goal attainment is the focus. The City would recommend that the Draft Permit be revised to require that up to 50 percent of the waste generated by the proposed operation be managed outside of the North Bosque watershed in a manner that is consistent with the goals of the applicable TMDL.

29. NMP Implementation

Draft Permit Provision VII.A.8 (a) indicates that the NMP submitted in the application shall be implemented upon issuance of the permit. However, multiple NMPs have been submitted for this proposed facility, and the Draft Permit does not make clear which one is applicable and should be reviewed. Unlike many of the individual permits issued in the North Bosque River watershed, this Draft Permit does not contain the date of the NMP to be implemented. The City recommends that the Draft Permit be revised to indicate the date of the NMP so that it is clear which NMP this facility will operate under for the year following permit issuance.

30. LMU Size Limit

Texas NRCS Code 590 requires sampling to be conducted in accordance with Texas A&M University ("TAMU") guidance.¹ According to TAMU guidance and the NRCS/TAMU NMP certification course, LMUs are required to be 40 acres or less in size. Three of the applicant's LMUs exceed this threshold. Specifically, LMU No. 1 is 57 acres, LMU No. 4 measures 109 acres, and LMU No. 5 is 87 acres in size. These three LMUs should be subdivided to meet the Texas NRCS Code 590 standard, with new soil sampling conducted on each of the smaller LMUs. This of course would require a revised LMU map and NMP to be prepared. However, failure to do so would leave the application inconsistent with Title 30, Section 321.42(i)(5)(A), which requires field application under an NMP that is in accordance with NRCS Code 590.

31. Provision of Buffer for Well No. 8 in LMU No. 4

The applicant has failed to properly buffer Well No. 8 in LMU No. 4. The maps in the Draft Permit show Well No. 8 to be buffered away from LMU No. 4. This well must be buffered into LMU No. 4, not away from it. The applicant should be required to correct its maps, recalculate the LMU acreage, and prepare a new NMP based on the new acreage.

¹ p. 590-2.

32. Provision of Stream Buffer Adjacent to LMU Nos. 1 and 1A

The USGS map of the applicant's property shows a native stream bed transecting this facility, running just to the north of LMU No. 1 and LMU No. 1A. According to correspondence in the file, this stream was diverted to run south of the RCSs when they were constructed. Therefore, this stream is now south of the original location shown on the USGS maps. The new location of this stream has not been properly identified on the maps in the Draft Permit. Notwithstanding the stream relocation, however, it must still be buffered in its new location. The buffers between this relocated stream and LMU No. 1 and LMU No. 1A have not been identified. Once the buffers have been identified, the areas of LMU No. 1 and LMU No. 1A should be adjusted and a new NMP prepared based on the new acreage.

33. Identification of Boundaries of LMU No. 2

Based on the Land Application Areas map (Attachment B in the Draft Permit), LMU No. 2 extends into the production area shown on the Site Map (Attachment A in the Draft Permit). Therefore, the area of LMU No. 3 is incorrect. The boundaries of LMU No. 2 should be corrected, the area recalculated, and a new NMP prepared based on the new acreage.

34. LMU No. 1A Area Description

The area of LMU No. 1A as shown on the LMU Application Areas map is approximately 16 acres. The applicant, however, represented in the application that LMU No. 1A has an area of 25 acres. Either the applicant has incorrectly identified the acreage of LMU No. 1A or it has failed to identify an additional component of LMU No. 1A on the map. Either the acreage needs to be corrected and a new NMP prepared, or the additional portion of LMU No. 1A needs to be identified on the map.

