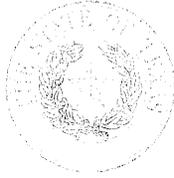


Buddy Garcia, *Chairman*
Larry R. Soward, *Commissioner*
Bryan W. Shaw, Ph.D., *Commissioner*
Mark R. Vickery, P.G., *Executive Director*



TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

April 7, 2009

TO: Persons on the attached mailing list.

RE: Nueces County Water Control and Improvement District No. 5
Permit No. WQ0011583001

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 Nueces County Water Control and Improvement District No. 5 Office, 4394 Farm-to-Market Road 666, Banquete, 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/lg

Enclosures

MAILING LIST
for
Nueces County Water Control and Improvement District No. 5
Permit No. WQ0011583001

FOR THE APPLICANT:

Emily Rodriguez
Nueces County Water Control and
Improvement District No. 5
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Banquete, Texas 78339-0157

PROTESTANTS/INTERESTED PERSONS:

Lionel Lopez, Director
South Texas Colonia Initiative, Inc.
4325 Philippine Drive
Corpus Christi, Texas 78411-5058

FOR THE EXECUTIVE DIRECTOR
via electronic mail:

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

Michael Redda, Technical Staff
Texas Commission on Environmental Quality
Water Quality Division MC-148
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Austin, Texas 78711-3087

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
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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

PROPOSED TPDES PERMIT NO. WQ0011583001

2009 APR -3 AM 9: 47

<p>APPLICATION BY</p> <p>NUECES COUNTY WATER CONTROL</p> <p>AND IMPROVEMENT DISTRICT NO. 5</p>	<p>§</p> <p>§</p> <p>§</p> <p>§</p> <p>§</p>	<p>BEFORE THE</p> <p>TEXAS COMMISSION ON</p> <p>ENVIRONMENTAL QUALITY</p>	<p>CHIEF CLERKS OFFICE</p>
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EXECUTIVE DIRECTOR'S RESPONSE TO PUBLIC COMMENT

The Executive Director (ED) of the Texas Commission on Environmental Quality (the Commission or TCEQ) files this Response to Public Comment (Response) on Nueces County Water Control and Improvement District No. 5's (Applicant) application for a renewal of Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0011583001, and the ED's preliminary decision. As required by Title 30 of the Texas Administrative Code (30 TAC) Section (§) 55.156 (Rule), before a permit is issued, the ED prepares a response to all timely, relevant and material, or significant comments. The Office of the Chief Clerk received timely filed comment letters and comments at the public meeting from Mr. Lionel Lopez of the South Texas Colonia Initiative, Inc., representing the Colonia residents. This Response addresses all such timely public comments received, whether or not withdrawn.

BACKGROUND

Description of Facility

The Applicant has applied for a renewal of TPDES Permit No. WQ0011583001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 100,000 gallons per day. The Banquete Wastewater Treatment Facility is an activated sludge process plant operated in the extended aeration mode. Treatment units include a lift station, bar screen, oxidation ditch, final clarifiers, sludge drying beds and a chlorine contact chamber. The facility is in operation.

The effluent limitations in the draft permit, based on a 30-day average, are 10 mg/l BOD₅, 15 mg/l TSS and 4.0 mg/l minimum dissolved oxygen (DO). The effluent shall contain a chlorine residual of at least 1.0 mg/l and shall not exceed a chlorine residual of 4.0 mg/l after a detention time of at least 20 minutes based on peak flow.

The treated effluent is discharged to Banquete Creek; thence to Petronilla Creek Above Tidal in Segment No. 2204 of the Nueces-Rio Grande Coastal Basin. The unclassified receiving water uses are no significant aquatic life uses for Banquete Creek (from the wastewater treatment plant to 0.12 miles downstream) and intermediate aquatic life uses for Banquete Creek (0.12 miles to segment). The designated uses for Segment No. 2204 are intermediate aquatic life uses and contact recreation. The effluent limitations in the draft permit will maintain and protect the

existing instream uses. All determinations are preliminary and subject to additional review and/or revisions.

The plant site is located at the crossing of Banquete Creek and County Road 40, which is approximately 1.25 miles east of Farm-to-Market Road 666 and 0.5 mile south of State Highway 44 near Banquete in Nueces County, Texas.

Procedural Background

TCEQ received the permit application on September 5, 2008, and declared it administratively complete on October 8, 2008. The Notice of Application and Intent to Obtain Water Quality Permit (NORI) was published on October 23, 2008 in the *Caller Times*. The Notice of Application and Preliminary Decision (NAPD) was published on January 6, 2009 in the *Caller Times*. This application is subject to the procedural requirements adopted pursuant to House Bill 801, (76th Legislature, 1999).

Access to Rules, Laws and Records

If you need more information about this permit application or the wastewater permitting process, please call the TCEQ Office of Public Assistance at 1-800-687-4040. Other information can be obtained on the web that following addresses:

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

Commission records for this facility are available for viewing and copying. Those records are located at TCEQ's main office in Austin, 12100 Park 35 Circle, Building F, 1st Floor (Office of Chief Clerk, for the current application until final action is taken) and at TCEQ's Region 14 Office, NRC Building, Suite 1200, 6300 Ocean Drive, Unit 5839, Corpus Christi, Texas 78412-5839. The application for this facility is available for viewing and copying at Nueces County Water Control and Improvement District No. 5 Office, 4394 Farm-to-Market Road 666, Banquete, Texas, since publication of the NORI. The permit application, draft permit, statement of basis/technical summary, and ED's preliminary decision have been available for viewing and copying at the same location since publication of the combined NAPD and Notice of Public Meeting.

