LOWERRE, FREDERICK, PERALES,
ALLMON & ROCKWELL
Attorneys at Law
707 Rio Grande, Suite 200
Austin, Texas 78701
(512) 469-6000 • (512) 482-9346 (facsimile)
mail@lf-lawfirm.com

OPA
H
MAY 13 2009
BY

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY
2009 MAY 13 AM 9:55
CHIEF CLERKS OFFICE

ACR
49649

May 8, 2009

Ladonna Castañuela
TCEQ Chief Clerk

Re: Application of Cottonwood Auction Barn, L.L.C. for TPDES Permit No. WQ0004136000

Ms. Castañuela:

On behalf of Dr. Pritchy Smith, and his son Parc Smith, I file this clarification and request for a contested case hearing regarding the application of Cottonwood Auction Barn, L.L.C. for TPDES Permit No. WQ0004136000. Dr. Smith owns property adjacent to the Cottonwood Auction Barn, listed as Property Number 2 on the Adjacent Landowners List submitted in the application (the "Smith Property"). Dr. Smith's property includes a residence which he currently leases, and which he has long intended to ultimately occupy upon retirement. Retention Control Structure # 1 of the Cottonwood Auction Barn facility is little more than 500 feet away from this residence on the Smith property. Near this residence is a groundwater well on the Smith property. This groundwater well is located less than 1000 feet from RCS # 1 at the Cottonwood Auction Barn. Water from this groundwater well is used for domestic purposes at the residence on the Smith property, including drinking water. The Smith's are concerned that the water in this well may be contaminated by the proposed facility through the movement of contaminants in the ground from the retention control structures at the Cottonwood Auction Barn, as well as the land application fields. Parc Smith has regularly engaged in recreational activities on the Smith property adjacent to the Cottonwood Auction Barn for several decades, including hiking, camping and fishing. The Smith's are concerned that odor from the land application fields and the retention control structure at the Cottonwood Auction Barn will impact both Parc and Pritchy Smith's ability to engage in recreational activities on the Smith Property, and also impact their ability to use the Smith property as a residence.

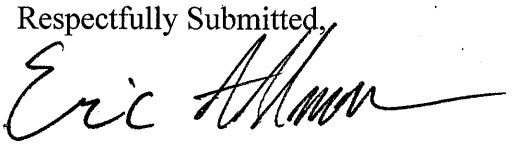
The Smith's wish to clarify a hearing request previously filed on August 21, 2008. In that request, the Smith's stated that Dr. Smith and his family use the waters downstream of the Auction Barn for recreational enjoyment. Cottonwood Creek is the Creek which flows directly through the Cottonwood Austion Barn. Green Creek is a separate creek which flows across the Smith property to the east of the Auction Barn. The convergence of Cottonwood Creek and Greens Creek occurs to the south of the Smith Property, and so the area of Greens Creek on the Smith property is not downstream

MW

of the creek flowing through the Cottonwood Auction Barn property. Given that the draft permit authorizes off-site application fields in the Greens Creek watershed upstream of the Smith property, the Smith's are still concerned that the operation of the facility as authorized by the draft permit will lead to contamination of Green Creek as it flows through the Smith Property, impacting the Smith's ability to use their property and Green Creek for recreational purposes, and also leading to algal blooms in Green Creek.

Pritchy Smith and Parc Smith request a contested case hearing on the aforementioned issues and each issue raised in Dr. Smith's previous comments and hearing request. The Smiths disagree with the Executive Director's statement in the response to comments that, "The draft permit is consistent with the Bosque TMDL, TMDL I-Plan, and CAFO rules in 30 TAC, Chapter 321."[1] Thus, the Smith's request a hearing on whether the draft permit is consistent with the Bosque TMDL, the TMDL I-Plan, and CAFO Rules at 30 TAC, Chapter 321. Pritchy Smith and Parc Smith both seek a contested case hearing on each issue raised by Dr. Smith and the City of Waco, including those issues discussed in Comments No. 1 – 34 of the Executive Director's April 9, 2009 Response to Comments.

Respectfully Submitted,



Eric Allmon

LOWERRE, FREDERICK, PERALES, ALLMON & ROCKWELL
707 Rio Grande, Suite 200
Austin, TX 78701
Tel. (512) 469-6000
Fax (512) 482-9346
Attorneys for Dr. G. Pritchy Smith and Parc Smith

[1] ED's Response to Comment #2.