35. Justification of Crop Yields

The applicant makes projections of crop yields that are dependent on soil types, water availability, and sufficient nitrogen. Even though these projected crop yields directly impact the NMPs, there is no data in the application that demonstrates the reasonableness of the forecasted crop yield. This information should be readily available to the applicant, however, as the PPP has for years required the operator to maintain records of the actual annual yield of each harvested crop. Adherence to the Texas NRCS Code 590² standard requires that the NMP be based on realistic yield goals for the crops. The NMP certification course states that these realistic yield goals are to be determined as a function of the historical yields from the fields. The actual annual yield of harvested crops from the applicant's fields should be submitted to demonstrate that the applicant is using reasonable crop yields. Without this information, it is

² p. 590-7.

difficult to see how the application is deemed to be consistent with Title 30, Section 321.42(i)(5)(A) of the Texas Administrative Code.

36. Identification of Soil Test Locations and Timing

Texas NRCS Code 590³ requires that NMPs include the approximate locations where soil tests will be taken and the time of year sampling will be conducted. The applicant's proposed NMP, however, does not include any of this information. This deficiency raises further questions of how the application meets the requirements of Title 30, Section 321.42(i)(5)(A), which requires the implementation of an NMP that is developed in accordance with NRCS Code 590.

37. Calculation of Agronomic Rates

The methodology that the applicant employs to calculate agronomic rates in its NMP appears to be fundamentally flawed. The NMP submitted in the application does not account for the nutrients available to plants in the root zone to satisfy the crop requirement. Instead, the NMP would allow nutrient application regardless of the actual soil nutrient content until the soil reaches a concentration of 200 ppm P. Even at that point, the NMP would continue to allow additional nutrient application despite the presence of more than three times the necessary nutrient levels needed to support optimum growth. The applicant's NMP should be revised to allow application of only that quantity of nutrients that will benefit optimum crop production (*i.e.*, beneficial use).

38. Application of Supplemental Phosphorus

According to Table 7 of the NMP, the applicant is planning to apply manure at 20 percent of the maximum rate and an additional 25 lb/acre P₂O₅ as supplemental phosphorus to LMU No. 3. Supplemental nutrients are added in the form of inorganic commercial fertilizer. The applicant indicates that in addition to the supplemental inorganic phosphorus being applied to LMU No. 3, inorganic phosphorus will also be applied to LMU No. 1 (90 lb/acre P₂O₅) and LMU No. 4 (50 lb/acre P₂O₅). Both LMU Nos. 1 and 4 are wastewater irrigation fields. LMU No. 1 already contains 220 lb/acre P₂O₅, while 32 lb/acre P₂O₅ will be added with the wastewater, bringing the total P₂O₅ to 252 lb/acre. The crop requirement for LMU No. 1, however, is only 230 lb/acre P₂O₅. Similarly, LMU No. 4 currently contains 179 lb/acre P₂O₅, while 28 lb/acre P₂O₅ will be added with the wastewater, giving LMU No. 4 a total P₂O₅ level of 201 lb/acre. The crop requirement for LMU No. 4 is only 125 lb/acre P₂O₅, however.

In a watershed such as the North Bosque that is impaired for phosphorus, requiring the applicant to apply manure at a higher rate, versus being allowed to apply supplemental phosphorus as proposed in the NMP, would appear to be the more prudent approach.

³ *Id.*

39. Regulating Manure Application on Third-Party Fields

Draft Permit Provision VII.A.8(e)(5)(i)(B) requires incorporation of manure on cultivated fields within 48 hours after land application. The Draft Permit provides no restrictions regarding application of manure on non-cultivated fields. Because of the significant damage to vegetation and reduction in yield and nutrient uptake that is often associated with manure incorporation on non-cultivated fields, the City believes this application method should be prohibited altogether. At a minimum, the City would encourage the TCEQ to consider amending the Draft Permit to prohibit application of manure on non-cultivated fields within 500 feet of a stream, particularly since no buffers are required for third-party fields.