COMMENTS AND RESPONSES

COMMENT 1:

Mr. Lopez indicates that there are complaints regarding dirty water under Banquete Bridge and masses of debris, rubbish and trash under the bridge on CR 40 near the wastewater treatment plant for which the wastewater treatment plant should be responsible to clean.

RESPONSE 1:

TCEQ records indicate that no complaints of dirty water under Banquete Bridge, and masses of debris, rubbish and trash under the bridge on CR 40 near the wastewater treatment plant were received by the agency. TCEQ conducts periodic inspections of wastewater facilities and also conducts investigations based on complaints received from the public. To report complaints about the facility, please contact the Corpus Christi Regional Office at (361) 825-3100, or call the 24-hour toll-free Environmental Complaints Hotline at 1-888-777-3186. Complaints phoned in to the toll-free Environmental Complaints Hotline from Nueces County are automatically routed to the Corpus Christi Regional Office. Citizen complaints may also be filed on-line at www.tceq.state.tx.us/compliance/complaints/index.html. The TCEQ investigates all complaints received. If the facility is found to be out of compliance with the terms and conditions of its permit, it will be subject to investigation and possible enforcement action. For more information regarding enforcement, please see TCEQ's web site at www.tceq.state.tx.us and click on "Compliance, Enforcement and Cleanups."

COMMENT 2:

Mr. Lopez comments that the discharge of treated wastewater from the Banquete Wastewater Treatment Facility will affect human health, aquatic life and impact the recreational use of the receiving stream.

RESPONSE 2:

As part of the permit application process, TCEQ must determine the uses of the receiving water and set effluent limits that are protective of those uses. The draft permit includes effluent limitations and monitoring requirements for 5-day CBOD₅, TSS, chlorine residual and pH to ensure that the proposed effluent limits will not result in a violation of the Texas Surface Water Quality Standards (TSWQS) for the protection of surface water quality, groundwater, and human health. It also includes additional requirements for the wastewater treatment system to ensure the protection of water quality and human health and for the disposal of domestic sludge generated from the wastewater treatment facility.

In this case, unclassified receiving water uses are no significant aquatic life uses for Banquete Creek (from the wastewater treatment plant to 0.12 miles downstream) and intermediate aquatic life uses for Banquete Creek (0.12 miles to segment). The designated uses for Segment No. 2204 are intermediate aquatic life uses and contact recreation. The ED determined that the proposed draft permit is protective of the environment, water quality, and human health and that

it meets TCEQ rules and requirements if the Applicant operates and maintains the facility as required by the proposed permit and regulations. To report complaints about the facility, please contact the TCEQ at 1-888-777-3186 to reach the TCEQ region office in your area. Non-compliance with the permit may result in enforcement action against the Applicant.

COMMENT 3:

Mr. Lopez asks what Segment No. 2204 uses are intermediate aquatic life uses and contact recreation.

RESPONSE 3:

Segment 2204 was made a segment in the 1988 Commission's approved standards revision. At that time, uses for segments were determined using the available data and the conditions observed by regional staff. Criteria for the intermediate aquatic life use are mean dissolved oxygen (DO) of 5.0 mg/l and minimum DO of 4.0 mg/l in spring and mean dissolved oxygen (DO) of 4.0 mg/l and minimum DO of 3.0 mg/l in seasons other than spring. The habitat is moderately diverse with some expected species assemblage. Sensitive species are very low in abundance and the trophic structure is moderately imbalanced.

All perennial streams are considered as water bodies with contact recreational uses unless and otherwise contact recreational activity is prohibited by law; e.g. Houston ship Channel.

COMMENT 4:

Mr. Lopez asks if TCEQ tests the water at the bridge (Banquete) where the discharge flows through.

RESPONSE 4:

There is no Surface Water Quality Monitoring (SWQM) test station at the Banquete Bridge. The closest SWQM station available to the site is Station No. 13099 located approximately 5 miles downstream under the bridge of FM 2826.

Respectfully submitted,

TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY

Mark R. Vickery, P.G.
Executive Director

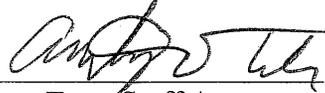
Robert Martinez, Director
Environmental Law Division

By 
Anthony Tatu, Staff Attorney
Environmental Law Division
State Bar No. 00792869
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(512) 239-5778
(512) 239-0606

REPRESENTING THE EXECUTIVE
DIRECTOR OF THE TEXAS COMMISSION
ON ENVIRONMENTAL QUALITY

CERTIFICATE OF SERVICE

I certify that on April 3, 2009 the "Executive Director's Response to Public Comment" for Proposed TPDES Permit No.WQ0011583001 was filed with the Texas Commission on Environmental Quality's Office of Chief Clerk.



Anthony Tatu, Staff Attorney
Environmental Law Division
State Bar No. 00792869

TEXAS
COMMISSION
ON ENVIRONMENTAL
QUALITY

2009 APR -3 AM 9:47

CHIEF CLERKS OFFICE

MAILING LIST
APPLICATION FOR PROPOSED TPDES PERMIT NO. WQ0011583001
NUECES COUNTY WATER CONTROL AND IMPROVEMENT DISTRICT NO. 5

FOR THE APPLICANT:

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FOR THE OFFICE OF PUBLIC
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FOR THE CHIEF CLERK:

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