LOWERRE, FREDERICK, PERALES,
ALLMON & ROCKWELL
Attorneys at Law
707 Rio Grande, Suite 200
Austin, Texas 78701
(512) 469-6000 · (512) 482-9346 (facsimile)
mail@lf-lawfirm.com

AGR
49649

H

OPA
MAY 0 8 2009
BY

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY
2009 MAY -8 PM 1:24
CHIEF CLERKS OFFICE

May 8, 2009

Ladonna Castañuela
TCEQ Chief Clerk

Re: Application of Cottonwood Auction Barn, L.L.C. for TPDES Permit No. WQ0004136000

Ms. Castañuela:

On behalf of Dr. Pritchy Smith, and his son Parc Smith, I file this clarification and request for a contested case hearing regarding the application of Cottonwood Auction Barn, L.L.C. for TPDES Permit No. WQ0004136000. Dr. Smith owns property adjacent to the Cottonwood Auction Barn, listed as Property Number 2 on the Adjacent Landowners List submitted in the application (the "Smith Property"). Dr. Smith's property includes a residence which he currently leases, and which he has long intended to ultimately occupy upon retirement. Retention Control Structure # 1 of the Cottonwood Auction Barn facility is little more than 500 feet away from this residence on the Smith property. Near this residence is a groundwater well on the Smith property. This groundwater well is located less than 1000 feet from RCS # 1 at the Cottonwood Auction Barn. Water from this groundwater well is used for domestic purposes at the residence on the Smith property, including drinking water. The Smith's are concerned that the water in this well may be contaminated by the proposed facility through the movement of contaminants in the ground from the retention control structures at the Cottonwood Auction Barn, as well as the land application fields. Parc Smith has regularly engaged in recreational activities on the Smith property adjacent to the Cottonwood Auction Barn for several decades, including hiking, camping and fishing. The Smith's are concerned that odor from the land application fields and the retention control structure at the Cottonwood Auction Barn will impact both Parc and Pritchy Smith's ability to engage in recreational activities on the Smith Property, and also impact their ability to use the Smith property as a residence.

The Smith's wish to clarify a hearing request previously filed on August 21, 2008. In that request, the Smith's stated that Dr. Smith and his family use the waters downstream of the Auction Barn for recreational enjoyment. Cottonwood Creek is the Creek which flows directly through the Cottonwood Austion Barn. Green Creek is a separate creek which flows across the Smith property to the east of the Auction Barn. The convergence of Cottonwood Creek and Greens Creek occurs to the south of the Smith Property, and so the area of Greens Creek on the Smith property is not downstream

mw

of the creek flowing through the Cottonwood Auction Barn property. Given that the draft permit authorizes off-site application fields in the Greens Creek watershed upstream of the Smith property, the Smith's are still concerned that the operation of the facility as authorized by the draft permit will lead to contamination of Green Creek as it flows through the Smith Property, impacting the Smith's ability to use their property and Green Creek for recreational purposes, and also leading to algal blooms in Green Creek.

Pritchy Smith and Parc Smith request a contested case hearing on the aforementioned issues and each issue raised in Dr. Smith's previous comments and hearing request. The Smiths disagree with the Executive Director's statement in the response to comments that, "The draft permit is consistent with the Bosque TMDL, TMDL I-Plan, and CAFO rules in 30 TAC, Chapter 321."[1] Thus, the Smith's request a hearing on whether the draft permit is consistent with the Bosque TMDL, the TMDL I-Plan, and CAFO Rules at 30 TAC, Chapter 321. Pritchy Smith and Parc Smith both seek a contested case hearing on each issue raised by Dr. Smith and the City of Waco, including those issues discussed in Comments No. 1 – 34 of the Executive Director's April 9, 2009 Response to Comments.

Respectfully Submitted,

Eric Allmon

Eric Allmon

LOWERRE, FREDERICK, PERALES, ALLMON & ROCKWELL
707 Rio Grande, Suite 200
Austin, TX 78701
Tel. (512) 469-6000
Fax (512) 482-9346
Attorneys for Dr. G. Pritchy Smith and Parc Smith

[1] ED's Response to Comment #2.