40. Wastewater Application on Third-Party Fields

According to the Technical Information Packet, it appears that the applicant plans to apply wastewater to third-party fields. There does not seem to be any way that wastewater can be applied using any portion of the CAFO's irrigation system since utilizing this type of system would necessitate some control over the third-party field by the CAFO (*e.g.*, control of the pumping rate from the RCS) which is prohibited under the third-party fields rules. The Draft Permit should be amended to allow wastewater application on third-party fields only when the wastewater is transported from the CAFO by truck.

41. NRCS Code 590 Requirements for Third-Party Field Applications

Draft Permit Provisions VII.A.8(e)(5)(i)(C-E) should be revised to include a statement that the application rate is not to exceed the requirements of NRCS Code 590. Although more restrictive in many instances, it is possible for third-party fields to meet the requirements of Draft Permit Provisions VII.A.8(e)(5)(i)(C-E) but fail to meet the requirements of NRCS Code 590. For example, NRCS Code 590 requires that the application rate not exceed the annual crop P requirement in fields with a P-Index rated of "Very High." Draft Permit Provision VII.A.8(e)(5)(i)(C) allows the nitrogen crop requirement rate if the field is less than 50 ppm irrespective of the P-Index. Adherence to NRCS Code 590 should be required if it is more restrictive. The City would recommend that a specific provision be added to the Draft Permit that requires adherence to NRCS Code 590 for third-party fields when such a standard is more restrictive.

42. NMP for Third-Party Fields

According to Draft Permit Provision VII.A.8(e)(5)(i)(A), no NMP is required for third-party fields. Without preparing an NMP, the requirements of Permit Provisions VII.A.8(e)(5)(i)(C-E) cannot be met since an NMP is the planning tool that is necessary to determine the appropriate application rates. The City requests that the applicant be required to submit an NMP for third-party field applications.

43. Reporting Crop Yields on Third-Party Fields

While Title 30, Section 321.46(d)(8)(F) of the Texas Administrative Code requires recording the actual yield of each harvested crop in the PPP, it does not require the yield to be reported. Similarly, Draft Permit Provision VIII.B.7 does not require reporting of this information in the annual report. Because the applicant is not required to report the actual yields of each harvested crop in the PPP, the phosphorus crop removal rates are extremely difficult, if not impossible, to calculate with any measure of reliability. This of course makes compliance with the phosphorus application rate limitations extraordinarily difficult to ascertain. The City would suggest that provision VIII.B.7 of the Draft Permit be amended to require the submission of crop records and crop yield records in the annual report, and that provision VII.A.8(e)(5)(iv) of the Draft Permit be amended to require that records of crops and crop yields on third-party fields be submitted to the TCEQ quarterly. Alternatively, the City requests that Draft Permit Provision VII.A.8(e)(5)(iv) be revised to clarify the methods that the TCEQ will employ to determine compliance in the absence of any annual harvested yield reporting requirements.

44. Sludge Application to Third-Party Fields

Draft Permit Provision VII.A.8(e)(5) would allow sludge to be applied to third-party fields. Title 30, Section 321.42(j) of the Texas Administrative Code, however, allows only manure, litter, and wastewater to be applied to third-party fields. The City would request that the Draft Permit be revised to clarify that no sludge may be applied to third-party fields.

45. Demonstration of Sustainability for the Term of the Permit

The NMP provided in the Draft Permit addresses only the first year of the permit. It fails to address the subsequent years of the five-year permit term. A five-year NMP should be prepared that shows the impacts of all nutrient management issues over the entire permit term, which would be particularly insightful with respect to determining the sustainability of the operation. With a five-year NMP establishing an overall maximum sustainable application rate, an annual NMP could then be used to make discreet adjustments to the application schedule for individual fields based on annual soil sampling and crop production. While it is true that the NMP may change each year based on site-specific sampling results, an NMP for the term of the permit would demonstrate that, based on projected application rates, the applicant has enough land to sustain its operation for the five-year permit term.