LOWERRE, FREDERICK, PERALES, ALLMON, & ROCKWELL

707 Rio Grand, Suite 200
Austin, TX 78701
(512) 469-6000 Phone
(512) 482-9346 FAX

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY
2009 MAY -8 PM 1:23
CHIEF CLERKS OFFICE

FAX COVER SHEET

To: LaDonna Castanuela 239-3311

From: Nakisha Nathan

Date: April 8, 2009

DOCUMENTS	NUMBER OF PAGES (not including cover pg.)
Hearing Request	2

COMMENTS:

CONFIDENTIALITY NOTICE: This message is intended for the use of the individual or entity to which it is addressed. This message consists of information from LOWERRE & FREDERICK and may be privileged, confidential and exempt from disclosure by law. Unauthorized distribution or copying of this information is prohibited. If you have received this communication in error, please notify us immediately at our telephone number listed above. We will promptly arrange for the return of the message to us.

PLEASE CALL 512.469.6000 AS SOON AS POSSIBLE IF ALL PAGES ARE NOT RECEIVED OR IF THERE ARE ANY OTHER PROBLEMS WITH THE TRANSMITTAL OF THIS FAX.

AGR
49649

LOWERRE, FREDERICK, PERALES,
ALLMON & ROCKWELL
ATTORNEYS AT LAW
707 Rio Grande, Suite 200
Austin, Texas 78701
(512) 469-6000 · (512) 482-9346 (facsimile)
Mail@LF-LawFirm.com

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY
2008 SEP 26 PM 3:28
CHIEF CLERKS OFFICE

September 26, 2008

OPA
SEP 30 2008
BY

LaDonna Castañuela
Office of the Chief Clerk, MC 105
TCEQ
P. O. Box 13087
Austin, TX 78711-3087

Re: Application by Cottonwood Auction Barn LLC for TCEQ Water Quality Permit No. 4136; Public Comments and Request for Contested Case Hearing

Dear Ms. Castañuela:

The following comments are intended to supplement previous comments submitted on behalf of Dr. Pritchy Smith regarding the above-referenced application for authorization of renewal to operate a confined animal feeding operation (CAFO). Dr. Smith also maintains his request for a contested case hearing on each of the issues raised in these and prior comments.

Dr. Smith owns land and an occupied home within the 0.25 mile buffer zone of the permanent odor source at the Cottonwood Auction Barn and is concerned the facility is currently operating illegally and does not meet the requirements of 30 TAC Chapter 321. The draft permit does not contain an adequate odor control plan that identifies structural and management practices the owners will utilize to effectively control odor, dust, and other air contaminants. The plan should include additional abatement measures to reduce these contaminants. Moreover, the facility has not yet obtained an individual air permit under 30 TAC Chapter 116 and should not be operating with over 999 total head. By doing so, it is in violation of TCEQ rules.

For these reasons, the TCEQ should deny Cottonwood Auction Barn's application to renew its permit. Dr. Pritchy Smith requests a contested case hearing regarding the application concerning this issue, as well as any other issues raised in comments provided to TCEQ by any other person, regardless of whether those comments are provided orally or in writing.

Sincerely,

Eric Allmon

Eric Allmon
State Bar No. 24031819

mw

LOWERRE, FREDERICK, PERALES,
ALLMON & ROCKWELL
44 East Avenue, Suite 100
Austin, TX 78701
(512) 469-6000 Phone
(512) 482-9346 FAX

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY
2008 SEP 26 PM 3:28
CHIEF CLERKS OFFICE

FAX COVER SHEET

FAX NUMBER TRANSMITTED TO:

To: LaDonna Castanuela **512.239.3311**
From: Eric Allmon
Date: September 26, 2008

DOCUMENTS	NUMBER OF PAGES (not including cover pg.)
Letter on Public Comments and Request for Contested Case Hearing	1

CONFIDENTIALITY NOTICE: This message is intended for the use of the individual or entity to which it is addressed. This message consists of information from LOWERRE & FREDERICK and may be privileged, confidential and exempt from disclosure by law. Unauthorized distribution or copying of this information is prohibited. If you have received this communication in error, please notify us immediately at our telephone number listed above We will promptly arrange for the return of the message to us.

PLEASE CALL 512.469.6000 AS SOON AS POSSIBLE IF ALL PAGES ARE NOT RECEIVED OR IF THERE ARE ANY OTHER PROBLEMS WITH THE TRANSMITTAL OF THIS FAX.