46. Identification of Historical Waste Application Fields

Title 30, Section 321.42(k) of the Texas Administrative Code requires that soil samples be taken in historical waste application fields as well as active LMUs. Although Draft Permit Provision X.N. requires a map of the historical fields to be maintained in the PPP, the historical fields have not been identified in the application or in the permit. Since active LMUs are identified in the Draft Permit, it would seem appropriate to identify the location of the historical

fields in the Draft Permit, as well. This simple revision would alleviate a great deal of confusion regarding the naming, numbering, and location of waste application fields that has historically plagued similar permits.

47. Definition of Vegetative Buffers

Draft Permit Provision X.D requires that the operator install and maintain buffers according to NRCS standards. While the NRCS does have practice standards for “filter strips,”⁴ no similar practice standard exists for “vegetative buffers.” Without a definition and standard for “vegetative buffer,” the term has marginal utility from a compliance viewpoint. A single tree in the buffer area could very well be considered a “vegetative buffer” without additional guidance from the TCEQ. If the TCEQ considers “vegetative buffers” to mean either “filter strips” as defined by NRCS Practice Code 393 or “riparian forest buffers” as defined by NRCS Practice Code 393, then this definition should be placed in the Draft Permit to make it clear to the applicant. The City believes that enforcement of this standard could be a challenge without a clear definition written into the Draft Permit. Accordingly, the City would suggest that the Draft Permit be amended to include the following: “A vegetative buffer shall meet the criteria of Riparian Forest Buffers defined by NRCS Practice Code 391 or the criteria of Vegetative Filter Strips as defined by NRCS Practice Code 393.”

48. Non-Attainment of Bacterial Water Quality Standards

This facility discharges into Segment No. 1226 which is currently listed on the State’s 303(d) list (impaired and threatened waters) for non-attainment of bacteria water quality standards. In the Fact Sheet⁵ TCEQ states that “the RCS storage capacity requirements, nutrient management practices, increased TCEQ oversight of operational activities, and requirements of the TMDL Implementation Plan, which are incorporated into the draft permit, are designed to reduce the potential for this CAFO to contribute to further impairment from bacteria.”

With respect to the first component of that statement—RCS storage capacity requirements—increased RCS storage capacity requirement should decrease the amount of bacteria discharged during chronic or catastrophic rainfall events as the TCEQ has indicated. However, chronic and catastrophic rainfall events are atypical. The majority of the occurrences of non-attainment of bacterial water quality standards occurs during non-chronic and non-catastrophic rainfall events, so non-attainment during these other conditions should also be addressed.

With respect to the second element—nutrient management practices—it remains unclear how nutrient management practices will have any measurable effect on bacteria. While bacteria and pathogen loads originate from the same sites and materials as nutrients and are transported

⁴ See NRCS Practice Standard Code 393.

⁵ P. 12.

via the same streams and rivers, the processes and removal mechanism for bacteria are far different from those for nutrients. Much of the nutrients from CAFOs are removed by harvesting growing crops following land application. It is not clear, however, that bacteria are effectively absorbed or otherwise removed by crop growth. Bacteria undergo different processes in the streams and rivers than nutrients. They are not removed by algae, and bacteria have a potential for regrowth. Additionally, a look at the NMP submitted for this facility indicates that the application rates will be limited based on the nitrogen concentrations in the wastewater just as they have in the past. Therefore, there is no additional limitation on the amount of bacteria being applied over what has been allowed under the previous permit.

With respect to the third element—increased TCEQ oversight of operational activities—the TCEQ's efforts here are admirable and sorely needed. But this typically involves enforcement, which is a reactive, not proactive, method. It is not clear how oversight will eliminate the bacteria non-attainment.

With respect to the fourth and final element—the TMDL Implementation Plan—the plan addresses only phosphorus, not bacteria.

Given the significance of the bacterial problems that exist in the North Bosque Watershed, the City encourages the TCEQ to amend the Draft Permit to include additional provisions that address the control of pathogens from the land application and irrigation operations authorized therein.

49. Reporting for Third-Party Fields

The Draft Permit and Commission rules allow for the disposal of wastewater or manure by the use of third-party fields not owned, operated, controlled, rented or leased by the applicant. Both the Draft Permit and Commission rules limit the use of third-party fields to only those for which a soil test phosphorus analysis shows a level less than 200 ppm and which require initial and annual soil sampling. In addition, the Draft Permit sets out land application rates for such fields. However, the Draft Permit does not include provisions that require the applicant to report information regarding land application rates and soil testing to the Commission to ensure compliance. The Draft Permit only requires that the applicant submit records to the regional office containing the "name, locations, and amounts of wastewater, sludge, and/or manure transferred to operators of third party fields."⁶ It is not apparent how compliance with the Draft Permit provisions regarding third-party fields can be determined without further information on soil testing, areas of application, application rates, etc. The inclusion of additional provisions regarding reporting for third-party fields to clarify that information needed to determine compliance will provide for better enforcement. For example, such provisions could include revision of VII.8.(e)(5)(iv) to state that

⁶ Draft Permit VII.A.8(e)(5)(iv).

[t]he permittee shall submit records to the appropriate regional office quarterly that contain the name, locations, and amounts of wastewater, and/or manure transferred to operators of third-party fields, a copy of any initial or annual soil analyses, land application locations, dates and times, and nutrient concentration of applied materials, rates, acreage of application area, and crops and crop yields for the preceding quarter.

In addition, it would be beneficial if this information is also included in the annual report to the Office of Enforcement pursuant to 30 Tex. Admin. Code § 231.36(j), along with (i) copies of contracts with the applicable third-party field operators; (ii) a statement that application rates in any third-party field met permit requirements during the previous year; and (iii) a summary of discharges from third-party fields or a statement that there has been no discharge from any third-party field. If such information is included, the performance of the operator with respect to use of third-party fields for the previous year may be reviewed in a holistic manner with all necessary information available.

50. Control of Third-Party Fields

The Draft Permit prohibits discharges except as provided by the permit and federal regulations. The Draft Permit authorizes discharges from RCSs whenever "chronic or catastrophic rainfall events or catastrophic conditions cause an overflow."⁷ The Draft Permit also prohibits the "drainage of wastewater, sludge and manure from an LMU" unless authorized under certain conditions.⁸ However, the Draft Permit, although allowing the application of waste on third-party fields, is silent with respect to drainage or discharges from third-party fields. It is important that the Draft Permit clearly state that drainage or discharges of wastewater or manure from third-party fields is prohibited. Otherwise, there does not appear to be any control regarding the over-application of waste on third-party fields. Better control of third-party fields is very important because such fields do not benefit from the use of RCSs, NMPs, or other protections imposed on LMUs. In addition, the Commission should consider prohibiting the applicant's further use of any third-party field if it is determined that it has ever disposed of waste on a third-party field when the most current soil test reflects phosphorous concentrations of greater than 200 ppm or the application rate established by permit for a third-party field is ever exceeded. The use of third-party fields should be considered to be a privilege that should be revoked if it is ever abused.

⁷ A "chronic or catastrophic rainfall event" is defined at 30 Tex. Admin. Code § 321.32(10) as a "series of rainfall events that do not provide opportunity for dewatering a retention control structure and that are equivalent to or greater than the design rainfall event or any single rainfall event that is equivalent to or greater than the design rainfall event."

⁸ Draft Permit VII.A.8(f)(2)(i).

Ms. LaDonna Castañuela

November 24, 2008

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The City of Waco hereby requests that the Executive Director consider these comments in evaluating the Draft Permit which has been proposed to Gerben Leyendekker / Leyendekker Dairy. The City appreciates the opportunity to submit these comments and the consideration it hopes the Executive Director and Commission staff will give to them.

Sincerely,



Martin C. Rochelle

MCR/ldp

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