LOWERRE, FREDERICK, PERALES & ALLMON
ATTORNEYS AT LAW
44 East Avenue, Suite 100
Austin, Texas 78701
(512) 469-6000 · (512) 482-9346 (facsimile)
Mail@LF-LawFirm.com

OPA
AUG 22 2008
BY EB
CHIEF CLERKS OFFICE
2008 AUG 21 PM 4:50
TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

August 21, 2008

H

IWD
49649

LaDonna Castañuela
Office of the Chief Clerk, MC 105
TCEQ
P. O. Box 13087
Austin, TX 78711-3087

Re: Application by Cottonwood Auction Barn LLC for TCEQ Water Quality Permit No. 4136; Public Comments and Request for Contested Case Hearing

Dear Ms. Castañuela:

The following comments, submitted on behalf of Dr. Pritchy Smith, regard the above-referenced application for authorization of renewal to operate a confined animal feeding operation (CAFO). Dr. Smith also requests a contested case hearing on each of the issues raised in these comments, including whether the proposed permit is consistent with the Implementation Plan for Soluble Reactive Phosphorus in the North Bosque Watershed.

Dr. Smith owns land adjacent to the Cottonwood Auction Barn and is concerned that the applicant has not met their burden with regard to nuisance odors, and protection against adverse impacts on water quality and downstream uses of the receiving waters. The permit may not adequately control contamination from pathogens and bacteria or increased phosphorus in the receiving waters. Dr. Smith and his family use the downstream waters for recreational enjoyment and he is concerned that pathogens and algal blooms will be harmful to his health and the health of his family.

The facility is located in the drainage area of the North Bosque River in Segment 1226 of the Brazos River Basin. This segment has been recognized as out of compliance for state water quality standards regarding algal growth and bacteria. TCEQ has acknowledged that, "water quality concerns in the North Bosque River watershed are largely associated with animal feeding operations."[1] Phosphorus has been identified as the pollutant most directly responsible for algal blooms in this river. Waste from Confined Animal Feeding Operations (CAFOs) in the watershed is also largely responsible for the bacteria problems in the river.

[1] IMPLEMENTATION PLAN FOR SOLUBLE REACTIVE PHOSPHORUS IN THE NORTH BOSQUE WATERSHED FOR SEGMENTS 1226 AND 1255, TCEQ and Texas State Soil and Water Conservation Board, December 2002.

mw

For these reasons, TCEQ should deny Cottonwood Auction Barn's application to renew its permit. Dr. Pritchy Smith requests a contested case hearing regarding the application concerning each issue raised in these comments, as well as any other issues raised in comments provided to TCEQ by any other person, regardless of whether those comments are provided orally or in writing.

Respectfully Submitted,

LOWERRE & FREDERICK, PERALES, ALLMON & ROCKWELL
44 East Ave, Suite 100
Austin, TX 78701
Tel. (512) 469-6000
Fax (512) 482-9346

Eric Allmon
State Bar No. 24031819

LOWERRE, FREDERICK, PERALES, ALLMON & ROCKWELL

44 East Avenue, Suite 100
Austin, TX 78701
(512) 469-6000 Phone
(512) 482-9346 FAX

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY
2008 AUG 21 PM 4:50
CHIEF CLERKS OFFICE

FAX COVER SHEET

To: **LaDonna Castañuela** **Fax:** **(512) 239-3311**

From: **Eric Allmon**

Date: **August 21, 2008**

DOCUMENTS	NUMBER OF PAGES (not including cover pg.)
Comment and Hearing Request re: Application by Cottonwood Auction Barn LLC for TCEQ Water Quality Permit No. 4136; Public Comments and Request for Contested Case Hearing	2

COMMENTS:

CONFIDENTIALITY NOTICE: This message is intended for the use of the individual or entity to which it is addressed. This message consists of information from LOWERRE & FREDERICK and may be privileged, confidential and exempt from disclosure by law. Unauthorized distribution or copying of this information is prohibited. If you have received this communication in error, please notify us immediately at our telephone number listed above. We will promptly arrange for the return of the message to us.

PLEASE CALL 512.469.6000 AS SOON AS POSSIBLE IF ALL PAGES ARE NOT RECEIVED OR IF THERE ARE ANY OTHER PROBLEMS WITH THE TRANSMITTAL OF THIS FAX.